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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

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,

vs

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

Petitioners-Respondents,

vs.

**SUPREME COURT DOCKET
No. 44746-2016**

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

**NOTICE OF FILING
HYPERLINKED ELECTRONIC
BRIEF AND NOTICE OF
ERRATA**

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.

TO: THE CLERK OF THE IDAHO SUPREME COURT AND ALL COUNSEL OF RECORD

Pursuant to this Court's order granting the parties' *Motion for Leave to File Hyperlinked Electronic Briefs* in this matter, Respondents the Ditch Companies, by and through their counsel of record, hereby submit their hyperlinked electronic *Respondents' Brief for the Ditch Companies* in PDF format on a DVD. Copies of the DVD are being mailed with this notice to the parties.

The Ditch Companies hereby submit this *Notice of Errata* to correct the following clerical errors in, and corrections to, the *Respondents' Brief for the Ditch Companies*, filed August 1, 2017:

Table of Authorities Missing from table:
American Falls Reservoir Dist. No. 2 v. IDWR, 143 Idaho 862,
154 P.3d 433 (2007) fn. 7, p. 53
Twin Lakes Canal Co. v. Choules, 151 Idaho 214,
254 P.3d 1210 (2011) p. 54
Idaho Rule of Evidence 201 fn. 5, p. 31

Page 11, ¶ 11 Ex. 2008, 000479-80000478-79, ¶ 18.

Page 12 AR. 001369001344.

Page 13 The Watermasters kept track of water released from the reservoirs for flood control purposes, did not accrue those flows to any reservoir storage right, and reported the total, annual flood control releases in their annual reports in a category categories-called "flood control and other loss to the [irrigation season or system]."

- Page 23 When the storage rights “fill on paper” in the water right accounting (an expression used because the reservoirs are not ~~in~~-physically filled), in part with water that is physically stored and in part with water that is released for flood control, they are “satisfied” and no longer entitle the right holders to store water.
- Page 23 This conclusion is based on ~~the~~ IDWR’s legal theory that storage rights and Idaho law/policy compel storage right holders to store water “as quickly as possible,” without regard to flood control considerations.
- Page 25 The Ditch Companies oppose this conclusion for the same reasons that ~~they oppose it opposes~~ IDWR’s theory that flood control releases “fill” and “satisfy” their storage water rights.
- Page 27 IDWR asserts that this conflict “create[s] a ‘conundrum’ and ‘dilemma’ for priority administration of water rights” because the existing storage rights do not authorize using the reservoirs for flood control. *Id.*, p. 372.
- Page 34 The Director was so upset by Sisco’s testimony that he met *ex parte* with IDWR witness Cresto to prepare rebuttal to undermine Sisco’s credibility and testimony, and he expressly rejected Sisco’s testimony in his *Final Order*. Tr. 8/31/158/28/15 942:17-945:25; . . .
- Page 39 The 1985 Manual describes important roles for the Boise River Watermaster and IDWR in reservoir operation, . . .
- Page 40 The delayed filling of the reservoirs would be intolerable for storage right holders were it not for the refill assurances of the reservoir operating plans’ runoff forecast and rule curve operating criteria, . . .
- Page 41 The widely reported high winter and spring runoff and flood control releases of 2017 illustrates the point.
- Page 53 According to IDWR, the Director “allows” the BOR to store the water ultimately released for end beneficial use as a “substitute” or “replacement” for the flood control releases. . .
- Page 53 Nevertheless, the Director attempts to unilaterally force substitution—to reallocate, subordinate, and redistribute senior storage rights under the guise of water right accounting-administration.
- Page 53, fn. 7 This statutory prohibition applies equally to storage water rights as it does natural flow water rights. *American Falls Reservoir Dist. No. 2 v. IDWR*, 143 Idaho at 862, 878, 154 P.3d at 433, 449 (citing IDAHO CODE § 42-202, and treating storage water rights the same as any other water right).


Page 58 During flood control operations the Corps and BOR forecast runoff and use the rule curves to determine the amount of vacant reservoir space that is needed, and the amount of water that may be stored, . . .

Page 60 *If*, however, the Court rejects this outcome by adopting IDWR’s theory that flood control releases “fill” and “satisfy” the Boise River Reservoir storage rights ~~as IDWR contends~~, it is absolutely essential that a water right be decreed . . .

Page 64 As further explained by the SRBA Court in its *Memorandum Decision and Order on Challenge*, Subcase Nos. 74-15051, *et al.* (“Lemhi High Flows Claims”) (Jan. 1, 2012~~Feb. 12, 2012~~), . . .

RESPECTFULLY SUBMITTED this 16th day of August, 2017.

SAWTOOTH LAW OFFICES, PLLC

By 
Daniel V. Steenson
Attorneys for Petitioners-Respondents
Ditch Companies

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 16th day of August, 2017, I caused a true and correct copy of the foregoing **NOTICE OF FILING HYPERLINKED ELECTRONIC BRIEF AND NOTICE OF ERRATA** to be served by the method indicated below, and addressed to the following:

Original by Hand Delivery to:

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Daniel V. Steenson

**Idaho Supreme Court
Docket No. 44746-2016**

Idaho Department of Water Resources and Spackman

v.

Ballentyne Ditch Company, et al.

Case No. CV-WA-2015-21376

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In the Matter of
Accounting for the
Distribution of
Water to the
Federal On-Stream
Reservoirs in Water
District 63 before
the Idaho
Department of
Water Resources



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**RESPONDENTS' BRIEF FOR
THE DITCH COMPANIES**

filed August 1, 2017
HYPERLINKED ELECTRONIC BRIEF