

December 19, 2005

Don L Miller
1835 Teton View Dr
Rexburg ID 83440

FINAL NOTICE
PLEASE READ

RE: EVIDENCE OF PRIORITY FOR SRBA WATER RIGHT CLAIM 22-11537

Dear Claimant (s):

The Idaho Department of Water Resources is beginning water rights review in Basin 22, the Teton Valley area. The Notice(s) of Claim identified with the number shown above has been filed in the Snake River Basin Adjudication (SRBA). The Notice of Claim indicates water usage is based on "Beneficial Use". Water rights of this type are established by the historical use of water, dating back to when water was first used for the purpose claimed, at or on the place of use identified on the Claim. The date the water was first put to beneficial use, known as the priority date, has not been confirmed by License, Decree, or Permit. For this reason, proof must be provided supporting the priority date. **As the claimant, you are responsible for submitting the necessary proof to support the priority date.**

Your claim, as referenced above, claims a Priority Date of JULY 21, 1969, from Paradise Springs.

It is important that each element of the Notice of Claim be verified. For instance, regarding claims for irrigation, the evidence should tend to show that diversion works were in place, that they were capable of diverting the claimed diversion rate, and that the diverted water was beneficially used on the entire claimed place of use on or before the claimed priority date.

For your reference, I have provided a printout of your Notice of Claim and the pamphlet entitled "**Evidence of Priority**". The pamphlet describes the types of evidence which are acceptable and suggests which documents will fulfill this requirement. While I encourage you to read the entire pamphlet, I direct your attention to the two sections entitled "**What Kind of Evidence is Required**" and "**Some Examples of Documents Which May Be Evidence of the Priority Date**". PLEASE READ THE ENCLOSED PAMPHLET.

See Evidence Letter 114
22-11639.

copy for transfer in place of me.
we have noted our land is to be used & how it is
being altered.
Carlson said you will have to agree - if not we will
find that there have been forfeitures.

RIGBY & THATCHER
ATTORNEYS AT LAW
25 NORTH SECOND EAST
P. O. BOX 362
REXBURG, IDAHO 83440

TELEPHONE
356-6701
356-3298
AREA CODE 208

RAY W. RIGBY
GORDON S. THATCHER

August 23, 1967

1/11/45E

Mr. M. N. Kunz
Victor, Idaho

Mr. Grant Kunz
Victor, Idaho

Mr. Monroe Dustin
Victor, Idaho

Mr. Denton Dustin
Victor, Idaho

Gentlemen:

Jacob Zohner, Fred Miller and Chester Miller have asked the assistance of this office in straightening out some water titles on Paradise Springs there in the Bates area of Teton County. In the famous water decree in the case of Rexburg Irrigation Company v. Teton Irrigation Canal Company, J. J. Miller was decreed 100 inches of water from Paradise Springs with a priority of June 1, 1904, to be used upon the SW $\frac{1}{4}$ SE $\frac{1}{4}$ and S $\frac{1}{2}$ SW $\frac{1}{4}$ of Sec. 30, and the NE $\frac{1}{4}$ NW $\frac{1}{4}$ of Sec. 31, all in Twp. 4 N., R. 45, E.B.M. However, neither at that time nor at any time since has J. J. Miller ever owned that land. Furthermore, he filed a notice of water right in the Fremont County Records dated May 23, 1901, wherein he claimed that he was going to use waters of Henderson Springs or Paradise Springs to the extent of 2 c.f.s.; that the water would be diverted commencing as a spring on the NE $\frac{1}{4}$ NW $\frac{1}{4}$ of Sec. 30, Twp. 4 N., R. 45, E.B.M., thence East about 1/2 mile and thence into the Teton River. He said the general course of the proposed canal is "north"; that the length of the proposed canal is about one mile, and that he intended to use the water upon the E $\frac{1}{4}$ NW $\frac{1}{4}$ of Sec. 30 and the E $\frac{1}{4}$ SW $\frac{1}{4}$ of Sec. 19, both in Twp. 4 N., R. 45, E.B.M.

Mr. M. N. Kunz
Mr. Grant Kunz
Mr. Monroe Dustin
Mr. Denton Dustin

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Again, you will note that the course of the canal would have to have been south to reach the land to which this water was decreed in Sec. 30 and Sec. 31. An examination of the premises reveals that this would have been virtually impossible because of the high hill just to the north of the property described in the decree.

