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DEPARTMENT OF
WATER RESOURCES

DISTRICT COURT - SRBA Fifth Judicial District County of Twin Falls - State of Idaho
FEB 15 2012
By _____ Clerk
Deputy Clerk

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	) SPECIAL MASTER'S REPORT
	)
Case No. 39576	) FINDINGS OF FACT AND
	) CONCLUSIONS OF LAW
	)
	) FOR WATER RIGHTS 63-00179C
	) and 63-32580
	)
	) RECOMMENDATION RE: ORDER
	) CONFIRMING ENFORCABILITY OF
	) AMENDED AND RESTATED
	) SETTLEMENT AGREEMENT

I. BACKGROUND

The *Director's Report* for Mason Creek Ditch Company's ("Mason Creek") Boise River water right 63-00179C provided that the point of diversion had been changed through an accomplished transfer pursuant to Idaho Code § 42-1425 to a location on the Boise River that coincides with the diversion works of the Caldwell Highline Canal. The Pioneer Irrigation District ("Pioneer") is the owner and operator of the Caldwell Highline Canal. In June 2007, Pioneer filed an objection to the *Director's Report*, objecting to the recommended point of diversion.

In October 2010, the Court held a hearing on cross-motions for summary judgment by Pioneer and Mason Creek. The Court denied Mason Creek's motion seeking dismissal of Pioneer's objection and remanded the matter to IDWR for a hearing regarding whether the accomplished change in point of diversion for Mason Creek's water right resulted in injury or enlargement.

On November 29, 2010, Pioneer and Mason Creek met for settlement negotiations without counsel present. Thereafter, the parties exchanged written settlement agreements and

ultimately executed and recorded a Settlement Agreement, dated December 14, 2010 (the “2010 Settlement Agreement”)

On February 8, 2011, Pioneer filed a *Motion to Determine Enforceability of Settlement Agreement with Mason Creek Ditch Company*. The primary basis for the motion was that no prior existing agreement established Mason Creek’s right to convey water right 63-00179C through Pioneer’s Caldwell Highline Canal. Therefore, Pioneer was concerned that the 2010 Settlement Agreement violated the trust relationship between Pioneer and its patrons because it required the use of Pioneer property for the benefit of non-patrons, and was thus *ultra vires* and void. Pioneer filed its motion in order to obtain a judicial determination of that issue. The parties briefed the issues and presented oral argument on February 22, 2011. On March 25, 2011, this Special Master entered an ***Order on Pioneer’s Motion to Determine Enforceability of Settlement Agreement***, which held that the 2010 Settlement Agreement was void because it commits the use of non-surplus property of Pioneer to the use of landowners outside the District.

Counsel for Mason Creek and counsel for Pioneer subsequently discovered the following Pioneer Board minutes, respectively, which address the use of the Caldwell Highline Canal for delivery of Mason Creek’s Boise River water right. The Pioneer Board minutes dated January 7, 1911, provide:

Mason Creek Ditch Co. appeared before the board asking for a contract with the district authorizing the Pioneer Irrigation District to divert from the river and carry all the water belonging to Mason Creek Ditch Co. and deliver the same to them at different places on the Highline Canal. Such contract was agreed upon and the district’s attorneys directed to draft the same.

See Addendum 1 to the Joint Motion to Confirm Enforceability of Amended and Restated Settlement Agreement, Exhibit B.

The Pioneer Board minutes dated July 13, 1915, provide:

Whereas, under present arrangement, the turning of the said . . . Mason Creek rights into said Highline Canal gives the lands under said Highline Canal, within the Pioneer Irrigation District a pro rata share of the use of the water belonging to said district, and heretofore, 2655 inches of water has been turned into the Phyllis Canal in order to give the lands under the Phyllis Canal their pro-rata share of the waters of the District; and

Whereas it is for the best interests of the District that the water be diverted as they have heretofore been diverted,

Be It Therefore Resolved that it is hereby Ordered that the State Engineer of the State of Idaho be requested, and he is hereby requested, to continue diverting said water as they have been heretofore diverted, to wit:

In addition to the amount decreed to the Phyllis Canal, to divert the 2655 inches aforesaid into the Phyllis Canal, and to divert the . . . Mason Creek Rights into the Caldwell Highline Canal; and the President of the Board is hereby instructed to notify the said State Engineer of this resolution.

See Addendum 1 to the Joint Motion to Confirm Enforceability of Amended and Restated Settlement Agreement, Exhibit C.

