RECEIVED
MAY 0 6 2010
DEPARTMENT OF
WATER RESOURCES

CHARLES L. HONSINGER (ISB #5240)
RINGERT LAW CHARTERED
455 S. Third, P. O. Box 2773
Boise, Idaho 83701-2773
Telephone: (208) 342-4591
Facsimile: (208) 342-4657

Attorneys for Objector The Terteling Company, Inc.

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 No. 39576	SUBCASE NUMBER 63-5195
	AFFIDAVIT OF CHARLES L. HONSINGER IN SUPPORT OF MOTION TO FILE LATE OBJECTION

STATE OF IDAHO)
) ss
COUNTY OF ADA)

CHARLES L. HONSINGER, being first duly sworn upon his oath, deposes and says that:

1. I make this affidavit based upon my own personal knowledge and belief of the facts contained herein.

2. I am the attorney for The Terteling Company, Inc., an entity that has claimed many water rights in the Snake River Basin Adjudication, including water right no. 63-12.

3. As part of my preparations to try the subcases involving Edwards' Family, LLC's

objections to The Terteling Company, Inc.'s water rights, my client and I recently examined the file for water right no. 63-5195 (to which Edwards Family, LLC had also objected) and discovered what appeared to be an error in the recommendation of the priority date for that water right. The error was that water right no. 63-5195 was recommended with a priority date of June 1, 1921 which was earlier than the priority date for TTCI water right no. 63-12 which was recommended with a priority date of July 1, 1921.

4. Attached hereto as Exhibit "A" is a true and accurate copy of a March 15, 2005 Memorandum from Vicky L. Music present in the Idaho Department of Water Resources' SRBA Claim File for water right no. 63-5195.

5. Attached hereto as Exhibit "B" is a true and accurate copy of a January 28, 2010 electronic mail message from Vicky Music to Andy Terteling.

6. Attached hereto as Exhibit "C" is a true and accurate copy of a September 22, 1989 memorandum from Clifton W. Johnson to L. Glen Saxton present in the Idaho Department of Water Resources' SRBA Claim File for water right no. 63-5195.

7. Attached hereto as Exhibit "D" is a true and accurate copy of a September 21, 1989 memorandum from Raymond F. Stralow to L. Glen Saxton present in the Idaho Department of Water Resources' SRBA Claim File for water right no. 63-5195..

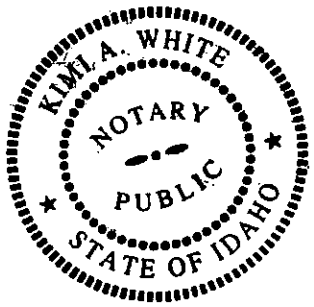
Further your affiant sayeth naught.

Charles L. Honsinger

STATE OF IDAHO)
)ss.
County of Ada)

On this 5th day of May, 2010, before me, the undersigned, a notary public in and for said state, personally appeared CHARLES L. HONSINGER, known to me to be the individual that executed the foregoing affidavit, and acknowledged to me that he executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year in this certificate first above written.



Notary Public for Idaho
Residing at Boise, Idaho
My Commission Expires: 04/01/10

CERTIFICATE OF SERVICE

I hereby certify that on this 5th day of May, 2010, a true and correct copy of the foregoing document was served by U.S. mail to the following:

Nick Spencer
Deputy Attorney General
Idaho Department of Water Resources
P.O. Box 83720
Boise, ID 83720-0098
Fax: (208)287-6700

Ms. Dana Hofstetter
Hofstetter Law Office, LLC
608 W. Franklin Street
Boise, ID 83702
Fax: (208)424-8744

David Niznik
Diane Peck-Niznik
3911 Whitehead
Boise, ID 83703

Charles L. Honsinger

Exhibit A

MEMORANDUM TO CLAIM FILE

TO:	CLAIM FILE NO. 63-5195 – STRALOW WELL
FROM:	VICKY L MUSIC, WATER RESOURCE AGENT, IDWR / WESTERN REGION
SUBJECT:	BASIS FOR RECOMMENDATION
DATE:	3/15/2005
CC:	NA

This is for the claim referred to as the "Stralow "well in the Stewart Gulch geothermal area. It is not part of water district 63S but the well has been replumbed, measuring instrumentation installed, and is being monitored by Ken Neeley, Watermaster of WD 63-S.

