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BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

IN THE MATTER OF APPLICATIONS FOR PERMIT NOS. 29-8162 AND 29-8164 IN THE NAME OF CRAIG LYON AND VICKI LYON (Previously in the name of Lazy V Ranch)	)))))	**FINAL ORDER**

Lazy V Ranch filed two applications to appropriate water with the Idaho Department of Water Resources ("IDWR"), numbered as 29-8162 and 29-8164. Lazy V Ranch is not a corporation as represented on the applications but is a business operated by Thayne and Karen Vargason. The applicants will hereafter be referred to as ("Vargasons"). The applications were protested by George Katsilometes ("Katsilometes"), Evelee Hill-Rush ("Rush"), John Mehlhaff ("Mehlhaff"), and Duke Walden ("Walden"). A hearing was conducted on October 23 - 24, 1997, regarding the protests. The hearing officer issued a recommended order on May 14, 1997, approving the applications with conditions.

Vargasons and Katsilometes filed petitions for reconsideration and the petitions were denied by an order dated July 1, 1998.

Vargasons and Katsilometes filed timely exceptions to the recommended order

On July 24, 2008, IDWR received a document titled *Assignment of Application for Permit*. The assignment, executed by Thayne and Karen Vargason, principals in Lazy V. Ranch, conveyed applications nos. 29-8162 and 29-8164 to Craig and Vicki Lyon ("Lyon" or "Lyons").

ISSUES RAISED BY KATSILOMETES

Katsilometes raised several issues from the recommended order. The issues raised by Katsilometes will be listed as margin headings below and will be discussed individually.

The water applied for is not "wastewater."

The hearing officer recognized a disagreement about whether the water discharging from the Lava Hot Springs Foundation's delivery system through a bleeder valve with air is necessary

for operation of the system. IDWR employees who investigated the system stated that the system design was consistent with acceptable engineering practices. Although the use of water does not employ the most efficient method of application of water to a beneficial use, the diversion and application of water is reasonable.

Even though "bleeding" water is an acceptable method of operation, the applicant did not quantify how much water must discharge from the bleeder valve to operate the system delivering water for the Lava Hot Springs Foundation ("Foundation") uses. The applicant or the Foundation must establish the quantity of water that is required to discharge from the bleeder valve to operate the Foundation's system. Permit no. 29-8162 shall be limited to the rate of flow needed to operate the bleeder valve.

"Waste" of water is prohibited.

Water diverted and applied in a reasonable manner may have a component that is not directly used for the primary purpose but may have some secondary worth in accomplishing the primary purpose. If this component of the total water delivered is not consumed, IDWR has traditionally classified the water as "wastewater." Application no. 29-8162 proposes diversion of water that fits this definition of wastewater.

There is no factual basis for a finding of fact that the owners of the condominiums objected to a pipeline crossing condominium property.

Conflicting evidence was presented at the hearing about whether the operator of the condominiums objected to a pipeline crossing the condominium property. Charles Sudweeks, engineer for the Foundation, and Bob Meline, manager for the Foundation, both testified that the operator of the condominiums objected. The hearing officer chose to believe the testimony of Sudweeks and Meline. Even if the assertion by Katsilometes is true, it would not change the decision. The Foundation could have contracted with Vargasons/Lyons even if the operator of the condominiums had not objected.

Perforation of well casing.

Katsilometes argues that findings about perforations in the well casings were erroneous. Findings about casing perforations were irrelevant and were deleted from this final decision.

The recommended decision attempts to adjudicate the water rights of Katsilometes.

The water rights owned by Katsilometes are not being adjudicated by this decision. Some analysis of the development of the water rights is necessary for this decision, however.

There are no facts in the record substantiating findings about the hydrologic relationship of the protestant's diversions and the Foundation's diversion.

Katsilometes submitted well drilling reports and testified about changes in water temperatures and water levels. The protestants testified about their diversion locations, changes in water temperature, and changes in their ability to divert water. The protestants also attempted to associate the changes to activities of the Foundation. The hearing officer analyzed all the testimony of the protestants and testimony about the Foundation's activities and found that diversion of water by the Foundation is not injuring the protestants. In an administrative hearing, IDWR should apply its technical expertise to the evidence in the record. This decision affirms the hearing officer's findings.

Application for permit nos. 29-8162 and 29-8164 should be denied because the applicant failed to satisfy the criteria of Idaho Code § 42-203A.

In considering an application to appropriate water, IDWR must determine whether the proposed diversion and use will reduce the quantity of water for existing water rights, whether the water supply is sufficient for the purpose sought, whether the application is filed in good faith or filed for delay or speculation, whether the applicant has sufficient financial resources to complete the project, whether the proposed use of water will conflict with the local public interest, and whether the proposed use is contrary to conservation of water resources in the state of Idaho.

Issues were raised regarding the adequacy of information to show the amount of water required for fish propagation, the sizing of the fishery facilities, the amount of water available from the source, and the adequacy of contracts establishing easements for delivery of the water. Questions about the amount of water required for the proposed fish propagation, the size of the fishery facilities, and the amount of water available from the source all relate to the sufficiency of the water supply. An applicant should establish the flow rate from the source that can be available for diversion. This was established by Charles Sudweeks when he testified about his design of the Foundation system to divert all of the available water.

The only evidence in the record regarding the amount of water required for fish propagation and the design of the fish rearing facilities, other than showing the successful operation using flows passed at the bleeder valve by the Foundation, was information taken from a trout rearing graph provided by IDWR. Keith Wilson testified at the hearing that the graph was prepared as a guideline for the amount of the water needed to rear trout not tilapia. Without additional information, the linkage between the quantity of water available for appropriation and the amount needed was not established.

The conclusions of law of the recommended order and this final order discuss the statutes that created the Foundation and the implied statements that the low temperature geothermal water arising and flowing on Foundation property be used for pleasurable or therapeutic human uses.

The Foundation has traditionally used the low temperature geothermal water either directly or indirectly for these public purposes. Direct diversion and use of the low temperature geothermal water arising or flowing on Foundation property by a third party for rearing warm water fish is not in the local public interest. Nevertheless, after the Foundation has beneficially used the water (including the water passed through the bleeder valve), a third party can appropriate the low temperature geothermal water on Foundation property for fish propagation or other uses not associated with the public enjoyment of the low geothermal water.

The recommended order issued by the hearing officer should be amended to reject application for permit no. 29-8164 because the application is not in the public interest and the sufficiency of the water supply for the purpose sought was not proven. Approval of application no. 29-8162 is affirmed because Vargasons showed that tilapia could be raised with the current system in place.

ISSUES RAISED BY VARGASONS

Vargasons/Lyons contest a condition requiring written consent from the Foundation for the development of low temperature geothermal water prior to development or diversion of water under the two permits approved. Vargasons/Lyons argue that the condition creates law in excess of authority of IDWR, rejects the history of the agreements between the Foundation and Vargasons/ Lyons, interferes with the rights of third parties, dictates the manner in which the Foundation is to discharge its authority, and improperly delegates authority of IDWR to another branch of government. The concern is no longer at issue because this decision rejects application for permit no. 29-8164, and express approval by the Foundation is no longer required.

FINDINGS OF FACT

1. Applications for permit nos. 29-8162 and 29-8164 propose diversion of low temperature geothermal water arising or artificially captured on lands owned by the State of Idaho and administered by the Lava Hot Springs Foundation ("Foundation"). Vargasons/Lyons own 17 acres of property adjoining the west side of the Foundation property.

2. Application for permit no. 29-8162 proposes the following:

Purpose:	Diversion to Storage Storage for Fish Propagation
Flow Rate:	3.0 cubic feet per second ("cfs")
Storage Volume:	0.5 acre feet
Period of Use:	January 1 through December 31

Proposed Priority:	November 20, 1995
Point of Diversion:	Lot 7 (NWSE[1]), Section 21, T9S, R38E, B.M. (Two diversions)
Place of Use:	Lot 6 (NESW), Section 21, T9S, R38E, B.M.
Source:	Wastewater

3. Karen Vargason testified that application for permit no. 29-8162 proposes two points of diversion after low temperature geothermal water is beneficially used by the Foundation. The specific description of the points of diversion will be discussed later in the decision.

4. Application for permit no. 29-8164 proposes the following:

Purpose:	Diversion to Storage Storage for Fish Propagation
Flow Rate:	7.0 cfs
Storage Volume:	0.5 acre feet[2]
Period of Use:	January 1 through December 31
Proposed Priority:	January 5, 1996
Point of Diversion:	Lot 8 (SENESE), Section 21, T9S, R38E, B.M.
Place of Use:	Lot 6 (NESW), Section 21, T9S, R38E, B.M.
Source:	Spring located on Foundation property

5. The Portneuf River flows through the center of the City of Lava Hot Springs. In general, the private property of the town site is located on the south side of the river. The State

1 In this decision, the public land survey numeric descriptor "1/4" is assumed to follow each two alpha character public land survey locator when the numeric descriptor is missing. For instance, in this example, the full description would be Lot 7 (NW1/4SE1/4), Section 21, Township 9 South, Range 38 East, Boise Meridian.

2 This is the same storage volume included in application no. 29-8162.

of Idaho owns several hundred acres of land located immediately north of the City of Lava Hot Springs.

6. The Idaho Legislature created the Foundation by enacting Title 67, Chapter 44 of the Idaho Code. The Foundation is charged with the duty of managing the state lands in the vicinity of Lava Hot Springs and the unique low temperature geothermal water located thereon.

7. Protestants' exhibit K generally depicts the location of the state property, the City of Lava Hot Springs, and the properties owned by the protestants.

8. Since its creation, the Foundation has built and promoted the construction of public hot pools, a natatorium (assumed to be a swimming pool) that collapsed or was irreparably damaged during a flood event, and in later years, a swimming pool complex and some condominiums. The Foundation has contracted with concessionaires to operate businesses on the property of the Foundation. The condominiums are operated privately by a concessionaire through a lease arrangement.

9. The Foundation claimed water rights for the beneficial use of the low temperature geothermal water in the Snake River Basin Adjudication ("SRBA"). These water rights were decreed by the SRBA Court. Three decreed water rights authorize use of water by the Foundation for a commercial purpose: 29-4178 (2.03 cfs), 29-2283 (0.5 cfs), and 29-10219 (0.02 cfs), for a total flow of 2.55 cfs. Partial decrees for the Foundation's SRBA rights authorizing commercial purposes are attached as **Attachment A**. The Foundation holds water rights authorizing diversion of a total of 2.55 cfs from geothermal springs for commercial purposes.

10. In approximately 1990, the Foundation decided to improve the delivery of water to the swimming pool complex for heating the pool water and associated buildings, and initiated a reconstruction of its hot water delivery system. Prior to reconstruction, water in the pool and space in the associated buildings were heated with natural gas.

11. Water can be captured for delivery to the swimming pool complex from two sources on Foundation property. The first source of water discharges from the public bathing pools, located at the east side of the Foundation property. The second source of water is springs (or shallow underground flows) located south and west of the public bathing pools. The springs once supplied hot water to the natatorium.

12. The Foundation decided to construct a primary delivery system and an auxiliary system for back up that could also serve future expansion. The systems were designed so that water from the two sources would not commingle.

13. Two parallel water delivery systems were constructed alongside each other. The systems will be referred to as system no. 1 and system no. 2. The pumps, pump basins, and

pipelines of the systems will be assigned the same number as the system of which they are a component.

14. System no. 2 is the primary system for delivery of the Foundation's low temperature geothermal water and is designed to pump 780 gallons per minute ("gpm"), or 1.74 cfs.

15. System no. 1 is an auxiliary or back up system. Pump no. 1 was designed to divert approximately 1,200 gpm, or 2.67 cfs.

16. Together, the pumps were designed to divert 1,980 gpm, or 4.41 cfs. The engineer for the project, Charles Sudweeks ("Sudweeks"), testified that the pumps were designed to divert all of the available water.

17. Water from both sources is delivered to a single location in a divided structure referred to in the evidence as a cistern, a pump house, a collection box, and a well. For purposes of this decision, the structure will be referred to as the "main pump house."

18. The main pump house has two compartments. This decision will refer to the compartments as pump basin no. 1 and pump basin no. 2. Water is diverted from both sources continuously and delivered into pump basin nos. 1 and 2. The testimony and evidence refers to pumps in and pipelines extending from the compartments as pump nos. 1 and 2, and pipeline nos. 1 and 2, respectively.

19. During construction of the main pump house, the contractor excavated from five to ten feet below ground surface. A concrete floor was constructed in pump basin no. 1. The floor in pump basin no. 2 was not covered with concrete, but was left open after the excavation. Protestants allege that pumping of water from the excavated pump basins is drying up springs that once flowed on Foundation property and is also reducing temperatures and water levels in wells and springs from which the protestants divert water.

20. Sudweeks testified that the old natatorium site was cleared, and new pipelines were connected to the old pipelines that capture spring water and once supplied water to the natatorium. Water from the spring flows by gravity to pump basin no. 2. A ten horsepower pump and motor, referred to as pump no. 2, delivers water into pipeline no. 2.

21. Water flowing from the public bathing pools discharges into pump basin no. 1. A 20 horsepower pump and motor, referred to as pump no. 1, pumps water into pipeline no. 1.

22. Low temperature geothermal water must be lifted from the main pump house to reach the swimming pool complex. Sudweeks determined that water should be pumped from the main pump house uphill (approximately 400 horizontal feet and 30-40 vertical feet) in a

northwesterly direction to a point where the water would gravity flow downhill to the swimming pool complex (See applicant's exhibit no. 14).

23. Two twelve-inch diameter pipes exit the main pump house in a northwesterly direction (one from each pump basin) and ascend alongside each other to the apex discussed above. After reaching the apex, the pipelines descend parallel to each other in a westerly direction to a valve box (valve box no. 1).

24. Four valve boxes are spaced along the pipelines, and both pipelines intersect the valve boxes. The valve boxes were numbered during the hearing, and are identified on applicant's exhibit no. 14. The valve box numbers have no relationship to the system numbers.

25. Valve box no. 1 was built for possible future development. The valves in valve box no. 1 are not currently utilized for controlling water in the system.

26. A junction is constructed in pipeline nos. 1 and 2 in the second valve box (valve box no. 2). A single delivery pipeline, cross-connected to both pipeline nos. 1 and 2, was constructed south to the swimming pool complex. A bleeder valve was constructed in each cross connection. The bleeder valves can release air and water into pipeline no. 1 and pipeline no. 2 in a westerly direction. Parallel pipeline nos. 1 and 2 extend west from valve box no. 2 through two more unused valve boxes (valve box nos. 3 & 4) to the western boundary of the Foundation property. Pipelines constructed down gradient of valve box no. 4 will be referred to hereafter as the "pipeline extensions."

27. The initial plans of the Foundation, depicted on applicant's exhibit no. 14, proposed construction of the pipeline extensions along the western boundary of the Foundation property where the pipelines would discharge water to the Portneuf River. The pipeline extensions would have crossed the lands leased by the condominium concessionaire. When the contractor was in the field preparing for construction, the lessee of the condominium property objected to construction of the pipeline extensions across the leased property.

28. The contractor communicated the lessee's objection to the executive director of the Foundation, Robert Meline ("Meline").

29. The system reconstruction was planned for the spring of 1991, and completion was necessary before the swimming pool opened in May of 1991.

30. Meline felt that an extended dispute with the condominium concessionaire would unacceptably delay the construction and sought other options. He approached Thayne and Karen Vargason about constructing the pipeline extensions on the Vargason property that adjoins the west side of the Foundation property.

31. Vargasons agreed that the Foundation could construct its pipeline extensions on their property in exchange for the right to divert "excess water" from the Foundation's pipelines. Applicant's exhibit nos. 2 and 3 are copies of the documents underlying the agreement. Meline testified that he received consent for the agreement from three Foundation board members prior to signing the agreement. The pipeline extensions were constructed on Vargason's property. A pipeline to the Vargason property was tapped to line 2 in valve box no. 4 at the time of construction. Vargasons paid for the pipeline delivering water to their property. Valve box no. 4 is the location of one of two points of diversion proposed by application no. 29-8162.

32. Vargasons constructed a pond on their property to raise tilapia, a tropical fish that lives in warm water. Water from the bleeder valve was diverted to the pond. A research project, conducted by Shelley High School students, showed that young tilapia could be raised in the pond. Approximately 40,000 tilapia were reared in the pond.

33. The temperature of the water delivered to Vargason's pond is 102° F, and must be cooled to 84° F for rearing of tilapia. Vargasons constructed sprayers to aerate and cool the warm water to an acceptable temperature for the fish.

34. The Foundation's system operates automatically except on rare occasions. System no. 2 operates 24 hours a day year-round, except when occasional maintenance is necessary or a shut down occurs because of a power failure or mechanical failure. In most cases, pump no. 1 will operate when pump no. 2 is not operating.

35. To maintain the proper temperature in the Vargason pond, low temperature geothermal water must flow almost continuously into the pond. In March of 1996, the Foundation's automated delivery system malfunctioned. Flow of low temperature geothermal water to the Vargason pond ceased, and, as the water in the pond cooled, approximately 20,000 fish died.

36. Pump nos. 1 and 2 are variable speed pumps. The pumps operate at different speeds depending on demand at the swimming pool complex. Water is pumped to the apex of the pipelines. From the apex, water flows by gravity towards the swimming pool complex. At valve box no. 2, the bleeder valves previously discussed drain air out of the operating pipeline before the water flows toward the swimming pool complex. The purpose of the bleeder valve is to remove air that impedes the operation of the heat exchangers.

37. Some water discharges from the bleeder valves along with the air bled from the pipelines at the head of the delivery line to the swimming pool complex. Application no. 29-8162 proposes diversion of the water passing the bleeder valves for use in the fish pond.

38. The bleeder valves are operated manually. Sudweeks did not establish the quantity of water that must be passed with escaping air to properly operate the system.

39. Mehlhaff, one of the protestants, owns a company that designs heat exchangers. Mehlhaff testified that the system delivering water to the swimming pool complex does not require bleeder valves. Protestants also argue that, even if the bleeder valves are necessary, an excessive amount of water is being released to Vargasons.

40. Russell Rydalch, an engineer employed by IDWR, and Ken Baker, his supervisor, examined the Foundation's water delivery system. A report of the investigation was received into evidence as applicant's exhibit no. 4. Rydalch and Baker determined that there were several ways the system could have been constructed, but that the construction with bleeder valves was an acceptable method of constructing the system to insure proper delivery of water and operation of the heat exchangers.

41. Sudweeks' design is a sound engineering design that allows unsophisticated operation of the delivery system.

42. A large swimming pool, a small swimming pool, and several associated buildings are components of the swimming pool complex. The walls of the swimming pools are constructed with gunite. Gunite walls are susceptible to damage when the pools are drained. The walls could be damaged by pressure behind the pool walls caused by a high water table. The walls could also be damaged by frost. Sudweeks testified that the water required to supply the swimming pool complex varies depending on weather and human use of the swimming pools.

43. The pools are open for public access from the end of May through the first of September and are closed from September until May. The Foundation leaves water in the pools year-round to protect the pool structure from collapse or frost heaves, except during a short maintenance period. The Foundation buildings are heated year-round. The temperature of the water in the pools is at least 40° F through the winter months.

44. The swimming pools are annually drained in the fall for four or five days and cleaned. Although not clearly explained in the testimony, fall is probably the time when the ground water level in the soil behind the pool walls is the lowest and risk of wall failure because of hydrostatic back-pressure is reduced. During periods of maintenance, system no. 2 still supplies water to the buildings. In addition, water is used for cleaning and maintenance work.

45. Two heat exchangers heat water for the large swimming pool. One heat exchanger heats the water for the small swimming pool. Another heat exchanger heats the buildings of the Foundation near the pools. In addition, low temperature geothermal water is sometimes placed directly in the swimming pools.

46. Water used for heating purposes or discharging from the swimming pools is recollected in a pipeline that discharges to the Portneuf River as depicted in applicant's exhibit nos. 4 and 14. This discharge pipe is another point of diversion from which Vargasons propose

to divert wastewater under application for permit no. 29-8162, and will be referred to as the swimming pool complex outlet.

47. The delivery system for capture of wastewater discharges from the swimming pool complex outlet is not constructed.

48. Application no. 29-8164 proposes the diversion of water now flowing into pump basin no. 1 that is unused by the Foundation. Although the application lists the source of water as a spring, Karen Vargason testified that the application proposes diversion of water flowing from the public hot pools into the main pump house (pump basin no. 1) and spilling into the Portneuf River.

49. Karen Vargason testified that if application no. 29-8164 is approved, she will seek a right of way from the Foundation to construct a pipeline that will capture water flowing (not pumped) from pump basin no. 1 before it discharges into the Portneuf River. She also testified that, as an alternative, she might seek an agreement with the Foundation to deliver low temperature geothermal water to the proposed place of use through the existing Foundation delivery system. No specific plans for diversion and delivery of water were submitted into evidence.

50. Improvements for beneficial use of water from the bleeder valve have been constructed and are presently owned by Lyons. Karen Vargason testified that she could pay for the additional planned improvements from funds available in her savings account. Because Lyons purchased the proposed place of use after the hearing, there is no evidence of Lyons' financial resources to fund expansions of the present system.

51. Karen Vargason testified that 20,000 pounds of tilapia would be reared annually, equivalent to between 40,000 and 100,000 juvenile fish annually.

52. George Katsilometes (Katsilometes) owns a hotel on the south side of the Portneuf River in Lava Hot Springs southwest of the Foundation's main pump house. Katsilometes owns permit to appropriate water no. 29-7869, which authorizes the diversion of 0.50 cfs from ground water for commercial purposes. Katsilometes constructed an 80-foot deep low temperature geothermal well in 1990. A well driller's report of the well is one of the documents marked as protestants' exhibit J.

53. Katsilometes constructed a bathing pool for guests at the hotel. He installed a five horsepower pump in the well at a depth of 72 feet. The pump produced a flow of 80 gpm.

54. Katsilometes testified that he needs 40 gpm to maintain the pool at an optimum bathing temperature of approximately 108° F. Protestants' exhibit J contains a summary of a pump test conducted by Katsilometes' well driller, Rodney Hendricks (Hendricks). Hendricks measured a temperature of 122° F after pumping the well for 17.5 hours.

55. Katsilometes testified that water was pumped from his well 24 hours a day for the entire year.

56. From 1991 through 1995, water levels in Katsilometes' well declined. Katsilometes testified that the water temperature in his well also declined from 122° F to 104° F.

57. In 1995, Katsilometes constructed additional bathing pools. Because of the additional water demand, and the reduction in the water level and temperature in the first well, Katsilometes drilled another well in 1995. The well driller's report for the second well is also a part of protestants' exhibit J.

58. Between 1990 and 1995, Katsilometes installed a 7.5 horsepower pump in the first well, lowered the intake, and installed a pump in the second well. He increased his total pumping capacity from 80 gpm to between 200 and 230 gpm.

59. Katsilometes submitted evidence of a test of the two wells conducted in 1995 by an employee of Hendricks. A summary of the test is included as part of protestants' exhibit J.

60. Katsilometes testified that when water is being pumped from the second well, the water temperature in the first well rises. He speculated that pumping by the Foundation moved the hot water east of his property. He hypothesized that pumping from the second well draws some of the hot water back from the east to the first well. He testified that the 1995 test by Hendricks' employee supports this theory.

61. Katsilometes also testified that he observed an increase in water levels and water temperatures in his wells and that the water diverted from his wells "clears up" when the Foundation ceases pumping.

62. Katsilometes' property is located west and south of the Foundation's main pump house. He testified that the ground surface elevation at his property is lower than the ground surface elevation of the Foundation's property. He testified that the hottest well (the second well drilled in 1995) is approximately 130 yards away from the Foundation's main pump house. He testified that the first well (the well drilled in 1990) is located approximately 60 feet west of the second well.

63. Mehlhaff testified that he owns a domestic well located almost directly across the river from the Foundation's main pump house. Mehlhaff testified that he noticed a decline in both water temperature and pressure after the Foundation reconstructed its system. He testified that, during the summer months, he is now unable to divert low temperature geothermal water. His domestic well is approximately 20 feet deep and is a four (4) inch diameter well.

64. Walden is or was the proprietor of the River Side Inn. He testified that his water rights are some of the oldest water rights authorizing diversion of low temperature geothermal water. He testified that he diverts water both from a well and a low temperature geothermal spring. He derives approximately 80 percent of his water from the spring and 20 percent of his water from the well. Walden's spring arises in the Portneuf River just upstream and across the river from the Foundation's main pump house. A cistern is constructed in the river to prevent mixing of water from the spring with the river water. The temperature of the spring is 133° F; one of the warmer springs in the area. Walden's well is approximately 16 to 18 feet deep.

65. Walden testified that he observed significant fluctuations in water levels after the Foundation reconstructed its system. Nevertheless, he has at all times been able to divert water pursuant to his water rights.

66. Rush owns property located south and east of the Foundation's main pump house. Rush and Waldon divert water from the same spring. Rush is concerned about future declines in water levels of the spring from which she now diverts or proposes to divert water.

67. According to the well driller's reports of the Katsilometes wells contained in protestants' exhibit J, both the wells were completed to a depth of 80 feet. The wells were constructed entirely within a rock stratum that is permeable to surface water infiltration. The geothermal water is not separated from cold water flowing in the Portneuf River by an aquitard. The water in the Portneuf River interacts directly with warm geothermal water rising through underground fractures or faults.

68. If pumping by the Foundation causes declines in water levels and water temperature, the most dramatic declines would be noticed in the geothermal diversions nearest to the Foundation's main pump house. Although Walden testified he had noticed fluctuations of water levels in his spring, the changes were not significant compared to allegations by Katsilometes that the pump in his well would not pump from a depth of 72 feet because there was not enough water. Both Walden and Mehlhaff should observe significantly greater effect from pumping by the Foundation than Katsilometes.

69. Pumping by Katsilometes is probably drawing warm water away from its boundary with the cold water of the Portneuf River, and the declining water temperature is probably caused by intrusion of cold water into Katsilometes' wells.

70. Water levels are declining in the Mehlhaff well and the spring from which Walden and Rush divert water probably because of pumping by Katsilometes not because of pumping by the Foundation.

71. Diversion by the Foundation from its pump basins does not affect the availability of water to the protestants. Even if the Foundation pumping is affecting other water rights, the claimed priority dates of the Foundation's water rights are earlier in time than the priority dates

of the water rights held by the protestants, and, if the Foundation is not diverting more than it is beneficially using (including reasonable waste), diminishment of water available to the protestants resulting from diversion by the Foundation is not injury.

72. Diversion of water from the outlet of the swimming pool complex will not adversely affect other water users.

73. Diversion of excess water bled from the bleeder valves at the cross connection where water is delivered to the swimming pool complex will not adversely affect other water users.

74. Diversion of water now leaving the Foundation's hot pools, either through the existing pipeline, or through a new pipeline, will not adversely affect diversions by other water users.

75. Meline testified that the proposal by Vargasons to the Foundation to divert water not presently used by the Foundation had been discussed with the Foundation's board, but the board had tabled any action regarding the proposal pending the review and the decision regarding the protests to these applications. Meline testified that he was not prepared to state the position of the Foundation regarding the pending applications.

76. Karen Vargason testified that the quantities sought for appropriation were determined with the help of Keith Wilson, an employee of IDWR. Keith Wilson testified that the flow rate sought for appropriation was taken from an IDWR graph that relates flow rate to the number of fish proposed for rearing. The graph is intended for determining the flow rate necessary for trout rearing and propagation.

77. The information submitted by Keith Wilson was the only technical information submitted to IDWR related to the quantity of water necessary for fish rearing and the size of the rearing facilities.

CONCLUSION OF LAW

1. Idaho Code § 42-203A provides, in pertinent part, as follows:

> In all applications whether protested or not protested, where the proposed use is such (a) that it will reduce the quantity of water under existing water rights, or (b) that the water supply itself is insufficient for the purpose for which it is sought to be appropriated, or (c) where it appears to the satisfaction of the director that such application is not made in good faith, is made for delay or speculative purposes, or (d) that the applicant has not sufficient financial resources with which to complete the work involved therein, or (e) that it will conflict with the local public interest as defined in section 42-202B, Idaho Code, or (f) that it is contrary to conservation of

water resources within the state of Idaho, or (g) that it will adversely affect the local economy of the watershed or local area within which the source of water for the proposed use originates, in the case where the place of use is outside of the watershed or local area where the source of water originates; the director of the department of water resources may reject such application and refuse issuance of a permit therefor, or may partially approve and grant a permit for a smaller quantity of water than applied for, or may grant a permit upon conditions.

2. The applicant bears the burden of proof regarding the criteria set forth in Idaho Code § 42-203A.

3. Title 67, Chapter 44 of the Idaho Code creates the Lava Hot Springs Foundation and grants the Foundation authority to manage the state property and the geothermal resources at Lava Hot Springs. The law does not describe a preference for one use of the geothermal water over another use. Furthermore, the law does not expressly charge the Foundation with any public interest responsibility.

4. The traditional uses of low temperature geothermal waters by the Foundation have been for bathing and heating. Idaho Code § 67-4404 refers to "hot springs, bathing facilities, and sanitarium and hospital . . ." and implies that the intended use is for some human therapeutic activity. Idaho Code § 67-4405 and § 67-4408 refer to "bathing facilities, pleasure resort, hospital or sanitarium. . . ."

5. Idaho Code § 67-4402 states that the Foundation has the authority to lease property under its control "not used or needed by the Foundation . . .."

6. The statutory charge to the Foundation to manage water on the lands it controls and the statutory language discussing traditional uses of the water creates an oversight authority in the Foundation to determine the best use of the water for the public good. IDWR should not approve an application filed by someone other than the Foundation for diversion of low temperature geothermal water directly from sources located on Foundation property for fish propagation. Application no. 29-8164 is not in the public interest.

7. The diversion and use of water delivered from the bleeder valve as proposed by application for permit no. 29-8162 will not injure other water rights.

8. The testimony established that 4.41 cfs is available from the sources now diverted by the Foundation. Nonetheless, the Foundation's water rights only authorize the diversion of 2.55 cfs that could be captured as wastewater under application for permit no. 29-8162. There is insufficient water to satisfy the 3.0 cfs flow rate proposed for diversion by permit no 29-8162, and the flow rate should be limited to a maximum flow of 2.55 cfs.

9. Because construction of the bleeder valve delivery system and the pond for beneficial use is complete, that portion of application 29-8162 is not speculative or filed in bad faith.

10. In addition, because the pipe connection from the bleeder valve to the Lyon pond is complete, Lyons have sufficient financial resources to construct the already competed portion of the project.

11. Use of the trout water-sufficiency-curve to determine how many fish can be raised did not establish the facility volumes and flow necessary to raise tilapia.

12. Application for permit no. 29-8162 proposes diversion of wastewater. The term has always referred to water that has been beneficially used and can be diverted by the original right holder or another downstream user prior to reaching a public water supply. Water exiting a bleeder valve is wastewater, provided no more water is bled from the valve than is necessary to accomplish the delivery in the existing system.

13. When water is not being delivered to the swimming pool complex, no wastewater should be delivered to Lyons pursuant to permit no. 29-8162.

14. The proposed use of wastewater is not contrary to conservation of the water resources of the State of Idaho.

ORDER

IT IS HEREBY ORDERED that application for permit no. 29-8164 is REJECTED and issuance of a permit is REFUSED.

IT IS FURTHER ORDERED that permit no. 29-8162 is APPROVED with the following conditions:

1. Proof of application of water to beneficial use shall be submitted on or before February 1, 2011.

2. Subject to all prior water rights.

3. The permit holder or the Lava Hot Springs Foundation must establish and report to IDWR and to the protestants prior to diverting water under permit no. 29-8162 the quantity of water that must discharge from the bleeder valves to operate the Foundation's system. Diversion of waste water must be limited to the established waste flow from the bleeder valve.

4. This right only authorizes one point of diversion at the bleeder valve located within Lot 7 (NWSE), Section 21, T09S, R38E.

5. The right holder shall not assign or sell the permit without first securing the written approval of the Department of Water Resources.

6. Use of water under this approval shall comply with applicable state water quality standards.

7. The issuance of this right does not grant any right-of-way or easement across the land of another.

8. Use of water under this water right shall be nonconsumptive.

9. Use of water under this water right will be regulated by the watermaster of State Water District no. 29, Portneuf River.

Dated this 13th day of January, 2009.

DAVID R. TUTHILL, JR.
Director

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 14th day of January, 2009, a true and correct copy of the document(s) described below were served by placing the same in the United States mail, postage prepaid and properly addressed to the following:

Document(s) Served: Final Order and Explanatory Information sheet for a Final Order when a hearing was held.

CRAIG AND VICKI LYON
273 NORTH 2400 WEST
BRINGHAM CITY UT 83402

JACK H ROBISON
JONES CHARTERED
415 S ARTHUR
PO BOX 967
POCATELLO ID 83204-0967

GREGORY W MOELLER
RIGBY THATCHER ANDRUS
RIGBY KAM & MOELLER
PO BOX 250
REXBURG ID 83440

BOB MELINE
LAVA HOT SPRINGS FOUNDATION
420 EAST MAIN
LAVA HOT SPRINGS ID 83246

JOHN MEHLHAFF
1424 HIGH ST
AUBURN CA 95603

FL DUKE WALDEN
PO BOX 127
LAVA HOT SPRINGS ID 83246

EVELEE HILL RUSH
PO BOX 4905
POCATELLO ID 83205-4905

Deborah J. Gibson
Administrative Assistant
Water Management Division

2004 MAR 22 PM 02:00
DISIRICT COURI - SRBA
IWIN FALLS CO., IDAHO
FILED _____

ATTACHMENT A

IN IHE DISIRICI COURI OF IHE FIFIH JUDICIAL DISIRICI OF IHE SIAIE OF IDAHO, IN AND FOR IHE COUNIY OF IWIN FALLS

In Re SRBA	)	PARIIAL DECREE PURSUANI IO
	)	I.R.C.P 54(b) FOR
Case No 39576	)	
	)	Water Right 29-04178

NAME AND ADDRESS:
IAVA HOI SPRINGS FOUNDAIION P
IAVA HOI SPRINGS FOUNDAIION P
O BOX 669
LAVA HOI SPRINGS ID 83246

SOURCE: SPRINGS IRIBUIARY: PORINEUF RIVER

QUANIIIY: 2 03 CFS

PRIORIIY DAIE: 06/13/1902

POINI OF DIVERSION: I09S R38E S22 LOI 10 (SWNWSW) Within Bannock County

PURPOSE AND PERIOD OF USE:

PURPOSE OF USE	PERIOD OF USE	QUANIIIY
Commercial	01-01 IO 12-31	2 03 CFS

PLACE OF USE: Commercial Within Bannock County
I09S R38E S22 IOI 10 (SWSW)

OIHER PROVISIONS NECESSARY FOR DEFINIIION OR ADMINISIRAIION OF IHIS WAIER RIGHI:

IHIS PARIIAL DECREE IS SUBJECI IO SUCH GENERAL PROVISIONS NECESSARY FOR IHE DEFINIIION OF IHE RIGHTS OR FOR IHE EFFICIENI ADMINISIRAIION OF IHE WAIER RIGHIS AS MAY BE ULIIMAIELY DEIERMINED BY IHE COURI AI A POINI IN IIME NO LAIER IHAN IHE ENIRY OF A FINAL UNIFIED DECREE I.C SECIION 42-1412(6)

RULE 54(b) CERIIFICAIE

With respect to the issues determined by the above judgment or order, it is hereby CERIIFIED, in accordance with Rule 54(b) I.R.C.P., that the court has determined that there is no just reason for delay of the entry of a final judgment and that the court has and does hereby direct that the above judgment or order shall be a final judgment upon which execution may issue and an appeal may be taken as provided by the Idaho Appellate Rules.

John M. Melanson
Presiding Judge of the
Snake River Basin Adjudication

2004 MAR 22 PM 02:00
DISTRICT COURT - SRBA
TWIN FALLS CO., IDAHO
FILED _____

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

In Re SRBA	)	PARTIAL DECREE PURSUANT TO
	)	I.R.C.P. 54(b) FOR
Case No. 39576	)	
_____	)	Water Right 29-02283

NAME AND ADDRESS: LAVA HOT SPRINGS FOUNDATION P
LAVA HOT SPRINGS FOUNDATION P
O BOX 669
LAVA HOT SPRINGS, ID 83246

SOURCE: GROUND WATER

QUANTITY: 0.50 CFS

PRIORITY DATE: 01/14/1949

POINT OF DIVERSION: T09S R38E S22 LOT 10 (SENWSW) Within Bannock County

PURPOSE AND PERIOD OF USE:

PURPOSE OF USE	PERIOD OF USE	QUANTITY
Commercial	01-01 TO 12-31	0.50 CFS

PLACE OF USE: Commercial Within Bannock County
T09S R38E S22 LOT 10 (NWSW)

OTHER PROVISIONS NECESSARY FOR DEFINITION OR ADMINISTRATION OF THIS WATER RIGHT:

THIS PARTIAL DECREE IS SUBJECT TO SUCH GENERAL PROVISIONS NECESSARY FOR THE DEFINITION OF THE RIGHTS OR FOR THE EFFICIENT ADMINISTRATION OF THE WATER RIGHTS AS MAY BE ULTIMATELY DETERMINED BY THE COURT AT A POINT IN TIME NO LATER THAN THE ENTRY OF A FINAL UNIFIED DECREE I.C. SECTION 42-1412(6)

RULE 54(b) CERTIFICATE

With respect to the issues determined by the above judgment or order, it is hereby CERTIFIED, in accordance with Rule 54(b), I.R.C.P., that the court has determined that there is no just reason for delay of the entry of a final judgment and that the court has and does hereby direct that the above judgment or order shall be a final judgment upon which execution may issue and an appeal may be taken as provided by the Idaho Appellate Rules.

John M. Melanson
Presiding Judge of the
Snake River Basin Adjudication

2004 MAR 22 PM 02:00
DISTRICT COURT - SRBA
TWIN FALLS CO., IDAHO
FILED _____

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

In Re SRBA	)	PARTIAL DECREE PURSUANT TO
	)	I.R.C.P. 54(b) FOR
Case No. 39576	)	
	)	Water Right 29-10219

NAME AND ADDRESS: LAVA HOT SPRINGS FOUNDATION P
LAVA HOT SPRINGS FOUNDATION P
O BOX 669
LAVA HOT SPRINGS, ID 83246

SOURCE: GROUND WATER

QUANTITY: 0.02 CFS

PRIORITY DATE: 06/01/1961

POINT OF DIVERSION: T09S R38E S22 LOT 10 (SWSWSW) Within Bannock County

PURPOSE AND PERIOD OF USE:

PURPOSE OF USE	PERIOD OF USE	QUANTITY
Commercial	01-01 TO 12-31	0.02 CFS

PLACE OF USE: Commercial Within Bannock County
T09S R38E S22 LOT 10 (SWSW)

OTHER PROVISIONS NECESSARY FOR DEFINITION OR ADMINISTRATION OF THIS WATER RIGHT:

THIS PARTIAL DECREE IS SUBJECT TO SUCH GENERAL PROVISIONS NECESSARY FOR THE DEFINITION OF THE RIGHTS OR FOR THE EFFICIENT ADMINISTRATION OF THE WATER RIGHTS AS MAY BE ULTIMATELY DETERMINED BY THE COURT AT A POINT IN TIME NO LATER THAN THE ENTRY OF A FINAL UNIFIED DECREE. I.C. SECTION 42-1412(6).

RULE 54(b) CERTIFICATE

With respect to the issues determined by the above judgment or order, it is hereby CERTIFIED, in accordance with Rule 54(b), I.R.C.P., that the court has determined that there is no just reason for delay of the entry of a final judgment and that the court has and does hereby direct that the above judgment or order shall be a final judgment upon which execution may issue and an appeal may be taken as provided by the Idaho Appellate Rules.

John M. Melanson
Presiding Judge of the
Snake River Basin Adjudication

11/99

RECEIVED
JUL 24 2008
DEPARTMENT OF WATER RESOURCES

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

ASSIGNMENT OF APPLICATION FOR PERMIT

To change the ownership of an application for permit

Lazy V Ranches, Inc., hereby assign to Craig and Vickie Lyon

of, 273 North 2400 West, Brigham City, Utah 83402 (801) 391-2883
(Full Address) (Phone)

All my right, title, and interest in and to Application for Permit No. 29-8162 and 29-8164 to appropriate the public waters of the State of Idaho.

OR (for partial assignments)

The following described portion of my right, title, and interest in and to Application for Permit No. _____ to appropriate the public waters of the State of Idaho.
(Describe portion of the application for permit assigned, listing the number of acres in each 40 acre subdivision, point of diversion location, and amount of the water in cubic feet per second.)

Made this 18 day of June, 2008.

Lazy V Ranches, Inc.

Applicant(s) Thayne Vargason, President

Karen Vargason, Secretary

State of Idaho)
)ss
County of Bannock

On this 18 day of June, 2008, personally appeared before me the signer(s) of the above instrument, who duly acknowledged to me that he (she) (they) executed the same.

SEAL

LORI DAVIE
NOTARY PUBLIC
STATE OF IDAHO

Notary Public residing at Pocatello

My commission expires: 11/21/2013

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE

STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR PERMIT NO. 29-08162 AND FOR PERMIT NO. 29-08164 IN THE NAME OF LAZY V RANCH	)))))	**ORDER DENYING PETITIONS FOR RECONSIDERATION**

On June 11, 1998, Lazy V Ranch (Vargasons) petitioned the hearing officer for reconsideration of a recommended order dated May 14, 1998 and mailed on May 29, 1998. On June 16, 1998, the Idaho Department of Water Resources (IDWR) received a motion for reconsideration of recommended order from the protestant, George Katsilometes.

Rule 720.02.a. states that a "party may file a petition for reconsideration of [a] recommended order with the hearing officer issuing the order within fourteen (14) days of the service date of this order." Vargasons timely filed a petition for reconsideration. The motion for reconsideration of recommended order filed by Katsilometes was untimely filed, and the motion is denied in this order. Nevertheless, the issues raised in Vargasons' petition for reconsideration must be addressed and the issues raised by Katsilometes, although untimely, will also be discussed.

ISSUES RAISED BY VARGASONS

Vargasons contest a condition requiring written consent from the Lava Hot Springs Foundation for the development of low temperature geothermal water prior to development or diversion of water under the two permits approved. Vargasons argue that the condition creates law in excess of authority of IDWR, rejects the history of the agreements between the Lava Hot Springs Foundation (Foundation) and Vargasons, interferes with the rights of third parties, dictates the manner in which the Foundation is to discharge its authority, and improperly delegates authority of IDWR to another branch of government.

IDWR is charged with the responsibility of reviewing the local public interest. While the direct statutory authorities of the Foundation do not expressly create a public interest responsibility, the grant of authority to the Foundation to manage lands and waters arising and flowing thereon and the makeup of the Foundation's board as a group of citizens and

businessmen places the Foundation in a unique position of guiding IDWR in determining what the local public interest is. The recognized contract between the Foundation and Vargasons for delivery of waste water in exchange for an easement is a strong indication that the Foundation thought the agreement to allow use of waste water for the easement was in the public interest. Bob Meline stated in his testimony, however, that the Foundation was not prepared to act on the proposal by Vargasons to divert additional Foundation water for fish propagation until IDWR determines whether the water rights should be granted or not. Because of the contentious history of this proposed water use, and the Attorney General's opinion that affirmed IDWR's responsibility to determine whether water rights should be issued, the Foundation's reluctance was justified. Condition No. 2 requiring written confirmation from the Foundation is a further protection that the public interest is fully satisfied. IDWR is not rejecting any prior agreements between the Foundation and the applicant, it is not interfering with the rights of third-parties, it is not creating and defining the legal duties of another governmental agency, it is not legislating or delegating authority to the Foundation, or directing the Foundation to act in any way. If the Foundation refuses to issue a written consent to allow the Vargasons to use the low temperature geothermal water for fish propagation, no diversion or delivery shall take place, and, upon attempting to show proof of beneficial use, the water right will not be developed because of lack of beneficial use. Furthermore, the applicant will not have complied with the conditions of the permit. The petition for reconsideration filed by Vargasons should be denied.

ISSUES RAISED BY KATSILOMETES

Katsilometes raised several issues from the recommended order. These issues will be listed as margin headings below, and will be discussed individually.

The water applied for was not "waste water."

The hearing officer recognizes that there was a disagreement about whether the water discharging from the bleeder valve with air is necessary for operation of the system. Department employees who investigated the system stated that the system design was consistent with acceptable engineering practices. Although the use of water does not employ the most efficient method of application of water to a beneficial use, the diversion and application of water is reasonable.

"Waste" of water is prohibited by the Idaho Code.

Water diverted and applied in a reasonable manner may have a component that is not fully used for the primary purpose but may have some secondary worth. This has traditionally

been classified as "wastewater." The water proposed to be diverted by Vargasons fits this definition.

The agreement between the Foundation and Vargasons is invalid.

If Katsilometes were a party to the contract, and was questioning its validity, perhaps many of the issues raised by Katsilometes would be legitimate. Here, however, deficiencies in the contract are not proper issues to be raised by a third-party such as Katsilometes. Vargasons and the Foundation testified about and have acted as if a contract existed between them. IDWR will not disturb this arrangement by ruling on the validity of the contract because of issues raised by an outside party.

Application for permit no. 29-08162 should be denied because it fails to meet all the criteria set forth in Idaho Code § 42-203(A).

The hearing officer differs with Katsilometes, and generally reaffirms that the evidence satisfies the criteria of Idaho Code § 42-203(a).

There is no factual basis for a finding of fact that the owners of the condominiums objected to a pipeline crossing their property.

Conflicting evidence was presented at the hearing about whether the operator of the condominiums objected to a pipeline crossing their property. Sudweeks, engineer for the property, and Bob Meline, manager for the Foundation, both testified that the operators of the condominiums objected. The hearing officer chose to believe the testimony of Sudweeks and Meline. Even if the assertion by Katsilometes is true, it would not change the decision. The Foundation could have contracted with Vargasons even if the operators of the condominiums objected.

Perforation of well casing.

Katsilometes argues that the casing in his well was perforated, and that IDWR ignored his testimony by presuming "that the well casing was not perforated. . . ." A review of the testimony reveals that Katsilometes testified about two different wells, and the decision discusses the two different wells. The first well is the well in which the casing is presumed not to be perforated because Katsilometes did not testify about perforations in the first well. He did testify about perforations in the second well, and his testimony was recognized in the decision.

A graph for trout rearing was used to determine the quantity of water necessary for rearing tilapia.

Protestants correctly point out that a graph for raising trout was used to determine the quantities of water needed to raise warm water tilapia. Water demands for trout and tilapia are probably different. While the protestant did not present any additional information regarding the need for water and size of the ponds, the restrictive conditions of IDWR on the permit are sufficient to prevent an over appropriation of water.

There are not substantial facts in the record to support the findings of fact.

Katsilometes refers to Findings of Fact Nos. 51 - 74, a large block of findings discussing the hydrogeologic characteristics of the area, and the relationship of the protestants' diversions to the diversions of the Foundation. Without specific examples of the findings Katsilometes finds objectionable, it is difficult for the hearing officer to address these concerns. Some of the findings were based on well logs submitted by Katsilometes. In particular, the well logs for his well, show a lithology devoid of any confining material. In other words, the geothermal water, which comes from a deeper source, mingles with the cold waters of the Portneuf River along some interface. If Katsilometes desires a greater degree of review from IDWR regarding its findings, Katsilometes must identify specifically the objectional language and the grounds for the objection.

ORDER

IT IS HEREBY ORDERED that the petition for reconsideration filed by Vargasons is hereby **DENIED**.

IT IS FURTHER ORDERED, that the petition for a motion for reconsideration of recommended order filed by Katsilometes is **DENIED** because it was untimely filed.

DATED This 1st day of July, 1998.

Gary Spackman

Gary Spackman

CERTIFICATE OF MAILING

I do hereby certify that on this 10th day of July, 1998, I mailed a true and correct copy, postage prepaid, of the foregoing **ORDER DENYING PETITIONS FOR RECONSIDERATION** to the following:

George W. Katsilometes
P.O. Box 670
Lava Hot Springs, ID 83246
Fax: 208-232-2170

John Mehlhaff
1424 High St.
Auburn, CA 95603
Fax: 916-632-3938

Jack H. Robison
Jones Chartered
P.O. Box 967
Pocatello, ID 83204-0967
Fax: 208-232-5962

Evelee Hill Rush
P.O. Box 4905
Pocatello, ID 83205-4905
Fax: 208-232-2170

Julie L. Yarbrough

JULIE L. YARBROUGH
Senior Secretary, Water Allocation Bureau

AMENDED CERTIFICATE OF MAILING

I do hereby certify that on this 24th day of July, 1998, I mailed a true and correct copy, postage prepaid, of the foregoing **ORDER DENYING PETITIONS FOR RECONSIDERATION** to the following:

Bob Meline
Lava Hot Springs Foundation
420 East Main
Lava Hot Springs, ID 83246

Jack H. Robison
Jones, Chartered
415 S. Arthur
P.O. Box 967
Pocatello, ID 83204-0967

Evelee Hill Rush
P.O. Box 4905
Pocatello, ID 83205-4905

Gregory W. Moeller
Rigby, Thatcher, Andrus, Rigby, Kam & Moeller
P.O. Box 250
Rexburg, ID 83440

John Mehlhaff
1424 High St.
Auburn, CA 95603

F.L. Duke Walden
P.O. Box 127
Lava Hot Springs, ID 83246

Julie L. Yarbrough

JULIE L. YARBROUGH
Senior Secretary, Water Allocation Bureau

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

IN THE MATTER OF APPLICATIONS FOR PERMIT NOS. 29-08162 and 29-08164 IN THE NAME OF LAZY V RANCH	))))	**RECOMMENDED ORDER**

Lazy V Ranch filed two applications to appropriate water with the Idaho Department of Water Resources (IDWR), numbered as 29-08162 and 29-08164. Lazy V Ranch is not a corporation as represented on the applications but is a business operated by Thayne and Karen Vargason. The applicant will hereafter be referred to as "Vargasons." The applications were protested by George Katsilometes, Evelee Hill-Rush, John Mehlhaff, and Duke Walden. A hearing was conducted on October 23 - 24, 1997, regarding the protests.

Based on the evidence and testimony presented at the hearing, the hearing officer recommends the following findings of fact, conclusions of law, and order:

FINDINGS OF FACT

1. Application for permit nos. 29-08162 and 29-08164 propose diversion of low temperature geothermal water arising or artificially captured on lands owned by the State of Idaho and administered by the Lava Hot Springs Foundation (Foundation). Vargasons own 17 acres of property adjoining the west side of the Foundation property.

2. Application for permit no. 29-08162 proposes the following:

Purpose:	Diversion to Storage Storage for Fish Propagation
Flow Rate:	3.0 cfs
Storage Volume:	0.5 acre feet
Period of Use:	January 1 through December 31
Proposed Priority:	November 20, 1995

Point of Diversion:	Lot 7 (NWSE), Section 21, T9S, R38E, B.M. (Two diversions)
Place of Use:	Lot 6 (NESW), Section 21, T9S, R38E, B.M.
Source:	Wastewater

3. Karen Vargason testified that application for permit no. 29-08162 proposes two points of diversion after low temperature geothermal water is beneficially used by the Foundation. The specific description of the points of diversion will be discussed later in the decision.

4. Application for permit no. 29-08164 proposes the following:

Purpose:	Diversion to Storage Storage for Fish Propagation
Flow Rate:	7.0 cfs
Storage Volume:	0.5 acre feet
Period of Use:	January 1 through December 31
Proposed Priority:	January 5, 1996
Point of Diversion:	Lot 8 (SENESE), Section 21, T9S, R38E, B.M.
Place of Use:	Lot 6 (NESW), Section 21, T9S, R38E, B.M.
Source:	Spring located on Foundation property

5. The Portneuf River flows through the center of the City of Lava Hot Springs. In general, the private property of the townsite is located on the south side of the river. The State of Idaho owns several hundred acres of land located immediately north of the City of Lava Hot Springs.

6. The Idaho Legislature created the Foundation by enacting Title 67, Chapter 44 of the Idaho Code. The Foundation is charged with the duty of managing the state lands in the vicinity of Lava Hot Springs and the unique low temperature geothermal water located thereon.

7. Protestants' exhibit K generally depicts the location of the state property, the City of Lava Hot Springs, and the properties owned by the protestants.

8. Since its creation, the Foundation has built and promoted the construction of public hot pools, a natatorium (assumed to be a swimming pool) that collapsed or was irreparably damaged during a flood event, and in later years, a swimming pool complex and some condominiums. The Foundation has contracted with concessionaires to operate businesses on the property of the Foundation. The condominiums are operated privately by a concessionaire through a lease arrangement.

9. The Foundation claimed water rights for the beneficial use of the low temperature geothermal water. A summary of the Foundation's Snake River Basin Adjudication (SRBA) claims are attached as Attachment A. The Foundation claims the right to divert a total of 6.27 cubic feet per second (cfs) from geothermal springs for commercial purposes.

10. In approximately 1990, the Foundation decided to improve the delivery of water to the swimming pool complex for heating the pool water and associated buildings, and initiated a reconstruction of its hot water delivery system. Prior to reconstruction, the pool and associated buildings were heated with natural gas.

11. Water can be captured for delivery to the swimming pool complex from two sources on Foundation property. The first source of water discharges from the public bathing pools, located at the east side of the Foundation property. The second source of water is springs (or shallow underground flows) located south and west of the public bathing pools. The springs once supplied hot water to the natatorium.

12. The Foundation decided to construct a primary delivery system and an auxiliary system for back up that could also serve future expansion. The systems were designed so that water from the two sources would not commingle.

13. Two parallel water delivery systems were constructed alongside each other. The systems will be referred to as system no. 1 and system no. 2. The pumps, pump basins, and pipelines of the systems will be assigned the same number as the system of which they are a component.

14. System no. 2 is the primary system for delivery of the Foundation's low temperature geothermal water and is designed to pump 780 gallons per minute (gpm).

15. System no. 1 is an auxiliary or back up system. Pump no. 1 was designed to divert approximately 1,200 gpm.

16. Together, the pumps were designed to divert 1,980 gpm. The engineer for the project, Charles Sudweeks (Sudweeks), testified that the pumps were designed to divert all of the available water. A flow of 1,980 gpm is equal to a flow of 4.41 cfs. This flow rate is less than the total flow rate claimed by the Foundation in its SRBA claims.

17. Water from both sources is delivered to a single location in a divided structure referred to in the evidence as a cistern, a pump house, a collection box, and a well. For purposes of this decision, the structure will be referred to as the "main pump house."

18. The main pump house has two compartments. This decision will refer to the compartments as pump basin no. 1 and pump basin no. 2. Water is diverted from both sources continuously and delivered into pump basin nos. 1 and 2. The testimony and evidence refers to pumps in and pipelines extending from the compartments as pump nos. 1 and 2, and pipeline nos. 1 and 2, respectively.

19. During construction of the main pump house, the contractor excavated from five to ten feet below ground surface. A concrete floor was constructed in pump basin no. 1. The floor in pump basin no. 2 was not covered with concrete, but was left open after the excavation. Protestants allege that pumping of water from the excavated pump basins is drying up springs that once flowed on Foundation property and is also reducing temperatures and water levels in wells and springs from which they divert water.

20. Sudweeks testified that the old natatorium site was cleared, and new pipelines were connected to the old pipelines that capture spring water and once supplied water to the natatorium. Water from the springs flow by gravity to pump basin no. 2. A ten horsepower pump and motor, referred to as pump no. 2, delivers water into pipeline no. 2.

21. Water flowing from the public bathing pools discharges into pump basin no. 1. A 20 horsepower pump and motor, referred to as pump no.1, pumps water into pipeline no. 1.

22. Low temperature geothermal water must be lifted from the main pump house to reach the swimming pool complex. Sudweeks determined that water should be pumped from the main pump house uphill (approximately 400 horizontal feet and 30-40 vertical feet) in a northwesterly direction to a point where the water would gravity flow downhill to the swimming pool complex (See applicant's exhibit no. 14).

23. Two twelve-inch diameter pipes exit the main pump house in a northwesterly direction (one from each pump basin) and ascend alongside each other to the apex discussed above. After reaching the apex, the pipelines descend parallel to each other in a westerly direction to a valve box (valve box no. 1).

24. Four valve boxes are spaced along the pipelines, and both pipelines intersect the valve boxes. The valve boxes were numbered during the hearing, and are identified on applicant's exhibit no. 14. The valve box numbers have no relationship to the system numbers.

25. Valve box no. 1 was built for possible future development. The valves in valve box no. 1 are not currently utilized for controlling water in the system.

26. A junction is constructed in pipeline nos. 1 and 2 in the second valve box (valve box no. 2). A single delivery pipeline, cross connected to both pipeline nos. 1 and 2, was constructed south to the swimming pool complex. A bleeder valve was constructed in each cross connection. The bleeder valves can release air and water into pipeline no. 1 and pipeline no. 2 in a westerly direction. Parallel pipeline nos. 1 and 2 extend west from valve box no. 2 through two more unused valve boxes (valve box nos. 3 & 4) to the western boundary of the Foundation property. Pipelines constructed down gradient of valve box no. 4 will be referred to hereafter as the "pipeline extensions."

27. The initial plans, depicted on applicant's exhibit no. 14, proposed construction of the pipeline extensions along the western boundary of the Foundation property that would discharge water to the Portneuf River. The pipeline extensions would have crossed the lands leased by the condominium concessionaire. When the contractor was in the field preparing for construction, the lessee of the condominiums objected to construction of the pipeline extensions across the leased property.

28. The contractor communicated the lessee's objection to the executive director of the Foundation, Robert Meline (Meline).

29. The system reconstruction was planned for the spring of 1991, and completion was necessary before the swimming pool opened in May of 1991.

30. Meline felt that an extended dispute with the condominium concessionaire would unacceptably delay the construction and sought other options. He approached Thayne and Karen Vargason about constructing the pipeline extensions on the Vargason property that adjoins the west side of the Foundation property.

31. Vargasons agreed that the Foundation could construct its pipeline extensions on their property in exchange for the right to divert "excess water" from the Foundation's pipelines. Applicant's exhibit nos. 2 and 3 are copies of the documents underlying the agreement. Meline testified that he received consent for the agreement from three Foundation board members prior to signing the agreement. The pipeline extensions were constructed on Vargason's property. A pipeline to the Vargason property was tapped to line 2 in valve box no. 4 at the time of construction. Vargasons paid for the pipeline delivering water to their property. Valve box no. 4 is the location of one of two points of diversion proposed by application no. 29-08162.

32. Vargasons constructed a pond on their property to raise tilapia, a tropical fish that lives in warm water. Water from the bleeder valve was diverted to the pond. A research project, conducted by Shelley High School students, showed that young tilapia could be raised in the pond. Approximately 40,000 tilapia were reared in the pond.

33. The temperature of the water delivered to Vargasons' pond is 102° F, and must be cooled to 84° F for rearing of tilapia. Vargasons constructed sprayers to aerate and cool the warm water to an acceptable temperature for the fish.

34. The Foundation's system operates automatically except on rare occasions. System no. 2 operates 24 hours a day year-round, except when occasional maintenance is necessary or a shut down occurs because of a power failure or mechanical failure. In most cases, pump no. 1 will operate when pump no. 2 is not operating.

35. To maintain the proper temperature in the Vargason pond, low temperature geothermal water must flow almost continuously into the pond. In March of 1996, the Foundation's automated delivery system malfunctioned. Flow of low temperature geothermal water to the Vargason pond ceased, and, as the water in the pond cooled, approximately 20,000 fish died.

36. Pump nos. 1 and 2 are variable speed pumps. The pumps operate at different speeds depending on demand at the swimming pool complex. Water is pumped to the apex of the pipelines. From the apex, water flows by gravity towards the swimming pool complex. At valve box no. 2, the bleeder valves previously discussed drain air out of the operating pipeline before the water flows toward the swimming pool complex. The purpose of the bleeder valve is to remove air that impedes the operation of the heat exchangers.

37. Some water discharges from the bleeder valves along with the air bled from the pipelines at the head of the delivery line to the swimming pool complex. Vargasons propose to divert the water passing the bleeder valves for use in their fish pond.

38. The bleeder valves are operated manually. Sudweeks did not establish the quantity of water that must be passed with escaping air to properly operate the system.

39. John Mehlhaff (Mehlhaff), one of the protestants, owns a company that designs heat exchangers. Mehlhaff testified that the system delivering water to the swimming pool complex does not require bleeder valves. Protestants also argue that, even if the bleeder valves are necessary, an excessive amount of water is being released to Vargasons.

40. Russell Rydalch, an engineer employed by IDWR, and Ken Baker, his supervisor, examined the Foundation's water delivery system. A report of the investigation was received into evidence as applicant's exhibit no. 4. Rydalch and Baker determined that there were several ways that the system could have been constructed, but that the construction with bleeder valves was an

acceptable method of constructing the system to insure proper delivery of water and operation of the heat exchangers.

41. The hearing officer specifically finds that Sudweeks' design is a sound engineering design that allows unsophisticated operation of the delivery system.

42. A large swimming pool, a small swimming pool, and several associated buildings are components of the swimming pool complex. The walls of the swimming pools are constructed with gunite. Gunite walls are susceptible to damage when the pools are drained. The walls could be damaged by back wall pressure because of a high water table or by frost. The pools are only open for public access from the end of May through the first of September. Sudweeks testified that the water required to supply the swimming pool complex varies depending on weather and human use of the swimming pools.

43. The pools are closed from September until May. The Foundation leaves water in the pools year round to protect the pool structure from collapse or frost heaves, except during a short maintenance period. The Foundation buildings are heated year round. The temperature of the water in the pools is at least 40° F through the winter months.

44. The swimming pools are annually drained in the fall for four or five days and cleaned. Although not clearly explained in the testimony, fall is probably the time when the ground water level in the soil behind the pool walls is the lowest and risk of failure because of hydrostatic back-pressure is reduced. During periods of maintenance, system no. 2 still supplies water to the buildings. In addition, water is used for cleaning and maintenance work.

45. Two heat exchangers heat water for the large swimming pool. One heat exchanger heats the water for the small swimming pool. Another heat exchanger heats the buildings of the Foundation near the pools. In addition, low temperature geothermal water is sometimes placed directly in the swimming pools.

46. Water used for heating purposes or discharging from the swimming pools is recollected in a pipeline that discharges to the Portneuf River as depicted in applicant's exhibit nos. 4 and 14. This discharge pipe is another point of diversion from which Vargasons propose to divert wastewater under application for permit no. 29-08162, and will be referred to as the swimming pool complex outlet.

47. Application no. 29-08164 proposes the diversion of water now flowing into pump basin no. 1 that is unused by the Foundation. Although the application lists the source of water as a spring, Karen Vargason testified that the application proposes diversion of water flowing from the public hot pools into the main pump house (pump basin no. 1) and spilling into the Portneuf River.

48. Karen Vargason testified that if the application is approved, she would seek a right of way from the Foundation to construct a pipeline that would capture water flowing (not pumped) from pump basin no. 1 before it discharges into the Portneuf River. She also testified that, as an alternative, she might seek an agreement with the Foundation to deliver low temperature geothermal water to the Vargason property through the existing Foundation delivery system. No specific plans for diversion and delivery of water were submitted into evidence.

49. Karen Vargason testified that she could pay for the planned improvements with her savings.

50. Karen Vargason testified that 20,000 pounds of tilapia would be reared annually, equivalent to between 40,000 and 100,000 juvenile fish annually.

51. George Katsilometes (Katsilometes) owns a hotel on the south side of the Portneuf River in Lava Hot Springs southwest of the Foundation's main pump house. Katsilometes owns permit to appropriate water no. 29-07869 which authorizes the diversion of 0.50 cfs from ground water for commercial purposes. Katsilometes constructed an 80 foot deep low temperature geothermal well in 1990. A well driller's report of the well is one of the documents marked as protestants' exhibit J. The portion of the well driller's report where casing perforation information should be entered is blank. Without additional information, the hearing officer must presume that the well casing is not perforated.

52. Katsilometes constructed a bathing pool for guests at the hotel. He installed a 5.0 horsepower pump in the well at a depth of 72 feet. The pump produced a flow of 80 gpm.

53. Katsilometes testified that he needed 40 gpm to maintain the pool at an optimum bathing temperature of approximately 108° F. Protestants' exhibit J contains a summary of a pump test conducted by Katsilometes' well driller, Rodney Hendricks (Hendricks). Hendricks measured a temperature of 122° F after pumping the well for 17.5 hours.

54. Katsilometes testified that water was pumped from his well 24 hours a day for the entire year.

55. From 1991 through 1995, water levels in Katsilometes' well declined. Katsilometes testified that the water temperature in his well also declined from 122° F to 104° F.

56. In 1995, Katsilometes constructed additional bathing pools. Because of the additional water demand, and the reduction in the water level and temperature in the first well, Katsilometes drilled another well. The well driller's report for the second well is also a part of protestants' exhibit J. The portion of the report where casing perforation information should be entered is blank. Katsilometes testified that the casing was perforated.

57. Between 1990 and 1995, Katsilometes installed a 7.5 horsepower pump in the first well, lowered the intake, and installed a pump in the second well. He increased his total pumping capacity from 80 gpm to between 200 and 230 gpm.

58. Katsilometes submitted evidence of a test of the two wells conducted in 1995 by an employee of Hendricks. A summary of the test is included as part of protestants' exhibit J.

59. Katsilometes testified that when water is being pumped from the second well, the water temperature in the first well rises. He speculated that pumping by the Foundation moved the hot water east of his property. He hypothesized that pumping from the second well draws some of the hot water back from the east to the first well. He testified that the 1995 test by Hendricks' employee supports this theory.

60. Katsilometes also testified that he observed an increase in water levels and water temperatures in his wells and a decrease in turbidity and sediment in the water he diverts when the Foundation ceases pumping.

61. Katsilometes' property is located west and south of the Foundation's main pump house. He testified that the ground surface elevation at his property is lower than the ground surface elevation of the Foundation's property. He testified that the hottest well (the second well drilled in 1995) is approximately 130 yards away from the Foundation's main pump house. He testified that the first well (the well drilled in 1990) is located approximately 60 feet west of the second well.

62. Mehlhaff testified that he owns a domestic well located almost directly across the river from the Foundation's main pump house. Mehlhaff testified that he noticed a decline in both water temperature and pressure after the Foundation reconstructed its system. He testified that, during the summer months, he is now unable to divert low temperature geothermal water. His domestic well is approximately 20 feet deep and is a four (4) inch diameter well.

63. Duke Walden (Walden) is the proprietor of the River Side Inn. He testified that his water rights are some of the oldest water rights authorizing diversion of low temperature geothermal water. He testified that he diverts water both from a well and a low temperature geothermal spring. He derives approximately 80 percent of his water from the spring and 20 percent of his water from the well. Walden's spring arises in the Portneuf River just upstream and across the river from the Foundation's main pump house. A cistern was constructed in the river to prevent mixing of water from the spring with the river water. The temperature of the spring is 133° F; one of the warmer springs in the area. Walden's well is approximately 16 to 18 feet deep.

64. Walden testified that he observed significant fluctuations in water levels after the Foundation reconstructed its system. Nevertheless, he has at all times been able to divert water pursuant to his water rights.

65. Evelee Hill-Rush (Rush) owns property located south and east of the Foundation's main pump house. She diverts water from the same spring Walden diverts water from. She is concerned about future declines in water levels of the spring from which she now diverts or proposes to divert water.

66. According to the well driller's reports of the Katsilometes wells, contained in protestants' exhibit J, both the wells were completed to a depth of 80 feet. The wells were constructed entirely within a rock strata that is permeable to surface water infiltration. The geothermal water is not separated from cold water flowing in the Portneuf River by any aquiclude. The water in the Portneuf River interacts directly with warm geothermal water rising through underground fractures or faults. The cold surface water and the warmer ground water mix together but retain some separation because of a pressure equilibrium between the cold and the hot water.

67. If pumping by the Foundation causes declines in water levels and water temperature, the most dramatic declines would be noticed in the geothermal diversions nearest to the Foundation's main pump house. Although Walden testified he had noticed fluctuations of water levels in his spring, the changes were not significant compared to allegations by Katsilometes that the pump in his well would not pump from a depth of 72 feet because there was not enough water. Both Walden and Mehlhaff should observe significantly greater effect from pumping by the Foundation than Katsilometes.

68. Furthermore, if the Katsilometes wells were constructed without perforations, all of the water must enter the casing from the bottom of the well, decreasing the productivity of the well.

69. Pumping by Katsilometes is drawing warm water away from its boundary with the cold water of the Portneuf River, and the declining water temperature is caused by intrusion of cold water into Katsilometes' wells.

70. Water levels are declining in the Mehlhaff well and the spring from which Walden and Rush divert water probably because of pumping by Katsilometes not because of pumping by the Foundation.

71. Diversion by the Foundation from its pump basins does not affect the availability of water to the protestants.

72. Diversion of water from the outlet of the swimming pool complex will not adversely affect other water users.

73. Diversion of excess water bled from the bleeder valves at the cross connection where water is delivered to the swimming pool complex will not adversely affect other water users.

74. Diversion of water now leaving the Foundation's hot pools, either through the existing pipeline, or through a new pipeline, will not adversely affect diversions by other water users.

75. Meline testified that the proposals by Vargasons to the Foundation to divert water not presently used by the Foundation had been discussed with the Foundation's board, but the board had tabled any action regarding the proposal pending the review and the decision regarding the protests to these applications. Meline testified that he was not prepared to state the position of the Foundation regarding the pending applications.

76. The protestants argued that Vargasons' applications were speculative because Vargasons did not present a sufficient plan for the construction and operation of the fish facility and a delivery of water to the facility.

77. Karen Vargason testified that the quantities sought for appropriation were determined with the help of Keith Wilson, an employee of IDWR. Keith Wilson testified that the flow rate sought for appropriation was taken from an IDWR graph that relates flow rate to the number of fish proposed for rearing. The graph is only to be used for determining the flow rate necessary for trout rearing and propagation.

CONCLUSION OF LAW

1. Idaho Code § 42-203A provides, in pertinent part, as follows:

> In all applications whether protested or not protested, where the proposed use is such (a) that it will reduce the quantity of water under existing water rights, or (b) that the water supply is insufficient for the purpose for which it is sought to be appropriated, or (c) where it appears to the satisfaction of the director that such application is not made in good faith, is made for delay or speculative purposes, or (d) that the applicant has not sufficient financial resources with which to complete the work involved therein, or (e) that it will conflict with the local public interest, where the local public interest is defined as the affairs of the people in the area directly affected by the proposed use, or (f) that it is contrary to conservation of water resources within the state of Idaho; the director of the department of water resources may reject such application and refuse issuance of a permit therefor, or may partially approve and grant a permit for a smaller quantity of water than applied for, or may grant a permit upon conditions.

2. The applicant bears the burden of proof regarding the criteria set forth in Idaho Code § 42-203A.

3. Title 67, Chapter 44 of the Idaho Code creates the Lava Hot Springs Foundation and grants the Foundation authority to manage the state property and the geothermal resources at Lava

Hot Springs. The law does not describe a preference for one use of the geothermal water over another use. Furthermore, the law does not expressly charge the Foundation with any public interest responsibility.

4. The traditional uses of low temperature geothermal waters by the Foundation have been for bathing and heating. Idaho Code § 42-4404 refers to " hot springs, bathing facilities, and sanitarium and hospital. . ." and implies that the intended use is for some human therapeutic activity. Idaho Code § 42-4405 and § 42-4408 refer to "bathing facilities, pleasure resort, hospital or sanitarium . . . ."

5. Idaho Code § 67-4402 states that the Foundation has the authority to lease property under its control "not used or needed by the foundation . . . ."

6. The statutory charge to the Foundation to manage water on the lands it controls combined with language discussing traditional uses of the water creates an oversight authority in the Foundation to determine the best use of the water for the public good. IDWR should not approve any proposal for diversion on Foundation property by the applicant unless the Foundation expressly consents to the diversion and use. IDWR also should not approve a proposal by an applicant to use water that would prevent the Foundation from using water on its property for some purpose it determines to be a better beneficial use in the future.

7. If the Foundation consents to water use by Vargasons, the use is in the public interest as determined by the Foundation.

8. The use of water proposed by Vargasons will not injure other water rights.

9. The testimony established that only 4.41 cfs is available from the sources now diverted by the Foundation. At times, there is sufficient water to satisfy the flow rate proposed for diversion by application for permit no. 29-08162. The flow rate proposed for diversion by application for permit no. 29-08164 should be reduced to 4.41 cfs.

10. The combined flow rate diverted under permit nos. 29-08162 and 29-08164 should be limited to 4.41 cfs.

11. The ability to deliver water through the existing system and the already-constructed Vargason pond are sufficient indications of intent to beneficially use the water. The applicant did not submit sufficient plans for a new pipeline system, however, and any proposal to build a new pipeline to delivery water from the Foundation's collection works to Vargason's fish pond is speculative.

12. Use of the trout water sufficiency curve to determine how many fish can be raised is not grounds to establish that the applications are speculative. The applications are not speculative and were filed in good faith.

13. The applicant has sufficient financial resources to complete the proposed project.

14. Application for permit no. 29-08162 proposes diversion of wastewater. The term has always referred to water that has been beneficially used and can be diverted by the original right holder or another downstream user prior to reaching a public water supply. Water exiting a bleeder valve is wastewater, provided no more water is bled from the valve than is necessary to accomplish the delivery in the existing system.

15. When water is not being delivered to the swimming pool complex, no wastewater should be delivered to Vargasons pursuant to permit no. 29-08162.

16. Application for permit no. 29-08164 proposes diversion of water arising on Foundation property but not beneficially used by the Foundation. Water may be diverted through the existing system.

17. If the Foundation determines to contract with Vargasons to deliver water other than wastewater through its system for fish propagation, the characterization of the water as wastewater is unimportant.

18. The proposed use of water is not contrary to conservation of the water resources of the State of Idaho, particularly if the use of water is subordinate to future uses of the low temperature geothermal water as determined by the Foundation.

ORDER

IT IS HEREBY ORDERED that application for permit nos. 29-08162 and 29-08164 are APPROVED.

IT IS FURTHER ORDERED that permit nos. 29-08162 and 29-08164 are issued with the following conditions:

1. Proof of beneficial use shall be submitted within two years of the final decision issued by the director and disposition of any subsequent appeals to the courts of the State of Idaho.

2. The permit holder must obtain written consent from the Lava Hot Springs Foundation for development of low temperature geothermal water arising on Foundation property for fish propagation prior to any development or diversion of water under this permit.

3. At the time of the field examination following submittal of proof of beneficial use, the permit holder must submit information showing the quantity of water necessary for the rearing of 20,000 pounds of tilapia annually.

4. The combined flow rate diverted for permit nos. 29-08162 and 29-08164 shall be limited to 4.41 cfs.

5. This water right is subordinate to any beneficial future use of water by the Lava Hot Springs Foundation, and the Lava Hot Springs Foundation may interrupt delivery of water to the holder of this water right for the future beneficial use.

6. Two points of diversion located within Lot 7 (NWSE), S21, T09S, R38E are authorized under right no. 29-08162.

7. Project construction shall commence within one year from the date of permit issuance and shall proceed diligently to completion unless it can be shown to the satisfaction of the Director of the Department of Water Resources that delays were due to circumstances over which the permit holder had no control.

8. The right holder shall not assign or sell the permit without first securing the written approval of the Department of Water Resources.

9. Use of water under this approval shall comply with applicable water quality standards of the Division of Environmental Quality of the Idaho Department of Health and Welfare.

10. The issuance of this right does not grant any right-of-way or easement across the land of another.

11. Use of water under this water right shall be nonconsumptive.

12. Use of water under this water right will be regulated by the watermaster of State Water District no. 29, Portneuf River.

IT IS FURTHER ORDERED that permit no. 29-08164 shall contain the following condition:

The water right holder may divert water pursuant to this permit only through the water delivery systems delivering water to the Foundation's beneficial uses.

Dated this 14th day of May, 1998.

Gary Spackman
Hearing Officer

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 29th day of May, 1998, I mailed a true and correct copy, postage paid, of the foregoing **RECOMMENDED ORDER** to the following:

Bob Meline
Lava Hot Springs Foundation
420 East Main
Lava Hot Springs, ID 83246

Jack H. Robison
Jones, Chartered
415 S. Arthur
P.O. Box 967
Pocatello, ID 83204-0967

Evelee Hill Rush
P.O. Box 4905
Pocatello, ID 83205-4905

Gregory W. Moeller
Rigby, Thatcher, Andrus, Rigby, Kam & Moeller
P.O. Box 250
Rexburg, ID 83440

John Mehlhaff
1424 High St.
Auburn, CA 95603

F.L. Duke Walden
P.O. Box 127
Lava Hot Springs, ID 83246

Julie L. Yarbrough

JULIE L. YARBROUGH
Senior Secretary

ATTACHMENT A

AJ5809NP
No. A29-04178

IDAHO DEPARTMENT OF WATER RESOURCES
ADJUDICATION CLAIM PROFILE REPORT

DATE: 02/06/98
PAGE: 3

OWNER CODE	NAME & ADDRESS	PRIORITY DATE	WATER USE	USE PERIOD FROM	USE PERIOD TO	DIVERSION RATE	DIVERSION VOLUME
C	STATE OF IDAHO	06/13/1908	COMMERCIAL	01-01	12-31	3.00 CFS	
				TOTAL DIVERSION:		3.00 CFS	

Water Source: SPRINGS Tributary to: Stage: BENEFICIAL USE

Point(s) of Diversion: T09S R38E S22 Lot10(SWSWSW) BANNOCK County

Place of use Legal Description for: COMMERCIAL

			NE				NW				SW				SE			
			NENE	NWNE	SWNE	SENE	NENW	NWNW	SWNW	SENW	NESW	NWSW	SWSW	SESW	NESE	NWSE	SWSE	SESE
T	R	S	Lt Ac	Lt Ac	Lt Ac	Lt Ac	Lt Ac	Lt Ac	Lt Ac	Lt Ac	Lt Ac	Lt Ac	Lt Ac	Lt Ac	Lt Ac	Lt Ac	Lt Ac	Lt Ac
09S	38E	22											10-C					

POU County: BANNOCK

Non-Irrigation Uses: COMMERCIAL USE FOR VISITORS NEEDS AT RECREATION AREA

Other Rights: A29-02283, A29-02360 AND A29-10213, A29-10219

Dates: Exam Made Date: Verified Date: Objection Filed Date:

Misc: Water District Number: Field Inspection Flag:
Presumption Flag:

Audit: 01/23/90 JONES 07/19/94 THOMPSON

OWNER CODE	NAME & ADDRESS	PRIORITY DATE	WATER USE	USE PERIOD FROM	USE PERIOD TO	DIVERSION RATE	DIVERSION VOLUME
C	STATE OF IDAHO	07/23/1963	COMMERCIAL	01-01	12-31	3.27 CFS	
				TOTAL DIVERSION:		3.27 CFS	

Water Source: SPRINGS Tributary to: PORTNEUF RIVER Stage: BENEFICIAL USE

Point(s) of Diversion: T09S R38E S21 Lot08(NESE) BANNOCK County

Place of use Legal Description for: COMMERCIAL

			NE				NW				SW				SE			
			NENE	NWNE	SWNE	SENE	NENW	NWNW	SWNW	SENW	NESW	NWSW	SWSW	SESW	NESE	NWSE	SWSE	SESE
T	R	S	Lt Ac	Lt Ac	Lt Ac	Lt Ac	Lt Ac	Lt Ac	Lt Ac	Lt Ac	Lt Ac	Lt Ac	Lt Ac	Lt Ac	Lt Ac	Lt Ac	Lt Ac	Lt Ac
09S	38E	21													08-C			

POU County: BANNOCK

Non-Irrigation Uses: COMMERCIAL USE FOR VARIETY OF NEEDS OF RECREATION AREA

Other Rights: A29-02283, A29-02360 AND A29-04178

Remarks: GEN CLAIM BASED ON LAPSED PERMIT 29-02478

Dates: Exam Made Date: Verified Date: Objection Filed Date:

Misc: Water District Number: Field Inspection Flag:
Presumption Flag:

Audit: 01/23/90 JONES 08/01/94 THOMPSON

APPLICATION FOR PERMIT
LAZY "V" RANCH
NO. 29-08162

11/20/1995	Application filed
12/21/1995	Advertised ID STATE JOURNAL
12/28/1995	Date of Protest 01/08/1996

PROTESTS RECEIVED

01/03/1996	F.L. DUKE WALDEN
01/04/1996	GEORGE W. KATSILOMETES
01/08/1996	EVELEE HILL RUSH
01/08/1996	JOHN MEHLHAFF

02/07/1996	NOTICE OF PREHEARING CONFERENCE 29-08162 AND 29-08164 IN THE NAME OF LAZY V RANCH
04/22/1996	AMENDED NOTICE OF HEARING & PREHEARING ORDER
06/06/1996	ORDER SCHEDULING DISCOVERY
08/04/1996	NOTICE OF PREHEARING CONFERENCE
8/2/97	Notice of Hearing Returned Receipt Cards

Is your RETURN ADDRESS completed on the reverse side?

SENDER:

- Complete items 1 and/or 2 for additional services.
- Complete items 3, 4a, and 4b.
- Print your name and address on the reverse of this form so that we can return this card to you.
- Attach this form to the front of the mailpiece, or on the back if space does not permit.
- Write "*Return Receipt Requested*" on the mailpiece below the article number.
- The Return Receipt will show to whom the article was delivered and the date delivered.

I also wish to receive the following services (for an extra fee):

1. ☐ Addressee's Address
2. ☐ Restricted Delivery

Consult postmaster for fee.

3. Article Addressed to:

GEORGE KATSILOMETES
PO BOX 670
LAVA HOT SPRINGS ID 83246

4a. Article Number

23

4b. Service Type

☐ Registered ☒ Certified
☒ Express Mail ☐ Insured
☐ Return Receipt for Merchandise ☐ COD

7. Date of Delivery

5. Received By: *(Print Name)*

Kim Hayes

6. Signature: *(Addressee or Agent)*

8. Addressee's Address *(Only if requested and fee is paid)*

PS Form 3811, December 1994

Domestic Return Receipt

Thank you for using Return Receipt Service.

UNITED STATES POSTAL SERVICE

First-Class M
Postage & Fe
USPS
Permit No. G-10

• Print your name, address, and ZIP Code in this box •

DEPARTMENT OF WATER RESOURCES
EASTERN DISTRICT OFFICE
900 N. SKYLINE DR.
IDAHO FALLS, IDAHO 83402

RECEIVED
AUG 11 1997

Department of Water Resources
Eastern Regio

Is your RETURN ADDRESS completed on the reverse side?

SENDER:

(plete items 1 and/or 2 for additional services.
. .plete items 3, 4a, and 4b.
- Print your name and address on the reverse of this form so that we can return this card to you.
- Attach this form to the front of the mailpiece, or on the back if space does not permit.
- Write "*Return Receipt Requested*" on the mailpiece below the article number.
- The Return Receipt will show to whom the article was delivered and the date delivered.

I also wish to receive the following services (for an extra fee):

1. ☐ Addressee's Address
2. ☐ Restricted Delivery

Consult postmaster for fee.

3. Article Addressed to:

EVELEE HILL RUSH
PO BOX 4905
POCATELLO ID 83205

4a. Article Number

04

4b. Service Type

☐ Registered ☒ Certified
☐ Express Mail ☐ Insured
☐ Return Receipt for Merchandise ☐ COD

7. Date of Delivery

AUG 1 1 1997

5. Received By: *(Print Name)*

E. RUSH.

6. Signature: *(Addressee or Agent)*

8. Addressee's Address *(Only if requested and fee is paid)*

PS Form **3811**, December 1994 Domestic Return Receipt

Thank you for using Return Receipt Service.

UNITED STATES POSTAL SERVICE

First-Class M
Postage & F Paid
USPS
Permit No. G-10

• Print your name, address, and ZIP Code in this box •

DEPARTMENT OF WATER RESOURCES
EASTERN DISTRICT OFFICE
900 N. SKYLINE DR.
IDAHO FALLS, IDAHO 83402

RECEIVED
AUG 1 2 1997
Department of Water Resources
Eastern Region

Is your RETURN ADDRESS completed on the reverse side?

SENDER:
- Complete items 1 and/or 2 for additional services.
- Complete items 3, 4a, and 4b.
- Print your name and address on the reverse of this form so that we can return this card to you.
- Attach this form to the front of the mailpiece, or on the back if space does not permit.
- Write "*Return Receipt Requested*" on the mailpiece below the article number.
- The Return Receipt will show to whom the article was delivered and the date delivered.

I also wish to receive the following services (for an extra fee):
1. ☐ Addressee's Address
2. ☐ Restricted Delivery

Consult postmaster for fee.

3. Article Addressed to:

JACK H ROBINSON
JONES CHARTERED
PO BOX 967
POCATELLO ID 83204-0967

4a. Article Number
06

4b. Service Type
☐ Registered ☒ Certified
☐ Express Mail ☐ Insured
☒ Return Receipt for Merchandise ☐ COD

7. Date of Delivery
8/8/97

5. Received By: *(Print Name)*
Lamont Jones

6. Signature: *(Addressee or Agent)*
Lamont Jones

8. Addressee's Address *(Only if requested and fee is paid)*

PS Form 3811, December 1994 Domestic Return Receipt

Thank you for using Return Receipt Service.

UNITED STATES POSTAL SERVICE

POCATELLO, ID 832
PM
AUG

First-Class
Postage & Fees Paid
USPS
Permit No. G-10

• Print your name, address, and ZIP Code in this box •

DEPARTMENT OF WATER RESOURCES
EASTERN DISTRICT OFFICE
900 N. SKYLINE DR.
IDAHO FALLS, IDAHO 83402

RECEIVED
AUG 11 1
Department of Water Resources
Eastern Region

83402-1715

SENDER:

- Complete items 1 and/or 2 for additional services.
- Complete items 3, 4a, and 4b.
- Print your name and address on the reverse of this form so that we can return this card to you.
- Attach this form to the front of the mailpiece, or on the back if space does not permit.
- Write "*Return Receipt Requested*" on the mailpiece below the article number.
- The Return Receipt will show to whom the article was delivered and the date delivered.

I also wish to receive the following services (for an extra fee):

1. ☐ Addressee's Address
2. ☐ Restricted Delivery

Consult postmaster for fee.

3. Article Addressed to:

CAREN VARGASON
TAMY "V" RANCH
PO BOX 268
LAVA HOT SPRINGS ID 83246

4a. Article Number

07

4b. Service Type

☐ Registered ☒ Certified
☐ Express Mail ☐ Insured
☐ Return Receipt for Merchandise ☐ COD

7. Date of Delivery

8-13-97

5. Received By: *(Print Name)*

8. Addressee's Address *(Only if requested and fee is paid)*

6. Signature: *(Addressee or Agent)*

PS Form **3811,** December 1994

Domestic Return Receipt

Is your RETURN ADDRESS completed on the reverse side?

Thank you for using Return Receipt Service.

UNITED STATES POSTAL SERVICE

First-Class Mail
Postage & Fees Paid
USPS
Permit No. G-10

• Print your name, address, and ZIP Code in this box •

RECEIVED
AUG 15 1997
Department of Water Resources
Eastern Region

DEPARTMENT OF WATER RESOURCES
EASTERN DISTRICT OFFICE
900 N. SKYLINE DR.
IDAHO FALLS, IDAHO 83402

Is your RETURN ADDRESS completed on the reverse side?

SENDER:

- Complete items 1 and/or 2 for additional services.
- Complete items 3, 4a, and 4b.
- Print your name and address on the reverse of this form so that we can return this card to you.
- Attach this form to the front of the mailpiece, or on the back if space does not permit.
- Write *"Return Receipt Requested"* on the mailpiece below the article number.
- The Return Receipt will show to whom the article was delivered and the date delivered.

I also wish to receive the following services (for an extra fee):

1. ☐ Addressee's Address
2. ☐ Restricted Delivery

Consult postmaster for fee.

3. Article Addressed to:

FL DUKE WALDEN
PO BOX 127
LAVA HOT SPRINGS ID 83246

4a. Article Number

4b. Service Type

☐ Registered ☒ Certified
☐ Express Mail ☐ Insured
☐ Return Receipt for Merchandise ☐ COD

7. Date of Delivery

8-8-97

5. Received By: *(Print Name)*

MARY E. HINZ

6. Signature: *(Addressee or Agent)*

Mary E. Hinz

8. Addressee's Address *(Only if requested and fee is paid)*

LAVA HOT SPRINGS ID 83246 AUG 8 P.M. 1997

PS Form **3811**, December 1994 102595-97-B-0179 Domestic Return Receipt

Thank you for using Return Receipt Service.

UNITED STATES POSTAL SERVICE

First-Class M
Postage & Fees Paid
USPS
Permit No. G-10

• Print your name, address, and ZIP Code in this box •

DEPARTMENT OF WATER RESOURCES
EASTERN DISTRICT OFFICE
900 N. SKYLINE DR.
IDAHO FALLS, IDAHO 83402

RECEIVED
AUG 11 1997

Department of Water Resources
Eastern Region

For Accountable Mail

Name and Address of Sender	DEPARTMENT OF WATER RESOURCES EASTERN DISTRICT OFFICE 900 N. SKYLINE DR. IDAHO FALLS, IDAHO 83402	Indicate type of mail: ☐ Registered ☐ Insured ☐ COD ☑ Certified ☐ Return Receipt for Merchandise ☐ Int'l Recorded Del. ☐ Express Mail	Check appropriate block for Registered Mail: ☐ With Postal Insurance ☐ Without Postal Insurance	Affix stamp here if issued as certificate of mailing or for additional copies of this bill. *Postmark and Date of Receipt*

Line	Article Number	Name of Addressee, Street, and Post Office Address	Postage	Fee	Handling Charge	Act. Value (If Regis.)	Insured Value	Due Sender If COD	R. R. Fee	S. D. Fee	S. H. Fee	Rest. Del. Fee / Remarks
1	03	George Katsilometes PO Box 670 Sava Hot Springs	.32	1.35					1.10			Hearing For
2	04	Evelyn Hill Rush PO Box 4905 Pocatello										29-08162
3	05	John Mehlhoff 1424 High St. Auburn CA 95603										29-0816
4	06	Jack Robinson PO Box 967 Pocatello 83204-0967										Lazy "V
5	07	Caren Vargason PO Box 268 Sava Hot Springs 83246										Ranch
6	08	F.L. Duke Walden P.O. Box 127 Sava Hot Springs 83246										
7						$16.62						
8						8-7-1997						
9												
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11												
12												
13												
14												
15												

IDAHO FALLS, ID EAGLE ROCK ANNEX USPS AUG 7 1997

Total Number of Pieces Listed by Sender	Total Number of Pieces Received at Post Office	Postmaster, Per (Name of Receiving Employee)
6	[illegible]	[signature]

The full declaration of value is required on all domestic and international registered mail. The maximum indemn payable for the reconstruction of nonnegotiable documents under Express Mail document reconstruction insurar is $50,000 per piece subject to a limit of $500,000 per occurrence. The maximum indemnity payable on Expr Mail merchandise insurance is $500. The maximum indemnity payable is $25,000 for registered mail, sent v optional postal insurance. See *Domestic Mail Manual* R900, S913, and S921 for limitations of coverage on insu and COD mail. See *International Mail Manual* for limitations of coverage on international mail. Special handl charges apply only to third and fourth class parcels.

PS Form **3877**, February 1994 — **Form Must be Completed by Typewriter, Ink or Ball Point Pen** — *U.S. Government Printing Office: 1994 — 3

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE

STATE OF IDAHO

IN THE MATTER OF APPLICATIONS	)	
FOR PERMIT NO.'S 29-08162	)	
AND 29-08164 IN THE NAME OF	)	**NOTICE OF**
LAZY "V" RANCH	)	**HEARING**

On November 20, 1995, and January 4, 1996, Lazy "V" Ranch filed with the Department of Water Resources Application for Permit No.'s 29-08162 and 29-08164, respectively. The applications were protested by F.L. Duke Walden, George W. Katsilometes, Evelee Hill Rush and John Mehlhaff.

THE DEPARTMENT HAS NOW SCHEDULED THE MATTER FOR HEARING ON SEPTEMBER 10 & 11, 1997, AT 9:30 A.M., IN THE DOWNSTAIRS CONFERENCE ROOM AT THE POCATELLO AIRPORT, POCATELLO, ID.

The hearing will be held in accordance with the provisions of the adopted Rules of Procedure of the Department of Water Resources. A copy of the rules may be obtained from the Department upon request. The presiding officer at the hearing will be Gary Spackman.

If you plan to offer exhibits for the record, note that IDAPA Rule of Procedure 37.01.01606 requires that you provide a copy of exhibits to each party and to the presiding officer.

The hearing will be conducted in a facility which meets the accessibility requirements of the Americans with Disabilities Act. If you require special accommodations in order to attend, participate in or understand the hearing, please advise the Department within ten (10) days prior to the hearing.

Dated this 7th day of August, 1997.

RONALD D. CARLSON
Regional Manager

CERTIFICATE OF SERVICE

I hereby certify that on the 7th day of August, 1997, I mailed a true and correct copy, postage prepaid, of foregoing **NOTICE OF HEARING** to the following:

George Katsilometes
P.O. Box 670
Lava Hot Springs, ID 83246

John Mehlhaff
1424 High St.
Auburn, CA 95603

Caren Vargason
Lazy "V" Ranch
P.O. Box 268
Lava Hot Springs, ID 83246

Evelee Hill Rush
P.O. Box 4905
Pocatello, ID 83205

Jack H. Robinson
Jones Chartered
P.O. Box 967
Pocatello, ID 83204-0967

F.L. Duke Walden
P.O. Box 127
Lava Hot Springs, ID 83246

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE

STATE OF IDAHO

RECEIVED
SEP 09 1996
Department of Water Resources
Eastern Region

IN THE MATTER OF APPLICATION FOR PERMIT NO. 29-08162 AND APPLICATION FOR PERMIT NO. 29-08164 IN THE NAME OF LAZY V RANCH	)	**NOTICE OF PREHEARING CONFERENCE**

On January 5, 1996, the applicant Lazy V Ranch, Inc. filed two applications for permit with the Department of Water Resources numbered 29-08162 and 29-08164. The applications for permit were protested by George W. Katsilometes, John Mehlhaff, and Evelee Hill Rush.

The department has scheduled the above-captioned matter for prehearing conference as follows:

DATE:	October 3, 1996
LOCATION:	Pocatello Airport Downstairs Conference Room
TIME:	9:30 A.M.

The prehearing conference will be conducted in accordance with the provisions of Title 42, Chapters 2 and 17, and Title 67, Chapter 52, Idaho Code, the adopted rules of procedure of the department, and the water appropriation rules. A copy of the rules may be obtained from the department upon request. The presiding officer at the prehearing conference will be Gary Spackman.

The hearing will be conducted in a facility meeting the accessability requirements of the Americans with Disabilities Act. If you require special accommodations in order to attend, participate in, or understand the hearing, please advise the department within ten (10) days prior to the hearing.

The parties shall submit the following to opposing parties and the hearing officer at least seven (7) days before the prehearing conference:

(1) A list of perspective witnesses and a brief explanation of the testimony expected from each witness.

(2) Copies of all documents expected to be offered as exhibits.

The parties should be prepared at the prehearing conference to discuss the relevancy of all proposed evidence. The hearing officer will determine what evidence is relevant or not relevant, and will exclude irrelevant evidence. The parties shall also be prepared to discuss the anticipated testimony of each witness listed in the prehearing submittals. Testimony from a witness may be limited or excluded if the witness will not offer testimony related to the issues the department must consider or if the testimony would be accumulative.

A formal hearing will be scheduled at the prehearing conference and should be conducted shortly thereafter. The preferred dates for the hearing are October 23 and 24, 1996. If these dates conflict with existing schedules, the weeks of October 21 through 25, October 28 through November 4, and November 6, 7, and 8 are open dates. Any party with a conflict should propose alternative hearing dates to the hearing officer and the other parties.

Attached is a report of a field investigation conducted by department staff.

DATED this 4th day of September, 1996.

GARY SPACKMAN
Hearing Officer

CERTIFICATE OF SERVICE

I do hereby certify that on this 4th day of September, 1996, I mailed a true and correct copy, postage prepaid, of the foregoing **NOTICE OF PREHEARING CONFERENCE** to the following:

George Katsilometes
P.O. Box 670
Lava Hot Springs, ID 83246

Evelee Hill Rush
P.O. Box 4905
Pocatello, ID 83205-4905

John Mehlhauf
1424 High St.
Auburn, CA 95603

Jack H. Robinson
Jones Chartered
P.O. Box 967
Pocatello, ID 83204-0967

Caren Vargason
Lazy V Ranch
P.O. Box 268
Lava Hot Springs, ID 83246

Deborah Drew-Ellis

Deborah Drew-Ellis

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE

STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR PERMIT NO. 29-08162 AND FOR PERMIT NO. 29-08164 IN THE NAME OF LAZY V RANCH	ORDER SCHEDULING DISCOVERY

An order issued on May 15, 1996, purported to schedule discovery. The order did not establish a framework for discovery, however.

ORDER

IT IS HEREBY ORDERED, that the parties shall engage in discovery beginning from the date of this order until September 6, 1996. Discovery shall be allowed pursuant to rules 520 through 532 of the Idaho Department of Water Resources Rules of Procedure and the Idaho Rules of Procedure. Forms of discovery shall include depositions, interrogatories, requests for production of documents, requests for admission and subpoenas.

IT IS FURTHER ORDERED that a prehearing conference will be conducted during September or October, 1996. The parties shall submit the following to opposing parties and the hearing officer at or before the prehearing conference:

1. A list of prospective witnesses and a brief explanation of the testimony expected from each witness.

2. Copies of all documents expected to be offered as exhibits.

IT IS FURTHER ORDERED that the parties should be prepared at the prehearing conference to discuss the relevancy of all proposed evidence. The hearing officer will determine what evidence is relevant or not relevant, and will exclude irrelevant evidence. The parties shall also be prepared to discuss the anticipated testimony of each witness listed in the prehearing submittals. Testimony from a witness may be limited or excluded if the witness will not offer testimony related to the issues the Department must consider or if the testimony would be cumulative.

IT IS FURTHER ORDERED that a hearing will be scheduled at the prehearing conference.

Dated this 5th day of June, 1996.

Gary Spackman

Gary Spackman

CERTIFICATE OF MAILING

I do hereby certify that on this 6th day of June, 1996, I mailed a true and correct copy, postage prepaid, of the foregoing **ORDER SCHEDULING DISCOVERY** to the following:

George W Katsilometes
PO Box 670
Lava Hot Springs ID 83246

Jack H Robison
Jones Chartered
PO Box 967
Pocatello ID 83204-0967

John Mehlhaff
1424 High St
Auburn CA 95603

Evelee Hill Rush
PO Box 4905
Pocatello ID 83205-4905

Roberta Loveall

Roberta Loveall

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE

STATE OF IDAHO

RECEIVED
APR 2 5 1996
Department of Water Resources
Eastern Region

IN THE MATTER OF APPLICATION FOR PERMIT NO. 29-08162 IN THE NAME OF LAZY V RANCH	))))	AMENDED NOTICE OF HEARING AND PREHEARING ORDER

NOTICE

The Department has scheduled the above captioned matter for hearing as follow:

DATE: May 22, 1996
LOCATION: Pocatello Airport Conference Room (downstairs)
TIME: 9:30 a.m.

The hearing will be held in accordance with provisions of Chapters 2 and 17, Title 42 and Chapter 52, Title 67, Idaho Code, the adopted Rules of Procedure of the Department and Water Appropriation Rules 40 and 45. A copy of the rules may be obtained from the Department upon request. The presiding officer at the hearing will be Gary Spackman.

If you plan to offer exhibits for the record, you need to exchange exhibits with the other parties prior to the hearing. Note the IDAPA Rule of Procedure 37.01.01606 (Rule 606) requires that you provide a copy of exhibits to each party and to the presiding officer at the hearing. **DO NOT PREMARK PROPOSED EXHIBITS.**

The hearing will be conducted in a facility meeting the accessibility requirements of the Americans with Disabilities Act. If you require special accommodations in order to attend, participate in or understand the hearing, please advise the Department within ten (10) days prior to the hearing.

All parties to the matter will have the opportunity to respond and present information and argument on all issues involved.

ORDER

IT IS HEREBY ORDERED that the parties shall exchange a list of witnesses and copies of exhibits the parties intend to offer as evidence at the hearing no later than May 7, 1996. Copies of the list of exhibits and witnesses should be provided to the Department of Water Resources (Department).

IT IS FURTHER ORDERED that names of rebuttal witnesses should be submitted to the parties and the Department on or before May 17, 1996.

IT IS FURTHER ORDERED that failure to provide the above information to the parties and the Department is cause for the hearing officer to limit testimony or refuse to receive documents offered by the parties at the hearing.

Dated this 22nd day of April, 1996.

Gary Spackman
Hearing Officer

CERTIFICATE OF MAILING

I DO HEREBY CERTIFY that on this 22nd day of April, 1996, I mailed a true and correct copy, postage prepaid of the foregoing **AMENDED NOTICES OF HEARING AND PREHEARING ORDERS FOR APPLICATIONS FOR PERMIT NOS. 29-08162 AND 29-08164** to the following:

Caren Vargason
Lazy V Ranch Inc
PO Box 268
Lava Hot Springs ID 83246

George W Katsilometes
PO Box 670
Lava Hot Springs ID 83246

John Mehlhaff
1424 High St
Auburn CA 95603

Jack H Robison
Jones Chartered
PO Box 967
Pocatello ID 83204-0967

Evelee Hill Rush
PO Box 4905
Pocatello ID 83205-4905

Bob Meline
Lava Hot Springs Foundation
420 East Main
Lava Hot Springs ID 83246

Kent Foster
330 Shoup Ave 3rd Fl
Idaho Falls ID 83402

Kris Rhodes

Kris Rhodes

8 March 1996

Pre Conf Hearings

John Mehlhaff 916 823 9553

George W. Katzenbach 776-5830

Evelle Hill Rush → 232-2139

Jay Valcarce Jay Valcarce

Diana Vargovon

Jack H Robison

M. Jay Burke

Jim Rush

Sandy Williams

Charles G. Kunze

Ilene Meadows

Norm Young - Hearing officer

Dennis M Dunn - IDWR

Robert J. Meline Foundation Director

Ralph E Lacy Foundation Board Member

AMPAD 22-141 50 SHEETS 22-142 100 SHEETS 22-144 200 SHEETS

Is your RETURN ADDRESS completed on the reverse side?

SENDER:

- plete items 1 and/or 2 for additional services.
- plete items 3, and 4a & b.
- Print your name and address on the reverse of this form so that we can return this card to you.
- Attach this form to the front of the mailpiece, or on the back if space does not permit.
- Write "Return Receipt Requested" on the mailpiece below the article number.
- The Return Receipt will show to whom the article was delivered and the date delivered.

I also wish to receive the following services (for an extra fee):

1. ☐ Addressee's Address
2. ☐ Restricted Delivery

Consult postmaster for fee.

3. Article Addressed to:

FL DUKE WALDEN
PO BOX 127
LAVA HOT SPRINGS ID 83246

4a. Article Number

1347

4b. Service Type

☐ Registered ☐ Insured
☒ Certified ☐ COD
☐ Express Mail ☐ Return Receipt for Merchandise

7. Date of Delivery

2/8/96

5. Signature (Addressee)

8. Addressee's Address (Only if requested and fee is paid)

6. Signature (Agent)

PS Form 3811, December 1991 ☆U.S. GPO: 1993—352-714 **DOMESTIC RETURN RECEIPT**

Thank you for using Return Receipt Service.

UNITED STATES POSTAL SERVICE

Official Business

PENALTY FOR PRIVATE USE TO AVOID PAYMENT OF POSTAGE, $300

LAVA HOT SPRINGS ID 83246 FEB 8 P.M. 1996

U.S. MAIL

Print your name, address and ZIP Code here

DEPARTMENT OF WATER RESOURCES
EASTERN DISTRICT OFFICE
900 N. SKYLINE DR.
IDAHO FALLS, IDAHO 83402

Is your RETURN ADDRESS completed on the reverse side?

SENDER:

- Complete items 1 and/or 2 for additional services.
- Complete items 3, and 4a & b.
- Print your name and address on the reverse of this form so that we can return this card to you.
- Attach this form to the front of the mailpiece, or on the back if space does not permit.
- Write "Return Receipt Requested" on the mailpiece below the article number.
- The Return Receipt will show to whom the article was delivered and the date delivered.

I also wish to receive the following services (for an extra fee):

1. ☐ Addressee's Address
2. ☐ Restricted Delivery

Consult postmaster for fee.

3. Article Addressed to:

JOHN MEHLHAFF
1424 HIGH STREET
AUBURN CA 95603

4a. Article Number
1349

4b. Service Type
☐ Registered ☐ Insured
XX ☐ Certified ☐ COD
☐ Express Mail ☐ Return Receipt for Merchandise

7. Date of Delivery

8. Addressee's Address (Only if requested and fee is paid)

5. Signature (Addressee) John Mehlhaff

6. Signature (Agent)

PS Form 3811, December 1991 ☆U.S. GPO: 1993-352-714 **DOMESTIC RETURN RECEIPT**

Thank you for using Return Receipt Service.

UNITED STATES POSTAL SERVICE

Official Business

PENALTY FOR PRIVATE USE TO AVOID PAYMENT OF POSTAGE, $300

U.S.MAIL

Print your name, address and ZIP Code here

DEPARTMENT OF WATER RESOURCES
EASTERN DISTRICT OFFICE
900 N. SKYLINE DR.
IDAHO FALLS, IDAHO 83402

20

SENDER:

- Complete items 1 and/or 2 for additional services.
- Complete items 3, and 4a & b.
- Print your name and address on the reverse of this form so that we can return this card to you.
- Attach this form to the front of the mailpiece, or on the back if space does not permit.
- Write "Return Receipt Requested" on the mailpiece below the article number.
- The Return Receipt will show to whom the article was delivered and the date delivered.

I also wish to receive the following services (for an extra fee):

1. ☐ Addressee's Address
2. ☐ Restricted Delivery

Consult postmaster for fee.

3. Article Addressed to:

EVELEE HILL RUSH
PO BOX 4905
POCATELLO ID 83205-4905

4a. Article Number
1350

4b. Service Type
☐ Registered ☐ Insured
☒ Certified ☐ COD
☐ Express Mail ☐ Return Receipt for Merchandise

7. Date of Delivery
FEB 8 1996

5. Signature (Addressee)
Evelee Hill

8. Addressee's Address (Only if requested and fee is paid)

6. Signature (Agent)

PS Form **3811**, December 1991 ★U.S. GPO: 1993—352-714 **DOMESTIC RETURN RECEIPT**

Is your RETURN ADDRESS completed on the reverse side?

Thank you for using Return Receipt Service.

UNITED STATES POSTAL SERVICE

Official Business

PENALTY FOR PRIVATE USE TO AVOID PAYMENT OF POSTAGE, $300

U.S. MAIL

Print your name, address and ZIP Code here

DEPARTMENT OF WATER RESOURCES
EASTERN DISTRICT OFFICE
900 N. SKYLINE DR.
IDAHO FALLS, IDAHO 83402

NAME AND ADDRESS OF SENDER

Indicate type of mail
☐ Registered ☑ Return Receipt
☐ Insured For Merchandise
☐ COD
☑ Certified ☐ Express Mail

Check appropriate block for Registered Mail:
☐ With Postal Insurance
☐ Without Postal Insurance

Affix stamp here if issued as certificate of mailing or for additional copies of this bill.

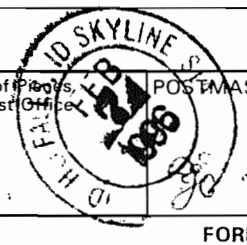
POSTMARK AND DATE OF RECEIPT

Line	Number of Article	Name of Addressee, Street, and Post-Office Address	Postage	Fee	Handling Charge	Act. Value (If Regis.)	Insured Value	Due Sender If C.O.D.	R. R. Fee	S. D. Fee	S. H. Fee	Rest. Del. Fee / Remarks
1	1347	FL Duke Walden PO Box 127 Lava 83246	.32	1.10					1.10			Prehearing
2	1348	George Katsilometes 5 Portneuf Ave Lava 83246	.32	1.10					1.10			
3	1349	John McAlhaff 1424 High St Auburn Ca 95603	.32	1.10					1.10			
4	1350	Evelee Hill Rush PO Box 4905 Pocatello 83205	.32	1.10					1.10			
5	1351	Caren Vargason PO Box 268 Lava 83246	.32	1.10					1.10			
6	1352	Roger Ling PO Box 336 Rupert 83350	.32	1.10					1.10			
7	1353	Kent Foster PO Box 5030 Idaho Falls 83405	.32	1.10					1.10			
8	1354	Joseph or Ella Marty 1775 E 1500 N Homer 83425	.32	1.10					1.10			
9	1355	Bradley Peterson PO Box 574 Hyde Park UT 84318	.32	1.10					1.10			
10												
11												
12												
13												
14												
15												

Total number of Pieces Listed by Sender: 9.

Total Number of Pieces Received at Post Office: Nine.

POSTMASTER, PER *(Name of receiving employee)*



The full declaration of value is required on all domestic and international registered mail. The maximum indemnity payable for nonnegotiable documents under Express Mail document reconstruction insurance is $50,000 per piece subject to a limit of $500,000 per occurrence. The maximum indemnity payable on Express Mail merchandise insurance is $500. The maximum indemnity payable is $25,000 for Registered Mail, $500 for COD and $500 for Insured Mail. Special handling charges apply only to Third- and Fourth-Class parcels.

FORM MUST BE COMPLETED BY TYPEWRITER, INK OR BALL POINT PEN

☆U.S. GOVERNMENT PRINTING OFFICE 1990-255-306

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE

STATE OF IDAHO

IN THE MATTER OF APPLICATION)
FOR PERMIT NO.'S 29-08162 &) NOTICE OF
29-08164 IN THE NAME OF LAZY)
V RANCH, INC.) PREHEARING CONFERENCE

On November 20, 1995, Lazy V Ranch, Inc. filed with the Department of Water Resources an application for permit No. 29-08162. On January 3, 1996, the application was protested by F.L. Duke Walden. On January 4, 1996, the application was protested by George W. Katsilometes. On January 8, 1996, the application was protested by Evelee Hill Rush and John Mehlhaff.

On January 5, 1996, Lazy V Ranch, Inc. filed with the Department of Water Resources an application for permit No. 29-08164. On January 22, 1996, the application was protested by George W. Katsilometes. On February 2, 1996, the application was protested by F.L. Duke Walden.

The Department has scheduled the matter for a prehearing conference at 10:00 a.m. on March 7, 1996, at the Pocatello Airport, Pocatello, ID, in accordance with the provisions of the adopted Rules of Procedure of the Department of Water Resources.

Agenda items for this prehearing conference will include:

1. Identify spokesman and/or counsel representing the protestant.
2. Review of the application.
3. Identify issues of protest.
4. Designate date for identifying witnesses.
5. Designate target date for conducting administrative hearing if resolution is not possible during the prehearing conference.

The hearing will be conducted in a facility which meets the accessibility requirements of the Americans with Disabilities Act. If you require special accommodations in order to attend, participate in or understand the conference, please advise the Department within ten (10) days prior to the conference.

Dated this 7th day of February, 1996.

RONALD D. CARLSON
Regional Manager

I hereby certify that on the 7th day of February, 1996, I mailed a true and correct copy, postage prepaid, of this document to the applicants (s) and protestant (s) listed below:

Rita Bodell

RITA BODELL
Secretary

Certified

CAREN VARGASON
LAZY V RANCH INC
P.O. BOX 268
LAVA HOT SPRINGS ID 83246

EVELEE HILL RUSH
PO BOX 4905
POCATELLO ID 83205-4905

JOHN MEHLHAFF
1424 HIGH STREET
AUBURN CA 95603

GEORGE W KATSILOMETES
5 PORTNEUF AVE
LAVA HOT SPRINGS ID 83246

F.L. DUKE WALDEN
PO BOX 127
LAVA HOT SPRINGS ID 83246

CO3434/ 1-8-96
25.00

RECEIVED
JAN 0 8 1996
Department of Water Resources

January 4, 1995

To: State of Idaho Dept. of Water Resources
1301 N. Orchard St.
Boise, Idaho 83702-9000
CC: Lazy V Ranch, Inc.

Fr: John Mehlhaff
1424 High Street
Auburn, California
95603

Dear Sirs,

I would like to protest the application for permit to appropriate the public waters of the State of Idaho, Case No. 29-08162 applied for by Lazy V Ranch, Inc. of 5 Portneuf Avenue, Lava Hot Springs, Idaho, 83246. Enclosed is my $25. check required for the protest fee. I assume that this protest will enact a public hearing on this matter.

Among the reasons for this protesting are:

1. The pumping of this volume of water to the Lazy V Ranch may lower the well head levels of current water users close to the well and limit their ability to use their existing water rights.
2. The diversion of water from the Lava Foundation to the Lazy V Ranch appears to violate several Idaho codes.
3. Any appropriation of this public water should be made available to all property owners within access to the pipe line.

Sincerely,
John Mehlhaff
John Mehlhaff

RECEIVED
JAN 10 1996
Department of Water Resources
Eastern District Office

Receipt # E021821 1-8-96

7/94

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
NOTICE OF PROTEST

This form may be used to file a protest with the department under sections 42-108B, 42-203A, 42-203C, 42-211, 42-222 an 42-224, Idaho Code. The department will also accept a timely protest not completed on this form if it contains all necessar information.

1. Matter being protested Application for Permit # 29-8162. Lazy V Ranch, Inc. Thayne and Karen Vargason
2. Name of protestant Evelee Hill Rush
3. Protestant's representative for service (If different than protestant)

   Non applicable.
4. Service mailing address Mailing, P.O. Box 4905, Pocatello, ID 83205-4905
5. Service telephone no. 208-232-2139, Pocatello. 208-776-5550, Lava.
6. Basis of protest (including statement of facts and law upon which the protest is based)

   Please note attached sheet. Addendum A and B.

   (additional pages may be attached to describe the nature of the protes
7. What would resolve your protest? 1. A thorough study of the thermal aquafir to determine full potential of hot water available. 2. The determination of water rights for individuals and the state according to time water used and quantity. 3. The formation of a water district with the state and all water useres. 4. Equal right to**

I hereby, acknowledge that if I, or my designated representative, fails to appear at any regularl scheduled conference or hearing in the matter of which I have been notified at the address above, th department may issue a notice of proposed default against me in this matter for failure to appear. I als verify that I have served a copy of this protest upon the applicant.

**use of the state's waste water.

Signed this 6 day of January, 1996

Evelee Hill Rush

PROTESTANT Evelee Hill Rush

None

PROTESTANT'S REPRESENTATIVE

Addendum A

January 6, 1996

Protest to Application for Permit #29-8167, Lazy V Ranch, Thayne and Karen Vargason, Owners.

6. Basis or Protest:

1. Such a potential large volume (3CFS) could reduce the amount of hot water flowing in the spring on my property which is adjacent to the pumping station of the State Foundation Pools, note location of protestants property on map Addendum B. Pumping that large of a volume of hot water could reduce the water temperature in my spring and at other points of pumping. Mr. and Mrs. Jack Terrell, former owners of the property I purchased in May on 1995, often have stated to me the amount of hot spring water has reduced in flow since the 1962 flood and the state's pumping for the summer pool. The Terrell property has been in the family since 1911. I feel it is the responsibility of the new potential water user, i.e. Lazy V Ranch, to give me factual, third party, professional information that this amount of water use will not effect my hot water right deeded and established in 1911.

2. This permit is for the State Foundation's waste water. The amount available for "waste" could be zero or up to the amount applied for. If the purpose for the use of the hot water is to raise a warm water fish, how can the Lazy V Ranch be assured there will be an ample water supply at the most critical times to keep the fish alive? If the state pumps water to the Lazy V Ranch, by-passing the use at the Olympic Pool then is this waste water of water given for the monetary use of a private citizen?

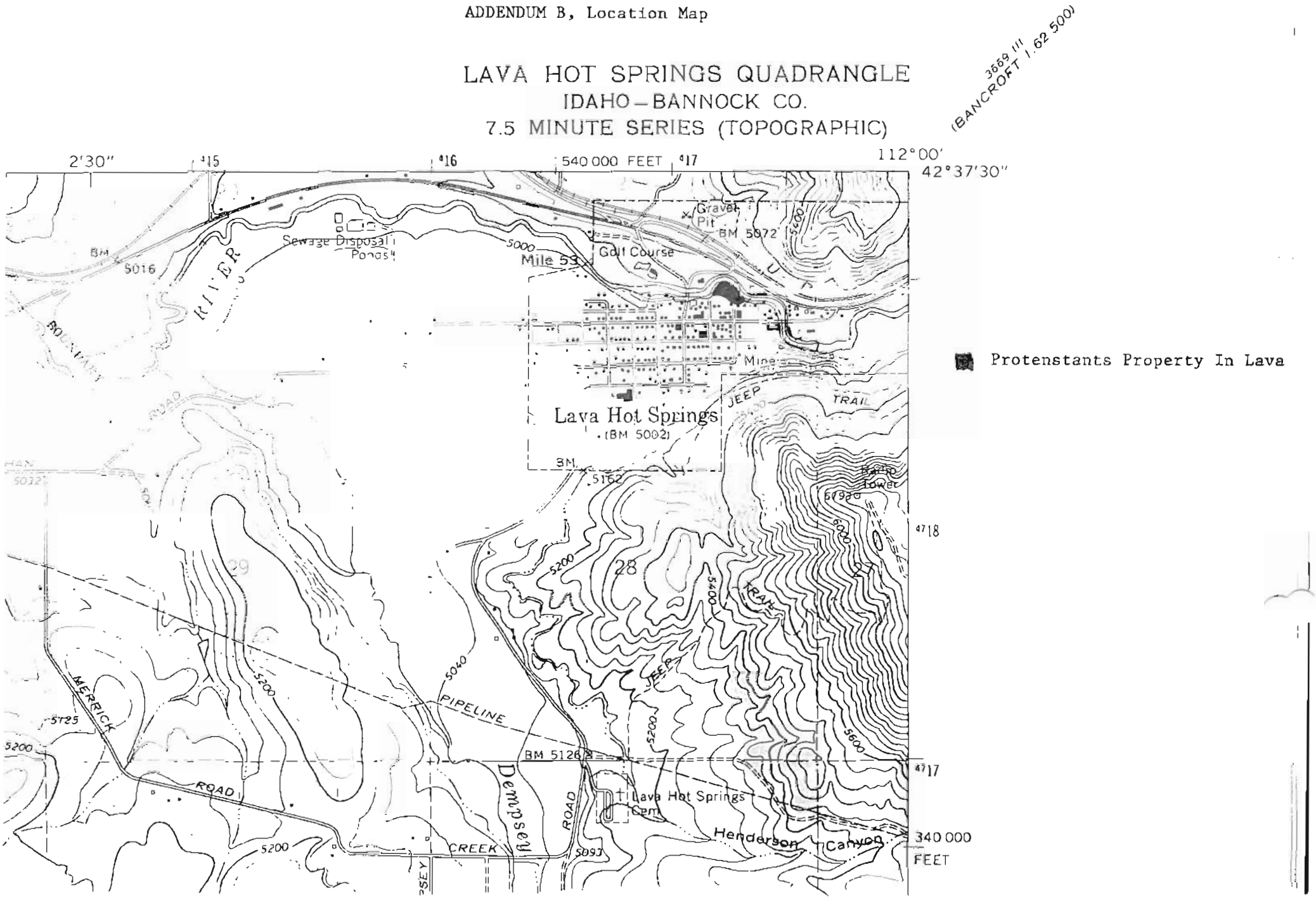
3. The "waste" water applied for in this permit is water which is supplied to the Olympic Pool and buildings. The pool is only open from Memorial Day to Labor Day. Why would the State Foundation be pumping such a large volume of water during the winter months? To me it seems the State Foundation is trying to perfect the largest water right possible by pumping huge amounts instead of allowing the hot water aquifer to replenish, recharge during the winter months. The state of Idaho has a fiduciary obligation to the citizens of Idaho and the all other Lava hot water claimants for the judicious management of use and conservation of the natural resource. A significant conflict of interest exists when the state, namely the State Foundation competes financially with the private citizen in offering services based on the use of the hot mineral water. Who does the state represent, it's own financial interest or the interest of the greater citizenry? Should the state be held to the highest standard to help promote the businesses interests of the private citizen while also protecting and conserving such a vital natural resource? Is the State Foundation exempt from the same laws which apply to the general citizen?

