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overall district operations, including ensuring proper delivery of water to Pioneer's patrons, and the operation, repair, and maintenance of Pioneer's water delivery and drainage facilities. Prior to becoming the Superintendent, I was Pioneer's Assistant Superintendent, a position I held since 2003. As the Assistant Superintendent, I was responsible for the coordination and supervision of district-wide operation and maintenance activities. I began my employment with Pioneer in 1992. During my tenure with Pioneer, I have participated in extensive operation and maintenance activities on water conveyance facilities owned and/or operated by Pioneer throughout its service area, and have supervised and coordinated such activities by other Pioneer employees. In fact, for the years 1998 through 2003, I was the ditchrider in charge of operating the Caldwell Highline Canal. Based upon my employment with Pioneer since 1992, I am knowledgeable about the operation of Pioneer's irrigation delivery and drainage facilities, including the Caldwell Highline Canal. I make this affidavit based upon my personal knowledge.

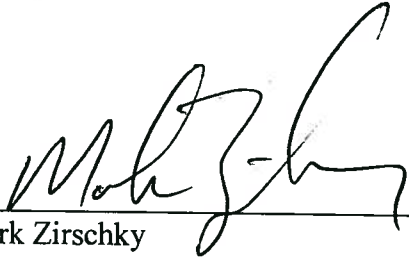
2. It is my understanding that the Mason Creek Ditch Company has indicated that Pioneer is obligated to divert water from the Caldwell Highline Canal into Mason Creek and Fivemile Creek for delivery to Mason Creek Ditch Company water users.

3. Pioneer does indeed maintain and operate two particular check structures which periodically release water from the Caldwell Highline Canal into both Mason Creek and Fivemile Creek. However, the purpose of those releases is to manage flows in the canal in order to avoid overtopping. In my experience, Pioneer has never released water from those check structures for the purpose of delivering water to the Mason Creek Ditch Company or anyone else.

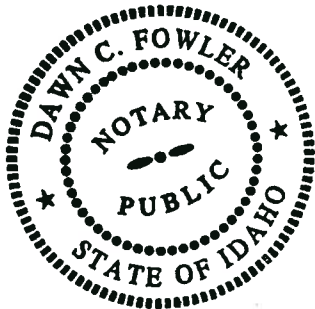
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4. In addition to these periodic releases of water from the Caldwell Highline Canal into Mason Creek and Fivemile Creek, Pioneer also diverts water from Mason Creek and Fivemile Creek into the Caldwell Highline Canal. Pioneer's water rights 63-2276 and 63-32515 are diverted from Mason Creek into a feeder canal which feeds into the Caldwell Highline Canal. Pioneer's water rights 63-2294 and 63-32514 are diverted from Fivemile Creek into a feeder canal that feeds into the Caldwell Highline Canal. Both of these feeder canals feed into the Caldwell Highline Canal at points that are upstream of diversions into the Horton "400" Lateral and the Canyon Hill "500" Lateral. Both of those laterals have headgates which serve Mason Creek Ditch Company water users.

Further your affiant sayeth naught.


Mark Zirschky

SUBSCRIBED AND SWORN to before me this 2nd day of February, 2011.




NOTARY PUBLIC FOR IDAHO
Residing at Boise
My Commission Expires 7-14-2016

SCANNED
FEB 11 2011

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 8th day of February, 2011, I caused a true and correct copy of the foregoing **AFFIDAVIT OF MARK ZIRSCHKY** to be served by the method indicated below, and addressed to the following:

Mason Creek Ditch Company

Represented by:

Albert P. Barker

Shelley M. Davis

BARKER ROSHOLT & SIMPSON LLP

1010 W. Jefferson, Suite 102

P.O. Box 2139

Boise, ID 83701-2139

☒ U.S. Mail, Postage Prepaid

☐ Hand Delivered

☐ Overnight Mail

☐ Facsimile

Franklin Ditch Company

Represented by:

Daniel V. Steenson

Jon C. Gould

RINGERT LAW CHARTERED

P.O. Box 2773

Boise, ID 83701

☒ U.S. Mail, Postage Prepaid

☐ Hand Delivered

☐ Overnight Mail

☐ Facsimile

Martin Galvin

P.O. Box 115

Middleton, ID 83644

☒ U.S. Mail, Postage Prepaid

☐ Hand Delivered

☐ Overnight Mail

☐ 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

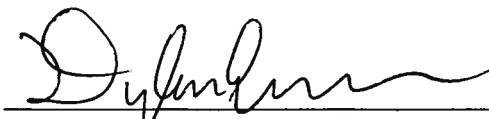
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Dylan B. Lawrence

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