

Attorneys for Objector Pioneer Irrigation District

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18946.0006

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. 63-00179C 63-32580

**PIONEER IRRIGATION DISTRICT'S SECOND
SET OF DISCOVERY REQUESTS TO MASON
CREEK DITCH COMPANY**

COMES NOW Objector Pioneer Irrigation District ("Pioneer"), by and through undersigned counsel, and pursuant to SRBA Administrative Order Section 1 and Idaho Rules of Civil Procedure 26, 33, 34, and 36, and hereby requests that Mason Creek Ditch Company (the "Company") respond to the interrogatories, requests for production, and requests for admission set forth below, and produce copies of the requested documents under oath no later than thirty (30) days from the date of receipt thereof as provided in said Rules.

The following Introduction and Definitions shall apply to these discovery requests:

I. INTRODUCTION

In responding to these interrogatories, requests for production, and requests for admission you are requested to furnish all information available to you, or subject to your reasonable inquiry, including information in the possession of your attorneys, investigators, employees, agents, representatives, guardians, consultants, expert witnesses and/or any other person or persons acting on your behalf, and not merely such information as is known to you by your own personal knowledge.

In responding to these discovery requests, you must make a diligent search of your records and all other papers and materials that are in your possession or available to you or your representatives. If any item has subparts, please answer each part separately and in full. If you cannot answer any of the following discovery requests in full after exercising due diligence to secure the information necessary to do so, please so state and answer or respond to the extent possible, specifying your inability to answer the remainder and stating whatever information or knowledge you have concerning the unanswered portions.

If you object to any discovery request on the ground that the information sought is privileged and nondiscoverable, please state the basis for your claim of privilege and, in the case of any request for production, "identify" the "documents" and "records" which you object to producing, in sufficient detail as to enable the court to rule upon claim of privilege.

These discovery requests are deemed to be continuing. If, after responding to these discovery requests, you acquire any further information responsive to them, you are hereby requested, pursuant to Idaho Rule of Civil Procedure 26(e), to file and serve supplemental

answers or responses containing such further information. If you fail to respond to one or more of these discovery requests or if your responses are evasive or incomplete, Pioneer may move for an order compelling you to fully respond to these discovery requests and to pay the reasonable expenses, including attorney fees, incurred by Pioneer in obtaining the order.

If you fail to produce “documents” and “records” requested herein or fail to answer any interrogatory on the ground that the necessary information, “documents,” or “records” are not within your care, custody, possession or control, please state what efforts you have made to obtain such information, “documents,” or “records.”

If you fail to answer or respond to any of these discovery requests in full or fail to supplement your answers or responses as requested, Pioneer may move the Court for an order precluding you from introducing into evidence, or otherwise using either at trial or on motion for summary judgment, any testimony, witness, exhibit, “document,” “record,” publication, or other item or information not timely disclosed in your response to these discovery requests.

II. DEFINITIONS

When asked to “identify” a person or entity or when asked for the “identity” of a person or entity, please state:

- (a) The name of the person or entity;
- (b) The present or last known address and telephone number of the person or entity;
- (c) The present or last known occupation, business, and employer of the person or entity; and
- (d) The present or last known address and telephone number of the employer of the person or entity.

When asked to “identify” a record or document or when asked for the “identity” of a “record” or “document,” please state:

- (a) The nature or type of “record” or “document” (*e.g.*, letter, photograph, tape recording, etc.);
- (b) The subject matter of the “record” or “document” and/or a general description of its contents;
- (c) The “identity” of the person who authored or created the “record” or “document”;
- (d) The date of the document or, if it bears no date, the date on which it was prepared or created; and
- (e) The physical location of the original and any copies of the “record” or “documents” of which you are aware and the “identity” of the present custodian of the “record” or “document.”

