

Christopher H. Meyer [ISB No. 4461]
Michael P. Lawrence [ISB No. 7288]
GIVENS PURSLEY LLP
601 West Bannock Street
P.O. Box 2720
Boise, Idaho 83701-2720
Office: (208) 388-1200
Fax: (208) 388-1300
chrismeyer@givenspursley.com
mpl@givenspursley.com

Attorneys for Protestant SUEZ Water Idaho Inc.

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DEPARTMENT OF
WATER RESOURCES

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WATER RESOURCES
WESTERN REGION

BEFORE THE IDAHO DEPARTMENT OF WATER RESOURCES

IN THE MATTER OF APPLICATION FOR
TRANSFER NO. 81844 IN THE NAME OF
THE CITY OF KUNA (FOR WATER
RIGHT NOS. 63-3266, 63-8215, 63-11970,
63-12394, 63-12552, AND 63-31481)

**STIPULATION REGARDING APODs AND
MONITORING, AND WITHDRAWAL OF
SUEZ'S PROTEST**

Applicant City of Kuna ("City") and Protestant SUEZ Water Idaho Inc. ("SUEZ")
(collectively "Parties") hereby submit this *Stipulation Regarding APODs and Monitoring, and
Withdrawal of SUEZ's Protest* ("Stipulation").

On October 16, 2018, SUEZ submitted in this proceeding a detailed memorandum on the
subject of "alternate points of diversion" ("APODs").

In exploring these APOD issues, the Parties have consulted with each other and with M3
Companies LLC ("M3"). M3 (or an affiliate thereof) is the developer of the Falcon Crest
subdivision, which will be served by three new wells that are the subject of the transfer.

As a result of those productive discussions, the Parties have entered a separate *2018
Mutual Cooperation Agreement*. That private agreement, however, is not intended to be made a

part of the record in this proceeding. Nor is it intended to be referenced in or made a part of the subject water rights.

The City's transfer application seeks to establish 14 wells as APODs for six of the City's existing licensed and decreed municipal water rights. These 14 APODs include 11 existing wells serving current customers of the City and three yet-to-be-constructed wells that will serve the planned Falcon Crest subdivision.

Accordingly, the Parties stipulate that each water right included in this transfer shall include the following condition:

Condition No. 1. To the extent necessary for administration between points of diversion for ground water, and between points of diversion for ground water and hydraulically connected surface sources, ground water was first diverted under this right from [name of well] located in [quarter-quarter description].

The Parties generally concur in the analysis of APODs provided in the above-referenced memorandum provided to the Idaho Department of Water Resources ("Department") by SUEZ. However, in the interest of expediting the approval of the pending transfer application, the Parties have agreed that it is not necessary to obtain definitive guidance from the Department with respect to these issues at this time. So long as the standard APOD condition is included in the subject water rights, the Parties are satisfied that they and the Department may address APOD administration issues in due course.

In addition, the Parties have agreed to a Monitoring Plan specifying diversion measurement and ground water monitoring and reporting requirements for each of the three new wells authorized as APODs in the vicinity of the Falcon Crest subdivision. The Monitoring Plan is set out in Appendix A hereto. Accordingly, the Parties stipulate that each water right included in this transfer shall include the following condition:

Condition No. 2. Diversion and use of water in connection with this right is subject to a Monitoring Plan agreed to by the right holder, which is set out as Appendix A to the "Stipulation Regarding APODs and Monitoring, and Withdrawal of SUEZ's Protest" filed in this proceeding. Pursuant to the Monitoring Plan, the right holder shall annually submit records to the Department, together with fees in the amount specified in Section 42-701(6), Idaho Code. In the event of a failure to comply with any component of the Monitoring Plan, after actual notice and a reasonable opportunity to cure, the right holder shall cease further diversions under the right until such noncompliance is remedied. Failure to comply with any approval condition, including the Monitoring Plan, shall be cause for the Department to cancel or revoke this right, or for an administrative or judicial action enjoining use of the right after actual notice and a reasonable opportunity to cure.

