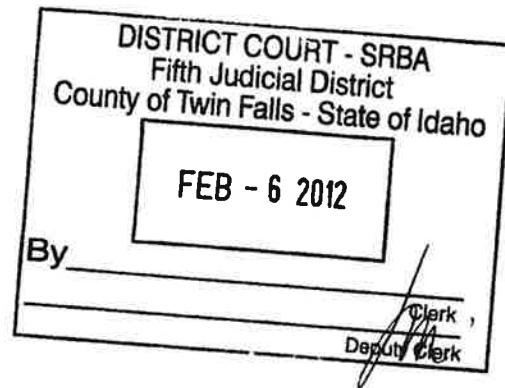


Attorneys for Objector  
Pioneer Irrigation District

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

**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.

**JOINT MOTION TO CONFIRM ENFORCEABILITY OF  
AMENDED AND RESTATED SETTLEMENT AGREEMENT - 1**

Client:2318429.1

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.

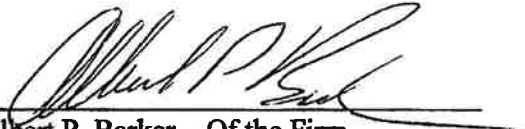
DATED this 31st day of January, 2012.

MOFFATT, THOMAS, BARRETT, ROCK &  
FIELDS, CHARTERED

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

DATED this 31<sup>st</sup> 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 1<sup>st</sup> 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

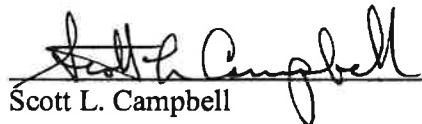
Boise, ID 83720

☒ U.S. Mail, Postage Prepaid

☐ Hand Delivered

☐ Overnight Mail

☐ Facsimile

  
\_\_\_\_\_  
Scott L. Campbell

## **ADDENDUM 1**

2012001835

RECORDED

2012 JUN 13 PM 2 50

CHRIS YELLMAN  
CANYON COUNTY RECORDS  
BY *[Signature]*

**AMENDED AND RESTATED  
SETTLEMENT AGREEMENT**

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.

*[Handwritten signature]*  
TPE *[Signature]*

201

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.

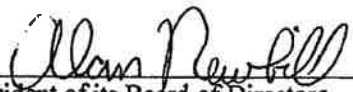
PIONEER IRRIGATION DISTRICT  
Post Office Box 426  
Caldwell, Idaho 83605

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:

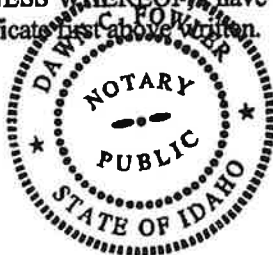
Arch Biscardi, Secretary

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.

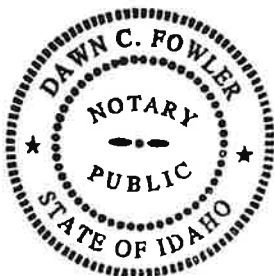


Dawn C. Fowler  
NOTARY PUBLIC FOR IDAHO  
Residing at Boise  
My commission expires 7-16-2016

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.

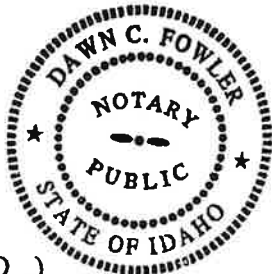


Dawn C. Fowler  
NOTARY PUBLIC FOR IDAHO  
Residing at Boise  
My commission expires 7-16-2016

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.

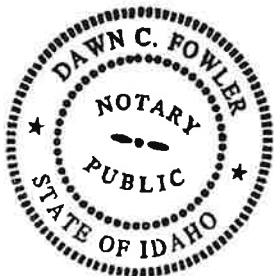


Dawn C. Fowler  
NOTARY PUBLIC FOR IDAHO  
Residing at Boise  
My commission expires 7-16-2016

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 AM 11:29  
WILLIAM H. HURST  
CANYON CITY RECORDS  
CITY OF BRAN

RECORDED

2010057959

This Agreement (the "Agreement"), is entered into and made effective this 15th 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

Snake River Basin Adjudication  
TYPE B T K FOR 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:

Gawn C. Fowler  
Secretary

**MASON CREEK DITCH COMPANY**

By: John J. McEvoy  
President of Its Board of Directors

JOHN J MCEVOY

Attest:

Dick Bucander  
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 Sawbell, 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. Jaquier-Page  
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. Jaquier-Page  
NOTARY PUBLIC FOR IDAHO  
Residing at Middleton  
My commission expires 9/26/12

STATE OF IDAHO

) 55.

**County of Canyon**

On this 14<sup>th</sup> 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 D. Jones - 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 Biondi, 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. Jorgensen - Page 2  
NOTARY PUBLIC FOR IDAHO  
Residing at 41 Middleton  
My commission expires 9/26/12

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. Greenlee, Jos. Dickens and Arthur G. 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. Greenlee 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.G. Street, on finance; and L.E. Greenlee, on records and legal rights, for the ensuing year.

Upon motion, Rice, Thompson & Buckner 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 side hill 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 \$436.97 of which time checks had already been issued, and for the balance of \$2177.83, maintenance warrants numbered 291 to 396 inclusive were issued.

John Thomas appeared before the board asking

MINUTE BOOK, PIONEER IRRIGATION DISTRICT.

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 waterway.

It was moved and carried that the president and secretary be instructed to issue <sup>as due</sup> to H. L. Weick, on the 18th Nov. Sec. 36-4-3 in consideration of the payment of \$5400.

Mrs. 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 attorneys directed to draft same.

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

L. E. Hunsay  
President

Attest:-

J. J. Jester  
Secy.

**RECORDER SCAN**

**RECORDER SCAN**

**EXHIBIT "C"**

MINUTE BOOK, PIONEER IRRIGATION DISTRICT.

Caldwell, Idaho, July 6, 1915.  
The Board of Directors of the Pioneer Irrigation District met in regular session; present, L. E. Greenlee, A. H. Street and W. A. Shupe, Directors, and J. Jester, Jr., Secretary.

Claims amounting to \$2397.<sup>52</sup> were allowed, for \$157.<sup>75</sup> of which time checks had been issued; and in payment of the balance, \$2245.<sup>77</sup>, maintenance warrants numbered 687 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 rights and the Franklin Ditch rights together with 2655 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 waters 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 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 to divert said waters as they have been heretofore diverted, to wit:

In addition to the amount decreed to the Phyllis Canal, to divert the 2655 inches

decrease  
water in  
Phyllis

MINUTE BOOK. PIONEER IRRIGATION DISTRICT

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. Hamman, 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 18th, 1915.

Attest:

J. J. Jester,  
Secretary

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 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

05/11/2012

IDAHO DEPARTMENT OF WATER RESOURCES  
RECOMMENDATION OF WATER RIGHTS ACQUIRED UNDER STATE LAW

RIGHT NUMBER: 63-33392

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

SOURCE: FIFTEEN MILE CREEK

TRIBUTARY: BOISE RIVER

QUANTITY: 17.000 CFS

Right Nos. 63-179C, 63-32580 and 63-33392 are limited to a total combined diversion rate of 53.2 cfs.

PRIORITY DATE: 06/01/1869

POINT OF DIVERSION:

T04N R02W S16 SWSW Within CANYON County

PURPOSE AND  
PERIOD OF USE:

| <u>PURPOSE OF USE</u> | <u>PERIOD OF USE</u> | <u>QUANTITY</u> |
|-----------------------|----------------------|-----------------|
| IRRIGATION            | 03/01 11/15          | 17.000 CFS      |

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 place of use described by the digital boundary.

Right Nos. 63-179C, 63-32580 and 63-33392 are limited to the irrigation of a combined total of 1504.3 acres in a single irrigation season.

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 entry of a final unified decree. Section 42-1412(6), Idaho Code.

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

EXPLANATORY MATERIAL: BASIS OF CLAIM - Beneficial Use

Page 1

# IN THE SUPREME COURT

OF THE  
STATE OF IDAHO

November Term, 1908

Farmers' Co-operative Ditch Company  
(a corporation)  
*Plaintiff and Respondent.*  
vs.

Riverside Irrigation District, Ltd., et al  
*Defendants and Respondents.*

Nampa & Meridian Irrigation District,  
Pioneer Irrigation District, Riverside Irrigation District, Ltd., and New York Canal Company, Ltd.,  
*Defendants and Appellants.*

Seven Pages  
Tells how they  
Irrigated out  
of the sloughs  
in early days

## Transcript on Appeal VOL. II

*Appeal from the District Court of the Seventh Judicial  
District of the State of Idaho, in and for  
the County of Canyon.*

HUGH E. McELROY,  
W. E. BORAH,

RICE & THOMPSON,  
E. J. FRAWLEY,  
*Attorneys for Appellants.*

Richards and Hagen  
J. J. Plowhead  
Silas W. Moody  
Davidson and Stoutemyer  
J. J. Blake  
R. H. Johnson  
T. D. Cahalan  
J. L. Niday  
S. E. Hays  
Wyman and Wyman  
Griffiths and Griffiths  
Rice & Thompson

W. A. Stone  
H. E. Wallace  
Ira E. Barber  
Hawley, Puckett & Hawley  
Frank Martin  
O. E. Jackson  
Ralph P. Quarles  
Wood and Wilson  
C. C. Cavanah  
N. M. Rulek  
Hugh E. McElroy

*Attorneys for Respondents.*

PROOF  
OF 1869  
DATE

SEE HIGHLIGHTED  
AREAS & STEWART  
DECRE 1904 MAPS  
FOR REFERENCE.

923

I irrigated both, or all of these tracts; that is 320 acres.

2999 What this slough sub irrigates I don't have to irrigate from the Franklin ditch. I put this water on the same land that the Franklin ditch goes on.

