

#508 X

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

IN RE THE GENERAL ADJUDICATION
OF RIGHTS TO THE USE OF WATER FROM
THE SNAKE RIVER BASIN WATER SYSTEM.

CIVIL CASE NUMBER: 39576

Ident. Number: A29-04467
Date Received: 3/28/1990
Receipt No: 5013111
Received By: ADN

NOTICE OF CLAIM TO A WATER RIGHT
ACQUIRED UNDER STATE LAW

1. Name: LAVA IRRIGATION CO. LTD. 208-776-5628
Address: P.O. BOX 182
LAVA HOT SPRINGS, ID 83246

2. Date of Priority: FEB 11, 1904

3. Source: PORTNEUF RIVER Trib. to: SNAKE RIVER

4. Point of Diversion:

Township	Range	Section	1/4 of	1/4 of	1/4	Lot	County
09S	38E	9	NE	SE		6	BANNOCK

5. Description of diverting works:
CONCRETE HEADWORKS WITH WOODEN GATES

6. Water is used for the following purposes:

Purpose	From	To	C.F.S.	(or)	A.F.A.
IRRIGATION	09/15	04/15	20.500		
STOCKWATER	09/15	04/15	0.120		

7. Total Quantity Appropriated is:
20.500 C.F.S. (and/or) A.F.A.

8. Total consumptive use is 2052.5 Acre Feet Per Annum.

9. Non-irrigation uses:
S/500 CATTLE.

10. Place of Use:

Township	Range	Section	1/4 of	1/4	Lot	Use	Acres
09S	37E	24	NE	SE	1	IRR	17.0

Section Acres 17.0

A29-04467

Page 1

Date: 04/12/90

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10. Place of Use: Continued

Township	Range	Section	1/4	of	1/4	Lot	Use	Acres
09S	38E	15	NW		NW	4	IRR	15.0
			SW		SW	5	IRR	33.0
			SE		SW	6	IRR	4.0
							Section Acres	52.0
		16				1	IRR	1.0
			NE		NE		IRR	11.0
			SE		NE		IRR	17.0
			SW		SW		IRR	39.0
			SE		SW		IRR	39.0
			NE		SE		IRR	13.0
							Section Acres	120.0
		17	SE		SW		IRR	11.0
			SW		SE		IRR	37.0
			SE		SE		IRR	39.0
							Section Acres	87.0
		19	NW		SW		IRR	2.0
			SW		SW	5	IRR	10.0
			SE		SW	6	IRR	11.0
			NE		SE	4	IRR	6.0
			NW		SE		IRR	4.0
			SW		SE	7	IRR	2.0
							Section Acres	35.0
		20	NE		NE		IRR	36.0
			NW		NE		IRR	38.0
			SW		NE		IRR	29.0
			SE		NE	5	IRR	29.0
			NE		NW		IRR	28.0
			SW		NW		IRR	9.0
			SE		NW		IRR	36.0
			NE		SW	7	IRR	24.0
			NW		SW		IRR	17.0
			SW		SW	8	IRR	20.0
			SE		SW	9	IRR	14.0
							Section Acres	280.0

10. Place of Use: Continued

Township	Range	Section	1/4 of	1/4	Lot	Use	Acres
09S	38E	21	NW	NE		IRR	37.0
			SW	NE		IRR	36.0
			SE	NE		IRR	4.0
			NE	NW		IRR	38.0
			NW	NW		IRR	37.0
			SW	NW	5	IRR	32.0
			SE	NW		IRR	29.0
			NE	SW	6	IRR	2.0
			NE	SE	8	IRR	2.0
			NW	SE	7	IRR	13.0
						Section Acres	230.0
						Total Acres	821.0

11. Place of use in counties: BANNOCK

12. Do you own the property listed above as place of use? YES

13. Other Water Rights Used:
A29-00047A, A29-00048, A29-10816

14. Remarks:

THE CLAIMANTS ADD THE FOLLOWING REMARKS:
 "Union Grain and Elevator vs. McCammon Ditch Co. decree recognized an irrigation season [of] April 15, to Sept 15, the actual irrigation practice of Lava Irrigation historically has been to use the water any time needed during the non irrigation, first come, first serve down the river."
 "The purpose of this claim is to establish this historical practice as a legitimate water right as used, dated back to the beginning of our decreed water rights."
 "Refer to appendage and affidavits."

