

**SUPPLEMENTAL DIRECTOR'S REPORT REGARDING
SUBCASE NO. 63-179C**

In Re SRBA
Twin Falls County Civil Case No. 39576

Report to the SRBA District Court

DISTRICT COURT - SRBA	
Fifth Judicial District	
County of Twin Falls - State of Idaho	
OCT 31 2011	
By _____	Clerk
_____	Deputy Clerk

Prepared by the Idaho Department of Water Resources
Gary Spackman, Interim Director
Carter Fritschle, Manager, Adjudication Section

October 31, 2011

INTRODUCTION

In accordance with Idaho Code § 42-1412(4), Administrative Order 1, and Special Master Booth's July 17, 2011, *Trial Scheduling Order* ("Order"), the Director of the Idaho Department of Water Resources ("IDWR" or "Department") submits this Supplemental Director's Report ("Report") regarding subcase number 63-179C. As directed in the Order, the purpose of this Report is to provide the Department's analysis of injury and/or enlargement pursuant to Idaho Code § 42-1425. Pioneer Irrigation District ("Pioneer") has objected to water right number 63-179C, claiming the accomplished change in point of diversion has caused injury and/or resulted in an enlargement of the water right. This Report was prepared under the supervision of Gary Spackman, Interim Director, and Carter Fritschle, Manager, Adjudication Section. The following employee has knowledge of the information contained in the Report: Jan Shurte, Adjudication Technical Analyst.

ANALYSIS

In its recommendation for water right number 63-179C, the Department recommended an accomplished change in point of diversion, pursuant to Idaho Code § 42-1425. A reference map showing the original and recommended points of diversion is attached hereto as Attachment 1. Consistent with the procedures described in Judge Wildman's *Memorandum Decision and Order on Challenge* in SRBA Subcase Nos. 01-23B, 01-297, 35-2543 and 35-4246, issued on April 4, 2011, the Department received additional information from claimant Mason Creek Ditch Company ("Mason Creek") and Pioneer to determine if the accomplished transfer "constituted an enlargement of the original right" or "injured a water right existing on the date of the change." See I.C. § 42-1425(2)(a).

Background

Water right number 63-179¹ was decreed in *Farmers' Co-operative Ditch Co. v. Riverside Irrigation District, Ltd.* (Jan. 18, 1906), commonly referred to as the "Stewart Decree." The Stewart Decree awarded Mason Creek 1860 inches with a priority date of June 1, 1869, from a point of diversion on the south bank of the Boise River near the center of the east line of T4N R2W §16 "for use upon the lands lying under its canal system." A copy of the pertinent pages of the Stewart Decree is attached hereto as Attachment 2.

The Stewart Decree recognized 1.1 inches to the acre as the duty of water for bottom land. See id. at ¶ 2. The quantity decreed was based on the number of irrigated acres found multiplied by the duty. The Mason Creek place of use is river bottom. Extrapolating the number of acres from the quantity decreed, the Stewart Decree suggests a maximum place of use for Mason Creek of 1691 acres (1860 inches ÷ 1.1 inches/acre).

No evidence of enlargement

In the SRBA, Mason Creek claimed 1937 acres under water right number 63-179C. In making its original recommendation for 63-179C, the Department used July 6, 1987 National Aerial Photography Program imagery to determine the number of irrigated acres in Mason Creek's service area. Based on the imagery, the Department found 1504.3 acres were irrigated within Mason Creek's service area.

Pioneer argues a number of acres of Mason Creek's service area could not have been irrigated from the old point of diversion a century ago. The Department disagrees based on the totality of evidence, including the Stewart Decree, which suggests irrigation of far more acres

¹ Since the issuance of the Stewart Decree, water right number 63-179 has been split administratively into three portions. 63-179A, claimed by Pioneer, which has been ordered disallowed by the SRBA Court; 63-179B which has been partially decreed to Canyon County Water Company, Ltd. for 1.00 cfs on up to 3839 acres (when combined with water right numbers 63-163 and 63-21761), and the water right at issue, 63-179C to Mason Creek.

than Pioneer claims was irrigable. Moreover, a number of the founding Mason Creek members owned land in areas Pioneer characterizes as non-irrigable. Further compounded by the lack of information about the historic infrastructure and specific irrigation practices, the Department cannot concur with Pioneer's definitive pronouncement.

Based on all of the information in the Department's possession, the Department cannot conclude the accomplished change in point of diversion constituted an enlargement of the original right.

