

MAR 12 2012

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 NUMBER 39576

Objection to Amended
Director's Report
Subcases 22-13853, 22-11639
22-13509 and 22-13854

BACKGROUND

The 'global settlement agreement' concerning these water rights has been dissolved. No new settlement has been reached. Each of these rights needs to have the quantity and in some cases the priority date modified to meet pre settlement numbers.

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 22-13853 that he did not agree with the quantity that was assigned to him as part of the settlement, 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.

At this time Rex Miller lies in EIRMC recovering from a stroke. While he is responsive to questions and now can answer yes or no, he is at this time unable to participate in court hearings and represent himself as he did before. Understandably, the Special Master has set dates for him to respond by that he will certainly miss; these dates need to be more flexible to accommodate

his specific situation and allow time to discover whether or not he will be able to continue representing himself or not.

The settlement agreement did not reflect the way water has been used out of Paradise Springs. 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, be 0.55 cfs, and not what he got from the settlement.

Right 22-13854, belonging to Richardson Family Properties, has the wrong point of diversion listed. As part of the settlement, I was willing to overlook this but since that settlement is no longer in effect, I think it is important to get this corrected. The point of diversion listed is a pump below the Paradise Springs Pond. The actual point of diversion for this pump is the upper spring pool, not below the dam. The point of diversion that is being used comes from a pump in the fire pond, not below the dam. The fire pond is an artesian well and so water being taken out of that pond should be subject to measurement. Why wouldn't the claimant claim the point of diversion he is using?

Right 22-13509 belongs to the Fred Miller Trust. The current Amended Director's Report is the only thing that gives them any right to any of the John Miller decree. There is no evidence that the north ditch that John Miller constructed ever reached the Fred Miller trust property. It physically could have reached about an acre, but there are no witnesses that have testified that it did. There is ample evidence that after Chet Miller put in a pump at the bottom of the Paradise Springs pond, the Fred Miller property was irrigated. The claim for this pump listed both the Miller decree and the Withrich decree as sources for water being pumped. The Fred Miller Trust is due water from the Withrich Decree and not the Miller Decree. Since before 1987, Gary Zohner rented the Fred Miller trust property and although there was no water claim for this property until last year, Gary said that he was 'using his water' on that property. Gary Zohner did not file on the share of the Withrich right he owns, because he was not using this water on his property. He was using this water on the Fred Miller Trust property. The Fred Miller Trust should claim Gary Zohner's share of the Withrich right based on accomplished transfer, since it has been used there for at least 30 years or more. Don Miller, Rex Miller and I should not have to give up our water to them when they have a legitimate claim on the water that's been being used on their property and it has the same priority date as the parent right they've claimed from.

22 - 11639

I originally protested this right because the priority date and quantity were both wrong. Right 22-11639, as Don Miller and I testified to at the Reid trial, is a claim on the John Miller decree, 22-405 and as such should have a priority date of 6/1/1904 and a quantity of .54 cfs. When this right was discussed on the record in December 2011, Mr. Budge and Mr. Harris stated that they agreed with the quantity being raised. With respect to the priority date, Mr. Budge stated that he wouldn't approve the quantity being raised if I was later going "to improve (my) position." I did not respond to this and the issue was not further discussed at that hearing. At this time, I must renew my objection to this right based on the same issues I had originally, namely the priority date and quantity. Far from improving my position, I am simply trying to codify what my predecessors have done with their water from Paradise Springs.

CONCLUSION

The Fred Miller Trust, 22-13509, needs to file on the Withrich right, not the Miller right as Mr. Budge advised them when he allowed himself to be hired by Ron Miller in an apparent conflict of interest. Right 22-13853 needs the quantity adjusted to .55 cfs, 22-13854 needs to have the correct and current point of diversion listed, and 22-11639 needs to have it's priority date changed to 6/1/04 and the quantity to .54 cfs.

 3/7/2012
Michael L Reid
Objector

Copies to:
IDWR Document depository
TJ Budge
Rob Harris
Rex Miller