

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

RIGHT NUMBER: 22-13211

NAME AND ADDRESS:

DON LE ROY MILLER
1835 TETON VIEW DR
REXBURG ID 83440

SOURCE:

Source:
PARADISE SPRING

Tributary:

TETON RIVER

QUANTITY:

0.170 CFS

~~0.300 CFS~~

PRIORITY DATE:

06/01/1904

POINT OF DIVERSION:

T04N R45E S30 NENW
Within TETON County

~~T04N R45E S30 SWNENW~~
~~Within TETON County~~

PURPOSE AND
PERIOD OF USE:

Purpose of use:

Period of use:

Quantity:

IRRIGATION

04/15 10/31

0.170 CFS

~~0.300 CFS~~

PLACE OF USE:

IRRIGATION within TETON County

T04N R45E S30 NENW 9.7

~~T04N R45E S30 NENW 9.5~~

T04N R45E S30 Lot 1 NWNW 2.1

~~T04N R45E S30 Lot 1 NWNW 2.3~~

11.8 ACRES TOTAL

This right is limited to the irrigation of 8.5 acres within the place of use described above in a single irrigation season.

Right Nos. 22-13211 and 22-11537 are limited to the irrigation of a combined total of 11.8 acres in a single irrigation season.

~~This right is limited to the irrigation of 5.1 acres within the place of use described above in a single irrigation season.~~

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.

For purposes of administration during times of scarcity, this water right shall not be permitted to make a delivery call in excess of 7.6 acres and/or 0.17 cfs.

EXPLANATORY MATERIAL: BASIS OF CLAIM - Decreed

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

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

08/10/2006

IDAHO DEPARTMENT OF WATER RESOURCES
PRELIMINARY RECOMMENDATION OF WATER RIGHTS ACQUIRED UNDER STATE LAW

RIGHT NUMBER: 22-13211

NAME AND ADDRESS: DON LE ROY MILLER
1835 TETON VIEW DR
REXBURG ID 83440

SOURCE: PARADISE SPRING

TRIBUTARY: TETON RIVER

QUANTITY: 0.300 CFS

PRIORITY DATE: 06/01/1904

POINT OF DIVERSION:

T04N R45E S30 SWNENW Within TETON County

PURPOSE AND
PERIOD OF USE:

PURPOSE OF USE

PERIOD OF USE

QUANTITY

IRRIGATION

04/15 10/31

0.300 CFS

PLACE OF USE:

IRRIGATION Within TETON County

T04N R45E S30

NENW

9.50

T04N R45E S30 Lot 1 NWNW

2.30

11.8 ACRES TOTAL

This right is limited to the irrigation of 5.1 acres within the place of use described above in a single irrigation season.

Right Nos. 22-13211 and 22-11537 are limited to the irrigation of a combined total of 11.8 acres in a single irrigation season.

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 - Decreed

This right is a split from former right 22-405

RECEIVED

AUG 18 2011

Department of Water Resources
Eastern Region

LAW OFFICES OF

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CHARTERED**

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August 17, 2011

Michael Holliday
Eastern Region/IDWR
900 N. Skyline Drive, Ste A
Idaho Falls, Idaho 83402

Re: *SRBA Subcase Nos. 22-13211, 22-13212 and 22-13854 (Paradise Springs)*

Dear Michael:

Enclosed are SF5s for each of the above-referenced water rights. Ray Williams sent these to me for my signature, and asked that I forward them to the remaining parties for their signatures. I am sending them to you since you must sign each SF5. I anticipate you will then send these to the other parties that need to sign them.

Sincerely,



THOMAS J. BUDGE



TJB:rr

Enclosures

cc: Ray Williams/IDWR



State of Idaho

DEPARTMENT OF WATER RESOURCES

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

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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.

SCANNED

JAN 24 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

SCANNED
JAN 24 2011

Paradise Springs Water Rights, Basin 22, Teton County Idaho

Paradise Springs, located near Driggs Idaho in Basin 22 is the subject of much contention. The recommendations have been reported to the court for all Basin 22 claims as well as these Paradise Springs and those water rights related to Paradise Springs. Objections are now being filed with the court regarding these rights. This report is to document the reasoning behind the recommendations made on the water rights for Paradise Springs and those water rights relating.

Water Right Referenced in This Report

22-180A, 22-180B, 22-180D, 22-575A, 22-11537, 22-11639, 22-12714B, 22-13134, 22-13135, 22-13211, 22-13212, 22-13503, 22-13509, 22-13511, 22-13585, 22-13586.

Water Right 22-405

Water right 22-405 was decreed to J. J. Miller in "Rexburg Irrigation Company et al. vs. Teton Irrigation Canal Company et al.", commonly known as the Rexburg Decree. Water right 22-405 was decreed to lands located on SWSE and S½ SW Section 30, and NENW of Section 21, Township 4 North, Range 45 East, for a total of 160 acres. The decree entitled Mr. Miller to a total of 2.0 cfs from Paradise Springs. The decree stated a priority date of 6-1-1904.

Mike Reid, Don Leroy Miller and Rex Miller are the original claimants for 22-405. Rex Miller has since sold a portion of his land to John Collins, Andrew Richardson and some of his land if not all is now being subdivided. All of the original claimants claim the water had never been used on the decreed place of use. Don is J.J. Miller's son. He states along with the rest of the original claimants that J. J. Miller never owned any of the land described in the Rexburg decree, and that the land that the water was intended to be used on is located in the SESW and NESW Section 19 as well as NENW and SENW Section 30, Township 4 North, Range 45 East. After looking at the USGS topographic map, it was found that Paradise Springs' water could never have been used on the land described in the Rexburg Decree because it is up hill.

Don Miller brought in J. J. Millers Homestead description as well as a Notice Of Water Right submitted by J. J. Miller. The Homestead Entry for J. J. Miller and the land listed on his Notice of Water right are described as follows: E½ NW Section 30 and E½ SW Section 19, Township 4 North, Range 45 East.

Given this information it is believed that water right 22-405 had always been used on the land described by the claimants. It is also believed that the Rexburg Decree was in error.

