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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.

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/Respondents,
and

BOISE PROJECT BOARD OF CONTROL and
NEW YORK IRRIGATION DISTRICT,

Petitioners/Appellants-Cross Respondents,
v.

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

Supreme Court Docket No. 44745-2017

Ada County District Court No. CVWA-
2015-21376 (Consolidated Ada County
No. CVWA-2015-21391)

**SUEZ'S MEMORANDUM IN SUPPORT OF
MOTION FOR LEAVE TO FILE
OVERLENGTH BRIEF**

Water Resources,
Respondents/Respondents,
and
SUEZ WATER IDAHO INC.,
Intervenor-Respondent/Respondent-Cross
Appellant.

Intervenor-Respondent/Respondent-Cross Appellant, Suez Water Idaho Inc. (“Suez”), by and through its attorneys of record, and pursuant to Idaho Appellate Rule 32, hereby submits this memorandum in support of its accompanying motion to file a response to the opening brief in this appeal in excess of the 50 page limit set forth in Idaho Appellate rule 34(b). Suez intends to file a substantively identical brief in this appeal and two related appeals, Supreme Court Docket Nos. 44677-2016 and 44746-2017 (in one of which Suez is a cross-appellant), which will respond to the opening briefs in all three appeals, and serve as Suez’s opening briefs as cross-appellant in Docket Nos. 44677-2016 and 44745-2017.¹ Suez estimates that the text of the brief would not exceed 110 pages.

This case is an appeal from an IDAPA administrative judicial review proceeding initiated by Ballantyne Ditch Company, *et al.* (the “Ditch Companies”), and the Boise Project Board of Control and New York Irrigation District (together, “Boise Project”). The Ditch Companies and Boise Project petitioned the District Court for review of the Idaho Department of Water Resources (the “Department”) Director’s final orders regarding the “distribution of water to federal on-stream reservoirs in Water District 63.” R. 001053. The District Court affirmed the Director’s orders in part, and set aside and remanded in part. R. 001052-74.

¹ Suez has made minor adjustments to the party designations in the caption (separating district court designations from appeal designations with a forward slash). Suez will defer, of course, to the Court’s designation of the caption. Suez also notes that Settlers Irrigation District was omitted from the caption on the District Court’s *Clerk’s Certificate of Appeal* and the Idaho Supreme Court’s *Order Consolidating Appeal Nos. 44677, 44745 and 44746 for Record and Transcript Only*.

The underlying administrative contested case was initiated in 2013 and concluded in 2015. There was a five-day hearing and the agency record exceeds 28,000 pages. The Director's orders are lengthy and include extensive factual findings and legal analysis. The issues include numerous factual and legal questions concerning water administration.

On May 8, 2017, this Court granted the request of the Ditch Companies to file an overlength opening brief of not more than 110 pages in Supreme Court Docket No. 44677-2016. The Ditch Companies' opening brief in that appeal was 90 pages in length. Also on May 8, 2017, this Court granted the request of the Boise Project to file an overlength opening brief of not more than 70 pages in Supreme Court Docket No. 44745-2017. The Boise Project's opening brief in that appeal was over 60 pages in length. Also, on May 8, 2017, this Court granted the request of the Department to file an overlength brief of not more than 70 pages in Supreme Court Docket No. 44746-2017. The Department's opening brief in that appeal was 60 pages in length. As mentioned, Suez intends to file a substantively identical brief in all three appeals, which will respond to the opening briefs in all three appeals, and also serve as Suez's opening briefs as cross-appellant in Docket Nos. 44677-2016 and 44745-2017. Accordingly, 50 pages will be insufficient to respond to all of the issues raised in the opening briefs filed in the three appeals, and to address the issues in Suez's opening brief as cross-appellant.

Given the voluminous record, the nature and number of issues, the length of the opening briefs in this and the related appeals, and Suez's need to address issues in its opening brief on cross-appeal, good cause exists to grant Suez's motion for leave to exceed the 50 page limit of Idaho Appellate Rule 34(b). As the Certificate of Uncontested Motion accompanying the motion explains, counsel for Suez has discussed this matter with opposing counsels and is authorized to represent that opposing counsels have no objection to this motion.

Suez also is filing a substantively similar motion and memorandum in support in Supreme Court Docket Nos. 44677-2016 and 44746-2017.

Respectfully submitted this 10th day of July, 2017.

GIVENS PURSLEY LLP

By 

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CERTIFICATE OF SERVICE

I hereby certify that on this 10th day of July, 2017, I caused to be filed and served true and correct copies of the foregoing document to the persons listed below by the method indicated:

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