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 DEPARTMENT OF
 WATER RESOURCES

BEFORE THE DEPARTMENT OF WATER RESOURCES
 OF THE STATE OF IDAHO

IN THE MATTER OF INTEGRATED)
 MUNICIPAL APPLICATION)
 PACKAGE ("IMAP") OF UNITED)
 WATER IDAHO INC., BEING A)
 COLLECTION OF INDIVIDUAL)
 APPLICATION FOR TRANSFERS)
 OF WATER RIGHTS AND)
 APPLICATIONS FOR AMENDMENT)
 OF PERMITS)

**MEMORANDUM IN SUPPORT OF
 MOTION FOR SUMMARY
 JUDGMENT TO LIMIT PLANNING
 HORIZON**

I. INTRODUCTION

The Boise Project Board of Control has participated in this proceeding since its' initial phase, and continued its participation after the stay was lifted in 2012. During the most recent phase the Boise Project Board of Control has had several opportunities to talk informally with Suez's representatives concerning their goals and vision for the Boise valley, and has appreciated those opportunities. While many of the Boise Project's concerns have been assuaged through those informal discussions and subsequent amendments to the IMAP, the Boise Project continues to believe that the requested rolling fifty (50) year planning horizon is not supported by the

statutory requirements governing the Department's authority to grant water rights for reasonably anticipated future municipal needs. The water rights that remain in Suez's Integrated Municipal Application Package, after its' amendments to remove certain surface water rights from the package, are fully developed and not subject to forfeiture. Certainly the Boise Project Board of Control has no intention of alleging that any of Suez's developed groundwater rights are subject to forfeiture, nor is it reasonably foreseeable that any other party could claim so. For these reasons, as discussed herein, the Boise Project Board of Control requests that the Idaho Department of Water Resources deny the fifty year planning horizon requested by the applicant, and assign a planning horizon that conforms to the requirements of I.C. § 42-202B(8).

II. PERTINENT FACTUAL AND PROCEDURAL HISTORY

Suez, then United Water Idaho, filed its Integrated Municipal Application Package ("IMAP") initially on May 4, 2001. In 2003, the Director of the Department of Water Resources stayed the proceedings. Upon a Motion from Suez, the stay of the matter was lifted in an Order issued June 6, 2012. In that Order, the Director also recognized that "[t]he components of many of the water rights identified in the various IMAP applications have changed or been clarified during the stay of the proceedings." Order Lifting Stay, June 6, 2012, p. 4.

On April 28, 2017, after conducting additional studies concerning its IMAP, Suez filed its 2017 Update Report of IMAP and 2065 Master Water Plan. In it, United Water stated that the IMAP "does not seek any additional appropriation of water." *Id.*, p. 4. It then described the three primary purposes of the IMAP:

1. Its seeks alternative points of diversion ("APODs") for 101 of its ground water rights and permits and one additional point of diversion ("POD") for surface water permit no. 63-12055.
2. It secures protection for forfeiture under the Municipal Water Rights Act of 1996 during the 50-year planning horizon for all rights included in the IMAP.

3. It tidies up various other aspects of the rights and permits: For example, it provides a uniform description of the service area, nature of use, and season of use, and it eliminates volume limits (by reducing the instantaneous flow rate).

2017 Update, pp. 4-5. In November, 2017, Suez subsequently and voluntarily removed two water rights from its' IMAP, groundwater right no. 63-2892, and surface water right no. 63-12055, referenced above.

Suez provided its Master Water Plan for the Years 2015 to 2065 on April 28, 2017. The Master Plan is described by Suez as quantifying “the total projected peak municipal demand (including total volume and MMAD for billed customer demand and other non-billed production) over 50 years from 2015 through 2065.” Master Water Plan, p. 3. Ultimately the report concludes that “Suez’s current portfolio is sufficient to cover its current demands and RAFN through the year 2058.” *Id.*, at p. 41. However, it then curiously notes that “the gap is limited to peak production days in August.” *Id.*, p. 41, n. 34. It is not entirely clear if that is intended to mean that the current portfolio is sufficient to meet the reasonably anticipated future needs of Suez through all of 2065, except in August of that year, or whether the “gap” occurs in August each year from 2058 to 2065. Under either scenario, Suez has a “gap” of 40.29 cfs only in the month of August beginning in the year 2058, or 2065, modeled out approximately 40 to 50 years in the future.

III. STANDARD OF REVIEW

Summary judgment must be granted “if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” *Id.* R. Civ. P. 56(a). “A material issue of fact, for summary judgment purposes, is one that is relevant to an element of the claim or defense and whose existence might affect the outcome of the case.” *State v. Hudson*, 162 Idaho 888, 892, 407 P.3d 202, 206 (2017), *citing Rife v. Long*, 127 Idaho

841, 849-50, 908 P.2d 143, 151052 (1995). “The moving party is entitled to judgment when the non-moving party fails to make a showing sufficient to establish the existence of an element essential to that party’s case on which that party will bear the burden of proof at trial.” *St. Alphonsus Reg. Med. Cntr. v. Raney*, 2018 WL 1123921, March 2, 2018, citing *Badell v. Beeks*, 115 Idaho 101, 102, 765 P.2d 126, 127 (1988).

