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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 BEFORE THE IDAHO DEPARTMENT OF WATER RESOURCES.	**Supreme Court Docket No. 44745-2017** Ada County District Court No. CV-WA-2015-21376 (Consolidated Ada County No. CV-2015-21391)
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,	**DEPARTMENT'S RESPONSE TO MOTIONS TO CONSOLIDATE FOR BRIEFING AND ORAL ARGUMENT**

Petitioners,

vs.

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

Petitioners/Appellants,

vs.

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

Respondents,

and

SUEZ WATER IDAHO, INC.,

Intervenor/Respondent.

The Idaho Department of Water Resources and Gary Spackman, in his capacity as Director of the Idaho Department of Water Resources (collectively, "Department"), by and through their attorneys of record, hereby submit this response to the motions to consolidate cases for briefing and oral argument ("*Motions*") filed by Suez Water Idaho, Inc. ("Suez") in appeal nos. 44677, 44745, and 44746, and on March 13, 2017. The Department is filing the same response in each appeal.

The *Motions* are intended to "result in less time and paper" being devoted to these appeals, *Motions* at 6, and present two distinctly different proposals to this Court. The Department's concern is with the second proposal—"Briefing and Oral Argument Proposal #2," *Motions* at 5—which would have the effect of making Suez an appellant in the Department's appeal (appeal no.

44746). While the Department understands Suez's concerns, the Department does not agree with "Briefing and Oral Argument Proposal #2" and respectfully requests that this Court not adopt "Briefing and Oral Argument Proposal #2."

DISCUSSION

While the *Motions* requested consolidation of the appeals filed by the "Ditch Companies,"[1] the Boise Project Board of Control, and New York Irrigation District (appeal nos. 44677 and 44745), the *Motions* did not request consolidation of the Department's separate appeal (appeal no. 44746). *Motion* at 2. The Department agrees that its appeal should not be consolidated with the appeals of the Ditch Companies, the Boise Project Board of Control, and New York Irrigation District (collectively, "Irrigation Organizations").

The *Motions* did propose, however, to change Suez's role in the Department's appeal. Suez's "Briefing and Oral Argument Proposal #2" asks that Suez be allowed to file "an Opening Brief and a Reply Brief" in the Department's appeal, and that the Department "divide" its oral argument time allocation with Suez. *Motions* at 5-6. Thus, "Briefing and Oral Argument Proposal #2" would in effect make Suez an appellant in the Department's appeal.

Suez does not speak for the Department, however. The Department is an administrative agency charged with distributing water in accordance with the prior appropriation doctrine as established by Idaho law, Idaho Code § 42-602, while Suez is a water right holder advocating for its particular interests. Further, Suez filed a cross-appeal of the Irrigation Organizations' appeals, and will have ample opportunity to present its views in briefing and argument in the cross-appeal.

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[1] The "Ditch Companies" are: 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.

I.A.R. 18; *see Motions* at 5-6 (proposing briefing and argument schedules for Suez's cross-appeal). To the extent Suez wishes to present it views again in the Department's appeal, it should do so in a respondent's brief. I.A.R. 35. Further, the time allotted to the Department for oral argument in its appeal should not be reduced to allow Suez an additional opportunity to argue its cross-appeal.

While Suez's assertion that it is "aligned with IDWR," *Motions* at 5, may be correct as to the ultimate outcome in these appeals, the issues are legally and factually complex, and the issues raised in Suez's cross-appeal and the Department's appeal are not identical. The Department's appeal should be kept separate from Suez's cross-appeal to avoid potential confusion of the issues and arguments.

CONCLUSION

The Department recognizes that it may be desirable to have "less time and paper" devoted to these appeals, *Motions* at 6, but the Department's appeal should be kept separate from the Irrigation Organizations' appeals and from Suez's cross-appeal. The Department respectfully requests that this Court not adopt "Briefing and Oral Argument Proposal #2." *Motions* at 5-6. The Department takes no position on "Briefing and Oral Argument Proposal #1." *Motions* at 3-5.

DATED this 17th day of March 2017.

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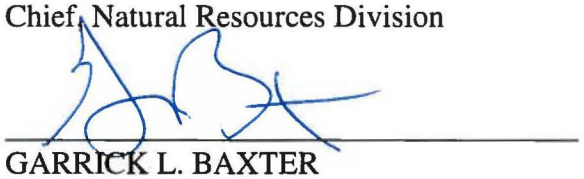

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 17TH day of March 2017, I caused to be served a true and correct copy of the foregoing document by the method(s) indicated:

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