

29

Page 1

did not receive any notice from the Homeowners Association that the Homeowners Association intended to void the October 14, 2008 offer of judgment.

3. Attached to this affidavit are true and correct copies of the following documents:

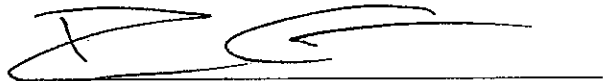
Exhibit A Offer of Judgment from the Idaho Department of Fish and Game to the North Henry's Lake Homeowners Association (Oct. 14, 2008);

Exhibit B Email correspondence from Jerry R. Rigby, counsel for North Henry's Lake Homeowners Association, to David I. Stanish, deputy attorney general for the Idaho Department of Fish and Game (Oct. 15, 2008);

Exhibit C Transfer Approval Notice (Mar. 2, 2009); and

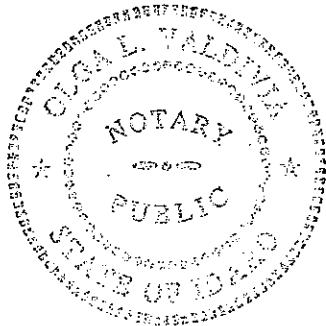
Exhibit D Letter from David I. Stanish, deputy attorney general for the Idaho Department of Fish and Game, to Jerry R. Rigby, counsel for North Henry's Lake Homeowners Association (Jan. 20, 2010).

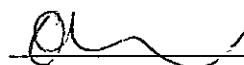
4. Further your affiant sayeth naught.



DAVID I. STANISH
Deputy Attorney General
Counsel for the Idaho Department of Fish and Game

Subscribed and sworn (or affirmed) to before me, a notary public in and for the State of Idaho this 8th day of February 2010.




Notary Public for Idaho
Residing at Boise, ID
My Commission expires: 2/5/2012

CERTIFICATE OF SERVICE

I certify that on this 8th day of February 2010, I caused to be served the original and/or copy of this **AFFIDAVIT OF DAVID I. STANISH** on each of the following persons by the indicated methods:

1. Original to:

CLERK OF THE DISTRICT COURT
SNAKE RIVER BASIN
ADJUDICATION
253 THIRD AVENUE NORTH
PO BOX 2707
TWIN FALLS, ID 83303-2707

- ☒ U.S. Mail, postage prepaid
- ☐ Hand Delivery
- ☐ Federal Express
- ☐ Facsimile: (208) 736-2121
- ☐ Statehouse Mail

2. Copies to

SPECIAL MASTER BILYEU
SNAKE RIVER BASIN
ADJUDICATION
253 THIRD AVENUE NORTH
PO BOX 2707
TWIN FALLS, ID 83303-2707

- ☒ U.S. Mail, postage prepaid
- ☐ Hand Delivery
- ☐ Federal Express
- ☐ Email:
- ☐ Statehouse Mail

NORTH HENRY'S LAKE
HOMEOWNERS ASSOCIATION
REPRESENTED BY:
JERRY RIGBY
25 N 2ND E
P.O. BOX 250
REXBURG, ID 83440-0250

- ☒ U.S. Mail, postage prepaid
- ☐ Hand Delivery
- ☐ Federal Express
- ☐ Email:
- ☐ Statehouse Mail

WALT POOLE
IDAHO DEPARTMENT OF FISH
AND GAME
600 S. WALNUT
BOISE, ID 83712

- ☐ U.S. Mail, postage prepaid
- ☐ Hand Delivery
- ☐ Federal Express
- ☒ Statehouse Mail

IDWR DOCUMENT DEPOSITORY
PO BOX 83720
BOISE, ID 83720-0098

- ☐ U.S. Mail, postage prepaid
- ☐ Hand Delivery
- ☐ Federal Express
- ☒ Statehouse Mail

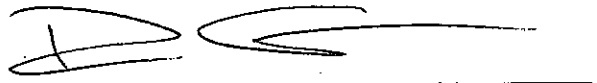


Exhibit A

**Offer of Judgment from the Idaho
Department of Fish and Game to the North
Henry's Lake Homeowners Association
(Oct. 14, 2008)**



STATE OF IDAHO, OFFICE OF THE ATTORNEY GENERAL
700 W. Jefferson Street, Rm. 210
P.O. Box 83720
Boise, Idaho 83720-0010

October 14, 2008

VIA E-MAIL

Jerry R. Rigby
Rigby, Andrus & Moeller, Chartered
25 North Second East
Rexburg, Idaho 83440
jrigby@rigby-thatcher.com

Re: Offer of Judgment Subject to I.R.C.P. 68 and I.R.E. 408
SRBA Subcase Nos. 21-02100 (IDFG Henry's Lake Fish Hatchery Water Right) and 21-10015
(North Henry's Lake Homeowners Association Water Right)

Dear Mr. Rigby:

The Idaho Department of Fish and Game (IDFG) hereby makes the following offer of judgment in full satisfaction of the North Henry's Lake Homeowners Association's *Motion to Set Aside Partial Decree* in SRBA subcase no. 21-02100 and the State of Idaho's *Motion to Alter and Amend Special Master's Recommendation* in SRBA subcase no. 21-10015.¹

A. SEQUENCE OF EVENTS

Upon acceptance of this offer of judgment, the Parties agree to the following sequence of events:

1. The Parties shall stipulate to continue the pending *Motion to Set Aside Partial Decree* in SRBA subcase no. 21-02100 and *Motion to Alter and Amend Special Master's Recommendation* in SRBA subcase no. 21-10015, see Attachment I;
2. IDFG shall file with the Idaho Department of Water Resources (IDWR) an application to transfer water right no. 21-02100 that is consistent with that set forth in Attachment II;
3. Upon IDWR approval of an application to transfer water right no. 21-02100 that is consistent with that set forth in Attachment II: (a) the Parties agree to enter

¹ This offer of judgment is inadmissible in any legal proceeding other than for the purposes authorized by I.R.C.P. 68 and I.R.E. 408.

SF-5s in subcase nos. 21-02100 and 21-10015 consistent with that set forth in Attachments III and IV; and (b) IDFG shall file with the Fremont County Clerk's Office a quitclaim deed forever releasing any and all right, title, and/or property interest related to the historic diversion works for water right no. 21-02100 appurtenant to the property owned and/or governed by the North Henry's Lake Homeowners Association.

B. MUTUAL UNDERSTANDINGS

The North Henry's Lake Homeowners Association agrees not to object to any application to transfer water right no. 21-02100 that is consistent with that set forth in Attachment II. In the event: (a) IDFG fails to file an application to transfer water right no. 21-02100 within sixty (60) days of the acceptance of this offer; (b) IDFG files an application to transfer water right no. 21-02100 that is inconsistent with that set forth in Attachment II; or (c) IDWR issues a decision, preliminary or final, on the application to transfer water right no. 21-02100 that is inconsistent with that set forth in Attachment II, the Parties agree that this agreement shall be voidable upon the discretion of either Party. The exercise of such discretion would allow the Parties to proceed as if this agreement had never been executed, but must be served upon the other Party in writing within sixty (60) days of the issuance of such offending action or decision.

The Parties understand that the application to transfer water right no. 21-02100 contemplates the installation of a measuring device within the Idaho Transportation Department's right-of-way in or near the culvert through which Pittsburg Creek flows under Highway 87. This agreement is with the stipulation that at least two measurements are taken each year, in September and March. IDFG shall provide the results of these two measurements to the NHLHA.

The Parties contemplate that the flow in Pittsburg Creek at the downstream end of the Highway 87 culvert shall be measured by IDWR as soon as reasonably possible. This understanding does not, however, create a duty upon IDFG or IDWR to make such measurement.

