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JUN 21 2010
DEPARTMENT OF
WATER RESOURCES

Dana L. Hofstetter (ISB #3867)
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Attorney for Edwards Family LLC

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

In Re SRBA	)	Subcase Nos. 63-12, 63-13, 63-14, 63-15, 63-16, 63-308,
	)	63-2103A, 63-2103B, 63-3603, 63-4037, 63-5067,
Case No. 39576	)	63-5195, 63-7595, 63-9758, 63-21875, 63-27649,
	)	63-27671, 63-30006, 63-30007, 63-31050, 63-31051,
	)	63-31052, 63-31053, 63-31054, 63-31055, 63-31056,
	)	63-31057, 63-31058, 63-31059, 63-31060, 63-31062, and
	)	63-32895
	)	
	)	
	)	AFFIDAVIT OF DANA L. HOFSTETTER

STATE OF IDAHO	)
	) ss.
COUNTY OF ADA	)

Dana L. Hofstetter, being first being duly sworn upon oath, deposes and says:

(1) I am Dana L. Hofstetter, attorney of record in the above-referenced SRBA Subcases for the Edwards Family LLC.

(2) Attached hereto as Exhibit A is a true and correct copy of the *Silkey v. Tiegs* Decree, Ada County, Idaho Case No. 11748 from my file.

(3) Attached hereto as Exhibit B is a true and correct copy of Final Order Adopting Proposed Memorandum Decision and Order in the Idaho Department of Water Resources ("IDWR") Matter of Creation of Water District 63-S, Stewart Gulch, dated December 5, 1989, from my file.

(4) Attached hereto as Exhibit C is a true and correct copy of Final Memorandum Decision and Order in IDWR Matter of Request for Groundwater Regulation: Decreed Right Nos. 63-0012, 63-0013, 63-0014, 63-0015 & 63-0016; Claim No. 63-4037P and Permit No. 63-9758, dated December 1, 1992, from my file.

(5) Attached hereto as Exhibit D is a true and correct copy of Order Denying Petitions for Rehearing and Amended Final Memorandum Decision and Order in IDWR Matter of Request for Ground Water Regulation: Decreed Right Nos. 63-0012, 63-0013, 63-0014, 63-0015 & 63-0016, Claim No. 63-4037 and Permit No. 63-9758, dated October 27, 1993, from my file.

(6) Attached hereto as Exhibit E is a true and correct copy of Final Order in IDWR Matter of a Petition to Modify the Boundaries of Water District No. 63-S, dated

December 8, 1995, that I obtained from the IDWR Internet website.

(7) Attached hereto as Exhibit F is a true and correct copy of Amended Application for Transfer No. 5875 that I obtained from my file.

(8) Attached hereto as Exhibit G is a true and correct copy of the January 24, 2002, Settlement Agreement between The Terteling Company, Inc. and Edwards Family, LLC, recorded as Ada County Instrument No. 102097169 from my office file.

(9) Attached hereto as Exhibit H is a true and correct copy of Amended Preliminary Order and Order Denying Petition for Reconsideration in IDWR Matter of Application for Transfer No. 68558 in the name of The Terteling Company, Inc., dated August 9, 2002, from my office file.

(10) Attached hereto as Exhibit I is a true and correct copy of Amended IDWR Transfer Approval No. 68558 dated October 9, 2002, from my file.

(11) Attached hereto as Exhibit J is a true and correct copy of Second Amended Application for Transfer No. 71690 that I obtained from the IDWR Internet website.

(12) Attached hereto as Exhibit K is a true and correct copy of the April 10, 2006 Affidavit of Norman C. Young filed in the IDWR Matter of Application for Transfer No. 71690 in the Name of The Terteling Company, Inc. that I obtained from my file.

(13) Attached hereto as Exhibit L is a true and correct copy of Withdrawal of Protest in the IDWR Matter of Application for Transfer No. 71690 in the Name of The Terteling Company, Inc., dated April 10, 2006, from my office file.

(14) Attached hereto as Exhibit M is a true and correct copy of a September 13, 2006, letter from Gary Spackman of IDWR to Charles L. Honsinger that I obtained by request from IDWR.

(15) Attached hereto as Exhibit N is a true and correct copy of the transcript of the June 14, 2010, I.R.C.P. 30(b)(6) deposition of The Terteling Company, Inc. and T-7, LLC (with Exhibits) in the instant SRBA Subcases.

(16) Attached hereto as Exhibit O is a true and correct copy of the June 15, 2010, transcript (with Exhibits) of the June 15, 2010 deposition of Edward Squires in the instant SRBA Subcases.

(17) Attached hereto as Exhibit P is a true and correct copy of a January 29, 2010, letter and attachment from Charles Honsinger to the parties or their counsel in the instant SRBA Subcases.

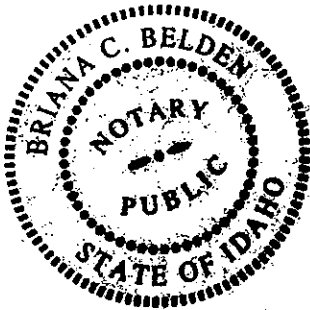
(18) Attached hereto as Exhibit Q are true and correct copies of filings in Ada County, Idaho Case No. 97293 that I obtained from the Ada County, Idaho Court Clerk's Office.

FURTHER YOUR AFFIANT SAYETH NAUGHT.

DATED this 18th day of June 2010.

Dana L. Hofstetter
Dana L. Hofstetter

SUBSCRIBED AND SWORN to before me this 17 day of June 2010.



Briana C. Belden
Notary Public in and for the State of Idaho
Residing at: Meridian
My Commission Expires: 01-16-2013

CERTIFICATE OF SERVICE

I hereby certify that on this 18th day of June, 2010, I caused to be served a copy of the foregoing document (with any attachments) on the following persons by the postage pre-paid method below:

Charles L. Honsinger

RINGERT LAW

455 S. Third

P.O. Box 2773

Boise, ID 83701-2773

☒ U.S. Mail ☐ Overnight Delivery ☐ Hand-Delivery ☐ Facsimile

IDWR Document Depository

P.O. Box 83720

Boise, ID 83720-0098

☒ U.S. Mail ☐ Overnight Delivery ☐ Hand-Delivery ☐ Facsimile

Andrew Waldera

Moffatt Thomas

P.O. Box 829

Boise, Idaho 83701

☒ U.S. Mail ☐ Overnight Delivery ☐ Hand-Delivery ☐ Facsimile

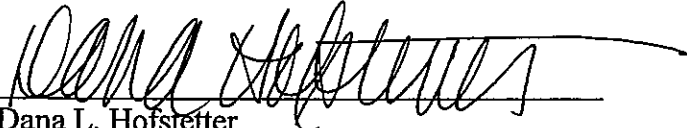
David Niznik

Diane Peck-Niznik

3911 Whitehead

Boise, Idaho 83703

☒ U.S. Mail ☐ Overnight Delivery ☐ Hand-Delivery ☐ Facsimile


Dana L. Hofstetter

Case Number 11748

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR ADA COUNTY.

FRANCES SILKEY,

Plaintiff,

v.

H. W. TIEGS, THOMAS F.
EDWARDS and J. RYAN,

Defendants.

This case came regularly on, for trial before the court without a jury on the _____ day of January, 1930, when Edwin Snow appearing as attorney for plaintiff, and Wm. H. Morgan and T. L. Martin appearing as attorneys for the defendants. Whereupon the case was heard and submitted and duly considered; and the court having made and filed herein its decision, findings of fact and conclusions of law,

NOW THEREFORE, on motion of plaintiff, it is ORDERED, ADJUDGED AND DECREED as follows:

(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

(2) Plaintiff is hereby decreed a prior right to the use of forty miners inches of said water flowing from her said wells located on the land hereinafter described, said quantity of water to be measured at said wells, with priority as to seven miners inches of such water dating from

July 1, 1921, and with pri

EXHIBIT

A

633 0013 July 1, 1921, and with priority as to thirty-three inches
of such water dating from July 1, 1922, said water being de-
creed for irrigation, stock, domestic, heating and other
beneficial uses upon the following described land:

* Commencing at the quarter section corner common
to sections numbered twenty-eight (28) and twenty-
nine (29) in Township numbered four (4) North of
Range numbered two (2) East of Boise Meridian; thence
south 29' west a distance of 662.3 feet, along the
section line common to said sections 28 and 29 to the
real place of beginning, thence south 29' west a distance
of 778.8 feet along said section line common to sections
28 and 29 to an iron pin; thence north 81°16' west a
distance of two hundred twenty-four and two-tenths
(224.2) feet along the south bank of Boise City Canal
Company ditch, to a point; thence north 61°35' west a
distance of one hundred thirty-five and three quarters
(135.3/4) feet to a point, thence north 76°20' west a
distance of three hundred twenty-eight and four-tenths
(328.4) feet, to an iron pin; thence north 39' east a
distance of 613.1 feet; thence south 89°11' east a
distance of 657.4 feet to the place of beginning; all
being in Section 29, Township 4 North, Range 2 East
Boise Meridian in Ada County, Idaho; also.

Commencing at the quarter section corner common
to Sections numbered twenty-eight (28) and Twenty-nine (29)
in Township Four (4) North, Range Two (2) East of Boise
Meridian, the real place of beginning, thence south 0°29'
west a distance of six hundred sixty-two and three-tenths
(662.3) feet along the section line common to said sections
twenty-eight (28) and twenty-nine (29); thence north 89°11'
west, parallel to the east and west quarter section line

of said section twenty-nine (29), a distance of six hundred fifty-seven and four-tenths (657.4) feet; thence north $0^{\circ}39'$ east a distance of six hundred sixty-two and three tenths (662.3) feet, to the east and west quarter section line of said section twenty-nine (29); thence south $89^{\circ}11'$ east, along said quarter section line, six hundred and fifty-six and five-tenths (656.5) feet to the place of beginning, containing ten acres of land, more or less, together with all water rights, water, ditches, aqueducts upon, leading to or used in connection with the above described land;

all of said property containing approximately ~~twenty~~

63 0014

(3) Defendant Thomas F. Edwards is hereby decreed the right to the use of ~~feet~~ two inches of water from his well (measured at said well) located on his land hereinafter described, for irrigation, domestic stock and heating purposes with priority dating from November 22, 1926, said water to be appurtenant to the following described land;

Commencing at a point 10.86 chains north of the center of Section 29, Township 4 North, Range 2 E.B.M., a stone, and thence north a distance of 4.10 chains to an iron bar; thence south 75° degrees, East a distance of 15.43 chains to an iron pipe; thence South $1^{\circ}50$ minutes West a distance of 4.15 chains to an iron bar; thence north $74^{\circ}43$ minutes west a distance of 15.32 chains to a stone, the place of beginning, containing six and fifteen-hundredths acres, more or less.

Also:

Commencing at a point 14.96 chains North of the

SIGNED AND SEALED
JUL 10 1927
CLERK OF THE DISTRICT COURT

center of Section twenty-nine (29), Township Four (4) North, Range Two (2) east of Boise Meridian; thence running South 75 degrees East 7.91 chains; thence North 12.68 chains; thence North 47 degrees 39 minutes West 10.40 chains; thence south 17.89 chains to the place of beginning. Area Eleven and 67/100 (11.67) acres more or less.

Also:

Commencing at a point 14.96 chains North and 7.91 chains South 75 degrees and 30 minutes East from the center of Section 29, Township 4 North, Range 2 East of the Boise Meridian; thence South 75 degrees and 30 minutes East a distance of 7.51 chains to an iron pipe; thence north 1 degree and 20 minutes East a distance of 6.33 chains to an iron pipe; thence North 22 degrees and 50 minutes East a distance of 1.38 chains to a point; thence North 48 degrees and 10 minutes West a distance of 10.67 chains to a post set in concrete; thence South a distance of 12.83 chains to the place of beginning containing Seven and Seventy-six (7.76) Hundredths acres more or less.

Said land belonging to defendant Edwards aggregates ~~25.58~~ acres.

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

63 6615 (4) That the defendant H. W. Tice hereby decreed the right to the use of forty miners' inches of water from his well (measured at said well) located on his land hereinafter described for irrigation, domestic, stock and heating purposes, with priority dating from March 23, 1927, said water to be appurtenant to the following described land;

Commencing at the Quarter Corner on the West line of Section 28, Township 4 North, Range 2 East of the Boise Meridian; thence south along the West line of said Section 28, 1137 feet, thence East 683 feet, more 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 17.26 chains along the Section line; thence South 89 minutes 53 seconds East 10.29 chains to a point; thence North 20 minutes east 8.55 chains to the center of the County Road; thence North 47 degrees 53 minutes West 13.00 chains to the East and West quarter section line; thence North 89 degrees and 22 minutes West 0.54 chains to the place of beginning containing 13.48 acres.

Said land belonging to defendant Tieggs aggregates approximately _____ acres.

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

10000-5 (5) That defendant J. Ryan is hereby decreed the right to the use of forty miners inches of water from his 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

(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,

ALL RIGHTS RESERVED
NOT TO BE REPRODUCED OR TRANSMITTED IN ANY FORM OR BY ANY MEANS, ELECTRONIC OR MECHANICAL, INCLUDING PHOTOCOPYING, RECORDING, OR BY ANY INFORMATION STORAGE AND RETRIEVAL SYSTEM, WITHOUT PERMISSION IN WRITING FROM THE PUBLISHER.

(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 Jun 13, 1930.

Stephen Utter, Clerk

State of Idaho)
County of Ada. } ss.

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.

By Stephen P. Peterson Clerk
W. E. Peterson Deputy.

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

IN THE MATTER OF CREATION OF WATER)
DISTRICT 63-S, STEWART GULCH)

COUNTY: ADA

FINAL ORDER
ADOPTING PROPOSED MEMORANDUM DECISION AND ORDER

This matter having come before the Idaho Department of Water Resources (Department) as a petition to form a water district and also as a response to an Order to Show Cause why the Department should not prohibit or limit the diversion of water under certain groundwater rights, the Department finds, concludes and orders as follows:

FINDINGS OF FACT

1. On August 22, 1989, the Department received a request to create a water district and appoint a watermaster. On the same date, the Department also received a request to issue a summary order prohibiting water use from some wells used by Quail Hollow Golf Course.

2. The rights to the use of low temperature geothermal groundwater from certain wells in the vicinity of 36th Street and Hill Road in Boise, Idaho were decreed in the case of Silkey v. Tiegs, et. al., Ada County Case No. 11748 on June 13, 1930. The decree found that water to supply the rights was diverted from a common and interconnected source.

3. The decree recognized that water was diverted by means of artesian pressures and established a distribution scheme to protect historic pressures and flow rates by artesian pressure.

4. The identification numbers of the rights and current users of water under the rights as confirmed by the Silkey decree are as follows: 63-0012, 63-0013 and 63-0015, Hunt Bros. Floral, Inc.; 63-0014, Edwards Greenhouses; and 63-0016, M.E. or R.E. Ryan.

5. Two wells are operated for irrigation purposes by Quail Hollow Golf Club under Claim No. 63-4037P and Permit No. 63-9758. Claim No. 63-4037P claims a priority date of 1931. Permit No. 63-9758 has a priority of June 30, 1981. Data gathered by the United States Geological Survey, represented by hydrographs that are part of the record in this matter and testimony of witnesses, establish that the source of water diverted from the Quail Hollow wells is interconnected with the source of water for the rights decreed in the Silkey decree.

6. Testimony indicates the water supply for wells owned by J. A. Terteling also appears to be interconnected to the water supply for the previously described rights.

7. Department records show that Raymond F. Stralow owns a well once known as the Church well, and has filed a claim in the Snake River Basin Water Rights Adjudication alleging a date of priority of January 1, 1900. The Stralow well is also interconnected with the water supply for the uses of water listed above.

8. Section 42-602, Idaho Code, requires the Department to supervise the distribution of Idaho's public waters in accordance with the rights of prior appropriation.

9. Section 42-604, Idaho Code, charges the Department with the responsibility to create water districts and Section 42-605, Idaho Code, provides for the election or appointment of a watermaster to administer the use of water under rights within the water district.

10. The Silkey decree directs the Department to form a water district and administer the uses accordingly.

11. Many legal issues of law and fact have been raised regarding the authority of the Department under Section 42-237a, Idaho Code, to enjoin the use of water by later-in-time diverters to protect senior water rights and the general applicability of the ground water act to wells which predate the act.

12. Both issues of fact and law have been raised and remain to be resolved regarding the scope of authority granted to the Department by Idaho Code, Section 42-237a. A legal question must be resolved regarding the applicability of the reasonable pumping level language as provided in Section 42-226, Idaho Code. Furthermore, if a reasonable pumping level should be established, a factual question regarding what level is reasonable must also be resolved.

13. ~~The unresolved issues of fact and law described in findings of fact 11 and 12 are before the Department in a separate but related show cause proceeding and will not be further addressed in the present proceeding.~~

14. Flow measuring devices and pressure measuring equipment are needed on each well to determine the amount of water being diverted within the water district and to properly deliver the water to those entitled to its use.

CONCLUSIONS OF LAW

1. The Department is authorized to create a water district and appoint a watermaster for proper distribution of the water decreed in the case of Silkey v. Tiegs together with other water rights which divert and use water from the same low temperature geothermal aquifer.

2. Section 42-607, Idaho Code states:

It shall be the duty of the said watermasters to distribute the waters of the public stream, streams or water supply, comprising his water district, among the several ditches taking water there from according to the prior water rights of each respectively, and whole or in part, . . . provided, that any person or corporation claiming the right to the use

of waters of the stream or water supply comprising a water district, but not owning or having the use of any adjudicated or decreed right therein, or right therein evidence by permit or license issued by the Department of Water Resources, shall for purposes of distribution during the scarcity of water, be held to have a right subsequent to any adjudicated, decreed, permit, or licensed right in such stream or water supply. . .

3. Interim management is needed. The Department should create a water district for the management and supervision of the low temperature geothermal resource.

4. The Department should require the installation and maintenance of flow measuring devices and pressure measuring equipment which enable a watermaster to properly distribute water to those entitled to its use.

ORDER

IT IS HEREBY ORDERED AS FOLLOWS:

1. Water District 63-S, Stewart Gulch, is hereby created in connection with the use of the low temperature geothermal water resource.

2. The area within the following boundaries shall constitute the water district as shown on Figure 1, attached:

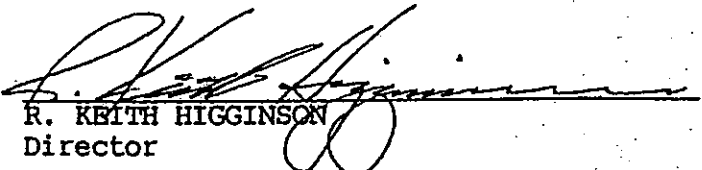
Beginning at the East Quarter corner of Section 15, T4N, R2E, B.M., thence south approximately one and one-half mile to the southeast corner of Section 22, thence west one mile to the southwest corner of Section 22, thence south one-half mile to the east quarter corner of Section 28, thence west one-half mile to the center of Section 28, thence south one-half mile to the south quarter corner of Section 28, thence west approximately one and one-half mile to the southwest corner of Section 29, thence north one mile to the northwest corner of Section 29, thence east one mile to the Northeast corner of Section 29, thence north one-half mile to the west quarter corner of Section 21, thence east one-half mile to the center of Section 21, thence north one-half mile to the north quarter corner of Section 21, thence east one-half mile to the northeast corner of Section 21, thence North one-half mile to the west quarter corner of Section 15, thence east one mile to the point of beginning, all in T4N, R2E, B.M.

3. The owners of wells used for the diversion of low temperature geothermal water within the district shall install flow measuring devices and the rate of flow and volume of pressure measuring equipment acceptable to the Department for the measurement of the rate of flow and volume of water diverted from their respective wells. Such devices and/or equipment shall be installed on or before April 1, 1990.

4. Certain domestic heating uses are exempt from regulation by the watermaster of the district. The intent of this exemption is to exclude from

regulation the heating of single family residences and in-house uses of the water which utilize the heat of the water where total use of water per household does not exceed 13,000 gallons per day. Wells not used exclusively for domestic heating purposes are subject to regulation and the requirement to install measuring devices and/or pressure measuring equipment.

Dated this 5th day of December, 1989.


R. KEITH HIGGINSON
Director

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this the 5th day of December, 1989, I deposited in the United States mail, postage prepaid a true and correct copy of each of the foregoing ORDER ISSUING PROPOSED DECISION and PROPOSED MEMORANDUM DECISION AND ORDER sent to:

William F. Ringert, Esq.
Ringert, Clark, Harrington, Reid, Christenson & Kaufman
P. O. Box 2773
Boise, ID 83701-2773

Susan D. Miner, Esq.
Hawley, Troxell, Ennis & Hawley
P. O. Box 1617
Boise, ID 83701

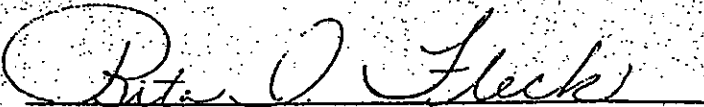
Kenneth R. Arment
Brady, Saetrum & Lerma
P. O. Box 1398
Boise, ID 83701

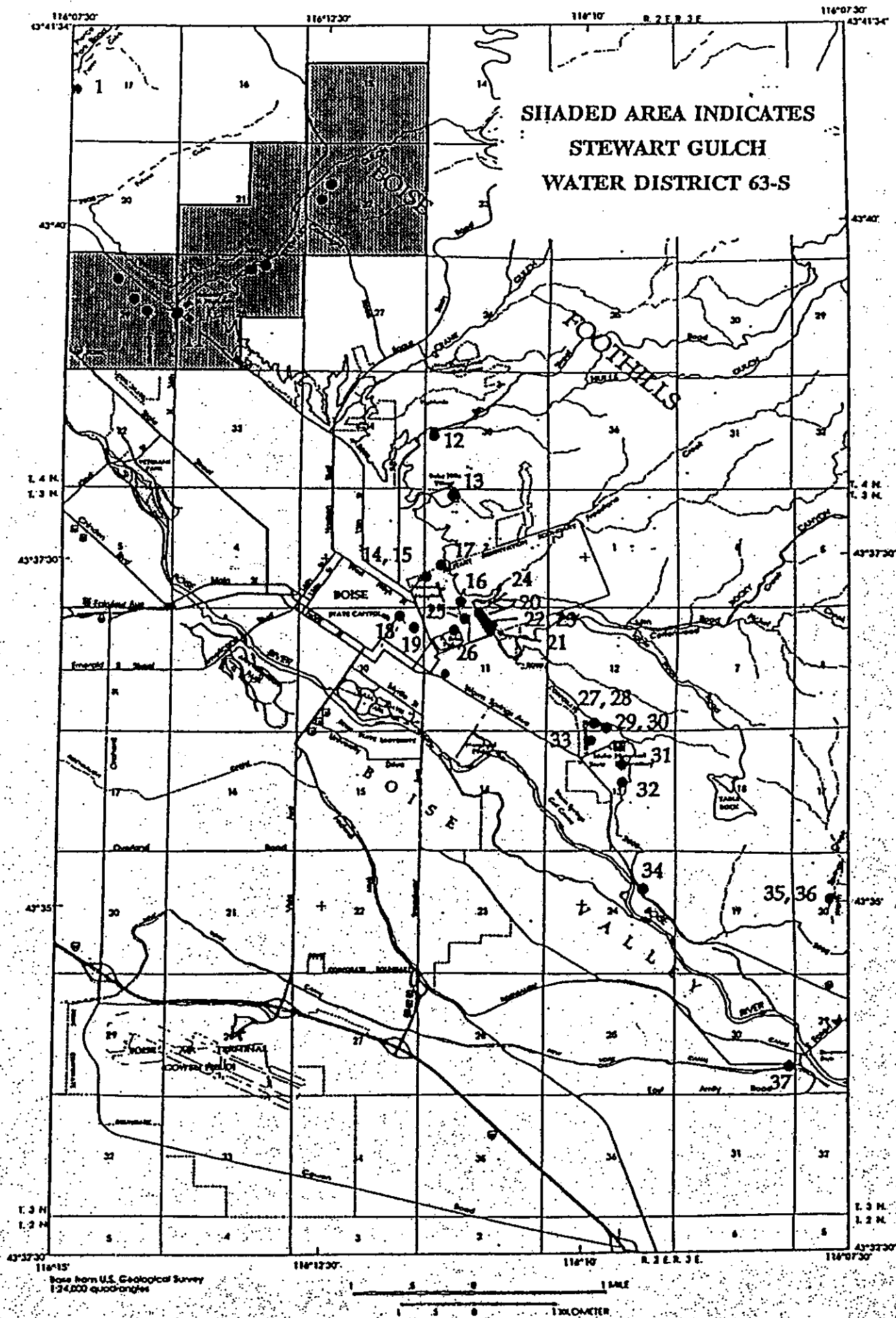
M. E. and R. E. Ryan
4504 Foothill Dr.
Boise, ID 83703

J. A. Terteling
877 W. Main, Rm. 706
Boise, ID 83702

Jeffrey C. Fereday
Michael C. Creamer
Givens, Pursley, Webb & Huntley
P. O. Box 2720
Boise, ID 83701

Ray F. Stralow
3911 Whitehead
Boise, ID 83703


RITA I. FLECK
Secretary/Records Manager



BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE
STATE OF IDAHO

IN THE MATTER OF REQUEST FOR	)	
GROUNDWATER REGULATION: DECREED	)	FINAL MEMORANDUM
RIGHT NO.'S 63-0012, 63-0013	)	DECISION AND ORDER
63-0014, 63-0015 & 63-0016; CLAIM	)	
NO. 63-4037P AND PERMIT NO. 63-9758	)	

This matter came before the Idaho Department of Water Resources (Department) as a petition to form a water district and as a response to an order to show cause why the Department should not prohibit or limit the diversion of water under certain groundwater rights. A proposed decision was issued, and exceptions were filed by Tee Ltd. (Quail Hollow) and Hunt Bros. Floral, Inc. The exceptions will be addressed in the following analysis.

EXCEPTIONS

Tee Ltd. objected to the proposed decision because:

1. Tee Ltd. alleged the Silkey v. Tiegs decree limits the use of water to the uses as of the date of the decree and implies that change of the uses is prohibited.
2. Tee Ltd. contended that diversion from the Tiegs and Ryan well is prohibited, and that diversion from the Tiegs well under another water right and diversion from the Ryan well should be enjoined.
3. Tee Ltd. argued that physical conditions and water use has changed so significantly, that the Silkey decree can't be administered, and the Department should establish a reasonable pumping level.
4. Tee Ltd. argued that diversions are not being measured.
5. Tee Ltd. requested oral argument.

Hunt Bros. Floral, Inc. objected to the decision, not because it disagreed with the holding, but because several conclusions of law not necessary to the decision discuss disputed Department



authority to subject pre-1951 groundwater rights to the reasonable pumping level language of the Groundwater Act.

ANALYSIS

Silkey granted to the predecessor of Hunt Bros. Floral, Inc., the right to use water for "irrigation, stock, domestic heating and other beneficial uses" upon the land described. There is no evidence in the record that the Silkey rights are being used for a purpose other than those described by the decree.

The intent of the decree prohibition of diversion from the Tiegs well was to prevent injury to earlier right holders. Diversion from the Tiegs well to satisfy the Silkey rights is not prohibited by the decree.

The prohibition of diversion of other rights will be followed except for diversion for domestic purposes, including heating associated with a domestic use.

Diversions can be measured and the rights administered.

Oral argument is not necessary.

Most of the conclusions of law to which Hunt Bros. objected have been removed as unnecessary language.

FINDINGS OF FACT

1. On August 22, 1989, Hunt Bros. Floral, Inc. (Hunt Bros.) filed a petition with the Department requesting the creation of a water district and the appointment of a watermaster for the Stewart Gulch low temperature geothermal basin located in the vicinity of 36th Street and Hill Road in Boise, Idaho. On the same date, Hunt Bros. requested that the Department issue a summary order prohibiting any further withdrawals of water from certain wells operated by Quail Hollow Golf Club (Quail Hollow) within the basin.