On February 6, 2012, the parties filed a *Joint Motion to Confirm Enforceability of Amended and Restated Settlement Agreement* for the purpose of jointly seeking confirmation from the SRBA Court that such Amended and Restated Settlement Agreement is enforceable. The parties agree and assert that the Amended and Restated Settlement Agreement is not *ultra vires* because the 1911 and 1915 Board minutes reflect that the subject portion of the Caldwell Highline Canal had a surplus conveyance capacity at that time, and because the Pioneer Board determined contemporaneously with the transfer that the arrangement to deliver Mason Creek's Boise River Water in the Caldwell Highline Canal was in the best interests of Pioneer.

II. FINDINGS OF FACT

1. Pioneer has filed a *Notice of Withdrawal of Objections* in the above-captioned subcases. Accordingly, the water rights may be decreed with the elements as set forth in the *Director's Report*, including the accomplished transfer of the point of diversion for water right 63-00179C.

2. At the time when the point of diversion of Mason Creek's Boise River water right (63-00179C) was transferred to the Caldwell Highline Canal, there was surplus space in the canal that was not being utilized to convey water to lands within the District. Specifically, the minutes reflect that return flows and unused water of the Mason Creek Ditch Company could be utilized by Pioneer's downstream patrons on the Caldwell Highline Canal, which, along with the

development of water from Mason Creek and Fivemile Creek, allowed Pioneer to transfer its Caldwell Highline Canal Water to Pioneer's Phyllis Canal.

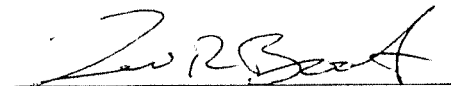
III. CONCLUSIONS OF LAW

The Amended and Restated Settlement Agreement is not *ultra vires*.

Based on the file and record herein, IT IS RECOMMENDED that water rights 63-00179C and 63-32580 be **decreed** with the elements as set forth in the attached ***Recommendation for Partial Decree Pursuant to I.R.C.P. 54(b)***. IT IS FURTHER RECOMMENDED that the SRBA District Court issue the attached ***Order Confirming Enforceability of Amended and Restated Settlement Agreement***.

Dated

Feb 15, 2012



Theodore R. Booth
Special Master
Snake River Basin Adjudication

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)
) PARTIAL DECREE PURSUANT TO
) I.R.C.P. 54(b) FOR
Case No. 39576)
)
) Water Right 63-00179C

NAME AND ADDRESS: MASON CREEK DITCH CO
C/O RICHARD BICANDI
1905 MASON RD
CALDWELL, ID 83605

SOURCE: BOISE RIVER TRIBUTARY: SNAKE RIVER

QUANTITY: 36.20 CFS

Whenever it becomes necessary for the watermaster to deliver this right the following condition shall apply. This right shall receive 100 percent of its decreed quantity until the natural flow of the waters of the Boise River shall decrease so that all rights containing this condition cannot receive 100 percent of their decreed quantities, at which time this right and the other rights containing this condition shall first be cut to 75 percent of their decreed quantities, as the natural flow of the river decreases, beginning with the latest rights containing this condition and proceeding to the earliest rights containing this condition in the order of their priority dates, and after all of the rights containing this condition shall have been reduced to 75 percent of their decreed quantities, should the natural flow of the waters of the river decrease below the amount necessary to supply 75 percent of those decreed quantities, then this right and the other rights containing this condition, beginning with the latest and proceeding to the earliest, shall be reduced to 60 percent of their decreed quantities.

PRIORITY DATE: 06/01/1869

POINT OF DIVERSION: T04N R02W S24 NENENE Within Canyon County

PURPOSE AND PERIOD OF USE:	PURPOSE OF USE	PERIOD OF USE	QUANTITY
	Irrigation	03-01 TO 11-15	36.20 CFS

Diversion for irrigation under this water right prior to April 1 and after October 31 shall occur only when the natural flow in the Boise River below the Star Bridge in Township 04 North, Range 01 West, Section 18, NE of the SE of the SE, Boise Meridian (approximate river mile 33.9) is sufficient for water to be available for diversion at the point of diversion described above, provided that any such use of this water right prior to April 1 and after October 31 shall be subordinated to water rights for storage in Lucky Peak Reservoir, Lake Lowell, Arrowrock Reservoir, and/or Anderson Ranch Reservoir, as decreed in SRBA Case No. 39576.

PLACE OF USE:

The boundary encompassing the place of use for this water right is described with a digital boundary as defined by I.C. Section 42-202B(2) and authorized pursuant to I.C. Section 42-1411(2)(h). The data comprising the digital boundary are incorporated herein by reference and are stored on a CD-ROM disk issued in duplicate originals on file with the SRBA District Court and the Idaho Department of Water Resources. A map depicting the place of use is attached hereto to illustrate the

SRBA Partial Decree Pursuant to I.R.C.P. 54(b) (continued)

PLACE OF USE (continued)

place of use described by the digital boundary.
This right can be used to irrigate up to 1504.3 acres within the
boundary of the Mason Creek Ditch Company.

