

Albert P. Barker
John A. Rosholt
John K. Simpson
Travis L. Thompson
Shelley M. Davis
Paul L. Arrington
Scott A. Magnuson
Sarah W. Higer



Paul L. Arrington
pla@idahowaters.com

195 River Vista Place, Suite 204
Twin Falls, Idaho 83301-3029
(208) 733-0700 telephone
(208) 735-2444 facsimile
jar@idahowaters.com

1010 West Jefferson, Suite 102
Post Office Box 2139
Boise, Idaho 83701-2139
(208) 336-0700 telephone
(208) 344-6034 facsimile
brs@idahowaters.com

RECEIVED

AUG 27 2012

Department of Water Resources
Eastern Region

August 23, 2012

James Cefalo
Idaho Department of Water Resources, Eastern Region
900 N. Skyline Drive, Suite A
Idaho Falls, Idaho 83402-1718

RE: *Settlement Agreement & Stipulation to Withdraw Protests*
Application for Permit 13-7784 (Miller Family Real Estate, L.L.C.)

Dear James:

Attached, please find a *Settlement Agreement and Stipulation for Withdrawal of Protests*, signed by Miller Family Real Estate, L.L.C. ("Miller") and the following Protestants to application for permit 13-7784: Merrill Ranch Partnership, LLC, Brent Abbott and PacifiCorp.

With this stipulation to withdraw protests, along with the previously filed stipulation withdrawing the protest filed by the Treasureton Irrigation District, the only outstanding protest is the one filed by Strongarm Reservoir Irrigation District. We continue to try and reach an agreement with Strongarm and will notify you of any settlement.

Thank you for giving us the time to work through these issues. If there are any questions, please feel free to give me a call at 208-733-0700.

Yours truly,

Paul L. Arrington

PLA/jn

Encs.

cc: T.J. Budge
Steven R. Fuller
Claudia Conder

RECEIVED

AUG 27 2012

Department of Water Resources
Eastern Region

Paul A. Arrington ISB # 7198
Sarah W. Higer ISB #8012
BARKER ROSHOLT & SIMPSON LLP
113 Main Avenue West, Suite 303
P.O. Box 485
Twin Falls, ID 83303-0485
Telephone: (208) 733-0700
Facsimile: (208) 735-2444

Attorneys for Miller Family Real Estate L.L.C.

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR PERMIT)
NO. 13-7784, IN THE NAME OF MILLER FAMILY) **STIPULATION FOR**
REAL ESTATE, LLC) **WITHDRAWAL OF**
) **PROTESTS**
)
)
)
)

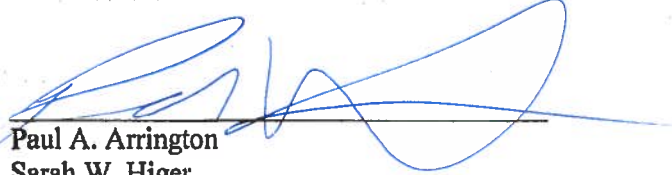
COMES NOW, Applicant, Miller Family Real Estate L.L.C. ("Miller"), by and through its attorneys of record, and Protestants, Merrill Ranch Partnership, LLC ("Merrill") and Brent Abbott ("Abbott"), by and through their respective attorneys of record, and Intervenor, PacifiCorp, and hereby stipulate to the withdrawal of the *Notices of Protest*, filed by Merrill and Abbott in this matter. This Stipulation is submitted to the Idaho Department of Water Resources ("IDWR") pursuant and subject to the *Settlement Agreement* between Miller, Merrill, Abbott and PacifiCorp, effective May 15, 2012, attached hereto, as Exhibit A.

