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SUPREME COURT
COURT OF APPEALS

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IN THE SUPREME COURT OF THE STATE OF IDAHO

IN THE MATTER OF ACCOUNTING FOR DISTRIBUTION OF WATER TO THE FEDERAL ON-STREAM RESERVOIRS IN WATER DISTRICT 63	**Supreme Court Docket No. 44677**
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	**IRRIGATION ENTITIES' RESPONSE TO THE MOTIONS TO CONSOLIDATE APPEALS FOR BRIEFING AND ORAL ARGUMENT**

COMPANY; PIONEER DITCH COMPANY; PIONEER IRRIGATION DISTRICT; SETTLERS IRRIGATION DISTRICT; SOUTH BOISE WATER COMPANY; and THURMAN MILL DITCH COMPANY;

Petitioners/Appellants-Cross Respondents,

vs.

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

Petitioners/Respondents,

vs.

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

Respondents/Respondents,

and

SUEZ WATER IDAHO, INC.,

Intervenor-Respondent/
Respondent-Cross Appellant.

COME NOW 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 (collectively the "Ditch Companies"), by and through their attorneys of record, Sawtooth Law Offices, PLLC, and the Boise Project Board of Control and New York Irrigation District (together the "Boise Project"), by and through their attorneys of record, Barker Rosholt Simpson, LLP and Charles F. McDevitt, and hereby submit this response to the motions to

consolidate appeals for briefing and oral argument ("*Motions*") filed by Suez Water Idaho, Inc. ("Suez") in Docket Nos. 44677, 44745 and 44746, on or about March 13, 2017.

For purposes of this response the Ditch Companies and Boise Project may be sometimes collectively referred to as the "Irrigation Entities." Furthermore, the Irrigation Entities are filing the same response in each appeal. For the reasons stated herein, the Irrigation Entities oppose the consolidation of the appeals as suggested by Suez.

I.
DISCUSSION

The *Motions* filed by Suez suggest the consolidation of Docket Nos. 44677 (the appeal filed by the Ditch Companies) and 44745 (the appeal filed by the Boise Project) based upon the statement that the interests of the Ditch Companies and the Boise Project are "generally aligned." *Motions* at 3. Suez did not seek the consolidation of the appeal filed by the Idaho Department of Water Resources and Gary Spackman, in his capacity as Director of the Idaho Department of Water Resources (collectively "Department") in Docket No. 44746, but did provide a proposal for briefing and oral argument schedules based upon a statement that Suez is aligned with the Department.

However, the Department responded to the *Motions* and pointed out in the *Department's Response to Motions to Consolidate for Briefing and Oral Argument* ("*Department's Response*"), filed on or about March 17, 2017, that while Suez and the Department may be aligned as to the ultimate outcome in the appeals, "[t]he Department's appeal should be kept separate from Suez's cross-appeal to avoid potential confusion of the issues and arguments" given the fact that "the issues are legally and factually complex, and the issues raised in Suez's cross-appeal and the Department's appeal are not identical." *Department's Response* at 4.

The same is true with respect to the separate appeals filed by the Ditch Companies and the Boise Project. While the two may be "generally" aligned, the Ditch Companies and Boise Project include separate and distinct entities and are represented by separate counsel. Moreover, the issues raised in their respective appeals are not identical and to the extent the issues are similar they may intend to focus on separate issues and arguments in their respective appeals. The distinction between the Ditch Companies and the Boise Project is further demonstrated by the fact that the Ditch Companies and the Boise Project have separate interests in the reservoirs and storage water rights which are the subject of these appeals. The Ditch Companies include irrigation entities which have storage entitlements in Lucky Peak Reservoir. In contrast, the irrigation entities which comprise the Boise Project have no storage entitlements in Lucky Peak Reservoir. Just as the Department is unwilling to be consolidated with Suez and/or to share its briefing and oral argument time with Suez given the complex factual and legal issues involved in these appeals, the time allotted to the Ditch Companies and Boise Project in their respective appeals should not be reduced. The Ditch Companies and Boise Project are opposed to consolidation which would limit the oral argument time in their respective appeals as it would unfairly prejudice their right to present the issues raised in their respective appeals.

