

GIVENS PURSLEY LLP

LAW OFFICES

601 W. Bannock Street
PO Box 2720, Boise, Idaho 83701
TELEPHONE: 208 388-1200
FACSIMILE: 208 388-1300
WEBSITE: www.givenspursley.com

Gary G. Allen
Christopher J. Beeson
Jessica M. Borup
William C. Cole
Michael C. Creamer
Thomas E. Dvorak
Roy Lewis Eiguren
Timothy P. Fearnside
Jeffrey C. Fereday
Steven J. Hippler
Karl T. Klein
Debora K. Kristensen
Anne C. Kunkel
Franklin G. Lee

David R. Lombardi
D. David Lorello, Jr.
Emily A. MacMaster
Kimberly D. Maloney
John M. Marshall
Kenneth R. McClure
Kelly Greene McConnell
Cynthia A. Melillo
Christopher H. Meyer
L. Edward Miller
Patrick J. Miller
Judson B. Montgomery
Angela K. Nelson
Deborah E. Nelson

W. Hugh O'Riordan, LLM
Michael C. Orr
Kenneth L. Pursley
Bradley V. Sneed
H. Barton Thomas, LLM
Conley E. Ward
Robert B. White
Michael V. Woodhouse

James A. McClure
OF COUNSEL

Raymond D. Givens
RETIRED

RECEIVED

OCT 14 2004

Department of Water Resources

October 13, 2004

Roxanne Brown
Idaho Department of Water Resources
322 E. Front Street
P.O. Box 83720
Boise, ID 83720-0098

Re: George Miller – Water Rights
GP File No. 7184-2

Dear Roxanne:

I write to provide information on behalf of George Miller in support of claimed priority dates on several water rights in the Pahsimeroi River Basin. This information is submitted in response to your letter dated July 16, 2004. If you need additional information as your investigation proceeds, please do not hesitate to contact me.

Sincerely,



John M. Marshall

JMM/hcm

Enclosures

S:\CLIENTS\7184\2\JMM to IDWR enc Miller info DOC

73-4092
73-10085
73-10086
73-10087

222

Instrument No. 25744

4 - 1003.

Bailey 916731.

THE UNITED STATES OF AMERICA.

TO ALL TO WHOM THESE PRESENTS SHALL COME, GREETING:

WHEREAS, a Certificate of the Register of the Land Office at Bailey, Idaho, has been deposited in the General Land Office, whereby it appears that, pursuant to the Act of Congress of May 20, 1862, "To Secure Homesteads to Actual Settlers on the Public Domain," and the acts supplemental thereto, the claim of Edward R. Miller has been established and duly consummated, in conformity to law, for the south half of the southwest quarter and the northwest quarter of the southwest quarter of Section twenty-six and the northwest quarter of the northwest quarter of Section thirty-five in Township fourteen north of Range twenty-three east of the Boise Meridian, Idaho, containing one hundred sixty acres, according to the Official Plat of the Survey of the said Land, returned to the GENERAL LAND OFFICE by the Surveyor-General:

NOW KNOW YE, That there is, therefore, granted by the UNITED STATES unto the said claimant the tract of Land above described:

TO HAVE AND TO HOLD the said tract of Land, with the appurtenances thereof, unto the said claimant and to the heirs and assigns of the said claimant forever; subjected to any vested and accrued water rights for mining, agricultural, manufacturing, or other purposes, and rights to ditches and reservoirs used in connection with such water rights, as may be recognized and acknowledged by the local customs, laws, and decisions of courts; and there is reserved from the lands hereby granted a right of way thereon for ditches or canals constructed by the authority of the United States.

IN TESTIMONY WHEREOF, I, Warren G. Harding, President of the United States of America, have caused these letters to be made Patent, and the seal of the General Land Office to be hereunto affixed. GIVEN under my hand, in the District of Columbia, the twentieth day of February in the year of our Lord one thousand nine hundred and twenty-two and of the Independence of the United States the one hundred and forty-sixth, By the President: Warren G. Harding,

By Viola B. Pugh, Secretary.

M. P. LeRoy

Recorder of the General Land Office.

