

to create a "genuine issue of material fact" and thereby preclude summary judgment.⁴ Moreover, defendant argues that an ambiguity, in and of itself, can make summary judgment inappropriate.⁵

To support its position as to the correct interpretation of the provision, Koosharem attached certain documents to its motion for partial summary judgment setting forth the historical development of Koosharem's and Meridian's water rights to the Otter, which culminated in the Cox Decree of 1936. Such documentation allegedly establishes that, excluding surplus flow, Koosharem's augmented portion includes all of the inflow and accretions to the Otter below the Koosharem Reservoir Dam and above the Koosharem diversion dam, while Meridian's augmented portion is limited to the inflow and accretions to the Otter below the Koosharem diversion dam and above the Meridian diversion dam. While Koosharem admits that this documentary evidence is extrinsic, it maintains that such evidence is appropriate, given the ambiguous character of the provision. Koosharem points out that an ambiguous judgment is subject to construction according to the rules that apply to all written instruments,⁶ and that such rules of construction allow parol or extrinsic evidence.⁷

Koosharem also maintains that Meridian conceded the ambiguity of the provision by submitting extrinsic evidence in support of its motion for partial summary judgment to clarify the provision's meaning. The evidence submitted by Meridian, characterized by Koosharem as extrinsic, consisted of certified copies of documents and records from the Cox (Richlands Irrigation Company v. West View Irrigation Co., supra) proceedings.

Neither the State Engineer nor the trial court conceded the ambiguity of this particular provision of the Cox Decree, and neither do we. The language is clear and can therefore be construed upon its face. Koosharem's augmented rights are clearly limited to the segment of the Otter between the

4. Pursuant to Rule 56, Utah R. Civ. P., summary judgment is appropriate only if the pleadings, depositions, answers to interrogatories, admissions and affidavits 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. Bowen v. Riverton City, Utah, ___ P.2d ___ (No. 17732, filed November 4, 1982); Amjacs Interwest, Inc. v. Design Associates, Utah, 635 P.2d 53 (1981).

5. Amjacs Interwest, Inc. v. Design Associates, supra, n.4; West v. West, 15 Utah 2d 87, 387 P.2d 686 (1963).

6. Moon Lake Water Users Association v. Hanson, Utah, 535 P.2d 1262 (1975).

7. Continental Bank & Trust Co. v. Bybee, 6 Utah 2d 98, 306 P.2d 773 (1957).