#### CROSS EXAMINATION BY MR. WOOD

My timber is on the north 80 of my daughter's entry.

#### REDIRECT EXAMINATION BY MR. GRIFFITH

The description of the land my daughter owns is the south half of the southwest quarter of section 16, and the north half of the northwest quarter of section 21; and my quarter is directly south of that. My land is on sections sixteen and twenty-one. This slough runs over that 80 in section 16. This slough coming out of the river, and the other slough coming down, they join together. The creek empties into that slough that we have all irrigated out of, and they all come together about the center of the east 40 of that 80, and the slough runs on west. It leaves the land about the center of the west 40, and it runs off onto Thomas's on the north side and then there is a dam there to keep it from running back into the river, and the slough runs back and cuts the northwest quarter. This timber that is irrigated by damming the slough is on the north side of the slough, and extends back east.

John Thomas, recalled as a witness, testified as follows:

DIVERSION FOR FIVE/FIFTEEN  
/TEN MILE CR. TO MASON.  
SLOUGH + ON DOWN FOR  
IRRIGATION 1908 TESTI-  
MONY FROM THE DUTY OF  
H2O LAWSUIT - BOISE RIVER.

NOTE: PER MAP OF 1904 DIV. FROM FIFTEENMILE

SPRINGS & PUMPS INTO MASON SLOUGH  
PRIOR TO FORTYING THE RIVER

924

# DIRECT EXAMINATION BY MR. GRIFFITH

I stated that I lived where I now live since 1866; I irrigate some of my land from this Mason slough.  
3002 About 45, maybe 50 acres is irrigated from this source. I think me and Mr. Wooten put a cut in there in 1863 or '69 a headgate I mean. I had 156 acres there all together; it lies right west, a part of it north of Madden's place, and I irrigated about 45 acres from this slough. I never was in the corporation but used water from it, and everybody below us watered from it. I bought part of the land from a party who was in the corporation. I irrigated the lower tract of land from the Mason slough; it joins Madden's place. I irrigate the north part of my land from the Mason slough; the place farther down the river. I have got three places up there. I irrigate the two upper ones from the Franklin slough. The third place joins Mr. Wheatley on the north; that is this one next to the railroad. The second one joins Charles Madden. I irrigate in section 17, joining the railroad right of way from the same slough as the Franklin ditch. I do not irrigate from the Franklin ditch, I irrigate 45 acres of the lower place from the Mason slough. There are  
3004 107 and 156 acres in the two upper places joining Madden; I irrigate it all; I had it all in cultivation, except what washed away; I stated this morning that I had under cultivation on these two places 160 acres.

# CROSS EXAMINATION BY MR. WOOD

I call the northwest quarter of section 17, joining the railroad track; the lower place; I irrigated that all out of the slough. The Franklin ditch has nothing to do with it.

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JOHN THOMAS  
1866  
1868  
1869

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BY THE COURT

3005 There is not a bit of difference between this Mason creek slough and the Mason slough that the Franklin ditch empties into.

BY MR. WOOD

This 75 acres was credited to the Franklin ditch.

BY THE STATE ENGINEER

That is a mistake; I took it all out of the Franklin slough. I irrigate nearly 80 acres from that slough. I think I meant the upper place when I stated that I irrigated nearly 45 or 50 acres. I don't irrigate the upper place out of the upper slough. I said I irrigate the upper land out of the Mason slough because I had an old ditch up there and I had no water.

BY MR. GRIFFITH

There was 160 acres and a fraction of 37 acres in the Plowhead place, but I think the fraction all washed away and I think a little of the other. I think there is about 120 acres left. The Snobbel place is the same place I bought from him, that is the Plowhead place. In my original place, the place that I took originally there was 156 acres in one and 107 acres in the other, that would make 267 acres, and from that 40 acres washed off one tract.

3007 L. F. Cook, recalled as a witness, testified as follows:

COOK DIRECT EXAMINATION BY MR. GRIFFITH

I have lived about three miles and a half from Cald-

926

well since 1879, I own about 471 acres there. That land is irrigated from the Boise river through these sloughs; it is pretty hard to tell what I irrigate out of the main canal of the Pioneer Irrigation District.

There is 80 acres lying outside of all of the sloughs next to the bluff. I have an interest in 79 1-2 inches coming out of the slough and irrigate that 80 acres with that, and the rest of this land is irrigated from this water, from what we would call the Mason slough and the Franklin ditch together. We have had 79 1-2 inches put in our shares. In putting in the ditches in different places when that ditch was built there was 1,350 inches of water to be divided between us, and the water that comes down is all turned in at two different points, one near the headgate of the ditch and the other at the "Waste slough." One is 800 inches and the other 350 inches, then the Mason creek comes right into the same slough again. I don't know how much water I get from these two sources that comes from the Strahorn heading. The 1,350 inches is divided into 17 shares, and that would give me 125 inches. The whole ranch is all irrigated, that on the bench and all on the bottom, 471 acres.

3010

## BY THE COURT

I said this morning that 250 acres was in cultivation in hay and grain; now there is pasture land and hay land.

## BY MR. GRIFFITH

I have about 250 acres under cultivation that I irrigate for the purpose of pasture and hay, native grass that grows there wild hay. I knew the people ir-

927

irrigating from this slough, the Mason slough, when first come there. It goes through the Madden ranch,

3011 Thomas, Hamilton Davis, Mr. Beardsley's, now owned by Mr. Whitney, through the Wooten place on down the canyon; through Potts' place and Mr. Wells.' The Potter ranch was all owned at that time by Mr. Potts. Mr. Job is below the Potts ranch. The people incorporated that into a company known as the Mason Creek Ditch Company; they became members of that company and regulated the proportion and distribution of the water from that same source thereafter.

3012 Mr. Madden, Mr. Thomas, Hamilton Davis, Whitney, Milliner and myself, Mr. Hesse, Mr. Wells and Mr. Mason right at the canyon, own this land at the present time. Mr. Smith owns the 40 acres right east of Mr. Whitney. All that is a part of the Hamilton Davis place; it is known now as the Stoddard place.

At the time we made the transfer to the Idaho and Oregon Land and Improvement Company, one year when the water was a little short we saw that we didn't have as much water in the sloughs as we should have, we then went to work and organized an incorporation 3013 known as the Mason Creek Ditch Company, and then we took in other members and other lands beside what was irrigated from the Franklin ditch, persons who are not under the Franklin ditch at all, but have irrigated from this slough. This land has been irrigated from this slough ever since I have been there.

BY MR. WOOD

It is pretty hard for me to tell how much of my land I irrigate from the Mason slough. The water runs together for a half a mile. I take water out of two

1829

928

3014 places now; I don't know how to get at how much water I use in irrigating land from the Mason slough. I don't know—I would say something over 100 acres of land irrigated from the Mason slough. I would say about 125 acres, maybe 150 acres of my land is actually under cultivation and irrigated from the Franklin ditch. I own besides the west half of section 18, the southeast quarter of the northeast quarter and the northeast quarter of the northeast quarter of section 13, and then I own the southeast quarter of the northeast quarter of section 24.

These two 40's, the west half of section 18, the southeast quarter of the northeast quarter of section 24, then there is a 40 that lies in here (indicating) belonging to a man named Parrish in section 13, between what I own there and own in section 24.

A part of the 40 acres in the northeast quarter of the northeast quarter of section 24 is in alfalfa, about 20 acres. I took up that 10 as a pre-emption about 1885; it was sage brush land. The sage brush has not  
3016 been cleared off all of it, about one-half of this 40 acres is still in sage brush.

BY MR. BORAH

We generally call what I own 480 acres the township line runs through there and there are a few lots; I think it is 471 acres and a fraction. I could hardly tell you how much I irrigate and how much I put water on. There is some timber land lying next to the river and the sloughs irrigate the timber, I should think there must be 40 acres of it. There must be over  
3017 300 acres that I irrigate out of the 471 acres, pasture

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land and everything. I don't know how much is sub irrigated from these sloughs. The timber land next to the river sub irrigates. There is about 40 acres of that land. I irrigate this from the Mason ditch and the Franklin ditch.

I have 80 acres lying apart from my other land that I irrigate from the Franklin ditch. That water is not mingled with the Mason creek ditch at all. The Mason creek and Franklin ditch all mingles. There has never been any measuring device arranged by which we could tell how much water I use coming from the Mason creek ditch and how much from the Franklin. I have 80 acres that the Mason creek ditch doesn't irrigate at all. That is irrigated wholly from the Franklin.

#### BY MR. GRIFFITH

I dam the water up in the sloughs to irrigate the pasture land and the timber land. Most generally the hay land I am aiming to run water out over the land and the grain land I sub it. I flood all my land by entirely by damming the sloughs or running it over the surface one way or another. I wet all of my land in one of these two ways, and from one of these two sources. I have been irrigating this land in this manner ever since I have been on the place. I bought the place from a man by the name of Marion E. Mason. A portion of it I pre-empted myself. When I found after this survey that the house was not on the land I bought, as I thought it was, I pre-empted that tract, 160 acres.

930

BY MR. RICE

I don't know how much timber land there is. I expect there is 80 acres of this 471 acres still in sage brush, probably more. I seeded about 20 acres of this sage brush to alfalfa and clover, the biggest portion of it. I have taken off the sage brush—the sage brush is still standing on probably 100 acres; I don't know, there is 100 acres, about that. I have never seeded anything on this where the sage brush is standing.

