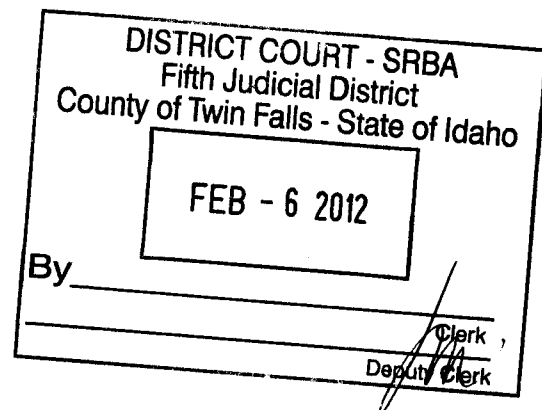


Attorneys for Objector
Pioneer Irrigation District

Scott L. Campbell, ISB No. 2251
Dylan B. Lawrence, ISB No. 7136
Matthew J. McGee, ISB No. 7979
MOFFATT, THOMAS, BARRETT, ROCK &
FIELDS, CHARTERED
101 S. Capitol Blvd., 10th Floor
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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. 63-00179C 63-32580

**JOINT MOTION TO CONFIRM
ENFORCEABILITY OF AMENDED AND
RESTATED SETTLEMENT AGREEMENT
(EXPEDITED HEARING REQUESTED)**

COME NOW Pioneer Irrigation District ("Pioneer") and Mason Creek Ditch Company ("Mason Creek" or "Mason"), by and through undersigned counsel of record, and hereby move the Court to confirm the enforceability of the Amended and Restated Settlement Agreement executed and recorded by Pioneer and Mason Creek on January 13, 2012, attached hereto as Addendum 1.

1. Pioneer is the owner and operator of the Caldwell Highline Canal. *See* Order on Pioneer's Motion to Determine Enforceability of Settlement Agreement (the "Order"), dated March 25, 2011, at 2. On or about December 14, 2006, IDWR issued a Director's Report for Mason Creek's Boise River water right (63-00179C), which provided that such right included an accomplished change in point of diversion to the Caldwell Highline Canal. *See id.*

2. In June 2007, Pioneer filed an objection to the Director's Report for Mason Creek's Boise River water right. *See id.* In October 2010, the Court held a hearing on cross-motions for summary judgment by Pioneer and Mason Creek. *See id.* 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 Boise River water right resulted in injury or enlargement. *See id.*

3. On November 29, 2010, Pioneer and Mason Creek met for settlement negotiations without counsel present. *See id.* Thereafter, the parties exchanged written settlement agreements and ultimately executed and recorded a Settlement Agreement, dated December 14, 2010 (the "2010 Settlement Agreement"). *See id.*

4. 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 its Boise River water right 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.

5. The parties briefed the issues and presented oral argument on February 22, 2011. On March 25, 2011, the court entered its Order on Pioneer's Motion to Determine Enforceability of Settlement Agreement. The Court held that the Settlement Agreement was unenforceable to the extent it requires the delivery of Mason Creek's non-Boise River water rights through the Caldwell Highline Canal. *See* Order at 9-10. The Court also held that the 2010 Settlement Agreement is void because it commits the use of non-surplus property of Pioneer to the use of landowners outside the District. *See id.* at 10-11.

6. Counsel for Mason Creek and counsel for Pioneer subsequently discovered the following Pioneer Board minutes, respectively, which address use of the Caldwell Highline Canal for delivery of Mason Creek's Boise River water right. 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 districts' attorneys directed to draft the same.

See Addendum 1, Amended and Restated Settlement Agreement, Exhibit B.

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

Whereas, under present arrangements, the turning of the said Franklin rights and 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 Franklin and 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, Amended and Restated Settlement Agreement, Exhibit C.

7. At the time of Pioneer's Motion, neither Mason Creek, nor Pioneer, nor IDWR were aware of any agreement or other document establishing Mason Creek's legal right to convey its Boise River water right through Pioneer's Caldwell Highline Canal. In light of the foregoing 1911 and 1915 Pioneer Board minutes, however, and after further negotiation, Pioneer and Mason Creek have executed the Amended and Restated Settlement Agreement.

8. After submission of extensive documentary evidence by both parties, IDWR filed a Supplemental Director's Report in subcase 63-179C on October 31, 2011, concluding that the Department found no evidence of injury or enlargement in the accomplished transfer of the point of diversion of water right no. 63-179 to the Caldwell Highline Canal as of the time of the change in or about 1911.