Pursuant to Sections 4 and 5 of the *Settlement Agreement*, this Stipulation requires the following limitations or conditions be added to any Permit and License issued by the IDWR for Water Right No. 13-7784:

- The season of use for diversions of water from Cottonwood Creek shall be limited to 4/1 to 10/31.¹
- The use of water under this water right shall be subject to the terms of the Settlement Agreement effective May 15, 2012 between Miller Family Real Estate, LLC, Merrill Ranch Partnership, LLC, Brent Abbott, and PacifiCorp, on file with the IDWR.
- Water right nos. 13-7784 and 13-7127 are limited to the storage of a combined total of 800 acre-feet.

Dated this 23rd day of August, 2012

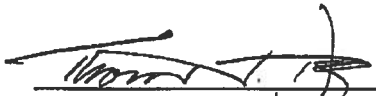
BARKER RSHOLT & SIMPSON LLP


Paul A. Arrington
Sarah W. Higer

Attorneys for Miller Family Real Estate LLC

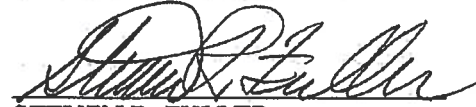
Dated this ____ day of _____, 2012

MERRILL RANCH PARTNERSHIP, LLC


By: Thomas J. Budget Attorney for Merrill Ranch P'tip, LLC

Dated this ____ day of _____, 2012

FULLER & FULLER, PLLC


STEVEN R. FULLER
Attorney for Brent Abbott

¹ The season of use for diversions from Current Creek and Stockton Creek shall remain "1/1 to 12/31" as indicated in the Application for Permit.

Dated this 24th day of May, 2012

PACIFICORP


By: _____

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 23rd day of August, 2012, I caused to be served a true and correct copy of the foregoing to be served on the following via first class mail, postage prepaid:

Steven Fuller
Attorney at Law
P.O. Box 191
Preston, Idaho 83263

Claudia Conder
PacifiCorp
1407 West North Temple
Salt Lake City, Utah 84116

Strongarm Reservoir Irrigation District
2806 W. 7400 N.
Preston, Idaho 83263

T.J. Budge
Racine, Olson, Nye Budge & Bailey, Chtd.
P.O. Box 1391
Pocatello, Idaho 83204-1391

Exhibit A

SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT ("Agreement") is entered into, effective May 15, 2012, by and between MILLER FAMILY REAL ESTATE, L.L.C., a Utah limited liability company, 9350 South 150 East Suite 1000, Sandy, Utah 84070 ("MFRE"), MERRILL RANCH PARTNERSHIP, LLC, an Idaho limited liability company, Post Office Box 22, Swan Lake, Idaho 83281 ("Merrill"), BRENT ABBOTT, P.O. Box 60, Swan Lake, ID 83821 ("Abbott") and PACIFICORP, 1407 West North Temple, Salt Lake City, Utah 84116 ("PacifiCorp") (collectively referred to herein as "Party" or "Parties").

RECITALS

WHEREAS, MFRE owns water right 13-7127, which authorizes the diversion of water from Current Creek into an existing reservoir on property owned by MFRE in Bannock County (the "Miller Reservoir") during the winter months, with a season of use identified as "11/1 to 3/31;" and

WHEREAS, MFRE filed an Application for Permit (the "Application"), on May 3, 2011, with the Idaho Department of Water Resources (IDWR); and

WHEREAS, the Application, assigned water right number 13-7784, seeks to divert water from Cottonwood Creek, Stockton Creek and Current Creek into the Miller Reservoir, with a season of use identified as "1/1 to 12/31;" and

WHEREAS, Merrill and Abbott each filed protests against the Application and PacifiCorp filed a protest by intervention which issues were limited by an Order Granting Petition to Intervene dated October 20, 2011, to injury of PacifiCorp's Bear River senior rights in the Bear River drainage; and

WHEREAS, the parties desire to settle and resolve the protests filed by Merrill, Abbott and PacifiCorp pursuant to the terms of this Agreement;

NOW THEREFORE, in consideration of the mutual promises and performances set forth below, the sufficiency of which is hereby acknowledged, the Parties agree as follows.

