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Attorneys for Larry Quist

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

IN THE MATTER OF APPLICATION
FOR TRANSFER NO. 83745 IN THE NAME
OF SUNSET FARM & RANCH LLC

**LARRY QUIST'S OPPOSITION TO
SUNSET FARM & RANCH LLC'S
MOTION FOR SUMMARY JUDGMENT**

Larry Quist ("Quist"), by and through its undersigned counsel, hereby opposes Sunset Farm & Ranch LLC's ("Sunset") motion for summary judgment. Sunset's Motion must be denied, as it is unsupported by any evidence and there are genuine disputes of material fact.

LEGAL STANDARD

Rule 565 of the Department's Rules of Procedure authorizes the filing of pre-hearing motions. IDAPA 37.01.01.565. By implication, the rule permits motions for summary judgment. "[T]he Department relies on the standards set forth in Rule 56 of the Idaho Rules of Civil Procedure and the associated case law as a guide for addressing motions for summary judgment." *In the Matter*

of Sylte's Petition for Declaratory Ruling Regarding Distribution of Water to Water Right No. 95-0734, Dkt. No. P-DR-2017-001, Order on Motions for Summary Judgment at 3 (September 6, 2017). "A motion for summary judgment may be granted if a hearing officer determines that there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law." *Id.*; *see also* Rule 56, I.R.C.P. "The moving party carries the burden of proving the absence of a genuine issue of material fact." *Scout, LLC v. Truck Ins. Exch.*, 164 Idaho 593, 597, 434 P.3d 197, 201 (2019). Accordingly, the evidence must be viewed in the light most favorable to the non-moving party. *Berrett v. Clark Cty. Sch. Dist. No. 161*, 165 Idaho 913, 454 P.3d 555, 567 (2019). And credibility findings cannot be made at the summary judgment stage. *Hilliard v. Murphy Land Co., LLC*, 158 Idaho 737, 742, 351 P.3d 1195, 1200 (2015).

ARGUMENT

The Hearing Officer may approve a transfer application only if, among other things "no other water rights are injured thereby." I.C. § 42-222. Before reaching this determination, the Hearing Officer "*shall examine all the evidence and available information.*" I.C. § 42-222 (emphasis added).

Here, Sunset argues that Quist's water rights will not be injured as a matter of law. But Sunset has failed to provide *any* evidence of the purported lack of injury—not even a single affidavit in support. Instead, Sunset merely points to Quist's Protest, which actually cuts against Sunset's assert. Motion at 15. The Protest clearly declares that the proposed transfer "injures [Quist's] water rights." *See* Notice of Protest, dated Dec. 16, 2019. With that signed statement, and with no evidence from Sunset to the contrary, there is no question that there remains a genuine issue of material fact

as to whether Quist's water rights have been injured. And Sunset has failed to meet its burden of proof. *Truck Ins. Exch.*, 164 Idaho at 597.

Sunset nevertheless claims that summary judgment is appropriate here because "[t]here is no evidence that approval of T83745 will impact the value of Quist's water rights, *i.e.*, that he has suffered an 'injury in fact' that can be 'redressed' by the Hearing Officer, or one that is 'concrete and particularized.'" Motion at 16. But this improperly flips the burden of proof. Quist does not have to demonstrate that there is an injury, Sunset must prove the absence of injury—which it has failed to do. *See Truck Ins. Exch.*, 164 Idaho at 597.

Finally, even if it was Quist's burden to demonstrate injury, discovery is not yet complete in this case. Sunset has served discovery requests on Quist, with responses due on December 18. Accordingly, Sunset is not even aware of what evidence Quist has, and their claim that no evidence of injury exists is hollow at this point in the administrative process. Quist is entitled to finish the discovery process and have his evidence presented to the Hearing Officer. I.C. Sec. 42-222. And summary judgment is inappropriate.

CONCLUSION

For the foregoing reasons, the Court should deny Sunset's Motion for Summary Judgment.

DATED THIS 9th day of December, 2020.

PARSONS BEHLE & LATIMER

By:

A handwritten signature in blue ink, appearing to read "Norman M. Semanko", written over a horizontal line.

Norman M. Semanko

Aaron M. Worthen

Attorneys for Larry Quist

CERTIFICATE OF SERVICE

I hereby certify that on this 9th day of December, 2020, I served a true and correct copy of the foregoing document on the parties listed below by their designated method of service.

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