3. The Lazy V Ranch states they have a one-half acre holding pond. The amount of water requested appears to me to be an oversupply for the amount of storage area available. Is there a further development use for the hot water in the future that is unstated? Would this water be available for a future use (speculative use), unstated now?

4. I question the water supply to Lazy V Ranch is "waste" water. Photos taken by me on Friday, December 29, at 9:42 A.M. of the State Foundation Hot Pools, the State Foundation Olympic Pool and the Lazy V Ranch Pond show closely equal amounts of steam arising from the pond and the hot pools. Very little steam is coming from the Olympic Pool. Thus the water must be by-passing the Olympic pool going straight to the pond. Is this waste water? Are we establishing a whole new hot water right under the guise of state waste water? Is the State Foundation receiving monetary remuneration for the waste water? Is the waste water on an open bid to the public?

5. My property is also downstream from the State Foundation waste water. Please allow me an equal opportunity to apply for and use the waste water for the same terms and conditions of the Lazy V Ranch.

ADDENDUM B, Location Map



Protenstants Property In Lava

Photo taken of State Foundation Olympic Pool on Friday, December 29, 1995, at 9:42 A.M. by Evelee Hill Rush.

Photos taken of State Foundation Hot Pools, on Friday, December 29, 1995, 9:42 A.M., by Evelee Hill Rush

Photos taken of the Lazy V Ranch Pond on Firday, December 29, 1995, 9:42 A.M.

Receipt # E021819

RECEIVED
JAN 04 1996
Department of Water Resources
Eastern District Office

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

IN THE MATTER OF THE APPLICATION FOR PERMIT TO APPROPRIATE THE PUBLIC WATERS OF THE STATE OF IDAHO, NO. 29-08162	**PROTEST**

GEORGE W. KATSILOMETES, whose address is 5 Portneuf Avenue, Lava Hot Springs, Idaho 83246, hereby protests the Application No. 29-08162 by LAZY V RANCH, INC., on the following grounds:

1. The proposed use of water will injure the water rights of this Protestant, in that the proposed use will reduce the quantity of water under existing water rights of this Protestant;

2. The application is made for speculative purposes;

3. The primary diversions by the state of Idaho or Lava Hot Springs Foundation violate, at least in part, Idaho Code, § 42-201;

4. The proposed change is not in the local public interest as defined in § 42-203A(5), Idaho Code;

5. The proposed change is contrary to the conservation of water resources within the state of Idaho.

Dated January 2, 1996.

George W. Katsilometes

CERTIFICATE OF SERVICE

I hereby certify that on the 3rd day of January, 1996, I caused to be served a true and correct copy of the foregoing by the method indicated below, and addressed to the following:

Lazy V Ranch, Inc.
P.O. Box 268
Lava Hot Springs, ID 83246

✓ Hand Delivery
✓ U.S. Mail
____ Overnight Mail
____ Telecopy (FAX)

George W. Katsilometes

L 021808

7/94

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
NOTICE OF PROTEST

This form may be used to file a protest with the department under sections 42-108B, 42-203A, 42-203C, 42-211, 42-222 and 42-224, Idaho Code. The department will also accept a timely protest not completed on this form if it contains all necessary information.

1. Matter being protested LAZY V RANCH INC. APPLICATION for WATER Right # 29-08162
2. Name of protestant F.L. DUKE WALDEN
3. Protestant's representative for service (If different than protestant)

4. Service mailing address P.O. Box 127 LAVA Hot Springs Id. 83246
5. Service telephone no. 208-776-5504 208-776-5655
6. Basis of protest (including statement of facts and law upon which the protest is based) UNFAIR TO LAVA Hot Springs CITY & Residents STATE of Idaho IS PAYING undue Expense for EXISTING WATER Supply

(additional pages may be attached to describe the nature of the protest)

7. What would resolve your protest? Resolve Issues & Agreement STATE Foundation / CITY OF LAVA / LAZY V RANCH & ALL Protestants

I hereby, acknowledge that if I, or my designated representative, fails to appear at any regularly scheduled conference or hearing in the matter of which I have been notified at the address above, the department may issue a notice of proposed default against me in this matter for failure to appear. I also verify that I have served a copy of this protest upon the applicant.

Signed this 29 day of December, 19 95.

F.L. Duke Walden
PROTESTANT

PROTESTANT'S REPRESENTATIVE

RECEIVED
JAN 03 1996
Water Resources
District Office

Form 202
10/92

Ident. No 29-8162

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
APPLICATION FOR PERMIT

To appropriate the public waters of the State of Idaho

1. Name of applicant LAZY "V" RANCH, ~~INC~~ * Phone (208) 776-5409 233-8011 (W)

   Post office address P.O. Box 268, Lava Hot Springs, Id 83246

2. Source of water supply Waste water which is a tributary of Portneuf River

3. Location of point of diversion is _____ ¼ of NW ¼ of SE ¼, Govt. Lot 7

   Sec. 21 Township 9S Range 38E B.M. Bannock County; additional

   points of diversion if any: _____

4. Water will be used for the following purposes:

   Amount 3.00 (cfs ~~or acre-feet per annum~~) for DIVERSION TO STORAGE purposes from 1/1 to 12/31 (both dates inclusive)

   Amount 0.5af (~~cfs or~~ acre-feet per annum) for STORAGE FOR FISH Propagation purposes from 1/1 to 12/31 (both dates inclusive)

   Amount _____ (cfs or acre-feet per annum) for _____ purposes from _____ to _____ (both dates inclusive)

   Amount _____ (cfs or acre-feet per annum) for _____ purposes from _____ to _____ (both dates inclusive)

5. Total quantity to be appropriated is (a) 3.00 cfs (cubic feet per second) and/or (b) _____ (acre feet per annum)

6. Proposed diverting works:

   a. Description of ditches, flumes, pumps, headgates, etc. Waste water discharge pipe from Lava Hot Springs FOUNDATION to FISH Propagation PONDS with discharge into the PORTNEUF RIVER

   b. Height of storage dam 3 feet; active reservoir capacity 0.5 acre-feet; total reservoir capacity 0.5 acre-feet; period of year when water will be diverted to storage: 1/1 to 12/31 inclusive.

   c. Proposed well diameter is _____ inches; proposed depth of well is _____ feet.

   d. Is ground water with a temperature of greater than 85°F being sought? —

   e. If well is already drilled, when? —; Drilling firm —;

   Well was drilled for *(well owner)* —

7. Time required for the completion of the works and application of the water to be proposed beneficial use is 5 years *(minimum 1 year)*.

* Changes as per telecom w/ Karen Vargason 4/26/96

8. Description of proposed uses (*if irrigation only, go to item 9*):

   a. Hydropower; show total feet of head and proposed capacity in KW. _____

   b. Stockwatering; list number and kind of livestock. _____

   c. Municipal; show name of municipality. _____

   d. Domestic; show number of households. _____

   e. Other; describe fully. Fish Propagation using Geothermal wastewater from Lava Hot Springs Foundation

9. Description of place of use:

   a. If water is for irrigation, indicate acreage in each subdivision in the tabulation below.

   b. If water is used for other purposes, place a symbol of the use (*example: D for Domestic*) in the corresponding place of use below. See instructions for standard symbols.

TWP	RANGE	SEC.	NE¼				NW¼				SW¼				SE¼				TOTALS
			NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	
9S	38E	21									LL H								

Total number of acres to be irrigated _____

10. Describe any other water rights used for the same purposes as described above. 29-7847

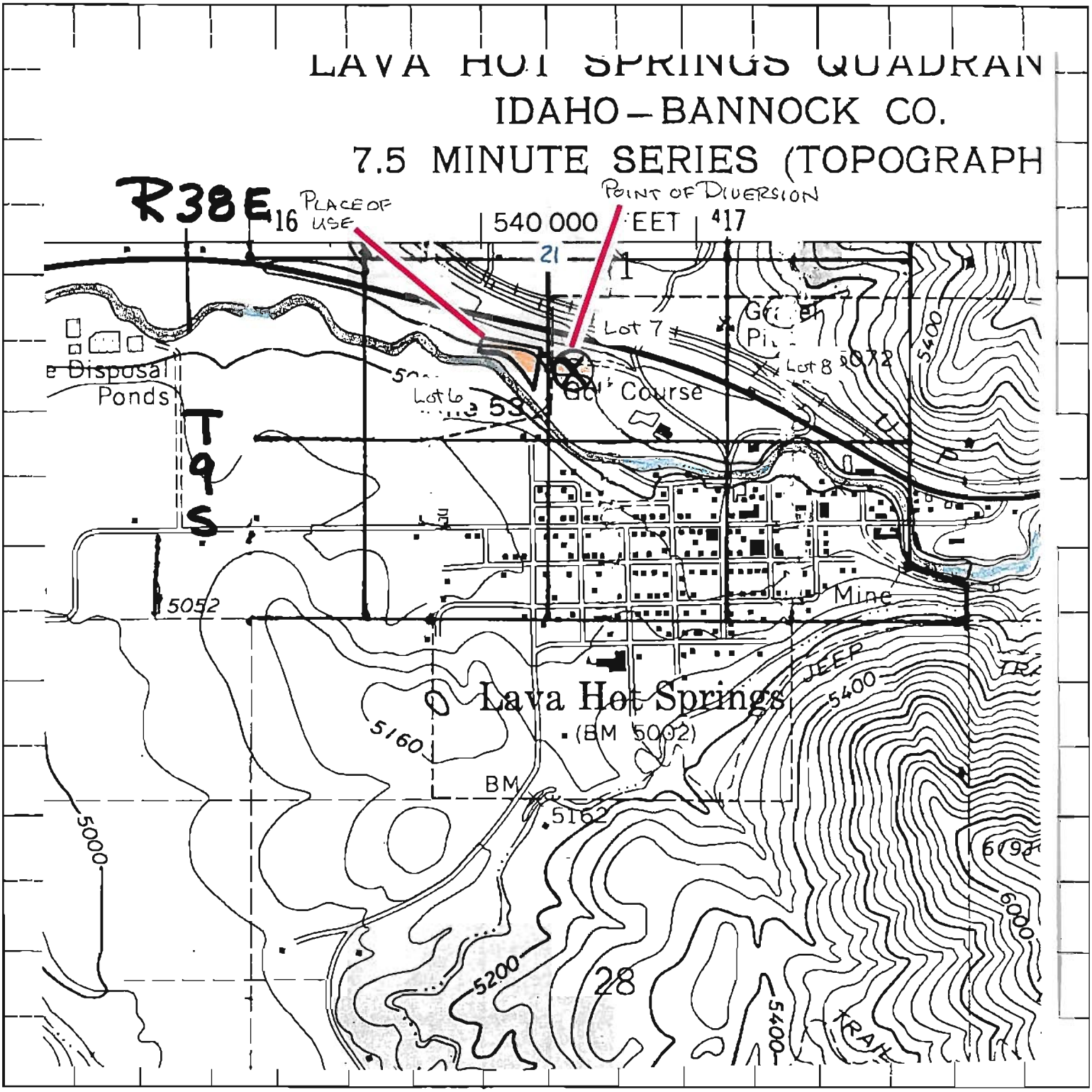
11. a. Who owns the property at the point of diversion? Lava Hot Springs Foundation

    b. Who owns the land to be irrigated or place of use? Applicants

    c. If the property is owned by a person other than the applicant, describe the arrangement enabling the applicant to make this filing. _____

12. Remarks: Pres: Thayne E. Vargason > officers of Lazy V. Ranch
Sec-Treas: Karen Vargason

13. Map of proposed project: show clearly the proposed point of diversion, place of use, section number, township and range number.



Scale: 2 inches equal 1 mile.

BE IT KNOWN that the undersigned hereby makes application for permit to appropriate the public waters of the State of Idaho as herein set forth.

Aaron Vargason
(Applicant)
Secretary

Assisted By
Received by KCW Date 11/20/95 Time 1500hrs Preliminary check by _____

Fee $ 140.00 Receipted by KCW # E021725 Date 11/20/95

Publication prepared by RB Date 12-21 & 28-95 Published in Idaho State Journal

Publication approved _____ Date _____

ACTION OF THE DIRECTOR, DEPARTMENT OF WATER RESOURCES

This is to certify that I have examined Application for Permit to appropriate the public waters of the State of Idaho No. _____, and said application is hereby _____.

1. Approval of said application is subject to the following limitations and conditions:

   a. SUBJECT TO ALL PRIOR WATER RIGHTS.

   b. Proof of construction of works and application of water to beneficial use shall be submitted on or before _____, 19____.

   c. The rate of diversion, if water is to be used for irrigation under this permit, when combined with all other water rights for the same land shall not exceed 0.02 cubic feet per second for each acre of land.

   d. The water right acquired under this permit if for hydropower purposes shall be junior and subordinate to all rights to the use of water, other than hydropower, within the State of Idaho that are initiated later in time than the priority of this permit and shall not give rise to any right or claim against any future rights to the use of water, other than hydropower, within the State of Idaho initiated later in time than the priority of this permit.

   e. Other:

Ident. No. **29-08162**

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

APPLICATION FOR PERMIT

To appropriate the public waters of the State of Idaho

1. Name: LAZY V RANCH 208-776-5409
   Address: PO BOX 268
   LAVA HOT SPRINGS ID 83246

2. Source: WASTE WATER Trib. to: PORTNEUF RIVER
3. Location of Point of Diversion: Lot 7(NWSE), Sec. 21, Township 09S, Range 38E
   BANNOCK County

4. Water will be used for the following purposes:

Purpose	From	To	CFS	(or)	AF
FISH PROP. STORAGE	01/01	12/31			0.50
DIVERSION TO STORAGE	01/01	12/31	3.000		

5. Total quantity to be appropriated is:
   3.000 CFS (and/or) AF

6. Proposed diverting works:
   a. Description of ditches, flumes, pumps, headgates, etc.
      DISCHARGE PIPE TO PONDS WITH DRAINAGE INTO RIVER
   b. Height of storage dam feet; active reservoir capacity acre-feet; total reservoir capacity acre-feet; period of year when water will be diverted to storage: to inclusive.
   c. Proposed well diameter is inches; proposed depth of well is feet.
   d. Is groundwater with a temperature greater than 85F being sought? NO
   e. If well is already drilled, when?
      Drilling Firm
      Well was drilled for

7. Time required for the completion of the works and application of the water to the proposed beneficial use is 5 year(s).

8. Place of Use: FISH PROP. STORAGE

TWN	RGE	SEC		
09S	38E	21	Lot	6(NESW)

9. a. Who owns the property at the point of diversion?
APPLICANT
b. Who owns the land to be irrigated or place of use?
APPLICANT
c. If the property is owned by a person other than the applicant, describe the arrangement enabling the applicant to make this filing.

10. Remarks:
Fish propagation using geothermal waste water from Lava Hot Springs Foundation.

11. Map of proposed point of diversion and place of use attached? [ ]

BE IT KNOWN that the undersigned hereby makes application for permit to appropriate the public waters of the State of Idaho as herein set forth.

_____
Applicant

Received by _____ Date _____ Time_____ Preliminary check by _____

Fee $ 140.00 Receipted by _____ #E021725 Date 11/20/1995

Publication prepared by _____ Date _____ Published in _____

Publication approved _____ Date _____

STARTING RIGHT SIDE OF FILE

State of Idaho
DEPARTMENT OF WATER RESOURCES
322 East Front Street • P.O. Box 83720 • Boise, Idaho 83720-0098
Phone: (208) 287-4800 • Fax: (208) 287-6700 • Web Site: www.idwr.idaho.gov

C. L. "BUTCH" OTTER
Governor

DAVID R. TUTHILL, JR.
Director

January 13, 2008

RE: In the matter of applications for permit no. 29-8162 and 29-8164 in the name of Craig Lyon and Vicki Lyon (previously in the name of Lazy V Ranch)

Dear Interested Parties:

The Department of Water Resources has issued the enclosed **Final Order** pursuant to section 67-5246 or 67-5247, Idaho Code. Also enclosed is an informational sheet that explains how a party may respond to a final order, if they do not agree with the Department's decision.

Sincerely,

Deborah J. Gibson

Deborah J. Gibson
Administrative Assistant
Water Management Division

Enclosures
cc: IDWR –Eastern Region

EXPLANATORY INFORMATION
TO ACCOMPANY A
FINAL ORDER

(Required by Rule of Procedure 740.02)

The accompanying order is a "**Final Order**" issued by the department pursuant to section 67-5246 or 67-5247, Idaho Code.

Section 67-5246 provides as follows:

(1) If the presiding officer is the agency head, the presiding officer shall issue a final order.

(2) If the presiding officer issued a recommended order, the agency head shall issue a final order following review of that recommended order.

(3) If the presiding officer issued a preliminary order, that order becomes a final order unless it is reviewed as required in section 67-5245, Idaho Code. If the preliminary order is reviewed, the agency head shall issue a final order.

(4) Unless otherwise provided by statute or rule, any party may file a petition for reconsideration of any order issued by the agency head within fourteen (14) days of the issuance of that order. The agency head shall issue a written order disposing of the petition. The petition is deemed denied if the agency head does not dispose of it within twenty-one (21) days after the filing of the petition.

(5) Unless a different date is stated in a final order, the order is effective fourteen (14) days after its issuance if a party has not filed a petition for reconsideration. If a party has filed a petition for reconsideration with the agency head, the final order becomes effective when:

(a) the petition for reconsideration is disposed of; or

(b) the petition is deemed denied because the agency head did not dispose of the petition within twenty-one (21) days.

(6) A party may not be required to comply with a final order unless the party has been served with or has actual knowledge of the order. If the order is mailed to the last known address of a party, the service is deemed to be sufficient.

(7) A non-party shall not be required to comply with a final order unless the agency has made the order available for public inspection or the nonparty has actual knowledge of the order.

State of Idaho
DEPARTMENT OF WATER RESOURCES
322 East Front Street • P.O. Box 83720 • Boise, Idaho 83720-0098
Phone: (208) 287-4800 • Fax: (208) 287-6700 • Web Site: www.idwr.idaho.gov

C. L. "BUTCH" OTTER
Governor
DAVID R. TUTHILL, JR.
Director

July 25, 2008

CRAIG AND VICKI LYON
273 NORTH 2400 WEST
BRIGHAM CITY UT 83402

RE: Change of Ownership for Water Right nos. 29-8162, 29-8164 and 29-7847

Dear Water Right Holder(s):

The department acknowledges receipt of an Assignment of Applications for Permit nos. 29-8162 and 29-8164, and an Assignment of Permit no. 29-7847 changing ownership of these water rights to you. The department has modified its records to reflect the changes in ownership and has enclosed computer-generated reports for each water right application and permit for your records.

Be advised that Section 42-248, Idaho Code requires the owners of water rights to maintain current ownership and address records on file with the department. Forms to file a change of ownership of a water right and/or a change in the address of the water right owner are available from any department office, or at the department's website at: www.idwr.idaho.gov

Please feel free to contact this office if you have any questions regarding this matter.

Sincerely,

Deborah J. Gibson

Deborah Gibson
Administrative Assistant
Water Allocation Bureau

Enclosures
cc: Jack H. Robison, Jones Chartered

Memorandum

To: **Cindy Bird**
Copy: **Ernest Carlsen**
From: **Gary Spackman**
Date: **October 16, 2007**

Re: **Applications to Appropriate Water nos. 29-8162 & 29-8164**
Permit No. 29-7847 – Request for Assistance

I need your assistance to locate the current owner of property located near Lava Hot Springs previously owned by Thayne E. and Karen Vargason, doing business as Lazy V Ranch.

In November, 1995, Lazy V Ranch filed application to appropriate water no. 29-8162. In January 1996, Lazy V Ranch filed application to appropriate water no. 29-8164. The applications were protested, and IDWR held a hearing. IDWR issued a preliminary order on May 14, 1998. IDWR also denied a petition for reconsideration on July 1, 1998. Parties filed exceptions to the preliminary order. A final order was prepared for the director's signature, but was never signed.

In addition, at the time applications no. 29-8162 and 29-8164 were filed, Thayne and Karen Vargason held water right permit no. 29-7847. Vargasons had filed proof of beneficial use, and IDWR had conducted a beneficial use exam. The water delivery system and beneficial use under permit no. 29-7847 were related to the use of water proposed by applications nos. 29-8162 and 29-8164. The Vargasons applied for an amendment of permit no. 29-7847 in May 1996. Because of the contested case for applications nos. 29-8162 and 29-8164, IDWR delayed consideration of the application for amendment to and issuance of the license for permit no. 29-7847.

I've heard rumors that Vargasons do not currently own the place of use described by the water right filings. Vargasons have not contacted the department about the permits in several years. IDWR finish the administrative process for the applications and the permit. Would you please research the ownership and send us documentation of the ownership. A good place to start might be visiting with the director of the Lava Hot Springs Foundation because Lazy V Ranch was located adjacent to the west property boundary of the Lava Hot Springs Foundation property.

The legal description for the point of diversion is: Lot 7 (NWSE), Sec. 21, T09S, R38E, Bannock County.

Thanks.

FAX
To: Chris

Ltr was signed + mailed to Greg Moeller

Law Offices

RIGBY, THATCHER, ANDRUS
RIGBY, KAM & MOELLER, Chartered

Ray W. Rigby
Gordon S. Thatcher
G. Rich Andrus
Jerry R. Rigby
Michael S. Kam
Gregory W. Moeller

P.O. Box 250
25 North Second East
Rexburg, ID 83440

Telephone: (208) 356-3633
Fax: (208) 356-0768
E-Mail: Rexlaw@srv.net

From: G. Katsilometes
776-5830

SENT BY UPS
NEXT DAY AIR

November 5, 1997

Greg Johnson
2467 Rainbow
Lake Havasu City, AZ 86404

Re: Applications for Permits from Lazy V. Ranch

Dear Mr. Johnson,

Pursuant to our recent telephone conversation, I am enclosing a proposed "Affidavit" for your signature. The information contained herein is based upon our recent telephone conversation and the telephone conversations that you have had with Mr. Katsilometes.

If the language in this Affidavit is acceptable, and you agree with all of the contents therein, we would request that you please sign the document in the space indicated and have your signature notarized. We would then ask that you return the document to my office as soon as possible.

If you have any questions or concerns, or desire any revisions, please call me immediately. Your help and cooperation in this matter is greatly appreciated.

Sincerely yours,

Gregory W. Moeller

dk

cc: George Katsilometes

katsilom.lt4

Signed copy of Affidavit requested 11-19-03 but we had nothing in file + couldn't locate anything any where else.

Advised George —

Ray W. Rigby
Gregory W. Moeller
of Rigby, Thatcher, Andrus, Rigby, Kam
& Moeller, Chartered
25 N. 2nd E.
P.O. Box 250
Rexburg, ID 83440

Telephone No. (208) 356-3633

Attorneys for Protestant, George Katsilometes

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE

STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR PERMIT NO. 29-08162 AND FOR PERMIT NO. 29-08164 IN THE NAME OF LAZY V RANCH	)	**AFFIDAVIT OF GREG JOHNSON**

STATE OF ARIZONA,)
ss.
County of _____.)

GREG JOHNSON, being first duly sworn, deposes and says:

1. I am an adult, competent to testify to the matters herein.

2. I reside at 2467 Rainbow, Lake Havasu City, Arizona 86404.

3. I was the foreman for Frasier Construction Co. on a project to take geothermal water to the Lava Hot Springs Foundation Olympic Pool Complex. The project was begun in 1989 (DPW Project No. 90-547), and Brad Frasier was my supervisor.

4. In the Fall of 1989, the Frasier Construction Co. track hoe operator was directed by Bob Moline, Director of the Lava Hot Springs Foundation, to dig two holes attempting to find hot water. The first was adjacent to the Portneuf River in the park across the river from the Friedel's Pancake House. The second was across the river from the Evelee Hill-Rush property at the very west end of the park.

5. An earlier attempt to dig a hole across from the Pancake House was abandoned because there was not enough hot water found at that site. However, the second hole at the very west end of the park did produce a large amount of hot water.

6. A John Deere 690 Track Hoe was used to do the digging for the hot water. Howard Lowe and Ron Hensley were the track hoe operators at the site of the new hole.

7. At the time this second hole was dug, the area had already been recently disturbed by digging. However, the area was virgin with respect to underground piping. In the beginning the area was swampy. The digging was done in the early mornings when the ground was frozen to give the track hoe good footing for digging.

8. As the digging took place, lava rock was encountered and was removed or moved to get at the greatest flow and hottest flow of water.

9. The track hoe operator dug down at least 18 feet to find the hottest water. The water was hotter and it appeared that more water was flowing after the digging.

10. Water was flowing into the hole from all directions and was flowing up to three or four feet from the surface of the ground. The water then percolated through the rocks and flowed to the river.

11. The track hoe was then used to help Green Plumbing Co. install four 4-foot

lengths of hollow perforated cylindrical concrete pipe (barrels) on top of each other down into the second hole to keep the size of the hole from collapsing and to allow water to enter the hole from all directions.

12. Green Plumbing tested the flow and the temperature for one week after the hole was dug. Green Plumbing installed a slab for support and a 16" steel pipe which carries the overflow of hot water from the new hole to the river. Green Plumbing then ran screened casing (conductor pipe) down into the new hole and attached the casing to the pump.

13. Doyle Schultz from Green Plumbing and Stratford Plumbing & Heating witnessed this digging and construction. Bob Moline oversaw the whole project and told the workmen where to dig and how deep to dig.

_____
Greg Johnson

SUBSCRIBED AND SWORN To before me this _____ day of November, 1997.

_____
Notary Public for Arizona
Residing at _____, Arizona
My Commission Expires: _____

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

January 17, 1996

GEORGE W KATSILOMETES
5 PORTNEUF AVE
LAVA HOT SPRINGS ID 83246

RE: Application for Permit No. 29-08162 LAZY V RANCH INC

Dear Protestants:

Your protest against approval of the above referenced applications have been received and a copy has been sent to the applicant. The Department suggests you contact the applicant directly in an effort to determine what is proposed by the application and to attempt to resolve the protest.

Unless this office is advised that either the matter has been resolved or there exists extenuating circumstances, our objective is to schedule a conference and/or hearing in the near future to consider the protest. At such a conference and/or hearing, the following are the principle items the Department can consider in their approving or denying the application (Idaho Code § 42-203).

1. Will the proposed use reduce the quantity of water under existing rights?

2. Is the proposed water supply insufficient for the purpose intended?

3. Is the application made in good faith or for delay or speculative purposes?

4. Has the applicant sufficient financial resources with which to complete the project?

RECEIVED
AUG 17 1998
Department of Water Resources

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AUG 17 1998
WATER RESOURCES
WESTERN REGION

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BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE

STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR PERMIT NO. 29-08162 AND FOR PERMIT NO. 29-08164 IN THE NAME OF THE LAZY V RANCH	**EXCEPTION TO RECOMMENDED ORDER AND BRIEF**

The applicant in the above entitled matter hereby takes exception to the recommended order mailed July 24, 1998. Applicant adopts Applicant's Petition for Reconsideration, a copy of which is attached hereto as Exhibit "A" and post-hearing brief entitled Applicant's Response, a copy of which is attached hereto as Exhibit "B". Applicant augments Exhibits "A" and "B" objecting to Condition No. 2 as follows:

The hearing examiner's response to the Petition for Reconsideration provides no additional authority or content in support of Condition No. 2. The Applicant respectfully submits that Condition No. 2 as set forth in the Order is unnecessary, arbitrary and capricious and is not supported by law and fact.

Condition No. 2 provides as follows:

> "The permit holder must obtain written consent from the Lava Hot Springs Foundation for development of low temperature geothermal water arising on Foundation property for fish propagation prior to any development or diversion of water under this permit." (emphasis supplied).

The condition is purportedly based upon conclusion of law paragraph 6 in which the hearing examiner finds without citation of controlling authority that "IDWR should not approve any proposal for diversion on Foundation property by the Applicant unless the Foundation expressly consents to the diversion of use."

The Findings of Fact which appear to be related to such conclusion of law and the agreement with the Vargasons are set forth in Findings of Fact, paragraphs 27 through 32.

As testified to by the Applicant, the Lava Hot Springs Foundation (Foundation) has been a willing and supportive participant in the development of the tilapia operation consistent with their agreement set forth in Applicant's Exhibits No. 2 and 3. The hearing examiner failed to note in the findings of fact the uncontradictive testimony of the Applicant and Bob Meline as to the substantial involvement of the Foundation. Further Bob Meline, obviously with apparent authority, entered into the Agreement in January of 1991 on behalf of the Foundation. Initially, the Foundation believed that it had authority to grant rights to the water in addition to use of the land. *See Letter of Steven W. Strack, Applicant's Exhibit No. 8.* As noted in Exhibit No. 8, the Foundation acknowledges the Agreement contending that "The Foundation approved the system pursuant to the authority vested in it by the Idaho Code §67-1401, which vests the Foundation with "[a]ll right to the operation management control... of the land and property belonging to the State of Idaho situated within and near the City of Lava Hot Springs." Applicant's Exhibit 9 and 10 further evidence that the Foundation's support and acknowledgment of its obligations to the

Vargasons pursuant to the Agreement. For example in Exhibit 10, page 10, in a general discussion regarding the jurisdictional issue between the Foundation and the Department of Water Resources, the Board, the chairman, Mr. Wellard states as follows:

> "Mr. Wellard said the agreement to run through the ground was a done deal and there is no question about that. The question was concerning the Foundation Boards authority to use or lease water or something else without going through water resources."

Board member, Mr. Al Ricken acknowledged the Board's support of the project and the application and its responsibility as follows:

> "Mr. Ricken stated that Karen Vargason was encouraged to proceed with the project because the Foundation encouraged her. Mr. Ricken said he feels the Board should help her because the prior action of this Board."

Nevertheless, the Board did not actively participate before the Department of Water Resources. However, at no time did Bob Meline or any other person from the Board deny the agreement set forth in Applicant's Exhibits No. 2 and 3. To the contrary, Bob Meline and the Foundation affirmed the Agreement. In other words, both the Applicant and the Foundation recognized the agreement set forth in Applicant's Exhibits No. 2 and 3. The Foundation has accepted the benefits of the agreement since 1991 and campaigned to maintain those benefits with the IDWR. *See Applicant's Exhibit No.8.*

In spite of this uncontradictive testimony of the ongoing mutual agreement with the Foundation, the hearing examiner denied any use under any circumstances without a re-submittal to the Lava Foundation. The hearing examiner made no findings of fact nor cited any legal authority for Condition No. 2 and indeed none exists. While acknowledging that the Foundation pursuant to Idaho Code §67-4402 is vested with the exclusive authority to manage the state

property and resources at Lava Hot Springs, the hearing examiner then disregards the agreement between the Foundation and the Applicant. The Vargasons are prohibited by Condition No. 2 from using the system which is in place and water which is already being delivered pursuant to the existing agreement. No reason exists for Condition No. 2. The water if not used by the Vargasons is dumped into the Portneuf River.

Condition No. 2 creates an issue where none exists. Lava Hot Springs did not file a protest to the applications herein and is not a party to this action. The Foundation has never objected to the use of the Foundation property by the Applicant or the diversion of water which has been in place for over seven (7) years. While vesting the management and control of the property at Lava Hot Springs in the Foundation, Idaho Code Title 67, Chapter 44 creates no special status for the Foundation nor does the statute specify the form of consent. The Foundation is no different than any other non-party property owner whose connection to an application is the ownership or control of property over which water is conveyed. Nothing in the statutory scheme authorizes the IDWR to require the Applicant to obtain re-approvals of consents and agreements which are already in existence. It would be different if the Department required all applicants to reaffirm existing easement or use agreements with all adjacent landowners. While the IDWR, may not agree with the actions of the Foundation, the IDWR cannot ignore the legal effect of actions by the Foundation pursuant to their exclusive authority.

Nor does the Foundation need the IDWR protection. The Lava Foundation has substantial resources available to manage or control its property. If for example, the Applicant were to violate the existing agreement with the Foundation, the Foundation has immediate access to the Attorney General's office and other state employees to pursue formidable remedies against

the Applicant. This has not occurred and as testified to at the hearing, the agreement between the Applicant and the Foundation has been fully performed and the system is in place.

The Applicant must resist any Conditions by the IDWR which disregards their rights under the agreement. The Applicant entered into and fully performed their agreement with the Foundation in good faith. The Foundation has benefitted from that agreement and continues to acknowledge and consent to the agreement with the Applicants. Expansion of the agreement would require participation of the Foundation. But as to the rights created by the existing agreement, there is simply no rational basis or legal authority cited to disregard the fundamental rights between the Applicant and the Foundation.

The issues raised in Condition No. 2 violate the due process afforded to the Applicant provided by Idaho Code §42-203A by assuming to determine an issue with a non-party. Had the Foundation participated as a party by filing a protest and refuting the agreement, then an issue may exist. However, the proper parties to the agreement raised no issues to the validity of the agreement and affirmed the agreement. Condition No.2 contradicts Idaho Code §42-203(a)(5) which specifies that the determination upon the hearing shall be from "the evidence presented". The IDWR is not authorized to manufacture requirements of this applicant which would not be applicable to any other applicant. The Applicant has demonstrated they have the right to access and have received delivery of the water for seven (7) years with the knowledge and participation of the Foundation. If a dispute in the future were to occur, that is between the Applicant and the third party Foundation to resolve. The IDWR should only be involved if the Applicant cannot demonstrate proof of beneficial use. No basis exists to suggest that the Applicant and the Foundation will not continue to enjoy the benefits of their agreement. Condition No. 2 is arbitrary

and violates the procedures established for the review of the Applicant's permit. The Applicant requests that the condition be removed.

PART II. RESPONSE TO AMENDED BRIEF TAKING EXCEPTION TO RECOMMENDED ORDER.

The Brief taking exception to the recommended order raises nothing new than raised in the Post Trial Brief. The issues raised were resolved by the hearing examiner based upon competent and substantial evidence. These issues were also responded to by the Applicant in Exhibit B. The response to Protestant's Closing Argument and Post Hearing Brief and the analysis by the hearing examiner addresses all the issues raised by the Protestants.

The technical arguments raised by the Applicants are summarized on pages 7 and 8 of their amended brief. The issues regarding waste water are adequately addressed by the hearing examiner and are supported by substantial and competent evidence. Further, as noted at the hearing, the designation of waste water on the application was determined by Keith Wilson from IDWR. The hearing examiner correctly found that the engineering of the water system is appropriate.

With regard to the technical objections to the agreement, all of the arguments fail as the Protestants lack standing to challenge the agreement and the agreements have been fully performed and accepted by both parties since 1991. The agreement with the Foundation is an express contract and is the express consent by the Foundation. The arguments by the Protestants do not in any way challenge the terms of the agreement. The technical objections would be applicable only between the parties to a disputed agreement. An agreement which the parties have fully performed or mutually admit is binding upon the parties. As stated by Mr. Wellard, "it

is a done deal". Even if the Foundation did not admit the agreement, their conduct for seven (7) years would bind the Foundation to the agreement.

Concepts of ratification, estoppel, implied contract as well as an express contract fully performed all apply to a governmental entity. A governmental entity may ratify a contract by its express acts or conduct. *Wilson v. Village of Forest View*, 69 Ill App2d 400, 217 NE2d 398, *Carr v. Anchorage*, 243 F.2d 482, *Monroe Co., v. Asbury Park*, 40 N.J. 457, 193 A.2d 115.

A governmental entity is bound by the same principals of common honesty that imposes a higher obligation to do justice upon all persons in spite of the formalities of the public body's minutes. *Scott Tp. School Dist. Authority vs. Branna Construction Corp.*, 419 Pa 303, 214 A2d 236. An invalid contract may be ratified by a governmental body if it is one within its original authority. *Independent Paving Co. v. Bay St. Louis*, 74 F2d 291.

The objection by the Protestants are irrelevant. The lack of a legal description is not an issue as the pipeline and diversions are all in place and are readily identifiable. Lazy V Ranch is not an entity but rather a d/b/a of Thayne and Karen Vargason and the agreement is signed individually. Karen Vargason has accepted and ratified the agreement. The majority of the Board of Directors of Lava Hot Springs Foundation authorized Bob Meline to enter into the agreement with the Vargasons. Bob Meline had full and apparent authority to enter into the agreement and the Foundation has full authority to enter into such an agreement concerning Foundation property. More importantly, the Foundation has knowingly benefitted and accepted the agreement for seven (7) years thereby accepting the agreement and ratifying Mr. Meline's execution of Applicant's Exhibits No. 2 and 3. Both the Vargasons and the Foundation understand their agreements and have fully performed their agreement. All of these issues have

been repeatedly addressed by the hearing examiner.

The new issue raised by Protestant is the claim that George Katsilometes somehow has standing as a taxpayer and a resident of Lava Hot Springs. However, Mr. Katsilometes filed a protest on his own behalf and at all times during the hearing, pursued his personal and private interest. At no time did he profess to be representing the public interest at large. Mr. Katsilometes has no standing to object to the existing and continuing agreement between the Applicant and the Foundation which has been acknowledged by the parties. He cites no authority to suggest otherwise.

The challenge to the findings of fact by the Protestants are simply a request to re-review the evidence. Finding no. 27, 51 and 67 through 74 are all supported by the evidence as described by the hearing examiner. The challenge to finding of fact no. 77 was supported by the substantial evidence of the Applicant that the fish operation, with the assistance of the Foundation and other entities, has in fact operated successfully. In regards to which graph was used, the undisputable fact is that 40,000 tilapia were reared in the pond. Once the Applicant is allowed to operate, the proof of beneficial use will be forthcoming. These findings are all supported by substantial and competent evidence. With exception of Condition No. 2, there is no basis to otherwise alter the recommended order.

DATED this 14th day of August, 1998.

Jack H. Robison, attorney for applicant

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 14th day of August, 1998, a true and correct copy of the foregoing document was served by the method indicated below upon each of the following:

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Director Hearing Examiner Department of Water Resources 1301 N. Orchard Boise, Idaho 83726	__X_ U.S. Mail, Postage Prepaid _____ Hand Delivered __X_ Facsimile (208) 327-7866 _____ Overnight Mail
Evelee Hill Rush P.O. Box 4905 Pocatello, Idaho 83205-4905	__X_ U.S. Mail, Postage Prepaid _____ Hand Delivered _____ Facsimile
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BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE

STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR PERMIT NO. 29-08162 AND FOR PERMIT NO. 29-08164 IN THE NAME OF THE LAZY V RANCH	)))))	**PETITION FOR RECONSIDERATION**

COMES NOW the Applicant, by and through the attorney of record, Jones, Chartered, and hereby petitions for reconsideration, in part, of the recommended Order. Applicant objects to Condition No. 2 which provides as follows:

> "the permit holder must obtain written consent from the Lava Hot Springs Foundation for development of low temperature geothermal water arising on Foundation property for fish propagation prior to any development or diversion of water under this permit."

Applicant further objects to the portions of the Findings of Fact and Conclusion of Law creating law in excess of the authority of the Idaho Department of Water Resources ("IDWR") with regard to the Lava Hot Springs Foundation ("Foundation").

EXHIBIT

A

The Lava Hot Springs Foundation is not a party to the above entitled action. They have not filed a protest to the application. To the contrary, the evidence demonstrates that the Foundation historically supported and assisted the Applicant in the development of the fish farm operation and was supportive at the hearing. The Foundation has agreements with the Applicant which have been fully performed both by the Vargasons and the Foundation. The Foundation has had the use and benefit of the easement and discharge of water through pipes within the easement for over seven (7) years. No issue exists between the Applicant and the Foundation to be resolved by the IDWR.

Condition No. 2 proposed by the IDWR, necessarily rejects the history of agreements between the Foundation and the Applicant. The uncontradicted evidence at the hearing is that the Applicant has an agreement for access and will receive the water in the future. If the Foundation has an issue with the Applicant, it has authority to deal with those issues without the direction of the IDWR. However, the Foundation raised no such issues as a protestant or otherwise.

The IDWR is usually careful in the exercise of its statutory authority to avoid interfering with the rights of third parties. For example, Orders routinely disclaim that the grant of a permit "does not grant any right-of-way or easement across the land of another." However, by proposing Condition No. 2, IDWR exercises its authority over the relationship of the Applicant with another independent governmental entity and dictates the manner in which the Foundation is to discharge its authority. It is not the job of the IDWR to adjudicate land use and other issues between adjoining landowner even if they were parties to the action. Condition No. 2 was not requested by any party to the action, nor did the Foundation request benevolent interdiction of the

IDWR. The Applicant is at a loss to explain why the IDWR has chosen to create and define the legal duties of another governmental agency at the expense of the Applicant.

Condition No. 2 is further objectional as an improper delegation of authority by the IDWR to another branch of government. Condition No. 2 grants ultimate authority to the Foundation for the approval of Applicant's permit. If Condition No. 2 fails, the permit fails. The IDWR has no authority and none is cited for legislating this authority to the Foundation and none is provided under Idaho Code §67-4402. The determination by IDWR in paragraph 3 of the Conclusion of Law that the "law does not expressly charge the Foundation with any public interest responsibility" contradicts such action by the IDWR. Idaho Code §67-4401 does not legislate to the Foundation the manner in which it is to manage property. The IDWR is in no position to direct any particular action by the Foundation. Condition No. 2 requires the Foundation to again approve the use. The IDWR has no authority to force the Foundation to comply with the directive of the proposed Order or any other requirement as was evident throughout the proceedings.

To require the Applicant to re-apply to another governmental agency for this directive dictated by the IDWR is unprecedented. Condition No. 2 will cause needless delay and further expense to the Applicant. The IDWR's proposed assumption of authority of the relationship between the Applicant and another governmental body, is intermeddling and improper. The consequences are severe. For example, will the IDWR defend the Foundation in the event that it now disapproves or refuses to act as required by the IDWR. If the Foundation were to repudiate its existing agreements, the Applicant may have no choice but to bring suit against the Foundation

for breach of contract and for damages. The damages would include the loss of the permit and expenses of the development including attorney fees in pursuit of the permit. Of the relief requested, the Applicant should request that the Foundation be ordered either to comply with the existing agreements (if the permit was not lost) or to remove the pipe and pay the Applicant for the reasonable value of the use of their land for the last seven (7) years and for the loss of the business opportunity. The Applicant has no reason to believe the Foundation will not continue its harmonious relationship with the Applicant. The above description of consequences is merely an example of foreseeable consequences to the Applicant and third parties if the IDWR persists in the proposed Condition No. 2. The Applicant believes that such consequences could not have been fully considered by the IDWR before proposing Condition No. 2.

The irony is that Condition No. 2 is not necessary to the approval of the permit. Neither the Applicant nor the Foundation have ever challenged or disclaimed their existing agreements. Both the Applicant and the Foundation have benefitted from the easement and installation of the pipes. Applicant's Exhibit No. 8 is the letter from the attorney for the Foundation dated October 1, 1996 to Norman C. Young which acknowledges the agreement. As stated by Mr. Strack, "the Foundation agreed to the diversion in return for the Ranch's permission to run the waste water pipe across Ranch's property." Other references are in the Foundation's minutes. The issue is not whether the Foundation will or will not comply with Condition No. 2, but rather whether such exercise of such authority by the IDWR is necessary or proper. To now mandate that the Applicant and the Foundation must take further action at the behest of IDWR is beyond its review authority and the criteria established in Idaho Code §42-203A. There is absolutely no

evidence before the IDWR to justify Condition No. 2. Applicant requests that Condition No. 2 be omitted.

RESPECTIVELY SUBMITTED this 11th day of June, 1998.

Jack H. Robison, attorney for Applicant

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 11th day of June, 1998, a true and correct copy of the foregoing document was served by the method indicated below upon each of the following:

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BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE

STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR PERMIT NO. 29-08162 AND FOR PERMIT NO. 29-08164 IN THE NAME OF THE LAZY V RANCH	)	**APPLICANT'S RESPONSE**

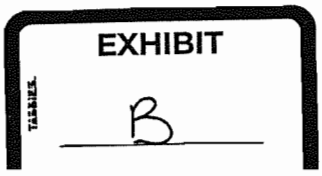
COMES NOW the Applicant, by and through the attorney of record, Jones, Chartered, and hereby submits the following response to the Closing Arguments of Post Hearing Brief of the Protestant George Katsilometes.

STATEMENT OF FACTS

The Applicant does not profess to detail the extensive testimony from the hearing. The Applicant provided extensive testimony on all issues including each issue set forth in Idaho Code §42-203(a)(5). The Applicant hereby submits general observations regarding the issues and criteria.

I. APPLICATION NO. 29-08162 FOR 3CFS

As testified to by Karen Vargason, her application is based upon an evolving experiment by the Vargasons, the Foundation, Fish and Game, Shelly High School and other entities involved



in the project. The Applicant has the advantage from the evolving development as the project has been substantially completed and the viability and feasibility of the operation has been demonstrated in actual use. From the beginning, the parties reasonably believe that the authority for the project was with the Lava Hot Springs Foundation. It was not until the attorney general's opinion occurring during these proceeding that the role of the Department of Water Resources was realized. Consequently, the above applications were pursued. Ms. Vargason relied substantially upon the expertise of Keith Wilson of the Department of Water Resources in preparing and filing for the applications.

The application for 3CFS indicates that the source of the water is waste water. The Hearing Officer requested additional guidance regarding the definition of waste water. The term waste water on the application was not generated by the Applicant. It was provided by Keith Wilson. While the Protestant on page 9 of their brief state it is "difficult to find a true statutory definition of waste water", the view of the Applicant is contrary.

To the authority cited by the Protestant actually supports the Applicant. The understanding and actual use by the Foundation and Vargason is the water which has been applied to beneficial use by the Foundation and is not consumed and is not subject to any further use before it is discharged into the Portneuf River. This condition exists both at the discharge to the swimming pool as well as the completed point of diversion at the junction box on the Foundation's property. Both point of diversions are within the application being located in the same government lot 7. See Exhibit K. The Foundation pipeline is merely the conduit for transporting the water after it has been used to the Portneuf River. Under the present design and use, these discharges will continue indefinitely and there are no known future uses of this water by

the Foundation. Nevertheless, either under the agreement between the Foundation or the law of waste water, the Foundation is not precluded from subsequent uses. However, it was testified that any such future uses would be non-consumptive and will likely add to the amount of discharge at the points of diversion.

The fact that the point of diversion is at the junction box before the water leaves the Foundation's property does not alter the character of the water. The pipe is merely a conduit for the water after it has been used. It is no different than the ditches referred to in Idaho Code §42-107. The character of the water does not change. The citations of authority by the Protestants does not suggest that the water must leave the property or control of the Foundation. In fact According to the authority cited by Protestant, the Foundation, as any other water user, retains the right under the law of waste water to intercept and control the water in the future. The agreement with the Vargasons is the same. Even if the water is diverted off the Foundation's property, the Foundation does not lose "control". What was intended by the parties is the use of the water after it is used by the Foundation before it is discharged into the Portneuf River, i.e. waster water. The terminology on the application does not contradict the use in fact.

As for the issues set forth in Idaho Code §42-203A(5) the proof in general by the Applicant is as follows:

Idaho Code §42-203A(5)(a) The quantity of water under existing rights is not reduced by the Vargasons' use. As noted in the response to the Protestants arguments, the Foundations' water right and use are not at issue. Whether or not there is a different way for the Foundation to use its water is irrelevant. The use by the Vargasons merely takes advantage of the existing conditions which does not affect existing water rights. The Protestants can show no damage nor

can they connect the conditions they complain of to the Vargasons' applications.

Similarly, there is no issues regarding Idaho Code §42-203A(5)(b)(c)(d) and (f). None of these requirements are issues as illustrated by the fact that the project has been operational. As testified by the Vargasons, they can use all the water within the 3CFS. They are not speculating as to the project nor was the application not made in good faith. The operation has been substantially developed to the extent that there is little if any financial investment required. Charles Sudweeks testified to any potential modifications and their costs. All of these costs are within the existing finances of the Vargasons who own their property with no debt and have significant cash reserves. The use by the Vargasons is non-consumptive and actually cools the water which is an advantage to the environment of the Portneuf River. There is simply no issue as to these points.

As to the public interest, Idaho Code §420203(A)(5)(e), the support by the Foundation of the project defines the public interest. The support is for good reason. The project is not detrimental to the environment and in fact improves the environment of the Portneuf River. Local jobs will be provided. Contrary to the speculation by the Protestants, there is no cost to the Foundation based upon their current operation of the pools. There is simply no negative impact which will be contrary to the public interest.

The Protestants make various technical arguments in part II of their Brief. Neither the Foundation nor the Vargasons have challenged their agreements. The Protestants are not parties to these agreements and do not have a legal standing or interest to challenge the agreements. Details such as the lack of a legal description, signatures, vagueness, and approvals are all moot by the fact that the pipeline is installed and the project is complete. The "what if" issues raised by

the Protestant simply do not alter the fact that the Vargasons have access and can utilize the water with the Foundation's support as testified. Similarly, the Protestants have provided no proof that the filing in the name of a corporation in any way prejudice the Protestants. There is simply no reason to grant the application either in the name of Vargason Ranch or conditional upon the subsequent filing of the corporation.

Reduced to the essential issues there is no reasonable basis to deny the application for 3CFS. The application is based upon a completed concept which can be operational upon the grant of a permit.

II. APPLICATION FOR 7CFS PERMIT NO. 29-08164.

This application was also prepared with the assistance of Keith Wilson requesting diversion of spring water from the Lava Hot Springs Foundation. The Applicant has attempted through the Foundation to access the water through its existing pipeline or even by an easement. The issues have been tabled by the Foundation pending the decision in this matter. The portions of this brief related to the application for 3CFS, are applicable to the Application. They are also interrelated. To the extent there is a waste water issue in the application of 3CFS, this Application from the spring covers the same water. In other words, whether the water is waste water or is from the spring is relevant only as to which right is granted under which permit. The Protestants put on testimony that there is excess water available at the spring not within the Foundation's water rights. The means for transport of the water is available but the Foundation has refused to act. The permit should be granted to the Applicant so that she might develop this resource.

III. PROTESTANTS HAVE FAILED TO DEMONSTRATE ANY DAMAGE OR CAUSAL CONNECTION TO THE PROPOSED WATER USE.

Katsilometes claims he noticed a change in the temperature in the water in 1991. He claims that the other Protestants have also noticed the changes in quantity accessibility and temperature of the water. Katsilometes testified that these observations were observed in 1991 "when the Foundation first began pumping water through their new system". Protestants Brief page 3.

The testimony and the approach by the Protestants are flawed. All of the testimony by the Protestants is based upon undocumented and unverified personal observations. None of the Protestants ever provided documentation that they have submitted a complaint to the Department of Water Resources or that they ever pursued their perceived damages discovered in 1991. What was demonstrated by the testimony of the Protestants was a history of increasing competition and changing uses among the Protestants. These occurred upstream, and by Katsilometes himself. The Protestants have blamed and squabbled with each other in the past about their water, inconsistent with their blame of the Foundation. The majority of the Protestants are competing for the geothermal water arising on Foundation property although Mr. Katsilometes, to demonstrate his lack of bais, claimed that his application was filed in bad faith as a "defensive action".

The testimony which depends upon the credibility of the Protestants is simply not creditable. The one attempt was the well test submitted by Mr. Katsilometes. However, the testimony as submitted by the well driller degraded the proof to "junk science". The well driller testified that the temperature of the waters were in fact the same in the second well test as the first

well test. Further, he admitted the second test was performed under conditions different from that performed under the first test. His statement was that they "got the wrong guy" to testify to the well tests.

In any event, Mr. Katsilometes can not claim any damage as he is pumping water illegally. He testified that the expansion of his use exceeded the authority of his permit,. He substantially expanded the amount of water under his permit after the time had lapsed for proof of beneficial use. Consequently, he does not have a property right in this water within which to claim damage even if damage existed.

Mr. Katsilometes theory is further flawed by the fact that his conclusions were based upon his testimony that there was no excess water being discharged by the Foundation. Mr. Katsilometes testified that he observed the white plastic discharge pipe from the Foundation and did not observe water being discharged. Katsilometes position is that there is no natural flow and that the Foundation's pumping is excessive. Mr. Katsilometes is wrong as to the discharge pipe which is a metal pipe which discharges below the water line into the Portneuf River.

The testimony of the Applicant's witnesses, who work with the system, including Charles Sudweeks, is accurate as to the operation of the system. As repeatedly testified to by various witnesses called by the Applicant, the water being utilized by the Foundation captured from the natural flow of waters arising on the Foundation property. They are not pumping water from the ground but only capturing the water naturally flowing. The amount of water being pumped at any one time is randomly variable with the excess being discharged into the Portneuf River. The amount of pumping by the Foundation has no impact upon the Protestants.

A fundamental flaw of the Protestants is that they have no proof that their alleged claims

are connected to the use by the Vargasons. The conditions complained by the Protestants stated in 1991, years before the Vargasons became involved. The Foundation's systems and methods utilizing their water are not at issue. The Protestants are using the Vargason application as a forum to complain about the Foundation. Of course, many of the Protestants are competing for the Foundation's water. Notwithstanding the statement by the hearing examiner, the Protestants pursued this strategy at the hearing and now have devoted the majority of their Brief to this issue. The portions of their Brief set forth at I(b), (c), (d), (e) and III(a), (e), (f) are all based upon this assault of the Foundations' water rights. They are irrelevant to these proceedings.

IV. CONCLUSION

The Vargasons have demonstrated their entitlement to permits for the water identified in the applications. They have demonstrated the project would be operating except for the permit. Until they obtain the permit further development is not prudent. Proof of beneficial use is not presently at issue. The other issues raised by the Protestants are either irrelevant to the application or have been rendered moot due to the stage of development of the project. Everything is on hold waiting the determination of the application. Once these permits have been issued, the fish farm will be in operation.

RESPECTIVELY SUBMITTED this 24th day of December, 1997.

Jack H. Robison, attorney for Applicant

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 29th day of December, 1997, a true and correct copy of the foregoing document was served by the method indicated below upon each of the following:

Gregory W. Moeller Rigby, Thatcher, Andrus, Rigby, Kam & Moeller P.O. Box 250 Rexburg, Idaho 83440	__X_ U.S. Mail, Postage Prepaid _____ Hand Delivered _____ Facsimile
Gary Spackman Hearing Examiner Department of Water Resources 1301 N. Orchard Boise, Idaho 83726	__X_ U.S. Mail, Postage Prepaid _____ Hand Delivered _____ Facsimile
Evelee Hill Rush P.O. Box 4905 Pocatello, Idaho 83205-4905	__X_ U.S. Mail, Postage Prepaid _____ Hand Delivered _____ Facsimile
John Mahlaff 1424 High St. Auburn, CA 95603	__X_ U.S. Mail, Postage Prepaid _____ Hand Delivered _____ Facsimile
F.L. Duke Walden 1353 Akers Road Hot Springs, Arkansas 71901	__X_ U.S. Mail, Postage Prepaid _____ Hand Delivered _____ Facsimile

Jack H. Robison

Julie

RECEIVED

AUG 1 2 1998

Department of Water Resources

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BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

IN THE MATTER OF APPLICATIONS FOR PERMIT NO. 29-08162 AND FOR PERMIT NO. 29-08164 IN THE NAME OF LAZY V RANCH	**AMENDED BRIEF TAKING EXCEPTION TO RECOMMENDED ORDER** (Idaho Code §67-5243(3))

INTRODUCTORY NOTE

On May 15, 1998, Gary Spackman, Hearing Officer for the Idaho Department of Water Resources made a Recommended Order on the above-referenced applications. The Recommended Order was mailed to the interested parties on May 29, 1998. On June 11, 1998, Protestant, George Katsilometes, filed a "Motion for Reconsideration of Recommended Order" pursuant to Idaho Code § 67-5243(3).

Having received no response to his motion, on July 21, 1998, Protestant George Katsilometes filed a "Brief Taking Exception to Recommended Order." At the time he filed his brief, he was totally unaware that the Hearing Officer had signed an order denying his motion for reconsideration on July 1, 1998. The order was not mailed until July 10, 1998, and for some

reason Protestant's attorney was left off the mailing certificate. Therefore, the Protestant's counsel erroneously assumed that his Motion for Reconsideration had been summarily denied by the Hearing Officer due to his failure to rule within 21 days.

The Protestant's counsel has now had an opportunity to review the Hearing Officer's "Order Denying Petitions for Reconsideration." Pursuant to the Hearing Officer's letter of July 24, 1998, Protestant now files this "amended" brief.

STATEMENT OF FACTS

Protestant has not had an opportunity to review a transcript of the hearing in this matter. Therefore, Protestant will not attempt to provide an exhaustive account of the testimony at trial. Rather, Protestant intends to provide an overview and summary of the relevant facts that we believe were established at the hearing.

In the late 1980's, George and Fran Katsilometes purchased the Lava Hot Springs Inn, with the intent of developing it into a resort. They planned on constructing hot bathing pools which would make use of the abundant geothermal water in the area. On December 20, 1989, George Katsilometes received a "Permit to Appropriate Water" (Protestant's Exhibit "T") from the Idaho Department of Water Resources (hereinafter "IDWR").

On or about April 30, 1990, George Katsilometes (hereinafter "Katsilometes") hired Brent Hendricks of Independent Drilling to drill a geothermal well. The water was tested by Brent Hendricks in 1990 and was determined to be 122 degrees. (Protestant's Exhibit "J"). At considerable personal expense, Katsilometes developed his water right pursuant to the permit and constructed pools. Additional pools were added in 1995 and 1996.

The Lava Hot Springs Foundation (hereinafter "Foundation") is a legislatively created

foundation which manages certain state-owned lands and facilities in the Lava Hot Springs area. I.C. §67-4401 *et seq*. The Foundation's operations are located across the Portneuf River from Katsilometes and the other Protestants: Evelee Hill-Rush, John Mehlhaff and Duke Walden. From 1989 to 1991, the Foundation initiated a massive redesign and upgrade of its water delivery and heat exchange systems in order to more fully utilize the local geothermal resources. The project was engineered by Charles L. Sudweeks of Engineered Systems Associates, Inc. The plumbing contractor was Gary Blanchard, of Greene Plumbing.

In 1991, when the Foundation first began pumping water through their new system, Katsilometes immediately noticed a temperature drop of approximately eight degrees from his well. From 1991 through 1995, he noted the temperature dropped from 122 degrees to 104 degrees. On October 31, 1995, Rodney Hendricks of Independent Well Drilling performed a test and determined that one well was only capable of producing water with a temperature of 104 degrees. When that well was run in conjunction with a second pump, the temperature rose to 110 degrees. See Protestant's Exhibit "J."

Katsilometes observed that when the Foundation's pumps were running, his water temperature decreased noticeably. Katsilometes also became aware that the Foundation's pumps were running almost constantly, even when the Foundation's pools were closed and not in use. Katsilometes later discovered that an Application for Permit had been filed by Thayne and Karen Vargason, (hereinafter "Vargasons") for the use of so-called "waste water" from the Foundation.

Katsilometes met with other water users in the Lava Hot Springs area and discovered that they were experiencing similar difficulties with their water. As a result, Katsilometes and the other Protestants have protested Vargasons' Applications. All of the Protestants, including

Don't recall this

Katsilometes, testified that once the Foundation's pumps started running, they noticed significant changes in the quantity, accessibility, and temperature of their water. Protestants each testified that they believe that they were damaged by not only the Foundation's use of the water, but by the Foundation's continuous running of their pumps to provide so-called "waste water" to Vargasons. Protestants testified that they believe that if the Foundation had not agreed to or felt obligated to continuously provide water to Vargasons, the pumps would not run so often, causing them damage. They were led to this inescapable conclusion because the inefficient manner in which the Foundation operates its system only benefits Vargasons. For example, the pumps rant almost year-round, although the pools are in use just for the summer months. Even in the late spring and early fall, when freezing water is unlikely, the pumps continue to run, providing a great benefit to Vargasons at taxpayer expense. Protestants testified that they specifically noted their water quantity, accessibility, and temperature improved when the Foundation's pumps were off.

Karen Vargason testified at the hearing that Vargasons owned property bordering the Foundation property since 1987. They improved the property and added a fish pond. Karen Vargason testified that in January of 1991 she was approached by Bob Meline, Director of the Foundation. Mr. Meline represented that the Foundation had "hit a brick wall" in their efforts to place an underground water discharge pipe through property leased by the Foundation to a condominium. The original design by Mr. Sudweeks called for the discharge pipeline to run along the western boundary of the State's property. Realizing the hot water would be a valuable asset, Vargasons entered into a written agreement with Mr. Meline to allow the Foundation an easement to construct the discharge pipe through their property in exchange for the right to "all

excess water" flowing through the Foundation's discharge systems. Applicants' Exhibits 2 and 3. In her rebuttal testimony, Karen Vargason conceded that it was her understanding that any right to so-called "waste water" was subject to the Foundation's right to future development and use of the water and heat.

In approximately 1995, the Vargasons got the idea to enter into a project with Shelley High School to raise a nonnative variety of fish known as Tilapia in their pond. In the Spring of 1995, they started with 650 fish, which bred to approximately 20,000 fish by November. Vargasons testified that it is their intent to expand their operation to commercially raise Tilapia. According to Karen Vargason, the water in the pond must be maintained at temperature between 78° and 84° for the Tilapia to survive. The water from the discharge tube provided by the Foundation supplied water at approximately 102°. Therefore, the water was sprayed into the air in order to cool it. Karen Vargason testified that on at least two occasions, the hot water supply has been interrupted, resulting in the Vargasons suffered a massive fish kill.

In order to access water through the discharge pipe, a diversion device was placed on State property to allow Vargasons to directly divert the water onto their property. This was referred to as the "tap for fish pond" in Applicants' Exhibit "4," Attachment 1. In addition to that device, Karen Vargason testified that an attempt was made to provide access to further water through the Foundation's discharge pipe along the Portneuf River.

Karen Vargason further testified about the Vargasons' desire to install a pump in the Foundation's pump house and divert the water through what she termed a "spare pipe" upon the Foundation property. This was referred to as "pipe 1" in Applicants' Exhibit "4," Attachment 1. However, Karen Vargason provided no proof that the Foundation had consented to the

installation of a pump, to the use of an existing pipeline, or an easement for access along Foundation property.

It is worth noting that Bob Meline, Director of the Foundation, testified that the easement to run the discharge pipe through Vargasons' property was necessary because of stiff resistance from the owners of a condominium which was leasing Foundation property. However, this claim is clearly contradicted in the Idaho Attorney General's Investigative Report, dated April 18, 1997. (Protestant's Exhibit "L"). In that report, there is a statement from the manager of the condominium, Mrs. Jerry Wellard, who stated, "I wouldn't have told them I was against running pipes through the condominium property, because I didn't have the authority." (Protestant's Exhibit "L," at p. 3).

A fair and unbiased review of the engineering plans illustrates that there were many simpler, and less expensive options available to the designers of the system other than taking the discharge pipe through Vargason's property. This is obvious since Mrs. Wellard's comments indicate there was no actual resistance to the original plan. Furthermore, Mr. Mehlhaff, an expert in heat exchanges, testified that the apparatus taking "excess" water to Vargason's was unnecessary. The only reasonable explanation for taking the discharge pipe through Vargason's property was to benefit the Vargasons, at taxpayers' expense.

As a result of the decision of the Foundation to allow Vargasons the use of this "waste water," and to allow their pumps to remain in virtually constant use, Katsilometes and the other Protestants have been harmed personally. Because Katsilometes sincerely believes that not only has he been personally harmed, but also the interests of the City of Lava Hot Springs and

the entire State of Idaho have been and will continue to be harmed by the conduct of Vargasons and the Foundation, Katsilometes has filed this protest.

ARGUMENT

I. THE HEARING OFFICER FAILED TO SATISFACTORILY RESPOND TO THE LEGAL ISSUES SET FORTH BY PROTESTANT, GEORGE KATSILOMETES.

Pursuant to the Hearing Officer's request at the conclusion of the hearing before the Idaho Department of Water Resources on October 23 and 24, 1997, the parties were required to submit written briefs. Protestant, George Katsilometes complied by filing his "Closing Argument and Post-Hearing Brief" on November 28, 1997.

Numerous substantive issues related to Vargason's application for Permit No. 29-08162 and 29-08164 were raised in that Brief. However, almost all of these arguments were ignored or not substantially resolved in the Department's "Recommended Order" and "Order Denying Petitions for Reconsideration." Rather than repeating those arguments and substantially repeating their prior brief, those arguments will be set forth and outlined below:

A. Vargason's application for Permit 29-08162 should be denied because the water applied for was not "waste water."

(1) The water Vargasons are claiming is not waste water because it is not first put to beneficial use by the Foundation.

(2) The water Vargasons applied for is not waste water because it does not have to leave the Foundation's property through Vargason's property.

(3) The water applied for by Vargason's is not "waste" water because it is not necessary to "bleed off" this water from the heat exchanger systems in the first place.

B. Vargason's application for Permit 29-08162 should be denied because the agreement with the Foundation to provide water for the Vargasons is invalid.

(1) The agreements between the Foundation and Vargasons lack the necessary legal formalities to be binding on either side.

a. Both agreements lack legal descriptions.

b. Both Thayne Vargason and Karen Vargason did not sign the agreement.

c. The agreements are signed on behalf of "Lazy V Ranch," an entity that was not in existence at the time of signing and is still not in existence.

d. There is no record in the Minutes of the Board of Directors of the Lava Hot Springs Foundation consenting to, authorizing, or ratifying Mr. Meline's signing of Applicant's Exhibit Nos. 2 and 3.

e. The agreements are invalid because they are vague and/or ambiguous.

(2) The agreement between Vargasons and the Foundation is invalid because it is contrary to the authority granted the Foundation.

a. There is not a factual basis for many of the findings of fact contained in the Recommended Order.

C. Vargason's application for Permit No. 29-08162 should be denied because it fails to meet all of the criteria set forth in Idaho Code §42-203(a).

D. Vargason's application for Permit #29-08164 does not meet all the requirements set forth in Idaho Code §42-203(a).

A full text of the legal argument and the authorities cited should be on file with the Department of Water Resources. A copy of "Protestant George Katsilometes Closing Argument and Post-Hearing Brief" has also been attached hereto as Appendix "A"[1]. Protestant respectfully submits that a resolution of these legitimate legal issues is required before a Recommended Order should be adopted by the Court.

II. FINDING NUMBER 27 IS NOT SUBSTANTIATED BY THE RECORD.

As should be clear from the Statement of Facts set forth above, one of the main issues contested at the hearing was why the pipeline was directed through applicants' property in the first place. Although there was some testimony from Mr. Meline that he felt it was necessary, the overwhelming weight of the testimony and evidence presented at the hearing

[1]In order to reduce costs, Appendix "A" has only been attached to the copies of this brief filed with the Director of the IDWR and Applicant's counsel, because copies of that brief have already been served on the other Protestants. A copy will be promptly provided to any other party upon request.

strongly contradicted that statement.

For example, the investigative report of the Idaho Attorney General's Office (Hearing Exhibit "4") concluded that there did not appear to be any real opposition from the condominium owner to the placement of the pipeline through the leased property, as originally planned. Furthermore, Gary Blanchard, the contractor on the Foundation Project, testified at the hearing, contrary to Mr. Meline's statements, that he was aware of no significant opposition.

Testimony at the hearing, coupled with the Attorney General's findings, make the record clear that Mr. Meline has attempted to concoct an explanation why the pipeline should be taken to the Vargason's, for their sole benefit. There was no real opposition to sending the water back into the river, as the original plans called for. Had the original plans been followed, this controversy likely would not have arisen.

III. THERE ARE NO FACTS IN THE RECORD SUBSTANTIATING FINDINGS 51, AND 67 THROUGH 74 IN THE RECOMMENDED ORDER.

The purpose of the hearing was not to adjudicate Protestant, George Katsilometes water rights. Evidence was submitted by Mr. Katsilometes showing the rights that he possessed and the impact of the activities of Vargasons and the Foundation in damaging those rights. Nevertheless, the Hearing Officer made findings in Paragraphs 51 and 67 through 74, which are almost entirely unsubstantiated by any evidence in the record. In fact, several of the findings are contradictory.

For example, the last sentence of Finding Number 56 states that "Katsilometes testified that the casing was perforated." However, the last sentence of Finding Number 51 makes this statement "without additional information, the Hearing Officer must presume that the well casing is not perforated." This contradictory conclusion becomes especially manifest in

Findings 67 though 71 in which the Hearing Officer appears to blame Katsilometes for the problems that the other Protestants (Walden, Mehlhaff and Hill-Rush) have experienced since the commencement of the Foundation's pumping activities.

Such a conclusion must be based upon competent evidence, which was not submitted at the hearing. Furthermore, inasmuch as Applicants had the burden of proof at this hearing, it would be unfair to suddenly switch the burden of proof to Katsilometes, as if his application were at issue. These findings, especially 51, and 67 through 71 are clearly erroneous and must be stricken from the Recommended Order.

IV. THE HEARING OFFICER ERRED IN RELYING UPON A FISH GRAPH TO BE USED FOR TROUT ONLY BY APPLYING IT TO TILAPIA.

In Finding of Fact No. 7, the Hearing Officer made the following finding:

> Keith Wilson testified that the flow rates sought for application were taken from an IDWR graph that rates flow rate to the number of fish proposed for rearing. The graph is only to be used for determining the flow rate necessary for trout rearing and propagation.
>
> Finding of Fact No. 77 (*Emphasis Added*)

This chart was admitted at the hearing as Applicant's Exhibit No. 17. The bottom of Exhibit No. 17 states clearly, as noted in the findings, that this information could only be used for trout rearing and propagation, not for other species.

Despite this clear finding of fact, and evidence in the record, the Hearing Officer ignored his finding in making Conclusion of Law No. 12:

> Use of the trout water sufficiency curve to determine how many fish can be raised is not grounds to establish that the applications are speculative. The applications are not speculative and were filed in good faith.
>
> Conclusion of Law No. 12

Inasmuch as the IDWR's own exhibit indicates that the flow rates stated in Exhibit 17 are not valid for other species, the Hearing Officer has somehow concluded, although not expressly stated, that there were sufficient quantities of water to raise the Tilapia and that the applications were not speculative.

As the Department is well aware, the burden of proof is on the applicant to establish that he can meet the requirements set forth in Idaho Code §42-203(a). Shokal v. Dunn, 109 Idaho 330 707 P.2d 441 (1985). If Applicants are going to import an exotic species of fish, not native to these waters, in an attempt to commercially raise them in the waters of the State of Idaho, they must at least make a prima facia showing that there is sufficient water available to raise them commercially, as they have sought on their Application. The only evidence submitted concerning the proper flow for Tilapia was Exhibit 17, which on its face states it is only applicable for trout, no other species. In light of this clear error in the Recommended Order, Conclusion of Law No. 12 is clearly erroneous. Furthermore, any other conclusions and recommendations based upon Conclusion of Law No. 12 are similarly erroneous.

V. THE WATER APPLIED FOR BY VARGASONS' IS NOT "WASTE WATER."

The Hearing Officer states in his "Order Denying Petitions for Reconsideration" as follows:

> Although the use of water does not employ the most efficient method of application of water to a beneficial use, the diversion and application of water is reasonable. Order Denying Petitions, p. 2.

This response appears to miss Protestant's entire point that a far less efficient application of water was intentionally selected by Mr. Meline, at taxpayer expense, in order to benefit only the Vargasons, not the public.

In the case at hand, the testimony indicated that there was no real reason to take the pipelines to Vargasons. The Attorney General's investigation confirms that although a potential legal challenge by condominium orders was the stated reason for the revised plans, this was just a mere pretext. There was no real opposition to the original design plans.

It is our position that "waste" can only be created if it is genuine waste. To intentionally design or revise engineering plans to utilize a less effective method of diversion and application is known as the "wasting of water," not "waste water." Although the Hearing Officer found the diversion "reasonable," he concedes that this important resource of the state is not being handled as efficiently as it could. We suggest that this is the whole point–there would be no "waste" if it was handled more efficiently.

VI. THE LEGAL INADEQUACIES OF VARGASONS' AGREEMENT WITH THE FOUNDATION CAN BE RAISED BY KATSILOMETES

The hearing officer has suggested that as a third-party, Mr. Katsilometes cannot raise issues related to the validity of the agreement between Vargasons and the Foundation. The basis for Katsilometes arguments is set forth in detail in his Post-Hearing Brief, pp. 12-19.

The Hearing Officer failed to take into consideration the nature of the Lava Hot Springs Foundation. It is essentially a public entity, created by statute. I.C. §§ 67-4401 *et seq*. As a taxpayer of this state and resident of Lava Hot Springs, Mr. Katsilometes can hardly be considered a disinterested third party. The act of Congress granting the State of Idaho the land and water around Lava Hot Springs clearly states it was "conveyed unto the said state of Idaho, to be held by said state for public use. . ." Chapter 1076, Approved June 13, 1902, 32 St. L. 330. See compiler's note to I.C. § 67-4401. The public has a very real concern, therefore, in the management of this resource.

The legal infirmities of the so-called agreement are substantial and numerous. They call into question its validity if ever questioned by either side to the agreement, or by interested taxpayers. These problems include a (1) lack of legal descriptions, (2) both Vargasons did not sign the agreement, (3) agreement signed on behalf of fictitious entities, not in existence at the time, (4) no record in Minutes of Board of Directors authorizing or ratifying the agreement, (5) vague and ambiguous wording, and (6) agreement beyond authority of Foundation.

The Hearing Officer seems to suggest that as long as Mr. Meline and the Vargasons had no problem with these inadequacies, it is not Mr. Katsilometes concern. However, there are many potential circumstances which could change, thereby undermining this agreement. For example, a conveyance to a third party by the Vargasons, a divorce, a death, a new Director, etc. could all create circumstances in which the legal shortcomings of the agreement would become apparent. Certainly more is expected of essentially a "state" contract which deals with an important resource of the State.

CONCLUSION

For the reasons set forth above, and in "Protestant's Closing Argument and Post-Hearing Brief," Protestant respectfully requests that the Recommended Order be revised so that the exceptions to it noted herein, be made.

RESPECTFULLY SUBMITTED This 10th day of August, 1998.

Gregory W. Moeller
of Rigby, Thatcher, Andrus, Rigby, Kam
& Moeller, Chartered
Attorneys for George Katsilometes

CERTIFICATE OF SERVICE

I HEREBY CERTIFY That on this 10th day of August, 1998, a true and accurate copy of the foregoing was sent by U.S. Mail, postage prepaid, to the following:

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APPENDIX "A"

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Attorneys for Protestant, George Katsilometes

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE

STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR PERMIT NO. 29-08162 AND FOR PERMIT NO. 29-08164 IN THE NAME OF LAZY V RANCH	)))))	**PROTESTANT GEORGE KATSILOMETES' CLOSING ARGUMENT AND POST-HEARING BRIEF**

COMES NOW the Protestant, George Katsilometes, by and through his attorneys of record, Ray W. Rigby and Gregory W. Moeller, of Rigby, Thatcher, Andrus, Rigby, Kam & Moeller, Chartered, and hereby submits the following Closing Argument and Post-Hearing Brief in response to the Hearing Officer's Order of November 4, 1997.

INTRODUCTION

This matter came before the Department of Water Resources at a hearing on October 23 and 24, 1997, in Pocatello, Idaho. During the hearing, a great deal of highly detailed and technical testimony was presented. Late on the evening of October 24, 1997, after two very long days of testimony, the parties agreed to submit closing arguments in writing. This brief will

serve as George Katsilometes closing argument and post-hearing brief.

STATEMENT OF FACTS

At the time this brief is due, Protestant has not had an opportunity to review a transcript. Therefore, Protestant will not provide an exhaustive account of the testimony at trial. Rather, Protestant intends to provide an overview and summary of the relevant facts that we believe were established at the hearing.

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Katsilometes spoke with other water users in the Lava Hot Springs area and discovered that they were having similar difficulties with their water. As a result, Katsilometes has protested Vargasons' Applications. Protests have also been lodged by John Mehlhaff, Evelee Hill-Rush, and Duke Waldon. All of the Protestants, including Katsilometes, testified that once the Foundation's pumps started running, they noticed significant changes in the quantity, accessibility, and temperature of their water. Protestants each testified that they believe that they were damaged by not only the Foundation's use of the water, but by the Foundation's continuous

running of their pumps to provide so-called "waste water" to Vargasons. Protestants testified that they believe that if the Foundation had not agreed to or felt obligated to continuously provide water to Vargasons, the pumps would not run so often, causing them damage. They were led to this inescapable conclusion because the inefficient manner in which the Foundation operates its system only benefits Vargasons. Protestants testified that they specifically noted their water quantity, accessibility, and temperature improved when the Foundation's pumps were off.

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In order to access water through the discharge pipe, a diversion device was placed on State property to allow Vargasons to directly divert the water onto their property. This was referred to as the "tap for fish pond" in Applicants' Exhibit "4," Attachment 1. In addition to that device, Karen Vargason testified that an attempt was made to provide access to further water through the Foundation's discharge pipe along the Portneuf River.

Karen Vargason further testified the Vargasons' desire to install a pump in the Foundation's pump house and divert the water through what she termed a "spare pipe" upon the Foundation property. This was referred to as "pipe 1" in Applicants' Exhibit "4," Attachment 1. However, Karen Vargason provided no proof that the Foundation had consented to the installation of a pump, to the use of an existing pipeline, or an easement for access along Foundation property.

It is worth noting that Bob Meline, Director of the Foundation, testified that the easement to run the discharge pipe through Vargasons' property was necessary because of stiff resistance from the owners of a condominium which was leasing Foundation property. However, this claim is clearly contradicted in the Idaho Attorney General's Investigative Report, dated

April 18, 1997. (Protestant's Exhibit "L"). In that report, there is a statement from the manager of the condominium, Mrs. Jerry Wellard, who stated, "I wouldn't have told them I was against running pipes through the condominium property, because I didn't have the authority." (Protestant's Exhibit "L," at p. 3).

A fair and unbiased review of the engineering plans illustrates that there were many simpler, and less expensive options available to the designers of the system other than taking the discharge pipe through Vargason's property. This is obvious since Mrs. Wellard's comments indicate there was no actual resistance to the original plan. The only reasonable explanation for taking the discharge pipe through Vargason's property was to benefit the Vargasons.

As a result of the decision of the Foundation to allow Vargasons the use of this "waste water," and to allow their pumps to remain in virtually constant use, Katsilometes and the other Protestants have been harmed personally. Because Katsilometes sincerely believes that not only has he been personally harmed, but also the interests of the City of Lava Hot Springs and the entire State of Idaho have been and will continue to be harmed by the conduct of Vargasons and the Foundation, Katsilometes has filed this protest.

ARGUMENT

I. VARGASON'S APPLICATION FOR PERMIT NO. 29-08162 SHOULD BE DENIED BECAUSE THE WATER APPLIED FOR IS NOT WASTE WATER.

A. Legal Definition of "Waste."

The Idaho Code specifically refers to waste water in Title 42, Chapter 1. Specifically, the statute reads:

> All ditches now constructed or which may hereafter be constructed for the purpose of utilizing seepage, waste or spring water of the state, shall be governed by the same laws relating to priority of right as those ditches, canals, and conduits constructed for the purpose of utilizing the waters of running streams. I.C. §42-107.

Interestingly, this statute refers to "ditches" which have been constructed for "utilizing seepage [or] waste [water]." Apparently, the statutory scheme did not consider water which was intentionally diverted through a pipeline to another property as "waste."

Over the years, the Idaho Supreme Court has developed specific standards in regard to waste water. In the case of Sebern v. Moore, 44 Idaho 410, 258 P. 176 (1927), the Idaho Supreme Court stated:

> We conclude that surface waste and seepage water may be appropriated under the provisions of C.S. §5562, subject to the right of the owner to cease wasting it, or in good faith to change the place or manner of wasting it, or to recapture it, so long as he applies it to a beneficial use. 258 P. at 178.

This decision was followed in Colthorp v. Mountain Home Irrigation Dist., 66 Idaho 173, 157 P.2d 1005 (1945).

Both of these cases stand for the proposition that although "waste water" may be appropriated, the prior appropriator of the water has the right to stop "wasting" it. The prior appropriator even has the right to change the location or manner in which the water is being wasted. Therefore, if Vargasons are claiming their right to a permit on the grounds that this is waste water, they may only take it subject to the Foundation's absolute right to use the water differently in the future, discharge the water in a different location in the future, or stop wasting it altogether.

It is once again worth noting that I.C. § 42-107 refers to waste water being taken

through "ditches." That is because historically waste water has been defined as flood water which escapes from a prior user's land or system onto the land of another. For example, see Gerber v. Nampa and Meridian Irrigation Dist., 16 Idaho 22, 100 P. 80 (1908). In that case, the Idaho Supreme Court considered the claim by a user of waste water of entitlement to continue to receive the waste water. The Court held as follows:

> It appears to us the point involved in this case is, can a canal company be compelled by mandate to perpetually furnish water to a person whom it has simply accommodated with water at times when its regular customers did not need it, and when the water of its regular customers would require the full capacity of its canal if demanded? We must answer this question in the negative. If under the provisions of said section of our Constitution [Idaho Constitution §4, Article 15] a canal company is compelled to furnish water to subsequent applicants, when the capacity of its canal has already been exhausted by prior applicants and users, it would present a condition which was not intended by the provisions of said sections of the Constitution. . . . Under the provisions of our Constitution and statute the canal company must respect the rights of prior users of water therefrom, and one desiring to use water cannot compel a canal company to sell water beyond the capacity of its canal. 100 P. at 82.

In the case at hand, the Foundation is intentionally diverting the water to Vargasons. There appears to be an important distinction between water that is left in the appropriator's control versus water that has been abandoned:

> One clear element that can be pointed out is the distinction between the water right and the water. In many of the cases, the courts are talking only about the water that has left the appropriator's control and in other cases, they may only be talking about that water without having made it clear. Once the water has left the appropriator's control, it is too late to reclaim it. The water, as contrasted with the water right, has been abandoned. Usually for purposes of this rule, once water leaves the appropriator's land, it is too late to reclaim the water. Water and Water Rights, Vol. 2, §13.04, P. 150 (1991 Ed.).

It is difficult to find a true statutory definition of "waste" water. One court has defined "surplus water" as water available after reasonable beneficial use and prior appropriation

rights are all satisfied. Peabody v. City of Vallejo , 2 Cal. 2d 351, 40 P.2d 486 (1935). California has also defined this as "excess" water. Meridian, Ltd. v. San Francisco, 13 Cal. 2d 424, 90 P.2d 537, *rehearing denied*, 13 Cal. 2d 495, 91 P.2d 105 (1939). In other words, it appears that the water has to have been "used" before it can be considered waste.

Interestingly, it does not appear that intentional diversion of water through a pipeline to another's property is typically considered as waste:

> Of course, only "surplus" or "excess" waters are appropriable. In this section, the consequence of an earlier appropriation on the availability of water for later appropriation is considered from the perspective of what happens to any water that **escapes** on the way to its original use and to any water that remains unconsumed after the original **use** of the water by the appropriator. There are many possible scenarios, such as: the water may overflow a reservoir or a ditch; it may seep from the bottom or sides of a reservoir or ditch; it may run off the surface after irrigation; it may percolate through the ground after irrigation; it may be ditched off and deposited in the stream by the land owner. Water and Waters, Vol. 2, §13.04, P. 148 (1991 Ed.). (Emphasis added).

In other words, "surplus" or "excess" water must have "escaped" or been "unconsumed after original use" by the prior appropriator. Under that definition, it is difficult to see how Vargasons can claim a right to this so-called "waste water." This water has not escaped and is unused. This will be set forth more fully below.

B. The water Vargasons are claiming is not "waste water" because it is not first put to beneficial used by the Foundation.

Bob Meline testified that the Foundation generally operates its heated swimming pools from June through August. Mr. Meline claims that there are times during the rest of the year when the pumps are needed in order to heat the buildings. They also need the heat to keep the pools from freezing. Assuming all that is true, there can be no logical explanation for why the pumps and the heat exchangers need to be in operation during the relatively warm months of

the year when the pools and most of the facilities are not in use. For example, in May and September, when the weather is quite temperate, the Foundation continues to run the pumps 24 hours a day.

There was testimony from Katsilometes and others at the hearing that the pumps are running at a time when the pools were not in use or being cleaned. Photographs submitted by Katsilometes show the pools empty with the pumps still running. See Protestant's Exhibits "E," "F," "G" and "J."

It appears obvious, in light of such facts, that during such periods of time the water is not being beneficially used at all by the Foundation. In fact, the only "use" of the water at all is the Vargasons using the water to heat their fish ponds. Under such a situation, how can the water possibly be deemed "waste water?" This water has not escaped from the control of the Foundation nor has it been beneficially used first by the Foundation.

Even if Vargasons were not involved, this would still be a case of a permittee (the Foundation) using more water than needed and more than can be put to beneficial use. However, this is relevant to this proceeding because the Vargasons seek to become part of this very system and benefit personally from the Foundation's misuse of its own rights. Either way, Katsilometes and the other Protestants are damaged by **any** course of action which permits the Foundation and/or the Vargasons to improperly use the waters of the State of Idaho. These hot geothermal waters are a rare and valuable resource which the IDWR must not allow to be wasted, especially when other legitimate users are damaged.

C. <u>The Water Vargasons have applied for is not "waste water" because it does not have to leave the Foundation's property through Vargasons' property.</u>

There can be little doubt that the only reason that the water at issue even reaches Vargasons' land is because it is intentionally piped there by the Foundation. However, there is no reason for this to occur. A review of the design plans submitted by Charles Sudweeks, the engineer for the Foundation project, as well as the map drawn by the IDWR Energy Division (see Attachment 1 to Applicants' Exhibit 4), shows that there is no reason why the so-called "waste water" cannot be discharged directly into the Portneuf River at a variety of other locations which would have been more direct and cheaper for the Foundation.

As was discussed earlier, the Investigative Report of the Idaho Attorney General's Office (Exhibit "4") made it clear that there was no real opposition from the condominium owners to the placement of the pipeline through the leased property. Gary Blanchard, the contractor on the Foundation project, testified that he was not personally aware of any significant opposition. He basically confirmed that there was no reason for the pipeline to go through Vargasons' property. Mr. Blanchard also testified that there was no reason why the pipeline couldn't have gone directly to the river from valve box 3. (See Applicants' Exhibit "4," attachment 1).

An issue raised during the course of the hearing was whether or not the Lease Agreement between the State of Idaho (through the Foundation) and the condominiums contained any language which would have prevented the Foundation from placing the pipeline across the leased land. Copies of the Lease Agreement were requested from Mr. Meline in the Subpoena Duces Tecum issued by the IDWR. Mr. Meline did not bring these documents to the hearing, but represented at the hearing that they would be provided to the Protestants after the

hearing. Protestants still have not received copies of these leases despite representations from Mr. Meline that they would be provided. Unless Applicants can prove to the contrary, Protestants will submit to the Court that it would be highly unusual for a state lease to prevent the State from placing an underground pipeline under its leased property.

The facts clearly illustrate that an intentional and unnecessary departure from the original design specifications was pushed through the Board of Directors by Bob Meline, based upon false representations that it was absolutely necessary to avoid delays and legal costs. This change only benefitted the Vargasons and can lead to only one conclusion: this is not "waste" water.

D. <u>The water applied for by Vargasons is not "waste" water because it is not necessary to "bleed off" this water from the heat exchanger system in the first place.</u>

The Foundation's main contractor on the project, Gary Blanchard, testified during the hearing that the so-called "bleed off" of excess water was not necessary to run the heat exchangers. Mr. Blanchard was the plumbing contractor that actually installed the heat exchangers and he has technical expertise in this area. He had extensive knowledge and experience in installing such systems. He is not a party to these proceedings and his testimony must be given great weight.

Additionally, one of the Protestants, John Mehlhaff, was certified as an expert to testify about heat exchangers. He has extensive experience in working with all kinds of systems that use heat exchangers. He also testified that there is no reason why the system needed to "bleed off" water to run the heat exchangers. He agreed with Mr. Blanchard that as the system was built, "bleed off" should be unnecessary. Their testimony also raises the question as to why

a system would have been designed in the first place with "bleed off" being necessary. A more efficient and economical system would not have required "bleed off."

E. Conclusion.

In conclusion, it appears very clear that although Permit 29-08162 purports to be merely an application for a permit to use "waste water," that this is not waste water at all. The manner in which it is used and intentionally delivered to the Vargasons by the Foundation belies any effort to call it "waste water." The Foundation is not putting all of its water rights to beneficial use. This raises other serious issues which perhaps must be considered in another forum. Nevertheless, for purposes of this hearing, the facts provide strong justification for denial of Vargasons' application because they now seek to become part of this system.

II. VARGASONS' APPLICATION FOR PERMIT NO. 29-08162 SHOULD BE DENIED BECAUSE THE AGREEMENT WITH THE FOUNDATION TO PROVIDE WATER TO THE VARGASONS IS INVALID.

A. The agreements between the Foundation and Vargasons lack the necessary legal formalities to be binding on either side.

As will be discussed below, Applicants' Exhibits 2 and 3 play a very key role in this matter. Exhibit 2 purports to be an "authorization for entrance for easement into and upon Lazy V Ranch premises for piping work," and was signed on January 29, 1991. Although Exhibit 2 states that this document will "suffice until a legal document can be obtained," no such document has ever been prepared by the State, Foundation, or Vargasons.

Applicants' Exhibit 3 purports to be an amendment to the earlier authorization for entrance of easement and is dated January 31, 1991. This document, apparently signed two days after Exhibit 2, amends the earlier agreement by granting Lazy V Ranch "the use of all excess

waters that the Foundation has going through their said drainage systems." (Emphasis not added). As will be discussed below, these documents suffer from significant legal infirmities which taken separately or together render them invalid.

1. Both agreements lack a legal description.

Although the pipeline is already in place, it is impossible to discern, from looking at the document alone, where the easement actually has been granted. Vargasons, or their successors, could easily raise this issue in an attempt to challenge the easement. Similarly, there is no language in the document preventing the Foundation from asserting that the easement should be located in another place.

It should be horn-book law that any agreement concerning real property needs to contain a legal description of the property. For example, the Idaho Supreme Court held in Hoffman v. S V Co., Inc., 102 Idaho 87, 628 P.2d 218, 221 (1981) that in order for a contract concerning real estate to be valid, the contract must, among other things, contain a description of the property and all essential terms of the agreement.

Obviously, in the case at hand, there is no valid description of the property. At most there is a description of the size of the easement. Applicants may argue that the meaning was clear to all of the parties and the conduct of the parties if the best proof of their intent. Nevertheless, if Exhibit 2 and/or Exhibit 3 were submitted to a county recorder as an easement, certainly they would not accept the legal description contained therein.

2. Both Thayne Vargason and Karen Vargason did not sign the agreement.

Karen Vargason testified that she and her husband, Thayne Vargason, both owned the property adjoining the Foundation's property. The record is clear that Thayne Vargason and

Karen Vargason are both married. Therefore, in order for a real estate agreement to be binding upon them both, it would require both signatures.

Idaho Code §32-912 explains why this is necessary:

> Either the husband or the wife shall have the right to manage and control the community property, and either may bind the community property by contract, except that **neither the husband nor wife may sell, convey or encumber the community real estate unless the other joins in executing the sale agreement, deed, or other instrument of conveyance by which the real estate is sold, conveyed or encumbered**, and any community obligation incurred by either the husband or the wife without the consent in writing of the other shall not obligate the separate property of the spouse who did not so consent; . . . I.C. §32-912 (Emphasis added).

The granting of an easement certainly can be construed as a sale, conveyance, or encumbrance upon real estate. This is not a binding agreement. Therefore, Vargasons, their heirs, or successors would have the right to disavow this agreement.

3. <u>The agreements are signed on behalf of "Lazy V Ranch," an entity that was not in existence at the time of signing and is still not in existence</u>.

Vargasons submitted Applicants' Exhibit 7 as an exhibit at the hearing. This document is a "Certificate of Assumed Business Name," whereby Vargasons give notice that they have adopted the name of "Lazy V Ranches" as an assumed name. Astonishingly, this document is dated just a few weeks prior to the date of the hearing on October 23, 1997.[1]

At the time Applicants' Exhibit No. 2 was signed, it purported to be an agreement between the "Idaho State Foundation" and the "Lazy V Ranch." At the time this document was signed, "Lazy V Ranch" was not a legal entity. Interestingly, Protestants are not sure whether or

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[1]The copy of this exhibit provided to Protestants does not contain a date. The version of Exhibit 7 submitted as evidence at the hearing apparently does bear the stamp of the Secretary of State's Office and indicates that it was filed just a few weeks prior to the hearing.

not at the time this agreement was signed that the "Idaho State Foundation" was even a legal entity. We can only assume Mr. Meline intended to mean the Lava Hot Springs Foundation.

Similarly, one of the parties to Applicants' Exhibit 3 is either the "Lazy V Ranch" or "Lazy V Ranches," depending on which portion of the document you look at. Once again, this document is apparently signed by the "Idaho State Foundation." None of these fictitious entities were in existence in 1991 when the agreements were signed.

It is also worth noting that both the Application for Permit No. 29-8162 and the Application for Permit No. 29-8164 (Applicants' Exhibit Nos. 5 and 6) were signed by the "Lazy V Ranch, Inc." However, it was clear from the testimony of Karen Vargason that Lazy V Ranch has never been incorporated. Therefore, both applications for permit are still in the name of a nonexistent entity.

The legal impact of this failure is clear when the provisions of the Assumed Business Names Act of 1997 (I.C. §53-501, et seq.) are reviewed. For example, Idaho Code §53-506(1) provides that:

> A person may conduct business under an assumed name **if a certificate of assumed business name has been filed with the Secretary of State and is in effect.** (Emphasis added).

Some of the consequences for non-compliance with this section of the code are set forth in I.C. §53-509(1):

> Any person who transacts business in Idaho under an assumed business name without having complied with the requirements of this chapter shall not be entitled to maintain any legal action in the courts of this state until the person has filed a certificate of assumed business name as required by this chapter.

These requirements appear to be similar to the earlier versions of I.C. §§ 53-501 et seq., which

were in effect at the time Vargasons signed Applicants' Exhibits 5, 6 and 7.

It can be argued that filing for an Application for Permit is the equivalent of filing a legal action in the State of Idaho. Similarly, signing a document purporting to be an easement with an entity (i.e. the Foundation) which is doing business with the State of Idaho, could be considered subject to these requirements as well. But even more importantly, the Vargasons still do not have it right. By filing for their Certificate of Assumed Business Name under the name "Lazy V Ranches" (Applicants' Exhibit No. 7), this is still inconsistent with the names of the Applicant on Exhibit Nos. 5 and 6 ("Lazy V Ranch, Inc.") and Exhibit Nos. 2 and 3 ("Lazy V Ranch"). The misrepresentations of status and the inconsistencies in these documents give the parties to the documents, as well as the IDWR, grounds for contesting their validity.

4. <u>There is no record in the minutes of the Board of Directors of the Lava Hot Springs Foundation consenting to, authorizing, or ratifying Mr. Meline's signing of Exhibit Nos. 2 and 3</u>.

Mr. Meline testified that when he became aware of the alleged difficulty in taking the discharge pipe through property leased by the condominiums, he immediately contacted, and received the consent of a majority of the members of the Board of Directors by telephone. However this approval was never documented by any minute of the Board of Directors.

Sheldon Jones, a member of the Board of Directors at the time, testified that he was in the area and could have been contacted by Mr. Meline, but apparently no attempt was made to reach him. He was not aware of any vote or other action taken by the Board of Directors ratifying the terms of this agreement. In fact, he testified that he had not seen the documents (Applicants' Exhibits "2" and "3") before.

The impact of this should be obvious. Without a minute in the records

authorizing this action, the entire legality of Exhibits 2 and 3 is called into question. Board approval, documented in a minute or otherwise, should be required before the State of Idaho grants any lucrative right, or obligates itself in any way, to another party. This was not done, and provides strong basis for a challenge of the legality of the agreements.

5. The agreements are invalid because they are vague and/or ambiguous.

Applicants' Exhibit 3 purports to grant the "Lazy V Ranch" the right to "use of all excess waters that the Foundation has going through their said drainage pipes." (Emphasis not added). What is meant by the term "all excess waters" is unclear and problematic. Certainly, this imprecise language gives rise to various interpretations, some of which would be entirely inconsistent with local public interests and the interests of the State of Idaho.

For example, if Vargasons claim that this language gives them a demand right, or if this language creates a priority in them over any other uses, the Foundation will have given away an important asset of the State. On the other hand, if "excess" is defined to mean water that is not needed, this could refer to abandoned water which the Foundation has no right to convey. In short, this language creates more problems than it solves. There are other inconsistencies, ambiguities, and vague points in these agreements which could be challenged.

Interestingly, I.C. §42-2601, et seq., concerning the sale of water rights, makes specific reference to certain legal formalities that must be included in any contract for the sale of water for irrigation purposes. Certainly, if the IDWR has minimum standards for agreements involving the sale of water rights, such standards should have been involved in a transaction between the State of Idaho (through the Foundation) and a private citizen.

B. The agreement between Vargasons and the Foundation is invalid because

it is contrary to the authority granted the Foundation.

The authority of the Foundation to control the use of water on state lands was extensively analyzed in Attorney General Opinion No. 97-1. In fact, this Attorney General's Opinion was a specific response to issues raised in this litigation. The Attorney General concluded, in part:

> **The Foundation's water rights** are appurtenant to the lands described in I.C. §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 a 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 now authorized under the water right.** Attorney General Opinion No. 97-1, p. 5. (Emphasis added).

This opinion is important because the Attorney General has apparently concluded that it is up to the Department of Water Resources to determine whether an applicant has the right to make beneficial use of the Foundation's waste water. However, it goes much further by stating that the Foundation does not have the ability to enter into contracts authorizing the use of its waste water. That is exactly what Applicants' Exhibit Nos. 2 and 3 purport to do. These documents purport to be contracts authorizing Vargasons ("Lazy V Ranch") the right to "use of all excess waters that the Foundation has going through their said drainage system." Applicants' Exhibit No. 3. How can that statement contained in Applicants' Exhibit No. 3 be construed as anything other than a "contract authorizing the use of its waste water." That agreement, as per the Attorney General's Opinion, is beyond the authority and scope of the Foundation.

Protestants also submit that any such private agreement is in violation of the act by which the Lava Hot Springs Foundation was created. The preface to the act stated as follows:

> Chapter 1076--An act to grant certain lands to the State of Idaho. Be it enacted by the Senate and House of Representatives of the United States of America in Congress Assembled that [legal description omitted] are hereby ceded, granted, relinquished, and conveyed unto the said State of Idaho, to be held by said state for **public use** under such regulations as said state may prescribe. Approved June 13, 1902, 32 St. L. 330. (Cited in I.C. §67-4401, emphasis added).

Attempting to grant the right to use all their excess waste water to the Vargasons, as consideration for the granting of an unnecessary easement, surely is in conflict to the U.S. Congress' intention that this be deeded to the State for "public use." Protestants believe that because this agreement violates the very intent for which the Foundation was created in the first place, the agreement is thereby invalid. The Attorney General's Opinion itself, provides all the authority needed to reach that conclusion.

III. VARGASONS' APPLICATION FOR PERMIT NO. 29-08162 SHOULD BE DENIED BECAUSE IT FAILS TO MEET THE CRITERIA SET FORTH IN I.C. §42-203A.

At the beginning of the hearing in this matter, the hearing officer cited I.C. §42-203A(5), which provide as follows:

> In all applications, whether protested or not protested, where the proposed use is such (a) that it will reduce the quantity of water under existing water rights, or (b) that the water supply itself is insufficient for the purpose for which it is sought to be appropriated, or (c) where it appears to the satisfaction of the director that such application is not made in good faith, is made for delay or for speculative purposes, or (d) that the applicant has not sufficient financial resources with which to complete the work involved therein, or (e) that it will conflict with the local public interest, where the local public interest is defined as the affairs of the people in the area directly affected by the proposed use, or (f) that it is contrary to conservation of water resources within the State of Idaho; the Director of the Department of Water Resources may reject such application and refuse issuance of a permit therefore, only partially approve and grant a permit for a smaller quantity of water than applied for, or may grant a permit upon conditions. I.C. §42-203A(5).

The earlier arguments set forth in this brief touch on many of the aspects of I.C. §42-203A(5).

The purpose of this section of the brief is to provide a more detailed analysis in order to establish why each of these six criterion calls into question Vargasons' Application for Permit No. 29-08162.

A. <u>The Vargasons' proposed use will reduce the quantity of water under existing water rights</u>.

Each of the Protestants testified at trial that when the Foundation's pumps have been turned on, they have noticed an immediate impact on the quantity, temperature, and accessibility of their water rights. These rights have been significantly degraded while the pumps are on, and appear to improve when the pumps are off.

The Protestants also testified that before the Foundation turned on their pumps, there were numerous springs arising on the State's property across the river. These springs have since dried up. All of this water is apparently being collected in an underground well or cistern and diverted to the Foundation's pumps. This is one possible explanation for the damage Protestants are suffering.

Vargasons have claimed they are entitled to all of the Foundation's waste water. Their proposed use is for fish propagation, and by their own admission they must have a constant supply of hot water in order for the fish to survive. It is very clear that the Foundation is aware of the Vargasons' needs and is also aware that should they shut their pumps off, the Vargasons will be damaged.

Katsilometes believes that under the direction of the current Director of the Lava Hot Springs Foundation the pumps have been operated in a manner to provide far more water than needed by the Foundation in order to provide Vargasons with "waste water." Several

instances of this were testified to at the hearing. Protestant's Exhibits "E," "F," "G," "H" and "J" actually show this happening.

The obligation which Mr. Meline testified he felt compelled to abide by, that being the agreement set forth in Applicants' Exhibit Nos. 2 and 3, allows the Vargasons to claim "all excess water" from the Foundation. This can be construed to require the Foundation to keep the pumps running even when they have little or no use for the water.

The impact on Katsilometes was well-documented. Exhibit "J" sets forth plainly the degradation of Mr. Katsilometes existing water rights. Water temperature has decreased from his well substantially since the Foundation began running their pumps, especially since they began providing water to Vargasons on an almost constant basis. Therefore, the Foundation's actions, based upon their "agreements" with the Vargasons, have reduced and will continue to reduce the quantity of waters available under existing water rights.

B. <u>The water supply is insufficient for the purpose for which it is being sought to be appropriated</u>.

Keith Wilson testified on behalf of the Applicants that he calculated the amount of water necessary for their proposed fish propagation purposes based on information found in Applicants' Exhibit No. 17. However, Exhibit No. 17 specifically indicates that the calculations and assumptions made therein can only be used for trout and would not be valid for any other species. Therefore, the fish flow determination chart cannot be used for Tilapia, the species of fish that Vargasons testified they intend to raise.

Vargasons did not provide any other testimony or documentary evidence to suggest that the amount of water they are seeking to appropriate (3.0 c.f.s.) would be adequate

for the raising of Tilapia in the quantity that will be necessary to be commercially viable. This significant omission is a fatal flaw in Vargasons' application. Not only have Vargasons not met their burden of proving that the amount of waste water is adequate for the purpose for which it is sought, but it also clearly illustrates the speculative nature of their Application for Permit as will be discussed below.

An additional flaw in Vargasons' Application for Permit is that there was no evidence presented to suggest that 3.0 c.f.s. were being regularly discharged by the Foundation. The hearing officer noted during Keith Wilson's testimony that he never measured over 3.0 c.f.s. being discharged. The Vargasons must still prove how much water is needed and how much water is available. Until they do so, their Applications must be denied.

Although Applicants' Exhibits 5 and 16 refer to 3 c.f.s., there appears to be no evidence that amount of water was ever measured flowing from the discharge pipe on the Vargasons' property. Therefore, there is absolutely no proof that the right which they are claiming will ever produce the amount of water that Exhibit 17 suggests will be necessary, assuming it has any application to Tilapia.

C. <u>Vargasons' application has been made for purely speculative purposes.</u>

Vargasons have made an application for a permit for the raising of a non-native variety of fish, Tilapia. They concede that they have little background or scientific experience in this area. The raising of fish in general, and Tilapia in particular, at a commercial level requires an amount of expertise that Vargasons have not yet illustrated that they possess. For example, Vargasons have not submitted a business plan or other information showing how this proposed use will be economically viable. These fish are not being raised merely for enjoyment, but for

commercial purposes. In order for that commercial purpose to succeed, Vargasons must prove that given the nature of their water supply, they have an economically viable business. This has not been done.

Furthermore, there were issues raised at the hearing as to whether or not Vargasons can comply with state and federal regulations involved in creating a commercial fish propagation facility. Despite Karen Vargason's testimony that they meet all regulations, two exhibits submitted by Protestants state to the contrary. Protestants' Exhibit Nos. 12 and 13 both make it clear that there are serious questions regarding compliance with state and federal regulations. For example, in Applicants' Exhibit No. 12, Greg Tourtlotte, Regional Supervisor for the Idaho Fish & Game, stated:

> Private fish ponds require a permit from our department and commercial fish ponds require a permit from the Idaho Department of Agriculture. If this will be a commercial facility, we would have concerns regarding the nutrient content of the effluent and its impact in the Portneuf River. A commercial facility may require a National Pollution Discharge Elimination System (NPDES) Permit which is the jurisdiction of Idaho Division of Environmental Quality and the U.S. Environmental Protection Agency. We also have concerns regarding the species of fish propagated and their disease status. We would caution the Applicants that the acquisition of supplemental permits are separate processes and not insured by the issuance of a water right. Applicants' Exhibit 12.

Vargasons did not provide any evidence or documentation at the hearing suggesting that they have been or would be able to meet these concerns. The IDWR should not be willing to take their word that everything will be approved.

The Vargasons' Application is also speculative because they are relying upon an uncertain source of water for the viability of their operation. The Vargasons testified that on earlier occasions when the pumps stopped running they experienced a devastating fish kill.

However, they portrayed these as isolated incidents which were not likely to reoccur. It is hard to understand that if this is a serious business venture, why the Vargasons would have such a cavalier attitude. The Vargasons are totally dependent upon the Foundation's willingness to leave their pumps on 24 hours a day, 365 days a year, unless those times happen to coincide with their fish harvest. The fact that the pumps have accidentally gone off twice since the Vargasons commenced their project, is a strong indicator that it is likely to occur again.

Furthermore, Vargasons appear to be relying on Mr. Meline's personal commitment to them to keep the pumps running on an almost constant basis. It should be assumed that Mr. Meline will not be the Foundation's Executive Director forever. Should a new Director be appointed, who is not as willing to bend over backwards to comply with the Vargasons' desires, the Vargasons' commercial fish operation will be in further jeopardy.

The very nature of the water right upon which their entire operation will be based, which is a "waste water" right, illustrates the speculative and risky nature of the Application. As has been set forth by the Idaho Supreme Court in Sebern v. Moore:

> Surface waste and seepage water may be appropriated . . . subject to the right of the owner to cease wasting it, or in good faith to change the place or manner of wasting it, or to recapture it, so long as he applies it to a beneficial use. 258 P.2d at 178.

In other words, by its very nature, waste water is subject to being used, moved, or in some way eliminated without Vargasons having any say. Karen Vargason admitted in her rebuttal testimony that her application was subject to the Foundation's prior right to use the water and heat for future development. If the use by future development were to significantly cool the water, or cause the water to be discharged in another location more convenient for the

Foundation, Vargasons' entire operation would become unviable.

In order to run a commercially viable warm water fish farm, it is well known, and should be common sense, you must have a reliable source of water. In this case, Vargasons are relying upon waste water, which is an inherently unreliable source of water. Compound that with the fact that the water must be of a certain temperature to be used by the Vargasons, then the speculative nature of their application is obvious. Should future development occur and should that future development consume more water or take more heat from the water, the Vargasons will be receiving less water and/or colder water. To base an application for permit to a water right, not to mention a business venture, on such an uncertain source of water is not just speculative, it is imprudent.

D. <u>Vargasons lack sufficient financial resources</u>.

Vargasons did not establish they have significant financial resources to complete the work necessary to make their project commercially viable. Vargasons testified as if nothing further would be required of them to make this operation viable. In the event further finances were needed, Karen Vargason testified that she could rely upon her "savings." However, because of the speculative and risky nature of the "waste water" right that they are depending upon, it is entirely possible that alterations to their system will be needed to compensate for less water and/or cooler water.

Furthermore, with the absence of a business plan, the Vargasons have not proven the commercial viability of the projects. Without knowing this important factor, the adequacy of Karen Vargason's "savings" to operate this fish farm has not been established and should not be assumed.

The Idaho Supreme Court has held that the applicant has the burden to establish that it is "reasonably probable" that they will be able to obtain the necessary financing within five years to complete the project. Shokal v. Dunn, 109 Idaho 337, 707 P.2d 441 (1985). Although Karen Vargason testified that she had some "savings," no business plan or specific monetary figures or information were provided to the hearing officer to make a showing that it was "reasonable probable" that the project could be fully financed and complete within five years. This was the Vargasons' burden of proof and they did not meet it.

E. Vargasons' Application is not in the local public interest.

The local public interest is defined as "the affairs of the people in the area directly affected by the proposed use." I.C. §42-203A(5)(e). In this case, the area directly affected by the proposed use is very large. For example, each of the Protestants are obviously in the area of proposed use. Furthermore, all of the citizens of Lava Hot Springs are in the area affected by the proposed use. Lava Hot Springs, as a regional recreational facility, draws visitors from throughout Southeastern Idaho and the world. Because of the unique nature of the Foundation's facility, and the rare geothermal water resources in this region, a large portion of the state is arguably directly affected.

On a more localized level, as has been set forth in Argument III(A) of this brief, the Protestants are adversely affected by the proposed use. Any agreement which creates an incentive or obligation for leaving the Foundation's pumps on 24 hours a day, 365 days a year, has an obvious adverse impact on Katsilometes and the other Protestants.

The Lava Hot Springs Community is also adversely affected. For example, the rights purported to be granted to Vargasons by the Foundation (Applicants' Exhibit Nos. 2 and 3)

could result in a chilling effect on future development in the Lava Hot Springs area. This would deny the Lava Hot Springs Community of a potential source of economic growth and development. For example, the Foundation certainly will have opportunities for future development whereby additional facilities, which would hire additional local residents and bring additional monies into the community, would be constructed utilizing the Foundation's water rights. However, if such development were halted, delayed, or modified in order to insure viability of the Vargasons' fish farm, this would not be in the local public interest. This would also affect visitors to the facility throughout Southeastern Idaho.

In short, it is not in the local public interest to put the needs of the Vargasons over the needs of the entire community. Additionally, Katsilometes and the other Protestants should not have their water rights and livelihoods threatened. That is the effect of what the Foundation and the Vargasons have attempted to do.

The waters used by the Foundation have a rich and important history in Lava Hot Springs. They are a rare and special resource that must be wisely and cautiously managed. These waters have been used for recreational and therapeutic purposes. Historically, the water has not been used for fish propagation. Fish propagation only benefits the Vargasons, while continued use for heat, recreational, or therapeutic purposes benefit many people. Granting the Vargasons' Application for a Permit will not benefit the public nor the Foundation, just the Vargasons.

The law is clear that the burden of proof on the issue of local public interest lies with the applicant. Shokal v. Dunn, 109 Idaho 330, 707 P.2d 441 (1985). The Vargasons had the burden at the hearing to prove why it was in the local public interest for their application to

be granted. Only if that burden is met do Katsilometes and the other Protestants have the obligation to prove to the contrary. It is Katsilometes' position that the Vargasons never met their burden. Even if that is not true, we believe substantial evidence was presented at the hearing to establish that their application is not in the "local public interest."

F. <u>Vargasons' Application is contrary to conservation of water resources within the State of Idaho</u>.

As has been discussed in Argument I(C) and (D), of this brief, it was unnecessary for the Foundation to physically move this so-called "waste water" off of the Foundation property and onto the Vargasons for their use. In fact, the testimony of Mr. Mehlhoff and Mr. Blanchard was specific that it is unnecessary to "bleed" any water off from the heat exchangers to the Vargasons in the first place. (See Argument I(E)).

By the very nature of this claim, the Vargasons are seeking to use "waste" water. (See Applicants' Exhibit 5). Their alleged "Agreement" with the Foundation is for "all excess" water. (See Applicants' Exhibit 3). By definition, their claims are for water that is being wasted. This is not consistent with conservation because it encourages or obligates the Foundation to continue wasting its water, rather than putting it to beneficial use.

Water is an important resource to the State of Idaho. In fact, it has been called the life blood of the State of Idaho. It is a resource that must be managed wisely and prudently. The actions of the Foundation in deliberately designing a system to take water to a private individual, and leaving their pumps running 24 hours a day, 365 days a year, when arguably several months of the year there is no need to have the pumps running at all, obviously encourages the wasting of water rather than conservation. If the pumps were turned off in the

months of May, September, or at other times when there is no need to heat the water or the buildings, everyone would be benefitted except the Vargasons. The IDWR should not sanction the intentional wasting of waters in order to benefit the Vargasons.

IV. VARGASONS' APPLICATION FOR PERMIT NO. 29-08164 DOES NOT MEET THE REQUIREMENTS SET FORTH IN I.C. §42-203A.

Vargasons' Application for Permit No. 29-08164 (Applicants' Exhibit 6) refers to a request to appropriate 7.0 c.f.s. directly from springs on the Lava Hot Springs Foundation, presumably through an existing pump or a new pump and transferred by an existing pipe or new pipes. Many of the arguments previously made in this brief are also applicable to this specific permit, especially those raised in Argument III. In order to avoid repetition, all arguments made against Permit No. 29-08162 are specifically incorporated by reference as they pertain to Permit No. 29-08164. Katsilometes will highlight specific additional areas of concern related to Permit No. 29-08164 in this portion of his brief.

A. Vargasons' Application for Permit No. 29-08164 will reduce the quantity of water available under existing water rights.

All of the damages documented by Katsilometes and the other Protestants concerning the adverse impact on their water rights will only be greatly exacerbated if the Vargasons are given a new right to pump an additional 7.0 c.f.s. Katsilometes and the other Protestants are already being adversely affected by the Foundation's and Vargasons' current uses of the water. To draw an additional 7.0 c.f.s. could create a catastrophe in the area.

The source of this water is uncertain. We can only assume Applicants are talking about additional water on state property. There is no proof they can appropriate such water

without harming the Protestants, the Foundation, or other prior appropriators.

B. <u>The water supply is not sufficient for the purpose for which it is sought to be appropriated by Vargasons in Permit No. 29-08164</u>.

It was clear from the testimony at the hearing that the 7.0 c.f.s. requested by Vargasons under this permit exceeds the amount of water currently being appropriated by the Foundation itself. Seven c.f.s. appears to be an arbitrary number calculated by the amount of water needed to create a certain volume of water (20,650 c.f.). (See Applicants' Exhibit 6).

When questioned under cross-examination, Keith Wilson doesn't know if the Foundation's rights themselves were actually researched. In fact, Keith Wilson testified he doesn't know the actual amount diverted, but only suggested 7.0 c.f.s. be entered into the application to reflect the estimated amount that would be needed for the Vargasons' proposed use. Such evidence clearly undermines the entire basis for Permit No. 29-08164. Vargasons have a duty to prove that there is enough water for them to appropriate at the rate they are requesting. They have not met this burden.

C. <u>Vargasons' Application for Permit No. 29-08164 has been made for speculative purposes</u>.

Not only is Permit No. 29-08164 speculative for the same reasons that Permit No. 29-08162 is speculative, but there are also an entirely different set of problems which call into question the viability of the permit. For example, Karen Vargason testified about installing an additional pump. There was no testimony presented that the Foundation had approved or would approve the installation of an additional pump. Furthermore, there was no testimony provided that Vargasons could use the existing pumps of the Foundation.

Vargasons also appear to be speculating that they may be allowed to use an

existing pipeline that has been referred to as the "spare pipe" or "Pipe No. 1." (See attachment 1 to Applicants' Exhibit 4). Once again, there is absolutely no evidence in the record that the Foundation has approved, will approve, or can approve Vargasons' use of the existing pipe. Furthermore, there is no evidence in the record that the Foundation has approved, will approve, or can approve an easement allowing Vargasons to construct their own pipeline across Foundation property.

The question must be asked that if the amount of water set forth in Application for Permit No. 29-08162 is supposedly adequate for the commercially viable facility envisioned by the Vargasons, why is this additional permit required? The answer is clear that the Vargasons anticipate future development, which once again would qualify as a speculative purpose. If that is not true, then they must know that the amount requested in Permit No. 29-08162 is inadequate. Either way, the Applications should be denied.

D. Vargasons have not proven they have sufficient financial resource to complete the work necessary for Permit No. 29-08164.

In all probability, Vargasons will have to engage in substantial expenditures in order to install a pump and other necessary equipment for Permit No. 29-08164. There was no testimony provided by Vargasons or other evidence as to the costs associated with the purchase and installation of an additional pump or even the construction of an additional pipeline. Once again, we are left to assume Karen Vargason's "savings" will be adequate for any expenses incurred. The Vargasons have clearly failed to meet their burden that financing would be "reasonably probable." Shokal v. Dunn, 109 Idaho 337, 707 P.2d 441 (1985).

E. Vargasons' Application for Permit No. 29-08164 is contrary to the local public interest.

Once again, to allow the Vargasons the right to appropriate an additional 7.0 c.f.s. of water from the Foundation's land is not in the local public interest. For starters, such an application would effectively thwart the Foundation's ability for future development. Future development would bring jobs and a needed economic boost to the Lava Hot Springs area. It is beyond comprehension why the Foundation has not filed a protest against this application.

The Vargasons' use of 7.0 c.f.s. would at best provide only a minimal benefit to the local community, while substantially benefitting only them. Weighing the equities, the public has the greater interest in not allowing Vargasons to appropriate 7.0 c.f.s. of water from the Foundation's lands.

F. Vargasons' Application No 29-08164 is contrary to the conservation of water resources within the State of Idaho.

For many of the reasons set forth above, Application No. 29-08164 is not consistent with conservation of the water resources of the State of Idaho. Seven c.f.s. of water is a huge amount of water. To dedicate that much water solely for the propagation of fish, is not consistent with conservation.

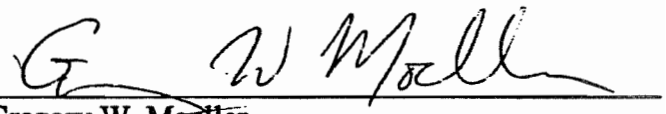
For example, this 7.0 c.f.s. of hot geothermal water could be put to much better recreational, therapeutic, or other uses that would benefit the local public interests and the State of Idaho as a whole. Furthermore, allowing Vargasons to appropriate the 7.0 c.f.s. would put future development of Foundation property at risk, which also would not be consistent with the conservation of an important resource of the State of Idaho. Where Vargasons have not proven that much water even exists, or that they have a right to remove that much water independently from the Foundation's property, this application clearly is inconsistent with the policy of

conserving an important resource of the State.

CONCLUSION

For the reasons set forth above, Katsilometes strongly urges the Court to refuse to issue Permit No. 29-08162 and Permit No. 29-08164 in the name of Lazy V Ranch. Katsilometes' objections raised at the hearing and in this brief provide substantial and legitimate reason for the rejection of both permits. The characterizations made by the Applicants and others, including the Foundation, of Mr. Katsilometes' protests have been unfair and demeaning. Katsilometes respectfully submits that a fair and reasoned examination of the evidence will lead to the conclusion that both permits must be denied.

RESPECTFULLY SUBMITTED This 28th day of November, 1997.



