

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: A29-10213
Date Received: 1/23/1990
Receipt No: E011955
Received By: _____

NOTICE OF CLAIM TO A WATER RIGHT
ACQUIRED UNDER STATE LAW

1. Name: STATE OF IDAHO 208-776-5221
Address: LAVA HOT SPRINGS FOUNDATION
P.O. BOX 430
LAVA HOT SPRINGS, ID 83246

2. Date of Priority: JUL 23, 1963

3. Source: SPRINGS Trib. to: PORTNEUF RIVER

4. Point of Diversion:

Township	Range	Section	1/4 of	1/4 of	1/4	Lot	County
09S	38E	21	NE	SE		8	BANNOCK

5. Description of diverting works:
SPRINGS TO PIPELINE TO COMMERCIAL USE

6. Water is used for the following purposes:

Purpose	From	To	C.F.S.	(or)	A.F.A.
COMMERCIAL	01/01	12/31	3.270		

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

8. Total consumptive use is Acre Feet Per Annum.

9. Non-irrigation uses:
COMMERCIAL USE FOR VARIETY OF NEEDS OF RECREATION AREA

10. Place of Use:

Township	Range	Section	1/4 of	1/4	Lot	Use	Acres
09S	38E	21	NE	SE	8	COMMER	

11. Place of use in counties: BANNOCK

A29-10213

Page 1

Date: 01/23/90



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

13. Other Water Rights Used:

A29-02283, A29-02360 AND A29-04178

14. Remarks:

CLAIM BASED ON LAPSED PERMIT 29-02478

15. Basis of Claim: BENEFICIAL USE

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 _____ wish to receive and pay a small annual fee for monthly copies of the docket sheet.

Number of attachments: _____

For Individuals:

I/We do solemnly swear or affirm that the statements contained in the foregoing document are true and correct.

Signature of Claimant(s): _____ Date: _____
_____ Date: _____

For Organizations:

I do solemnly swear or affirm that I am EXECUTIVE DIRECTOR of
_____ Title
IDAHO's STATE FOUNDATION, that I have signed the foregoing
Organization
document in the space below as EXECUTIVE DIRECTOR of
_____ Title
IDAHO's STATE FOUNDATION and that the statements contained in the
Organization
foregoing document are true and correct.

ROBERT Y. MELINE
Signature of Authorized Agent

EXECUTIVE DIRECTOR
Title and Organization

2 February 1990
Date

State of Idaho)
County of Bannock) SS.

Subscribed and sworn (or affirmed) before me this 2 day

of February 19 90

Cindy Fisher
Notary Public

Seal

Residing at Pocatello, Id

My Commission Expires 2-11-91

IDAHO DEPARTMENT OF WATER RESOURCES
Adjudication Recommended Right Report

03/01/2001

WATER RIGHT NO. 29-10213

Owner Type **Name and Address**
Current Owner STATE OF IDAHO
 LAVA HOT SPRINGS FOUNDATION
 PO BOX 430
 LAVA HOT SPRINGS, ID 83246
 (208)776-5221

Also Known As LAVA HOT SPRINGS FOUNDATION
 LAVA HOT SPRINGS, ID 83246

Priority Date: 07/23/1963

Basis:

Status: **DISALLOWED**

Source **Tributary to**
SPRINGS **PORTNEUF RIVER**

Beneficial Use	From	To	Diversion Rate	Volume	Subuse Code
COMMERCIAL	1/01	12/31	3.27 CFS		

Total Diversion 3.27 CFS

Location of Point(s) of Diversion:

SPRINGS **NESE Lt 8** **Sec. 21** **Township 09S** **Range 38E** **BANNOCK County**

Place(s) of use:

Place of Use Legal Description: **COMMERCIAL** **BANNOCK County**

Township	Range	Section	Lot	Tract	Acres	Lot	Tract	Acres	Lot	Tract	Acres	Lot	Tract	Acres
09S	38E	21	8	NESE										

Comments:

Author	Date	Subject	Comment
aruberry	3/1/01	DISALLOWED	CLAIM - ITEM 14. REMARKS: CLAIM BASED ON LAPSED PERMIT 29-02478

Dates:

Licensed Date:
Claim Received Date: 02/05/1990
Enlargement Use Priority Date:
Enlargement Statute Priority Date:
Decreed Date:
Date Filed with Court:
Objection Filed Date:
SF5 Filed:
Special Master Recom Signed Date:

Element Reviewed/Verified Dates: No dates found



STATE OF IDAHO
OFFICE OF THE ATTORNEY GENERAL
ALAN G. LANCE

D. Tuttle Don
Adj. file ✓

439-10013

ATTORNEY GENERAL OPINION NO. 97-1

RECEIVED
JAN 17 1997

RECEIVED

JAN 13 1997

To: Robert I. Meline, Executive Director
Lava Hot Springs Foundation
P.O. Box 669
Lava Hot Springs, Idaho 83246

Department of Water Resources

Department of Water Resources
Eastern District Office

Per Request for Attorney General's Opinion

QUESTIONS PRESENTED

1. Does the Lava Hot Springs Foundation, under the terms of title 67, chapter 44, Idaho Code, have authority to control the use of hot springs and hot waters located on lands under the control of the Foundation?
2. If the Foundation has the authority to control the use of hot springs and hot waters on lands under the control of the Foundation, is such control exclusive, or is the use of such waters subject to the provisions of title 42, Idaho Code?
3. If the Foundation has authority to control the use of hot springs and hot waters on lands under the control of the Foundation, does such authority extend to authorizing the use of such hot springs and hot waters by private parties on private lands in exchange for an easement across such lands for a pipeline used for the discharge of the Foundation's waste water, or would such a use have to be licensed by the Idaho Department of Water Resources?

CONCLUSION

1. Yes, the Lava Hot Springs Foundation (Foundation) maintains authority to manage and control the use of all hot waters lawfully appropriated under state law that rise and flow on the Foundation's lands.
2. The rights to the use of all hot waters that rise and flow at Lava Hot Springs are water rights that have been appropriated under state law and are subject to regulation by the Idaho Department of Water Resources (Department) under the provisions of title 42 of the Idaho Code.

3. The Foundation has the authority under title 67, chapter 44, Idaho Code, to enter into agreements involving easements with private parties to discharge the Foundation's waste water. However, the Foundation may not authorize the use of any portion of its water in a manner that is inconsistent with its state water right. Other parties seeking to use the Foundation's waste water for new uses or on lands other than the authorized place of use must file for a permit from the Idaho Department of Water Resources.

BACKGROUND

Lava Hot Springs was acquired from the United States under an act of Congress in 1902 which conveyed certain lands to the state of Idaho for public use subject to state regulation. The Act reads as follows:

Chapter 1076. -- An Act to grant certain lands to the State of Idaho. Be it enacted by the Senate and the House of Representatives of the United States of America in Congress assembled, That lots seven and eight in section twenty-one, the northwest quarter of the southwest quarter, and lots nine and ten in section twenty-two, all in township nine south, range thirty-eight east, base meridian, in the State of Idaho, are hereby ceded, granted, relinquished, and conveyed unto said State of Idaho for public use under such regulations as said State may prescribe. 32 Stat. 330 (1902)

Seventeen years later, in 1919, the state of Idaho passed Senate Bill No. 9 vesting in the department of welfare the responsibility to manage the lands and property at Lava Hot Springs. 1919 Idaho Sess. Laws 108. The Lava Hot Springs Foundation was created in 1935 and the statutes were amended to make the Foundation responsible for the management and control of the lands and property at Lava Hot Springs. 1935 Idaho Sess. Laws 16. The Foundation, operating as an agency within the department of parks and recreation, continues to manage the lands at Lava Hot Springs today.

ANALYSIS

A. Introduction

The threshold issue raised by the questions presented is whether the unique language in title 67, chapter 44, Idaho Code, creates a special type of water right for the benefit of the Foundation that is different from all other state water rights acquired under the appropriation process. An underlying legal issue is whether it is possible in this state for another type of state water right to exist other than one acquired by appropriation under Idaho law.