3021 L. F. Cook, recalled, testifies as follows:

## DIRECT EXAMINATION BY MR. GRIFFITH

I now own 471 acres that has been figured up with the assessor. There would be if it takes an inch to the acre, 147 inches of water used on it that comes from the Franklin ditch. The only way to get at it is to divide by the number of inches in the Franklin ditch, divide 2,500 inches and that gives 147 inches. I irrigate all of my place; it is in pasture, grain land and hay. It is all fenced. The balance of it is irrigated from the Mason creek head. I think that would leave 324 acres irrigated from that source. I am acquainted with the different persons and land owners who irrigate from this Mason creek ditch and slough. They are John Thomas, Emma Stoddard, Hamilton Davis, H. N. Whitney and Jacob Plowhead—it is owned by Mr. Thomas. Next after Whitney coming down the slough is L. O. Leonard, George Milliner, myself, L. F. Cook, Charles E. Goocy, J. W. Ballard, George Hesse, S. H. Vassar, Charles S. Wells, Edith Mason and C. Mason. 3023 J. P. Wells has 120 acres, and the other is 1,800 acres

NOTE:

JOHN THOMAS ←  
IS DOWNSTREAM  
FROM MASON  
SLOUGH & WOULD  
HAVE USED A  
COMBO OF  
FIFTEEN MILE &  
SLOUGHS.

HAVE  
ALL WOULD USED CO-MINGLED WATER  
FROM 15 MILE INTO MASON SLOUGH.

CONTAINS  
WASTEWATER  
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or something over it, I don't just remember what it is, but I think something over that.

## CROSS EXAMINATION BY MR. RICE

John Thomas irrigates some of his Plowhead place beside from Mason creek. This Mason Creek Ditch Company is not a capital stock company, it is a partnership company. I don't know as I can explain to you how a member becomes a member of the Mason Creek Ditch Company. I paid in about the amount  
3024 that was done in the first place, to put in headgate and dams and such as that and become a member. I expect that Thomas irrigates something near 200 acres out of the Mason creek slough. I don't know exactly where the line runs through or how his land lies.

Of the Emma Stoddard place there is about 50 acres that lies above the grade of the Mason creek ditch. There is a little ditch that goes right around under the bluff back of the house that comes out of the Mason slough. This is the highest point it reaches. I don't  
3025 remember the size of the headgate of that little ditch, but I should think it was something like three or four feet. It has been carrying water right along the last year. I guess every year so far as I know there has been water running through the headgate there. I don't know whether the balance of the Stoddard land is considered too wet or not—I don't know whether they are cultivating it or not. I don't know just how it is, I am not positive, I haven't been through there—I  
3026 don't know whether it has been irrigated from this ditch or not. I don't know whether this 40 acres credited for the Hamilton Davis place to the Mason slough is exclusive of the amount put in as being irrigated from the

s. I ex-  
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Franklin ditch on the Hamilton Davis place. I can hardly say how much land on the Hamilton Davis place is under cultivation now. Some of the place lies up towards the bluff, towards the Franklin ditch; I don't know whether it is cultivated or not; it is fenced, but I don't know whether they use water on it or not, but all down on the bottom is under cultivation.

3027 Part of the Leonard place is covered with timber. The state engineer's map is not correct as the river has cut in there until there is about only 15 acres of that place. I think this list here (indicating) would be excessive of the amount, to the amount of 15 acres, if it were all cultivated. It is all in timber except for what grass grows among the timber.

The Vassar place is south of the Hesse place, it is in pasture, there is some sage brush on it and grass. There are different grasses, some of it is salt grass.

3028 Mr. Vassar runs water over that. That was once under cultivation when Mason creek ditch was first built, it was first put under cultivation in grain and alfalfa by Mr. Evans, then they went out of the country and there was nobody on it for a while, and then they rented it and it has been used for pasture ever since.

Mr. George Milliner, recalled as a witness, testified as follows:

#### DIRECT EXAMINATION BY MR. GRIFFITH

I live about four miles east of Caldwell; I have lived there three years; I know the land irrigated from the Mason creek ditch; I own land irrigated from that ditch; I own about 173 acres.

A man by the name of L. McIntyre and another by the name of George Houton originally owned that

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land. I own all together in that same tract 323 acres; 173 acres of this is irrigated from the Mason creek ditch. I am acquainted with the persons who irrigate from this ditch at the present time; I think I am. I saw some names here that I am not acquainted with, probably they were people whom I have never seen, some of them ranchers. The Hamilton Davis ranch I know, but I don't know much about them people at all, and the Stoddard ranch I have never seen any of them. I know the renter who is on his place. I know where the Stoddard land lies, and have been across all of it. I know the place irrigated from this ditch.

This list (indicating) contains the name of the owners, and the number of acres owned, and the number of acres irrigated from the Mason creek ditch, as far as I know, but I have not measured their land, it does to the best of my knowledge. To the best of my knowledge the acreage would be all right.

(Counsel for the Mason Creek Ditch Company offers the paper mentioned, marked as Exhibit A, in evidence.)

I believe there is somewhere between 1,800 and 2,000 acres irrigated from the Mason creek ditch; 1,850 acres I believe is what it has been figured at on that list. I have been put in as secretary of the Mason Creek Ditch Company, I suppose although I haven't acted, I have got neglectful of that business. Generally when we have our meeting we call on somebody who is qualified to handle the business. I believe I saw the articles of incorporation of that company. As near as I can tell there is no capital stock, it is just a partnership company.

MILLNER

934

## CROSS EXAMINATION BY MR. RICE

I am familiar with the Mason creek slough, or the  
3033 Mason creek ditch from its head on down. We have  
a headgate at the river which is seven feet wide and  
five feet high. Farther on down to Ten Mile is a  
slough, or a part of the river. Then we have gates  
again at Ten Mile. When we get down to the Whit-  
ney place, or somewhere near there, there is a dam put  
in the slough and a constructed ditch on down.

It has been carrying the proper amount of water  
heretofore, but I believe there is a cut a little higher  
above the slough that goes further south on higher  
3034 ground, it runs west to the old ditch, I think.

It is completed and water run through it to the  
old Mason creek ditch that covered the lower ground  
years ago. I should judge it goes into the Mason  
creek ditch again in about two miles probably. That  
ditch runs over the land of J. P. Wells, it runs en-  
tirely around it I believe, but a part of the ditch might  
be off of his place still south of what is known as the  
Vaughn ranch. This map showing the ditch entirely  
north of the J. P. Wells ranch is wrong. The Whitney  
3035 place is on the north side of the road; the Wells land  
is just north of the Whitney and runs a quarter south.  
The ditch runs close to the line, but in places where  
the bench comes out, it may go into the Wells land  
farther than in other places, but it is calculated to  
cover it all. Mr. Wells owns 120 acres, I think all of  
it is in cultivation. He has not owned it a great while.  
I think not over four years, that is the place that Den-  
erline lived on.

I never lived there only one year to know what was

*MILNER*

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3036 going on on that place and that year there was quite a little of it cultivated. That ditch which is brought down from Whitney's is a small ditch. I don't know what it would carry, but the head at that time was about two feet. The south ditch which runs around from there further south is one by four feet, probably two by four; I mean two feet deep. It might be larger than four feet on the bottom, I have not seen the ditch. Below the gate the ditch was four feet on the bottom and probably five or six feet on the top.

3037 It will carry more water than the one which goes through Whitney's on the south side of the place. I don't know what both of these ditches together will carry. You see I don't understand measuring water at all.

I have timber on the north part of my land which I irrigate. I irrigate it by damming it up near the land that has crops on it. It subs. I use that water raising the timber and pasture. There is probably 60 acres of that. The Stoddard ranch I think is all 3038 irrigated. There was hay and grain raised on the part of it under the bluff last year I believe. I don't know how much water it takes to irrigate that. It is a very dry piece of land. I guess it is as dry a piece of land as there is on the river bottom. It is hard to produce a crop on it for the reason that the land there is chiefly gravel, a gravel bar. There is a ditch that runs around below a part of the Stoddard place; the Mason ditch runs there. To a certain amount I believe that would catch the waste water 3039 off the Stoddard place. The ground that I spoke of that is so awful dry is on the north side of the slough; it is between the slough and the river.

MILLNER

936

That slough is a quarter of a mile north of the county road—it is over that. I think this little bench is not over 200 yards from the road where the bench drops off. This ditch would naturally make it a little wet, this ditch which comes out of it, some little portions of it, not any to speak of I don't believe. I think this land needs irrigation to produce pasture—it may be too wet for grain. It needs more water for pasture than for grain. It subs, you understand, probably clean through this bench from the Mason creek slough.

BY MR. GRIFFITH.

I have been calling this slough down there (indicating) the Mason creek slough, and these ditches that come out of here are taken out by putting dams there and making a cut through the bank and taking the water out. There are a number of them and consequently one don't have to be so very large for one or two places. It is taken out clear to the west side of my land, within 50 yards, and if any goes off it empties into the river on my land, and Mr. Cook's probably within 20 yards of my west line. If the water is not utilized that is where it goes. This timber land of mine is irrigated from irrigating the grain land or the land that is cultivated.

You would term them sloughs if there was water in them. After irrigating the grain land the water rests there and produces grass and timber which I run together, pasture land and timber land.

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BY MR. RICE

This 471 acres of mine includes the land here (indicating) as conshay land.

Mr. H. M. Whitney, a witness for said defendant, testified as follows:

## DIRECT EXAMINATION BY MR. GRIFFITH

I live four miles east of Caldwell; I know the land that is irrigated from the Mason creek ditch; I own 3043 120 acres of land there. I irrigate practically all of it from this ditch. George W. Beardsley was the original owner of that land; it has been irrigated from this ditch ever since I knew it. There are ditches and sloughs running through my land and rights of way. I think the actual area of the irrigated land outside of the rights of way is about 125 acres. I get water from no other source.

## CROSS EXAMINATION BY MR. RICE

This south ditch from Mason creek slough runs 3044 along the south side of my place just north of the road. It comes out of the main slough at Madden's place. The south ditch gets to Well's land at his east line. It goes to the bluff and then around the edge of his land—I think it covers the most of it. I own out to the road south of my place. I do not irrigate my orchard from the Caldwell water. The south ditch is about four feet on the bottom.

