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DEPARTMENT OF
WATER RESOURCES

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 No.:
) 74-321C
)
_____)

TELEPHONIC DEPOSITION OF MYRA E. MILLER

Wednesday, December 12, 2007; 9:30 o'clock a.m.
1000 Riverwalk Drive, Suite 200, Idaho Falls, Idaho



T&T REPORTING

CERTIFIED SHORTHAND REPORTERS

COPY

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LAWYER'S NOTES

[illegible]

SHEET 2 PAGE 5

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1 EXAMINATION

2 BY MR. FOSTER:

3 Q. Myra, this is Kent Foster, and have you
4 ever had your deposition taken before?

5 A. Not over the phone.

6 Q. Well, most of us haven't -- I haven't done
7 this very often, and I don't suppose anybody else has
8 done this over the phone, but it's the only thing
9 we'll have to be careful of is that we don't all try
10 to talk at the same time, or the reporter won't be
11 able to get that, she couldn't anyway, even if you
12 were here.13 And, of course, we won't be able to
14 see nods of the head or anything like that. So I
15 guess if we all speak as clearly as we can, we'll
16 probably do our job the best we possibly can.17 THE COURT REPORTER: Could we have
18 everybody identify themselves?19 MR. FOSTER: Yes. Let's have everybody
20 identify themselves.21 I'm Kent Foster with the law firm
22 Holden, Kidwell, Hahn & Crapo. We're the attorneys
23 for Mr. Glenn Seaberg and his wife, Kathy Seaberg, and
24 the case is -- I'm sorry, I've got to grab that.

25 This is a deposition being taken in

1 MR. FOSTER: Okay. Go ahead,

2 Mrs. Miller.

3 THE WITNESS: I'm Myra Miller, I live at
4 Salmon, Idaho.

5 What else do you want to know?

6 MR. FOSTER: Your address.

7 THE WITNESS: 168 Highway 28, Salmon,
8 Idaho, 83467.9 MR. FOSTER: Thank you. And why don't you
10 identify yourself, too, Mr. Seaberg.11 MR. SEABERG: This is Glenn Seaberg. I
12 live at 7 Towmay (phonetic) Lane, Salmon, Idaho, and
13 I'm the owner of the property in question.14 MR. FOSTER: Okay. And the claimant in
15 this -- under Water Right Number 74-14981, correct?

16 MR. SEABERG: Right.

17 MR. FOSTER: Okay. Anything else we need
18 to do?

19 (No audible response.)

20 Q. (BY MR. FOSTER:) Okay. Mrs. Miller, I
21 want to start by talking about some of the things we
22 talked about earlier. You have in front of you some
23 documents that Mr. Seaberg brought over to you,
24 haven't you?

25 A. Yes, sir. The Warranty Deed and the

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PAGE 8

1 the case -- Subcase Number 74-321 upper case C, and
2 probably Subcase Number 74-14981. It's the Snake
3 River Basin adjudication proceeding Case Number 39576,
4 which is pending in the Fifth Judicial District, the
5 State of Idaho, in and for the County of Twin Falls.

6 Did I miss anything, Andrea?

7 MS. COURTNEY: No. I was just checking
8 for 74-321 C, that's been partially decreed already.9 MR. FOSTER: Yes, you're right, and I only
10 referred to it because we will refer to it several
11 times, I think, throughout the deposition, so....12 MS. COURTNEY: Sure. And you noticed
13 that, but I -- yeah.14 MR. FOSTER: Yes. And that's correct. It
15 has been partially decreed, but 14981 is a claim
16 that -- our allegation would be that it should have
17 been part of 321, upper case, C if things had been
18 done properly way back when.

19 MS. COURTNEY: Sure.

20 MR. FOSTER: Now, everybody else. Go
21 ahead an, Andrea.22 MS. COURTNEY: I'm Andrea Courtney,
23 C-o-u-r-t-n-e-y, and I'm attorney with the Idaho
24 Attorney General's office representing the Department
25 of Water Resources.

1 Notice of Claim to a Water Right.

2 Q. Okay. You should have two warranty deeds.

3 A. Yes.

4 Q. Okay. And then you also still have that
5 big map, don't you?

6 A. Yes.

7 Q. Okay. We're going to -- We've already had
8 the reporter mark the first warranty deed that has the
9 number 647 up in the upper right-hand corner. It says
10 Instrument Number 85276.

11 Can you find that one?

12 A. Yes.

13 Q. Okay. We've already had that marked as
14 Deposition Exhibit Number 1.

15 A. Okay.

16 Q. Have you taken -- Have you looked at that
17 deed, Mrs. Miller?18 A. Part of it, together with all the water
19 and water rights.

