

**IN THE SUPREME COURT OF THE STATE OF IDAHO**  
Supreme Court Docket No. 44745-2017

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

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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,

v.

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

Petitioners-Appellants-Cross Respondents,

v.

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-Cross Appellant.

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**IDWR'S RESPONSE TO SUEZ'S  
OPENING BRIEF ON CROSS APPEAL**

Judicial Review from the Idaho Department of Water Resources  
Honorable Eric J. Wildman, District Judge, Presiding  
Ada County District Court Case No. CV-WA-2015-21376  
(Consolidated Ada County Case No. CV-WA-2015-21391)

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## I. INTRODUCTION

Suez Water Idaho, Inc. (“Suez”), filed a *Response Brief and Opening Brief on Cross-Appeal* (“*Suez Brief*”) in the appeal of the Boise Project Board of Control and New York Irrigation District (Idaho Supreme Court Docket No. 44745-2017) and in the appeal of the Ditch Companies<sup>1</sup> (Idaho Supreme Court Docket No. 44677-2016). The two briefs were filed on August 1, 2017, and are essentially identical.<sup>2</sup> The Idaho Department of Water Resources (“Department”) hereby submits this brief as respondent in Suez’s cross-appeal in the Boise Project Board of Control’s appeal. The Department is filing an identical response brief in Suez’s cross-appeal of the Ditch Companies’ appeal.

## II. ARGUMENT

The Department understands Suez’s position to be that this Court should affirm the Director’s *Final Order* in its entirety. *Suez Brief* at 84. The Department has taken the same position in its appeal and in the appeals of the Boise Project Board of Control and the Ditch Companies, and for the reasons discussed in the Department’s briefs in those appeals, the Department supports Suez’s request that this Court affirm the Director’s *Final Order*.

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<sup>1</sup> 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.

<sup>2</sup> Suez also filed an essentially identical brief in the Department’s appeal (Idaho Supreme Court Docket No. 44746-2017).

Although some of the terminology used by Suez to describe the accounting processes and the legal authorities differ from those discussed and cited in the Director's *Final Order* and the Department's briefs, the Department agrees with the main conclusions reached by Suez, including that: (1) the Department's water right accounting methods are consistent with and compelled by Idaho's prior appropriation doctrine and the maximum use doctrine; (2) the alternative accounting methods proposed by the Boise Project Board of Control and the Ditch Companies are contrary to Idaho's prior appropriation doctrine and do not work; and (3) that under Idaho's prior appropriation doctrine and the maximum use doctrine, on-stream storage water right holders may store and put to beneficial use "excess water" after the storage water rights have been satisfied when sufficient water is available to satisfy all other water rights.

RESPECTFULLY SUBMITTED this 29<sup>th</sup> day of August 2017.

LAWRENCE G. WASDEN  
Attorney General

DARRELL G. EARLY  
Deputy Attorney General  
Chief, Natural Resources Division



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GARRICK L. BAXTER  
Deputy Attorney General  
Idaho Department of Water Resources

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 29<sup>th</sup> day of August 2017, I caused a true and correct copy of the foregoing document to be filed with the Court and served on the following parties by the indicated methods:

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