1. MEASURING DEVICES: The Parties agree that a Parshall flume or other measuring device approved by the IDWR shall be installed and maintained at each of the following locations and by the following Party or Parties:

1.1. *Treasureton Canal/Stockton Diversion*: One measuring device has already been installed to measure the amount of water from Cottonwood Creek that is diverted from the Treasureton Canal into the Stockton Creek drainage. This measuring device is installed immediately below the existing headgate that diverts water from the Treasureton Canal into the Stockton Creek drainage. MFRE and Merrill shall be responsible for the operation, maintenance, and repair of this measuring device.

1.2. *Cottonwood Creek Point of Injection*. One measuring device shall be installed to measure the amount of water from the Treasureton Canal that flows into Stockton Creek. This measuring device shall be installed at the point of injection of Cottonwood Creek water into Stockton Creek. Abbott has already purchased this measuring device, and Treasureton Canal has agreed to install it. Abbott shall be responsible for the operation, maintenance and repair of this measuring device.

1.3. *Stockton Creek*: One measuring device shall be installed on Stockton Creek immediately upstream from the point of injection of the water diverted from Cottonwood Creek into Stockton Creek. Abbott has already purchased this measuring device. Abbott shall be responsible for the installation, operation, maintenance and repair of this measuring device.

1.4. *Miller Reservoir Inlet*: One measuring device shall be installed on the inlet pipe that diverts water from Stockton Creek into the Miller Reservoir. MFRE shall be responsible for the purchase, installation, operation, maintenance and repair of this measuring device.

1.5. *Miller Reservoir Outlet*: One measuring device shall be installed on the outlet of the Miller Reservoir at the point where water that is discharged from the Miller Reservoir injects into Stockton Creek, such that this measuring device can be viewed from Stockton Creek Road. MFRE shall be responsible for the purchase, installation, operation, maintenance and repair of this measuring device.

1.6. *Current Creek/Unnamed Stream*: Measuring devices have already been installed on the following tributaries to the Miller Reservoir: (1) Current Creek; and (2) an unnamed stream to the north of Current Creek. MFRE shall be responsible for the operation, maintenance and repair of the Current Creek and unnamed stream measuring devices. MFRE grants to Merrill, Abbott, and any watermaster for Stockton Creek the right to access and monitor these measuring devices.

2. WATER MASTER: The Parties agree that the water users of the Stockton Creek drainage be incorporated into Water District 13M (Cottonwood Creek Water District) and that the distribution of water in the Stockton Creek Drainage, including water rights that are diverted into Stockton Creek from Cottonwood Creek through the Treasureton Canal, will be administered by the Cottonwood Creek Water District watermaster.

3. NO LINING: MFRE agrees that it will not install any type of clay, synthetic, or other liner in the Miller Reservoir.

4. SEASON OF USE: The season of use of water right 13-7784, for diversions of water from Cottonwood Creek through the Treasureton Canal shall be limited to "4/1 to 10/31." The season of use from Current Creek and Stockton Creek shall be "1/1 to 12/31."

5. CONDITIONS ADDED TO WATER RIGHT: The following conditions shall be added to any Permit and License issued by the IDWR for water right 13-7784:

5.1. The use of water under this water right shall be subject to the terms of the Settlement Agreement effective May 15, 2012 between Miller Family Real Estate, LLC, Merrill Ranch Partnership, LLC, Brent Abbott, and PacifiCorp, on file with the IDWR.

