

IMAP SETTLEMENT AGREEMENT BETWEEN BOISE PROJECT ET AL. AND SUEZ

Boise Project Board of Control, Big Bend Irrigation District, Boise-Kuna Irrigation District, and Wilder Irrigation District ("Irrigation Entities") and SUEZ Water Idaho Inc. ("SUEZ") (collectively "Parties") enter into this IMAP Settlement Agreement ("*Agreement*").

RECITALS

1. **IMAP proceeding.** On May 4, 2001, SUEZ (then known as United Water Idaho Inc.) filed a set of applications with the Idaho Department of Water Resources ("IDWR") entitled *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*. The IMAP is intended to quantify SUEZ's reasonably anticipated future needs ("RAFN") pursuant to the Municipal Water Rights Act of 1996 and thereby to protect its existing portfolio of rights from forfeiture during its planning horizon. The IMAP also seeks to integrate SUEZ's water rights portfolio by making each of its wells an alternate point of diversion ("APOD") for every ground water right (except those associated with its Ranney collectors).

2. **Protests.** The Irrigation Entities and others protested SUEZ's IMAP application.

3. **IMAP stay and relaunch.** The IMAP was stayed by order of IDWR on December 18, 2003. On July 6, 2012, nearly a decade later, following issuance of partial decrees to SUEZ in the Snake River Basin Adjudication ("SRBA"), IDWR approved SUEZ's motion to lift the stay in the IMAP proceeding.

4. **Recent pleadings.** On March 16, 2018, the Boise Project Board of Control filed its *Motion for Summary Judgment to Limit Planning Horizon ("MSJ")*. On April 26, 2018, the Irrigation Entities and SUEZ jointly submitted a *Notice of Withdrawal of Discovery and Stipulation Regarding Scope of Protest ("Stipulation")*.

5. **Narrowing of issues.** As reflected in the *Stipulation*, the Parties have resolved concerns over all issues presented by the IMAP (including APODs, the quantification of RAFN, and the need for a reopener provision) except for the issue of the duration of the planning horizon as reflected in the *MSJ*. The Parties then engaged in further discussions aimed at addressing and resolving the Irrigation Entities' concerns over the duration of the 50-year planning horizon sought by SUEZ.

6. **Basis of agreement.** SUEZ has a substantial portfolio of water rights, permits, and other entitlements. Based on current projections, that portfolio will enable SUEZ to meet its RAFN through the year 2058. In order to resolve the Irrigation Entities' protests, SUEZ proposed to sharply limit its ability to fill the "gap" between its portfolio of water rights and other entitlements and its anticipated water needs at the end of its 50-year planning horizon. Based on those limitations, described below, the Boise Project Board of Control agreed to withdraw its MSJ and the Irrigation Entities agreed to withdraw their protests of the IMAP, as set out in the *Stipulated and Conditional Withdrawal of Protest ("Withdrawal of Protest")* filed in this matter.

7. **Private agreement.** At an IMAP status conference on May 31, 2018, the Parties were advised by the Hearing Officer and IDWR staff that it is unlikely that IDWR would be able or willing to attach conditions to the IMAP water rights that impose limitations on new appropriations. The Hearing Officer and IDWR staff suggested that it would be more

appropriate for the Irrigation Entities and SUEZ to enter into a private side agreement to establish those limitations. Accordingly, the Parties have entered into this *Agreement* the terms of which are set out below.

TERMS OF AGREEMENT

If SUEZ obtains final approval for its 50-year planning horizon and the RAFN quantification (370.87 cfs) set out in the SUEZ's *Master Water Plan for the Years 2015 to 2065* ("*Master Water Plan*"), SUEZ and the Irrigation Entities agree as set out in Paragraph Nos. 8 through 25 below. If that condition is not met, the Parties are released from this *Agreement* and from the *Stipulation*.

8. **Restriction on new appropriations.** SUEZ will not seek any new appropriation of ground water or of natural flow surface water from the Boise River basin to reduce or fill the "gap" between its water rights portfolio and its RAFN. The "gap" is currently quantified at 40.29 cfs and estimated to be the additional amount (beyond the currently authorized 330.58 cfs of water rights, decrees, permits, and other long-term (non-rental) entitlements) that will need to be acquired to meet peak demand in the year 2065.

