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District Court - SRBA
 Fifth Judicial District
 In Re: Administrative Appeals
 County of Twin Falls - State of Idaho

JAN 13 2017

By _____ Clerk
 _____ Deputy Clerk

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT
 OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

BALLENTYNE DITCH COMPANY; BOISE VALLEY IRRIGATION DITCH COMPANY; CANYON COUNTY WATER COMPANY; EUREKA WATER COMPANY; FARMERS' CO-OPERATIVE DITCH COMPANY; MIDDLETON MILL DITCH COMPANY; MIDDLETON IRRIGATION ASSOCIATION, INC.; NAMPA & MERIDIAN IRRIGATION DISTRICT; NEW DRY CREEK DITCH COMPANY; PIONEER DITCH COMPANY; PIONEER IRRIGATION DISTRICT; SETTLERS IRRIGATION DISTRICT; SOUTH BOISE WATER COMPANY; and THURMAN MILL DITCH COMPANY;

Petitioners,

vs.

BOISE PROJECT BOARD OF CONTROL, and NEW YORK IRRIGATION DISTRICT,

Petitioners,

vs.

IDAHO DEPARTMENT OF WATER RESOURCES; and GARY SPACKMAN, in his capacity as the Director of the Idaho Department of Water Resources,

Respondents,

Supreme Court No. 44677

Case No. CV-WA-2015-21376
 (Consolidated Ada County Case No. CV-WA-2015-21391)

SUEZ'S SECOND NOTICE OF CROSS-APPEAL

RECEIVED
 IDAHO SUPREME COURT
 JAN 17 11:10:10
 APPEALS

FILED - ORIGINAL
 JAN 17 2017
 Supreme Court Court of Appeals
 Twin Falls

and

SUEZ WATER IDAHO INC.,

Intervenor-Respondent.

IN THE MATTER OF ACCOUNTING FOR
DISTRIBUTION OF WATER TO THE
FEDERAL ON-STREAM RESERVOIRS IN
WATER DISTRICT 63

TO: THE PARTIES AND THEIR COUNSEL OF RECORD AND THE CLERK OF
THE COURT IN THE ABOVE-CAPTIONED ACTION.

NOTICE IS HEREBY GIVEN THAT:

1. In response to the *Notice of Appeal* filed in this matter by the Boise Project Board of Control and New York Irrigation District (collectively, "Petitioners") on December 23, 2016, the above-named Intervenor-Respondent, Suez Water Idaho Inc. ("Suez"), cross-appeals against Petitioners to the Idaho Supreme Court from the portions of the District Court's September 1, 2016 *Memorandum Decision and Order*, September 1, 2016 *Judgment*, and November 14, 2016 *Order Denying Rehearing*, entered in the above-captioned action (collectively, "*Judgment*"), which set aside, in part, the October 20, 2015 *Amended Final Order* ("*Order*") issued by the Director of the Idaho Department of Water Resources ("Department" or "IDWR") in *In the Matter of Accounting for Distribution of Water to the Federal On-Stream Reservoirs in Water District 63* ("*Contested Case*"). Copies of the *Judgment* and *Order* are attached as Exhibits A, B, C, and D to Suez's *Notice of Cross-Appeal* (against Ballantyne Ditch Company, *et al.*) filed in this matter on December 23, 2016 ("*Suez's First Notice of Cross-Appeal*"), and are hereby incorporated by this reference. Suez is filing this *Second Notice of Cross-Appeal* as a belt-and-suspenders measure to ensure the Court is presented with Suez's issues in all relevant

proceedings in case the appeals are not consolidated into a single proceeding.¹ The following paragraphs are substantively identical to *Suez's First Notice of Cross-Appeal*.

2. Suez has a right to cross-appeal to the Idaho Supreme Court pursuant to I.A.R. 4, and the *Judgment* described in paragraph 1 above is an appealable judgment pursuant to I.R.C.P. 54(a) and I.A.R. 11(f).

