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Attorneys for Pioneer Irrigation District

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

IN THE MATTER OF ACCOUNTING FOR
DISTRIBUTION OF WATER TO THE
FEDERAL ON-STREAM RESERVOIRS IN
WATER DISTRICT 63

**PIONEER IRRIGATION DISTRICT'S FIRST
SET OF DISCOVERY REQUESTS TO THE
IDAHO DEPARTMENT OF WATER
RESOURCES**

COMES NOW, Pioneer Irrigation District ("Pioneer"), by and through undersigned counsel of record and pursuant to Idaho Rules of Civil Procedure 26, 33, and 34; IDAPA 37.01.01.520-524; the Idaho Department of Water Resources' *Scheduling Order; Notice of Hearing; Order Authorizing Discovery*, dated October 14, 2014; and the Department of Water Resources' *Amended Scheduling Order*, dated November 20, 2014, and hereby submits its First

Set of Discovery Requests to **THE IDAHO DEPARTMENT OF WATER RESOURCES** as follows¹:

**I.
INSTRUCTIONS**

In responding to these Interrogatories and Requests for Production of Documents, you are requested to furnish all information available to you, or subject to your reasonable inquiry, including information in the possession of your attorneys, investigators, employees, agents, representatives, guardians, consultants, expert witnesses, and any other person or persons acting on your behalf, and not merely such information as is known to you by your own personal knowledge.

In responding to these discovery requests, you must make a diligent search of your Records and all other papers and materials that are in your possession or available to you, or to the individuals described in the preceding paragraph. If any item has subparts, please answer each part separately and in full. If you cannot answer any of the following requests in full after exercising due diligence to secure the information necessary to do so, please so state and answer or respond to the extent possible, specifying your inability to answer the remainder and stating whatever information or knowledge you have concerning the unanswered portions.

¹ Pioneer believes this contested case proceeding to be rather unique in that it was unilaterally commenced by the Department absent the request of any of the parties to the same. Consequently, the Department's status (party or not) in this matter is somewhat confusing for purposes serving discovery requests. Pioneer is treating the Department as a party for discovery purposes by virtue of: (1) the currently scheduled depositions of Liz Cresto and Mathew Weaver on December 15 and 16, respectively; and (2) the underlying *Scheduling Order; Notice of Hearing; Order Authorizing Discovery*, dated October 14, 2014, wherein the parties are authorized to engage in discovery, including the service of document requests upon the Department via submission to Deborah Gibson. *See, Scheduling Order; Notice of Hearing; Order Authorizing Discovery*, dated October 14, 2014, p. 2.

If you object to any discovery request on the ground that the information sought is privileged and non-discoverable, please state the basis for your claim of privilege and, in the case of any request for production, identify the documents and records which you object to producing, in sufficient detail as to enable the Hearing Officer to rule upon the claim of privilege.

These discovery requests are deemed to be continuing. If, after responding to these requests, you acquire any further information responsive to them, you are hereby requested, pursuant to Idaho Rule of Civil Procedure 26(e), to file and serve supplemental answers or responses containing such further information.

If you fail to respond to one or more of these discovery requests or if your response to one or more of these requests is evasive or incomplete, Pioneer may move the Hearing Officer for an order compelling you to fully respond to these requests and to pay the reasonable expenses, including attorney fees, incurred by it in obtaining the order.

If you fail to produce documents and records requested herein on the ground that the necessary information, records or documents are not within your care, custody, possession or control, please state what efforts you have made to obtain such information, documents or records.

If you fail to respond to any of these discovery requests in full or fail to supplement your answers or responses as requested, Pioneer may move the Hearing Officer for an order precluding you from introducing into evidence, or otherwise using at hearing, any testimony, witness, exhibit, document, record, publication, or other item or information not timely disclosed in your responses to these discovery requests.

II. DEFINITIONS

1. The term "Communication(s)" shall include, without limitation, any dissemination of information or transmission of a statement from one person to another or in the presence of another, whether written, oral, or by action or conduct.

2. The terms "Document(s)" and/or "Record(s)" mean any tangible thing upon which has been placed handwriting, e-mail transmission, typewriting, printing, photocopying, photographing, digital or computerized data, or any other form of recording, communication or representation, including but not limited to letters, words, pictures, sounds, magnetic impulses, symbols, numbers or any combination thereof, whether or not visible to the unassisted human eye. This definition shall include, but is not limited to, any and all originals, copies, or drafts of any and all of the following: Records, notes, summaries, schedules, contracts, agreements, orders, design manuals, inventories, audits, acknowledgments, diaries, findings, forecasts, tests, appraisals, reports, memoranda, telephone recordings, telephone logs, telephone lists, diaries, calendars, planners, daytimers, correspondence and letters, e-mail, telegrams, telexes, facsimiles and faxes, cables, tapes, tape recordings, statements, receipts, invoices, transcripts, recordings, photographs, witness statements, pictures, films, videotapes, computer programs, computer databases, models, things and materials of any nature whatsoever. Any "Document" which contains any comment, notation, addition, insertion or marking of any kind which is not part of another document is to be considered as a separate "Document."

