



Photo 1. 63-00016 Field Exam 7/25/02. Photo's by RDH. Artesian well located on different owners property. Claimants have right of way to it. The well used to be used as a large irrigation well with other small uses. The area has since been subdivided and the only irrigation is for 1 de minimus domestic lawn and internal household heating.

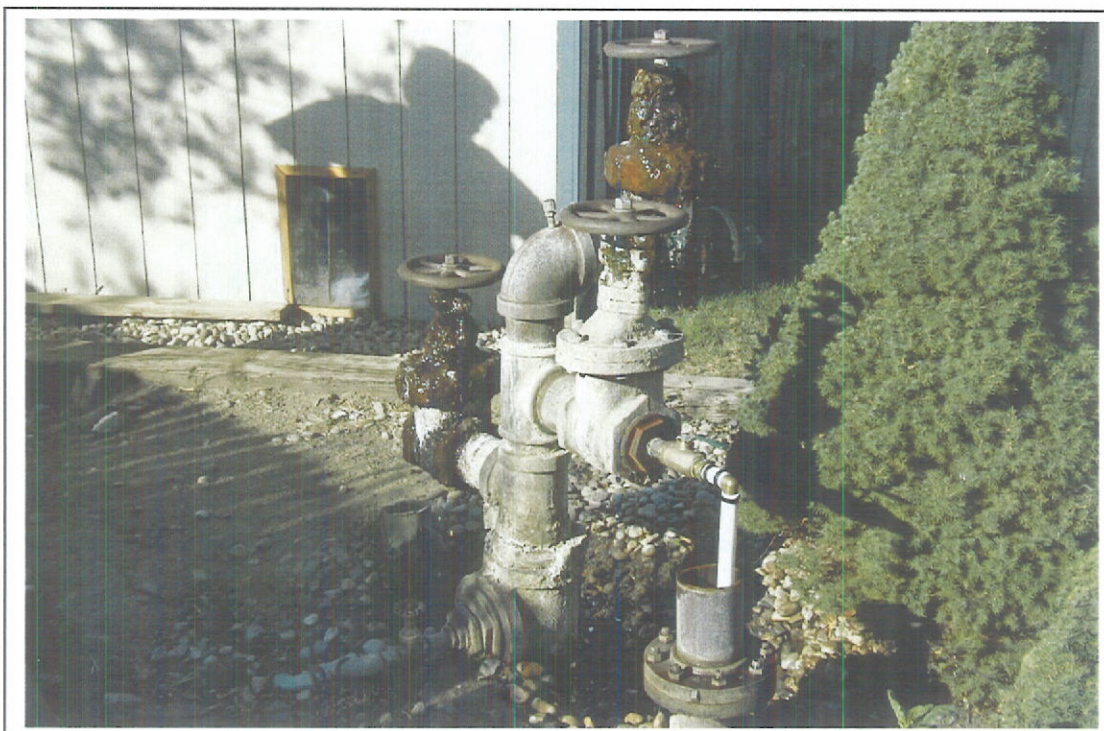


Photo 2. Well location per GPS is in the SENENW, T04N, R02E, S29.



Photo 3. View of domestic home and lawn looking southeast.

Claims: 63-00016

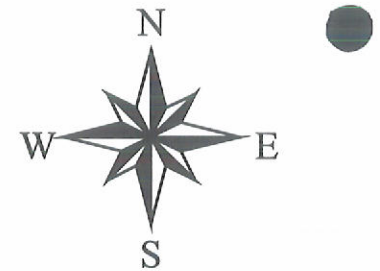
Date Prepared: 7-26-02

Prepared By: Ron Howerton

IDAHO DEPARTMENT OF WATER RESOURCES



**T04N, R02E
S29**



● **Point of Diversion**

□ **Place of use**

□ **Section**

□ **Quarter/Quarter** ●

0 0.1 0.2 0.3 0.4 0.5 0.6 0.7 Miles

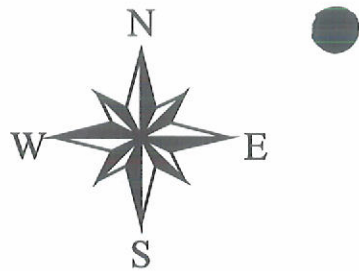
1987 NAPP

IDAHO DEPARTMENT OF WATER RESOURCES

Claims: 63-00016
Date Prepared: 7-26-02
Prepared By: Ron Howerton



T04N, R02E
S29



- Point of Diversion
- Place of use
- Section
- Quarter/Quarter



1987 NAPP



[Icon Latitude: 43.6606451, Longitude: -116.244089]

Same land

or less, to the West line of the Leonard E. Griffith Tract (see deed recorded in Book 107 of Deeds, page 124), thence North 564 feet along the West line of said Griffith tract to the center of the County Road, commonly known as the Foot Hill road; thence Northwesterly along the center of said County Road to the place of beginning.

Also:

Beginning at the quarter section corner between Sections 28 and 29, Township 4 North, Range 2 East of the Boise Meridian; thence South 29 minutes West ^{113.16'} 17.26 chains along the Section line; thence South 89 ^{degrees} minutes ⁵³ seconds East ^{67.14'} 10.29 chains to a point; thence North 20 minutes east ^{56.30'} 8.55 chains to the center of the County Road; thence North 47 ^{85'} degrees 53 minutes West 13.00 chains to the East and West quarter section line; thence North 89 ^{35.64'} degrees and 22 minutes West 0.54 chains to the place of beginning containing 13.48 acres.

Said land belonging to defendant Tiegs aggregates approximately _____ acres.

Said right to be subject to the further provisions of this decree.

63 0016

(5) That defendant IR. Ryan is hereby decreed the right to the use of forty miners inches of water from his Artesian well (measured at said well) located on his land hereinafter described for irrigation, domestic, stock and heating purposes with priority dating from September 24, 1927, said water to be appurtenant to the following described land;

The East one-half ($E\frac{1}{2}$) of the Northeast Quarter

DECREE FILE 63-A-2W
SILKEY VS TIEGS

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLSIN RE THE GENERAL ADJUDICATION
OF RIGHTS TO THE USE OF WATER FROM
THE SNAKE RIVER BASIN WATER SYSTEM

CIVIL CASE NUMBER: 39576

Identification No. A63-00016Date Received Aug. 18, 1989Receipt Number W004647NOTICE OF CLAIM
TO A
WATER RIGHT
ACQUIRED UNDER STATE LAW
For Domestic and/or Stockwater Purposes
Where Daily Use is less than 13,000 gallons per day.

Filing Fee \$25

Please type or print clearly

1. Name of Claimant (s) Mary or Rose Ryan Phone (208) 342-8498
Mailing Address 4504 Foothill Dr. Boise Id Zip 837632. Date of Priority (Only one per claim) 7-13-27 Month/Day/Year3. Source of water supply (Check one) (☒) Groundwater or Other () (a) WR # 63-00016

which is tributary to (b) _____ Name or kind of source

4. Location of point of diversion is: Township 4N Range 2E
Section 29, SE 1/4 of SE NE 1/4 of NE 1/4, Govt. Lot _____, BM.,
County of Ada

Additional points of diversion if any: _____

5. Description of existing diversion works (Ditches, Wells, Pumps, Pipelines, Headgate Etc.), including the dates of any changes or enlargements in use, the dimensions of the diversion works as constructed and as enlarged and the depth of each well. well, 1325 ft deep, 4 in casing, Artesian

6. Water is claimed for the following: (limited to Domestic and/or Stockwater only. See Instructions.)

For domestic purposes from 1-1 to 12-31 amount .80 (cfs)
Heating (Both dates are inclusive)

For _____ purposes from _____ to _____ amount _____

7. Total quantity claimed .8 (cfs)8. Total consumptive use claimed is de minimus9. Non-irrigation uses. Describe fully. (Domestic: give number of households served if single ownership; Stockwater: Type, and Number of livestock) domestic 1 household with 2 people and heating

MICROFILMED

10. Place of use is: Township: 4N Range 2E
Section 29 NE 1/4 of NW 1/4, Govt. Lot _____, B.M.,
County of Ada for (Circle One) Domestic Stock Domestic and Stock
Additional places of use, if any _____

11. In which county (ies) are lands listed above as place of use located? Ada

12. Do you own the property listed above as place of use? Yes X No _____
If your answer is No, describe in Remarks below the authority you have to claim this water right.

13. Describe any other water rights used at the same place and for the same purposes as described above. None (~~None~~)

14. Remarks: _____

15. Basis of Claim (Circle One) Beneficial Use Posted Notice License Permit Decree

Court _____ Decree Date _____ Plaintiff vs Defendant _____

If applicable provide IDWR Water Right Number _____

16. Signature (s) _____

Number of Attachments _____

By signing I/We acknowledge reading the
notice on the back of this claim form.
I/We wish to receive for a small annual
fee monthly copies of the docket sheet.
YES _____ NO X

For Individuals: I do solemnly swear or affirm that the statements contained in the foregoing document are true and correct.

Signature of Claimant (s) Ryan Date 8-17-89

Date _____

For Organizations: I do solemnly swear or affirm that I am _____

of _____, that I have signed the foregoing
document in the space below as _____ of _____
and that the statements contained in the foregoing document are true and correct.

Signature of Authorized Agent _____ Date _____

Title and Organization _____

State of Idaho/or _____)
County of ADA) SS.

Subscribed and sworn (or affirmed) before me this 18 day of Aug. 19 89

SEAL

Notary Public Linda Werner

Residing at Linda A. Werner

My Commission Expires Residing at Boise, Idaho

My Commission Expires December 8, 1994

Last Name Ryan Ident No. _____

Copies: White-State, Yellow-Claimant

MICROFILMED

AUG 14 1992

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE OF IDAHO,
IN AND FOR THE COUNTY OF TWIN FALLS

IN RE THE GENERAL ADJUDICATION
OF RIGHTS TO THE USE OF WATER FROM
THE SNAKE RIVER BASIN WATER SYSTEM

CIVIL CASE NUMBER: 39576

Ident. Number 63-16
Date Received: 8/18/1989
Receipt No: W004647
Received By:

NOTICE OF CLAIM TO A WATER RIGHT
ACQUIRED UNDER STATE LAW

1. Name of Claimant(s): ROSE RYAN Phone: (208)342-8498
4504 FOOTHILL DR
BOISE ID USA 83703
- MARY RYAN Phone: (208)342-8498
4504 FOOTHILL DR
BOISE ID USA 83703

2. Date of Priority: 09/24/1927

3. Source: GROUND WATER Trib. to:

4. Point of Diversion:

Township	Range	Section	1/4 of 1/4 of 1/4 Lot	County	Type
04N	02E	29	SE NE NW	ADA	

5. Description of diverting works:

1325' WELL W/4" CASING, ARTESIAN.

6. Water is used for the following purposes:

Purpose	From	To	C.F.S.	(or) A.F.A
DOMESTIC	1/01	12/31	0.8	

7. Total Quantity Appropriated is:
0.8 C.F.S.

8. Total consumptive use:

9. Non-irrigation uses:

10. Place of use:

Township	Range	Section	1/4 of 1/4	Lot	Use	Acres
04N	02E	29	NE NW		DOMESTIC	

11. Place of use in counties: ADA

12. Do you own the property listed above as place of use? Yes

13. Other Water Rights Used:

14. Remarks:

15. Basis of Claim: Decreed

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE OF IDAHO,
IN AND FOR THE COUNTY OF TWIN FALLS

IN RE THE GENERAL ADJUDICATION
OF RIGHTS TO THE USE OF WATER FROM
THE SNAKE RIVER BASIN WATER SYSTEM.

CIVIL CASE NUMBER: 39576

Ident. Number: A63-00016
Date Received: 8/18/1989
Receipt No: W004647
Received By: DE JD

NOTICE OF CLAIM TO A WATER RIGHT
ACQUIRED UNDER STATE LAW

1. Name: MARY RYAN 208-342-8498
Address: 4504 FOOTHILL DR.
BOISE, ID 83703

OR
Name: ROSE RYAN 208-342-8498
Address: 4504 FOOTHILL DR.
BOISE, ID 83703

2. Date of Priority: SEP 24, 1927

3. Source: GROUNDWATER Trib. to:

4. Point of Diversion:

Township	Range	Section	1/4 of	1/4 of	1/4	Lot	County
04N	02E	29	SE	NE	NW		ADA

5. Description of diverting works:
1325' WELL W/4" CASING, ARTESIAN.

6. Water is used for the following purposes:

Purpose	From	To	C.F.S.	(or)	A.F.A.
DOMESTIC	01/01	12/31	0.800		

7. Total Quantity Appropriated is:
0.800 C.F.S. (and/or) A.F.A.

8. Total consumptive use is Acre Feet Per Annum.

9. Non-irrigation uses:
D/1 HOUSEHOLD W/2 PEOPLE AND HEATING

A63-00016

Page 1

Date: 08/22/89

MICROFILMED
AUG 14 1992

10. Place of Use:

Township	Range	Section	1/4 of 1/4	Lot	Use	Acres
04N	02E	29	NE NW		DOMEST	

11. Place of use in counties: ADA

12. Do you own the property listed above as place of use? YES

13. Other Water Rights Used:
NONE

14. Remarks:

15. Basis of Claim: BENEFICIAL USE

16. Signature(s)

(a.) By signing below, I/We acknowledge that I/We have received, read and understand the form entitled "How you will receive notice in the Snake River Basin Adjudication." (b.) I/We do _____ do not _____ wish to receive and pay a small annual fee for monthly copies of the docket sheet.

Number of attachments: _____

For Individuals:

I/We do solemnly swear or affirm that the statements contained in the foregoing document are true and correct.

Signature of Claimant(s): _____ Date: _____
_____ Date: _____

State of Idaho)
County of _____) SS.

Subscribed and sworn (or affirmed) before me this _____ day
of _____ 19 _____

Notary Public

Seal

Residing at _____

My Commission Expires _____

9-185-July 1935
Revised

230 Collins Rd.
Boise 83702 3341750
Bill Young

UNITED STATES
DEPARTMENT OF THE INTERIOR
GEOLOGICAL SURVEY
WATER RESOURCES BRANCH

WELL SCHEDULE

Date Oct. 23, 1947 Field No. 4N2E
Record by R. L. Nace Office No. 296a2
Source of data owner; Idaho District Court Records

1. Location: State Idaho County Ada
Map Air Photo BUL 10-42

1/4 sec. T S R E W

2. Owner: J. Ryan Address Boise
Tenant Address
Driller Jack Dir Address Boise

3. Topography Flood plain Terrace near Foothill

4. Elevation ft. above below

5. Type: Dug, drilled, driven, bored, jetted, 1927

6. Depth: Rept. 1325 ft. Meas. 1327 ft.

7. Casing: Diam. 4 in., to 6 in. Type 1-1327
Depth ft. Finish

8. Chief Aquifer From ft. to ft.

Others

9. Water level ft. meas. Summer 1927 above below LSD

which is ft. above below surface

10. Pump: Type None Capacity G. M.

Power: Kind Horsepower

11. Yield: Flow 45 G. M., Pump G. M., Meas. Rept. Est.

Drawdown ft. after ft. after G. M.

12. Use: Dpm., Stock, PS., RR., none; capped

Adequacy, permanence

13. Quality Temp Hot °F. ft.

Taste, odor, color Sample Yes No

Unit for ft.

14. Remarks: none

AUG 14 1992

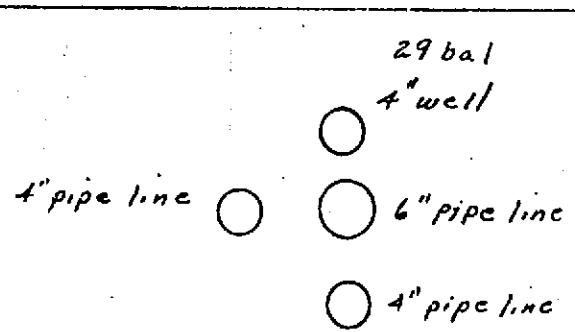
50833

Ryan
29 BADDO
well ident. No.

