

**LAWRENCE G. WASDEN**  
Attorney General

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

**GARRICK L. BAXTER, ISB #6301**  
**MICHAEL C. ORR, ISB # 6720**  
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](mailto:garrick.baxter@idwr.idaho.gov)  
[michael.orr@ag.idaho.gov](mailto:michael.orr@ag.idaho.gov)

*Attorneys for Respondents*

**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;  
SOUTH BOISE WATER COMPANY; and  
THURMAN MILL DITCH COMPANY,

*Petitioners,*

Supreme Court Docket No. 44745-2017

**SECOND JOINT MOTION  
TO DISMISS APPEAL**

vs.

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

*Petitioners-Appellants-Cross 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,*

and

SUEZ WATER IDAHO, INC.,

*Intervenor-Respondent-Cross Appellant.*

The parties to the above-captioned appeal hereby stipulate to dismiss and jointly move this Court, pursuant to Rule 33 of the Idaho Appellate Rules and this Court's *Order Re: Joint Motion to Dismiss Appeal* (Aug. 23, 2019), to dismiss this appeal with prejudice, with all parties to bear their own costs and fees.

### **BACKGROUND**

As discussed in the parties' June 2018 motion to suspend this appeal and reschedule oral argument for the first available date after November 30, 2019, and also in the parties' first *Joint Motion to Dismiss Appeal* (July 29, 2019), the parties to the appeals and cross-appeals pending under Idaho Supreme Court docket nos. 44677-2016, 44745-2017, and 44746-2017 entered into a stipulated settlement of their disputes over the "fill" and/or "refill" of the storage water rights for the federal on-stream reservoirs in the Boise River Basin. The parties' *Stipulation*

(including its “Attachments”) is appended as “Exhibit 1” to the parties’ first *Joint Motion to Dismiss Appeal*. The purpose of the *Stipulation* is “to facilitate and expedite resolution of all disputes among the parties that have arisen in various judicial and administrative proceedings pertaining to issues of the ‘fill’ and/or ‘refill’ of the storage water rights for on-stream reservoirs in Idaho Department of Water Resources (‘Department’ or ‘IDWR’) Administrative Basin 63.”<sup>1</sup> *Stipulation* at 1 (parenthetical in original).

In the *Stipulation*, the parties agreed to seek issuance in the SRBA of partial decrees and orders to implement the proposed settlement, and to seek dismissal of these appeals and cross-appeals with instructions to the District Court to vacate the orders that are the subject of the appeals and cross-appeals. The District Court issued the partial decrees and orders proposed by the *Stipulation*. Thus, and as required by the *Stipulation*, the parties jointly moved this Court to dismiss this appeal with prejudice, with each party to bear its own costs and fees, and with instructions to the District Court to vacate its *Memorandum Decision and Order* (Sep. 1, 2016) and *Order Denying Rehearing* (Nov. 14, 2016) entered in the case underlying this appeal, Twin County Case No. CV-WA-2015-21376 (Consolidated Ada County Case No. CV-WA-2015-21391). See [*First*] *Joint Motion to Dismiss Appeal*.

This Court issued an *Order Re: Joint Motion to Dismiss Appeal* on August 23, 2019, and “inform[ed] the parties there is no rule allowing vacation of a district court decision.” *Order Re: Joint Motion to Dismiss Appeal* at 2. This Court therefore ordered “that this matter is

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<sup>1</sup> Including but not limited to the disputes arising in the appeals and cross-appeals pending under Idaho Supreme Court docket nos. 44677-2016, 44745-2017, and 44746-2017; the administrative and judicial proceedings underlying these same appeals and cross-appeals; and Snake River Basin Adjudication (“SRBA”) subcase nos. 00-91017, 63-33732, 63-33733, 63-33734, 63-33737, and 63-33738.

REMANDED to the Twin Falls County District Court, Honorable Eric Wildman presiding, for further proceedings in accordance with applicable legislation and stipulation of the parties. When said proceedings have concluded, this Court will hear further Motions to dismiss the appeal.” *Order Re: Joint Motion to Dismiss Appeal* at 2.

