

RECEIVED
MAR 15 2012
DEPARTMENT OF
WATER RESOURCES

DISTRICT COURT - SRBA Fifth Judicial District County of Twin Falls - State of Idaho	
MAR 14 2012	
By _____	Clerk
_____	Deputy Clerk

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	)	AMENDED ORDER ON SHOW CAUSE
	)	HEARING
Case No. 39576	)	
	)	SUBCASE NOS.: 22-11639, 22-13509,
	)	and 22-13854
_____	)	

I. PROCEDURAL BACKGROUND

An *Order on Show Cause Hearing* was issued March 9, 2012. That order incorrectly stated that 22-11639 was decreed with .19 cfs. It was decreed with .59 cfs. It was the proposed *SF5* which had quantity listed as .19 cfs. Additionally, that *Order* incorrectly listed the claimant of 22-13854 as Michael Reid. The claimant of 22-13854 is Richardson Family Properties. This *Amended Order on Show Cause Hearing* makes these corrections. This court issued an *Order to Show Cause and Summons to Appear* in subcases 22-11639, 22-13509, and 22-13854. The *Order to Show Cause* was issued because the court had held numerous hearings on these subcases with assurances that they were close to resolution, but a resolution was not forthcoming.

At a Status Conference held October 12, 2011, IDWR reported that *Standard Form 5* settlement documents had been sent to Michael, Stephen and Joy Reid on these subcases, but had not been returned. Mr. Reid did not attend a prior Status Conference on September 21, 2011, and Stephen and Joy Reid did not attend multiple hearings, including those on September 21, 2011 and July 6, 2011 at which time the parties tried to conclude these subcases on Paradise Springs.

During the Status Conference held October 12, 2011, Michael Reid stated on the record that he agreed to the proposed *Standard Form 5* for 22-13854. He represented that he had signed and mailed the *SF5* for 22-13854. Mr. Reid also stated that he agreed with the *Standard Form 5*

for 22-11639 but was waiting for Stephen and Joy Reid to sign the document. Mr. Reid confirmed his agreement with the *SF5* for 22-11639 at the hearing on Dec. 7, 2011. Mr. Reid stated that he had not received the *Standard Form 5* for 22-13509. At the hearing, the Court told the parties that if the *SF5s* were not signed and filed within a week, it would issue an *Order to Show Cause*. Completed *SF5s* were not filed, so the Court issued the *Order to Show Cause*. The proposed *SF5s* for the *Order to Show Cause* are attached hereto as Exhibit 1. A hearing was held on December 7, 2011. At the hearing, Cedron Cemetery District, Cedron Irrigation LLC, Teton Rainbow Ranches Inc., Trees Inc., and Wally Rothgeb Jr. (hereafter collectively "Cedron") asserted that the parties had an enforceable global settlement covering these subcases. Richardson Family Properties, Daniel Miller, David Miller, Larry Miller, Lewis Miller, Phillip Miller, Ralph Miller, and Ron Miller (hereafter "Millers") supported Cedron's position that there was an enforceable global settlement agreement. Cedron and Millers asked that Michael and Stephen and Joy Reid be bound to the settlement agreement.

II. STANDARD OF REVIEW

A. Oral Stipulations

In general, settlement agreements do not have to be in writing to be enforceable. If an oral stipulation to settle is entered on the court records, it is usually enforceable. However, oral settlement agreements must comply with the requirements of a contract. *Lawrence v. Hutchinson*, 146 Idaho 892, 204 P.3d 532 (2009) There must be a meeting of the minds shown by mutual intent to contract with an offer and acceptance. The contract must be complete, definite, and certain in all its material terms. *Id.* at 146 Idaho 898. The intent of the parties is to be determined by the surrounding facts and circumstances of each particular case. *Id.*

B. Statute of Frauds

Real property in Idaho must generally be transferred by a written instrument. Idaho water rights are considered a type of real property. In *Olson v. IDWR*, 105 Idaho 98, 666 P.2d 188 (1983), the Idaho Supreme Court declared an oral stipulation on water rights unenforceable in the absence of a writing. But the court cited to *Francis v. Green*, 7 Idaho 668, 65 P. 362 (1901) which held an oral settlement to convey water rights need not be in writing if part performance had occurred. In *Olson*, the reason the stipulation was unenforceable was that it changed existing

water rights and there was no part performance. The court found that a compromise or change to definitional elements was similar to a compromise of the metes and bounds of real property, and thus settlements approving changes to water rights should be in writing unless there was part performance. *Id.*

C. Administrative Order 1

Finally, SRBA *Administrative Order 1* approves of oral stipulations to the elements of a water right. “Where parties reach an agreement on a contested water right recommendation, they shall file either a stipulation with the court using Standard Form 5 or some other stipulation acceptable to the court. Subcases may also be resolved orally on the record.” *AOI* Rule 4d(3).

