

DISTRICT COURT-SRBA  
Fifth Judicial District  
County of Twin Falls - State of Idaho

FEB 16 2010

DISTRICT OF THE

TWIN FALLS

Clerk  
Deputy Clerk

Therefore, IT IS HEREBY ORDERED, pursuant to I.R.C.P. 6(c)(2) that the claimants shall appear at a Show Cause Hearing to determine whether subcases 21-2100 and 21-10015 have been resolved by the agreement of the parties. North Henry's Lake Homeowners Association shall appear at the hearing with counsel.

DATE: March 3, 2010 Wednesday  
TIME: 3:30 pm  
LOCATION: Snake River Basin Adjudication  
253 3<sup>rd</sup> Ave. North  
Twin Falls, Idaho 83301

**Parties may participate by telephone for this Show Cause Hearing by dialing 1-225-383-1099 and when prompted enter participant code 926509. If you have any questions regarding participating by telephone, please contact the Clerk's office at (208) 736-3011.**

IT IS FURTHER ORDERED THAT, affidavits from the parties pursuant to I.R.C.P. 6(c)(2) shall be due on or before February 26, 2010.

North Henry's Lake Homeowners Association is hereby informed that pursuant to Rule 6(c)(2) of the Idaho Rules of Civil Procedure, any party has the right to elect to produce testimony and evidence at the hearing upon the Order to Show Cause, or to cross-examine the adverse party or the adverse party's affiants, by first giving at least twenty four (24) hours notice to the Court and opposing counsel before the show cause hearing.

A copy of this *Order to Show Cause and Summons to Appear* shall be served upon North Henry's Lake Homeowners Association not less than five (5) days prior to the date set for hearing, upon which the claimant is required to appear before this Court and show cause. Service of this *Order* shall be made in accordance with I.R.C.P. 5(b) and 6(c)(2).

APPEARANCE AT THIS HEARING IS MANDATORY. FAILURE TO APPEAR AT THIS HEARING MAY RESULT IN WATER RIGHTS 21-2100 AND 21-10015 BEING RECOMMENDED IN A SPECIAL MASTER'S REPORT AND RECOMMENDATION CONSISTENT WITH THE AGREEMENT WITH THE STATE OF IDAHO AS SET FORTH ON ATTACHMENTS A AND B TO THIS DOCUMENT.

Dated: February 16, 2010.

  
BRIGETTE BILYEU, Special Master  
Snake River Basin Adjudication

# Attachment A

## 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 NWSE~~  
~~Within FREMONT County~~

T16N R43E S33 NWSE  
Within FREMONT County

PURPOSE AND  
PERIOD OF USE:

Purpose of use:

Period of use:

Quantity:

FISH PROPAGATION

01/01 12/31

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).

# Attachment B

## 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

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PLACE OF USE: ~~MUNICIPAL within FREMONT County~~

~~T15N R43E S04 NENE~~  
~~T16N R43E S33 SWSE~~  
~~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.

CERTIFICATE OF MAILING

I certify that a true and correct copy of the ORDER TO SHOW CAUSE AND SUMMONS TO APPEAR was mailed on February 16, 2010, with sufficient first-class postage to the following:

NORTH HENRY'S LAKE  
NORTH HENRYS LAKE HOMEOWNERS

Represented by:  
JERRY R. RIGBY  
25 N 2ND E  
PO BOX 250  
REXBURG, ID 83440-0250  
Phone: 208-356-3633

STATE OF IDAHO  
Represented by:  
NATURAL RESOURCES DIV CHIEF  
STATE OF IDAHO  
ATTORNEY GENERAL'S OFFICE  
PO BOX 44449  
BOISE, ID 83711-4449

STATE OF IDAHO  
DEPT OF FISH & GAME  
PO BOX 25  
BOISE, ID 83707  
Phone: 208-334-3700

LANA ESPLIN  
NORTH HENRY'S LAKE  
4317 WINDSONG WAY  
ST GEORGE, UT 84790  
Phone: 435-669-6643

DIRECTOR OF IDWR  
PO BOX 83720  
BOISE, ID 83720-0098

LANA ESPLIN  
3897 TETON RD  
ISLAND PARK, ID 83429  
Phone: 435-669-6643