

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES



CLAIM TO A WATER RIGHT

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

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

Notice is hereby given that LAVA HOT SPRING FOUNDATION, an agency of the State of Idaho, Lava Hot Springs, ID 83246 (Mailing Address) (Name of Claimant) 776-5221 or Telephone No. 232-4471 (Zip Code)

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

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

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

(2) Describe the source of water: (Name of stream, lake, spring, etc., or ground water) Spring tributary to Portneuf River

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

Quantity	(cfs, gpd, AFA)	Use	(Domestic, Irrigation, Stock, Etc.)	Period of Use From	(Both dates inclusive)	To	(Mo., Day)	(Mo., Day)
<u>2-3 cfs of</u>		<u>recreational,</u>		<u>full year</u>	<u>continuous</u>			
<u>100° to 140°</u>		<u>thermal, therapeu</u>						
<u>geothermal</u>		<u>tic and health</u>						
<u>water</u>								

(4) 2-3 cfs TOTAL QUANTITY USED.
(cfs, gpd, AFA)

(5) A) Point of diversion: (Location of point where water is diverted from its source)
SW ¼ SW ¼, Sec. 22' Twp. 9S Rge. 38 E B.M., County of Bannock
Additional points of diversion:

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

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

T	R	SEC.	NE%				NW%				SW%				SE%				TOTAL
			NE%	NW%	SW%	SE%	NE%	NW%	SW%	SE%	NE%	NW%	SW%	SE%	NE%	NW%	SW%	SE%	
9S	38E	22											X						

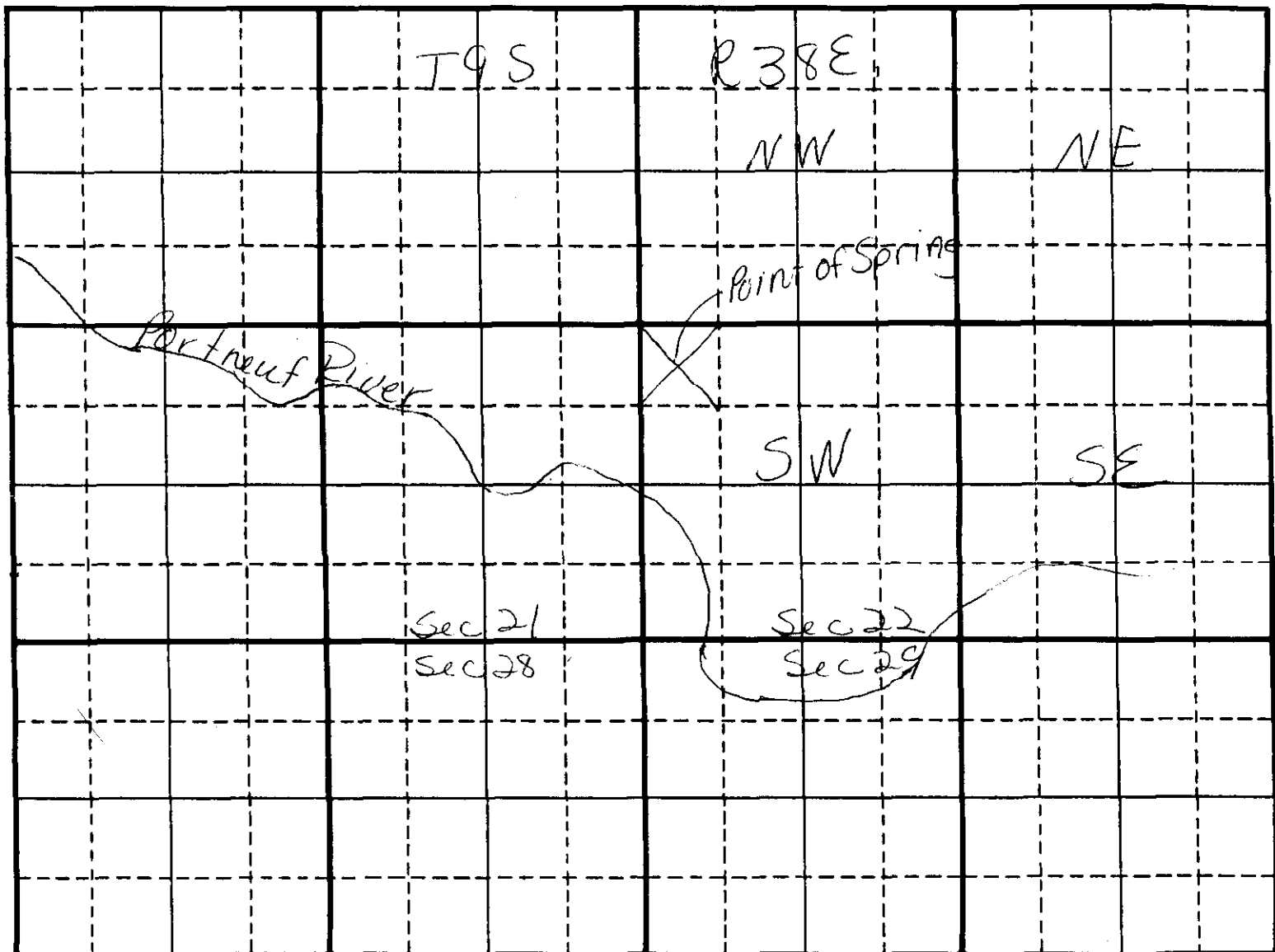
No. of acres --0--

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

NOTE: Include here the type and number of stock watered:

(7) If you are claiming water as a member of an organization, list name of organization: As Chairman of the Lava Hot Springs Foundation, which is charged with the management and control of the lands and property, etc. See Idaho Code §67-4401, etc.

- (8) Remarks Prior to June 13, 1902, the people of the State of Idaho and the people of the Territory of Idaho used these springs for recreational, health, therapeutic, thermal, industrial and all related purposes. June 13 1902, is the date these waters and lands were conveyed to the State of Idaho for public use, and is the earliest verifiable date of use.



Scale: 4 inches equal 1 mile.

Map should show the location of the point of diversion and the place of use of the water by 40-acre subdivisions, section, township and range of the public land survey system.

State of Idaho)
County of Bonneville) ss.

Be it known that the undersigned, being duly sworn, deposes and says that he, she, they subscribed the foregoing claim to a water right, together with all attached information, and that the matters and facts therein are true to the best of the affiant's knowledge.

LAVA HOT SPRINGS FOUNDATION

Sworn to before me this 23 day of October 1980

FLOYD JENSEN, (Chairman)
1980

Notary Public
Residing at Pocatello, Idaho

My commission expires _____

FOR DEPARTMENT USE ONLY

Received by KW Date 10/29/80 Exception filed by: _____ Date _____
Prelim. check by EMC Date 11-4-1980
30 \$20.00 fee received by KW Date 11/5/80 # 16063
Published in Idaho State Journal
Dates 11/13 & 11/20/80

Forwarded to
claimant by: _____ Date _____

PROOF OF PUBLICATION

STATE OF IDAHO
County of Bannock

ss.

Rosalee Olmstead

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>Nov 13</u>	, 19 <u>80</u>	_____	, 19____
<u>Nov 20</u>	, 19 <u>80</u>	_____	, 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.