SEAL

RECORDED: Patent Number 850741

Recorded at the request of E. R. Miller August 7th, 1922 at 25 minutes past 10 o'clock A. M., in Book 26 of Deeds page 222 Records of Lemhi County, Idaho.

E. R. Miller
Deputy.

H. H. Thompson
County Recorder.

Instrument 15964.

IN THE PROBATE COURT IN AND FOR LEMHI COUNTY, STATE OF IDAHO.

IN THE MATTER OF THE ESTATE)
 OF LAURA MILLER, DECEASED.)

Decree of settlement of final Account and of
 Distribution of Estate.

EDWARD R. MILLER, the Administrator of the said estate of the said Laura Miller, deceased, having on the 10th day of July, 1915, duly filed in this court his certain petition for distribution of the said estate, together with his final account, said petition setting forth among other things, that the said estate is in a condition to be closed and that a portion thereof remains to be divided among the certain heirs of the said deceased, said matter duly coming on regularly to be heard on this the 22nd. day of July, 1915, upon due proof that due and regular notice had been given as directed by the order of this Court heretofore made as required by law, and it duly appearing that such due and regular notice had been given, the said Edward R. Miller, administrator aforesaid, appearing by A.C. Cherry, Esquire, his counsel of record, this Court proceeded to the hearing of said petition; and,

It further duly and satisfactorily appearing to the Court that each and all of the heirs of the said estate, to-wit: Edward R. Miller, Mary A. Gallagher, Frances K. Grubb, William A. Miller and George Miller, have adopted the said petition for distribution and have joined in the prayer thereof and have asked that a distribution be made in accordance therewith; and,

It further duly and satisfactorily appearing to the Court that the aforementioned heirs are the only parties interested in the estate and that a full and satisfactory settlement and agreement has been entered into by and among them and each of them, to the following effect, to-wit:

1. That the said property known as the "Home Ranch", to-wit: the SW $\frac{1}{4}$ of the NW $\frac{1}{4}$, the E $\frac{1}{2}$ of the NW $\frac{1}{4}$, the NE $\frac{1}{4}$ of the SW $\frac{1}{4}$, Sec. 35, Tp. 14, N.R. 23 E.B.M. in Lemhi County, Idaho, containing 160 acres of land more or less, together with all and singular the tenements, Hereditaments and appurtenances thereunto belonging or in anywise appertaining, together with all cattle, horses, two mowing machines, one hay rake, two buck rakes, one binder and two sets of harness, shall be set apart, set over and distributed to, the said Edward R. Miller, William A. Miller and George H. Miller as and for their sole and individual property free and clear from any and all claim of any of the other heirs of the said deceased.

2. That the certain ranch known as the "Ross Ranch", described as the SE $\frac{1}{4}$ of the SE $\frac{1}{4}$, Sec. 7, and the SW $\frac{1}{4}$ of the SW $\frac{1}{4}$ and the SE $\frac{1}{4}$ of the SW $\frac{1}{4}$ Sec. 8, all in Tp. 14, N.R. 22, E.B.M. a portion whereof is situate in Lemhi County, Idaho, and a portion in Custer County, Idaho, this being the ranch commonly known as the Ross Homestead Ranch, containing 120 acres more or less, together with all and singular the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining, shall be set apart, set over and distributed to the said Frances K. Grubb, as and for her sole and separate property free and clear from any and all claim of any of the other heirs of the said deceased.

3. That the said Edward R. Miller, William A. Miller and George H. Miller, under said agreement shall pay the store bills, expenses of last sickness of said deceased, and all other claims against the said estate at their own cost and expense, together with all costs of administration.

4. That the said Edward R. Miller, William A. Miller and George H. Miller shall pay the said Mrs. Mary A. Gallagher the sum of \$1000.00 for her share and interest in the said estate and that the said payment of \$1000.00 shall terminate and end any and all interest whatever of the said Mary A. Gallagher therein.

