

12/11/2002

IDAHO DEPARTMENT OF WATER RESOURCES
PRELIMINARY RECOMMENDATION OF WATER RIGHTS ACQUIRED UNDER STATE LAW

RIGHT NUMBER: 29-4178

NAME AND ADDRESS: STATE OF IDAHO
LAVA HOT SPRINGS FOUNDATION
PO BOX 669
LAVA HOT SPRINGS ID 83246

SOURCE: SPRINGS

TRIBUTARY: PORTNEUF RIVER

QUANTITY: 2.030 CFS

PRIORITY DATE: 06/13/1902

POINT OF DIVERSION:

T09S R38E S22 SWNW Lot 10 Within BANNOCK County

PURPOSE AND
PERIOD OF USE:

PURPOSE OF USE
COMMERCIAL

PERIOD OF USE
01/01 12/31

QUANTITY
2.030 CFS

PLACE OF USE: COMMERCIAL Within BANNOCK County

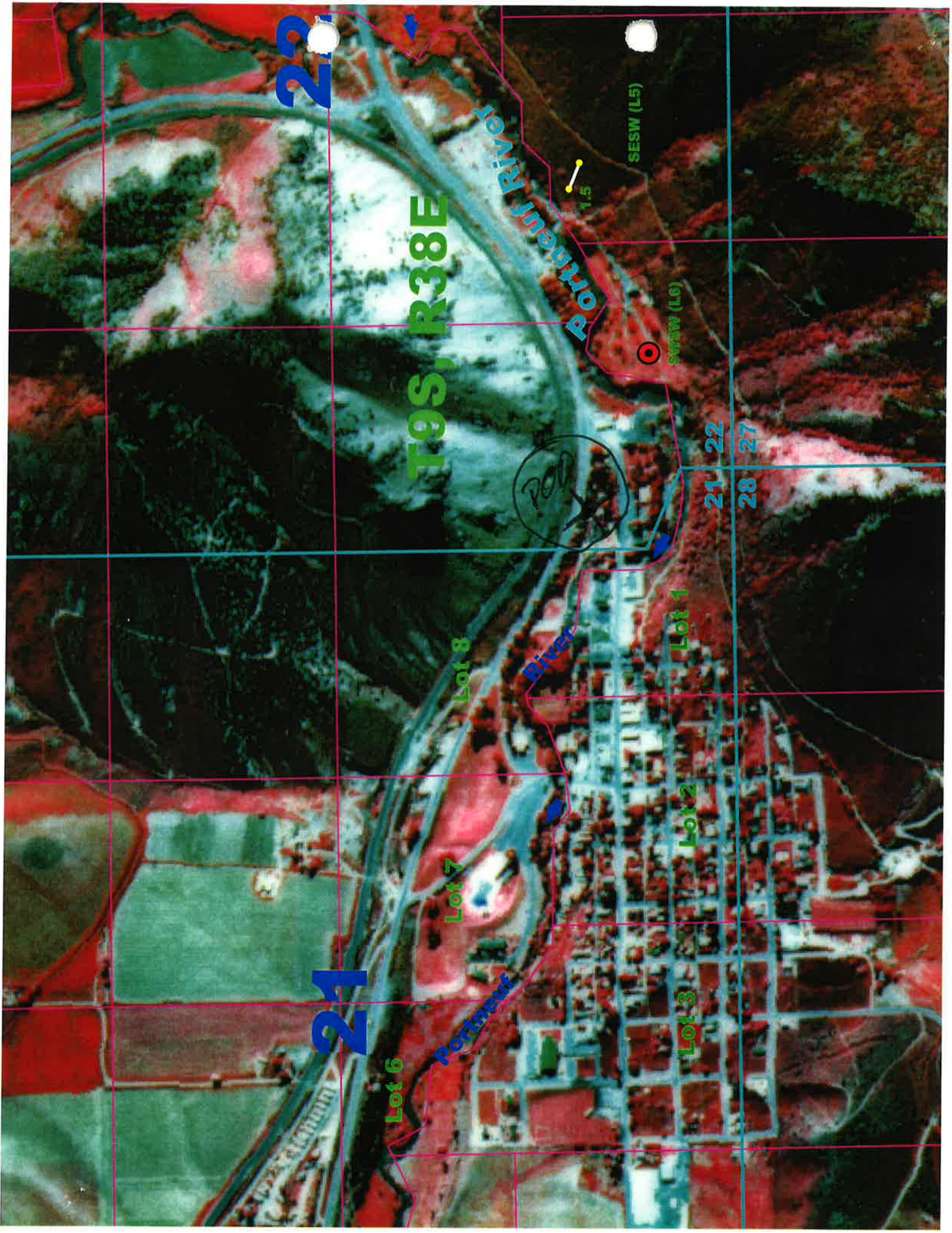
T09S R38E S22 Lot 10 SWSW

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: Beneficial Use

WATER TEMPERATURE MEASURED AT 112 DEGREES F.



23

T9S, R38E

Portneuf River

SESW (L5)

SESW (L6)

1.5

200

21 22

28 27

Lot 8

Lot 7

Lot 1

Lot 2

Lot 3

21

Lot 6

Portneuf River

39-4176

① Priority Date: Original Shady Grove Claim (1980) indicates a Priority Date of June 13, 1902. New. SEBA Claim (1990) shows June 13, 1908. Why — ?

Attorney General Opinion No. 97-1 (attached) classifies 1902 priority as CONSPIRACY OF US COUNCILS TO DOMINATE states

AFIDAVITS submitted by the CLAIMANT support the ANALYST Priority Dating to 1915 (see Evelyn Brumby)

② Source: Springs as claimed - No TRB. → Fortney River Original (243) claim shows TRB. to Fortney River.

③ POP: Claims Sw Sw Sw Sec. 22 = Appos to 10K TACT-01K
Recommend = Adjust lot 10 Sw Sw Sw
1/66: Original (243) claim shows:
Sec. 22
RUTHERFORD, THOMAS, Therapeutic and Health
No US COUS FOR THOMAS (Hoping - 105-22) THOMAS KIL/THOMAS

3/01/01 Requested a DEFINITION RE: 567.4401-4403 IC.
PESANT TO USA OF THE CLAIMS ALLOTTED TO THE FOUNDATION.
1) BOSS COMMUNISM USE APPEAL TO BOTH FOR HONOR AND NOT FOR PROFIT ORGANIZATIONS. ITS ORGANIZATIONALITY, 2) IS LAVA HOT SPAS FOUND A FOR PROFIT ORGANIZATION?

⑤ Q: Measurement (or FLOW) records 1900. See the two sheets. This is a common error. Transferring to Confrontation.

⑥: How HOT? 112 of

FEB 23 2005

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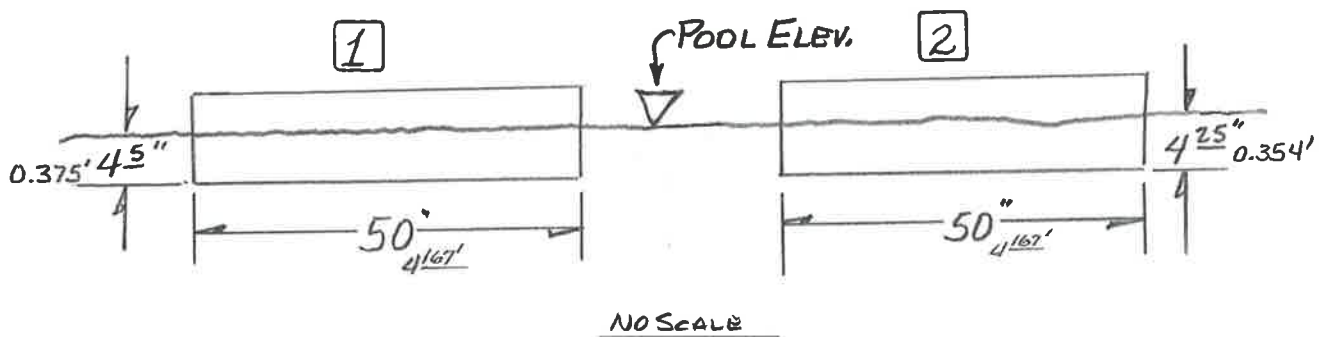
DEFINITION

