Christopher H. Meyer [ISB No. 4461]
Michael P. Lawrence [ISB No. 7288]
Preston N. Carter [ISB No. 8462]
GIVENS PURSLEY LLP
601 West Bannock Street
P.O. Box 2720
Boise, Idaho 83701-2720
Office: (208) 388-1200
Fax: (208) 388-1300
www.givenspursley.com

Attorneys for Applicant SUEZ Water Idaho Inc.

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DEPARTMENT OF
WATER RESOURCES

BEFORE THE IDAHO DEPARTMENT OF WATER RESOURCES

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

SUEZ'S RESPONSE BRIEF ON MOTION FOR SUMMARY JUDGMENT

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INTRODUCTION

Applicant SUEZ Water Idaho Inc. ("SUEZ") respectfully submits this response to the *Motion for Summary Judgment to Limit Planning Horizon* ("*MSJ*") and the *Memorandum in Support of Motion for Summary Judgment to Limit Planning Horizon* ("*BP Brief*") filed on March 16, 2018 by Boise Project Board of Control ("Boise Project").

The *MSJ* was filed by the Boise Project alone. No other Protestant, including the irrigation district members of Boise Project who are parties to this proceeding, joined in the motion or filed their own.

In the IMAP, SUEZ seeks recognition of its forecast for "reasonably anticipated future needs" ("RAFN") based on a 50-year planning horizon. Boise Project urges the Hearing Officer to approve instead a planning horizon not exceeding 22 years, corresponding to the end-year population forecasts in *Communities in Motion 2040 Regional Long-Range Transportation Plan, Ada and Canyon Counties, Idaho* ("*CIM 2040*"), published in 2014 by the Community Planning Association of Southwest Idaho ("COMPASS").[1] *BP Brief* at 6-7.

SUEZ responds here urging the Hearing Officer to grant partial summary judgment approving SUEZ's 50-year planning horizon based on the arguments set forth in this brief and the affidavits filed in support.[2] In the alternative, SUEZ urges the Hearing Officer to deny the *MSJ* and withhold any judgment on the duration of the planning horizon until the conclusion of the proceeding.

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[1] A copy of *CIM 2040* is set out as an exhibit to the *Fifteenth Affidavit of Jack W. Relf.*

[2] SUEZ's arguments are supported by the 23 affidavits listed in Exhibit A to this brief.

ORAL ARGUMENT MAY BE HELPFUL

Boise Project did not request oral argument on its *MSJ*. SUEZ believes that the briefing and affidavits provide a sufficient basis for a decision. On the other hand, SUEZ believes that oral argument may be helpful. SUEZ will defer to the Hearing Officer's preference.

ARGUMENT

I. PROCEDURAL POSTURE

The *MSJ* is more accurately styled a motion for partial summary judgment. No ruling on the merits of the motion would dispose of all issues in this proceeding.

In a prior motion, SUEZ urged the Hearing Officer to defer consideration of this matter until the conclusion of the hearing set for May 2018. The Hearing Officer denied that motion. Accordingly, SUEZ has no choice but to put on its full case with respect to the issue framed by the *MSJ* (the duration of the planning horizon). It would be foolhardy for SUEZ simply to contend that material facts are in dispute, urge dismissal, and leave it at that. If SUEZ failed to present evidence and argument in support of its 50-year planning horizon, the Hearing Officer could find that the motion is ripe and issue a ruling on the merits detrimental to SUEZ. In addition, if the Hearing Officer ruled against SUEZ on a less-than-complete record, SUEZ would be prejudiced by having a less-than-complete record on appeal.

In its motion for deferral, SUEZ urged that the issue of the duration of the planning horizon could more efficiently be taken up after the hearing, along with whatever other issues would be addressed in post-hearing briefing. Given that the Boise Project has put SUEZ through this exhaustive pre-hearing exercise, there now seems no reason for the Hearing Officer to delay his ruling. The Hearing Officer has the relevant facts, and the briefing presents the relevant

arguments with respect to what inferences he should draw. The issue is ripe, and a decision may simplify and shorten the presentation of evidence at the hearing.[3]

As discussed below, SUEZ could have filed a cross motion for summary judgment, but doing so would have added nothing to the Hearing Officer's authority to issue a ruling on the merits of the Boise Project's motion in favor of SUEZ along the lines urged herein.

II. STANDARD OF REVIEW

While the Idaho Rules of Civil Procedure do not apply to this contested case, motions for summary judgment are allowed, and the Department applies the standards and precedent applicable to motions for summary judgment under Idaho R. Civ. P. 56.[4]

> The Department's Rules of Procedure (IDAPA 37.01.01) do not explicitly authorize motions for summary judgment. The rules do, however, authorize the filing of pre-hearing motions, which would include motions for summary judgment. *See* IDAPA 37.01.01.565. Although the Idaho Rules of Civil Procedure generally do not apply to contested cases before the Department *(see* IDAPA 37.01.01.052), the Department relies on the standards set forth in Rule 56 of the Idaho Rules of Civil Procedure and the associated case law as a guide for addressing motions for summary judgment. A motion for summary judgment may be granted if a hearing officer determines that there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law. *See* Rule 56, I.R.C.P

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[3] In footnote 4 of SUEZ'S *Motion to Defer or for Extension of Time*, SUEZ stated that it would urge denial of the *MSJ* based on the existence of disputed material facts. Upon reflection, and particularly in light of the case law allowing the Hearing Officer to reach the merits even in the presence of competing inferences, SUEZ now believes that a ruling on the merits is permissible and appropriate.

[4] Rule 56(a) states:

> A party may move for summary judgment, identifying each claim or defense, or the part of each claim or defense, on which summary judgment is sought. The court must grant summary judgment 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.

Idaho R. Civ. P. 56(a).

Order on Motions for Summary Judgment, at page 3, *In the Matter of Sylte's Petition for Declaratory Ruling Regarding Distribution of Water to Water Right No. 95-0734* (IDWR Docket No. P-Dr-2017-001, Sept. 6, 2017).

A party that claims a fact is undisputed must support the assertion by:

> (A) citing to particular parts of materials in the record, including depositions, documents, electronically stored information, affidavits or declarations, stipulations (including those made for purposes of the motion only), admissions, interrogatory answers, or other materials; or
>
> (B) showing that the materials cited do not establish the absence or presence of a genuine dispute, or that an adverse party cannot produce admissible evidence to support the fact.

Idaho R. Civ. P. 56(c)(1).

In making its decision, the tribunal may consider not only the materials cited by the moving party but also other materials in the record. Idaho R. Civ. P. 56(c)(2). If a party fails to properly support an assertion of fact or fails to respond to another party's assertion of fact, the tribunal may:

> (1) give an opportunity to properly support or address the fact;
>
> (2) consider the fact undisputed for purposes of the motion;
>
> (3) grant summary judgment if the motion and supporting materials, including the facts considered undisputed, show that the movant is entitled to it; or
>
> (4) issue any other appropriate order.

Idaho R. Civ. P. 56(e).

Ordinarily, the standards applicable to summary judgment require a tribunal to liberally construe facts in the existing record in favor of the party opposing the motion, and to draw all reasonable inferences from the record in favor of the nonmoving party. *Fragnella v. Petrovich*, 153 Idaho 266, 271, 281 P.3d 103, 108 (2012). If the record contains conflicting inferences or

reasonable minds might reach different conclusions, a summary judgment must be denied. *Massey v. Conagra Foods, Inc.*, 156 Idaho 476, 479, 328 P.3d 456, 459 (2014).

However, as the Idaho Supreme Court recently stated, where the tribunal (rather than a jury) is the finder of fact, the standards are different.

> When an action will be tried before the court without a jury, the judge is not constrained to draw inferences in favor of the party opposing a motion for summary judgment but rather the trial judge is free to arrive at the most probable inferences to be drawn from uncontroverted evidentiary facts.

Barnes v. Jackson, 163 Idaho 194, 197, 408 P.3d 1266, 1269 (2018) (quoting *Loomis v. City of Hailey*, 119 Idaho 434, 437, 807 P.2d 1272, 1275 (1991)).

This is a well-established rule in Idaho. *See Fuquay v. Low*, 162 Idaho 373, 377, 397 P.3d 1132, 1136 (2017); *Intermountain Forest Mgmt., Inc. v. Louisiana-Pac. Corp.*, 136 Idaho 233, 235, 31 P.3d 921, 923 (2001); *Riverside Dev. Co. v. Ritchie*, 103 Idaho 515, 650 P.2d 657 (1982); *Blackmon v. Zufelt*, 108 Idaho 469, 700 P.2d 91 (Ct.App.1985); *Hollandsworth v. Cottonwood Elevator Co.*, 95 Idaho 468, 471, 511 P.2d 285, 288 (1973); *Angleton v. Angleton,* 84 Idaho 184, 198, 370 P.2d 788, 796 (1962).

In this proceeding, Boise Project has moved for summary judgment. However, if the facts in the record are undisputed (which they are, insofar as the existence and content of the various planning documents, laws, rules, and decisions is concerned), it is also well-established that the tribunal has the authority to grant summary judgment to SUEZ, even though SUEZ has not filed its own cross motion.

> The district court may grant summary judgment to a non-moving party even if the party has not filed its own motion with the court. A motion for summary judgment allows the court to rule on the issues placed before it as a matter of law; the moving party runs the risk that the court will find against it.

Barnes v. Jackson, 163 Idaho 194, 197, 408 P.3d 1266, 1269 (2018) (quoting *Harwood v. Talbert*, 136 Idaho 672, 677, 39 P.3d 612, 617 (2001)). *See also Allen v. Blaine County,* 131 Idaho 138, 141, 953 P.2d 578, 580 (1998); *Post Falls Trailer Park v. Fredekind,* 131 Idaho 634, 637, 962 P.2d 1018, 1021 (1998); *Brummett v. Ediger,* 106 Idaho 724, 726, 682 P.2d 1271, 1273 (1984).

The bottom line is that summary judgment is proper when there is no genuine issue of material fact and the only remaining questions are questions of law. *Chandler v. Hayden*, 147 Idaho 765, 768, 215 P.3d 485, 488 (2009). This is the case here. The parties have presented their evidence concerning the issues raised by Boise Project's motion. There is no reason to believe that the evidence at trial would be substantially different. For that reason, and consistent with the authorities set forth above, the Hearing Officer is authorized to, and should, issue a dispositive ruling upon these issues. As addressed fully below, based upon the facts in the record and the applicable law, the Hearing Officer should draw the appropriate inferences and grant summary judgment in favor of SUEZ on these issues.

III. WHY A 50-YEAR PLANNING HORIZON IS NEEDED.

The Boise Project questions why SUEZ needs a 50-year planning horizon to protect its water rights in the IMAP from forfeiture when those rights "are fully developed and not subject to forfeiture." *BP Brief* at 2. In fact, SUEZ has a real and urgent need for the 50-year planning horizon. First, protection from forfeiture is not a certainty. Second, establishing a "gap" in its ability to meet RAFN could become a prerequisite to SUEZ's ability to acquire additional surface water entitlements (from willing sellers, through construction of new storage, or through cooperative efforts to improve irrigation water efficiency). Finally, RAFN recognition will firm up SUEZ's water rights against an out-of-state challenge—a benefit to all Idahoans.

SUEZ and other municipal providers have benefited from Idaho's "growing communities doctrine," which allows municipal suppliers to acquire water supplies—protected from forfeiture—to support long-term growth.[5] This has allowed SUEZ to secure the considerable portfolio of rights it holds today. The doctrine's validity was implicitly confirmed (though never addressed) by the SRBA Court when it decreed 90 of SUEZ's water rights.

SUEZ appreciates the Boise Project's acknowledgement of the growing communities doctrine and its statement that "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." *BP Brief* at 2. SUEZ is not so sanguine. Ultimately, the growing communities doctrine is whatever a court says it is. Being a common law doctrine, it has no statutory basis. The only statutory basis for forfeiture protection is the Municipal Water Rights Act of 1996 ("1996 Act" or the "Act").[6]

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[5] The phrase "growing communities doctrine" is used in reference to a body of case law. The label has been employed by the Washington Supreme Court, *State of Washington, Dept. of Ecology v. Theodoratus*, 957 P.2d 1241 (Wash. 1998) (dissent), and by a number of commentators, e.g., Janis A. Carpenter, *Water for Growing Communities: Refining Tradition in the Pacific Northwest*, 27 Envtl. L. 127 (1997); Sandra Zellmer, *The Anti-Speculation Doctrine and its Implications for Collaborative Water Management*, 8 Nevada L. J. 994 (2008); A. Dan Tarlock, *The Progressive Growth Doctrine Meets Old and New Stresses on the West's Variable and Perhaps Shrinking Water Supplies*, 11 No. 2 ABA Water Resources Committee Newsletter 12 (2009); Lora Lucero and A. Dan Tarlock, *Water Supply and Urban Growth in New Mexico: Same Old, Same Old or a New Era?*, 42 Nat. Resources J. 803 (2003); A. Dan Tarlock & Sarah B. Van de Wetering, *Western Growth and Sustainable Water Use: If There Are No "Natural Limits," Should We Worry About Water Supplies?*, 27 Pub. Land and Res. L. Rev. 33 (2006). Although this shorthand description has not yet been employed by the Idaho Supreme Court, and differs somewhat from the "great and growing cities doctrine" which has taken hold in Colorado, it captures the idea. The doctrine plainly applies to all growing communities, large and small, not just to great cities. For instance, in *Village of Peck v. Denison*, 92 Idaho 747, 751, 450 P.2d 310, 314 (1969), the doctrine was applied to a community of 200 inhabitants.