20 Q. Okay. Yeah, it has that.

21 First of all, it's a deed from whom
22 to whom? Do you remember?

23 A. From Goodman to Miller.

24 Q. Okay. And is this the deed under which
25 you acquired title to the property that you own?

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1 A. Yes.
 2 Q. What's the date of this deed?
 3 A. I think it was '56.
 4 Q. Okay. Yes. At the top it says that it
 5 was made this 2nd day of August in the year of our
 6 Lord 1956.
 7 Do you see that right at the top?
 8 A. Yeah.
 9 Q. Okay. And I stated an instrument number,
 10 85276. Is that the same document you're looking at?
 11 A. Yes.
 12 Q. Okay. How much land did you acquire at
 13 that time? Do you recall?
 14 A. Eighty acres. Two forty acre quarters.
 15 Q. Okay. And --
 16 A. One forty was near the highway, and the
 17 other forty was near the river.
 18 Q. Okay. And so the forty that's near the
 19 highway, was that a square forty, or was it kind of a
 20 triangular-shaped forty?
 21 A. It was irrigated. I was on the flat.
 22 Q. Okay.
 23 A. Yeah. Okay. On the map.
 24 Q. Well, I'm haven't actually looked at the
 25 map yet, but it's okay if you do.

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1 Can you -- Actually, I asked you if
 2 that was a triangular-shaped piece of property, but
 3 it's -- today I want to refer to the land that's in
 4 section fifteen just so that we know that we're
 5 communicating, about the same piece of property.
 6 A. Okay. Yeah.
 7 Q. But you think there was about forty acres
 8 in section fifteen, then?
 9 A. Yes.
 10 Q. Okay. That's the land we want to focus
 11 on.
 12 Now, you started to refer to a
 13 paragraph in the warranty deed that talks about water
 14 and water rights. It's located approximately in the
 15 center of the deed.
 16 Would you read that paragraph,
 17 please.
 18 A. Huh? It says: Together with all water,
 19 water rights, ditch, and ditch rights, appertaining
 20 thereto or used in connection therewith including
 21 three cubic feet per second -- okay? -- of water from
 22 the Lemhi River through the Andrews ditch decreed
 23 June 20th, 1931, and recorded in Book D of Judgments
 24 at pages fifty-nine to sixty-three inclusive of the
 25 records of Lemhi County, Idaho.

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1 Q. Okay. And that's the entire paragraph,
 2 correct?
 3 A. Yes, sir.
 4 Q. Mrs. Miller, what kind of property was
 5 this when you acquired it?
 6 A. Well, it was farmland.
 7 Q. And did you and Mr. Miller farm it?
 8 A. We certainly did. There was a lot of
 9 willows on the place that we destroyed and made
 10 further land use.
 11 Q. Had it been farmed before you acquired the
 12 land?
 13 A. Part of it.
 14 Q. Okay.
 15 A. Yes.
 16 Q. And you continued to farm it until about
 17 when?
 18 A. Well, until about -- Well, we're still
 19 working on part of it.
 20 Q. Okay. Okay.
 21 A. Part of that forty.
 22 Q. At some point in time, you began to sell
 23 pieces of it, didn't you?
 24 A. Yes, sir. That was when our children
 25 went -- our two oldest boys went away to college.

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1 Q. All right.
 2 A. We no longer do it by ourselves, and we
 3 tried to hire help, and they'd be here one day and not
 4 come back the next. So that was our solution.
 5 Q. About when would that have been?
 6 A. Well, I believe our oldest boy graduated
 7 in the '60s, and the next one was a couple years
 8 later.
 9 Q. Okay. Would this be in the late '60s?
 10 A. About halfway.
 11 Q. Okay. Then you began to sell pieces of
 12 the property to others by subdividing it, I assume?
 13 A. Yes.
 14 Q. Okay. Now, Mrs. Miller, how was the
 15 property irrigated? Did you ever help with that
 16 irrigation, or did your husband do the irrigating?
 17 A. I did a lot of it.
 18 Q. Okay. Where did the water come from?
 19 A. From the Flew Sandrews (phonetic) ditch.
 20 Q. All right.
 21 A. And we had a head gate up near the
 22 Scarborough property is where the head gate came
 23 out.
 24 Q. How far away from the land was that?
 25 A. It wasn't -- It was near the highway and

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1 the upper end of his forty acres.
 2 Q. Okay. And you irrigated most of the farm
 3 until you began to sell off pieces, I assume, and then
 4 you stopped irrigating pieces that had been sold?
 5 A. To the other water people.
 6 Q. Okay.
 7 A. Water rights that went with the
 8 property.
 9 Q. Okay. Mrs. Miller, you were married to
 10 Clarence C. Miller?
 11 A. Yes, sir.
 12 Q. And I understand he's deceased; is that
 13 correct?
 14 A. Right. He died in -- September 12th,
 15 1994.
 16 Q. Okay.
 17 A. He was we were married fifty-three
 18 years.
 19 Q. Well, good for you. That's an
 20 accomplishment.
 21 Mrs. Miller, a time came when you
 22 were notified that there was a need to file a claim to
 23 a water right in connection with an adjudication
 24 proceeding regarding the Lemhi River and its
 25 tributaries.

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1 Do you remember that?
 2 A. Yes.
 3 Q. And did you file such a claim?
 4 A. Yes.
 5 Q. Do you have in front of you a document
 6 called Notice of Claim to a Water Right?
 7 A. Yes.
 8 Q. We've marked that as Deposition Exhibit
 9 Number 3.
 10 Have you reviewed that document
 11 enough to be sort of familiar with it?
 12 A. Uh-huh.
 13 Q. Do you see your signature on it --
 14 A. Uh-huh.
 15 Q. -- near the bottom?
 16 A. Yes.
 17 Q. And it appears that your signature was
 18 acknowledged by Lyle Glen Saxton. Can you see his
 19 name?
 20 A. Yes.
 21 Q. Okay. Now, up at the top of that, kind of
 22 in the right-hand portion, there's an IDENT period
 23 number, I guess that means identification number, and
 24 do you see the number that has been typed
 25 in 74-0447?

