

50

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: A29-10816
Date Received: 3/28/1990
Receipt No: 50811
Received By: JDH

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: JUL 01, 1889

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	2.260		
STOCKWATER	09/15	04/15	0.120		

7. Total Quantity Appropriated is:
2.260 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

A29-10816

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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, A29-04467

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: 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 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 Avenue
Signature of Authorized Agent

Secretary - Lava Irrigation
Title and Organization Co. Ltd.

April 12, 1990
Date

State of Idaho)
County of BONNEVILLE) SS.

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

[Signature]
Notary Public

Seal

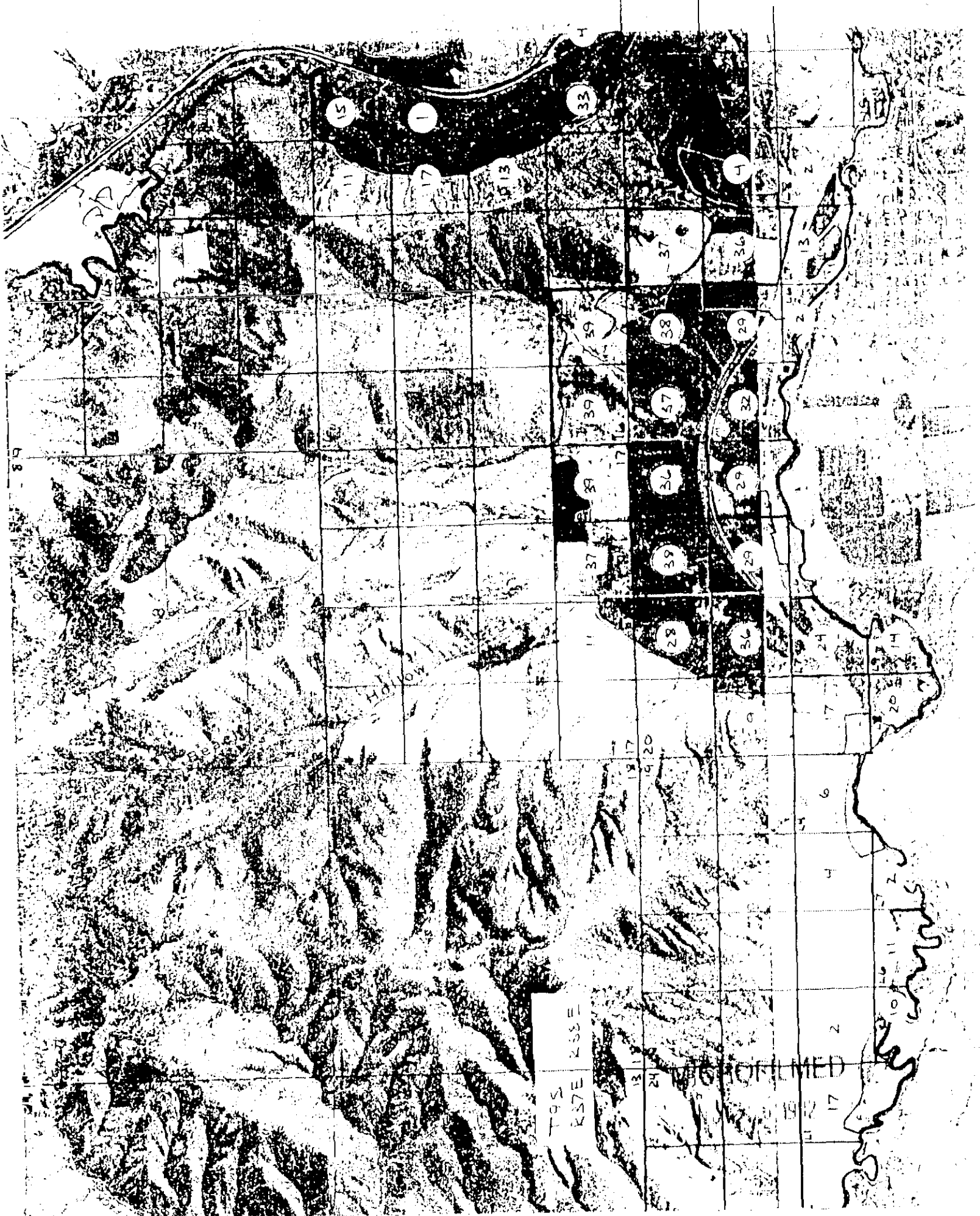
Residing at Idaho Falls
My Commission Expires 9-12-94

