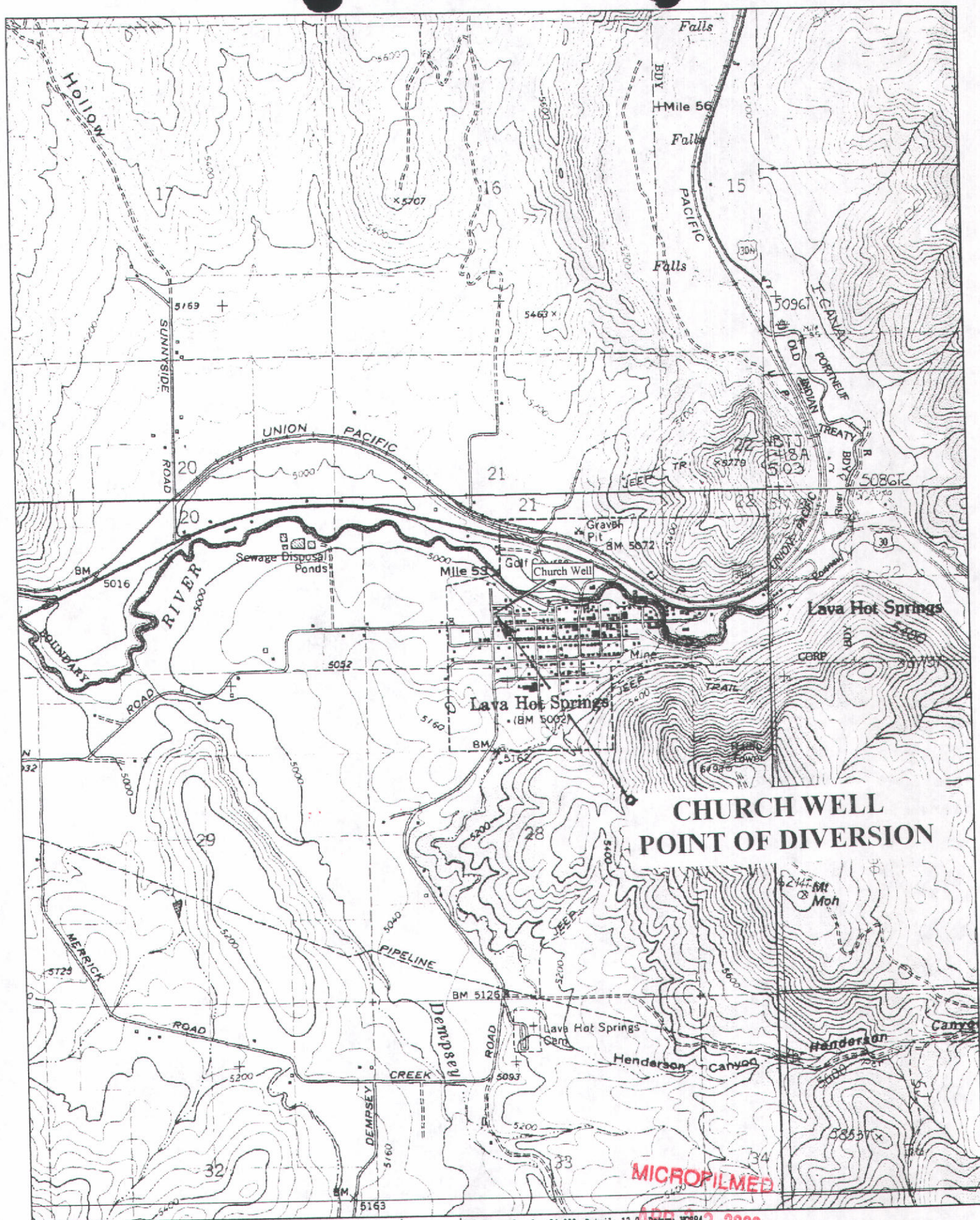




STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
PROOF OF BENEFICIAL USE

RECEIVED

MAR 27 2003

Department of Water Resources

The Idaho Department of Water Resources considers this form a statement that the permit holder(s) has/have completed all development that will occur under this permit and that water has been applied according to the provisions of the permit for the beneficial use(s) described below. This form must be accompanied by a license examination fee, when necessary, or be accompanied by a completed field examination report prepared by a certified water right examiner.

1. Permit No. 29-13297 Telephone No. (208) 776-5820

2. Name of Permit Holder(s): CITY OF LAVA HOT SPRINGS

3. Mailing Address: P.O. BOX 187

City LAVA HOT SPRINGS State ID Zip 83246

4. Source of Water: GROUNDWATER If GROUNDWATER (well), Date Drilled: mo. Aug. / yr. 1968

a. Well Driller: Ivan Bortz Drilling Permit Number: - - - - -

5. Use(s) (as authorized by the water right permit):

Domestic (No. of households): Stockwater (No. and type of stock):

Irrigation (No. of acres): Other: Municipal non-domestic and domestic

6. Total rate of diversion and/or volume for which proof is submitted: .25 cfs OR acre feet

7. Measuring Device Requirement: (refer to the approval conditions on your permit and respond accordingly)

(This question is not optional. Please check either yes or no. Proofs returned not checked accordingly, will be considered incomplete)

Measuring Device: Is a measuring device required?

Yes or No X

Has the measuring device been installed?

Yes or No

8. Fee Enclosed: \$ 100.00 (See Fee Schedule on back of the instructions for filing proof of beneficial use)

9. Person to contact to accompany the Department representative during field examination of the water system.

Name: J. Tony Hobson, Maint. Supervisor Telephone Number: (208) 776-5820

Address: 115 West Elm Street, Lava Hot Springs, ID 83246

10. The information given on this form is my true statement of the extent to which the above numbered permit has been developed and water has been diverted. I agree to relinquish any undeveloped portion of the permit to the State of Idaho.