The Parties further stipulate and agree that diversion and use of water authorized under Transfer No. 81844 shall be subject to the terms and conditions of this *Stipulation*, which shall be binding upon the Parties hereto, and their heirs, successors, and assigns. Accordingly, the Parties stipulate that each water right included in this transfer shall include the following condition:

Condition No. 3. The diversion and use of water described in this right may be subject to additional conditions and limitations agreed to by the protestant and the right holder under a separate agreement to which the Department is not a party. Because the Department is not a party, the Department is not responsible for enforcement of any aspect of the agreement not specifically addressed in other conditions herein. Enforcement of those portions of the agreement not specifically addressed in other conditions shall be the responsibility of the protestant and the water right holder.

Subject to the above stipulations, SUEZ hereby withdraws its protest of this transfer application.

Respectfully submitted this _____ day of January, 2019.

WHITE PETERSON GIGRAY & NICHOLS, P.A.

Dated January 15, 2019

By


Wm. F. Gigray

Dated January 15, 2019

By

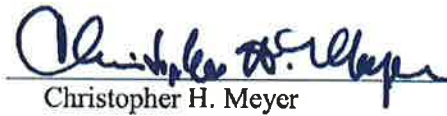

Matthew A. Johnson

Attorneys for Applicant City of Kuna

GIVENS PURSLEY LLP

Dated January 14, 2019

By


Christopher H. Meyer

Dated January 14, 2019

By


Michael P. Lawrence

Attorneys for Protestant SUEZ Water Idaho Inc.

Appendix A MONITORING PLAN

1. **Production data collection and reporting.** The right holder must collect and annually report to the Idaho Department of Water Resources ("Department") the monthly volume of water withdrawn from each point of diversion authorized by Transfer No. 81844 located in Sections 15 or 22, T2N, R1E, B.M., beginning on the first day of pumping of the first well.
2. **Ground water level monitoring and reporting.** The right holder must collect and report to the Department ground water levels in each point of diversion authorized by Transfer No. 81844 located in Sections 15 or 22, T2N, R1E, B.M., that document, in the manner specified below, non-pumping water levels such that changes in local aquifer pressure can be determined. The obligation under this section 2 shall remain in effect for 10 years after the first day of pumping of the first new well.
 - a. After the test pumping of any new point of diversion authorized by Transfer No. 81844 located in Sections 15 or 22, T2N, R1E, B.M., to fulfill the requirements under IDAPA 58.01.08.510.06, pre-production water levels will be documented and reported to the Department. These pre-production measurements will be obtained after the well has been allowed to recover for a period of time equal to at least 200% of the time the well was pump tested but prior to diversions authorized under Transfer No. 81844. Sufficient water level measurements will be obtained to determine that water level is not recovering from development or pump testing. The elevation of the datum used to determine drawdown during test pumping will be surveyed and reported along with the non-pumping water level measurements.
 - b. Following measurements of pre-production water levels, measurements will be obtained from each well authorized by Transfer No. 81844 located in Sections 15 or 22, T2N, R1E, B.M., in December and March of each year. Such water level measurements will be obtained when the wells have been idle for at least 6 hours and no other well operated by the right owner is significantly affecting the water level. At least 3 measurements will be obtained approximately 5 minutes apart during each visit to the well. Measurements will be made with an electric line sounder or chalked steel measuring tape to the nearest 0.01 foot. The elevation for the datum for measurements will be surveyed, or resurveyed as necessary, so that the water level elevations for all measurements can be accurately determined. These water level measurements will be reported to IDWR annually. If need be, the obligation under this subsection 2(b) may be delayed until such time as the right holder has a back-supply in place allowing it to idle the well for 6 hours while maintaining service to customers, in which case the 10-year duration of the obligation shall be extended by an equivalent amount of time.
3. **Fees.** In connection with the reporting requirements set out above, the right holder agrees to pay to the Department fees in the amount specified in Idaho Code § 42-701(6) or any comparable statutory or regulatory requirement then in effect.

