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

CITY OF POCA TELLO,

Plaintiff,

vs.

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

Defendants,

Case No. CV42-23-1668

**AFFIDAVIT OF ANTHONY S.
OLENICHAK IN SUPPORT
OF STATE OF IDAHO'S
CROSS MOTION FOR
SUMMARY JUDGMENT AND
RESPONSE TO PLAINTIFF'S
MOTION FOR SUMMARY
JUDGMENT**

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, BURLEY
IRRIGATION DISTRICT, FREMONT-MADISON
IRRIGATION DISTRICT, and IDAHO IRRIGATION
DISTRICT,

Intervenors.

STATE OF IDAHO)
) ss
COUNTY OF BONNEVILLE)

ANTHONY S. OLENICHAK, being first duly sworn upon his oath, deposes and state that:

1. I am over the age of 18 years and competent as to the matters discussed below.
2. In 1988, I began work for the Idaho Department of Water Resources in the Eastern Regional Office as a senior water rights agent. In 1990, I became a hydrologist for Water District 01. I was later promoted to the Water District 01 Program Manager, a position I have held since 2006. My duties and responsibilities as Program Manager include, among other things, supervision of Water District 01 staff and operating, maintaining, and improving the Water District 01 water rights accounting system.
3. I am the Watermaster of Water District 01. I have held this position since mid-2019. My duties and responsibilities as watermaster include, among other things, overseeing the distribution of natural flow and storage water to diversions in Water District 01 to satisfy water delivery requests.

4. According to Procedure 4.1 of the 2023 Rental Pool Procedures, the Watermaster shall serve as the manager of the rental pool and shall administer the rental pool consistent with these procedures, which include, but are not limited to:
 - a. Determining impacts pursuant to Procedure 7;
 - b. Calculating payments to participating spaceholders as prescribed by Procedures 5.2 and 7.3;
 - c. Accepting storage into the common pool, assignment pool, and executing rental agreements on behalf of the Committee;
 - d. Disbursing and investing rental pool monies with the advice and consent of the Rental Pool Subcommittee; and
 - e. Taking such additional actions as may be directed by the Committee.
5. Participation in the Water District 01 rental pool is voluntary. Spaceholders may choose to participate or not to participate.
6. Any spaceholder that chooses not to participate is treated as though the Water District 01 Rental Pool Procedures do not apply to them. Non-participant storage is allocated and administered without reference to the procedures.
7. Participation in the rental pool is encouraged. The procedures seek to ensure that at least 75% of contracted reservoir system space is committed to supplying the Common Pool by participating spaceholders.
8. A higher percentage of participants lessens the burden on any one spaceholder of having to provide water to the pool and ensures there is a sufficient market of water made available for other uses.
9. Spaceholder participation in the rental pool has varied over the years.

10. In 2023, all spaceholders except two participated in the Common Pool.
11. Participating spaceholders make all their storage water available to the Common Pool.
12. After a determination is made as to how much water will be needed to meet the demand for water from the Common Pool, a proportionate share of each participant's storage water is made available for rental through the Common Pool. The share made available depends on the rental demand each year and the restrictions contained in the rental pool procedures.
13. The Common Pool supplies storage for: large rentals, small rentals, flow augmentation under the Snake River Water Rights Agreement of 2004 ("Nez Perce Agreement"), Blackfoot Equitable Adjustment Agreement, and the 2015 Shoshone Bannock Settlement Agreement.
14. The rental pool procedures were created, partly, as a mechanism to effectuate the terms of the Nez Perce Agreement, one of which was to provide flow augmentation from the Upper Snake system.
15. Without the rental pool, it is unclear how the State of Idaho would effectuate getting the water supplies necessary to provide the flow augmentation required by the Nez Perce Agreement, or to provide mitigation under agreements such as the 2015 SWC-IGWA Settlement Agreement, 2015 Settlement Agreement with the Shoshone-Bannock Tribes, and Blackfoot River Equitable Adjustment Settlement Agreement Water.
16. Participants in the rental pool receive benefits that include:
 - a. Allowance for changes in purpose of use, place of use, and point of diversion to occur without the necessity of completing the water right transfer process described in section 42-222, Idaho Code.

