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DEC 12 2014

IDAHO DEPARTMENT OF
WATER RESOURCES

MOORE SMITH BUXTON & TURCKE, CHARTERED

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December 12, 2014

Craig L. Saxton
Idaho Department of Water Resources
322 East Front Street
P.O. Box 83720
Boise, ID 83720-0098

*Sent via U.S. Mail and email to
Craig.Saxton@idwr.idaho.gov*

RE: George Katsilometes – Water Permit No. 29-7869

Dear Mr. Saxton:

We are writing on behalf of George W. Katsilometes, who has recently engaged our services to assist in resolution of the ongoing inquiry into licensing of his Water Permit 29-7869. We are mindful of various correspondence in this file, including your August 28, 2014 “Notice of Intent to Void Permit.” It is my understanding that the Department has extended the deadline stated in that Notice, and is accepting additional information on or before December 12, 2014. Please accept this letter in satisfaction of that request, along with the enclosed Affidavit of George W. Katsilometes.

I appreciate your willingness to discuss this matter with me yesterday. As I indicated, our relationship with Mr. Katsilometes was formed only very recently. We have endeavored to bring ourselves up to speed on these files, and are mindful that there have been many delays and that closure on these matters would be desirable for all involved. We cannot change the past or the fact that we have only recently entered the picture, but believe that a mutually acceptable completion of the licensing process could be imminent.

We have reviewed the prior proposed amendment(s) and background information with Mr. Katsilometes. Based on these discussions, Mr. Katsilometes is willing to agree to a proposed amendment that will change the point of diversion and place of use.

The crux of completing a settlement on permit 29-7869 is identifying the rate of diversion. The Department’s file indicates that it believes the proper rate of diversion is 0.18 cfs, or not more than 0.20 cfs. We read the file to base this determination almost entirely on Mr. Katsilometes’s testimony during the Lazy V Ranch protest hearing, reflected in the 1997 Findings and Conclusions resolving those protests. Specifically, Mr. Katsilometes testified that his original well produced a flow of 80 gpm, which was the only well put into use prior to the January 1, 1992 development period stated in Permit 29-7869.

Mr. Craig L. Saxton
December 12, 2014
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There is ample basis to support a finding beyond 80 gpm, or 0.2 cfs. As Mr. Katsilometes states in his affidavit, and we wish to amplify, his testimony in the earlier protest hearing would be taken out of context in an analysis of his maximum rate of diversion. The 80 gpm estimate, assuming it is accurate, only reflect normal operations. The license must authorize the maximum rate of diversion. Mr. Katsilometes explains, and logic supports, the conclusion that diversion beyond the 80 gpm rate did in fact occur. *See*, Katsilometes Affidavit at ¶¶18-19. Indeed, the 1995 IDWR field report calculated theoretical pumping volume for the two wells existing at that time of 0.88 and 0.62 cfs.

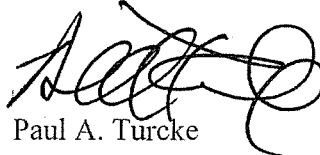
In light of the foregoing, Mr. Katsilometes is not willing to agree to an amendment of the rate of diversion to 0.2 cfs.

We recognize the lengthy and not always tidy history revealed in these files, but urge the Department to discontinue, or at least delay, the presently-proposed action of voiding Permit 29-7869. Mr. Katsilometes is willing to entertain a proper amendment of this permit. Particularly challenging here is the practical difficulty of confirming beneficial use more than twenty years after the fact. There were not protests to this permit, nor have there ever been protests to Mr. Katsilometes's use or his long running operations. The amount of water in question is relatively small. The Department's treatment of cases like this is far from a model of consistency. Voiding Permit 29-7869 would back Mr. Katsilometes into a proverbial corner, and provide us little option but to vigorously challenge such agency action. No file is a perfect foundation for litigation, and this file is less perfect than most, for any party.

While we are new to these matters we have formed a firm opinion about a proper resolution of the licensing analysis. While there does not appear to be formal action pending for the related Permit 29-13672, we believe that global resolution of these two permits would be desirable for all parties. It is essential that Mr. Katsilometes be able to achieve certainty on these permits, in light of the needs of commercial operations. Again, we request that you discontinue the present effort to void Permit 29-7869, and invite further discussion about how we may complete necessary documentation, revisit the details appropriate to these permits, and proceed toward issuing licenses on both of these permits.