5.2. Water right nos. 13-7784 and 13-7127 are limited to the storage of a combined total of 800 acre-feet.

6. AFFIRMATION OF PRIORITY: MFRE recognizes and confirms that water right 13-7784 is subject to the laws of the State of Idaho as it relates to the diversion, use and administration of water. Particularly, MFRE recognizes that water right 13-7784 will be junior in priority to water rights 13-57, 13-885B, 13-886B, 13-887B and 13-889D, owned by Merrill, water rights 13-55 and 13-56, owned by Abbott, and Bear River water rights decreed in the matters of *Utah Power & Light Company v Last Chance Canal Company, Limited, et al.*, Equity No. 203, July 14, 1920 (Dietrich Decree), and *Utah Power & Light Company v. Richmond Irrigation Company, et al.*, February 21, 1922 (Kimball Decree) owned by PacifiCorp, and that, in times of shortage, MFRE's use of water right 13-7784 may be curtailed to satisfy water rights with a senior priority.

7. MITIGATION: MFRE agrees to dry up nine and three tenths (9.3) acres that are currently irrigated with water rights 13-885A, 13-886A, 13-887A and 13-889C to mitigate for the impacts of diversions under water right 13-7784, all as set forth in the attached Mitigation Plan prepared for Application No. 13-7784.

8. TRANSFER OF WATER RIGHTS: MFRE agrees to submit to the IDWR and in good faith pursue approval of an Application for Transfer of Water Right to change the remaining portions of water rights 13-885A, 13-886A, 13-887A and 13-889C (after nine and three tenths acres are dried up for mitigation purposes) from irrigation to storage in Miller Reservoir.

9. DISPUTE RESOLUTION: Any substantial dispute between the parties will be resolved in accordance with the following provisions:

9.1. Good Faith Negotiation. Upon written notice from one party to the other, representatives of the parties will attempt in good faith to resolve the dispute by negotiation.

9.2. Mediation. If any dispute cannot be resolved by negotiation, either party may demand that the dispute be subjected to mediation before a mediator designated by mutual agreement of the parties. The mediation will be held in Bannock County, Idaho, unless otherwise agreed by the parties. Mediator costs will be split equally between the parties.

9.3. Judicial Relief. No party may pursue judicial relief until after complying with the procedures set forth in sections 9.1 and 9.2, except to pursue injunctive relief if

in its judgment such relief is necessary to avoid irreparable damage. If injunctive relief is pursued, the parties shall continue to participate in good faith in the procedures set forth in sections 9.1 and 9.2.

9.4. Attorney Fees. If action is brought to enforce any provision of this Agreement, the prevailing party will be entitled to recover reasonable attorney fees and costs incurred.

9.5. Governing Law, Jurisdiction, and Venue. The laws of Idaho shall govern the interpretation of this Agreement. The parties agree that the courts of Idaho shall have exclusive jurisdiction and that Bannock County is the proper venue.

9.6. Exclusive Procedures. The procedures specified in this section shall be the exclusive procedures for resolving disputes between the parties arising out of or relating to this Agreement. All applicable statutes of limitation shall be tolled while the procedures specified in this section are pending.

10. NOTICE: All notices hereunder must be in writing addressed to the Party at the address specified herein, unless the Party has designated another address in writing. In addition to the address identified herein, a copy of all notices provided to MFRE shall be sent to the following address:

Paul L. Arrington
Barker Rosholt & Simpson, LLP
P.O. Box 485
Twin Falls, ID 83303

11. REPRESENTATION: Each Party hereby represents, warrants and covenants to the other Parties that the Party has the authority to enter into this Agreement and perform the obligations herein.

12. ENTIRE AGREEMENT: This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof.

13. MODIFICATION: This Agreement may not be amended except by a written agreement signed by all Parties.

14. NO THIRD PARTY BENEFICIARIES: Nothing in this Agreement, expressed or implied, is intended or shall be construed to confer upon or to give to any person or entity, other than the Parties hereto and their successors and permitted assigns, any rights, remedies or other benefits under or by reason of this Agreement.

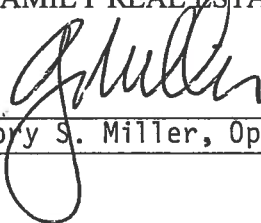
15. BINDING EFFECT: This Agreement shall inure to the benefit of, and is binding upon, the Parties hereto, and their respective heirs, representatives, successors and assigns.

