

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

RECEIVED

Section 42-225a, Idaho Code

JUL 24 1978

CLAIM TO A WATER RIGHT

Department of Water Resources

Under the provisions of Section 42-225a, Idaho Code, a person may file a claim to a right to use water which has been established by diversion and application to beneficial use. **The filing of this claim does not confirm the water right but will serve for information purposes only.** It may, however, become the basis for future adjudication of the water right by the Court.

Notice is hereby given that Lava Hot Springs Resort, Inc.

(name of claimant)

of P. O. Box 621, Idaho Falls, Id 83401, claims a right to the diversion and beneficial use of
(mailing address)

(mailing address)

the public water of the State of Idaho

The extent and nature of said claim is as follows:

- (1) Describe source of water: (name of stream, lake, spring, etc., or ground water) Subterranean
 _____, tributary to, _____

- (2) Describe the purpose for which the water has been used and the time during the year when you have used the right claimed:

Amount 2.0 CFS Use Irrigation Period of Use: From Jan. 1 To Dec. 31

Amount Use Period of Use: From 01 To

Amount	<u> </u>	Use	<u> </u>	Period of Use:	From <u> </u>	To <u> </u>
	(cfs, gpm or a/f)		(dom., irri., stock, etc.)		(both dates inclusive)	

- (3) Total quantity of water claimed: 2.0" cubic feet per second, or _____ acre feet per annum, and/or _____ gallons per minute.

- (4) Priority claimed: (the date water was first applied to beneficial use) March 15, 1961

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 to this rule is that a claim may be filed on domestic use from a ground-water source.

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

NW ¼ NW ¼. Sec. 21 Twp. 9 S. Rge. 38 E. B. M. County of Bannock

Additional points of diversion: Property has 200 inches of decreed water from Lava Irrigation Company.

- 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. Well and sprinkling system.

- (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 ¼				NW ¼				SW ¼				SE ¼				TOTAL
9S	38E		NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	
"	"	16											40	40					80
"	"	20	40	20															60
"	"	21					40	40	20	23									123

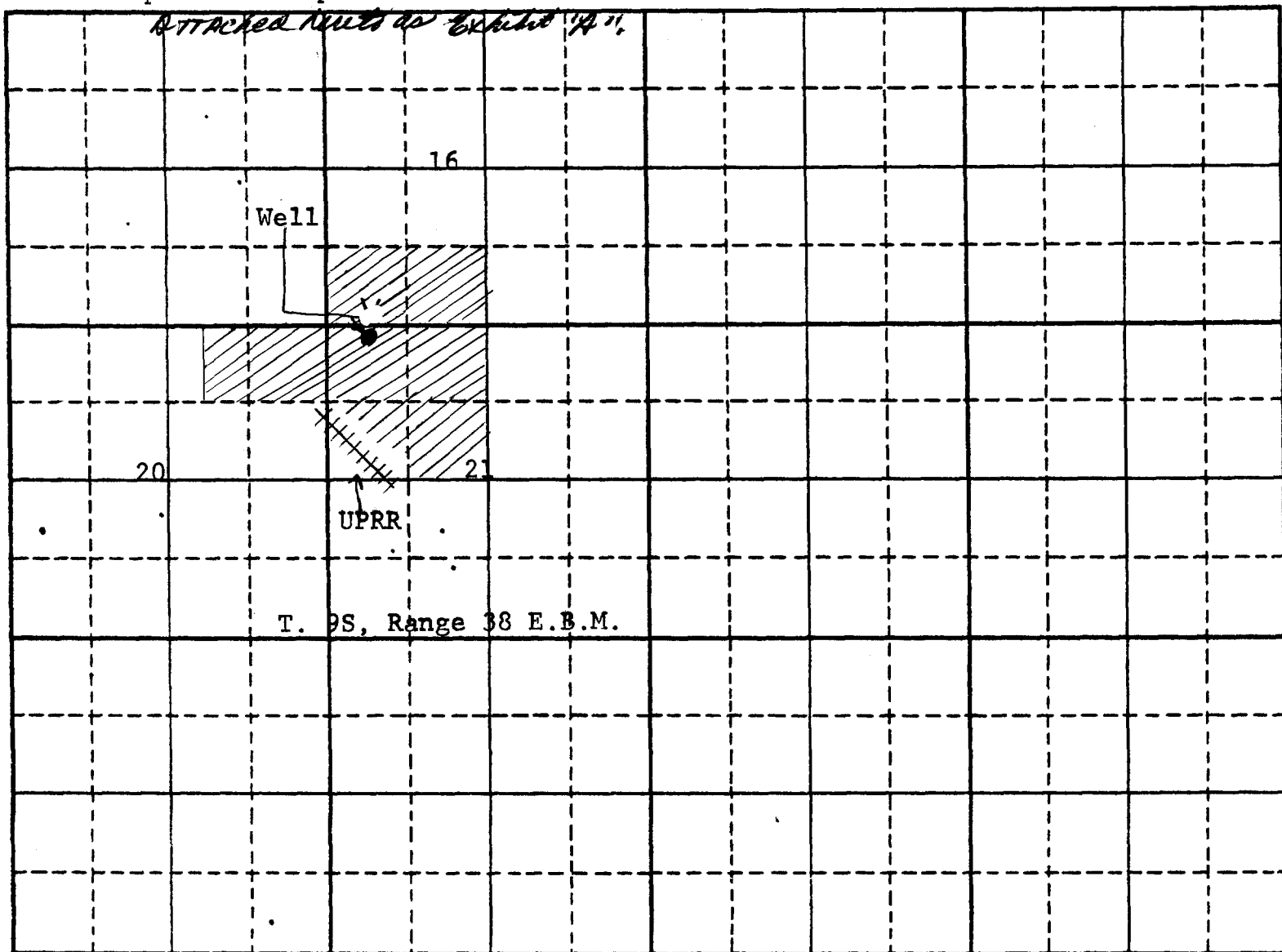
And that land immediately adjacent
and North of U.P.R.R.
.