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229-00047A
A29-00047

229-00047A
A29-00816



Log for claim A29-10816

Spatial Dynamics PJM

9/11/00

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	Indiscernible
09s37e	16		1	0	No quarter/quarter description
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	Permissible place of use?
09s38e	20	NENE	36	38	
09s38e	20	NWNE	38	38	
09s38e	20	SWNE	29	37	
09s38e	20	SENE	29	45	Indiscernible
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	Indiscernible
09s38e	21	NWSE	13	34	Indiscernible
Totals:			821	1001.8	

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 yrs 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. Dees 4-10-90

On 4-10-90, before me, Gilbert R. Burslem II,
a notary public of the State of Idaho, appeared Calvin A. Rowell

NOTARY RESIDING AT Pocatello

CANON COUNTY

Gilbert R. Burslem II

MY COMMISSION EXPIRES

10-4-94

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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 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 D. Peterson
Notary Public

Love Hill Springs
Residing At

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NOV 10 1992

Lava Hot Springs, Idaho
April 9, 1990

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 homestead, 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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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 **MICROFILMED** inches of snow were **NOV 7 1992** ground. We have done this all through my lifetime. Nobody has ever tried to stop us, and I feel that

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 William Kidd
Lava Hot Springs
Idaho, 83246

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Taken away some of our land.
 There was plenty of water for
 everyone 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 winter for livestock.
 Sheep men would buy hay from the
 farmers and feed the sheep in the
 fields and have canal water
 from 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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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~~^{is} subscribed to the within
instrument, and acknowledged to me that ~~he~~^{HE} executed the same.

Robert D. Bergendorf
NOTARY PUBLIC

Residing at LAUA HOT SPRINGS, Idaho
Commission Expires LIFETIME.

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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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.

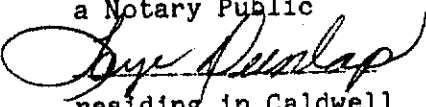
As the growing seasons became hotter, there was less water available to this Canal Company, and sometimes, we were cut down to three streams of about 50 inches of water each at the headgates.

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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NOV 16 1992

Greenleaf Id.
4-3-90

to whom it may concern

In Regards to conditions of
the Sunnyside Canal near
Lava 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 years
Chairman of the Board
in the spring we turned the
water in as soon as the canal
was ready.

Water in the summer we would
have to take turns but 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.

Leila Waters
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NOV 16 1992

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

PO Box 416
Greenleaf Idaho
83626-0416



State of Idaho
DEPARTMENT OF WATER RESOURCES

150 Shoup Ave., Suite 15, Idaho Falls, Idaho 83402 - (208) 525-7161

EASTERN REGION

March 30, 1990

CECIL D. ANDRUS
GOVERNOR
R. KEITH HIGGINSON
DIRECTOR

Golden and Vera Avery
P. O. Box 264
Lava Hot Springs, Idaho 83246

RE: Notices of Claim to a Water Right

Dear Mr. and Mrs. Avery,

Enclosed you will find two sets of copies of the Notices of Claim to a Water Right that Mrs. Avery and I worked on during her visit to this office, Wednesday, March 28, 1990. One set has been marked 'State Copies' and the other has been marked 'Personal Copies'.

Please check over each copy for any errors that may have been made. Then sign each of the 'State Copies' in front of a notary and return them to this office with your payment of \$110.00.

I have included extra signature pages for your domestic Notice of Claim from Stephens Springs for your convenience.

Please remember that the filing deadline for your area of Bannock County is May 1, 1990. Be sure to return your notarized 'State Copies' with your payment before then to avoid any late fees. The 'Personal Copies' are for your records.

The fees have been calculated as follows:

Claim	Fee
A29-04228 (domestic springs)	\$ 60.00
A29-10816 (overlaps Lava Irr. Co.)	50.00
Total ==>	\$ 110.00 =====

Again, it would probably be best to return these 'State Copies' a few days after Lava Irrigation Co.'s Notices of Claim are returned to this office. Please be sure to return both yours and Lava Irrigation Co.'s claims before May 1, 1990.

If you have any questions, feel free to give me a call at this office. The phone number is 525-7161.

Sincerely,

Paul R. Meyer
WR Agent, Senior

enc.

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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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REMARKS: Union Gravel and Elevator vs McCommon Ditch 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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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

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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