Because of this error and the fact that the Rexburg Decree is an indeterminate decree in regard to exact acreage, Idaho Department of Water Resources' "Adjudication Memo #57" was used as a guide for these recommendations. "Adjudication Memo #57" states

that if the water right was part of an indeterminate decree, then the acres irrigated in 1987 will be used as the decreed place of use. In 1987 all of the E½ NW Section 30 and E½ SW Section 19, Township 4 North, Range 45 East was irrigated. This information was found through statements from the original claimants including signed statements from Rex Miller and Craig Kunz and by reviewing the aerial photos taken in 1987/1988 by the National Agriculture Imagery Program (NAIP). Though this is true, the claimants state that the NESW of Section 19 Township 4 North, 45 East was not irrigated until later (Affidavit supplied).

Rex Miller and Don Miller are brothers and each of them owned part of the land that was homesteaded by J. J. Miller. Even though the land was not split half and half between Don and Rex, the water right was. This information was obtained by a conversation with Don and a signed statement from Rex. Rex Miller and Don Miller each received 1.0 cfs of water right 22-405.

Mike Reid bought a portion of land from Don Miller therefore a portion of Don's 1.0 cfs was portrayed to him. Because of a claim that ground water users in the area were drying up Paradise Springs, Mike Reid filed a transfer to officially move the water from the decreed place of use to the land that it has always been used on. This transfer was lost in the system and when it was found it was decided that the Adjudication recommendations would accomplish the change the transfer was trying to accomplish, and the transfer was withdrawn. Rex's 1.0 cfs was also split. The recommendations for 22-405 have been created based on the above information.

Recommendations for 21-405:

- Mike Reid owns 35.6 acres of the Homesteaded land and receives 0.7 cfs and is reflected in the following claim files: 22-13212 (0.5 cfs), 22-13503 (0.2 cfs).
- Don Miller owns 9.6 acres and receives 0.3 cfs reflected in claim number 22-13211
- Rex Miller at one time irrigated 93.8 acres using water right 22-405 and water right 22-587. He owns 1.0 cfs of 22-405 and did not claim any additional water from 22-587 although he owned land covered by that right. He sold 7.2 acres and 0.08 cfs to Russel Bourne who then sold it to John Collins. John Collins' land was decreed as 22-587 and was therefore was recommended as such. Rex then sold another piece of his land to Andrew Richardson who received 0.34 cfs for 31 acres on land decreed as 22-405. Rex was left with 55.6 acres and 0.61 cfs on land covered by both 22-405 and 22-587.
- Rex Miller 55.6 acres and 0.61 cfs. Combination of 22-405 and 22-587 reflected in claim number 22-13585.
- Andrew Richardson 31 acres and 0.34 cfs. Portion of 22-405 reflected in claim number 22-13586.

- John Collins 7.2 acres and 0.08 cfs. Portion of 22-587 reflected in claim number 22-12714B.

Water Right 22-13509

Later in time the NESW of Section 19, Township 4 North, Range 45 East started being irrigated by water that came from a ditch along the Western hillside. There was an affidavit submitted by Chester Miller, one of J. J. Miller's sons. This affidavit went through some history about the water from Paradise springs but the only concrete date that can be taken from that affidavit was 1960. Because of this information the priority date that was given to water right 22-13509 for the irrigation of the NESW of Section 19, Township 4 North, Range 45 East.

Water Right 22-4104

According to the claimants in 1969 a pump went in on the East side of the spring and pumped water through a pipe for sprinkler irrigation. This pump not only irrigated all of the homesteaded land, but also began irrigating a small piece of land owned by Don Miller in the NWNW of Section 30 Township 4 North, Range 45 East. The affidavit provided by Chester Miller supports this beneficial use water right 22-4104. This right was split between Don Miller and Mike Reid.

Recommendations for 22-4104:

- Mike Reid receives 0.59 cfs reflected in claim number 22-11639.
- Don Miller receives 0.14 cfs reflected in claim number 22-11537.

Water Right 22-587

This water right was decreed in the Rexburg Decree to Caroline Withrick for an "undivided $\frac{1}{4}$ of Paradise Springs" with a priority of 6-1-1904. The land in the decree is stated as follows:

"NE1/4SE1/4, and SE1/4 of NE1/4 of Section 30, T. 4 N., R., 45 E., B. M. also, Homestead not described in pleadings."

The Homestead for Caroline Withrick was found on the BLM website (www.glorerecords.blm.gov) but her name was spelled slightly different. The homestead was issued to Carolina Wuthrick dated May 20th 1862. The land was listed as follows:

"S1/2SE Section 19 and NWNE Section 30 of T 4N R 45E"

The land listed on the decree and on the Homestead Entry total 200 acres.

7.2 acres of SWSE Section 19, Township 4 North, Range 45 East has been recommended to John Collins as 22-12714B. The remainder of that quarter-quarter has been recommended to Rex Miller as 22-13585. Duane Kunz claims 1.6 cfs of 22-587 reflected in water right claim number 22-13511. He claims the water has been used on NESW and NWSW Section 30, Township 4 North, Range 45 East, which is not the decreed place of use and no evidence has been submitted suggesting an error in the decree. As a result that claim has been disallowed.

Water Right 22-575

Water right 22-575 was decreed in the Rexburg Decree to George Walton for 100 inches (2 cfs) from Paradise Springs with a priority of 6-1-1892. The land it was decreed to is described as follows:

“NW1/4 of SW1/4 and W1/2 of NW1/4 of Section. 29, and NE1/4 of NE1/4 of Section 30, T. 4 N. R., 45 E., B. M., Containing 160 Acres.”

In water right transfer number 3555 Gary Zohner transferred 1 cfs of water right 22-575 from NWNW Section 29 and NENE Section 30, Township 4 North, Range 45 East to the NWSE and SESE Section 19, Township 4 North, Range 45 East. Also in the same transfer he moved 0.7 cfs of water right 22-180 from the NENE Section 30, Township 4 North, Range 45 East to the same place of use in Section 19.

After transfer # 3555, the land pertinent to 22-575 is as follows:

NWSW and SESE Section 19, SWNW and NWSW Section 29 all in Township 4 North, Range 45East.

