

RECEIVED  
FEB 15 2011  
DEPARTMENT OF  
WATER RESOURCES

Attorneys for Claimant and Objector  
Pioneer Irrigation District

Scott L. Campbell, ISB No. 2251  
Andrew J. Waldera, ISB No. 6608  
Dylan B. Lawrence, ISB No. 7136  
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  
18946.0137

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

RESPONSE IN OPPOSITION TO MASON  
CREEK'S MOTION TO DISMISS

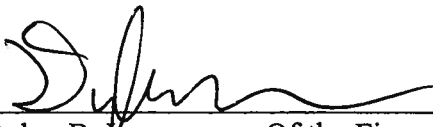
Pioneer Irrigation District, through undersigned counsel of record, hereby files this response in opposition to Mason Creek Ditch Company's motion to dismiss Pioneer's objections to water right recommendations 63-00179C and 63-32580. Pioneer has filed a motion to determine the enforceability of the Settlement Agreement relied upon by Mason in its motion. If the Settlement Agreement is unenforceable, then there is no basis to enforce Paragraph 1 of the

agreement. As Pioneer argues in the memorandum in support of its motion, “[a] contract prohibited by law is illegal and hence unenforceable,” *Quiring v. Quiring*, 130 Idaho 560, 566, 944 P.2d 695, 701 (1997), and “[i]n most cases, the court will leave the parties to an illegal contract as it finds them.” *Farrell v. Whiteman*, 146 Idaho 604, 609, 200 P.3d 1153, 1158 (2009). Mason has not adduced any support for the proposition that Paragraph 1 is enforceable, if other aspects of the Settlement Agreement are unenforceable. Therefore, if the Court determines that any portion of the agreement is unenforceable, these subcases should proceed from where they left off when they were stayed to accommodate settlement discussions.

For the foregoing reasons, Pioneer respectfully requests that the Court deny Mason’s motion.

DATED this 14<sup>th</sup> day of February, 2011.

MOFFATT, THOMAS, BARRETT, ROCK &  
FIELDS, CHARTERED

By   
Dylan B. Lawrence – Of the Firm  
Attorneys for Pioneer Irrigation District

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 14<sup>th</sup> day of February, 2011, I caused a true and correct copy of the foregoing **RESPONSE IN OPPOSITION TO MASON CREEK'S MOTION TO DISMISS** 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

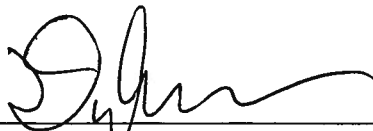
☒ U.S. Mail, Postage Prepaid  
☐ Hand Delivered  
☐ Overnight Mail  
☐ Facsimile

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  
Boise, ID 83720

☒ U.S. Mail, Postage Prepaid  
☐ Hand Delivered  
☐ Overnight Mail  
☐ Facsimile

  
\_\_\_\_\_  
Dylan B. Lawrence