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IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT
STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

In Re: CITY OF POST FALLS, IDAHO, <div style="text-align: right;">Petitioner.</div>	No. CV- 02-1588 FINDINGS OF FACT, CONCLUSIONS OF LAW AND JUDGMENT
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THIS MATTER has come duly and regularly before this Court for hearing on May 22, 2002, counsel for Petitioner has submitted a Petition for Judicial Confirmation, a memorandum and affidavits in support of its Petition, and it appearing that proper notice of the filing of the Petition for Judicial Confirmation has been given as provided in Title 7, Chapter 13, Idaho Code, and the Court has examined the allegations of the Petition, the exhibits annexed thereto, and the memoranda in support thereof; the Court, has been fully advised in the premises, and now makes the following:

FINDINGS OF FACT

I.

Petitioner is a political subdivision within the definition contained in Idaho Code § 7-1303(6), and has filed this action pursuant to Idaho Code §§7-1301, *et seq.* (the "Judicial Confirmation Law"), seeking judicial confirmation of the validity of water revenue bonds (the "Bonds"), as authorized by Ordinance No. 995, (the "Bond

1 Ordinance"), whereby the City will borrow money, all for the purpose of making
2 improvements to its domestic water system.

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4 II.

5 Pursuant to Idaho Code §§ 7-1305, 7-1306, Notice of the filing of the
6 Petition for Judicial Confirmation was duly served by publication once a week for
7 three (3) consecutive weeks by three weekly insertions in The Post Falls Press, a
8 newspaper of general circulation within the City of Post Falls, on May 1, May 8 and
9 May 15, 2002, and by posting in a prominent place at or near the main door of City
10 Hall at least thirty (30) days prior to the date fixed for said Hearing on the Petition,
11 all as more fully shown by the Affidavit of Publication and Affidavit of Posting of
12 Notice filed in this action.

13 III.

14 No person or entity has filed any written appearance or pleading or has
15 otherwise appeared. The allegations of the Petition for Judicial Confirmation and
16 the authenticity of the documents submitted in this action as set forth herein, are
17 deemed to be admitted:

- 18 (1) Affidavit of John Tindall in Support of Petition, filed March 18,
19 2002;
- 20 (2) Affidavit of Paul A. Klatt, P.E. in Support of Petition, filed March
21 18, 2002;
- 22 (3) Affidavit of Shelly Enderud in Support of Petition, filed March 18,
23 2002;
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(4) Affidavit of Terry Werner in Support of Petition, filed March 18, 2002;

(5) Affidavit of Christene Pappas in Support of Petition, filed March 22, 2002;

(6) Affidavit of Publication of Notice of Hearing, filed May 22, 2002;
and

(7) Affidavit of Posting Notice of Hearing, filed May 22, 2002.

IV.

Petitioner, pursuant to Section 50-323, Idaho Code, maintains and operates, and has for many years continuously maintained and operated, a domestic water system (the "System").

V.

There are numerous deficiencies in the existing water system of the City, including:

- (1) Inadequate and inconsistent water supply from Wells No. 1 and 2;
- (2) Insufficient water storage for fire protection and water delivery;
- (3) Problems with portions of the water distribution system; and
- (4) Inadequate and inconsistent pressure in certain service areas, which could jeopardize water delivery for both domestic use and fire protection.

VI.

The improvements consist generally of the following (the "Improvements"):

- (1) The acquisition, construction and installation of two (2) new wells and related well improvements in North Post Falls;

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(2) The acquisition, construction and installation of a new reservoir in North Post Falls near Prairie Falls;

(3) The repair, replacement and/or realignment of piping/pipelines and the installation of new pipelines where necessary, through the City;

(4) The acquisition, construction and installation of booster station upgrades in the Highlands area;

(5) The acquisition, construction and installation of a pressure reducing station in North Post Falls;

(6) The engineering and design of the improvements, together with the preparation of all maps, plans and specifications therefore;

(7) The acquisition and installation of all incidental equipment, controls and property necessary to place the improvements in proper service; and

(8) The improvement of sites on which the Improvements will be located and the acquisition of easement, if any, required therefor.

