

Christopher H. Meyer [ISB No. 4461]  
Michael P. Lawrence [ISB No. 7288]  
GIVENS PURSLEY LLP  
601 W Bannock St  
Boise, Idaho 83702  
PO Box 2720  
Boise, Idaho 83701-2720  
Office: (208) 388-1200  
Fax: (208) 388-1300  
www.givenspursley.com  
*Attorneys for Applicant SUEZ Water Idaho Inc.*

**RECEIVED**

**NOV 03 2017**

**DEPARTMENT OF  
WATER RESOURCES**

**BEFORE THE IDAHO DEPARTMENT OF WATER RESOURCES**

IN THE MATTER OF INTEGRATED  
MUNICIPAL APPLICATION PACKAGE  
("IMAP") OF SUEZ WATER IDAHO INC.,  
BEING A COLLECTION OF INDIVIDUAL  
APPLICATIONS FOR TRANSFERS OF  
WATER RIGHTS AND APPLICATIONS  
FOR AMENDMENT OF PERMITS.

**SUEZ's DISCUSSION OF SURFACE  
WATER APODS**

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## DISCUSSION

During the status conference on August 24, 2017, questions arose over the effect of adding a second point of diversion (“POD”) to the permit for surface water right No. 63-12055. This submission is provided to the Idaho Department of Water Resources (“IDWR”) by Applicant SUEZ Water Idaho Inc. (“SUEZ”) in response to those questions.

The quick answer is that the addition of a second POD upstream of the Marden Treatment Plant for No. 63-12055 will not and cannot affect any surface water right senior to 1993. Existing surface rights junior to 1993 can be protected through appropriate conditioning.

Questions were also raised about why some water rights are not included in the IMAP. This submission re-caps prior explanations as to this.

### I. SUMMARY OF BOISE RIVER SURFACE WATER RIGHTS

SUEZ owns 13 surface water rights and entitlements. Six are Boise water rights or permits. Five are Snake River exchange rights. Two are storage contract rights.

Of the six Boise River surface water rights, only one is included in the IMAP:

<b>Boise River Surface Water Right Included in IMAP</b>			
<b>Water Right No.</b>	<b>Priority Date</b>	<b>POD(s) (surface water intakes)</b>	<b>cfs</b>
63-12055	9/8/1993	Marden	24.80
<b>Boise River Surface Water Rights Not Included in IMAP</b>			
<b>Water Right No.</b>	<b>Priority Date</b>	<b>POD(s) (surface water intakes)</b>	<b>cfs</b>
63-20041 (formerly 63-165L)	6/1/1866	Marden	0.68
63-169F	6/1/1868	Marden	0.81
63-243E	5/1/1889	Marden	3.30
63-243H	5/1/1889	Marden	0.93
63-31409	1/18/2002	Marden & Columbia	20.00

## **II. TWELVE SURFACE WATER RIGHTS AND ENTITLEMENTS NOT INCLUDED IN THE IMAP**

The IMAP includes most, but not all, water rights and entitlements in SUEZ's portfolio. This section explains why 12 of SUEZ's 13 surface water rights and entitlements were not included in the IMAP. An explanation of why ten of SUEZ's 112 ground water rights were not included in the IMAP is set out in *Suez's 2017 Update Report on IMAP and 2065 Master Water Plan* (with errata dated April 28, 2017) at pages 9-13 and footnote 15 at page 16.<sup>1</sup>

As has been explained before, SUEZ's gap analysis is based on a comparison of future need to the quantity available under all water rights and entitlements in SUEZ's portfolio, not just the 103 water rights and permits included in the IMAP. See, *Suez's 2017 Update Report on IMAP and 2065 Master Water Plan* (April 28, 2017) at pages 9-10 and 22-23; *Master Water Plan for the Years 2015 to 2065* (with errata dated April 28, 2017) at pages 35-42.