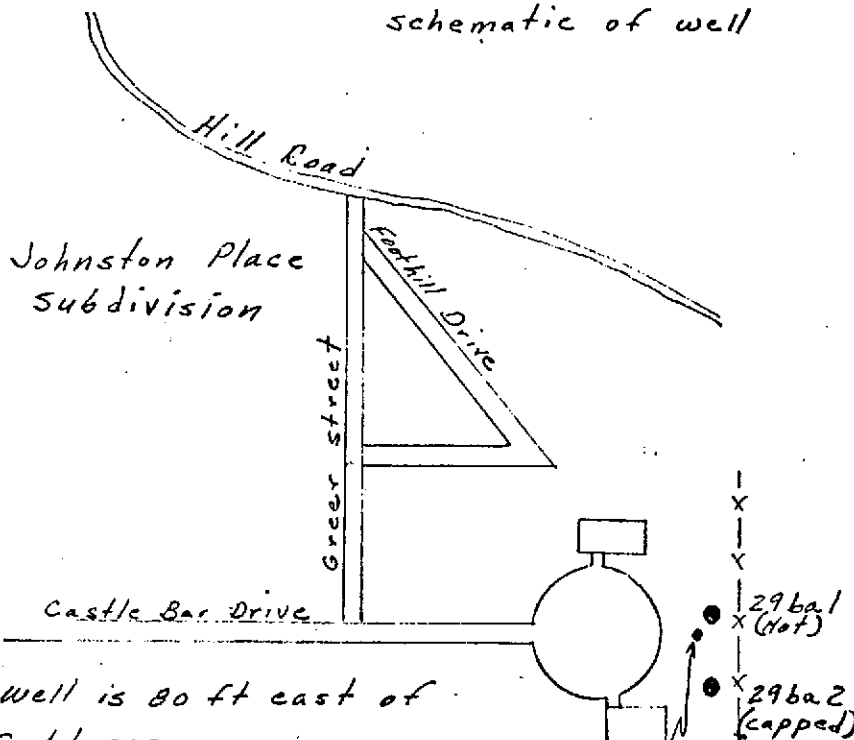
T4N R2E S29
SE NE NW

4N-2E-29ba1

Ada County
Idaho



schematic of well



well is 80 ft east of
Culdesac
50 ft north of south
boundary of lot and
25 ft north of 29ba2

stand pipe - Not
a well - 18 ft.
west of 29ba1

05/31/2005

RECEIVED

JUN 28 2005

WATER RESOURCES
WESTERN REGION

NOTICE OF ERROR

REPLY

Please type or print clearly, fill out this form completely and mail.

Return this reply form to IDWR by the deadline date printed below if you want IDWR to change your recommendation or you want to let IDWR know that you agree with its recommendation.

YOUR DEADLINE FOR RETURNING A NOTICE OF ERROR REPLY IS: July 15, 2005

Water right number: 63-16

MARY RYAN
4504 FOOTHILL DR
BOISE ID 83703
Telephone Number: (208)342-8498

ROSE RYAN
4504 FOOTHILL DR
BOISE ID 83703
Telephone Number: (208)342-8498

1. Describe the portion of the proposed recommendation with which you disagree (e.g. priority date, period of use, source):
2. Describe the changes you wish to make in the proposed recommendation:
3. Give a brief explanation as to why you disagree with these portions:

☒ I AGREE with this proposed recommendation: no changes need to be made.

DATE:

6-24-05

SIGNATURE:

Mary E. Ryan Rose E. Ryan

Please print your name:

Mary E. Ryan Rose E. Ryan

IDWR Regional Office, 2735 Airport Wy, Boise, ID 83705, 2083342190

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

In Re SRBA

Case 39576

A. Subcase 63-16

(Insert water right number)

STANDARD FORM 1
OBJECTION

Please fill in the following information:

B. NAME AND ADDRESS OF PERSON OBJECTING

Name: Edwards Family LLC

Address: 4106 Sand Creek Street

Boise, Idaho 83703

Daytime Phone: 208-342-7548

Name & Address of Attorney, if any:

Dana Hofstetter

Hofstetter Law Office, LLC

608 West Franklin Street

Boise, Idaho 83702

208-424-7800

C. CLAIMANT OF WATER RIGHT AS LISTED IN DIRECTOR'S REPORT

Name: Mary and Rose Ryan

Address: 4504 Foothill Drive

Boise, Idaho 83703

D. I object to the following elements as recommended in the Director's Report.
(Please check the appropriate box(es)):

1. ☐ **Name and Address**
Should be: _____
2. ☐ **Source**
Should be: _____
3. ☐ **Quantity**
Should be: _____
4. ☐ **Priority Date**
Should be: _____
5. ☐ **Point of Diversion**
Should be: _____
6. ☐ **Instream Flow Beginning and Ending Point**
Should be: _____
7. ☐ **Purpose(s) of Use**
Should be: _____
8. ☐ **Period of Year**
Should be: _____
9. ☐ **Place of Use**
Should be: _____
10. **I object because:**
 - ☒ This water right should not exist.
 - ☐ This water right was not recommended, but should be recommended with the elements described above.

E. **REASONS SUPPORTING OBJECTION(S):** To the extent that this water right authorizes the diversion of water from the Stewart Gulch Geothermal Aquifer it should not exist pursuant to *Silkey v. Tiegs*.

F.

VERIFICATION (Must be Completed)

State of Idaho)
) ss.
County of Ada)

Dana L. Hofstetter, duly sworn, upon oath, deposes and says:
(Name of person filing objection)

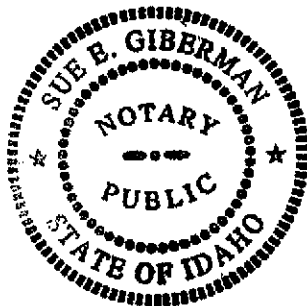
That I am the party/claimant filing this objection, as defined by I.C. §§ 42-1401A(1) and (6) or that I am the attorney for the party/claimant objecting and that I have read this objection, know its contents and believe that the statements are true to the best of my knowledge.

Signature of person filing objection

Dana L. Hofstetter

Attorney signing in representative capacity

Subscribed and sworn to before me on: April 20, 2006



Sue E. Giberan
Notary Public for the State of Idaho
Residing at: Boise Idaho
My Commission expires: 2-25-09

INSTRUCTIONS FOR MAILING

You must mail the objection, to the Clerk of the Court. **FAX filings will not be accepted.** You must also send a copy to all the parties listed below in the Certificate of Mailing.

G. CERTIFICATE OF MAILING

I certify that on April 21, 2006, I filed the original with the SRBA Court and mailed copies of this Objection, including all attachments, to the following persons:

1. Original to:

Clerk of the District Court (*via Hand Delivery*)
Snake River Basin Adjudication
253 Third Avenue North
PO Box 2707
Twin Falls, ID 83303-2707

2. One copy to the claimant of the water right at the following address:

Name: Mary and Rose Ryan
Address: 4504 Foothill Drive
Boise, Idaho 83703

3. Copies to:

IDWR Document Depository
PO Box 83720
Boise, ID 83720-0098

Chief, Natural Resources Division
Office of the Attorney General
PO Box 44449
Boise, ID 83711-4449

United States Department of Justice
Environment and Natural Resources Division
550 West Fort Street, MCS 033
Boise, ID 83724



Signature of Objector or attorney
mailing on Objector's behalf

11/22/2002

IDAHO DEPARTMENT OF WATER RESOURCES
PRELIMINARY RECOMMENDATION OF WATER RIGHTS ACQUIRED UNDER STATE LAW

RIGHT NUMBER: 63-16

NAME AND ADDRESS: MARY RYAN
4504 FOOTHILL DR
BOISE ID 83703

ROSE RYAN
4504 FOOTHILL DR
BOISE ID 83703

SOURCE: GROUND WATER

TRIBUTARY:

QUANTITY: 0.050 CFS
11.400 AFY

THE QUANTITY OF WATER UNDER THIS RIGHT SHALL NOT EXCEED 13,000
GALLONS PER DAY.

PRIORITY DATE: 09/24/1927

POINT OF DIVERSION:

T04N R02E S29 SENENW Within ADA County

PURPOSE AND
PERIOD OF USE:

PURPOSE OF USE

PERIOD OF USE

QUANTITY

DOMESTIC

01/01 12/31

0.050 CFS

11.40 AFY

DOMESTIC USE IS FOR INTERNAL HEATING AND EXTERNAL LAWN & GARDEN
SPRINKLING FOR 1 HOME.

PLACE OF USE: DOMESTIC Within ADA County

T04N R02E S29 NENW

OTHER PROVISIONS NECESSARY FOR DEFINITION OR ADMINISTRATION OF THIS WATER RIGHT:

THIS PARTIAL DECREE IS SUBJECT TO SUCH GENERAL PROVISIONS
NECESSARY FOR THE DEFINITION OF THE RIGHTS OR FOR THE
EFFICIENT ADMINISTRATION OF THE WATER RIGHTS AS MAY BE
ULTIMATELY DETERMINED BY THE COURT AT A POINT IN TIME NO LATER
THAN THE ENTRY OF A FINAL UNIFIED DECREE. SECTION 42-1412(6),
IDAHO CODE.

THE QUANTITY OF WATER DECREED FOR THIS WATER RIGHT IS NOT A
DETERMINATION OF HISTORICAL BENEFICIAL USE.

EXPLANATORY MATERIAL: Decreed

PARCEL NO. S0629212400

SOURCE IS ALSO KNOWN AS THE RYAN WELL.

WATER TEMPERATURE MEASURED AT 118 DEGREES F. FROM POINT OF
DIVERSION IN THE SENENW, T04N, R02E, S29.

**STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
ADJUDICATION FIELD REPORT**

Prior to Field Exam

- ☒ Copy of Claim, claim has been signed, sealed, and dated by notary?
- ☒ Check fees paid
- ☒ Well logs (if needed)
- ☒ Copy of topo or NAPP
- ☒ Check of Govt. Lots, if needed, Govt. Plat/Tax lot information
- ☒ Check POD & POU overlap, see below – include overlapping right for exam
- ☒ Evidence of Priority – if none, talk with claimant

CLAIMANT INFORMATION – verify contact information is completeClaim No(s) 63-16Owner: SAME Phone No. _____

Current Address: _____

- ☒ No change NAME IS THE SAME
- ☐ NEW OWNER _____
- ☐ No change Address
- ☐ NEW ADDRESS _____
- ☐ How long owned property? _____

Accompanied by: _____

PRIORITY DATE

- ☒ No change – Complete evidence submitted or not necessary
- ☐ Incomplete – Claimant should be asked when water was first used and submit proof of date.
- ☐ Priority date is acceptable/within mandatory filing dates?

Priority date, per claimant, is: _____

(If priority date, based on your exam, seems questionable, explain below.)

Source: _____ Tributary to _____

- ☒ No Change – SAME SOURCE
- ☐ Source found is different than claimed: _____

POINT OF DIVERSION

- ☒ No change
- ☐ POD found is different than claimed: _____
- ☐ If different, when did POD change? _____

DIVERSION AND DELIVERY SYSTEM

Points of Diversion:

ID #	Govt Lot #	1/4	1/4	1/4	Sec.	Twp.	Rge.	County	Method of Determination/Remarks GPS ID

Description of diverting works

WELL, 1325 DEEP, 4 IN CASING, ARTESIAN
TEMP MEASURED AT 118°F

OVERLAP REVIEWOther water rights with the same point of diversion: NONE

Does overlap add acres or uses to existing system, increase rate of flow or volume, or other? Explain:

WATER USES☒ No change☐ Different Uses

Use _____ From _____ To _____ Amount _____ CFS _____ AFA

Use _____ From _____ To _____ Amount _____ CFS _____ AFA

Use _____ From _____ To _____ Amount _____ CFS _____ AFA

TOTAL VOLUME - Groundwater only☐ Incomplete on claim, the total is, Amount _____ CFS _____ AFA☒ Changes found, the new total is, Amount 0.05 CFS 11.4 AFA☐ More than 1" per Acre? Yes _____ (claimant must complete excess flow sheet)

CALC
0.02 CASH - 6 AF
- 0.3 AFAT 10.8
0.05 11.4

SEE ATTACHED HEAT WORKSHEET**NON-IRRIGATION USES:**☒ No change☐ Changes Exam found: Domestic # of homes _____ Stock # _____

Types _____ Additional comments: _____

PLACE OF USE:☒ No Change☐ Changes shown below:

Place of Use			NE				NW				SW				SE				Totals
TWP	RGE	SEC	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	

Overlap with other water rights: NONE

Does overlap increase rate of flow, volume, additional acres, different source for same acres? Explain:

Delivery System Narrative: WELL IS USED FOR INTERNAL HEATING & EXTERNAL LAWN & GARDEN SPRINKLING FOR 1 HOME.

SOURCE IS AKA THE RYAN WELL.

ARTESIAN with NO Pump

Well or Diversion Identification No GPS ID	Motor Make	Hp	Motor Serial No.	Pump Make	Pump Serial No. or Discharge size
	<u>NA</u>				

FLOW MEASUREMENTS:

Attach appropriate documents

NARRATIVE/REMARKS/COMMENTS

- SEE ATTACHED EX MEMO & HEATING SPREADSHEET.
- A TEST FLOW WAS DONE TO SEE IF D-CY OF WATER WAS POSSIBLE - THE FLOW EXCEEDED THE REQUIRED USES.

(The following section contains horizontal lines for writing.)

AFTER EXAM THE FILE SHOULD CONTAIN:

- ☒ Completed claim checklist
- ☒ Photographs of POD's and POU
- ☒ GPS readings
- ☒ Completed map and or GIS layout showing POD's and POU

DATE EXAM CONDUCTED: 7-25-02

FIELD EXAMINER: Don Hewitt

Ron Howerton
Sr Water Agent

MEMO OF TX

TX 7-25-02 08:30 AM

ACCOMPANIED BY: MARY & ROSE RYAN (OWNERS)
& PLUMMER CONTRACTOR - EFFICIENCY EXPERT
DALE PROHASKA 342-3997

- MEASURED 119° AT WELL - INTERNAL HEAT SYSTEM ON HOME WAS CONVERTED FROM COPPER RADIANT PIPES IN CONCRETE FLOORS TO NEW FORCED AIR COILED IN HEAT EXCHANGER.
- Plummer said he used 1 inch pipe 740' to home. The well is on another owner's property and the RYAN'S HAVE RIGHT OF WAY ACROSS AND TO THE WELL PER OWNERS.
- DONE A OPEN FLOW MEASUREMENT WITH A 5 GAL Bucket it filled in 2 SEC which would show a high flow of .33 cfs however, it was measured by USGS IN 1947 AT 45 GPM. @ .1 cfs. SEE ATTACHED USGS SURVEY AND WELL DIAGRAM.

GPS Location, photos 1 & 2 well, photo 3 home.

ORIGINAL RIGHT WAS FOR 20 ACRES OF IRRIGATION HEATING, DOMESTIC & STOCK.

USFS NOW ARE $\frac{1}{2}$ ACRE OF IRRIGATION and HEATING OF 1 HOME.



Photo 1. 63-00016 Field Exam 7/25/02. Photo's by RDH. Artesian well located on different owners property. Claimants have right of way to it. The well used to be used as a large irrigation well with other small uses. The area has since been subdivided and the only irrigation is for 1 de minimus domestic lawn and internal household heating.



Photo 2. Well location per GPS is in the SENENW, T04N, R02E, S29.



Photo 3. View of domestic home and lawn looking southeast.