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY That on this 28th day of November, 1997, a true and accurate copy of the foregoing was sent by U.S. Mail, postage prepaid, to the following:

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BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

IN THE MATTER OF APPLICATIONS FOR PERMIT NO. 29-08162 AND FOR PERMIT NO. 29-08164 IN THE NAME OF LAZY V RANCH	)))))	**BRIEF TAKING EXCEPTION TO RECOMMENDED ORDER** (Idaho Code §67-5243(3))

On May 15, 1998, Gary Spackman, Hearing Officer for the Idaho Department of Water Resources made a Recommended Order on the above-referenced applications. The Recommended Order was mailed to the interested parties on May 29, 1998.

On June 11, 1998, Protestant, George Katsilometes, filed a "Motion for Reconsideration of Recommended Order" pursuant to Idaho Code § 67-5243(3). Twenty-one (21) days passed with no response or action upon Protestant's Motion for Reconsideration by the Hearing Officer. Therefore, this being within twenty-one (21) days after the expiration of the Hearing Officer's failures to act upon the "Motion for Consideration," Protestant timely files these exceptions to the Recommended Order of May 14, 1998.

STATEMENT OF FACTS

Protestant has not had an opportunity to review a transcript of the hearing in this matter Therefore, Protestant will not attempt to provide an exhaustive account of the testimony at trial. Rather, Protestant intends to provide an overview and summary of the relevant facts that we believe were established at the hearing.

In the late 1980's, George and Fran Katsilometes purchased the Lava Hot Springs Inn, with the intent of developing it into a resort. They planned on constructing hot bathing pools which would make use of the abundant geothermal water in the area. On December 20, 1989, George Katsilometes received a "Permit to Appropriate Water" (Protestant's Exhibit "T") from the Idaho Department of Water Resources (hereinafter "IDWR").

On or about April 30, 1990, George Katsilometes (hereinafter "Katsilometes") hired Brent Hendricks of Independent Drilling to drill a geothermal well. The water was tested by Brent Hendricks in 1990 and was determined to be 122 degrees. (Protestant's Exhibit "J"). At considerable personal expense, Katsilometes developed his water right pursuant to the permit and constructed pools. Additional pools were added in 1995 and 1996.

The Lava Hot Springs Foundation (hereinafter "Foundation") is a legislatively created foundation which manages certain state-owned lands and facilities in the Lava Hot Springs area. I.C. §67-4401 *et seq*. The Foundation's operations are located across the Portneuf River from Katsilometes and the other Protestants: Evelee Hill-Rush, John Mehlhaff and Duke Walden. From 1989 to 1991, the Foundation initiated a massive redesign and upgrade of its water delivery and heat exchange systems in order to more fully utilize the local geothermal resources. The project was engineered by Charles L. Sudweeks of Engineered Systems Associates, Inc. The

plumbing contractor was Gary Blanchard, of Greene Plumbing.

In 1991, when the Foundation first began pumping water through their new system, Katsilometes immediately noticed a temperature drop of approximately eight degrees from his well. From 1991 through 1995, he noted the temperature dropped from 122 degrees to 104 degrees. On October 31, 1995, Rodney Hendricks of Independent Well Drilling performed a test and determined that one well was only capable of producing water with a temperature of 104 degrees. When that well was run in conjunction with a second pump, the temperature rose to 110 degrees. See Protestant's Exhibit "J."

Katsilometes observed that when the Foundation's pumps were running, his water temperature decreased noticeably. Katsilometes also became aware that the Foundation's pumps were running almost constantly, even when the Foundation's pools were closed and not in use. Katsilometes later discovered that an Application for Permit had been filed by Thayne and Karen Vargason, (hereinafter "Vargasons") for the use of so-called "waste water" from the Foundation.

Katsilometes met with other water users in the Lava Hot Springs area and discovered that they were experiencing similar difficulties with their water. As a result, Katsilometes and the other Protestants have protested Vargasons' Applications. All of the Protestants, including Katsilometes, testified that once the Foundation's pumps started running, they noticed significant changes in the quantity, accessibility, and temperature of their water. Protestants each testified that they believe that they were damaged by not only the Foundation's use of the water, but by the Foundation's continuous running of their pumps to provide so-called "waste water" to Vargasons. Protestants testified that they believe that if the Foundation had not agreed to or felt obligated to continuously provide water to Vargasons, the pumps would not run so often, causing

them damage. They were led to this inescapable conclusion because the inefficient manner in which the Foundation operates its system only benefits Vargasons. For example, the pumps rant almost year-round, although the pools are in use just for the summer months. Even in the late spring and early fall, when freezing water is unlikely, the pumps continue to run, providing a great benefit to Vargasons at taxpayer expense. Protestants testified that they specifically noted their water quantity, accessibility, and temperature improved when the Foundation's pumps were off.

Karen Vargason testified at the hearing that Vargasons owned property bordering the Foundation property since 1987. They improved the property and added a fish pond. Karen Vargason testified that in January of 1991 she was approached by Bob Meline, Director of the Foundation. Mr. Meline represented that the Foundation had "hit a brick wall" in their efforts to place an underground water discharge pipe through property leased by the Foundation to a condominium. The original design by Mr. Sudweeks called for the discharge pipeline to run along the western boundary of the State's property. Realizing the hot water would be a valuable asset, Vargasons entered into a written agreement with Mr. Meline to allow the Foundation an easement to construct the discharge pipe through their property in exchange for the right to "all excess water" flowing through the Foundation's discharge systems. Applicants' Exhibits 2 and 3. In her rebuttal testimony, Karen Vargason conceded that it was her understanding that any right to so-called "waste water" was subject to the Foundation's right to future development and use of the water and heat.

In approximately 1995, the Vargasons got the idea to enter into a project with Shelley High School to raise a non-native variety of fish known as Tilapia in their pond. In the

Spring of 1995, they started with 650 fish, which bred to approximately 20,000 fish by November. Vargasons testified that it is their intent to expand their operation to commercially raise Tilapia. According to Karen Vargason, the water in the pond must be maintained at temperature between 78° and 84° for the Tilapia to survive. The water from the discharge tube provided by the Foundation supplied water at approximately 102°. Therefore, the water was sprayed into the air in order to cool it. Karen Vargason testified that on at least two occasions, the hot water supply has been interrupted, resulting in the Vargasons suffered a massive fish kill.

In order to access water through the discharge pipe, a diversion device was placed on State property to allow Vargasons to directly divert the water onto their property. This was referred to as the "tap for fish pond" in Applicants' Exhibit "4," Attachment 1. In addition to that device, Karen Vargason testified that an attempt was made to provide access to further water through the Foundation's discharge pipe along the Portneuf River.

Karen Vargason further testified the Vargasons' desire to install a pump in the Foundation's pump house and divert the water through what she termed a "spare pipe" upon the Foundation property. This was referred to as "pipe 1" in Applicants' Exhibit "4," Attachment 1. However, Karen Vargason provided no proof that the Foundation had consented to the installation of a pump, to the use of an existing pipeline, or an easement for access along Foundation property.

It is worth noting that Bob Meline, Director of the Foundation, testified that the easement to run the discharge pipe through Vargasons' property was necessary because of stiff resistance from the owners of a condominium which was leasing Foundation property. However, this claim is clearly contradicted in the Idaho Attorney General's Investigative Report, dated

April 18, 1997. (Protestant's Exhibit "L"). In that report, there is a statement from the manager of the condominium, Mrs. Jerry Wellard, who stated, "I wouldn't have told them I was against running pipes through the condominium property, because I didn't have the authority." (Protestant's Exhibit "L," at p. 3).

A fair and unbiased review of the engineering plans illustrates that there were many simpler, and less expensive options available to the designers of the system other than taking the discharge pipe through Vargason's property. This is obvious since Mrs. Wellard's comments indicate there was no actual resistance to the original plan. Furthermore, Mr. Mehlhaff, an expert in heat exchanges, testified that the apparatus taking "excess" water do to Vargason's was unnecessary. The only reasonable explanation for taking the discharge pipe through Vargason's property was to benefit the Vargasons, at taxpayers' expense.

As a result of the decision of the Foundation to allow Vargasons the use of this "waste water," and to allow their pumps to remain in virtually constant use, Katsilometes and the other Protestants have been harmed personally. Because Katsilometes sincerely believes that not only has he been personally harmed, but also the interests of the City of Lava Hot Springs and the entire State of Idaho have been and will continue to be harmed by the conduct of Vargasons and the Foundation, Katsilometes has filed this protest.

ARGUMENT

I. THE HEARING OFFICER FAILED TO SATISFACTORILY RESPOND TO THE LEGAL ISSUES SET FORTH BY PROTESTANT, GEORGE KATSILOMETES.

Pursuant to the Hearing Officer's request at the conclusion of the hearing before the Idaho Department of Water Resources on October 23 and 24, 1997, the parties were required to submit written briefs. Protestant, George Katsilometes complied by filing his "Closing

Argument and Post-Hearing Brief" on November 28, 1997.

Numerous substantive issues related to Vargason's application for Permit No. 29-08162 and 29-08164 were raised in that Brief. However, almost all of these arguments were ignored or not substantially resolved in the Department's "Recommended Order." Rather than repeating those arguments herein, and substantially repeating their prior brief, those arguments will be set forth and outlined for them herein.

1. The Hearing Officer's recommended order virtually ignores every legal issue raised by the Protestant, George Katsilometes in his "Closing Argument and Post-Hearing Brief" dated November 28, 1997. Specifically, the following legal issues, thoroughly briefed and outlined by Protestant, George Katsilometes were not significantly touched upon in the Recommended Order:

A. Vargason's application for Permit 29-08162 should be denied because the water applied for was not "waste water".

(1) The water Vargasons are claiming is not waste water because it is not first put to beneficial use by the Foundation.

(2) The water Vargasons applied for is not waste water because it does not have to leave the Foundation's property through Vargason's property.

(3) The water applied for by Vargason's is not "waste" water because it is not necessary to "bleed off" this water from the heat exchanger systems in the first place.

B. Vargason's application for Permit 29-08162 should be denied because the agreement with the Foundation to provide water for the Vargasons is invalid.

(1) The agreements between the Foundation and Vargasons lack the necessary legal formalities to be binding on either side.

a. Both agreements lack legal descriptions.
b. Both Thayne Vargason and Karen Vargason did not sign the agreement.
c. The agreements are signed on behalf of "Lazy V Ranch," an entity that was not in existence at the time of signing and is still not in existence.
d. There is no record in the Minutes of the Board of Directors of the Lava Hot Springs Foundation consenting to, authorizing, or ratifying Mr. Meline's signing of Applicant's Exhibit Nos. 2 and 3.
e. The agreements are invalid because they are vague and/or ambiguous.

(2) The agreement between Vargasons and the Foundation is invalid because it is contrary to the authority granted the Foundation.

a. There is not a factual basis for many of the findings of fact contained in the Recommended Order.

C. Vargason's application for Permit No. 29-08162 should be denied because it fails to meet all of the criteria set forth in Idaho Code §42-203(a).

D. Vargason's application for Permit #29-08164 does not meet all the requirements set forth in Idaho Code §42-203(a).

A full text of the legal argument and the authorities cited should be on file with the Department of Water Resources. A copy of "Protestant George Katsilometes Closing Argument and Post-Hearing Brief" has also been attached hereto as Appendix "A"[1]. Protestant respectfully submits that a resolution of these legitimate legal issues is required before a Recommended Order should be adopted by the Court.

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[1]In order to reduce costs, Appendix "A" has only been attached to the copies of this brief filed with the Director of the IDWR and Applicant's counsel, because copies of that brief have already been served on the other Protestants. A copy will be promptly provided to any other party upon request.

II. FINDING NUMBER 27 IS NOT SUBSTANTIATED BY THE RECORD.

As should be clear from the Statement of Facts set forth above, one of the main issues contested at the hearing was why the pipeline was directed through applicant's property in the first place. Although there was some testimony from Mr. Meline that he felt it was necessary, the overwhelming weight of the testimony and evidence presented at the hearing strongly contradicted that statement.

For example, the investigative report of the Idaho Attorney General's Office (Hearing Exhibit "4") concluded that there did not appear to be any real opposition from the condominium owner to the placement of the pipeline through the leased property, as originally planned. Furthermore, Gary Blanchard, the contractor on the Foundation Project, testified a the hearing, contrary to Mr. Meline's statements, that he was aware of no significant opposition.

Testimony at the hearing, coupled with the Attorney General's findings, make the record clear that Mr. Meline has attempted to concoct an explanation why the pipeline should be taken to the Vargason's, for their sole benefit. There was no real opposition to sending the water back into the river, as the original plans called for. Had the original plans been followed, this controversy likely would not have arisen.

III. THERE ARE NO FACTS IN THE RECORD SUBSTANTIATING FINDINGS 51, AND 67 THROUGH 74 IN THE RECOMMENDED ORDER.

The purpose of the hearing was not to adjudicate Protestant, George Katsilometes water rights. Evidence was submitted by Mr. Katsilometes showing the rights that he possessed and the impact of the activities of Vargasons and the Foundation in damaging those rights. Nevertheless, the Hearing Officer made findings in Paragraphs 51 and 67 through 74, which are almost entirely unsubstantiated by any evidence in the record. In fact, several of the findings are

contradictory.

For example, the last sentence of Finding Number 56 states that "Katsilometes testified that the casing was perforated." However, the last sentence of Finding Number 51 makes this statement "without additional information, the Hearing Officer must presume that the well casing is not perforated." This contradictory conclusion becomes especially manifest in Findings 67 though 71 in which the Hearing Officer appears to blame Katsilometes for the problems that the other Protestants (Walden, Mehlhaff and Hill-Rush) have experienced since the commencement of the Foundation's pumping activities.

Such a conclusion must be based upon competent evidence, which was not submitted at the hearing. Furthermore, inasmuch as Applicants had the burden of proof at this hearing, it would be unfair to suddenly switch the burden of proof to Katsilometes, as if his application were at issue. These findings, especially 51, and 67 through 71 are clearly erroneous and must be stricken from the Recommended Order.

IV. THE HEARING OFFICER ERRED IN RELYING UPON A FISH GRAPH TO BE USED FOR TROUT ONLY, AND APPLYING IT TO TILAPIA.

In Finding of Fact No. 7, the Hearing Officer made the following finding:

> Keith Wilson testified that the flow rates sought for application was taken from an IDWR graph that rates flow rate to the number of fish proposed for rearing. The graph is only to be used for determining the flow rate necessary for trout rearing and propagation.
>
> Finding of Fact No. 77 (*Emphasis Added*)

This chart was admitted at the hearing as Applicant's Exhibit No. 17. The bottom of Exhibit No. 17 states clearly, as noted in the findings, that this information could only be used for trout rearing and propagation, not for other species.

ignored his finding in making Conclusion of Law No. 12:

> Use of the trout water sufficiency curve to determine how many fish can be raised is not grounds to establish that the applications are speculative. The applications are not speculative and were filed in good faith.
>
> Conclusion of Law No. 12

Inasmuch as the IDWR's own exhibit indicates that the flow rates stated in Exhibit 17 are not valid for other species, the Hearing Officer has somehow concluded, although not expressly stated, that there were sufficient quantities of water to raise the Tilapia and that the applications were not speculative.

As the Department is well aware, the burden of proof is on the applicant to establish that he can meet the requirements set forth in Idaho Code §42-203(a). Shokal v. Dunn, 109 Idaho 330 707 P.2d 441 (1985). If Applicants are going to import an exotic species of fish, not native to these waters, in an attempt to commercially raise them in the waters of the State of Idaho, they must at least make a prima facia showing that there is sufficient water available to raise them commercially, as they have sought on their Application. The only evidence submitted concerning the proper flow for Tilapia was Exhibit 17, which on its face states it is only applicable for trout, no other species. In light of this clear error in the Recommended Order, Conclusion of Law No. 12 is clearly erroneous. Furthermore, any other conclusions and recommendations based upon Conclusion of Law No. 12 are similarly erroneous.

CONCLUSION

For the reasons set forth above, and in "Protestant's Closing Argument and Post-Hearing Brief," Protestant respectfully requests that the Recommended Order be revised so that the exceptions to it noted herein, be made.

RESPECTFULLY SUBMITTED This 21st day of July, 1998.

Gregory W. Moeller
of Rigby, Thatcher, Andrus, Rigby, Kam
& Moeller, Chartered
Attorneys for George Katsilometes

CERTIFICATE OF SERVICE

I HEREBY CERTIFY That on this 21th day of July, 1998, a true and accurate copy of the foregoing was sent by U.S. Mail, postage prepaid, to the following:

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Department of Water Resources
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Boise, ID 83726

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APPENDIX "A"

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BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE

STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR PERMIT NO. 29-08162 AND FOR PERMIT NO. 29-08164 IN THE NAME OF LAZY V RANCH	)))))	**PROTESTANT GEORGE KATSILOMETES' CLOSING ARGUMENT AND POST-HEARING BRIEF**

COMES NOW the Protestant, George Katsilometes, by and through his attorneys of record, Ray W. Rigby and Gregory W. Moeller, of Rigby, Thatcher, Andrus, Rigby, Kam & Moeller, Chartered, and hereby submits the following Closing Argument and Post-Hearing Brief in response to the Hearing Officer's Order of November 4, 1997.

INTRODUCTION

This matter came before the Department of Water Resources at a hearing on October 23 and 24, 1997, in Pocatello, Idaho. During the hearing, a great deal of highly detailed and technical testimony was presented. Late on the evening of October 24, 1997, after two very long days of testimony, the parties agreed to submit closing arguments in writing. This brief will

serve as George Katsilometes closing argument and post-hearing brief.

STATEMENT OF FACTS

At the time this brief is due, Protestant has not had an opportunity to review a transcript. Therefore, Protestant will not provide an exhaustive account of the testimony at trial. Rather, Protestant intends to provide an overview and summary of the relevant facts that we believe were established at the hearing.

In the late 1980's, George and Fran Katsilometes purchased the Lava Hot Springs Inn, with the intent of developing it into a resort. They planned on constructing hot bathing pools which would make use of the abundant geothermal water in the area. On December 20, 1989, George Katsilometes received a "Permit to Appropriate Water" (Protestant's Exhibit "T") from the Idaho Department of Water Resources (hereinafter "IDWR").

On or about April 30, 1990, George Katsilometes (hereinafter "Katsilometes") hired Brent Hendricks of Independent Drilling to drill a geothermal well. The water was tested by Brent Hendricks in 1990 and was determined to be 122 degrees. (Protestant's Exhibit "J"). At considerable personal expense, Katsilometes developed his water right pursuant to the permit and constructed pools. Additional pools were added in 1995 and 1996.

The Lava Hot Springs Foundation (hereinafter "Foundation") is a legislatively created foundation which manages certain state-owned lands and facilities in the Lava Hot Springs area. I.C. §67-4401 et seq. The Foundation's operations are located across the Portneuf River from Katsilometes and the other Protestants. From 1989 to 1991, the Foundation initiated a massive redesigned and upgrade of its water delivery and heat exchange systems in order to more fully utilize the local geothermal resources. The project was engineered by Charles L.

Sudweeks of Engineered Systems Associates, Inc. The plumbing contractor was Gary Blanchard, of Greene Plumbing.

In 1991, when the Foundation first began pumping water through their new system, Katsilometes immediately noticed a temperature drop of approximately eight degrees from his well. From 1991 through 1995, he noted the temperature dropped from 122 degrees to 104 degrees. On October 31, 1995, Rodney Hendricks of Independent Well Drilling performed a test and determined that one well was only capable of producing water with a temperature of 104 degrees. When that well was run in conjunction with a second pump, the temperature rose to 110 degrees. See Protestant's Exhibit "J."

Katsilometes observed that when the Foundation's pumps were running, his water temperature decreased noticeably. Katsilometes also became aware that the Foundation's pumps were running almost constantly, even when the Foundation's pools were closed and not in use. Katsilometes later discovered that an Application for Permit had been filed by Thayne and Karen Vargason, (hereinafter "Vargasons") for the use of so-called "waste water" from the Foundation.

Katsilometes spoke with other water users in the Lava Hot Springs area and discovered that they were having similar difficulties with their water. As a result, Katsilometes has protested Vargasons' Applications. Protests have also been lodged by John Mehlhaff, Evelee Hill-Rush, and Duke Waldon. All of the Protestants, including Katsilometes, testified that once the Foundation's pumps started running, they noticed significant changes in the quantity, accessibility, and temperature of their water. Protestants each testified that they believe that they were damaged by not only the Foundation's use of the water, but by the Foundation's continuous

running of their pumps to provide so-called "waste water" to Vargasons. Protestants testified that they believe that if the Foundation had not agreed to or felt obligated to continuously provide water to Vargasons, the pumps would not run so often, causing them damage. They were led to this inescapable conclusion because the inefficient manner in which the Foundation operates its system only benefits Vargasons. Protestants testified that they specifically noted their water quantity, accessibility, and temperature improved when the Foundation's pumps were off.

Karen Vargason testified at the hearing that Vargasons owned property bordering the Foundation property since 1987. They improved the property and added a fish pond. Karen Vargason testified that in January of 1991 she was approached by Bob Meline, Director of the Foundation. Mr. Meline represented that the Foundation had "hit a brick wall" in their efforts to place an underground water discharge pipe through property leased by the Foundation to a condominium. The original design by Mr. Sudweeks called for the discharge pipeline to run along the western boundary of the State's property. Realizing the hot water would be a valuable asset, Vargasons entered into a written agreement with Mr. Meline to allow the Foundation an easement to construct the discharge pipe through their property in exchange for the right to "all excess water" flowing through the Foundation's discharge systems. Applicants' Exhibits 2 and 3. In her rebuttal testimony, Karen Vargason conceded that it was her understanding that any right to so-called "waste water" was subject to the Foundation's right to future development and use of the water and heat.

In approximately 1995, the Vargasons got the idea to enter into a project with Shelley High School to raise a variety of fish known as Tilapia in their pond. In the Spring of

1995, they started with 650 fish, which bred to approximately 20,000 fish by November. Vargasons testified that it is their intent to expand their operation to commercially raise Tilapia. According to Karen Vargason, the water in the pond must be maintained at temperature between 78° and 84° for the Tilapia to survive. The water from the discharge tube provided by the Foundation supplied water at approximately 102°. Therefore, the water was sprayed into the air in order to cool it. Karen Vargason testified that the hot water supply has been interrupted when at least twice the pumps shut off. As a result, the Vargasons suffered a massive fish kill.

In order to access water through the discharge pipe, a diversion device was placed on State property to allow Vargasons to directly divert the water onto their property. This was referred to as the "tap for fish pond" in Applicants' Exhibit "4," Attachment 1. In addition to that device, Karen Vargason testified that an attempt was made to provide access to further water through the Foundation's discharge pipe along the Portneuf River.

Karen Vargason further testified the Vargasons' desire to install a pump in the Foundation's pump house and divert the water through what she termed a "spare pipe" upon the Foundation property. This was referred to as "pipe 1" in Applicants' Exhibit "4," Attachment 1. However, Karen Vargason provided no proof that the Foundation had consented to the installation of a pump, to the use of an existing pipeline, or an easement for access along Foundation property.

It is worth noting that Bob Meline, Director of the Foundation, testified that the easement to run the discharge pipe through Vargasons' property was necessary because of stiff resistance from the owners of a condominium which was leasing Foundation property. However, this claim is clearly contradicted in the Idaho Attorney General's Investigative Report, dated

April 18, 1997. (Protestant's Exhibit "L"). In that report, there is a statement from the manager of the condominium, Mrs. Jerry Wellard, who stated, "I wouldn't have told them I was against running pipes through the condominium property, because I didn't have the authority." (Protestant's Exhibit "L," at p. 3).

A fair and unbiased review of the engineering plans illustrates that there were many simpler, and less expensive options available to the designers of the system other than taking the discharge pipe through Vargason's property. This is obvious since Mrs. Wellard's comments indicate there was no actual resistance to the original plan. The only reasonable explanation for taking the discharge pipe through Vargason's property was to benefit the Vargasons.

As a result of the decision of the Foundation to allow Vargasons the use of this "waste water," and to allow their pumps to remain in virtually constant use, Katsilometes and the other Protestants have been harmed personally. Because Katsilometes sincerely believes that not only has he been personally harmed, but also the interests of the City of Lava Hot Springs and the entire State of Idaho have been and will continue to be harmed by the conduct of Vargasons and the Foundation, Katsilometes has filed this protest.

ARGUMENT

I. VARGASON'S APPLICATION FOR PERMIT NO. 29-08162 SHOULD BE DENIED BECAUSE THE WATER APPLIED FOR IS NOT WASTE WATER.

A. Legal Definition of "Waste."

The Idaho Code specifically refers to waste water in Title 42, Chapter 1. Specifically, the statute reads:

> All ditches now constructed or which may hereafter be constructed for the purpose of utilizing seepage, waste or spring water of the state, shall be governed by the same laws relating to priority of right as those ditches, canals, and conduits constructed for the purpose of utilizing the waters of running streams. I.C. §42-107.

Interestingly, this statute refers to "ditches" which have been constructed for "utilizing seepage [or] waste [water]." Apparently, the statutory scheme did not consider water which was intentionally diverted through a pipeline to another property as "waste."

Over the years, the Idaho Supreme Court has developed specific standards in regard to waste water. In the case of Sebern v. Moore, 44 Idaho 410, 258 P. 176 (1927), the Idaho Supreme Court stated:

> We conclude that surface waste and seepage water may be appropriated under the provisions of C.S. §5562, subject to the right of the owner to cease wasting it, or in good faith to change the place or manner of wasting it, or to recapture it, so long as he applies it to a beneficial use. 258 P. at 178.

This decision was followed in Colthorp v. Mountain Home Irrigation Dist., 66 Idaho 173, 157 P.2d 1005 (1945).

Both of these cases stand for the proposition that although "waste water" may be appropriated, the prior appropriator of the water has the right to stop "wasting" it. The prior appropriator even has the right to change the location or manner in which the water is being wasted. Therefore, if Vargasons are claiming their right to a permit on the grounds that this is waste water, they may only take it subject to the Foundation's absolute right to use the water differently in the future, discharge the water in a different location in the future, or stop wasting it altogether.

It is once again worth noting that I.C. § 42-107 refers to waste water being taken

through "ditches." That is because historically waste water has been defined as flood water which escapes from a prior user's land or system onto the land of another. For example, see Gerber v. Nampa and Meridian Irrigation Dist., 16 Idaho 22, 100 P. 80 (1908). In that case, the Idaho Supreme Court considered the claim by a user of waste water of entitlement to continue to receive the waste water. The Court held as follows:

> It appears to us the point involved in this case is, can a canal company be compelled by mandate to perpetually furnish water to a person whom it has simply accommodated with water at times when its regular customers did not need it, and when the water of its regular customers would require the full capacity of its canal if demanded? We must answer this question in the negative. If under the provisions of said section of our Constitution [Idaho Constitution §4, Article 15] a canal company is compelled to furnish water to subsequent applicants, when the capacity of its canal has already been exhausted by prior applicants and users, it would present a condition which was not intended by the provisions of said sections of the Constitution. . . . Under the provisions of our Constitution and statute the canal company must respect the rights of prior users of water therefrom, and one desiring to use water cannot compel a canal company to sell water beyond the capacity of its canal. 100 P. at 82.

In the case at hand, the Foundation is intentionally diverting the water to Vargasons. There appears to be an important distinction between water that is left in the appropriator's control versus water that has been abandoned:

> One clear element that can be pointed out is the distinction between the water right and the water. In many of the cases, the courts are talking only about the water that has left the appropriator's control and in other cases, they may only be talking about that water without having made it clear. Once the water has left the appropriator's control, it is too late to reclaim it. The water, as contrasted with the water right, has been abandoned. Usually for purposes of this rule, once water leaves the appropriator's land, it is too late to reclaim the water. Water and Water Rights, Vol. 2, §13.04, P. 150 (1991 Ed.).

It is difficult to find a true statutory definition of "waste" water. One court has defined "surplus water" as water available after reasonable beneficial use and prior appropriation

rights are all satisfied. Peabody v. City of Vallejo , 2 Cal. 2d 351, 40 P.2d 486 (1935). California has also defined this as "excess" water. Meridian, Ltd. v. San Francisco, 13 Cal. 2d 424, 90 P.2d 537, *rehearing denied*, 13 Cal. 2d 495, 91 P.2d 105 (1939). In other words, it appears that the water has to have been "used" before it can be considered waste.

Interestingly, it does not appear that intentional diversion of water through a pipeline to another's property is typically considered as waste:

> Of course, only "surplus" or "excess" waters are appropriable. In this section, the consequence of an earlier appropriation on the availability of water for later appropriation is considered from the perspective of what happens to any water that **escapes** on the way to its original use and to any water that remains unconsumed after the original **use** of the water by the appropriator. There are many possible scenarios, such as: the water may overflow a reservoir or a ditch; it may seep from the bottom or sides of a reservoir or ditch; it may run off the surface after irrigation; it may percolate through the ground after irrigation; it may be ditched off and deposited in the stream by the land owner. Water and Waters, Vol. 2, §13.04, P. 148 (1991 Ed.). (Emphasis added).

In other words, "surplus" or "excess" water must have "escaped" or been "unconsumed after original use" by the prior appropriator. Under that definition, it is difficult to see how Vargasons can claim a right to this so-called "waste water." This water has not escaped and is unused. This will be set forth more fully below.

B. The water Vargasons are claiming is not "waste water" because it is not first put to beneficial used by the Foundation.

Bob Meline testified that the Foundation generally operates its heated swimming pools from June through August. Mr. Meline claims that there are times during the rest of the year when the pumps are needed in order to heat the buildings. They also need the heat to keep the pools from freezing. Assuming all that is true, there can be no logical explanation for why the pumps and the heat exchangers need to be in operation during the relatively warm months of

the year when the pools and most of the facilities are not in use. For example, in May and September, when the weather is quite temperate, the Foundation continues to run the pumps 24 hours a day.

There was testimony from Katsilometes and others at the hearing that the pumps are running at a time when the pools were not in use or being cleaned. Photographs submitted by Katsilometes show the pools empty with the pumps still running. See Protestant's Exhibits "E," "F," "G" and "J."

It appears obvious, in light of such facts, that during such periods of time the water is not being beneficially used at all by the Foundation. In fact, the only "use" of the water at all is the Vargasons using the water to heat their fish ponds. Under such a situation, how can the water possibly be deemed "waste water?" This water has not escaped from the control of the Foundation nor has it been beneficially used first by the Foundation.

Even if Vargasons were not involved, this would still be a case of a permittee (the Foundation) using more water than needed and more than can be put to beneficial use. However, this is relevant to this proceeding because the Vargasons seek to become part of this very system and benefit personally from the Foundation's misuse of its own rights. Either way, Katsilometes and the other Protestants are damaged by **any** course of action which permits the Foundation and/or the Vargasons to improperly use the waters of the State of Idaho. These hot geothermal waters are a rare and valuable resource which the IDWR must not allow to be wasted, especially when other legitimate users are damaged.

C. <u>The Water Vargasons have applied for is not "waste water" because it does not have to leave the Foundation's property through Vargasons' property.</u>

There can be little doubt that the only reason that the water at issue even reaches Vargasons' land is because it is intentionally piped there by the Foundation. However, there is no reason for this to occur. A review of the design plans submitted by Charles Sudweeks, the engineer for the Foundation project, as well as the map drawn by the IDWR Energy Division (see Attachment 1 to Applicants' Exhibit 4), shows that there is no reason why the so-called "waste water" cannot be discharged directly into the Portneuf River at a variety of other locations which would have been more direct and cheaper for the Foundation.

As was discussed earlier, the Investigative Report of the Idaho Attorney General's Office (Exhibit "4") made it clear that there was no real opposition from the condominium owners to the placement of the pipeline through the leased property. Gary Blanchard, the contractor on the Foundation project, testified that he was not personally aware of any significant opposition. He basically confirmed that there was no reason for the pipeline to go through Vargasons' property. Mr. Blanchard also testified that there was no reason why the pipeline couldn't have gone directly to the river from valve box 3. (See Applicants' Exhibit "4," attachment 1).

An issue raised during the course of the hearing was whether or not the Lease Agreement between the State of Idaho (through the Foundation) and the condominiums contained any language which would have prevented the Foundation from placing the pipeline across the leased land. Copies of the Lease Agreement were requested from Mr. Meline in the Subpoena Duces Tecum issued by the IDWR. Mr. Meline did not bring these documents to the hearing, but represented at the hearing that they would be provided to the Protestants after the

hearing. Protestants still have not received copies of these leases despite representations from Mr. Meline that they would be provided. Unless Applicants can prove to the contrary, Protestants will submit to the Court that it would be highly unusual for a state lease to prevent the State from placing an underground pipeline under its leased property.

The facts clearly illustrate that an intentional and unnecessary departure from the original design specifications was pushed through the Board of Directors by Bob Meline, based upon false representations that it was absolutely necessary to avoid delays and legal costs. This change only benefitted the Vargasons and can lead to only one conclusion: this is not "waste" water.

D. <u>The water applied for by Vargasons is not "waste" water because it is not necessary to "bleed off" this water from the heat exchanger system in the first place.</u>

The Foundation's main contractor on the project, Gary Blanchard, testified during the hearing that the so-called "bleed off" of excess water was not necessary to run the heat exchangers. Mr. Blanchard was the plumbing contractor that actually installed the heat exchangers and he has technical expertise in this area. He had extensive knowledge and experience in installing such systems. He is not a party to these proceedings and his testimony must be given great weight.

Additionally, one of the Protestants, John Mehlhaff, was certified as an expert to testify about heat exchangers. He has extensive experience in working with all kinds of systems that use heat exchangers. He also testified that there is no reason why the system needed to "bleed off" water to run the heat exchangers. He agreed with Mr. Blanchard that as the system was built, "bleed off" should be unnecessary. Their testimony also raises the question as to why

a system would have been designed in the first place with "bleed off" being necessary. A more efficient and economical system would not have required "bleed off."

E. Conclusion.

In conclusion, it appears very clear that although Permit 29-08162 purports to be merely an application for a permit to use "waste water," that this is not waste water at all. The manner in which it is used and intentionally delivered to the Vargasons by the Foundation belies any effort to call it "waste water." The Foundation is not putting all of its water rights to beneficial use. This raises other serious issues which perhaps must be considered in another forum. Nevertheless, for purposes of this hearing, the facts provide strong justification for denial of Vargasons' application because they now seek to become part of this system.

II. VARGASONS' APPLICATION FOR PERMIT NO. 29-08162 SHOULD BE DENIED BECAUSE THE AGREEMENT WITH THE FOUNDATION TO PROVIDE WATER TO THE VARGASONS IS INVALID.

A. The agreements between the Foundation and Vargasons lack the necessary legal formalities to be binding on either side.

As will be discussed below, Applicants' Exhibits 2 and 3 play a very key role in this matter. Exhibit 2 purports to be an "authorization for entrance for easement into and upon Lazy V Ranch premises for piping work," and was signed on January 29, 1991. Although Exhibit 2 states that this document will "suffice until a legal document can be obtained," no such document has ever been prepared by the State, Foundation, or Vargasons.

Applicants' Exhibit 3 purports to be an amendment to the earlier authorization for entrance of easement and is dated January 31, 1991. This document, apparently signed two days after Exhibit 2, amends the earlier agreement by granting Lazy V Ranch "the use of all excess

waters that the Foundation has going through their said drainage systems." (Emphasis not added). As will be discussed below, these documents suffer from significant legal infirmities which taken separately or together render them invalid.

1. Both agreements lack a legal description.

Although the pipeline is already in place, it is impossible to discern, from looking at the document alone, where the easement actually has been granted. Vargasons, or their successors, could easily raise this issue in an attempt to challenge the easement. Similarly, there is no language in the document preventing the Foundation from asserting that the easement should be located in another place.

It should be horn-book law that any agreement concerning real property needs to contain a legal description of the property. For example, the Idaho Supreme Court held in Hoffman v. S V Co., Inc., 102 Idaho 87, 628 P.2d 218, 221 (1981) that in order for a contract concerning real estate to be valid, the contract must, among other things, contain a description of the property and all essential terms of the agreement.

Obviously, in the case at hand, there is no valid description of the property. At most there is a description of the size of the easement. Applicants may argue that the meaning was clear to all of the parties and the conduct of the parties if the best proof of their intent. Nevertheless, if Exhibit 2 and/or Exhibit 3 were submitted to a county recorder as an easement, certainly they would not accept the legal description contained therein.

2. Both Thayne Vargason and Karen Vargason did not sign the agreement.

Karen Vargason testified that she and her husband, Thayne Vargason, both owned the property adjoining the Foundation's property. The record is clear that Thayne Vargason and

Karen Vargason are both married. Therefore, in order for a real estate agreement to be binding upon them both, it would require both signatures.

Idaho Code §32-912 explains why this is necessary:

> Either the husband or the wife shall have the right to manage and control the community property, and either may bind the community property by contract, except that **neither the husband nor wife may sell, convey or encumber the community real estate unless the other joins in executing the sale agreement, deed, or other instrument of conveyance by which the real estate is sold, conveyed or encumbered**, and any community obligation incurred by either the husband or the wife without the consent in writing of the other shall not obligate the separate property of the spouse who did not so consent; . . . I.C. §32-912 (Emphasis added).

The granting of an easement certainly can be construed as a sale, conveyance, or encumbrance upon real estate. This is not a binding agreement. Therefore, Vargasons, their heirs, or successors would have the right to disavow this agreement.

3. <u>The agreements are signed on behalf of "Lazy V Ranch," an entity that was not in existence at the time of signing and is still not in existence</u>.

Vargasons submitted Applicants' Exhibit 7 as an exhibit at the hearing. This document is a "Certificate of Assumed Business Name," whereby Vargasons give notice that they have adopted the name of "Lazy V Ranches" as an assumed name. Astonishingly, this document is dated just a few weeks prior to the date of the hearing on October 23, 1997.[1]

At the time Applicants' Exhibit No. 2 was signed, it purported to be an agreement between the "Idaho State Foundation" and the "Lazy V Ranch." At the time this document was signed, "Lazy V Ranch" was not a legal entity. Interestingly, Protestants are not sure whether or

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[1]The copy of this exhibit provided to Protestants does not contain a date. The version of Exhibit 7 submitted as evidence at the hearing apparently does bear the stamp of the Secretary of State's Office and indicates that it was filed just a few weeks prior to the hearing.

not at the time this agreement was signed that the "Idaho State Foundation" was even a legal entity. We can only assume Mr. Meline intended to mean the Lava Hot Springs Foundation.

Similarly, one of the parties to Applicants' Exhibit 3 is either the "Lazy V Ranch" or "Lazy V Ranches," depending on which portion of the document you look at. Once again, this document is apparently signed by the "Idaho State Foundation." None of these fictitious entities were in existence in 1991 when the agreements were signed.

It is also worth noting that both the Application for Permit No. 29-8162 and the Application for Permit No. 29-8164 (Applicants' Exhibit Nos. 5 and 6) were signed by the "Lazy V Ranch, Inc." However, it was clear from the testimony of Karen Vargason that Lazy V Ranch has never been incorporated. Therefore, both applications for permit are still in the name of a nonexistent entity.

The legal impact of this failure is clear when the provisions of the Assumed Business Names Act of 1997 (I.C. §53-501, et seq.) are reviewed. For example, Idaho Code §53-506(1) provides that:

> A person may conduct business under an assumed name **if a certificate of assumed business name has been filed with the Secretary of State and is in effect.** (Emphasis added).

Some of the consequences for non-compliance with this section of the code are set forth in I.C. §53-509(1):

> Any person who transacts business in Idaho under an assumed business name without having complied with the requirements of this chapter shall not be entitled to maintain any legal action in the courts of this state until the person has filed a certificate of assumed business name as required by this chapter.

These requirements appear to be similar to the earlier versions of I.C. §§ 53-501 et seq., which

were in effect at the time Vargasons signed Applicants' Exhibits 5, 6 and 7.

It can be argued that filing for an Application for Permit is the equivalent of filing a legal action in the State of Idaho. Similarly, signing a document purporting to be an easement with an entity (i.e. the Foundation) which is doing business with the State of Idaho, could be considered subject to these requirements as well. But even more importantly, the Vargasons still do not have it right. By filing for their Certificate of Assumed Business Name under the name "Lazy V Ranches" (Applicants' Exhibit No. 7), this is still inconsistent with the names of the Applicant on Exhibit Nos. 5 and 6 ("Lazy V Ranch, Inc.") and Exhibit Nos. 2 and 3 ("Lazy V Ranch"). The misrepresentations of status and the inconsistencies in these documents give the parties to the documents, as well as the IDWR, grounds for contesting their validity.

4. <u>There is no record in the minutes of the Board of Directors of the Lava Hot Springs Foundation consenting to, authorizing, or ratifying Mr. Meline's signing of Exhibit Nos. 2 and 3</u>.

Mr. Meline testified that when he became aware of the alleged difficulty in taking the discharge pipe through property leased by the condominiums, he immediately contacted, and received the consent of a majority of the members of the Board of Directors by telephone. However this approval was never documented by any minute of the Board of Directors.

Sheldon Jones, a member of the Board of Directors at the time, testified that he was in the area and could have been contacted by Mr. Meline, but apparently no attempt was made to reach him. He was not aware of any vote or other action taken by the Board of Directors ratifying the terms of this agreement. In fact, he testified that he had not seen the documents (Applicants' Exhibits "2" and "3") before.

The impact of this should be obvious. Without a minute in the records

authorizing this action, the entire legality of Exhibits 2 and 3 is called into question. Board approval, documented in a minute or otherwise, should be required before the State of Idaho grants any lucrative right, or obligates itself in any way, to another party. This was not done, and provides strong basis for a challenge of the legality of the agreements.

5. The agreements are invalid because they are vague and/or ambiguous.

Applicants' Exhibit 3 purports to grant the "Lazy V Ranch" the right to "use of all excess waters that the Foundation has going through their said drainage pipes." (Emphasis not added). What is meant by the term "all excess waters" is unclear and problematic. Certainly, this imprecise language gives rise to various interpretations, some of which would be entirely inconsistent with local public interests and the interests of the State of Idaho.

For example, if Vargasons claim that this language gives them a demand right, or if this language creates a priority in them over any other uses, the Foundation will have given away an important asset of the State. On the other hand, if "excess" is defined to mean water that is not needed, this could refer to abandoned water which the Foundation has no right to convey. In short, this language creates more problems than it solves. There are other inconsistencies, ambiguities, and vague points in these agreements which could be challenged.

Interestingly, I.C. §42-2601, et seq., concerning the sale of water rights, makes specific reference to certain legal formalities that must be included in any contract for the sale of water for irrigation purposes. Certainly, if the IDWR has minimum standards for agreements involving the sale of water rights, such standards should have been involved in a transaction between the State of Idaho (through the Foundation) and a private citizen.

B. The agreement between Vargasons and the Foundation is invalid because

it is contrary to the authority granted the Foundation.

The authority of the Foundation to control the use of water on state lands was extensively analyzed in Attorney General Opinion No. 97-1. In fact, this Attorney General's Opinion was a specific response to issues raised in this litigation. The Attorney General concluded, in part:

> **The Foundation's water rights** are appurtenant to the lands described in I.C. §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 a 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 now authorized under the water right**. Attorney General Opinion No. 97-1, p. 5. (Emphasis added).

This opinion is important because the Attorney General has apparently concluded that it is up to the Department of Water Resources to determine whether an applicant has the right to make beneficial use of the Foundation's waste water. However, it goes much further by stating that the Foundation does not have the ability to enter into contracts authorizing the use of its waste water. That is exactly what Applicants' Exhibit Nos. 2 and 3 purport to do. These documents purport to be contracts authorizing Vargasons ("Lazy V Ranch") the right to "use of all excess waters that the Foundation has going through their said drainage system." Applicants' Exhibit No. 3. How can that statement contained in Applicants' Exhibit No. 3 be construed as anything other than a "contract authorizing the use of its waste water." That agreement, as per the Attorney General's Opinion, is beyond the authority and scope of the Foundation.

Protestants also submit that any such private agreement is in violation of the act by which the Lava Hot Springs Foundation was created. The preface to the act stated as follows:

> Chapter 1076--An act to grant certain lands to the State of Idaho. Be it enacted by the Senate and House of Representatives of the United States of America in Congress Assembled that [legal description omitted] are hereby ceded, granted, relinquished, and conveyed unto the said State of Idaho, to be held by said state for **public use** under such regulations as said state may prescribe. Approved June 13, 1902, 32 St. L. 330. (Cited in I.C. §67-4401, emphasis added).

Attempting to grant the right to use all their excess waste water to the Vargasons, as consideration for the granting of an unnecessary easement, surely is in conflict to the U.S. Congress' intention that this be deeded to the State for "public use." Protestants believe that because this agreement violates the very intent for which the Foundation was created in the first place, the agreement is thereby invalid. The Attorney General's Opinion itself, provides all the authority needed to reach that conclusion.

III. VARGASONS' APPLICATION FOR PERMIT NO. 29-08162 SHOULD BE DENIED BECAUSE IT FAILS TO MEET THE CRITERIA SET FORTH IN I.C. §42-203A.

At the beginning of the hearing in this matter, the hearing officer cited I.C. §42-203A(5), which provide as follows:

> In all applications, whether protested or not protested, where the proposed use is such (a) that it will reduce the quantity of water under existing water rights, or (b) that the water supply itself is insufficient for the purpose for which it is sought to be appropriated, or (c) where it appears to the satisfaction of the director that such application is not made in good faith, is made for delay or for speculative purposes, or (d) that the applicant has not sufficient financial resources with which to complete the work involved therein, or (e) that it will conflict with the local public interest, where the local public interest is defined as the affairs of the people in the area directly affected by the proposed use, or (f) that it is contrary to conservation of water resources within the State of Idaho; the Director of the Department of Water Resources may reject such application and refuse issuance of a permit therefore, only partially approve and grant a permit for a smaller quantity of water than applied for, or may grant a permit upon conditions. I.C. §42-203A(5).

The earlier arguments set forth in this brief touch on many of the aspects of I.C. §42-203A(5).

The purpose of this section of the brief is to provide a more detailed analysis in order to establish why each of these six criterion calls into question Vargasons' Application for Permit No. 29-08162.

A. <u>The Vargasons' proposed use will reduce the quantity of water under existing water rights</u>.

Each of the Protestants testified at trial that when the Foundation's pumps have been turned on, they have noticed an immediate impact on the quantity, temperature, and accessibility of their water rights. These rights have been significantly degraded while the pumps are on, and appear to improve when the pumps are off.

The Protestants also testified that before the Foundation turned on their pumps, there were numerous springs arising on the State's property across the river. These springs have since dried up. All of this water is apparently being collected in an underground well or cistern and diverted to the Foundation's pumps. This is one possible explanation for the damage Protestants are suffering.

Vargasons have claimed they are entitled to all of the Foundation's waste water. Their proposed use is for fish propagation, and by their own admission they must have a constant supply of hot water in order for the fish to survive. It is very clear that the Foundation is aware of the Vargasons' needs and is also aware that should they shut their pumps off, the Vargasons will be damaged.

Katsilometes believes that under the direction of the current Director of the Lava Hot Springs Foundation the pumps have been operated in a manner to provide far more water than needed by the Foundation in order to provide Vargasons with "waste water." Several

instances of this were testified to at the hearing. Protestant's Exhibits "E," "F," "G," "H" and "J" actually show this happening.

The obligation which Mr. Meline testified he felt compelled to abide by, that being the agreement set forth in Applicants' Exhibit Nos. 2 and 3, allows the Vargasons to claim "all excess water" from the Foundation. This can be construed to require the Foundation to keep the pumps running even when they have little or no use for the water.

The impact on Katsilometes was well-documented. Exhibit "J" sets forth plainly the degradation of Mr. Katsilometes existing water rights. Water temperature has decreased from his well substantially since the Foundation began running their pumps, especially since they began providing water to Vargasons on an almost constant basis. Therefore, the Foundation's actions, based upon their "agreements" with the Vargasons, have reduced and will continue to reduce the quantity of waters available under existing water rights.

B. <u>The water supply is insufficient for the purpose for which it is being sought to be appropriated</u>.

Keith Wilson testified on behalf of the Applicants that he calculated the amount of water necessary for their proposed fish propagation purposes based on information found in Applicants' Exhibit No. 17. However, Exhibit No. 17 specifically indicates that the calculations and assumptions made therein can only be used for trout and would not be valid for any other species. Therefore, the fish flow determination chart cannot be used for Tilapia, the species of fish that Vargasons testified they intend to raise.

Vargasons did not provide any other testimony or documentary evidence to suggest that the amount of water they are seeking to appropriate (3.0 c.f.s.) would be adequate

for the raising of Tilapia in the quantity that will be necessary to be commercially viable. This significant omission is a fatal flaw in Vargasons' application. Not only have Vargasons not met their burden of proving that the amount of waste water is adequate for the purpose for which it is sought, but it also clearly illustrates the speculative nature of their Application for Permit as will be discussed below.

An additional flaw in Vargasons' Application for Permit is that there was no evidence presented to suggest that 3.0 c.f.s. were being regularly discharged by the Foundation. The hearing officer noted during Keith Wilson's testimony that he never measured over 3.0 c.f.s. being discharged. The Vargasons must still prove how much water is needed and how much water is available. Until they do so, their Applications must be denied.

Although Applicants' Exhibits 5 and 16 refer to 3 c.f.s., there appears to be no evidence that amount of water was ever measured flowing from the discharge pipe on the Vargasons' property. Therefore, there is absolutely no proof that the right which they are claiming will ever produce the amount of water that Exhibit 17 suggests will be necessary, assuming it has any application to Tilapia.

C. <u>Vargasons' application has been made for purely speculative purposes.</u>

Vargasons have made an application for a permit for the raising of a non-native variety of fish, Tilapia. They concede that they have little background or scientific experience in this area. The raising of fish in general, and Tilapia in particular, at a commercial level requires an amount of expertise that Vargasons have not yet illustrated that they possess. For example, Vargasons have not submitted a business plan or other information showing how this proposed use will be economically viable. These fish are not being raised merely for enjoyment, but for

commercial purposes. In order for that commercial purpose to succeed, Vargasons must prove that given the nature of their water supply, they have an economically viable business. This has not been done.

Furthermore, there were issues raised at the hearing as to whether or not Vargasons can comply with state and federal regulations involved in creating a commercial fish propagation facility. Despite Karen Vargason's testimony that they meet all regulations, two exhibits submitted by Protestants state to the contrary. Protestants' Exhibit Nos. 12 and 13 both make it clear that there are serious questions regarding compliance with state and federal regulations. For example, in Applicants' Exhibit No. 12, Greg Tourtlotte, Regional Supervisor for the Idaho Fish & Game, stated:

> Private fish ponds require a permit from our department and commercial fish ponds require a permit from the Idaho Department of Agriculture. If this will be a commercial facility, we would have concerns regarding the nutrient content of the effluent and its impact in the Portneuf River. A commercial facility may require a National Pollution Discharge Elimination System (NPDES) Permit which is the jurisdiction of Idaho Division of Environmental Quality and the U.S. Environmental Protection Agency. We also have concerns regarding the species of fish propagated and their disease status. We would caution the Applicants that the acquisition of supplemental permits are separate processes and not insured by the issuance of a water right. Applicants' Exhibit 12.

Vargasons did not provide any evidence or documentation at the hearing suggesting that they have been or would be able to meet these concerns. The IDWR should not be willing to take their word that everything will be approved.

The Vargasons' Application is also speculative because they are relying upon an uncertain source of water for the viability of their operation. The Vargasons testified that on earlier occasions when the pumps stopped running they experienced a devastating fish kill.

However, they portrayed these as isolated incidents which were not likely to reoccur. It is hard to understand that if this is a serious business venture, why the Vargasons would have such a cavalier attitude. The Vargasons are totally dependent upon the Foundation's willingness to leave their pumps on 24 hours a day, 365 days a year, unless those times happen to coincide with their fish harvest. The fact that the pumps have accidentally gone off twice since the Vargasons commenced their project, is a strong indicator that it is likely to occur again.

Furthermore, Vargasons appear to be relying on Mr. Meline's personal commitment to them to keep the pumps running on an almost constant basis. It should be assumed that Mr. Meline will not be the Foundation's Executive Director forever. Should a new Director be appointed, who is not as willing to bend over backwards to comply with the Vargasons' desires, the Vargasons' commercial fish operation will be in further jeopardy.

The very nature of the water right upon which their entire operation will be based, which is a "waste water" right, illustrates the speculative and risky nature of the Application. As has been set forth by the Idaho Supreme Court in Sebern v. Moore:

> Surface waste and seepage water may be appropriated . . . subject to the right of the owner to cease wasting it, or in good faith to change the place or manner of wasting it, or to recapture it, so long as he applies it to a beneficial use. 258 P.2d at 178.

In other words, by its very nature, waste water is subject to being used, moved, or in some way eliminated without Vargasons having any say. Karen Vargason admitted in her rebuttal testimony that her application was subject to the Foundation's prior right to use the water and heat for future development. If the use by future development were to significantly cool the water, or cause the water to be discharged in another location more convenient for the

Foundation, Vargasons' entire operation would become unviable.

In order to run a commercially viable warm water fish farm, it is well known, and should be common sense, you must have a reliable source of water. In this case, Vargasons are relying upon waste water, which is an inherently unreliable source of water. Compound that with the fact that the water must be of a certain temperature to be used by the Vargasons, then the speculative nature of their application is obvious. Should future development occur and should that future development consume more water or take more heat from the water, the Vargasons will be receiving less water and/or colder water. To base an application for permit to a water right, not to mention a business venture, on such an uncertain source of water is not just speculative, it is imprudent.

D. Vargasons lack sufficient financial resources.

Vargasons did not establish they have significant financial resources to complete the work necessary to make their project commercially viable. Vargasons testified as if nothing further would be required of them to make this operation viable. In the event further finances were needed, Karen Vargason testified that she could rely upon her "savings." However, because of the speculative and risky nature of the "waste water" right that they are depending upon, it is entirely possible that alterations to their system will be needed to compensate for less water and/or cooler water.

Furthermore, with the absence of a business plan, the Vargasons have not proven the commercial viability of the projects. Without knowing this important factor, the adequacy of Karen Vargason's "savings" to operate this fish farm has not been established and should not be assumed.

The Idaho Supreme Court has held that the applicant has the burden to establish that it is "reasonably probable" that they will be able to obtain the necessary financing within five years to complete the project. Shokal v. Dunn, 109 Idaho 337, 707 P.2d 441 (1985). Although Karen Vargason testified that she had some "savings," no business plan or specific monetary figures or information were provided to the hearing officer to make a showing that it was "reasonable probable" that the project could be fully financed and complete within five years. This was the Vargasons' burden of proof and they did not meet it.

E. Vargasons' Application is not in the local public interest.

The local public interest is defined as "the affairs of the people in the area directly affected by the proposed use." I.C. §42-203A(5)(e). In this case, the area directly affected by the proposed use is very large. For example, each of the Protestants are obviously in the area of proposed use. Furthermore, all of the citizens of Lava Hot Springs are in the area affected by the proposed use. Lava Hot Springs, as a regional recreational facility, draws visitors from throughout Southeastern Idaho and the world. Because of the unique nature of the Foundation's facility, and the rare geothermal water resources in this region, a large portion of the state is arguably directly affected.

On a more localized level, as has been set forth in Argument III(A) of this brief, the Protestants are adversely affected by the proposed use. Any agreement which creates an incentive or obligation for leaving the Foundation's pumps on 24 hours a day, 365 days a year, has an obvious adverse impact on Katsilometes and the other Protestants.

The Lava Hot Springs Community is also adversely affected. For example, the rights purported to be granted to Vargasons by the Foundation (Applicants' Exhibit Nos. 2 and 3)

could result in a chilling effect on future development in the Lava Hot Springs area. This would deny the Lava Hot Springs Community of a potential source of economic growth and development. For example, the Foundation certainly will have opportunities for future development whereby additional facilities, which would hire additional local residents and bring additional monies into the community, would be constructed utilizing the Foundation's water rights. However, if such development were halted, delayed, or modified in order to insure viability of the Vargasons' fish farm, this would not be in the local public interest. This would also affect visitors to the facility throughout Southeastern Idaho.

In short, it is not in the local public interest to put the needs of the Vargasons over the needs of the entire community. Additionally, Katsilometes and the other Protestants should not have their water rights and livelihoods threatened. That is the effect of what the Foundation and the Vargasons have attempted to do.

The waters used by the Foundation have a rich and important history in Lava Hot Springs. They are a rare and special resource that must be wisely and cautiously managed. These waters have been used for recreational and therapeutic purposes. Historically, the water has not been used for fish propagation. Fish propagation only benefits the Vargasons, while continued use for heat, recreational, or therapeutic purposes benefit many people. Granting the Vargasons' Application for a Permit will not benefit the public nor the Foundation, just the Vargasons.

The law is clear that the burden of proof on the issue of local public interest lies with the applicant. Shokal v. Dunn, 109 Idaho 330, 707 P.2d 441 (1985). The Vargasons had the burden at the hearing to prove why it was in the local public interest for their application to

be granted. Only if that burden is met do Katsilometes and the other Protestants have the obligation to prove to the contrary. It is Katsilometes' position that the Vargasons never met their burden. Even if that is not true, we believe substantial evidence was presented at the hearing to establish that their application is not in the "local public interest."

F. <u>Vargasons' Application is contrary to conservation of water resources within the State of Idaho</u>.

As has been discussed in Argument I(C) and (D), of this brief, it was unnecessary for the Foundation to physically move this so-called "waste water" off of the Foundation property and onto the Vargasons for their use. In fact, the testimony of Mr. Mehlhoff and Mr. Blanchard was specific that it is unnecessary to "bleed" any water off from the heat exchangers to the Vargasons in the first place. (See Argument I(E)).

By the very nature of this claim, the Vargasons are seeking to use "waste" water. (See Applicants' Exhibit 5). Their alleged "Agreement" with the Foundation is for "all excess" water. (See Applicants' Exhibit 3). By definition, their claims are for water that is being wasted. This is not consistent with conservation because it encourages or obligates the Foundation to continue wasting its water, rather than putting it to beneficial use.

Water is an important resource to the State of Idaho. In fact, it has been called the life blood of the State of Idaho. It is a resource that must be managed wisely and prudently. The actions of the Foundation in deliberately designing a system to take water to a private individual, and leaving their pumps running 24 hours a day, 365 days a year, when arguably several months of the year there is no need to have the pumps running at all, obviously encourages the wasting of water rather than conservation. If the pumps were turned off in the

months of May, September, or at other times when there is no need to heat the water or the buildings, everyone would be benefitted except the Vargasons. The IDWR should not sanction the intentional wasting of waters in order to benefit the Vargasons.

IV. VARGASONS' APPLICATION FOR PERMIT NO. 29-08164 DOES NOT MEET THE REQUIREMENTS SET FORTH IN I.C. §42-203A.

Vargasons' Application for Permit No. 29-08164 (Applicants' Exhibit 6) refers to a request to appropriate 7.0 c.f.s. directly from springs on the Lava Hot Springs Foundation, presumably through an existing pump or a new pump and transferred by an existing pipe or new pipes. Many of the arguments previously made in this brief are also applicable to this specific permit, especially those raised in Argument III. In order to avoid repetition, all arguments made against Permit No. 29-08162 are specifically incorporated by reference as they pertain to Permit No. 29-08164. Katsilometes will highlight specific additional areas of concern related to Permit No. 29-08164 in this portion of his brief.

A. Vargasons' Application for Permit No. 29-08164 will reduce the quantity of water available under existing water rights.

All of the damages documented by Katsilometes and the other Protestants concerning the adverse impact on their water rights will only be greatly exacerbated if the Vargasons are given a new right to pump an additional 7.0 c.f.s. Katsilometes and the other Protestants are already being adversely affected by the Foundation's and Vargasons' current uses of the water. To draw an additional 7.0 c.f.s. could create a catastrophe in the area.

The source of this water is uncertain. We can only assume Applicants are talking about additional water on state property. There is no proof they can appropriate such water

without harming the Protestants, the Foundation, or other prior appropriators.

B. The water supply is not sufficient for the purpose for which it is sought to be appropriated by Vargasons in Permit No. 29-08164.

It was clear from the testimony at the hearing that the 7.0 c.f.s. requested by Vargasons under this permit exceeds the amount of water currently being appropriated by the Foundation itself. Seven c.f.s. appears to be an arbitrary number calculated by the amount of water needed to create a certain volume of water (20,650 c.f.). (See Applicants' Exhibit 6).

When questioned under cross-examination, Keith Wilson doesn't know if the Foundation's rights themselves were actually researched. In fact, Keith Wilson testified he doesn't know the actual amount diverted, but only suggested 7.0 c.f.s. be entered into the application to reflect the estimated amount that would be needed for the Vargasons' proposed use. Such evidence clearly undermines the entire basis for Permit No. 29-08164. Vargasons have a duty to prove that there is enough water for them to appropriate at the rate they are requesting. They have not met this burden.

C. Vargasons' Application for Permit No. 29-08164 has been made for speculative purposes.

Not only is Permit No. 29-08164 speculative for the same reasons that Permit No. 29-08162 is speculative, but there are also an entirely different set of problems which call into question the viability of the permit. For example, Karen Vargason testified about installing an additional pump. There was no testimony presented that the Foundation had approved or would approve the installation of an additional pump. Furthermore, there was no testimony provided that Vargasons could use the existing pumps of the Foundation.

Vargasons also appear to be speculating that they may be allowed to use an

existing pipeline that has been referred to as the "spare pipe" or "Pipe No. 1." (See attachment 1 to Applicants' Exhibit 4). Once again, there is absolutely no evidence in the record that the Foundation has approved, will approve, or can approve Vargasons' use of the existing pipe. Furthermore, there is no evidence in the record that the Foundation has approved, will approve, or can approve an easement allowing Vargasons to construct their own pipeline across Foundation property.

The question must be asked that if the amount of water set forth in Application for Permit No. 29-08162 is supposedly adequate for the commercially viable facility envisioned by the Vargasons, why is this additional permit required? The answer is clear that the Vargasons anticipate future development, which once again would qualify as a speculative purpose. If that is not true, then they must know that the amount requested in Permit No. 29-08162 is inadequate. Either way, the Applications should be denied.

D. Vargasons have not proven they have sufficient financial resource to complete the work necessary for Permit No. 29-08164.

In all probability, Vargasons will have to engage in substantial expenditures in order to install a pump and other necessary equipment for Permit No. 29-08164. There was no testimony provided by Vargasons or other evidence as to the costs associated with the purchase and installation of an additional pump or even the construction of an additional pipeline. Once again, we are left to assume Karen Vargason's "savings" will be adequate for any expenses incurred. The Vargasons have clearly failed to meet their burden that financing would be "reasonably probable." Shokal v. Dunn, 109 Idaho 337, 707 P.2d 441 (1985).

E. Vargasons' Application for Permit No. 29-08164 is contrary to the local public interest.

Once again, to allow the Vargasons the right to appropriate an additional 7.0 c.f.s. of water from the Foundation's land is not in the local public interest. For starters, such an application would effectively thwart the Foundation's ability for future development. Future development would bring jobs and a needed economic boost to the Lava Hot Springs area. It is beyond comprehension why the Foundation has not filed a protest against this application.

The Vargasons' use of 7.0 c.f.s. would at best provide only a minimal benefit to the local community, while substantially benefitting only them. Weighing the equities, the public has the greater interest in not allowing Vargasons to appropriate 7.0 c.f.s. of water from the Foundation's lands.

F. Vargasons' Application No 29-08164 is contrary to the conservation of water resources within the State of Idaho.

For many of the reasons set forth above, Application No. 29-08164 is not consistent with conservation of the water resources of the State of Idaho. Seven c.f.s. of water is a huge amount of water. To dedicate that much water solely for the propagation of fish, is not consistent with conservation.

For example, this 7.0 c.f.s. of hot geothermal water could be put to much better recreational, therapeutic, or other uses that would benefit the local public interests and the State of Idaho as a whole. Furthermore, allowing Vargasons to appropriate the 7.0 c.f.s. would put future development of Foundation property at risk, which also would not be consistent with the conservation of an important resource of the State of Idaho. Where Vargasons have not proven that much water even exists, or that they have a right to remove that much water independently from the Foundation's property, this application clearly is inconsistent with the policy of

conserving an important resource of the State.

CONCLUSION

For the reasons set forth above, Katsilometes strongly urges the Court to refuse to issue Permit No. 29-08162 and Permit No. 29-08164 in the name of Lazy V Ranch. Katsilometes' objections raised at the hearing and in this brief provide substantial and legitimate reason for the rejection of both permits. The characterizations made by the Applicants and others, including the Foundation, of Mr. Katsilometes' protests have been unfair and demeaning. Katsilometes respectfully submits that a fair and reasoned examination of the evidence will lead to the conclusion that both permits must be denied.

RESPECTFULLY SUBMITTED This 28th day of November, 1997.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY That on this 28th day of November, 1997, a true and accurate copy of the foregoing was sent by U.S. Mail, postage prepaid, to the following:

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BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE

STATE OF IDAHO

IN THE MATTER OF APPLICATIONS FOR PERMIT NO. 29-08162 AND FOR PERMIT NO. 29-08164 IN THE NAME OF LAZY V RANCH	)	**MOTION FOR RECONSIDERATION OF RECOMMENDED ORDER** (Idaho Code §67-5243(3))

COMES NOW the Protestant, George Katsilometes, and pursuant to Idaho Code §67-5243(3), hereby files this Motion for Reconsideration of Recommended Order of the Hearing Officer, Gary Spackman, dated May 14, 1998 and mailed to the Protestant on May 29, 1998.

The grounds upon which this Motion for Reconsideration are based are set forth as follows:

1. The Hearing Officer's recommended order virtually ignores every legal issue raised by the Protestant, George Katsilometes in his "Closing Argument and Post-Hearing Brief" dated November 28, 1997. Specifically, the following legal issues, thoroughly briefed and

outlined by Protestant, George Katsilometes were not significantly touched upon in the Recommended Order:

A. Vargason's application for Permit 29-08162 should be denied because the water applied for was not "waste water".

(1) The water Vargasons are claiming is not waste water because it is not first put to beneficial use by the Foundation.

(2) The water Vargasons applied for is not waste water because it does not have to leave the Foundation's property through Vargason's property.

(3) The water applied for by Vargason's is not "waste" water because it is not necessary to "bleed off" this water from the heat exchanger systems in the first place.

B. Vargason's application for Permit 29-08162 should be denied because the agreement with the Foundation to provide water for the Vargasons is invalid.

(1) The agreements between the Foundation and Vargasons lack the necessary legal formalities to be binding on either side.

a. Both agreements lack legal descriptions.
b. Both Thayne Vargason and Karen Vargason did not sign the agreement.
c. The agreements are signed on behalf of "Lazy V Ranch," an entity that was not in existence at the time of signing and is still not in existence.
d. There is no record in the Minutes of the Board of Directors of the Lava Hot Springs Foundation consenting to, authorizing, or ratifying Mr. Meline's signing of Applicant's Exhibit Nos. 2 and 3.
e. The agreements are invalid because they are vague and/or ambiguous.

(2) The agreement between Vargasons and the Foundation is invalid because it is contrary to the authority granted the Foundation.

a. There is not a factual basis for many of the findings of fact contained in the Recommended Order.

C. Vargason's application for Permit No. 29-08162 should be denied because it fails to meet all of the criteria set forth in Idaho Code §42-203(a).

D. Vargason's application for Permit #29-08164 does not meet all the requirements set forth in Idaho Code §42-203(a).

2. Finding Number 27 is not substantiated by the record in that the "Lessee of the condominiums" testified at the hearing that an objection was not made to Mr. Meline. The Investigative Report of the Idaho Attorney General's Office (Exhibit "4") indicated that there was not real opposition from the condominium owners to the placement of a pipeline through the leased property. Gary Blanchard, the contractor on the Foundation project testified that he was not personally aware of any significant opposition. A close review of the testimony and Applicant's Exhibit "4" finds that there is no factual basis for this finding of fact.

3. There are not substantial facts in the record upon which the Hearing Officer could make his findings of fact contained in Paragraphs 51 through 74. For example, on Finding No. 51, the Hearing Officer concludes that he must "presume that the well casing was not perforated," but he states in Finding No. 56 that Mr. Katsilometes testified that his casing was perforated. No explanation is given why the Hearing Officer chose not to believe Mr. Katsilometes.

4. In Finding of Fact No. 77 the Hearing Officer correctly finds that a graph used by Keith Wilson to determine the flow rate for raising fish was only to be used for trout rearing and propagation. However, in Conclusion of Law No. 12, he contradicts himself by concluding that a trout water sufficiency curve can be used to make determinations for other species of fish

without being speculative.

5. Protestant has numerous other concerns about the adequacy of the findings and conclusions and reserves the right to raise those issues if it is necessary for him to file a brief upon denial of reconsideration.

RESPECTFULLY SUBMITTED This 11th day of June, 1998.

Gregory W. Moeller
of Rigby, Thatcher, Andrus, Rigby, Kam
& Moeller, Chartered
Attorneys for George Katsilometes

CERTIFICATE OF SERVICE

I HEREBY CERTIFY That on this 11th day of June, 1998, a true and accurate copy of the foregoing was sent by U.S. Mail, postage prepaid, to the following:

Gary Spackman
Hearing Examiner
Department of Water Resources
1301 N. Orchard
Boise, ID 83726

John Mehlhaff
1424 High St.
Auburn, CA 95603

Evelee Hill-Rush
P.O. Box 4905
Pocatello, ID 83205-4905

Duke Walden
P.O. Box 127
Lava Hot Springs, ID 83246

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

Gregory W. Moeller

RECEIVED
JUL 27 1998
Department of Water Resources

RECEIVED
JUN 12 1998
Department of Water Resources

Jack H. Robison
JONES, CHARTERED
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RECEIVED
JUN 15 1998
WATER RESOURCES
WESTERN REGION

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE

STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR PERMIT NO. 29-08162 AND FOR PERMIT NO. 29-08164 IN THE NAME OF THE LAZY V RANCH	**PETITION FOR RECONSIDERATION**

COMES NOW the Applicant, by and through the attorney of record, Jones, Chartered, and hereby petitions for reconsideration, in part, of the recommended Order. Applicant objects to Condition No. 2 which provides as follows:

> "the permit holder must obtain written consent from the Lava Hot Springs Foundation for development of low temperature geothermal water arising on Foundation property for fish propagation prior to any development or diversion of water under this permit."

Applicant further objects to the portions of the Findings of Fact and Conclusion of Law creating law in excess of the authority of the Idaho Department of Water Resources ("IDWR") with regard to the Lava Hot Springs Foundation ("Foundation").

The Lava Hot Springs Foundation is not a party to the above entitled action. They have not filed a protest to the application. To the contrary, the evidence demonstrates that the Foundation historically supported and assisted the Applicant in the development of the fish farm operation and was supportive at the hearing. The Foundation has agreements with the Applicant which have been fully performed both by the Vargasons and the Foundation. The Foundation has had the use and benefit of the easement and discharge of water through pipes within the easement for over seven (7) years. No issue exists between the Applicant and the Foundation to be resolved by the IDWR.

Condition No. 2 proposed by the IDWR, necessarily rejects the history of agreements between the Foundation and the Applicant. The uncontradicted evidence at the hearing is that the Applicant has an agreement for access and will receive the water in the future. If the Foundation has an issue with the Applicant, it has authority to deal with those issues without the direction of the IDWR. However, the Foundation raised no such issues as a protestant or otherwise.

The IDWR is usually careful in the exercise of its statutory authority to avoid interfering with the rights of third parties. For example, Orders routinely disclaim that the grant of a permit "does not grant any right-of-way or easement across the land of another." However, by proposing Condition No. 2, IDWR exercises its authority over the relationship of the Applicant with another independent governmental entity and dictates the manner in which the Foundation is to discharge its authority. It is not the job of the IDWR to adjudicate land use and other issues between adjoining landowner even if they were parties to the action. Condition No. 2 was not requested by any party to the action, nor did the Foundation request benevolent interdiction of the

IDWR. The Applicant is at a loss to explain why the IDWR has chosen to create and define the legal duties of another governmental agency at the expense of the Applicant.

Condition No. 2 is further objectional as an improper delegation of authority by the IDWR to another branch of government. Condition No. 2 grants ultimate authority to the Foundation for the approval of Applicant's permit. If Condition No. 2 fails, the permit fails. The IDWR has no authority and none is cited for legislating this authority to the Foundation and none is provided under Idaho Code §67-4402. The determination by IDWR in paragraph 3 of the Conclusion of Law that the "law does not expressly charge the Foundation with any public interest responsibility" contradicts such action by the IDWR. Idaho Code §67-4401 does not legislate to the Foundation the manner in which it is to manage property. The IDWR is in no position to direct any particular action by the Foundation. Condition No. 2 requires the Foundation to again approve the use. The IDWR has no authority to force the Foundation to comply with the directive of the proposed Order or any other requirement as was evident throughout the proceedings.

To require the Applicant to re-apply to another governmental agency for this directive dictated by the IDWR is unprecedented. Condition No. 2 will cause needless delay and further expense to the Applicant. The IDWR's proposed assumption of authority of the relationship between the Applicant and another governmental body, is intermeddling and improper. The consequences are severe. For example, will the IDWR defend the Foundation in the event that it now disapproves or refuses to act as required by the IDWR. If the Foundation were to repudiate its existing agreements, the Applicant may have no choice but to bring suit against the Foundation

for breach of contract and for damages. The damages would include the loss of the permit and expenses of the development including attorney fees in pursuit of the permit. Of the relief requested, the Applicant should request that the Foundation be ordered either to comply with the existing agreements (if the permit was not lost) or to remove the pipe and pay the Applicant for the reasonable value of the use of their land for the last seven (7) years and for the loss of the business opportunity. The Applicant has no reason to believe the Foundation will not continue its harmonious relationship with the Applicant. The above description of consequences is merely an example of foreseeable consequences to the Applicant and third parties if the IDWR persists in the proposed Condition No. 2. The Applicant believes that such consequences could not have been fully considered by the IDWR before proposing Condition No. 2.

The irony is that Condition No. 2 is not necessary to the approval of the permit. Neither the Applicant nor the Foundation have ever challenged or disclaimed their existing agreements. Both the Applicant and the Foundation have benefitted from the easement and installation of the pipes. Applicant's Exhibit No. 8 is the letter from the attorney for the Foundation dated October 1, 1996 to Norman C. Young which acknowledges the agreement. As stated by Mr. Strack, "the Foundation agreed to the diversion in return for the Ranch's permission to run the waste water pipe across Ranch's property." Other references are in the Foundation's minutes. The issue is not whether the Foundation will or will not comply with Condition No. 2, but rather whether such exercise of such authority by the IDWR is necessary or proper. To now mandate that the Applicant and the Foundation must take further action at the behest of IDWR is beyond its review authority and the criteria established in Idaho Code §42-203A. There is absolutely no

evidence before the IDWR to justify Condition No. 2. Applicant requests that Condition No. 2 be omitted.

RESPECTIVELY SUBMITTED this 11th day of June, 1998.

Jack H. Robison, attorney for Applicant

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 11th day of June, 1998, a true and correct copy of the foregoing document was served by the method indicated below upon each of the following:

Gregory W. Moeller Rigby, Thatcher, Andrus, Rigby, Kam & Moeller P.O. Box 250 Rexburg, Idaho 83440	__X_ U.S. Mail, Postage Prepaid _____ Hand Delivered _____ Facsimile
Gary Spackman Hearing Examiner Department of Water Resources 1301 N. Orchard Boise, Idaho 83726	_____ U.S. Mail, Postage Prepaid _____ Hand Delivered __X_ Facsimile (208) 327-7866 __X_ Overnight Mail
Evelee Hill Rush P.O. Box 4905 Pocatello, Idaho 83205-4905	__X_ U.S. Mail, Postage Prepaid _____ Hand Delivered _____ Facsimile
John Mahlaff 1424 High St. Auburn, CA 95603	__X_ U.S. Mail, Postage Prepaid _____ Hand Delivered _____ Facsimile
F.L. Duke Walden 1353 Akers Road Hot Springs, Arkansas 71901	__X_ U.S. Mail, Postage Prepaid _____ Hand Delivered _____ Facsimile
Bob Meline Lava Hot Springs Foundation 420 East Main Lava Hot Springs, Idaho 83246	__X_ U.S. Mail, Postage Prepaid _____ Hand Delivered _____ Facsimile

Jack H. Robison

State of Idaho
DEPARTMENT OF WATER RESOURCES
1301 North Orchard Street, P.O. Box 83720, Boise, Idaho 83720-0098
Phone: (208) 327-7900 FAX: (208) 327-7866

PHILIP E. BATT
GOVERNOR

KARL J. DREHER
DIRECTOR

July 24, 1998

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John Mehlhaff
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Auburn, CA 95603

F.L. Duke Walden
P.O. Box 127
Lava Hot Springs, ID 83246

Re: Application for Permit No. 29-08162 and 29-08164 in the name of Lazy V Ranch

Dear Interested Parties:

I signed an order denying petitions for reconsideration on July 1, 1998, that document was mailed on July 10, 1998. The late mailing was compounded by an incomplete mailing certificate, and some of the parties were never served with the document. I have asked that the document be remailed to all of the parties. Exceptions must be filed with the director within twenty-one (21) days of the mailing date written in the amended certificate of service attached to the enclosed order.

I am sorry for any inconvenience caused by our errors.

Sincerely,

L. Glen Saxton

for: Gary Spackman
Hearing Officer

Encl.
H:\TMP\LAZYSERV.LET

State of Idaho
DEPARTMENT OF WATER RESOURCES
1301 North Orchard Street, P.O. Box 83720, Boise, Idaho 83720-0098
Phone: (208) 327-7900 FAX: (208) 327-7866

PHILIP E. BATT
GOVERNOR

KARL J. DREHER
DIRECTOR

July 10, 1998

RE: In the Matter of Application for Permit No. 29-08162 and 29-08164 in the name of Lazy V Ranch

Dear Interested Parties:

I have enclosed a copy of the Order Denying Petitions for Reconsideration issued in connection with the above referenced applications for permit.

If you have any questions concerning the enclosed document, please contact me directly at (208)327-7953.

Sincerely,

Julie L. Yarbrough

JULIE L. YARBROUGH, Senior Secretary
Water Allocation Bureau

Enclosure

c: IDWR - Eastern Region

State of Idaho
DEPARTMENT OF WATER RESOURCES
1301 North Orchard Street, P.O. Box 83720, Boise, Idaho 83720-0098
Phone: (208) 327-7900 FAX: (208) 327-7866

PHILIP E. BATT
GOVERNOR

KARL J. DREHER
DIRECTOR

May 29, 1998

RE: In the matter of Applications for Permit No. 29-08162 and 29-08164 in the name of Lazy V Ranch

Dear Interested Party:

The accompanying order is a "**recommended order**" issued by the department pursuant to Section 67-5243, Idaho Code. The provisions of this order will not become effective until the Director issues a final order in this matter.

Each party to these proceedings who appeared at the hearing may file a petition for reconsideration, briefs and exceptions to the recommended order and may request oral argument before the Director of the department as further described below:

PETITION FOR RECONSIDERATION

Any party may file a petition for reconsideration of a recommended order with the hearing officer issuing the order within fourteen (14) days of the service date of the order. The hearing officer will act on a petition for reconsideration within twenty-one (21) days of its receipt, or the petition will be considered denied by operation of law. See Section 67-5243(3), Idaho Code.

EXCEPTIONS AND BRIEFS

Within twenty-one (21) days after (a) the service date of this recommended order, (b) the service date of a denial of a petition for reconsideration from this recommended order, or © the failure within twenty-one (21) days to grant or deny a petition for reconsideration from this recommended order, any party may in writing support or take exceptions to any part of a recommended order and may file briefs in support of the party's position on any issue in the proceeding. Written briefs in support of or taking exceptions to the recommended order shall be filed with the Director. Opposing parties shall have twenty-one (21) days to respond.

ORAL ARGUMENT

The Director may schedule oral argument in the matter before issuing a final order. Oral argument on exceptions to a recommended order shall be heard at the discretion of the Director. If oral arguments are to be heard, the Director will, within a reasonable time, notify each party of the place, date and hour for the argument of the case. Unless the Director orders otherwise, all oral arguments will be heard in Boise, Idaho.

CERTIFICATE OF SERVICE

All exceptions, briefs, requests for oral argument and any other matters filed with the Director in connection with the recommended order shall be served on all other parties to these proceedings in accordance with Rules of Procedure 302 and 303.

FINAL ORDER

The Director will issue a final order within fifty-six (56) days of receipt of the written briefs, oral argument or response to briefs, whichever is later, unless waived by the parties or for good cause shown. The agency may remand the matter for further evidentiary hearings if further factual development of the record is necessary before issuing a final order. The department will serve a copy of the final order on all parties of record.

APPEAL OF FINAL ORDER TO DISTRICT COURT

A party aggrieved by a final order of the Director is entitled to judicial review in compliance with sections 67-5271 through 67-5279, Idaho Code.

Sincerely,

L. Glen Saxton

L. GLEN SAXTON, Chief
Water Allocation Bureau

Enclosure

c: IDWR - Eastern Region

Jack H. Robison
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RECEIVED
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WATER RESOURCES
WESTERN REGION

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE

STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR PERMIT NO. 29-08162 AND FOR PERMIT NO. 29-08164 IN THE NAME OF THE LAZY V RANCH	)))))	**APPLICANT'S RESPONSE**

COMES NOW the Applicant, by and through the attorney of record, Jones, Chartered, and hereby submits the following response to the Closing Arguments of Post Hearing Brief of the Protestant George Katsilometes.

STATEMENT OF FACTS

The Applicant does not profess to detail the extensive testimony from the hearing. The Applicant provided extensive testimony on all issues including each issue set forth in Idaho Code §42-203(a)(5). The Applicant hereby submits general observations regarding the issues and criteria.

I. APPLICATION NO. 29-08162 FOR 3CFS

As testified to by Karen Vargason, her application is based upon an evolving experiment by the Vargasons, the Foundation, Fish and Game, Shelly High School and other entities involved

in the project. The Applicant has the advantage from the evolving development as the project has been substantially completed and the viability and feasibility of the operation has been demonstrated in actual use. From the beginning, the parties reasonably believe that the authority for the project was with the Lava Hot Springs Foundation. It was not until the attorney general's opinion occurring during these proceeding that the role of the Department of Water Resources was realized. Consequently, the above applications were pursued. Ms. Vargason relied substantially upon the expertise of Keith Wilson of the Department of Water Resources in preparing and filing for the applications.

The application for 3CFS indicates that the source of the water is waste water. The Hearing Officer requested additional guidance regarding the definition of waste water. The term waste water on the application was not generated by the Applicant. It was provided by Keith Wilson. While the Protestant on page 9 of their brief state it is "difficult to find a true statutory definition of waste water", the view of the Applicant is contrary.

To the authority cited by the Protestant actually supports the Applicant. The understanding and actual use by the Foundation and Vargason is the water which has been applied to beneficial use by the Foundation and is not consumed and is not subject to any further use before it is discharged into the Portneuf River. This condition exists both at the discharge to the swimming pool as well as the completed point of diversion at the junction box on the Foundation's property. Both point of diversions are within the application being located in the same government lot 7. See Exhibit K. The Foundation pipeline is merely the conduit for transporting the water after it has been used to the Portneuf River. Under the present design and use, these discharges will continue indefinitely and there are no known future uses of this water by

the Foundation. Nevertheless, either under the agreement between the Foundation or the law of waste water, the Foundation is not precluded from subsequent uses. However, it was testified that any such future uses would be non-consumptive and will likely add to the amount of discharge at the points of diversion.

The fact that the point of diversion is at the junction box before the water leaves the Foundation's property does not alter the character of the water. The pipe is merely a conduit for the water after it has been used. It is no different than the ditches referred to in Idaho Code §42-107. The character of the water does not change. The citations of authority by the Protestants does not suggest that the water must leave the property or control of the Foundation. In fact According to the authority cited by Protestant, the Foundation, as any other water user, retains the right under the law of waste water to intercept and control the water in the future. The agreement with the Vargasons is the same. Even if the water is diverted off the Foundation's property, the Foundation does not lose "control". What was intended by the parties is the use of the water after it is used by the Foundation before it is discharged into the Portneuf River, i.e. waster water. The terminology on the application does not contradict the use in fact.

As for the issues set forth in Idaho Code §42-203A(5) the proof in general by the Applicant is as follows:

Idaho Code §42-203A(5)(a) The quantity of water under existing rights is not reduced by the Vargasons' use. As noted in the response to the Protestants arguments, the Foundations' water right and use are not at issue. Whether or not there is a different way for the Foundation to use its water is irrelevant. The use by the Vargasons merely takes advantage of the existing conditions which does not affect existing water rights. The Protestants can show no damage nor

can they connect the conditions they complain of to the Vargasons' applications.

Similarly, there is no issues regarding Idaho Code §42-203A(5)(b)(c)(d) and (f). None of these requirements are issues as illustrated by the fact that the project has been operational. As testified by the Vargasons, they can use all the water within the 3CFS. They are not speculating as to the project nor was the application not made in good faith. The operation has been substantially developed to the extent that there is little if any financial investment required. Charles Sudweeks testified to any potential modifications and their costs. All of these costs are within the existing finances of the Vargasons who own their property with no debt and have significant cash reserves. The use by the Vargasons is non-consumptive and actually cools the water which is an advantage to the environment of the Portneuf River. There is simply no issue as to these points.

As to the public interest, Idaho Code §420203(A)(5)(e), the support by the Foundation of the project defines the public interest. The support is for good reason. The project is not detrimental to the environment and in fact improves the environment of the Portneuf River. Local jobs will be provided. Contrary to the speculation by the Protestants, there is no cost to the Foundation based upon their current operation of the pools. There is simply no negative impact which will be contrary to the public interest.

The Protestants make various technical arguments in part II of their Brief. Neither the Foundation nor the Vargasons have challenged their agreements. The Protestants are not parties to these agreements and do not have a legal standing or interest to challenge the agreements. Details such as the lack of a legal description, signatures, vagueness, and approvals are all moot by the fact that the pipeline is installed and the project is complete. The "what if" issues raised by

the Protestant simply do not alter the fact that the Vargasons have access and can utilize the water with the Foundation's support as testified. Similarly, the Protestants have provided no proof that the filing in the name of a corporation in any way prejudice the Protestants. There is simply no reason to grant the application either in the name of Vargason Ranch or conditional upon the subsequent filing of the corporation.

Reduced to the essential issues there is no reasonable basis to deny the application for 3CFS. The application is based upon a completed concept which can be operational upon the grant of a permit.

II. APPLICATION FOR 7CFS PERMIT NO. 29-08164.

This application was also prepared with the assistance of Keith Wilson requesting diversion of spring water from the Lava Hot Springs Foundation. The Applicant has attempted through the Foundation to access the water through its existing pipeline or even by an easement. The issues have been tabled by the Foundation pending the decision in this matter. The portions of this brief related to the application for 3CFS, are applicable to the Application. They are also interrelated. To the extent there is a waste water issue in the application of 3CFS, this Application from the spring covers the same water. In other words, whether the water is waste water or is from the spring is relevant only as to which right is granted under which permit. The Protestants put on testimony that there is excess water available at the spring not within the Foundation's water rights. The means for transport of the water is available but the Foundation has refused to act. The permit should be granted to the Applicant so that she might develop this resource.

III. PROTESTANTS HAVE FAILED TO DEMONSTRATE ANY DAMAGE OR CAUSAL CONNECTION TO THE PROPOSED WATER USE.

Katsilometes claims he noticed a change in the temperature in the water in 1991. He claims that the other Protestants have also noticed the changes in quantity accessibility and temperature of the water. Katsilometes testified that these observations were observed in 1991 "when the Foundation first began pumping water through their new system". Protestants Brief page 3.

The testimony and the approach by the Protestants are flawed. All of the testimony by the Protestants is based upon undocumented and unverified personal observations. None of the Protestants ever provided documentation that they have submitted a complaint to the Department of Water Resources or that they ever pursued their perceived damages discovered in 1991. What was demonstrated by the testimony of the Protestants was a history of increasing competition and changing uses among the Protestants. These occurred upstream, and by Katsilometes himself. The Protestants have blamed and squabbled with each other in the past about their water, inconsistent with their blame of the Foundation. The majority of the Protestants are competing for the geothermal water arising on Foundation property although Mr. Katsilometes, to demonstrate his lack of bais, claimed that his application was filed in bad faith as a "defensive action".

The testimony which depends upon the credibility of the Protestants is simply not creditable. The one attempt was the well test submitted by Mr. Katsilometes. However, the testimony as submitted by the well driller degraded the proof to "junk science". The well driller testified that the temperature of the waters were in fact the same in the second well test as the first

well test. Further, he admitted the second test was performed under conditions different from that performed under the first test. His statement was that they "got the wrong guy" to testify to the well tests.

In any event, Mr. Katsilometes can not claim any damage as he is pumping water illegally. He testified that the expansion of his use exceeded the authority of his permit,. He substantially expanded the amount of water under his permit after the time had lapsed for proof of beneficial use. Consequently, he does not have a property right in this water within which to claim damage even if damage existed.

Mr. Katsilometes theory is further flawed by the fact that his conclusions were based upon his testimony that there was no excess water being discharged by the Foundation. Mr. Katsilometes testified that he observed the white plastic discharge pipe from the Foundation and did not observe water being discharged. Katsilometes position is that there is no natural flow and that the Foundation's pumping is excessive. Mr. Katsilometes is wrong as to the discharge pipe which is a metal pipe which discharges below the water line into the Portneuf River.

The testimony of the Applicant's witnesses, who work with the system, including Charles Sudweeks, is accurate as to the operation of the system. As repeatedly testified to by various witnesses called by the Applicant, the water being utilized by the Foundation captured from the natural flow of waters arising on the Foundation property. They are not pumping water from the ground but only capturing the water naturally flowing. The amount of water being pumped at any one time is randomly variable with the excess being discharged into the Portneuf River. The amount of pumping by the Foundation has no impact upon the Protestants.

A fundamental flaw of the Protestants is that they have no proof that their alleged claims

are connected to the use by the Vargasons. The conditions complained by the Protestants stated in 1991, years before the Vargasons became involved. The Foundation's systems and methods utilizing their water are not at issue. The Protestants are using the Vargason application as a forum to complain about the Foundation. Of course, many of the Protestants are competing for the Foundation's water. Notwithstanding the statement by the hearing examiner, the Protestants pursued this strategy at the hearing and now have devoted the majority of their Brief to this issue. The portions of their Brief set forth at I(b), (c), (d), (e) and III(a), (e), (f) are all based upon this assault of the Foundations' water rights. They are irrelevant to these proceedings.

IV. CONCLUSION

The Vargasons have demonstrated their entitlement to permits for the water identified in the applications. They have demonstrated the project would be operating except for the permit. Until they obtain the permit further development is not prudent. Proof of beneficial use is not presently at issue. The other issues raised by the Protestants are either irrelevant to the application or have been rendered moot due to the stage of development of the project. Everything is on hold waiting the determination of the application. Once these permits have been issued, the fish farm will be in operation.

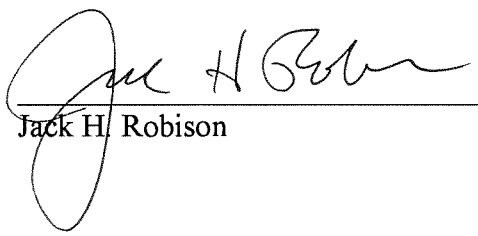
RESPECTIVELY SUBMITTED this 24th day of December, 1997.

Jack H. Robison, attorney for Applicant

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 24th day of December, 1997, a true and correct copy of the foregoing document was served by the method indicated below upon each of the following:

Gregory W. Moeller Rigby, Thatcher, Andrus, Rigby, Kam & Moeller P.O. Box 250 Rexburg, Idaho 83440	__X_ U.S. Mail, Postage Prepaid _____ Hand Delivered _____ Facsimile
Gary Spackman Hearing Examiner Department of Water Resources 1301 N. Orchard Boise, Idaho 83726	__X_ U.S. Mail, Postage Prepaid _____ Hand Delivered _____ Facsimile
Evelee Hill Rush P.O. Box 4905 Pocatello, Idaho 83205-4905	__X_ U.S. Mail, Postage Prepaid _____ Hand Delivered _____ Facsimile
John Mahlaff 1424 High St. Auburn, CA 95603	__X_ U.S. Mail, Postage Prepaid _____ Hand Delivered _____ Facsimile
F.L. Duke Walden 1353 Akers Road Hot Springs, Arkansas 71901	__X_ U.S. Mail, Postage Prepaid _____ Hand Delivered _____ Facsimile



Jack H. Robison

RECEIVED
DEC 12 1997
Department of Water Resources

FAX to: Mr. Gary Spackman
Dept. of Water Resources
1301 N. Orchard
Boise, Idaho 83726
Fax No. 208-327-7866

From: John Mehlhaff
Fax. No. 916-632-3938

RECEIVED
DEC 15 1997
WATER RESOURCES
WESTERN REGION

Re: Final Argument
Lazy V Ranch

Hello Gary,

I haven't received a copy of a closing argument from Jack Robison. Please fax me a copy at the above number, if he submitted one. If not, please let me know.

Thanks,

John Mehlhaff

FROM : Intevac RTP-Systems PHONE NO. : 916 632 3938 Dec. 12 1997 08:04AM P1

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DEC 0 1 1997
WATER RESOURCES
WESTERN REGION

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November 28, 1997

Gary Spackman
Hearing Officer
Department of Water Resources
1301 North Orchard
Boise, ID 83276

Re: In the Matter of Permit No. 29-08162 and Permit No. 29-08164 in the Name of Lazy-V-Ranch

Dear Mr. Spackman:

Enclosed for filing please find George Katsilometes' "Closing Argument and Post-Hearing Brief," as per your Order of November 4, 1997.

Sincerely yours,

Gregory W. Moeller

Enclosure

cc: Evelee Hill Rush
John Mehlhaff
F. L. Duke Waldon
Jack Robison

BEFORE THE DEPARTMENT OF WATER RESOURCES

STATE OF IDAHO

IN THE MATTER OF APPLICATIONS FOR PERMIT NOS. 29-08162 AND 29-08164 IN THE NAME OF LAZY V RANCH	)	POST HEARING ORDER

During a hearing for protests against the above entitled matter on October 23 and 24, the parties stipulated to admission of several documents contained in protestant George Katsilometes' exhibit list dated October 10, 1997. Some of the exhibits were marked and expressly received into evidence at the hearing. The remainder needed to be identified, but because of the late hour at the conclusion of the hearing, the hearing officer agreed to mark these exhibits and distribute a list of the identification corresponding to the numbers on Katsilometes' exhibit list.

In addition, after reviewing the log of exhibits, there are several exhibits were not expressly admitted. Finally, this order sets forth the briefing schedule agreed upon by the parties at the end of the hearing.

No. Listed on Oct. 10 Exhibit List	**Assigned Exhibit Identification**
4	M
5	N
27	Applicants Exhibit No. 8
28	O
29	Protestants Exhibit L
30	P
31	Q

CERTIFICATE OF MAILING

I hereby certify that on this 4th day of November, 1997, I mailed a true and correct copy, postage prepaid, of the Post Hearing Order to the parites listed below.

Sue Taylor

Sue Taylor

KAREN VARGASON
LAZY V RANCH
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LAVA HOT SPRINGS ID 83246

GEORGE KATSILOMITES
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PO BOX 670
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EVELEE HILL RUSH
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NOV 13 1997
WATER RESOURCES
WESTERN REGION

November 8, 1997

SENT VIA FACSIMILE: (208) 327-7866

Gary Spackman
Hearing Examiner
Department of Water Resources
1301 N. Orchard
Boise, Idaho 83726

RE: Karen and Thayne Vargason/Water Rights
Our file no. 5194.007

Dear Gary:

I tried to reach you during the last week without success.

In reviewing my records and your recent Order, I am unable to identify which exhibit is Exhibit 19. Could you please advise?

As to the issue of the location of points of diversion, I believe both points are described in the Application as Government Lot 7. I direct your attention to Exhibit K.

Thank you.

Yours very truly,

Jack H. Robison

JHRld
Enclosure
cc: Karen Vargason
c:\my files\wnovember97\vargason11081

RECEIVED
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WATER RESOURCES
WESTERN REGION

Ray W. Rigby
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Attorneys for Protestant, George Katsilometes

ORIGINAL

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE

STATE OF IDAHO

IN THE MATTER OF APPLICATION) FOR PERMIT NO. 29-08162 AND) FOR PERMIT NO. 29-08164 IN THE) NAME OF LAZY V RANCH))	**PROTESTANT GEORGE KATSILOMETES' CLOSING ARGUMENT AND POST-HEARING BRIEF**

COMES NOW the Protestant, George Katsilometes, by and through his attorneys of record, Ray W. Rigby and Gregory W. Moeller, of Rigby, Thatcher, Andrus, Rigby, Kam & Moeller, Chartered, and hereby submits the following Closing Argument and Post-Hearing Brief in response to the Hearing Officer's Order of November 4, 1997.

INTRODUCTION

This matter came before the Department of Water Resources at a hearing on October 23 and 24, 1997, in Pocatello, Idaho. During the hearing, a great deal of highly detailed and technical testimony was presented. Late on the evening of October 24, 1997, after two very long days of testimony, the parties agreed to submit closing

arguments in writing. This brief will serve as George Katsilometes closing argument and post-hearing brief.

STATEMENT OF FACTS

At the time this brief is due, Protestant has not had an opportunity to review a transcript. Therefore, Protestant will not provide an exhaustive account of the testimony at trial. Rather, Protestant intends to provide an overview and summary of the relevant facts that we believe were established at the hearing.

In the late 1980's, George and Fran Katsilometes purchased the Lava Hot Springs Inn, with the intent of developing it into a resort. They planned on constructing hot bathing pools which would make use of the abundant geothermal water in the area. On December 20, 1989, George Katsilometes received a "Permit to Appropriate Water" (Protestant's Exhibit "T") from the Idaho Department of Water Resources (hereinafter "IDWR").

On or about April 30, 1990, George Katsilometes (hereinafter "Katsilometes") hired Brent Hendricks of Independent Drilling to drill a geothermal well. The water was tested by Brent Hendricks in 1990 and was determined to be 122 degrees. (Protestant's Exhibit "J"). At considerable personal expense, Katsilometes developed his water right pursuant to the permit and constructed pools. Additional pools were added in 1995 and 1996.

The Lava Hot Springs Foundation (hereinafter "Foundation") is a legislatively created foundation which manages certain state-owned lands and facilities in

the Lava Hot Springs area. I.C. §67-4401 et seq. The Foundation's operations are located across the Portneuf River from Katsilometes and the other Protestants. From 1989 to 1991, the Foundation initiated a massive redesigned and upgrade of its water delivery and heat exchange systems in order to more fully utilize the local geothermal resources. The project was engineered by Charles L. Sudweeks of Engineered Systems Associates, Inc. The plumbing contractor was Gary Blanchard, of Greene Plumbing.

In 1991, when the Foundation first began pumping water through their new system, Katsilometes immediately noticed a temperature drop of approximately eight degrees from his well. From 1991 through 1995, he noted the temperature dropped from 122 degrees to 104 degrees. On October 31, 1995, Rodney Hendricks of Independent Well Drilling performed a test and determined that one well was only capable of producing water with a temperature of 104 degrees. When that well was run in conjunction with a second pump, the temperature rose to 110 degrees. See Protestant's Exhibit "J."

Katsilometes observed that when the Foundation's pumps were running, his water temperature decreased noticeably. Katsilometes also became aware that the Foundation's pumps were running almost constantly, even when the Foundation's pools were closed and not in use. Katsilometes later discovered that an Application for Permit had been filed by Thayne and Karen Vargason, (hereinafter "Vargasons") for the use of so-called "waste water" from the Foundation.

Katsilometes spoke with other water users in the Lava Hot Springs area and discovered that they were having similar difficulties with their water. As a result, Katsilometes has protested Vargasons' Applications. Protests have also been lodged by John Mehlhaff, Evelee Hill-Rush, and Duke Waldon. All of the Protestants, including Katsilometes, testified that once the Foundation's pumps started running, they noticed significant changes in the quantity, accessibility, and temperature of their water. Protestants each testified that they believe that they were damaged by not only the Foundation's use of the water, but by the Foundation's continuous running of their pumps to provide so-called "waste water" to Vargasons. Protestants testified that they believe that if the Foundation had not agreed to or felt obligated to continuously provide water to Vargasons, the pumps would not run so often, causing them damage. They were led to this inescapable conclusion because the inefficient manner in which the Foundation operates its system only benefits Vargasons. Protestants testified that they specifically noted their water quantity, accessibility, and temperature improved when the Foundation's pumps were off.

Karen Vargason testified at the hearing that Vargasons owned property bordering the Foundation property since 1987. They improved the property and added a fish pond. Karen Vargason testified that in January of 1991 she was approached by Bob Meline, Director of the Foundation. Mr. Meline represented that the Foundation had "hit a brick wall" in their efforts to place an underground water discharge pipe through property leased by the Foundation to a condominium. The original design by Mr.

Sudweeks called for the discharge pipeline to run along the western boundary of the State's property. Realizing the hot water would be a valuable asset, Vargasons entered into a written agreement with Mr. Meline to allow the Foundation an easement to construct the discharge pipe through their property in exchange for the right to "all excess water" flowing through the Foundation's discharge systems. Applicants' Exhibits 2 and 3. In her rebuttal testimony, Karen Vargason conceded that it was her understanding that any right to so-called "waste water" was subject to the Foundation's right to future development and use of the water and heat.

In approximately 1995, the Vargasons got the idea to enter into a project with Shelley High School to raise a variety of fish known as Tilapia in their pond. In the Spring of 1995, they started with 650 fish, which bred to approximately 20,000 fish by November. Vargasons testified that it is their intent to expand their operation to commercially raise Tilapia. According to Karen Vargason, the water in the pond must be maintained at temperature between 78° and 84° for the Tilapia to survive. The water from the discharge tube provided by the Foundation supplied water at approximately 102°. Therefore, the water was sprayed into the air in order to cool it. Karen Vargason testified that the hot water supply has been interrupted when at least twice the pumps shut off. As a result, the Vargasons suffered a massive fish kill.

In order to access water through the discharge pipe, a diversion device was placed on State property to allow Vargasons to directly divert the water onto their property. This was referred to as the "tap for fish pond" in Applicants' Exhibit "4,"

Attachment 1. In addition to that device, Karen Vargason testified that an attempt was made to provide access to further water through the Foundation's discharge pipe along the Portneuf River.

Karen Vargason further testified the Vargasons' desire to install a pump in the Foundation's pump house and divert the water through what she termed a "spare pipe" upon the Foundation property. This was referred to as "pipe 1" in Applicants' Exhibit "4," Attachment 1. However, Karen Vargason provided no proof that the Foundation had consented to the installation of a pump, to the use of an existing pipeline, or an easement for access along Foundation property.

It is worth noting that Bob Meline, Director of the Foundation, testified that the easement to run the discharge pipe through Vargasons' property was necessary because of stiff resistance from the owners of a condominium which was leasing Foundation property. However, this claim is clearly contradicted in the Idaho Attorney General's Investigative Report, dated April 18, 1997. (Protestant's Exhibit "L"). In that report, there is a statement from the manager of the condominium, Mrs. Jerry Wellard, who stated, "I wouldn't have told them I was against running pipes through the condominium property, because I didn't have the authority." (Protestant's Exhibit "L," at p. 3).

A fair and unbiased review of the engineering plans illustrates that there were many simpler, and less expensive options available to the designers of the system other than taking the discharge pipe through Vargason's property. This is obvious since

Mrs. Wellard's comments indicate there was no actual resistance to the original plan. The only reasonable explanation for taking the discharge pipe through Vargason's property was to benefit the Vargasons.

As a result of the decision of the Foundation to allow Vargasons the use of this "waste water," and to allow their pumps to remain in virtually constant use, Katsilometes and the other Protestants have been harmed personally. Because Katsilometes sincerely believes that not only has he been personally harmed, but also the interests of the City of Lava Hot Springs and the entire State of Idaho have been and will continue to be harmed by the conduct of Vargasons and the Foundation, Katsilometes has filed this protest.

ARGUMENT

I. VARGASON'S APPLICATION FOR PERMIT NO. 29-08162 SHOULD BE DENIED BECAUSE THE WATER APPLIED FOR IS NOT WASTE WATER.

A. Legal Definition of "Waste."

The Idaho Code specifically refers to waste water in Title 42, Chapter 1. Specifically, the statute reads:

> All ditches now constructed or which may hereafter be constructed for the purpose of utilizing seepage, waste or spring water of the state, shall be governed by the same laws relating to priority of right as those ditches, canals, and conduits constructed for the purpose of utilizing the waters of running streams. I.C. §42-107.

Interestingly, this statute refers to "ditches" which have been constructed for "utilizing seepage [or] waste [water]." Apparently, the statutory scheme did not consider water

which was intentionally diverted through a pipeline to another property as "waste."

Over the years, the Idaho Supreme Court has developed specific standards in regard to waste water. In the case of Sebern v. Moore, 44 Idaho 410, 258 P. 176 (1927), the Idaho Supreme Court stated:

> We conclude that surface waste and seepage water may be appropriated under the provisions of C.S. §5562, subject to the right of the owner to cease wasting it, or in good faith to change the place or manner of wasting it, or to recapture it, so long as he applies it to a beneficial use. 258 P. at 178.

This decision was followed in Colthorp v. Mountain Home Irrigation Dist., 66 Idaho 173, 157 P.2d 1005 (1945).

Both of these cases stand for the proposition that although "waste water" may be appropriated, the prior appropriator of the water has the right to stop "wasting" it. The prior appropriator even has the right to change the location or manner in which the water is being wasted. Therefore, if Vargasons are claiming their right to a permit on the grounds that this is waste water, they may only take it subject to the Foundation's absolute right to use the water differently in the future, discharge the water in a different location in the future, or stop wasting it altogether.

It is once again worth noting that I.C. § 42-107 refers to waste water being taken through "ditches." That is because historically waste water has been defined as flood water which escapes from a prior user's land or system onto the land of another. For example, see Gerber v. Nampa and Meridian Irrigation Dist., 16 Idaho 22, 100 P. 80 (1908). In that case, the Idaho Supreme Court considered the claim by a user of waste

water of entitlement to continue to receive the waste water. The Court held as follows:

> It appears to us the point involved in this case is, can a canal company be compelled by mandate to perpetually furnish water to a person whom it has simply accommodated with water at times when its regular customers did not need it, and when the water of its regular customers would require the full capacity of its canal if demanded? We must answer this question in the negative. If under the provisions of said section of our Constitution [Idaho Constitution §4, Article 15] a canal company is compelled to furnish water to subsequent applicants, when the capacity of its canal has already been exhausted by prior applicants and users, it would present a condition which was not intended by the provisions of said sections of the Constitution. . . . Under the provisions of our Constitution and statute the canal company must respect the rights of prior users of water therefrom, and one desiring to use water cannot compel a canal company to sell water beyond the capacity of its canal. 100 P. at 82.

In the case at hand, the Foundation is intentionally diverting the water to Vargasons. There appears to be an important distinction between water that is left in the appropriator's control versus water that has been abandoned:

> One clear element that can be pointed out is the distinction between the water right and the water. In many of the cases, the courts are talking only about the water that has left the appropriator's control and in other cases, they may only be talking about that water without having made it clear. Once the water has left the appropriator's control, it is too late to reclaim it. The water, as contrasted with the water right, has been abandoned. Usually for purposes of this rule, once water leaves the appropriator's land, it is too late to reclaim the water. Water and Water Rights, Vol. 2, §13.04, P. 150 (1991 Ed.).

It is difficult to find a true statutory definition of "waste" water. One court has defined "surplus water" as water available after reasonable beneficial use and prior appropriation rights are all satisfied. Peabody v. City of Vallejo , 2 Cal. 2d 351, 40 P.2d 486 (1935). California has also defined this as "excess" water. Meridian, Ltd. v. San Francisco, 13 Cal. 2d 424, 90 P.2d 537, *rehearing denied*, 13 Cal. 2d 495, 91 P.2d 105

(1939). In other words, it appears that the water has to have been "used" before it can be considered waste.

Interestingly, it does not appear that intentional diversion of water through a pipeline to another's property is typically considered as waste:

> Of course, only "surplus" or "excess" waters are appropriable. In this section, the consequence of an earlier appropriation on the availability of water for later appropriation is considered from the perspective of what happens to any water that **escapes** on the way to its original use and to any water that remains unconsumed after the original **use** of the water by the appropriator. There are many possible scenarios, such as: the water may overflow a reservoir or a ditch; it may seep from the bottom or sides of a reservoir or ditch; it may run off the surface after irrigation; it may percolate through the ground after irrigation; it may be ditched off and deposited in the stream by the land owner. Water and Waters, Vol. 2, §13.04, P. 148 (1991 Ed.). (Emphasis added).

In other words, "surplus" or "excess" water must have "escaped" or been "unconsumed after original use" by the prior appropriator. Under that definition, it is difficult to see how Vargasons can claim a right to this so-called "waste water." This water has not escaped and is unused. This will be set forth more fully below.

B. The water Vargasons are claiming is not "waste water" because it is not first put to beneficial used by the Foundation.

Bob Meline testified that the Foundation generally operates its heated swimming pools from June through August. Mr. Meline claims that there are times during the rest of the year when the pumps are needed in order to heat the buildings. They also need the heat to keep the pools from freezing. Assuming all that is true, there can be no logical explanation for why the pumps and the heat exchangers need to be in operation during the relatively warm months of the year when the pools and most of the

facilities are not in use. For example, in May and September, when the weather is quite temperate, the Foundation continues to run the pumps 24 hours a day.

There was testimony from Katsilometes and others at the hearing that the pumps are running at a time when the pools were not in use or being cleaned. Photographs submitted by Katsilometes show the pools empty with the pumps still running. See Protestant's Exhibits "E," "F," "G" and "J."

It appears obvious, in light of such facts, that during such periods of time the water is not being beneficially used at all by the Foundation. In fact, the only "use" of the water at all is the Vargasons using the water to heat their fish ponds. Under such a situation, how can the water possibly be deemed "waste water?" This water has not escaped from the control of the Foundation nor has it been beneficially used first by the Foundation.

Even if Vargasons were not involved, this would still be a case of a permittee (the Foundation) using more water than needed and more than can be put to beneficial use. However, this is relevant to this proceeding because the Vargasons seek to become part of this very system and benefit personally from the Foundation's misuse of its own rights. Either way, Katsilometes and the other Protestants are damaged by **any** course of action which permits the Foundation and/or the Vargasons to improperly use the waters of the State of Idaho. These hot geothermal waters are a rare and valuable resource which the IDWR must not allow to be wasted, especially when other legitimate users are damaged.

C. <u>The Water Vargasons have applied for is not "waste water" because it does not have to leave the Foundation's property through Vargasons' property.</u>

There can be little doubt that the only reason that the water at issue even reaches Vargasons' land is because it is intentionally piped there by the Foundation. However, there is no reason for this to occur. A review of the design plans submitted by Charles Sudweeks, the engineer for the Foundation project, as well as the map drawn by the IDWR Energy Division (see Attachment 1 to Applicants' Exhibit 4), shows that there is no reason why the so-called "waste water" cannot be discharged directly into the Portneuf River at a variety of other locations which would have been more direct and cheaper for the Foundation.

As was discussed earlier, the Investigative Report of the Idaho Attorney General's Office (Exhibit "4") made it clear that there was no real opposition from the condominium owners to the placement of the pipeline through the leased property. Gary Blanchard, the contractor on the Foundation project, testified that he was not personally aware of any significant opposition. He basically confirmed that there was no reason for the pipeline to go through Vargasons' property. Mr. Blanchard also testified that there was no reason why the pipeline couldn't have gone directly to the river from valve box 3. (See Applicants' Exhibit "4," attachment 1).

An issue raised during the course of the hearing was whether or not the Lease Agreement between the State of Idaho (through the Foundation) and the condominiums contained any language which would have prevented the Foundation from

placing the pipeline across the leased land. Copies of the Lease Agreement were requested from Mr. Meline in the Subpoena Duces Tecum issued by the IDWR. Mr. Meline did not bring these documents to the hearing, but represented at the hearing that they would be provided to the Protestants after the hearing. Protestants still have not received copies of these leases despite representations from Mr. Meline that they would be provided. Unless Applicants can prove to the contrary, Protestants will submit to the Court that it would be highly unusual for a state lease to prevent the State from placing an underground pipeline under its leased property.

The facts clearly illustrate that an intentional and unnecessary departure from the original design specifications was pushed through the Board of Directors by Bob Meline, based upon false representations that it was absolutely necessary to avoid delays and legal costs. This change only benefitted the Vargasons and can lead to only one conclusion: this is not "waste" water.

D. <u>The water applied for by Vargasons is not "waste" water because it is not necessary to "bleed off" this water from the heat exchanger system in the first place.</u>

The Foundation's main contractor on the project, Gary Blanchard, testified during the hearing that the so-called "bleed off" of excess water was not necessary to run the heat exchangers. Mr. Blanchard was the plumbing contractor that actually installed the heat exchangers and he has technical expertise in this area. He had extensive knowledge and experience in installing such systems. He is not a party to these proceedings and his testimony must be given great weight.

Additionally, one of the Protestants, John Mehlhaff, was certified as an expert to testify about heat exchangers. He has extensive experience in working with all kinds of systems that use heat exchangers. He also testified that there is no reason why the system needed to "bleed off" water to run the heat exchangers. He agreed with Mr. Blanchard that as the system was built, "bleed off" should be unnecessary. Their testimony also raises the question as to why a system would have been designed in the first place with "bleed off" being necessary. A more efficient and economical system would not have required "bleed off."

E. Conclusion.

In conclusion, it appears very clear that although Permit 29-08162 purports to be merely an application for a permit to use "waste water," that this is not waste water at all. The manner in which it is used and intentionally delivered to the Vargasons by the Foundation belies any effort to call it "waste water." The Foundation is not putting all of its water rights to beneficial use. This raises other serious issues which perhaps must be considered in another forum. Nevertheless, for purposes of this hearing, the facts provide strong justification for denial of Vargasons' application because they now seek to become part of this system.

II. VARGASONS' APPLICATION FOR PERMIT NO. 29-08162 SHOULD BE DENIED BECAUSE THE AGREEMENT WITH THE FOUNDATION TO PROVIDE WATER TO THE VARGASONS IS INVALID.

A. The agreements between the Foundation and Vargasons lack the necessary legal formalities to be binding on either side.

As will be discussed below, Applicants' Exhibits 2 and 3 play a very key

role in this matter. Exhibit 2 purports to be an "authorization for entrance for easement into and upon Lazy V Ranch premises for piping work," and was signed on January 29, 1991. Although Exhibit 2 states that this document will "suffice until a legal document can be obtained," no such document has ever been prepared by the State, Foundation, or Vargasons.

Applicants' Exhibit 3 purports to be an amendment to the earlier authorization for entrance of easement and is dated January 31, 1991. This document, apparently signed two days after Exhibit 2, amends the earlier agreement by granting Lazy V Ranch "the use of all excess waters that the Foundation has going through their said drainage systems." (Emphasis not added). As will be discussed below, these documents suffer from significant legal infirmities which taken separately or together render them invalid.

1. Both agreements lack a legal description.

Although the pipeline is already in place, it is impossible to discern, from looking at the document alone, where the easement actually has been granted. Vargasons, or their successors, could easily raise this issue in an attempt to challenge the easement. Similarly, there is no language in the document preventing the Foundation from asserting that the easement should be located in another place.

It should be horn-book law that any agreement concerning real property needs to contain a legal description of the property. For example, the Idaho Supreme Court held in Hoffman v. S V Co., Inc., 102 Idaho 87, 628 P.2d 218, 221 (1981) that in

order for a contract concerning real estate to be valid, the contract must, among other things, contain a description of the property and all essential terms of the agreement.

Obviously, in the case at hand, there is no valid description of the property. At most there is a description of the size of the easement. Applicants may argue that the meaning was clear to all of the parties and the conduct of the parties if the best proof of their intent. Nevertheless, if Exhibit 2 and/or Exhibit 3 were submitted to a county recorder as an easement, certainly they would not accept the legal description contained therein.

2. Both Thayne Vargason and Karen Vargason did not sign the agreement.

Karen Vargason testified that she and her husband, Thayne Vargason, both owned the property adjoining the Foundation's property. The record is clear that Thayne Vargason and Karen Vargason are both married. Therefore, in order for a real estate agreement to be binding upon them both, it would require both signatures.

Idaho Code §32-912 explains why this is necessary:

> Either the husband or the wife shall have the right to manage and control the community property, and either may bind the community property by contract, except that **neither the husband nor wife may sell, convey or encumber the community real estate unless the other joins in executing the sale agreement, deed, or other instrument of conveyance by which the real estate is sold, conveyed or encumbered**, and any community obligation incurred by either the husband or the wife without the consent in writing of the other shall not obligate the separate property of the spouse who did not so consent; . . . I.C. §32-912 (Emphasis added).

The granting of an easement certainly can be construed as a sale, conveyance, or

encumbrance upon real estate. This is not a binding agreement. Therefore, Vargasons, their heirs, or successors would have the right to disavow this agreement.

3. The agreements are signed on behalf of "Lazy V Ranch," an entity that was not in existence at the time of signing and is still not in existence.

Vargasons submitted Applicants' Exhibit 7 as an exhibit at the hearing. This document is a "Certificate of Assumed Business Name," whereby Vargasons give notice that they have adopted the name of "Lazy V Ranches" as an assumed name. Astonishingly, this document is dated just a few weeks prior to the date of the hearing on October 23, 1997.[1]

At the time Applicants' Exhibit No. 2 was signed, it purported to be an agreement between the "Idaho State Foundation" and the "Lazy V Ranch." At the time this document was signed, "Lazy V Ranch" was not a legal entity. Interestingly, Protestants are not sure whether or not at the time this agreement was signed that the "Idaho State Foundation" was even a legal entity. We can only assume Mr. Meline intended to mean the Lava Hot Springs Foundation.

Similarly, one of the parties to Applicants' Exhibit 3 is either the "Lazy V Ranch" or "Lazy V Ranches," depending on which portion of the document you look at. Once again, this document is apparently signed by the "Idaho State Foundation." None of these fictitious entities were in existence in 1991 when the agreements were signed.

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[1]The copy of this exhibit provided to Protestants does not contain a date. The version of Exhibit 7 submitted as evidence at the hearing apparently does bear the stamp of the Secretary of State's Office and indicates that it was filed just a few weeks prior to the hearing.

It is also worth noting that both the Application for Permit No. 29-8162 and the Application for Permit No. 29-8164 (Applicants' Exhibit Nos. 5 and 6) were signed by the "Lazy V Ranch, Inc." However, it was clear from the testimony of Karen Vargason that Lazy V Ranch has never been incorporated. Therefore, both applications for permit are still in the name of a nonexistent entity.

The legal impact of this failure is clear when the provisions of the Assumed Business Names Act of 1997 (I.C. §53-501, et seq.) are reviewed. For example, Idaho Code §53-506(1) provides that:

> A person may conduct business under an assumed name **if a certificate of assumed business name has been filed with the Secretary of State and is in effect.** (Emphasis added).

Some of the consequences for non-compliance with this section of the code are set forth in I.C. §53-509(1):

> Any person who transacts business in Idaho under an assumed business name without having complied with the requirements of this chapter shall not be entitled to maintain any legal action in the courts of this state until the person has filed a certificate of assumed business name as required by this chapter.

These requirements appear to be similar to the earlier versions of I.C. §§ 53-501 et seq., which were in effect at the time Vargasons signed Applicants' Exhibits 5, 6 and 7.

