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Attorneys for Appellants

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;

Supreme Court Docket No. 44746-2017

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

**DEPARTMENT'S I.A.R. 34(f)(1) NOTICE
OF ADDITIONAL AUTHORITY**

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

Petitioners-Respondents,

vs.

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

Petitioners-Respondents,

vs.

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

Respondents-Appellants,

and

SUEZ WATER IDAHO, INC.,

Intervenor-Respondent.

I.A.R. 34(f)(1) NOTICE OF ADDITIONAL AUTHORITY

Appellants 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, and pursuant to Idaho Appellate Rule 34(f)(1), hereby provide notice to this Court and all parties of additional legal authority, cited herein to supplement the Department’s briefing in this appeal.¹

¹ Idaho Appellate Rule 34(f)(1) provides as follows:

The additional authority consists of the following decisions of this Court, which were issued after all briefs had been filed in this appeal: *Black Canyon Irr. Dist. v. State of Idaho & Suez Water Idaho, Inc. Co. (In re: SRBA Case No. 39576, Subcase Nos. 65-23531 and 65-23532)*, 163 Idaho 144, 408 P.3d 899 (2017) (“*BCID v. State*”); and *United States v. Black Canyon Irr. Dist., State of Idaho, and Suez Water Idaho, Inc. Co. (In re: SRBA Case No. 39576, Subcase Nos. 65-23531 and 65-23532)*, 163 Idaho 54, 408 P.3d 52 (2017) (“*U.S. v. BCID*”).

These decisions pertain to the following issues raised by the Department in this appeal: whether the District Court in erred in setting aside in part and remanding in part the Director’s *Final Order*, including:

- i. Whether the District Court erred in determining that the interests of the United States and its contractors in un-adjudicated and disputed beneficial use-based water right claims that are pending in the SRBA are prejudiced by the Water District 63 accounting system;
- ii. Whether the District Court erred in concluding the Director erred when he did not “recognize that the United States and/or the irrigators have a valid legal right to, or vested property interest in, water identified as unaccounted for storage”; and

At any time before the issuance of an opinion, any party may supplement his brief by the citation of additional authority, identifying the issue on appeal to which it pertains, without written comment thereon, and identifying the headnote or relevant pages of the authority cited. This augmentation may be done by written notice to the court and all parties without first obtaining leave of the court.

- iii. Whether the District Court's remand to the Director exceeds his authority by requiring the Director to resolve disputed questions of the nature and extent of beneficial use-based water right claims that are pending in the SRBA.²

The cited decisions also pertain to the following additional issues raised in this appeal by the Ditch Companies and the Boise Project Board of Control: whether the Ditch Companies and/or the Boise Project Board of Control are entitled to an award of attorney's fees and costs pursuant to Idaho Code § 12-117 and/or Idaho Rule of Civil Procedure 54(d)(1).³

The relevant pages of the additional authorities cited above are as follows: *BCID v. State*, 163 Idaho at 152-57, 408 P.3d at 907-12; *U.S. v. BCID*, 163 Idaho at 61-64, 408 P.3d at 59-62.

RESPECTFULLY SUBMITTED this 6th day of April 2018.

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² These issues are set forth on pages 30-31 of the *IDWR Appellants' Brief* filed in this appeal (Idaho Supreme Court case no. 44746) on May 26, 2017.

³ These issues are set forth on page 21 of the *Respondents' Brief for the Ditch Companies* filed in this appeal (Idaho Supreme Court case no. 44746) on August 1, 2017, and page 19 of the *Boise Project Board of Control's Brief in Response to IDWR & Director's Brief* filed in this appeal (Idaho Supreme Court case no. 44746) on July 14, 2017.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 6th day of April 2018, I caused to be served a true and correct copy of the foregoing document by the method(s) indicated:

Original to:
Clerk of the Court
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