That pursuant to the said agreement among the said heirs the said Frances K. Grubb has taken possession of and has continuously used and occupied the said lands and premises known as the said "Ross Ranch", as her property and the said Edward R. Miller, William A. Miller and George H. Miller have taken possession of, and continuously used and occupied the said ranch known as the "Home Ranch" together with the livestock and farm implements so set apart to them under said agreement and the said Edward R. Miller, William A. Miller and George H. Miller at their own charge and expense have fully paid and liquidated any and all debts and claims against the said estate under said agreement and have paid to the said Mary A. Gallagher the said sum of \$1000.00 for her interest in the said estate and that all the right and interest of each and all of said heirs in the premises have been and are now fully, satisfactorily and clearly settled by and among them under said agreement and they each and all have prayed for a distribution of the said estate in conformity therewith; and,

It further duly appearing to the satisfaction of this Court that the residue of the estate consisting of the aforesaid mentioned property hereinafter particularly described, is now ready for distribution and that the said estate is now in a condition to be closed and that the said estate consists of real estate and personal property, all of which is the separate property of the said Laura Miller, deceased;

That the said Laura Miller died intestate in the County of Lemhi, State of Idaho, on the 27 day of January, 1912, and that her only heirs at law are the said Edward R. Miller, Mary A. Gallagher, Frances K. Grubb, William A. Miller and George Miller, who are her children;

That all claims against said estate are fully paid; that all taxes due from said estate have been paid; that since the rendition of the said final account no sum of money has been received or expended by said administrator for the purposes of said estate; and that the estimated expense of closing said estate will amount to the sum of \$75.00.

That the said Edward R. Miller, Frances K. Grubb, William A. Miller and George Miller are entitled to the residue of said estate as hereinabove mentioned.

Now, on this the said 22nd day of July, 1915, on motion of A.C. Cherry, Esquire, counsel for said Edward R. Miller, administrator aforesaid, it is hereby ordered, adjudged and decreed that the residue of said estate of the said Laura Miller, deceased, hereinabove particularly described and now remaining in the hands of the said administrator, be and same is hereby distributed as follows, to-wit:

(a) That the said property known as the "Home Ranch" to-wit: The SW $\frac{1}{4}$ of the NW $\frac{1}{4}$, the E $\frac{1}{2}$ of the NW $\frac{1}{4}$, the NE $\frac{1}{4}$ of the SW $\frac{1}{4}$, Section 35, Township 14, N.R. 23 E.B.M. in Lemhi County, Idaho, containing 160 acres of land more or less, together with all and singular the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining, together with all cattle, horses, two mowing machines, one hay rake, two buck rakes, one binder and two sets of harness be and the same is set apart, set over, and distributed to, the said Edward R. Miller, William A. Miller and George H. Miller as and for their sole and individual property free and clear from any and all claims of any of the other heirs of the said deceased.

(b) That the certain ranch known as the "Ross Ranch", described as the SE $\frac{1}{4}$ of the SE $\frac{1}{4}$, Sec. 7, and the SW $\frac{1}{4}$ of the SW $\frac{1}{4}$ and the SE $\frac{1}{4}$ of the SW $\frac{1}{4}$ Sec. 8, all in Tp. 14, N.R. 22, E.B.M. a portion whereof is situate in Lemhi County, Idaho, and a portion in Custer County, Idaho, this being the ranch commonly known as the Ross Homestead Ranch, containing 120 acres more or less, together with all and singular the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining, shall be and the same is hereby set apart, set over and distributed to the said Frances K. Grubb as her sole and separate property free and clear from any and all claims of any of the other heirs of the said deceased.

8/26/15

DEED Y

251

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year in this certificate first above written.

SEAL.

W. C. Smith
Notary Public for the State of Idaho,
residing at Salmon, Idaho.

STATE OF IDAHO,)
) ss.
County of Lemhi)

I hereby certify that this instrument was filed for record at the request of W. E. Bosch at 30 minutes past 2 o'clock P. M., this 26th day of May A. D. 1917 in my office, and duly recorded in Book Y of Deeds at page 251 & 151.

By W. C. Smith
Deputy.

