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IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

PIONEER IRRIGATION DISTRICT,

Plaintiff,

vs.

CITY OF CALDWELL,

Defendant.

Case No. CV 08-556-C

**COMPLAINT FOR DECLARATORY AND  
INJUNCTIVE RELIEF**

Filing Fee A: \$88.00

COMES NOW Plaintiff Pioneer Irrigation District, by and through undersigned  
counsel of record, for a cause of action against the Defendant City of Caldwell, and hereby  
complains and alleges as follows:

**JUDGE  
GREGORY M. CULET**

COPY

**I.**  
**PARTIES**

1. Plaintiff Pioneer Irrigation District (“Pioneer”) is an irrigation district duly organized and existing under and by virtue of the laws of the State of Idaho. Pioneer provides irrigation water and irrigation drainage functions to approximately 34,000 acres in Canyon County. Pioneer was organized in 1903 and has the distinction of being one of the first irrigation districts formed in Idaho after the Idaho legislature enacted statutes earlier that year providing for the creation of irrigation districts. In addition, many of Pioneer’s irrigation delivery and drainage facilities date back to the late 1800s.

2. Defendant City of Caldwell is a municipal corporation duly organized and existing under and by virtue of the laws of the State of Idaho and located within Canyon County, Idaho.

**II.**  
**JURISDICTION AND VENUE**

3. The conduct which forms the basis for the causes of action set forth herein occurred within Canyon County, Idaho. In addition, this action concerns real property located wholly within the boundaries of Canyon County. Accordingly, this Court has subject matter jurisdiction over this matter pursuant to Idaho Code Sections 1-701 and 1-705. In addition, Pioneer’s legal rights are affected by a municipal ordinance enacted by Defendant. Accordingly, this Court has jurisdiction to issue a declaratory judgment regarding this ordinance pursuant to Idaho Code Section 10-1202.

4. Defendant is a municipal corporation located wholly within Canyon County, Idaho. Accordingly, this Court has personal jurisdiction over Defendant pursuant to Idaho Code Section 5-514.

5. This action concerns real property located within the boundaries of Canyon County, Idaho. In addition, Defendant is a municipal corporation located wholly within Canyon County. Accordingly, venue of this matter is proper in Canyon County pursuant to Idaho Code Sections 5-401 and 5-404.

### III. GENERAL ALLEGATIONS

6. Idaho Code Section 42-1102 grants a right-of-way for irrigation facilities and provides that the existence of a “visible ditch, canal or conduit shall constitute notice to the owner, or any subsequent purchaser, of the underlying servient estate” that the owner of the ditch, canal, or conduit “has the right-of-way and the incidental rights confirmed or granted by this section.”

7. In addition, Idaho Code Sections 42-1102 and 42-1209 prohibit any party from “caus[ing] or permit[ting]” any encroachments into an irrigation easement or right-of-way without the express written permission of the owner and require that any such unauthorized encroachments that unreasonably or materially interfere with the use or enjoyment of the right-of-way be removed at the sole expense of the person or entity “causing or permitting” such encroachment (emphasis added).

8. Similarly, Idaho Code Section 42-1208 provides that irrigation facilities are not subject to adverse possession and prohibits the construction of any obstructions in irrigation easements or rights-of-way for the purpose of adversely possessing such facilities.

9. For at least 100 years, Pioneer’s irrigation delivery and drainage systems in Canyon County have been fully visible and have provided notice that any encroachments into its facilities are strictly prohibited without express written permission from Pioneer to construct such encroachments.

10. On September 5, 2006, Defendant, by and through the Caldwell City Council, adopted a revised storm water management manual (the "Manual") in Case No. 0A-76-06.

11. Prior to September 5, 2006, the Manual had been adopted by Defendant, through the Caldwell City Council, as an emergency ordinance in Bill No. 19, Ordinance No. 2594.

12. The Manual contains requirements for the management and disposition of municipal storm water runoff from new commercial and residential developments within the City of Caldwell and its Area of Impact.

13. Pursuant to Section 103.1 of the Manual, a storm water "retention" facility stores runoff until it percolates into the ground or evaporates.