III. DISCUSSION

This court issued an *Order to Show Cause* explaining that *Masters Reports and Recommendations* would issue according to proposed *Standard Form 5s* unless “good cause” was shown. The proposed *Standard Form 5s* had been discussed at prior hearings, but not filed because not all parties had signed. The proposed *Standard Form 5s* were signed by IDWR, counsel for Cedron and counsel for Millers. Therefore, all parties had signed the *Standard Form 5s* except Michael, Joy, and Stephen Reid. Cedron and Millers argued that there is no “good cause” because the *SF5s* document oral stipulations the parties made to settle these subcases.

The law regarding oral settlements was explained in *Lawrence v. Hutchinson*, 146 Idaho 892, 204 P.3d 532 (Ct. App 2009). The *Lawrence* Court said that settlement agreements do not have to be in writing to be enforceable. Oral settlements may be valid if they comply with the requirements for contracts. Formation of a valid settlement agreement requires a meeting of the minds shown by a manifestation of mutual intent to contract. *Id.* at 898. The manifestation of mutual intent to contract is shown by an offer and acceptance. In addition, there must be a meeting of the minds on the essential terms of the agreement. *Id.* The *Lawrence* Court emphasized that placing an agreement on the court’s record will ordinarily bind the parties. “Oral stipulations are binding when acted upon or entered on the court records.” *Id.* citing *Kohring v. Robertson*, 137 Idaho 94, 99, 44 P.3d 1149, 1154 (2002).

A. Meeting on Global Settlement

All parties agree that in November of 2010 they held a meeting to discuss a global settlement of the subcases on Paradise Springs including 22-13854, 22-13509, and 22-11639. IDWR sent a letter dated January 24, 2011 that set forth details of a global settlement including 22-13854 and 22-13509 and 22-11639. (Attached as Exhibit 2) The parties disagreed about whether that meeting resulted in a binding global settlement agreement.

Michael Reid argued there is “good cause” why the court should not issue the *Masters Reports and Recommendations*. Mr. Reid argued that he withdrew from the global agreement “on the afternoon of October 11, 2011.” *Response to Statement* (Dec. 21, 2011). Mr. Reid argued that he withdrew because he did not obtain a subordination clause he understood was part of the global agreement. *Response to Statement*. The other parties argued that no “good cause” exists because Mr. Reid agreed to a global settlement of multiple rights and the parties acted in part performance.

B. Acts of the Parties

The Court looks at the January 24th letter, the proposed *SF5s*, and the actions of the parties to determine whether a valid global settlement agreement was formed. The January 24th letter set forth the quantity and acreage agreed to for each right. For some rights, there was an additional beneficial use portion which had not been claimed. *Master's Reports* were issued for some subcases, and some subcases were partially decreed. For example, 22-587, 22-12714, and 22-12511 have been partially decreed. A trial was held for 22-13212, and *Master's Reports* were issued. The global agreement anticipated a *Motion to Set Aside* for 22-13212 which was filed, but then withdrawn by Mr. Reid. The global settlement called for a beneficial use component related to 22-13212 which was filed under the number 22-11639.

Subcase 22-13586 was partially decreed in 2011. A related late claim was filed for the beneficial use, and was numbered 22-13997. A *Master's Report* was issued for 22-13997. The global settlement anticipated an amended claim for 22-13853 and a related late claim. A *Motion to file Late Claim* was filed, but denied. A continued *Motion to Amend Claim* is scheduled for 22-13853. No late claim was filed for the beneficial use related to 22-13853. The parties agree that

the claimant of 22-13853, Rex Miller, did not attend the settlement meeting for the global agreement.

The parties have taken some actions contemplated in the January 24th letter, including the filing of late claims, amended claims, the issuance of *Master's Reports*, and *Partial Decrees*.

C. January 24th Letter

Oral settlements can be valid if they comply with the requirements of contracts. Here, the court looks at whether the facts show a meeting of the minds on the essential terms of a global settlement with a mutual intent to contract. *Lawrence* at 898. Mutual intent to contract is shown by an offer and an acceptance. The meeting of the minds must occur on the essential terms of the agreement. *Id.*

The parties did not provide much detail regarding the offer and acceptance of the essential terms of the global settlement. The January 24th letter was offered to show that a global settlement had occurred. Thus, the letter must be examined to determine whether it shows the necessary elements required of a contract.

The letter shows a mutual interest in resolving the subcases on Paradise Springs because it sets forth the structure of the discussions during the November 2010 meeting. Nothing in the letter contradicts a mutual intent to contract for a global settlement. However, mutual intent to contract is usually shown by an offer and acceptance of the essential terms of an agreement.