2. On August 25, 1989, the Department issued an Order to Show Cause directing certain well owners in the Stewart Gulch low temperature geothermal area to show cause why the Department should not issue an order prohibiting withdrawals from their respective wells.

3. On September 7, 1989, the Department conducted a hearing on the Petition to Create a Water District and the request for an

issuance of an order prohibiting further withdrawals from the Quail Hollow wells.

4. The hearing was reconvened by the Department on September 13, 1989 and September 14, 1989 to allow the participants additional time to introduce evidence on the matters at issue.

5. Preliminary investigations by the Department and testimony at the hearing indicate that during pumping in the late summer Quail Hollow Golf Club's irrigation wells interfere with the artesian pressure and the delivery of hot water to wells owned by Hunt Bros., the senior water right holders under the Silkey v. Tiegs decree.

6. The rights to the use of low temperature geothermal groundwater from certain wells in the vicinity of 36th Street and Hill Road in Boise, Idaho were decreed in the case of Silkey v. Tiegs, et. al., Ada County Case No. 11748 on June 13, 1930. The court found that water to supply the rights was diverted from a common and interconnected source.

7. The Silkey decree recognized that the groundwater in Stewart Gulch was diverted by means of artesian pressures and directed the Department to regulate and measure the flows of the wells and to create a water district under the applicable law.

8. Water right identification numbers and the current users of water as confirmed by the Silkey decree are as follows:

Hunt Bros. Floral, Inc. - 63-0012
63-0013
63-0015

Edwards Greenhouses - 63-0014

M. E. or R. E. Ryan - 63-0016

9. Quail Hollow operates two wells for irrigation purposes under Claim No. 63-4037P and Permit No. 63-9758. Claim No. 63-4037P claims a priority date of October 1, 1931. Permit No. 63-9758 claims a priority date of June 30, 1981.

10. Department records and testimony indicate that the water supply for the wells owned by J. A. Terteling and the well owned by Raymond F. Stralow appear to be interconnected to the same water

supply described in the Silkey decree and used for irrigation by Quail Hollow.

11. The following is a list of adjudication claim nos. assigned to claims filed by the well owners for water rights in the Snake River Basin Adjudication.

<u>Owner</u>	<u>Adjudication Claim No.</u>	<u>Water Right No.</u>
Hunt Bros.	A63-0012	63-0012
	A63-0013	63-0013
	A63-0015	63-0015
Edwards Greenhouse	A63-0014	63-0014
M.E. or R.E. Ryan	A63-0016	63-0016
Quail Hollow		
a) Victor L. Nibler	A63-4037	63-04037
b) TEE Limited	(No Claim Filed)	63-09758
J.A. Terteling	A63-03603	63-03603
	A63-07595	63-07595
Raymond Stralow	A63-05195	63-05195

12. Evidence at the hearing established that Hunt Bros. acquired the Tiegs well, and began diverting water under its water right entitlement from the Tiegs well. Evidence also established that the nature of use by Hunt Bros. has changed, both by transfer which was approved in 1954, and by transfers accomplished without recording.

13. There was no evidence of forfeiture by Hunt Bros. or the other right holders.

14. The Silkey decree prohibited diversion of water from the Tiegs well and the Ryan well. Both of these wells have been used for diversion of water.

15. In response to the petition to create a water district, the Department issued a final order dated December 5, 1989 creating Water District 63-S for the low temperature geothermal water resource in Stewart Gulch.

16. The final order creating a water district dated December 5, 1989, did not address the show cause matter and reserved any

decision on certain unresolved legal issues pertaining to the Department's authority under the Ground Water Act.

17. The Department issued a Proposed Decision and Order for the show cause order on September 24, 1990.

18. The Department was informed that Hunt Bros. no longer own the property, and the current owner is Jeff Jayo or the "Flora Shop."

19. Matter herein expressed as a finding of fact which is later deemed to be a conclusion of law is hereby made a conclusion of law.

CONCLUSIONS OF LAW

1. Idaho's Constitution provides that all waters within the state are subject to the regulation and control of the state. Idaho Const. art. XV § 1, provides:

Use of waters a public use. - The use of all waters now appropriated, or that may hereafter be appropriated for sale, rental or distribution; also of water originally appropriated for private use, but which after such appropriation has heretofore been, or may hereafter be sold, rented, or distributed, is hereby declared to be a public use, and subject to the regulations and control of the state in the manner prescribed by law.

2. The state has a statutory duty to supervise the appropriation and allotment of the water resources of the state to water users who divert the water for beneficial use. Idaho Code § 42-101 (1990) prescribes in part:

Nature of property in water. - Water being essential to the industrial prosperity of the state, and all agricultural development throughout the greater portion of the state depending upon its just apportionment to, and economical use by, those making a beneficial application of the same, its control shall be in the state, which, in providing for its use, shall equally guard all the various interests involved. All the waters of the state, when flowing in their natural channels, including the waters of all natural spring and lakes within the boundaries of the state are declared to be the property of the state, whose duty it shall be to supervise their appropriation and allotment to those diverting the same therefrom for any beneficial purpose

3. The state's duty to supervise the appropriation of water applies to all subterranean waters as well as to surface waters within the state. I.C. § 42-103.

4. The low temperature geothermal waters at issue in this action have already been the subject of previous litigation in which the court applied the general water laws and principles under Idaho law. The Idaho Court, citing Hinton v. Little, 50 Idaho 371, 296 P. 582 (1931), specifically acknowledged that the underground artesian waters at issue in this matter are subject to the laws of prior appropriation. Silkey v. Tiegs, 51 Idaho 344, 5 P.2d 1049 (1931).

5. The proposed decision issued earlier discussed at length the authority of the Director to regulate diversions and require a reasonable pumping level even before the passage of the Ground Water Act in 1951. The entire discussion has been omitted because the Department is not required to determine a reasonable pumping level in this case.

6. The Silkey court established that artesian pressure should be protected from further declines.

7. Because the Silkey decree specifically addressed and ~~protected artesian pressure~~ in the aquifer, the Department, in deference to the Silkey decree, will refrain from examining whether the artesian pressure in Stewart Gulch constitutes a reasonable pumping level and is in the public interest pursuant to I.C. § 42-226 until such time as the court addresses the issue in the Snake River Basin Adjudication.

8. ~~The watermaster of Water District 63-8 must administer the waters of Stewart Gulch in accordance with the provisions of the Silkey v. Tiegs decree, including the protection of the artesian pressure necessary to deliver water to the prior appropriators.~~ I.C. §§ 42-237a and 42-607.

9. Hunt Bros., or its successors, is entitled to full use of its water rights in their order of priority from the point of diversion it has acquired, including the Tiegs well.

10. Water users from the Ryan well and the Stralow well may

continue to divert water for domestic purposes, provided it does not cause significant declines in any artesian pressure diversions which injures earlier in time water rights.

11. Even though the Stralow well use is only represented by an adjudication claim, the watermaster will not shut off domestic use from the well.

12. Matter herein expressed as a conclusion of law which is later deemed to be a finding of fact is hereby made a finding of fact.

ORDER

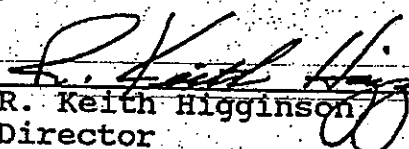
IT IS HEREBY ORDERED that the watermaster of Water District 63-S shall administer the groundwater in the water district under the terms of the Silkey v. Tiegs decree and according to the laws of prior appropriation.

IT IS FURTHER ORDERED that the watermaster of Water District 63-S shall, upon determination that ~~there is not sufficient water that can be delivered by artesian pressure to fill a senior groundwater right, limit or prohibit withdrawals from wells within~~ the water district having a later priority.

IT IS FURTHER ORDERED that a water district meeting should be conducted pursuant to Title 42, Chapter 6 of the Idaho Code. Should the users fail to appoint a watermaster, upon request of a user, the Department will appoint a watermaster.

IT IS FURTHER ORDERED that Tee Ltd.'s request for oral argument is DENIED.

Dated this 1ST day of DECEMBER, 1992.



R. Keith Higginson
Director

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 2nd day of December, 1992, I mailed a true and correct copy of the foregoing Final Memorandum Decision and Order, postage prepaid to the following:

William F Ringert
Ringert, Clark et al
PO Box 2773
Boise, ID 83701

J A Terteling
877 W Main Rm 706
Boise, ID 83702

Susan D Miner
Hawley, Troxell et al
PO Box 1617
Boise, ID 83701

Jeffrey C Fereday
Givens Pursley et al
PO Box 2720
Boise, ID 83701

Kenneth R Arment
Brady, Saetrum & Lerma
PO Box 1398
Boise, ID 83701

Ray F Stralow
3911 Whitehead
Boise, ID 83703

Michael C Creamer
Givens Pursley et al
PO Box 2720
Boise, ID 83701

M E and R E Ryan
4505 Foothill Dr
Boise, ID 83703

Karen L. Gustafson
Karen L. Gustafson
Secretary/Records Manager

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

IN THE MATTER OF REQUEST FOR
GROUND WATER REGULATION: DECREED
RIGHT NOS. 63-0012, 63-0013
63-0014, 63-0015 & 63-0016, CLAIM
NO. 63-4037 AND PERMIT NO. 63-9758

) ORDER DENYING PETITIONS
) FOR REHEARING AND
) AMENDED FINAL MEMORANDUM
) DECISION AND ORDER
)

This matter came before the Idaho Department of Water Resources (Department) as a petition to form a water district and as a response to an Order to Show Cause why the Department should not prohibit or limit the diversion of water under certain ground water rights. On December 5, 1989, the Department issued a final Order creating Water District 63-S to control the distribution of water from the low temperature geothermal aquifer in Stewart Gulch. That final Order did not address the show cause matter and reserved any decision on certain unresolved legal issues pertaining to the Department's authority under the Ground Water Act. Those legal issues reserved in the December 5, 1989 final Order are addressed by the Department during these proceedings.

The Department issued a proposed decision on September 24, 1990, and exceptions were filed by Tee Ltd. (Quail Hollow) and Hunt Bros. Floral, Inc. (Hunt Bros.). On December 1, 1992, the Department issued a Final Memorandum Decision and Order that included Department responses to exceptions filed by Quail Hollow and Hunt Bros. Petitions for Rehearing were received from both J. L. Terteling and Quail Hollow during the month of December, 1992, raising several issues. The Department in this order addresses the issues raised in the petitions for rehearing and amends the Final Memorandum Decision and Order.

ORDER DENYING PETITIONS FOR REHEARING

On December 22, 1992, Terteling Trust No. 7 and J. L. Terteling (herein collectively "Terteling") filed a Petition for

ORDER DENYING PETITIONS FOR REHEARING AND
AMENDED FINAL MEMORANDUM DECISION AND ORDER - Page 1

EXHIBIT

D

Rehearing before the Department advocating that the Department's Final Memorandum Decision and Order be modified in several respects.

Specifically, the Terteling petition requested that the Department exclude Terteling's wells from administration in Water District No. 63-S, appoint a local ground water board, eliminate protection for artesian pressure in the aquifer and correct an inconsistency in the Conclusions of Law of the Department's final decision.

On December 30, 1992, Quail Hollow filed a late Petition for Rehearing and Joinder in Terteling Petition for Rehearing with the Department requesting the Department reconsider its final order and appoint a local ground water board and establish reasonable ground water pumping levels in the aquifer.

Terteling's Petition for Rehearing and Quail Hollow's Petition for Rehearing are DENIED. The Department addresses the issues raised in the petitions by amending its Final Memorandum Decision and Order in the following manner:

A. Finding of Fact No. 10 will remain unchanged in the Amended Final Memorandum Decision as there appears to be a general interconnection between all the wells in the aquifer. The final order is amended to recognize the option of excluding the Terteling wells from regulation under Water District No. 63-S if it can be demonstrated that there is no interconnection with the other wells in the aquifer.

B. The Department declines to appoint a local ground water board. The issues raised in the petitions for rehearing do not involve a senior ground water right alleging injury because of interference from a junior ground water right as contemplated under Idaho Code § 42-237(b). Moreover, formation of a local ground water board is unnecessary in view of the changes incorporated in the Department's Amended Final Memorandum Decision and Order.

C. The Department will regulate Water District No. 63-S pursuant to the terms of the Silkey v. Tiegs decree pending

adjudication of the affected rights in Twin Falls County Case No. 39576 (Snake River Basin Adjudication). Legal issues involving the establishment of reasonable pumping levels and the protection of artesian pressure raised in the petitions for rehearing can be raised before the court in the Snake River Basin Adjudication.

D. The inconsistency in the Conclusions of Law identified by the Terteling petition for rehearing is corrected by the deletion of Conclusion of Law No. 11 from the Department's original decision.

AMENDED FINAL MEMORANDUM DECISION AND ORDER

FINDINGS OF FACT

1. On August 22, 1989, Hunt Bros. Floral, Inc. (Hunt Bros.) filed a petition with the Department requesting the creation of a water district and the appointment of a watermaster for the Stewart Gulch Low Temperature Geothermal Basin located in the vicinity of 36th Street and Hill Road in Boise, Idaho. On the same date, Hunt Bros. requested that the Department issue a summary order prohibiting any further withdrawals of water from certain wells operated by Quail Hollow Golf Club (Quail Hollow) within the basin.
2. On August 25, 1989, the Department issued an Order to Show Cause directing certain well owners in the Stewart Gulch Low Temperature Geothermal area to show cause why the Department should not issue an order prohibiting withdrawals from their respective wells.
3. On September 7, 1989, the Department commenced a hearing on the Petition to Create a Water District and on the request for issuance of an order prohibiting further withdrawals from the Quail Hollow wells.
4. The hearing was reconvened by the Department on September 13, 1989 and September 14, 1989 to allow the participants additional time to introduce evidence on the matters at issue.
5. Preliminary investigations by the Department and testimony at the hearing indicate that during pumping in the late summer Quail Hollow Golf Club's irrigation wells interfere with the

artesian pressure and the delivery of hot water to wells owned by Hunt Bros., the senior water right holders in the case of Silkey v. Tiegs, et al., Ada County Case No. 11748, June 13, 1930.

6. The rights to the use of low temperature geothermal ground water from certain wells in the vicinity of 36th Street and Hill Road in Boise, Idaho were decreed in the Silkey case. The court found that water to supply the rights was diverted from a common and interconnected source.

7. The Silkey decree recognized that the ground water in Stewart Gulch was diverted by means of artesian pressure and directed the Department to regulate and measure the flows of the wells and to create a water district under the applicable law.

8. Water right identification numbers and the current users of water as confirmed by the Silkey decree are as follows:

Hunt Bros. Floral, Inc. - 63-0012
63-0013
63-0015

Edwards Greenhouses - 63-0014

M. E. or R. E. Ryan - 63-0016

9. Quail Hollow operates two wells for irrigation purposes under Claim No. 63-4037 and Permit No. 63-9758. Claim No. 63-4037 claims a priority date of October 1, 1931. Permit No. 63-9758 has a priority date of June 30, 1981.

10. Department records and testimony indicate that the water supply for the wells owned by J. A. Terteling and the well owned by Raymond F. Stralow appear to be interconnected to the same water supply described in the Silkey decree and used for irrigation by Quail Hollow.

11. The following is a list of adjudication claim numbers assigned to claims filed by the well owners for water rights in the Snake River Basin Adjudication.

<u>Owner</u>	<u>Adjudication Claim No.</u>	<u>Water Right No.</u>
Hunt Bros.	A63-0012	63-0012
	A63-0013	63-0013
	A63-0015	63-0015
Edwards Greenhouse	A63-0014	63-0014
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Quail Hollow		
a) Victor L. Nibler	A63-4037	63-04037
b) TEE Limited	(No Claim Filed)	63-09758
J.A. Terteling	A63-03603	63-03603
	A63-07595	63-07595
Raymond Stralow	A63-05195	63-05195

12. Evidence at the hearing established that Hunt Bros. acquired the Tiegs well, and began diverting water under its water right entitlement from the Tiegs well. Evidence also established that the nature of use by Hunt Bros. has changed, both by a transfer which was approved in 1954, and by transfers accomplished without recording.

13. There was no evidence of forfeiture by Hunt Bros. or the other right holders.

14. The Silkey decree prohibited diversion of water from the Tiegs well and the Ryan well. Both of these wells have been used for diversion of water.

15. In response to the petition to create a water district, the Department issued an order dated December 5, 1989 creating Water District No. 63-S for the low temperature geothermal water resource in Stewart Gulch.

16. The order creating a water district, dated December 5, 1989, did not address the show cause matter and reserved any decision on certain unresolved legal issues pertaining to the Department's authority under the Ground Water Act.

17. The Department issued a Proposed Decision and Order for the show cause order on September 24, 1990.

18. On December 1, 1992, the Department issued a Final

Memorandum Decision and Order that included Department responses to the exceptions filed by Quail Hollow and Hunt Bros.

19. The Department has been informed that Hunt Bros. no longer own the property, and the current owner is "Flora Company."

20. A matter herein expressed as a Finding of Fact which is later deemed to be a Conclusion of Law is hereby made a Conclusion of Law.

CONCLUSIONS OF LAW

1. Idaho's Constitution provides that all waters within the state are subject to the regulation and control of the state. Idaho Const. art. XV § 1, provides:

Use of waters a public use. - The use of all waters now appropriated, or that may hereafter be appropriated for sale, rental or distribution; also of water originally appropriated for private use, but which after such appropriation has heretofore been, or may hereafter be sold, rented, or distributed, is hereby declared to be a public use, and subject to the regulations and control of the state in the manner prescribed by law.

(Emphasis added).

2. The state has a statutory duty to supervise the appropriation and allotment of the water resources of the state to water users who divert the water for beneficial use. Idaho Code § 42-101 (1990) prescribes in part:

Nature of property in water. - Water being essential to the industrial prosperity of the state, and all agricultural development throughout the greater portion of the state depending upon its just apportionment to, and economical use by, those making a beneficial application of the same, its control shall be in the state, which, in providing for its use, shall equally guard all the various interests involved. All the waters of the state, when flowing in their natural channels, including the waters of all natural spring and lakes within the boundaries of the state are declared to be the property of the state, whose duty it shall be to supervise their appropriation and allotment to those diverting the same therefrom for any beneficial purpose.

(Emphasis added).

3. The state's duty to supervise the appropriation of water

applies to all subterranean waters as well as to surface waters within the state. I.C. § 42-103.

4. The low temperature geothermal waters at issue in this action have been the subject of previous litigation in which the court applied the general water laws and principles under Idaho law. The Idaho Court, citing Hinton v. Little, 50 Idaho 371, 296 P. 582 (1931), specifically acknowledged that the underground artesian waters at issue in this matter are subject to the laws of prior appropriation. Silkey v. Tiegs, 51 Idaho 344, 5 P.2d 1049 (1931).

5. The proposed decision issued earlier discussed at length the authority of the Director to regulate diversions and require a reasonable pumping level even before the passage of the Ground Water Act in 1951. The entire discussion has been omitted because the Department is not required to determine a reasonable pumping level in this case.

6. ~~The Silkey decree established that artesian pressure should be protected from further declines.~~

7. Because the Silkey decree specifically addressed and protected artesian pressure in the aquifer, the Department, in deference to the Silkey decree, ~~will refrain from examining whether the artesian pressure in Stewart Gulch constitutes a reasonable pumping level and is in the public interest pursuant to I.C. § 42-226 until such time as the court addresses the issue in the Snake River Basin Adjudication.~~

8. The watermaster of Water District No. 63-S must administer the waters of Stewart Gulch ~~in accordance with the provisions of the Silkey v. Tiegs decree, including the protection of the artesian pressure necessary to deliver water to the prior appropriators.~~ ~~I.C. §§ 42-237a and 42-607.~~

9. Hunt Bros., or its successors, is entitled to full use of its water rights in order of priority from the point of diversion it has acquired, including the Tiegs well.

10. Water users from the Ryan well and the Stralow well may

continue to divert water for domestic purposes, provided the use does not cause significant decline in the artesian pressure for any diversion which causes injury to earlier in time water rights.

11. Matter herein expressed as a Conclusion of Law which is later deemed to be a Finding of Fact is hereby made a Finding of Fact.

ORDER

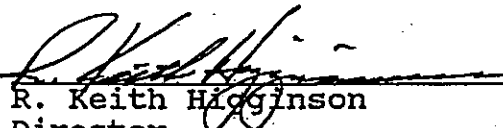
IT IS HEREBY ORDERED that the Watermaster of Water District No. 63-S shall administer the ground water in the water district under the terms of the Silkey v. Tiegs decree and according to the laws of prior appropriation.

IT IS FURTHER ORDERED that the Watermaster of Water District No. 63-S shall, upon his determination that there is not sufficient water that can be delivered by artesian pressure to fill a senior ground water right, limit or prohibit withdrawals from wells within the water district having a later priority. The Department will consider altering the boundaries of Water District No. 63-S to eliminate regulation of a well if its owners demonstrate to the satisfaction of the Director of the Idaho Department of Water Resources that regulation of the wells will not impact the water availability to the other well in the aquifer having a senior right and should not, therefore, be regulated within Water District No. 63-S.

IT IS FURTHER ORDERED that ~~this Amended Final Memorandum Decision and Order shall only govern the administration of low temperature geothermal ground water from Water District No. 63-S until such time as the water rights are adjudicated and all other relevant matters necessary to define the rights are addressed in Twin Falls County Case No. 39576 (Snake River Basin Adjudication).~~

This order is not intended to preclude or limit any wateruser from advancing any legal argument or defense before the District Court in Twin Falls County Case No. 39576 involving any issue raised or ruled upon by the Department in its Amended Final Memorandum Decision and Order.

Dated this 27th day of OCTOBER, 1993.


R. Keith Higginson
Director

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 27th day of October, 1993, I mailed a true and correct copy of the foregoing Order Denying Petitions for Rehearing and Amended Final Memorandum Decision and Order, postage prepaid to the following:

William F Ringert
Ringert, Clark et al
PO Box 2773
Boise, ID 83701

J A Terteling
877 W Main Rm. 706
Boise, ID 83702

Susan D Miner
Hawley, Troxell et al
PO Box 1617
Boise, ID 83701

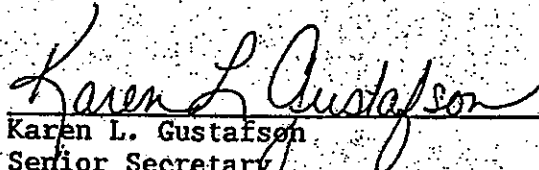
Jeffrey C Fereday
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Kenneth R Arment
Brady, Saetrum & Lerma
PO Box 1398
Boise, ID 83701

Ray F Stralow
3911 Whitehead
Boise, ID 83703

Michael C Creamer
Givens Pursley et al
PO Box 2720
Boise, ID 83701

M E and R E Ryan
4505 Foothill Dr
Boise, ID 83703


Karen L. Gustafson
Senior Secretary

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE

STATE OF IDAHO

IN THE MATTER OF A PETITION)
TO MODIFY THE BOUNDARIES OF) **FINAL ORDER**
WATER DISTRICT NO. 63-S)
_____)

Terteling Trust No. 7 filed a petition with the Idaho Department of Water Resources (Department) to modify the boundaries of Water District No. 63-S, also known as Stewart Gulch. The petition was filed on January 25, 1995, and a hearing for water district members and interested parties was conducted on May 16, 1995.

The four regulated water right users within the water district participated in the hearing. These water users include the following in the order of senior to junior water right priority: Flora Company (Flora), Edwards Greenhouses (Edwards), Terteling Trust No. 7 (Petitioner) and Quail Hollow Golf Course (Golf Course).

At the conclusion of the hearing, the record was left open until June 6, 1995, to accommodate additional information. Briefs by attorneys were also due by that date. Response briefs were due by June 16, 1995. Additional information was submitted by the Petitioner, Flora and Edwards in a timely manner.

A Recommended Order was issued by the Idaho Department of Water Resources (Department) on September 21, 1995, and served by mail on September 27, 1995. No exceptions to the Recommended Order were filed with the Department.

Based upon his understanding of the law, the Director makes the following Findings of Fact, Conclusions of Law and Final Order:



FINDINGS OF FACT

1. Water District No. 63-S (District) is a low temperature geothermal resource district composed of four regulated water users. The regulated District members use "hot water" wells primarily for commercial (greenhouses) and irrigation (crops and a golf course) purposes. Minor or domestic uses exempt from water right permitting requirements remain unregulated within the District absent a showing of cause for regulation.
2. The District was established by the Final Order Adopting Proposed Memorandum Decision and Order issued by the Director of the Department (Director) on December 5, 1989. That order recognized the terms of Silkey v. Tiegs, et al., Ada County Case No. 11748, June 13, 1930. Pursuant to a request for ground water regulation within the District, the Director issued a subsequent order (Final Memorandum Decision and Order) on December 1, 1992, to implement watermaster administration of pertinent water rights. The Department initiated District operations by organizing the first annual District meeting in February, 1993.
3. Guidelines for the administration of water rights within the District were further modified by the Director's October 27, 1993 Order Denying Petitions for Rehearing and Amended Final Memorandum Decision and Order.
4. District procedures facilitated calls by the senior water right owner, Flora, for water deliveries in the late summers of 1993 and 1994 (around Labor Day). In each regulated period as water shortages developed, senior rights were authorized to divert while junior rights were curtailed. Watermaster control included, but was not limited to, Petitioner's Windsock well (TWS well) located in the NW~~X~~SW~~X~~ Section 22, T4N, R2E, B.M., whereby use of the well was curtailed as needed.
5. Petitioner's evidence established a definite link between the TWS well and other low temperature geothermal wells that are found down-gradient in the District. These other wells include those used by Flora, Edwards and the Golf Course; these wells are located as follows in T4N, R2E, B.M.:

- a) Flora well no. 1 in the NW~~SW~~ Section 28 and well no. 2 in the NE~~SE~~ Section 29;
- b) Edwards well in the SW~~NE~~ Section 29; and
- c) Golf Course well no. 1 in the SW~~SE~~ Section 21 and well no. 2 in the NW~~NE~~ Section 28.

6. Petitioner's Motorcycle Club well (TMC well) is located in the NW~~NE~~ Section 22, T4N, R2E, B.M. and falls within current District boundaries but has not been in use during any periods of watermaster regulation.

7. The TMC well has been reconstructed to provide a viable source of low temperature geothermal water for beneficial use. Irrigation use from this well is authorized by License No. 63-07595 as most recently defined in Transfer No. 4202, approved by the Director's Final Order dated October 27, 1993. License No. 63-07595 provides for irrigation of 103 acres within Sections 21 and 22, T4N, R2E, B.M.

8. The hydrologic consultant for the Petitioner conducted three aquifer tests to determine if the TWS well and down-gradient low temperature geothermal wells are hydraulically connected to the TMC well. The tests occurred in June 1993, March 1994, and May through June 1994. Results from the three tests showed that the TWS, Golf Course, Flora, and Edwards wells do not demonstrate such a connection with the TMC well.

9. The Petitioner's conclusion that a hydrological barrier exists between the TMC well and the other down-gradient low temperature geothermal wells, including the TWS well, is based on the following six factors:

- a) three aquifer tests in 1993 and 1994;
- b) observable faults from land surface analysis (road cuts, etc.);
- c) the Chevron Seismic Line data estimated to be dated from the 1970's or 1980's (faulting trends);

- d) substrata differences northwest and southwest of the barrier (lithology);
- e) hydrological analysis of nearby surface springs, primarily the Terteling Springs between and west/northwest of the TWS and TMC wells;
- f) ground water temperature differences encountered on either side of the barrier.

Testimony of the Petitioner's consultant concluded that the most significant of these six was factor (a), the three recent aquifer tests.

10. Faults can act as either conduits or barriers to the flow of water, and if the latter, are rarely 100% effective. Existing data indicate that a barrier fault(s) is located between the TWS and TMC wells. Because the low temperature geothermal wells down-gradient (southwest) from the TWS well are interconnected with the TWS well and because none of these wells are connected with the TMC well, the barrier restricts communication between the areas northeast and southwest of the barrier.