- b. Monetary incentives when leasing their storage allocations to other water users.
 - c. Protections and incentives provided when flow augmentation storage is supplied to the USBR under the Nez Perce Agreement.
 - d. Opportunity to obtain additional storage supplies when participants have exhausted their own storage allocations.
17. The City of Pocatello is a voluntary participant in the Water District 01 Rental Pool and contributed to the Common Pool in 2005–2022.
18. The City of Pocatello received the following monetary benefits resulting from annual Common Pool rentals occurring in the years 2005–2022:
- a. 2005: \$17,443.29
 - b. 2006: \$17,128.91
 - c. 2007: \$6,537.43
 - d. 2008: \$23,336.80
 - e. 2009: \$19,456.27
 - f. 2010: \$8,512.29
 - g. 2011: \$24,139.13
 - h. 2012: \$75,375.16
 - i. 2013: \$128,296.94
 - j. 2014: \$24,104.86
 - k. 2015: \$18,213.92
 - l. 2016: \$12,088.47
 - m. 2017: \$23,880.49
 - n. 2018: \$31,014.00

- o. 2019: \$23,483.28
- p. 2020: \$25,775.02
- q. 2021: \$31,650.00
- r. 2022: \$2,521.85
- s. Total: \$512,958.07

19. In addition to providing storage water to the Common Pool, participating spaceholders may also supply storage water for things like hydropower rentals, private storage leases, and additional flow augmentation rentals.

20. The City of Pocatello has provided storage water to other water users through private leases each year beginning in 2007, excepting the year 2009. The following list shows the acre-feet (AF) volume the City privately leased from the City's storage allocation and the monetary amount paid to the City by the lessee for each lease:

- a. 2007: 24,345 AF to Idaho Ground Water Users Association ("IGWA") for \$243,450
- b. 2008: 10,369 AF to IGWA for \$103,690
- c. 2010: 10,000 AF to IGWA for \$100,000
- d. 2011: 10,000 AF to Southwest Irrigation District ("SWID") for \$100,000
- e. 2012: 10,000 AF to SWID for \$100,000
- f. 2013: 10,000 AF to SWID for \$100,000 and 10,000 AF to IGWA for \$250,000
- g. 2014: 10,000 AF to SWID for \$100,000
- h. 2015: 10,000 AF to SWID for \$200,000
- i. 2016: 732 AF to various other cities for total of \$14,640; 10,000 AF to SWID for \$200,000; and 10,000 AF to LCSC Enterprises LLC. for \$200,000.

- j. 2017: 192 AF to various other cities for a total of \$3,840; 10,000 AF to SWID for \$200,000; and 10,000 AF to LCSC Enterprises LLC for \$200,000
 - k. 2018: 3,000 AF to SWID for \$60,000 and 10,000 AF to LCSC Enterprises LLC for \$250,000
 - l. 2019: 4,703.6 AF to various other cities for a total of \$94,072; 10,000 AF to SWID for \$200,000; and 10,000 AF to LCSC Enterprises LLC for \$250,000
 - m. 2020: 2,097.4 AF to various other cities for a total of \$41,948 and 20,000 AF to SWID for \$500,000
 - n. 2021: 3,969.3 AF to various other cities for a total of \$99,232.50 and 1,550 AF to City of Idaho Falls for \$31,000
 - o. 2022: 4,855.1 AF to various other cities for a total of \$121,377.50
 - p. Total: \$3,763,250
21. The rental pool procedures are drafted to ensure participants in the pool have priority over non-participants in purchasing storage through the rental pool.
22. The rental pool procedures are drafted to ensure that non-participating spaceholder storage allocations are not impacted by operation of the rental pool.
23. The rental pool procedures are also drafted to ensure that participating-senior spaceholders that lease their storage do not impact other spaceholders' storage fill and allocations.
24. A storage spaceholder in Water District 01 has the right to use their entire storage allocation at point of diversion, place of use, and purpose of use that are consistent with the decreed water right for the storage reservoir and their storage contract. However, a spaceholder does not have the right to lease their storage to be used at points of diversion,

places of use, or purposes of use outside the ones described in the decreed water right for the storage reservoir or their storage contract unless the spaceholder files a transfer under I.C. § 42-222 or leases water through the rental pool. A lease can only occur if the lease will not cause injury to other water rights. IDAPA 37.02.03.040.01.h