### **A. Water Right Nos. 63-20041, 63-169F, 63-243E, and 63-243H**

At the time the IMAP was filed, four Boise River surface water rights now decreed to SUEZ were held in the name of other entities (Nos. 63-20041, 63-169F, 63-243E, and 63-243H). When the IMAP was filed, SUEZ (then United Water Idaho) intended to claim them in the SRBA. However, as explained in the original IMAP submission, SUEZ thought it unwise to include them in the IMAP because their status was unresolved:

In order to avoid potentially distracting side issues over which entity has the right to change these water rights and other complexities unique to these interests, UWID intends to exclude them from this IMAP.

IMAP (amended April 9, 2003) at page 38.

During the SRBA, these four rights were decreed to SUEZ. Accordingly, SUEZ could seek to amend the IMAP today to add these rights to the transfer package. But SUEZ has not elected to do so, in order to expedite resolution of the current IMAP.

**B. Water Right No. 63-31409**

The application for permit for Water Right No. 63-31409 was filed on November 16, 2001, and the permit was not issued until March 4, 2004. Thus, the permit did not exist when the IMAP was filed on May 4, 2001 nor when it was amended on April 9, 2003. Moreover, there is no need to change this right, because the permit as issued authorizes alternative points of diversion (“APODs”) at both the Marden and Columbia Treatment Plants.

**C. Exchange and contract rights**

The five Snake River exchange rights are not included in the IMAP because exchanges are inherently complex and could add to confusion in IMAP proceeding. The two storage water contracts are not included in the IMAP, because these are not SUEZ’s privately held water rights.

**III. THE ONE SURFACE WATER RIGHT INCLUDED IN THE IMAP: No. 63-12055**

As noted in *Suez’s 2017 Update Report on IMAP and 2065 Master Water Plan* (April 28, 2017) (Table 2 at page 10), the IMAP includes only one surface water right. This is a permit for Water Right No. 63-12055. It has a September 8, 1993 priority and one point of diversion for the Marden Treatment Plant (near the Warm Springs Golf Course below the diversion for the Ridenbaugh canal). The IMAP seeks to add a second point of diversion, upstream at SUEZ’s

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<sup>1</sup> Briefly, one was only a permit application when the original IMAP was filed, four were later-discovered SRBA claims, two were removed from IMAP to facilitate transfer actions, and three are Ranney collector rights split off during the SRBA.

Columbia Treatment Plant (above the Ridenbaugh canal and below the New York canal diversion at Diversion Dam). This would create a mini-APOD authority with two PODs.

**IV. EFFECTS OF ADDING AN UPSTREAM POD**

**A. No effect on senior rights**

Water rights senior to 1993 (the priority date of No. 63-12055) would not be injured by the addition of a POD at the Columbia Treatment Plant. The priority system protects those rights, and would result in curtailment of No. 63-12055, in the event there is not enough water to satisfy both SUEZ’s right and the senior. In other words, the addition of an APOD provides no exemption from the priority system. If needed to satisfy their priorities, seniors could call water past SUEZ’s APOD.

Accordingly, the water rights of Protestant Nampa Meridian Irrigation District, which are senior to No. 63-12055, would be unaffected by the proposed new APOD at Columbia, even though it is upstream of NMID’s point of diversion for the Ridenbaugh Canal at Barber Park.

**B. Possible effect on junior rights**

The addition of an upstream APOD could injure junior surface rights with points of diversion between Marden and Columbia. To SUEZ’s knowledge (based on an examination of IDWR’s website), there are only three such rights:<sup>2</sup>

<b>Table 2</b>				
<b>Surface Rights Between Marden &amp; Columbia Junior to 1993</b>				
<b>Water Right No.</b>	<b>Owner</b>	<b>Priority Date</b>	<b>cfs</b>	<b>Purpose</b>
63-12577	Idaho Shakespeare Festival	12/2/1999	0.11	Aesthetic
63-31878	Bown Crossing LLC	8/19/2003	4.50	Aesthetic
63-33341	City of Boise, Parks & Rec	2/18/2010	0.54	Irrigation

<sup>2</sup> In the event SUEZ inadvertently has failed to identify other junior surface rights between Marden and Columbia, the discussion in this section likely would apply to them as well.