The Parties agree that IDWR's issuance of a decision on the application to transfer water right no. 21-02100 that is consistent with that set forth in Attachment II and the subsequent filing of the quitclaim deed described in Part A.3 of this agreement shall resolve any and all claims, rights, protests, and/or disputes by, and on behalf of, the North Henry's Lake Homeowners Association and its members against water right no. 21-02100. This agreement is not intended to waive, limit, affirm, or deny the North Henry's Lake Homeowners Association's right to make a delivery call pursuant to its own water rights.

The Parties agree that IDWR's issuance of a decision on the application to transfer water right no. 21-02100 that is consistent with that set forth in Attachment II and the subsequent filing of the quitclaim deed described in Part A.3 of this agreement shall resolve any and all claims, rights, protests, and/or disputes by, and on behalf of, IDFG against water right no. 21-10015. This agreement is not intended to waive, limit, affirm, or deny IDFG's right to make a delivery call pursuant to its own water rights.

The Parties agree that IDWR's issuance of a decision on the application to transfer water right no. 21-02100 that is consistent with that set forth in Attachment II and the subsequent filing of the quitclaim deed described in Part A.3 of this agreement shall resolve any and all claims, rights, protests, and/or disputes by, and on behalf of, IDFG against the North Henry's Lake Homeowners Association and its members as it relates to any and all right, title, and/or property interest related

to the historic diversion works for water right no. 21-02100 appurtenant to the property owned and/or governed by the North Henry's Lake Homeowners Association.

The Parties agree that this agreement has been reached in the process of good faith negotiations for the purpose of resolving legal disputes, including pending litigation, without any determination on the merits. The Parties agree that nothing herein or resulting herefrom shall constitute an admission against interest or be used in any proceeding as legal support or precedent, except as to effectuate this specific agreement. Each Party stands by its claims and/or objections and intends merely to avoid litigation and to settle its peace.

The Parties agree to bear their own costs and fees, including attorney fees.

C. CONCLUSION

Please present this offer to your client, the North Henry's Lake Homeowners Association. We respectfully request a response by the end of business, October 15, 2008. Unless NHLHA is willing to accept the terms of this offer, we shall proceed to hearing on these matters.

DATED this 14th day of October 2008.

/s/ David. I. Stanish

DAVID I. STANISH

Deputy Attorney General

On behalf of IDFG

Cc: lgesplin@sunrivertoday.com

ATTACHMENT I

LAWRENCE G. WASDEN
Attorney General

CLIVE J. STRONG
Deputy Attorney General
Chief, Natural Resources Division

DAVID I. STANISH (ISB #7310)
Deputy Attorney General
P.O. Box 44449
Boise, Idaho 83711-4449
Telephone: (208) 334-2400
Facsimile: (208) 854-8072

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	)	Subcase Nos. 21-02100 and 21-10015
	)	
	)	STIPULATION TO CONTINUE HEARING ON
	)	MOTION TO SET ASIDE PARTIAL DECREE IN
Case No. 39576	)	SUBCASE NO. 21-02100
	)	
	)	STIPULATION TO CONTINUE HEARING ON STATE
	)	OF IDAHO'S MOTION TO ALTER AND AMEND
	)	SPECIAL MASTER'S RECOMMENDATION IN
	)	SUBCASE NO. 21-10015

The State of Idaho, by and through deputy attorney general David I. Stanish, and the North Henry's Lake Homeowners Association, by and through its attorney of record Jerry R. Rigby, hereby stipulate that the hearings set for the *Motion to Set Aside Partial Decree* in subcase no. 21-02100 and the *Motion to Alter and Amend Special Master's Recommendation* in subcase no. 21-10015 on October 22, 2008 at 2:30 pm before Special Master Bilyeu be continued until further notice. The grounds for these *Stipulations* are that the parties have

STIPULATION TO CONTINUE HEARING ON MOTION TO SET ASIDE PARTIAL
DECREE IN SUBCASE NO. 21-02100 and STIPULATION TO CONTINUE HEARING
ON STATE OF IDAHO'S MOTION TO ALTER AND AMEND SPECIAL MASTER'S
RECOMMENDATION IN SUBCASE NO. 21-10015

Page 1

entered into a settlement agreement that contemplates full resolution of these matters; however, such resolution is contingent upon completion of certain Idaho Department of Water Resources (IDWR) administrative proceedings contemplated therein. In order to give the administrative proceedings time to proceed, the Parties request that the Court set these matters for a status conference no less than six months from the date of these *Stipulations*.

/s/ David. I. Stanish
DAVID I. STANISH
Deputy Attorney General
Attorney for the State of Idaho

October 14, 2008
Date

JERRY R. RIGBY
Rigby, Andrus & Moeller, Chtd.
Attorney for the North Henry's Lake Homeowners Association

Date

CERTIFICATE OF SERVICE

I certify that on the _____ day of _____, 2008 I caused to be served the original and/or copy of this STIPULATION TO CONTINUE HEARING ON MOTION TO SET ASIDE PARTIAL DECREE IN SUBCASE NO. 21-02100 and this STIPULATION TO CONTINUE HEARING ON STATE OF IDAHO'S MOTION TO ALTER AND AMEND SPECIAL MASTER'S RECOMMENDATION IN SUBCASE NO. 21-10015 on each of the following persons by the indicated methods:

1. Original to:

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

- ☐ U.S. Mail, postage prepaid
- ☐ Hand Delivery
- ☐ Federal Express
- ☐ Facsimile: (208) 736-2121
- ☐ Statehouse Mail

2. Copies to

Special Master Brigitte Bilyeu
Snake River Basin Adjudication
253 Third Avenue North
PO Box 2707
Twin Falls, ID 83303-2707

- ☐ U.S. Mail, postage prepaid
- ☐ Hand Delivery
- ☐ Federal Express
- ☐ Email: bbilyeu@srba.state.id.us
- ☐ Statehouse Mail

North Henry's Lake Homeowners
Associaton
Represented by:
Jerry Rigby
25 N 2nd E
P.O. Box 250
Rexburg, ID 83440-0250

- ☐ U.S. Mail, postage prepaid
- ☐ Hand Delivery
- ☐ Federal Express
- ☐ Facsimile: _____
- ☐ Statehouse Mail

David I. Stanish
Natural Resources Division
Office of Attorney General
700 West State Street
P.O. Box
Boise, ID 83720

- ☐ U.S. Mail, postage prepaid
- ☐ Hand Delivery
- ☐ Federal Express
- ☐ Facsimile: _____

United States Department of Justice
Environment and Natural Resource
Division
550 West Fort Street, MSC 033
Boise, ID 83724

- ☐ U.S. Mail, postage prepaid
- ☐ Hand Delivery
- ☐ Federal Express
- ☐ Facsimile: _____
- ☐ Statehouse Mail

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

- ☐ U.S. Mail, postage prepaid
 - ☐ Hand Delivery
 - ☐ Federal Express
 - ☐ Facsimile: _____
-

ATTACHMENT II

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

Transfer No. _____

APPLICATION FOR TRANSFER OF WATER RIGHT PART 1

Name of Applicant State of Idaho, Department of Fish and Game Phone (208) 558-7202Mailing address PO Box 25, Boise, ID 83707 Email dkeen@idfg.idaho.gov**A. PURPOSE OF TRANSFER**

1. ☒ Change point of diversion ☐ Add diversion point(s) ☐ Change place of use
☐ Change nature of use ☐ Change period of use ☐ Other _____

2. Describe the reason for the proposed changes Decreed right has two PODs: (1) Pittsburg Creek, and (2) Sherwood Springs Creek, aka Hatchery Creek. Transfer will affect only Pittsburg Creek portion of the right, which amounts to 4.0 cfs. Transfer POD from Pittsburg Creek, a tributary of Henry's Lake, to Henry's Lake below fish hatchery. Water will be pumped to hatchery and allowed to flow through hatchery facility and back into Henry's Lake.