11. The precise location, path and extent of the barrier cannot be determined from existing data. Faulting in this location most likely matches the northwest-southeast trending faults of the Boise Front. The barrier appears to bisect Section 22, T4N, R2E B.M. in a northwest-southeast manner from a point 700 feet south of the northwest section corner to a point 700 feet west of the southeast section corner (Petitioner's Exhibit B).

12. Characterization of the hydrological barrier is more general than specific. Nonetheless, the barrier separates aquifer functions between the TMC well and the wells found down-gradient.

13. No aquifer communication between the low temperature geothermal wells within the District and those outside of the District has been documented. Therefore, no foundation exists to modify the District boundaries in any outward direction from the current boundaries established by the Director's previous orders (Finding of Fact Nos. 2 and 3).

14. In addition to the testimony and exhibits presented at the May 16, 1995 hearing and subsequent information submitted while the record remained open, the Department takes official notice of the following:

- a) Silkey v. Tiegs decree;
- b) previous Department proceedings and subsequent orders issued by the Director establishing the District;
- c) Water District No. 63-S file information;
- d) official water right files, Snake River Basin Adjudication files, and well logs for the water rights within the District;
- e) all data, hydrographs, seismic information, and similar types of information whether found in print or electronic formats that are contained in Department files and that are related to aquifer monitoring or other testing within the District and/or the Boise Front Ground Water Management Area; and
- f) other correspondence, memoranda, and similar documents located in the Department files that pertain to low temperature geothermal wells in and around the District.

CONCLUSIONS OF LAW

1. Idaho's Constitution provides that all waters within the state are subject to state regulation and control. Idaho Constitution Article XV § 1, defines:

Use of waters is a public use. - The use of all waters now appropriated, or that may hereafter be appropriated is hereby declared to be a public use, and subject to the regulations and control of the state in the manner prescribed

2. A statutory duty exists for the state to supervise the appropriation and allotment of the water resources of the state to water users who divert for beneficial use as prescribed in part in I. C. § 42-101:

Nature of property in water. - Water being essential to the industrial prosperity of the state All the waters of the state within the boundaries of the state are declared to be the property of the state, whose duty it shall be to supervise their appropriation and allotment to those diverting the same therefrom for any beneficial purpose

3. The state's duty to supervise the appropriation of water applies to all subterranean waters as well as to surface waters within the state. I. C. § 42-103.

4. The Director must control water distribution within water districts prescribed in part by I. C. § 42-602:

Director to supervise water distribution. - The Director of the department of water resources shall have direction and control of the distribution of water from all natural sources within a water district to facilities diverting therefrom. Distribution of water within water districts created pursuant to section 42-604, Idaho Code, shall be accomplished by watermasters as provided in this chapter and supervised by the director.

5. The Director retains authority to revise water district boundaries through the hearing and order process described in I. C. § 42-604:

Creation of water districts. - The director of the department of water resources shall divide the state into water districts in such a manner where the use of waters by appropriators in one district does not affect or conflict with the use of the waters by appropriators outside such district The director may create, revise the boundaries of, or abolish a water district or combine two (2) or more water districts by entry of an order if such action is required to properly administer uses of the water resource. Before entering an order creating, modifying, or abolishing a district the hearing shall be held within

the district or proposed district, or at some nearby location convenient to the affected water users.

Each water district created hereunder shall be considered an instrumentality of the state of Idaho for the purpose of performing the essential governmental function of distribution of water among appropriators under the laws of the state of Idaho.

6. Based upon the information presented to the Department regarding the existence and effect of the hydrological barrier, the Department should modify the boundaries of the District and should exclude the TMC well from control of the District watermaster.

7. The low temperature geothermal wells that should remain subject to watermaster control include six wells situated down-gradient from the barrier. The regulated wells include those operated by the Petitioner (TWS well), the Golf Course (two wells), Flora (two wells), and Edwards (one well) as previously identified by legal location herein. Low temperature geothermal wells found within the District and utilized for domestic use defined in I. C. § 42-111 remain excused from watermaster regulation.

ORDER

IT IS HEREBY ORDERED that Water District No. 63-S shall be managed under the following provisions:

1. The boundaries of the District are modified to include the area as shown on attached Figure 1 and described as follows:

Beginning at a point 700 feet west of the southeast corner of Section 22, T4N, R2E, B.M., thence west seven-eighths mile to the southwest corner of Section 22, thence south one-half mile to the east quarter corner of Section 28, thence west one-half mile to the center of Section 28, thence south one-half mile to the south quarter corner of Section 28, thence west one and one-half miles to the southwest corner of Section 29, thence north one mile to the northwest corner of Section 29, thence east one mile to the northeast corner of Section 29, thence north one-half mile to the west quarter corner of Section 21,

thence east one-half mile to the center of Section 21, thence north one-half mile to the north quarter corner of Section 21, thence east three-eighths mile to a point 700 feet west of the northeast corner of Section 21, thence southeast one and four-tenths miles through Section 22 in a line intersecting Cartwright Road, Stewart Gulch, and Miller Gulch to the point of beginning, all in T4N, R2E, B.M.

2. The area north and east of the new boundary line as shown on attached Figure 1 is excluded from Water District No. 63-S, and the Terteling Motorcycle Club well located within the excluded zone is no longer subject to control by the watermaster of said District based on the revised District boundary.

3. The Department will consider additional alterations to the boundaries of Water District No. 63-S to eliminate regulation of a well if its owners demonstrate to the satisfaction of the Director of the Department that regulation of the well will not impact the water availability to another well in the aquifer having a senior right and should not, therefore, be regulated within the District. Similarly, the Department will consider additional alterations to the boundaries of the District to add regulation of a well if it can be shown, to the satisfaction of the Director, that the well adversely affects the water availability to another well in the aquifer having a senior right and should, therefore, be regulated within Water District 63-S.

4. This Final Order shall only govern the administration of low temperature geothermal ground water from the District until such time as the water rights are adjudicated and all other relevant matters necessary to define the rights are addressed in Twin Falls County Case No. 39576 (Snake River Basin Adjudication).

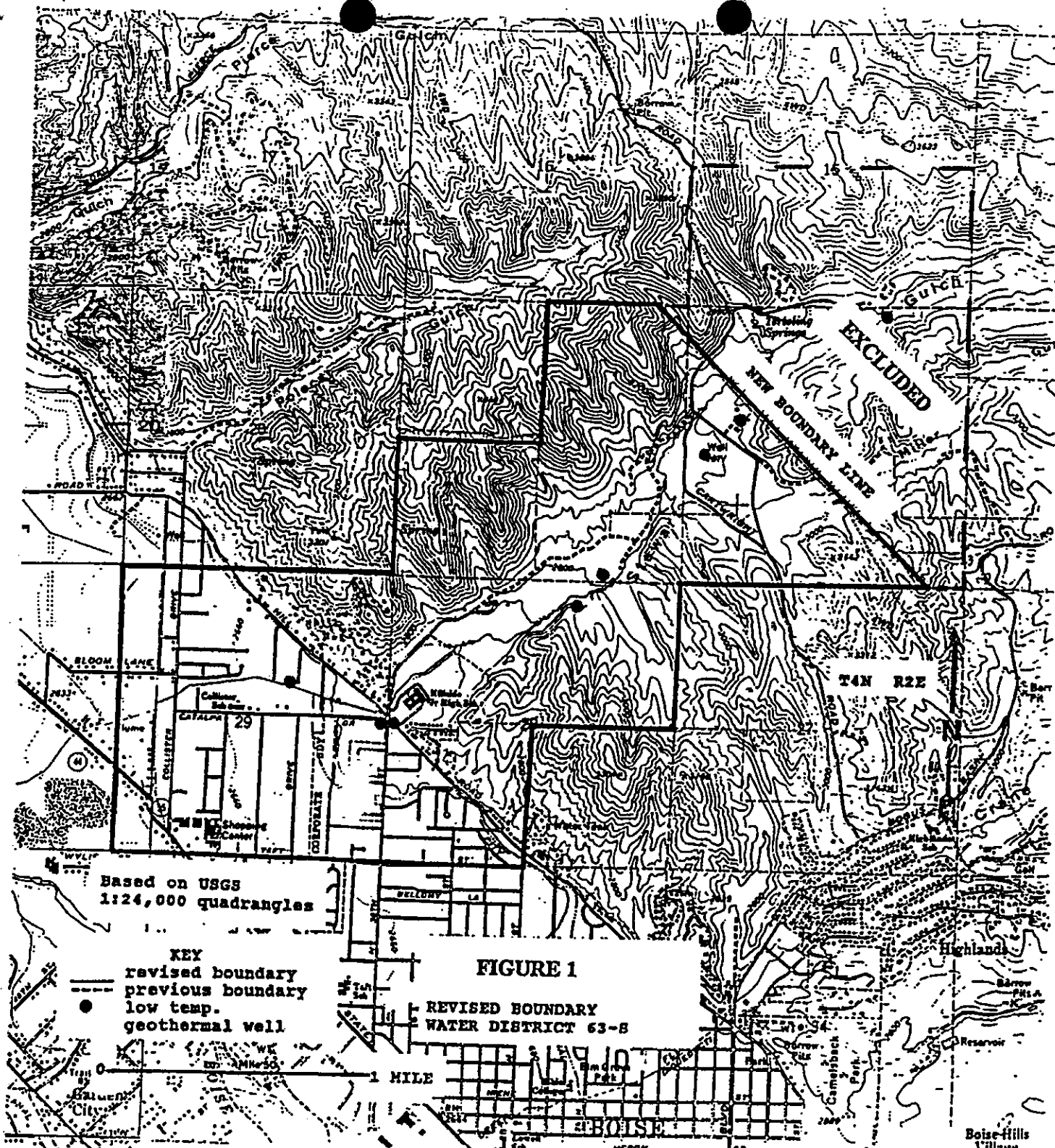
Furthermore, this order is not intended to preclude or limit any water user from advancing any legal argument or defense before the District Court in Twin Falls County Case No. 39576 involving any issue raised or ruled upon by the Department in this Final Order.

Furthermore, all other aspects of previous orders issued by the Director and referenced in Finding of Fact Nos. 2 and 3, that are not addressed herein remain in effect.

DATED this 8th day of December, 1995.



KARL J. DREHER, Director



CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 11th day of December, 1995,
I mailed a true and correct copy, postage prepaid, of the foregoing
FINAL ORDER to the following:

D. See & E. Tullis
Flora Co.
3823 N 36th
Boise, ID 83703

Edwards Greenhouses
Attn: M. or G. Monnie
4106 Sand Creek
Boise, ID 83703

Sherman Nelson
4015 Whitehead St.
Boise, ID 83703

Kenneth R. Arment
1770 W. State STE 339
Boise, ID 83702

William D. Collins
WESTBERG MCCABE & COLLINS
P.O. Box 2836
Boise, ID 83701

Dave Hendrickson
4520 N 36th
Boise, ID 83703

W.F. Ringert
RINGERT CLARK CHARTERED
P.O. Box 2773
Boise, ID 83701-2773

J. Fereday & M. Creamer
GIVENS PURSLEY ET AL
P.O. Box 2720
Boise, ID 83701

William A. Harenberg
Watermaster 63-S
3927 Garnet St.
Boise, ID 93703-5107

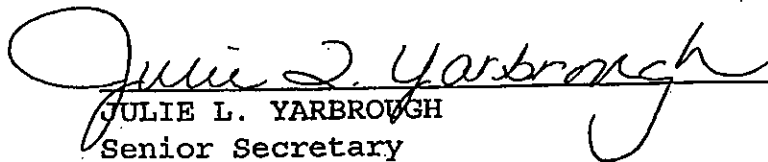
Terteling Trust No. 7
877 W Main STE 706
Boise, ID 83702

Mary & Rose Ryan
4504 Foothills Dr.
Boise, ID 83703

William R. Snyder
P.O. Box 961
Boise, ID 83701

Susan D. Miner
HAWLEY TROXELL ET AL
P.O. Box 1617
Boise, ID 83701

Ed Squires
1530 Knights Dr.
Boise, ID 83712


JULIE L. YARBROUGH
Senior Secretary

RECEIVED

OCT 02 2000

WATER RESOURCES
WESTERN REGIONSTATE OF IDAHO
DEPARTMENT OF WATER RESOURCESAPPLICATION FOR TRANSFER OF WATER RIGHT
PART 1

RECEIVED

DEC 20 20

WATER RESOURCES
WESTERN REGION

Name of applicant The Terteling Company, Inc. ("Terteling") Phone 208-388-5200
 Post Office Address 3823 N. 36th Street, Boise, Idaho, 83703
 Contact/Counsel: John M. Marshall, Givens Pursley LLP, P.O. Box 2720, Boise, ID 83701-2720

A. PURPOSE OF TRANSFER

1. ☐ Change point of diversion ☒ Add diversion point(s) ☐ Change place of use
☐ Change nature of use ☐ Change period of use ☐ Other _____

2. Describe the reason for the proposed changes:

TERTELING SEEKS TO ADD ALTERNATE POINTS OF DIVERSION TO EXISTING DECREED GEOTHERMAL WATER RIGHT SO THAT IT CAN USE THESE WATER RIGHT FOR THE SAME PURPOSES AT AN ALTERNATE LOCATION. PLEASE SEE EXHIBIT A FOR A MORE DETAILED EXPLANATION OF THIS TRANSFER.

B. DESCRIPTION OF RIGHT(S) OR PORTION THEREOF, AFTER THE REQUESTED CHANGE

1. Right Number	Priority	Amount	Nature of Use	Period of Use:	
<u>63-00012</u>	<u>07/01/1921</u>	<u>0.14 cfs</u>	<u>IRRIGATION</u>	<u>1/1</u>	to <u>12/31</u>
		<u>0.14 cfs</u>	<u>STOCKWATER</u>	<u>1/1</u>	to <u>12/31</u>
		<u>0.14 cfs</u>	<u>HEATING</u>	<u>1/1</u>	to <u>12/31</u>
		<u>0.14 cfs</u>	<u>DOMESTIC</u>	<u>1/1</u>	to <u>12/31</u>
<u>63-00013</u>	<u>07/01/1922</u>	<u>0.66 cfs</u>	<u>IRRIGATION</u>	<u>1/1</u>	to <u>12/31</u>
		<u>0.66 cfs</u>	<u>STOCKWATER</u>	<u>1/1</u>	to <u>12/31</u>
		<u>0.66 cfs</u>	<u>HEATING</u>	<u>1/1</u>	to <u>12/31</u>
		<u>0.66 cfs</u>	<u>DOMESTIC</u>	<u>1/1</u>	to <u>12/31</u>
<u>63-00015</u>	<u>3/23</u> <u>07/01/1927</u>	<u>0.80 cfs</u>	<u>IRRIGATION</u>	<u>1/1</u>	to <u>12/31</u>
		<u>0.80 cfs</u>	<u>STOCKWATER</u>	<u>1/1</u>	to <u>12/31</u>
		<u>0.80 cfs</u>	<u>HEATING</u>	<u>1/1</u>	to <u>12/31</u>
		<u>0.80 cfs</u>	<u>DOMESTIC</u>	<u>1/1</u>	to <u>12/31</u>

2. Total amount of water being transferred 1.6 cubic feet per second and/or _____ acre feet per annum

3. Source of water GROUND WATER tributary to _____

AMENDED

mm 12/8/00
 initials & date



4. Point(s) of Diversion

Lot	¼	¼	¼	Sec.	Twp	Rge	County	Local name for diversion
	NW	NW	SW	28	4N	2E	ADA	Pit Well
	NE	NE	SE	29	4N	2E	ADA	Shed Well
	NE	NE	SE	29	4N	2E	ADA	House Well
	NW	NW	SW	22	4N	2E	ADA	Windsock Well

5. Lands irrigated or place of use

Twp.	Rge.	Sec.	NE ¼				NW ¼				SW ¼				SE ¼				Totals
			NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	
4N	2E	29													7.5				7.5
4N	2E	22									7			.5					7.5
4N	2E	29													S,H,D				
4N	2E	22									S,H,D			S,H,D					

6. General Information

TOTAL 7.5

a. Description of diversion system:

EXISTING GREENHOUSES, AN OFFICE BUILDING AND A GARAGE ARE HEATED AND IRRIGATED BY THREE INTERCONNECTED GEOTHERMAL WELLS. AN EXISTING GEOTHERMAL WELL, KNOWN AS THE WINDSOCK WELL, WILL BE USED TO SUPPLY WATER FOR THE SAME PURPOSES IN NEW GREENHOUSES AND A SHOP IN SECTION 22.

b. Are the lands from which you propose to transfer the water right subject to any liens, deeds of trust, mortgages, or contracts? NO If yes, provide a notarized statement from the holder of the lien, deed of trust, mortgage or contract agreeing to the proposed changes. NOT APPLICABLEc. Describe the effect on the land now irrigated if the place of use is changed pursuant to this transfer: IRRIGATION OCCURS INSIDE AND OUTSIDE OF GREENHOUSES. THE EXISTING GREENHOUSES MAY BE REDUCED IN SIZE AND POTENTIALLY REMOVED.d. Remarks: PLEASE SEE EXHIBIT A

ACTION OF THE DIRECTOR, DEPARTMENT OF WATER RESOURCES

This is to certify that I have examined Application for Transfer of Water Right Nos. _____ and said application is hereby _____
subject to the following limitations and conditions:

Witness my hand this _____ day of _____, 20____.

PART 2**A. DESCRIPTION OF RIGHT AS RECORDED**

1. Right evidenced by

a. Decree No. CASE NO. 11748 decreed to FRANCES SILKEY in case of FRANCES SILKEY vs. H.W. TIEGS, THOMAS F. EDWARDS AND J. RYAN dated JUNE 13, 1930 in THIRD DISTRICT COURT county of ADA. THIS RIGHT IS LISTED AS WATER RIGHT 36-00012 IN THE DEPARTMENT'S RECORDS.

63

b. Transfer No. 268

2. Attach a copy of last year's tax notice for the property to which the water right is appurtenant or other documents which show ownership. Label Document as Exhibit B. Check appropriate box:

☐ Tax Notice

☒ Warranty Deed

☐ Other _____

3. Source of water GROUND WATER tributary to _____

4. Date or priority 07/01/1921

5. Water is used for the following purpose: irrigation, stock, domestic, heating and other. *OK per decree*

6. Total amount of water under right(s) 0.14 cubic feet per second and/or _____ acre-feet per annum.

7. Point(s) of Diversion

Lot	¼	¼	¼	Sec.	Twp	Rge	County	Local name for diversion
	NW	NW	SW	28	4N	2E	ADA	Pit Well
	NE	NE	SE	29	4N	2E	ADA	Shed Well
	NE	NE	SE	29	4N	2E	ADA	House Well

8. Lands irrigated or place of use: THE PLACE OF USE FOR ALL USES IS IN THE NESE OF TOWNSHIP 4N, RANGE 2E, SECTION 29. *and SENE 5, 29*

9. Describe any other water rights used for the same purpose as described above:

63-00013 and 63-00015.

10. To your knowledge, has any portion of this water right undergone a period of five or more consecutive years of non-use? NO If yes, describe _____

B. Description of Portion of Right Being Transferred

NOT APPLICABLE

C. Description of Unchanged Portion of Right

NOT APPLICABLE

PART 2**A. DESCRIPTION OF RIGHT AS RECORDED**

1. Right evidenced by

a. Decree No. CASE NO. 11748 decreed to FRANCES SILKEY in case of FRANCES SILKEY vs. H.W. TIEGS, THOMAS F. EDWARDS AND J. RYAN dated JUNE 13, 1930 in THIRD DISTRICT COURT county of ADA. THIS RIGHT IS LISTED AS WATER RIGHT 36-00013 IN THE DEPARTMENT'S RECORDS. 63

b. Transfer No. 268

2. Attach a copy of last year's tax notice for the property to which the water right is appurtenant or other documents which show ownership. Label Document as Exhibit B. Check appropriate box:

☐ Tax Notice

☒ Warranty Deed

☐ Other _____

3. Source of water GROUND WATER tributary to _____

4. Date or priority 07/01/1922

5. Water is used for the following purpose: irrigation, stock, domestic, heating and other. *ok per decree*

6. Total amount of water under right(s) 0.66 cubic feet per second and/or _____ acre-feet per annum.

7. Point(s) of Diversion

Lot	¼	¼	¼	Sec.	Twp	Rge	County	Local name for diversion
	NW	NW	SW	28	4N	2E	ADA	Pit Well
	NE	NE	SE	29	4N	2E	ADA	Shed Well
	NE	NE	SE	29	4N	2E	ADA	House Well

8. Lands irrigated or place of use: THE PLACE OF USE FOR ALL USES IS IN THE NESE of TOWNSHIP 4N, RANGE 2E, SECTION 29. *and JUNE 5, 29*

9. Describe any other water rights used for the same purpose as described above:

63-00012 and 63-00015.

10. To your knowledge, has any portion of this water right undergone a period of five or more consecutive years of non-use? NO If yes, describe _____

B. Description of Portion of Right Being Transferred

NOT APPLICABLE

C. Description of Unchanged Portion of Right

NOT APPLICABLE

PART 2**A. DESCRIPTION OF RIGHT AS RECORDED**

1. Right evidenced by

- a. Decree No. CASE NO. 11748 decreed to H.W. TIEGS in case of FRANCES SILKEY vs. H.W. TIEGS, THOMAS F. EDWARDS AND J. RYAN dated JUNE 13, 1930 in THIRD DISTRICT COURT county of ADA. THIS RIGHT IS LISTED AS WATER RIGHT 36-00015 IN THE DEPARTMENT'S RECORDS. ⁶³

2. Attach a copy of last year's tax notice for the property to which the water right is appurtenant or other documents which show ownership. Label Document as Exhibit B. Check appropriate box:

☐ Tax Notice☒ Warranty Deed☐ Other _____

3. Source of water GROUND WATER tributary to _____

4. Date or priority 03/23/1927

5. Water is used for the following purpose: irrigation, stock, domestic, heating and other. ^{not OK per decree}

6. Total amount of water under right(s) 0.80 cubic feet per second and/or _____ acre-feet per annum.

7. Point(s) of Diversion

Lot	¼	¼	¼	Sec.	Twp	Rge	County	Local name for diversion
	NW	NW	SW	28	4N	2E	ADA	Pit Well

8. Lands irrigated or place of use: THE PLACE OF USE FOR ALL USES IS IN THE NWSW of TOWNSHIP 4N, RANGE 2E, SECTION 28. 28

9. Describe any other water rights used for the same purpose as described above:

63-00012 and 63-00013

10. To your knowledge, has any portion of this water right undergone a period of five or more consecutive years of non-use? NO If yes, describe _____

B. Description of Portion of Right Being Transferred

NOT APPLICABLE

C. Description of Unchanged Portion of Right

NOT APPLICABLE

PART 3

- A. Draw a map or attach a USGS map indicating the new point(s) of diversion and/or the new place of use for rights described in part 1. Clearly depict the land by section, township and range number.

PLEASE SEE EXHIBIT C.

B. CHANGES IN NATURE OF USE

1. New nature of use, amount, hours/days/years, period of use:

NOT APPLICABLE.

2. Quantity and quality of return flows and location of discharge:

NOT APPLICABLE.

3. Describe effects on other water uses resulting from the proposed change:

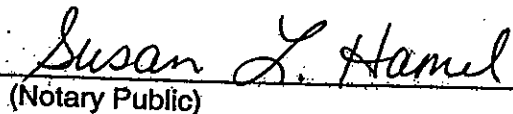
NOT APPLICABLE.

I hereby assert that no one will be injured by such change and that the change does not constitute an enlargement in use of the original right. The information contained in this application is true to the best of my knowledge.

I understand that any willful misrepresentations made in this application may result in voiding its approval.


J.L. Terteling, President.

Subscribed and sworn to before me this 19th day of September, 2000.


(Notary Public)

My commission expires 3/22/2002

FOR DEPARTMENT USE ONLY

Transfer contains 8 pages and 3 attachmentsReceived by AT Date 10-2-00 Protest by _____Prelim. check by RL Fee 290.00 W027031Receipted by AT Date 10-3-00Published in THE IDAHO STATESMAN Copies of protest forwarded by _____Pub. dates 12/7+14/00 SL Hearing held by _____ Date _____Watermaster recommendation request on _____ Recommended for ☐ approval ☐ denial

_____ rec'd. _____ by _____

Copy of transfer sent to line holder _____

EXHIBIT A - Overview of Requested Changes

1. Background

The three water rights that are the subject of this transfer were all decreed in the *Silkey v. Tiegs* decree which adjudicated geothermal water rights in the Stewart Gulch area northwest of Boise. All three rights have been administered by IDWR as part of Water District 63-S which was created to administer rights decreed in *Silkey v. Tiegs*. Water rights 63-00012 and 63-00013 (the "Silkey Rights") are the most senior rights from the decree. Water right 63-00015 (the "Tiegs Right") was adjudicated as a legitimate water right, but the decree includes an administrative provision which prevents its uses, until further order from the court, in favor of maintaining flows and artesian pressures in more senior rights.

Subsequent to the decree, both the Silkey and the Tiegs rights (collectively known as the "Flora Rights") were purchased by a common owner who then filed a transfer application to allow diversion of the Silkey rights out of the Tiegs well. Transfer 268 approved this request. A companion transfer, which would have allowed the diversion of the Tiegs water right out of the Silkey wells was never filed, presumably because the decree prevented use of the Tiegs right. The wells have historically been used to heat and irrigate the greenhouse complex on the corner of 36th Street and Hill Road, currently known as the Flora Greenhouse. Terteling also holds a beneficial use right to irrigate in the greenhouses with water from separate cold water wells. A separate transfer has been filed for this right.

2. Purpose of the Transfer

First, this transfer application seeks to add points of diversion to the Tiegs right so that all the Flora Rights may be diverted from the interconnected, three well system. Even though the *Silkey v. Tiegs* decree precludes use of the Tiegs right, it is still a viable right. This right has not been forfeited because the owners have been administratively prevented from using it. Department records for Water District 63-S confirm that the Tiegs right is a viable water right that has not been forfeited. The limiting condition from the *Silkey v. Tiegs* decree may be removed after the right is reviewed by the Snake River Basin Adjudication court, after which Terteling could begin diverting this right. It is therefore appropriate to include the Tiegs right in this transfer.

This transfer also seeks to add an alternate point of diversion for all the Flora Rights up gradient in the geothermal aquifer in an existing geothermal well. The existing well, commonly known as the "Windsock Well," was previously used for irrigation under water right 63-07595. Transfer No. 4202 authorized an alternate, cold water point of diversion for the Windsock Well, and the irrigation authorized by water right 63-07595 is now accomplished through this cold water well. The Windsock Well is now available for diversion of geothermal water for heating in addition to its current capacity as a backup irrigation source.

Terteling intends to move some portion of the Flora Greenhouse operations to the vicinity of the Windsock Well. The total combined diversion rates for all the rights will remain the same, thereby

T. 68558

preventing enlargements. It is not yet known at this time how much of the operation will be moved to the new location. By obtaining alternate points of diversion, Terteling will be able to maximize the resource by utilizing the geothermal water authorized by the Flora Rights at the most efficient location.

SENT BY: IDWR WESTERN REGION;

334 2348;

DEC-17-01 2:48PM;

PAGE 3/9

EXHIBIT B - Warranty Deed

ADA CO. RECORDER

JUNIOR TITLE

J. DAVID NAVARRO

BOISE ID

WARRANTY DEED

APR 03 1997

WATER RESOURCES
WESTERN REGION

'92 FEB 14 PM 4 41

Warranty Deed made this 14 day of February, 1997, between Flora Co., an Idaho corporation, with its principal office at 3823 North 36th Street, in the City of Boise, County of Ada, State of Idaho (herein referred to as "Grantor"), and The Terteling Company, Inc., an Idaho corporation, with its principal office at 877 West Main Street, Suite 706, Boise, Idaho 83702 (herein referred to as "Grantee"), witnesseth:

That Grantor, for and in consideration of the sum of Ten Dollars (\$10.00), and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, has granted, bargained, and sold, and does, by these presents, grant, bargain, sell, and convey unto Grantee and its successors and assigns forever, all of that certain real property situated in the County of Ada, State of Idaho, more particularly described in Schedule I attached hereto and incorporated herein by this reference.