It can be argued that filing for an Application for Permit is the equivalent of filing a legal action in the State of Idaho. Similarly, signing a document purporting to be an easement with an entity (i.e. the Foundation) which is doing business with the State of Idaho, could be considered subject to these requirements as well. But even

more importantly, the Vargasons still do not have it right. By filing for their Certificate of Assumed Business Name under the name "Lazy V Ranches" (Applicants' Exhibit No. 7), this is still inconsistent with the names of the Applicant on Exhibit Nos. 5 and 6 ("Lazy V Ranch, Inc.") and Exhibit Nos. 2 and 3 ("Lazy V Ranch"). The misrepresentations of status and the inconsistencies in these documents give the parties to the documents, as well as the IDWR, grounds for contesting their validity.

4. <u>There is no record in the minutes of the Board of Directors of the Lava Hot Springs Foundation consenting to, authorizing, or ratifying Mr. Meline's signing of Exhibit Nos. 2 and 3</u>.

Mr. Meline testified that when he became aware of the alleged difficulty in taking the discharge pipe through property leased by the condominiums, he immediately contacted, and received the consent of a majority of the members of the Board of Directors by telephone. However this approval was never documented by any minute of the Board of Directors.

Sheldon Jones, a member of the Board of Directors at the time, testified that he was in the area and could have been contacted by Mr. Meline, but apparently no attempt was made to reach him. He was not aware of any vote or other action taken by the Board of Directors ratifying the terms of this agreement. In fact, he testified that he had not seen the documents (Applicants' Exhibits "2" and "3") before.

The impact of this should be obvious. Without a minute in the records authorizing this action, the entire legality of Exhibits 2 and 3 is called into question. Board approval, documented in a minute or otherwise, should be required before the

State of Idaho grants any lucrative right, or obligates itself in any way, to another party. This was not done, and provides strong basis for a challenge of the legality of the agreements.

5. The agreements are invalid because they are vague and/or ambiguous.

Applicants' Exhibit 3 purports to grant the "Lazy V Ranch" the right to "use of all excess waters that the Foundation has going through their said drainage pipes." (Emphasis not added). What is meant by the term "all excess waters" is unclear and problematic. Certainly, this imprecise language gives rise to various interpretations, some of which would be entirely inconsistent with local public interests and the interests of the State of Idaho.

For example, if Vargasons claim that this language gives them a demand right, or if this language creates a priority in them over any other uses, the Foundation will have given away an important asset of the State. On the other hand, if "excess" is defined to mean water that is not needed, this could refer to abandoned water which the Foundation has no right to convey. In short, this language creates more problems than it solves. There are other inconsistencies, ambiguities, and vague points in these agreements which could be challenged.

Interestingly, I.C. §42-2601, et seq., concerning the sale of water rights, makes specific reference to certain legal formalities that must be included in any contract for the sale of water for irrigation purposes. Certainly, if the IDWR has minimum standards for agreements involving the sale of water rights, such standards should have

been involved in a transaction between the State of Idaho (through the Foundation) and a private citizen.

B. The agreement between Vargasons and the Foundation is invalid because it is contrary to the authority granted the Foundation.

The authority of the Foundation to control the use of water on state lands was extensively analyzed in Attorney General Opinion No. 97-1. In fact, this Attorney General's Opinion was a specific response to issues raised in this litigation. The Attorney General concluded, in part:

> **The Foundation's water rights** are appurtenant to the lands described in I.C. §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 a 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 now authorized under the water right.** Attorney General Opinion No. 97-1, p. 5. (Emphasis added).

This opinion is important because the Attorney General has apparently concluded that it is up to the Department of Water Resources to determine whether an applicant has the right to make beneficial use of the Foundation's waste water. However, it goes much further by stating that the Foundation does not have the ability to enter into contracts authorizing the use of its waste water. That is exactly what Applicants' Exhibit Nos. 2 and 3 purport to do. These documents purport to be contracts authorizing Vargasons ("Lazy V Ranch") the right to "use of all excess waters that the Foundation has going through their said drainage system." Applicants' Exhibit No. 3. How can that statement contained in Applicants' Exhibit No. 3 be construed as

anything other than a "contract authorizing the use of its waste water." That agreement, as per the Attorney General's Opinion, is beyond the authority and scope of the Foundation.

Protestants also submit that any such private agreement is in violation of the act by which the Lava Hot Springs Foundation was created. The preface to the act stated as follows:

> Chapter 1076--An act to grant certain lands to the State of Idaho. Be it enacted by the Senate and House of Representatives of the United States of America in Congress Assembled that [legal description omitted] are hereby ceded, granted, relinquished, and conveyed unto the said State of Idaho, to be held by said state for **public use** under such regulations as said state may prescribe. Approved June 13, 1902, 32 St. L. 330. (Cited in I.C. §67-4401, emphasis added).

Attempting to grant the right to use all their excess waste water to the Vargasons, as consideration for the granting of an unnecessary easement, surely is in conflict to the U.S. Congress' intention that this be deeded to the State for "public use." Protestants believe that because this agreement violates the very intent for which the Foundation was created in the first place, the agreement is thereby invalid. The Attorney General's Opinion itself, provides all the authority needed to reach that conclusion.

III. VARGASONS' APPLICATION FOR PERMIT NO. 29-08162 SHOULD BE DENIED BECAUSE IT FAILS TO MEET THE CRITERIA SET FORTH IN I.C. §42-203A.

At the beginning of the hearing in this matter, the hearing officer cited I.C. §42-203A(5), which provide as follows:

> In all applications, whether protested or not protested, where the proposed use is such (a) that it will reduce the quantity of water under existing water rights, or (b) that the water supply itself is insufficient for the purpose for which it is sought to be appropriated, or (c) where it appears to the satisfaction of the director that such application is not made in good faith, is made for delay or for speculative purposes, or (d) that the applicant has not sufficient financial resources with which to complete the work involved therein, or (e) that it will conflict with the local public interest, where the local public interest is defined as the affairs of the people in the area directly affected by the proposed use, or (f) that it is contrary to conservation of water resources within the State of Idaho; the Director of the Department of Water Resources may reject such application and refuse issuance of a permit therefore, only partially approve and grant a permit for a smaller quantity of water than applied for, or may grant a permit upon conditions. I.C. §42-203A(5).

The earlier arguments set forth in this brief touch on many of the aspects of I.C. §42-203A(5). The purpose of this section of the brief is to provide a more detailed analysis in order to establish why each of these six criterion calls into question Vargasons' Application for Permit No. 29-08162.

A. <u>The Vargasons' proposed use will reduce the quantity of water under existing water rights</u>.

Each of the Protestants testified at trial that when the Foundation's pumps have been turned on, they have noticed an immediate impact on the quantity, temperature, and accessibility of their water rights. These rights have been significantly degraded while the pumps are on, and appear to improve when the pumps are off.

The Protestants also testified that before the Foundation turned on their pumps, there were numerous springs arising on the State's property across the river. These springs have since dried up. All of this water is apparently being collected in an underground well or cistern and diverted to the Foundation's pumps. This is one

possible explanation for the damage Protestants are suffering.

Vargasons have claimed they are entitled to all of the Foundation's waste water. Their proposed use is for fish propagation, and by their own admission they must have a constant supply of hot water in order for the fish to survive. It is very clear that the Foundation is aware of the Vargasons' needs and is also aware that should they shut their pumps off, the Vargasons will be damaged.

Katsilometes believes that under the direction of the current Director of the Lava Hot Springs Foundation the pumps have been operated in a manner to provide far more water than needed by the Foundation in order to provide Vargasons with "waste water." Several instances of this were testified to at the hearing. Protestant's Exhibits "E," "F," "G," "H" and "J" actually show this happening.

The obligation which Mr. Meline testified he felt compelled to abide by, that being the agreement set forth in Applicants' Exhibit Nos. 2 and 3, allows the Vargasons to claim "all excess water" from the Foundation. This can be construed to require the Foundation to keep the pumps running even when they have little or no use for the water.

The impact on Katsilometes was well-documented. Exhibit "J" sets forth plainly the degradation of Mr. Katsilometes existing water rights. Water temperature has decreased from his well substantially since the Foundation began running their pumps, especially since they began providing water to Vargasons on an almost constant basis. Therefore, the Foundation's actions, based upon their "agreements" with the Vargasons,

have reduced and will continue to reduce the quantity of waters available under existing water rights.

B. <u>The water supply is insufficient for the purpose for which it is being sought to be appropriated</u>.

Keith Wilson testified on behalf of the Applicants that he calculated the amount of water necessary for their proposed fish propagation purposes based on information found in Applicants' Exhibit No. 17. However, Exhibit No. 17 specifically indicates that the calculations and assumptions made therein can only be used for trout and would not be valid for any other species. Therefore, the fish flow determination chart cannot be used for Tilapia, the species of fish that Vargasons testified they intend to raise.

Vargasons did not provide any other testimony or documentary evidence to suggest that the amount of water they are seeking to appropriate (3.0 c.f.s.) would be adequate for the raising of Tilapia in the quantity that will be necessary to be commercially viable. This significant omission is a fatal flaw in Vargasons' application. Not only have Vargasons not met their burden of proving that the amount of waste water is adequate for the purpose for which it is sought, but it also clearly illustrates the speculative nature of their Application for Permit as will be discussed below.

An additional flaw in Vargasons' Application for Permit is that there was no evidence presented to suggest that 3.0 c.f.s. were being regularly discharged by the Foundation. The hearing officer noted during Keith Wilson's testimony that he never measured over 3.0 c.f.s. being discharged. The Vargasons must still prove how much

water is needed and how much water is available. Until they do so, their Applications must be denied.

Although Applicants' Exhibits 5 and 16 refer to 3 c.f.s., there appears to be no evidence that amount of water was ever measured flowing from the discharge pipe on the Vargasons' property. Therefore, there is absolutely no proof that the right which they are claiming will ever produce the amount of water that Exhibit 17 suggests will be necessary, assuming it has any application to Tilapia.

C. Vargasons' application has been made for purely speculative purposes.

Vargasons have made an application for a permit for the raising of a non-native variety of fish, Tilapia. They concede that they have little background or scientific experience in this area. The raising of fish in general, and Tilapia in particular, at a commercial level requires an amount of expertise that Vargasons have not yet illustrated that they possess. For example, Vargasons have not submitted a business plan or other information showing how this proposed use will be economically viable. These fish are not being raised merely for enjoyment, but for commercial purposes. In order for that commercial purpose to succeed, Vargasons must prove that given the nature of their water supply, they have an economically viable business. This has not been done.

Furthermore, there were issues raised at the hearing as to whether or not Vargasons can comply with state and federal regulations involved in creating a commercial fish propagation facility. Despite Karen Vargason's testimony that they meet all regulations, two exhibits submitted by Protestants state to the contrary. Protestants'

Exhibit Nos. 12 and 13 both make it clear that there are serious questions regarding compliance with state and federal regulations. For example, in Applicants' Exhibit No. 12, Greg Tourtlotte, Regional Supervisor for the Idaho Fish & Game, stated:

> Private fish ponds require a permit from our department and commercial fish ponds require a permit from the Idaho Department of Agriculture. If this will be a commercial facility, we would have concerns regarding the nutrient content of the effluent and its impact in the Portneuf River. A commercial facility may require a National Pollution Discharge Elimination System (NPDES) Permit which is the jurisdiction of Idaho Division of Environmental Quality and the U.S. Environmental Protection Agency. We also have concerns regarding the species of fish propagated and their disease status. We would caution the Applicants that the acquisition of supplemental permits are separate processes and not insured by the issuance of a water right. Applicants' Exhibit 12.

Vargasons did not provide any evidence or documentation at the hearing suggesting that they have been or would be able to meet these concerns. The IDWR should not be willing to take their word that everything will be approved.

The Vargasons' Application is also speculative because they are relying upon an uncertain source of water for the viability of their operation. The Vargasons testified that on earlier occasions when the pumps stopped running they experienced a devastating fish kill. However, they portrayed these as isolated incidents which were not likely to reoccur. It is hard to understand that if this is a serious business venture, why the Vargasons would have such a cavalier attitude. The Vargasons are totally dependent upon the Foundation's willingness to leave their pumps on 24 hours a day, 365 days a year, unless those times happen to coincide with their fish harvest. The fact that the pumps have accidentally gone off twice since the Vargasons commenced their project, is

a strong indicator that it is likely to occur again.

Furthermore, Vargasons appear to be relying on Mr. Meline's personal commitment to them to keep the pumps running on an almost constant basis. It should be assumed that Mr. Meline will not be the Foundation's Executive Director forever. Should a new Director be appointed, who is not as willing to bend over backwards to comply with the Vargasons' desires, the Vargasons' commercial fish operation will be in further jeopardy.

The very nature of the water right upon which their entire operation will be based, which is a "waste water" right, illustrates the speculative and risky nature of the Application. As has been set forth by the Idaho Supreme Court in Sebern v. Moore:

> Surface waste and seepage water may be appropriated . . . subject to the right of the owner to cease wasting it, or in good faith to change the place or manner of wasting it, or to recapture it, so long as he applies it to a beneficial use. 258 P.2d at 178.

In other words, by its very nature, waste water is subject to being used, moved, or in some way eliminated without Vargasons having any say. Karen Vargason admitted in her rebuttal testimony that her application was subject to the Foundation's prior right to use the water and heat for future development. If the use by future development were to significantly cool the water, or cause the water to be discharged in another location more convenient for the Foundation, Vargasons' entire operation would become unviable.

In order to run a commercially viable warm water fish farm, it is well known, and should be common sense, you must have a reliable source of water. In this

case, Vargasons are relying upon waste water, which is an inherently unreliable source of water. Compound that with the fact that the water must be of a certain temperature to be used by the Vargasons, then the speculative nature of their application is obvious. Should future development occur and should that future development consume more water or take more heat from the water, the Vargasons will be receiving less water and/or colder water. To base an application for permit to a water right, not to mention a business venture, on such an uncertain source of water is not just speculative, it is imprudent.

D. Vargasons lack sufficient financial resources.

Vargasons did not establish they have significant financial resources to complete the work necessary to make their project commercially viable. Vargasons testified as if nothing further would be required of them to make this operation viable. In the event further finances were needed, Karen Vargason testified that she could rely upon her "savings." However, because of the speculative and risky nature of the "waste water" right that they are depending upon, it is entirely possible that alterations to their system will be needed to compensate for less water and/or cooler water.

Furthermore, with the absence of a business plan, the Vargasons have not proven the commercial viability of the projects. Without knowing this important factor, the adequacy of Karen Vargason's "savings" to operate this fish farm has not been established and should not be assumed.

The Idaho Supreme Court has held that the applicant has the burden to

establish that it is "reasonably probable" that they will be able to obtain the necessary financing within five years to complete the project. Shokal v. Dunn, 109 Idaho 337, 707 P.2d 441 (1985). Although Karen Vargason testified that she had some "savings," no business plan or specific monetary figures or information were provided to the hearing officer to make a showing that it was "reasonable probable" that the project could be fully financed and complete within five years. This was the Vargasons' burden of proof and they did not meet it.

E. Vargasons' Application is not in the local public interest.

The local public interest is defined as "the affairs of the people in the area directly affected by the proposed use." I.C. §42-203A(5)(e). In this case, the area directly affected by the proposed use is very large. For example, each of the Protestants are obviously in the area of proposed use. Furthermore, all of the citizens of Lava Hot Springs are in the area affected by the proposed use. Lava Hot Springs, as a regional recreational facility, draws visitors from throughout Southeastern Idaho and the world. Because of the unique nature of the Foundation's facility, and the rare geothermal water resources in this region, a large portion of the state is arguably directly affected.

On a more localized level, as has been set forth in Argument III(A) of this brief, the Protestants are adversely affected by the proposed use. Any agreement which creates an incentive or obligation for leaving the Foundation's pumps on 24 hours a day, 365 days a year, has an obvious adverse impact on Katsilometes and the other Protestants.

The Lava Hot Springs Community is also adversely affected. For example, the rights purported to be granted to Vargasons by the Foundation (Applicants' Exhibit Nos. 2 and 3) could result in a chilling effect on future development in the Lava Hot Springs area. This would deny the Lava Hot Springs Community of a potential source of economic growth and development. For example, the Foundation certainly will have opportunities for future development whereby additional facilities, which would hire additional local residents and bring additional monies into the community, would be constructed utilizing the Foundation's water rights. However, if such development were halted, delayed, or modified in order to insure viability of the Vargasons' fish farm, this would not be in the local public interest. This would also affect visitors to the facility throughout Southeastern Idaho.

In short, it is not in the local public interest to put the needs of the Vargasons over the needs of the entire community. Additionally, Katsilometes and the other Protestants should not have their water rights and livelihoods threatened. That is the effect of what the Foundation and the Vargasons have attempted to do.

The waters used by the Foundation have a rich and important history in Lava Hot Springs. They are a rare and special resource that must be wisely and cautiously managed. These waters have been used for recreational and therapeutic purposes. Historically, the water has not been used for fish propagation. Fish propagation only benefits the Vargasons, while continued use for heat, recreational, or therapeutic purposes benefit many people. Granting the Vargasons' Application for a

Permit will not benefit the public nor the Foundation, just the Vargasons.

The law is clear that the burden of proof on the issue of local public interest lies with the applicant. Shokal v. Dunn, 109 Idaho 330, 707 P.2d 441 (1985). The Vargasons had the burden at the hearing to prove why it was in the local public interest for their application to be granted. Only if that burden is met do Katsilometes and the other Protestants have the obligation to prove to the contrary. It is Katsilometes' position that the Vargasons never met their burden. Even if that is not true, we believe substantial evidence was presented at the hearing to establish that their application is not in the "local public interest."

F. Vargasons' Application is contrary to conservation of water resources within the State of Idaho.

As has been discussed in Argument I(C) and (D), of this brief, it was unnecessary for the Foundation to physically move this so-called "waste water" off of the Foundation property and onto the Vargasons for their use. In fact, the testimony of Mr. Mehlhoff and Mr. Blanchard was specific that it is unnecessary to "bleed" any water off from the heat exchangers to the Vargasons in the first place. (See Argument I(E)).

By the very nature of this claim, the Vargasons are seeking to use "waste" water. (See Applicants' Exhibit 5). Their alleged "Agreement" with the Foundation is for "all excess" water. (See Applicants' Exhibit 3). By definition, their claims are for water that is being wasted. This is not consistent with conservation because it encourages or obligates the Foundation to continue wasting its water, rather than putting it to beneficial use.

Water is an important resource to the State of Idaho. In fact, it has been called the life blood of the State of Idaho. It is a resource that must be managed wisely and prudently. The actions of the Foundation in deliberately designing a system to take water to a private individual, and leaving their pumps running 24 hours a day, 365 days a year, when arguably several months of the year there is no need to have the pumps running at all, obviously encourages the wasting of water rather than conservation. If the pumps were turned off in the months of May, September, or at other times when there is no need to heat the water or the buildings, everyone would be benefitted except the Vargasons. The IDWR should not sanction the intentional wasting of waters in order to benefit the Vargasons.

IV. VARGASONS' APPLICATION FOR PERMIT NO. 29-08164 DOES NOT MEET THE REQUIREMENTS SET FORTH IN I.C. §42-203A.

Vargasons' Application for Permit No. 29-08164 (Applicants' Exhibit 6) refers to a request to appropriate 7.0 c.f.s. directly from springs on the Lava Hot Springs Foundation, presumably through an existing pump or a new pump and transferred by an existing pipe or new pipes. Many of the arguments previously made in this brief are also applicable to this specific permit, especially those raised in Argument III. In order to avoid repetition, all arguments made against Permit No. 29-08162 are specifically incorporated by reference as they pertain to Permit No. 29-08164. Katsilometes will highlight specific additional areas of concern related to Permit No. 29-08164 in this portion of his brief.

A. Vargasons' Application for Permit No. 29-08164 will reduce the quantity of water available under existing water rights.

All of the damages documented by Katsilometes and the other Protestants concerning the adverse impact on their water rights will only be greatly exacerbated if the Vargasons are given a new right to pump an additional 7.0 c.f.s. Katsilometes and the other Protestants are already being adversely affected by the Foundation's and Vargasons' current uses of the water. To draw an additional 7.0 c.f.s. could create a catastrophe in the area.

The source of this water is uncertain. We can only assume Applicants are talking about additional water on state property. There is no proof they can appropriate such water without harming the Protestants, the Foundation, or other prior appropriators.

B. The water supply is not sufficient for the purpose for which it is sought to be appropriated by Vargasons in Permit No. 29-08164.

It was clear from the testimony at the hearing that the 7.0 c.f.s. requested by Vargasons under this permit exceeds the amount of water currently being appropriated by the Foundation itself. Seven c.f.s. appears to be an arbitrary number calculated by the amount of water needed to create a certain volume of water (20,650 c.f.). (See Applicants' Exhibit 6).

When questioned under cross-examination, Keith Wilson doesn't know if the Foundation's rights themselves were actually researched. In fact, Keith Wilson testified he doesn't know the actual amount diverted, but only suggested 7.0 c.f.s. be

entered into the application to reflect the estimated amount that would be needed for the Vargasons' proposed use. Such evidence clearly undermines the entire basis for Permit No. 29-08164. Vargasons have a duty to prove that there is enough water for them to appropriate at the rate they are requesting. They have not met this burden.

C. Vargasons' Application for Permit No. 29-08164 has been made for speculative purposes.

Not only is Permit No. 29-08164 speculative for the same reasons that Permit No. 29-08162 is speculative, but there are also an entirely different set of problems which call into question the viability of the permit. For example, Karen Vargason testified about installing an additional pump. There was no testimony presented that the Foundation had approved or would approve the installation of an additional pump. Furthermore, there was no testimony provided that Vargasons could use the existing pumps of the Foundation.

Vargasons also appear to be speculating that they may be allowed to use an existing pipeline that has been referred to as the "spare pipe" or "Pipe No. 1." (See attachment 1 to Applicants' Exhibit 4). Once again, there is absolutely no evidence in the record that the Foundation has approved, will approve, or can approve Vargasons' use of the existing pipe. Furthermore, there is no evidence in the record that the Foundation has approved, will approve, or can approve an easement allowing Vargasons to construct their own pipeline across Foundation property.

The question must be asked that if the amount of water set forth in Application for Permit No. 29-08162 is supposedly adequate for the commercially viable

facility envisioned by the Vargasons, why is this additional permit required? The answer is clear that the Vargasons anticipate future development, which once again would qualify as a speculative purpose. If that is not true, then they must know that the amount requested in Permit No. 29-08162 is inadequate. Either way, the Applications should be denied.

D. Vargasons have not proven they have sufficient financial resource to complete the work necessary for Permit No. 29-08164.

In all probability, Vargasons will have to engage in substantial expenditures in order to install a pump and other necessary equipment for Permit No. 29-08164. There was no testimony provided by Vargasons or other evidence as to the costs associated with the purchase and installation of an additional pump or even the construction of an additional pipeline. Once again, we are left to assume Karen Vargason's "savings" will be adequate for any expenses incurred. The Vargasons have clearly failed to meet their burden that financing would be "reasonably probable." Shokal v. Dunn, 109 Idaho 337, 707 P.2d 441 (1985).

E. Vargasons' Application for Permit No. 29-08164 is contrary to the local public interest.

Once again, to allow the Vargasons the right to appropriate an additional 7.0 c.f.s. of water from the Foundation's land is not in the local public interest. For starters, such an application would effectively thwart the Foundation's ability for future development. Future development would bring jobs and a needed economic boost to the Lava Hot Springs area. It is beyond comprehension why the Foundation has not filed a

protest against this application.

The Vargasons' use of 7.0 c.f.s. would at best provide only a minimal benefit to the local community, while substantially benefitting only them. Weighing the equities, the public has the greater interest in not allowing Vargasons to appropriate 7.0 c.f.s. of water from the Foundation's lands.

F. Vargasons' Application No 29-08164 is contrary to the conservation of water resources within the State of Idaho.

For many of the reasons set forth above, Application No. 29-08164 is not consistent with conservation of the water resources of the State of Idaho. Seven c.f.s. of water is a huge amount of water. To dedicate that much water solely for the propagation of fish, is not consistent with conservation.

For example, this 7.0 c.f.s. of hot geothermal water could be put to much better recreational, therapeutic, or other uses that would benefit the local public interests and the State of Idaho as a whole. Furthermore, allowing Vargasons to appropriate the 7.0 c.f.s. would put future development of Foundation property at risk, which also would not be consistent with the conservation of an important resource of the State of Idaho. Where Vargasons have not proven that much water even exists, or that they have a right to remove that much water independently from the Foundation's property, this application clearly is inconsistent with the policy of conserving an important resource of the State.

CONCLUSION

For the reasons set forth above, Katsilometes strongly urges the Court to refuse to issue Permit No. 29-08162 and Permit No. 29-08164 in the name of Lazy V Ranch. Katsilometes' objections raised at the hearing and in this brief provide substantial and legitimate reason for the rejection of both permits. The characterizations made by the Applicants and others, including the Foundation, of Mr. Katsilometes' protests have been unfair and demeaning. Katsilometes respectfully submits that a fair and reasoned examination of the evidence will lead to the conclusion that both permits must be denied.

RESPECTFULLY SUBMITTED This 28th day of November, 1997.

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Attorneys for George Katsilometes

CERTIFICATE OF SERVICE

I HEREBY CERTIFY That on this 28th day of November, 1997, a true and accurate copy of the foregoing was sent by U.S. Mail, postage prepaid, to the following:

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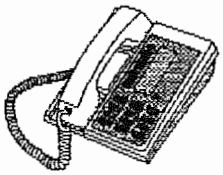

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Department of Water Resources

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RE: Karen and Thayne Vargason/Water Rights
Our file no. 5194.007

Dear Gary:

I tried to reach you during the last week without success.

In reviewing my records and your recent Order, I am unable to identify which exhibit is Exhibit 19. Could you please advise?

As to the issue of the location of points of diversion, I believe both points are described in the Application as Government Lot 7. I direct your attention to Exhibit K.

Thank you.

Yours very truly,

Jack H. Robison

JHRld
Enclosure
cc: Karen Vargason
c:\my files\wnovember97\vargason11081

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BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE

STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR PERMIT NO. 29-08162 AND FOR PERMIT NO. 29-08164 IN THE NAME OF THE LAZY V RANCH	)))))	**SUPPLEMENT TO LIST OF WITNESSES**

The applicant hereby supplements the initial disclosure of documents including the disclosure dated May 9, 1997 with the photos and documents attached hereto, which may be used as Exhibits at the hearing in the above-entitled action. Said items are in addition to the Department's records related to the applicant and protesting parties, and documents and pleadings on file herein. Applicant further reserves the right to rebuttal evidence.

DATED this 13th day of October, 1997.

Jack H. Robison, attorney for applicant

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 13th day of October, 1997, a true and correct copy of the foregoing document was served by the method indicated below upon each of the following:

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Jack H. Robison

University of Idaho
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Extension System

Twin Falls County Office
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Fax: (208) 733-9645

September 23, 1997

Karen Vargason
P.O. Box 268
Lava Hot Springs, ID 83246

Dear Mrs. Vargason,

I'm enclosing construction diagrams of trout raceways to give you an idea of the general layout of raceways. In addition, there are a few articles on warmwater raceway culture.

Based on the information you provided a possible design is as follows:6.2 cubic feet per second water split into 2 raceways, and three uses.

Raceway dimensions; 10 feet wide, 34 feet long, 4 feet deep - operating dimensions; 10 feet wide, 24 feet rearing space with a 10 foot quiescent zone (settling area) at the end of each raceway, 3.5 feet water depth.

The turnover per raceway is about 6.4 minutes based on 3.1 cfs and a volume of 1190 cubic feet:
10x34x3.5=1190 cu. ft.
1190 cu. ft. x 7.48 gallons/cu. ft.=8,901 gallons
3.1 cfs x 449 gpm/cfs=1,392 gallons per minute
raceway turnover = 8,901 gallons/1,392 gpm=6.4 minutes

If possible there should be a 4 foot drop between each use to aerate the water, at a minimum have a 2 foot drop.

Raceway walls should be at least 8 inches wide, its best to consult a cement or construction company on the amount of rebar and cement mixture needed.

I'm including a rough sketch of the raceways. Should you have any questions or need additional information let me know.

Sincerely,

Gary Fornshell
Extension Aquaculture Educator

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Figure 4 - Trout Raceway System 7/24/95

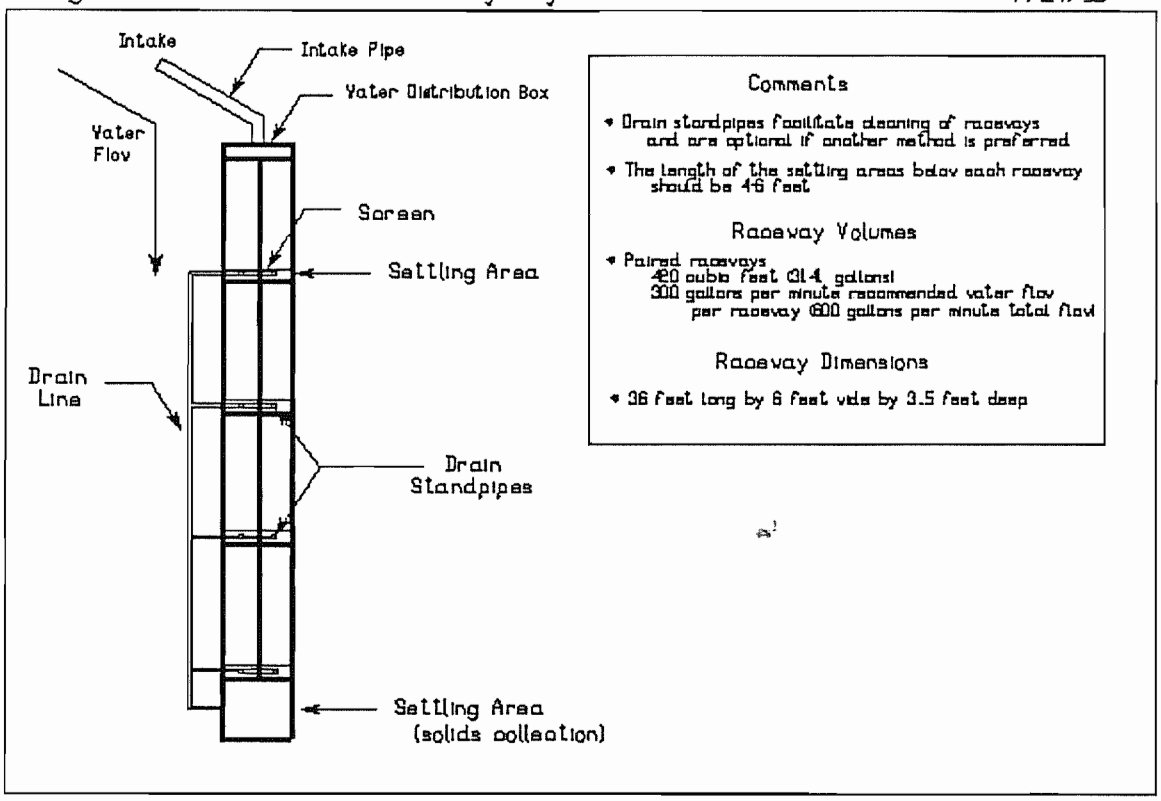


Figure 5 - Trout Raceways - Inflow (Top View) 2/97

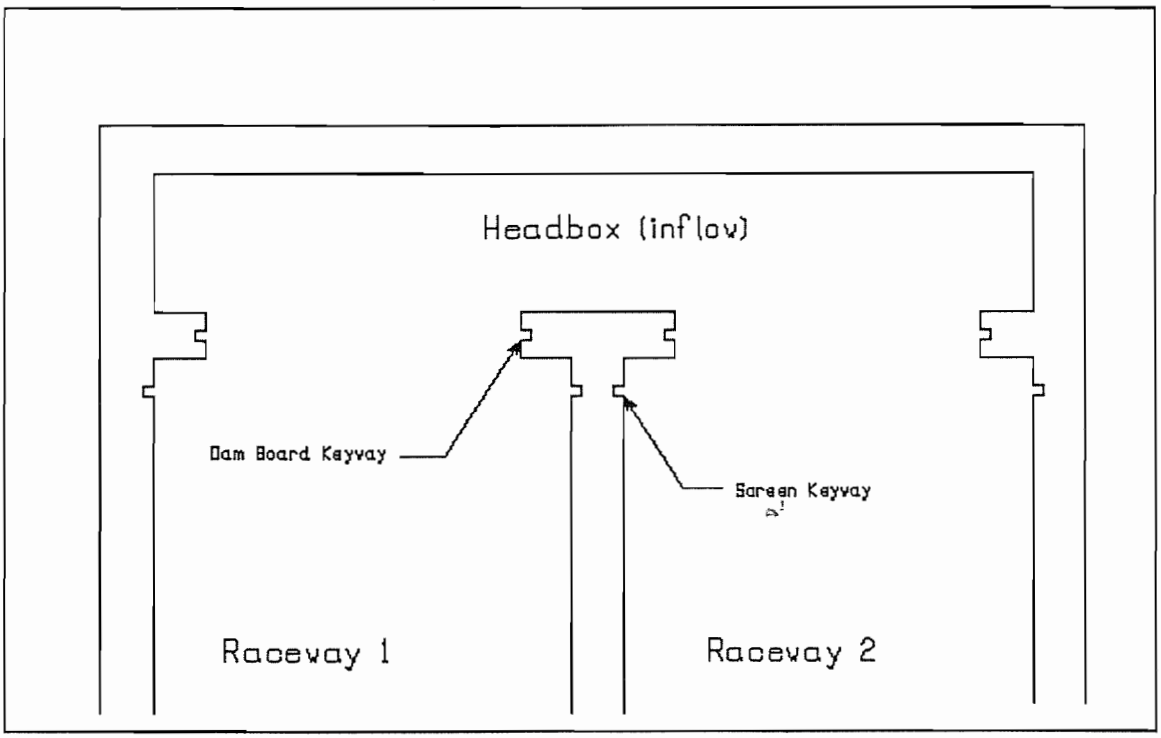


Figure 7 - Trout Raceways - Consecutive Uses 2/97

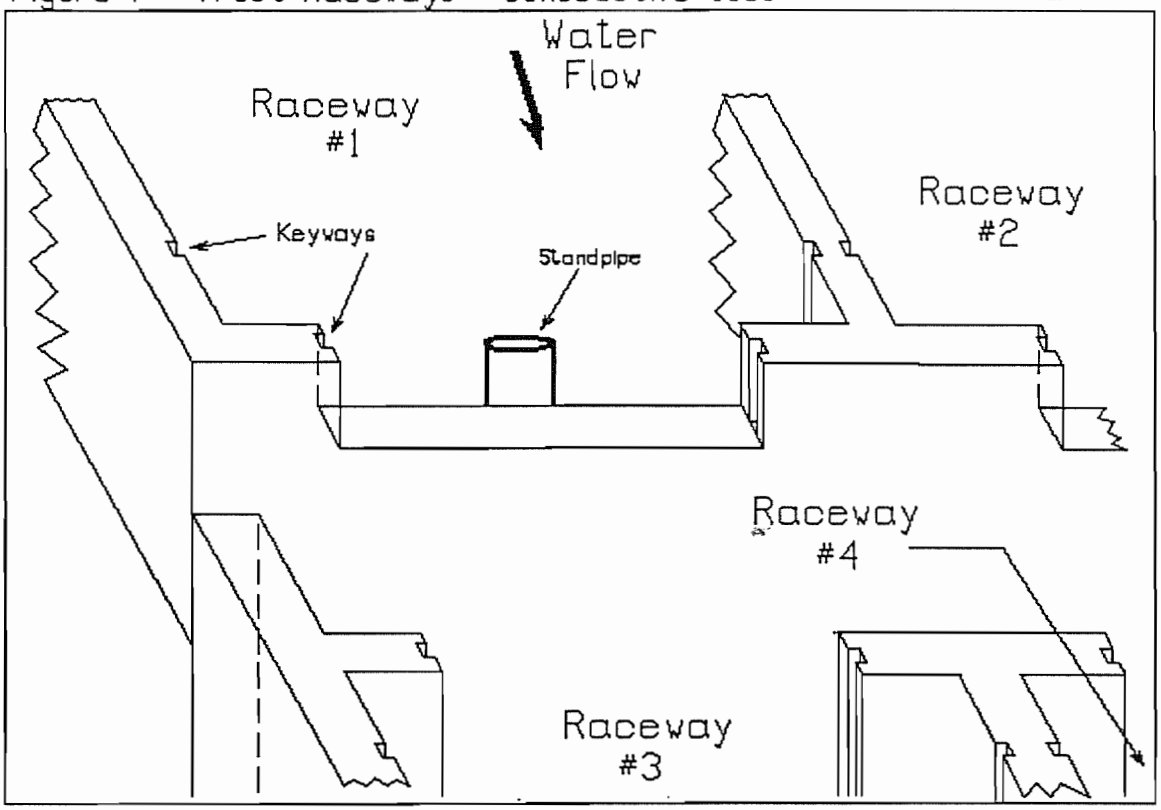
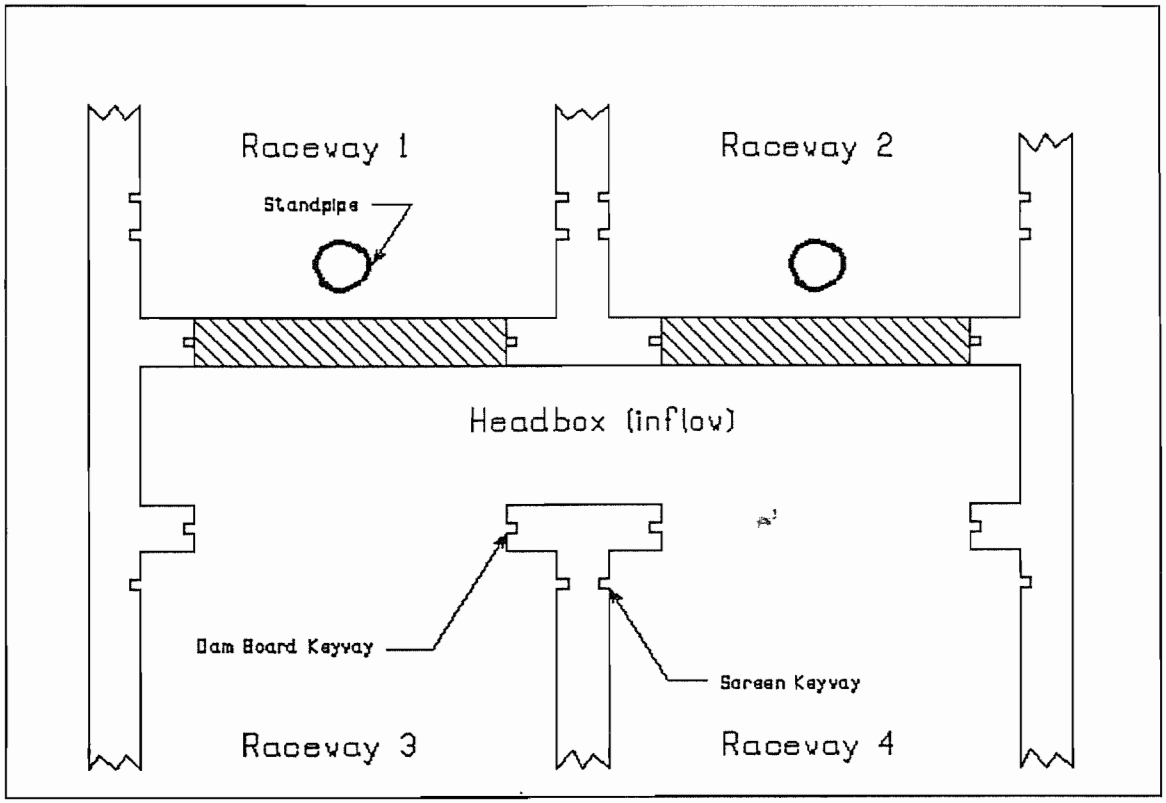


Figure 6 - Trout Raceways - Consecutive Uses (Top View) 2/97



How Will Fish Be Grown in the Future?

By James W. Avault, Jr., Ph.D., *is professor of fisheries at Louisiana State University, Baton Rouge, Louisiana.*

The trend is clear. Aquaculture is going super high density. As noted in the last issue of Aquaculture Magazine, Taiwanese may stock up to 600,000 post larval shrimp per hectare (240,000 per acre), feed every 4 hours and utilize 24-hour a day aeration with eight 1-hp paddlewheel aerators per hectare. Catfish farmers in Mississippi are gradually moving away from 20-acre grow-out ponds and emergency aeration only. New ponds being constructed are smaller in size and are outfitted with stationary aeration. Crawfish ponds, too, are becoming smaller, more manageable and more intensive.

One might ponder, then, what is the ultimate culture system? It is doubtful that there will ultimately be only one culture system that is best for all species under all conditions, but Leo Ray of Fish Breeders of Idaho, Inc. may have a grow-out system that can be used for a variety of species. He grows catfish, tilapia and trout in raceways. Growing trout in raceways is nothing new, but Leo Ray, a past president of the Catfish Farmers of America and the U.S. Trout Farmers Association, has pioneered raceway culture of catfish and tilapia, and he plans to look at crawfish and other species.

Here is his story. Leo Ray, a former student of Howard Clemens at the University of Oklahoma, decided to enter fish farming around 1968. His first farm was pond culture in California. In 1972 he became interested in raceways. He sought advice from various people including Fred Meyer, then with the Fish Farming Station at Stuttgart, Arkansas, and Bob Piper, then with the National Fish Culture Development Center at Bozeman,

Leo Ray, Fish Breeders of Idaho, Inc.

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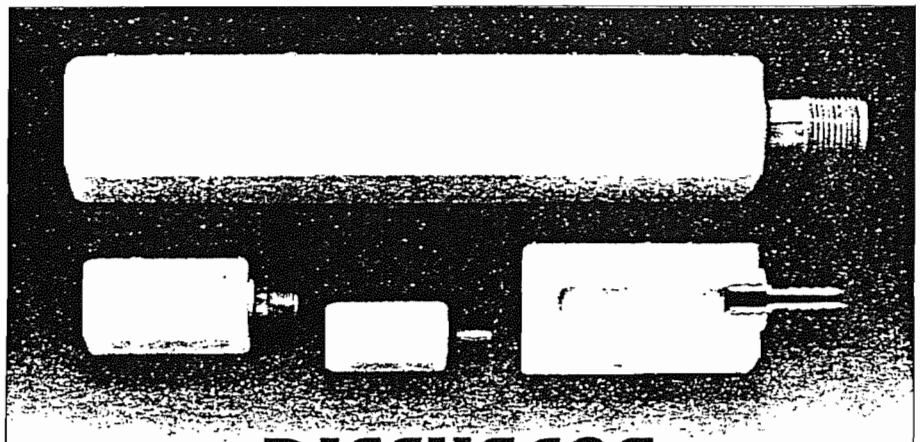

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Montana. In short, he began raising trout, catfish and tilapia in raceways, but not in a conventional manner. For catfish and tilapia, he drilled 700-feet deep wells to obtain 90 degrees F, 7,000 gpm artesian-flow water. He then constructed raceways, each with four sections. Between each section is a 2-foot drop. Each section is 24 feet long, 10 feet wide, and 3-1/2 feet in water depth. (Conventional raceways are usually much longer). The space utilized by fish is 770 cubic feet. The raceways are in pairs with a common center wall. Hot artesian water is blended with cooler water to give 80 degrees F water. This water passes by gravity through five sets of raceways in all, each raceway having four sections (80 sections total), from the top of the hill to the bottom. The upper raceways grow catfish, the lower tilapia.

Leo Ray notes that there are two densities to consider in producing catfish - pounds per cubic foot of space and pounds per water flow in cubic feet per second (CFS). The pounds per cubic feet of space is primarily limited by social factors. The pounds per CFS is limited by water quality. Catfish have a peck order but this breaks down at high density stocking. How high? Ray routinely harvests 10,000 to 14,000 pounds of catfish for each section of raceway, and he once calculated that he had up to one-third fish and two-thirds water by weight in a section. Based on water flow, he produces 40,000 to 50,000 pounds per CFS. He starts off by stocking 2 to 4 pounds of fish per cubic foot of space. Lower densities are used for small fish.

Regarding water quality, Ray lists three major factors: dissolved oxygen, ammonia, and settleable solids. A 2-feet drop waterfall for each section of raceway replaces approximately 50% of the oxygen. Water entering the first section of a raceway contains about 7 ppm dissolved oxygen (DO). Fish remove 2 ppm and the waterfall adds 1 ppm. The second section then receives 6 ppm DO, and so on. Water exiting the fourth and last section of a raceway contains about 3 ppm DO. As water flows down a ditch to the second set of raceways, DO is replenished to near saturation. The water, then, is

reused and reused – five sets of raceways in all. The loss of DO can be calculated based on pounds of feed utilized. Ray calculated that the oxygen required to metabolize 50 pounds of feed is approximately 2 ppm from one CFS of water.

Approximately 0.2 ppm of ammonia is produced per CFS from metabolism of 50 pounds of feed. Feeding 200 pounds of feed in one CFS of water for four sections, ammonia at discharge would be 0.8 ppm. As water from the first set of raceways enters the ditch, bacteria begin to break ammonia down to nitrite, then the less harmful nitrate.

Settleable solids are a major concern for raceway growers, and the Environmental Protection Agency (EPA) stipulates that solids cannot exceed 5 ppm. In Ray's operation solids collect behind a screen. A PVC stand-pipe is lifted periodically and solids go by underground pipe to two settling basins. These basins contain duckweed and aeration. The sludge is pumped to the fifth set of raceways containing tilapia.

With his raceway system, Ray annually produces 500,000 pounds of catfish. He does his own processing. If we assume that last year 300 million pounds of catfish were produced by the whole industry, then Ray's small raceways produce 1 out of every 600 catfish grown in the United States. When asked what he plans for the future, Ray replied, "I plan to look at better aeration in my system to increase oxygen and better methods of ammonia removal, and I will look at new species such as crawfish and alligators."

Leo Ray's story is one of success, and we can all learn by it, but not everyone has access to gravity flow water year-round. Nevertheless, much can be learned from Ray's method of growing fish. He has demonstrated that raceway culture need not be limited to trout. The physical dimensions of his raceways, stocking density, reuse of water, and water management are all lessons to learn. And now one catfish farmer has built on Ray's technology. Kelley Farmer, pioneer catfish farmer from Dumas, Arkansas, is growing catfish in raceways. Water, held in a reservoir, flows by gravity through raceways, collects in a pond below and is pumped up to the reservoir for reuse. Too costly? The cost of pumping is more than offset by the savings in harvesting and other operations. Two of Leo Ray's raceways with a total of eight sections can produce 80,000 pounds of fish per crop. If we assume that 4,000 pounds of fish are produced per acre in conventional ponds, it would take a 20-acre grow-out pond to produce 80,000 pounds. Will raceways be the way catfish and other species are grown in the future? Think about it.

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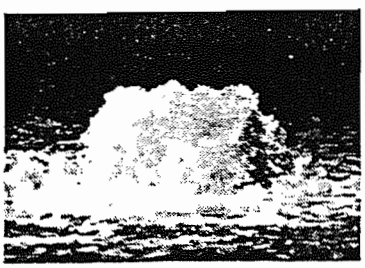

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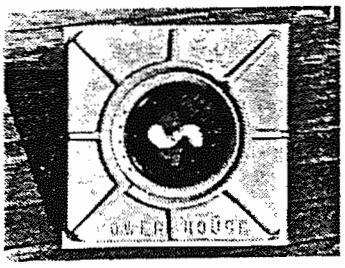

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PRODUCTION OF TILAPIA

IN CATFISH RACEWAYS USING GEOTHERMAL WATER

Leo E. Ray
Fish Breeders of Idaho, Inc.
Buhl, Idaho 83316

ABSTRACT

There exists a market for Tilapia zillii to clean aquatic vegetation from water impoundments. Production technology to supply large numbers of reproductive age T. zillii for early spring stocking was developed. Problems incurred in producing tilapia during the winter including timing, predation, grading, and transportation are discussed. A second potential exists in the form of the food market for tilapia. Initial market testing has been very encouraging.

INTRODUCTION

Fish Breeders of Idaho, Inc., is raising and marketing T. zillii and T. mossambica. Facilities used are catfish raceways that are supplied partly with geothermal water to achieve proper growth of tilapia. The tilapia are fed a catfish diet. Objectives are to maximize production and to produce fish that are the proper size and age for the market. Prices are comparable to those received for catfish.

MARKETS

The initial market for T. zillii was for aquatic vegetation control. Golf courses, private or public lakes, and irrigation districts have need for a better method to control aquatic vegetation in impoundments. T. zillii, if properly managed, will do this with few environmental problems. The market demands 7- to 10-cm fish of reproductive age in large numbers ready for stocking in early spring. It is difficult for the tilapia to control aquatic vegetation if excessive plant development occurs before the tilapia are stocked and have had time to reproduce.

A second market demand is developing for tilapia in the processed food market. This market was tested with T. mossambica and T. zillii. There is

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a market for a continuous supply of fish over 300 g. Market results have been very encouraging. Tilapia is well accepted as a food fish.

FACILITIES

Tilapia production facilities of Fish Breeders of Idaho, Inc. are located in the Snake River Canyon near Buhl, Idaho. Artesian wells produce 20,000 liters of 32°C water per minute. Cold water springs supply water to cool the hot water to the desired temperature of 26-27°C.

Raceways and combination settling, spawning ponds are located below the wells on a hill that slopes 25 m in 400 m. This drop in elevation is the key to reaeration which allows reuse of the water.

These facilities were designed by Fish Breeders for the production of channel catfish (Ictalurus punctatus) which has been their primary use. Tilapia are being raised in the facilities as a sideline in such a way as does not interfere with the catfish operation.

The raceways are 3.05 m wide, 1.2 m deep and 29.3 m long. Each is divided into four sections with a 0.6 m drop between each section. These raceways are in pairs with a common center wall. Water is approximately 1.06 m deep. An average 5,000 liters per minute flows through each raceway. Water enters with 7 to 8 ppm dissolved oxygen. When loaded to capacity, the water leaves the raceways at 3 to 4 ppm dissolved oxygen. Oxygen intake in the drop between sections will average 1 ppm while the average loss per section is 2 ppm. This gives 14 ppm of oxygen for each 3,400 liters per minute of water flowing through the raceway for fish utilization.

The water is presently reused through three raceway sets, one located below the other on a slope with about 3 m of elevation and 100 m distance between each raceway set. A fourth set of raceways is under construction. Settling ponds are located between sets of raceways. These ponds are used for spawning tilapia and are drained into the raceways for harvesting.

PROBLEMS

Tilapia are thought to be very easy fish to spawn and raise, however, most work has been done with small numbers of fish. There is a considerable difference between raising several thousand fish and several million. Problems are again compounded when one attempts to culture in a high density flow-through system. Producing fish can be easy but volume production at a profit may be another matter.

For the vegetation control market, spawning is desired in the fall and early winter. This requires spawning a tropical fish in cold winter weather during a reduced photoperiod. Fish Breeders used hot artesian water to maintain

spawning temperatures by circulating the hot water through spawning ponds. It is thought that photoperiod is important in the control of spawning. Facilities are not available to control photoperiod and using temperature control alone has been successful.

T. zillii are very predaceous on newly hatched fry. If a few hundred sub-reproductive age fish are in a spawning pond they will usually destroy most of the spawn. To reduce predation, adults with similar reproductive history are stocked to spawn within a 10- to 14-day period.

Harvesting tilapia from a pond can be very difficult. Fish Breeders facilities are designed so the ponds can be drained directly into raceways. This is done when the fish are approximately 3 cm long.

Grading is necessary. The market demand is for 9-cm fish. Larger fish are graded off and fed lean rations while smaller fish are fed heavier rations. Grading is done in the concrete raceways. It would be very difficult to grade tilapia in earthen facilities. Concrete facilities coupled with large flows of water is necessary to handle large quantities of small tilapia.

Transportation is done in insulated tanks. A heat system is sometimes necessary for long distance transportation.

Diseases have not been a problem with small tilapia. However, some larger tilapia have blindness followed by the loss of the eyes, and death. Serious attempts have not been made to identify the cause of this problem.

COMMENTS

Contrary to the opinion of many people interested in tilapia culture, Fish Breeders does not look at tilapia as a low-priced fish to fill the shelves of the American fish markets.

If the producer provides fish at zero cost to a processor and that fish is processed and goes through the normal middle-man chain to the retail consumer, the retail consumer will pay approximately $1.76/kg for the product. A reasonable profit to the producer will not greatly affect the price of the finished product. If an extra 10¢ profit to the producer takes the product beyond the price of the retail market, then something is wrong with the marketing program.

If a tilapia industry is to develop, it must be done with a greater profit to the farmer than other fish the farmer is raising. If the farmer cannot make more profit on tilapia than other fish, he will raise the other fish. A tilapia industry cannot be built on a low profit product. The industry must gain momentum on a high profit. After the industry is developed, it may change to lower margins, but initial growth must be built on a high profit incentive.

Tilapia are good food fish. One need not apologize for their quality. Should tilapia develop the reputation of a trash fish it will be the fault of the people in the industry today. The potential retail customers who will buy tilapia in the future have never heard of tilapia. They will accept the fish the way it is presented to them. Tilapia reputation will be dependent on the image the industry creates.

INTENSIVE CULTURE OF TILAPIA

WITH GEOTHERMALLY HEATED WATER

Paul C. Lauenstein
Fish Department
Weisbart and Weisbart, Inc.
Alamosa, Colorado 81101

ABSTRACT

The main features of the tilapia farm in Alamosa, Colorado are a well supplying geothermally heated water at 26°C, circular steel tanks, cement raceways, earthen raceways, and a round earthen pond. The farm requires 252 liters/sec to sustain 50 tons of tilapia (Tilapia aurea) stocked at 20 to 60 kg/m^3/hr. High flow is necessary to maintain the water temperature in raceways above 24°C with ambient temperature as low as -32°C in winter. Important fish production indices include feed conversion of 1.5:1, daily consumption of pelleted feed at 1 to 1.5% of body weight, and growth rate of 1 to 2 g/day. Unwanted spawning is not a problem in this flow-through system.

INTRODUCTION

The culture of tropical fish is possible in one of the coldest, driest places in the U.S. because of an artesian well supplying geothermally heated water. The tilapia farm of Weisbart and Weisbart, Inc., is in Alamosa, Colorado, in the wide, flat San Luis valley, 2300 m above sea level. The possibility of sub-freezing temperatures exists year-round, and winter temperatures as low as -32°C are not uncommon. The climate is semi-arid, average annual rainfall being only 17 cm.

FACILITIES

An artesian well supplying geothermally heated water of 26°C is the most important asset of the farm. The well is 41 cm in diameter and over 300 m deep. Natural artesian flow can reach 400 m^3/hr. However, since artesian flow fluctuates greatly from season to season, a pump driven by a 150 H.P. electric motor has been mounted on the well and can provide 1200 m^3 of water/hr.

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Water from the well supplies four types of fish production units: circular steel tanks, small concrete raceways, large earthen raceways, and a round earthen pond. The steel tanks range from 2 to 7 m in diameter, and are 1 m deep. The concrete raceways are 30 m long, 1 m wide, and 0.5 m deep. The earthen raceways are 35 m long, 4 m wide and 1 m deep. The pond occupies an area of 0.3 ha and is 1 m deep. All require a constant flow of fresh water to support densely stocked fish populations. Of the available 1200 m^3/hr, 700 goes to the earthen raceways, 300 to the steel tanks, and 200 to the small cement raceways. All effluent passes through the pond.

In the event of a power failure, the electric pump on the well stops. Natural artesian flow does not return for several days. To keep the fish alive during such an emergency, there are gasoline-powered pumps to recirculate the water in the system.

CULTURE

Reproduction

At the densities at which the tilapia are stocked in the tanks and raceways (16-64 kg/m^3), they do not spawn. However, in the pond, where the standing stock is less than 4 kg/m^3, they spawn prolifically from March until October. Spawning in the pond virtually ceases in winter, perhaps because of the shorter photoperiod and/or lower water temperature. Recruitment from the pond is sufficient to supply the farm with fingerlings.

Rearing Fingerlings

Young tilapia of 1 to 2 g are netted from the margins of the pond, stocked in the small cement raceways, and reared to 25 g. They are fed a finely ground meal composed of various grains and supplemented with blood meal plus a vitamin-mineral premix. Growth rate during this stage is 0.4 g/day. The fingerlings feed very actively and consume 3% of their body weight daily. Mortality averages 30%.

Grow-Out

After reaching 25 g the fish are transferred to the steel tanks, where they are reared to 150 g. During this period they are fed sinking pellets of 36% protein. Feed conversion is 1.5:1. Growth rate increases to 1.0 g/day. Feed consumption, however, declines to less than 2% daily. Mortality is less than 5%.

The final grow-out phase from 150 g to market size (300-400 g) is accomplished in the earthen raceways. No attempt is made to segregate all-male populations because at such high stocking densities and perhaps because of flow-through, there is no problem of wild spawning. Feed conversion is 1.5:1. Growth rate is 1.5 g/day. Feed consumption is only 1% daily. Mortality is very low.

Water Quality

Saturation dissolved oxygen (D.O.) at 2300 m above sea level and 26°C is 6.2 mg/liter. The well water contains 4.5 mg/liter D.O. The alkalinity of the well water is 100 mg/liter as $CaCO_3$, and the pH is 8.5. In heavily stocked tanks the pH drops to 7.5. Methane is present in the well water at 2 mg/liter. No methane is present in the tanks, however, presumably because the turbulence of the water as it pours into the tanks allows the methane to volatilize.

Diseases

No epizootics have occurred, nevertheless there are some disease problems. Among the fingerlings, fungus causes chronic mortality. Larger fish are sometimes afflicted with a bloated stomach, which causes them to swim upside down on the surface for a day or two before dying. A different problem arises if water flowing into a tank enters via a pipe extending below the water surface, without being aerated. The fish develop severe exophthalmia which gradually leads to chronic mortality in the tank. This condition may result from toxicity by a dissolved gas, perhaps methane, which has not been allowed to volatilize.

MARKETING

The fish are processed at the farm. They are harvested and dumped alive into a vat of ice water. Then they are scaled, gutted, individually packed in plastic bags, and frozen. Dress-out averages 83%.

One serious marketing problem is competition from wild tilapia harvested from natural lakes and ponds. These wild tilapia are sold at a far lower price. Although identical in appearance, the wild tilapia are sometimes tainted by off-flavors resulting from a eutrophic environment. Tilapia raised in clear, artesian water never have this problem.

DISCUSSION

Although production of table-size tilapia is feasible in geothermally heated water, it has not yet generated profits at this farm. The high rate of flow necessary to maintain warm water temperatures precludes any natural productivity, so production is totally dependent on expensive artificial feed. If the manure from the adjoining swine farm could be either fed directly to the tilapia, or used to produce algae for feeding to them, the high feed costs might be reduced.

Rapid loss of heat from the water in such a cold climate limits the scale of the operation. Covering production units to reduce heat loss might allow some expansion, but this would be expensive. Alternatively, lost heat could be replaced if abundantly available solar radiation could be harnessed to heat the water, but this too would involve considerable capital expenditure.

With the advantages of a copious supply of warm water and a high degree of control over the facilities, the greatest potential of this farm may lie in hybrid fingerling production, or perhaps in holding wild tilapia for a short period to purge them of off-flavors before marketing them. Both possibilities, however, are contingent upon a well developed tilapia culture industry, which does not yet exist in the U.S.

L-2409
SRAC Publication No. 282

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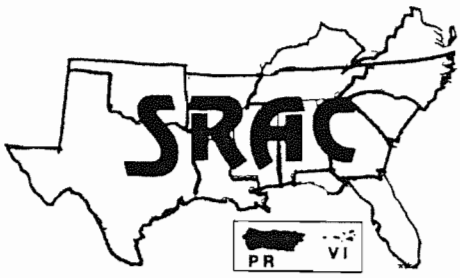

September, 1989

Tank Culture of Tilapia

James E. Rakocy*

Tank culture of tilapia is a good alternative to pond or cage culture if sufficient water or land is not available and the economics are favorable. Tilapia grow well at high densities in the confinement of tanks when good water quality is maintained. This is accomplished by aeration and frequent or continuous water exchange to renew dissolved oxygen (DO) supplies and remove wastes. Culture systems that discard water after use are called flow-through systems while those that filter and recycle water are referred to as recirculating systems.

Intensive tank culture offers several advantages over pond culture. High fish density in tanks disrupts breeding behavior and allows male and female tilapia to be grown together to marketable size. In ponds, mixed-sex populations breed so much that parents and offspring compete for food and become stunted. Tanks allow the fish culturist to easily manage stocks and to exert a relatively high degree of environmental control over parameters (e.g., water temperature, DO, pH, waste) that can be adjusted for maximum production. With tanks, feeding and harvesting operations require much less time and labor compared to ponds. Small tank volumes make it practical and economical to treat diseases with therapeutic chemicals dissolved in the culture water. Intensive tank culture can produce very high yields on small parcels of land.

Tank culture also has some disadvantages. Since tilapia have limited access to natural foods in tanks, they must be fed a complete diet containing vitamins and minerals. The cost of pumping water and aeration increases production costs. The filtration technology of recirculating systems can be fairly complex and expensive and requires constant and close attention. Any tank culture system that relies on continuous aeration or water pumping is at risk of mechanical or electrical failure and major fish mortality. Backup systems are essential. Confinement of fish in tanks at high densities creates stressful conditions and increases the risk of disease outbreaks. Discharges from flow-through systems may pollute receiving waters with nutrients and organic matter.

Geographical range

The geographical range for culturing tilapia in outdoor tanks is dependent on water temperature. The preferred temperature range for optimum tilapia growth is 82° to 86°F. Growth diminishes significantly at temperatures below 68°F and death will occur below 50°F. At temperatures below 54°F, tilapia lose their resistance to disease and are subject to infections by bacteria, fungi and parasites.

In the southern region, tilapia can be held in tanks for 5 to 12 months a year depending on location. The southernmost parts of Texas and Florida are the only areas where tilapia survive outdoors year-round. Elsewhere, tilapia must be overwintered in heated water.

Flow-through systems are only practical for year-round culture in temperate regions if geothermal water is available. In the winter it would be too expensive to heat water and soon discard it. There has been some promising research on the use of heated effluents from power plants to extend the growing season.

Indoor recirculating systems are more appropriate for year-round culture because buildings can be insulated to conserve heat and the heated water is saved through recycling. Indoor recirculating systems

* University of the Virgin Islands

have potential for extending the geographical range of tilapia culture throughout the U.S. Systems could be located in urban areas close to market outlets.

Flow-through systems

The most durable tank materials are concrete and fiberglass. Other suitable but less durable materials include wood coated with fiberglass or epoxy paint, and polyethylene, vinyl or neoprene rubber liners inside a support structure such as coated steel, aluminum or wood. Tank material must be non-toxic and non-corrosive. The interior surface should be smooth to prevent damage to fish by abrasion, to facilitate cleaning and to reduce resistance to flow. Both ease and expense of installation are important factors in the selection of construction materials.

Tanks come in a variety of shapes, but the most common forms are circular and rectangular. Raceways are rectangular tanks that are long and narrow. Variations of circular tanks are silos, which are very deep, and octagonal tanks. Circular tanks are very popular because they tend to be self-cleaning. If the direction of the inlet flow is perpendicular to the radius, a circular flow pattern develops which scours solids off the tank bottom and carries them to a center drain. Rectangular tanks are easy to construct but often have poor flow characteristics. Some of the incoming water may flow directly to the drain, short-circuiting the tank, while other areas of the tank maybecome stagnant, which allows waste to accumulate and lowers oxygen levels. For these reasons, circular tanks provide better conditions than rectangular tanks for tilapia culture.

Circular culture tanks may be as large as 100 feet in diameter, but common sizes range from 12 to 30 feet in diameter and from 4 to 5 feet in depth. Rectangular tanks are variable in dimensions and size, but raceways have specific dimension requirements for proper operation. The length to width to depth ratio should be 30:3:1 for good flow patterns. If the volume of water flow is limited, shorter raceways are better to increase the water exchange rate and prevent tilapia from concentrating near the inlet section where DO levels are higher.

Drain design important

Drain design is another important aspect of tank culture. Center drains are required in circular tanks for effective removal of solid waste. Water level is controlled by an overflow standpipe placed directly in the center drain or in the drain line outside the tank. A larger pipe (sleeve) with notches at the bottom is placed over the center standpipe to draw waste off the tank bottom. The sleeve is higher than the standpipe but lower than the tank wall so that water will flow over the sleeve into the standpipe if notches become closed. When an external standpipe is used, the drain line must be screened to prevent fish from escaping. To prevent clogging, the screened area must be expanded by inserting a cylinder of screen into the drain so that it projects into the tank.

Aeration requirements depend on the rate of water exchange. If water is exchanged rapidly, one to four times per hour, in a tank with moderate fish densities, aeration devices may not be required. The oxygen supply will be renewed by the DO in the incoming water. A flow rate of 6 to 12 gallons/minute is needed to support the oxygen requirement of 100 pounds of tilapia. DO, which should be maintained at 5 mg/liter for good tilapia growth, is the primary limiting factor for intensive tank culture. Flow- through systems should ideally be located next to rivers or streams to take advantage of gravity-fed water supplies, but pumping is practical in many situations.

Limited water supplies frequently restrict exchange rates to a few times a day or as little as 10 to 15 percent per day. In this case, aeration is needed to sustain tilapia at commercial levels. Paddlewheel aerators, agitators and blowers (diffused aeration) are some of the devices used to aerate tanks. Aerators are rated according to their effectiveness (pounds of oxygen transferred into the water per hour) and efficiency (pounds of oxygen transferred/horsepower-hour). Aeration requirements can be estimated by using aerator ratings and oxygen (O_2) consumption rates of tilapia, which consume 4.5 grams O_2/100 pounds of fish/hour while resting and several times more oxygen while they are feeding and active. For example, a tank with 1,000 pounds of tilapia would consume 45 grams of O_2/hour at resting, but maximum oxygen consumption may be at least three times higher (135 grams O_2/hour) depending on water temperature, body weight and feeding rate. Aeration efficiency (AE) of diffused-air systems (medium bubble size) ranges from 1,000 to 1,600 grams O_2/kilowatt-hour under standard conditions (68°F and 0 mg/liter DO). However, AE declines to 22 percent of the standard at 5 mg/liter DO and 86°F. Therefore, AE would range from 220 to 352 grams O_2/kilowatt-hour under culture conditions. Dividing the maximum oxygen consumption rate (135 grams O_2/hour) by the median AE (286 grams O_2/hour) gives 0.47-kilowatt (0.63-horsepower) as the size of aerator needed to provide adequate DO levels.

A current trend for intensive tank systems has been the use of pure oxygen for aeration. Oxygen from oxygen generators, compressed oxygen tanks, or liquid oxygen tanks is dissolved completely into the culture water by special techniques to help sustain very high fish densities.

Recirculating systems

Recirculating systems generally recycle 90 to 99 percent of the culture water daily. The rearing tank is aerated as in flow- through systems with low exchange rates. Recirculating systems require a clarifier (settling tank) to remove solid waste (feces and uneaten feed) and a biofilter to remove toxic waste products (ammonia and nitrite) that are produced by the fish.

A cylindrical clarifier with a conical

bottom (60° slope) and center drain facilitates solids removal, but often rectangular tanks are used and the solids are pumped or siphoned off the bottom. Baffles are used near the inlet to slow the incoming water flow and near the outlet to retain floating sludge. If a few tilapia fingerlings (of one sex to prevent breeding) are placed in the clarifier, their movement will concentrate sludge in the lowest portion of the tank. They should not be fed, as they will obtain adequate nutrition from the sludge and wasted feed. For efficient solids removal, clarifiers have a water retention time of 25 to 30 minutes and a minimal depth of 4 feet.

There are many effective biofilter designs, but they all operate on the same principle of providing a large surface area for the attachment of vitrifying bacteria that transform ammonia (NH_3), excreted from the gills of fish, into nitrite (NO_2), which in turn is converted to nitrate (NO_3). Nitrate is relatively non-toxic to fish, but an accumulation of ammonia and nitrite can cause mortality. Tilapia begin to die at ammonia concentrations around 2 mg/liter (expressed as NH_3-N) and nitrite levels of 5 mg/liter (as NO_2-N).

Gravel biofilters, which once were common, are being replaced by plastic-media biofilters because they are lightweight and easy to clean. Biofilters now consist of self-supporting stacks of honeycombed modules, columns or tanks containing loosely packed rings, or a series of discs on an axle that floats at the water surface and rotates, alternately exposing the media to water and air. Regardless of design, biofilters generally have the same requirements for efficient vitrification: 1) DO of not less than 2 mg/liter or 3 to 5 mg/liter for maximum efficiency; 2) pH 7 to 8; 3) a source of alkalinity for buffer since vitrification produces acid and destroys about 7 mg of alkalinity for every mg of NH_3-N oxidized; 4) moderate levels of organic waste (less than 30 mg/liter measured as biochemical oxygen demand), thereby requiring good clarification; 5) water flow velocities that do not dislodge bacteria.

Biofilters can be sized by balancing ammonia production rates with ammonia removal rates. Unfortunately, these rates are highly variable. In a growout study on tilapia in tanks, ammonia production averaged 10 grams/100 pounds of fish/day (range:4 to 21). Ammonia production depends on quality of feed, feeding rate, fish size and water temperature, among other factors. Ammonia removal rates may range from 0.02 to 0.10 grams/ft^2 of biofilter surface area/day depending on type of media, biofilter design, and the factors that affect vitrification.

The required biofilter surface area can be obtained by dividing total ammonia production for the maximum standing crop by the ammonia removal rate. The filter volume can be determined by dividing the required biofilter surface area by the specific surface area (ft^2/ft^3) of the media. For example, assume that a biofilter containing l-inch pall rings is being designed to support 1,000 pounds of tilapia. The ammonia production rate is estimated to be 10 grams/100 pounds of fish/day. Therefore, total ammonia production would be 100 grams/day. The ammonia removal rate is estimated to be 0.05 grams/ft^2/day. Dividing total ammonia production by the ammonia removal rate gives 2,000 ft^2 as the required biofilter surface area. One-inch pall rings have a specific surface area of 66 ft^2/ft^3. Dividing the required biofilter surface area by the specific surface area gives 30 ft^3 as the biofilter volume needed to remove ammonia.

Species selection

The most appropriate species of tilapia for tank culture in the U.S. are *Tilapia nilotica, T. aurea,* Florida red tilapia, Taiwan red tilapia, and hybrids between these species or strains. The choice of a species for culture depends mainly on availability, legal status, growth rate and cold tolerance. Many states prohibit the culture of certain species. Unfortunately, *T. nilotica,* which has the highest growth rate under tropical conditions, is frequently restricted. Florida red tilapia grow nearly as fast as *T. nilotica* and have an attractive reddish-orange appearance. *T. aurea* grow at the slowest rate under tropical conditions, but this species has the greatest cold tolerance and may have the highest growth rate in temperate regions at temperatures below optimum.

Breeding

Tanks are commonly used to breed tilapia. Within 10 to 20 days after stocking brood fish, newly-hatched fry appear in schools that can be captured with a dip net and transferred to a nursery unit. Fry that avoid capture prey on subsequent spawns and production declines. At that point, the tank must be drained to remove all juvenile fish and begin another spawning cycle.

More controlled breeding can be obtained with net enclosures (hapas). With hapas, all fry can be removed at regular intervals, which ensures uniformity in size among the fry, reduces predation, and eliminates the need for draining the brood tank. Hapas can be fabricated to any specification, but a convenient size for spawning measures 10 feet by 4 feet by 4 feet deep. This size fits well into a 12-foot diameter tank. Hapas are made from nylon netting (Delta style) with a l/16-inch mesh.

Male and female brood fish, which have been kept apart, are stocked into the hapa to begin breeding. A sex ratio of 2 females to 1 male is used to produce large quantities of fry. The optimum stocking density ranges from 0.5 to 1.0 fish/ft^2. The brood fish are fed high quality feed at a rate of 2 percent of their body weight per day. All of the fry are removed a few days after they begin to appear. This is accomplished by pulling a 4-inch PVC float down the length of the hapa to concentrate the fry and brood fish to one end. The brood fish are captured with a large-mesh dip net and placed into a small container. The fry are captured with a fine-mesh dip net and transferred to a nursery tank. Each brood fish is

then captured by hand and its mouth is held open under water to remove any fry, sac fry, or eggs that it maybe incubating. The fry are moved to the nursery tank while the sac fry and eggs are placed in hatchery jars. This method produces roughly 3 fry and 3 eggs (including sac fry) per square foot per day.

Production management

Stocking density, which is very high for fry, is decreased at regular intervals throughout the production cycle to reduce crowding, to ensure adequate water quality, and to use tank space efficiently (Table 1). It is not economical to pump water for a tank system that is stocked initially at one tenth of its capacity, which is the standard stocking practice for ponds. As density becomes too high, fish stocks can be split in half and physically moved to new tanks or given more space by adjusting screen partitions within the rearing tank. Rectangular tanks or raceways, in particular, are much easier to use and allow the culture of several size groups in one tank. However, fry and small fingerlings are cultured separately because they require better water quality. Each time that stocks are split and moved, they are graded through a bar grader to cull out about 10 percent of the slowest growing fish, which would probably not reach market size. Culls could be sold as baitfish if permitted by state law. Recommended grader widths are 25/64, 32/64, 44/64, and 89/64ths of an inch for tilapia greater than 5, 10,25, and 250 grams, respectively.

The highest mortality of the production cycle (about 20 percent) occurs during the fry rearing stage. Much of this is due to predation. As the fish grow and become hardier, mortality decreases significantly at each stage so that no more than 2 percent of the fish are expected to die during final growout.

Fry are given a complete diet of powdered feed (40 percent protein) that is fed continuously throughout the day with automatic feeders. The initial feeding rate, which can be as high as 20 percent of body weight per day under ideal conditions (good water quality and temperature: 86°F), is gradually lowered to 15 percent by day 30. During this period, fry grow rapidly and will gain close to 50 percent in body weight every 3 days. Therefore, the daily feed ration is adjusted every 3 days by weighing a small sample of fish in water on a sensitive balance. If feeding vigor diminishes, the feeding rate is cut back immediately and water quality (DO, pH, ammonia, nitrite) is checked.

Feed size can be increased to various grades of crumbles for fingerlings (1 to 50 grams), which also require continuous feeding for fast growth. During the growout stages, the feed is changed to floating pellets to allow visual observation of the feeding response. Recommended protein levels are 32 to 36 percent in fingerling feed and 28 to 32 percent in feed for larger fish. Adjustments in the daily ration can be made less often (e.g., weekly) because relative growth, expressed as a percentage of body weight, gradually decreases to 1 percent per day as tilapia reach 1 pound in weight, although absolute growth in grams/day steadily increases.

The daily ration for adult fish is divided into three to six feedings that are evenly spaced throughout the day. If feed is not consumed rapidly (within 15 minutes), feeding levels are reduced. DO concentrations decline suddenly in response to feeding activity. Although DO levels generally decline during the day in tanks, feeding intervals provide time for DO concentrations to increase somewhat before the next feeding. Continuous feeding of adult fish favors the more aggressive fish, which guard the feeding area, and causes the fish to be less uniform in size. With high quality feeds and proper feeding techniques, the feed conversion ratio (fish weight gain divided by feed weight) should average 1.5 for a l-pound fish.

Total production levels range from 3 to 6 pounds/ft^3 of rearing space and 6 to 17 pounds/gallon/minute of flow. Monthly production levels range from 0.4 to 0.6 pounds/ft^3. The higher production levels are generally obtained in flow-through systems. Production can always be increased by increasing the inputs, but this may not be economical.

Table 1. Recommended stocking and feeding rates for different size groups of tilapia in tanks and estimated growth rates.

Stocking Rate (number/m^3)	Weight(grams)		Growth Rate	Growth Period	Feeding Rate (%)
	Initial	Final	(g/day)	(days)	
8,000	0.02	0.5-1	-	30	20- 15
3,200	0.5-1	5	-	30	15- 10
1,600	5	20	0.5	30	10- 7
1,000	20	50	1.0	30	7- 4
500	50	100	1.5	30	4 -3.5
200	100	250	2.5	50	3.5- 1.5
100	250	450	3.0	70	1.5 - 1.0

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Educational programs conducted by the Texas Agricultural Extension Service serve people of all ages regardless of socioeconomic level, race, color, sex, religion, handicap or national origin.

Issued in furtherance of Cooperative Extension Work in Agriculture and Home Economics, Acts of Congress of May 8, 1914, as amended, and June 30, 1914, in cooperation with the United States Department of Agriculture. Zerle L. Carpenter, Director, Texas Agricultural Extension Service, The Texas A&M University System

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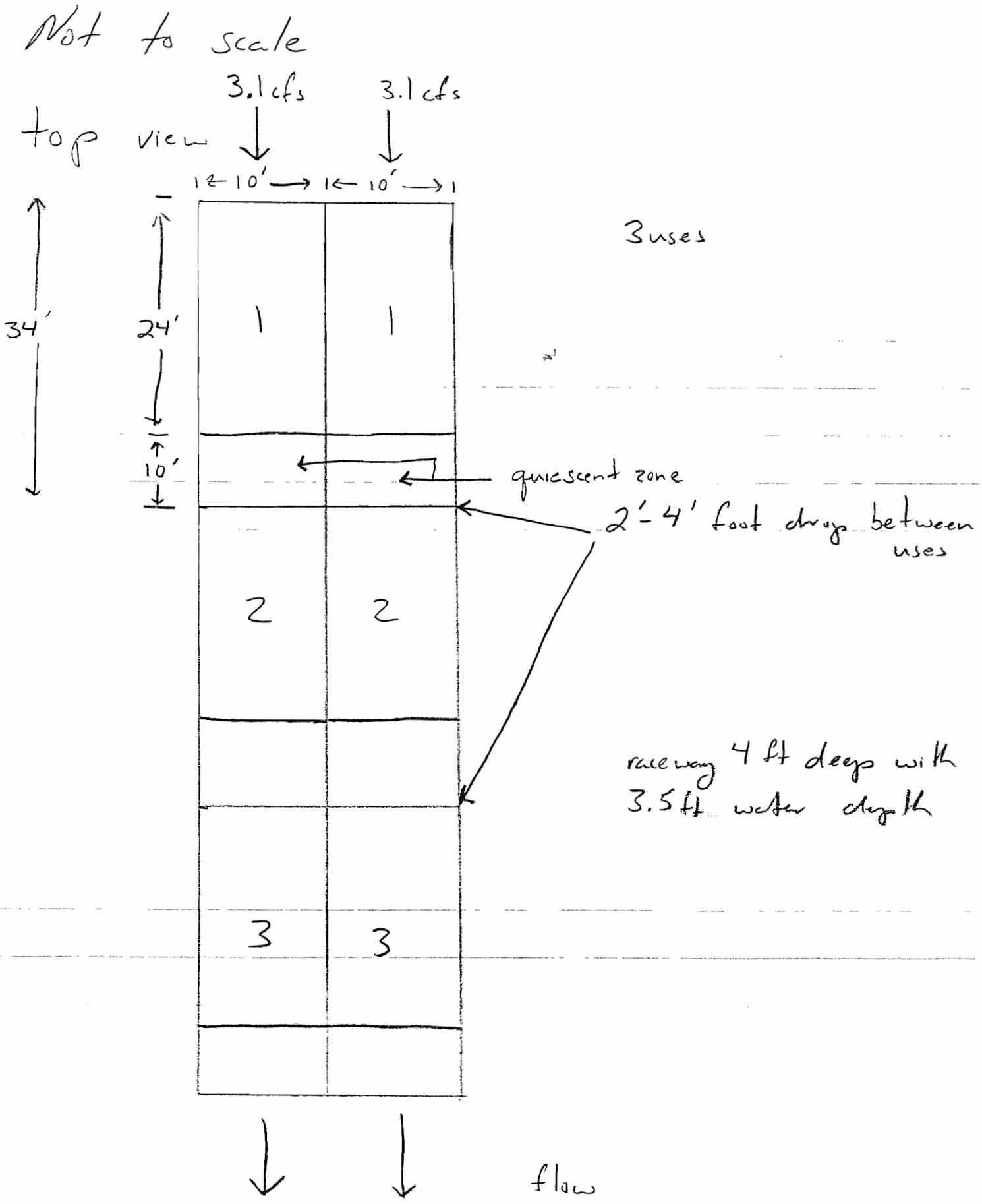
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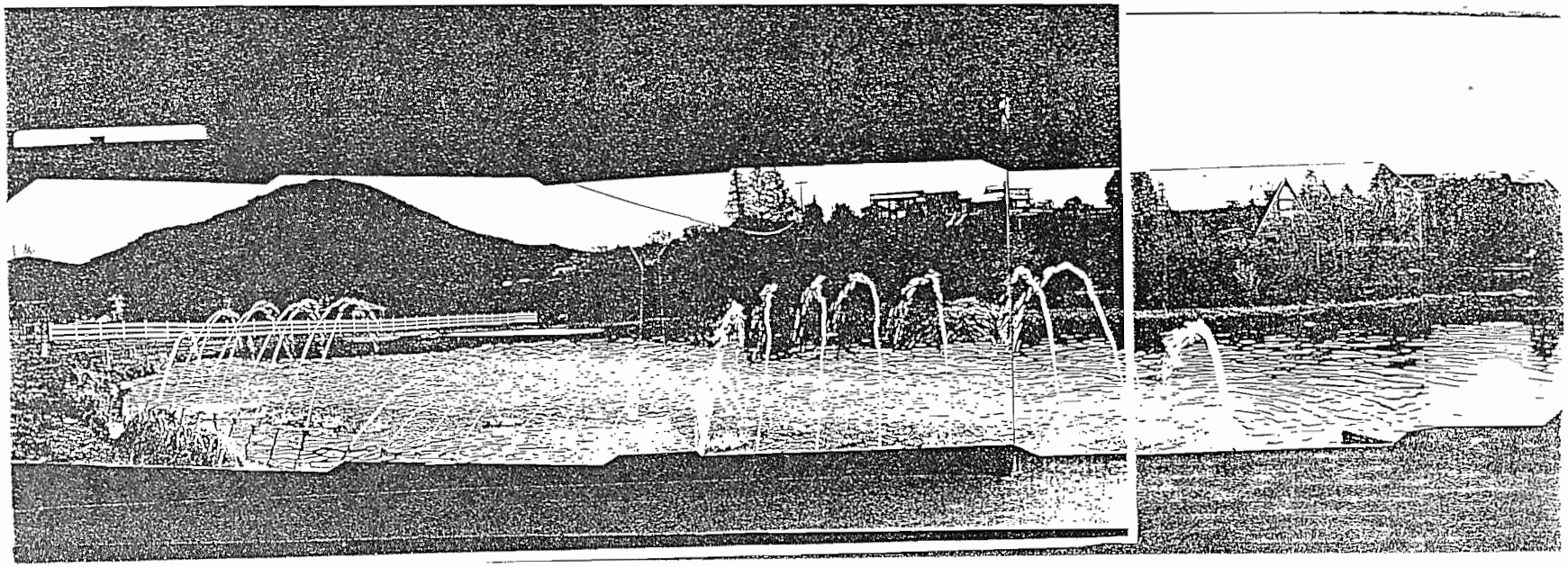

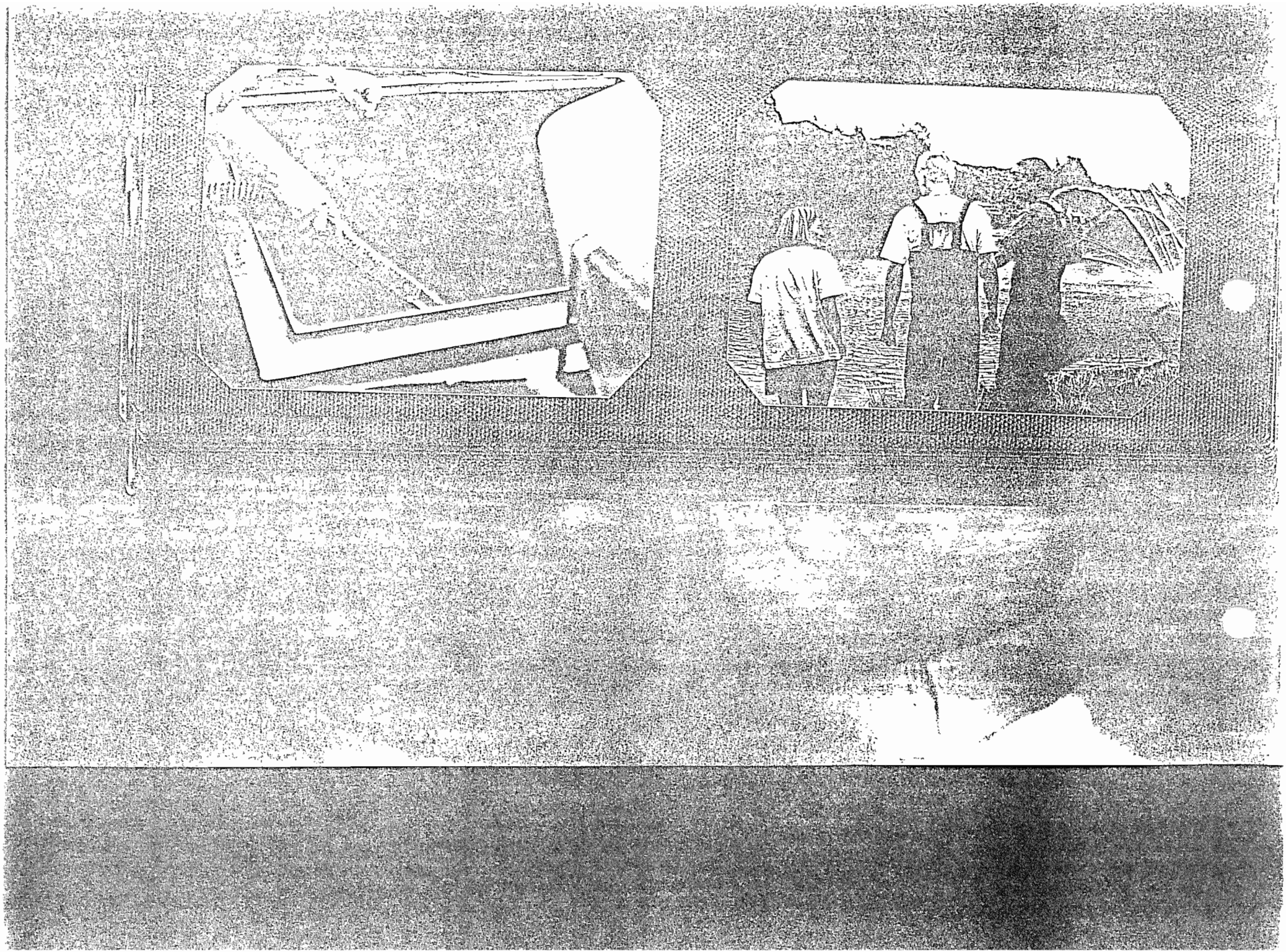

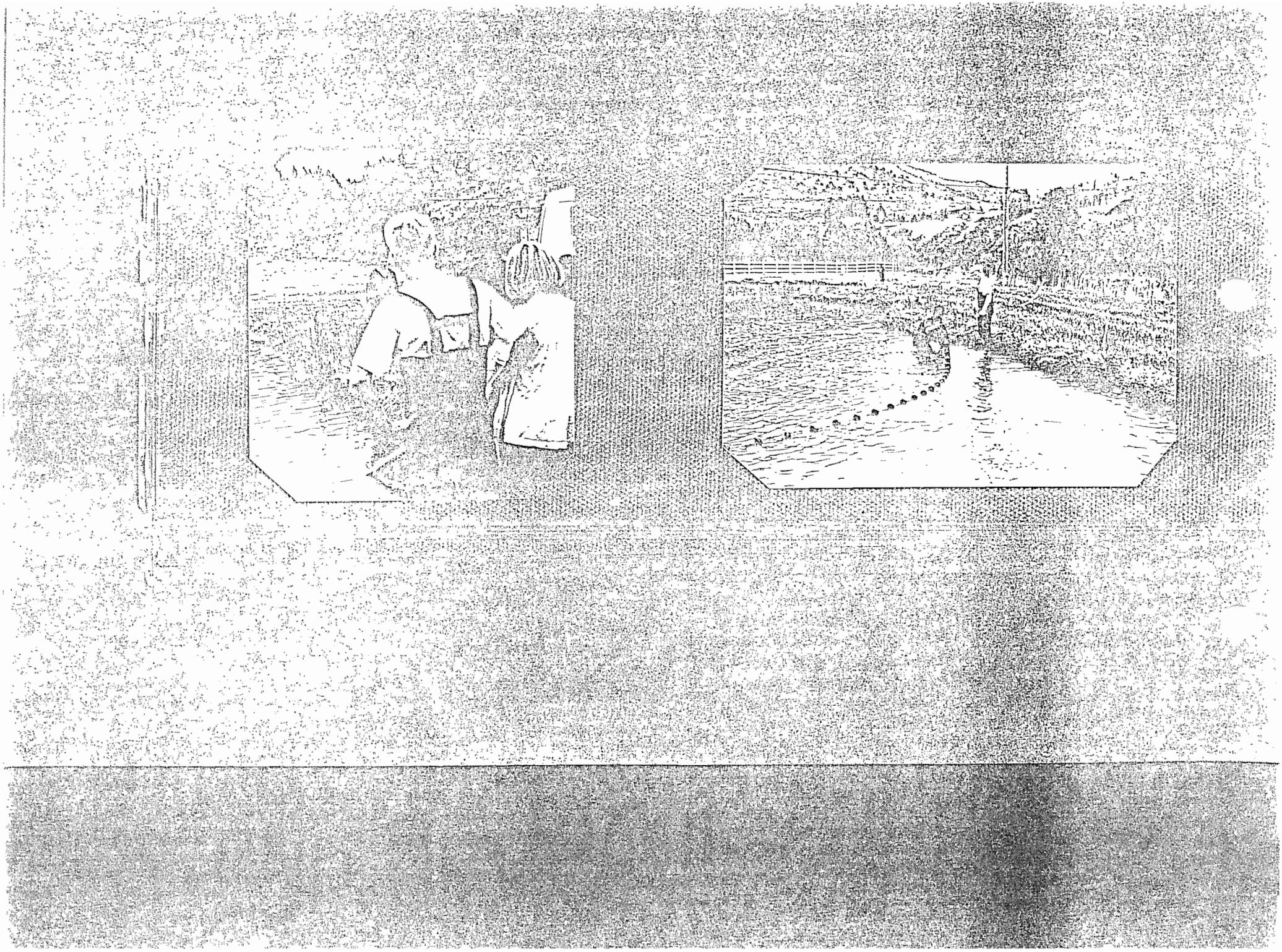

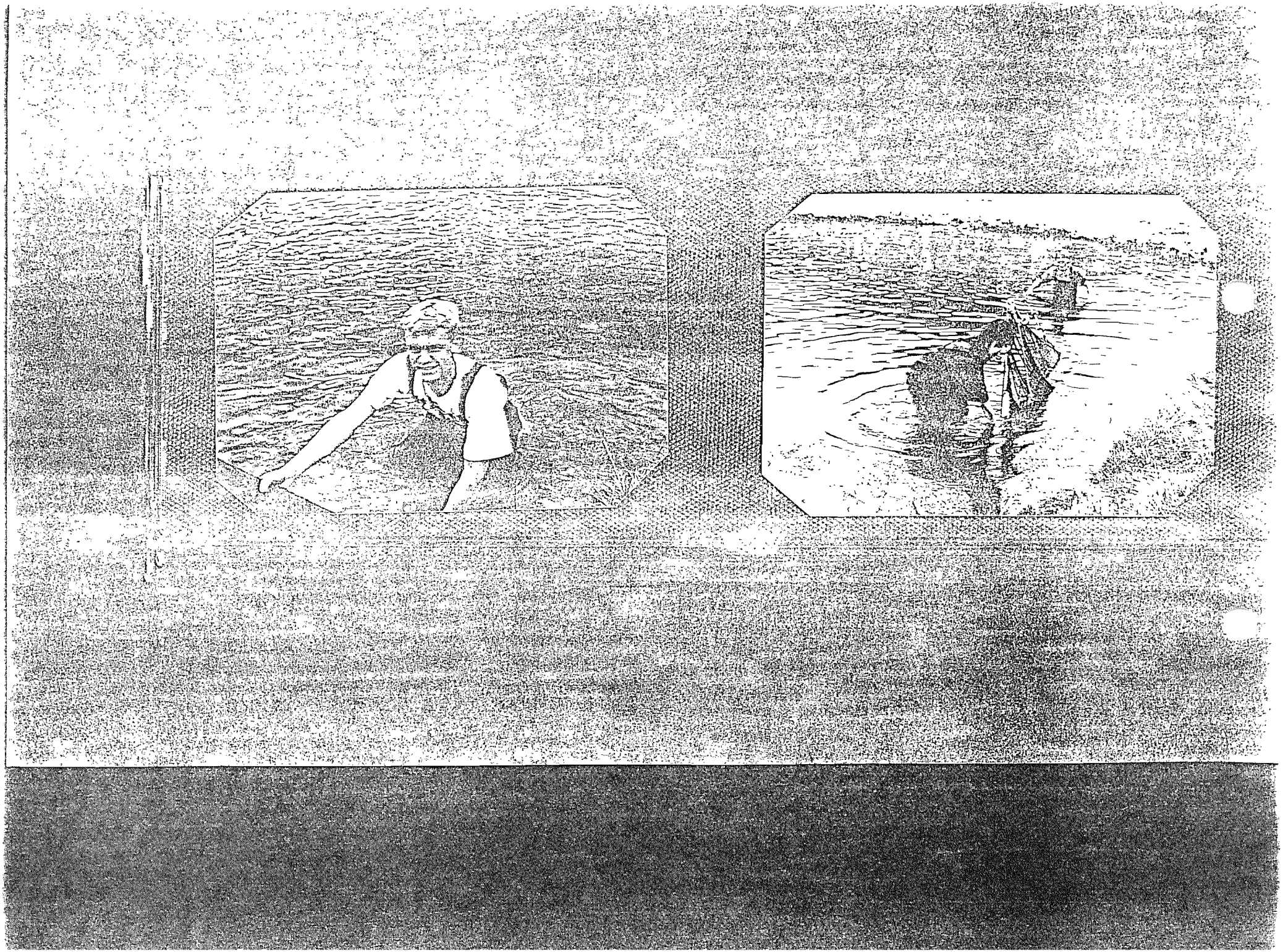

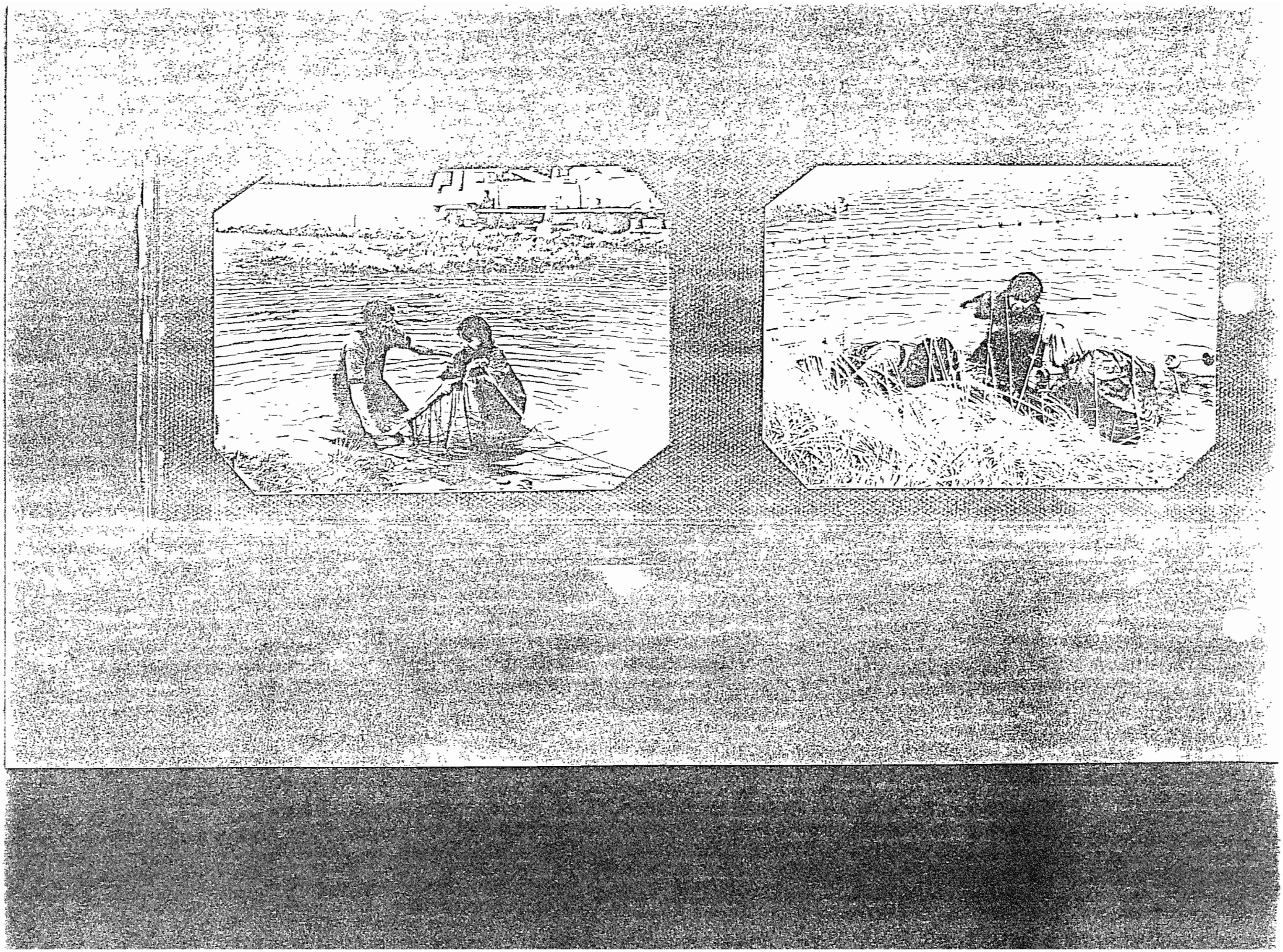

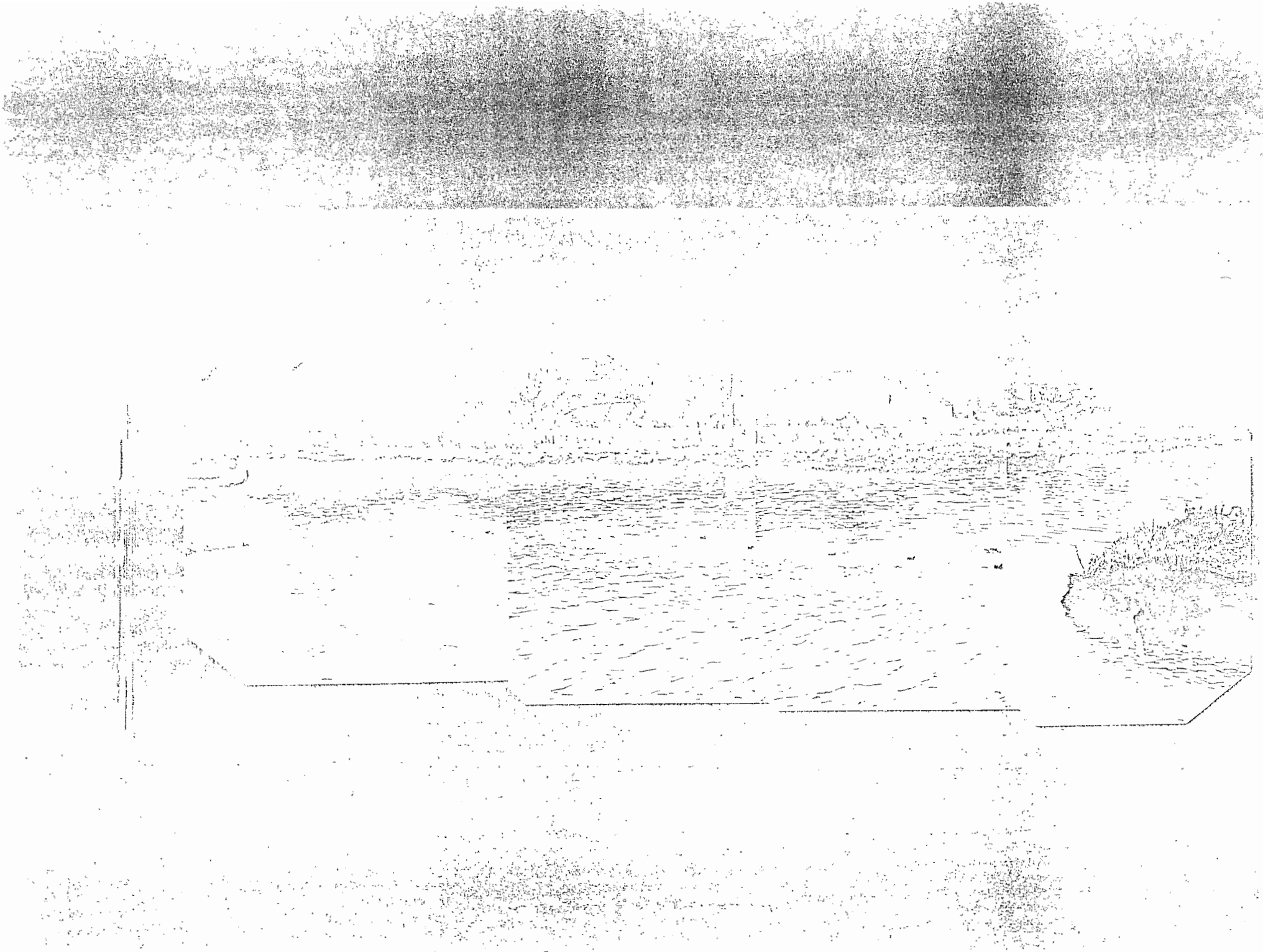

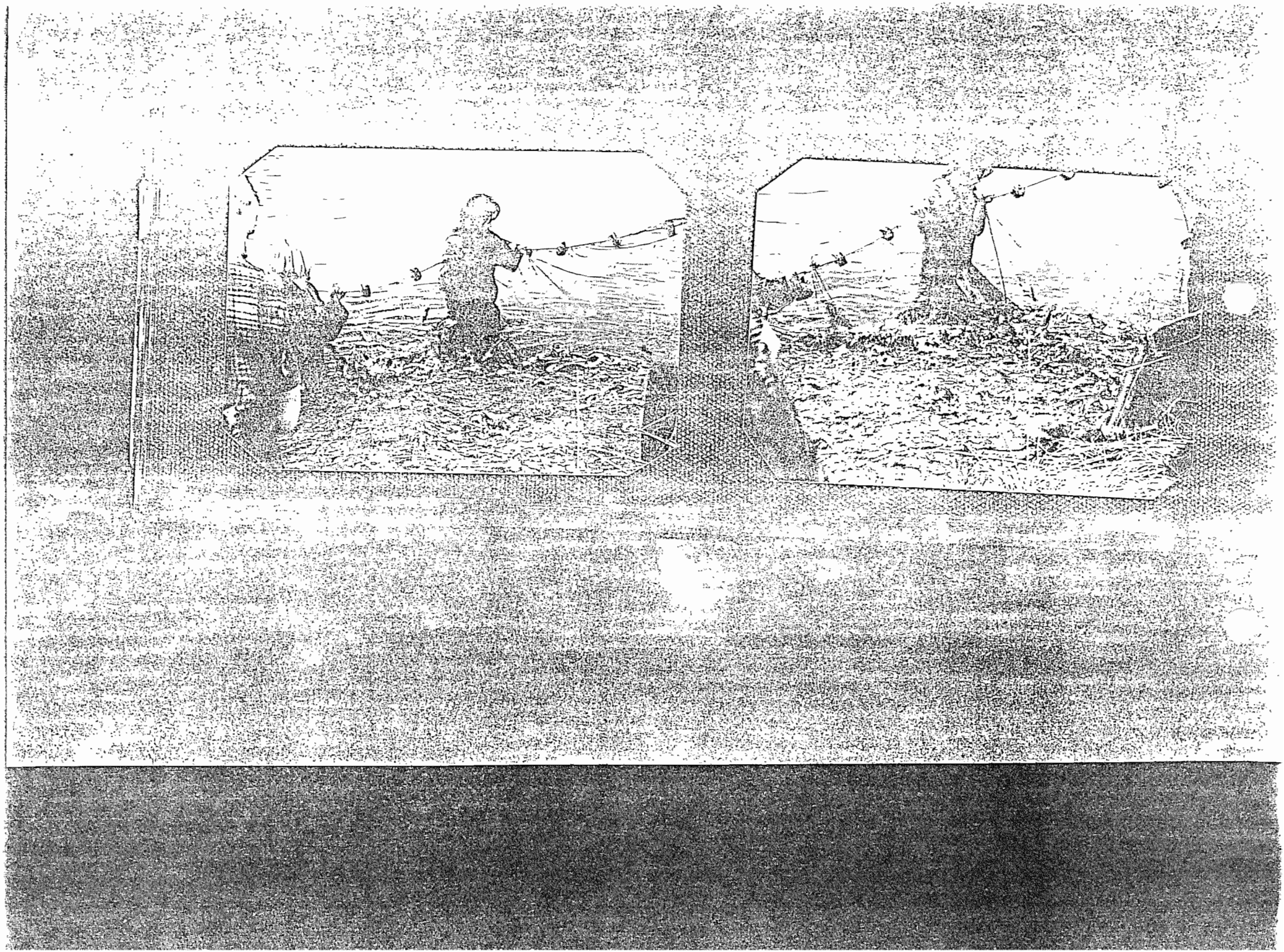

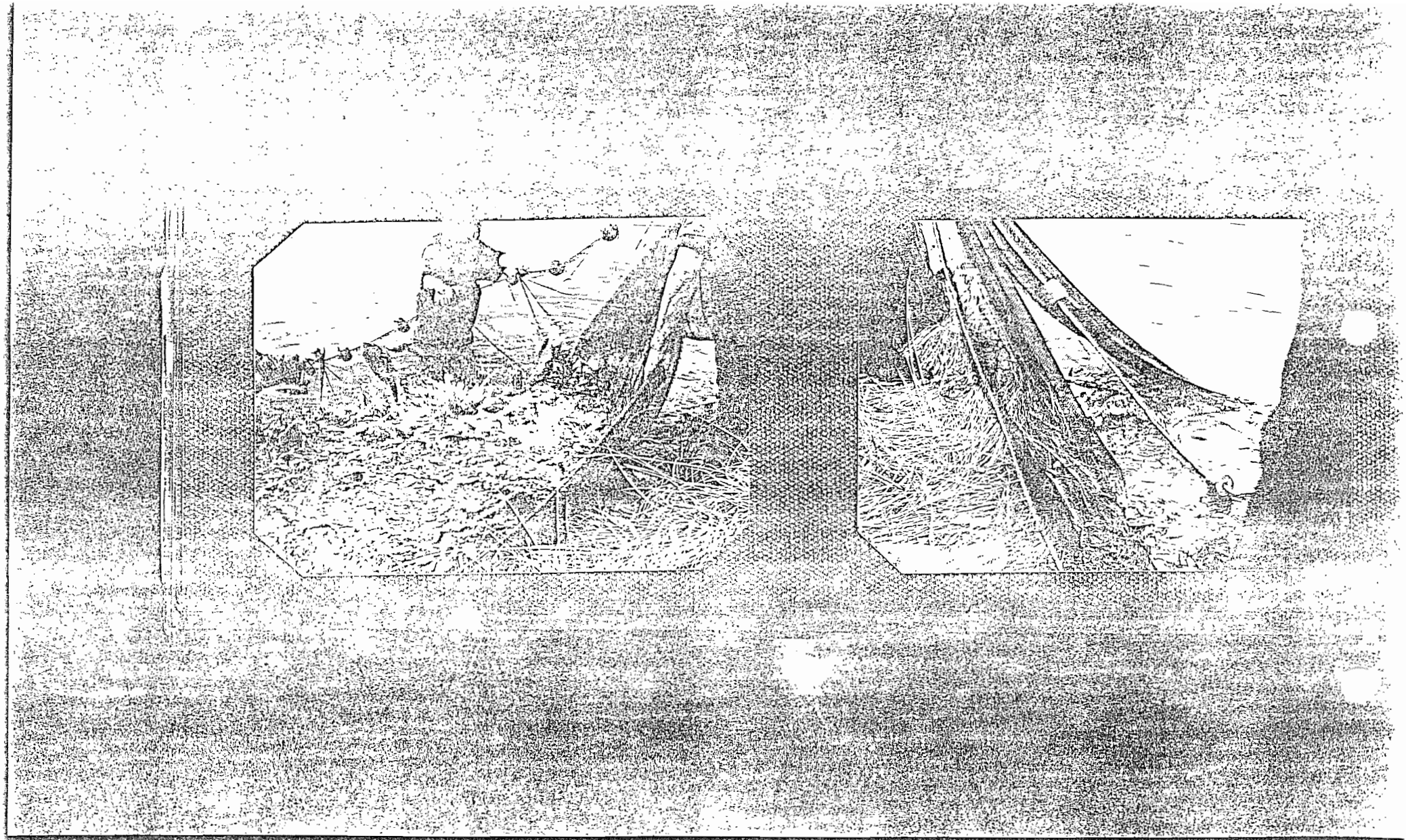

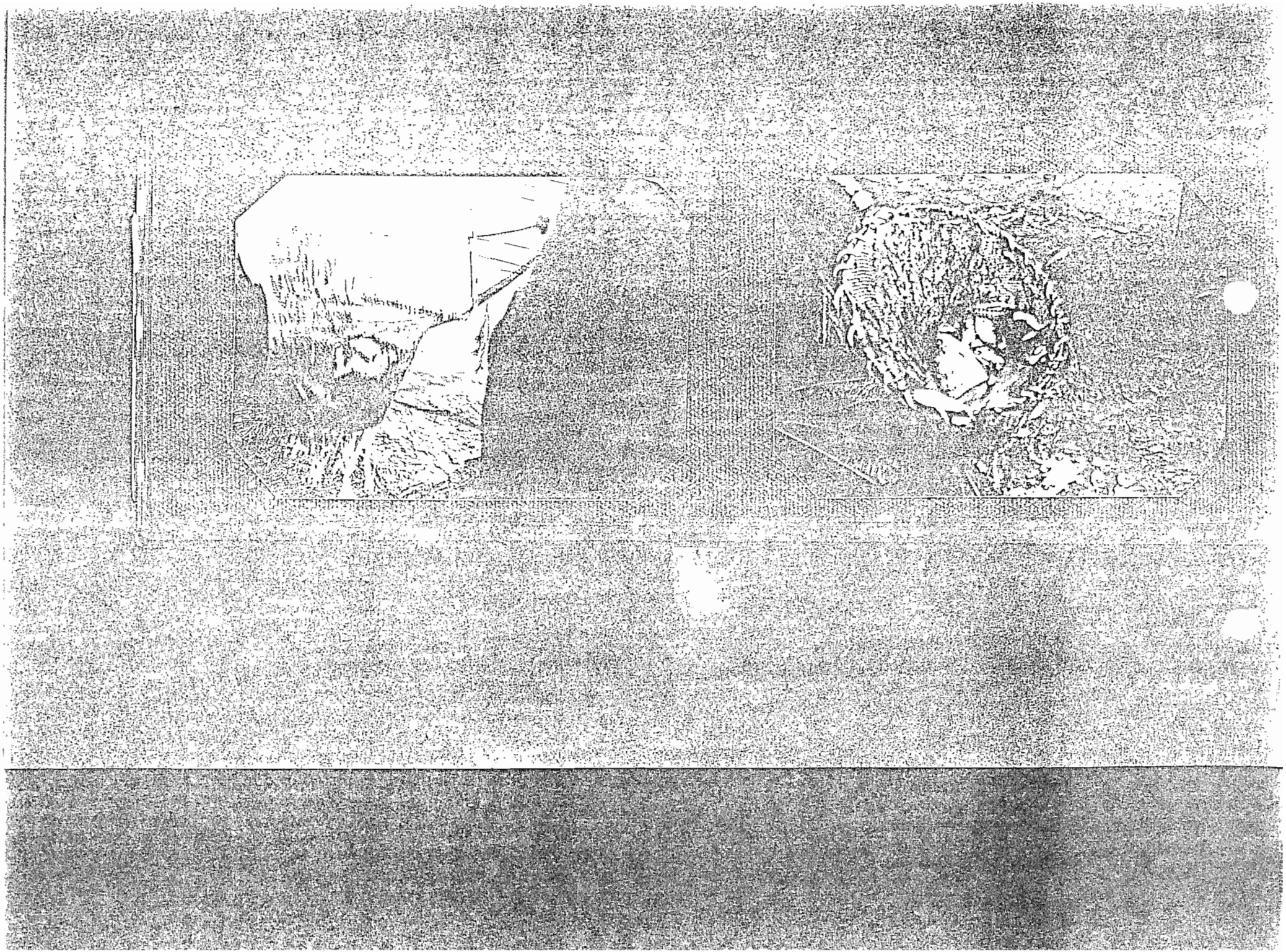

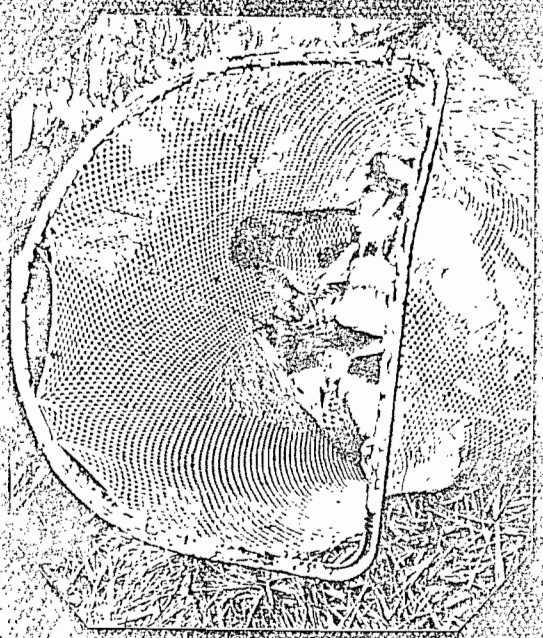

ESA

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C. SUDWEEKS, P.E.
D. SUDWEEKS, P.E.

January 23, 1996

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 to be 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.

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

Charles L. Sudweeks

jls

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.

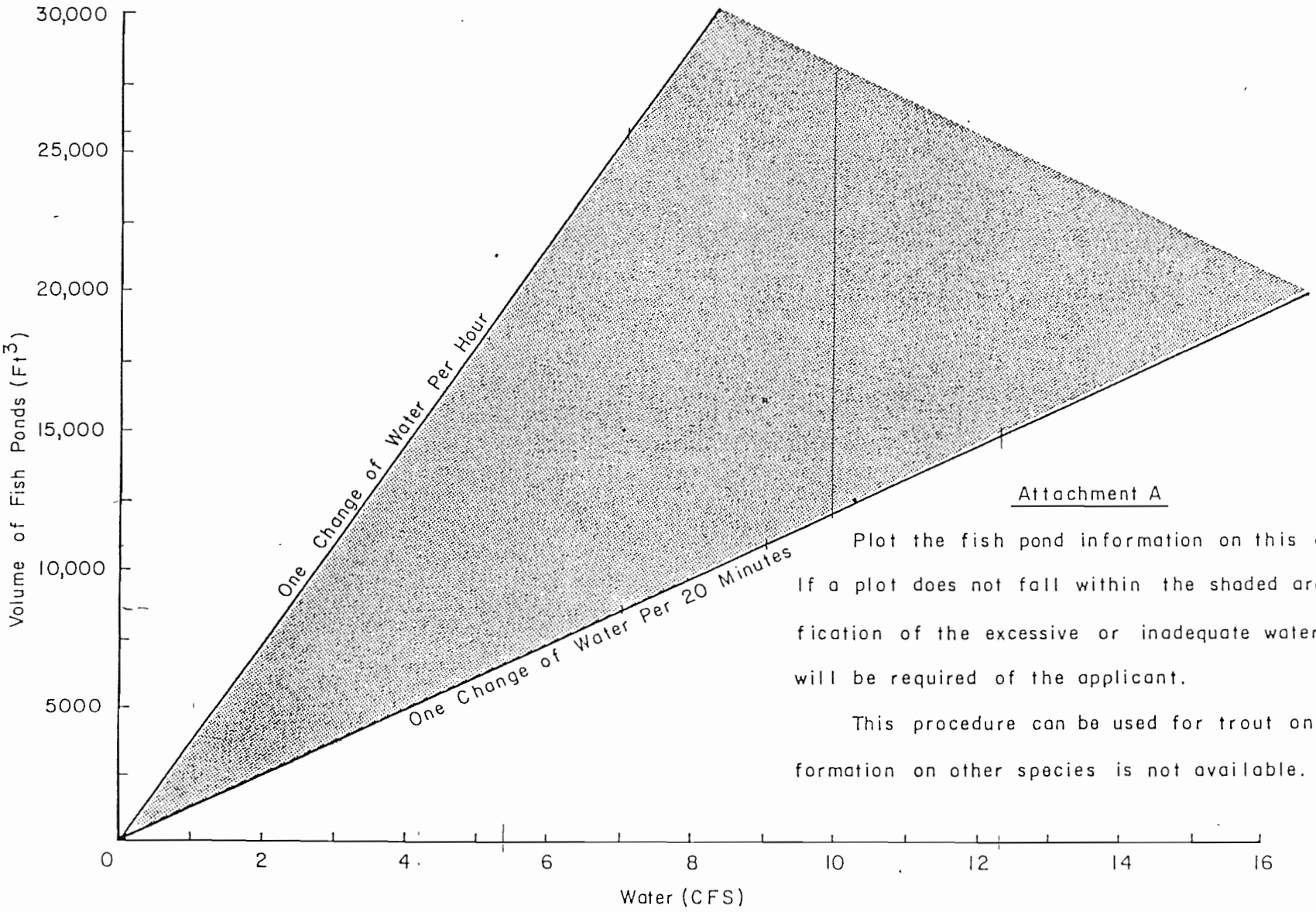
I did not have any confrontation with this person but it was apparent that she was very concerned with the project going through their landscaped area.

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) cmd



Attachment A

Plot the fish pond information on this graph. If a plot does not fall within the shaded area, justification of the excessive or inadequate water supply will be required of the applicant.

This procedure can be used for trout only. Information on other species is not available.

Water Requirements For Trout Rearing Facilities Based On Total Volume Of Ponds

STATE OF IDAHO

OFFICE OF THE ATTORNEY GENERAL

ALAN G. LANCE

September 29, 1997

Gary Spackman
Hearing Examiner
Dept. of Water Resources
1301 N. Orchard
Boise, Idaho 83726

Re: In the Matter of Application for Permit No. 29-08162 and for Permit No. 29-08164 in the Name of Lazy V Ranch

Dear Mr. Spackman:

I am the Deputy Attorney General assigned to represent the Lava Hot Springs Foundation. As you are aware, the Foundation is not a party to the above-named matter. It recently came to my attention, however, that Gregory Moeller, attorney for the protestant, George Katsilometes, filed a witness list naming many current and former employees of the Foundation as witnesses, and asking you to issue subpoenas for them. I discussed the matter with Mr. Moeller, who informed me that the witnesses are being called in support of the protestant's allegation that the water outflowing from the Foundation's heat exchange system (and which is the source of the water used by the applicant) is not in reality waste water.

In other words, it appears that the protestant intends to collaterally attack the Foundation's water rights by alleging that the Foundation is not putting the water in the heat exchange system to beneficial use, but is instead illegally diverting it for the purpose of providing water to the applicant. If that is the case, the Foundation strongly protests such a course of action. First, the issue has already been addressed by the Department, which investigated the heat exchange system and concluded that "the capacity and operation of the delivery system is in line with the demand for heat transfer to the cold water pools." *See* attached report of Kenneth Baker and Russell Rydalch. If the protestants do not agree with the Department's findings, however, the hearing on the pending applications is not the proper forum in which to hear such allegations. For one thing, the Foundation is not a party to these proceedings, and has not been given proper notice that its water rights are at issue. If Mr.