Rosalee Olmstead

Subscribed and sworn to before me this 26
day of November, 1980

[Signature]

Notary Public, State of Idaho
Residence: Pocatello, Idaho

RECEIVED

NOV 28 1980

Department of Water Resources
Eastern District Office

PROOF OF PUBLICATION

STATE OF IDAHO
County of Bannock

ss.

Rosalie Chastano

NOTICE OF CLAIMS TO
WATER RIGHTS
Notice is hereby given that the
following claim(s) to water
right(s) have been established by
diversion and application to bene-
ficial use:

29-4178
LAVA HOT SPRING FOUNDA-
TION
LAVA HOT SPRINGS, ID 83246
Source: SPRING tributary to
PORTNEUF RIVER
Priority Date: 06-13-1902
Amount: 3.00 CFS
Diversion Point: SWSW Sec 22 T 19 N
09S R 38E, BANNOCK Co.
Use: RECREATION (3000 GPD)
from 01-01 to 12-31
Place of Use: SWSW Sec 22 T 19 N
R 38E
Diversion Means: SPRING.
Any exception to any claim of
water right may be filed with the
Director of the Idaho Department
of Water Resources, 150 Shoup
Ave., Idaho Falls, Idaho 83401.
S/C. Stephen Alfred
Director
Nov. 13, 20, 1980
No. 216

being first duly sworn on oath deposes and says: That she
was at all times herein mentioned a citizen of the United States of Ameri-
ca, 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:

Nov 13 , 1980 , 19

Nov 20 , 1980 , 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.

Rosalie Chastano

Subscribed and sworn to before me this 20
day of November, 1980

[Signature]

Notary Public, State of Idaho
Residence: Pocatello, Idaho

RECEIVED

NOV 28 1980

Department of Water Resources
Eastern District Office

CORPORATE RESOLUTION

BE IT RESOLVED that Floyd Jensen, as Chairman of the Lava Hot Springs Foundation, be and he is hereby authorized, on behalf of the Lava Hot Springs Foundation and the State of Idaho, to sign and execute Claim to Water Right for the Lava Hot Springs and to do all things in conjunction with and necessary thereto.

The above resolution was duly passed and adopted by the Lava Hot Springs Foundation at a regular Board Meeting conducted on the 18th day of August, 1980, at Lava Hot Springs, Idaho, at which meeting a quorum of the members was present.

DATED this 26 day of August, 1980.

LAVA HOT SPRINGS FOUNDATION

BY Karen Keller
Karen Keller
Executive Director

SUBSCRIBED AND SWORN TO Before me this ____ day of August, 1980.

(SEAL)

Alvin Poole
NOTARY PUBLIC for Idaho
Residing at Lava Hot Springs

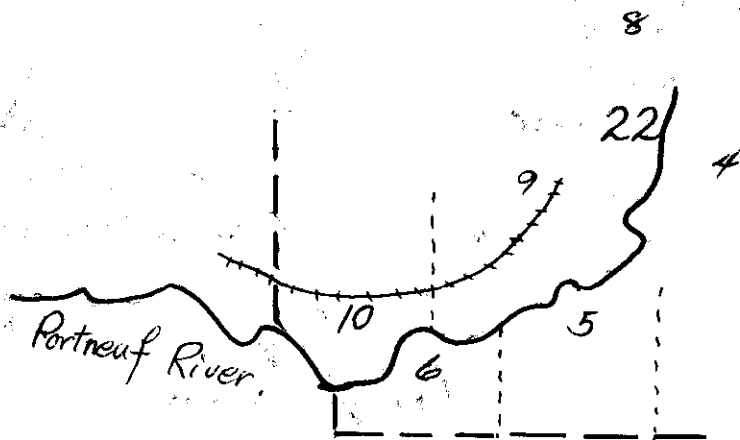
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OCT 29 1980

Department of Water Resources
Eastern District Office

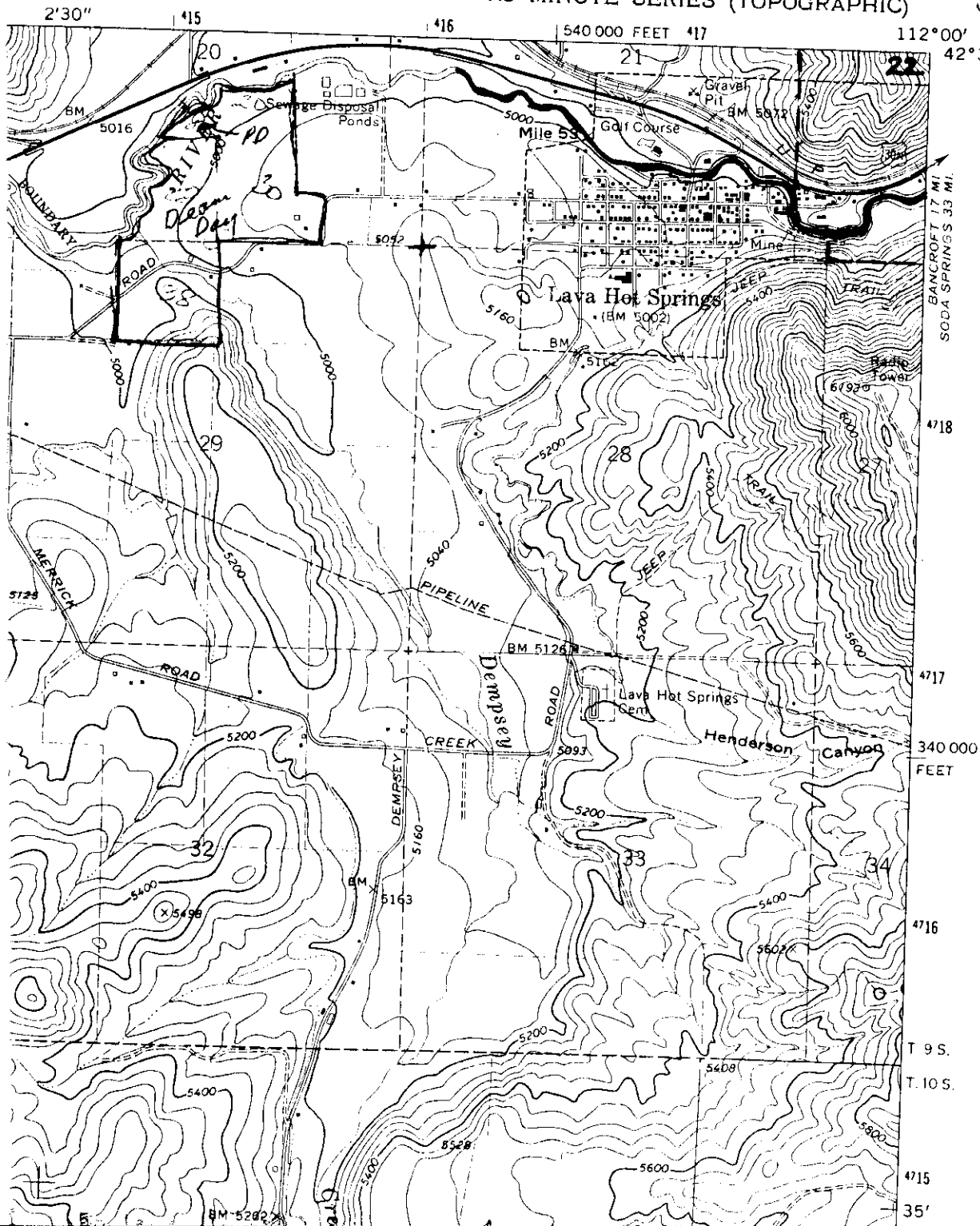
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AUG 28 1980

