

Attorneys for Objector Pioneer Irrigation District

Scott L. Campbell, ISB No. 2251
Andrew J. Waldera, ISB No. 6608
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
18946.0006

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. 63-00166B 63-00167B

**PIONEER IRRIGATION DISTRICT'S SECOND
SET OF DISCOVERY REQUESTS TO
FRANKLIN 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 Franklin 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 the transfer of Franklin Ditch Company claimed water into the Caldwell Highline Canal for conveyance purposes beyond the original 1,350 inches (27 cfs) historically conveyed by the Canal as evidenced by the testimony of Company witnesses during the Stewart Decree proceedings and by the contract and indentures by and between Franklin Ditch Company and the Idaho and Oregon Land Improvement Company, dated October 2, 1883, June 24, 1884, and June 25, 1884, respectively. When answering this interrogatory please state or identify when the transfer occurred, the administrative identification number (if any) of the transfer, the source of the transferred water, the facility that conveyed the water to Company lands prior to the transfer into the Caldwell Highline Canal, and whether Pioneer and the Idaho Department of Water Resources (or their respective predecessors) approved of the transfer.

INTERROGATORY NO. 16: Please describe in full and complete detail your knowledge of the construction of the Clayton driveway/culvert structure referenced in a number of the requests for admission contained herein, including Request for Admission No. 25. When answering this Interrogatory please identify who constructed the driveway/culvert, when the

driveway/culvert was constructed, and the water flow capacity of the culvert (*i.e.*, what canal flow capacity is the culvert designed to accommodate).

INTERROGATORY NO. 17: 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 to the same.

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. 18: Please admit that William Clayton is a shareholder or member of the Franklin Ditch Company.

REQUEST FOR ADMISSION NO. 19: Please admit that William Clayton owns a property access driveway consisting in part of a culvert located within, and driveway bridge across, the Caldwell Highline Canal.

REQUEST FOR ADMISSION NO. 20: Please admit that the Clayton driveway/culvert structure restricts the water conveyance capacity of the Caldwell Highline Canal.

REQUEST FOR ADMISSION NO. 21: Please admit that the Clayton driveway/culvert structure precludes the conveyance of more than 43 cfs into the Caldwell Highline Canal at its heading on the Boise River.

REQUEST FOR ADMISSION NO. 22: Please admit that the conveyance of more than 43 cfs in the Caldwell Highline Canal threatens the integrity of the canal, the integrity of the Clayton driveway/culvert structure, and threatens the overtopping of the canal banks and the corresponding flooding of lands adjacent to the canal in the vicinity of the driveway/culvert structure.

REQUEST FOR ADMISSION NO. 23: Please admit that the Clayton driveway/culvert structure was constructed prior to 1985.

REQUEST FOR ADMISSION NO. 24: Please admit that the Clayton driveway/culvert structure was constructed by Mr. William Clayton or his predecessors-in-interest.

REQUEST FOR ADMISSION NO. 25: Please admit that the Clayton driveway/culvert structure is located within the SENW quarter quarter section of Section 24, Township 4N, Range 2W, Boise Meridian.

REQUEST FOR ADMISSION NO. 26: Please admit that the Clayton driveway/culvert structure is located approximately one mile (or less) downstream of the Caldwell Highline Canal point of diversion on the Boise River.

REQUEST FOR ADMISSION NO. 27: Please admit that the Clayton driveway/culvert structure is located upstream of all of the Franklin Ditch Company headgates that divert water from the Caldwell Highline Canal.

REQUEST FOR ADMISSION NO. 28: Please admit that the Franklin Ditch Company shareholders or members have historically diverted, since 1985 or prior thereto, approximately 37 cfs on/from the segment of the Caldwell Highline Canal located between the canal's point of diversion on the Boise River and where the canal crosses Fivemile Creek.

REQUEST FOR ADMISSION NO. 29: Please admit that the quantities and priorities of the Franklin Ditch Company's claimed Boise River-sourced water rights are:

- (a) 63-00166B – 15.4 cfs (1866); and
- (b) 63-00167B – 27.6 cfs (1880).