[6] 1996 Idaho Sess. Laws, ch. 297 (codified as amended at Idaho Code §§ 42-202(2), 42-202(11), 42-202B, 42-217, 42-219(1), 42-219(2), 42-222(1), 42-223(2)). This list of codified sections excludes some minor "clean up" to other sections of the Water Code that were included in the 1996 Act. References to municipal providers are also found in Idaho Code §§ 43-335 and 43-338, dealing with the right of irrigation districts to lease water to municipal providers. These references were not part of the 1996 Act but came a year later.

If municipal providers fail to take advantage of the Act—or, worse yet, seek to comply but have their planning horizons cut short by the Department—it is anyone's guess what a court will say about the applicability of the growing communities doctrine to rights not deemed RAFN under the 1996 Act. The parameters of the 1996 Act have not been fully developed by the Department, and the Act has never been evaluated by the Idaho Supreme Court.[7]

The only safe bet—the one that SUEZ is making—is to follow to the letter the rigorous statutory procedure provided by the Legislature in order to acquire explicit statutory forfeiture protection.

Idaho municipal water rights law changed in 1996 with the enactment of the Municipal Water Rights Act. A change from common law to statutory forfeiture protection is a real change. Just how it will play out is unknown. Here is what the Act's Statement of Purpose said about how the Act interacts with the common law doctrine:

> The appropriation doctrine as applied throughout the western states provides flexibility for municipal providers to obtain and hold water rights needed to assure an adequate water supply for reasonably anticipated future needs. While this concept is recognized in Idaho case law, it should be further described in statutes in order to guide the actions of the Department of Water Resources, water users and the courts, and to assure that the use of this concept is appropriately controlled. The legislation seeks to define and limit the authority of municipal water providers to develop and hold water rights for reasonably anticipated future needs and to allow water to be supplied to expanding service areas. This statute addresses future licensing of water rights for municipal purposes (including those currently permitted) as well as future changes in water rights to municipal purposes. The statute does not address those licensed and decreed water rights now held by municipal providers, and the legislation intends no change in the common law with respect to such rights. Municipalities would be

[7] For that matter, the Court has not evaluated the growing communities doctrine since 1969. Three Idaho cases have applied the doctrine, though not calling by that name: *City of Pocatello v. Murray*, 206 F. 72 (D. Idaho 1913) (*aff'd, Murray v. City of Pocatello*, 214 F. 214 (9th Cir. 1914)); *Beus v. City of Soda Springs*, 62 Idaho 1, 107 P.2d 151 (1940); *Village of Peck v. Denison*, 92 Idaho 747, 450 P.2d 310 (1969).

> required to provide information to describe their service area, to establish a reasonable planning horizon, and to show that the water rights are necessary for reasonably anticipated future needs.

Statement of Purpose, R.S. 06104, which became S.B. 1535, enacted as the Municipal Water Rights Act of 1996, 1996 Idaho Sess. Laws, ch. 297 (emphasis supplied) (this Statement of Purpose is signed by Norm Young, then Administrator of IDWR's Water Management Division).

This is a mixed bag. It may be read to say that the growing communities doctrine will continue to apply (independent of the 1996 Act) to protect all pre-1996 licensed and decreed rights. But what about SUEZ's pre-1996 beneficial use claims that were decreed in the SRBA after 1996? And what about SUEZ's pre-1996 domestic and irrigation rights (only later decreed as municipal)?

The Statement of Purpose expressly says that the 1996 Act (and not the common law) will apply to water rights that are subsequently appropriated or changed to municipal use.[8] Given this, SUEZ cannot sit on its hands in the coming years comforted by the fact that it has a large portfolio of ground water rights. It also needs surface rights. Indeed, SUEZ is constantly in the market to acquire more surface rights. If SUEZ loses the "gap" it has under the 50-year planning horizon, it is conceivable that SUEZ could be shut out of that market.

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[8] The fact that the 1996 Act ended the ability of municipal providers to acquire new rights under the growing communities doctrine is reflected in IDWR's guidance on non-RAFN water rights. Jeff Peppersack, *Administrator's Memorandum – Processing Applications and Amendments and Determining Beneficial Use for Non-RAFN Municipal Water Rights* (Application Processing No. 18; Licensing No. 1) (the "*Peppersack Memo*") at 2 (Oct. 19, 2009). Under this guidance, IDWR no longer will allow municipal providers to appropriate new non-RAFN water rights unless they can demonstrate a short term need based on an assessment of their entire water right portfolio. In other words, the Department now requires municipal providers to undertake a gap analysis for non-RAFN (as well as RAFN) rights. For those whose existing water rights are sufficient to meet short term need, no new appropriations will be allowed. The *Peppersack Memo* addresses new appropriations, not transfers of water rights. But the Department could someday apply the same standard to municipal providers seeking to acquire existing non-municipal rights through willing-seller purchases and other means. And the *Peppersack Memo* may also apply (at least by analogy) to acquisition of contractual or other interests in new storage capacity.

In the absence of an approved 50-year planning horizon and a RAFN quantification with a small "gap" to grow into, SUEZ could find itself unable to engage willing-seller purchases, to undertake creative efficiency-improvement arrangements with irrigators that could free up surface water for transfer, or to participate in efforts to expand the availability of surface storage in the Treasure Valley. Each of these are things that could provide win-win solutions for SUEZ and Valley irrigators.

Finally, long-term RAFN approval will strengthen SUEZ's water rights in the event of interstate conflict. *Galante Affidavit*, ¶ 12 at page 3. This, of course, benefits both SUEZ and the State. If the U.S. Supreme Court were called upon to "equitably apportion" the Snake River Basin's waters among Idaho, Washington, and Oregon, Idaho stands a much better chance of keeping Idaho's water in Idaho if the Department has analyzed, documented, and confirmed municipal providers' long-term need water rights portfolios through a RAFN proceeding. Indeed, recognition of the risk to Idaho water with respect to downstream demands on the Spokane River was a major driver in Idaho's support for the Rathdrum Prairie Aquifer CAMP process. As discussed in Section VII at page 24, other states are planning for the future. The Department should not prevent SUEZ from doing the same.

In addition to equitable apportionment, long-term RAFN approval (or the absence thereof) would be a factor in the evaluation of an application for an out-of-state water use under the Idaho Water Export Act enacted in 1990. 1990 Idaho Sess. Laws, ch. 141 (codified primarily at Idaho Code § 42-401, but also §§ 42-203A(5)(f) and 42-222(1)) ("Water Export Act"). It authorizes the Department to evaluate six factors in considering any application for transfer or appropriation of water rights for out-of-state use, including:

> (b) The current and reasonably anticipated water demands of the state of Idaho;

> (c) Whether there are current or reasonably available anticipated water shortages within the state of Idaho;

Idaho Code § 42-401(3).

In sum, SUEZ's efforts to comply with the 1996 Act's rigorous requirements is undertaken for legitimate reasons that threaten no one and benefit the State.

IV. WHAT IS A "ROLLING" 50-YEAR PLANNING HORIZON?

SUEZ has advocated throughout the IMAP that it should be approved with a "reopener" condition. *See., e.g., SUEZ's 2017 Update Report on IMAP and 2065 Master Water Plan* at 24-26 (Apr. 28, 2017). The Boise Project refers to the reopener concept as a "rolling" planning horizon. *BP Brief* at 1.

The reopener concept is intended to address concerns that SUEZ's forecast could someday be found to overstate its actual future needs. SUEZ's willingness to agree to such a condition underscores the fact that SUEZ is seeking no more than the quantity of water that will actually be necessary to meet future needs.

Under such a condition, the Department would be authorized to require SUEZ to re-evaluate its future needs from time to time before the end of the planning horizon—presumably no more frequently than every 10 to 20 years. On these occasions, SUEZ would undertake a revised 50-year forecast from that point forward. In the unlikely, but possible, event that SUEZ could no longer justify retention of its entire portfolio (in other words, if the new gap analysis showed more water rights than future demand), the Department would be authorized under the condition to take appropriate action that could lead to loss of forfeiture protection for those rights (or portions thereof) no longer needed to meet future demand.

As explained by former IDWR chief counsel Phillip J. Rassier, the reopener concept (based on the subsequent shortening of the planning horizon) is consistent with the 1996 Act.

Phillip J. Rassier, *Memorandum – Authority of IDWR to Impose a Reopener Condition on a RAFN Water Right* (June 5, 2015) ("Rassier Memo") (Exhibit 9 to *2065 Master Water Plan*). It also is consistent with the continually updated land use plans of municipalities within SUEZ's planning area. For example, the City of Boise updates its comprehensive plan every 10 to 15 years. *Affidavit of Hal Simmons*, ¶ 3 at page 2 ("the City typically prepares major updates or even whole plan replacements every 10-15 years, thus extending the planning horizon well before the initial 20-year horizon has expired. The City's population and boundaries will continue to grow beyond 20 years; therefore, long-range planning by utilities and other major service providers is vital to the long-term sustainability of the City.").

Mike Galante, who is a central player in interstate water issues and long-term planning efforts in North Idaho, made this observation:

> 21. In sum, based on my experience in water planning on behalf of various water entities in the State of Idaho, I believe it is essential that municipal providers, such as SUEZ, that serve rapidly growing areas of the State should be allowed to plan for, secure, and protect from forfeiture [and] out-of-state demands sufficient water rights for the long term.
>
> 22. Fifty years is a long time. But with a re-opener provision, I do not believe that the 50 years sought by SUEZ is unreasonable or inconsistent with the planning work we have undertaken for water rights in North Idaho.

Galante Affidavit, ¶¶ 21, 22 at page 5.

The bottom line is that SUEZ seeks a 50-year planning horizon today with a proposed reopener condition to allow the Department (and others) to re-scrutinize SUEZ's future needs as time goes by. This approach is lawful. It also is prudent, as demonstrated by municipalities that update their planning documents on an ongoing basis. In short, it meets the letter and the spirit of the 1996 Act—whose dual goals are to promote long-term planning while avoiding unnecessary hoarding.

V. THE 1996 ACT DOES NOT TIE THE DURATION OF THE PLANNING HORIZON TO THE DURATION OF OTHER PLANNING DOCUMENTS; IT SIMPLY REQUIRES THAT THE DURATION OF THE PLANNING HORIZON BE REASONABLE.

This proceeding is governed by the Municipal Water Rights Act of 1996. In this law, the Legislature reaffirmed the growing community doctrine's role in Idaho water law, while placing clear sideboards on how it will be applied to new appropriations or changes in water rights. By requiring careful planning and full disclosure by those who seek new or changed future needs water rights, the statute establishes a cautious approach to municipal water rights consistent with the objectives of maximum use and conservation of water resources. Its restrictions on the transfer of water rights (or portions thereof) held for future needs to a new place of use or nature of use (Idaho Code §§ 42-219(1) and 42-222(1)) eliminates the incentive for hoarding of municipal water rights for future sale.[9] In short, the 1996 Act reflects a far more disciplined and transparent approach to the growing communities doctrine.

The structure of this new approach is reflected in several newly defined terms of art, all contained in the following one-sentence summary of the statute: "Municipal providers" may secure water rights for "municipal purposes" of sufficient quantity to serve all "reasonably anticipated future needs" (aka "RAFN") within an expanding future "service area" (which SUEZ calls its "planning area") during a specified "planning horizon."

The defined term at issue in this *MSJ* is the "planning horizon" and, specifically, its duration. The Act defines the term as follows:

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[9] As Mike Galante said in his affidavit: "The RAFN quantification process is a valuable exercise that sets Idaho apart from other states, making it a leader in long-term municipal water planning. It adds transparency and oversight to a process that in other states is often undertaken behind closed doors. The restrictions on the sale of RAFN rights ensure that Idaho will avoid the hoarding of water rights and the conflicts among municipal water providers that have plagued other states. These benefits will be lost, however, if municipal providers are not allowed to plan sufficiently far into the future." *Galante Affidavit*, ¶ 11 at page 3.

> "Planning horizon" refers to the length of time that the department determines is reasonable for a municipal provider to hold water rights to meet reasonably anticipated future needs. The length of the planning horizon may vary according to the needs of the particular municipal provider.

Idaho Code § 42-202B(7) (emphasis supplied).