VII.

Petitioner, by and through the City Council, adopted Ordinance No. 995 on February 5, 2002 (“Ordinance No. 995”) authorizing: (1) The acquisition, construction and installation of the Improvements, as described herein; (2) the execution of an Agreement to use loan proceeds to pay the costs of acquiring, constructing and installing the Improvements; (3) the execution of loan documents; (4) the repayment of the loan with net revenues of the System; and (5) other matters properly relating thereto.

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VIII.

Petitioner does not have adequate funds presently available in its current budget to pay the costs of the Improvements. The costs of the Improvements are estimated to be \$4,522,000. In order to finance the acquisition of the Improvements, Petitioner proposes to enter into a Loan Agreement with the State of Idaho Department of Environmental Quality whereby Petitioner will borrow the sum of not to exceed \$3,522,000, and also use \$1,000,000 of revenue generated by the Water System of the City to pay the costs of the Improvements.

IX.

As provided in Ordinance No. 995, Petitioner will use net revenues of the System to make the payments on the Loan represented by a Bond on a pro rata basis with outstanding water revenue bonds of the Petitioner. Any Loan Payments will be distributed to the State of Idaho Department of Environmental Quality, as lender to the City in accordance with the terms and provisions of Ordinance No. 995.

X.

Article 8, §3 of the Idaho Constitution (the "Constitution") provides that no county, city or other political subdivision shall incur any indebtedness or liability, in any manner or for any purpose, exceeding in that year the income and revenue provided to it for such year, without the assent of two-thirds (or, in the case of certain revenue bonds, the assent of the majority) of the qualified electors thereof voting at an election held for that purpose. However, Article 8 §3 contains the following exception: "provided that this section shall not be construed to apply to the ordinary and necessary expenses authorized by the general laws of the state...".

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XI.

Petitioner, by and through the City Council, has determined in Ordinance No. 995 that the costs of the Improvements constitute ordinary and necessary expenses of the Petitioner within the meaning of the above-quoted proviso to Article 8, §3 of the Constitution, for which no approving vote of the electors is required. This determination is based upon the following factors:

1. The proposed expenditures are necessary to protect the health, safety and welfare of the Petitioner’s inhabitants from the risks of inadequate water quantity for firefighting purposes and the domestic water supply.
2. The proposed expenditures will be incurred to replace and upgrade the existing System to render such facilities serviceable, as opposed to the construction of wholly new facilities;
3. The amount of the proposed indebtedness or liability is not disproportionate to the Petitioner's overall budget;
4. The improvements are authorized by the general laws of the State; and
5. The Petitioner has maintained and operated the System for many years and has determined that the improvements are indispensable to and legally required for the efficient continued operation of the System.

XII.

If any of the statements in the introduction, or the Findings of Fact are determined to be Conclusions of Law, they are so deemed and to that extent, they are incorporated into these Conclusions of Law. If any of the statements in the introduction, or

1 the Conclusions of Law are determined to be Findings of Fact, they are so deemed and to
2 that extent, they are incorporated into these Findings of Fact.
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4 Based upon the foregoing Findings of Fact, the Court now makes the
5 following:

6 CONCLUSIONS OF LAW

7 I.

8 Proceedings under the Judicial Confirmation Law, Title 7, Chapter 13, Idaho
9 Code, are proceedings *in rem* and jurisdiction of the subject matter and of all
10 interested parties is lawfully obtained through publication and posting as provided
11 therein. Publication and posting as authorized by the Judicial Confirmation Law is a
12 valid method of vesting jurisdiction of this Court over all interested parties and the
13 subject matter.

14 II.

15 Jurisdiction of this Court over the subject matter of the Petition for Judicial
16 Confirmation and over all interested parties has, as a matter of law, been obtained
17 herein by publication and posting as provided by law.