9. The purpose of this Motion is to jointly seek confirmation from the Court that such Amended and Restated Settlement Agreement is enforceable. Should the Court find that the Amended and Restated Settlement Agreement is enforceable, Pioneer will execute and file the Notice of Withdrawal of Objections attached hereto as Addendum 2. Pioneer and Mason Creek jointly submit that the 1911 and 1915 Board minutes demonstrate that such agreement is not *ultra vires*.

10. The parties believe that the Amended and Restated Settlement Agreement is not *ultra vires* because the 1911 and 1915 Board minutes reflect that the upper portion of the Caldwell Highline Canal was surplus property 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. As this Court held in its analysis and application of *Yaden v. Gem Irrigation District*, 37 Idaho 300, 216 P. 250 (1923) (and its progeny) to the 2010 Settlement Agreement, an irrigation district may not commit the use of non-surplus property, including canals, to non-patrons of such district. See Order at 10-11. However, the 1911 and 1915 Board minutes attached as Exhibits B and C to the Amended and Restated Settlement Agreement indicate that the upper portion of the Caldwell Highline Canal was surplus property at that time. More specifically, those minutes reflect that return flows and unused water of Mason 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 right to Pioneer's Phyllis Canal.

11. In *Booth v. Weiser Irr. Dist.*, 112 Idaho 684, 686, 735 P.2d 995, 997 (1987), the Idaho Supreme Court stated:

In this case, WID contracted with parties located outside of its district in order to acquire their established diversion facilities, canal and water rights in order to better serve its patrons. The agreement to acquire Jeffreys' and Durbin's diversion facilities and water rights increased WID's ability to serve its patrons. The fact that the agreement required it to deliver 250 inches of water to the contracting parties for use outside the district did not, under these factual circumstances, make the agreement *ultra vires*.

Under these principles, the parties believe that the arrangement contemplated by the 1911 and 1915 Board minutes and, hence, the Amended and Restated Settlement Agreement, are not *ultra vires*.

12. In addition to the issues described above, the 2010 Settlement Agreement provided, in pertinent part, as follows: “Pioneer agrees to convey water diverted under **Mason Creek’s water rights** into the Highline Canal. . . .” See Order at 9 (emphasis added). The Court determined that the 2010 Settlement Agreement was unenforceable to the extent it required conveyance of Mason Creek’s non-Boise River water rights (*i.e.*, 63-32580 and 63-33392) through the Caldwell Highline Canal, because Idaho law does not allow for diversion from the Boise River of a water right with a source that is not the Boise River. *Id.* at 9-10. The Amended and Restated Settlement Agreement has addressed that issue by use of the following, more specific language: “Pioneer agrees to convey water diverted under **Mason Creek’s Boise River water right** into the Highline Canal. . . .” See Addendum 1, Amended and Restated Settlement Agreement, ¶ 6 (emphasis added).

For the foregoing reasons, Pioneer and Mason Creek respectfully request that the Court enter an order finding that the attached Amended and Restated Settlement Agreement is enforceable and not *ultra vires*.

REQUEST FOR EXPEDITED HEARING

In light of the fact the motion is a joint effort that is unopposed and, absent a request from the Court, will require no further briefing, Pioneer and Mason Creek respectfully request that their Joint Motion to Determine Enforceability be heard at an expedited hearing. Specifically, the parties request that the Court take consideration of the motion up at 9:30 AM,

Tuesday, February 7, 2012, at the date and time already scheduled for a final pre-trial conference.

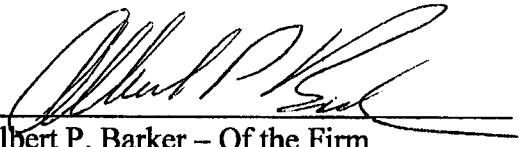
DATED this 31st day of January, 2012.

MOFFATT, THOMAS, BARRETT, ROCK &
FIELDS, CHARTERED

By Scott L. Campbell
Scott L. Campbell – Of the Firm
Attorneys for Pioneer Irrigation District

DATED this 31st day of January, 2012.