Idaho Code § 67-4401 provides: "All rights to the operation, management and control, and to the maintenance and improvement of the lands and property belonging to the state of

Idaho situated within and near the city of Lava Hot Springs, in Bannock County, state of Idaho, hereinafter more particularly described is vested in the Lava Hot Springs Foundation which shall be an agency within the department of parks and recreation"

Idaho Code § 67-4403 describes the lands and property placed under the jurisdiction and control of the Foundation. Idaho Code § 67-4403 provides:

Description of property: The property hereinbefore referred to, and herewith placed under the jurisdiction and control of the said foundation, is described as follows: The northwest quarter (1/4) of the southwest quarter (1/4), and lots nine (9) and ten (10) in section twenty-two (22), and lots seven (7) and eight (8) in section twenty-one (21) in township nine (9), south, range thirty-eight (38) east of the Boise meridian, together with all and singular the tenements, hereditaments and appurtenances thereunto belonging, or in any wise appertaining, and the hot springs and hot waters arising and flowing thereon, in Bannock County, state of Idaho.

Upon further analysis of Idaho's Constitution and related water statutes, the language in Idaho Code § 67-4403 placing jurisdiction and control of the hot springs and hot waters under the direction of the Foundation is intended to refer to only those waters lawfully appropriated under state law.

B. The Right to Use Water at Lava Hot Springs is Sanctioned under Water Rights Acquired by Appropriation

All rights to water under state law in Idaho are acquired by appropriation. Article 15, § 3 of the Idaho Constitution provides: "The right to divert and appropriate the unappropriated waters of any natural stream to beneficial uses, shall never be denied, except that the state may regulate and limit the use for power purposes" Idaho Code § 42-101 provides: "All the waters of the state, when flowing in their natural channels, including the waters of all natural springs and lakes within the boundaries of the state are declared to be the property of the state, whose duty it shall be to supervise their appropriation and allotment to those diverting the same therefrom for any beneficial purpose" Idaho Code § 42-103, prior to the 1971 amendments, provided: "The right to the use of the waters of rivers, streams, lakes, springs, and of subterranean waters, may be acquired by appropriation." Idaho Code § 42-104 provides: "The appropriation must be for some useful or beneficial purpose, and when the appropriator or his successor in interest ceases to use it for such purpose, the right ceases." Idaho Code § 42-106 provides: "As between appropriators, the first in time is the first in right."

The consistent thread in Idaho's Constitution and water statutes is that the right to use water must be acquired by appropriation. The Idaho Supreme Court has long held that the method to acquire water in Idaho is by appropriation and that the state may regulate the means of appropriating water within the state. Speer v. Stephenson, 16 Idaho 707, 102 P. 365 (1909).

Unquestionably, the law of prior appropriation is specified as the method to establish the right to use water in Idaho. Absent a clear statutory expression by the legislature to create an exception to the appropriation statutes, all rights to the use of water in Idaho must be acquired by appropriation. The language in Idaho Code §§ 67-4401 and 67-4403 is not a clear expression that the legislature intended to create an exception from the appropriation process for the waters at Lava Hot Springs. The most reasonable interpretation of this language is that the Foundation's jurisdiction and control over waters at Lava Hot Springs refers to those waters that have already been appropriated or that will be appropriated in the future. The legislature has had several opportunities over the years to pass laws regarding the use of water by the state acting through the governor or a state board for a special purpose. In every instance there is a clear expression in the statutes that the water for the special purpose should be appropriated in trust for the people of the state of Idaho.¹ Additionally, Idaho Code § 42-1503 requires that an application to appropriate water be filed by the Idaho Water Resource Board before a minimum stream flow can be established under Idaho law.

Other statutory authority as well as past actions on the part of the Foundation and the Department indicate that the use of the water at Lava Hot Springs was based upon appropriative water rights developed under state law. Perhaps most instructive on the nature of the Foundation's water rights is the language contained in Idaho Code §§ 58-703 and 58-704, passed in 1931, which addressed cessions to the United States for the construction of a national veterans' sanatorium or hospital at Lava Hot Springs. Idaho Code § 58-703 provides: "The state board of land commissioners, acting for and on behalf of the state of Idaho, is hereby authorized, empowered and directed to cede, grant, relinquish and convey to the government of the United States, . . . such portion of the hot mineral and cold water and water rights appurtenant to said lands as may be necessary and convenient [for the operation of a national veterans' sanatorium or hospital]." The description of the lands provided in section 58-704 again refers to waters and water rights appurtenant thereto. The use of the terms "water rights" and "appurtenant" in sections 58-703 and 58-704 is a strong indicator that the Foundation merely controlled the use of the water under a traditional state water right that is appurtenant to lands at Lava Hot Springs.

