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DEPARTMENT OF
WATER RESOURCES

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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.: 22-13853

**MEMORANDUM IN SUPPORT OF
MOTION TO FILE AMENDED NOTICE OF
CLAIM**

David W. Miller, Larry J. Miller, Ralph P. Miller, M. Phillip Miller, Lewis J. Miller, Daniel D. Miller and Ronald K. Miller (collectively the "Millers"), by and through their counsel of record, Robert L. Harris of Holden, Kidwell, Hahn & Crapo, PLLC, hereby submit this *Memorandum in Support of a Motion to File Amended Notice of Claim* for the above subcase. The Motion to File Amended Notice of Claim was filed by Rex and Renae Miller on July 30, 2012.

Water Right No. 22-13853 is one of the Paradise Springs subcases, which has been an ongoing matter in the SRBA for a number of years. It was part of settlement negotiations held in Idaho Falls in November of 2010, where the parties reached an agreement with regards to how

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the parties would *pro rata* allocate the 2.0 cfs and 100 acres of the JJ Miller water right (Water Right No. 22-405), and then file late beneficial use claims for the remaining acres desired by each water right holder. While there were some eventual disputes over the particulars of some of the water rights, the parties by and large have complied with the framework from the settlement agreement memorialized by IDWR agent Michael Holliday. *See* attached January 24, 2011 letter from Michael Holliday and February 3, 2011 letter from Andrea Courtney.

However, due to Rex Miller's recent health problems, neither he nor his wife Renae filed the necessary documents with the SRBA court as called for in the settlement agreement, which included the need amend their claim for Water Right No. 22-13853. The amendment will increase 22-13853's diversion rate to .33 cfs. The court has provided a number of opportunities for Rex and Renae to file these documents, but the documents were not filed until now.

As part of the settlement of remaining issues for the Millers' water right (22-13509), based on concerns voiced by Michael Reid, the Millers agreed to prepare the amended claim documents for 22-13853, and have them delivered to Renae Miller for signature. This was done, and the motion to file amended notice of claim has now been timely filed.

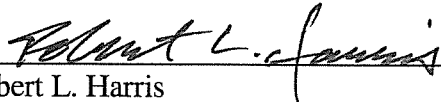
In addition, the Millers agreed to file a brief in support of the amended claim, and this is the brief that satisfies this condition.

The Millers have always maintained that the parties present at the settlement conference were in unanimous agreement on the framework contemplated in the settlement agreement, recognizing that additional paperwork needed to be filed by the parties. At the request of the attorneys present, Michael Holliday prepared and sent the January 24th letter to the Paradise Springs water right holders explaining what each water right holder had to do to make their water

rights—as well as their late claim beneficial use water rights¹—consistent with the settlement framework.

Because the January 24th letter was a memorialization of an agreement between the parties, the Millers fully support the *Motion to File Amended Notice of Claim* for Water Right No. 22-13853 filed by Rex and Renae Miller. We urge the court to grant the motion because it is a component to the settlement of the Paradise Springs subcases as outlined in the January 24th letter.

Dated this 14th day of August, 2012.


Robert L. Harris
HOLDEN, KIDWELL, HAHN & CRAPO, PLLC

¹ Rex and Renae Miller have also filed their *Motion to File Late Claim*, which has been numbered 22-14051.

CERTIFICATE OF MAILING

I certify that on this 14th day of August, 2012, I mailed/faxed the original and copies of this form, including all attachments, to the following persons by mailing/faxing the original and/or copies, postage prepaid and addressed as follows:

1. **ORIGINAL TO:**

Clerk of the District Court—Snake River Basin Adjudication
253 Third Avenue North
P.O. Box 2707
Twin Falls, ID 83303-2707
VIA FACSIMILE: 208-736-2121

COPIES TO:

Rex and Renae Miller
PO Box 55
Filer, ID 83328

(☒) *First Class Mail*
(☐) *Hand Delivery*
(☐) *Facsimile*
(☐) *Overnight Mail*
(☐) *Email*

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Racine, Olson, Nye Budge & Bailey, Chtd.
201 E Center St
PO Box 1391
Pocatello, ID 83204-1391

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Michael L. Reid
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Stephen D. Reid
550 S. 450 W.
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Director of IDWR
PO Box 83720
Boise, ID 83720-0098

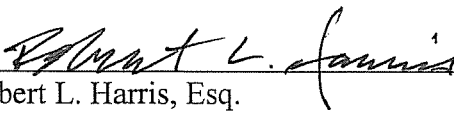
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DEPARTMENT OF WATER RESOURCES

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C. L. "BUTCH" OTTER
Governor

GARY 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.