OTHER PROVISIONS NECESSARY FOR DEFINITION OR ADMINISTRATION OF THIS WATER RIGHT:

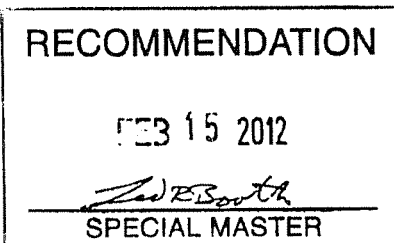
This right is designated as No. 46 in the Stewart Decree and the
Boise Water Distribution Report.

THIS PARTIAL DECREE IS SUBJECT TO SUCH GENERAL PROVISIONS
NECESSARY FOR THE DEFINITION OF THE RIGHTS OR FOR THE EFFICIENT
ADMINISTRATION OF THE WATER RIGHTS AS MAY BE ULTIMATELY
DETERMINED BY THE COURT AT A POINT IN TIME NO LATER THAN THE
ENTRY OF A FINAL UNIFIED DECREE. I.C. SECTION 42-1412(6).

RULE 54(b) CERTIFICATE

With respect to the issues determined by the above judgment or order, it is hereby CERTIFIED, in accordance
with Rule 54(b), I.R.C.P., that the court has determined that there is no just reason for delay of the entry of a
final judgment and that the court has and does hereby direct that the above judgment or order shall be a final
judgment upon which execution may issue and an appeal may be taken as provided by the Idaho Appellate Rules.

Eric J. Wildman
Presiding Judge of the
Snake River Basin Adjudication



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)
) PARTIAL DECREE PURSUANT TO
) I.R.C.P. 54(b) FOR
Case No. 39576)
)
) Water Right 63-32580

NAME AND ADDRESS: MASON CREEK DITCH CO
C/O RICHARD BICANDI
1905 MASON RD
CALDWELL, ID 83605

SOURCE: MASON CREEK TRIBUTARY: BOISE RIVER

The source of this water right includes waste water. The
wasting of water may be discontinued at any time.

QUANTITY: 17.00 CFS

PRIORITY DATE: 03/01/1922

POINT OF DIVERSION: T04N R02W S19 NWNW Within Canyon County
SENN

PURPOSE AND PERIOD OF USE:	PURPOSE OF USE	PERIOD OF USE	QUANTITY
	Irrigation	03-01 TO 11-15	17.00 CFS

PLACE OF USE:

This right and Right No. 63-179C are limited to the irrigation
of a combined total of 1504.3 acres in a single irrigation
season.

The boundary encompassing the place of use for this water right
is described with a digital boundary as defined by I.C. Section
42-202B(2) and authorized pursuant to I.C. Section
42-1411(2)(h). The data comprising the digital boundary are
incorporated herein by reference and are stored on a CD-ROM disk
issued in duplicate originals on file with the SRBA District
Court and the Idaho Department of Water Resources. A map
depicting the place of use is attached hereto to illustrate the
place of use described by the digital boundary.

OTHER PROVISIONS NECESSARY FOR DEFINITION OR ADMINISTRATION OF THIS WATER RIGHT:

THIS PARTIAL DECREE IS SUBJECT TO SUCH GENERAL PROVISIONS
NECESSARY FOR THE DEFINITION OF THE RIGHTS OR FOR THE EFFICIENT
ADMINISTRATION OF THE WATER RIGHTS AS MAY BE ULTIMATELY
DETERMINED BY THE COURT AT A POINT IN TIME NO LATER THAN THE
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with Rule 54(b), I.R.C.P., that the court has determined that there is no just reason for delay of the entry of a
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judgment upon which execution may issue and an appeal may be taken as provided by the Idaho Appellate Rules.

Eric J. Wildman
Presiding Judge of the
Snake River Basin Adjudication

RECOMMENDATION

FEB 15 2012

David B. Booth
SPECIAL MASTER



Mason Creek Ditch Co

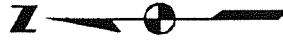
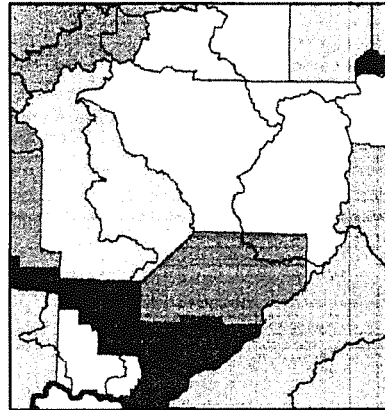
Adjudication Recommendations: 63-179C, 63-32580