IV. ARGUMENT

A. Suez’s Proposed Planning Horizon is Not Consistent with Any Ada County or City of Boise Comprehensive Land Use Planning Documents:

In its’ Master Water Plan, Suez recognizes that it is not attempting in this proceeding to appropriate water, but argues that approval of a 50-year planning horizon for its reasonably anticipated future needs, “it would appear that Suez will have no gap to fill.” Currently, and applying any standard or adopted comprehensive land use planning document in Suez’s service area, it is true that Suez does not have any gap to fill for approximately 40 to 50 years. It is not Suez’s intent that the planning horizon remain static either. As it states in its’ Master Water Plan, “it is anticipated that Suez will re-evaluate its long-term needs from time to time[,]” and requests that the Department issue a RAFN plan with a “reopener condition.” Master Water Plan, p. 4.

Idaho law defines “reasonable anticipated future needs” as “future uses of water by a municipal provider for municipal purposes within a service area which, on the basis of population and other planning data, are reasonably expected to be required within the planning horizon of each municipality within the service area not inconsistent with comprehensive land use plans approved by each municipality.” I.C. § 42-202B(8). Additionally a “[p]lanning horizon’ refers to the length of time that the department determines is reasonable for a municipal provider to hold water rights to meeting reasonably anticipated future needs.” I.C. § 42-202B(7).

Logically it then follows that the planning horizon approved by the department for Suez, must be one that is consistent with other comprehensive land use plans in its service area.

The Department discusses its policies and guidelines for evaluation of Reasonably Anticipated Future Needs Municipal Water Rights in its Application Processing Memo No. 74, which is also the RAFN Municipal Water Right Handbook, dated March 16, 2015. The memorandum states that “the applicant will present a planning horizon time period, including a specified ending year.” RAFN Municipal Water Right Handbook (“Handbook”), p. 7. It also sets out the additional items that must be considered.

- The customary standards of practice for water infrastructure planning
- The planning period identified in any applicable Comprehensive Plan
- Planning periods identified by other application planning documents
- Regional Planning Studies

Id., pp. 7-8.

Suez’s expert for purposes of developed the Master Water Plan is John C. Church, an economist with substantial experience forecasting and modeling population in the Treasure Valley. Suez also relied upon the services of Don Reading, another economist, and Christian Petrich, a hydrologic engineer, to review Mr. Church’s report. Master Water Plan, pp. 75-109, and 113-117. All three experts recognized that the basis for the modeling of the population projections for Suez’s service area depended upon the modeling and projections contained in the COMPASS planning report, a regional long-range transportation plan for Ada and Canyon Counties,” which “look 20+ years into the future to help ensure our roads, bridges, and transportation services (buses, etc.) are ready by helping prioritize projects based on public input and how the region is likely to grow.” <http://www.compassidaho.org/prodserv/cim2040.htm> The

current COMPASS plan projects population growth to the year 2040. The City of Boise's Comprehensive Plan, titled Blueprint Boise, evaluates population growth over a 10 to 20 year planning horizon. https://pds.cityofboise.org/media/151834/bb_chapter_1_01302017.pdf , pp. 1-22, 5-1, FH-3. The only other planning document that appears to encompass a 50 year planning model is the Treasure Valley Comprehensive Aquifer Management Plan, which has been in process for approximately a decade, but has never been finalized by the Water Resource Board. Even if that draft Plan met the statutory requirements for a planning horizon of a municipality, which the Board is not, there is no authority to rely on a draft that has never been actually approved or implemented.

The RAFN Municipal Water Right Handbook recognizes “[w]hen another pertinent planning document exists, such as a master water plan, then the planning document should be consistent with the master plan for the coincident period of time shared between the planning horizons of both documents.” Handbook, p. 9. Further, “[l]onger planning horizons increase the level of uncertainty associated with predicted values and must be considered by the Department with greater caution.” *Id.*, p. 8. Dr. Petrich, when reviewing Mr. Church's Master Plan, recognized “[t]he actual future water use will depend on the actual growth in population and households, future availability of groundwater and surface water, irrigation-season temperatures, water-use efficiency, the cost of water, and numerous other factors.” Master Water Plan, p. 116.

Based on these factors, Suez's proposed open-ended planning horizon that extends to the year 2065 is not reasonable planning horizon, and is inconsistent with other comprehensive land use planning documents in its service area. A reasonable planning horizon for Suez's service area to meet its reasonably anticipated future needs should be limited to no longer than the year

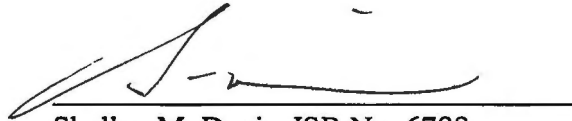
2040, the year adopted by the COMPASS planning document, and relied upon by Suez to model population projections.

V. CONCLUSION

For the foregoing reasons, the Boise Project Board of Control, requests that the Hearing Officer grant its' Motion for Summary Judgment, and limit the planning horizon sought by Suez in these proceedings to term that does not extend beyond the year 2040.

Dated this 16th day of March, 2018.

BARKER ROSHOLT & SIMPSON LLP

A handwritten signature in black ink, appearing to read 'Shelley M. Davis', is written over a horizontal line.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 16th day of March, 2018, I served a true and correct copy of the foregoing, **BOISE PROJECT BOARD OF CONTROL'S MEMORANDUM IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT TO LIMIT PLANNING HORIZON** upon the following persons via the method indication below:

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*For Nampa & Meridian Irrigation District and Settlers
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