These people say that water from Paradise Springs has never been used upon the land mentioned in the decree, and from our exhaustive search of the records and discussing it with several people, they all are in accord. It appears that the water was used principally to the north of the springs and is now being used on the E $\frac{1}{2}$ NW $\frac{1}{4}$ of Sec. 30, E $\frac{1}{2}$ SW $\frac{1}{4}$ and the entire SE $\frac{1}{4}$ of Sec. 19, all in Twp. 4 N., R. 45, E.8.M. These people then claim that they own all of the Paradise Springs water decreed to J. J. Miller, as well as other water rights in Paradise Springs by virtue of other decrees. They base this right on the fact that they own the land upon which the water is used; that the decree was in error in describing the land owned by J. J. Miller, and that in any event, they have used the water on these lands to the exclusion of those lands mentioned in the decree uninterruptedly for many years, and certainly more than the last five years, which would mean they would have acquired the right by prescriptive use, if by no other title.

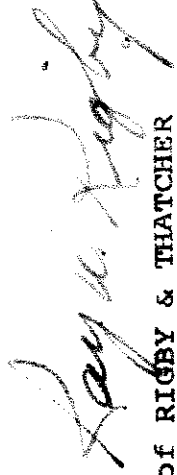
They are now thinking of putting in a pump, mainline and sprinklers to more fully utilize this water. Before they do this, however, they would like to make sure their water rights are good. It would seem very wise for all parties to sit down together and work this out, if there is any dispute. We have a wealth of information here at the office, and would be happy to meet with you people or anyone else in your behalf, and we could even get all the parties together and show them the information we have and let them make their own independent searches to the end that titles to the water may be properly documented to avoid a quiet title action or any other type of action at law.

Mr. M. N. Kunz
Mr. Grant Kunz
Mr. Monroe Dustin
Mr. Denton Dustin

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We assure you of our complete cooperation in behalf of all parties concerned. Would you please let us know what your thinking is and if we might arrange a meeting of all parties. It is quite important that this be done as soon as possible.

Yours very truly,


of RIGBY & THATCHER

ss

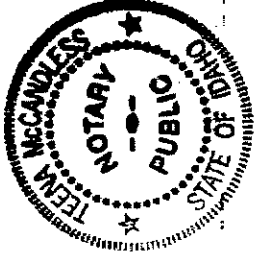
cc Mr. Jacob Zohner
Mr. Chet Miller
Mr. Fred Miller

The undersigned do hereby affirm that the John J Miller water right, #22-405 decreed for 2 cfs in the Rexburg Decree, was split between the undersigned as claimed in the SRBA, as follows:

Rex Miller owns 1 cfs (split to .92cfs for Rex and .08 cfs to R. Bourne)
 Don Miller owns .30 cfs
 Mike Reid owns .70 cfs

I hereby swear or affirm this is true.

Rex Miller
 Rex Miller



(State Of Idaho)
 (Teton County)

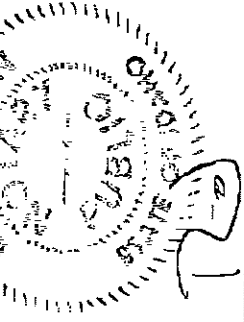
(Subscribed and sworn or affirmed before me this 29th day of June, 2006.)

Tena McCandless
 Residing at: JEROME
 Commission expires: 1/17/11

Don Miller
 Don Miller

(State Of Idaho)
 (Teton County)

(Subscribed and sworn or affirmed before me this 15th day of May, 2006.)

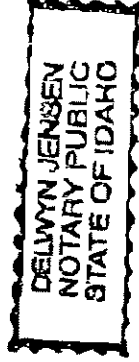


Delwyn Jensen
 Residing at: Rexburg
 Commission expires: 9-20-2006

Mike Reid
 Mike Reid

(State Of Idaho)
 (Teton County)

(Subscribed and sworn or affirmed before me this 12 day of May, 2006.)



Delwyn Jensen
 Residing at: Rexburg
 Commission expires: 1/22/09

Received Time Jun. 29. 1:28PM