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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

PETITION FOR JUDICIAL REVIEW

Fee Category: Exempt
Idaho Code § 67-2301

Case Type: L.3.a

IN THE MATTER OF THE ALLOCATION
OF STORED WATER TO THE CITY OF
POCATELLO BY WATER DISTRICT 01

COMES NOW the City of Pocatello (“City” or “Pocatello”), by and through its undersigned counsel, and hereby submits this *Petition for Judicial Review* (“*Petition*”) pursuant to Idaho Code (“I.C.”) sections 42-1701A(4) and 67-5270(3) and Rule 84 of the Idaho Rules of Civil Procedures (“I.R.C.P.”), to seek judicial review of a final agency action of the Idaho Department of Water Resources (“IDWR” or “Department”). Pursuant to I.R.C.P. 84(c)(5), Petitioner reserves the right to assert additional issues and/or clarify the issues stated in this *Petition* or which are discovered later.

STATEMENT OF THE CASE

1. This *Petition* seeks judicial review of the *Preliminary Order Denying Motion for Summary Judgment and Upholding Department Action* (“*Order*”) issued by Department Hearing Officer James Cefalo on September 3, 2025.

2. The *Order* denied Pocatello’s requested relief and dismissed Pocatello’s challenge to Water District 01’s application of the last-to-fill rule against Pocatello’s space in Palisades Reservoir when allocating storage water amongst contract holders in 2023, as set forth in the 2023 Final Storage Report.

3. The *Order* became a final order of the Department on September 17, 2025, because no petitions for reconsideration or exceptions were filed within fourteen (14) days of the service date of the *Order*. See IDAPA 37.01.01.730.02.a.

4. This *Petition* is timely filed because it is filed within twenty-eight (28) days of the *Order* becoming final. See I.C. § 67-5273(2); see also IDAPA 37.01.01.730.02.h.

JURISDICTION AND VENUE

5. This Court has jurisdiction over this action because the *Order* is a final order of the Department that is subject to judicial review. I.C. §§ 42-1701A(4), 67-5270(3).

6. This Court is the proper venue for this action pursuant to I.C. section 67-5272(1)(b) because the Department is located in Ada County.

7. An Idaho Supreme Court Administrative Order dated December 9, 2009, declares that all petitions for judicial review made pursuant to I.C. § 42-1701A of any decision from the Department be assigned to the presiding judge of the Snake River Basin Adjudication District Court of the Fifth Judicial District.

I.R.C.P. 84(c) INFORMATION

8. **Name of Agency for Which Judicial Review is Sought:** Idaho Department of Water Resources, an executive department existing under the laws of the state of Idaho pursuant to Idaho Code § 42-1701 *et seq.*, with its state office located at 322 E. Front Street, Boise, Ada County, Idaho 83702.

9. **Title of the District Court to Which the Petition is Taken:** In the District Court of the Fourth Judicial District of the State of Idaho, in and for the County of Ada.

10. **Date, Heading, and Case Caption of the Action for Which Judicial Review is Sought:** *Preliminary Order Denying Motion for Summary Judgment and Upholding Department Action*, In the Matter of the Allocation of Stored Water to the City of Pocatello by Water District 01 (Sept. 3, 2025).

11. **Hearing:** There was not a hearing or oral presentation before the agency in this action.

12. **Statement of Issues for Judicial Review:** An initial list of the statement of issues for judicial review are:

a. Whether the *Order*, or the findings, inferences, conclusions, or decisions within, violates any provision of I.C. section 67-5279(3).

b. Whether the Department's determination that "Pocatello's delivery of its storage water to AFRD#2 constitutes a change in place of use for water right 1-2068" lacks a basis in law or fact or is otherwise erroneous. *Order* at 14.

c. Whether the Department's determination that "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” lacks a basis in law or fact or is otherwise erroneous. *Order* at 19.

d. Whether condition no. 1 in the partial decree for water right 1-2068, imposed after the decision in *United States v. Pioneer Irr. Dist.*, 144 Idaho 106 (2007), requires the Department to place a further limitation on place of use that is more restrictive than the decreed place of use specified in 1-2068. *Order* at 17. .

e. Whether the Department is required to impose the interpretation of condition no. 1 in the partial decree for water right 1-2068 reflected in the *Order* at 17 throughout Idaho.

f. Whether the failure to apply the interpretation of condition no. 1 of the partial decree for water right 1-2068 reflected in the *Order* at 17 throughout the State of Idaho works an unconstitutional taking of Pocatello’s equitable interest in the water right. *See* Idaho Const. art. I, § 14; *id.*, art. XV, § 7.

g. Whether use of Pocatello’s storage water in accordance with the partial decree for water right 1-2068 requires the Department to exclude such amounts from the last-to-fill rule.

h. Whether the Department’s application of the last-to-fill rule against Pocatello’s space was contrary to Article XV, Section 3 of the Idaho Constitution, I.C. section 42-602, or other law.

i. Whether the Department’s application of the last-to-fill rule against Pocatello’s space was an unconstitutional taking. *See* Idaho Const. art. I, § 14; *id.*, art. XV, § 7.

13. Designation as to Whether a Transcript is Requested: There is no transcript to request because there was no hearing or oral presentation before the agency in this action.

14. **Attorney Certification:** The undersigned certifies that:

- a. Service of this *Petition* has been made upon the Department; and
- b. Payment has been sent to the clerk of the agency for the estimated fee to prepare the record.

DATED this 15th day of October 2025.

SOMACH SIMMONS & DUNN, P.C.

By: 
Maximilian C. Bricker (ISB # 12283)
Attorney for City of Pocatello

CERTIFICATE OF SERVICE

I hereby certify that on this 15th day of October 2025, I served the foregoing document on the persons below via email and iCourt unless otherwise indicated:

IDAHO DEPARTMENT OF WATER RESOURCES Director Mathew Weaver Hearing Officer James Cefalo Sarah Tschohl Christina Henman Mathew.weaver@idwr.idaho.gov James.Cefalo@idwr.idaho.gov sarah.tschohl@idwr.idaho.gov Christina.Henman@idwr.idaho.gov file@idwr.idaho.gov	COALITION OF CITIES Candice M. McHugh Chris M. Bromley MCHUGH BROMLEY, PLLC cbromley@mchughbromley.com cmchugh@mchughbromley.com
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