City of Lava Hot Springs

Signature of permit holder: [Signature] City Clerk
(include your title, if on behalf of company or organization)

Date: 3/21/03

MICROFILMED

JUN 02 2003

State of Idaho
Department of Water Resources

Permit to Appropriate Water

AMENDED

AMENDED

NO. 29-13297

Priority: February 26, 2002

Maximum Diversion Rate: 0.25 CFS

This is to certify, that CITY OF LAVA HOT SPRINGS
PO BOX 187
LAVA HOT SPRINGS ID 83246

has applied for a permit to appropriate water from:

GROUND WATER

and a permit is APPROVED for development of water as follows:

<u>BENEFICIAL USE</u>	<u>PERIOD OF USE</u>	<u>RATE OF DIVERSION</u>
MUNICIPAL	01/01 to 12/31	0.25 CFS

LOCATION OF POINT(S) OF DIVERSION:

GROUND WATER SE $\frac{1}{4}$ SW $\frac{1}{4}$ Sec. 21, Twp 9S, Rge 38E, B.M. BANNOCK County

CONDITIONS OF APPROVAL

1. Proof of application of water to beneficial use shall be submitted on or before April 1, 2003.
2. Subject to all prior water rights.
3. The issuance of this right does not grant any right-of-way or easement across the land of another.
4. Right holder shall comply with the drilling permit requirements of Section 42-235, Idaho Code.
5. After specific notification by the Department, the right holder shall install a suitable measuring device or shall enter into an agreement with the Department to determine the amount of water diverted from power records and shall annually report the information to the Department.
6. The daily diversion volume for non-domestic uses under this municipal right shall not exceed 2,500 gallons per use and the daily diversion volume for domestic uses under this right shall not exceed 13,000 gallons per dwelling in accordance with Section 42-111, Idaho Code.
7. Developing new large irrigation projects such as parks, golf courses, or sports activities fields is not authorized under this right.
8. The right holder shall not provide water diverted under this right for the irrigation of land having appurtenant surface water rights as a primary source of irrigation water except when the surface water rights are not available for use. This condition applies to all land with appurtenant surface water rights, including land converted from irrigated agricultural use to other land uses but still requiring water to irrigate lawns and landscaping.
9. The use of water under this right shall not give rise to any claim against the holder of a senior water right based upon the theories of forfeiture, abandonment, adverse possession, waiver, equitable estoppel, estoppel by laches or customary preference.
10. Place of use is within the service area of the City of Lava Hot Springs municipal water supply.

This permit is issued pursuant to the provisions of Section 42-204, Idaho Code. Witness the signature of the Director, affixed at Boise, this 29th day of April, 2002

MICROFILMED

AUG 15 2002


KARL J DREHER, Director

State of Idaho
Department of Water Resources
Permit to Appropriate Water

NO. 29-13297

Priority: 02/26/2002

Maximum Diversion Rate: 0.25 CFS

This is to certify, that CITY OF LAVA HOT SPRINGS
PO BOX 187
LAVA HOT SPRINGS ID 83246

has applied for a permit to appropriate water from:

Source: GROUND WATER

and a permit is APPROVED for development of water as follows:

<u>BENEFICIAL USE</u>	<u>PERIOD OF USE</u>	<u>RATE OF DIVERSION</u>
MUNICIPAL	01/01 to 12/31	0.25 CFS

LOCATION OF POINT(S) OF DIVERSION:

GROUND WATER SE¼SW¼ Sec. 21, Twp 09S, Rge 38E, B.M. BANNOCK County

CONDITIONS OF APPROVAL

1. Proof of application of water to beneficial use shall be submitted on or before **April 1, 2003**.
2. Subject to all prior water rights.
3. The issuance of this right does not grant any right-of-way or easement across the land of another.
4. Right holder shall comply with the drilling permit requirements of Section 42-235, Idaho Code.
5. After specific notification by the Department, the right holder shall install a suitable measuring device or shall enter into an agreement with the Department to determine the amount of water diverted from power records and shall annually report the information to the Department.
6. The daily diversion volume for non-domestic uses under this municipal right shall not exceed 2,500 gallons per use and the daily diversion volume for domestic uses under this right shall not exceed 13,000 gallons per dwelling in accordance with Section 42-111, Idaho Code.
7. Irrigation of large projects such as parks, golf courses, or sports activities fields is not authorized under this right.
8. The right holder shall not provide water diverted under this right for the irrigation of land having appurtenant surface water rights as a primary source of irrigation water except when the surface water rights are not available for use. This condition applies to all land with appurtenant surface water rights, including land converted from irrigated agricultural use to other land uses but still requiring water to irrigate lawns and landscaping.
9. The use of water under this right shall not give rise to any claim against the holder of a senior water right based upon the theories of forfeiture, abandonment, adverse possession, waiver, equitable estoppel, estoppel by laches or customary preference.
10. Place of use is within the service area of the City of Lava Hot Springs municipal water supply.

This permit is issued pursuant to the provisions of Section 42-204, Idaho Code. Witness the signature of the Director, affixed at Boise, this 12th day of April, 2002.

MICROFILMED

APR 23 2002


for KARL J DREHER, Director

RECEIVED

APR - 5 2002

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
APPLICATION FOR PERMIT

To appropriate the public waters of the State of Idaho

Department of Water Resources

1. Name of Applicant CITY OF LAVA HOT SPRINGS Phone (208) 776-5820
Mailing address P.O. Box 187 Lava Hot Springs, ID
2. Source of water supply GROUND WATER which is a tributary of N/A
3. Location of point of diversion is Township 9S Range 38E Sec. 21 in the SE $\frac{1}{4}$,
SW $\frac{1}{4}$, Govt. Lot BANNOCK County;
additional points of diversion if any: _____
4. Water will be used for the following purposes:
Amount 0.25 cfs for MUNICIPAL purposes from 1/01 to 12/31 (both dates inclusive)
(cfs or acre-feet per annum)
Amount _____ for _____ purposes from _____ to _____ (both dates inclusive)
(cfs or acre-feet per annum)
Amount _____ for _____ purposes from _____ to _____ (both dates inclusive)
(cfs or acre-feet per annum)
Amount _____ for _____ purposes from _____ to _____ (both dates inclusive)
(cfs or acre-feet per annum)
Amount _____ for _____ purposes from _____ to _____ (both dates inclusive)
(cfs or acre-feet per annum)
Amount _____ for _____ purposes from _____ to _____ (both dates inclusive)
(cfs or acre-feet per annum)
5. Total quantity to be appropriated is (a) 0.25 and/or (b) _____
cubic feet per second acre feet per annum
6. Proposed diverting works:
 - a. Describe type and size of devices used to divert water from the source NEW 40 HORSEPOWER PUMP SET AT 138' IN EXISTING WELL CASING.
 - b. Height of storage dam _____ feet; active reservoir capacity _____ acre-feet; total reservoir capacity _____ acre-feet
 - 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? SEPT, 1968; Drilling firm IVAN VORTZ (LICENSE #51).
Well was drilled for (well owner) CITY OF LAVA HOT SPRINGS; Drilling Permit No. _____
7. Time required for completion of works and application of water to proposed beneficial use is 1 years (minimum 1 year)
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. LAVA HOT SPRINGS
 - d. Domestic; show number of households. _____
 - e. Other; describe fully. _____

