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DEPARTMENT OF
WATER RESOURCES

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
SUPPLEMENTAL RESPONSES TO MASON
CREEK DITCH COMPANY'S FIRST SET OF
DISCOVERY REQUESTS**

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

I.
GENERAL OBJECTIONS

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

Pioneer objects to the definitions and instructions to the extent they purport to require discovery requests beyond that required under the Idaho Rules of Civil Procedure. These responses are provided in accordance with the Idaho Rules of Civil Procedure irrespective of any definitions and instructions that may accompany these discovery requests.

These responses are made subject to all objections as to competence, relevance, materiality, and admissibility. These responses are subject to all objections that would require the exclusion of any statement, material, or information herein provided if such interrogatory were asked of or any statement, material, or information provided were made by witnesses present and testifying in court. All such objections are reserved and may be interposed at the time of trial.

Pioneer specifically objects to these discovery requests to the extent they seek information protected by the attorney-client privilege, the attorney work product doctrine, and the rules governing the discovery of facts of experts as set forth in Rule 26(b)(4), Idaho Rule of Civil Procedure. This objection is intended to apply to all of the discovery requests that seek such information and will not necessarily be repeated for each request to which it applies.

Pioneer has, to the extent possible, construed each request as requesting only information and/or documents not subject to any applicable protection.

No incidental or implied admissions are intended. The fact that Pioneer has responded to any discovery request, or part thereof, should not be taken as an admission that Pioneer accepts that the discovery request or the response or objection thereto constitutes admissible evidence. Pioneer's answers to any discovery requests herein do not constitute a waiver of their rights to object to any future, additional, or supplemental discovery requests regarding the same or similar matter.

II. ANSWERS TO INTERROGATORIES

INTERROGATORY NO. 2: Please describe, with specificity, each factual and legal basis for the Objection filed by Pioneer Irrigation District to the Director's recommendation for water right no. 63-179C.

INITIAL ANSWER TO INTERROGATORY NO. 2: Pioneer's investigations into the factual and legal issues relevant to the recommendation of water right 63-179C are ongoing, and Pioneer therefore reserves the right to supplement its response in accordance with Idaho Rule of Civil Procedure 26(e) and the Trial Scheduling Order. At this time, Pioneer responds as follows.

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 historically 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. 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.

SUPPLEMENTAL ANSWER TO INTERROGATORY NO. 2: Pioneer's investigations into the factual and legal issues relevant to the recommendation of water right 63-179C are ongoing, and Pioneer therefore reserves the right to supplement its response in accordance with Idaho Rule of Civil Procedure 26(e) and the Trial Scheduling Order. At this time, Pioneer responds as follows.

The recommendation for water right 63-179C recommends a point of diversion which would require water to be diverted, conveyed, and delivered to the water users comprising the Mason Creek Ditch Co. through Pioneer's Caldwell Highline Canal. Pioneer has historically performed all of the operation, maintenance, and repair of the Caldwell 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's Caldwell Highline Canal does not have sufficient operational capacity to convey all of the water rights which have been recommended with the Caldwell Highline Canal as the point of diversion. Therefore, Pioneer believes all or a portion of this water right has been forfeited. To the extent that diversions of Boise River water pursuant to water right 63-179 have occurred, Pioneer suspects that some of that water has historically been used on Pioneer lands. Pioneer also believes that the majority of any water diverted by Mason Creek Ditch Co. water users from the Caldwell Highline Canal (if any) consists of wastewater

rather than Boise River water. 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.

INITIAL 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.

SUPPLEMENTAL ANSWER TO INTERROGATORY NO. 3: While Mason Creek Ditch Co. lacks any specific authorization to utilize Pioneer's system, at some point in time, water right 63-179 began to be diverted, conveyed, and delivered to the water users comprising the Mason Creek Ditch Co. through Pioneer's Caldwell Highline Canal. Pioneer has performed all of the operation, maintenance, and repair of the Caldwell 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. To the extent that diversions of Boise River water to water right 63-179 have occurred, Pioneer suspects that some of that water 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.