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1 A. Yes, sir.
 2 Q. And that has been lined through, hasn't
 3 it?
 4 A. Yes.
 5 Q. And what's been written above it?
 6 A. Number 4-0321 C.
 7 Q. Was that done when you filed this claim?
 8 A. No.
 9 Q. When did you realize that that number had
 10 been changed?
 11 A. When that second book came out, the beige
 12 one.
 13 Q. Okay. Let's talk about the books for just
 14 a minute. We haven't introduced those as exhibits,
 15 but you have copies of some books that you referred
 16 to, don't you?
 17 A. Yes. Well, I have the books.
 18 Q. Okay. And the covers on them are
 19 different colors.
 20 A. Yes, sir.
 21 Q. What's the first one?
 22 A. Green.
 23 Q. Okay. And sometimes it's just referred to
 24 as the green book?
 25 A. Yes.

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1 Q. And what do you understand those books to
 2 be?
 3 A. Each one of them says on it Proposed Water
 4 Rights.
 5 Q. Okay. And where did you -- Where did you
 6 get those books?
 7 A. When the notice of the meetings for this
 8 adjudication --
 9 Q. Okay.
 10 A. -- came out. At those meetings is where
 11 we obtained the books.
 12 Q. Okay. You went to a meeting, and those
 13 books were distributed, were handed out?
 14 A. Yes, sir.
 15 Q. Okay. Do you know who handed them out?
 16 A. Or mailed.
 17 Q. Or they could have been mailed?
 18 A. Yes, they could have been.
 19 Q. But they came to you from whom?
 20 A. From the Water Resources.
 21 Q. Okay. From the Idaho Department of Water
 22 Resources?
 23 A. Yes, sir.
 24 Q. Now, Mrs. Miller, let's stop looking at
 25 that for just a moment, and let's go to the big map.

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1 We've marked that as Deposition Exhibit Number 2.
 2 Do you have that in front of you?
 3 A. Yes.
 4 Q. Now, looking at that map, you see what
 5 appears to be a map with squares on it, and other
 6 markings, like you can see, for instance, State
 7 Highway 28, I assume?
 8 A. Yes.
 9 Q. And then parcels that have been marked,
 10 and they have lots of numbers in them, don't they?
 11 A. Yes.
 12 Q. And at the bottom of this map, there is a
 13 list.
 14 A. Right.
 15 Q. And what do you understand that list to
 16 be?
 17 A. The people who have the property that is
 18 numbered.
 19 Q. Okay. For example, if you go -- there are
 20 thirty -- I think I count something like thirty-seven
 21 numbers.
 22 A. Right.
 23 Q. And out to the side of each one there's a
 24 name.
 25 A. Yes, sir.

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1 Q. And then if you go over straight to the
 2 right about six or seven inches, can you see the
 3 number fifteen again?
 4 A. Yes.
 5 Q. With the number fourteen across the line
 6 from it?
 7 A. Yes, sir.
 8 Q. And then if you go straight down the page
 9 about six or seven inches, can you see the number
 10 fifteen again?
 11 A. Yes, sir.
 12 Q. And there you can see across one line to
 13 the right the number fourteen and below the fifteen
 14 the number twenty-two, and below the number fourteen
 15 number twenty-three?
 16 A. Yes.
 17 Q. And then if you proceed straight to the
 18 left about another six or seven inches again, can you
 19 see the number fifteen one more time?
 20 A. Yes.
 21 Q. And right below it there's a number
 22 twenty-two?
 23 A. Yes.
 24 Q. Okay. I'm going to represent that that's
 25 a depiction of section fifteen of the township

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1 Q. And if you go down to number five it says:
 2 Miller, comma, Clarence.
 3 Do you see that?
 4 A. Yes.
 5 Q. And then on number seven it says: Miller,
 6 comma, Clarence.
 7 A. Yeah.
 8 Q. And then below that it has a C and a
 9 slush, Augustus -- you'll have to tell me how to say
 10 that last name again.
 11 A. Vitolins.
 12 Q. Vitolins, V-i-t-o-l-i-n-s?
 13 A. Yes.
 14 Q. Now, to relate those numbers to the map,
 15 Mrs. Miller, would you go to the upper left-hand
 16 portion of this map?
 17 A. Uh-huh.
 18 Q. Can you see right in the corner the number
 19 fifteen?
 20 A. Oh, clear up at the corner?
 21 Q. Yes. Clear up in the left, upper
 22 left-hand corner?
 23 A. Uh-huh.
 24 Q. Do you see the number fifteen?
 25 A. Yes, sir.