29-4178 STAT. CLAIM

I. STATE OF IDAHO - LAVA HOT SPRINGS FOUNDATION.

II. Q IS CLAIMED @ 30 cfs (NO KNOWN BASIS OR Q)

A. DISCHARGE OF PORTS (2) FROM LAVA HOT POND WERE MEASURED 11/14/02 BY A. RUBENRY AND C. BIRD. AS SHOWN IF FACING PORTS.



$$1 \quad 4.167' \times 0.375' = 1.563' \text{ ft}$$

$$\text{Avg. } 1.52' \times 2 \text{ PORTS} = 3.04' \text{ ft}$$

$$2 \quad 4.167' \times 0.354' = 1.475' \text{ ft}$$

VELOCITY MEASURED AT 1⁵⁰ CU FT / SEC.

$$3.04 \text{ ft} \div 1.50 \text{ SEC.} = 2.027 \text{ cfs.}$$

$$2.027 \text{ cfs} \times 448 \text{ GPM} = 909 \text{ GPM} \times 3600 \text{ MIN/DAY} = 3.274 \text{ MILLION GAL/DAY}$$

PLUS 4" SUBMERGED PIPE $\approx$ 93K GPD

$$Q = 3.3 \text{ MILLION GPD}$$

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FEB 23 2005

GPS DATA

663,557.27 $\longleftrightarrow$

170.722.15 $\updownarrow$

Table A7-2. Discharge of standard contracted rectangular weirs in ft³/sec. Shaded entries determined experimentally. All others computed from the formula $Q=3.33(L-0.2h_1)h_1^{1.5}$.

Head, h_1 ft	Weir Length, L , ft								
	0.5	1.0	1.5	2.0	3.0	4.0	5.0	6.0	7.0
0.18	0.122	---	---	---	---	---	---	---	---
.19	.132	---	---	---	---	---	---	---	---
.20	.142	0.286	0.435	0.584	0.882	1.18	1.48	1.78	2.07
.21	.152	.307	.467	.627	.948	1.27	1.59	1.91	2.23
.22	.162	.329	.500	.672	1.02	1.36	1.70	2.05	2.39
.23	.173	.350	.534	.718	1.09	1.45	1.82	2.19	2.55
.24	.184	.373	.568	.764	1.16	1.55	1.94	2.33	2.72
.25	.195	.395	.604	.812	1.23	1.64	2.06	2.48	2.89
.26	---	.419	.639	.860	1.30	1.74	2.18	2.63	3.07
.27	---	.442	.676	.909	1.38	1.84	2.31	2.78	3.25
.28	---	.466	.712	.959	1.45	1.95	2.44	2.93	3.43
.29	---	.490	.750	1.01	1.53	2.05	2.57	3.09	3.61
.30	---	.514	.788	1.06	1.61	2.16	2.70	3.25	3.80
.31	---	.539	.827	1.11	1.69	2.26	2.84	3.41	3.99
.32	---	.564	.866	1.17	1.77	2.37	2.98	3.58	4.18
.33	---	.590	.905	1.22	1.85	2.48	3.11	3.75	4.38
.34	---	.615	.945	1.28	1.94	2.60	3.26	3.92	4.58
.35	---	.658	.986	1.33	2.02	2.71	3.40	4.09	4.78
.36	---	.686	1.03	1.39	2.11	2.83	3.54	4.26	4.98
.37	---	.714	1.07	1.44	2.19	2.94	3.69	4.44	5.19
.38	---	.743	1.11	1.50	2.28	3.06	3.84	4.62	5.40
.39	---	.772	1.15	1.56	2.37	3.18	3.99	4.80	5.61
.40	---	.801	1.20	1.62	2.46	3.30	4.14	4.99	5.83
.41	---	.830	1.24	1.68	2.55	3.43	4.30	5.17	6.05
.42	---	.860	1.28	1.74	2.64	3.55	4.46	5.36	6.27
.43	---	.890	1.33	1.80	2.74	3.68	4.61	5.55	6.49
.44	---	.920	1.37	1.86	2.83	3.80	4.77	5.75	6.72
.45	---	.950	1.42	1.92	2.93	3.93	4.94	5.94	6.95
.46	---	.981	1.46	1.98	3.02	4.06	5.10	6.14	7.18
.47	---	1.01	1.51	2.05	3.12	4.19	5.26	6.34	7.41
.48	---	1.04	1.55	2.11	3.22	4.32	5.43	6.54	7.65
.49	---	1.08	1.60	2.17	3.31	4.46	5.60	6.74	7.88
.50	---	1.11	1.65	2.24	3.41	4.59	5.77	6.95	8.12
.51	---	---	---	2.30	3.51	4.73	5.94	7.15	8.37
.52	---	---	---	2.37	3.62	4.86	6.11	7.36	8.61
.53	---	---	---	2.43	3.72	5.00	6.29	7.57	8.86
.54	---	---	---	2.50	3.82	5.14	6.46	7.79	9.11
.55	---	---	---	2.57	3.93	5.28	6.64	8.00	9.36
.56	---	---	---	2.63	4.03	5.43	6.82	8.22	9.61
.57	---	---	---	2.70	4.14	5.57	7.00	8.43	9.87
.58	---	---	---	2.77	4.24	5.71	7.18	8.65	10.1
.59	---	---	---	2.84	4.35	5.86	7.37	8.88	10.4
.60	---	---	---	2.91	4.46	6.00	7.55	9.10	10.6

Table A7-2 [continued]. Discharge of standard contracted rectangular weirs in ft³/sec. Shaded entries determined experimentally. All others computed from the formula $Q=3.33(L-0.2h_1)h_1^{1.5}$.

Head, h_1 ft	2.0	3.0	4.0	5.0	6.0	7.0
0.61	2.98	4.57	6.15	7.74	9.33	10.9
.62	3.05	4.68	6.30	7.93	9.55	11.2
.63	3.12	4.79	6.45	8.12	9.78	11.4
.64	3.19	4.90	6.60	8.31	10.0	11.7
.65	3.26	5.01	6.75	8.50	10.2	12.0
.66	3.34	5.12	6.91	8.69	10.5	12.3
.67	3.41	5.23	7.06	8.89	10.7	12.5
.68	3.58	5.35	7.22	9.08	10.9	12.8
.69	3.66	5.46	7.37	9.28	11.2	13.1
.70	3.74	5.58	7.53	9.48	11.4	13.4
.71	3.82	5.69	7.69	9.68	11.7	13.7
.72	3.90	5.81	7.84	9.88	11.9	13.9
.73	3.98	5.93	8.00	10.1	12.2	14.2
.74	4.06	6.05	8.17	10.3	12.4	14.5
.75	4.14	6.16	8.33	10.5	12.7	14.8
.76	4.22	6.28	8.49	10.7	12.9	15.1
.77	4.30	6.40	8.65	10.9	13.2	15.4
.78	4.38	6.52	8.82	11.1	13.4	15.7
.79	4.46	6.65	8.98	11.3	13.7	16.0
.80	4.54	6.77	9.15	11.5	13.9	16.3
.81	4.62	6.89	9.32	11.7	14.2	16.6
.82	4.70	7.01	9.49	12.0	14.4	16.9
.83	4.78	7.14	9.65	12.2	14.7	17.2
.84	4.87	7.26	9.82	12.4	15.0	17.5
.85	4.96	7.39	9.99	12.6	15.2	17.8
.86	5.05	7.51	10.2	12.8	15.5	18.1
.87	5.14	7.64	10.3	13.0	15.7	18.4
.88	5.23	7.76	10.5	13.3	16.0	18.8
.89	5.32	7.89	10.7	13.5	16.3	19.1
.90	5.41	8.02	10.9	13.7	16.5	19.4
.91	5.50	8.15	11.0	13.9	16.8	19.7
.92	5.59	8.27	11.2	14.2	17.1	20.0
.93	5.68	8.40	11.4	14.4	17.4	20.4
.94	5.77	8.53	11.6	14.6	17.6	20.7
.95	5.86	8.66	11.7	14.8	17.9	21.0
.96	5.95	8.80	11.9	15.1	18.2	21.3
.97	6.04	8.93	12.1	15.3	18.5	21.7
.98	6.13	9.06	12.3	15.5	18.8	22.0
.99	6.22	9.19	12.5	15.8	19.0	22.3
1.00	6.31	9.32	12.7	16.0	19.3	22.6
1.01	---	---	12.8	16.2	19.6	23.0
1.02	---	---	13.0	16.5	19.9	23.3
1.03	---	---	13.2	16.7	20.2	23.6
1.04	---	---	13.4	16.9	20.5	24.0
1.05	---	---	13.6	17.2	20.7	24.3

SCANNED
FEB 23 2005
PROFILE

MAY 11, 2001

DEAR SIR OR MADAM:

WATER RIGHT NUMBERS A29-02283, A29-02360, A29-04178,
A29-10213 AND A29-10219 HAVE BEEN CHANGED TO REFLECT THE
ADDRESS ON THE FRONT OF THIS CARD.

