

Oct. 23, 1997

Protestants Exhibit

#

accepted

A - Photo

B - Feasibility study

C - Photo

D - Spickman letter 2 pgs

E - Photo's

F - "

G - "

H - "

I - "

J - Well logs & other pgs

K - Lava proximity map

L - Investigative Report

PROTESTANT'S EXHIBIT A





DPW PROJECT NO. 90-547

*ENGINEERING FEASIBILITY STUDY
GEOTHERMAL WATER USES
LAVA HOT SPRINGS FOUNDATION
DEPARTMENT OF PARKS AND RECREATION*

LAVA HOT SPRINGS, IDAHO

DECEMBER 1989



Engineered Systems Associates, Inc.
MECHANICAL - ELECTRICAL - CONSULTING ENGINEERS
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CHARLES L. SUDWEEKS, P.E. DWAYNE C. SUDWEEKS, P.E.

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ENGINEERING FEASIBILITY STUDY
GEOTHERMAL WATER USES
IDAHO STATE HOT SPRINGS FOUNDATION
DEPARTMENT OF PARKS AND RECREATION
LAVA HOT SPRINGS, IDAHO

DPW PROJECT NO. 90-547

SCOPE OF WORK

The scope of this work involves:

- A. An analysis of the usage of the natural hot water overflow from the Foundation hot pools.
- B. The condition of the existing equipment and operation of the Idaho State Hot Springs Foundation swimming pools, including the heating of existing pools.
- C. The disposition of natural hot water after it has been used for energy purposes.
- D. The potential left in the natural hot water for other commercial uses.



EXISTING CONDITIONS

(Reference Foldout Sheets S1, S2 and S3 at end of this section.)

The existing 4-inch domestic cold water line from the well at Pump House #2 to a location just east of the old natatorium complex is not being used by the Foundation, but the well and pump system is used to supply water to the Riverside Retreat Campground. A 50-year lease, entered into in March of 1971, exists between the State of Idaho and the Riverside Retreat Campground. This lease includes providing culinary and irrigation water to that facility.

During a review of the area on October 27, 1989, the maintenance people pointed out several valves in the grass just east of the old natatorium location. These valves were later dug up with a back hoe. The 4-inch galvanized steel pipe revealed by this excavation and serving these valves is in good condition and appears to be connected to the 4-inch domestic cold water line from Pump House #2. These lines served the old natatorium.





OLD VALVES ON EXISTING 4-INCH
DOMESTIC COLD WATER LINE.
PART OF THE OLD NATATORIUM COMPLEX

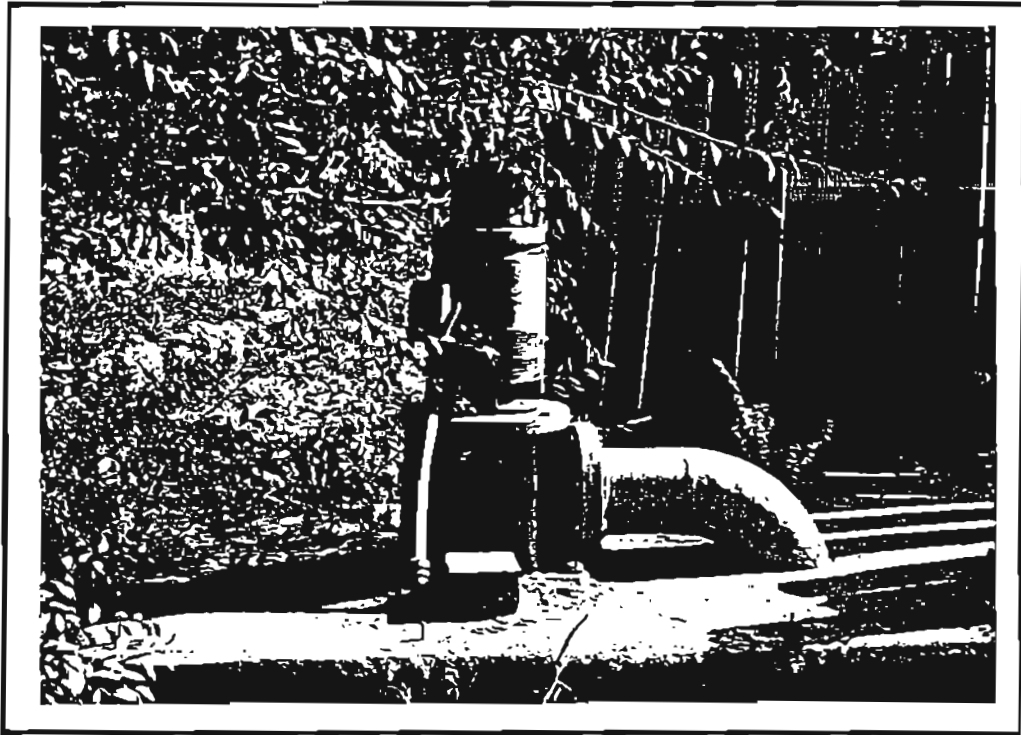


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The 30 horsepower pump shown just west of the hot pools is about 18 years old. This pump supplies natural hot water from the hot pools' overflow water to the swimming pool complex where it runs through a heat exchanger to heat the large pool.

When the swimming pool complex was built, a submersible pump installed in a redwood pit pumped the overflow water to the complex. Sized to handle the entire overflow volume of approximately 1200 gallons per minute, this pump worked quite well but went out after only 2 years' operation. The replacement pump, a 30 horsepower Jacuzzi pump mounted on a concrete cap over the redwood pit, has never operated quite like the original pump. The capacity is different and today it only pumps about 40 percent of the overflow water to the complex. This pump is worn out and needs to be replaced.





EXISTING JACUZZI 30 HP. PUMP



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A 15-inch diameter concrete pressure pipe line, installed when the swimming pool complex was built, runs from the 30 horsepower pump location up the hill to the highway right-of-way and from there to the mechanical room of the complex. Water in this line goes through heat exchangers to heat the large outdoor pool water and discharges back into the river.

The integrity of the 15" concrete pressure line is questionable. A section at the elbow approximately 350 feet east of the Memorial Building has been replaced. It appears that some of the pipe has settled and cracked and materials are now blocking part of the pipe. Maintenance personnel report that when the concrete pipe was repaired with concrete grout some of the grout was spilled inside the pipe, possibly blocking part of the pipe.



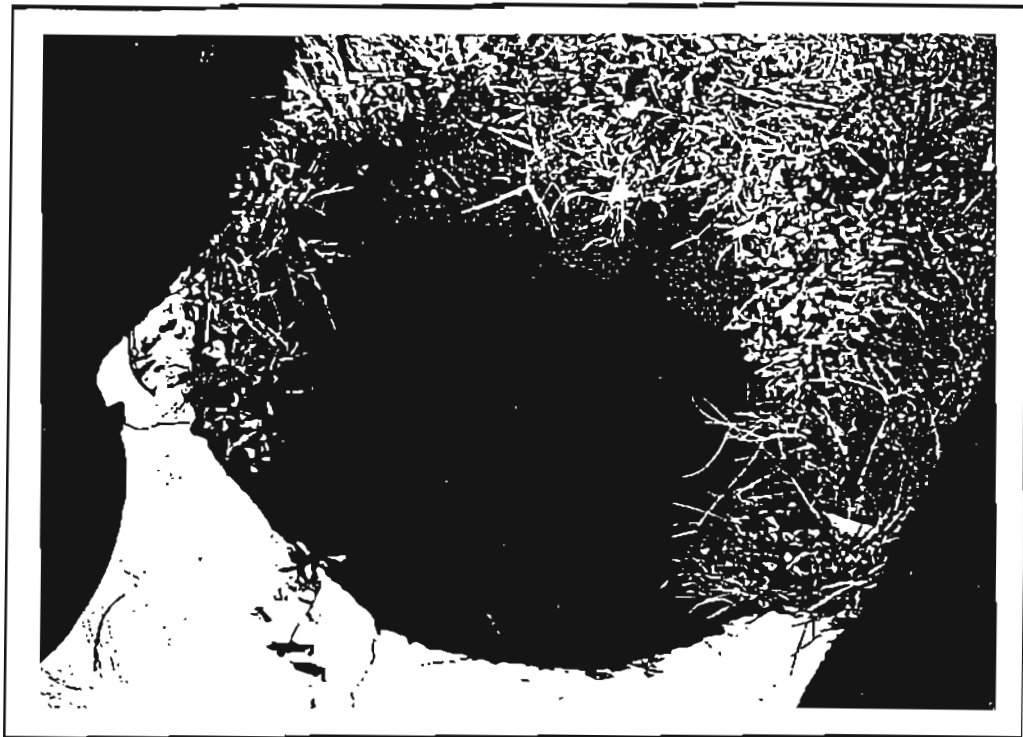


15-INCH HOT WATER RETURN LINE
TO THE RIVER FROM THE LARGE
POOL HEAT EXCHANGERS.



The overflow water from the hot pools runs through a 24-inch diameter concrete pipe to the 30 horsepower pump pit. Water not used by the pump flows about 120 feet west where it merges with the 36-inch concrete drain line from the hot pools. This 36-inch line continues about 200 feet west, parallel to the river, and discharges into the river under the foot bridge.

When the hot pools are drained twice a week, the hot water source to the 30 horsepower pump for the swimming pool complex is lost via the 24-inch overflow line. During the time the overflow water is not available to heat the large swimming pool, the pool water temperature drops 6 to 8 degrees F. Because of the reduced hot water flow to the pool heat exchangers, it takes as long as 2 to 3 days to get the pool water temperature back up to 88 deg. F. The overflow water from the hot pools is 1,700,000 gallons per day or 1180 gallons per minutes with a water temperature of 108 deg. F. The continuous interruptions in water flow and pool temperature cause a chemical problem with the large pool, and the loss of temperature in the large pool creates complaints from the patrons.



MANHOLE - 24" & 36" HOT WATER LINES MERGE



HOT WATER DISCHARGE INTO RIVER (UNDER BRIDGE)

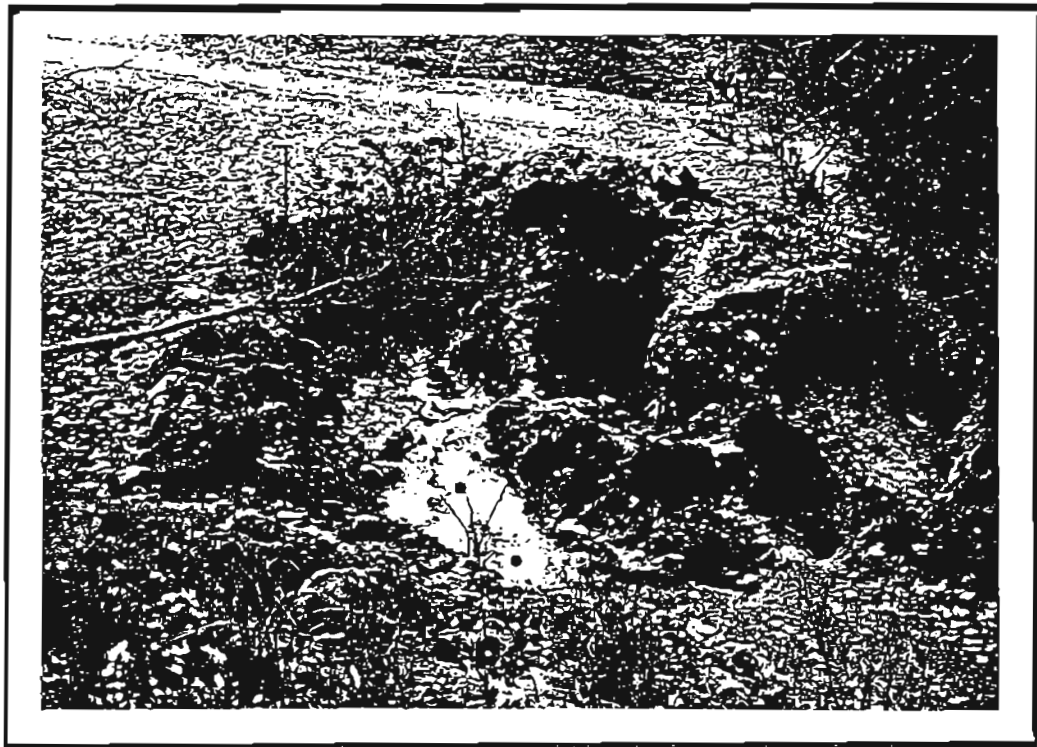


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The Idaho State Hot Springs Foundation, located in Lava Hot Springs, desires to utilize another hot water source approximately 450 feet east of the existing Memorial Building in the middle of the lawn area.

While digging a hole in the ground at the seepage area, workers discovered two 4-inch wooden pipes and one 8-inch concrete pipe. These pipes are old drain lines from the original natatorium system and have been used for years as an underground irrigation system for the lower park area and at one time filled a wading pond. This water is only four to five feet below the surface. It should be noted that it is part of the Foundation hot springs water source.

Maintenance people have installed a 16-inch steel pipe which allows this water to discharge into the river at this location. Water flow measured at these pipes is 1,100,000 gallons per day or 765 gallons per minute. The water temperature is a constant 119 deg. F. and the water is crystal clear. Flow and temperature is not affected by hot pool discharge or hot pool drainage. This flow has run for the last 90 days with no change in flow or temperature. Tests by the State Health Department shows this water to be potable.

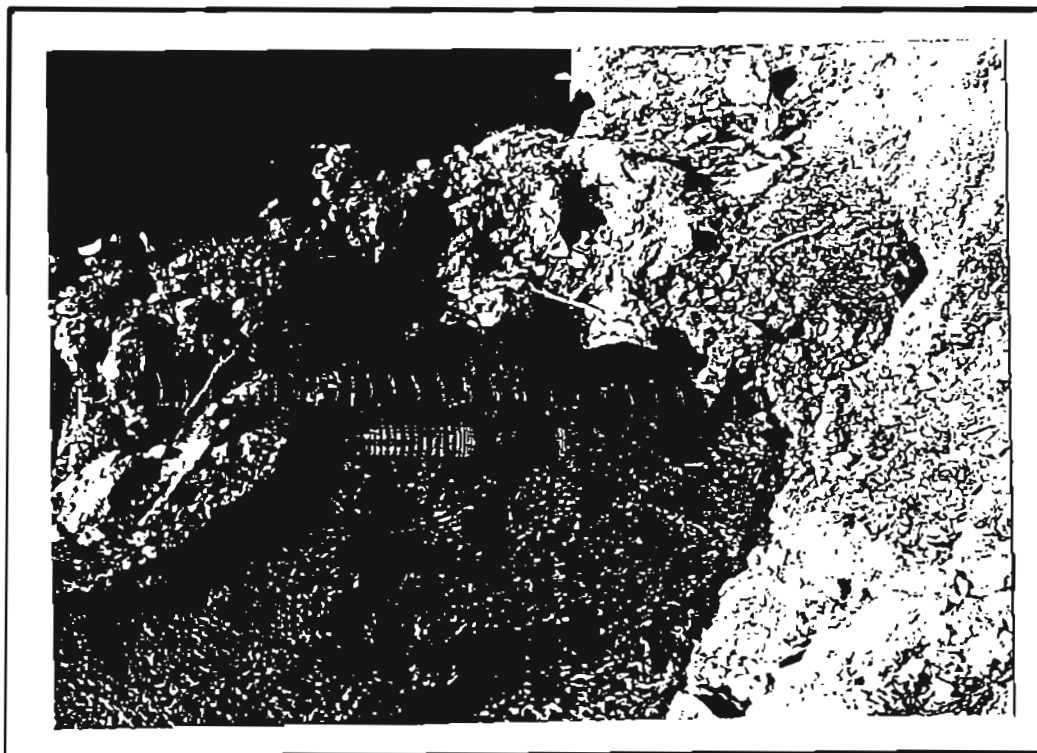


ALTERNATE HOT WATER SOURCE
765 GPM - 119 DEG. F.





ALTERNATE HOT WATER SOURCE - INLET



ALTERNATE HOT WATER SOURCE - OUTLET

The City of Lava provides domestic cold water for the swimming pool complex via a 4-inch water line east from the pool complex. This line connects to a 6-inch city water line as shown in front of the Memorial Building. The 4-inch line also loops and serves the condominiums west of the pool complex. In addition, the City of Lava provides all of the domestic cold water to all of the Idaho State Hot Springs Foundation buildings.