B. DESCRIPTION OF RIGHT(S) OR PORTION THEREOF, AFTER THE REQUESTED CHANGE

1. Right Number	Priority	Amount (cfs/ac-ft)	Nature of Use	Period of Use
<u>21-02100</u>	<u>02-03-1948</u>	<u>6.0 cfs</u>	<u>Fish Propagation</u>	<u>01/01</u> to <u>12/31</u>
_____	_____	_____	_____	_____ to _____
_____	_____	_____	_____	_____ to _____
_____	_____	_____	_____	_____ to _____

2. Total amount of water being transferred 4.0 cubic feet per second and/or _____ acre-feet per annum.

3. Source of water Unnamed Stream (i.e., Pittsburg Creek) tributary to Henry's Lake

4. Point(s) of Diversion:

Lot	¼	¼	¼	Sec	Twp	Rge	County	Local name for diversion
		NW	SE	33	16N	43E	Fremont	Sherwood Springs (Hatchery Creek) Pump House
		SW	SE	33	16N	43E	Fremont	Fish Hatchery Lake Diversion

5. Lands irrigated or place of use:

Twp	Rge	Sec	NE ¼				NW ¼				SW ¼				SE ¼				Totals
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
16N	43E	33														X			

Total Acres _____

PART 1

6. General Information:

a. Description of diversion system New diversion to include an electric pump, 8-inch pipe (approximately 75 meters in length) and an aeration chamber. Water to be combined with that from second POD of water right on Sherwood Spring (Hatchery Creek).

b. Are the lands from which you propose to transfer the water right subject to any liens, deeds of trust, mortgages, or contracts?
Yes X No. If yes, provide a notarized statement from the holder of the lien, deed of trust, mortgage or contract agreeing to the proposed changes.

c. Describe the affect on the land now irrigated if the place of use is changed pursuant to this transfer:

N/A.

d. Remarks:

POU remains the same. New POD on the lake to be located at approx. 44o39.878"N, 111o23.248W (NAD 83 Datum). Use will continue to be a non-consumptive use with water returning to the lake after it runs through the hatchery facility. IDFG will install measuring devices at 1) Highway 87 Pittsburg Creek culvert, and 2) Hatchery Creek mouth or pumping station on Henry's Lake, in order to quantify water available from old POD. IDFG will monitor Highway 87 measuring device and limit diversion at new POD accordingly.

ACTION OF THE DIRECTOR, DEPARTMENT OF WATER RESOURCES

This is to certify that I have examined Application for Transfer of Water Rights No. _____

And the said application is hereby _____, subject to the following conditions:

Witness my hand this _____ day of _____, 20 _____.

 For the Director

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

APPLICATION FOR TRANSFER OF WATER RIGHT
PART 2

(Attach one copy for each right)

A. DESCRIPTION OF RIGHT AS RECORDED

1. Right as evidenced by:

- a. Decree No. 21-02100 Decreed to State of Idaho, Department of Fish & Game
in case of SRBA partial decree vs. _____
dated Feb. 2, 2007 in 5th Jud. Dist. county of Twin Falls
- b. License No. _____ issued by the Idaho Department of Water Resources.
- c. Claim No. _____ on file with the Idaho Department of Water Resources.
- d. Transfer No. _____ which produced this right.

2. Attach copy of last year's tax notice for the property to which the water right is appurtenant or other documents which show ownership. Label document as attachment A. Check appropriate box below:

☐ Tax Notice ☐ Warranty Deed ☐ Other _____

3. Source of water 1) Sherwood Spring; and 2) Pittsburg Creek tributary to Henry's Lake4. Date or priority 02-03-1948

5. Water is used for the following purposes:

amount 6.0 cfs for Fish Propagation purposes from 01-01 to 12-31
(cfs/ac-ft)

amount _____ for _____ purposes from _____ to _____
(cfs/ac-ft)

amount _____ for _____ purposes from _____ to _____
(cfs/ac-ft)

6. Total amount of water under right 6.0 cubic feet per second and/or _____ acre-feet per annum.

7. Point(s) of Diversion:

Lot	1/4	1/4	1/4	Sec	Twp	Rge	County	Local name for diversion
		NW	SE	33	16N	43E	Fremont	Sherwood Springs (Hatchery Creek) Pump House
		NE	SE	33	16N	43E	Fremont	Pittsburg Creek Head Box

8. Lands irrigated or place of use:

Twp	Rge	Sec	NE 1/4				NW 1/4				SW 1/4				SE 1/4				Totals
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
16N	43E	33														X			

