

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

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

RIGHT INCLUDES ACCOMPLISHED CHANGE IN PLACE OF USE PURSUANT TO SECTION 42-1425, IDAHO CODE.

T9S, R38E

NWSE
(LOT 7)

NESE
(LOT 8)

29-10213

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28 27

LAVA FOUNDATION WELLS
ACCOMPANIED BY MIKE *HANSEN*
Narrative by Cindy Bird
January 3, 2003

- **GPS FILE NAME:** HOTWEL 9:46AM 1-3-03
N42 degrees 37.169 minutes W112 degrees 00.391 minutes

The hot well is located at the foundation. It supplies water to the showers and the ramped sidewalk at the foundation. It has a 2 hp submersible pump. They pump 35 GPM out of the well. The GPS tag on the wellhead was A0009940.

- **GPS FILE NAME:** IRGWEL 9:57PM 1-3-03
N 42 degrees 37.194 minutes W112 degrees 00.138 minutes

GPS point was taken approximately 15 feet south of wellhead. I had to move away from the pump house and trees to collect the point.

The irrigation well is located at the Cottonwood Campgrounds. The campground is located south of highway 30 as your leaving lava heading over Fish Creek Summit. The pump was a 30 hp Vertical 3 phase pump, Model F403A, I.D. No. Y06Y131R006F. This well is used to irrigate all of the parks in Lava and down to the swimming pool. There is a 6" buried mainline in town and when it gets to the pools it's reduced to a 4" then to a 2". This irrigation well is also used to fill the swimming pool. The pool is opened no later then Memorial weekend sometimes as much as a month earlier depending on the weather. The large pool holds 780,000 gallons and the small pool holds 180,000 gallons.

- **GPS FILE NAME:** POOLHT 10:18PM 1-3-03
N 42 degrees 37.255 minutes W112 degrees 00.569 minutes.

29-10213

GPS point was taken approximately 20 feet south of pump house away from the building interference.

The pump house is located west of the footbridge in Lava. Two systems are located in the pump house and used to heat the swimming pool year round.

First system: At the discharge for the hot pools, Mike can put some boards in the concrete box and divert the water to a catch basin in the pump house where it is then pumped into a 6" pipe with a 20 hp Marathon Electric pump, Model XA286TTDR7697AN, up to highway 30 and then dumps into a 12" pipe that gravity flows to the swimming pool. Or they have a bypass that allows the water to flow back into the Portneuf River.

Second system: There are several springs that flow into a catch basin in the pump house and is pumped with another 20 hp pump Marathon Electric pump through a 8" pipe up to the highway and again dumped into a 12" pipe that gravity flows to the pool. This system also has a bypass that goes by the condos and back into the Portneuf River. The model number was not legible on this pump or the backup pump.

Season of use for this water is 1/1 to 12/31. They run water through the pool year round to keep it from freezing. The pressure on the pump during my visit was 26.3 psi. Mike said he always run it at 26 psi. Someone from water resources had been down trying to figure out how much water was going through the system. On the west wall inside the pump house was 10-14-85, 807,000 gallons per 24 hr period, and 33, 626 per hour. Mike recalls that this was done by the bucket and stopwatch method.

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

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
P.O. Box ~~669~~ 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: 776-5221

[] Signature of Claimant: Mark J. Love

[] 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:



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
Records Clerk

Enclosure(s)

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

8324620430



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

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 13 1997

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.

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.

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Norma Lick 1-20-90
Signature: _____ date: _____
Jane 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 commisison expires 2/11/91

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 PRETAINING TO THE NATURAL HOT WATERS LOCATED ON THE STATE FOUNDATION PROPERTY.

Leon Gates Jan 20, 1990

Signature: date:

Kathleen Howell 1-20-90

Witnessed: date:

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1940

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 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:
Paul L. Itami 1-20-90
Witnessed: date:

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1948

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

NOV 16 1992

AFFIDAVIT

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

DO SOLEMLY 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.

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1950

Edna Hobson 1-20-90
Signature: date:
Norma Pittston 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 Gilliland 1/20/90
Witnessed: date:

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1/950

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 SOLEMLY 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.

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19 45

Donna Peltier 1/20/90
Signature: _____ date: _____
Ed L. Stone 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 2/11/92 1992
MICROFILMED

AFFIDAVIT

I Mark Campbell II, 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 HEREWITH I, Mark Campbell II AFFIRM MY STATEMENT FOR PUBLIC RECORD THE AFFOREMENTIONED FACTS PERTAINING TO THE NATURAL HOT WATERS LOCATED ON THE STATE FOUNDATION PROPERTY.

