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DEPARTMENT OF
WATER RESOURCES

DISTRICT COURT - SRBA Fifth Judicial District County of Twin Falls - State of Idaho	
DEC 15 2008	
By _____	Clerk
_____	Deputy Clerk

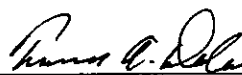
IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

In Re SRBA	)	SUBCASES: 63-00166A, 63-00166B, 63-00167A,
	)	63-00167B, 63-00179A, and 63-00179C
	)	(Pioneer Irrigation District/Franklin Ditch
	)	Co/Mason Creek Ditch Co)
Case No. 39576	)	
_____	)	SETTLEMENT CONFERENCE REPORT

A mandatory settlement conference was held on December 12, 2008, in Boise, Idaho. Attached is a sign-in sheet of those who attended as well as a summary of the claims and some of the issues discussed.

Final settlement of all issues will likely be reached within two weeks after counsel for the Franklin Ditch Company has the opportunity to prepare and submit language to be included as a remark with the water rights. Representatives of the Mason Creek Ditch Company generally agreed with positions of the Franklin Ditch Company. The parties expected to incorporate language from I.C. § 42-108 concerning changes in the water rights – attached is a copy of the statute. Counsel for IDWR said they would likely concur in the suggested resolution.

DATED December 15, 2008.



TERRENCE A. DOLAN
Settlement Moderator
Snake River Basin Adjudication

Jeff Scott pioneer Irr. 459-3617

Alan Newbill Pioneer Irr.

Scott Campbell Pioneer Irrigation 345-2000

~~JOHN J. McEvoy~~ Moffatt Thomas

JOHN J. McEvoy MASON CREEK 899-7264

MARTIN GALVIN MASON CREEK 585-2922

Jon Gould Franklin Ditch 342-4591

JAN SHURTE IDWR 334-2190

Andrea Cartney OAG for IDWR 287-4810

SETTLEMENT CONFERENCE
Friday, December 12, 2008, 10:00 a.m.
IDWR Western Region Office
2735 Airport Way, Boise, ID
Settlement Moderator – Terrence A. Dolan

63-166A

DR – Disallow: “Recommended as right no. 63-166B.”

C / O – Pioneer Irrigation District / **Scott C. Campbell** / **Andrew J. Waldera**

63-166B

DR – 15.4 cfs, 2,056 acres, July 3, 1866, *Stewart Decree*

C – Franklin Ditch Co. / **Jon C. Gould**

O – Pioneer Irrigation District

63-167A

DR – Disallow: “Recommended as right no. 63-167B.”

C / O – Pioneer Irrigation District

63-167B

DR – 27.6 cfs, 2,056 acres, October 29, 1880, *Stewart Decree*

C – Franklin Ditch Co.

O – Pioneer Irrigation District

63-179A

DR – Disallow: “Recommended as right no. 63-179C.”

C / O – Pioneer Irrigation District

63-179C

DR – 36.2 cfs, 1,504.3 acres, June 1, 1869, *Stewart Decree*

C – Mason Creek Ditch Co. – **Martin Galvin, pro se**

O – Pioneer Irrigation District

R – **John J. McEvoy, pro se**

IDWR – Andrea L. Courtney / Garrick L. Baxter

Note:

DR = *Director's Report, Reporting Area 13, Basin 63, IDWR Part 3*, filed
December 19, 2006.

C = Claimant

O = Objector

R = Respondent

y been appropriated
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ss. 93 C.J.S., Waters,

waters. — All
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as those ditches,
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., § 3246; C.S.,

tain Home Irrigation
P.2d 1005 (1945).

Water.
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r a sale or a rental,
in action against cap-
pel it to furnish him
if any, and he cannot
to furnish perpetual
as is required to be
appropriator. Gerber
Irrigation Dist., 16
8).

ion Against Diver-

d change in the place
jury, if any, must be
it. Colthorp v. Moun-
st., 66 Idaho 173, 157

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ion district's applica-
of point of diversion
judicata. Colthorp v.
tion Dist., 66 Idaho
5).

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of seepage water of
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relief restraining lat-
ste or to beneficial use
tain Home Irrigation
P.2d 1005 (1945).

or diversion of return
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land, the seepage of
by plaintiff and his
alleging an abandon-
a cause of action.
Home Irrigation Dist.,
1005 (1945).

Utilization of Seepage.

Construction of ditches to utilize seepage or waste water rightfully under control of another was not authorized by this section. United States v. Haga, 276 F. 41 (D. Idaho 1921).

Water in Canals.

