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Shelley M. Davis, ISB #6788
Sarah W. Higer, ISB # 8012
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Attorneys for Mason Creek Ditch Company

RECEIVED

FEB 09 2011

DEPARTMENT OF
WATER RESOURCES

**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 SARAH W. HIGER IN**
) **SUPPORT OF MASON CREEK'S**
) **MOTION TO DISMISS PIONEER**
) **IRRIGATION DISTRICT'S OBJECTIONS**
) **TO MASON CREEK'S WATER RIGHTS**
) **NOS. 63-00179C AND 63-32580**

SARAH W. HIGER, being first duly sworn upon oath, deposes and states as follows:

1. I am an attorney in the firm Barker Rosholt & Simpson LLP providing legal representation to the Mason Creek Ditch Company in the above captioned matter. I am over the age of 18 and have knowledge of the documents and legal proceedings pertinent to this matter, and I make this affidavit based upon personal knowledge.

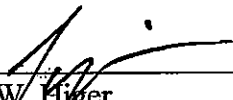
AFFIDAVIT OF SARAH W. HIGER IN SUPPORT OF MASON CREEK'S MOTION TO
DISMISS PIONEER IRRIGATION DISTRICT'S OBJECTIONS TO MASON CREEK'S
WATER RIGHTS NOS. 63-00179C AND 63-325801

2. Attached hereto as Exhibit A is a true and correct copy of the fully executed Settlement Agreement entered into by Pioneer Irrigation District and Mason Creek Ditch Company on December 14th, 2010 and recorded at the Canyon County Recorder's Office on December 15, 2010.

Further, your affiant sayeth naught.

DATED this 8th day of February, 2011.

BARKER ROSHOLT & SIMPSON LLP



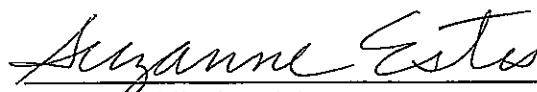
Sarah W. Higer
Attorneys for Mason Creek Ditch Company

STATE OF IDAHO)
) ss.
County of Ada)

On this 8th day of February, 2011, before me, Suzanne Estes, a Notary Public in and for said State, personally appeared Sarah W. Higer, known or identified to me to be the person who executed said instrument.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.





Notary Public for Idaho
Residing at Boise, Idaho
My commission expires: June 1, 2012

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 **AFFIDAVIT OF SARAH W. HIGER IN SUPPORT OF MASON CREEK'S MOTION TO DISMISS PIONEER IRRIGATION DISTRICT'S OBJECTIONS TO MASON CREEK'S WATER RIGHTS NOS. 63-00179C AND 63-32580** by the method indicated below, and addressed to each of the following:

Original hand-delivered to:

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

Copies mailed to:

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

United States Department of Justice
Environment & Natural Resource 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

EXHIBIT "A"

SETTLEMENT AGREEMENT

2010 DEC 15 AM 11:39
 WILLIAM H. HURST
 CANYON CNTY RECORDERS
 Office Brown

RECORDED

2010057959

This Agreement (the "Agreement"), is entered into and made effective this 14th day of

December

2010

by and between **PIONEER IRRIGATION DISTRICT** ("Pioneer"), an irrigation district organized and existing under and by virtue of the laws of the State of Idaho, whose address is P.O. Box 426, Caldwell, Idaho, 83606, and **MASON CREEK DITCH COMPANY** ("Mason Creek"), an Idaho corporation, whose address is 1905 Mason, Caldwell, Idaho 83605.

Pioneer and Mason Creek agree to compromise, settle, and resolve the pending litigation in the Snake River Basin Adjudication in Subcase No. 63-00179C and 63-32580, based upon the following mutual promises, agreements, and understandings.

