

RECEIVED

AUG 09 2010

DEPARTMENT OF
WATER RESOURCES

Attorneys for Objector Pioneer Irrigation District

Scott L. Campbell, ISB No. 2251
Andrew J. Waldera, ISB No. 6608
MOFFATT, THOMAS, BARRETT, ROCK &
FIELDS, CHARTERED
101 S. Capitol Blvd., 10th Floor
Post Office Box 829
Boise, Idaho 83701
Telephone (208) 345-2000
Facsimile (208) 385-5384
18946.0006

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

Subcase Nos. 63-00166B 63-00167B

**PIONEER IRRIGATION DISTRICT'S FIRST
SET OF DISCOVERY REQUESTS TO
FRANKLIN DITCH COMPANY**

COMES NOW Objector Pioneer Irrigation District ("Pioneer"), by and through undersigned counsel, and pursuant to SRBA Administrative Order ("AO") Section 1 and Idaho Rules of Civil Procedure 26, 33, 34, and 36, and hereby requests that Franklin Ditch Company (the "Company") respond to the interrogatories, requests for production, and requests for admission set forth below, and produce copies of the requested documents under oath no later than thirty (30) days from the date of receipt thereof as provided in said Rules.

The following Introduction and Definitions shall apply to these discovery requests:

I. INTRODUCTION

In responding to these interrogatories, requests for production, and requests for admission you are requested to furnish all information available to you, or subject to your reasonable inquiry, including information in the possession of your attorneys, investigators, employees, agents, representatives, guardians, consultants, expert witnesses and/or any other person or persons acting on your behalf, and not merely such information as is known to you by your own personal knowledge.

In responding to these discovery requests, you must make a diligent search of your records and all other papers and materials that are in your possession or available to you or your representatives. If any item has subparts, please answer each part separately and in full. If you cannot answer any of the following discovery requests in full after exercising due diligence to secure the information necessary to do so, please so state and answer or respond to the extent possible, specifying your inability to answer the remainder and stating whatever information or knowledge you have concerning the unanswered portions.

If you object to any discovery request on the ground that the information sought is privileged and nondiscoverable, please state the basis for your claim of privilege and, in the case of any request for production, "identify" the "documents" and "records" which you object to producing, in sufficient detail as to enable the court to rule upon claim of privilege.

These discovery requests are deemed to be continuing. If, after responding to these discovery requests, you acquire any further information responsive to them, you are hereby requested, pursuant to Idaho Rule of Civil Procedure 26(e), to file and serve supplemental

answers or responses containing such further information. If you fail to respond to one or more of these discovery requests or if your responses are evasive or incomplete, Pioneer may move for an order compelling you to fully respond to these discovery requests and to pay the reasonable expenses, including attorney fees, incurred by Pioneer in obtaining the order.

If you fail to produce “documents” and “records” requested herein or fail to answer any interrogatory on the ground that the necessary information, “documents,” or “records” are not within your care, custody, possession or control, please state what efforts you have made to obtain such information, “documents,” or “records.”

If you fail to answer or respond to any of these discovery requests in full or fail to supplement your answers or responses as requested, Pioneer may move the Court for an order precluding you from introducing into evidence, or otherwise using either at trial or on motion for summary judgment, any testimony, witness, exhibit, “document,” “record,” publication, or other item or information not timely disclosed in your response to these discovery requests.

II. DEFINITIONS

When asked to “identify” a person or entity or when asked for the “identity” of a person or entity, please state:

- (a) The name of the person or entity;
- (b) The present or last known address and telephone number of the person or entity;
- (c) The present or last known occupation, business, and employer of the person or entity; and
- (d) The present or last known address and telephone number of the employer of the person or entity.

When asked to “identify” a record or document or when asked for the “identity” of a “record” or “document,” please state:

- (a) The nature or type of “record” or “document” (*e.g.*, letter, photograph, tape recording, etc.);
- (b) The subject matter of the “record” or “document” and/or a general description of its contents;
- (c) The “identity” of the person who authored or created the “record” or “document”;
- (d) The date of the document or, if it bears no date, the date on which it was prepared or created; and
- (e) The physical location of the original and any copies of the “record” or “documents” of which you are aware and the “identity” of the present custodian of the “record” or “document.”

In responding to these discovery requests, the following definitions shall apply:

The terms “record” and/or “document(s)” mean any tangible thing upon which has been placed handwriting, e-mail transmission, typewriting, printing, photocopying, photographing, digital or computerized data, or any other form of recording, communication or representation, including but not limited to letters, words, pictures, sounds, magnetic impulses, symbols, numbers or any combination thereof, whether or not visible to the unassisted human eye. This definition shall include, but is not limited to, any and all originals, copies or drafts of any and all of the following: records, notes, summaries, schedules, contracts, agreements, drawings, blueprints, sketches, invoices, orders, acknowledgments, diaries, reports, findings, forecasts, tests, appraisals, reports, memoranda, medical records, telephone recordings, telephone

logs, telephone lists, diaries, calendars, planners, daytimers, correspondence and letters, e-mail, telegrams, telexes, facsimiles and faxes, cables, tapes, tape recordings, statements, receipts, invoices, check registers, transcripts, recordings, photographs, witness statements, pictures, films, videotapes, computer programs, computer databases, models, things and materials of any nature whatsoever. Any "document" which contains any comment, notation, addition, insertion or marking of any kind which is not part of another document is to be considered as a separate "document."