Sincerely,

MOORE SMITH BUXTON & TURCKE, CHTD.



Paul A. Turcke

PAT: kmd
Enclosure
cc: George Katsilometes (w/Enclosure)

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IDAHO DEPARTMENT OF
WATER RESOURCES

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Of Attorneys for George W. Katsilometes

**BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO**

IN THE MATTER OF WATER PERMIT
NO. 29-7869 IN THE NAME OF
GEORGE W. KATSILOMETES

)
)
) **AFFIDAVIT OF**
) **GEORGE W. KATSILOMETES**
)
)
)

STATE OF IDAHO)
ss.
County of Bannock)

GEORGE W. KATSILOMETES, being first duly sworn upon oath and upon his personal knowledge, deposes and says:

1. Since gaining and receiving permission from the State of Idaho, without objection from my neighbors in Lava Hot Springs, to explore for low temperature geothermal water in 1989, my goal as an owner of the Lava Hot Springs Inn seeking to attract tourists to Idaho, has been to work with professional well drillers, architects, builders and the IDWR to be a good steward of those waters.

2. Upon discovering the existence of low temperature geothermal water in aquifers beneath my properties and following a visit from the IDWR in 1989, during which I was told that

I must make beneficial use of the water to avoid losing it, I have worked hard and invested greatly in constructing and developing facilities which meet the criteria set forth for beneficial use.

3. Under the terms of the Permit To Appropriate Water No. 29-07869 for 0.5 cfs issued with a priority date of August 25, 1989, I have done my best to construct works and apply the geothermal water to beneficial use. In 1989, I built our first pool, which is divided into two compartments each holding approximately 5000 gallons of water. I connected this pool to the first completed well by underground piping, and delivered water to this pool for use by guests of our Inn.

4. In addition to using the water to fill and maintain proper temperature in our pools, we also use the water for heating the buildings at our Inn. We have learned the average amounts for these uses, but there are fluctuations and there are times when we divert more water, or less water, to maintain our operations.

5. I submitted to IDWR on 3/10/1990 a statement of Commencement Of Works wherein I checked the box that indicated to IDWR that "I understood that I must continue to develop the water system with due diligence to maintain a valid permit," which was accepted, received and stamped by IDWR on Feb. 7, 1992.

6. An Analysis Sheet for Proof of Beneficial Use was completed by IDWR (Klg) and approved on 1/24/92.

7. Between 1992 and 1995 I secured funding for and hired architects for the development and construction of 16 additional pools and a Spa Building and I proceeded

diligently in working toward completion of the full Beneficial Use of the water under my two permits.

8. In 1995, a second well was completed along with 16 additional pools for the added use of the water.

9. This well was connected by underground piping to the first well and to all 17 of the pools.

10. Dennis Dunn of the IDWR made a field visit on Aug. 9, 1995 to complete a Beneficial Use Field Report to confirm and verify these developments, which were all carefully shown to him by a colleague and myself.

11. In 1995 the construction and development of the facilities reached the point that the two completed wells delivered to 5 pools approximately 360,000 gallons per day, with the second well pumping at an average rate of about 150 gpm using a 7.5 hp motor and the first well pumping at an average rate of about 100 gpm using a 5 hp motor.

12. In 2001 a third well was added which permitted the full use of all of the pools and heating of current and future buildings.

13. The third well is also connected to the underground piping supplying the pools with the first 2 wells.

14. In September, 2005, at the request of the IDWR, Dr. Thomas E. Lachmar, Ph.D., P.G. made hydrologic studies of the effect of pumping from the wells and concluded that there was no effect on temperature or water levels in the region of ¼ mile of my neighbors or my other wells when 1 cfs was continuously drawn from the wells.

15. The figures above represent my present recollection of average rates that we have used in conducting our operations. As I stated before, there are times when we divert more water than these averages, such as when air temperatures dip into the single digits or even below zero, and it requires a greater delivery and recharge of hot water to maintain the relatively constant temperatures we seek in heating our buildings and our pools.

