

LAWRENCE G. WASDEN
Attorney General

CLIVE J. STRONG
Deputy Attorney General
Chief, Natural Resources Division

GARRICK L. BAXTER, ISB #6301
EMMI L. BLADES, ISB #8682
ANDREA L. COURTNEY, ISB #7705
Deputy Attorneys General
Idaho Department of Water Resources
P.O. Box 83720
Boise, ID 83720-0098
Telephone: (208) 287-4800
Facsimile: (208) 287-6700
garrick.baxter@idwr.idaho.gov
emmi.blades@idwr.idaho.gov
andrea.courtney@idwr.idaho.gov

Attorneys for IDWR and Gary Spackman

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,

Supreme Court Docket No. 44677-2016

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

**DEPARTMENT'S RESPONSE TO
MOTIONS TO CONSOLIDATE FOR
BRIEFING AND ORAL ARGUMENT**

SOUTH BOISE WATER COMPANY, and
THURMAN MILL DITCH COMPANY,

Petitioners/Appellants/Cross-Respondents,

vs.

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

Petitioners,

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/Cross-Appellant.

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,

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.

and will have ample opportunity to present its views in briefing and argument in the cross-appeal. 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 its 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.

LAWRENCE G. WASDEN
Attorney General

CLIVE J. STRONG
Deputy Attorney General
Chief, Natural Resources Division



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

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:

Original to:

Clerk of the Court
IDAHO SUPREME COURT
451 W. State Street
Boise, ID 83303-2707

- ☐ U.S. Mail, postage prepaid
- ☒ Hand Delivery
- ☐ Overnight Mail
- ☐ Facsimile
- ☐ Email

Daniel V. Steenson
S. Bryce Farris
Andrew Waldera
SAWTOOTH LAW OFFICES, PLLC
P.O. Box 7985
Boise, ID 83707
dan@sawtoothlaw.com
bryce@sawtoothlaw.com
andy@sawtoothlaw.com

- ☒ U.S. Mail, postage prepaid
- ☐ Hand Delivery
- ☐ Overnight Mail
- ☐ Facsimile
- ☒ Email

Albert P. Barker
Shelley M. Davis
BARKER ROSHOLT & SIMPSON, LLP
P.O. Box 2139
Boise, ID 83701-2139
apb@idahowaters.com
smd@idahowaters.com


- ☒ U.S. Mail, postage prepaid
- ☐ Hand Delivery
- ☐ Overnight Mail
- ☐ Facsimile
- ☒ Email

Charles F. McDevitt
P.O. Box 1543
Boise, ID 83701
chas@mcdevitt.org

- ☒ U.S. Mail, postage prepaid
- ☐ Hand Delivery
- ☐ Overnight Mail
- ☐ Facsimile
- ☒ Email

Christopher H. Meyer
Michael P. Lawrence
GIVENS PURSLEY, LLP
P.O. Box 2720
Boise, ID 83701-2720
chrismeyer@givenspursley.com
mpl@givenspursley.com

- ☒ U.S. Mail, postage prepaid
- ☐ Hand Delivery
- ☐ Overnight Mail
- ☐ Facsimile
- ☒ Email



Garrick L. Baxter
Deputy Attorney General