J. L. Kirtley, Jr.,
Ex Officio Recorder.

Instrument No. 18301

THIS INDENTURE, Made this 18 day of May in the year of our Lord one thousand nine hundred and seventeen between GEORGE E. MILLER and FLORA MILLER, husband and wife, of Patterson, County of Lemhi State of Idaho the parties of the first part, and EDWARD E. MILLER and WILLIAM A. MILLER brothers of Patterson, County of Lemhi, State of Idaho the parties of the second part.

WITNESSETH, That the said parties of the first part, for and in consideration of the sum of FOUR THOUSAND DOLLARS lawful money of the United States of America, to them in hand paid by the said parties of the second part, the receipt whereof is hereby acknowledged, have granted, bargained and sold, and by these presents do grant, bargain, sell, convey and confirm unto the said parties of the second part, and to their heirs and assigns forever, all the following described real estate, situated in Pahsimarri Valley County of Lemhi, State of Idaho, to wit:

The Southwest quarter of the Northwest quarter, and the East half of the Northwest quarter, and the Northeast quarter of the Southwest quarter, Section thirty five (35), Township fourteen (14), North Range twenty three (23), East of Boise Meridian, containing 160 acres.

Together with all water rights, water, canals, ditches, headgates, and everything thereunto belonging.

TOGETHER, With all and singular the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining, the reversion and reversions, remainder and remainders, rents, issues and profits thereof, and all estate, right, title and interest in and to the said property, as well in law as in equity, of the said parties of the first part.

TO HAVE AND TO HOLD, All and singular the above mentioned and described premises, together with the appurtenances, unto the party of the second part, and to their heirs and assigns forever. And the said parties of the first part, and their heirs, the said premises in the quiet and peaceable possession of the said parties of the second part, their heirs and assigns, against the said parties of the first part, and their heirs, and against all and every person and persons whomsoever, lawfully claiming or to claim the same shall and will WARRANT and by these presents forever DEFEND.

IN WITNESS WHEREOF, The said parties of the first part have hereunto set their hands and seals the day and year first above written.

Signed, sealed and delivered in the presence of) G. E. Miller (SEAL)
) Flora Miller (SEAL)
E. L. Cleveland)
Saloma J. Cleveland)

STATE OF IDAHO,)
County of Lemhi) ss.

On this 18th day of May in the year 1917 before me Saloma J. Cleveland a Notary Public in and for said County, personally appeared George E. Miller and Flora Miller his wife known to me to be the persons whose names are subscribed to the within instrument, and and acknowledged to me that they executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year in this certificate first above written.

SEAL.

My commission expires September 5th, 1918

Saloma J. Cleveland
Notary Public residing at May Idaho

STATE OF IDAHO,)
) ss.
County of Lemhi)

I hereby certify that this instrument was filed for record at request of Saloma J. Cleveland at 41 minutes past 4 o'clock P. M., this 28th day of May A. D. 1917 in my office, and duly recorded in Book Y of Deeds at page 251.

By W. C. Smith
Deputy

J. L. Kirtley, Jr.,
Ex Officio Recorder.

5/28/17

DEED NO.

1

223

Instrument No. 26744

4 - 1903.

Halley 016731.

THE UNITED STATES OF AMERICA,

TO ALL TO WHOM THESE PRESENTS SHALL COME, GREETING:

WHEREAS, a Certificate of the Register of the Land Office at Halley, Idaho, has been deposited in the General Land Office, whereby it appears that, pursuant to the Act of Congress of May 20, 1862, "To Secure Homesteads to Actual Settlers on the Public Domain," and the acts supplemental thereto, the claim of Edward R. Miller has been established and duly consummated, in conformity to law, for the south half of the southwest quarter and the northwest quarter of the southwest quarter of Section twenty-six and the northwest quarter of the northwest quarter of Section thirty-five in Township fourteen north of Range twenty-three east of the Boise Meridian, Idaho, containing one hundred sixty acres, according to the Official Plat of the Survey of the said Land, returned to the GENERAL LAND OFFICE by the Surveyor-General:

NOW KNOW YE, That there is, therefore, granted by the UNITED STATES unto the said claimant the tract of Land above described:

TO HAVE AND TO HOLD the said tract of Land, with the appurtenances thereof, unto the said claimant and to the heirs and assigns of the said claimant forever; subjected to any vested and accrued water rights for mining, agricultural, manufacturing, or other purposes, and rights to ditches and reservoirs used in connection with such water rights, as may be recognized and acknowledged by the local customs, laws, and decisions of courts; and there is reserved from the lands hereby granted a right of way thereon for ditches or canals constructed by the authority of the United States.

