

Robert L. Harris, Esq.
HOLDEN, KIDWELL, HAHN & CRAPO, P.L.L.C.
P.O. Box 50130
1000 Riverwalk Dr., Ste. 200
Idaho Falls, Idaho 83405
Telephone: (208) 523-0620
Facsimile: (208) 523-9518
Idaho State Bar Number 7018

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DEPARTMENT OF
WATER RESOURCES

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

A. Subcase: 34-2459, 34-2460, 34-2461,
34-2462, 34-10925 and 34-7037

**MEMORANDUM IN SUPPORT OF MOTION TO SET
ASIDE PARTIAL DECREES PURSUANT
TO I.R.C.P. 60(a)**

Mitchell Sorensen, by and through his counsel of record, Robert L. Harris of Holden, Kidwell, Hahn & Crapo, PLLC, hereby submits this memorandum in support of his motion to set aside the above partial decrees pursuant to Rule 60(a) of the Idaho Rules of Civil Procedure.

On April 23, 2008, Mr. Sorensen filed a motion to set aside the above partial decrees. A hearing on the matter was heard on July 23, 2008, but the hearing was continued to November 17, 2008 in order for Mr. Sorensen to provide additional information to the court. This memorandum explains the additional information, which is attached to the Affidavit of Attorney Robert L. Harris in Support of Motion to Set Aside Partial Decrees (the "Harris Affidavit").

As previously represented to this court, the water rights at issue have been partially decreed to Charles B. Isom and Fern A. Isom, and these rights are appurtenant to property Mr. Sorensen is

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now leasing. Exhibit A to the Harris Affidavit contains a summary of these water rights and their relevant elements. In the lease agreement between the Isoms and Mr. Sorensen, Mr. Sorensen was given authority to undertake any and all necessary matters pertaining to the water rights. In the course of Mr. Sorensen's investigation of the water rights, he discovered that the Water Right Partial Decrees as they are currently issued for the above water rights do not comport with the historical practices of the Isoms, and their predecessors-in-interest.

As the water rights are currently listed, Water Right Nos. 34-2459, 34-2460, 34-2461, 34-2462, and 34-10925 share two common points of diversion which are located in the SWSENW and the SENESW, both in Section 2, T3N., R26E. These wells are commonly referred to as the "Airport Wells". Water Right No. 34-7037 is diverted through two wells found in the NESENW of Section 3, T4N., R26E., and the SENWSW of Section 34, T5N., R26E. These wells are commonly referred to as the "Island Wells", and these wells divert into the Island Canal to be delivered to the same place of use as water from the Airport wells are delivered. A GIS map depicting these points of diversion and their place of use is attached to the Harris Affidavit at Exhibit B.

I.R.C.P. 60(a) provides the following:

Clerical mistakes in judgments, orders or other parts of the record and errors therein arising from oversight or omission may be corrected by the court at any time of its own initiative or on the motion of any party and after such notice, if any, as the court orders.

Based upon our review of IDWR records, it appears that there was a clerical error made to not include all four wells as authorized points of diversion under all of the existing water rights, and the partial decrees should be set aside pursuant to Idaho Rule of Civil Procedure 60(a).

Attached as Exhibit C to the Harris Affidavit is the original claim filed for one of the water rights involved in this matter, Water Right No. 34-2459. The claim was filed by Willard Bell of Crater Farms, Inc. These documents were obtained by reviewing microfiche documents stored and maintained in the Eastern Region Office of IDWR. This original claim only claimed the Airport Wells as points of diversion under the water right.

Attached at Exhibit D to the Harris Affidavit is an **amended** claim filed by Willard Bell of Crater Farms, Inc. on October 30, 1990, which was prepared by Kent Foster of Holden, Kidwell, Hahn & Crapo, PLLC. Importantly, the amended claim contained two maps: one map of the water right place of use (near the Arco Airport) and three claimed points of diversion (the Airport Wells), **and the second map depicting the location of the Island Wells**. This second map depicting the Island wells was not included in the original claim filed by Mr. Bell. This second map has been lightened in the map contained at Exhibit E of the Harris Affidavit to make it easier to read.