In order to avoid injury to these (and any similarly situated rights), IDWR may find it appropriate to impose a condition on No. 63-12055 (if its proposed transfer in IMAP is approved) limiting SUEZ's diversions under that right at Columbia Treatment Plant so as to avoid impairment of junior surface rights existing as of the time of approval of the IMAP.<sup>3</sup> (Again, seniors already are protected by virtue of their priority.)

Respectfully submitted this 3<sup>rd</sup> day of November, 2017.

GIVENS PURSLEY LLP

By   
Christopher H. Meyer

By   
Michael P. Lawrence

*Attorneys for SUEZ Water Idaho Inc.*

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<sup>3</sup> Conditioning might come in the form of a subordination to specific water rights or in the form of the "APOD condition language" employed by IDWR for ground water rights.

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 3<sup>rd</sup> day of November, 2017, the foregoing was filed, served, and copied as shown below. Service by email is authorized by the Hearing Officer's Order of September 11, 2017 at page 3.

**DOCUMENT FILED:**

IDAHO DEPARTMENT OF WATER RESOURCES  
P.O. Box 83720  
Boise, ID 83720-0098  
Hand delivery or overnight mail:  
322 East Front Street  
Boise, ID 83702

- U. S. Mail
- Hand Delivered
- Overnight Mail
- Facsimile
- E-mail

**SERVICE COPIES TO IDWR, PROTESTANTS, INTERVENORS, AND INTERESTED PARTIES:**

Stephan L. Burgos  
Director  
Public Works Department  
CITY OF BOISE  
PO Box 500  
Boise, ID 83701-0500  
Facsimile: (208) 433-5650  
sburgos@cityofboise.org  
Hand delivery or overnight mail:  
150 N Capitol Blvd, City Hall #1  
Boise, ID 83702  
*(For the City of Boise, intervenor in support)*

- U. S. Mail
- Hand Delivered
- Overnight Mail
- Facsimile
- E-mail

Abigale R. Germaine, Esq.  
Assistant City Attorney  
City Attorney's Office  
CITY OF BOISE  
PO Box 500  
Boise, ID 83701-0500  
Facsimile: (208) 384-4454  
agermaine@cityofboise.org  
Hand delivery or overnight mail:  
150 N Capitol Blvd  
Boise, ID 83702  
*(For the City of Boise, intervenor in support)*

- U. S. Mail
- Hand Delivered
- Overnight Mail
- Facsimile
- E-mail

Warren Stewart, P.E.  
City Engineer  
Public Works Department  
CITY OF MERIDIAN  
33 E Broadway Ave, Ste 200  
Meridian, ID 83642  
Facsimile: (208) 898-9551  
wstewart@meridiancity.org  
*(For the City of Meridian, intervenor in support)*

- U. S. Mail
- Hand Delivered
- Overnight Mail
- Facsimile
- E-mail

Kyle Radek, P.E.  
Assistant City Engineer, Engineering Division  
Public Works Department  
CITY OF MERIDIAN  
33 E Broadway Ave, Ste 200  
Meridian, ID 83642  
Facsimile: (208) 898-9551  
kradek@meridiancity.org  
*(For the City of Meridian, intervenor in support)*

- U. S. Mail
- Hand Delivered
- Overnight Mail
- Facsimile
- E-mail

Charles L. Honsinger, Esq.  
HONSINGER LAW, PLLC  
PO Box 517  
Boise, ID 83701  
Facsimile: (208) 908-8065  
honsingerlaw@gmail.com  
*(For the City of Meridian, intervenor in support)*

- U. S. Mail
- Hand Delivered
- Overnight Mail
- Facsimile
- E-mail

Brent Orton, P.E., MSC  
Public Works Director, City Engineer  
CITY OF CALDWELL  
621 East Cleveland Blvd.  
Caldwell, ID 83605  
Facsimile: (208) 455-3012  
borton@cityofcaldwell.org  
*(For the City of Caldwell, intervenor in support)*

