

Keen, Shelley

From: Lana Esplin [lgesplin@sunrivertoday.com]
Sent: Tuesday, February 11, 2014 10:37 AM
To: Keen, Shelley
Cc: Weigand
Subject: Re: IDFG transfer questions

Mr. Keen,

Thanks for the measurements. I believe I told you Jessica Buelow had already given us the 2012 and 2013 Highway 87 Pittsburg Creek measurements. NHLHA requested the measurements be taken at that location and were part of our Settlement Agreement with IDFG. Another part of the agreement was the IDFG was to give us a "quit claim deed" which they haven't furnished yet.

Recently I did some averages on Jessica's 2013 flow data and sent her a copy. I sent you a copy also. Both 2012 and 2013 only had a few days of spring run off where the flow was over 1.0 cfs.

As I told you on the phone, we want to protect our Pittsburg Creek water right which is in the State Water Bank. Our concern is the fact that we know there is not the 4.0 cfs that IDFG is claiming in their Pittsburg Creek portion of their water right and that's why we requested the measurements in the Settlement Agreement.

You said I should ask you questions in writing. With the recent information you are giving me, I have more questions:

Does the IDFG have to follow the rules all other water users follow?

For instance, there has been a 50 year period of non use by the IDFG.

In the IDFG request for extension of time that you signed, it says this extension does not stay the accumulation of the 5 year period associated with forfeiture of a water right for non use. The extension expires in a few days.

How can the IDFG use the water if the measurements for two years show the water isn't there?

Before we signed the Settlement Agreement, Nick Spencer from the State Attorney General's office assured me that

the state would monitor and measure the available water in Pittsburg Creek and the only time the IDFG could use the water was when the measurements showed it was in excess of our water right. Mr. Spencer also said our water can not be used by the IDFG when it is in the water bank.

The Standard Form 5, page six, in our court case with the IDFG says:

*OTHER PROVISIONS NECESSARY FOR DEFINITION OR ADMINISTRATION OF THIS WATER RIGHT:
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.*

Since Henry's Lake Station has been an egg taking station for several years, shouldn't the IDFG application for a water right transfer have listed a "change of use" from "Fish Propagation" to "Egg Gathering?"

Is there any egg gathering besides the months of March and April listed on the Idaho Fish and Game website?

The following link and paragraph is from the online site of the Idaho Fish & Game:

<http://fishandgame.idaho.gov/public/fish/?getPage=95>

Henry's Lake Fish Hatchery and Fish Management Station
Monday, February 3, 2014

Site Overview

*The Henry's Lake facility is an egg taking station only. **Fish are available for viewing March and April only.** Spawn taking activities usually take place twice a week, on Mondays and Thursdays. Watching these spawn taking operations is also a popular activity and visitors are encouraged.*

I know you've been away from your desk recently and hope you can answer my questions.
Thanks for your help in this matter.

Lana Esplin

Past Secretary, NHLHA

On 1/27/2014 4:04 PM, Keen, Shelley wrote:

Ms. Esplin,

I have attached two files I received from the Idaho Department of Fish and Game. The Excel spreadsheet contains Pittsburg Creek flow measurement data from 2013. The PDF shows flow measurement data from 2012. It is my understanding that the measurement location is the Hwy 87 crossing.

I will forward you the operations plan regarding the establishment of a point of diversion in Henry's Lake when I receive it from IDFG. I am expecting it in a couple of days.

Sincerely,

Shelley Keen
Idaho Department of Water Resources
Shelley.Keen@idwr.idaho.gov
208-287-4947

From: Lana Esplin [<mailto:lgesplin@sunrivertoday.com>]
Sent: Tuesday, January 21, 2014 1:44 PM
To: Keen, Shelley
Subject: re: IDFG transfer questions

Shelley Keen

Water Rights Section Manager

Idaho Department of Water Resource