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DEPARTMENT OF
WATER RESOURCES

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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 DYLAN LAWRENCE IN
SUPPORT OF PIONEER IRRIGATION
DISTRICT'S RESPONSE IN OPPOSITION TO
FRANKLIN DITCH COMPANY'S MOTION
FOR SUMMARY JUDGMENT**

STATE OF IDAHO)
) ss.
County of Ada)

DYLAN B. LAWRENCE, having been duly sworn upon oath, deposes and states

as follows:

**AFFIDAVIT OF DYLAN LAWRENCE IN SUPPORT OF
PIONEER'S RESPONSE IN OPPOSITION TO FRANKLIN
DITCH COMPANY'S MOTION FOR SUMMARY JUDGMENT - 1**

1. I am an attorney duly licensed to practice law in the state of Idaho. I am one of the attorneys representing Pioneer Irrigation District in the above-referenced matter. I have access to the client's files in this matter, and make this affidavit based upon my personal knowledge.

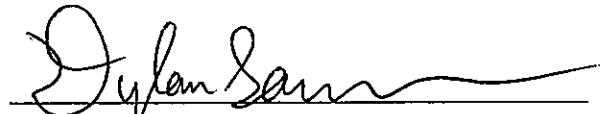
2. Attached hereto as Exhibit A is a true and correct copy of relevant excerpts of IDWR's SRBA Claim Investigation Handbook. As reflected in Exhibit B hereto (30(b)(6) Dep. of IDWR, 11:20-12:1), IDWR has confirmed that this version of the Claim Investigation Handbook is currently in effect, and was in effect at the time IDWR prepared the recommendations for the water rights involved in these subcases.

3. Attached hereto as Exhibit B is a true and correct copy of relevant excerpts of transcript of the 30(b)(6) deposition of IDWR in these subcases.

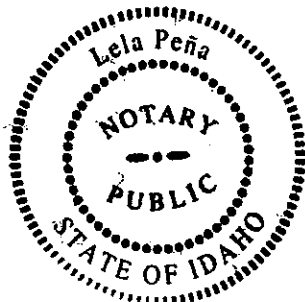
4. Attached hereto as Exhibit C is a true and correct copy of IDWR's recommendation for water right 63-5239, in the name of the Franklin Ditch Company.

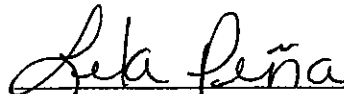
5. Attached hereto as Exhibit D is a true and correct copy of relevant portions of Franklin Ditch Company's discovery responses.

Further your affiant sayeth naught.


Dylan B. Lawrence

SUBSCRIBED AND SWORN to before me this 28th day of September, 2010.




NOTARY PUBLIC FOR IDAHO
Residing at Boise
My Commission Expires 5-31-2012

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 28th day of September, 2010, I caused a true and correct copy of the foregoing **AFFIDAVIT OF DYLAN LAWRENCE IN SUPPORT OF PIONEER IRRIGATION DISTRICT'S RESPONSE IN OPPOSITION TO FRANKLIN DITCH COMPANY'S MOTION FOR SUMMARY JUDGMENT** to be served by the method indicated below, and addressed to the following:

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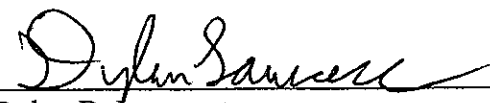

Dylan B. Lawrence

EXHIBIT A

**To the Affidavit of Dylan B. Lawrence in Support of Pioneer
Irrigation District's Response in Opposition to Franklin Ditch
Company's Motion for Summary Judgment**

In Re SRBA Case No. 39576

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

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CLAIM INVESTIGATION HANDBOOK

CHAPTER 1

INTRODUCTION

The Idaho Department of Water Resources plays a key role in the Snake River Basin Adjudication. IDWR receives all claims for state law based water rights and investigates them before they are considered by the SRBA District Court. IDWR investigates them to determine how it believes each water right should be described, and then submits its recommendations to the SRBA District Court in the form of a Director's Report. Experience in the Test Basins shows that over 90% of the time IDWR's recommendation to the SRBA District Court is accepted and decreed without objection. Even when objections are filed conversations with IDWR often result in agreements between the claimant and IDWR regarding how the water right should be described. In other words, in most cases the water rights in the SRBA will be decreed in the way that IDWR recommends.

This fact illustrates that IDWR bears a major responsibility to ensure that the water rights decreed in the SRBA accurately describe the water uses that the rights authorize and protect. This revised Claim Investigation Handbook has been developed to assist you in investigating the water right claims in the SRBA. Although it is not possible to provide you with a "cookbook" that describes how every individual claim should be recommended, the guidelines in this manual are designed to assist you in exercising and developing your good judgment regarding water right recommendations. It also explains to you the process that will occur from the time you are assigned a claim until that claim is decreed as a water right.

Examinations of claims and preparation of recommendations is complex work. On one hand there is a temptation to be extremely thorough in this process. On the other, the public cannot afford to pay for a "Cadillac" inspection of every water right. We are seeking a "Chevrolet" inspection, maximizing the use of technology to enhance efficiency and accuracy, while developing a speedy and cost-effective product. We are always open to new ways of doing business to achieve this end.

Remember, this Handbook cannot answer every question. Use your common sense; talk with your co-workers; talk with your supervisor and consult with your regional Deputy Attorney General when you deal with a situation not quite answered by this Handbook. In the end, the State is counting on your diligence, hard work and good judgment to complete the SRBA fairly and efficiently.