The letter shows that the discussions were moving towards a global settlement. However the wording does not indicate that a concrete offer and acceptance of the essential terms had occurred. Rather, the wording states that the “parties in attendance and the Idaho Department of Water Resources reached a tentative agreement.” That wording is less definite than what might have accompanied a definitive agreement to which all parties agreed. The letter also referred to additional steps needed to be taken by the parties. “The table below lists the amounts agreed upon during the settlement conference followed by the tasks that need to be completed before the settlement can be finalized.” This language certainly refers to additional action needed by the parties. Those acts could be considered as part performance of a global agreement. However, the wording points to something less definite. The letter indicates that the listed tasks, such as filing

late claims, would be completed “before the settlement can be finalized.” That wording is consistent with the phrase “tentative agreement” used to describe the discussions. The letter seems to be saying that the parties needed to take additional steps before the essential terms were finalized.

Looking at the letter as a whole, it appears to describe a very productive settlement meeting which moved the parties towards a resolution. But the letter described the discussions as ending with a “tentative agreement” which required further action and additional details before there would be sufficient details for a meeting of the minds. In short, the January 24th letter does not appear to memorialize a global settlement agreement that was a “done deal.” Rather, the letter appears to memorialize a good first step towards a definitive agreement. Therefore, this court concludes that a binding global settlement agreement on all subcases had not been reached.

Next, this Court looks at the facts for each subcase to determine whether “good cause” exists for each subcase independent of a global agreement. The question is whether the parties entered a binding settlement agreement for individual subcases. The court concludes that the parties did enter into settlement agreements on two individual subcases, but did not have a settlement agreement on the final subcase.

- A. **22-11639.** Water claim 22-11639 was claimed by Joy, Michael, and Stephen Reid. A *Partial Decree* was issued by the SRBA court on Nov. 24, 2008. On February 18, 2009, Michael Reid filed a *Motion to Set Aside Partial Decree* for that right and filed a *Late Objection*. The proposed SF5 provided a quantity of .19 cfs. Water right 22-11639 was referred to in the Jan. 24th letter as the beneficial use related to 22-13212. The parties indicated on the record on December 7, 2011 that they agreed to an increased quantity of .59 cfs. The increased quantity would require this right to essentially go back to the quantity and acreage described in the *Partial Decree*. Michael Reid agreed on the record with the SF5 and the increased quantity. The other claimants Joy and Stephen Reid did not attend any hearings, and did not appear at the *Order to Show Cause* hearing. All other parties, including Michael Reid, agreed to the SF5 with the quantity adjustment at the December 7, 2011 hearing. Where the elements of 22-11639 were clearly established in the *Order to Show Cause*, and where the parties put the agreement on the record, the parties entered into a binding settlement agreement. Michael Reid agreed to accept the increased quantity for the right, and consequently made no showing of “good cause.” Therefore, 22-11639 shall be recommended consistent with the SF5 and the increased quantity.

B. 22- 13854. Water claim 22-13854 was claimed by Richardson Family Properties. Michael Reid stated on the record on Oct. 12, 2011 that he agreed with the *SF5*, had signed it and mailed it. Mr. Reid argued that he should not be bound to the settlement he entered into regarding this water right. Mr. Reid stated in his *Response to Statement*, "On the afternoon of October 11, 2011, Michael Reid dissolved the agreement concerning the Miller right, #22-405. This was due to a material mistake by IDWR in preparing the SF-5, subsequent lack of action to correct . . . and a court deadline. Since Mr. Reid was provided none of the things he was to get from the agreement, he should not be held to providing others the things he gave as part of the agreement."

This court holds that the parties did not enter into a global settlement. Therefore, Mr. Reid's discussion about withdrawing from the global settlement need not be addressed. However, the court looks next at whether the parties entered into a binding settlement agreement on this individual subcase. The other parties asserted that Mr. Reid settled subcase 22-13854.

The January 24th letter listed additional steps the parties needed to take to finalize the global stipulation, including the steps needed for 22-13854:

22-13854. "This right is governed, in part, by the stipulation filed December 2009. [The claimant] Needs to file a new beneficial use claim for 14 acres and 0.38 cfs."

The January 24th letter established elements of the agreement, but recognized that additional steps needed to be taken. Late claim 22-13998 was claimed for the beneficial use related to 22-13854. A *Master's Report and Recommendation* was issued for beneficial use right 22-13998. Furthermore, the proposed *Standard Form 5* for 22-13854 is consistent with the January 24th letter. This court reads the January 24th letter as using language which indicates a global settlement was not formed.

However, the court finds that the parties did place a valid settlement for this subcase on the record. Mr. Reid stated on the record on October 12, 2011 that he had received the *SF5* for 22-13854, had signed it, and had sent it along to additional parties. Mr. Reid's statements indicated that a meeting of the minds had occurred, that an offer and acceptance had taken place, and that the elements were correctly set forth in writing in the *SF5*. Therefore, the Court finds that a valid oral agreement was in place for this water right, that the essential elements were set forth on the record on October 12, and in the *SF5* attached to the *Order to Show Cause*. Therefore, 22-13854 shall be recommended consistent with the *SF5* attached to the *Order to Show Cause*.