Natural Resources Division
P.O. Box 83720, Boise, Idaho 83720-0010
Telephone: (208) 334-2400, FAX: (208) 334-2690
Located at 700 W. Jefferson Street, Suite 210

OCT 02 1997

Katsilometes intends to challenge the Foundation's water rights, then he must comply with the provisions in the Idaho Code governing such challenges. Under the terms of Idaho Code §§ 42-350 and 42-351, a person who alleges that a licensee has failed to put water to beneficial use or is otherwise illegally diverting water must petition the director to take action, which includes the issuance of a notice of violation, followed by a compliance conference and a civil enforcement action if necessary. There is no provision in the Idaho Code or the Department's regulations allowing challenges to a licensed water right to occur in the context of a hearing over a protest to a permit application.

Therefore, the Foundation requests that you decline to address, in the upcoming hearing over the pending applications, the issue of whether or not the bypass outflow from the Foundation's heat exchange system is a beneficial use of water. We submit that the issue is simply outside the scope of your authority under Idaho Code § 42-203A. If, however, you intend to proceed and address the issue, then we demand that the hearing be postponed and the Foundation be given a reasonable opportunity to intervene in order to protect its rights. Anything less would be a serious violation of due process.

Please let me know immediately how you plan to address this situation, so that the Foundation can make an informed decision as to whether it needs to intervene in this action or otherwise take this matter up with the director. You can reach me at 334-4143 if you have any questions.

Sincerely,

Steven W. Strack
Deputy Attorney General

SWS/dp
Enclosure
cc: Bob Meline
Gregory Moeller
Evelee Hill Rush
John Mahloff
F.L. Duke Walden

Lava\L7270nsa.doc

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

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.

All water which flows through the heat exchangers is directly discharged into the Portneuf river. <u>There is no diversion of water once it has flowed through the heat exchangers which heat the cold-water pools and pool building.</u> 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 <u>one exception</u>: 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.

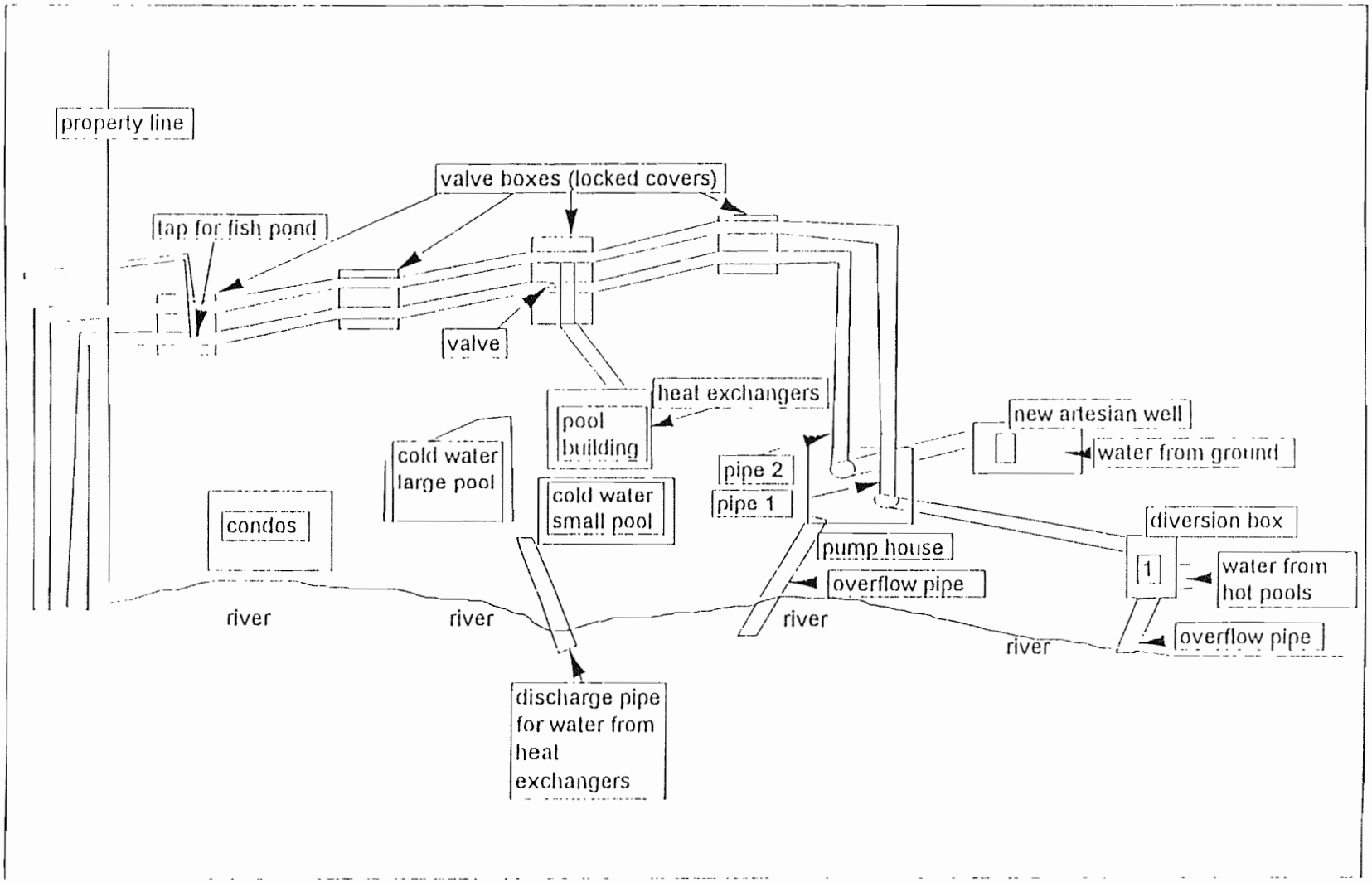
We believe that the capacity and operation of the delivery system is in line with the demand for heat transfer to the cold water pools. The extended piping system retains the function and capability to supply other facility needs and future development of the site.

_____ DATE 5.26.96
Kenneth L. Baker, Conservation Bureau Chief

_____ DATE 5/26/96
Russell Rydalch, Engineer In Training

Attachment 1

Lava Hot Springs (no scale)



Prepared by IDWR Energy Division 8/26/96

CERTIFICATE OF ASSUMED BUSINESS NAME

To the SECRETARY OF STATE, STATE OF IDAHO

Pursuant to Section 53-504, Idaho Code, the undersigned gives notice of adoption of an Assumed Business Name.

1. The assumed business name which the undersigned use(s) in the transaction of business is:

   Lazy V Ranches

2. The true name(s) and business address(es) of the entity or individual(s) doing business under the assumed business name is/are:

Name	Address
Karen Vargason	299 N. center, Lava Hot Springs, ID 83246
Thayne Vargason	299 N. Center, Lava Hot Springs, ID 83246

3. The general type of business transacted under the assumed business name is:

   Retail Trade and Agriculture

   See categories on the reverse

4. The name and address to which correspondence should be addressed:

   Karen and Thayne Vargason

   P.O. Box 268, Lava Hot Springs, Idaho 83246

Signed Karen Vargason

By Karen Vargason

Capacity Co-Owner

Submit Certificate of Assumed Business Name and **$20.00** fee to:

Secretary of State
700 West Jefferson
PO Box 83720
Boise ID 83720-0080

Customer #

Secretary of State use only

g:\corp\forms\abn.pm6 Revision 10/96

Oct 23, 1997 Hearing - Lazy V Ranch

Tape # 1

49 - 250 Speckman opening Remarks
" " "
251 - 516 Jack Robison Remarks
524 - 647 Greg Moeller Remarks
650 - 722 Gary Speckman Remarks
725 - 2846 Karen Vargason Testimony
2865 - 5865 " " "
end
5870 - [redacted] Cross examination
" "

Tape #2

[redacted] Karen Vargason Cross Examination
" "
227 - 280 " Redirect
281 - 310 " Recross
312 - 408 Recross
410 - 750 Speakman Questions
770 - 995 Ms. Lish (Karen) - Testimony
1023 - 1978 Ruth Wilson - Testimony
3079
1983 - [redacted] " Cross X
3682 - 3187 " Redirect
3189 - [redacted] " Recross
3375
3386 - 5307 Sidwicks - Testimony

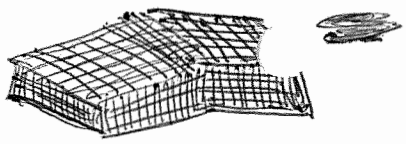
020 495 " Cross X
500 - 1258 " Cross X Mulhoff
1265 - 1311 " Redirect
1312 - 1365 " Recross
1370 - 1461 " "

Applicant exhibits

#		accepted
1	- photos	✓
2	- Easement agreement	✓
3	- Amended easement	✓
4	- Field Report	✓
5	Applic for permit	✓
6	Applic for permit	✓
7	Certif. of Business name	✓
8	Stack letter	✓
9		✓
10	Minutes	✓
11	Easement agreement	✓
12	Fish & Game letter	✓
13	" " "	✓
14	Plans	✓
15	Letter	✓
16	- Field report	✓
17	- Fish flow chart	
18	- photo - Varsseveld property	
19	- Application # 29-08168	✓
20	- Minutes (excerpt)	1-3-1980?
rejected - 21	- U of I document	

Protestants Exhibit

#	Accepted
A - Photo	✓
B - Feasibility study	✓
C - Photo	✓
D - Spackman letter 2 pgs	✓
E - Photo's	
F - "	
G - "	
H - "	
~~I~~ - "	
~~J~~ - Well logs & other pgs	
K - Lava proximity map	✓
L - Investigative Report	



Tape #	
1476-2928	Bob Moline testimony
2939-5255	" " Cross Ex.
2265-5406	" " Cross X - Melhoff
108-6011	" Cross X - Evalee Rush
012-6108	" " " Walton
127-6395	" Redirect
	" Recross
426-end	" Recross - Rush
Tape #3	"
0-59	"
18-557	" GARY SPACKMAN Inquiry
604-768	Thayne Vargason - Testimony
782-1000	Steve Peterson - " "
1024-1363	Rev. Marceau -
364-1406	" " Cross X
1418-1552	Brad Erasure - Testimony
610-1701	SPACKman Remarks
1711-2293	Gary Blanchard - Testimony
2295-2330	Cross X
2332-2356	- Redirect
2372-2648	Patty Carol Pulling - Testimony
2650-2669	" " Cross X
2679-2805	Remarks
2807-3117	Sheldon Jones - Testimony
435-3558	" " - Cross X
3575-3658	- Recross
3663-3684	" " Redirect

Tape #	
5760 - 4028	Brent Hendricks - Testimony
4030-4146	" " Cross X
4150 - 4543	" " Redirect
4545-4678	" " Re Cross X
4680-4762	" " Redirect
4764 - 4866	" " Gary's Questions
4916-6596	George Katsilometes - Testimony
6610 - end	" "
Tape #5	
0010-1120	" " Cross X
1125 - 1273	" " Redirect
1278 - 1363	" " Re cross
1368-2109	" " Gary's Questions
2110-2170	" " Redirect
2176-2186	" " Re cross
2228-2830	John Melhoff Narrative testimony
2835 - 3033	" " Cross X by Moeller
3050-3825	" " Cross X by Robison
3841 - 4158	Garys Questions
4181 -	Duke Walden - Narative Testimony
-4788	Cross X by Moeller
4798 - 5556	" " " " " Robison
5612 - 5664	" " " " " Moeller
5690	" " " " Robison
5785	Gary's Questions
5810 - tape end	Evelee Rush
Tape #6	
22 - 0129	" " ~~Cross X Moeller~~
32 - 188	" " Cross X ~~Re~~ Moeller
96 - 467	" " Cross X Robison

Tape #	
0476 - ~~500~~	Evelee Rush - Continued testimony
-585	
588 - 715	" " Gary's Questions
734 - 909	Russ Sidell - Rebuttal Testimony
910 - 992	" " - Moeller
1001 - 1104	" " - Duke Walden
1135 - 1585	Bob Moline - Rebuttal Testimony
1586 - 1617	" " - Moeller
1625 - 1708	" " - Evelee
1716 - 1772	- Walden
1781 - 2205	Karen Vargeson - Rebuttal testimony
2230 - 2250	- Evelee
2252 - 2302	- Duke Walden
2406	End of Hearing

Hearing —

April —

By March 18 — — Apr.

Clear 2 days —

Hold separate days on application

Exchange Witness list by 15 days before hearing — (by issues —)

Opportunity for submitting rebuttal witness —

Exchange exhibits @ requests for documents —

Note the timing —

3:00 @ Lava Springs

To: File 29:8162
29:8164

From: NCY

Re: Prehearing conference

A prehearing conference was held @ Pocatello, Idaho to consider protests against the application. ~~The~~ conference ~~was attended by~~ attendance list is attached. ~~[illegible]~~ The protestants appeared to consider the application @ a combined conference. ~~In response~~ After The applicant reviewed the proposal under 29-8162, the protestants asked for a view of the project site and declined to discuss their concerns until of the view ~~[illegible]~~ The applicant then reviewed her proposal for the ~~[illegible]~~ application.

The following plans for ~~the~~ a formal hearing were made:

(1) The parties will by 3/18/96:
- ~~[illegible]~~ available hearing date in April
- Witnesses
- Requests for documents
- Hearing exhibits

(2) Separate hearings will be held
applicant wanted on consecutive pay

protestants want at least 60 days separation on the hearings.

Mr Rush will arrange
(1) For a ~~meeting~~ hearing room
(2) For a view.

29-8162	29-8164
11/20/95	1/5/96
Waste water	Spring
3.0 cfs	7.0 cfs
LAZY "U" Ranch, Inc	LAZY "U" Ranch, Inc.
Applicant owns P.d.	P.O. on Foundation
Duke Walden	Protest: Duke Walden
George Kotsilometes	George Kotsilometes
Evelee Hill Ranch	Intervene - Evelee Hill Ranch
John Mehlhoff	

Sharon Sue Hathaway - late protest - intervention (?)

KAREN VARGASON

- Foundation gave 6" of water
- IDEL experiment on Talapia
  Shelley High School
  650 fish become 46,000
  in 6 months
- IDWR said 3 cfs I don't know who
- Same Spring as source -
- only get waste water -

Question same spring -
Moline - may be different systems
but same source
Is it 10 cfs
Copy of agreement giving 6" of
water

Pool is filled with hot water &
also heated by exchange

Winter 40 to 60 °F
Summer 80 °F

Longer pipe & valve - more
volume in raceways
18 raceway - 3 ft x 4 ft x 20
Keith Wilson -

Thinks 0.75 cfs now being used –
Needs 3 cfs –

State has no obligation to deliver water.
only take what is there
Risk of fish dying is Vargas

Engineering is not complete –

Some chlorination every 3 days
dissipate before release.

Lazy "V" Ranch, Inc is a part
of Butcher Block, Inc.

Issue is application invalid
because of error in name

Buddy Campbell dug the hole for
the pond in 1986 or 1987.
Commenced receiving water in 1985

No application submitted to the Board
for the extra water use

Manager of cades refused to allow the
pipes to cross –

ROSTER OF ATTENDANCE

IDAHO DEPARMENT OF WATER RESOURCES
2735 Airport Way, Boise, ID 83705

Re: Applications for Permit Nos. 29-08162, 29-08164 in the Name of Lazy "V" Ranch

Place: Pocatello Airport, Downstairs Conference Room

Date: Thursday and Friday, October 23 and 24, 1997

Conducted by: Gary Spackman

NAME	ADDRESS
George W. Ratzi Powers	94 E Portneuf Lava Hot Springs
John Mehlhoff	1424 High St Auburn, Ca 95603
Gary W Moeller	508 Rolling Hills, Rexburg
Ray W. Tigby	25 N 2 E, PO B 250, Rexburg, Id 8344
Evelyn Hill	340 S. 11th Pocatello, ID 83201
Jack H Robison	415 S. Arthur Pocatello Id 83201
Karen Vargason	299 N. Center - Lava Hot Springs, Ia.
Reggie Vargason	299 No Center Lava Hot Springs 8246

WITNESSES

Called by Lazy V Ranch
Subpoenas to JACK ROBISON
JONES CHARTERED
415 ARTHUR
PO BOX 967
POCATELLO ID 83204-0967

Charles Sudweeks, Pocatello
Floyd Jensen, Lava Hot Springs?
Bob Meline, Lava Hot Springs
Dave Loveless, Pocatello
Mike Winston, Shelley
Jessica Winston, Shelley
Keith Wilson, IDWR, Idaho Falls
Rick Frandsen, Lava Hot Springs
Donald Campbell, Buhl
Gary Fornshell, Twin Falls
County Extension Agt

Subpoenas to JOHN MEHLHAFF
1424 HIGH ST
AUBURN CA 95603

Charles Sudweeks, Pocatello
Robert Meline, Lava Hot Springs
Mike Hanson, Lava Hot Springs
Karen Vargason, Lava Hot Springs

Called by George Katsilometes
Subpoenas to RAY RIGBY & GREGORY MOELLER, ATTORNEYS AT LAW, REXBURG
PO BOX 250
REXBURG, IDAHO 83440

Reverend Richard Marsceau, Lava Hot Springs
Rick Frandsen, Lava Hot Springs
Mike Hansen, Lava Hot Springs

Russell Sidell, Lava Hot Springs
Thayne Vargason, Lava Hot Springs
Ron Carlson, IDWR, Idaho Falls
Harold Jones, IDWR, Idaho Falls
Keith Wilson, IDWR, Idaho Falls
Dennis Dunn, IDWR, Idaho Falls
Charles Sudweeks, Pocatello
Donald Campbell, Buhl
Mark Sidell, Lava Hot Springs
Robert Meline, Lava Hot Springs
Sheldon Jones, Lava Hot Springs
Gary Blanchard, Pocatello?
Brad Frasure, Pocatello?
Karen Lish, Lava Hot Springs
Brent Hendricks, Pocatello?
Steve Peterson, Lava Hot Springs
Shane Beeson, Lava Hot Springs
Mary Fridell, Lava Hot Springs
Eleanor Ferguson, Lava Hot Springs
Carroll Pulling, Lava.HotSprings
DavidTreasure, Lava Hot Springs
Dale McFarland, Lava Hot Springs
Archie Service, Pocatello
Ed Walker, Idaho Falls (Pump Tech)

WITNESSES

Called by Lazy V Ranch
Subpoenas to JACK ROBISON
JONES CHARTERED
415 ARTHUR
PO BOX 967
POCATELLO ID 83204-0967

Charles Sudweeks, Pocatello
Floyd Jensen, Lava Hot Springs?
Bob Meline, Lava Hot Springs
Dave Loveless, Pocatello
Mike Winston, Shelley
Jessica Winston, Shelley
Keith Wilson, IDWR, Idaho Falls
Rick Frandsen, Lava Hot Springs
Donald Campbell, Buhl
Gary Fornshell, Twin Falls
County Extension Agt

Subpoenas to JOHN MEHLHAFF
1424 HIGH ST
AUBURN CA 95603

Charles Sudweeks, Pocatello
Robert Meline, Lava Hot Springs
Mike Hanson, Lava Hot Springs
Karen Vargason, Lava Hot Springs

Called by George Katsilometes
Subpoenas to RAY RIGBY & GREGORY MOELLER, ATTORNEYS AT LAW, REXBURG
PO BOX 250
REXBURG, IDAHO 83440

Reverend Richard Marsceau, Lava Hot Springs
Rick Frandsen, Lava Hot Springs
Mike Hansen, Lava Hot Springs
Russell Sidell, Lava Hot Springs
Thayne Vargason, Lava Hot Springs
Ron Carlson, IDWR, Idaho Falls
Harold Jones, IDWR, Idaho Falls
Keith Wilson, IDWR, Idaho Falls
Dennis Dunn, IDWR, Idaho Falls
Charles Sudweeks, Pocatello
Donald Campbell, Buhl
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Brad Frasure, Pocatello?
Karen Lish, Lava Hot Springs
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Steve Peterson, Lava Hot Springs
Shane Beeson, Lava Hot Springs
Mary Fridell, Lava Hot Springs
Eleanor Ferguson, Lava Hot Springs
Carroll Pulling, Lava.HotSprings
DavidTreasure, Lava Hot Springs
Dale McFarland, Lava Hot Springs
Archie Service, Pocatello
Ed Walker, Idaho Falls (Pump Tech)

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

October 15, 1997

H MICHAEL WINSTON
316 N HANSON AV
SHELLEY, ID 83274

Re: Hearings for Applications for Permit No.s 29-08162 and 29-09164 in the Name of Lazy V Ranch

Dear Mr. Winston:

The Department of Water Resources (IDWR) has issued a subpoena for your attendance to a hearing scheduled for October 23 and 24, 1997. You may be served by one of the parties in the near future. A large number of subpoenas have been issued by IDWR. The purpose of this letter is to inform you that you are entitled to prepayment of your costs and one days witness fee prior to your attendance. I have attached copies of rule 45(c)(1), rule 45(c)(2), and rule 54(d)(1), which govern the payment of fees.

If you are served with a subpoena, you should demand at the time of service the fees for one (1) days attendance and one-way mileage. If you are asked to testify about happenings of which you have knowledge, you are entitled to $20 per day, plus one-way mileage at the rate of .30 per mile. If you are an expert witness, you are entitled to a reasonable expert witness fee, not to exceed $500. An expert witness is a person who is considered to have sufficient knowledge in a particular field that he can give an opinion based on hypothetical facts posed to him.

Sincerely,

Gary Spackman

Gary Spackman

GS:st

MARK SIDELL
9585 S FRANDSEN RD
LAVA HOT SPRINGS ID 83246

SHELDON JONES
257 W BOOTH
LAVA HOT SPRINGS ID 83246

KAREN LISH
LAVA HOT SPRINGS ID 83246

STEVE PETERSON
LAVA HOT SPRINGS ID 83246

SHANE BEESON
85 W FIFE
LAVA HOT SPRINGS ID 83246

MARY FRIDEL
15 N 3 E
LAVA HOT SPRINGS ID 83246

DALE MCFARLAND
130 W MERLE
LAVA HOT SPRINGS ID 83246

FLOYD JENSEN
LAVA HOT SPRINGS ID 83246

H MICHAEL WINSTON
316 N HANSON AV
SHELLEY ID 83274

JESSICA WINSTON
316 N HANSON AV
SHELLEY ID 83274

RICKEY FRANDSEN
7516 E US HWY 30
LAVA HOT SPRINGS ID 83246

CHARLES SUDWEEKS
9161 W CARIBOU RD
POCATELLO ID 83204-7216

THAYNE & KAREN VARGASON
PO BOX 268
LAVA HOT SPRINGS ID 83246

ROBERT MELINE
430 E MAIN ST
LAVA HOT SPRINGS ID 83246

MIKE HANSON
430 E MAIN ST
LAVA HOT SPRINGS ID 83246

REV RICHARD MARSCEAU
PO BOX 7
LAVA HOT SPRINGS ID 83246

RUSSELL SIDELL
1451 SPAULDING LN
POCATELLO ID 83201-2821

DONALD CAMPBELL
4449 N 1325 E
BUHL ID 83316-5216

GARY FORNSHELL
561 5TH AVE N
TWIN FALLS ID 83301-5713

ARCHIE SERVICE
7050 RUNNING IRON LN
POCATELLO ID 83204-3817

BRAD FRASURE
11086 N RIO VISTA RD
POCATELLO ID 83202-5315

G L BLANCHARD
2277 ELMORE ST
POCATELLO ID 83201-7021

ELEANOR FERGUSON
LAVA HOT SPRINGS ID 83246

CARROLL PULLING
LAVA HOT SPRINGS ID 83246

DAVID TREASURE
LAVA HOT SPRINGS ID 83246

KEITH WILSON
IDWR EASTERN REGION
900 N SKYLINE DR STE A
IDAHO FALLS ID 83402-1718

RON CARLSON
IDWR EASTERN REGION
900 N SKYLINE DR STE A
IDAHO FALLS ID 83402-1718

DENNIS DUNN
IDWR EASTERN REGION
900 N SKYLINE DR STE A
IDAHO FALLS ID 83402-1718

HAROLD JONES
IDWR EASTERN REGION
900 N SKYLINE DR STE A
IDAHO FALLS ID 83402-1718

Rule 54(d)(1). Costs — Items allowed.

(A) Parties Entitled to Costs. Except when otherwise limited by these rules, costs shall be allowed as a matter of right to the prevailing party or parties, unless otherwise ordered by the court.

(B) Prevailing Party. In determining which party to an action is a prevailing party and entitled to costs, the trial court shall in its sound discretion consider the final judgment or result of the action in relation to the relief sought by the respective parties, whether there were multiple claims, multiple issues, counterclaims, third party claims, cross-claims, or other multiple or cross issues between the parties, and the extent to which each party prevailed upon each of such issue or claims. The trial court in its sound discretion may determine that a party to an action prevailed in part and did not prevail in part, and upon so finding may apportion the costs between and among the parties in a fair and equitable manner after considering all of the issues and claims involved in the action and the resultant judgment or judgments obtained.

(C) Costs as a Matter of Right. When costs are awarded to a party, such party shall be entitled to the following costs, actually paid, as a matter of right:

1. Court filing fees.

2. Actual fees for service of any pleading or document in the action whether served by a public officer or other person.

3. Witness fees of $20.00 per day for each day in which a witness, other than a party or expert, testifies at a deposition or in the trial of an action.

4. Travel expenses of witnesses who travel by private transportation, other than a party, who testify in the trial of an action, computed at the rate of $.30 per mile, one way, from the place of residence, whether it be within or without the state of Idaho; travel expenses of witnesses who travel other than by private transportation, other than a party, computed as the actual travel expenses of the witness not to exceed $.30 per mile, one way, from the place of residence of the witness, whether it be within or without the state of Idaho.

5. Expenses or charges of certified copies of documents admitted as evidence in a hearing or the trial of an action.

6. Reasonable costs of the preparation of models, maps, pictures, photographs, or other exhibits admitted in evidence as exhibits in a hearing or trial of an action, but not to exceed the sum of $500 for all of such exhibits of each party.

7. Cost of all bond premiums.

8. Reasonable expert witness fees for an expert who testifies at a deposition or at a trial of an action not to exceed the sum of $500 for each expert witness for all appearances.

9. Charges for reporting and transcribing of a deposition taken in preparation for trial of an action, whether or not read into evidence in the trial of an action.

10. Charges for one (1) copy of any deposition taken by any of the parties to the action in preparation for trial of the action.

did not contain copies of the subpoenas and the praecipe for the record did not specifically request their inclusion. Carter Packing Co. v. Pioneer Irrigation Dist., 91 Idaho 701, 429 P.2d 433 (1967).

Motion to Inspect Books.

A motion by a person against whom a criminal prosecution is pending for an order giving him and his counsel leave to inspect the records and files of certain mining companies for the purpose of preparing his defense, supported by an affidavit that a subpoena duces tecum, under the statutes of this state, for their production at the trial, would not give adequate relief and would cause great delay partakes of the nature of a bill of discovery and is unwarranted either by common law rules or statutory provisions. Idaho Galena Mining Co. v. Judge of Dist. Court, 47 Idaho 195, 273 P. 952 (1929).

Collateral References. Subpoena duces tecum for production of items held by a foreign custodian in another country. 82 A.L.R.2d 1403.

Rule 45(c)(1). Witness fees and expenses.

Witness fees and expenses in the district court and the magistrates division thereof shall be in the amounts provided for under Rule 54(d)(1). (Amended July 2, 1976, effective October 1, 1976; am. effective July 1, 1977.)

Federal rules comparison. There is no comparable federal rule.

Rule 45(c)(2). Service of subpoena.

A subpoena may be served by an officer authorized by law to serve process or by any other person who is not a party and is not less than eighteen (18) years of age. Service of a subpoena upon a person named therein shall be made by delivering a copy thereof to such person and by giving or offering to the person at the same time, if demanded, the fees for one (1) day's attendance and the mileage allowed by law, except that no prepayment tender of fees and mileage shall be necessary to witnesses subpoenaed by the attorney general or any prosecuting attorney on behalf of the state. When the subpoena is issued on behalf of the state or an officer or agency thereof, fees and mileage need not be tendered. When service is by an officer it must be returned with the officer's certificate of service, and when served by any other person it must be returned with an affidavit of such person of its service. (Amended July 2, 1976, effective October 1, 1976; am. effective July 1, 1977.)

Federal rules comparison. This rule is similar to Federal Rule 45(b)(1), except that this rule exempts prepayment tender of fees in some cases, and this rule adds the last sentence.

Rule 45(d)(1). Subpoena for taking depositions — Place of examination.

Proof of service of a notice to take a deposition as provided in Rules 30 and 31, or the presentation of a stipulation for the taking thereof, constitutes a sufficient authorization for the issuance by the clerk of the district court for the county in which the action is pending, or by the clerk of the district court for the county in which a deposition is being taken to be used in an action pending in another state or country, of subpoenas for the person named or described therein. The subpoena may command the person to whom it is

directed to produce de
which constitute or co
the scope of the exami
subpoena will be subje
30 and subdivision (b)
of the state, the cour
enforce such rules.

Compiler's notes. The
the provisions" in the secor
enclosed in parentheses by
surplusage.

Federal rules compari
comparable federal rule.

Cross ref. Depositions up
tion, Rule 30(a).

Documentary evidence, s
duction of, Rule 45(b).

Rule 45(d)(2). Depo

A resident of the sta
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of the state wherein t

Federal rules comparis
45(c)(3)(A)(ii) differs in that
dance within 100 miles rath

Resident of Adjoining Co

A witness who resides
county and more than thirt
place of trial is not oblig

Rule 45(e). Subpoe

At the request of an
shall be issued as prov
or trial in a district cou
within the state.

Federal rules comparis
comparable federal rule.

Necessary Witnesses.

The Civil Rules, together
corpus statutes, provide to

MARK SIDELJ
9585 S FRANDSEN RD
LAVA HOT SPRINGS ID 83246

SHELDON JONES
257 W BOOTH
LAVA HOT SPRINGS ID 83246

KAREN LISH
LAVA HOT SPRINGS ID 83246

STEVE PETERSON
LAVA HOT SPRINGS ID 83246

SHANE BEESON
85 W FIFE
LAVA HOT SPRINGS ID 83246

MARY FRIDEL
15 N 3 E
LAVA HOT SPRINGS ID 83246

DALE MCFARLAND
130 W MERLE
LAVA HOT SPRINGS ID 83246

FLOYD JENSEN
LAVA HOT SPRINGS ID 83246

H MICHAEL WINSTON
316 N HANSON AV
SHELLEY ID 83274

JESSICA WINSTON
316 N HANSON AV
SHELLEY ID 83274

RICKEY FRANDSEN
7516 E US HWY 30
LAVA HOT SPRINGS ID 83246

CHARLES SUDWEEKS
9161 W CARIBOU RD
POCATELLO ID 83204-7216

THAYNE & KAREN VARGASON
PO BOX 268
LAVA HOT SPRINGS ID 83246

ROBERT MELINE
430 E MAIN ST
LAVA HOT SPRINGS ID 83246

MIKE HANSON
430 E MAIN ST
LAVA HOT SPRINGS ID 83246

REV RICHARD MARSCEAU
PO BOX 7
LAVA HOT SPRINGS ID 83246

RUSSELL SIDELL
1451 SPAULDING LN
POCATELLO ID 83201-2821

DONALD CAMPBELL
4449 N 1325 E
BUHL ID 83316-5216

GARY FORNSHELL
561 5TH AVE N
TWIN FALLS ID 83301-5713

ARCHIE SERVICE
7050 RUNNING IRON LN
POCATELLO ID 83204-3817

BRAD FRASURE
11086 N RIO VISTA RD
POCATELLO ID 83202-5315

G L BLANCHARD
2277 ELMORE ST
POCATELLO ID 83201-7021

ELEANOR FERGUSON
LAVA HOT SPRINGS ID 83246

CARROLL PULLING
LAVA HOT SPRINGS ID 83246

DAVID TREASURE
LAVA HOT SPRINGS ID 83246

KEITH WILSON
IDWR EASTERN REGION
900 N SKYLINE DR STE A
IDAHO FALLS ID 83402-1718

RON CARLSON
IDWR EASTERN REGION
900 N SKYLINE DR STE A
IDAHO FALLS ID 83402-1718

DENNIS DUNN
IDWR EASTERN REGION
900 N SKYLINE DR STE A
IDAHO FALLS ID 83402-1718

HAROLD JONES
IDWR EASTERN REGION
900 N SKYLINE DR STE A
IDAHO FALLS ID 83402-1718

ED WALKER
4444 S YELLOWSTONE HWY
IDAHO FALLS ID 83401

KAREN VARGASON
LAZY V RANCH
PO BOX 268
LAVA HOT SPRINGS ID 83246

GEORGE KATSILOMITES
LAVA HOT SPRINGS INN
PO BOX 670
LAVA HOT SPRINGS ID 83246

EVELEE HILL RUSH
PO BOX 4905
POCATELLO ID 83205

DUKE WALDREN
PO BOX 127
LAVA HOT SPRINGS ID 83246

JOHN MEHLHOFF
1424 HIGH ST
AUBUTN CA 95603

JACK ROBISON
PO BOX 967
POCATELLO ID 83204-0967

GREGORY MOELLER
PO BOX 250
REXBURG ID 83440

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

FAX TRANSMITTAL COVER SHEET

FAX # (208) 334-2348

DATE: 10-15-97

TO: Steven Strack

FROM: Western Region
Gary Spackman

DOCUMENT DESCRIPTION: Copy of appr. # 29-08164 and Info from D. Moeller.

TOTAL PAGES SENT: 6 **+ COVER SHEET**

CONTACT: Sue Taylor

RECEIVED
OCT - 7 1997
WATER RESOURCES
WESTERN REGION

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
EASTERN REGION
IDAHO FALLS ID
ph. (208) 525-7161

FAX NO. (208) 525-7177

TRANSMITTAL COVER SHEET
OMNIFAX

TO: GARY SPACKMAN FROM: H.C. JONES

DOCUMENT DESCRIPTION: Applic. #29-08164

George Katsilometes phone # 776-5830
Evelee Hill " " 232-2159

TOTAL NUMBER OF PAGES (Including this page): ______

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JAN 16 1996
Dep... Resources
East... District Office

Form 202
10/92

Ident. No. 29-8164

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
APPLICATION FOR PERMIT

RECEIVED
OCT - 7 1997
WATER RESOURCES
WESTERN REGION

To appropriate the public waters of the State of Idaho

1. Name of applicant Lazy "V" Ranch ~~Inc~~ * Phone 208 233-8011 (w) 776-5409
   Post office address P.O. Box 268 Lava Hot Springs Id 83246
2. Source of water supply Spring which is a tributary of Portneuf River
3. Location of point of diversion is SE ¼ of NE ¼ of SE ¼, Govt. Lot 8
   Sec. 21 Township 9S Range 38E B.M. Bannock County; additional points of diversion if any: —
4. Water will be used for the following purposes:
   Amount 7.00 (cfs ~~or acre-feet per annum~~) for DIVERSION to Storage purposes from 1/1 to 12/31 (both dates inclusive)
   STORAGE FOR
   Amount — (cfs or acre-feet per annum) for Fish Propagation purposes from 1/1 to 12/31 (both dates inclusive)
   Amount — (cfs or acre-feet per annum) for — purposes from — to — (both dates inclusive)
   Amount — (cfs or acre-feet per annum) for — purposes from — to — (both dates inclusive)
5. Total quantity to be appropriated is (a) 7.00 cfs (cubic feet per second) and/or (b) — (acre feet per annum)
6. Proposed diverting works:
   a. Description of ditches, flumes, pumps, headgates, etc. Geothermal Spring on Lava Hot Springs foundation land, for Fish Propagation Ponds discharged into Portneuf River
   b. Height of storage dam 3 feet; active reservoir capacity 0.5 acre-feet; total reservoir capacity 0.5 acre-feet; period of year when water will be diverted to storage: 1/1 to 12/31 inclusive.
   c. Proposed well diameter is — inches; proposed depth of well is — feet.
   d. Is ground water with a temperature of greater than 85°F being sought? —
   e. If well is already drilled, when? —; Drilling firm —:
   Well was drilled for *(well owner)* —
7. Time required for the completion of the works and application of the water to be proposed beneficial use is 5 years *(minimum 1 year)*.

* Name on application / Name on Water Lease 4/21/96

8. Description of proposed uses (*if irrigation only, go to item 9*):

a. Hydropower; show total feet of head and proposed capacity in KW. _____

b. Stockwatering; list number and kind of livestock. _____

c. Municipal; show name of municipality. _____

d. Domestic; show number of households. _____

e. Other; describe fully. Fish Propagation using Geothermal Water

9. Description of place of use:

a. If water is for irrigation, indicate acreage in each subdivision in the tabulation below.

b. If water is used for other purposes, place a symbol of the use (*example: D for Domestic*) in the corresponding place of use below. See instructions for standard symbols.

TWP	RANGE	SEC.	NE¼				NW¼				SW¼				SE¼				TOTALS
			NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	
9S	38E	21									46 H								

Total number of acres to be irrigated _____

10. Describe any other water rights used for the same purposes as described above. 29-7847

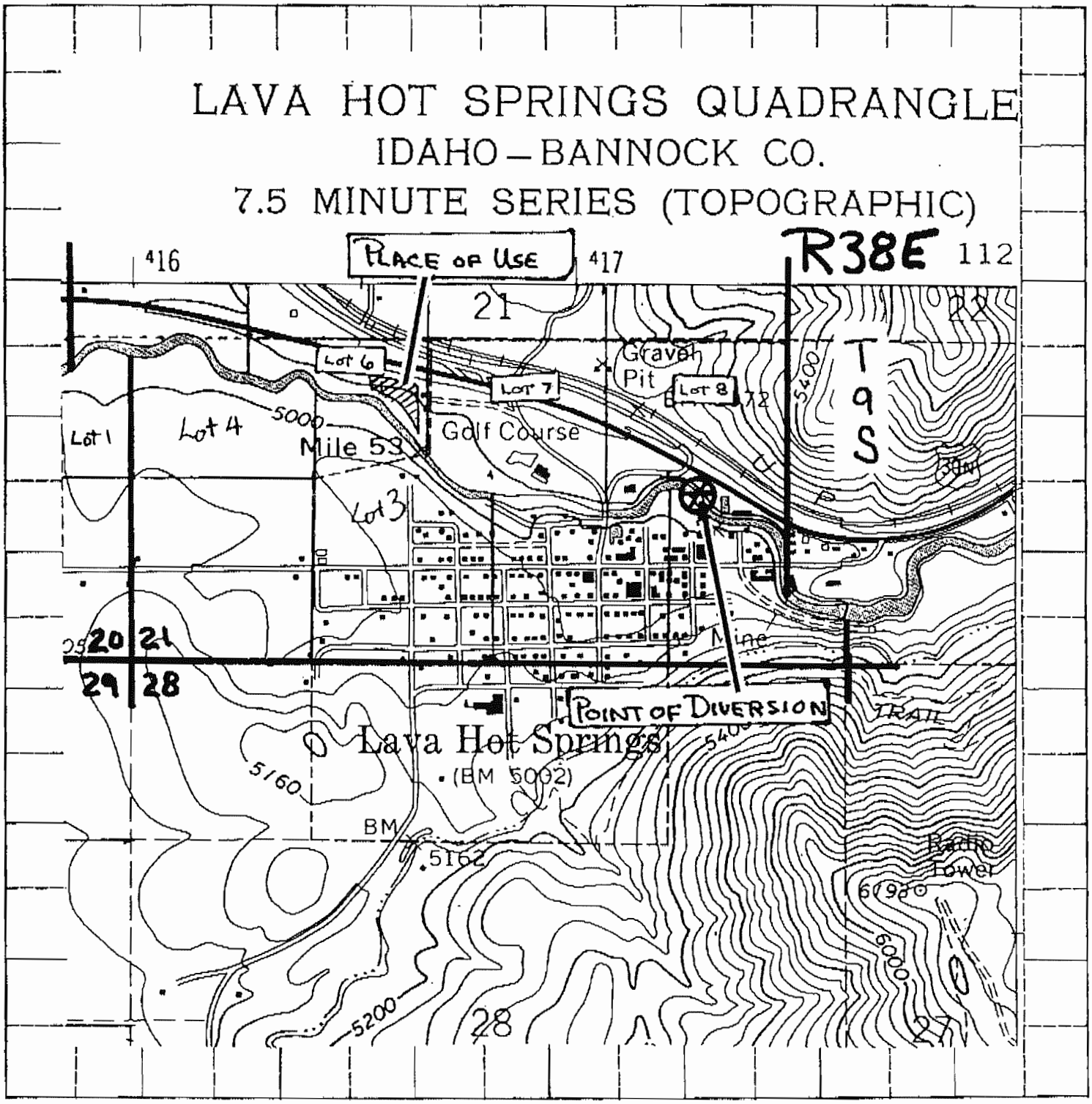
11. a. Who owns the property at the point of diversion? Lava Hot Springs Foundation

b. Who owns the land to be irrigated or place of use? Applicants

c. If the property is owned by a person other than the applicant, describe the arrangement enabling the applicant to make this filing. _____

12. Remarks: Pres: Thayne E Vargason / officers Lazy "V" Ranch
Sec Trea: Karen Vargason /

13. Map of proposed project: show clearly the proposed point of diversion, place of use, section number, township and range number.



Scale: 2 inches equal 1 mile.

BE IT KNOWN that the undersigned hereby makes application for permit to appropriate the public waters of the State of Idaho as herein set forth.

(Applicant)

Assisted By KAW 1/5/96
Received by KAW Date 1/5/96 Time 1617 hrs Preliminary check by _____

Fee $ 220.00 Receipted by KAW # E0 21819 Date 1/5/1996

Publication prepared by RB Date 1-18 & 25-96 Published in Idaho State Journal

Publication approved _____ Date _____

ACTION OF THE DIRECTOR, DEPARTMENT OF WATER RESOURCES

This is to certify that I have examined Application for Permit to appropriate the public waters of the State of Idaho No. _____, and said application is hereby _____.

1. Approval of said application is subject to the following limitations and conditions:

   a. SUBJECT TO ALL PRIOR WATER RIGHTS.

   b. Proof of construction of works and application of water to beneficial use shall be submitted on or before _____, 19____.

   c. The rate of diversion, if water is to be used for irrigation under this permit, when combined with all other water rights for the same land shall not exceed 0.02 cubic feet per second for each acre of land.

   d. The water right acquired under this permit if for hydropower purposes shall be junior and subordinate to all rights to the use of water, other than hydropower, within the State of Idaho that are initiated later in time than the priority of this permit and shall not give rise to any right or claim against any future rights to the use of water, other than hydropower, within the State of Idaho initiated later in time than the priority of this permit.

   e. Other:

State of Idano
DEPARTMENT OF WATER RESOURCES
1301 North Orchard Street, P.O. BOX 83720, Boise, Idaho 83720-0098
Phone: (208) 327-7900 FAX: (208) 327-7866

PHILIP E. BATT
GOVERNOR

KARL J. DREHER
DIRECTOR

October 14, 1997

John Mehlhaff
Attorney at Law
1424 High Street
Auburn, CA 95603

COPY

Re: Application for Permit No. 29-08162 and Application for Permit No. 29-08164 in the Name of Lazy V Ranch

Dear Mr. Mehlhaff:

Enclosed are the Subpoenas you have requested from the Department. Please let me know immediately if there are any changes or corrections to them.

Sincerely,

Deborah Drew-Ellis

Deborah Drew-Ellis
Legal Secretary

/dde
Encl.

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR PERMIT NO. 29-08162 AND APPLICATION FOR PERMIT NO. 29-08164 IN THE NAME OF LAZY V RANCH	)	**SUBPOENA**

THE STATE OF IDAHO TO: **CHARLES SUDWEEKS**

YOU ARE HEREBY COMMANDED to appear before the Director of the Department of Water Resources at: The Pocatello Airport, Downstairs Conference Room, at 2036 S. Airport Way, Pocatello, Idaho on the 24th day of October, 1997 at 9:30 a.m. as a witness in the above entitled matter.

DATED this 14th day of October, 1997.

By order of the Director.

KARL J. DREHER, Director

by _____

Glen L. Saxton, Water Allocation Bureau Chief

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR PERMIT NO. 29-08162 AND APPLICATION FOR PERMIT NO. 29-08164 IN THE NAME OF LAZY V RANCH	))))))	**SUBPOENA**

THE STATE OF IDAHO TO: **ROBERT MELINE**

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by _____
Glen L. Saxton, Water Allocation Bureau Chief

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OF THE STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR PERMIT NO. 29-08162 AND APPLICATION FOR PERMIT NO. 29-08164 IN THE NAME OF LAZY V RANCH	))))))	**SUBPOENA**

THE STATE OF IDAHO TO: **MIKE HANSON**

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OF THE STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR PERMIT NO. 29-08162 AND APPLICATION FOR PERMIT NO. 29-08164 IN THE NAME OF LAZY V RANCH	)	**SUBPOENA**

THE STATE OF IDAHO TO: **KAREN VARGASON**

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by _____
Glen L. Saxton, Water Allocation Bureau Chief

State of Idano
DEPARTMENT OF WATER RESOURCES
1301 North Orchard Street, P.O. BOX 83720, Boise, Idaho 83720-0098
Phone: (208) 327-7900 FAX: (208) 327-7866

PHILIP E. BATT
GOVERNOR

KARL J. DREHER
DIRECTOR

October 14, 1997

COPY

Jack H. Robison
Jones Chartered
415 Arthur
P.O. Box 967
Pocatello, ID 83204-0967

Re: Application for Permit No. 29-08162 and Application for Permit No. 29-08164 in the Name of Lazy V Ranch

Dear Mr. Robison:

Enclosed are the Subpoenas and the Subpoena Duces Tecum you have requested from the Department. Please let me know immediately if there are any changes or corrections to them.

Sincerely,

Deborah Drew-Ellis

Deborah Drew-Ellis
Legal Secretary

/dde
Encl.

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR PERMIT NO. 29-08162 AND APPLICATION FOR PERMIT NO. 29-08164 IN THE NAME OF LAZY V RANCH	)	**SUBPOENA**

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KARL J. DREHER, Director

by _____

Glen L. Saxton, Water Allocation Bureau Chief

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OF THE STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR PERMIT NO. 29-08162 AND APPLICATION FOR PERMIT NO. 29-08164 IN THE NAME OF LAZY V RANCH	)	**SUBPOENA**

THE STATE OF IDAHO TO: **FLOYD JENSEN**

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by _____

Glen L. Saxton, Water Allocation Bureau Chief

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR PERMIT NO. 29-08162 AND APPLICATION FOR PERMIT NO. 29-08164 IN THE NAME OF LAZY V RANCH	))))))	**SUBPOENA**

THE STATE OF IDAHO TO: **BOB MELINE**

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Glen L. Saxton, Water Allocation Bureau Chief

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR PERMIT NO. 29-08162 AND APPLICATION FOR PERMIT NO. 29-08164 IN THE NAME OF LAZY V RANCH	)	**SUBPOENA**

THE STATE OF IDAHO TO: **DAVE LOVELESS**

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By order of the Director.

KARL J. DREHER, Director

by _____

Glen L. Saxton, Water Allocation Bureau Chief

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR PERMIT NO. 29-08162 AND APPLICATION FOR PERMIT NO. 29-08164 IN THE NAME OF LAZY V RANCH	)	**SUBPOENA**

THE STATE OF IDAHO TO: **MIKE WINSTON**

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By order of the Director.

KARL J. DREHER, Director

by _____
Glen L. Saxton, Water Allocation Bureau Chief

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR PERMIT NO. 29-08162 AND APPLICATION FOR PERMIT NO. 29-08164 IN THE NAME OF LAZY V RANCH	)	**SUBPOENA**

THE STATE OF IDAHO TO: **JESSICA WINSTON**

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By order of the Director.

KARL J. DREHER, Director

by _____

Glen L. Saxton, Water Allocation Bureau Chief

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR PERMIT NO. 29-08162 AND APPLICATION FOR PERMIT NO. 29-08164 IN THE NAME OF LAZY V RANCH	)	**SUBPOENA**

THE STATE OF IDAHO TO: **KEITH WILSON**

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KARL J. DREHER, Director

by _____
Glen L. Saxton, Water Allocation Bureau Chief

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OF THE STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR PERMIT NO. 29-08162 AND APPLICATION FOR PERMIT NO. 29-08164 IN THE NAME OF LAZY V RANCH	))))))	**SUBPOENA**

THE STATE OF IDAHO TO: **RICK FRANDSEN**

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by _____
Glen L. Saxton, Water Allocation Bureau Chief

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR PERMIT NO. 29-08162 AND APPLICATION FOR PERMIT NO. 29-08164 IN THE NAME OF LAZY V RANCH	)	**SUBPOENA**

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KARL J. DREHER, Director

by _____

Glen L. Saxton, Water Allocation Bureau Chief

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR PERMIT NO. 29-08162 AND APPLICATION FOR PERMIT NO. 29-08164 IN THE NAME OF LAZY V RANCH	)	**SUBPOENA**

THE STATE OF IDAHO TO: **GARY FORNSHELL**

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KARL J. DREHER, Director

by _____
Glen L. Saxton, Water Allocation Bureau Chief

State of Idaho
DEPARTMENT OF WATER RESOURCES
1301 North Orchard Street, P.O. BOX 83720, Boise, Idaho 83720-0098
Phone: (208) 327-7900 FAX: (208) 327-7866

PHILIP E. BATT
GOVERNOR

KARL J. DREHER
DIRECTOR

October 14, 1997

Gregory W. Moeller
RIGBY THATCHER ANDRUS
RIGBY KAM & MOELLER, CHRTD.
P.O. Box 250
Rexburg, ID 83440-0250

COPY

Re: Application for Permit No. 29-08162 and Application for Permit No. 29-08164 in the Name of Lazy V Ranch

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Enclosed are the Subpoenas and the Subpoena Duces Tecum you have requested from the Department. Please let me know immediately if there are any changes or corrections to them.

Sincerely,

Deborah Drew-Ellis

Deborah Drew-Ellis
Legal Secretary

/dde
Encl.

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR PERMIT NO. 29-08162 AND APPLICATION FOR PERMIT NO. 29-08164 IN THE NAME OF LAZY V RANCH	))))))	**SUBPOENA**

THE STATE OF IDAHO TO: **REVEREND RICHARD MARSCEAU**

YOU ARE HEREBY COMMANDED to appear before the Director of the Department of Water Resources at: The Pocatello Airport, Downstairs Conference Room, at 2036 S. Airport Way, Pocatello, Idaho on the 24th day of October, 1997 at 9:30 a.m. as a witness in the above entitled matter.

DATED this 14th day of October, 1997.

By order of the Director.

KARL J. DREHER, Director

by _____
Glen L. Saxton, Water Allocation Bureau Chief

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE

STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR PERMIT NO. 29-08162 AND APPLICATION FOR PERMIT NO. 29-08164 IN THE NAME OF LAZY V RANCH	)	**SUBPOENA DUCES TECUM**

THE STATE OF IDAHO TO: **RICK FRANDSEN**

YOU ARE HEREBY COMMANDED to appear before the Director of the Department of Water Resources at the Pocatello Municipal Airport, in the Downstairs Conference Room at 2036 S. Airport Way, Pocatello, Idaho on the 24th day of October, 1997, at 9:30 a.m. as a witness in the above entitled matter.

You are further commanded to bring with you the following items and documents:

Bids and bills for work done on the Foundations pump, well, and pipelines.

DATED this 14th day of October, 1997.

By order of the Director.

KARL J. DREHER, Director

by Glen Saxton
Glen L. Saxton, Water Allocation Bureau Chief

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE

STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR PERMIT NO. 29-08162 AND APPLICATION FOR PERMIT NO. 29-08164 IN THE NAME OF LAZY V RANCH	)	**SUBPOENA DUCES TECUM**

THE STATE OF IDAHO TO: **MIKE HANSEN**

YOU ARE HEREBY COMMANDED to appear before the Director of the Department of Water Resources at the Pocatello Municipal Airport, in the Downstairs Conference Room at 2036 S. Airport Way, Pocatello, Idaho on the 24th day of October, 1997, at 9:30 a.m. as a witness in the above entitled matter.

You are further commanded to bring with you the following items and documents:

1. **The monthly flow rate for the Foundation's facilities for 1995 to present.**

2. **Temperature measurements of the geothermal water flowing into and out of the Foundation's facilities from 1995 to present.**

DATED this 14th day of October, 1997.

By order of the Director.

KARL J. DREHER, Director

by _____
Glen L. Saxton, Water Allocation Bureau Chief

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE

STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR PERMIT NO. 29-08162 AND APPLICATION FOR PERMIT NO. 29-08164 IN THE NAME OF LAZY V RANCH	)	**SUBPOENA DUCES TECUM**

THE STATE OF IDAHO TO: **RUSSELL SIDELL**

YOU ARE HEREBY COMMANDED to appear before the Director of the Department of Water Resources at the Pocatello Municipal Airport, in the Downstairs Conference Room at 2036 S. Airport Way, Pocatello, Idaho on the 24th day of October, 1997, at 9:30 a.m. as a witness in the above entitled matter.

You are further commanded to bring with you the following items and documents:

1. **The monthly flow rate for the Foundation's facilities for 1995 to present.**

2. **Temperature measurements of the geothermal water flowing into and out of the Foundation's facilities from 1995 to present.**

DATED this 14th day of October, 1997.

By order of the Director.

KARL J. DREHER, Director

by _____
Glen L. Saxton, Water Allocation Bureau Chief

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE

STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR PERMIT NO. 29-08162 AND APPLICATION FOR PERMIT NO. 29-08164 IN THE NAME OF LAZY V RANCH	)	**SUBPOENA DUCES TECUM**

THE STATE OF IDAHO TO: **THAYNE VARGASON**

YOU ARE HEREBY COMMANDED to appear before the Director of the Department of Water Resources at the Pocatello Municipal Airport, in the Downstairs Conference Room at 2036 S. Airport Way, Pocatello, Idaho on the 24th day of October, 1997, at 9:30 a.m. as a witness in the above entitled matter.

You are further commanded to bring with you the following items and documents:

1. **Copy of the easement(s) established between the Vargasons and the Lava Hot Springs Foundation.**

2. **All permits permitting the raising of fish on Vargason's property including all state and federal permits.**

DATED this 14th day of October, 1997.

By order of the Director.

KARL J. DREHER, Director

by _____
Glen L. Saxton, Water Allocation Bureau Chief

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE

STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR PERMIT NO. 29-08162 AND APPLICATION FOR PERMIT NO. 29-08164 IN THE NAME OF LAZY V RANCH	)	**SUBPOENA DUCES TECUM**

THE STATE OF IDAHO TO: **RON CARLSON**

YOU ARE HEREBY COMMANDED to appear before the Director of the Department of Water Resources at the Pocatello Municipal Airport, in the Downstairs Conference Room at 2036 S. Airport Way, Pocatello, Idaho on the 24th day of October, 1997, at 9:30 a.m. as a witness in the above entitled matter.

You are further commanded to bring with you the following items and documents:

All permits to divert, appropriate and to make beneficial use of geothermal water in the name of the Foundation.

DATED this 14th day of October, 1997.

By order of the Director.

KARL J. DREHER, Director

by _____
Glen L. Saxton, Water Allocation Bureau Chief

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR PERMIT NO. 29-08162 AND APPLICATION FOR PERMIT NO. 29-08164 IN THE NAME OF LAZY V RANCH	)	**SUBPOENA**

THE STATE OF IDAHO TO: **HAROLD JONES**

YOU ARE HEREBY COMMANDED to appear before the Director of the Department of Water Resources at: The Pocatello Airport, Downstairs Conference Room, at 2036 S. Airport Way, Pocatello, Idaho on the 24th day of October, 1997 at 9:30 a.m. as a witness in the above entitled matter.

DATED this 14th day of October, 1997.

By order of the Director.

KARL J. DREHER, Director

by _____
Glen L. Saxton, Water Allocation Bureau Chief

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR PERMIT NO. 29-08162 AND APPLICATION FOR PERMIT NO. 29-08164 IN THE NAME OF LAZY V RANCH	))))))	**SUBPOENA**

THE STATE OF IDAHO TO: **KEITH WILSON**

YOU ARE HEREBY COMMANDED to appear before the Director of the Department of Water Resources at: The Pocatello Airport, Downstairs Conference Room, at 2036 S. Airport Way, Pocatello, Idaho on the 24th day of October, 1997 at 9:30 a.m. as a witness in the above entitled matter.

DATED this 14th day of October, 1997.

By order of the Director.

KARL J. DREHER, Director

by _____

Glen L. Saxton, Water Allocation Bureau Chief

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE

STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR PERMIT NO. 29-08162 AND APPLICATION FOR PERMIT NO. 29-08164 IN THE NAME OF LAZY V RANCH	)	**SUBPOENA DUCES TECUM**

THE STATE OF IDAHO TO: **DENNIS DUNN**

YOU ARE HEREBY COMMANDED to appear before the Director of the Department of Water Resources at the Pocatello Municipal Airport, in the Downstairs Conference Room at 2036 S. Airport Way, Pocatello, Idaho on the 24th day of October, 1997, at 9:30 a.m. as a witness in the above entitled matter.

You are further commanded to bring with you the following items and documents:

All notes, drawings, photographs and other materials recorded during visit to the Foundation facilities.

DATED this 14th day of October, 1997.

By order of the Director.

KARL J. DREHER, Director

by _____
Glen L. Saxton, Water Allocation Bureau Chief

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE

STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR PERMIT NO. 29-08162 AND APPLICATION FOR PERMIT NO. 29-08164 IN THE NAME OF LAZY V RANCH	)	**SUBPOENA DUCES TECUM**

THE STATE OF IDAHO TO: **CHARLES SUDWEEKS**

YOU ARE HEREBY COMMANDED to appear before the Director of the Department of Water Resources at the Pocatello Municipal Airport, in the Downstairs Conference Room at 2036 S. Airport Way, Pocatello, Idaho on the 24th day of October, 1997, at 9:30 a.m. as a witness in the above entitled matter.

You are further commanded to bring with you the following items and documents:

Idaho State University survey of Foundation property.

DATED this 14th day of October, 1997.

By order of the Director.

KARL J. DREHER, Director

by _____
Glen L. Saxton, Water Allocation Bureau Chief

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR PERMIT NO. 29-08162 AND APPLICATION FOR PERMIT NO. 29-08164 IN THE NAME OF LAZY V RANCH	))))))	**SUBPOENA**

THE STATE OF IDAHO TO: **DONALD CAMPBELL**

YOU ARE HEREBY COMMANDED to appear before the Director of the Department of Water Resources at: The Pocatello Airport, Downstairs Conference Room, at 2036 S. Airport Way, Pocatello, Idaho on the 24th day of October, 1997 at 9:30 a.m. as a witness in the above entitled matter.

DATED this 14th day of October, 1997.

By order of the Director.

KARL J. DREHER, Director

by _____

Glen L. Saxton, Water Allocation Bureau Chief

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR PERMIT NO. 29-08162 AND APPLICATION FOR PERMIT NO. 29-08164 IN THE NAME OF LAZY V RANCH	))))))	**SUBPOENA**

THE STATE OF IDAHO TO: **MARK SIDELL**

YOU ARE HEREBY COMMANDED to appear before the Director of the Department of Water Resources at: The Pocatello Airport, Downstairs Conference Room, at 2036 S. Airport Way, Pocatello, Idaho on the 24th day of October, 1997 at 9:30 a.m. as a witness in the above entitled matter.

DATED this 14th day of October, 1997.

By order of the Director.

KARL J. DREHER, Director

by _____

Glen L. Saxton, Water Allocation Bureau Chief

5. **The Idaho State University survey of Foundation property.**

DATED this 14th day of October, 1997.

By order of the Director.

KARL J. DREHER, Director

by _____
Glen L. Saxton, Water Allocation Bureau Chief

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR PERMIT NO. 29-08162 AND APPLICATION FOR PERMIT NO. 29-08164 IN THE NAME OF LAZY V RANCH	)	**SUBPOENA**

THE STATE OF IDAHO TO: **SHELDON JONES**

YOU ARE HEREBY COMMANDED to appear before the Director of the Department of Water Resources at: The Pocatello Airport, Downstairs Conference Room, at 2036 S. Airport Way, Pocatello, Idaho on the 24th day of October, 1997 at 9:30 a.m. as a witness in the above entitled matter.

DATED this 14th day of October, 1997.

By order of the Director.

KARL J. DREHER, Director

by _____
Glen L. Saxton, Water Allocation Bureau Chief

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE

STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR PERMIT NO. 29-08162 AND APPLICATION FOR PERMIT NO. 29-08164 IN THE NAME OF LAZY V RANCH	))))))	**SUBPOENA DUCES TECUM**

THE STATE OF IDAHO TO: **GARY BLANCHARD**

YOU ARE HEREBY COMMANDED to appear before the Director of the Department of Water Resources at the Pocatello Municipal Airport, in the Downstairs Conference Room at 2036 S. Airport Way, Pocatello, Idaho on the 24th day of October, 1997, at 9:30 a.m. as a witness in the above entitled matter.

You are further commanded to bring with you the following items and documents:

Bids and bills for work done on the Foundations pump, well, and pipelines.

DATED this 14th day of October, 1997.

By order of the Director.

KARL J. DREHER, Director

by _____
Glen L. Saxton, Water Allocation Bureau Chief

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE

STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR PERMIT NO. 29-08162 AND APPLICATION FOR PERMIT NO. 29-08164 IN THE NAME OF LAZY V RANCH	)	**SUBPOENA DUCES TECUM**

THE STATE OF IDAHO TO: **BRAD FRASURE**

YOU ARE HEREBY COMMANDED to appear before the Director of the Department of Water Resources at the Pocatello Municipal Airport, in the Downstairs Conference Room at 2036 S. Airport Way, Pocatello, Idaho on the 24th day of October, 1997, at 9:30 a.m. as a witness in the above entitled matter.

You are further commanded to bring with you the following items and documents:

Bids and bills for work done on the Foundations pump, well, and pipelines.

DATED this 14th day of October, 1997.

By order of the Director.

KARL J. DREHER, Director

by _____
Glen L. Saxton, Water Allocation Bureau Chief

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR PERMIT NO. 29-08162 AND APPLICATION FOR PERMIT NO. 29-08164 IN THE NAME OF LAZY V RANCH	)	**SUBPOENA**

THE STATE OF IDAHO TO: **KAREN LISH**

YOU ARE HEREBY COMMANDED to appear before the Director of the Department of Water Resources at: The Pocatello Airport, Downstairs Conference Room, at 2036 S. Airport Way, Pocatello, Idaho on the 24th day of October, 1997 at 9:30 a.m. as a witness in the above entitled matter.

DATED this 14th day of October, 1997.

By order of the Director.

KARL J. DREHER, Director

by _____

Glen L. Saxton, Water Allocation Bureau Chief

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR PERMIT NO. 29-08162 AND APPLICATION FOR PERMIT NO. 29-08164 IN THE NAME OF LAZY V RANCH	)	**SUBPOENA**

THE STATE OF IDAHO TO: **BRENT HENDRICKS**

YOU ARE HEREBY COMMANDED to appear before the Director of the Department of Water Resources at: The Pocatello Airport, Downstairs Conference Room, at 2036 S. Airport Way, Pocatello, Idaho on the 24th day of October, 1997 at 9:30 a.m. as a witness in the above entitled matter.

DATED this 14th day of October, 1997.

By order of the Director.

KARL J. DREHER, Director

by _____

Glen L. Saxton, Water Allocation Bureau Chief

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR PERMIT NO. 29-08162 AND APPLICATION FOR PERMIT NO. 29-08164 IN THE NAME OF LAZY V RANCH	)	**SUBPOENA**

THE STATE OF IDAHO TO: **STEVE PETERSON**

YOU ARE HEREBY COMMANDED to appear before the Director of the Department of Water Resources at: The Pocatello Airport, Downstairs Conference Room, at 2036 S. Airport Way, Pocatello, Idaho on the 24th day of October, 1997 at 9:30 a.m. as a witness in the above entitled matter.

DATED this 14th day of October, 1997.

By order of the Director.

KARL J. DREHER, Director

by _____

Glen L. Saxton, Water Allocation Bureau Chief

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR PERMIT NO. 29-08162 AND APPLICATION FOR PERMIT NO. 29-08164 IN THE NAME OF LAZY V RANCH	)	**SUBPOENA**

THE STATE OF IDAHO TO: **SHANE BEESON**

YOU ARE HEREBY COMMANDED to appear before the Director of the Department of Water Resources at: The Pocatello Airport, Downstairs Conference Room, at 2036 S. Airport Way, Pocatello, Idaho on the 24th day of October, 1997 at 9:30 a.m. as a witness in the above entitled matter.

DATED this 14th day of October, 1997.

By order of the Director.

KARL J. DREHER, Director

by _____
Glen L. Saxton, Water Allocation Bureau Chief

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR PERMIT NO. 29-08162 AND APPLICATION FOR PERMIT NO. 29-08164 IN THE NAME OF LAZY V RANCH	)	**SUBPOENA**

THE STATE OF IDAHO TO: **MARY FRIDELL**

YOU ARE HEREBY COMMANDED to appear before the Director of the Department of Water Resources at: The Pocatello Airport, Downstairs Conference Room, at 2036 S. Airport Way, Pocatello, Idaho on the 24th day of October, 1997 at 9:30 a.m. as a witness in the above entitled matter.

DATED this 14th day of October, 1997.

By order of the Director.

KARL J. DREHER, Director

by _____
Glen L. Saxton, Water Allocation Bureau Chief

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR PERMIT NO. 29-08162 AND APPLICATION FOR PERMIT NO. 29-08164 IN THE NAME OF LAZY V RANCH	)	**SUBPOENA**

THE STATE OF IDAHO TO: **ELEANOR FERGUSON**

YOU ARE HEREBY COMMANDED to appear before the Director of the Department of Water Resources at: The Pocatello Airport, Downstairs Conference Room, at 2036 S. Airport Way, Pocatello, Idaho on the 24th day of October, 1997 at 9:30 a.m. as a witness in the above entitled matter.

DATED this 14th day of October, 1997.

By order of the Director.

KARL J. DREHER, Director

by _____

Glen L. Saxton, Water Allocation Bureau Chief

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR PERMIT NO. 29-08162 AND APPLICATION FOR PERMIT NO. 29-08164 IN THE NAME OF LAZY V RANCH	)	**SUBPOENA**

THE STATE OF IDAHO TO: **CARROLL PULLING**

YOU ARE HEREBY COMMANDED to appear before the Director of the Department of Water Resources at: The Pocatello Airport, Downstairs Conference Room, at 2036 S. Airport Way, Pocatello, Idaho on the 24th day of October, 1997 at 9:30 a.m. as a witness in the above entitled matter.

DATED this 14th day of October, 1997.

By order of the Director.

KARL J. DREHER, Director

by _____
Glen L. Saxton, Water Allocation Bureau Chief

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR PERMIT NO. 29-08162 AND APPLICATION FOR PERMIT NO. 29-08164 IN THE NAME OF LAZY V RANCH	))))))	**SUBPOENA**

THE STATE OF IDAHO TO: **DAVID TREASURE**

YOU ARE HEREBY COMMANDED to appear before the Director of the Department of Water Resources at: The Pocatello Airport, Downstairs Conference Room, at 2036 S. Airport Way, Pocatello, Idaho on the 24th day of October, 1997 at 9:30 a.m. as a witness in the above entitled matter.

DATED this 14th day of October, 1997.

By order of the Director.

KARL J. DREHER, Director

by _____
Glen L. Saxton, Water Allocation Bureau Chief

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR PERMIT NO. 29-08162 AND APPLICATION FOR PERMIT NO. 29-08164 IN THE NAME OF LAZY V RANCH	)	**SUBPOENA**

THE STATE OF IDAHO TO: **DALE McFARLAND**

YOU ARE HEREBY COMMANDED to appear before the Director of the Department of Water Resources at: The Pocatello Airport, Downstairs Conference Room, at 2036 S. Airport Way, Pocatello, Idaho on the 24th day of October, 1997 at 9:30 a.m. as a witness in the above entitled matter.

DATED this 14th day of October, 1997.

By order of the Director.

KARL J. DREHER, Director

by _____

Glen L. Saxton, Water Allocation Bureau Chief

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR PERMIT NO. 29-08162 AND APPLICATION FOR PERMIT NO. 29-08164 IN THE NAME OF LAZY V RANCH	))))))	**SUBPOENA**

THE STATE OF IDAHO TO: **ARCHIE SERVICE**

YOU ARE HEREBY COMMANDED to appear before the Director of the Department of Water Resources at: The Pocatello Airport, Downstairs Conference Room, at 2036 S. Airport Way, Pocatello, Idaho on the 24th day of October, 1997 at 9:30 a.m. as a witness in the above entitled matter.

DATED this 14th day of October, 1997.

By order of the Director.

KARL J. DREHER, Director

by _____

Glen L. Saxton, Water Allocation Bureau Chief

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR PERMIT NO. 29-08162 AND APPLICATION FOR PERMIT NO. 29-08164 IN THE NAME OF LAZY V RANCH	)	**SUBPOENA**

THE STATE OF IDAHO TO: **ED WALKER**

YOU ARE HEREBY COMMANDED to appear before the Director of the Department of Water Resources at: The Pocatello Airport, Downstairs Conference Room, at 2036 S. Airport Way, Pocatello, Idaho on the 24th day of October, 1997 at 9:30 a.m. as a witness in the above entitled matter.

DATED this 14th day of October, 1997.

By order of the Director.

KARL J. DREHER, Director

by _____

Glen L. Saxton, Water Allocation Bureau Chief

State of Idaho
DEPARTMENT OF WATER RESOURCES
Western Region, 2735 Airport Way, Boise, Idaho 83705-5082 - (208) 334-2190
FAX (208) 334-2348

October 14, 1997

PHILIP E. BATT
GOVERNOR

KARL J. DREHER
DIRECTOR

STEVEN W STRACK
DEPUTY ATTORNEY GENERAL
PO BOX 83720
BOISE ID 83720-0010

Re: Hearing for Applications for Permit Nos. 29-08162 and 29-08164 in the Name of Lazy V Ranch

Dear Mr. Strack:

Thank you for your letter dated September 29, 1997. I understand your concerns, particularly because of some of the long and contentious history of this matter.

On October 9, 1997, I conducted a telephonic pre-hearing conference with the parties. We discussed the nature of the testimony I would accept, and the scope of the hearing. I told the parties that the validity of the water rights held by the Lava Hot Springs Foundation would not be considered at the hearing. The use of water by Lava Hot Springs Foundation is important, however, to determine whether there is sufficient wastewater for the purpose sought. Furthermore, application no. 29-08164 proposes diversion of water from a stream located on Foundation property. The position of the Foundation regarding the proposal is critical to IDWR's determination as to whether the application should approved or rejected.

Based on my discussion with the parties, you can be assured that IDWR will not issue any ruling from the hearing that directly affects the water rights of the Lava Hot Springs Foundation. As always, however, there may be evidence that could cause IDWR to engage in additional fact finding, or hold subsequent hearings that could involve the Foundation.

The parties have requested that a number of the present and former Foundation board members attend the hearing and testify. IDWR issued subpoenas for all of the witnesses requested. Witnesses are entitled to request witness fees and travel costs at the time the subpoena is served. If the testimony is irrelevant or cumulative, I intend to limit the questioning of witnesses. Nonetheless, I felt I could not refuse to issue subpoenas for these witnesses.

As I have discussed with you before, I believe that if the Foundation had been more cooperative, the inconvenience to some of the Foundation members of attending the hearing might have been avoided.

Sincerely,

Gary Spackman

Gary Spackman

GS:st

CC: Parties in this Matter

KAREN VARGASON
LAZY V RANCH
PO BOX 268
LAVA HOT SPRINGS ID 83246
PH: 208-776-5409

GEORGE KATSILOMETES
LAVA HOT SPRINGS INN
PO BOX 670
LAVA HOT SPRINGS ID 83246
PH; 776-5830

EVELEE HILL RUSH
PO BOX 4905
POCATELLO ID 83205
PH: 208-232-2139

DUKE WALDEN
PO BOX 127
LAVA HOT SPRINGS ID 83246
PH; 501-262-2306

JOHN MEHLHOFF
1424 HIGH ST
AUBURN CA 95603
PH: 916-632-3933

GREG MOELLER
PO BOX 250
REXBURG ID 83440
PH: 208-356-3633

JACK H ROBISON
PO BOX 967
POCATELLO ID 83204-0967
PH: 208-232-5911

STEVE STRACK
DEPUTY ATTY GEN
PO BOX 83720
BOISE ID 83720-0010
PH: 208-334-4143

KAREN VARGASON
LAZY V RANCH
PO BOX 268
LAVA HOT SPRINGS ID 83246
PH: 208-776-5409

GEORGE KATSILOMETES
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PH; 776-5830

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POCATELLO ID 83204-0967
PH: 208-232-5911

STEVE STRACK
DEPUTY ATTY GEN
PO BOX 83720
BOISE ID 83720-0010
PH: 208-334-4143

Intevac Systems Engineering
3845 Atherton Rd, Suite 1
Rocklin, California 95765
Tel. 916-632-3933, Fax 916-632-3938

October 13, 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. Additional exhibits.

Dear Mr. Spackman,

Enclosed are 4 pages of additional exhibit.

These exhibits were not faxed on the 13th as agreed due to the holiday.

Best regards,

John Mehlhaff

John Mehlhaff

Certificate of Service I hereby certify that on October 14, 1997, a true and correct copy of the foregoing document was served by the method indicated below upon each of the following.

George Katsilometes — By Fax
P.O. Box
Lava Hot Springs, Idaho 83246
Fax 208-776-5815

Gary Spackman — By Fax
Dept. of Water Resources
1301 N. Orchard
Boise, Idaho 83276
Fax 208-327-7866

Evelee Hill Rush — By Fax
P.O. Box 4905
Pocatello, Idaho 83205-4905
Fax 208-232-2170

F.L. Duke Walden — By Mail, postage prepaid
P.O. Box 127
Lava Hot Sprins, Idaho 83246

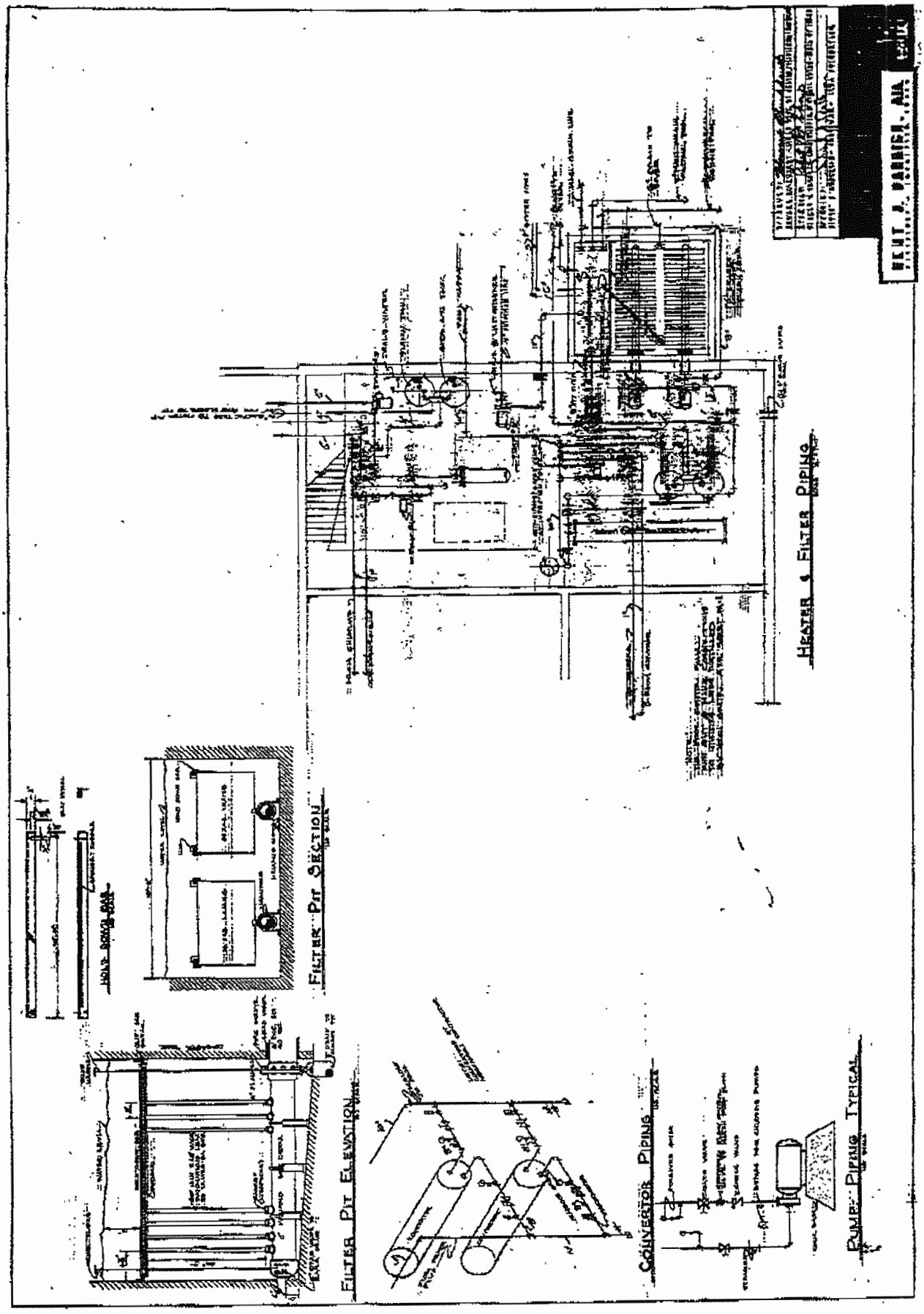
Karen Vargason — By Mail, postage prepaid
Lasy V. Ranch
P.O. Box 268
Lava Hot Springs, Idaho 83246

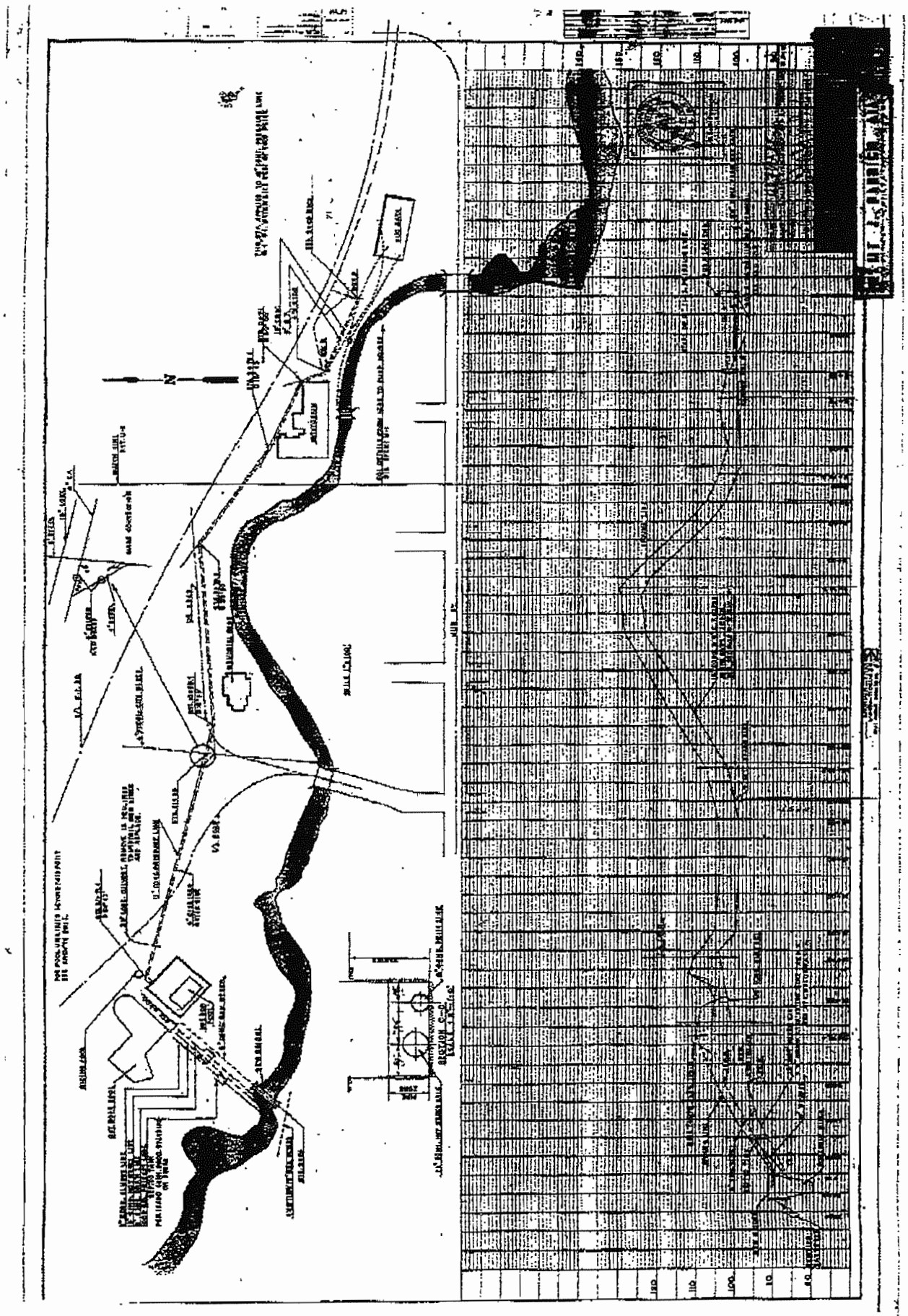
Jack Robison — By Fax
415 S. Arthur
P.O. Box 967
Pocatello, Idaho 83204--967
Fax 208-232-5962

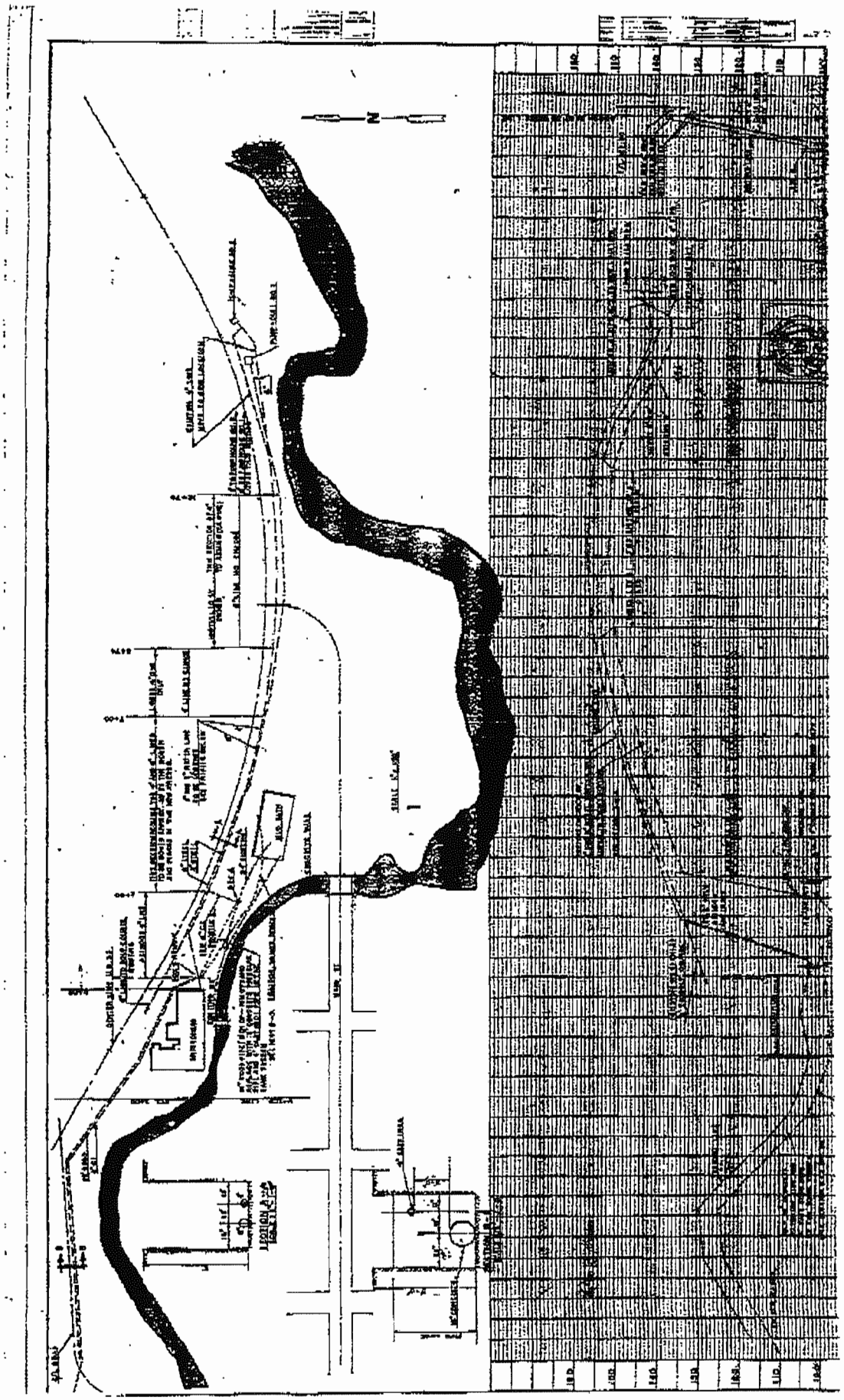
Gregory Moeller — By Fax
P.O. Box 250
Rexburg, Idaho 83440
Fax 208-356-0768

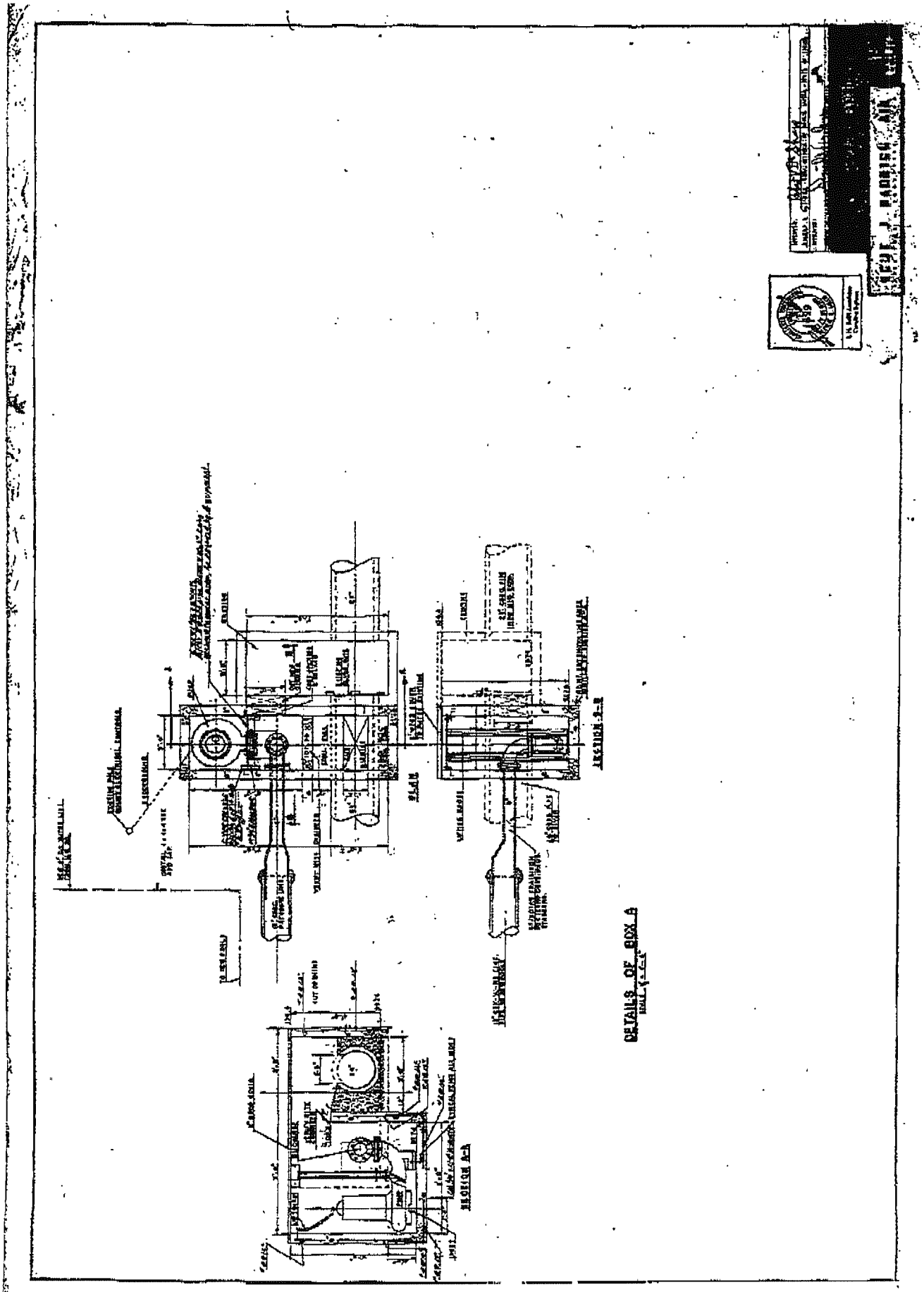
John Mehlhaff

John Mehlhaff


HEATER & FILTER PIPING
FILTER PIT SECTION
FILTER PIT ELEVATION
CONVERTOR PIPING
PUMP PIPING TYPICAL







State of Idaho
DEPARTMENT OF WATER RESOURCES
1301 North Orchard Street, P.O. BOX 83720, Boise, Idaho 83720-0098
Phone: (208) 327-7900 FAX: (208) 327-7866

PHILIP E. BATT
GOVERNOR

KARL J. DREHER
DIRECTOR

FAX TRANSMITTAL COVER SHEET

DATE: Oct. 14, 1997

TO: Gary Spackman
Western

FROM: Debbie Ellis
Legal
327-7920

DOCUMENT DESCRIPTION: Fax from John Mehlhaff.

COMMENTS: You might let him know you are in a different location next time you talk with him.

COVER SHEET + 6 **PAGES**

PLEASE CONTACT Debbie Ellis
IF YOU DO NOT RECEIVE THIS ENTIRE DOCUMENT

FAX

TO: GARY SPACKMAN
FROM: RITA BODELL

PAGES (including cover sheet): 10

SUBJECT: NAMES AND ADDRESSES

MESSAGE: I wasn't able to find all of the addresses. I hope this helps. Skip talked to Bob Meline and he said that if the letter is sent to the Post Office in Lava Hot Springs, the person who it is addressed to will get the letter.

If you have any questions, call me.

RUSSELL SIDELL LAVA HOT SPRINGS MOVED TO POCATELLO

MARK SIDELL 9585 S FRANDSEN RD LAVA HOT SPRINGS 776-5510

SHELDON JONES 257 W BOOTH LAVA HOT SPRINGS 776-5266

KAREN LISH LAVA HOT SPRINGS

BRENT HENDRICKS POCATELLO

STEVE PETERSON LAVA HOT SPRINGS

SHANE BEESON 85 W FIFE LAVA HOT SPRINGS 776-5817

MARY FRIDEL 15 N 3 E LAVA HOT SPRINGS 776-5559

DALE MCFARLAND 130 W MERLE LAVA HOT SPRINGS 776-5372

ED WALKER IDAHO FALLS

FLOYD JENSEN LAVA HOT SPRINGS

DAVE LOVELESS POCATELLO

H MICHAEL WINSTON 316 N HANSON AV SHELLEY 357-5869

JESSICA WINSTON

RICKEY FRANDSEN 7516 E US HWY 30 LAVA HOT SPRINGS 776-5211

DONALD CAMPBELL BUHL

Charles Sudweeks - 9161 W. Caribou Rd
Pocatello, ID

Thayne/Karen Vaugeron - 299 N. Center
Lava Hot Springs ID

Robert Meline - 430 E. Main St
C/O Lava Hot Springs Foundation
Lava Hot Springs ID

Mike Hanson - 430 E. Main St
C/O Lava Hot Springs Foundation
Lava Hot Springs, ID

Reverend Richard Marsceau
C/O Post office Box 7
Lava Hot Springs, ID

Telephone Search Results

YAHOO!

Establish or Rebuild Your Credit Today Click Here

Click here for a Free Offer from FutureCard!

If you have questions regarding privacy, please read this.

Name	Address	Phone
Russell E Sidell	1451 Spaulding Ln, Pocatello,ID 83201-2821	(208)237-1030

Search Again

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According to Bob Meline's Secretary, This person is in Pocatello

Telephone Search Results

YAHOO!

Four 11 Where's Donna?

If you have questions regarding privacy, please read this.

Name	Address	Phone
Charles L & Alta Sudweeks	9161 W Caribou Rd, Pocatello,ID 83204-7216	(208)233-2346

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Telephone Search Results

YAHOO!

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Name	Address	Phone
Beverly & Donald Campbell	521 7th Av N, Buhl,ID 83316-1103	(208)543-9261
Donald K Campbell	4449 N 1325th E, Buhl,ID 83316-5216	(208)543-9277

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Telephone Search Results

YAHOO!

RocketMail

click to get it! - it's free

Click here to get FREE EMAIL!!!

If you have questions regarding privacy, please read this.

Name	Address	Phone
Gary Fornshell	561 5th Av N, Twin Falls,ID 83301-5713	(208)736-2407

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Telephone Search Results

YAHOO!

Four 11 Where's Donna?

If you have questions regarding privacy, please read this.

Name	Address	Phone
Archie W & Sher Service	7050 Running Iron Ln, Pocatello,ID 83204-3817	(208)232-8558

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new business referrals.

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Name	Address	Phone
Brad C Frasure	11086 N Rio Vista Rd, Pocatello,ID 83202-5315	(208)237-2428

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Telephone Search Results

YAHOO! Help Add Me! More Yahoos

Four 11 Where's Donna?

If you have questions regarding privacy, please read this.

Name	Address	Phone
G L Blanchard	2277 Elmore St, Pocatello,ID 83201-7021	(208)237-7099

Search Again

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Questions? Please see our FAQ and our disclaimer.

Ray W. Rigby
Gregory W. Moeller
of Rigby, Thatcher, Andrus, Rigby, Kam
& Moeller, Chartered
25 N. 2nd E.
P.O. Box 250
Rexburg, ID 83440

Telephone No. (208) 356-3633

Attorneys for Protestant, George Katsilometes

RECEIVED
OCT 14 1997
WATER RESOURCES
WESTERN REGION

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE

STATE OF IDAHO

IN THE MATTER OF APPLICATION)
FOR PERMIT NO. 29-08162 AND)
FOR PERMIT NO. 29-08164 IN THE)
NAME OF LAZY V RANCH)
)

EXHIBIT LIST

COMES NOW the Protestant, GEORGE KATSILOMETES, by and through his attorneys of record, Ray W. Rigby and GregoryW. Moeller, of Rigby, Thatcher, Andrus, Rigby, Kam & Moeller, Chtd., and hereby submits the following list of documents to be entered into evidence at the hearing set for this matter on October 23 and 24, 1997:

1. Map of Lots 6, 7, 8 and 10, in Sections 21 and 22, Township 9 S., Range 38 E.B.M., Bannock County, Idaho.

2. History of Lava Hot Springs describing the two main springs.

3. Canceled or Lapsed Permit No. 31247, 29-02478, dated August 7, 1973.

4. Adjudication Claim A29-10213 dated January 23, 1990.

5. Adjudication Claim A29-04178 dated January 23, 1990.

6. IDWR Adjudication Claims Proof Reading Report, #A29-10213.
7. Audit Report, Lava Hot Springs Foundation, #4090.
8. Letter from Robert I. Meline to Harold W. Jones, dated August 13, 1990.
9. Letter from Robert I. Meline to Harold W. Jones, dated November 9, 1990.
10. Draft letter from Thayne Vargason to Bob Meline, dated May 15, 1991.
11. Draft of easement description and agreement, Harper - Leavitt Engineering, Inc., dated ?
12. Fax letter from George W. Katsilometes to Philip E. Batt.
13. Fax to Lea Eck from Ken Neely, dated April 7, 1995 (7 pages).
14. Letter from George W. Katsilometes to Norm Young, dated April 24, 1995.
15. Memo from Ron Carlson to Karl Dreher, dated June 6, 1995.
16. Memo from Ron Carlson to file, dated October 10, 1995.
17. Letter from Idaho Fish & Game to Harold W. Jones dated January 3, 1996.
18. Letter from Idaho Fish & Game to Harold W. Jones dated January 23, 1996.
19. Letter from George W. Katsilometes, et al., to Dennis Dunn dated May 23, 1996.
20. Letter from Evelee Hill-Rush to Gary Spackman dated July 12, 1996.
21. Letter to Kathy Brack from Jack H. Robison, Esq., dated July 22, 1996.
22. Letter from Norm Young to John Mehlhaff, dated September 16, 1996 (2 sides)
23. Memo from Norm Young to Ken Baker dated September 19, 1996.
24. Letter from John Mehlhaff to Norm Young dated September 19, 1996.
25. Draft Reply letter to John Mehlhaff from Norm Young.
26. Memo from Ken Baker to Norm Young dated September 20, 1996.

27. Letter from Steven W. Strack to Norman C. Young, dated October 1, 1996.

28. Attorney General Opinion No. 97-1.

29. Attorney General Investigation, dated April 21, 1997.

30. Letter to Jack Robison and Ray Rigby from Gary Spackman, dated May 8, 1997.

31. Letter to parties and attorneys from Gary Spackman, dated June 16, 1997.

32. Letter to George W. Katsilometes from Robert G. Haynes, P.E. (Regional Manager, IDWR) dated September 17, 1997.

33. Letter to George W. Katsilometes from Allen Merritt, P.E. (Regional Manager IDWR) dated September 19, 1997 (4 pages).

34. Letter from David L. Simons to George Katsilometes.

35. Letter to Gary Spackman from John Mehlhaff dated October 7, 1997.

36. Letter from C. Kelly Pearce (former Director of Lava Foundation) to To Whom it May Concern, dated October 9, 1997.

37. Letter from Carl L. and Cindy Hurst to To Whom it May Concern.

38. IDWR definitions of Beneficial Use.

39. Specifications for <u>original</u> B&G Heat Exchanger for outdoor olympic pool.

40. IDWR Adjudication Claims by Point of Diversion for Section 21 (Bannock County).

41. Permit to Appropriate Water No. 29-07869, dated August 25, 1989.

42. Well Driller's Report dated March 19-22, 1990.

43. Step test on Katsilometes low-temperature geothermal well. dated April 30, 1990.

44. Copy of check from Lava Hot Springs Inn to A.D. Potter Construction, dated September 25, 1990.

45. Temperature differential test on Katsilometes low-temperature geothermal well

dated October 31, 1995.

46. Letter of approval of labels for bottled mineral water to George Katsilometes from Lynn R. Van Every, Sr., E.H.S., dated June 27, 1995.

47. Minutes of Lava Foundation, March 20, 1963 to March 19, 1997.

48. Set of photographs of Vargason and Foundation hot water systems and surroundings.

49. Administrative Rules of IDWR, Well Construction Standards Rules.

50. Administrative Rules of IDWR, Water Appropriation Rules.

A copy of each of the above-referenced documents has been attached hereto.

DATED This 10th day of October, 1997.

Gregory W. Moeller
of Rigby, Thatcher, Andrus, Rigby, Kam
& Moeller, Chartered

CERTIFICATE OF SERVICE

I HEREBY CERTIFY That on this 10th day of October, 1997, a true and accurate copy of the foregoing was sent by U.S. Mail, postage prepaid, to the following:

Gary Spackman
Hearing Examiner
Department of Water Resources
1301 N. Orchard
Boise, ID 83726

John Mehlhaff
1424 High St.
Auburn, CA 95603

Evelee Hill-Rush
P.O. Box 4905
Pocatello, ID 83205-4905

October 14, 1997

Re: Hearings for Applications for Permit No.s 29-08162 and 29-09164 in the Name of Lazy V Ranch

Dear :

The Department of Water Resources (IDWR) has issued a subpoena for your attendance to a hearing scheduled for October 23 and 24, 1997. You may be served by one of the parties in the near future. A large number of subpoenas have been issued by IDWR. The purpose of this letter is to inform you that you are entitled to prepayment of your costs and one days witness fee prior to your attendance. I have attached copies of rule 45(c)(1), rule 45(c)(2), and rule 54(d)(1), which govern the payment of fees.

If you are served with a subpoena, you should demand at the time of service the fees for one (1) days attendance and one-way mileage. If you are asked to testify about happenings of which you have knowledge, you are entitled to $20 per day, plus one-way mileage at the rate of .30 per mile. If you are an expert witness, you are entitled to a reasonable expert witness fee, not to exceed $500. An expert witness is a person who is considered to have sufficient knowledge in a particular field that he can give an opinion based on hypothetical facts posed to him.

Sincerely,

Gary Spackman

GS:st

RECEIVED
OCT 1 0 1997
WATER RESOURCES
WESTERN REGION

Law Offices

RIGBY, THATCHER, ANDRUS
RIGBY, KAM & MOELLER, Chartered

RECEIVED
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Department of Water Resources

Ray W. Rigby
Gordon S. Thatcher
G. Rich Andrus
Jerry R. Rigby
Michael S. Kam
Gregory W. Moeller

P.O. Box 250
25 North Second East
Rexburg, ID 83440

Telephone: (208) 356-3633
Fax: (208) 356-0768
E-Mail: Rexlaw@srv.net

SENT BY FACSIMILE TRANSMISSION
(208) 327-7866

October 8, 1997

Gary Spackman
Hearing Officer
Department of Water Resources
1301 North Orchard
Boise, ID 83276

Re: In the Matter of Permit No. 29-08162 and Permit No. 29-08164 in the Name of Lazy-V-Ranch

Dear Mr. Spackman:

We are in receipt of a letter dated September 29, 1997, from Stephen W. Strack, Deputy Attorney General for the State of Idaho, to you. Because we believe the letter is misleading, and because we are concerned that the Department may take action based solely upon Mr. Strack's representations, we feel compelled to give you this response.

The Deputy Attorney General suggests that the sole purpose for the calling of certain witnesses on our witness list is to "collaterally attack" the water rights of the Lava Hot Springs Foundation. This statement is incorrect, misleading, and we believe unfairly characterizes what we are attempting to achieve at the upcoming hearing. Please bear in mind that it was the Applicants themselves who listed "waste water" from the Lava Hot Springs Foundation as being their source of water. By so naming the owner as the Foundation and characterizing the water as "waste" water, the underlying issue of whether or not this is really waste water has been introduced by the Applicants. Certainly, if someone in an application claims water to be waste water, a protestant should be allowed the right to show that it is not waste water. A denial of the opportunity to do so would be a serious breach of due process.

I am sure you will recall that Mr. Katsilometes and other Protestors have requested that they be

allowed to tour the facility in question operated by the Foundation and owned by the people of the State of Idaho. However, they have been denied this right. Similarly, they have not been allowed to have their own experts examine the site. Therefore, one of our only methods in determining whether or not this is really "waste" water is to call competent individuals with knowledge, who work for the Foundation, as witnesses in this matter and require them to answer our questions under oath. If the Foundation had been more forthcoming in the past, perhaps it would not have been necessary for us to list as many witnesses as we have. Perhaps we could pare down our witness list if the Foundation was more forthcoming with information and access to the facility.

I note that the witness list supplied by Vargasons also includes employees of the Foundation. Furthermore, our witness list is essentially the same as earlier lists supplied by Mr. Katsilometes. There is no surprise or unfair prejudice to Applicants or the Foundation.

In conclusion, if the Department intends in any way to limit testimony as suggested by the Deputy Attorney General, we would request an opportunity to be heard on this issue. If the Deputy Attorney General, apparently on behalf of the Foundation, is requesting a continuance, we strongly object and wish to be heard on that issue as well. If you have any questions, please do not hesitate to contact us as 356-3633.

Sincerely yours,

Ray W. Rigby

Ray W. Rigby

Gregory W. Moeller

Gregory W. Moeller

dk

Enclosure

cc: Evelee Hill Rush
John Mehlhaff
F. L. Duke Waldon
Jack Robison

KATSILOM.LT2

Law Offices

RIGBY, THATCHER, ANDRUS
RIGBY, KAM & MOELLER, Chartered

Ray W. Rigby
Gordon S. Thatcher
G. Rich Andrus
Jerry R. Rigby
Michael S. Kam
Gregory W. Moeller

P.O. Box 250
25 North Second East
Rexburg, ID 83440

Telephone: (208) 356-3633
Fax: (208) 356-0768
E-Mail: Rexlaw@srv.net

SENT BY FACSIMILE TRANSMISSION
(208) 327-7866

October 8, 1997

Gary Spackman
Hearing Officer
Department of Water Resources
1301 North Orchard
Boise, ID 83276

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Gary Spackman
Hearing Officer
Department of Water Resources
October 8, 1997

Page 2

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I note that the witness list supplied by Vargasons also includes employees of the Foundation. Furthermore, our witness list is essentially the same as earlier lists supplied by Mr. Katsilometes. There is no surprise or unfair prejudice to Applicants or the Foundation.

In conclusion, if the Department intends in any way to limit testimony as suggested by the Deputy Attorney General, we would request an opportunity to be heard on this issue. If the Deputy Attorney General, apparently on behalf of the Foundation, is requesting a continuance, we strongly object and wish to be heard on that issue as well. If you have any questions, please do not hesitate to contact us as 356-3633.

Sincerely yours,

Ray W. Rigby
Ray W. Rigby

Gregory W. Moeller

dk

Enclosure

cc: Evelee Hill Rush
John Mehlhaff
F. L. Duke Waldon
Jack Robison
KATSILOM.LT2

State of Idaho
DEPARTMENT OF WATER RESOURCES
1301 North Orchard Street, P.O. BOX 83720, Boise, Idaho 83720-0098
Phone: (208) 327-7900 FAX: (208) 327-7866

PHILIP E. BATT
GOVERNOR

KARL J. DREHER
DIRECTOR

FAX TRANSMITTAL COVER SHEET

DATE: Oct. 8, 1997

TO: Gary Spackman
Western Region

FROM: Debbie Ellis
Legal
327-7920

DOCUMENT DESCRIPTION: Fax from Ray Rigby and Gregory Moeller received today re: Lazy-V-Ranch.

COMMENTS: This fax was sent to the central office by mistake.

COVER SHEET + 2 **PAGES**

PLEASE CONTACT Debbie Ellis
IF YOU DO NOT RECEIVE THIS ENTIRE DOCUMENT

Intevac Systems Engineering
3845 Atherton Rd, Suite 1
Rocklin, California 95765
Tel. 916-632-3933, Fax 916-632-3938

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 withnesses 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

Post-it® Fax Note 7671	Date 10/7	# of pages ▶ 2
To Gary Spackman	From Debbie Eller	
Co./Dept. Western Reg.	Co. Legal	
Phone #	Phone # 327-7920	
Fax #	Fax #	

Certificate of Service I hereby certify that on October 7, 1997, a true and correct copy of the foregoing document was served by the method indicated below upon each of the following.

George Katsilometes P.O. Box Lava Hot Springs, Idaho 83246 Fax 208-776-5815	By Fax
Gary Spackman Dept. of Water Resources 1301 N. Orchard Boise, Idaho 83276 Fax 208-327-7866	By Fax
Evelee Hill Rush P.O. Box 4905 Pocatello, Idaho 83205-4905 Fax 208-232-2170	By Fax
F.L. Duke Walden P.O. Box 127 Lava Hot Sprins, Idaho 83246	By Mail, postage prepaid
Karen Vargason Lasy V. Ranch P.O. Box 268 Lava Hot Springs, Idaho 83246	By Mail, postage prepaid
Jack Robison 415 S. Arthur P.O. Box 967 Pocatello, Idaho 83204--967 Fax 208-232-5962	By Fax
Gregory Moeller P.O. Box 250 Rexburg, Idaho 83440 Fax 208-356-0768	By Fax

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SEP 30 1997
WATER RESOURCES
WESTERN REGION

Jack H. Robison
JONES, CHARTERED
415 S. Arthur
P.O. Box 967
Pocatello, Idaho 83204-0967
(208) 232-5911
FAX: (208) 232-5962

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE

STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR PERMIT NO. 29-08162 AND FOR PERMIT NO. 29-08164 IN THE NAME OF THE LAZY V RANCH	**OBJECTION TO WITNESS LIST**

COMES NOW the applicant in the above matter and objects to the entire witness list submitted by George Katsilometes. The applicant has received no other witness list in the above matter pursuant to the Order dated September 11, 1997.

The witness list supplies insufficient information regarding the substance of the testimony of witnesses to determine whether or not twenty-nine (29) subpoenas are appropriate. Further, as no other witness list has been received by the applicant, applicant requests that only George Katsilometes be entitled to call witnesses at the hearing in the above matter.

It is requested that the hearing officer will schedule the above matter for hearing prior to October 3, 1997 for a determination as to these issues.

DATED this 26th day of September, 1997.

Jack H. Robison, attorney for applicant

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 26th day of September, 1997, a true and correct copy of the foregoing document was served by the method indicated below upon each of the following:

Gregory W. Moeller Rigby, Thatcher, Andrus, Rigby, Kam & Moeller P.O. Box 250 Rexburg, Idaho 83440 Fax: (208) 356-0768	__X_ U.S. Mail, Postage Prepaid _____ Hand Delivered __X_ Facsimile
Gary Spackman Hearing Examiner Department of Water Resources 1301 N. Orchard Boise, Idaho 83726 Fax: (208)327-7866	__X_ U.S. Mail, Postage Prepaid _____ Hand Delivered __X_ Facsimile
Evelee Hill Rush P.O. Box 4905 Pocatello, Idaho 83205-4905 Fax: (208)232-2170	__X_ U.S. Mail, Postage Prepaid _____ Hand Delivered __X_ Facsimile
John Mahlaff 1424 High St. Auburn, CA 95603 Fax: (208)232-2170	__X_ U.S. Mail, Postage Prepaid _____ Hand Delivered __X_ Facsimile
F.L. Duke Walden P.O. Box 127 Lava Hot Springs, Idaho 83246	__X_ U.S. Mail, Postage Prepaid _____ Hand Delivered _____ Facsimile
Bob Maline Lava Hot Springs Foundation 420 East Main Lava Hot Springs, Idaho 83246	__X_ U.S. Mail, Postage Prepaid _____ Hand Delivered _____ Facsimile

Jack H. Robison

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SEP 30 1997
WATER RESOURCES
WESTERN REGION

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

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.

All water which flows through the heat exchangers is directly discharged into the Portneuf river. <u>There is no diversion of water once it has flowed through the heat exchangers which heat the cold-water pools and pool building.</u> 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 <u>one exception</u>: 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

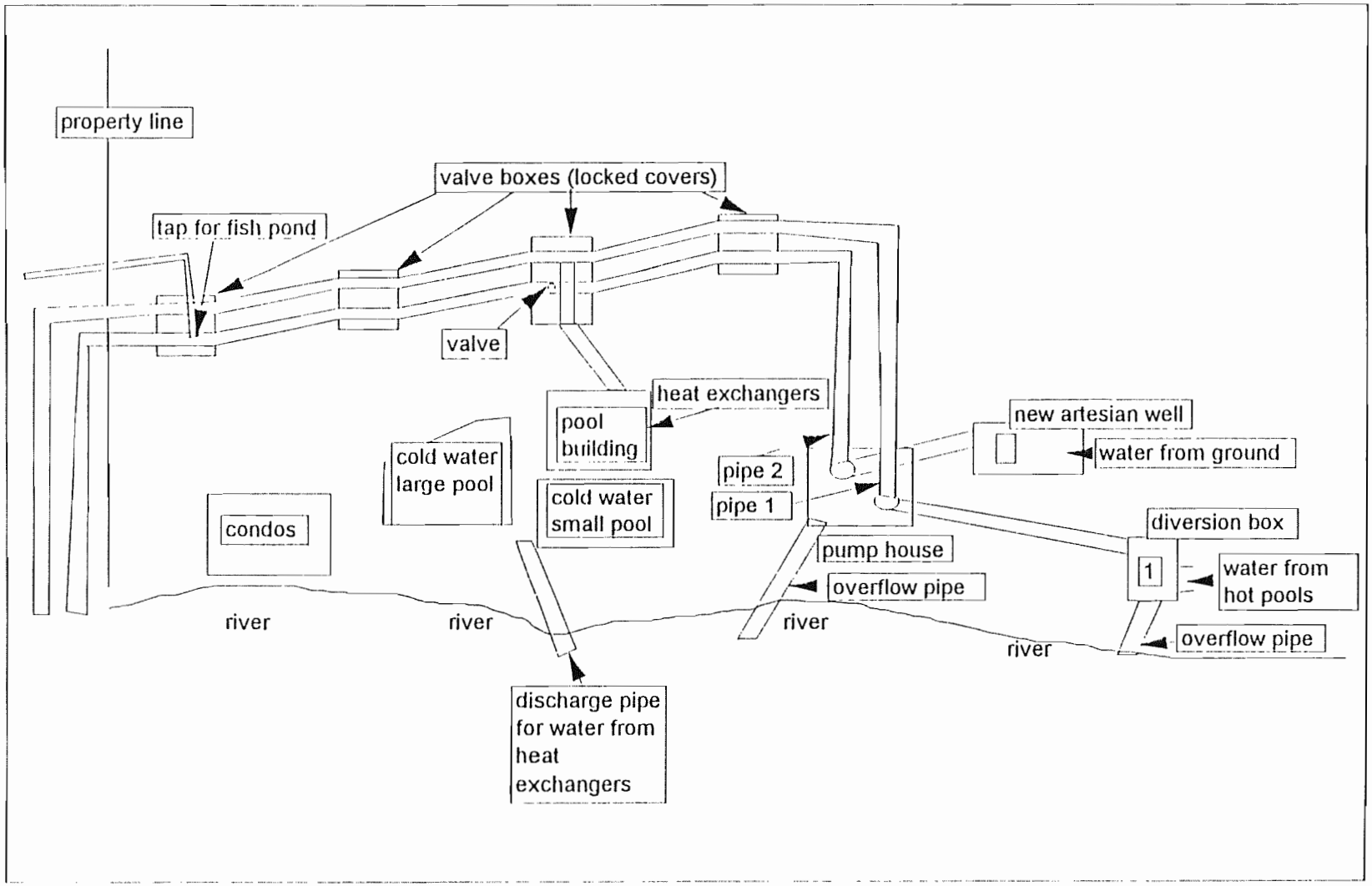
Kenneth L. Baker, Conservation Bureau Chief

DATE 8/26/96

Russell Rydalch, Engineer In Training

Attachment 1

Lava Hot Springs (no scale)



Prepared by IDWR Energy Division 8/26/96

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WATER RESOURCES
WESTERN REGION

Law Offices

RIGBY, THATCHER, ANDRUS
RIGBY, KAM & MOELLER, Chartered

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September 25, 1997

Gary Spackman
Hearing Examiner
Department of Water Resources
1301 N. Orchard
Boise, ID 83726

Re: Application for Permit Nos 29-08162 and 29-08164 in the Name of Lazy Ranch
Protestant: George Katsilometes

Dear Mr. Spackman:

It is my understanding that you have had a conversation with our client, George Katsilometes, concerning certain documents which we wish the witnesses to bring to the upcoming hearing on the above-referenced matter.

According to Mr. Katsilometes, you had agreed to issue subpoenas duces tecum and asked us to provide a list of the documents we wish the documents to bring to the hearing. The following is the list of the witnesses, with the corresponding documents we would like them to bring:

1. Bob Meline:

a) All correspondence between the Lava foundation and the department of water resources regarding diversions of geothermal water, geothermal water permits, requests to appropriate geothermal water, geothermal water rights, or having to do with the installation of the system to divert geothermal water to the olympic pool complex.

b) All rights and permits to divert, appropriate, and make beneficial use of geothermal water issued to the Lava foundation.

c) Copies of all power bills for the two pumps in Foundation Pump House #1.

d) Minutes of Lava Foundation Board Meetings from 1962 to present.

e) All bids, invoices, and correspondence between the engineer(s), contractor(s), and people employed to work on the system built and installed to deliver geothermal water to the olympic pool complex at the Lava foundation.

2. Ron Carlson

a) All correspondence between the Lava foundation and the department of water resources regarding diversions of geothermal water, geothermal water permits, requests to appropriate geothermal water, geothermal water rights, and having to do with the installation of the system to divert geothermal water to the olympic pool complex at the Lava Foundation.

b) All rights and permits to divert, appropriate, make beneficial use of geothermal water issued to the foundation.

3. Brad Frasure

Bills, bids, and invoices issued to the Lava foundation for materials and services provided during the construction of the system to provide geothermal water to the olympic pool complex.

4. Gary Blanchard

Bills, bids, and invoices issued to the Lava foundation for materials and services provided during the construction of the system to provide geothermal water to the olympic pool complex.

5. Ed Walker

Bills, bids, and invoices issued to the Lava foundation for materials and services provided during the construction of the system to provide geothermal water to the olympic pool complex.

6. Rick Frandsen

Bills, bids, and invoices issued to the Lava foundation and to Vargason's for materials and services provided during and since the construction of the system to provide geothermal water to the olympic pool complex.

7. Sheldon Jones

Minutes of Lava Foundation Board Meetings from 1962 to present.

8. Harold Jones

All correspondence between the Lava foundation and the department of water resources regarding diversions of geothermal water, geothermal water permits, requests to appropriate geothermal water, geothermal water rights, and having to do with the installation of the system to divert geothermal water to the olympic pool complex.

9. Keith Wilson

All correspondence between the Lava foundation and the department of water resources regarding diversions of geothermal water, geothermal water permits, requests to appropriate water, geothermal water rights and having to do with the installation of the system to divert geothermal water to the olympic pool complex.

10. Dennis Dunn

a) All correspondence between the Lava foundation and the department of water resources regarding diversions of geothermal water, geothermal water permits, requests to appropriate geothermal water, geothermal water rights, and having to do with the installation of the system to divert geothermal water to the olympic pool complex.

b) All materials, drawings, videos, etc. collected and witnessed during visits to the Lava foundation.

11. Charles L. Sudweeks

a) All correspondence between Mr. Sudweeks' firm and himself and the Lava foundation regarding diversions of geothermal water, geothermal water permits, requests to appropriate geothermal water geothermal water rights, or having to do with the design and installation of the system to divert geothermal water to the olympic pool complex.

b) All bids, invoices, and correspondence between the engineer(s), contractors(s), and people employed to work on the system built and installed to deliver geothermal water to the olympic pool complex at the Lava foundation.

c) All letters, copies of plans and permits between the Department of Administration; Public Works Division of the State of Idaho, having to do with the building and installation of the ;new and redesigned system to divert geothermal water to the olympic pool complex.

d) All permits from environmental agencies having to do with construction and installation of the system to divert geothermal water to the olympic pool complex.

e) Copies of as-built plans of the new system to divert geothermal water to the olympic pool complex at the Lava foundation.

12. Thayne Vargason

a) All correspondence between the Lava foundation and the Vargason's regarding the establishment of a system to provide the Vargason's with geothermal water.

b) All easements established between the Vargason's and the Lava foundation.

c) Permits from governmental environmental agencies and the Idaho Fish and Game for the raising of warm water African fish on Vargason property using geothermal water provided by the Lava foundation.

d) All bids, receipts, invoices, and bills for the installation of the pipelines carrying geothermal water on and to Vargason property.

13. Russell Sidell

All records of operation of the heat exchangers and pumps which supply geothermal water to the heat exchangers.

14. Mike Hansen

All records of operation of the heat exchangers and pumps which supply geothermal water to the heat exchangers.

If you have any questions, please do not hesitate to contact me.