In responding to these discovery requests, the following definitions shall apply:

The terms “record” and/or “document(s)” mean any tangible thing upon which has been placed handwriting, e-mail transmission, typewriting, printing, photocopying, photographing, digital or computerized data, or any other form of recording, communication or representation, including but not limited to letters, words, pictures, sounds, magnetic impulses, symbols, numbers or any combination thereof, whether or not visible to the unassisted human eye. This definition shall include, but is not limited to, any and all originals, copies or drafts of any and all of the following: records, notes, summaries, schedules, contracts, agreements, drawings, blueprints, sketches, invoices, orders, acknowledgments, diaries, reports, findings, forecasts, tests, appraisals, reports, memoranda, medical records, telephone recordings, telephone

logs, telephone lists, diaries, calendars, planners, daytimers, correspondence and letters, e-mail, telegrams, telexes, facsimiles and faxes, cables, tapes, tape recordings, statements, receipts, invoices, check registers, transcripts, recordings, photographs, witness statements, pictures, films, videotapes, computer programs, computer databases, models, things and materials of any nature whatsoever. Any "document" which contains any comment, notation, addition, insertion or marking of any kind which is not part of another document is to be considered as a separate "document."

III. INTERROGATORIES

INTERROGATORY NO. 15: Please describe in full and complete detail how the original, Stewart Decree-based Boise River point of diversion of the Mason Creek Ditch Company (Section 16, Township 4N, Range 2W, Boise Meridian) was transferred to the Caldwell Highline Canal point of diversion (NENE quarter quarter section of Section 24, Township 4N, Range 2W, Boise Meridian). When answering this Interrogatory, please state when the transfer occurred, the administrative identification number (if any) of the transfer, why the transfer occurred or was necessary, whether Mason Creek Ditch Company formally applied for the transfer, and whether Pioneer and the Idaho Department of Water Resources (or their predecessors) approved of the transfer.

INTERROGATORY NO. 16: If your responses to any of the Requests for Admission contained herein are anything other than unqualified admissions, please describe in full and complete detail any and all facts supporting, either in whole or in part, your responses.

**IV.
REQUESTS FOR PRODUCTION OF DOCUMENTS**

REQUEST FOR PRODUCTION NO. 8: Please produce all documents that are in any way responsive to, or supportive of, any of your responses to the Requests for Admission contained herein.

REQUEST FOR PRODUCTION NO. 9: Please produce all documents that are in any way responsive to, or supportive of, any of your answers to the Interrogatories contained herein.

**V.
REQUESTS FOR ADMISSION**

REQUEST FOR ADMISSION NO. 17: Please admit that the point of diversion for the Caldwell Highline Canal is located within the NENE quarter quarter of Section 24, Township 4N, Range 2W, Boise Meridian.

REQUEST FOR ADMISSION NO. 18: Please admit that the point of diversion of Water Right No. 63-00179C as originally decreed in the Stewart Decree proceedings was located in Section 16, Township 4N, Range 2W, Boise Meridian.

REQUEST FOR ADMISSION NO. 19: Please admit that the points of diversion referenced within Request for Admission Nos. 17 and 18 are located approximately 3 to 4 miles apart.

REQUEST FOR ADMISSION NO. 20: Please admit that the conveyance of Water Right No. 63-00179C through the Caldwell Highline Canal, when initially performed, required the approval of the Pioneer Irrigation District.

REQUEST FOR ADMISSION NO. 21: Please admit that the conveyance of Water Right No. 63-00179C through the Caldwell Highline Canal, when initially performed, required the approval of the Idaho Department of Water Resources or its predecessor agency.

REQUEST FOR ADMISSION NO. 22: Please admit that the Franklin Ditch Company does not divert and convey water to the Mason Creek Ditch Company service area from the Caldwell Highline Canal.

REQUEST FOR ADMISSION NO. 23: Please admit that the operational conveyance capacity of the Caldwell Highline Canal is approximately 43 cfs.

REQUEST FOR ADMISSION NO. 24: Please admit that Mason Creek Ditch Company does not divert water directly from the Caldwell Highline Canal (*i.e.*, Mason Creek Ditch Company does own, operate, or maintain any headgates located on/within the Caldwell Highline Canal).