9. **Aquifer improvement projects.** In some instances, it may be helpful to SUEZ to undertake aquifer improvement projects with water diverted under water rights it owns. In these projects, water under another valid existing water right owned by SUEZ is injected or otherwise placed in an aquifer for water quality, system efficiency, or storage purposes. It may then be necessary for SUEZ to obtain a new water right (i.e., appropriation) to divert a corresponding quantity of water (i.e., to take out the water previously placed in the aquifer). Under these arrangements, the new appropriation would not result in any net increase in SUEZ's system-wide authority to divert, because the water placed in the aquifer already was owned by SUEZ.

Whether viewed as mitigation or storage, the result does not increase the overall quantity of water SUEZ is entitled to divert and provide to its customers. Accordingly, Paragraph No. 8 does not prohibit such undertakings so long as the result does not increase SUEZ's overall system-wide effective diversion authority. In contrast, a new appropriation of ground or surface water for injection into the aquifer and subsequent removal would be prohibited under Paragraph No. 8.

10. Changes and conveyances. Paragraph No. 8 does not prohibit SUEZ from changing or conveying its water rights, permits, or other entitlements through transfer, exchange, purchase, sale, lease, or otherwise so long as the effect does not increase SUEZ's overall system-wide effective diversion authority.

11. Contracting for storage and willing-seller acquisitions. Paragraph No. 8 (which only applies to new appropriations) does not prohibit SUEZ from reducing or filling its "gap" (i.e., increasing its system-wide authorization to divert more than the currently authorized 330.58 cfs referenced in Paragraph No. 8) by contracting for storage or by acquiring licensed, decreed, or permitted water rights or other entitlements (or portions thereof) held by others through purchase, sale, lease, rental, agreement, contribution, gift, bequest, or devise.

12. Notice regarding acquisition of permits. The clarification of Paragraph No. 8 set out in Paragraph No. 11 allows the acquisition of permits held by others to fill the "gap," because SUEZ often expands its certificated area (aka service area) to include new developments or other areas to which existing water rights (including permits) are appurtenant. Like all municipal providers, SUEZ may be expected or required to acquire these water rights (including permits) as part of the expansion of service. SUEZ agrees to give advance notice to the Irrigation Entities of all acquisitions of a water right permit or interest therein. This notice requirement reflects good

faith commitments made by the Parties to each other in the spirit of cooperation. It is not intended to be enforced through judicial or administrative proceedings.

13. Reductions in authorized quantity. SUEZ's agreement to Paragraph No. 8 is premised upon its existing portfolio and the "gap" analysis set out in SUEZ's *Master Water Plan* at pages 35-42. As explained there, the "gap" analysis is based on all water rights, permits, and other entitlements in SUEZ's portfolio and assumes that SUEZ's existing permits will be licensed at the permitted quantities. In the event that any of SUEZ's permits are not licensed at the permitted quantities or if for any other reason any existing water right, permit, or entitlement counted in the "gap" analysis in the *Master Water Plan* is reduced in quantity, the limitation on new appropriations set out in Paragraph No. 8 shall be relaxed but only to the extent of allowing SUEZ to seek new appropriations to make up for the reduction in the effective quantity of existing water rights, permits, and other entitlements described in the *Master Water Plan*.

14. Licensing of permits. Conditioned upon satisfaction of the other terms of this *Agreement* and in the *Withdrawal of Protest* filed in this matter, the Irrigation Entities agree to take no action in opposition to SUEZ's efforts to obtain licenses for its existing permits at the permitted quantities to meet its RAFN.

15. Duration. The limitations on new appropriations set out above shall remain in effect for 20 years. If analysis and evidence undertaken during the next "reopener" or other proceeding entailing re-evaluation or modification of SUEZ's RAFN indicates a material change to the modeled "gap" quantity presented in its *Master Water Plan for the Years 2015 to 2065*, the Irrigation Entities stipulates that they will attempt to negotiate and pursue a mutually agreeable resolution of any concerns they have in response to the changed circumstances with Suez and other interested parties. In the event the Parties are unable to reach a mutually agreeable

resolution, any Party may petition the Idaho Department of Water Resources to initiate a contested case to resolve the dispute.

16. Contact information. Notice to Irrigation Entities required under this *Agreement* shall be provided in writing or by email to:

Shelley M. Davis, Esq.
Barker Rosholt & Simpson LLP
PO Box 2139
Boise, ID 83701-2139
smd@idahowaters.com

or to such other representative of Irrigation Entities as it shall designate in writing or by email.

