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Attorneys for the Ditch Companies

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 BEFORE THE IDAHO DEPARTMENT OF
WATER RESOURCES

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-Appellants-
Cross Respondents,

and

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

**SUPREME COURT DOCKET
No. 44677-2016**

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

**DITCH COMPANIES' MOTION
FOR JUDICIAL NOTICE AND
STATEMENT IN SUPPORT**

Director of the Idaho Department of Water Resources;

Respondents,

and

SUEZ WATER IDAHO, INC.,

Intervenor-Respondent-
Cross Appellant.

MOTION FOR JUDICIAL NOTICE

Appellants/the Ditch Companies,¹ by and through undersigned counsel of record hereby move this Court to take judicial notice of the documents attached hereto.

STATEMENT IN SUPPORT OF MOTION FOR JUDICIAL NOTICE

Rule 201 of the Idaho Rules of Evidence authorizes a court to take judicial notice of “adjudicative facts.” In *Trautman v. Hill*, the Idaho Court of Appeals explained:

This Court may take judicial notice of adjudicative facts, those not subject to reasonable dispute in that they are either generally known within the territorial jurisdiction of the trial court or are capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned. I.R.E. 201. This notice may be taken at any stage in the proceeding, at the trial or appellate level and extends to official reports of the federal government. . .

116 Idaho 337, 340, 775 P.2d 651, 654 (Ct. App. 1989).

The Ditch Companies request that the Court take judicial notice of the adjudicative facts contained in the following attached documents:

Attachment 1: Figures prepared by the United States Bureau of Reclamation (“BOR”) and presented to the Idaho Water Users Association Law Seminar on November 10,

¹ The “Ditch Companies” include: 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.

2017, which show: (a) historic Boise River runoff volumes, 1895-2017; (b) the four highest years of Boise River unregulated flows at Lucky Peak Reservoir; and (c) Boise River 2017 flows and storage.

Attachment 2: The “Graph of Boise System Storage” prepared by BOR and available online at https://www.usbr.gov/pn/hydromet/daily_grapha.html?list=boisys3 af.

Attachment 3: The map of “Boise Valley Irrigation Company Service Areas” published by the Idaho Department of Water Resources (“IDWR”) and available at: <https://www.idwr.idaho.gov/files/districts/20051128-Irrigation-Map-Boise-Valley.pdf>.

Each of these documents are official records and compilations of federal and state government agencies (the BOR and the Idaho Department of Water Resources, respectively). Though the facts and information the documents convey are likely not generally known within the territorial jurisdiction of the Court, the facts and information are capable of accurate and ready determination by resort to sources whose accuracy cannot be reasonably questioned with respect to the materials presented. Consequently, the above-referenced documents qualify for judicial notice under IRE 201(b)(2). Further, and as noted in *Trautman, supra*, and provided in IRE 201(f), appellate courts are authorized to take judicial notice because the action may be taken “at any stage of the proceeding.”

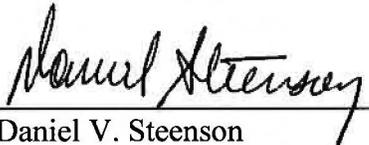
These facts are relevant to and illustrative of issues presented to the Court in this appeal, including, but not limited to, the use and operation of the Boise River Reservoirs (Arrowrock, Anderson Ranch and Lucky Peak) for beneficial use storage and flood control. Attachments 1 and 2, prepared by BOR, contain runoff, river flow and storage data from 2017, a year of extraordinarily high runoff within the recent memory of the Court, and put the 2017 water year in historic context. Attachment 3, prepared by IDWR, depicts geographic areas within the Boise Valley that depend upon water from the Boise River Reservoirs (addressing a question about place of use Justice Brody asked counsel during oral argument for the recent Black Canyon storage right appeal).

CONCLUSION

For the reasons set forth above, the Ditch Companies respectfully request that this Court take judicial notice of the documents appended hereto as Attachment 1, Attachment 2 and Attachment 3.

Respectfully submitted this 13th day of April, 2018.

SAWTOOTH LAW OFFICES, PLLC

By 
Daniel V. Steenson
Attorneys for Petitioners/Appellants/
Cross Respondents Ditch Companies

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 13th day of April, 2018, I caused a true and correct copy of the foregoing **DITCH COMPANIES' MOTION FOR JUDICIAL NOTICE AND STATEMENT IN SUPPORT** to be served by the method indicated below, and addressed to the following:

Original to:

Idaho Supreme Court
451 W. State Street
P.O. Box 83720
Boise, ID 83720
Tel (208) 334-2210
Fax (208) 947-7590

- U.S. Mail, Postage Prepaid
- Hand Delivered
- Overnight Mail
- Facsimile
- Electronic Mail or CM/ECF

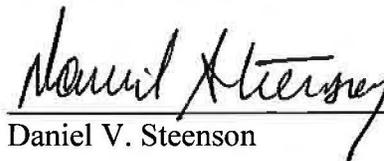
Copies by U.S. Mail and Email to:

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Daniel V. Steenson

RECLAMATION

Managing Water in the West

Lessons Learned from Snowmageddon 2017

Roland Springer

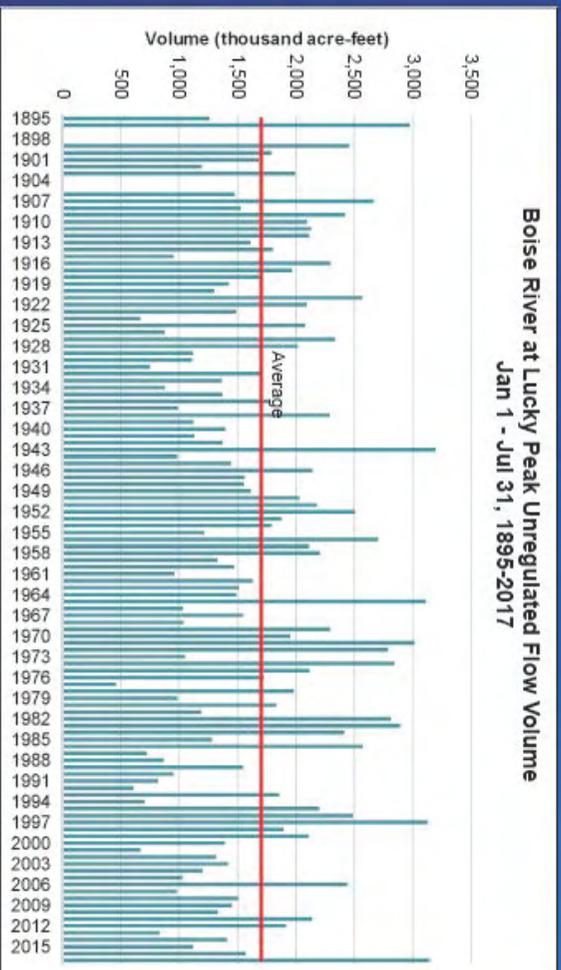
IWUA Water Law Seminar – Nov. 10, 2017



U.S. Department of the Interior
Bureau of Reclamation

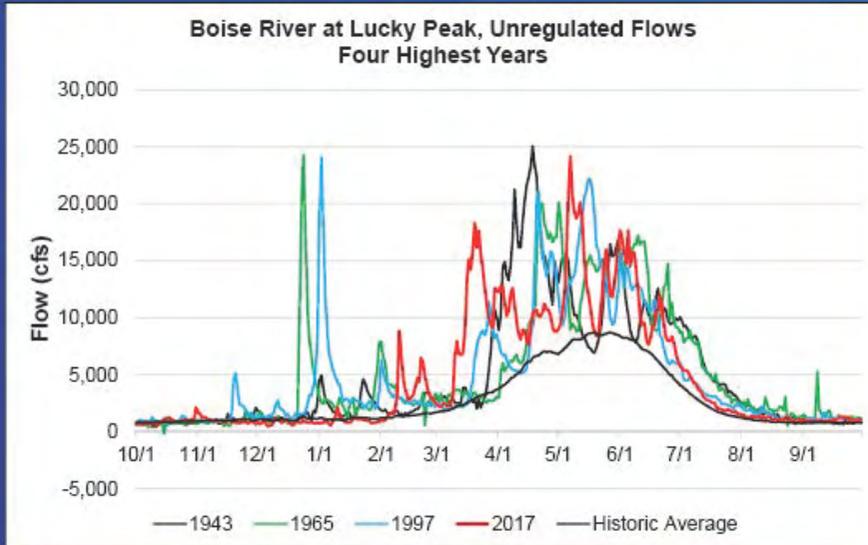
Boise River Runoff

Boise River at Lucky Peak Unregulated Flow Volume
Jan 1 - Jul 31, 1895-2017



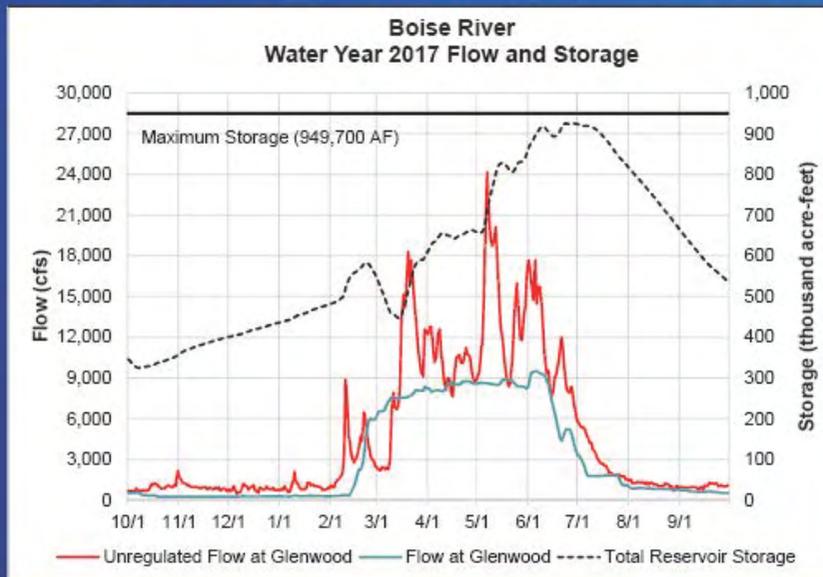
RECLAMATION

Unregulated Flows at Lucky Peak



RECLAMATION

Water Year Summary – Boise



RECLAMATION

Water Year Graph (4-12-18)

www.usbr.gov/pn/hydromet/daily_grapha.html?list=boisys3 af

- Current Year
- - Previous Year
- ... Average



PROVISIONAL DATA - Subject to change

ATTACHMENT 2

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