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DEPARTMENT OF
WATER RESOURCES

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IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

In Re SRBA

Case No. 39576

**PIONEER'S RESPONSE TO UNITED STATES'
MOTION TO REVISE NON-DESTRUCT
ORDER**

Pioneer Irrigation District hereby files this Response to United States' Motion to Revise Non-Destruct Order, pursuant to Section 6(f)(4)(b) of this Court's Administrative Order 1 ("AO1"). It is supported by the Affidavit of Scott L. Campbell, filed contemporaneously herewith (the "Campbell Affidavit").

I. BACKGROUND

On February 1, 2008, the United States filed a Motion to Revise Non-Destruct Order and Supporting Memorandum with this Court (hereinafter, the "U.S. Motion" or the

“Motion”). In its Motion, the United States requests that this Court “lift the non-destruct Order for documents related to subcases where the water right claims have reached partial decree or have been disallowed and for which any challenge or appeal period has run.” (U.S. Motion at 3.)

The United States seeks relief from Section 5(b) of AO1, which provides:

No party to the SRBA may destroy any document or evidence kept in any medium which relates to a pending claim in the SRBA or has been prepared for use in the SRBA, except on motion and order by the SRBA Court.

While the U.S. Motion deals primarily with document retention issues affecting the U.S. Forest Service, the relief is specifically requested by “the United States.” In addition, if the Motion is granted, the relief from the document retention requirement could potentially apply to all parties to the SRBA, including federal agencies other than the U.S. Forest Service.

Pioneer objects to the United States’ request for the reasons set forth in this Response.

II. ARGUMENT

On January 30 and 31, 2008, a deposition of Mr. Jerrold D. Gregg took place in SRBA subcase 63-3618, *i.e.*, the Lucky Peak Storage subcase. Relevant portions of the transcript of that deposition are attached to the Campbell Affidavit as Exhibit A. Mr. Gregg is the Area Manager of the Bureau of Reclamation’s Snake River Area Office. During his deposition, Mr. Gregg was questioned regarding his knowledge of any “documents, correspondence, or information, in written or electronic form, that relates to that process of the [federal government’s] adoption of the 1985 Water Control Manual.” (Gregg Depo., 35:2-5.) In response, Mr. Gregg stated that, “Our filing system—of course, a lot of those memos have been

purged from the files. We have record retention policies. So I would say most of them are gone now.” (Gregg Depo., 35:8-11.)

The United States, therefore, has admitted that it is already in violation of the document retention requirement in Section 5(b) of this Court’s AO1. Critically, the United States has relied specifically and heavily on the Water Control Manual in the Lucky Peak subcase to support its claim to water right 63-3618.¹ Therefore, the documents that relate to the adoption of that Manual “relate[] to a pending claim in the SRBA” and therefore should have been retained pursuant to Section 5(b) of AO1. According to Mr. Gregg, the federal government has not retained these documents.

Based on this admitted violation of this Court’s document retention requirements, Pioneer objects to the relief requested by the United States in its Motion. The determination regarding whether documents are solely related to claims which have been decreed or disallowed will be entirely within the subjective discretion of the United States. Pioneer is concerned that the United States may deem some documents as appropriate to dispose of, when in fact such documents may relate to pending water right claims in the SRBA. Allowing destruction of such documents at this stage will eliminate the possibility of any review in discovery of the documents by parties other than the United States. This would prejudice the rights of Pioneer and other parties to the SRBA to pursue litigation in the most effective means available under AO1 and the Idaho Rules of Civil Procedure.

¹ See, e.g., Br. in Supp. of United States’ Mot. for Summ. J., p. 13 (SRBA Subcase No. 63-3618); Resp. Br. in Supp. of United States’ Mot. for Summ J., pp. 9-10 (SRBA Subcase No. 63-3618)

III. CONCLUSION

The United States has admitted that it has not complied with this Court's document retention requirement. Therefore, it should not be granted further relief from that requirement while there are still pending claims in the SRBA.

DATED this 11th day of March, 2008.

MOFFATT, THOMAS, BARRETT, ROCK &
FIELDS, CHARTERED

By Scott L. Campbell
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 11th day of March, 2008, I caused a true and correct copy of the foregoing **PIONEER'S RESPONSE TO UNITED STATES' MOTION TO REVISE NON-DESTRUCT ORDER** to be served by U.S. Mail, postage prepaid, and addressed to the SRBA Expedited Service List.

Scott L. Campbell
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