4. **Other requirements.** The requirements set out above are in addition to any monitoring and reporting requirements that may be imposed on the right holder by the Department pursuant to Idaho Code § 42-701 or any comparable statutory or regulatory requirement then in effect.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 8th day of March, 2019, the foregoing was filed, served, and copied as shown below.

DOCUMENT FILED:

IDAHO DEPARTMENT OF WATER RESOURCES
P.O. Box 83720
Boise, ID 83720-0098
Hand delivery or overnight mail:
322 East Front Street
Boise, ID 83702

☐	U. S. Mail
☒	Hand Delivered
☐	Overnight Mail
☐	Facsimile
☐	E-mail

SERVICE COPIES:

Wm. F. Gigray, III, Esq.
Matthew A. Johnson, Esq.
WHITE PETERSON GIGRAY & NICHOLS, P.A.
5700 E Franklin Rd, Ste 200
Nampa, ID 83687
wfg@whitepeterson.com
jkiiha@whitepeterson.com
Facsimile: (208) 466-4405
(For the City of Kuna, Applicant)

☒	U. S. Mail
☐	Hand Delivered
☐	Overnight Mail
☐	Facsimile
☒	E-mail

Bob Bachman
Public Works Director
CITY OF KUNA
PO Box 13
Kuna, ID 83634
Facsimile: None
bbachman@kunaID.gov
Hand delivery or overnight mail:
6950 S Ten Mile Rd
Meridian, ID 83634
(For the City of Kuna, Applicant)

☒	U. S. Mail
☐	Hand Delivered
☐	Overnight Mail
☐	Facsimile
☒	E-mail

Ed Squires
HYDRO LOGIC, INC.
102 S 17th St, Ste 201
Boise, ID 83702
Facsimile: (208) 342-3100
ed@hydrologicinc.net
(For the City of Kuna, Applicant)

☒ U. S. Mail
☐ Hand Delivered
☐ Overnight Mail
☐ Facsimile
☒ E-mail

Candice McHugh
McHugh Bromley, PLLC
380 S. 4th Street, Suite 103
Boise, ID 83702
cmchugh@mchughbromley.com
(For Cloverdale Ridge Water Corp, Protestant)

☒ U. S. Mail
☐ Hand Delivered
☐ Overnight Mail
☐ Facsimile
☒ E-mail

Steven & Helga Haase
6144 E Dear Flat Road
Kuna, ID 83634
sphaase1@gmail.com
(Protestant)

☒ U. S. Mail
☐ Hand Delivered
☐ Overnight Mail
☐ Facsimile
☒ E-mail

John & Margaret Lawson
1357 Cow Horse Drive
Kuna, ID 83634
jmlcattle@gmail.com
(Protestant)

☒ U. S. Mail
☐ Hand Delivered
☐ Overnight Mail
☐ Facsimile
☒ E-mail

John & Amy Ruhs
11589 S. Cloverdale Road
Kuna, ID 83634
jaruhs@yahoo.com
(Protestant)

☒ U. S. Mail
☐ Hand Delivered
☐ Overnight Mail
☐ Facsimile
☒ E-mail

Brad Rosanbalm
1091 Cow Horse Drive
Kuna, ID 83634
brosanbalm@gmail.com
(Protestant)

☒ U. S. Mail
☐ Hand Delivered
☐ Overnight Mail
☐ Facsimile
☒ E-mail

Jeff Caldwell
1581 Cow Horse Drive
Kuna, ID 83634
jmcaldwell1519@gmail.com
(Protestant)

☒ U. S. Mail
☐ Hand Delivered
☐ Overnight Mail
☐ Facsimile
☒ E-mail

William Terry
6169 Reining Horse Drive
Kuna, ID 83634
bterry51@cableone.net
(Protestant)

☒ U. S. Mail
☐ Hand Delivered
☐ Overnight Mail
☐ Facsimile
☒ E-mail

Richard Vick
11457 S. Cloverdale Road
Kuna, ID 83634
teddytuggy49@gmail.com
(Protestant)