The ditch which comes from my place near the south side of Millinger's is about three feet on the 3045 bottom. I have had no experience in measuring water, and couldn't say what these two ditches carry.

938

Mr. J. P. Wells, a witness for said defendant, testified as follows:

#### DIRECT EXAMINATION BY MR. GRIFFITH

I live about four miles east of Caldwell; I own land irrigated from this Mason creek ditch, about 120 acres. Mrs. Lee was the original owner of this land—I irrigate it from the Mason creek ditch.

#### CROSS EXAMINATION BY MR. RICE

3046 I have irrigated this land ever since I have been there, over two years. When I went there it was all fenced and in pasture and some of it cleared up and an orchard on it. The orchard lies just in the center east and west and then back out from the road. All of it was pasture when I was there. This orchard was there when I went there and the portion marked "Orchard" in the northeast corner on the state engineer's map was forest trees. I have no waste land; I have to furnish a right of way for the ditch.

3047 Mr. George Hesse, called as a witness for said defendant, testified as follows:

#### DIRECT EXAMINATION BY MR. GRIFFITH

I live about three miles northeast of Caldwell. I own about 275 acres irrigated by the Mason creek ditch. I own 430 acres all together. Mitchell Potts was the original owner of this land.

#### CROSS EXAMINATION BY MR. RICE

I irrigate 147 acres from the Franklin ditch. I estimate it to be that, and both of them coming in

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3048 together I irrigate that many acres by subbing. I go south of the Martin land, that is about a quarter south of the slough of the Mason creek ditch. I irrigate all of the land I have there by subbing or surface irrigating. I do not cultivate it all; I cultivate about 300 acres. I cultivate that part down next to the river. There is none of it, about 80 acres south of the Mason creek slough that is cultivated. That is salt grass pasture—I irrigate it. I get the water out of that slough. I get it from the south slough. I take that water

3049 across Mason creek to that ditch. There is Mason creek water empties into the south slough above where I take it. I have never measured it. That is about a half a mile above where I take out water. The ditch from Mr. Wells empties into it up there. That would empty into Mason creek on Mr. Cook's place. The road makes a turn to the north just where it crosses Mr. Cook's place. This ditch comes right in there pretty close to the southwest corner of Well's place. It empties into Mason creek within a few hundred yards.

3050 It is what Mr. Wells uses for irrigation on his land. There is probably 120 acres of salt grass pasture on my place. I sub it all the time as long as there is water to get. There is a couple of ditches through the highest part.

#### REDIRECT EXAMINATION BY MR. GRIFFITH

Mr. Gooley has 40 acres. He sub irrigates from the same slough that I take my water from.

Mr. Charles Wells, a witness for said defendant, testified as follows:

940

## 3051 DIRECT EXAMINATION BY MR. GRIFFITH

I live a mile and a half northwest of town—I own 173 acres of land under the Mason creek ditch which I irrigate from this ditch; I own 281 acres all together. I have been over the Mason land three times, that is all. I know the Edith Mason 40, it is irrigated from this slough, there is about 30 acres, over that, there is 40 acres, that is watered from that, and the rest is on the hill where the bench cuts off the southwest corner of the Cornelius Mason land. He has the northwest corner of that section; that is, the fraction that the river cuts off a portion. He irrigates that from this slough—he irrigates all with the exception of a little on the bluff, probably five acres. All together, in my judgment he irrigates all of 158 acres excepting about five acres. Something like that, I wouldn't say for sure, I never paid any attention to how much land there was.

## CROSS EXAMINATION BY MR. RICE

3053 There is a great deal of Mason's land washed away by the river; I hardly know how much is left; I don't know where his north line is. I think four or five or six acres runs up on top of Canyon hill, and there is about ten acres of Edith Mason's place on that bluff.

## BY THE COURT

I couldn't state exactly how much of C. Mason's land is washed away and how much of it is left. There is one slough in it. He irrigates over 100 acres, but I couldn't give you any estimate of it. He irrigates probably 125 acres.

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## 3054 CROSS EXAMINATION BY MR. RICE

My place runs down to the river adjoining Mr. Mason's on the east. The railroad fence is the southeast corner of his land. I couldn't say how far north from there to the river as it is now. I know about where that corner is, I couldn't tell the distance unless I measured it. I have a fence through there, I never measured the fence. Mason irrigates between the creek and my land. He raises crops and pasture both.

## 3055 REDIRECT EXAMINATION BY MR. GRIFFITH

I know this land of Ballard and Vassar. I couldn't say how much of the Ballard land he irrigates from this ditch, some of it washed away. Mr. Jobe was the original owner of this land.

## CROSS EXAMINATION BY MR. RICE

I use some of the Franklin water. It is brought to my land in the slough. It is emptied in above, that 800 inches and that 350 inches described yesterday. The 800 inches and the 350 inches both come through the  
3056 slough; that is my proportion, according to my understanding.

Mr. J. W. Ballard, a witness for said defendant, testified as follows:

## DIRECT EXAMINATION BY MR. GRIFFITH

I own about 20 acres of land under the Mason creek ditch; it is a lot that is on the river, a part of it washed away. It is irrigated from the Mason creek ditch.

942

Mr. S. H. Vassar, a witness for said defendant,  
3057 testified as follows:

## DIRECT EXAMINATION BY MR. GRIFFITH

I live about two miles and a half east of Caldwell.  
I own 40 acres of land under the Mason creek ditch.  
I irrigate that land from this ditch.

## CROSS EXAMINATION BY MR. RICE

I have irrigated this land two years this coming  
May or June. I began in 1903. When I went there  
the land was in pasture and grass. There was sage  
brush in some spots. The ditch I irrigate from comes  
3058 in by the school house. I am not well acquainted  
with the location of the head of it; part of it runs  
south and part of it runs east of the place. A lateral  
from the Caldwell ditch runs through my place. I  
don't irrigate out of that. I have 80 acres all to-  
gether, it lies north and south. I bought one of these  
40's from Lola Sutton—I bought both of them from  
her.

Mrs. Mary Potts, a witness for said defendant, tes-  
tified as follows:

## 3059 DIRECT EXAMINATION BY MR. GRIFFITH

I live in Caldwell. I did live before coming to  
Caldwell two miles and a half up on what is now  
called the Hesse place. I lived there from December  
'63 until March 14, 1890. The country was soon set-  
tled up soon after I came. I irrigated my place and  
raised crops on it right shortly after I came. We  
irrigated from the slough at the time, it was all water  
from the river, the slough they afterwards constructed

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3060 the Mason creek ditch from. Since that time we ir-  
rigated from this ditch all the time.

Mr. George Hesse, a witness being recalled, tes-  
tified as follows:

#### CROSS EXAMINATION BY MR. RICE

I am put in among the Franklin ditch people as  
only one share; get the Franklin water to my place  
from the slough where it is turned out. My part all  
comes down through the slough. It is all commingled  
with the Mason creek water up at Ten Mile.

15 MILE

#### TESTIMONY IN RELATION TO THE STOCK- TON DITCH

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R. H. Stockton, called as a witness in his own be-  
half, testified as follows:

#### DIRECT EXAMINATION BY MR. GRIFFITH

I have been living at Parma for about 16 years. I  
own about 300 acres that is irrigated from the Boise  
river. I irrigate part of it from the Sebree ditch—150  
acres irrigated that way.

3062 I can use this water that I use on the south side of  
the place. I can run it on the north side of the place;  
I own ten inches in the Sebree ditch, and I use that,  
and there is a part of that north part that is too wet  
and a part of it isn't.

I irrigate the balance by a slough that comes down  
what we call the Shipley place, and through the  
Kiesel place and runs on down through my place, and  
I put dams in the slough and take the water out.  
That is not a private ditch, there are others who use  
out of it; my brother uses some out of that. And

TO: Idaho Dept. of Water Resources

August 1, 2011

ATTN: Jan

My name is Martin Galvin. I have knowledge of and have irrigated under the Mason Creek Ditch Co. for 65 years.

The part of the Mason Creek Ditch Co. that I have been affiliated with is known as the Ten Mile Lateral. This lateral is diverted from Fifteen Mile Creek, which flows through the old Earl Uptmor place. This property lies east of Midland Blvd. and north of Lincoln Road along the west quarter line of Sec. 16, Township 4N Range 2W.

The Ten Mile Lateral is diverted out of Fifteen Mile Creek approximately one half mile south of where it enters the Boise River. The Ten Mile Lateral irrigates approximately 513 acres of Mason Creek Ditch Company's 1600 plus acres.

Due to the small amount of acres Mason Creek Ditch Co. has never hired a manager or ditch rider. The stockholders have always done all of the operations and maintenance themselves. I have been involved with operations and maintenance for over 65 years.

Due to Pioneer District's objections in the SRBA of Mason Creek Ditch Company's Boise River water rights which is delivered through the Caldwell Hi-line, we thought it best to file a late waste water right claim. Along with all of the waste water that is collected from Five Mile Drain, Ten Mile Drain, and Fifteen Mile Drain which runs from the Boise River to the southeast clear to the Kuna area, there is a small drain known to Franklin Ditch Company stockholders that irrigate east of Midland Blvd. as the Little Slough, which picks up drain water from approximately 473 acres. This land lies between the bluff and the Boise River. The Little Slough runs some water all year and enters Fifteen Mile Creek approximately one quarter mile upstream from where Mason Creek's Ten Mile Lateral has its heading.

With all of the information and Franklin Ditch Co. water rights No. 34 Priority Date July 3, 1866 of 770 inches (63-0166) and No. 77 Priority Date October 29, 1880 of 1380 inches (63-0167).

The IDWR should be able to give Mason Creek Ditch Co. early drain water rights. In early days, prior to putting Mason Creek's water into the Franklin Ditch, this water went clear to the Canyon in the Big Mason Slough.