16. FURTHER ASSURANCES: The Parties hereto agree that they will execute and deliver such further documents, undertake such further acts and give such further assurances as

may be reasonably requested by each other in order to carry out the full intent and purposes of this Agreement.

DATED THIS 6th day of June, 2012.

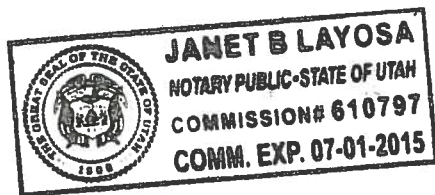
MILLER FAMILY REAL ESTATE, L.L.C.

By 
Its Gregory S. Miller, Operating Manager

NOTARY

STATE OF UTAH)
)ss.
County of Salt Lake)

I, Janet B. Layosa, a notary public, do hereby certify that on this 6th day of June, 2012, personally appeared before me Gregory S. Miller, who, being by me first duly sworn, declared that he is the Operating Manager of MILLER FAMILY REAL ESTATE, L.L.C., that he signed the foregoing document as the Operating Manager ~~of President~~ of MILLER FAMILY REAL ESTATE, L.L.C.




NOTARY PUBLIC FOR UTAH
Residing at: Salt Lake County, Utah
My Commission Expires: 7-1-2015

DATED THIS 13th day of Aug., 2012.

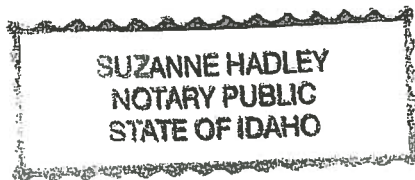
MERRILL RANCH PARTNERSHIP LLC

By Glen Merrill
Its manager

NOTARY

STATE OF Idaho)
)ss.
County of Bannock)

I, Suzanne Hadley, a notary public, do hereby certify that on this 13th day of Aug., 2012, personally appeared before me Glen Merrill, who, being by me first duly sworn, declared that he is the manager of MERRILL RANCH PARTNERSHIP, LLC, that he signed the foregoing document as the manager of President of MERRILL RANCH PARTNERSHIP, LLC.



Suzanne Hadley
NOTARY PUBLIC FOR IDAHO
Residing at: Sun Lake
My Commission Expires: 8.11.15

DATED THIS 25 day of May, 2012

BRENT ABBOTT

Brent Abbott

NOTARY

STATE OF IDAHO)
)ss.
County of Franklin)

I, Suzanne Hadley, a notary public, do hereby certify that on this 25th day of May, 2012, personally appeared before me BRENT ABBOTT, who, being by me first duly sworn, declared that he is the individual who signed the foregoing document.



Suzanne Hadley
NOTARY PUBLIC FOR State of IDAHO
Residing at: Swan Lake, ID
My Commission Expires: 8.11.15

DATED THIS 24th day of MAY, 2012

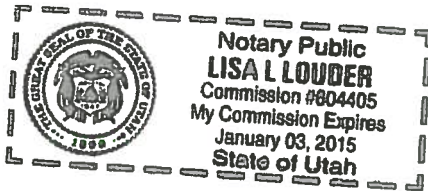
PACIFICORP

By Claudia Condel
Its WATER RIGHTS ADMINISTRATOR

NOTARY

STATE OF UTAH)
County of SALT LAKE)ss.

I, Lisa L. Louder, a notary public, do hereby certify that on this 24th day of May, 2012, personally appeared before me Claudia Condel, who, being by me first duly sworn, declared that she is the water rights administrator for PACIFICORP, that she signed the foregoing document as authorized representative for PacifiCorp..



Lisa L. Louder
NOTARY PUBLIC FOR Utah
Residing at: Salt Lake
My Commission Expires: 1-3-2015