BARKER, ROSHOLT & SIMPSON, LLP

By 
Albert P. Barker – Of the Firm
Attorneys for Mason Creek Ditch
Company

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 1st day of February, 2012, I caused a true and correct copy of the foregoing **JOINT MOTION TO CONFIRM ENFORCEABILITY OF AMENDED AND RESTATED SETTLEMENT AGREEMENT** 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 RSHOLT & 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

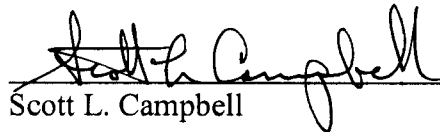
Boise, ID 83720

(☒) U.S. Mail, Postage Prepaid

() Hand Delivered

() Overnight Mail

() Facsimile



Scott L. Campbell

ADDENDUM 1

2012001835

RECORDED

2012 JUN 13 PM 2 55

CHRIS YALOWITZ
CANYON COUNTY RECORDS
BY *[Signature]*

**AMENDED AND RESTATED
SETTLEMENT AGREEMENT**

Denise May
TYPE INSTRUMENT FEE \$ *[Signature]*

201

This Amended and Restated Settlement Agreement (the "Agreement"), is entered into and made effective this 13 day of January, 2012, 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.

WHEREAS, Pioneer and Mason Creek entered into the Settlement Agreement attached hereto as Exhibit A, which is dated December 14, 2010 and recorded as Instrument No. 2010057959, Records of Canyon County, Idaho. Pioneer thereafter sought a determination from the SRBA Court that the Settlement Agreement was void and not enforceable. The Special Master assigned to Mason Creek's subcases determined that the Settlement Agreement was void and not enforceable, based on the facts before him at that time. The SRBA Presiding Judge has not ruled on the enforceability of the Settlement Agreement. Subsequent to the Special Master's determination, discovery in the SRBA subcases revealed minutes of the Pioneer Board from January 1911 and July 1915. Attached hereto as Exhibits B and C are copies of those Board minutes. Pioneer's Board minutes disclosed that in 1911 Pioneer and Mason Creek agreed that Mason Creek's Boise River water right would be diverted into the Highline Canal, and that a contract was to be prepared. In 1915 Pioneer's Board reaffirmed the arrangement to deliver Mason Creek's water rights in the Highline Canal and resolved to direct the State Engineer to continue diverting Mason Creek's and Franklin's Boise River water rights into the Highline Canal and directed the State Engineer to move Pioneer's Highline Canal rights to the Phyllis Canal. At that time, Pioneer's Board determined that this arrangement was in the best interests of Pioneer. In light of these facts the parties agree that this Settlement Agreement is enforceable. The parties agree to jointly seek confirmation of enforceability from the Special Master and/or the Presiding Judge in the SRBA.

NOW, THEREFORE, for and in consideration of the premises and of the covenants, agreements, and conditions set forth herein, Pioneer and Mason Creek agree to compromise, settle, and resolve the pending litigation in the Snake River Basin Adjudication in Subcase Nos. 63-00179C and 63-32580, based upon the following mutual promises, agreements, and understandings.

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 this 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 wastewater remark by the Idaho Department of Water Resources. Any such objection by Pioneer shall be limited to the elements of whether the priority date should be prior to 1922 and the appropriate form of a wastewater remark.
2. Mason Creek agrees that Pioneer owns and has exclusive authority and control over the operations, maintenance, repair, and improvement of the Highline Canal.
3. 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 when 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 served by the Highline Canal. 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 or portion thereof 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 or the District 63 rental pool. If the Department of Water Resources seeks to require additional measures so that Pioneer may use water on lands within Pioneer's boundaries served by the Highline Canal which have been diverted into the canal under Mason Creek's Boise River water right, beyond the terms of this agreement, Mason Creek shall cooperate with such lawful and reasonable requests of the Department, so that the terms of this agreement can be carried out.

4. Mason Creek agrees that Pioneer shall not be charged for use of water diverted into the Highline Canal under Mason Creek water rights.
5. Pioneer agrees that Mason Creek owns its water rights as recommended in the Snake River Basin Adjudication District Court.
6. Pioneer agrees to convey water diverted under Mason Creek's Boise River water right into the Highline Canal, at no cost to Mason Creek, to delivery headgates on the Highline Canal and, when necessary to supplement deliveries to Mason Creek's shareholders from Five Mile Creek and/or Mason Creek to meet Mason Creek's obligations to its shareholders, to the two existing spillways from the Highline Canal to Five Mile Creek and Mason Creek, for use on lands owned by Mason Creek shareholders. Pioneer's deliveries of water to the existing spillways shall be limited to 18 cfs for each spillway. Said deliveries shall be made to the extent necessary to allow Mason Creek to divert 17 cfs at the points of diversion for each of its Five Mile

Creek and Mason Creek water rights. Pioneer is not required to deliver any portion of Mason Creek's water rights under right nos. 63-32580 and 63-33392. 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 right. Pioneer agrees to operate, maintain, and repair the Highline Canal.