Total No. of acres 263

- B) If the water is used for other than irrigation, fully describe that use, being as specific as possible:

- (7) If you are claiming water as a member of an organization, list name of organization: Lava Hot Springs Resort, Inc.

- (8) Remarks Originally, an application for permit (No. G. 29568) was filed on said well on March 15, 1961, by one Harold Irick of Lava Hot Springs, Idaho. The well had been completed on August 5, 1960. The system has always been used since installation but Mr. Irick failed to file proof on permit and permit was cancelled on July 5, 1966. See J.B. IRICK AFFIDAVIT



Scale: 2 inches equal 1 mile.

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

State of Idaho)
) ss.
County of Bonneville)

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 affiants knowledge.

Lava Hot Springs Resort, Inc.

Sworn to before me this 18 day of July

(Claimant)

19 78

Notary Public

Residing at Idaho Falls, Idaho

My commission expires Lifelong

For Department Use Only

Received by CW B.P. Date 8-02-78 Exception filed by: _____ Forwarded to _____ Date _____
Prelim. check by EMC Date 8-02-78 claimant by: _____
\$10.00 fee received by B.P. 92-41 Date 7-25-78
Approved for publication by QJ - 9-1-78/1489
Published in Idaho State Journal
Dates Aug. 10 + 17-1978

AFFIDAVIT

STATE OF IDAHO)
) ss.
 County of Bonneville)

J. B. IRICK, being first duly sworn upon oath, deposes and says:

That he is a resident of the County of Bannock, State of Idaho, and has been for many years last past. That affiant makes this Affidavit in support of Claim to Water Right filed simultaneously herewith by Lava Hot Springs Resort, Inc., an Idaho corporation, with principal place of business in Bannock County, State of Idaho, and present mailing address at P. O. Box 621, Idaho Falls, Idaho.

That your affiant is familiar with the real property owned by Lava Hot Springs Resort, Inc., located near the City of Lava Hot Springs, in Bannock County, State of Idaho. That your affiant knows of his own knowledge and observation that during the year 1960, Harold Irick employed Sterling Sigmund to drill a well on said property in the location and designation as set forth in claimant's Claim to Water Right and that said well was drilled and completed on or about August 5, 1960. That said well is 16 inches in diameter and drilled to a depth of 255 feet, cased to 195 feet, with a water level at 90 feet from the top of the ground. That immediately following the drilling of said well and in August of 1960, your affiant observed the water being applicated to said real property by means of said pump and sprinkling system and that since that time your affiant has continuously observed said water being applied to the real property and lands as described and set forth in said Claim to Water Right.