This brings up the question that if there is no record of Franklin's water right No. 34 of 770 inches being moved into the Caldwell Hi-line out of the Little Slough it could have caused injury to Mason Creek Ditch Co. or it may explain how Pioneer's water right No. 90 of 2655 inches got moved out of the Caldwell Hi-line to the Phyllis with no record. It seems reasonable that when you add up Mason Creek's water right No. 46 of 1860 inches and Franklin's water right No. 34 of 770 inches they total 2630 inches which is very close to Pioneer's Irrigation's water right No. 90 of 2655 inches. These water rights were all moved without any record so if there was no verbal agreement, then that would mean Mason's water right No. 46 and Franklin water right No. 34 have been in the Caldwell Hi-line adversely for over 90 years.



Mason Creek Board Member, Martin C. Galvin

Page 1

June, 29, 2011

My name is Martin Galvin. I am 79 years of age. I have knowledge of and have irrigated under the Mason Creek Ditch Co. for 65 years.

I still farm part of the property that my great grandfather purchased and homesteaded which is serviced by Mason Creek Ditch Co. and Franklin Ditch Co.

According to Ernie Thomas' memoirs (See Exhibit 1), his grandfather, John Thomas, which is my great grandfather, homesteaded the property I just mentioned in 1852. The memoirs tell of how they first started to irrigate by damming up the sloughs, which were created by high water run-off by the Boise River, with willows and brush which caused the water to spread out over the land and sub-irrigate. This network of sloughs existed from the county line at CanAda to Canyon Hill, a distance of approximately seven mile long by one mile wide.

This network of sloughs had one main slough in the middle which became known as the Big Mason Slough, named for one of the early settlers, George Mason, who lived at the west end under Canyon Hill

Section 16 Township 4N Range 2W is the section east of Midland Blvd. This is where Fifteen Mile entered the Big Mason Slough, along the west quarter line. Approximately four miles to the southeast is where Five Mile and Ten Mile come together to form Fifteen Mile Creek. Approximately three miles to the west is Mason Creek, which runs southeast to northwest and enters on the lower end. Feeder ditches are diverted from Mason Creek to Franklin and Mason water users.

Five Mile Creek, Ten Mile Creek and Mason Creek all pick up waste water from the Ridenbaugh Rossi Canal, which had 13,000+ inches with a priority date of 1869 and the Ridenbaugh Canal, which had 460 inches with a priority date of 1869, also.

Mason and Franklin settlers were irrigating with co-mingled waters from the Boise River, Fifteen Mile Creek and Mason Creek waste water since the date of 1869 (see exhibit 2) *(is the 1862 map)*

There is an 1862 Bureau of Reclamation map to verify the Big Mason Slough coming out of the Boise River in Section 24, Township 4N Range 2W. This is the same location where the Caldwell H-line leaves the Boise River today.

Fifteen Mile Creek enters the Big Mason Slough in Section 16 Township 4N Range 2W along the west quarter line and Mason Creek enters the lower end farther to the west.

In later years, the willow and brush dams were replaced with cement check diversions which backed up the Big Mason Slough and forced water out of the feeder sloughs to the north and south, which lays flat from the river to the bench.

I have helped farm some of this ground since the early 1940's and I am familiar with one of these cement check diversions which was on the property that I still farm to this day.

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Page 3

I am sure Pioneer Irrigation Dist. is aware that several hundred acres of Mason Creek Ditch Company's land is being mined for gravel which should create even more surplus water for Pioneer Irrigation Dist. to use at no cost to them.

I believe that all of Pioneer Irrigation's objections in the Snake River Basin Adjudication of Mason Creek Ditch Co. water has been caused by their lawyer's misguiding them. This has cost patrons of both companies many thousands of dollars in lawyer's fees that have been completely unnecessary. Now it is being said that it cannot be settled by the Snake River Basin Judge and will have to go to Canyon County District Court. What a waste of money during these hard economic times to settle something that has worked so well for both of the irrigation companies for over 90 years.

1904 Stewart Decree Map

Mrs. Stoddard

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THOMAS

17

MASON  
SLOUGH  
↑

Mrs. H. Davis

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CHAS. MADDEN

Fifteenmile Creek Diversion

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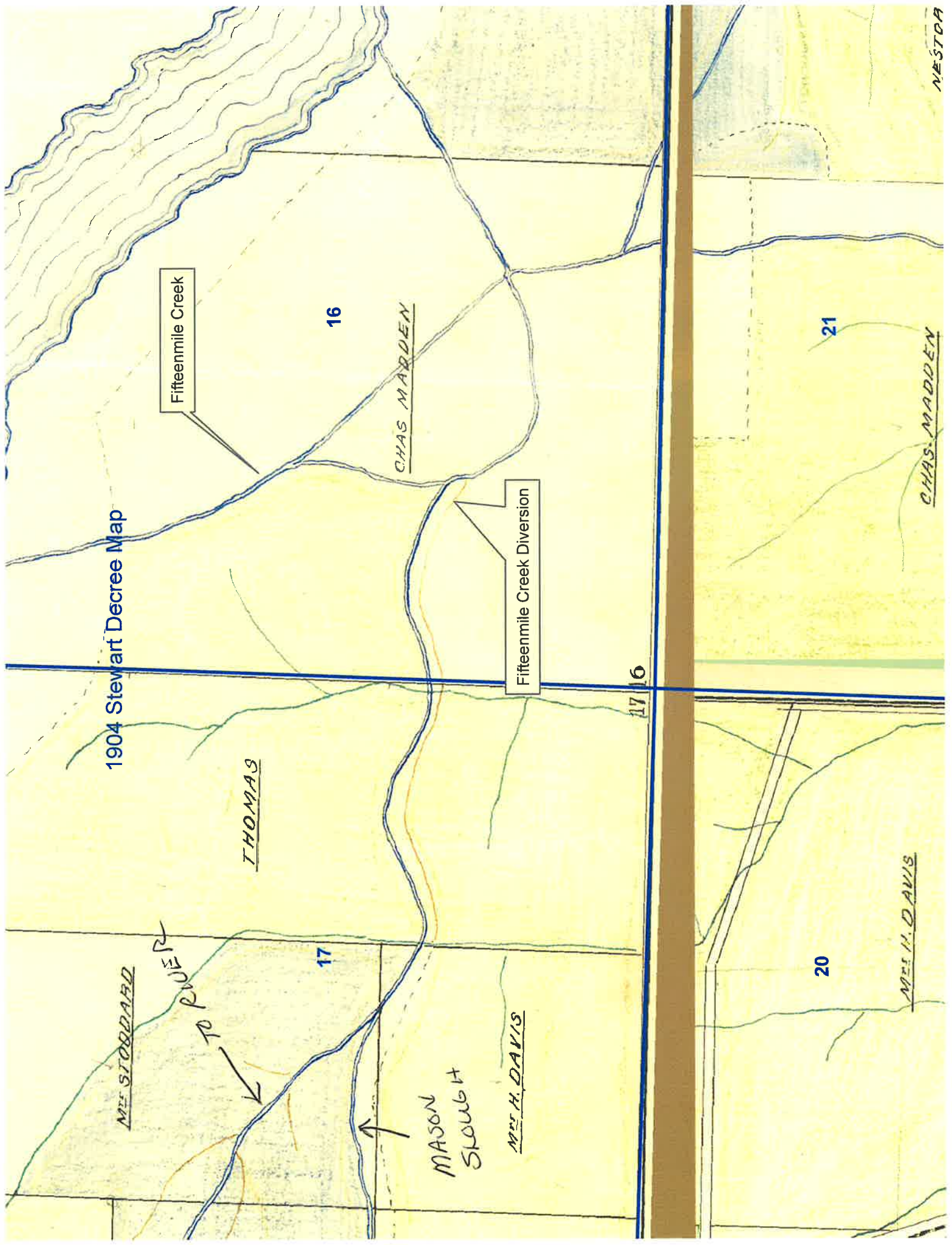
Mrs. H. Davis

21

CHAS. MADDEN

NESTOR

Fifteenmile Creek



bing Maps

Point of diversion for Mason Creek Ditch  
Co. from Fifteenmile Creek. SWSW,  
S16, Twp. 4N, Rge. 2W



On the go? Use [m.bing.com](http://m.bing.com) to find maps,  
directions, businesses, and more



Bird's eye view maps can't be printed, so another map view has been substituted.



1987 Infrared Photo

Fifteenmile Creek

Fifteenmile Creek Diversion

17

16

20

21



'2011 Aerial Photo

Fifteenmile Creek

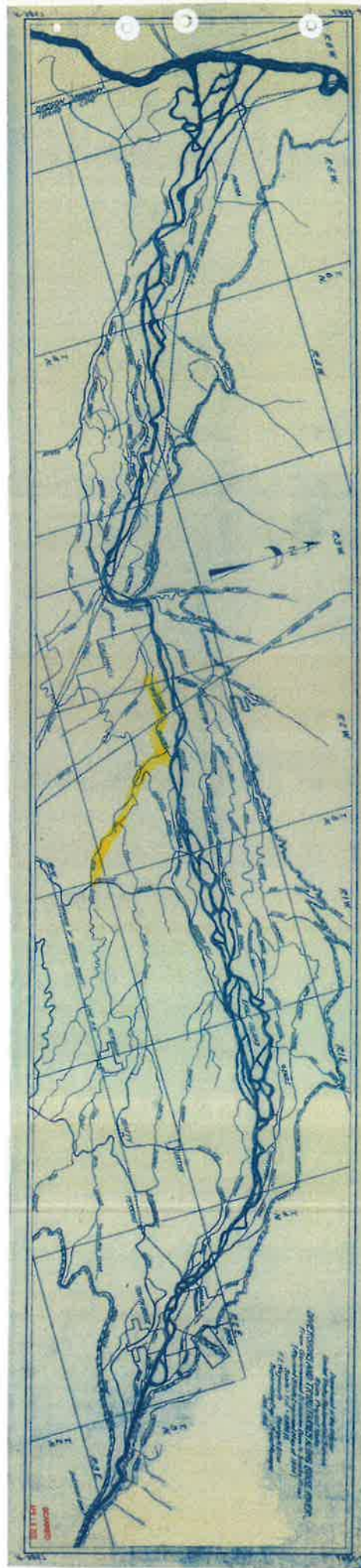
Fifteenmile Creek Diversion

20

17

18

21



MISSISSIPPI RIVER AND TRIBUTARIES  
FROM THE MISSISSIPPI RIVER TO THE GULF OF MEXICO  
1850  
PUBLISHED BY THE U.S. GEOLOGICAL SURVEY  
WASHINGTON, D.C.

