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DEPARTMENT OF
WATER RESOURCES

Albert P. Barker, ISB #2867
Shelley M. Davis, ISB #6788
Sarah W. Higer, ISB #8012
BARKER ROSHOLT & SIMPSON LLP
1010 W. Jefferson St., Ste. 102
P.O. Box 2139
Boise, ID 83701-2139
Telephone: (208) 336-0700
Facsimile: (208) 344-6034

Attorneys for Mason Creek Ditch Company

**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	)	
	)	SUBCASE NOS.: 63-00166a, 63-00166b,
	)	63-00167a, 63-00167b, 63-00179a, 63-00179C,
Case No. 39576	)	and 63-32580
	)	
	)	AFFIDAVIT OF ALBERT P. BARKER IN
	)	SUPPORT OF MASON CREEK'S
	)	MOTION FOR SUMMARY JUDGMENT

ALBERT P. BARKER, being first duly sworn upon oath, deposes and states as follows:

1. I am an attorney in the firm Barker Rosholt & Simpson LLP providing legal representation to the Mason Creek Ditch Company in the above captioned matter. I am over the age of 18 and have knowledge of the documents and legal proceedings pertinent to this matter, and I make this affidavit based upon personal knowledge.

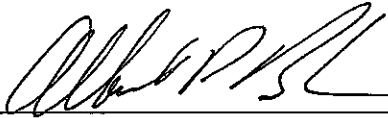
2. Attached hereto as Exhibit A is a true and correct copy of excerpts from the Stewart Decree, including paragraph XLIII (Mason Creek) for water right No. 46 and paragraph LXXVI (Pioneer) for water right Nos. 90, 117 and 135.

3. Attached hereto as Exhibit B is a true and correct copy of excerpts from Pioneer Irrigation District's Response to Mason Creek Ditch Company's First Set of Discovery Requests.

4. Attached hereto as Exhibit C is a true and correct copy of the Idaho Department of Water Resource's Final Recommendation for water right No. 63-00179C.

DATED this 17th day of September, 2010.

BARKER ROSHOLT & SIMPSON LLP

A handwritten signature in black ink, appearing to read 'Albert P. Barker', is written over a horizontal line.

Albert P. Barker

Attorneys for Mason Creek Ditch Company

CERTIFICATE OF SERVICE

I **HEREBY CERTIFY** that on this 17th day of September, 2010, I caused to be served a true and correct copy of the foregoing **AFFIDAVIT OF ALBERT P. BARKER IN SUPPORT OF MASON CREEK'S MOTION FOR SUMMARY JUDGMENT** by the method indicated below, and addressed to each of the following:

Original hand delivered to:

Clerk of the District Court
Snake River Basin Adjudication
P.O. Box 2707
Twin Falls, ID 83303-2707
Fax No. 208-736-2121

Copy mailed to:

IDWR Document Depository
P.O. Box 83720
Boise, ID 83720-0098

Chief, Natural Resources Division
Office of the Attorney General
State of Idaho
P.O. Box 44449
Boise, ID 83711-4449

United States Department of Justice
Environment & Natural Resc Division
550 West Fort Street, MSC 033
Boise, ID 83724

Copy faxed to:

Jon C. Gould
Daniel V. Steenson
Ringert Law
P. O. Box 2773
Boise, ID 83701-2773
Attorneys for Franklin Ditch Company

Scott L. Campbell
Andrew J. Waldera
Moffatt Thomas, et al.
P. O. Box 829
Boise, ID 83701-0829
Attorneys for Pioneer Irrigation District



Albert P. Barker

EXHIBIT “A”

637

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO IN AND FOR THE COUNTY OF CANYON.

7

Farmers' Cooperative Ditch Company (a corporation)

Plaintiff,

vs.