25. Leasing water through the Water District 01 Rental Pool has the potential to impact or lessen, not just non-participating spaceholder's reservoir accruals, but also the reservoir accrual of other participating spaceholders.
26. The Last to Fill Procedure was put into place to protect spaceholders' reservoir accrual from being impacted or lessened as a result of other spaceholders leasing storage to be used for places of use, points of diversion, or purposes of use different than described in the reservoir's decreed water right or their storage contract. Evacuation of a spaceholder's storage to provide for a lease cannot be allowed to lessen other spaceholder's storage.
27. To ensure that non-participating and other participating spaceholders are not injured by operation of the rental pool, participating spaceholders who assign storage to the Common Pool, rent through a private lease, assign water to the supplemental pool, the assignment pool, or the extraordinary pool have the storage that was evacuated to supply those rentals become Last to Fill space in the reservoir system in the following year
28. Junior and non-participating spaceholder allocations are protected by the Last to Fill Procedure. The Last to Fill Procedure causes all senior space evacuated to supply rentals to refill under the same priority as junior space evacuated to supply rentals.
29. Rather than being a penalty, the Last to Fill Procedure serves to protect non-participating spaceholders and participating junior spaceholders.

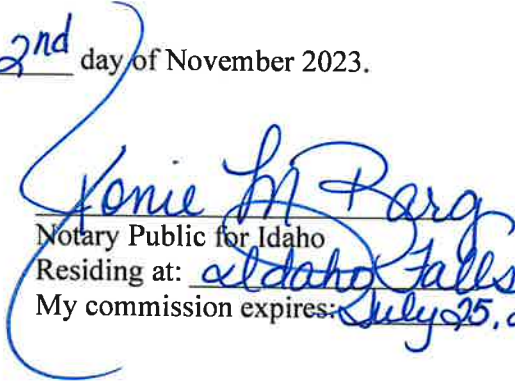
30. Palisades Reservoir has 259,600 acre-feet with a 1921 priority date, 940,400 acre-feet with a 1939 priority date, and 157,000 acre-feet with 2002 priority date. American Falls Reservoir has 1,672,590 acre-feet with a 1921 priority date. Jackson Lake has 298,981 acre-feet with a 1906 priority date, 138,829 acre-feet with a 1910 priority date, and 409,190 acre-feet with a 1913 priority date.
31. The City of Pocatello has a storage contact with the Bureau of Reclamation for 50,000 acre-feet of the 940,400 total acre-feet of 1939-priority space in Palisades Reservoir and does not have a storage contract for any space in Jackson or American Falls Reservoirs.
32. If a spaceholder in a senior-priority reservoir, like Jackson or American Falls, leases out water through the rental pool, it is assumed that is water that the senior spaceholder would not otherwise have used during that year.
33. In the following year, the space evacuated by the senior Jackson or American Falls spaceholder will need to be filled to 100% before junior spaceholders, like the City of Pocatello in the 1939-Palisades space, can be filled.
34. Thus, the evacuation of space for a rental of water by senior Jackson or American Falls could potentially cause the junior Palisades space to either not fill or only fill partially in the following year.
35. The Last the Fill Procedures ensure that junior priority space, like the City of Pocatello's 1939-Palisades space, is not impacted or lessened by senior-priority spaceholder's evacuation of space for rental of water through the rental pool.

DATED this 2nd day of November 2023.


ANTHONY S. OLENICHAK

SUBSCRIBED AND SWORN to before me this 2nd day of November 2023.




Notary Public for Idaho
Residing at: aldaho Falls, id
My commission expires: July 25, 2024

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 2nd day of November 2023, I caused to be served a true and correct copy of the foregoing via iCourt E-File and Serve, upon the following:

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