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APR 23 2002

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FEB 26 2002

Department of Water Resources
Eastern Region

3. 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	RGE	SEC	NE				NW				SW				SE				TOTALS
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
09S	38E	21																	
09S	38E	22	WITHIN EXISTING CITY LIMITS - LAVA HOT SPRINGS																
09S	38E	28																	

Total number of acres to be irrigated _____

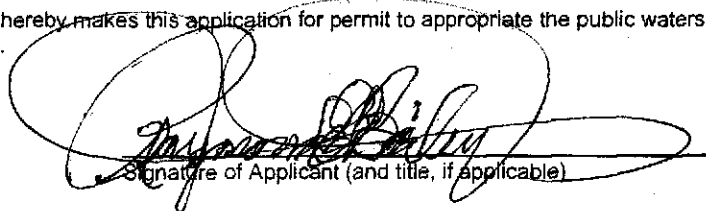
10. Describe any other water rights used for the same purposes as described above. CITY HAS FOUR OTHER RIGHTS: 29-7346, 29-8056, 29-4230, 29-4229

11. a. Who owns the property at the point of diversion? CITY OF LAVA HOT SPRINGS
b. Who owns the land to be irrigated or place of use? MUNICIPAL USE
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: City has existing well called Church Well, old pump removed which pumped 0.310 CFS (29-7346)... well was pump tested up over 0.67 CFS... REQUESTING AN ADDITIONAL 0.25 CFS TO BRING TOTAL FLOW TO 0.56 CFS (250 GPM)

13. MAP OF PROPOSED PROJECT REQUIRED - Attach an 8 1/2"x11" map clearly identifying the proposed point of diversion, place of use, section #, township & range. (A photocopy of a USGS 7.5 minute topographic quadrangle map is preferred.)

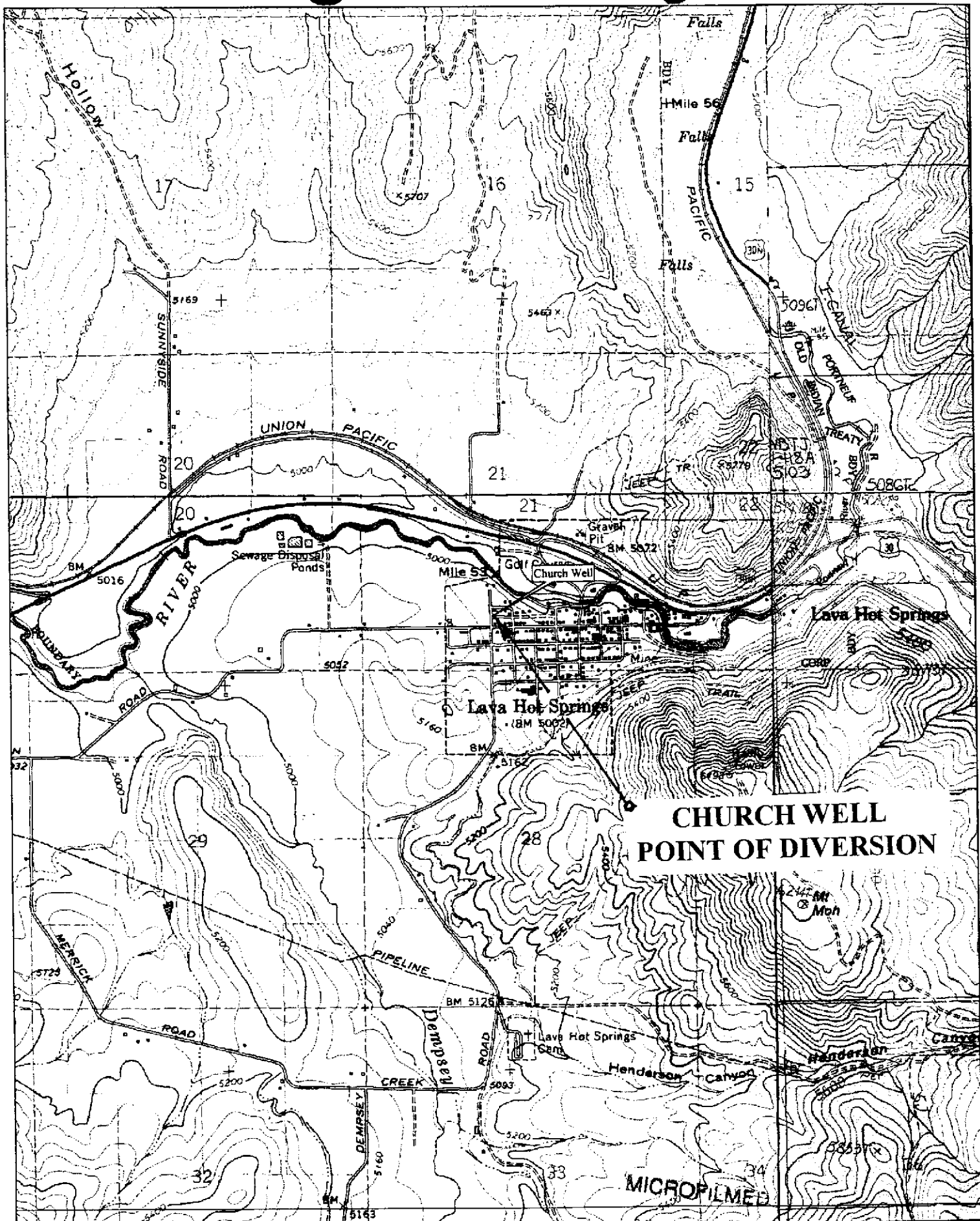
BE IT KNOWN that the undersigned hereby makes this application for permit to appropriate the public waters of the State of Idaho as herein set forth.


Signature of Applicant (and title, if applicable)

Received by HWS Date _____ Time _____ Preliminary check by _____
Fee \$ 250.00 Received by HWS # E027482 Date 2-26-02
Publication prepared by SC Date 3/7 & 3/14/01 Published in Idaho State Journal
Publication approved _____ Date 3/18/02

MICROFILMED

APR 23 2002





State of Idaho

DEPARTMENT OF WATER RESOURCES

1301 North Orchard Street, Boise, ID 83706 - P.O. Box 83720, Boise, ID 83720-0098
Phone: (208) 327-7900 Fax: (208) 327-7866 Web Site: www.idwr.state.id.us

DIRK KEMPTHORNE
Governor

KARL J. DREHER
Director

May 1, 2003

CITY OF LAVA HOT SPRINGS
PO BOX 187
LAVA HOT SPRINGS ID 83246

PROOF ACKNOWLEDGMENT LETTER

RE: PERMIT NO. 29-13297

Dear Permit Holder:

The department acknowledges receipt of the proof of beneficial use form submitted for the above referenced permit. The next step in the process of developing a water right is for the department to contact you to schedule a field examination to determine and confirm the use being made of the water, and that it meets the permitted beneficial use.