Together with all and singular the tenements, hereditaments, easements, rights and appurtenances thereunto belonging or in anywise appertaining (including, without limitation, all easements, rights and appurtenances described in Schedule II attached hereto and incorporated herein by this reference), the reversion and reversions, remainder and remainders, rents, issues, and profits thereof; and all estate, right, title, and interest in and to the property, as well in law as in equity.

To have and to hold, all and singular the above-described premises together with the appurtenances unto Grantee and its successors and assigns forever. And Grantor does hereby

Reviewed By: *[Signature]*

covenant to and with Grantee that Grantor is the owner in fee simple of said premises; that said premises are free from all encumbrances except those to which this conveyance is expressly made subject and those made, suffered or done by Grantee; and subject to easements, rights-of-way and restrictions, if any, of record and general taxes and assessments for the current year which are not yet due and payable, and Grantor and Grantor's successors and assigns shall and will warrant and by these presents forever defend the premises in the quiet and peaceable possession of Grantee, its successors and assigns against Grantor and Grantor's successors and assigns and against all and every person or persons whomsoever, lawfully claiming the same.

IN WITNESS WHEREOF, Grantor has hereunto set Grantor's hand on the day and year first above written.

GRANTOR:

Flora Co., an Idaho corporation

Daniel P. See Pres

By: Daniel P. See

Its: President

(13975.29\doc\warrd4.1)

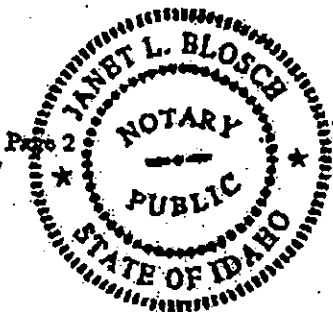
STATE OF IDAHO)
) ss.
County of Ada)

Elizabeth Tullis Sec

On this 12/16 day of February, 1997, before me, the undersigned, a Notary Public in and for said state, personally appeared Daniel P. See, known or identified to me to be the President and Secretary of Flora Co., the corporation that executed the instrument or the person who executed the instrument on behalf of said corporation, and acknowledged to me that such corporation executed the same. and Elizabeth Tullis

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

WARRANTY DEED -
MM&C 8975.29 02/14/97



Janet L. Bloesch
Notary Public
Residing at Boise, Idaho
my commission expires
3-17-1999

SCHEDULE I

That portion of Section 29, Township 4 North, Range 2 East, Boise Meridian, in the County of Ada, State of Idaho, more particularly described as follows:

Commencing at the quarter section corner common to Sections numbered 28 and 29, in Township 4 North, Range 2 East, the REAL PLACE OF BEGINNING; thence South $0^{\circ}29'$ West a distance of 662.3 feet along the section line common to said Sections 28 and 29; thence North $89^{\circ}11'$ West, parallel to the East and West quarter section line of said Section 29, a distance of 657.4 feet; thence North $0^{\circ}39'$ East a distance of 662.3 feet, to the East and West quarter section line of said Section 29; thence South $89^{\circ}11'$ East, along said quarter section line, 656.5 feet to the PLACE OF BEGINNING. *

EXCEPT any portion lying within the following:

Commencing at the quarter section corner common to Sections 28 and 29, Township 4 North, Range 2 East, of the Boise Meridian, marked by a stone; thence South along the East line of said Section 29, a distance of 437.2 feet to a point the same being the TRUE POINT AND PLACE OF BEGINNING; thence continuing South $0^{\circ}29'$ West 1003.9 feet on the East line of said Section 29 marked by an iron pin; thence North $81^{\circ}16'$ West 234.2 feet to a point; thence North $61^{\circ}35'$ West 135.75 feet to a point; thence North $76^{\circ}20'$ West 328.4 feet to a point, marked by an iron pin; thence North $0^{\circ}39'$ East 838.2 feet to a point; thence South $89^{\circ}05'$ East 657 feet to the POINT AND PLACE OF BEGINNING.

EXCEPT ditch and road rights-of-way.

* just = N656

NO SENE on
other fronts

RECEIVED

APR 03 1997

WATER RESOURCES
WESTERN REGION

SCHEDULE II

1. All water, water rights, geothermal water rights, well rights, ditch rights and/or other water rights appurtenant to the premises including but not limited to the rights decreed to Frances Silkey and H. W. Tiegs under Silkey v. Tiegs, et al., in the District Court of the Third Judicial District of the State of Idaho, in and for Ada County, entered June 13, 1930, Case No. 11748; and rights acquired under Water Right No. 63-0012, 63-0013 and 63-0015 of the Idaho Department of Water Resources and Claims Nos. A63-0012, A63-0013 and A63-0015 filed in the District Court of the Fifth Judicial District of the State of Idaho, in and for the County of Twin Falls in that certain action entitled In Re the General Adjudication of Rights to the Use of Water from the Snake River Basin Water System, Case No. 39576, which water rights are for eighty (80) miner's inches (1.6 cu. ft. per second) of water for irrigation, stock, domestic, heating and other beneficial uses; and all water, water rights, geothermal water rights, well rights, ditch rights and/or other water rights as set forth in that certain Corporate Warranty Deed dated November 15, 1991, between Hunt Bros. Floral, Inc., as grantor, to Flora Co., as grantee, recorded on November 15, 1991, as Instrument No. 9165042, records of the Ada County Recorder, Ada County, Idaho.
2. The geothermal well retained by the grantor for itself and its successors and assigns, located in the northerly tip of the real property more particularly described in that certain Warranty Deed dated March 20, 1996, between Flora Co., Inc., as grantor, and Michael E. Peterson and Beth E. Peterson, husband and wife, as grantees, recorded on March 21, 1996, as Instrument No. 96023748, official records of Ada County, Idaho, along with any and all water rights, including geothermal rights, associated with said real property.
3. All easements set forth in that certain Agreement for Easement dated only as March, 1996, between Michael E. Peterson and Beth E. Peterson, husband and wife, as grantors, and Flora Co., Inc., an Idaho corporation, as grantee, recorded on March 21, 1996, as Instrument No. 96023749, official records of Ada County, Idaho, and the geothermal well and the related water lines and equipment located on the "Servient Parcel" described in said Easement Agreement.

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APR 03 1997

WATER RESOURCES
WESTERN REGION

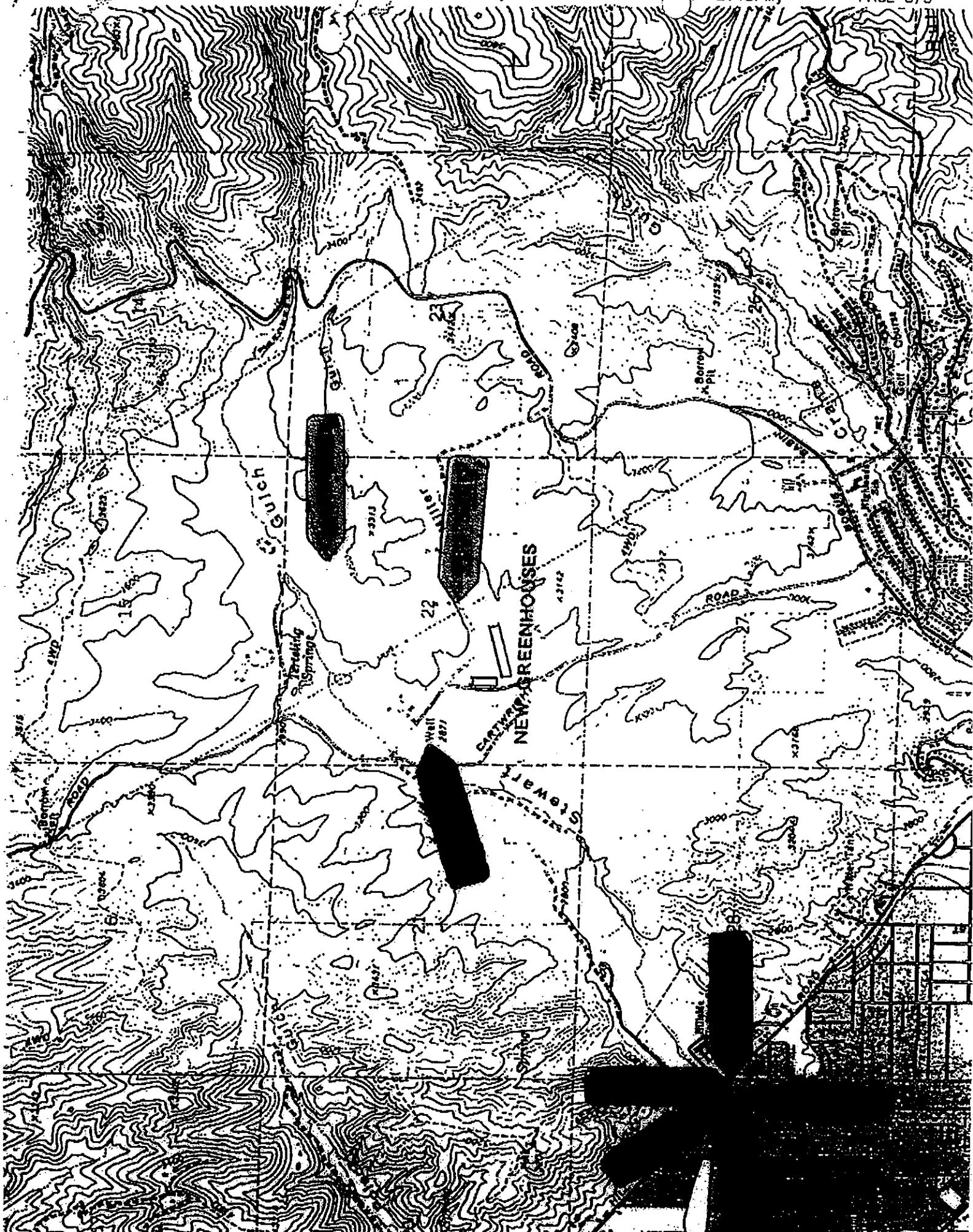
SENT BY: IDWR WESTERN REGION;

334 2348;

DEC-17 2:49PM;

PAGE 8/9

EXHIBIT C - USGS Map



SETTLEMENT AGREEMENT

This Settlement Agreement (the "Agreement") is made and entered into this 24th day of January, 2002, between The Terteling Company, Inc., an Idaho corporation ("Terteling"), and the Edwards Family, LLC, an Idaho Limited Liability Corporation ("Edwards"). Terteling and Edwards may be referred to hereinafter individually as "Party" or collectively as the "Parties."

Recitals and Background Information

A. Terteling represents that it owns Water Right Nos. 63-00012, 63-00013 and 63-00015, which were decreed in *Silkey v. Tiegs*, Ada County Case No. 11748, *on review* 51 Idaho 344 (1931) and 54 Idaho 126 (1934) ("*Silkey v. Tiegs*"). *Silkey v. Tiegs* adjudicated rights to use geothermal water from an aquifer referred to herein as the Stewart Gulch Geothermal Aquifer. Water Right Nos. 63-00012 and 63-00013 (the "Silkey Rights") are the two most senior water rights decreed in *Silkey v. Tiegs* with priority dates of July 1, 1921 and July 1, 1922 respectively. Water Right No. 63-00015 (the "Tiegs Right") is designated in *Silkey v. Tiegs* with a priority date of March 23, 1927.

B. Edwards represents that it owns Water Right No. 63-00014 (the "Edwards Right"), which was decreed in *Silkey v. Tiegs* with a priority date of November 22, 1926. The Edwards Right is diverted from a well located in SE¼ SW¼ NE¼ Section 29, Township 4 North, Range 2 East, Boise Meridian (the "Edwards Well").

C. By Final Orders dated December 5, 1989 and December 1, 1992, the Department established Water District 63-S (the "District") and implemented watermaster administration of water rights diverted from the Stewart Gulch Geothermal Aquifer in the District. As of the date of this Agreement, the District is not active.

D. The Parties estimate that the total sustainable volume of water that can be diverted annually from the Stewart Gulch Geothermal Aquifer is approximately between 650 AFA to 750 AFA.

E. On October 2, 2000, Terteling filed with the Department an Application for Transfer of Water Right for the Silkey and Tiegs Rights (Transfer No. 68558), seeking approval to divert and use these rights from an alternate point of diversion (the "Windsock Well") in the

EXHIBIT

adoption No. 2008

page 1 of 7

NW¼ SW¼ Section 22, Township 4 North, Range 2 East, Boise Meridian, and at a new place of use in Section 22, Township 4 North, Range 2 East, Boise Meridian. The land, including place of use and diversion points, currently associated with the Silkey and Tiegs Rights is described in Exhibit A hereto. The land on which the Silkey and Tiegs Rights' proposed alternate point of diversion and new place of use is located is described in Exhibit B hereto. Also, on October 2, 2000, Terteling filed with the Department an Application for Transfer of Water Right (Transfer No. 68559) for diversion and use of cold water at locations near the Windsock Well. These two Applications for Transfer of Water Right (Transfer Nos. 68558 and 68559), as amended, will be referred to herein as the Transfers. Paul Edwards, a principal of Edwards, filed protests against the Transfers on December 22, 2000 (the "Protests"). Edwards' land associated with Water Right No. 63-00014 is described in Exhibit C hereto.

F. The Parties believe it is in their mutual interests to resolve the Protests and to enter into a comprehensive agreement to mutually protect their most senior water rights in the Stewart Gulch Geothermal Aquifer.

NOW, THEREFORE, in consideration of the mutual promises and covenants hereinafter expressed, the Parties agree as follows:

1. **Withdrawal of Protests.** Within five days after execution of this Agreement by both Parties, Edwards shall file with the Department appropriate documents suspending Paul Edwards' Protests to the Transfers pending the Department's approval of the Transfers that caps the maximum combined annual diverted volume for the Silkey and Tiegs rights at 400 AFA.
2. **Reactivation of District 63-S.** Within ten days of the Department's approval of the Transfers, the Parties will file a petition with the Department requesting a special meeting of the water right holders of the District for the purpose of reactivating the District by appointment of a watermaster for administration of water rights and by reinstituting measurement and reporting for water rights in the District. Thereafter, in subsequent years, the Parties shall use all reasonable efforts to ensure the continued appointment of a District watermaster and implementation of the District measurement and reporting program. The Parties shall use all reasonable efforts to ensure that the District's measurement and reporting program includes the kind of measurement and reporting described in Section 3 of this Agreement.
3. **Measurement and Reporting.** The Parties shall install and maintain meters on all

of their wells in the District for the purpose of measuring and recording total diverted volumes. Total diverted volumes shall be reported quarterly to the watermaster, which report shall include the total volume diverted for each well either owned by them or used by them in the District for the preceding quarter.

4. **Diverted Volumes.** Terteling shall divert a combined maximum total of 400 AFA from the Stewart Gulch Geothermal Aquifer under the Silkey and Tiegs Rights and Edwards shall divert a maximum of 250 AFA from the Stewart Gulch Geothermal Aquifer under the Edwards Right.

5. **Diversion Rate.** Each Party may divert water at the rates ultimately authorized by the respective final Snake River Basin Adjudication ("SRBA") partial decrees for the Silkey Rights and the Edwards Right.

6. **Silkey v. Tiegs.** The parties shall take the following steps to protect their senior Silkey and Edwards Rights pursuant to the *Silkey v. Tiegs* decree:

- (a) The Parties shall use all reasonable efforts to ensure that the Department's Boise Front Low Temperature Geothermal Resource Ground Water Management Area moratorium (or some other substantially similar Department moratorium that also includes the Stewart Gulch Geothermal Aquifer) remains in effect to prevent the development of new water rights diverted from the Stewart Gulch Geothermal Aquifer. The Parties also shall use all reasonable efforts to seek and obtain an area of drilling concern designation pursuant to Idaho Code § 42-238(15) or another appropriate regulatory designation, order, determination, decision, etc. from the Department to prohibit development in the Stewart Gulch Geothermal Aquifer of any new water rights that are exempted from Department water right permitting and licensing requirements, such as domestic water rights. Thereafter, the Parties shall use all reasonable efforts to have the Department maintain such designation, order, determination, decision, or other regulatory mechanism.
- (b) The Parties also shall use all reasonable efforts to ensure that the Department continues to include the Stewart Gulch Geothermal Aquifer either in a designated ground water management area, such as the Boise Front Ground Water Management Area, in a designated critical ground water area or in some other substantially similar designated area under Idaho law. The Parties shall use all reasonable efforts so that the Department

issues, implements, and maintains such orders or some other similar regulatory mechanism to ensure that the diverted volumes to the maximum extent provided for in Section 4 of this Agreement are available to fulfill the senior Silkey and Edwards Rights.

7. **The Tiegs Right.** The Transfers do not authorize Terteling to divert water under the Tiegs Right.

8. **Snake River Basin Adjudication.** The Parties shall use all reasonable efforts to establish the Stewart Gulch Geothermal Aquifer as a separate source in the SRBA for purposes of water right administration. The Parties agree that their respective SRBA claims shall be consistent with the terms of this Agreement, including the total annual combined diverted volume of 400 AFA for the Silkey and Tiegs Rights and the total annual diverted volume of 250 AFA for the Edwards Right. The Parties on behalf of themselves and any related individuals or entities agree that they will not assert or argue in the SRBA that the total combined annual diverted volume for the Silkey and Tiegs Rights is greater or less than 400 AFA and that total annual diverted volume for the Edwards Right is greater or less than 250 AFA. The Parties agree to undertake all reasonable and appropriate efforts to have the SRBA decrees for Water Right Nos. 63-00012, 63-00013, 63-00014 and 63-00015 reference this Agreement in substantially the following manner: "This water right is subject to the terms of an Agreement dated _____, 2002 recorded at the Ada County Recorder's Office as Instrument No. _____."

9. **Heating Purposes.** The Parties shall utilize water diverted under Water Right Nos. 63-00012, 63-00013, and 63-00014 primarily for heating purposes. Any other use of water diverted under Water Right Nos. 63-00012, 63-00013, and 63-00014, such as for irrigation, only shall occur after the heat is removed by another beneficial use.

10. **Closure of Wells.** If either Party ceases use (including monitoring) of any wells in the Stewart Gulch Geothermal Aquifer for five consecutive years, the Party shall immediately close and appropriately seal such wells. The wells shall be closed and sealed in such a way to prevent any leakage or loss of the geothermal resource.

11. **Department Approval of Transfers.** The Parties agree that the terms of this Agreement are contingent upon the Department's approval of the Transfers that include a

combined total annual diversion volume for the Silkey and Tiegs Rights of no more than and no less than 400 AFA.

12. **Recording of Agreement.** Within ten (10) days after the Department's approval of the Transfers, the Parties shall record this Agreement at the Ada County, Idaho Recorder's Office. The provisions of this Agreement shall be covenants and perpetual servitudes running with Water Right Nos. 63-00012, 63-00013, 63-00014, and 63-00015, and the associated lands, including any new lands to which these water rights are transferred.

13. **Communications.** All communications and submission of measurement data to the Parties pursuant to this Agreement shall be addressed as follows:

The Terteling Company, Inc. (Terteling)
3823 N. 36th Street
Boise, ID 83703
Ph. (208) 381-5205

Garnette Monnie (Edwards)
Edwards Greenhouses
4106 Sand Creek
Boise, ID 83703-4028
Ph. (208) 342-7548

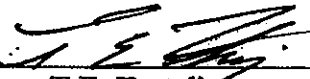
The parties agree to notify each other regarding any changes in the names and/or addresses listed above.

14. **General.** The Parties acknowledge that both Parties and their attorneys have reviewed and participated in drafting this Agreement. The headings of the sections of this Agreement have been inserted for the convenience of reference only and shall not affect any construction or interpretation of this Agreement. This Agreement is the entire agreement of the Parties with respect to the Transfers and with respect to the matters addressed herein concerning Water Right Nos. 63-00012, 63-00013, 63-00014, and 63-00015. This Agreement may be modified only with the mutual written consent of both Parties. Except as otherwise provided in this Agreement, any waivers hereunder must be in writing. No waiver of any right or remedy in the event of default hereunder shall constitute a waiver of such right or remedy in the event of any subsequent default. This Agreement shall be governed in all respects by the laws of the State of Idaho. This Agreement is for the benefit only of the Parties hereto and shall inure to the benefit of and bind the heirs, personal representatives, successors and assigns of the Parties hereto. The

invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provision hereof. In the event of a court proceeding or other legal action regarding the breach or violation of this Agreement, the prevailing party shall be entitled to reasonable attorney's fees and costs. The Parties each represent that they are authorized to enter into this Agreement.

IN WITNESS WHEREOF, the Parties hereto have exercised this instrument the day and year first above written.

THE TERTELING COMPANY, INC.

By 
T.E. Terteling

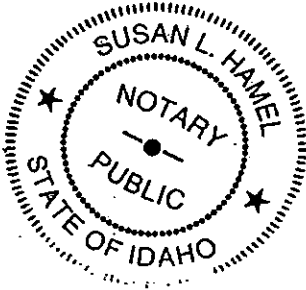
EDWARDS FAMILY, LLC

By 
Garnette Monnie, Member

STATE OF IDAHO)
) ss:
County of Ada)

On this 24th day of January, 2002, before me the undersigned Notary Public, personally appeared T.E. Terteling, known to me to be an authorized agent of THE TERTELING COMPANY, INC., the entity that executed the foregoing instrument.

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

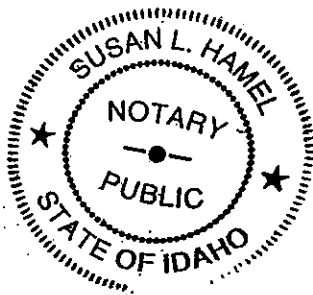


Susan L. Hamel
Notary Public for the State of Idaho
Residing in Kuna, ID Ada County
My Commission Expires: 03/22/2002

STATE OF IDAHO)
) ss:
County of Ada)

On this 24th day of January, 2002, before me the undersigned Notary Public, personally appeared Garnette Monnie, known to me to be a member of EDWARDS FAMILY, LLC, the entity that executed the foregoing instrument.

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



Susan L. Hamel
Notary Public for the State of Idaho
Residing in Kuna, ID Ada County
My Commission Expires: 03/22/2002

EXHIBIT A

That portion of Section 29, Township 4 North, Range 2 East, Boise Meridian, in the County of Ada, State of Idaho, more particularly described, as follows:

Commencing at the quarter section corner common to Sections numbered 28 and 29, in Township 4 North, Range 2 East, the REAL PLACE OF BEGINNING; thence South $0^{\circ}29'$ West a distance of 662.3 feet along the section line common to said Sections 28 and 29; thence North $89^{\circ}11'$ West, parallel to the East and West quarter section line of said Section 29, a distance of 657.4 feet; thence North $0^{\circ}39'$ East a distance of 662.3 feet, to the East and West quarter section line of said Section 29; thence South $89^{\circ}11'$ East, along said quarter section line, 656.5 feet to the PLACE OF BEGINNING.

EXCEPT any portion lying within the following:

Commencing at the quarter section corner common to Sections 28 and 29, Township 4 North, Range 2 East, of the Boise Meridian, marked by a stone; thence South along the East line of said Section 29, a distance of 437.2 feet to a point the same being the TRUE POINT AND PLACE OF BEGINNING; thence continuing South $0^{\circ}29'$ West 1003.9 feet on the East line of said Section 29 marked by an iron pin; thence North $81^{\circ}16'$ West 234.2 feet to a point; thence North $61^{\circ}35'$ West 135.75 feet to a point; thence North $76^{\circ}20'$ West 328.4 feet to a point, marked by an iron pin; thence North $0^{\circ}39'$ East 838.2 feet to a point; thence South $89^{\circ}05'$ East 657 feet to the POINT AND PLACE OF BEGINNING.

EXCEPT ditch and road rights-of-way.

EXHIBIT B

SW 1/4 of Section 22, Township 4 North, Range 2 East of the Boise Meridian, Ada County, Idaho.

Exhibit "C"

Those certain parcels of real property situated in the County of Ada, State of Idaho, more particularly described as follows:

- (A) Lots One through Four, inclusive, Block 1, of Thomas F. Edwards Subdivision situate in Section 29, Township 4 North Range 2 East of the Boise Meridian, in Ada County, State of Idaho.
- (B) Lots 20 through 22, inclusive, of Block 1, of the Thomas F. Edwards Subdivision, according to the plat thereof, records of Ada County, State of Idaho.
- (C) Permit to use hot and cold water from Lot 1, Block 1, of Thomas F. Edwards Subdivision, Ada County, State of Idaho.
- (D) A parcel of land in Southwest Quarter of Northeast Quarter of Section 29, Township 4 N., Range 2 E. B. M., Ada County, State of Idaho, and more particularly described as follows: Commencing at a point 10.86 chains North of the center of Section 29, thence S. $74^{\circ} 43'$ E. 15.32 chains to an iron bar located at the Southeast Corner of Thomas F. Edwards' land, the true point of beginning; Thence N. $1^{\circ} 15'$ E. 3.40 chs. to a piece of iron pipe; Thence S. $72^{\circ} 30'$ E. 2.22 chains to a piece of iron pipe; thence S. $23^{\circ} 05'$ E. 3.18 chains to a piece of iron pipe; thence N. $74^{\circ} 43'$ West 3.55 chains to iron bar, the place of beginning, containing 0.98 (98/100) acres.
- (E) Beginning at the Northeast Corner of the Southwest Quarter of the Northeast Quarter of Section 29, Township 4 North, Range 2 East, B. M., Ada County, Idaho; thence South 358.38 feet; thence East 58.83 feet; thence South 285.09 feet to an iron rod; thence West 265.83 feet to an iron rod; thence South 24 feet to an iron pipe; thence North 72 degrees 30 minutes West 21.13 feet to the real point of beginning; thence North 72 degrees 30 minutes West 125.39 feet; thence North 1 degree 50 minutes East 49.50 feet; thence North 1 degree 20 minutes East 19.70 feet; thence South 88 degrees East 120 feet; thence South 1 degree 20 minutes West 104.11 feet to the real point of beginning;

EXCEPTING Any portion which may lie in Tamarack Drive.
- (F) Beginning at the Northeast Corner of the Southwest Quarter of the Northeast Quarter (SW1/4NE1/4) Section 29, T. 4N., R. 2E., B. M. Thence South 358.38 feet to a point, thence East 58.83 feet, thence South 285.09 feet to an iron rod, thence West 265.83 feet to the real point of beginning, thence South 24.0 feet, to

an iron pipe, thence N. 72 degrees 30 minutes West 21.13 feet to a point, thence North 1 degree 20 minutes East 104.11 feet to a point, thence S. 88 degrees 40 minutes E. 20.64 feet to a point, thence S. 1 degree 20 minutes W. 85.97 feet to the real point of beginning.

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208 381 5200

TERTELING CO INC

001

January 22, 2002

THE TERTELING COMPANY, INC.

BOARD OF DIRECTORS MINUTES WITHOUT A MEETING

The below signed Directors, who represent all of the Directors of The Terling Company, Inc. without a notice or a formal meeting, approve said resolution provided a simple majority of all Directors so signify by their signatures below.

WHEREAS The Terling Company, Inc. filed two applications with the Idaho Department of Water Resources on October 2, 2000 to transfer its rights under *Silkey v. Tieg* (geothermal rights) and a cold water right currently located on the Flors Co. property at 3823 N. 38th Street, Boise, Idaho, to the Corporation's property located in Section 22, Ada County, for use at 4988 Peaceful Cove Lane, Boise, Idaho.

WHEREAS another senior water rights owner under *Sikoy v. Tlaga*, Paul Edwards, filed protests against the transfers on December 22, 2000.

WHEREAS the Corporation and Edwards have reached agreement whereby Edwards agrees to withdraw his protest to the Idaho Department of Water Resources.

WHEREAS the Corporation desires to have T. E. Terteling execute the Settlement Agreement between Edwards and the Corporation on behalf of the Corporation

THEREFORE, BE IT RESOLVED that the Board of Directors authorizes T. E. Terteling to execute the Settlement Agreement on behalf of The Terteling Company, Inc.

Disapproved:

Approved:

Disapproved: _____

Approved: _____
James K. Heller, Jr.
J. K. Heller, Jr.