III. INTERROGATORIES

INTERROGATORY NO. 1: Please state the name, address, and telephone number of each and every individual known to you who has any knowledge of, or who claims to have knowledge of any facts or evidence discoverable in this matter, together with a summary of each person's knowledge.

INTERROGATORY NO. 2: Please identify any and all expert witnesses you intend to call at the trial in this matter, and please:

- (a) Summarize each expert's background and qualifications;
- (b) State the subject matter of each expert's expected testimony;
- (c) State the substance of the facts and opinions to which each expert is expected to testify; and
- (d) Disclose all underlying facts and data upon which each expert bases his or her expert opinions.

INTERROGATORY NO. 3: If you contend that Pioneer, or any individual(s) acting on behalf of the Pioneer, has made any admission or statement against any of the Pioneer's interests in this matter, please state the following:

- (a) The identity of the individual making the admission and/or statement;
- (b) The date, time, and location where the admission and/or statement was made;
- (c) The name and address of each individual present at the time the admission and/or statement was made;
- (d) Whether the admission and/or statement was written or oral; and
- (e) If the admission and/or statement was oral, please state the complete content of the admission and/or statement to the best of your knowledge.

INTERROGATORY NO. 4: Please identify the ultimate source (*i.e.*, river, creek, or drain) of each of your claimed water rights.

INTERROGATORY NO. 5: Please identify the location of the Point of Diversion for your claimed water rights and please identify by water right number the water right(s) diverted through each Point of Diversion identified. For purposes of this Interrogatory, "Point of Diversion" means the point from which your claimed water right(s) are diverted from their ultimate source (*i.e.*, river, creek, or drain).

INTERROGATORY NO. 6: Please identify each and every headgate owned by you or members/patrons of your Company that diverts water from the Highline Canal, also known as the Caldwell Highline Canal (hereinafter referred to as the "Highline Canal"). When identifying said headgates, please also describe/identify the physical, geographic location of the same.

INTERROGATORY NO. 7: Please describe in full and complete detail how your claimed water rights are conveyed from their respective sources to your claimed Place of Use. When answering this Interrogatory, please describe the source of the underlying water right and

the names and locations of the facilities through which the water rights are conveyed to your claimed Place of Use.

INTERROGATORY NO. 8: Please describe in full and completed detail the historical origins, development, and conveyance of your claimed water rights.

INTERROGATORY NO. 9: Please describe in full and complete detail any and all operation and maintenance activities you perform on the Highline Canal and/or its corresponding Boise River diversion infrastructure.

INTERROGATORY NO. 10: Please identify and describe in full and complete detail any and all agreements or contracts (oral or written) you have entered into with either Pioneer or the Idaho and Oregon Land Improvement Company concerning your claimed water rights and/or any corresponding water conveyance facilities/infrastructure (*i.e.*, canals, ditches, headgates, diversion dams, etc.).

INTERROGATORY NO. 11: Please describe in full and complete detail all facts supporting your claimed ownership of your water rights.

INTERROGATORY NO. 12: Please list/identify all water rights used for irrigation of your claimed Place of Use.

INTERROGATORY NO. 13: Please identify all documents and/or tangible objects which have been provided to each expert who has been retained or consulted by you or your attorneys with regard to the above-captioned subcases.

INTERROGATORY NO. 14: If any of your responses to any of the requests for admission contained herein are anything other than an unqualified admission, please explain in full and complete detail the reason/facts supporting your response (*i.e.*, your qualified admission or denial).

**IV.
REQUESTS FOR PRODUCTION OF DOCUMENTS**

REQUEST FOR PRODUCTION NO. 1: If any of the admissions and/or statements identified in Interrogatory No. 3 were written, please produce copies of any and all documentation of the admissions and/or statements.

REQUEST FOR PRODUCTION NO. 2: Please produce any and all exhibits you intend to offer as evidence during trial in this matter.

REQUEST FOR PRODUCTION NO. 3: Please produce any and all documents or other items which you have provided to any expert who has been retained or consulted by you or your attorneys with regard to the subject matter of this action.

REQUEST FOR PRODUCTION NO. 4: Please produce any and all documents that are in any way responsive to any of the interrogatories contained herein and/or that are in any way supportive of your answers to any of the interrogatories contained herein.

REQUEST FOR PRODUCTION NO. 5: Please produce any and all documents that are in any way responsive to any of the requests for admission contained herein and/or that are in any way supportive of your responses to any of the requests for admission contained herein.

REQUEST FOR PRODUCTION NO. 6: Please produce any maps or diagrams depicting the Company's irrigation system.

REQUEST FOR PRODUCTION NO. 7: Please produce any and all other additional documentation that is in any way supportive of any of your claims or allegations in the above-captioned subcases.