3. When asked to "Identify" a person or entity or when asked for the "Identity" of a person or entity, please include:

(a) The name of the person or entity;

(b) The present or last known address and telephone number of the person or entity;

(c) The present or last known occupation, title, business, and employer of the person or entity; and

(d) The present or last known address and telephone number of the employer of the person or entity.

4. When asked to "Identify" a Record or Document please include:

(a) The nature or type of Record or Document (*e.g.*, letter, photograph, map, drawing, tape recording, etc.);

(b) The subject matter of the Record or Document and/or a general description of its contents;

(c) The "identity" of the person who authored or created the Record or Document;

(d) The date of the Document or, if it bears no date, the date on which it was prepared or created; and

(e) The physical location of the original and any copies of the Document or Record of which you are aware and the "identity" of the present custodian of the Record or Document.

5. The terms "You" and "Your" shall mean the Idaho Department of Water Resources.

6. The term "Refill Period" shall mean the period of time in flood control release years during which the Boise River reservoir system (Arrowrock, Anderson Ranch, and Lucky Peak reservoirs) was "physically filling" as that term is defined and used in the attached

summary table provided by the Idaho Department of Water Resources.² The period of record applicable to the “Refill Period” includes 1911 to date.

III. INTERROGATORIES

INTERROGATORY NO. 1: Please identify all water rights junior to January 13, 1911 (the priority date of Arrowrock Reservoir storage water right no. 63-303), but senior to December 9, 1940, diverted from the Boise or Snake Rivers (including their respective tributaries) within each of the following reaches:

- (a) Boise River upstream of Lucky Peak Dam in Administrative Basin No. 63;
- (b) Boise River between Lucky Peak Dam and the Middleton Gage;
- (c) Boise River between Middleton Gage and the Boise River confluence with the Snake River; and
- (d) Snake River between the confluence of the Boise River and the Oregon state line.

When answering this interrogatory, please identify the water rights by number (*i.e.*, 63-xxxxx and 02-xxxxx) and by reach in which the point of diversion is located. Please also include the water right priority date, quantity, and purpose of use.

INTERROGATORY NO. 2: Please identify all water rights junior to December 9, 1940 (the priority date of Anderson Ranch Reservoir storage water right no. 63-3614), but senior to April 12, 1963, diverted from the Boise or Snake Rivers (including their respective tributaries) within each of the following reaches:

² The attached table is one of the “summary” tables excerpted from an Excel Spreadsheet titled: “JrtoLP.xlsx” attached to an email from Liz Cresto addressed to various water user representatives sent on November 20, 2014 at 9:36 AM (copy of cover email attached for reference).

- (a) Boise River upstream of Lucky Peak Dam in Administrative Basin No. 63;
- (b) Boise River between Lucky Peak Dam and the Middleton Gage;
- (c) Boise River between Middleton Gage and the Boise River confluence with the Snake River; and
- (d) Snake River between the confluence of the Boise River and the Oregon state line.

When answering this interrogatory, please identify the water rights by number (*i.e.*, 63-xxxxx and 02-xxxxx) and by reach in which the point of diversion is located. Please also include the water right priority date, quantity, and purpose of use.

INTERROGATORY NO. 3: Please identify all water rights junior to April 12, 1963 (the priority date of Lucky Peak Reservoir storage water right no. 63-3618) diverted from the Boise or Snake Rivers (including their respective tributaries) within each of the following reaches:

- (a) Boise River upstream of Lucky Peak Dam in Administrative Basin No. 63;
- (b) Boise River between Lucky Peak Dam and the Middleton Gage;
- (c) Boise River between Middleton Gage and the Boise River confluence with the Snake River; and
- (d) Snake River between the confluence of the Boise River and the Oregon state line.

When answering this interrogatory, please identify the water rights by number (*i.e.*, 63-xxxxx and 02-xxxxx) and by reach in which the point of diversion is located. Please also include the water right priority date, quantity, and purpose of use.

INTERROGATORY NO. 4: For each water right identified in your answer to Interrogatory No. 1 above, please identify those rights that were allowed to divert water during the Refill Period. When answering this interrogatory, please identify the quantity of water diverted under each water right during the Refill Period and the date(s) or period of time each water right diverted during the Refill Period.

INTERROGATORY NO. 5: For each water right identified in your answer to Interrogatory No. 2 above, please identify those rights that were allowed to divert water during the Refill Period. When answering this interrogatory, please identify the quantity of water diverted under each water right during the Refill Period and the date(s) or period of time each water right diverted during the Refill Period.

INTERROGATORY NO. 6: For each water right identified in your answer to Interrogatory No. 3 above, please identify those rights that were allowed to divert water during the Refill Period. When answering this interrogatory, please identify the quantity of water diverted under each water right during the Refill Period and the date(s) or period of time each water right diverted during the Refill Period.

IV.