ADA COUNTY RECORDER
J. DAVID NAVARRO
BOISE, IDAHO

2002.AU 27 PM 4:22

RECORDED - REQUEST OF

Peritling Co. & Edward Family Lc
FEE *3.00* DEPUTY *Harper*

102097169

**This sheet has been added to document
to accommodate recording information.**

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

IN THE MATTER OF APPLICATION) FOR TRANSFER NO. 68558 IN THE) NAME OF TERTELING COMPANY INC) _____)	AMENDED PRELIMINARY ORDER AND ORDER DENYING PETITION FOR RECONSIDERATION
---	--

This matter having come before the Idaho Department of Water Resources ("IDWR") in the form of an application for transfer, IDWR enters the following Findings of Fact and Order:

FINDINGS OF FACT

On September 19, 2000, The Terteling Company, Inc. ("Terteling") filed Application for Transfer No. 5875 ("application") with IDWR proposing to change the place of use and add points of diversion for water right nos. 63-12, 63-13, and 63-15. The application was later renumbered to 68558. The water rights were decreed in the case of Silkey v. Tiegs, 51 Idaho 344, 5 P.2d 1049 (1934) that authorized diversion of low temperature geothermal water.

The application was protested by the Edwards Family LLC ("Edwards"), the owner of water right no. 63-14, one of the water rights decreed in Silkey. The parties reached an agreement resulting in suspension of the protest. Complete withdrawal of the protest was contingent upon inclusion of agreed-to conditions in the final approval of the transfer by IDWR.

On June 3, 2002, IDWR approved transfer no. 68558. Condition No. 9 of the approval stated:

Diversion from the Windsock well shall not significantly reduce artesian pressure for water rights bearing priority dates 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 in the Silkey v. Tiegs decree.

On July 8, 2002, Terteling filed a PETITION FOR RECONSIDERATION arguing that IDWR should not protect historical artesian pressure. Terteling requested that the language of the condition be modified to establish and protect reasonable pumping levels. Terteling argues that "the unique protection of artesian pressure in the Silkey v. Tiegs decree . . . applies only to applicant's rights 63-12 and 63-13."

There is no language in the Silkey v. Tiegs decree that states the court only intended to protect artesian pressure for water right nos. 63-12 and 63-13. Water right



no. 63-14, owned by Edwards, was limited, but other rights, including 63-15, now owned by Terteling and approved for diversion by the transfer contested by Terteling, were totally curtailed presumably to protect artesian pressure in the aquifer. The total curtailment was intended to protect all the water rights bearing earlier priority dates, not just the two senior priority water rights.

On October 27, 1993, the director of IDWR issued an ORDER DENYING PETITIONS FOR REHEARING AND AMENDED MEMORANDUM DECISION AND ORDER in a contested case regarding the regulation of the low temperature geothermal resources in Stewart Gulch. At that time, Terteling asked IDWR to establish reasonable pumping levels. Conclusion of Law no. 7 of the order states:

Because the Silkey decree specifically addressed and protected artesian pressure in the aquifer, the Department, in deference to the Silkey decree, will refrain from examining whether the artesian pressure in Stewart Gulch constitutes a reasonable pumping level and is in the public interest pursuant to I.C. § 42-226 until such time as the court addresses the issue in the Snake River Basin Adjudication.

IDWR determined in 1993 that the Silkey v. Tiegs decree protects artesian pressure. IDWR will not eliminate this protection in the condition and should add language to the condition allowing modification by the Snake River Basin Adjudication Court as set forth in the previous decision.

On August 6, 2002, Terteling filed a MOTION TO STRIKE EDWARD'S FAMILY LLC'S RESPONSE TO PETITION FOR RECONSIDERATION AND SUPPORTING AFFIDAVITS ("Motion to Strike") filed by Edwards. The motion was based on an argument that the order suspending the protest and the agreement between Terteling and Edwards prohibited the filing of the response.

IDWR need not decide whether to strike the response because Terteling's petition asks for a determination of Edwards' status as a party. IDWR will accept submittals from those who are not parties prior to making a decision.

Terteling also asked for an order from IDWR authorizing diversion of water from the Windsock Well prior to final approval of the application for transfer by IDWR. A separate order specifically authorizing diversion from this new well is not appropriate, since this Amended Preliminary Order that modifies the Preliminary Order issued on June 3, 2002 allows diversion of water under terms of the Preliminary Order as herein amended.

ORDER

IT IS HEREBY ORDERED that the petition for reconsideration filed by The Terteling Company, Inc, is **DENIED**.

IT IS FURTHER ORDERED that a new condition of transfer approval will be **ADDED** as follows and identified as Condition No. 7:

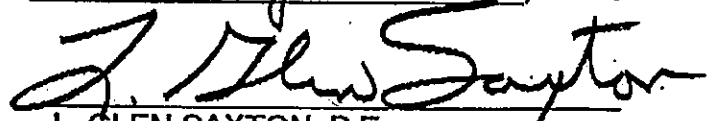
The Silkey v. Tiegs decree specifically addressed and protected artesian pressure in the aquifer. The Department, in deference to the Silkey decree, will refrain from examining whether the artesian pressure in Stewart Gulch constitutes a reasonable pumping level and is in the public interest pursuant to I.C. § 42-226 until such time as the court addresses the issue in the Snake River Basin Adjudication.

IT IS FURTHER ORDERED that the former Condition No. 7 on the transfer will become Condition No. 8, and will be **CHANGED** to read as follows:

Unless otherwise determined by the Snake River Adjudication, diversion from the Windsock well shall not significantly reduce artesian pressure for water rights bearing priority dates 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 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.

IT IS FURTHER ORDERED that the Motion to Strike filed by Terteling is **DENIED.**

Dated this 9th day of August, 2002.


L. GLEN SAXTON, P.E.
Chief, Water Allocation Bureau

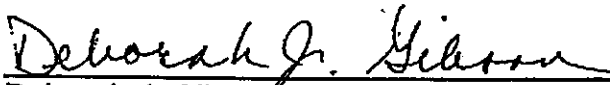
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 9th day of August, 2002, the above and foregoing document was served on the following by faxing a copy of the same at the noted fax number, and by placing a copy of the same in the United States mail, postage prepaid and properly addressed to the following:

JEFFREY C FEREDAY
JOHN M MARSHALL
GIVENS PURSLEY LLP
PO BOX 2720
BOISE ID 83701-2720
Fax: 388-1300

GARY SPACKMAN
WESTERN REGIONAL MANAGER
IDAHO DEPT. OF WATER
RESOURCES
2735 AIRPORT WAY
BOISE ID 83705-5082
Fax: 334-2348

DANA L HOFSTETTER
HOFSTETTER LAW OFFICES
~~608 W FRANKLIN ST~~
BOISE ID 83702
Fax: 424-8774



Deborah J. Gibson
Administrative Assistant
Water Allocation Bureau

RECEIVED

OCT 11 2002

WATER RESOURCES
WESTERN REGIONSTATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

AMENDED

TRANSFER OF WATER RIGHT

TRANSFER NO. 68558

AMENDED

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

Right	Origin/Basis	Priority	Rate	Volume	Acres	Total	Source
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

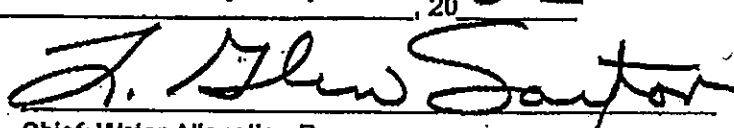
Purpose of Transfer (Changes Proposed)

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 9th day of October, 2002

 Chief, Water Allocation Bureau

EXHIBIT

I

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

PLACE OF USE: IRRIGATION

Twp Rge Sec	NE				NW				SW				SE				
	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	Totals
04N 02E 22									7.0			.5					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. The Silkey v. Tiegs decree specifically addressed and protected artesian pressure in the aquifer. The Department, in deference to the Silkey decree, will refrain from examining whether the artesian pressure in Stewart Gulch constitutes a reasonable pumping level and is in the public interest pursuant to I.C. § 42-226 until such time as the court addresses the issue in the Snake River Basin Adjudication.
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 watermaster's annual report to IDWR.
9. Unless otherwise determined by the Snake River Adjudication, diversion from the Windsock well shall not significantly reduce artesian pressure for water rights bearing priority dates 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 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.
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.

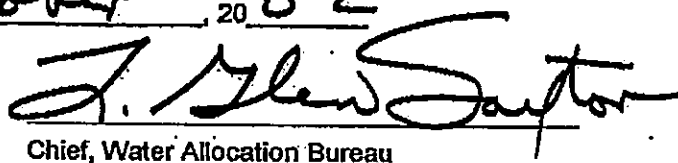
WATER RIGHT NO. 63-12
As Modified by Transfer No. 68558

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.
18. 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.

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 9th day of October, 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			.5					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. The Silkey v. Tiegs decree specifically addressed and protected artesian pressure in the aquifer. The Department, in deference to the Silkey decree, will refrain from examining whether the artesian pressure in Stewart Gulch constitutes a reasonable pumping level and is in the public interest pursuant to I.C. § 42-226 until such time as the court addresses the issue in the Snake River Basin Adjudication.
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. Unless otherwise determined by the Snake River Adjudication, diversion from the Windsock well shall not significantly reduce artesian pressure for water rights bearing priority dates 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 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.
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.

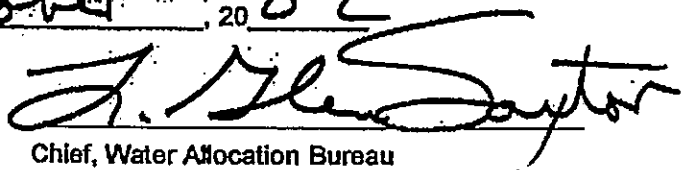
WATER RIGHT NO. 63-13
As Modified by Transfer No. 68558

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.
18. 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.

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 9th day of October, 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

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

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. The Silkey v. Tiegs decree specifically addressed and protected artesian pressure in the aquifer. The Department, in deference to the Silkey decree, will refrain from examining whether the artesian pressure in Stewart Gulch constitutes a reasonable pumping level and is in the public interest pursuant to I.C. § 42-226 until such time as the court addresses the issue in the Snake River Basin Adjudication.
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. Unless otherwise determined by the Snake River Adjudication, diversion from the Windsock well shall not significantly reduce artesian pressure for water rights bearing priority dates 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 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.

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

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.
19. 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.

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 9th day of October, 2002


Chief, Water Allocation Bureau

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Page 1 of 8

WATER RESOURCES
WESTERN REGION

Transfer No. 71690

STATE OF IDAHO

DEPARTMENT OF WATER RESOURCES

**SECOND AMENDED APPLICATION FOR TRANSFER OF WATER RIGHT
PART 1**

Name of applicant The Terteling Company, Inc. Phone (208) 338-5200

Post Office Address 3823 N. 36th Street, Boise, ID 83703

A. PURPOSE OF TRANSFER

1. ☐ Change point of diversion ☒ Add diversion point(s) ☐ Change place of use
☐ Change nature of use ☐ Change period of use ☐ Other _____
2. Describe the reason for the proposed changes: To add one new well as a point of diversion for all three water rights; to make other low temperature geothermal wells owned by both The Terteling Company and T-7, LLC points of diversion for low temperature geothermal water right nos. 63-12, 63-13 and 63-15.

B. DESCRIPTION OF RIGHTS(S) OR PORTION THEREOF, AFTER THE REQUESTED CHANGE

1. Right Number Priority Amount Nature Period of Use
(cfs/ac-ft)
- | | | | | |
|--------------|-------------------|----------------|--------------------------------|----------------------------|
| <u>63-12</u> | <u>07/01/1921</u> | <u>.14 cfs</u> | <u>Domestic, Heating, Irr.</u> | <u>1/1</u> to <u>12/31</u> |
| <u>63-13</u> | <u>07/01/1922</u> | <u>.66 cfs</u> | <u>Domestic, Heating, Irr.</u> | <u>1/1</u> to <u>12/31</u> |
| <u>63-15</u> | <u>03/23/1927</u> | <u>.80 cfs</u> | <u>Domestic, Heating, Irr.</u> | <u>1/1</u> to <u>12/31</u> |
2. Total amount of water being transferred .86 cfs cubic feet per second and/or 400 acre-feet per annum.
3. Source of water Groundwater tributary to N/A
4. Point(s) of Diversion:

Lot	1/4	1/4	1/4	Sec	Twp	Rge.	County	Local name for division
	W	NW	SW	28	4N	2E	ADA	Tiegs Well
	NE	SE		29	4N	2E	ADA	Silkey Well
	NE	SE		29	4N	2E	ADA	Office Well
	NW	SW		22	4N	2E	ADA	Windsock Well
	NE	SW		22	4N	2E	ADA	Greenhouse Well (Proposed new well)
	SE	SW	NW	22	4N	2E	ADA	Pool Well
	NE	NW	NE	22	4N	2E	ADA	Motorcycle Hot Well
	NE	NW		22	4N	2E	ADA	Terteling Springs Well

* Please see attached narrative for further discussion



5. Lands irrigated or place of use:

Twp	Rge	Sec	NE 1/4				NW 1/4				SW 1/4				SE 1/4				Total
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
4N	2E	22									7.0 D,H			.5 D,H					7.5
4N	2E	29													7.5, D,H				7.5

Total acres 6.0

6. General Information:

a. Description of diversion system Deep wells pumping from low-temperature geothermal aquifer into an existing interconnected distribution system originally used for irrigation purposes in Section 22. A similar, but separate interconnected system exists in Section 29.

b. Are the lands from which you propose to transfer the water right subject to any liens, deeds of trust, mortgages, or contracts?
Yes X No. If yes, provide a notarized statement from the holder of the lien, deed of trust, mortgage or contract agreeing to the proposed changes.

c. Describe the affect on the land now irrigated if the place of use is changed pursuant to this transfer: No effect on lands currently irrigated by these water rights

d. Remarks: The total instantaneous diversion of water pursuant to water right nos. 63-12, 63-13 and 63-15 from all points of diversion shall not exceed 0.86 cfs, nor shall the total combined diversion volume for these water rights from all of the points of diversion exceed an annual volume of 400.0 acre feet.*

ACTION OF THE DIRECTOR, DEPARTMENT OF WATER RESOURCES

This is to certify that I have examined Application for Transfer of Water Rights No. _____

And said application is hereby _____, subject to the following limitations and conditions:

Witness my hand this _____ day of _____, 20_____

* Please see attached narrative for further discussion

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
APPLICATION FOR TRANSFER OF WATER RIGHT

PART 2

(Attach one copy for each right)

A. DESCRIPTION OF RIGHT AS RECORDED: Please see copies of attached Approved Transfer.

1. Right Evidenced by:

- a. Decree No. 11748 Decreed to _____
in case of Silkey vs. Tiegs
dated 06/30/1930 in Boise county of Ada
- b. License Nos. _____ Issued by the Idaho Department of Water Resources.
- c. Claim No. _____ on file with the Idaho Department of Water Resources.
- c. Transfer Nos. 68558 which produce these rights.

2. Attach a copy of last year's tax notice of the property to which the water right is appurtenant or other documents which show ownership.

Label document as attachment A. Check appropriate box below:

- ☐ Tax Notice ☐ Warranty Deed ☐ Other _____

3. Source of water _____ tributary to _____

4. Date of priority _____

5. Water is used for the following purpose:

amount _____ for _____ purposes from _____ to _____
(cfs/ac-ft)

amount _____ for _____ purposes from _____ to _____
(cfs/ac-ft)

amount _____ for _____ purposes from _____ to _____
(cfs/ac-ft)

6. Total amount of water under right _____ cubic feet per second and/or _____ acre-feet per annum.

7. Point(s) of Diversion:

Lot	1/4	1/4	1/4	Sec.	Twp.	Rge.	County	Local name for diversion

8. Lands irrigated or place of use:

Twp.	Rge.	Sec.	NE 1/4				NW 1/4				SW 1/4				SE 1/4				Totals

Total acres _____

9. Describe any other water rights used for the same purpose as described above. _____

PART 2

10. To your knowledge, has any portion of the water right undergone a period of five or more consecutive years of non-use?

No _____ If yes, describe _____

B. DESCRIPTION OF PORTION OF RIGHT BEING TRANSFERRED

(If the entire right is to be changed by the applicant, omit part B and C.)

1. amount _____ for _____ purposes from _____ to _____
 (cfs/ac-ft)
 amount _____ for _____ purposes from _____ to _____
 (cfs/ac-ft)
 amount _____ for _____ purposes from _____ to _____
 (cfs/ac-ft)

2. Point(s) of Diversion:

Lot	1/4	1/4	1/4	Sec.	Twp.	Rge.	County	Local name for diversion

3. Lands irrigated or place of use:

Twp.	Rge.	Sec.	NE 1/4				NW 1/4				SW 1/4				SE 1/4				Totals

Total acres

C. DESCRIPTION OF UNCHANGED PORTION OF RIGHT (omit if there is no change)

1. amount _____ for _____ purposes from _____ to _____
 (cfs/ac-ft)
 amount _____ for _____ purposes from _____ to _____
 (cfs/ac-ft)
 amount _____ for _____ purposes from _____ to _____
 (cfs/ac-ft)

2. Point(s) of Diversion:

Lot	1/4	1/4	1/4	Sec.	Twp.	Rge.	County	Local name for diversion

3. Lands irrigated or place of use:

Twp.	Rge.	Sec.	NE 1/4				NW 1/4				SW 1/4				SE 1/4				Totals

Total acres _____

**STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
APPLICATION FOR TRANSFER OF WATER RIGHT
PART 3**

- A. Draw a map or attach a USGS map indicating the new point(s) of diversion and/or the new place of use for rights described in part 1. Clearly depict the land by section, township and range number:

Please see attached labeled copy of USGS map.

[illegible]

SCALE: 2 inches equal 1 mile. Draw plan in ink.

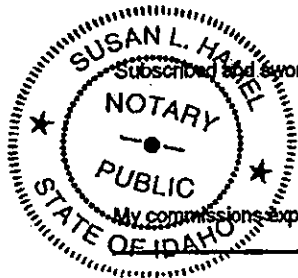
PART 3

B. CHANGES IN NATURE OF USE

1.	<u>New Nature of Use</u>	<u>Amount</u>	<u>Hours/days/year</u>	<u>Period of Use</u>
				to _____
2.	Quantity and quality of return flows and location of discharge:			
3.	Describe effects on water uses resulting from the proposed change:			

I hereby assert that no one will be injured by such change and that the change does not constitute an enlargement in use of the original right. The information contained in this application is true to the best of my knowledge.

I understand that any willful misrepresentations made in this application may result in voiding its approval.



Subscribed and sworn to before me this _____ day of _____, 2005.

(Signature of Applicant)

(Notary Public)

My commissions expires _____

03/27/2008

Susan L. Hamel

FOR DEPARTMENT USE ONLY

Transfer contains _____ pages and _____ attachments	
Received by _____ Date _____	Protest filed by _____
Prelim. check by _____ Fee _____	
Received by _____ Date _____	
Published in _____	Copies of protest forwarded by _____
Pub. dates _____	Hearing held by _____ Date _____
Watermaster recommendation requested on _____	Recommended for ☐ approval ☐ denial
_____ re'd. _____	by _____
Copy of transfer sent to lien holder _____	

NARRATIVE

- I. Restriction:** Under no circumstances will combined diversions of water under water right nos. 63-12, 63-13 and 63-15 exceed .86 cfs or 400 acre-feet per year.
- II. Purposes:** The purposes of this proposed transfer (listed below) are predicated on the central goal of flexibility in the use of water right nos. 63-12, 63-13 and 63-15 while preventing any expansion in quantities of water diverted from the Water District 63-S low temperature geothermal aquifer.
1. To provide backup existing geothermal source wells for existing heating uses under water right nos. 63-12, 63-13 and 63-15 in T4N R2E, Section 22, NESW and SESW.
 2. To add a new well as a point of diversion for water right nos. 63-12, 63-13, 63-15 in T4N R2E, Section 22, NESW.

III. Discussion of Purposes of Transfer

1. Backup geothermal wells for existing heating uses.

(a) Given that replacement pumping plants and parts for existing wells that are points of diversion for water right nos. 63-12, 63-13 and 63-15 are custom-built out of the country, replacement and/or repair of existing pumping plants and wells in the event of failure may take as long as one month. To avoid the economic hardship such a failure would cause, The Terteling Company seeks to add existing geothermal wells located on the Terteling property as backup points of diversion for its water rights.

(b) Water rights 63-12, 63-13, 63-15 will be transferred to the points of diversion for geothermal water located on the Terteling Ranch, including the point of diversion for water right no. 63-31052 (Pool Well).

(c) In the event that Water Right nos. 63-12, 63-13 and 63-15 are diverted from the point of diversion for water right no. 63-31052 (Pool Well), any such diversions of water right nos. 63-12, 63-13 and 63-15 will be separately monitored with a calibrated, high-quality totalizing flow-meter, reported to the Water District 63-S water master, and accounted for as a portion of the annual volumetric limitation of 400 a/f to which water right nos. 63-12, 63-13 and 63-15 are cumulatively limited.

2. To add new well as point of diversion.

(a) The proposed new Greenhouse Well will permit The Terteling Company to move past its dependence on aging geothermal wells that may soon reach the end of their useful life.

(b) Because of the large costs and extensive investigation necessary to locate, drill and complete the new Greenhouse Well with adequate seals and long-term materials, The Terteling Company seeks a period of three years within which to complete the same.

(c) As with all other changes proposed under this transfer, any diversions of water from the

new Greenhouse Well will be subject to the 400 afa and .86cfs to which water right nos. 63-12, 63-13 and 63-15 are subject.

IV. Proposed Conditions

To ensure that there is no expansion of the transferred water rights pursuant to this part of the proposed transfer, Applicant proposes that they be conditioned as follows:

- WB ✓ 1. Under no circumstances will combined diversions of water under water right nos. 63-12, 63-13 and 63-15 exceed .86 cfs or 400 Acre-feet per year.
2. The flow rate and volume of all diversions of water pursuant to water right nos. 63-12, 63-13 and 63-15 shall be monitored, and reported quarterly to the water master of Water District 63-S in accordance with the attached monitoring plan.
3. All points of diversion approved under this transfer shall be equipped with flow rate/volume monitoring devices that are subject to approval by the water master of Water District 63-S.
4. The proposed Greenhouse Well shall be completed within 3 years of the date of approval of this transfer. All other changes approved under this transfer shall be completed within one year of the date of approval of this transfer.
5. Water may be diverted for heating purposes under water right nos. 63-12, 63-13 and 63-15 from the point of diversion for water right no. 63-31052 located in T4N R2E, Section 22 SWNW (known locally as the "Pool Well") only upon an emergency preventing the diversion of water right nos. 63-12, 63-13 and 63-15 from the Windsock well for heating uses located in T4N R2E Section 22, NESW, and SESW.
6. A flow rate/volume monitoring device acceptable to IDWR and the watermaster shall be placed on the distribution line leading from the Pool Well to the places of use located in T4N R2E Section 22, NESW, and SESW.

Location map for The Terteling Company's low-temperature geothermal water wells showing diagrammatic piping and flow-meter placements. Base map USGS 7.5-minute topographic series.



RECEIVED

APR 11 2006

DEPARTMENT OF
WATER RESOURCES

Dana L. Hofstetter, ISB # 3867
HOFSTETTER LAW OFFICE, LLC
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Facsimile: (208) 424-8774

Attorney for Edwards Family LLC

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

IN THE MATTER OF APPLICATION
FOR TRANSFER NO. 71690 IN THE
NAME OF THE TERTELING COMPANY,
INC.

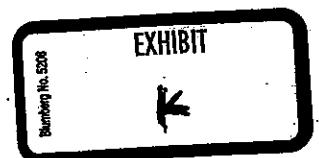
AFFIDAVIT OF NORMAN C. YOUNG

STATE OF IDAHO)
) ss:
COUNTY OF ADA)

Norman C. Young, P.E./L.S., being first duly sworn, deposes and states:

Educational and Professional Background

1) I am an engineer employed by ERO Resources Corporation ("ERO") at its office located in Boise, Idaho. I have a Bachelor of Science Degree and a Master



of Science Degree in Agricultural Engineering from the University of Idaho. I am a licensed professional engineer and land surveyor in the State of Idaho.

2) I have over 35 years of experience as an engineer working in the areas of surface and ground water resource inventory, evaluation and management, water resources engineering, and various programs involving the administration of water use and water rights. This experience includes:

- a) Two years inventorying surface and ground water resources.
 - b) Three years managing a regional office for the Idaho Department of Water Resources ("IDWR") with responsibilities for all IDWR regulatory and permitting programs.
 - c) Three years as Chief of IDWR's Engineering Bureau with responsibility for managing the supervision of the Carey Act, well drilling, safety of dams, use of geothermal resources, stream channel protection and other water resource regulation and management programs.
 - d) Twenty-five years as Administrator responsible for all IDWR regulatory and permitting programs involving all aspects of water rights and water resource regulation and management.
 - e) Three years as an engineering consultant with ERO assisting clients on water right and water use issues.
- 3) My experience with IDWR includes extensive involvement in developing and refining the administrative procedures and policies for establishing water rights under the Doctrine of Prior Appropriation applicable in Idaho, for

confirming water rights through the state's licensing and adjudication processes, for modifying established water rights by the state's transfer procedures and for administration and management of water rights, including conjunctive management of surface and ground water rights.

4) While employed with IDWR, I had responsibility for developing administrative rules and policies used by IDWR in water administration at this time, including the following:

- a) Water Appropriation Rules, IDAPA 37.03.08.
- b) Well Construction Standard Rules, IDAPA 37.03.09.
- c) Rules for Conjunctive Management of Surface and Ground Water Resources, IDAPA 37.03.11.
- d) Draft rules (not adopted, to date) for water management in Idaho.
- e) Transfer Processing Policies and Procedures, Administrator's Memorandum Transfer Processing No. 24, October 30, 2002. This policy specifically relates to the Eastern Snake Plain Aquifer, but incorporates IDWR's longstanding statewide policies and practices related to applications for transfer.

Materials Reviewed

5) I have been retained in this administrative proceeding by Edwards Family LLC to provide expert analysis and opinion concerning the effect of the changes proposed in Application for Transfer No. 71690 on the diversion and use of water under rights held by Edwards Family LLC and the conformance of the Application

to the requirements of statutes, rules and policies related to processing and approval of Applications for Transfer.

6) I have reviewed the following information to assist Edwards Family LLC in this proceeding:

- a) Application for Transfer No. 71690 in its various versions: initial, amended, seconded amended and the version for which published notice ultimately was provided. This review included the files available from IDWR's electronic database and paper files at the central office of the department.
- b) Snake River Basin Adjudication ("SRBA") water right claims and IDWR's SRBA recommendations for the rights listed in the Application for Transfer and other rights diverting within Water District 63-S and those from other sources associated with the diversion and use of the rights listed in the Transfer Application and the changes proposed in the Transfer Application. IDWR's electronic database and the compact disc (CD) containing the Director's Report for Reporting Area 13, IDWR Basin 63, Part II were the basis for this review. IDWR files and documents related to previous transfer proceedings affecting these rights also were reviewed.
- c) Driller's reports for wells in Water District 63-S and the immediately surrounding area. IDWR's electronic database was the basis for this review.
- d) Files concerning the creation, modification and operation of Water District 63-S.

- e) IDWR's rules and policies concerning the processing and approving of changes to water rights.
- f) A field review of Applicant Terteling's diversion and use of water in the Water District 63-S area.

Opinions

Adding the proposed points of diversion to Water Right Nos. 63-12, -13 and -15 by Approval of Transfer No. 71690, without appropriate conditions and limitations attached to the approval, will enlarge the use of water and injure other water rights. This conclusion is based upon the following opinions:

- 7) Opinion #1: Impacts to Water District 63-S Administration - Additional points of diversion will increase the complexity, effort and expense required for the Watermaster to monitor, regulate and report operations in Water District 63-S. If approved, Transfer No. 71960 should be conditioned to require that all resulting increased costs incurred by Water District 63-S will be paid by the Applicant.
 - a) The Water District 63-S Water Year 2005 Report lists nine wells for which the annual volume of diversion is monitored and reported. (Exhibit 138.) The Report includes water level data for these nine wells and for an additional well that is outside of the district boundaries (Motorcycle Club Well). (Exhibits 130-132.) The cost for operating the district in 2005 was \$2860.90. Most of the cost was assessed to three water users (The Terteling Company, Edwards Greenhouses, and Quail Hollow Golf Course) with a \$10 assessment to Ryan. The Transfer Application proposes to add to the District three flow

Settlement Agreement for the Boise Front Low-Temperature Geothermal
Groundwater Management Area.

