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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.

Supreme Court Docket No. 44746

SUEZ'S MOTION TO CONSOLIDATE CASES FOR BRIEFING AND ORAL ARGUMENT

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/Respondents,

and

BOISE PROJECT BOARD OF CONTROL and NEW YORK IRRIGATION DISTRICT,

Petitioners/Respondents,

v.

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/Respondent.

MOTION

Suez Water Idaho Inc. ("Suez") hereby moves this Court for an order consolidating Docket Nos. 44677 and 44745 for purposes of streamlining briefing and oral argument.[1]

To prevent confusion among docket numbers, identical motions have been filed in Docket Nos. 44677, 44745, and 44746.

DISCUSSION

A. Consolidation

Suez makes this motion with all due respect and deference to the Court, seeking guidance in light of the parties' inability to agree on a course of action.

Docket Nos. 44677 and 44745 involve precisely the same parties: Ballantyne Ditch Company, *et al.* (the "Ditch Companies"), Boise Project Board of Control and New York Irrigation District (together, "Boise Project"), the Idaho Department of Water Resources ("IDWR"), and Suez Water Idaho Inc. ("Suez"). The Ditch Companies and Boise Project are referred to collectively as "Irrigators."

Both Dockets also involve appeals (and cross-appeals) of the same matter: Ada County Case No. CV-WA-2015-21376 (Consolidated Ada County Case No. CV-WA-2015-21391), which was re-assigned to the Snake River Basin Adjudication District Court of the Fifth Judicial

[1] Suez has made minor adjustments to the party designations in the caption (separating district court designations from appeal designations with a forward slash). Suez will defer, of course, to the Court's designation of the caption. Suez also notes that Settlers Irrigation District was omitted from the caption on the District Court's *Clerk's Certificate of Appeal* and the Idaho Supreme Court's *Order Consolidating Appeal Nos. 44677, 44745 and 44746 for Record and Transcript Only.*

District pursuant to this Court's December 9, 2009 Administrative Order. The Ditch Companies are the Appellants in Docket No. 44677 (and Suez is Cross-Appellant). The Boise Project is the Appellant in Docket No. 44745 (and Suez is Cross-Appellant). IDWR is the Appellant in Docket No. 44746, raising issues distinct from those raised by the Ditch Companies and Boise Project in Docket Nos. 44677 and 44745.

Docket Nos. 44677 and 44745—the two matters of which Suez requests consolidation—involve largely, if not completely, overlapping claims and issues (in spirit, if not in letter) by the Ditch Companies and Boise Project, whose interest in this litigation are generally aligned. Suez has proposed to all other parties in the above-captioned matters that Docket Nos. 44677 and 44745 be consolidated to avoid repetitious briefing and oral argument. IDWR initially provided positive feedback as to Proposal #1 (below), but each of Suez's consolidation proposals were rejected by the Ditch Companies. Suez has received no response to any of its proposals from the Boise Project. Because the parties have been unable to agree on the proper course of action moving forward, Suez submits this suggestion of consolidation to the Court for resolution.

Because there is no compelling reason to duplicate briefing and argument on the issues presented in Docket Nos. 44677 and 44745, and in the interest of judicial economy, Suez suggests that this Court consolidate Docket Nos. 44677 and 44745 for purposes of briefing and oral argument.

B. Briefing and Oral Argument Proposal #1

If this consolidation request is granted, Suez requests the Court order the following briefing schedule for consolidated Docket Nos. 44677 and 44745 and separate Docket No. 44746:

BRIEFING SCHEDULE (PROPOSAL #1)

Briefing round one (35 days after record is settled) (3 briefs):
- *Irrigators' consolidated appeals (Nos. 44677 and 44745)*
  - Boise Project: Opening Brief
  - Ditch Companies: Opening Brief
- *IDWR appeal (No. 44746)*
  - IDWR: Opening Brief

Briefing round two (28 days later) (5 briefs):
- *Irrigators' consolidated appeals (Nos. 44677 and 44745)*
  - Suez: Combined Response Brief on Appeal and Opening Brief on Cross Appeal
  - IDWR: Response Brief
- *IDWR appeal (No. 44746)*
  - Boise Project: Response Brief
  - Ditch Companies: Response Brief
  - Suez: Response Brief

Briefing round three (21 days later) (4 briefs):
- *Irrigators' consolidated appeals (Nos. 44677 and 44745)*
  - Boise Project: Combined Reply Brief on Appeal and Response Brief on Cross Appeal
  - Ditch Companies: Combined Reply Brief on Appeal and Response Brief on Cross Appeal
  - IDWR: Response Brief on Cross Appeal
- *IDWR appeal (No. 44746)*
  - IDWR: Reply Brief