14. By contrast, pursuant to Section 103.1 of the Manual, a storm water "detention" facility stores runoff and, by definition, discharges it directly into an existing drainage way.

15. Pursuant to Sections 100.5 and 103.2.1 of the Manual, new developments may discharge storm water into a natural or manmade drainage way at a rate of one miner's inch (0.02 cubic feet per second) for every acre of property to be drained.

16. Section 101.1.5 of the Manual permits a developer to construct a new discharge into an irrigation delivery or drainage facility simply by providing notice to the owner of the irrigation facility.

17. Pursuant to Sections 100.5 and 103.6.6 of the Manual, non-discharging storm water retention facilities associated with residential developments are "strongly

discouraged” and are “not allowed” unless, in the sole discretion of the City Engineer, there is a “compelling public interest” for such facility.

18. In addition, in the event that the City Engineer approves a retention facility, Section 103.6.4 of the Manual requires such facility to include an overflow drainage line into a point of historical discharge, if historical drainage rights are associated with the property to be drained. Such overflow drain may have discharge capacities exceeding two miner’s inches per acre.

19. Similarly, Section 103.7.5 requires detention facilities to include emergency spillways and allows such emergency overflows to be discharged into irrigation facilities without the consent of the owner of such irrigation facilities if a historical right to drain is associated with the property to be drained.

20. Moreover, Section 102.5 of the Manual implies that developers may discharge municipal storm water runoff into “major drains” without obtaining approval from the owner or operator of such facilities to do so.

21. Finally, Section 101.1.2 of the Manual provides that, “[i]t is the developer’s responsibility to ensure that . . . discharge rates not exceed a development’s ‘reasonable’ share of downstream system capacity,” but does not define what constitutes a “reasonable’ share of downstream system capacity.”

22. Based upon the Manual and Defendant’s implementation thereof, developers have installed multiple unauthorized points of municipal storm water discharge into Pioneer’s irrigation and drainage facilities and have dedicated these facilities to the Defendant to become part of its street and road system.

23. While some agricultural lands may have a historic right to drain agricultural storm water and irrigation runoff to Pioneer facilities, this right does not include the right to pipe and discharge municipal storm water runoff into Pioneer facilities, as this would constitute an impermissible expansion of any such historical right to drain.

24. Even if urban lands have a historical right to drain, the Manual's intent to "discharge at the rate of one miner's inch (1/50 cfs) per acre" is unlawful to the extent that it allows discharges in excess of such historical discharge rates.

25. Pioneer's irrigation "drains" were designed and constructed in the early 1900s for the primary purpose of intercepting and draining irrigation runoff and subsurface seepage water from farmland.

26. In addition, Pioneer's "drains" do not function solely for drainage. Rather, they serve the dual purpose of draining agricultural lands *and* delivering live irrigation water.

27. As is reflected in Section 100.4 of the Manual, "[a]s land is developed, the surfaces are graded and covered with non-porous materials. The reduced interception and depression storage causes the amount and rate of runoff from developed area to be greater than from undeveloped area. During rainfall events, the runoff may move more quickly through the drainage system due to unnatural routing of the flows and increased flow rates. Minor or major flooding may result."

28. In addition to its enactment and implementation of the Manual, Defendant has itself constructed and taken ownership from developers of one or more points of discharge of storm water runoff in Pioneer facilities.

29. Due to the nature and purpose of Pioneer's facilities and the increased rates of storm water runoff and discharge that are associated with the development of farmland,

Pioneer's facilities are unable to adequately handle storm water discharges from new commercial and residential developments.

30. The presence of these unauthorized storm water discharges in Pioneer's facilities materially and unreasonably interferes with Pioneer's use and enjoyment of its irrigation easements and rights-of-way because:

(a) The extra runoff materially and unreasonably interferes with Pioneer's ability to conduct maintenance and repair of its facilities during the irrigation off-season, when many of these facilities should be free of water; and

(b) The presence of these unauthorized municipal storm water discharges into Pioneer's facilities subjects Pioneer to additional and unreasonable liabilities under state and federal law.

31. Pursuant to Idaho Code Section 42-1203, Pioneer has a statutory duty to ensure that its facilities do not contain more water than they can "easily contain."