15. Basis of Claim: STATUTORY CLAIM

16. Signature(s)

(a.) By signing below, I/We acknowledge that I/We have received, read and understand the form entitled "How you will receive notice in the Snake River Basin Adjudication." (b.) I/We do _____ do not X wish to receive and pay a small annual fee for monthly copies of the docket sheet.

Number of attachments: _____

For Organizations:

I do solemnly swear or affirm that I am Secretary of _____

Lava Irrigation Co. Ltd., that I have signed the foregoing
Organization

document in the space below as Secretary of _____

Lava Irrigation Co. Ltd., and that the statements contained in the
Organization

foregoing document are true and correct.

Patricia Avery
Signature of Authorized Agent

Secretary - Lava Irrigation Co. Ltd.
Title and Organization

April 12, 1990
Date

State of Idaho)
County of BOISEVILLE) SS.

Subscribed and sworn (or affirmed) before me this 12 day
of April 19 90

[Signature]
Notary Public

Seal

Residing at Louis
My Commission Expires 12-90

REMARKS: Union Grain and Elevator vs McCammon Litch Co. decree recognized an irrigation season April 15, to Sept. 15, the actual irrigation practice of Lava Irrigation historically has been to use the water any time needed during the non irrigation season, first come first serve down the river.
The purpose of this claim is to establish this historical practice as a legitimate water right as used, dated back to the beginning of our decreed water rights.

Refer to appendage and affidavits.

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Log for claim A29-04467

Spatial Dynamics AMH

8/11/00

TR	SEC	QQ	Acres Claimed	Acres Found	COMMENT
09s37e	24	NESE	17	18	
09s38e	15	NWNW	15	23	
09s38e	15	SWSW	33	45	
09s38e	15	SESW	4	13	
09s38e	16	NENE	11	13	
09s38e	16	SENE	17	22	
09s38e	16	SWSW	39	40	
09s38e	16	SESW	39	40	
09s38e	16	NESE	13	16	
09s38e	17	SESW	11	16	
09s38e	17	SWSE	37	36	
09s38e	17	SESE	39	38	
09s38e	19	NWSW	2	2.4	
09s38e	19	SWSW	10	13	
09s38e	19	SESW	11	18	
09s38e	19	NESE	6	9.1	
09s38e	19	NWSE	4	4.6	
09s38e	19	SWSE	2	18	
09s38e	20	NENE	36	38	
09s38e	20	NWNE	38	38	
09s38e	20	SWNE	29	37	
09s38e	20	SENE	29	45	
09s38e	20	NENW	28	31	
09s38e	20	SWNW	9	11	
09s38e	20	SENW	36	36	
09s38e	20	NESW	24	18	
09s38e	20	NWSW	17	15	
09s38e	20	SWSW	20	27	
09s38e	20	SESW	14	18	
09s38e	21	NWNE	37	40	
09s38e	21	SWNE	36	37	
09s38e	21	SENE	4	7.1	
09s38e	21	NENW	38	40	
09s38e	21	NWNW	37	37	
09s38e	21	SWNW	32	43	
09s38e	21	SENW	29	37	
09s38e	21	NESW	2	8.6	
09s38e	21	NESE	2	19	
09s38e	21	NWSE	13	34	
Totals:			820	1001.8	

AJ5809NP
No. A29-04467

IDAHO DEPARTMENT OF WATER RESOURCES
ADJUDICATION CLAIM PROFILE REPORT

DATE: 05/22/00
PAGE: 159

OWNER CODE	NAME & ADDRESS	PRIORITY DATE	WATER USE	USE PERIOD FROM TO	DIVERSION RATE	DIVERSION VOLUME
C	LAVA IRRIGATION CO LTD PO BOX 182 LAVA HOT SPRINGS ID 83246 (208) 776-5628	02/11/1904	IRRIGATION STOCKWATER	09-15 04-15 09-15 04-15	20.500 CFS 0.120 CFS	
TOTAL DIVERSION: CONSUMPTIVE USE:					20.500 CFS	2052.50 AFA

Water Source: PORTNEUF RIVER

Tributary to: SNAKE RIVER

Stage: STATUTORY CLAIM

Point(s) of Diversion: T09S R38E S09 Lot06(NESE)