C. **22-13509.** Water claim 22-13509 was claimed by David Miller, Larry Miller, Ralph Miller, Phillip Miller, Lewis Miller, Daniel Miller and Ronald Miller. An *Objection* was filed by Michael Reid. Mr. Reid asserted during the October 12, 2011 Status Conference that he had not yet received a *Standard Form 5* for this right. Mr. Reid did not sign the *Standard Form 5*. All other parties signed the *SF5*, and a copy was attached to the *Order to Show Cause*. At the December 7, 2011 hearing, Mr. Reid argued that he withdrew from the agreement on the afternoon of October 11, 2011. He also asserted that a mistake occurred on the subordination language in the global agreement.

The other parties argued that a global settlement was reached which included this water right. The other parties argued that the elements were described in the January 24 letter and the proposed *Standard Form 5*. In addition, the parties argued that they acted to fulfill the terms of the global agreement.

The January 24th letter established some of the essential elements of a global agreement. It listed the acreage and quantity for each water right. In addition, the letter recognized that additional action was needed to complete the terms of the global agreement. The claimant did file a late claim for the additional beneficial use. As discussed above, late claim 22-13999 claimed the beneficial use related to 22-13509. A *Master's Report and Recommendation* has issued for the beneficial use right 22-13999.

This court has previously analyzed why the January 24th letter does not memorialize a binding global agreement, but rather a tentative agreement to work on essential terms for a global agreement. There is no global settlement agreement which binds the parties to the proposed *SF5* for this subcase. In addition, there is no independent agreement which bound the parties to the proposed *SF5* for this subcase.

IV. CONCLUSION

Cedron and the Millers argued that the parties with water rights on Paradise Springs entered into a binding global agreement in November of 2010. They asserted that the January 24th 2011 letter memorialized the essential terms of the global settlement. That global settlement, they argued, binds all parties to all the subcases discussed in the January 24th letter. Michael Reid disagreed, asserting that the terms of the agreement were too uncertain to constitute the essential terms of an agreement. In the alternative, Mr. Reid argued that he did not get the benefit of the terms on which he negotiated. This court concluded that a valid global settlement was not formed.

The January 24th letter utilized language that indicated the parties had reached an agreement in principle. However, the language of the letter called the results of negotiations a “tentative agreement.” In addition, the letter referred to tasks the parties needed to accomplish before a settlement could “be finalized.” Therefore, the Court concluded that the January 24th letter memorialized a positive step in negotiations, but did not show that an offer and acceptance had occurred on the essential terms. Therefore, the court looked next to see whether valid settlement agreements were reached on individual subcases.

The Court finds that valid settlement agreements were entered on the record for two of these subcases. *AOI* specifically allows subcases in the SRBA to be settled orally. The elements of a valid oral settlement were met with the necessary elements recorded in the proposed *SF5s* which were accepted on the record. Mr. Reid agreed on the record to the *SF5* for **22-11639** with an increased quantity to .59 cfs. Since the claimants Stephen and Joy Reid did not appear, and since Michael Reid agreed, no “good cause” was shown. Consequently, subcase **22-11639** shall be recommended consistent with the *SF5*, but with the quantity and acreage as described in the *Partial Decree*.

Mr. Reid agreed on the record at the hearing on October 12, 2011 that he had received the *SF5* for **22-13854**, agreed to its terms, and had signed it. Since Michael Reid stipulated to the elements of the *SF5* on the record, no “good cause” was shown. Therefore, the court shall recommend **22-13854** consistent with the *SF5*.

The analysis is quite different for **22-13509** since there was no oral agreement by Mr. Reid. The court found that the negotiations in November of 2010 and the letter of January 24th did not result in an offer and acceptance on the essential terms of a global settlement of all subcases on Paradise Springs. Therefore, Mr. Reid and the parties cannot be bound to the proposed *SF5* for 22-13509 based on the global negotiations. The next question is whether additional words or actions created a settlement agreement on **22-13509**. Mr. Reid did not agree to the terms of an *SF5* for 22-13509. In fact, he stated on the record on October 12, 2011 that he had not received the *SF5* for this water right. Nothing else in the record supports a finding that a settlement agreement exists for 22-13509. Therefore, the court finds that “good cause” exists for **22-13509**. Therefore, the court **will not** issue a *Master’s Report and Recommendation* for **22-13509** based on the *Order to Show Cause*.