That in approximately the year 1970 and the year 1971, said well was not used for the entire season. Other than for that short period of time your affiant has continually

seen the use of said well and sprinkling system and the appropriation of the waters set forth in said Claim to Water Right. That said waters have been appropriated by means of said well and applied to the real property through the sprinkling system located on said property since the month of August, 1960. That to your affiant's knowledge said well has been used at full capacity at a capacity of 2.6⁵⁰¹ cubic feet per second.

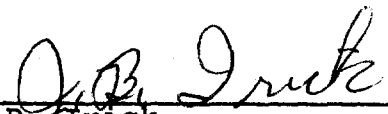
That during the year of 1977, your affiant and his family personally operated and farmed said real property and used said sprinkling system, the well and water works located thereon to its full capacity irrigating the lands and property as set forth in said Claim to Water Right.

That your affiant knows of no time since August of 1960, that the water or the use thereof have been denied or prevented by any person, firm, water district, corporation, municipality, county, state or federal government.

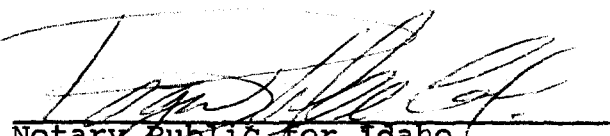
That during the times that your affiant has observed said well, water works and system the waters have been used, depending upon the season, from approximately the early spring until the snows in the fall.

That your affiant has examined and read the Claim to Water Right submitted herewith by the claimant, Lava Hot Springs Resort, Inc., and knows the contents thereof, and believes the same to be true and correct.

DATED This 3rd day of March, 1978.


J. B. Irick

Subscribed and sworn to before me this 3rd day of March, 1978.


Notary Public for Idaho
Residing at Idaho Falls, Idaho
My Commission expires: 6/15/79

29-4097

PROOF OF PUBLICATION

STATE OF IDAHO
County of Bannock

ss.

NOTICE TO A WATER RIGHT NO. 29-4097

Notice is hereby given that Lava Hot Springs Resort, Inc., Idaho Falls, Idaho has filed a claim to a water right established by diversion and application to beneficial use of 2.00 cubic feet per second of water from a ground water source with point of diversion in the NW 1/4 NW 1/4, Sec. 21, T. 9S, R. 38E, B.M., Bannock County.

The water is claimed to be used from Jan. 1 to Dec. 31 for the irrigation of 200 acres with a priority of March 15, 1961 the place of use is within the SW 1/4 Sec. 16, N 1/2 NW 1/4, Sec. 20, NW 1/4, Sec. 21, T. 9S, R. 38E, B.M.

Any exception to this claim of water right may be filed with the Idaho Department of Water Resources, 1515 Lincoln Road, Idaho Falls, Idaho.

R. KEITH HIGGINSON
Director
August 10, 1978
No. 623

Patricia Beck
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:

August 10, 1978 19.....
August 17, 1978 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.

Patricia Beck
Subscribed and sworn to before me this *24th* day of *August*, 19*78*

[Signature]

Notary Public, State of Idaho
Residence: Pocatello, Idaho

SEP 1 1978

Department of Water Resources
Eastern District Office

MICROFILMED

29-4097

PROOF OF PUBLICATION

STATE OF IDAHO
County of Bannock

SS.

NOTICE OF CLAIM TO A WATER RIGHT

NO. 29-400
Notice is hereby given that Lava Hot Springs Resort, Inc., Idaho Falls, Idaho has filed a claim to a water right established by diversion and application to beneficial use of 2.00 cubic feet per second of water from a ground-water source with point of diversion in the NW $\frac{1}{4}$ NW $\frac{1}{4}$, Sec. 21, T. 9S, R. 38E, B.M., Bannock County.
The water is claimed to be used from Jan. 1 to Dec. 31 for the irrigation of 263 acres with a priority of March 15, 1941 the place of use is within the SW $\frac{1}{4}$ SW $\frac{1}{4}$, Sec. 16, N $\frac{1}{2}$ N $\frac{1}{2}$ SW $\frac{1}{4}$, Sec. 20, NW $\frac{1}{4}$, Sec. 21, T. 9S, R. 38E, B.M.