16. In my review of the IDWR files for my permits, I note that IDWR makes great, if not singular, emphasis of the 1997 Findings and Conclusions from the Lazy V Ranch protest hearing (the "F&C"). This appears the basis for the determination by at least some IDWR personnel that only .18 cfs of water was ever put to beneficial use prior to January 1, 1992. This is because the F&C state that I testified in that hearing that from our well drilled in 1990 we installed a 5 hp pump which produced a flow of 80 gpm.

17. The F&C are generally correct, but were prepared in an entirely different context and should be, at most, indirect evidence showing the minimum rate of diversion in a license for permit 29-7869. I note that the first line of the permit itself identifies 0.50 cfs as the "Maximum Diversion Rate." In testifying during the Lazy V hearing, the focus of my testimony was to demonstrate that the digging of and pumping of water from State Foundation Well 2 to the Vargason property was having an adverse impact on our customary, daily operations. This is an entirely different inquiry than determining the maximum diversion we accomplished prior to January 1, 1992.

18. There were times prior to January 1, 1992, when we diverted water at a greater rate than 80 gpm. I cannot state with precision whether we ever achieved a rate of 0.5 cfs, which

equates to about 225 gpm. Again, during periods of cold weather, the 80 gpm rate would not adequately support our combined uses of heating our buildings and filling/heating our pools.

19. It is in my opinion and experience possible for the pump we ran from our first well to achieve a diversion rate approaching, if not exceeding, 0.5 cfs. I note that the Dunn 1995 Field Report contains pump flow calculations of 0.88 cfs for the "east well" and 0.62 for the "west well."

20. In the fall of 2012, Blake Jordan of IDWR called my attorney Robert H. Wood, seeking a visit to our property on that day for a 'Beneficial Use Field Examination' to be conducted under Permit No. 29-13672. I called Mr. Jordan at the request of my attorney and asked why he was making this request and Mr. Jordan said the Idaho State Office was requiring it, and because the Permit had been protested. This surprised me, and I told him the permit had not been openly protested. During the field examination, I took great pains to carefully explain all developments and constructions leading to the state of beneficial use at the time of his visit. This was done with mutual cooperation and full revealing of our facilities in a friendly way. Some of our equipment was not fully functioning on that day, and Mr. Jordan was unable to obtain the level of documentation that could have been possible with greater advance notice.

21. The amount of water that we divert under our two permits is relatively small, has no discernible adverse impact that has ever been raised by any surrounding water users, and provides great benefit to our operation, employees, customers, and the State of Idaho. *See, generally, www.lavahotspringsinn.com*. I have discharged the water entering my pools and buildings to the Snake River Aquifer for use by the farmers and people downstream from Lava. Our Inn has been in business for over 26 years, and now attracts about 7,000 visitors a year from

throughout the world. We employ 15 Idaho residents, and contribute roughly \$200,000 tax revenue to the State of Idaho annually.

22. I have engaged Thomas E. Lachmar, Ph. D., P.G. to determine scientifically that the withdrawing of the water supply at the rate of 1.0 cfs does not exceed the rate of natural recharge of the aquifers.

23. All of my wells and the full 1.0 cfs under my two permits are necessary for the full beneficial use of these waters in our operations. If my water supply is limited in any way, it will adversely impact our business. Specifically, we will be unable to safely and predictably maintain the operations that we have conducted since about 1995, and certainly since 2001.

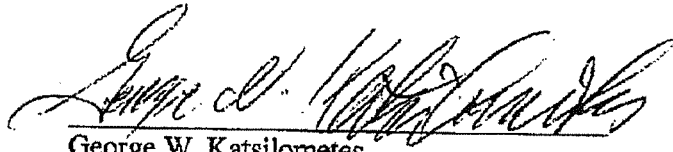
24. While my present focus is on maintaining our full permitted use under permit 29-7869, I note that we have just recently secured approval of an SBA loan which will facilitate additional expansion of our operations. A copy of paperwork associated with the loan is attached hereto as Exhibit "A." I note that this approval was many years developing, as it was virtually impossible for an operation like ours to secure such funding prior to, during, and immediately following the 2008 depression. I realize that if we need additional water beyond our permitted 1.0 cfs to support any expansion we will need to evaluate the possibility of obtaining a new water right(s), however, any reduction in our existing permits will have a synergistic negative effect, by not only torpedoing our efforts to expand that were so long in creating, but by jeopardizing our ability to continue our long-existing present operations.

