

IN THE SUPREME COURT OF THE STATE OF IDAHO

Supreme Court Docket No. 44677-2016

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

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-Appellants-Cross Respondents,

v.

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

Petitioners,

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.

**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)

ATTORNEYS FOR RESPONDENTS	ATTORNEYS FOR PETITIONERS- APPELLANTS-CROSS RESPONDENTS
<p>LAWRENCE G. WASDEN ATTORNEY GENERAL</p> <p>DARRELL G. EARLY Deputy Attorney General Chief, Natural Resources Division</p> <p>GARRICK L. BAXTER, ISB #6301 ANDREA L. COURTNEY, ISB #7705 EMMI L. BLADES, ISB #8682 Deputy Attorneys General P.O. Box 83720 Boise, ID 83720-0098 Telephone: (208) 287-4800 garrick.baxter@idwr.idaho.gov andrea.courtney@idwr.idaho.gov emmi.blades@idwr.idaho.gov</p> <p><i>Attorneys for Idaho Department of Water Resources and Gary Spackman</i></p>	<p>DANIEL V. STEENSON S. BRYCE FARRIS ANDREW J. WALDERA SAWTOOTH LAW OFFICES, PLLC 1101 W. River Street, Suite 110 P.O. Box 7985 Boise, ID 83707 Telephone: (208) 629-7447 dan@sawtoothlaw.com bryce@sawtoothlaw.com andy@sawtoothlaw.com</p> <p><i>Attorneys for Ditch Companies</i></p>
ATTORNEYS FOR PETITIONERS	ATTORNEYS FOR INTERVENOR- RESPONDENT-CROSS APPELLANT
<p>ALBERT P. BARKER SHELLEY M. DAVIS BARKER ROSHOLT & SIMPSON, LLP 1010 W. Jefferson Street P.O. Box 2139 Boise, ID 83701-2139 Telephone: (208) 336-0700 apb@idahowaters.com smd@idahowaters.com</p> <p><i>Attorneys for Boise Project Board of Control</i></p> <p>CHARLES F. MCDEVITT CHAS. F. MCDEVITT LAW OFFICE P.O. Box 1543 Boise, Idaho 83701 Telephone: (208) 412-5250 chas@mcdevitt.org</p> <p><i>Attorney for New York Irrigation District</i></p>	<p>CHRISTOPHER H. MEYER MICHAEL P. LAWRENCE GIVENS PURSLEY, LLP 601 W. Bannock Street P.O. Box 2720 Boise, ID 83701-2720 Telephone: (208) 338-1200 chrismeyer@givenspursley.com mpl@givenspursley.com</p> <p><i>Attorneys for Suez Water Idaho Inc.</i></p>

TABLE OF CONTENTS

TABLE OF CONTENTS..... i
I. INTRODUCTION1
II. ARGUMENT1

I. INTRODUCTION

Suez Water Idaho, Inc. (“Suez”), filed a *Response Brief and Opening Brief on Cross-Appeal* (“*Suez Brief*”) in the appeal of the Ditch Companies¹ (Idaho Supreme Court Docket No. 44677-2016) and in the appeal of the Boise Project Board of Control and New York Irrigation District (Idaho Supreme Court Docket No. 44745-2017). The two briefs were filed on August 1, 2017, and are essentially identical.² The Idaho Department of Water Resources (“Department”) hereby submits this brief as respondent in Suez’s cross-appeal in the Ditch Companies’ appeal. The Department is filing an identical response brief in Suez’s cross-appeal of the Boise Project Board of Control’s 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 Ditch Companies and the Boise Project Board of Control, 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*.

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.

² 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 Ditch Companies and the Boise Project Board of Control 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 29th day of August 2017.

LAWRENCE G. WASDEN
Attorney General

DARRELL G. EARLY
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 29th 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:

Original to:

Clerk of the Court
IDAHO SUPREME COURT
451 W. State Street
Boise, ID 83702
sctbriefs@idcourts.net

- 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