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DEPARTMENT OF  
WATER RESOURCES

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 MARK ZIRSCHKY

STATE OF IDAHO )  
 ) ss.  
County of Canyon )

I, MARK ZIRSCHKY, being first duly sworn upon oath, depose and state as  
follows:

1. I am the current Superintendent for the Pioneer Irrigation District, a position I have held since August 2010. As Pioneer's Superintendent, I am responsible for overall district operations, including ensuring proper delivery of water to Pioneer's patrons, and the operation, repair, and maintenance of Pioneer's water delivery and drainage facilities. Prior to becoming the Superintendent, I was Pioneer's Assistant Superintendent, a position I held since 2003. As the Assistant Superintendent, I was responsible for the coordination and supervision of district-wide operation and maintenance activities. I began my employment with Pioneer in 1992. During my tenure with Pioneer, I have participated in extensive operation and maintenance activities on water conveyance facilities owned and/or operated by Pioneer throughout its service area, and have supervised and coordinated such activities by other Pioneer employees. In fact, for the years 1998 through 2003, I was the ditchrider in charge of operating the Caldwell Highline Canal. Based upon my employment with Pioneer since 1992, I am knowledgeable about the operation of Pioneer's irrigation delivery and drainage facilities, including the Caldwell Highline Canal. I make this affidavit based upon my personal knowledge.

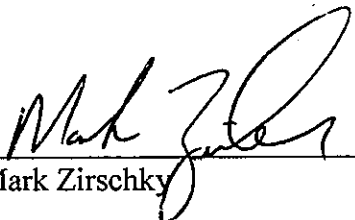
2. Pioneer owns and operates the Caldwell Highline Canal. The Caldwell Highline Canal diverts water from the south channel of the Boise River in Canyon County in the NENE quarter-quarter section of Township 4N, Range 2W, Section 24, Boise Meridian. The Highline Canal runs for approximately ten miles and delivers water to approximately 7,443 acres of land within Pioneer's own district boundaries.

3. There is a particular driveway bridge and culvert within the Caldwell Highline Canal, two photos of which are attached hereto as Exhibit A. This structure is located in the SENW quarter-quarter section of Township 4N, Range 2W, Section 24, Boise Meridian,

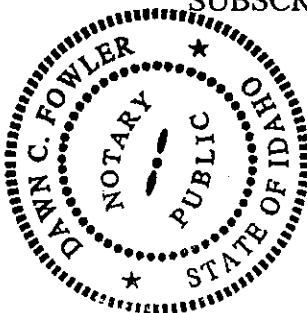
approximately 0.8 miles downstream of the Highline Canal's diversion from the Boise River. I am not aware of the precise date of construction of this culvert. However, it has been there since I began my employment with Pioneer in 1992, and my understanding is that it was originally constructed several years prior to that. Pioneer's records for the property in question reflect the owner of the property to be William C. Clayton. It is my understanding that Mr. Clayton is a member of the Franklin Ditch Company.

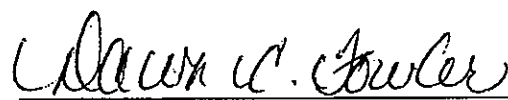
4. Due to the presence of this driveway bridge and culvert in the Caldwell Highline Canal, Pioneer consistently limits its total diversions into the canal at the headgate to the 40-43 cfs range. I believe diversions into the canal in excess of this quantity would risk overtopping the canal banks, flooding of adjacent properties, damage to the canal, and damage to the driveway culvert in question. As long as this driveway culvert is present in the Caldwell Highline Canal, it is unlikely that Pioneer would ever intentionally divert more than 40-43 cfs of water into the canal.

Further your affiant sayeth naught.

  
Mark Zirschky

SUBSCRIBED AND SWORN to before me this 20<sup>th</sup> day of September, 2010.



  
NOTARY PUBLIC FOR IDAHO  
Residing at Boise ID  
My Commission Expires 7-16-2016

### CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 28<sup>th</sup> day of September, 2010, I caused a true and correct copy of the foregoing **AFFIDAVIT OF MARK ZIRSCHKY** 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

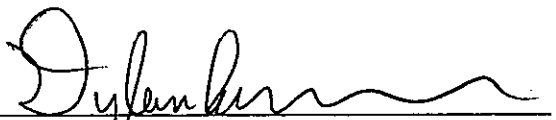
Boise, ID 83720

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☐ Facsimile

  
Dylan B. Lawrence

# **EXHIBIT A**

**To the Affidavit of Mark Zirschky**

*In Re SRBA Case No. 39576*

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