It sets out no particular criteria. Instead it boils down to a determination of what is "reasonable" under the circumstances for the particular municipal provider. For the reasons set out below, and in the many affidavits filed in support of this response brief, 50 years is a reasonable planning horizon for SUEZ.

A separate provision of the Act defines the term RAFN:

> "Reasonably anticipated future needs" refers to 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. Reasonably anticipated future needs shall not include uses of water within areas overlapped by conflicting comprehensive land use plans.

Idaho Code § 42-202B(8) (emphasis supplied).

This definition speaks to quantification of future needs over the course of the planning horizon (whose duration is addressed in Section 42-202B(7)). Its key points are that the quantity of future projected demand should "not be inconsistent with comprehensive land use plans" and should exclude all demand from geographic areas that are "overlapped by conflicting land use plans."[10]

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[10] Admittedly, the language of the RAFN definition is awkward. The definition refers to "future uses of water . . . which . . . are reasonably expected to be required within the planning horizon of each municipality within the service area." As the definition of planning horizon makes unmistakably clear, it is the municipal provider, not the municipality, that has a planning horizon. The insertion of two commas (or mental pauses) would make the sentence easier to understand, and consistent with the definition of planning horizon: RAFN is "future uses of water

Boise Project contends that the planning horizon 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." *BP Brief* at 7 (referring apparently to *CIM 2040*). This contention apparently is premised on the definition of RAFN. *BP Brief* at 4. Boise Project declares: "Logically it then follows that the planning horizon approved by the department for Suez, must be one consistent with other comprehensive land use plans in its service area." *BP Brief* at 5.

This reflects a misunderstanding of the distinct roles of the two definitions. Only the definition of "planning horizon" speaks to the duration of the planning horizon. Accordingly, it is the controlling statutory provision here. The definition of RAFN speaks to the quantification of demand during the planning horizon, and requires attention to comprehensive plans.

In sum, the "not inconsistent with" requirement in the definition of RAFN speaks to the quantity of RAFN at the end of the planning horizon, not the duration of the planning horizon. The only statutory directive on the duration of the planning horizon is the requirement that it be reasonable. For the reasons discussed herein, SUEZ's 50-year planning horizon is reasonable. As Dr. Petrich explains in his affidavit:

> Applying for, developing, perfecting, or acquiring municipal water rights can take decades. Similarly, identifying, assessing the adequacy of, and developing sources of water supply can take years or decades. These challenges are greater for a large utility serving a rapidly growing urban area in which large portions of supply sources are considered fully appropriated. Given the magnitude of projected water-demand increases (see above), it is

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. . . which . . . are reasonably expected to be required, within the planning horizon, of each municipality within the service area."

Any ambiguity in the definition should be resolved so as to avoid an absurd result. The reference to "within the planning horizon" must refer to the municipal provider's planning horizon. That is the only planning horizon mentioned in the Act, and it is defined plainly and explicitly in the preceding sub-section of the statute. In contrast, municipalities do not have planning horizons.

> my judgment that SUEZ is prudent in using a 50-year planning horizon in its water-supply planning efforts. . . .
>
> I believe that 50 years is a reasonable water-supply planning timeframe for a large utility serving tens of thousands of customers and having the obligation to provide water for a rapidly growing urban population.

Affidavit of Christian R. Petrich ("*Petrich Affidavit*") at 6 ¶¶ 18-19.

VI. THE *RAFN HANDBOOK* RECOGNIZES THAT THE DURATION OF THE PLANNING HORIZON MAY CORRESPOND TO THE 50-YEAR DURATION OF THE *2065 MASTER WATER PLAN*.

In 2013, the Department issued its only guidance on the subject of the duration of the planning horizon. It was updated in 2014 and again in 2015. Mat Weaver, *Memorandum – Application Processing No. 74, Permit Processing No. 20, License Processing No. 13, Transfer Processing No. 29*, at 5 (Mar. 16, 2015) (replacing Nov. 15, 2014 and Nov. 13, 2013 versions) ("*RAFN Handbook*").

The *RAFN Handbook* discusses the duration of the planning horizon at pages 7-9. It begins by recognizing the controlling definition of planning horizon, concluding that "Department staff must evaluate, among other things, whether the proposed planning horizon is reasonable." *RAFN Handbook* at 7. In making that determination of reasonableness, the *RAFN Handbook* suggests consideration of:

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

RAFN Handbook at 7-8. In providing this list, the *RAFN Handbook* does not say that any of these documents fix an upper limit on the duration of planning horizon. It simply says that they

should be considered. SUEZ sets out an exhaustive discussion of these, and how they relate to the planning horizon, in Section VIII at page 25.

The *RAFN Handbook* then summarizes planning horizon periods used in six academic water planning references. They range between ten and 100 years. *RAFN Handbook* at 8 (Table 1).

Next, the *RAFN Handbook* summarizes "planning horizons associated with actual water resource planning documents in the State of Idaho." *RAFN Handbook* at 8. Of the 11 documents listed, five have planning horizons of 50 years or more. *RAFN Handbook* at 8 (Table 2).

Based on these sets of examples, the *RAFN Handbook* concludes: "The data presented in Tables 1 and 2 suggest that planning horizons between 10 and 55 years are the standard amongst the planning profession and in the actual adoption of planning documents within the State of Idaho." *RAFN Handbook* at 8.

The guidance goes on to say that planning horizons of 20 years or less generally require little documentation, while those longer than 20 years must be supported by long-term planning documents:

> Planning horizons of 15-20 years are generally reasonable and require little scrutiny . . . . Planning horizons greater than 20 years can be considered by the Department, but when proposed they should be supported by long-term planning documents such as those listed in Table 2 and by professionally prepared demographic studies substantiating the duration of the planning horizon period.

RAFN Handbook at 8.

SUEZ's 50-year planning horizon fits squarely within these standards. First, it is supported by long-term planning documents "such as those listed in Table 2." Indeed, SUEZ's own "Water Demand Study" is listed in Table 2. Second, it is supported by "professionally

prepared demographic studies substantiating the duration of the planning horizon period." This includes John Church's water demand forecast incorporated into SUEZ's *2065 Master Water Plan*, as well as Dr. Don Reading's and Dr. Christian Petrich's analyses, which independently corroborate Mr. Church's work. *2065 Master Water Plan*, including Exhibits. 5 and 7.

The guidance then addresses language found within the definition of RAFN:

> As a final measure, the planning horizon period proposed by the applicant must not only be reasonable, but also consistent with the adopted Comprehensive Plan of the City. This can be interpreted to mean no greater in length than the planning horizon period associated with the Comprehensive Plan, if no other pertinent planning documents exist. When 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.

RAFN Handbook at 9.

To the extent this guidance suggests that the duration of the planning horizon is somehow controlled by or capped at the duration of underlying comprehensive plans, that is incorrect (or an incorrect reading of the guidance). For reasons explained above in Section V, the definition of RAFN governs the quantification of RAFN, not the duration of the planning horizon. In any event, the guidance recognizes that this is just one interpretation ("can be interpreted to mean").

But there is no need to settle this point here. This is because the guidance recognizes: "When 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." *RAFN Handbook* at 9 (emphasis supplied).

Here there is another pertinent planning document. It is the *2065 Master Water Plan*, which identifies a 50-year planning horizon. Indeed, as noted above, this plan is the latest

version of the Water Demand Study by United Water Idaho (now SUEZ) expressly identified in the guidance as an example of a pertinent planning document that can justify planning horizons greater than 20 years. *RAFN Handbook* at 8.

Accordingly, under IDWR's own guidance, it is the duration of the *2065 Master Water Plan* that matters, not the various "durations" of the six comprehensive plans applicable to one part or another of SUEZ's planning area.

In any event, even if the "not inconsistent with" requirement in the definition of RAFN applies to the duration of the planning horizon, consistency can be measured in many ways, as the guidance recognizes. SUEZ explains and documents that consistency in the sections that follow and in the affidavits it has provided.

VII. LONG-TERM WATER PLANNING IN OTHER WESTERN STATES

Obviously, the duration of water planning documents from other jurisdiction does not determine or control what is reasonable for Idaho municipal providers. But it is relevant in at least two senses.

First, the Department may wish to be reassured that a 50-year planning horizon is not an outlier.

Second, one of SUEZ's objectives is to protect its water right portfolio over the long haul in the event of future interstate water conflicts. In that regard, knowledge that water planners and providers in other states are engaged in water-supply planning over a 50-year timeframe reinforces the conclusion that it is not unreasonable for SUEZ to do the same.

Accordingly, SUEZ examined publicly available long-term planning documents in the other Western states that it was able to locate through internet searches and informal discussions with agency staff. SUEZ identified long-term water planning documents in 14 other western

states. This review confirmed the observation made in the *RAFN Handbook* at page 8 that published planning horizons described in the academic literature range from ten to 100 years. Those located by SUEZ ranged from 20 to 91 years.

Significantly, SUEZ found that water planners in the majority of states (ten out of 14) have adopted water plans with planning horizons of 50 years or more. A summary of plans in all 14 states in which long-term plans were located is presented in Exhibit B to this brief at page 58.

Thus, while planning horizons are not uniform by any means, a 50-year planning horizon is commonly used for water planning purposes in Western states. Indeed, a 50-plus year timeframe appears to be predominant, particularly in the most rapidly growing parts of the West.[11]

In sum, the planning horizon SUEZ is seeking here is well within the range of "normal" in the Western United States. The municipal provider for Boise, now reputedly the fastest growing city in the nation,[12] should be allowed to keep up with other jurisdictions that have the same foresight to plan ahead.

VIII. NO PLANNING DOCUMENT OTHER THAN THE *2065 MASTER WATER PLAN* SET THE DURATION OF THE PLANNING HORIZON.

Boise Project's *MSJ* was unaccompanied by any affidavit. The only evidence it cited was a reference in its brief to the City of Boise's Comprehensive Plan (*Blueprint Boise*) and COMPASS's *CIM 2040*. As discussed in Section V at page 18, the 1996 Act does not tie the duration of a planning horizon to the duration of other entities' planning documents. Rather, it

[11] The states with plans of less than 50 years are Kansas (40 years), Montana (20 years), Oregon (48 and 43 years), and Wyoming (30 years). SUEZ did not identify long-term water plans in North Dakota, Nebraska, or Alaska.

[12] *Affidavit of John S. Church* ("*Church Affidavit*"), ¶¶ 26-28 at page 7.

simply requires that the duration of the planning horizon be reasonable. SUEZ's 50-year planning horizon satisfies this standard for the reasons described above.

Aside from there being no reason for the Hearing Officer to consider whether the duration of SUEZ's planning horizon is consistent with comprehensive plans and other planning documents used by the municipalities SUEZ serves, the simple fact is that none of these other planning documents actually say what SUEZ's planning horizon should be. These are discussed below.

A. CIM 2040

Boise Project makes passing reference in its brief to Boise's comprehensive plan, *Blueprint Boise* (discussed in Section VIII.B(3) at page 34). Ultimately, however, it does not contend that the ten to 20 year timeframe referenced there should control the duration of SUEZ's planning horizon. Instead, Boise Project says it is "the year adopted by the COMPASS planning document" that controls. *BP Brief* at 7 (apparently referring to *CIM 2040*).

This is a curious conclusion. *CIM 2040* is not a comprehensive plan. It is not a water master plan. As reflected in its name (Regional Long-Range Transportation Plan), its sole purpose is to guide transportation planning and investments in Ada and Canyon Counties. Not surprisingly, no COMPASS document is included on the list of pertinent planning documents in the *RAFN Handbook* at 1 (Table 2).

CIM 2040 does contain population forecasts through the year 2040. Those forecasts, in turn, are relied on by several comprehensive plans. Likewise, they were relied on by Mr. Church in his 50-year forecast. Boise Project's conclusion that the duration of population projections for street planning decisions should set the upper limit for a RAFN application does not follow law or logic.

The 1996 Act does not say that the duration of the planning horizon is limited by the duration of other population forecasts. All the Act requires is that RAFN be quantified "on the basis of population and other planning data." Idaho Code § 42-202B(8). That is exactly what SUEZ did. In his affidavit, Mr. Church explains how he used the COMPASS projections through 2040 to calibrate his forecast. *Church Affidavit*, ¶¶ 18-23 at pages 4-6.

As explained in the affidavit of the City of Eagle planner responsible for its comprehensive plan:

> 3. . . . Although those [COMPASS] projections end at 2040, that is not the build out date of the land use component of the Eagle Comp Plan. Rather, the Eagle Comp Plan has no end date. The City does not expect its population to cease growing in 2040. . . . Therefore, the City believes planning must continue beyond 2040.

Affidavit of Nichoel Baird Spencer ("*Spencer Affidavit*"), ¶ 3, at page 2.

For these reasons, Boise Project's contention that SUEZ cannot look further than 2040 because of population figures found in a regional transportation document is without basis.