Issues with the claim:

1 – Priority date issues

a - A 1900 priority date was claimed which predates nearly all drilling activity in the area. Evidence of priority submitted was affidavit by Mr. Cantwell, grandson of Mrs. Silkey and son the well driller and former resident of the home where the well is located. His statement indicates the well was drilled in 1921.

b – The Silkey v Tiegs decree was an adjudication between 4 parties. No domestic wells were included. We don't know if the decree intended to include all sources from the geothermal source and no domestic wells existed, hence, none were recommended, or if the action just did not include domestic wells.

2 – Quantity claimed

a – 0.74 cfs claimed for heating of 4 homes – no basis for this Q given

b – 1.0 cfs for domestic for 4 homes

3 - Historical and current uses

a – has been used for internal domestic and heating in the past, but the volume of water is not sufficient for all domestic and heating uses for 4 homes. The first 2 homes [Johnson and Nelson]were built in 1908 and 1925 per Ada Co Assessor taxlot information. The Miller house was built in 1954 and the Bunderson home, in 1978.

b - Over time, the occupants of the 4 homes began using the water as supplemental heating source. They made the system work by reusing and reheating the water, and by remodeling the homes and installing new geothermal heat systems. During the Boise City permitting process, 3 of the homes were required to change over to city water for internal use.

c - The only home to use the geothermal water for internal uses is Helen Miller. Her use of the geothermal water is limited to the clothes washer and the showers.

Basis for recommendation

1 – Priority date – The Department has discussed whether the 1921 priority date should be recommended, or 6/14/1930, 1 day after the Silkey decree. I am recommending the 1921 priority date based on the following rationale.

a - The quantity recommended is considered a de minimus domestic quantity per IDWR and statutory guidance. De minimus domestic claims for a single household which is how this water use originally developed, would not be required to submit proof of priority date.

b - An affidavit of an interview with Mr. Cantwell was submitted. Mr. Cantwell was a former resident of the home were the well was drilled when the well was drilled in 1921. His statement is as good as it gets regarding evidence of priority.

c - It is reasonable to assume that the Silkey v. Tiegs matter was not intended to be a general adjudication but was a private adjudication among 4 parties and that the parties did not intend to include all de minimus domestic uses.

2 – Quantity

The well is only capable of producing 13 gpm. I calculated the rate of flow needed for heating the 4 homes using IDWR Application Processing Memo # 23 – "Methods for Estimating Rate of Flow for Geothermal Heating Systems". I used the lowest house efficiency factors and calculated a flow requirement of over 30 gpm. I am recommending .03 cfs total quantity for both domestic and heating which is the maximum flow rate the well can produce.

3 – Uses

I am recommending 0.03 cfs for domestic and 0.03 cfs and 16.5 afa for heating for a total quantity of .03 cfs. This preserves the historical uses.

VLM

Exhibit B

Charlie Honsinger

From: Andy J. Terteling [ajt@tertco.com]
Sent: Thursday, January 28, 2010 9:49 AM
To: Charlie Honsinger
Subject: FW: 63-5795 Stralow/Niznick

Importance: High

-----Original Message-----
From: Music, Vicky [mailto:Vicky.Music@idwr.idaho.gov]
Sent: Thursday, January 28, 2010 9:48 AM
To: Andy J. Terteling
Subject: FW: 63-5795 Stralow/Niznick

Andy -
I looked at the file again and see that in me memo to file dated 3/15/05, on page 1 I refer to an affidavit by Mr Cantwell and on page 2, I refer to a statement by MR Cantwell. The purpose of the memo to memorialize some of my thoughts are the basis of my rec. They often are no all inclusive when it comes to the information considered. Anyway, there was no affidavit from Mr Cantwell, but 2 statements from Mr Johnson and Mr. Stralow who interviewed Mr Cantwell in 1989 when he was approx 76.

Vicky Music

-----Original Message-----
From: Music, Vicky
Sent: Thursday, January 21, 2010 8:30 AM
To: 'Andy J. Terteling'
Subject: RE: 63-5795 Stralow/Niznick

Good morning Andy - I did get it. Hopefully will be able to look at the file this week and will get back to you. Have a great week!

Vicky Music

-----Original Message-----
From: Andy J. Terteling [mailto:ajt@tertco.com]
Sent: Wednesday, January 20, 2010 12:14 PM
To: Music, Vicky
Subject: FW: 63-5795 Stralow/Niznick

Hi Vicky,

I'm not sure this e-mail got through to you; it didn't show up in my sent items so I'm resending it today... darn computers!

