

RECEIVED

AUG 31 2007

DEPARTMENT OF
WATER RESOURCES

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

A. Subcase 21-2100

Case No. 39576

MOTION TO SET ASIDE
PARTIAL DECREE

B. NAME AND ADDRESS OF PERSON OBJECTING

Name: Lana Esplin, North Henry's Lake Homeowners Association

Address: 3897 Teton Road, Island Park, Idaho 83429

Daytime Phone: Cell: 435-669-6643 ; Summer Home: 208-558-7214

C. CLAIMANT OF WATER RIGHT AS LISTED IN DIRECTOR'S REPORT

Name: State of Idaho Dept. of Fish and Game

Address: PO Box 25, Boise, Idaho 83707

D. OBJECTION

I object to the following elements in the "Unnamed Stream" portion of this water right as recommended in the Director's Report.

1. The "Unnamed Stream" portion of this water right should not exist.
2. The Source should not include "Unnamed Stream" because the pipeline for this source was abandoned over 40 years ago.
3. Quantity should be listed at 2 CFS for Sherwood Springs with "Unnamed Stream" omitted. The "Unnamed Stream" had only 1 CFS instead of 4 CFS. See attached Water Measurement of "Unnamed Stream" taken August 27, 2007.
4. Point of Diversion for "Unnamed Creek" should be omitted because it has been abandoned.
5. Purpose(s) of Use for "Unnamed Stream" should be omitted because it has not been used for stated purpose for 40 years.
6. Period of Use was overstated at 01-01 to 12-31 for "Unnamed Stream." The original 1947 Agreement was for March 1st to June 15th for the Water License #20294.

E. REASONS SUPPORTING OBJECTIONS

1. The Water License #20294 was based on a 1947 "Agreement" between Alton R. Howell and Harold R. Harvey, land owners in the area, and the Idaho Fish and Game Department. This was an agreement for the IFGD to build and share a "particular" 8 inch wooden pipeline over a portion of the landowners' property in exchange for the owners to share the use of that particular pipeline. The use for the IFGD was limited to March 1st through June 15th. The owners could have full use of the pipeline and water the rest of the year, with domestic use all year.
2. This agreement dissolved when that pipeline was abandoned and no longer used by the parties over 40 years ago.

3. The "particular" pipeline became unusable with time and by the late 1960s, homes were being built over remnants of the old pipeline.
4. There was no provision in the Agreement for the shared pipeline use and water diversion to run with the land, Parties, or heirs.
5. There was no easement conveyed in the Agreement for the pipeline which crossed Mr. Howell and Mr. Harvey's land.
6. There were errors on the 1989/1990 Adjudication of IFGD Claim to Water Right #21-2100. This document was showing the Unnamed Creek point of diversion, although in 1989, at the time of the 1989 Adjudication, there had been no diversion for over 20 years. This document was showing combined use of 6 CFS from January to December when there was only the actual use of 2 CFS from Sherwood Springs and no use from the abandoned pipeline.
7. There is no documentation online showing Mr. Howell or Mr. Harvey actually owned the water right in question. The Agreement simply said they were "the prior appropriators of all waters of "No Name Creek" in Pittsburg Canyon." The name of this creek was changed to "Unnamed Creek" on the 1989 Adjudication Claim.
8. The NHLHA has a recorded Grand Deed dated June 5, 1979, with a priority date of September 15, 1904, transferring ownership for "Unnamed Creek" from Henry's Lake Lodge, Inc. to North Henry's Lake Homeowners' Association. See attached copy of this Grant Deed.

Note: Other reasons and documents may be added later

F. VERIFICATION

I, Lana Esplin, am the party/claimant filing this objection for NHLHA, as defined by I.C. §§ 42-1401A(1)

(Signature of person filing objection)

Lana Esplin

Date of Signature: August 28, 2007

INSTRUCTIONS FOR MAILING

You must mail the objection, to the Clerk of the court. FAX filings will not be accepted. You must also send a copy to all the parties listed below in the Certificate of Mailing.

G. CERTIFICATE OF MAILING

I certify that on August 27, 2007, I mailed the original and copies of this objection/motion, including all attachments, to the following persons:

1. Original to:

Clerk of the District court
Snake River Basin Adjudication
253 Third Avenue North
PO Box 2707
Twin Falls, ID 83303-2707

2. One copy to the claimant of the water right at the following address:

Name: State of Idaho Dept. of Fish and Game
Address: PO Box 25, Boise, Idaho 83707

3. Copies to:

IDWR Document Depository
PO Box 83720
Boise, ID 83720-0098

United States Department of Justice
Environment & Nat'l Resources Div
550 W Fort Street, MSC 033
Boise, ID 83724

Chief, Natural Resources Division
Office of Attorney General
PO Box 44449
Boise, ID 83711-4449