Teton Rainbow Ranch at one time prior to 1987 owned land located in the SWNW and NWSW Section 29, Township 4 North, Range 45 East. They sold that land to Peter Shields and reserved the water as stated in the warrantee deed located in the claim file for water right 22-13134. Teton Rainbow Ranch then moved the water to SENE and NESE Section 30, Township 4 North, Range 45 East. Based on this information the recommendations follow.

Recommendations for 22-575:

- Gary Zohner receives 1.0 cfs reflected in claim number 22-575A limited to 80 acres.
- Wally Rothgeb receives, as an accomplished change in place of use, 0.13 cfs for 8.9 acres reflected in claim number 22-13135.
- Teton Rainbow Ranch receives, as an accomplished change in place of use, 0.86 cfs for 54 acres reflected in claim number 22-13134.

Water Right 22-180

Water right 22-180 was decreed in the Rexburg Decree to H. C. Bowles for 140 inches (2.8 cfs) from Spring Creek, with a priority of 6-1-1889. The land describe in the decree is as follows:

“SW1/4 of SW1/4 and SW1/4 of SE1/4 of Section. 29, N1/2 of NE1/4 of Section. 30, T. 4 N., R. 45 E., B. M., containing 160 acres”.

After transfer # 3555 mentioned above the lands to which water right 22-180 was pertinent is as follows.

NWSE and SESE Section 19, SWSW and SWSE Section 29, and NWNE Section 30, Township 4 North, Range 45 East.

Though 22-180 was decreed the source of “Spring Creek”, no one knows exactly where Spring Creek is. Some of the local names for Paradise Springs are Sulfur Creek and Spring Creek. In my analysis Paradise Springs, springs up into a pond and when water is high it will flow down and add to the water down stream in what is locally known as Miller Slough or Paradise Creek. Paradise Creek is a gaining reach and water can be found in it even after water is too low for Paradise Springs to feed it. It is possible that at the time of the Rexburg decree, Paradise Springs and Paradise Creek were referred to as separate sources. It is my opinion that the Rexburg Decree decreed rights to Paradise Springs and also Paradise Creek but named it Spring Creek because it was connected to Paradise Springs at times. For lack of other evidence and the fact that for years, it has been accepted that 22-180 is part of Paradise Springs my recommendation is that 22-180 be decreed, at least in part, to Paradise Creek. A transfer was even approved by the Department for this right and no protests were received to my knowledge. The Rexburg Decree did however decree 40 acres of land to this water right on the East side of the River. This is the portion of the right that Duane Kunz is claiming. That is why I recommended Unnamed Stream to this right. Why that land was decreed is unknown to me. It may be an error, or the land on the West side of the river may be in error. It could also be that H. C. Bowles allowed the water to flow into the Teton River and then he took it out upstream in an exchange fashion, otherwise I don’t understand why 80 acres would be decreed right on Paradise Creek and 80 acres decreed ½ mile upstream and 40 acres of it on the East side of the river. It may be that we want to recommend 22-180A and 22-180D as Paradise Creek to differentiate between Paradise Springs and Paradise Creek, and then have a point of injection and a point of re-diversion.

Based on that information the recommendations for 22-180 are as follows.

Recommendations for 22-180:

- Gary Zohner receives 0.7 cfs for 80 acres reflected in claim number 22-180A (Paradise Springs)

- Duane Kunz receives 0.7 for 40 acres reflected in claim number 22-180B (Unnamed Stream)
- Larell Kunz receives 0.44 cfs for 25 acres reflected in claim number 22-180D (Paradise Springs)

Report by Trent Galbraith 12-15-06: Revised 10-1-2007

Paradise Springs

22-405

22-405 was decreed to J. J. Miller in the Rexburg Decree to lands located on SWSE and S1/2SW Sec 30, and NENW of Sec 21 T 4 N 45 E for a total of 160 acres. The source of the decree is 2 CFS from Paradise Springs. The decree stated a priority date of 6/1/1904.

Mike Reid, Don Leroy Miller and Rex Miller are the original claimants for 22-405. Rex Miller has since sold a portion of his land to John Collins, Andrew Richardson and some of his land if not all is now being subdivided. All of the original claimants claim the water has never been used on the decreed POU. Don is J.J. Miller's son. He states as well as the rest of the claimants that J. J. Miller never owned any of the land described in the Rexburg decree, and that the land that the water was intended to be used on is SESW and NESW Sec 19 as well as NENW and SENW Sec 30 in T 4 N 45 E. Paradise Springs' water could never have been used on the land described in the Rexburg Decree because it is up hill and too far away.

Don Miller brought in J. J. Millers Homestead description as well as a Notice Of Water Right. The Homestead Entry for J. J. Miller and the land listed on his Notice of Water right are described as follows: E1/2NW Sec 30 and E1/2SW Sec 19 T 4 N 45 E.

Given this information it is believed that water right 22-405 had always been used on the land described by the claimants. It is also believed that the Rexburg Decree was in error.

Because of this error and the fact that the Rexburg Decree is and indeterminate decree when it comes to exact acreage, memo #57 was used as a guide for these recommendation. Memo #57 states that if the water right was part of an indeterminate decree, then we use the acres irrigated in 1987 as the decreed POU. In 1987 all of the E1/2NW Sec 30 and E1/2SW Sec 19 was irrigated. This information was found by looking at aerial photos of 1987 or by statements from the original claimants including signed statements from Rex Miller and Craig Kunz. Though this is true the claimants state that the NESW of Sec 19 was not irrigated until later (Affidavit supplied).

Rex Miller and Don Miller are brothers and each of them owned part of the land that was homesteaded. Even though the land was not split half and half between Don and Rex, the water right was. This information was obtained by a conversation with Don and a signed statement from Rex. Rex Miller initially had 1 CFS of 22-405 and Don had the same.

Mike Reid bought some land from Don Miller so a portion of Don's 1 CFS goes to him. Because of some issues with well users drying up Paradise Springs, Mike Reid filed a transfer to officially move the water from the decreed POU to the land that it has always been used on. This transfer was lost in the system and by the time it was found it was decided that because the Adjudication recommendations would accomplish the same thing the transfer was trying to accomplish, the transfer would be withdrawn. Rex's 1

CFS was also split. The recommendations for 22-405 have been created based on the above information.