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1 twenty-one north, range twenty-two east.
 2 Do you agree with that?
 3 A. Yes.
 4 Q. Okay. Now, your property in section
 5 fifteen at that time would have been located where?
 6 A. In the upper left hand.
 7 Q. Okay. And did you own anything on the
 8 south side of the highway?
 9 A. No.
 10 Q. Just on the north side of the highway,
 11 correct?
 12 A. Correct.
 13 Q. All right. Now, if you go to the north
 14 side of that highway, still in the upper left-hand
 15 corner, do you see the number five with the circle
 16 around it?
 17 A. Yes.
 18 Q. And it's a triangular-shaped piece of
 19 property, if we assume it's a piece of property.
 20 A. Uh-huh.
 21 Q. Do you also see the number 5.3?
 22 A. Yes.
 23 Q. Okay. Kind of to the left and a little
 24 bit above that number five in a circle?
 25 A. Uh-huh.

SHEET 6 PAGE 21

1 Q. And then you see a big number printed on
 2 there, 74-0321 upper case C?
 3 A. Yes, sir.
 4 Q. Okay. Now, is that part of the land that
 5 you understood that you and Mr. Miller owned at that
 6 time?
 7 A. Yes.
 8 Q. And would the 5.3 be the acreage within
 9 that quarter, quarter section?
 10 A. Yes.
 11 Q. Now, in that triangular-shaped piece of
 12 land there's a little bit of property, also a
 13 triangular shape, the upper right-hand portion of that
 14 triangle that looks like it's a crossover into the
 15 next quarter, quarter section.
 16 Can you see what I'm talking about?
 17 A. Yes.
 18 Q. And do you see the number that's outside
 19 of the map, but it says 74-0448?
 20 A. I do.
 21 Q. And do you see the arrow that's been
 22 drawn?
 23 A. Yes.
 24 Q. Okay. How much land would you say was in
 25 that -- in that portion of that quarter, quarter

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1 Q. Now, if you -- That last piece of property
 2 right below it, there's one that has a number seven in
 3 a circle.
 4 Can you see that piece?
 5 A. Yes.
 6 Q. And would that be the piece of property
 7 that you owned and were selling to the Vitolins,
 8 Vitolins?
 9 A. Vitolins.
 10 Q. Vitolins?
 11 A. Yeah.
 12 Q. Okay. And that has a number four in it;
 13 is that correct?
 14 A. Right.
 15 Q. And so now let's come back to the claim
 16 that you filed, Exhibit Number 3, Deposition Exhibit
 17 Number 3, in about the center of that page, you see a
 18 box with some squares or some rectangular little boxes
 19 in that represent the quarter, quarter sections and
 20 the number of acres in each.
 21 Do you understand where I'm saying?
 22 A. Yes.
 23 Q. And so, what's the number for the land in
 24 the northeast of the northwest quarter?
 25 A. The northeast is 13.3.

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1 section?
 2 A. Maybe an acre.
 3 Q. Okay. Approximately an acre. So that
 4 whole triangular piece of property there, even though
 5 there's a quarter section line that runs -- quarter,
 6 quarter section line that runs through it, was a total
 7 of -- was something over six acres then. 6.3 or
 8 six-and-a-half acres or thereabouts?
 9 A. Right.
 10 Q. Okay. Now, if you continue to the right,
 11 do you see another piece of property with the number
 12 five circled?
 13 A. Yes.
 14 Q. And what else is in that block?
 15 A. 8.0.
 16 Q. And what do you understand that to be?
 17 A. Eight acres.
 18 Q. Okay. And is that the eight acres that
 19 you subsequently sold to the Seabergs?
 20 A. Yes, sir.
 21 Q. But at the time this map was made and your
 22 claim was filed, you and Mr. Miller owned both of
 23 those pieces of property that had the numbers five in,
 24 didn't you?
 25 A. Yes.

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1 Q. Okay. And in the northwest of the
 2 northwest?
 3 A. 5.3.
 4 Q. Okay. So that the total over to the side
 5 is 18.6 acres, right?
 6 A. Right.
 7 Q. Now, do you understand that to be the same
 8 acreage that we've just pointed out on the nap in
 9 those three parcels?
 10 A. Yes.
 11 Q. Okay. So when you filed this claim, why
 12 was your name on it instead of your husband's,
 13 Mrs. Miller?
 14 A. Because he had passed away.
 15 Q. It says this was filed back in 1971.
 16 Wouldn't that have been before he was passed away?
 17 A. Excuse me, I was thinking of the other,
 18 the date.
 19 MR. SEABERG: The bottom, yeah.
 20 Q. (BY MR. FOSTER:) This -- the Notice of
 21 Claim that I'm referring to, Exhibit Number 3 --
 22 A. Yes.
 23 Q. -- do you see at the bottom the date
 24 August 10, 1971?
 25 A. Yes.