U.S. GEOLOGICAL SURVEY

SEE # 8 TELLING HOW  
TEN MILE/FIFTEEN MILE  
EMPTIES INTO MASON SLOUGH

DEPARTMENT OF THE INTERIOR

UNITED STATES RECLAMATION SERVICE

BOISE PROJECT

IDAHO.

2

REPORT

on

RETURN FLOW AND STEEPAGE INTO BOISE RIVER DURING THE

LOW WATER PERIOD OF 1914.

by

W. C. STEWARD, Assistant Engineer in charge of

Duty of Water Investigations,  
Boise Project.

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Object of the work.

Early in the irrigation season of 1914 it was decided to obtain a record of all the principal creeks and sloughs that furnish return water to the Boise River, the primary object being to determine what canals, if any, were taking more water than necessary and then wasting large amounts of this available water back into the river, thus depriving other canals on the river above of the water necessary to properly irrigate their land.

With this in view, rating stations were established on Ten Mile creek, Mason creek, Mason slough, Dixie slough, Indian creek, Hartley Gulch, Willow creek, Middleton slough,

and on various small sloughs and at various points along the river and on many of the important canals along the valley and records of the flow were kept during the irrigation season.

#### Division of Boise River into Sections.

(See Figs. 1 and 2)

In the study of the low water conditions in the Boise Valley, the river naturally divides itself into four sections. (See Fig 2)

- (1) From the Government Diversion Dam to a point just below the Canyon County Water Company Canal, a distance of about 25 miles.
- (2) From Canyon County Water Company Canal to the diversion dam in the canyon above Caldwell, a distance of about 9 miles.
- (3) From the canyon dam to a point just below Lower Center Point canal, a distance of about 7 miles.
- (4) From the Lower Center Point canal to the Snake River, a distance of about 13 miles.

These divisions come by the fact that all the water may be taken from the river at three points; viz., opposite Canyon County Canal, the Farmers' Cooperative (Sebree) canal, and the Lower Center Point canal and still there will be enough return flow to furnish all decreed rights below these points respectively. In the study of river flow and water rights this condition must be constantly kept in mind.

The following table gives the average discharge in second-feet, for a period of 34 days from August 8th to September 10th, inclusive, of all water ways along the river as far down as Notus bridge, as per sections indicated on preceding page.

Section No. 1.

|                              |        |                        |       |
|------------------------------|--------|------------------------|-------|
| Boise River at Highland ..   | 835.0+ | Boise Valley Waste.... | 1.6+  |
| Main New York Canal .....    | 83.5-  | Dry Creek Canal .....  | 33.0- |
| Penitentiary " .....         | 2.5-   | Thurman Mill Waste ... | 1.0+  |
| Ridenbaugh " .....           | 303.7- | Eagle Island Canals .. | 28.4- |
| Bubb " .....                 | 6.2-   | Eagle Slough .....     | 1.0+  |
| Rossi Mill Canal (Power) .   | 25.0+  | Ballantine Canal ..... | 7.8+- |
| Cruzen Canal .....           | 50.0-  | Dry Creek waste .....  | 4.0+  |
| Boise City Canal .....       | 20.3-  | Phyllis Canal .....    | 64.5- |
| Jacobs Canal .....           | 2.2-   | Eureka Canal No. 1 ... | 13.4- |
| Cottonwood Creek .....       | 22.0+  | Middleton Water Co. .. | 58.2- |
| Settlers Canal .....         | 68.1-  | Middleton Mill Co. ... | 30.0- |
| Davis Canal .....            | 13.4-  | Pioneer .....          | 13.9- |
| Thurman Mill Canal .....     | 19.8-  | Eureka No. 1 waste ... | 6.7*  |
| Sand Creek .....             | 3.0+   | Caldwell High Line ... | 50.4- |
| Boise Sewer .....            | 20.0+  | Franklin Canal .....   | 1.5-  |
| Farmers' Union Canal .....   | 39.7-  | Kennedy Canal .....    | 2.6-  |
| Boise Valley Canal .....     | 22.0-  | Canyon County Canal .. | 24.0- |
| Little Union .....           | 13.7-  | Boise River .....      | 12.0  |
|                              |        | (Below Canyon County)  |       |
| Total Canal deliveries ..... |        | 965.0                  |       |
| Total tributary gain .....   |        | 59.3                   |       |
| Total seepage gain .....     |        | 75.1                   |       |

+ Indicates discharge into the river.

- Indicates discharge from the river.

## Section 2.

|                             |       |
|-----------------------------|-------|
| Boise River .....           | 12.0+ |
| (Below Canyon County)       |       |
| Phyllis Slough.....         | 5.0+  |
| Ten Mile .....              | 11.5+ |
| Big Slough .....            | 5.6-  |
| Middleton Slough .....      | 30.7+ |
| Willow Creek .....          | 3.0+  |
| Hartley Gulch .....         | 4.0+  |
| Mason Creek .....           | 25.8+ |
| Riverside No.1 .....        | 8.0-  |
| Farmers' Cooperative .....  | 96.0- |
| Canyon Canal .....          | 10.1- |
| Seibenberg Canal .....      | 8.9-  |
| Boise River at Canyon ..... | 10.7- |

|                          |       |
|--------------------------|-------|
| Total canal deliveries   | 120.6 |
| Total tributary gain ... | 90.0  |
| Total seepage gain ..... | 47.3  |

## Section 3.

|                            |       |
|----------------------------|-------|
| Boise River .....          | 10.1+ |
| (Below Seibenberg Canal)   |       |
| Riverside Canal No.1 ..... | 8.0+  |
| Caldwell Drain .....       | 3.5+  |
| Indian Creek .....         | 71.6+ |
| Riverside No.2 .....       | 37.3- |
| Upper Dixie Slough ..      | 4.8+  |
| Pioneer Dixie .....        | 10.1- |
| Eureka No.2 .....          | 21.5- |
| Upper Center Point ..      | 7.2-  |
| Lower Center Point ..      | 5.4-  |
| Five small sloughs ..      | 5.4+  |
| Boise River at Notus       | 28.7- |

|                          |      |
|--------------------------|------|
| Total canal deliveries   | 86.5 |
| Total tributary gain ... | 85.3 |
| Total seepage gain ..... | 11.2 |

+ Indicates discharge into the river.

- Indicates discharge from the river.

## Explanation of Figure 2.

Figure 2 represents Boise River with incoming and outgoing waterways from the Government Diversion Dam to Notus. The diagram is drawn to a scale so that the width of the stream represents the average daily flow for a period of 34 days, from August 8th to September 10th, inclusive.

The direction of the flow of water is indicated in three ways; first, in looking from the left to the right of the sheet, all streams leaving the river are shown as branching out and all streams entering are shown as branching in; second, the names are lettered in the direction of flow; and third, the arrows indicate the direction of flow. The lengths of sections as shown on the diagram are approximately proportional to the distances along the river, so that the location of the streams are shown in about their relative position on the map. In the table, column 2, the term "Delivered" includes all water taken from the section by canals, together with the water passing to the next section. In column 3, "In river and tributary" includes the water in the river at the upper end of the section, together with all the tributary flow in the section. Column 4, "Seepage Gain" is the water gained to the section from underground flow or from very small surface streams not measurable. It is obtained by subtracting amounts in column 3 from those in column 2. "Tributary Gains" is the sum of the measurable tributaries in the section.

#### Complex Conditions.

There are several complex conditions along the river that need explanation in order to fully understand the dif-

ficulties of canal deliveries.

(1) Rossi Mill ditch, originally constructed for power purposes, was used, during the irrigation season, for irrigation only. While it carries a good head, there is very little used for irrigation and as a rule it acts as much as a drain ditch as for carrying irrigation water, so that it discharges back to the river an amount equal or a little greater than the amount diverted, therefore, in Figure 2 it is so shown.

(2) The Cruzen (Perrault) Canal heading usually carries a larger quantity of water than is used by the Capital Water Company, the Boise City and the Jacobs Canals, all of which it feeds. Part of the water is used for power. This excess water, together with the flow of Cottonwood Creek, is returned to Boise River through Cottonwood Creek.

(3) The Boise City water works pumps water from the Boise river bed at a point opposite the Natatorium. This water is returned to the river through the Boise sewer. In the above table the return water of the sewer is noted but no account is taken of the water pumped, as the quantity is not known. This, however, is taken care of in the river seepage.

(4) The Farmers' Union Canal diverts water for the Boise Valley Canal. It has a wasteway just above the Boise Valley heading and another where it crosses Dry Creek. The Boise Valley canal wastes its water into the Dry Creek Canal about one-quarter mile above the Dry Creek Canal rating flume. As there is a wasteway above this flume, the Boise Valley waste is assumed to be a part of the river supply.

(5) The Ballantine Canal gets practically its entire supply from waste water. It has a river heading that is kept up and may be used in case a very large flow is desired. The waste water flowing in the Ballantine Canal that is not used may be discharged at either one of three places; into the river near Eagle; into Dry Creek at the flume crossing; or into Middleton Water Company Canal below Linder.