Be advised that Section 42-248, Idaho Code, requires you or the owner of these 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.

If you have questions, please contact the **Eastern** Regional Office of the department in Idaho Falls (208) 525-7161.

Sincerely,

Deborah J. Gibson
Administrative Assistant
Water Allocation Bureau

Encl.

c: IDWR - Regional Office (w/encl.)

MICROFILMED

JUN 6 2 2003

ANALYSIS SHEET FOR PROOF OF BENEFICIAL USE

Permit No.: 29-13297

Reviewed By: dgibson

Date: April 30, 2003

	<u>Yes</u>	<u>No</u>		<u>Yes</u>	<u>No</u>
Proof received timely?	X		Drilling permit required?	X	
License examination fee required?	X		Drilling permit No.:		
Appropriate fee submitted?	X		Drilling permit upgrade needed?		
Receipt No.:		E027482, C068243	Well driller's report filed?		X
Additional Amount Due:			Measuring device required?		X
Name and address same as permit?	X		Measuring device installed?		
Are the water uses correct?	X		Measure device waiver requested?		

Priority Calculation

Date proof received		03/27/2003
Date proof due	-	04/01/2003
Lapse notice sent	-	
No. of days late	=	0
Holiday allowance	+	
Priority date	+	02/26/2002
New priority date	=	02/26/2002

Deficiencies of Actions Items

Acknowledge proof.

January 31, 2003

CITY OF LAVA HOT SPRINGS
PO BOX 187
LAVA HOT SPRINGS, ID 83246

PROOF DUE NOTICE

RE: PERMIT NO. 29-13297

Dear Permit Holder:

One of the conditions of approval of the above referenced water permit was that proof of the extent of your beneficial use must be submitted to this office on or before April 01, 2003. (See last page of your approval permit or your last approved extension request.) Enclosed is a form which when accompanied by the license examination fee or a completed field examination report prepared by a certified water right examiner may be used to submit the required proof.

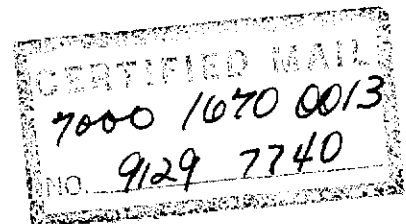
If you have not fully completed your project, and you or a previous owner of this permit have not received a prior extension of time, you may request an extension of time if the delay is for reasonable cause as provided in Section 42-204, Idaho Code. If you have been prevented from proceeding by a governmental agency or by litigation which might bring title to the water in question, more than one extension of time can be granted. An extension of time request form is enclosed for your convenience.

Either an acceptable proof of beneficial use submittal or an acceptable request for an extension of time must be received by this department on or before the above described proof due date. If neither is received, the department will send you a lapse notice. Within sixty (60) days of the mailing of the lapse notice, the permit will no longer be of any force nor effect.

Sincerely,

Deborah J. Gibson, Administrative Assistant
Water Allocation Bureau

Enclosures



MICROFILMED

JUN 9 2 2003



State of Idaho

DEPARTMENT OF WATER RESOURCES

1301 North Orchard Street, Boise, ID 83706 - P.O. Box 83720, Boise, ID 83720-0098

Phone: (208) 327-7900 Fax: (208) 327-7866 Web Site: www.idwr.state.id.us

DIRK KEMPTHORNE
Governor

KARL J. DREHER
Director

April 29, 2002

MAYOR RAYMOND E BAILEY
CITY OF LAVA HOT SPRINGS
PO BOX 187
LAVA HOT SPRINGS ID 83246

RE: Water Appropriation Permit No. 29-13297

Dear Mayor Bailey:

I have enclosed an amended Permit No. 29-13297, which was issued on April 29, 2002. The permit was revised to change approval condition no. 7 to make it clear that the City of Lava Hot Springs can irrigate the municipal park under the permit. The revised permit, which supersedes the permit issued April 12, 2002, is an amended preliminary order issued by the Department of Water Resources pursuant to Section 67-5243, *Idaho Code*. **A preliminary order can and will become a final order without further action of the department unless a party petitions for reconsideration or files an exception and/or brief as further described in the enclosed information sheet.**

The intent of condition no. 7 on the permit is to ensure that the use of water is consistent with the order establishing a moratorium on appropriations of water in the Eastern Snake River Plain area (ESPA). Since 1992 the ESPA, including the Lava Hot Springs area, has been subject to the moratorium order. Under the moratorium order, as it was amended in 1993, IDWR will not process applications for new consumptive uses of surface water and ground water in the ESPA. Currently there are more than 500 applications for new water rights that are being held without processing because of the moratorium.

Permit No. 29-13297 was processed under an exception to the moratorium. The moratorium order includes an exception for new domestic uses as the term is defined in §42-111, *Idaho Code*. A copy of §42-111, *Idaho Code*, is enclosed for your reference. The exception also applies to applications for multiple ownership subdivisions and mobile home parks, so long as each unit individually meets the definition of domestic use set forth in §42-111, *Idaho Code*. There is no exception specifically for municipal water use, which is an umbrella term for large systems supplying domestic, irrigation, industrial, commercial, and other kinds of water uses in a community. Permit No. 29-13297 was issued under the concept that a municipal water use serves mostly domestic water users. To fit the moratorium exception for domestic uses, the permit had to include approval conditions 6 and 7, which preclude the diversion of water for uses that do not meet the domestic definition.

MICROFILMED

MAY 15 2002

Mayor Bailey of Lava Hot Springs

April 29, 2002

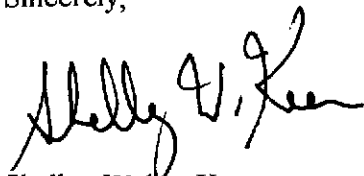
Page 2

As a practical matter, the limitations in conditions 6 and 7, as they are stated on the original version of Permit No. 29-13297, have not been a problem for most municipalities because they commingle all their water diversions in their municipal water systems. With all their water sources commingled together, they can say that their older water rights, which do not carry the restrictions in conditions 6 and 7, are serving the industrial, commercial, and irrigation uses, and the permit issued under the moratorium is serving the domestic uses in the city. The Lava Hot Springs scenario is unique because you do not want to commingle all the water diverted from the well in the municipal water system.