90
-48
1942

Mark Campbell II 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 Pocatello, Idaho
My Commission expires 2/11/91
MICROFILMED
NOV 16 1992

AFFIDAVIT

I William M 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 PRETAINING TO THE NATURAL HOT WATERS LOCATED ON THE STATE FOUNDATION PROPERTY.

90
-60
1930

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

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

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

89-10213

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

From: George W. Katsilonetes P.O. 670, 94 E.
Portneut 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 priority diversions by the state
of Idaho as Lata 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, 1989

Also:

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

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 29-10213
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

RECEIVED
JAN 15 2003
Department of Water Resources
Eastern Region

2. Date of Priority: 05/01/1911

3. Source: SPRINGS Trib. to: PORTNEUF RIVER

4. Point of Diversion:

Township	Range	Section	1/4 of 1/4 of 1/4 Lot	County	Type
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	1/01	12/31	3.27	

7. Total Quantity Appropriated is:
3.27 C.F.S.

8. Total consumptive use:

9. Non-irrigation uses:

10. Place of use:

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

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 Organizations:

I do solemnly swear or affirm that I am EXECUTIVE DIRECTOR of
Title
LAVA HOT SPRINGS FOUNDATION, STATE OF Idaho that I have signed the foregoing
Organization

document in the space below as EXECUTIVE DIRECTOR of
Title
LAVA HOT SPRINGS FOUNDATION and that the statements contained in the
Organization

foregoing document are true and correct.

Mark J. Lowe
Signature of Authorized Agent

EXECUTIVE DIRECTOR LAVA HOT SPRINGS FOUNDATION, STATE OF Idaho
Title and Organization

14 Jan 03

Date

State of Idaho)

County of Bannock) SS.

Subscribed and sworn (or affirmed) before me this

of January 20 02

1473

Cindy E. Bird

Notary Public

Residing at

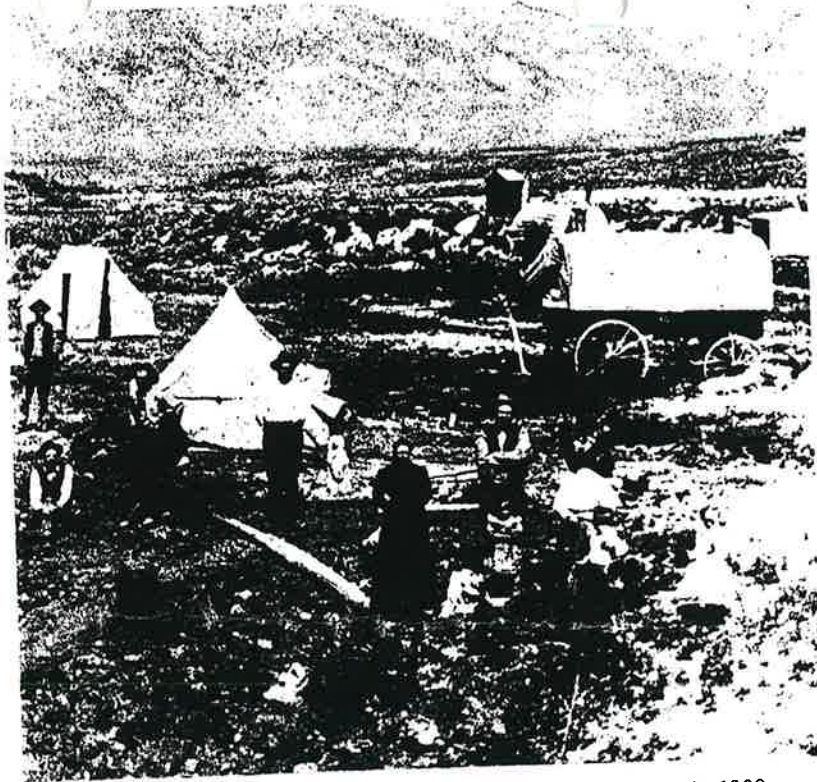
Lava Hot Springs

My commission Expires

May 1, 2007



Reprinted from "Incredible
Idaho" 30¢



Camping at Dempsey in 1908.