The grant from the United States in 1902 provided that title to Lava Hot Springs was to be held by the state of Idaho under such regulations as the state may prescribe. In 1919, the Idaho Legislature passed laws directing the department of welfare to manage and control the hot springs and hot waters at Lava Hot Springs. It appears that the department of welfare was directed to manage and control the hot springs and the same hot waters that had been used for many years at Lava Hot Springs prior to the passage of the 1919 Act. In fact, the Foundation recognized this earlier use and claimed a 3 cfs year round water right with a 1902 priority when it filed a Claim to a Water Right with the Idaho Department of Water Resources in 1980. The Foundation filed applications for additional water rights as its needs increased over the years and the Department has processed the applications and issued two water right licenses authorizing the use of additional waters at Lava Hot Springs.

C. The Water at Lava Hot Springs is Subject to State Regulation under Title 42 and must be Applied in a Manner Consistent with the Underlying Water Right

Idaho Code § 67-4401 places a duty on the Foundation to manage and control the hot springs and hot waters arising from lands at Lava Hot Springs. The most reasonable interpretation of this statute is that jurisdiction and control is limited to those waters appropriated under state law. The Foundation's water rights acquired under the appropriation process are the same type of water rights held by other water users in the state and are subject to regulation under title 42 of the Idaho Code.

Finally, under Idaho Code § 67-4402, the Foundation is authorized to exercise such powers as are incidental or conducive to the attainment of the purposes of the Foundation. The authority granted to the Foundation in Idaho Code § 67-4402 appears sufficient to allow the Foundation to enter into agreements pertaining to easements, provided the purpose of the agreement is incidental or conducive to the attainment of the purposes of the Foundation. An agreement which pertains to an easement to discharge waste water from lands managed by the Foundation appears to fall within the grant of authority under Idaho Code § 67-4402. However, as with all appropriators of water, the Foundation must use its water in a manner that is consistent with its underlying water rights. The Foundation's water rights are appurtenant to the lands described in Idaho Code § 67-4403 and should not be applied to other lands. If an adjacent property owner desires to make beneficial use of the Foundation's waste water, that person needs to file an application for permit to appropriate water with the Idaho Department of Water Resources. The Foundation does not have the ability to enter into contracts authorizing the use of its waste water on lands not authorized under the water right.

AUTHORITIES CONSIDERED

1. Federal Statutes:

32 Stat. 330 (1902).

2. Idaho Constitution:

Art. 15, § 3.

3. Idaho Code:

§ 42-101.

§ 42-103.

§ 42-104.

§ 42-106.

§ 42-1503.

§ 58-703.

§ 58-704.
§ 67-4301.
§ 67-4304.
§ 67-4307.
§ 67-4308.
§ 67-4309.
§ 67-4310.
§ 67-4311.
§ 67-4401.
§ 67-4402.
§ 67-4403.

4. **Idaho Cases:**

Speer v. Stephenson, 16 Idaho 707, 102 P. 365 (1909).

5. **Other Authorities:**

1919 Idaho Sess. Laws 108.
1935 Idaho Sess. Laws 16.

DATED this 9th day of January, 1997.



ALAN G. LANCE
Attorney General

Analysis by:

JOHN W. HOMAN
Deputy Attorney General

1. See Idaho Code § 67-4301, Appropriation of waters at Big Payette Lake; Idaho Code § 67-4304, Appropriation of waters at Priest, Pend d'Oreille and Coeur d'Alene Lakes; Idaho Code § 67-4307, Appropriation of waters at Malad Canyon; Idaho Code § 67-4308, Appropriation of waters at Niagra Springs; Idaho Code § 67-4309, Appropriation of waters at Big Springs; Idaho Code § 67-4310, Appropriation of waters at Box Canyon; Idaho Code § 67-4311, Appropriation of waters at Thousand Springs.