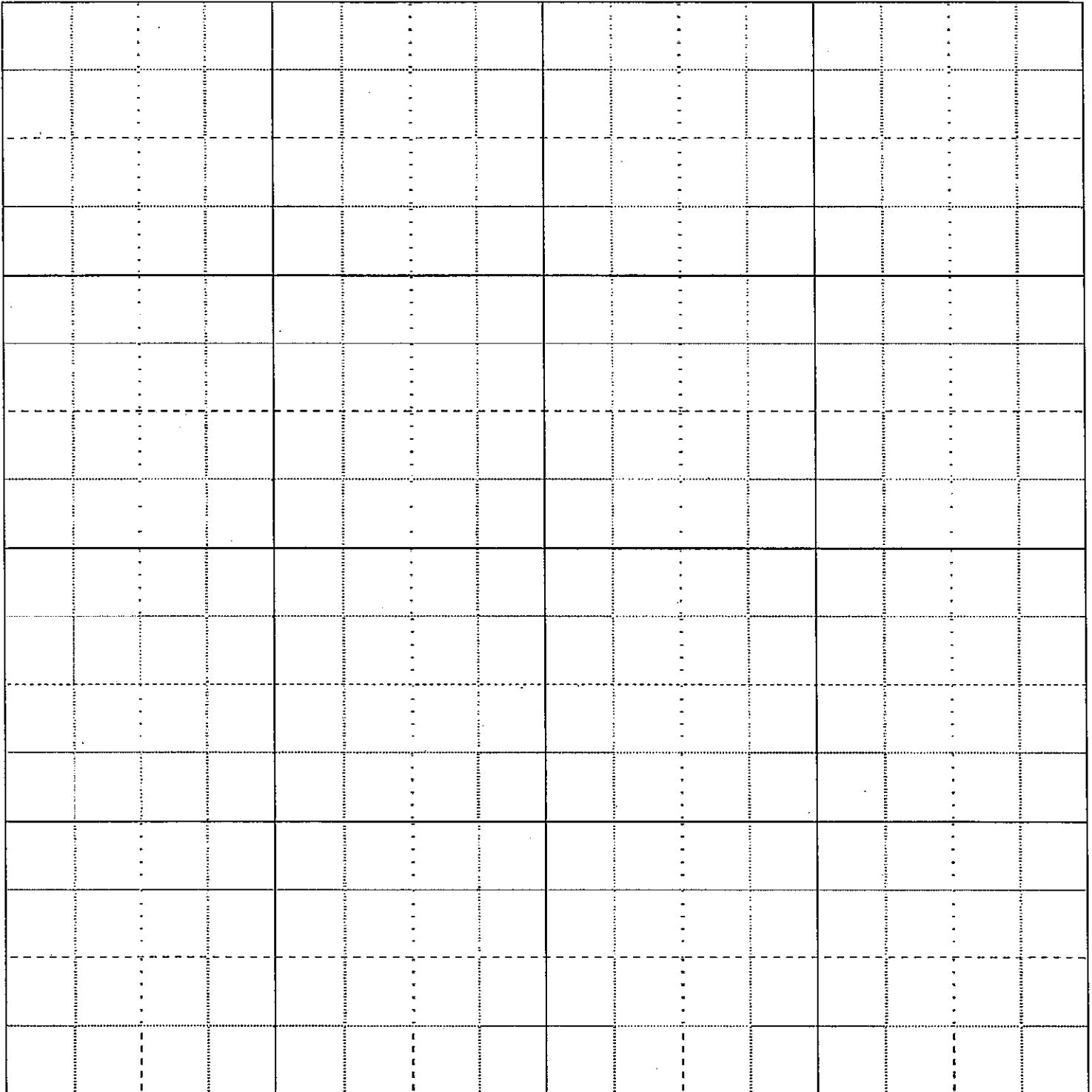
Total Acres _____

9. Describe any other water rights used for the same purpose as described above _____

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

**APPLICATION FOR TRANSFER OF WATER RIGHT
PART 3**

- A. Draw a map or attach a USGS map indicating the new point(s) of diversion and/or the new place of use for the rights described in part 1. Clearly depict the land by section, township and range number.



Scale: 2 inches equal 1 mile. Draw plan in ink.

PART 3**B. CHANGES IN NATURE OF USE**

- | 1. | <u>New Nature of Use</u> | <u>Amount(cfs/af-ft)</u> | <u>Hours/days/year</u> | <u>Period of Use</u> |
|----|--------------------------|--------------------------|------------------------|----------------------|
| | _____ | _____ | _____ | _____ to _____ |
| | _____ | _____ | _____ | _____ to _____ |
2. Quantity and quality of return flows and location of discharge: _____

3. Describe effects on other water uses resulting from the proposed change:

I hereby assert that no one will be injured by such change and that the change does not constitute an enlargement in use of the original right. The information contained in this application is true to the best of my knowledge.

I understand that any willful misrepresentations made in this application may result in voiding its approval.

(Signature of Applicant)

Print Name (and title, if applicable)

Subscribed and sworn to before me this _____ day of _____, 20_____.

(Notary Public)

My commission expires _____

FOR DEPARTMENT USE ONLY

Transfer contains _____ pages and _____ attachments

Received by _____ Date _____ Protest filed by _____

Prelim. Check by _____ Fee _____

Received by _____ Date _____

Published in _____ Copies of protest forwarded by _____

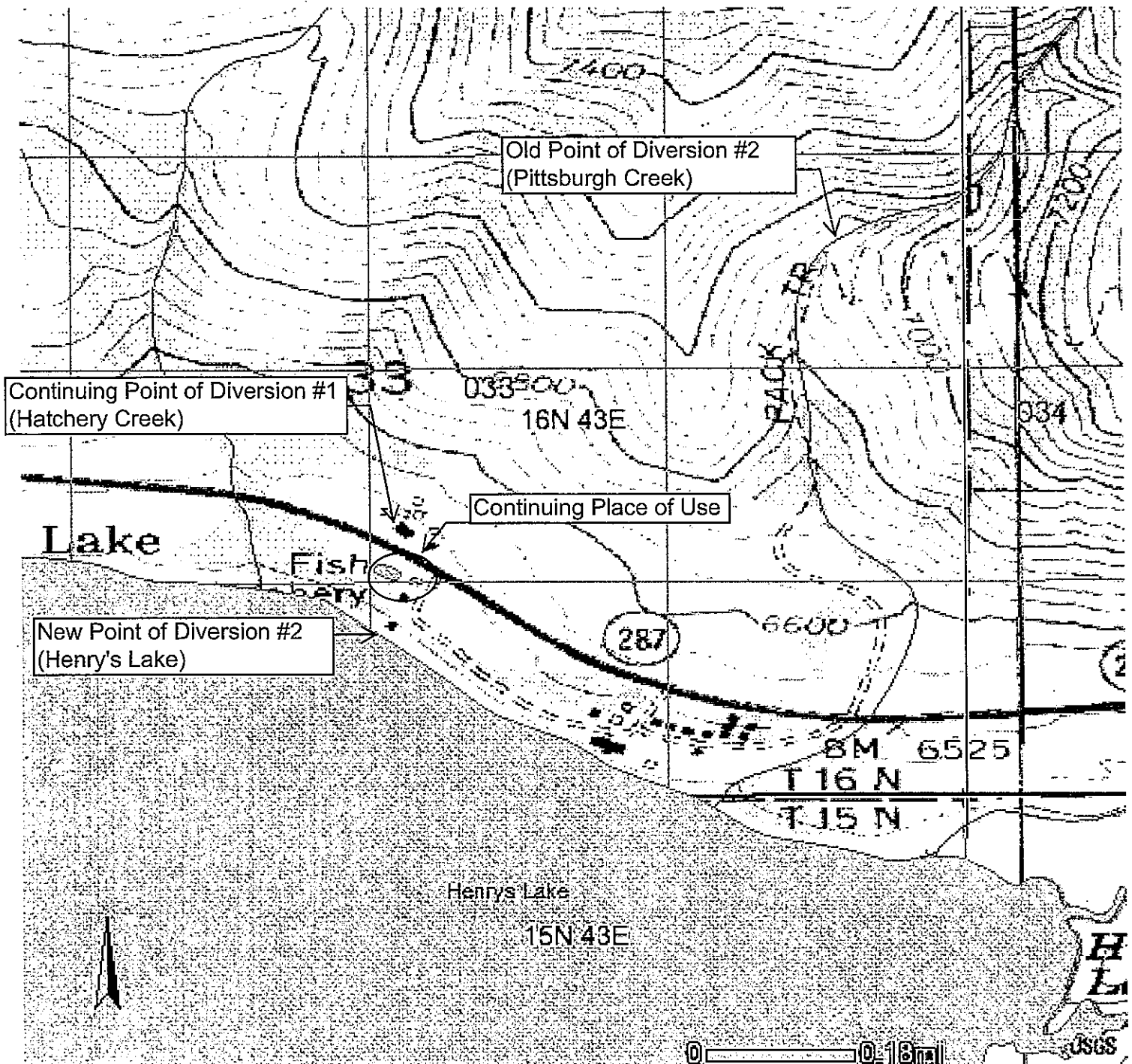
Pub. Dates _____ Hearing held by _____ Date _____

Watermaster recommendations requested on _____ Recommended for ☐ approval ☐ denial

_____ received _____ by _____

Copy of transfer sent to lien holder _____

Application for Transfer of Water Right No. 21-02100



Location of New Point of Diversion

5/2/2008

No warranty is made by the BLM for the use of the data for purposes not intended by the BLM.



ATTACHMENT III

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

In Re SRBA)
)
Case No. 39576)
_____) Water Right 21-02100

NAME AND ADDRESS: STATE OF IDAHO
DEPT OF FISH & GAME
PO BOX 25
BOISE, ID 83707

SOURCE: SHERWOOD SPRING Tributary: HENRYS LAKE
~~UNNAMED STREAM~~ Tributary: HENRYS LAKE
PITTSBURG CREEK

QUANTITY: 6.00 CFS
QUANTITY UNDER THIS RIGHT IS LIMITED TO 2.00 CFS FROM THE
SHERWOOD SPRINGS SOURCE AND 4.00 CFS FROM THE PITTSBURG
CREEK SOURCE FOR A COMBINED DIVERSION RATE OF 6.00 CFS

PRIORITY DATE: 02-03-1948

DIVERSION POINT: T16N R43E S33 NESE Within Fremont County
 NWSE

PURPOSE AND PERIOD OF USE:	PURPOSE OF USE	PERIOD OF USE	QUANTITY
	Fish Propagation	01-01 TO 12-31	6.00 CFS

PLACE OF USE: Fish Propagation
 T16N R43E S33 NWSE Within Fremont County

OTHER PROVISIONS NECESSARY FOR DEFINITION / ADMINISTRATION OF THIS WATER
RIGHT:

THE USE OF WATER UNDER THIS RIGHT SHALL IN NO WAY AFFECT THE WATER
RIGHTS OR USE OF WATER OF SENIOR WATER USERS, INCLUDING WATER RIGHT NO.
21-10015.