Copies of this manual may be provided to the public when specifically requested, subject to payment of mailing and/or copying charges. "Subscriptions" for updates will not be available.

inception of the right to the present (this will be referred to as determining continuity of use).

3. If a five-year cessation in water use has occurred, determine if any of the statutory or common law defenses to forfeiture are present.
4. If a five-year cessation in water use has occurred, but the use has resumed, determine if any other water right holders are injured by such resumption.

When an agent is asked to present the basis for a forfeiture recommendation in court, the agent must be sure that the analysis described above has been fully conducted. The analysis should be fully documented in the claim file. Section III, below, describes the circumstances when this complete analysis is necessary.

III. PARTIAL FORFEITURE.

The agent must consider the following when making a partial forfeiture recommendation:

A. Irrigation Uses.

An irrigation use may be recommended as partially forfeited only if there is a reduction in the actual number of acres irrigated. Descriptive elements of a water right, standing alone, will not be recommended as forfeited except in the context of a limitation in the number of acres. When there is a recommendation of partial forfeiture based upon the number of acres irrigated, the diversion rate and volume may need to be adjusted down, depending upon the extent of the original diversion rate and volume.

B. Other Uses.

For all other uses, the agent should consult with their legal liaison and State Office staff if there is a potential partial forfeiture.

IV. CLEAR AND CONVINCING EVIDENCE OF FORFEITURE?

It is not possible to provide a general rule for what constitutes clear and convincing evidence of forfeiture. There is a range within which different fact-finders could find forfeiture. At one end of the range would be two photographs, five years apart which show that water was not used in either of those years. At the other end of the range would be physical evidence such as a parking lot or a diversion system with limited capacity that was in place for five or more years. In between is a host of possibilities with testimony from neighbors, watermaster records, electrical bills, assessors' records, crop records, and so on. The question is: when looked at most favorably for the water right holder, does the evidence clearly show that water was not used for five years?

The type and degree of evidence of forfeiture will determine how IDWR participates in subcase proceedings. In situations where IDWR has some evidence of forfeiture, the agent may recommend forfeiture, but should not expect IDWR to submit extensive evidence of this recommendation if challenged in a subcase. The forfeiture recommendation will be used to raise a presumption that water has not been used for a specifically identified five year period, and the claimant will have to specifically rebut this presumption with evidence showing **continuity of use**. Where IDWR has what it considers to be clear and convincing evidence of forfeiture, IDWR will enter the full basis for its recommendation in a Class II subcase context. Forfeiture cases should be discussed with the agent's legal liaison when the case management report to the SRBA District Court is being prepared to assess the strength of the recommendation.

The following examples provide guidance to the agent regarding situations in which it is appropriate to initially recommend forfeiture when considering evidence of non-use of water rights:

- ▶ Permanent physical features preventing use, such as parking lots or homes, are constructed after the right is established.
- ▶ Two photos greater than five years apart showing no use.
- ▶ A photo and field exam greater than five years apart showing no use.
- ▶ Anecdotal information from a neighbor of five consecutive years of non-use.

If the claimant presents evidence during the notice of error process that establishes **continuity of use** and disproves forfeiture, the preliminary recommendation will be changed. If not, the forfeiture recommendation will be issued to the SRBA District Court and the claimant will need to show **continuity of use** to the Court.

The following examples illustrate situations when forfeiture should not be recommended when considering evidence of non-use of water rights:

- ▶ Incidental acreage not irrigated due to the characteristics of the irrigation system, such as corners on land now irrigated with circles, but originally square.
- ▶ Water use resumed in good faith at time of field examination.
- ▶ Less than five percent (< 5%) discrepancy between claimed irrigation acres and irrigation determined by G.I.S. analysis.

In these situations third parties would have to allege and prove forfeiture if they disagree with IDWR's recommendation.

V. RECOMMENDING FORFEITURE IN THE SRBA.

EXHIBIT B

**To the Affidavit of Dylan B. Lawrence in Support of Pioneer
Irrigation District's Response in Opposition to Franklin Ditch
Company's Motion for Summary Judgment**

In Re SRBA Case No. 39576

Subcase Nos. 63-00166A, 63-00166B, 63-00167A,
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Case No. 39576	) 63-00167A, 63-00167B
	) 63-00179A, 63-00179C
	) 63-32580
_____	)

RULE 30(b)(6) DEPOSITION OF JAN SHURTE

Moffatt, Thomas, Barrett, Rock & Fields, Chartered
101 South Capitol Boulevard, 10th Floor
Boise, Idaho

Friday, September 17, 2010
Beginning at 9:00 o'clock a.m.

QnA COURT REPORTING, LLC
Jeana Reiner, CSR, RPR
Idaho Certificate No. 711
776 East Riverside Drive, Suite 200
Eagle, Idaho 83616
Web: www.qnacourtreporting.com
E-mail: realtimeqna@msn.com
(ELECTRONIC COPY) Telephone: (208) 484-6309
30(b)(6) DEPOSITION OF JAN SHURTE (TAKEN 09.17.10)

1 BY MR. LAWRENCE:
2 Q. And so what is your current position with the
3 Department of Water Resources?
4 A. My current position is water right supervisor
5 in the adjudication section at western regional
6 office.
7 Q. Was that your employment position at the
8 time?
9 A. Yes, it was.
10 Q. So there have been no changes in your
11 employment status since then, it sounds like?
12 A. No.
13 Q. And just to let you know, as you can see, we
14 didn't notice this up as a deposition where you were
15 required to bring documents in, so I took that upon
16 myself, as you see.
17 So if there is ever anything I ask where you
18 are thinking, oh, gosh, I remember there was a document
19 in the file, or something that related to that, then let
20 me know, and there is a good chance we will be able to
21 produce it out of this Redweld here.
22 A. That would great.
23 Q. And you do understand that you are what's
24 called a 30(b)(6) witness. So you were supposed to
25 prepare in some way to be the representative of the