Andy
-----Original Message-----
From: Andy J. Terteling
Sent: Monday, January 18, 2010 11:55 AM
To: Music, Vicky
Subject: 63-5795 Stralow/Niznick

Hi Vicky,

I read the Stralow/Niznick file and I could not find the affidavit from Mr. Cantwell that you mentioned in your basis for recommendation. Instead I only found the letter written by Mr. Stralow that mentions he interviewed Mr. Cantwell, I attached that letter for your reference.

Obviously my concern is the Stralow well being first in line when everything I have read shows it should be second to Silkey #1. Would be willing to provide me the affidavit from Mr. Cantwell? I'm sure that would be really helpful, and then maybe I can put this one to rest.

Thanks again Vicky for all your help.

Andy

ajt@tertco.com
381-5212 work
866-5200 cell

Exhibit C

Johnson

September 22, 1989

To: L. Glen Saxton, Hearing Officer, Idaho Dept. of Water Resources

From: Clifton W. Johnson, 3907 Whitehead, Boise, Idaho, A user on the Ray Stralow (originally the Samuel Cantwell) artesian well

Subject: A statement regarding water use from the Stuart Gulch Artesian Aquifer resulting from the hearing to "show cause" issued August 25, 1989 and held September 7, 13 and 14, 1989.

I purchased a home on the corner of Whitehead and Catalpa in October 1968. The home is heated with hot water from a well owned by Ray Stralow, 3911 Whitehead, adjoining my property on the North. There are presently 17 radiators in my home to heat about 3,000 sq. ft. of floor space. During the past twenty years I have been able to maintain room temperatures above 70 degrees F, even in the coldest weather. Wayne Church, the former owner of the Stralow well, told me when I bought the property that the temperature of the water was about 115 degrees F and the pressure about 20 pounds per square inch or greater. I did not install a pressure gauge on my inflow pipe from the well until August 18, 1989.

Both my property and Stralow's were owned by Samuel Cantwell from 1917 to 1937. Later the property was divided and the well attached to what is now the Stralow property. According to Carl Cantwell, a son of Samuel Cantwell (in an interview September 21, 1989, at his home 2415 32nd Street), the hot water well was completed in 1921 or 1922 by drilling a 2-inch well in an existing 4-inch well and deepening to more than 1,100 ft. The hot water was put to use for heating and domestic purposes at Cantwell's and nearby houses soon after completion. Evidently, the Cantwell's were motivated to drill by relatives, the SilKey's, who had just completed two hot water wells on 36th Street. Carl Cantwell has photographs of SilKey and Cantwell hot water wells flowing under artesian pressure. He said the temperature of the water was about 120 degrees F.

The flow through my house is regulated by a valve at the discharge into a ditch and varies from about 1 gallon per minute in the summer to over 5 gallons per minute in the winter. Hot water is not used for irrigation since I have shares in the Boise Canal Company sufficient for lawn and garden.

The first time I experienced any difficulty with our hot water supply in over 20 yrs. of use was in late summer and early fall of 1988, when my upstairs shower would barely run. However, by December the pressure had increased, though not back to normal. Then in mid August 1989 my shower upstairs

ceased to run completely and I talked with Ray Stralow about the problem--he said his pressure was very low also. The water temperature was also noticeably colder, down to 92 degrees F. I discussed the problem with other users on the Stralow well, who were experiencing similar problems. Further, I talked with Paul Edwards who said his pressure was the lowest ever. Then, when I visited Robert Hunt he said his well had quit flowing and something had to be done immediately.

Review of "show cause" documents, copies of exhibits at the hearing and other pertinent information assures me that the Stuart Gulch hot water aquifer needs immediate control to protect early priority rights. The Stralow well is my only source of heat and hot water and installation of an alternate system would be very expensive. Until the hearing I was not aware that the golf course was pumping hot water from the same aquifer as the old decreed rights. The aquifer should be maintained to utilize the hot water resource and not waste the heat for irrigation. I estimate from the cost of my hot water, based on my approximate use during the past year, that it costs me about 3 1/2 cents per thousand gallons. My daily water use ranges from about 1500 gallons per day in the summer to over 7000 gallons per day in the winter. The golf course irrigation that was mentioned at the hearing as about 500,000 gallons per day during the peak irrigation season wastes about $175 worth of heat per day--based on my payment for hot water from the Stralow Well.

