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DEPARTMENT OF
WATER RESOURCES

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

COMES NOW Pioneer Irrigation District ("Pioneer"), by and through
undersigned counsel, and answers and responds to Mason Creek Ditch Company's ("Company")
Second Discovery Requests to Pioneer Irrigation District 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. 10: Please identify each and every factual and legal basis you have for objecting to the priority date recommended for Water Right No. 63-32580 and every person with knowledge of any such facts.

ANSWER TO INTERROGATORY NO. 10: Objection. Pioneer objects to this interrogatory on the grounds and to the extent that it seeks information protected by either the attorney-client privilege or the work product doctrine. Subject to and without waiving said objections, it appears that Mason Creek Ditch Company supported its claimed 1869 priority date solely with the notarized letter of Charles Paynter, Jr., dated November 26, 2006. Though the Idaho Department of Water Resources ultimately recommended a priority date of 1922, it relied upon the above-referenced Paynter letter in doing so. Consequently, the sole piece of "evidence" establishing the recommended 1922 priority date is the recollection of a then 90-year old individual who was six years old in 1922.

At present, Pioneer disagrees that the Paynter letter alone serves as sufficient evidence of the recommended priority date. Mr. Paynter's letter states that the Company has diverted water from Mason Creek at the specified location "for as long as I can remember." However, Mr. Paynter does not state any specific time frame for his recollection. Moreover, the reliability of a six (6) year old's observations are questionable, let alone observations allegedly made at six (6) years old later recounted at age ninety (90).

In addition to the Paynter letter, the Company also submitted a notarized letter of Edwin June Vassar in support of its historic diversions of water from Mason Creek. Mr. Vassar states that he can personally recall such diversions occurring since "1931 to present," as opposed to either 1869 or 1922. Mr. Vassar's recollection calls into question that of Mr. Paynter regarding Company diversions from Mason Creek as early as 1922. Assuming for the moment that the observations of a six (6) year old are sufficiently reliable (as is allegedly the case with respect to Mr. Paynter), Mr. Vassar was six (6) years old in 1926, yet he does not recall Company diversion of water from Mason Creek at the identified diversion points any earlier than 1931.

Regarding the Company's "person with knowledge" inquiry, Pioneer identifies the following individuals at present:

- Charles Paynter, Jr.;
- Edwin June Vassar; and
- Jan Shurte, Senior Water Resource Agent, Idaho Department of Water Resources.

Pioneer's investigation into these matters is ongoing. Pioneer will supplement this answer under Rule 26(e) as necessary.

INTERROGATORY NO. 11: Please identify each and every change in the Point of Diversion (POD) for Water Right no. No. 63-371 (Right No. 90) from that set out in the Stewart Decree to that utilized by Pioneer today. Include in your answer the diversion structure and the legal description of each such POD.

ANSWER TO INTERROGATORY NO. 11: The Stewart Decree originally decreed the point of diversion for Boise River Right No. 90 (now known as Water Right No. 63-371) as “a point on the farm known as the William Frost farm in section 18, township 4 north, range 1 west, Boise Meridian, through what is known as the Caldwell canal.” Based upon Pioneer records already produced to Mason Creek Ditch Company, the point of diversion for Water Right No. 63-371 was transferred from the head of the Caldwell Canal to that of the Phyllis Canal, located in the SENW quarter-quarter section of Section 24, Township 4N, Range 1W, Boise Meridian. The transfer of the point of diversion from the Caldwell Canal to the Phyllis Canal took place some time between the issuance of the Stewart Decree (1906) and 1940.

At present, and after review of its records, Pioneer has been unable to locate documentation associated with the subject transfer. In response to Pioneer inquiry, the Idaho Department of Water Resources has likewise been unable to locate any documentation associated with the above-referenced transfer to date.

Regarding the Company’s “diversion structure” inquiry, the diversion structure/headgate for the Caldwell Highline Canal is located in the NENE quarter-quarter section of Section 24, Township 4N, Range 2W, Boise Meridian. This includes a concrete check structure spanning the river that employs check boards to control the elevation/depth of the corresponding diversion pool behind the structure. The diversion structure/headgate for the Phyllis Canal is as noted above. In addition to the foregoing infrastructure, diversions into the

Phyllis Canal are also aided by a seasonal diversion dam structure located at the head end of Eagle Island in the SENW quarter-quarter section of Section 23, Township 4N, Range 1E, Boise Meridian. This Eagle Island seasonal diversion dam directs a portion of Boise River flows into the south channel of the river to support/facilitate diversions into the Phyllis Canal which is located downstream on the same south channel of the Boise River.

Pioneer's investigation into these matters is ongoing. Pioneer will supplement this answer under Rule 26(e) as necessary.