INITIAL 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 Pioneer therefore reserves the right to supplement its response in accordance with Idaho Rule of Civil Procedure 26(e) and the Trial Scheduling Order. At this time, Pioneer responds as follows.

Under Idaho law, waste water may be recaptured by the original appropriator, even if doing so injures water users who have perfected water rights in such waste water. Virtually all of the water in Mason Creek consists of return flow from irrigation occurring within Pioneer. Therefore, to more accurately capture Idaho law, the remark in the recommendation should be revised to include these clarifications. In addition, the recommended quantity exceeds the reasonable duty of water when combined with the recommendation for 63-179C and Mason's potential claim to 63-33392.

SUPPLEMENTAL 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 Pioneer therefore reserves the right to supplement its response in accordance with Idaho Rule of Civil Procedure 26(e) and the Trial Scheduling Order. At this time, Pioneer responds as follows.

Under Idaho law, waste water may be recaptured by the original appropriator, even if doing so injures water users who have perfected water rights in such waste water. Virtually all of the water in Mason Creek consists of return flow from irrigation occurring within

Pioneer. Therefore, to more accurately capture Idaho law, the remark in the recommendation should be revised to include these clarifications. In addition, the recommended quantity exceeds the reasonable duty of water when combined with the recommendation for 63-179C and Mason's claim to 63-33392. Moreover, the available evidence does not reasonably support the recommended priority date, or the assignment of that priority date to the entire recommended quantity.

INTERROGATORY NO. 7: Please identify all persons whom you expect to call as witnesses and expert witnesses at the trial of SRBA sub-case nos. 63-179C or 63-179A and any of these consolidated subcases.

INITIAL ANSWER TO INTERROGATORY NO. 7: Pioneer has not yet definitively determined who will testify as fact witnesses and expert witnesses at trial, and Pioneer therefore reserves the right to supplement this response once those final decisions have been made in accordance with Idaho Rule of Civil Procedure 26(e) and the Trial Scheduling Order. At this time, Pioneer responds that Pioneer board members Alan Newbill, Leland Earnest and Rob Greenfield; Pioneer Superintendent Mark Zirschky; and Pioneer Secretary/Treasurer Dawn Fowler may testify at trial as fact witnesses. Their business address and phone number are P.O. Box 426, Caldwell, Idaho 83606, (208) 459-3617. Scott King, P.E., of SPF Water Engineering, LLC, may also testify at trial as an expert witness. His business address and telephone number are 300 E. Mallard Dr. Suite 350, Boise, ID, 83706, (208) 383-4140.

SUPPLEMENTAL ANSWER TO INTERROGATORY NO. 7: Pioneer has not yet definitively determined who will testify as fact witnesses and expert witnesses at trial, and Pioneer therefore reserves the right to supplement this response once those final decisions have been made in accordance with Idaho Rule of Civil Procedure 26(e) and the Trial Scheduling

Order. At this time, Pioneer responds that Pioneer board members Alan Newbill, Leland Earnest and Rob Greenfield; Pioneer Superintendent Mark Zirschky; and Pioneer Secretary/Treasurer Dawn Fowler may testify at trial as fact witnesses. Their business address and phone number are P.O. Box 426, Caldwell, Idaho 83606, (208) 459-3617. Scott King, P.E., of SPF Water Engineering, LLC, may also testify at trial as an expert witness. His business address and telephone number are 300 E. Mallard Dr. Suite 350, Boise, ID, 83706, (208) 383-4140. Jennifer Stevens, Ph.D of SHRA StevensHistoricalResearchAssociates may also testify at trial as a fact and/or expert witness. Her business address and telephone number are 500 W. Idaho St., Boise, Idaho 83702, (208) 850-1553.

INTERROGATORY NO. 8: Please identify all documents that you intend to introduce as exhibits at the trial of SRBA sub-case no. 63-179C or 63-179A and any of these consolidated subcases.