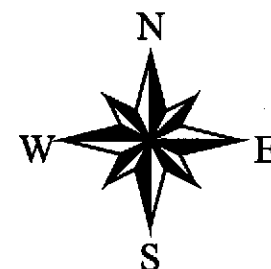
IDAHO DEPARTMENT OF WATER RESOURCES

Claims: 63-00016

Date Prepared: 7-26-02

Prepared By: Ron Howerton

**T04N, R02E
S29**



● **Point of Diversion**

□ **Place of use**

□ **Section**

□ **Quarter/Quarter** ●



0 0.1 0.2 0.3 0.4 0.5 0.6 0.7 Miles

1987 NAPP

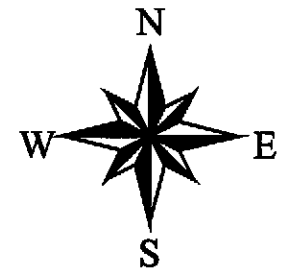
Claims: 63-00016

Date Prepared: 7-26-02

Prepared By: Ron Howerton

IDAHO DEPARTMENT OF WATER RESOURCES

**T04N, R02E
S29**



● **Point of Diversion**

□ **Place of use**

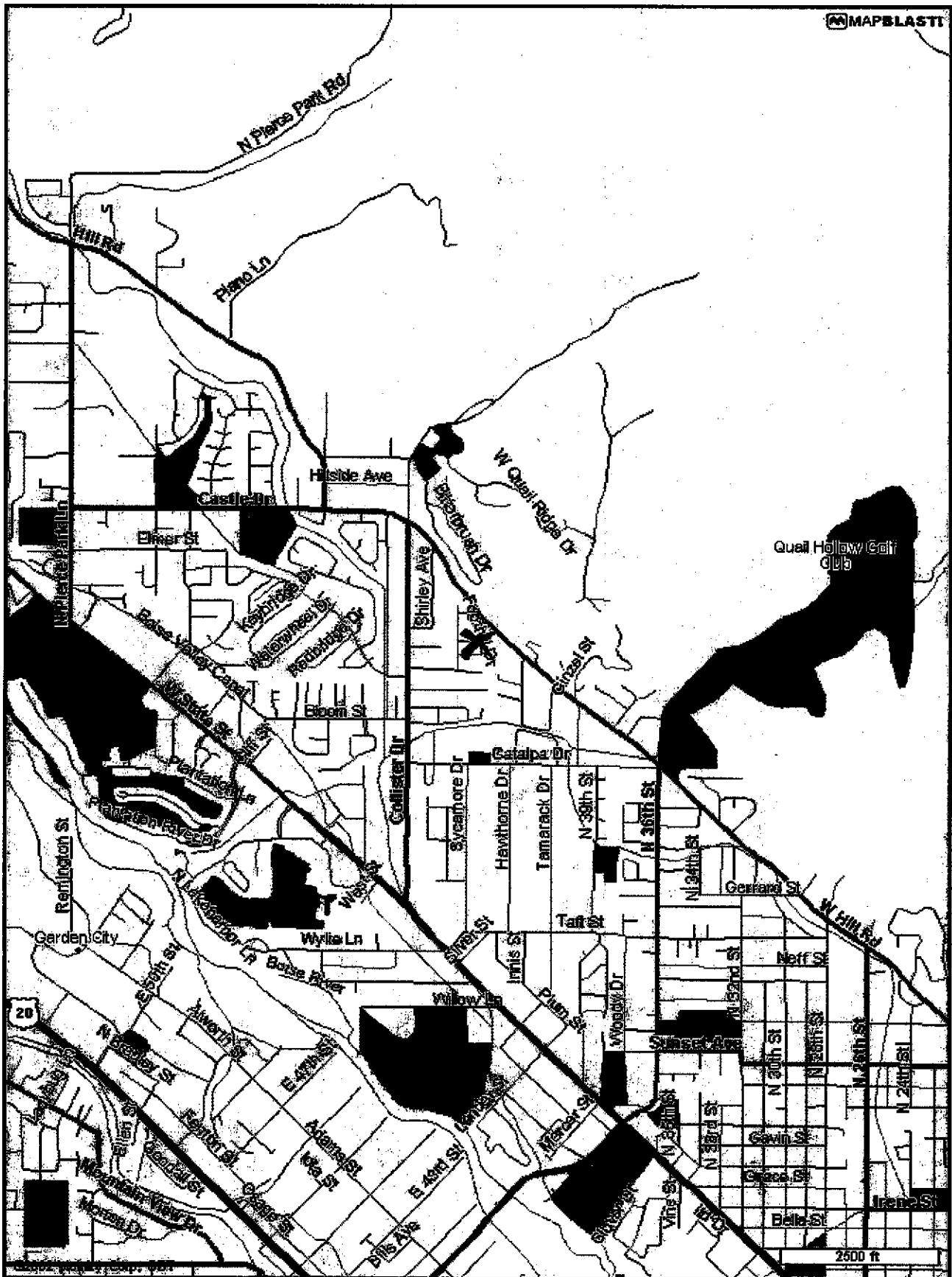
□ **Section**

□ **Quarter/Quarter** ●



0 0.1 0.2 0.3 0.4 0.5 0.6 0.7 Miles

1987 NAPP



[Icon Latitude: 43.6606451, Longitude: -116.244089]



4504 Foothill Dr
Boise, ID 83703-4010

RESIDENTIAL SPACE HEATING/COOLING REQUIREMENTS FOR COLD OR GEOTHERMAL SOURCES

Worksheet created by Cindy Hodges, 11/93.

Data entered by: Ron Howerton
Exam Date: 07/25/01
File No: 63-16
Computations for: Heating

REQUIRED DATA:

Area of livable floor space, ft2 (A)	1760
2 story? (N=1, Y=2)	2
House efficiency factor (e) *	0.67
Inside design temperature (Ti)	78
Average outside temperature (To) **	4
Source temperature, degrees F (S)	118
Heating/cooling days per season (D)	210
Hours/day system operates (H)	24

* e values are as follows:

- 0.28 Best energy efficiency - extra insulation, caulked and weatherstripped, with storm windows and doors
- 0.44 Better energy efficiency - standard insulation, caulked and weatherstripped, with storm windows and/or doors
- 0.67 Average residence - standard insulation, no weatherproofing but with storm windows or double panes
- 1.11 Poor energy efficiency - minimal insulation, no weatherproofing or storm windows (older homes, shops or greenhouses)

** Suggested average outside temperatures:

WINTER	SUMMER
4 deg F Boise	80 deg F Boise
6 deg F Grand View	90 deg F Grand View
-8 deg F Cascade	70 deg F Cascade

CALCULATED DATA:

DESIGN HEAT LOAD (BTU/hr required)
Formula: $E = [e \times (T_i - T_o)] A$
Applies factor of 0.8 for two-story dwelling

E = 69,809 BTU/hour

TEMPERATURE DROP ACROSS SYSTEM
Formula: $T_s = 0.3 \times [S - T_i]$

Ts = 12 degrees F

FLOW RATE REQUIRED (at given source temperature)
Formula: $Q = E / (500 \times T_s) \times 448.8$

Q = 0.03 cfs

DIVERTED VOLUME OVER SEASON
Formula: $V_{div} = Q \times D \times H / 24 \times 1.9835$

Vdiv = 10.8 AFA

RESIDENTIAL SPACE HEATING/COOLING REQUIREMENTS FOR COLD OR GEOTHERMAL SOURCES

Worksheet created by Cindy Hodges, 11/93.

Data entered by: Rdh
 Date: 7-28-02
 File No: 03-16
 Computations for: COOLING ☒ HEATING

REQUIRED DATA:

Area of livable floor space, ft2 (A) 20x44 = 1760 SF
 2 story? (N=1, Y=2) X2
 House efficiency factor (e) * 0.67
 Inside design temperature (Ti) 70
 Average outside temperature (To) ** 40
 Source temperature, degrees F (S) 118
 Heating/cooling days per season (D) 7 mo
 Hours/day system operates (H) 24 hrs

**PLEASE SUBMIT A DIAGRAM
 OF YOUR SYSTEM
 OR SYSTEM BLUE PRINT.**

* e values are as follows:

- 0.28 Best energy efficiency - extra insulation, caulked and weatherstripped, with storm windows and doors
- 0.44 Better energy efficiency - standard insulation, caulked and weatherstripped, with storm windows and/or doors
- 0.67 Average residence - standard insulation, no weatherproofing but with storm windows or double panes
- 1.11 Poor energy efficiency - minimal insulation, no weatherproofing or storm windows (older homes, shops or greenhouses)

** Suggested average outside temperatures:

WINTER

4 deg F Boise

6 deg F Grand View

-8 deg F Cascade

SUMMER

80 deg F Boise

90 deg F Grand View

70 deg F Cascade

(8/95)rdh

BUCKET MEASUREMENT

TIMED ANALYSIS:

FX DATE: 7-25-02

AGENT: RON HOWERTON

WR/CLAIM NO.(S): 63-16, _____

TYPE OF SYSTEM: ☒ DOMESTIC ☐ STOCK ☐ COMMERCIAL ☐ OTHER _____

SAMPLE:

If a 5 gallon bucket takes 15 seconds to fill, you divide 5 by 15 which equals .333 Gallons Per Second. Then divide Gallons Per Second by 7.48 (1 Cubic Foot = 7.48 gallons) to get CFS which equals 0.04 CFS.

5 Gal/15 Sec = .333 Gal Per Sec; then DIVIDE .333 GPS BY 7.48 Gal Per Cu Ft. = 0.04 CFS

FORMULA:

STEP 1.

$$\frac{(5) \text{ GAL}}{(15) \text{ SEC}} = 2.5 \text{ GPS}$$

STEP 2.

$$\frac{(2.5) \text{ GPS}}{7.48 \text{ GP CU FT}} = .33 \text{ CFS MAX}$$

NOTES ON SYSTEM:

MOTOR MAKE: NA

SER# OR I.D. NA

PUMP MAKE: NA

SER# OR RATING NA

COMMENTS: 4 INCH CASING - 1325 FT Deep - Artesian
per USGS Survey MEASURED AT 45+ GPM
IN 1947. = .1 cfs.

SD-1603-3

Idaho Department Of Water Resources
Detail Receipt Summary Screen

Date: 07/25/02
Time: 14:36:18

Rec/No - W004647 AR/No -
From: - MARY E. RYAN

Receipt Type - CK Doc/No - 4227
Remarks -

MOST CURRENT RECEIPT

Receipt Date: 08/18/1989

Type Of Payment	Fund	FD	PCA	Obj	Subsid	Fee
ADJUDICATION FEES	9337		410162	6490		50.00

Total Due - 50.00

WR/No	WR Fee	WR/No	WR Fee	WR/No	WR Fee
A6300016	25.00	A6317773	25.00		

(Enter=Continue)

(GOLD7=Selection Screen)

(GOLD8=Cancel)



State of Idaho

DEPARTMENT OF WATER RESOURCES

Western Region, 2735 Airport Way, Boise, Idaho 83705-5082 - (208) 334-2190

FAX (208) 334-2348

July 15, 2002

Re: Water Right Claim No(s). A63-00016
SNAKE RIVER BASIN ADJUDICATION Filings

DIRK KEMPTHORNE
Governor

KARL J. DREHER
Director

**MARY RYAN &/or
ROSE RYAN
4504 FOOTHILL DR
BOISE ID 83703**

Dear Mary and Rose,

We are currently in the process of reviewing the above referenced claim(s), which were filed during the Snake River Basin Adjudication (SRBA) claims filing. However, due to the problem explained below we may not be able to recommend this claim to the SRBA Court in Twin Falls for decree. A claim profile report is enclosed for your review.

In our first part of our investigation for the above referenced claim(s), IDWR (IDAHO DEPARTMENT OF WATER RESOURCES) hired a contractor "Intrepid Engineering Services, Inc.". Their job was to locate the claimed water source, make contact with the owner if possible and measure the amount of flow for IDWR to help speed up our large amount of fieldwork for beneficial use claims. Beneficial use claims normally have never been investigated by IDWR and thus no license or decreed right exists for these beneficial use claims and we need to verify the claimed elements of the claimed beneficial uses for the court.

"Intrepid" Contractor findings:

They found that the well had been removed for the above claim, thus, no beneficial use.

If you agree that the claimed well source no longer exists and/or has been capped off and/or no longer has any beneficial use, please sign and return the enclosed Request for Withdrawal of Claim form in the enclosed return envelope. Our investigation then will be closed for this claim after we receive your "signed" Withdrawal of Claim form.

However, if you believe our contractor may have missed finding this well source or any replacement well source and/or the claimed beneficial use, then please contact me at 334-2190 ASAP to set up an appointment for a field exam. If I do not get the withdrawal form or hear from you within 30 days of the date of this letter I will assume that our contractor was correct and your claim to beneficial use may not be recommended. It is highly important that you respond.

Sincerely,
Ron Howerton
Ron Howerton
Senior Water Right Agent
Enclosures/Attachment



IDAHO DEPARTMENT OF WATER RESOURCES

SNAKE RIVER BASIN ADJUDICATION - BASIN 63

RIGHT ID 63 16
POD ID 171841
Quad Boise North 1
Claim Type Large
Easting
Northing
GPSID

Diversion Description

1325' WELL W/4" CASING, ARTESIAN. Removed per the Idaho Department of Resources.

Assumptions

POD no longer exists.

Invoice

2000-055-01

Phase-0 (No Attention)
Phase-I (Ready to Go to Field)
Phase-II (Site Visit - Data Missin
Phase-III (Complete w/issues)
Phase-IV (Total Complete)

Linked

Photos

EPE (ft)

Date (M/D/Y)

Time

Flow Rate (CFS)

0.00

Open Channel Flow

☐ Complete one box from both Area and Calculation sections

Cross Sectional Area

☐ Circular Channel

- ☐ Less than half full
☐ Half full
☐ More than half full
☐ Full

Diameter 0

Depth 0

☐ Rectangular Channel

Width 0

Depth 0

Flow Calculation

☐ Continuity

Velocity

0

☐ Orifice

(Use only for head over a pipe flowing full with free discharge)

Depth of Water above orifice centerline 0

☐ Weir

(Use only for water flowing freely over weir)

Height of water above nappe 0

Width of weir 0

☐ Manning (If used, include photo of representative channel section)

Channel Slope

Channel Description	Concrete lined	.016
	Smooth earth	.025
	Earth	.033
	Rough bed, weeds on sides	.04
	Smooth natural stream	.033
	Rough natural stream	.1

Pumped System

☐

HP 0

Pressure Head (psi)

Elevation Head (ft)

Motor Mfg

Motor Serial #

Pump Type

Pump Mfg

Pump Serial#

New Contact Information

☐

New Contact Comments

Left message.

This Form and the associated query are the exclusive intellectual property of Intrepid Engineering Services, and may not be copied, modified, or distributed without the express written consent of Intrepid Engineering Servc, Inc.



INTREPID
Engineering Services, Inc. (IES)
Enabling People and Solutions

RIGHT ID

63

16

RYAN

AJ5856NP

IDAHO DEPARTMENT OF WATER RESOURCES
RECOMMENDED WATER RIGHTS ACQUIRED UNDER STATE LAW

DATE: AUG-21-1997
PAGE: A-1

RIGHT NUMBER: 63-00016

NAME & ADDRESS: MARY RYAN
ROSE RYAN ✓
4504 FOOTHILL DR
BOISE ID 83703

SOURCE: GROUNDWATER

QUANTITY: 0.8 CFS

PRIORITY DATE: 09/24/1927

POINT OF DIVERSION: T04N R02E S29 ✓ SENENW ✓ Within ADA County

PURPOSE AND PERIOD OF USE:	PURPOSE OF USE	PERIOD OF USE	QUANTITY
	DOMESTIC D/1 HOUSEHOLD W/2 PEOPLE	01-01 12-31	0.8 CFS

PLACE OF USE: DOMESTIC Within ADA County
T04N R02E S29 ✓ NENW ✓

EXPLANATORY MATERIAL: BASIS OF CLAIM BENEFICIAL USE

DECREED

50629212400

Verified by Sh Date: 3-18-98

Verification Source: Computer

IDAHO DEPARTMENT OF WATER RESOURCES

Water Right Report 63-16

WATER RIGHT NUMBER: 63-16

Owner Type Name and Address
 Current Owner J RYAN
 , ZZ

Priority Date: 09/24/1927

Basis: Decreed

Status: Active

Source Tributary
 GROUND WATER

<u>Beneficial Use</u>	<u>From</u> <u>To</u>	<u>Diversion Rate</u>	<u>Annual Volume</u>
STOCKWATER	/ to /		
IRRIGATION	/ to /	0.800 CFS	
DOMESTIC	/ to /		
HEATING	/ to /		
<u>Total Diversion:</u>		0.800 CFS	

Location of Point(s) of Diversion

GROUND WATER NE1/4NW1/4 Sec. 29, Twp 04N, Rge 02E, B.M.
 ADA County

Place of Use

IRRIGATION

Twp	Rge	Sec	NE	NW	SW	SE	Totals
04N	02E	29	NE	NW	SW	SE	20.0

Total Acres: 20

STOCKWATER same as IRRIGATIONDOMESTIC same as IRRIGATIONHEATING same as IRRIGATIONConditions of Approval:Remarks:

1. General

NO WATER PERMITTED TO FLOW OR BE USED FROM RYAN WELL UNTIL FURTHER
 NOTICE BY COURTS.