RECORDED
 TYPE B + K
 FEE C
 (Snake River Basin Adjudication)

1. 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. Pioneer agrees not to object to Mason Creek's new water right filing 63-33392, which is a waste water right from 5-Mile Creek Drain, provided this water right is recommended with a priority date not before 1922 and is noted with a wasterwater remark by the Idaho Department of Water Resources.
2. Pioneer and Mason Creek agree that they will each pay their respective costs and attorney's fees and shall not seek recovery of those costs and fees in the identified subcases.
3. Mason Creek agrees that Pioneer owns and has exclusive authority and control over the operations, maintenance, repair, and improvement of the Highline Canal.
4. Mason Creek agrees that it will not lease to the Idaho Water Resources Board Water Supply Bank any portion of Mason Creek's water rights that have historically been diverted into the Highline Canal and is needed by Pioneer land owners for irrigation of lands within Pioneer's boundaries. Mason Creek agrees to provide Pioneer written notice prior to filing an application to lease Mason Creek water that has been historically diverted into the Highline Canal. Mason Creek agrees not to file a lease

application if, within thirty (30) days after delivery of Mason Creek's notice, Pioneer delivers a written response to Mason Creek that Pioneer needs and intends to use the water diverted into the Highline Canal under Mason Creek's water rights upon lands within Pioneer's boundaries. If Pioneer has sufficient water rights that can be diverted through the Highline Canal to meet the needs of its landowners who receive water from the canal, then Mason Creek may lease its water rights to the Water Supply Bank. Pioneer agrees that it will not utilize the water diverted under Mason Creek's water rights in the Highline Canal to enable it to lease Pioneer's water rights to the Water Supply Bank.

5. Mason Creek agrees that Pioneer shall not be charged for use of water diverted into the Highline Canal under Mason Creek water rights.
6. Pioneer agrees that Mason Creek owns its water rights as recommended in the Snake River Basin Adjudication District Court.
7. Pioneer agrees to convey water diverted under Mason Creek's water rights into the Highline Canal, at no cost to Mason Creek, to delivery headgates on the Highline Canal for use on lands owned by Mason Creek shareholders. Mason Creek's water rights have delivery priority over Pioneer's. Pioneer's water rights may be diverted into the Highline Canal when and to the extent that the capacity of the canal is not required to deliver Mason Creek's water rights. Pioneer agrees to operate, maintain and repair the Highline Canal in order to deliver Mason Creek's water rights.
8. Mason Creek agrees that Pioneer has the right to install measuring devices at its own expense on Mason Creek delivery headgates on the Highline Canal, when Pioneer requires measuring devices of all deliveries from the Highline Canal.
9. Mason Creek agrees to provide Pioneer with accurate contact information, specifying the responsible party for each Mason Creek delivery headgate to allow Pioneer to notify those parties prior to chemical treatment of water in the Highline Canal.
10. Mason Creek and Pioneer agree to conduct a joint meeting of their Boards of Directors each year, on or about the first Thursday in March, at a mutually acceptable location. Franklin Ditch Company may also

attend. The meeting is for the purpose of discussing any issues involving implementation of this Agreement and other issues of mutual concern.

11. This Agreement shall be enforced and construed under the laws of Idaho.

12. All notices permitted or required to be given under the terms of this Agreement shall be in writing and shall be deemed effective upon receipt if sent by first class mail, postage prepaid, and addressed to the respective party hereto as follows, or at such other address as a party designates in writing.

PIONEER IRRIGATION DISTRICT

Post Office Box 426
Caldwell, Idaho 83605

MASON CREEK DITCH COMPANY

1905 Mason
Caldwell, Idaho 83605

13. This Agreement shall be recorded at the Canyon County Recorder's Office.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the date first set forth above.