III. RESPONSES TO REQUESTS FOR PRODUCTION OF DOCUMENTS

REQUEST FOR PRODUCTION NO. 12: Please produce all documents supporting or relating in any way to your objection to the priority date recommended for Water Right No. 63-32580.

RESPONSE TO REQUEST FOR PRODUCTION NO. 12: Objection. Pioneer objects to this request for production on the grounds and to the extent that it seeks information protected by either the attorney-client privilege or the work product doctrine. Subject to and without waiving said objections, please see documents attached hereto as Bates Nos. PID000444-PID000450. Pioneer's investigation into these matters is ongoing. Pioneer will supplement this answer under Rule 26(e) as necessary.

REQUEST FOR PRODUCTION NO. 13: Please provide all measurements in your possession or control, or that of your expert, SPF Water Engineering, of flows in the Highline Canal, Mason Creek, Five Mile, Ten Mile and Fifteen Mile drains.

RESPONSE TO REQUEST FOR PRODUCTION NO. 13: Objection. Pioneer objects to this request for production on the grounds that reviewing all of its files for "all

measurements...of flows in the Highline Canal, Mason Creek, Five Mile, Ten Mile and Fifteen Mile drains” would be unduly burdensome. Pioneer also objects to this request on the grounds that it seeks materials and information protected by the attorney-client privilege and the work product doctrine. Pioneer further objects to this request on the grounds that “[a] party may not discover facts known or opinions held by an expert...who is not expected to be called as a witness at trial,” and that “[f]acts known and opinions held by experts expected to testify...may be obtained by interrogatory and/or deposition.” I.R.C.P. 26(b)(4), and 26(b)(4)(B). Therefore, this request is not properly presented.

Subject to and without waiving said objections, Pioneer responds that responsive documents are attached hereto as Bates Nos. PID000405-PID000443, PID000451-PID000461 PID000480-PID000513, and PID000549-PID000747. Further, Pioneer maintains a set of the “Water Distribution of Boise River District 63” reports and ditchrider notebooks which may contain responsive information. In accordance with Idaho Rule of Civil Procedure 34, Pioneer will make these reports and ditchrider notebooks available for inspection at its business offices located at 3084 South Lake Avenue, Caldwell, Idaho at a mutually convenient date and time.

Pioneer’s investigation into these matters is ongoing. Pioneer will supplement this answer under Rule 26(e) as necessary.

REQUEST FOR PRODUCTION NO. 14: Please produce all measurements or calculations in your possession or control, or that of your expert, SPF Water Engineering, of the capacity of the Highline Canal.

RESPONSE TO REQUEST FOR PRODUCTION NO. 14: Objection. Pioneer objects to this request for production on the grounds that reviewing all of its files for “all measurements or calculations . . . of the capacity of the Highline Canal” would be unduly

burdensome. Pioneer also objects to this request on the grounds that it seeks materials and information protected by the attorney-client privilege and the work product doctrine. Pioneer further objects to this request on the grounds that “[a] party may not discover facts known or opinions held by an expert...who is not expected to be called as a witness at trial,” and that “[f]acts known and opinions held by experts expected to testify...may be obtained by interrogatory and/or deposition.” I.R.C.P. 26(b)(4), and 26(b)(4)(B). Therefore, this request is not properly presented. At this time, Pioneer does not expect to call Scott King as a witness to testify with respect to the capacity of the Caldwell Highline Canal. Therefore, this request improperly seeks the production of documents protected by Rule 26(b).

Subject to and without waiving said objections, Pioneer responds that responsive documents are attached hereto as Bates Nos. PID000405-PID000443, PID000462-PID000469, PID000480-PID000513, and PID000549-PID000747. In addition, it is possible that documents responsive to this request could be found in Pioneer’s files related to the enlargement of the Caldwell Highline Canal and containing agreements for the alteration of Pioneer’s facilities. In accordance with Idaho Rule of Civil Procedure 34, Pioneer will make these files available for inspection at its business offices located at 3084 South Lake Avenue, Caldwell, Idaho at a mutually convenient date and time.

Pioneer’s investigation into these matters is ongoing. Pioneer will supplement this answer under Rule 26(e) as necessary.

REQUEST FOR PRODUCTION NO. 15: Please produce all records of all orders or directives you have provided to the water master for delivery of water to the Highline Canal.

RESPONSE TO REQUEST FOR PRODUCTION NO. 15: Objection. Pioneer objects to this request for production on the grounds that reviewing all of its files for “all orders

or directives [Pioneer has] provided to the water master for delivery of water to the Highline Canal” would be unduly burdensome. Subject to and without waiving said objection, Pioneer’s “orders or directives” to the water master have historically been conveyed telephonically, as opposed to in writing. Further, Pioneer keeps and maintains ditchrider notebooks that may contain water master-related delivery requests. In accordance with Idaho Rule of Civil Procedure 34, Pioneer will make these reports and ditchrider notebooks available for inspection at its business offices located at 3084 South Lake Avenue, Caldwell, Idaho at a mutually convenient date and time.