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1 Department of Water Resources in the deposition, as
2 opposed to just relying upon your own knowledge
3 previously.
4 And that wasn't a very good articulation, but
5 you do understand that you are the 30(b)(6)
6 representative of the Department here today?
7 A. Well, maybe you could explain it a little bit
8 more.
9 Q. Under the Rules of Civil Procedure, you can
10 depose somebody individually and then there is also a
11 rule that allows you to depose somebody as a
12 representative of an entity who speaks for the entity.
13 And generally, that entails responsibilities to
14 also prepare so that they can speak on behalf of the
15 entity and not just as to their own previous personal
16 knowledge.
17 A. Yes, I can say I did that, and I understand
18 that.
19 Q. But again, all we're talking about here today
20 is what you do know at this point.
21 A. Right.
22 Q. So you don't need to guess or speculate. If
23 you don't know the answer to a question or you're a
24 little unsure, then be clear about it, and that way
25 we'll know one way or the other that that's the case.

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1 A. All right.
2 MR. LAWRENCE: One quick housekeeping item, and
3 this is something that we may use throughout the course
4 of the deposition, and it may not be. But I would like
5 to mark the first exhibit here.
6 (Exhibit No. 1 was marked for identification.)
7 BY MR. LAWRENCE:
8 Q. Take a look at that generally. Obviously I
9 don't want you to read the whole thing right now, but
10 does that look familiar to you?
11 A. Yes, it does. It's the Claims Investigation
12 Handbook.
13 Q. And is that currently in effect? Was it in
14 effect at the time you prepared the recommendations --
15 or I should back up and just ask, are you the one that
16 prepared the recommendations for the water rights that
17 we're dealing with today?
18 A. I prepared the recommendation for 63-32580, but
19 not for the rest of them.
20 Q. Let me ask the question more generally. Is
21 that the Claims Investigation Manual that was in effect
22 at the time the Department prepared the
23 recommendation?
24 A. Yes, it is.
25 Q. Is it still in effect now?

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1 A. Yes.
2 Q. I think it refers to like a 1999 or a 2000
3 revision, something like that.
4 A. There has probably been revisions to it, but it
5 still at that time -- I don't know what revisions had
6 been made at that time for sure, but this is the -- if
7 this is a copy of the Claims Investigation Manual that
8 was there in 2006, then yeah.
9 Q. So if we do have questions or want to refer to
10 what typical Department procedures are, then that would
11 be a good resource to go to, an accurate representation
12 of what the Department's procedures are?
13 A. Yes. That, and there is also the adjudication
14 memorandums that we also used when we were doing
15 recommendations.
16 Q. Right. So if at any time you think that there
17 is something that might be helpful from that, let me
18 know. There are a few things I may want to discuss as
19 well, but I just wanted to kind of get that in the
20 record at the outset, because it might be something that
21 we refer to here and there throughout the process.
22 MR. LAWRENCE: If I can mark this as another
23 exhibit, please. And a lot of these I do have courtesy
24 copies for you guys.
25 (Exhibit No. 2 was marked for identification.)

Page 12

1 a look at some of the testimony that was in the record 2 on which the Stewart Decree was based? So the testimony 3 from the proceedings back in the early 1900s that 4 resulted in the Stewart Decree? 5 A. I don't know whether Dave did or not. I did 6 not. 7 Q. But generally speaking, when we're talking 8 about judicial decree, this might be a helpful place to 9 just discuss this as a general matter and not 10 necessarily specific to this water right. 11 But what is the Department's position on -- let 12 me ask it this way: What is the Department's position, 13 first of all, on whether the Stewart Decree and those 14 proceedings were a general adjudication or a private 15 adjudication? 16 A. We believe it was a general adjudication. 17 Q. Oh, that was a general adjudication? 18 A. On the Boise River as a single source. 19 Q. Now, in the SRBA, does the Department treat 20 prior judicial decrees differently based on those two 21 categories, whether it considers it a private 22 adjudication or a general adjudication? 23 A. I believe that, in my experience, the reason 24 that we make those determinations is more to -- we don't 25 treat them any differently. It's more to decide whether Page 21	1 water right. And if they didn't, then they didn't have 2 a water right after that, I mean, as of that date of the 3 decree. 4 Q. And did the Stewart Decree deal with the Boise 5 River only or did it include any tributaries? 6 A. No. As far as we could tell, it was just the 7 Boise River Proper. 8 Q. Just the Boise River itself? 9 A. Yes. 10 Q. So the fact that tributaries weren't included 11 doesn't affect whether it's a general or a private 12 adjudication? 13 A. I don't know that. 14 (Exhibit No. 4 was marked for identification.) 15 BY MR. LAWRENCE: 16 Q. Does this document look familiar? It's a 17 document I've just handed you that we've labeled as 18 Exhibit 4; is that correct? 19 A. Yes, it does look familiar. 20 Q. Can you tell me what you know about this and 21 the context in which it was prepared? 22 A. I believe that it was meeting notes for a 23 meeting that they had with the Franklin Ditch Company in 24 2005. Somebody typed it up from that meeting. 25 Q. Now, down under the "Actions" heading, and then Page 23
1 or not it included just the Boise River in this case or 2 any kind of tributaries to the Boise River and in -- no. 3 Okay. 4 Basically, in a general adjudication, it should 5 have been everything that was -- not tributary to the 6 Boise, but the Boise River Proper. And in a private 7 adjudication it can be just a couple of people that are 8 fighting over just a few sources or one source, and it 9 doesn't necessarily mean that it's the entire group of 10 people that use that water source. It's just between 11 these two private individuals. 12 So it means that other people can date back 13 into the decree if they have water rights on that 14 source. So in the case of the Boise River being a 15 general adjudication, everybody should have claimed it 16 at that time and filed on it, and it should have been 17 objected to if there was a problem. And we don't date 18 things back into the decree from that same source. 19 Q. So let me ask the question I may have sort of 20 asked at the beginning. So what makes the Stewart 21 Decree proceedings a general adjudication as opposed to 22 a private adjudication? 23 A. Well, my understanding of a general 24 adjudication is where everybody that used water out of 25 that source was notified, and they should have filed a Page 22	1 you'll see there is -- you know, we have these little 2 items denoted with bullet points. So can you read for 3 me, not the very last one, but the next to the last 4 bullet under "Actions"? 5 A. It states, "Maximum flow rate for the Back 6 Slough and Highline Canal are needed. Helen will see if 7 there is any information in the paperwork. If not, 8 follow-up may be necessary." 9 Q. Do you know what the result of that 10 investigation was as far as the maximum flow rate for 11 the Back Slough and the Highline Canal? 12 A. Not on the Back Slough. On the Highline Canal, 13 I know there was a graph in the file that showed the 14 last 50 years of from about -- I think it was -- I'd 15 have to look at it, but I think it was a 50-year period. 16 I'll just say that. Of the flow and the Highline 17 Canal. 18 Q. And I recall the document you are referring to. 19 And actually we can go ahead and track that down as 20 well. 21 A. But other than that, I do not know what the 22 results of that were. 23 (Exhibit No. 5 was marked for identification.) 24 BY MR. LAWRENCE: 25 Q. So I've handed you a document that we've marked Page 24

