

**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.

THE IDAHO DEPARTMENT OF WATER
RESOURCES, and MATHEW WEAVER in
his capacity as the 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

) **ORDER DENYING PETITION**
) **FOR REHEARING**

I.
BACKGROUND

This matter concerns a petition seeking judicial of a final order of the Director of the Idaho Department of Water Resources. The final order upheld Water District 01's application of the last-to-fill rule against 2,396 acre-feet of the City of Pocatello's storage space in Palisades Reservoir in 2023. On May 27, 2026, the Court entered a Memorandum Decision and Order, along with a Final Judgment, affirming the final order. The background set forth in the Memorandum Decision is incorporated herein. On June 17, 2026, Pocatello filed a petition for rehearing. In response to the petition, the Court ordered oral argument be held and set forth a briefing schedule for the parties. The parties briefed the issues and a hearing on the petition for rehearing was held on September 10, 2026.

II.
ANALYSIS

This case involves the application of the last-to-fill rule against 2,396 acre-feet of Pocatello's storage space in Palisades Reservoir in 2023. In the final order, the Department determined Pocatello's rental of Storage Water to AFRD#2 in 2022 constituted a change in the place of use element of water right 01-2068. The Department further determined Pocatello's rental of Storage Water to AFRD#2 constituted a change in the purpose of use element of water right 01-2068. For these reasons, the Department found the last-to-fill rule was appropriately applied to the rented Storage Water in 2023. The Court affirmed the Department's determinations for the reasons set forth in its Memorandum Decision and Order. Pocatello challenges the Court's affirmation on rehearing.

A. The Department's determination that Pocatello's rental of Storage Water to AFRD#2 in 2022 constituted a change in the place of use element of water right 01-2068 is affirmed.

In the Memorandum Decision, this Court held the Department did not err in determining the authorized place of use for Pocatello's 50,000 acre-feet of Storage Water under water right 01-2068 is its municipal service area. The Court's holding is based on the Pioneer Remark, which informs the place of use element of water right 01-2068. The language of the Pioneer

Remark is clear. It establishes that while the consumers or users of water under water right 01-2068 have “title to the use of the water,” that interest is appurtenant to the lands served by such consumers or users. With respect to Pocatello, this is its municipal service area.

In large part, Pocatello reasserts its same argument that the Pioneer Remark does not inform place of use under water right 01-2068, but rather addresses ownership. The Court disagrees. The word “appurtenant” in the Pioneer Remark plainly refers to the “lands within the boundaries of or served by” the consumers. This refers to the place of use. Therefore, the Pioneer Remark does not only identify who holds the ownership interest, it expressly provides that interest “is appurtenant to the lands within the boundaries served by such irrigation organizations.” Pocatello does not, as it argues, have an unfettered right to use its water anywhere in any of the fifteen counties identified under the place of use element. The Department correctly determined the authorized place of use for Pocatello’s 50,000 acre-feet of Storage Water under water right 01-2068 is its municipal service area.

Pocatello next argues that the Pioneer Remark cannot inform the place of use element of water right 01-2068 because it is located in the “other provisions” section of the partial decree. It relies upon the Idaho Supreme Court’s decision in the *City of Blackfoot v. Spackman*, 162 Idaho 302, 396 P.3d 1184 (2017). Pocatello asserts that case stands for the proposition that a remark in the “other provisions” section of a partial decree cannot alter a decreed element of a water right such as the place of use. The Court disagrees.

In the *City of Blackfoot*, the Court held that a private settlement agreement cannot alter a decreed element of a water right:

A private settlement agreement cannot define, add, or subtract from the elements of a validly adjudicated water right; it can only limit, condition, or clarify the administration of the right as between the private parties to the agreement.

City of Blackfoot, 162 Idaho at 308-309, 396 P.3d at 1190-1191 (emphasis added). This is due to the nature of private settlement agreements. As the Court explained, a private settlement agreement “is a private agreement between private parties.” *Id.* at 309, 396 P.3d at 1191. IDWR is not a party to a private settlement agreement. *Id.* As such, the Director is not bound by a private settlement agreement and has no duty to enforce a private settlement agreement. *Id.* The Court held that to allow a private settlement agreement to enlarge or otherwise alter the clearly decreed elements of a water right, “would allow private parties to alter a judicial decree.” *Id.* It

concluded “such a result is simply untenable.” *Id.* Thus, the Court held that a private settlement agreement cannot alter the decreed elements of a water right.

The Pioneer Remark is not a private settlement agreement. Rather, it is a remark judicially crafted by the Idaho Supreme Court as a consequence of litigation in the Snake River Basin Adjudication involving storage water rights located in three federal reservoirs on the Boise River System. That litigation ultimately culminated in the Idaho Supreme Court’s decision in *U.S. v. Pioneer Irr. Dist.*, 144 Idaho 106, 115, 157 P.3d 600, 609 (2007). That decision sets forth the Pioneer Remark.

The Pioneer Remark addresses the unique characteristics of storage water rights in federal reservoirs. Such rights differ from traditional water rights in significant ways, including a judicially recognized split in ownership not applicable to traditional water rights. As a result, the Pioneer Remark, while located in the other provisions section of the partial decrees on which it is contained, certainly informs the name and address element of those partial decrees. While the United States of America is listed in the name and address element, the Pioneer Remark informs that element to clarify that title to the use of the water is held by the consumers or users of the water. The Pioneer Remark likewise informs the place of use element to clarify that the place of use for each consumer is appurtenant to the lands within the boundaries of or served by such consumer.