No evidence of injury

The parties do not specify the exact date of the relevant change in point of diversion. The earliest documentation of the change is 1911, though the change may have occurred earlier. For its injury analysis herein, the Department will use the irrigation season of 1911 as the operative timeframe.²

The Boise River is the water source at issue for this injury analysis. Critically, Mason Creek's change in point of diversion did not leapfrog other canals or ditches up the Boise River. No evidence suggests private diversions existed between the decreed point of diversion and the accomplished change in point of diversion.

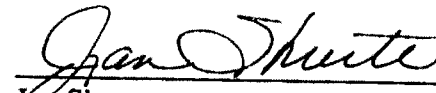
Pioneer suggests injury occurred because the Caldwell Highline capacity is limited to 40-43 cfs by a culvert. The effect of the culvert is irrelevant to the present analysis because, according to Pioneer, it was built some years prior to 1992. The exact timing, however, is not important because the culvert was constructed well after the relevant change in point of diversion. In other words, the Caldwell Highline of 1911 was not limited by the culvert.

² To a large extent, Pioneer's arguments as to injury are premised on 1914-1915 data, after the change in point of diversion occurred.

Based on all of the information in the Department's possession, the Department cannot conclude the accomplished change in point of diversion injured a right existing on the date of the change.

CONCLUSION

Pursuant to Idaho Code § 42-1425, the Department finds no evidence of injury or enlargement resulting from the accomplished change of point of diversion at the time the change occurred. Therefore, based upon this injury and enlargement review, the Department stands by its current recommendation for water right number 63-179C and will not be filing an Amended Director's Report for this right.



Jan Shurte
Adjudication Technical Analyst

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I served a true and correct copy of the following described document on the persons listed below by United States mail with the correct postage affixed thereto on this 31st day of October, 2011.

Document Served: **SUPPLEMENTAL DIRECTOR'S REPORT REGARDING
WATER RIGHT NUMBER 63-179C**

MASON CREEK DITCH CO.

Represented by:

ALBERT P. BARKER

1010 W. JEFFERSON, STE. 102

P.O. BOX 2139

BOISE, ID 83701-2139

PIONEER IRRIGATION DISTRICT

Represented by:

DYLAN B. LAWRENCE

101 S CAPITOL BLVD 10TH FLOOR

P.O. BOX 829

BOISE, ID 83701-0829

MASON CREEK DITCH CO.

C/O MARTIN C. GALVIN

P.O. BOX 115

MIDDLETON, ID 83644

NATURAL RESOURCES DIVISION CHIEF

STATE OF IDAHO

ATTORNEY GENERAL'S OFFICE

P.O. BOX 44449

BOISE, ID 83711-4449

US DEPARTMENT OF JUSTICE

ENVIRONMENT & NATURAL RESOURCES

550 WEST FORT STREET, MSC 033

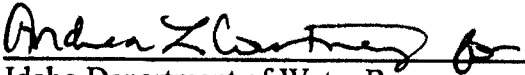
BOISE, ID 83724

JOHN J. MC EVOY

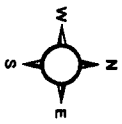
1703 N. KCID RD.