Since District costs have been apportioned in the past by the amounts diverted, and since the proposed additional points of diversion will result in additional District expense without increasing the amount of water diverted by the Applicant, a large portion of these additional costs will be borne by the two other significant assessment paying members of the District. A condition should be included in any approval of the Transfer, requiring that the District's costs associated with the additional points of diversion will be borne by the Applicant.

- b) Presently, the Water District 63-S Watermaster monitors, regulates and reports annual diversions by well. Approval of the proposed change will require that the Watermaster perform regulation, monitoring and reporting for diversions under each right associated with the points of diversion included in this Transfer. The Watermaster will need to determine the rate and volume of water diverted under the particular right or rights. The complex piping system at the Pool well, that reportedly includes an existing connection to the Windsock well, makes it unlikely that the Watermaster could confidently determine the diversion for separate rights diverting from this well, unless the diversion system is rebuilt to provide direct, individual connections to the uses covered by each right.

8) Opinion #2: Monitoring, Measurement, Recording and Reporting Needs -

Additional points of diversion enlarge the capacity of the system physically available to divert water under the rights being transferred, requiring additional regulation and more sophisticated measuring and diversion control devices to insure that the authorized diversion rates and volumes are not exceeded. If approved, Transfer No. 71690 should be conditioned to require continuous logging of diversion rates at all authorized points of diversion and a limited period of time to repair any malfunctioning monitoring and recording equipment.

a) Section 42-222, Idaho Code, does not allow approval of an Application for Transfer that will enlarge use of water under a water right. IDWR policy provides that an evaluation of the affect of the change on the diversion rate is a necessary part of the test for determining whether use of a right will be enlarged (Exhibit No. 140).

b) Right Nos. 63-12, -13 and -15 authorize a combined total diversion of 0.86 cfs. However, the physical capacity to divert water could be as much as 2.63 cfs upon approval of the additional points of diversion sought under the proposed Transfer. The physical capacity would be more than three times the authorized rate. This estimate is based upon:

i) The three wells at the Flora site have a combined capacity of at least 0.86 cfs based upon the claims filed for these rights, the approval of Transfer No. 68558 for this rate and the larger diversion rates for these wells noted in Table 2, Exhibit No. 4.

- ii) Information submitted on behalf of the applicant (Exhibit No. 109) after reconstruction of the Windsock well indicates it was test pumped at 0.8 cfs.
 - iii) The proposed backup well would have a capacity of 0.8 cfs to replace the capacity of the Windsock well.
 - iv) Based upon the claims and information in IDWR files, the Pool well has a capacity of about 0.11 cfs and the Terteling Springs well has a capacity of 0.06 cfs.
- c) Simply conditioning use of water to a maximum combined diversion rate of 0.86 cfs does not assure compliance. Because the Watermaster cannot physically be at all wells at the same time, approval of the proposed Transfer requires the installation and maintenance of monitoring and control devices that monitor and record flow rates as well as total volumes diverted. Measuring equipment capable of validating that the combined diversion rate and the combined annual volume have not been exceeded at any time is needed at each point of diversion.
- d) Adding points of diversion increases the probability of one or more measuring devices not being operable or not reading accurately. IDWR/Watermaster need stiff penalty provisions similar to those in the recently approved permit for Flinda Terteling (63-31999) to assure that rights will be used only as approved and that the needed monitoring equipment is installed and maintained in operable condition at each point of diversion.

9) Opinion #3: Extra Backup Wells - The existing Pool and Terteling Springs wells will not be needed as backup points of diversion under Right Nos. 63-12, -13 and -15 after the proposed backup well is successfully constructed and added to the system supplying the greenhouses. If approved, Transfer No. 71690 should be conditioned to delete the Pool and Terteling Springs wells as authorized points of diversion under Rights Nos. 63-12, -13, and -15 when water from the new proposed backup well is available for delivery to the greenhouses.

a) The stated purpose of the proposed Transfer, described in the information the Applicant submitted with the application, is to provide a reliable backup supply of geothermal water to that now provided by the Windsock well. If this purpose is achieved by the construction of the proposed new backup well, the Pool and Terteling Springs wells will not also be needed for this purpose.

Because of the cost and complexity of regulating the use of water under Right Nos. 63-12, -13 and -15 from multiple points of diversion, any approval of Application for Transfer No. 71690 should be conditioned to delete the Pool and Terteling Springs wells as points of diversion under these rights once the new backup well is constructed and functioning.

b) It is noted that a single backup supply is adequate for other important uses, such as public water supplies (IDEQ Requirements for Design of Public Water Systems, IDAPA 58.01.08.550.03.p).

10) Opinion #4: Administration of Overlapping Water Rights - SRBA claims for other water rights associated with some of the proposed additional points of

diversion list places of use and purposes of use that overlap with those asserted under the subject Water Rights Nos. 63-12, -13, and -15. For example, SRBA Claim Nos. 63-3603 and 63-7595 relate to the diversion and use from wells included in Transfer No. 71690 and claim an overlapping irrigation use with the irrigation place of use claimed under Right Nos. 63-12, -13 and -15.

a) Right Nos. 63-12, -13 and -15 currently authorize a total of 6 acres of irrigation inside and outside of greenhouses at two separate locations covering 15 acres (7.5 acres in the NESE of Section 29 in and near the Flora Greenhouses and 7.5 acres in the E $\frac{1}{2}$ SW of Section 22 in and near the Peaceful Cove Greenhouses). Right No. 63-7595 also authorizes irrigation of 6 acres in the E $\frac{1}{2}$ SW of Section 22, and Right No. 63-3603 authorizes irrigation of 32 acres in the E $\frac{1}{2}$ SW of Section 22. Additionally, the authorized points of diversion for Rights Nos. 63-7595 and 63-3603 include the 40-acre subdivisions within which the Pool and Terteling Springs wells are located. Approval of the proposed Transfer adding these same wells as points of diversion for Right Nos. 63-12, -13 and -15 would require the Watermaster to monitor the places and purposes of use of the water diverted to determine the amount of water diverted under each right. If the irrigated acres in the overlapping places of use are not unique to each right and actually overlap, the Watermaster will not be able to distinguish which right is being used. This can make fair and accurate Watermaster regulation impossible when the rights have different conditions and limitations on use. For example, in this instance Right Nos. 63-12, -13,

and -15 are allowed to be used on only 6 acres each year and have a 400-afa annual diversion limit, while Right Nos. 63-3603, 63-7595 and other associated rights currently are recommended in the SRBA to have a 171-acre combined acreage limit. At best, approval of the proposed transfer would significantly increase the Watermaster workload by requiring frequent determination of where and how the water is being used and, at worst, could make the Watermaster function unworkable.

b). IDWR has addressed the problems created by rights having overlapping points of diversion and places of use either:

i) By refusing to approve changes to rights that create the problem.

Application for Transfer No. 71690, prior to amendment, sought to provide backup supplies for existing domestic and heating uses from Tom's well and Andy's well. When IDWR staff identified these proposed changes as "stacking" of water rights, the application was amended (Exhibit No. 101, Page 5, Paragraph 3). The duplicating uses described in the previous paragraph merit a similar determination of "stacking;" or

ii) By crediting the water diverted in accordance with the priority of the rights.

For example, in Water District 01, the water accounting program developed by IDWR, credits water diverted into a canal having rights of varying priorities to the oldest priority right up to the full authorized rate under that right before crediting any diversion to the next priority right.

c) If approved, in order to avoid resulting enlargement and injury, Transfer No. 71690 should be conditioned to:

- i) Provide for the Watermaster to be informed at all times about which right is being diverted;
- ii) Extend the scope of Watermaster regulation to include the places of use;
- iii) Require a separate distribution system with dedicated measuring and recording devices from each point of diversion to directly serve the uses authorized under Right Nos. 63-12, -13, and -15; and
- iv) Assess the rate and volume of diversion starting with the oldest priority right and continuing in priority sequence from each point of diversion.

11) Opinion #5: Pending SRBA Proceedings - IDWR policy requires that the processing of Transfer No. 71690 be delayed until the rights listed in the Application and other rights associated with the overlapping points of diversion and places of use are decreed in the SRBA. In early August 2005, IDWR informed other Basin 63 Transfer applicants that processing would be delayed until the time had elapsed for objections to be filed for the respective SRBA claims (Exhibit 139). To the extent that the rights were objected to, the processing delay would extend until those objections were resolved. The objection period has not yet expired for SRBA Claim Nos. 63-12, -13, and -15, and for other SRBA claims for the use of water from certain points of diversion sought to be added under Transfer No. 71690. The failure to follow this policy can cause Transfer results that are inconsistent with SRBA outcomes, thereby,

likely causing an enlargement in use of water under the rights and injury to the water rights of others.

- a) Several weeks prior to publishing Notice of Transfer No. 71690, IDWR announced a policy of delaying the processing of Transfers until recommendations were entered on SRBA claims associated with the rights being sought to be transferred and the opportunity for objections in the adjudication process had expired (**Exhibit No. 139**). The reasons cited by IDWR for delaying processing are relevant to Transfer No. 71690: 1) IDWR's limited staff resources were necessary to complete the remaining Director's Reports; and 2) processing an Application for Transfer in an area where a Director's Report is pending can result in confusion and complications with simultaneous judicial (SRBA) and administrative (Transfer) actions underway. A review of IDWR's files indicates the extensive amount of staff resources required by the processing of Transfer No. 71690. IDWR's files also document the confusion and complication created by processing Transfer No. 71690 while the claims for the involved rights are pending in the SRBA. IDWR staff questioned which version of Right Nos. 63-12, -13, and -15 was the basis for the Application: as the rights were approved under Transfer No. 68558; as initially claimed in the SRBA; or as represented by amended SRBA claims filed in March 2004 (**Exhibit 108**). IDWR staff also expressed concern over a potential enlargement in the uses (particularly "commercial" use) that were sought to be added through either the amended claims or the initial

versions of the Application for Transfer. Representatives for the Applicant attempted to remove this concern from the Application by indicating that the basis for the Transfer is the rights as approved pursuant to Transfer No. 68558 and by deleting changes in use from the Application. While this approach may clarify the intent of the Application for Transfer, it does resolve the confusion and conflict over this issue that results from having the administrative process occur while differing claims are pending in the SRBA. If IDWR takes final administrative action approving a change in these rights prior to the SRBA action becoming final, IDWR and the SRBA Court then recognize the SRBA claims to have been amended by the Transfer Approval. Because the uses claimed are different than those listed on the Application for Transfer, a new review of the amended claims should be triggered. Conversely, if the SRBA completes action on the claims prior to IDWR's action on the Transfer becoming final, the uses listed on the Partial Decrees may not match with the uses sought in the Application for Transfer. Either way, the Protestants and anyone else concerned with the issue are forced to participate in two confusing processes, one before IDWR and the other before the Court.

- b) Other Transfer Applications that are as far, or farther, along than this Transfer are on administrative hold. For example, Transfer No. 70024, filed on February 26, 2002 has been at the final review/approval stage since mid-2005, but is subject to the hold.

c) IDWR's standard practice of including a condition on Transfer approvals reserving jurisdiction to allow a recommendation to the SRBA Court made in the future to differ from the decision entered on the Transfer will not work in this instance because of the uncertainty over whether the claims will remain before the SRBA Court when the administrative process is finally completed.

12) Opinion #6: Separate Systems Require Separate Transfer Approvals -

IDWR policy requires separate Transfer Applications for the separate systems proposed by Transfer No. 71690. The failure to follow this policy can result in an enlargement in use of water under the rights and injury to the water rights of others.

a) Application for Transfer No. 71690 at Item 6a. describes the diversion system as follows: "Deep wells pumping from low-temperature geothermal aquifer into an existing interconnected distribution system originally used for irrigation purposes in Section 22. A similar, but separate interconnected system exists in Section 29." The map submitted with the Application depicts the "interconnected distribution systems." A separate pipeline is shown to provide water from the proposed new well to the greenhouses in Section 22. Thus, actually, it appears that the Application proposes three separate systems.

b) IDWR policy, as expressed in its Transfer Processing No. 24 Memorandum (Exhibit 125) requires a separate Application for each system. IDWR cited this policy Memorandum when requiring the Motorcycle Club well to be

deleted from Transfer No. 71690 because of its location in a separate source (Exhibit 102).

- c) Watermaster regulation is more complicated when water rights are associated with more than one system because of the need to monitor, compare and regulate uses occurring at the separate sites.
- d) Allowing different systems to share the same water rights provides the opportunity for a sudden change in use without IDWR approval of the specific change. This can be a significant concern to other users from the aquifer if the systems are widely separated in a small aquifer. Also, the water rights obtained by a property purchaser may be uncertain when water rights are shared among separate water systems at different locations.

13) Opinion #7: The Terteling Springs Well is From a Different Source -

IDWR policy does not allow a well from a different source to be added to a water right. Information in IDWR files indicates that the Terteling Springs well may be from a different source. If approved, Transfer No. 71690 should be conditioned either to delete the Terteling Springs well as an authorized point of diversion or to require the diversion and use of water from Terteling Springs well to be regulated as part of Water District 63-S. The failure to address this matter will result in an enlargement in use of water under the rights and injure the water rights of others.

(It is understood that the "Motorcycle Club Well" and Tom's and Andy's hot wells" previously have been deleted from the Transfer Application for the same reason.)

- a) IDWR determined that the Motorcycle Club Well was in a separate aquifer in an order reducing the area covered by Water District 63-S (Exhibit No. 133) and based upon IDWR policy (Exhibit No. 102), required Transfer No. 71690 to be amended to drop the Motorcycle Club Well from the Application.
- b) The Terteling Springs well is in the area deleted from Water District 63-S (Exhibit No.133) and also should be removed from the Transfer Application.
- c) While the present boundaries of Water District 63-S and uniform application of IDWR policy concerning separate sources expressed in Exhibit No. 102 require that wells outside of Water District 63-S be dropped from consideration under Transfer No. 71690, IDWR's policy of adding a well to Water District 63-S upon a determination that use of the well impacts senior priority rights within Water District 63-S (Paragraph 4 of the Final Order, Exhibit No. 133) also applies.

14) Opinion #8: Incorporation of the Conditions of Prior Transfer Approvals -

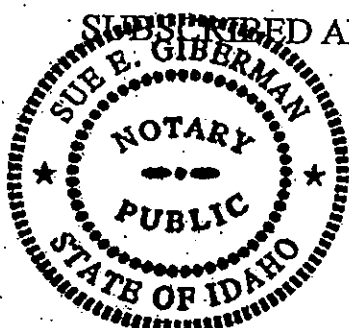
The conditions of approval of prior transfers, including without limitation, the conditions of approval for Transfer No. 68558, should be incorporated into any approval for the subject Transfer Application. Without the incorporation of prior conditions of approval, many of which were based upon an agreement between the parties and the continuing effect of *Silkey v. Tiegs*, enlargement and injury will occur. (Exhibits 100 and 118) During preliminary review, IDWR staff recognized that, if approved, Transfer No. 71690 "will remain subject to that agreement and conditions listed on approved Transfer No. 68558." (Exhibit No.

101, Page 2, Paragraph 4). However, the draft approval document prepared for Transfer No. 71690 (Exhibit No. 116) does not faithfully repeat the conditions of approval of Transfer No. 68558. For example, Condition No.1 of Transfer No. 68558, limiting use to 6 acres in a single season for each of the rights, is omitted from the draft approval document for Transfer No. 71690. Condition No. 4 of Transfer No. 68558, prohibiting the use of Water Right No. 63-15 until further direction of the court also is omitted from the draft approval document. The wording of some conditions is changed as necessary to reflect events since the approval of Transfer No. 68558, such as the reactivation of Water District 63-S, but several others have been simply reworded for no apparent reason and the revisions may affect the legal interpretation of the conditions. Examples of reworded conditions are Nos. 7 and 11 from the conditions of approval for Right No. 63-12 in Transfer No. 68558.

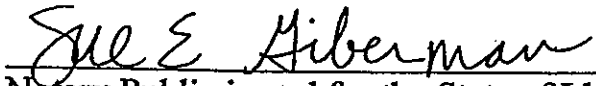
FURTHER YOUR AFFIANT SAYETH NAUGHT.

DATED this 10TH day of April, 2006.


NORMAN C. YOUNG



SUBSCRIBED AND SWORN to before me this 10th day of April, 2006.

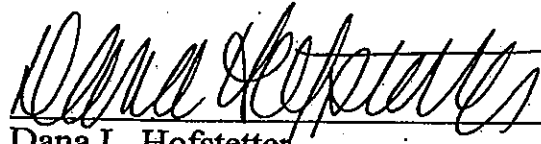

Notary Public in and for the State of Idaho
Residing at: Boise Idaho
My Commission Expires: 2-25-09

CERTIFICATE OF SERVICE

I hereby certify that on the 10th day of April, 2006, I caused to be served copies of the foregoing Affidavit of Norman C. Young on the following persons by the methods indicated below:

Director (Original for Filing)
Idaho Department of Water Resources
P.O. Box 83720
Boise, ID 83720-0098
× U.S. Mail ☐ Fed Ex ☐ Hand ☐ Fax

Charles L. Honsinger
Ringert Clark Chartered
P.O. Box 2773
Boise, ID 83701-2773
× U.S. Mail ☐ Fed Ex ☐ Hand ☐ Fax


Dana L. Hofstetter

EA3006.1\6861

RECEIVED

APR 11 2006

DEPARTMENT OF
WATER RESOURCES

Dana L. Hofstetter, ISB # 3867
HOFSTETTER LAW OFFICE, LLC
608 West Franklin Street
Boise, Idaho 83702
Telephone: (208) 424-7800
Facsimile: (208) 424-8774

Attorney for Edwards Family LLC

**BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO**

IN THE MATTER OF APPLICATION
FOR TRANSFER NO. 71690 IN THE
NAME OF THE TERTELING COMPANY,
INC.

WITHDRAWAL OF PROTEST

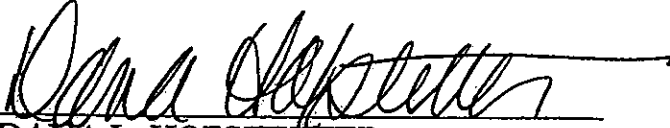
Edwards Family LLC, by and through its counsel of record, Dana L. Hofstetter of Hofstetter Law Office, LLC, withdraws its Protest in this matter and requests that the Idaho Department of Water Resources ("IDWR") issues its decision based on the record in this proceeding, including, without limitation, the Affidavit of Norman C. Young. The Protest is being withdrawn on the basis that there are no disputed issues of material fact and the matters at issue involve IDWR policy and rules, Idaho statutes and other legal matters. The Affidavit of Norman

EXHIBIT

L

C. Young describes the matters of concern to Edwards Family LLC and a hearing on this matter is not necessary.

Respectfully submitted this 10th day of April, 2006.


DANA L. HOFSTETTER

CERTIFICATE OF SERVICE

I hereby certify that on the 10th day of April, 2006, I caused to be served copies of the foregoing **Withdrawal of Protest** on the following persons by the methods indicated below:

Director (Original for Filing)
Idaho Department of Water Resources
P.O. Box 83720
Boise, ID 83720-0098
× U.S. Mail ☐ Fed Ex ☐ Hand ☐ Fax

Charles L. Honsinger
Ringert Clark Chartered
P.O. Box 2773
Boise, ID 83701-2773
× U.S. Mail ☐ Fed Ex ☐ Hand ☐ Fax


Dana L. Hofstetter

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State of Idaho

DEPARTMENT OF WATER RESOURCES

322 East Front Street, P.O. Box 83720, Boise, ID 83720-0098
Phone: (208) 287-4800 Fax: (208) 287-6700 Web Site: www.idwr.idaho.gov

JAMES E. RISCH
Governor

KARL J. DREHER
Director

September 13, 2006

CHARLES L HONSINGER
RINGERT CLARK
PO BOX 2773
BOISE ID 83701

Re: Application for Transfer no. 71690, in the name of
The Terteling Company, Inc. ("Terteling")

Dear Mr. Honsinger:

On April 19, 2006, you wrote me a letter about application for transfer no. 71690 (water right nos. 63-12, 63-13, and 63-15). On September 11, 2006, you called the Idaho Department of Water Resources (IDWR) and inquired about the status of the application. This letter responds to your earlier correspondence and your verbal inquiry.

Edwards Family, LLC ("Edwards") protested application for transfer no. 71690. IDWR appointed Peter Anderson as the hearing officer for the contested case. On April 10, 2006, Dana Hofstetter, attorney for Edwards, withdrew the Edwards protest. In the withdrawal of protest, Hofstetter stated that "there are no disputed issues of material fact and the matters at issue involve IDWR policy, and rules, Idaho statutes and other legal matters." Despite the withdrawal of protest, Hofstetter submitted an affidavit authored by Norman C. Young, and asked IDWR to consider the concerns raised therein. Your letter dated April 19, 2006 responds to the withdrawal of protest and the affidavit of Young.

Sometime shortly after the date of protest withdrawal, you and I conversed on the telephone about whether IDWR would consider the Young affidavit. I told you IDWR would probably review the information contained in the affidavit. In your letter, you requested that "[t]o the extent that IDWR considers the information provided by Mr. Young, [Terteling] requests that it be given further opportunity to rebut the information and present alternative information and/or theories."

After April 2006, objections were filed against Terteling's claims for water right nos. 63-12, 63-13, and 63-15 in the Snake River Basin Adjudication (SRBA). These objections raise many issues about the validity or the extent of elements of the water rights. Court proceedings for the objections have been scheduled for this fall and winter.



SCANNED
OCT 20 2006

Charles L. Honsinger
September 13, 2006
Page 2

As a result of the ongoing contested cases in the SRBA, IDWR will delay consideration of transfer no. 71690 until the contested cases in the SRBA for water right nos. 63-12, 63-13, and 63-15 are decided. IDWR will hold application for transfer no. 71690 until it receives notice of resolution of the SRBA disputes.

Respectfully,

A handwritten signature in cursive script, appearing to read "Gary Spackman".

Gary Spackman

Cc: Dana Hoffstetter

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

COPY

In Re SRBA

)
) Subcase Nos. 63-12, 63-13,
) 63-14, 63-15, 63-16, 63-308,
) 63-2103A, 63-2103B, 63-3603,
Case 39576) 63-4037, 63-5067, 63-5195,
) 63-7595, 63-9758, 63-21875,
) 63-27649, 63-27671, 63-30006,
) 63-30007, 63-31050, 63-31051,
) 63-31052, 63-31053, 63-31054,
) 63-31055, 63-31056, 63-31057,
) 63-31058, 63-31059, 63-31060,
) 63-31-062, 63-32895

RULE 30(b)(6) DEPOSITION OF THE TERTELING COMPANY, INC.

AND

RULE 30(b)(6) DEPOSITION OF T-7, LLC

TESTIMONY OF JOSEPH L. TERTELING

JUNE 14, 2010

REPORTED BY:

MARTA D. GLODOWSKI, CSR No. 725, RFR

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EXHIBIT

N

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)

) Subcase Nos. 63-12, 63-13,
) 63-14, 63-15, 63-16, 63-308,
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) 63-30007, 63-31050, 63-31051,
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) 63-31058, 63-31059, 63-31060,
) 63-31-062, 63-32895

RULE 30(b)(6) DEPOSITION OF THE TERTELING COMPANY, INC.

AND

RULE 30(b)(6) DEPOSITION OF T-7, LLC

TESTIMONY OF JOSEPH L. TERTELING

JUNE 14, 2010

REPORTED BY:

MARIA D. GLODOWSKI, CSR No. 725, RPR

Notary Public

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1 THE RULE 30(b)(6) DEPOSITION OF THE TERTELING
2 COMPANY, INC., AND RULE 30(b)(6) DEPOSITION OF T-7, LLC,
3 TESTIMONY OF JOSEPH L. TERTELING, was taken on behalf of
4 Edwards Family, LLC, at the offices of M & M Court
5 Reporting Service, Inc., 421 West Franklin Street, Boise,
6 Idaho, commencing at 9:40 a.m. on June 14, 2010, before
7 Maria D. Glodowski, Certified Shorthand Reporter and
8 Notary Public within and for the State of Idaho, in the
9 above-entitled matter.

APPEARANCES:

13 For Edwards Family, LLC: Hofstetter Law Office, LLC

14 BY: Dana L. Hofstetter

15 608 West Franklin Street

16 Boise, Idaho 83702

18 For Joseph L. Terteling: Ringert Law Chartered

19 BY: Charles L. Honsinger

20 455 South 3rd Street

21 Boise, Idaho 83701

23 Also Present: Andrew Terteling

24 David Niznik

(208) 345-9611

M & M COURT REPORTING

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1	DEPOSITION EXHIBIT NO.:(continued)	PAG
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(208) 345-8800 (fax)

1 JOSEPH L. TERTELING,
2 first duly sworn to tell the truth relating to said
3 cause, testified as follows:
4 (Deposition Exhibit Nos. A through I were
5 marked for identification.)
6

7 MS. HOFSTETTER: Okay. As a preliminary
8 matter, Mr. Honsinger, at the deposition of Garnette
9 Edwards a couple of weeks ago, you requested certain
10 additional documents, and I believe this is what you
11 requested, what I'm handing you here.

12 MR. HONSINGER: Thank you, Counsel.
13

14 EXAMINATION

15 BY MS. HOFSTETTER:

16 Q. Could you state your name.

17 A. Joseph Loyd Terteling.

18 Q. And your address, please?

19 A. 5100 Cartwright -- it's Road -- Boise, Idaho,
20 83714.

21 Q. Okay. Mr. Terteling, I'm handing you what's
22 been marked Exhibit A. Have you seen this document
23 before?

24 A. Is this the corporation, or T-7?

25 Q. Here's the title of the document over there.

Page 6

1 A. Oh, yes.

2 Q. Okay. Could you identify this document?

3 A. Right. It's a duces tecum for the Terteling
4 Company for this court case.

5 Q. Okay. And so are you here today pursuant to
6 this notice?

7 A. Yes.

8 Q. And are you the designated representative for
9 the Terteling Company pursuant to this notice?

10 A. Yes.

11 Q. Are there any other representatives that will
12 be testifying today pursuant to this notice for the
13 Terteling Company?

14 A. No.

15 Q. Okay. Thank you. Let's discuss -- as you
16 know -- if you -- on pages 2, and following, this notice
17 requests that you bring certain documents today with you
18 to the deposition. Have you brought any documents today?

19 A. Yes.

20 MS. HOFSTETTER: Okay. And, Mr. Honsinger,
21 perhaps you can describe the documents that you brought
22 today?

23 MR. HONSINGER: Okay. Counsel, we brought ten
24 boxes of documents today. Three of these boxes contain
25 IDWR's files with respect to the water rights referenced

1 in the notice. And those files include SRBA claim files,
2 IDWR water rights back files, I believe, they call them,
3 so three boxes.

4 The other seven boxes contain various
5 documents, various files in the Terteling Company's
6 records related to water rights, related to these water
7 rights, related to pumps, diversions, virtually anything
8 to do with water rights, and they're a hodgepodge of
9 materials, and they will be made available for you at my
10 office at a later time that is convenient for both of us
11 to look through and copy if you so desire.

12 MS. HOFSTETTER: I appreciate that. Thank you

13 MR. HONSINGER: In addition, Counsel, we've
14 also made copies of documents that we feel would be
15 particularly helpful today, and you may use them or not as
16 you choose. We have made copies for both you and the
17 court reporter with the exception of one document. So if
18 you'd like me to, I can go ahead and describe each of
19 those.

20 MS. HOFSTETTER: That would be great. Thank
21 you.

22 MR. HONSINGER: All right. First off is a map
23 showing the -- well, I'll just -- this is a map showing
24 the 36th Street -- the Terteling 36th Street hot water
25 system. Is that correct, Joe?

