


IDAHO DEPARTMENT OF LANDS

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July 21, 1994

Mr. Robert I. Meline
 Executive Director
 Idaho State Foundation
 430 East Main
 Lava Hot Springs, ID 83246

SUBJECT: State of Idaho Easement No. 2383
 (Part of Section 21, Township 9 South, Range 38 East, B.M.)

Dear Mr. Meline:

The subject easement was issued in 1958 and it authorized an alleyway. The easement states that it is subject to a pipeline right-of-way but I do not know where that pipeline is located as it is not shown on the easement plat nor can I find an easement issued prior to Easement 2383 for a pipeline in this vicinity. Anyway, the subject easement is purpose specific as it was issued for an alleyway and authorizes that use only.

Our attorneys tell us that the interpretation of Idaho Code 58-603 (copy attached) is that if an easement issued by the state is not used for the specified purpose for a five year period, it automatically terminates. Therefore, if this alleyway has not been used for twenty-five years, it is already terminated by operation of this law.

We will be glad to issue a recordable easement termination or relinquishment form if requested by the Village of Lava or yourself.

Your discussion in your letter about the pumping of water disturbs me somewhat. Easement 2383 authorizes an alleyway and does not authorize any other use. I wish to make that perfectly clear. If the City of Lava desires to use

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To <u>Steve Strack</u>	From <u>Robert Meline</u>	
Co.	Co. <u>Lava Hot Springs Found.</u>	
Dept.	Phone #	
Fax # <u>334-2530</u>	Fax #	

the easement area or any adjoining area for drilling and/or transporting water or any other use, for that matter, they would have to apply for a new easement that would have to be approved by the Foundation.

If you have any further questions, please write or call me at 208-334-0259.

Sincerely yours,

Donald F. McNarie

Donald F. McNarie
Real Estate Specialist
Bureau of Real Estate

DFM:smc

Enclosure

are not used for the purpose of said reservoir, or if the works in connection with which said reservoir is to be used are not constructed within five years from the granting or sale of the said lands, or such further time as the state land board shall grant, the rights granted shall revert to the state.

58-603. RIGHTS OF WAY FOR PUBLIC UTILITY LINES, HIGHWAY, AND OTHER PURPOSES. The state board of land commissioners is hereby empowered to grant, over and upon any land owned or controlled by the state of Idaho, rights of way for railroad, telegraph, telephone and electric lines, pipelines for natural and manufactured gas, rights of way for highway purposes, and rights of way for any other public or private purpose or beneficial use. Application for such right of way must be accompanied by a map, in duplicate, showing the course of such right of way over each smallest legal subdivision of land, and the amount of land required for said right of way. The said right of way may be granted by the state board of land commissioners upon such terms and upon such compensation being paid therefor as the said board may determine: provided, that no land shall be sold under the provisions of this section for less than ten dollars (\$10.00) per acre. Upon the said right of way being granted, it shall be the duty of the director of the department of lands to enter the same upon the plats of state lands on file in his office: provided further, that if the lands so granted are not used for the purpose specified in the application for right of way, within five (5) years from the granting of such right of way, then in such event the said lands so granted shall revert to the state; or if the tracks or works upon such lands for which such right of way has been granted are not completed within five (5) years after such right of way has been granted, the state land board shall have the right to declare such rights of way forfeited.

58-604. RIGHTS OF WAY -- GRANT TO UNITED STATES. There is hereby granted over all the lands now or hereafter belonging to the state a right of way for ditches constructed by authority of the United States. All conveyances of state lands hereafter made shall contain a reservation of such right of way.