Department of Water Resources
Eastern District Office



7.5 MINUTE SERIES (TOPOGRAPHIC)





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APR 22 1997

Department of Water Resources

STATE OF IDAHO

OFFICE OF THE ATTORNEY GENERAL

ALAN G. LANCE

April 21, 1997

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

4-23-97
NORM NCM
John H. [unclear] Gmy
to Debbie ✓
Vault ✓
LAVA HOT SPRINGS file
KEN BAKER Phil

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

Dear Mr. Mehlhaff:

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

Sincerely,

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

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

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



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

INVESTIGATIVE REPORT

DATE: April 18, 1997

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

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

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

COMPLAINT

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

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

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

INVESTIGATION

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

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

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

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 Rydalph, engineer at IDWR (**Attachment A**), each of the discharge pipes contain valve boxes located at various places along the pipes. Both Mr. Meline and Mr. Jensen stated that these transport pipes were located north of the large pools for possible future development of diversion of geothermal water to the north western quadrant of the Foundation property. The valve boxes were installed to permit future expansion and/or diversion of geothermal water to this area. According to Mr. Jensen, the initial plan as drawn by Mr. Sudweeks and accepted by the Foundation directors called for these pipes to make a 90° turn south and run along the western perimeter of the state-owned property to discharge into the Portneuf River.

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

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

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

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

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

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

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

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

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

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

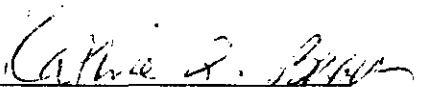
It was apparent in the interviews conducted, that the Foundation is a source of long-standing contention in the community with detractors for virtually every decision made by the Executive Director and/or the Board. It should also be noted that both the Foundation and Mr. Meline enjoy local support. 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.


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

Approved By: 

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

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.

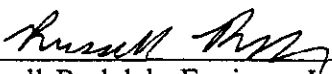
The amount of geothermal water required to maintain a set temperature in the pool will vary as weather and pool usage varies. The operators set the pool temperature in the mechanical room and the heat exchanger control system adjusts the flow to each exchanger as required. A variable speed pumping system 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.

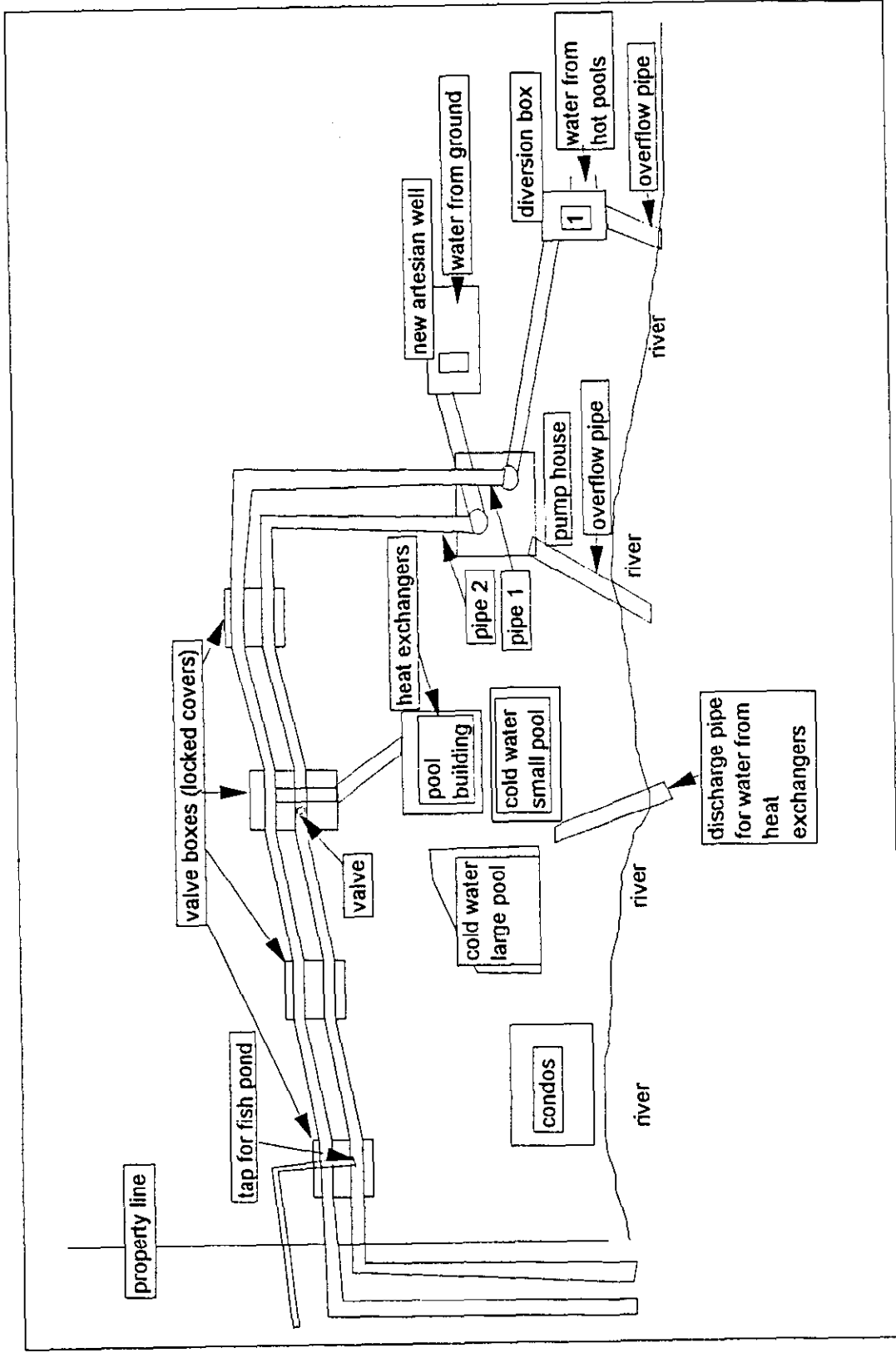
CONCLUSIONS

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 B

January 23, 1996

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

Subject: Lava Pool Geothermal piping

Dear Mr. Jensen:

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

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

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

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

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

Sincerely,

Gary N. Blanchard

Letter never sent. (max) cmr



Engineered Systems Associates, Inc.

MECHANICAL - ELECTRICAL - ENGINEERING

January 23, 1996

315 WEST CENTER, POCATELLO, IDAHO 83204

TELEPHONE - 208-233-0501

FAX - 208-233-0529

C. SUDWEEKS, P.E.

D. SUDWEEKS, P.E.

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 was then 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.



MEMBER ACES

Floyd Jensen

2.

January 23, 1996

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

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

Very truly yours,

ENGINEERED SYSTEMS ASSOCIATES, INC.