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. I.C. SECTION
42-1416(6).

Explanatory Material: Basis of Claim - License

ATTACHMENT IV

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

In Re SRBA)
)
Case No. 39576)
_____) Water Right 21-10015

NAME AND ADDRESS: NORTH HENRYS LAKE HOMEOWNERS
ASSN INC C/O LANA ESPLIN, SEC.
3897 TETON RD
ISLAND PARK, ID 83429

SOURCE: HOWE SPRINGS TRIBUTARY: PITTSBURG CREEK
~~UNNAMED STREAM TRIBUTARY: PITTSBURG CREEK~~
PITTSBURG CREEK TRIBUTARY: HENRYS LAKE

QUANTITY: 1.50 CFS
QUANTITY UNDER THIS RIGHT IS LIMITED TO 0.50 CFS FROM THE
HOWE SPRINGS SOURCE AND 1.00 CFS FROM THE PITTSBURG CREEK
SOURCE FOR A COMBINED DIVERSION RATE OF 1.50 CFS

PRIORITY DATE: 09-15-1904

DIVERSION POINT: T16N R43E S33 SESE Within Fremont County
 S34 SWSW

PURPOSE AND PERIOD OF USE:	PURPOSE OF USE	PERIOD OF USE	QUANTITY
	MUNICIPAL	01-01 TO 12-31	1.50 CFS

PLACE OF USE:	Municipal	Within Fremont County
	T15N R43E S04	NENE
	T16N R43E S33	SWSE
	S34	SESE
		SWSW

OTHER PROVISIONS NECESSARY FOR DEFINITION / 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. I.C. SECTION
42-1416(6).

Explanatory Material: Basis of Claim - Decreed

Exhibit B

**Email correspondence from Jerry R. Rigby,
counsel for North Henry's Lake Homeowners
Association, to David I. Stanish, deputy
attorney general for the Idaho Department of
Fish and Game (Oct. 15, 2008)**

2/04/2010

From: jrigby@rex-law.com
To: Stanish, David
Sent: 10/15/2008 10:14AM
Subject: 21-02100 - Signed Agreement NHLHA

Here is the final word. I have now signed the stipulation and attached it to this email. I am also sending the original to you via mail.

Thanks so much for your patience in this matter. Let's just hope that the application goes through and is approved.

Thanks

Jerry R.

From: Lana Esplin [mailto:lgesplin@sunrivertoday.com]
Sent: Wednesday, October 15, 2008 9:20 AM
To: Jerry Rigby; Steve Fanucchi
Subject: Agreement NHLHA

Jerry,

I just got off the phone with Steve and our Water Chairman, Mont Harris, and they have agreed to accept the newest agreement. The document looks pretty good for us now.

I told our Water Chairman that you had promised to send someone up from the IDWR to do a measurement within the week. Remember he would like to be present at this first measurement. Please have the IDWR contact him as to when they will be taking the measurement.

His name is: Mont Harris
Address: 3876 Lake View Drive
Home Phone: 208-558-9208
Cell Phone: 208-520- 8520

Thanks for all your help in this and especially getting the final wording in the document.

Lana

Exhibit C

Transfer Approval Notice (Mar. 2, 2009)



State of Idaho

DEPARTMENT OF WATER RESOURCES

900 N. Skyline Dr., Suite A • Idaho Falls, Idaho 83402-1718

Phone: (208) 525-7161 • Fax: (208) 525-7177 • Web Site: www.idwr.idaho.gov

EASTERN REGION

March 2, 2009

C. L. "BUTCH" OTTER
Governor

DAVID R. TUTHILL, JR.
Director

STATE OF IDAHO
DEPT OF FISH & GAME
PO BOX 25
BOISE ID 83707

RE: Transfer No.: 74584
Water Right No(s): 21-2100
Transfer Approval Notice

Dear Water Right Holder:

The Department of Water Resources has issued the enclosed approved Transfer of Water Right(s). Please be sure to thoroughly review the conditions of approval and remarks listed on the approval document.

The Transfer of Water Right(s) is a PRELIMINARY ORDER issued by the Department pursuant to section 67-5243, Idaho Code. It can and will become a final order without further action by the Department unless the APPLICANT petitions for reconsideration or files an exception and/or brief within fourteen (14) days of the service date as described in the enclosed information sheet.

ANY PERSON aggrieved by any decision, determination, order or action of the Department and who has not previously been afforded an opportunity for a hearing on the matter may request a hearing pursuant to section 42-1701A(3), Idaho Code. A written petition contesting the action of the Department and requesting a hearing shall be filed within fifteen (15) days after receipt of the denial or conditional approval.

If the transfer approval includes a condition requiring measuring and recording devices, such devices shall comply with specifications established by the Department. Detailed specifications are available on the Department's homepage on the Internet, or you can request a copy by contacting any office of the Department. Please be sure to thoroughly review the specifications to avoid unnecessary costs for reinstallation or modification due to non-conforming or improperly installed devices.

Please note that water right owners are required to report any change of water right ownership and/or mailing address to the Department within 120 days of the change. Failure to report these changes could result in a \$100 late filing fee. Contact any office of the Department or visit the Department's homepage on the Internet to obtain the proper forms and instructions.

If you have any questions, please contact me at 208-525-7161.

Sincerely,

A handwritten signature in cursive script that reads "Ernest Carlsen". The signature is written in black ink and is positioned above the printed name.

Ernest Carlsen

Water Resources Program Manager

Enclosure(s)

CERTIFICATE OF SERVICE

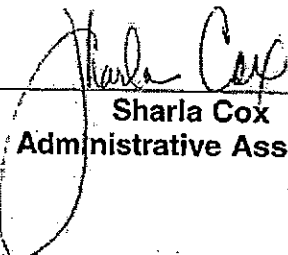
I hereby certify that on March 2, 2009 I mailed a true and correct copy, postage prepaid, of the foregoing TRANSFER APPROVAL to the person(s) listed below:

RE: TRANSFER NO. 74584

WATER RIGHTS NOS. 21-2100

**STATE OF IDAHO
DEPT OF FISH & GAME
PO BOX 25
BOISE ID 83707**

**WATER DISTRICT 01
900 N SKYLINE DR STE A
IDAHO FALLS ID 83402**



**Sharla Cox
Administrative Assistant**

Statement of Available Procedures and Applicable Time Limits

**RESPONDING TO PRELIMINARY ORDERS ISSUED
BY THE IDAHO DEPARTMENT OF WATER RESOURCES**
(To be used in connection with actions when a hearing was not held)

(Required by Rule of Procedure 730.02)

The accompanying order or approved document is a "Preliminary Order" issued by the department pursuant to section 67-5243, Idaho Code. It can and will become a final order without further action of the Department of Water Resources ("department") unless a party petitions for reconsideration, files an exception and brief, or requests a hearing as further described below:

PETITION FOR RECONSIDERATION

Any party may file a petition for reconsideration of a preliminary order with the department within fourteen (14) days of the service date of this order. **Note: the petition must be received by the department within this fourteen (14) day period.** The department will act on a petition for reconsideration within twenty-one (21) days of its receipt, or the petition will be considered denied by operation of law. See Section 67-5243(3) Idaho Code.