RESPECTFULLY SUBMITTED;

Cheri Vandermeulen

CHERI VANDERMEULEN
RECORDS CLERK



STATE OF IDAHO
LAVA HOT SPRINGS FOUNDATION
PO BOX 669
LAVA HOT SPRINGS ID 83246

SCANNED
FEB 23 2005

PROFILED

RECEIVED

MAY 10 2001

Department of Water Resources
Eastern Region

CHANGE IN ADDRESS

This form is solely for purposes of notifying IDWR of a change in address of an adjudication claim.

[X] Water Right Number(s): A29-02283, A29-02360,
A29-4178, A29-10213,
A29-10219

[X] Old Mailing Address: STATE OF Idaho
LAVA HOT SPRINGS FOUNDATION
PO Box ~~669~~ 40 LAVA HOT SPRINGS, ID 83246

[X] New Mailing Address: STATE OF Idaho
LAVA HOT SPRINGS FOUNDATION
P.O. Box 669 LAVA HOT SPRINGS, ID 83246

[] Telephone Number: 776-5231

[] Signature of Claimant: Mark J. Lowe

[] Date: 5-9-01

FOR IDWR USE ONLY:

Initial Review and Data-Entry

Date: By:

Further Action Needed:

Further Action Taken:

Date: By:

Final Review and Data-Entry

Date: By:

SCANNED

FEB 23 2005

PROCESSED



State of Idaho

DEPARTMENT OF WATER RESOURCES

900 N. Skyline Dr., Suite A, Idaho Falls, Idaho 83402-1718 - (208) 525-7161- Fax (208) 525-7177

EASTERN REGION

May 7, 2001

DIRK KEMPTHORNE
GOVERNOR

KARL J. DREHER
DIRECTOR

STATE OF IDAHO
LAVA HOT SPRINGS FOUNDATION
PO BOX 669
LAVA HOT SPRINGS ID 83246-0669

RE: CHANGE OF ADDRESS FOR A29-02283, A29-02360,
A29-4178, A29-10213 AND A29-10219

Dear Sir or Madam:

It has come to our attention that your address may have recently changed. The address currently recorded on the above referenced water right(s) is as follows:

State of Idaho
Lava Hot Springs Foundation
Po Box 430
Lava Hot Springs ID 83246

We recommend if, in fact, the address in question has been changed, you file a "Change in Address" with this department in order that we may send all further correspondence to the appropriate address.

Enclosed is a Change in Address form. Please fill out the form completely, sign and date it and return it to my attention.

If you have any questions regarding this matter, please call 525-7161.

Respectfully submitted,

Cheri Vandermeulen

Cheri Vandermeulen
Records Clerk

Enclosure(s)

PROFILED

SCANNED
FEB 23 2005

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
Eastern District Office
900 N. Skyline Dr., Suite A
Idaho Falls, ID 83402-1718

RETURN SERVICE REQUESTED

29-2283
29-2360
29-4178
29-10213

29-10219

LAVA 430

STATE OF IDAHO

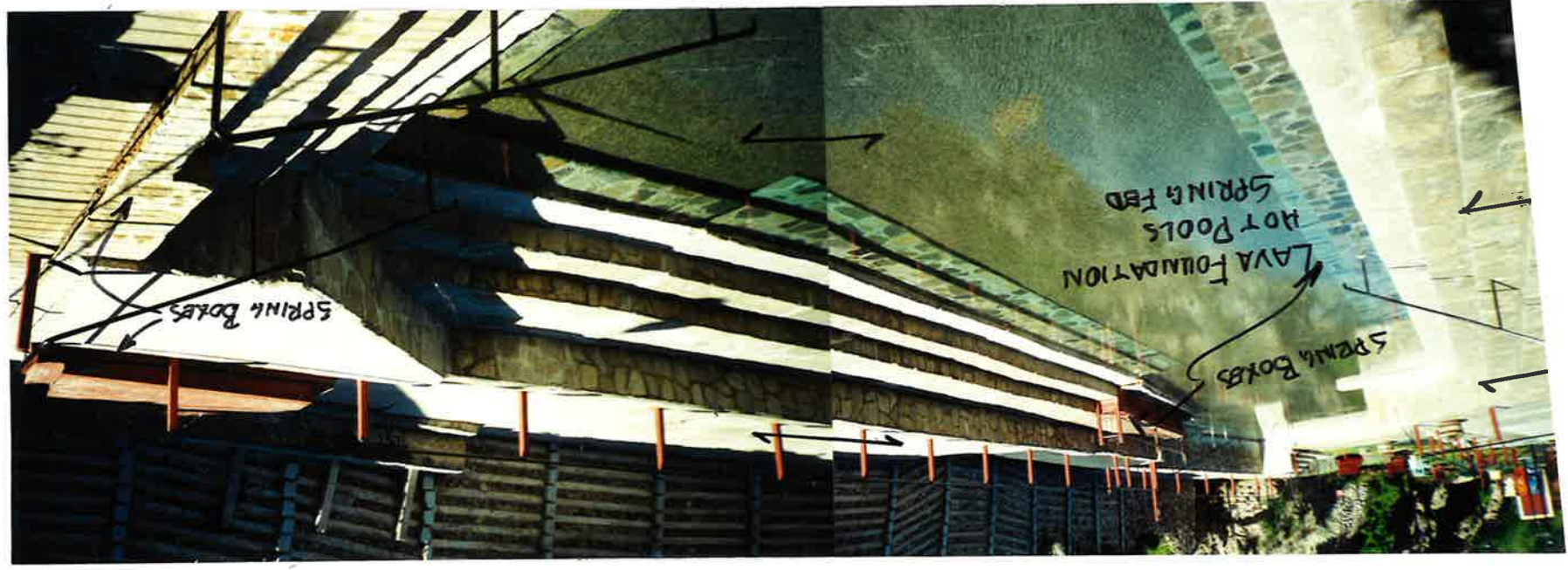
LAVA430 832462007 1900 04 05/03/01
RETURN TO SENDER
LAVA HOT SPRINGS FOUNDATION
PO BOX 669
LAVA HOT SPRINGS ID 83246-0669
RETURN TO SENDER

832462007

PROFILE

SCANNED

FEB 23 2005



Photos (above) show Spring Boxes. Pool is reported to Refill in 2 hours. Photo (below) shows location of Hot Pool Discharge. Photo (right) shows discharge to Refuse River.



SCANNED

JUN 08 2001



State of Idaho

DEPARTMENT OF WATER RESOURCES

900 N. Skyline Dr., Suite A, Idaho Falls, Idaho 83402-1718 - (208) 525-7161- Fax (208) 525-7177

EASTERN REGION

May 8, 2001

DIRK KEMPTHORNE
GOVERNOR

KARL J. DREHER
DIRECTOR

STATE OF IDAHO
LAVA HOT SPRINGS FOUNDATION
OFFICE OF THE DIRECTOR
PO BOX 430
LAVA HOT SPRINGS ID 83246

RE: NOTICE OF CLAIM NUMBER A29-04178

Dear Sir:

This letter is the second and final request for flow measurement data. Please see the attached letter dated March 1, 2001.

If we do not receive this information within the next 30 days your claim will be disallowed.

Sincerely,

A handwritten signature in black ink, appearing to read 'Allen Ruberry'.