Charles L. Sudweeks

jls

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

RECEIVED
JUL 24 1996
OFFICE OF THE
ATTORNEY GENERAL

RE: *Vargason Water Permit*

Dear Kathy:

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

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

The sole consideration for the agreement was the mutual covenants set forth in the agreement. The Vargason's only retain the right to connect to the pipe for access to the waste water after use by the Foundation. The Vargason's claim no right to require pumping or other delivery from the Foundation. Their sole benefit is access, at the Foundation's pipeline, to water after use by the Foundation. By analogy, if the pipeline were a ditch waste water, the Vargason's merely retained the right to access the water in the ditch. The water is used by Vargason, via a pipeline they constructed for a fish pond, and then discharged to the Portneuf River. As you will note, 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 Plumbing and Heating Company, one of the contractors on the project, who witnessed the refusal by the town house management to allow the pipeline, at its originally designed location. Mr. Blanchard prepared this letter for Floyd Jensen, but it was not used. However, he retained the letter in his file.

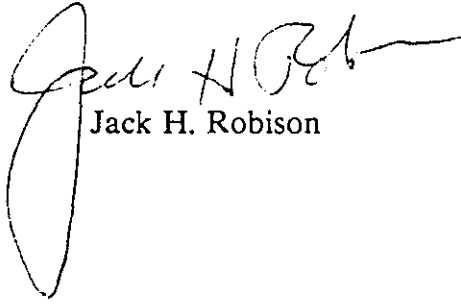
There is absolutely nothing improper regarding this transaction. The Vargason's were not opposed to having the discharge pipe on their property and agreed to an easement on their property. The easement occurred only after opposition to the original proposed location. The Vargason easement was necessary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

Kathy Brack
July 12, 1996
Page - 2

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

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

Yours very truly,

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

Jack H. Robison

JHR:kw
cc: Karen Vargason

3/4/91
file 123

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:

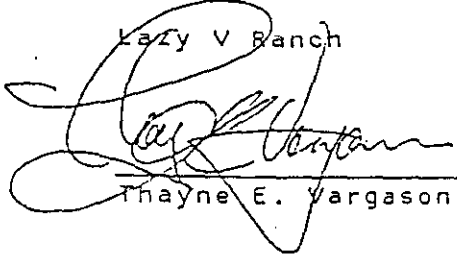
Reference: Authorization for entrance for easement into and upon
Lazy V Ranch premises for piping work.

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.

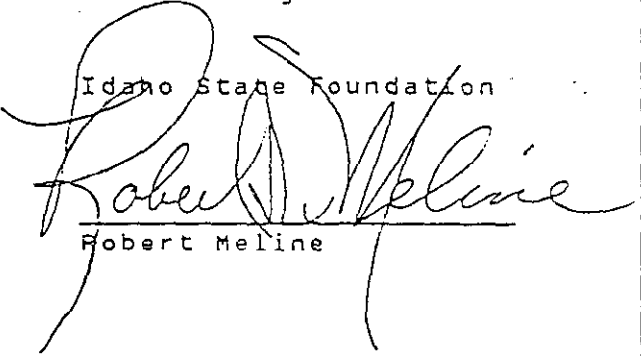
The contractors are aware of fence, trees and buildings so as not to damage such, and back fill shall please the Foundation and the Vargason's.

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

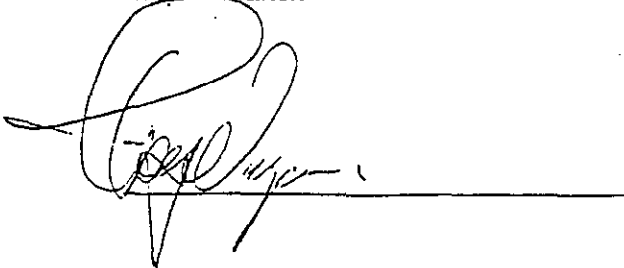
This is to amend the Authorization for Entrance for Easement into and upon Lazy V Ranch premises for piping work letter dated January 29, 1991

Please see paragraph three (3).

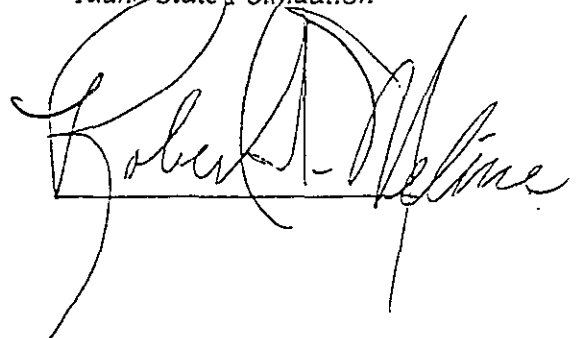
A reference should indicate that the easement excavation and installation of two (2) 12" drainage pipes through the said Lazy V Ranches property will be for the use of all excess waters that the foundation has going through their said drainage systems.

This reference was omitted from the original letter of authorization.

Lazy V Ranch



Idaho State Foundation



BILLING

L.W. FRANDSEN & SONS WELL DRILLING

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

Date: May 25, 1994

RECEIVED
OCT 23 1996
OFFICE OF THE
ATTORNEY GENERAL

NAME: Thayne Vargason

ADDRESS: Lava Hot Springs, Idaho

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

paid
5/31/94

Make payment to Rickey Frandsen, Thank You!



State of Idaho

DEPARTMENT OF WATER RESOURCES

900 N. Skyline Dr., Idaho Falls, Idaho 83402-1718 - (208) 525-7161 - Fax (208) 525-7177

EASTERN REGION

PHILIP E. BATT
GOVERNOR

KARL J. DREHER
DIRECTOR

10 September 1996

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

Re: Lava Hot Springs

Dear Ms Brack,

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

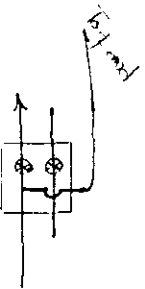
A total by pass flow of 50 gallons per minute is a reasonable estimate of flow going past the heat exchangers. This flow will not change as more water is demanded by the heat exchangers because the head pressure will not change-the pipe is always full.

If you have any questions please contact me.

Sincerely,

Dennis M. Dunn
Sr. Water Resource Agent

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



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

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.

3. The Foundation has the authority under title 67, chapter 44, Idaho Code, to enter into agreements involving easements with private parties to discharge the Foundation's waste water. However, the Foundation may not authorize the use of any portion of its water in a manner that is inconsistent with its state water right. Other parties seeking to use the Foundation's waste water for new uses or on lands other than the authorized place of use must file for a permit from the Idaho Department of Water Resources.

BACKGROUND

Lava Hot Springs was acquired from the United States under an act of Congress in 1902 which conveyed certain lands to the state of Idaho for public use subject to state regulation. The Act reads as follows:

Chapter 1076. -- An Act to grant certain lands to the State of Idaho. Be it enacted by the Senate and the House of Representatives of the United States of America in Congress assembled, That lots seven and eight in section twenty-one, the northwest quarter of the southwest quarter, and lots nine and ten in section twenty-two, all in township nine south, range thirty-eight east, base meridian, in the State of Idaho, are hereby ceded, granted, relinquished, and conveyed unto said State of Idaho for public use under such regulations as said State may prescribe. 32 Stat. 330 (1902)

Seventeen years later, in 1919, the state of Idaho passed Senate Bill No. 9 vesting in the department of welfare the responsibility to manage the lands and property at Lava Hot Springs. 1919 Idaho Sess. Laws 108. The Lava Hot Springs Foundation was created in 1935 and the statutes were amended to make the Foundation responsible for the management and control of the lands and property at Lava Hot Springs. 1935 Idaho Sess. Laws 16. The Foundation, operating as an agency within the department of parks and recreation, continues to manage the lands at Lava Hot Springs today.