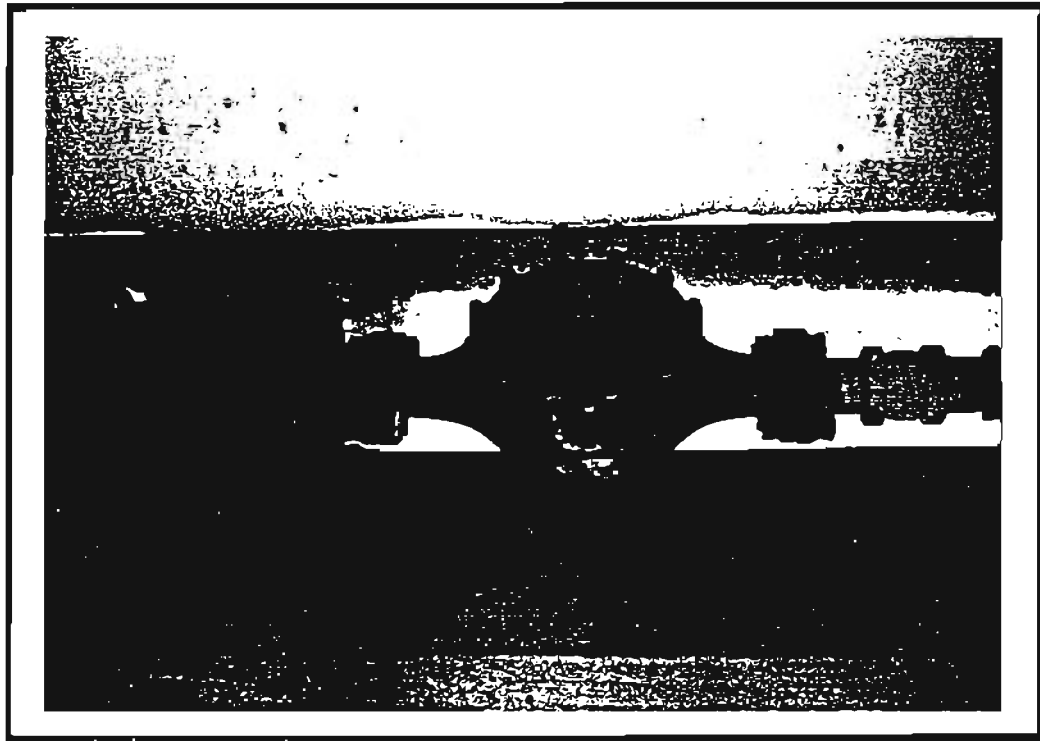
There is an existing 6-inch steel water line running from Pump House #1 to the pool complex grass area. This line provides irrigation water, but only in the summer months. The water has been tested and could be used for domestic water if the system were modified for freeze protection in the winter.

The water meter for the pool complex is located just inside the mechanical room near the ceiling.

The City of Lava bills the Idaho State Hot Springs Foundation for water usage at the pool complex building during the months of May through September but not for the months when the pools are closed during October through April. While the pool complex is closed, three hoses run water constantly into the pools to provide makeup water. The water flow is not quite enough to keep the pools full. This flow of water also keeps the city line from freezing where it crosses the river.

At the time the pools were built, a well drilled to provide domestic cold water for the complex produced only warm mineral water so the well was abandoned and the complex was connected to the city domestic water line. Domestic cold water in Lava is at a premium and many times in the summer restrictions are placed on water usage.





CITY WATER METER IN THE MECHANICAL ROOM
OF THE POOL COMPLEX BUILDING



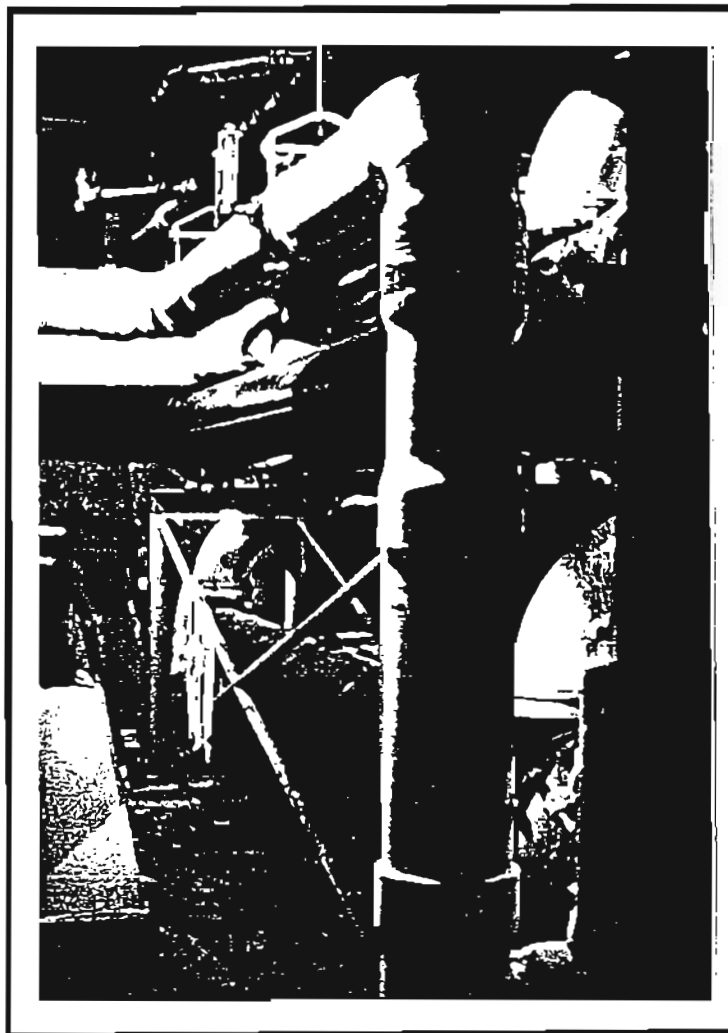
The mechanical systems for the pool complex consist of:

- A. Two large heat exchangers which take the hot pool overflow water via the 30 horsepower pump and use it to heat the large outdoor pool. These heat exchangers, installed when the pool was built, have not been cleaned or de-scaled since then. The bottom half of the upper heat exchanger was replaced about two years ago because it rusted through. The bottom heat exchanger is now showing signs of the same rusting-through and wearing-out. If this exchanger is to be used next season, it will need to be repaired. This is the only method of heating the large pool.
- B. A twenty-year-old gas fired copper tube boiler provides the heat for the small pool through a heat exchanger. This boiler also provides hot water used to heat the building. Pumps circulate hot water through insulated pipes to unit heaters throughout the building.
- C. Two gas fired water heaters heat the necessary domestic hot water for showers and other domestic uses.

D. Most of the pumps, valves, and piping are original equipment installed when the complex was built.

Although most are in fairly good repair, some replacement and heavy maintenance will be in order in the near future.





THE TWO HEAT EXCHANGERS
FOR HEATING THE BIG POOL



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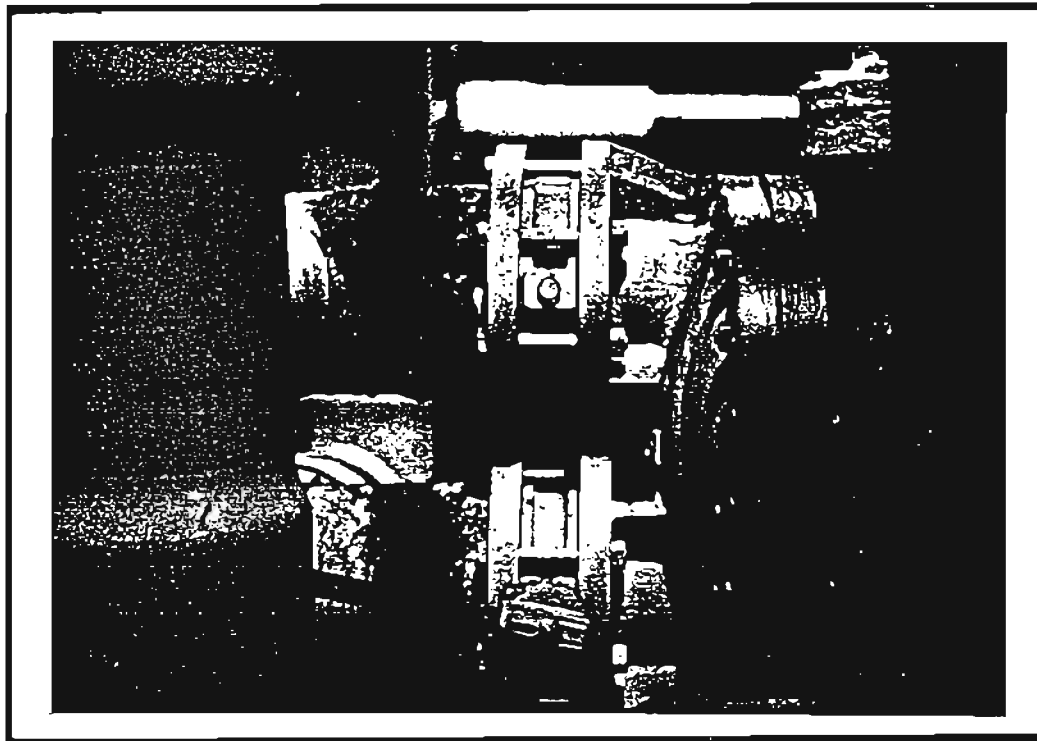


THERE ARE THREE AREAS WHERE
LEAKING IS VISIBLE ON BOTTOM
EXCHANGER. (Two Shown)

THE BOTTOM
EXCHANGER IS
VERY THIN AND
LEAKING.



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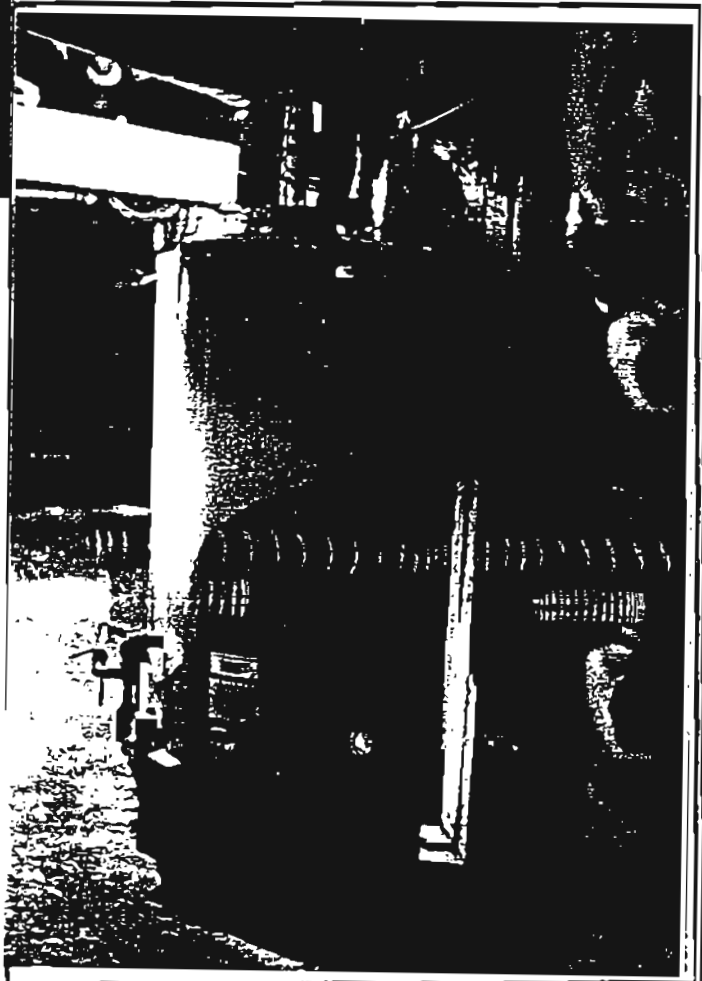
POOL PIPING CONNECTIONS AT HEAT EXCHANGERS





GAS BOILER FOR SMALL POOL AND
BUILDING HEAT

GAS FIRED WATER HEATERS



SUMMARY OF EXISTING CONDITIONS

- A. The most often heard complaint is: "We are not able to keep the big pool warm enough." This is evidenced by the fact that the only heat to the big pool is the pumped overflow water from the hot pools. The present system will not provide enough water and the overflow source of water is lost two days a week when the hot pools are drained.
- B. The only heat for the small pool is the gas boiler in the pool complex building. This gas boiler also provides heat for the building. The domestic hot water for shower use is also heated by gas water heaters. The gas bills for the winter months run about \$300 per month for building heat and about \$1,800 per month in the summer for small pool and shower water heating.
- C. The electrical power bill for the pool complex runs about \$3,000 per month in the summer and \$300 per month in the winter. This power includes all the pool pumps, lights and heater fans. A separate power bill of \$450 per month runs the 30 horsepower hot water pump.
- D. All of the above costs go on while over a million gallons of natural hot water a day are being discharged to the river without any beneficial use.



RECOMMENDATIONS

The present natural hot water flow of 1.7 million gallons per day of hot pool overflow and the alternate source of 1.1 million gallons per day discharging into the river have a great potential for energy use that is not being utilized. Only about 700,000 gallons per day are *500 gpm* being used in the summer months to heat the large swimming pool. All the rest of the year this water flow simply discharges into the Portneuf River. Due to present-day environmental standards, this water flow cannot be consumed but some of the heat energy could be extracted and the water then returned to the river to maintain its flow. The major problem of using this energy is getting the natural hot water to a location where it can be put to beneficial use.

There are adequate amounts of natural hot water to be used for heating both swimming pools in the summer and only extracting about 15 deg. F. temperature from the water temperature. There is plenty of water to heat the pool complex buildings in the winter and also provide the desired additional water makeup to the pools to eliminate the annual damage repair work, which is in excess of \$3,000, due to the



low water levels in the winter. Additionally, it would be possible to use the natural hot water for the shower use at about 100 deg. F. after it goes through the heat exchangers. This water usage, along with the makeup water usage, would amount to less than 5% of the total flow that would be used.

A site survey done by the Idaho State University Vo-Tech students and included in the appendix shows that it would be possible to gravity flow the natural hot water from the hot pools along the river bank, across the road to a point just south of the present pool complex. It is recommended that the alternate 119 deg. F. water source be kept separate from the hot pools overflow water source. This would require two lines, a 16-inch diameter plastic line for the 119 deg. F. water source and a 24-inch diameter plastic line for the 108 deg. F. overflow water. By not mixing the waters together we save the available energy, and by having two lines either one or both lines may be used as the demand for hot water changes. Also, if a problem develops with one line, the second line could handle the load while repairs were being made.

The lines will join at a new pump pit just south of the pool complex where the water could be pumped into the complex to be used for pool heating, building heat, showers,

and makeup water. The water would then be returned to the lines leaving the pump pit, diverted back to the river, or sent on to the west past the condominiums. Here, the water could again be put to use for space heating of the condominiums and then returned to the lines to continue west to the edge of the Foundation property where the water could be leased to private owners for use in fish raising ponds or greenhouses and then returned to the river.

If the water starts out at 119 deg. F., there will be a 5 deg. F. temperature drop to transport the water to the pool complex site. A 15 deg. F. temperature drop through the heat exchangers would provide 99 deg. F. water leaving the pool complex. The hot pool overflow water starts out at 108 deg. F. and would lose about 8 deg. F. temperature drop in the transport to the pool complex. This would make both water flows at 99 deg. F. after leaving the pool complex.

Because of the need to keep the large pool system in operation and maintain normal operations, I recommend that the work be done in phases as follows:

Phase I:

Install a new hot water pump in a new pump pit located at the source of the 119 deg. F. water.

Install a new line from the new pump location up the



hill and intersect the existing 15-inch line which presently serves the pool complex. Remove the existing 30 horsepower pump and abandon the existing 15-inch concrete line from the pump location to the connection point of the new line.

Run a sewer camera down the 15-inch concrete line and repair any bad places that restrict the flow.

The existing heat exchangers for the large pool are ready to be replaced and major repair work needs to be done before next season. Replace the present heat exchangers with new stainless steel high efficiency plate heat exchangers.

The work involved in Phase I could be completed in time for the opening of the 1990 swimming season so there would be no loss of pool usage and a savings in repair work needed to start the 1990 season would be realized. The other advantage of Phase I would be to provide a constant source of higher temperature hot water for use in the heat exchangers with no interruption of flow.

Additional heat exchangers could be added so the hot water could be used to heat the small pool and provide building heat in the winter.



Phase I is not a good long term solution because:

(1) The pipe being used is a twenty-year-old concrete pipe with many problems; (2) High pumping costs exist because of the long distance; (3) The 1.7 million gallons per day of overflow water from the hot pools is not being utilized.

