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DEPARTMENT OF
WATER RESOURCES

Attorneys for Doug Schureman, Tyler Felton & Jim Hueslman

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

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)
) Subcase No. 34-2459, 34-2460, 34-2461,
) 34-2462, 34-10925
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OBJECTOR'S RESPONSE TO
CLAIMANT'S MOTION FOR
SUMMARY JUDGMENT

COMES NOW, Doug Schureman, Tyler Felton¹ and Jim Hueslman (collectively, referred to as "Schureman"), by and through their attorneys Barker Rosholt & Simpson, LLP, and hereby submit this response to the Claimants' *Motion for Summary Judgment*, filed with this Court on November 4, 2010. As discussed herein, there are material issues of fact that are in dispute, therefore, summary judgment should be denied.

INTRODUCTION

Through the above claims, the Claimants, Isom Acres Limited Partnership, Charles Isom and Don Isom (collectively, "Isom"), seek to create a water right where none existed and to collaterally attack their prior licenses. They would have this Court enter a partial decree based

¹ Mr. Felton passed away in early 2010. Objectors are in the process of substituting the estate as a party.

on an accomplished transfer theory that would allow the diversion of as much as 24.5 cfs (1225 inches) from the so-called “island wells” even though there is no evidence that they had any authority to convey any water from the island wells to their place of use prior to 1995. The authority to convey this water is vital to Isom’s claim because the points of diversion (the island wells) are 8 miles from the place of use. The only way to convey the water from the island wells to the place of use is through the Big Lost River Irrigation District’s (“BLRID”) conveyance system. Absent permission to convey the water, Isom would have not ability to beneficial use the water at the place of use.

Schureman filed an objection to the water rights alleging injury associated with the accomplished transfer. Remand is required by the accomplished transfer statute. There is no discretion. Isom’s citation to a decision refusing to remand to address the ownership of a water right is unpersuasive. Indeed, this Special Master has recognized the nondiscretionary nature of the remand provision and should apply it in this case.

Isom seeks to collaterally attack his licenses – an action expressly prohibited by this Court. Whereas the prior licenses included a combined volume limitation of 3.5 acre feet per acre and 6930 acre feet per year, Isom advocates a volume limitation of 8441.5 acre feet per year – or 4.26 acre feet per acre. The law does not allow such an action in the SRBA Court.

Isom’s sole factual support for his motion is a 1995 agreement, an affidavit from Charles Isom and the license for water right 37-7037. Yet, none of these are sufficient to demonstrate an absence of material facts. The 1995 agreement is facially insufficient to demonstrate an accomplished transfer which must have taken place prior to November 19, 1987. None of the agreements prior to 1995 listed the island wells as authorized points of diversion for conveyance

through the BLRID's system. As such, there was no evidence of authority to convey this groundwater through the Munsey Canal prior to 1995.

However, even if there was some authority to divert water through the system, the evidence shows that, at most, the amount of ground water diverted through the system prior to 1987 was 12 cfs (600 inches).

Ironically, the Claimants now try to hide behind the very decree they argued should be set aside. They claim that Schureman should be estopped from asserting its objection because many of the elements remain unchanged from the prior decree. Isom provides no legal support for this novel theory. Indeed, the law expressly provides that Schureman may file an objection to the director's report and the factual circumstances are different. That notwithstanding, the factual issues are not the same.

In the end, Isom has failed to demonstrate the necessary lack of disputed material facts. As such, summary judgment should be denied.

STATEMENT OF FACTS

This matter involves a recommendation by the Director for the above water rights that adds two points of diversion – commonly referred to as the “island wells.” The legal description of these island wells is as follows:

NESENW, S3, T4N, R26E
SWNWSW, S34, T5N, R26E

These rights were originally partially decreed on December 16, 1997 without these points of diversion. The prior decrees only listed points of diversion near the place of use – commonly referred to as the “airport wells.”

Isom moved the Court for an order setting aside the partial decrees so that the island wells could be included. On September 4, 2009, this Court issued its *Order on Motion to Set*

Aside Partial Decree, setting a deadline for filing amended claims, an amended Director's report and objections. That *Order* did not set any limitations on the ability of parties to the SRBA to participate in these proceedings. The Amended Director Reports for the above water rights were issued on December 8, 2009. Schureman filed a timely *Objection*.

The history of the island wells is very important to these proceedings. Indeed, Isom's entire case rests on his ability to demonstrate the *authority* and *ability* to deliver water from the island wells to his place of use prior to 1987.