DECREE

Riverside Irrigating District, Limited, (a corporation), The Sie-
benberg Cooperative Ditch Company, Limited (a corporation), Frank
Gilbert, T. W. Boone, Prior Burnett, Thomas Andrews, H. Ray Boudinot,
I. H. Tucker, C. F. J. Peterson, William McKnett, Fred J. Kiesel,
Neil McGarron, Michael Gilbride, Lower Boise Ditch Company, (a corpor-
ation), R. H. Stockton, H. F. Vanderpool, D. D. Campbell, William
Eoss, Smith Stockton, John Atkins, Ben Eoss, John Eoss, D. K. McCon-
nel, John Lempi, John Kammon, Bird Bowman, (substituted for M. R.
Bowman Jr.), D. Mumford, T. T. Johnson, H. Carlyle, Charles Allen,
J. Poeman, Robert McGuire, Frederick Ode, Eureka Ditch Company, (a
corporation), J. Roland, Thomas J. Palmer and Noah W. Palmer (substi-
tuted for Lillian Potter, Administratrix of the Estate of L. D. Potter,
deceased, Susan E. Potter, Thad. S. Potter, Elisha Potter, Lillian
Potter, Ida Potter, James Eaker), C. W. Cooper, Pioneer Dixie Ditch
Company (a corporation), William C. Young, Lizzie Young, Estella C.
Young, E. E. Kirkpatrick, S. H. Mitchell, L. F. Cook, Triphenia Jobs,
administratrix of the estate of J. H. Jobs, deceased, Triphenia Jobs,
Charlotte Conrod, _____ Conrod, her husband, Minta Lund and Frank
Lund, her husband, William Jobs and Alice Jobs, Edith Jobs and Cor-
rinna Jobs, minors, A. Holcomb, George Milner, George Hess, John Thom-
as, H. H. Whitney, Emma S. Lee, Edwin Curtis, Eureka Water Company,
(a corporation), William Simpson, William Lewis, Huston Frost, Elijah
Frost, George Godrich, R. M. Brannan, William Frost, Adam Schindler,
Pioneer Irrigation District, (a corporation), Franklin Ditch Company,
(a corporation), Canyon County Water Company, (an association),
Francis A. Phelps and Frances Phelps husband and wife, John D. Rut-
ledge, James Hartley, Joseph Wilson, Daniel Mastersen, Perry Stoffle,
H. McGill, C. C. Foote, J. E. Smith, Juan Lempi, E. E. Fowler, Thomas

(19)

Sec. 28, all in T. 5 N. R. 5 W. B.M., in the following amount from the following date;

63 0178425 inches, from June 1, 1869; and hereby designated as Right No. 44.

And be adjudged to pay \$28.75 costs, in addition to the costs incurred by him.

XLIII.

That the defendant the MASON CREEK DITCH COMPANY, a corporation, be and it is hereby awarded the use of the waters of Boise River, diverted at a point on the south bank thereof near the center of the east line of Sec. 16, T. 4 N. R. 2 W. B.M., for use upon the lands lying under its canal system, in the following amount from the following date:

63 01791860 inches, from June 1, 1869; and hereby designated as Right No. 46

And be adjudged to pay \$180.20 costs in addition to the costs incurred by it.

XLIV.

That the defendant T. W. Boons be, and he is hereby awarded the use of the waters of Boise River, diverted at a point on the SE $\frac{1}{4}$ of Sec. 25, and SW $\frac{1}{4}$ of Sec. 30, T. 5 N. R. 5 W. B.M., for use upon the NE $\frac{1}{4}$, NW $\frac{1}{4}$ of SE $\frac{1}{4}$, and lots 1, 2 and 3, Sec. 25, T. 5 N. R. 5 W. B.M., in the following amounts and from the following dates;

63 0180175 inches, from June 1, 1869; and hereby designated as Right No. 47

63 0181110 inches, from June 1, 1874; and hereby designated as Right No. 59

And be adjudged to pay \$19.95 costs in addition to the costs incurred by him.

XLV.

That the defendant W. J. HAMMING be, and he is hereby awarded the use of the waters of Boise River, diverted at a point near the middle of the east line of Sec. 17, T. 4 N. R. 1 E. B.M., by a canal running through a part of Secs. 17 and 18, T. 4 N. R. 1 E. B.M., for use upon lands lying under said canal, and situated on Eagle Island, Ada County Idaho, in the following amount and from the following date;

63 0182130 inches, from June 1, 1870; and hereby designated as Right No. 48

And be adjudged to pay \$9.10 costs in addition to the costs incurred by him.

RECORDED

JUN 2 1896

LXVI.

That the defendant the PIONEER IRRIGATION DISTRICT, a corporation, be, and it is hereby awarded the use of the waters of Boise River, diverted from said river at a point on the farm known as the William Frost farm in Sec. 18, T. 4 N. R. 1 W. B.M., through what is known as the Caldwell canal, for use upon the lands lying under its canal system, in the following amount and from the following date;

63-0371 2655 inches, from June 1, 1884, and hereby designated as Right No. 90.