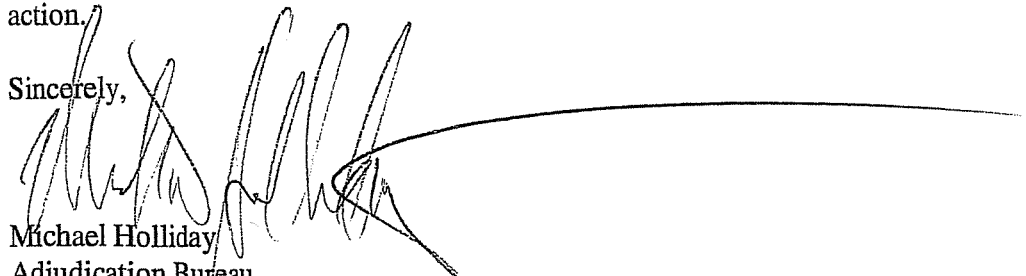
22-13853. Needs to amend claimed flow rate to 0.33 cfs and file a new beneficial use claim for 6.5 acres and 0.13 cfs.

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



STATE OF IDAHO
OFFICE OF THE ATTORNEY GENERAL
LAWRENCE G. WARDEN

February 3, 2011

Rex Miller
P.O. Box 532
Driggs, ID 83422

Re: Water right 22-13853

Dear Mr. Miller:

I am a deputy attorney general representing the Idaho Department of Water Resources ("IDWR"). This letter is a follow-up to the letter Michael Holliday from IDWR sent to you last month about your subcase.

As you know, the Paradise Springs subcases in the Snake River Basin Adjudication ("SRBA") are on the road to settlement. Your water right 22-13853 is one of the subcases involved in said settlement. The SRBA Court held a hearing yesterday to discuss the status of the subcases involved in the settlement. The Court set a final deadline of February 11, 2011, in which to file an amended claim, if you intend to do so. As referenced in Mr. Holliday's letter, as part of the settlement, you can receive an increase in quantity for your water right (from .25 cfs to .33 cfs). However, IDWR can only recommend the increased amount to the SRBA Court if you file an amended claim. Amending a claim is not difficult, and you can contact Mr. Holliday for assistance. If you are content with your quantity recommendation the way it stands, .25 cfs, then you need not amend. If you choose not to amend, IDWR will, at some point after February 11, send a settlement document entitled Standard Form 5 ("SF5") for your signature. The SF5 will reflect the settlement, reducing your recommended place of use under this right to 16.5 acres (another 6.5 acres can be added via a late claim - see below). We will send more detailed instructions with the SF5.

Additionally, as part of the settlement and referenced also in Mr. Holliday's letter, you may be entitled to another water right, one based on beneficial use from Paradise Springs for .13 cfs on 6.5 acres. This additional right would necessarily have a later priority date than does 22-13853 (the other beneficial use rights that are part of this settlement grouping have priority dates in the 1960s), and you would be responsible for submitting evidence in support of the priority date. The Court set a final deadline of March 25, 2011, for filing any late claims connected to this settlement. If you do not file

a late claim associated with the potential beneficial use of Paradise Springs water, you may be forfeiting said water right.

If you have questions about these matters, please contact me at (208) 287-4810 or Mr. Holliday at (208) 525-7161.

Sincerely,

A handwritten signature in black ink that reads "Andrea L. Courtney". The signature is written in a cursive style with a large, sweeping "A" and a long, horizontal line extending from the end of the name.

Andrea L. Courtney

Cc: Michael Holliday