As to the authority to deliver the water, Isom relies on a 1995 *Water Pumping and Transport Agreement* entered between the previous owner (Crater Farms, Inc.) and the BLRID. *Harris 2nd Aff.* Ex. G. The use of BLRID conveyance systems to deliver water to the Isom place of use began in the 1970's.² Agreements in 1974, 1978, 1979 and 1980 show that the previous owners of the Isom property entered into agreements with BLRID to convey as much as 1000 inches through the Munsey Canal. *Arrington Aff.* Exs. A-D. Each of these agreements identifies the same two points of diversion from which ground water was authorized to be diverted into the Munsey Canal. *Id.* These authorized points of diversion are listed as follows:

E ½ SW, S23, T3N, R26
SESW, NESE, S33, T5, R26

Id. These points of diversion are not the island wells. Schureman is unaware of any pre-1987 agreement with BLRID to convey water diverted from the island wells.

As to the ability to divert water, Isom relies on the license exam for licensed water right 34-7037. *Harris 2nd Aff.* Exs. C & D. There are two island wells drilled in association with the licensed water right 34-7037. *Harris 2nd Aff.* Ex. D. The first well was drilled in August, 1976. *Arrington Aff.* Ex. E at 3-4. The second island well was drilled in May, 1982. *Id.* at 4. A field

² At that time, the property was owned by Crater Farms. However, for ease of reference, the property will be referred to as the Isom property.

exam and licensing report were completed in August, 1985. *Arrington Aff.* Ex. F.³ According to the report, although the system had a capacity of 24.66 cfs, *id.* at 7 (12.62 cfs from one well and 12.04 cfs from the other), the actual flow measurement was only 15.26 cfs, *id.* at 12 (7.23 cfs from one well and 8.03 cfs from the other).⁴

The licensing process for 34-7037 included numerous objections by local water users. *See Arrington Aff.* Ex. G (request for extension of time to submit proof of beneficial use due to “pending resolution of protests”); *see also generally, Id.* Ex. E (discussing the procedural history). The then-Director of the Idaho Department of Water Resources (“IDWR”), A. Kenneth Dunn, issued an *Order Adopting Proposed Memorandum* on May 19, 1986, with specific limitations to address the injury claims. *Arrington Aff.* Ex. E. As it relates to the island wells, the Director provided:

1. Flow meters of a type approved by the Department of Water Resources shall be installed and maintained on *each diversion to assure that the total pumping rate does not exceed 12.00 cubic feet per second at any time.*

Id. at 5 (emphasis added). In other words, the Director ordered that diversions from the island wells would be limited to 12 cfs (600 inches) – the diversion rate of water right 37-7037. *Harris 2nd Aff.* Ex. D.

As originally drafted and executed, the 1995 agreement allowed for the diversion of 600 inches (12 cfs). *Harris 2nd Aff.* Ex. G. On January 12, 1998, the BLRID acting office manager, Rita M. Lundy, sent Crater Farms, a letter indicating that, although the agreement allowed for the conveyance of 600 inches, the BLRID had approved a diversion of 1000 inches based on the existence of water right 34-7138. *Arrington Aff.* Ex. H. She indicated that the agreement would

³ The beneficial use exam and licensing report consist of 40 numbered pages (i.e. Page __ of 40). References to page numbers in this brief will be to those page numbers (i.e. page 7 refers to “Page 7 of 40”).

⁴ Isom references the diversion capacity of 24.66 cfs but overlooks the flow measurements of 15.26 cfs. *Isom Br.* at 4.

be amended to recognize this water rights. *Id.*⁵ Importantly, water right 34-7138 is a surface water right and is not diverted through the island wells. *Harris 2nd Aff.* Ex. F.

Water rights 34-7037 and 34-7138 were each licensed in 1994 with specific volume limitation remarks. *See Harris 2nd Aff.* Exs. D & F. Both licenses state that, “when combined *with all other rights*,” they “shall provide no more than .02 cfs per acre nor more than 3.5 afa per acre for the lands above.” *Id.* (emphasis added). In addition, they both include the following remark:

The combined annual volume of water under this right [34-7037] and the Right Nos. 34-24 59/2460/2461/2462/7138/10925 shall not exceed 6930.0 acre feet.

Id. The Director’s report, however, recommended these water rights with an annual volume of 8441.5 acre feet – approximately 4.26 acre feet per acre. There is no information in the back file or otherwise known to Schureman to support this increased volume limitation.