BANNOCK County

Place of use Legal Description for: IRRIGATION

		NE				NW				SW				SE					
T	R S	Lt	Ac	Lt	Ac	Lt	Ac	Lt	Ac	Lt	Ac	Lt	Ac	Lt	Ac	Lt	Ac	SUM	
09S	37E 24	:		:		:		:		:		:		:		01-17	:	17.0	
09S	38E 15	:		:		:		:		:		:		:		05-33 06-04	:	52.0	
09S	38E 16	:	11	:		:		:		:		:		:		39 39	:	119.0	
09S	38E 17	:		:		:		:		:		:		:		11	:	87.0	
09S	38E 19	:		:		:		:		:		:		:		04-06 04-07-02	:	35.0	
09S	38E 20	:	36	:	38	:	29	:	05-29	:	28	:	09	:	36	:	07-24 02-05-10 06-11	:	280.0
09S	38E 21	:		:	37	:	36	:	04	:	38	:	37	:	05-32	:	29	:	230.0
TOTAL ACRES																	821.0		

Place of use location for STOCKWATER is the same location as described for: IRRIGATION

Lots Without 1/4 1/4 Description: IRRIGATION

09S 38E 16 01-01

SUM
1.0

Place of use location for STOCKWATER is the same location as described for: IRRIGATION

POU County: BANNOCK

Non-Irrigation Uses: S/500 CATTLE.

Other Rights: A29-00047A, A29-00048, A29-10816

Other Water Rights with Same Point(s) of Diversion with Stage (Includes All Sources):

A29-00047A A29-00048 A29-10816

Other Water Rights Listing Overlapping Place(s) of Use:

A29-00036 A29-00037 A29-00047A A29-00048 A29-00180 A29-02360 A29-02452 A29-04090 A29-04180 A29-10624
A29-10625 A29-10791 A29-10816 A29-10820 A29-11773 A29-12267

Remarks: GEN THE CLAIMANTS ADD THE FOLLOWING REMARKS:
"Union Grain and Elevator vs. McCammon Ditch Co. decree
recognized an irrigation season [of] April 15, to Sept 15,
the actual irrigation practice of Lava Irrigation
historically has been to use the water any time needed

AJ5809NP
No. A29-04467

IDAHO DEPARTMENT OF WATER RESOURCES
ADJUDICATION CLAIM PROFILE REPORT

DATE: 05/22/00
PAGE: 160

Remarks: during the non irrigation, first come, first serve
down the river."
"The purpose of this claim is to establish this historical
practice as a legitimate water right as used, dated back
to the beginning of our decreed water rights."
"Refer to appendage and affidavits."

Dates: Exam Made Date: Verified Date: Objection Filed Date:

Misc: Water District Number: 29 Field Inspection Flag:
Presumption Flag: D

Audit: 04/12/90 MEYER 07/25/94 THOMPSON 03/29/95 POST-STD

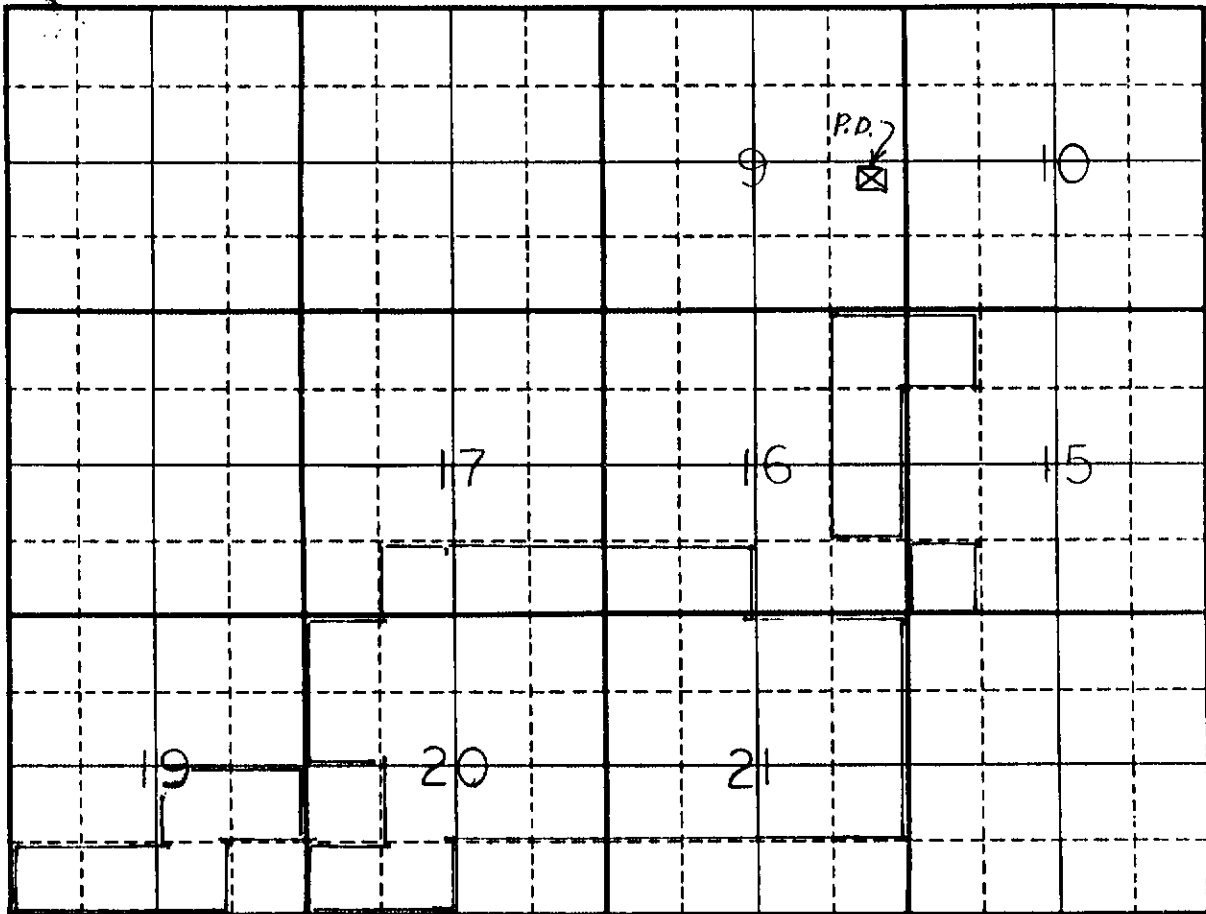
(Name of Claimant)

(Mailing Address)

(Zip Code)

(7) If you are claiming water as a member of an organization, list name of organization:

(8) Remarks This claim is for water historically diverted by the claimant after the decreed period of use ends on September 15.



Scale: 2 inches equal 1 mile.

Map should show the location of the point of diversion and the place of use of the water by 40-acre subdivisions, section, township and range of the public land survey system.

State of Idaho)
County of Bonneville) ss.

Be it known that the undersigned, being duly sworn, deposes and says that he, she, they subscribed the foregoing claim to a water right, together with all attached information, and that the matters and facts therein are true to the best of the affiant's knowledge.