AFFIDAVIT

I Norma Lick, THIS DATE, Jan 20 1990,

DO SOLEMNLY STATE THAT THE NATURAL HOT MINERAL WATERS OF THE STATE FOUNDATION LOCATED IN LAVA HOT SPRINGS IDAHO, FLOWING IN THE LOWER PARK AREA NEAR THE LOCATION OF THE OLD NATORIUM POOLS HAS BEEN UTILIZED FOR 48 YEARS BY THE STATE FOUNDATION. MY KNOWLEDGE OF THIS HAS BEEN FROM PERSONAL OBSERVATION OF THIS SITE AND WATER. PURPOSES AND USE OF THESE WATERS HAS BEEN, WADING PONDS, FISH PONDS, IRRIGATION, AND ESTHETIC USE. JUST RECENTLY, THE STATE FOUNDATION HAS DEVELOPED THE CULVERT SYSTEM AND PUMP HOLDING TANK SYSTEM TO PICK UP THESE WATERS AND TRANSFER THEM TO THE OLYMPIC POOL LOCATION FOR A MOST MEANINGFUL USE. HEAT EXTRACTION AND RECREATIONAL USES. THESE WATERS HAVE BEEN UTILIZED CONTINUOUSLY FOR YEARS AND SERVE A NEED FOR THE STATES FOUNDATION IN PROVIDING A MOST MEANINGFUL RECREATIONAL FACILITY FOR ITS USERS.

IN WITNESS HERewith I, Norma Lick AFFIRM MY STATEMENT FOR PUBLIC RECORD THE AFFOREMENTIONED FACTS PRETAINING TO THE NATURAL HOT WATERS LOCATED ON THE STATE FOUNDATION PROPERTY.

Norma Lick 1-20-90
Signature: _____ date: _____
Gene Vaughan 1-20-90
Witnessed: _____ date: _____

SUBSCRIBED and sworn to before me this 20th day of January, 1990.

Candy Fisher
Notary Public
Residing at Pocatello, Idaho
My commision expires _____

MICROFILMED

NOV 16 1992

AFFIDAVIT

Leon Gates, THIS DATE, Jan. 20 1990,

DO SOLEMNLY STATE THAT THE NATURAL HOT MINERAL WATERS OF THE STATE FOUNDATION LOCATED IN LAVA HOT SPRINGS IDAHO, FLOWING IN THE LOWER PARK AREA NEAR THE LOCATION OF THE OLD NATORIUM POOLS HAS BEEN UTILIZED FOR 50 YEARS BY THE STATE FOUNDATION. MY KNOWLEDGE OF THIS HAS BEEN FROM PERSONAL OBSERVATION OF THIS SITE AND WATER. PURPOSES AND USE OF THESE WATERS HAS BEEN, WADING PONDS, FISH PONDS, IRRIGATION, AND ESTHETIC USE. JUST RECENTLY, THE STATE FOUNDATION HAS DEVELOPED THE CULVERT SYSTEM AND PUMP HOLDING TANK SYSTEM TO PICK UP THESE WATERS AND TRANSFER THEM TO THE OLYMPIC POOL LOCATION FOR A MOST MEANINGFUL USE. HEAT EXTRACTION AND RECREATIONAL USES. THESE WATERS HAVE BEEN UTILIZED CONTINUOUSLY FOR YEARS AND SERVE A NEED FOR THE STATES FOUNDATION IN PROVIDING A MOST MEANINGFUL RECREATIONAL FACILITY FOR ITS USERS.

IN WITNESS HEREWITH I, Leon Gates AFFIRM MY STATEMENT FOR PUBLIC RECORD THE AFFOREMENTIONED FACTS PERTAINING TO THE NATURAL HOT WATERS LOCATED ON THE STATE FOUNDATION PROPERTY.

Leon Gates Jan 20, 1990
Signature: date:
Kashuni Howell 1-20-90
Witnessed: date:

SUBSCRIBED and sworn to before me this 20th day of January, 1990

Cindy Fisher
Notary Public
Residing at Pocatello, Idaho
My Commission expires
MICROFILMED