Allen Ruberry
Senior Water Right Agent

Enclosure: 1

1 March 2001

State of Idaho
Lava Hot Springs Foundation
Office of the Director
PO Box 430
Lava Hot Springs ID 83246

RE: Snake River Basin Adjudication (SRBA), Claim to Water Right A29-04178

Dear Sir:

I have started review of the SRBA water right claims in the Portneuf River area. The above referenced claim is for part of the water system of the Lava Hot Springs Foundation.

This claim is based on beneficial use dating to 1908. This type of claim requires flow measurements to confirm quantity claimed for beneficial use. In this case, pumping or flow records, which date from 1980 to 1987, will satisfy this requirement. Therefore, by this letter, I am requesting copies of the flow records for this source. I have enclosed a copy of the claim referenced for your perusal.

Please provide the documentation requested showing the basis for the SRBA claim referenced above within the next 30 days. Without the requested data the claims will be recommended as disallowed.

I look forward to your timely response, should you have questions regarding this matter please feel free to contact this office.

Respectfully submitted,

Allen B. Ruberry
Sr. Water Resource Agent
Adjudication Bureau

cc; file

Enclosures; Claim 29-04178 (copy)

Ruberry, Allen

From: Music, Vicky
Sent: Thursday, March 01, 2001 2:54 PM
To: Ruberry, Allen
Subject: Lava Hot Springs Foundation - B31

Hi, Al. I pulled statutes, read the Atty Gen opinion, and talked to Carter F. I can't find any info that indicates that commercial use cannot be claimed by a state agency or department, and is only available to a private or for profit business/organizations. Carter concurs that commercial use is appropriate and can be recommended for the Lava Hot Springs Foundation per the SRBA claim. Bye now.

Vicky Music
Paralegal - IDWR
327-7928

Confidentiality Notice: This e-mail may contain confidential and privileged information exempt from disclosure under applicable law. This message is intended only for the use of the individual or individuals identified above. If you have received this message by mistake, please notify the sender immediately by replying to this message. Please delete the message from your system and do not review, disclose, copy, or distribute any information contained or attached to the message. Thank You



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

D. Tuthill DM
Adj. file ✓

ASPT-04178

ATTORNEY GENERAL OPINION NO. 97-1

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

RECEIVED
JAN 17 1997

RECEIVED
JAN 13 1997

Department of Water Resources
Eastern District Office

Department of Water Resources

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.

REFERS TO STATEWIDE
CLAIM 29-4178

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.

ID HO'S STATE FOUNDATION
Lava Hot Springs Foundation

P.O. Box 669
Lava Hot Springs, Idaho 83246
(208) 776-5221 or (800) 423-8597

Governor:
Phil Batt

Board of Directors
Floyd J. Jensen
Al Ricken
Sheldon H. Jones
Emmette H. Spraker
Ralph E. Lacy

Executive Director
Robert I. Meline

March 27, 1995

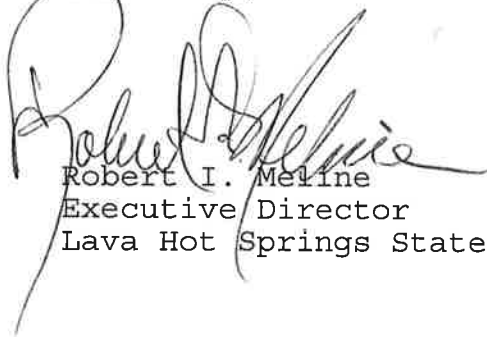
State of Idaho
Department of Water Resources
Attn: Mr. Dave Carlson
Water Right Agent, Adjudications
900 N. Skyline Drive
Idaho Falls, Idaho 83402-1718

Dear Mr. Carlson:

As per your letter dated January 3, 1995 subject:
Evidence of Priority. The affidavits and related
correspondence relating to the State Foundation Hot
Mineral Springs claim #29-04178 is submitted.

Your assistance in this matter is most appreciated.

Sincerely,



Robert I. Meline
Executive Director
Lava Hot Springs State Foundation

Enclosures:

ENCLOSURE
NOV 13 1995

AFFIDAVIT

I Floyd J. Jensen, THIS DATE: March 24 95 DO SOLEMNLY STATE THAT THE NATURAL HOT MINERAL SPRINGS LOCATED IN LAVA HOT SPRINGS IDAHO BY THE STATE FOUNDATION OFFICE FLOWING INTO THE WORLD FAMOUS HOT POOLS HAVE BEEN UTILIZED FOR 23 YEARS FOR BENEFICIAL USE OF THE STATE OF IDAHO AND STATE FOUNDATION.

MY KNOWLEDGE OF THIS HAS BEEN FORM PERSONAL OBSERVATION OF THE FACILITY AND THE SPRINGS.

THE PURPOSE AND USE OF THESE WATERS HAS BEEN, HOT MINERAL BATHS, THERAPY POOLS, IRRIGATION OF LAWNS AND ADJACENT GARDENS, HEAT SOURCE FOR OFFICE BUILDING AND DRESSING ROOMS, SHOWERS AND BATHROOM FACILITY USE, AND ALSO PUMPED OVER TO THE OLYMPIC SWIMMING COMPLEX TO FILL AND HEAT THE BIG POOL, AND UTILIZED AT THE POOL FOR THE SHOWERS, HEATING OF THE POOL WATER, THE POOL BUILDING AND SOME IRRIGATION OF LAWNS AND FLOWER BEDS SURROUNDING THE OLYMPIC POOLS.

1995
- 23 yrs
1972

THESE WATERS HAVE BEEN PUT TO BENEFICIAL USE BY THE STATE FOUNDATION FOR MANY YEARS.

IN WITNESS HERewith I Floyd J. Jensen
AFFIRM MY STATEMENT FOR PUBLIC RECORD THERE
AFOREMENTIONED FACTS PERTAINING TO THE NATURAL HOT SPRINGS,
LOCATED ON THE STATE FOUNDATION PROPERTY.

Floyd J. Jensen March 24 95
Signature Date
Robert D. Melius 03/24/95
Witness Date

SUBSCRIBED AND SWORN BEFORE ME THIS 24th DAY OF MARCH 1995.

Katherine A. Smith
Notary Public,
Residing at Lava Hot Springs, Idaho
My commission expires 4-16 ²⁰⁰⁰ ~~1995~~

MICROFILMED
NOV 13 1996

AFFIDAVIT

I TED T. ITAMI, THIS DATE: 3-23-95 DO SOLEMNLY
STATE THAT THE NATURAL HOT MINERAL SPRINGS LOCATED IN LAVA HOT
SPRINGS IDAHO BY THE STATE FOUNDATION OFFICE FLOWING INTO THE
WORLD FAMOUS HOT POOLS HAVE BEEN UTILIZED FOR 38
YEARS FOR BENEFICIAL USE OF THE STATE OF IDAHO AND STATE
FOUNDATION.

MY KNOWLEDGE OF THIS HAS BEEN FORM PERSONAL OBSERVATION OF THE
FACILITY AND THE SPRINGS.

THE PURPOSE AND USE OF THESE WATERS HAS BEEN, HOT MINERAL
BATHS, THERAPY POOLS, IRRIGATION OF LAWNS AND ADJACENT
GARDENS, HEAT SOURCE FOR OFFICE BUILDING AND DRESSING ROOMS,
SHOWERS AND BATHROOM FACILITY USE, AND ALSO PUMPED OVER TO
THE OLYMPIC SWIMMING COMPLEX TO FILL AND HEAT THE BIG POOL,
AND UTILIZED AT THE POOL FOR THE SHOWERS, HEATING OF THE
POOL WATER, THE POOL BUILDING AND SOME IRRIGATION OF LAWNS AND
FLOWER BEDS SURROUNDING THE OLYMPIC POOLS.

THESE WATERS HAVE BEEN PUT TO BENEFICIAL USE BY THE STATE
FOUNDATION FOR MANY YEARS.

IN WITNESS HERewith I Ted T. Itami
AFFIRM MY STATEMENT FOR PUBLIC RECORD THERE
AFOREMENTIONED FACTS PERTAINING TO THE NATURAL HOT SPRINGS,
LOCATED ON THE STATE FOUNDATION PROPERTY.