ANALYSIS

A. Introduction

The threshold issue raised by the questions presented is whether the unique language in title 67, chapter 44, Idaho Code, creates a special type of water right for the benefit of the Foundation that is different from all other state water rights acquired under the appropriation process. An underlying legal issue is whether it is possible in this state for another type of state water right to exist other than one acquired by appropriation under Idaho law.

Idaho Code § 67-4401 provides: "All rights to the operation, management and control, and to the maintenance and improvement of the lands and property belonging to the state of

Idaho situated within and near the city of Lava Hot Springs, in Bannock County, state of Idaho, hereinafter more particularly described is vested in the Lava Hot Springs Foundation which shall be an agency within the department of parks and recreation"

Idaho Code § 67-4403 describes the lands and property placed under the jurisdiction and control of the Foundation. Idaho Code § 67-4403 provides:

Description of property: The property hereinbefore referred to, and herewith placed under the jurisdiction and control of the said foundation, is described as follows: The northwest quarter (1/4) of the southwest quarter (1/4), and lots nine (9) and ten (10) in section twenty-two (22), and lots seven (7) and eight (8) in section twenty-one (21) in township nine (9), south, range thirty-eight (38) east of the Boise meridian, together with all and singular the tenements, hereditaments and appurtenances thereunto belonging, or in any wise appertaining, and the hot springs and hot waters arising and flowing thereon, in Bannock County, state of Idaho.

Upon further analysis of Idaho's Constitution and related water statutes, the language in Idaho Code § 67-4403 placing jurisdiction and control of the hot springs and hot waters under the direction of the Foundation is intended to refer to only those waters lawfully appropriated under state law.

B. The Right to Use Water at Lava Hot Springs is Sanctioned under Water Rights Acquired by Appropriation

All rights to water under state law in Idaho are acquired by appropriation. Article 15, § 3 of the Idaho Constitution provides: "The right to divert and appropriate the unappropriated waters of any natural stream to beneficial uses, shall never be denied, except that the state may regulate and limit the use for power purposes" Idaho Code § 42-101 provides: "All the waters of the state, when flowing in their natural channels, including the waters of all natural springs and lakes within the boundaries of the state are declared to be the property of the state, whose duty it shall be to supervise their appropriation and allotment to those diverting the same therefrom for any beneficial purpose" Idaho Code § 42-103, prior to the 1971 amendments, provided: "The right to the use of the waters of rivers, streams, lakes, springs, and of subterranean waters, may be acquired by appropriation." Idaho Code § 42-104 provides: "The appropriation must be for some useful or beneficial purpose, and when the appropriator or his successor in interest ceases to use it for such purpose, the right ceases." Idaho Code § 42-106 provides: "As between appropriators, the first in time is the first in right."

The consistent thread in Idaho's Constitution and water statutes is that the right to use water must be acquired by appropriation. The Idaho Supreme Court has long held that the method to acquire water in Idaho is by appropriation and that the state may regulate the means of appropriating water within the state. Speer v. Stephenson, 16 Idaho 707, 102 P. 365 (1909).

Unquestionably, the law of prior appropriation is specified as the method to establish the right to use water in Idaho. Absent a clear statutory expression by the legislature to create an exception to the appropriation statutes, all rights to the use of water in Idaho must be acquired by appropriation. The language in Idaho Code §§ 67-4401 and 67-4403 is not a clear expression that the legislature intended to create an exception from the appropriation process for the waters at Lava Hot Springs. The most reasonable interpretation of this language is that the Foundation's jurisdiction and control over waters at Lava Hot Springs refers to those waters that have already been appropriated or that will be appropriated in the future. The legislature has had several opportunities over the years to pass laws regarding the use of water by the state acting through the governor or a state board for a special purpose. In every instance there is a clear expression in the statutes that the water for the special purpose should be appropriated in trust for the people of the state of Idaho.¹ Additionally, Idaho Code § 42-1503 requires that an application to appropriate water be filed by the Idaho Water Resource Board before a minimum stream flow can be established under Idaho law.

Other statutory authority as well as past actions on the part of the Foundation and the Department indicate that the use of the water at Lava Hot Springs was based upon appropriative water rights developed under state law. Perhaps most instructive on the nature of the Foundation's water rights is the language contained in Idaho Code §§ 58-703 and 58-704, passed in 1931, which addressed cessions to the United States for the construction of a national veterans' sanatorium or hospital at Lava Hot Springs. Idaho Code § 58-703 provides: "The state board of land commissioners, acting for and on behalf of the state of Idaho, is hereby authorized, empowered and directed to cede, grant, relinquish and convey to the government of the United States, . . . such portion of the hot mineral and cold water and water rights appurtenant to said lands as may be necessary and convenient [for the operation of a national veterans' sanatorium or hospital]." The description of the lands provided in section 58-704 again refers to waters and water rights appurtenant thereto. The use of the terms "water rights" and "appurtenant" in sections 58-703 and 58-704 is a strong indicator that the Foundation merely controlled the use of the water under a traditional state water right that is appurtenant to lands at Lava Hot Springs.

The grant from the United States in 1902 provided that title to Lava Hot Springs was to be held by the state of Idaho under such regulations as the state may prescribe. In 1919, the Idaho Legislature passed laws directing the department of welfare to manage and control the hot springs and hot waters at Lava Hot Springs. It appears that the department of welfare was directed to manage and control the hot springs and the same hot waters that had been used for many years at Lava Hot Springs prior to the passage of the 1919 Act. In fact, the Foundation recognized this earlier use and claimed a 3 cfs year round water right with a 1902 priority when it filed a Claim to a Water Right with the Idaho Department of Water Resources in 1980. The Foundation filed applications for additional water rights as its needs increased over the years and the Department has processed the applications and issued two water right licenses authorizing the use of additional waters at Lava Hot Springs.

C. The Water at Lava Hot Springs is Subject to State Regulation under Title 42 and must be Applied in a Manner Consistent with the Underlying Water Right

Idaho Code § 67-4401 places a duty on the Foundation to manage and control the hot springs and hot waters arising from lands at Lava Hot Springs. The most reasonable interpretation of this statute is that jurisdiction and control is limited to those waters appropriated under state law. The Foundation's water rights acquired under the appropriation process are the same type of water rights held by other water users in the state and are subject to regulation under title 42 of the Idaho Code.

Finally, under Idaho Code § 67-4402, the Foundation is authorized to exercise such powers as are incidental or conducive to the attainment of the purposes of the Foundation. The authority granted to the Foundation in Idaho Code § 67-4402 appears sufficient to allow the Foundation to enter into agreements pertaining to easements, provided the purpose of the agreement is incidental or conducive to the attainment of the purposes of the Foundation. An agreement which pertains to an easement to discharge waste water from lands managed by the Foundation appears to fall within the grant of authority under Idaho Code § 67-4402. However, as with all appropriators of water, the Foundation must use its water in a manner that is consistent with its underlying water rights. The Foundation's water rights are appurtenant to the lands described in Idaho Code § 67-4403 and should not be applied to other lands. If an adjacent property owner desires to make beneficial use of the Foundation's waste water, that person needs to file an application for permit to appropriate water with the Idaho Department of Water Resources. The Foundation does not have the ability to enter into contracts authorizing the use of its waste water on lands not authorized under the water right.