SHEET 7 PAGE 25

- 1 Q. He was alive at that time, wasn't he?
- 2 A. I'm sorry. Uh-huh.
- 3 Q. And do you have any recollection why you
- 4 would have filed that claim or signed that claim
- 5 instead of him?
- 6 A. Probably because he might have been
- 7 away.
- 8 Q. Okay. You don't have any specific
- 9 recollection about why he was not available at that
- 10 time?
- 11 A. He worked away from home.
- 12 Q. Okay. In any event, August 10, 1971,
- 13 appears to be the date that you signed that and you
- 14 accept that, I guess, as the correct date?
- 15 A. Yes.
- 16 Q. And now, Mrs. Miller, after that time --
- 17 at the time this claim was filed -- First of all, at
- 18 the time this claim was filed, was it your intention
- 19 to claim a water right for all of the land that you
- 20 owned, that you and Mr. Miller still owned?
- 21 A. Yes.
- 22 Q. And that's what the purpose of that claim
- 23 was?
- 24 A. Yes.
- 25 Q. Do you know was the number 74-0447, was

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- 1 that changed at that time, or do you know when that
- 2 was changed?
- 3 A. What was changed between the green book
- 4 and the beige book.
- 5 Q. Okay. So when the green book was
- 6 published, what did you understand that to have to do
- 7 with the water right you had claimed?
- 8 A. Repeat that question.
- 9 Q. What did you think the green book told you
- 10 about the water right that you had claimed?
- 11 A. That it was according to what was
- 12 discussed at the meeting --
- 13 Q. Okay.
- 14 A. -- and the adjudication.
- 15 Q. And did it include -- To your knowledge
- 16 did it include all the water rights for all
- 17 18.6 acres?
- 18 A. Yes.
- 19 Q. Can you find that page in there and look
- 20 and make sure that that's correct?
- 21 A. I'm not sure what page you're talking
- 22 about. Is it in the book or what?
- 23 Q. Yes, in the book. Do you know which pages
- 24 in the book refer to these water rights?
- 25 A. Yes. Ours was on page three thirteen in

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- 1 the green book and three oh five in the beige book.
- 2 Q. Okay. Let's go to three -- I'm sorry, was
- 3 it three eighteen in the green book?
- 4 A. Three thirteen.
- 5 Q. Three thirteen? Let's go to three
- 6 thirteen in the green book?
- 7 A. Yes.
- 8 Q. Does that show how many acres the water
- 9 right was recommended for?
- 10 A. I believe so.
- 11 Q. And how many does it say?
- 12 A. I don't have the book in front of me.
- 13 Q. Oh, I'm sorry, I thought you had that.
- 14 MR. SEABERG: She's not got her hands on
- 15 it right now, Ken.
- 16 MR. FOSTER: It's not close enough that we
- 17 can find it really quick.
- 18 MR. SEABERG: Do you have one in front of
- 19 you?
- 20 MR. FOSTER: No. I don't have one in
- 21 front of me.
- 22 MR. SEABERG: I'll go look for it here.
- 23 Q. (BY MR. FOSTER:) Okay. Mrs. Miller, what
- 24 I'm trying to remember is at some point in time I
- 25 thought you told me you became aware that there had

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- 1 not been a water right recommended for all of the
- 2 land?
- 3 A. At a meeting with Mr. Saxton --
- 4 Q. Oh.
- 5 A. -- he made a statement saying that we did
- 6 not need that much water.
- 7 Q. Were you present at that meeting?
- 8 A. I was.
- 9 Q. Okay. Both you and Mr. Miller were
- 10 present at that meeting?
- 11 A. That's right.
- 12 Q. And what was your response to that?
- 13 A. Our response was that Clarence immediately
- 14 tried to correct that statement or decision or
- 15 whatever.
- 16 Q. And so you disagreed, then, with
- 17 Mr. Saxton?
- 18 A. Yes.
- 19 Q. And while you were present, was it made
- 20 clear to Mr. Saxton that you disagreed?
- 21 A. Yes.
- 22 Q. And --
- 23 A. Right at the time.
- 24 Q. Okay.
- 25 A. He stated that.

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1 Q. Okay. And did he give you any information
2 about what you could do about it?
3 A. He had no response.
4 Q. Oh, okay. Well, did you or Mr. Miller
5 ever take any action to try to correct that?
6 A. I have several documents that he applied
7 for the water rights besides what was in the green
8 book, and -- I mean, according to what was in the
9 green book and what came out in the beige book.
10 Q. Okay. And in the beige book, do you
11 remember the difference between the green book and the
12 beige book about what it said about the water right?
13 A. Not exactly.
14 Q. Have we found those books yet?
15 A. The water was 6.3, and that --
16 Q. Now, what are you reading from now,
17 Mrs. Miller?
18 A. Pardon?
19 Q. What are you reading from now?
20 MR. SEABERG: Green book.
21 Q. (BY MR. FOSTER:) From the green book?
22 A. Maximum rate of diversion down to Clarence
23 Miller is oh three twenty-five.
24 Q. I'm sorry, Mrs. Miller, we're not hearing
25 you. Please state that again, if you would?