Signature

Date

Witness

Date

SUBSCRIBED AND SWORN BEFORE ME THIS 23rd DAY OF MARCH
1995.

Katherine A. Smith
Notary Public,

Residing at Lava Hot Springs, Idaho

My commission expires 04-16-2000

NOV 13 1999

AFFIDAVIT

I Geo SHIDZAWA, THIS DATE: 3-23-94 DO SOLEMNLY
STATE THAT THE NATURAL HOT MINERAL SPRINGS LOCATED IN LAVA HOT
SPRINGS IDAHO BY THE STATE FOUNDATION OFFICE FLOWING INTO THE
WORLD FAMOUS HOT POOLS HAVE BEEN UTILIZED FOR 64
YEARS FOR BENEFICIAL USE OF THE STATE OF IDAHO AND STATE
FOUNDATION.

MY KNOWLEDGE OF THIS HAS BEEN FORM PERSONAL OBSERVATION OF THE
FACILITY AND THE SPRINGS.

THE PURPOSE AND USE OF THESE WATERS HAS BEEN, HOT MINERAL
BATHS, THERAPY POOLS, IRRIGATION OF LAWNS AND ADJACENT
GARDENS, HEAT SOURCE FOR OFFICE BUILDING AND DRESSING ROOMS,
SHOWERS AND BATHROOM FACILITY USE, AND ALSO PUMPED OVER TO
THE OLYMPIC SWIMMING COMPLEX TO FILL AND HEAT THE BIG POOL,
AND UTILIZED AT THE POOL FOR THE SHOWERS, HEATING OF THE
POOL WATER, THE POOL BUILDING AND SOME IRRIGATION OF LAWNS AND
FLOWER BEDS SURROUNDING THE OLYMPIC POOLS.

THESE WATERS HAVE BEEN PUT TO BENEFICIAL USE BY THE STATE
FOUNDATION FOR MANY YEARS.

IN WITNESS HEREWITH I Benny Shigawa
AFFIRM MY STATEMENT FOR PUBLIC RECORD THERE
AFOREMENTIONED FACTS PERTAINING TO THE NATURAL HOT SPRINGS,
LOCATED ON THE STATE FOUNDATION PROPERTY.

Benny Shigawa 3-23-95
Signature Date
Robert D. Miller 3/23/95
Witness Date

SUBSCRIBED AND SWORN BEFORE ME THIS 23rd DAY OF MARCH
1995.

Katherine A. Smith

Notary Public,

Residing at Lava Hot Springs, Idaho 2000

My commission expires 04-16 1995

NOV 13 1995

AFFIDAVIT

I Evelyn Brennan THIS DATE: 3-23-95 DO SOLEMNLY
STATE THAT THE NATURAL HOT MINERAL SPRINGS LOCATED IN LAVA HOT
SPRINGS IDAHO BY THE STATE FOUNDATION OFFICE FLOWING INTO THE
WORLD FAMOUS HOT POOLS HAVE BEEN UTILIZED FOR 80
YEARS FOR BENEFICIAL USE OF THE STATE OF IDAHO AND STATE
FOUNDATION.

MY KNOWLEDGE OF THIS HAS BEEN FORM PERSONAL OBSERVATION OF THE
FACILITY AND THE SPRINGS.

THE PURPOSE AND USE OF THESE WATERS HAS BEEN, HOT MINERAL
BATHS, THERAPY POOLS, IRRIGATION OF LAWNS AND ADJACENT
GARDENS, HEAT SOURCE FOR OFFICE BUILDING AND DRESSING ROOMS,
SHOWERS AND BATHROOM FACILITY USE, AND ALSO PUMPED OVER TO
THE OLYMPIC SWIMMING COMPLEX TO FILL AND HEAT THE BIG POOL,
AND UTILIZED AT THE POOL FOR THE SHOWERS, HEATING OF THE
POOL WATER, THE POOL BUILDING AND SOME IRRIGATION OF LAWNS AND
FLOWER BEDS SURROUNDING THE OLYMPIC POOLS.

THESE WATERS HAVE BEEN PUT TO BENEFICIAL USE BY THE STATE
FOUNDATION FOR MANY YEARS.

IN WITNESS HERewith I Evelyn M Brennan
AFFIRM MY STATEMENT FOR PUBLIC RECORD THERE
AFOREMENTIONED FACTS PERTAINING TO THE NATURAL HOT SPRINGS,
LOCATED ON THE STATE FOUNDATION PROPERTY.

Evelyn M Brennan
Signature Date

Katherine A. Smith 3-23-95
Witness Date

SUBSCRIBED AND SWORN BEFORE ME THIS 23rd DAY OF MARCH
1995.

Katherine A. Smith

Notary Public,

Residing at Lava Hot Springs, Idaho

My commission expires 04-16 ²⁰⁰⁰ ~~1995~~

NOV 13 1995

AFFIDAVIT

I Ralph E. Lacy, THIS DATE: I DO SOLEMNLY
STATE THAT THE NATURAL HOT MINERAL SPRINGS LOCATED IN LAVA HOT
SPRINGS IDAHO BY THE STATE FOUNDATION OFFICE FLOWING INTO THE
WORLD FAMOUS HOT POOLS HAVE BEEN UTILIZED FOR 30
YEARS FOR BENEFICIAL USE OF THE STATE OF IDAHO AND STATE
FOUNDATION.

MY KNOWLEDGE OF THIS HAS BEEN FORM PERSONAL OBSERVATION OF THE
FACILITY AND THE SPRINGS.

THE PURPOSE AND USE OF THESE WATERS HAS BEEN, HOT MINERAL
BATHS, THERAPY POOLS, IRRIGATION OF LAWNS AND ADJACENT
GARDENS, HEAT SOURCE FOR OFFICE BUILDING AND DRESSING ROOMS,
SHOWERS AND BATHROOM FACILITY USE, AND ALSO PUMPED OVER TO
THE OLYMPIC SWIMMING COMPLEX TO FILL AND HEAT THE BIG POOL,
AND UTILIZED AT THE POOL FOR THE SHOWERS, HEATING OF THE
POOL WATER, THE POOL BUILDING AND SOME IRRIGATION OF LAWNS AND
FLOWER BEDS SURROUNDING THE OLYMPIC POOLS.

THESE WATERS HAVE BEEN PUT TO BENEFICIAL USE BY THE STATE
FOUNDATION FOR MANY YEARS.

IN WITNESS HERewith I Ralph E. Lacy
AFFIRM MY STATEMENT FOR PUBLIC RECORD THERE
AFOREMENTIONED FACTS PERTAINING TO THE NATURAL HOT SPRINGS,
LOCATED ON THE STATE FOUNDATION PROPERTY.

Ralph E. Lacy 3/22-95
Signature Date
M. L. Lacy 3/22/95
Witness Date

SUBSCRIBED AND SWORN BEFORE ME THIS 22nd DAY OF MARCH
1995.

Katherine A. Smith
Notary Public,
Residing at Lava Hot Springs, Idaho
My commission expires 9-16 ²⁰⁰⁰ 1995

NOV 13 1995

AFFIDAVIT

I CHARLES G. KUNZE THIS DATE: MAR 22-95 DO SOLEMNLY
STATE THAT THE NATURAL HOT MINERAL SPRINGS LOCATED IN LAVA HOT
SPRINGS IDAHO BY THE STATE FOUNDATION OFFICE FLOWING INTO THE
WORLD FAMOUS HOT POOLS HAVE BEEN UTILIZED FOR 65
YEARS FOR BENEFICIAL USE OF THE STATE OF IDAHO AND STATE
FOUNDATION.

MY KNOWLEDGE OF THIS HAS BEEN FORM PERSONAL OBSERVATION OF THE
FACILITY AND THE SPRINGS.

THE PURPOSE AND USE OF THESE WATERS HAS BEEN, HOT MINERAL
BATHS, THERAPY POOLS, IRRIGATION OF LAWNS AND ADJACENT
GARDENS, HEAT SOURCE FOR OFFICE BUILDING AND DRESSING ROOMS,
SHOWERS AND BATHROOM FACILITY USE, AND ALSO PUMPED OVER TO
THE OLYMPIC SWIMMING COMPLEX TO FILL AND HEAT THE BIG POOL,
AND UTILIZED AT THE POOL FOR THE SHOWERS, HEATING OF THE
POOL WATER, THE POOL BUILDING AND SOME IRRIGATION OF LAWNS AND
FLOWER BEDS SURROUNDING THE OLYMPIC POOLS.