AUTHORITIES CONSIDERED

1. Federal Statutes:

32 Stat. 330 (1902).

2. Idaho Constitution:

Art. 15, § 3.

3. Idaho Code:

§ 42-101.

§ 42-103.

§ 42-104.

§ 42-106.

§ 42-1503.

§ 58-703.

§ 58-704.
§ 67-4301.
§ 67-4304.
§ 67-4307.
§ 67-4308.
§ 67-4309.
§ 67-4310.
§ 67-4311.
§ 67-4401.
§ 67-4402.
§ 67-4403.

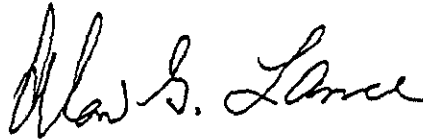
4. Idaho Cases:

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

5. Other Authorities:

1919 Idaho Sess. Laws 108.
1935 Idaho Sess. Laws 16.

DATED this 9th day of January, 1997.



ALAN G. LANCE
Attorney General

Analysis by:

JOHN W. HOMAN
Deputy Attorney General

1. See Idaho Code § 67-4301, Appropriation of waters at Big Payette Lake; Idaho Code § 67-4304, Appropriation of waters at Priest, Pend d'Oreille and Coeur d'Alene Lakes; Idaho Code § 67-4307, Appropriation of waters at Malad Canyon; Idaho Code § 67-4308, Appropriation of waters at Niagra Springs; Idaho Code § 67-4309, Appropriation of waters at Big Springs; Idaho Code § 67-4310, Appropriation of waters at Box Canyon; Idaho Code § 67-4311, Appropriation of waters at Thousand Springs.



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

29-4178

ATTORNEY GENERAL OPINION NO. 97-1

RECEIVED

JAN 13 1997

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

Department of Water Resources

Per Request for Attorney General's Opinion

QUESTIONS PRESENTED

1. Does the Lava Hot Springs Foundation, under the terms of title 67, chapter 44, Idaho Code, have authority to control the use of hot springs and hot waters located on lands under the control of the Foundation?
2. If the Foundation has the authority to control the use of hot springs and hot waters on lands under the control of the Foundation, is such control exclusive, or is the use of such waters subject to the provisions of title 42, Idaho Code?
3. If the Foundation has authority to control the use of hot springs and hot waters on lands under the control of the Foundation, does such authority extend to authorizing the use of such hot springs and hot waters by private parties on private lands in exchange for an easement across such lands for a pipeline used for the discharge of the Foundation's waste water, or would such a use have to be licensed by the Idaho Department of Water Resources?

CONCLUSION

1. Yes, the Lava Hot Springs Foundation (Foundation) maintains authority to manage and control the use of all hot waters lawfully appropriated under state law that rise and flow on the Foundation's lands.
2. The rights to the use of all hot waters that rise and flow at Lava Hot Springs are water rights that have been appropriated under state law and are subject to regulation by the Idaho Department of Water Resources (Department) under the provisions of title 42 of the Idaho Code.

3. The Foundation has the authority under title 67, chapter 44, Idaho Code, to enter into agreements involving easements with private parties to discharge the Foundation's waste water. However, the Foundation may not authorize the use of any portion of its water in a manner that is inconsistent with its state water right. Other parties seeking to use the Foundation's waste water for new uses or on lands other than the authorized place of use must file for a permit from the Idaho Department of Water Resources.

BACKGROUND

Lava Hot Springs was acquired from the United States under an act of Congress in 1902 which conveyed certain lands to the state of Idaho for public use subject to state regulation. The Act reads as follows:

Chapter 1076. -- An Act to grant certain lands to the State of Idaho. Be it enacted by the Senate and the House of Representatives of the United States of America in Congress assembled, That lots seven and eight in section twenty-one, the northwest quarter of the southwest quarter, and lots nine and ten in section twenty-two, all in township nine south, range thirty-eight east, base meridian, in the State of Idaho, are hereby ceded, granted, relinquished, and conveyed unto said State of Idaho for public use under such regulations as said State may prescribe. 32 Stat. 330 (1902)

Seventeen years later, in 1919, the state of Idaho passed Senate Bill No. 9 vesting in the department of welfare the responsibility to manage the lands and property at Lava Hot Springs. 1919 Idaho Sess. Laws 108. The Lava Hot Springs Foundation was created in 1935 and the statutes were amended to make the Foundation responsible for the management and control of the lands and property at Lava Hot Springs. 1935 Idaho Sess. Laws 16. The Foundation, operating as an agency within the department of parks and recreation, continues to manage the lands at Lava Hot Springs today.

ANALYSIS

A. Introduction

The threshold issue raised by the questions presented is whether the unique language in title 67, chapter 44, Idaho Code, creates a special type of water right for the benefit of the Foundation that is different from all other state water rights acquired under the appropriation process. An underlying legal issue is whether it is possible in this state for another type of state water right to exist other than one acquired by appropriation under Idaho law.

Idaho Code § 67-4401 provides: "All rights to the operation, management and control, and to the maintenance and improvement of the lands and property belonging to the state of

Idaho situated within and near the city of Lava Hot Springs, in Bannock County, state of Idaho, hereinafter more particularly described is vested in the Lava Hot Springs Foundation which shall be an agency within the department of parks and recreation"

Idaho Code § 67-4403 describes the lands and property placed under the jurisdiction and control of the Foundation. Idaho Code § 67-4403 provides:

Description of property: The property hereinbefore referred to, and herewith placed under the jurisdiction and control of the said foundation, is described as follows: The northwest quarter (1/4) of the southwest quarter (1/4), and lots nine (9) and ten (10) in section twenty-two (22), and lots seven (7) and eight (8) in section twenty-one (21) in township nine (9), south, range thirty-eight (38) east of the Boise meridian, together with all and singular the tenements, hereditaments and appurtenances thereunto belonging, or in any wise appertaining, and the hot springs and hot waters arising and flowing thereon, in Bannock County, state of Idaho.

Upon further analysis of Idaho's Constitution and related water statutes, the language in Idaho Code § 67-4403 placing jurisdiction and control of the hot springs and hot waters under the direction of the Foundation is intended to refer to only those waters lawfully appropriated under state law.

B. The Right to Use Water at Lava Hot Springs is Sanctioned under Water Rights Acquired by Appropriation

All rights to water under state law in Idaho are acquired by appropriation. Article 15, § 3 of the Idaho Constitution provides: "The right to divert and appropriate the unappropriated waters of any natural stream to beneficial uses, shall never be denied, except that the state may regulate and limit the use for power purposes" Idaho Code § 42-101 provides: "All the waters of the state, when flowing in their natural channels, including the waters of all natural springs and lakes within the boundaries of the state are declared to be the property of the state, whose duty it shall be to supervise their appropriation and allotment to those diverting the same therefrom for any beneficial purpose" Idaho Code § 42-103, prior to the 1971 amendments, provided: "The right to the use of the waters of rivers, streams, lakes, springs, and of subterranean waters, may be acquired by appropriation." Idaho Code § 42-104 provides: "The appropriation must be for some useful or beneficial purpose, and when the appropriator or his successor in interest ceases to use it for such purpose, the right ceases." Idaho Code § 42-106 provides: "As between appropriators, the first in time is the first in right."