Comments:

False

decree says: NO WATER CAN WITHOUT INJURY
 to respondent's prior right, be permitted
 to flow from the Tiegs and Ryan wells.

(SEE PAGE 359 OF DECREE)

REMARK WAS
 MIS QUOTED
 IN WR FILE

Points Decided.

[1] From the definitions, it is apparent the Board is given jurisdiction by C. S., sec. 6273, to pass upon these contracts, not only as to the fee not exceeding \$1 per month, and the services to be rendered, but also the feature involved herein.

The argument that C. S., sec. 6273, applies only to "agreements" is answered by the fact that the collectively and wholly inclusive term "all questions" is used in C. S., sec. 6273, and that the legislature did not intend C. S., sec. 6273, to be restricted to or by C. S., sec. 6262, since hospital contracts are nominated "agreements" in C. S., sec. 6230, and again so recognized in C. S., sec. 6230A, 1921 Sess. Laws, 476.

[2] Having jurisdiction to approve or determine, the Board may reject. (*Key v. Board of Education of Granville County*, 170 N. C. 123, 86 S. E. 1002; *Fuller v. Board of University and School Lands*, 21 N. D. 212, 129 N. W. 1029; *Melton v. Cherokee Oil & Gas Co.*, 67 Okl. 247, 170 Pac. 691; *Coker v. Watson*, 132 Okl. 199, 252 Pac. 829, 833.)

The Board did not exceed its jurisdiction, and the writ is therefore quashed. Costs to defendants.

Lee, C. J., and Budge, Varian and McNaughton, JJ., concur.

Petition for rehearing denied.

(No. 5651. December 7, 1931.)

FRANCES SILKEY, Respondent, v. H. W. TIEGS,
THOMAS F. EDWARDS and J. RYAN, Appellants.

[5 Pac. (2d) 1049.]

WATER AND WATERCOURSES—SUBTERRANEAN WATER—APPROPRIATION—
PRIORITIES—TRIAL—REOPENING OF CASE.

1. Granting or refusing motion to reopen case after it has been submitted for decision, but before judgment, is discretionary.

Points Decided.

2. In suit determining priority to subterranean hot water, denying new trial and refusing to reopen case for introduction of evidence showing leak in plaintiff's well *held* not abuse of discretion.

3. Percolating subterranean waters may be appropriated either by statutory permit method, or by actual diversion for beneficial use (C. S., secs. 5558, 5568, 5570, 5571, and sec. 5569, as amended by Laws 1929, chap. 281; Const., art. 15, sec. 3).

4. Valid appropriation of percolating subterranean waters, either by statutory permit method or by actual diversion for beneficial use, has priority over subsequent appropriation, however made (C. S., secs. 5558, 5568, 5570, 5571, and sec. 5569, as amended by Laws 1929, chap. 281; Const., art. 15, sec. 3).

5. Where court's findings are supported, judgment will not be reversed because different conclusion might be inferred.

6. As respects decree, inferior claimants of percolating subterranean waters could close and seal wells in lieu of equipping wells with valves, controlling works and measuring devices.

7. Decree adjudicating water priorities *held* not objectionable as awarding claimant forty miner's inches during nonirrigating season, without finding amount put to beneficial use during that season.

8. Court *held* authorized to retain jurisdiction of case involving water rights for two years and to incorporate in decree administrative provisions (C. S., sec. 5605 et seq., and sec. 5606).

9. Decree awarding subsequent appropriators water with priorities of certain date, but prohibiting subsequent appropriators from using water, *held* not inconsistent.

APPEAL from the District Court of the Third Judicial District, for Ada County. Hon. Dana E. Brinck, Judge.

Suit to quiet title in and to determine priorities of the use of subterranean hot water, and for injunction restraining defendants from operating their artesian wells in such manner as to deplete flow in plaintiff's wells. Judgment for plaintiff. Defendants appeal. *Affirmed*.

Publisher's Note.

3. Prescriptive rights in percolating waters, see note in 55 A. L. R. 1441. See, also, 27 E. C. L. 1285.

T. L. Martin and Wm. M. Morgan, for Appellants.

It is a fundamental principle of constitutional law, which requires the citation of no authority to support it, that a state constitution is not a grant, but is a limitation upon the powers of the legislature, and the legislative branch of a state government may do whatever it is not prohibited from doing by the constitution. Exercising its powers, the legislature of Idaho has granted and regulated the right to use subterranean waters and has prescribed the means for establishing priorities in the rights to the use thereof. (C. S., secs. 5558, 5568 and 5569; *Speer v. Stephenson*, 16 Ida. 707, 102 Pac. 365; *Nielson v. Parker*, 19 Ida. 727, 115 Pac. 488; *Morris v. Bean*, 146 Fed. 423.)

Edwin Snow, for Respondent.

"Prior in time prior in right" applies to underground artesian waters. (*Hinton v. Little*, 50 Ida. 371, 296 Pac. 582.)

It was not the intention of the legislature to make the permit method the exclusive method of acquiring a water right. (*Nielson v. Parker*, 19 Ida. 727, 115 Pac. 488; *Morris v. Bean*, 146 Fed. 423; *Youngs v. Regan*, 20 Ida. 279, 118 Pac. 499.)

A court of equity has inherent power to insert in its decrees administrative provisions for their enforcement and to retain jurisdiction to see they are enforced. (Century Digest, "Equity," secs. 1053, 1054; Freeman on Judgments, 5th ed., secs. 33-37; *People v. Lyons*, 168 Ill. App. 396.)

VARIAN, J.—This case involves the right to the use of artesian hot water developed from wells upon the lands owned by the parties situate in Sections 28 and 29, Twp. 4 N., R. 2 E. B. M., in Ada county, lying on high ground north of the Soldiers' Home near Boise. The location and soil render them chiefly valuable for truck gardening purposes although hay and other crops are also grown thereon. The hot water from the wells is utilized to heat their homes and

hotbeds as well as for irrigating crops. Appellant Tiegs' well is about 155 feet east of respondent's smaller well, which is 16 feet east of her larger well. Appellant Edwards' well is 1644 feet westerly from respondent's larger well and appellant Ryan's well is 1315 feet northerly from appellant Edwards' well, or about 2,950 feet northwesterly from the larger well of Mrs. Silkey, respondent.

This suit was brought by respondent to quiet title to certain waters appropriated by means of two artesian wells bored on her farm, and to enjoin appellants from using their wells in such manner as to deplete the flow in respondent's said wells.

The court found for respondent and among other things:

"That underlying the lands of the parties hereto, all of which lands are in the same immediate vicinity, is a supply of natural warm water forming an artesian basin; that the evidence is insufficient to establish that the water flows in a subterranean stream, and the court accordingly finds that said supply of water is water percolating underground through a stratum of material which stratum is more pervious than the adjacent material, with the result that with such pervious stratum being tapped by the wells of the respective parties hereto, water from such wells flowed and flows freely therefrom in copious streams to the surface of the ground by artesian pressure, and such pervious stratum and the water percolating therein is the common source of supply for each and every of the flowing artesian wells of the parties hereto, which wells are hereinafter more particularly described, such source of supply forming a natural underground artesian reservoir which underlies not all, but a part of the lands of the several parties hereto."

Respondent was decreed a prior right to the use of forty miner's inches of water, with the following priority; as to seven miner's inches from July 1, 1921, and from July 1, 1922, as to thirty-three miner's inches. Appellants were decreed rights to the use of water from their several wells with priorities as follows: Thomas F. Edwards, forty-two miner's inches from November 22, 1926; H. W. Tiegs, forty miner's

Opinion of the Court—Varian, J.

inches from March 23, 1927; and J. Ryan, forty miner's inches from September 24, 1927. The decree fixes the duty of water for irrigation purposes at two miner's inches per acre. The following provisions are contained in the decree:

"(1) That the waters herein decreed and allotted are subterranean waters subject to appropriation by the several parties hereto under the laws of the State of Idaho; That the waters flowing from the artesian well of each party is derived from the same source, and the supply of said wells constitutes one interdependent and connected source of supply, and such waters and said wells are hereby drawn within the jurisdiction of this court for distribution for beneficial uses under and pursuant to the terms of this decree.

"(7) The amount of water that may be permitted to flow from the wells of the defendants is hereby provisionally fixed and limited as follows: During the period from October 1st of each year to April 1st of the following year, the defendant Edwards may be permitted to flow from his said well and use for beneficial purposes fifteen miner's inches of water; from April 1st to October 1st of each year, said defendant Edwards may be permitted to flow from his said well and to use for beneficial purposes twenty miner's inches of water, or so much thereof as will not deplete the flow of plaintiff's wells below forty miner's inches. No water shall be permitted to flow or be used from the respective wells of the defendants Tiegs and Ryan, as it is hereby further determined and decreed that until further order of the court, no water can without injury to plaintiff's prior right to the use of said water to the extent herein decreed be permitted to flow or be used from the wells of any of the defendants in excess of the amount herein permitted to be used by the defendant Edwards.

"(8) Each of the parties hereto shall install and maintain suitable and efficient valves, controlling works and measuring devices at their respective wells, all such valves and controlling works to be adequate to entirely shut off said water when required under the terms of this decree and all such

Opinion of the Court—Varian, J.

measuring devices to be of such design as to accurately measure the amount of water diverted or flowing. All such controlling works and measuring devices shall at all times be subject to the inspection of any party hereto and of public officials, commissioners or watermasters having jurisdiction over the administration of this decree.

"(10) The enforcement of this decree is committed, in the first instance, pending the creation, as provided by law, by the Commissioner of Reclamation of the State of Idaho, of a water district comprising the source of supply of the water rights herein decreed, to said Commissioner of Reclamation who is hereby appointed a commissioner of this court for that purpose, to serve without compensation, he having consented so to do. Said Commissioner is hereby directed to regulate the flow of the wells of the parties hereto in accordance with the terms hereof and to make from time to time measurements of the flow of the said wells and keep a record thereof, and for this purpose may open and close, regulate and measure the flow of said wells.

"(11) The court retains jurisdiction of this cause for a period of two years from this date to adjust the allowance of water permitted to be used from the wells of the defendants, in case it should hereafter appear from said record of measurements that more or less water than herein provisionally fixed may or should be permitted to flow from the wells of said defendants, or any of them, without infringement of the rights herein decreed in accordance with their respective priorities. The court also retains jurisdiction during said period to correct any clerical error herein, such as land descriptions or the like. The court also retains jurisdiction to make such further orders as may be found necessary to give effect to this decree and to punish the parties hereto, their agents and employees and their grantees and successors in interest for any violation of the provisions hereof. In all other respects, this decree shall be final."

The case was tried by the court without a jury commencing January 6, 1930, and ending January 9, 1930. After decision by the court and before findings were filed, or decree

entered, appellants, on March 5, 1930, moved to reopen the case upon the ground that they had discovered that there was a leak in the Silkey wells whereby a large quantity of the water flowing therein was lost, etc. The motion was renewed on March 29, 1930, based upon certain experiments conducted by appellants after the trial. These motions were submitted upon affidavits and, on June 13, 1930, were denied. The court then filed findings and entered decree herein. Appellants moved for a new trial, which was denied, and they now appeal from the order refusing to reopen the case, the order denying a new trial, and from the decree.

[1, 2] Granting or refusing a motion to reopen a case for the purpose of taking further or additional evidence, after it has been submitted for decision, but before entry of judgment, rests in the discretion of the trial judge. (*Froman v. First Nat. Bank*, 35 Ida. 10, 204 Pac. 145; *Parker v. Swett*, 188 Cal. 474, 205 Pac. 1065; *Denman v. Brenneman*, 48 Okl. 566, 149 Pac. 1105, L. R. A. 1915E, 1947; *Bowers' Judicial Discretion of Trial Courts*, p. 489; 26 R. C. L. 1042.)

The evidence taken at the trial showed that the hot water in controversy here was obtained at a depth of about 1200 feet, but nonflowing cold-water wells were found at a much less depth. The affidavits proffered tended to show that the water in certain shallow wells, bored after the trial, in the vicinity of respondent's wells, was warmer than the cold water wells in the vicinity of approximately the same depth. Appellants argue therefrom that there is a leak in one or both of respondent's wells. The affidavits show the warm condition of the water obtains in a test well bored nearest to one of appellant Tiegs' wells. A counter-affidavit by respondent is to the effect that earlier shallow wells on her property were cold, but that since the boring of the Tiegs' well one cold well lying southwest of said Tiegs well has been lukewarm. After carefully reading the affidavits we are of the opinion that the court did not abuse its discretion in refusing to reopen the case for further testimony. This evidence is far from clear and does not establish appellants' contention that there is a leakage of water from respondent's

wells. Neither did the court err in denying the motion for a new trial.

The vital question raised by this appeal is whether subterranean waters may be appropriated by diversion and beneficial use without compliance with the statute (C. S., sec. 5569, as amended Sess. Laws 1929, chap. 281, p. 675) prescribing the procedure for obtaining a permit from the department of reclamation. Respondent relies entirely upon diversion and application to a beneficial use, having made no attempt to initiate a right under said sections of the statute, while appellants, at the date of the trial, had taken such steps. Their contention is, that subterranean waters can be validly appropriated in no other manner, and that by putting her water to a beneficial use respondent failed to establish a right thereto, or make an appropriation thereof.

The Constitution, art. 15, sec. 3, provides: "The right to divert and appropriate the unappropriated waters of any natural stream to beneficial uses, shall never be denied," and that "Priority of appropriation shall give the better right as between those using the water." It nowhere mentions subterranean waters. The legislature, in 1899 (Laws 1899, p. 380), passed an act, embodied in the present code as C. S., sec. 5558, reading: "The right to the use of the waters of rivers, streams, lakes, springs and of subterranean waters, may be acquired by appropriation."

As was said by Mr. Justice Budge (*Bower v. Moorman*, 27 Ida. 162, 180, Ann. Cas. 1917C, 99, 147 Pac. 496), in holding that subterranean waters appropriated by means of artesian wells might be appropriated under this statute:

"In the case of *Le Quime v. Chambers*, 15 Ida. 405, 98 Pac. 415, 21 L. R. A., N. S., 76, the court says in effect that percolating water is subject to appropriation under our statute, and as such will be recognized and protected by the courts."

In the recent case of *Hinton v. Little*, 50 Ida. 371, 296 Pac. 582, involving priorities of artesian water appropriations by diversion and application to a beneficial use, Mr. Justice Givens said:

"We then have a clear statement in *Bower v. Moorman, supra*, to the effect that subterranean waters are the subject of appropriation. That being true, it follows that the judgment herein should be affirmed, since the waters here were appropriated by the respondents prior to the time that the appellants sought to take from their wells the amount of water now claimed by them."

Coming now to the precise question involved, this court held, in cases involving appropriation of surface waters, that the statutory method prescribed by C. S., secs. 5569, 5570, and 5571, was not exclusive, notwithstanding the provisions of C. S., sec. 5568, reading:

"All rights to divert and use the waters of this state for beneficial purposes shall hereafter be acquired and confirmed under the provisions of this chapter. And after the passage of this title all the waters of this state shall be controlled and administered in the manner herein provided."

Nielson v. Parker, 19 Ida. 727, 115 Pac. 488, holds, in effect, that diversion and application to a beneficial use is sufficient appropriation. See, also, *Morris v. Bean*, 146 Fed. 423, cited by both appellants and respondent.