☒ U. S. Mail
☐ Hand Delivered
☐ Overnight Mail
☐ Facsimile
☒ E-mail

Chris Bromley
McHugh Bromley, PLLC
380 S. 4th Street, Suite 103
Boise, ID 83702
cbromley@mchughbromley.com
(For Desert View Estates Water Corp., Protestant)

☒ U. S. Mail
☐ Hand Delivered
☐ Overnight Mail
☐ Facsimile
☒ E-mail

Gary and Brenda Mittleider
400 Cow Horse Drive
Kuna, ID 83634
Mitt520@aol.com
(Protestant)

☒ U. S. Mail
☐ Hand Delivered
☐ Overnight Mail
☐ Facsimile
☒ E-mail

Casey and Ashley Hiatt
10699 S. Cloverdale Road
Kuna, ID 83634
rchvandal@gmail.com
(Protestant)

☒ U. S. Mail
☐ Hand Delivered
☐ Overnight Mail
☐ Facsimile
☒ E-mail

COURTESY COPIES TO IDWR AND NON-PARTIES:

Charles L. Honsinger, Esq.
HONSINGER LAW, PLLC
PO Box 517
Boise, ID 83701
Facsimile: (208) 908-8065
honsingerlaw@gmail.com
(For M3 Companies LLC, Developer)

☐ U. S. Mail
☐ Hand Delivered
☐ Overnight Mail
☐ Facsimile
☒ E-mail

Kimi White
Paralegal
IDAHO DEPARTMENT OF WATER RESOURCES
PO Box 83720
Boise, ID 83720-0098
Facsimile: (208) 287-6700
kimi.white@idwr.idaho.gov
Hand delivery or overnight mail:
322 E Front St
Boise, ID 83702

☐ U. S. Mail
☐ Hand Delivered
☐ Overnight Mail
☐ Facsimile
☒ E-mail

Garrick L. Baxter, Esq.
Deputy Attorney General
IDAHO DEPARTMENT OF WATER RESOURCES
PO Box 83720
Boise, ID 83720-0098
Facsimile: (208) 287-6700
garrick.baxter@idwr.idaho.gov
Hand delivery or overnight mail:
322 E Front St
Boise, ID 83702

☐ U. S. Mail
☐ Hand Delivered
☐ Overnight Mail
☐ Facsimile
☒ E-mail

Emmi Blades, Esq.
Deputy Attorney General
IDAHO DEPARTMENT OF WATER RESOURCES
PO Box 83720
Boise, ID 83720-0098
Facsimile: (208) 287-6700
emmi.blades@idwr.idaho.gov
Hand delivery or overnight mail:
322 E Front St
Boise, ID 83702

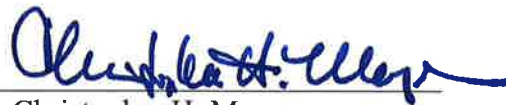
☐ U. S. Mail
☐ Hand Delivered
☐ Overnight Mail
☐ Facsimile
☒ E-mail

Shelley W. Keen
Water Rights Section Manager
IDAHO DEPARTMENT OF WATER RESOURCES
PO Box 83720
Boise, ID 83720-0098
Facsimile: (208) 287-6700
shelley.keen@idwr.idaho.gov
Hand delivery or overnight mail:
322 E Front St
Boise, ID 83702

☐ U. S. Mail
☐ Hand Delivered
☐ Overnight Mail
☐ Facsimile
☒ E-mail

Nick Miller, P.E.
Manager
Western Regional Office
IDAHO DEPARTMENT OF WATER RESOURCES
2735 Airport Way
Boise, ID 83705-5082
Facsimile: (208) 334-2348
nick.miller@idwr.idaho.gov

☐ U. S. Mail
☐ Hand Delivered
☐ Overnight Mail
☐ Facsimile
☒ E-mail


Christopher H. Meyer