Phase II:

Build two gravity flow hot water lines from the old natatorium site to a new pump pit and distribution box just south of the pool complex, keeping the two water sources separated. Install pumps at this location to supply the needed hot water to the pool building for use and then return the water to the pump pit or discharge it to the river. The pump installed under Phase I could remain in place and be used as a backup or emergency pump or relocated to the new pump pit for primary use to the pool building. It is recommended that variable speed pumps be used so that the flow can be matched to the load requirements and reduce the over-all electrical pumping costs.

Water could be tapped off from these lines and used anywhere along the route of the line, such as heating the Memorial Building or other future developments by the Foundation.

Phase II:

1. Install new 16-inch diameter and
24-inch diameter plastic gravity
flow lines to a new pump pit box
just south of the swimming pool
complex _____ \$126,000
2. Build pump pit box and provide
pumps to supply the pool complex
building _____ \$ 23,500
- TOTAL _____ \$149,500
=====

Phase III:

1. Extend the lines past the condo
complex to the Idaho State Hot
Springs Foundation property
line _____ \$ 24,000
2. Build pump pit box and overflow
line to the river _____ \$ 10,000
- TOTAL _____ \$ 34,000
=====

282,100



PAYBACK ANALYSIS

Payback analysis of the costs involved on this project is not a usable number because many of the costs include replacement of existing worn out equipment and piping.

Another problem is that the changes suggested will increase the temperature of the pools, which may extend the usage and comfort, which are hard items to put a dollar figure on.

With a heat loss of 5,360,000 BTU/hr the large pool would require a cost of about \$6,500 per month, if the water were heated with a natural gas boiler, to maintain the present temperature during the pool season.

Phase III:

This phase would extend the hot water lines past the pool complex and the condo complex to a final box location at the edge of the Idaho State Hot Springs Foundation property where the water could be leased for private use or returned to the river.



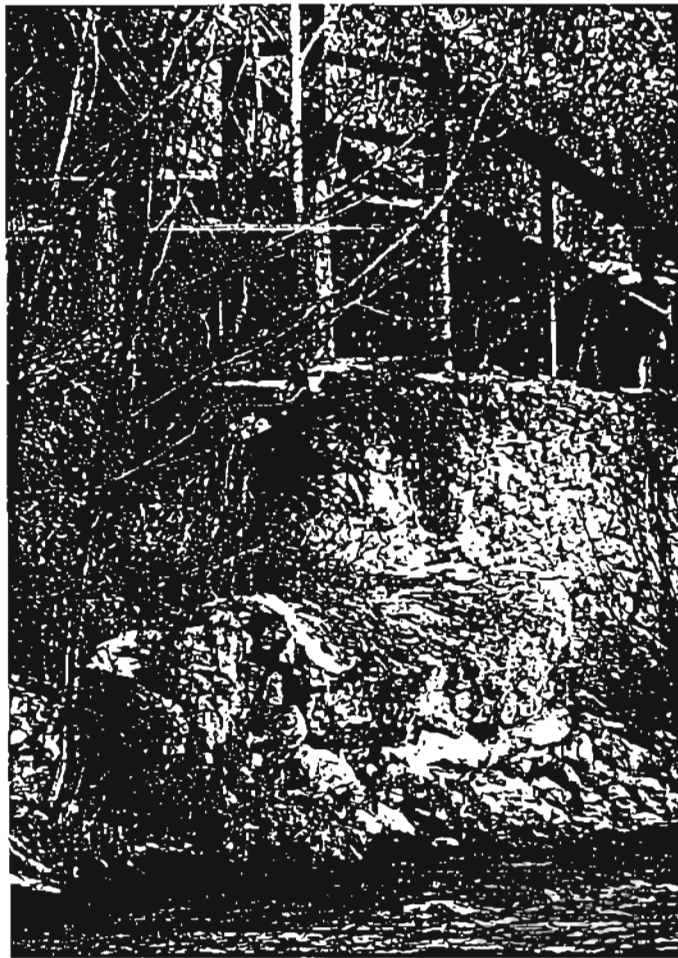
ADDITIONAL CONSIDERATIONS:

- A. The Phase II project shows the lines following the river bank. The present north river bank is being eroded each spring with the high flood waters. Many of the original walkways and stone walls are now falling into the river. A beaver making his home along this stretch of the river is busy cutting down most of the trees and larger willows along the north bank causing additional problems. With coordination between the Department of Water Resources and the Department of Fish and Game, the new lines could be run near the north bank of the river and the bank cleaned of debris, rock and soil added, and new trees planted to preserve the environment of the location after the lines are installed and restore this area back to its original beauty and access.
- B. The present cold water well at Pump House #1 provides an adequate supply for irrigating the large lawn areas around the Foundation pools. Since potable cold water is in short supply, this water could be sold to the city for additional revenue during the high demand months of the summer. The line would need to be



modified for freeze protection in the winter. The overflow hot water from the hot pools could be used to do the irrigating of the large lawn areas.

- C. As the new gravity pipes are installed from the old natatorium site to the pool complex, a walkway could be placed over the pipes. The heat loss from the pipes would keep the walkway clear of ice and snow in the winter and provide a nice connecting link between the swimming pools and the hot pools.



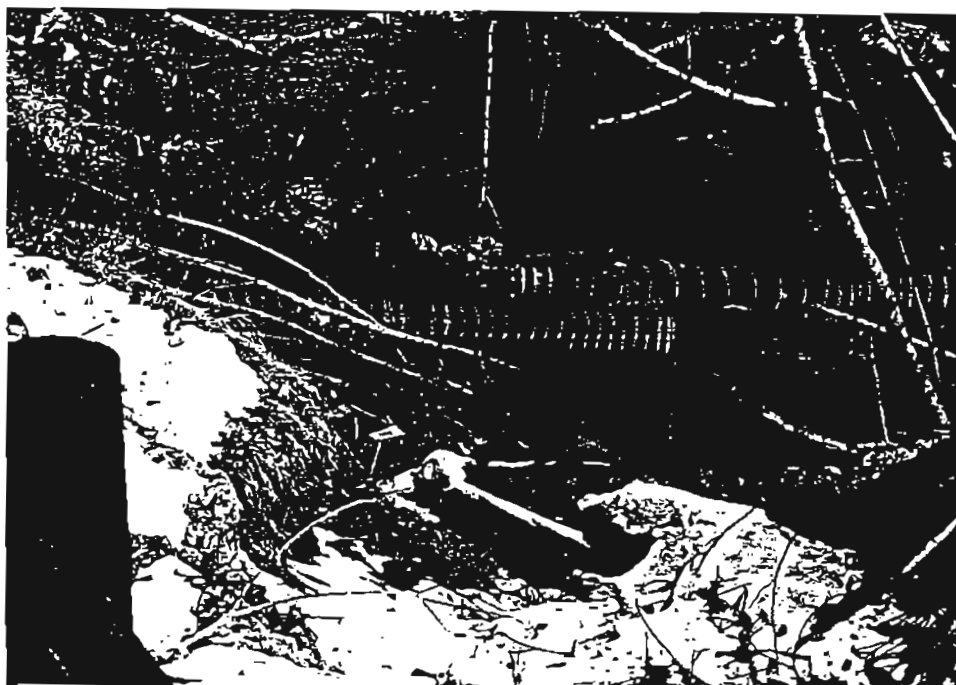
Existing stone wall
fallen into river



High water
erosion of
stone wall
and river bank



Tree cut down
by beaver



Willows cut
down by
beaver



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COSTS INVOLVED

Phase I:

1. New hot water pump and pump pit
with connection to existing
15-inch line ————— \$ 26,260
2. Two new stainless steel heat
exchangers to replace the existing
units ————— 33,600
- TOTAL ————— \$ 59,860

Phase Ia:

1. Additional heat exchanger and pump
system to heat the small pool ——— \$ 23,500
2. Additional heat exchanger and pump
system to heat the building in
winter ————— 16,300
- TOTAL ————— \$ 39,800



PROTESTANT'S EXHIBIT C





State of Idaho
DEPARTMENT OF WATER RESOURCES

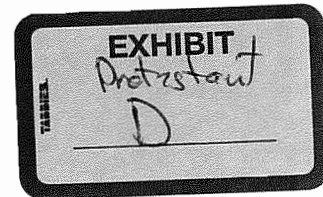
Western Region, 2735 Airport Way, Boise, Idaho 83705-5082 - (208) 334-2190
FAX (208) 334-2348

PHILIP E. BATT
GOVERNOR

KARL J. DREHER
DIRECTOR

May 8, 1997

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Pocatello, ID 83204-0967



Ray W. Rigby
Attorney at Law
P.O. Box 250
Rexburg, ID 83440-0250

Re: Application for permit nos. 29-08162 and 29-08164 in the name of Lazy V Ranch

Gentlemen:

On October 3, 1996 a prehearing conference was conducted for application for permit nos. 29-08162 and 29-08164 in the name of Lazy V Ranch. Almost simultaneous with the conference, a request was filed with the Idaho Attorney General's office, asking for an opinion regarding the authority granted to the Lava Hot Springs Foundation by Title 67, Chapter 44 of the Idaho Code. The issue was whether the Lava Hot Springs Foundation was granted exclusive ownership of the waters arising on lands described by the statutes, and whether the foundation was required to comply with laws requiring appropriation of water. Because of the pending request for interpretation of the law, and a fear that a proceeding without the interpretation might be wasteful, all of the parties agreed to defer any action until a decision was rendered by the Attorney General's office.

The Attorney General issued his opinion on January 9, 1997. A copy of the decision is enclosed. The Attorney General determined that the foundation did not receive exclusive ownership of the waters contained on his property, and that the foundation was required to adhere to the appropriation process. The holding determines that the foundation cannot directly contract to deliver water to an individual outside of the foundation's boundaries, and that the individual must also adhere to the appropriation process. Lazy V Ranch is required to continue to pursue its applications for permit.

Jack H. Robison
Ray W. Rigby
May 8, 1997
Page 2

I want to press forward with prehearing matters and schedule a hearing. I would like to schedule a hearing for July 8-9, 1997, unless you want to engage in discovery or you feel another prehearing conference would be fruitful. I will schedule a hearing for July 8-9, 1997 if I haven't heard from the parties by May 21, 1997.

If Lazy V Ranch is now diverting water for fish propagation as proposed by its applications for permit, Lazy V Ranch should either: (1) Remove the fish, allowing a reasonable period not exceeding thirty (30) days, for removal, or (2) Demonstrate ownership of sufficient water rights to authorize the use by Lazy V Ranch. Water proposed for diversion by Lazy V Ranch that wastes from Lava Hot Springs Foundation property should discharge to the river as directly as possible if there is no water right authorizing diversion of water by Lazy V Ranch.

Respectfully,



Gary Spackman
Western Region Manager
Idaho Department of Water Resources

GS/dde
Enclosure

- c. George Katsilometes
John Mehlhaff
Evelee Hill Rush
Thayne Vargason
Harold Jones, Eastern Region

PROTESTANT'S EXHIBIT E



PROTESTANT'S EXHIBIT F



PROTESTANT'S EXHIBIT G



PROTESTANT'S EXHIBIT H



PROTESTANT'S EXHIBIT I



IDAHO
DEPARTMENT OF WATER RESOURCES
WELL DRILLER'S REPORTUSE TYPEWRITER OR
BALLPOINT PENState law requires that this report be filed with the Director, Department of Water Resources
within 30 days after the completion or abandonment of the well.

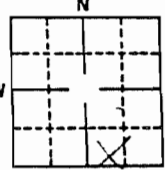
1. WELL OWNER Name <u>GEORGE W. KATSIKIDAKIS</u> Address <u>15 PORTNEUE AVE LAUREL, ID 83043-46</u> Owner's Permit No. <u>99-89-2-014</u>		7. WATER LEVEL Static water level <u>7</u> feet below land surface. Flowing? ☐ Yes ☒ No G.P.M. flow _____ Artesian closed-in pressure _____ p.s.i. Controlled by: ☐ Valve ☐ Cap ☐ Plug Temperature _____ °F. Quality _____ Describe artesian or temperature zones below.																																																																							
2. NATURE OF WORK ☒ New well ☐ Deepened ☐ Replacement ☐ Well diameter increase ☐ Abandoned (describe abandonment procedures such as materials, plug depths, etc. in lithologic log)		8. WELL TEST DATA ☒ Pump ☐ Bailer ☒ Air ☐ Other _____ <table border="1"><thead><tr><th>Discharge G.P.M.</th><th>Pumping Level</th><th>Hours Pumped</th></tr></thead><tbody><tr><td><u>50+</u></td><td></td><td></td></tr><tr><td></td><td></td><td></td></tr><tr><td></td><td></td><td></td></tr></tbody></table>		Discharge G.P.M.	Pumping Level	Hours Pumped	<u>50+</u>																																																																		
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<u>50+</u>																																																																									
3. PROPOSED USE ☒ Domestic ☐ Irrigation ☐ Test ☐ Municipal ☐ Industrial ☐ Stock ☐ Waste Disposal or Injection ☒ Other <u>COMMERCIAL - HEATING</u> (specify type)		9. LITHOLOGIC LOG <table border="1"><thead><tr><th rowspan="2">Bore Diam.</th><th colspan="2">Depth</th><th rowspan="2">Material</th><th colspan="2">Water</th></tr><tr><th>From</th><th>To</th><th>Yes</th><th>No</th></tr></thead><tbody><tr><td>1"</td><td>0</td><td>2</td><td>TOPSOIL</td><td></td><td></td></tr><tr><td>12"</td><td>2</td><td>18</td><td>BANDERS</td><td></td><td></td></tr><tr><td>12"</td><td>18</td><td>24</td><td>WHITE SANDSTONE</td><td></td><td></td></tr><tr><td>14"</td><td>24</td><td>37</td><td>SANDSTONE - BROWN CLAY</td><td></td><td></td></tr><tr><td>14"</td><td>37</td><td>56</td><td>CLAY - SANDSTONE</td><td></td><td></td></tr><tr><td>14"</td><td>56</td><td>57</td><td>CLAY - SANDSTONE</td><td></td><td></td></tr><tr><td>14"</td><td>57</td><td>62</td><td>CLAY - SANDSTONE</td><td></td><td></td></tr><tr><td>14"</td><td>62</td><td>63</td><td>CLAY - SANDSTONE</td><td></td><td></td></tr><tr><td>14"</td><td>63</td><td>74</td><td>CLAY - SANDSTONE</td><td></td><td></td></tr><tr><td>14"</td><td>74</td><td>10</td><td>SAND - GRAVEL - SANDSTONE</td><td></td><td></td></tr></tbody></table>		Bore Diam.	Depth		Material	Water		From	To	Yes	No	1"	0	2	TOPSOIL			12"	2	18	BANDERS			12"	18	24	WHITE SANDSTONE			14"	24	37	SANDSTONE - BROWN CLAY			14"	37	56	CLAY - SANDSTONE			14"	56	57	CLAY - SANDSTONE			14"	57	62	CLAY - SANDSTONE			14"	62	63	CLAY - SANDSTONE			14"	63	74	CLAY - SANDSTONE			14"	74	10	SAND - GRAVEL - SANDSTONE		
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4. METHOD DRILLED ☒ Rotary ☐ Air ☐ Hydraulic ☐ Reverse rotary ☐ Cable ☐ Dug ☐ Other _____																																																																									
5. WELL CONSTRUCTION Casing schedule: ☒ Steel ☐ Concrete ☐ Other _____ <table border="1"><thead><tr><th>Thickness</th><th>Diameter</th><th>From</th><th>To</th></tr></thead><tbody><tr><td>1/2" Inches</td><td>1 1/2" Inches</td><td>1 feet</td><td>23 feet</td></tr><tr><td>1/2" Inches</td><td>1 1/2" Inches</td><td>23 feet</td><td>32 1/2 feet</td></tr><tr><td>1/2" Inches</td><td>1 1/2" Inches</td><td>32 1/2 feet</td><td>32 1/2 feet</td></tr></tbody></table> Was casing drive shoe used? ☐ Yes ☐ No Was a packer or seal used? ☐ Yes ☐ No Perforated? ☐ Yes ☐ No How perforated? ☐ Factory ☐ Knife ☐ Torch ☐ Gun Size of perforation _____ inches by _____ inches Number _____ From _____ To _____ _____ perforations _____ feet _____ feet _____ perforations _____ feet _____ feet _____ perforations _____ feet _____ feet Well screen installed? ☐ Yes ☒ No Manufacturer's name _____ Type _____ Model No. _____ Diameter _____ Slot size _____ Set from _____ feet to _____ feet Diameter _____ Slot size _____ Set from _____ feet to _____ feet Gravel packed? ☐ Yes ☒ No ☐ Size of gravel _____ Placed from _____ feet to _____ feet Surface seal depth <u>11"</u> Material used in seal: ☒ Cement grout ☒ Bentonite ☒ Pudding clay ☐ _____ Sealing procedure used: ☐ Slurry pit ☐ Temp. surface casing ☒ Overbore to seal depth Method of joining casing: ☐ Threaded ☒ Welded ☐ Solvent Weld ☐ Cemented between strata Describe access port _____		Thickness	Diameter	From	To	1/2" Inches	1 1/2" Inches	1 feet	23 feet	1/2" Inches	1 1/2" Inches	23 feet	32 1/2 feet	1/2" Inches	1 1/2" Inches	32 1/2 feet	32 1/2 feet																																																								
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6. LOCATION OF WELL Sketch map location must agree with written location.  Subdivision Name <u>110</u> Lot No. _____ Block No. _____ County <u>BANKS</u> Sec. <u>21</u> T. <u>4</u> S. R. <u>21</u> W.		10. Work started <u>March 11</u> finished <u>March 2</u> 19 <u>90</u>																																																																							
11. DRILLERS CERTIFICATION I/We certify that all minimum well construction standards were complied with at the time the rig was removed. Firm Name <u>PROTESTANT CONSTRUCTION</u> Firm No. <u>300</u> Address <u>100 W. 200 N. 12</u> Date <u>3-26-90</u> Signed by (Firm Official) _____ and (Operator) <u>+</u>																																																																									