1 A. Yes, it did. 2 Q. So the agreement doesn't really address a 3 change in a point of diversion after the Stewart Decree; 4 right? 5 A. No, it does not. That's correct. 6 Q. It would not explain the accomplished transfer 7 referred to in the SRBA recommendation? 8 A. That's true. 9 Q. And we will probably refer back to this, so 10 let's keep it handy. But I think we're done with the 11 agreement for now. 12 And so just to summarize that whole little 13 discourse that we just had, at this point the Department 14 just isn't familiar or knowledgeable about the change in 15 point of diversion from the Stewart Decree to the SRBA; 16 is that correct? 17 A. I believe that Dave was knowledgeable about it 18 when he made the recommendation. He knew that it was in 19 a different section than what was in the decree. That's 20 about it. 21 Q. Why don't we move down to place of use. And if 22 you could just summarize for me your knowledge of the 23 process that the Department followed when it recommended 24 the place of use for this water right 166B. 25 A. When the Department, when we do ditch companies Page 33	1 boundaries determined of who the ditch company serves? 2 A. Quite frankly, the ditch company told us. 3 Yeah, there was no other way for us to really know 4 ourselves personally on that type of thing. 5 Q. And do you know what process the ditch company 6 would go through or did go through for these 7 recommendations to identify their boundaries? 8 A. They worked with one of our GIS personnel; I 9 know that. But as far as within their own ditch 10 company, I don't know what they did. 11 Q. And this might be a difficult question to 12 answer, but would the place of use for a ditch 13 company -- and so just talking about the boundary at 14 this point as opposed to what's actually irrigated. 15 Would the boundaries be determined by determining which 16 lands can actually be served by the particular 17 facilities through which water is conveyed or is there 18 some other method for actually drawing the boundaries 19 around a ditch company place of use? 20 A. Actually, it was just based on where the ditch 21 company said their boundaries were. 22 Q. And why don't we go back to Exhibit 2, because 23 this may be a little helpful when we talk about place of 24 use. This is, again, the map that we walked through a 25 little bit towards the beginning. Page 35
1 or irrigation districts, we started out actually in the 2 beginning where we had a gentleman that was working on 3 GIS, the shapes that it looked like of irrigated areas, 4 like within the Franklin Ditch Company's area. We 5 started with that. 6 Then we worked with the people and said, "Okay. 7 This is what we've come up with as a starting point." 8 And then it was a lot of going back and forth and back 9 and forth about how many -- and that's how we got the 10 total acres. 11 And then we also worked with them about where 12 their boundaries were. And basically a ditch company 13 would come in. They would designate their boundaries, 14 and we would say, okay, that they would work with our 15 GIS person, or with the agent, or whoever themselves. 16 And then we would exchange maps back and forth 17 several, several times, and finally come up with the 18 boundaries and how many acres within those boundaries 19 they currently irrigated or irrigated as of 1987. We 20 used 1987 photos. 21 Q. And so just to ask in a little bit more 22 detail -- and part of this is just I'm more familiar 23 with irrigation districts, and I understand how their 24 boundaries are determined. 25 With a ditch company, how are the actual Page 34	1 Does that, as a general matter -- again, I'm 2 not trying to tie you to specifics and, you know, 3 whether a particular corner is within or not, but 4 generally speaking, does that look like an accurate 5 representation of the Franklin Ditch Company place of 6 use? 7 A. Yes, it does. 8 Q. So can you explain to me a little bit about 9 just, I mean, physically speaking, how it is that the 10 place of use ends up in those kind of the three chunks. 11 We have kind of a long, thin chunk to the east; a fat 12 "L" in the middle; and then another chunk to the west 13 there. How is it that there are those three separate 14 chunks like that in a place of use? 15 A. It's not uncommon. It's based on probably 16 where their shareholders are. You'd have to ask the 17 Franklin Ditch Company about that. 18 Q. Andy probably did yesterday, but I just don't 19 know what the answers are. So I'm trying to get them 20 from you. 21 A. No. It's probably just where they irrigate 22 their land at. And they had distribution points, you 23 know, that don't always include people in between. 24 Q. So it's not uncommon to have kind of a -- I 25 don't know the right adjective to use, but a cleaved Page 36