EXCEPTIONS AND BRIEFS

Within fourteen (14) days after (a) the service date of a preliminary order, (b) the service date of a denial of a petition for reconsideration from this preliminary order, or (c) the failure within twenty-one (21) days to grant or deny a petition for reconsideration from this preliminary order, any party may in writing support or take exceptions to any part of a preliminary order and may file briefs in support of the party's position on any issue in the proceeding with the Director. Otherwise, this preliminary order will become a final order of the agency.

REQUEST FOR HEARING

Unless a right to a hearing before the Department or the Water Resource Board is otherwise provided by statute, any person aggrieved by any final decision, determination, order or action of the Director of the Department and who has not previously been afforded an opportunity for a hearing on the matter may request a hearing pursuant to section 42-1701A(3), Idaho Code. A written petition contesting the action of the Director and requesting a hearing shall be filed within fifteen (15) days after receipt of the denial or conditional approval.

ORAL ARGUMENT

If the Director grants a petition to review the preliminary order, the Director shall allow all parties an opportunity to file briefs in support of or taking exceptions to the preliminary order and may schedule oral argument in the matter before issuing a final order. If oral arguments are to be heard, the Director will within a reasonable time period notify each party of the place, date and hour for the argument of the case. Unless the Director orders otherwise, all oral arguments will be heard in Boise, Idaho.

CERTIFICATE OF SERVICE

All exceptions, briefs, requests for oral argument and any other matters filed with the Director in connection with the preliminary order shall be served on all other parties to the proceedings in accordance with IDAPA Rules 37.01.01302 and 37.01.01303 (Rules of Procedure 302 and 303).

FINAL ORDER

The Director will issue a final order within fifty-six (56) days of receipt of the written briefs, oral argument or response to briefs, whichever is later, unless waived by the parties or for good cause shown. The Director may remand the matter for further evidentiary hearings if further factual development of the record is necessary before issuing a final order. The department will serve a copy of the final order on all parties of record.

Section 67-5246(5), Idaho Code, provides as follows:

Unless a different date is stated in a final order, the order is effective fourteen (14) days after its issuance if a party has not filed a petition for reconsideration. If a party has filed a petition for reconsideration with the agency head, the final order becomes effective when:

- (a) the petition for reconsideration is disposed of; or
- (b) the petition is deemed denied because the agency head did not dispose of the petition within twenty-one (21) days.

APPEAL OF FINAL ORDER TO DISTRICT COURT

Pursuant to sections 67-5270 and 67-5272, Idaho Code, if this preliminary order becomes final, any party aggrieved by the final order or orders previously issued in this case may appeal the final order and all previously issued orders in this case to district court by filing a petition in the district court of the county in which:

- i. A hearing was held,
- ii. The final agency action was taken,
- iii. The party seeking review of the order resides, or
- iv. The real property or personal property that was the subject of the agency action is located.

The appeal must be filed within twenty-eight (28) days of this preliminary order becoming final. See section 67-5273, Idaho Code. The filing of an appeal to district court does not itself stay the effectiveness or enforcement of the order under appeal.

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
TRANSFER OF WATER RIGHT
TRANSFER NO. 74584

This is to certify that: STATE OF IDAHO
DEPT OF FISH & GAME
PO BOX 25
BOISE ID 83707
(208)334-3700

has requested a change to the water right(s) listed below. This change in water right(s) is authorized pursuant to the provisions of Section 42-222, Idaho Code. A summary of the changes is also listed below. The authorized change for each affected water right, including conditions of approval, is shown on the following pages of this document.

Summary of Water Rights Before the Proposed Change

<u>Right</u>	<u>Origin/Basis</u>	<u>Priority</u>	<u>Rate</u>	<u>Volume</u>	<u>Acre Limit</u>	<u>Total Acres</u>	<u>Source</u>
21-2100	WR/Decreed	02/03/1948	6 cfs	N/A	N/A	N/A	SHERWOOD SPRING, UNNAMED STREAM

Purpose of Transfer (Changes Proposed)

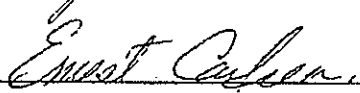
<u>Current Number</u>	<u>Split</u>	<u>POD</u>	<u>POU</u>	<u>Add POD</u>	<u>Period of Use</u>	<u>Nature of Use</u>
21-2100	NO	YES	YES	NO	NO	NO

Summary of Water Rights After the Approved Change

<u>Existing Right</u>	<u>New No. (changed portion)</u>	<u>Transfer Rate</u>	<u>Transfer Volume</u>	<u>Acre Limit</u>	<u>Total Acres</u>	<u>New No. (remaining portion)</u>	<u>Remaining Rate</u>	<u>Remaining Volume</u>	<u>Remaining Acre Limit</u>	<u>Remaining Total Acres</u>
21-2100	21-2100	6.0 cfs	N/A	N/A	N/A		N/A	N/A	N/A	N/A
COMBINED										
TOTALS		6.0 cfs	N/A	N/A	N/A		N/A	N/A	N/A	N/A

Detailed Water Right Description(s) attached

Dated this 23 day of February, 2009


for Ernest Carlson
Chief, Water Allocation Bureau

SUPPORT DATA

IN FILE # 21-2100

WATER RIGHT NO. 21-2100
As Modified by Transfer No. 74584

In accordance with the approval of Transfer No. 74584, Water Right No. 21-2100 is now described as follows.

Right Holder: STATE OF IDAHO
DEPT OF FISH & GAME
PO BOX 25
BOISE ID 83707

Priority Date: February 03, 1948

Source: SHERWOOD SPRING
HENRYS LAKE

Tributary: HENRYS LAKE
HENRYS FORK

<u>BENEFICIAL USE</u>	<u>From</u>	<u>To</u>	<u>Diversion Rate</u>
FISH PROPAGATION	01/01 to	12/31	6.00 CFS

LOCATION OF POINT(S) OF DIVERSION:

HENRYS LAKE	L2 (SESW)	Sec. 33 Twp 16N Rge 43E	FREMONT County
SHERWOOD SPRING	NWSE	Sec. 33 Twp 16N Rge 43E	FREMONT County

PLACE OF USE: FISH PROPAGATION

Twp Rge Sec	NE				NW				SW				SE				Totals
	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
16N 43E 33									X						X		

CONDITIONS OF APPROVAL

1. Diversion of water from the additional point(s) of diversion authorized under Transfer 74584 located in L2, SESW, Sec. 33, T16N, R43E shall not exceed a maximum diversion rate of 4.00 cfs.
2. Diversion of water from Henrys Lake is limited to those times water is available for diversion under this right and priority from Unnamed Stream at the original point of diversion in the NESE, S33, T16N, R43E, and to the amount of water that actually reaches Henrys Lake.
3. Use of water under this right will be regulated by a watermaster with responsibility for the distribution of water among appropriators within a water district. At the time of this approval, this water right is within State Water District No. 01.
4. The right holder shall maintain a measuring device and lockable controlling works of a type approved by the Department in a manner that will provide the watermaster suitable control of the diversion(s).
5. Prior to diversion of water under this approval, the right holder shall provide a means of measurement acceptable to the department for measuring the flow from Unnamed Stream at the original point(s) of diversion, at the mouth of Unnamed Stream and at the point of diversion from Henrys Lake.
6. This right does not grant any right-of-way or easement across the land of another.