NOV 16 1992

AFFIDAVIT

I Fujiye Itami, THIS DATE JAN. 20, 1 1990,

DO SOLEMNLY STATE THAT THE NATURAL HOT MINERAL WATERS OF THE STATE FOUNDATION LOCATED IN LAVA HOT SPRINGS IDAHO, FLOWING IN THE LOWER PARK AREA NEAR THE LOCATION OF THE OLD NATORIUM POOLS HAS BEEN UTILIZED FOR 42 YEARS BY THE STATE FOUNDATION. MY KNOWLEDGE OF THIS HAS BEEN FROM PERSONAL OBSERVATION OF THIS SITE AND WATER. PURPOSES AND USE OF THESE WATERS HAS BEEN, WADING PONDS, FISH PONDS, IRRIGATION, AND ESTHETIC USE. JUST RECENTLY, THE STATE FOUNDATION HAS DEVELOPED THE CULVERT SYSTEM AND PUMP HOLDING TANK SYSTEM TO PICK UP THESE WATERS AND TRANSFER THEM TO THE OLYMPIC POOL LOCATION FOR A MOST MEANINGFUL USE. HEAT EXTRACTION AND RECREATIONAL USES. THESE WATERS HAVE BEEN UTILIZED CONTINUOUSLY FOR YEARS AND SERVE A NEED FOR THE STATES FOUNDATION IN PROVIDING A MOST MEANINGFUL RECREATIONAL FACILITY FOR ITS USERS.

IN WITNESS HERewith I, Fujiye Itami AFFIRM MY STATEMENT FOR PUBLIC RECORD THE AFFOREMENTIONED FACTS PRETAINING TO THE NATURAL HOT WATERS LOCATED ON THE STATE FOUNDATION PROPERTY.

Fujiye Itami 1/20/1990
Signature: date:
Jed I. Itami 1-20-90
Witnessed: date:

SUBSCRIBED and sworn to before me this 20th day of January, 1990.

Cindy Fisher
Notary Public
Residing at Pocatello, Idaho
My Commission expires 2/1/91

NOV 16 1992

AFFIDAVIT

I Edna Hobson, THIS DATE, Jan 20, 1990,

DO SOLEMNLY STATE THAT THE NATURAL HOT MINERAL WATERS OF THE STATE FOUNDATION LOCATED IN LAVA HOT SPRINGS IDAHO, FLOWING IN THE LOWER PARK AREA NEAR THE LOCATION OF THE OLD NATORIUM POOLS HAS BEEN UTILIZED FOR 40 YEARS BY THE STATE FOUNDATION. MY KNOWLEDGE OF THIS HAS BEEN FROM PERSONAL OBSERVATION OF THIS SITE AND WATER. PURPOSES AND USE OF THESE WATERS HAS BEEN, WADING PONDS, FISH PONDS, IRRIGATION, AND ESTHETIC USE. JUST RECENTLY, THE STATE FOUNDATION HAS DEVELOPED THE CULVERT SYSTEM AND PUMP HOLDING TANK SYSTEM TO PICK UP THESE WATERS AND TRANSFER THEM TO THE OLYMPIC POOL LOCATION FOR A MOST MEANINGFUL USE. HEAT EXTRACTION AND RECREATIONAL USES. THESE WATERS HAVE BEEN UTILIZED CONTINUOUSLY FOR YEARS AND SERVE A NEED FOR THE STATES FOUNDATION IN PROVIDING A MOST MEANINGFUL RECREATIONAL FACILITY FOR ITS USERS.

IN WITNESS HERewith I, Edna Hobson AFFIRM MY STATEMENT FOR PUBLIC RECORD THE AFFOREMENTIONED FACTS PRETAINING TO THE NATURAL HOT WATERS LOCATED ON THE STATE FOUNDATION PROPERTY.

Edna Hobson 1-20-90

Signature:

date:

Norma Pittman 1/20/90

Witnessed:

date:

SUBSCRIBED and sworn to before me this 20th day of January, 1990.

Cindy Fisher
Notary Public
Residing at Pocatello, Idaho
My Commission expires 2/11/91
MICROFILMED
NOV 16 1992

AFFIDAVIT

I TED T. ITAMI, THIS DATE, JAN. 20 1990.