STANDARD OF REVIEW

Summary judgment shall be rendered when “the pleadings, depositions and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.” I.R.C.P. 56(c). Disputed facts are to be construed in favor of the non-moving party, and all reasonable inferences that can be drawn from the record are drawn in favor of the non-moving party. *Gem State Ins. Co. v. Hutchinson*, 145 Idaho 10, 175 P.3d 172 (2007).

⁵ The copy of the 1995 agreement provided by Isom is not the amended page referenced in this letter. *See Harris 2nd Aff.* Ex. G. Schureman has been unable to locate this amended first page.

ARGUMENT

I. Schureman is Not Barred by Res Judicata from Filing Objections to the Amended Director's Reports.

Isom asserts that Schureman's objections are barred by *res judicata* by the previous partial decrees. *Isom Br.* at 7-8. He claims that, since some of the elements objected to by Schureman were identical to those contained in the partial decree, *res judicata* bars any action by this Court on these elements. *Id.* Yet, this Court specifically ruled that objections could be filed in the *Order on Motion to Set Aside Partial Decree*. Furthermore, Idaho law provides Schureman with an opportunity to file an objection to the Director's report. I.C. § 42-1412. Nothing in this Court's *Order on Motion to Set Aside Partial Decree* or in the statute that limits Schureman's ability to participate in these proceedings. Isom sought to have the prior decrees set aside. He cannot now hide from the consequences of that decision.

Notwithstanding the legal flaw in Isom's argument, the issues simply are not the same. Indeed, the prior Director's report and decrees did not include the island wells as points of diversion. Rather, they only included the airport wells – which Isom admits are 8 miles away from the island wells. *Isom Br.* at 9. The prior proceedings did not question whether or not Isom could divert 24.5 cfs from the island wells. There was no accomplished transfer implicated in the prior proceedings. In short, no questions relating to the island wells were even addressed in the prior proceedings. As such, Schureman did not have any need, let alone an opportunity, to address the concerns raised by the new Director's reports. Accordingly, *res judicata* simply does not apply.

II. The Accomplished Transfer Statute Requires a Remand – the Decision is Not Discretionary.

Isom accuses Schureman of trying to “circumvent the SRBA process” in seeking a remand pursuant to Idaho Code § 42-1425. *Isom Br.* at 14-15.⁶ To support his theory, Isom relies exclusively on a decision in Basin 74 where Special Master Dolan denied a request for remand. *Id.* Isom fails to acknowledge, however, that that issue dealt with the ownership of certain water rights.⁷

To the contrary, the language of section 42-1425 is clear. Indeed, this Special Master has held that the remand provisions are not discretionary. In enacting the accomplished transfer statute, the Legislature recognized that “prior to the commencement of the [SRBA], many persons entitled to the use of water or owning land to which water has been made appurtenant ... changed the place of use, point of diversion, nature or purpose of use, or period of use of their water rights without compliance” with section 42-222 (the transfer statute). I.C. § 42-1425(1)(a). The Legislature recognized that the denial of these claims for failure to comply with 42-222 “would cause significant undue financial impact to a claimant and the local economy.” *Id.* § 42-1425(1)(b). As such, in order to “avoid the harsh economic impacts that would result from a denial of the claim,” *id.*, the Legislature enacted the accomplished transfer statute. Under this

⁶ Isom tries to confuse the matter by questioning whether Schureman’s injury allegations relate to a delivery call or the accomplished transfer statute. *Isom Br.* at 14. To clear up Isom’s confusion, this matter involves the adjudication of water rights for which an accomplished transfer is been claimed.

⁷ Those subcases involved competing claims to the same water rights (Group A and Group B). The Director’s reports recommended the water rights in the names of members of Group A under the theory that an accomplished transfer had occurred when the properties were all owned by the same individual. That property was subdivided and is currently owned by members of Group A and Group B. The accomplished transfer moved the water from property owned by Group B to property owned by Group A. Group B filed objections to the Director’s report, asserting that the accomplished transfer never occurred and that the water should be appurtenant to the original place of use – property owned Group B. They asserted that the water rights claimed and recommended to Group A should not exist. The motion for remand under section 42-1425 was denied, therefore, because the issue was one of ownership – not of injury resulting from an accomplished transfer.

statute, a water user could claim a water right as an accomplished transfer and thereby avoid the strict procedural requirements of section 42-108 and 42-222, *id.* at § 42-1425.