(6) The Dry Creek Canal has a wasteway at its Dry Creek crossing.

(7) The Middleton Mill Slough forms a wasteway for a network of canals, laterals and waste composed of the lower end of Ballantine, Dry Creek, Middleton Water Company, Middleton Mill Company, Pioneer, and Canyon County Water Company Canals. It would be possible to divert practically all of this waste at the low water period to the Hartly Canal which in turn wastes into Willow Creek and Hartly Gulch.

(8) Ten Mile Creek empties into Big Slough, sometimes called Thomas slough or Mason slough. From this slough the water may be discharged direct into the Boise river or by a system of dams and channels it may be taken through Big slough to a point south of Middleton, where the water can be discharged to the river or diverted to a canal irrigating land below.

(9) The Riverside canal has a heading in the river in the Canyon above Caldwell. Any water diverted here is emptied into Indian Creek. From Indian Creek, the Riverside Canal has another heading below Caldwell. By this system the Riverside Canal may take water from the river or from Indian Creek or from both. As the court has decreed that Indian Creek is tributary to Boise River, the Riverside Canal has a right to this water only when it is not needed to supply the rights below.

(10) Upper Dixie slough is seepage and waste water from the lands south and west of Caldwell. A ditch has been dug to conduct this water into the Pioneer Dixie canal at a point approximately two and one-half miles northwest of Caldwell. In this investigation it was assumed that this water was a part of the river supply but it has been accounted for separately from the discharge into Pioneer Dixie heading.

Exhibit # 2 Pages 11+12

GRANDFATHER JOHN THOMAS

JEC 10  
(NW 1/4 E 1/2 E 1/2)

John said he was born in Wheaton, Germany 7-20-1830. He claimed he ran away and was a stowaway to America at age nine.

There is some doubt in my mind as to whether he changed his name. I am sure he was German because he could read and speak German, but it is said Thomas is more of a Welch name. In early eighteen hundred children were hired out to work at very early ages. This may have been his reason for running away, and may be a change of name.

Landing in Philadelphia, Penn. and not being able to speak English he followed a brewery wagon back to the brewery where he worked as a stable boy and other jobs around the brewery. Here he learned English.

Grandpa later joined the General Walker expedition to Panama. They were building a railroad across the Isthmus of Panama. The expedition ran into trouble and disbanded. Grandpa and a friend made their way up the Pacific coast to the California Gold rush. With no luck mining they moved on into Rouge River Valley in Oregon.

After a few years in Rouge Valley they split up as partners. Grandpa wanted to move on to Idaho. His partner said, "Never settle where you could not hear a steam boat whistle."

Grandpa was one of the very early pioneers to settle in Boise Valley. He homesteaded on 160 acres in 1853, three miles south of Middleton, Idaho. He then went back to the Oregon Coast for some horses and implements to farm with. While he was gone a man by the name of Hamilton Davis, jumped his claim, so rather than contest it he filed on an adjoining 160 acres which turned out to be a better farm.

Most of the farm was river bottom land covered with trees and brush. First the land was cleared. They did this by dragging heavy brush to make a seed bed. Then the seed was broadcast by hand from a seed sack or bucket. The final step was to drag the brush again to cover the seed. Later harrows were made of wood frames and wooden teeth. He acquired a plow sometime later and potatoes were planted in every third furrow. He raised potatoes, cabbage and oats, which he freighted to Silver City, a mining area in the mountains of Owyhee Co., Territory of Idaho.

Grandpa married Mrs. Ernestine Schnabel in Boise, Idaho Territory in 1874. Grandma Thomas became a very hard working partner.

Grandma Ernestine Misseldt was born March 6, 1842 in Germany. She died May 27, 1905. She married Sebastian Schnabel in Germany. They came to America and settled in Illinois near some of the Messelt family. They were the parents of a son, George, and a

Exhibit #1 Page 2

daughter, Annie, both born in Cootburg, Illinois? Believed born in Germa

Grandma's family were high German and Sebastian was born in low German society. They didn't mix well in Illinois so Sebastian was put down by his neighbor's and unhappy in America, so he left his family. They think he went back to Germany. He was never heard from again.

Grandma's brother, Joe Misseldt, who had the first brewery in Boise wanted her to come to Boise to live. She came by train to Kelton, Utah and then overland stage to Boise. Joe had married Agatha, mother of Peter Sonna's wife, Mary.

After John and Ernestine married, three children were born to this union: Lee Frederick b. Sept. 1, 1876-d. Aug. 30, 1946. Amelia b. Feb. 12, 1878-d. July 2, 1969, and Walter b. Oct. 3, 1882 d. May 7, 1958.

In order to prove his rights to the homestead he needed some cash. He began running freight wagon trips from Kelton, Utah, a railway station, to Walla Walla, Washington and to Silver City, Idaho.

Now the farm needed irrigation water which meant damming up some creeks running here and there through the valley and building ditches. Straw dams were made of brush, trees and straw. Some of the settlers went together and formed the Franklin Ditch Co. Their canal was called the Highline. It took water out of Boise River near Star, Idaho. The canal ran along the bench hill side for three or four miles. It was built with hand tools and a tongue scraper built about 4 feet square of planks with two handles off the back, some metal across the front to cut dirt and a hoop metal band fastened on each side with a tongue between horses which pulled it. It could be loaded and dumped by raising and lowering the handles. This canal brought water to higher bench land. Later the canal was sold to Caldwell Ditch Co. which carried water free to settlers who first built the canal.

Grandpa Thomas was a person who could take advantage of an opportunity and look to the future. He saw the need for horses, mules, feed for some and food and supplies for the mines near by.

When they started to build the railroad through Caldwell in 1882 he built a shack for a saloon on new Main street for start of Caldwell. Grandmother started a restaurant in a tent along side of it they served the railroad workers. Thus they improved the ranch and bought livestock, horses, mules and cattle.

As the ranch started to produce crops, he freighted oats, cabbage, and potatoes to Idaho City and Silver City mines.

He told of crossing Snake River on ice with an eight horse team and two wagons. Another time he and his stepson, George, were caught in a blizzard in Southeast Idaho coming from Kelton.

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JOHN K. SIMPSON  
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August 8, 2011

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Middleton, ID 83644

John McEvoy  
1703 N. KCID Road  
Caldwell, ID 83605

Richard Bicandi  
1905 Mason Road  
Caldwell, ID 83605

***Re: Pioneer Irrigation District Litigation Plan***

Dear Gentlemen:

Pioneer has objected to all of three Mason Creek water rights:

- 1.) Boise River water right 63-179C;
- 2.) Wastewater claim for Mason Creek 63-32580; and
- 3.) Wastewater claim for Ten Mile/Fifteen Mile Creek 63-33392.

Pioneer has taken the position that because there is no contract between Pioneer and Mason Creek then Mason Creek has no right to use the Pioneer's Caldwell Highline Canal to deliver water to Mason Creek. Pioneer also asserted a claim to Mason Creek's right, which was given the number 63-179A.

**Mason Creek's Boise River Right 63-179C.**

The SRBA Court granted Pioneer's motion to remand this subcase to the Department of Water Resources to determine whether or not the accomplished transfer of the point of diversion from Section 16 to the Caldwell Highline Canal caused an injury or enlargement of the right. This is a condition of the SRBA statutes. The Court gave the parties until August 19<sup>th</sup> to submit any additional information to the Department on injury and enlargement associated with that change in point of diversion. Once that determination is made, the Department will either issue a Supplemental Director's Report or an Amended Director's Report. If the Department issues a Supplemental Director's Report it means there has been no change in its recommendation and it

Mason Creek Directors  
August 8, 2011  
Page 2

will simply explain why they find no injury or enlargement. If they issue an Amended Director's Report it will be because they are changing the recommendation concerning the point of diversion from Section 16 to the Caldwell Highline Canal. I anticipate that the Department will affirm its decision to recognize an accomplished change in the point of diversion.

The first step is to provide the Department with as much information as possible concerning the original locations of the diversion and the change to the Caldwell Highline. In addition, we need to provide the Department with as much information as we can about moving Pioneer's right number 90 from the Caldwell Highline to the Phyllis. You should be aware that the Department already recognized a change in point of diversion from the Highline to the Phyllis was an accomplished transfer for Pioneer's right number 90. The partial decree for this right recognizes both points of diversion.

63-371

I recommended that we provide the Department with additional information including the maps that John brought in on Friday, August 5, 2011. I recommend that someone from my office go over to the Pioneer Irrigation District Office and review their records, including the Board of Directors records from the early 1900s to see what else they have that discusses Pioneer's use of the Phyllis and Caldwell Highline canals and the expansion of the Phyllis which seems to have taken place about 1915, as shown on one of the maps that John brought in. So far all we have is what they chose to provide us. Also attached is some additional testimony in the Stewart Decree of the founders of Mason Creek. I would appreciate your thoughts on how this testimony fits into our case.

Even after the Department rules on whether or not there has been any injury or enlargement in the accomplished transfer, we still have to face the rest of Pioneer's objections to this right. Pioneer has objected to the number of acres and to the amount of water, asserting that there has been a partial forfeiture. My recommendation is that we obtain from the Water Master in District 63, a copy of the delivery records for every year from as far back in time as the records go for deliveries into the Caldwell Highline and for the delivery of Mason Creek's Boise River right. With respect to the number of acres irrigated we need to be able to identify for the Court the location of the laterals and what lands are being delivered. As you will remember from the Affidavit filed by Scott King, Pioneer's hydrologist, he contends that there are only about 50 acres of land irrigated directly out of the Caldwell Highline that belong to Mason Creek. We need to be able to demonstrate that assertion is incorrect. I would also suggest some additional written discovery requests should be sent to Pioneer. Pioneer previously sent a notice to take a deposition of Mason Creek that we had scheduled for last fall and then postponed because of the settlement. The Court will allow Pioneer to reschedule that deposition. So far I have not heard when they would want to schedule that deposition. I also think we should locate and interview the former Pioneer manager who was discharged by Pioneer. If any of you know him or know how to get in touch with him, I strongly suggest that we get him in and talk to him about the Mason Creek situation. He may very well be interested in helping us given how he seems to have been treated by Pioneer's Board. We may also want to take a deposition or two ourselves of Allen Newbill and perhaps the Pioneer manager concerning operations of their system and the

42-223 10/8

DEFENSE to FORFEITURE

WE HAD NO CONTROL

Mason Creek Directors  
August 8, 2011  
Page 3

interrelationship with the drains and sloughs between Pioneer and the river. Trial is scheduled for three days beginning February 22, 2012.