- U. S. Mail
- Hand Delivered
- Overnight Mail
- Facsimile
- E-mail

Christopher E. Yorgason, Esq.  
Middleton City Attorney  
YORGASON LAW OFFICES, PLLC  
6200 N Meeker Pl  
Boise, ID 83713  
Facsimile: (208) 375-3271  
chris@yorgasonlaw.com  
*(For the City of Middleton, protestant)*

- U. S. Mail
- Hand Delivered
- Overnight Mail
- Facsimile
- E-mail

Cherese D. McLain, Esq.  
MOORE, SMITH, BUXTON & TURCKE, CHARTERED  
950 W Bannock St, Ste 520  
Boise, ID 83702  
Facsimile: (208) 331-1202  
cdm@msbtlaw.com  
*(For the Star Water & Sewer District, protestant  
and for the City of Eagle, interested party)*

- U. S. Mail
- Hand Delivered
- Overnight Mail
- Facsimile
- E-mail

S. Bryce Farris, Esq.  
Andrew J. Waldera, Esq.  
SAWTOOTH LAW OFFICES, PLLC  
PO Box 7985  
Boise ID 83707  
Facsimile: (208) 629-7559  
bryce@sawtoothlaw.com  
andy@sawtoothlaw.com

- U. S. Mail
- Hand Delivered
- Overnight Mail
- Facsimile
- E-mail

Hand delivery or overnight mail:  
1101 W River St, Ste 110  
Boise ID 83702  
*(For Nampa Meridian Irrigation District and  
Settlers Irrigation District, protestants)*

Albert P. Barker, Esq.  
Shelley M. Davis, Esq.  
BARKER, ROSHOLT & SIMPSON, LLP  
PO Box 2139  
Boise, ID 83701-2139  
Facsimile: (208) 344-6034  
apb@idahowaters.com  
smd@idahowaters.com

- U. S. Mail
- Hand Delivered
- Overnight Mail
- Facsimile
- E-mail

Hand delivery or overnight mail:  
1010 W Jefferson, Ste 102  
Boise, ID 83702  
*(For Boise Project Board of Control, Big Bend  
Irrigation District, Boise-Kuna Irrigation District,  
and Wilder Irrigation District, protestants)*

Richard T. Roats, Esq.  
 City Attorney  
 CITY OF KUNA  
 PO Box 13  
 Kuna, ID 83634  
 Facsimile: (208) 922-5989  
 rroats@kunaID.gov  
 kunaattorney@icloud.com  
 (For the City of Kuna, interested party)

- U. S. Mail
- Hand Delivered
- Overnight Mail
- Facsimile
- E-mail

COURTESY COPIES TO:

James Cefalo  
 Hearing Officer  
 Eastern Regional Office  
 Idaho Department of Water Resources  
 900 North Skyline Dr., Ste. A  
 Idaho Falls ID 83402-6105  
 Facsimile: (208) 525-7177  
 james.cefalo@idwr.idaho.gov

- U. S. Mail
- Hand Delivered
- Overnight Mail
- Facsimile
- E-mail

Kimi White  
 Paralegal  
 IDAHO DEPARTMENT OF WATER RESOURCES  
 PO Box 83720  
 Boise, ID 83720-0098  
 Facsimile: (208) 287-6700  
 kimi.white@idwr.idaho.gov  
 Hand delivery or overnight mail:  
 322 E Front St  
 Boise, ID 83702

- U. S. Mail
- Hand Delivered
- Overnight Mail
- Facsimile
- E-mail

Garrick L. Baxter, Esq.  
 Deputy Attorney General  
 IDAHO DEPARTMENT OF WATER RESOURCES  
 PO Box 83720  
 Boise, ID 83720-0098  
 Facsimile: (208) 287-6700  
 garrick.baxter@idwr.idaho.gov  
 Hand delivery or overnight mail:  
 322 E Front St  
 Boise, ID 83702

- U. S. Mail
- Hand Delivered
- Overnight Mail
- Facsimile
- E-mail

Emmi Blades, Esq.  
Deputy Attorney General  
IDAHO DEPARTMENT OF WATER RESOURCES  
PO Box 83720  
Boise, ID 83720-0098  
Facsimile: (208) 287-6700  
emmi.blades@idwr.idaho.gov  
Hand delivery or overnight mail:  
322 E Front St  
Boise, ID 83702