WATER RIGHT NO. 21-2100
As Modified by Transfer No. 74584

CONDITIONS OF APPROVAL

7. Prior to the diversion and use of water under this approval, the right holder shall comply with applicable water quality permitting requirements administered by the Department of Environmental Quality or the Department of Agriculture.
8. The right holder shall accomplish the change authorized by this transfer within one year(s) of the date of this approval.
9. Failure of the right holder to comply with the conditions of this transfer is cause for the Director to rescind approval of the transfer.
10. Pursuant to Section 42-1412(6), Idaho Code, this water right is subject to such general provisions necessary for the definition of the rights or for the efficient administration of water rights as may be determined by the Snake River Basin Adjudication court at a point in time no later than the entry of the final unified decree.

This water right is subject to all prior water rights and shall be administered in accordance with Idaho law and applicable rules of the Department of Water Resources.

Dated this 23 day of February, 2007



Chief, Water Allocation Bureau

Exhibit D

**Letter from David I. Stanish, deputy attorney
general for the Idaho Department of Fish and
Game, to Jerry R. Rigby, counsel for North
Henry's Lake Homeowners Association
(Jan. 20, 2010)**



STATE OF IDAHO
OFFICE OF THE ATTORNEY GENERAL
LAWRENCE G. WASDEN

January 20, 2010

SENT UNITED STATES MAIL

Jerry R. Rigby
Rigby, Andrus, & Rigby, Chartered
Attorneys at Law
25 North Second Street
Rexburg, Idaho 83440

Re: 01-02100 and 01-10015 – Transmittal of Stipulations and SF-5s for Execution

Dear Jerry:

Please find attached two stipulations and two SF-5s intended to resolve the issues pending in the above-referenced Henry's Lake Fish Hatchery and North Henry's Lake Homeowners Association subcases. The SF-5s were completed with the aid of the Idaho Department of Water Resources, so I anticipate their concurrence thereto. If acceptable, please sign these four documents and return them to my attention for filing. If you have any questions, please do not hesitate to call me at the telephone number below.

Sincerely,

A handwritten signature in dark ink, appearing to read "D. Stanish", with a long horizontal flourish extending to the right.

David I. Stanish
Deputy Attorney General

DIS/olv

Enclosures

LAWRENCE G. WASDEN
Attorney General
CLIVE J. STRONG
Deputy Attorney General
Chief, Natural Resources Division
DAVID I. STANISH (ISB #7310)
Deputy Attorney General
P.O. Box 44449
Boise, Idaho 83711-4449
Telephone: (208) 334-2400
Facsimile: (208) 854-8072

JERRY R. RIGBY
Rigby, Andrus, & Rigby, Chartered
Attorneys at Law
25 North Second East
Rexburg, Idaho 83440
Telephone: (208) 356-3633
Facsimile: (208) 356-0768

**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	)	Subcase Nos. 21-02100 and 21-10015
	)	
Case No. 39576	)	STIPULATION TO RESOLVE
	)	MOTION TO SET ASIDE PARTIAL
	)	DECREE IN SUBCASE NO. 21-02100
	)	
	)	STIPULATION TO RESOLVE
	)	MOTION TO ALTER AND AMEND
	)	SPECIAL MASTER'S
	)	RECOMMENDATION IN SUBCASE
	)	NO. 21-10015
	)	

The State of Idaho, Department of Fish and Game, and the North Henry's Lake Homeowners Association, by and through their respective attorneys, hereby stipulate and agree as follows:

I. PROCEDURAL BACKGROUND

On February 2, 2007, this Court entered its Partial Decree for water right no. 21-02100 in the name of the Idaho Department of Fish and Game. On August 29, 2007, the North Henry's Lake Homeowners Association filed a motion to set aside the partial decree entered for water right no. 21-02100.

On April 29, 2008, this Court entered its Special Master's Report and Recommendation, Findings of Fact and Conclusions of Law for water no. 21-10015 in the name of the North Henry's Lake Homeowners Association. On May 28, 2008, the Idaho Department of Fish and Game filed a motion to alter and amend the Special Master's recommendation entered for water right no. 21-10015.

II. MOTION TO SET ASIDE PARTIAL DECREE IN SUBCASE NO. 21-02100

In order to resolve all issues between the parties in subcase no. 21-02100, the parties stipulate and agree as follows:

1. That the Court grant the North Henry's Lake Homeowners Association's pending motion to set aside the partial decree in subcase no. 21-02100; and
2. That the Court enter a Special Master's Recommendation and Partial Decree for water right no. 21-02100 consistent with that set forth in the Standard Form 5 filed by the parties in subcase no. 21-02100 on this same date.

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III. MOTION TO ALTER AND AMEND SPECIAL MASTER'S RECOMMENDATION IN SUBCASE NO. 21-10015

In order to resolve all issues between the parties in subcase no. 21-10015, the parties stipulate and agree as follows:

1. That the Court grant the Idaho Department of Fish and Game's pending motion to alter and amend the Special Master's recommendation in subcase no. 21-10015; and
2. That the Court enter an amended Special Master's Recommendation and Partial Decree for water right no. 21-10015 consistent with that set forth in the Standard Form 5 filed by the parties in subcase no. 21-10015 on this same date.

IV. MUTUAL UNDERSTANDINGS

1. The parties agree that this stipulation has been reached in the process of good faith negotiations for the purpose of resolving legal disputes, including pending litigation, without any determination on the merits. The parties agree that nothing herein or resulting herefrom shall constitute an admission against interest or be used in any proceeding as legal support or precedent, except as to effectuate this specific agreement. Each party stands by its claims and/or objections and intends merely to avoid litigation and to settle its peace.
2. The parties agree to bear their own costs and fees, including attorney fees.

DAVID I. STANISH
Deputy Attorney General
Attorney for the State of Idaho

Date

JERRY R. RIGBY
Rigby, Andrus & Moeller, Chtd.
Attorney for the North Henry's Lake Homeowners Association

Date

CERTIFICATE OF SERVICE

I certify that on this _____ day of _____ 2010, I caused to be served the original and/or copy of this **STIPULATION TO RESOLVE MOTION TO SET ASIDE PARTIAL DECREE IN SUBCASE NO. 21-02100** and **STIPULATION TO RESOLVE MOTION TO ALTER AND AMEND SPECIAL MASTER'S RECOMMENDATION IN SUBCASE NO. 21-10015** on each of the following persons by the indicated methods:

1. Original to:

CLERK OF THE DISTRICT COURT
SNAKE RIVER BASIN
ADJUDICATION
253 THIRD AVENUE NORTH
PO BOX 2707
TWIN FALLS, ID 83303-2707

- ☐ U.S. Mail, postage prepaid
- ☐ Hand Delivery
- ☐ Federal Express
- ☐ Facsimile: (208) 736-2121
- ☐ Statehouse Mail

2. Copies to

NORTH HENRY'S LAKE
HOMEOWNERS ASSOCIATION
REPRESENTED BY:
JERRY RIGBY
25 N 2ND E
P.O. BOX 250
REXBURG, ID 83440-0250

- ☐ U.S. Mail, postage prepaid
- ☐ Hand Delivery
- ☐ Federal Express
- ☐ Email: bbilyeu@srba.state.id.us
- ☐ Statehouse Mail

DAVID I. STANISH
NATURAL RESOURCES DIVISION
OFFICE OF ATTORNEY GENERAL
JOE R. WILLIAMS BUILDING,
SECOND FLOOR
P.O. BOX 83720
BOISE, ID 83720

- ☐ U.S. Mail, postage prepaid
- ☐ Hand Delivery
- ☐ Federal Express
- ☐ Facsimile: _____
- ☐ Statehouse Mail

IDWR DOCUMENT DEPOSITORY
PO BOX 83720
BOISE, ID 83720-0098

- ☐ U.S. Mail, postage prepaid
- ☐ Hand Delivery
- ☐ Federal Express
- ☐ Facsimile: _____