1 Q. How are you doing? Do you want to keep going 2 or take a break before we move on to 167? 3 A. I'll take a break. 4 Q. Do you want to take a break? 5 A. Yeah. 6 MR. LAWRENCE: We will take a break. We're off 7 the record. 8 (Break taken.) 9 (Exhibit Nos. 8 and 9 were marked for 10 identification.) 11 BY MR. LAWRENCE: 12 Q. Welcome back. Before we move on to 167B, there 13 were a couple of things I wanted to explore real 14 quickly. 15 I believe that we've just handed you what has 16 been marked as Exhibits 8 and 9; is that correct? 17 A. Yes, it is. 18 Q. And is 8 the Indenture of June 24th, 1884? 19 A. Yes, it is. 20 Q. And Exhibit 9 is an Indenture of June 25th, 21 1884? 22 A. Yes. 23 Q. Do those documents look familiar to you? 24 A. Yes, they do. 25 Q. And how do you have knowledge of them? In what Page 45	1 So at this point, just for the ease of our eyes, why 2 don't we rely upon the typed written version. 3 And if you could, maybe just take a minute to 4 read the first paragraph before you get down to the, 5 "Together with all and singular." 6 A. You don't want me to read it out loud, do you? 7 Q. Only if you want to. 8 A. No, not necessarily. 9 Q. So what's your understanding of what this first 10 paragraph is doing? 11 A. To be honest with you, I am not a deed expert. 12 And I would have to say I've read these time and time 13 again, and I am not sure what they were trying to do; 14 that's just the bottom line. 15 Q. Let's focus on some particular language. So 16 about two thirds of the way down, starting in the line 17 where you've got "(1350)" on the left -- 18 A. Uh-huh. 19 Q. -- so if we go over about halfway through that 20 line, we have, "Said water to be appurtenant to, and 21 used only on the lands owned or claimed by," and then it 22 lists several individuals. Do you see that? 23 A. I do. 24 Q. I think you probably have answered this in a 25 general way, but to your knowledge, did the Department Page 47
1 context have you come across them? 2 A. Actually, they were sent to me by Helen from 3 the Franklin Ditch Company. 4 Q. Is this Helen Larson? 5 A. Yes, Helen Larson. 6 Q. Do you recall what you did with them, how they 7 were utilized in the process of recommending the 8 Franklin water rights? 9 A. I didn't do anything with them. I just put 10 them in the file and read through them, thought it was a 11 little strange, and went about my way. 12 Q. So they weren't utilized? 13 A. No. 14 Q. Now, if we could take a look actually at 15 Exhibit 9 -- and would you like a minute to read it 16 over? It's in old school English that sometimes takes 17 me a few minutes to digest. 18 A. Yes. It was very difficult to read. And so 19 this -- the typewritten? 20 Q. Yeah, we should clarify that. Just for the 21 record, what I've handed you are Exhibits 8 and 9. On 22 the top is a handwritten indenture for each one of them 23 and then behind that is a typed version. 24 I haven't gone through it word for word to make 25 sure that they are consistent, but I believe they are. Page 46	1 do any research into the lands held by these individuals 2 when it recommended the place of use for the Franklin 3 ditch water rights? 4 A. Not from -- no, not in this situation. They 5 didn't -- we would not have considered this agreement, 6 because the decree subordinated it. 7 Q. Because the decree came after it? 8 A. Right. 9 Q. So from your perspective -- and correct me if 10 I'm wrong. I'm just trying to restate what I think the 11 Department's position is, is that this would be, at 12 most, a contractual matter between the parties in the 13 indenture or the deed, and not a matter for the 14 Department to get into because of the Stewart Decree? 15 A. That is exactly right, yes. 16 Q. And why don't we just take a quick look at the 17 other indenture, the one that we marked as Exhibit 8. 18 Sorry to make you do this again, but if you don't mind 19 reading the first paragraph of that one as well. 20 A. Okay. 21 Q. Well, realizing again that this is confusing -- 22 it's probably a run-on sentence several times over. But 23 do you have an opinion as to what this paragraph is 24 doing, if you could just kind of summarize it in one 25 sentence as opposed to seven like they did? Page 48

1 A. Well, it's -- I can speculate, but I really
2 hate to say, because I don't really know what they were
3 exactly doing with each one of these. It seems like one
4 day they did one thing and the next day they did the
5 next.
6 And it's a private agreement, and I would hate
7 to speculate on exactly, because I don't understand
8 them, to be honest with you.
9 Q. Fair enough. Again, let's just focus on
10 particular parts of them. So on Exhibit 8, the earlier
11 one, the June 24th, 1884 --
12 A. Yeah. You started with the last one first.
13 Q. Sorry about that. Within the first paragraph,
14 if you could go down -- so it's four lines from the
15 bottom of the first paragraph. And, you know, I believe
16 what we're talking about here is what this deed or
17 indenture is actually conveying. And it says, "All of
18 the water rights, sloughs and ditches, known as the
19 Franklin ditch property were owned or claimed to be
20 owned by the Franklin ditch property." Do you see that
21 language?
22 A. Yes, I do. Uh-huh.
23 Q. So it appears as though whatever Franklin has,
24 they are conveying to this other party, the Idaho and
25 Oregon Land Improvement Company; do you agree with
Page 49

