Christopher H. Meyer [ISB No. 4461]
Michael P. Lawrence [ISB No. 7288]
GIVENS PURSLEY LLP
601 W Bannock St
Boise, Idaho 83702
PO Box 2720
Boise, Idaho 83701-2720
Office: (208) 388-1200
Fax: (208) 388-1300
www.givenspursley.com
Attorneys for Applicant SUEZ Water Idaho Inc.

RECEIVED
NOV 03 2017
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 DISCUSSION OF SURFACE WATER APODS**

TABLE OF CONTENTS

I. Summary of Boise River surface water rights 3

II. Twelve surface water rights and entitlements were not included in the IMAP 4

- A. Water Right Nos. 63 20041, 63 169F, 63 243E, and 63-243H 4
- B. Water Right No. 63-31409 5
- C. Exchange and contract rights 5

III. The only surface water right included in the IMAP: No. 63-12055 5

IV. Effects of adding an upstream POD 6

- A. No effect on senior rights 6
- B. Possible effect on junior rights 6

CERTIFICATE OF SERVICE 8

DISCUSSION

During the status conference on August 24, 2017, questions arose over the effect of adding a second point of diversion ("POD") to the permit for surface water right No. 63-12055. This submission is provided to the Idaho Department of Water Resources ("IDWR") by Applicant SUEZ Water Idaho Inc. ("SUEZ") in response to those questions.

The quick answer is that the addition of a second POD upstream of the Marden Treatment Plant for No. 63-12055 will not and cannot affect any surface water right senior to 1993. Existing surface rights junior to 1993 can be protected through appropriate conditioning.

Questions were also raised about why some water rights are not included in the IMAP. This submission re-caps prior explanations as to this.

I. SUMMARY OF BOISE RIVER SURFACE WATER RIGHTS

SUEZ owns 13 surface water rights and entitlements. Six are Boise water rights or permits. Five are Snake River exchange rights. Two are storage contract rights.

Of the six Boise River surface water rights, only one is included in the IMAP:

Table 1 Boise River Surface Water Right Included in IMAP			
Water Right No.	**Priority Date**	**POD(s) (surface water intakes)**	**cfs**
63-12055	9/8/1993	Marden	24.80
Boise River Surface Water Rights Not Included in IMAP			
Water Right No.	**Priority Date**	**POD(s) (surface water intakes)**	**cfs**
63-20041 (formerly 63-165L)	6/1/1866	Marden	0.68
63-169F	6/1/1868	Marden	0.81
63-243E	5/1/1889	Marden	3.30
63-243H	5/1/1889	Marden	0.93
63-31409	1/18/2002	Marden & Columbia	20.00

II. TWELVE SURFACE WATER RIGHTS AND ENTITLEMENTS NOT INCLUDED IN THE IMAP

The IMAP includes most, but not all, water rights and entitlements in SUEZ's portfolio. This section explains why 12 of SUEZ's 13 surface water rights and entitlements were not included in the IMAP. An explanation of why ten of SUEZ's 112 ground water rights were not included in the IMAP is set out in *Suez's 2017 Update Report on IMAP and 2065 Master Water Plan* (with errata dated April 28, 2017) at pages 9-13 and footnote 15 at page 16.[1]

As has been explained before, SUEZ's gap analysis is based on a comparison of future need to the quantity available under all water rights and entitlements in SUEZ's portfolio, not just the 103 water rights and permits included in the IMAP. See, *Suez's 2017 Update Report on IMAP and 2065 Master Water Plan* (April 28, 2017) at pages 9-10 and 22-23; *Master Water Plan for the Years 2015 to 2065* (with errata dated April 28, 2017) at pages 35-42.

A. Water Right Nos. 63-20041, 63-169F, 63-243E, and 63-243H

At the time the IMAP was filed, four Boise River surface water rights now decreed to SUEZ were held in the name of other entities (Nos. 63-20041, 63-169F, 63-243E, and 63-243H). When the IMAP was filed, SUEZ (then United Water Idaho) intended to claim them in the SRBA. However, as explained in the original IMAP submission, SUEZ thought it unwise to include them in the IMAP because their status was unresolved:

> In order to avoid potentially distracting side issues over which entity has the right to change these water rights and other complexities unique to these interests, UWID intends to exclude them from this IMAP.

IMAP (amended April 9, 2003) at page 38.