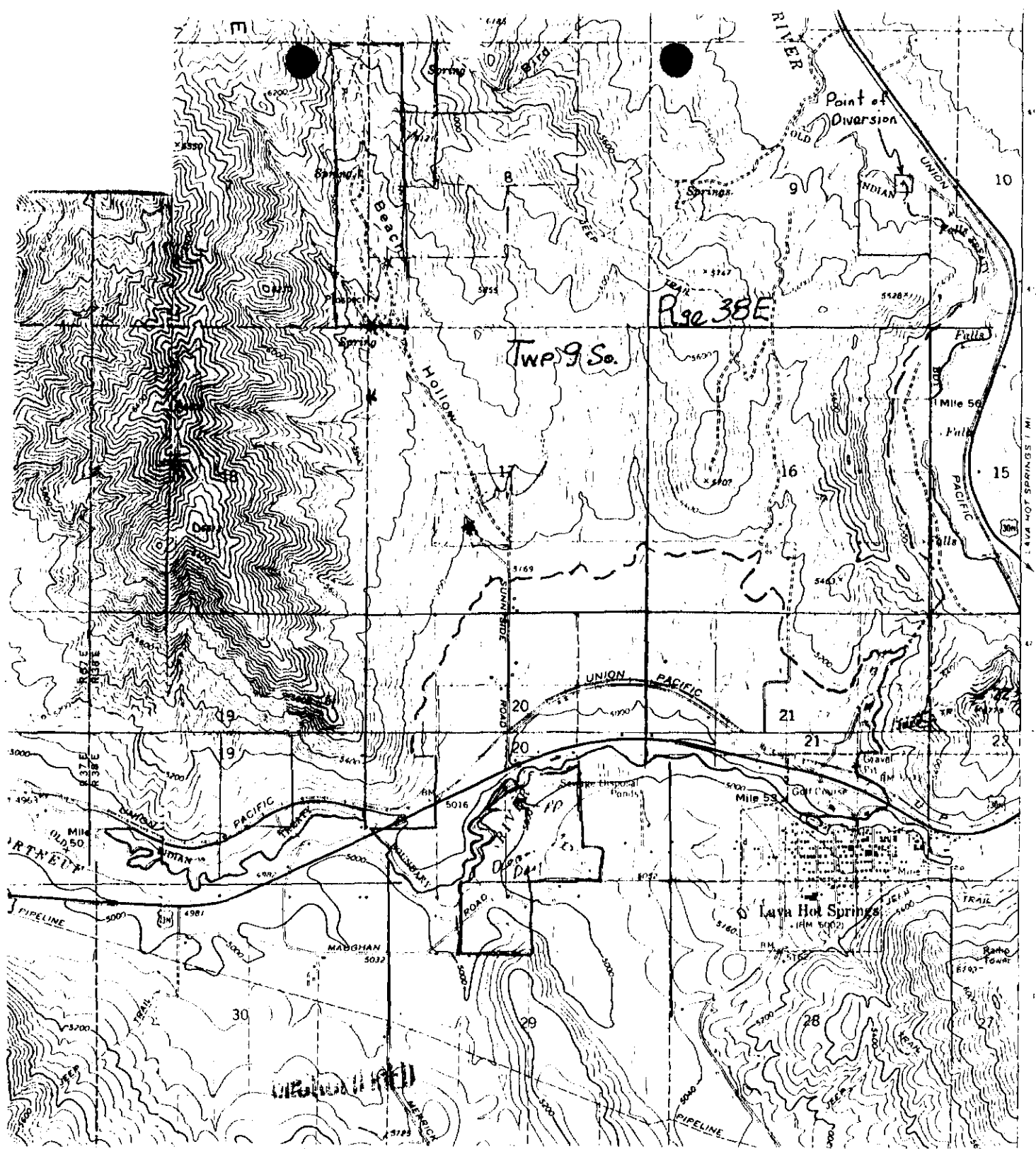
Sworn to before me this 7th day of June

Calvin A. Rowell
(Claimant)
Calvin Wray
Notary Public
Residing at Idaho Falls

My commission expires 6-15-85

FOR DEPARTMENT USE ONLY

Received by EMC Date 6/7/84 Exception filed by: _____ Date _____
Prelim. check by RWJ Date 6/9/84 Forwarded to claimant by: _____ Date _____
Published in Idaho State Journal Date June 28, 1984 33576



To whom it may concern:-

My parents moved into Lava Hot Springs
the year of 1919 Purchased a farm on Dempsey
creek. I was 9 years old then. The Lava Irrigation
Company was a established canal then
operating with a full water right established
in 1904. I purchased a farm under the
Lava Irrigation system in 1940.

We have had water in that canal every
year that I have owned ranch 1940 to 1990
Water is in early April until Nov. Water
regulated according to Water Decree.

Sincerely
Calvin A. Rowell
Calvin A. Rowell

Witness: B. J. Deeds 4-10-90

On 4-10-90, before me, Gilbert R. Birkenshaw II,
a notary public of the State of Idaho, appeared CALVIN A. ROWELL

NOTARY: RESIDING AT Pocatello

BANNOCK COUNTY

Gilbert R. Birkenshaw II

MY COMMISSION EXPIRES 10-4-94

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State of Idaho

County of Bannock

On this 10th day of April 19 90, before me personally
appeared J. B. Smith to me known to be the
person(s) described in and who executed the foregoing instrument,
and acknowledged to me that he executed the same as his
free act and deed.

3-11-93
Term Expires

Shirley M. Burton
Notary Public
Lone Hand Springs
Residing At

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NOV 13 1992

April 10 - 1990

In regards to using water before and after the normal irrigation season begins and ends.

I moved here in 1948, Feb. 28. We always use canal water from the Portneuf River until it either snows or freezes up. Our decreed water right is usually cut off in early summer, if we didn't use water as late as possible, we wouldn't keep our pasture + hay field from drying out. Also that water is our main source of livestock water, as our spring water is insufficient for our household use + livestock both.