EXHIBIT
(Protestant)

GRUNDFOS

4-30-90

Step Test on
Static Water Level

Kasilomates well LAVA H.S.
7' 3" Time 4:45

120° F

From ground Level To Test
Level 2' offset.

gpm
120

3:00	14'		
1:50	16'		
1:30	16' 7"		
2:00	17' 2.5"		
2:30	20'		
3:00	21' 8"		
3:30	22' 8"		
4:00	22' 5"		
4:30	22' 5"		116.3
5:00	22' 5"		
10:00	24' 6"		109.1
20:00	25' 4"		105.8
30:00	26' 8.5"		
40:00	27' 10"		103.5
50:00	28' 11.5"		
60:00	29' 4.5"		
70:00	30' 4"		101.7
120:00	30' 10.5"	122° F	
180:00	31' 1.5"		103.4
240:00	31' 4"		
17.5 Hrs.	34' 8.5"	122° F	111.1 gpm

Recovery Test

10:30 A.M. 5-1-90

:30	
1:00	28'
1:30	24'
2:00	
2:30	23'
3:00	
3:30	22'
4:00	
5:00	21'
10:00	18.5'
15:00	16'
20:00	15'
25:00	14'

Tested By :

Rodney J. Haskins

FORWARD WHITE COPY TO WATER RESOURCES

10-31-95 Katsilometes' Low Temperature Geothermal Well

Well #1 Temperature Test (Degrees F)

# <u>Pressure</u>	<u>With Well #2</u>	<u>Without Well #2</u>
50		100.6
45		101.5
40		102.3
35		103.2
30		103.5
25		103.7
20		104.0
15		104.2
10	109.8	104.6
9	110.0	104.6

(Note: Temperature rose to 119.0 degrees F when pump motor placed at bottom of well and with well No. 2 pumping)

Test conducted by: Rodney Hendricks of Independent Well Drilling, Blackfoot, ID.

well #1 Test

o/o well
#2

Pressure

50

188.6⁵

101.5°

102.3°

10520

 107.5°

7.5.7°

1841

107.20

104.6° 4:50
1845

105.9°
110° 46° C

Harvard

Ph.D. where
X 2-24-

John May

[illegible]



Legy Spackman
RECEIVED

APR 22 1997

Department of Water Resources

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

April 21, 1997

RECEIVED

MAY 06 1997

WATER RESOURCES
WESTERN REGION

Mr. John Mehlhaff
Intervac RTP Systems
3845 Atherton Road, Suite 1
Rocklin, CA 95765

Re: Investigation of Complaint Concerning Bob Meline and Lava Hot Springs
Foundation

Dear Mr. Mehlhaff:

The Attorney General's Office has concluded its investigation of the allegations you made concerning the diversion of geothermal water at the Lava Hot Springs Foundation. The Investigative Report is enclosed for your review. We have found no violations of law by Mr. Meline. We have closed our investigation of this matter.

Sincerely,

David G. High
Chief, Civil Litigation Division
Office of the Attorney General

DGH/kb
Enclosure
CIV LIT MISC/LAV-LT.DOC

cc: Jim Yost, Office of the Governor
✓ Phil Rassier, Idaho Department of Water Resources
Dennis Dunn, Eastern Region, Idaho Department of Water Resources
Bob Meline, Lava Hot Springs Foundation



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

INVESTIGATIVE REPORT

DATE: April 18, 1997

INVESTIGATED BY: Kathie L. Brack
Civil Litigation Division
Office of the Attorney General

REVIEWED & APPROVED BY: David G. High
Chief, Civil Litigation Division
Office of the Attorney General

SUBJECT: Complaint of John Mehlhaff concerning allegations
of wrongdoing by the Executive Director of the
Lava Hot Springs Foundation

COMPLAINT

John Mehlhaff filed a complaint with the Idaho Attorney General's Office making various allegations concerning the diversion of geothermal water from state-owned Lava Hot Springs Foundation ("Foundation") property to adjacent private property owned by Karen and Thayne Vargason. Mr. Mehlhaff alleges that the heat exchange system used by the Foundation and its facilities is being operated in such a way as to divert geothermal resources from the state-owned facility to the Vargason's property and that the Executive Director of the Foundation, Bob Meline, has benefited financially from this diversion. The complaint also asserts that public monies were used in building the delivery system to a pond located on the Vargason property. Mr. Mehlhaff's complaint states that the heat exchange system utilized by Lava Hot Springs requires 15 gallons per minute to satisfy the heating needs of the facility, but is using an amount in excess of that solely to divert geothermal water to the Vargasons. Mr. Mehlhaff requested that the Attorney General conduct an investigation into these allegations.

In a separate telephone conversation, Mr. Mehlhaff suggested that Mr. Meline had caused unnecessary pipe lines to be run through the Vargason property for the purpose of diverting

geothermal water to the Vargasons and alleged that Mr. Meline had gained personally from this diversion.

INVESTIGATION

I interviewed Floyd Jensen, who served as Chairman of the Board of Directors for the Foundation ("Board") through the bidding, design review and installation of the heat exchange system. Governor Batt appointed Dwaine Wellard as Chairman in 1995 to replace Jensen. Jensen will remain on the Board until 1999. Mr. Meline is an exempt state employee and oversees the daily operations and management of the facility. He works in accord with the wishes of the Foundation directors and serves at their pleasure (Idaho Code § 67-4404).

In accordance with a directive by then-Governor Andrus, the Department of Public Works ("DPW") was charged in 1989 with developing the geothermal resources at the Foundation's facility to reduce the cost of natural gas heating which was used at the time to heat several outdoor pools and various buildings. A study was conducted by Charles L. Sudweeks of Engineered Systems Associates, Inc. of Pocatello for DPW and the Board to determine the feasibility and costs of converting the system to geothermal heat. Mr. Sudweeks studied the heating needs of the facility and designed a heat exchange system to extract heat from artesian geothermal water for which the state has beneficial use rights. The project was put out to public bid and advertised. The Foundation's ~~directors~~ awarded the engineering contract to Mr. Sudweeks's firm.

Mr. Mehlhaff has stated that he believes Mr. Meline used a \$500,000 grant to install the system. The Idaho State Legislature appropriated approximately \$400,000 in 1990 for pumps, heat exchangers, transport pipes, excavation and design. The project was approved by the Board. The project was overseen by DPW and was subject to the annual audit of the Foundation by the Idaho Division of Financial Management ("DFM"). Interviews conducted with staff auditors at DFM indicated there have been no questionable audits of the Foundation's expenditures.

2 The heat extraction system necessitates a discharge system for waste water after heat extraction occurs. Two 12-inch discharge pipes (one for each of the two pumps utilized by the system) run north behind the large cold water pool (See, site map attached to Idaho Department of Water Resources ("IDWR") Field Report, **Attachment A**). This area is owned by the state and operated by the Foundation. According to the Field Report prepared by Ken Baker, Conservation Bureau Chief and Russell Rydalch, engineer at IDWR (**Attachment A**), each of the discharge pipes contain valve boxes located at various places along the pipes. Both Mr. Meline and Mr. Jensen stated that these transport pipes were located north of the large pools for possible future development of diversion of geothermal water to the north western quadrant of the Foundation property. The valve boxes were installed to permit future expansion and/or diversion of geothermal water to this area. According to Mr. Jensen, the initial plan as drawn by Mr. Sudweeks and accepted by the Foundation directors called for these pipes to make a 90° turn south and run along the western perimeter of the state-owned property to discharge into the Portneuf River.

During the site surveying process, a woman who identified herself as the manager of the condominium complex indicated to the plumbing contractor, Gary Blanchard of Greene Plumbing and Mr. Sudweeks, that she was very displeased that there would be excavation through the landscaped areas adjacent to the condominiums. In an interview I conducted with Mrs. Jerry Wellard, she stated that she was the manager of the condominiums at the time of the conversion project, but denied telling Mr. Blanchard or Mr. Sudweeks that she was opposed to excavations through land adjacent to the condominiums stating, "I wouldn't have told them I was against running pipes through the condominium property, because I didn't have the authority."¹

In separate interviews with Mr. Blanchard and Mr. Sudweeks, both stated that the manager of the condominiums informed them during their surveying of the area that she did not want them to excavate areas surrounding the condominiums and was particularly concerned about disturbing the trees and tennis courts. Attached are copies of letters from both Mr. Blanchard and Mr. Sudweeks written to various parties prior to this investigation which describe their recollections of conversations with Mrs. Wellard (Attachments B & C). Mr. Jensen further stated that Mr. Meline came to him during the site surveying stage and told him that the condominium lease holders objected to discharge pipes running through the condominium property. Mr. Meline asked Mr. Jensen if he should contact the Vargasons and try to obtain an easement for an alternate discharge route. According to Mr. Jensen, there has been a history of conflict between the lease holders and the Foundation; Mr. Jensen agreed with Mr. Meline that it would be best to avoid further conflict with the lease holders and authorized Mr. Meline to find an alternative route for the discharge lines. I also interviewed Mr. Meline and Karen Vargason regarding this issue. Mr. Meline remembers that Mr. Sudweeks and Mr. Blanchard told him that the condominium owners would be upset if the Foundation excavated through the grounds. He stated that this was the sole reason he sought approval from the Board to negotiate an easement with the Vargasons. Mrs. Vargason also recalled that when Mr. Meline spoke to her about a possible easement he indicated that this was something of an emergency since the project was underway and it was imperative the he quickly locate an alternative discharge route.

Mr. Jensen told me that some of the condominium lease holders, including Mr. and Mrs. Wellard, have historically been highly critical of the Foundation, Mr. Meline and the operation of the facility, and that the relationship between the parties has been strained for some time. He also stated that there is some local sentiment, possibly including the Wellards, of people who are opposed to the state owning this property and a desire to see the facility privatized.

Attached are copies of the 1991 agreements between the Foundation and the Vargasons, in which the Vargasons granted the Foundation an easement for the installation of two 12-inch discharge pipes running to the Portneuf River (Attachment D). In lieu of payment, the Foundation agreed that the Vargasons could use all excess water discharged through the line. Mrs. Vargason stated that she hired her own contractor to install two 6-inch diversion lines from the state-owned lines to discharge waste water to a cold-water pond on her property. The pond

¹ It should be noted that Mrs. Wellard's husband, Dwaine Wellard, is currently the chairman of the Foundation's Board of Directors. In a separate conversation with Mr. Wellard, he stated that he has no knowledge or evidence that Mr. Meline has benefited personally from the diversion of water to the Vargasons.

had been installed in approximately 1988 and was used to raise trout. Attached is a copy of a receipt from L. W. Frandsen & Sons Well Drilling, indicating that the Vargasons paid for the trenching to their pond in May 1994 (**Attachment E**). According to both Mrs. Vargason and Dennis Dunn, water agent from IDWR, the geothermal water that is discharged through this line is non-consumptive and runs through a pond stocked with warm water talapia fish before flowing back to the river.

In interviews with Mrs. Vargason, her attorney Jack Robison, Mr. Meline and Mr. Dunn. I was informed that the Vargasons do not have a demand agreement with the Foundation for discharge water (See, Jack Robison letter of July 22, 1996, **Attachment D**). The Vargasons can only access whatever water is discharged through the line. The agreement between the parties appears to conform to this agreement. The Field Report also confirms this to be the case. In their description of the heat exchange system, Mr. Baker and Mr. Rydalch confirmed that the heat exchange system is self-regulating: once the set-point temperature is determined, the variable speed pump pumps only as much water as is required through the heat exchangers to extract the amount of heat necessary to maintain the set-point temperature for the facility.

According to the Field Report, the majority of the water that is available from the artesian spring and which is pumped through the heat exchange system, flows directly to the river. It was confirmed by Mr. Dunn that there are two sumps, one for each pump, and all of the water not pumped through the exchangers for heat extraction flows directly from the sump to the river. A minimal amount of water is diverted north of the pools from the heat exchangers and through the lines on the Vargason easement. The Field Report and Mr. Dunn's on-site observation confirm that the water which runs through the Vargason easement diverts through a locked valve box on Foundation property and was originally designed into the system as a by-pass to bleed air out of the pipes before reaching the heat exchangers. It was explained by both Mr. Sudweeks and Mr. Meline that this valve design was necessary to increase pump efficiency. According to Messrs. Sudweeks, Meline and Jensen this was the original design accepted by the Foundation--well before the negotiation of the easement with the Vargasons. Mr. Dunn has measured the water running through the Vargason lines and found that of the approximately 32 gallons per minute that runs through the by-pass lines, approximately 20 gallons per minute diverts through the Vargason's 6-inch lines into their pond (**Attachment F**).

It is only this nominal amount of water from the by-pass which is diverted through the Vargason easement. The larger volume of water flowing through the heat exchangers and the sumps is discharged directly through Foundation property to the river. As Mr. Dunn points out in his September 10, 1996, correspondence, the flow through the by-pass is independent of the variable flow through the heat exchangers and is static--irrespective of the flow through the heat exchangers and the sumps--this flow is constant. According to Mr. Sudweeks and Mr. Baker, the large swimming pools which are serviced by the heat exchange system contain over one million gallons of water. As the Field Report notes at page 2, "the pumping ... of water is directly tied to the need for energy." Interviews with Messrs. Meline, Sudweeks and Dunn, confirm that the facilities are heated year round to prevent freezing of the pools and damage to the concrete walls. The construction of the pools requires that they be filled at all times to avoid collapse. While the amount of heat needed for the Foundation facilities varies throughout the year, the need for heat

9 extraction and therefore discharge at the facility is constant year round, regardless of whether the facility is open for public use.

1 Attached is a copy of the October 10, 1995, memorandum from Ron Carlson, Regional Manager, Eastern Region of IDWR (Attachment G). The memorandum addresses a number of allegations made by George Katsilometes to IDWR and the Governor's Office regarding the Foundation's diversion of geothermal waste water to the Vargasons. Mr. Katsilometes owns property adjacent to Mr. Mehlhaff, and while he has not filed a written complaint with this office, he has contacted Deputy Attorney General David High to complain about the Vargason's access and use of the Foundation waste water and has previously made allegations similar to those of Mr. Mehlhaff to both Governor Batt and IDWR. Mr. Carlson's memorandum confirms that the Foundation's water rights are for 6.77 cfs and the use in 1995 was approximately two-thirds of the amount claimed. The memorandum also indicates that at the time Mr. Katsilometes made his allegations to IDWR in 1995, several staff members investigated the allegations and met with Mr. Katsilometes. The memorandum also references a meeting between IDWR staff, Mr. Katsilometes and Mr. Sudweeks in which a number of Mr. Katsilometes' concerns were addressed. The memorandum specifically memorializes the discussion between the parties as to the Foundation's year round need for heat (and heat extraction) and the circumstances which gave rise to the easement in lieu of payment between the Vargasons and the Foundation.

Mr. Mehlhaff and Mr. Katsilometes are concerned that the Vargasons are benefiting from the waste diversion through their pond. It should be noted that at the time the easement agreement was negotiated in 1991, the Vargasons had an existing water right permitting them to draw water directly from the Portneuf River. After they placed lines from the state-owned discharge lines in 1994 to access discharge water, the Vargasons entered into an experiment with Lockheed Corporation, Shelley High School and Idaho State University to determine whether or not the geothermal waste water would support a population of warm-water fish. While the experiment has apparently been successful, the Vargasons claim not to have harvested the fish for profit; however, this is their goal. Mr. Dunn believes that no harvestation of fish has occurred to date. Because they do not have a demand right for water from the Foundation, the Vargasons believe their for-profit operation is precarious. It was confirmed by Mr. Meline, Mrs. Vargason and Mr. Dunn that the Foundation's primary pump malfunctioned for several days during March 1996, and while it was not pumping the temperature in the Vargason pond dropped and killed over 20,000 fish. There has been no allegation nor is there any evidence that the Vargasons are seeking to acquire a demand right from the Foundation.