The waiver of these requirements, however, is not unlimited. As the statute makes clear, the waiver only exists to the extent that no one objects to the accomplished transfer. Indeed, “all requirements of sections 42-108 and 42-222, Idaho Code, are hereby waived *in accordance with the following procedures*: (a) *If an objection is filed* to a claim for accomplished change of place of use, point of diversion, nature or purpose of use or period of use, the district court shall remand.” *Id.* § 42-1425(2) (emphasis added). This Special Master affirmed the mandatory nature of the accomplished transfer statute hearing requirements in her *Order on Summary Judgment* (water rights 29-271 *et seq.*). There, the Court recognized that “However duplicative a formal remand may be, it is provided for when an objection is filed relating to I.C. § 42-1425.”

In this case, an accomplished transfer has been claimed. Schureman filed an objection to the point of diversion. As such, the law demands a remand and summary judgment should be denied.

III. The Remark on the Amended Director’s Reports Does Not Address Injury Caused by the Claimed Accomplished Transfer.

Isom alleges that even if there is injury, the following remark placed on each amended Director’s report addresses that injury:

Pursuant to a call, in times of scarcity, the diversion of water under this right from the two wells in T05N R26E S34 SWNWSE and T04N R25E S3 NESENEW has a priority date of May 18, 1982.

Isom Br. at 15. According to Isom, this remark will give Schuremen “the protection they desire.” *Id.*

Isom’s argument is wrong and demonstrates a misunderstanding of the procedure for a ground water call. Unlike surface water administration with its attendant “shut and fasten”

obligations, I.C. §§ 42-602 & -607, the Ground Water Act prohibits the administration of ground water rights unless and until the Director has determined a reasonable pumping level. I.C. § 42-226; *Baker v. Ore-Ida Foods, Inc.*, 95 Idaho 575, 585 (1973) (“A senior appropriator is only entitled to be protected to the extent of the ‘reasonable ground water pumping levels’ as established by the IDWR”). As such, for ground water rights subject to the Ground Water Act, administration will not occur until a reasonable pumping level has been established and reached. Accordingly, those diverting under junior ground water rights are free to deplete the source while those diverting under senior ground water rights must continue to suffer the consequences of depletions that require deeper wells or even eliminate the water supply.

The *Affidavit of Darrell E. McDonald* and *Affidavit of Norma K. Soward*, filed in support of their *Motion to File Late Objection or Alternatively to Participate*, demonstrate the concerns of injury shared by Schureman. Both explain how their ground water diversions have been impacted by diminishing water supplies and that they have been forced to drill deeper wells and/or install stronger pumps to divert their decreed water supplies. Based on their experiences, they fear that increased diversions by Isom will force them to drill even deeper to acquire water.

To Schureman’s knowledge, no reasonable pumping level has been established for the area including the island wells. Under the law, therefore, Schureman will have no recourse when Isom’s diversions deplete the water supply. Accordingly, an assurance that diversions from the Island Wells will be limited to a priority of 1982, alone, is no protection at all. *See also McDonald Aff.* ¶ 9 (explaining that the subordination provision is really no protection because it will force McDonald to enter a call every year and rely on the watermaster to administer the ground water. “If and when this can be done, the negative impact on the local water table and

thus by ability to divert the full amount of my water rights will have occurred); *Sowards Aff.* ¶ 10 (same).

IV. Isom Has Not Shown Any Authority to Divert Water from the Island Wells for Conveyance Through the BLRID System Prior to 1987.

Isom asserts that he has a right to deliver water from the island wells to his place of use using the BLRID conveyance system prior to 1987. His only support for this contention is a 1995 conveyance agreement with BLRID and the *Isom Affidavit*. Yet, the 1995 agreement does not evidence any pre-1987 deliveries through the BLRID system. Furthermore, the *Isom Affidavit* only provides Mr. Isom's "understanding" of how water was delivered prior to 1987 – there is no firsthand knowledge. As such, this evidence does not support Isom's claim.

Importantly, none of the pre-1987 conveyance agreements include the island wells as authorized points of diversion. *Arrington Aff.* At Exs. A-D. These agreements identify the points of diversion from which BLRID authorized the diversion of ground water to be conveyed to the Isom place of use. *Id.* The island wells were not included in the four agreements during the 1970's and 1980's. *Id.* In fact, it was not until the 1995 agreement that the island wells were identified as authorized points of diversion for delivery through the BLRID system. *Harris 2nd Aff.* at Ex. G. Since Isom cannot show that he had the authority to deliver water from the island wells prior to 1987, he cannot sustain a motion for summary judgment.