During the SRBA, these four rights were decreed to SUEZ. Accordingly, SUEZ could seek to amend the IMAP today to add these rights to the transfer package. But SUEZ has not elected to do so, in order to expedite resolution of the current IMAP.

B. Water Right No. 63-31409

The application for permit for Water Right No. 63-31409 was filed on November 16, 2001, and the permit was not issued until March 4, 2004. Thus, the permit did not exist when the IMAP was filed on May 4, 2001 nor when it was amended on April 9, 2003. Moreover, there is no need to change this right, because the permit as issued authorizes alternative points of diversion ("APODs") at both the Marden and Columbia Treatment Plants.

C. Exchange and contract rights

The five Snake River exchange rights are not included in the IMAP because exchanges are inherently complex and could add to confusion in IMAP proceeding. The two storage water contracts are not included in the IMAP, because these are not SUEZ's privately held water rights.

III. THE ONE SURFACE WATER RIGHT INCLUDED IN THE IMAP: NO. 63-12055

As noted in *Suez's 2017 Update Report on IMAP and 2065 Master Water Plan* (April 28, 2017) (Table 2 at page 10), the IMAP includes only one surface water right. This is a permit for Water Right No. 63-12055. It has a September 8, 1993 priority and one point of diversion for the Marden Treatment Plant (near the Warm Springs Golf Course below the diversion for the Ridenbaugh canal). The IMAP seeks to add a second point of diversion, upstream at SUEZ's

---

[1] Briefly, one was only a permit application when the original IMAP was filed, four were later-discovered SRBA claims, two were removed from IMAP to facilitate transfer actions, and three are Ranney collector rights split off during the SRBA.

Columbia Treatment Plant (above the Ridenbaugh canal and below the New York canal diversion at Diversion Dam). This would create a mini-APOD authority with two PODs.

IV. EFFECTS OF ADDING AN UPSTREAM POD

A. No effect on senior rights

Water rights senior to 1993 (the priority date of No. 63-12055) would not be injured by the addition of a POD at the Columbia Treatment Plant. The priority system protects those rights, and would result in curtailment of No. 63-12055, in the event there is not enough water to satisfy both SUEZ's right and the senior. In other words, the addition of an APOD provides no exemption from the priority system. If needed to satisfy their priorities, seniors could call water past SUEZ's APOD.

Accordingly, the water rights of Protestant Nampa Meridian Irrigation District, which are senior to No. 63-12055, would be unaffected by the proposed new APOD at Columbia, even though it is upstream of NMID's point of diversion for the Ridenbaugh Canal at Barber Park.

B. Possible effect on junior rights

The addition of an upstream APOD could injure junior surface rights with points of diversion between Marden and Columbia. To SUEZ's knowledge (based on an examination of IDWR's website), there are only three such rights:[2]

Table 2

Surface Rights Between Marden & Columbia Junior to 1993

Water Right No.	Owner	Priority Date	cfs	Purpose
63-12577	Idaho Shakespeare Festival	12/2/1999	0.11	Aesthetic
63-31878	Bown Crossing LLC	8/19/2003	4.50	Aesthetic
63-33341	City of Boise, Parks & Rec	2/18/2010	0.54	Irrigation

[2] In the event SUEZ inadvertently has failed to identify other junior surface rights between Marden and Columbia, the discussion in this section likely would apply to them as well.

In order to avoid injury to these (and any similarly situated rights), IDWR may find it appropriate to impose a condition on No. 63-12055 (if its proposed transfer in IMAP is approved) limiting SUEZ's diversions under that right at Columbia Treatment Plant so as to avoid impairment of junior surface rights existing as of the time of approval of the IMAP.[3] (Again, seniors already are protected by virtue of their priority.)

Respectfully submitted this 3rd day of November, 2017.

GIVENS PURSLEY LLP

By _____
Christopher H. Meyer

By _____
Michael P. Lawrence

Attorneys for SUEZ Water Idaho Inc.

[3] Conditioning might come in the form of a subordination to specific water rights or in the form of the "APOD condition language" employed by IDWR for ground water rights.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 3rd day of November, 2017, 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 IDWR, 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

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
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
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 Water & Sewer District, protestant 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

COURTESY COPIES TO:

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
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
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

Garrick Nelson, P.E. 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
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
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	☐ ☐ ☐ ☐ ☒	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	☐ ☐ ☐ ☐ ☒	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	☐ 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