The Vargason's currently have two applications for water rights pending before IDWR and are seeking to increase their non-consumptive use of additional waste water. Mr. Katsilometes, Mr. Mehlhaff and others have protested these applications. The hearing on the applications was continued pending an opinion from the Attorney General's Office regarding whether or not IDWR has jurisdiction over the Foundation's hot water resources. The Attorney General released Opinion No. 97-1 on January 9, 1997. Pertinent to these matters, the opinion concludes:

 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. The Foundation may not authorize the use of any portion of its water in a manner that is inconsistent with its state water right; the rights to use Foundation geothermal waters are subject to regulation by IDWR (See, Attachment H).

CONCLUSION

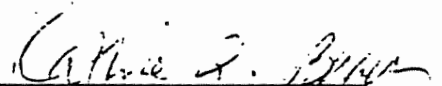
It was apparent in the interviews conducted, that the Foundation is a source of long-standing contention in the community with detractors for virtually every decision made by the Executive Director and/or the Board. It should also be noted that both the Foundation and Mr. Meline enjoy local support. It appears that many of the complaints in opposition to the Foundation are based on incomplete information and/or speculation regarding the operation of the facility, as well as competing interests for geothermal resources. With respect to the heat exchange system implemented by the Foundation in 1991, there may be design alternatives which would achieve the inexpensive and efficient geothermal heating needs sought by the Foundation. However, as noted in the Field Report, the "capacity and operation of the delivery system is in line with the demand for heat transfer [by the facility]."

In subsequent correspondence to the Attorney General's Office, Mr. Mehlhaff has questioned the design and operation of the heat exchange system, and in particular the air-bleed valve design. The design of the heat exchange system and the operation of the facility are fully within the authority and discretion of the Board of Directors of the Lava Hot Springs Foundation pursuant to Idaho Code § 67-4402. Expenditures of public appropriations and construction projects are subject to audit by the Department of Public Works and the Idaho Division of Financial Management. No evidence of irregularity or impropriety has been noted by either agency. The design issues raised by Mr. Mehlhaff are separate questions from those initially raised regarding alleged wrongdoing by Mr. Meline, however, there is no evidence to suggest that the air-bleed valve design does not achieve its purpose or that it was designed into the system for the purpose of diverting Foundation resources.

 With respect to the operation of the heat exchange system of the Lava Hot Springs Foundation, there is no evidence that Mr. Meline has acted without the knowledge, support or authority of the Board or that he has gained personally in any manner from the outcome or operation of the project. There is no evidence that the water used for the facility's heat extraction is manipulated in order to create discharge. And there is also no evidence that public monies were used in providing access to waste water from the state-owned discharge lines to the Vargason's pond. Further, there is no evidence to support the allegations that the heat exchange system is designed or operated in a manner contrary to the heating needs of the facility, or that it does not efficiently meet its design objectives. The heat exchange system operated by the Lava Hot Springs Foundation appears to meet the purposes of the Foundation and not the alleged water needs of the Vargasons.

The remaining issue contained in the allegations relates to the placement of the discharge lines through the Vargason's property. The system was designed and approved by the Board, not Mr. Meline, to provide for possible geothermal expansion and diversion to the north western quadrant of the Foundation property. This necessitated the placement of discharge lines along the western perimeter of the property. The original plans as bid placed these discharge lines along the boundary between the state land and the Vargason's property and necessitated excavation through land owned by the state and leased to a nearby condominium development. In order to avoid additional enmity with the condominium lease holders the Board directed Mr. Meline to seek an alternative route for the discharge of waste water to the Portneuf River. An alternative route approximately fifteen feet west of the original site was obtained by an easement agreement between the Foundation and the Vargasons. The original plan designed by Mr. Sudweeks, prior to the negotiation of the easement included an air bleeder valve requiring a nominal amount of static water flow in order to increase pump efficiency and reduce temperature build-up.

There is no evidence that Mr. Meline made either a unilateral or unauthorized decision to relocate discharge lines on the Vargason property. The Foundation (and its agent) is fully within its authority to enter into easement agreements and authorize the use of a portion of its water in a manner which is consistent with its rights. There is no evidence that any state monies have been expended in providing the Vargasons with access to a nominal amount of waste water granted to them in exchange for an easement to the Foundation, and no evidence that Mr. Meline has personally benefited in any manner from the outcome of the Lava Hot Springs Foundation geothermal conversion. No facts have been found to support the allegations.


Kathie L. Brack, Investigator
Civil Litigation Division
Office of the Attorney General

Approved By:


David G. High, Chief
Civil Litigation Division
Office of the Attorney General



FIELD REPORT

OBSERVATIONS OF THE GEOTHERMAL HEATING SYSTEM AT THE LAVA HOT SPRINGS STATE FACILITY

August 26, 1996

BACKGROUND

In early July, Kathie Brack, Legal Assistant for the State Attorney General's office, requested that Energy Division staff perform an analysis of the geothermal heating system being utilized at the Lava Hot Springs Foundation. The purpose of the analysis was to determine if the geothermal water flow through Foundation heat exchangers, matched the demand (need) for energy to heat two cold water swimming pools and the adjacent service structure (pool building).

This report has been prepared by Ken Baker and Russell Rydalch, Idaho Department of Water Resources Energy Division. The report describes our investigation and observations of the state facility at Lava Hot Springs subsequent to an August 12, 1996 site visit.

We spent approximately three hours at the state facility. At 1 p.m. we met with Mike Hansen, chief of facility maintenance, and Charles Sudweeks, P.E., the design engineer for the cold water pools and pool building heating system. Mr. Sudweeks and Mr. Hansen spent over two hours with us, walking the length of the state-owned property, explaining the entire system of water flow from the points of inflows to the outflows.

Dennis Dunn, Water Agent with the Department's Eastern Division was also on-site during the afternoon. After our facility tour, Dennis re-walked the entire site making a video recording of the facility.

SITE OBSERVATIONS

There are two artesian geothermal springs on the state facility. The upper spring feeds the two large hot pools at the main Foundation facility and office. This water flows out of the lower pool into the Portneuf river. The water is filtered and then typically discharged into the Portneuf river approximately 50 yards down stream from the two hot pools. At the point of discharge into the river there is a diversion box. This box allows the water to be diverted to a pumping station approximately 50 yards further down stream, and acts as back-up hot water for heating the two cold water pools and the pool building which are located approximately 2 blocks down stream of the pump house.

[The main source of geothermal water which is utilized in heating the two cold-water pools

X
and pool building is a second artesian well located at the pump house (approximately 100 yards below the two hot pools and the upper hot spring). This second spring referred to as the new well (new artesian well on Attachment 1). Again, this is an artesian flow. Water from this well which is not being pumped to the cold water pools, overflows into the Portneuf river.

The pumping station has two separate pumps and two separate sources of geothermal water which can be pumped up hill and then gravity fed to the heat exchangers which supply energy (heat) to the cold-water pools. The new well pump has a 10 HP capacity. This is the primary pump. The back-up pump, which utilizes water diverted from the upper hot pools has a 20 HP capacity. This pump and diversion is utilized only if the new well pump fails. According to Mike Hansen, the new well pump has failed twice since the installation of the system.

Both pumps are variable speed. Again, their purpose is to supply water to meet the energy demand of the cold water pools and service building. For example, on the day we visited the facility, the ambient outdoor temperature was in the high 90's, and the cold-water pool temperature of the large (Olympic) pool was set at 100 degrees. This setting provided an actual pool temperature of 90 degrees. The small pool had a set point of 100 degrees with an actual pool temperature of 84 degrees. The pool building required no energy for heating. The demand for flow through the heat exchangers matched the need for these conditions. On a colder day, the pools would lose energy at a higher rate and demand more flow through the heat exchangers in order to meet the temperature set point.

X All water which flows through the heat exchangers is directly discharged into the Portneuf river. There is no diversion of water once it has flowed through the heat exchangers which heat the cold-water pools and pool building. However, the pumping and subsequent flow of water is directly tied to the need for energy at the cold water pools and adjacent pool building, as stated above, with one exception: There is a locked valve box adjacent to the cold-water pools. This is the point of water diversion to the heat exchangers. The two 12 inch pipes which began up stream at the pump house continue approximately 150 yards beyond this valve box and the cold water pools, cross onto private property, make a 90 degree turn, running parallel to state property, and terminate at the Portneuf river. There is a small by-pass flow (estimated to be 50 gallons per minute) which is facilitated through the opening of a valve at the cold-water pool valve box.

This by-pass does have an operational purpose. It allows any air which may be in the 12 inch pipe to be bled by the pipe leading to the heat exchanger, thus keeping air from entering the heat exchange system and causing efficiency and operational problems.

TECHNICAL DESCRIPTION

The following technical observations are descriptive of the hot water piping system which

provides flow through the cold water pool heat exchangers. Attachment #1 is a sketch of the technical description which follows.

Water was flowing in pipe #2, originating at the new well. The valve on pipe # 2 at the valve box near the large pool was slightly opened, allowing a portion of water to continue down the line. A 12" pipe connects to the main pipes here, providing a route for the water to get to the pool building mechanical room.

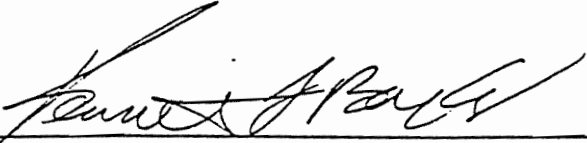
There are four plate heat exchangers in the mechanical room. The function of the exchangers is to take some energy out of the geothermal water. Within each exchanger, the pool water passes over one side of numerous plates while the geothermal water passes over the opposite sides. This is an efficient method of extracting this energy. The operators are satisfied with the system's performance and indicate that it is functioning well. The smallest heat exchanger heats the water that circulates through the building heating system. The two large heat exchangers are for the large swimming pool and the other one is for the small swimming pool. After passing through the heat exchangers the geothermal water is piped directly to the river.

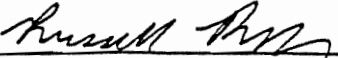
The amount of geothermal water required to maintain a set temperature in the pool will vary as weather and pool usage varies. The operators set the pool temperature in the mechanical room and the heat exchanger control system adjusts the flow to each exchanger as required. * A variable speed pumping system is used in the pump house as a tool to provide efficient pumping. The pumping control system senses pressure and causes the pumps to speed up or slow down as required to maintain a certain operating pressure.

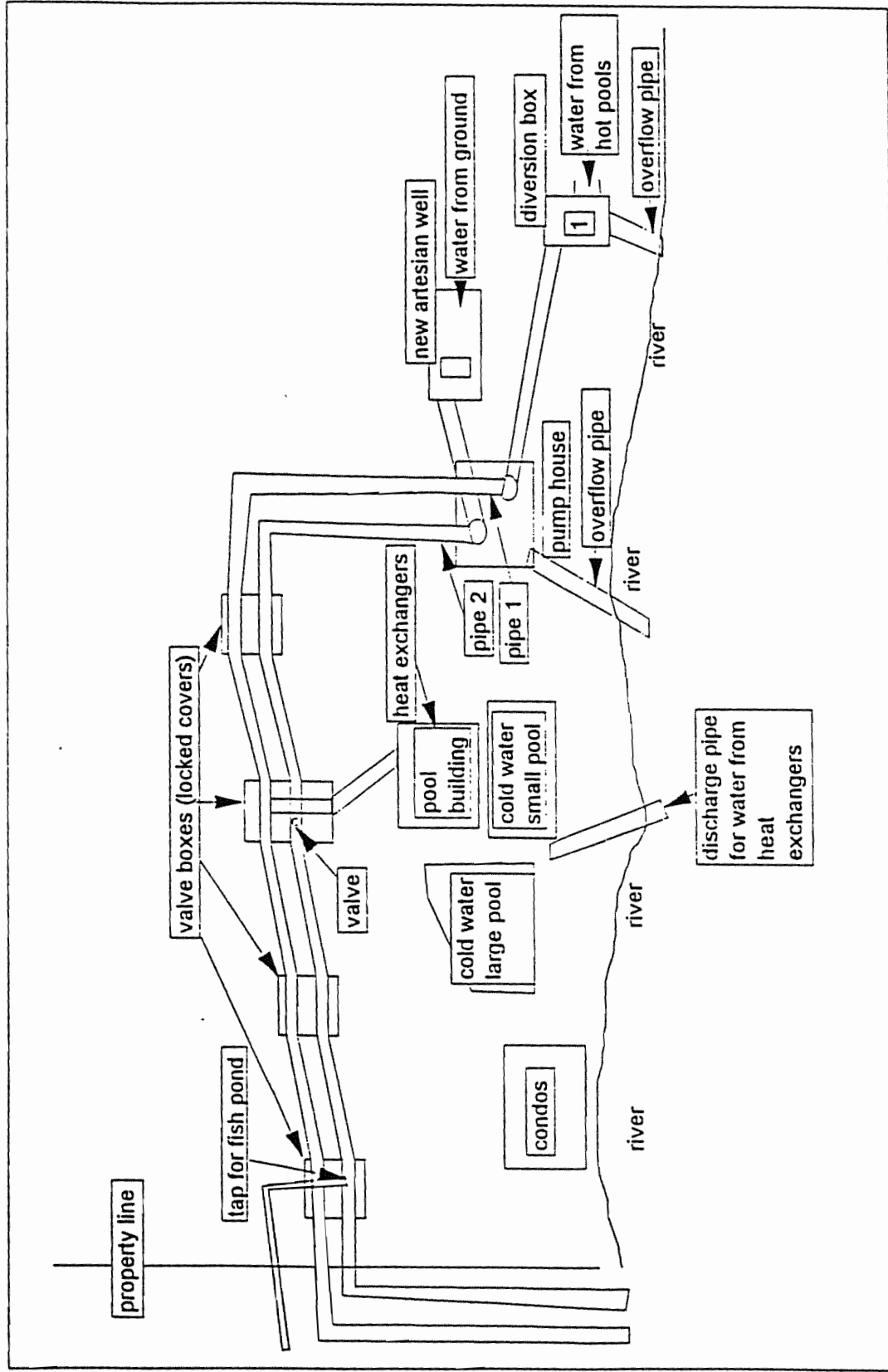
CONCLUSIONS

The idea of heating cold water pools with geothermal water is simple in concept - run hot water through a heat exchanger and transfer a percentage of its energy into to another water stream coming from the pool. The physical design necessary to actually make this transfer of energy possible, piping, valves, controls, pumps, etc., takes on a more complex nature. It is important to remember that this is an engineered system. Though components or operations may seem separate from each other, they do not function in isolation, but work together. To make judgements about one part of the system without knowing its relationship to other operating parts doesn't give proper credit to the sophistication of the design.

We believe that the capacity and operation of the delivery system is in line with the demand for heat transfer to the cold water pools. The extended piping system retains the function and capability to supply other facility needs and future development of the site.

 DATE 8.26.96
Kenneth L. Baker, Conservation Bureau Chief

 DATE 8/26/96
Russell Rydalch, Engineer In Training





ATTACHMENT B

January 23, 1996

Mr. Floyd Jensen, Chairman
Lava Hot Springs Foundation
430 East Main
Lava, ID 83246

Subject: Lava Pool Geothermal piping

Dear Mr. Jensen:

Charles Sudweeks asked to write a letter to you explaining my relationship with the management of the condominiums while we were scoping out the Geothermal project.

In Mid-December, 1990, on one of three occasions, while I was laying out the route for the pipe to parallel the West boundary fence back to the river; I was approached by a lady who identified herself as the management of the condominiums.

I gave her a very brief overview of the work we would be doing in laying the pipe on the West side of the condominiums.

I did not have any confrontation with this person but it was apparent that she was very concerned with the project going through their landscaped area.

A few days later in a meeting with Charles Sudweeks and Bob Meline; I reported my concern about her negative approach to the project. Bob Meline instructed me to withhold any work until he could find an alternate route. Several days later I was told to run the line on the West side of the fence line.

Sincerely,

Gary N. Blanchard

Letter never sent. (max) *cmr*

24-10-1944

24-10-1944



Engineered Systems Associates, Inc.

MECHANICAL - ELECTRICAL - ENGINEERING

January 23, 1996

315 WEST CENTER, POCA TELLO, IDAHO 832
 TELEPHONE - 208-233-05
 FAX - 208-233-05.
 C. SUDWEEKS, P.
 D. SUDWEEKS, P.

Mr. Floyd Jensen, Chairman
 Lava Hot Springs Foundation
 430 East Main
 Lava, ID 83246

Subject: Lava Pool

Dear Mr. Jensen:

As the engineer for the natural hot water line to the swimming pool I would like to make some statements regarding the installation and location of the line carrying the waste water from the pumped line back into the river.