It was held by this court, in *Short v. Praisewater*, 35 Ida. 691, 699, 208 Pac. 844, that waters of a spring, situate within the boundaries of a homestead entry, are subject to appropriation for a beneficial use with the consent of the entryman, the appropriation consisting of diversion and application to a beneficial use without attempting to follow the prescribed steps to appropriate water by the statutory method. And in *Youngs v. Regan*, 20 Ida. 275, 118 Pac. 499, involving the right to the use of water from springs and artesian wells, the trial court gave precedence to an appropriation under the statutory permit method (*supra*) over one who had diverted and applied the waters to a beneficial use prior to the application for a permit. This court reversed the decree and held that appellant had made the first appropriation of water from both springs and wells. (*Hinton v. Little, supra*. And in *Bower v. Moorman, supra*, and *Hinton v. Little, supra*, this court applied to appropriation

of subterranean waters the rule promulgated by C. S., sec. 5561, "As between appropriators, the first in time is first in right."

[3, 4] We are constrained to hold, therefore, under the decisions cited, and by analogy to the decisions of this court involving appropriation of surface waters, as distinguished from underground waters, that percolating subterranean waters may be appropriated either by the statutory permit method (C. S., secs. 5569, 5570, 5571) or by actual diversion and application to a beneficial use; and that a valid appropriation first made under either method will have priority over a subsequent valid appropriation, however made. It is apparent that the principal advantage to be gained in pursuing the statutory permit method is that the priority then dates from the date of the permit, while the priority dates from the actual application of the water to a beneficial use in cases where the statutory method is not followed.

[5] Appellants attack the decree as not being supported, in many particulars, by the evidence; that the evidence fails to show that taking water from appellants' wells decreases the flow from respondent's wells; that the evidence does not establish that the water flowing in the hot wells of the parties comes from a common source, etc.; that respondent has not shown a right entitling her to the use of forty miner's inches of water; and that the finding and decree, to the effect that sixty miner's inches is the maximum amount of water that can be diverted from the artesian basin supplying the water to all the wells without depleting the supply available to respondent's well, is not supported. It is sufficient to say that there is ample evidence in the record to sustain all these findings. Appellants particularly criticize the testimony of the engineer, Mr. W. G. Sloan. After this suit was commenced the parties stipulated that certain experiments should be conducted for ascertaining the source of the waters in controversy. Mr. Sloan was selected by the respondent (plaintiff), and Mr. Gordon Smith, a civil engineer, by appellants. They proceeded to make tests and experiments from which certain data was

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obtained. This was agreed upon by the engineers and stands undisputed in the evidence. Mr. Sloan, testifying as an expert, was of opinion that the hot water in all the artesian wells of the parties came from the same basin, or source; that fifty to sixty miner's inches of water might be taken from the artesian basin without depleting the flow of respondent's wells, etc. Mr. Smith was not put upon the stand to dispute either the data or conclusions testified to by Mr. Sloan. We are now asked to take the data derived from the experiments of these engineers, assume the role of experts, and draw different conclusions from the facts than the judge who tried the case. The evidence was sufficient to sustain the trial court in his findings and judgment and we will not reverse the case because a different conclusion might be inferred therefrom by other persons. (*Wooten v. Dahlquist*, 42 Ida. 121, 244 Pac. 407; *Lus v. Pecararo*, 41 Ida. 425, 238 Pac. 1021; *Wolf v. Eagleson*, 29 Ida. 177, 157 Pac. 1122.)

Appellants assign as error what their counsel terms "a seasonal limitation upon the right of appellant, Edwards, to the use of the water," to which he is found entitled as set forth in paragraph seven of the decree, *supra*. The court decreed him forty-two miner's inches of water "for irrigation, domestic, stock, and heating purposes." The amount of water that he was permitted to flow from his well was "provisionally fixed and limited" as set out in paragraph seven of the decree, *supra*. As argued by respondent, this provision of the decree is clearly in the interest of appellant Edwards. He is permitted to use the excess normal flow from the basin, estimated at from fifteen to twenty inches above the forty miner's inches appropriated by respondent. The testimony indicates that there is more flow during the later period than in the first period mentioned in the decree. It is not an attempt to fix one duty of water for one part of the irrigation season and a higher duty for another part, as was the case in *Muir v. Allison*, 33 Ida. 146, 191 Pac. 206, cited by appellants, where the court held that one entitled to a continuous flow of the waters of a stream could not be deprived

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of his right thereto by decree without his consent. The purpose of the decree here is to provisionally fix the total amount of water to be taken from respondent's and appellant Edwards' wells. Sixty miner's inches is the amount found by the court to be the normal flow from said basin. In any event this provision is not final and is in effect an administrative one, subject to change by the trial court in case it should later develop that said appellant is entitled to more or less than the amounts so permitted to flow from his well. There is no force in the objection that the decree does not permit appellant Edwards to have any supervision, control over, or right of measurement over respondent's wells. That is a matter to be supervised and controlled by the commissioner of reclamation appointed, as a commissioner to enforce the operation of the decree, by the trial court.

[6] Again, appellants also object to paragraph eight of the decree, *supra*, contending that Ryan and Tiegs are shut off from the use of any water from their wells yet are compelled to install and maintain suitable and sufficient valves, controlling works, and measuring devices at their wells; that said valves and controlling works can be put to no useful purpose and thereby said appellants are deprived of their property without due process of law. Apparently the court intended to permit these parties to have the benefit of any water that might be determined to belong to them in case the operation of the wells under the administrative provisions of the decree should show that both respondent Silkey and appellant Edwards could be supplied to the full extent of their rights leaving a surplus for the later rights. If appellants are satisfied to close and seal their wells entirely, we see no reason why they should not be permitted to do so, and save the expense of installing measuring and controlling devices.

Appellants contend that the decree is in violation of the rights of appellants in that it awards to respondent forty miner's inches, as prior to the rights awarded to appellants, without reference to the quantity of water respondent puts to a beneficial use, and enjoins appellants Tiegs and Ryan

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from taking any water from their wells, etc. This contention cannot be sustained since paragraph six of the decree, among other things, provides:

"All rights herein decreed and allotted are decreed for beneficial use only, and none of the parties hereto, their agents or employees, or their successors in interest, shall have the right to permit his said well to flow or to use water therefrom in excess of the amount actually required for beneficial use."

Objection is made that the decree fixes the duty of water at two miner's inches per acre for irrigation purposes, awards respondent forty miner's inches without reference to the number of acres actually irrigated, and without limiting her rights "to take not to exceed two miner's inches per acre for each acre of land actually irrigated." The court found that respondent owned approximately twenty acres of land described in the decree. The decree awards forty miner's inches of water for use upon said land. The general clause (paragraph six) of the decree, quoted above, limits the right to use for irrigation purposes to the amount of water actually required for that purpose and fixes the duty of water at two miner's inches per acre for such purpose. We conclude the decree is sufficiently definite as to the particulars urged.

[7] Appellant urges that the decree is contrary to law in that it awards respondent forty miner's inches of water during the nonirrigation season without finding the amount of water she had put to a beneficial use during that season, or the amount necessary for such use, etc. In finding seven the court finds respondent appropriated, diverted, and applied to a beneficial use in irrigating, domestic, and other beneficial uses, on her lands, the total amount of forty miner's inches of water flowing to the surface from her wells under natural artesian pressure; that she has hot-houses on her land for forcing and starting early fruits and vegetables; that the water is piped through her residence and hot-houses for heating purposes; "and the whole flow of plaintiff's said wells, up to but not exceeding forty miner's inches of water, measured at plaintiff's well, is necessary to plaintiff for the

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beneficial uses above recited." Considering the facts of this case and the nature of the water right involved, this finding is deemed sufficient to support the award decreed.

[8] Appellants strenuously contend that the court was without power to incorporate in its decree certain administrative provisions (paragraphs eight and ten, *supra*), such as the appointment of the commissioner of reclamation, as a commissioner, to supervise the use of the water flowing from the wells, take measurements thereof from time to time, and keep a record thereof. They also complain that the court had no authority to retain jurisdiction of the cause for the period of two years for the purpose of adjusting the allowance of water permitted to be used from appellant's wells, etc. (paragraph eleven of the decree, *supra*).

Appellants' contention is that, the legislature having failed to provide by statute for the supervision and control of subterranean waters, the court was without authority to make such provision. It must be conceded that C. S., chap. 219, relating to distribution of water among appropriators, and particularly C. S., sec. 5606, therein, placing the immediate direction and control of "all of the streams to the canals and ditches diverting therefrom" in the hands of the department of reclamation, does not expressly contemplate its control of subterranean waters not in a defined stream.

The appointment of a commissioner (and we see no reason why the commissioner of reclamation should not act as such), to carry out the administrative provisions of the decree, is necessary under the facts presented by the case at bar. Otherwise respondent, having a prior right to the use of the waters of the artesian basin partly underlying her land and those of appellants, would be without a practical or adequate remedy, since the decree is not self-enforcing. Nor does the fact that the legislature has not legislated on this particular branch of the subject tie the hands of the court here. As was said by Mr. Justice White, in *Montezuma Canal Co. v. Smithville Canal Co.*, 218 U. S. 371, 31 Sup. Ct. 67, 54 L. ed. 1074, 1080 (see 11 Ariz. 99, 89 Pac. 512, for same case below).

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"But because it was within the legislative power to provide administrative machinery to supervise the common use of water in a flowing stream by those having a lawful right to appropriate the water of that stream for beneficial use, it does not result that the decree entered by the court below was in excess of its authority. On the contrary in view of the absence of legislative action on the subject, and of the necessity which manifestly existed for supervising the use of the stream by those having the right to take the water in accordance with the decree which, undoubtedly to that extent, the court was authorized to render, we think the action taken by the court did not transcend the bounds of judicial authority, and therefore is not justly amenable to the attack made upon it."

There being no definite procedure established by statute the court in this equitable suit had inherent power to enforce its decree in its own way. (See *Maloney v. Zipf*, 41 Ida. 30, 237 Pac. 632; *State v. Superior Court*, 101 Wash. 260, 172 Pac. 254.) Retaining jurisdiction of the cause for two years and the administrative provisions of the decree objected to by appellants were all framed for their benefit and were within the powers of a court of equity in the absence of express statutory provisions governing the matter. (*Salt Lake City v. Salt Lake City Water & Electrical Power Co.*, 24 Utah, 249, 67 Pac. 672, 61 L. R. A. 648; *Salt Lake City v. Utah & Salt Lake City Canal Co.*, 43 Utah, 519, 137 Pac. 638; *Heil v. Hubbell*, 80 Colo. 452, 252 Pac. 343; 21 C. J. 692; 2 *Wiel on Water Rights in Western States*, 3d ed., 1113.)

[9] Finally, it is urged that the decree is inconsistent in its provisions in that it awards appellants Tiegs and Ryan certain amounts of water with priorities dating March 23, 1927, and September 24, 1927, respectively, prohibits them from permitting any water to flow from their wells until further order of the court, and perpetually enjoins them from using the water awarded to them, even though neither respondent nor appellant Edwards is using all, or any part of, the water awarded to them.

Points Decided.

Paragraph seven of the decree, *supra*, contains provisional administrative provisions and decrees that no water can, without injury to respondent's prior right, be permitted to flow from the Tiegs and Ryan wells. Paragraph nine enjoins all parties, successors in interest, etc., from any and all use of water from their respective wells except in the manner, to the extent, and for the purposes mentioned in the decree. Having determined that respondent's and appellant Edwards' rights are prior to those of appellants Tiegs and Ryan, and that there is insufficient water to satisfy the prior rights in full, the decree is right and not inconsistent in the particulars named.

The decree may be supplemented by the addition of a clause permitting appellants Tiegs and Ryan to permanently close and seal their hot water wells, in lieu of equipping them with valves, controlling, and measuring devices. When so supplemented the decree to stand affirmed. Cost to respondent.

Lee, C. J., and Budge, Givens and McNaughton, JJ., concur.

Petition for rehearing denied.

(No. 5746. December 8, 1931.)

MRS. R. REINOEHL, Appellant, v. HAMACHER POLE & LUMBER COMPANY and STATE INSURANCE FUND, Respondents.

[6 Pac. (2d) 860.]

WORKMEN'S COMPENSATION LAW—CONSTRUCTION—INDUSTRIAL ACCIDENT—TICK BITE.

1. Tick bites resulting in Rocky Mountain spotted fever and death of lumber camp swamper held received "in course of employment," making death compensable (C. S., sec. 6217, sec. 6323, as amended by Laws 1927, chap. 106, sec. 20, and sec. 6324).

Argument for Appellants.

(No. 5938. January 18, 1934.)

FRANCES SILKEY, Respondent, v. H. W. TIEGS,
THOMAS F. EDWARDS and J. RYAN, Appellants.

[28 Pac. (2d) 1037.]

WATER AND WATERCOURSES—APPROPRIATION—PRIORITIES—APPEAL AND
ERROR—LAW OF THE CASE.

1. Trial court's findings on sufficient evidence as to quantity of water used and available for use by plaintiff from her wells before defendants' wells were operated and determination of parties' priorities became law of case on affirmance by supreme court.

2. Burden was on parties, moving to modify affirmed decree adjudicating water priorities, to sustain motion by direct and convincing testimony.

3. First appropriator of water has first right thereto and cannot be deprived thereof, in absence of clear, convincing evidence that he would not be injured or affected by subsequent appropriator's diversion of water.

4. Burden was on party, moving to close well of one of parties moving to modify affirmed decree adjudicating water priorities, to sustain motion by direct and convincing testimony.

5. Affidavits of parties moving to modify affirmed decree adjudicating water priorities held insufficient to warrant decrease of amount awarded prior appropriator filing counter-affidavit.

APPEAL from the District Court of the Third Judicial District, for Ada County. Hon. Charles E. Winstead, Judge.

Appeal from denial of motion to modify affirmed decree.
Affirmed.

Edwin Snow, for Respondent.

T. L. Martin, for Appellants.

Publisher's Note.

3. See 27 B. C. L. 1269 (8 Perm. Supp., p. 6062).

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GIVENS, J.—Respondent and appellants separate appropriators of water from an artesian basin, were adjudicated priorities June 13, 1930, the court retaining provisional supervision for two years, authorizing the Commissioner of Reclamation to make measurements and tests, the wells of Tiegs and Ryan to be fitted with measuring devices, otherwise to remain closed, contemplating if such action would thereby appear justified, allowing increased amounts to the junior appropriators within the limits of their appropriations. Appellants sought unavailingly (*Silkey v. Tiegs*, 51 Ida. 344, 5 Pac. (2d) 1049) relief both from such priorities and the provisional feature.

Before the expiration of the two years, appellants petitioned the trial court to continue such provisional jurisdiction and tests thereunder and:

"That until further order of the court, said commissioner shall permit such quantity of water to flow from the wells of defendants as shall be available to them, without depleting the flow from plaintiff's wells below 21 miners inches;

"That such other and further order be made and entered as shall be necessary to permit defendants to use the available supply of water from their wells, the use of which will not deplete the amount available to and discharged by plaintiff's wells, as shown by the measurements made and to be made by said Commissioner of Reclamation." Respondent asked to have the Edwards well closed entirely.

Appellants' motion was supported by their respective affidavits all in substance as follows: That their wells (except Edwards') have remained closed since June, 1930, with the exception of a very slight intermittent flow, of such small amounts as to not affect the artesian basin, and that Edwards did not use the full amount decreed to him; and the Commissioner of Reclamation's measurements of discharges and available discharges from all wells.

Respondent filed a counter-affidavit to the effect that appellants had used more water than they asserted (which was denied by one of the appellants), also that another well

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opened by one not a party to the proceedings, subsequent to the first trial of the action herein, tapped the basin.

Appellants argue now, as on the first appeal, and on application for rehearing, that respondent never has been able to obtain more than 21 inches from her wells, that there is 140 inches of water available in the basin and that the withdrawal of that amount, or at least 60 inches, does not and never has injuriously affected respondent and that not to permit such withdrawal is to permit such excess to be wasted by not being put to a beneficial use, with no corresponding benefit to respondent.