Recommendations

Mike Reid owns 35.6 acres of the Homesteaded land and receives 0.7 CFS and is reflected in the following claim files: 22-13212 (0.5 CFS), 22-13503 (0.2 CFS).

Don Miller owns 9.6 acres and receives 0.3 CFS reflected in claim number 22-13211

Rex Miller at one time irrigated 93.8 acres using water right 22-405 and 22-587. He owns 1.0 CFS of 22-405 and did not claim any additional water from 22-587 although he owned land covered by that right. He sold 7.2 acres and 0.08 CFS to Russel Bourne who then sold it to John Collins. That land was decreed as 22-587 so that is how it was recommended. Rex Then split off another piece of his land to Andrew Richardson who then got a right for 0.34 CFS for 31 acres on land decreed to 22-405. Rex was left with 55.6 acres and 0.61 CFS on land covered by both 22-405 and 22-587.

Rex Miller 55.6 acres 0.61 CFS combination of 22-405 and 22-587 reflected in claim number 22-13585.

Andrew Richardson 31 acres 0.34 CFS portion of 22-405 reflected in claim number 22-13586.

John Collins 7.2 acrs .08 CFS portion of 22-587 reflected in claim number 22-12714B.

22-13509

Later in time the NESW of Sec 19 started being irrigated by water that came from a ditch along the Western Hillside. There was an affidavit submitted by Chester Miller, one of J. J. Miller's sons. This affidavit went through a lot of history about the water from Paradise springs but the only date that can be pulled from that affidavit was 1960. This is the priority date I gave 22-13509 for the irrigation of the NESW of Sec 19.

22-4104

According to the claimants in 1969 a pump went in on the east side of the spring and pumped water through a pipe for sprinkler irrigation. This pump besides irrigating all of the Homesteaded land also began irrigating a small piece of land owned by Don Miller in the NWNW of Sec 30. The affidavit provided by Chester Miller supports this beneficial use water right 22-4104. This right was split between Don Miller and Mike Reid.

Recommendations

Mike Reid receives 0.59 CFS reflected in 22-11639.

Don Miller receives 0.14 CFS reflected in 22-11537.

22-587

This water right was decreed in the Rexburg Decree to Caroline Withrick for an "undivided $\frac{1}{4}$ of Paradise Springs" with a priority of 6/1/1904. The land stated in the decree is stated as follows:

"NE $\frac{1}{4}$ SE $\frac{1}{4}$, and SE $\frac{1}{4}$ of NE $\frac{1}{4}$ of Sec 30, T. 4 N., R., 45 E., B. M. also, Homestead not described in pleadings."

The Homestead for Caroline Withrick was found on the BLM website (www.glorerecords.blm.gov) but her name was spelled a little different. The homestead was made by Carolina Wuthrick dated May 20th 1862. The land was listed as follows:

S1/2SE Sec 19 and NWNE Sec 30 of T 4N R 45E

The land listed on the decree and on the Homestead Entry totals 200 acres.

7.2 acres of SWSE Sec 19 T 4N R 45E has been recommended to John Collins. The remainder of SWSE has been recommended to Rex Miller. Duane Kunz claims 1.6 CFS of 22-587. He claims the water has been used on NESW and NWSW Sec 30 T 4N R 45E which is not the decreed POU so it has been disallowed.

22-575

22-575 was decreed in the Rexburg Decree to George Walton for 100 inches (2 CFS) from Paradise Springs with a priority of 6/1/1892. The land it was decreed to is described as follows:

"NW $\frac{1}{4}$ of SW $\frac{1}{4}$ and W $\frac{1}{2}$ of NW $\frac{1}{4}$ of Sec. 29, and NE $\frac{1}{4}$ of NE $\frac{1}{4}$ of Sec. 30, T. 4 N. R., 45 E., B. M., Containing 160 Acres."

In transfer number 3555 Gary Zohner Transferred 1 CFS of 22-575 from NWNW Sec 29 and NENE Sec 30 4N 45E to NWSE and SESE Sec 19 4N 45E. Also in the same transfer he moved .7 CFS of 22-180 from NENE Sec 30 4N 45E to the same POU in Sec 19.

After the transfer, the land pertinent to 22-575 is as follows:

NWSW and SESE Sec 19, SWNW and NWSW Sec 29 all in 4N 45E.

Teton Rainbow Ranch at one time prior to 1987 owned SWNW and NWSW Sec 29. They sold that land to Peter Shields and reserved the water as stated in a warrantee deed in 22-13134. Teton Rainbow Ranch then moved the water to SENE and NESE Sec 30. Based on this information the recommendations follow.

Recommendations

Gary Zohner receives 1.0 CFS reflected in claim number 22-575A limited to 80 acres.

Wally Rothgeb receives, as an accomplished change in POU, 0.13 CFS for 8.9 acres reflected in claim number 22-13135.

Teton Rainbow Ranch receives, as an accomplished change in POU, 0.86 CFS for 54 acres reflected in claim number 22-13134.

22-180

22-180 was decreed in the Rexburg Decree to H. C. Bowles for 140 inches (2.8 CFS) from Spring Creek, with a priority of 6-1-1889. The land describe in the decree is as follows:

“SW1/4 of SW1/4 and SW1/4 of SE1/4 of Sec. 29, N1/2 of NE1/4 of Sec. 30, T. 4 N., R. 45 E., B. M., containing 160 acres”.

After transfer 3555 mentioned above the lands to which this water water was pertinent is as follows.

NWSE and SESE Sec 19, SWSW and SWSE Sec 29, and NWNE Sec 30.

Based on that information the recommendations for 22-180 are as follows.