I'm, — J. B. Irick, a member of the Lava Irrigation Company.

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STATE OF IDAHO, COUNTY OF BANNOCK

On this 9th day of APRIL, 1990, before me, a notary public in
and for said State, personally appeared

WILLIAM KIDD

Known to me to be the person whose name ~~is~~ ^{HE} subscribed to the within
instrument, and acknowledged to me that ~~HE~~ executed the same.

Robert Bergendorf
NOTARY PUBLIC

Residing at LAUA HOT SPRINGS, Idaho

Commission Expires LIFETIME

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Farm



Journal photo by Bob Jensen

Irrigation pipe has been put to use in parts of this area, as warm temperatures dry soil during the day. However, freezing temperature at night result in ice forming. Water will placed in many area canal systems this week as farmers begin watering their crops.

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TO WHOM IT MAY CONCERN:

I, Fred G. Walker, would like to say, I was born and raised on the Walker Ranch located near Lava Hot Springs, Idaho, and lived there until February 1953. I was also the Ditch Checker for one summer while living there. There was plenty of water for all of the ranches in the area before the Chesterfield Dam was constructed, no one in the area had any water problem until after the construction of that Dam. Then the situation seemed to change a very great deal. The Sunnyside Ditch Company had plenty of water for all users at the beginning as well as at the ending of the season. They all irrigated and used the water all season until it froze up in the winter. We had all the water for all the ranchers in the area all season long. Everyone had all the water needed to irrigate their land from early in the spring until it all froze up with the winter. My folks before me had plenty and I had plenty for the same acres and the same farm from early spring until it froze up with the winter.

Signed Fred G. Walker
Fred G. Walker

Subscribed and sworn to before me this 4th day of April 1990, at
Cokeville, Lincoln County, State of Wyoming.

My Commission expires: Feb. 1, 1993

Marcel D. Reed
Notary Public

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Greenleaf Id.
4-3-90

to whom it may concern

In Regards to conditions of
the Lemmyside Canal near
Tane Hot Springs Idaho

In the years of 1947-48-49 and 50
I lived on the farm now owned
and operated by Halder and Vera
Avery and family.

I was a Board member and for 2 year
Chairman of the Board
in the spring we turned the
water in as soon as the canal
was ready.

After in the summer we would
have to take turns it was
able to irrigate through
October and as I remember
we would have about three
hundred inches then would
have water for live stock
until it froze up in
the canals.

Letter Water

Nancy O'Brien
Notary - Garange Co. Op Fed. C. U.
Ex. 10-14-94

PO Box 416
Greenleaf Idaho
83626-0416

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NOV 13 1992

April 3, 1990

TO WHOM IT MAY CONCERN:

This is a statement concerning the Water Rights and the water that was available at the time we farmed at Sunnyside, near Lave Hot Springs, Idaho.

The land we farmed from the Spring of 1947 through 1950, is presently owned and farmed by Golden and Vera Avery and their family.

The water in the Sunnyside Canal, was available in the spring, whenever the share holders decided it was needed or as soon as the Canal could be cleaned and made ready.

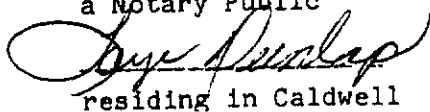
As the growing seasons became hotter, there was less water available to this Canal Company, and sometimes, we were cut down to three streams of about 50 inches of water each at the headgates.

In the fall, after the heavy demand for water was over, the water was kept in the canal as long as anyone wanted it, or until it was frozen.

The summer of 1950, I was hired by the Canal Company as Ditch Rider. I started as soon as I got out of school, about May 20th, and had the job until I quit, September 25th, to take another job. At that time, my Dad took the job for the rest of the season.

The information in this letter is as close as I can remember.

Signed & Subscribed
before me this day 4-3-90
a Notary Public


residing in Caldwell



Lester E. Waters
2202 Big Sky St.
Caldwell, Idaho 83605

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State of Idaho
DEPARTMENT OF WATER RESOURCES

1301 North Orchard Street, Statehouse Mail, Boise, Idaho 83720 - (208) 334-7900

CECIL D. ANDRUS
GOVERNOR
R. KEITH HIGGINSON
DIRECTOR

September 16, 1988

Lyndon Green
105 E 16th Street
McCammon, ID 83250

Re: Water District 29, Portneuf River

Dear Mr. Green:

In your telephone call of September 14, 1988, you stated that the irrigation season in Water District 29 under the Portneuf River decree ends on September 15. You asked me what action, if any, should be taken by the watermaster after that date.