Pioneer’s investigation into these matters is ongoing. Pioneer will supplement this answer under Rule 26(e) as necessary.

REQUEST FOR PRODUCTION NO. 16: Please produce the results of any “Hubble analysis” (as that term was used by your attorney in the 30(6)(b) deposition of the IDWR in these subcases) in your possession of control, or that of your expert, SPF Water Engineering, for any lands in Pioneer Irrigation District and any lands in or adjacent to Mason Creek or Franklin Ditch Company boundaries and any “bottom lands” (as that term is used in the Stewart decree) along the Boise River.

RESPONSE TO REQUEST FOR PRODUCTION NO. 16: Objection. Pioneer objects to this request for production on the grounds that its counsel did not use the terms “Hubble analysis” during the September 17, 2010 Rule 30(b)(6) deposition of the Idaho Department of Water Resources. Instead, those terms were used by the Department’s designated Rule 30(b)(6) witness, Ms. Jan Shurte. *See*, Tr. at 88:24. Pioneer also objects to this request on the grounds that it seeks materials and information protected by the attorney-client privilege and the work product doctrine.

Pioneer further objects to this request on the grounds that “[a] party may not discover facts known or opinions held by an expert...who is not expected to be called as a witness at trial,” and that “[f]acts known and opinions held by experts expected to testify...may be obtained by interrogatory and/or deposition.” I.R.C.P. 26(b)(4), and 26(b)(4)(B). Therefore, this request is not properly presented.

Subject to and without waiving said objections, Pioneer has not located any documents responsive to this request. However, Pioneer’s investigation into these matters is ongoing. Pioneer will supplement this answer under Rule 26(e) as necessary.

REQUEST FOR PRODUCTION NO. 17: Please produce all records, including transcripts of proceedings, of any transfer of the point of diversion of Water Right No. 63-371 (water right No. 90 in the Stewart decree) including any transfer referred to in the Statement by Turner and Welsh produced by Pioneer at PID000127.

RESPONSE TO REQUEST FOR PRODUCTION NO. 17: Please see Answer to Interrogatory No. 11.

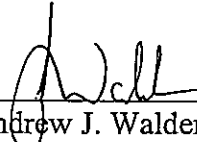
REQUEST FOR PRODUCTION NO. 18: Please produce your agreement with Canyon Hill Irrigation District, referred to in document No. PID000097.

RESPONSE TO REQUEST FOR PRODUCTION NO. 18: Please see documents attached hereto as Bates Nos. PID000470-PID000479. These documents consist of three contracts between Pioneer and the “Caldwell Irrigation District,” dated 1918, 1919, and 1956, respectively. Though Pioneer understands that this request for production seeks a contract with the Canyon Hill Irrigation District, these two contracts were found in Pioneer’s Canyon Hill Irrigation District file, along with a note stating that the Caldwell Irrigation District was the prior incarnation of what then became the Canyon Hill Irrigation District. However, Pioneer has not

been able to verify that the foregoing nomenclature differences are accurate, only that its files and notes indicate as much.

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

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

STATE OF IDAHO)
) ss.
County of Canyon)

DAWN FOWLER, being first duly sworn, deposes and says:

I am the Secretary/Treasurer of **PIONEER IRRIGATION DISTRICT** and am authorized to make this verification in its behalf.

I have read **PIONEER IRRIGATION DISTRICT'S RESPONSES TO MASON CREEK DITCH COMPANY'S SECOND DISCOVERY REQUESTS TO PIONEER IRRIGATION DISTRICT**, know the contents thereof and that the same are true to the best of my knowledge, information, and belief.

Dawn Fowler

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

NOTARY PUBLIC FOR IDAHO
Residing at _____
My Commission Expires _____

CERTIFICATE OF SERVICE

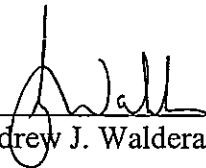
I HEREBY CERTIFY that on this 20th day of October, 2010, I caused a true and correct copy of the foregoing **PIONEER IRRIGATION DISTRICT'S RESPONSES TO MASON CREEK DITCH COMPANY'S SECOND DISCOVERY REQUESTS TO PIONEER IRRIGATION DISTRICT** to be served by the method indicated below, and addressed to the 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
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Director
IDAHO DEPARTMENT OF WATER RESOURCES
322 E. Front Street, 6th Floor
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☐ Facsimile



Andrew J. Waldera