PIONEER IRRIGATION DISTRICT

By: Alan Newkirk

President of its Board of Directors

Attest:

David C. Fowler
Secretary

MASON CREEK DITCH COMPANY

By: John J. McEvoy

President of its Board of Directors

JOHN J MCEVOY

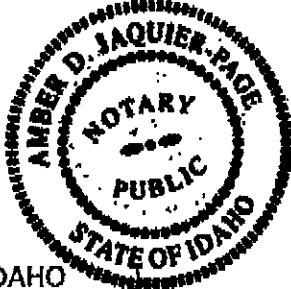
Attest:

Lick Becandis
Secretary

STATE OF IDAHO)
) ss.
 County of Canyon)

On this 14th day of December, 2010, before me, the undersigned Notary Public in and for the said State, personally appeared Alan Sawbill, known or identified to me to be the President of **PIONEER IRRIGATION DISTRICT**, the person who executed the instrument on behalf of **PIONEER IRRIGATION DISTRICT**, and acknowledged to me that **PIONEER IRRIGATION DISTRICT** executed the same.

IN WITNESS WHEREOF, I have set my hand and affixed my official seal the day and year in this certificate first above written.

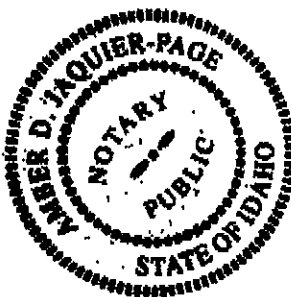


Amber D. Jaquier-Page
 NOTARY PUBLIC FOR IDAHO
 Residing at Middleton
 My commission expires 9/26/12

STATE OF IDAHO)
) ss.
 County of Canyon)

On this 14th day of December, 2010, before me, the undersigned Notary Public in and for the said State, personally appeared Dawn C. Fowler, known or identified to me to be the Secretary of **PIONEER IRRIGATION DISTRICT**, the person who executed the instrument on behalf of **PIONEER IRRIGATION DISTRICT**, and acknowledged to me that **PIONEER IRRIGATION DISTRICT** executed the same.

IN WITNESS WHEREOF, I have set my hand and affixed my official seal the day and year in this certificate first above written.

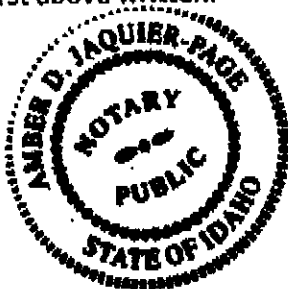


Amber D. Jaquier-Page
 NOTARY PUBLIC FOR IDAHO
 Residing at Middleton
 My commission expires 9/26/12

STATE OF IDAHO)
) ss.
 County of Canyon)

On this 14th day of December, 2010, before me, the undersigned Notary Public in and for the said State, personally appeared John S. McEvoy, known or identified to me to be the President of **MASON CREEK DITCH COMPANY**, the person who executed the instrument on behalf of **MASON CREEK DITCH COMPANY**, and acknowledged to me that **MASON CREEK DITCH COMPANY** executed the same.

IN WITNESS WHEREOF, I have set my hand and affixed my official seal the day and year in this certificate first above written.

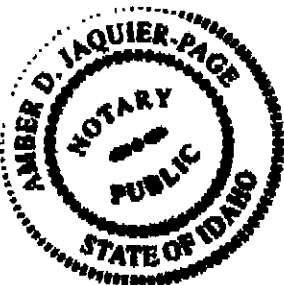


Amber D. Jaquier-Page
 NOTARY PUBLIC FOR IDAHO
 Residing at Middleton
 My commission expires 9/26/12

STATE OF IDAHO)
) ss.
 County of Canyon)

On this 14th day of December, 2010, before me, the undersigned Notary Public in and for the said State, personally appeared Dick Bilandi, known or identified to me to be the Secretary of **MASON CREEK DITCH COMPANY**, the person who executed the instrument on behalf of **MASON CREEK DITCH COMPANY**, and acknowledged to me that **MASON CREEK DITCH COMPANY** executed the same.

IN WITNESS WHEREOF, I have set my hand and affixed my official seal the day and year in this certificate first above written.



Amber D. Jaquier-Page
 NOTARY PUBLIC FOR IDAHO
 Residing at Middleton
 My commission expires 9/26/12