Please be advised that Special Master Brigitte Bilyeu has set the following date for water

right 22-13509:

April 4, 2012

2:00 pm

Scheduling Conference

Location: Snake River Basin Adjudication
253 3rd Ave. North
Twin Falls, Idaho 83301

Parties may participate by telephone for the Scheduling Conference by dialing 1-215-446-0193 and when prompted enter participant code 926509#. Any questions regarding telephone participation, please contact the Clerk's office at (208) 736-3011.

Dated: March 14, 2012.



BRIGETTE BILYEU
Special Master
Snake River Basin Adjudication

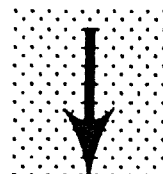
Year	Percentage of Population Aged 65 and Over
1950	7
1960	10
1970	9
1980	14
1990	17
2000	18
2010	19
2020	20
2030	20
2040	20
2050	20

In Re SRBA	)	Subcase No. 22-11639
	)	
Case No. 39576	)	
	)	STANDARD FORM 5
	)	
	)	STIPULATED ELEMENTS OF A
	)	WATER RIGHT

1

IDAHO DEPARTMENT OF WATER RESOURCES RECOMMENDED
WATER RIGHTS ACQUIRED UNDER STATE LAW

INITIAL
HERE



RIGHT NUMBER: 22-11639

NAME AND ADDRESS:

JOY M REID
550 S 450 W
VICTOR ID 83455

MICHAEL L REID
PO BOX 801
VICTOR ID 83455

STEPHEN D REID
550 S 450 W
VICTOR ID 83455

SOURCE:

Source:

PARADISE SPRING
PARADISE CREEK

Tributary:

TETON RIVER

QUANTITY:

0.190 CFS

0.590 CFS

PRIORITY DATE:

07/21/1969

POINT OF DIVERSION:

T04N R45E S30 N2NW
Within TETON County
T04N R45E S30 S2NW
Within TETON County

PURPOSE AND
PERIOD OF USE:

Purpose of use:

Period of use:

Quantity:

IRRIGATION

04/15 10/31

0.190 CFS

0.590 CFS

PLACE OF USE:

IRRIGATION within TETON County
T04N R45E S30 S2NW 35.6

35.6 ACRES TOTAL

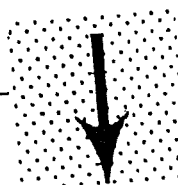
Right Nos. 22-11639 and 22-13212 are limited to the irrigation of a combined total of 35.6 acres in a single irrigation season.

This right is limited to the irrigation of 9.6 acres within the place of use described above in a single irrigation season.

The rights listed below are limited to the irrigation of a combined total of 35.6 acres in a single irrigation season. Combined Right Nos. 22-11639, 22-13212, 22-13503

INITIAL
HERE

IDAHO DEPARTMENT OF WATER RESOURCES RECOMMENDED
WATER RIGHTS ACQUIRED UNDER STATE LAW



OTHER PROVISIONS NECESSARY FOR DEFINITION OR ADMINISTRATION OF THIS WATER RIGHT:

This partial decree is subject to such general provisions necessary for the definition of the rights or for the efficient administration of the water rights as may be ultimately determined by the Court at a point in time no later than the entry of a final unified decree. Section 42-1412(6), Idaho Code.

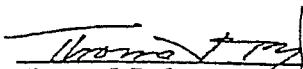
EXPLANATORY MATERIAL: BASIS OF CLAIM - Beneficial Use

This right is a split from former right 22-4104.

[Handwritten signature]

[Handwritten initials]

INTERVENORS:
Cedron Irrigation LLC
Cedron Cemetery District
Trees Inc
Rainbow Ranches Inc.


Thomas J. Budge, Attorney Date 8-11-2011

IDWR Concurrence:

Michael Holliday 8/9/2011
Water Resource Program Manager Date

Andrea Courtney Date
Deputy Attorney General
Attorney for IDWR

OBJECTOR(s):

Michael Reid

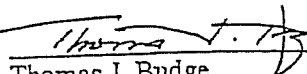
Date

Larell A. Kunz

Date

INTERVENOR(s):

Cedron Irrigation, LLC
Cedron Cemetery District
Teton Rainbow Ranches
Wally Rothgeb
Trees, Inc.

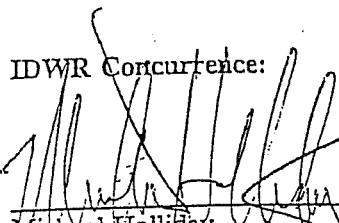

Thomas J. Budge

Date

8-11-2011

Attorney for Intervenor

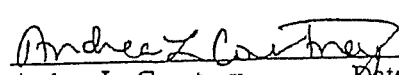
IDWR Concurrence:


Michael Holliday

Date

9/19/2011

Water Rights Supervisor


Andrea L. Courtney

Date

8/5/11

Deputy Attorney General
Attorney for IDWR

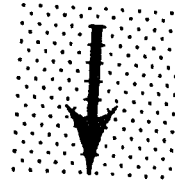
IDAHO DEPARTMENT OF WATER RESOURCES RECOMMENDED
WATER RIGHTS ACQUIRED UNDER STATE LAW