30¢
each
RECEIVED
JAN 15 2003
Department of Water Resources
Eastern Region

Lava Hot Springs

by
Ruth Ann Olson & Rebecca Frandsen
(City of Lava Hot Springs Tourist Information Center)

A friendly Western resort town, nestled on the banks of the historic Portneuf River, Lava Hot Springs is the home of the West's most highly developed natural hot mineral water facility. Long before white men discovered the natural hot waters of Lava, the proud Indian nation of the Bannock-Shoshone Tribes gathered at the original site of the mineral springs to bathe, rest and worship the Great Spirit. For centuries, the Indians paid tribute to the Great Spirit for the curative properties of these springs, and they set this area aside as a neutral ground to be shared in peace by all tribes.

The first white men to discover the hot mineral springs were westward-moving fur trappers and explorers. Trapper-explorer Joseph Miller and

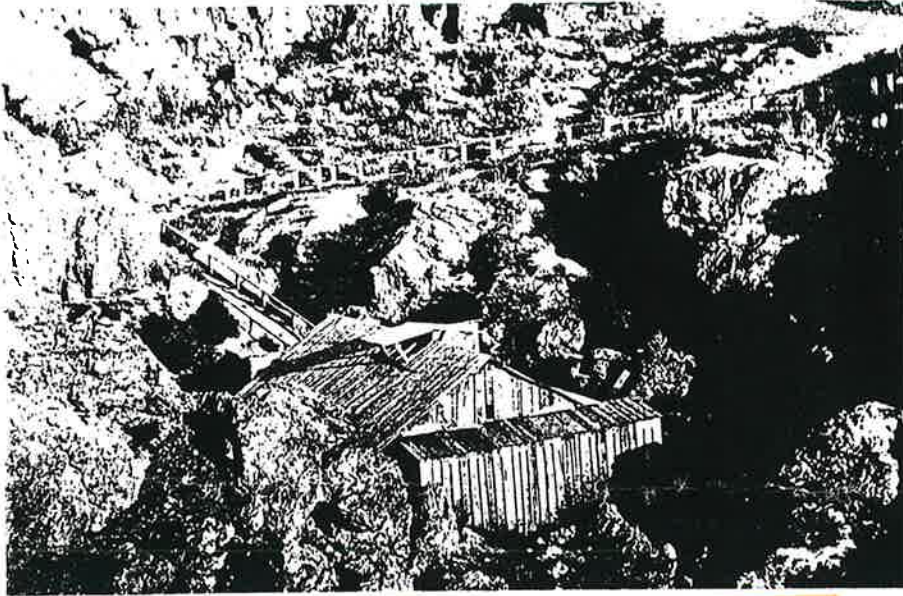
party saw the springs in 1812 while descending the Portneuf River. Soon afterwards, returning Astorian Robert Stuart, accompanied by six other trappers, saw the springs while ascending the Snake River. In addition to trappers sent out by the various fur companies, many independent trappers explored the area and found the furs along the Portneuf River to be of the very best quality. The best known fur trapper in this area was Bob Dempsey, a squaw man who trapped along Dempsey Creek for years. He had a permanent camp and built a one-room cabin about a mile and a half west of the present town of Lava, where Dempsey Creek flows into the Portneuf River.

In the 1880's, the first white settlement, Dempsey, was a small far-

ming community in the valley, named after Bob Dempsey, the early-day trapper. More settlers began trickling in, many dropping out of wagon trains going west and some coming back from the Salt Lake Valley to settle in the Dempsey area. On July 24, 1890, the first white child was born in Dempsey. His name was Andrew L. Hooper, son of Andrew and J. Euphemia Hooper. Andrew Hooper died on April 10, 1977.

The Oregon Shortline Railroad, which reached Montpelier in 1882, came through this valley about a year later. It was completed in 1884, and later merged with the Union Pacific Railroad Co. During the next two decades, anyone wishing to board a train, from Dempsey, had to flag it down, unless a passenger was getting

twenty-seven



Magnificent enclosure built over the main pool in 1911

Arthur Fullmer.

During the next decade, steady improvements were made at the springs and in the community. In 1913, the Legislature provided for a loan of \$10,000, and the one-room enclosure was replaced by a more modern structure. The State Natatorium was completed in 1918, with indoor and outdoor swimming pools to complement the health baths. The village built its own outdoor swimming pool, in the middle of town, using the hot mineral water piped from a village-owned spring. Hotels, apartment houses, and summer homes began to appear in every part of town, along with restaurants, lunch counters, and saloons. All did a thriving business.

With the development of the town's natural resources, considerable attention was given to the health, education and spiritual welfare of the community. A municipal hospital was erected near the banks of the Portneuf River, and operated for many years, until rising costs and shortage of doctors forced its closure. In later years, it became a well-operated and much needed nursing home. A modern brick school was built on a hill overlooking the village, replacing the one-room country schools. There were and still are three churches in the

community: Protestant, Catholic and Mormon.

