

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 NUMBER 39576

Motion for Late
Objection
SUBCASE 22-13853

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FEB 21 2012
DEPT. OF WATER RESOURCES

BACKGROUND

This water right belongs to Rex Miller. Rex appeared in SRBA court concerning a Motion to Amend this right, but before the right can be amended it must first be objected to. This late objection is made to correct the quantity and priority date of this right.

ARGUMENT

Rex Miller was not at the settlement conference for the rights concerning Paradise Springs. Michael Holliday announced at that meeting that he had Rex's phone number and we could call him if we wanted. We did not call Rex. At the settlement meeting, Don Miller and I agreed to give up some of our water to the Fred Miller Trust, and as part of this Rex was to give up a good deal of the water that IDWR initially recommended to him. Rex stated in court during the Motion to Amend this right that he did not agree with the quantity that was assigned to him, that he was not aware that a settlement meeting took place, and that he did not wish to be a party to that settlement. He should not be held to being a part of a settlement he was not notified of and did not participate in. This settlement has been nullified by Michael Reid because of the lack of follow through by the State and Mr. Budge and is not in effect anyway.

The settlement agreement did not reflect the way water has been used out of Paradise Springs, and any new settlement will have to be based on the way water has been used, not a convenient agreement that only helps the Fred Miller Trust. Rex Miller's share of the Miller Right, prior to selling land that is now Paradise Springs subdivision owned by Richardson Family, was 1 cfs. The quantity in 22-13853 should reflect this, and not what he got from the settlement.

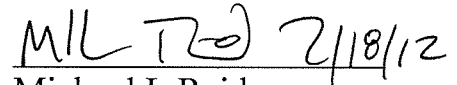
Right 22-13853 contains the land that is mentioned by Samuel Kunz in his testimony during the Rexburg Decree. Samuel Kunz states that John Miller was irrigating "9 acres" at the time he testified and could irrigate "about 100 acres total." The 9 acres that were under irrigation during this testimony should have a priority date of 5/23/01, which is when John Miller filed on this water in Fremont County. Although the court decided that the priority date could not be amended to 5/23/01 in the Reid trial, 22-13853 is a separate claim with separate circumstances and therefore needs to be considered separately.

CONCLUSION

The current quantity and priority date are incorrect on this right and need to be reviewed and changed to meet the actual water use and not a contrived agreement that Rex Miller was not a party to and that has been dissolved by Michael Reid.

MOTION TO CONTINUE

At this time, Rex Miller lies in Eastern Idaho Regional Medical Center having suffered a major stroke about two weeks ago. Rex intended to file an objection to his right, but had the stroke before this could be completed. As such, I request that the hearing be continued to a time when either Rex is able to represent himself or adequate representation can be found for him.


Michael L Reid
Objector

CC: Rex Miller
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