INITIAL
HERE

RIGHT NUMBER: 22-13854

NAME AND ADDRESS:

RICHARDSON FAMILY PROPERTIES LLC
PO BOX 469
VICTOR ID 83455



SOURCE:

Source:
PARADISE SPRINGS

Tributary:
TETON RIVER

QUANTITY:

0.240 CFS

~~0.360 CFS~~

AK

PRIORITY DATE:

06/01/1904

TJB

ref

NWA

POINT OF DIVERSION:

T04N R45E S30 NENW
Within TETON County

~~T04N R45E S30 NENW~~
~~Within TETON County~~

PURPOSE AND
PERIOD OF USE:

Purpose of use:

Period of use:

Quantity:

IRRIGATION

04/15 10/31

0.240 CFS

~~04/15 10/15~~

~~0.360 CFS~~

PLACE OF USE:

IRRIGATION within TETON County

T04N R45E S19 SWSE 31.0

~~T04N R45E S19 SWSE 33.0~~

31 ACRES TOTAL

~~33 ACRES TOTAL~~

This right is limited to the irrigation of 17 acres within the place of use
described above in a single irrigation season.

Right Nos. 22-13854 and 22-13998 are limited to the irrigation of a combined total
of 31 acres in a single irrigation season.

IDAHO DEPARTMENT OF WATER RESOURCES RECOMMENDED
WATER RIGHTS ACQUIRED UNDER STATE LAW

INITIAL
HERE



OTHER PROVISIONS NECESSARY FOR DEFINITION OR ADMINISTRATION OF THIS WATER RIGHT:

This water right shall not be permitted to make a delivery call against water right nos. 22-13135, 22-13961, 22-13962, 22-13963, 22-13964, 22-2280E, 22-2296B, 22-2296D, and 22-13681, and their progeny.

This partial decree is subject to such general provisions necessary for the definition of the rights or for the efficient administration of the water rights as may be ultimately determined by the Court at a point in time no later than the entry of a final unified decree. Section 42-1412(6), Idaho Code.

EXPLANATORY MATERIAL: BASIS OF CLAIM - Decreed

The following rights are diverted through point of diversion described above: 22-12714B, 22-13509, 22-13586, 22-13853, 22-13854, 22-13997, 22-13998, and 22-13999.

This right is a split from former right 22-587.

~~This right is a split from former right 22-13585.~~

~~This right is a split from former right 22-12714A, parent right 22-405 and 587.~~

155

22-13854 MWA

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. 22-13509

STANDARD FORM 5

STIPULATED ELEMENTS OF A
WATER RIGHT

This form is used to report the stipulated elements of one water right acquired under state law and/or one federal reserved water right. Submission of this form will not automatically result in the issuance of a partial decree. The Presiding Judge or Special Master will conduct any hearing necessary to determine whether the facts, data, expert opinions and law support the issuance of a partial decree for the water right.

The parties agree that the Snake River Basin Adjudication Court has jurisdiction of the parties and subject matter to enter a partial decree for this water right; that they have been served with sufficient process, according to the law; and that they have appeared, prosecuted, and defended their positions with regard to this water right dispute.

The parties and IDWR agree and stipulate that the elements of this water right should be described per the attached. The parties and IDWR have further indicated their concurrence by initialing each of the attached pages.

CLAIMANTS/OBJECTORS:

David W. Miller
Larry J. Miller
Ralph P. Miller
M. Phillip Miller
Lewis J. Miller
Daniel D. Miller
Ronald K. Miller

OBJECTORS:

Michael Reid

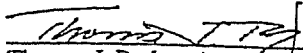
Robert L. Harris
Robert L. Harris, Attorney

9/21/2011
Date

Pro Se

INTERVENORS:

Cedron Irrigation LLC
Cedron Cemetery District
Trees Inc
Teton Rainbow Ranches Inc
Wally Rothgeb Jr


Thomas J. Budge, Attorney
8-11-2011
Date

IDWR Concurrence:


Michael Holliday
8/11/2011
Date
Water Resource Program Manager

Andrea Courtney
Deputy Attorney General
Attorney for IDWR
Date

IDAHO DEPARTMENT OF WATER RESOURCES RECOMMENDED
WATER RIGHTS ACQUIRED UNDER STATE LAW

RIGHT NUMBER: 22-13509

NAME AND ADDRESS:

DANIEL D MILLER
C/O RONALD K MILLER
707 ROOSEVELT
AMERICAN FALLS ID 83211

DAVID W MILLER
C/O RONALD K MILLER
707 ROOSEVELT
AMERICAN FALLS ID 83211

LARRY J MILLER
C/O RONALD K MILLER
707 ROOSEVELT
AMERICAN FALLS ID 83211

LEWIS J MILLER
C/O RONALD K MILLER
707 ROOSEVELT
AMERICAN FALLS ID 83211

M PHILLIP MILLER
C/O RONALD K MILLER
707 ROOSEVELT
AMERICAN FALLS ID 83211

RALPH F MILLER
C/O RONALD K MILLER
707 ROOSEVELT
AMERICAN FALLS ID 83211

RONALD K MILLER
707 ROOSEVELT
AMERICAN FALLS ID 83211

SOURCE: Source:
PARADISE SPRING

Tributary:
TETON RIVER

QUANTITY: 0.510 CFS

0.160-CFS

PRIORITY DATE: 06/01/1904

POINT OF DIVERSION:
T04N R45E S30 NE1/4
Within TETON County

PURPOSE AND
PERIOD OF USE:

Purpose of use:

Period of use:

Quantity:

IRRIGATION

04/15 10/31

0.510 CFS

0.160-CFS

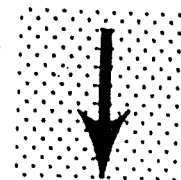
INITIAL
HERE



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IDaho DEPARTMENT OF WATER RESOURCES RECOMMENDED
WATER RIGHTS ACQUIRED UNDER STATE LAW

INITIAL
HERE



PLACE OF USE: IRRIGATION within TETON County
T04N R45E S19 N65W 35.0 404N R45E S19 N65W 5.4

35 ACRES TOTAL

5.4 ACRES TOTAL

Right Nos. 22-13509 and 22-13999 are limited to the irrigation of a combined total of 35 acres in a single irrigation season.

This right is limited to the irrigation of 25.4 acres within the place of use described above in a single irrigation season.

OTHER PROVISIONS NECESSARY FOR DEFINITION OR ADMINISTRATION OF THIS WATER RIGHT:

This water right shall not be permitted to make a delivery call against water right nos. 22-13135, 22-13961, 22-13962, 22-13963, 22-13964, 22-22802, 22-22968, 22-22969, and 22-13681, and their progeny.

This partial decree is subject to such general provisions necessary for the definition of the rights or for the efficient administration of the water rights as may be ultimately determined by the Court at a point in time no later than the entry of a final unified decree. Section 42-1412(6), Idaho Code.

EXPLANATORY MATERIAL: BASIS OF CLAIM - Decreed

Right includes accomplished change in place of use pursuant to Section 42-1425, Idaho Code.

The following rights are diverted through point of diversion described above: 22-127148, 22-13509, 22-13586, 22-13853, 22-13854, 22-13997, 22-13998, and 22-13999.

This right is a split from former right 22-405.

Right includes accomplished change in point of diversion pursuant to Section 42-1425, Idaho Code.

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State of Idaho

Exhibit 2**DEPARTMENT OF WATER RESOURCES**

Eastern Region, 900 North Skyline Drive, Suite A • Idaho Falls, Idaho 83402-1718

Phone: (208) 525-7161 • Fax: (208) 525-7177 • Web Site: www.idwr.idaho.govC. L. "BUTCH" OTTER
GovernorGARY SPACKMAN
Interim Director

January 24, 2011

Dear Claimant:

As you may recall a settlement conference was recently held in Idaho Falls in hopes that the disputes regarding the water right claims from Paradise Springs could be resolved. At the settlement conference the parties in attendance and the Idaho Department of Water Resources reached a tentative agreement. However, final settlement is contingent upon additional action by the parties. The purpose of this letter is to let you know what further action needs to be taken in order to bring closure to the Paradise Springs subcases in the Snake River Basin Adjudication ("SRBA").

The table below lists the amounts agreed upon during the settlement conference followed by the tasks that need to be completed before the settlement can be finalized. Please find your subcase(s) below and take the appropriate action. IDWR would be happy to help you through the process if you need assistance, as appropriate. Because of the global nature of the settlement of Paradise Springs, SF5 settlement documents will be prepared once the late claims and amended claims are ready for resolution. In other words, all the subcases are tied together and are anticipated to progress through the SRBA resolution process as a group.

<u>Claim number</u>			<u>Owner</u>	<u>Decreed</u>	<u>Beneficial</u>	<u>Decreed</u>	<u>Beneficial</u>
- - -			-	<u>Acres</u>	<u>Use Acres</u>	<u>Quantity</u>	<u>Use Quantity</u>
22	587	A	KUNZ, LARELL A	25		0.35	
22	12714	B	SUSAN C ALDEEN TRUST	7.8		0.11	
22	13211		MILLER, DON LE ROY	8.5	3.3	0.17	0.07
22	13212		REID, MICHAEL L	26	9.6	0.52	0.19
22	13511		TETON RAINBOW RANCHES	72		1	
22	13586		RICHARDSON, ANDREW J	23.5	8.5	0.47	0.17
22	13853		MILLER, CHESTER H; MILLER, REX H	16.5	6.5	0.33	0.13
22	13854		RICHARDSON FAMILY PROPERTIES LLC	17	14	0.24	0.38
22	13509		FRED MILLER TRUST	25.5	9.5	0.51	0.19

22-587A: No need to amend the claim. Only needs to sign SF5.22-12714B: Needs to amend claimed flow rate to 0.11 cfs.