Upon remand, the District Court gave notice of its “intent pursuant to stipulation of the parties to (1) enter an *Order* vacating its *Memorandum Decision and Order* dated September 1, 2016, and its *Order Denying Rehearing* dated November 14, 2016, and (2) remand this matter to [IDWR] for further proceedings, if any, as may be necessary.” *Order Vacating Orders and Remanding to the Idaho Department of Water Resources* at 3 (Oct. 22, 2019).<sup>2</sup> The District Court provided an opportunity for any party wishing to object to the District Court’s intended action to file a written objection. *Id.* No objections were filed. *Id.* The District Court therefore issued an order on vacating its *Memorandum Decision and Order* and *Order Denying Rehearing*, and remanding to IDWR for any further proceedings that may be necessary. *Id.* at 3-4. No appeals have been taken from that order, and the time period for filing any appeals expired on December 3, 2019. I.A.R. 14(a).

### **DISCUSSION**

This Court’s *Order* of August 23, 2019 remanded the proceedings to the District Court to consider whether to vacate the District Court’s decisions as the parties requested in their *Stipulation*. The District Court vacated its prior decisions but also remanded the case back to IDWR. Ordinarily when a District Court remands an appeal to the administrative agency, the parties would appeal that decision to this Court. *See* I.A.R. 11(a)(2). However, this Court’s *Order* of August 23, 2019 specifically stated that this appeal remained suspended and after the

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<sup>2</sup> Copies of this order and the associated “Judgment” are appended hereto as “**Exhibit A.**”

proceedings before the District Court were complete, then this Court would entertain further motions to dismiss. Hence the parties are filing this second joint motion to dismiss on the grounds that they have fully and completely settled the issues that led to the appeal and that all conditions to dismissal have now been satisfied. Accordingly, the parties jointly stipulate that this appeal should be dismissed with prejudice under I.A.R. 33.

Furthermore, this Court may dismiss an appeal when it appears that the case involves only a moot question. *Goodson v. Nez Perce Cty. Bd. of Cty. Comm'rs*, 133 Idaho 851, 853, 993 P.2d 614, 616 (2000). A case becomes moot when the issues presented are no longer live and the case does not present a justiciable controversy. *Id.* As a result of the *Stipulation* and the actions taken to implement it, including the District Court's vacatur of the decisions from which this appeal was taken, this case is no longer live and presents no justiciable controversy. The questions presented by this appeal are therefore moot. Dismissing this appeal with prejudice, with all parties to bear their own costs and fees, is authorized by and consistent with the parties' *Stipulation*, I.A.R. 33, and this Court's decisions.

### CONCLUSION

For the reasons discussed herein, the parties to this appeal jointly move this Court to dismiss this appeal with prejudice, with all parties to bear their own costs and fees.

Respectfully submitted this 9<sup>TH</sup> day of December, 2019.

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*Attorneys for the Idaho Department of Water Resources and Gary Spackman in his capacity as Director of the Idaho Department of Water Resources*

**LAWRENCE G. WASDEN  
LLP**

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



---

GARRICK L. BAXTER  
Deputy Attorney General

*Attorneys for the Boise Project Board of Control*

**BARKER ROSHOLT & SIMPSON**

---

ALBERT P. BARKER

*Attorneys for Ballentyne Ditch Co., et al.*

**SAWTOOTH LAW OFFICES, PLLC**



---

DANIEL V. STEENSON

*Attorney for New York Irrigation District*

**CHARLES McDEVITT LAW**

---

CHARLES F. McDEVITT

*Attorneys for Suez Water Idaho, Inc.*

**GIVENS PURSLEY LLP**

---

CHRISTOPHER H. MEYER

*Attorneys for the Idaho Department of Water Resources and Gary Spackman in his capacity as Director of the Idaho Department of Water Resources*

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

---

**GARRICK L. BAXTER**  
Deputy Attorney General

*Attorneys for Ballentyne Ditch Co., et al.*

**SAWTOOTH LAW OFFICES, PLLC**

---

**DANIEL V. STEENSON**

*Attorneys for Suez Water Idaho, Inc.*

**GIVENS PURSLEY LLP**

---

**CHRISTOPHER H. MEYER**

*Attorneys for the Boise Project Board of Control*

**BARKER ROSHOLT & SIMPSON LLP**



---

**ALBERT P. BARKER**

*Attorney for New York Irrigation District*

**CHARLES McDEVITT LAW**

---

**CHARLES F. McDEVITT**

*Attorneys for the Idaho Department of Water Resources and Gary Spackman in his capacity as Director of the Idaho Department of Water Resources*

