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DEPARTMENT OF
WATER RESOURCES

Attorneys for Franklin Ditch Company, Inc.

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. 63-00166A, 63-00166B
) 63-00167A, 63-00167B, 63-00179A,
) 63-00179C, and 63-32580
)
) FRANKLIN DITCH COMPANY'S
) MEMORANDUM IN SUPPORT OF
) MOTION FOR SUMMARY JUDGMENT
)
)
)

Comes now, Franklin Ditch Company, Inc. ("Franklin"), by and through its counsel of record, Ringert Law Chartered, and submits this *Memorandum in Support of its Motion for Summary Judgment*.

I. INTRODUCTION

This controversy relates to the ownership of water right nos. 63-00166 and 63-00167, decreed in 1906 to Franklin in *Farmers' Coop. Ditch Co. v. Riverside Irrigating Dist. et al.*, aff'd., 14 Idaho 450, 94 P. 761 (1908).

In the Snake River Basin Adjudication ("SRBA"), Pioneer Irrigation District ("Pioneer") filed notices of claims and objections seeking to have Franklin's water rights decreed to Pioneer

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based upon an 1883 agreement between Franklin and Pioneer's predecessor-in-interest and an alleged "historic use and practice" that has existed since 1883.

Pioneer was a party to the 1906 adjudication and is therefore prohibited from seeking to re-adjudicate ownership of water right nos. 63-00166 and 63-00167 in the SRBA. Franklin is therefore entitled to summary judgment confirming its ownership of these water rights, and dismissing Pioneer's notices of claims and objections.

II. FACTS

Franklin was organized in 1880 by several individuals to consolidate their Boise River diversions in order to enhance their water supply in times of shortage. *Gould Aff.*, Ex. 1 at 896-897, 901-903, 907-908, 910. In 1880, they enlarged and extended a Boise River diversion and ditch called the Stapleton ditch, after which it became known as the Franklin Ditch. *Id.* At the time Franklin was formed, approximately 2,200 acres were irrigated from the Franklin Ditch. *Id.*, at 897. Franklin owned and operated the Franklin Ditch to convey water to its shareholders until it sold the ditch to the Idaho and Oregon Land and Improvement Company ("IOLIC"). *Id.*

Franklin entered an agreement with IOLIC for the sale of the ditch in 1883 ("1883 Agreement"), and both parties executed deeds to effectuate the sale in 1884 ("1884 Deeds"). *Larson Aff.*, Ex. 1; Ex. 2; Ex. 3; *Gould Aff.*, Ex. 1, 897-898, 903, 916-919, 921. In 1883-1884, the IOLIC extended the Franklin Ditch to the City of Caldwell, after which the ditch also became known and the Caldwell Canal. *Gould Aff.*, Ex. 1, 897-898, 903-904, Ex. 2 at 1129. Pioneer took over ownership and operation of the Franklin Ditch in 1902 from the IOLIC, and enlarged the ditch. *Id.*, Ex. 1 at 897-898; Ex. 2 at 1116-1117.

At all times from 1883 until 1905/1906, IOLIC and Pioneer delivered exclusively to Franklin water that had been appropriated by Franklin's shareholders for use upon their lands as required by the 1883 Agreement. *Id.*, Ex. 1 at 899, 903-905, 916-919; Ex. 2 at 1116-1117, 1129-1130.

Franklin and Pioneer were parties to *Farmers' Coop. Ditch Co. v. Riverside Irrigating Dist. et al.*, aff'd., 14 Idaho 450, 94 P. 761 (1908). Judge Stewart presided, and the decree he issued is commonly referred to as the "Stewart Decree." The aforementioned facts are from the testimony of witnesses for Franklin and Pioneer contained in the *Transcript on Appeal* in the *Farmers' Coop. Ditch Co* case. *Id.*, Ex. 1; Ex. 2. The 1883 Agreement and the 1884 Deeds were admitted in evidence during the trial. *Id.*, Ex. 1 at 898, 921.

On the basis of the aforementioned evidence, Judge Stewart found that the Franklin shareholders had appropriated 770 inches of water from the Boise River on July 3, 1866, and that Franklin had enlarged the Franklin Ditch to appropriate an additional 1,380 inches from the Boise River on October 28, 1880, for use on the lands of the Franklin shareholders. *Id.*, Ex. 3, at 354, 415. These water rights were awarded to Franklin in the Stewart Decree (currently denominated as water right nos. 63-00166 and 63-00167). *Id.*, at 462. Judge Stewart awarded to Pioneer a June 1, 1884 right to divert 2,655 inches from the Boise River through the Franklin Ditch/Caldwell Canal, based on IOLIC's acquisition and enlargement of the ditch pursuant to the 1883 Agreement. *Id.*, at 381, 433, 484.

In 1990, Franklin and Pioneer filed notices of claims to water right nos. 63-00166 and 63-00167. The Idaho Department of Water Resources ("IDWR") designated Pioneer's claims as 63-00166A and 63-00167A, and designated Franklin's claims as 63-00166B and 63-10067B. See *Gould Aff.*, Exhibits 4 and 5. Pioneer filed amended claims in 2000 and 2005. The basis for Pioneer's

claims is the 1883 Agreement and an alleged “historic use and practice” that has existed since the date of the 1883 Agreement.