Sincerely yours,

Gregory W. Moeller

dk

KATSILOM.LT1

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SEP 30 1997
WATER RESOURCES
WESTERN REGION

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

September 29, 1997

Gary Spackman
Hearing Examiner
Dept. of Water Resources
1301 N. Orchard
Boise, Idaho 83726

Re: In the Matter of Application for Permit No. 29-08162 and for Permit No. 29-08164 in the Name of Lazy V Ranch

Dear Mr. Spackman:

I am the Deputy Attorney General assigned to represent the Lava Hot Springs Foundation. As you are aware, the Foundation is not a party to the above-named matter. It recently came to my attention, however, that Gregory Moeller, attorney for the protestant, George Katsilometes, filed a witness list naming many current and former employees of the Foundation as witnesses, and asking you to issue subpoenas for them. I discussed the matter with Mr. Moeller, who informed me that the witnesses are being called in support of the protestant's allegation that the water outflowing from the Foundation's heat exchange system (and which is the source of the water used by the applicant) is not in reality waste water.

In other words, it appears that the protestant intends to collaterally attack the Foundation's water rights by alleging that the Foundation is not putting the water in the heat exchange system to beneficial use, but is instead illegally diverting it for the purpose of providing water to the applicant. If that is the case, the Foundation strongly protests such a course of action. First, the issue has already been addressed by the Department, which investigated the heat exchange system and concluded that "the capacity and operation of the delivery system is in line with the demand for heat transfer to the cold water pools." *See* attached report of Kenneth Baker and Russell Rydalch. If the protestants do not agree with the Department's findings, however, the hearing on the pending applications is not the proper forum in which to hear such allegations. For one thing, the Foundation is not a party to these proceedings, and has not been given proper notice that its water rights are at issue. If Mr.

Natural Resources Division
P.O. Box 83720, Boise, Idaho 83720-0010
Telephone: (208) 334-2400, FAX: (208) 334-2690
Located at 700 W. Jefferson Street, Suite 210

Katsilometes intends to challenge the Foundation's water rights, then he must comply with the provisions in the Idaho Code governing such challenges. Under the terms of Idaho Code §§ 42-350 and 42-351, a person who alleges that a licensee has failed to put water to beneficial use or is otherwise illegally diverting water must petition the director to take action, which includes the issuance of a notice of violation, followed by a compliance conference and a civil enforcement action if necessary. There is no provision in the Idaho Code or the Department's regulations allowing challenges to a licensed water right to occur in the context of a hearing over a protest to a permit application.

Therefore, the Foundation requests that you decline to address, in the upcoming hearing over the pending applications, the issue of whether or not the bypass outflow from the Foundation's heat exchange system is a beneficial use of water. We submit that the issue is simply outside the scope of your authority under Idaho Code § 42-203A. If, however, you intend to proceed and address the issue, then we demand that the hearing be postponed and the Foundation be given a reasonable opportunity to intervene in order to protect its rights. Anything less would be a serious violation of due process.

Please let me know immediately how you plan to address this situation, so that the Foundation can make an informed decision as to whether it needs to intervene in this action or otherwise take this matter up with the director. You can reach me at 334-4143 if you have any questions.

Sincerely,

Steven W. Strack
Deputy Attorney General

SWS/dp
Enclosure
cc: Bob Meline
Gregory Moeller
Evelee Hill Rush
John Mahloff
F.L. Duke Walden

Lava\L7270nsa.doc

Jack H. Robison
JONES, CHARTERED
415 S. Arthur
P.O. Box 967
Pocatello, Idaho 83204-0967
(208) 232-5911
FAX: (208) 232-5962

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SEP 24 1997
WATER RESOURCES
WESTERN REGION

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE

STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR PERMIT NO. 29-08162 AND FOR PERMIT NO. 29-08164 IN THE NAME OF THE LAZY V RANCH

WITNESS LIST

The applicant in the above matter hereby adopts by reference the previous disclosed list of witnesses disclosed by the applicant including the Supplemental to List of Witnesses and Exhibits dated September 27, 1996, a copy of which is attached hereto. Applicant further discloses that each of the witnesses disclosed by the protesting parties, may be called as witnesses by the applicant as initial or rebuttal witnesses. Applicant reserves the right to supplement the list of witnesses in response to disclosure of the protest of F.L. Duke Walden by the Department on September 10, 1997.

DATED this 19th day of September, 1997.

Jack H. Robison, attorney for applicant

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 19th day of September, 1997, a true and correct copy of the foregoing document was served by the method indicated below upon each of the following:

Gregory W. Moeller Rigby, Thatcher, Andrus, Rigby, Kam & Moeller P.O. Box 250 Rexburg, Idaho 83440 Fax: (208) 356-0768	__X_ U.S. Mail, Postage Prepaid _____ Hand Delivered __X_ Facsimile
Gary Spackman Hearing Examiner Department of Water Resources 1301 N. Orchard Boise, Idaho 83726 Fax: (208)327-7866	__X_ U.S. Mail, Postage Prepaid _____ Hand Delivered __X_ Facsimile
Evelee Hill Rush P.O. Box 4905 Pocatello, Idaho 83205-4905 Fax: (208)232-2170	__X_ U.S. Mail, Postage Prepaid _____ Hand Delivered __X_ Facsimile
John Mahlaff 1424 High St. Auburn, CA 95603 Fax: (208)232-2170	__X_ U.S. Mail, Postage Prepaid _____ Hand Delivered __X_ Facsimile
F.L. Duke Walden P.O. Box 127 Lava Hot Springs, Idaho 83246	__X_ U.S. Mail, Postage Prepaid _____ Hand Delivered _____ Facsimile
Bob Maline Lava Hot Springs Foundation 420 East Main Lava Hot Springs, Idaho 83246	__X_ U.S. Mail, Postage Prepaid _____ Hand Delivered _____ Facsimile

Jack H. Robison

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE

STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR PERMIT NO. 29-08162 AND FOR PERMIT NO. 29-08164 IN THE NAME OF THE LAZY V RANCH	SUPPLEMENT TO LIST OF OF WITNESSES AND EXHIBITS

NOTICE

The applicant submits no new witnesses to the witnesses listed on the list of witnesses disclosed by the applicant and the protesting parties. The following is the witnesses expected to be called, not including rebuttal witnesses, and a brief summary of expected testimony.

1. Karen and Thayne Vargason - will testify as to all issues in support of the water permits.

2. Charles Sudweeks - He is the engineer for the geothermal heating systems at the Lava Hot Springs Foundation. Mr. Sudweeks is expected to testify about the design, construction, and operation of the system and the applicant's system.

3. Floyd Jensen - Chairman of the Board when the pipe easement was approved by the Lava Hot Springs Foundation. He is expected to testify about the events leading up to and the approval of the easement and above the Foundations geothermal heating system.

4. Bob Meline - Is the Executive Director of the Lava Foundation. Mr. Meline is expected to testify about the history of the Geothermal Heating System, the easement on the applicant's property and the history and operation of the overall system.

5. Dave Loveless - Worked at the INEL and was involved in the development of the applicant's fish project. He is expected to testify about the creation, operation, and viability of the fish project.

6. Mike Winston and Jessica Winston - Mike Winston was employed by Shelly High School. Jessica Winston was one of the students involved in the project. The witnesses are expected to testify to the details of the involvement of Shelly High School with the fish farm as a school project.

7. Keith Wilson - Department of Water Resources employee. He is expected to testify about the history and details of the application and water issues and communications with the applicant.

8. Rick Frandsen - Contractor who dug the pipeline ditch. Rick Frandsen is expected to testify about the work and payment by the applicant for his services.

9. Don Campbell - Fish Farmer. Supplies the fish to the applicant and is expected to testify about the fish and the applicants fish farm project.

10. Gary Fornshell - Twin Falls County Extension Agent. He is expected to testify about the history of the project and his involvement in ascertaining the feasibility of the fish farm.

Exhibits. No new or additional exhibits are expected to be offered other than the field report dated August 26, 1996.

DATED this 27th day of September, 1996.

Attorney for Applicant

CERTIFICATE OF MAILING

I HEREBY CERTIFY that I mailed, or caused to be mailed, a true and correct copy of the foregoing, by placing the same in the United States mail, postage prepaid, XX; or hand-delivered, ; and served by facsimile, XX; addressed as follows:

George Katsilometes
P.O. Box 670
Lava Hot Springs, Idaho 83246
Fax: 208-232-2170

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

John Mehlaff
1424 High St.
Auburn, CA 95603
Fax: 208-232-2170

Evelee Hill Rush
P.O. Box 4905
Pocatello, Idaho 83205-4905
Fax: 208-232-2170

on this 27th day of September, 1996.

Jack H. Robison

Gregory W. Moeller
of Rigby, Thatcher, Andrus, Rigby, Kam
& Moeller, Chartered
25 N. 2nd E.
P.O. Box 250
Rexburg, ID 83440

Telephone No. (208) 356-3633

Attorneys for Protestant, George Katsilometes

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WATER RESOURCES
WESTERN REGION

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

IN THE MATTER OF APPLICATION)
FOR PERMIT NO. 29-08162 AND)
FOR PERMIT NO. 29-08164 IN THE)
NAME OF LAZY V RANCH)
)

SUPPLEMENTAL WITNESS LIST

Protestant, GEORGE KATSILOMETES, by and through his attorney of record, Gregory W. Moeller, of Rigby, Thatcher, Andrus, Rigby, Kam & Moeller, Chtd., hereby discloses the following supplemental list of witnesses pursuant to the Department's Order of September 15, 1997:

1. Robert G. Haynes, P. E.: the northern region manager of the IDWR. He can clarify and explain the basis of the ruling that allowed the Foundation to divert hot water from section 21, lot 8.

2. Alan Merritt: the Twin Falls region manager of the IDWR. He can clarify and explain the basis of the ruling that allowed the Foundation to divert hot water from section 21, lot 8.

3. Ed Walker, Pump Tech of Idaho Falls, supplied the pumps and piping for the system. He has knowledge of the operation of the variable speed pumps, size, locations, etc. and the piping for the system.

Protestant further requests that the Department issue Subpoenas to each of the above-named witnesses.

DATED This 19th day of September, 1997.

Gregory W. Moeller
of Rigby, Thatcher, Andrus, Rigby, Kam
& Moeller, Chartered

CERTIFICATE OF SERVICE

I HEREBY CERTIFY That on this 19th day of September, 1997, a true and accurate copy of the foregoing was sent by U.S. Mail, postage prepaid, to the following:

John Mehlhaff
1424 High St.
Auburn, CA 95603

Gary Spackman
Hearing Examiner
Department of Water Resources
1301 N. Orchard
Boise, ID 83726
(and by fax to (208) 327-7866)

Evelee Hill Rush
P.O. Box 4905
Pocatello, ID 83205-4905

Jack H. Robison
Attorney at Law
P.O. Box 967
Pocatello, ID 83204-0967
(and by fax to (208) 232-5962)

Gregory W. Moeller

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WATER RESOURCES
WESTERN REGION

Gregory W. Moeller
of Rigby, Thatcher, Andrus, Rigby, Kam
& Moeller, Chartered
25 N. 2nd E.
P.O. Box 250
Rexburg, ID 83440

Telephone No. (208) 356-3633

Attorneys for Protestant, George Katsilometes

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE

STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR PERMIT NO. 29-08162 AND FOR PERMIT NO. 29-08164 IN THE NAME OF LAZY V RANCH	)	**WITNESS LIST**

Protestant, GEORGE KATSILOMETES, by and through his attorney of record, GregoryW. Moeller, of Rigby, Thatcher, Andrus, Rigby, Kam & Moeller, Chtd., hereby discloses the following list of witnesses pursuant to the Department's Order of September 15, 1997:

1. Reverend Richard Marsceau: a long time employee and head of maintenance of the foundation facilities for many years. Will provide historic information regarding the operation of the foundation pools and grounds.

2. Rick Frandsen: dug ditch for a pipeline designed to carry hot water from the system. Can verify the location of a pipeline.

3. Mike Hansen: current head of maintenance of the foundation facilities. Will provide current information regarding the operation of the foundation pools and grounds.

4. Russell Sidell: current manager of olympic pool complex. Information about the operation of the exchangers at the complex.

5. Thayne Vargason: an applicant.

6. Ron Carlson: eastern regional manager of Department of Water Resources. Information about state approvals to divert water issued to the foundation.

7. Harold Jones: water rights supervisor; eastern region of Department of Water Resources. Information about state approvals to divert water issued to the foundation.

8. Keith Wilson: allocation agent and field exams; eastern region of Department of Water Resources. Information about state approvals to divert water issued to the foundation.

9. Dennis Dunn: senior water resources agent; eastern region of Department of Water Resources. Information about state approvals to divert water issued to the foundation, and about the system as it appeared during his on-site visit last year.

10. Charles L. Sudweeks: engineer who designed the system for carrying water to the olympic pool complex and to the Vargasons.

11. Donald Campbell: First Ascent Fish farms; an expert in the raising of Tilapia sp.

12. Mark Sidell: welded the steel pipes leaving the pump house 1 which carry hot water to the olympic pool complex and to the Vargasons.

13. Robert Meline: director of the state foundation; intimate knowledge of the system.

14. Sheldon Jones: member of the board of directors of the state foundation during and since the installation of the system which delivers hot water to the olympic pool complex and to the Vargasons.

15. Gary Blanchard: owner; Greene Plumbing and Heating Co.; installed the pumps and piping for the new system which delivers hot water to the olympic pool complex and to the Vargasons.

16. Brad Frasure: Frasure Construction Co.; dug pipeline to the olympic pool complex.

17. Karen Lish: former director of the state foundation; knowledge of the original system design.

18. Brent Hendricks: well driller; has drilled geothermal wells in Lava.

19. Steve Peterson: long term manager of the olympic pool complex. Will

provide historic information regarding the operation of the foundation pools.

20. Shane Beeson: maintenance employee of the state foundation at the time of installation of the system to deliver hot water to the olympic pool complex and to the Vargasons.

21. Mary Fridell: long-term resident and business owner; nearest resident of Lava to the points of origin for the system which delivers hot water to the olympic pool complex and to the Vargasons.

22. Eleanor Ferguson: long-term resident and business person (12 year owner of the Spa mineral hot pool in Lava). Knowledge of water usage in the past in Lava.

23. Carroll Pulling: knowledge of pump operation of the system which delivers hot water to the olympic pool complex and to the Vargasons.

24. David D. Treasure: gardner and groundskeeper of the state foundation preceding and during the period of establishment of the new system.

25. Dale McFarland: gardener and groundskeeper of the state foundation prior to and following installation of the new diversion system.

26. Archie Service: attorney for the state foundation during three director terms; intimate knowledge of procedures and policies of foundation.

Protestant further requests that the Department issue Subpoenas to each of the above-named witnesses.

DATED This 18th day of September, 1997.

Gregory W. Moeller
of Rigby, Thatcher, Andrus, Rigby, Kam
& Moeller, Chartered

CERTIFICATE OF SERVICE

I HEREBY CERTIFY That on this 18th day of September, 1997, a true and accurate copy of the foregoing was sent by U.S. Mail, postage prepaid, to the following:

John Mahlaff
1424 High St.
Auburn, CA 95603

Gary Spackman
Hearing Examiner
Department of Water Resources
1301 N. Orchard
Boise, ID 83726

Evelee Hill Rush
P.O. Box 4905
Pocatello, ID 83205-4905

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

Ray W. Rigby

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WATER RESOURCES
WESTERN REGION

Before the Department of Water Resources
of the State of Idaho

Witness list for Permit No. 29-08162 and Permit No. 29-08164 in the name of Lazy V Ranch, Inc.

1. Charles Sudwicks will be asked to explain the design and operation of the water distribution system designed by his firm.
2. Bob Meline will be asked to explain the general plan and operation of the water system as well as explain agreements the foundation has entered into. He will also be asked to explain the procedures he took in procuring the water rights.
3. Mike Hanson will be asked to explain the day to day operation of the water system.
4. Karen Vargason will be asked to explain her application and agreements entered into with the Lava foundation.

Exhibit list for Hearing for Permit No. 29-08162 and Permit No. 29-08164 in the name of Lazy V Ranch, Inc., already distributed.

I submit the following list of documents to be entered in the above named hearing.

1. Six pages of site and system photographs
2. Application for permit No. 29-7847
3. Application for permit No. 29-8612
4. Legal statute summary regarding business names.
5. Overview of site and system plot.
6. Letter from Steve Strack, attorney generals office to Norm Young, Oct. 1, 1996.
7. Project No. 90-547 feasibility study by ESA.
8. Recommendations from feasibility study by ESA.
9. Chemical Engineering report on heat exchanger design, May 1993.
10. Aurora Pump bulletin 700D.
11. ITT heat exchanger submittal C324.1-C324.6
12. Johnson Controls Catalog for Lava swimming pool repair.
13. Aurora Pump pump performance curves for 20hp and 10hp pump.
14. Bell and Gossett Plate Design Quotation/Specs. for HX-2 and HX-1 heat exchangers.
15. Beneficial Use Field Report for permit no. 29-07847.
16. Lava Sudy of Utah Power and water Bills for 1986-1989.
17. Draft of easement agreement between LVR and Lava Hot Springs Foundation.
18. As build project site map.
19. As proposed project site map #1.
20. As proposed project site map #2.

RECEIVED
SEP 16 1997
WATER RESOURCES
WESTERN REGION

Certificate of Service

I hereby certify that I mailed a true and correct copy of the foregoing, by placing same in the United States mail, postage prepaid, addressed as follows:

Karen Vargason
Lazy V Ranch
P.O. Box 268
Lava Hot Springs, Id 83246

George Katsilometes
P.O. Box 670
Lava Hot Springs, Id 83246

Evelee Hill Rush
P.O. Box 4905
Pocatello, Id 83205

Gary Spackman, Hearing Examiner
Dept. of Water Resources
1301 N. Orchard
Boise, Id 83726

on this _____9___day of September, 1997

John Mehlhaff

RECEIVED
SEP 15 1997
Department of Water Resources

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE

STATE OF IDAHO

IN THE MATTER OF APPLICATIONS FOR PERMIT NO.'S 29-08162 AND 29-08164 IN THE NAME OF LAZY "V" RANCH.	)))))	**CONTINUANCE OF HEARING AND AMENDED HEARING NOTICE**

A hearing was scheduled on September 10 and 11, 1997, for protests filed against applications for permit no.'s 29-08162 and 29-08164. The parties consulted on September 8, 1997, and determined that witnesses necessary for the hearing had not been subpoenaed, and agreed that the hearing should be rescheduled.

ORDER

IT IS HEREBY ORDERED that the hearing scheduled for September 10 and 11 is CONTINUED. **The hearing is rescheduled for October 23 and 24, 1997, at the Pocatello Airport, downstairs conference room.**

IT IS FURTHER ORDERED that lists of witnesses should be submitted to IDWR and all parties on or before September 19, 1997.

IT IS FURTHER ORDERED that any objections to the witnesses should be submitted to IDWR on or before September 26, 1997.

IT IS FURTHER ORDERED that any new exhibits should be submitted to the parties at least ten (10) days prior to the hearing. If you plan to offer exhibits for the record, note that IDAPA Rule of Procedure 37.01.01606 requires that you provide a copy of exhibits to each party and to the presiding officer.

The hearing will be conducted in a facility which meets the accessibility requirements of the Americans with Disabilities Act. If you require special accommodations in order to attend, participate in, or understand the hearing, please advise IDWR within ten (10) days prior to the hearing.

Dated this 11TH day of September, 1997.

Gary Spackman

Gary Spackman
Hearing Officer

CERTIFICATE OF MAILING

I DO HEREBY CERTIFY that on the 11TH day of September, 1997, I mailed a true and correct copy, postage prepaid of the foregoing **CONTINUANCE OF HEARING AND AMENDED HEARING NOTICE FOR APPLICATIONS FOR PERMIT NOS. 29-08162 AND 29-8164** to the following:

CAREN VARGASON
LAZY V RANCH INC
PO BOX 268
LAVA HOT SPRINGS ID 83246

JOHN MEHLHAFF
1424 HIGH ST
AUBURN CA 95603

EVELEE HILL RUSH
PO BOX 4905
POCATELLO ID 83205-4905

GEORGE W KATSILOMETES
PO BOX 670
LAVA HOT SPRINGS ID 83246

JACK H ROBISON
JONES CHARTERED
PO BOX 967
POCATELLO ID 83204-0967

BOB MALINE
LAVA HOT SPRINGS FOUNDATION
420 EAST MAIN
LAVA HOT SPRINGS ID 83246

DUKE WALDEN
PO BOX 127
LAVA HOT SPRINGS ID 83246

Sue Taylor
Senior Secretary

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

September 11, 1997

To: Interested Parties on the Attached List

Re: Applications for Permit No.'s 29-08162 and 29-08164 in the Name of Lazy "V" Ranch

Dear Interested Parties:

In sending out correspondence over the last year, one protestant had not received copies and you may not have been aware of the protest.

F L DUKE WALDEN
PO BOX 127
LAVA HOT SPRINGS ID 83246

Enclosed is a copy of his protest. All correspondence between parties should be copied to Mr. Walden.

Sincerely,

Gary Spackman

Gary Spackman

GS:st

CAREN VARGASON
LAZY V RANCH INC
PO BOX 268
LAVA HOT SPRINGS ID 83246

JOHN MEHLHAFF
1424 HIGH ST
AUBURN CA 95603

EVELEE HILL RUSH
PO BOX 4905
POCATELLO ID 83205-4905

RAY RIGBY
PO BOX 250
REXBURG ID 83440-0250

GEORGE W KATSILOMETES
PO BOX 670
LAVA HOT SPRINGS ID 83246

JACK H ROBISON
JONES CHARTERED
PO BOX 967
POCATELLO ID 83204-0967

BOB MALINE
LAVA HOT SPRINGS FOUNDATION
420 EAST MAIN
LAVA HOT SPRINGS ID 83246

DUKE WALDEN
PO BOX 127
LAVA HOT SPRINGS ID 83246

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE

STATE OF IDAHO

IN THE MATTER OF APPLICATIONS FOR PERMIT NO.'S 29-08162 AND 29-08164 IN THE NAME OF LAZY "V" RANCH.	**CONTINUANCE OF HEARING AND AMENDED HEARING NOTICE**

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Senior Secretary

State of Idaho
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GOVERNOR

KARL J. DREHER
DIRECTOR

September 11, 1997

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LAVA HOT SPRINGS ID 83246

DUKE WALDEN
PO BOX 127
LAVA HOT SPRINGS ID 83246

7/94

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
NOTICE OF PROTEST

This form may be used to file a protest with the department under sections 42-108B, 42-203A, 42-203C, 42-211, 42-222 and 42-224, Idaho Code. The department will also accept a timely protest not completed on this form if it contains all necessary information.

LAZY V RANCH INC.

1. Matter being protested APPLICATION for WATER Right # 29-08162
2. Name of protestant E.L. DUKE WALDEN
3. Protestant's representative for service (If different than protestant)

4. Service mailing address P.O. Box 127 LAVA Hot Springs Id. 83246
5. Service telephone no. 208-776-5504 208-776-5655
6. Basis of protest (Including statement of facts and law upon which the protest is based)
UNFAIR TO LAVA Hot Springs City & Residents
STATE of Idaho IS PAYING undue Expense for
EXISTING WATER Supply

(additional pages may be attached to describe the nature of the protest

7. What would resolve your protest? Resolve Issues & Agreement
STATE Foundation / CITY OF LAVA / LAZY V RANCH
& ALL Protestants

I hereby, acknowledge that if I, or my designated representative, fails to appear at any regularl scheduled conference or hearing in the matter of which I have been notified at the address above, th department may issue a notice of proposed default against me in this matter for failure to appear. I als verify that I have served a copy of this protest upon the applicant.

Signed this 29 day of December, 19 95

E.L. Duke Walden
PROTESTANT

PROTESTANT'S REPRESENTATIVE

JAN 03 1996

...r Resources
...et Office

7/94

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
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Signed this 29 day of December, 19 95

E.L. Duke Walden
PROTESTANT

PROTESTANT'S REPRESENTATIVE

RECEIVED
JAN 03 1996
Resources
Office

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
EASTERN REGION
IDAHO FALLS ID
ph. (208) 525-7161

FAX NO. (208) 525-7177

TRANSMITTAL COVER SHEET
OMNIFAX

TO: GARY SPACKMAN FROM: H.W. Jones

DOCUMENT DESCRIPTION: Duke Walden Protests

He is now in Lava Hot Springs at 776-5504!

TOTAL NUMBER OF PAGES (Including this page): 3

BILLING ADDRESS: _____

NO. OF PAGES _____ COST/PAGE _____ TOTAL CHARGE _____

RECEIVED
FEB 02 1996
Department of Water Resources
Eastern District Office

7/94

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
NOTICE OF PROTEST

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LAZY V RANCH INC.

1. Matter being protested APPLICATION for WATER Right # 29-08164
2. Name of protestant E.L. DUKE WALDEN / RIVERSIDE INN
3. Protestant's representative for service (If different than protestant)

4. Service mailing address P.O. Box 127 LAVA Hot Springs Id. 8324
5. Service telephone no. 208-776-5504 208-776-5655
6. Basis of protest (Including statement of facts and law upon which the protest is based)
UNFAIR TO LAVA Hot Springs City & Residents
STATE of Idaho IS PAYING UNDUE EXPENSE for EXISTING WATER Supply. Would divert WATER IN CENTER of TOWN used by Tubers.

(additional pages may be attached to describe the nature of the prote

7. What would resolve your protest? Resolve Issues & Agreement STATE Foundation / CITY OF LAVA / LAZY V RANCH & ALL Protestants

I hereby, acknowledge that if I, or my designated representative, fails to appear at any regul scheduled conference or hearing in the matter of which I have been notified at the address above, department may issue a notice of proposed default against me in this matter for failure to appear. I verify that I have served a copy of this protest upon the applicant.

Signed this 29 day of JANUARY, 19 96

E.L. Duke Walden / Riverside INN
PROTESTANT

PROTESTANT'S REPRESENTATIVE

7/94

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
NOTICE OF PROTEST

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1. Matter being protested LAZY V RANCH INC. APPLICATION for WATER Right # 29-08162
2. Name of protestant F.L. DUKE WALDEN
3. Protestant's representative for service (if different than protestant)

4. Service mailing address P.O. Box 127 LAVA Hot Springs Id. 83246
5. Service telephone no. 208-776-5504 208-776-5655
6. Basis of protest (including statement of facts and law upon which the protest is based)
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Signed this 29 day of December, 19 95

F.L. Duke Walden
PROTESTANT

PROTESTANT'S REPRESENTATIVE

RECEIVED
JAN 03 1996
Resources
Office

9-5-97

Lava Hot Springs Inn

5 Portneuf Ave. ~ Lava Hot Springs ~ Idaho 83246

RECEIVED
SEP - 8 1997
WATER RESOURCES
WESTERN REGION

Gary Spackman
Hearing Officer
Department of Water Resources

Dear Gary,

You will find enclosed materials we find pertinent to the upcoming hearings. Copies have been sent to the Vargasons.

We have yet to have any contact from the Vargasons or their attorney.

Thank you again for your help in this matter.

Sincerely,

George W. Katsilometes, DVM, Ph.D.

P.S. Photos of plans are from original hearings which we will bring to hearings.

RECEIVED
SEP - 8 1997
WATER RESOURCES
WESTERN REGION

with hot baths between Mr. Katsilometes's Lava Springs Inn and the state's public pool.

STATE OF IDAHO/LAVA HOT SPRINGS FOUNDATION CLAIMS
(Exhibit B)

Priority Dates

7-23-1963 (State of Idaho) **A29-10213:** diversion from "springs" across the river from Mr. Katsilometes, and claims 3.27 cfs. It is a beneficial use claim, based on permit 29-02478 which lapsed in 1973, and was for only 1 cfs of water at that time. It is the only P/D found in Section 21.

6-1-1961 (State of Idaho) **A29-10219:** Beneficial Use GW claim described as "hand pump well for visitor use" - - 0.02 cfs.

1-14-1949 (State of Idaho) **A29-02283:** Licensed GW right for commercial use at visitors area - 0.050 cfs 1.5 hp 87' x 8" dia. (old) water level 8')

2-5-1955 (State of Idaho) **A29-02360:** Licensed GW right for irrigation of grounds (21 acres) and use for other functions on site; commercial needs for area - 0.500 cfs

6-13-1908 (State of Idaho) **A29-04178:** Beneficial Use claim on Springs for commercial use for visitors, needs at recreation area, use within pool and other areas for visitors - 3.000 cfs *

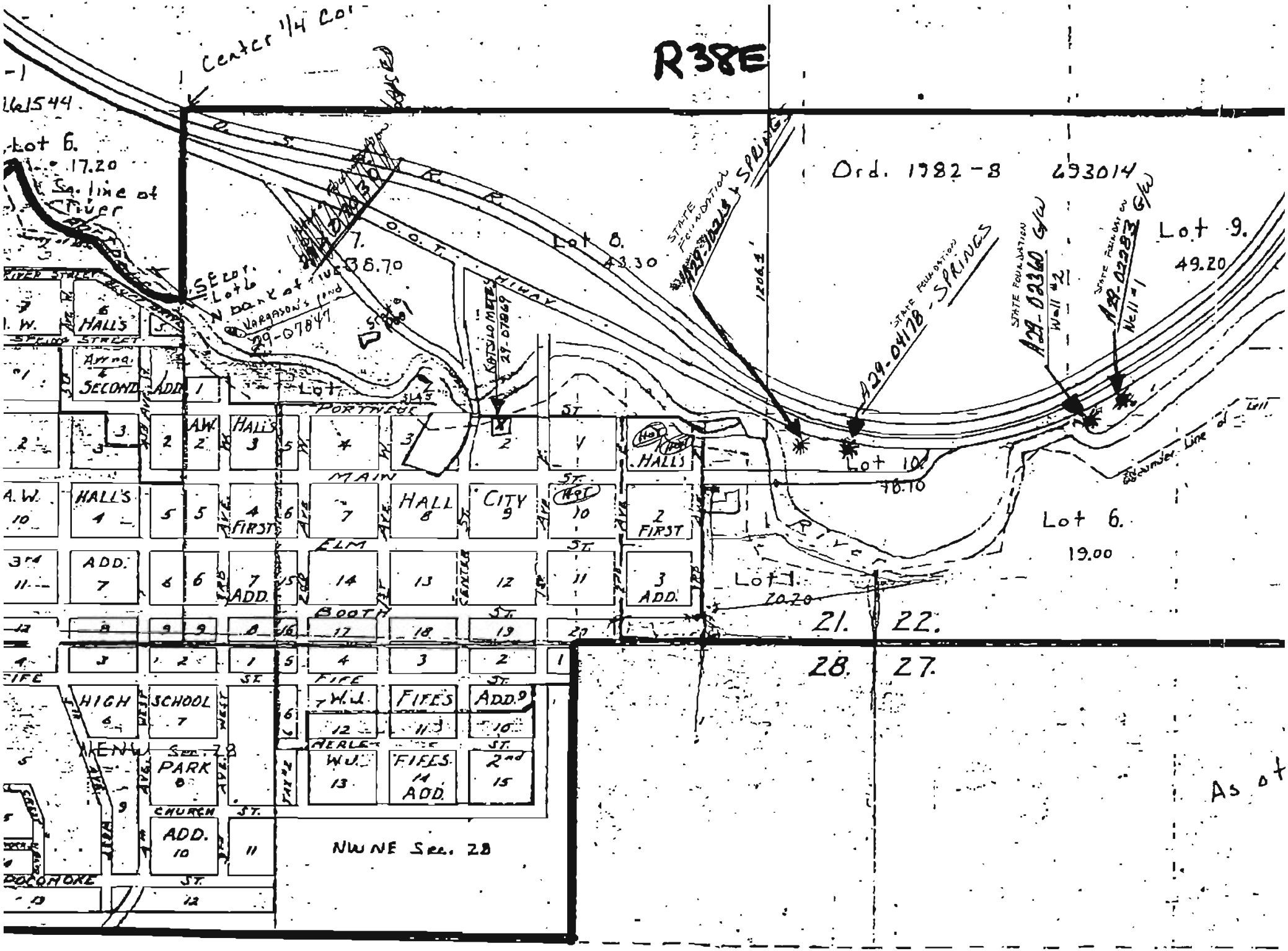
2-26-1969 (State of Idaho) **29-07030:** Licensed GW right for commercial use - 0.700 CFS. **NOT CLAIMED IN SRBA** drilled 1968 @ 94' lapsed

A current Proof Reading Report with map, from IDWR data files is attached for each claim, including Mr. Vargason's and Mr. Katsilometes's.

Also included with this memo is a copy of an audit report of the Lava Hot Springs Foundation which I received in the mail from Mr. Katsilometes (Exhibit C), and a copy of a letter he faxed to Governor Batt after his meeting last week with the engineer, Charles Sudweeks, P.E., and Newt Lowe, Mayor of Lava Hot Springs (Exhibit D).

8-25-1989 (Katsilometes) 29-07869
Permit groundwater right for commercial use for hotel. — 0.500 cfs.

(Jr. to State and Vargason)


R38E
Center 1/4 Cor
Lot 6.
17.20
Sq. line of River
Lot 8.
43.30
Ord. 1982-8
693014
Lot 9.
49.20
Lot 10
18.10
Lot 6.
19.00
Lot 1.
20.20
21.
22.
28.
27.
Sec. Lot 6
N bank of river
Vargason's pond
29-07847
38.70
O.O.T. HIWAY
KATSILOMETES
29-07869
STATE FOUNDATION
A29-04178 - SPRINGS
A29-02360 G/W
Well #2
A29-02283 G/W
Well #1
Secondary Line of Lot
RIVER STREET
SPRING STREET
PORTNEUF ST.
MAIN ST.
ELM ST.
BOOTH ST.
FIFE ST.
HERLE ST.
CHURCH ST.
POCOMOKE ST.
HALLS
SECOND ADD.
A.W.
HALL
CITY
FIRST
ADD.
HIGH SCHOOL
PARK
W.J.
FIFES
2nd
NWNE Sec. 28
As of

DAILY TEMPERATURES (°F)

IDAHO
JANUARY 1995

STATION	OB. TIME	MAX/MIN	DAY OF MONTH																													AVERAGE
			1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31	
IDAHO FALLS 16 SE	20	MAX	15	20	20	24	30	27	34	37	42	44	37	37	35	42	35	28	26	29	33	28	26	30		37	39	38	33	33	30	34	41	32.1
		OBS	19																															
		MIN	17	-6	-8	-6	6	13	25	26	32	33	27	24	30	33	27	21	19	21	23	-2	-2	-2		8	24	30	28	13	6	23	31	16.0
ISLAND PARK	14	MAX	14	14	18	24	26	27			33	35	35	33	33					20	26	30	30			29	40	40	40			28	32	28.7
		MIN	-35	-30	-28	-22	-10	10			18	33	29	26	25					6	14		-2		-19	-13	14	24	26			9	26	M
		OBS																			23						24							
LIFTON PUMPING STN	08	MAX	18	22	25	22	24	25	33	43	35	46	43	40	32	38	46	35	37	30	35	34	32	28	22	23	27	34	38	36	38	32	37	32.7
		MIN	-8	-6	-6	-6	-4	10	18	25	18	27	27	10	8	28	28	20	15	17	20	5	2	4	1	0	9	17	21	14	5	11	19	11.3
MALAD CITY	17	MAX	27	30	31	33	31	34	38	39	39	45	46	40	38	43	43	36	36	34	40	35	35	35	32	35	43	40	44	41	37	38	37	37.4
		MIN	2	4	0	3	21	26	24	28	32	36	32	22	32	33	32	30	23	27	27	17	12	8	8	16	27	32	31	23	20	31	31	22.3
MCCAMMON	18	MAX	23	20	24	28	27	31	37	38	44	44	40	37	36	44	40	35	31	30	36	32	31	28	29	35	41	38	37	38	34	38	36	34.3
		MIN	-2	-1	-3	-2	19	23	25	33	33	37	32	24	32	34	32	29	25	25	27	7	5	2	4	12	30	33	32	24	22	25	31	21.1
OAKLEY	18	MAX	31	24	36	35	28	40	45	38	47	49	47	39	38	47	41	34	35	40	42	36	37	41	40	46	49	46	41	42	44	40	51	40.3
		MIN	5	5	13	8	17	23	26	30	35	42	33	27	32	27	31	30	27	26	28	18	16	14	21	21	33	34	30	24	20	31	34	24.6
POCATELLO 2 NE	08	MAX	20	25	23	30	32	31	32	41	40	49	49	44	41	41	49	35	31	32	35	39	38	39	36	37	41	48	43	37	40	38	41	37.3
		OBS	25	23	30	32	31	32	41	40	49	49	44	41	41	49	35	31	32	35	39	38	39	36	37	41	48	43	37	40	38	41	47	
		MIN	-5	2	2	3	5	22	23	30	34	37	38	31	30	35	32	30	27	25	30	19	13	12	11	9	23	35	32	31	23	23	31	22.4
		OBS	2	2	3	5	22	23	30	34	37	38	31	20	35	32	30	27	25	30	19	13	12	11	9	23	35	32	31	23	23	31	33	
PRESTON	08	MAX	25	25	25	27	30	30	32	40	43	42	47	47	46	38	39	43	36	33	32	37	32	32	30	26	35	48	37	36	37	36	38	35.6
		MIN	1	1	1	2	1	18	20	26	34	33	33	22	22	32	33	26	20	21	24	7	6	3	2	2	18	26	31	30	20	31	30	18.6
		OBS																													29			
SODA SPRINGS AIRPORT	07	MAX	10	18	12	21	21	25	36	36	38	43	45	39	33	38	44	33	28	27	30	36	26	23	18	20	27	32	34	32	37	27	36	29.8
		MIN	-15	-14	-11	-2	8	17	16	35	32	33	32	18	19	30	28	24	20	20	21	5	5	0	2	7	16	24	28	25	10	7	22	14.9
SWAN VALLEY 2 E	18	MAX	17	17	17	17	21	25	33	39	40	43	42	37	34	47	40	40	27	30	32	28	28	21	23	28	36	38	36	32	31	30	35	31.1
		MIN	-12	-12	-9	-5	6	6	21	32	33	35	31	29	30	30	31	23	16	20	22	4	-1	-5	-4	5	23	32	29	26	9	17	29	15.8
		OBS									21																							
TETONIA EXPERIMENT STN	08	MAX			26	19	26	27			35	38	42	35	39				43	31	31	29			33	29	35	46	46			37	34	M
		MIN			-24	-13	-13	11			24	30	30	26	26				8	11	20	2		-12	-8		10	21	21			4	22	M
		OBS									4																							

SEE REFERENCE NOTES FOLLOWING STATION INDEX

DAILY TEMPERATURES (°F)

IDAHO
FEBRUARY 1995

STATION	OB. TIME	MAX/MIN	DAY OF MONTH 1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31	AVERAGE
DRIGGS	17	MAX	42	44	38	51	41	40	44	43	43	30	21	15	29	27	20	34	39	42	44	48	48	48	42	49	47	43	36	36				38.7
		MIN	36	25	18	18	18	21	21	21	17	16	4	0	11	13	11	16	20	29	24	33	21	19	20	21	24	31	32	14				19.8
		OBS																	29															
GRACE	17	MAX	40	56	47	48	49	57	57	53	43	42	42	32	36	36	36	42	44	45	48	54	57	56	58	60	58	58	52	51				48.5
		OBS																												62				
		MIN	34	38	22	27	25	25	26	25	24	24	20	18	16	29	4	14	24	25	32	26	20	23	24	22	21	22	34	18				23.6
IDAHO FALLS 16 SE	20	MAX	42	44	43	48	48	47	48	47	36	33	28	23	30	29	26	38	41	43	46	51	52	49	52	51	48	46	44	39				41.9
		OBS																									60							
		MIN	37	24	19	26	24	27	26	24	18	20	12	7	16	16	4	16	26	32	32	30	25	25	26	25	28	30	28	18				22.9
ISLAND PARK	14	MAX	36	39	35	38	40	40	38	38	36	30	17	9	26	26	25	24	36	36	38	49	49	43	46	47	47	45	41	39				36.0
		OBS											38	38																				
		MIN	22	24	5	20	12	11	13	23	5	17	-4	-11	-2	16	7	-3	10	10	27	24	13	14	23	13	12	23	28	12				13.0
LIFTON PUMPING STN	08	MAX	45	49	46	41	41	40	45	40	40	41	35	22	18	21	20	25	30	40	45	42	45	35	34	34	35	36	42	42				36.9
		MIN	31	35	18	18	17	20	20	21	20	27	17	11	11	11	-18	-18	-3	3	14	11	11	10	12	11	11	8	9	13				12.5
MALAD CITY	17	MAX	48	53	52	54	53	56	56	53	47	46	43	31	38	36	31	39	43	54	55	62	61	60	62	63	63	59	57	53				51.0
		MIN	31	35	25	25	25	25	27	27	25	25	26	18	16	25	1	14	20	32	25	25	24	24	25	24	25	24	38	18				24.1
		OBS																																
MCCAMMON	18	MAX	43	50	49	50	51	52	49	53	46	44	36	28	35	38	29	41	46	50	52	60	57	58	61	61	63	57	53	50				48.6
		MIN	35	39	25	27	25	25	28	28	25	24	19	14	18	24	8	22	27	35	32	27	28	26	26	27	27	26	35	17				25.7
OAKLEY	18	MAX	55	52	57	57	59	56	55	47	50	47	39	28	32	27	37	45	51	51	60	64	58	57	60	67	61	59	52	52				51.3
		MIN	38	35	35	32	32	33	34	28	28	30	16	12	12	20	7	19	29	36	33	33	35	33	34	35	36	33	37	27				29.0
POCATELLO 2 NE	08	MAX	51	48	53	52	53	54	55	53	47	42	32	23	35	25	32	44	50	48	56	62	58	55	58	64	62	57	50	46				48.8
		MIN	39	33	30	29	30	29	32	26	25	21	17	10	12	16	13	25	35	38	38	33	31	32	33	30	34	34	28	20				27.6
PRESTON	08	MAX	39	47	54	53	53	52	53	52	51	48	46	27	29	35	29	32	34	47	47	47	46	51	52	54	57	60	60	53				46.9
		OBS														25																		
		MIN	32	34	25	24	25	26	28	23	27	29	24	20	21	22	-1	2	3	13	13	13	22	23	26	28	27	28	26	22				21.6
SODA SPRINGS AIRPORT	07	MAX	41	44	44	43	44	43	42	42	45	36	37	25	18	29	23	26	38	42	44	44	48	42	47	50	45	47	52	47				40.4
		MIN	33	35	20	22	21	21	19	25	24	24	17	16	13	14	-4	0	12	12	29	28	25	20	19	21	25	24	25	19				20.0
SWAN VALLEY 2 E	18	MAX	44	38	41	41	43	42	43	47	42	32	30	24	31	28	24	34	41	43	46	55	51	46	50	56	55	46	45	43				41.5
		MIN	34	37	17	17	17	21	21	27	20	27	15	11	11	18	10	10	20	32	29	35	26	23	27	25	26	24	33	20				22.6
		OBS																	10															
TETONIA EXPERIMENT STN	08	MAX	38	41	40			45	43	40	42	42			27	33	22	23	35				48	46	42	46			52	42				39.3
		MIN	32	25	15			15	15	20	15	14			0	13	4	4	18				17	17	19	18			22	13				15.6

SEE REFERENCE NOTES FOLLOWING STATION INDEX

DAILY TEMPERATURES (°F)

IDAHO
MARCH 1995

STATION	OB. TIME	MAX/MIN	DAY OF MONTH 1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31	AVERAGE
GRACE	17	MAX	48	49	46	45	38	37	45	45	58	58	54	50	52	44	53	50	50	58	55	50	59	56	51	51	42	42	42	46	47	54	56	45.4
		MIN	20	18	31	26	24	19	16	18	32	42	44	34	32	30	35	21	26	27	33	26	32	18	27	24	22	20	16	20	20	15	22	25.5
		OBS																	44			44												
IDAHO FALLS 16 SE	20	MAX	32	32	37	33	31	28	35	45	52	52	46	43	41	46	47	44	55	57	43	55	43	38	46	32	33	30	31	34	34	44	53	41.0
		MIN	12	15	30	25	16	7	8	22	36	35	35	33	28	33	32	25	26	32	32	26	28	21	27	22	10	13	6	9	10	11	24	22.2
ISLAND PARK	14	MAX	28	33	35	41	30	24	27	35	42	42	44	42	42	42	42	42	46	47	47	39	38	34	39	39	35	31	42	42	34	34	42	38.1
		OBS																																
		MIN	5	6	20	22	17	-5	-1	4	28	33	31	31	30	26	27	9	12	17	27	16	31	24	10	20	15	3	6	10	8	-2	12	15.9
		OBS						14																										
LIFTON PUMPING STN	08	MAX	41	35	39	42	37	35	33	34	41	45	45	41	41	42	48	50	39	48	54	50	50	47	41	49	34	31	36	37	37	37	45	41.4
		MIN	13	14	18	24	15	6	2	11	12	28	38	32	29	28	32	18	23	25	30	24	30	25	27	22	21	18	16	21	21	18	25	21.5
MALAD CITY	17	MAX	50	51	49	45	45	40	47	57	60	58	56	47	50	55	54	51	60	60	56	62	60	47	53	45	40	44	43	45	46	53	59	51.2
		MIN	20	25	30	30	23	20	15	20	35	44	44	37	30	33	40	28	28	30	37	27	32	18	32	26	23	27	20	20	20	16	19	27.4
MCCAMMON	18	MAX	48	47	46	39	41	37	46	55	56	55	54	50	44	52	52	49	58	57	49	59	57	44	53	43	37	41	40	43	44	51	57	48.5
		MIN	19	20	33	30	26	21	17	25	40	42	43	36	31	33	37	26	27	32	38	28	32	24	36	27	23	25	18	20	18	18	23	28.0
OAKLEY	18	MAX	46	47	44	46	38	39	51	58	60	61	53	55	51	59	50	49	59	59	48	67	47	47	49	39	39	42	41	43	42	53	63	49.8
		MIN	21	20	38	31	27	19	21	32	42	43	36	34	33	40	40	29	28	38	35	35	35	26	33	25	25	24	23	16	21	23	30	29.8
POCATELLO 2 NE	08	MAX	47	46	44	48	38	35	48	57	57	55	52	50	46	55	50	51	59	56	47	62	40	44	54	36	37	42	44	46	45	51	61	48.5
		MIN	17	15	32	30	24	19	18	36	46	40	36	33	35	28	32	27	27	39	34	38	31	27	29	28	20	18	18	17	17	20	34	27.9
PRESTON	08	MAX	54	51	51	48	43	43	44	46	57	62	61	50	48	47	57	62	55	58	56	58	63	37	47	55	40	39	44	43	45	50	53	50.5
		MIN	24	26	28	28	26	22	17	20	27	32	45	35	30	33	36	26	30	31	29	33	35	25	30	25	24	22	20	22	22	20	19	27.2
SODA SPRINGS AIRPORT	07	MAX	44	35	39	40	39	35	31	39	41	52	46	47	44	40	48	49	41	54	56	45	54	34	41	50	35	34	34	33	38	37	44	41.9
		MIN	15	15	20	25	22	19	12	13	20	31	37	32	29	28	34	12	15	26	32	25	32	17	14	22	18	13	9	10	11	12	12	20.4
SWAN VALLEY 2 E	18	MAX	42	41	37	37	37	31	36	48	52	51	50	46	40	44	49	45	53	52	43	54	53	39	51	48	32	32	32	37	37	42	51	43.3
		MIN	15	15	30	28	27	8	10	23	38	37	37	31	30	30	34	28	26	33	33	26	31	26	26	23	15	10	8	11	11	15	25	23.9
		OBS																	42															
TETONIA EXPERIMENT STN	08	MAX	42	42	36	39	36	37	30	38	46	49	49	47	47	45	42	50	42	51	49	49	51	38	40	45	34	38	45	30	39	39	42	42.2
		OBS																																
		MIN	5	6	11	21	19	3	1	9	17	33	32	30	24	28	30	24	22	19	21	21	31	21	17	17	17		1	0	-1	6	17	16.7
		OBS																																

SEE REFERENCE NOTES FOLLOWING STATION INDEX

IDAHO
APRIL 1995

DAILY TEMPERATURES (°F)

STATION	OB. TIME	MAX/MIN	DAY OF MONTH														
			1	2	3	4	5	6	7	8	9	10	11	12	13	14	15
GRACE	17	MAX	60	60	60	57	60	66	57	54	40	44	50	58	68	67	45
		OBS													56		
		MIN	23	32	13	26	36	40	28	38	27	24	20	28	30	38	22
		OBS		16													
IDAHO FALLS 16 SE	20	MAX	55	47	54	63	56	58	50	39	36	41	40	61	65	44	38
		MIN	27	31	23	32	40	38	34	28	19	21	18	32	43	28	15
ISLAND PARK	14	MAX	50	47	42	52	52	47	47	38	35	43	43	43	51	51	39
		OBS	***	***							***						
		MIN			13	22	29	34	29			12	11	32	33	29	19
LIPTON PUMPING STN	08	MAX	52	55	50	56	60	60	62	57	45	40	41	49	58	62	43
		MIN	21	32	26	29	32	36	33	33	26	26	23	28	34	33	22
MALAD CITY	17	MAX	61	58	62	68	66	69	65	56	50	50	53	66	73	67	49
		MIN	22	37	19	25	31	37	30	36	29	25	17	26	41	32	21
MCCAMMON	18	MAX	61	55	61	67	66	63	56	55	46	49	51	64	69	65	48
		MIN	27	35	26	31	36	40	34	36	31	29	21	32	43	31	18
OAKLEY	18	MAX	61	53	63	71	64	62	59	48	46	49	53	67	70	56	45
		OBS														43	
		MIN	34	30	34	32	42	43	39	33	30	24	29	37	43	31	20
POCATELLO 2 NE	08	MAX	60	52	62	70	61	63	54	47	45	48	50	65	70	46	45
		MIN	39	32	31	43	47	43	40	32	29	27	27	40	35	28	20
PRESTON	08	MAX	59	61	63	62	67	67	68	59	48	48	48	52	66	70	47
		OBS														45	
		MIN	26	28	26	30	35	36	33	34	31	28	21	22	31	33	27
SODA SPRINGS AIRPORT	07	MAX	54	56	47	56	62	60	63	50	42	41	45	47	59	66	41
		MIN	22	29	21	21	29	30	30	30	23	19	19	19	31	31	14
SWAN VALLEY 2 E	18	MAX	56	54	53	63	59	59	59	50	35	41	42	58	67	66	42
		MIN	27	34	23	31	39	39	35	28	17	23	24	34	35	30	15
		OBS												19	19		
TETONIA EXPERIMENT STN	08	MAX			53	51	57	51	57			51	43	46	55	63	
		MIN			20	29	34	37	33			8	19	26	31	30	

IDAHO
MAY 1995

DAILY TEMPERATURES (°F)

STATION	DAY OF MONTH																AVERAGE
	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31	
	36	37	38	32	40	42	42	38	36	35	40	37	34	34	40	43	35.8
IDAHO FALLS 16 SE	61	63	61	61	64	67	55	56	58	56	52	52	64	67	69	72	56.7
	36	29	39	41	35	39	46	34	32	38	31	36	30	32	39	39	34.5
ISLAND PARK	62	60	60	58	57	60	47	59	59	56	51	47	59	64	67	69	54.0
						***							***	***			
	29	31	34	34			36	34	29	36	34				28	32	31.6
									42								
LIPTON PUMPING STN	68	67	68	63	64	63	69	57	50	52	52	52	54	57	62	68	57.2
	37	42	40	38	44	42	46	38	39	39	39	34	39	38	40	41	37.8
MALAD CITY	72	72	70	70	75	74	69	58	62	64	58	60	68	74	74	76	64.8
	36	40	37	33	42	39	48	41	45	44	42	36	37	35	37	36	37.3
MCCAMMON	68	69	68	71	72	71	67	57	58	63	67	60	67	70	72	74	63.3
	35	42	43	32	44	41	44	44	42	41	41	36	37	36	39	39	38.0
OAKLEY	63	68	66	67	71	73	62	56	53	60	60	60	66	71	75	69	61.1
	37	39	45	42	45	49	50	40	41	45	43	37	44	46	48	49	41.0
POCATELLO 2 NE	67	68	67	69	71	77	57	58	60	66	60	60	71	75	75	79	63.0
	37	40	50	39	48	51	45	38	45	45	38	45	40	39	45	52	40.6
PRESTON	74	75	74	73	71	71	78	63	62	63	65	57	58	68	71	75	64.9
	62						65										
	36	38	42	40	41	43	44	45	44	44	44	35	34	36	41	42	38.1
SODA SPRINGS AIRPORT	67	66	66	65	66	66	69	53	50	55	57	49	52	64	68	68	57.7
	29	30	30	29	30	39	40	39	37	38	39	36	32	33	35	34	32.6
SWAN VALLEY 2 E	67	62	60	63	67	68	64	58	63	60	57	53	63	64	69	71	59.6
	32	30	39	34	35	37	45	38	32	36	36	38	36	32	32	42	34.3
TETONIA EXPERIMENT STN	68	64	65	65			68	53	57	60	54				68	72	57.9
	32	30	39	32			32	30	29	38	36				31	40	32.8

IDAHO
JUNE 1995

DAILY TEMPERATURES (°F)

STATION	OB. TIME	MAX/MIN	DAY OF MONTH														
			1	2	3	4	5	6	7	8	9	10	11	12	13	14	15
		MIN	45	50	47	52	34	33	28	44	44	45	45	49	51	48	47
REXBURG RICKS COLLEGE	08	MAX															
		MIN															
SAINT ANTHONY 1 WNW	09	MAX	76	73	76	64	67	74	42	62	56	52	65	76	81	81	83
		MIN	42	44	45	46	44	34	26	30	35	31	34	34	47	47	45
		OBS								43							
EASTERN HIGHLANDS 10																	
ARBON 2 NW	18	MAX	73	73	63	69	73	53	52	56	55	66	75	81	82	82	78
		OBS						73									
		MIN	42	42	42	48	34	32	28	30	40	32	44	46	46	45	42
		OBS															
BERN	22	MAX	69	70	64	63	74	46	56	51	55	63	73	80	81	80	76
		MIN	39	45	44	43	35	32	29	39	36	38	37	44	48	48	50
DRIGGS	17	MAX	66	73	65	60	71	66	62	54	47	56	73	78	80	78	78
		MIN	40	44	44	44	43	31	23	37	35	35	35	44	46	44	46
GRACE	17	MAX	70	70	65	67	77	54	54	54	61	72	75	80	83	83	84
		OBS	70	75	70	65	67	77	54	54	54	61	72				
		MIN	40	45	50	45	45	34	29	42	42	42	37	45	49	47	40
IDAHO FALLS 16 SE	20	MAX	61	67	60	66	74	42	53	52	50	62	76	77	77	80	79
		MIN	34	34	42	37	35	30	21	37	39	41	35	45	44	44	44
ISLAND PARK	14	MAX	70	71	71	63	70	70	66	53	53	59	67	74	75	75	76
		OBS										***					
		MIN	39	42	32	42	46	31	25	39	35	32	31	41	39	40	43
		OBS				***		46				***		26			
LIFTON PUMPING STN	08	MAX	70	69	62	64	66	73	50	59	56	51	63	74	80	80	78
		MIN	42	45	45	43	44	34	32	32	38	38	40	45	50	50	54
MALAD CITY	17	MAX	76	76	70	68	80	51	59	58	59	67	79	85	85	86	83
		MIN	50	53	51	52	44	32	31	42	43	33	36	45	47	45	45
MCCAMMON	18	MAX	73	72	59	65	75	48	52	57	57	66	76	83	83	82	81
		MIN	44	48	49	51	47	33	29	43	43	42	44	47	50	47	45
OAKLEY	18	MAX	74	70	76	72	66	49	48	57	57	70	79	78	76	74	74
		MIN	50	48	49	54	40	34	28	42	42	40	53	55	51	53	49
POCATELLO 2 NE	08	MAX	74	73	67	57	69	77	48	53	55	57	69	80	88	82	84
		OBS	73	67	57	69	77	48	53	55	57	69	80	88	82	84	80
		MIN	45	47	48	48	50	34	31	28	42	43	44	52	56	52	46
		OBS	47	48	48	50	34	31	28	42	43	44	52	56	53	52	46
PRESTON	08	MAX	71	74	68	68	67	75	51	58	57	62	68	78	83	88	86
		MIN	40	48	48	48	44	33	34	36	36	43	46	46	47	50	47
SODA SPRINGS AIRPORT	07	MAX	72	70	68	61	66	75	47	54	51	53	65	76	81	82	81
		MIN	35	42	45	44	43	33	25	28	36	37	37	40	49	47	50
SWAN VALLEY 2 E	18	MAX	72	71	66	64	72	70	55	54	55	59	74	74	80	81	80
		OBS						44									
		MIN	41	41	44	47	46	33	26	40	38	47	39	40	46	46	46
TETONIA EXPERIMENT STN	08	MAX	71	71	74	63	74	70	45	60	60	54	65	73	78	79	81
		OBS			***	***						***	***				
		MIN	40	43	44	41	42	30	26	33	33	29	33	31	43	43	45
		OBS			***	***						***	***				

DAILY TEMPERATURES (°F)

STATION	OB. TIME	MAX/MIN	DAY OF MONTH														
			1	2	3	4	5	6	7	8	9	10	11	12	13	14	15
		MIN	50	56	53	51	47	56	52	56	57	58	57	62	48	45	50
		OBS				***											
CATELLO WSO ARPT	MID	MAX	81	82	69	74	85	89	89	94	94	92	90	90	73	79	84
		MIN	45	47	52	47	47	51	50	50	58	54	50	54	49	44	44
XBURG RICKS COLLEGE	08	MAX	76	81	77	69	71	76	84	84	89	91	86	84	80	70	75
		MIN	42	46	48	45	42	49	50	52	60	56	52	55	46	45	46
INT ANTHONY 1 WNW	09	MAX	80	81	77	69	72	79	85	85	90	91	88	85	82	75	76
		MIN	39	41	46	45	40	42	49	49	54	56	52	54	47	41	42
ASTERN HIGHLANDS 10																	
BON 2 NW	18	MAX	77	78	69	74	82	89	89	93	89	89	86	87	76	80	83
		MIN	45	47	50	47	44	50	49	47	57	58	51	59	42	37	41
RN	22	MAX	73	73	58	69	76	85	85	88	90	87	73	75	74	75	78
		MIN	43	39	47	38	38	43	46	48	60	50	51	49	48	39	42
IGGS	17	MAX	73	72	70	64	72	74	80	84	83	78	79	72	69	74	76
		OBS					60										
		MIN	39	42	43	41	41	40	45	46	53	51	52	46	40	39	44
		OBS															
ACE	17	MAX	78	74	65	72	76	84	89	90	94	93	88	84	80	80	80
		MIN	44	42	46	42	44	46	44	47	55	57	58	48	52	42	47
AHO FALLS 16 SE	20	MAX	74	72	61	65	74	82	82	85	86	85	81	78	62	67	79
		MIN	37	44	48	37	40	43	48	46	57	48	52	49	42	35	40
LAND PARK	14	MAX	72	73	72	72	68	74	77	80	82	82	82	80	72	72	72
		OBS		***													
		MIN	38	38	37	43	36	41	52	44	49	55	44	51	42	36	36
		OBS		***													
FTON PUMPING STN	08	MAX	71	71	75	62	71	76	81	85	85	86	83	77	70	75	72
		MIN	49	45	48	43	44	47	52	53	56	54	45	44	48	41	47
LAD CITY	17	MAX	80	81	81	87	86	93	93	96	92	90	89	86	83	83	87
		MIN	45	42	43	43	39	44	48	47	48	53	64	55	53	43	45
CAMMON	18	MAX	75	78	69	73	81	88	89	92	91	88	86	83	77	79	84
		OBS															
		MIN	45	45	52	41	40	49	50	50	59	57	64	58	48	42	43
KLEY	18	MAX	76	79	68	72	86	89	82	89	93	88	76	71	70	74	79
		MIN	53	53	51	45	49	51	54	54	54	56	57	53	40	46	51
CATELLO 2 NE	08	MAX	82	81	80	63	73	86	89	88	95	90	90	88	86	74	79
		OBS	81	80	63	73	86	89	88	95	90	90	88	86	74	79	83
		MIN	41	56	49	42	48	61	54	60	59	60	55	57	49	45	50
ESTON	08	MAX	81	80	81	80	83	90	94	93	96	93	91	86	80	81	88
		OBS															
		MIN	44	45	50	43	47	52	58	51	61	57	62	55	55	47	46
DA SPRINGS AIRPORT	07	MAX	74	76	74	60	69	79	86	88	90	88	85	82	76	74	77
		OBS															
		MIN	40	41	42	35	36	40	48	48	50	57	56	56	39	33	35
		OBS															
AN VALLEY 2 E	18	MAX	76	76	76	64	75	85	85	88	89	87	83	80	75	75	75
		OBS															
		MIN	38	45	45	43	41	50	52	48	55	55	59	57	45	37	37
TONIA EXPERIMENT STN	08	MAX			75		67	73	80			85	83	78	75	75	
		MIN			37		40	40	47			45	51	49	44	38	

IDAHO
AUGUST 1995

DAILY TEMPERATURES (°F)

STATION	OB. TIME	MAX/MIN	DAY OF MONTH														
			1	2	3	4	5	6	7	8	9	10	11	12	13	14	15
		MIN	36	46	44	57	45	48	54	45	36	49	54	39	50	43	42
MALTA 4 ESE	18	MAX	92	92	97	90	95	98	94	85	94	95	90	93	88	85	97
		OBS															
		MIN	35	47	48	55	50	55	53	49	35	52	50	40	49	36	43
		OBS															
MALTA AVIATION	17	MAX	94	93	96	91	95	96	94	82	90	96	90	92	87	85	97
		OBS			***				***	***							
		MIN		44		55	50	51			35	49	50	41	50		43
MASSACRE ROCKS ST PK	18	MAX	95	95	100	90	98	103	98	84	84	98	90	93	85	89	100
		MIN	45	52	53	60	53	56	63	52	39	56	57	57	53	43	51
		OBS					72										
POCATELLO WSO ARPT	MID	MAX	90	92	95	91	93	98	93	71	89	96	82	89	75	85	95
		MIN	43	48	49	57	50	50	58	47	35	54	53	44	51	43	46
REXBURG RICKS COLLEGE	08	MAX	76	82	86	88	88	88	90	86	65	88	89	88	82	73	75
		MIN	42	45	46	48	49	49	50	43	34	43	45	45	50	41	43
SAINT ANTHONY 1 WNW	09	MAX	77	85	87	88	83	87	91	91	69	82	90	80	83	72	80
		MIN	35	40	41	42	45	46	49	45	34	34	52	37	38	44	40
EASTERN HIGHLANDS	10																
ARBON 2 NW	18	MAX	89	90	91	88	91	95	90	83	82	92	83	85	86	83	92
		OBS								73							
		MIN	40	45	47	55	44	45	53	46	30	57	52	42	50	40	46
		OBS															
BERN	22	MAX	82	86	87	79	86	90	88	73	82	83	82	82	75	80	87
		MIN	36	40	44	47	42	47	46	45	31	51	50	37	45	39	38
DRIGGS	17	MAX	79	81	80	79	81	83	83	77	74	84	82	78	76	75	87
		OBS									***	***	***	***	***	***	
		MIN	34	47	54	48	46	50	51	47	33	53	54	42	47	42	43
		OBS										***	***	***	***	***	
GRACE	17	MAX	80	91	90	91	82	91	92	90	88	89	91	85	87	81	90
		OBS		***													
		MIN	37	42	46	50	43	47	47	42	40	54	48	46	53	36	46
		OBS		***								35					
IDAHO FALLS 16 SE	20	MAX	80	81	83	82	86	88	82	69	82	85	78	76	69	74	82
		OBS															69
		MIN	40	43	42	48	44	44	49	41	32	49	50	40	39	49	50
		OBS											37				
ISLAND PARK	14	MAX	73	78	80	80	79	79	84	84	72	82	82	73	72	72	77
		OBS															
		MIN	32	34	40	50	31	40	54	40	29	42	46	30	42	36	30
LIFTON PUMPING STN	08	MAX	78	83	88	86	80	87	88	85	71	85	84	82	83	75	81
		MIN	38	40	45	48	45	44	48	48	37	39	46	44	45	45	43
MALAD CITY	17	MAX	91	93	94	89	94	95	92	91	88	92	90	90	85	89	92
		MIN	35	41	46	52	45	47	50	45	33	53	57	41	49	45	40
MCCAMMON	18	MAX	88	91	90	84	93	93	89	89	85	89	84	87	85	84	91
		MIN	39	45	49	54	48	46	51	51	37	56	54	44	51	42	42
		OBS					66										
OAKLEY	18	MAX	85	85	87	85	89	90	89	69	87	91	86	83	78	79	91
		MIN	50	58	56	57	58	60	62	44	43	58	54	49	46	45	53
		OBS											46				
POCATELLO 2 NE	08	MAX	89	90	94	89	92	96	91	70	90	95	81	87	75	83	94
		MIN	51	57	57	63	59	63	59	48	41	61	56	50	49	45	60
PRESTON	08	MAX	82	88	93	94	90	93	95	94	76	86	90	87	88	84	86
		MIN	40	41	49	52	49	52	50	49	38	42	57	49	48	45	51
SODA SPRINGS AIRPORT	07	MAX	79	84	89	88	80	88	90	88	69	84	86	86	84	74	80
		OBS															
		MIN	31	37	44	48	45	45	48	45	33	34	52	52	37	35	37
		OBS															
SWAN VALLEY 2 E	18	MAX	82	87	84	84	85	92	88	83	83	87	81	83	69	78	87
		MIN	43	44	45	47	45	49	53	44	33	53	51	37	43	41	42
TETONIA EXPERIMENT STN	08	MAX	71	80	83	83			89	84	65	77	86				80
		MIN	38	44	47	47			42	41	31	44	50				38

IDAHO
SEPTEMBER 1995

DAILY TEMPERATURES (°F)

STATION	OB. TIME	MAX/MIN	DAY OF MONTH														
			1	2	3	4	5	6	7	8	9	10	11	12	13	14	15
POCATELLO WSO ARPT	MID	MAX	95	93	92	76	80	82	82	70	75	80	78	83	87	87	92
		MIN	51	58	54	60	50	42	49	47	37	45	39	41	40	41	44
REXBURG RICKS COLLEGE	08	MAX	86	90	91	88	79	78	78	81	69	72	74	79	77	83	82
		MIN	39	43	55	59	43	41	45	47	36	41	36	38	43	42	42
		OBS															
SAINT ANTHONY 1 WNW	09	MAX	86	81	90	87	71	80	79	82	70	72	75	74	79	85	83
		MIN	36	44	48	50	45	39	38	43	34	34	34	33	37	37	37
EASTERN HIGHLANDS 10 ARBON 2 NW	18	MAX	92	89	89	89	82	82	83	72	77	78	77	81	84	85	87
		OBS															
		MIN	39	63	57	57	52	44	48	48	35	35	35	39	38	42	45
BERN	22	MAX	89	87	86	71	78	81	78	73	74	70	72	78	80	80	83
		MIN	46	52	50	54	50	42	44	42	32	42	33	33	35	41	37
DRIGGS	17	MAX	81	81	79	70	74	74	73	64	69	67	66	73	78	78	77
		MIN	44	54	53	51	42	37	42	46	33	43	34	37	37	44	40
GRACE	17	MAX	90	92	90	87	88	80	84	85	85	76	80	80	80	85	86
		MIN	45	63	50	56	44	46	46	45	34	44	35	37	36	39	40
		OBS									46						
IDAHO FALLS 16 SE	20	MAX	87	85	84	67	74	76	77	62	68	69	69	76	78	76	81
		MIN	47	53	52	54	44	35	41	42	31	41	31	36	36	39	41
		OBS															
ISLAND PARK	14	MAX	83	83	85	85	79	72	75	76	76	72	70	70	76	78	80
		MIN	36	39	45	54	45	38	44	37	39	29	31	32	33	37	31
LIFTON PUMPING STN	08	MAX	85	85	86	84	76	80	80	80	75	76	75	74	77	74	81
		MIN	45	49	52	53	47	46	48	46	37	40	38	37	38	43	42
MALAD CITY	17	MAX	96	91	91	86	85	87	87	84	80	81	80	85	88	89	90
		MIN	47	56	54	60	49	44	48	50	38	50	37	35	37	39	39
MCCAMMON	18	MAX	93	88	86	85	81	81	81	80	75	77	75	81	83	85	86
		MIN	50	62	57	58	49	43	50	40	37	46	40	38	37	41	40
OAKLEY	18	MAX	90	86	89	82	73	77	72	66	69	76	72	79	82	83	89
		MIN	61	66	60	58	54	47	53	43	43	50	53	48	48	51	53
POCATELLO 2 NE	08	MAX	95	92	91	68	78	84	81	69	74	77	78	82	86	86	90
		MIN	60	64	60	57	52	44	58	46	40	49	42	46	48	49	53
PRESTON	08	MAX	92	93	90	89	77	84	84	85	86	79	79	79	83	85	86
		OBS															
		MIN	46	50	56	56	52	48	48	51	42	41	41	40	40	40	41
		OBS		61													
SODA SPRINGS AIRPORT	07	MAX	87	88	87	88	71	79	79	80	70	78	73	73	77	78	81
		OBS													***	***	***
		MIN	36	51	54	55	50	38	39	40	33	33	32	30	33	34	34
		OBS													***	***	***
SWAN VALLEY 2 E	18	MAX	85	85	85	82	77	78	81	76	74	73	68	75	80	81	82
		MIN	42	53	53	54	45	37	43	44	31	40	35	35	35	35	35
TETONIA EXPERIMENT STN	08	MAX	83					77	75	78			71	70	74	80	80
		OBS					87										
		MIN	43				42	34	39	44			31	35	37	42	38

IDAHO
OCTOBER 1995

DAILY TEMPERATURES (°F)

STATION	DAY OF MONTH																AVERAGE
	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31	
MALTA AVIATION	73	72	71	60	70	55	50	53	61 ***	65	60	61	69 ***	66	58	58	65.6
		29	46	20	17	30		18			45	28		25	28		29.2
MASSACRE ROCKS ST PK	74	78	72	58	76	66	53	57	65	65	62	42 60	68	67	58	55	67.2
	33	31	41	18	26	25	31	19	30	30	44	29	28	28	34	34	31.2
POCATELLO WSO ARPT	70	68	31 64	59	67	50	51	52	58	60	62	56	61	63	54	54	61.8
	33	39	37	21	18	33	27	19	32	38	42	35	28	34	36	25	31.8
REXBURG RICKS COLLEGE	70	70	61	60	51	61	50	44	46	54	60	61	52	54	58	48	57.1
	57 24	28	34	25	20	19	30	17	15	27	29	30	23	31	34	30	27.4
SAINT ANTHONY 1 WNW	71	66	60	64	55	61	54	47	47	53	57	62	52	54	60	48	57.7
	27	27	23	16	15	17	29	11	10	24	26	14	14	17	28	22	22.3
EASTERN HIGHLANDS 10 ARBON 2 NW	70	65	60	57	63	52	52	50	52	57	56	56	63	64	59	55	60.3
	37	30	42	22	20	36	29	10	24	26	40	32	26	33	35	37	29.4
BERN	69	63	59	54	64	50	39	44	48	54	53	51	59	62	56	42	56.6
	27	23	34	14	14	29	23	10	14	15	34	27	19	24	31	31	24.0
DRIGGS	62	58	56	47	59	49	42	43	46	50	55	54	55	55	49	48	53.8
	31	31	41	17	19	36	27	14	20	30	36	18	32	32	32	28	28.4
GRACE	71 ***	74	65	60	64	64	55	45	50	55	55	56	57	67	67	60	62.0
	26 ***	29	44	20	15	34	28	15	20	25	37	25	25	30	34	35	27.9
IDAHO FALLS 16 SE	60	61	52	53	62	47	39	44	50	53	54	49	55	55	49	48	54.3
	31	31	32	13	20	29	22 5	12	19	20	32	19	30	33	29	28	26.4
ISLAND PARK	54	54	50	50	54	54	42	42	43	46	50	50	50	50	50	40	52.8
	16	23	38	16	14	15	15	6	16	23	36	19	21	19	12	21	22.3
LIFTON PUMPING STN	61	67	61	61	52	56	59	42	44	48	56	53	55	58	65	54	56.8
	28	28	30	23	20	20	26	17	18	19	18	32	24	23	28	33	25.3
MALAD CITY	74	70	65	59	66	60	50	51	55	58	62	63	66	71	64	57	64.2
	23	28	32	25	13	25	23 81	12	16	14	37	27	22	23	25	40	25.7
MCCAMMON	70	65	64	57	63	60	44	48	52	57	60	56	63	66	57	56	60.7
	26	32	46	24	17	30	30	16	23	24	43	35	24	28	36	38	29.5
OAKLEY	74	72	68	67	70	64	47	52	60	61	61	60	64	62	58	51	64.0
	40	36	51	26 46	34	34	30	22	33	31	43	32	36	34	40	38	35.5
POCATELLO 2 NE	67	70	60	60	68	54	47	53	57	60	58	55	61	63	53	54	61.1
	47	38	35	24	27	31	30	20	36	40	45	38	31	37	36	25	34.5
PRESTON	71	74	68	68	59	63	60	46	50	52	56	62	64	65	68	59	63.0
	30	30	30	30	20	21	29	18	20	19	30	30	25	30	30	30	27.4
SODA SPRINGS AIRPORT	71	65	61	59	55	62	53	40	45	49	54	54	51	59	61	53	56.5
	20	26	23	15	11	20	28	11	8	22	23	20	18	18	26	34	21.3
SWAN VALLEY 2 E	71	63	63	64	64	64	43	45	50	54	57	57	57	59	57	57	58.9
	28	26	30 26	19	19	19	19	14	19	29	37	18	21	29	38	29	27.0
TETONIA EXPERIMENT STN	68	68	58	56	48			44 58	40	48	54	56			57	47	54.4
	25	24	27	14	16			12	14	23	28	19			28 15	15	23.0

IDAHO
NOVEMBER 1995

DAILY TEMPERATURES (°F)

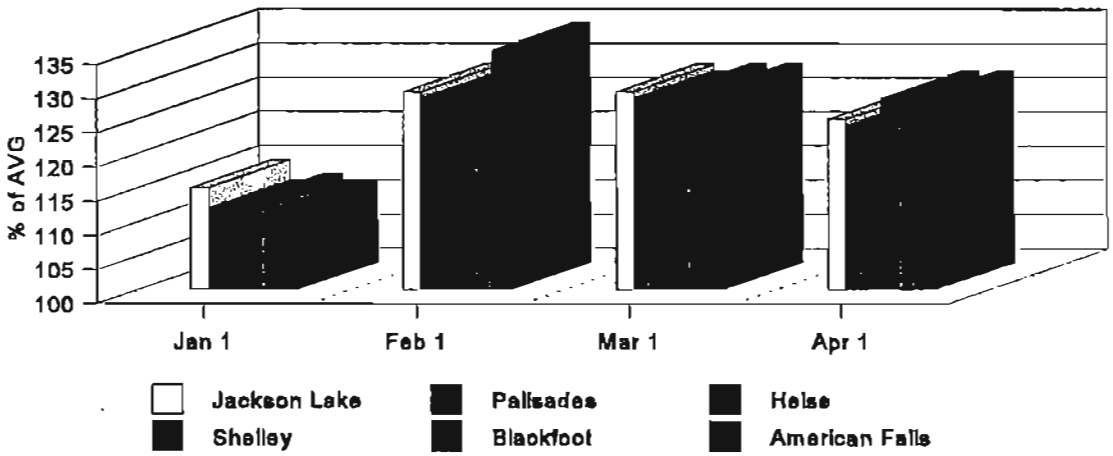
STATION	OB. TIME	MAX/MIN	DAY OF MONTH														
			1	2	3	4	5	6	7	8	9	10	11	12	13	14	15
		MIN	16	3	5	5	16	36	31	35	36	25	28	42	42	37	26
HAMER 4 NW	17	MAX	38	37	36	40	46	52	49	55	56	41	40	50	46	49	55
		MIN	16	-5	2	-1	18	12	11	21	24	4	25	23	27	26	24
HOWE	16	MAX	46	36	40	38	46	49	48	50	51	49	45	49	48	52	54
		OBS					***						***	***			
		MIN	20	2	6	3	23	20	28	25	40	22	26	31	33	32	26
IDAHO FALLS 2 ESE	18	MAX	38	39	43	45	49	46	46	59	51	40	52	54	50	55	59
		MIN	17	6	9	8	28	25	29	36	39	22	31	33	29	36	27
		OBS					11										
IDAHO FALLS 46 W	08	MAX	35	39	37	45	45	47	49	55	50	40	48	51	57	54	55
		MIN	9	-2	1	4	24	23	19	25	22	15	30	34	27	25	28
MALTA 1 ESE	18	MAX	35	45	48	55	48	47	55	66	55	42	60	54	62	65	60
		OBS															
		MIN	20	15	16	8	35	31	27	29	40	29	30	44	45	38	30
MALTA AVIATION	17	MAX	44	44	46	52	52	48	56	66	50	41	61	56	64	64	60
		OBS		***						***						***	***
		MIN	17	8	6	6	30	33	27	28	40	29	39	43	45	40	30
		OBS	***	***							***				***	***	***
MASSACRE ROCKS ST PK	18	MAX	40	44	50	57	53	49	54	69	55	41	62	54	64	67	58
		OBS		***											95		
		MIN	10	10	10	12	35	35	33	30	40	29	31	45	45	35	32
		OBS		***													
POCATELLO WSO ARPT	MID	MAX	38	40	45	48	51	48	52	65	50	40	55	51	56	60	60
		MIN	13	8	10	9	40	35	34	40	31	28	37	45	44	36	29
REXBURG RICKS COLLEGE	08	MAX	49	32	40	41	44	45	45	55	56	52	42	48	48	48	42
		OBS			11												
		MIN	14	12	3	5	8	31	26	25	36	28	18	35	36	37	22
		OBS	12	3	5	8	31	12	25	36	28	18	18	36	37	22	35
SAINT ANTHONY 1 WNW	09	MAX	49	33	37	40	42	45	46	47	55	52	38	45	47	45	45
		MIN	13	0	-2	3	4	20	17	23	32	12	12	28	34	36	30
EASTERN HIGHLANDS	10																
ARBON 2 NW	18	MAX	55	41	44	46	44	45	45	58	54	37	46	53	55	63	60
		OBS															
		MIN	13	2	9	8	26	34	29	34	36	26	29	37	41	38	28
BERN	22	MAX	39	34	41	41	43	36	42	57	43	30	50	44	49	57	56
		MIN	15	4	5	8	17	32	29	28	30	21	19	34	38	39	25
DRIGGS	17	MAX	38	36	38	39	39	36	38	47	46	38	40	42	44	55	61
		MIN	10	0	5	6	25	24	22	26	36	16	23	31	32	37	29
		OBS									22						
GRACE	17	MAX	43	38	38	45	40	45	41	52	59	40	40	47	45	57	61
		MIN	14	6	8	9	14	30	32	34	38	23	25	37	37	32	28
IDAHO FALLS 16 SE	20	MAX	32	32	42	42	42	37	38	52	44	42	42	45	50	55	60
		OBS								42	61						
		MIN	8	6	4	3	29	27	29	27	36	20	25	36	38	32	28
ISLAND PARK	14	MAX	40	30	34	34	41	41	36	42	42	40	36	36	36	44	48
		MIN	8	-6	-1	8	25	15	15	30	27	23	18	33	33	34	34
		OBS				18	12	1									
LIFTON PUMPING STN	08	MAX	45	35	35	40	42	43	42	46	58	46	34	53	45	52	58
		MIN	19	10	11	12	17	21	29	29	30	22	22	27	38	38	27
MALAD CITY	17	MAX	49	43	48	48	47	49	49	59	52	42	52	51	53	64	61
		MIN	20	8	9	10	14	32	27	21	31	28	25	42	42	30	27
MCCAMMON	18	MAX	44	38	44	44	46	46	46	60	54	39	47	52	55	61	59
		MIN	21	7	8	8	29	36	34	30	39	28	29	40	41	41	27
OAKLEY	18	MAX	44	40	43	50	50	47	56	65	51	39	58	54	62	63	65
		MIN	14	10	16	11	35	26	28	32	37	28	34	44	43	40	36
POCATELLO 2 NE	08	MAX	37	40	44	49	48	45	49	62	47	36	49	50	56	61	59
		MIN	14	10	16	13	37	34	34	44	28	26	31	42	41	40	33
PRESTON	08	MAX	58	38	42	45	48	52	56	58	62	48	41	50	48	56	64
		MIN	21	12	11	14	18	19	32	26	28	27	27	30	40	39	30
		OBS									41						
SODA SPRINGS AIRPORT	07	MAX	53	35	35	45	43	45	39	43	58	44	33	47	47	48	57
		OBS															
		MIN	17	0	0	1	4	21	28	33	32	24	23	31	38	37	25
		OBS	34					33									
SWAN VALLEY 2 E	18	MAX	33	34	42	44	43	41	39	55	48	41	40	45	42	56	56
		MIN	18	1	3	5	22	30	26	35	40	18	25	36	37	37	30
TETONIA EXPERIMENT STN	08	MAX	49	30	32			39	42	40	54	47			43	44	55
		OBS															
		MIN	6	5	4			6	20	29	36	13				36	26
		OBS													15		

IDAHO
DECEMBER 1995

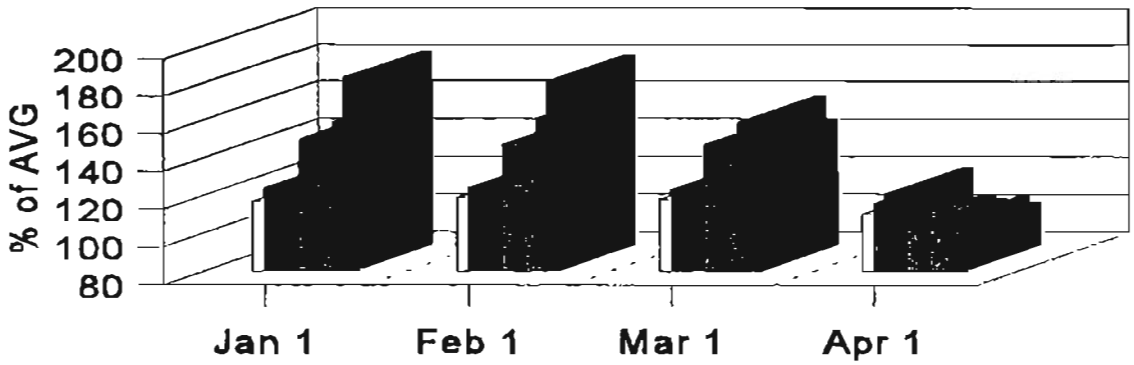
DAILY TEMPERATURES (°F)

STATION	OB. TIME	MAX/MIN	DAY OF MONTH														
			1	2	3	4	5	6	7	8	9	10	11	12	13	14	15
IDAHO FALLS 46 W	08	MAX	57	40	34	45	44	28	31	26	24	40	43	46	41	41	42
		OBS					27										
		MIN	37	22	8	22	8	10	11	-7	3	23	22	35	31	26	28
		OBS											34				
MALTA 4 ESE	18	MAX	60	57	48	51	44	41	40	39	42	57	55	55	52	51	45
		MIN	47	35	17	40	24	30	27	27	28	33	32	41	31	26	30
		OBS											42				
MALTA AVIATION	17	MAX	68	54	45	52	42	35	40	38	42	57	53	53	46	51	45
		OBS		44									***	***			
		MIN		34		39	22	30		22	27				32	25	30
MASSACRE ROCKS ST PK	18	MAX	67	47	47	45	43	34	36	38	33	56	57	56	56	54	48
		MIN	40	30	25	30	24	28	25	25	25	32	34	39	34	30	33
POCATELLO WSO ARPT	MID	MAX	64	45	46	49	37	33	35	28	35	50	50	53	45	46	49
		MIN	41	34	25	31	27	25	25	20	21	30	34	41	35	33	34
REXBURG RICKS COLLEGE	08	MAX	53	61	40	41	41	31	31	29	24	33	43	44	46	42	41
		OBS	61	40	41	41	31	31	29	24	33	43	44	46	42	41	32
		MIN	38	30	22	25	22	20	22	15	11	14	30	36	32	29	28
SAINT ANTHONY 1 WNW	09	MAX	54	59	41	39	47	31	30	34	21	32	40	44	45	41	40
		OBS								22							
		MIN	42	32	14	15	19	18	23	-1	12	17	28	33	35	30	24
EASTERN HIGHLANDS 10																	
ARBON 2 NW	18	MAX															
		MIN															
BERN	22	MAX	57	37	39	40	41	40	38	31	38	46	48	43	42	40	40
		MIN	32	25	14	30	25	27	22	13	24	30	31	31	26	24	20
		OBS															
DRIGGS	17	MAX	52	42	38	40	36	32	33	31	34	43	44	43	42	33	42
		MIN	40	29	21	32	24	17	11	7	13	33	37	36	31	29	27
GRACE	17	MAX	60	60	46	42	45	45	45	36	38	43	50	48	49	47	47
		MIN	36	34	16	33	30	30	27	20	18	33	37	30	28	18	29
IDAHO FALLS 16 SE	20	MAX	56	40	38	42	39	36	36	25	36	44	46	42	40	38	41
		MIN	33	27	17	28	22	16	17	14	15	34	35	39	31	28	25
ISLAND PARK	14	MAX															
		MIN															
LIFTON PUMPING STN	08	MAX	57	58	42	40	45	46	45	41	33	40	50	53	47	45	43
		MIN	29	29	18	19	26	29	29	21	22	25	30	31	31	24	21
MALAD CITY	17	MAX	63	55	46	52	43	45	44	39	38	53	48	51	49	49	44
		MIN	27	36	18	35	23	33	32	20	29	30	32	35	34	27	23
		OBS								35							
MCCAMMON	18	MAX	61	54	42	48	40	43	37	35	37	50	50	50	52	47	44
		MIN	37	33	19	34	31	32	27	23	28	35	36	35	35	32	27
		OBS				19											
OAKLEY	18	MAX	65	45	46	51	43	40	39	37	46	54	50	55	43	47	43
		MIN	40	30	24	41	27	30	29	21	28	37	37	39	31	29	33
POCATELLO 2 NE	08	MAX	62	43	43	46	43	31	35	30	40	53	51	49	43	46	46
		MIN	39	32	28	31	26	25	24	22	22	37	42	37	34	34	34
PRESTON	08	MAX	54	65	51	43	51	42	40	41	33	51	53	54	54	44	46
		MIN	32	36	20	22	26	28	23	21	21	29	38	38	35	28	25
		OBS				32											
SODA SPRINGS AIRPORT	07	MAX	50	57	40	39	42	42	39	35	30	40	49	48	46	42	44
		MIN	36	33	15	15	27	29	20	11	14	29	35	35	31	27	25
SWAN VALLEY 2 E	18	MAX	58	54	37	44	44	33	33	32	32	42	45	44	42	41	42
		OBS			54												
		MIN	41	28	20	35	25	26	15	11	18	31	28	35	35	32	28
		OBS	26														
TETONIA EXPERIMENT STN	08	MAX	45				40	30	28	32			43	43	43	39	36
		OBS				54											
		MIN	41			15	20	22	17	6				33	31	27	25
		OBS											12				

SNAKE RIVER STREAMFLOW FORECAST



UPPER SNAKE BASINS



- Ashton
- St Anthony
- Mackay Dam
- Little Wood
- Magic Dam
- Rexburg
- Topaz
- Little Lost
- Hailey

Jan Feb Mar April May / / / / Oct Nov Dec

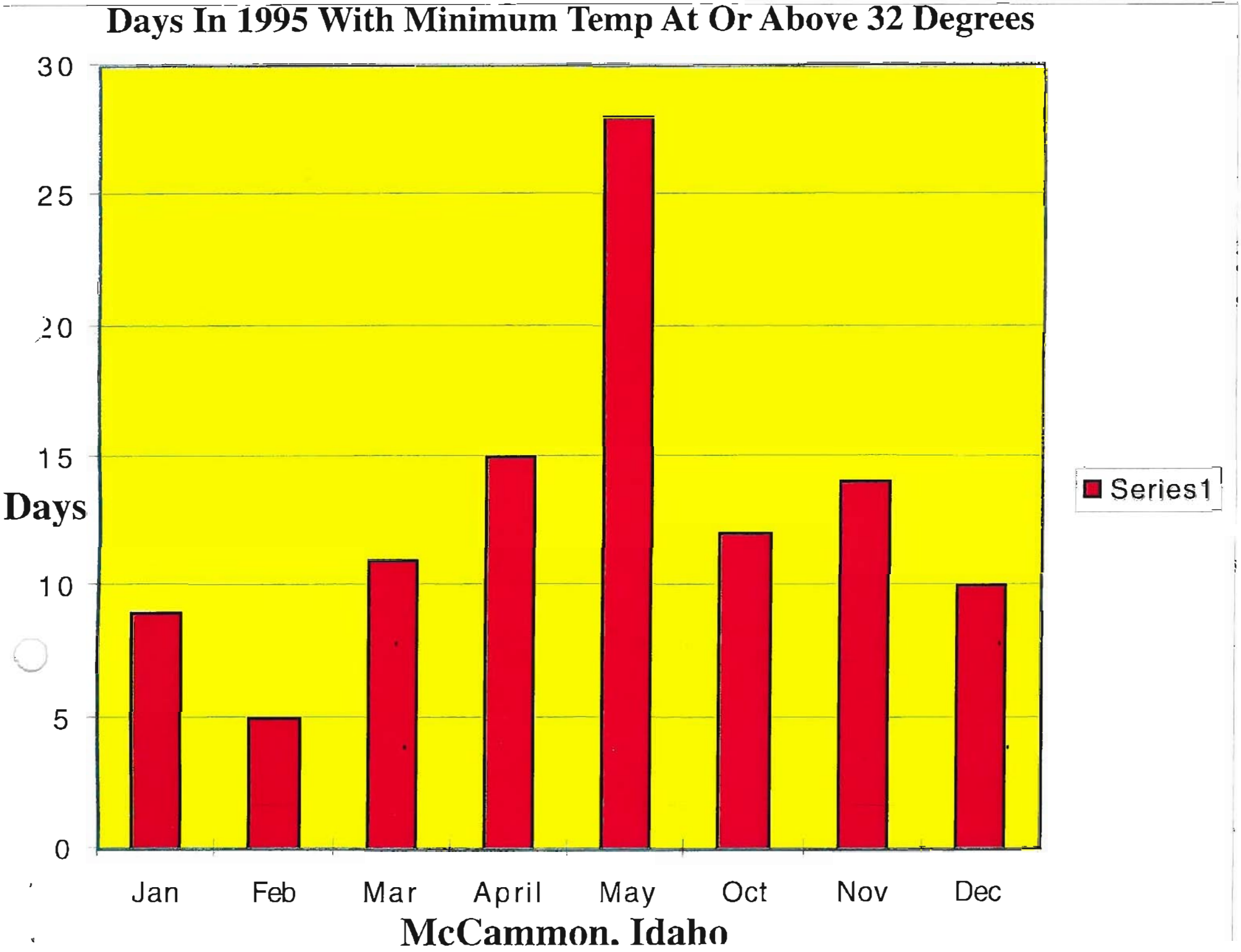
Total Days

[redacted] Days (1985) 32°F Above Freezing
McCammon Idaho (1985)

Total
104 Days

Jan 9
Feb 5
Mar 11
Apr. 15
May 28
Oct 12
Nov 14
[illegible] 15

Days Operational Historic 1990 → on Power Bills 1990+


Days In 1995 With Minimum Temp At Or Above 32 Degrees
30
25
20
15
10
5
0
Days
Jan
Feb
Mar
April
May
Oct
Nov
Dec
Series1
McCammon. Idaho

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE

STATE OF IDAHO

IN THE MATTER OF APPLICATIONS	)	
FOR PERMIT NO.'S 29-08162	)	
AND 29-08164 IN THE NAME OF	)	**NOTICE OF**
LAZY "V" RANCH	)	**HEARING**

On November 20, 1995, and January 4, 1996, Lazy "V" Ranch filed with the Department of Water Resources Application for Permit No.'s 29-08162 and 29-08164, respectively. The applications were protested by F.L. Duke Walden, George W. Katsilometes, Evelee Hill Rush and John Mehlhaff.

THE DEPARTMENT HAS NOW SCHEDULED THE MATTER FOR HEARING ON SEPTEMBER 10 & 11, 1997, AT 9:30 A.M., IN THE DOWNSTAIRS CONFERENCE ROOM AT THE POCATELLO AIRPORT, POCATELLO, ID.

The hearing will be held in accordance with the provisions of the adopted Rules of Procedure of the Department of Water Resources. A copy of the rules may be obtained from the Department upon request. The presiding officer at the hearing will be Gary Spackman.

If you plan to offer exhibits for the record, note that IDAPA Rule of Procedure 37.01.01606 requires that you provide a copy of exhibits to each party and to the presiding officer.

The hearing will be conducted in a facility which meets the accessibility requirements of the Americans with Disabilities Act. If you require special accommodations in order to attend, participate in or understand the hearing, please advise the Department within ten (10) days prior to the hearing.

Dated this 7th day of August, 1997.

RONALD D. CARLSON
Regional Manager

CERTIFICATE OF SERVICE

I hereby certify that on the 7th day of August, 1997, I mailed a true and correct copy, postage prepaid, of foregoing **NOTICE OF HEARING** to the following:

George Katsilometes
P.O. Box 670
Lava Hot Springs, ID 83246

John Mehlhaff
1424 High St.
Auburn, CA 95603

Caren Vargason
Lazy "V" Ranch
P.O. Box 268
Lava Hot Springs, ID 83246

Evelee Hill Rush
P.O. Box 4905
Pocatello, ID 83205

Jack H. Robinson
Jones Chartered
P.O. Box 967
Pocatello, ID 83204-0967

F.L. Duke Walden
P.O. Box 127
Lava Hot Springs, ID 83246

Name and Address of Sender

DEPARTMENT OF WATER RESOURCES
EASTERN DISTRICT OFFICE
900 N. SKYLINE DR.
IDAHO FALLS, IDAHO 83402

Indicate type of mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured ☐ Int'l Recorded Del.
☐ COD ☐ Express Mail
☑ Certified

Check appropriate block for Registered Mail:
☐ With Postal Insurance
☐ Without Postal Insurance

Affix stamp here if issued as certificate of mailing or for additional copies of this bill

Postmark and Date of Receipt

For Accountable Mail

Line	Article Number	Name of Addressee, Street, and Post Office Address	Postage	Fee	Handling Charge	Act. Value (If Regis.)	Insured Value	Due Sender If COD	R. R. Fee	S. D. Fee	S. H. Fee	Rest. Del. Fee / Remarks
1	03	George Katsilometes PO Box 670 Lava Hot Springs	.32	1.35					1.10			Hearing For 29-0816a
2	04	Evelyn Hill Rush PO Box 4905 Pocatello										29-0816
3	05	John Mehlhoff 1424 High St. Auburn CA 95603										"Lazy" V Ranch
4	06	Jack Robinson PO Box 967 Pocatello 83204-0967										
5	07	Caren Vargason PO Box 268 Lava Hot Springs 83246										
6	08	F.L. Duke Walden P.O. Box 127 Lava Hot Springs 83246				$16.62 8-7-1997						
7												
8												
9												
10												
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15												

IDAHO FALLS, I. EAGL ROCK ANNEX AUG 7 1997 USPS

Total Number of Pieces Listed by Sender	Total Number of Pieces Received at Post Office	Postmaster, Per *(Name of Receiving Employee)*
6	6	

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PS Form **3877**, February 1994 — **Form Must be Completed by Typewriter, Ink or Ball Point Pen** — *U.S. Government Printing Office: 1994 — 3

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WATER RESOURCES
WESTERN REGION

Before the Department of Water Resources
of the State of Idaho

Witness list for Permit No. 29-08162 and Permit No. 29-08164 in the name of Lazy V Ranch, Inc.

1. Charles Sudwicks
2. Bob Meline
3. Mike Hanson
4. Karen Vargason

Exhibit list for Hearing for Permit No. 29-08162 and Permit No. 29-08164 in the name of Lazy V Ranch, Inc.

I submit the following list of documents to be entered in the above named hearing.

1. Six pages of site and system photographs
2. Application for permit No. 29-7847
3. Application for permit No. 29-8612
4. Legal statute summary regarding business names.
5. Overview of site and system plot.
6. Letter from Steve Strack, attorney generals office to Norm Young, Oct. 1, 1996.
7. Project No. 90-547 feasibility study by ESA.
8. Recommendations from feasibility study by ESA.
9. Chemical Engineering report on heat exchanger design, May 1993.
10. Aurora Pump bulletin 700D.
11. ITT heat exchanger submittal C324.1-C324.6
12. Johnson Controls Catalog for Lava swimming pool repair.
13. Aurora Pump pump performance curves for 20hp and 10hp pump.
14. Bell and Gossett Plate Design Quotation/Specs. for HX-2 and HX-1 heat exchangers.
15. Beneficial Use Field Report for permit no. 29-07847.
16. Lava Sudy of Utah Power and water Bills for 1986-1989.
17. Draft of easement agreement between LVR and Lava Hot Springs Foundation.
18. As build project site map.
19. As proposed project site map #1.
20. As proposed project site map #2.

Certificate of Service

I hereby certify that I mailed a true and correct copy of the foregoing, by placing same in the United States mail, postage prepaid, addressed as follows:

Karen Vargason
Lazy V Ranch
P.O. Box 268
Lava Hot Springs, Id 83246

George Katsilometes
P.O. Box 670
Lava Hot Springs, Id 83246

Evelee Hill Rush
P.O. Box 4905
Pocatello, Id 83205

Gary Spackman, Hearing Examiner
Dept. of Water Resources
1301 N. Orchard
Boise, Id 83726

on this 30th day of August, 1997

John Mehlhaff

John Mehlhaff

RECEIVED
AUG 13 1997
WATER RESOURCES
WESTERN REGION

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE

STATE OF IDAHO

IN THE MATTER OF APPLICATIONS	)	
FOR PERMIT NO.'S 29-08162	)	
AND 29-08164 IN THE NAME OF	)	**NOTICE OF**
LAZY "V" RANCH	)	**HEARING**

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The hearing will be conducted in a facility which meets the accessibility requirements of the Americans with Disabilities Act. If you require special accommodations in order to attend, participate in or understand the hearing, please advise the Department within ten (10) days prior to the hearing.

Dated this 7th day of August, 1997.

RONALD D. CARLSON
Regional Manager

CERTIFICATE OF SERVICE

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George Katsilometes
P.O. Box 670
Lava Hot Springs, ID 83246

John Mehlhaff
1424 High St.
Auburn, CA 95603

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Evelee Hill Rush
P.O. Box 4905
Pocatello, ID 83205

Jack H. Robinson
Jones Chartered
P.O. Box 967
Pocatello, ID 83204-0967

F.L. Duke Walden
P.O. Box 127
Lava Hot Springs, ID 83246

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

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
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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MAY 12 1997
Department of Water Resources
Eastern Region

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.

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

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
OFFICE OF THE ATTORNEY GENERAL
ALAN G. LANCE

RECEIVED
MAY 1 2 1997
Department of Water Resources
Eastern Region

ATTORNEY GENERAL OPINION NO. 97-1

RECEIVED
JAN 1 3 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.

P.O. Box 83720, Boise, Idaho 83720-0010
Telephone: (208) 334-2400, FAX: (208) 334-2530
Located at 700 W. Jefferson Street, Suite 210

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 legistature 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

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.

RECEIVED
OCT 0 3 1996
Department of Water Resources

STATE OF IDAHO

OFFICE OF THE ATTORNEY GENERAL
ALAN G. LANCE

October 2, 1996

VIA FACSIMIL AND REGULAR MAIL

Karl J. Dreher
Director, Department of Water Resources
1301 North Orchard Street
Statehouse Mail
Boise, ID 83720

RE: Lazy V Ranch

Dear Mr. Dreher:

It is my understanding that a Pre-hearing conference has been scheduled for October 3, 1996, in the matter of pending water right applications filed by Thayne and Karen Vargason of the Lazy V Ranch in Lava Hot Springs. The applications have been protested and discovery has been protracted. The same protestants have also requested an investigation by the Attorney General's Office concerning allegations of the misuse of public funds by the Lava Hot Springs Foundation and its Supervisor.

I have reason to believe that the protestants intend to subpoena the investigator from my office, Kathie Brack, who has been conducting the investigation and compel her to testify in the water rights matter. I believe the issuance of a subpoena compelling Ms. Brack's testimony in the Vargason's water right applications would not be proper. The matters being investigated by my office (allegations of misuse of public funds) are unrelated and irrelevant to whether or not the department should issue permits to the Vargasons. Also, Ms. Brack has gained information from third parties, most whom will provide testimony in the application proceeding; she could therefore only provide hearsay testimony.

If a subpoena is requested for Kathie Brack, we would request to be heard before its issuance rather than be forced to move to quash the subpoena. We believe those requesting a

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Located at 650 W. State Street
Len B. Jordan Building, Lower Level

subpoena of Ms. Brack should be required to show some reasonable basis for the request prior to issuance of a subpoena. If you wish to discuss this further please contact me.

Sincerely,

David G. High
Chief, Civil Litigation Division

DGH/klb
cc: Phil Rassier, Deputy Attorney General
Gary Spackman, Idaho Department of Water Resources
Norm Young, Idaho Department of Water Resources

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Prehearing Conf. 29-08162 + 29-08164
Lazy V Ranch - 10-3-95

Name	Address	Representing
Jack Robison	P.O Box 967, Poc 83204	applicant
KAREN VARGASON	Box 268 - LAVA HOT SPRINGS 83246	APPLICANT
Dennis Dunn	IDWR - 900 N Skyline, Suite A	If 83402
Greg Moeller	P.O. Box 250, Rexburg 83440	Att'y for Protest.
Roy W. Rigby	" " " " " " " "	
George W. [illegible]	94E Northwest Lava	Protestant
Evelee Hill	P.O. Box 4905 Pocatello, ID 83205	Protestant

Spokesman

STATE OF IDAHO

OFFICE OF THE ATTORNEY GENERAL
P.O. Box 83720
Boise, ID 83720-0010
Phone: (208) 334-2400

FAX TRANSMISSION

DATE: 10/02/96

PAGES (including cover): 3

TO: NORM YOUNG

FROM: DAVID G. HIGH
Deputy Attorney General

FAX #: 327-7866

FAX #: (208) 334-2530

This fax was transmitted from the Idaho Attorney General's Office. If you did not receive the number of pages listed above, please call Cathy at (208) 334-4138.

COMMENTS:

Attention: Debbie Ellis

NOTICE: This message is intended only for the use of the individual or entity to which it is addressed and may contain information that is privileged, confidential and exempt from disclosure under applicable law. If the reader of this notice is not the intended recipient or the employee or agent responsible for delivering the message to the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error, please notify us immediately by telephone and return these papers to us at the address shown above via first class mail.

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

October 2, 1996

VIA FACSIMIL AND REGULAR MAIL

Karl J. Dreher
Director, Department of Water Resources
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Statehouse Mail
Boise, ID 83720

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DGH/klb
cc: Phil Rassier, Deputy Attorney General
Gary Spackman, Idaho Department of Water Resources
Norm Young, Idaho Department of Water Resources

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State of Idaho
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PHILIP E. BATT
GOVERNOR

KARL J. DREHER
DIRECTOR

October 2, 1996

John Mehlhaff
1424 High Street
Auburn, California 95603
FAX 916 632 3933

Re: Lava Hot Springs Foundation

Dear Mr. Mehlhaff:

Your letter of September 19, 1996, seeks additional information on the Foundation's need and authority to bypass water to operate the heat exchanger for the Olympic pool. Steven Strack, Deputy Attorney General, has reviewed your letter and has responded by letter dated October 1, 1996 (copy enclosed). His letter describes both the physical reasons for the bypass and the nature of the Foundation's water right claims that may affect IDWR's jurisdiction in this matter.

Mr. Strack indicates he is asking the Foundation to request an Attorney General's Opinion on the relative authorities of the Foundation and IDWR for administering the water arising on the Foundation's land. Enclosed is a copy of Section 67-4403, Idaho Code, which Mr. Strack references in his letter.

IDWR will defer further action concerning the on-going use by Lazy V Ranch of the bypass flows anticipating that the Foundation will make a timely request for an Attorney General's Opinion on this matter. In the meantime, we encourage and expect the Foundation to review the necessity for the bypass flow and to closely monitor the system to ensure that water is not diverted in excess of the authorized beneficial uses.

Sincerely,

NORMAN C. YOUNG
Administrator,
Water Management Division

Enclosures: 2
c: Steven Strack
George Katsilometes
Evelee Hill
Thayne Vargason
Jack Robison

STATE OF IDAHO

OFFICE OF THE ATTORNEY GENERAL

ALAN G. LANCE

October 1, 1996

Via Facsimile and Statehouse Mail

Norman C. Young
Administrator - Water Management Division
Idaho Department of Water Resources
Statehouse Mail

Dear Norm:

I am writing on behalf of the Lava Hot Springs Foundation. It is my understanding that the Department will soon be holding a hearing regarding the water right application of Lazy V Ranch. Although the Foundation is not a party to that proceeding, it does have a substantial interest in the proceedings. As you know, the Ranch's application is for the diversion of water from the Foundation's waste water system. The Foundation agreed to the diversion in return for the Ranch's permission to run the waste water pipe across the Ranch's property. The Ranch has indicated that if it is no longer allowed to divert water from the pipe, it will withdraw its permission to run the waste water across the Ranch's property.

My understanding is that several persons, including John Melhaff, have objected to the diversion on several grounds, including the assertion that the bypass system from which the diversion is made is not a beneficial use of water by the Foundation. They base this assertion on the understanding that the primary purpose of the bypass system is to bleed air from the system prior to its use in the heat exchanger. The objecting parties question the need for a 12-inch bypass pipe to accomplish this purpose.

My understanding from conversations with Bob Meline, the executive director of the Lava Hot Springs Foundation, is that the bypass pipe was designed to meet several additional needs: first, it was designed with the capacity to divert the entire flow of water from the hot springs in the case of an emergency requiring the diversion of water away from the heat exchanger. Second, the amount of water required by the heat exchanger varies according to need, and such needs are communicated to the pump at the hot springs. At very low flows the pump overheats. To rectify this, the bypass was designed to "leak" an amount of water sufficient to allow the pump to run at levels necessary to prevent such overheating. Third, the bypass system was designed with additional capacity to allow for the future nonconsumptive use of the water for space heating at the condominiums or other future buildings located on Foundation property.

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The Foundation approved the system pursuant to the authority vested in it by Idaho Code § 67-4401, which vests the Foundation with "[a]ll right to the operation, management and control . . . of the lands and property belonging to the state of Idaho situated within and near the city of Lava Hot Springs." Under the terms of Idaho Code § 67-4403, the term "property" includes the lands owned by the Foundation "and the hot springs and hot waters arising from and flowing thereon." These statutes raise a significant issue as to whether waters on Foundation property are within the jurisdiction of IDWR, whether they are within the exclusive jurisdiction of the Foundation, or whether there is to be some form of shared authority over such waters. Certainly, the unique nature of the water rights held by the Foundation requires further scrutiny. I am in the process of reviewing the Foundation's claims in the Snake River Basin Adjudication to determine whether those claims should be amended to reflect these statutory provisions, and the nature of the Foundation's water rights may well be resolved as part of the adjudication. In the meantime, I have asked the Foundation to request an attorney general's opinion to determine, at least on an interim basis, the relative authorities of the Foundation and IDWR with regard to the Foundation's hot water resources. One of the questions that the attorney general is being asked to determine is whether a use of water authorized by the Foundation through a contract with a private party is an unauthorized use of water as the term is used in Idaho Code § 42-351.

In the meantime, the Foundation believes it is in everybody's interest to actively cooperate with IDWR and employ IDWR's expertise in the area of water resources to ensure that Foundation's water is being put to maximum beneficial use. In that regard, the Foundation is undergoing an objective review of its water system to ensure that the water is being used in accordance with the directives of the statutes governing the operation of the Foundation. The Foundation plans to share its findings with IDWR.

In light of the uncertainties regarding the respective authorities of IDWR and the Foundation, we believe it would be appropriate for IDWR to temporarily defer any action that would interfere with the present operation of the Foundation's water system pending a determination of the respective authorities of the Foundation and IDWR. We believe the present action regarding the use of water by Lazy V Ranch is within the scope of this proposed deferral, since their use is authorized by the Foundation in accordance with the terms of the agreement between the Foundation and Lazy V Ranch.

Sincerely,

STEVEN W. STRACK
Deputy Attorney General
Natural Resources Division

SWS/sc
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Compiler's notes. Section 2 of S.L. 1965, ch. 108 declared an emergency. Approved March 8, 1965.

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67-4404. Superintendent and employees — Rules and regulations. — The said foundation shall have power to employ a superintendent of the hot springs and bathing facilities, necessary medical, surgical and other professional assistants, and to employ such other help as may be necessary, and to prescribe the duties of the said superintendent, medical, surgical and other professional assistants, and all other employees; it shall have power to remove the said superintendent, medical, surgical and other professional assistants, or other employees, at its pleasure, and shall make and ordain such rules and regulations for the conduct and administration of the said hot springs, bathing facilities and sanitarium and hospital as it shall deem necessary and proper. [1919, ch. 30, § 6, p. 108; C.S., § 1293; I.C.A., § 65-4104; am. 1935, ch. 5, § 4, p. 16.]

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State of Idaho
DEPARTMENT OF WATER RESOURCES
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PHILIP E. BATT
GOVERNOR

KARL J. DREHER
DIRECTOR

October 2, 1996

John Mehlhaff
1424 High Street
Auburn, California 95603
FAX 916 632 3933

Re: Lava Hot Springs Foundation

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NORMAN C. YOUNG
Administrator,
Water Management Division

Enclosures: 2
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STATE OF IDAHO

OFFICE OF THE ATTORNEY GENERAL

ALAN G. LANCE

October 1, 1996

Via Facsimile and Statehouse Mail

Norman C. Young
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Idaho Department of Water Resources
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Compiler's notes. Section 2 of S.L. 1965, ch. 108 declared an emergency. Approved March 8, 1965.

67-4403. Description of property. — 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 (¼) of the southwest quarter (¼), 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. [1919, ch. 30, § 3, p. 108; C.S., § 1292; I.C.A., § 65-4103; am. 1935, ch. 5, § 3, p. 16.]

67-4404. Superintendent and employees — Rules and regulations. — The said foundation shall have power to employ a superintendent of the hot springs and bathing facilities, necessary medical, surgical and other professional assistants, and to employ such other help as may be necessary, and to prescribe the duties of the said superintendent, medical, surgical and other professional assistants, and all other employees; it shall have power to remove the said superintendent, medical, surgical and other professional assistants, or other employees, at its pleasure, and shall make and ordain such rules and regulations for the conduct and administration of the said hot springs, bathing facilities and sanitarium and hospital as it shall deem necessary and proper. [1919, ch. 30, § 6, p. 108; C.S., § 1293; I.C.A., § 65-4104; am. 1935, ch. 5, § 4, p. 16.]

67-4405. Receipts and appropriation inuring to use of foundation. — The entire receipts of and from any source whatsoever that may inure to the benefit of the said foundation through its operation of the said property, bathing facilities, pleasure resort, hospital or sanitarium and the rents and royalties accruing from any mineral lease that shall be made of foundation lands shall be deposited in the Lava Hot Springs Foundation Fund, and all moneys now in or hereafter deposited in such fund are hereby appropriated for the use and benefit of the said Foundation. [1919, ch. 30, § 5, p. 108; C.S., § 1294; I.C.A., § 65-4105; am. 1935, ch. 5, § 5, p. 16; am. 1953, ch. 139, § 1, p. 229.]

RECEIVED
OCT 0 2 1996
Department of Water Resources

STATE OF IDAHO

OFFICE OF THE ATTORNEY GENERAL
ALAN G. LANCE

October 1, 1996

Via Facsimile and Statehouse Mail

Norman C. Young
Administrator - Water Management Division
Idaho Department of Water Resources
Statehouse Mail

Dear Norm:

I am writing on behalf of the Lava Hot Springs Foundation. It is my understanding that the Department will soon be holding a hearing regarding the water right application of Lazy V Ranch. Although the Foundation is not a party to that proceeding, it does have a substantial interest in the proceedings. As you know, the Ranch's application is for the diversion of water from the Foundation's waste water system. The Foundation agreed to the diversion in return for the Ranch's permission to run the waste water pipe across the Ranch's property. The Ranch has indicated that if it is no longer allowed to divert water from the pipe, it will withdraw its permission to run the waste water across the Ranch's property.

My understanding is that several persons, including John Melhaff, have objected to the diversion on several grounds, including the assertion that the bypass system from which the diversion is made is not a beneficial use of water by the Foundation. They base this assertion on the understanding that the primary purpose of the bypass system is to bleed air from the system prior to its use in the heat exchanger. The objecting parties question the need for a 12-inch bypass pipe to accomplish this purpose.

My understanding from conversations with Bob Meline, the executive director of the Lava Hot Springs Foundation, is that the bypass pipe was designed to meet several additional needs: first, it was designed with the capacity to divert the entire flow of water from the hot springs in the case of an emergency requiring the diversion of water away from the heat exchanger. Second, the amount of water required by the heat exchanger varies according to need, and such needs are communicated to the pump at the hot springs. At very low flows the pump overheats. To rectify this, the bypass was designed to "leak" an amount of water sufficient to allow the pump to run at levels necessary to prevent such overheating. Third, the bypass system was designed with additional capacity to allow for the future nonconsumptive use of the water for space heating at the condominiums or other future buildings located on Foundation property.

Natural Resources Division
P.O. Box 83720, Boise, Idaho 83720-0010
Telephone: (208) 334-2400, FAX: (208) 334-2690
Located at 700 W. Jefferson Street, Suite 210

The Foundation approved the system pursuant to the authority vested in it by Idaho Code § 67-4401, which vests the Foundation with "[a]ll right to the operation, management and control . . . of the lands and property belonging to the state of Idaho situated within and near the city of Lava Hot Springs." Under the terms of Idaho Code § 67-4403, the term "property" includes the lands owned by the Foundation "and the hot springs and hot waters arising from and flowing thereon." These statutes raise a significant issue as to whether waters on Foundation property are within the jurisdiction of IDWR, whether they are within the exclusive jurisdiction of the Foundation, or whether there is to be some form of shared authority over such waters. Certainly, the unique nature of the water rights held by the Foundation requires further scrutiny. I am in the process of reviewing the Foundation's claims in the Snake River Basin Adjudication to determine whether those claims should be amended to reflect these statutory provisions, and the nature of the Foundation's water rights may well be resolved as part of the adjudication. In the meantime, I have asked the Foundation to request an attorney general's opinion to determine, at least on an interim basis, the relative authorities of the Foundation and IDWR with regard to the Foundation's hot water resources. One of the questions that the attorney general is being asked to determine is whether a use of water authorized by the Foundation through a contract with a private party is an unauthorized use of water as the term is used in Idaho Code § 42-351.

In the meantime, the Foundation believes it is in everybody's interest to actively cooperate with IDWR and employ IDWR's expertise in the area of water resources to ensure that Foundation's water is being put to maximum beneficial use. In that regard, the Foundation is undergoing an objective review of its water system to ensure that the water is being used in accordance with the directives of the statutes governing the operation of the Foundation. The Foundation plans to share its findings with IDWR.

In light of the uncertainties regarding the respective authorities of IDWR and the Foundation, we believe it would be appropriate for IDWR to temporarily defer any action that would interfere with the present operation of the Foundation's water system pending a determination of the respective authorities of the Foundation and IDWR. We believe the present action regarding the use of water by Lazy V Ranch is within the scope of this proposed deferral, since their use is authorized by the Foundation in accordance with the terms of the agreement between the Foundation and Lazy V Ranch.

Sincerely,

STEVEN W. STRACK
Deputy Attorney General
Natural Resources Division

SWS/sc
l6275nsa

September 30, 1996

Mr. Gary Spackman
Hearing Officer
Idaho Dept. Of Water Resources
1301 N. Orchard Street, Statehouse Mail
Boise, Idaho 83720-9000
Fax (208) 327-7866

Re: Preliminary hearing of applications 29-08162 and 29-08164.

Dear Mr. Spackman,

Due to scheduling difficulties, I will not be able to attend the prehearing conference on October 3, 1996.

I would like to have the following items entered, discussed, and approved in the preliminary hearing for use in the final hearing. Please notify me after the preliminary hearing about your decisions.

The main issue to be discussed is whether the applicants have **legitimate access** to the geothermal waste water they have applied for. The alleged wastewater flows down a bypass pipeline onto the Vargason's property. Whether the bypass line is needed for operation of the heat exchange system is the issue to be determined. I intend to prove that it is not necessary and the bypass's primary function is for future expansion of the site. By proving that the bypass is not needed, then there will be no wastewater produced to flow down the bypass line. With no naturally flowing waste water then the applications should be denied for lack of access to the water.

Required Discovery Documents

Things he can discover

1. Engineering design requirements from Mr. Sudweeks justifying the need for the bypass pipeline for the operation of the heat exchanger.
2. Plat of the swimming pool area showing easements and restrictions.
3. Make and Model Number of the plate heat exchangers.
4. A copy of the video taken by water resources of the facility.

Witnesses for the hearing

Tell us who

1. I will bring a professional mechanical design engineer to discuss plate type heat exchange systems.
2. Mr. Sudweeks who will be asked to justify his design of the system.

FROM : Intevac RTP-Systems PHONE NO. : 916 632 3938 Sep. 30 1996 03:32PM P1

3. Mr. Bob Meline who will be asked to justify his reasons for routing the bypass pipe line onto private land.

4. Mike Hansen, chief of facility maintenance, will be asked to answer questions about operation of the heat exchange system.

I would also like to request that the final hearing be conducted on Wednesday, Nov. 27. This should give the Idaho Attorney Generals office time to complete their investigation. Additionally, because none of the requested for and agreed to information from the previous prehearing about the system has yet been released, I require this additional time to prepare for the hearing.

Best Regards,

John Mehlhaff

John Mehlhaff
1424 High Street
Auburn, California 95603
(916) 632-3933 phone
(916) 632-3938 fax

FROM : Intevac RTP-Systems PHONE NO. : 916 632 3938 Sep. 30 1996 03:33PM P2

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE

STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR PERMIT NO. 29-08162 AND FOR PERMIT NO. 29-08164 IN THE NAME OF THE LAZY V RANCH	SUPPLEMENT TO LIST OF OF WITNESSES AND EXHIBITS

NOTICE

The applicant submits no new witnesses to the witnesses listed on the list of witnesses disclosed by the applicant and the protesting parties. The following is the witnesses expected to be called, not including rebuttal witnesses, and a brief summary of expected testimony.

1. Karen and Thayne Vargason - will testify as to all issues in support of the water permits.

2. Charles Sudweeks - He is the engineer for the geothermal heating systems at the Lava Hot Springs Foundation. Mr. Sudweeks is expected to testify about the design, construction, and operation of the system and the applicant's system.

3. Floyd Jensen - Chairman of the Board when the pipe easement was approved by the Lava Hot Springs Foundation. He is expected to testify about the events leading up to and the approval of the easement and above the Foundations geothermal heating system.

4. Bob Meline - Is the Executive Director of the Lava Foundation. Mr. Meline is expected to testify about the history of the Geothermal Heating System, the easement on the applicant's property and the history and operation of the overall system.

5. Dave Loveless - Worked at the INEL and was involved in the development of the applicant's fish project. He is expected to testify about the creation, operation, and viability of the fish project.