There is a priority among consumers from canal analogous to that which exists among appropriators from a natural stream, and rights of later applicants for water are subor-

dinate to those of prior consumers, which, when exercised in full, exhaust the carrying capacity of the canal. Gerber v. Nampa & Meridian Irrigation Dist., 19 Idaho 765, 116 P. 104 (1911).

Collateral References. 78 Am. Jur. 2d, Waters, §§ 176-184.

Right of appropriator of water to recapture water which has escaped or is otherwise no longer within his immediate possession. 89 A.L.R. 210.

42-108. Change in point of diversion, place of use, period of use, or nature of use — Application of act. — The person entitled to the use of water or owning any land to which water has been made appurtenant either by a decree of the court or under the provisions of the constitution and statutes of this state, may change the point of diversion, period of use, or nature of use, and/or may voluntarily abandon the use of such water in whole or in part on the land which is receiving the benefit of the same and transfer the same to other lands, if the water rights of others are not injured by such change in point of diversion, place of use, period of use, or nature of use, provided; if the right to the use of such water, or the use of the diversion works or irrigation system is represented by shares of stock in a corporation or if such works or system is owned and/or managed by an irrigation district, no change in the point of diversion, place of use, period of use, or nature of use of such water shall be made or allowed without the consent of such corporation or irrigation district. Any permanent or temporary change in period or nature of use in or out-of-state for a quantity greater than fifty (50) cfs or for a storage volume greater than five thousand (5,000) acre-feet shall require the approval of the legislature, except that any temporary change within the state of Idaho for a period of less than three (3) years may be approved by the director without legislative approval.

Any person desiring to make such change of point of diversion, place of use, period of use, or nature of use of water shall make application for change with the department of water resources under the provisions of section 42-222, Idaho Code. After the effective date of this act, no person shall be authorized to change the period of use or nature of use, point of diversion or place of use of water unless he has first applied for and received approval of the department of water resources under the provisions of section 42-222, Idaho Code. [R.S., § 3157; 1899, p. 380, § 11; reen. R.C. & C.L., § 3247; C.S., § 5563; I.C.A., § 41-108; am. 1943, ch. 53, § 1, p. 101; am. 1947, ch. 80, § 1, p. 130; am. 1969, ch. 303, § 1, p. 905; am. 1981, ch. 147, § 1, p. 253; am. 1986, ch. 313, § 1, p. 763.]

Compiler's notes. Section 2 of S.L. 1943, ch. 53 is compiled herein as § 42-222.

Section 2 of S.L. 1969, ch. 303 is compiled herein as § 42-222.

Section 2 of S.L. 1981, ch. 147 is compiled as § 42-221.

Section 2 of S.L. 1986, ch. 313 is compiled as § 42-201.

Section 2 of S.L. 1947, ch. 80 declared an

emergency. Approved February 25, 1947.

Section 4 of S.L. 1981, ch. 147 declared an emergency. Approved March 27, 1981.

Sec. to sec. ref. This section is referred to in §§ 42-222, 42-1425, 42-1763A and 50-1805A.

Cited in: Schodde v. Twin Falls Land & Water Co., 161 F. 43 (9th Cir. 1908); Nettleton v. Higginson, 98 Idaho 87, 558 P.2d 1048

CERTIFICATE OF MAILING

I certify that a true and correct copy of the SETTLEMENT CONFERENCE REPORT was mailed on December 15, 2008, with sufficient first-class postage to the following:

PIONEER IRRIGATION DISTRICT
Represented by:
ANDREW J WALDERA
101 S CAPITOL BLVD 10TH FLOOR
PO BOX 829
BOISE, ID 83701-0829
Phone: 208-345-2000

JOHN J MC EVOY
1703 N KCID RD
CALDWELL, ID 83605
Phone: 208-899-7264

FRANKLIN DITCH CO
Represented by:
DANIEL V. STEENSON
455 S THIRD ST
PO BOX 2773
BOISE, ID 83701-2773
Phone: 208-342-4591

FRANKLIN DITCH CO
Represented by:
JON C GOULD
RINGERT CLARK CHARTERED
PO BOX 2773
BOISE, ID 83701

PIONEER IRRIGATION DISTRICT
Represented by:
SCOTT L CAMPBELL
101 S CAPITOL BLVD 10TH FLOOR
PO BOX 829
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MASON CREEK DITCH CO
C/O RICHARD BICANDI
1905 MASON
CALDWELL, ID 83605
Phone: 208-459-0428

MARTIN GALVIN
PO BOX 115
MIDDLETON, ID 83644

DIRECTOR OF IDWR
PO BOX 83720
BOISE, ID 83720-0098