

RECEIVED

AUG 23 2021

Department of Water Resources
Eastern Region

Lance J. Schuster, ISB No. 5404
BEARD ST. CLAIR GAFFNEY PA
955 Pier View Drive
Idaho Falls, ID 83402
Telephone: (208) 523-5171
Facsimile: (208) 529-9732
Email: lance@beardstclair.com

Attorneys for Protestants

**IDAHO DEPARTMENT OF WATER RESOURCES
STATE OF IDAHO**

IN THE MATTER OF APPLICATION FOR
PERMIT NOS. 29-14401, 29-14402

NOTICE OF PROTEST

Protestants, Michael Beer and Lori Beer, by and through their attorney, Lance J. Schuster of the firm Beard St. Clair Gaffney PA, files this Notice of Protest for the water rights applications filed by Lava Ranch Property Owners Association on July 21, 2021 as application numbers 29-14401 and 29-14402.

INTRODUCTION

Michael Beer and Lori Beer are the owners of certain real property located at 13714 South Smith Canyon, Lava Hot Springs, Idaho ("Beer Property"). The Beer Property is located in the Lava Ranch Subdivision (Lot 182) of Bannock County, Idaho. The property is not in an organized ground-water district. Located on the Beer Property is an artesian spring that has

dependably and reliably produced predictable quantities of water in all seasons of the year. Diversion of water from the artesian spring is accomplished with a collection pipe that diverts water from the spring to a cistern. From the cistern, a pump and pressure tank deliver water to a cabin on the Beer Property.

Adjacent property owners also have springs and seeps on their properties, some of which have been developed for domestic uses. All of these springs and seeps collectively form the headwaters of Deer Creek.

Petitioners have a decreed water right, issued in 2006, as Water Right No. 29-13740. This water right is for domestic use in the amount of .04 cfs. Petitioners have, in fact, used the water from the artesian spring for domestic use on the Beer Property. Lava Ranch Property Owner's Association, Inc., ("LRPOA") is a duly organized Idaho corporation.

LRPOA is the homeowner's association for the Lava Ranch Subdivision, a subdivision located in Bannock County, Idaho. In 2016, LRPOA developed a water system that includes a well near the south intersection of Wolverine Pass Road and Smith Canyon Road. The water system is uphill from the Petitioner's artesian spring.

BACKGROUND FOR PROTEST

The LRPOA well is apparently an old stock well that had not been used for some period of time ("LRPOA Well"). However, in 2016, LRPOA constructed a system that pumps water from the LRPOA Well to holding tanks several hundred feet above the elevation of the LRPOA Well. At the holding tanks, any member of the Lava Ranch Property Owner's Association may draw water from the holding tanks for domestic use.

Many of the lots in the Lava Ranch Subdivision do not have their own wells, and do not have surface water. There are approximately 470 lots in the Lava Ranch Subdivision. Many property owners are, by necessity, required to haul water to their property. As a result of the

development of the LRPOA Well, there are many property owners that have begun using the LRPOA Well. Mike and Lori Beer have observed individuals with large water tanks filling their tanks from the new system developed by LRPOA.

Concurrently, with the development of the new system, and use of the LRPOA Well, the Beers have noticed a precipitous and ongoing drop in the production of water from the springs on their property. They have also discovered that neighboring properties that also have springs have seen a decline in production of water. The Beers have measured the decline in production of water from their springs, and have discovered that the decline in water from their springs corresponds exactly with the use of the LRPOA Well.

As a result of the loss of water from their springs, the Protestants filed a Petition for Delivery Call with the Idaho Department of Water Resources on February 5, 2021.

BASIS FOR PROTEST

The Protestants object to the new water applications for two reasons:

1. Use of the LRPOA Well by LRPOA and property owners in the Lava Ranch Subdivision exceeds, and has exceeded, the use allowed under Idaho Code §§ 42-111 and 42-227 for domestic purposes.

2. Use of any water from the LRPOA Well will violate the provisions of Idaho Code § 42-203A(5), which prohibits the issuance of a permit or license where the proposed use (a) will reduce the quantity of water under existing water rights, or (b) the water supply itself is insufficient for the purpose for which it is sought to be appropriated. Use of water from the LRPOA Well has already materially injured, and will continue to material injure Mike and Lori Beer if permitted.

DATED: August 23, 2021.

/s/ Lance J. Schuster

Lance J. Schuster
Beard St. Clair Gaffney PA
Attorneys for Protestants

CERTIFICATE OF SERVICE

I hereby certify that on August 23, 2021, I served the foregoing *Notice of Protest* upon the following by mailing a copy thereof, properly addressed with postage prepaid, to:

Director of Department of Water Resources
P.O. Box 83720
Boise, ID 83720-0098

James Cefalo
Regional Manager
IDWR Eastern Region
900 N. Skyline Dr., Ste. A
Idaho Falls, ID 83402-1718

Travis L Thompson
Barker Roshot & Simpson LLP
PO Box 63
Twin Falls, ID 83303-0063

/s/ Lance J. Schuster

Lance J. Schuster
Beard St. Clair Gaffney PA
Attorneys for Protestants