Also, diverted at a point on the south bank of said river opposite the lower part of Eagle Island, in Sec. 24, T. 4 N. R. 1 W. B.M., through what is known as the Phyllis canal, for use upon the lands lying under its canal system, in the following amounts, from the following dates;

63-0224

10000 inches, from Sept. 1, 1890.; and hereby designated as Right No. 117.

63-0225

2817 inches, from April 1, 1904.; and hereby designated as Right No. 135.

And be adjudged to pay \$1083.04 costs in addition to the costs incurred by it.

LXVII.

That the defendant the RIVERSIDE IRRIGATION DISTRICT, a corporation, be, and it is hereby awarded the use of the waters of Boise River, diverted at a point on the south bank of said river near the center line of Sec. 20, T. 4 N. R. 3 W. B.M., for use upon the lands lying under its canal system, in the following amounts, from the following dates;

63-0226

1000 inches, from June 1, 1884. and hereby designated as Right No. 91.

63-0227

4000 inches, from May 1, 1893. and hereby designated as Right No. 124.

63-0228

1000 inches, from Oct. 1, 1899. and hereby designated as Right No. 130.

63-0229

3500 inches, from June 1, 1901. and hereby designated as Right No. 133.

And be adjudged to pay \$665.00 costs in addition to the costs incurred by it.

EXHIBIT “B”

Attorneys for Claimant and Objector
Pioneer Irrigation District

Scott L. Campbell, ISB No. 2251
Andrew J. Waldera, ISB No. 6608
Dylan B. Lawrence, ISB No. 7136
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
18946.0137

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

**PIONEER IRRIGATION DISTRICT'S
RESPONSES TO MASON CREEK DITCH
COMPANY'S FIRST SET OF DISCOVERY
REQUESTS**

COMES NOW Pioneer Irrigation District, by and through undersigned counsel,
and answers and responds to Mason Creek Ditch Company's First Set of Interrogatories,
Requests for Admission and Requests for Production, as follows:

ORIGINAL

Ditch Co. has historically not contributed to the payment of expenses associated with such efforts and lacks any specific authorization from Pioneer to convey the water right through Pioneer's system. Pioneer suspects that some of the water diverted under this right has historically been used on Pioneer lands. Pioneer's Highline Canal does not have sufficient operational capacity to convey all of the water rights which have been recommended with the Highline Canal as the point of diversion. Therefore, Pioneer believes all or a portion of this water right has been forfeited. The diversion rate exceeds a reasonable duty of water when combined with the recommendation for 63-32580 and Mason's potential claim to 63-33392.

INTERROGATORY NO. 3: Please describe, with specificity, each factual and legal basis for Pioneer Irrigation District's claim to the water now identified by water right no. 63-179A.

ANSWER TO INTERROGATORY NO. 3: The water right is diverted, conveyed, and delivered to the water users comprising the Mason Creek Ditch Co. through Pioneer's Highline Canal. Pioneer has performed all of the operation, maintenance, and repair of the Highline Canal. Mason Creek Ditch Co. has historically not contributed to the payment of expenses associated with such efforts and lacks any specific authorization from Pioneer to convey the water right through Pioneer's system. Pioneer suspects that some of the water diverted under this right has historically been used on Pioneer lands.

INTERROGATORY NO. 4: Please describe, with specificity, each factual and legal basis for Pioneer Irrigation District's objection to water right no. 63-32580 claimed by Mason Creek Ditch Company from Mason Creek.

ANSWER TO INTERROGATORY NO. 4: Pioneer's investigations into the factual and legal issues relevant to the recommendation of water right 63-32580 are ongoing, and

Mason's requests to the extent they request the production of privileged documents and information not required by Rule 26(b)(5)(A).

**IV.
RESPONSES TO REQUESTS FOR ADMISSION**

REQUEST FOR ADMISSION NO. 1: Please admit that the Mason Creek Ditch Company was decreed 1860 inches of water in the "Stewart Decree," and that Exhibit B is a true and correct copy of paragraph XLIII from the Stewart Decree decreeing that water right to the Mason Creek Ditch Company.

RESPONSE TO REQUEST FOR ADMISSION NO. 1: Pioneer admits the allegation in Request for Admission No. 1, with the qualification that Exhibit "B" is of poor quality and is not entirely legible; therefore, Pioneer cannot definitively confirm that Exhibit "B" is a true and correct copy of the Stewart Decree.