Because the city park is already irrigated, the increased diversion rate authorized under Permit No. 13297 is presumably needed to make your irrigation more efficient without increasing the total consumptive use volume for irrigation purposes. Therefore, condition no. 7 has been modified to make it clear that it prohibits only the development of new irrigation under this permit.

If you have any questions, please call me at 208-327-7946, or email me at skeen@idwr.state.id.us.

Sincerely,



Shelley Walter Keen
Water Rights Supervisor

Enclosures

MICROFILMED

CERTIFICATE OF SERVICE

I hereby certify that on **April 30, 2002**, I mailed a true and correct copy, postage prepaid, of the foregoing **PRELIMINARY ORDER** to the person(s) listed below:

RE: Water Appropriation Permit 29-13297

**MAYOR RAYMOND E BAILEY
CITY OF LAVA HOT SPRINGS
PO BOX 187
LAVA HOT SPRINGS ID 83246**


**Kari Lynn Townsend
Secretary**

**MICROFILMED
AUG 15 2002**

**EXPLANATORY INFORMATION
TO ACCOMPANY A
PRELIMINARY ORDER**

The accompanying order or approved document is a "Preliminary Order" issued by the department pursuant to section 67-5243, Idaho Code. It can and will become a final order without further action of the Department of Water Resources (department) unless a party petitions for reconsideration, files an exception and brief, or requests a hearing as further described below:

PETITION FOR RECONSIDERATION

Any party may file a petition for reconsideration of a preliminary order with the department within fourteen (14) days of the service date of this order. The department 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 fourteen (14) days after (a) the service date of a preliminary order, (b) the service date of a denial of a petition for reconsideration from this preliminary order, or (c) the failure within twenty-one (21) days to grant or deny a petition for reconsideration from this preliminary order, any party may in writing support or take exceptions to any part of a preliminary order and may file briefs in support of the party's position on any issue in the proceeding with the Director. Otherwise, this preliminary order will become a final order of the agency.

REQUEST FOR HEARING

Unless a right to a hearing before the department or the Idaho Water Resource Board (Board) is otherwise provided by statute, any person aggrieved by any final decision, determination, order or action of the Director of the department and who has not previously been afforded an opportunity for a hearing on the matter may request a hearing pursuant to section 42-1701A(3), Idaho Code. A written petition contesting the action of the Director and requesting a hearing shall be filed within fifteen (15) days after receipt of the denial or conditional approval.

ORAL ARGUMENT

If the Director grants a petition to review the preliminary order, the Director shall allow all parties an opportunity to file briefs in support of or taking exceptions to the preliminary order and may schedule oral argument in the matter before issuing a final order. If oral arguments are to be heard, the Director will within a reasonable time period 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 preliminary order shall be served on all other parties to the proceedings in accordance with IDAPA Rules 37.01.01302 and 37.01.01303 (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 Director 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.

Section 67-5246(5), Idaho Code, provides as follows:

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.

APPEAL OF FINAL ORDER TO DISTRICT COURT

Pursuant to sections 67-5270 and 67-5272, Idaho Code, if this preliminary order becomes final, any party aggrieved by the final order or orders previously issued in this case may appeal the final order and all previously issued orders in this case to district court by filing a petition in the district court of the county in which:

- i. A hearing was held,
- ii. The final agency action was taken,
- iii. The party seeking review of the order resides, or
- iv. The real property or personal property that was the subject of the agency action is located.

The appeal must be filed within twenty-eight (28) days of this preliminary order becoming final. See section 67-5273, Idaho Code. The filing of an appeal to district court does not itself stay the effectiveness or enforcement of the order under appeal.



115 WEST ELM
P.O. Box 187
LAVA HOT SPRINGS, ID
83246
(208) 776-5820
FAX (208) 776-5130

RAYMOND E. BAILEY
MAYOR

CANDA L. DIMICK
CLERK-TREASURER

COUNCILMEMBERS

WILLIAM ROBERT ANDERSON
IRENE BERGENDORF
MARSHALL BURGIN
MARILYN CARR

April 22, 2002

Mr. Shelley W. Keen, Water Rights Supervisor
IDAHO DEPARTMENT OF WATER RESOURCES
P.O. Box 83720
Boise, ID 83702-0098

RECEIVED

APR 26 2002

Department of Water Resources

RE: City of Lava Hot Springs, Permit No. 29-13297

Dear Mr. Keen:

The City of Lava Hot Springs is writing this letter in receipt of your letter dated April 15, 2002, which transmitted a Permit to Appropriate Water, Permit No. 29-13297. This permit is for an additional 0.25 CFS to be drawn from the Church Well, which has an existing water right for 0.31 CFS (Permit No. 29-7346). Based on our review of the Permit received, we have serious concerns about some of the Conditions of Approval and how they would affect our use of our existing water rights, as well as, the additional water rights being granted under this permit.

The intent of the City of Lava Hot Springs is to connect the Church Well directly into the existing storage tanks and blend it with water coming from the city's other water sources. The primary reasons for taking the Church Well to the tank include the improvement of its overall quality, taste and to allow for a single disinfection point should it be required in the future. The Church Well is warm (80 degrees Fahrenheit) and high in Arsenic so it must be blended to make it usable as a culinary source. This well would be used as a "last on, first off" source for the culinary system. The city plans to use it to irrigate an adjacent park when it is not needed as a backup supply for culinary. The park has been irrigated with city water for over 20 years so this is not a new consumptive use.

Our concern is that according to Condition No. 7 of the permit, no irrigation of parks is authorized. As a practical matter, it would be difficult for the city to differentiate between the existing .31 CFS and the new .25 CFS when it was irrigating the park. Our desire would be to utilize the Church Well as described in this letter. This would mean that some of the newly permitted water would be applied directly to the adjacent city park and during peak flow periods it would be mixed with other water sources and supplies as culinary water. The city has not created or expanded any new parks or other areas which would require irrigation water and does not plan to do so in the future.