**LAWRENCE G. WASDEN  
LLP**  
Attorney General  
**DARRELL G. EARLY**  
Deputy Attorney General  
Chief, Natural Resources Division

---

**GARRICK L. BAXTER**  
Deputy Attorney General

*Attorneys for Ballentyne Ditch Co., et al.*

**SAWTOOTH LAW OFFICES, PLLC**

---

**DANIEL V. STEENSON**

*Attorneys for Suez Water Idaho, Inc.*

**GIVENS PURSLEY LLP**

---

**CHRISTOPHER H. MEYER**

*Attorneys for the Boise Project Board of Control*

**BARKER ROSHOLT & SIMPSON**

---

**ALBERT P. BARKER**

*Attorney for New York Irrigation District*

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---

**CHARLES F. McDEVITT**

*Attorneys for the Idaho Department of Water Resources and Gary Spackman in his capacity as Director of the Idaho Department of Water Resources*

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

---

**GARRICK L. BAXTER**  
Deputy Attorney General

*Attorneys for Ballentyne Ditch Co., et al.*

**SAWTOOTH LAW OFFICES, PLLC**

---

**DANIEL V. STEENSON**

*Attorneys for Suez Water Idaho, Inc.*

**GIVENS PURSLEY LLP**

---

**CHRISTOPHER H. MEYER**

*Attorneys for the Boise Project Board of Control*

**BARKER ROSHOLT & SIMPSON LLP**

---

**ALBERT P. BARKER**

*Attorney for New York Irrigation District*

**CHARLES McDEVITT LAW**

---

**CHARLES F. McDEVITT**

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 9<sup>th</sup> day of December 2019, I caused to be served a true and correct copy of the foregoing document to the following parties using the iCourt Portal:

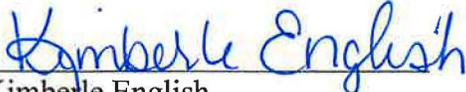
Clerk of the Court  
IDAHO SUPREME COURT  
451 W. State Street  
Boise, ID 83303-2707

Daniel V. Steenson  
Andrew Waldera  
Bryce Farris  
SAWTOOTH LAW OFFICES, PLLC  
P.O. Box 7985  
Boise, ID 83707  
[dan@sawtoothlaw.com](mailto:dan@sawtoothlaw.com)  
[andy@sawtoothlaw.com](mailto:andy@sawtoothlaw.com)  
[bryce@sawtoothlaw.com](mailto:bryce@sawtoothlaw.com)

Albert P. Barker  
BARKER ROSHOLT & SIMPSON, LLP  
P.O. Box 2139  
Boise, ID 83701-2139  
[apb@idahowaters.com](mailto:apb@idahowaters.com)

Charles F. McDevitt  
P.O. Box 1543  
Boise, ID 83701  
[chas@mcdevitt.org](mailto:chas@mcdevitt.org)

Christopher H. Meyer  
Michael Lawrence  
GIVENS PURSLEY, LLP  
P.O. Box 2720  
Boise, ID 83701-2720  
[chrismeyer@givenspursley.com](mailto:chrismeyer@givenspursley.com)  
[mpl@givenspursley.com](mailto:mpl@givenspursley.com)

  
Kimberle English

# Exhibit A

(copies of the *Order Vacating Orders and Remanding to the Idaho Department of Water Resources* and *Judgment* entered in Case No. CV-WA-2015-21376 (Consolidated Ada County Case No. CV-WA-2015-21391) on October 22, 2019)



SUEZ WATER IDAHO INC., )  
 )  
 Intervenor. )  
 \_\_\_\_\_ )  
 )  
 IN THE MATTER OF ACCOUNTING FOR )  
 DISTRIBUTION OF WATER TO THE )  
 FEDERAL ON-STREAM RESERVOIRS IN )  
 WATER DISTRICT 63 )  
 \_\_\_\_\_ )

On October 20, 2015, the Director of the Idaho Department of Water Resources issued an *Amended Final Order* concerning his method of distributing water to federal on-stream reservoirs located in the Boise River System. Several parties sought judicial review of the *Amended Final Order*. On September 1, 2016, the Court entered its *Memorandum Decision and Order* affirming in part and setting aside and remanded in part the *Amended Final Order*. On November 14, 2016, the Court entered an *Order Denying Rehearing*. *Notices of Appeal* were subsequently filed by several parties. The appeals are currently pending under Idaho Supreme Court docket numbers 44677-2016, 44745-2017, and 44746-2017.