I was hired by the Department of Public Works, as directed by the legislature in September 1989, to make a study of the existing pool conditions and find a way if possible to heat the pool and the buildings with natural hot water, reducing the cost of gas and other utilities. This study was completed in January 1990 and the results were given to the Department of Public Works and the Foundation Board.

In the spring of 1990 the legislature appropriated funds to construct the system recommended by my study. After an interview process, Engineered Systems Associates was selected by the Foundation Board to be the professional engineer on the project. We proceeded to prepare plans and specifications for the construction of the pipe line system as required by state law. Approval had been obtained from EPA, Idaho Fish and Game Department of Environmental Quality, District Health Department, and the Army Corp. of Engineers for the cutting of the bank of the river and returning the waste water back into the river. This water could not be contaminated in any way and could only be used as supplemental make up to the pools and heat recovery from the water temperature.

The plans and specifications were put out to the public bid and advertised as required by the state law. The public bid opening was held on November 29, 1990. I am enclosing a photo copy of the plan showing the location of the waste water line as it was originally bid by the contractors. This line was surveyed by Harper-Leavitt Engineers prior to the bid time and the surveyor indicated that the manager of the condominiums had expressed an interest and concern about what was going to happen with the location of the pipe line since it was crossing an area of the state property that they had under lease. The line would also impact the lawn and the trees near the property line fence.



Floyd Jansen

2.

January 23, 1996

On December 3, 1990 a contract was signed by the foundation with Greene Plumbing Co. of Pocatello, Idaho for the work with requirement that all work be completed by May 1, 1991. Because of the short time frame the contractor was instructed to proceed as soon as the contract documents were complete. Construction started in January 1991.

It was decided that the pipe line would be started from the river entrance and work back toward the pool building. Pipe materials and equipment were brought to the site for use. I was present when the line was being staked out in preparation for the excavation work. We were approached by a lady who identified herself as the manger of the condominiums. She indicated that we would not be allowed to tear up any property because it was under lease and we should contact Bob Meline. Both myself and Gary Blanchard of Greene Plumbing, the contractor, contacted Bob Meline and told him of the conversation. Greene Plumbing was told to stop work until the problem was solved. Several days later we were instructed by Mr. Meline to place the waste water lines on the west side of the fence so as not to disturb the condominium property. The changes were made and the project was completed. The project was put into operation on May 1, 1991.

Very truly yours,

ENGINEERED SYSTEMS ASSOCIATES, INC.


Charles L. Sudweeks

jls

CONFIDENTIAL

LAMONT JONES
JACK H. ROBISON
THOMAS J. HOLMES
JESSE C. ROBISON

LAW OFFICES
JONES, CHARTERED
415 SOUTH ARTHUR
P.O. BOX 967
POCATELLO, IDAHO 83204-0967



TELEPHONE: (208) 232-5
FAX: (208) 232-5

July 22, 1996

STATE OF IDAHO
ATTORNEY GENERAL'S OFFICE
ATTN: Kathy Brack
Civil Litigation
P.O. Box 83720
Boise, ID 83720

RECEIVED
JUL 24 1996
ATTORNEY GENERAL

RE: *Vargason Water Permit*

Dear Kathy:

Pursuant to your request, enclosed please find copies of documents related to the Vargason easement in Lava Hot Springs, Idaho.

The easement on the Vargason property occurred only after the manager of the town house, located upon the Foundation property, refused to allow the Foundation to excavate and construct the discharge pipe near the town houses. The Vargason property is located adjacent to the town house property.

 The sole consideration for the agreement was the mutual covenants set forth in the agreement. The Vargason's only retain the right to connect to the pipe for access to the waste water after use by the Foundation. The Vargason's claim no right to require pumping or other delivery from the Foundation. Their sole benefit is access, at the Foundation's pipeline, to water after use by the Foundation. By analogy, if the pipeline were a ditch waste water, the Vargason's merely retained the right to access the water in the ditch. The water is used by Vargason, via a pipeline they constructed for a fish pond, and then discharged to the Portneuf River. As you will note, there is no grant by the foundation of the water right nor would such grant be effective.

Also enclosed, please find the letter of Gary Blanchard from Green Plumbing and Heating Company, one of the contractors on the project, who witnessed the refusal by the town house management to allow the pipeline, at its originally designed location. Mr. Blanchard prepared this letter for Floyd Jensen, but it was not used. However, he retained the letter in his file.

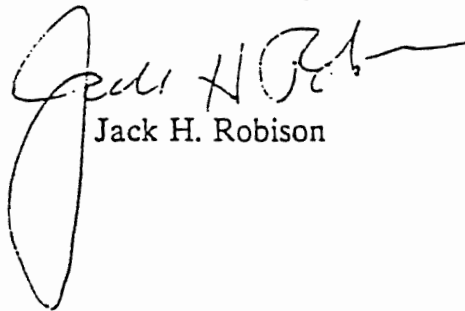
There is absolutely nothing improper regarding this transaction. The Vargason's were not opposed to having the discharge pipe on their property and agreed to an easement on their property. The easement occurred only after opposition to the original proposed location. The Vargason easement was necessary to the project and of substantial benefit at no cost to the Foundation. The complaints you have received are

Kathy Brack
July 12, 1996
Page - 2

not from persons with a concern of the public interest, but, rather, from persons who seek to further their private interests.

If I can be of any further assistance, please advise.

Yours very truly,

A handwritten signature in black ink, appearing to read "Jack H. Robison", with a long horizontal flourish extending to the right.

Jack H. Robison

JHR:kw
cc: Karen Vargason

3/6/91
file 127

Butcher Block Wholesale Meats

758 South Main, Pocatello, Idaho 83204 • (208) 233-8464

January 29, 1991

Idaho State Foundation
430 E. Main
Lava Hot Springs, ID 83246

ATTENTION: Mr. Bob Meline
Executive Director

Dear Bob:

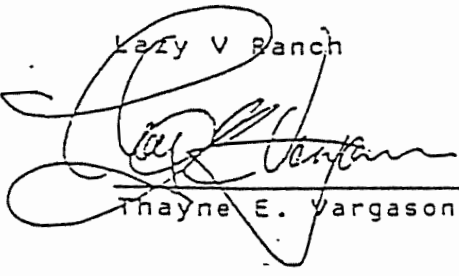
Reference: Authorization for entrance for easement into and upon
Lazy V Ranch premises for piping work.

The Lazy V Ranch owners, Thayne E. and Karen Vargason, hereby authorize Idaho State Foundation and its contractors (Green Plumbing, Mr. Gary Blanchard and his equipment and operators, the sub contractor Mr. Kenny Stratford, and his crew to dig a 6' x 4' trench 30' westerly then 100 degree turn and then southwesterly approximately 300' to the Portneuf river, and install two (2) 12" plastic lines and fill with trench with dirt and bring back to normal landscaping.

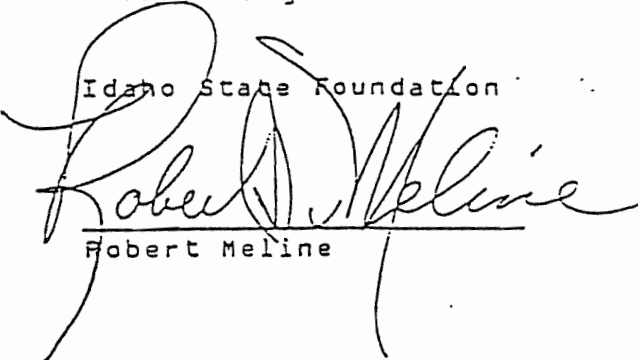
The contractors are aware of fence, trees and buildings so as not to damage such, and back fill shall please the Foundation and the Vargason's.

It is agreed by the owners of said property and the Idaho State Foundation's executive director that this letter of authorization for easement excavation and installation of two (2) 12" drainage pipes through said property will suffice until a legal document can be obtained.

Lazy V Ranch


Thayne E. Vargason

Idaho State Foundation


Robert Meline

January 31, 1991

Idaho State Foundation
430 E. Main
Lava Hot Springs, ID 83246

ATTENTION: Mr. Bob Meline
Executive Director

Dear Bob:

Subject: Letter of Authorization for Entrance for 12" pipes dated January 29, 1991

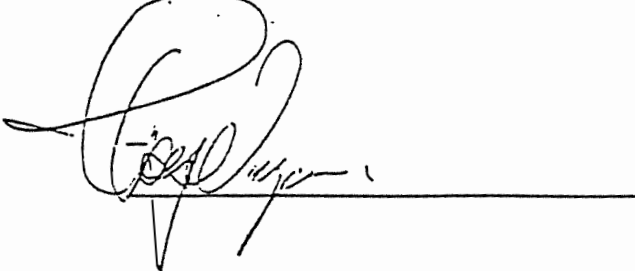
This is to amend the Authorization for Entrance for Easement into and upon Lazy V Ranch premises for piping work letter dated January 29, 1991

Please see paragraph three (3).

A reference should indicate that the easement excavation and installation of two (2) 12" drainage pipes through the said Lazy V Ranches property will be for the use of all excess waters that the foundation has going through their said drainage systems.

This reference was omitted from the original letter of authorization.

Lazy V Ranch



Idaho State Foundation



BILLING

L.W. FRANDSEN & SONS WELL DRILLING

P.O. Box 357
Lava Hot Springs, Idaho 83246
Phone (208) 776-5325

Date: May 25, 1994

RECEIVED
OCT 23 1996
OFFICE OF THE
ATTORNEY GENERAL

NAME: Thayne Vargason

ADDRESS: Lava Hot Springs, Idaho

Quantity	Description	Unit Price	Amount
1	Digging Trench for water line to pond	\$575.00	<u>\$575.00</u>
	Total		\$575.00

paid
9/31/94

Make payment to Rickey Frandsen, Thank You!



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

PHILIP E. BATT
GOVERNOR

KARL J. DREHER
DIRECTOR

10 September 1996

Kathy Brack
Office of the Attorney General
P.O. Box 83720
Boise, Idaho 83720-0010

Re: Lava Hot Springs

Dear Ms Brack,

On Thursday, September 5, 1996 I measured the bypass outflow at Lava Hot Springs. The flow into the river from the primary system was 32 gallons per minute. The secondary or backup system was not running. The Vargasons were diverting water through six sprinklers into the pond at the time I was there: this would give them a diversion rate of 20 gallons per minute.

A total by pass flow of 50 gallons per minute is a reasonable estimate of flow going past the heat exchangers. This flow will not change as more water is demanded by the heat exchangers because the head pressure will not change-the pipe is always full.

If you have any questions please contact me.

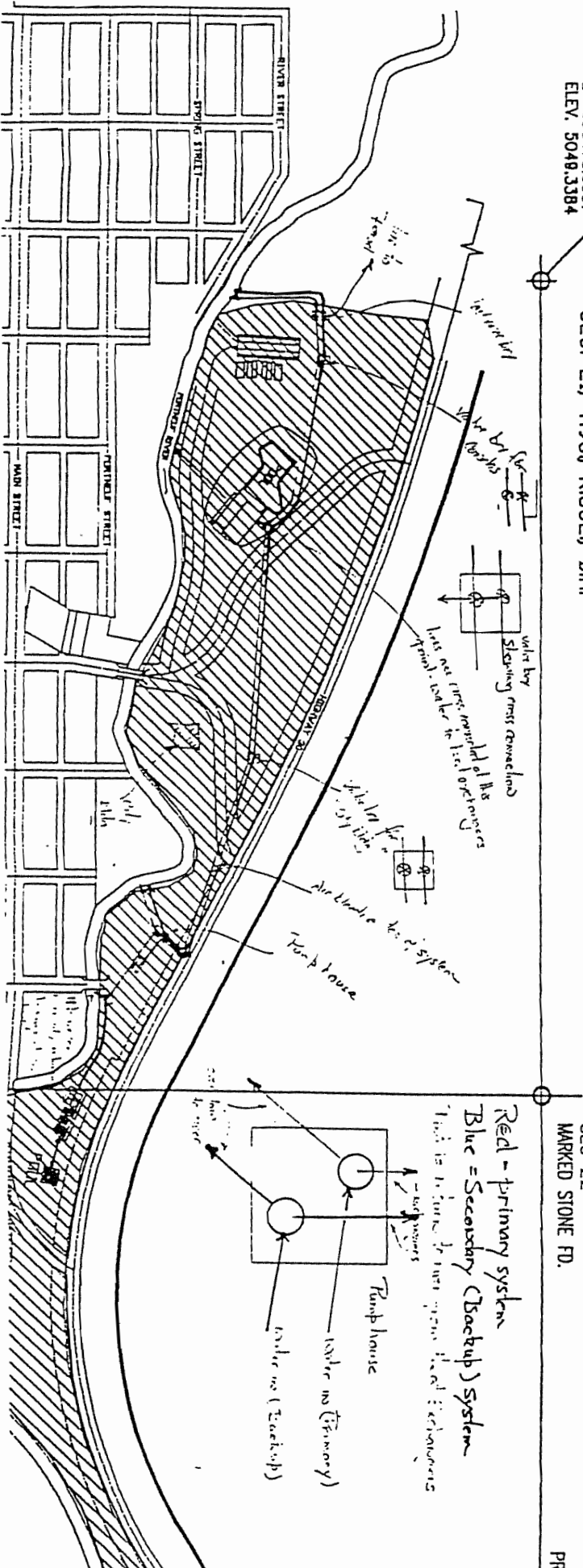
Sincerely,

Dennis M. Dunn
Sr. Water Resource Agent

A hand-drawn schematic of a parallel circuit. It consists of two vertical wires on the left and right. Two light bulbs are connected in parallel between these wires. A switch is connected in parallel with the bulbs, also between the two main vertical wires.

CENTER 1/4 CORNER
SEC. 21, T.9S., R.38E., B.M.

PR



MEMORANDUM

DATE: OCTOBER 10, 1995
TO: FILE
FROM: RON CARLSON
RE: KATSILOMETES COMPLAINT

Post-It™ brand fax transmittal memo 7671		# of pages = 7
To: Kathy Brack	From: Dennis Dunn	
Co.:	Co. IDWR	
Dept.:	Phone # 208 525-7161	
Fax #	Fax # 208 525-7177	

In June of 1995 I sent Dennis Dunn to Lava Hot Springs to investigate a complaint against the Lava Hot Springs Foundation that was lodged with the Governor by George Katsilometes. Based upon Dennis' investigation there were no clear cut violations of water rights involved. If the rights claimed by the foundation, which total 6.77 cfs, are confirmed by the adjudication court the current use is about two-thirds of the amount claimed. I prepared a memo to the director on June 6, 1995 that summarized Dennis' findings. Ultimately the governor's office used the information we collected in responding to Mr. Katsilometes.

Apparently Mr. Katsilometes was not satisfied with the governor's response and contacted John Rosholt to pursue the matter. John asked if I would personally meet with George Katsilometes and investigate his complaint. I had staff arrange meetings with both Mr. Katsilometes and directors of the Foundation. The meeting was scheduled for October 3, 1995. Harold Jones and I met first with George Katsilometes at 2:00 p.m. on that day. During the meeting Katsilometes represented the following to be facts and the basis of his complaints:

1. Water from hot springs on the east side of Lava Hot Springs is pumped through two separate systems for the purpose of heating the "new" public swimming pool. (This pool has been there for over 20 years). The heat exchangers do a poor job of heating the water leaving the pool uncomfortably cold. There was an implication that these two systems were simply a guise to divert water to the property of the director's brother-in-law, (Mr. Vargason). The new heat exchangers and water delivery system was installed by the foundation three years ago.

2. Katsilometes claims that the foundations water rights for recreation have been forfeited through non-use because no water has been used for thirty years (1963-1993).

3. The water is supposed to be used for recreational purposes but is not being used in the pools. (The water is only used for the heat it contains.)

4. The swimming pool is currently closed for the year, yet

the pipelines continue to deliver water to the Vargason property. Water going through the 12" pipe does not have to go through the heat exchanger.

5.) The water leaving the heat-exchangers does not have to return to the river across Vargason property. The Foundation owns the land on which the condominiums are located and the return pipe could have been run in front of these condos.