6. Mike Winston and Jessica Winston - Mike Winston was employed by Shelly High School. Jessica Winston was one of the students involved in the project. The witnesses are expected to testify to the details of the involvement of Shelly High School with the fish farm as a school project.

7. Keith Wilson - Department of Water Resources employee. He is expected to testify about the history and details of the application and water issues and communications with the applicant.

8. Rick Frandsen - Contractor who dug the pipeline ditch. Rick Frandsen is expected to testify about the work and payment by the applicant for his services.

9. Dan Campbell - Fish Farmer. Supplies the fish to the applicant and is expected to testify about the fish and the applicants fish farm project.

10. Gary Fornshell - Twin Falls County Extension Agent. He is expected to testify about the history of the project and his involvement in ascertaining the feasibility of the fish farm.

Exhibits. No new or additional exhibits are expected to be offered other than the field report dated August 26, 1996.

DATED this 27th day of September, 1996.

Attorney for Applicant

CERTIFICATE OF MAILING

I HEREBY CERTIFY that I mailed, or caused to be mailed, a true and correct copy of the foregoing, by placing the same in the United States mail, postage prepaid, XX; or hand-delivered, ____; and served by facsimile, XX; addressed as follows:

George Katsilometes
P.O. Box 670
Lava Hot Springs, Idaho 83246
Fax: 208-232-2170

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

John Mehlaff
1424 High St.
Auburn, CA 95603
Fax: 208-232-2170

Evelee Hill Rush
P.O. Box 4905
Pocatello, Idaho 83205-4905
Fax: 208-232-2170

on this 27th day of September, 1996.

Jack H. Robison

77-615

Taped 11
9-16-97

Via Fax: 9/25/96

To: Gary Spackman; Hearing Officer;
Permit Nos. 29-08162 and 29-08164

From: George W. Katsilometes

Sir; I am sending this fax in response to your request for a short statement regarding the reason we have requested subpoenas for the following witnesses:

1. Dave Hunter is the chairman of the board for the Hot Springs Village Assn. and this business leases land from the state just to the west of the olympic pool. This state land has been used for public roads, pipelines, etc. in the past and as protestants, we would like to know why geothermal water was not discharged to the river across this state property as has traditionally been the case.

2. Reverend Richard Marceau was a long-time employee of the foundation and was employed as maintenance supervisor at the time of installation of the system. He has intimate knowledge of how and where the system was installed.

3. Newt Lowe was present at a meeting with Charles Sudweeks (chief engineer of the system) and can testify as to what Mr. Sudweeks said about why the system was overdesigned and why numerous gatevalves were installed.

4. Rick Frandsen was paid to operate a ditch witch to dig pipelines for the project. Can testify to where pipelines are.

5. Katherine Howell as a chief administrator and financial employee of the foundation can produce documents and testify as to the expenditure of funds and the costs of opperating the system.

6. Mark Campbell was employed to excavate the idle naturally flowing spring from which the geothermal water is being pumped to the olympic pool and to the Vargason property.

7. Mike Hansen is the current maintenance supervisor at the foundation, is the son-in-law of Vargason, and has knowledge of the current mode of operation of the system.

8. Russ Sidell is a current employee of the foundation and has knowledge of the operation of the heat exchangers and the system.

9. Dwaine Wellard is a board member of the foundation and his wife Geri manages the Hot Springs Village Condominiums (see above). He can testify as to the board's function with respect to the management of the foundation for the good of the people.

10. Geri Wellard manages the Hot Springs Village Condominiums and can testify as to purported requests for easements and the

provisions for the delivery of the geothermal waters to the condominiums.

11. Thayne Vargason is an applicant and can testify as to his relationship with Robert Meline and the foundation, the viability of the fish farming venture, his long term plans for usage of 7 cfs of delivered gerthermal waters and the history of how the pipelines were placed on his property.

12. Ron Carlson, Harold Jones, Keith Wilson, and Dennis Dunn of the department of water resources can testify as to the content of meetings with the Vargason's, Robert Meline, the board, George Katsilometes, and others having interest in the use of the hot spring waters.

13. Charles L. Sudweeks is the engineer hired by the foundation to plan and oversee the installation of the system. His knowledge of the capacities, specifications, costs, design, etc. is very important.

14. John Welhan is a hydrologist who can testify as to the water flows, demands, capacities of water systems, springs, etc.

15. Don Campbell is an expert in aquaculture and the raising of Tilapia sp. He supplied the fingerlings to the Vargason's for their abortive effort to raise these warm water fish with pumped mineral hot water. He can testify as to the viability of any venture for the raising of warm water mammals which are dependent on the mechanical/electrical delivery of hot water.

16. Gary Fornshell is also knowledgeable of aquaculture and this project and can testify as to the origination of the venture and its history.

17. Mark Sidell was hired to weld the pipelines and can testify as to the sizing of the pipelines and their installation.

18. Emmette Spraker, Al Ricken, Floyd Jensen, Sheldon Jones and Ralph Lacy are present or former foundation board members who can testify as to the relationship between the board and the director of the foundation with respect to the installation of the system and its operation.

19. Jay Valcarce is knowledgeable in hydrology and can testify as to the installed capacities of system vs. the actual water supply required for efficient operation of the system.

20. Robert Meline director of the foundation from the time of request of funds from the legislature for the system to the present. He can testify as to board meetings pertaining to the system, requests for funds from the legislature for the system, disbursement of funds for planning, installation and equipping the system, his long-term relationships with Vargason and Sudweeks, his reason for placing pipilines onto private property, etc.

MEMORANDUM

TO: NORM YOUNG
CC:
FROM: KEN BAKER
RE: JOHN MEHLHAFF LETTER OF SEPTEMBER 19, 1996
DATE: SEPTEMBER 20 , 1996

In response to Mr. Melhoff's September 19 letter to you: As you may recall, when Russell and I were writing our report we came to a point where we did not know if a bypass was necessary for the operation of the system. At that time, we considered suggesting that the AG's office get a professional engineer to make that determination because this issue seemed like a pivotal one in the discussion of down stream water use. However, I decided to consult with the design engineer, Mr. Sudweeks on the matter. I phoned and spoke with him about the need for the bypass flow. Mr. Sudweeks believes that a bleeder was appropriate for times of startup and shut down. I believe that was his decision to make as the projects design engineer.

We don't disagree with Mr. Mehlhaff's contention that a simple air relief valve would be adequate for venting air. Russell and I consulted with an energy division mechanical engineer early in the process of our investigation, and he pointed out that an air bleed valve could be used. I believe we should keep it in mind that Mr. Sudweeks was designing from a point of view that included future expansion - the 12" pipes were continuing past the pools allowing him to use them in his consideration of the design. During his design, he had opportunity to look at what was available from a total system viewpoint.

Our report on the bypass is not a determination of a fact which we calculated, but a communication of a design decision which the design engineer presented to us. I don't intend to question his decision.

Our objective for the project, which is in the report, was to determine if the geothermal water flow through Foundation heat exchangers, matched the demand for energy to heat two cold water swimming pools and the adjacent service structure. Our conclusion was, it does. We have expressed to the Attorney General's office that further investigation into the system design would best be done by a private professional engineer.

Thanks

Ken Baker

MEMORANDUM

TO: **KEN BAKER**

FROM: **NORM** NC

SUBJECT: **MORE HELP ON LAVA HOT SPRINGS**

DATE: **September 19, 1996**

==========

The attached letter from John Mehlhaff questions the need for a bypass flow at the heat exchanger. Do you have any further information that would help in a further response to Mehlhaff?

intevac
RTP Systems

September 19, 1996

Mr. Norm Young
Idaho Dept. of Water Resources
1301 North Orchard Street
State House Mail, Boise
Idaho 83720-9000
Fax: (208) 327-7866

Re: Your fax of Sept. 16, 1996

Dear Mr. Young,

Upon reading your fax, I became puzzled about the statement that the bypass flow to the fish pond is necessary for continued operation of the pool. Could you please provide me with sufficient detail why this is the case. I would like to become better informed?

I have contacted design engineers from ITT Standard, the largest supplier of heat exchangers in the U.S., and they assure me that a plate type heat exchanger requires no bypass flow to operate, especially when the system operates with variable speed pumps. If an air bleed is necessary, as was reported in the field report, (they claim there is no need for one) then a simple air pressure relief valve would suffice.

I also own and operate several plate type heat exchangers and quite successfully operate them without a bypass flow or air bleed valve. I hope you can understand why the above statement puzzles me.

I'm also enclosing and article on plate type heat exchangers from the Chemical Engineering May 1993 showing plate type heat exchanger operation and listing the selection criteria of a plate heat exchanger. Nothing in any of the literature talks about a bypass flow or the need for an air bleed.

Please help me to understand the inconsistencies in the information I am getting from the designer of the Lava system. If you have access to a written design specification showing the bypass flow or the air bleed requirement, I would certainly like a copy. Up to this point, there are a lot of opinions, but no data. It is my experience, that good data will end most arguments. Thanks for your help.

Best Regards,
John Mehlhaff
John Mehlhaff
(916) 632-3933 fax

Intevac, Inc. RTP Systems 3845 Atherton Road, Suite 1 Rocklin, CA 95765 U.S.A.
916/632-3933 FAX 916/632-3938

FROM : Intevac RTP-Systems PHONE NO. : 916 632 3938 Sep. 17 1996 04:12PM P1

John Mehlhaff
1424 High Street
Auburn, California 95603
(916 632 3933 Fax

Re: Lazy V Ranch Diversion and Use of Water

Dear Mr. Mehlhaff:

Your letter of September 5, 1996, inquires about the status of a Notice of Violation/Cease and Desist Order for the Lazy V Ranch use of hot water at Lava Hot Springs. The Vargasons and Steve Strack, an attorney representing the Lava Hot Springs Foundation, responded by telephone to my letter of July 11, 1996, indicating that a bypass flow is necessary for the continued operation of the heating system for the Olympic pool operated by the Foundation. They asserted that continuing the bypass flow (and by implication, the continued operation of the pool) was for physical and contractual reasons directly associated with continuing the diversion to the fish pond.

Through discussions with the engineer that designed the system and by reviewing the plans for the facility, IDWR staff has confirmed that a bypass flow is physically required for operation of the heat exchanger as the system is now configured. Further review is required of whether continued diversion to the Lazy V pond is legally required and authorized if the Foundation releases water through the pipelines located on Lazy V property. This requires additional information about the nature of the water rights held by the Foundation and the provisions of the agreement between Lazy V and the Foundation.

The necessary reviews are on-going, but I am not able at this time to advise you of whether an order will be issued, when such an order might be issued, or the nature of the order. IDWR is not required by Section 42-351, Idaho Code, to issue an order to prevent every unauthorized diversion, but the Director is given discretion to take such action when he deems it to be appropriate. Injury to existing water rights, interference with public uses of water and the efforts that the water divertor is making to comply with state law are important considerations in determining whether an order is issued.

Your interest is noted, and you will be advised of the action that the department takes on this matter.

Sincerely,

NORMAN C. YOUNG
Administrator
Water Management Division

State of Idano
DEPARTMENT OF WATER RESOURCES
1301 North Orchard Street, Statehouse Mail, Boise, Idaho 83720-9000
Phone: (208) 327-7900 FAX: (208) 327-7866

PHILIP E. BATT
GOVERNOR

KARL J. DREHER
DIRECTOR

September 16, 1996

VIA FAX
(916 632-3936)

John Mehlhaff
1424 High Street
Auburn, California 95603

Re: Lazy V Ranch Diversion and Use of Water

Dear Mr. Mehlhaff:

Your September 5, 1996 letter inquires about the status of a Notice of Violation/Cease and Desist Order for the Lazy V Ranch's use of hot water at Lava Hot Springs. The Vargasons and Steve Strack, an attorney representing the Lava Hot Springs Foundation, responded by telephone to my July 11, 1996 letter, indicating that a bypass flow is necessary for the continued operation of the heating system for the Olympic pool operated by the Foundation. They asserted they need to continue the bypass flow (and by implication, the continued operation of the pool) for physical and contractual reasons directly associated with continuing the diversion to the fish pond.

Through discussions with the engineer that designed the system and by reviewing the plans for the facility, IDWR staff has confirmed that a bypass flow is physically required for operation of the heat exchanger as the system is now configured. Further review is required to determine whether continued diversion to the Lazy V pond is legally required and authorized if the Foundation releases water through the pipelines located on Lazy V property. This requires additional information about the nature of the water rights held by the Foundation and the provisions of the agreement between Lazy V and the Foundation.

The necessary reviews are on-going, but I am not able at this time to advise you of whether an order will be issued, when such an order might be issued, or the nature of the order. IDWR is not required by Section 42-351, Idaho Code, to issue an order to prevent every unauthorized diversion, but the Director is given discretion to take such action when he deems it to be appropriate. Injury to existing water rights, interference with public uses of water and the efforts the water diverter is making to comply with state law are important considerations in determining whether an order is issued.

Your interest is noted, and you will be advised of the action the Department takes on this matter.

Sincerely,

NORMAN C. YOUNG
Administrator
Water Management Division

c: Thayne and Karen Vargason
Steve Strack
Kathie Brack, Legal Asst.

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE

STATE OF IDAHO

RECEIVED
SEP 0 9 1996
Department of Water Resources
Eastern Region

IN THE MATTER OF APPLICATION FOR PERMIT NO. 29-08162 AND APPLICATION FOR PERMIT NO. 29-08164 IN THE NAME OF LAZY V RANCH	)	**NOTICE OF PREHEARING CONFERENCE**

On January 5, 1996, the applicant Lazy V Ranch, Inc. filed two applications for permit with the Department of Water Resources numbered 29-08162 and 29-08164. The applications for permit were protested by George W. Katsilometes, John Mehlhaff, and Evelee Hill Rush.

The department has scheduled the above-captioned matter for prehearing conference as follows:

DATE:	October 3, 1996
LOCATION:	Pocatello Airport Downstairs Conference Room
TIME:	9:30 A.M.

The prehearing conference will be conducted in accordance with the provisions of Title 42, Chapters 2 and 17, and Title 67, Chapter 52, Idaho Code, the adopted rules of procedure of the department, and the water appropriation rules. A copy of the rules may be obtained from the department upon request. The presiding officer at the prehearing conference will be Gary Spackman.

The hearing will be conducted in a facility meeting the accessability requirements of the Americans with Disabilities Act. If you require special accommodations in order to attend, participate in, or understand the hearing, please advise the department within ten (10) days prior to the hearing.

The parties shall submit the following to opposing parties and the hearing officer at least seven (7) days before the prehearing conference:

(1) A list of perspective witnesses and a brief explanation of the testimony expected from each witness.

(2) Copies of all documents expected to be offered as exhibits.

The parties should be prepared at the prehearing conference to discuss the relevancy of all proposed evidence. The hearing officer will determine what evidence is relevant or not relevant, and will exclude irrelevant evidence. The parties shall also be prepared to discuss the anticipated testimony of each witness listed in the prehearing submittals. Testimony from a witness may be limited or excluded if the witness will not offer testimony related to the issues the department must consider or if the testimony would be accumulative.

A formal hearing will be scheduled at the prehearing conference and should be conducted shortly thereafter. The preferred dates for the hearing are October 23 and 24, 1996. If these dates conflict with existing schedules, the weeks of October 21 through 25, October 28 through November 4, and November 6, 7, and 8 are open dates. Any party with a conflict should propose alternative hearing dates to the hearing officer and the other parties.

Attached is a report of a field investigation conducted by department staff.

DATED this 4th day of September, 1996.

GARY SPACKMAN
Hearing Officer

CERTIFICATE OF SERVICE

I do hereby certify that on this 4th day of September, 1996, I mailed a true and correct copy, postage prepaid, of the foregoing **NOTICE OF PREHEARING CONFERENCE** to the following:

George Katsilometes
P.O. Box 670
Lava Hot Springs, ID 83246

Evelee Hill Rush
P.O. Box 4905
Pocatello, ID 83205-4905

John Mehlhauf
1424 High St.
Auburn, CA 95603

Jack H. Robinson
Jones Chartered
P.O. Box 967
Pocatello, ID 83204-0967

Caren Vargason
Lazy V Ranch
P.O. Box 268
Lava Hot Springs, ID 83246

Deborah Drew-Ellis

Deborah Drew-Ellis

intevac
RTP Systems

September 5, 1996

John Mehlhaff
1424 High Street
Auburn, California 95603
(916) 632-3933 fax

Mr. Norman Young, Administrator
State of Idaho
Department of Water Resources
1301 North Orchard Street,
Statehouse Mall
Boise, Idaho 83720-9000
(208) 327-7866

Dear Mr. Young,

I would like to know the status of the Notice of Pending Cease and Desist Order regarding Application for Permit nos. 29-08162 & 29-08164 and Permit No. 29-07847 by Lazy V. Ranch.

In your letter dated July 11, 1996, it was stated that a Notice of Violation would shortly be issued if hot water diversion did not cease. Since the hot water diversion has not ceased, as of September 2, when will your office be issuing the Notice of Violation and Cease and Desist Order?

Please fax me your reply.

Best Regards,

John Mehlhaff

FROM : Intevac RTP-Systems PHONE NO. : 916 632 3938 Sep. 05 1996 08:48AM P1

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE

STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR PERMIT NO. 29-08162 AND APPLICATION FOR PERMIT NO. 29-08164 IN THE NAME OF LAZY V RANCH	)	**NOTICE OF PREHEARING CONFERENCE**

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(1) A list of perspective witnesses and a brief explanation of the testimony expected from each witness.

(2) Copies of all documents expected to be offered as exhibits.

The parties should be prepared at the prehearing conference to discuss the relevancy of all proposed evidence. The hearing officer will determine what evidence is relevant or not relevant, and will exclude irrelevant evidence. The parties shall also be prepared to discuss the anticipated testimony of each witness listed in the prehearing submittals. Testimony from a witness may be limited or excluded if the witness will not offer testimony related to the issues the department must consider or if the testimony would be accumulative.

A formal hearing will be scheduled at the prehearing conference and should be conducted shortly thereafter. The preferred dates for the hearing are October 23 and 24, 1996. If these dates conflict with existing schedules, the weeks of October 21 through 25, October 28 through November 4, and November 6, 7, and 8 are open dates. Any party with a conflict should propose alternative hearing dates to the hearing officer and the other parties.

Attached is a report of a field investigation conducted by department staff.

DATED this 4th day of September, 1996.

Gary Spackman

GARY SPACKMAN
Hearing Officer

CERTIFICATE OF SERVICE

I do hereby certify that on this 4th day of September, 1996, I mailed a true and correct copy, postage prepaid, of the foregoing **NOTICE OF PREHEARING CONFERENCE** to the following:

George Katsilometes
P.O. Box 670
Lava Hot Springs, ID 83246

Evelee Hill Rush
P.O. Box 4905
Pocatello, ID 83205-4905

John Mehlhauf Mehlhau
1424 High St.
Auburn, CA 95603

Jack H. Robinson
Jones Chartered
P.O. Box 967
Pocatello, ID 83204-0967

Caren Vargason
Lazy V Ranch
P.O. Box 268
Lava Hot Springs, ID 83246

Deborah Drew-Ellis

Deborah Drew-Ellis

Eastern Region:
Skip Jones
Dennis Dunn
Central Office:
Ken Baker

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

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.

All water which flows through the heat exchangers is directly discharged into the Portneuf river. <u>There is no diversion of water once it has flowed through the heat exchangers which heat the cold-water pools and pool building.</u> 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 <u>one exception</u>: 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

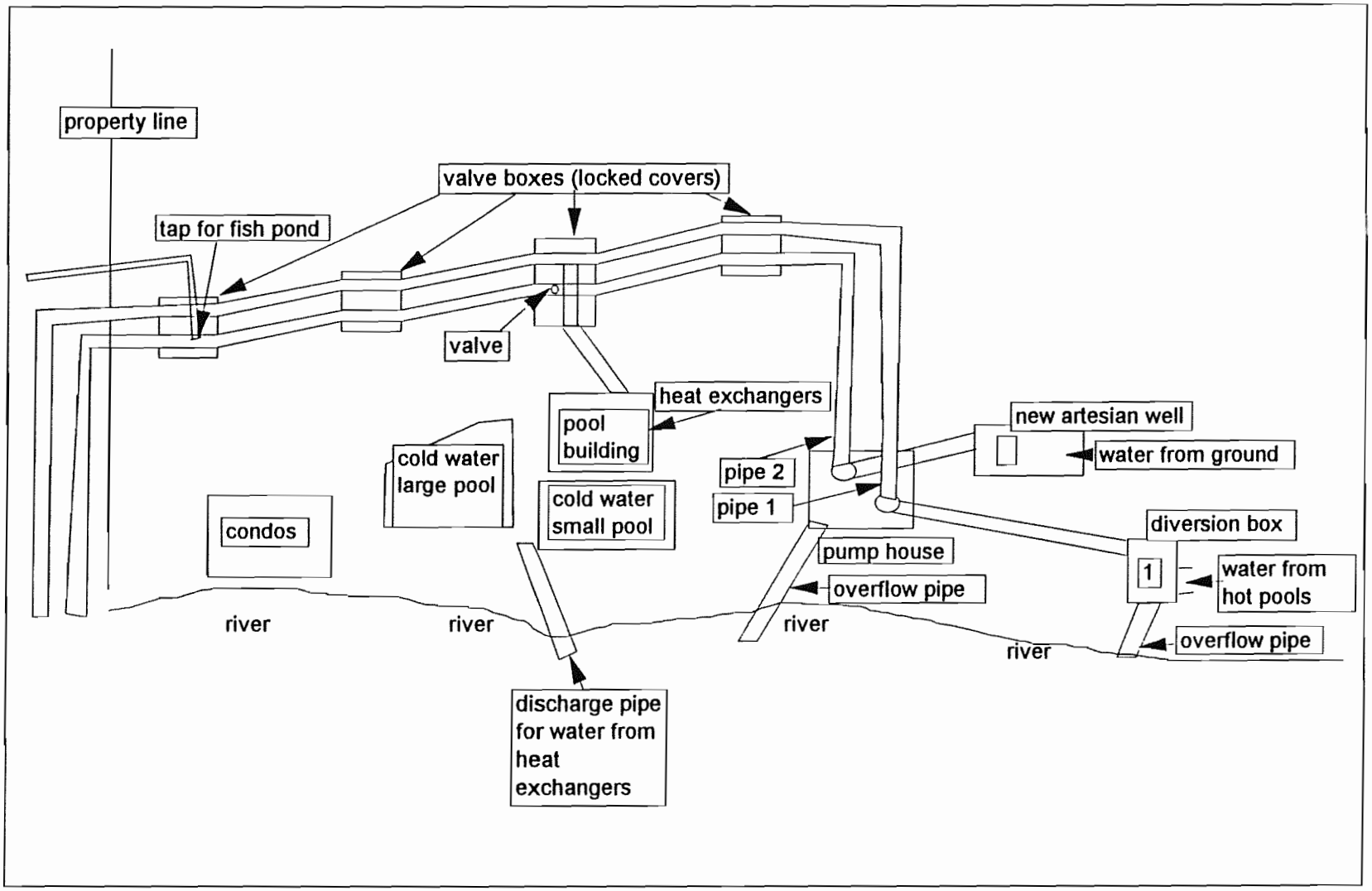
Kenneth L. Baker, Conservation Bureau Chief

DATE 8/26/96

Russell Rydalch, Engineer In Training

Attachment 1

Lava Hot Springs (no scale)



Prepared by IDWR Energy Division 8/26/96

State of Idaho
DEPARTMENT OF WATER RESOURCES
1301 North Orchard Street, Statehouse Mail, Boise, Idaho 83720-9000
Phone: (208) 327-7900 FAX: (208) 327-7866

COPY

PHILIP E. BATT
GOVERNOR

KARL J. DREHER
DIRECTOR

July 11, 1996

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

Re: Rearing of Fish by Lazy V. Ranch; Application for Permit nos. 29-08162 & 29-08164, Permit No. 29-07847.

Dear Mr. Robison:

NOTICE OF PENDING CEASE AND DESIST ORDER

An Order Vacating Hearing and Scheduling Discovery related to protested application for permits nos. 29-08162 & 29-08164 was issued on May 15, 1996. A portion of the order stated "that additional diversion of water proposed by application for permit nos. 29-08162 & 29-08164 is prohibited until the applications for permit are approved." In a subsequent letter, dated June 6, 1996, the hearing officer elaborated on the condition:

> The meaning of this restriction is that no more water can be diverted to the location proposed by the applications than is otherwise authorized. If no water rights authorize diversion of water to the pond at its present location, the water must flow naturally to the Portneuf River after use by Lava Hot Springs Foundation.

Thayne E. and Karen Vargason, who are apparently principals in Lazy V Ranch, own permit no. 29-07847, which authorizes diversion of water from the Portneuf River for storage and recreational purposes. When the application for permit was filed in 1988, Vargason's represented that the proposed pond would be stocked with about 50 trout.

Proof of beneficial use for permit no. 29-07847 was filed in 1990. The beneficial use was examined by a Department employee in 1995. The examiner found that geothermal water was being diverted from the outlet of the Lava Hots Springs Foundation facilities rather than from the Portneuf River. He recommended that the Department amend the source to wastewater. The amendment was advertized without protest. Because issues raised by protests to the applications for permit may also apply to the change in source for the existing permit, the Department decided to hold the application for amendment of permit no. 29-07847 until the Department is convinced

that the amendment should be considered independently. At present, permit no. 29-07847 only authorizes diversion from the Portneuf River.

The records of the Department do not reveal any right to divert and use the geothermal water now being diverted by Lazy V Ranch or Vargasons. Idaho law and Department orders prohibit the diversion of water without a valid water right. Department correspondence further explained the law and the intent of the order to Lazy V Ranch.

The Department has received a report that geothermal water continues to be diverted from the Lava Hot Springs Foundation outlet to a pond for the rearing of warm water fish. Without a water right, the continued diversion is a violation of Idaho law and the Department's order.

This letter is notice that the Department will shortly issue a Notice of Violation and Cease and Desist Order requiring that Lazy V Ranch/Vargasons cease diverting water without a valid water right. The Department does not want to cause a large fish kill, but Lazy V Ranch/Vargasons have had sufficient notice and time to either move the fish to another location or attempt to show some right to continue diverting the geothermal water.

Respectfully,

Norman C. Young
Administrator

cc. George Katsilometes
Evelee Hill-Rush
John Melhauf
Thayne Vargason

MEMORANDUM

TO: GARY SPACKMAN
CC:
FROM: KEN BAKER
RE: LAVA HOT SPRINGS HEAT EXCHANGER FLOW REVIEW
DATE: JULY 8, 1996

At the request of Cathy Brack of the AG's office, we have reviewed design documentation on the Lava Hot Springs facility. Our purpose was to specifically review the sizing of the new heat exchangers for the complex to determine if the sizing of the exchangers and subsequent flow of geothermal water through the exchanger match the need for project heating.

Our mechanical engineer in training, Russell Rydalch, reviewed the project specifications and documentation and made the following observations:

1. The permit application states that, "The existing hot water flow will be pumped through new pipes to provide heat to the existing swimming pool heat exchangers and other potential heat users on demand." However, the existing hot water flow is not defined in terms of flow rates.

2. No calculations were found regarding the sizing of the pumps and pipes, only specifications.

3. The permit application states that, "Summer usage will be on demand to heat the outdoor pool. Winter usage will be on demand to heat the buildings." There is no mention of other demands. There are no calculations to show demand of the buildings or pool.

In summary. The plans show what was to be done, and what equipment was to be used. They do not specify why or provide sizing information.

We suggest that the project engineer be consulted in this matter of sizing and flow rates. I would be inclined to accept the project engineer's design if it is, in fact, based on anticipated load at the facility.

Thanks
Ken Baker

COPY

State of Idaho
DEPARTMENT OF WATER RESOURCES
1301 North Orchard Street, Statehouse Mail, Boise, Idaho 83720-9000
Phone: (208) 327-7900 FAX: (208) 327-7866

PHILIP E. BATT
GOVERNOR

KARL J. DREHER
DIRECTOR

June 12, 1996

Jack H. Robison
Jones Chartered
P.O. Box 967
Pocatello, Idaho 83204-0967

Re: Karen Vargason, Lazy V. Ranch, Inc.

Dear Mr. Robison:

Enclosed please find copies of recent correspondence with Mr. Katsilometes in the above-referenced matter.

Sincerely,

Gary Spackman

Gary Spackman

GS/dde
Encl.

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE

STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR PERMIT NO. 29-08162 AND FOR PERMIT NO. 29-08164 IN THE NAME OF LAZY V RANCH	**ORDER SCHEDULING DISCOVERY**

An order issued on May 15, 1996, purported to schedule discovery. The order did not establish a framework for discovery, however.

ORDER

IT IS HEREBY ORDERED, that the parties shall engage in discovery beginning from the date of this order until September 6, 1996. Discovery shall be allowed pursuant to rules 520 through 532 of the Idaho Department of Water Resources Rules of Procedure and the Idaho Rules of Procedure. Forms of discovery shall include depositions, interrogatories, requests for production of documents, requests for admission and subpoenas.

IT IS FURTHER ORDERED that a prehearing conference will be conducted during September or October, 1996. The parties shall submit the following to opposing parties and the hearing officer at or before the prehearing conference:

1. A list of prospective witnesses and a brief explanation of the testimony expected from each witness.

2. Copies of all documents expected to be offered as exhibits.

IT IS FURTHER ORDERED that the parties should be prepared at the prehearing conference to discuss the relevancy of all proposed evidence. The hearing officer will determine what evidence is relevant or not relevant, and will exclude irrelevant evidence. The parties shall also be prepared to discuss the anticipated testimony of each witness listed in the prehearing submittals. Testimony from a witness may be limited or excluded if the witness will not offer testimony related to the issues the Department must consider or if the testimony would be cumulative.

IT IS FURTHER ORDERED that a hearing will be scheduled at the prehearing conference.

Dated this 5th day of June, 1996.

Gary Spackman

Gary Spackman

CERTIFICATE OF MAILING

I do hereby certify that on this 6th day of June, 1996, I mailed a true and correct copy, postage prepaid, of the foregoing **ORDER SCHEDULING DISCOVERY** to the following:

George W Katsilometes
PO Box 670
Lava Hot Springs ID 83246

Jack H Robison
Jones Chartered
PO Box 967
Pocatello ID 83204-0967

John Mehlhaff
1424 High St
Auburn CA 95603

Evelee Hill Rush
PO Box 4905
Pocatello ID 83205-4905

Roberta Loveall

Roberta Loveall

State of Idaho
DEPARTMENT OF WATER RESOURCES
1301 North Orchard Street, Statehouse Mail, Boise, Idaho 83720-9000
Phone: (208) 327-7900 FAX: (208) 327-7866

PHILIP E. BATT
GOVERNOR

KARL J. DREHER
DIRECTOR

June 6, 1996

George W. Katsilometes
P.O. Box 670
Lava Hot Springs, ID 83246

Jack H. Robison
Jones Chartered
P.O. Box 967
Pocatello, ID 83204-0967

John Mehlhaff
1424 High St.
Auburn, CA 95603

Evelee Hill Rush
P.O. Box 4905
Pocatello, ID 83205-4905

RE: DISCOVERY AND OTHER RELATED MATTERS

Dear Parties:

On May 15, 1996, I issued an Order Vacating Hearing and Scheduling Discovery. My review of the order shows that I did not schedule discovery as the order purported. Enclosed is an amended Order Scheduling Discovery. As stated in the order, discovery should be complete by September 6, 1996. A prehearing conference will be held shortly thereafter. At or before the prehearing conference, the parties must submit a list of prospective witnesses and a brief explanation of the testimony expected from each witness. In addition, copies of all documents expected to be offered as exhibits should also be submitted. At the prehearing conference, I will determine what evidence is relevant or not relevant, and will exclude the irrelevant evidence.

As a hearing officer, I must ensure that each party has the chance to present all relevant evidence at the hearing. I must also control the hearing and ensure that the parties are adequately prepared. The hearing is not the time to search for documents that might be relevant or to determine what information a particular witness may have knowledge of. The knowledge of a prospective witness needs to be established during discovery. The search for relevant documents is also a function of discovery.

Many of the witnesses listed in the prehearing submittal are not parties. They may have information which is important to the protestants or the applicants, however. The only way the documents in possession of and knowledge of these witnesses can be made available, if not voluntarily offered, is through a deposition. The taking of depositions before the administrative agency is

The taking of depositions before the administrative agency is controlled by Rules 520 through 532 of the Department's Rules of Procedure. The Department's Rules refer generally to the Idaho Rules of Civil Procedure. Specifically, Rule 523 of the Department's Rules of Procedure states that "[d]epositions may be taken in accordance with the Idaho Rules of Civil Procedure for any purpose allowed by statute under the Idaho Rules of Civil Procedure, or rule or order of the agency."

Rule 30 of the Idaho Rules of Civil Procedure sets forth the procedures for deposing a witness and requiring the witness to produce documents. In most cases, the deposition is overseen by a court reporter, who swears in the witness, and stenographically records the testimony. A transcript is not required, however, unless a party wants the transcript for purposes of impeachment. The party asking for a deposition pays the court reporter, unless the parties agree to share the cost.

When a party wants to depose a prospective witness, he must request in writing the issuance of a subpoena to that witness, requiring attendance of the witness at a particular time and place. I suggest that the parties coordinate the time and place for the deposition prior to requesting the issuance of a subpoena. If the party requesting a deposition wants the witness to bring documents to the deposition, a subpoena duces tecum should be requested.

At the prehearing conference, the parties must establish what specific facts a witness will testify about, and which specific documents will be offered into evidence. The mere fact that someone may have knowledge of the Foundation or the applicant's use of water is not sufficient showing of relevant knowledge for me to require their attendance. Specific knowledge related to the pending applications must be shown. Specific knowledge can be established through the discovery process.

Finally, I feel some obligation to inform the parties of telephone calls that I have received, particularly from protestant George Katsilometes. I received several calls in which Mr. Katsilometes attempted to discuss facts of the case with me, and upon warning him that I cannot listen to facts without the other parties present, Mr. Katsilometes was unwilling to accept my explanations. Furthermore, Mr. Katsilometes accused me of being impartial, of attempting to protect the Lava Hot Springs Foundation, and of not being willing to listen to his position. He informed me that if my actions did not change, there would be "hell to pay," and that he knew many people in high positions in the state, and that my "ass would be grass." During another telephone conversation, he told me if my oversight of this contested matter was not done fairly, he would sue me or the Department.

I informed Mr. Katsilometes that his statements to me would not change my approach to this particular matter. I also told Mr. Katsilometes that I will not receive telephone calls from him, and that any further conversations must be through an attorney, or be

in writing, carbon copied to the other parties.

Let me remind all of the parties that any correspondence or communication regarding any facts must be either in the presence of the other parties or be in writing and carbon copied to all the parties.

The order dated May 15, 1996, prohibited additional diversion of water proposed by application for permit nos. 29-08162 & 29-08164 until the applications for permit are approved." The meaning of this restriction is that no more water can be diverted to the location proposed by the applications than is otherwise authorized. If no water rights authorize diversion of water to the pond at its present location, the water must flow naturally to the Portneuf River after use by Lava Hot Springs Foundation.

Sincerely,

Gary Spackman

GS/rl
cc: Harold Jones, Eastern Region

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE

STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR PERMIT NO. 29-08162 AND FOR PERMIT NO. 29-08164 IN THE NAME OF LAZY V RANCH	ORDER SCHEDULING DISCOVERY

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IT IS FURTHER ORDERED that a hearing will be scheduled at the prehearing conference.

Dated this 5th day of June, 1996.

Gary Spackman

Gary Spackman

CERTIFICATE OF MAILING

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George W Katsilometes
PO Box 670
Lava Hot Springs ID 83246

Jack H Robison
Jones Chartered
PO Box 967
Pocatello ID 83204-0967

John Mehlhaff
1424 High St
Auburn CA 95603

Evelee Hill Rush
PO Box 4905
Pocatello ID 83205-4905

Roberta Loveall

Roberta Loveall

CORRESPONDENCE BEGINNING WITH JUNE 1996 IS CONTINUED IN FILE NO. 2

(LAZY V RANCH, No. 29-08162)

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To Gary Spackman	From Dennis
Co.	Co.
Dept.	Phone #
Fax #	Fax #

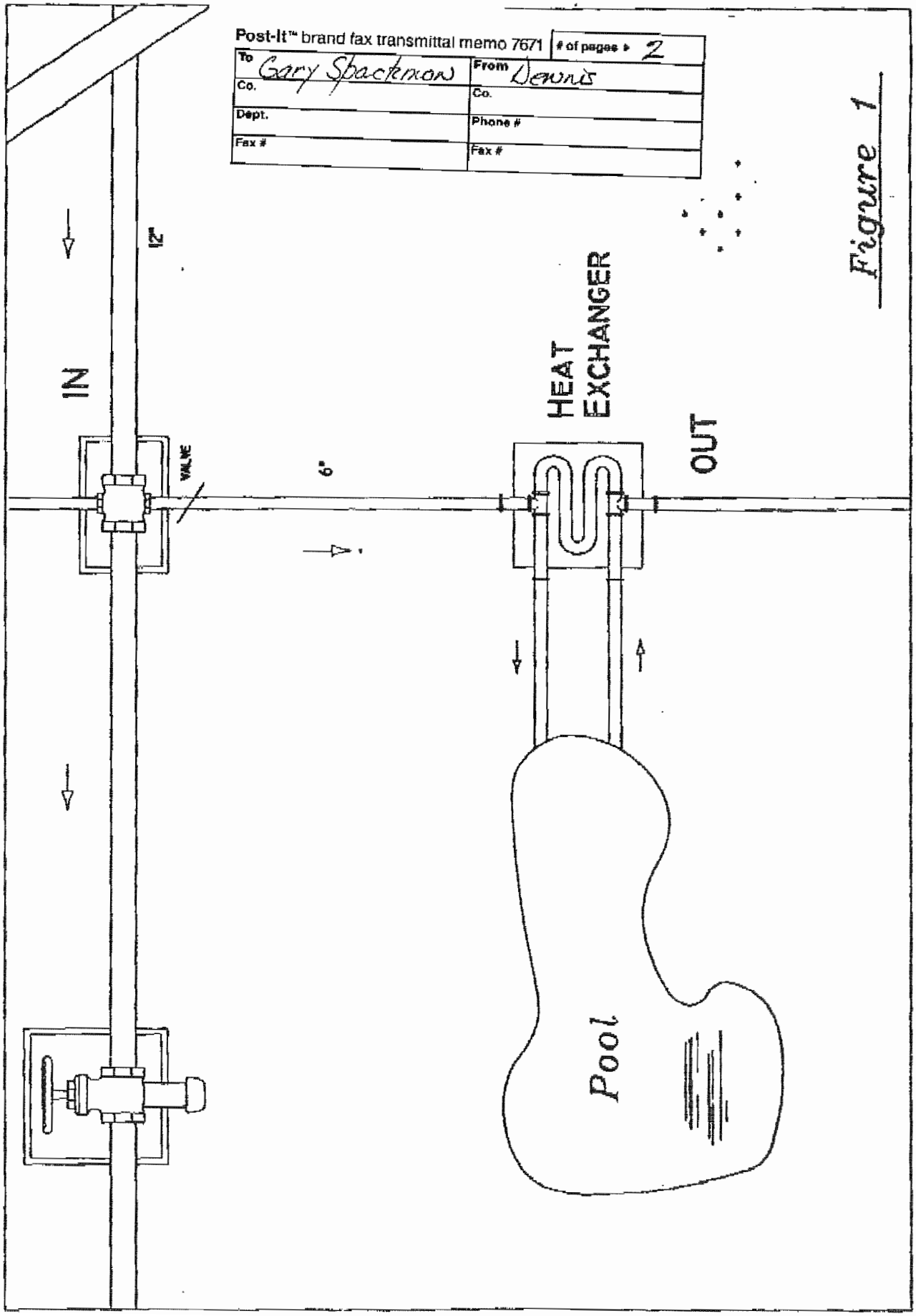

Figure 1

Tour Check Sheet to be completed by Dennis Dunn, Department of Water Resources; for Protestants in the Vargason Matters:

1. Number of Pumps _____

2. Pump Specifications from plates on Pumps _____

3. Location, size and depth of Cisterns for collecting waters to be diverted to Vargasons and olympic pool complex _____

4. Size (diameters, locations and lengths) of pipes installed to divert water to the Vargasons and the olympic pool complex _____

5. Size (diameters, locations and lengths) of pipes installed to take water from the olympic pool complex to the Vargasons and to the Portneuf _____

6. Location, length and diameter of preexisting pipes to take water to the Portneuf _____

7. All points of diversion installed along the pipelines (gatevalves, T's, roughed in diversions to the condominiums, etc.) _____

8. Number of Heat Exchangers _____

9. a.) Specifications of Heat Exchangers (from Manufacturer's plate on Exchanger _____

_____

_____

b.) Maximum flow through heat exchangers _____

_____

_____

c.) Input and output pipe sizes for exchangers _____

_____

_____

d.) Pool temperature control systems (manufacturers, specifications, etc.) _____

_____

10. What are the gallon/minute flow rates from the springs which supply the public soaking pools and the gallon/minute flow rates being pumped from the picnic area to the West of the springs and North of the Portneuf?

_____

_____

11. Is there a valve (etc) for diverting the waters leaving the public soaking pools to the cisterns and pump(s) installed for diverting waters to the Vargasons and the olympic pool complex (please describe this system)? _____

_____

_____

_____

_____

12. Were there heat exchangers in place in the old system (manufacturers, specifications, etc.) _____

13. Were new heat exchangers installed in the new system? _____

232-2139

Wynns only 3 pages came in. HWJ

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To Gary Spachman	From Dennis
Co.	Co.
Dept.	Phone #
Fax #	Fax #

5/23/96

To: Dennis Dunn; Department of Water Resources

From: George W. Katsilometes, Evelee Hill-Rush and John Mehlhaff
re: Vargason Protests

Dear Dennis:

Thank you again for your professionalism and patience in answering our questions regarding the Vargason protests. We understand you will be conducting a fact-finding tour of the facilities installed to collect, pump, pipe, divert, heat exchange and recharge the aquifer by the state foundation. In lieu of having our own tour of these new water diversion and heat exchange installations (as we were told we would have at the preliminary hearing), an unbiased detailed tour by the Department of Water Resources may be acceptable.

It is our wish that the following details be examined and recorded:

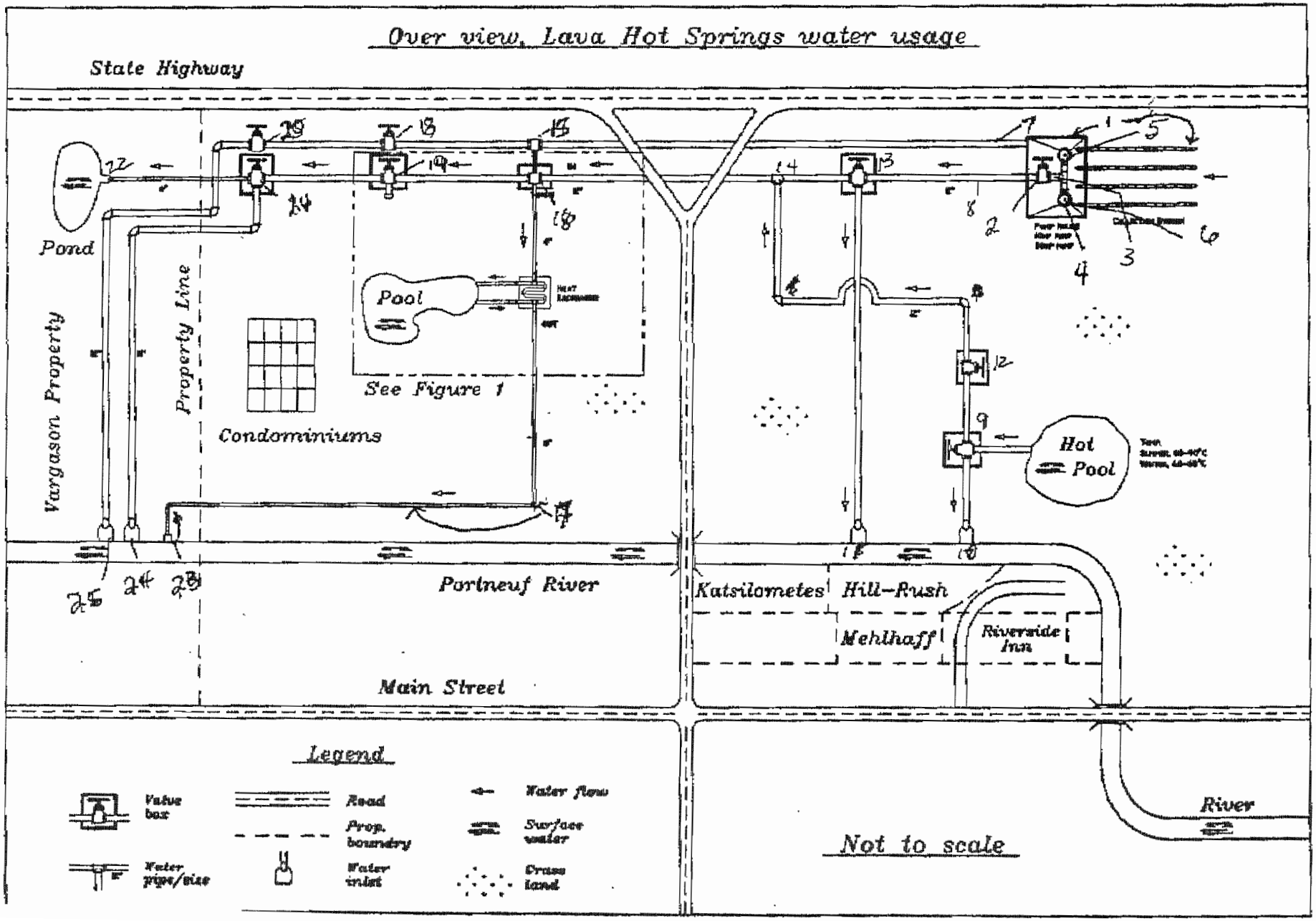
1. The geothermal water collection facilities installed at taxpayers expense by the state foundation such as cisterns, valves, underground holding facilities, piping, etc. from which water can be diverted (Please see figure 2, items 1,2,3).
2. The depth and size of casings from which water is being pumped (See figure 2, item 4).
3. The specifications for all pumps capable of diverting water to the Vargasons and the olympic pool complex (including manufacturers, horsepower, characteristics for variable speed pumping, degree of automation, etc.; See figure 2, items 5,6).
4. The size of the pipes leaving the pumps and the lift required to pump (See figure 2, items 7,8).
5. Number and locations of all points of diversion on the pipelines, including but not excepting; gatevalves, T's, 90 degree bends, points of termination, etc. (See figure 1, items 2,3,4,6 and figure 2, items 1,2,3,4,5,6,9,10,11,12,13,14,15,16,17,18,19,20,21,22,23,24,25).
6. Exact location of all pipelines carrying geothermal water (Please make corrections to figures 1 and 2).
7. Number of heat exchangers and specifications for heat exchangers (capacities, manufacturers, water flow limitations, type of exchanger, etc., See figure 1, items 1,2,3,4,5,6,7).
8. Points of historic replacement of geothermal waters to the Portneuf (Please add to maps).
9. Points of current replacement of geothermal waters to the Portneuf (Please add to maps).
10. Details of the diversion of waters which leave the heat exchangers (i.e. the elbows, pipelines, etc. which flow toward and follow the river from the pool complex to the north bank of the Portneuf at the pedestrian bridge then down to and onto the Vargason property; See figure 1, item 7 and figure 2, items 17,23,24,25).
11. Maximum hot water flows thru the heat exchanger in gallons per minute and hot water flows required to heat the pool during the months the pool is open and the months when it is closed.

Please call for clarification if needed before the tour and correct or update figures 1 and 2.

Sincerely,

George W. Katsilometes, Evelee Hill-Rush and John Mehlhaff

Figure 2


Over view, Lava Hot Springs water usage
State Highway
Pond
Vargason Property
Property Line
Pool
See Figure 1
Condominiums
Portneuf River
Main Street
Katsilometes
Hill-Rush
Mehlhaff
Riverside Inn
Hot Pool
River
Not to scale
Legend
Valve box
Water pipe/size
Road
Prop. boundry
Water inlet
Water flow
Surface water
Grass land

intevac
RTP Systems

May 20, 1997

Gary Spackman
State of Idaho
Department of Water Resources
Western Region, 2735 Airport Way
Boise, Idaho 83705-5-82
Fax: (208) 334-2348

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

I would like to request that the hearing regarding Lazy V Ranch be held during the first week in August. I have many schedule conflicts in July and have to travel a long distance to the hearing which would make it impossible for me to attend in the July 8-9, 1997 time period.

Thanks for the information on the Attorney General Opinion.

Sincerely,

John Mehlhaff

Intevac, Inc. RTP Systems 3845 Atherton Road, Suite 1 Rocklin, CA 95765 U.S.A.
916/632-3933 FAX 916/632-3938

FROM : Intevac RTP-Systems PHONE NO. : 916 632 3938 May. 20 1997 08:07AM P1

RECEIVED
MAY 17 1996
Department of Water Resources

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE

STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR PERMIT NO. 29-08162 AND FOR PERMIT NO. 29-08164 IN THE NAME OF LAZY V RANCH	)))))	OBJECTION TO LIST OF WITNESSES AND EXHIBITS AND REQUEST FOR PRETRIAL HEARING

NOTICE

COMES NOW the Applicant and objects to the list of witnesses and exhibits requested to be subpoenaed by the Idaho Department of Water Resources by the Protestants. In addition to the Protestants, 22 witnesses are specified and with numerous documents. The witnesses and exhibits specified are burdensome, over broad, and involve irrelevant and immaterial issues unrelated to the applications before the Department of Water Resources. If all of such witnesses were called to testify, the hearings could not possibly be held within the time allotted.

Applicant requests the Hearing Officer to continue the hearing in the above matter and schedule a prehearing conference for May 23, 1996, at Pocatello, to limit the subpoenas and witnesses to material and relevant issues to the applications before the Department of Water Resources and to bifurcate the hearings on the two permits and to schedule future proceedings and hearings accordingly.

Jack H. Robison
Attorney for Applicant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I mailed, or caused to be mailed, a true and correct copy of the foregoing, by placing same in the United States mail, postage prepaid, X; or hand delivered ____; or served by facsimile X, addressed as follows:

George W. Katsilometes
P.O. Box 670
Lava Hot Springs, ID 83246
Fax: 208-232-2170

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

John Mehlhaff
1424 High St.
Auburn, CA 95603
Fax: 208-232-2170

Evelee Hill Rush
P.O. Box 4905
Pocatello, ID 83205-4905
Fax: 208-232-2170

on this 14th day of May, 1996.

Jack H. Robison

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE

STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR PERMIT NO. 29-08162 AND FOR PERMIT NO. 29-08164 IN THE NAME OF LAZY V RANCH	)))))	**ORDER VACATING HEARING AND SCHEDULING DISCOVERY**

An order issued on April 22, 1996 required the parties to exchange a list of witnesses and copies of exhibits no later than May 7, 1996. On May 7, 1996, the Department received a faxed copy of a list of witnesses from protestants George Katsilometes, Evelee Hill and John Mehlhaff. Protestants requested that subpoenas be issued requiring the attendance of twenty-six (26) witnesses. In addition, the protestants requested that extensive documents be brought to the hearing by the witnesses pursuant to subpoenas duces tecum.

On May 9, 1996, Lazy V Ranch, through its attorney, Jack H. Robison, submitted a list of six (6) witnesses, and copies of exhibits that will be introduced at the hearing. The submittal of a witness list and documents by the applicants was two days late.

The extensive documents identified as possible exhibits, the number of issues raised by the protestants, and the large number of witnesses listed by the protestants should be refined prior to any hearing. Furthermore, the applicant missed a fixed deadline for exchange of documents that could prejudice the ability of the protestants to prepare.

ORDER

IT IS HEREBY ORDERED that the hearings for application for permit nos. 29-08162 and 29-08164 are VACATED, and will be rescheduled at a later date.

IT IS FURTHER ORDERED that additional diversion of water proposed by application for permit nos. 29-08162 & 29-08164 is prohibited until the applications for permit are approved.

IT IS FURTHER ORDERED that a prehearing conference will be conducted during August or September, 1996. The parties shall submit the following to opposing parties and the hearing officer at or before the prehearing conference:

1. A list of prospective witnesses and a brief explanation of the testimony expected from each witness.

2. Copies of all documents expected to be offered as exhibits.

IT IS FURTHER ORDERED that the parties should be prepared at the prehearing conference to discuss the relevancy of all proposed evidence. The hearing officer will determine what evidence is relevant or not relevant, and will exclude irrelevant evidence. The parties shall also be prepared to discuss the anticipated testimony of each witness listed in the prehearing submittals. Testimony from a witness may be limited or excluded if the witness will not offer testimony related to the issues the Department must consider, or if the testimony would be cumulative.

IT IS FURTHER ORDERED that a hearing will be scheduled at the prehearing conference.

DATED This 15th day of May, 1996.

Gary Spackman

Gary Spackman

CERTIFICATE OF MAILING

I do hereby certify that on this 16th day of May, 1996, I mailed a true and correct copy, postage prepaid, of the foregoing **ORDER VACATING HEARING AND SCHEDULING PREHEARING CONFERENCE** to the following:

George W. Katsilometes
P.O. Box 670
Lava Hot Springs, ID 83246
Fax: 208-232-2170

John Mehlhaff
1424 High St.
Auburn, CA 95603
Fax: 208-232-2170

Jack H. Robison
Jones Chartered
P.O. Box 967
Pocatello, ID 83204-0967
Fax: 208-232-5962

Evelee Hill Rush
P.O. Box 4905
Pocatello, ID 83205-4905
Fax: 208-232-2170

Deborah Drew-Ellis

Deborah Drew-Ellis

Is your RETURN ADDRESS completed on the reverse side?

SENDER:
- Complete items 1 and/or 2 for additional services.
- Complete items 3, 4a, and 4b.
- Print your name and address on the reverse of this form so that we can return this card to you.
- Attach this form to the front of the mailpiece, or on the back if space does not permit.
- Write "*Return Receipt Requested*" on the mailpiece below the article number.
- The Return Receipt will show to whom the article was delivered and the date delivered.

I also wish to receive the following services (for a extra fee):
1. ☐ Addressee's Address
2. ☐ Restricted Delivery

Consult postmaster for fee.

3. Article Addressed to:
John Mehlhaff
1424 High Street
Auburn CA 95603

4a. Article Number
P 326 991 518

4b. Service Type
☐ Registered ☑ Certified
☐ Express Mail ☐ Insured
☐ Return Receipt for Merchandise ☐ COD

7. Date of Delivery 3/30/96

5. Received By: *(Print Name)* JOHN Mehlhaff

8. Addressee's Address *(Only if requested and fee is paid)* John Mehlhaff

6. Signature: *(Addressee or Agent)*
X

PS Form **3811**, December 1994 29-08162 Domestic Return Receipt

Thank you for using Return Receipt Service.

U[illegible] STATES POSTAL SERVICE

First-Class Mail
Postage & Fees Paid
USPS
Permit No. G-10

● Print your name, address, and ZIP Code in this box ●

Water Allocations
DEPARTMENT OF WATER RESOURCES
1301 N. ORCHARD ST.
BOISE, ID 83706-2237

49

Is your RETURN ADDRESS completed on the reverse side?

SENDER:

- Complete items 1 and/or 2 for additional services.
- Complete items 3, 4a, and 4b.
- Print your name and address on the reverse of this form so that we can return this card to you.
- Attach this form to the front of the mailpiece, or on the back if space does not permit.
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I also wish to receive the following services (for a extra fee):

1. ☐ Addressee's Address
2. ☐ Restricted Delivery

Consult postmaster for fee.

3. Article Addressed to:

Jack H Robison
Jones Chartered
PO Box 967
Pocatello Id 83204-
0967

4a. Article Number

P 326 991 518

4b. Service Type

☐ Registered ☑ Certified
☐ Express Mail ☐ Insured
☐ Return Receipt for Merchandise ☐ COD

7. Date of Delivery

MAR 2 7 1996

5. Received By: *(Print Name)*

8. Addressee's Address *(Only if requested and fee is paid)*

6. Signature: *(Addressee or Agent)*

X

PS Form 3811, December 1994 # 29-08162 Domestic Return Receipt

Thank you for using Return Receipt Service.

J[illegible] STATES POSTAL SERVICE

First-Class Mail
Postage & Fees Paid
USPS
Permit No. G-10

- Print your name, address, and ZIP Code in this box -

Water Allocations
DEPARTMENT OF WATER RESOURCES
1301 N. ORCHARD ST.
BOISE, ID 83706-2237

RECEIVED
MAR 29 1996
Department of Water Resources

Is your RETURN ADDRESS completed on the reverse side?

SENDER:

- Complete items 1 and/or 2 for additional services.
- Complete items 3, 4a, and 4b.
- Print your name and address on the reverse of this form so that we can return this card to you.
- Attach this form to the front of the mailpiece, or on the back if space does not permit.
- Write *"Return Receipt Requested"* on the mailpiece below the article number.
- The Return Receipt will show to whom the article was delivered and the date delivered.

RECEIVED
APR 11 1996
Department of Water Resources

I also wish to receive th following services (for a extra fee):

1. ☐ Addressee's Address
2. ☐ Restricted Delivery

Consult postmaster for fee.

3. Article Addressed to:

Caren Vargason
Lazy V Ranch
PO Box 268
Lava Hot Springs ID 83246

4a. Article Number
P 326 991 516

4b. Service Type
☐ Registered ☒ Certified
☐ Express Mail ☐ Insured
☐ Return Receipt for Merchandise ☐ COD

7. Date of Delivery
4/9/96

5. Received By: *(Print Name)*

8. Addressee's Address *(Only if requested and fee is paid)*

6. Signature: *(Addressee or Agent)*
X Caren Vargason

PS Form **3811**, December 1994 # 29-08162 Domestic Return Receipt

Thank you for using Return Receipt Service.

STATES POSTAL SERVICE

First-Class Mail
Postage & Fees Paid
USPS
Permit No. G-10

- Print your name, address, and ZIP Code in this box -

Water Allocations
DEPARTMENT OF WATER RESOURCES
1301 N. ORCHARD ST.
BOISE, ID 83706-2237

RECEIVED
APR 11 1996
Department of Water Resources

CAREN VARGASON
LAZY V RANCH INC
P O BOX 268
LAVA HOT SPRINGS ID 83246

GEORGE W KATSILOMETES
P O BOX 670
LAVA HOT SPRINGS ID 83246

JOHN MEHLHAFF
1424 HIGH ST
AUBURN CA 95603

JACK H ROBISON
JONES CHARTERED
P O BOX 967
POCATELLO ID 83204-0967

P 326 991 516

US Postal Service
Receipt for Certified Mail
No Insurance Coverage Provided.
Do not use for International Mail *(See reverse)*

Sent to CAREN VARGASON	
Street & Number P O BOX 268	
Post Office, State, & ZIP Code LAVA HOT SPRINGS ID	
Postage	$

P 326 991 517

US Postal Service
Receipt for Certified Mail
No Insurance Coverage Provided.
Do not use for International Mail *(See reverse)*

Sent to GEORGE W KATSILOMETES	
Street & Number	
Post Office, State, & ZIP Code	
Postage	$
Certified Fee	
Special Delivery Fee	
Restricted Delivery Fee	
Return Receipt Showing to Whom & Date Delivered	
Return Receipt Showing to Whom, Date, & Addressee's Address	
TOTAL Postage & Fees	$
Postmark or Date	

PS Form **3800**, April 1995

P 326 991 518

US Postal Service
Receipt for Certified Mail
No Insurance Coverage Provided.
Do not use for International Mail *(See reverse)*

Sent to JOHN MEHLHAFF	
Street & Number	
Post Office, State, & ZIP Code	

P 326 991 519

US Postal Service
Receipt for Certified Mail
No Insurance Coverage Provided.
Do not use for International Mail *(See reverse)*

Sent to JACK H ROBISON	
Street & Number	
Post Office, State, & ZIP Code	
Postage	$
Certified Fee	
Special Delivery Fee	
Restricted Delivery Fee	
Return Receipt Showing to Whom & Date Delivered	
Return Receipt Showing to Whom, Date, & Addressee's Address	
TOTAL Postage & Fees	$
Postmark or Date	

PS Form **3800**, April 1995

To: Gary Spackman; Hearing Officer; Dept. of Water Resources; Boise; re: Vargason Applications for State's Geothermal Water
From: George W. Katsilometes

Dear Mr. Spackman:

This letter is written to give you my requests with respect to the above matter:

1. I would like for you to inform the state foundation that our expert would like to tour the pumping, piping and heat exchange facilities which the state has installed and is currently funding and maintaining. Our expert is John Mehlhaff, who is a licensed engineer and one of the protestants in this matter (you have his name, phone and address on file). I would remind you that during the preliminary hearing conducted by Norm Young, we were promised (and Robert Meline agreed to) our tour of the facilities. This has not been granted to date. You have had our verbal and written requests for this tour for some time now and I expect a prompt resolution of this request (within 7 days).

2. I do not think it is fair to us to schedule another preliminary hearing. Doing this would be unfair to the protestants, contrary to the department's policy of trying to save the taxpayer's money and would be inconsistent with your action of combining the two formal hearings for the sake of saving taxpayer's money. Please do not do this.

I want legal and statistical documentation of the appropriateness of doing this and I want to know if this is the policy of the department. Please do this.

3. I do not think it is fair to review our list of witnesses, their testimonies, their potential testimonies, etc. prior to the formal hearing. Please do not ask for this.

4. I do not think it is fair to review the list of documentation, etc. we have requested prior to the formal hearing. Please do not do this.

I would remind you that the Vargason's filed their applications under the name of Lazy V Ranch, Inc. which is a false and nonexistent corporate entity in Idaho.

I would remind you that we requested that two separate hearings be conducted on the two Vargason applications and that this request was ignored by your office, and scheduling of the hearings on two concurrent days was justified on the basis that it would be 'too costly to the taxpayers' to have hearings on two separate dates.

I would remind you that the Vargason's asked for and recieved at least one postponement in this matter. Please schedule the

I would remind you that the Vargason's were late in submitting their list of witnesses (a complete copy of which I have not been presented). I have seen no response from you in the way of a reprimand etc. Please mail the list of witnesses and documentation submitted by the Vargason's to P.O. 670, Lava Hot Springs, ID, 83246.

I am sorry the the Vargason's think our list of witnesses is too long or that the documentation we request is too great. It is our right to have complete and thorough discovery in this matter and this was promised us by Norm Young in the preliminary hearing.

I expect a very wide scope when requesting the appearance of witnesses and documents. Please, in fairness as an impartial hearing officer, assure that this happens.

Thank you for your participation and I expect a response to this letter.

Very Sincerely Yours,

George W. Katsilometes, D.V.M., Ph.D.

Fax: 208-776 5815

cc: Carl Drayer, Director, Dept. of Water Resources
The Honorable Phil Batt, Governor

3 Pages Total

To: Carl Drayer, Director, Department of Water Resources

From: George W. Katsilometes

Dear Mr. Drayer:

I enclosing a copy of a Fax letter to Gary Spackman the hearing officer in the matter of the Vargason applications and our protests. This matter comes under your domain, as the state's geothermal waters are one of its most valuable resources.

The state foundation has been pumping water from a hot spring on the North bank of the Portneuf river for approximately 2 years. Most of this water either flows directly through pipes or following heat exchange through state installed pipes onto the property of Thayne and Karen Vargason. The system of pumps, pipes, heat exchanger(s), etc. were installed with appropriated funds in 1993 and 1994. The cost of pumping and piping water to the Vargason's exceeds $70,000 and was unnecessary as the water could have been diverted directly to the Portneuf as was historically the case. The state, therefore, pays for the pumping and piping of geothermal water to the Vargasons. The Vargasons recently applied for two permits to use the water (a total of 7 cfs or >3,000 gpm) for the stated purpose of raising Tilapia sp., an African fresh water fish. The one acre pond in which the fish have lived for 2 years, was chilled in April resulting in the death of the fish. The water is still being pumped to the pond at state expense.

These permits are being protested by Evelee Hill-Rush (Pocatello), John Mehlhaff (Auburn, CA), Dwayne (Duke) Walden (Lava Hot Springs) and myself.

As Lava is a designated tourist town in Idaho and we pay a 2% travel and tourism tax, and as the lands and waters have been put in the care of the foundation for the benefit of the public and to attract visitors to southeast Idaho, we are certain that it is not in the best interest of the state and the region to give a single private individual millions of dollars worth of geothermal water for the raising of African fish. The public could benefit to a much greater degree through the use of the waters in the expansion of tourism to this area, and as a heating source for homes and businesses.

This is a politically dangerous situation and I would advise you to stop this give away of the state's resources.

Sincerely,

George W. Katsilometes

George W. Katsilometes
PO 670
Lava Hot Springs, ID 83246
Fax: 208-776-5815

(2)

To: Gary Spackman; Hearing Officer; Dept. of Water Resources; Boise; re: Vargason Applications for State's Geothermal Water
From: George W. Katsilometes

Dear Mr. Spackman:

This letter is written to give you my requests with respect to the above matter:

1. I would like for you to inform the state foundation that our expert would like to tour the pumping, piping and heat exchange facilities which the state has installed and is currently funding and maintaining. Our expert is John Mehlhaff, who is a licensed engineer and one of the protestants in this matter (you have his name, phone and address on file). I would remind you that during the preliminary hearing conducted by Norm Young, we were promised (and Robert Meline agreed to) our tour of the facilities. This has not been granted to date. You have had our verbal and written requests for this tour for some time now and I expect a prompt resolution of this request (within 7 days).

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3. I do not think it is fair to review our list of witnesses, their testimonies, their potential testimonies, etc. prior to the formal hearing. Please do not ask for this.

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(3)

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I am sorry the the Vargason's think our list of witnesses is too long or that the documentation we request is too great. It is our right to have complete and thorough discovery in this matter and this was promised us by Norm Young in the preliminary hearing.

I expect a very wide scope when requesting the appearance of witnesses and documents. Please, in fairness as an impartial hearing officer, assure that this happens.

Thank you for your participation and I expect a response to this letter.

Very Sincerely Yours,

George W. Katsilometes, D.V.M., Ph.D.

Fax: 208-776-5815

cc: Carl Drayer, Director, Dept. of Water Resources
The Honorable Phil Batt, Governor

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE

STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR PERMIT NO. 29-08162 AND FOR PERMIT NO. 29-08164 IN THE NAME OF LAZY V RANCH	LIST OF WITNESSES AND EXHIBITS

RECEIVED
MAY 13 1996
Department of Water Resources

NOTICE

The undersigned is the initial list of witnesses and exhibits to be relied upon by Lazy V Ranch in the above matter.

Witnesses. The applicant has received the witness list of the protesting parties. The following witnesses are duplicate with such list.

1) Charles Sudwicks

2) Floyd Jensen

3) Bob Meline

4) Employee of the Department of Water Resources

Other Witnesses for the Applicant

1) Dave Loveless
2525 N. Fremont
Idaho Falls, ID 83415-3850
526-0851

2) Mike Winston and Jessica Winston
316 N. Hansen Ave.
Shelly, ID 83274
357-7400

Exhibits. Copies of potential exhibits intended to be offered are as follows: 1. Applications and documents on file with the Department of Water Resources; 2. Letters dated January 3, 1996 and January 23, 1996; 3. Diagrams, maps, and photographs in the possession of our attorney, Jones, Chartered, 415 South Arthur, Pocatello, Idaho, which are available for inspection upon prior appointment (copies of three diagrams/maps submittal herewith); 4. Easement Agreement with Lava Hot Springs Foundation; 5. Proposed Easement Agreement with Lava Hot Springs Foundation. 6. Easement description; and 7. Newspaper article dated Jan 9, 1996.

Attorney for Applicant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I mailed, or caused to be mailed, a true and correct copy of the foregoing, by placing same in the United States mail, postage prepaid, X; or hand delivered ____; or served by facsimile X, addressed as follows:

George W. Katsilometes
P.O. Box 670
Lava Hot Springs, ID 83246
Fax: 208-232-2170

John Mehlhaff
1424 High St.
Auburn, CA 95603
Fax: 208-232-2170

Evelee Hill Rush
P.O. Box 4905
Pocatello, ID 83205-4905
Fax: 208-232-2170

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

on this 9th day of May, 1996.

Jack H. Robison

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

RECEIVED
MAY 12 1997
Department of Water Resources
Eastern Region

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.

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

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
OFFICE OF THE ATTORNEY GENERAL
ALAN G. LANCE

RECEIVED
MAY 1 2 1997
Department of Water Resources
Eastern Region

ATTORNEY GENERAL OPINION NO. 97-1

RECEIVED
JAN 1 3 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.

P.O. Box 83720, Boise, Idaho 83720-0010
Telephone: (208) 334-2400, FAX: (208) 334-2530
Located at 700 W. Jefferson Street, Suite 210

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 legistature 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

ALAN G. LANCE
Attorney General

Analysis by:

JOHN W. HOMAN
Deputy Attorney General

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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.

Water Right Number - L29-07847 Prefix Translation: LICENSE Old (D) Number -

Last Name	First Name	Address
*** C - CURRENT OWNER ***		
VARGASON	THAYNE E	1 - PO BOX 268 2 - 3 - City- LAVA HOT SPRINGS State- ID Zip- 83246 Phone -
VARGASON	KAREN	1 - PO BOX 268 2 - 3 - City- LAVA HOT SPRINGS State- ID Zip- 83246 Phone -

Priority Date	Region	Stage	Status
04/20/1988	15 EASTERN	L - LICENSE	

Source	Tributary
WASTE WATER	PORTNEUF RIVER

Point of Diversion

Twn	Rng	Sec	Tract	Lot	RFlg	County	Diversion Name	Diversion Rate	Diversion No.
09S	38E	21	NW SE	7		(5) BANNOCK			

Water Use

Code	Description	Period From	Period To	Diversion Rate	Diversion Volume
47	RECREATION STORAGE	01/01	12/31		0.20
55	DIVERSION TO STORAGE	01/01	12/31	0.060	

Total Div. Rate	Total Div. Volume	Total Div. Capacity
0.060	0.20	0.090

Place of Use

Twn	Rng	Sec	Tract	Lot	Acres	Code	Description	County
09S	38E	21	NE SW	6		47	RECREATION STORAGE	(5) BANNOCK

Diversion Means -

Non-Irrigation Use -

Other Rights for Same Use -

Remarks

No Remarks found.

Old Water Right Numbers

No Old Water Right Numbers found.

Water right number - L29-07847 Prefix Translation: LICENSE

+ - Conditions of Approval - +

R04 - Use of water under this water right will be regulated by the
- watermaster of State Water District No. 29.

R02 - A lockable device subject to the approval of the Department
- shall be maintained on the diverting works in a manner that will
- provide the watermaster suitable control of the diversion.

027 - Use of water under this right shall be non-consumptive.

+ - - - - Decree Plaintiff - - - + + - - - - Decree Defendant - - - + + - Decree Date - +

00/00/0000

+ -Comments- +

No Comments Found

+ - - Audit Fields - 03/29/96 CZIMMERM 05/07/96 RLOVEALL

+ - Water Rights Dates and Flags Area - +

Proof Due Date	- 07/01/1990	Field Exam Made	- 11/14/1995	Field Exam Fee	- R
Approved/Denied	- 08/03/1988	Protested Date	- 00/00/0000	Swan Falls	- 1
Proof Made Date	- 02/23/1990	Hearing Date	- 00/00/0000	Temporary Right	- P
Exam to S.O. Date	- 03/21/1996	Verified Date	- 00/00/0000	DLE/Carey Act	-
Order Show Cause	- 00/00/0000	Receipt Number	- E012111	Water District	- 29
Licensed Date	- 00/00/0000	Appl Received	- 04/20/1988	Transfer/Amended	-
Decree Date	- 00/00/0000	Name Connector	- AND/OR	POU Ownership Flag	- Y
Presumption Flag	-				

RECEIVED
MAY 10 1996
Department of Water Resources

May 7, 1996

Gary Spackman
Hearing Officer
Idaho Department of Water Resources
Boise, Idaho
FAX 208-327-7866

Re: Lazy V Ranch (Vargasons), Nos. 29-08162 and 29-08164
Hearing

From: George Katsilometes, Evelee Hill, John Mehlhaff, Protestants

Dear Gary,

As per your request, please find enclosed the following:

1. List of witnesses to be subpoenaed by IDWR.

2. Exhibit A, Fifty Seventh Congress, Sess. I Chs. 1074, 1076-1078, 1902: Chapter 1076. An act to grant certain lands to the state of Idaho.
3. Exhibit B, Idaho Session Laws, 1935, Chapter 5, H.B. #50, Chapter 164, 1943, S.B. #106, 1965, Chapter 108, S. B. #130, Idaho Code # 58-703, & 58-704, Idaho Session Laws, Chapter 196, H.B. #336. Exhibit C; The Pocatello Tribune, June 18, 1902, front page article on Lava Springs.
Chapter 44, State Code 67-4401 67-4402, 67-4403, 67-4404, 67-4405, 67-4406, 67-4407, 67-4408, and 67-4409.

3. Response to six statutes of law to protest water permit and request for documentation by duces tecum, i.e. please request following information be supplied by the appropriate party and given to protestants then allow a minimum of one week to preview documents. All document requests are highlighted.

(a). Whether the proposal will reduce the quantity of water under existing rights.

1. From Water Resources: Copies of all State Foundation hot water rights, permits, proving up documentation, pumping permits, current cfs pumped on daily basis. List and copies of all inspections.

2. From Water Resources; Copies of any and all hydrologic data on the hot water spring system at Lava Hot Springs.

3. Does the pumping done by State Foundation dry up or minimize the flow to other springs in the area?

4. Vargasons are applying for more water than the state of Idaho has permits for.

(b). Whether the water supply itself is insufficient for the purpose for which it is sought to be appropriated.

1. Do the Vargasons need the full amount applied for in both permits for fish propagation? Verify.

(b). Whether the water supply itself is insufficient for the purpose for which it is sought to be appropriated.

(c). Whether the application is not make in good faith, or is make for the delay or speculative purposes.

1. We question the use of water for fish propagation or is the water right being secured for future development commercially.

a. Mr. Vargason and Mr. Meline, Foundation Director have been business partners previously, i.e., food concessions at Skyline ski area and Bannock County fairgrounds. We feel the State Foundation is a party to all further proceedings to said water claim due to the fact they approved, installed the diversion works onto the Vargason property and pay the cost of pumping hot water to the Varagson property, for the purpose of fish propagation.
For support of this future speculative purpose, we request the following documentation:

1. From State Foundation: Copy of land lease agreement between the Hot Spring Village Association of Time Share Unit Owners, Inc. commonly called Lava Condominiums and the State foundation.

2. From State Foundation: All foundation and board of directors minutes and memoranda between 1986 and 4-22-1996 plus all minutes from meetings and correspondence with Idaho Department of Water Resources.

3. From State Foundation: Copy of easement agreement, and correspondence between State Foundation and Vargasons regarding diversion works currently operational.

4. From State Foundation: Copy of correspondence and/or verbal conversation between the State Foundation and the Lava Condominiums. If there is no formal easement agreement, should state funds be used to construct the diversion works on private property?

5. From State Foundation: Copy of bids and final accounting of diversion works. Information given to the public upon request.

6. From Mr. Charles Sudweeks: Design, bid proposal, technical data, correspondence, and final accounting of heat exchanger and pumps, etc. from Mr. Charles Sudweeks, Engineering Systems, Pocatello Idaho. How much water does the State Foundation need for the operation of the heat exchanger and building? How many months is there no demand for the hot water, possibly September, October, spring start up April and May?

7. From State Foundation: Name brand and all technical data on State Foundation pumps.

8. From State Foundation: Any and all lease agreements with the State Foundation and Vargasons.

9. From Mr. Bob Meline: Any current or past business agreements between Bob Meline and Vargasons.

10. From State Foundation: Tour of State Foundation facility including, pump house, olympic swimming pool, heat exchanger, pipelines, etc.

11. From State Foundation: Monthly and yearly electric cost and all maintenance costs of pumps.

12. From Mr. John Welhan: Written verification from a hydrologist for the effect of spring water when state pumps in comparison to when the pumps are stopped.

(d). Whether the applicant has sufficient financial resources with which to complete the project. All of the following information from Vargasons.

1. Vargason financial statement.

2. Business plan for fish propagation.

3. Copies of bids for construction works and any further diversion works of hot water.

4. Financial Statement on current fish business including invoices of sale. Total dollar volume of fish sold and to whom.

5. Copies of grants and correspondence from INEL.

6. Copies of proposals and correspondence from the high school to Vargasons and the State Foundation for fish propagation.

7. Optimal conditions for raising fish.

8. Copies of invoices for past construction for current fish propagation business.

9. Requirement for flood insurance for business and improvements.

(e). Whether the proposal would conflict with the local public interest.

1. From the State Foundation: Copy of the document transferring the State Foundation ground to the United States Government. The water rights to the springs remain under the domain of the Bannock Shoshone Tribal Water Rights. Currently all Bannock Shoshone Native Americans pay no fee to soak in the state hot pools. Does the IDWR have jurisdiction over the springs or Native American rights under the federal government?

2. Land grant from the U.S. Government to the State of Idaho clearly restricted the use of the land and springs. It was for "public use" only. State codes also maintain the "public use" doctrine. Granting of Vargasons permits for water would challenge the original grant and could potentially nullify the state's use of the springs, both cold and hot water springs.

3. The amount of heat potential in the hot water is significant and could be used for the public use for buildings, etc., not given to one individual.

4. Since the State Foundation has the legal right to lease property to individuals, why would it choose to give, free of charge, and at a cost to the state of Idaho taxpayer, to an individual, hot water, contrary to the public good?

5. Was the cost to install the diversion works, beyond the stated necessary water for the heat exchanger , in the public interest?

Respectfully submitted,

George Katsilometes
Evelee Hill
John Mehlhaff

cc Lamont Jones, Attorney

Idaho Department of Water Resources
Gary Spackman, Hearing Examiner

Re: Water Permits Nos. 29-08162 and 29-08164
Lazy-v Ranch

Request to Subpoena the following witnesses by IDWR and served by protestants.

1. Dave Hunter C.P.A., Chairman of Board, Hot Springs Village Association of Time Share, Inc;
Phone 208-232-8800
P.O. Box 1243
Pocatello, ID 83024
Business Address:
353 N. 4th Ave
Pocatello, ID 83201

2. Rev. Richard Marsceau
General Delivery
Lava Hot Springs, ID 83246
Phone: 776-5632

3. Newt Lowe
15 W. Booth
Lava Hot Springs, ID 83246
776-5605

4. Rick Frandsen
7516 E. U.S. Highway 30
Lava Hot Springs, ID 83246
776-5211

5. Katherine Howell
8608 E. U.S. Highway 30
Lava Hot Springs, ID 83246
776-5435

6. Mark Campbell
61 W. Booth
Lava Hot Springs, ID 83246
776-5364

7. Mike Hansen
191 Rosewood Ave.
Pocatello, ID 83204
208-233-2578

8. Russ Sidell
1451 Spaulding Lane
Pocatello, ID 83201
237-1030

9. Dwaine & Jeri Wellard
9588 E. Merrick Road
Lava Hot Spings, ID 83246
776-5847
Bus. 776-5445

10. Thayne Vargason
299 N. Center
Lava Hot Springs, ID 83246
776-5409

11. Ron Carlson
Harold Jones
Keith Wilson
Dennis Dunn
Dept. Of Water Resources, Idaho Falls, ID.

12. Charles L. Sudweeks
9161 W. Caribou Rd.
Pocatello, ID 83204
233-2346
Bus. 233-0501

13. John Welhan
966 Cahina Way
Pocatello, ID 83204
232-0949

14. Don Campbell
1325 E. 4449 N.
Buhl, ID 833116
208-543-4387

15. Gary Fornshell
Twin Falls County Extension Office
246 3rd. Ave. East
Twin Falls, ID 83301

16. Robert Meline
655 S. 10 Ave
Pocatello, ID 83201
233-3211

17. Mark Sidell
9585 S. Frandsen Rd.
Lava Hot Springs, ID 83246
776-5510

18. Emmette Spraker
208 S. 19th
Pocatello, ID 83201
233-2715

19. Al Ricken
193 Charles Place
Pocatello, ID 83201
232-4400

20. Floyd Jensen
1580 W. 3200S.
Preston, ID 83263

21. Sheldon Jones
257 W. Booth
Lava Hot Springs, ID 83246
776-5266

22. Ralph Lacy
126 S. 15th
Pocatello, ID 83201
232-4951

23. Jay Valcarce
441 S. 11th
Pocatello, ID 83201
233-7988

cc Lamont Jones, Attorney

Exhibits A, B, C.
Mailed 4-8-1996

Treaty U.S. Stats at Large, 57th Congress
1901-1903 Vol. 32, pt. 1

hundred and ninety-four, be, and is hereby, authorized and directed: *Provided*, That the additional cost for its construction shall not exceed the sum of sixty thousand dollars.

Proviso.
Limit of cost.

Approved, June 10, 1902.

June 13, 1902.
[Public, No. 151.]

CHAP. 1076.—An Act To grant certain lands to the State of Idaho.

Idaho.
Grant of land to.

Be it enacted by the Senate and 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 the said State of Idaho, to be held by said State for public use under such regulations as said State may prescribe.

Approved, June 13, 1902.

June 13, 1902.
[Public, No. 152.]

CHAP. 1077.—An Act For the relief of Navajo County, Arizona.

Navajo County, Ariz.
Board of supervisors authorized to refund debt of.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the county of Navajo, Territory of Arizona, be, and is hereby, authorized and empowered, through its board of supervisors, to refund the outstanding county indebtedness of said county, which said indebtedness is evidenced by bonds of said county numbered thirty and seventy-three, inclusive, payable to Apache County, Arizona Territory. Said bonds are in the sum of one thousand dollars each, interest payable annually on the second day of January, at the rate of six and one-half per centum, together with ten thousand dollars of the principal each year.

Issuance of new bonds.

SEC. 2. That the said board of supervisors is hereby authorized to refund said bonded indebtedness, in the sum of forty-three thousand dollars, by issuing in lieu thereof bonds in the sum of one thousand dollars each, said bonds to bear a rate of interest not to exceed five per centum per annum, interest and five thousand dollars of the principal payable annually from and after the second day of January, nineteen hundred and eleven.

Denomination and interest.

Payments.

Signatures to and delivery of refunding bonds.

SEC. 3. That said refunding bonds shall be signed and delivered by the chairman of the board of supervisors and the treasurer of said Navajo County, and shall be made payable to the person, persons, or company purchasing the aforesaid refunding bonds.

Approved, June 13, 1902.

June 13, 1902
[Public, No. 53.]

CHAP. 1078.—An Act Ratifying the act of the Territorial legislature of Arizona, approved March second, nineteen hundred and one, providing a fund for the erection of additional buildings for the University of Arizona.

Arizona.
Act for university buildings approved.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the act of the Territorial legislature of the Territory of Arizona entitled "An act to provide a fund for the erection of additional buildings and furnishing the same for the University of Arizona," approved March second, nineteen hundred and one, and which said act was to take effect on its approval and ratification by the Congress of the United States, be, and the same is hereby, approved and ratified.

Approved, June 13, 1902.

1935

CHAPTER 5

(H. B. No. 50)

AN ACT

CREATING THE LAVA HOT SPRINGS FOUNDATION; PRESCRIBING THE NUMBER OF MEMBERS OF THE SAID FOUNDATION, LENGTH OF OFFICE, MANNER OF APPOINTMENT AND SALARIES OF SAID FOUNDATION; INVESTING THE MANAGEMENT AND CONTROL OF THE STATE-OWNED PROPERTIES IN OR NEAR LAVA HOT SPRINGS, IDAHO, IN THE SAID FOUNDATION; PRESCRIBING THE POWERS AND DUTIES OF THE LAVA HOT SPRINGS FOUNDATION; DESCRIBING THE PROPERTY TO BE CONTROLLED BY SUCH FOUNDATION; ENUMERATING THE OFFICERS AND EMPLOYEES OF SUCH FOUNDATION; PROVIDING A GENERAL EXPENSE FUND AND APPROPRIATION FOR THE OPERATION OF SUCH PROPERTY; REPEALING ALL ACTS, OR PARTS OF ACTS, IN CONFLICT HEREWITH; AND DECLARING AN EMERGENCY.

Be It Enacted by the Legislature of the State of Idaho:

That Chapter 41 of Title 65, Idaho Code Annotated be, and the same is hereby amended to read as follows:

SECTION 1. That Section 65-4101 of the Idaho Code Annotated be, and the same is hereby amended to read as follows: All right 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 Village of Lava Hot Springs, in Bannock County, State of Idaho, hereinafter *more particularly described is hereby vested in the Lava Hot Springs Foundation. Said Foundation shall consist of three members who shall be appointed by the Governor and who shall hold office for a term of six years, save and except the first members who shall be appointed by the Governor as follows: one to be appointed for a term of six years, one to be appointed for a term of four years and one to be appointed for a term of two years, and thereafter as their terms expire the Governor to appoint their successors for terms of six years. The said members to receive their actual expenses while traveling to or meeting for the purposes of the Foundation and a per diem of Five Dollars ($5.00) per day while actually engaged in the business of the Foundation. The said Foundation shall not receive any property from, nor operate any school, college or institution of learning.*

SEC. 2. That Section 65-4102 of the Idaho Code Annotated be, and the same is hereby amended to read as follows: The said *Foundation* is hereby authorized and it is made its duty to take charge of all the lands and property of the State of Idaho situated within and near the Village of Lava Hot Springs and hereinafter more fully described, to have a general supervision and control of all buildings and property appertaining thereto and to have general charge and control of the construction of all buildings to be built thereon and of the operation and maintenance thereof. The said *Foundation* shall have power to let contracts for any buildings to be constructed upon said lands and the entire and complete supervision of such construction, and the operation, maintenance and repair of any and all buildings now existing or hereinafter to be constructed upon said lands. *The said Foundation shall operate a sanitarium and hospital to stimulate and further the work being done in the field of infantile paralysis, spinal meningitis and other ailments, including the advancement and diffusion of knowledge concerning such work and the coordination and correlation of the efforts of all those engaged therein. The said Foundation shall have power to acquire by bequest, devise, gift, lease or purchase, and hold for its purposes money and property of whatsoever kind or description and wheresoever situated. Said Foundation shall have power to accept and administer any trust of property, real or personal, for any of the purposes of the Foundation. Said Foundation shall have authority to acquire, hold, sell, lease or otherwise dispose of real and personal property as the purposes of the Corporation may require, subject to such limitations as may be prescribed by law, and in general to exercise such powers as are incidental or conducive to the attainment of the purposes of the Foundation. The said members of the said Foundation shall meet annually on the 4th Monday of January in each year and, in addition thereto, at such other times as the said members may prescribe.*

SEC. 3. That Section 65-4103 of the Idaho Code Annotated be, and the same is hereby amended to read as follows: 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 (¼) of the southwest quarter (¼), 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 belong-

ing, or in any wise appertaining, and the hot springs and hot waters arising and flowing thereon, in Bannock County, State of Idaho.

SEC. 4. That Section 65-4104 of the Idaho Code Annotated be, and the same is hereby amended to read as follows: The said *Foundation* shall have power to employ a superintendent of the hot springs and bathing facilities, *necessary medical, surgical and other professional assistants,* and to employ such other help as may be necessary, and to prescribe the duties of the said superintendent, *medical, surgical and other professional assistants,* and all other employees; it shall have power to remove the said superintendent, *medical, surgical and other professional assistants,* or other employees, at its pleasure, and shall make and ordain such rules and regulations for the conduct and administration of the said hot springs, bathing facilities and sanitarium and hospital as it shall deem necessary and proper.

S.L. '35 (reg.) c. 5 sec.5 ref. to I. '30 c. 237 secs. 1, 2 pp. 559, 560

SEC. 5. That Section 65-4105 of the Idaho Code Annotated be, and the same is hereby amended to read as follows: *The entire receipts of and from any source whatsoever that may inure to the benefit of the said Foundation through its operation of the said property, bathing facilities, pleasure resort, hospital or sanitarium are hereby appropriated for the use and benefit of the said Foundation and, in addition thereto, the sum of One Thousand Dollars ($1,000.00) is hereby appropriated biennially for the use of the said Foundation.*

S.L. c. 3 amd. I. sec

SEC. 6. *All acts and parts of acts in conflict hereof are hereby repealed.*

SEC. 7. *An emergency existing therefor, which emergency is hereby declared to exist, this act shall be in force and effect from and after its passage and approval.*

Approved February 6, 1935.

1943

CHAPTER 164

(S. B. No. 106)

AN ACT

RELATING TO THE LAVA HOT SPRINGS LAND GRANTED TO THE STATE BY ACT OF CONGRESS APPROVED JUNE 13, 1902, WITH ITS IMPROVEMENTS; AUTHORIZING THE STATE LAND BOARD TO LEASE THE SAID PROPERTY; PROVIDING FOR THE SUSPENSION OF THE LAVA HOT SPRINGS FOUNDATION ACT, CHAPTER 5, 1935 SESSION LAWS AMENDATORY OF CHAPTER 41, TITLE 65, IDAHO CODE ANNOTATED, UPON THE EFFECTIVE DATE OF SUCH LEASE; MAKING AN APPROPRIATION FOR ITS OPERATION WHEN NOT LEASED; AND DECLARING AN EMERGENCY.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. The State Board of Land Commissioners * *and the Lava Foundation Board are* hereby authorized to negotiate for and enter into an agreement of lease by which the lands granted to the State of Idaho by the Act of Congress approved June 13, 1902, and commonly referred to as the Lava Hot Springs Grant, being particularly described as the Northwest Quarter of the Southwest Quarter and Lots 9 and 10 in Section 22, and Lots 7 and 8 in Section 21, in Township 9 South, Range 38 East Boise Meridian, together with the improvements, bathing facilities, equipment, personal property, tenements, hereditaments and appurtenances, shall be devoted to public use in conformity with the terms of the grant act above referred to, and in the manner and upon the terms required in addition by Chapter 3, Title 56, Idaho Code Annotated as amended.

SEC. 2. Upon such lease becoming effective, and for the term of such lease, the provisions of the Lava Hot Springs Foundation Act, Chapter 5, 1935 Session Laws, amendatory of Chapter 41, Title 65, Idaho Code Annotated, shall be suspended and without operative force.

SEC. 3. *There is hereby appropriated out of the Lava Hot Springs fund the entire receipts of and from any sources whatsoever that may hereafter inure to the benefit of the Lava Hot Springs Foundation through its operation of the property of the said Foundation, bathing facilities, pleasure resort, hospital or sanitarium, together with the further sum of $1,000 or so much thereof as may be necessary, out of any moneys in the General Fund of the State of Idaho not otherwise appropriated, for the use of the said Foundation. Provided; that the appropriation herein made shall not be effective or the funds appropriated available during any period when the provisions of the Lava Hot Springs Foundation Act, Chapter 5 of the 1935 Session Laws, amendatory of Chapter 41, Title 65, Idaho Code Annotated, shall be suspended as herein provided.*

SEC. 4. An emergency existing therefor, which emergency is hereby declared to exist, this act shall be in full force and effect from and after its passage and approval.

Approved March 8, 1943.

1965

CHAPTER 108
(S. B. No. 130)

AN ACT

AMENDING SECTION 67-4402, IDAHO CODE, TO PROVIDE THAT THE MEMBERS OF THE LAVA HOT SPRINGS FOUNDATION MAY CONTRACT WITH FEDERAL, STATE AND LOCAL GOVERNMENTAL AGENCIES FOR FLOOD CONTROL PROJECTS, MULTIPLE USE WATER RESOURCE DEVELOPMENT AND ANY OTHER PROJECTS CONDUCIVE TO THE ATTAINMENT OF THE PURPOSES OF THE FOUNDATION; AND DECLARING AN EMERGENCY.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 67-4402, Idaho Code, be, and the same is hereby amended to read as follows:

67-4402. POWERS AND DUTIES OF FOUNDATION —ANNUAL MEETING.—The said foundation is hereby authorized and it is made its duty to take charge of all personal property and the lands and property of the state of Idaho situated within and near the village of Lava Hot Springs and hereinafter more fully described, to have a general supervision and control of all buildings, improvements, and property appertaining thereto. Said foundation shall have the authority to lease any real or personal property not used or needed by the foundation, to an individual or company, subject to approval by the board of examiners of the state of Idaho, for a period not exceeding ninety-nine years, as the purposes of the corporation or individual may require, subject to such limitations as may be prescribed by law; *to enter into contracts with federal, state, and local governmental agencies for flood control projects and measures, for multiple use water resource development, and for any other project or measure incidental or conducive to the attainment of the purposes of the foundation;* and, in general, to exercise such powers as are incidental or conducive to the attainment of the purposes of the foundation. The said members of the said foundation shall meet annually on the 4th Monday of January in each year and, in addition thereto, at such other times as the said members may prescribe. Any lease or leases made pursuant to the provisions of this section shall be exempt from the limitations as to term of lease set forth in section 58-307, Idaho Code.

SECTION 2. An emergency existing therefor, which emergency is declared to exist, this act shall be in full force and effect immediately upon its passage and approval.

Approved March 8, 1965.

58-703. Lava Hot Springs — Cession to United States authorized. — 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 part or parcels of lands hereinafter described as may be convenient and necessary, and required as and for a site for a national veterans' sanatorium or hospital, and such portion of the hot mineral and cold water and water rights appurtenant to the said lands as may be necessary and convenient for the operation and maintenance of such institution, and such mineral baths as may be maintained and operated in connection therewith, and for the irrigation, operation and maintenance of the grounds and lands upon which such institution and baths are located and maintained. Upon acceptance by the United States government and the proper department or bureau thereof, authorized by any act of congress, to erect such veterans' sanatorium or hospital, the state board of land commissioners shall execute a conveyance in fee simple to said United States government or its department or bureau, which deed shall be signed by the governor and countersigned by the secretary of state and by the director of the department of lands, and attested with the great seal of the state and seal of the state board of land commissioners, which said deed shall operate to convey a good and sufficient title in fee simple. [1931, ch. 196, § 1, p. 340; I.C.A., § 56-603; am. 1974, ch. 17, § 74, p. 308.]

Compiler's notes. S.L. 1931, ch. 196 contained a preamble which read: "Whereas, the state of Idaho is the owner of those certain lands known as the Lava Hot Springs, particularly described as the northwest quarter (NW¼) of the southwest quarter (SW¼) and the lots nine (9) and ten (10) in section twenty-two (22), and the lots seven (7) and (8) in section twenty-one (21) in township nine (9) south or range thirty-eight (38) east of the Boise meridian in Idaho by gift and grant from the government of the United States, and of certain water and water rights appurtenant thereto, and

"Whereas, certain parts and parcels of the said described lands and certain portions of such water and water rights are of greater value to the United States Government as and for a site for a national veterans' sanatorium, or hospital, and the maintenance and operation of the same, than they are to the state of Idaho for any purpose for which the state may legally use them, and

"Whereas, the use of a portion of the above described lands as a site for a federal sanatorium or hospital is hereby declared to be the application of said lands to a public use, and

"Whereas, the act of the Congress of the United States which granted the above lands to the state of Idaho was made with no restriction as to alienation, save that such lands be applied to a public use."

Section 73 of S.L. 1974, ch. 17 is compiled as § 58-603.

Section 75 of S.L. 1974, ch. 17 provided that the act should take effect on and after July 1, 1974.

58-704. Lava Hot Springs — Description of lands. — The lands or such portion thereof as may be necessary and convenient for the location of, and for a site for such national veterans' sanatorium or hospital, and which this act declares may be conveyed as provided in section 58-703, are particularly described as follows:

The northwest quarter (NW¼) of the southwest quarter (SW¼) and the lots nine (9) and ten (10) in section twenty-two (22), and the lots seven (7) and eight (8) in section twenty-one (21) in township nine (9) south of range thirty-eight (38) east of the Boise meridian in Idaho, and the waters and water rights appurtenant thereto. [1931, ch. 196, § 2, p. 340; I.C.A., § 56-604.]

Compiler's notes. Section 3 of S.L. 1931, ch. 196 declared an emergency. Approved March 16, 1931.

58-702. **Consent to purchases by United States — Jurisdiction for execution of process reserved.** — Consent is given to any purchase already made or that may hereafter be made, by the government of the United States, of any lots or tracts of land within this state, for the use of such government, and to erect thereon and use such buildings, or other improvements, as may be deemed necessary by said government; and over such lands and the buildings, or improvements that are, or may be, erected thereon, the said government shall have entire control and jurisdiction, except that the state shall have jurisdiction to execute thereon all process, civil or criminal, lawfully issued by the courts of this state, and not incompatible with this cession. [1895, p. 21, § 1; reen. 1899, p. 235, § 1; reen. R.C. & C.L., § 28; C.S., § 71; I.C.A., § 56-602.]

58-703. Lava Hot Springs — Cession to United States authorized. — 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 part or parcels of lands hereinafter described as may be convenient and necessary, and required as and for a site for a national veterans' sanatorium or hospital, and such portion of the hot mineral and cold water and water rights appurtenant to the said lands as may be necessary and convenient for the operation and maintenance of such institution, and such mineral baths as may be maintained and operated in connection therewith, and for the irrigation, operation and maintenance of the grounds and lands upon which such institution and baths are located and maintained. Upon acceptance by the United States government and the proper department or bureau thereof, authorized by any act of congress, to erect such veterans' sanatorium or hospital, the state board of land commissioners shall execute a conveyance in fee simple to said United States government or its department or bureau, which deed shall be signed by the governor and countersigned by the secretary of state and by the director of the department of lands, and attested with the great seal of the state and seal of the state board of land commissioners, which said deed shall be sufficient to convey a good and sufficient title in fee simple. [1931, ch. 196, § 1, p. 340; I.C.A., § 56-603; am. 1974, ch. 17, § 74, p. 308.]

Compiler's notes. S.L. 1931, ch. 196 contained a preamble which read, "Whereas, the state of Idaho is the owner of those certain lands known as the Lava Hot Springs, particularly described as the northwest quarter (NW¼) of the southwest quarter (SW¼) and the lots nine (9) and ten (10) in section twenty-two (22), and the lots seven (7) in the northeast section twenty-one (21) in township nine (9) south of range thirty-eight (38) east of the Boise meridian in Idaho by gift and grant from the government of the United States, and of certain water and water rights appurtenant thereto, and

"Whereas, certain parts and parcels of the said described lands and certain portions of such water and water rights are of greater value to the United States Government as and for a site for a national veterans' sanatorium, or hospital, and the maintenance and operation of the same, than they are to the state of Idaho for any purpose for which the state may legally use them, and

"Whereas, the use of a portion of the above described lands as a site for a federal sanatorium or hospital is hereby declared to be the application of said lands to a public use, and

"Whereas, the act of the Congress of the United States which granted the above lands

to the state of Idaho was made with no restriction as to alienation, save that such lands be applied to a public use."

Section 73 of S.L. 1974, ch. 17 is compiled as § 58-603.

Section 75 of S.L. 1974, ch. 17 provided that the act should take effect on and after July 1, 1974.

58-704. Lava Hot Springs — Description of lands. — The lands or such portion thereof as may be necessary and convenient for the location of, and for a site for such national veterans' sanatorium or hospital, and which this act declares may be conveyed as provided in section 58-703, are particularly described as follows:

The northwest quarter (NW¼) of the southwest quarter (SW¼) and the lots nine (9) and ten (10) in section twenty-two (22), and the lots seven (7) and eight (8) in section twenty-one (21) in township nine (9) south of range thirty-eight (38) east of the Boise meridian in Idaho, and the waters and water rights appurtenant thereto. [1931, ch. 196, § 2, p. 340; I.C.A., § 56-604.]

Compiler's notes. Section 3 of S.L. 1931, ch. 196 declared an emergency. Approved March 16, 1931.

58-705. Consent to land purchase for migratory labor homes projects — Jurisdiction. — Consent is given to any purchase already made, or that may hereafter be made, by the government of the United States of any lots, or tracts of land within this state, for migratory labor homes projects; and over such lands and the buildings or improvements that are, or may hereafter be, erected thereon the United States shall have entire control and jurisdiction, except that the state shall have jurisdiction to execute thereon any process, civil or criminal, lawfully issued by the courts of this state, and not incompatible with this cession. [1943, ch. 152, § 1, p. 308.]

Compiler's notes. Section 2 of S.L. 1943, ch. 152 declared an emergency. Approved March 5, 1943. The title of this act did not provide for an emergency.

58-706. Consent to land purchase for stream flow protection and other purposes. — Consent of the state of Idaho is hereby given for the acquisition by the United States by purchase, of such lands in the state of Idaho, as in the opinion of the secretary of agriculture may be needed for stream flow protection, production of timber, erosion control, and/or other purposes, subject to the right of the state to cause its civil and criminal processes to be executed on such lands and to punish offenses against the laws of the state committed on lands so acquired. [1935, ch. 37, § 1, p. 66.]

Compiler's notes. Section 2 of S.L. 1935, ch. 37 declared an emergency. Approved February 20, 1935.

58-707. Cession over real property of veterans administration at hospital. — The state of Idaho hereby accepts the cession of concurrent jurisdiction with the United States over the real property comprising the veterans

CHAPTER 196

(H. B. NO. 336)

AN ACT

AUTHORIZING, EMPOWERING AND DIRECTING THE STATE BOARD OF LAND COMMISSIONERS, ON BEHALF OF THE STATE OF IDAHO, TO CEDE, GRANT, RELINQUISH AND CONVEY, IN FEE SIMPLE, TITLE TO THE GOVERNMENT OF THE UNITED STATES OR ANY DEPARTMENT THEREOF, SUCH PORTIONS OF THOSE CERTAIN LANDS, WATERS, AND WATER RIGHTS OF THOSE LANDS KNOWN AS THE LAVA HOT SPRINGS, BANNOCK COUNTY, STATE OF IDAHO; AND DECLARING AN EMERGENCY.

WHEREAS, The State of Idaho is the owner of those certain lands known as the Lava Hot Springs, particularly described as the Northwest quarter (NW¼) of the Southwest quarter (SW¼) and the Lots nine (9) and ten (10) in Section twenty-two (22), and the Lots seven (7) and (8) in Section twenty-one (21) in Township nine (9) South of Range thirty-eight (38) East of the Boise Meridian in Idaho by gift and grant from the Government of the United States, and of certain water and water rights appurtenant thereto, and

WHEREAS, Certain parts and parcels of the said described lands and certain portions of such water and water rights are of greater value to the United States Government as and for a site for a National Veterans' Sanatorium, or Hospital, and the maintenance and operation of the same, than they are to the State of Idaho for any purpose for which the State may legally use them, and

WHEREAS, The use of a portion of the above described lands as a site for a Federal Sanatorium or Hospital is hereby declared to be the application of said lands to a public use, and

WHEREAS, The Act of the Congress of the United States which granted the above lands to the State of Idaho was made with no restriction as to alienation, save that such lands be applied to a public use; now, therefore,

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF IDAHO:

SECTION 1. That the State Board of Land Commissioners, acting for and on behalf of the State of Idaho, be and it is hereby authorized, empowered and directed to cede, grant, relinquish and convey to the Government of the United States, such part or parcels of lands hereinafter described as may be convenient and necessary, and required as and for a site for a National Veterans' Sanatorium or Hospital, and such portion of the hot mineral and cold water and water rights appurtenant to the said lands as may be necessary and convenient for the operation and maintenance of such institution, and such mineral baths as may be maintained and operated in connection therewith, and for the irrigation, operation and maintenance of the grounds and lands upon which such institution and baths are located and maintained. Upon acceptance by the United States Government and the proper department or bureau thereof, authorized by any Act of Congress, to erect such Veterans' Sanatorium or Hospital, the State Board of Land Commissioners shall execute a conveyance in fee simple to said United States government or its department or bureau, which deed shall be signed by the Governor and countersigned by the Secretary of State and by the Land Commissioner, and attested with the Great Seal of the State and seal of the State Board of Land Commissioners, which said deed shall operate to convey a good and sufficient title in fee simple.

SEC. 2. The lands or such portion thereof as may be necessary and convenient for the location of, and for a site for such National Veterans' Sanatorium or Hospital, and which this act declares may be conveyed as provided in Section 1 hereof, are particularly described as follows:

The Northwest quarter (NW¼) of the Southwest quarter (SW¼) and the Lots nine (9) and ten (10) in Section twenty-two (22), and the Lots seven (7) and eight (8) in Section twenty-one (21) in Township nine (9) South of Range thirty-eight (38) East of the Boise Meridian in Idaho, and the waters and water rights appurtenant thereto.

SEC. 3. An emergency existing therefor, which emergency is hereby declared to exist, this Act shall be in force and effect from and after its passage and approval.

Approved March 16, 1931.

4

67-4409. Lava Hot Springs capital improvement account. — There is hereby created and established in the agency asset fund in the state treasury an account to be known as the Lava Hot Springs capital improvement account to which shall be credited or deposited such moneys and interest accruing over and above the operation and maintenance cost from a Lava Hot Springs Foundation account, as the members of the Foundation may from time to time determine. The purposes for which moneys in the account may be used shall be to acquire, purchase, improve, repair, furnish, and equip Lava Hot Springs facilities and sites. All claims against the account shall be examined, audited and allowed in the same manner now or hereafter provided by law for claims against the state. This account shall be invested by the state treasurer in investments permitted by section

67-1210, Idaho Code, and the interest shall be returned to the acco
[I.C., § 67-4409, as added by 1980 ch. 355, § 1 p. 919.]

Compiler's notes. Former § 67-4409, 1973, ch. 242, § 1, p. 494, was repeal
which comprised I.C., § 67-4409, as added by S.L. 1976, ch. 51, § 3, effective July 1,

67-4405. Receipts and appropriation inuring to use of foundation. — The entire receipts of and from any source whatsoever that may inure to the benefit of the said foundation through its operation of the said property, bathing facilities, pleasure resort, hospital or sanitarium and the rents and royalties accruing from any mineral lease that shall be made of foundation lands shall be deposited in the Lava Hot Springs Foundation Fund, and all moneys now in or hereafter deposited in such fund are hereby appropriated for the use and benefit of the said Foundation. [1919, ch. 30, § 5, p. 108; C.S., § 1294; I.C.A., § 65-4105; am. 1935, ch. 5, § 5, p. 16; am. 1953, ch. 139, § 1, p. 229.]

Compiler's notes. The first part of section 5 of S.L. 1919, ch. 30 appropriating $12,000 out of moneys received from leases, rents, baths, etc., to be expended for maintenance and operation purposes was omitted as temporary. It was not clear whether the latter part of the section was intended to be temporary or permanent. It was therefore included in the subject-matter as amended.

Section 6 of S.L. 1935, ch. 5 repealed all acts and parts of acts in conflict.

Section 7 of S.L. 1935, ch. 5 declared an emergency. Approved February 6, 1935.

Cross ref. Rotary expense fund, §§ 67-2019 — 67-2022.

67-4406. Lease of property authorized. — The state board of land

larly described as the northwest quarter of the southwest quarter and lots 9 and 10 in section 22, and lots 7 and 8 in section 21, in township 9 south, range 38 east Boise meridian, together with the improvements, bathing facilities, equipment, personal property, tenements, hereditaments and appurtenances, shall be devoted to public use in conformity with the terms of the grant act above referred to, and in the manner and upon the terms required in addition by chapter 3, title 58. [1943, ch. 164, § 1, p. 342.]

Compiler's notes. Lava Hot Springs Grant, act of congress approved June 13, 1902, see compiler's note under § 67-4401.

67-4407. Suspension of Lava Hot Springs Foundation Act upon leasing. — Upon such lease becoming effective, and for the term of such lease, the provisions of the Lava Hot Springs Foundation Act, Chapter 5, 1935 Session Laws, amendatory of Chapter 41, Title 65, Idaho Code Annotated, [§§ 67-4401 — 67-4405] shall be suspended and without operative force. [1943, ch. 164, § 2, p. 342.]

67-4408. Appropriation for operation when not leased. — There is hereby appropriated out of the Lava Hot Springs account the entire receipts of and from any sources whatsoever that may hereafter inure to the benefit of the Lava Hot Springs Foundation through its operation of the property of the said foundation, bathing facilities, pleasure resort, hospital or sanitarium. The foundation may also expend any other moneys that may be appropriated, donated, bequeathed or granted for the use of the foundation. Provided; that the appropriation herein made shall not be effective or the funds appropriated available during any period when the provisions of the Lava Hot Springs Foundation Act, Chapter 5 of the 1935 Session Laws, amendatory of Chapter 41, Title 65, Idaho Code Annotated, [sections 67-4401 — 67-4405] shall be suspended as herein provided. [1943, ch. 164, § 3, p. 342; am. 1989, ch. 176, § 1, p. 427.]

Compiler's notes. Section 4 of S.L. 1943, ch. 164 declared an emergency. Approved March 8, 1943.

67-4402. Powers and duties of foundation — Annual meeting. — The said foundation is hereby authorized and it is made its duty to take charge of all personal property and the lands and property of the state of Idaho situated within and near the village of Lava Hot Springs and hereinafter more fully described, to have a general supervision and control of all buildings, improvements, and property appertaining thereto. Said foundation shall have the authority to lease any real or personal property not used or needed by the foundation, to an individual or company, subject to approval by the board of examiners of the state of Idaho, for a period not exceeding ninety-nine (99) years, as the purposes of the corporation or individual may require, subject to such limitations as may be prescribed by law; to enter into contracts with federal, state, and local governmental agencies for flood control projects and measures, for multiple use water resource development, and for any other project or measure incidental or conducive to the attainment of the purposes of the foundation; and, in general, to exercise such powers as are incidental or conducive to the attainment of the purposes of the foundation. The said members of the said foundation shall meet annually during the month of January in each year and, in addition thereto, at such other times as the said members may prescribe. Any lease or leases made pursuant to the provisions of this section shall be exempt from the limitations as to term of lease set forth in section 58-307, Idaho Code. [1919, ch. 30, § 2, p. 108; C.S., § 1291; I.C.A., § 65-4102; am. 1935, ch. 5, § 2, p. 16; am. 1959, ch. 266, § 1, p. 561; am. 1965, ch. 108, § 1, p. 213; am. 1978, ch. 279, § 2, p. 677.]

Compiler's notes. Section 2 of S.L. 1965, ch. 108 declared an emergency. Approved

67-4403. Description of property. — 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 (¼) of the southwest quarter (¼), 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. [1919, ch. 30, § 3, p. 108; C.S., § 1292; I.C.A., § 65-4103; am. 1935, ch. 5, § 3, p. 16.]

67-4404. Superintendent and employees — Rules and regulations. — The said foundation shall have power to employ a superintendent of the hot springs and bathing facilities, necessary medical, surgical and other professional assistants, and to employ such other help as may be necessary, and to prescribe the duties of the said superintendent, medical, surgical and other professional assistants, and all other employees; it shall have power to remove the said superintendent, medical, surgical and other professional assistants, or other employees, at its pleasure, and shall make and ordain such rules and regulations for the conduct and administration of the said hot springs, bathing facilities and sanitarium and hospital as it shall deem necessary and proper. [1919, ch. 30, § 6, p. 108; C.S., § 1293; I.C.A., § 65-4104; am. 1935, ch. 5, § 4, p. 16.]

CHAPTER 44

LAVA HOT SPRINGS

SECTION.		SECTION.	
67-4401.	Management and control.	67-4406.	Lease of property authorized.
67-4402.	Powers and duties of foundation — Annual meeting.	67-4407.	Suspension of Lava Hot Springs Foundation Act upon leasing.
67-4403.	Description of property.	67-4408.	Appropriation for operation when not leased.
67-4404.	Superintendent and employees — Rules and regulations.	67-4409.	Lava Hot Springs capital improvement account.
67-4405.	Receipts and appropriation inuring to use of foundation		

67-4401. Management and control. — All right 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 hereby vested in the Lava Hot Springs Foundation which shall be an agency within the department of parks and recreation. Said foundation shall consist of five (5) members who shall be appointed by the governor and who shall hold office for a term of six (6) years, save and except the first members who shall be appointed by the governor as follows: one (1) to be appointed for a term of six (6) years, one (1) to be appointed for a term of four (4) years and one (1) to be appointed for a term of two (2) years, and thereafter as their terms expire the governor to appoint their successors for terms of six (6) years. At least one (1) member shall be a resident of the city of Lava Hot Springs. The members shall be compensated as provided by section 59-509(g), Idaho Code. The said foundation shall not receive any property from, nor operate any school,

college or institution of learning. [1919, ch. 30, § 1, p. 16; am. 1949, ch. 137, § 1, p. 242; am. 1974, ch. 8, § 18, p. 35; am. 1978, ch. 279, § 1, p. 677; am. 1980, ch. 247, § 84, p. 582; am. 1989, ch. 372, § 1, p. 420.]

Compiler's note. The act by which Lava Hot Springs was granted to the state is as follows: Chapter 1076 — An act to grant certain lands to the state of Idaho. Be it enacted by the senate and house of representatives of the United States of America in congress assembled, That lots 7 and 8 in section 21, northwest quarter of the southwest quarter, and lots 9 and 10 in section 22, all in township 9 south, range 38 east, base meridian, in the state of Idaho, are hereby ceded, granted, relinquished and conveyed unto the said state of Idaho, to be held by said state for public use under such regulations as said state may prescribe. Approved June 13, 1902, 32 St. L. 330.

Sections 17 and 19 of S.L. 1974, ch. 8 are compiled herein as §§ 67-4312 and 56-602.

Sections 83 and 85 of S.L. 1980, ch. 247 are compiled as §§ 67-4221 and 67-4704, respectively.

Section 26 of S.L. 1974, ch. 8 provided this act be in full force and effect on and after July 1, 1974.

Cross ref. Cession to federal government, §§ 58-703, 58-704.

Sec. to sec. ref. Sections 67-4401 — 67-4405 are referred to in §§ 67-4407, 67-4408.

ERY EVENING
EXCEPT SUNDAY

The Pocatello Tribune

TODAY'S NEWS
IN TODAY'S PAPER

Vol. I. Pocatello, Idaho, Wednesday Evening, June, 18 1902. No. 80

A GREAT RACE

Opening of Ft. Hall Reserve at Noon Tuesday.

A WILD CHASE FOR THE LAND

The Rush for the Land Office at Blackfoot That Followed—Progress of Special Scenes at Start—A Holiday.

The race for the lands and mines of the Fort Hall reservation lacked spectacular features. It was an interesting entertainment and the day was not without excitement. The whole population turned out to see the start of the race. The finish found a good many disappointed people and some happy ones. Good nature and a spirit of fair play were predominant.

The race began at noon, with the screaming whistle as the signal to start. The line-up for the race in Pocatello was from the southeastern boundary of the city. Many started from other points on the townsite boundaries and in every direction, but they went in small parties by twos and threes and one at a time. But just below the brickyard there was a regular line up, several hundred horsemen were drawn up in a fairly good line and there was a thousand or more people back of them to see them off.

On the big red bluff east of the city half the population of the city seemed to be gathered to see the start. The sky line was black with people. The tops of the trains of freight cars on the Oregon Short Line tracks were filled with spectators. There were several hundred people on the flat top of the brewery and the roof of every high building in the city was crowded with eager spectators.

Promptly at 12 o'clock the start was made. With the first hoarse scream of the whistle the motley crew of horsemen was off in a bunch and in a cloud of dust. A great cheer burst forth with the start. There was in the race a few wagons and one or two buggies. All were out of sight behind the Black Rocks in exactly one and a half minutes.

At the same instant smaller parties started for every other point of the compass. On the south side of the river there was quite a bunch of starters. Some headed up Pocatello creek, some due west over the mountains and still others north toward the few sections between the five mile limit and the southern boundary of the reservation.

It was but a short time until the race for the land office commenced. The men who set out for land knew where they were going and it didn't take them long to locate the spot. Most of them raced back to the city and waited for the special train but some had provided relays of swift horses and raced right through to Blackfoot. One after another they clattered through the city cheered on by their friends and were soon lost in the dust of the road leading to Blackfoot.

At exactly 12:55, W. D. Sweeney dashed in from the hills and filed first to send the first notice of mineral location in the Fort Hall mining district. He ran a big mine the "Blue Rock." He was followed closely by W. M. Nixon of Butte, who filed a water location appropriating all the waters of Gay creek.

At 1:07 Will Hillman rode in on a foam flecked horse from Topaz. He left Topaz at three minutes past 12 and was riding to beat the train to Blackfoot. He changed horses and kept right on. His ride was a feature of the most exciting race of the day.

The homeseeker's special, which left McCammon at 1:20, pulled in at 2:10 with every coach crowded. The run from Pocatello to Blackfoot a distance of twenty four miles, was made in 28 minutes.

The scene at Blackfoot was one of the wildest excitement. The entire population was out to see the train come in and long before it pulled up to the station, the men began to roll off. They fell all along the side of the moving train like sacks of grain tumbled from a loaded wagon. Some rolled down the embankment, turning over many times before they got to their feet. Some were badly bruised. J. A. McConeny was the first man off the train. He landed on his face and was somewhat scraped up. Meyers Cohn was off early too, and the side of his face touched the ground first and was badly skinned up. Others alighted in all conceivable positions, but all were up and running like deers for the land office. There was already a line some twenty deep at the land office door. For a few minutes all was confusion but it was soon all straightened out and the line, three or four hundred long, was pushed into shape and twisted back and forth up the street for nearly a block. All Blackfoot was looking on and willing to help keep things moving and inside the Land office, Register Thomas and Receiver Robertson went steadily on with the filings, each case being fully disposed of as it came on in its turn.

The arrangements for handling the crowd at the Land office were really very good. A narrow alley way was built that would admit of but a single file of men extended across the pavement. At the door of the Land office a special guard admitted but one at a time and his case was fully disposed of before another man got in. Col. Ferguson, special agent of the general land office, was in charge of these arrangements.

When 4 o'clock came, the land office closed. There were several hundred people still in line. The name of every man was taken and a number representing his place in the line was issued to him and the crowd was dismissed until 10 o'clock this morning. Many returned to Pocatello for the night and went up to Blackfoot on the early train this morning.

The day was without violence or accident. There were disappointments and kroo oses and there were a number of incidents that caused discontent and that will lead to many contests in the court. There was evidence of "sooners" and some indications of sharp practices, but on the whole fair play seemed to be the idea that prevailed and this spirit kept everybody fairly good humored in spite of disappointments.

FEELING UGLY TODAY

Prospects of Trouble At Blackfoot.

Many Contests are Being Filed and the Feeling Against "Sooners" is Getting Very Bitter.

Blackfoot, Idaho, June 18.—The crowds at the United States land office in this city continued unabated today. Many camped on the ground in front of the office all night, waiting to file on claims on the Fort Hall reservation. The struggle for the more valuable lands of the reservation is increasing. The feeling against "sooners," hundreds of whom eluded the Indian police and deputies yesterday and took up choice claims, is very bitter today and though no actual trouble so far has occurred it is likely looked for unless some of the pending contests are settled. Contests for choice lands are being filed steadily and the courts will be kept busy for months straightening out the tangles.

THE DAILY TRIBUNE, 75c PER MONTH.

HEAD WORK

T. F. Terrell Thinks its Lots Easier Than Racing.

MADE FIRST FILING ON LAND

The Great Race for the Topaz Ranch Which Met With Disappointment—Some Other Incidents.

The interesting features of the opening of the Fort Hall reservation yesterday are the incidents of the day. Those were serious enough to the interested parties but to those who were after neither lands nor mines were often highly amusing. The way the men tumbled off the moving train at Blackfoot would have made the proverbial rubber laugh if he had been present and the race from the train to the land office was a spectacle that would have made a wooden Indian in front of a cigar store grin. If there had been any in Blackfoot.