REQUEST FOR ADMISSION NO. 30: Please admit that the quantity and priority of the Mason Creek Ditch Company's claimed Boise River-sourced water right is:

- (a) 63-00179C – 36.2 cfs (1869).

REQUEST FOR ADMISSION NO. 31: Please admit that when less than 51.6 cfs is being diverted into the Caldwell Highline Canal at its heading on the Boise River, Franklin Ditch Company diversions exceeding a total of 15.4 cfs from the Caldwell Highline Canal upstream of the canal's intersection with Fivemile Creek are out of priority with the diversion and delivery of Water Right No. 63-00179C downstream of the canal/Fivemile Creek intersection.

REQUEST FOR ADMISSION NO. 32: Please admit that the Franklin Ditch Company does not convey water diverted from the Caldwell Highline Canal to lands located within the Mason Creek Ditch Company service area.

REQUEST FOR ADMISSION NO. 33: Please admit that the Strahorn Slough and the Caldwell Highline Canal are two separate water conveyance facilities.

REQUEST FOR ADMISSION NO. 34: Please admit that, as confirmed by the testimony of Franklin Ditch Company witnesses during the Stewart Decree proceedings, at the time the Stewart Decree was issued, the Company conveyed no more than 1,350 inches (27 cfs) through the Caldwell Highline Canal, and that the remainder of the Company's claimed water rights were conveyed via the Strahorn (aka North) Slough and the South (aka Waste) Slough.

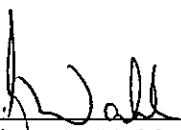
REQUEST FOR ADMISSION NO. 35: Please admit that the conveyance of both Franklin Ditch Company claimed water right nos. 63-00166B (15.4 cfs) and 63-00167B (27.6 cfs), totaling 43.0 cfs, exceeds the 1,350 inches (27 cfs) conveyed within the Caldwell Highline Canal as established by the testimony of Company witnesses during the Stewart Decree proceedings.

REQUEST FOR ADMISSION NO. 36: Please admit that, when initially performed, the conveyance of more than 1,350 inches (27 cfs) of Franklin Ditch Company claimed Boise River water through the Caldwell Highline Canal required the approval of the Pioneer Irrigation District.

REQUEST FOR ADMISSION NO. 37: Please admit that, when initially performed, the conveyance of more than 1,350 inches (27 cfs) of Franklin Ditch Company claimed Boise River water through the Caldwell Highline Canal required the approval of the Idaho Department of Water Resources or its predecessor agency.

DATED this 2nd 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

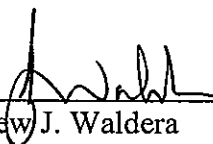
I HEREBY CERTIFY that on this 20th day of October, 2010, I caused a true and correct copy of the foregoing PIONEER IRRIGATION DISTRICT'S FIRST SET OF DISCOVERY REQUESTS TO FRANKLIN DITCH COMPANY to be served by the method indicated below, and addressed to the following:

Daniel V. Steenson
Jon C. Gould
RINGERT LAW, CHTD.
455 S. 3rd St.
P.O. Box 2773
Boise, ID 83701-2773

☐ 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

Scott L. Campbell, ISB No. 2251
Andrew J. Waldera, ISB No. 6608
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
18946.0006

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. 63-00166B 63-00167B

NOTICE OF SERVICE OF PIONEER
IRRIGATION DISTRICT'S SECOND SET OF
DISCOVERY REQUESTS TO FRANKLIN
DITCH COMPANY

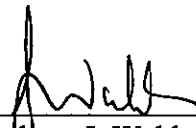
NOTICE IS HEREBY GIVEN that on the 20th day of October, 2010, a copy of
PIONEER IRRIGATION DISTRICT'S SECOND SET OF DISCOVERY REQUESTS TO FRANKLIN
DITCH COMPANY and a copy of the foregoing NOTICE OF SERVICE were served by the method
indicated below and addressed to the following at the address shown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

Daniel V. Steenson
Jon C. Gould
RINGERT LAW, CHTD.
455 S. 3rd St.
P.O. Box 2773
Boise, ID 83701-2773

☐ 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