7. 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 and spillways from the Highline Canal to Mason Creek and Five Mile Creek, when Pioneer requires measuring devices of all deliveries from the Highline Canal.
8. 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.
9. 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. The parties agree to establish a protocol for Mason Creek and its landowners to communicate with Pioneer and its ditch riders concerning day-to-day delivery issues and to resolve any delivery disputes.
10. This Agreement shall be enforced and construed under the laws of Idaho.
11. 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.

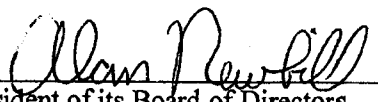
PIONEER IRRIGATION DISTRICT
Post Office Box 426
Caldwell, Idaho 83605

MASON CREEK DITCH COMPANY
1905 Mason
Caldwell, Idaho 83605

12. Attorneys Fees. Upon Execution of this Agreement, Pioneer shall pay Mason Creek the sum of \$15,000.00 in full and complete satisfaction for all claims that Mason Creek may have against Pioneer related to Pioneer's claims, objections and actions related to the SRBA subcases 63-179A, 63-179C and 63-32580, including any claims for costs and fees.
13. The covenants, conditions and agreements contained in this Agreement shall be binding on each of the parties hereto and on all parties and all persons claiming under them or either of them, and the advantages hereof shall inure to the benefit of each of the parties hereto and their respective successors and assigns.
14. This Agreement amends and restates the December 14, 2010 Agreement and supersedes the December 14, 2010 Agreement.
15. 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: 
President of its Board of Directors

Attest:

Walter L. Cline Secretary

MASON CREEK DITCH COMPANY

By [Signature]
President of its Board of Directors

Attest:

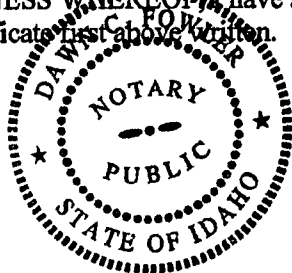
Paul Picardi Secretary

RECORDER SCAN

STATE OF IDAHO)
)ss.
County of Canyon)

On this 13 day of January, 2012, before me, the undersigned notary Public in and for the said State, personally appeared Alan Newbill 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.

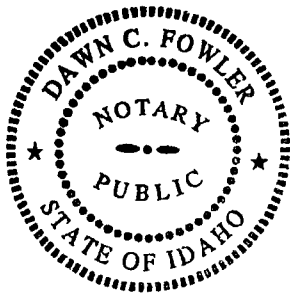


Dawn C. Fowler
NOTARY PUBLIC FOR IDAHO
Residing at Boise
My commission expires 7-16-2016

STATE OF IDAHO)
)ss.
County of Canyon)

On this 13 day of January, 2012, before me, the undersigned notary Public in and for the said State, personally appeared Debra L. Cline, 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.

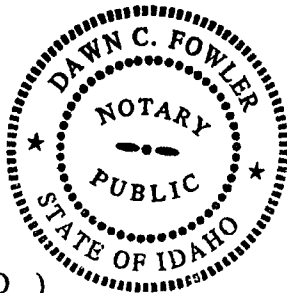


Dawn C. Fowler
NOTARY PUBLIC FOR IDAHO
Residing at Boise
My commission expires 7-16-2016

STATE OF IDAHO)
)ss.
County of Canyon)

On this 13 day of January, 2012, before me, the undersigned notary Public in and for the said State, personally appeared John J. 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.

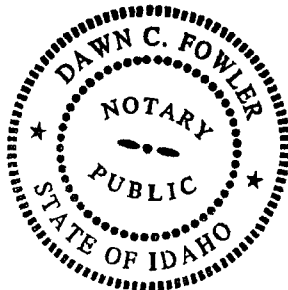


Dawn C. Fowler
NOTARY PUBLIC FOR IDAHO
Residing at Boise
My commission expires 7-16-2016

STATE OF IDAHO)
)ss.
County of Canyon)

On this 13 day of January, 2012, before me, the undersigned notary Public in and for the said State, personally appeared Richard Bicandi, 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.



Dawn C. Fowler
NOTARY PUBLIC FOR IDAHO
Residing at Boise
My commission expires 7-16-2016

RECORDER SCAN

RECORDER SCAN

EXHIBIT "A"

SETTLEMENT AGREEMENT

2010 DEC 15 PM 11:29
 WILLIAM H. HURST
 CANYON CNTY RECORDS
 C. Brown

2010057959

RECORDED

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.