Signature of objector mailing on Objector's behalf

Lana Explor

UNNAMED CREEK/PITTSBURG CREEK

North Henry's Lake Homeowner's Association

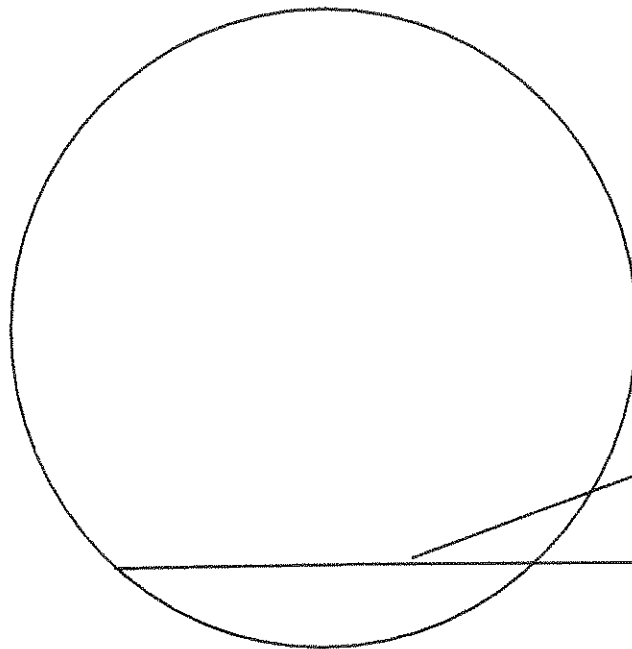
Water Measurement Taken August 27, 2007

North Side of 16 inch Culvert on Teton Road

Subcase 21-2100

INCHES

16
15
14
13
12
11
10
9
8
7
6
5
4
3
2
1



2 INCHES
DEEP

WATER LEVEL
16 INCH CULVERT

Microfilm No. 360658 July 30, 1979
Darlene M. Calonge Fremont Co. Recorder
Fee \$4:00 Belva Hill Deputy
Recorded at Request of
Harry Landreth

GRANT DEED

THIS INDENTURE, Made this 5th day of June, 1979 by and between HENRY'S LAKE LODGE, INC., an Idaho corporation, with its principal office at Macks Inn, Idaho 83433, the party of the first part, and NORTH HENRY'S LAKE HOMEOWNERS ASSOCIATION, INC., an Idaho corporation, with its principal office at Macks Inn, Idaho 83433, the party of the second part,

WITNESSETH:

That the said party of the first part, for and in consideration of the sum of Ten Dollars and other valuable consideration to it in hand paid by the said party of the second part, the receipt of which is hereby acknowledged, does hereby grant, bargain, sell, convey and confirm unto the said party of the second part, and to its successors and assigns, forever, the following described water rights located in Fremont County, State of Idaho, to-wit:

One-half c.f.s. of the waters of Howe Springs located in the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 34, Township 16 North, Range 43 East, Boise Meridian, with a priority date of September 15, 1904, at a point of diversion within said SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 34, Township 16 North, Range 43 East, Boise Meridian, and this right includes within it State of Idaho water License no. 844, now renumbered on the records of the Idaho Department of Water Resources as License No. 21-2006, and one c.f.s. of the waters of an unnamed creek flowing from Pittsburg Canyon in Fremont County, Idaho, with a priority date of September 15, 1904, with points of diversion at various places within the SE $\frac{1}{4}$ SE $\frac{1}{4}$ of said 34, Township 16 North, Range 43 East, Boise Meridian to use for domestic purposes, including the watering of livestock, fishponds, and in the irrigation of the following described property located in Fremont County Idaho, to wit:

Beginning at a point 349 feet East of the Northwest corner of the South Half of the Southeast Quarter of Section , 33, Township 16 North, Range 43 East, Boise Meridian, and running thence south 48 degrees 15' East 334 feet; thence South 32 degrees 50' West 404 feet thence Southeasterly along the highwater line of Henry's Lake to a point that is South 89 degrees 50; West 1106 feet from the Southeast corner of Section 33, Township 16 North, Range 43 East, Boise Meridian; thence South 63 degrees 38' East 788.5 feet; thence North 89 degrees 50' East 1320 feet; thence North 1320 feet; thence West 3611 feet to the point of beginning, less the highway right of way.

TO HAVE TO AND TO HOLD, the same unto the said party of the second part, its successors and assigns forever.
above written. IN WITNESS WHEREOF, The party of the first part has caused its corporate name to be affixed hereto by its officers pursuant to a resolution of its Board of Directors duly authorizing the same, the day and year first

HENRY'S LAKE LODGE, INC.
An Idaho corporation
Michael D. Todd
President

ATTEST:
Jane Todd Howell
Secretary

STATE OF IDAHO,

County of Fremont.

On this 12 day of June, 1979, before me, the undersigned, a Notary Public in and for said State, personally appeared before me Michael D. Todd, known to me to be the President of Henry's Lake Lodge, Inc., the corporation that executed the foregoing instrument and acknowledged to me that said corporation executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

Richard S. ...
Notary Public for Idaho
Residing at: Rexburg
My commission expires: Lifetime