63-32580 Mason Creek Right.

This right was claimed as a beneficial use right for Mason Creek right with a priority date of June 1, 1869, which is the same priority date as the river right. The Department has recommended the priority date to be March 1, 1922. Based upon Jan Shurte's comments, the Department reached that conclusion because that what they thought most of the wastewater began to be developed in this part of the valley. Pioneer has objected to the right and the recommended priority date of March 1, 1922. Mason Creek did not object to the recommendation. However since Pioneer has objected, Mason Creek may be able to offer evidence showing earlier priority, hoping that the Court will find an earlier date than the 1922 date. Accordingly, we should be developing as much information as possible on use of water from Mason Creek. This Mason Creek right is consolidated for trial with right 63-179C and trial is now scheduled for February 22, 2012 for three days. It is important that we gather together as much information as we can about use from Mason Creek on the next couple of months. The maps that John brought in today will be helpful.

Water Right 63-33392 Ten Mile/Fifteen Mile.

This right is a beneficial use claim from Ten Mile/Fifteen Mile, also with a claimed priority date of 6/01/1869, the same date as 63-179C. I spoke with Jan Shurte, she would like any information that we can provide concerning the earliest possible date of use of wastewater or any water out of Fifteen Mile. We have some evidence from the testimony in the Stewart Decree about how those early sloughs were dammed up and we have some indication from the maps that John brought in about the diversions out of Ten Mile. It would be useful to be able to state in writing anything that any of you know about how far back in time, the use of Ten Mile as a source began, and anything that you have been told by any of your predecessors and any other water users on the ditch, about Ten Mile as a source and what lands it irrigates. If we can get that into the record, that will help Jan make her decision. It does not have to be something that is known only to your personal knowledge. We can put into evidence hearsay through the Department. Particularly about the history of use of the water rights, the Department recognizes that in trying to find out what happened in the 19<sup>th</sup> Century, there are not too many people around who remember. This information should be gathered as soon as possible, but we not stuck with the August 19, 2011 deadline.

Possible Lawsuit vs. Pioneer in Canyon County District Court.

One option we need to decide on is whether and when to file a separate lawsuit against Pioneer asserting a prescriptive easement or adverse possession for the use of the Caldwell Highline Canal. The SRBA Court does not have the jurisdiction over rights-of-way, so lawsuit this would have to be filed in District Court in Canyon County. Much of the evidence that we are gathering to show the accomplished transfer for the change in point of diversion would be

Mason Creek Directors  
August 8, 2011  
Page 4

useful in such a lawsuit. Pioneer says that there is no agreement with Mason Creek. Mason Creek has claimed the right to use the Caldwell Highline to deliver its Boise River right for nearly one hundred years. That would be the basis of our claim for adverse possession. In the alternative, Mason Creek could condemn a right-of-way through the Caldwell Highline Canal for delivery of its water. The "damages" of such condemnation under the Idaho case law is the additional maintenance cost incurred by Pioneer to deliver that water. Since Pioneer has been delivering that water all along, there is least arguably no additional cost for a condemnation of the right to continue to be able to use that canal. Such a decision could also let Pioneer's Board off the hook because under Judge Booth's earlier ruling they apparently believe they cannot agree to allow Mason Creek to use the canal. If a district court holds that Mason Creek has a right to use the canal under an adverse possession theory, then Pioneer is bound. John, if you could locate some information for me about the City of Caldwell suit against Pioneer for use of their ditch, I would like to see the Complaint and Answer and any decision by the Court.

Pioneer's Claim to Mason Creek Right 63-179A.

Last fall we obtained a summary judgment from the Special Master that Pioneer had no claim to water right 63-179A. I asked the court to disallow that right and issue a partial decree. The court did so in an order issued in early June. This weekend, I discovered that partial decree when reviewing the Mason Creek rights on-line in the IDWR website. I was not served with a copy of the partial decree and nor were any of you served, based on the certificate of service.

Ordinarily this would not be a bad thing. We wanted that claim to go away and it has. Pioneer cannot appeal that decision. However, the time passed for me to file a request for attorneys' fees against Pioneer before I even found out that the Order had been entered. We would ask that fees be awarded because the claim to right 63-179A was frivolous. Indeed, Pioneer put up no argument why it even made this claim.

If you want to make a claim for fees, we need to file a motion with the court asking it to set aside the Order and re-issue it for a clerical mistake of not serving all the parties. There is no guarantee that the court will set aside the Order, and no guarantee that we would get any attorneys' fees if the court does give us time to ask for fees on this subcase 63-179A. If we are going to ask for this remedy, we have to file right away. Of course, seeking fees from Pioneer may further derail settlement discussions and make final resolution harder and more expensive. In addition, setting aside and re-entering the partial decree would allow Pioneer the option of filing an appeal, which has now expired.

Motion to Reconsider – Settlement.

We also have the ability to ask the Special Master to reconsider his decision that the settlement agreement is unenforceable. We could show that Settlers entered into a similar agreement with ACHD authorizing use of the canals and drains for ACHD's drainage under an adverse possessive theory. We could show the court that we are seeking the same adverse

Mason Creek Directors  
August 8, 2011  
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possession remedy by filing the Canyon County lawsuit. That would mean we are stuck with the December agreement.

Settlement.

Pioneer also may be willing to settle if they keep the right to kick you out of the canal, if they need it. They think they need that right in time of drought. They also want to be obligated to deliver to Franklin and Mason Creek the "current capacity" (whatever that is). We should discuss whether a response to their most recent proposal is worth making, after they rejected your proposal.

Costs and Fees.

All of this litigation has become expensive, because of Pioneer's approach to dragging everything out and their unwillingness to agree to the settlement they agreed to. We have incurred more than \$40,000 in costs and fees and have not been paid. The Department would not accept the water in the bank while Pioneer's objections were pending. While we have a trial date in February 2012, it is possible Pioneer could drag that out even beyond the 2012 irrigation season.

The rest of the litigation could easily double the fees, and will likely be even more than that especially if we get in a big fight over an adverse possession lawsuit in district court. Therefore, we need to come to some arrangement to pay for the fees and costs as we go forward into this significant effort.

Very truly yours,

**BARKER ROSHOLT & SIMPSON LLP**

*Albert P. Barker / se*

Albert P. Barker

APB/se  
Enclosures

Exhibit #4

Caldwell, Idaho, June 17th, 1915.

To the State Engineer, of the State of Idaho,

The Water Master on the Boise River, and

The Board of Directors, of the Pioneer Irrigation District.

Dear Sirs:-

~~For and in behalf of the land owners and water users, and owners of those certain water rights, known as the Franklin-Ditch Company's Rights, the Mason-Creek Ditch Company's Rights, and the right of the Caldwell Canal, now the Caldwell Highline Canal, being rights designated as Rights No. 24, No. 25, No. 26 and No. 27 of that certain decree, made and entered on the 18th day of January, 1906, in the District Court of the Seventh Judicial District, of the State of Idaho, in and for Canyon County, in that certain case known as the Boise River Priority Case, wherein the Farmer's Co-operative Litch Company, a corporation, is plaintiff, and the Riverside Irrigating District, Limited, a corporation and others, are defendants, your attention is called to the fact, and you and each of you are hereby notified, that it is your duty to cause the waters diverted from the Boise River under the said above mentioned Rights, to be conveyed through the said Caldwell Highline Canal, for use on the lands under the flow of the said canal. You are further notified that you are now, and for some time past have been, causing said waters under said Right No. 26, and others of said waters, to be diverted through the Hydraulic Canal, for use upon lands other than the lands above mentioned, and depriving said lands of their said rights. And you are hereby further notified that you are now, and for some time past have been, depriving said lands under the flow of the said Caldwell Highline Canal of the use of the waters from Boise River to which they are rightfully entitled, and are causing said lands, and the crops growing thereon, and their owners of said lands great and irreparable injury and damage, for all of which you and each of you will be held to a strict accountability.~~

Respectfully,

*Walter H. H. H.*

OFFICE OF  
PIONEER IRRIGATION DISTRICT  
CANYON AND ADA COUNTIES IDAHO

Exhibit # 3

CALDWELL, IDAHO

July 3, 1923.

Mr William Welch,  
Watermaster, Boise River,  
Boise, Idaho.

WATER DISTRICT 12A

Dear Sir,--

File No. 12A

As you are aware the water decreed to this District and drawn at the Phyllis Canal is insufficient to provide a sufficient head for proper irrigation of the lands under that canal.

As you are also aware this District is under contract to carry thru its Caldwell Canal the water decreed to the Franklin Ditch Co under decrees Nos 34 and 77, and to the Mason Creek Ditch Co under decree No 46, amounting to 4010 inches.

Owing to the fact that a large amount of water is frequently supplied to these ditches by this District which is developed by drain ditches within the District there are times when all of the water is not needed by these ditch companies.

In view of these facts I am asked by our Board of Directors to request that if it is possible for you to do so you make temporary transfer to the Phyllis Canal of such surplus water of these rights mentioned when it is not needed by these companies.

Very truly yours,

*M. L. Evans*  
Secretary.