THESE WATERS HAVE BEEN PUT TO BENEFICIAL USE BY THE STATE
FOUNDATION FOR MANY YEARS.

IN WITNESS HERewith I Charles G. Kunze
AFFIRM MY STATEMENT FOR PUBLIC RECORD THERE
AFOREMENTIONED FACTS PERTAINING TO THE NATURAL HOT SPRINGS,
LOCATED ON THE STATE FOUNDATION PROPERTY.

1995
65
1930

Charles G. Kunze
Signature Date
Mark L. Linn 3/22/95
Witness Date

SUBSCRIBED AND SWORN BEFORE ME THIS 22nd DAY OF MARCH
1995.

Kathleen A. Smiley
Notary Public,
Residing at Lava Hot Springs, Idaho
My commission expires 4-16 2000
1995

NOV 13 1999

AFFIDAVIT

Katherine Howell, THIS DATE: 3-21-95 DO SOLEMNLY
STATE THAT THE NATURAL HOT MINERAL SPRINGS LOCATED IN LAVA HOT
SPRINGS IDAHO BY THE STATE FOUNDATION OFFICE FLOWING INTO THE
WORLD FAMOUS HOT POOLS HAVE BEEN UTILIZED FOR 45
YEARS FOR BENEFICIAL USE OF THE STATE OF IDAHO AND STATE
FOUNDATION.

MY KNOWLEDGE OF THIS HAS BEEN FORM PERSONAL OBSERVATION OF THE
FACILITY AND THE SPRINGS.

THE PURPOSE AND USE OF THESE WATERS HAS BEEN, HOT MINERAL
BATHS, THERAPY POOLS, IRRIGATION OF LAWNS AND ADJACENT
GARDENS, HEAT SOURCE FOR OFFICE BUILDING AND DRESSING ROOMS,
SHOWERS AND BATHROOM FACILITY USE, AND ALSO PUMPED OVER TO
THE OLYMPIC SWIMMING COMPLEX TO FILL AND HEAT THE BIG POOL,
AND UTILIZED AT THE POOL FOR THE SHOWERS, HEATING OF THE
POOL WATER, THE POOL BUILDING AND SOME IRRIGATION OF LAWNS AND
FLOWER BEDS SURROUNDING THE OLYMPIC POOLS.

THESE WATERS HAVE BEEN PUT TO BENEFICIAL USE BY THE STATE
FOUNDATION FOR MANY YEARS.

1995
- 45
1950

IN WITNESS HERewith I _____
AFFIRM MY STATEMENT FOR PUBLIC RECORD THERE
AFOREMENTIONED FACTS PERTAINING TO THE NATURAL HOT SPRINGS,
LOCATED ON THE STATE FOUNDATION PROPERTY.

Katherine Howell 3-21-95
Signature Date
Robert J. McLean 21 March 1995
Witness Date

SUBSCRIBED AND SWORN BEFORE ME THIS 21st DAY OF MARCH
1995.

Katherine A. Smith
Notary Public,
Residing at Lava Hot Springs, Idaho
My commission expires 4-16 2000
1995

NOV 13 1995

AFFIDAVIT

I Robert F. Melive THIS DATE: 21 Mar 95 DO SOLEMNLY
STATE THAT THE NATURAL HOT MINERAL SPRINGS LOCATED IN LAVA HOT
SPRINGS IDAHO BY THE STATE FOUNDATION OFFICE FLOWING INTO THE
WORLD FAMOUS HOT POOLS HAVE BEEN UTILIZED FOR 47
YEARS FOR BENEFICIAL USE OF THE STATE OF IDAHO AND STATE
FOUNDATION.

MY KNOWLEDGE OF THIS HAS BEEN FORM PERSONAL OBSERVATION OF THE
FACILITY AND THE SPRINGS.

THE PURPOSE AND USE OF THESE WATERS HAS BEEN, HOT MINERAL
BATHS, THERAPY POOLS, IRRIGATION OF LAWNS AND ADJACENT
GARDENS, HEAT SOURCE FOR OFFICE BUILDING AND DRESSING ROOMS,
SHOWERS AND BATHROOM FACILITY USE, AND ALSO PUMPED OVER TO
THE OLYMPIC SWIMMING COMPLEX TO FILL AND HEAT THE BIG POOL,
AND UTILIZED AT THE POOL FOR THE SHOWERS, HEATING OF THE
POOL WATER, THE POOL BUILDING AND SOME IRRIGATION OF LAWNS AND
FLOWER BEDS SURROUNDING THE OLYMPIC POOLS.

THESE WATERS HAVE BEEN PUT TO BENEFICIAL USE BY THE STATE
FOUNDATION FOR MANY YEARS.

IN WITNESS HERewith I Robert F. Melive
AFFIRM MY STATEMENT FOR PUBLIC RECORD THERE
AFOREMENTIONED FACTS PERTAINING TO THE NATURAL HOT SPRINGS,
LOCATED ON THE STATE FOUNDATION PROPERTY.

Signature

Date

Witness

Date

SUBSCRIBED AND SWORN BEFORE ME THIS 21st DAY OF MARCH
1995.

Katherine A. Smith

Notary Public,

Residing at Lava Hot Springs, Idaho

My commission expires April 16 ~~1995~~ 2000

NOV 13 1990

AFFIDAVIT

I RUSSELL E. SIDELL, THIS DATE: MARCH 21-95 DO SOLEMNLY STATE THAT THE NATURAL HOT MINERAL SPRINGS LOCATED IN LAVA HOT SPRINGS IDAHO BY THE STATE FOUNDATION OFFICE FLOWING INTO THE WORLD FAMOUS HOT POOLS HAVE BEEN UTILIZED FOR 18 YEARS FOR BENEFICIAL USE OF THE STATE OF IDAHO AND STATE FOUNDATION.

MY KNOWLEDGE OF THIS HAS BEEN FORM PERSONAL OBSERVATION OF THE FACILITY AND THE SPRINGS.

THE PURPOSE AND USE OF THESE WATERS HAS BEEN, HOT MINERAL BATHS, THERAPY POOLS, IRRIGATION OF LAWNS AND ADJACENT GARDENS, HEAT SOURCE FOR OFFICE BUILDING AND DRESSING ROOMS, SHOWERS AND BATHROOM FACILITY USE, AND ALSO PUMPED OVER TO THE OLYMPIC SWIMMING COMPLEX TO FILL AND HEAT THE BIG POOL, AND UTILIZED AT THE POOL FOR THE SHOWERS, HEATING OF THE POOL WATER, THE POOL BUILDING AND SOME IRRIGATION OF LAWNS AND FLOWER BEDS SURROUNDING THE OLYMPIC POOLS.

THESE WATERS HAVE BEEN PUT TO BENEFICIAL USE BY THE STATE FOUNDATION FOR MANY YEARS.

IN WITNESS HERewith I Russell E. Sidell
AFFIRM MY STATEMENT FOR PUBLIC RECORD THERE
AFOREMENTIONED FACTS PERTAINING TO THE NATURAL HOT SPRINGS,
LOCATED ON THE STATE FOUNDATION PROPERTY.

Russell E. Sidell 3-21-95
Signature Date

Russell E. Sidell 21 March 95
Witness Date

SUBSCRIBED AND SWORN BEFORE ME THIS 21ST DAY OF MARCH 1995.

Katherine A. Smith

Notary Public,

Residing at Lava Hot Springs, Idaho

My commission expires April 16 ~~1995~~ 2000

NOV 13 1999

AFFIDAVIT

I Mike Hansen, THIS DATE: 3-21-95 DO SOLEMNLY
STATE THAT THE NATURAL HOT MINERAL SPRINGS LOCATED IN LAVA HOT
SPRINGS IDAHO BY THE STATE FOUNDATION OFFICE FLOWING INTO THE
WORLD FAMOUS HOT POOLS HAVE BEEN UTILIZED FOR 5 yr
YEARS FOR BENEFICIAL USE OF THE STATE OF IDAHO AND STATE
FOUNDATION.