B. Comprehensive plans

The largest part of SUEZ's planning area falls within the City of Boise's area of city impact. In addition, SUEZ's planning area includes portions of the areas of city impact for the Cities of Eagle, Kuna, Meridian, and Garden City. *Affidavit of Roger D. Dittus* ("*Dittus Affidavit*"), ¶ 8 at page 3. The remainder of SUEZ's planning area falls within unincorporated areas of Ada County. *Id.*

The comprehensive plans adopted by these six jurisdictions are described below.[13] First, however, it is important to understand what a comprehensive plan does and does not do.

(1) What is a comprehensive plan?

Neither the 1996 Act nor the *RAFN Handbook* applies a wooden rule limiting the duration of the planning horizon to the timeframe of the applicable comprehensive plans. Indeed, for a municipal provider that serves multiple municipalities, how could it? It is, to say the least, an unworkable proposition that SUEZ would have half a dozen different planning horizons, one for each city or unincorporated area within its planning area. This is all the more unworkable when one considers that SUEZ does not hold water rights or build infrastructure that honor area of city impact boundaries.

For reasons discussed in preceding sections, SUEZ believes that the "not inconsistent" requirement in the definition of RAFN does not control the duration of the planning horizon. Nevertheless, the *RAFN Handbook* makes some ambiguous references to comprehensive plans in its discussion of the duration of the planning horizon. Accordingly, in this section SUEZ examines each of the comprehensive plans applicable to any portion of its planning area.

In 1975, the Legislature enacted a statute governing land use planning and zoning in Idaho. Idaho's Local Land Use Planning Act ("LLUPA"), Idaho Code §§ 67-6501 to 67-6538. It requires that municipalities not make planning and zoning decisions on the fly, but instead within the context of an over-arching vision of the city's or county's future. Accordingly, it mandates that every city and county adopt a comprehensive land use plan. Idaho Code §§ 67-6508, § 67-6509.

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[13] Under LLUPA (defined below), a city's comprehensive plan applies throughout its area of city impact, if an agreement to that effect is entered with the County. Ada County has entered into such agreements with each of the five cities within SUEZ's planning area.

As its name implies, this plan is a comprehensive articulation of the conditions and objectives that will guide land use planning and zoning decisions within the municipality. "The plan shall consider previous and existing conditions, trends, desirable goals and objectives, or desirable future situations for each planning component." Idaho Code § 67-6508. The referenced "planning components" in the prior quotation are 17 specific areas of concern including such things as population, schools, natural resources, transportation, housing, and airports, but not including water rights.[14] Idaho Code § 67-6508.

The comprehensive plan has one purpose and one purpose only: to guide land use planning and zoning decisions.[15]

A comprehensive plan is a constantly evolving document. They are typically updated every few years, but may be amended as often as desired by the governing board. Idaho Code § 67-6509(d). Any person may petition for a revision to the plan as often as every six months. Idaho Code § 67-6509(d).

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[14] The closest that LLUPA gets to water rights is the mandate that applicants for land use changes be required to use surface water, where reasonably available, as the primary water source for irrigation. Idaho Code § 67-6537(1). In the same section, LLUPA requires that comprehensive plans consider "the quantity and quality of ground water in the area." Idaho Code § 67-6537(4). Nothing in LLUPA, however, requires comprehensive plans to consider the adequacy of a municipal provider's water rights to meet long term demand.

[15] LLUPA requires:

- "[Z]oning districts shall be in accordance with the policies set forth in the adopted comprehensive plan." Idaho Code § 67-6511(1).
- Amendments to zoning ordinances shall occur only "[a]fter considering the comprehensive plan." Idaho Code § 67-6511(2)(b).
- If a zone change is found by the governing board to be "in conflict with the policies of the adopted comprehensive plan," the board may consider changes to the comprehensive plan, after which the zone change may be considered again. Idaho Code § 67-6511(2)(c).
- In addition to zoning changes, the conditional use permits ("CUPs") may be issued only if found to be "not in conflict with the [comprehensive] plan." Idaho Code § 67-6512(a).
- Finally, LLUPA references comprehensive plans in the context of the requirement for a reasoned statement by the decision-maker explaining the basis for the approval or denial of a land use application. Idaho Code §§ 67-6535(1) and 67-6535(2).

Affidavits submitted in this matter have included the following observations about comprehensive plans vis-à-vis long-term water right planning (others are set out in the discussion below of individual comprehensive plans):

> 13. The purpose of comprehensive plans is to meet statutory requirements for planning and zoning under the Local Land Use Planning Act. Those plans are not intended to be future need water right planning exercises. For that reason, the duration of the outlook for comprehensive plans is often relatively short (20 years is not uncommon). This is because they control zoning actions today based on desired land use development over the relatively near future. They are not aimed at guessing what land use patterns will be in 50 years. What is designated as low density or open space in a comprehensive plan today may not be so designated in the next iteration of that plan.
>
> . . .
>
> 15. Accordingly, in my judgment, there is no inconsistency between the relatively short planning horizons of planning documents aimed at zoning issues or infrastructure and the 50-year planning horizon sought by SUEZ.

Church Affidavit, ¶¶ 13, 15 at pages 3-4.

> 19. First, it is important to understand that comprehensive plans are adopted for planning and zoning purposes and to lay out a blueprint of where and how a city or county is planning to grow, not water rights acquisition to meet long-term future needs. Those are fundamentally different purposes. Accordingly, comprehensive plans typically have relatively shorter time horizons (which are only rarely referred to as "planning horizons"). This is appropriate, because comprehensive plans are intended to guide zoning decisions over relatively shorter periods. For example, the future land use map might identify an area as agricultural in today's comprehensive plan, but the next comprehensive plan might modify that area to allow residential or commercial development. Comprehensive plans are not designed to lock in zoning other land use planning for many decades. In contrast, the purpose of RAFN analysis and the acquisition of sufficient water rights to meet those needs is an inherently long-term undertaking. Limiting the ability of municipal providers to acquire future needs water rights based on the timeframe of a comprehensive plan, frankly, makes no sense.
>
> 20. I believe this is why the RAFN Handbook recognizes that such an interpretation (limiting RAFN planning to the

> timeframe of the comprehensive plan) is only one possible interpretation and, in any event, is inapplicable where another pertinent planning document "such as a master water plan" exists. Here the 2065 Master Water Plan is another pertinent planning document and its 50-year planning horizon should not be limited by any shorter timeframe identified in any comprehensive plan

Affidavit of Don C. Reading, ¶¶ 19-20 at page 6.

> 4. The Eagle Comp Plan is intended for land use planning purposes, not water supply planning. . . .
>
> . . .
>
> 8. The Eagle Comp Plan and Eagle Water System Plan do not, and are not intended to, dictate the planning horizon for SUEZ's reasonably anticipated future needs municipal water rights.
>
> 9. It is imperative for the City's future that water rights are secured that are sufficient to supply the City's needs at full build-out. While SUEZ's 50-year planning horizon sought in the IMAP is longer than the terms of the Eagle Comp Plan and Eagle Water System Plan, it is consistent with those plans and the City's planning goals and objectives in general.

Spencer Affidavit, ¶¶ 4, 8 & 9 at pages 2-3.

(2) Ada County Comp Plan (2016)

In November of 2016, Ada County adopted its most recent comprehensive plan, entitled *Ada County 2025 Comprehensive Plan*, also known as *Ada County 2025* ("*Ada County Comp Plan*"). A copy of this plan is set out as an exhibit to the *First Affidavit of Jack W. Relf (Ada County Comp Plan).*

The *Ada County Comp Plan* applies "only within unincorporated portions of Ada County located outside the Areas of City Impact (ACI) or as otherwise negotiated between the City and County." *Ada County Comp Plan* at 7 (emphasis original).

The *Ada County Comp Plan* explains that the County does not provide water or plan for water supply. Rather, it defers to SUEZ and other municipal providers to do so:

> Water is not provided to residents by Ada County, but by a number of private, quasi-public, and public entities. The largest provider is Suez Water, a private utility company which serves over 240,000 residents in Boise, Garden City, and Eagle. . . . Management of water resources in the County is largely left to the responsible utility/owner, and not Ada County.

Ada County Comp Plan at 8 (emphasis supplied).

The *Ada County Comp Plan* does not explain why the year 2025 appears in its name. That is only nine years from the date of the plan's adoption. It does, however, refer to a timeframe of ten to 20 years:

> The updated Comprehensive Plan will serve as a policy guide for the growth and physical development of Ada County over the next ten to twenty years.

Ada County Comp Plan at 3 (emphasis supplied).

> Stakeholder Focus Groups. A series of six focus groups representing state and local agencies, organizations and departments, land use planning professionals and real estate developers, special interest and recreational user groups, local businesses and employers, farmers and agricultural stakeholders, and resident and community groups were convened early on in the process in order to hear what they thought were the largest issues and opportunities facing Ada County over the next 10 - 20 years.

Ada County Comp Plan at 5-6 (emphasis supplied).

> Focus areas reflect the vision and values of the community—they articulate what we hope to achieve over the next ten to twenty years as a community and as a County organization.

Ada County Comp Plan at 11 (emphasis supplied).[16]

[16] Inconsistently with these statements in the comprehensive plan itself, Appendix A to the *Ada County Comp Plan* at page 1 refers to a ten-year time frame.

Although the *Ada County Comp Plan* focuses on the next ten to 20 years, it also recognizes that growth will continue after that period. For example, one of its listed "Goals and Strategies: is:

> **5.7b- Coordinated Planning.** Encourage long-term regional planning of city and sewer district collection and wastewater treatment facilities. Coordinate with cities and sewer districts to develop long-term planning area boundaries to accommodate future expansion to help ensure that wastewater treatment and collection facilities can be provided cost-effectively and efficiently over the long term (beyond 20 years) as areas outside of Areas of City Impact are urbanized.

Ada County Comp Plan at 69 (emphasis supplied).

Another of its "Goals and Policies" specifically deals with water supply:

> **5.2a- Water supply.** Support continued assessment of surface and groundwater supplies in Ada County and the Treasure Valley to assess long-term availability and quality of current and future supplies.

Ada County Comp Plan at 64-65 (emphasis supplied).

Perhaps most notably, in its "Implementation" section, the *Ada County Comp Plan* sets forth a "detailed action plan to support the implementation of the goals and policies in each of the six Focus Areas." *Ada County Comp Plan* at 77. One of the strategies identified is:

> Develop a process to improve coordination with water service providers in identifying long-term (20 years or beyond) water service and facility needs.

Ada County Comp Plan at 87, Strategy 2.1k (emphasis supplied) (note that there are two strategies identified as 2.1k—apparently an inadvertent error). In other words, the *Ada County Comp Plan* expressly recognizes that the County does not plan for water supply, but intends to work with municipal providers to identify long-term needs beyond the 20-year timeframe.

In its "Trends & Forces Report" (attached as Appendix A to the plan), the County recognizes that long-term demand for water is will continue to increase.

> **Future Needs**: It is difficult to determine how much water is available in Ada County's water system and how much demand for water will grow in the future. While the exact amount of water needed to meet future demands varies by analysis, all point to the fact that demand will increase as additional growth occurs in Ada County and elsewhere in the Treasure Valley.

Appendix A to *Ada County Comp Plan* ("Trends & Forces Report") at 57.

The *Ada County Comp Plan* anticipates considerable population growth in the unincorporated areas. "Compared to the cities, unincorporated Ada County is forecast to see the largest population increase by 2040 . . . ." Appendix A to *Ada County Comp Plan* at 12. By 2040, the plan projects an additional 70,000 people (more than double the 2013 population of 60,532) in these unincorporated areas. That calculates to an annual growth rate of 2.89% over this 27-year period.

In sum, there is nothing in the *Ada County Comp Plan* inconsistent with SUEZ's 50-year planning horizon. To the contrary, the plan expressly defers to other municipal providers and recognizes that they will need to plan for water supply beyond the County's 20-year land use planning timeframe.

(3) Boise Comp Plan (2017)

The City of Boise's comprehensive plan, *Blueprint Boise* is dated March 27, 2017 ("*Boise Comp Plan*"). A copy of this plan is set out as an exhibit to the *Second Affidavit of Jack W. Relf (Boise Comp Plan)*. The *Boise Comp Plan* describes itself as a vision statement that looks out ten to 20 years. This is what it says (and all it says) about the duration of that vision:

> Those ideals [from past planning efforts] have been expanded and refined in this updated Comprehensive Plan to reflect the changes that Boise City has experienced during the last ten years and those

> it is likely to face during the next ten to twenty years.

Boise Comp Plan at page 1-20 (emphasis supplied).

> When asked to describe what they value about their community, residents of Boise City resoundingly responded—quality of life. While "quality of life" can mean different things to different people—whether views of the foothills, a quiet neighborhood, safety, access to parks and recreation, good schools, cultural amenities, being able to walk to work, frequent transit service, or something altogether different—Boise City residents were able to agree on seven common themes that will help protect their quality of life as the city prepares to welcome many new residents over the next ten to 20 years.

Boise Comp Plan at page 2-1 (emphasis supplied).