As evidenced at the hearing, the heavy pumpage from the Terteling and Golf Course wells during the past few years has caused a drop in water pressure in older wells with earlier priority rights. I am pleased that the problems are being recognized and feel strongly that present use is "mining" this valuable resource and must be controlled if older rights are to be protected.

The pressure at my home has increased in the past month from 9 to 14 pounds per sq. in. and the temperature has increased from 92 dgrees to 104 degrees F. Our system may partly recover sufficient for this winter, but if the downward trend in water levels of recent years continues we will soon not have sufficient water for our uses. It seems to me the Idaho Department of Water Resources must reduce withdrawall from the aquifer and protect older water rights. The most beneficial uses of the water and heat resources appear to be associated with older rights and water use.

Signed: Clifton H. Johnson

Date: September 22, 1989

Exhibit D

RAYMOND F. STRALOW - 3911 Whitehead St. - Boise, ID 83703 - 345-5191

September 18, 1989

RECEIVED
SEP 22 1989
Department of Water Resources

TO: Department of Water Resources
1301 N. Orchard
Boise, ID

ATTN: L. Glen Saxton, Chief, Water Allocation Bureau

As a follow-up to the Show Cause hearing which you conducted September 7, 13 and 14 relative to the Stuart Gulch geothermal water wells, I am submitting the following for your information and consideration.

The geothermal artesian well located at 3911 Whitehead, formerly known as the Church well, but located on my property, is now believed to be the second such well to be drilled in the Stuart Gulch area, in the summer of 1921. Today I inverviewed Mr. Carl M. Cantwell of 2415 N. 32nd, Boise, concerning the time when this well was drilled. Mr. Cantwell was born in 1913, and stated that he was living on the property at the time the well was drilled, and was about 7 years of age. His grandmother was Mrs. Silkey, and his father was the well-driller. After the first Silkey well was drilled (now the first Hunt well) Mrs. Silkey had the drilling rig moved to the present Whitehead St. and the well drilled to heat the Cantwell home. This home is now 3907 Whitehead, with Mr. and Mrs. Clifton W.Johnson owner and resident there for the past 20 years.

As per Mr. Cantwell's recollection, and our own observation, the size of the well is 2", with a 4" casing. Mr. Cantwell has photos dated 1921, showing drilling of the Cantwell well, and we have a tape recording of our conversation. Both of these would be available to Water Resources if desired to add to your files.

The home I live in at 3911 Whitehead was built in 1955 by Mr. Church, who at that time also owned the 3907 Whitehead house. The large lot was split, and the well became part of the lot for my home. The geothermal hot water heats the house through pipes laid in the cement floor, and the temperature is controlled with a thermostat set at 70°F. at all times.

Multiple lines feed from the geothermal artesian well -- a 2" pipe feeds the original house at 3907 Whitehead, and 3/4" pipes feed the other houses. The flow to the users is restricted due to the size of the pipe, and cut-off valves for each user are also in place. The well has over the years served as many as 6 houses, for heating and domestic use. At the present time, there are only 4 houses on the well, including mine.

The output of the well has been curtailed by new wells having been drilled, and the hot water being pumped from them for irrigation. It is not only the volume of output that has been lowered, but the temperature has also dropped from approximately 118°F. to 90°F. This makes it very difficult, if not impossible, to adquately heat the homes that depend on this for year-round comfort, and to provide warm water for bathing.

MICROFILMED
AUG 21 1992

The expense involved to go into a different source of heat and hot water would be great. These homes have been using this Church/Stralow well as a source of heat and domestic hot water for many years (since 1921 in the case of the Johnson home). My own home was specifically designed and built for geothermal heating. There had not been any problems of this nature -- declining pressure and heat -- prior to the drilling and pumping of new wells in the area, referring in particular to the Quail Hollow wells.

I feel that being fortunate enough to have the hot water in this area of Boise, the water should be used for it's heating potential, and not wasted in irrigation. The amount that Quail Hollow uses in one day could heat one home for a year. I feel that it has been proven by tests that the Quail Hollow wells have affected my well adversely, and other artesian wells in this immediate area. Therefore, I believe that the Department of Water Resources should limit the pumping of geothermal water for irrigation purposes, and should preserve the reservoir for senior rights.

Raymond F. Stralow

Raymond F. Stralow

Copies to:
Hunt Bros. Floral, 3823 N. 36th
Edwards Greenhouse, 4106 Sand Creek
Mary E. Ryan, 4504 Foothill Dr.
Quail Hollow Golf Club, 4520 N. 36th

MICROFILMED
AUG 2 1 1992