In 2006, IDWR filed Director’s reports recommending that Franklin’s claims for water right nos. 63-00166B and 63-00167B be decreed as claimed, and that Pioneer’s claims for water right nos. 63-00166A and 63-00167A be disallowed. In 2007, Pioneer filed objections to these Director’s reports.

III. STANDARD OF REVIEW

Summary judgment must be granted when “the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” I.R.C.P. 56(c); *Friel v. Boise City Housing Authority*, 126 Idaho 484, 485, 887 P.2d 29, 30 (1994). The court liberally construes the record in the light most favorable to the party opposing the motion, drawing all reasonable inferences and conclusions in that party’s favor. *Friel*, 126 Idaho at 485, 887 P.2d at 30 (citing *Farm Credit Bank of Spokane v. Stevenson*, 125 Idaho 270, 272, 869 P.2d 1365, 1367 (1994); *Harris v. Dept. of Health and Welfare*, 123 Idaho 295, 298, 847 P.2d 1156, 1159 (1992)). If reasonable people could reach different conclusions or draw conflicting inferences from the evidence, a summary judgment motion must be denied. *Stevenson*, 125 Idaho at 272, 869 P.2d at 1367. However, if the evidence reveals no disputed issues of material fact, what remains is a question of law, over which the court exercises free review. *Id.*

The IDWR Director’s reports constitute prima facie evidence of the nature and extent of a claimed water rights. *N. Snake Ground Water Dist. v. Gisler* (in Re Srba Case No. 39576), 136 Idaho 747, 750 (2002). In objecting to a water claim that has been recommended in the Director’s report,

the objectors have the burden of rebutting the recommendations contained in those Director's reports.

IV. ARGUMENT

A. Pioneer is Precluded From Claiming Ownership of Franklin's Water Rights.

The SRBA Presiding Judge has explained the binding effect of prior decrees on parties to the SRBA:

The Idaho Supreme Court has held that a prior decree entered in a private adjudication is binding upon the parties (and their privies) to that decree. *State v. Hagerman Water Right Owners*, 130 Idaho 736, 742, 947 P.2d 409,415 (1997). In its decision, the Court cites I.C. § 42-1401A, which defines a private adjudication as binding "those persons joined in the action and for the administration of such rights." I.C. § 42-1401A (9). Further, with limited exception, I.C. § 42-1420 states that a "decree in a general adjudication shall be conclusive as to the nature and extent of all water rights in the adjudicated water system." I.C. § 42-1420 (1). Therefore, in the SRBA, water rights decreed in a prior adjudication are binding upon the parties (and their successors-in-interest) to that decree. Such parties bound by that earlier decree may not collaterally attack it in a later adjudication, such as the SRBA. The SRBA cannot serve as a second opportunity for parties and their successors-in-interest to re-adjudicate their prior decreed water rights. Subject to certain exceptions, this Court has consistently prohibited parties from reopening prior decrees in the SRBA.

Order Conditionally Granting Motion to File Late Notice of Claim; Order Requiring Filing of Amended Claim; Order Requesting Amended Director's Report if Amended Claim is Filed in Subcases 74-15015 and 74-15861 (January 12, 2009).

Under the doctrine of *res judicata*, in an action between the same parties (and their successors-in-interest) upon the same claim or demand, the former adjudication concludes parties and privies not only as to every matter offered and received to sustain or defeat the claim but also as to every matter which might and should have been litigated in the first suit. *Sagewillow, Inc. v. Idaho Dep't of Water Res.*, 138 Idaho 831, 844 (2003). The 'sameness' of a cause of action for purposes of application of the doctrine of *res judicata* is determined by examining the operative facts

underlying the two lawsuits. *Id.* quoting *Houser v. Southern Idaho Pipe & Steel, Inc.*, 103 Idaho 441, 649 P.2d 1197 (1982).

Water right nos. 63-00166 and 63-00167 were awarded to Franklin by the Stewart Decree. The basis for Pioneer's claim of ownership in the SRBA, the 1883 Agreement and delivery and use of Franklin's water rights thereafter, were the subject of testimony in the prior adjudication. The 1883 Agreement and the 1884 deeds were entered in evidence. Pioneer is bound by the Stewart Decree, and may not collaterally attack its determination of Franklin's ownership of these rights in the SRBA. Franklin is therefore entitled to summary judgment confirming its ownership of these water rights, and dismissing Pioneer's notices of claims and objections.

V. CONCLUSION

For the above stated reasons, Franklin respectfully requests that this Court grant its motion for summary judgment.

DATED this 14th day of September, 2010.

RINGERT LAW CHARTERED

By: 
Daniel V. Steenson
Attorney for Franklin Ditch Company

CERTIFICATE OF SERVICE

I hereby certify that on this 14th day of September, 2010, I served a true and correct copy of the foregoing document by U.S. mail, postage pre-paid to the following:

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