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1 MR. SEABERG: We have here, Kent, the
2 green book and the beige book are probably the same.
3 MR. FOSTER: Okay.
4 MR. SEABERG: So I think they're both
5 6.3.
6 Q. (BY MR. FOSTER:) Okay. And the 6.3 --
7 now, let me ask Mrs. Miller, Mrs. Miller what does the
8 6.3 number represent, to your knowledge?
9 A. Stock water. Was for year round.
10 Q. The 6.3 was stock water? That's not an
11 acreage figure?
12 A. Well, excuse me, it says 6.3 is what our
13 acreage is now, and it was water for that, and since
14 the other properties were sold.
15 Q. Okay. Was there any water recommended for
16 the eight acres that the Seabergs now own?
17 A. Yes. Not -- not individually, but we
18 built on that at that time, right?
19 Q. Okay. Now, you tell me. If you still
20 owned it, did the -- did those books, did they
21 recommend enough water for all of the land that you
22 had claimed?
23 A. No. That was why -- that was why Clarence
24 went to the courthouse and to the Water Resources
25 Department. I dropped him off at their office several

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1 times.
2 Q. And what did you understand his purpose
3 was?
4 A. To gain the rightful amount.
5 Q. For all of those acres?
6 A. Yes.
7 Q. I don't suppose you'll remember exactly
8 how many times he did that or every place that he went
9 to try to accomplish that correction?
10 A. Well, I know that I took him to the water
11 resources office twice.
12 Q. And where was that office?
13 A. In Salmon, Idaho, at -- I think it's
14 Terrace Street.
15 Q. Okay. It wasn't right near the
16 courthouse, then?
17 A. No.
18 Q. And on other occasions you took him to the
19 courthouse?
20 A. Yes.
21 Q. All right. Now, were you present with him
22 on any of those occasions?
23 A. No. I was working.
24 Q. Okay.
25 A. I took him on my way to work.

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1 Q. All right. And then picked him up later,
2 I assume.
3 A. Yes.
4 Q. Did he ever communicate to you that he
5 had -- was making any progress in correcting what he
6 thought was a mistake or what he was doing?
7 A. He was hopeful, let's put it that way.
8 But I -- I don't recall anything except the papers
9 that we received through the mail.
10 Q. Okay. Did a time ever come when he told
11 you or communicated to you that he thought you had
12 corrected the mistake or had received all of the water
13 that he thought he was entitled to?
14 A. They thought it was taken care of, yes.
15 Q. Okay. Do you know about when that time
16 came, approximately?
17 A. Oh, probably '71.
18 Q. Okay. So sometime during that year of
19 1971 when you first filed the claim?
20 A. Uh-huh.
21 Q. It wouldn't have been after that?
22 A. Well, it might have taken some time, you
23 know, so it was probably '71 when he went in, but into
24 those offices.
25 Q. Okay. But a time came when you understood

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1 he thought he had corrected the mistake?
 2 A. Yes.
 3 Q. Did he do anything after that time to
 4 modify what the water right said?
 5 A. Well, legally, he -- he made application
 6 again for that water that he was not allowed.
 7 Q. Okay. Do you know when that was done?
 8 A. Probably about '83, I suppose.
 9 Q. Okay. And do you know what the result of
 10 that effort was?
 11 A. I don't think I have any -- any record in
 12 my possession of that. I don't believe that I have
 13 anything in my possession of the resource department's
 14 doing anything about it.
 15 Q. Okay. Mrs. Miller, Mr. Miller, you said,
 16 passed away in '94?
 17 A. Yes, sir. September 12th.
 18 Q. And now would you look at what we have
 19 handed you as Exhibit Number 4. We've called it
 20 Exhibit Number 4. It's a warranty deed from Myra E.
 21 Miller to Glenn A. and Kathy Seaberg?
 22 A. Yes, sir.
 23 Q. Do you see that?
 24 A. Yes.
 25 Q. Up at the top do you see the number

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1 Q. Okay. At the time you sold that land to
 2 the Seabergs, was it being irrigated?
 3 A. It certainly was. I did it myself.
 4 Q. Okay.
 5 A. And you see the ditch there and a head
 6 gate.
 7 Q. Okay. And did you understand there was a
 8 water right for it?
 9 A. Certainly.
 10 Q. Okay.
 11 A. Water.
 12 Q. Okay.
 13 A. I didn't want to get caught.
 14 Q. Sure. And so when you sold that land to
 15 the Seabergs in 1994, you thought there was a water
 16 right for it, and you had continued to irrigate it?
 17 A. Yes.
 18 Q. Do you know what the Seabergs did with the
 19 land after they acquired it?
 20 A. They put horses on there and pastured and
 21 they irrigated.
 22 Q. Okay. So you knew that they were
 23 irrigating the land. Did you know that they were
 24 irrigating the land?
 25 A. Yes.

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1 6-6120-G?
 2 A. At the very top?
 3 Q. Yes.
 4 A. Top right-hand corner?
 5 MR. SEABERG: We don't see it, Ken.
 6 MR. FOSTER: So maybe it didn't come
 7 through on the fax.
 8 MR. SEABERG: Okay.
 9 Q. (BY MR. FOSTER:) Would you look down in
 10 the lower right-hand corner there's a box there that
 11 has American Land Title in it?
 12 A. Yes.
 13 Q. Do you see a number stamped in there?
 14 A. 224902.
 15 Q. Okay. That's the same document I'm
 16 looking at.
 17 A. Okay.
 18 Q. And this is the deed from you to the
 19 Seabergs.
 20 A. Okay.
 21 Q. And what did you sell to the Seabergs?
 22 A. Eight acres of land.
 23 Q. And which eight acres was it?
 24 A. The one on the map with the circle five,
 25 and the eight and oh in it.