One of the features of the day was the filing made by Lieutenant Governor Thos. F Terrell. There is a particularly attractive piece of land up the canyon about seven miles, in back of the Black Rocks. At least a dozen of men had their eye on it and wanted it for their own, and they lined up below the brickyard at noon and made an honest run to get to it first. Clift Johnson won the race and turning, started for Blackfoot as fast as horseflesh could carry him. He made the total distance of forty-one miles from the south line of the city to the land and from the land to Blackfoot in two hours and one minute, using six horses, only to find that Mr. Terrell had gone leisurely to Blackfoot and shortly after noon stepped into the land office and filed upon that identical piece of land. Shortly after Mr. Terrell filed on the land Lawyer Sam Rich a brother of Judge Rich, filed a contest against the entry.

Mr. Terrell's filing was the first one made on Segravation land. He said, in explaining his position, that he believed that he had a legal right to make it. He was required to make an affidavit that he had been on the land prior to making his entry and was familiar with it, but nothing that specified that such personal knowledge of the land must be gained after 12 o'clock on the 17th. Mr. Terrell said that for more than a year past he had held a pass from Indian Agent Caldwell permitting him to camp and fish on the reservation and that he had, therefore, been lawfully upon the land in question prior to the opening of the reservation and had lawfully acquired his knowledge of the lands.

The entry, however, caused considerable feeling and much comment. It was freely stated that it was all a trick,—a prearranged scheme between Mr. Terrell and his friend Mr. Rich; that Mr. Terrell was to make the filing and Rich contest it, and having Terrell's filing set aside as illegal, Rich would gain a thirty-day preference right of entry and he and Terrell would then mutually enjoy the benefits. This was the view expressed by one of the land office officials as well as by outsiders. Mr. Terrell, however said that he was acting in good faith and on what he believed to be his rights under the law, and suggested that Rich was probably acting for Pocatello parties but whom, he said, he didn't know.

The most exciting race of the day was for the "Bob Smith" ranch at Topaz, an abandoned Indian farm and one of the finest pieces of land on the reservation. Stories brought from McCammon are that about thirty men wanted it and started for the land. Will Hillman, Claude Cottrell and

Continued on Page Six.

THE SOONERS

Were in Evidence all Over The Reservation.

SAT ON THE VERY BEST THINGS

Many Men Who Have Been Watching Prospects For Years Found Them Taken—Some Lucky.

This morning everybody in town is talking mines and lots of good stories are told. Almost every man you meet has one or two locations, but there is persistent iteration of the statement that "sooners" were found on almost every point run for with their notices and stakes up. There were no personal encounters but innumerable contests will probably follow the reports of "sooners" are borne out yet the fact that many men were seen coming in from the hills last evening with blankets on their backs or packing big overcoats and it is pretty certain that they didn't start in a race handicapped by any such paraphernalia.

The race for the Bella Marsh mine is said to have been fully up to expectations. Harry Ferguson, who came down from Boise to take part in it and who did take part in it, says that there were about a hundred men started for it. Some of them had relays of fresh horses stationed along the way and the finish was quite exciting. W. A. Clark of Butte and James A. Murray of Butte, are both said to have had men in the race and Willard, Green, a young fellow who got his notice onto the ground ahead of the other racers, is said to be one of Clark's men. The claim had, however, been staked when he got on the ground and was held by a party of locators, supposed to be "sooners." Two Butte men named Elliott and McCleary this morning claim that they were the first on the ground but that they were run on by the "sooners." These are supposed to have been Murray's men. Elliott says that they will contest the location. Green made the run for them and parties who saw it say it was a great run.

A pretty good story of the arrest of a party of eight well known Pocatello citizens before noon yesterday up about the head of Rabbit creek is being told around town this morning. Harry King, T. B. Smith, H. V. Platt and Chas. S. Spaulding are said to have been in the party. The Indian police held them until after the rush and the story as told around this morning is that they didn't get what they were after, but that they made other locations just as good.

Theodore Swanson made quite a race for something good that he thought he knew of at the head of Rabbit creek. He started out from the sand pit at the east end of Center street and rode right up over the hills, but Hat Eldredge beat him from some other point and had the claim located when he got there.

J. M. Ingersol made the race in a top buggy and a two-horse team of blacks. He drove right to his mine and located it. It is just above Mosquito Springs and he thinks a mighty good copper property. It never put down the top of his buggy.

Several placer locations were made on the Portneuf just above the city. H. B. Magill, A. W. Fisher, J. J. Elder, J. G. Briscoe, J. H. Beau, J. B. Wood, G. Parker and E. T. Sell each located 160 acres and O. L. Cleland and R. J. Hayes located 40 acres each just across the river from them.

George Kimpton located some claims up Trail creek. He is badly crippled and chased out in a farm wagon, but got there all the same.

Robert Peabody, John Kane and others are said to have gotten the whole mountain point just east of the city located.

Henry Lopes and George McCloud started out from the southern boundary of the town site and headed for the mine that Mr. Lopes has been watching for years down on the point of the mountain. They got there in time to get part of what they wanted, but only part of it. Some one was there before them and had staked part of what they wanted. There was some left, however.

E. M. Parkey set out for a mine in the same district and reports that when he got within sight of it, two men calmly walked into sight and staked off the claim. They had no horses in sight and it would be hard to persuade Mr. Parkey that they were not "sooners."

Several coal claims were located southeast of the city. A. J. Pierce and others located 160 acres as placer lands. Henry Allen and John Brett made filings partly on the same land, it is said. These parties are exhibiting some pretty good looking coal.

Quite a number of water locations were filed as well as locations of lands and mines. J.S. Campbell has posted his notice of appropriation of certain spring branches of Mink creek. Tom Halcomb got his notice on Spring creek and Gid Kimport gobbled up the waters of Black Rock creek. There were lots of others. A whole bundle of water locations from outside points have already come into the recorder's office.

The race made by Willard Green for the Bella Marsh mine is said to have been one of the prettiest of the day. He made the run on one sixteen year old horse against an opponent with three relays and won out by a foot race. His horse dropping before he reached the place but he ran and fell with his notice right onto the ground just ahead of the man behind him. That there were already locators on the claim doesn't detract any from the beauty of the race.

Dan Swinehart had intended to go after a mine. He owns three saddles and loaned out two of them. Somebody borrowed the third without asking him about it. When he went to saddle up for the race, he had no saddle and had to stay at home. He says that he is glad of it.

Thos. Hargraves and Walt. Hutson made a hot race—neck and neck—for a choice south of the city. Hargraves won by a neck but they got on the ground only to find three sooners with a jug of whiskey and their location notices all up. Mr. Hargaves, however, got a number of good locations.

John Frasier reports that his claim was gone, too. About thirteen years ago he gave an Indian a horse and as a return compliment the red man showed him a fine prospect about twenty miles below the city. He has watched it ever since and made a bee run for it. When he got there, however, some fellow was setting on it—a sooner, he is sure.

George Dash made a hot foot chase for some coal prospects and got some of them only. He was the third man in.

Wm. Kelly and John Dougherty, who were gathered in by the Indian police the day before the opening, are not discouraged. They still have mines in sight.

LAVA SPRINGS

Now Belong to State of Idaho For Medicinal Purposes.

Washington, D. C., June 16.—(Special).—The President has just signed the bill donating to the state of Idaho the lands on the Ft. Hall reservation described as the Lava Hot Springs, for medical purposes.

THE DAILY TRIBUNE 75c. PER MONTH

Entertainments

Tonight

"Jesse James" by the McCallum Stock Company.

COAL STRIKE

May Be Made General All Over the Country.

THERE WILL BE NONE TO BURN

If Coal Mining Ceases it Will Probably Stop Work in Many Factories and Cause Railroads Inconvenience.

Wilkesbarre, Pa., June 18.—President Mitchell called a national convention at Indianapolis at the earliest possible moment to consider the advisability of calling out all the soft coal miners of the United States. Mitchell says he cannot give the exact date on which the convention will be held.

President Mitchell was extremely uncommunicative as to what the probable action of the convention might be. If it should decide to inaugurate a national suspension of continuing everybody at strike headquarters believes it would have a disastrous effect upon the industries of the country. The supply of coal would soon become so short that large and small industrial establishments would be compelled to suspend operations. Many railroads would suffer seriously.

THE RAMPANT REBELS

Carry Everything Before Them in Venezuela.

The Situation is Said to be Very Critical so Far as the Government is Concerned—Cities Besieged.

Willemstad, Island Curacoa, Friday, June 13.—News reached here today of important successes of the Venezuelan revolutionists. After five hours fighting on June 11th a thousand revolutionists captured LaVela de Coro, a seaport town on the Gulf of Coro. Of the government forces twenty-seven men were killed and 128 captured. Coro, the capital of the state of Falcon, is besieged by the revolutionists and is expected to surrender at any moment.

CAME BY WAY OF BOISE

"Sooner" Said to have Gobbled the Best of It.

That is of the Mineral Land on the Reservation and the Gossip Here Indicates That the Report Has Some Foundation.

Boise, Idaho, June 18.—(Special).—Reports from Pocatello are to the effect that the "sooners" secured practically all the mineral ground in the ceded part of the Fort Hall reservation. It is claimed that they had stakes set before the signal was given and innumerable contests will follow.

WITHOUT ASKING

Pittsburg Steel Workers Get Advance In Wages.

Pittsburg, June 18.—Jones & Laughlins, iron and steel manufacturers, have voluntarily advanced the wages of all their employees excepting the tonnage men. The increase will average ten per cent and affects over 4000 men. The furnace employes of the Carnegie Steel company have been advanced during the week and it is understood all the day laborers at the mills of this company will be advanced.

THE DAILY TRIBUNE 75c Per Month

To: Gary Spackman, Hearing Officer

From: George W. Katsilometes, D.V.M., Ph.D.

Dear Mr. Spackman:

I am sending this fax to inform you that I have not received any correspondence from the Vargason's or their representatives regarding their applications for geothermal waters. This exchange was to take place on or before 5/7/96.

I would like to concur with Evelee Hill that the entire water situation vis-a-vis the geothermal water flowing and being pumped from the north side of the Portneuf in Lava Hot Springs should be discussed concurrently with the discussions regarding the Vargason applications. It is my view that the foundation is mandated to act in the public interest in their husbandry of this priceless resource and that they must be included in all discussions regarding the distribution of the waters they manage.

Thank you again for your patience and for answering our questions.

Very sincerely yours,

George W. Katsilometes, D.V.M., Ph.D.

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE

STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR PERMIT NO. 29-08162 AND FOR PERMIT NO. 29-08164 IN THE NAME OF LAZY V RANCH	**LIST OF WITNESSES AND EXHIBITS**

NOTICE

The undersigned is the initial list of witnesses and exhibits to be relied upon by Lazy V Ranch in the above matter.

Witnesses. The applicant has received the witness list of the protesting parties. The following witnesses are duplicate with such list.

1) Charles Sudwicks

2) Floyd Jensen

3) Bob Meline

4) Employee of the Department of Water Resources

Other Witnesses for the Applicant

1) Dave Loveless
2525 N. Fremont
Idaho Falls, ID 83415-3850
526-0851

2) Mike Winston and Jessica Winston
316 N. Hansen Ave.
Shelly, ID 83274
357-7400

Exhibits. Copies of potential exhibits intended to be offered are as follows: 1. Applications and documents on file with the Department of Water Resources; 2. Letters dated January 3, 1996 and January 23, 1996; 3. Diagrams, maps, and photographs in the possession of our attorney, Jones, Chartered, 415 South Arthur, Pocatello, Idaho, which are available for inspection upon prior appointment (copies of three diagrams/maps submittal herewith); 4. Easement Agreement with Lava Hot Springs Foundation; 5. Proposed Easement Agreement with Lava Hot Springs Foundation. 6. Easement description; and 7. Newspaper article dated Jan 9, 1996.

Attorney for Applicant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I mailed, or caused to be mailed, a true and correct copy of the foregoing, by placing same in the United States mail, postage prepaid, X; or hand delivered ___; or served by facsimile X, addressed as follows:

George W. Katsilometes
P.O. Box 670
Lava Hot Springs, ID 83246
Fax: 208-232-2170

John Mehlhaff
1424 High St.
Auburn, CA 95603
Fax: 208-232-2170

Evelee Hill Rush
P.O. Box 4905
Pocatello, ID 83205-4905
Fax: 208-232-2170

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

on this 9th day of May, 1996.

Jack H. Robison

Post-it™ brand fax transmittal memo 7671 | # of pages ▸ 4

To Karen Vaughan	From Keith C Wilson
Co.	Co. IDWR
Dept.	Phone # (208) 525-7166
Fax # 208 233 0317	Fax # (208) 525-7177

Ident. No. 29-8162

E OF IDAHO
F WATER RESOURCES

...ON FOR PERMIT

To appropriate the public waters of the State of Idaho

233-8011 (w)

1. Name of applicant LAZY "V" RANCH, INC Phone (208) 776-5409
   Post office address P.O. Box 268, Lava Hot Springs, Id 83246
2. Source of water supply Wastewater which is a tributary of Portneuf River
3. Location of point of diversion is ____ ¼ of NW ¼ of SE ¼, Govt. Lot 7
   Sec. 21 Township 9S Range 38E B.M. Bannock County; additional
   points of diversion if any: ____
4. Water will be used for the following purposes:
   Amount 3.00 (cfs or acre-feet per annum) for DIVERSION TO STORAGE purposes from 1/1 to 12/31 (both dates inclusive)
   Amount 0.5af (cfs or acre-feet per annum) for STORAGE FOR FISH Propagation purposes from 1/1 to 12/31 (both dates inclusive)
   Amount ____ (cfs or acre-feet per annum) for ____ purposes from ____ to ____ (both dates inclusive)
   Amount ____ (cfs or acre-feet per annum) for ____ purposes from ____ to ____ (both dates inclusive)
5. Total quantity to be appropriated is (a) 3.00 cfs (cubic feet per second) and/or (b) ____ (acre feet per annum)
6. Proposed diverting works:
   a. Description of ditches, flumes, pumps, headgates, etc. Waste water discharge pipe from Lava Hot Springs Foundation to Fish Propagation Ponds with discharge into the Portneuf River
   b. Height of storage dam 3 feet; active reservoir capacity 0.5 acre-feet; total reservoir capacity 0.5 acre-feet; period of year when water will be diverted to storage: 1/1 to 12/31 inclusive.
   c. Proposed well diameter is ____ inches; proposed depth of well is ____ feet.
   d. Is ground water with a temperature of greater than 85°F being sought? —
   e. If well is already drilled, when? —; Drilling firm —;
   Well was drilled for *(well owner)* —
7. Time required for the completion of the works and application of the water to be proposed beneficial use is 5 years *(minimum 1 year)*.

Assisted by
Received by Kaw Date 11/20/95 Time 1500hrs Preliminary check by _____

Fee $ 140.00 Receipted by Kaw # E021725 Date 11/20/95

Publication prepared by RB Date 12-21 & 28-95 Published in Weekly State Journal

Publication approved _____ Date _____

ACTION OF THE DIRECTOR, DEPARTMENT OF WATER RESOURCES

This is to certify that I have examined Application for Permit to appropriate the public waters of the State of Idaho No. _____, and said application is hereby _____.

1. Approval of said application is subject to the following limitations and conditions:

   a. SUBJECT TO ALL PRIOR WATER RIGHTS.

   b. Proof of construction of works and application of water to beneficial use shall be submitted on or before _____, 19____.

   c. The rate of diversion, if water is to be used for irrigation under this permit, when combined with all other water rights for the same land shall not exceed 0.02 cubic feet per second for each acre of land.

   d. The water right acquired under this permit if for hydropower purposes shall be junior and subordinate to all rights to the use of water, other than hydropower, within the State of Idaho that are initiated later in time than the priority of this permit and shall not give rise to any right or claim against any future rights to the use of water, other than hydropower, within the State of Idaho initiated later in time than the priority of this permit.

   e. Other:

8. Description of proposed uses (*if irrigation only, go to item 9*):

a. Hydropower; show total feet of head and proposed capacity in KW. _____

b. Stockwatering; list number and kind of livestock. _____

c. Municipal; show name of municipality. _____

d. Domestic; show number of households. _____

e. Other; describe fully. Fish Propagation using Geothermal wastewater from Lava Hot Springs Foundation

9. Description of place of use:

a. If water is for irrigation, indicate acreage in each subdivision in the tabulation below.

b. If water is used for other purposes, place a symbol of the use (*example: D for Domestic*) in the corresponding place of use below. See instructions for standard symbols:

TWP	RANGE	SEC.	NE¼				NW¼				SW¼				SE¼				TOTALS
			NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	
9S	38E	21									LL H								

Total number of acres to be irrigated _____

10. Describe any other water rights used for the same purposes as described above. 29-7847

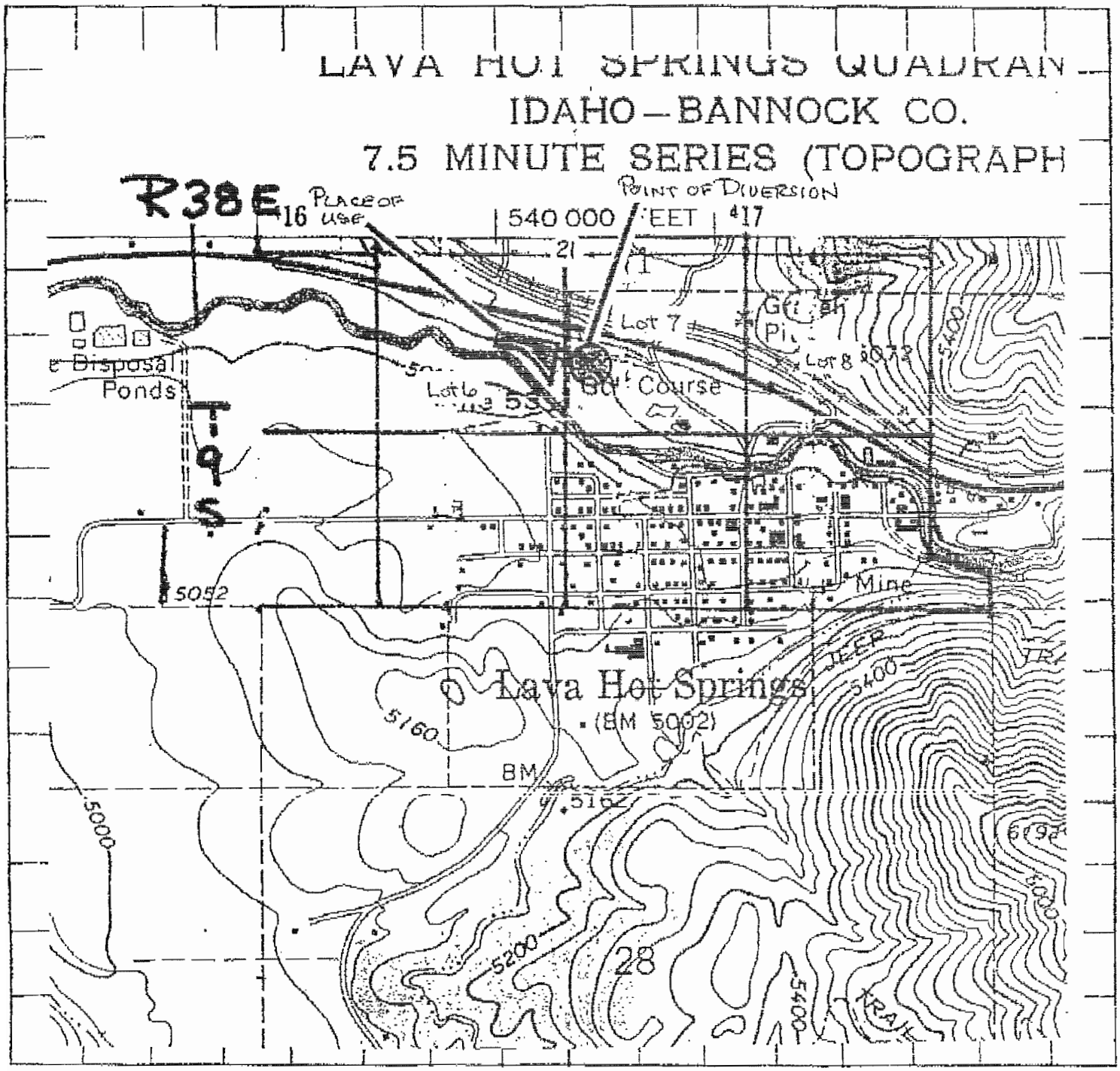
11. a. Who owns the property at the point of diversion? Lava Hot Springs Foundation.

b. Who owns the land to be irrigated or place of use? Applicants

c. If the property is owned by a person other than the applicant, describe the arrangement enabling the applicant to make this filing. _____

12. Remarks: Pres: Thayne E. Vargason > officers of Lazy V. Ranch.
Sec-Treas: Karen Vargason

13. Map of proposed project: show clearly the proposed point of diversion, place of use, section number, township and range number.



Scale: 2 inches equal 1 mile.

BE IT KNOWN that the undersigned hereby makes application for permit to appropriate the public waters of the State of Idaho as herein set forth.

(Applicant)

Form 202
10/82

Ident. No. _____

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
APPLICATION FOR PERMIT

To appropriate the public waters of the State of Idaho

1. Name of applicant Lazy "V" Ranch Inc Phone 208 233-8011 (w) 776-5409

   Post office address P.O. Box 268 Lava Hot Springs Id 83246

2. Source of water supply Spring which is a tributary of Portneuf River

3. Location of point of diversion is SE ¼ of NE ¼ of SE ¼, Govt. Lot 8

   Sec. 21 Township 9S Range 38E B.M. Bannock County; additional

   points of diversion if any: _____

4. Water will be used for the following purposes:

   Amount 7.00 (cfs or acre-feet per annum) for Diversion to Storage purposes from 1/1 to 12/31 (both dates inclusive)

   Amount _____ (cfs or acre-feet per annum) for STORAGE FOR Fish Propagation purposes from 1/1 to 12/31 (both dates inclusive)

   Amount _____ (cfs or acre-feet per annum) for _____ purposes from _____ to _____ (both dates inclusive)

   Amount _____ (cfs or acre-feet per annum) for _____ purposes from _____ to _____ (both dates inclusive)

5. Total quantity to be appropriated is (a) 7.00 cfs (cubic feet per second) and/or (b) _____ (acre feet per annum)

6. Proposed diverting works:

   a. Description of ditches, flumes, pumps, headgates, etc. Geothermal Springs on Lava Hot Springs foundation land, for Fish Propagation Ponds discharged into Portneuf River

   b. Height of storage dam 3 feet; active reservoir capacity 0.5 acre-feet; total reservoir capacity 0.5 acre-feet; period of year when water will be diverted to storage: 1/1 to 12/31 inclusive.

   c. Proposed well diameter is - inches; proposed depth of well is - feet.

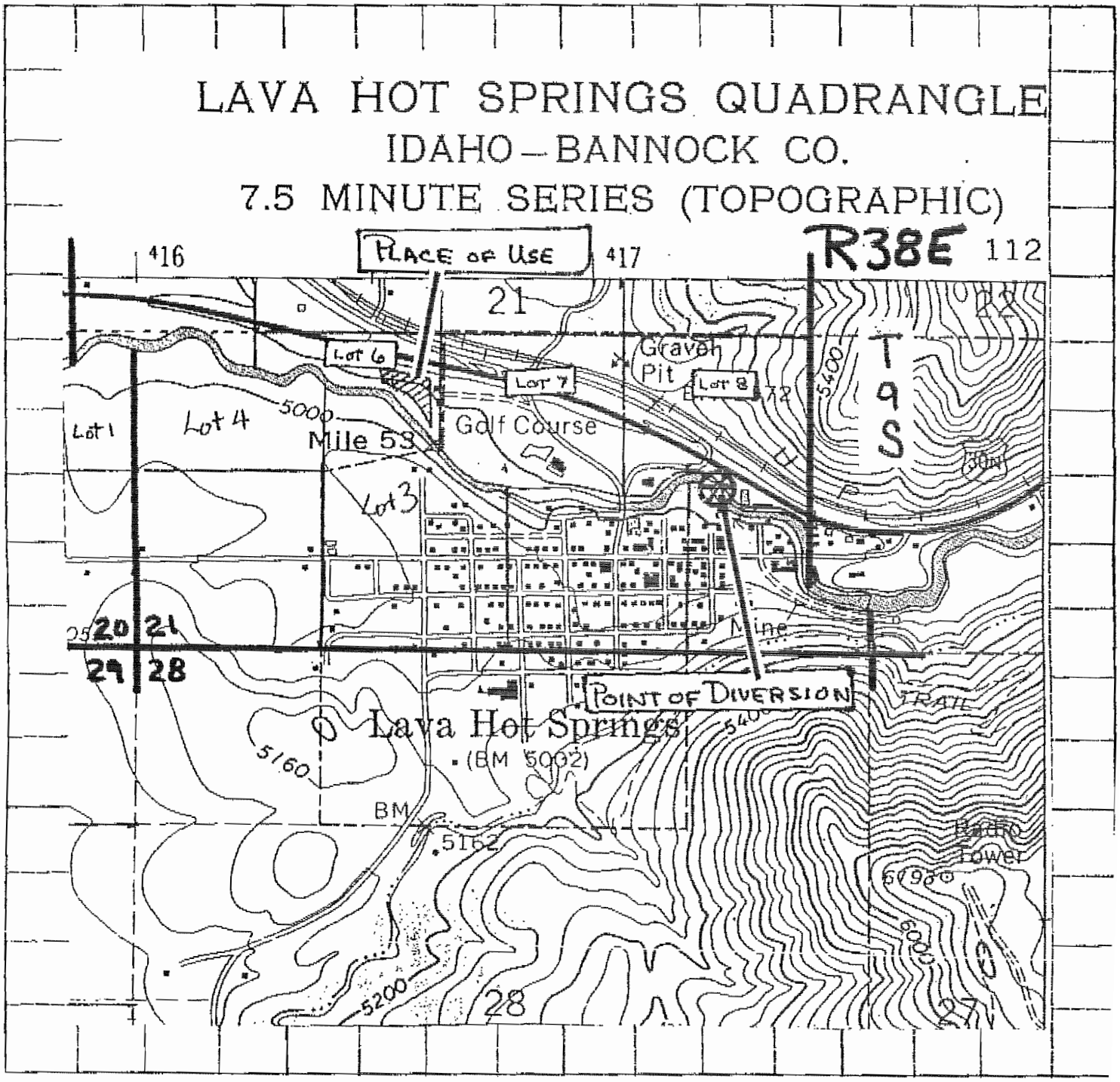
   d. Is ground water with a temperature of greater than 85°F being sought? -

   e. If well is already drilled, when? -; Drilling firm -;

   Well was drilled for *(well owner)* -

7. Time required for the completion of the works and application of the water to be proposed beneficial use is 5 years *(minimum 1 year)*.

13. Map of proposed project: show clearly the proposed point of diversion, place of use, section number, township and range number.



Scale: 2 inches equal 1 mile.

BE IT KNOWN that the undersigned hereby makes application for permit to appropriate the public waters of the State of Idaho as herein set forth.

(Applicant)

8. Description of proposed uses (*if irrigation only, go to item 9*):
   a. Hydropower; show total feet of head and proposed capacity in KW. _____
   b. Stockwatering; list number and kind of livestock. _____
   c. Municipal; show name of municipality. _____
   d. Domestic; show number of households. _____
   e. Other; describe fully. Fish Propagation using Geothermal Water

9. Description of place of use:
   a. If water is for irrigation, indicate acreage in each subdivision in the tabulation below.
   b. If water is used for other purposes, place a symbol of the use (*example: D for Domestic*) in the corresponding place of use below. See instructions for standard symbols.

TWP	RANGE	SEC.	NE¼				NW¼				SW¼				SE¼				TOTALS
			NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	
9S	38E	21									46 H								

Total number of acres to be irrigated _____

10. Describe any other water rights used for the same purposes as described above. 29-7847

11. a. Who owns the property at the point of diversion? Lava Hot Springs Foundation
    b. Who owns the land to be irrigated or place of use? Applicants
    c. If the property is owned by a person other than the applicant, describe the arrangement enabling the applicant to make this filing. _____

12. Remarks: Pres: Thayne E Vargason & officers Lazy "V" Ranch
    Sec Trea: Karen Vargason

Assisted By Kaw 1/5/96
Received by Kaw Date 1/5/96 Time 1617 hrs Preliminary check by _____

Fee $ 220.00 Receipted by Kaw # E0 21819 Date 1/5/1996

Publication prepared by _____ Date _____ Published in _____

Publication approved _____ Date _____

ACTION OF THE DIRECTOR, DEPARTMENT OF WATER RESOURCES

This is to certify that I have examined Application for Permit to appropriate the public waters of the State of Idaho No. _____, and said application is hereby _____.

1. Approval of said application is subject to the following limitations and conditions:

   a. SUBJECT TO ALL PRIOR WATER RIGHTS.

   b. Proof of construction of works and application of water to beneficial use shall be submitted on or before _____, 19 ____.

   c. The rate of diversion, if water is to be used for irrigation under this permit, when combined with all other water rights for the same land shall not exceed 0.02 cubic feet per second for each acre of land.

   d. The water right acquired under this permit if for hydropower purposes shall be junior and subordinate to all rights to the use of water, other than hydropower, within the State of Idaho that are initiated later in time than the priority of this permit and shall not give rise to any right or claim against any future rights to the use of water, other than hydropower, within the State of Idaho initiated later in time than the priority of this permit.

   e. Other:

IDAHO FISH & GAME

SOUTHEAST REGION
1345 Barton Road
Pocatello, Idaho 83204-1819

January 3, 1996

Phil Batt / Governor
Jerry M. Conley / Director

Harold W. Jones
Water Right Supervisor
Idaho Department of Water Resources
900 N. Skyline Dr.
Idaho Falls, ID 83402-1718

Re: Application 29-08162 - Lazy V Ranch, Inc.

Dear Skip,

Department personnel have reviewed the application by Lazy V Ranch, Inc. (Thayne and Karen Vargason) to appropriate 3 cfs of heated wastewater for fish propagation, have discussed the application with the applicants and have no objection to the permit issuance. However, we have some comments regarding the planned use of this water.

Private fish ponds require a permit from our Department and commercial fish ponds require a permit from the Idaho Department of Agriculture. If this will be a commercial facility, we would have concerns regarding the nutrient content of the effluent and its impact to the Portneuf River. A commercial facility may require a National Pollution Discharge Elimination System (NPDES) Permit which is the jurisdiction of Idaho Division of Environmental Quality and the U.S. Environmental Protection Agency. We also have concerns regarding the species of fish propagated and their disease status. We would caution the applicants that the acquisition of supplemental permits are separate processes and not insured by the issuance of a water right.

Thank you for the opportunity to review this application and provide input.

Sincerely:

Greg Tourtlotte
Regional Supervisor

cc: Jim Lukens
Chris Bocek
Natural Resources Policy Bureau
Division of Environmental Quality, Pocatello
Dr. Mamer, Idaho Department of Agriculture, Division of Animal Industries
Thayne and Karen Vargason

IDAHO FISH & GAME
SOUTHEAST REGION
1345 Barton Road
Pocatello, Idaho 83204-1819

Phil Batt / Governor
Jerry M. Conley / Director

January 23, 1996

Harold W. Jones
Water Right Supervisor
Idaho Department of Water Resources
900 N. Skyline Dr.
Idaho Falls, ID 83402-1718

Re: Application 29-08164 - Lazy V Ranch, Inc.

Dear Skip,

Department personnel have reviewed the application by Thayne and Karen Vargason, owners of the Lazy V Ranch, to appropriate 7.0 cfs of geothermal water from Lava Hot Springs Foundation for fish propagation and have no objection to the permit issuance.

In our response to application 29-08162 we identified concerns related to the use of the water and additional permits which may be required. The same comments apply to this application since appropriated water will be used in the same aquaculture endeavor.

Thank you for the opportunity to review this application and provide input.

Sincerely:

Greg Tourtlotte
Regional Supervisor

GT/JL/jl

cc: Jim Lukens
Chris Bocek
Natural Resources Policy Bureau
Division of Environmental Quality, Pocatello
Thayne and Karen Vargason

1/23/96

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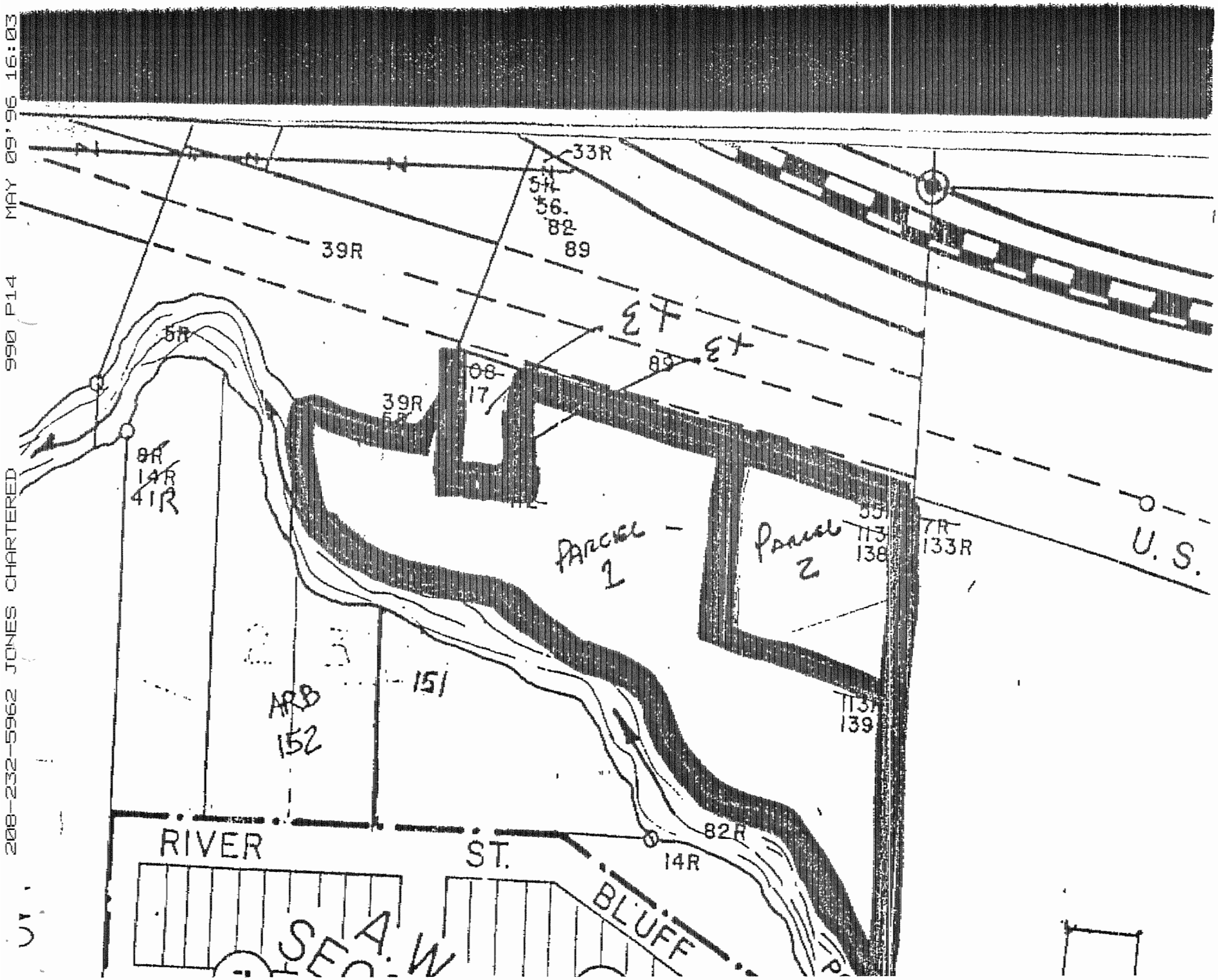

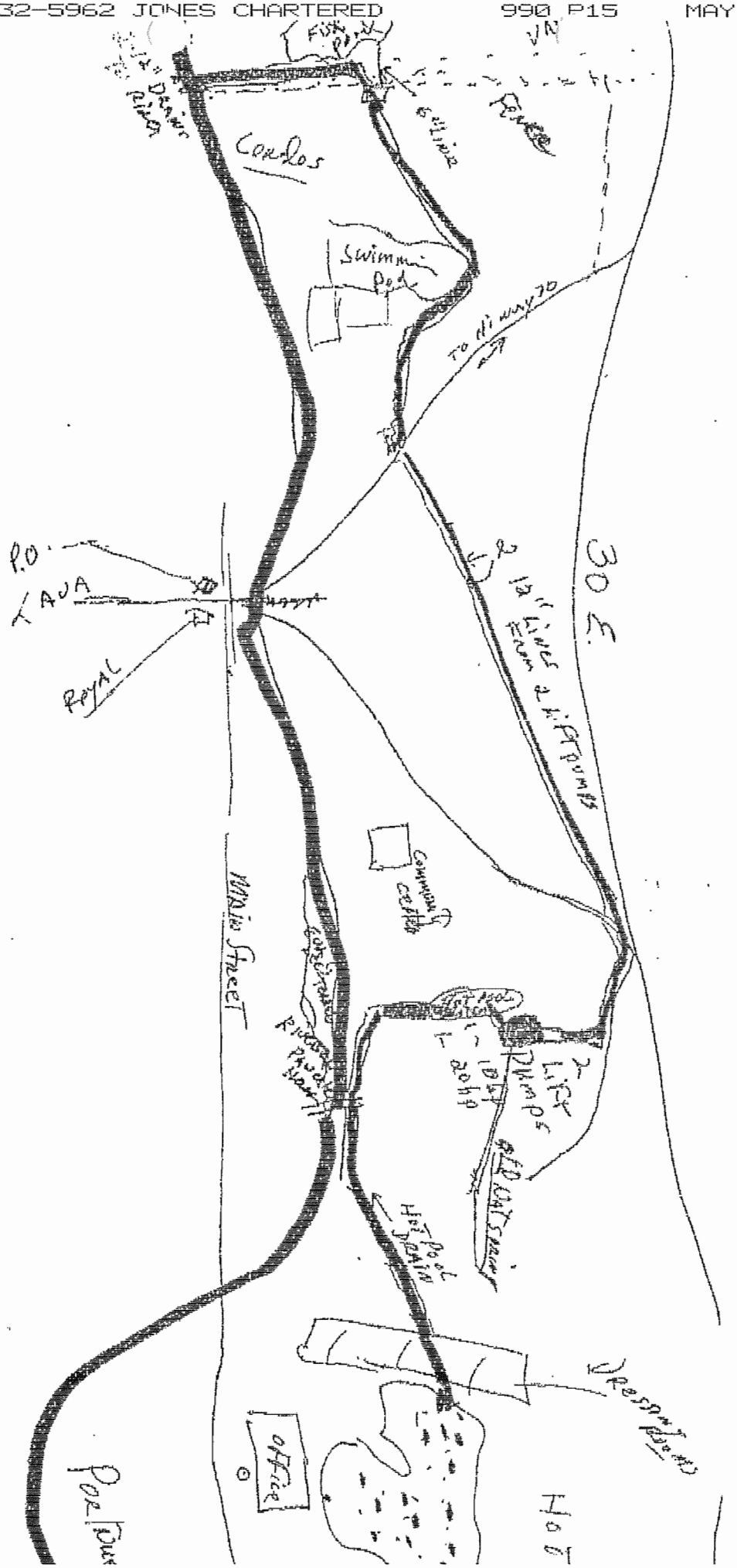
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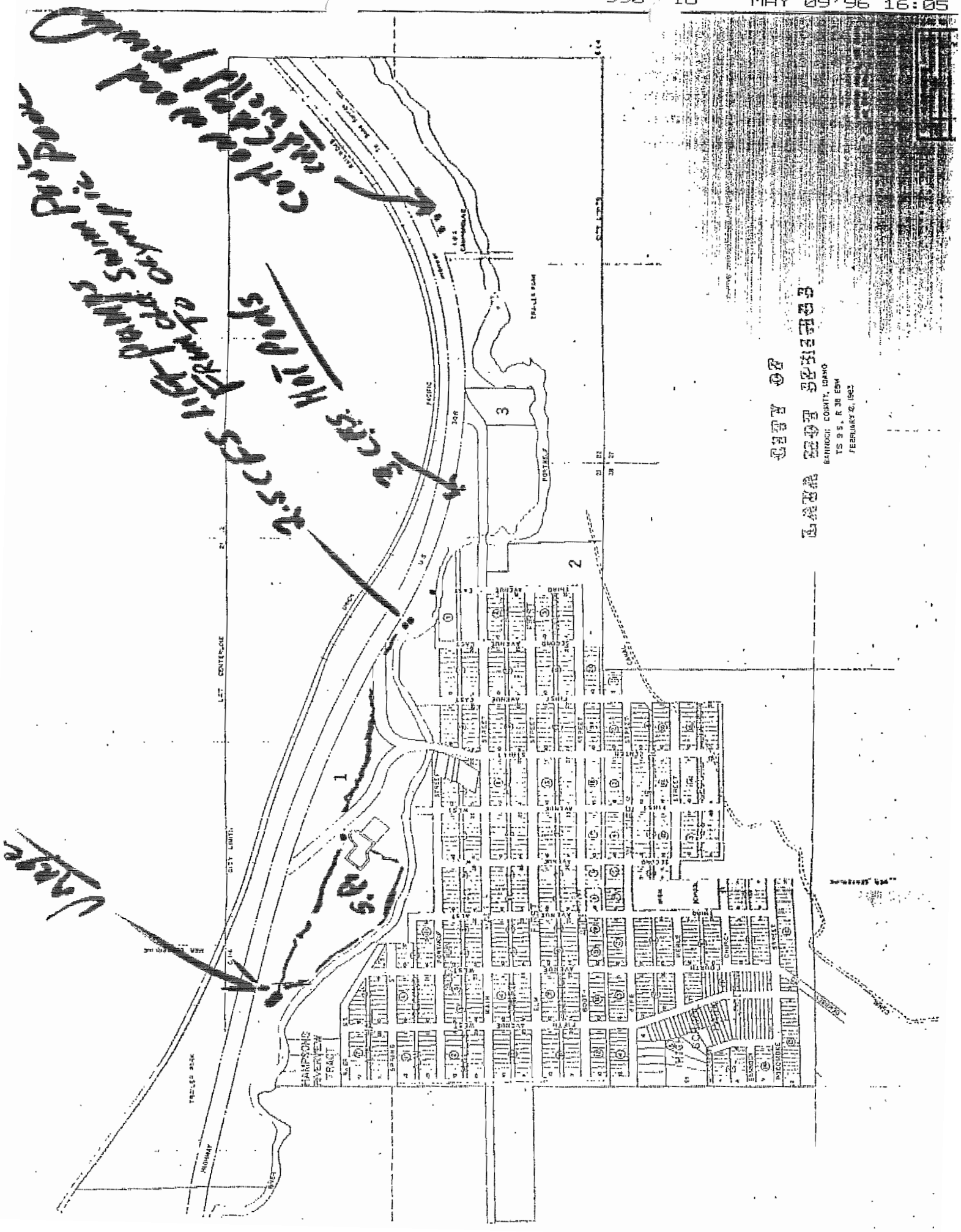
CITY OF
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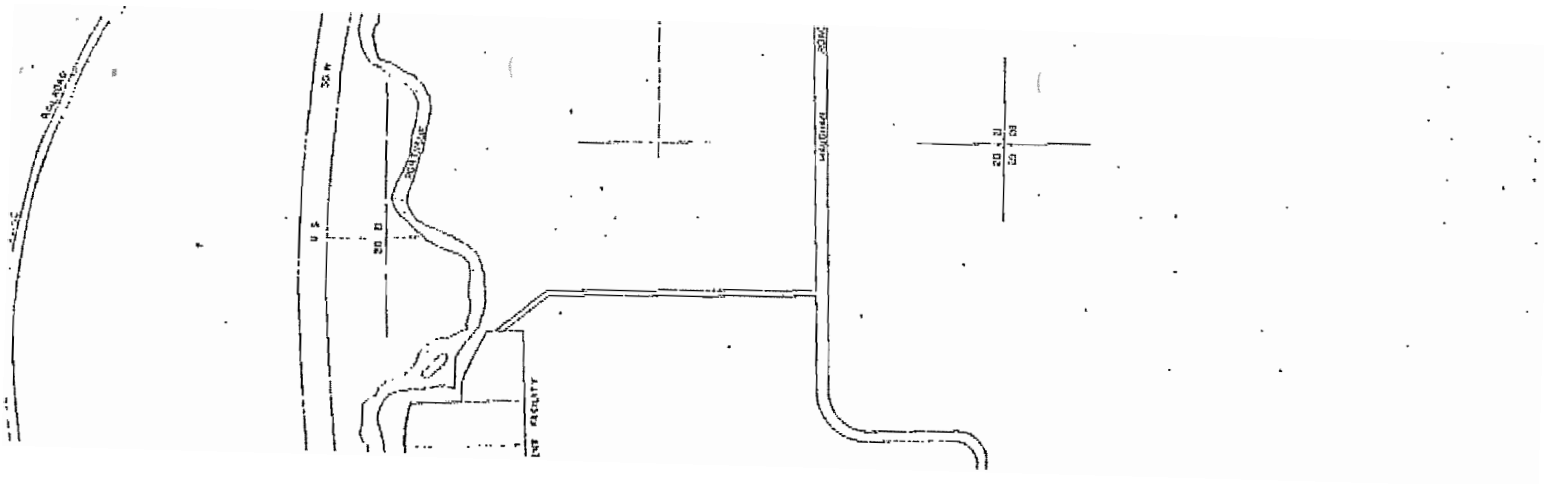


Butcher Block Wholesale Meats

758 South Main, Pocatello, Idaho 83204 • (208) 233-8484

May 15, 1991

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

ATTENTION: Mr. Bob Meline
Executive Director

This is a Letter of Consideration for use of the excess hot water that the Lava Hot Springs Foundation utilizes in their facilities.

This proposed hot water is the hot water above and beyond that which has alreay been dedicated for use by the Lazy V Ranch in exchange and in lieu of cash payment for an easement granted to the Lava Hot Springs Foundation by the Lazy V Ranch on their property.

Thanking you in advance for your consideration in this matter, I remain

Sincerely yours,

Lazy V Ranch

Thayne Vargason

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

1/31/91

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

1/29/91

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

1/29/91

DRAFT

EASEMENT AGREEMENT

THIS AGREEMENT entered into this _____ day of _____, 1996, between the Lava Hot Springs Foundation ("Foundation") and Lazy V. Ranch, ("LVR").

R E C I T A L S

1. Foundation is the owner and holder of water licenses issued by the State of Idaho which are superior to all water rights to be perfected by LVR under Idaho State Water Permits Numbers 29-08162 and 29-08164.

2. LVR and Foundation have entered into one Easement Agreement covering some of the waste waters flowing from Foundation property and now used by LVR; LVR now requests and Foundation is willing to grant another Easement for a pipeline to transport the remaining Foundation waste water across another portion of Foundations property upon the terms and conditions contained herein.

NOW THEREFORE, in consideration of the provision contained herein and the recitals set forth above, which are a material part of this Agreement, the parties agree as follows:

1. Foundation for the sum of $10.00 and the mutual covenants contained herein and other valuable consideration, receipt of which is hereby acknowledged, hereby grants and conveys to LVR, its successors and assigns, a right of way and Easement in common with Foundation for a water line to be constructed and buried by the LVR upon the center line of the following described Foundation property.

Together with the right of ingress and egress when necessary to maintain, repair and replace the water line from time to time solely at LVR's expense.

2. LVR shall at all times maintain the pipeline in a water tight condition.

3. LVR, as additional consideration to Foundation for the foregoing easement, covenants and agrees with Foundation that:

a. LVR's water permits only grant it the right to use waters resulting after the beneficial use of waters by Foundation under its license(s).

b. LVR shall forever indemnify, save and hold harmless the Foundation of and from any damage whatsoever kind or character suffered by LVR resulting from the diminished flow or discontinued flow of Foundation water or waste water.

c. LVR shall forever indemnify, save and hold harmless the Foundation of and from any liability or damages that may result to the Foundation, or any third party, by reason of a break or rupture of the water line to be placed on Foundations property by LVR regardless of the cause of such break or rupture.

d. That from time to time, at Foundation's option and expense, the water line easement herein granted and a pipeline of equal or greater size may be relocated upon Foundations property so long as the free flow of Foundation's water through the relocated pipeline shall not be impaired.

4. The water line easement herein granted shall be appurtenant to and shall be perpetual unless sooner terminated by the mutual written agreement of the parties, their successors or assigns.

5. This Easement Agreement shall be binding upon the respective parties, their successors and assigns.

LAVA HOT SPRINGS FOUNDATION

BY_____
EXECUTIVE DIRECTOR

LAZY V. RANCH

_____
KAREN VARGASON

HARPER - LEAVITT ENGINEERING, INC.

PROFESSIONAL ENGINEERING, MATERIALS TESTING & LAND SURVEYING

800 W. Judicial St. • P.O. Box 866
Blackfoot, Idaho 83221
(208) 785-2977

985 N. Capital Ave. • P.O. Box 50691
Idaho Falls, Idaho 83405
(208) 524-0212

ANYONE MAKING CHANGES IN THE FOLLOWING DESCRIPTION ASSUMES FULL RESPONSIBILITY FOR THE ENTIRE CONTENTS. THERE HAS BEEN NO SEARCH ON SAID DESCRIPTION FOR ENCROACHMENTS EITHER PHYSICAL OR WRITTEN EXCEPT FOR THOSE AS SHOWN ON THE ACCOMPANYING PLAT, (IF PLAT IS REQUIRED) THEREFORE WE ASSUME NO RESPONSIBILITY FOR ANY ERRORS OR OMISSIONS HEREIN.

FOR: LAVA FOUNDATION
JOB NO: 90123
BY: BDJ
DATE: MAY 7, 1991
REVISED:

30 FOOT EASEMENT

Part of the S.W. 1/4 of Section 21, Township 9 South; Range 38 East, B.M., Bannock County, Idaho described as:

Beginning at a point that is S 00° 18' 18" W 2643.16 feet along the section line and S 89° 38' 18" E 2639.02 feet along the east-west center section line to the center of said section as described on Lava Hot Springs Condominium project Instrument No. 580277 and S 00° 18' 15" W 593.93 feet all from the northwest corner of said Section 21 and running thence S 00° 18' 15" W 282.31 feet to the bank of the Portneuf River; thence N 43° 42' 32" W 43.18 feet along said bank; thence N 00° 18' 15" E 256.06 feet; thence S 80° 36' 26" E 30.38 feet to the point of beginning.

Easement contains 0.19 acres.

A fish tale with a surprise ending

Science students from Shelley High School's 'Solutions' class have found that where there's enthusiasm, there are no limits to what one can accomplish.

Story by
Rick Bolton

Photos by
Karen Vargason

SHELLEY HIGH school students Brian Bolander, Jessica Winston and Teresa Rodriguez haul in tilapia fish at the Lava Hot Springs demonstration project.

Students learn teamwork ...

In taking on a real-world challenge, Science Action Team students met and worked with the people who can make things happen.

Karen Hollister of the INEL Institute's Academic and Education Relations Office said, "In research, you don't always find the answer right away. These students learned how to be tenacious. They had to learn to talk to scientists and members of the community to convince them to be involved and work together."

Among the organizations the students contacted for assistance were the Idaho Natural Resources Department, the city of Lava Hot Springs, Idaho Department of Fish and Game, Soil and Water Conservation District, the Idaho Aquaculture Institute, University of Idaho, Idaho State University and public schools.

"These kids have just taken the ball and run with it," said the INEL Institute's Julene Messick, who was instrumental in establishing the Science Action Team program.

Teacher Mike Winston said students working on this project are getting a big-picture view. They gain knowledge in water quality, fish diseases, aquaculture water and nutrient requirements, and marketing of tropical fish. They look at fish and game concerns, and even become familiar with how agencies and organizations work together.

"We classified this as an environmental project," Winston said. "When students pick a project, they pick something in an area they want to explore. These students were interested in environmental careers, so they selected this one."

Best of all, Winston said, the students "have all witnessed a real change in their abilities to communicate, to work with groups and deal with technical adults."

Property owner Karen Vargason, the fish caretaker, said this has been the most wonderful experience of her life. The students always behaved in a professional manner, she said.

"I've never been so impressed with a group of young men and women. I think you are going to go somewhere," she said.

Given the opportunity to experiment with raising fish in warm water runoff at Lava Hot Springs, a student-led project has shown that a tropical fish species can thrive in warm spring water of southeastern Idaho.

Students Teresa Rodriguez, Jessica Winston, Rebecca Lisonbee and Brian Bolander are part of an INEL Science Action Team, which brings them together with teachers and professional scientists and engineers. The team goal is similar to that of the "Solutions" class — to solve a community problem by applying scientific or engineering expertise. In May, the students took 650 donated tilapia fish and — with the help of property owners Karen and Thayne Vargason who fed the fish — increased their numbers to more than 40,000 by November.

The demonstration project — a partnership among the students, the INEL, Lava Hot Springs Foundation, private landowners and a fish farmer — has been so productive they're now looking into establishing a commercial business, a private fish hatchery or a public fish research center. Their project could ultimately bring jobs to the community of Lava Hot Springs.

"They're excited because when they started the project (in the spring of 1995), nobody thought it would work," said Mike Winston, Shelley science teacher. "They've overcome political and technical issues."

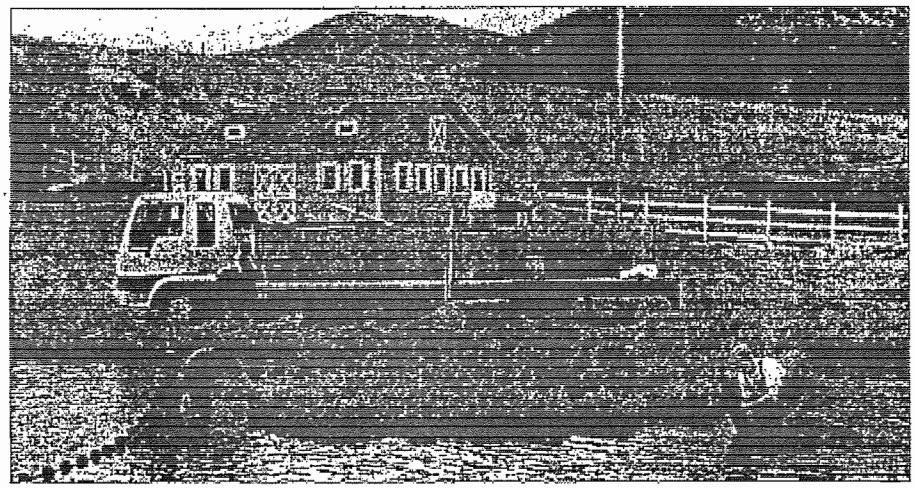
Applying technology locally

The students' enthusiasm is contagious. All of the adults who are assisting them appear just as excited as the teens over their success.

Don Campbell — former executive director of the Idaho Aquaculture Association who raises catfish and tilapia near Buhl — served as a mentor by teaching the students the intricacies of fish farming. He said his biggest reward is seeing the students learn and grow.

"These students are learning persistence, commitment and dedication," Campbell said. "That's how you succeed. They are examples of the high caliber of young people we have in Idaho. You give them an opportunity, and they'll succeed."

It all began when the Vargasons approached the Lava Hot Springs Foundation, a state organization that manages the hot springs, about raising tropical fish in a pond on their property in Lava.



BRIAN BOLANDER, right, and fish farmer/consultant Don Campbell, left, use a net to encircle tilapia tropical fish at the demonstration pond at Lava Hot Springs. Harvested tilapia were transported to Buhl, where they are raised to a marketable size.

The Foundation contacted the INEL about assisting with the venture. The Technology Transfer office of Lockheed Martin Idaho Technologies worked with the company's INEL Institute to find high school students to form a Science Action Team.

Dave Loveless, a technology transfer specialist with Lockheed Martin Idaho Technologies, said the project fit well with one of the Department of Energy's INEL missions — research into the uses of geothermal energy.

"While geothermal energy cannot compete with oil and gas prices, there are other uses for the energy," Loveless said. "The project also meshes with the INEL agriculture program, which is trying to get its technologies to the communities and farmers of Idaho."

Raising African fish

Shelley students were eager to take on this project. They studied aquaculture by calling up data on the Internet, and gleaned more information from Dave Bruner, an Idaho State University ichthyologist, and Campbell, who travels widely as an aquaculture consultant. They recommended trying to raise tilapia. These colorful, bright fish from Africa grow quickly in 87- to 90-degree Fahrenheit water with ideal mineral content. After reaching adult size in a few months, they weigh an average of two pounds, and sell well in fish markets. Some say they taste similar to orange roughy.

Students designed and built a large metal fish cage for the pond, and the Shelley Education Foundation paid for supplies. They cleaned out some of the moss in the pond, and when the pond looked ready, they dumped the 650 donated tilapia into the pond last May.

At Lava, the warm-water springs have the largest flow of any springs in the intermountain area — 10 cubic feet per second. Through the Lava Hot Springs Foundation, warm water runoff from swimming pools is channeled into a fish pond on the Vargasons' property. From the pond, it flows into the Portneuf River just as it would if it hadn't been diverted.

Although the fish do pollute the pond water somewhat, natural techniques remove most pollutants. New techniques developed by the Idaho Aquaculture Association and College of Southern Idaho for construction of fish farms greatly reduce suspended solids (fish waste). And because there are natural biofiltration systems, including such things as cattails, a fish research pond or commercial fish pond could use these systems year-round so when the water leaves, it is as clean as it was when it went into the pond.

The pond is screened so the tilapia cannot escape into the Portneuf River. If they did, they would not survive because the river water is too cold for the tropical fish.

Karen Vargason fed and cared for the tiny fish, which she calls "my babies." The students monitored the water and the condition of the fish. By July, they had spawned to 10,000 fingerlings, and in November, the students harvested about 15,000 fish — enough to pay for the expense of the feed and transportation to Buhl, where Campbell will raise them to marketable size.

Looking at a viable operation

At a meeting Dec. 14 in the Engineering Research Office Building, those involved in the project praised each other for their success and cooperation. They cautioned that before the project can be turned into a commercial success, a number of hurdles — technical, political and economic — need to be studied and resolved— such as whether aquaculture is the best use of the warm water, and whether it's feasible to route enough water to make a commercial operation viable.

They seemed certain that this "star" Science Action Team project could overcome any hurdles, especially because there is an expanding market for tilapia grown in Idaho.

Bob Meline, Lava Hot Springs Foundation director, said with everyone's cooperation, the project is succeeding.

Winston credited Loveless with having a vision for the project. "But when it came down to doing it," Winston said, "nobody thought the project would amount to anything. Now to harvest so many fish and to have closure . . . that's a huge payoff for these kids."

Loveless said seeing students succeed in a project like this gives him the same sense of reward he got when he watched a space shuttle rocket launch, and knew that as an employee of the Kennedy Space Center at Cape Canaveral, he had a small part in making it happen.

"This is a good example of how the INEL, a school, a local community and the state can work together to create the potential for jobs for the future," he said.

DON CAMPBELL, left, Buhl fish farmer who donated the tilapia, helps student Teresa Rodriguez as they harvest the fish.

TILAPIA FLOP in one of the nets used to harvest them from the pond.

Post-It® Fax Note 7671	Date 5-8-96	# of pages ▶ 1
To Gary Spackman	From Evelee Hill	
Co./Dept. IDWR	Co.	
Phone #	Phone # 208-232-2139	
Fax # 208-327-7866	Fax # 208-232-2170	

May 8, 1996

Mr. Gary Spackman
Hearing Examiner
Idaho Department of Water Resources
Boise, Id
FAX 208-327-7866

Re: Permit hearing for Lazy V Ranch, #s. 29-08162 and 29-08164

Dear Gary,

Thank you for acknowledgment of my fax sent yesterday evening. The exhibits were mailed this morning. All correspondence and exhibits were faxed to Lamont Jones office last night. No information written or verbal has been received from Lamont Jones office or Caren Vargason to date. The notice of hearing listed May 7, 1996 as the date for exchange. Given the amount of information and the witness list request, a postponement of the hearing would be acceptable to me.

Sincerely yours,

Evelee Hill

cc Lamont Jones
Caren Vargason

SENDER:
- Complete items 1 and/or 2 for additional services.
- Complete items 3, and 4a & b.
- Print your name and address on the reverse of this form so that we can return this card to you.
- Attach this form to the front of the mailpiece, or on the back if space does not permit.
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JOHN MEHLHAFF
1424 HIGH ST
AUBURN CA 95603

4a. Article Number
P581145519

4b. Service Type
☐ Registered ☐ Insured
☒ Certified ☐ COD
☐ Express Mail ☐ Return Receipt for Merchandise

7. Date of Delivery

8. Addressee's Address (Only if requested and fee is paid)

5. Signature (Addressee)
John Mehlhaff

6. Signature (Agent)

AUBURN CA 95603 APR 25 1996 USPS

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PS Form 3811, November 1990 ☆U.S. GPO: 1991—287-066 DOMESTIC RETURN RECEIPT

UNITED STATES POSTAL SERVICE

Official Business

RECEIVED
APR 29 1996
Department of Water Resources

U.S. MAIL

PENALTY FOR PRIVATE USE, $300

Print your name, address and ZIP Code here

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
1301 NORTH ORCHARD STREET
BOISE, IDAHO 83706-2237

Attn: K Rhodes

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3. Article Addressed to:

BOB MELINE
LAVA HOT SPRINGS FOUNDATION
420 EAST MAIN
LAVA HOT SPRINGS ID 83246

4a. Article Number
P461212178

4b. Service Type
☐ Registered ☐ Insured
☒ Certified ☐ COD
☐ Express Mail ☐ Return Receipt for Merchandise

7. Date of Delivery
4/23/96

5. Signature (Addressee)

8. Addressee's Address (Only if requested and fee is paid)

6. Signature (Agent)
Kathy Smith

PS Form 3811, November 1990 ☆U.S. GPO: 1991—287-066 **DOMESTIC RETURN RECEIPT**

UNITED STATES POSTAL SERVICE

Official Business

RECEIVED
APR 26 1996
Department of Water Resources

LAVA HOT SPRINGS ID

U.S. MAIL

PENALTY FOR PRIVATE USE $300

Print your name, address and ZIP Code here

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
1301 NORTH ORCHARD STREET
BOISE, IDAHO 83706-2237

Attn: K Rhodes

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2. ☐ Restricted Delivery

Consult postmaster for fee.

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3. Article Addressed to:
EVELEE HILL RUSH
PO BOX 4905
POCATELLO ID 83205-4905

4a. Article Number
P461212177

4b. Service Type
☐ Registered ☐ Insured
☒ Certified ☐ COD
☐ Express Mail ☐ Return Receipt for Merchandise

7. Date of Delivery
4 4-23

5. Signature (Addressee)

8. Addressee's Address (Only if requested and fee is paid)

6. Signature (Agent)

PS Form **3811**, November 1990 ☆U.S. GPO: 1991—287-066 **DOMESTIC RETURN RECEIPT**

UNITED STATES POSTAL SERVICE

Official Business

RECEIVED
APR 25 1996
Department of Water Resources

U.S. MAIL

PENALTY FOR PRIVATE USE, $300

Print your name, address and ZIP Code here

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
1301 NORTH ORCHARD STREET
BOISE, IDAHO 83706-2237

attn: KRhodes

SENDER:
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1. ☐ Addressee's Address
2. ☐ Restricted Delivery

Consult postmaster for fee.

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3. Article Addressed to:

JACK H ROBISON
JONES CHARTERED
PO BOX 967
POCATELLO ID 83204-0967

4a. Article Number
P461212179

4b. Service Type
☐ Registered ☐ Insured
☒ Certified ☐ COD
☐ Express Mail ☐ Return Receipt for Merchandise

7. Date of Delivery
4/23/96 KLS

5. Signature (Addressee)

8. Addressee's Address (Only if requested and fee is paid)

6. Signature (Agent)

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DEPARTMENT OF WATER RESOURCES
1301 NORTH ORCHARD STREET
BOISE, IDAHO 83706-2237

attn: K Rhodes

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- Complete items 3, and 4a & b.
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3. Article Addressed to:
Department of Water Resources
CAREN VARGASON
LAZY V RANCH INC
PO BOX 268
LAVA HOT SPRINGS ID 83246

4a. Article Number
P581145518

4b. Service Type
☐ Registered ☐ Insured
☒ Certified ☐ COD
☐ Express Mail ☐ Return Receipt for Merchandise

7. Date of Delivery
4/29/96

5. Signature (Addressee)
Caren Vargason

6. Signature (Agent)

8. Addressee's Address (Only if requested and fee is paid)

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STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
1301 NORTH ORCHARD STREET
BOISE, IDAHO 83706-2237

attn: VKhoeler

SENDER:

- Complete items 1 and/or 2 for additional services.
- Complete items 3, and 4a & b.
- Print your name and address on the reverse of this form so that we can return this card to you.
- Attach this form to the front of the mailpiece, or on the back if space does not permit.
- Write "Return Receipt Requested" on the mailpiece below the article number.
- The Return Receipt Fee will provide you the signature of the person delivered to and the date of delivery.

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MAY 1 - 1996
Department of Water Resources

I also wish to receive the following services (for an extra fee):

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3. Article Addressed to:
GEORGE W KATSILOMETES
PO BOX 670
LAVA HOT SPRINGS ID 83246

4a. Article Number
P581145517

4b. Service Type
☐ Registered ☐ Insured
☐ Certified ☐ COD
☐ Express Mail ☐ Return Receipt for Merchandise

7. Date of Delivery

5. Signature (Addressee)

8. Addressee's Address (Only if requested and fee is paid)

6. Signature (Agent)

PS Form 3811, November 1990 ☆U.S. GPO: 1991—287-065 **DOMESTIC RETURN RECEIPT**

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Department of Water Resources

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Print your name, address and ZIP Code here

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
1301 NORTH ORCHARD STREET
BOISE, IDAHO 83706-2237

Attn. K Rhodes

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE

STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR PERMIT NO. 29-08162 IN THE NAME OF LAZY V RANCH	)))	**AMENDED NOTICE OF HEARING AND PREHEARING ORDER**

NOTICE

The Department has scheduled the above captioned matter for hearing as follow:

DATE: May 22, 1996
LOCATION: Pocatello Airport Conference Room (downstairs)
TIME: 9:30 a.m.

The hearing will be held in accordance with provisions of Chapters 2 and 17, Title 42 and Chapter 52, Title 67, Idaho Code, the adopted Rules of Procedure of the Department and Water Appropriation Rules 40 and 45. A copy of the rules may be obtained from the Department upon request. The presiding officer at the hearing will be Gary Spackman.

If you plan to offer exhibits for the record, you need to exchange exhibits with the other parties prior to the hearing. Note the IDAPA Rule of Procedure 37.01.01606 (Rule 606) requires that you provide a copy of exhibits to each party and to the presiding officer at the hearing. **DO NOT PREMARK PROPOSED EXHIBITS.**

The hearing will be conducted in a facility meeting the accessibility requirements of the Americans with Disabilities Act. If you require special accommodations in order to attend, participate in or understand the hearing, please advise the Department within ten (10) days prior to the hearing.

All parties to the matter will have the opportunity to respond and present information and argument on all issues involved.

ORDER

IT IS HEREBY ORDERED that the parties shall exchange a list of witnesses and copies of exhibits the parties intend to offer as evidence at the hearing no later than May 7, 1996. Copies of the list of exhibits and witnesses should be provided to the Department of Water Resources (Department).

IT IS FURTHER ORDERED that names of rebuttal witnesses should be submitted to the parties and the Department on or before May 17, 1996.

IT IS FURTHER ORDERED that failure to provide the above information to the parties and the Department is cause for the hearing officer to limit testimony or refuse to receive documents offered by the parties at the hearing.

Dated this 22nd day of April, 1996.

Gary Spackman
Hearing Officer

CERTIFICATE OF MAILING

I DO HEREBY CERTIFY that on this 22nd day of April, 1996, I mailed a true and correct copy, postage prepaid of the foregoing **AMENDED NOTICES OF HEARING AND PREHEARING ORDERS FOR APPLICATIONS FOR PERMIT NOS. 29-08162 AND 29-08164** to the following:

Caren Vargason
Lazy V Ranch Inc
PO Box 268
Lava Hot Springs ID 83246

George W Katsilometes
PO Box 670
Lava Hot Springs ID 83246

John Mehlhaff
1424 High St
Auburn CA 95603

Jack H Robison
Jones Chartered
PO Box 967
Pocatello ID 83204-0967

Evelee Hill Rush
PO Box 4905
Pocatello ID 83205-4905

Bob Meline
Lava Hot Springs Foundation
420 East Main
Lava Hot Springs ID 83246

Kent Foster
330 Shoup Ave 3rd Fl
Idaho Falls ID 83402

Kris Rhodes

Kris Rhodes

Gary Spackman

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APR 2 2 1997
Department of Water Resources

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

RECEIVED
MAY 0 6 1997
WATER RESOURCES
WESTERN REGION

April 21, 1997

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

Civil Litigation Division
P.O. Box 83720, Boise, Idaho 83720-0010
Telephone: (208) 334-2400, FAX: (208) 334-2830
Located at 650 W. State Street
Len B. Jordan Building, Lower Level

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

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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

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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.

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

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[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 <u>need</u> for heat

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

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.

Approved By:

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

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

ATTACHMENT A

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

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.

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

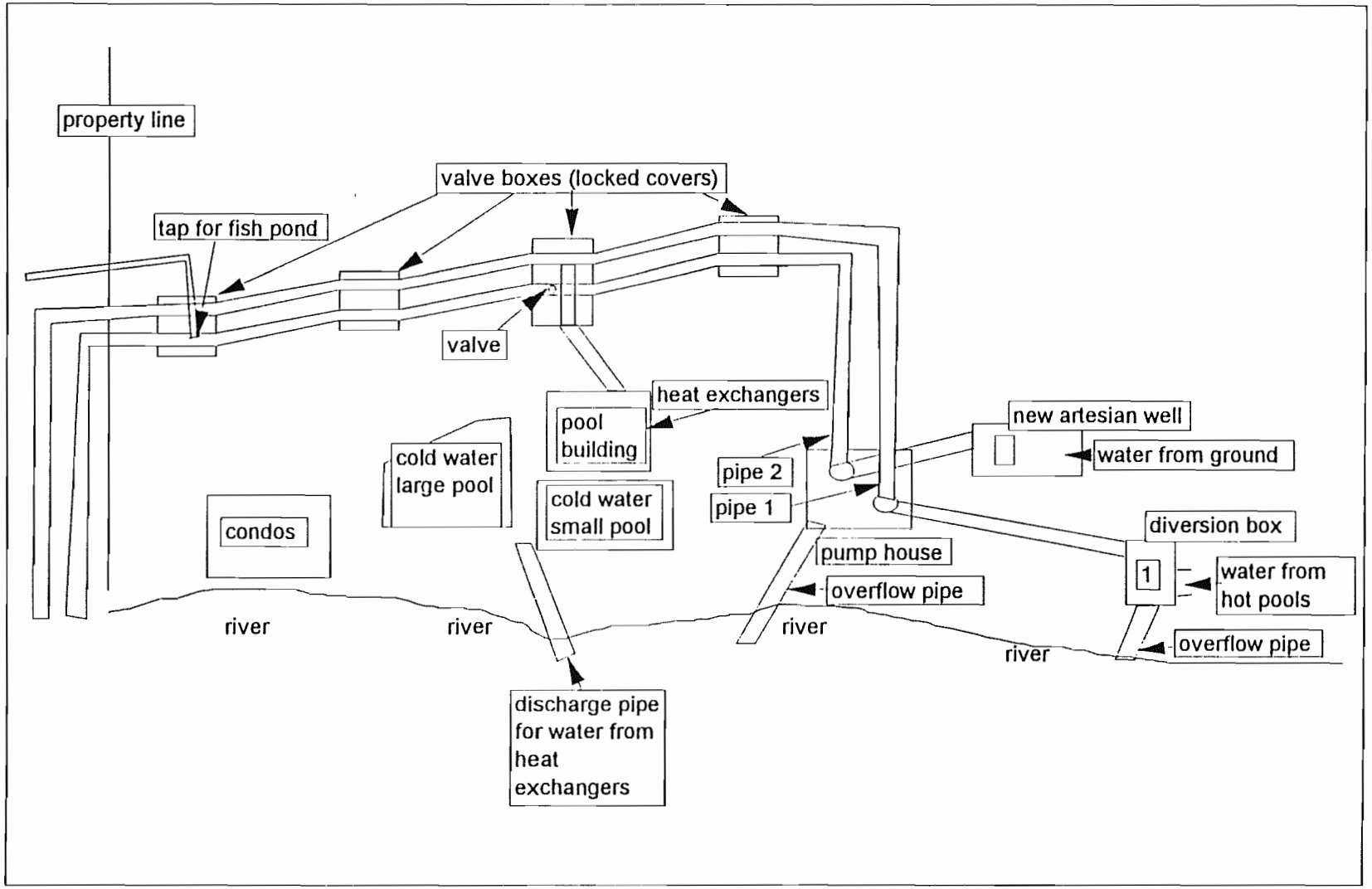
Kenneth L. Baker, Conservation Bureau Chief

DATE 8/26/96

Russell Rydalch, Engineer In Training

Attachment 1

Lava Hot Springs (no scale)



Prepared by IDWR Energy Division 8/26/96

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) cmp

ATTACHMENT C

ESA

Engineered Systems Associates, Inc.
MECHANICAL - ELECTRICAL - ENGINEERING

315 WEST CENTER, POCATELLO, IDAHO 83204
TELEPHONE - 208-233-0501
FAX - 208-233-0529
C. SUDWEEKS, P.E.
D. SUDWEEKS, P.E.

January 23, 1996

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 to be 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.

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

Charles L. Sudweeks

jls

ATTACHMENT D

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

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

TELEPHONE: (208) 232-5911
FAX: (208) 232-5962

July 22, 1996

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

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, their 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 Pluming 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

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,

Jack H. Robison

JHR:kw
cc: Karen Vargason

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

1/29/91

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

Robert A. Meline

1/31/91

ATTACHMENT E

BILLING

L.W. FRANDSEN & SONS WELL DRILLING

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

RECEIVED
OCT 23 1996
OFFICE OF THE
ATTORNEY GENERAL

Date: May 25, 1994

NAME: Thayne Vargason

ADDRESS: Lava Hot Springs, Idaho

Quantity	Description	Unit Price	Amount
1	Digging Trench for water line to pond	$575.00	$575.00
	Total		$575.00

Paid 5/31/94

Make payment to Rickey Frandsen, Thank You!

ATTACHMENT F

State of Idah
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.

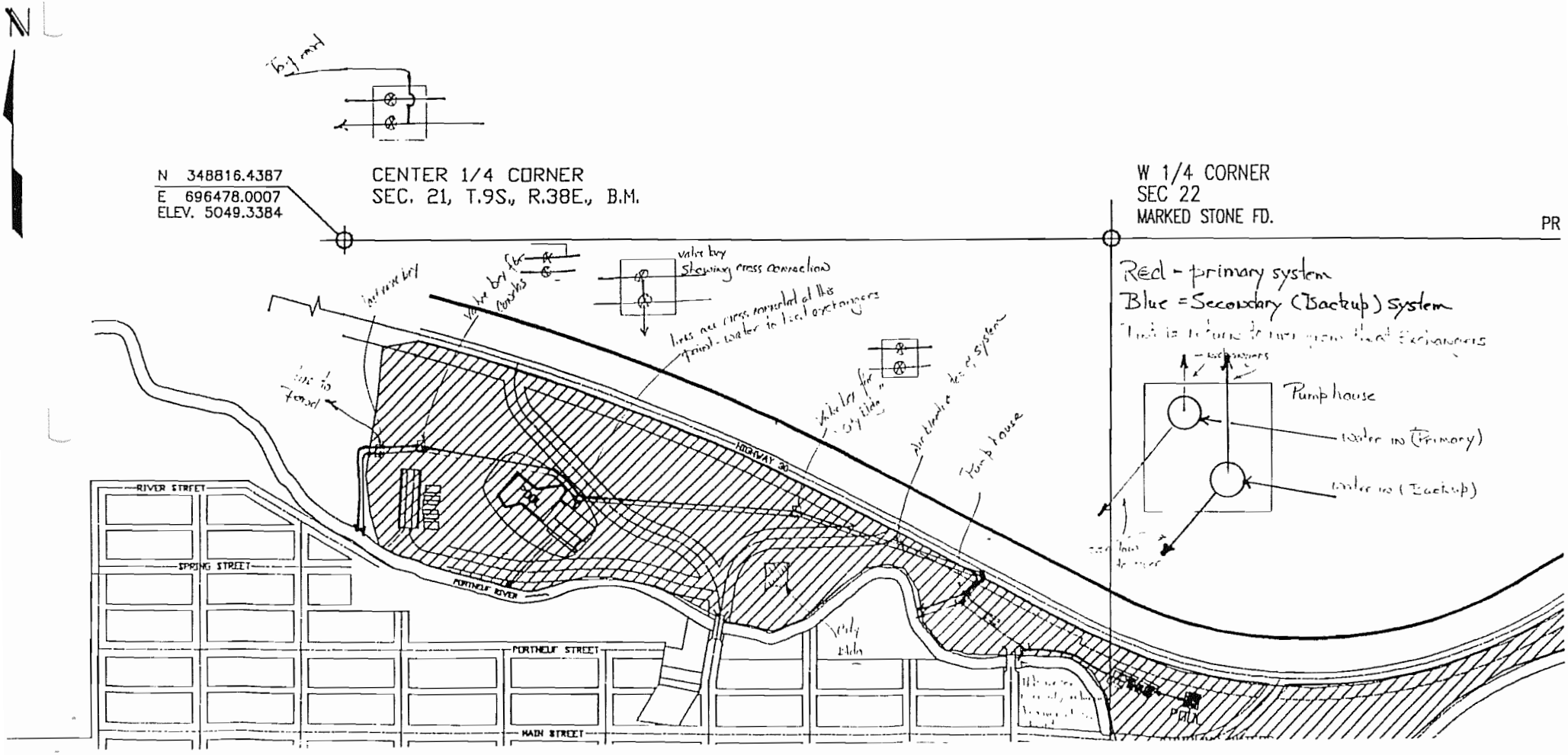
Sincerely,

Dennis M Dunn

Dennis M. Dunn
Sr. Water Resource Agent

LAVA HOT SPRINGS, IDAHO

MASTER PLAN



ATTACHMENT G

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

JUN-19-'96 WED 10:38 ID: TEL NO: #706 P01

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.

ATTACHMENT H

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.

P.O. Box 83720, Boise, Idaho 83720-0010
Telephone (208) 334-2400 FAX (208) 334-2530
Located at 700 W. Jefferson Street, Suite 210

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 legistature 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

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.

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

TELEPHONE: (208) 232-5911
FAX: (208) 232-5962

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

April 4, 1996

RECEIVED
APR 0 8 1996
Department of Water Resources

Gary Spackman
Department of Water Resources
1301 N. Orchard
Boise, Idaho 83726

Re: Our Client: Karen Vargason, Lazy V. Ranch, Inc.

Dear Mr. Spackman:

As soon as we received your Notice of Hearing in the above matter, we advised you we have an existing conflict with the dates of April 25 and 26, 1996. We were advised we would receive an Amended Notice of Hearing scheduling the hearing for May, 1996. Could you please advise me when that will be issued and of the tentative dates.

Thank you.

Yours very truly,

JACK H. ROBISON

JHRme
spkman04.031

pc: Karen Vargason

State of Idaho
DEPARTMENT OF WATER RESOURCES
1301 North Orchard Street, Statehouse Mail, Boise, Idaho 83720-9000
Phone: (208) 327-7900 FAX: (208) 327-7866

PHILIP E. BATT
GOVERNOR

KARL J. DREHER
DIRECTOR

April 3, 1996

TO: Caren Vargason
Lazy V Ranch Inc
PO Box 268
Lava Hot Springs ID 83246

George W Katsilometes
PO Box 670
Lava Hot Springs ID 83246

John Mehlhaff
1424 High St
Auburn Ca 95603

Jack H Robison
Jones Chartered
PO Box 967
Pocatello ID 83204-0967

Evelee Hill Rush
PO Box 4905
Pocatello ID 83205-4905

RE: Application for Permit Nos. 29-08162 & 29-08164, in the name of Lazy V Ranch

After having reviewed available dates for a hearing regarding protests filed against the above listed applications, I scheduled a hearing for April 24 and 25, 1996. On March 27, 1996, Jack Robison, attorney for the applicant, called and informed me that April 24 and 25, 1996 conflicted with another scheduled matter. In reviewing the file, I discovered that notice of the hearing was not sent to Evelee Hill Rush.

I now anticipate scheduling the hearing for May 22 and 23, 1996 in Pocatello. The hearing for application for permit no 29-08162 will begin at 9:30 the morning of May 22 and at its conclusion the hearing for application for permit no. 29-08164 will begin. If your schedules conflict with my proposals, please notify me immediately so the hearing can be rescheduled. If a party cannot attend the hearing on the dates that I am proposing, he will be responsible for coordinating another hearing time with the remaining parties.

At the prehearing conference, Evelee Hill Rush agreed to arrange a tour of the Lava Hot Springs Foundation water diversion and delivery facilities. She informed me after the hearing notice was sent that she was having difficulty scheduling the site tour. I spoke with Bob Meline of the Foundation, and he expressed reluctance by the Foundation to allow a full tour of the Foundation facilities. He cited safety as the primary reason for his reluctance.

RECEIVED
APR 0 8 1996
Department of Water Resources
Eastern Region

The Department of Water Resources has the authority to go on the lands of others, and inspect the diversion works and the use of the waters of the state of Idaho. The Department also has the authority to order some discovery in contested matters. I question whether the Department has the authority to force a tour of the facility, however. Mr. Meline stated that he will speak to the Foundation Board, and determine whether some limited tour would be possible. I will continue to work with Mr. Meline, but suggest that the parties also work with the Foundation in scheduling a tour. If information about the Foundation's system is important, and a site tour is not conducted, the information may have to be reconstructed by calling witnesses from the Foundation, the Foundation's engineer, and perhaps Department of Water Resources employees who are familiar with the system.

Sincerely,

Gary Spackman

Gary Spackman

cc: Bob Meline

State of Idaho
DEPARTMENT OF WATER RESOURCES
1301 North Orchard Street, Statehouse Mail, Boise, Idaho 83720-9000
Phone: (208) 327-7900 FAX: (208) 327-7866

PHILIP E. BATT
GOVERNOR

KARL J. DREHER
DIRECTOR

April 3, 1996

TO: Caren Vargason
Lazy V Ranch Inc
PO Box 268
Lava Hot Springs ID 83246

George W Katsilometes
PO Box 670
Lava Hot Springs ID 83246

John Mehlhaff
1424 High St
Auburn Ca 95603

Jack H Robison
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PO Box 967
Pocatello ID 83204-0967

Evelee Hill Rush
PO Box 4905
Pocatello ID 83205-4905

RE: Application for Permit Nos. 29-08162 & 29-08164, in the name of Lazy V Ranch

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At the prehearing conference, Evelee Hill Rush agreed to arrange a tour of the Lava Hot Springs Foundation water diversion and delivery facilities. She informed me after the hearing notice was sent that she was having difficulty scheduling the site tour. I spoke with Bob Meline of the Foundation, and he expressed reluctance by the Foundation to allow a full tour of the Foundation facilities. He cited safety as the primary reason for his reluctance.

RECEIVED
APR 0 8 1996
Department of Water Resources
Eastern Region

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Sincerely,

Gary Spackman

Gary Spackman

cc: Bob Meline

3/26/96

To files: 29-08162 & 29-08164
From: Gary Spackman
Date: 3/26/96
Re: Scheduling tour of Lava Hot Springs facilities

Evalee Hill called today. She stated that a site tour of the Lava Hot Springs Foundation facility was scheduled for April 3, 1996 in Lava Hot Springs, but Bob Meline (mĕ-lēne) of the foundation decided the tour could not be conducted until May. I told her I would call Bob and, if necessary, write a letter requesting the tour.

Addresses and telephone numbers are:

Bob Meline
Lava Hot Springs Foundation
420 East Main
Lava Hot Springs, Idaho (208)-776-5221

Attorney for Foundation is:
Steve Strack
334-2400

Dwaine Welland
9588 East Merrick Road
Lava Hot Springs, Id. (208) 776-5847

→ WK @ Park Price Motor (208) 232-1062

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE

STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR PERMIT NO. 29-08162 IN THE NAME OF LAZY V RANCH	))))	**NOTICE OF HEARING**

The department has scheduled the above captioned matter for hearing as follows:

Date:	April 24, 1996
Location:	Pocatello Airport Conference Room (Downstairs)
Time:	9:30 a.m.

The hearing will be held in accordance with provisions of Chapters 2 and 17, Title 42 and Chapter 52, Title 67, Idaho Code, the adopted Rules of Procedure of the department and Water Appropriation Rules 40 and 45. A copy of the rules may be obtained from the department upon request. The presiding officer at the hearing will be Gary Spackman.

If you plan to offer exhibits for the record, you need to exchange exhibits with the other parties prior to the hearing. Note that IDAPA Rule of Procedure 37.01.01606 (Rule 606) requires that you provide a copy of exhibits to each party and to the presiding officer at the hearing. DO NOT PREMARK PROPOSED EXHIBITS.

The hearing will be conducted in a facility meeting the accessibility requirements of the Americans with Disabilities Act. If you require special accommodations in order to attend, participate in or understand the hearing, please advise the department within (10) days prior to the hearing.

All parties to the matter will have the opportunity to respond and present information and argument on all issues involved.

Dated this 21st day of March, 1996.

Gary Spackman

GARY SPACKMAN
Hearing Officer

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE

STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR PERMIT NO. 29-08164 IN THE NAME OF LAZY V RANCH	))))	**NOTICE OF HEARING**

The department has scheduled the above captioned matter for hearing as follows:

Date:	April 24, 1996 and April 25, 1996, if necessary (Beginning after the conclusion of the hearing for Application for Permit No. 29-08162)
Location:	Pocatello Airport Conference Room (Downstairs)
Time:	Afternoon

The hearing will be held in accordance with provisions of Chapters 2 and 17, Title 42 and Chapter 52, Title 67, Idaho Code, the adopted Rules of Procedure of the department and Water Appropriation Rules 40 and 45. A copy of the rules may be obtained from the department upon request. The presiding officer at the hearing will be Gary Spackman.

If you plan to offer exhibits for the record, you need to exchange exhibits with the other parties prior to the hearing. Note that IDAPA Rule of Procedure 37.01.01606 (Rule 606) requires that you provide a copy of exhibits to each party and to the presiding officer at the hearing. DO NOT PREMARK PROPOSED EXHIBITS.

The hearing will be conducted in a facility meeting the accessibility requirements of the Americans with Disabilities Act. If you require special accommodations in order to attend, participate in or understand the hearing, please advise the department within (10) days prior to the hearing.

All parties to the matter will have the opportunity to respond and present information and argument on all issues involved.

Dated this 21st day of March, 1996.

Gary Spackman

GARY SPACKMAN
Hearing Officer

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this the 25th day of March, 1996, a true and correct copy of the foregoing NOTICES OF HEARING FOR APPLICATIONS FOR PERMIT NOS. 29-08162 AND 29-08164 were mailed, postage prepaid to:

CAREN VARGASON
LAZY V RANCH INC
P O BOX 268
LAVA HOT SPRINGS ID 83246

GEORGE W KATSILOMETES
P O BOX 670
LAVA HOT SPRINGS ID 83246

JOHN MEHLHAFF
1424 HIGH ST
AUBURN CA 95603

JACK H ROBISON
JONES CHARTERED
P O BOX 967
POCATELLO ID 83204-0967

Rita I. Fleck

RITA I. FLECK
Administrative Secretary

MEMORANDUM

To: Norm Young

From: L. Glen Saxton GLS

RE: **LAVA HOT SPRINGS HEARING**

Date: March 19, 1996

You inquired about my availability for a hearing in Lava Hot Springs on April 23, 24 and 25, 1996.

I checked my calendar and already have a hearing scheduled on April 23 in connection with Application for Permit No. 65-13466, Bogus Basin Rec. Assn. I have been hoping this matter would settle, but the attorneys seem to just keep wanting it rescheduled in the future.

The weeks of May 6, and May 20, 1996 are clear for me so far. If this is not soon enough, I could ask Gary Spackman if he is available to conduct the hearing. That Lava Hot Springs country is his old stomping ground anyway.

Please advise me if we can help.

MEMORANDUM

TO: **FILES 29-08162 AND 29-08164**

FROM: **NORM YOUNG**

SUBJECT: **PRE-HEARING CONFERENCE**

DATE: **March 18, 1996**

==========

On March 7, 1996, a pre-hearing conference was held at Pocatello to consider protests against approval of these applications. The parties were all in attendance except protestant Duke Walden. The protestants objected to consolidation of the proceedings for the two application, and asked that the hearings be held at separate times, with the second application heard 60 days after the first application. I indicated that the hearing officer would rule on this request as a pre-hearing order was issued setting the hearing, but I would recommend that the hearings be held on consecutive days.

The protestants also asked that an on-site view of the project be made before they would finalize their objections or consider settlement. The applicant described the intended development and use of the water under each of the applications.

The following arrangements were made for formal hearing(s) on the applications:

1. On or before March 18, 1996:
   -The parties will provide a list of unavailable dates for a hearing in April or May.
   -Evalee Hill Rush will investigate and advise the hearing officer of the availability of a room in Lava Hot Springs to hold a hearing.
   -Evalee Hill Rush will arrange for an on-site view of the project and advise the hearing officer of the arrangements.

2. IDWR will issue a pre-hearing order addressing the following:

   1. Hearing(s) location, time and date and name of hearing officer.
   2. On-site view meeting location, time and date.
   3. A requirement that each party file a list of witnesses, copies of exhibits and requests for documents by a date no later than 15 days prior to the hearing date.
   4. Rebuttal witnesses to be identified no later than 5 days before the hearing.

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

TELEPHONE: (208) 232-5911
FAX: (208) 232-5962

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

KELLY KUMM

March 13, 1996

RECEIVED
MAR 18 1996
Department of Water Resources

Norm Young
Department of Water Resources
1301 N. Orchard
Boise, ID 83726

Re: Water Permits

Dear Mr. Young:

Enclosed please find unavailable dated for myself and Karen Vargason for the months of March, April and May on the above referenced matter.

If you have any questions, please advise.

Yours very truly,

Jack H. Robison

JHR:jc
Enclosure

cc: Karen Vargason

1996

March

1996

SUNDAY	MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	SATURDAY
31					1 No	2
3	4 No	5 No	6 No	7 No	8 No	9
10	11 No	12 No	13 No	14 No	15 No	16
17	18 Yes	19 No	20 No	21 Yes	22 Yes	23
24	25 No	26 Yes	27 Yes	28 No	29 Yes	30

1996

April

1996

SUNDAY	MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	SATURDAY
	1 NO	2 NO	3 NO	4 NO	5 NO	6
7	8 NO	9 NO	10 yes	11 yes	12 yes	13
14	15 yes	16 yes	17 yes	18 yes	19 yes	20
21	22 NO	23 yes	24 yes	25 yes	26 yes	27
28	29 yes	30 yes				

1996

May

1996

SUNDAY	MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	SATURDAY
			1 NO	2 YES	3 YES	4
5	6 YES	7 YES	8 YES	9 YES	10 YES	11
12	13 YES	14 YES	15 YES	16 YES	17 YES	18
19	20 YES	21 YES	22 YES	23 YES	24 YES	25
26	27 YES	28 YES	29 YES	30 YES	31 YES	

RECEIVED
MAR 1 5 1996
Department of Water Resources

3/12/96

George W. Katsilometes
P.O. 670
Lava Hot Springs, ID 83246

Mr. Norman Young
Department of Water Resources
1301 N Orchard
Boise, ID 83706

Dear Mr. Young:

This letter is written to inform you that I can attend the formal hearings on the Applications for Permits Numbered 29-08162 and 29-08164 in the name of Lazy V Ranch, Inc. on any two separate hearing dates acceptable to all other participants. Fridays are not the best day of the week for me due to business pressures.

It is absolutely necessary that the tour of the facilities the foundation now operates to deliver geothermal water, heat exchange geothermal water, etc. be undertaken at least 4 weeks prior to the dates of the hearings. It is also my belief that a fair hearing of our protests can best occur only in separate hearings on the two applications.

My protests regarding the applications were stated in my original letter and will be focused and expanded on at the hearings.

Sincerely yours,

George W. Katsilometes

George W. Katsilometes

RECEIVED
MAR 18 1996
Department of Water Resources

March 12, 1996

Norm Young
Dept. of Water Resources

John Mehlhaff
1424 High St.
Auburn, California
95603
Phone 916-823-7553

Subject: Public Hearing on Permit No. 29-08162 Lazy V Ranch Inc.

Dear Norm,

The List of dates that I will be unable to attend a public hearing on this matter are:

1. April 15-18, 1996 and 2. May 11-18, 1996

Please arrange the hearing time so as to not conflict with these dates, as I have to travel a long distance to attend the hearing. I also again request that this hearing look only at the facts regarding No. 29-08162 and not be commingled with 29-08164. I feel that these are two distinct and unrelated permit applications.

I would also like to expand my previous protest to include the following principle items as listed in Idaho Code 42-203.
1. Will the proposed use reduce the quantity of water under existing rights?
2. Is the proposed water supply insufficient for the purpose intended?
3. Is the application made in good faith or for delay or speculative purposes?
4. Will the proposed use under this permit conflict with the local public interest?
5. Is the proposed use contrary to conservation of water resources within the State of Idaho?

Best Regards,
John Mehlhaff
John Mehlhaff

8 March 1996

Pre Conf Hearings

John Mehlhaff 916 823 9553

George W. Katzenbach 776-5830

Evelle Hill Rush → 232-2139

Jay Valcarce Jay Valcarce

Aaron Vargovon

Jack H Robison

M. Jay Burke

Jim Rush

Sandy Williams

Charles G. Kunze

Ilene Meadows

Norm Young - Hearing officer

Dennis M Dunn - IDWR

Robert J. Meline Foundation Director

Ralph E Lacy Foundation Board Member

AMPAD 22-141 50 SHEETS 22-142 100 SHEETS 22-144 200 SHEETS

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE

STATE OF IDAHO

IN THE MATTER OF APPLICATION)
FOR PERMIT NO.'S 29-08162 &) NOTICE OF
29-08164 IN THE NAME OF LAZY)
V RANCH, INC.) PREHEARING CONFERENCE

On November 20, 1995, Lazy V Ranch, Inc. filed with the Department of Water Resources an application for permit No. 29-08162. On January 3, 1996, the application was protested by F.L. Duke Walden. On January 4, 1996, the application was protested by George W. Katsilometes. On January 8, 1996, the application was protested by Evelee Hill Rush and John Mehlhaff.

On January 5, 1996, Lazy V Ranch, Inc. filed with the Department of Water Resources an application for permit No. 29-08164. On January 22, 1996, the application was protested by George W. Katsilometes. On February 2, 1996, the application was protested by F.L. Duke Walden.

The Department has scheduled the matter for a prehearing conference at 10:00 a.m. on March 7, 1996, at the Pocatello Airport, Pocatello, ID, in accordance with the provisions of the adopted Rules of Procedure of the Department of Water Resources.

Agenda items for this prehearing conference will include:

1. Identify spokesman and/or counsel representing the protestant.
2. Review of the application.
3. Identify issues of protest.
4. Designate date for identifying witnesses.
5. Designate target date for conducting administrative hearing if resolution is not possible during the prehearing conference.

The hearing will be conducted in a facility which meets the accessibility requirements of the Americans with Disabilities Act. If you require special accommodations in order to attend, participate in or understand the conference, please advise the Department within ten (10) days prior to the conference.

Dated this 7th day of February, 1996.

RONALD D. CARLSON
Regional Manager

I hereby certify that on the 7th day of February, 1996, I mailed a true and correct copy, postage prepaid, of this document to the applicants (s) and protestant (s) listed below:

Rita Bodell

RITA BODELL
Secretary

Certified

CAREN VARGASON
LAZY V RANCH INC
P.O. BOX 268
LAVA HOT SPRINGS ID 83246

EVELEE HILL RUSH
PO BOX 4905
POCATELLO ID 83205-4905

JOHN MEHLHAFF
1424 HIGH STREET
AUBURN CA 95603

GEORGE W KATSILOMETES
5 PORTNEUF AVE
LAVA HOT SPRINGS ID 83246

F.L. DUKE WALDEN
PO BOX 127
LAVA HOT SPRINGS ID 83246

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

February 6, 1996

FL DUKE WALDEN
PO BOX 127
LAVA HOT SPRINGS ID 83246

RE: Application for Permit No. 29-08164 LAZY V RANCH

Dear Protestant:

Your protest against approval of the above referenced application has been received and a copy has been sent to the applicant. The Department suggests you contact the applicant directly in an effort to determine what is proposed by the application and to attempt to resolve the protest.

Unless this office is advised that either the matter has been resolved or there exists extenuating circumstances, our objective is to schedule a conference and/or hearing in the near future to consider the protest. At such a conference and/or hearing, the following are the principle items the Department can consider in either approving or denying the application for permit (Sec. 42-203, Idaho Code): the following are the principle items the Department can consider in either approving or denying the application for permit (Sec. 42-203, Idaho Code):

1. Will the proposed use reduce the quantity of water under existing rights?
2. Is the proposed water supply insufficient for the purpose intended?
3. Is the application made in good faith or for delay or speculative purposes?
4. Has the applicant sufficient financial resources with which to complete the project?
5. Will the proposed use under this permit conflict with the local public interest?
6. Is the proposed use contrary to conservation of water resources within the State of Idaho?

The protestant must be prepared to present proof of allegations involving one or more of the six items.

If this office can be of further assistance, please contact us.

Sincerely,

Harold W. Jones

HAROLD W. JONES
Water Rights Supervisor
HWJ/rb
pc: IDWR - State Office

State of Idaho
DEPARTMENT OF WATER RESOURCES
900 N. Skyline Dr., Idaho Falls, Idaho 83402-1718 - (208) 525-7161 - Fax (208) 525-7177

RECEIVED
FEB 0 7 1996
Department of Water Resources

EASTERN REGION

PHILIP E. BATT
GOVERNOR

KARL J. DREHER
DIRECTOR

February 6, 1996

CAREN VARGASON
PO BOX 268
LAVA HOT SPRINGS ID 83246

RECEIVED
FEB 0 7 1996
Department of Water Resources

RE: Application for Permit No. 29-08164

Dear Ms. Vargason:

Enclosed is a copy of a protest filed against the issuance of a permit. The Department suggests you contact the protestant directly in an effort to determine the nature of the protest and to attempt to resolve the protest.

Unless this office is advised that either the matter has been resolved or there exists extenuating circumstances, our objective is to schedule a conference and/or hearing in the near future to consider the protest. At a conference and/or hearing, the following are the principle items the Department can consider in either approving or denying the application for permit (Sec. 42-203, Idaho Code):

1. Will the proposed use reduce the quantity of water under existing water rights?
2. Is the proposed water supply insufficient for the purpose intended?
3. Is the application made in good faith or for delay or speculative purposes?
4. Has the applicant sufficient financial resources with which to complete the project?
5. Will the proposed use conflict with the local public interest?
6. Is the proposed use contrary to conservation of water resources within the State of Idaho?

The applicant must be prepared to present evidence and/or testimony addressing each of the six items. Although representation by legal counsel is not mandatory at a proceeding before the Department, you may retain an attorney in your behalf.

If this office can be of further assistance, please contact us.

Sincerely,

Harold W. Jones rb

HAROLD W. JONES
Water Rights Supervisor
HWJ/rb
pc: IDWR - STATE OFFICE
enc

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

February 6, 1996

GEORGE W KATSILOMETES
5 PORTNEUF AVE
LAVA HOT SPRINGS ID 83246

RE: Application for Permit No. 29-08164 LAZY V RANCH

Dear Protestant:

Your protest against approval of the above referenced application has been received and a copy has been sent to the applicant. The Department suggests you contact the applicant directly in an effort to determine what is proposed by the application and to attempt to resolve the protest.

Unless this office is advised that either the matter has been resolved or there exists extenuating circumstances, our objective is to schedule a conference and/or hearing in the near future to consider the protest. At such a conference and/or hearing, the following are the principle items the Department can consider in either approving or denying the application for permit (Sec. 42-203, Idaho Code): the following are the principle items the Department can consider in either approving or denying the application for permit (Sec. 42-203, Idaho Code):

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4. Has the applicant sufficient financial resources with which to complete the project?
5. Will the proposed use under this permit conflict with the local public interest?
6. Is the proposed use contrary to conservation of water resources within the State of Idaho?

The protestant must be prepared to present proof of allegations involving one or more of the six items.

If this office can be of further assistance, please contact us.

Sincerely,

Harold W. Jones rb

HAROLD W. JONES
Water Rights Supervisor
HWJ/rb
pc: IDWR - State Office

ACTION REQUIRED

FROM: KEITH C WILSON

TO: Harold Jones

24 Jan 1996
0934hrs

I talked with Karen Vargason today about her application for permit that has been protested (29-08162). She has tried to talk with the protestants to explain her application. At this time she feels that it would be best to go to a hearing so that everyone involved will get the same information at the same time. Therefore, Karen Vargason (Lazy V Ranch) has requested a hearing ASAP.

Hold until 29-08164 clears

Keith C Wilson

IDAHO FISH & GAME
SOUTHEAST REGION
1345 Barton Road
Pocatello, Idaho 83204-1819

Phil Batt / Governor
Jerry M. Conley / Director

January 23, 1996

Harold W. Jones
Water Right Supervisor
Idaho Department of Water Resources
900 N. Skyline Dr.
Idaho Falls, ID 83402-1718

Re: Application 29-08164 - Lazy V Ranch, Inc.

Dear Skip,

Department personnel have reviewed the application by Thayne and Karen Vargason, owners of the Lazy V Ranch, to appropriate 7.0 cfs of geothermal water from Lava Hot Springs Foundation for fish propagation and have no objection to the permit issuance.

In our response to application 29-08162 we identified concerns related to the use of the water and additional permits which may be required. The same comments apply to this application since appropriated water will be used in the same aquaculture endeavor.

Thank you for the opportunity to review this application and provide input.

Sincerely:

Greg Tourtlotte
Regional Supervisor

GT/JL/jl

cc: Jim Lukens
Chris Bocek
Natural Resources Policy Bureau
Division of Environmental Quality, Pocatello
Thayne and Karen Vargason

1/23/96

January 17, 1996

SHARON SUE HOFHINE
211 BOOTH ST
LAVA HOT SPRINGS ID 83246

Dear Ms. Hofhine:

The Idaho Department of Water Resources has received your protest against application 29-08162 in the name of Lazy V Ranch. Due to the fact that we did not receive it until January 9, 1996, we are unable to except it as a valid protest.

The Department of Water Resources' Water Appropriation Rules and Regulations states: 4,3,1,2. Protests against the approval of an application for permit or against a permit being reprocessed will only be considered if received by the department after receipt of the application by the department and prior to the expiration of the protest period announced in the advertisement unless the protestant successfully intervenes in the proceeding.

If you have any questions, please give us a call.

Sincerely,

Rita Bodell
Secretary

enc. protest w/envelope

Hoffine
PO Box 38
Lava Id 83246

POCATELLO ID 832
PM
08 JAN
1996

USA 32

Water Resources
Eastern Region
900 N Skyline
Idaho Falls Id
83402

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

RECEIVED
JAN 0 5
Department of Water Resources
Eastern Region

IN THE MATTER OF THE
APPLICATION FOR PERMIT TO
APPROPRIATE THE PUBLIC WATERS
OF THE STATE OF IDAHO, NO.
29-08162

PROTEST

SHARON SUE HOFHINE, WHOS ADDRESS IS 211 BOOTH STREET. LAVA HOT SPRINGS, IDAHO 83246,HEREBY PROTESTS THE APPLICATION # 29-08162 BY LAZY V RANCH, INC., ON THE FOLLOWING GROUNDS.

1. THE PROPOSED CHANGE IN NOT IN THE LOCAL PUBLIC INTEREST AS DEFINED IN 42-203A(5)IDAHO CODE;

2. THE PROPOSED CHANGE IS CONTRARY TO THE CONSERVATION OF WATER RESOURCES WITHIN THE STATE OF IDAHO.

3. THE PRIMARY DIVERSONS BY THE STATE OF IDAHO, OR LAVA HOT SPRINGS FOUNDATION VIOLATE, AT LEASE IN PART, IDAHO CODE,42-201;

4. LAZY V RANCH INC, IS NOT A VALID CORPORATION IN THE STATE OF IDAHO, SO IT IS UNCLEAR AS TO WHO IS INFACT FILING FOR THIS WATER PERMIT:

5. THE FACT THAT ANY WATER FURNISHED BY THIS PERMIT COMES FROM A NATURAL UNDERGROUND GEO-THERMAL SOURCE, NOT FROM A NATURAL FLOW,THEREFORE REQUIRES THE USE OF EXPENSIVE PUMPS, AND ELECTRICITY TO DELIVER THIS WATER, WOULD OBLIGATE THE GENERAL PUBLIC TO ASSUME THE COST TO DELIVER THIS WATER TO ANYONE HOLDIND THE WATER RIGHT. THIS IS EVIDENCED BY WHAT IS NOW HAPPING AND HAS HAPPENED IN THE PAST.

6. THIS WATER SOURCES IS GEO-THERMAL CREATED BY NATURE AND HAS A NATURAL FLOW. IT IS NATURALLY STORED UNDERGROUND AND IS RELEASED THRU NATURAL SPRINGS. ANY MAN MADE PUMPING CAN REDUCE THE QUALITY AND QUANITY OF THE GEO-THERMAL AQUIFER. STORAGE IN MAN MADE PONDS DOES NOT QUALIFY AS A DEMONSTRATED BENEFICIAL USE OF THIS RESOURCE, AS IS REQUIRED FOR A WATER RIGHT DESCRIBED IN THE STATE WATER RIGHT REGULATIONS IN ESTABLISHING A NEED: RIGHT.

7. THIS APPLICATION IS MADE FOR SPECULATIVE PURPOSES;

DATED Jan 5-1996

Sharon Sue Hofhine

776-5678

January 17, 1996

CAREN VARGASON
LAZY V RANCH INC
PO BOX 268
LAVA HOT SPRINGS ID 83246

RE: Application for Permit No. 29-08162

Dear Applicant:

Enclosed are copies of protests filed against the issuance of the above referenced applications. The Department suggests you contact the protestant directly in an effort to determine the nature of the protest and to attempt to resolve the protest.

Unless this office is advised that either the matter has been resolved or there exists extenuating circumstances, our objective is to schedule a conference and/or hearing in the near future to consider the protest. At a conference and/or hearing, the following are the principle items the Department can consider in either approving or denying the application for permit (Idaho Code § 42-203):

1. Will the proposed use reduce the quantity of water under existing water rights?
2. Is the proposed water supply insufficient for the purpose intended?
3. Is the application made in good faith or for delay or speculative purposes?
4. Has the applicant sufficient financial resources with which to complete the project?
5. Will the proposed use conflict with the local public interest?
6. Is the proposed use contrary to conservation of water resources within the State of Idaho?

The applicant must be prepared to present evidence and/or testimony addressing each of the six items. Although representation by legal counsel is not mandatory at a proceeding before the Department, you may retain an attorney in your behalf.

If this office can be of further assistance, please contact us.

Sincerely,

Harold W. Jones rb

HAROLD W. JONES
Water Rights Supervisor

HWJ:rb

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

January 17, 1996

EVELEE HILL RUSH
PO BOX 4905
POCATELLO ID 83205-4905

RE: Application for Permit No. 29-08162 LAZY V RANCH INC

Dear Protestants:

Your protest against approval of the above referenced applications have been received and a copy has been sent to the applicant. The Department suggests you contact the applicant directly in an effort to determine what is proposed by the application and to attempt to resolve the protest.

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5. Will the proposed use under this permit conflict with the local public interest?

6. Is the proposed use contrary to conservation of water resources within the State of Idaho?

The protestant must be prepared to present proof of allegations involving one or more of the six items.

In addition, Rule 302 of the Department's Rules of Procedure requires a protestant to send a copy of the protest to the applicant in question.

If this office can be of further assistance, please contact us.

Sincerely,

Harold W. Jones rb

HAROLD W. JONES
Water Rights Supervisor

HWJ:rb
pc: IDWR - State Office

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

January 17, 1996

F L DUKE WALDEN
PO BOX 127
LAVA HOT SPRINGS ID 83246

RE: Application for Permit No. 29-08162 LAZY V RANCH INC

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EASTERN REGION

PHILIP E. BATT
GOVERNOR

KARL J. DREHER
DIRECTOR

January 17, 1996

GEORGE W KATSILOMETES
5 PORTNEUF AVE
LAVA HOT SPRINGS ID 83246

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Water Rights Supervisor

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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

January 17, 1996

JOHN MEHLHAFF
1424 HIGH STREET
AUBURN CA 95603

RE: Application for Permit No. 29-08162 LAZY V RANCH INC

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Water Rights Supervisor

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January 17, 1996

CAREN VARGASON
LAZY V RANCH INC
PO BOX 268
LAVA HOT SPRINGS ID 83246

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Sincerely,

Harold W. Jones

HAROLD W. JONES
Water Rights Supervisor

HWJ:rb

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.

P.O. Box 83720, Boise, Idaho 83720-0010
Telephone: (208) 334-2400, FAX: (208) 334-2530
Located at 700 W. Jefferson Street, Suite 210

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 legistature 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

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.

IDAHO FISH & GAME

SOUTHEAST REGION
1345 Barton Road
Pocatello, Idaho 83204-1819

January 3, 1996

Phil Batt / Governor
Jerry M. Conley / Director

Harold W. Jones
Water Right Supervisor
Idaho Department of Water Resources
900 N. Skyline Dr.
Idaho Falls, ID 83402-1718

Re: Application 29-08162 - Lazy V Ranch, Inc.

Dear Skip,

Department personnel have reviewed the application by Lazy V Ranch, Inc. (Thayne and Karen Vargason) to appropriate 3 cfs of heated wastewater for fish propagation, have discussed the application with the applicants and have no objection to the permit issuance. However, we have some comments regarding the planned use of this water.

Private fish ponds require a permit from our Department and commercial fish ponds require a permit from the Idaho Department of Agriculture. If this will be a commercial facility, we would have concerns regarding the nutrient content of the effluent and its impact to the Portneuf River. A commercial facility may require a National Pollution Discharge Elimination System (NPDES) Permit which is the jurisdiction of Idaho Division of Environmental Quality and the U.S. Environmental Protection Agency. We also have concerns regarding the species of fish propagated and their disease status. We would caution the applicants that the acquisition of supplemental permits are separate processes and not insured by the issuance of a water right.

Thank you for the opportunity to review this application and provide input.

Sincerely:

Greg Tourtlotte
Regional Supervisor

RECEIVED
JAN 08 1996
Department of Water Resources
Eastern District Office

cc: Jim Lukens
Chris Bocek
Natural Resources Policy Bureau
Division of Environmental Quality, Pocatello
Dr. Mamer, Idaho Department of Agriculture, Division of Animal Industries
Thayne and Karen Vargason

PROOF OF PUBLICATION

STATE OF IDAHO } ss.
County of Bannock }

NOTICE OF APPLICATION FOR WATER RIGHT

The Following application(s) have been filed to appropriate the public waters of the State of Idaho:

29-08162
LAZY V RANCH INC
PO BOX 268
LAVA HOT SPRING, ID 83246
Source: WASTE WATER
Tributary: PORTNEUF RIVER
Diversion Pt: LOT 7 (NWSE) Sec 21 T 09S R 38E in BANNOCK County.
Use: DIVERSION TO STORAGE (3.000 CFS)
FISH PROP. STORAGE (0.50 AF)
Total Diversion (3.000 CFS)
Date Filed: 11/20/1995
In: BANNOCK County
T09S R38E S21 Lot 6 (NESW)

The permit (s) will be subject to all prior water rights. Protests must be filed with the applicant and the Director, Dept. of Water Resources, along with a $25.00 filing fee, Eastern Region, 900 N Skyline, Idaho Falls, Idaho 83402 on or before JANUARY 8, 1996.

KARL J. DREHER,
Director
December 21, 28, 1995
LN1049

HEATHER J. WHEELOCK

being first duly sworn on oath deposes and says: That SHE was at all times herein mentioned a citizen of the United States of America, more than 21 years of age, and the Principal Clerk of THE IDAHO STATE JOURNAL, a daily newspaper, printed and published at Pocatello, Bannock County, Idaho, and having a general circulation therein.

That the document or notice, a true copy of which is attached, was published in the said IDAHO STATE JOURNAL, on the following dates, to-wit:

DECEMBER 21, 19 95	, 19
DECEMBER 28, 19 95	, 19
, 19	, 19
, 19	, 19
, 19	, 19

That said paper has been continuously and uninterruptedly published in said County for a period of seventy-eight weeks prior to the publication of said notice or advertisement and is a newspaper within the meaning of the laws of Idaho.

Heather J. Wheelock

STATE OF IDAHO

COUNTY OF BANNOCK

On this 28TH day of DECEMBER in the year of 1995, before me, a Notary Public, personally appeared HEATHER J. WHEELOCK, known or identified to me to be the person whose name subscribed to the within instrument, and being by me first duly sworn, declared that the statements therein are true, and acknowledged to me that he executed the same.

Jeri L Larsen

Notary Public for Idaho

Residing at POCATELLO

My commission expires: JULY 1997

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

December 13, 1995

ID DEPT OF FISH & GAME
REGION 5
1345 BARTON RD
POCATELLO ID 83201

RE: Application No. 29-08162

Dear Sir:

We are enclosing a copy of the application (s) that may be of interest to your department. Please review the application (s) and submit any comments you may have to our Department as soon as possible. The last date of protest is January 8, 1996, and we are required to take final action shortly thereafter.

If we may be of further assistance, please feel free to contact us.

Respectfully submitted,

Harold W. Jones rb
Harold W. Jones
Water Right Supervisor

HWJ/rb
enc.

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

December 13, 1995

LAZY V RANCH
PO BOX 268
LAVA HOT SPRINGS ID 83246

RE: Notice of Application for Permit No. 29-08162

Dear Applicant:

The Department of Water Resources acknowledges receipt of your water right application. This office is currently in the process of advertising the applications in the Idaho State Journal on December 21 & 28, 1995. The advertisement will be published for two consecutive weeks, and a period of ten days following the second publication will be allowed for the submittal of protests.

If the application is protested, you will be sent a copy of the protest. The protest must be resolved before the application is approved or denied. If the protest is not resolved voluntarily, this Department will conduct a conference and/or hearing on the matter.

If the application is not protested, it will be forwarded to our State Office in about five weeks. State Office Personnel will conduct a complete review prior to final processing of the applications and will notify you of the outcome of this review. When a permit is issued, you will be sent a copy. A typical processing time for an unprotested application is about eight weeks.

Please feel free to contact this office if you have any questions regarding this procedure.

Sincerely,

Harold W. Jones rb
Harold W. Jones
Water Right Supervisor

HWJ/rb

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

DECEMBER 12, 1995

IDAHO STATE JOURNAL
P.O. BOX 431
POCATELLO, ID 83204

Gentlemen:

Enclosed you will find a legal notice which we wish to have published on the dates indicated (once a week for two consecutive weekly issues) in your newspaper. If you cannot publish the notice on the proposed dates, please contact us immediately.

An affidavit of publication must be submitted to the Department along with the publication bill. Your cooperation is appreciated.

Please send the affidavit of publication and publication billing to this office before JANUARY 8, 1996.

Yours truly,

Rita Bodell
Secretary

Encl.

29-08162

LAZY V RANCH INC
PO BOX 268
LAVA HOT SPRINGS, ID 83246

Source: WASTE WATER Tributary: PORTNEUF RIVER

Diversion Pt: LOT 7 (NWSE) Sec 21 T 09S R 38E in BANNOCK County.

Use: DIVERSION TO STORAGE (3.000 CFS)
FISH PROP. STORAGE (0.50 AF)
Total Diversion: (3.000 CFS)

Date Filed: 11/20/1995

In: BANNOCK County
T09S R38E S21 Lot 6(NESW)

The permit(s) will be subject to all prior water rights. Protests must be filed with the applicant and the Director, Dept. of Water Resources, along with a $25.00 filing fee, Eastern Region, 900 N Skyline, Idaho Falls, Idaho 83402 on or before JANUARY 8, 1996.

KARL J. DREHER, Director

Published: 12/21/1995 & 12/28/1995

Send copies to Fish & Game

Dist. for staffing 11-21-95
Submitted for advertising 11-22-95

Form No. 202a
4/87

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

APPLICATIONS FOR PERMIT ANALYSIS SHEET

INITIAL REVIEW BY HWJ **DATE** 11-22-95 **APPLICATION NO.** 29-8162
Lazy "V" Ranch, Inc.

REQUIRED INFORMATION

✓ Name (If applicant is a corporation or partnership, names must be provided for the director, officers, & other partners.)
✓ Address
✓ Source (See USGS Quad for names of water sources)
✓ Point of Diversion (10 acres for spring, lot & block descriptions for subdivisions, local name, flow and/or volume)
✓ County
✓ Quantity (flow and/or volume)
✓ Period of Use
✓ Nature of proposed use (Include description of use.)
✓ Description of diverting works
✓ Time required for beneficial use of water
✓ Place of use or acres irrigated
✓ Map
✓ Signature (If applicant is corp. partnership, or municipality, title of signator is required)
✓ Fee
✓ Yes ____ No* In form to receipt

ADDITIONAL INFORMATION

✓ Overlapping place of use (Describe source & relationship to present application on the back.) 29-07847
✓ Overlapping point of diversion
____ Yes ____ No Field check required
Field check by _____
____ Yes ____ No Field report attached
____ Yes ____ No Critical groundwater area
____ Yes ____ No Groundwater management area
____ Yes ____ No Send dam safety information
____ Yes ____ No Send power requirement letter
____ Yes ____ No Send fish farm requirement letter
____ Yes ____ No Power residency affidavit
____ Yes ____ No Power efficiency form
____ Yes ____ No Within trustwater boundary (If yes, attach trust water supplementary analysis sheet.)
____ Yes ____ No Diversion greater than 5 cfs or 500 acre ft. (If yes, attach large diversion supplementary analysis sheet.)
____ See reverse side for additional information
*REQUEST THE FOLLOWING ADDITIONAL INFORMATION FROM THE APPLICANT _____

_____ Date Requested _____

PROCESSING ✓ Yes ✓ No In form for advertising
✓ Yes ✓ No Statewide advertising
✓ Yes ___ No Fee amount, receipt date & No. recorded on application

SEND COPIES TO
___ Idaho Dept. of Health & Welfare
PX Idaho Dept. of Fish & Game
___ Idaho Dept. of Lands
___ Adjudication Bureau Unit
___ U.S. BLM
___ U.S. Forest Service
___ Water District
___ Other ___

FINAL REGIONAL PROCESSING REVIEW

✓ Yes ___ No Affidavit of publication received
✓ Yes ___ No Application published correctly. If not, record action taken.

✓ Yes ___ No Publication dates & paper, recorded on application
✓ Yes ___ No Protests received
Final date for protest 1-8-96
___ Yes ___ No Protests, dates, resolution of protest, recorded on application
___ Yes ___ No Recommendations, attached
___ Yes ___ No Measuring device required
___ Yes ___ No Access port required
___ Yes ___ No Will water be delivered by watermaster? If yes, what Dist. ___
___ Yes ___ No Special conditions of approval or cover letter below. ___

___ See below for additional information

Date of priority recommended ___
By ___ Date ___

STATE OFFICE REVIEW ___

___ See below for additional information

By ___ Date ___

ADDITIONAL INFORMATION

LOCAL PUBLIC INTEREST

Comments received from

_____City	_____Idaho Fish & Game	_____Irrigation District
_____County	_____Idaho Health & Welfare	_____Canal Company
_____Reservations	_____Division of Environment	_____Other_____

Project impacts/implications report

COMMENTS