DO SOLEMNLY STATE THAT THE NATURAL HOT MINERAL WATERS OF THE STATE FOUNDATION LOCATED IN LAVA HOT SPRINGS IDAHO, FLOWING IN THE LOWER PARK AREA NEAR THE LOCATION OF THE OLD NATORIUM POOLS HAS BEEN UTILIZED FOR 40 YEARS BY THE STATE FOUNDATION. MY KNOWLEDGE OF THIS HAS BEEN FROM PERSONAL OBSERVATION OF THIS SITE AND WATER. PURPOSES AND USE OF THESE WATERS HAS BEEN, WADING PONDS, FISH PONDS, IRRIGATION, AND ESTHETIC USE. JUST RECENTLY, THE STATE FOUNDATION HAS DEVELOPED THE CULVERT SYSTEM AND PUMP HOLDING TANK SYSTEM TO PICK UP THESE WATERS AND TRANSFER THEM TO THE OLYMPIC POOL LOCATION FOR A MOST MEANINGFUL USE. HEAT EXTRACTION AND RECREATIONAL USES. THESE WATERS HAVE BEEN UTILIZED CONTINUOUSLY FOR YEARS AND SERVE A NEED FOR THE STATES FOUNDATION IN PROVIDING A MOST MEANINGFUL RECREATIONAL FACILITY FOR ITS USERS.

IN WITNESS HERewith I, Ted T. Itami AFFIRM MY STATEMENT FOR PUBLIC RECORD THE AFFOREMENTIONED FACTS PRETAINING TO THE NATURAL HOT WATERS LOCATED ON THE STATE FOUNDATION PROPERTY.

Ted T. Itami 1-20-90
Signature: date:
Donna Tillatton 1/20/90
Witnessed: date:

SUBSCRIBED and sworn to before me this 20th day of January, 1990.

Cindy Fisher
Notary Public
Residing at Pocatello, Idaho
My Commission expires 2/11/91
MICROFILMED
NOV 16 1992

AFFIDAVIT

I Donna Peltier, THIS DATE, Jan 20 1990,

DO SOLEMNLY STATE THAT THE NATURAL HOT MINERAL WATERS OF THE STATE FOUNDATION LOCATED IN LAVA HOT SPRINGS IDAHO, FLOWING IN THE LOWER PARK AREA NEAR THE LOCATION OF THE OLD NATORIUM POOLS HAS BEEN UTILIZED FOR 45 YEARS BY THE STATE FOUNDATION. MY KNOWLEDGE OF THIS HAS BEEN FROM PERSONAL OBSERVATION OF THIS SITE AND WATER. PURPOSES AND USE OF THESE WATERS HAS BEEN, WADING PONDS, FISH PONDS, IRRIGATION, AND ESTHETIC USE. JUST RECENTLY, THE STATE FOUNDATION HAS DEVELOPED THE CULVERT SYSTEM AND PUMP HOLDING TANK SYSTEM TO PICK UP THESE WATERS AND TRANSFER THEM TO THE OLYMPIC POOL LOCATION FOR A MOST MEANINGFUL USE. HEAT EXTRACTION AND RECREATIONAL USES. THESE WATERS HAVE BEEN UTILIZED CONTINUOUSLY FOR YEARS AND SERVE A NEED FOR THE STATES FOUNDATION IN PROVIDING A MOST MEANINGFUL RECREATIONAL FACILITY FOR ITS USERS.

IN WITNESS HERewith I, Donna Peltier AFFIRM MY STATEMENT FOR PUBLIC RECORD THE AFFOREMENTIONED FACTS PRETAINING TO THE NATURAL HOT WATERS LOCATED ON THE STATE FOUNDATION PROPERTY.

Donna Peltier 1/20/90
Signature: _____ date: _____
Ed L. Tume 1-20-90
Witnessed: _____ date: _____

SUBSCRIBED and sworn to before me this 20th day of January, 1990.

Cindy Fisher
Notary Public
Residing at Pocatello, Idaho
My Commission expires **MICROFILMED** NOV 16 1992

AFFIDAVIT

I, Mark Campbell, THIS DATE, 1-20 1990.

DO SOLEMNLY STATE THAT THE NATURAL HOT MINERAL WATERS OF (THE STATE FOUNDATION LOCATED IN LAVA HOT SPRINGS IDAHO, FLOWING IN THE LOWER PARK AREA NEAR THE LOCATION OF THE OLD NATORIUM POOLS HAS BEEN UTILIZED FOR 42 YEARS BY THE STATE FOUNDATION. MY KNOWLEDGE OF THIS HAS BEEN FROM PERSONAL OBSERVATION OF THIS SITE AND WATER. PURPOSES AND USE OF THESE WATERS HAS BEEN, WADING PONDS, FISH PONDS, IRRIGATION, AND ESTHETIC USE. JUST RECENTLY, THE STATE FOUNDATION HAS DEVELOPED THE CULVERT SYSTEM AND PUMP HOLDING TANK SYSTEM TO PICK UP THESE WATERS AND TRANSFER THEM TO THE OLYMPIC POOL LOCATION FOR A MOST MEANINGFUL USE. HEAT EXTRACTION AND RECREATIONAL USES. THESE WATERS HAVE BEEN UTILIZED CONTINUOUSLY FOR YEARS AND SERVE A NEED FOR THE STATES FOUNDATION IN PROVIDING A MOST MEANINGFUL RECREATIONAL FACILITY FOR ITS USERS.

