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FEB 06 2012

DEPARTMENT OF
WATER RESOURCES

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February 1, 2012

Michele Edl
Associate Engineer
Idaho Department of Water Resources
P.O. Box 83720
Boise, Idaho 83720-0098

Re: *Lava Hot Springs Permit No. 29-7936*

Dear Ms. Edl:

The City of Lava Hot Springs has asked me to assist it with the licensing of its water right permit no. 29-7936. Your recent letter to the City dated December 30, 2011, raises a question as to whether this water right was properly developed, given that the *Beneficial Use Field Report* states that the collection boxes had been filled in with gravel and that spring water was flowing into the Portneuf River. I believe some additional information concerning this water right and the field exam will allay your concerns and allow this right to be licensed.

The *Beneficial Use Field Report* includes two sets of pictures of the collection boxes that divert this water right, copies of which are enclosed with this letter. One set shows open collection boxes; the other set shows the collection boxes filled in with gravel. The City filled in the collection boxes as a safety measure. Before they were filled, the City had trouble with kids climbing and even cutting the fence surrounding the collection boxes so that they could get in and soak in the collection boxes. The City filled the boxes with gravel and removed the fencing to eliminate that problem. The porous gravel does not interfere with the ability of the boxes to collect and divert the spring water into the pipe that transports it to the City.

The *Beneficial Use Field Report* includes another picture that shows the overflow pipe that returns water to the Portneuf River. This pipe is not located near the collection boxes, but rather at the end of the distribution system. Any water that is not used within the City is returned to the Portneuf River at this location. Thus, the City has in fact diverted the water through the distribution system installed for that purpose. Since this is a non-consumptive water right, it should commonly return to the Portneuf River at the end of the system.

You've also raised a concern with the use of water by the Lava Spa Motel to whom the City agreed to deliver water diverted under water right no. 29-7936. On file with the IDWR is a copy of the lease between the City and the Lava Spa Motel for this purpose. The lease authorized the motel to install a lateral connection to the City's water line to enable the use of the geothermal water within the motel. This lease began in 1993 and continued through 2007, at which time ownership of the motel changed hands. The City is in the process of negotiating a new lease with the current owner of the motel.

The extent to which the motel did or didn't use the water that it leased from the City should not affect or be a basis for refusing to license this water right. The IDWR typically licenses water rights for municipalities based on the installed capacity of the system that diverts water right. This reflects the reality that it would be impractical for a City to control how water is used within the homes and other facilities to which it delivers water. Similarly, the IDWR licenses water rights for subdivisions based on the number of lots that have water lines installed to them (the so-called "stub-in" policy), even if homes have not been built on all such lots by the proof due date. These policies of the IDWR are both reasonable and consistent with Idaho Code section 42-223(6) which protects water rights from forfeiture if the non-use results from circumstances over which the water right owner has no control. Accordingly, the City's installation of a diversion and distribution system, and its actual diversion and delivery of water to facilities within the City, should be sufficient to license water right no. 29-7936 consistent with the *Beneficial Use Field Report* dated July 2, 2001.

Please feel free to give me a call if you have any questions regarding this letter. Otherwise, we look forward to having water right no. 29-7936 licensed in the near future.

Sincerely,



T.J. BUDGE

TJB:rr

Enclosures

cc: Canda Dimick/City of Lava Hot Springs

RECEIVED

SEP 10 1997

AGREEMENT TO SUPPLY WATER

Department of Water Resources

THIS AGREEMENT made and entered into this 7th day of JULY, 1993, between the CITY OF LAVA HOT SPRINGS, a municipal corporation of the State of Idaho, hereinafter "CITY", and LAVA SPA MOTEL, a corporation of the State of Idaho, by and through its President, John R. Berger, hereinafter "MOTEL",

WITNESSETH:

WHEREAS, Resolution¹⁹⁹³⁻² of City dated June 24, 1993, a copy of which is attached hereto as Exhibit "A" authorized CITY to enter into an agreement with MOTEL, to furnish water from Chicken Soup Springs;

NOW, PURSUANT TO said Resolution ¹⁹⁹³⁻² and within the limits of its Permit No. 29-07936 of the Idaho Department of Water Resources to appropriate water from Chicken Soup Springs, a copy of which is attached as Exhibit "B";

NOW, THEREFORE, CITY and MOTEL agree as follows:

1. CITY agrees to deliver to the delivery point shown on the diagram attached to Exhibit "A" 40 g.p.m. of water from Chicken Soup Springs at the natural temperature of the spring water for the MOTEL to take from the delivery point to its place of business.