Suez's *Motions* provide two proposals and suggest that each proposal was rejected by the Ditch Companies. However, as explained in the Ditch Companies' responses to the proposals when initially proposed by Suez, the proposals provided Suez additional briefing opportunities by providing Suez with an opening brief in the Departments' appeal when it is not an appellant and not allowed to do so under the Idaho Appellate Rules while also providing Suez a final reply brief on cross appeal, and limited the oral argument time of the Ditch Companies and the Boise Project while at the same time retaining a full 30 minutes of oral argument time to the

Department in its appeal. The proposals also included the right for Suez and the Department to file responsive briefing to each other's respective appeal and cross-appeal while limiting the briefing of the Irrigation Entities. The Ditch Companies responded that the proposals unfairly provided Suez and the Department more oral argument time and briefing opportunities while eliminating oral argument time and briefing opportunities of the Ditch Companies and Boise Project. The Ditch Companies then suggested that the parties follow the Idaho Appellate Rules as to which party is entitled to file a brief in each appeal, and suggested an alternative proposal to divide the oral argument time which was never responded to by Suez or the Department. Instead, Suez filed these *Motions*. In any event, the *Motions*, like the proposals previously submitted by Suez, benefit only Suez and the Department, eliminate oral argument time and briefing opportunities by the Irrigation Entities, and unduly prejudice the rights of the Irrigation Entities to present their respective arguments and issues on appeal.

II.
IRRIGATION ENTITIES' PROPOSAL

The Ditch Companies' alternative proposal to divide the oral argument time which was provided to Suez and the Department, and which is still proposed by the Irrigation Entities as part of this response, is the following:

Ditch Companies' Appeal (Docket No. 44677):

Opening: 30 minutes for the Ditch Companies (reserving as it chooses for rebuttal)

Response: 30 minutes divided between the Department and Suez (Ditch Companies and Boise Project will agree to not argue in each other's respective appeals)

Boise Project's Appeal (Docket No. 44745):

Opening: 30 minutes for the Boise Project (reserving as it chooses for rebuttal)

Response: 30 minutes divided between the Department and Suez (Ditch Companies and Boise Project will agree to not argue in each other's respective appeals)

Department's Appeal (Docket No. 44746):

Opening: 30 minutes for the Department (reserving as it chooses for rebuttal)

Response: 30 minutes divided between the Ditch Companies and Boise Project (Suez would not argue in the Department's appeal but would be given more time in the appeals of the Ditch Companies and Boise Project)

The Irrigation Entities' proposal provides continuity in the respective oral argument times based upon the "general" alignment of the parties and it still provides Suez with more time for oral argument (30 minutes total) than either of its proposals.[1] As to the briefing, the Ditch Companies would simply suggest that the parties follow the Idaho Appellate Rules.

Finally, the Irrigation Entities would propose to the Court that the oral argument times for these three appeals be scheduled back to back and on the same day if feasible.

III.
CONCLUSION

For the reasons stated herein, the Irrigation Entities oppose the consolidation of the appeals suggested by Suez. The consolidation proposals suggested by Suez would reduce the briefing and oral argument time of the Irrigation Entities in their respective appeals and would unfairly prejudice the Irrigation Entities. In the alternative, the Irrigation Entities have suggested a proposal which protects and maintains the briefing schedules as provided by the Idaho

[1] Arguably the Ditch Companies, Boise Project and the Department would be giving up five (5) minutes of oral argument time under the Irrigation Entities' proposal because instead of having 1/3 or 10 minutes of response time in the two appeals which they are not the appellant (20 minutes total) each would have a total of 15 minutes of response time. Suez would have a total of 30 minutes under either situation.

Appellate Rules but does align the parties for purposes of response time during oral argument in the three separate appeals.

DATED this 21st day of March, 2017.

SAWTOOTH LAW OFFICES, PLLC

By _____
S. Bryce Farris
Attorneys for the Ditch Companies

DATED this 21st day of March, 2017.

BARKER ROSHOLT & SIMPSON, LLC

By _____
Albert P. Barker
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DATED this 21st day of March, 2017.

CHAS. F. MCDEVITT LAW OFFICE

By _____
Charles F. McDevitt
Attorney for New York Irrigation District

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 21st day of March, 2017, I caused a true and correct copy of the foregoing *Irrigation Entities' Response to the Motions to Consolidate Appeals for Briefing and Oral Argument* to be served by the method indicated below, and addressed to the following:

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