The purpose of this letter is to get some clarification from IDWR on our proposed use of the water granted under this permit. Specifically, we would propose to utilize the water primarily for culinary use as it would be delivered to our storage tank and blended with other water sources. However, during spring and fall seasons when irrigation of our existing park is necessary, we would propose to use the newly permitted water along with the existing water in the Church Well to irrigate the existing park. The city is now in the design process for water system upgrades which will include additional storage,

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AUG 15 2002

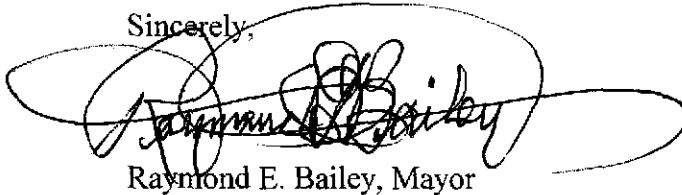
April 22, 2002
Idaho Department of Water Resources
Page 2

individual water meters and other improvements that will result in better use of our existing water supplies and increased conservation by our customers. This will hopefully result in few periods when the Church Well will be used as a direct backup supply to the culinary system and make it available as a direct source to the park. Because of its temperature and quality, it is better suited to irrigation usage. If it is used on the park, our other water resources can be directed to higher culinary uses.

If the consideration of our circumstances requires additional time, we would respectfully request that the action on the final order in the matter of this permit be delayed in order to resolve the issues we have raised. If using this additional water will limit the use of our existing water resources or cause the city to have to keep track of which sources is being used for what purpose, we are not sure we want the permit.

Please let us know if you need additional information or have questions. You may want to talk with Wayne Shepherd, who is our City Engineer (208) 233-9793. Thank you for your assistance in this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Raymond E. Bailey", is written over a large, loopy oval scribble.

Raymond E. Bailey, Mayor

cc: Wayne Shepherd

MICROFILMED

AUG 15 2002



State of Idaho

DEPARTMENT OF WATER RESOURCES

1301 North Orchard Street, Boise, ID 83706 - P.O. Box 83720, Boise, ID 83720-0098
Phone: (208) 327-7900 Fax: (208) 327-7866 Web Site: www.idwr.state.id.us

DIRK KEMPTHORNE
Governor

KARL J. DREHER
Director

April 15, 2002

CITY OF LAVA HOT SPRINGS
PO BOX 187
LAVA HOT SPRINGS ID 83246

RE: Permit No. 29-13297

Permit Approval Notice

Dear Permit Holder:

The Department of Water Resources has issued the enclosed permit authorizing you to establish a new water right. Please be sure to thoroughly review the conditions of approval and remarks listed on your permit.

The permit is a PRELIMINARY ORDER issued by the Department pursuant to Section 67-5243, Idaho Code. It can and will become a final order without further action by the Department unless a party petitions for reconsideration or files an exception and/or brief within fourteen (14) days of the service date as described in the enclosed information sheet.

Enclosed is a form entitled 'Instructions for Proof of Beneficial Use.' Please read the instructions carefully since you must take further action to develop this permit into a licensed water right. Also enclosed is a form entitled 'Proof of Beneficial Use.' If your project is already completed, you should complete and submit this form immediately.

The right to drill a well is not a part of this permit to appropriate water. Beginning in July of 1987, a statute was enacted which requires a drilling permit for new well construction and deepening of existing wells. If the well(s) proposed for use under this water right permit were drilled or deepened after July 1, 1987, a separate drilling permit must be obtained from this Department. Please contact the Ground Water Protection Section located here at this office or our regional office nearest you.

Also, please note that water right owners are required to report any change of water right ownership and/or mailing address to the Department within 120 days of the change. Failure to report these changes could result in a \$100 late filing fee. Contact any office of the Department or visit the Department's homepage on the Internet to obtain the proper forms and instructions.

MICROFILMED

APR 23 2002

If you have any questions, please contact me at 208-327-7946.

Sincerely,

for Kari Lynn Johnson
Shelley W. Keen
Water Rights Supervisor

SWK:klt

Enclosure(s)

MICROFILMED

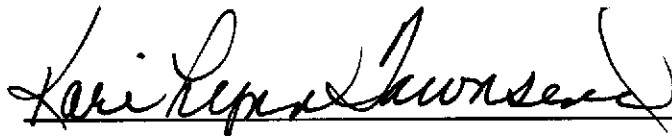
APR 23 2002

CERTIFICATE OF SERVICE

I hereby certify that on April 15, 2002 I mailed a true and correct copy, postage prepaid, of the foregoing PRELIMINARY ORDER(Approved Permit) to the person(s) listed below:

RE: WATER RIGHT NO. 29-13297

**CITY OF LAVA HOT SPRINGS
PO BOX 187
LAVA HOT SPRINGS ID 83246**

A handwritten signature in cursive script, reading "Kari Lynn Townsend", written over a horizontal line.

**Kari Lynn Townsend
Secretary**

MICROFILMED

APR 23 2002

**EXPLANATORY INFORMATION
TO ACCOMPANY A
PRELIMINARY ORDER**

The accompanying order or approved document is a "Preliminary Order" issued by the department pursuant to section 67-5243, Idaho Code. It can and will become a final order without further action of the Department of Water Resources (department) unless a party petitions for reconsideration, files an exception and brief, or requests a hearing as further described below:

PETITION FOR RECONSIDERATION

Any party may file a petition for reconsideration of a preliminary order with the department within fourteen (14) days of the service date of this order. The department 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 fourteen (14) days after (a) the service date of a preliminary order, (b) the service date of a denial of a petition for reconsideration from this preliminary order, or (c) the failure within twenty-one (21) days to grant or deny a petition for reconsideration from this preliminary order, any party may in writing support or take exceptions to any part of a preliminary order and may file briefs in support of the party's position on any issue in the proceeding with the Director. Otherwise, this preliminary order will become a final order of the agency.

REQUEST FOR HEARING

Unless a right to a hearing before the department or the Idaho Water Resource Board (Board) is otherwise provided by statute, any person aggrieved by any final decision, determination, order or action of the Director of the department and who has not previously been afforded an opportunity for a hearing on the matter may request a hearing pursuant to section 42-1701A(3), Idaho Code. A written petition contesting the action of the Director and requesting a hearing shall be filed within fifteen (15) days after receipt of the denial or conditional approval.

ORAL ARGUMENT

If the Director grants a petition to review the preliminary order, the Director shall allow all parties an opportunity to file briefs in support of or taking exceptions to the preliminary order and may schedule oral argument in the matter before issuing a final order. If oral arguments are to be heard, the Director will within a reasonable time period 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 preliminary order shall be served on all other parties to the proceedings in accordance with IDAPA Rules 37.01.01302 and 37.01.01303 (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 Director 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.