IN WITNESS HEREWIT Mark Campbell AFFIRM MY STATEMENT FOR PUBLIC RECORD THE AFFOREMENTIONED FACTS PERTAINING TO THE NATURAL HOT WATERS LOCATED ON THE STATE FOUNDATION PROPERTY.

Mark Campbell 1-20-90
Signature: _____ date: _____
Witnessed: _____ date: _____

SUBSCRIBED AND sworn to before me this 20th day of January, 1990.

Cindy Fisher
Notary Public
Residing at _____
My Commission expires 2/11/91
MICROFILMED
NOV 16 1992

AFFIDAVIT

I, William Kidd, THIS DATE, Jan 20 1990 1990.

DO SOLEMNLY STATE THAT THE NATURAL HOT MINERAL WATERS OF THE STATE FOUNDATION
LOCATED IN LAVA HOT SPRINGS IDAHO, FLOWING IN THE LOWER PARK AREA NEAR THE
LOCATION OF THE OLD NATORIUM POOLS HAS BEEN UTILIZED FOR 60 YEARS BY
THE STATE FOUNDATION. MY KNOWLEDGE OF THIS HAS BEEN FROM PERSONAL OBSERVATION
OF THIS SITE AND WATER. PURPOSES AND USE OF THESE WATERS HAS BEEN, WADING
PONDS, FISH PONDS, IRRIGATION, AND ESTHETIC USE. JUST RECENTLY, THE STATE
FOUNDATION HAS DEVELOPED THE CULVERT SYSTEM AND PUMP HOLDING TANK SYSTEM TO
PICK UP THESE WATERS AND TRANSFER THEM TO THE OLYMPIC POOL LOCATION FOR A
MOST MEANINGFUL USE. HEAT EXTRACTION AND RECREATIONAL USES. THESE WATERS HAVE
BEEN UTILIZED CONTINUOUSLY FOR YEARS AND SERVE A NEED FOR THE STATES FOUNDATION
IN PROVIDING A MOST MEANINGFUL RECREATIONAL FACILITY FOR ITS USERS.

IN WITNESS HEREWITH I, William Kidd AFFIRM MY STATEMENT FOR PUBLIC
RECORD THE AFFOREMENTIONED FACTS PERTAINING TO THE NATURAL HOT WATERS LOCATED
ON THE STATE FOUNDATION PROPERTY.

William Kidd Jan. 20, 1990
Signature: _____ date: _____
Witnessed: _____ date: 1-20-90

SUBSCRIBED and sworn to before me this 20th day of January, 1990.

Cindy Fisher MICROFILMED
Notary Public NOV 16 1992
Residing at Pocatello, Idaho
My Commission expires 2/11/91

87-10213

To: Judge - District Court of the Fifth
Judicial District of the State of Idaho, Inc.
And For The County of Twin Falls (Judge
Hurlbut)

From: George W. Katsilometes P.O. 670, 94 E.
Portland Ave., Lata Hot Springs, ID
83246 (208) 776-5830

Re: I am protesting adjudication claim:
No: A29-10213

Reasons: I. The proposed use of water will
injure and will (has) reduced the
quantity and temperature of water under
existing water rights of myself;

II. The application is made for
speculative purposes;

III. The primary diversions by the state
of Idaho or Hot Springs Foundation violate,
at least in part, Idaho Code, §42-201.

IV. The proposed change is not in
the local public interest as defined
in § 42-203A(5), Idaho Code;

V. The proposed change is contrary to the
conservation of water resources within the
state of Idaho.

Dated May 14, 1988

Also:

(Please notify of any legal actions) George W. Katsilometes