> This chapter contains the citywide principles, goals, and policies that will guide Boise City in its decision making over the next ten to 20 years.

Boise Comp Plan at page 2-5 (emphasis supplied).

> This chapter establishes a land use framework for future development in Boise's AOCI [area of city impact] over the next 10 to 20 years. This framework includes the types of places the community would like to foster and the land use patterns that will be encouraged in each of those places. The Land Use Map and accompanying land use criteria will be used to guide future development decisions, infrastructure improvements, and public and private investment within Boise's AOCI.

Boise Comp Plan at page 3-1 (emphasis supplied).

> Blueprint Boise establishes a broad vision for Boise City over the next 10 to 20 years.

Boise Comp Plan at page 5-1 (emphasis supplied).

The *Boise Comp Plan* looks out 20 years because that is all it needs to look out. It purpose is to provide a blueprint that will shape planning and zoning decisions. Every zoning application is measured against the *Boise Comp Plan* to ensure that it is "in accordance" with the current vision of where the city is headed. Idaho Code § 67-6511. That is the primary purpose

of a comprehensive plan. *Affidavit of Hal Simmons* ("*Simmons Affidavit*"), ¶ 2 at page 2. It does not address, in any way, the municipal government's need for a long-term water supply.

What this means, and all it means, is that Boise makes zoning decisions today based on its vision of what the city will look like over the next two decades. That does not mean that the city does not care about what happens after 20 years. It certainly cannot be construed to mean that the city prefers that its municipal water provider only have a 20-year supply of water rights.

Boise City's Planning Director summed this up well:

> 3. The Boise Comp Plan describes itself as a vision statement that looks out ten to 20 years. That does not mean that the City does not care about what happens after 20 years, or that land use planning and development issues will cease to exist in 20 years. In fact, the City typically prepares major updates or even whole plan replacements every 10-15 years, thus extending the planning horizon well before the initial 20-year horizon has expired. The City's population and boundaries will continue to grow beyond 20 years; therefore, long-range planning by utilities and other major service providers is vital to the long-term sustainability of the City.
>
> 4. The Boise Comp Plan does not, and is not intended to, dictate the planning horizon for SUEZ Water Idaho Inc.'s ("SUEZ") reasonably anticipated future needs municipal water rights. It also does not, and is not intended to, dictate SUEZ's municipal water planning area or its reasonably anticipated future municipal water needs.
>
> 5. SUEZ is the City's primary supplier of municipal water. SUEZ's current certificated service area encompasses nearly the entire Area of Impact for the City. It is imperative for the City's future that SUEZ secure water rights sufficient to supply the City's needs at full build-out. Thus, while SUEZ's 50-year planning horizon sought in the IMAP is longer than the term of the Boise Comp Plan, it is not inconsistent.

Simmons Affidavit, ¶¶ 3-5 at pages 2-3.

(4) Eagle Comp Plan (2017)

On November 24, 2017, the City of Eagle adopted its latest comprehensive plan alternatively entitled *The City of Eagle Comprehensive Plan* and *Eagle is Home* ("*Eagle Comp*

Plan"). A copy of this plan is set out as an exhibit to the *Third Affidavit of Jack W. Relf (Eagle Comp Plan).*

The plan identifies a 23-year vision for land use planning purposes. "The 2017 plan is intended to express the goals and policies of the City through 2040; however, the plan must be a living document open to community discussion, debate, and change as the social, economic, legislative, and fiscal values of the City, region, and state change." *Eagle Comp Plan* at 4.

"While the planning horizon of the plan is 2040, the combined development potential of the plan is much larger. It is estimated, based on an annual average growth rate of 4.5% that the City's planning boundary will reach build out by approximately 2050, with a population of approximately 95,000." *Eagle Comp Plan* at 4.

Like the *2065 Master Water Plan*, the *Eagle City Comp Plan* employs population forecast data obtained from COMPASS and the U.S. Census. It notes that the city's population in 2016 was 25,510, and that it is projected to be 73,367 in 2040. *Eagle City Comp Plan* at 10. That calculates to a robust annual increase of 6.41% over that 17 year period.

The *Eagle Comp Plan* contains a brief discussion of the three water providers serving the city. *Eagle Comp Plan* at 26-28. It includes no discussion of water rights, other than some references to the goal of maximizing the use of surface rights where feasible, *Eagle Comp Plan* at 38, 154, and a passing reference to the task of developing standards and practices for well construction and water rights acquisition. *Eagle Comp Plan* at 213.

The City's planner who oversaw the preparation of the *Eagle Comp Plan* confirmed in her affidavit that "[t]he Eagle Comp Plan and Eagle Water System [Master] Plan do not, and are not intended to, dictate the planning horizon for SUEZ's reasonably anticipated future needs municipal water rights." *Spencer Affidavit*, ¶ 8 at 3.

In sum, the *Eagle Comp Plan* is not pertinent to SUEZ's 50-year planning horizon. The extent the Hearing Officer believes otherwise, the *Eagle Comp Plan* is consistent with SUEZ's planning horizon. As Ms. Spencer's affidavit states:

> It is imperative for the City's future that water rights are secured that are sufficient to supply the City's needs at full build-out. While SUEZ's 50-year planning horizon sought in the IMAP is longer than the terms of the Eagle Comp Plan and Eagle Water System Plan, it is consistent with those plans and the City's planning goals and objectives in general.

Spencer Affidavit, ¶ 9 at page 3.

(5) Meridian Comp Plan (2011)

SUEZ currently serves customers in a small portion of the City of Meridian. *Dittus Affidavit*, ¶ 10 at page 3. Thus, there is a very small overlap between SUEZ's planning area and the City of Meridian's area of impact.

In 2011, the City of Meridian adopted its current comprehensive plan, *City of Meridian Comprehensive Plan* ("*Meridian Comp Plan*"). It has been amended four times, most recently on February 20, 2018. A copy of this plan is set out as an exhibit to the *Fourth Affidavit of Jack W. Relf (Meridian Comp Plan).*

"Plan goals, objectives, and action items are designed to address a 10- to 15-year period, although some of the elements and action items address a longer timeframe." *Meridian Comp Plan* at 2.

The *Meridian Comp Plan* provides for a "Future Acquisitions Map" which, pursuant to LLUPA, identifies land proposed for public acquisition over the next 20 years. *Meridian Comp Plan* at 45.

The *Meridian Comp Plan* includes an estimate of future population and households for the years 2009 through 2035, with corresponding increases of 71.62% and 71.16%. *Meridian Comp Plan* at 18.

As Meridian's Assistant City Engineer explains in his affidavit, Meridian's water planning is driven not by its comprehensive plan but its master water plan, which has both a 50-year and a full build-out planning horizon. See discussion below in Section VIII.C(2) at page 43.

(6) Kuna Comp Plan (2017)

The City of Kuna is the municipal provider for residents of the City. SUEZ's certificated area does not come close to the City's current boundary. However, the City recently expanded its area of city impact, which now overlaps a small portion of SUEZ's current certificated area as well as its planning area. Accordingly, SUEZ includes here a discussion of Kuna's planning documents.

In December of 2017, the City of Kuna adopted its current comprehensive plan, entitled *Envision Kuna* ("*Kuna Comp Plan*"). A copy of this plan is set out as an exhibit to the *Sixth Affidavit of Jack W. Relf (Kuna Comp Plan).*

The *Kuna Comp Plan* sets out no planning horizon or any particular indication of the duration of time on which this planning vision is built.

It does observe: "The City of Kuna has experienced substantial population growth over the past 15 years and is expected to experience even greater growth over the next 20 years." *Kuna Comp Plan* at page 3.

"The Envision Kuna Comprehensive Planning process is intended to generate a new, highly relevant plan to guide Kuna's future for the next 10-20 years." *Kuna Comp Plan* at page 16 (emphasis supplied).

"Areas of Change represent parts of the community that are anticipated to change within the near future or next 20 years, are particularly important areas, or represent vital opportunities for Kuna. Key Areas of Change related to Transportation, Quality of Life and Land Use are noted below." *Kuna Comp Plan* at page 28 (emphasis supplied).

The *Kuna Comp Plan* contains population forecast data (from COMPASS) for the 23-year period 2017 to 2040.[17]

But there is nothing in the *Kuna Comp Plan* that is inconsistent with its municipal water provider (SUEZ) taking steps to assure it will have the water to serve outlying areas of Kuna's area of city impact for more than the next two decades.

(7) Garden City Comp Plan (2006)

SUEZ currently has no customers in Garden City and no part of SUEZ's infrastructure lies within Garden City. *Dittus Affidavit*, ¶ 9 at page 3. However, a tiny portion of Garden City lies within SUEZ's current certificated area, and SUEZ's planning area simply follows that boundary. Thus, Garden City's comprehensive plan bears little, if any, relevance to SUEZ, its planning horizon, or its RAFN.

In any case, because of the slight overlap between SUEZ's planning area and Garden City, SUEZ includes this section for the sake of completeness.

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[17] The *Kuna Plan* shows an increase from 18,700 in 2017 to 54,437 in 2040, which corresponds to an annual growth rate of 4.52%. This compares to a 2015 population for the SUEZ planning area of 247,345 and a 2040 population of 345,259. SUEZ's *2065 Master Water Plan* at pages A-157 and A-171. That calculates to an annual growth rate of 1.34%. Thus, Kuna's growth forecast is more aggressive than is SUEZ's.

Garden City adopted the *Garden City Comprehensive Plan* ("*Garden City Comp Plan*") on July 24, 2006. A copy of this plan is set out as an exhibit to the *Seventh Affidavit of Jack W. Relf (Garden City Comp Plan).*

The *Garden City Comp Plan* does not state a duration for the plan's vision, except for a passing reference to "the twenty year period of the plan" within a discussion of transportation-oriented development nodes. *Garden City Master Plan* at 36.

Like the *2065 Master Water Plan*, the *Garden City Comp Plan* employs population forecast data obtained from COMPASS and the U.S. Census. It notes that the city's population in 2006 was 12,074, and that it is projected to be 16,600 in 2030. *Garden City Comp Plan* at 43. That calculates to a modest annual increase of 1.34% over that 24 year period. The plan then notes:

> . . . Population forecasts for the city have historically underestimated population change, in part because of the tendency to overlook the potential for re-development. . . .
> . . . With these land use objectives, the potential for population growth is much greater than what is anticipated in the most recent COMPASS projections.

Garden City Comp Plan at 43.

The plan contains this brief discussion of water rights:

> UTILITIES: The city's Public Works Department provides water and sewer services to residents and businesses. In 2005, domestic water was supplied by eight city wells with an ability to pump 6,300 gallons per minute (gpm). With repairs and maintenance to the water system the capacity of the system would increase to 14,600 gpm. This capacity, however, would exceed the maximum water rights granted to the City of 10,865 gpm. Additional water rights and/or water conservation will be needed if the City is to be able to provide water for the expected population forecasted in this plan.
>
> . . .
>
> . . . In 2006, the department is identifying the entire infrastructure, determining the city's water rights, and assessing its

utility needs for the future.

Garden City Comp Plan at 48.

As with each of the comprehensive plans discussed above, nothing in Garden City's plan is inconsistent with SUEZ's efforts to provide reliable water service for the next 50 years.

C. Other water planning documents

(1) Eagle Water System Master Plan (2015)

In September 2015, the City of Eagle approved the *City of Eagle Municipally Owned Water System Master Plan Update #3* ("*Eagle Water System Master Plan*"). A copy of this plan is set out as an exhibit to the *Ninth Affidavit of Jack W. Relf (Eagle Master Plan)*.

The City of Eagle is served by three municipal water providers, SUEZ, Eagle Water Company, and the City of Eagle itself. The *Eagle Water System Master Plan* addresses only the City's water system and demands outside of SUEZ's service area. *Spencer Affidavit*, ¶ 6 at page 3. *See also Eagle Water System Master Plan* at 6 ("By 2040, the City municipal water system (as distinguished from EWC [Eagle Water Company] and UWI [SUEZ] systems) plans to serve a 31,363 population.").

Accordingly, the *Eagle Water System Master Plan* is not a pertinent or controlling planning document for purposes determining consistency with SUEZ's 50-years planning horizon. *Spencer Affidavit*, ¶ 8 at 3 ("The Eagle Comp Plan and Eagle Water System Plan do not, and are not intended to, dictate the planning horizon for SUEZ's reasonably anticipated future needs municipal water rights.").

The *Eagle Water System Master Plan*, which employs a 30-year planning horizon, primarily serves as a facilities plan. *Spencer Affidavit*, ¶ 4 at page 2. Indeed, it was approved by the Idaho Department of Environmental Quality ("IDEQ") as the City's Public Drinking System

Facility Plan. *Id.* *See also Eagle Water System Master Plan* at unnumbered page 2 (approval letter from IDEQ).