Section 67-5246(5), Idaho Code, provides as follows:

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.

APPEAL OF FINAL ORDER TO DISTRICT COURT

Pursuant to sections 67-5270 and 67-5272, Idaho Code, if this preliminary order becomes final, any party aggrieved by the final order or orders previously issued in this case may appeal the final order and all previously issued orders in this case to district court by filing a petition in the district court of the county in which:

- i. A hearing was held,
- ii. The final agency action was taken,
- iii. The party seeking review of the order resides, or
- iv. The real property or personal property that was the subject of the agency action is located.

The appeal must be filed within twenty-eight (28) days of this preliminary order becoming final. See section 67-5273, Idaho Code. The filing of an appeal to district court does not itself stay the effectiveness or enforcement of the order under appeal.

**APPLICATION FOR PERMIT
STATE OFFICE ANALYSIS**
Reviewed by Sharla Curtis on 4/9/01

No. 29-13297 Name: City of Lava H.S. Corp. Officers _____ Ad ok ☒ Govt Lots _____

AREA OF CONCERN: No/Yes _____ Moratorium _____ GWMA _____ TRUST/NON-TRUST _____

GROUNDWATER: (✓Flow Chart)

DRILLING PERMIT

All wells - 046
Basin 34 - 084 (if necessary)
WMD - North/East/West
≤ 0.24 cfs/5 acres - No MD
> 0.24 cfs/5 acres - 067
~~WMD~~
Supp irr (irr = only use) - 065-104
Supp irr (+ other uses) - 100-105
~~≤ 0.24 cfs/5 acres~~ - No MD
> 0.24 cfs/5 acres - 01M

LOCATION:

Boise Front LoGeo - 058 (<85 GW)
Mitigation - 121

Trust - 051 (consumptive uses)
Non-Trust - 048 (consumptive uses or non-cons. > 1.0 cfs)

USES:

STORAGE - 18C-01H-01P-18B-NA
IRR ≤ 5 ac - R66/R67/R68/R69 (0.03 cfs/ac)
> 5 ac - R62/R63/R64/R65 (0.02 cfs/ac)
STOCKWATER - R37 (BLM/FS)-111 (instream stock)
MINING - 054-106
HEAT/COOL - R07 (injection well)
FIRE PROT - 077
COMMERCIAL/
INDUSTRIAL - 106-R07
DAIRY - 082-WD8
POWER - 17H or 17K (+uses)-17G (under FERC)
or 17M (not FERC regulated)
025-027-R22-08A

BENEFICIAL USE DUE: 4/10/2003

MISC CONDITIONS/REMARKS:

Protested - 020-W19
Development Period
≤ 1 yr - 26A
Ownership - 004
Non-consumptive - 027
Water Quality - 106-R07

SURFACE WATER: (✓Flow Chart)

F&G contacted - Yes/No Response
In/Above MSF - WB9

PLANNING REVIEW/RESPONSE

WD - R04 (WD# _____)
≤ 0.20 cfs/others - 01H, 01P or No MD
> 0.20 cfs - 01J

SPRINGS/SINK, INACTIVE WD or WB

≤ 0.24 cfs/5 acres - No MD
> 0.24 cfs/5 acres - 01M or No MD

RIVER BASINS: (SW special considerations)

Snake R (01) - W23, N/A
(02,03) - 007 (w/ remark WB9 if above Weiser)
Payette R (65) - W23, 047 (Payette Lake)
Salmon R (70's) - 029 (fish screens)
Weiser R (67) - 086-087

USES:

MUNICIPAL

Restricted area - 022,075
Irr., GW supp to SW - 102
Future needs - 007,109

FISH PROP

- 029 (70's only)-007-122-106

DOMESTIC

Surface water - WB5 (Big Wood/Boise above Star Bridge)
- 27A (Payette R)
>1 in restricted area - 070-071-075 (no parks/common areas)
Irr separate or none allowed - WB5
GW w/irrigation from SW evident - 065-104
Moratorium approvable - W03 (2500 gpd - meets domestic def
i.e. D/convenience store)

Multiple pd's per ¼¼ - W32
Subd lot desc (pd) - W59
Subd lot desc (pu) - W60
Use definitions - W02 example - S/50 range
Pre-1987 development - 068-074 (allow 120 days for proof due)
Single p/d intended - 076

IRRIGATION SEASON _____ - _____ (Per updated map)

IRR VOLUME/ACRE _____

OTHER CONDITIONS/REMARKS _____

COMMENTS _____

APR - 5 2002

Department of Water Resources

Dist for Staffing _____
Submitted for advertising 2-27-02

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
APPLICATION FOR PERMIT ANALYSIS PERMIT

City of Lava

INITIAL REVIEW BY HWT DATE 2-29-02 APPLICATION NO. 29-13297

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 subdivision, 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 signatory is required)
☒ Fee
☒ Yes _____ No* In form to receipt

ADDITIONAL INFORMATION:

- ☒ Overlapping place of use (Describe source & relationship to present application on the back)
☒ Overlapping point of diversion
____ Yes _____ No Critical groundwater area
____ Yes _____ No Groundwater management area
____ Yes _____ No Send dam safety information
____ Yes _____ No Send fish farm requirement letter
____ Yes _____ No Power residency affidavit
____ Yes _____ No Within trustwater boundary (If yes, attach trust water supplementary analysis sheet)
☒ Yes _____ No **Public Water System**
____ Yes _____ No **Planning section review**
____ Yes _____ No **Moratorium Hold file**

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:

- ☒ Id Dept of Environmental Quality Pocatello _____ U.S. BLM
____ Id Dept of Fish & Game _____ U.S. Forest Service
____ Id Dept of Lands _____ Water District
____ Adjudication Bureau Unit _____ Other _____

☒	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 _____
☐	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 District _____
☐	Yes	☐	No	Special conditions of approval or cover letter below.

By: _____ Date: _____
 ADDITIONAL INFORMATION: _____

Comments received from:

_____ City	_____ Id Fish & Game	_____ Irrigation District
_____ County	_____ Id Health & Welfare	_____ Canal Company
_____ Reservations	_____ Div. Of Environment	_____ Other _____

COMMENTS

PROOF OF PUBLICATION

RECEIVED

MAR 18 2002

Department of Water Resources
Eastern Region

STATE OF IDAHO
County of Bannock

LN8176

KAREN MASON

NOTICE

The following application(s) have been filed to appropriate the public waters of the State of Idaho:

29-13297

CITY OF LAVA HOT
SPRINGS
P.O. BOX 187
LAVA HOT SPRINGS,
ID 83246

Point(s) of Diversion:
SESW S21 T09S
R38E, BANNOCK
County
Source GROUND WATER

Use: MUNICIPAL
01/01 To 12/31 0.25
CFS
Total Diversion: 0.25
CFS

The Place of Use is
within the City of
Lava Hot Springs.