IDWR CONCURRENCE

Date

Date

CERTIFICATE OF SERVICE

I certify that on this _____ day of _____ 2010, I caused to be served the original and/or copy of this **STANDARD FORM 5** on each of the following persons by the indicated methods:

1. Original to:

CLERK OF THE DISTRICT COURT
SNAKE RIVER BASIN
ADJUDICATION
253 THIRD AVENUE NORTH
PO BOX 2707
TWIN FALLS, ID 83303-2707

- ☐ U.S. Mail, postage prepaid
- ☐ Hand Delivery
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- ☐ Facsimile: (208) 736-2121
- ☐ Statehouse Mail

2. Copies to

NORTH HENRY'S LAKE
HOMEOWNERS ASSOCIATION
REPRESENTED BY:
JERRY RIGBY
25 N 2ND E
P.O. BOX 250
REXBURG, ID 83440-0250

- ☐ U.S. Mail, postage prepaid
- ☐ Hand Delivery
- ☐ Federal Express
- ☐ Email: bbilyeu@srba.state.id.us
- ☐ Statehouse Mail

DAVID I. STANISH
NATURAL RESOURCES DIVISION
OFFICE OF ATTORNEY GENERAL
JOE R. WILLIAMS BUILDING,
SECOND FLOOR
P.O. BOX 83720
BOISE, ID 83720

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IDWR DOCUMENT DEPOSITORY
PO BOX 83720
BOISE, ID 83720-0098

- ☐ U.S. Mail, postage prepaid
- ☐ Hand Delivery
- ☐ Federal Express
- ☐ Facsimile: _____

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

RIGHT NUMBER: 21-2100

NAME AND ADDRESS:

STATE OF IDAHO
DEPT OF FISH & GAME
PO BOX 25
BOISE ID 83707

SOURCE:

Source:
SHERWOOD SPRING

Tributary:
HENRYS LAKE

Source:
HENRYS LAKE
~~UNNAMED STREAM~~

Tributary:
HENRYS FORK
~~HENRYS LAKE~~

QUANTITY: 6.000 CFS

Diversion of water from the additional point of diversion authorized under Transfer 74584 located in L2, (SESW), Sec. 33, T16N, R43E shall not exceed a maximum diversion rate of 4.00 cfs.

PRIORITY DATE: 02/03/1948

POINT OF DIVERSION:

T16N R43E S33 Lot 2 SESW
Within FREMONT County

~~T16N-R43E-S33-NESE~~
~~Within FREMONT County~~

T16N R43E S33 NWSE
Within FREMONT County

PURPOSE AND
PERIOD OF USE:

Purpose of use:
FISH PROPAGATION

Period of use:
01/01 12/31

Quantity:
6.000 CFS

PLACE OF USE:

FISH PROPAGATION within FREMONT County
T16N R43E S33 NESW
T16N R43E S33 Lot 2 SESW
T16N R43E S33 NWSE
T16N R43E S33 Lot 1 SWSE

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.

Diversion of water from Henrys Lake is limited to those times water is available for diversion under this right and priority from Unnamed Stream at the original point of diversion in the NESE, S33, T16N, R43E, and to the amount of water that actually reaches State Highway 287 in the SESE, S33, T16N, R43E or at another suitable location and then flows into Henrys Lake.

Unnamed stream is known locally as Pittsburg Creek.

The use of water under this right shall in no way affect the water rights or use of water of senior water users, including water right no. 21-10015.

Prior to diversion of water under Transfer 74584, the right holder shall provide a means of measurement acceptable to the department for measuring the flow from Unnamed Stream at: the original point of diversion in the NESE, S33, T16N, R43E; where Unnamed Stream flows under State Highway 287 in the SESE, S33, T16N, R43E or at another suitable location; and at the point of diversion from Henrys Lake in Lot 2 (SESW), S33, T16N R43E.

EXPLANATORY MATERIAL: BASIS OF CLAIM - License

This right does not grant any right-of-way or easement across the land of another.

Upon approval by the department, the right holder may rely on measurements taken at the location where Unnamed Stream flows under State Highway 287 in the SESE, S33, T16N, R43E or at another suitable location as evidence of the flows occurring at the original point of diversion.

Failure of the right holder to comply with the conditions of Transfer 74584 is cause for the Director to rescind approval of the transfer.

Prior to the diversion and use of water under this approval, the right holder shall comply with applicable water quality permitting requirements administered by the Department of Environmental Quality or the Department of Agriculture.

The right holder shall accomplish the change authorized by Transfer 74584 by February 23, 2014.

Use of water under this right will be regulated by a watermaster with responsibility for the distribution of water among appropriators within a water district. At the time of this approval, this water right is within State Water District No. 01.

The right holder shall maintain a measuring device and lockable controlling works of a type approved by the Department in a manner that will provide the watermaster suitable control of the diversion(s).

IDWR CONCURRENCE

Date

Date

CERTIFICATE OF SERVICE

I certify that on this ____ day of _____ 2010, I caused to be served the original and/or copy of this **STANDARD FORM 5** on each of the following persons by the indicated methods:

1. Original to:

CLERK OF THE DISTRICT COURT
SNAKE RIVER BASIN
ADJUDICATION
253 THIRD AVENUE NORTH
PO BOX 2707
TWIN FALLS, ID 83303-2707

- ☐ U.S. Mail, postage prepaid
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NORTH HENRY'S LAKE
HOMEOWNERS ASSOCIATION
REPRESENTED BY:
JERRY RIGBY
25 N 2ND E
P.O. BOX 250
REXBURG, ID 83440-0250

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- ☐ Hand Delivery
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DAVID I. STANISH
NATURAL RESOURCES DIVISION
OFFICE OF ATTORNEY GENERAL
JOE R. WILLIAMS BUILDING,
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BOISE, ID 83720

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- ☐ U.S. Mail, postage prepaid
- ☐ Hand Delivery
- ☐ Federal Express
- ☐ Facsimile: _____

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

RIGHT NUMBER: 21-10015

NAME AND ADDRESS:

NORTH HENRYS LAKE HOMEOWNERS
ASSN
C/O LANA ESPLIN SECRETARY
3897 TETON RD
ISLAND PARK ID 83429

SOURCE:

Source:
HOWE SPRINGS

Tributary:

UNNAMED STREAM
~~PITTSBURG CREEK~~

Source:
UNNAMED STREAM

Tributary:
HENRYS LAKE
~~PITTSBURG CREEK~~

QUANTITY: 1.500 CFS

Quantity under this right is limited to 0.50 cfs from the Howe Springs source and 1.00 cfs from the unnamed stream source for a combined diversion rate of 1.50 cfs.

PRIORITY DATE: 09/15/1904

POINT OF DIVERSION:

T16N R43E S33 SESE
Within FREMONT County
T16N R43E S34 SWSW
Within FREMONT County

PURPOSE AND
PERIOD OF USE:

Purpose of use:
MUNICIPAL

Period of use:
01/01 12/31

Quantity:
1.500 CFS

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

PLACE OF USE: MUNICIPAL within FREMONT County

T15N R43E S04 NENE
T16N R43E S33 SWSW
T16N R43E S33 SESE
T16N R43E S34 SWSW

Place of use is within the area served by the public water supply system of North Henrys Lake Homeowners Association. The place of use is generally located within: Lot 1, Section 4, Township 15N, Range 43E; Lot 1 and SESE, Section 33, Township 16N, Range 43E; and SWSW, Section 34, Township 16N, Range 43E.

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 combination of old Right Nos. 21-168 and 21-169.

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

Unnamed stream is known locally as Pittsburg Creek.