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**BEFORE THE IDAHO DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO**

IN THE MATTER OF APPLICATIONS
FOR PERMIT NOS. 63-34079 AND 63-
34080 IN THE NAME OF CHRIS EMMERT

**MUNICIPAL PROVIDERS'
RESPONSE TO BOISE PROJECT'S
MOTION TO STRIKE AND
MEMORANDUM IN OPPOSITION**

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INTRODUCTION

This is the combined response of the City of Nampa and Suez Water Idaho Inc., by and through their attorneys Givens Pursley LLP, the City of Meridian and the City of Caldwell, by and through their attorney Honsinger Law, PLLC, the City of Eagle, by and through its attorneys Moore Smith Buxton & Turcke, Chartered, the City of Boise, by and through its attorney Abigail R. Germaine, and the City of Kuna, by and through its attorney Richard T. Roats (collectively “Municipal Providers”) to the following documents filed by Protestant Boise Project Board of Control (“Boise Project”) on or about July 19, 2017:

- *Motion to Strike*
- *Memorandum in Opposition to Petition for Intervention and in Support of Motion to Strike (“Boise Project’s Brief”)*

ARGUMENT

I. RESPONSE TO *MOTION TO STRIKE*

Municipal Providers filed *Municipal Providers’ Brief in Opposition to Petition for Reconsideration (“Municipal Provider’s Brief”)* contemporaneously with *Municipal Providers’ Petition to Intervene (“Petition to Intervene”)* on July 14, 2017. As explained in the *Petition to Intervene* at page 10, the *Municipal Provider’s Brief* was filed in order to meet the 14-day deadline provided by the Department’s rules. It goes without saying that, if the Hearing Officer were to deny the *Petition to Intervene*, he should disregard *Municipal Provider’s Brief*. Even if he were to deny the *Petition to Intervene*, however, *Municipal Provider’s Brief* should remain in the record for purposes of exceptions or appeal.

II. RESPONSE TO *BOISE PROJECT’S BRIEF*

Municipal Providers do not see a need to clutter the record with a more detailed response. Suffice it to say that if Municipal Providers have not established a sufficient nexus and interest to

justify intervention here, the Department would need to do an about-face as to longstanding practice, the result of which would be to insulate the Department from legitimate concerns raised by water right holders directly affected by the precedent established by contested case rulings. Municipal Providers' interest in this matter is not academic. These water right holders are geographically located so as to be directly affected by whatever mitigation precedent is established in this litigation.

Boise Project cites case law saying that in order to establish standing (which is not the same as the standard for intervention¹), Municipal Providers must show a distinct and palpable interest that is not like one suffered alike by all citizens in the jurisdiction. Municipal Providers have amply met that standard. They own water rights that could be affected by this ruling. That is not true of "all citizens in the jurisdiction."²

Boise Project ignores the "bait and switch" nature of how it behaved in this proceeding. Instead, Boise Project suggests that Municipal Providers were not entitled to rely on the protest, but should have read the briefs throughout the proceeding to see if new issues arose. That is not a credible standard.

The other points raised by Boise Project are transparently wrong or irrelevant.

¹ *Perry v. Proposition 8 Official Proponents*, 587 F.3d 947, 950 n.2 (9th Cir. 2009) ("We have yet to decide whether putative intervenors must satisfy standing independently of the parties to the case."). Elizabeth Zwickert Timmermans, Note, *Has the Bowsher Doctrine Solved the Debate?: The Relationship Between Standing and Intervention as of Right*, 84 Notre Dame L. Rev. 1411 (2009).

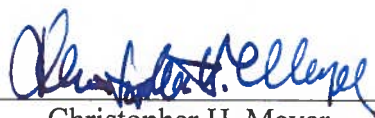
² See *Miles v. Idaho Power Co.*, 116 Idaho 635, 641, 778 P.2d 757, 763 (1989) (Johnson, J.) (Idaho Power Company ratepayers, though a large class, were sufficiently distinct from the general population to have standing to challenge the Swan Falls Agreement); *Alpert v. Boise Water Corp.*, 118 Idaho 136, 795 P.2d 298 (1990) (Boyle, J.) (customers of the water company had standing to challenge a franchise fee imposed by the City of Boise on the water company). Relying on *Miles*, the *Alpert* Court recognized that the class of ratepayers is nearly as large as the class of taxpayers in general, but nonetheless found standing. *Alpert*, 118 Idaho at 139, 795 P.2d at 301 (quoting *Miles*, 116 Idaho at 642, 778 P.2d at 764, which in turn was quoting *United States v. SCRAP*, 412 U.S. 699, 687-88 (1973)).

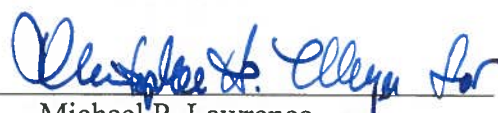
ORAL ARGUMENT

Municipal Providers defer to the Hearing Officer as to whether oral argument would be helpful on any of the pending matters.

Respectfully submitted this 20th day of July, 2017.

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By 
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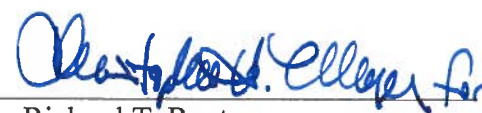
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 20th day of July, 2015, the foregoing was filed, served, and copied as follows:

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