World War I broke out and many of Lava's young men marched away to fight for their country. With the outbreak of the flu epidemic of 1918 and the diphtheria plague, many died. One Private Leslie Byington died at Ft. Meade, Maryland, and the local American Legion Post was named for him.

There followed a period of brisk activity in the little town until the Great Depression hit. Owners of hotels, restaurants and most other businesses and farms found it difficult to keep operating.

Lava was just beginning to recover from the devastating effects of the Depression when, in 1936, a fire broke out in the center of town. The blaze raged all night, completely destroying one entire city block. One of the buildings in the block contained the liquor store. Bystanders tell of normally sober, solid citizens carrying away "quarts" of liquor which they stashed or sipped on as the town burned! When the good citizens sobered up, they went to work rebuilding.

In 1946, Mr. Max D. Cohn was appointed Foundation Manager and proved to be the force behind its ever-

increasing development. Through the early fifties, the popularity of both the health baths and the swimming pools continued to rise in the post-war economy.

In 1962 and again in 1963, the health baths, the swimming pools and many private businesses suffered extensive flood damage. After digging out and cleaning up, it was two years before the Foundation and the town began to recover. Businessmen rebuilt and in 1966, the Foundation instituted reconstruction of the health baths. These new rock-lined bathing pools were the sole financial responsibility of the Foundation and were opened formally on May 27, 1967. Civic-minded townspeople, Foundation Superintendent C. A. Smith and the Board of Directors had been rattling cages in the State Capitol for some time to gain a necessary \$550,000 appropriation towards a new swimming complex. The Foundation was under heavy pressure from the State Board of Health to clean up or clear out. Finally, in September of 1968, construction was undertaken on the new swimming complex.

The citizens of Lava Hot Springs have maintained the dauntless spirit of their pioneer ancestors. The community has continued to grow.

followed by all who are mindful of the debt this generation and each succeeding one owes to the early pioneers who drove over it as vanguards of civilization.

Being on the main line of the Oregon Short Line Railway company, a part of the Harriman system, Lava Hot Springs enjoys the most desirable of rail transportation facilities. The company's property here consists of a large passenger station, provided with private lounging rooms for men and women, and other buildings serving in the handling of baggage, express and freight.

Times have changed since pools were first built

As you've been enjoying the pleasures of the olympic-size swimming pool at Lava Hot Springs, or the hot mineral pools at the other end of town, you've probably taken for granted the dressing rooms, landscaping, buildings, and maybe even the bikinis all around. But it hasn't always been this way in Lava.

The following is a description of the "new" facilities for swimmers and bathers in Lava during the mid-1920's, at which time the state of Idaho had spent the incredible sum of over \$100,000 for property and facilities:

"Bathing facilities are provided through the construction of an enclosed natatorium, 75 x 150 feet, the building being of pressed brick and wood construction. It houses a pool 45 x 90 feet, ranging from two feet, nine inches to nine feet in depth. A complete equipment, such as diving boards, rings, etc., is provided. There are modern dressing rooms, shower baths, two laboratories, drinking fountains and such other conveniences as will add to the completeness of the project.

The floors are of concrete, sloping towards draining troughs and are kept in a thoroughly sanitary state. Surrounding the pool on three sides are large balconies which will accommodate 300 spectators.

A laundry equipment, consisting of a washer, extractor and dryer, and operated by motors, adds to the completeness of the natatorium.

A novel, practical facility is the ladies' hair-drying parlor, which is equipped with large mirrors, curling irons, modern driers, etc.

Adjoining the enclosed natatorium is an open-air pool, which is housed by a building 78 feet by 132 feet. Enhancing the pleasure of bathers is a high diving tower, the first landing being 13 feet and the second or top landing 24 feet.

The sanitarium, which is built over hot mineral springs, is 57 feet by 84 feet, being constructed of pressed brick and wood. There are two pools, one for ladies and one for men. The floor of the pools are covered with gravel.

Perhaps the most popular pool is that which is within a stone's throw of the sanitarium, known as the mud baths, and which is covered by a large wooden canopy. It is built over hot mineral springs. Flowing into it from springs is water of three quite distinct characters -- magnesium, iron and sulphur.

... modern swim

... and frie

Lava Summer Drive

JUN 06 2001

377

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: EO11955
Received By: _____

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: 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

A2910213



MICROFILMED
NOV 16 1992

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
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 Y MELINE
Signature of Authorized Agent

EXECUTIVE DIRECTOR
Title and Organization

2 Febuary 1990
Date

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