

Galbraith, Trent

From: lgesplin [lgesplin@sunrivertoday.com]
Sent: Tuesday, July 31, 2007 3:24 PM
To: Carlsen, Ernie
Cc: Galbraith, Trent
Subject: re: claim #21-02100

Attachments: Error Water Right IDAHO FISH AND GAME DEPARTMENT.doc; "AVG certification"



Error Water Right _AVG
IDAHO FISH A... tification_.txt (227 f
Mr. Carlsen:

Mr. Fritschle emailed me that he had just forwarded my attachment: "notice of error on claim #21-02100" to you. I'm attaching it again, since Trent was working with me on our NHLHA adjudication, in case he hasn't seen it.

NHLHA has no problem with the Sherwood Springs portion of the water claim. The way we read the "Agreement" portion of the claim is that it was an "limited" agreement to share a wooden pipeline for the water diversion. Wooden pipelines do not last. Remnants of the rotten pipeline are below several of the homes West of George and Margaret Lang.

We couldn't see any documentation in your online records for the ownership of "Pittsburg Creek" in 1947 by Mr. Howell and Mr. Harvey who signed the agreement. It appears to us that an "agreement" to share a pipeline, now rotting and abandoned for over 50 years is not a valid agreement any more. In addition it was changed in 1990 to show an all year diversion instead of 3 1/2 months. I think the problem here is because the two sources of water were combined into one water right. In addition, NHLHA was never notified of the 1990 adjudication of #21-02100 which concerned them. This was probably because whoever looked at the water rights was seeing two different streams: "No Name Creek" flowing into Henry's Lake and "Unnamed Creek" flowing into Henry's Fork which was later changed to Pittsburg Creek. In addition, the IFGD never, at any time, notified anyone at the IDWR that they were no longer using or diverting the water from Pittsburg Creek. We also question the 4cfs claimed in 1947 because our 1907 water right said ALL the waters of Pittsburg Creek and listed 1cfs. Maybe this is common to overstate the actual water or is there another claim to the Pittsburg Creek?

It appears that since Sherwood Springs has had sufficient water since 1947 for the Wild Rose Fish Hatchery to operate, that IFGD doesn't need the water. They would also be showing a conflict of interest in diverting the water since they are using "Pittsburg Creek" for fish spawning. While the fish from Henry's Lake can spawn below Highway 87, they can't get under the highway to spawn above it unless there is a maximum flow in the stream, which is in the spring.

Do you have any other records on #21-02100 that are not showing online?

I'd appreciate talking with you or Trent on the phone for further advice on the matter. Could one of you call me at 208-558-7214.

Thank you!

Lana Esplin