

FEB 11 2021

DEPARTMENT OF
WATER RESOURCES

Lance J. Schuster, ISB No. 5404
BEARD ST. CLAIR GAFFNEY PA
2105 Coronado St.
Idaho Falls, ID 83404
Telephone: (208) 523-5171
Facsimile: (208) 529-9732
Email: lance@beardstclair.com

Attorneys for Petitioners

**IDAHO DEPARTMENT OF WATER RESOURCES
STATE OF IDAHO**

IN THE MATTER OF THE WATER
RIGHTS OF:
MICHAEL BEER AND LORI BEER
AND WATER RIGHT NO. 29-13740.

Docket :

PETITION FOR DELIVERY CALL

Michael Beer and Lori Beer, by and through their attorney, Lance J. Schuster of the firm Beard St. Clair Gaffney PA, submits the following Petition for Delivery Call in accordance with Art. XV, § 3, Idaho Constitution, Idaho Code §§ 42-101, 42-226, 42-602, 42-607 and IDAPA 37.03.11.030, and as otherwise provided for by the laws of the State of Idaho.

BACKGROUND

1. Petitioners are the owners of certain real property located at 13714 South Smith Canyon, Lava Hot Springs, Idaho ("Beer Property"). The Beer Property is located in the Lava

Ranch Subdivision (Lot 182) of Bannock County, Idaho. The property is not in an organized ground-water district.

2. Located on the Beer Property is an artesian spring that has dependably and reliably produced predictable quantities of water in all seasons of the year. Diversion of water from the artesian spring is accomplished with a collection pipe that diverts water from the spring to a cistern. From the cistern a pump and pressure tank deliver water to a cabin on the Beer Property.

3. Adjacent property owners also have springs and seeps on their properties, some of which have been developed for domestic uses. All of these springs and seeps collectively form the headwaters of Deer Creek

4. Petitioners have a decreed water right issued in 2006 as Water Right No. 29-13740. This water right is for domestic use in the amount of .04 cfs.

5. Petitioners have, in fact, used the water from the artesian spring for domestic use on the Beer Property.

6. The Respondent, Lava Ranch Property Owner's Association, Inc., ("LRPOA") is a duly organized Idaho corporation. The name and address of the President of LRPOA is Matt Groll, 3286 N. 1730 E., North Logan, UT 84341.

BASIS OF CALL

7. LRPOA is the homeowner's association for the Lava Ranch Subdivision, a subdivision located in Bannock County, Idaho. In 2016 LRPOA developed a water system that includes a well near the south intersection of Wolverine Pass Road and Smith Canyon Road. The water system is uphill from the Petitioner's artesian spring.

8. The LRPOA well is apparently an old stock well that had not been used for some period of time ("LRPOA Well"). However, in 2016 LRPOA constructed a system that pumps

water from the LRPOA Well to holding tanks several hundred feet above the elevation of the LRPOA Well. At the holding tanks any member of the Lava Ranch Property Owner's Association may draw water from the holding tanks for domestic use.

9. Many of the lots in the Lava Ranch Subdivision do not have their own wells, and do not have surface water. There are approximately 470 lots in the Lava Ranch Subdivision. Many property owners are, by necessity, required to haul water to their property.

10. As a result of the development of the LRPOA Well there are many property owners that have begun using the LRPOA Well. Petitioners have observed individuals with large water tanks filling their tanks from the new system developed by LRPOA.

11. There is no meter or way to measure the amount of water being drawn from the LRPOA Well.

12. Use of the LRPOA Well by LRPOA and property owners in the Lava Ranch Subdivision exceeds, and has exceeded, the use allowed under Idaho Code §§ 42-111 and 42-227 for domestic purposes. LRPOA possesses no other water rights, permits, or licenses for the use of water from the LRPOA Well.

13. In the Summer of 2017, the Petitioners began to see a decline in flows from their artesian spring. By August, 2019, there was insufficient water from the spring for Petitioners to maintain water in their cistern. Other adjacent property owners, who also have artesian springs on their properties, have noticed decreases in the water flows.

14. Petitioners have previously provided the Idaho Department of Water Resources an investigative report as to the causes of the failure of the artesian spring on their property. The area having a common ground water supply is Smith Canyon, Bannock County, Idaho.

15. The diminished flow of water from the Petitioner's artesian spring have left the Petitioner's water rights unsatisfied.

16. The Petitioner's water rights are being materially injured by the excessive, unmeasured, unpermitted, and unlicensed pumping of water by LRPOA from the new water system developed near Wolverine Pass Road and Smith Canyon Road.

RELIEF REQUESTED

Pursuant to the Department's constitutional and statutory duty to supervise the distribution of water, the Petitioners respectfully request that the Department find that Petitioners' have suffered material injury to their water rights and order LRPOA to curtail its usage, or to the extent such usage is found to be a violation of Idaho law, stop pumping water entirely from the LRPOA Well.

DATED: February 5, 2021.

/s/ Lance J. Schuster

Lance J. Schuster

BEARD ST. CLAIR GAFFNEY PA

Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing *Petition for Delivery Call* upon the following by mailing a copy thereof, properly addressed with postage prepaid, to:

Director of Department of Water Resources
P.O. Box 83720
Boise, ID 83720-0098

James Cefalo
Regional Manager
IDWR Eastern Region
900 N. Skyline Dr., Ste. A
Idaho Falls, ID 83402-1718

Matt Groll
President
Lava Hot Springs Property Owners Association, Inc.
3286 N. 1730 E.
North Logan, UT 84341

/s/ Lance J. Schuster
Lance J. Schuster
BEARD ST. CLAIR GAFFNEY PA
Attorneys for Plaintiffs