Any exception to this claim of water right may be filed with the Idaho Department of Water Resources, 1535 Lincoln Road, Idaho Falls, Idaho 83401.
R. KEITH HIGGINS
Director
August 10, 17, 1978
No. 623

Patricia Peck
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:

August 10	1978	19
August 17	1978	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.

Patricia Peck
Subscribed and sworn to before me this *24th* day of *August*, 19*78*

[Signature]
Notary Public, State of Idaho
Residence: Pocatello, Idaho

RECEIVED

SEP 1 1978

PROOF OF PUBLICATION

STATE OF IDAHO
County of Bannock

ss.

NOTICE OF CLAIM TO A WATER RIGHT NO. 29-4090

Notice is hereby given that Lava Hot Springs Resort, Inc., Idaho Falls, Idaho has filed a claim to a water right established by diversion and application to beneficial use of 2.00 cubic feet per second of water from a ground-water source with point of diversion in the NW $\frac{1}{4}$ NW $\frac{1}{4}$, Sec. 21, T. 9S, R. 38E, B.M., Bannock County

The water is claimed to be used from Jan. 1 to Dec. 31 for the irrigation of 263 acres with a priority of March 15, 1961 the place of use is within the S $\frac{1}{2}$ SW $\frac{1}{4}$, Sec. 16, N $\frac{1}{2}$ NE $\frac{1}{4}$, Sec. 20, NW $\frac{1}{4}$, Sec. 21, T. 9S, R. 38E, B.M.

Any exception to this claim of water right may be filed with the Idaho Department of Water Resources, 1515 Lincoln Road, Idaho Falls, Idaho, 83401

R. KEITH HIGGINSON
Director
August 10, 17, 1978
No. 623

Patricia Beck
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:

August 10	1978		19.....
August 17	1978		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.

Patricia Beck
Subscribed and sworn to before me this *24th* day of *August*, 19*78*

[Signature]
Notary Public, State of Idaho
Residence: Pocatello, Idaho

September 28, 1978

Roger D. Cox
Cox & Bowen, Chartered
P. O. Box 621
Idaho Falls, Idaho 83401

RE: Claim to a Water Right, No. 29-4090, Lava Hot Springs Resort, Inc.

Dear Mr. Cox:

This letter confirms our telephone conversation of September 26, 1978, concerning the above referenced water right claim. Discussed was the possibility of additional steps which could be taken to improve on the present legal status of this beneficial use right for 2.0 cfs of groundwater with a claimed priority of March 15, 1961.

I expressed to you the opinion that the filing of the claim form with the supporting affidavit of J. E. Irick should be sufficient to protect the claimed water right. No apparent benefit would be gained from initiating a court action at the present time.

An action to adjudicate this single claimed water right under Idaho Code, Sec. 42-1401, or a related provision, appears inappropriate in the absence of a known adverse claim or an intent to adjudicate other rights in the same groundwater basin. If a court were to agree to issue a decree for the single water right in question its value would be questionable. The water rights of individuals not made a party to the action would not appear to be affected by the decree.

A possible alternative action exists under Section 42-1405 for a summary supplemental adjudication of the 1932 decree in Union Grain & Elevator Co. v. McCammon Canal Co. et al. An action under 42-1405 does not result in a decreed water right, however. It would only provide prima facie evidence of a water right subject to attack at any time by any person deeming himself aggrieved thereby. The effect of such an adjudication is to authorize the watermaster under 42-607 to make distribution to the right in time of shortage ahead of any rights not adjudicated or decreed or evidenced by

Roger D. Cox

- 2 -

September 28, 1978

permit or license.

There would be no advantage in bringing a 42-1405 action in the present case because there is no indication that the watermaster intends to curtail distribution to the claimed right.

If the department can be of further assistance in this matter, please contact us.