1 that?
2 A. Let me just read it one more time. Because I
3 have to read -- "The party of the first part. Party of
4 the second part" -- sorry. I'm mumbling. I'll just
5 read it to myself.
6 It appears to say that, yes.
7 Q. So over on Exhibit 9, the indenture that was
8 executed the following day, June 25th -- and if we again
9 look for that "to wit," it's starting seven lines from
10 the bottom of the first paragraph, we have 1,350 inches
11 of water being conveyed --
12 A. And back.
13 Q. -- back by the Idaho and Oregon Land
14 Improvement Company to the Franklin Ditch Company; is
15 that your understanding of what's going on there?
16 A. Yes, that's what it appears to be; although, we
17 didn't take these into consideration. And I am not
18 going to swear as to what they were trying to accomplish
19 or to the fact that I feel like it's every single water
20 right that Franklin had, or anything like that, because
21 I really don't know this kind of contract.
22 Q. But bottom line, these weren't -- I mean, I
23 think you said it before, but these weren't considered
24 by the Department. The Department just relied upon the
25 Stewart Decree.
Page 50

1 A. Yes.
2 Q. And that's it; correct?
3 A. Right. Yeah.
4 Q. And this relates back to towards the beginning
5 when we were talking about adjudications generally and
6 how the Department treats them. I mean, is there any
7 precedent? Has the Department ever gone back behind an
8 old decree and said, "Well, we see what we think to be
9 an error here, so we're going to do something in the
10 recommendation, even though it may conflict with the old
11 decree"?
12 A. No. As a matter of fact, we are trained to
13 stick with what the old decree says, unless there is an
14 ambiguity in that decree, where it's just not clear what
15 they meant.
16 Q. So it's only ambiguity as opposed to even if
17 there is some -- what many would agree would be an
18 error, that's not a basis for doing something
19 inconsistent with an old decree?
20 A. I think there has probably been times in the
21 Department where we have -- I don't know. Actually, if
22 it is an error -- it's really hard to say whether it's
23 an error or not. Only if it's an ambiguity and we just
24 don't understand it.
25 Q. Fair enough. And as far as ambiguities go,
Page 51

1 that's a good segue, if we can turn back to -- I think
2 at some point we marked as an exhibit a portion of the
3 Stewart Decree that related to the Franklin Ditch
4 Company. I think it was Exhibit 6.
5 A. Yes.
6 Q. We've talked about place of use for 166 and
7 just the Franklin rights in general already. So how is
8 place of use identified in the Stewart Decree?
9 A. In this case, it's just, "For use upon the
10 lands lying under its canal system, in the following
11 amounts." So it's just saying for lands lying under the
12 canal system.
13 Q. When that type of language appears in an old
14 judicial decree, is that something the Department views
15 as an ambiguity?
16 A. No. I mean, I would think that was a lot of
17 information from an old decree, actually.
18 Q. Really?
19 A. Yeah. Sometimes they don't even say where the
20 place of use is; and that's an ambiguity to me. But
21 "lying under its canal system," it would have meant the
22 canal system at the time of the Stewart Decree.
23 Q. Did the Department do anything to verify what
24 the canal system was at the time of the Stewart Decree?
25 A. I don't know that. I don't know what Dave did.
Page 52