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 wastewater 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

received by Pioneer litigation
 type B + K fee C

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 Newbill

President of its Board of Directors

Attest:

Gaww C. Fowler
Secretary

MASON CREEK DITCH COMPANY

By: John J McEvoy

President of its Board of Directors

JOHN J MCEVOY

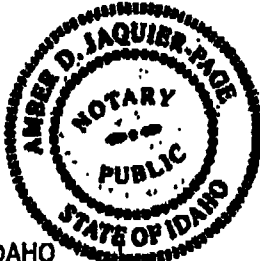
Attest:

Dick Bucandri
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 Jewell, 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.

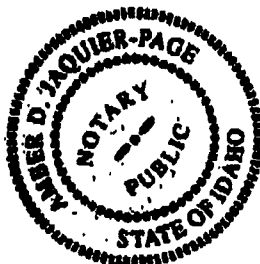


Amber D. Jarnagin
NOTARY PUBLIC FOR IDAHO
Residing at Middleton
My commission expires 9/26/12

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.

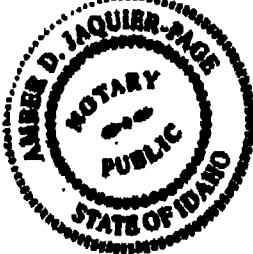


Amber D. Bagnier-Pag
NOTARY PUBLIC FOR IDAHO
Residing at 4 Middlebrook
My commission expires 9/26/12

STATE OF IDAHO)
County of Canyon) ss.

On this 14th day of December, 2010, before me, the undersigned Notary Public in and for the said State, personally appeared John S. McCray, 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.

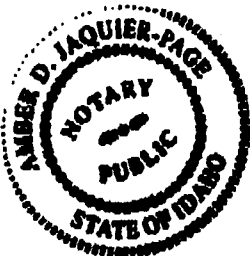


Amber A. Janner-Page
NOTARY PUBLIC FOR IDAHO
Residing at Middleton
My commission expires 9/21/17

STATE OF IDAHO)
) ss.
County of Canyon)

On this 4th 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. Janner-Pag
NOTARY PUBLIC FOR IDAHO
Residing at 4 Middleton
My commission expires 9/21/12

RECORDER SCAN

RECORDER SCAN

EXHIBIT "B"

MINUTE BOOK, PIONEER IRRIGATION DISTRICT.

Caldwell, Idaho, Jan, 3, 1911.

The board of directors of the Pioneer Irrigation District met at 10:00 o'clock, A. M., present L. E. Greenleaf, Jos. Dickens and Arthur S. Street, Directors, and J. Foster Jr., secretary, and proceeded at once to the organization of the board for the ensuing year.

It was moved and seconded that L. E. Greenleaf be retained as president of the board for the coming year; that J. Foster Jr. be retained as secretary and Elmer Brown as superintendent of the district, each at the same salary he received last year. The motion prevailed.

It was moved and carried that Jos. Dickens be retained as committee on Canals and works; A. S. Street, on finance; and L. E. Greenleaf, on records and legal rights, for the ensuing year.

Upon motion, Rice, Thompson & Buchner were retained as attorneys for the district with the same fees as heretofore, and G. D. Snell, Jr. was appointed treasurer for the district at the same salary as heretofore.

Upon motion, Fred Sheldon was retained as headgate man for the Phyllis Canal, to have full control of the sidehill portion of the canal, at a salary of \$55.00 per month during January and February and \$110.00 per month during the remainder of the year.

It was moved and carried that Roy Gibbins be appointed headgate man for the Highline Canal, to have full charge of the canal as far as Madden's headgate, at a salary of \$42.50 per month during January and February and \$85.00 per month during the remainder of the year.

Claims amounting to \$2604.80 were allowed, for \$432.97 of which time checks had already been issued, and for the balance of \$2171.83, maintenance warrants numbered 292 to 396 inclusive were issued.

John Thomas appeared before the board asking

for a refund of taxes on account of railroad right-of-way and land he claims is out of the district.

The secretary was instructed to investigate and report at the next meeting.

In case of errors in toll charges on Caldwell lots, the secretary and superintendent are authorized to correct same and to cancel them on the assessment rolls, without referring them to the board of directors.

Professor French appeared before the board asking permission to build a bridge over the waste gate in the channel of the river at the head of the Highline Canal, in order that sheep might cross. The board granted permission providing the bridge does not in any manner obstruct the waste way.