In 2018, the parties entered into a stipulated settlement. The purpose of the settlement is to:

[F]acilitate and expedite resolution of all disputes among the Parties that have arisen in various judicial and administrative proceedings pertaining to the issues of the “fill” and/or “refill” of the storage water rights for on-stream reservoirs in Idaho Department of Water Resources . . . Administrative Basin 63, known as Arrowrock, Anderson Ranch and Lucky Peak Reservoirs . . ., including but not limited to: SRBA subcase nos. 00-91017, 63-33732, 63-33733, 63-33734, 63-33737, and 63-33738; the appeals and cross-appeals pending under Idaho Supreme Court docket nos. 44677-2016, 44745-2017, and 44746-2017; and the administrative and judicial proceedings underlying these same appeals and cross-appeals.

*Stipulation*, p.1.<sup>1</sup>

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<sup>1</sup> A copy of the *Stipulation* is attached as Exhibit 1 to the State of Idaho’s *Motion to Alter or Amend Partial Decrees for Water Right Nos. 63-303, 63-3613, 63-3614, and 63-3618*.

The settlement anticipates the parties thereto supporting certain legislative and judicial actions. In the legislative arena, the parties agreed to jointly support passage of legislation pertaining to new or proposed projects to store more than one thousand acre feet of surface water. That legislation, which is now codified as Idaho Code § 42-115, was passed and made effective as of February 13, 2019.

In the judicial arena, the parties agreed to jointly support the filing of the following *Motions* with the SRBA District Court: (1) *Motion to Decree Water Right No. 63-33734A*; (2) *Motion to Decree Water Right No. 63-33734B and Disallow Water Right Claim Nos. 63-33732, 63-33733, 63-33734, 63-33737, and 63-33738*; and (3) *Motion to Alter or Amend Partial Decrees for Water Right Nos. 63-303, 63-3613, 63-3614, and 63-3618*. The State of Idaho filed the *Motions* on February 19, 2019. The Court entered *Orders* granting the *Motions* on July 19, 2019. No notices of appeal from these *Orders* were filed and the time for doing so has expired.

The parties also agreed to file a *Joint Motion to Dismiss Appeal* in Idaho Supreme Court docket nos. 44677-2016, 44745-2017, and 44746-2017. The *Joint Motions* were filed on July 29, 2019, and request that the Idaho Supreme Court dismiss the appeals with instructions to the district court to vacate its *Memorandum Decision and Order* and *Order Denying Rehearing*. On August 23, 2019, the Idaho Supreme Court entered its *Order Re: Joint Motion to Dismiss Appeal*. The Court informed the parties that there is no rule allowing it to vacate a judgment of a trial court pursuant to stipulation of the parties. It ordered that the matter be remanded to this Court “for further proceedings in accordance with applicable legislation and stipulation of the parties.”

On September 17, 2019, the Court gave notice that it was its intent pursuant to stipulation of the parties to (1) enter an *Order* vacating its *Memorandum Decision and Order* dated September 1, 2016, and its *Order Denying Rehearing* dated November 14, 2016, and (2) remand this matter to the Idaho Department of Water Resources for further proceedings, if any, as may be necessary. Any party wishing to object to the Court’s intended action was required to file a written objection with the Court on or before October 15, 2019. No written objections were filed and the time for doing so has expired.

THEREFORE, BASED ON THE FOREGOING, THE FOLLOWING ARE  
HEREBY ORDERED:

1. The Court's *Memorandum Decision and Order* dated September 1, 2016, and its *Order Denying Rehearing* dated November 14, 2016, are hereby vacated.
2. The matter is remanded to the Idaho Department of Water Resources for further proceedings, if any, as may be necessary.