Irrigation Service Area Boundary
GIS Place of Use Illustration

Legend

Service Area

-  State Outline
-  Townships
-  PLS Sections
-  Quarter Quarters



Canyon County
IDWR Basin 63

Prepared by Danielle Favreau
On November 18, 2009
1987/88 Aerial Photography

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. 63-00179C 63-32580

**ORDER CONFIRMING ENFORCEABILITY
OF AMENDED AND RESTATED
SETTLEMENT AGREEMENT**

WHEREAS, on February 7, 2012, the Court heard oral argument on a Joint Motion to Confirm Enforceability of Amended and Restated Settlement Agreement filed by Pioneer Irrigation District and Mason Creek Ditch Company, and, prior to the hearing, the Court reviewed the parties' written materials and submissions, and the Court finding good cause and being fully advised in the premises.

NOW, THEREFORE, IT IS HEREBY ORDERED that the parties' Joint Motion to Confirm Enforceability of Amended and Restated Settlement Agreement is GRANTED, and the enforceability of that Agreement is hereby confirmed.

IT IS SO ORDERED.

DATED this _____ day of February, 2012.

Honorable Eric J. Wildman
District Judge, Snake River Basin
Adjudication District Court

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this _____ day of February, 2012, I caused a true and correct copy of the foregoing **ORDER CONFIRMING ENFORCEABILITY OF AMENDED AND RESTATED SETTLEMENT AGREEMENT** to be served by the method indicated below, and addressed to the following:

Pioneer Irrigation District

Represented by:
Scott L. Campbell
Dylan B. Lawrence
MOFFATT, THOMAS, BARRETT, ROCK &
FIELDS, CHARTERED
101 S. Capitol Boulevard, 10th Floor
Post Office Box 829
Boise, Idaho 83701-0829

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

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

Mason Creek Ditch Company
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

Clerk of the Court

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)
)
_____)

NOTICE OF ISSUANCE OF
SPECIAL MASTER'S
RECOMMENDATION

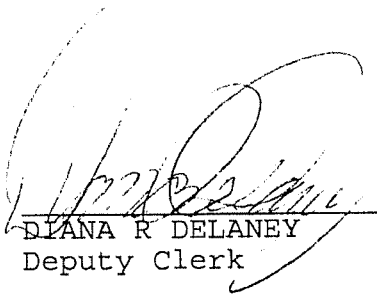
Water Right(s): 63-00179C
63-32580

On February 15, 2012, Special Master THEODORE R. BOOTH issued a SPECIAL MASTER'S RECOMMENDATION for the above subcase(s) pursuant to SRBA Administrative Order 1 (A01), Section 13a.

Pursuant to SRBA Administrative Order 1, Section 13a, any party to the adjudication including parties to the subcase, may file a Motion to Alter or Amend on or before the 28th day of the next month.

Failure of any party in the adjudication to pursue or participate in a Motion to Alter or Amend the SPECIAL MASTER'S RECOMMENDATION shall constitute a waiver of the right to challenge it before the Presiding Judge.

DATED February 15, 2012.



DIANA R DELANEY
Deputy Clerk

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)
_____)

CERTIFICATE OF MAILING

Water Right(s): 63-00179C
63-32580

CERTIFICATE OF MAILING

I certify that a true and correct copy of the SPECIAL MASTER'S REPORT, SPECIAL MASTER'S RECOMMENDATION FOR PARTIAL DECREE and NOTICE OF ISSUANCE OF SPECIAL MASTER'S REPORT AND RECOMMENDATION were mailed on February 15, 2012, with sufficient first-class postage prepaid to the following:

DIRECTOR OF IDWR
PO BOX 83720
BOISE, ID 83720-0098

MASON CREEK DITCH CO
Represented by:
ALBERT P BARKER
1010 W JEFFERSON, STE 102
PO BOX 2139
BOISE, ID 83701-2139
Phone: 208-336-0700

PIONEER IRRIGATION DISTRICT
Represented by:
SCOTT L CAMPBELL
101 S CAPITOL BLVD 10TH FLOOR
PO BOX 829
BOISE, ID 83701-0829
Phone: 208-345-2000

CERTIFICATE OF MAILING

PAGE 1
02/15/12

MARTIN GALVIN
PO BOX 115
MIDDLETON, ID 83644

JOHN J MC EVOY
1703 N KCID RD
CALDWELL, ID 83605
Phone: 208-899-7264

A handwritten signature in black ink, appearing to read 'Diana R. Delaney', is written over a horizontal line.

DIANA R DELANEY
Deputy Clerk