[1] In the first trial the court in effect found upon sufficient though conflicting evidence that respondent had used and there was available for use from her wells 40 inches, prior to the time appellants' wells were operated; this upon affirmance became the law of the case and a final adjudication of her rights, as did the determination of appellants' priorities. (*Joyce v. Murphy Land etc. Co.*, 35 Ida. 549, 208 Pac. 241; *South Boise Water Co. v. McDonald*, 50 Ida. 409, 296 Pac. 591; *St. John Irr. Co. v. Danforth*, 50 Ida. 513, 298 Pac. 365.)

Appellants now urge as a basis of their right to have respondent's heretofore determined prior amount of water decreased, that she cannot now obtain that amount, though the determination of this precise issue by the trial court in the previous trial was based upon the conclusion that the appellants were responsible for such decrease, if any.

[2-4] The trial court by denying appellants' motion herein indicated he was not satisfied the provisional tests entitled them to more water, without interference with respondent's prior right. The burden was on appellants herein to sustain their motion by direct and convincing testimony, this language in *Moe v. Harger*, 10 Ida. 302, 77 Pac. 645, being particularly apt:

"This court has uniformly adhered to the principle announced both in the constitution and by the statute that the first appropriator has the first right; and it would take more than a theory, and, in fact, clear and convincing evi-

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dence in any given case, showing that the prior appropriator would not be injured or affected by the diversion of a subsequent appropriator, before we could depart from a rule so just and equitable in its application and so generally and uniformly applied by the courts. Theories neither create nor produce water, and when the volume of a stream is diverted and seventy-five per cent of it never returns to the stream, it is pretty clear that not exceeding twenty-five per cent of it will ever reach the settler and appropriator down the stream and below the point of diversion by the prior user." (*Josslyn v. Daly*, 15 Ida. 137, 96 Pac. 568.) Likewise as to respondent's motion with respect to entirely closing the Edwards well.

[5] Each counsel has diametrical theories as to what the evidence warrants as to the water their respective clients should receive. No engineer enlightens us, and adherence to the rule requiring protection of the prior appropriator, precludes relief to appellants on the showing presented.

The affidavits and showings above detailed are not sufficient to show that any good, without possible continuing hazard to respondent's rights, would be accomplished by continuing the provisional portion of the decree, even though the affirmance of the former decree was not an adjudication that two years was the maximum period for such study, fixing that as the limit, which point we do not decide, as unnecessary.

The judgment is therefore affirmed; costs awarded to respondent.

Budge, C. J., Holden and Wernette, JJ., and Rice, D. J., concur.

or less, to the West line of the Leonard E. Griffith Tract (see deed recorded in Book 107 of Deeds, page 124), thence North 564 feet along the West line of said Griffith tract to the center of the County Road, commonly known as the Foot Hill road; thence Northwesterly along the center of said County Road to the place of beginning. Also:

Beginning at the quarter section corner between Sections 28 and 29, Township 4 North, Range 2 East of the Boise Meridian; thence South 29 minutes West ^{113.16'} 17.26 chains along the Section line; thence South ^{67.14'} 89 ^{degrees} minutes ⁵³ seconds East ^{564.30'} 10.29 chains to a point; thence North 20 minutes east 8.55 chains to the center of the County Road; thence North 47 ^{55'} degrees 53 minutes West 13.00 chains to the East and West quarter section line; thence North 89 ^{35.64'} degrees and 22 minutes West 0.54 chains to the place of beginning containing 13.48 acres.

Said land belonging to defendant Tiegs aggregates approximately _____ acres.

Said right to be subject to the further provisions of this decree.

63 0016 (5) That defendant ~~W. W. Ryan~~ is hereby decreed the right to the use of forty miners inches of water from his ^{Artesian} well (measured at said well) located on his land hereinafter described for irrigation, domestic, stock and heating purposes with priority dating from September 24, 1927, said water to be appurtenant to the following described land;

The East one-half (E $\frac{1}{2}$) of the Northeast Quarter

DECREE FILE 63-A-2W
SILKEY VS TIEGS

(NE $\frac{1}{4}$) of the Northwest Quarter (NW $\frac{1}{4}$) of Section
Twenty-nine (29) Township Four North (T. 4N) Range
Two East (R. 2E.) Boise Meridian, containing Twenty
(20) acres.

Said right to be subject to the further provisions of this
decree.

(6) A miners inch of water shall be deemed equiv-
alent to one-fiftieth of a cubic foot per second; all rights
herein decreed and allotted are decreed for beneficial use
only, and none of the parties hereto, their agents or em-
ployees, or their successors in interest, shall have the
right to permit his said well to flow or to use water there-
from in excess of the amount actually required for beneficial
use. The duty of water for irrigation purposes on the lands
of the several parties hereto is hereby fixed and determined
at two miners inches per acre.

(7) The amount of water that may be permitted to
flow from the wells of the defendants is hereby provisionally
fixed and limited as follows: During the period from
October 1st of each year to April 1st of the following year,
the defendant Edwards may be permitted to flow from his said
well and use for beneficial purposes fifteen miners inches of
water; from April 1st to October 1st of each year, said de-
fendant Edwards may be permitted to flow from his said well
and to use for beneficial purposes twenty miners inches of water,
or so much thereof as will not deplete the flow of plaintiff's
wells below forty miners inches. No water shall be permitted
to flow or be used from the respective wells of the defend-
ants Tiegs and Ryan, as it is hereby further determined and
and decreed that until further order of the court, no water
can without injury to plaintiff's prior right to the use of
said water to the extent herein decreed be permitted to

flow or be used from the wells of any of the defendants in excess of the amount herein permitted to be used by the defendant Edwards.

(8) Each of the parties hereto shall install and maintain suitable and efficient valves, controlling works and measuring devices at their respective wells, all such valves and controlling works to be adequate to entirely shut off said water when required under the terms of this decree and all such measuring devices to be of such design as to accurately measure the amount of water diverted or flowing. All such controlling works and measuring devices shall at all times be subject to the inspection of any party hereto and of public officials, commissioners or watermasters having jurisdiction over the administration of this decree.

(9) Each and every of the parties hereto and their servants, attorneys, employees and successors in interest are hereby enjoined and restrained from any and all use of the water from their respective wells, except in the manner and to the extent and for the purposes herein provided.

(10) The enforcement of this decree is committed, in the first instance, pending the creation, as provided by law, by the Commissioner of Reclamation of the State of Idaho, of a water district comprising the source of supply of the water rights herein decreed, to said Commissioner of Reclamation who is hereby appointed a commissioner of this court for that purpose, to serve without compensation, he having consented so to do. Said Commissioner is hereby directed to regulate the flow of the wells of the parties hereto in accordance with the terms hereof and to make from time to time measurements of the flow of the said wells and keep a record thereof, and for this purpose may open and close, regulate and measure the flow of said wells.

(11) The court retains jurisdiction of this cause for a period of two years from this date to adjust the allowance of water permitted to be used from the wells of the defendants, in case it should hereafter appear from said record of measurements that more or less water than herein provisionally fixed may or should be permitted to flow from the wells of said defendants, or any of them, without infringement of the rights herein decreed in accordance with their respective priorities. The court also retains jurisdiction during said period to correct any clerical error herein, such as land descriptions or the like. The court also retains jurisdiction to make such further orders as may be found necessary to give effect to this decree and to punish the parties hereto, their agents and employees and their grantees and successors in interest for any violation of the provisions hereof. In all other respects, this decree shall be final.

(12) Plaintiff shall have and recover against the defendants her costs herein taxed at \$_____, and shall be entitled to execution therefor.

Dated this 13 day of June, 1930.

Dana E. Brinck, District Judge.

Entered and Filed June 13, 1930.

Stephen Utter, Clerk

State of Idaho)
 (ss.
County of Ada.)

Certificate

I, STEPHEN UTTER, Clerk of the District Court of the Third Judicial District of the State of Idaho, in and for the County of Ada, do hereby certify that the foregoing is a true and correct copy of the original DECREE filed in the above entitled action and remaining now on file in my office at Boise City, Ada County, Idaho.

Given under my hand and the seal of said Court
at office in Boise City, Ada County, Idaho, this the
19th day of August, 1930.

Stephen P. Allen
Clerk

By Paul Peterson Deputy.

MEMORANDUM

DATE: 5/1/2002

FROM: Lori Graves *g*

TO: Transfer File No. 68558

COPY

Attachments

- A. Overview
- B. Flora Site Warranty Deed
- C. USGS Map
- D. Settlement Agreement Dated 2/5/02
- E. John Marshall's Supporting Letter Dated 2/15/02
- F. The Hydro Logic Report Titled "Evaluation of the Flora Company's Geothermal Discharge Weir"

Brief

2 - Applicants propose to combine three decreed geothermal rights, aka the Flora rights, plus add a fourth existing geothermal well, aka the Windsock well, to reflect an interconnected system. Applicants also wish to change the P/U to allow for moving some or all of the greenhouse operation to the vicinity of the Windsock well, aka the Tertling site, located up gradient in the geothermal aquifer from the Flora wells. Applicants are unsure of the results from the move and wish to keep the arrangement flexible, proposing to not exceed the transfer limits at one or both locations.

Edwards Family, which also diverts water from the same geothermal aquifer, protested the transfer, fearing injury to their rights because of an enlargement of geothermal water as a result of the transfer. Applicants then hired Hydro Logic to evaluate and determine the annual production volumes under the rights that have been historically used at Flora.

Ken Neely and I reviewed Hydro Logic's final report and concluded that it had done a professional and thorough job compiling and interpreting the available data for the Flora system. Based on the report findings, Edwards Family reached a settlement with the applicants, contingent upon the transfer being approved with a volume limitation of 400 afa.

Ownership

Flora Site: The original rights were claimed in the SRBA as decreed. The rights describe 6 acres irrigated in Parcel 1, West of 36th St. and 1.5 acres irrigated in Parcel 2, East of 36th St. The claims were split in the SRBA based on submitted ownership documentation, then recombined after clarification of the ownership documents by SRBA legal staff.

Tertling

IDWR concluded that, in 1996, Flora sold Parcel 2 to the Petersons without water rights, but retained access to the well located in Parcel 2. In 1997, Turteling purchased Parcel 1, which included all the Flora water rights, wells, and easements. See Attachment C. Also see Nick Spencer's memo dated 11/9/01 included in reviewer's notes.

Tertling Site: Confirmed as applicant via Ada County Assessor.

— MEANS confirmed ownership I guess?

Historical Beneficial Use

Evidence submitted and/or referenced in this transfer package leaves little doubt that the Flora wells have been historically used to some extent for the uses described. Ed Squires, with Hydro Logic, stated that the limited site measurements he found for the Flora wells date back to the 1920's. John Marshall, applicants' attorney, also submitted aerial photos depicting the Flora site for years 1938, 1949, 1959 and 1964. Maps and aerial photography available to the department, dating from the early 1970's up to the year 2000, also indicated beneficial use occurring at the Flora site.

Flora rights 63-00012 and 63-00013 are the most senior rights in the Silkey v. Tiegs decree. Flora right 63-00015 was also decreed, but with an administrative provision preventing its use, until further ordered from the court, in favor of maintaining flows and artesian pressures for the more senior rights. ~~Because the Owners have been~~ administratively prevented from using this right does not constitute forfeiture.

complete sentence as written →

~~James~~ having

Transfer Amounts

The transfer lists 7.5 acres irrigation. This accounts for total irrigated acres in Parcels 1 and 2, which Flora once owned. Parcel 2 has not been irrigated since at least March, 1996, when the Petersons purchased the parcel without water rights. By the time the transfer was received in October, 2000, five irrigation seasons had lapsed (assuming parcel 2 had been irrigated the season prior to sale). Only 6 acres in parcel 1 should be recognized for irrigation use. The 1.5 acres in parcel 2 should not be counted due to non-use. John Marshall's attached letter dated February 15, 2002, is consistent with this recommendation in which he contends the current Flora site consists of 7 total acres; 6 acres irrigated and 1 acre for buildings and pavement.

The transfer flow rates reflect the decreed flow rates for a total of 1.6 cfs. Volume amounts were not decreed. As described above, applicants and protestants agreed that 400 afa was an acceptable volume limitation to insure that the proposed change did not constitute an enlargement. Several reasons explaining the conservative nature of the 400 afa amount were accurately documented in the Executive Summary located in the beginning of Hydro Logic's report.

Table 4 in the report also shows that the maximum combined flow rate ever measured from the three Flora hot wells was 386 GPM. Based on this data, the combined diversion rate from the hot wells should be limited to .86 cfs (386 GPM). Ed Squires agreed with this conclusion.

Overlaps

Flora Site: Claim 63-31051 represents two cold water wells used for commercial uses associated with the business operation. See accompanying transfer no. 68559.

Tertling Site: Two licenses are used for irrigation of 178 acres at the proposed P/U. Right 63-3603 lists three wells in S22 as alternate points of diversion per approved transfer no. 3990; the Pool well (SWNW), the Tertling artesian hot well (NENW), and the Windsock well (NWSW). According to the SRBA claim, the only wells used alternately are the Windsock well and a well located in the NWNE, aka the Motorcycle well, that was connected to the Windsock well in 1978. In 1997 the Champaign well was successfully drilled in the NWNE per approved transfer no. 4202 and is used as a third alternate source for irrigation. The right is conditioned that water can be diverted from only one of the wells at a time.

Right 63-7595 lists four points of diversion in S22 per approved transfer no. 4202; the Windsock well (NWSW), the Motorcycle well (NWNE) the Champaign well (NWNE) and the Pool well (SWNW). Unlike right 63-3603, this license was not conditioned to use only one well at a time. This explains why the Pool well was included on SRBA claim 63-7595 and not claim 63-3603. According to the claims, the Pool well is only used for domestic and stockwater uses and is not tied to the irrigation system.

This transfer lists the Windsock well as the ground water source to be used in S22 for the uses described. Please note that this well is also used as an alternate irrigation source for right 63-3603 and as a supplemental irrigation source for right 63-7595.

SRBA

The SRBA claims were filed for the associated water rights.

The transfer package was reviewed with SRBA staff. They confirmed the validity of the associated water right claims and agree with the recommendations of this memo. Copies of this transfer and memo have been submitted to the SRBA files.

Possible Injury

According to John Marshall, the proposed transfer will benefit existing rights by moving the two most senior rights in the Stewart Gulch Geothermal Aquifer away from wells where artesian flows are protected by the Silkey v. Tiegs decree. After the transfer, the primary P/D will be the Windsock well, which has been tested for its effects on surrounding geothermal wells that pump during the winter heating season. The tests proved that pumping the Windsock well, even during times of declining aquifer pressures, did not injure existing ground water rights. When the Windsock well was pumped for irrigation, no water rights in Water District 63-S experienced any documented problems except the wells from which applicant now proposes to transfer.

Not sure the domestic rights were included in this scenario so statement might be a little too strong

The Stewart Gulch Water District 63-S was formed in 1992, but is currently not active. A boundary was determined for the District, which included domestic hot water users. Regardless of status or priority, the uses and rights described in the transfer are subordinate to the domestic hot water wells within the District 63-S boundary. The transfer needs to be conditioned to insure the domestic users' protection.

Edwards also divert water from the Stewart Gulch Geothermal Aquifer and protested the transfer for fear of possible injury. As a result, a settlement agreement was reached which limits the Flora rights to a combined diversion volume of no more than 400 afa. Re-activation of Water District 63-S was also part of the settlement agreement.

Recommendations

Install suitable measuring and recording equipment on the Windsock well that is acceptable to the Department.

Implement a high quality monitoring and reporting program as recommended on no. 2, page 11 of the Hydro Logic report.

Limit combined flow rate to .86 cfs.

Limit combined diversion volume to 400 afa.

Limit irrigation to 6 acres and .02 cfs/acre.

If the diversion of the Windsock well is found to have more impact on the water available to existing rights in the Stewart Gulch Geothermal Aquifer than the impact of the presently installed system, the right holder shall cease to use the proposed well and return to the original operation.