REQUEST FOR ADMISSION NO. 25: Please admit that deliveries of water to the lands served by the Mason Creek Ditch Company, diverted from the Caldwell Highline Canal, are delivered by laterals which also deliver water to Pioneer Irrigation District lands.

REQUEST FOR ADMISSION NO. 26: Please admit that the Mason Creek Ditch Company does not divert water from the Caldwell Highline Canal upstream of where the canal intersects Fivemile Creek.

REQUEST FOR ADMISSION NO. 27: Please admit that Franklin Ditch Company has historically diverted, since 1985 or prior thereto, approximately 37 cfs from the Caldwell Highline Canal upstream of the intersection of the canal and Fivemile Creek.

REQUEST FOR ADMISSION NO. 28: Please admit that Franklin Ditch Company diversions from the Caldwell Highline Canal upstream of the canal's intersection with

Fivemile Creek leaves approximately 1.5 to 4.5 cfs of Boise River water in the canal for diversion by Mason Creek Ditch Company downstream of the intersection of the canal and Fivemile Creek.

REQUEST FOR ADMISSION NO. 29: Please admit that Caldwell Highline Canal flows are replenished by Pioneer's diversion of Fivemile Creek water into the canal via Pioneer's Fivemile Creek feeder canal.

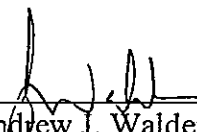
REQUEST FOR ADMISSION NO. 30: Please admit that water diversions from the segment of the Caldwell Highline Canal located between Fivemile Creek and Mason Creek are comprised primarily of water from Fivemile Creek and irrigation return flows recaptured by the Caldwell Highline Canal.

REQUEST FOR ADMISSION NO. 31: Please admit that water diversions from the segment of the Caldwell Highline Canal located between Mason Creek and Interstate 84 are comprised primarily of water from Mason Creek and irrigation return flows recaptured by the Caldwell Highline Canal.

REQUEST FOR ADMISSION NO. 32: Please admit that Mason Creek Ditch Company diverts less than 36.2 cfs of Boise River-sourced water from the Caldwell Highline Canal.

DATED this 20th day of October, 2010.

MOFFATT, THOMAS, BARRETT, ROCK &
FIELDS, CHARTERED

By 
Andrew J. Waldera – Of the Firm
Attorneys for Pioneer Irrigation District

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 20th day of October, 2010, I caused a true and correct copy of the foregoing **PIONEER IRRIGATION DISTRICT'S SECOND SET OF DISCOVERY REQUESTS TO MASON CREEK DITCH COMPANY** to be served by the method indicated below, and addressed to the following:

Mason Creek Ditch Company
Represented by:
Albert P Barker
BARKER RSHOLT & 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

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

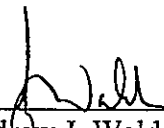
☒ U.S. Mail, Postage Prepaid
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☐ Facsimile

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

☒ U.S. Mail, Postage Prepaid
☐ Hand Delivered
☐ Overnight Mail
☐ Facsimile

Director
IDAHO DEPARTMENT OF WATER RESOURCES
322 E. Front Street, 6th Floor
P.O. Box 83720
Boise, ID 83720

☒ U.S. Mail, Postage Prepaid
☐ Hand Delivered
☐ Overnight Mail
☐ Facsimile



Andrew J. Waldera

Attorneys for Objector Pioneer Irrigation District

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**NOTICE OF SERVICE OF PIONEER
IRRIGATION DISTRICT'S SECOND SET OF
DISCOVERY REQUESTS TO MASON CREEK
DITCH COMPANY**

NOTICE IS HEREBY GIVEN that on the 20th day of October, 2010, a copy of
PIONEER IRRIGATION DISTRICT'S SECOND SET OF DISCOVERY REQUESTS TO MASON CREEK
DITCH COMPANY and a copy of the foregoing NOTICE OF SERVICE were served by the method
indicated below and addressed to the following at the address shown below:

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

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

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☐ Hand Delivered
☐ Overnight Mail
☐ Facsimile

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

☒ U.S. Mail, Postage Prepaid
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Director
IDAHO DEPARTMENT OF WATER RESOURCES
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