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DEPARTMENT OF
WATER RESOURCES

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Attorneys for Franklin Ditch Company, Inc.

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, AND 63-32580
)

) **AFFIDAVIT OF JON C. GOULD**
) **IN SUPPORT OF FRANKLIN'S REPLY**
)
)

STATE OF IDAHO)
) ss.
County of Ada)

JON C. GOULD, being first duly sworn upon his oath, deposes and says that:

1. That I am an attorney of record for Franklin Ditch Company (hereinafter "Franklin"), in this matter and make this Affidavit based upon my personal knowledge and am competent to testify to the matters contained herein.

2. I certify that the attached, as Exhibit 1, is a true and correct photocopy of relevant excerpts of transcript of the 30(b)(6) deposition of IDWR in these subcases.

3. I certify that the attached, as Exhibit 2, is a true and correct photocopy of Exhibit 5, Maximum Monthly Diversions 1950-2000 13210005 Caldwell Highline Canal from the 30(b)(6)

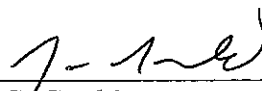
AFFIDAVIT OF JON C. GOULD IN SUPPORT OF FRANKLIN'S REPLY - Page 1

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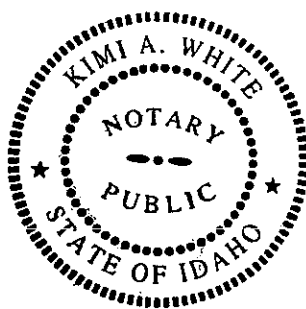
deposition of IDWR in these subcases.

DATED this 5th day of October, 2010.

RINGERT LAW CHARTERED

By 
Jon C. Gould

Sworn to and subscribed before me this 5th day of October, 2010.




Notary Public for Idaho
Residing in Boise, Idaho
My Commission Expires: 01/01/16

CERTIFICATE OF SERVICE

I hereby certify that on this 5th day of October, 2010, I served a true and correct copy of the foregoing document by U.S. mail, postage pre-paid to the following:

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

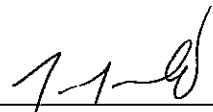
Chief of Natural Resource Division
Office of the Attorney General
State of Idaho
P.O. Box 44449
Boise, Idaho 83711-4449

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

Mason Creek Ditch Company
c/o Albert Barker
P.O. Box 2139
Boise, Idaho 83701-2139

Martin Galvin
P.O. Box 115
Middleton, Idaho 83644

John J. McEvoy
1703 N. KCID Road
Caldwell, Idaho 83605



Jon C. Gould

Exhibit 1

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
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 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?

1 Q. And can you explain the background behind the
2 accomplished transfer. So we have the point of
3 diversion. And then down in explanatory material there
4 is just a general notation that it's an accomplished
5 change in point of diversion. Do you know the
6 background of that remark?

7 A. Yes. In the decree, the point of diversion was
8 listed as just in Section 18, 04 North 1 West, I believe
9 it was. Yeah, 04 North 01 West. And when Dave
10 recommended this, the point of diversion listed on this,
11 and Mason Creek and on Pioneer's for Caldwell Highline,
12 was in Section 24.

13 When that happens, we put the accomplished
14 transfer condition on there for a change of point of
15 diversion. And when it's been a long period of time,
16 like this has been, it's assumed there is no injury,
17 because nobody has complained about it for several
18 years. I mean, that's kind of some of the basics of
19 that analysis.

20 Q. Right.

21 A. And that is why that's put on there; so that
22 people know that it was an accomplished change.

23 Q. Do you know or have any idea why the point of
24 diversion was different between the Stewart Decree and
25 what was recommended in the SRBA, what accounted for the

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

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

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.

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

1 Q. And you testified as to that.

2 A. Yes, I did.

3 Q. And then on the recommendation, the point of
4 diversion, it is a different location.

5 A. Yes, it is.

6 Q. And was that the basis for the comment
7 regarding the accomplished change?

8 A. Yes.

9 Q. And did the Department ever make a
10 determination that the actual point of diversion had
11 been changed?

12 A. I'm sure that -- yes, I would say that they did
13 by putting that remark on there.

14 Q. Is there information --

15 A. There is no information in the file to say, you
16 know, this is the date that we did it. It went to here.
17 And, you know, there was agreements that kind of eluded
18 that there was some changes. And I think that's
19 probably what Dave took into consideration, and the fact
20 that it was a different legal description.

21 Q. And I think the point I'm getting at is, is it
22 possible that at the time of the Stewart Decree that the
23 point of diversion was at the William Frost farm, but
24 that possibly the description of Section 18, Township 4,
25 Range 1 was in error?

1 A. That could very well be.

2 Q. And then subsequently with the modern
3 technology, when you guys did your mapping, it showed
4 that point of diversion being at Township 4 North, Range
5 2 West, Section 24. If there is a discrepancy between a
6 point of diversion in a prior decree and a point of
7 diversion on your records, how do you handle something
8 like that in this type of process?

9 A. We normally do -- it has been our policy that
10 if there's a point of diversion in the original water
11 right, and we recommend something different, that we are
12 assuming there was an accomplished change in the point
13 of diversion. So we do put that remark on there. That
14 has been our direction from the -- it's of the
15 adjudication.

16 Q. And are you familiar with any instances where
17 it was known that there was a clerical or typographical
18 error in a prior decree?

19 A. Yes.

20 Q. And in that situation did you include the
21 accomplished change comment in the recommendation?

22 A. If we knew that it was an error, I mean, if we
23 had documentation in the file that there was actually an
24 error in the decree, that it was totally wrong, you
25 know, like a total different township and range, they

1 probably would not have put that in there, but most of
2 the time you didn't know for sure that it was wrong. So
3 when you went out and saw that it was in a different
4 location than what was designated in the decree, you had
5 to assume that it had been changed. You'd have to have
6 some good evidence.

7 Q. And so in those situations where you don't have
8 good evidence, you just include the comment?

9 A. Right.

10 Q. And that comment, that explanatory comment
11 appears on both 63-167A and 63-167B. I know one is
12 Exhibit 3 and one might be Exhibit 7.

13 A. It's on 166B and 167B, I think, isn't it?

14 Q. Yeah. That's what I meant to say, 166B and
15 167B.

16 A. Yes, it is.

17 MR. GOULD: That concludes my questioning.

18 F U R T H E R E X A M I N A T I O N

19 BY MR. LAWRENCE:

20 Q. This may have been a line of questioning before
21 you came in, but to summarize it, when we were talking
22 about this earlier, I think the overall conclusion was
23 the Department just didn't have anything in its files
24 one way or the other; is that correct? As far as why
25 this particular --

Exhibit 2

KTS are 63-1796 36.2 maso.
 63-166 B 15.1 Frank
 63-167 B 27.6 From

MAXIMUM MONTHLY DIVERSION 1950-2000

13210005 CALDWELL HIGHLINE CANAL

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