The historical practice on the Portneuf is for the watermaster to stop delivering water rights under the decree on September 15. After that date it has been the practice of the waterusers to divert water as needed irrespective of the priorities under the decree.

It is the normal duty of a watermaster to delivery water rights on a stream in accordance with the terms of the applicable decrees. Consistent with court decree, it has been the long-standing practice on the Portneuf for the formal irrigation season to end on September 15 and for the watermaster to discontinue delivering irrigation water rights after that date. I do not find it appropriate to order the watermaster to alter that longstanding practice this year.

Waterusers who have historically diverted water and put it to beneficial use after September 15 each year may have established legal rights to continue that practice. The extent of any such rights will be determined in the pending Snake River basin water rights adjudication.

I hope this letter has adequately answered your question.

Sincerely,


R. KEITH HIGGINSON
Director

cc: Eastern Region
Tom Bloxham

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APPENDAGE TO THE FILING OF WATER RIGHT OF

LAVA IRRIGATION COMPANY

Portneuf River district #29 Lava Hot Springs, Idaho 83246

Our present decreed water rights are jeopardized by:

1. Illegal loss free transportation of storage water in the river channel. We ask the adjudication correct this situation by requiring the users of the storage water to stand the loss or require all the water users in the river district to share in the loss on a percentage basis according to the cubic feet of water they have decreed to them.
2. Many years after the established use rights and decreed rights many wells have been allowed in the upper basin area, draining the aquifer. We ask an in depth study be made to determine the affect these wells have on the river flow before a decision is made.

Historically the amount of our water has been cut down during the irrigation season because there is not enough water to fill all the rights. Of necessity we have used the water at any time during the non irrigation season in any amount needed, first come first served down the river.

We have filed a claim of use #29-4467 claiming the right to use the water in this manner until November 15 each year. This application was not protested when advertised. We request this use right be recognized and established as a legitimate water right as of 1904 the same as our decreed right.

Shane Irick

Shane Irick - President

Patricia Avery

Patricia Avery - Sec.

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*Lava Irrigation Co.
Seal*

Lava Ditch

April 9, 19.

Idaho State Water
Resources Board:

I am writing this as a member of The Lava Irrigation Co., or the Sunny Side Ditch as it is commonly known; and also as a member of the Kidd family. We are the only family to still own our original homesteads. All the rest have changed ownership times without number. I am the oldest living person to have known constantly about the irrigation situation in this community.

I went to college with Elmo Higginson, in Pocatello in 1929 and 1930. He was your hydrologist and I believe his son is your hydrologist now.

Our project is small, only slightly more than a thousand acres in the beginning. Highway 30 has

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Taken away some of our land.
There was plenty of water, for
every one in the beginning. They
turned what water they needed
into our canal and turned it
back into the river when they were
through using it. They always tried
to keep some water in the canal
through the winters for livestock.
Sheep men would buy hay from the
farmers and feed the sheep in the
fields and have canal water
for the sheep to drink.

They built the reservoir at
Chesterfield, they tried turning the
stored water down the Portneuf
River, which would not carry the
extra water. They paid damages
for several years to farmers
downstream for flooding the fields.
They then built the long outlet canal
to bypass the farms. In the beginning
the canal would not carry the

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water, but the canal eroded until we have the bad situation we have today.

The McCammon Mill sued to get its water, and they won the lawsuit, and a decree was handed down about the various water rights. Since then, the McCammon Mill sold its water right, I believe to either the McCammon Canal Co., or to some of its members.

Ever since, our project has had less and less water, so we have tried to get water into our canal before the irrigation season began, and also after the irrigation season had ended, to soak up our fields for the next season. I personally have watered fields when several inches of snow were on the ground. We have done this all through my life time. Nobody has ever tried to stop us, and I feel that

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we have established a right to do this.

Now, companies have planned to build hydropower plants in the river, and they intend to demand the entire river flow when the irrigation season ends until the spring when the season begins again. The way things are shaping up, we will have scarcely any water at all. They should not be allowed to do this to us. The plants are not needed at all, and the Federal Government should never have approved their building.

Sincerely

P.O. Box 137 Wilhelm Kidd
Lava Hot Springs
Idaho, 83246

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