IN TESTIMONY WHEREOF, I, Warren G. Harding, President of the United States of America, have caused these letters to be made Patent, and the seal of the General Land Office to be hereunto affixed. GIVEN under my hand, in the District of Columbia, the twentieth day of February in the year of our Lord one thousand nine hundred and twenty-two and of the Independence of the United States the one hundred and forty-sixth. By the President: Warren G. Harding.
By Viola B. Pugh, Secretary.
M. P. LeRoy
Recorder of the General Land Office.

SEAL

RECORDED: Patent Number 850741

Recorded at the request of E. R. Miller August 7th, 1922 at 25 minutes past 10 o'clock A. M., in Book 26 of Deeds page 222 Records of Lemhi County, Idaho.

E. R. Miller
Deputy.

H. H. Linn
County Recorder.

8/7/22

The United States of America,
To all to whom these presents shall come, Greeting;

Homestead Certificate No. 1449 }
Application 1443

Whereas There has been deposited in the General Land Office of the United States a certificate of the Register of the Land Office at Hailey, Idaho, whereby it appears that, pursuant to the Act of Congress approved 20th May, 1862, "To secure Homesteads to Actual Settlers on the Public Domain," and the acts supplemental thereto, the claim of Philip Miller has been established and duly recommended, in conformity to law, for the North East quarter of the North West quarter, the South half of the North West quarter and the North East quarter of the South West quarter of Section thirty five in Township fourteen North of Range twenty three East of Boise Meridian in Idaho, containing one hundred and sixty acres according to the Official Plat of the Survey of the said Land, returned to the General Land Office by the Surveyor General;

Now know ye, That there is, therefore, granted by the United States unto the said Philip Miller the tract of Land above described: To have and to hold the said tract of Land, with the appurtenances thereof, unto the said Philip Miller and to his heirs and assigns forever, subject to any vested and accrued water rights for mining, agricultural, manufacturing, or other purposes, and rights to ditches and reservoirs used in connection with such water rights, as may be recognizing and acknowledged by the local customs, laws, and decisions of courts, and also subject to the right of the proprietor of a vein or lode to extract and remove his ore therefrom, should the same be found to penetrate or intersect the premises hereby granted, as provided by law. And there is reserved from the lands hereby granted, a right of way thereon for ditches or canals constructed by the authority of the United States.

In testimony whereof, Theodore Roosevelt, President of the United States of America, has caused these letters to be made Patent and the seal of the General Land Office to be hereunto affixed.
Given under my hand, at the City of Washington, the eighteenth day of September in the year of our Lord one thousand nine hundred and four, and of the Independence of the United States the one hundred and twenty ninth.

By the President: T. Roosevelt.

Senf.

By J. M. McKean Secretary,

W. H. Bush, Recorder of the General Land Office.

Recorded Idaho, Vol. 53, Page 336

Recorded at the request of J. C. Sinclair December 10th, 1904 at 30 minutes past 12 o'clock P.M. in Book 2 of Records page 226 Records of Laramie County Idaho
W. C. Smith

The United States of America,
To all to whom these presents shall come, Greeting:

Desert Land
Certificate No. 527.