The *Eagle Water System Master Plan* addresses water rights and water quality issues in Chapter 7.0, "Water Rights and Ground Water Monitoring," *Eagle Water System Master Plan* at 47-54. This is not actually a planning discussion, but a recitation of the status quo. *Spencer Affidavit*, ¶ 7 at page 3. For example, the discussion under 7.1.5 Reasonably Anticipated Future Needs recites the facts concerning prior and pending RAFN applications, noting that "[t]he City, following the example of previous municipal RAFN applications, selected a 30-year planning horizon . . . ." That statement was in reference to the M3 application, which was a private development with a 30-year build-out schedule. *Spencer Affidavit*, ¶ 7 at page 3.

In sum, the *Eagle Water System Master Plan* is not pertinent to SUEZ's RAFN planning because it applies only to the City's water system located outside of SUEZ's service area. Moreover, it is not a comprehensive plan. Nor is it a water rights planning document. Instead, it focuses on facilities planning and a recitation of the current status of the City's water rights, which are not implicated in the IMAP. "While SUEZ's 50-year planning horizon sought in the IMAP is longer than the terms of the Eagle Comp Plan and Eagle Water System [Master] Plan, it is consistent with those plans and the City's planning goals and objectives in general." *Spencer Affidavit*, ¶ 9 at page 3.

(2) Meridian Master Water Plan (2012)

The City of Meridian operates a municipal water system serving the City's residents. *Affidavit of Kyle Radek* ("*Radek Affidavit*"), ¶ 6 at page 2. Also, as mentioned above, there is a very small overlap between SUEZ's planning area and the City of Meridian's area of impact in which SUEZ already serves its customers. *Dittus Affidavit*, ¶ 10 at page 3.

In 2012, the City of Meridian adopted its *Final – Master Water Plan for the City of Meridian, Idaho* ("*Meridian MWP*"). A copy of this plan is set out as an exhibit to the *Fifth Affidavit of Jack W. Relf (Meridian Master Water Plan).*

The *Meridian MWP* is the City's facility plan required by IDEQ's regulations requiring Public Drinking Water System Facility Plan. *Radek Affidavit*, ¶ 7 at page 2. It "identifies approximately $40 million in substandard size main replacements to be made over the next 20 to 50 years." *Meridian MWP* at page 1-4.

> The Public Works Department's leadership is evident through the development of the City's first conservation plan, work to formalize their design and construction standards, and current long-term water supply planning efforts that look beyond the 20-year horizon required by IDEQ. In addition, the City already has their next Water Master Plan Update identified in their budget for 2015.

Meridian MWP at page 1-7.

However, it also projects population and water demands at 5, 20, and 50 year intervals, and also at "build-out." *Radek Affidavit*, ¶ 8 at page 2. *See also Meridian MWP* at page 3-14.[18]

The executive summary provides:

> This WMP focuses on improvements required over the next 20 years (2030). However, longer-term evaluations were conducted on the City's water supply system that include projections through build-out.
>
> . . .
>
> This plan assumes that groundwater will continue to be a viable source of supply for the City in the near-term and long-term. Additional water supply planning is being conducted as a follow up study to this project. That study is evaluating how to address the

[18] Over the 50-year period (2010 to 2060), the *Meridian MWP* projects population to increase from 66,000 to 252,000. That calculates to an annual growth rate of 2.72% growth. In comparison, SUEZ's *2065 Master Water Plan* shows a 2010 population within the planning area of 237,670 and a 2060 population of 459,154. *2065 Master Water Plan* at pages A-157 and A-171. That calculates to an annual growth rate of 1.33%. Thus, Meridian's growth forecast is more aggressive than is SUEZ's.

> City's water supply needs beyond the IDEQ focused 20-year horizon.

Meridian MWP at page 1-2.

The *Meridian MWP* includes projections to satisfy IDEQ's regulatory requirements for facilities. *Radek Affidavit*, ¶¶ 9-10 at pages 2-3. It includes a 50-year projection to "plan for the long-term water supply needs (including water rights). . . . [because] to ensure service to future customers, it is important that providers in rapidly growing areas like the City of Meridian look well into the future." *Radek Affidavit*, ¶ 11 at page 3.

The *Meridian MWP* also includes projects population at "build-out" because

> The City believes that it is prudent to plan to supply water for the ultimate build-out of the City. Regardless of how long it takes, Meridian has a finite area that it will grow into and the people that live in that defined area will depend on the City for their municipal water supply. Therefore, it is the City's position that not only is 50 years an appropriate timeframe for water supply and water rights needs, but that a much longer time frame is justified if the area of service is defined.

Radek Affidavit, ¶¶ 12-13 at pages 3-4.

Clearly, if the *Meridian MWP* is relevant to SUEZ, there is no conflict between it and SUEZ's 50-year planning horizon. Both identify 50-year planning horizons. The City's Assistant City Engineer confirmed this in his affidavit (extensively quoted and cited above), where he stated: "I am not aware of anything in Suez's Master Water Plan that is inconsistent with any of my statements in this affidavit regarding planning time periods." *Radek Affidavit*, ¶ 13 at page 4.

(3) Garden City Utility Master Plan (2009)

As explained above, although a tiny portion of Garden City lies within SUEZ's planning area, Garden City's planning efforts are largely (if not completely) irrelevant to SUEZ because

SUEZ currently has no customers in Garden City and no part of SUEZ's infrastructure lies within Garden City. *Dittus Affidavit*, ¶ 9 at page 3. Nevertheless, as with the *Garden City Comp Plan* discussion above, because of the slight overlap between SUEZ's planning area and Garden City, SUEZ includes this section for the sake of completeness.

In January 2009, Garden City issued its *Utility Master Plan (Facilities Planning Study) Water System* ("*Garden City Utility Master Plan*"). A copy of this plan is set out as an exhibit to the *Eighth Affidavit of Jack W. Relf (Garden City Utility Master Plan).*

Garden City owns and operates its own municipal water system. The *Garden City Utility Master Plan* addresses only the City's water system and demands—not SUEZ's. Accordingly, the *Garden City Utility Master Plan* is not a pertinent or controlling planning document for purposes determining consistency with the IMAP.

Similar to the *Eagle Water System Master Plan*, the *Garden City Utility Master Plan* employs a 30-year planning horizon and primarily serves as a facilities plan, but Garden City's plan also ventures into planning for future water demand to facilitate that purpose. *Garden City Utility Master Plan* at unnumbered p. 1 ("This plan will provide the City officials and staff with information regarding the current condition and extent of utilities and evaluate anticipated future demands."). Like the City of Eagle's plan, Garden City's was approved by the IDEQ as the City's Public Drinking Water System Facility Plan. *Garden City Utility Master Plan* at unnumbered pages 2-3 (approval letter from IDEQ).

The *Garden City Utility Master Plan* addresses water rights and water demands, among other things, in Section III, "Existing Source, Distribution, And Treatment Facilities," *Garden City Utility Master Plan* at 18-45. In large part this section details Garden City's current water rights and infrastructure status. But it also includes a short discussion of the 1996 Act. *Id.* at 28

("the 1996 Act can be summarized by 'Municipal providers' may secure water rights for 'municipal purposes' of sufficient quantity to serve all 'reasonably anticipated future needs' within an expanding 'service area' during a specified 'planning horizon' . . . ."). Notably, this discussion takes the view that "[t]he concepts established in the 1996 Act of most significance to the city include no limits on the planning horizon . . . ." *Id.* (emphasis added). Thus, even if the *Garden City Utility Master Plan* was relevant to SUEZ (which it isn't), it certainly cannot be said to be inconsistent with SUEZ's 50-year planning horizon.[19]

In sum, the *Garden City Utility Master Plan* is not pertinent to SUEZ's RAFN planning because it applies only to the City's water system located outside of SUEZ's service area. Moreover, it is not a comprehensive plan. In any event, having a 30-year planning horizon for water delivery infrastructure is not inconsistent with SUEZ's 50-year planning horizon, which ensures that there will be water to fill those pipes.

(4) Treasure Valley DCMI Report (2016)

In 2016, under the direction of the Idaho Water Resource Board ("IWRB"), Dr. Christian Petrich produced a report entitled *Treasure Valley DCMI Water-Demand Projections (2015-2065)* dated August 8, 2016 ("*2016 TV DCMI Report*"). *Petrich Affidavit* at 4 ¶ 11. A copy of this report is set out as an exhibit to the *Twelfth Affidavit of Jack W. Relf (Treasure Valley DCMI).*

The *2016 TV DCMI Report* is the same report that Dr. Petrich compared to John Church's water demand forecast incorporated into SUEZ's *2065 Master Water Plan.* Dr. Petrich's report

[19] Ultimately, the *Garden City Utility Master Plan* concludes that, using its 30 year outlook, "[t]he required firm pumping capacity to satisfy the future PHD is 26,350 gpm, or 17,600 gpm to meet the future MDD at 2038." *Garden City Utility Master Plan* at 62.

corroborating Mr. Church's work against the *2016 TV DCMI Report* is attached as Exhibit 7 to SUEZ's *2065 Master Water Plan.*

The *2016 TV DCMI Report* projected domestic, commercial, municipal, and industrial ("DCMI") water demand for a 50-year period extending from 2015 to 2065. *Petrich Affidavit*, ¶ 11 at page 4. According to Dr. Petrich, using 50 years was an appropriate timeframe to project DCMI water demand for the purposes of this study. Obviously, with its same beginning and end dates, this is consistent with SUEZ's 50-year planning horizon. *See Petrich Affidavit* at 6 ¶ 19 ("the 50-year planning horizon incorporated by SUEZ is consistent with multiple IWRB and IDWR long-range water-supply plans and consistent with existing, long-range water-demand projections in the Treasure Valley.").

(5) BSU Whitepaper (2017)

In October 2017, Boise State University issued a whitepaper entitled *Projecting Urban Expansion in the Treasure Valley to 2100* ("*BSU Whitepaper*). A copy of this paper is set out as an exhibit to the *Fourteenth Affidavit of Jack W. Relf (BSU Whitepaper).*

This paper addresses current and historical urban expansion into non-urban areas in the Treasure Valley, asking "If we stay on our current path, what will the Treasure Valley look like in 25 years? 75? 100?" *BSU Whitepaper* at 2. Potential scenarios described in the paper "aim to capture and graphically represent the range of possibilities decision makers may face." *Id.*

The paper includes population projections and potential urban expansion scenarios through 2100, i.e. a planning horizon of more than 80 years. *BSU Whitepaper* at 4-8. This is just another example of long-range planning which is consistent with SUEZ's 50-year planning horizon.

D. Comprehensive Aquifer Management Plans

As explained above, the duration of a municipal provider's planning horizon is not dictated by other water planning documents. Nevertheless, they may be relevant to the Department's determination of whether the planning horizon sought by a particular municipal provider is reasonable. Accordingly, this section addresses two Comprehensive Aquifer Management Plans. As explained by Dr. Petrich, "the 50-year planning horizon incorporated by SUEZ is consistent with multiple IWRB and IDWR long-range water-supply plans and consistent with existing, long-range water-demand projections in the Treasure Valley." *See Petrich Affidavit* at 6 ¶ 19.

In 2008, the Legislature enacted a law directing IWRB and IDWR to conduct "a statewide comprehensive aquifer planning and management effort" over a ten-year period beginning in 2009. H.B. 428, 2008 Idaho Sess. Laws ch. 134 (codified at Idaho Code § 42-1779). These plans are largely known as Comprehensive Aquifer Management Plans, or "CAMPs."

The IWRB and the Idaho Department of Water Resources ("IDWR") are in charge of the CAMP program. Idaho Code § 42-1779. According to the IWRB's CAMP Website, the CAMP program "is designed to provide the Idaho Water Resource Board and the Idaho Department of Water Resources with the necessary information to develop plans for managing ground and surface water resources into the future." The CAMP Website also says that the CAMP plans

> will be designed to address water supply and demand issues looking out 50 years into the future. The program is intended to investigate strategies and develop plans which will lead to sustainable water supplies and optimum use of the water resources.

CAMP Website (emphasis added).

In 2009, The IWRB issued a "Request for Proposals" ("*2009 RFP*") in which it sought contractor proposals to generate water demand studies for CAMPs in the Treasure Valley and Rathdrum Prairie. *Petrich Affidavit*, ¶ 8 at page 3. *See also Petrich Affidavit*, Ex. A, p. 17 (copy of *2009 RFP*). The 2009 RFP states that "[t]he water management plans will be designed to address water supply and demand issues looking out 50 years into the future." *Petrich Affidavit,* Ex. A, p. 17.

Thus, under the legislatively-directed program, two 50-year CAMPs have been undertaken:[20] the Rathdrum Prairie Aquifer CAMP ("*RPA CAMP*") and the Treasure Valley CAMP ("*TV CAMP*"). *See* the IWRB's Comprehensive Aquifer Management Planning website ("CAMP Website").[21] Copies of the latest versions of these plans are set out as exhibits to the *Tenth Affidavit of Jack W. Relf (Rathdrum Prairie CAMP)* and the *Eleventh Affidavit of Jack W. Relf (Treasure Valley CAMP).*

These two CAMPs are described below.