The consistent thread in Idaho's Constitution and water statutes is that the right to use water must be acquired by appropriation. The Idaho Supreme Court has long held that the method to acquire water in Idaho is by appropriation and that the state may regulate the means of appropriating water within the state. Speer v. Stephenson, 16 Idaho 707, 102 P. 365 (1909).

Unquestionably, the law of prior appropriation is specified as the method to establish the right to use water in Idaho. Absent a clear statutory expression by the legislature to create an exception to the appropriation statutes, all rights to the use of water in Idaho must be acquired by appropriation. The language in Idaho Code §§ 67-4401 and 67-4403 is not a clear expression that the legislature intended to create an exception from the appropriation process for the waters at Lava Hot Springs. The most reasonable interpretation of this language is that the Foundation's jurisdiction and control over waters at Lava Hot Springs refers to those waters that have already been appropriated or that will be appropriated in the future. The legislature has had several opportunities over the years to pass laws regarding the use of water by the state acting through the governor or a state board for a special purpose. In every instance there is a clear expression in the statutes that the water for the special purpose should be appropriated in trust for the people of the state of Idaho.¹ Additionally, Idaho Code § 42-1503 requires that an application to appropriate water be filed by the Idaho Water Resource Board before a minimum stream flow can be established under Idaho law.

Other statutory authority as well as past actions on the part of the Foundation and the Department indicate that the use of the water at Lava Hot Springs was based upon appropriative water rights developed under state law. Perhaps most instructive on the nature of the Foundation's water rights is the language contained in Idaho Code §§ 58-703 and 58-704, passed in 1931, which addressed cessions to the United States for the construction of a national veterans' sanatorium or hospital at Lava Hot Springs. Idaho Code § 58-703 provides: "The state board of land commissioners, acting for and on behalf of the state of Idaho, is hereby authorized, empowered and directed to cede, grant, relinquish and convey to the government of the United States, . . . such portion of the hot mineral and cold water and water rights appurtenant to said lands as may be necessary and convenient [for the operation of a national veterans' sanatorium or hospital]." The description of the lands provided in section 58-704 again refers to waters and water rights appurtenant thereto. The use of the terms "water rights" and "appurtenant" in sections 58-703 and 58-704 is a strong indicator that the Foundation merely controlled the use of the water under a traditional state water right that is appurtenant to lands at Lava Hot Springs.

The grant from the United States in 1902 provided that title to Lava Hot Springs was to be held by the state of Idaho under such regulations as the state may prescribe. In 1919, the Idaho Legislature passed laws directing the department of welfare to manage and control the hot springs and hot waters at Lava Hot Springs. It appears that the department of welfare was directed to manage and control the hot springs and the same hot waters that had been used for many years at Lava Hot Springs prior to the passage of the 1919 Act. In fact, the Foundation recognized this earlier use and claimed a 3 cfs year round water right with a 1902 priority when it filed a Claim to a Water Right with the Idaho Department of Water Resources in 1980. The Foundation filed applications for additional water rights as its needs increased over the years and the Department has processed the applications and issued two water right licenses authorizing the use of additional waters at Lava Hot Springs.

C. The Water at Lava Hot Springs is Subject to State Regulation under Title 42 and must be Applied in a Manner Consistent with the Underlying Water Right

Idaho Code § 67-4401 places a duty on the Foundation to manage and control the hot springs and hot waters arising from lands at Lava Hot Springs. The most reasonable interpretation of this statute is that jurisdiction and control is limited to those waters appropriated under state law. The Foundation's water rights acquired under the appropriation process are the same type of water rights held by other water users in the state and are subject to regulation under title 42 of the Idaho Code.

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AUTHORITIES CONSIDERED

1. Federal Statutes:

32 Stat. 330 (1902).

2. Idaho Constitution:

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3. Idaho Code:

§ 42-101.

§ 42-103.

§ 42-104.

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§ 67-4402.
§ 67-4403.

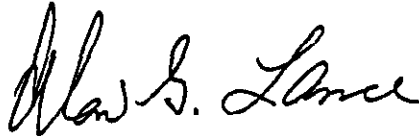
4. **Idaho Cases:**

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

5. **Other Authorities:**

1919 Idaho Sess. Laws 108.
1935 Idaho Sess. Laws 16.

DATED this 9th day of January, 1997.



ALAN G. LANCE
Attorney General

Analysis by:

JOHN W. HOMAN
Deputy Attorney General

1. See Idaho Code § 67-4301, Appropriation of waters at Big Payette Lake; Idaho Code § 67-4304, Appropriation of waters at Priest, Pend d'Oreille and Coeur d'Alene Lakes; Idaho Code § 67-4307, Appropriation of waters at Malad Canyon; Idaho Code § 67-4308, Appropriation of waters at Niagra Springs; Idaho Code § 67-4309, Appropriation of waters at Big Springs; Idaho Code § 67-4310, Appropriation of waters at Box Canyon; Idaho Code § 67-4311, Appropriation of waters at Thousand Springs.

State of Idaho
Department of Water Resources

CLAIM ANALYSIS SHEET

INITIAL REVIEW BY: Ernst

Right Number 29 4178

Applicant Law Hot Springs Foundation

NOTE: 29-4178 IF ANY OF THE ITEMS BELOW ARE MISSING, THE CLAIM IS INCOMPLETE AND MUST BE RETURNED IMMEDIATELY TO THE CLAIMANT ALONG WITH THE APPROPRIATE COVER LETTER.

CHECK:

- ☒ Name and address.
- ☒ Date of priority. (Check for a date past the mandatory filing dates.) (One date only.)
- ☒ Source.
- ☒ Quantity, use, period. 3 c/s - recreational Jan 1 Dec 31
- ☒ Point(s) of diversion.
- ☒ Location of use.
- ☒ Signature/notarization/fee. 12/1

FINAL REGIONAL PROCESSING REVIEW:

- ☒ Affidavit of publication received.
- ☒ Claim published correctly.
- ☐ Exceptions processed.

By Ernest Carlson Date 12-2-1980

STATE OFFICE PROCESSING:

- ☒ Claim review complete.

By Haween Date 12/4/80

MICROFILMED

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
Eastern Region

150 Shoup Ave.
Idaho Falls, Idaho 83401
(208) 525-7161

DECEMBER 2, 1980

LAVA HOT SPRING FOUNDATION
LAVA HOT SPRINGS ID 83246

RE: Claim No. 29-4178

Dear Claimant:

The Department of Water Resources has completed the advertising of your claim to a water right, and no further action is authorized under Section 42-243 and 42-244, IDAHO CODE. Your claim will be retained in our files and will be available at any time for use by you or the court.

The filing and advertising of the claim does not confirm the water right claimed, but will serve to record and preserve the information and the evidence which you included in your claim.

If, at a later date, you find that you have additional information or supporting evidence that you would like to have included with the claim, you may have that information or evidence added at any time. Please refer to the claim identification number when corresponding with this office.

We are enclosing a copy of your claim for your records. If you have questions, or if this office may be of further assistance, please feel free to contact us.

Yours truly,

RONALD D. CARLSON
Eastern Region Supervisor

Enclosure

RECEIVED

November 6, 1980

RE: Claim to a Water Right No. 29-4178 @ LAVA HOT SPRING FOUNDATION

Archie W. Service
GREEN, SERVICE, GASSER & KERL
P. O. Box 4883
Pocatello, ID 83201

Dear Mr. Service:

Attached herewith is Departmental Receipt No. 16063 in the amount of \$30.00 for the above referenced claim.