V. If Isom Did Have Authority to Delivery Water Through the BLRID System Prior to 1987, It Was Only For 600 Inches (12 cfs) from the Island Wells.

Even if, *arguendo*, Isom did have authority to deliver water from the island wells to his place of use through the BLRID system, the evidence demonstrates that he only had the authority to deliver 600 inches of ground water.

The only evidence of diversions prior to 1987 comes from the field exam and license report conducted in 1985. *Arrington Aff.* Ex. F. According to that exam, while the system had a capacity of 24.66 cfs, *id.* at 7, the flows were measured at 15.26 cfs, *id.* at 12.⁸

On May 19, 1986, the Director issued an order that further limited the diversion of water from the island wells. *Arrington Aff.* Ex. E. In response to protests filed against a request to amend the permit application for 34-7037 to add the second island well, the Director ordered that:

1. Flow meters of a type approved by the Department of Water Resources shall be installed and maintained on each diversion ***to assure that the total pumping rate does not exceed 12.00 cubic feet per second at any time.***

Id. at 5 (emphasis added). There is no evidence that this *Order* was ever challenged by Isom or his predecessor in interest or that the 12 cfs (600 inch) limitation was ever lifted to allow for additional diversions from the island wells.

The 1995 agreement provides further evidence that the water delivered through the BLRID system was limited to 600 inches (12 cfs) from the island wells. As originally drafted, the 1995 agreement only identified water right 37-7037 and limited diversions to 600 inches (12 cfs). *Harris 2nd Aff.* Ex. G. Although this rate was subsequently increased to 1000 inches (20 cfs), there is no evidence that Isom had conveyed that much water through the BLRID system prior to 1987. *Isom Br.* at 14.

In a 1998 letter from BLRID, Crater Farms was informed that the agreement would be amended to allow conveyance of 1000 inches by specifically referencing water right 34-7138. *Arrington Aff.* Ex. H (“To correct this I have re-typed the first page of this transport agreement noting that you have another license #34-7138 for 16 CFS or another 800 inches”). Importantly,

⁸ In light of the flow measurements, *Arrington Aff.* Ex. F at 12, Isom’s claim that “the accomplished transfer happened based on the physical capacity of the diversion system,” *Isom Br.* at 13, is wrong. Even though the capacity may have been 24.66 cfs, the actual measured diversions were 15.26 cfs. *Arrington Aff.* Ex. F at 7 & 12.

water right 34-7138 is a surface water right – it is not diverted through the island wells. *Harris 2nd Aff.* Ex. F. As such, it is clear that the transport of 1000 inches included, at most, 600 inches of ground water, with the remainder being made up of surface water.

Contrary to Isom’s allegation that the historical practice was to divert the entire 24.5 cfs from the island wells, *Isom Br.* at 13-14, the evidence demonstrates that, at most, 12 cfs (600 inches) of island well water was delivered through the BLRID system. As such, summary judgment should be denied.

VI. The Volume Limitations Must be Consistent with the Licenses.

Isom contends that he should be permitted to divert a larger volume of water in order to make up for conveyance losses. *Isom Br.* at 9-10. Water rights 34-7037 and 34-7138 were both licensed with the following remark:

The combined annual volume of water under this right [34-7037] and the Right Nos. 34-2459/2460/2461/2462/7138/10925 shall not exceed 6930.0 acre feet.

Harris 2nd Aff. Exs. D & F. Isom admits that “it is undisputed that IDWR licensed the above subcases such that in combination, they are allowed 3.5 acre-feet per acre – based on an IDWR standard – for a total of 6930 acre-feet.” *Isom Br.* at 9.

Notwithstanding this provision, and Isom’s admission, the above water rights were recommended with the following volume limitation remark, which Isom alleges is “appropriate:”

The rights listed below are limited to a total combined annual diversion volume of 8441.5 af. Combined Right Nos. 34-2459, 34-2460, 34-2461, 34-2462, 34-7037, 34-7138 and 34-10925.

The volume recommended is 1511.5 acre feet larger than the volume recognized on the licenses and allows for 4.26 acre feet per acre.