32. Pursuant to Idaho Code Section 42-1204, Pioneer has a statutory duty to ensure that water from its facilities does not "damage or in any way injure the property or premises of others."

33. The federal Clean Water Act ("CWA"), 33 U.S.C. § 1251, *et seq.*, prohibits point source discharges of pollutants into waters of the United States without a proper National Pollution Discharge Elimination System ("NPDES") permit. CWA § 402.

34. Municipal storm water runoff is classified as a point source requiring an NPDES permit under the CWA. CWA § 402(p).

35. Pioneer is generally exempt from liability under the CWA regarding the operation of its facilities, as agricultural return flows are exempt from the CWA's permitting

requirements so long as discharges are “composed *entirely* of return flows from irrigated agriculture.” *Id.* at § 402(l) (emphasis added).

36. Unauthorized point source municipal storm water discharges such as those which have been constructed in Pioneer facilities pursuant to the Manual and/or by the Defendant may expose Pioneer, as owner and/or operator of those facilities, to both civil and criminal liability ranging from \$25,000 to \$50,000 pursuant to CWA restrictions and penalties. *Id.*

37. Due to increasing urbanization within its District, some of Pioneer’s combined irrigation delivery and drainage facilities provide irrigation water to thousands of residential properties which use that water for landscaping purposes, resulting in direct human contact with said water. Because municipal storm water contains numerous pollutants, the water quality provided to residential properties has been and will continue to be degraded by the discharge points mandated by the Manual.

**IV.**  
**COUNT ONE**  
**(Declaration of Plaintiff’s Rights)**

38. Pioneer realleges and incorporates by reference the allegations contained in Paragraphs 1 through 37, above.

39. Defendant’s adoption and implementation of the Manual ignores that the construction of municipal storm water discharge points into Pioneer facilities requires the express written consent of Pioneer and expressly conflicts with Pioneer’s requirements.

40. Defendant’s adoption and implementation of the Manual ignores and conflicts with Pioneer’s authority to prohibit unauthorized discharges into its facilities that materially or unreasonably interfere with Pioneer’s ability to properly maintain and operate such facilities without causing flooding or damage to the property of others.

41. Through its adoption and implementation of the Manual, Defendant has “caused or permitted” the unauthorized installation of municipal storm water discharge pipes into Pioneer’s irrigation delivery and drainage facilities by developers who need land use approvals from Defendant to develop their properties for sale or lease.

42. The presence of these unauthorized points of discharge into Pioneer’s facilities materially and unreasonably interferes with Pioneer’s use and enjoyment of its irrigation and drain easements and rights-of-way by interfering with maintenance activities during the irrigation off-season, by increasing the likelihood of flooding from Pioneer facilities, and by unnecessarily exposing Pioneer to state and federal liabilities.

43. Pioneer is entitled to a judicial determination and declaration that:

(a) Pioneer is the owner and operator of certain easements and rights-of-way for the delivery and drainage of irrigation water in Canyon County;

(b) Pursuant to Idaho Code Section 42-1209, Pioneer has the authority to prohibit encroachments into these easements and rights-of-way that unreasonably interfere with Pioneer’s use and enjoyment of its easements and rights-of-way;

(c) Unauthorized storm water discharge points have been constructed in Pioneer facilities within the City of Caldwell and its Area of Impact;

(d) By its adoption and implementation of the Manual, Defendant has “caused or permitted” these unauthorized discharge points to be installed in Pioneer’s facilities;

(e) These unauthorized storm water discharge points materially interfere with Pioneer’s ability to safely and adequately deliver and drain irrigation water without flooding or otherwise damaging the property of others;

(f) Pioneer may prohibit such unauthorized discharges of municipal storm water into its irrigation delivery and drainage facilities, even if the lands to be drained have a historical right to drain agricultural storm and irrigation water runoff into Pioneer facilities; and

(g) Defendant, either itself or pursuant to its authority over the developers who have already installed such unauthorized points of discharge, shall ensure that such discharge points be removed and Pioneer's facilities repaired at no expense to Pioneer.