Sincerely,

KAY WALKER
Secretary

MICROFILMED

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
Eastern Region

150 Shoup Ave.
Idaho Falls, Idaho 83401
(208) 525-7161

NOVEMBER 6, 1980

Idaho State Journal
P. O. Box 431
Pocatello, Idaho 83201

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. We have allowed ample time for you to submit a galley proof to this office for review before the first publication date. 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 DECEMBER 1, 1980.

Yours truly,

RONALD D. CARLSON
Supervisor
Eastern Region

Encl.

MICROFILMED

NOTICE OF CLAIMS TO WATER RIGHTS

Notice is hereby given that the following claim(s) to water right(s) have been established by diversion and application to beneficial use:

Any exception to any claim of water right may be filed with the Director of the Idaho Department of Water Resources, 150 Shoup Ave., Idaho Falls, Idaho 83401 .

C. STEPHEN ALLRED

Director

Published 11/13 & 11/20/80.

MICROFILMED

29-4128-

LAVA HOT SPRING FOUNDATION

LAVA HOT SPRINGS, ID 83246

Source: SPRING tributary to PORTNEUF RIVER

Priority Date: 06/13/1902

Amount: 3.00 CFS

Diversion Point: SWSW Sec 22 T 09S R 38E, BANNOCK Co.

Use: RECREATION (3.00 CFS) from 01/01 to 12/31

Place of Use: SWSW Sec 22 T 09S R 38E

Diversion Means: SPRING.

MICK

JAMES B. GREEN
ARCHIE W. SERVICE
CLARK GASSER
RON KERL
JIM D. PAPPAS
DUANE A. SYBEE
FREDERICK L. RINGE

ALBERTA M. PHILLIPS
STEVEN V. RICHERT

GREEN, SERVICE, GASSER & KERL
ATTORNEYS AT LAW
CENTER PLAZA — P. O. BOX 4883
POCATELLO, IDAHO 83201
TELEPHONE (208) 232-4471

ROBERT M. TERRELL
1883 - 1971

October 27, 1980

Idaho Department of Water Resources
Eastern Division
1515 Lincoln Road
Idaho Falls, ID 83401

ATTENTION: ERNEST CARLSEN

Re: Lava Hot Springs

Dear Mr. Carlsen:

Enclosed herein please find reexecuted Claim to Water Right. This is an application on our part to establish under statutory authority the right of the State of Idaho and the Lava Hot Springs Foundation to the main thermal hot springs. The other wells and springs have been filed upon, Permit Nos. 29-703, 29-2360, 29-2283.

Please review and advise.

Very truly yours,

GREEN, SERVICE, GASSER & KERL


Archie W. Service

AWS:mdc
Enclosure

RECEIVED

OCT 29 1980

Department of Water Resources
Eastern District Office

MICROFILMED



STATE OF IDAHO

DEPARTMENT OF WATER RESOURCES

EASTERN REGION

John V. Evans
Governor

C. Stephen Allred
Director

1515 Lincoln Road
Idaho Falls, Idaho 83401
(208) 523-7186

September 22, 1980

Archie W. Service
Attorney at Law
P. O. Box 4883
Pocatello, ID 83201

Dear Mr. Service:

The initial regional review of the Claim to a Water Right your office recently submitted on behalf of Lava Hot Springs Foundation identified several items requiring attention. We are, therefore, returning the claim, the attached corporate resolution and your Firm's Check No. 92-284/15935 for \$20.00.

While re-drafting your Client's claims the following items should be considered:

1. The priority date in Item #1 is the date water from the source was first used beneficially or the earliest verifiable date. A separate claim should be completed for each priority date claimed. Information on the claim indicates the priority date for the springs could predate 1902 for certain beneficial uses while the priority dates on the wells can not predate when the wells were drilled.
2. For Item #2 a separate claim should be drafted for each water source unless the groundwater and spring water were developed simultaneously for use in the same system.
3. In completing Item #3 a quantity of water and period of use should be indicated for each use listed. It appears from the original claim these would include recreation, heating and industrial or commercial, with an explanation in Item #6B that recreation is for public swimming and therapeutic purposes. Industrial is normally recognized as applying to milling and manufacturing while commercial use is specified when water is used for green houses. Further explanation of these two uses should also be provided in Item #6B.
4. The place of use in Item #6 should be indicated by township, range, section and 40 acre subdivision.

After you have completed drafting of your Client's claims, they should be forwarded to this office accompanied by a check for the statutory filing fee of \$30.00 for each claim submitted.

MICROFILMED

page 2

Archie W. Service

RE: Claim for Lava Hot Springs Foundation

September 22, 1980

Should you have any questions concerning the drafting of your Client's claims, please feel free to call or contact our Eastern Regional Office.

Respectfully submitted,

Ernest Carlsen

ERNEST CARLSEN

Sr. Resource Analyst

EC:kw

Enclosures

Claim form & Corporate Resolution

Check No. 92-284/15935

GREEN, SERVICE, GASSER & KERL TERRELL, GREEN, SERVICE & GASSER ATTORNEYS AT LAW CENTER PLAZA P. O. BOX 4883 208 232-4471 POCATELLO, IDAHO 83201		No 15935 92-284/1241	
PAY TWENTY AND NO/100-----		DATE 8/25/80 AMOUNT \$20.00	
TO THE ORDER OF Idaho Department of Water Resources		GENERAL ACCOUNT	
		<i>Archie W. Service</i>	
⑆124102842⑆ 00 001963 8⑈			

CV Rocky Mountain Bank Note

PAYEE: DETACH THIS STATEMENT BEFORE DEPOSITING CHECK

GREEN, SERVICE, GASSER & KERL, POCATELLO, IDAHO

DATE	INVOICE NO.	DESCRIPTION	AMOUNT	DISCOUNT OR DEDUCTION	NET AMOUNT
8/25/80	760	Filing Fee Lava Hot Springs Foundation Claim to Water Right			\$20.00
✓ mdc					

GREEN, SERVICE, GASSER & KERL
ATTORNEYS AT LAW
CENTER PLAZA — P. O. BOX 4883
POCATELLO, IDAHO 83201
TELEPHONE (208) 232-4471

ROBERT M. TERRELL
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CLARK GASSER
RON KERL
JIM D. PAPPAS
DUANE A. BYBEE
FREDERICK L. RINGE

ALBERTA M. PHILLIPS
STEVEN V. RICHERT

August 27, 1980

Idaho Department of Water Resources
1515 Lincoln Road
Idaho Falls, ID 83401

Re: Lava Hot Springs Foundation
Claim to Hot Springs

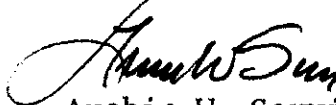
Gentlemen:

Enclosed herein please find executed Claim to a Water Right, together with our remittance in the amount of \$20.00. This claim is filed on behalf of the Lava Hot Springs Foundation, pursuant to Idaho Code 42-245. May we request that you examine same as to form and, if satisfactory, please forward same to Boise for ultimate recording and filing.

May we request that a certificate or other proof of its filing, after same has been done, be forwarded to this office in order that we may complete our files.

Very truly yours,

GREEN, SERVICE, GASSER & KERL


Archie W. Service

AWS:mdc

Enclosures

RECEIVED
AUG 28 1980
Department of Water Resources
MICROFILMED
Eastern District Office