Notice to SUEZ required under this *Agreement* shall be provided in writing or by email to:

Marshall Thompson
Vice President and General Manager
SUEZ Water Idaho Inc.
8248 W Victory Rd
Boise, ID 83709
marshall.thompson@suez-na.com

or to such other representative of SUEZ as it shall designate in writing or by email.

17. Cooperation and communication. In order to facilitate and enhance cooperation and communication between the Parties, the Parties agree to meet informally from time to time upon the request of either Party. These meetings are intended to provide an ongoing opportunity for constructive dialog on issues of mutual concern regarding water supply infrastructure, public policy, and long term planning to meet the municipal water needs of their customers. These meetings will be attended by staff of the respective Parties and such others as the Parties may invite. This provision reflects the Parties' efforts to improve lines of communication, but noncompliance with this provision shall not be deemed a breach of this *Agreement*.

18. Legal counsel. In negotiating this *Agreement*, the Parties have consulted and been represented by their respective legal counsel.

19. Modification. This *Agreement* may be modified by the Parties by mutual agreement at any time. To be effective, such modifications shall be memorialized and acknowledged by both Parties in a writing and/or email(s).

20. Enforcement. In the event of a material breach of this *Agreement* (except for the notice requirement in Paragraph 12 and the cooperation requirement in Paragraph 17), the non-breaching Party may seek judicial enforcement by way of specific enforcement or other appropriate relief. However, such breach will not result in nullification of the withdrawal of the *MSJ* or protests as provided in the *Withdrawal of Protest* filed in this matter.

21. No third party rights. This *Agreement* is entered into solely for the benefit of the Parties. The *Agreement* creates no third party rights.

22. Authorization. Each of the undersigned represent that they are authorized to enter into this *Agreement* on behalf of the Party they represent.

23. Counterparts. This *Agreement* may be executed in counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same *Agreement*.

24. Effective date. This *Agreement* shall be effective only if executed by both Parties. The effective date shall be the last date shown on the signature blocks below.

25. Renewal. This *Agreement* shall remain in effect for twenty years from the effective date, and may be renewed for additional ten-year periods upon agreement of the Parties.

BOISE PROJECT BOARD OF CONTROL

Date: 7-3-2018

By: Richard Durrant
Richard Durrant
Chairman

BIG BEND IRRIGATION DISTRICT

Date: _____

By: _____
Ben Witte
Chairman

BOISE-KUNA IRRIGATION DISTRICT

Date: 7-3-18

By: Kenneth Cole
Kenneth Cole
Chairman

WILDER IRRIGATION DISTRICT

Date: _____

By: _____
Diane Gooding
Chairman

SUEZ WATER IDAHO INC.

Date: _____

By: _____
Gregory P. Wyatt
Vice President and General Manager

BOISE PROJECT BOARD OF CONTROL

Date: _____

By: _____

Richard Durrant
Chairman

BIG BEND IRRIGATION DISTRICT

Date: 7/3/18

By: Neil Allison

~~Ben Witte~~ Neil Allison
Chairman

BOISE-KUNA IRRIGATION DISTRICT

Date: _____

By: _____

Kenneth Coles
Chairman

WILDER IRRIGATION DISTRICT

Date: _____

By: _____

Diane Gooding
Chairman

SUEZ WATER IDAHO INC.

Date: _____

By: _____

Gregory P. Wyatt
Vice President and General Manager

BOISE PROJECT BOARD OF CONTROL

Date: _____

By: _____
Richard Durrant
Chairman

BIG BEND IRRIGATION DISTRICT

Date: _____

By: _____
Ben Witte
Chairman

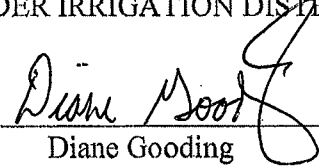
BOISE-KUNA IRRIGATION DISTRICT

Date: _____

By: _____
Kenneth Coles
Chairman

WILDER IRRIGATION DISTRICT

Date: _____

By: _____

Diane Gooding
Chairman

SUEZ WATER IDAHO INC.

Date: _____

By: _____
Gregory P. Wyatt
Vice President and General Manager