Briefing round four (21 days later) (1 brief):
- *Irrigators' consolidated appeals (Nos. 44677 and 44745)*
  - Suez: Reply Brief on Cross Appeal

If this consolidation is approved, Suez respectfully suggests that oral arguments on all three matters be heard on the same day and that the following division of time on oral argument would be appropriate:

ORAL ARGUMENT (PROPOSAL #1)

Irrigators' consolidated appeals (Nos. 44677 and 44745)
- Opening: Irrigators divide 30 minutes (reserving as they choose for rebuttal).
- Response: IDWR/Suez divide 30 minutes (Only Suez would have a right to reserve time for rebuttal, since it is the only Cross Appellant).

IDWR appeal (No. 44746)

Opening: IDWR gets 30 minutes (reserving as it chooses for rebuttal).

Response: Suez leads off with 10 minutes. Irrigators then divide the remaining 20 minutes.

C. Briefing and Oral Argument Proposal #2

Alternatively, the Court might wish to recognize that in Docket No. 44746 (IDWR's appeal), Suez, although technically a Respondent, is aligned with IDWR. If so, the Court might wish to adjust the briefing and oral argument schedules as set out below. The only difference between Proposal #1 and Proposal #2 is that in Proposal #1 Suez files a Response Brief in Docket No. 44746, while in Proposal #2 Suez instead files an Opening Brief and a Reply Brief:

BRIEFING SCHEDULE (PROPOSAL #2)

Briefing round one (35 days after record is settled) (4 briefs):

Irrigators' consolidated appeals (Nos. 44677 and 44745)

Boise Project: Opening Brief

Ditch Companies: Opening Brief

IDWR appeal (No. 44746)

IDWR: Opening Brief

Suez: Opening Brief

Briefing round two (28 days later) (4 briefs):

Irrigators' consolidated appeals (Nos. 44677 and 44745)

Suez: Combined Response Brief on Appeal and Opening Brief on Cross Appeal

IDWR: Response Brief

IDWR appeal (No. 44746)

Boise Project: Response Brief

Ditch Companies: Response Brief

Briefing round three (21 days later) (5 briefs):

Irrigators' consolidated appeals (Nos. 44677 and 44745)

Boise Project: Combined Reply Brief on Appeal and Response Brief on Cross Appeal

Ditch Companies: Combined Reply Brief on Appeal and Response Brief on Cross Appeal

IDWR: Response Brief on Cross Appeal

IDWR appeal (No. 44746)

IDWR: Reply Brief

Suez: Reply Brief

Briefing round four (21 days later) (1 brief):
Irrigators' consolidated appeals (Nos. 44677 and 44745)
Suez: Reply Brief on Cross Appeal

Suez suggests that this second proposal might result in the following oral argument schedule:

ORAL ARGUMENT (PROPOSAL #2)

Irrigators' consolidated appeals (Nos. 44677 and 44745)
Opening: Irrigators divide 30 minutes (reserving as they choose for rebuttal).
Response: IDWR/Suez divide 30 minutes (Only Suez would have a right to reserve time for rebuttal, since it is the only Cross Appellant).

IDWR appeal (No. 44746)
Opening: IDWR/Suez divide 30 minutes (reserving as they choose for rebuttal).
Response: Irrigators divide 30 minutes.

CONCLUSION

The two proposals above result in 13 and 14 briefs, respectively, and, presumably, two hours of oral argument. That seems sufficient. If consolidation is not approved, there will be 19 briefs (assuming the Irrigators are allowed to fully engage in each other's appeals) and, presumably, three hours of oral argument.

Suez submits this motion with the hope that it will result in less time and paper devoted to this appeal. In doing so, Suez is cognizant of the fact that this motion involves time and paper. Accordingly, Suez underscores that it offers this motion as a suggestion for the Court to consider. Suez does not intend to file additional briefing on the issue. Nor will it respond to anything filed in response to this motion (unless the Court so directs).

Suez respectfully requests that this Court grant its motion without a hearing, and consolidate Docket Nos. 44677 and 44745 to avoid redundant and repetitious briefing and argument.

Respectfully submitted this 13th day of March, 2017.

GIVENS PURSLEY LLP

By _____
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By _____
Michael P. Lawrence

Attorneys for Suez Water Idaho Inc.

CERTIFICATE OF SERVICE

I hereby certify that on this 13th day of March 2017, I caused to be filed and served true and correct copies of the foregoing document to the persons listed below by the method indicated:

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