CALDWELL, ID 83605

DIRECTOR OF IDWR
P.O. BOX 83720
BOISE, ID 83720-0098


Idaho Department of Water Resources

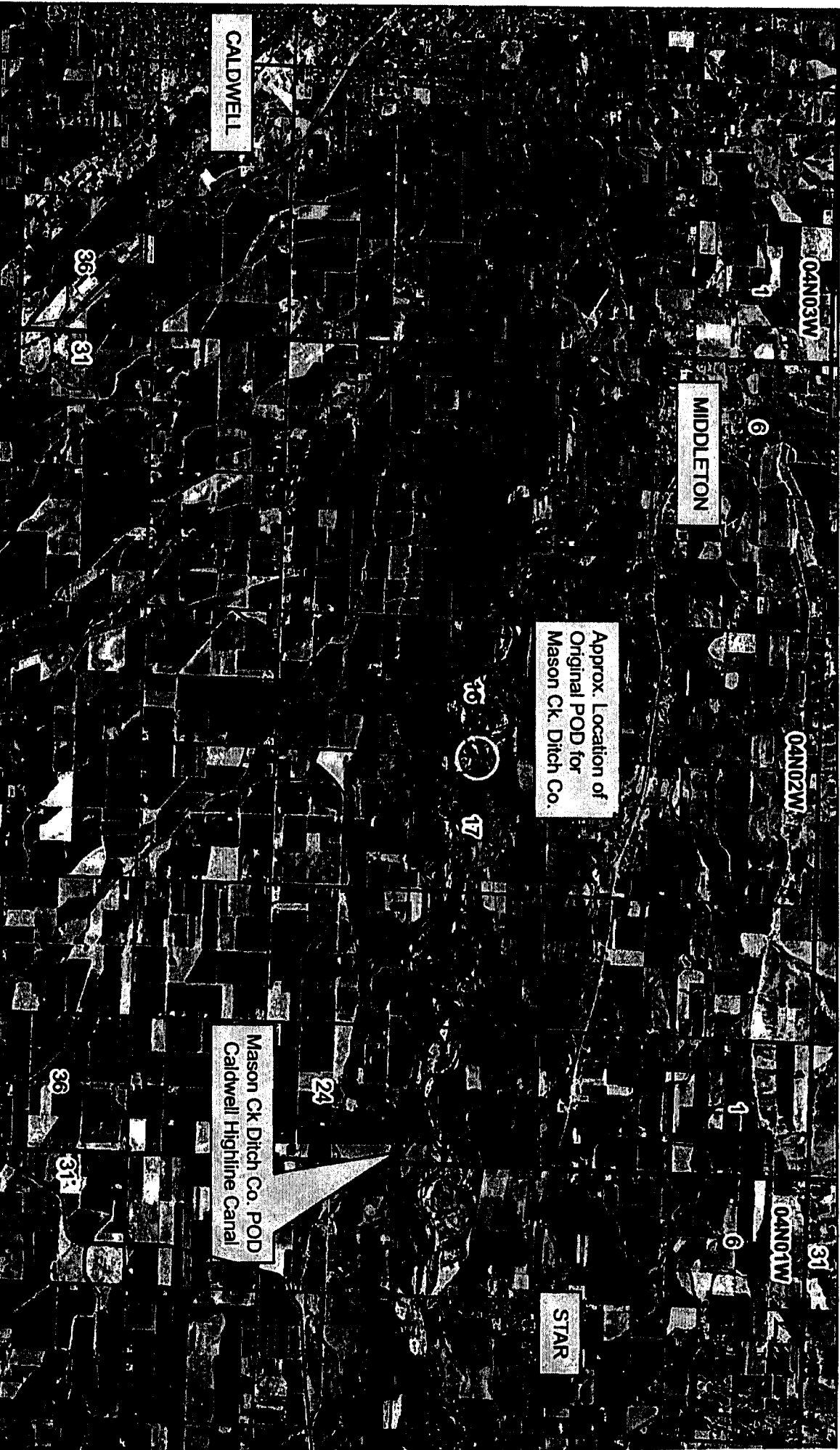
ATTACHMENT 1



Attachment No. 1

LEGEND

-  Mason Creek Ditch Co
-  Township/Range
-  Sections
-  Point of Diversion



ATTACHMENT 2

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO IN AND FOR THE COUNTY OF CANYON.

Farmers' Cooperative Ditch Company (a corporation)

Plaintiff,

vs.

D E C R E E

Riverside Irrigating District, Limited, (a corporation), The Sie-
benberg Cooperative Ditch Company, Limited (a corporation), Frank
Gilbert, T. W. Doone, Prior Burnett, Thomas Andrews, H. Ray Boudinot,
I. M. Tucker, C. F. J. Peterson, William McKnett, Fred J. Kiesel,
Neil McCarron, Michael Gilbride, Lower Boise Ditch Company, (a corpora-
tion), R. H. Stockton, H. F. Vanderpool, D. D. Camboll, William
Poss, Smith Stockton, John Atkins, Ben Ross, John Poss, D. V. McCon-
nol, John Lemm, John Hammon, Bird Bowman, (substituted for M. B.
Bowman Jr.), D. Mumford, T. T. Johnson, H. Carlyle, Charles Allen,
J. Bowman, Robert McGuire, Frederick Ode, Eureka Ditch Company, (a
corporation), J. Roland, Thomas J. Palmer and Noah W. Palmer (substi-
tuted for Lillian Potter, Administratrix of the Estate of L. D. Potter,
deceased, Susan B. Potter, Thad. S. Potter, Elisha Potter, Lillian
Potter, Ida Potter, James Baker), C. W. Cooper, Pioneer Dixie Ditch
Company (a corporation), William C. Young, Lizzie Young, Estella C.
Young, H. M. Kirkpatrick, S. H. Mitchell, L. F. Cook, Triphenia Jobe,
administratrix of the estate of J. H. Jobe, deceased, Triphenia Jobe,
Charlotte Coonrod, _____ Coonrod, her husband, Minta Lund and Frank
Lund, her husband, William Jobe and Alice Jobe, Edith Jobe and Cor-
rinna Jobe, minors, A. Holcomb, George Milner, George Hess, John Thom-
as, H. B. Whitney, Emma S. Lee, Edwin Curtis, Eureka Water Company,
(a corporation), William Simpson, William Lewis, Huxton Frost, Elijah
Frost, George Goodrich, R. M. Brannan, William Frost, Adam Schindler,
Pioneer Irrigation District, (a corporation), Franklin Ditch Company,
(a corporation), Canyon County Water Company, (an association)
Francis A. Phelps and Frances Phelps husband and wife, John D. Rut-
ledge, James Hartley, Joseph Wilson, Daniel Mastersen, Perry Stoffle,
H. McGill, S. C. Foote, J. E. Smith, John Lomp, M. F. Fowler, Thomas