3. Suez's preliminary statement of the issues on appeal (which is identical to the statement in *Suez's First Notice of Cross-Appeal*) is as follows. The outcomes for which Suez will argue are provided in brackets:

- a. Even in the absence of express authorization to do so on the face of the water right, does Idaho's Prior Appropriation Doctrine allow the holder of a valid on-stream storage water right to store and put to beneficial use additional water pursuant to that water right after the water right has been satisfied once, so long as sufficient water is available both to allow the additional storage and to satisfy all other water rights? [Yes]
- b. Is the right to additional storage without injury described in subsection (a) above necessary and appropriate to ensure the maximum utilization of Idaho's water resources as required by the Idaho Constitution? [Yes]
- c. Did the District Court err in Section IV.C of its *Memorandum Decision and Order* by setting aside in part the Director's *Order* in the *Contested Case*? [Yes]

¹ Suez is not filing a notice of cross-appeal against the Director of IDWR or the Department with respect to their *Notice of Appeal* filed on December 23, 2016 ("*IDWR Appeal*"), because (1) Suez is aligned with the Director and the Department, (2) Suez is a named party to that appeal, correctly identified as an Intervenor-Respondent, (3), Suez perceives that, although there have been multiple appeals, this is still a single litigation in which Suez is a party, and (4) the issues raised by the Director and the Department in the *IDWR Appeal* include the issues raised by Suez in *Suez's First Notice of Cross-Appeal* and in this *Second Notice of Cross-Appeal*. I.A.R. 35(a)(4) ("The statement of issues presented will be deemed to include every subsidiary issue fairly comprised therein.").

d. Did the District Court err in Section IV.D of its *Memorandum Decision and Order* by setting aside in part the Director's *Order* in the *Contested Case*? [Yes]

e. Is Suez entitled to an award of attorney fees and costs on appeal? [Yes]

Pursuant to I.A.R 18(f), the preliminary statement of issues on appeal set forth above shall not prevent Suez from asserting other issues on appeal.

4. No order has been entered sealing all or any portion of the record.

5. Suez requests the same reporter's transcripts as specified in the Petitioners' *Notice of Appeal* filed December 23, 2016 (which are the same transcripts specified in the *Ditch Companies' Notice of Appeal* filed December 6, 2016, and *Suez's First Notice of Cross-Appeal*).

6. In addition to those documents automatically included under Rule 28, I.A.R., and the documents (including any exhibits or attachments thereto) specified in the Petitioners' *Notice of Appeal* filed December 23, 2016 (which are the same documents specified in the *Ditch Companies' Notice of Appeal* filed December 6, 2016), Suez requests that the following documents (also including any exhibits or attachments thereto) be included in the clerk's record:

- All documents in the settled agency record and transcripts provided to the District Court on a DVD pursuant to or as identified in the December 24, 2015 *Notice of Lodging of Agency Record and Transcripts with the Agency*, the January 19, 2016 *Notice of Lodging Settled Agency Record with District Court*, and the January 19, 2016 *Order Settling the Agency Record and Transcript*.

This document request is identical to *Suez's First Notice of Cross-Appeal*.

7. Suez requests no other documents, charts, or pictures be included in the record on appeal under I.A.R. 18(j).

8. Christopher H. Meyer, the undersigned, hereby certifies:

a. That a copy of this notice of cross-appeal was and/or will be, simultaneously with filing, served on each reporter of whom a transcript has been requested to wit:

Sabrina Vasquez, Court Reporter
25 Northridge Way
Jerome, ID 83338

b. That the reporter has been paid the estimated fee for preparation of the reporter's transcript.

c. That the estimated fee for preparation of the clerk's record has been paid.

d. That all appellate filing fees have been paid.

e. That a copy of this notice of cross-appeal was and/or will be, simultaneously with filing, served upon all other parties required pursuant to I.A.R. 20.

Respectfully submitted this 12th day of January, 2017.

GIVENS PURSLEY LLP

By 
Christopher H. Meyer
Attorneys for Suez Water Idaho Inc.

State of Idaho
County of Twin Falls ss.
I hereby certify the foregoing to be a full, true and correct copy of the original on file in the above entitled action.

KRISTINA GLASCOCK
CLERK OF THE DISTRICT COURT
By 
Deputy Clerk



CERTIFICATE OF SERVICE

I hereby certify that on this 12th day of January, 2017, I caused to be filed and served true and correct copies of the foregoing document to the person(s) listed below by the method indicated:

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