**V.
REQUESTS FOR ADMISSION**

REQUEST FOR ADMISSION NO. 1: Please admit that the Point of Diversion for water right nos. 63-00166B and 63-00167B is also the Point of Diversion or heading of the Highline Canal.

REQUEST FOR ADMISSION NO. 2: Please admit that the Highline Canal is owned, operated, and maintained by Pioneer.

REQUEST FOR ADMISSION NO. 3: Please admit that all Boise River diversion infrastructure (*i.e.*, diversion dam and headgate) corresponding to the Highline Canal is owned, operated, and maintained by Pioneer.

REQUEST FOR ADMISSION NO. 4: Please admit that you do not contribute any monetary funds for the operation or maintenance of the Highline Canal.

REQUEST FOR ADMISSION NO. 5: Please admit that you do not contribute any monetary funds for the operation or maintenance of the Boise River diversion infrastructure (*i.e.*, diversion dam and headgate) corresponding to the Highline Canal.

REQUEST FOR ADMISSION NO. 6: Please admit that you do not contribute any in-kind labor or equipment assistance for the operation or maintenance of the Highline Canal.

REQUEST FOR ADMISSION NO. 7: Please admit that you do not contribute any in-kind labor or equipment assistance for the operation or maintenance of the Boise River diversion infrastructure (*i.e.*, diversion dam and headgate) corresponding to the Highline Canal.

REQUEST FOR ADMISSION NO. 8: Please admit that water right nos. 63-00166B and 63-00167B are natural-flow based Boise River rights.

REQUEST FOR ADMISSION NO. 9: Please admit that water right nos. 63-00166B and 63-00167B are conveyed to your claimed Place of Use through the Highline Canal.

REQUEST FOR ADMISSION NO. 10: Please admit that water right nos. 63-00166B and 63-00167B are subject to proportionate reductions as Boise River flows decrease during the course of irrigation season.

REQUEST FOR ADMISSION NO. 11: Please admit that Pioneer has delivered the full quantity of water right nos. 63-00166B and 63-00167B to you when the water rights were otherwise subject to proportionate reduction in times of decreasing natural river flows.

REQUEST FOR ADMISSION NO. 12: Please admit that there are times when you do not divert the full quantity of water right nos. 63-00166B and 63-00167B from the Highline Canal.

REQUEST FOR ADMISSION NO. 13: Please admit that any portions of water right nos. 63-00166B and 63-00167B that are not diverted by you from the Highline Canal flow into the Pioneer delivery/service area.

REQUEST FOR ADMISSION NO. 14: Please admit that you entered into a contract with the Idaho and Oregon Land Improvement Company on or about June 24, 1884, wherein you sold and conveyed to the Idaho and Oregon Land Improvement Company "all of the Water Rights, Sloughs and ditches known as the Franklin Ditch property, or owned or claimed to be owned by the Franklin Ditch Company."

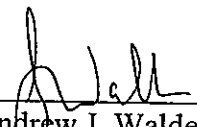
REQUEST FOR ADMISSION NO. 15: Please admit that on or about June 25, 1884, the Idaho and Oregon Land Improvement Company sold and conveyed to you "the first Thirteen Hundred and Fifty (1,350) inches of Water of the Main Caldwell Canal."

REQUEST FOR ADMISSION NO. 16: Please admit that by operation of the contracts referenced in Request for Admission Nos. 14 and 15 above, that the Idaho and Oregon Land Improvement Company retained ownership of all water rights (or portions thereof) formerly owned and conveyed by you except for the 1,350 inches discussed within the contract dated on or about June 25, 1884.

REQUEST FOR ADMISSION NO. 17: Please admit that by operation of the contracts referenced in Request for Admission Nos. 14 and 15 above, that the Idaho and Oregon Land Improvement Company took full and exclusive ownership of the Main Caldwell Canal, also known as the Highline Canal.

DATED this 6th day of August, 2010.

MOFFATT, THOMAS, BARRETT, ROCK &
FIELDS, CHARTERED

By 

Andrew J. Waldera – Of the Firm
Attorneys for Pioneer Irrigation District

CERTIFICATE OF SERVICE

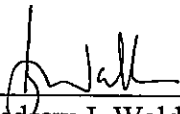
I HEREBY CERTIFY that on this 6th day of August, 2010, I caused a true and correct copy of the foregoing **PIONEER IRRIGATION DISTRICT'S FIRST SET OF DISCOVERY REQUESTS TO FRANKLIN DITCH COMPANY** to be served by the method indicated below, and addressed to the following:

Daniel V. Steenson
Jon C. Gould
RINGERT LAW, CHTD.
455 S. 3rd St.
P.O. Box 2773
Boise, ID 83701-2773

☐ U.S. Mail, Postage Prepaid
☐ Hand Delivered
☐ Overnight Mail
☒ Facsimile

Director
IDAHO DEPARTMENT OF WATER RESOURCES
322 E. Front Street, 6th Floor
P.O. Box 83720
Boise, ID 83720

☒ U.S. Mail, Postage Prepaid
☐ Hand Delivered
☐ Overnight Mail
☐ Facsimile



Andrew J. Waldera