MY KNOWLEDGE OF THIS HAS BEEN FORM PERSONAL OBSERVATION OF THE
FACILITY AND THE SPRINGS.

THE PURPOSE AND USE OF THESE WATERS HAS BEEN, HOT MINERAL
BATHS, THERAPY POOLS, IRRIGATION OF LAWNS AND ADJACENT
GARDENS, HEAT SOURCE FOR OFFICE BUILDING AND DRESSING ROOMS,
SHOWERS AND BATHROOM FACILITY USE, AND ALSO PUMPED OVER TO
THE OLYMPIC SWIMMING COMPLEX TO FILL AND HEAT THE BIG POOL,
AND UTILIZED AT THE POOL FOR THE SHOWERS, HEATING OF THE
POOL WATER, THE POOL BUILDING AND SOME IRRIGATION OF LAWNS AND
FLOWER BEDS SURROUNDING THE OLYMPIC POOLS.

THESE WATERS HAVE BEEN PUT TO BENEFICIAL USE BY THE STATE
FOUNDATION FOR MANY YEARS.

IN WITNESS HERewith I Mike Hansen
AFFIRM MY STATEMENT FOR PUBLIC RECORD THERE
AFOREMENTIONED FACTS PERTAINING TO THE NATURAL HOT SPRINGS,
LOCATED ON THE STATE FOUNDATION PROPERTY.

Mike Hansen 3-21-95
Signature Date

Russell E. Dwyer 3-21-95
Witness Date

SUBSCRIBED AND SWORN BEFORE ME THIS 21st DAY OF MARCH
1995.

Katherine A. Smith
Notary Public,
Residing at Lava Hot Springs, Idaho
My commission expires April 16 ~~1995~~ ²⁰⁰⁰





State of Idaho

DEPARTMENT OF WATER RESOURCES

900 N. Skyline Dr., Idaho Falls, Idaho 83402-1718 - (208) 525-7161 - FAX: (208) 525-7177

EASTERN REGION

CECIL D. ANDRUS
GOVERNOR

R. KEITH HIGGINSON
DIRECTOR

DATE: JAN. 3, 1995

A29-04178
STATE OF IDAHO
LAVA HOT SPRINGS FOUNDATION
PO BOX 430
LAVA HOT SPRINGS ID 83246

EVIDENCE OF PRIORITY

Dear Claimant:

The Notice of Claim identified above and or below has been filed in the Snake River Basin Adjudication(SRBA). The notice indicates a water usage of irrigation, or other commercial application that is based on **BENEFICIAL USE**. Water rights of this type are established by the historical use of water, dating back to when the water was first used for the purpose claimed. This date is know as the **PRIORITY DATE**, has not been confimed by a license, Decree, or Permit. For this reason, proof must be provided supporting the priority date. As the claimant, you are responsible for submitting the necessary proof to support the **PRIORITY DATE**.

For your reference, I have provided a printout of your Notice of claim and the pamphlet **EVIDENCE OF PRIORITY**. The pamphlet suggests which documents will fulfill this requirement.

The IDWR can not recommend the notice be decreed by the court if no evidence of a priority date is submitted.

Please submit the documentation supporting the priority date by March 31, 1995, referencing the information with the corresponding Water right number. If you have any questions, please contact this office.

Dave Carlson
Water Right Agent, Adjudications

MICROFILMED

NOV 13 1996

RECEIPT
For Monies Paid
to the
IDAHO DEPARTMENT OF WATER RESOURCES

Receipt No: E011955

Date: 02/05/90
Time: 14:35:34

Received
From: IDAHO, STATE OF

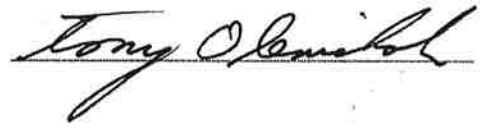
Type of Payment	Program Acct Class	Amount
ADJUDICATION FEE	0410162 9337 6490	\$905.00
Total		\$905.00

CHECK 0732

WR/NO: A29-04178 A29-02360 A29-02283 A29-10219 A29-10213

Idaho Department of Water Resources

Region: EASTERN

Signature: 

STATE OF IDAHO
LAUA HOT SPRINGS FOUNDATION
P.O. Box 430
LAUA HOT SPRINGS, ID 83246

NOV 13 1990

Reid
10.2.80
POOR ORIGINAL

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
Eastern Region

150 Shoup Ave.
Idaho Falls, Idaho 83401
(208) 525-7161

DECEMBER 2, 1980

LAVA HOT SPRING FOUNDATION
LAVA HOT SPRINGS ID 83246

RE: Claim No. 29-4178

Dear Claimant:

The Department of Water Resources has completed the advertising of your claim to a water right, and no further action is authorized under Section 42-243 and 42-244, IDAHO CODE. Your claim will be retained in our files and will be available at any time for use by you or the court.

The filing and advertising of the claim does not confirm the water right claimed, but will serve to record and preserve the information and the evidence which you included in your claim.

If, at a later date, you find that you have additional information or supporting evidence that you would like to have included with the claim, you may have that information or evidence added at any time. Please refer to the claim identification number when corresponding with this office.

We are enclosing a copy of your claim for your records. If you have questions, or if this office may be of further assistance, please feel free to contact us.

Yours truly,

Ronald D. Carlson

RONALD D. CARLSON by *fw*
Eastern Region Supervisor

Enclosure

JAMES B. GREEN
ARCHIE W. SERVICE
CLARK GASSER
RON KERL
JIM D. PAPPAS
DUANE A. BYBEE
FREDERICK L. RINGE

ALBERTA M. PHILLIPS
STEVEN V. RICHERT

GREEN, SERVICE, GASSER & KERL
ATTORNEYS AT LAW
CENTER PLAZA - P. O. BOX 4883
POCATELLO, IDAHO 83201
TELEPHONE (208) 232-4471

ROBERT M. TERRELL
1883-4971

*Reid
11-12-80*

November 10, 1980

Karen Keller, Executive Director
Lava Hot Springs Foundation
Lava Hot Springs, ID 83246

Re: Claim to Water Right

Dear Karen:

Please find enclosed for your information a copy
of the receipt I received in the above matter.

Very truly yours,

GREEN SERVICE, GASSER & KERL


Archie W. Service

mdc
Enclosure

NOV 13 1980



STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
EASTERN REGION

PAID 12-80
POOR ORIGINAL

John V. Evans
Governor

C. Stephen Allred
Director

525-7161
150 Shoup
Idaho Falls, ID 83401

November 6, 1980

RE: Claim to a Water Right No. 29-4178 - LAVA HOT SPRING FOUNDATION

Archie W. Service
GREEN, SERVICE, GASSER & KERL
P. O. Box 4883
Pocatello, ID 83201

Dear Mr. Service:

Attached herewith is Departmental Receipt No. 16063 in the amount of \$30.00 for the above referenced claim.

Sincerely,

Kay Walker

KAY WALKER
Secretary

STATE OF IDAHO
Department of Water Resources

No 16063

Boise, Idaho, Nov. 5, 1980

RECEIVED FROM Green Service, Gasser & Kerl of Pocatello \$30.00
Thirty and 00/100 DOLLARS

FCR	
ck #92-284/16187	\$
1 claim	\$ 30 00
for Lava Hot Springs Foundation	\$
TOTAL	30 00

MICROFILMED

NOV 13 1980

Karl (unborn)



STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
EASTERN REGION

John V. Evans
Governor

C. Stephen Allred
Director

1515 Lincoln Road
Idaho Falls, Idaho 83401
(208) 523-7186

May 20, 1980

Floyd Jensen
Lava Hot Springs Foundation
Lava Hot Springs, Idaho 83246

Dear Mr. Jensen:

Enclosed is a copy of a water right license for the Lava Hot Springs Foundation and the booklet entitled Water Measurement.

If you have any questions, please feel free to contact me.