Recommendations

Gary Zohner receives 0.7 CFS for 80 acres reflected in claim number 22-180A

Duane Kunz receives 0.7 for 40 acres reflected in claim number 22-180B

Larell Kunz receives .44 CFS for 25 acres reflected in claim number 22-180D

Report by Trent Galbraith 12-15-06



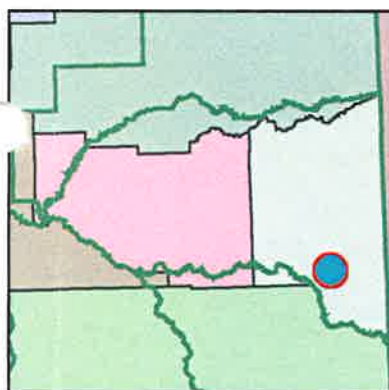
Idaho Department of Water Resources

SRBA Recommendation:

22-13211

Legend

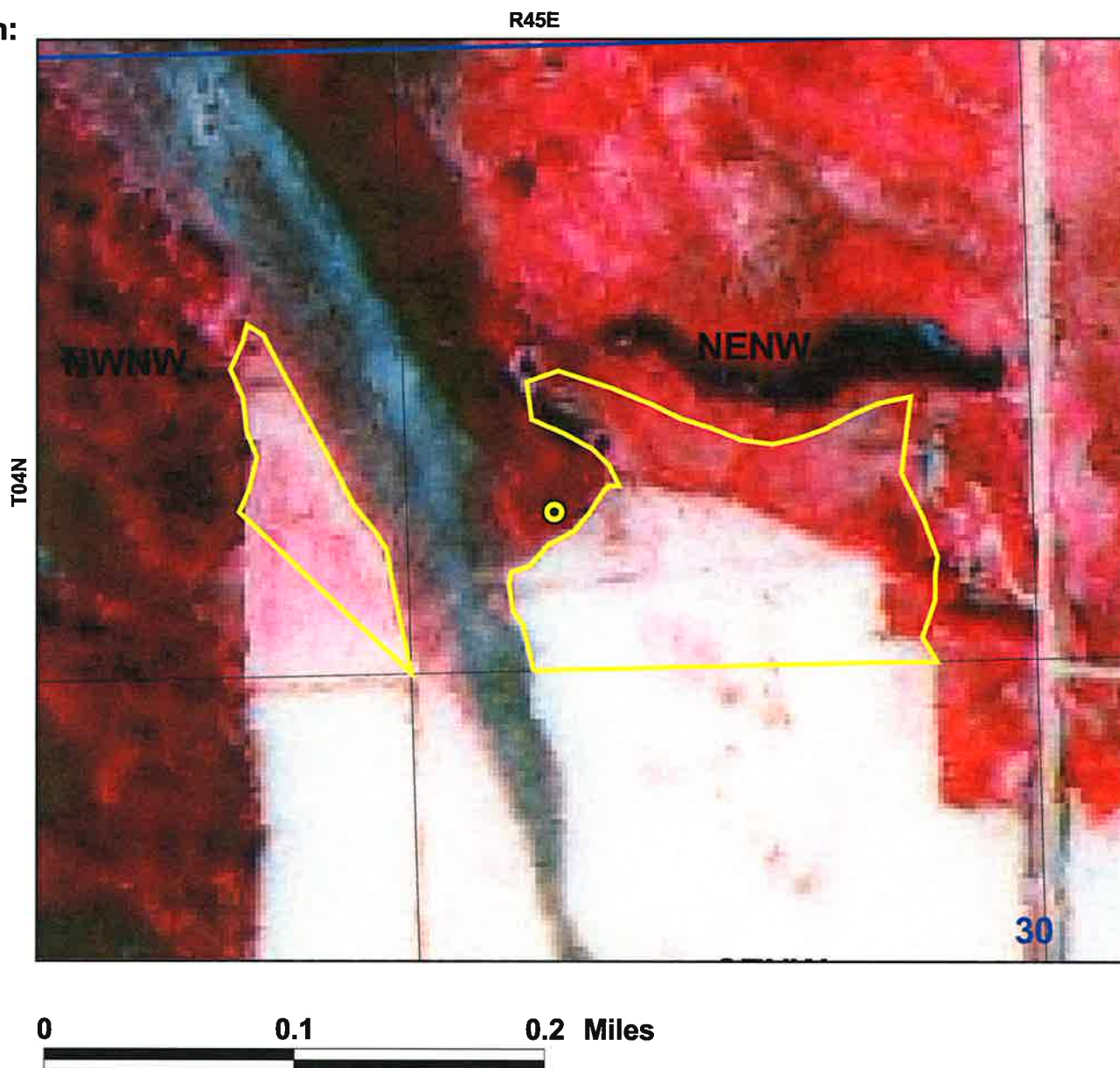
- Point of Diversion
- Place of Use
- Townships
- PLS Sections
- Quarter Quarters



Teton County
IDWR Basin 22



Prepared by T. Galbraith
On Tuesday, April 25, 2006
1987/88 Aerial Photography



The undersigned do hereby affirm that the John J Miller water right, #22-405 decreed for 2 cfs in the Rexburg Decree, was split between the undersigned as claimed in the SRBA, as follows:

Rex Miller owns 1 cfs (split to .92cfs for Rex and .08 cfs to R. Bourne)
Don Miller owns .30 cfs
Mike Reid owns .70 cfs

I hereby swear or affirm this is true.

Rex Miller
Rex Miller



(State Of Idaho)
(Jerome County)

(Subscribed and sworn or affirmed before me this 29th day of JUNE, 2006.)

Teena McCandless
Residing at: Jerome
Commission expires: 1/17/11

Don Miller
Don Miller

(State Of Idaho)
(Madison County)

(Subscribed and sworn or affirmed before me this 15th day of MAY, 2006.)

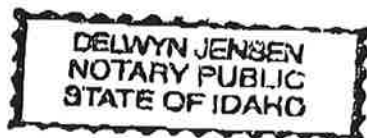


Delwyn Jensen
Residing at: Rexburg
Commission expires: 9-20-2006

Mike Reid
Mike Reid

(State Of Idaho)
(Teton County)

(Subscribed and sworn or affirmed before me this 10 day of May, 2006.)



Delwyn Jensen
Residing at: Driggs
Commission expires: 1/22/09

1/2 Not Ray
Kant Foster
NOTICE OF WATER RIGHT.

STATE OF IDAHO,
COUNTY OF FREMONT,

To All Concerned Notice is Hereby Given:

1st. That

hereby giving the use of the waters of

to the extent of

cubic feet per second.