(1) *RPA CAMP*

The *RPA CAMP* "was conducted under the leadership of the IWRB." *RPA CAMP* at 8. According to the *RPA CAMP*,

> The IWRB developed the following goals for the statewide Comprehensive Aquifer Management Planning effort (CAMP):
>
> • Provide reliable sources of water, projecting 50 years into the future
> • Develop strategies to avoid conflicts over water resources
> • Prioritize future state investments in water
> • Bridge the gaps between future water needs and supply

[20] A third, the CAMP for the Eastern Snake Plain Aquifer, pre-dated the legislatively-directed CAMP process.

[21] http://www.idwr.idaho.gov/waterboard/WaterPlanning/CAMP/CAMP.htm

RPA CAMP at 3 (emphasis supplied).

> [The *RPA CAMP*] describes the overarching goals and recommended actions which can be implemented to successfully accomplish the stated goals for local residents, the state of Idaho, and to promote productive regional cooperation to benefit the area over the next 50 years.

RPA CAMP at 3 (emphasis supplied).

Long-term, 50-year, planning was critically important to the *RPA CAMP*:

> Projecting future water demand is an integral part of the Rathdrum Prairie CAMP process. The sufficiency of existing water resources cannot be determined without understanding the potential magnitude of future water demand. The Rathdrum Prairie Aquifer Water Demand Projections study provides projections of Rathdrum Prairie water demand over the next 50 years. The water demand study was conducted for (and funded by) the IWRB as part of the Rathdrum Prairie CAMP process.

RPA CAMP at 3 (emphasis supplied).

The *RPA CAMP* states

> Critical to the development of the RP CAMP is estimation of future water demands. Water demand overlying the RPA was projected for a 50-year time horizon (2060).

RPA CAMP at 10 (emphasis supplied).

The *RPA CAMP*'s water demand projections are "based on a moderate level of population growth (averaging approximately 2.3% per year) over the next 50 years." *RPA CAMP* at 4, 10 (emphasis supplied).

The *RPA CAMP* also used long-term, 50 year climate projections:

> Climate variability adds another element of uncertainty to planning for future water needs. Studies based on climate models and emission scenarios indicate that the overall temperature in the RPA region may increase over the next 50 years.

RPA CAMP at 11 (emphasis supplied).

Concerning Legislative Reporting and Plan Revision, *RPA CAMP* states:

> The Board will provide periodic reports to the legislature documenting the progress made on the implementation of the Plan. The Board will evaluate the Plan after five years of implementation and make planning recommendations to the legislature and Governor's office. The 50-year horizon will be considered at each revision so that the Plan will remain a relevant planning document without expiration.

RPA CAMP at 21 (emphasis supplied).

As Mr. Galante explains in his affidavit:

> 15. The RPA CAMP study employed a 50-year planning horizon. The IWRRI Study has a 30-year planning horizon. Both of these are reasonable under the circumstances, taking into account the differing purposes of the studies.
>
> 16. The RPA CAMP was a region-wide municipal demand forecast. It did not attempt to allocate demand to individual municipal providers.
>
> 17. The IWRRI Study sought to allocate that overall regional demand to individual municipal providers. This entailed a mediation process. Given the number of entities at the table and the sometimes conflicting interests involved, 30 years was as far out as the group could agree to go.
>
> 18. Importantly, the IWRRI Study did not contain any re-opener provision. It is a fixed 30-year projection of future demand. It is expected that individual municipal providers will proceed with RAFN applications for fixed 30-year periods based on this allocation, without any re-opener provisions.
>
> 19. In contrast, I understand that the SUEZ RAFN application calls for a re-opener condition that will allow SUEZ's future demand to be re-examined periodically, and that adjustments can be made in the event then-current circumstances no longer justify holding the full quantity of water for 50 years.
>
> 20. I believe that re-opener provision is important in justifying SUEZ's 50-year planning horizon. That distinguishes it from the 30-year planning horizon in the IWRRI Study and makes it more analogous to the 50-year planning horizon in the RPA CAMP (which could be re-evaluated at any time).

Galante Affidavit, ¶¶ 15-20 at pages 4-5.

(2) *TV CAMP*

The *TV CAMP* "was conducted under the leadership of the IWRB." *TV CAMP* at 3. The *TV CAMP* proposed by the Advisory Committee in 2012 has not yet been approved by the IWRB or the Idaho Legislature. IWRB, CAMP Website (Treasure Valley CAMP section[22]).

Its purpose and 50-year planning horizon is laid out in the document:

> [The *TV CAMP*] provides a framework for long-range management of the aquifer . . . [and] describes the overarching goals and actions that can be implemented to successfully accomplish the stated goals for local residents and the state of Idaho and to promote productive regional cooperation to benefit the area over the next 50 years."

TV CAMP at 1 (emphasis supplied).

According to the *TV CAMP*:

> The specific goals of the statewide Comprehensive Aquifer Management Plan (CAMP) program are to:
>
> • Provide reliable sources of water, projecting 50 years into the future
> • Develop strategies to avoid conflicts over water resources
> • Prioritize future investments in water

TV CAMP at 3 (emphasis supplied).

The *TV CAMP* identified several challenges associated with water user and needs in the Treasure Valley, including:

> A challenge over the next 50 years will be to conserve and protect the water resources in the Treasure Valley's streams and aquifers and the riparian habitat it supports, while providing the water supplies for the current and future use.
>
> A challenge for the Treasure Valley will be to meet new and on-going water demands over the next 50 years.

[22] http://www.idwr.idaho.gov/waterboard/WaterPlanning/CAMP/TV_CAMP/TVdefault.htm

TV CAMP at 21 (emphasis supplied).

CONCLUSION

Boise Project's contention that SUEZ cannot look further than 2040—just 22 years—because of population figures found in a regional transportation document is contrary to the 1996 Act, the *RAFN Handbook*, and common sense. The 1996 Act requires only that the Department determine the planning horizon to be reasonable. To the extent the *RAFN Handbook* is read to require that the duration of the planning horizon be "not inconsistent" with comprehensive plans and other planning documents, SUEZ has demonstrated that lack of inconsistency in this brief and its 23 affidavits.

The timeframes of planning documents vary, but SUEZ's 50-year planning horizon is not inconsistent with their goals and objectives. It is identical to the planning horizons of *TV CAMP* and *RPA CAMP*. And it is consistent with the clear trend in water planning in the fast growing Western States. In short, it is reasonable. In contrast, Boise Project has offered a bald conclusion buttressed by nothing.

SUEZ has gone the extra mile. It has done the right thing in subjecting its portfolio and its future needs to critical examination. It has complied with the letter and the vision of the 1996 Act. It has worked in close cooperation with other municipal providers. The fruit of that effort is evident in the affidavits many of them have filed. Indeed, the absence of animosity among municipal providers within the Treasure Valley and across the State is a tribute both to them and to the wisdom of the 1996 Act. Idaho has become a leader in the nation in encouraging thorough, open, and effective municipal water rights planning, and in avoiding municipal water wars. SUEZ's 50-year planning horizon is consistent with and the product of that vision. It should be approved.

Accordingly, SUEZ urges that the Hearing Officer do one of the following:

1. Grant partial summary judgment and approve SUEZ's 50-year planning horizon as reasonable and in accordance with law based on the ample evidence now in the record.
2. Grant partial summary judgment, rule that the 50-year planning horizon sought by SUEZ is not *per se* unreasonable, but defer until after the May hearing a final decision on whether the evidence supports a 50-year planning horizon in this case.
3. Deny the *MSJ* without reaching the merits on the basis that material facts are in dispute or that the issue presented is better taken up after the May hearing.

Respectfully submitted this 9th day of April, 2018.

GIVENS PURSLEY LLP

By _____
Christopher H. Meyer

By _____
Michael P. Lawrence

By _____
Preston N. Carter

Attorneys for SUEZ Water Idaho Inc.

Exhibit A TABLES OF AFFIDAVITS

SUBSTANTIVE AFFIDAVITS				
	Name of Affidavit	**Author / Representing**	**Subject**	**Date filed**
1.	Affidavit of Roger D. Dittus	SUEZ employee	Identifies comprehensive plans within the planning area	4/3/2018
2.	Affidavit of Don C. Reading	SUEZ consultant (Ben Johnson Associates)	Duration of planning horizon vis-à-vis comprehensive plans and RAFN Handbook	4/4/2018
3.	Affidavit of Michael R. Galante	Manager of NKWD	Duration of planning horizon vis-à-vis RPA CAMP and IWRRI Study	4/5/2018
4.	Affidavit of Kyle Radek	Assistant City Engineer, City of Meridian	Duration planning horizon vis-à-vis Meridian planning process	4/5/2018
5.	Affidavit of Christian R. Petrich	SUEZ consultant (SPF Water Engineering)	Duration of planning horizon vis-à-vis TV CAMP, TV DCMI, RPA Camp, and Moscow water demand	4/6/2018
6.	Affidavit of John S. Church	SUEZ consultant (Idaho Economics)	Duration of planning horizon vis-à-vis comprehensive plans, infrastructure plans, CIM 2040; and more recent reports	4/6/2018
7.	Affidavit of Nichoel Baird Spencer	City Planner, City of Eagle	Duration of planning horizon vis-à-vis Eagle Comp Plan and Eagle Water System Plan	4/9/2018
8.	Affidavit of Hal Simmons	Planning Director, City of Boise	Duration of planning horizon vis-à-vis Blueprint Boise	4/9/2018

DOCUMENTARY AFFIDAVITS				
	Name of Affidavit	**Role / Representing**	**Subject**	**Date filed**
1.	First Affidavit of Jack W. Relf	SUEZ attorney	Copy of Ada County Comp Plan	4/4/2018
2.	Second Affidavit of Jack W. Relf	SUEZ attorney	Copy of Boise Comp Plan	4/4/2018
3.	Third Affidavit of Jack W. Relf	SUEZ attorney	Copy of Eagle Comp Plan	4/4/2018
4.	Fourth Affidavit of Jack W. Relf	SUEZ attorney	Copy of Meridian Comp Plan	4/4/2018
5.	Fifth Affidavit of Jack W. Relf	SUEZ attorney	Copy of Meridian Master Water Plan	4/4/2018
6.	Sixth Affidavit of Jack W. Relf	SUEZ attorney	Copy of Kuna Comp Plan	4/4/2018
7.	Seventh Affidavit of Jack W. Relf	SUEZ attorney	Copy of Garden City Comp Plan	4/4/2018
8.	Eighth Affidavit of Jack W. Relf	SUEZ attorney	Copy of Garden City Utility Master Plan	4/4/2018
9.	Ninth Affidavit of Jack W. Relf	SUEZ attorney	Copy of Eagle Master Plan	4/4/2018
10.	Tenth Affidavit of Jack W. Relf	SUEZ attorney	Copy of Rathdrum Prairie Aquifer CAMP	4/4/2018
11.	Eleventh Affidavit of Jack W. Relf	SUEZ attorney	Copy of Treasure Valley CAMP	4/4/2018
12.	Twelfth Affidavit of Jack W. Relf	SUEZ attorney	Copy of Treasure Valley DCMI	4/4/2018
13.	Thirteenth Affidavit of Jack W. Relf	SUEZ attorney	Copy of Rathdrum Prairie Aquifer Future Water Demand	4/4/2018
14.	Fourteenth Affidavit of Jack W. Relf	SUEZ attorney	Copy of BSU Whitepaper	4/4/2018
15.	Fifteenth Affidavit of Jack W. Relf	SUEZ attorney	Copy of CIM 2040	4/9/2018

Exhibit B **WATER PLANNING DOCUMENTS FROM OTHER WESTERN STATES**

State	Planning Horizon	Water Planning Document
Arizona	2000 through 2050 (initial duration of 50 years)	City of Tucson Water Department, *Water Plan: 2000-2050* (November 22, 2004) at ES-3 (projecting population and demand from 2000-2050), *available at* https://www.tucsonaz.gov/files/water/docs/waterplan.pdf The *Water Plan: 2000-2050* was updated in 2008 and 2012. Both updates continue to project through 2050. The updates are available at https://www.tucsonaz.gov/files/water/docs/wp08-update.pdf and https://www.tucsonaz.gov/files/water/docs/2012_Update_Water_Plan_2000-2050.pdf
California	2009 through 2050 and 2100 (initial duration of 41 and 91 years)	State of California, Department of Water Resources, *California Water Plan Update 2009* (2009) at 9 ("Looking forward to the year 2050 and on to the end of the century, more changes can be expected . . . . ."), *available at* https://www.water.ca.gov/-/media/DWR-Website/Web-Pages/Programs/California-Water-Plan/Water-Plan-Updates/Files/Update-2009/Water-Plan-Update-2009-Highlights.pdf The *California Water Plan* was most recently updated in 2009 and 2013 and another update is underway for 2018. Each of these updates continues to project through 2050 and 2100. The updates are available at https://www.water.ca.gov/Programs/California-Water-Plan/Water-Plan-Updates#collapse-Update-2013
Colorado	50 years	The Colorado Supreme Court upheld a 50-year planning period for the Pagosa Area Water and Sanitation District and San Juan Water Conservancy District. *Pagosa Area Water & Sanitation Dist. v. Trout Unlimited*, 219 P.3d 774, 777 (Colo. 2009).
Kansas	40 years "and beyond"	City of Wichita, *Integrated Local Water Supply Plan* (2010) *as recognized in Wichita Area Future Water Supply: A Model Program for Other Municipalities* at 1 ("The City of Wichita's Equus Beds Aquifer Storage and Recovery (ASR) project is one aspect of the City's plan to ensure that Wichita has the water it needs through the year 2050 and beyond."), *available at* http://www.wichita.gov/PWU/UtilitiesDocuments/WICHITA%20AREA%20FUTURE%20WATER%20SUPPLY.pdf and with projections found in City of Wichita, *Water for the Future, The City of Wichita's Regional Aquifer Storage and Recovery Project* at 3, *available at* http://www.wichita.gov/PWU/UtilitiesDocuments/WATER%20FOR%20THE%20FUTURE%20PRESENTATION.pdf