“The law of the case in the SRBA is that a party may not subsequently challenge elements or conditions decided in a license.” *Order on Motion to Dismiss Objections & Request*

for Attorney Fees, Subcase Nos. 37-494, *et al* (The Valley Club), at 5 (Oct. 10, 2008); *see also*, e.g., *Memorandum Decision & Order on Motions for Summary Judgment*, (Subcase Nos. 63-2529, *et al.*) (June 11, 2009) (attempt to challenge licensed diversion volume “constitutes an impermissible collateral attack on the prior administrative proceedings”); *Memorandum Decision and Order on Challenge*; *Order on State's Motion to Dismiss Claimant's Notice of Challenge* (Subcase No. 36-8099) (2000) (IDWR license becomes final when the time to appeal it has expired); *Response to United States Motion for Status Conference*, (Subcase No. 03-10022) (2000) (scope of what can be litigated in SRBA is limited and does not included collateral attacks on previously perfected water rights); *Memorandum Decisions & Order On Challenge, Order On State of Idaho's Motion to Dismiss Claimants Notice of Challenge*, (Subcase No. 36-8099) (2000) (collateral attack on IDWR license is not permissible when a party has failed to exhaust administrative remedies); *Order on Challenge of “Facility Volume” Issue & Additional Evidence Issues*, (Subcase Nos. 37-2708, *et al.*) (1999) (the SRBA Court disfavors collateral attacks on licenses).

Even though he admits that the rights were licensed with a total diversion rate of 6930 acre feet, *Isom Br.* at 10, Isom asserts that the increased volume is a “reasonable amount” to account for “the over 8-mile trip the Isom water must make through the BLRID system.” *Isom Br.* at 9-10. As such, they claim that it was an appropriate exercise by the Director to increase the volume. *Id.* Yet, they cannot overcome the weight of the prior license.

The prior licenses specifically limit the annual volume to 6930 acre-feet per year – or 3.5 acre-feet per acre. In fact, the licenses state that, “when combined *with all other rights*,” they “shall provide *no more than* .02 cfs per acre nor more than 3.5 afa per acre for the lands above.” *Harris 2nd Aff.* Exs. D & F (emphasis added).

The Director understood that this water would travel a long way to the place of use. *Harris 2nd Aff.* Ex. D. Indeed, the license references the BLRID conveyance system through which the water was delivered. *Id.* This is the so-called “8-mile trip” that Isom uses to justify the enhanced volume limitations. *Isom Br.* at 9. Notwithstanding potential conveyance losses, the Director licensed the rights for 3.5 acre-feet per acre. That decision was not challenged by Isom, or his predecessor in interest, and cannot be challenged now in the SRBA.

Isom misunderstands the law when he alleges that Schureman must present “evidence that the additional amount of acre-feet is unjustified under the circumstances.” *Isom Br.* at 9. To the contrary, the law is clear. Isom cannot collaterally attack the licenses. Since the licenses only provide an annual diversion volume of 6930 acre feet, and limit the per acre diversion to “3.5 afa,” any attempt to increase the volumes cannot stand. As such, summary judgment should be denied.

CONCLUSION

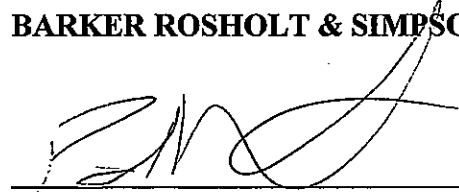
The increased diversions from the island wells will injure neighboring ground water users. Since an objection was filed to the accomplished transfer, remand is necessary – the law demands as much. That notwithstanding, the facts simply do not support Isom’s contentions. There is no evidence that Isom had any authority to convey water through the BLRID system prior to 1987. If, *arguendo*, Isom can show that water was conveyed through the BLRID system, it was, at most, only 600 inches. Finally, Isom cannot collaterally attack a license in the SRBA. As such, the increased diversion volumes must be rejected.

In the end, the outstanding questions of material facts prevent summary judgment. As such, Isom’s motion should be denied.

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DATED this 17th day of November, 2010.

BARKER ROSHOLT & SIMPSON LLP

A handwritten signature in black ink, appearing to read 'T. Thompson', is written over a horizontal line.

Travis L. Thompson

Paul L. Arrington

Attorneys for Objectors

CERTIFICATE OF SERVICE

I hereby certify that on the 17th day of November, 2010, I served a true and correct copy of the foregoing document(s) on the person(s) listed below, in the manner indicated:

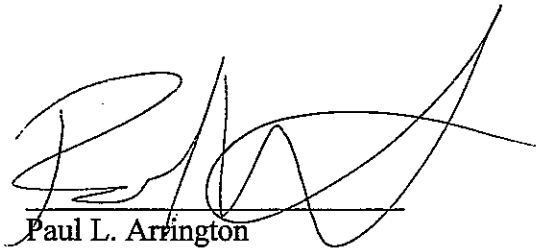
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