Very truly yours,

PHILLIP J. RASSIER
Assistant Attorney General
Idaho Department of Water Resources

PJR:alw



State of Idaho
DEPARTMENT OF WATER RESOURCES
STATE OFFICE, 373 W. Franklin Street, Boise, Idaho

JOHN V. EVANS
Governor

C. STEPHEN ALLRED
Director

Mailing address:
Statehouse
Boise, Idaho 83720
(208) 384-2215

September 8, 1978

Lava Hot Springs Resort, Inc.
P. O. Box 621
Idaho Falls, Idaho 83401

Dear Sirs:

RE: Claim to Water Right No. 29-4090

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 can be of further assistance, please feel free to contact us.

Yours truly,

RONALD D. CARLSON
Eastern Regional Supervisor

Enclosure
RDC:dh

RECEIVED
SEP 11 1978
IDH

August 15, 1978

RE: Claim to a Water Right No. 29-4090 LAVA HOT SPRINGS RESORT, INC.

Mr. Roger D. Cox
Attorney at Law
P.O. Box 621
Idaho Falls, Idaho 83401

Dear Mr. Cox:

Attached herewith is departmental receipt No. 11489 in the amount of \$20.00 for the above referenced claim.

Very truly yours,

COLLEEN WRAY
Senior Secretary

Attachment

MICROFILMED



STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
EASTERN REGION

John V. Evans
Governor

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

C. Stephen Allred
Director

August 15, 1978

RE: Claim to a Water Right No. 29-4090 Lava Hot Springs Resort, Inc.

Mr. J. B. Irick
Lava Hot Springs,
Idaho 83246

Dear Mr. Irick:

Pursuant to your request, I am enclosing a copy of the above referenced claim to a water right.

If we may be of further assistance, please feel free to contact this office.

Very truly yours,

ERNEST M. CARLSEN
Water Resource Agent

EMC:CW

Enclosure

RECEIVED

August 4, 1978

RE: Application for Transfer No. 29-4088 SIMPLOT
Claim to a Water Right 29-4088 " Amended
" " 29-4090 LAVA HOT SPRINGS

Idaho State Journal
Box 431
Pocatello, Idaho 83201

Gentlemen:

Enclosed you will find a legal notice which we wish to have published once a week for two consecutive weekly issues of your newspaper. We have inserted the publication dates allowing time for you to submit us a galley proof for review before publication.

After sending us a galley proof, proceed with the publication on the dates we have inserted, assuming the notice is correct. If we have any corrections, we will notify you before the first publication. 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.

Very truly yours,

RONALD D. CARLSON
Supervisor,
Eastern Region

Bill submitted 9-1-78 by LL

RDC: CW

Enc: Legal Notice (3)

MICROFILMED

NOTICE OF CLAIM TO A WATER RIGHT

NO. 29-4090

Notice is hereby given that Lava Hot Springs Resort, Inc.,
Idaho Falls, Idaho
has filed a claim to a water right established by diversion and application
to beneficial use of 2.00 cubic feet per second ~~acre feet per annum~~
of water from a ground-water source
with point of diversion in the NW¹/₄, Sec. 21, T. 9S, R. 38E, B.M.,
Bannock County.

The water is claimed to be used from Jan. 1 to Dec. 31 for the
irrigation of 263 acres
with a priority of March 15, 1961;
the place of use is within the S¹/₂SW¹/₄, Sec. 16, N¹/₂NE¹/₄, Sec. 20, NW¹/₄,
Sec. 21, T. 9S, R. 38E, B.M.

Any exception to this claim of water right may be filed with the Idaho
Department of Water Resources, 1515 Lincoln Road, Idaho Falls, Idaho, 83401.

R. KEITH HIGGINSON

Director

Published in the Idaho State Journal, Pocatello, Idaho
on August 10 and August 17, 1978

MICROFILMED

Copy
Sent

80

ROGER D. COX
DWIGHT R. BOWEN
DALE W. STORER

COX & BOWEN, CHARTERED
ATTORNEYS AT LAW
IDAHO FIRST NATIONAL BANK BUILDING
POST OFFICE BOX 621
IDAHO FALLS, IDAHO 83401

TELEPHONE 522-8606
AREA CODE 208

July 31, 1978

RECEIVED
AUG 2 1978

Mr. Ernest Carlson
Water Resource Agent
Department of Water Resources
1515 Lincoln Road
Idaho Falls, Idaho 83401

Department of Water Resources
Eastern District Office

Re: Claim to Water Right - Lava Hot Springs
Resort, Inc.