IT IS SO ORDERED.

Dated Oct 22, 2019

  
\_\_\_\_\_  
ERIC S. WILDMAN  
District Judge

**CERTIFICATE OF MAILING**

I certify that a true and correct copy of the ORDER VACATING ORDERS AND REMANDING TO IDWR (WITH CORRECTED CERTIFICATE OF MAILING) was mailed on October 22, 2019, with sufficient first-class postage to the following:

ALBERT P BARKER  
1010 W JEFFERSON ST STE 102  
PO BOX 2139  
BOISE, ID 83701-2139  
Phone: 208-336-0700

ANDREW J WALDERA  
SAWTOOTH LAW OFFICES PLLC  
1101 W RIVER ST STE 110  
PO BOX 7985  
BOISE, ID 83707  
Phone: 208-629-7447

CHARLES F MC DEVITT  
PO BOX 1543  
BOISE, ID 83701-1543  
Phone: 208-412-5250

DANIEL V STEENSON  
SAWTOOTH LAW OFFICES PLLC  
1101 W RIVER ST STE 110  
PO BOX 7985  
BOISE, ID 83707  
Phone: 208-629-7447

GARRICK L BAXTER  
DEPUTY ATTORNEY GENERAL  
STATE OF IDAHO - IDWR  
PO BOX 83720  
BOISE, ID 83720-0098  
Phone: 208-287-4800

MICHAEL P LAWRENCE  
601 W BANNOCK ST  
PO BOX 2720  
BOISE, ID 83701-2720  
Phone: 208-388-1200

S. BRYCE FARRIS  
SAWTOOTH LAW OFFICES PLLC  
1101 W RIVER ST STE 110  
PO BOX 7985  
BOISE, ID 83707  
Phone: 208-629-7447

DIRECTOR OF IDWR  
PO BOX 83720  
BOISE, ID 83720-0098



Julie Murphy



**IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA**

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,

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 Director of the Idaho Department of Water Resources,

Respondents,

and

SUEZ WATER IDAHO INC.,

Intervenor.

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

) **JUDGMENT** (With Corrected  
) Certificate of Mailing)

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

)  
)  
)  
)  
)  
)  
)

JUDGMENT IS ENTERED AS FOLLOWS:

The *Petitions for Judicial Review* filed in the above-captioned matter are hereby dismissed with prejudice and the matter is remanded for further proceedings, if any, as may be necessary.

Dated Oct 22, 2019

  
\_\_\_\_\_  
ERIC J. WILDMAN  
District Judge

**CERTIFICATE OF MAILING**

I certify that a true and correct copy of the JUDGMENT  
(WITH CORRECTED CERTIFICATE OF MAILING) was mailed on October  
22, 2019, with sufficient first-class postage to the following:

ALBERT P BARKER  
1010 W JEFFERSON ST STE 102  
PO BOX 2139  
BOISE, ID 83701-2139  
Phone: 208-336-0700

ANDREW J WALDERA  
SAWTOOTH LAW OFFICES PLLC  
1101 W RIVER ST STE 110  
PO BOX 7985  
BOISE, ID 83707  
Phone: 208-629-7447

CHARLES F MC DEVITT  
PO BOX 1543  
BOISE, ID 83701-1543  
Phone: 208-412-5250

DANIEL V STEENSON  
SAWTOOTH LAW OFFICES PLLC  
1101 W RIVER ST STE 110  
PO BOX 7985  
BOISE, ID 83707  
Phone: 208-629-7447

GARRICK L BAXTER  
DEPUTY ATTORNEY GENERAL  
STATE OF IDAHO - IDWR  
PO BOX 83720  
BOISE, ID 83720-0098  
Phone: 208-287-4800

MICHAEL P LAWRENCE  
601 W BANNOCK ST  
PO BOX 2720  
BOISE, ID 83701-2720  
Phone: 208-388-1200

S. BRYCE FARRIS  
SAWTOOTH LAW OFFICES PLLC  
1101 W RIVER ST STE 110  
PO BOX 7985  
BOISE, ID 83707  
Phone: 208-629-7447

DIRECTOR OF IDWR  
PO BOX 83720  
BOISE, ID 83720-0098



Julie Murphy