List standard water district controls assuming the re-activation of Water District 63-S.

Carry over the administrative provision ordered from the court in the Silkey v. Tiegs Decree for water right 63-00015.

Update the protest status in the data base from "Suspended Protest" to "Withdrawn" if the transfer approval is consistent with the settlement agreement (Attachment D).

MEMORANDUM

To: File nos. 63-00012, 63-0013, 63-0015 (Application for transfer no. 68558) in the name of The Terteling Co.

From: Gary Spackman

Date: May 9, 2002

Re: Proposed Conditions of Approval

I recommend that the Idaho Department of Water Resources (IDWR) approve application for transfer no. 68558. Please refer to a memo written by Lori Graves, dated May 1, 2002 for details about the application for transfer. I recommend the following conditions of approval, some of which were proposed as conditions of approval to resolve a protest filed by Edwards Family, LLC.

1. Measuring devices and lockable controlling works of a type acceptable to the Department shall be permanently installed and maintained as part of the diverting works for each point of diversion.

2. Diversion of water under this right shall be subject to the control of the watermaster of water district no. 63-S, Stewart Gulch.

3. Within one year of the approval of this transfer, water district no. 63-S shall be activated and a watermaster elected. Diversion and use of water from the Windsock well is contingent upon continued activity of water district no. 63-S.

4. Diversion from points of diversion authorized by this water right and other measurements described below shall be measured and recorded at least weekly. The measurements shall include aquifer shut in pressure, well-head pressure under pumping conditions, artesian flow or pumping discharge rate, totalized production volume for the period between readings, and water temperature. If these measurements are not being taken directly by the watermaster, the measurements must be reported to the watermaster at least quarterly.

5. The measuring devices for the wells must be calibrated by an independent method of measurement at least once a year. These calibrations shall be included in the watermaster's annual report to IDWR.

6. The combined flow rate from all the water rights and all of the points of diversion is limited to 0.86 cfs.

7. The annual volume diverted for all the water rights and all of the points of diversion is limited to 400 acre feet.

8. Diversion from the Windsock well shall not significantly reduce artesian pressure for water rights bearing a priority date than December 20, 2000, describing points of diversion within water district no. 63S below any historical pressure reductions caused by diverting from the wells recognized in the Silkey v. Tiegs decree. Upon written complaint of significant reduction from the holder of a water right bearing a priority date earlier than December 20, 2000, and a preliminary finding by IDWR that there has been a significant reduction in pressure, the director may require the right holder to conduct further monitoring to determine whether diversion from the Windsock well is causing the significant reduction in pressure.

9. The water diverted under this water right shall first be beneficially used for a purpose that utilizes the heat in the water prior to its use for irrigation or other beneficial use that does not utilize the heat in the water.

MEMORANDUM

DATE: 5/1/2002

FROM: Lori Graves *g*

TO: Transfer File No. 68559

COPY

Attachments

- A. Overview and Supporting Documentation Including:
 - 1. Ralph Milstead Affidavit
- B. Flora Site Warranty Deed
- C. USGS Map
- D. John Marshall's Supporting Letter Dated 2/15/02
- E. Applicant's Annual Diversion Volume Estimate via John Marshall's Letter Dated 3/13/02
- F. Pump Curve and Receipt

Brief

Applicants propose to add two alternate points of diversion to claim 63-31051. The alternate points are two existing cold water wells aka the Champaign well and the Barn well, which are located up Stewart Gulch approximately one mile North and two miles East of the existing wells at the Flora site. The applicants also wish to change the P/U to allow flexible use of this right at the existing Flora site and the proposed new Tertling, proposing not to exceed the transfer limits at one or both locations. The transfer deletes the irrigation use as claimed, recognizing that the use of water for irrigation under this right should be clarified to commercial use.

see next page

Edwards family protested this transfer because it is associated with accompanying transfer no. 68558 involving four hot water wells. A settlement agreement was reached between the parties, allowing the processing of this transfer to go forward.

Ownership

Flora Site: See Attachment B.

Tertling Site: Confirmed as applicant via Ada County Assessor.

Historical Beneficial Use

This transfer was filed in conjunction with transfer no. 68558 involving the Flora rights. The Flora rights, which all cover geothermal uses, were adjudicated in 1930, but the cold

water wells were not adjudicated. As a result, applicants filed beneficial use claim 63-31051 with a priority date consistent with Flora's most senior decreed geothermal right.

Because the right proposed for transfer is a beneficial use claim, the validity of the claim had to be determined. I conducted a verification investigation 2/12/02 and attached to this memo the results documented in a memo dated 3/14/02.

Overlaps

Flora Site: Rights 63-00012, -00013 and -00015 represent three hot water wells decreed for heating, domestic, stockwater and irrigation uses at the Flora site. See accompanying transfer no. 68558.

Tertling Site: Two licenses are used for irrigation of 178 acres at the proposed P/U. Right 63-3603 lists three wells in S22 as alternate points of diversion per approved transfer no. 3990; the Pool well (SWNW), the Tertling artesian hot well (NENW), and the Windsock well (NWSW). According to the SRBA claim, the only wells used alternately are the Windsock well and a well located in the NWNE, aka the Motorcycle well, that was connected to the Windsock well in 1978. In 1997 the Champaign well was successfully drilled in the NWNE per approved transfer no. 4202 and is used as a third alternate source for irrigation. The right is conditioned that water can be diverted from only one of the wells at a time.

Right 63-7595 lists four points of diversion in S22 per approved transfer no. 4202; the Windsock well (NWSW), the Motorcycle well (NWNE) the Champaign well (NWNE) and the Pool well (SWNW). Unlike right 63-3603, this license was not conditioned to use only one well at a time. This explains why the Pool well was included on SRBA claim 63-7595 and not claim 63-3603. According to the claims, the Pool well is only used for domestic and stockwater uses and is not tied to the irrigation system.

This transfer lists the Champaign well and the Barn well as two alternative cold water sources. Please note that ground water from the Champaign well is also used irrigation of the 178 licensed acres.

Recommendations

Install suitable measuring and recording equipment acceptable to the Department on all four wells.

Limit combined flow rate to .12 cfs.

Limit combined volume to 27 afa.

Limit irrigation to 6 acres and .02 cfs/acre.

— Why recommend if use is commercial in xfer?

Update the protest status in the data-base from "Suspended Protest" to "Withdrawn" if the transfer approvals for transfer no. 68558 are consistent with the settlement agreement (Attachment D, transfer no 68558).

MEMORANDUM

DATE: 3/14/2002

FROM: Lori Graves *LG*

TO: Steve Lester, SRBA File 63-31051

RE: Transfer No. 68559

The following memo addresses the validity of beneficial use claim no. 63-31051 necessary for the approval of transfer no. 68559.

Applicant's Supporting Documentation:

1. 1938 aerial photo with evidence of greenhouse operation
2. 1949 aerial photo with evidence of greenhouse operation
3. 1959 aerial photo with evidence of greenhouse operation
4. 1964 aerial photo with evidence of greenhouse operation
5. Affidavit from Ralph Milstead verifying existence of cold water well since 1937
6. Pump curve for 2 hp submersible pump installed in replacement well drilled in 1999
7. Reference to the Idaho Supreme Court decision that ratified the district courts decision in *Silkey v. Tiegs*, that mentioned cold water wells existed at the Flora site along with the hot wells that were adjudicated in *Silkey v. Tiegs* (see pg 4, no. 2 of John Marshall's 2/15/02 letter)
8. John Marshall's letter dated 3/13/2002, justifying the annual volume of water historically diverted from the two cold water wells.

Department's Supporting Documentation:

1. 1987, 1994, and 2000 arc view photos showing evidence of greenhouse operation.
2. 1999 well log for 8" replacement well drilled just West of the Flora house.

2/12/02 Department Field Investigation:

An 8" well, equipped with a 2 hp submersible pump is located in the NENESE, S29, just West of the Flora house. The submersible pump is a Grundfos, #40S20-7, which has a pumping capacity of the 40 gpm (.09 cfs). This well is located in the NENESE, S29, just West of the Flora house.

A second 8" well is located South of the well described above, still within the NENESE S29. The well and casing were up to code. The well was equipped with a submersible

pump. No other information about this well was available. Applicant's consultant, Ed Squirres, estimated that the well was upgraded in mid-1970. Because of the well's close proximity to the well described above, we can assume that it was developed in a similar manner.

Ed stated that the previous owners of Flora Co. told him that both wells were tied together by buried pvc pipe. The wells are used for hand watering, drip irrigation, buried soaker hoses, pressurized irrigation and commercial/domestic uses for the Flora office/house.

Assuming that the 2nd well also contains a similar 2 hp submersible pump, the system capacity for both wells would be approximately 80 gpm or .18 cfs. The historical cfs amount claimed is well within the estimated system capacity and appears reasonable.

The historical volume amount of 27 afa proposed for transfer per John Marshall's 3/13/2002 letter also appears reasonable based on the supporting documentation John referenced in his letter and based on the following calculations:

$.12 \text{ cfs} \times 365 \text{ days} \times 1.9835 = 86.9 \text{ afa capacity assuming historical year around irrigation use}$

$.12 \text{ cfs} \times 260 \text{ days} \times 1.9835 = 61.9 \text{ afa capacity assuming historical uses limited to the standard irrigation season.}$

SRBA Consultation:

The Flora lot is 7 acres in size. The beneficial use claim was filed for .12 cfs for commercial use, which would include all irrigation and domestic uses associated with the greenhouses and office/home. Jan Schurte reviewed the file and stated that the beneficial use right would be recommended as claimed based on the supporting documentation and the 2002 field investigation confirming the existing commercial uses and wells claimed.

RECEIVED

JUN 05 2002

WATER RESOURCES
WESTERN REGIONSTATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

TRANSFER OF WATER RIGHT

TRANSFER NO. 6P²²²⁰

This is to certify that: THE TERTELING COMPANY INC
3823 N 36TH ST
BOISE ID 83703
(208)338-5200

OTHER RIGHTS HAVE
APPROVED TRANSFER
63-12, 13 & 15

has requested a change to the water right(s) listed below. Pursuant to the provisions of Section 42-222, Idaho Code, water right, including conditions of approval, is shown on the

Summary of Water Rights Before the Pr

Right	Origin/Basis	Priority	Rate
63-12	AJC/Decreed	07/01/1921	0.14 cfs
63-13	AJC/Decreed	07/01/1922	0.66 cfs
63-15	AJC/Decreed	03/23/1927	0.80 cfs

Purpose of Transfer (Changes Proposed)

Current Number	Split	POD	POU	Add POD	Period of Use	Nature of Use
63-12	NO	NO	YES	YES	NO	NO
63-13	NO	NO	YES	YES	NO	NO
63-15	NO	NO	YES	YES	NO	NO

Summary of Water Rights After the Approved Change

Existing Right	New No. (changed portion)	Transfer Rate	Transfer Volume	Acre Limit	Total Acres	New No. (remaining portion)	Remaining Rate	Remaining Volume	Remaining Acre Limit	Remaining Total Acres
63-12	63-12	0.14 cfs	101.4 af	6.0	15.0		N/A	N/A	N/A	N/A
63-13	63-13	0.66 cfs	400.0 af	6.0	15.0		N/A	N/A	N/A	N/A
63-15	63-15	0.80 cfs	400.0 af	6.0	15.0		N/A	N/A	N/A	N/A
TOTALS		0.86 cfs	400.0 af	6.0	15.0		N/A	N/A	N/A	N/A

Detailed Water Right Description(s) attached

Dated this 3rd day of June, 2002

L. John Saylor
Chief, Water Allocation Bureau

RECEIVED

JUN 05 2002

WATER RESOURCES
WESTERN REGION

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
TRANSFER OF WATER RIGHT
TRANSFER NO. 68558

This is to certify that: THE TERTELING COMPANY INC
3823 N 36TH ST
BOISE ID 83703
(208)338-5200

has requested a change to the water right(s) listed below. This change in water right(s) is authorized pursuant to the provisions of Section 42-222, Idaho Code. The authorized change for each affected water right, including conditions of approval, is shown on the following pages of this document.

Summary of Water Rights Before the Proposed Change

<u>Right</u>	<u>Origin/Basis</u>	<u>Priority</u>	<u>Rate</u>	<u>Volume</u>	<u>Acres</u>	<u>Total</u>	<u>Source</u>
63-12	AJC/Decreed	07/01/1921	0.14 cfs			7.5	GROUND WATER
63-13	AJC/Decreed	07/01/1922	0.66 cfs			7.5	GROUND WATER
63-15	AJC/Decreed	03/23/1927	0.80 cfs			7.5	GROUND WATER

Purpose of Transfer (Changes Proposed)

<u>Current Number</u>	<u>Split</u>	<u>POD</u>	<u>POU</u>	<u>Add POD</u>	<u>Period of Use</u>	<u>Nature of Use</u>
63-12	NO	NO	YES	YES	NO	NO
63-13	NO	NO	YES	YES	NO	NO
63-15	NO	NO	YES	YES	NO	NO

Summary of Water Rights After the Approved Change

<u>Existing Right</u>	<u>New No. (changed portion)</u>	<u>Transfer Rate</u>	<u>Transfer Volume</u>	<u>Acre Limit</u>	<u>Total Acres</u>	<u>New No. (remaining portion)</u>	<u>Remaining Rate</u>	<u>Remaining Volume</u>	<u>Remaining Acre Limit</u>	<u>Remaining Total Acres</u>
63-12	63-12	0.14 cfs	101.4 af	6.0	15.0		N/A	N/A	N/A	N/A
63-13	63-13	0.66 cfs	400.0 af	6.0	15.0		N/A	N/A	N/A	N/A
63-15	63-15	0.80 cfs	400.0 af	6.0	15.0		N/A	N/A	N/A	N/A
TOTALS		0.86 cfs	400.0 af	6.0	15.0		N/A	N/A	N/A	N/A

Detailed Water Right Description(s) attached

Dated this 3rd day of June, 2002

J. Glen Saylor
Chief, Water Allocation Bureau

WATER RIGHT NO. 63-12
As Modified by Transfer No. 68558

In accordance with the approval of Transfer No. 68558, Water Right No. 63-12 is now described as follows.