JUN 21 1996

SCANNED

In the above entitled cause the default of the non-answering defendants having been duly entered, to-wit;

Frank Gilbert, William McKnett, Neil McCarron, Michael Gilbride, Lower Boise Ditch Company, H. F. Vanderpool, John Atkins, Ben Ross, John Ross, W. K. McConnel, H. Carlyle, J. Bowman, E. M. Kirkpatrick, S. H. Mitchell, L. F. Cook, Triphenia Jobe, administratrix of the estate of J. H. Jobe; William Jobe, Alice Jobe, Edith Jobe and Corinna Jobe, (minors) A. Holcomb, George Milner, George Hess, John Thomas, H. N. Whitney, Edwin Curtis, Kate Perrault, Henry Ott and John Doe et al, L. F. Graham, M. S. Cobb and O. F. Short;

and said cause having been regularly tried and submitted to the court for its decision, and the court having considered the evidence and being fully advised in the premises, makes and files its findings of fact, ^{and conclusions of law} and directs judgment to be entered in accordance therewith.

Whereupon it is ordered, adjudged and decreed as follows;

1. That each and every of the tracts of land described in the complaint, answers and cross-complaints in this action as belonging to the several parties, or tributary to the canals of certain parties plaintiff and defendant herein, are arid in character and require the artificial application of water to render them valuable for agricultural purposes.

2. That the quantity of water required for the successful irrigation and cultivation of said lands, measured at the intake of the respective ditches under a four inch pressure, is one inch per acre for bench lands, and one and one-tenth inch per acre for bottom lands.

3. That the quantity of water to which each of the parties to this action is entitled under this decree, shall be measured at the point or points of diversion thereof.

4. It is further ordered, adjudged and decreed that none of the parties hereto, or their successors in interest, shall have a right to the use of the waters of Boise River herein awarded, except for a beneficial purpose; and that whenever the beneficial use has ceased, such party or parties shall cease to divert and have no right to divert the said waters; that each and every of the parties hereto, their servants, attorneys, employees, privies and successors in interest, are hereby enjoined and restrained from any and all interfer-

(10)

Sec. 26, all in T. 5 N. R. 5 W. B.M., in the following amount from the following date;

63 0178 425 inches, from June 1, 1869; and hereby designated as Right No. 44.

And be adjudged to pay \$29.75 costs, in addition to the costs incurred by him.

XLIII.

That the defendant the MASON CREEK DITCH COMPANY, a corporation, be and it is hereby awarded the use of the waters of Boise River, diverted at a point on the south bank thereof near the center of the east line of Sec. 16, T. 4 N. R. 2 W. B.M., for use upon the lands lying under its canal system, in the following amount from the following date;

63 0179 1860 inches, from June 1, 1869; and hereby designated as Right No. 46

T-P.A. 29

And be adjudged to pay \$130.20 costs in addition to the costs incurred by it.

XLIV.

That the defendant T. W. Boone be, and he is hereby awarded the use of the waters of Boise River, diverted at a point on the SE $\frac{1}{4}$ of Sec. 25, and SW $\frac{1}{4}$ of Sec. 30, T. 5 N. R. 5 W. B.M., for use upon the NE $\frac{1}{4}$, NW $\frac{1}{4}$ of SE $\frac{1}{4}$, and lots 1, 2 and 3, Sec. 25, T. 5 N. R. 5 W. B.M., in the following amounts and from the following dates;

63 0180 175 inches, from June 1, 1869; and hereby designated as Right No. 47.

63 0181 110 inches, from June 1, 1874; and hereby designated as Right No. 50.

And be adjudged to pay \$19.95 costs in addition to the costs incurred by him.

XLV.

That the defendant W. J. HAMMING be, and he is hereby awarded the use of the waters of Boise River, diverted at a point near the middle of the east line of Sec. 17, T. 4 N. R. 1 E. B.M., by a canal running through a part of Secs. 17 and 18, T. 4 N. R. 1 E. B.M., for use upon lands lying under said canal, and situated on Eagle Island, Ada County Idaho, in the following amount and from the following date;

63 0182 130 inches, from June 1, 1870; and hereby designated as Right No. 48.

And be adjudged to pay \$9.10 costs in addition to the costs incurred by him.