Harold Jones indicated to Mr. Katsilometes that we had a meeting scheduled with Bob Moline at 3:00 p.m. Katsilometes asked me if he could accompany us to the meeting and he rode with us to the Lava Hot Springs office. When we arrived we found a room full of people, including Bob Moline, Director of the Foundation, the board of directors, Charles Sudweeks the design engineer, and the pool operators. According to the representatives of the foundation the important facts are:

1. The natural hot water in Lava Hot Springs has been used for years for some hot soaking pools. The swimming pool(s) does not use the hot spring water directly. In fact for many years the heating of the pool was done with natural gas. In 1989 governor Andrus asked why the foundation was not using geothermal heating and ultimately a directive was issued which required the conversion to geothermal heating.

2. Bob Sudweeks, the design engineer, designed the system with two 10' pumping pits which would allow that amount of water being pumped to be better regulated to provide only enough water to meet the current heating requirements of the system. The pool, while it is an outdoor pool and not open to public use in the winter, must be kept full of water to prevent collapse and must be heated during the winter to avoid freezing problems. Waste water from the heating system that is returned to the Portneuf river must be cooled sufficiently to prevent thermal pollution.

3. Initially the foundation planned to install the pipe needed to return water to the Portneuf on foundation property in front of the condominiums. However, the tenant objected so an alternate location had to be found. An agreement was made with Mr. Vargason to locate the return line on his property. Vargason has a permit for a 0.13 AF pond on his property. The source specified is the Portneuf river. Rather than pumping water from the river Vargason constructed the return line himself and delivered the Foundation's waste water to his pond. He currently is making no use of the heat in this water although his agreement with the foundation specifically says he can use the heat.

At the end of the meeting Mr. Katsilometes said that if the pipe to Vargason's property was removed "he would go away." It was not clear why he objected so strenuously to Vargason having access to hot spring water unless he believes eventually this water would represent a windfall of sorts and ultimately an unfair competitive advantage for Vargason or his successor.



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

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:

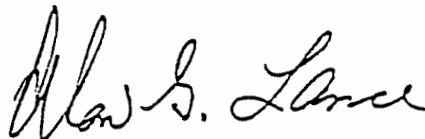
Speer v. Stephenson, 16 Idaho 707, 102 P. 365 (1909).

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.

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: E011955
Received By: _____

NOTICE OF CLAIM TO A WATER RIGHT
ACQUIRED UNDER STATE LAW

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

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



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

ROBERT Y. MELINE
Signature of Authorized Agent

EXECUTIVE DIRECTOR
Title and Organization

2 February 1990
Date

State of Idaho)
) SS.
County of Bannock)

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

of February 19 90

Cindy Fisher
Notary Public

Seal

Residing at Pocatello, Id

My Commission Expires 2-11-91

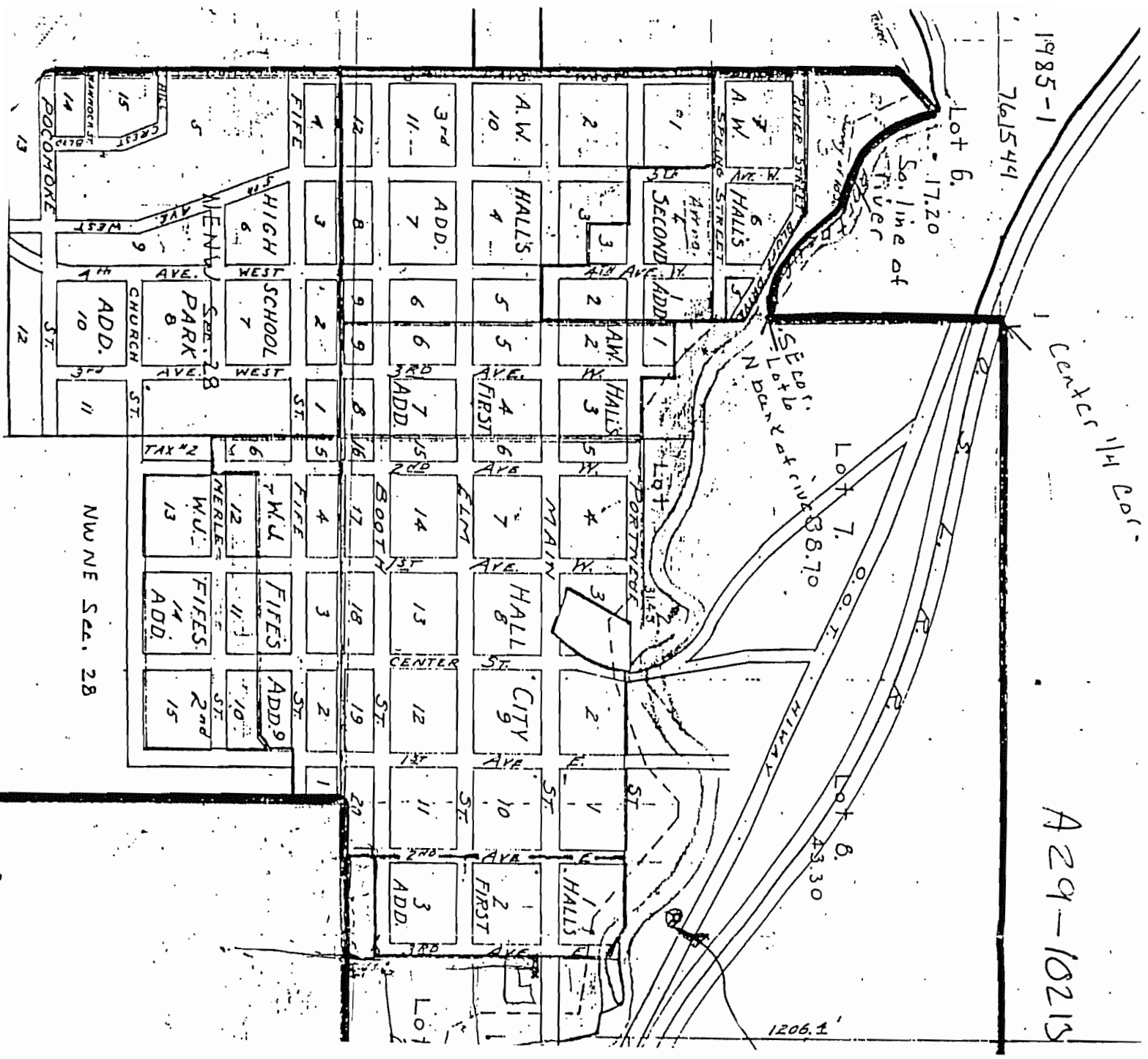
761541

6 to 10

So line of
river

Center 1/4 Cor-

A29-10215



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

Norma Lick 1-20-90
Signature: _____ date: _____
Gene 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 _____

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:

Katherine Howell 1-26-90
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 12-31-92
MICROFILMED

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:
J. L. Itami 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

NOV 16 1992

AFFIDAVIT

I Edna Hobson, 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, Edna Hobson AFFIRM MY STATEMENT FOR PUBLIC RECORD THE AFFOREMENTIONED FACTS PRETAINING TO THE NATURAL HOT WATERS LOCATED ON THE STATE FOUNDATION PROPERTY.

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:

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 Pellaton, 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 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 Pellaton AFFIRM MY STATEMENT FOR PUBLIC RECORD THE AFFOREMENTIONED FACTS PRETAINING TO THE NATURAL HOT WATERS LOCATED ON THE STATE FOUNDATION PROPERTY.

Donna Pellaton 1/20/90
Signature: _____ date: _____
[Signature] 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 NOV 16 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 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, Mark Campbell II AFFIRM MY STATEMENT FOR PUBLIC RECORD THE AFFOREMENTIONED FACTS PERTAINING TO THE NATURAL HOT WATERS LOCATED ON THE STATE FOUNDATION PROPERTY.

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 _____
My Commission expires 2/11/91
NOV 16 1992

AFFIDAVIT

I William 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.

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 NOV 16 1992
Residing at Pocatello, Idaho
My Commission expires 2/11/91

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

RECEIVED

FEB - 5 1990

Ident. Number: A29-04178
Date Received: 1/23/1990
Receipt No: E011955
Received By: _____

Department of Water Resources
Eastern District Office
**NOTICE OF CLAIM TO A WATER RIGHT
ACQUIRED UNDER STATE LAW**

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

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	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	Lot	Use	Acres
09S	38E	22	SW	SW	10	COMMER	

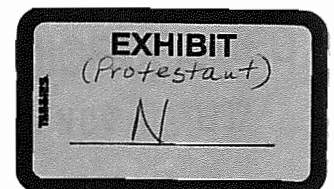
11. Place of use in counties: BANNOCK

A29-04178

Page 1

Date: 01/23/90

A2904178



Idaho

) SS.

of Bonneville

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

of February 19 90

Cindy Fisher
Notary Public

Seal

Residing at Pocatello, ID

My Commission Expires 2-11-91

1985-1

761544

Center 1/4 Cor.

R 38E

A 24-0

Lot 6. 17.20

So. line of River

A.W. HALLS

SECOND ADD. 1

2

A.W. HALLS

3rd ADD. 7

4

5

6

7

8

Lot 7. 0.0.7

Lot 8. 43.30

Lot 9. 1206.1

Lot 10. 16.10

Lot 11. 20.20

Lot 12. 21

Lot 13. 22

Lot 14. 28

Lot 15. 27

Lot 16. 19.0

Lot 17. 19.0

Lot 18. 19.0

1206.1

Ord. 1982-8

6930

PP & P & W

Lot 10. 16.10

Lot 11. 20.20

Lot 12. 21

Lot 13. 22

Lot 14. 28

Lot 15. 27

Lot 16. 19.0

Lot 17. 19.0

A.W. HALLS

SECOND ADD. 1

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A.W. HALLS

3rd ADD. 7

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A.W. HALLS

SECOND ADD. 1

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3rd ADD. 7

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A.W. HALLS

SECOND ADD. 1

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SECOND ADD. 1

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3rd ADD. 7

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A.W. HALLS

SECOND ADD. 1

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A.W. HALLS

3rd ADD. 7

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8

IDAHO'S STATE FOUNDATION
Lava Hot Springs Foundation

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

armor:

Bill 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

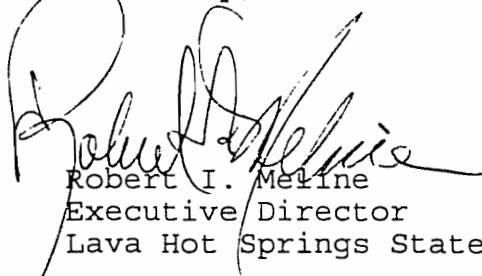
State of Idaho
Department of Water Resources
Attn: Mr. Dave Carlson
Water Right Agent, Adjudications
900 N. Skyline Drive
Idaho Falls, Idaho 83402-1718

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:

104 13 1000

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

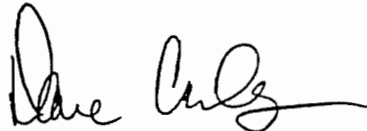
Dear Claimant:

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

DIVERSION VOLUME

Stage: BENEFICIAL USE

BANNOCK County

33

33

AFFIDAVIT

I Floyd J Tensen, 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.

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

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

Floyd J Tensen March 24 95
Signature Date
Robert A. Melius 03/24/95
Witness Date

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

Kaviersa A. Smith
Notary Public,
Residing at Lava Hot Springs, Idaho 2000
My commission expires 8-16-1995

10 1995

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.

Ted T. Itami 3-23-95
Signature Date
Robert L. Wallace 3/24/95
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 04-16-1999

AFFIDAVIT

I Geo SHIOZAWA, 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 Geo. Shiozawa
AFFIRM MY STATEMENT FOR PUBLIC RECORD THERE
AFOREMENTIONED FACTS PERTAINING TO THE NATURAL HOT SPRINGS,
LOCATED ON THE STATE FOUNDATION PROPERTY.

Geo. Shiozawa 3-23-95
Signature Date
Robert D. M... 3/23/95
Witness Date

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

Kathleen A. Smith
Notary Public,
Residing at Lava Hot Springs, Idaho 2000
My commission expires 04-16 ~~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 House 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~~

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. F. 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

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.

Charles G. Kunze
Signature Date

Michael L. Smith 3/22/95
Witness Date

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

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

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.

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 2000
My commission expires 4-16 1995

AFFIDAVIT

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

Robert I. Melive
Signature

21 MARCH 1995
Date

John Hansen
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 2000 ~~1995~~

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

Katharine A. Smith 21 March 95
Witness Date

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

Katharine A. Smith
Notary Public.
Residing at Lava Hot Springs, Idaho
My commission expires April 16 ~~1998~~ ²⁰⁰⁰

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 54
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 2000 ~~1995~~

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

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

BERTA M. PHILLIPS
STEVEN V. RICHERT

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
Archie W. Service

mdc
Enclosure



STATE OF IDAHO

DEPARTMENT OF WATER RESOURCES EASTERN REGION

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
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

Handwritten signature: K. L. Walker



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

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

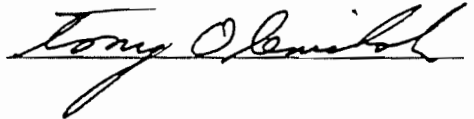
Type of Payment	Program Acct Class	Amount
ADJUDICATION FEE	0410162 9337 6490	\$905.00
	Total	\$905.00

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

Water Right Number - A29-02360 Adj. Flag Translation: Adjudication Temporary Work Area Old (D) Number -

*** C - CURRENT OWNER *** STATE OF IDAHO

1 - LAVA HOT SPRINGS FOUNDATION
2 - P.O. BOX 430
3 -
City- LAVA HOT SPRINGS State- ID Zip- 83246
Phone - 208-776-5221

*** K - ALSO KNOWN AS *** LAVA HOT SPRINGS FOUNDATION

1 -
2 -
3 -
City- LAVA HOT SPRINGS State- ID Zip- 83246
Phone - 208-000-0000

Priority Date - - - + - - - Region - - - + - - - Stage - - - + - - - Status - - - +
02/05/1955 15 L - LICENSE
Source - - - + - - - Tributary - - - - - - - - - +
GROUNDWATER

Point of Diversion - - - - - County (Blank if no Index Code)

09S 38E 22 NE SW 9 (5) BANNOCK

Code Description Period From Period To Water Use Diversion Rate Diversion Volume
10 - COMMERCIAL 01/01 12/31 0.500

Total Div. Rate - + - Total Div. Volume - + - Total Consumptive Use - + - KW Usage - +
0.500

Tract	Sec	Rng	Lot	Acres	Place of Use	Code	Description	County
09S	38E	21	NE SE	8	4.0	01	IRRIGATION	(5) BANNOCK
09S	38E	21	NW SE	7	13.0	01	IRRIGATION	(5) BANNOCK
09S	38E	22	SW SW	6	4.0	01	IRRIGATION	(5) BANNOCK

Total Acres: 21.0

- Diversion Means - IRRIGATION OF GROUNDS AND USE FOR OTHER FUNCTIONS ON SITE

- Non-Irrigation Use - IRRIGATION USE FOR GROUNDS AND COMMERCIAL NEEDS OF AREA

- Other Rights for Same Use - A29-02283 AND A29-04178, A29-10213, A29-10219

Adj. flag translation: Adjudication Temporary Work Area

- - Remarks - -
No Remarks found.

- - Conditions of Approval - -
No Conditions of Approval found.

+ - - - Decree Defendant - - - +

+ - - Audit Fields -

[illegible]

CLAIM TO A WATER RIGHT

Under the provisions of Section 42-243, Idaho Code, any person using or claiming rights to the public waters of established by diversion and application to a beneficial use must file a claim with the Department of Water Resources before June 30, 1983. Exempted from this filing are single family domestic uses as defined in Section 42-230(d), Idaho Code. Also exempted are rights represented by a permit, license, decree, adjudicated right, or a previously filed claim.

The filing of this claim does not confirm the water right claimed but failure to file may result in forfeiture of a water right.

Notice is hereby given that LAVA HOT SPRING FOUNDATION, an agency of the State
(Name of Claimant) 775-5221

Idaho, Lava Hot Springs, ID 83246

(Mailing Address)

(Zip Code)

Telephone No. 232-4471

claims a right to the diversion and beneficial use of the surface or ground water. The extent and nature of said claim is as follows:

- (1) Date of priority: (When was the water first applied to a beneficial use) June 13, 1902 (see 8)

A claim is not acceptable on a ground water source with a priority later than March 25, 1963 or on a surface water source with a priority later than May 20, 1971. An exception is that a claim may be filed on single family domestic use from a ground water source.

- (2) Describe the source of water: (Name of stream, lake, spring, etc., or ground water)

Spring tributary to Portneuf River

- (3) Describe the purpose for which the water has been used and the time during the year when you have used the right claimed: Therapeutic, health, recreation, thermal, and all other related purposes.

(cfs, gpd, AFA)

(Domestic, Irrigation, Stock, Etc.)