Right Holder: THE TERTELING COMPANY INC
 3823 N 36TH ST
 BOISE ID 83703

Priority Date: 07/01/1921

Source: GROUND WATER

<u>BENEFICIAL USE</u>	<u>From</u>	<u>To</u>	<u>Diversion Rate</u>	<u>Volume</u>
HEATING	01/01	to 12/31	0.14 CFS	101.4 AF
DOMESTIC	01/01	to 12/31	0.04 CFS	0.6 AF
IRRIGATION	01/01	to 12/31	0.14 CFS	38.0 AF
			0.14 CFS	101.4 AF

LOCATION OF POINT(S) OF DIVERSION:

GROUND WATER	NWNWSW Sec. 22Twp 04N Rge 02E ADA County
GROUND WATER	NWNWSW Sec. 28 Twp 04N Rge 02E ADA County
GROUND WATER	NENESE Sec. 29 Twp 04N Rge 02E ADA County
GROUND WATER	NENESE Sec. 29 Twp 04N Rge 02E ADA County

PLACE OF USE: HEATING & DOMESTIC

Twp Rge Sec	NE				NW				SW				SE				Totals
	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
04N 02E 22									X				X				
04N 02E 29													X				

PLACE OF USE: IRRIGATION

Twp Rge Sec	NE				NW				SW				SE				Totals
	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
04N 02E 22									7.0								7.5
04N 02E 29													7.5				7.5

Total Acres: 15

WATER RIGHT NO. 63-12
As Modified by Transfer No. 68558

CONDITIONS OF APPROVAL

1. Right 63-12 is limited to the irrigation of 6.0 acres within the place of use described above in a single irrigation season.
2. Rights 63-12, 63-13 and 63-15 when combined shall not exceed a total annual maximum diversion volume of 38.0 af for irrigation of 6.0 acres, 0.6 af for domestic use, and 400.0 af for heating and all combined uses.
3. The total instantaneous diversion of water from all points of diversion under Rights 63-12, 63-13 and 63-15 shall not exceed 0.86 cfs, nor a total combined annual volume of 400.0 af.
4. Prior to diversion of water under approval of Transfer 68558, action shall be taken to activate Water District 63-S. Diversion and use of water from the Windsock well is contingent upon continued activity of Water District 63-S.
5. Use of water under this water right will be regulated by the watermaster of State Water District No. 63-S, Stewart Gulch.
6. Prior to diversion of water under this approval, the right holder shall provide a means of measurement and lockable controlling works for all authorized points of diversion. The means of measurement and controlling works must be suitable for control of the diversions and acceptable to the watermaster.
7. Diversion from points of diversion authorized by this water right and other measurements described below shall be measured and recorded at least weekly. The measurements shall include aquifer shut in pressure, well-head pressure under pumping conditions, artesian flow or pumping discharge rate, totalized production volume for the period between readings, and water temperature. If these measurements are not being taken directly by the watermaster, the measurements must be reported to the watermaster at least quarterly.
8. The measuring devices for the wells must be calibrated by an independent method of measurement at least once a year. These calibrations shall be included in the watermasters annual report to IDWR.
9. Diversion from the Windsock well shall not significantly reduce artesian pressure for water rights bearing a priority date earlier than December 20, 2000, describing points of diversion within Water District 63-S. A significant reduction is defined as a decline in pressure below historical pressure reductions caused by diverting from the wells recognized in the Silkey v. Tiegs decree. Upon written complaint of significant reduction from the holder of a water right bearing a priority date earlier than December 20, 2000 or upon IDWRs own initiative, and upon a preliminary finding by IDWR that there has been a significant reduction in pressure, the director may require the right holder to: (a) conduct further monitoring to determine whether diversion from the Windsock well is causing the significant reduction in pressure; (b) curtail diversion of water from the Windsock well; or (c) require mitigation for diversion of water from the Windsock well.
10. Low temperature geothermal water diverted under this right shall not be used for domestic or irrigation purposes unless it is first used for heating purposes.

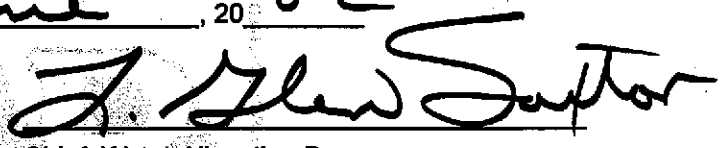
WATER RIGHT NO. 63-12
As Modified by Transfer No. 68558

CONDITIONS OF APPROVAL

11. Use of water under this right may be affected by an agreement between the protestant and the right holder.
12. Irrigation use is for inside commercial greenhouses and outside irrigation.
13. Domestic use is for business offices.
14. The Director maintains jurisdiction of this transfer up to five (5) years for the purpose of determining potential injury to existing rights, both junior and senior, in the vicinity of the transferred point of diversion.
15. The right holder shall accomplish the change authorized by this transfer within one (1) year of the date of this approval.
16. Failure of the right holder to comply with the conditions of this transfer is cause for the Director to rescind approval of the transfer.
17. Approval of this transfer does not preclude the opportunity for review of the validity of this water right in the ongoing Snake River Basin Adjudication.

This water right is subject to all prior water rights and shall be administered in accordance with Idaho law and applicable rules of the Department of Water Resources.

Dated this 3rd day of June, 2002


Chief, Water Allocation Bureau

WATER RIGHT NO. 63-13
As Modified by Transfer No. 68558

In accordance with the approval of Transfer No. 68558, Water Right No. 63-13 is now described as follows.

Right Holder: THE TERTELING COMPANY INC
 3823 N 36TH ST
 BOISE ID 83703

Priority Date: 07/01/1922

Source: GROUND WATER

<u>BENEFICIAL USE</u>	<u>From</u>	<u>To</u>	<u>Diversion Rate</u>	<u>Volume</u>
IRRIGATION	01/01	to 12/31	0.66 CFS	38.0 AF
DOMESTIC	01/01	to 12/31	0.04 CFS	0.6 AF
HEATING	01/01	to 12/31	0.66 CFS	400.0 AF
			0.66 CFS	400.0 AF

LOCATION OF POINT(S) OF DIVERSION:

GROUND WATER	NWNWSW Sec. 22 Twp 04N Rge 02E ADA County
GROUND WATER	NWNWSW Sec. 28 Twp 04N Rge 02E ADA County
GROUND WATER	NENESE Sec. 29 Twp 04N Rge 02E ADA County
GROUND WATER	NENESE Sec. 29 Twp 04N Rge 02E ADA County

PLACE OF USE: IRRIGATION

Twp Rge Sec	NE				NW				SW				SE				Totals
	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
04N 02E 22									7.0								7.5
04N 02E 29													7.5				7.5

Total Acres: 15

PLACE OF USE: DOMESTIC & HEATING

Twp Rge Sec	NE				NW				SW				SE				Totals
	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
04N 02E 22									X				X				
04N 02E 29													X				

WATER RIGHT NO. 63-13
As Modified by Transfer No. 68558

CONDITIONS OF APPROVAL

1. Right 63-13 is limited to the irrigation of 6.0 acres within the place of use described above in a single irrigation season.
2. Rights 63-12, 63-13 and 63-15 when combined shall not exceed a total annual maximum diversion volume of 38.0 af for irrigation of 6.0 acres, 0.6 af for domestic use, and 400.0 af for heating and all combined uses.
3. The total instantaneous diversion of water from all points of diversion under Rights 63-12, 63-13 and 63-15 shall not exceed 0.86 cfs, nor a total combined annual volume of 400.0 af.
4. Prior to diversion of water under approval of Transfer 68558, action shall be taken to activate Water District 63-S. Diversion and use of water from the Windsock well is contingent upon continued activity of Water District 63-S.
5. Use of water under this water right will be regulated by the watermaster of State Water District No. 63-S, Stewart Gulch.
6. Prior to diversion of water under this approval, the right holder shall provide a means of measurement and lockable controlling works for all authorized points of diversion. The means of measurement and controlling works must be suitable for control of the diversions and acceptable to the watermaster.
7. Diversion from points of diversion authorized by this water right and other measurements described below shall be measured and recorded at least weekly. The measurements shall include aquifer shut in pressure, well-head pressure under pumping conditions, artesian flow or pumping discharge rate, totalized production volume for the period between readings, and water temperature. If these measurements are not being taken directly by the watermaster, the measurements must be reported to the watermaster at least quarterly.
8. The measuring devices for the wells must be calibrated by an independent method of measurement at least once a year. These calibrations shall be included in the watermasters annual report to IDWR.
9. Diversion from the Windsock well shall not significantly reduce artesian pressure for water rights bearing a priority date earlier than December 20, 2000, describing points of diversion within Water District 63-S. A significant reduction is defined as a decline in pressure below historical pressure reductions caused by diverting from the wells recognized in the Silkey v. Tiegs decree. Upon written complaint of significant reduction from the holder of a water right bearing a priority date earlier than December 20, 2000 or upon IDWRs own initiative, and upon a preliminary finding by IDWR that there has been a significant reduction in pressure, the director may require the right holder to: (a) conduct further monitoring to determine whether diversion from the Windsock well is causing the significant reduction in pressure; (b) curtail diversion of water from the Windsock well; or (c) require mitigation for diversion of water from the Windsock well.
10. Low temperature geothermal water diverted under this right shall not be used for domestic or irrigation purposes unless it is first used for heating purposes.

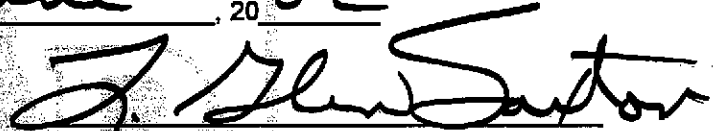
WATER RIGHT NO. 63-13
As Modified by Transfer No. 68558

CONDITIONS OF APPROVAL

11. Use of water under this right may be affected by an agreement between the protestant and the right holder.
12. Irrigation use is for inside commercial greenhouses and outside irrigation.
13. Domestic use is for business offices.
14. The Director maintains jurisdiction of this transfer up to five (5) years for the purpose of determining potential injury to existing rights, both junior and senior, in the vicinity of the transferred point of diversion.
15. The right holder shall accomplish the change authorized by this transfer within one (1) year of the date of this approval.
16. Failure of the right holder to comply with the conditions of this transfer is cause for the Director to rescind approval of the transfer.
17. Approval of this transfer does not preclude the opportunity for review of the validity of this water right in the ongoing Snake River Basin Adjudication.

This water right is subject to all prior water rights and shall be administered in accordance with Idaho law and applicable rules of the Department of Water Resources.

Dated this 3rd day of June, 2002



Chief, Water Allocation Bureau

WATER RIGHT NO. 63-15
As Modified by Transfer No. 68558

In accordance with the approval of Transfer No. 68558, Water Right No. 63-15 is now described as follows.

Right Holder: THE TERTELING COMPANY INC
 3823 N 36TH ST
 BOISE ID 83703

Priority Date: 03/23/1927

Source: GROUND WATER

<u>BENEFICIAL USE</u>	<u>From</u>	<u>To</u>	<u>Diversion Rate</u>	<u>Volume</u>
DOMESTIC	01/01	to 12/31	0.04 CFS	0.6 AF
IRRIGATION	01/01	to 12/31	0.80 CFS	38.0 AF
HEATING	01/01	to 12/31	0.80 CFS	400.0 AF
			0.80 CFS	400.0 AF

LOCATION OF POINT(S) OF DIVERSION:

GROUND WATER	NWNWSW Sec. 22 Twp 04N Rge 02E ADA County
GROUND WATER	NWNWSW Sec. 28 Twp 04N Rge 02E ADA County
GROUND WATER	NENESE Sec. 29 Twp 04N Rge 02E ADA County
GROUND WATER	NENESE Sec. 29 Twp 04N Rge 02E ADA County

PLACE OF USE: DOMESTIC & HEATING

Twp Rge Sec	NE				NW				SW				SE				Totals
	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
04N 02E 22									X				X				
04N 02E 29																X	

PLACE OF USE: IRRIGATION

Twp Rge Sec	NE				NW				SW				SE				Totals
	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
04N 02E 22									7.0			.5					7.5
04N 02E 29															7.5		7.5

Total Acres: 15

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CONDITIONS OF APPROVAL

1. Right 63-15 is limited to the irrigation of 6.0 acres within the place of use described above in a single irrigation season.
2. Rights 63-12, 63-13 and 63-15 when combined shall not exceed a total annual maximum diversion volume of 38.0 af for irrigation of 6.0 acres, 0.6 af for domestic use, and 400.0 af for heating and all combined uses.
3. The total instantaneous diversion of water from all points of diversion under Rights 63-12, 63-13 and 63-15 shall not exceed 0.86 cfs, nor a total combined annual volume of 400.0 af.
4. Water under Right 63-15 shall not be diverted or allowed to flow pending further direction from the court as described under the *Silkey v. Tiegs* decree dated 06-13-1930.
5. Prior to diversion of water under approval of Transfer 68558, action shall be taken to activate Water District 63-S. Diversion and use of water from the Windsock well is contingent upon continued activity of Water District 63-S.
6. Use of water under this water right will be regulated by the watermaster of State Water District No. 63-S, Stewart Gulch.
7. Prior to diversion of water under this approval, the right holder shall provide a means of measurement and lockable controlling works for all authorized points of diversion. The means of measurement and controlling works must be suitable for control of the diversions and acceptable to the watermaster.
8. Diversion from points of diversion authorized by this water right and other measurements described below shall be measured and recorded at least weekly. The measurements shall include aquifer shut in pressure, well-head pressure under pumping conditions, artesian flow or pumping discharge rate, totalized production volume for the period between readings, and water temperature. If these measurements are not being taken directly by the watermaster, the measurements must be reported to the watermaster at least quarterly.
9. The measuring devices for the wells must be calibrated by an independent method of measurement at least once a year. These calibrations shall be included in the watermasters annual report to IDWR.
10. Diversion from the Windsock well shall not significantly reduce artesian pressure for water rights bearing a priority date earlier than December 20, 2000, describing points of diversion within Water District 63-S. A significant reduction is defined as a decline in pressure below historical pressure reductions caused by diverting from the wells recognized in the *Silkey v. Tiegs* decree. Upon written complaint of significant reduction from the holder of a water right bearing a priority date earlier than December 20, 2000 or upon IDWR's own initiative, and upon a preliminary finding by IDWR that there has been a significant reduction in pressure, the director may require the right holder to: (a) conduct further monitoring to determine whether diversion from the Windsock well is causing the significant reduction in pressure; (b) curtail diversion of water from the Windsock well; or (c) require mitigation for diversion of water from the Windsock well.

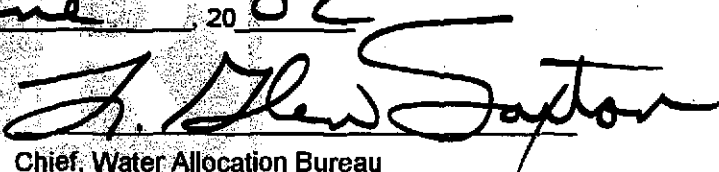
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CONDITIONS OF APPROVAL

11. Low temperature geothermal water diverted under this right shall not be used for domestic or irrigation purposes unless it is first used for heating purposes.
12. Use of water under this right may be affected by an agreement between the protestant and the right holder.
13. Irrigation use is for inside commercial greenhouses and outside irrigation.
14. Domestic use is for business offices.
15. The Director maintains jurisdiction of this transfer up to five (5) years for the purpose of determining potential injury to existing rights, both junior and senior, in the vicinity of the transferred point of diversion.
16. The right holder shall accomplish the change authorized by this transfer within one (1) year of the date of this approval.
17. Failure of the right holder to comply with the conditions of this transfer is cause for the Director to rescind approval of the transfer.
18. Approval of this transfer does not preclude the opportunity for review of the validity of this water right in the ongoing Snake River Basin Adjudication.

This water right is subject to all prior water rights and shall be administered in accordance with Idaho law and applicable rules of the Department of Water Resources.

Dated this 3rd day of June, 2002


Chief, Water Allocation Bureau

AJ0749NP
No. 63-00016

IDAHO DEPARTMENT OF WATER RESOURCES
ADJUDICATION CLAIM PROFILE REPORT
(REGIONAL)

DATE: 03/19/98
PAGE: 1

OWNER CODE	NAME & ADDRESS	PRIORITY DATE	WATER USE	USE PERIOD FROM TO	DIVERSION RATE	DIVERSION VOLUME
C	MARY RYAN	09/24/1927	DOMESTIC	01-01 12-31	0.80 CFS	
C	ROSE RYAN					
	4504 FOOTHILL DR					
	BOISE ID 83703					
	(208) 342-8498					
				TOTAL DIVERSION:	0.80 CFS	

Water Source: GROUNDWATER

Tributary to:

Stage: ~~BENEFICIAL USE~~

DECREED

Point(s) of Diversion: T04N R02E S29 SENENW

ADA County

Place of use Legal Description for: DOMESTIC

				NE				NW				SW				SE			
T	R	S	:	Lt	Ac	Lt	Ac	Lt	Ac	Lt	Ac	Lt	Ac	Lt	Ac	Lt	Ac	:	
04N	02E	29	:															:	
			:															:	

POU County: ADA

Non-Irrigation Uses: 1 HOME

Other Rights: NONE

Conditions of Approval:

- N11 - THE QUANTITY OF WATER DECREED FOR THIS WATER RIGHT IS NOT A DETERMINATION OF HISTORICAL BENEFICIAL USE.
- N13 - THE QUANTITY OF WATER UNDER THIS RIGHT SHALL NOT EXCEED 13,000 GALLONS PER DAY.

Remarks: EXP PARCEL NO. S0629212400

Dates: Exam Made Date: Verified Date: 03/19/1998 Objection Filed Date:

Misc: Water District Number: Field Inspection Flag:
Presumption Flag:

Audit: 03/19/98 SEGBERT

"R" FILE MADE PRIOR
TO FX 7/25/02