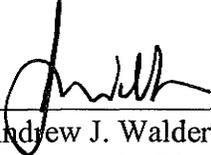
REQUESTS FOR PRODUCTION OF DOCUMENTS

REQUEST FOR PRODUCTION NO. 1: Please produce all Snake River Basin Adjudication partial decrees and administrative water right licenses for the water rights identified in your answers to Interrogatory Nos. 1 through 3, above.

REQUEST FOR PRODUCTION NO. 2: Please produce all Documents demonstrating the date(s) and quantity(ies) of water delivered to each water right identified in your answers to Interrogatory Nos. 4 through 6, above.

DATED this 26th day of November, 2014.

MOFFATT, THOMAS, BARRETT, ROCK &
FIELDS, CHARTERED

By 
Andrew J. Waldera – Of the Firm
Attorneys for Pioneer Irrigation District

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 26th day of November, 2014, I caused a true and correct copy of the foregoing **PIONEER IRRIGATION DISTRICT'S FIRST SET OF DISCOVERY REQUESTS TO THE IDAHO DEPARTMENT OF WATER RESOURCES** to be served by the method indicated below, and addressed to the following:

Director
IDAHO DEPARTMENT OF WATER RESOURCES
322 E. Front Street, 6th Floor
P.O. Box 83720
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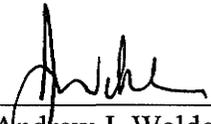
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Andrew J. Waldera

Andy Waldera

From: Cresto, Liz <Liz.Cresto@idwr.idaho.gov>
Sent: Thursday, November 20, 2014 9:36 AM
To: Weaver, Mathew; Dan Steenson; Shelley Davis; Andy Waldera; Charles McDevitt; Howard, Matt; Barker, Albert (IWRB Member); Bryce Farris; jkiser@cableone.net; Jerrold Gregg
Cc: Baxter, Garrick; Spackman, Gary
Subject: RE: Tuesday meeting
Attachments: JrtoLP.xlsx; PotentialJuniorImpacts.xlsx; CrestoPresentation111414.ppsx

Good morning,

Attached are the presentations from Friday, November 14 and from Tuesday, November 18. I also included the spreadsheets used in the two analyses presented.

Liz

From: Weaver, Mathew
Sent: Monday, November 17, 2014 5:11 PM
To: Dan Steenson; Shelley Davis; Andy Waldera; Charles McDevitt; Howard, Matt; Barker, Albert (IWRB Member); Bryce Farris; jkiser@cableone.net; Jerrold Gregg
Cc: Baxter, Garrick; Spackman, Gary; Cresto, Liz
Subject: RE: Tuesday meeting

Good Evening,

My apologies but a 12:00 start time will not work for the Department. Due to scheduling conflicts that I missed with my earlier reply, the Department cannot participate until 1:30 PM. However, if the meeting needs to go beyond the original end time of 3:00 PM we will be happy to stay late.

Again, I apologize for the lateness of this notice.

Mathew Weaver, PE
Deputy Director
Idaho Department of Water Resources
www.idwr.idaho.gov
(208) 287-4800

From: Dan Steenson [<mailto:dan@sawtoothlaw.com>]
Sent: Monday, November 17, 2014 3:44 PM
To: Shelley Davis; Andy Waldera; Weaver, Mathew; Charles McDevitt; Howard, Matt; Barker, Albert (IWRB Member); Bryce Farris; jkiser@cableone.net; Jerrold Gregg
Subject: Tuesday meeting

Matt,

Regarding tomorrow's meeting, I have not heard whether any of our clients will attend. I believe the following attorneys will attend: myself, Bryce Farris, Al Barker, Andy Waldera, Chuck McDevitt, Jerry Kiser. I would not be surprised to see a few water users attend.

I assume Matt Howard and perhaps Jerry Gregg will attend.

Our meeting is noon to 3:00pm, same place.

See you there.

Dan

Daniel V. Steenson

Attorney at Law

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Limited to those times when the reservoirs are physically filling									
Year	Wilderness Ranch	Shakespeare	United	Surprise Valley/Micron	Eagle Island Park	Mace Catlin	Seven Suckers	Canyon County	Total
1999	NA	0	0	0	0	0	0	0	0
2000	NA	0	728	0	20	0	0	0	748
2001*	NA	0	0	0	0	0	0	0	0
2002*	NA	0	13	0	2	0	0	0	15
2003*	NA	0	246	0	8	0	0	0	254
2004*	NA	0	222	0	8	0	0	0	230
2005*	NA	0	61	0	8	0	0	0	68
2006	NA	0	971	25	26	0	0	0	1,022
2007*	NA	0	330	28	4	0	0	0	362
2008	NA	0	1,068	0	20	0	12	0	1,099
2009	NA	0	538	0	11	0	1	0	550
2010	0	0	755	0	15	0	0	0	769
2011	9	0	1,142	54	34	0	3	0	1,244
2012	0	0	927	47	13	0	0	0	988

2013*	0	0	0	0	0	0	0	0	0
Average	2	0	467	10	11	0	1	0	490
*Reservoirs did not fill.									