Dear Mr. Carlson:

Please find enclosed herewith original and two
(2) copies of Claim to Water Right for Lava Hot Springs
Resort, Inc., which has been corrected relative to Item No.
5. We have also enclosed the filing fee for the same in
the sum of \$~~45.00~~20⁰⁰.

Should you have any additional questions or prob-
lems on the same, kindly advise.

Very truly yours,

Roger D. Cox
Roger D. Cox
Attorney at Law

RDC/pc

Encs.

MICROFILMED

PERIOD ENDING

GROSS

F.L.C.A.

F.W.H.

S.W.H.

NET PAY

\$10.00

NET CHECK

Filing Claim to Water Right - Lava Hot Spring
Resort, Inc.

FOR:

DETACH THIS STUB BEFORE CASHING

ROGER D. COX
ATTORNEY AT LAW
TRUST ACCOUNT
IDAHO FIRST NATIONAL BANK BUILDING
IDAHO FALLS, IDAHO 83401

No 5424

92-41
1241

URCES

DATE 7/19/78

PAY Ten and no/100

DOLLARS \$10.00

John Road
Idaho 83401
23-7186

TO THE
ORDER
OF

Department of Water
Resources

ROGER D. COX - TRUST ACCOUNT

IDAHO FALLS OFFICE
BANK OF COMMERCE IDAHO FALLS, IDAHO



⑆⑆24⑆004⑆⑆ ⑆6584526⑆

Mr. Pat Cox
Attorney at Law
P. O. Box 621
Idaho Falls, Idaho 83401

Dear Mr. Cox:

The Department is returning the claim to water right recently submitted by your office for Lava Hot Springs Resort, Inc. and check No. 92-41 for \$10.00 because the money sent in payment of the filing fee was insufficient.

Effective July 1, 1978 the State Legislature adopted a new statutory fee schedule for applications and claims received by the Department of Water Resources. This new schedule pertains to this claim because it was received in our office after the July 1 deadline. For your convenience a copy of the new fee schedule is enclosed.

Also in reviewing the claim it was noticed the location for the point of diversion in Item 5 was not consistent with the plat map under Item 8. Prior to resubmitting your client's claim, Item 5 and the plat map should be changed so they correspond.

If you should have questions regarding the above matter please feel free to call this office.

Sincerely,

ERNEST CARLSEN
Water Resource Agent

EC:bp

Enclosures

MICROFILMED

COX & BOWEN, CHARTERED

ATTORNEYS AT LAW

ROGER D. COX
DWIGHT R. BOWEN
DALE W. STORER

IDAHO FIRST NATIONAL BANK BUILDING
POST OFFICE BOX 621
IDAHO FALLS, IDAHO 83401

TELEPHONE 522-8606
AREA CODE 208

July 19, 1978

RECEIVED

JUL 24 1978

Department of Water Resources

Department of Water Resources
1365 North Orchard
Boise, Idaho

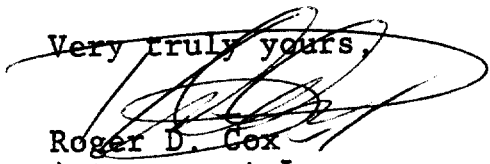
Re: Claim to Water Right - Lava Hot Springs
Resort, Inc.

Gentlemen:

Please find enclosed herewith original and two (2) copies of Claim to Water Right together with supporting Affidavit on behalf of Lava Hot Springs Resort, Inc. You will also find enclosed herewith our Trust Check No. 5424 in the sum of \$10 as statutory filing fees therefor.

After you have had an opportunity to review the claim would you kindly advise whether the same would be acceptable and whether the department would accept service of Summons and Complaint to be filed by Lava Hot Springs Resort, Inc. to obtain a decree for said water rights. You will note that the claimed water right pertains to a well which was drilled on the property in Bannock County and completed August 5, 1960, with a priority date claimed of March 15, 1961.

Very truly yours,


Roger D. Cox
Attorney at Law

RDC/pc

Encs.

MICROFILMED