Page 8

1 THE WITNESS: Yeah, distribution.

2 MR. HONSINGER: Second, is a map showing the
3 property designations between the Terteling Company,
4 Inc. -- and I will sometimes refer to the Terteling
5 Company, Inc., as TTCI -- between TTCI and T-7, LLC, on
6 the Terteling Ranch in Upper Stewart Gulch.

7 MS. HOFSTETTER: Okay.

8 MR. HONSINGER: Third, is a map showing the
9 distribution system for water up on the Terteling Ranch.

10 Fourth is a larger version -- or a larger scale
11 version of the map I mentioned earlier showing the
12 properties -- property boundaries between T-7 and TTCI.

13 Fifth is a simple list of water rights in which
14 TTCI and T-7, LLC, have an interest.

15 Sixth is a list of -- and this last one that I
16 mentioned here is a -- it's the only one I have one copy
17 of, and I apologize for that.

18 MS. HOFSTETTER: Okay.

19 MR. HONSINGER: Sixth is a list of water rights
20 describing certain elements of the water rights owned by
21 TTCI and T-7, LLC, including designation of whether or no
22 those water rights have a hot water source or not.

23 And then, finally, is a -- seventh is a list of
24 notes that Joe Terteling made to help him remember dates
25 that you might be interested in.

1 MS. HOFSTETTER: Okay. Well, what I'd like to
2 do is -- the exhibits I brought today go through -- let's
3 see -- and they go through to Exhibit I, I believe. And
4 so perhaps we can go off the record briefly just to mark
5 these additional -- the particular documents you brought
6 that you think are pertinent to the deposition today.

7 We can go off the record just to mark these and
8 include them in the record so we have a record. Do you
9 have any objection to that?

10 MR. HONSINGER: No. And it's up to you if you
11 want to include them in the deposition. If you don't feel
12 they're necessary, that's fine. But they're for your
13 records --

14 MS. HOFSTETTER: Okay.

15 MR. HONSINGER: -- or for your -- if you
16 believe they're necessary, let's go ahead and put them in.

17 MS. HOFSTETTER: Yeah, I'd like to do that. So
18 can we go off the record and then -- so maybe -- and mark
19 these?

20 (Off the record.)

21 (Deposition Exhibit Nos. J through P were
22 marked for identification.)

23 MS. HOFSTETTER: Okay. We've marked the
24 exhibits that the deponent believes are of particular
25 relevance for today's deposition. We've marked those J

Page 10

1 through P.

2 Q. (BY MS. HOFSTETTER) And, Mr. Terteling, do you
3 understand that you're under oath today, and that your
4 testimony here is testimony in the SRBA?

5 A. Yes.

6 Q. Have you --

7 A. But I haven't been sworn in on the SRBA yet. I
8 assume I'll be sworn in again when we get to court.

9 Q. I'm sorry? I don't understand your question.

10 A. I understand I'm sworn in here today.

11 Q. Yes.

12 A. And then you added, and in the SRBA.

13 Q. No. I meant that your testimony today -- that
14 you're under oath today, and that this is your testimony
15 in the SRBA proceeding?

16 A. Yes.

17 Q. Thank you. Have you ever done a deposition --
18 have you ever been a witness in a deposition before?

19 A. Yes.

20 Q. On how many occasions?

21 A. I'd guess half a dozen.

22 Q. Okay. Do you recall the lawsuits of those --
23 involving those depositions?

24 A. I've been divorced. I've separated my business
25 interests. I've been sued by employees we've fired.

1 We've had some disputes over mining phosphate ore. Ea
2 Aircraft, I suppose. So I got six yet?

3 Q. Could you explain your involvement -- your
4 relationship to Eagle Aircraft?

5 A. We owned it a hundred percent.

6 Q. And by we, do you mean the Terteling Company?

7 A. No, my sons and myself.

8 Q. Okay. And you were -- were you sued in some
9 capacity with the Eagle Air Company?

10 A. I paid off all my debts and took it bankruptcy.

11 Q. Okay. Okay. So you're familiar -- you're
12 somewhat familiar with the deposition process?

13 A. Well, I've been through it --

14 Q. Yeah.

15 A. -- but it's always an experience.

16 Q. Okay.

17 A. Always different.

18 Q. Have you ever done a deposition in a water
19 rights case before or been the --

20 A. Yes.

21 Q. -- witness -- I should say, more accurate, have
22 you ever been a witness in a deposition --

23 A. Yes.

24 Q. -- in a water rights case?

25 A. Yes.

Page 12

1 Q. How many water right cases were you the
2 deponent in?

3 A. Well, the one that pops in my brain is the
4 Owyhee Motorcycle Club.

5 Q. Okay. Do you recall any others?

6 A. Well, not at this time.

7 Q. Okay. And the Owyhee Motorcycle Club case, wa
8 that another SRBA subcase?

9 A. I'd say, yes.

10 Q. Okay. Thank you. Okay. Can you describe the
11 position you hold with the Terteling Company.

12 A. President.

13 Q. Any other position you currently hold with the
14 company?

15 A. Okay. When you say the Terteling Company,
16 technically, the name is the Terteling Company, Inc.

17 Q. Yes.

18 A. And Inc., you know -- and I'm the president of
19 that, and a board of director.

20 Q. Okay. Okay. So you -- so, yes. You know, I'm
21 going to, for shorthand today, probably refer to the
22 Terteling Company and leave off the Inc. But we're
23 talking about the company that is titled on the deposition
24 notice that's Exhibit A?

25 A. Right, and that is Inc., and you can use

1 Tertelings if you want.

2 Q. Okay. Or TICI is another term.

3 A. That's what we prefer.

4 Q. Okay. Now, are there any other entities that
5 have the Terteling Company in their title?

6 A. I'd say, no.

7 Q. Okay. I guess some hesitancy. Were there in
8 the past some entities?

9 A. Yes.

10 Q. Okay. So we're talking about the currently
11 existing entity known as the Terteling Company, Inc., when
12 we refer to the Terteling Company today?

13 A. Right, TICI. I is Inc.

14 Q. Okay. Great. Thank you. And just for
15 clarity, that is the company that has filed claims for
16 water rights in the SRBA?

17 A. In addition to T-7.

18 Q. Okay. And we'll get into that. But just for
19 clarity today, when we refer to TICI, the Terteling
20 Company, the Terteling Company, Inc., Terteling, we're
21 referring to the same entity for purposes of this
22 deposition?

23 A. Which does not include T-7.

24 Q. Which does not include T-7. And we'll refer to
25 T-7, LLC, as T-7. And, you know --

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1 A. But that's a separate entity.

2 Q. Right. Right.

3 A. The LLC is different than T-7.

4 Q. Well, maybe this is a good juncture -- because
5 this afternoon we have the deposition scheduled of T-7,
6 LLC, maybe this is a good juncture for you to -- are you
7 also going to be the representative at this afternoon's
8 deposition for T-7, LLC?

9 A. The reason I'm hesitating is, I think one of
10 the rights under TICI, Inc., may belong to T-7. I'm not
11 exactly sure whether T-7 or T-7, LLC, but I see the LLC on
12 there.

13 So I can testify -- and when I signed the
14 applications for T-7, I was signing it as the trust of
15 T-7, which we also call Terteling Trust No. 7, Trust 7,
16 but it's technically T-7.

17 Q. Okay.

18 A. So, you know, we can go into that this
19 afternoon.

20 Q. Okay. Well, I mean -- so that you -- what
21 you're saying -- what I hear you saying is that one of the
22 water rights may have been incorrectly claimed in the name
23 of TICI --

24 A. That's correct.

25 Q. -- instead of T-7, LLC?

Page 15

1 A. Well, just on your notice. You broke the two
2 out. I don't think they're incorrectly claimed with the
3 IDWR.

4 Q. Okay.

5 A. But in your typing the numbers, I think you may
6 have one of them switched.

7 Q. Okay. Okay. Maybe we can -- at this -- so
8 this notice that you have before you right now, Exhibit
9 is that -- that, I believe, has all the subcase numbers
10 listed on the caption.

11 A. I don't think it has T-7, though, Exhibit A.

12 Q. Yeah, it does.

13 MR. HONSINGER: I think it does, Joe.

14 MS. HOFSTETTER: It does.

15 THE WITNESS: Okay.

16 MS. HOFSTETTER: It has all of them listed here
17 that are involved in this group of SRBA subcase. It ever
18 has Mr. Niznik's subcase.

19 THE WITNESS: Okay.

20 MS. HOFSTETTER: The Ryans, the Edwards
21 subcase.

22 THE WITNESS: Okay. But my objection is that
23 it's under the Terteling Company, Inc.

24 MS. HOFSTETTER: Right.

25 THE WITNESS: And I don't think it -- Terteling

Page 16

1 Company, Inc., shouldn't include -- you know, I understand
2 to bring the documents, which we've done, but it doesn't
3 imply ownership; is that correct?

4 Q. (BY MS. HOFSTETTER) The notice -- I think
5 you're referring to the subcase numbers identified on
6 the --

7 A. Right.

8 Q. -- first page of Exhibit A? The court has
9 grouped these subcases to proceed together. And so these
10 include -- includes the Edwards right, 63-14, it includes
11 Mr. Niznik's right, 63-5195, it includes the Ryans right.
12 So just to answer your question, it includes the T-7 and
13 the TICI rights.

14 A. And the Niznik and the Edwards.

15 Q. Yeah. All of the ones that are grouped
16 together.

17 A. But you've separated -- I have another one for
18 T-7.

19 Q. Oh. There's one for T-7 that's not on the
20 list? Is that what you're saying?

21 A. No.

22 Q. Oh, you have a different deposition notice?

23 A. Right, so deposition notice.

24 Q. Right. And just for clarity, this morning's
25 deposition is going to focus on the rights claimed by

1 TTCI.

2 A. Okay.

3 Q. Even though all of them are grouped on this
4 notice.

5 A. Okay.

6 Q. And then this afternoon we've scheduled the
7 deposition of T-7.

8 A. Okay.

9 Q. And so we'll focus on the T-7 rights this
10 afternoon. Okay? So, you know, is that helpful clarity
11 about what we're doing this morning?

12 A. Yes, ma'am.

13 Q. I mean, we're going to talk a little bit about
14 T-7, but we're going to focus on the TTCI rights this
15 morning. So my question is just by way of understanding
16 the relationship between T-7 and TTCI, are you also going
17 to be the representative of T-7 at this afternoon's
18 deposition?

19 A. Yes.

20 Q. And is it your understanding you're going to be
21 the only representative of T-7 at this afternoon's
22 deposition?

23 A. Yes.

24 Q. Okay. Could you explain for me the -- you
25 know, why certain rights are claimed by TTCI in the SRBA

Page 18

1 and other rights are claimed by T-7?

2 A. Okay. They're different legal entities.

3 Q. Okay.

4 A. On Exhibit K, the different entities have
5 different ownerships of ground. Exhibit K, the green is
6 T-7, and the yellow surrounding it is TTCI.

7 Q. Okay. So what you're saying is the property
8 outlined in green on Exhibit K is owned by T-7?

9 A. Yes.

10 Q. And the property that's outlined in yellow on
11 Exhibit K is owned by TTCI except for the property owned
12 by T-7 and the property outlined in orange; is that
13 correct?

14 A. Which is the Owyhee Motorcycle Club.

15 Q. So is that correct?

16 A. Yes.

17 Q. Okay. And could you explain why certain
18 properties are owned by T-7 and other properties are owned
19 by TTCI.

20 A. My father originally bought a hundred and
21 sixty acres owned by T-7. I later bought an additional
22 160 acres, which I sold 40 acres to T-7, and 120 acres to
23 TTCI.

24 Q. Okay. So as far as this property that you have
25 outlined on Exhibit K, are you saying that there's a

(208) 345-9611

1 hundred and twenty acres outlined that belong to TTCI on
2 this property?

3 A. No, I didn't say that.

4 Q. Okay. Okay. Okay. So --

5 A. But instead of TTCI, why don't you make it T-7
6 for the -- there's one, two, three, four, five 40s, so
7 there's 200 acres now owned by T-7.

8 Q. Okay. So let -- okay. You said originally
9 your father bought the T-7 property. What year would the
10 have been about?

11 A. '47.

12 Q. Okay. And when he bought it, did he put it in
13 the name -- the ownership in the name of T-7, LLC?

14 A. No.

15 Q. What entity originally held the property?

16 A. Himself, J. W. Terteling.

17 Q. Okay. And at what point did title to that --
18 so that was an original -- just for clarity, that was
19 originally 160 acres that he purchased?

20 A. Yes.

21 Q. And at what point -- what year did you -- you
22 said that you transferred some property from TTCI,
23 40 acres?

24 A. No, I didn't say that.

25 Q. Okay. I thought you said that at a certain

Page 20

1 point you purchased, or the Terteling Company purchased

2 A. No. I said I purchased --

3 Q. Okay.

4 A. -- which is not TTCI.

5 Q. You personally?

6 A. Yes.

7 Q. Okay. So what year did you personally purchase
8 the hundred and sixty acres?

9 A. Let's look at my dates. I don't think I have
10 it on there.

11 Q. Okay.

12 A. What exhibit is the dates?

13 MR. HONSINGER: I believe it's P.

14 MS. HOFSTETTER: Thank you.

15 THE WITNESS: I don't have it on there. But I
16 purchased it from Galindo, G-a-l-i-n-d-o, around, I don't
17 know, '56 I'm guessing, plus or minus two years one way o
18 the other.

19 Q. (BY MS. HOFSTETTER) Okay. So in 1956?

20 A. Plus or minus two years.

21 Q. Okay. You purchased in your own name --

22 A. Yes.

23 Q. -- 160 acres from Galindo; is that correct?

24 A. Yes.

25 Q. And your name, as you mentioned earlier, is

1 Joseph L. Terteling. Are you also sometimes referred to
2 as J. L. Terteling?

3 A. Yes. And also referred to as Joe.

4 Q. Okay. Okay. And then you indicated that at a
5 certain point in time you transferred 40 acres of this
6 160 acres that you purchased from Galindo to your father,
7 J. W. Terteling?

8 A. No, to T-7.

9 Q. To T-7. And what year would that have been?

10 A. Well, Exhibit P -- I don't think I have that on
11 there either. Let me just say in the '80s.

12 Q. Okay. That's good enough.

13 A. And I'm not even sure of that.

14 Q. Okay. That's good enough. I'm just trying to
15 get a general time line here. And when was the -- and by
16 T-7, do you mean T-7, LLC?

17 A. No.

18 Q. Okay.

19 A. T-7, the trust.

20 Q. Okay. So what was the full name of T-7, the
21 trust, originally?

22 A. I believe it's T-7. But we also refer to it as
23 Terteling Trust No. 7.

24 Q. Okay. Do you recall when Terteling Trust No. 7
25 was created, approximately?

1 A. I'll say '60s.

2 Q. Okay.

3 A. But I'm not sure of that either.

4 Q. Okay. And it sounds like at some point the
5 Terteling Trust No. 7 was changed to T-7, LLC; is that
6 correct?

7 A. No.

8 Q. Okay. At what point was T-7, LLC, created?

9 A. I'm going to guess a couple of years ago, three
10 years ago.

11 Q. And at the time T-7, LLC, was created, were all
12 the assets of Terteling Trust No. 7 conveyed to T-7, LLC?

13 A. No.

14 Q. No. Were certain assets conveyed to T-7, LLC?

15 A. I'm not sure. So the answer is, I don't know.

16 Q. Okay.

17 A. But to help you, T-7 owns a hundred percent of
18 the limited partner -- the limited company, T-7, LLC. So
19 the ownership is still owned by T-7.

20 Q. Okay. And I'm getting confused between -- when
21 you refer to T-7, sometimes we talk about the T-7 Trust,
22 and sometimes we're talking about T-7, LLC.

23 A. But T-7, Terteling Trust No. 7, owns a hundred
24 percent of T-7, LLC.

25 Q. I got you. Okay. So the Terteling Trust owns

1 a hundred percent -- Terteling Trust No. 7 owns a hundi
2 percent of T-7, LLC?

3 A. That's correct. So when you ask ownership, I
4 know the ownership is in T-7. I don't know exactly wh
5 the LLC has.

6 Q. Thank you for that information. That clears
7 things up a great deal. Okay. And we can get more into
8 that -- to the T-7 issues this afternoon. I don't want
9 to -- but just for reference, who are the trustees of
10 Terteling Trust No. 7?

11 A. Myself. J. N. Terteling.

12 Q. And could you give me the full name for
13 J. N. Terteling?

14 A. Joseph Nixon.

15 Q. And who would that be?

16 A. My oldest son.

17 Q. Okay. Any other trustees?

18 A. Yes.

19 Q. Okay.

20 A. Tom, which is Thomas Edwards.

21 Q. Last name?

22 A. Terteling.

23 Q. Thank you. Any other?

24 A. Andy. Andy James Terteling.

25 Q. Any other trustees?

1 A. Not if you have four.

2 Q. I do have four. Other than yourself, the three
3 other trustees are your sons; is that correct?

4 A. That's correct.

5 Q. And who are the beneficiaries of Terteling
6 Trust No. 7?

7 A. They're grandchildren, my sons' children and
8 grandchildren.

9 Q. Your sons' children and your grandchildren,
10 which would be your grandchildren?

11 A. Well, it could also be their grandchildren.
12 It's a generation-skipping trust.

13 Q. Okay.

14 A. So it depends how many generations we skip
15 here.

16 Q. Oh.

17 A. But, obviously, you're going to skip myself and
18 my sons.

19 Q. Okay. So it's your grandchildren and --

20 A. Perhaps more.

21 Q. Perhaps more. Okay.

22 A. Based on timing.

23 Q. Okay. Any other beneficiaries besides your
24 grandchildren and their descendants?

25 A. Not if some of those are living.

1 Q. Say that again.

2 A. If they're living, then it goes to them. If
3 they're not living, then it's distributed differently.

4 Q. Okay. So the only living beneficiaries at this
5 point are your grandchildren?

6 A. That is correct. Unless you get into income.

7 Q. Okay. Okay. Who's entitled -- besides your --
8 who's entitled to income under the trust?

9 A. In the trust itself, my children. And that's
10 under T-7. That's not true in T-7, LLC.

11 Q. Okay. And we've just been talking about the
12 trust at this point. So the beneficiaries of the trust
13 are your grandchildren, but your children have the right
14 to income from the trust. And we'll talk about the LLC

15 A. That's the way it was originally set up, but I
16 don't think that's true today.

17 Q. Okay. How is it true today? I don't want to
18 get too complicated here, but --

19 A. I think it distributes to the LLC, and the LLC
20 makes the distribution.

21 Q. Okay. Okay. So this was how it was -- what
22 you just described as far as the beneficiaries was how it
23 was originally set up, and it may be set up a little
24 different as a result of the formation of T-7, LLC? Is
25 that what you're saying?

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1 A. That's what I believe.

2 Q. Okay. So let's discuss now T-7, LLC. And is
3 that an Idaho limited liability company?

4 A. Yes.

5 Q. And why was it created?

6 A. I'm not sure.

7 Q. Was it advice of counsel -- created by legal
8 advice -- because of legal advice?

9 A. It could be that, or it could be CPAs, too.

10 Q. Okay. Thank you. So let's talk about -- who
11 are the members of T-7, LLC?

12 A. Okay. There are two.

13 Q. Okay.

14 A. Tom Terteling and Andy Terteling.

15 Q. Okay. And both of those are your sons?

16 A. That's correct.

17 Q. And both are also trustees of the Terteling
18 Trust No. 7; is that correct?

19 A. Yes.

20 Q. Okay. And who are the managers of T-7, LLC?

21 A. That's covered above. You just asked that
22 question.

23 Q. I asked who the members.

24 A. Oh, members. Oh, managers?

25 Q. Yeah. Okay. So -- yeah. Who are -- we want

1 to go back to members. Who are the members of T-7, LLC?

2 MR. HONSINGER: We do want to go back to
3 members.

4 THE WITNESS: Oh. I --

5 Q. (BY MS. HOFSTETTER) Okay. Were those the
6 managers?

7 A. Yeah, those are the managers.

8 Q. Okay. So let's just clarify that. Okay. So
9 Tom Terteling and Andy Terteling, your sons, are the
10 managers --

11 A. That's correct.

12 Q. -- of T-7, LLC?

13 A. Yeah. Sorry about that. I missed manager and
14 members.

15 Q. That's okay. Okay. Who are the members of
16 T-7, LLC?

17 MR. HONSINGER: Counsel, earlier Mr. Terteling
18 stated that Terteling Trust No. 7 is the sole owner, one
19 hundred percent owner of T-7, LLC.

20 MS. HOFSTETTER: That's correct. I apologize
21 for that. Okay. That's right.

22 Q. (BY MS. HOFSTETTER) Okay. So the sole membe
23 of T-7, LLC, would be the Terteling Trust No. 7?

24 A. That's correct.

25 Q. So any income or assets of T-7, LLC, would

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1 belong to the trust beneficiaries; is that correct?

2 A. I think that covers today's children and
3 future --

4 MR. HONSINGER: I'm going to object. It calls
5 for a legal conclusion, but go ahead and answer.

6 THE WITNESS: I think -- you said assets?

7 Q. (BY MS. HOFSTETTER) Any of the assets --

8 A. And income.

9 Q. -- and income of T-7, LLC, would pass to the
10 beneficiaries pursuant to the trust; is that correct?

11 A. Yes.

12 Q. Okay. So let's go back now -- thank you for
13 those clarifications -- back now to the property, the real
14 property. And we were talking about Exhibit K. And you
15 were explaining that originally your father,
16 J. W. Terteling, purchased 160 acres that is now owned b
17 T-7, LLC; is that correct?

18 A. Yes.

19 Q. And you indicated of the property identified on
20 Exhibit K there's about 200 acres belonging to T-7, LLC?

21 A. Yes, now.

22 Q. And a hundred sixty of those acres, would they
23 be the 160 acres that were purchased by J. W. Terteling in
24 about 1947?

25 A. I think we covered that. My answer is the

1 same, and that's, yes.

2 Q. Okay. Okay. Could you explain how T-7, LLC,
3 obtained title to the approximate additional 40 acres that
4 it now owns.

5 A. I think we've covered that under the Galindo
6 sale. But I bought that myself -- we guessed as to the
7 date -- and then I transferred 40 acres of that ground to
8 T-7. I think that's repetitive.

9 Q. And in what year approximately did you transfer
10 the 40 acres to T-7?

11 A. I guessed earlier 1956, plus or minus two
12 years.

13 Q. And when we talk about T-7, are you referring
14 to -- you're referring to the trust, because T-7, the LLC,
15 didn't exist until about three years ago; is that correct?

16 A. That's correct.

17 Q. Okay. So the 200 acres identified on Exhibit K
18 as belonging to T-7, that would be -- today that T-7 would
19 refer to T-7, LLC; is that correct?

20 A. No.

21 Q. Okay. Could you clarify what's the -- who
22 owns -- what entity is referred to as T-7 on Exhibit K?

23 A. The Terteling Trust 7.

24 Q. Okay.

25 A. It's technically T-7, legally, but I believe

1 it's also referred to as the Terteling Trust No. 7.

2 Q. Okay. So if we were to look at the deeds --
3 the last deed for this property that's of record, it would
4 of -- the property would -- that deed would reflect that
5 the property's in the name of the Terteling Trust No. 7?

6 A. That's what I think, but I'm not exactly sure
7 what T-7, LLC, holds. So I'm not sure.

8 Q. Okay. Okay. But just for purposes of the
9 deposition today -- the depositions today, T-7 on
10 Exhibit K refers to property that's either owned by the
11 Terteling Trust No. 7, or T-7, LLC?

12 A. And T-7 owns the LLC.

13 Q. Right.

14 A. So it owns it one way or the other.

15 Q. Okay. So is that a yes to my question, that
16 this T-7 indicates either ownership in the Terteling Trust
17 No. 7, or in T-7, LLC, you're not sure exactly who
18 holds -- which entity holds title to this property at this
19 point in time?

20 A. I did an hour ago, but I don't now, so...

21 Q. So T-7, does it refer to one of those two
22 entities --

23 A. Yes.

24 Q. -- the trust, or the LLC?

25 A. Yes, that's covered.

1 MR. HONSINGER: To the extent you know, right?

2 THE WITNESS: Yeah, I guess.

3 Q. (BY MS. HOFSTETTER) Okay. Okay. Okay.

4 now I'd like to turn our attention to the property on
5 Exhibit K that's outlined in yellow except for the green
6 property and the orange outlined property. And I believe
7 you stated earlier that the property outlined in yellow
8 except for the green and orange is owned by TTCI?

9 A. That's correct. Except the map doesn't cover
10 all the ground. There's ground to the north that isn't
11 included in that map that's also owned by TTCI.

12 Q. Okay. And why is -- why did you provide this
13 map if it doesn't include all the TTCI property?

14 A. Because that's what I had earlier made that had
15 the quarter corners to quarter corners. And I thought we
16 were referring to where the water is, that it'd be handy
17 if you wanted to know what the northwest and the northwest
18 was.

19 Q. Okay. So about how many acres -- contiguous
20 acres are owned by TTCI, but are not on this Exhibit K?

21 MR. HONSINGER: Exhibit M might be helpful in
22 this regard, Counsel.

23 MS. HOFSTETTER: Okay. Thank you.

24 Q. (BY MS. HOFSTETTER) I'm handing you what's
25 been marked as Exhibit M. And does Exhibit M show the

1 complete TTCI property outlined in yellow?

2 A. No.

3 Q. It does not?

4 A. That is correct, it does not.

5 Q. About how many acres owned by TTCI are not
6 shown on Exhibit M?

7 A. You asked for approximate. The answer is maybe
8 about three 40s.

9 Q. Are the three 40s -- and by three 40s, you mean
10 three 40-acre tracts?

11 A. Yes.

12 Q. Are the three 40-acre tracts depicted on
13 Exhibit M? Can you, in other words, identify those
14 approximate three 40-acre tracts on Exhibit M that appear
15 to be omitted from the yellow boundaries?

16 A. I would guess that they're the south half -- I
17 got to break it up. Forget the legal. Take Section 21.

18 Q. Yes.

19 A. See the yellow border?

20 Q. Yes.

21 A. There's some additional land to the west of
22 that that's not depicted.

23 Q. Can you outline the additional land that you
24 believe belongs to TTCI in that area? With your pencil's
25 fine.

1 A. The answer is, no, because it doesn't follow
2 section lines, and it's irregular piece of ground. But
3 there are -- I was going to stipulate there's no wells on
4 there, but actually there is a well on it. See the green
5 well, Tom's Springs?

6 Q. Yes.

7 A. That's actually on the ground that's not
8 included on this map.

9 Q. Okay. And it looks to me like Tom's Springs
10 Well is in blue, but...

11 A. It is cold water.

12 Q. Okay. Okay. So -- okay. So you would -- it
13 sounds like you would estimate that there's about another
14 120 acres in Section 21 that's owned by TTCI that's not in
15 the yellow boundaries and --

16 MR. HONSINGER: Objection. I think that
17 mischaracterizes his testimony.

18 Q. (BY MS. HOFSTETTER) Okay. Well, could you
19 explain then --

20 A. The 120 is too large. I know there's a 40.

21 Q. Okay.

22 A. And then the others are chopped up some, and
23 it's a hundred feet off of some other borderline, and then
24 it goes down and follows the road for a ways. So could we
25 just call it something in 21?

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1 Q. Okay. Some additional acreage in 21 that's not
2 in the yellow boundaries?

3 A. That's correct, and it includes Tom's Springs.

4 Q. Okay. The additional acreage owned by TTCI in
5 Section 21 that is not depicted in the yellow boundaries
6 would have only one well on it, to your knowledge?

