

TO: IDAHO DEPARTMENT OF WATER RESOURCES – ADJUDICATION
c/o Carter Fritschle, Adjudication
FROM: Lana Esplin, past secretary North Henry's Lake Homeowners Association
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RE: IDAHO FISH AND GAME DEPARTMENT – WATER RIGHT #21-02100

Notice of Error for Idaho Fish and Game claiming “No Name Creek” as a water right in Water Claim #21-2100

This water right error was just discovered when a new development “Henry’s Lake Overlook,” which adjoins the NHLHA Subdivision, was granted permission to begin construction. The NHLHA Subdivision was formerly known as the Henry’s Lake Lodge Subdivision. Recently, some NHLHA residents were told by Damon Keen, Wild Rose Fish Hatchery Manager, that the IFGD had withdrawn their objections to the development under some agreed concessions, including a “new” pipeline right of way over the developers land to “Pittsburg Creek,” which is known in certain legal documents as “No Name Creek” or “Unnamed Creek.” This was the first time that anyone from the NHLHA had ever heard that the Idaho Fish and Game Department thought they had rights to divert water from Pittsburg Creek. The Henry’s Lake Overlook Development has a small portion of the water rights to Sherwood Springs (.04 cfs #21-4061). They also have a well drilling permit (Tag #D0044052) for 40 GPM dated June 28, 2007.

History

In February, 1948 the Idaho Fish and Game Department obtained water claim #21-2100 when they combined an “**Agreement**,” (dated June 19, 1947), with the said 1947 owners of “No Name Creek” rights and a “Sale/Grant” with the owners of Sherwood Estates and Sherwood Springs.

Agreement

Note: This agreement can be viewed online under adjudication back file #21-2100, p. 28-29

1. In 1947 Alton R. Howell and Harold R. Harvey, land owners in the area, entered into an “Agreement” with the Idaho Fish and Game Department for “limited” diversion of 4 cfs from “No Name Creek” in Pittsburg Canyon.
2. The IFGD was to construct an 8 inch wooden diversion pipe from a diversion box on “No Name Creek” which was to run through Mr. Howell and Mr. Harvey’s property to Sherwood Springs (now known as Hatchery Springs) and then to the Fish Hatchery.
3. The purpose of the diversion was to operate the Fish Hatchery and for Mr. Howell and Mr. Harvey to share the pipeline for their own use.
4. The “limited” use of the diverted water by the IFGD was limited to March through June 15th.
5. Mr. Howell and Mr. Harvey could have full use of the water in the pipe the rest of the year, with domestic use all year.
6. The IFGD was to place an 8 inch valve on the pipeline 1,000 feet east of the hatchery where land owners Mr. Howell and Mr. Harvey could take water from the pipeline.
7. This agreement made no mention of any water right number or pedigree showing Mr. Howell or Mr. Harvey actually owned the water rights. It simply said they were “the prior appropriators of all waters of No Name Creek in Pittsburg Canyon.”

Use of Pipeline:

The Sherwood Springs portion of IFGD Water Claim #21-2100 had sufficient water to operate the Fish Hatchery.

The shared pipeline in the "Agreement" for the "No Name Creek" portion of the claim, may have been used for a short period of time with Mr. Howell and Mr. Harvey sharing the use from it to irrigate their land. However it was abandoned a few years later when they sold their land to developers. In the 1960s or before, lots were being sold in the area where the pipe line had been. Remnants of the pipeline were seen by Mr. and Mrs. George Lang on their property (at a point on the property line between their two lots) during the digging of their cabin construction in 1969. It turned west on their property and remains can be seen on residents lots to the west of the Langs. Their Lots are in the Henry's Lake Lodge Subdivision, #4/1/10 & #5/1/11.

Use of "No Name Creek," or "Unnamed Creek" flowing from Pittsburg Canyon:

There is approximately 1 cfs minimum flow in this creek with possibly 4 cfs flowing during spring runoff.

The creek above, now known as Pittsburg Creek, is shown on the IFGD map on this link:

https://research.idfg.idaho.gov/Fisheries%20Research%20Reports/Volume%20088_Article%2009.pdf

Pittsburg Creek has been used for Fish spawning by the IFGD for many years as shown on the link above. For many years the creek has been used by previous owners and by NHLHA owners for irrigation near the creek by diversion ditches, temporary pipes, and pumping.

Proof of NHLHA claim to the water rights to "Unnamed Creek" #21-169 now #21-10015:

On June 5, 1979, Henry's Lake Lodge, Inc deeded their water rights to North Henry's Lake Homeowners Association. See copy of deed online at:

<http://www.idwr.idaho.gov/apps/ExtSearch/SearchWRAJ.asp>

under #21-10015, Amended Notice of Claim SF4. These water rights were for "Unnamed Creek" flowing from Pittsburg Canyon (#21-169 - **priority date of September 15, 1904**) and Howe Springs (#21-168 – priority date of September 15, 1904). These two water rights were combined into water right #21-10015 in October 1988 (See under Adjudication back file).

Adjudications for the "Unnamed Creek" water rights were completed in 1988 and 2007.

Idaho Fish and Game Adjudication Back File #21-0211

On July 16, 1990 an adjudication back file for IFGD water right #21-0211 showed that "No Name Creek" was still being claimed in conjunction with Sherwood Springs. However, now it was showing "year round use" even though the wooden pipeline had been abandoned for over 50 years from the date of the original "Agreement."

Correction Needed:

- 1. The NHLHA has a decreed, deeded, and recorded water right to "Unnamed Creek" or "No Name Creek" with a priority date of September 15, 1904.**
- 2. The IDFG has shown no deeded or recorded water right or proof of ownership to "Unnamed Creek" or "No Name Creek."**
- 3. The pipeline in the limited "Agreement" has been abandoned for over 50 years.**
- 4. Somehow this error was missed in previous adjudications in Snake River Basin and needs to be corrected.**

Prepared by Lana Esplin, past secretary for North Henry's Lake Homeowners Association.