2d. It is intended to divert said water at or near the point where a copy of this notice is posted, and more definitely as follows:

Commencing as a spring on the
N.E. 1/4 Sec 20, Twp 4 N., R. 45 E.,
Thence East about one half mile, and
thence into the Latah River.

(In above description give legal subdivision of land or describe the place with reference to some prominent landmark.)

3d. The purpose for which said water is to be used is

Irrigation and
Culinary Purposes

The place of intended use is

Batis Fremont Co. Idaho
Dam and Headgate

4th. It is intended to divert said water by means of

The general course of the proposed canal is
The length of the proposed canal is about one mile

It is intended to use said water for irrigating the following described land:

S. 1/4 Sec 20 = S. 1/4 Sec 21, Twp 4 N., R. 45 E.

5th. It is intended to have the works for diversion and use of said water as aforesaid completed with-

in 5 years. (This must in no case exceed five years.)

WITNESS my hand at St. Anthony, Idaho,

this 23 day of May, 1907

John J. Miller

Claimants.

June 12, 1902

4-007.

Application No. 8850

HOMESTEAD.

Land Office at

I, John J. Miller, of Bates
Idaho

, do hereby apply to enter, under Section 2289,
Revised Statutes of the United States; the E 48 N 4 = 30 = 6 5 N 4
of Section 19, in Township 4 N of
Range 45 E, containing 160 acres.

John J. Miller

Land Office at BLACKFOOT, IDAHO.

JUL 19 1902

I, LORENZO R. THOMAS, REGISTER OF THE LAND OFFICE,

do hereby certify that the above application is for Surveyed Lands of the class
which the applicant is legally entitled to enter under Section 2289, Revised
Statutes of the United States, and that there is no prior valid adverse right to
the same.

Lorenzo R. Thomas
Register.

7-5-06

- Because this is an indeterminate decree, memo #57 was used as guidance for Recommending splits of 22-40S.
- The Rexburg decree gives a POV that cannot possibly be irrigated by paradise springs. J.J. Miller never owned the land described and there are no claims for any portion of 22-40S that claim that land.
- In the file is a copy of J.J.'s homestead entry and a Notice of water right stating that the ~~land~~ water was always intended to be used on:
Sec 30: NENW
 SE NW
 T 04 N 45 E
Sec 19: SESW
 NFSW
- Given this information it is believed that the rexburg decree is incorrect and the land described above will be used as the original POV.
- Taking into account the sworn statement from Rex Miller, Don Miller and Mike Reid as well as lands irrigated in 1987: Recommendations for 22-40S ~~splits~~ ^{splits} are:
 - Don Miller owns ~9.6 acres and is entitled to .3 cfs
 - Mike Reid owns ~35.6 acres and is entitled to .7 cfs

22-13211
22-13212
22-13213

- 22-12714A - Rex Miller o is ≈ 66 acres and is entitled to .92 cfs
- Combined with a portion of 22-587
- 22-12714B - Russel Bourne owns ≈ 7.2 acres and is entitled to .08 cfs
- combined with a portion of 22-587
- 22-4104 is a statutory claim which the claimants believe to be an expansion of 22-405. This claim is prior to May 20th 1971 and can therefore be considered a beneficial use claim.
- This would overlap the 22-405 claims and would be proportionate to what they own of the claimed pov.
- 22-13503 and 22-13212 combined = .7 cfs
- Talked to Michael Holliday he said to use acreage as of 1987 if irrigated as per memo #57.

~~22-405~~

- All claimants of 22-405 and its splits claim the decreed pov is incorrect. There is no way paradise creek to go up hill to irrigate the land. This is true. The land is uphill and could not be irrigated from decreed source. Claimants claim that JJ Miller filled a claim with fremont county in 1901 (No copy found in files) stating Miller intended to use water on E $\frac{1}{2}$ NW Sec 30 and E $\frac{1}{2}$ SW sec 19 4N 4S E. Diverted at the NE NW of sec 30. With the water diverted there all of The E $\frac{1}{2}$ of SW se 19 could not be irrigated. It is possible some of it was irrigated by running a ditch along the hillside but there is no evidence of a ditch.

22-405

Transfers
Pending

- 13212
- 13211
- 12714A
- 12714B
- 4141

} Parts of 22-405. It is my opinion 22-405 should go away recommended as 22-13212.

22-11537
- 11639

} 1969 "Enlargement" parent rights 22-4104
I believe these should actually be Beneficial Use claims due to the fact they

are prior to 1971. This is if they used extra water! Claimants should get same % of enlargement as they did of 22-405. TG 4-4-06

4-6-06

22-12714A + 22-12714B are for $\frac{1}{2}$ of 22-405^{decree} which is lcs. 22-4104 is for an enlargement only which has been split into 22-11639 (Michael Reid) and 22-11537 (Don Miller). 22-405^{claim} is a duplicate of 22-13212 which is in the name of Michael Reid. The other part of 22-405 decree is 22-13211 which is also in the name of Michael Reid but according to Reid should be in the name of Don Miller. Don agrees.

22-4141 is a duplicate of 22-13211.