2. MOTEL agrees to pay CITY \$50.00 per month annually in advance for the use of said water with the monthly rate to be re-negotiated annually based on cost of living index and unexpected maintenance expense. Payments start upon completion of the holding tank by MOTEL as provided herein or in ninety (90) days whichever occurs first.

3. This Agreement shall run for five (5) years with an option to renew for five (5) years unless terminated earlier by the parties hereto.

MICROFILMED

OCT 22 1997

4. This Agreement automatically terminates should the City lose its permit, should the water not be available from the spring or because of temperature change not be usable by MOTEL or should MOTEL lose its place of business. Neither party is entitled to damages of any kind from the other party because of termination of this Agreement.

5. CITY will maintain the waterline from the spring to the delivery point and MOTEL will maintain the line from the delivery point to its place of business. CITY reserves the right to allow other users to hook onto its line. MOTEL will install and maintain its own holding tank at the delivery point to accept the water from CITY'S line.

6. MOTEL is solely responsible for meeting water quality discharge standards following its use of the water hereunder.

7. Failure of MOTEL to maintain its portion of the waterline or to pay charges called for hereunder justifies CITY in immediately shutting off the supply of water until the line is repaired or the charges are paid.

SIGNED By the parties at the date indicated opposite their names.

DATE: 7-7-93

CITY OF LAVA HOT SPRINGS

Kenneth Knowles
~~New Lower Mayor~~
Kenneth Knowles, Council President

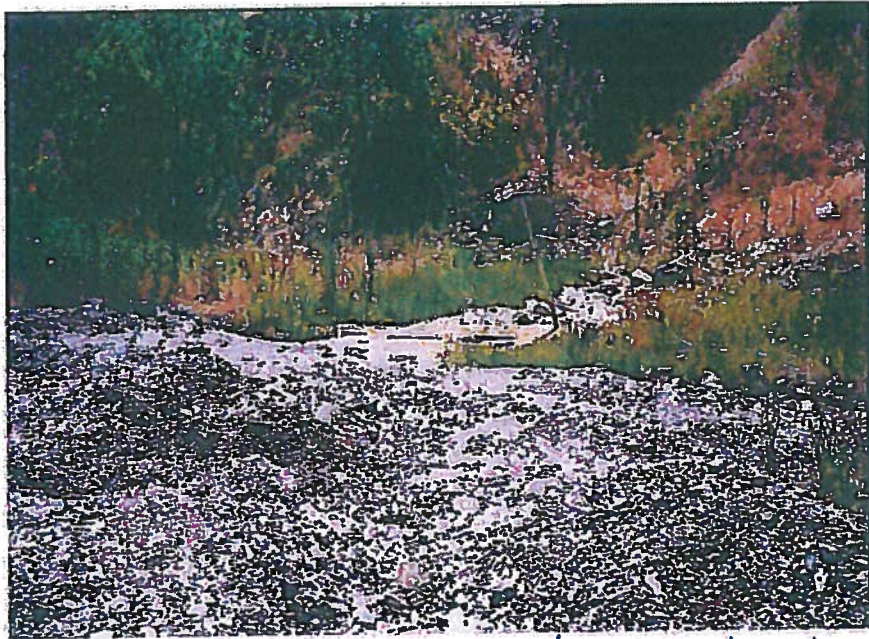
ATTEST:

Canda L. Dimick
Canda L. Dimick, Clerk

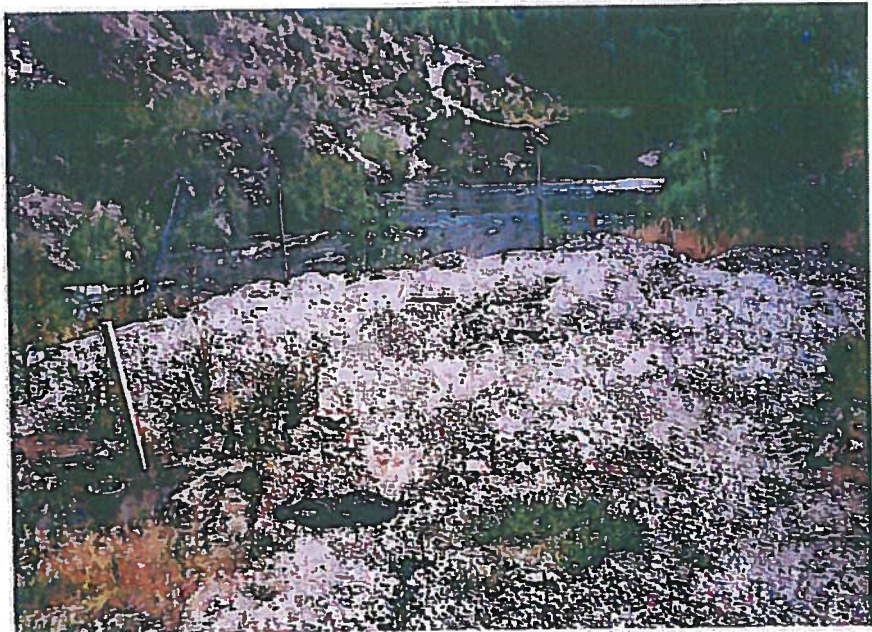
DATE: 7-7-93

LAVA SPA MOTEL

John R. Berger
John R. Berger, President



POD #29-7936 Concrete collection vaults have been
filled in with gravel



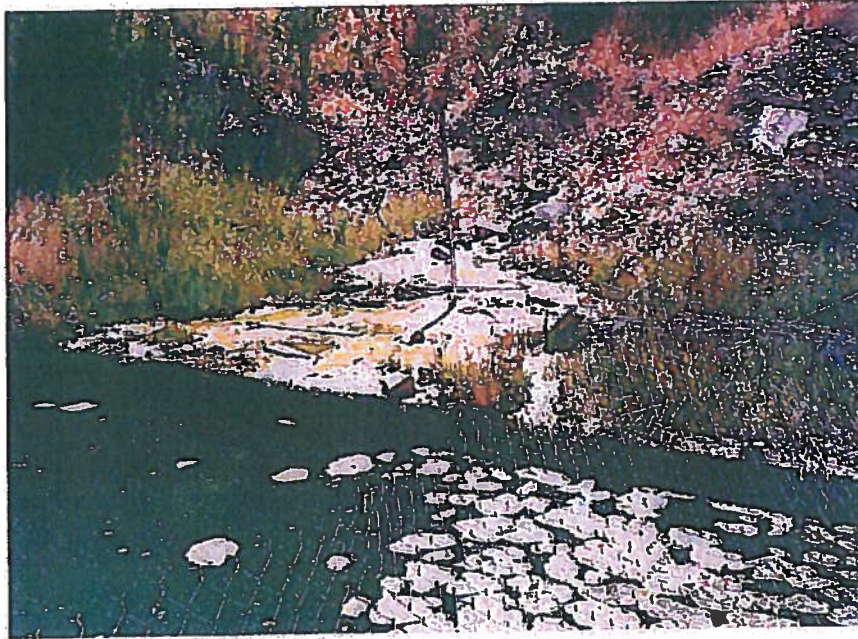
POD # 29-7936



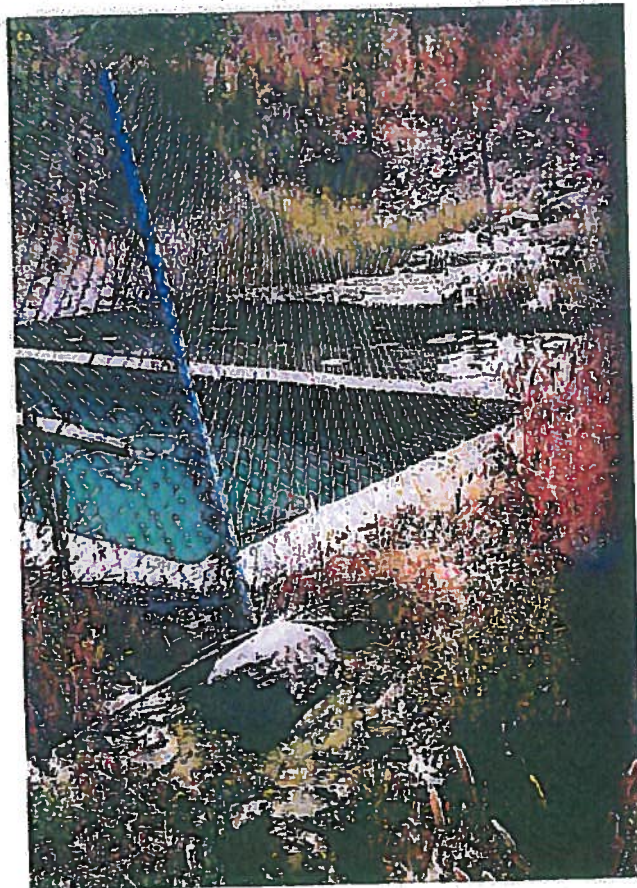
Downstream collection box with overflow pipe to river.
Permit # 29-7936



Overflow into river # 29-7936



POD Chicken soup spring trickles into containment vaults.



Water escaping vaults.

INITIAL EXAM
2000
See Photos taken
6-29-2001

29-7936