INITIAL ANSWER TO INTERROGATORY NO. 8: Pioneer has not yet definitively determined all documents it intends to introduce as exhibits at trial and therefore reserves the right to supplement this response in accordance with Idaho Rule of Civil Procedure 26(e) and the Trial Scheduling Order. At this time, Pioneer responds that it intends to utilize the documents attached as Bates Nos. PID000110-PID000113, PID000128-PID000132, PID000152-PID000303 and PID000344 as trial exhibits.

SUPPLEMENTAL ANSWER TO INTERROGATORY NO. 8: Pioneer incorporates its prior stated objections to this Request for Production. Subject to and without waiving said objections, please see the documents that have been produced in response to Request for Production No. 9.

III.
RESPONSES TO REQUESTS FOR PRODUCTION OF DOCUMENTS

REQUEST FOR PRODUCTION NO. 1: Please produce all contracts, agreements, and any documentation or record of any contracts or agreements between Mason Creek Ditch Company and Pioneer Irrigation District concerning water right nos. 63-179A or 63-179C, use of the Caldwell Highline Canal or use of water delivered by the Caldwell Highline Canal.

SUPPLEMENTAL RESPONSE TO REQUEST FOR PRODUCTION NO. 1:
Pioneer incorporates its prior stated objections to this Request for Production. Subject to and without waiving said objections, additional responsive documents are attached as Bates No. PID000362.

REQUEST FOR PRODUCTION NO. 2: Please produce all contracts, agreements, and any documentation or record of any contracts or agreements between Mason Creek Ditch Company and Pioneer Irrigation District concerning delivery of water to Mason Creek Ditch Company by or through Mason Creek, Five Mile, Ten Mile or Fifteen Mile Drains.

SUPPLEMENTAL RESPONSE TO REQUEST FOR PRODUCTION NO. 2:
Pioneer incorporates its prior stated objections to this Request for Production. Subject to and without waiving said objections, additional responsive documents are attached as Bates Nos. PID000362-PID000363.

REQUEST FOR PRODUCTION NO. 3: Please produce any maps and photographs of diversion structures and delivery systems from the Caldwell Highline Canal to Mason Creek, Five Mile, Ten Mile or Fifteen Mile Drains.

INITIAL RESPONSE TO REQUEST FOR PRODUCTION NO. 3: Pioneer has not located any maps or photographs that specifically depict "diversion structures and delivery

systems from the Caldwell Highline Canal to Mason Creek, Five Mile, Ten Mile, or Fifteen Mile Drains.” However, Pioneer possesses multiple maps of its overall service area and delivery and drainage system, as well as a box of unlabeled photographs that could contain photographs responsive to this request. However, because the photographs are unlabeled, Pioneer is unable to determine which photographs may be responsive to this request. In accordance with Idaho Rule of Civil Procedure 34, Mason may inspect such maps and photographs at Pioneer’s business offices located at 3804 S. Lake Ave., Caldwell, Idaho 83605, at a mutually agreeable date and time.

SUPPLEMENTAL RESPONSE TO REQUEST FOR PRODUCTION NO. 3:

Pioneer objects to this request on the basis that the check structures which release water from the Caldwell Highline Canal to Mason Creek and Five Mile Creek are utilized solely for the purposes of managing flows in the canal. Pioneer specifically objects to the characterization of these structures as “diversion structures and delivery systems.” Without waiving such objections, a photograph depicting the spill from the Caldwell Highline Canal into Mason Creek is included as Bates No. PID000364 and maps depicting the Caldwell Highline Canal system are included as Bates Nos. PID000392-PID000395, and PID000404. In addition, Pioneer possesses multiple maps of its overall service area and delivery and drainage system, as well as a box of unlabeled photographs that could contain photographs responsive to this request. However, because the photographs are unlabeled, Pioneer is unable to determine which photographs may be responsive to this request. In accordance with Idaho Rule of Civil Procedure 34, Mason may inspect such maps and photographs at Pioneer’s business offices located at 3804 S. Lake Ave., Caldwell, Idaho 83605, at a mutually agreeable date and time.

