

1. My name is Scott King, P.E. I am a professional engineer specializing in water rights and water resource engineering. My full background and credentials have been previously set forth in my affidavit filed with this Court on September 28, 2010, and in Exhibit A to that affidavit, which I specifically incorporate herein by reference. I am competent to make this affidavit, and I make this affidavit based upon my own personal knowledge.

2. I have reviewed the catalog of water deliveries that is attached as Exhibit A to the affidavit of Pioneer Superintendent Mark Zirschky being filed contemporaneously with this affidavit. I have also conducted site visits of Pioneer's Caldwell Highline Canal and have personally observed its operation. In addition, I have reviewed the discovery responses provided by Franklin and Mason regarding their diversions of water from the Caldwell Highline Canal, IDWR's Director's Report recommendations for water rights 63-166B and 63-167B in the name of the Franklin Ditch Company and water right 63-179C in the name of the Mason Creek Ditch Company, as well as the digital GIS recommended place of use and point of diversion shapefiles associated with those recommendations that are available in IDWR's online electronic water right database.

3. It is my understanding that water deliveries noted as "FREE DEL" or "FREE DELIVERY" in Pioneer's water delivery catalog are generally associated either with water users of the Franklin Ditch Company or the Mason Creek Ditch Company, though the catalog for the most part does not distinguish between the two. However, based upon my personal observation of the operation of the Caldwell Highline Canal, IDWR's water right recommendations and imagery, Franklin's discovery response that its water users have thirteen (13) diversions from the Caldwell Highline Canal, and information provided in Mason's discovery responses, I have prepared the map attached hereto as Exhibit A which I believe

accurately depicts the locations of water deliveries from the Caldwell Highline Canal to Franklin and Mason water users.

4. Based upon the water delivery catalog and the other information previously described, the total acreage irrigated out of the Caldwell Highline Canal by Franklin water users is approximately 1,849.9 acres, and the total acreage irrigated out of the Caldwell Highline Canal by Mason water users is approximately 78 acres. In addition, there are 144.6 acres where it is not clear from the water delivery catalog, the discovery responses provided by Franklin and Mason, and/or headgate locations if the water users belong to either Franklin Ditch Company and/or Mason Creek Ditch Company. The sum total in the water delivery catalog of "Free Deliveries" provided to both Franklin and Mason water users is 2,072.5 acres. While there are not currently measuring devices on the majority of the Franklin and Mason diversions from the Caldwell Highline Canal, it is my understanding that, where measurement is possible, Pioneer's policy is to deliver 0.02 cfs, aka "one inch," of water per acre of irrigated land. Based upon the information that I utilized to prepare Exhibit A, if that same standard were applied to the deliveries described in the delivery catalog for illustrative purposes, this would result in the delivery of 37 cfs of water out of the Caldwell Highline Canal to water users associated with the Franklin Ditch Company, 1.56 cfs of water out of the Caldwell Highline Canal to water users associated with the Mason Creek Ditch Company, and an additional 2.89 cfs of water out of the Caldwell Highline Canal that is presently unaccounted for, but which could be delivered to some combination of water users associated with Franklin Ditch Company and/or Mason Creek Ditch Company.

5. The conclusion that Mason Creek Ditch Company water users have historically diverted and beneficially used only small quantities of Boise River water conveyed

through the Caldwell Highline Canal is further supported by an analysis of the hydrography and flow regime of the canal system. Pioneer's delivery book indicates that deliveries to Mason Creek Ditch Company from the Caldwell Highline Canal occur from the Weymouth "100" Lateral and from other laterals from the Caldwell Highline Canal downstream of the Weymouth "100" Lateral, all of which divert from the Caldwell Highline Canal downstream of its crossing with Fivemile Creek. However, by the time the Caldwell Highline Canal reaches the Weymouth "100" lateral, the canal has already passed 12 of the 13 headgates associated with Franklin Ditch Company water users, and a turnout from the Weymouth "100" lateral constitutes the 13th headgate associated with Franklin Ditch Company. Based upon my personal observation of the operation of the Caldwell Highline Canal and Pioneer's water delivery catalog, I believe the majority of the Boise River water diverted into the Caldwell Highline Canal at its heading on the river has already been diverted by these Franklin water users by the time the canal reaches the Weymouth "100" lateral.

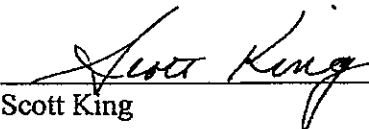
6. Instead, by the time the Caldwell Highline Canal reaches the Weymouth "100" lateral, the majority of canal flows consist of water from sources other than the Boise River. The most significant source of this water is a feeder canal which diverts and conveys water from Fivemile Creek into the Caldwell Highline Canal. In addition, there are a number of waste ditches which empty into the Caldwell Highline Canal upstream of the Weymouth "100" lateral. These are the waste ditch associated with the 5.3 Lateral, two waste ditches associated with the 5.17 Lateral, and an unnamed waste ditch upstream of William Clayton's bridge crossing the Caldwell Highline Canal.

7. Based upon this information, I believe water users associated with the Mason Creek Ditch Company have historically diverted and beneficially used only limited

quantities of water from the Caldwell Highline Canal. And, to the extent Mason water users have diverted and beneficially used water from the Caldwell Highline Canal, I believe a significant percentage of that water has consisted of Fivemile Creek water and waste water, rather than water diverted from the Boise River at the heading of the Caldwell Highline Canal.

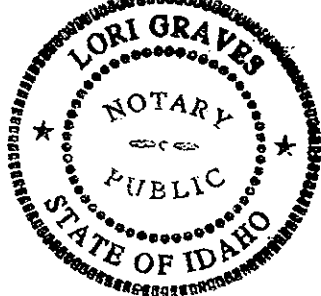
8. Instead, it appears more likely that Mason Creek Ditch Company water users have historically obtained their water from Mason Creek and Fivemile Creek. This conclusion is supported by the fact that IDWR has recommended water right 63-32580 in the name of Mason Creek Ditch Company for the diversion of up to 17 cfs of water from Mason Creek with a priority date of March 1, 1922, and that the Company has also filed a late SRBA claim (63-33392) to 17 cfs of water diverted from Fivemile Creek with a priority date of June 1, 1869.

Further your affiant sayeth naught.



Scott King

SUBSCRIBED AND SWORN to before me this 1 day of October, 2010.





NOTARY PUBLIC FOR IDAHO
Residing at Boise
My Commission Expires 5/6/2015

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 1st day of October, 2010, I caused a true and correct copy of the foregoing **AFFIDAVIT OF SCOTT KING, P.E. IN OPPOSITION TO MASON CREEK 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 Scott King, P.E. in Opposition to
Mason Creek 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

2009 NAIP Imagery