18 III.

19 The allegations of the Petition for Judicial Confirmation are deemed to be
20 admitted by all interested parties who failed to appear in objection thereto. This
21 Court is authorized to render the judgment as prayed for in the Petition for Judicial
22 Confirmation and as set forth hereinafter. There was no opposition by any member
23 of the public. There is no indication of public officials circumventing public
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2 opposition to a controversial project by trying to stretch the traditional definitions of
3 “ordinary and necessary”.

4 IV.

5 The proposed Improvements, the liabilities incurred incidental thereto, the
6 obligations and the incurrence of indebtedness therefore (collectively, the
7 "Expenditures") are "ordinary and necessary expenses" within the meaning of
8 Article 8, §3 of the Constitution for the following reasons:

- 9 1. The Improvements constitute an upgrade and reconditioning of the
10 existing System, as opposed to the construction of a wholly new
11 water system. The Court specifically finds the facts of the present
12 case to be analogous to the facts in *City of Pocatello v. Peterson*,
13 93 Idaho 774, 473 P.2d 644 (1970), in that while some aspects in
14 the present case are for new equipment, most of the project is to
15 expand and improve the existing infrastructure to meet safety and
16 health needs, as well as overall demand on the system. Clearly,
17 the project is “necessary”. The closer question is whether it is
18 “ordinary”. “An expenditure, although not of a frequently
19 recurring nature, may nonetheless be ‘ordinary and necessary’.”
20 *Id.*, 93 Idaho at 778, 473 P.2d at 649, citing *Hickey v. City of*
21 *Nampa*, 22 Idaho 41, 124 P. 280 (1912). Where a city finds the
22 system “inadequate to serve the public”, and the project will be
23 paid out of revenue generated from that improved system, those
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expenses sought are “ordinary and necessary” expenses within the proviso clause of Article 8, § 3 of the Idaho Constitution.” *Id.*

2. The Improvements are necessary to adequately meet the water supply requirements of the City's inhabitants.
3. The acquisition of the Improvements are necessary to protect the health, welfare and safety of the City's inhabitants.
4. The acquisition of the Improvements are necessary to comply with the Uniform Fire Code (1994 Ed.).
5. The amount of the proposed indebtedness to be incurred (approximately \$3,522,000) is not disproportionate to the City's overall budget for 2001/2002 (\$18,442,792.00). The expenditure is less than 20% of the total annual City Budget, which indicates a continuance of a regularly established activity.
6. The acquisition, construction and installation of the Improvements are authorized by Section 50-323, Idaho Code.
7. The City has operated the System for many years and has determined that the Improvements are indispensable to the efficient continued operation of the System, and the Court finds this determination by the City is supported by substantial evidence.

V.

As "ordinary and necessary" expenditures, the proposed Expenditures, including Ordinance No. 995, the Bonds and the ordinances pertaining thereto, are

1 not subject to the approving vote of the qualified electors at a special election called
2 for such purpose.

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4 VI.

5 The City may lawfully issue the Bonds and provide for the payment of the
6 same from the net revenues of the System, as provided for in Ordinance No. 995.

7 VII.

8 The Bond Ordinance and the Bonds, when and if duly executed and delivered
9 by the City pursuant to such authority, will be legal, valid and binding special
10 obligations of the City enforceable in accordance with their terms.

11 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED:

12 1. The Judicial Confirmation Law, Title 7, Chapter 13 of the Idaho Code, is
13 constitutional.

14 2. The City is authorized to enter into the proposed Agreement with the State
15 of Idaho Department of Environmental Quality and issue the Bonds without the
16 approval of the City's qualified electors voting at a special election called for such
17 purpose.

18 3. The Expenditures, including Ordinance No. 995 or the Bonds, as
19 appropriate, and Ordinance No. 995, are ordinary and necessary expenses of the City
20 within the meaning of Article 8, Section 3, Idaho Constitution.

21 4. The City may pledge the net revenues of the System to the payment of the
22 Expenditures.

23 5. The Agreement and the Bonds will be valid and binding obligations of the
24 City, enforceable in accordance with their terms.

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DATED this 23rd day of May, 2002.

JOHN T. MITCHELL, DISTRICT JUDGE