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1 Q. How did you know that?
 2 A. Well, it was within sight.
 3 Q. Okay. So you could see that it was being
 4 irrigated?
 5 A. Yes, sir.
 6 Q. And how --
 7 A. You could see that the foliage was
 8 growing.
 9 Q. Okay. Did you ever see Mr. or
 10 Mrs. Seaberg out doing anything about the water?
 11 A. Yes.
 12 Q. And how long did they continue to do
 13 that?
 14 A. As long as they've had the property.
 15 Q. Which is even up until this year, I
 16 assume?
 17 A. Yes.
 18 Q. So as far as you know that property has
 19 been irrigated every year since you sold it to them?
 20 A. Certainly.
 21 Q. And it was irrigated every year from the
 22 time you acquired it until you sold it to them?
 23 A. Certainly.
 24 Q. Okay.
 25 A. Still green until the snow hit.

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1 Q. That's right. Until it's too cold.
2 Mrs. Miller, that's about all the
3 questions I have, and I think we've had these exhibits
4 marked as deposition exhibits, and, Andrea, I haven't
5 sent you the exact copies, but we will do so.

6 I think that's all the questions I
7 have of Mrs. Miller. Do you want to inquire of her?

8 MS. COURTNEY: I do just have a couple of
9 quick questions. Thank you.

10 MR. FOSTER: Sure.

11
12 EXAMINATION

13 BY MS. COURTNEY:

14 Q. Mrs. Miller, what do you understand the
15 term water rights to mean?

16 A. That it goes with the land and that you
17 have the right to use the water from the river and
18 that there is a head gate farther up. If we don't
19 have enough water in the ditch, we can go up and turn
20 it down, and that we have the right to do that.

21 Q. And you said that you thought that the
22 eight acres that you and your husband sold to the
23 Seabergs that it had water rights for those eight
24 acres?

25 A. Yes, ma'am.

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1 claim dated August 10th, 1971?

2 A. We went to a lot of meetings, and that was
3 before those two books came out.

4 Q. Okay. So it was at those meetings before
5 the books came out that Mr. Saxton told you you
6 wouldn't get water for the full eighteen acres?

7 A. Well, he just said we didn't need that
8 much water. And I agree that there was some -- What
9 do you call it?

10 MR. SEABERG: Wastewater.

11 THE WITNESS: Wastewater, but that that
12 wouldn't suffice.

13 Q. (BY MS. COURTNEY:) That was a surprise?

14 A. It would not suffice.

15 Q. Okay. I got you.

16 A. However, Mr. Saxton was not doing the
17 irrigating, shall we say.

18 Q. What do you mean by that?

19 A. Well, he was making an assumption that he
20 was not doing the irrigating on the property, right?

21 Q. Right. You guys were the ones that were
22 irrigating.

23 A. That's right.

24 Q. Okay. I got you. I understand. Hold on
25 just one second, please.

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1 Q. Okay. And it was your understanding that
2 those eight acres weren't originally given water with
3 the adjudication that happened there on the Lemhi?

4 A. The whole parcel where I'm living, and
5 that also received the amount that we had originally
6 had.

7 Q. Is that 8.6 acres?

8 A. Uh-huh.

9 Q. From your claim, is that what you mean?

10 A. Yes.

11 Q. Okay. So you said your husband went to
12 talk to the IDWR there in Salmon about getting more
13 water than what showed up in the green book?

14 A. Yes.

15 Q. And you said there was -- you noticed a
16 change in the numbering of the claim, the 74-447, and
17 it changed in its number, and you learned that from a
18 meeting with Glen Saxton?

19 A. Yes.

20 Q. Do you remember about when that meeting
21 took place?

22 A. Well, let's see, at the time that they
23 were proposing the -- proposing the adjudication.
24 Does that help?

25 Q. So that was after the time you filed the

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1 A. Okay.

2 MS. COURTNEY: Sorry about that. I just
3 wanted to take a look at my notes.

4 I think that covers everything.

5 Thank you, Mrs. Miller.

6 THE WITNESS: You're welcome. Thank
7 you.

8 MR. FOSTER: And I want to thank you also
9 Mrs. Miller, and I don't have any further questions.

10 And unless you can think of something
11 important that we didn't cover that we have should
12 have covered.

13 THE WITNESS: Well, it still hasn't been
14 recognized, right?

15 MR. FOSTER: That's correct. And that's
16 what the Seabergs are trying to do in this -- in this
17 proceeding, and that's part of the reason we took this
18 deposition is we're trying to find out the history of
19 what we did about that water right back in the time of
20 the Lemhi adjudication proceeding.

21 THE WITNESS: Right. So is there going to
22 be any corrections?

23 MR. FOSTER: All we can do is hope. We're
24 trying to accomplish that in the appropriate way.

25 THE WITNESS: All right.

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1 MR. FOSTER: And thank you very much for
 2 your help.
 3 THE WITNESS: I'll do what I can.
 4 MR. FOSTER: Mrs. Miller, would you like
 5 to read -- The court reporter has been taking this
 6 down verbatim, and she has magic in her fingers, she
 7 knows how to do that. She will type up a transcript,
 8 it's called a transcript, of this deposition.
 9 Would you like to read that to make
 10 sure that we didn't make any mistakes in the testimony
 11 you gave?
 12 THE WITNESS: Okay.
 13 MR. FOSTER: If you would like to do that,
 14 we'll have it sent to you, and you can read it and
 15 then make any changes that need to be made and then
 16 sign it.
 17 THE WITNESS: Okay.
 18 MR. FOSTER: And would you give us your
 19 address one more time.
 20 THE WITNESS: Myra E. Miller, 168
 21 Highway 28, Salmon, Idaho, 83467.
 22 MR. FOSTER: Thank you very much. I think
 23 that's everything, and so, thanks.
 24 MS. COURTNEY: If I may, DiAnn, are you
 25 going to send me a copy of that as well?

