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

CITY OF POCATELLO

Plaintiff,

vs.

IDAHO WATER RESOURCES BOARD, IDAHO
DEPARTMENT OF WATER RESOURCES, GARY
SPACKMAN in his capacity as Director of the Idaho
Department of Water Resources and TONY
OLENICHAK, in his capacity as Water District 01
Watermaster

Defendants

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, and CITY OF WENDELL,

Intervenors.

Case No. **CV42-23-1668**

**CITY OF POCATELLO'S
MOTION FOR PARTIAL
SUMMARY JUDGMENT**

COMES NOW Plaintiff City of Pocatello ("Pocatello"), by and through its counsel of record, Somach Simmons & Dunn, P.C., and hereby moves this Court for entry of partial summary judgment pursuant to Idaho Rules of Civil Procedure ("I.R.C.P.") Rule 56 for

Pocatello and against Defendants (“State”).¹ This Motion for Partial Summary Judgment (“Motion”) is made on the grounds that there are no material facts in dispute for the issues listed herein and that Pocatello is entitled to judgment as a matter of law. Filed concurrently in support of this Motion, is Pocatello’s Memorandum in Support of Motion for Partial Summary Judgment (“Memorandum”).

WHEREFORE, Pocatello prays the Court enter judgment as follows:

1. That the Water District 01 Rental Pool Procedures are “rules” as that term is defined under Idaho law.
2. Declare that the Idaho Water Resources Board has unlawfully delegated rulemaking authority to the Committee of Nine, an *ultra vires* act; thus, the WD01 Rental Pool Procedures (“Procedures”) are void.
3. Declare that the Idaho Water Resources Board, and/or its delegates, has violated the Idaho Administrative Procedures Act by amending and/or adopting the Procedures without substantially complying with the procedural requirements in that chapter; thus, the Procedures are void. *See* Idaho Code § 67-5231.
4. Declare that Procedure 7.3 (the “Last to Fill Rule”) directs the Idaho Department of Water Resources to take *ultra vires* acts by requiring subordination of the rights of certain spaceholders, *i.e.*, (1) assigning them priorities contrary to the priority dates decreed by this Court, and (2) reallocating water to other users that otherwise would have been distributed to them. *See* Idaho Code §§ 42-602, -607.

¹ Gary Spackman is no longer Director of the Idaho Department of Water Resources, and the current office holder, Mathew Weaver, should be substituted in as a Defendant in his official capacity.

5. Declare that the Last to Fill Rule is facially unconstitutional and thus void.

Because it is contrary to Article XV, § 3, of the Idaho Constitution, there are no circumstances in which it would be valid.

6. Declare that the Idaho Department of Water Resources' past applications of the Last to Fill Rule resulted in physical takings of Pocatello's property right without compensation, contrary to Article I, § 14, of the Idaho Constitution.

7. Enjoin, the Director of the Idaho Department of Water Resources and Water District 01 Watermaster from applying the Procedures generally, and the Last to Fill Rule specifically.

Respectfully submitted this 17th of October, 2023.

SOMACH SIMMONS & DUNN, P.C.



Sarah A. Klahn, ISB No. 7928

Attorneys for Plaintiff City of Pocatello

CERTIFICATE OF SERVICE

I hereby certify that on this 17th day of October, 2023, the foregoing was filed electronically using the Court's e-file system, and upon such filing the following parties were served electronically:

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