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RECEIVED
MAR 08 2019
DEPARTMENT OF
WATER RESOURCES

Via Hand Delivery

March 8, 2019

Idaho Department of Water Resources
The Idaho Water Center
322 E Front St
Boise, ID 83702

Re: City of Kuna, Transfer No. 81844 - *Stipulation Regarding APODs and Monitoring, and Withdrawal of SUEZ's Protest*

Dear Sir or Madam:

Enclosed please find the original of the above-captioned pleading (the "*Stipulation*") for filing (along with this letter) in the proceeding for the City of Kuna's Transfer No. 81844. This *Stipulation* is submitted on behalf of my client, SUEZ Water Idaho Inc. ("SUEZ"). I am also enclosing a second copy of this letter and the *Stipulation* to serve as conformance copies.

This *Stipulation* was executed on January 15, 2019. Immediately thereafter, we learned that the Department would re-advertise the City's transfer application. Accordingly, SUEZ waited until the conclusion of the new protest period to ascertain whether new issues would be raised that might bear on SUEZ's interests. The protest period has now closed. Based on the protests filed, it does not appear that the issues raised require further involvement by SUEZ.

Accordingly, SUEZ is submitting the *Stipulation* today. I have modified the certificate of service attached to the *Stipulation* that was executed on December 15, 2019 to add the additional protestants. This is the reason that the footer appears different than the other pages in the *Stipulation*.

As noted in the *Stipulation*, SUEZ is withdrawing its protest conditionally, contingent upon the inclusion of three stipulated conditions set out in the *Stipulation*. If the Department (or other parties) have any concerns with these conditions, SUEZ requests an opportunity to address those concerns.

Condition No. 1 is the “standard APOD” condition. As explained in prior filings in this matter by SUEZ, SUEZ believes that this language is not well suited to addressing APODs that include yet-to-be-constructed wells.¹ Nevertheless, in the spirit of cooperation and in deference to the City, SUEZ has agreed that the standard APOD language may be employed here as a condition for the water rights in the transfer application. SUEZ looks forward to an opportunity in another forum to explore with the Department how APODs involving yet-to-be constructed wells will be administered. But there is no need to hold up the approval of this transfer.

Condition No. 2 implements the detailed well monitoring and reporting provisions to which the City and SUEZ have stipulated.

Condition No. 3 recognizes that the City and SUEZ have entered into a separate mutual cooperation agreement. The *Stipulation* does not call for IDWR enforcement of that agreement. It simply requires that the existence of a side agreement be referenced in the water rights subject to transfer.

¹ SUEZ has two concerns that it would like to pin down. One is that the standard APOD condition assumes that each APOD (*i.e.*, each well) has a priority date associated with it through a prior water right. (This is because the standard language was developed in the context of accomplished transfers in the SRBA.) Here some of the APODs are yet-to-be constructed wells with no associated water rights and, hence, no “original” priority date. SUEZ sought to clarify that the new APODs will take an original priority date for purposes of the APOD condition based on the date of transfer.

Second, SUEZ sought to establish that the so-called “rollback” (elimination of the APOD authority and evaluation pursuant to the original priority date) does not occur in the event of a claim of injury by a subsequent water right (junior to the APOD transfer). In other words, future water rights take their place in the priority system subject to the APOD authority created by the transfer.

As explained in my memorandum of 10/16/2018, it is not necessary to establish a quantity associated with the new APODs (for yet-to-be constructed wells) for purposes of the APOD condition. This is because quantity comes into play only where the date of the transfer is later than the “original” priority date associated with each of the APODs. (In contrast, quantity does matter and is established by the prior water rights where a transfer seeks to allow existing water rights to use each other’s points of diversion.) It bears emphasis, however, that the conclusion that quantity does not matter where the original priority date is the same as the date of the transfer is dependent on the policy that there will be no rollback vis-à-vis future acquired water rights.

Future efforts by municipal providers to obtain IDWR guidance on APODs should also address the scenarios under which the APOD condition is given effect (region-wide curtailment, localized restrictions, and well interference). The key area of contention is that the condition should not prohibit the municipal provider from diverting a water right historically associated with a well within a localized curtailment area from another APOD outside the curtailment area.

SUEZ wishes to thank the City of Kuna for its cooperation in resolving SUEZ's concerns in this matter.

If SUEZ can be helpful in any way in assisting the Department, the City, the parties, or the developer with respect to the issues raised in the transfer application or this *Stipulation*, please to not hesitate to call on us.

Sincerely,



Christopher H. Meyer

Encl: *Stipulation Regarding APODs and Monitoring, and Withdrawal of SUEZ's Protest*

cc: Service List

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