REQUEST FOR PRODUCTION NO. 3: Please produce the minutes of all meetings of the Board of Directors of Pioneer Irrigation District which refer to or relate to the negotiations for any agreements, any agreements themselves or the implementation of any agreements between Pioneer Irrigation District and either Franklin Ditch Company or Mason Creek Ditch Company concerning water rights, the Caldwell Highline Canal or use of any water delivered through the Caldwell Highline Canal.

SUPPLEMENTAL RESPONSE TO REQUEST FOR PRODUCTION NO. 4:
Pioneer incorporates its prior stated objections to this Request for Production. Subject to and without waiving said objections, additional responsive documents are attached as Bates Nos. PID000370-PID000386.

REQUEST FOR PRODUCTION NO. 7: Please produce all records, logs, diaries, reports, minutes, and documents of any kind that demonstrate Pioneer Irrigation District's historical use, delivery, or application of the water to beneficial use represented by water right no. 63-179C decreed to Mason Creek Ditch Company or by water right no. 63-179A claimed by Pioneer Irrigation District.

SUPPLEMENTAL RESPONSE TO REQUEST FOR PRODUCTION NO. 7:
Pioneer incorporates its prior stated objections to this Request for Production. Subject to and without waiving said objections, additional responsive documents are attached as Bates Nos. PID000036-PID000038 and PID000362-PID000363.

REQUEST FOR PRODUCTION NO. 9: Please produce all documents that Pioneer Irrigation District intends to introduce as exhibits at the trial of this action.

SUPPLEMENTAL RESPONSE TO REQUEST FOR PRODUCTION NO. 9:
Pioneer incorporates its prior stated objections to this Request for Production. Subject to and

without waiving said objections, additional responsive documents are attached as Bates Nos. PID000345-PID000346, PID000365-PID000369, and PID000387-PID000404, and were previously produced as Bates Nos. PID000001-PID000035.

REQUEST FOR PRODUCTION NO. 10: Please produce copies of any expert analyses, reports, memoranda, or other documents produced by an expert retained to provide services or advice to Pioneer Irrigation District that in any way relates to the basis for the objection filed by Pioneer Irrigation District to water right no. 63-179C or in claiming water right no. 63-179A. This request specifically seeks all documents required to be produced under Rule 26(b)(4) of the Idaho Rules of Civil Procedure concerning the opinions of your experts and the basis therefor.

INITIAL RESPONSE TO REQUEST FOR PRODUCTION NO. 10: Pioneer objects to this request as overbroad and outside the scope of Idaho Rules of Civil Procedure 26(b)(3), 26(b)(4), and 26(b)(4)(B). Pursuant to Rule 26(b)(3), Mason “may obtain discovery of documents and tangible things . . . prepared in anticipation of litigation or for trial by or for [Pioneer] or by or for [Pioneer’s] representative (including [Pioneer’s] attorney [or] consultant []) *only upon a showing* that [Mason] has substantial need of the materials in the preparation of [Mason’s] case and that [Mason] is unable without undue hardship to obtain the substantial equivalent of the materials by other means.” (Emphasis added). Pursuant to Rule 26(b)(4), “discovery of *facts known and opinions held* by experts expected to testify . . . and acquired or developed in anticipation of litigation or for trial, may be obtained by *interrogatory and/or deposition . . .*” (Emphasis added). Pursuant to Rule 26(b)(4)(B), “[a] party may not discover facts known or opinions held by an expert who has been retained or specially employed by

another party in anticipation of litigation or preparation for trial and who is not expected to be called as a witness at trial”

Notwithstanding such objections, Pioneer responds that, as previously disclosed in Response to Interrogatory No. 7, Pioneer has retained the services of Scott King, P.E. of SPF Water Engineering, LLC as an expert witness in this matter. At this time, Pioneer expects Mr. King to provide testimony regarding the general operational and flow regime of Pioneer’s Highline Canal and to prepare maps and other exhibits to illustrate the operation of the Highline Canal, as well as the points of diversion and places of use of the water rights involved. For any other matters outside of this specific scope of testimony, Mr. King is a consulting expert at this time, and the facts known and opinions held by Mr. King as to such other matters are therefore not discoverable at this time. If Pioneer expects Mr. King to testify as to additional matters, Pioneer will supplement this response in accordance with Idaho Rule of Civil Procedure 26 (b) and (e) and the Trial Scheduling Order.