Montana	20 years	Montana DNRC, *Montana State Water Plan* (December 5, 2014) at 3 (noting that the State Water Plan "provides a high-level overview of the state's water resources and lays out a path for managing those resources over the next twenty years"), *available at* http://dnrc.mt.gov/divisions/water/management/docs/state-water-plan/2015_mt_water_plan.pdf
Nevada	50 years	Southern Nevada Water Authority, *Water Resource Plan 2017* at 8 ("The SNWA's 2017 Water Resource Plan provides a comprehensive overview of water resources and demands in Southern Nevada, and discusses factors that will influence resource availability and use over a 50-year planning horizon."), *available at* https://www.snwa.com/assets/pdf/wr_plan.pdf
New Mexico	2000 through 2050 (initial duration of 50 years)	New Mexico Interstate Stream Commission, *Middle Rio Grande Regional Water Plan 2000-2050* (August 17, 2004) (conducting water balancing exercise from 2001-2050), *available at* http://www.ose.state.nm.us/Planning/RWP/Regions/region_12prior.php This document was updated in 2017 with projections through 2060, a 43-year planning period. State of New Mexico, Interstate Stream Commission, Office of the State Engineer, *Middle Rio Grande Regional Water Plan* (January 2017), *available at* http://www.ose.state.nm.us/Planning/RWP/documents/Reg12_MiddleRioGrandeRegionalWaterPlan2017_Reducedsize.pdf
Oklahoma	50 years	*Oklahoma Water Resources Board, 2012 Oklahoma Comprehensive Water Plan Executive Report (February 2012)* at 3 ("All factors impacting Oklahoma's water use for the next 50 years in each of the state's 82 planning basins were considered during OCWP water demand analysis."), available at http://www.owrb.ok.gov/supply/ocwp/pdf_ocwp/WaterPlanUpdate/draftreports/OCWP Executive Rpt FINAL.pdf

Oregon	48 years 43 years	Eugene Water & Electric Board, *Water Management and Conservation Plan* (January 2012) at ES-11 (projecting water demand from 2012 to 2060, a 48-year period), *available at* http://filepickup.wrd.state.or.us/files/Publications/WMCP/Requested%20Files/Example%20Approved%20WMCPs_Municipal/Eugene%20Water%20&%20Elec%20Board-WMCP_FINAL_01-30-2012.pdf Oregon Water Resources Department, *Statewide Water Needs Assessment Oregon Water Supply and Conservation Initiative* (September 2008) at xiv (projecting water demand from 2007 through 2050, a 43-year period), *available at* http://www.oregon.gov/owrd/law/docs/owsci/owrd_demand_assessment_report_final_september_2008.pdf
South Dakota	50 years	City of Sioux Falls, *Future Water Supply Evaluation* at ES-1 ("A planning period of 50 years beyond the implementation deadline of year 2012 was established due to the complexity, limited expandability, and significant costs associated with the construction of new water supply, transmission, and treatment system infrastructure."), *available at* http://www.siouxfalls.org/~/media/Documents/publicworks/water/future_water/final_executive_summary.pdf
Texas	50 years	Texas Water Development Board, *Water for Texas 2012 State Water Plan*, (January 2012) at 129 ("The first step in the regional water planning process is to quantify current and projected population and water demand over the 50-year planning horizon."), *available at* http://www.twdb.state.tx.us/publications/state_water_plan/2012/03.pdf
Utah	50 years for planning, 40 years for water rights for reasonable future water requirements	State of Utah, Natural Resources, Division of Water Resources, *Utah State Water Plan*, (May 2001) at 21 (projecting water use through 2050), *available at* https://water.utah.gov/Planning/SWP/StatePlans/SWP2001/SWP_pff.pdf Utah Code Ann. § 73-1-4(2)(e)(vii) & (f)(i) (providing that water rights owned by a public water supplier are not forfeited if held for reasonable future water requirements, a term that includes the amount of water needed in the next 40 years).

Washington	50 years	City of Olympia, Washington, *Comprehensive Plan for Olympia and the Olympia Growth Area* at PU5.1 ("Reserve water supply rights for at least 50 years in advance of need, so that supplies can be protected from contamination and they are not committed to lower priority uses."), *available at* http://www.codepublishing.com/WA/Olympia/?compplan/OlympiaCPNT.html
Wyoming	30 years	Wyoming Water Development Commission, *The Wyoming Framework Water Plan* (October 2007) at 1 ("This current Wyoming Framework Water Plan provides information for decision making for a 30 year planning horizon."), *available at* http://waterplan.state.wy.us/plan/statewide/execsummary.pdf

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 9th day of April, 2018, the foregoing was filed, served, and copied as shown below. Service by email is authorized by the Hearing Officer's Order of September 11, 2017 at page 3.

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 TO PROTESTANTS, INTERVENORS, AND INTERESTED PARTIES:

Stephan L. Burgos
Director
Public Works Department
CITY OF BOISE
PO Box 500
Boise, ID 83701-0500
Facsimile: 208-433-5650
sburgos@cityofboise.org
Hand delivery or overnight mail:
150 N Capitol Blvd, City Hall #1
Boise, ID 83702
(For the City of Boise, intervenor in support)

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

Abigale R. Germaine, Esq.
Assistant City Attorney
City Attorney's Office
CITY OF BOISE
PO Box 500
Boise, ID 83701-0500
Facsimile: 208-384-4454
agermaine@cityofboise.org
Hand delivery or overnight mail:
150 N Capitol Blvd
Boise, ID 83702
(For the City of Boise, intervenor in support)

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

Chris M. Bromley, Esq.
McHugh Bromley PLLC
380 S 4th St, Ste 103
Boise, ID 83702
Facsimile: 208-287-0864
cbromley@mchughbromley.com
(*For the City of Boise, intervenor in support*)

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

John Roldan, P.E.
Strategic Water Resources Manager
Public Works Department
CITY OF BOISE
PO Box 500
Boise, ID 83701-0500
Facsimile: 208-433-5650
jroldan@cityofboise.org
Hand delivery or overnight mail:
150 N Capitol Blvd
Boise, ID 83702
(For the City of Boise, intervenor in support)

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

Warren Stewart, P.E.
City Engineer
Public Works Department
CITY OF MERIDIAN
33 E Broadway Ave, Ste 200
Meridian, ID 83642
Facsimile: 208-898-9551
wstewart@meridiancity.org
(For the City of Meridian, intervenor in support)

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

Dale Bolthouse
Director
Public Works Department
CITY OF MERIDIAN
33 E Broadway Ave, Ste 200
Meridian, ID 83642
Facsimile: 208-898-9551
dbolthouse@meridiancity.org
(For the City of Meridian, intervenor in support)

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

Kyle Radek, P.E.
Assistant City Engineer, Engineering Division
Public Works Department
CITY OF MERIDIAN
33 E Broadway Ave, Ste 200
Meridian, ID 83642
Facsimile: 208-898-9551
kradek@meridiancity.org
(For the City of Meridian, intervenor in support)

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

Garrick Nelson
Staff Engineer II
Public Works Department
CITY OF MERIDIAN
33 E Broadway Ave, Ste 200
Meridian, ID 83642
Facsimile: 208-898-9551
gnelson@meridiancity.org
(For the City of Meridian, intervenor in support)

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

Charles L. Honsinger, Esq.
HONSINGER LAW, PLLC
PO Box 517
Boise, ID 83701
Facsimile: 208-908-8065
honsingerlaw@gmail.com
(For the City of Meridian, intervenor in support)

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

Brent Orton, P.E., MSC
Public Works Director, City Engineer
CITY OF CALDWELL
621 East Cleveland Blvd.
Caldwell, ID 83605
Facsimile: 208-455-3012
borton@cityofcaldwell.org
(For the City of Caldwell, intervenor in support)

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

Christopher E. Yorgason, Esq.
Middleton City Attorney
YORGASON LAW OFFICES, PLLC
6200 N Meeker Pl
Boise, ID 83713
Facsimile: 208-375-3271
chris@yorgasonlaw.com
(For the City of Middleton, protestant)

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

Cherese D. McLain, Esq.
MOORE, SMITH, BUXTON & TURCKE, CHARTERED
950 W Bannock St, Ste 520
Boise, ID 83702
Facsimile: 208-331-1202
cdm@msbtlaw.com
(For the Star Sewer & Water District, intervenor in support, and for the City of Eagle, interested party)

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

S. Bryce Farris, Esq.
Andrew J. Waldera, Esq.
SAWTOOTH LAW OFFICES, PLLC
PO Box 7985
Boise ID 83707
Facsimile: 208-629-7559
bryce@sawtoothlaw.com
andy@sawtoothlaw.com
Hand delivery or overnight mail:
1101 W River St, Ste 110
Boise ID 83702
(For Nampa & Meridian Irrigation District and Settlers Irrigation District, protestants)

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

Albert P. Barker, Esq.
Shelley M. Davis, Esq.
BARKER, ROSHOLT & SIMPSON, LLP
PO Box 2139
Boise, ID 83701-2139
Facsimile: 208-344-6034
apb@idahowaters.com
smd@idahowaters.com
Hand delivery or overnight mail:
1010 W Jefferson, Ste 102
Boise, ID 83702
(For Boise Project Board of Control, Big Bend Irrigation District, Boise-Kuna Irrigation District, and Wilder Irrigation District, protestants)

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

Richard T. Roats, Esq.
City Attorney
CITY OF KUNA
PO Box 13
Kuna, ID 83634
Facsimile: 208-922-5989
rroats@kunaID.gov
kunaattorney@icloud.com
(For the City of Kuna, interested party)

☐ 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, interested party)

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

COURTESY COPIES TO IDWR AND OTHER NON-PARTIES:

James Cefalo
Hearing Officer
Eastern Regional Office
Idaho Department of Water Resources
900 North Skyline Dr., Ste. A
Idaho Falls ID 83402-6105
Facsimile: 208-525-7177
james.cefalo@idwr.idaho.gov

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

Sharla Cox
Administrative Assistant
Eastern Regional Office
Idaho Department of Water Resources
900 North Skyline Dr., Ste. A
Idaho Falls ID 83402-6105
Facsimile: 208-525-7177
sharla.cox@idwr.idaho.gov

☐ 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

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

Sarah A. Klahn, Esq.
White & Jankowski, LLP
511 Sixteenth St, Ste 500
Denver, CO 80202-4224
sarahk@white-jankowski.com
Facsimile: (303) 825-5632
(For the City of Pocatello, withdrawn)

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

Kathleen Marion Carr, Esq.
Office of the Field Solicitor
U.S. DEPARTMENT OF THE INTERIOR
960 Broadway Ave, Ste 400
Boise, ID 83706
Facsimile: 208-334-1918
kathleenmarion.carr@sol.doi.gov
(For the U.S. Bureau of Reclamation, withdrawn)

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

E. Gail McGarry
Program Manager, Water Rights & Acquisitions
U.S. BUREAU OF RECLAMATION
Pacific Northwest Regional Office
1150 N Curtis Rd
Boise, ID 83706-1234
Facsimile: 208-378-5305
emcgarry@ usbr.gov
(For the U.S. Bureau of Reclamation, withdrawn)

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

Matt J. Howard, Esq.
Water Rights Analyst
U.S. BUREAU OF RECLAMATION
Pacific Northwest Regional Office
1150 N Curtis Rd
Boise, ID 83706-1234
Facsimile: 208-378-5305
mhoward@ usbr.gov
(For the U.S. Bureau of Reclamation, withdrawn)

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

Paul L. Arrington, Esq.
Director
Idaho Water Users Association
1010 W Jefferson St, Ste 101
Boise, ID 83702
Facsimile: 208-344-2744
paul@iwua.org

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

Christopher H. Meyer