(Both dates inclusive)
(Mo., Day) (Mo., Day)

Quantity 2-3 cfs of Use recreational Period of Use From full year To continuo

Quantity 100° to 140° Use thermal, therapeutic Period of Use From To

Quantity geothermal Use tic and health Period of Use From To

Quantity water Use Period of Use From To

Quantity Use Period of Use From To

- (4) 2-3 cfs TOTAL QUANTITY USED.

(cfs, gpd, AFA)

- (5) A) Point of diversion: (Location of point where water is diverted from its source)

SW ¼ SW ¼, Sec. 22' Twp. 9S Rge. 38 E B.M., County of Bannock

Additional points of diversion:

B) Describe means of diversion of water: (Pump and pipeline, well, diversion dam, reservoir, length of ditch and field, etc.). Give sizes and capacities: be as specific as possible. Describe any changes in the system and give the date of the change. spring

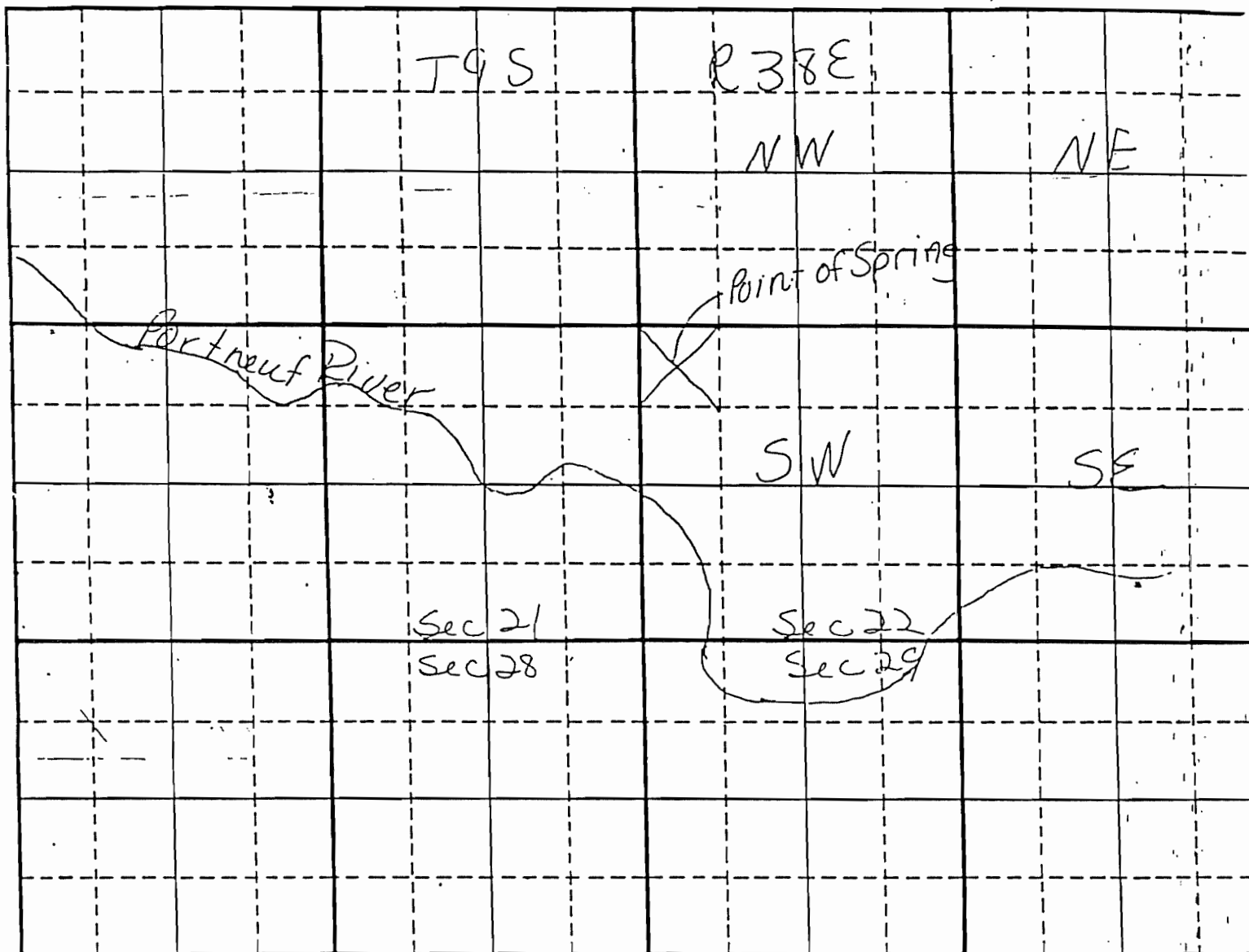
- (6) A) Describe location of use by listing number of irrigated acres within each 40-acre tract in appropriate box. If use is not for irrigation, place an "X" in appropriate box to show location.

T	R	SEC.	NE¼				NW¼				SW¼				SE¼				TOTAL
			NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	
9S	38E	22											X						

No. of acres ---0---

B) If water is used for other than irrigation, fully describe that use, being as specific as possible: The spring water is used for health, recreational, therapeutic, thermal and related purposes of the general public in the main hot baths operated by the Lava Hot Springs Foundation.

- (8) Remarks Prior to June 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, (Clerk) MAN

19 22

John W. Service



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

ATTORNEY GENERAL OPINION NO. 97-1

RECEIVED

JAN 13 1997

Department of Water Resources

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

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.

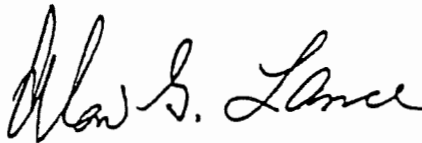
4. Idaho Cases:

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.



State of Idaho
DEPARTMENT OF WATER RESOURCES

Western Region, 2735 Airport Way, Boise, Idaho 83705-5082 - (208) 334-2190
FAX (208) 334-2348

PHILIP E. BATT
GOVERNOR

KARL J. DREHER
DIRECTOR

May 8, 1997

Jack H. Robison
Attorney at Law
P.O. Box 967
Pocatello, ID 83204-0967

Ray W. Rigby
Attorney at Law
P.O. Box 250
Rexburg, ID 83440-0250

Re: Application for permit nos. 29-08162 and 29-08164 in the name of Lazy V Ranch

Gentlemen:

On October 3, 1996 a prehearing conference was conducted for application for permit nos. 29-08162 and 29-08164 in the name of Lazy V Ranch. Almost simultaneous with the conference, a request was filed with the Idaho Attorney General's office, asking for an opinion regarding the authority granted to the Lava Hot Springs Foundation by Title 67, Chapter 44 of the Idaho Code. The issue was whether the Lava Hot Springs Foundation was granted exclusive ownership of the waters arising on lands described by the statutes, and whether the foundation was required to comply with laws requiring appropriation of water. Because of the pending request for interpretation of the law, and a fear that a proceeding without the interpretation might be wasteful, all of the parties agreed to defer any action until a decision was rendered by the Attorney General's office.

The Attorney General issued his opinion on January 9, 1997. A copy of the decision is enclosed. The Attorney General determined that the foundation did not receive exclusive ownership of the waters contained on his property, and that the foundation was required to adhere to the appropriation process. The holding determines that the foundation cannot directly contract to deliver water to an individual outside of the foundation's boundaries, and that the individual must also adhere to the appropriation process. Lazy V Ranch is required to continue to pursue its applications for permit.

SCANNED
APR 26 2011



Jack H. Robison
Ray W. Rigby
May 8, 1997
Page 2

I want to press forward with prehearing matters and a schedule a hearing. I would like to schedule a hearing for July 8-9, 1997, unless you want to engage in discovery or you feel another prehearing conference would be fruitful. I will schedule a hearing for July 8-9, 1997 if I haven't heard from the parties by May 21, 1997.

If Lazy V Ranch is now diverting water for fish propagation as proposed by its applications for permit, Lazy V Ranch should either: (1) Remove the fish, allowing a reasonable period not exceeding thirty (30) days, for removal, or (2) Demonstrate ownership of sufficient water rights to authorize the use by Lazy V Ranch. Water proposed for diversion by Lazy V Ranch that wastes from Lava Hot Springs Foundation property should discharge to the river as directly as possible if there is no water right authorizing diversion of water by Lazy V Ranch.

Respectfully,



Gary Spackman
Western Region Manager
Idaho Department of Water Resources

GS/dde
Enclosure

- c. George Katsilometes
John Mehlhaff
Evelee Hill Rush
Thayne Vargason
Harold Jones, Eastern Region



State of Idaho
DEPARTMENT OF WATER RESOURCES

Western Region, 2735 Airport Way, Boise, Idaho 83705-5082 - (208) 334-2190
FAX (208) 334-2348

PHILIP E. BATT
GOVERNOR

KARL J. DREHER
DIRECTOR

June 16, 1997

TO: Parties and Attorneys

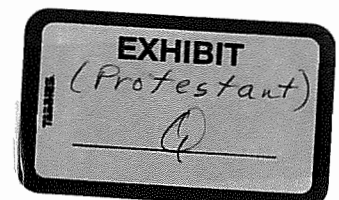
RE: Application for Permit nos. 29-08162 and 29-08164 in the Name of Lazy V Ranch.

Ladies and Gentlemen:

Please refer to my letter dated May 8, 1997. In the letter, I stated that I would like to schedule a hearing for July 8 & 9, 1997, unless I heard from the parties by May 21, 1997. George Mehlhauff and Caren Vargason communicated that they could not attend a hearing on July 8 & 9, 1997. Furthermore, Jack Robison, attorney for Lazy V Ranch also stated that it would be difficult for him to attend.

Because of the conflicts, I intend to schedule a hearing for September 10 & 11, 1997. If these dates are not acceptable, I will distribute copies of a calendar and ask parties to mark acceptable hearing dates and return them to me.

Jack Robison called me approximately two weeks ago, and asked about the language in my letter requiring removal of fish and curtailment of diversion of water. He referred to a permit issued to Thayne and Caren Vargason, numbered in IDWR files as 29-07847, which authorized the diversion of 0.06 cfs from the Portneuf River for recreational storage. The Vargasons filed proof of beneficial use and the beneficial use was examined by an IDWR employee. The examiner found that water was being diverted from the waste of Lava Hot Springs Foundation rather than the Portneuf River. The examiner recommended that IDWR amend the permit to change the source of the water and license the change without notifying any of the parties. Because the change of the source of water would accomplish the same action as is being contested in the two pending applications for permit, IDWR did not approve the application to amend permit no. 29-07847. The change should be delayed until the protests for applications for permit nos. 29-08162 and 29-08164 have been resolved. As a result, there is no water right authoring delivery of warm water to Vargason's

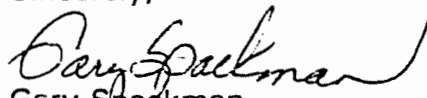


Lazy V. Ranch
June 16, 1997
Page -2-

fish ponds. Unless Vargasons can show a water right to divert and use low temperature geothermal water wasted from foundation property, the rearing of fish and diversion of water to the fish pond should cease immediately.

If the hearing date is acceptable, I will issue a notice of hearing in July, 1997.

Sincerely,



Gary Spackman

GS:st



State of Idaho
DEPARTMENT OF WATER RESOURCES

NORTHERN REGION, Suite No. 210 • 1910 Northwest Blvd. • Coeur d'Alene, Idaho 83814-2615
(208) 769-1450

Fax (208) 769-1454

PHILIP E. BATT
Governor

KARL J. DREHER
Director

September 17, 1997

George W. Katsilometes
Box 670
Lava Hot Springs ID 83246

Dear Mr. Katsilometes:

The purpose of this letter is to recap our 'phone conversation of 9/16.

Idaho Code 42-202 through 42-204 covers the situation which we discussed. When an application for permit is approved, the applicant may be granted up to five (5) years to complete the project and make Proof of Beneficial Use. If the project has not been completed by the time required, upon a showing of diligence and good faith, an extension of up to five (5) additional years to complete the project may be granted.

If a permit has lapsed for failure to make Proof of Beneficial Use, the permit holder may have the permit reinstated if the Proof of Beneficial Use is filed within 60 days of the date that the lapse notice is sent. In circumstances where the project has not been completed within the time prescribed by the permit, and the applicant still desires to use water, the only recourse is to file a new application for permit.

If you have any questions, please don't hesitate to contact me or Ron Carlson, Regional Manager in our Eastern Regional Office in Idaho Falls.

Sincerely,

Robert G. Haynes, P. E.
Regional Manager

RGH:db

cc: Ron Carlson



October 7, 1997

Gary Spackman
Hearing Examiner
Department of Water Resources
1301 N. Orchard
Boise, Idaho 83726
Fax 208 327-7866

Re: Application for Permit Nos 29-08162 and 29-08164 in the Name of Lazy V Ranch, Inc.

Dear Mr. Spackman,

I would like to voice my opinion regarding the objection to the witness list from Jack Robison dated Sept 26, 1997. In this letter, he stated that no other witness list was received and also a request was made by him that only George Katsilometes be entitled to call witnesses in the above hearing.

I had also submitted a witness list on two occasions. I expect those persons on the list to be subpoenaed and also defend my right to call witnesses at the hearing.

The witness list submitted by George Katsilometes was received well over a year ago by Mr. Robison, with no formal objection coming from him. Mr. Robison was given ample time to submit an objection, therefore I request that we do not hold another preliminary hearing to review the witness list.

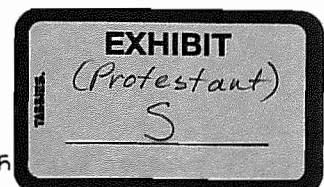
I also request that all of the witnesses listed by myself and George Katsilometes be admitted and that the hearing take place as scheduled on October 23 and 24, 1997.

I would also like to address the letter received from Steve Strack of the Attorney General's Office. His concerns are centered around defending the water rights of the Lava Foundation. The hearing on October 23&24 only addresses the application by Lazy V Ranch, Inc. Testimony or information presented at the hearing may create a cloud on the water rights of the Lava Foundation, however this information will only be used to prosecute the protest against the Lazy V Ranch, Inc. application. If the Dept. of Water Resources wants to act on this information and modify the Lava Foundation's water rights, there will be ample time for the Lava Foundation to defend their position in the future.

I strongly request that you proceed with this hearing without further delay.

Sincerely,

John Mehlhaff
John Mehlhaff



State of Idaho
Department of Water Resources
Permit To Appropriate Water

NO. 29-07869

Proposed Priority: August 25, 1989 Maximum Diversion Rate: 0.50 CFS

This is to certify, that **GEORGE WILLIAM KATSILOMETES**
5 PORTNEUF AVE.
LAVA HOT SPRINGS, ID 83246

has applied for a permit to appropriate water from: **GROUNDWATER**
and a permit is **APPROVED** for development of water as follows:

<u>BENEFICIAL USE</u>	<u>PERIOD OF USE</u>	<u>RATE OF DIVERSION</u>
COMMERCIAL	01/01 to 12/31	0.50 CFS

LOCATION OF POINT(S) OF DIVERSION: NWSESE Sec. 21, Township 09S, Range 38E
BANNOCK County

PLACE OF USE: COMMERCIAL

TWN RGE SEC

09S 38E 21 SESE

CONDITIONS/REMARKS:

1. Proof of construction of works and application of water to beneficial use shall be submitted on or before **January 1, 1992.**
2. Subject to all prior water rights.
3. Permit holder shall comply with the drilling permit requirements of Section 42-235, Idaho Code.
4. The right to the use of water acquired under this permit shall not give rise to any right or claim against the holder of a senior right based upon the theories of forfeiture, abandonment, adverse possession, waiver, equitable estoppel, estoppel by laches or customary preference.
5. The Director retains jurisdiction of the permit and any license subsequently issued to incorporate the use into a water district, require streamflow augmentation or other action needed to protect prior surface water and groundwater rights.
6. Permit holder shall commence the excavation or construction of diverting works within one year of the date this permit is issued and shall proceed diligently until the project is complete.
7. Return flow if discharged to a subsurface system must be authorized by a separate injection well permit, and return flow if discharged to a surface water system shall meet Idaho Water Quality Standards.
8. Commercial use is for a hotel.



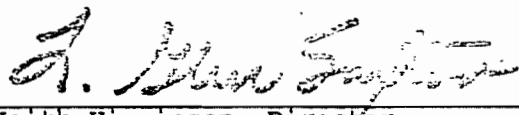
State of Idaho
Department of Water Resources

Permit To Appropriate Water

NO. 29-07869

This permit is issued pursuant to the provisions of Section 42-204, Idaho Code.
Witness the seal and signature of the Director, affixed at Boise, this

20th day of December, 1989.


for R. Keith Higginson, Director