JAN 25 2011

22-13211. No need to amend claim. Only needs to sign SF5. It is my understanding that the objectors to this subcase seek a subordination remark limiting a delivery call on this right to 7.6 acres and .17 cfs. Additionally, needs to set aside 22-11537, the 1969 beneficial use right, and sign an SF5 for .07 cfs and 3.3 acres.

22-13212. Needs to move to set aside and amend claim for 0.52 cfs. Eventual recommendation for -13212 will contain a subordination remark limiting a delivery call on this right to 4.5 acres and 0.16 cfs. Will receive SF5 on 22-11639 for 9.6 acres and 0.19 cfs as the beneficial use claim.

22-13511. No need to amend claim. Only needs to sign SF5.

22-13586. Needs to amend claimed flow rate to 0.47 cfs. This right is governed, in part, by the stipulation filed December 2009. Consistent with that stipulation, the eventual recommendation for -13586 will contain the following subordination remark: This water right shall not be permitted to make a delivery call against water right nos. 22-13135, 22-13961, 22-13962, 22-13963, 22-13964, 22-2280E, 22-2296B, 22-2296D, and 22-13681, and their progeny. Needs to file a new beneficial use claim for 8.5 acres and 0.17 cfs.

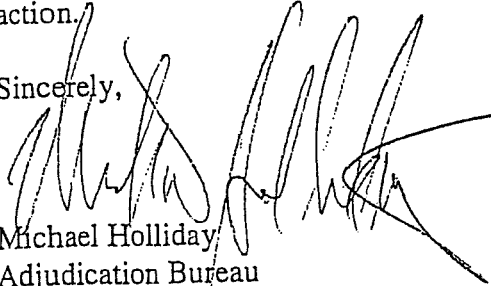
22-13853. Needs to amend claimed flow rate to 0.33 cfs and file a new beneficial use claim for 6.5 acres and 0.13 cfs.

22-13854. This right is governed, in part, by the stipulation filed December 2009. Needs to file a new beneficial use claim for 14 acres and 0.38 cfs.

22-13509. Consistent with the Amended Director's Report filed in July 2010, the eventual recommendation for -13509 will contain the following subordination remark: This water right shall not be permitted to make a delivery call against water right nos. 22-13135, 22-13961, 22-13962, 22-13963, 22-13964, 22-2280E, 22-2296B, 22-2296D, and 22-13681, and their progeny. Needs to file a new beneficial use claim for 9.5 acres and 0.19 cfs.

The next status conference on these subcases is set for February 2, 2011, at 9:30 a.m., during which Special Master Bilyeu agreed to hear motions to amend claims. Motions for late claims need to be heard by Judge Wildman. If you have questions about any of this, please contact your attorney, if applicable, or feel free to give me a call. Thanks in advance for your prompt action.

Sincerely,



Michael Holliday
Adjudication Bureau
Senior Water Right Agent

CERTIFICATE OF MAILING

I certify that a true and correct copy of the AMENDED ORDER ON SHOW CAUSE HEARING was mailed on March 14, 2012, with sufficient first-class postage to the following:

DANIEL D MILLER
DAVID W MILLER
LARRY J MILLER
LEWIS J MILLER
M PHILLIP MILLER
RALPH P MILLER
RICHARDSON FAMILY PROPERTIES
RONALD K MILLER

Represented by:
ROBERT L HARRIS
1000 RIVERWALK DR, STE 200
PO BOX 50130
IDAHO FALLS, ID 83405
Phone: 208-523-0620

CEDRON CEMETERY DISTRICT
CEDRON IRRIGATION LLC
MAHOGANY RANCH HOLDINGS
RAINBOW RANCHES INC
TETON RAINBOW RANCHES INC
TREES INC
WALLY JR ROTHGEB
WALLY ROTHGEB JR

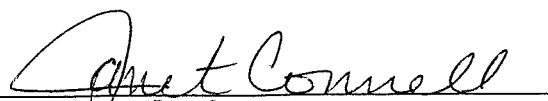
Represented by:
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PO BOX 1391
POCATELLO, ID 83204-1391
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DIRECTOR OF IDWR
PO BOX 83720
BOISE, ID 83720-0098

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JOY M REID
MICHAEL L REID
MICHAEL REID
STEPHEN D REID
550 S 450 W
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Phone: 208-354-8024


Deputy Clerk