**V.**  
**COUNT TWO**  
**(Nuisance—Public and Private)**

44. Pioneer realleges and incorporates by reference the allegations contained in Paragraphs 1 through 43, above.

45. A nuisance consists of an action that interferes with the comfortable enjoyment of life or property and includes unlawfully obstructing the free passage or use, in the customary manner, of any navigable lake, or river, stream, canal, or basin. IDAHO CODE § 52-101

46. Defendant's construction, approval, and ownership of municipal storm water discharge points in Pioneer's facilities encroach upon Pioneer's facilities, its easements, and/or its rights-of-way, and unreasonably and materially interfere with Pioneer's enjoyment and free use of its irrigation delivery and drainage systems.

47. The interference with maintenance activities, the increased risk of flooding, and the degradation of the quality of the water carried by Pioneer's irrigation delivery and drainage systems constitute a private nuisance to Pioneer and a public nuisance to those who accept water deliveries from, and/or reside within the vicinity of, Pioneer's facilities.

**VI.**  
**COUNT THREE**  
**(Trespass)**

48. Pioneer realleges and incorporates by reference the allegations contained in Paragraphs 1 through 47, above.

49. By invading and interfering with Pioneer's right of exclusive possession of its facilities as aforesaid, Defendant has committed and continues to commit trespass against Pioneer's property.

50. Each and every municipal storm water runoff drainage event through the Defendant's unauthorized points of discharge into Pioneer facilities constitutes a trespass because these discharges deprive Pioneer of its right to the exclusive possession and use of its facilities.

51. Pioneer is entitled to injunctive relief prohibiting trespass in the future and requiring Defendant to eliminate the sources of this trespass.

**VII.**  
**COUNT FOUR**  
**(Preliminary and Permanent Injunction)**

52. Pioneer realleges and reincorporates by reference the foregoing allegations contained within Paragraphs 1 through 51, above.

53. Defendant's unauthorized encroachment involving Pioneer's irrigation delivery and drainage easements and rights-of-way without Pioneer's express written consent is in direct violation of Idaho Code Sections 42-1208 and 42-1209, among others.

54. Defendants' encroachment interferes with Pioneer's ability to perform its statutory duties and potentially subjects it to liability under Idaho Code Sections 42-1202, 42-1203, and 42-1204.

55. Defendants' interference with Pioneer's irrigation delivery and drainage easements and rights-of-way entitles Pioneer to relief in the form of a preliminary and permanent injunction requiring the Defendant to:

(a) Immediately remove any discharge points of municipal storm water runoff owned, approved, or constructed by Defendant within any of Pioneer's irrigation delivery and drainage easements and rights-of-way; and

(b) Immediately restore such facilities to their original condition as near as practicable prior to Defendant's construction of the encroachments.

**VIII.  
COUNT FIVE  
(Attorney Fees and Costs)**

56. Pioneer realleges and incorporates by reference the allegations contained in Paragraphs 1 through 55, above.

57. Pioneer has been required to retain counsel to prosecute this action, and is, therefore, entitled to recover reasonable costs and attorney fees as provided by law and the Idaho Rules of Civil Procedure, including, but not limited to, Idaho Code Sections 6-918A, 12-121, and 42-1209 and Idaho Rule of Civil Procedure 54.

**IX.  
PRAYER FOR RELIEF**

WHEREFORE, Plaintiff Pioneer Irrigation District prays for judgment against Defendant City of Caldwell as follows:

1. For a declaratory judgment that the Manual conflicts with state law and is void.

2. For a declaratory judgment that Pioneer may remove any existing discharge points and prohibit the future construction of any points of municipal storm water discharge which have not been authorized in writing by Pioneer;

3. For an order enjoining Defendant from further interfering with Pioneer facilities without the express written consent of Pioneer;


4. For an order requiring Defendant to ensure that any unauthorized points of discharge owned or constructed in Pioneer facilities by Defendant or pursuant to the Manual or that are owned by Defendant are timely removed and repaired at no expense to Pioneer;

5. For costs of suit, including attorney fees; and

6. For such other relief that the Court deems appropriate and proper.

DATED this 16th day of January, 2008.

MOFFATT, THOMAS, BARRETT, ROCK &  
FIELDS, CHARTERED

By   
Scott L. Campbell – Of the Firm  
Attorneys for Pioneer Irrigation District