It was moved and carried that the president and secretary be instructed to issue ^{as due} to H. L. Weich, on the 18th Nov. Sec. 36-4-3 in consideration of the payment of \$5400.

Messrs. Bayles and Cook, representing the 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 the Mason Creek Ditch Co., and deliver same to them at different places on the Highline Canal. Such contract was agreed upon and the district's attorneys directed to draft same.

Whereupon the board adjourned to meet with the directors of the Emek Ditch Co. Jan. 7, 1911.

L. E. Greaney
President

Attest:-

J. J. Jett
Secy.

RECORDER SCAN

RECORDER SCAN

EXHIBIT "C"

Caldwell, Idaho, ~~August 12~~ July 6, 1915

The Board of Directors of the Pioneer Irrigation District met in regular session; present, L. E. Greenleaf, A. H. Street and W. A. Shupe, Directors, and J. Jester Jr., Secretary.

Claims amounting to \$2397.⁵² were allowed, for ~~\$157.⁷⁵~~ of which time checks had been issued; and in payment of the balance, \$2245.⁷⁷, maintenance warrants numbered 689 to 823 were drawn.

The following resolution was presented by A. H. Street, seconded by W. A. Shupe, and unanimously carried:

Whereas Walter Griffith is demanding that the Mason Creek ditch right and the Franklin Ditch right, together with 26.55 inches of water decreed to the Caldwell Highline Canal, be turned into the headgate of the Caldwell Highline Canal; and

Whereas, under present arrangements, the turning of the said Franklin rights and 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 26.55 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 this District that the waters 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 ~~continue~~ diverting said waters as they have been heretofore diverted, to wit:

In addition to the amount decreed to the Phyllis Canal, to divert the 26.55 inches

decrease
water on
Phyllis

aforsaid into the Phyllis Canal, and to divert the Franklin and 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.

It appearing to the Board of Directors of the Pioneer Irrigation District that Wilson Slough Drain divides the land hereinafter described so that the owner thereof is entitled to a bridge across said drain under the general resolution of this Board passed July 7, 1914,

Be It Therefore

Resolved That the Reclamation Service of the United States be authorized and directed to construct a bridge in accordance with the plans and specifications for land-locked lands, on file in its office in Boise, Idaho, across Wilson Slough Drain, on the following described lands, to wit:

North half (N $\frac{1}{2}$) of the Southwest quarter (SW $\frac{1}{4}$) of Section one (1), Township three (3), North of Range three (3), West of Boise Meridian, in Canyon County, Idaho; now belonging to Charles K. McMichael, and that the expense of said construction be paid out of the \$350,000 drainage fund now in the hands of the Reclamation Service of the United States.

Mr. Haman, of the College of Idaho, appeared before the Board asking that the ditch across the College campus be put under ground. He offered to pay one-half the cost of the materials and to cover the tile if the District will pay the other half of cost of materials and lay the tile.

The matter was taken under advisement.

No further business appearing, the Board adjourned to meet July 15th, 1915.

Attest:

J. Jester,
Secy.

L. E. Greenlee
President.

ADDENDUM 2

Attorneys for Objector
Pioneer Irrigation District

Scott L. Campbell, ISB No. 2251
Dylan B. Lawrence, ISB No. 7136
Matthew J. McGee, ISB No. 7979
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. 63-00179C 63-32580

NOTICE OF WITHDRAWAL OF OBJECTIONS

Pioneer Irrigation District, through undersigned counsel of record, hereby files this Notice of Withdrawal of Objections, pursuant to SRBA Rule of Procedure 1 and Idaho Rule of Civil Procedure 41(a)(1). Pioneer hereby acknowledges the Amended and Restated Settlement Agreement between Pioneer Irrigation District and Mason Creek Ditch Company, executed on January 13, 2012, and duly recorded with the Canyon County recorder as Instrument No. 2012001835, and this Court's order confirming of its enforceability, and hereby incorporates that agreement and order by reference herein. In consideration of the execution of that

agreement and the Court's confirmation of its enforceability, Pioneer hereby withdraws its objections in the above-referenced subcases.

DATED this _____ day of February, 2012.

MOFFATT, THOMAS, BARRETT, ROCK &
FIELDS, CHARTERED

By _____
Scott L. Campbell – Of the Firm
Attorneys for Pioneer Irrigation District

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this _____ day of February, 2012, I caused a true and correct copy of the foregoing **NOTICE OF WITHDRAWAL OF OBJECTIONS** 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

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

Scott L. Campbell