Whereas David B. Drake, of Lemhi County, Idaho has deposited in the General Land Office of the United States a Certificate of the Register of the Land Office at Hailey, Idaho, whereby it appears that full payment has been made by the said David B. Drake according to the provisions of the Act of Congress of the 4th of April, 1820, entitled "An Act making further provision for the sale of the Public Lands, and the Acts supplemental thereto, for the South West quarter of the South East quarter, the East half of the South West quarter and the North West quarter of the South West quarter of Section thirty-four in Township fourteen North of Range twenty-three East of Boise Meridian in Idaho, containing one hundred and sixty acres according to the Official Plat of the Survey of the said Lands, returned to the General Land Office by the Surveyor General, which said Tract, has been purchased by the said David B. Drake;

Now know ye, That the United States of America, in consideration of the premises and in conformity with the several acts of Congress thereon made and provided, have given and granted, and by these presents do give and grant, unto the said David B. Drake and to his heirs, the said tract above described; To have and to hold the same, together with all the right privileges, immunities, and appurtenances, of whatever nature, then and hereafter, unto the said David B. Drake and to his heirs and assigns forever; subject to any vested and accrued water rights for mining, agricultural, manufacturing, or other purposes and rights to ditch and reservoirs used in connection with such water rights as may be recognized and acknowledged by the local customs, laws, and decisions of courts, and subject to the right of the proprietor of a mine or lode to extract and remove therefrom, should the same be found to penetrate or intersect the premises hereby granted, as provided by law; and there is reserved from the lands hereby granted, a right of way thereon for ditches or canals constructed by the authority of the United States.

In testimony whereof, J. Theodore Roosevelt, President of the United States of America, has caused these letters to be made Patent, and the seal of the General Land Office to be hereunto affixed.

Given under my hand, at the City of Washington, the twenty-fifth day of June, in the year of our Lord one thousand nine hundred and five, and of Independence of the United States the one hundred and twenty-ninth.

By the President J. Roosevelt
By J. M. McKean, Secretary,

By Clerk

Recorded at the request of W. B. Drake October 16th 1905 at 10 minutes past 9 o'clock A.M.
Book A of Records page 376 County of Lemhi County, Idaho. W. B. Drake

County Recorder

8/30/04

To whom it may concern,

I am writing to affirm that I worked on the Phetys Miller ranch at the mouth of Patterson Creek from the late 1950s until the early 1970s except for time at school. During the growing season I irrigated or helped irrigate the Miller ranch with water from rights on Patterson Creek and with high water. As of July 14, 1960 we were utilizing water under the rights in question.

Hopfully this will be useful in establishing the usage. If I can provide additional information please feel free to contact me.

Ted Givens

2390 N. Townsend

Boise, ID 83702

208 384-7851

RECEIVED

SEP 24 2004

Givens Pursley, LLP

Ted Crumley
2390 N. Towerview Lane
Boise, ID 83702

March 6, 2003

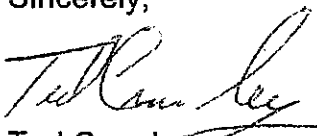
George Miller
50 Miller Road
May, ID 83253

Dear George:

I am writing to provide my recollection of water usage from Patterson Creek on the P. Miller ranch in Lemhi County. I worked on weekends and summers from approximately 1957 through 1971 on the ranch for Philip Miller. During that period, I was directly involved in irrigation activities on the ranch. During the spring, typically May, June, and July, there was significant spring runoff or high water in Patterson Creek. The timing and amount depended on the weather and snow pack. During these periods we were able to utilize approximately 300 inches of high water for irrigation purposes on the ranch. This allowed us to increase productivity of crops and pasture lands.

If I can supply additional information, please feel free to contact me at 208-362-9235.

Sincerely,

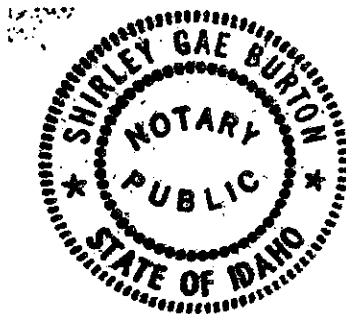

Ted Crumley

This notary certificate is prepared on a separate page and is attached to a letter addressed to George Miller containing 1 page, and is attached to that document by means of staple.

STATE OF IDAHO)
)
COUNTY OF ADA) ss.

On this 6th day of March, 2003, before me the undersigned, a notary public in and for said state, personally appeared Ted Crumley, that executed the attached instrument and acknowledged to me that he executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.



Shirley Gae Burton
Notary Public for Idaho
Residing at: Meridian, Idaho
My Commission expires: June 6, 2003