22-13211 was amended to reflect Don's portion and land. TR

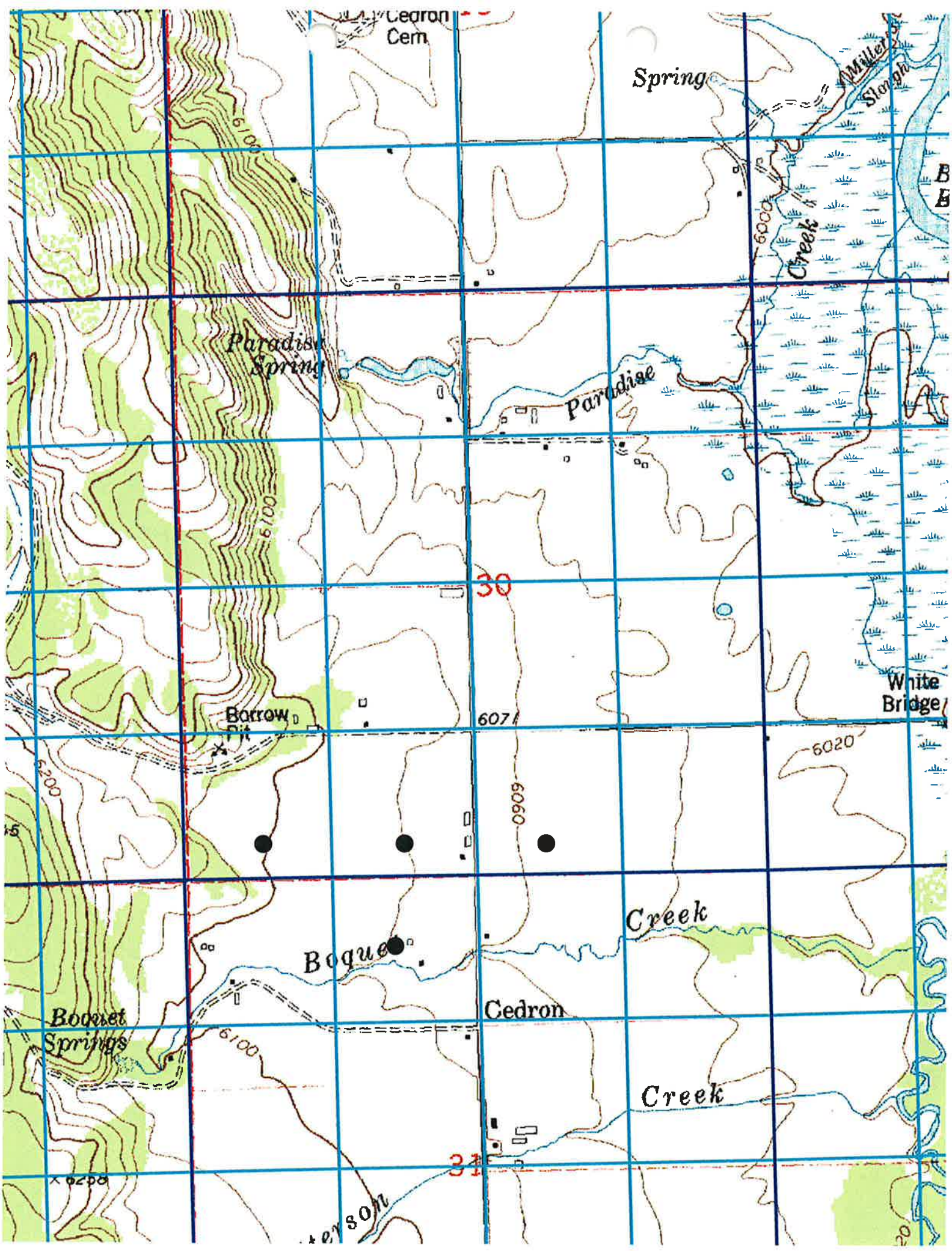
22-13503 is the additional .2 cbs of 22-405 decree that is for the irrigation of Reid's 35.6 acres needs a COS as with all of other 22-405 splits.

as of 4-6-06 a transfer for 22-13212 is in process and Jennifer has 22-13503. Claims for Reid cannot be recommended until transfer is complete. TR

~~Be sure to recommend the~~

- Called Don Leroy Miller and he said he would go through his files and get back to me. He couldn't answer any questions without his files in front of him. Wanted to ask him about 22-11537 Evidence. Maybe a meeting would be beneficial to look at his files and try to sort out 22 was splits as well. 11-11-06 T

- Leroy & Michael Reid came in 11-6-05.



Merrell, Joseph

Lots 5 and 6, containing about 160 acres, and lands adjacent to lots 5 and 6, containing about 80 acres, in Sec. 1, T., 4 S. R., 33 E., B. M., containing 243 acres in all.

Merrill, Samuel J.

SW $\frac{1}{4}$ of Sec. 2, T. 5 N. R., 45 E., B. M., containing 160 acres.

Meads, W. A.

SE $\frac{1}{4}$ of Sec. 5, T. 1 N., R., 44 E., B. M., containing 160 acres.

Metcalf, W. D.

N $\frac{1}{2}$ of NE $\frac{1}{4}$ of Sec. 23, T. 3 N., R., 38 E. B. M., containing 80 acres.

Mickelson, Peter

Lots 3 and 4 of Sec. 5, and Lots 1 and 2 of Sec. 6 T., 5 N. R., 45 E., B. M., containing 160 acres.

Miller, J. J.

SW $\frac{1}{4}$ of SE $\frac{1}{4}$, and S $\frac{1}{2}$ of SW $\frac{1}{4}$ of Sec. 30, and NE $\frac{1}{4}$ of NW $\frac{1}{4}$ of Sec. 31, T. 4 N. R., 45 E. B. M., containing 160 acres.

Mitchell, Edw. L.

Lots 1 and 2, and E $\frac{1}{2}$ of NW $\frac{1}{4}$ of Sec. 18, T. 8 N., R., 42 E., B. M., containing 138.70 acres.

Mitchell, James

50 acres off Southside of SE $\frac{1}{4}$ of Sec. 21, T. 1 N. R., 37 E., B. M.

Mitchell, William

Lot 2 of Sec. 16, T. 1 N. R., 37 E. B. M., containing 80 acres.

Modine, John A.

W $\frac{1}{2}$ of NW $\frac{1}{4}$ of Sec. 11, T. 1 N., R., 37 E., B. M., containing 80 acres.

Modine, N. P.

E $\frac{1}{2}$ of SE $\frac{1}{4}$ of Sec. 10, and W $\frac{1}{2}$ of W $\frac{1}{2}$ of Sec. 11, except 35 acres sold, and W $\frac{1}{2}$ of NW $\frac{1}{4}$ of Sec. 11, T. 1 N. R., 37 E. B. M.,

Modine, N. P.
et al.

NE $\frac{1}{4}$ of Sec. 10, Lots 1 and 2 of Sec. 10, and Lot 1 of W $\frac{1}{2}$ of SW $\frac{1}{4}$ of Sec. 11, except 35 acres, all in T. 1, N. R., 37 E. B. M.