25. I have exercised my best efforts, sometimes during extremely challenging times for small businesses in the tourism industry, to diligently apply yet conserve the water resources of the State of Idaho. Recognizing my water rights to the full extent authorized in my permits

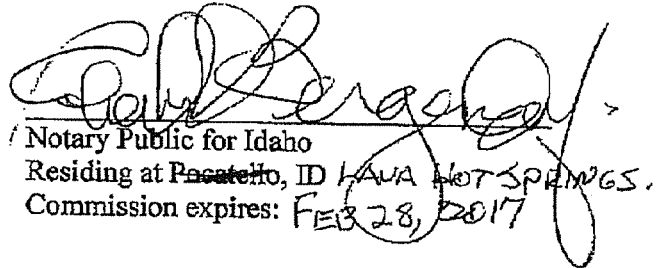
will cause no injury, and will be in the best interests of any interested parties, the general public, and the State of Idaho. I look forward to continuing in a cooperative and productive relationship with IDWR in conducting our operations and advancing these goals.

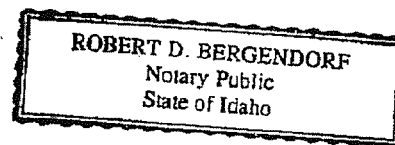
26. Further your affiant sayeth naught.

DATED this 12th day of December, 2014.


George W. Katsilometes

SUBSCRIBED and SWORN to before me this 12th day of December, 2014.


Notary Public for Idaho
Residing at ~~Pocatello~~, ID LAVA HOTSPRINGS.
Commission expires: FEB 28, 2017





U.S. Small Business Administration
AUTHORIZATION
(SBA 7(A) GUARANTEED LOAN)

SBA Loan #	71829450-04
SBA Loan Name	Lava Hot Springs Inn & Spa, LLC
Approval Date	October 30, 2014

Lender:

Bank of Idaho
2300 Via Caporatti
Pocatello, ID 83201

U. S. Small Business Administration (SBA):

7a Loan Guaranty Processing Center (Citrus Heights)
6501 Sylvan Road, Suite 122
Citrus Heights, CA 95610-5017

SBA approves, under Section 7(a) of the Small Business Act as amended, Lender's application, received October 21, 2014, for SBA to guarantee 75% of a loan ("Loan") in the amount of \$1,780,000.00 to assist:

Borrower:

1. Lava Hot Springs Inn & Spa, LLC
1424 E. Maple
Pocatello, ID 83201

All requirements in the Authorization which refer to Borrower also apply to any Co-Borrower.

A. THE GUARANTEE FEE IS \$47,562.50. - ESTIMATE WAS \$40,000

Lender must pay the guarantee fee within 90 days of the approval date of this Authorization. Failure to timely pay the guarantee fee will result in cancellation of the SBA guarantee. The 90-day deadline may not be extended. Lenders are required to make their payments electronically. Payment can be made at www.pay.gov or by ACH if they have previously enrolled with the SBA. No part of the guarantee fee is refundable if Lender has made any disbursement. Lender may collect this fee from Borrower after initial disbursement of Loan, except when an escrow closing is used, Lender may not collect the fee until all Loan funds have been disbursed to the Borrower from the escrow account. Borrower may use Loan proceeds to reimburse Lender for the guarantee fee.

For loans of \$150,000 or less, Lender may retain 25% of the guarantee fee but must remit the remainder to SBA.

B. ONGOING SERVICING FEE

1. Lender agrees to pay SBA an ongoing fee equal to 0.51% of one percent per year of the guaranteed portion of the outstanding balance.
2. Lender may not charge or otherwise pass through this fee to Borrower.

SBA Loan Number: 71829450-04
SBA Loan Name: Lava Hot Springs Inn & Spa, LLC

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EXHIBIT "A"