1 Q. And we talked a little bit about the 2 recommendation of place of use before; correct? 3 A. Yes. 4 Q. I believe you said it was kind of an iterative 5 process between the Department and the claimant where 6 you have exchanges of -- 7 A. That's correct. 8 Q. -- shape files, maps for boundaries, and that 9 sort of thing? 10 A. Yes. 11 Q. And I believe you clarified this before, but 12 that would have all been as of 1987? 13 A. Correct. 14 Q. So inherently there is an assumption there that 15 what was in place in 1997 was the same as it was when 16 the Stewart Decree was issued? 17 A. No. 18 Q. No? 19 A. Let me just clarify that. 20 Q. Okay. Go ahead. 21 A. Basically, what we were trying to do was to, 22 you know, to say what was there in 1987. I don't 23 believe we know what was there in 1906 necessarily under 24 the canal system. I mean -- I don't know. I don't know 25 what Dave was -- I mean, I know what I would have done Page 53	1 say how many acres. It didn't say where the canal 2 system was. 3 Q. Right. 4 A. So that's what we did in using the 1987 map, 5 the same as what we did for Pioneer also. 6 Q. Correct me if I'm wrong -- I'm about to put 7 words in your mouth and draw some inferences, but is it 8 basically the Department's position or what you are 9 saying is that lands under the canal system in 1906, the 10 Department's not able to recreate that at this time, so 11 we utilize 1987 information kind of assuming that they 12 are one and the same or close enough to be the basis of 13 a recommendation? 14 Do you want me to try again? 15 A. Yeah, please. 16 Q. Well, again, I'm starting with the assumption 17 that if you have an old decree that identifies an 18 element of the water right -- and I think this ties back 19 a little bit to what we were talking about before, that 20 that's the term of the water right and that generally 21 that's what's recommended in the SRBA; that if you've 22 got an old decree that says something that defines place 23 of use, then unless you can show an accomplished 24 transfer or some sort of an intervening change, that 25 that's usually carried forward to the recommendation in Page 55
1 in this situation, but I don't know what Dave did. 2 Q. So what would you have done in the situation? 3 A. I knew you were going to ask that question. 4 Actually, the way that the Department treated these is 5 that -- because, I guess -- okay. Because in the 6 decree, it doesn't say how many acres. There was no 7 duty of water in the Stewart Decree. 8 So I would have gone with the 1987 map and what 9 the ditch company showed and what we could digitize that 10 was being irrigated at the time of the ditch company 11 system. 12 Q. If the general rule is that we, you know, in 13 the SRBA, if there is an old decree, we're recommending 14 what was in the old decree -- 15 A. Uh-huh. 16 Q. -- why would we look to the 1987 information as 17 opposed to trying to go back to the time of the Stewart 18 Decree to figure out what was decreed at that time? 19 A. Because the Snake River Basin Adjudication was 20 supposed to be a snapshot in time and that was supposed 21 to be as of 1987. 22 There are times when we've looked back, if we 23 had the materials to do so, at decrees, if we had some 24 way to look back to see. In this case -- I guess you 25 could say that is an ambiguity, then, because it didn't Page 54	1 the SRBA; is that a fair -- 2 A. That's a fair -- 3 Q. -- general statement? 4 A. That's a fair statement, yes. 5 Q. So if we have a decree from 1906, I believe, 6 that says that the place of use is lands lying under its 7 canal system, but we use 1987 information to define the 8 place of use -- I mean, there has got to be some reason 9 that we look at the later information rather than what 10 was happening in 1906. 11 A. Well, and the reason being is that we really 12 don't know all the lands and where they were located 13 lying under its canal system in 1906. 14 Q. I understand that. Is it a matter of just it 15 being impossible or it's just impractical, because it 16 would be a lot of work and we're assuming 1987 is close 17 enough? 18 A. I think actually -- well, I have not actually 19 gone through and looked at everything that went into the 20 Stewart Decree, because there are boxes and boxes and 21 boxes on that. 22 So I don't know if somewhere in there -- yeah, 23 there might be something about where their canal was 24 located or the lands under their canal. And so we do 25 not undertake that type of -- because there is the Page 56

1 for the water right holder, does the evidence clearly
2 show that the water was not used for five years."
3 Q. And so focusing in on sort of in the middle of
4 that paragraph, where it says "at the other end of the
5 range" --
6 A. Uh-huh.
7 Q. I read that to mean what this manual is saying
8 is that that type of physical evidence is good or strong
9 evidence that forfeiture may be appropriate; is that
10 your understanding reading that as well?
11 A. Yes. It definitely means you have to have very
12 good evidence.
13 Q. Correct, but --
14 A. Physical evidence.
15 Q. -- just to put a little finer point on the
16 question, it's saying that physical evidence is good
17 evidence; do you agree with that?
18 A. Yes. And what he's getting at in this is just
19 that, you know, if you've got like a parking lot
20 covering where a farm used to be, then you know it's
21 been abandoned. I think that's what he's getting at.
22 Or forfeited.
23 Q. And then just if you can flip real quickly to
24 the next page, page 3.
25 A. Okay.

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1 Q. And then if you could just read the second
2 paragraph and then the first bullet under it.
3 A. "The following examples provide guidance to the
4 agent regarding situations in which it is appropriate to
5 initially recommend forfeiture when considering evidence
6 of nonuse of water rights. Permanent physical features
7 preventing use, such as parking lots or homes, are
8 constructed after the right is established."
9 Q. So that sounds kind of like what we read on the
10 previous page.
11 A. Yes.
12 Q. Again, that these sorts of permanent physical
13 features, things that are really out there provide a
14 strong evidence and a basis for a forfeiture finding; is
15 that a fair crystallization of what that's saying?
16 A. Yes, that's fair.
17 Q. I think we're done with the Claims
18 Investigation Manual for now.
19 A. Okay.
20 Q. Well, you know, turning back to the
21 recommendation for 167B, I think that we've covered --
22 you know, in talking about 166B, I think we've covered
23 most of what I wanted to get at. One thing to note, if
24 you go back down there to under place of use, we've got
25 that comment above the other provision.

Page 70

1 A. Yes.
2 Q. And there we don't have the reference to the
3 present or future acres.
4 A. Right.
5 Q. Do you have any idea why it would be in one
6 recommendation and not the other?
7 A. I do not know.
8 Q. Can you think of, are there any other
9 differences between 167B and 166B in the reasoning, the
10 procedures the Department followed? Or can we assume
11 that if we haven't focused on something, that the
12 procedures are probably the same for both?
13 A. Yes, you can assume that they are the same.
14 They were the same.
15 Q. Let me just make sure real quick that I don't
16 have anything else I want on 167B, but like I said, I
17 think we've covered it.
18 Actually, there was one thing in the file for
19 167B in the Department's back file. Let's take a look
20 at that real quick.
21 (Exhibit No. 11 was marked for identification.)
22 BY MR. LAWRENCE:
23 Q. Have you seen this document before, the one
24 that we've now marked as Exhibit 11?
25 A. Yes, I did see it in the file.