Modine, William

W $\frac{1}{2}$ of SE $\frac{1}{4}$ of Sec. 11, and E $\frac{1}{2}$ of SE $\frac{1}{4}$ of Sec. 10, T. 1 N. R., 37 E., B. M.,

~~1-0515~~ 22-0400
~~1-0516~~ 23-0047
 McPherson, Abner
 Meeds, W. A.

Menan Milling
 Company.

160 inches. June 10, 1889. North Leigh Creek.
 165 inches. May 15, 1896. Rainey Creek.

(See Long Island
 Irrigation Company.)

~~1-0517~~ 22-0401
~~1-0518~~ 22-0402
~~1-0519~~ 22-0403
~~1-0520~~ 22-0404
 Merrill, Joseph
 Merrill, Sam J.
 Mickelson, Peter
 Mickelson, Peter

40 inches. May 1, 1904. Springs on land.
 160 inches. June 1, 1898. Leigh Creek.
 140 inches. June 1, 1901. South Leigh Creek.
 20 inches. June 1, 1903. Swamps.

Miller, Eph. L.

The Farmers' Friend
 Canal Company.

~~1-0521~~ 22-0405
 Miller, J. J.

100 inches. June 1, 1904. Paradise Springs.

Miller, Margaret

The Farmers' Friend
 Canal Company.

Miller, Mary

The Farmers' Friend
 Canal Company.

Miller, Robert

The Farmers' Friend
 Canal Company.

Miskins, J. R.

Enterprise Canal
 Company.

~~1-0522~~ 21-0145
~~1-0523~~ 22-0406
 Mitchell, Edward L.
 Moffat, Andrew

150 inches. June 1, 1894. Fall River.
 20 inches. June 1, 1895. South Leigh Creek,
 and swamp.

~~1-0524~~ 22-0407
 Moffat, Andrew

140 inches. June 1, 1897. South Leigh Creek
 and swamp.

~~1-0525~~ 22-0408
 Moffat, John P.

40 inches. June 1, 1894. Swamps.

~~1-0526~~ 22-0409
 Moffat, John P.

50 inches. June 1, 1896. Swamps.

~~1-0527~~ 22-0410
 Moffat, John P.

70 inches. June 1, 1904. Swamps.

~~1-0528~~ 22-0411
 Moffat, Mary

80 inches. June 1, 1895. Leigh Creek.

~~1-0529~~ 22-0412
 Moffat, Mary

80 inches. June 15, 1897. Leigh Creek.

Molden, Charles F.

(Conveyed to Eliza-
 beth Kratzer.)

~~1-0530~~ 21-0146
 Moon, Carliso H.

250 inches. May 10, 1895. Fall River.

Moore, Willard

Enterprise Canal
 Company.

Morgan, Edward

Enterprise Canal
 Company.

Morgan, James

Enterprise Canal
 Company.

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE OF IDAHO,
IN AND FOR THE COUNTY OF TWIN FALLS

IN RE THE GENERAL ADJUDICATION
OF RIGHTS TO THE USE OF WATER FROM
THE SNAKE RIVER BASIN WATER SYSTEM

CIVIL CASE NUMBER: 39576

Ident. Number 22-13211
Date Received: 4/6/2006
Receipt No:
Received By: TG

**NOTICE OF CLAIM TO A WATER RIGHT
ACQUIRED UNDER STATE LAW**

1. Name of Claimant(s)

DON LE ROY MILLER Phone: (208)356-4299
1835 TETON VIEW DR
REXBURG ID USA 83440

2. Date of Priority: 06/01/1904

3. Source: PARADISE SPRING Trib. to: TETON RIVER

4. Point of Diversion:

Township	Range	Section	1/4 of 1/4 of 1/4 Lot	County	Type
04N	45E	30	NE NW	TETON	

5. Description of diverting works:

6. Water is used for the following purposes:

Purpose	From	To	C.F.S.	(or) A.F.A
IRRIGATION	04/15	10/15	0.3	

7. Total Quantity Appropriated is:
0.3 C.F.S.

8. Total consumptive use:

9. Non-irrigation uses:

10. Place of use:

Township	Range	Section	1/4 of 1/4 Lot	Use	Acres
----------	-------	---------	----------------	-----	-------

04N	45E	30	NE	NW	IRRIGATION	14.8
					Section Acres	14.8
					Total Acres	14.8

11. Place of use in counties: TETON

12. Do you own the property listed above as place of use? Yes

13. Other Water Rights Used:

14. Remarks:

DECREED RIGHT 22-405 WAS SPLIT BY THE MILLER BROTHERS IN ABOUT 1925-1930. PART OF 22-405 HAS BEEN CLAIMED AS 22-12714. THIS CLAIM IS FOR HALF OF THE REMAINING PORTION UNDER THE NAME OF DON MILLER

DECREED PLACE OF USE APPEARS TO BE AN ERROR; TOPOGRAPHY PREVENTS WATER REACHING PLACE OF USE. CLAIMED PLACE OF USE IS PART OF ACTUAL ORIGINAL PLACE OF USE.

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

15. Basis of Claim: Decreed

16. Signature(s)

(a.) By signing below, I/We acknowledge that I/We have received, read and understand the form entitled "How you will receive notice in the Snake River Basin Adjudication." (b.) I/We do _____ do not _____ wish to receive and pay a small annual fee for monthly copies of the docket sheet.

Number of attachments: _____

For Individuals:

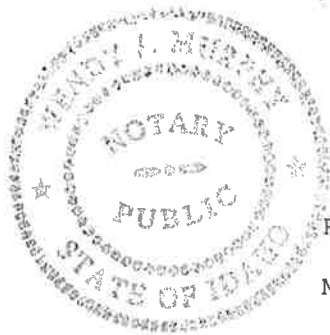
I/We do solemnly swear or affirm that the statements contained in the foregoing document are true and correct.

Signature of Claimant(s): Don Miller Date: 4-6-06

Date:

State of Idaho)
County of Bonneville) SS.

Subscribed and sworn (or affirmed) before me this 6th of April 2006



Wendy J. Murphy
Notary Public

Residing at Idaho Falls

My commission Expires 6/23/06