Dated Filed:
02/27/2002

Permits will be subject
to all prior water
rights. Protests may
be submitted based
on the criteria of Sec
42-203A, Idaho
Code.

Any protest against the
approval of this application must be
filed with the Director, Dept. of Water
Resource, Eastern
Region, 900 N. Sky-
line Dr., Ste A, Idaho
Falls, ID 83402 together with a protest
fee of \$25.00 for
each application on
or before March 25,
2002. The protestant
must also send a
copy of the protest to
the applicant.

KARL J. DREHER, Director
March 7, 14, 2002
LN8176

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:

<u>MARCH 7</u>	<u>2002</u>	<u>2002</u>
<u>MARCH 14</u>	<u>2002</u>	<u>2002</u>
<u> </u>	<u>2002</u>	<u>2002</u>
<u> </u>	<u>2002</u>	<u>2002</u>

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 of advertisement
and is a newspaper within the meaning of the laws of Idaho.

Karen Mason

STATE OF IDAHO
COUNTY OF BANNOCK

On this 14TH DAY of MARCH in the year of 2002, before
me, a Notary Public, personally appeared KAREN
MASON, 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 acknowledge to me that he executed the
same.

Lori A. Sekot

Notary Public for Idaho

Residing at POCATELLO

My commission expires: FEB. 2003

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APR 23 2002

FAX

March 11, 2002

To: Sharla Cox - IDWR - Eastern Regional Office
Fax # (208) 525-7177

From: Lin Buck - BLM - Idaho State Office
Fax # (208) 373-3839

Re: Application for Permit No. 29-13297 for City of Lava Hot Springs

Hi Sharla:

Our office reviewed the above water right application for permit from the IDWR New Water Rights filing report dated March 4, 2002 (copy attached).

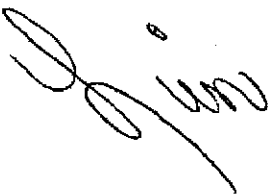
Our MTP (copy attached) shows:

POD: T09S R38E S21 SESW may be missing a lot #.

BLM does not have a problem with this claim, we are just providing this for your information.

Thank you.

Have a nice day!!



cc: Deena Teel - BLM - Idaho Falls FO
Fax # (208) 524-7505

Pages 4 (includes cover sheet)

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APR 23 2002



State of Idaho

DEPARTMENT OF WATER RESOURCES

900 N. Skyline Dr., Suite A, Idaho Falls, ID 83402-1718 • Phone: (208) 525-7161 FAX: (208) 525-7177

EASTERN REGION

DIRK KEMPTHORNE
Governor

KARL J. DREHER
Director

February 28, 2002

CITY OF LAVA HOT SPRINGS
PO BOX 187
LAVA HOT SPRINGS ID 83246

RE: Application for Permit No 29-13297

Dear Applicant(s):

The Department of Water Resources acknowledges receipt of your water right application. Please refer to the above referenced number in all future correspondence regarding this application.

A legal notice of the application has been prepared and is scheduled for publication in the Id State Journal on March 7 and 14, 2002. Submittal of protests to this application will be allowed for a period ending ten days after the second publication.

If the application is protested you will be sent a copy of the protest(s). All protests must be resolved before the application can be considered for approval. If the protest(s) cannot be resolved voluntarily, the Department will conduct a conference and/or hearing on the matter.

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

Sincerely,


Harold W Jones
Water Right Supervisor

HWJ:sc

Enclosure(s)

MICROFILMED
APR 23 2002



State of Idaho

DEPARTMENT OF WATER RESOURCES

900 N. Skyline Dr., Suite A, Idaho Falls, ID 83402-1718 • Phone: (208) 525-7161 FAX: (208) 525-7177

EASTERN REGION

DIRK KEMPTHORNE
Governor

KARL J. DREHER
Director

February 28, 2002

Id Dept of Environmental Quality
224 S Arthur
Pocatello ID 83204

RE: Application for Permit #29-13297

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 March 25, 2002, 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
Water Right Supervisor

HWJ: sc

Enc.

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APR 23 2002



State of Idaho

DEPARTMENT OF WATER RESOURCES

900 N. Skyline Dr., Suite A, Idaho Falls, ID 83402-1718 • Phone: (208) 525-7161 FAX: (208) 525-7177

EASTERN REGION

DIRK KEMPTHORNE
Governor

KARL J. DREHER
Director

February 28, 2002

Legal Notice Department
IDAHO STATE JOURNAL
PO BOX 431
POCATELLO ID 83204

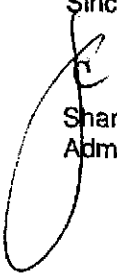
RE: Application for Permit No. 29-13297

Dear LEGAL NOTICE DEPARTMENT:

Enclosed you will find a legal notice which we wish to have published in your newspaper on the dates indicated (once a week for two consecutive weekly issues). 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. Please send the affidavit and bill to this office before March 25, 2002. Your cooperation is appreciated.

Sincerely



Sharla Cox
Administrative Assistant

*mailed
2/28/02
sc*

MAILED
APR 23 2002

The following application(s) have been filed to appropriate the public waters of the State of Idaho:

29-13297

CITY OF LAVA HOT SPRINGS

PO BOX 187

LAVA HOT SPRINGS ID 83246

Point(s) of Diversion: SESW S21 T09S R38E, BANNOCK County

Source GROUND WATER

Use: MUNICIPAL 01/01 To 12/31 0.25 CFS

Total Diversion: 0.25 CFS

The Place of Use is within the City of Lava Hot Springs.

Date Filed: 02/27/2002

Permits will be subject to all prior water rights. Protests may be submitted based on the criteria of Sec 42-203A, Idaho Code.

Any protest against the approval of this application must be filed with the Director, Dept. of Water Resource, Eastern Region, 900 N Skyline Dr Ste A, Idaho Falls ID 83402 together with a protest fee of \$25.00 for each application on or before March 25, 2002. The protestant must also send a copy of the protest to the applicant.

KARL J DREHER, Director

Published on March 7 and 14, 2002

APPROVED

MAR 23 2002