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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

**MOTION TO SET ASIDE
VERDICT**

**SUBCASE NUMBER
22-13212**

I. BACKGROUND

After a general settlement agreement between the owners of and objectors to the John Miller right of Paradise Springs in Teton County, ID was reached, the consensus was that right 22-13212 should be re-examined and the rate of flow should be increased to 0.52 cfs. It was also agreed between Mr. Budge and I that I could discuss the error in the priority date with the Special Master in an effort to understand how I failed to prove the May 23, 1901 priority that was due to John Miller instead of the June 1, 1904 priority which is correct only for Ms. Withrich.

II. FLOW RATE MODIFICATION

At the trial, it was decided that a ditch flowed across a lower quadrant of my property from the early 1900's until it was removed in the late 1960's when my predecessors switched from flood irrigation to sprinkler irrigation. It was decided that approximately 4.5 acres of my pasture had been flood irrigated and that my appropriate share of the Miller Right was 0.16 cfs. In her ruling, the Special Master agreed that it was reasonable to think that some of the Miller Right may have been pumped on to upper areas of my property, but she had to consider the claims of other Paradise Springs users and not knowing for sure what the validity of their claims were, err on the side of caution. At this time, since all claimants were able to reach an agreement, and it appears that I will receive an additional 0.36 cfs, I ask the Special Master to set aside her verdict in this case and allow the rate to be 0.52 cfs. This additional 0.36 cfs is subordinated to a few of the wells that Mr. Budge's clients own but not to all of the wells that affect Paradise Springs' supply. The original 0.16 cfs is not subordinated to any rights.

III. PRIORITY DATE

Since the court may, at any time, correct a mistake, I need to have the Special Master reconsider whether or not the discrepancy between John Miller's Notice of Water Right and the court decreed priority date is indeed a mistake. There is a preponderance of evidence that indicates that John Miller is deserving of the May 23, 1901 priority date to go with the 2 cfs of water that he filed on in Fremont County, and most of it made it on to the record. There is also the proven mistake with the Miller decree, which even Mr. Budge and his clients have had to agree is a mistake,

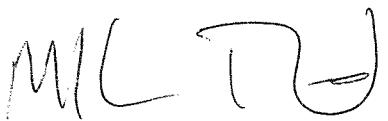
namely the location of Mr. Miller's legal property on the decree is an error. We know that Mr. Miller left his original homestead, which is the legal description on the Miller Right granted from the Rexburg Decree, due to "the complete inability to get water, either for culinary or irrigation" purposes and settled in 1901 around the headwaters of Paradise Springs. He stated that he wanted to take the water from Paradise Springs north onto land he homesteaded there, but to fully utilize the water he filed on he would have had to have imagined taking the water south as well. No doubt he knew that his neighbor, George Walton, needed to take the water to the south of the spring to irrigate the southern part of the Walton homestead and he knew that his father in law, Samuel Kunz, would want to use water from the south ditch on the Withrich place. He filed on 2 cfs because he thought he could build the dam high enough to irrigate 100 acres. By the time of the Rexburg vs Teton water trial (the "Rexburg Decree") in 1905, Samuel Kunz testified that before the dam was complete, John Miller was already irrigating 9 acres. Mr. Kunz also testified that when the dam was complete, Mr. Miller would be able to irrigate about 100 acres. Michael Holliday created a model using contour maps available on the computer and concluded that John Miller could have irrigated and did irrigate a little less than 70 acres. The objectors at the trial challenged Mr. Holliday's science but provided none of their own; I offered the other point of view, which is that the science Michael Holliday used may have neglected to include all the acres that were irrigated. If the water emerges from the dam only a foot higher it could reach about 10 more acres of the John Miller homestead than it does at present; the science Mr. Holliday used has a margin of error greater than 1 foot. It may be that John Miller did irrigate much closer to 100 acres than he was given credit for at the trial. By building the dam and irrigating what he could, he fulfilled his obligation within the law to be awarded the full benefit of his filing, which includes the priority date of 5/23/1901.

Besides the fact that all of the available evidence points to John Miller using water from Paradise Springs starting in 1901, there is also the fact that the decree from the court in Rexburg has already proven to be incorrect. It was shown at trial, conclusively, that the court in Rexburg had used the legal description of a previous homestead instead of Mr. Miller's actual homestead. In fact, the court in Rexburg failed on the two most important aspects of any decree—the place of use and the priority date, and both mistakes were made in the same way—a complete failure to utilize the legal documents available to them. With the legal description, the court mistakenly used an outdated homestead entry when the updated version was on file in that same courthouse, and with the priority date, the court used June 1, 1904 instead of relying on Mr. Miller's Notice of Water Right, a document that was on file there at that same courthouse. We can know surely that the court did not ever see Mr. Miller's Notice of Water Right because if they had seen this document, there would never have been the mistake on the location, either. This is because Mr. Miller wrote the correct legal description on the Notice of Water Right, and since the court obviously had no idea about the correct legal description, we can conclude that they never saw Mr. Miller's Notice of Water Right. This is the error that the court made: they failed to find or use the correct legal document with regard to Mr. Miller's water right, which was his Notice of Water Right. If it is not a mistake by the court never to look at Mr. Miller's Notice of Water Right, filed at that same courthouse a few years

earlier, then could the Special Master please explain to me how else to classify this? It should be noted that Mr. Miller did not testify for himself in Rexburg and the most likely reason is that he did not speak English—he spoke Swiss.

IV. CONCLUSION

As part of the overall settlement agreement between the users and objectors of Paradise Springs water rights, the verdict from the Reid trial needs to be set aside so that the quantity reflects the settlement agreement; and the priority date is incorrect due to a mistake by the court, just like the place of use was incorrect due to a mistake.


Michael L Reid 4/30/11

I certify that I sent a true copy to the following:

TJ Budge
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