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VERIFICATION

STATE OF _____)
) ss.
 COUNTY OF _____)

I, MYRA E. MILLER, say that I am the witness referred to in the foregoing deposition, taken on Wednesday, December 12, 2007, consisting of pages numbered 1 to 44; that I have read the said deposition and know the contents thereof; that the same are true to my knowledge, or with corrections, if any, as noted.

PAGE	LINE	SHOULD READ	REASON

MYRA E. MILLER

Subscribed and sworn to before me this
 day of _____, 2007, at _____,
 Idaho.

(Seal) Notary Public for Idaho
 My Commission Expires _____

* * *

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1 THE COURT REPORTER: Do you want one?
 2 MS. COURTNEY: I would, please. I guess
 3 electronically, if that's easiest.
 4 THE COURT REPORTER: And what's your
 5 E-mail address?
 6 MS. COURTNEY: Andrea, A-n-d-r-e-a dot
 7 Courtney, C-o-u-r-t-n-e-y at IDWR, which stands for
 8 the Idaho Department of Water Resources dot Idaho dot
 9 gov. Thank you so much.
 10 MR. FOSTER: Thank you very much, Andrea.
 11 And as soon as we get this, we'll try to get the
 12 motions filed.
 13 And, Glenn, I'll be in touch with you
 14 about the affidavit, too.
 15 (Discussion off the record.)
 16 MS. COURTNEY: Thank you.
 17 MR. FOSTER: Thank you, very much.
 18 MS. COURTNEY: Thank you.
 19 MR. FOSTER: I guess that's everything.
 20 We'll talk to all of you later.
 21 THE WITNESS: Have a good day.
 22 MS. COURTNEY: Bye-bye.
 23 (Whereupon, the deposition concluded
 24 at 10:23 a.m.)
 25 *****

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REPORTER'S CERTIFICATE

STATE OF IDAHO)
) ss.
 COUNTY OF BONNEVILLE)

I, DiAnn Erdman Prock, CSR, CCR, a duly
 commissioned Notary Public in and for the State of
 Idaho, do hereby certify:

That prior to being examined, MYRA E.
 MILLER, the witness named in the foregoing
 deposition, was by me duly sworn to testify to the
 truth, the whole truth, and nothing but the truth;

That said deposition was taken down by me
 in shorthand at the time and place therein named and
 thereafter reduced to typewriting under my
 direction, and that the foregoing transcript
 contains a full, true, and verbatim record of said
 deposition.

I further certify that I have no interest
 in the event of the action.

WITNESS my hand and seal this 26th day of
 December, 2007.

DiAnn Erdman Prock
 Idaho CSR SRT 885
 Notary Public in and for
 the State of Idaho.

My Commission Expires: 11-14-2013

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VERIFICATION

STATE OF _____)
COUNTY OF _____) ss.

I, MYRA E. MILLER, say that I am the witness referred to in the foregoing deposition, taken on Wednesday, December 12, 2007, consisting of pages numbered 1 to 44; that I have read the said deposition and know the contents thereof; that the same are true to my knowledge, or with corrections, if any, as noted.

PAGE	LINE	SHOULD READ	REASON
_____	_____	_____	_____
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MYRA E. MILLER

Subscribed and sworn to before me this _____ day of _____, 2007, at _____, Idaho.

(Seal)

Notary Public for Idaho
My Commission Expires _____

* * *

REPORTER'S CERTIFICATE

STATE OF IDAHO)
) ss.
COUNTY OF BONNEVILLE)

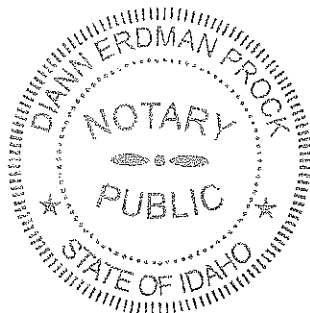
I, DiAnn Erdman Prock, CSR, CCR, a duly
commissioned Notary Public in and for the State of
Idaho, do hereby certify:

That prior to being examined, MYRA E.
MILLER, the witness named in the foregoing
deposition, was by me duly sworn to testify to the
truth, the whole truth, and nothing but the truth;

That said deposition was taken down by me
in shorthand at the time and place therein named and
thereafter reduced to typewriting under my
direction, and that the foregoing transcript
contains a full, true, and verbatim record of said
deposition.

I further certify that I have no interest
in the event of the action.

WITNESS my hand and seal this 26th day of
December, 2007.



DiAnn Erdman Prock
DiAnn Erdman Prock
Idaho CSR SRT 885
Notary Public in and for
the State of Idaho.

My Commission Expires: 11-14-2013