SUPPLEMENTAL RESPONSE TO REQUEST FOR PRODUCTION NO. 10:

Pioneer objects to this request as overbroad and outside the scope of Idaho Rules of Civil Procedure 26(b)(3), 26(b)(4), and 26(b)(4)(B). Pursuant to Rule 26(b)(3), Mason “may obtain discovery of documents and tangible things . . . prepared in anticipation of litigation or for trial by or for [Pioneer] or by or for [Pioneer’s] representative (including [Pioneer’s] attorney [or] consultant []) *only upon a showing* that [Mason] has substantial need of the materials in the preparation of [Mason’s] case and that [Mason] is unable without undue hardship to obtain the substantial equivalent of the materials by other means.” (Emphasis added). Pursuant to Rule 26(b)(4), “discovery of *facts known and opinions held* by experts expected to testify . . . and acquired or developed in anticipation of litigation or for trial, may be obtained by

interrogatory and/or deposition” (Emphasis added). Pursuant to Rule 26(b)(4)(B), “[a] party may not discover facts known or opinions held by an expert who has been retained or specially employed by another party in anticipation of litigation or preparation for trial and who is not expected to be called as a witness at trial”

Notwithstanding such objections, Pioneer responds that, as previously disclosed in Response to Interrogatory No. 7, Pioneer has retained the services of Scott King, P.E. of SPF Water Engineering, LLC as an expert witness in this matter. At this time, Pioneer expects Mr. King (1) to provide testimony regarding the general operational, flow, delivery, and drainage regime of Pioneer’s Caldwell Highline Canal and to prepare maps and other exhibits to illustrate the operation of the Caldwell Highline Canal, as well as the points of diversion and places of use of the water rights involved; (2) to provide testimony and mapping regarding the water conveyance facilities historically utilized by the Franklin Ditch Company; and (3) to provide testimony and mapping regarding the history and development of and relationship between the Franklin Ditch, the old Caldwell Canal, the Highline Canal, and the Caldwell Highline Canal. For any other matters outside of this specific scope of testimony, Mr. King is a consulting expert at this time, and the facts known and opinions held by Mr. King as to such other matters are therefore not discoverable at this time. If Pioneer expects Mr. King to testify as to additional matters, Pioneer will supplement this response in accordance with Idaho Rule of Civil Procedure 26 (b) and (e) and the Trial Scheduling Order. As Pioneer also disclosed in response to Interrogatory No. 7, Jennifer Stevens, Ph.D. may testify as an expert witness in this matter. At this time, Pioneer expects Dr. Stevens to testify regarding the history and development of and the relationship between the Franklin Ditch, the old Caldwell Canal, the Highline Canal, and the Caldwell Highline Canal.

DATED this 1st day of October 2010.

MOFFATT, THOMAS, BARRETT, ROCK &
FIELDS, CHARTERED

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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 1st day of October, 2010, I caused a true and correct copy of the foregoing **PIONEER IRRIGATION DISTRICT'S SUPPLEMENTAL RESPONSES TO MASON CREEK DITCH COMPANY'S FIRST SET OF DISCOVERY REQUESTS** 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

Director

IDAHO DEPARTMENT OF WATER RESOURCES

322 E. Front Street, 6th Floor

P.O. Box 83720

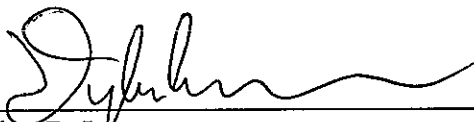
Boise, ID 83720

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☐ Facsimile



Dylan B. Lawrence