

Attorneys for Claimant and Objector
Pioneer Irrigation District

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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

Subcase Nos. 63-00166A 63-00166B
63-00167A 63-00167B
63-00179A 63-00179C
63-32580

**AFFIDAVIT OF DAWN FOWLER IN
SUPPORT OF MOTION FOR PARTIAL
SUMMARY JUDGMENT AND MOTION
TO REMAND**

STATE OF IDAHO)
) ss.
County of Canyon)

Dawn Fowler, having been duly sworn upon oath, deposes and states as follows:

1. I am the current Secretary/Treasurer for Pioneer Irrigation District. I have been Pioneer's Secretary/Treasurer since February 2, 2009. Prior to that time, I was Pioneer's Assistant Secretary/Treasurer, a position that I began in February 2004, when my employment with Pioneer began. As such, I am responsible for maintaining, and have access to, Pioneer's documents, files, and business records. I make this affidavit based upon my own personal knowledge.

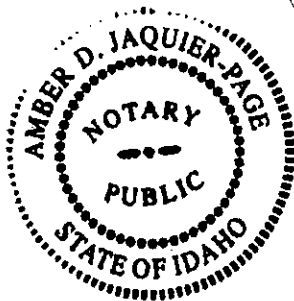
2. Attached hereto as Exhibit "A" is a true and correct copy of an Indenture dated June 21, 1902, conveying the "Caldwell Canal" from the Caldwell Land Company Limited to the Pioneer Irrigation District. This Indenture is located within Pioneer's file entitled "Deeds: Hiline Canal," which is maintained at Pioneer's business offices at 3804 S. Lake Avenue, Caldwell, Idaho 83605. Today, this canal is referred to as the Caldwell Highline Canal or simply as the Highline Canal.

3. Based upon my knowledge and experience with Pioneer, I have always understood Pioneer to be the owner of the Caldwell Highline Canal. I am not aware of any current or historical claims to ownership of the Caldwell Highline Canal by any other party after Pioneer's acquisition of the canal in 1902.

Further your affiant sayeth naught.


Dawn Fowler

SUBSCRIBED AND SWORN to before me this 10th day of September, 2010.



Amber D. Jaquier-Page
NOTARY PUBLIC FOR IDAHO
Residing at *Middleton*
My Commission Expires *9/26/12*

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 13th day of September, 2010, I caused a true and correct copy of the foregoing **AFFIDAVIT OF DAWN FOWLER IN SUPPORT OF MOTION FOR PARTIAL SUMMARY JUDGMENT AND MOTION TO REMAND** to be served by the method indicated below, and addressed to the following:

Mason Creek Ditch Company

Represented by:

Albert P Barker

BARKER ROSHOLT & SIMPSON LLP

1010 W. Jefferson, STE 102

P.O. Box 2139

Boise, ID 83701-2139

☒ U.S. Mail, Postage Prepaid

☐ Hand Delivered

☐ Overnight Mail

☐ Facsimile

Franklin Ditch Co.

Represented by:

Jon C. Gould

Daniel V. Steenson

RINGERT CLARK CHARTERED

P.O. Box 2773

Boise, ID 83701

☒ U.S. Mail, Postage Prepaid

☐ Hand Delivered

☐ Overnight Mail

☐ Facsimile

Martin Galvin

P.O. Box 115

Middleton, ID 83644

☒ U.S. Mail, Postage Prepaid

☐ Hand Delivered

☐ Overnight Mail

☐ Facsimile

John J. McEvoy

1703 N. KCID Road

Caldwell, ID 83605

☒ 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

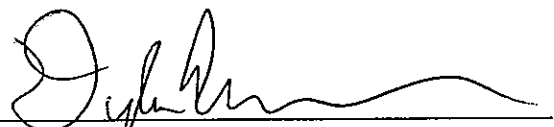

Dylan B. Lawrence

EXHIBIT A

TO THE AFFIDAVIT OF DAWN FOWLER IN SUPPORT OF MOTION
FOR PARTIAL SUMMARY JUDGMENT AND MOTION TO REMAND

In Re SRBA Case No. 39576

Subcase Nos. 63-00166A, 63-00166B, 63-00167A,
63-00167B, 63-00179A, 63-00179C, 63-32580

