

RECEIVED
FEB 09 2011
DEPARTMENT OF
WATER RESOURCES

I. ARGUMENT

A. Pioneer's Objections to Mason Creek's Water Rights Must be Dismissed

1. Subsequent to this court's *Memorandum Decision and Order on Motions for Summary Judgment*, Pioneer Irrigation District ("Pioneer") and Mason Creek entered into a settlement agreement on December 14, 2010. Provision 1 of the Settlement Agreement states:

Pioneer agrees to file Notices of Withdrawal of Objections to Mason Creek's water right nos. 63-00179C and 63-32580 ("Mason Creek's water rights") in the Snake River Basin Adjudication District Court Case No. 39576 for Subcase Nos. 63-00179C and 63-32580 within ten (10) days of recording a fully executed version of Agreement.

Settlement Agreement, at 1 (emphasis added). (See *Affidavit of Sarah W. Higer in Support of Motion to Dismiss Pioneer Irrigation District's Objections to Settlement Agreement*, hereinafter "*Higer Aff.*," Exhibit A).

2. The executed Settlement Agreement was recorded the following day, December 15, 2010 at the Canyon County Recorder's Office.
3. The Settlement Agreement bears the Canyon County Recorder's stamp, dated December 15, 2010, indicating that the executed Settlement Agreement was in fact recorded at the Canyon County Recorder's Office pursuant to the Agreement. See *Higer Aff.*, Ex. A.
4. As noted above, under the terms of the Agreement, Pioneer agreed to file Notices of Withdrawal of Objections to Mason Creek's Water Rights Nos. 63-00179C and 63-32580 within ten days of recording the Agreement; Pioneer has failed to do so. Therefore, Mason Creek asks this Court to dismiss Pioneer's Objections to water

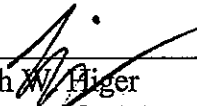
right nos. 63-00179C and 63-32580 in conformance with the terms of the Settlement Agreement.

II. CONCLUSION

Pioneer's failure to withdraw its objections to Mason Creeks' water right nos. 63-00179C and 63-32580 violates the terms of the Settlement Agreement. Consequently, Mason Creek respectfully requests that this Court dismiss those objections in order to fulfill the terms of the fully executed and recorded Settlement Agreement.

DATED this 8th day of February, 2011.

BARKER ROSHOLT & SIMPSON LLP



Sarah W. Higer
Attorneys for Mason Creek Ditch Company

CERTIFICATE OF SERVICE

I **HEREBY CERTIFY** that on this 8th day of February, 2011, I caused to be served a true and correct copy of the foregoing **MASON CREEK'S MOTION TO DISMISS PIONEER IRRIGATION DISTRICT'S OBJECTIONS TO MASON CREEK'S WATER RIGHT NOS. 63-00179C AND 63-32580** by the method indicated below, and addressed to each of the following:

Filed via Hand Delivery:

Clerk of the District Court
Snake River Basin Adjudication
253 3rd Avenue North
P.O. Box 2707
Twin Falls, ID 83303-2707
Fax No. 208-736-2121

Served via U.S. Mail:

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

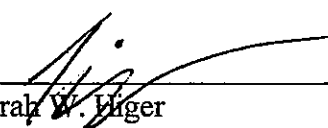
United States Department of Justice
Environment & Natural Resc Division
550 West Fort Street, MSC 033
Boise, ID 83724

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

Served via Facsimile and U.S. Mail:

Scott L. Campbell
Andrew J. Waldera
Moffatt Thomas, et al.
P. O. Box 829
Boise, ID 83701-0829
*Attorneys for Pioneer Irrigation
District*

Daniel V. Steenson
Jon C. Gould
P. O. Box 2773
Boise, ID 83701-2773
Attorneys for Franklin Ditch Company



Sarah W. Higer