

DISTRICT COURT - CIVIL	
Fifth Judicial District	
County of Twin Falls - State of Idaho	
NOV 24 2010	
By _____	Clerk _____
L. A. C.	

Robert L. Harris, Esq. (ISB # 7018)

rharris@holdenlegal.com

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

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: 34-2459, 34-2460, 34-2461,
34-2462, and 34-10925

**OPPOSITION TO MOTION TO FILE LATE
OBJECTION OR ALTERNATIVELY TO
PARTICIPATE**

Isom Acres Limited Partnership, Charles Isom, and Don Isom (collectively, "Isom"), by and through their counsel of record, Robert L. Harris of Holden, Kidwell, Hahn & Crapo, PLLC, hereby file this *Opposition to Motion to File Objection or Alternatively to Participate*, recently filed by Darrell E. McDonald and Norman K. Sowards. Isom objects to having the matter heard on December 1, 2010, and only received today by facsimile a notice of hearing attempting to schedule this matter for December 1, 2010, at the same time a Motion for Summary Judgment filed by Isom is scheduled to be heard. While the motion itself was filed on November 17, 2010, by facsimile

transmission to Isom's counsel, there is no indication regarding when the matter was to be heard, and counsel for the Isoms has not had sufficient time to review the documentation provided by McDonald and Sowards.

Additionally, counsel for McDonald and Sowards never contacted counsel for Isom regarding the time to have the motion heard, and therefore we request that the matter be scheduled at a date and time when Isom will have additional time and opportunity to respond fully to the arguments raised in the motion. Receiving a notice of the hearing just over a week before the hearing is proposed to be heard, and before the Thanksgiving holiday, has not provided Isom's counsel adequate time to respond.

Preliminarily, in review of the late objections, we note that McDonald and Sowards state that their objections "raises exactly the same issues as the objection filed by Doug Schureman, et al." *Motion* at 3. Additionally, McDonald states that his interest is to seek protection of their individual water rights, diverted from wells in close proximity to the two wells referred to as the "Island Wells." McDonald and Sowards further allege that their rights will impacted, even though they are senior in priority date to the use of the Island Wells pursuant to the accomplished transfer recommended by the Idaho Department of Water Resources.

As an initial matter, this particular matter has been ongoing before the SRBA Court beginning in 2008, extending almost three (3) years. It seems that allowing parties to intervene at this late stage, after Amended Director's Reports have been issued almost a year ago, would unduly delay the proceedings even further. Additionally, McDonald admits that his concerns are the exact same as Mr. Schureman's, who is already a party to this matter. His concerns could be addressed clearly through Mr. Schureman in this proceeding.

Lastly, McDonald and Sowards do not hold a meritorious position, as they essentially seek to protect their wells in the SRBA in a manner that is already protected under the prior appropriation doctrine.

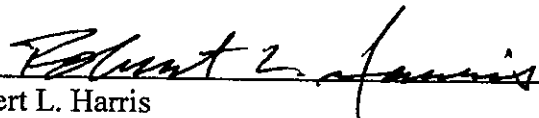
The Special Master in this case has already dealt with arguments from the Big Lost Basin relative to accomplished transfers, enlargements and conjunctive management in a decision entitled *Special Master's Report and Recommendation, Findings of Fact and Conclusions of Law for Water Rights 34-256, 34-416, 34-618, 34-692C, 34-2330B, 34-2426C, 34-7080B, 34-7092, 34-7121A, 34-7121B, 34-7179, 34-10896, and 34-12376*, (hereinafter, "SRBA Decision"). The Special Master addressed objections to water rights on the basis that use of ground water pumped further up the Lost River Valley has injured senior water rights, and will do so in the future. The first argument advanced by the objectors was that the court should "reject changes in place of use for rights which were transferred to an area known as Era Flat. The Association claimed that allowing rights to be used at this new place injured existing rights." SRBA Decision at 2-3.

Regarding this argument, Special Master Bilyeu held that these objections were not sound in the adjudication proceeding, finding that "[t]he proper application of the prior appropriation doctrine should protect the senior water rights in the Big Lost River Valley. Consequently, the injury alleged by The Association is not the kind of injury which should defeat the changes in use which occurred, since senior users could enforce the prior appropriation doctrine." SRBA Decision at 9. With regards to allegations of injury for the movement of water to the Era Flat, or "out of the valley" as it is sometimes referred to, the court held that "[f]or those water rights which involved a change in place of use, The Association must show that the change resulted in injury to water rights existing at the time of the change. There is insufficient evidence to show these changes in place of use to Era Flat resulted in injury of existing rights." SRBA Decision at 10.

In short, McDonald and Sowards are protected under the prior appropriation doctrine. They therefore do not have a meritorious position to intervene in this matter.

Isom reserves the right to supplement this response due to the unilaterally scheduled hearing once the Court determines if additional time for briefing is allowed.

Dated this 23rd day of November, 2010.


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

CERTIFICATE OF MAILING

I certify that on this 23rd day of November, 2010, 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:

Paul L. Arrington
Barker, Rosholt & Simpson, LLP
PO Box 485
Twin Falls, ID 83303

(☒) First Class Mail
(☐) Hand Delivery
(☐) Facsimile
(☐) Overnight Mail
(☐) Email

W. Kent Fletcher
Fletcher Law Office
PO Box 248
Burley, ID 83318

(☒) First Class Mail
(☐) Hand Delivery
(☐) Facsimile
(☐) Overnight Mail
(☐) Email

James K. Speck
Speck & Aanestad
A Professional Corporation
PO Box 987
Ketchum, ID 83340

(☒) First Class Mail
(☐) Hand Delivery
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(☐) Overnight Mail
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Robert L. Harris, Esq.
HOLDEN, KIDWELL, HAHN & CRAPO, PLLC

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