As the Pioneer Remark is not a private settlement agreement, the Court finds the Idaho Supreme Court’s decision in the *City of Blackfoot* is not controlling here. The Pioneer Remark was appropriately included in the other provisions section of the partial decree issued for water right 01-2068 based on the stipulation of the parties and subsequent order of this Court to address the unique nature of that storage water right in Palisades Reservoir. For these reasons, the Court will deny Pocatello’s petition for rehearing.

B. The Department’s determination that Pocatello’s rental of Storage Water to AFRD#2 in 2022 constituted a change in the purpose of use element of water right 01-2068 is affirmed.

The partial decree for water right 01-2068 authorizes four purposes of use: (1) irrigation storage; (2) irrigation from storage; (3) power storage; and (4) power from storage. The Department found Pocatello’s rental of storage water to AFRD#2 in 2022 was done for a purpose

of use not authorized under the decree – mitigation. R., 899-901. Pocatello reasserts its same argument that the end use of irrigation by the Surface Water Coalition defines its purpose of use. The Court disagrees for the reasons set forth in the Memorandum Decision.

The Court will not repeat its analysis here. It will just note that Pocatello did not itself use storage water in 2022 for irrigation purposes. Rather it used storage water to satisfy its mitigation obligation to the Surface Water Coalition under the Final Settlement Agreement. Stated another way, it used the storage water to allow it to continue to pump groundwater in 2022 out-of-priority, rather than face curtailment, pursuant to an approved mitigation plan. This is a mitigation purpose of use. Mitigation is a statutorily and judicially recognized beneficial use. *See e.g.*, Idaho Code § 42-223(10) (“No portion of any water right shall be lost or forfeited for nonuse if the nonuse results from the water right being used for mitigation purposes”); *North Snake Ground Water District v. IDWR*, 160 Idaho 518, 526-527, 376 P.3d 722, 730-731 (2016) (wherein the Idaho Supreme Court specifically held that mitigation is a recognized beneficial use of water). The purpose of use element of water right 01-2068 does not contain mitigation as a beneficial use. Therefore, the Department’s determination that Pocatello’s rental of Storage Water to AFRD#2 in 2022 constituted a change in the purpose of use element of water right 01-2068 is affirmed. For these reasons, the Court will deny Pocatello’s petition for rehearing.

C. Constitutional arguments.

Pocatello asks the Court to reconsider its holding that Water District 01’s application of the last-to-fill rule against Pocatello’s space in Palisades Reservoir in 2023 did not violate the equal protection clauses of the Idaho and United States Constitutions. Pocatello asserts the Department applies last-to-fill rules in at least four water districts in the state, but WD01 is the only district where the last-to-fill rule is applied to all rentals. The Court disagrees and will rely upon its analysis in its Memorandum Decision. In addition, the Court notes only that Pocatello is treated the same under the Water District 01 Rental Pool Procedures as all other spaceholders in Water District 01. Rental pool procedures are, by their nature, not procedures of general applicability. They are narrowly tailored by local committees to fit unique local conditions. The Court finds the application of rental pool procedures to facilitate the rental of stored water on a local basis to be a legitimate state interest under the rational basis test.

Pocatello next argues the Court's affirmation of the Department's holding that the last-to-fill rule was appropriately applied to the rented Storage Water in 2023 constitutes an unlawful taking. Because the last-to-fill rule was appropriately applied for the reasons set forth in this decision and the Memorandum Decision, these arguments are unpersuasive.

D. Pocatello's storage contract with the United States is not at issue in this proceeding.

At oral argument on rehearing, and in its briefing on rehearing, counsel for the City of Pocatello made several arguments that its storage contract with the United States permits it to use its storage water (1) for purposes of use inconsistent with those listed in the partial decree for water right 01-2068, including rental, and (2) at places of use outside of its municipal service area. The Court finds these arguments are not appropriately before the Court.

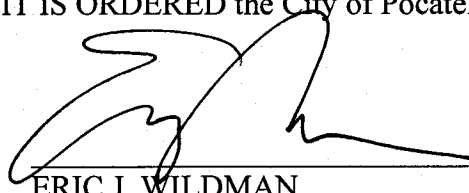
In its initial briefing on judicial review, Pocatello framed its arguments based only on the plain language of the partial decree for water right 01-2068. Those arguments do not implicate, or rely upon, its spaceholder contract with the USBOR. Indeed, before the Department, Pocatello asserted that "[t]he scope of a Spaceholder's authorized uses should be determined by reviewing the water right; only if the water right is silent on an element does the contract fill the gap." R., 56-58. Pocatello does not assert the partial decree is silent on any element relevant to its arguments. Therefore, the Court does not reach counsel's arguments on rehearing based on the language of Pocatello's storage contract with the United States.

III.

ORDER

Therefore, based on the foregoing, IT IS ORDERED the City of Pocatello's petition for rehearing is hereby denied.

Dated 9/30/24


ERIC J. WILDMAN
District Judge

CERTIFICATE OF SERVICE

I certify that on this day I served a copy of the attached to:

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Clerk of the Court

By 
Deputy Clerk