THIS INDENTURE, made the twenty-first day of June, A.D. 1902, between The Caldwell Land Company Limited, a corporation organized and existing under the laws of the State of Idaho, whose principal place of business is in the City of Caldwell, County of Canyon, State of Idaho, party of the first part and the Pioneer Irrigation District and Irrigation District organized and existing under and by virtue of the laws of the State of Idaho, the party of the second part, Witnesseth:

That whereas the said party of the first part is a corporation duly incorporated and existing under and by virtue of the laws of the State of Idaho, and in pursuance of the Statutes in such cases made and provided, has acquired and is the owner of a certain irrigation ditch, water-rights and rights of way, known as the Caldwell Canal and Irrigation Ditch and Water-right, (sometimes called the Strahorn System) situate in Canyon County, State of Idaho; and whereas the Board of Directors of said party of the first part duly assembled did by resolution duly adopted authorize and empower Walter Sebre ~~XXX~~ President and Albert W. Gipson, Secretary to sell and convey said property to the said Pioneer Irrigation District for the sum of ten thousand dollars, payable in the bonds of said District and authorized and directed said Walter Sebre President and Albert W. Gipson, Secretary, to make execute and deliver, for and in ~~XXX~~ behalf of said Caldwell Land Company Limited, and as its act and deed a conveyance of said Irrigation Ditch, water-right, and rights of way, and to affix to said conveyance the corporate name and seal of said corporation.

Now, therefore, in pursuance of said authorization and the payment of said sum of ten thousand dollars bonds of said party of the second part, the receipt whereof is hereby acknowledged, the said party of the first part does by these presents grant, bargain, sell, convey and confirm unto the said party of the second part its successors and assigns forever, to wit:-

All the water rights, canal, laterals, ditches, rights of way, headgates, and sloughs constituting and ~~and~~ System known as the Caldwell Canal and Irrigation Ditch & Water Right embracing the Irrigation Ditch and Water Right, (sometimes called the Strahorn System) the same including the water rights, sloughs, and ditches formerly known as the Franklin property having source on the South side of Boise River on the farm of William Frost, about seven miles above Middleton, Idaho, which was by deed of conveyance dated June 24th, 1884, and recorded in Book 2 of Deeds, Page 370, records of Canyon County, Idaho, conveyed by the Franklin Ditch Company to the Idaho and Oregon Land Improvement Company, and including also all the water rights, canals and ditches, and property conveyed to the Caldwell Real Estate and Water Company by the said Idaho and Oregon Land Improvement Company by deed dated September 22nd, 1890, and recorded in Book 6 of Deeds, Page 465, Records of Canyon County, Idaho, and including all the water rights acquired and added to said

system having source and tapping the Boise river on the South side near the Canyon and Ada County boundary line on the farms of William Frost and Adam Shindler and extending thence in a Westerly course to and in Canyon County, Idaho, to the City of Caldwell, Idaho: the main ditch or canal being about 18 miles long.

Together with all and singular the tenements, hereditaments, and appurtenances thereunto belonging or in anywise appertaining and the reversion and reversions, remainder and remainders, rents, issues and profits thereof, and all estate, right, title and interest in and to the said property, as well in law as in equity, of the said party of the first part:

To have and to hold, All and singular, the above mentioned and described premises, together with the appurtenances, unto the said party of the second part, and to its successors and assigns forever. and the said party of the first part, and its successors and assigns, the said premises in the quiet and peaceable possession of the said party of the second part, its successors and assigns, against the said party of the first part and its successors and assigns and against all and every person and persons whomsoever, lawfully claiming or to claim the same shall and will warrant and by these presents forever DEFEND, except as against the Franklin Ditch Co. its successors and assigns.

In witness whereof, the said party of the first part, by resolution of its Board of Directors, has caused these presents to be subscribed by its President and Secretary, and its Corporate name and seal to be hereunto affixed, the day and year first above written.

Walter Seabee
By *Walter Seabee* President.

Attest

John H. Griffiths
Secretary.

State of Idaho,) ss
County of Canyon

On this 23rd day of June, A.D. 1962, before me H.A. Griffiths, a Notary Public, in and for the County of Canyon, State of Idaho, personally appeared Walter Seabee, personally known to me to be the President of the Caldwell Land Company Limited, the Corporation that executed the foregoing instrument, and acknowledged to me that such Corporation executed the same.

In witness whereof, I have hereunto set my hand and affixed my notarial seal, the day and year in this certificate first above written

H.A. Griffiths
Notary Public.