Sincerely,

STEVE MCCORMICK
Water Resource Analyst

SM:jd

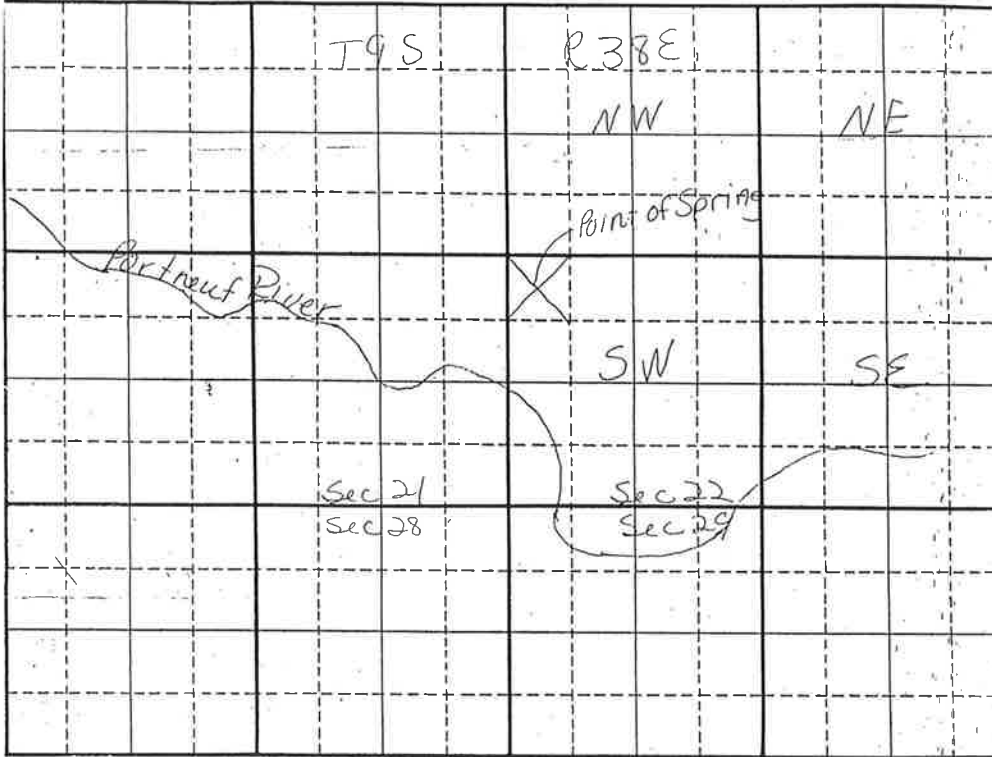
Enclosures

REPROFILMED

NOV 13 1996

(7) If you are claiming water as a member of an organization, list name of organization: As Chairman of the Lava Hot Springs Foundation, which is charged with the management and control of the lands and property, etc. See Idaho Code §67-4401, etc.

(8) Remarks Prior to Jun 13, 1902, the people of the State of Idaho and the people of the Territory of Idaho used these springs for recreational, health, therapeutic, thermal, industrial and all related purposes. June 1902, is the date these waters and lands were conveyed to the State of Idaho for public use, and is the earliest verifiable date of use.



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.

LAVA HOT SPRINGS FOUNDATION

Sworn to before me this 23 day of October

FLOYD JENSEN, CHAIRMAN

1980

Notary Public

Residing at Bozeman, Idaho

My commission expires.

FOR DEPARTMENT USE ONLY

Received by kw

Date 10/29/80

Exception filed by:

Forwarded to

Date

Prelim. check by ENC

Date 11/4/1980

claimant by:

30 \$20.00 fee received by kw

Date 11/5/80

Published in Idaho State Journal

Dates 11/13 & 11/20/80

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 29-4178
Date Received: 2/5/1990
Receipt No: E011955
Received By:

AMENDED

AMENDED

NOTICE OF CLAIM TO A WATER RIGHT
ACQUIRED UNDER STATE LAW

1. Name of Claimant(s)

STATE OF IDAHO Phone: (208)776-5221

LAVA HOT SPRINGS FOUNDATION
PO BOX 669
LAVA HOT SPRINGS ID USA 83246

2. Date of Priority: 06/13/1902

3. Source: SPRINGS Trib. to:

4. Point of Diversion:

Township Range Section 1/4 of 1/4 of 1/4 Lot County Type
09S 38E 22 SW SW 10 BANNOCK

5. Description of diverting works:

SPRINGS FOR USE WITHIN POOL AND OTHER AREAS FOR VISITORS

6. Water is used for the following purposes:

Purpose
COMMERCIAL

From To G.F.S.
1/01 12/31/3

(or) A.F.A

7. Total Quantity Appropriated is:

2.03 C.F.S.

8. Total consumptive use:

9. Non-irrigation uses:

10. Place of use:

PROFL

SCANNED

FEB 23 2005

Township	Range	Section	1/4 of 1/4	Lot	Use	Acres
09S	38E	22	SW SW	10	COMMERCIAL	

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:

14. Remarks:

AMENDED TO CHANGE PRIORITY DATE AND ADJUST CLAIMED Q TO MEASURED AMOUNT.

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: 0

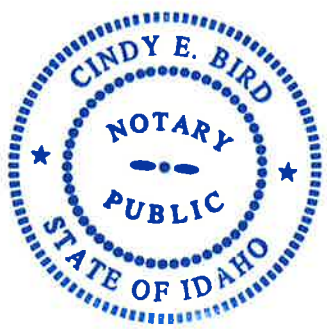
For Organizations:

I do solemnly swear or affirm that I am EXECUTIVE DIRECTOR of
Title
LAVA HOT SPRINGS FOUNDATION, that I have signed the foregoing
Organization
document in the space below as EXEC. DIRECTOR of
Title
LAVA HOT SPRINGS FOUNDATION and that the statements contained in the
Organization
foregoing document are true and correct. Mark June
Signature of Authorized Agent

Title and Organization
12-3-02
Date

State of Idaho)
County of Bannock) SS.

Subscribed and sworn (or affirmed) before me this 3rd day
of December 20 02 Cindy E Bird



Notary Public
Residing at Lava Hot Springs
My commission Expires May 1, 2007

PROFILED

SCANNED
FEB 23 2005

JUN 08 2001

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: A29-04178

Date Received: 1/23/1990

Receipt No: E011955

Received By:

FEB - 5 1990

Department of Water Resources
Eastern District Office

**NOTICE OF CLAIM TO A WATER RIGHT
ACQUIRED UNDER STATE LAW**

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

2. Date of Priority: JUN 13, 1908

3. Source: SPRINGS Trib. to:

4. Point of Diversion:

Township	Range	Section	1/4 of	1/4 of	1/4 of	Lot	County
09S	38E	22	SW	SW	SW	10	BANNOCK

5. Description of diverting works:
SPRINGS FOR USE WITHIN POOL AND OTHER AREAS FOR VISITORS

6. Water is used for the following purposes:

Purpose	From	To	C.F.S.	(or)	A.F.A.
COMMERCIAL	01/01	12/31	3.000		

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

A.F.A.

8. Total consumptive use is Acre Feet Per Annum.

9. Non-irrigation uses:
COMMERCIAL USE FOR VISITORS NEEDS AT RECREATION AREA

10. Place of Use:

Township	Range	Section	1/4 of	1/4 of	Lot	Use	Acres
09S	38E	22	SW	SW	10	COMMER	

11. Place of use in counties: BANNOCK

A29-04178

Page 1

Date: 01/23/90

MICROFILMED

NOV 13 1992

A2904178

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~~, A29-10213, A29-10219

14. Remarks:

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
IDAHO'S STATE FOUNDATION Title
Organization, that I have signed the foregoing
document in the space below as EXECUTIVE DIRECTOR of
IDAHO'S STATE FOUNDATION Title
Organization and that the statements contained in the
foregoing document are true and correct.

ROBERT I MELNE
Signature of Authorized Agent

EXECUTIVE DIRECTOR
Title and Organization

2 February 1990
Date

A29-04178

Page 2

Date: 01/23/90

MICROFILMED

NOV 13 1992

State of Idaho)
County of Bannock) SS.

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

of February 19 90

Seal

Cindy Fisher
Notary Public

Residing at Pocatello, ID

My Commission Expires 2-11-91