REQUEST FOR ADMISSION NO. 2: Please admit that Pioneer Irrigation District's claim to water right number 63-179A is for the same water right decreed to the Mason Creek Ditch Company in paragraph XLIII of the Stewart Decree.

RESPONSE TO REQUEST FOR ADMISSION NO. 2: Pioneer admits the allegation in Request for Admission No. 2.

DATED this 9th day of September, 2010.

MOFFATT, THOMAS, BARRETT, ROCK &
FIELDS, CHARTERED

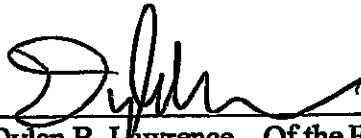
By 
Dylan B. Lawrence – Of the Firm
Attorneys for Pioneer Irrigation District

EXHIBIT “C”

IDAHO DEPARTMENT OF WATER RESOURCES
RECOMMENDED WATER RIGHTS ACQUIRED UNDER STATE LAW

RIGHT NUMBER: 63-179C
NAME AND ADDRESS: MASON CREEK DITCH CO
C/O RICHARD BICANDI
1905 MASON
CALDWELL ID 83605

SOURCE: BOISE RIVER
QUANTITY: 36.200 CFS

TRIBUTARY: SNAKE RIVER

Whenever it becomes necessary for the watermaster to deliver this right the following condition shall apply. This right shall receive 100 percent of its decreed quantity until the natural flow of the waters of the Boise River shall decrease so that all rights containing this condition cannot receive 100 percent of their decreed quantities, at which time this right and the other rights containing this condition shall first be cut to 75 percent of their decreed quantities, as the natural flow of the river decreases, beginning with the latest rights containing this condition and proceeding to the earliest rights containing this condition in the order of their priority dates, and after all of the rights containing this condition shall have been reduced to 75 percent of their decreed quantities, should the natural flow of the waters of the river decrease below the amount necessary to supply 75 percent of those decreed quantities, then this right and the other rights containing this condition, beginning with the latest and proceeding to the earliest, shall be reduced to 60 percent of their decreed quantities.

PRIORITY DATE: 06/01/1869

POINT OF DIVERSION: T04N R02W S24 NENEWE Within CANYON County

PURPOSE AND PERIOD OF USE:

PURPOSE OF USE	PERIOD OF USE	QUANTITY
IRRIGATION	03/15 11/15	36.200 CFS

Diversion for irrigation under this water right prior to April 1 and after October 31 shall occur only when the natural flow in the Boise River below the Star Bridge in Township 04 North, Range 01 West, Section 18, NE¼ of the SE¼ of the SE¼, Boise Meridian (approximate river mile 33.9) is sufficient for water to be available for diversion at the point of diversion described above, provided that any such use of this water right prior to April 1 and after October 31 shall be subordinated to water rights for storage in Lucky Peak Reservoir, Lake Lowell, Arrowrock Reservoir, and/or Anderson Ranch Reservoir, as decreed in SRBA Case No. 39576.

PLACE OF USE:

1504.3 ACRES TOTAL

The boundary encompassing the place of use for this water right is described with a digital boundary as defined by I.C. Section 42-202B(2) and authorized pursuant to I.C. Section 42-1411(2)(h). The data comprising the digital boundary are incorporated herein by reference and are stored on a CD-ROM disk issued in duplicate originals on file with the SRBA District Court and the Idaho Department of Water Resources. A map depicting the place of use is attached hereto to illustrate the place of use described by the digital boundary.

This right can be used to irrigate up to 1504.3 acres within the boundary of the Mason Creek Ditch Company.

OTHER PROVISIONS NECESSARY FOR DEFINITION OR ADMINISTRATION OF THIS WATER RIGHT:

This partial decree is subject to such general provisions necessary for the definition of the rights or for the efficient administration of the water rights as may be ultimately determined by the Court at a point in time no later than the entry of a final unified decree. Section 42-1412(6), Idaho Code.

This right is designated as No. 46 in the Stewart Decree and the Boise Water Distribution Report.

EXPLANATORY MATERIAL: BASIS OF CLAIM - Decreed

Right includes accomplished change in point of diversion pursuant to Section 42-1425, Idaho Code.

This right in Caldwell High Line Canal. Trans #29