- U. S. Mail
- Hand Delivered
- Overnight Mail
- Facsimile
- E-mail

Nick Miller, P.E.  
Manager  
Western Regional Office  
IDAHO DEPARTMENT OF WATER RESOURCES  
2735 Airport Way  
Boise, ID 83705-5082  
Facsimile: (208) 334-2348  
nick.miller@idwr.idaho.gov

- U. S. Mail
- Hand Delivered
- Overnight Mail
- Facsimile
- E-mail

Chris M. Bromley, Esq.  
McHugh Bromley PLLC  
380 S 4th St, Ste 103  
Boise, ID 83702  
Facsimile: (208) 287-0864  
cbromley@mchughbromley.com  
*(For the City of Boise, intervenor in support)*

- U. S. Mail
- Hand Delivered
- Overnight Mail
- Facsimile
- E-mail

John Roldan, P.E.  
Strategic Water Resources Manager  
Public Works Department  
CITY OF BOISE  
PO Box 500  
Boise, ID 83701-0500  
Facsimile: (208) 433-5650  
jroldan@cityofboise.org  
Hand delivery or overnight mail:  
150 N Capitol Blvd  
Boise, ID 83702  
*(For the City of Boise, intervenor in support)*

- U. S. Mail
- Hand Delivered
- Overnight Mail
- Facsimile
- E-mail

Garrick Nelson, P.E.  
Staff Engineer II  
Public Works Department  
CITY OF MERIDIAN  
33 E Broadway Ave, Ste 200  
Meridian, ID 83642  
Facsimile: (208) 898-9551  
gnelson@meridiancity.org  
*(For the City of Meridian, intervenor in support)*

- U. S. Mail
- Hand Delivered
- Overnight Mail
- Facsimile
- E-mail

Bob Bachman  
Public Works Director  
CITY OF KUNA  
PO Box 13  
Kuna, ID 83634  
Facsimile: None  
bbachman@kunaID.gov  
Hand delivery or overnight mail:  
6950 S Ten Mile Rd  
Meridian, ID 83634  
*(For the City of Kuna, interested party)*

- U. S. Mail
- Hand Delivered
- Overnight Mail
- Facsimile
- E-mail

Kathleen Marion Carr, Esq.  
Office of the Field Solicitor  
U.S. DEPARTMENT OF THE INTERIOR  
960 Broadway Ave, Ste 400  
Boise, ID 83706  
Facsimile: (208) 334-1918  
kathleenmarion.carr@sol.doi.gov

- U. S. Mail
- Hand Delivered
- Overnight Mail
- Facsimile
- E-mail

E. Gail McGarry  
Program Manager, Water Rights & Acquisitions  
U.S. BUREAU OF RECLAMATION  
Pacific Northwest Regional Office  
1150 N Curtis Rd  
Boise, ID 83706-1234  
Facsimile: (208) 378-5305  
emcgarry@usbr.gov

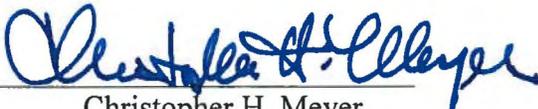
- U. S. Mail
- Hand Delivered
- Overnight Mail
- Facsimile
- E-mail

Matt J. Howard, Esq.  
Water Rights Analyst  
U.S. BUREAU OF RECLAMATION  
Pacific Northwest Regional Office  
1150 N Curtis Rd  
Boise, ID 83706-1234  
Facsimile: (208) 378-5305  
mhoward@ usbr.gov

- U. S. Mail
- Hand Delivered
- Overnight Mail
- Facsimile
- E-mail

Paul L. Arrington, Esq.  
Director  
Idaho Water Users Association  
1010 W Jefferson St, Ste 101  
Boise, ID 83702  
Facsimile: (208) 344-2744  
paul@iwua.org

- U. S. Mail
- Hand Delivered
- Overnight Mail
- Facsimile
- E-mail

  
\_\_\_\_\_  
Christopher H. Meyer