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1 Q. Basically what does it say? You can either
2 read it or just summarize it, whichever you prefer.
3 A. I'd rather read it. It says, "Telephone
4 conversation with Bill Clayton informed me that a small
5 portion of the Franklin Ditch Company water is diverted
6 from a headgate approximately 15 feet from the Caldwell
7 Highline headgate. The balance of the Franklin Ditch
8 Company's Boise River is delivered through the Caldwell
9 Highline Canal."
10 Q. I think we talked about this a little bit
11 earlier, and I had just forgotten that this document was
12 here. It would have been helpful for me to pull it out
13 at that time.
14 But my recollection is you said that you were
15 not familiar with another point of diversion for the
16 Franklin Ditch Company; is that correct?
17 A. I think I said I didn't know.
18 Q. So one way or the other, there is nothing you
19 can add to what's in this memo?
20 A. No. I don't know what Bill Clayton had to do
21 with the Franklin Ditch Company at that time, so no.
22 Q. But we agree, up at the top there, it's in the
23 SRBA file for the Franklin Ditch Company, right?
24 A. Yes, it is. Yeah.
25 Q. Do you have any idea, one way or the other,

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EXHIBIT C

**To the Affidavit of Dylan B. Lawrence in Support of Pioneer
Irrigation District's Response in Opposition to Franklin Ditch
Company's Motion for Summary Judgment**

In Re SRBA Case No. 39576

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

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

RIGHT NUMBER: 63-5239

NAME AND ADDRESS: FRANKLIN DITCH CO
C/O HELEN I LARSON
8500 JOPLIN RD
CALDWELL ID 83605

SOURCE: BACK SLOUGH

TRIBUTARY: BOISE RIVER

QUANTITY: 9.800 CFS

PRIORITY DATE: 04/01/1880

POINT OF

DIVERSION: T04N R02W S15 SESW Within CANYON County
T04N R02W S16 SESE Within CANYON County

PURPOSE AND
PERIOD OF USE:

<u>PURPOSE OF USE</u>	<u>PERIOD OF USE</u>	<u>QUANTITY</u>
IRRIGATION	3/15 11/15	9.800 CFS
The use of water for irrigation under this right may begin as early as March 1 and may continue to as late as November 15, provided other elements of the right are not exceeded. The use of water before March 15 under this remark is subordinate to all water rights having no subordinated early or late irrigation use and a priority date earlier than the date a partial decree is entered for this right.		

PLACE OF USE:

2056 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 when combined with Right Nos. 63-166B and 63-167B can be used to irrigate up to 2056 acres within the boundary of the Franklin 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.

EXPLANATORY MATERIAL: BASIS OF CLAIM - Beneficial Use

EXHIBIT D

**To the Affidavit of Dylan B. Lawrence in Support of Pioneer
Irrigation District's Response in Opposition to Franklin Ditch
Company's Motion for Summary Judgment**

In Re SRBA Case No. 39576

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

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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. 63-00166 and 63-00167
)
) FRANKLIN DITCH COMPANY'S
) ANSWERS TO PIONEER IRRIGATION
) DISTRICT'S FIRST SET OF DISCOVERY
) REQUESTS
)

Franklin Ditch Company (Franklin) answers Pioneer Irrigation District's First Set of
Discovery pursuant to Rules 26, 33, 34, and 36 of the Idaho Rules of Civil Procedure.

GENERAL OBJECTIONS

1. Franklin has not completed its own investigations and/or discovery. Accordingly, the answers that follow are based upon the best knowledge, information and belief of Franklin at this time. Franklin reserves the right to make any further answers if it appears that any omission or error has been made in connection with these answers or that more accurate information is or has become available. These answers are made without prejudice to Franklin's right to use in later discovery or to present at trial, such evidence as may later be discovered or evaluated.

2. Franklin objects to the definitions and instructions to the extent that they purport to

Franklin's right to object to any future additional or supplemental requests regarding the same or similar matters.

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 an facts or evidence discoverable in this matter, together with a summary of each person's knowledge.

ANSWER TO INTERROGATORY NO. 1:

Helen Larson
P.O. Box 1058
Caldwell, ID 83605
Tel: (208) 466-3819

Ms. Larson is a member and the current president of Franklin Ditch Company. She has lived within Franklin's place of use for 72 years. She is familiar with Franklin's water delivery system.

Bill Clayton
6820 Joplin Road
Meridian, ID 83642
Tel: (208) 442-7100

Mr. Clayton is an active member of Franklin Ditch Company. He owns a farm that is within the Franklin's place of use. He is familiar with Franklin's water delivery system.

Dale Van Beek
9613 Lincoln Road
Caldwell, ID 83605
Tel: (208) 459-8021

Mr. Van Beek a member and the current secretary of Franklin Ditch Company.

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;

RESPONSE TO REQUEST FOR PRODUCTION NO. 3: See Exhibit.

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.

RESPONSE TO REQUEST FOR PRODUCTION NO. 4: See Exhibit.

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.

RESPONSE TO REQUEST FOR PRODUCTION NO. 5: See Exhibit.

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

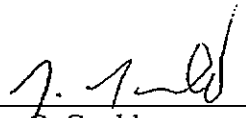
RESPONSE TO REQUEST FOR PRODUCTION NO. 6: See Exhibit.

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.

RESPONSE TO REQUEST FOR PRODUCTION NO. 7: See Exhibit.

DATED this 13th day of September, 2010.

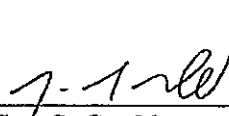
RINGERT LAW CHARTERED

By: 
Jon C. Gould
Attorneys for Franklin Ditch Company

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 13th 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:

Pioneer Irrigation District
c/o Scott Campbell
P.O. Box 829
Boise, Idaho 83701-0829



Jon C. Gould