The submission of this second map indicates that Mr. Bell and Mr. Foster claimed the Island Wells as authorized points of diversion under this water right. Unfortunately, for reasons not evident in the file, the legal descriptions for the Island Wells were not included on the first page of the amended claim (where the legal written legal descriptions are to be listed) as they apparently should have been based upon the included maps. Counsel for Mr. Sorensen, Mr. Harris, has reviewed the water right claim files for 34-2460, 34-2461, and 34-2462, and they contain the same map found at Exhibit E attached to their amended claims.¹

The Isoms have indicated to Mr. Sorensen that their historic practice, and the historic practice of their predecessor-in-interest, Mr. Willard Bell, is that the wells were used interchangeably

¹ See ¶3 of the Harris Affidavit.

depending on the time of the year to divert the entirety of Mr. Isom's 24.5 cfs of ground water authorized under the above rights. The Island Wells were drilled in 1982. See Well Driller's Report attached as Exhibit F to the Harris Affidavit.

Apparently the Island Wells were designed to divert the full 24.5 cfs. In the license for Water Right No. 34-7037, a copy of which is attached to the Harris Affidavit at Exhibit G, it specifically states that the Island Wells have a diversion capacity of 24.66 cfs, which is enough to divert 34-7037 (12 cfs) plus the additional 12.5 cfs under the other Isom water rights, for a total of 24.5 cfs.

The historic practice has been such that when the Airport wells are not producing sufficient amounts of water, the entirety of the Isom rights were diverted from the Island Wells. This practice was undertaken previous to 1987, and therefore, there has been an accomplished transfer pursuant to Idaho law, and all four points of diversion should be listed as authorized points of diversion under all of the above water rights with a combined diversion limitation of 24.5 cfs. As set forth above, it appears that Mr. Bell intended to have this historic practice evidenced in his claim, but because of the clerical error of not including the Island Wells in the text description of the points of diversion, the Island Wells were not included as they should have been.

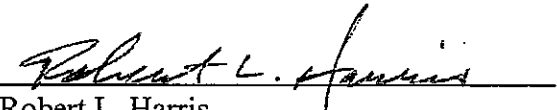
We would note additionally that all of the above-referenced water rights share a common place of use of 1980 acres, and further, share a combined annual diversion volume limitation of 8441.5 acre-feet. It follows that the rights should likewise all share the same points of diversion and combined diversion rate.

In sum, we respectfully request that this court to set aside the partial decrees listed above in order to combine all four points of diversion and their diversion rates to list both the Island Wells and the Airport wells as authorized points of diversion to divert a combined 24.5 cfs. In practice,

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the Island Wells were used previous to 1987 as points of diversion for Water Right Nos. 34-2459, 34-2460, 34-2461, 34-2462, 34-10925 and 34-7037, and as presented partially decreed, only 34-7037 lists the Island Wells as authorized points of diversion. Further, it appears that there was a clerical mistake in the claim documentation such that the Island Wells were not listed in the written legal description of the claimed places of use, even though a map was submitted indicating that they should have been. These errors are such that the partial decrees for the above subcases should be set aside pursuant to I.R.C.P. 60(a). A spreadsheet of how we believe the water rights should be partially decreed is attached to the Harris Affidavit at Exhibit H.

Dated this 13th day of November, 2008.


Robert L. Harris
HOLDEN, KIDWELL, HAHN & CRAPO, PLLC

CERTIFICATE OF MAILING

I certify that on this 13th day of November, 2008, I mailed the original and copies of this form, including all attachments, to the following persons by mailing the original and/or copies, postage prepaid and addressed as follows:

1. Original to:

Clerk of the District Court
Snake River Basin Adjudication
253 Third Avenue North
P.O. Box 2707
Twin Falls, ID 83303-2707

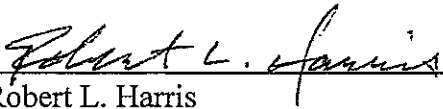
2. Copies to:

Charles B. & Fern A. Isom
3199 W. 2200 N.
Arco, ID 83213

IDWR Document Depository
P.O. Box 83720
Boise, ID 83720-0098

Chief, Natural Resources Division
Office of the Attorney General
State of Idaho
P.O. Box 44449
Boise, ID 83711-4449

United States Department of Justice
Environment and Natural Resource Division
550 West Fort Street, MSC 033
Boise, ID 83724


Robert L. Harris

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