7 A. That's correct.

8 Q. And that well --

9 A. No, it's not a well. It's a spring.

10 Q. Okay. So it would have only one water
11 diversion point on that additional property; is that
12 correct?

13 A. I believe so.

14 Q. Okay. And would that additional diversion
15 point be what's referenced as Tom's Springs on Exhibit M?

16 A. Yes.

17 Q. Thank you. Okay. Now --

18 A. Can I back up a little bit?

19 Q. Sure.

20 A. There's a question pending as to how many acres
21 are in the yellow? And I counted 22 40s.

22 Q. Okay.

23 A. Which would be some 880 acres --

24 Q. Okay.

25 A. -- plus or minus a correction section.

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1 Q. Okay. So what I'd like to do now is just
2 briefly go through and explain how TTCI and when TTCI
3 obtained title to those 880 acres. So does the TTCI
4 property include any portion of the property you purchase
5 from Galindo?

6 A. Yes.

7 Q. About how many acres of the 880 acres were
8 purchased by you from Galindo in about the year 1956?

9 A. Three 40s, so it'd be 120.

10 Q. Okay. And for the remaining approximately
11 700 acres, could you explain when and in what transaction
12 TTCI obtained title to those, or how TTCI obtained title
13 to those.

14 A. The time is going to take a little longer to
15 guess at the dates, but I can tell you in chronological
16 order what I acquired. The Galindo would have been first
17 that now is owned by TTCL. Then I bought three 40s from
18 Martin in Section 22.

19 Q. In what year?

20 A. I don't know. You know, we can back into that
21 if it's that important. Then I bought 600 acres up in 15,
22 from Finwick, that was later transferred to TTCL.

23 Q. And do you know about what year that would have
24 been?

25 A. You know, it's going to take a long time to try

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1 to back into it. We can look at my dates here.

2 Q. So you're referring to Exhibit P?

3 A. Yes. But I don't think I put that in there.

4 Then I bought in 21 two 80s, plus some additional ground
5 to the north, which is in the west half of 15, from
6 Finley.

7 Q. And what year was that, did you say?

8 A. I didn't.

9 Q. Okay. So two 80s, an additional ground in
10 Section --

11 A. Fifteen.

12 Q. -- from Finley?

13 A. Finley. And that pretty well comprises the
14 880 acres.

15 Q. So it sounds like to me each of these -- you've
16 listed four different transactions involving your purchase
17 of property.

18 A. You know, and when I say mine, I'm not sure
19 Finwick wasn't purchased directly by TTCL. I'm beginning
20 to think that's correct.

21 Q. Okay.

22 A. And probably if I back up, probably Finley was
23 purchased by TTCL rather than myself.

24 Q. Okay. And then the Galindo, though, you
25 mentioned was purchased by you personally; is that

1 correct?

2 A. That's correct.

3 Q. And in what year, do you know, that you
4 transferred it to TTCI?

5 A. Well, this -- you know, I guess it was the same
6 time when we transferred the 40 acres to T-7, and we
7 guessed '56 plus or minus two years.

8 Q. Thank you. And then the three 40s that you
9 purchased from Martin, did you purchase those personally?

10 A. You know, I'm not sure. I remember I was
11 trying to throw my '63 Riviera in on the trade. So I
12 don't really remember who wound up with the ownership.

13 Q. Maybe that's an indication of the year, '63?

14 A. It was after '63 that I had that car.

15 Q. Okay. But, in any event, would it be safe to
16 say that it was either purchased by you -- the Martin
17 piece was purchased by you or by TTCI directly?

18 A. That's correct.

19 Q. And at some -- if it was purchased by you, at
20 some point in time you conveyed it to TTCI?

21 A. That's true.

22 Q. These conveyances to TTCI of the Galindo
23 property and perhaps the Martin property that you made,
24 did you receive any consideration for those transfers to
25 TTCI?

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1 A. Yes.

2 Q. Could you explain how much consideration you
3 received for the -- the nature of the consideration you
4 received for conveying the Galindo to TTCI.

5 A. I don't recall, but it's probably transfers of
6 value in dollars. You know, if I transferred it, somebody
7 appraised it and --

8 Q. So would you have received fair market value at
9 the time of the transfer?

10 A. Yes.

11 Q. For both the Galindo property and the Martin
12 property, if you did --

13 A. Yeah.

14 Q. Okay.

15 A. The answer's yes.

16 Q. And would the fair market value perhaps be
17 shares or other ownership interest in TTCI?

18 A. No.

19 Q. Would it have been cash?

20 A. Cash equivalence. Probably two transactions on
21 some books.

22 Q. Okay. Okay.

23 MR. HONSINGER: Counsel, we've been at this for
24 about an hour, and my client did mention to me that he'd
25 like to take a break about every hour if we could.

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1 MS. HOFSTETTER: Okay.

2 MR. HONSINGER: So if we can take a five-minu
3 break, that'd be great.

4 MS. HOFSTETTER: That'd be find.

5 MR. HONSINGER: Thanks.

6 (A brief recess was taken.)

7 MS. HOFSTETTER: Okay. So we're back on the
8 record.

9 Q. (BY MS. HOFSTETTER) Mr. Terteling, does T
10 own the -- has it -- does it own any additional property
11 on Exhibit M besides the approximate -- the acreage that
12 you indicated in Section 21 that's not depicted in the
13 yellow boundary?

14 A. The answer is yes. In Section 29 there's three
15 hot water wells and two cold water wells shown as Silkey
16 Tiegs, and House for hot the water wells.

17 Q. Okay. And about how many acres in that area
18 does TTCI own?

19 A. I don't know.

20 Q. Could you draw a rough outline of the property
21 in Section 29 on Exhibit M that is owned by TTCI.

22 A. I think the three circles are close, but I'm
23 not sure.

24 Q. Which three circles are you referring to?

25 A. Silkey, House, and Tiegs.

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1 Q. Okay.

2 A. But it has North Cold and South Cold. I think
3 the south is too far south, but I'm not sure.

4 Q. So approximately TTCI also owns the ground
5 associated with five of the six circles depicted in
6 about -- in Section 29; is that correct?

7 A. I don't know. I'm just winging it.

8 Q. Okay. Which ones can you say definitely --
9 which of these circles in Section 29 on the boundary of
10 Section 28 --

11 A. We have a larger map that shows that that's
12 been submitted as an exhibit.

13 Q. Okay. Which exhibit would that be?

14 MR. HONSINGER: Is it J?

15 THE WITNESS: J.

16 Q. (BY MS. HOFSTETTER) Okay. I'm going to han
17 you Exhibit J. Now, Exhibit J, could you explain where
18 that -- what's depicted on Exhibit J would be located on
19 Exhibit M?

20 A. For the third time, it's under the three red
21 dots in Section 29 labeled Silkey, House, and Tiegs.

22 Q. Okay. So the property depicted as Exhibit J is
23 owned by TTCI; is that correct?

24 A. Yes.

25 Q. And the property depicted on Exhibit J --

1 A. Wait a minute. I answered that as J. When I
 2 said, yes, what --
 3 Q. J.
 4 A. Oh.
 5 Q. I had asked you about J.
 6 A. Okay. So you're still on J.
 7 Q. Okay. Now, I'm going to make the leap over to
 8 M. Just for point of reference, the property depicted on
 9 Exhibit J is approximately the Silkey, House, and Tiegs
 10 orange dots on Exhibit M; is that correct?
 11 A. Well, for the third time, I said I believe it's
 12 under Silkey, House, and Tiegs. So -- but, you know, to
 13 say absolutely correct, I don't know. I'm just saying
 14 approximate is correct.
 15 Q. Okay. Now, could you explain the north --
 16 what's depicted on Exhibit M as North Cold and South Cold?
 17 A. North and South Cold? Put your finger on it --
 18 MR. HONSINGER: Right here.
 19 MS. HOFSTETTER: Right next to Silkey, House --
 20 THE WITNESS: Oh, Cold. Cold. I don't hear
 21 very well. I heard Cole, like Cole Road.
 22 MS. HOFSTETTER: Yeah, and I don't speak very
 23 well, so...
 24 THE WITNESS: Okay. What was your question
 25 again?

1 Q. (BY MS. HOFSTETTER) So my question is, the
 2 circles identified as North Cold and South Cold on
 3 Exhibit M, what does -- what are those -- what does that
 4 refer to?
 5 A. Well, there is a cold water well along Catalpa,
 6 and it's so labeled on M as Catalpa Drive in blue. I'm
 7 not sure whether the South Cold is shown on Woody or
 8 whether -- it looks too far south for the property line,
 9 but I'm not absolutely sure, you know, where the property
 10 line is on Exhibit M.
 11 Q. Who owns the property on which the North Cold
 12 and South Cold are located?
 13 A. Well, I need to separate them. The North Cold
 14 is TTCI. The South Cold, I'm not sure whether it's on the
 15 Woody property. But -- so I think it's more reference
 16 maps, you know, showing the area and the location than
 17 defining area.
 18 Q. Okay. Who owns the Woody property?
 19 A. Flinda, F-l-i-n-d-a, Terteling.
 20 Q. And is Flinda Terteling your wife?
 21 A. Yes.
 22 Q. Thank you. Does North Cold refer to a
 23 so-called cold water well?
 24 A. Yes.
 25 Q. And does South Cold refer to a so-called cold

1 water well?
 2 A. I'm not exactly sure what South Cole is --
 3 Cold.
 4 Q. Okay. What kind of entity is TTCI?
 5 A. Corporation. Inc., making it a corporation.
 6 Q. Is it an Idaho corporation?
 7 A. Yes.
 8 Q. Who are the current officers of TTCI?
 9 A. Okay. Myself, president; Flinda,
 10 F-l-i-n-d-a --
 11 Q. Terteling, correct?
 12 A. -- executive vice president and secretary; Tom
 13 Terteling, vice president; Andy Terteling, vice presiden
 14 and that's the officers. Are you interested in board of
 15 directors?
 16 Q. Okay. Yes, I am. But first, just to clarify,
 17 Flinda Terteling is your wife?
 18 A. Yes.
 19 Q. Tom Terteling and Andy Terteling are your son
 20 is that correct?
 21 A. Yes.
 22 Q. I'm interested in the directors if you would.
 23 A. Okay. Myself.
 24 Q. Are you chairman of the board?
 25 A. Probably. And Jim Gallagher, G-a-l-a-g-h-e-r.

1 Q. And who is Jim Gallagher?
 2 A. He's a trustee, what used to be Seafirst Bank,
 3 which I think is Bank of America now, I think.
 4 Q. So he's not a family relation?
 5 A. No. That's correct. He's a bank employee.
 6 Q. Any other directors?
 7 A. No.
 8 Q. So TTCI has just two directors?
 9 A. That's correct.
 10 Q. Shareholders. How many shareholders does TTCI
 11 have?
 12 A. One.
 13 Q. And who is that?
 14 A. Terteling Holding Company.
 15 Q. And what kind of entity is Terteling Holding
 16 Company?
 17 A. It's an Idaho corporation.
 18 Q. And who are the shareholders in Terteling
 19 Holding Company?
 20 A. Terteling Trust No. 6, which is also referred
 21 to as T-6.
 22 Q. Any other shareholders?
 23 A. No.
 24 Q. Who are the officers of Terteling Holding
 25 Company?

1 A. Myself as president.
 2 Q. Any others?
 3 A. I'm sure my wife is secretary. And you want
 4 board of directors?
 5 Q. Okay. So just two officers?
 6 A. That's what I think.
 7 Q. Okay.
 8 A. Could be different, but that's what I think.
 9 Q. Yeah. And the board of directors?
 10 A. Myself and Jim Galagher.
 11 Q. Okay. Well, I need to talk about Terteling
 12 Trust No. 6. It sounds like that's a trust; is that
 13 correct?
 14 A. That's correct. It's a generation-skipping
 15 trust.
 16 Q. And it's different from Terteling Trust No. 7;
 17 is that correct?
 18 A. Yes.
 19 Q. Who are the beneficiaries of Terteling Trust
 20 No. 6?
 21 A. The male Terteling, and it's the same as the
 22 other, whether grandchildren, or who's living at that
 23 time, or born at that time, both.
 24 Q. So that would include you and your descendants;
 25 is that correct?

1 A. Well, descendants throw sons in there, and the
 2 income provision is the same, but the corpus goes to the
 3 male and female -- no, no, just male grandchildren, and
 4 whatever past grandchildren -- great-grandchildren.
 5 Q. Grandchildren and great-grandchildren of who?
 6 A. Myself.
 7 Q. So any beneficiaries other than your
 8 grandchildren and great-grandchildren?
 9 A. Not if they're living.
 10 Q. And who's the trustee or trustees of Trust --
 11 A. Myself and Jim Galagher.
 12 Q. Okay. Okay. And just for clarity, does TTCI
 13 own any property in addition to what's depicted on
 14 Exhibit M?
 15 A. Yes.
 16 Q. And where would such other property be located
 17 generally?
 18 A. Idaho. Oregon. Washington. Wyoming.
 19 Montana. Did I already say Montana?
 20 Q. Does TTCI own any other property in Ada County
 21 other than what's depicted on Exhibit M, plus the
 22 omissions in Sections 29 and Sections 21?
 23 A. Yes.
 24 Q. What other property depicted on Exhibit M --
 25 A. Oh, oh, depicted on Exhibit M? No, I don't

1 believe so.
 2 Q. Okay.
 3 A. Let's see how far -- is Seaman Gulch on there?
 4 No. I -- I -- I think that covers it.
 5 Q. Okay. So Exhibit M covers -- the property --
 6 TTCI owns the property in yellow on Exhibit M, plus some
 7 additional property in Section 21, plus some property in
 8 Section 29 and no -- and besides that, it owns nothing
 9 else depicted on Exhibit M; is that correct?
 10 A. I believe so.
 11 Q. Okay. Okay. Looking at Exhibit M, it looks
 12 like there's a number of wells identified on Exhibit M,
 13 and I'd like to just, you know, sort of discuss each one
 14 individually. And maybe we'll start at the top.
 15 Terteling -- the first one I see is Terteling Springs
 16 Source.
 17 A. Okay.
 18 Q. What kind of diversion does Terteling -- is on
 19 the Terteling Springs Source?
 20 MR. HONSINGER: Counsel, just so you're aware,
 21 Mr. Terteling is going to refer to Exhibit O as he
 22 answers.
 23 MS. HOFSTETTER: Okay. Thank you.
 24 Q. (BY MS. HOFSTETTER) Well, perhaps what you can
 25 do is give me -- you know, if you -- you know, you can

1 give me the respective water right number for each of
 2 those, or however you want to do it. I mean, you're
 3 referring to Exhibit O. I was just going to ask you --
 4 A. I underlined it, but you have one, also.
 5 Q. Okay.
 6 A. So it will save you writing it down.
 7 MR. HONSINGER: It's right here, Dana.
 8 MS. HOFSTETTER: Okay.
 9 THE WITNESS: We probably should have numbered
 10 these A, B, C, or one, two, three so you could run down
 11 them.
 12 MR. HONSINGER: Do you want him to refer to the
 13 actual exhibit with the exhibit sticker on it?
 14 MS. HOFSTETTER: Oh, here, yeah. You know --
 15 MR. HONSINGER: There you go.
 16 MS. HOFSTETTER: I was just going to go off the
 17 map, but if you want to go off of Exhibit O, that's fine.
 18 THE WITNESS: I don't care. The map's fine by
 19 me.
 20 Q. (BY MS. HOFSTETTER) I was just going to ask
 21 you generally -- first of all, let's just start here.
 22 Terteling -- does Exhibit M identify all of the wells on
 23 the property outlined -- let me back up again. I'm going
 24 to rephrase that question. Does the -- are all the wells
 25 on the property owned by TTCI identified on Exhibit M?

1 A. I don't know.
 2 Q. Are any missing?
 3 A. I don't know that either.
 4 Q. Okay.
 5 A. Not to my knowledge.
 6 Q. Okay. So -- okay. So you believe of the

7 property --

8 A. But -- but --

9 Q. Yeah.

10 A. Wait a minute.

11 Q. Yeah.

12 A. You get up north, there's some wells that are
 13 missing. So I --

14 MR. HONSINGER: Answer the question the best
 15 that you can.

16 THE WITNESS: The answer is, I don't know.

17 MS. HOFSTETTER: Okay.

18 THE WITNESS: But whoever did, did a good job
 19 of trying to get them all.

20 MS. HOFSTETTER: Okay.

21 THE WITNESS: But I'll bet there's springs and
 22 stuff that are missing.

23 Q. (BY MS. HOFSTETTER) Okay. Are all of TTCI's
 24 geothermal wells depicted on Exhibit M?

25 A. The easiest answer is to say some are labeled

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1 hot. I think the intent was to have them in red and -- so
 2 I think there's a fair representation. But I can't tell
 3 you whether it's all or not without matching, you know,
 4 against the number or writing the number on there.

5 Q. Okay. Okay. All right. Let's just go based
 6 on the dots that are represented. Oh, I see what you're
 7 saying. There is a key on Exhibit M, and it suggests that
 8 geothermal wells are identified with an orange dot?

9 A. Yes.

10 Q. So is the Terteling Springs Source in
 11 approximately Section 15, would that be a geothermal
 12 source?

13 A. No.

14 Q. So you think that one's incorrect? 'Cause it's
 15 an orange dot, isn't it?

16 A. Well, the word source is confusing to me,
 17 because we have springs that are cold, and we have an
 18 Artesian well that runs hot and cold. So I'm not sure
 19 exactly what the definition of source is.

20 Q. Okay. So what --

21 MR. HONSINGER: Can we go off the record for a
 22 second?

23 MS. HOFSTETTER: Sure. Let's go off the
 24 record.

25 (Off-the-record discussion.)

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1 MS. HOFSTETTER: Okay. Let's go back on the
 2 record now.

3 Q. (BY MS. HOFSTETTER) Okay. Let's go back to
 4 what's identified as Terteling Springs Source. And is
 5 that a well or some other kind of diversion works at that
 6 location, first of all?

7 A. The word source is confusing to me. If it's
 8 63-27649, it's a spring that flows into a reservoir.

9 Q. So do you believe what's identified as
 10 Terteling Springs Source on Exhibit M would be associated
 11 with what water right number again?

12 A. 63-27649.

13 Q. And what kind of a diversion system do you
 14 believe is associated with that location?

15 A. I don't know what that word is. Well, what it
 16 does is there's a -- the reason it's called Three Springs
 17 is it's dug out in three directions. So there's three
 18 flows of water that come together, then they collect into
 19 a pipe, go under a road, into a reservoir.

20 Q. So are there -- I'm trying to understand. Are
 21 there three springs -- three different springs at that
 22 location?

23 A. You know, the word different would call for a
 24 geological conclusion. All I know is they're dug out
 25 about 30 feet apart in three areas and then they flow

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1 together. So I think that's where it gets its name, Three
 2 Springs.

3 Q. Okay. So what's called Terteling Springs
 4 Source is also sometimes referred to as Three Springs?

5 A. Well, that's what I nickname it to separate it
 6 from other springs.

7 Q. And there's some sort of a collection system at
 8 that location to --

9 A. Right. They come together, flow into a pipe,
 10 the pipe flows under a road, into a reservoir.

11 Q. Is that water geothermal?

12 A. No. And I say, no, that I don't believe I've
 13 ever measured the temperature. But it's ground water at
 14 the surface.

15 Q. And based on your experience it doesn't feel
 16 warm?

17 A. I think the only time I grabbed it is I dug it
 18 out -- my dog got in it and he was sinking into the
 19 quicksand, and I grabbed him by the collar, and I could
 20 just barely pull him out. So I've never seen quicksand
 21 before. So I think I grabbed his collar. Other than
 22 that, I don't think I've ever put my hand in it.

23 Q. Okay. So you're not sure if it's hot or cold?

24 A. I wish it wasn't registered red here.

25 Q. Okay. So you think it may be incorrect, but

1 it's identified as geothermal here?

2 A. I think that's incorrect. I'd guess it's below
3 86 degrees.

4 MR. HONSINGER: I'm going to object, Counsel.
5 I don't see where it is identified as geothermal --

6 THE WITNESS: Well, it's just that --

7 MR. HONSINGER: -- on the map.

8 THE WITNESS: It's the red dot.

9 MS. HOFSTETTER: Yeah.

10 THE WITNESS: But it isn't registered hot here.

11 MS. HOFSTETTER: And by here you're --

12 THE WITNESS: On Exhibit zero.

13 MS. HOFSTETTER: Exhibit O?

14 THE WITNESS: Can you find springs?

15 Q. (BY MS. HOFSTETTER) And if it were hot, it
16 would -- it'd be identified as hot on Exhibit O is what
17 you're saying?

18 A. Yes.

19 Q. Okay. So these springs, is there a controlling
20 works on them? Can you valve them down?

21 A. No.

22 Q. They're just free flowing?

23 A. Yes.

24 Q. Okay. Let's go next to the next orange dot,
25 which is OMC -- identified as OMC. Is that on the T-7

1 property?

2 A. Yes.

3 Q. Okay. And what does OMC stand for?

4 A. Well, the arrow is going toward what's labeled
5 here Terteling Springs, but the OMC --

6 Q. Oh, I got you.

7 A. -- names the box that's owned by the orange
8 Owyhee Motorcycle --

9 Q. Okay. Okay.

10 A. -- Club.

11 Q. Let's not talk about the T-7 wells. We're
12 going to discuss that this afternoon.

13 A. Okay.

14 Q. So the Terteling -- what's identified on
15 Exhibit M as Terteling Springs Source that we were just
16 discussing, is that on T-7 property, or on TPCI property?

17 A. T-7.

18 Q. Oh, that's actually on T-7 property. Okay.

19 A. And I believe the Terteling Springs is also on
20 T-7's property.

21 Q. Okay. So we'll discuss those further this
22 afternoon. Let's discuss next what's identified in

23 Section 14 as Steve's Well. Who is Steve?

24 A. It would be Steve Terteling.

25 Q. And so is that the well associated with

1 63-32589, I believe, let's see, 32895?

2 ANDY TERTELING: There's going to be more th
3 one. We've got -- sorry.

4 MR. HONSINGER: Let Joe testify. Okay?

5 ANDY TERTELING: I'm sorry.

6 THE WITNESS: Okay. Steve's Well, I believe,
7 is 63-31060.

8 Q. (BY MS. HOFSTETTER) And why is this called
9 Steve's Well?

10 A. I have no idea.

11 Q. And do you know who Steve refers to?

12 A. Yes, Steve Terteling.

13 Q. Okay. And was Steve Terteling your son?

14 A. Yes.

15 Q. And Steve Terteling passed away; is that
16 correct?

17 A. Yes.

18 Q. So it looks like Steve's Well is outside the
19 TPCI property boundary; is that correct?

20 A. But it's not.

21 Q. Okay. It should be within the boundary?

22 A. That is correct.

23 Q. Okay.

24 A. Yeah, the boundary's not drawn correct. So my
25 880 acres are wrong.

1 Q. Okay. So there may be some other errors on
2 Exhibit M as far as the yellow boundary; is that correct?

3 A. Well, we found one.

4 Q. Okay. Okay. So Steve's -- what's depicted as
5 Steve's Well is on property owned by TPCI; is that
6 correct?

7 A. Yes.

8 Q. Okay. And do you know what -- again, for the
9 record, what water right number is associated with Steve's
10 Well?

11 A. 31060.

12 Q. Okay. And is that a geothermal?

13 A. No.

14 Q. Okay. Okay. So let's go down to -- I guess
15 the next one down -- working our way down is the Champagne
16 Well. Is the Champagne Well a geothermal well?

17 A. No.

18 Q. What water right number or numbers are
19 associated with the Champagne Well?

20 A. Can I skip the 63 on all of them?

21 Q. Yes.

22 A. 7595.

23 Q. Okay. Okay. We're going to leave the T-7
24 wells for this afternoon. So that -- would Peaceful Cove
25 be T-7, it's sort of on the line there?

1 A. Yes.

2 Q. And Andy's Cold would also be T-7?

3 A. Yes.

4 Q. Okay. So let's go next to Tom's -- what's
5 identified as Tom's Springs in Section 21.

6 A. Okay.

7 Q. What water right number would be associated
8 with that well?

9 A. 31061.

10 Q. Okay. And is Tom's Springs a geothermal
11 source?

12 A. No.

13 Q. Okay. So let's go next to Tom's Hot Well. Do
14 you know what water right number would be associated with
15 Tom's Hot Well?

16 A. 31059.

17 Q. And is Tom's Hot Well a geothermal source?

18 A. Yes.

19 Q. And do you know how deep that well is?

20 A. No, but I could say 600 plus or minus.

21 Q. You mean 600 feet plus or minus?

22 A. Yes.

23 Q. How can you say 600 feet deep if you don't know
24 for sure? What's the basis of your knowledge that you
25 think it's about 600 feet deep plus or minus?

1 A. The Windsock Well is about 600 feet. So I'm
2 guessing they're all, through the blue clay, to about the
3 same depth. And, technically, it's not blue clay. That's
4 what the old well drillers used to call it. It's a shale.

5 Q. So are you basically saying in your experience
6 it takes about a 600-foot deep well to encounter the
7 geothermal water at this location?

8 A. That's correct. But he's higher up on the
9 hill. So that's why I'm saying plus or minus.

10 Q. Okay. Okay. Okay. Let's go next to the Old
11 Barn Well number two. What water right number would be
12 associated with that well?

13 A. 31062.

14 Q. And is that a geothermal well?

15 A. It's shown in blue, so I'd say not.

16 Q. Okay. Next the Miller Gulch Test Well. Do you
17 know the water right number for that well?

18 A. I don't believe it has a water right, does it?
19 It's not producing water.

20 Q. Okay. So is it your understanding it's just a
21 test well?

22 A. Yes. But probably -- it's probably on here if
23 I can figure out which one it is.

24 MR. HONSINGER: Counsel, I don't think it is on
25 there and --

1 MS. HOFSTETTER: By on there, you mean
2 Exhibit O?

3 THE WITNESS: Yes.

4 MR. HONSINGER: On Exhibit O. And the reason I
5 don't think it is, is that I don't believe there's a water
6 right associated with the Miller Gulch Test Well. And
7 Mr. Terteling would have to confirm that for me, but I
8 believe that to be the case.

9 THE WITNESS: Could I have her read back what I
10 said on it?

11 (Requested portion read back.)

12 MS. HOFSTETTER: Okay. So do you want to
13 repeat that for the record what you just said?

14 MR. HONSINGER: I think the record's clear. I
15 don't want to confuse it any more.

16 Q. (BY MS. HOFSTETTER) Okay. So do you know i
17 the Miller Gulch Test Well is -- even though it's a test
18 well and doesn't appear to have a water right number, do
19 you know if it's in the geothermal aquifer or not?

20 A. You know, the answer is, I don't know.

21 Q. Okay. Okay. I noticed we skipped one well
22 identified as Motorcycle Hot/Cold Wells. Is that well,
23 the Motorcycle Hot/Cold Well, on the OMC property?

24 A. Is it on the OMC property? The answer is no.

25 Q. Is it on the TTCL property?

1 A. Yes.

2 Q. What water right number or numbers would be
3 associated with the Motorcycle Hot/Cold Wells?

4 MR. HONSINGER: Let's go off the record for a
5 minute.

6 (Off-the-record discussion.)

7 MS. HOFSTETTER: All right. Let's go back on
8 the record.

9 Q. (BY MS. HOFSTETTER) And we're talking about
10 the Motorcycle Hot -- what's identified on Exhibit M as
11 the Motorcycle Hot/Cold Wells. And I asked if there -- if
12 you knew what water right numbers, if any, would be
13 associated with those wells?

14 A. Okay. I have to separate them into two wells,
15 the hot and the cold.

16 Q. Okay. So there's actually two wells at that
17 location; is that correct?

18 A. It's complicated.

19 Q. Okay. Could you explain.

20 A. There's a big casing, and the other two wells
21 are inside the big casing.

22 Q. So there are actually three wells --

23 A. No.

24 Q. -- at that -- no?

25 A. No. The casing -- you know, it's just surface

1 casing. Then the cold well goes down to the cold level,
2 and inside that, parallel to it, or adjacent to it, it
3 goes down to the hot water.

4 Q. Okay. So it's one well, but it taps both hot
5 and cold water; is that correct?

6 A. Two separate casings inside.

7 Q. Okay. And it sounds like the two casings are
8 concentric with one casing placed inside the other?

9 A. No.

10 Q. No. Side by side?

11 A. Side by side.

12 Q. Okay.

13 A. But the Pool Well is concentric.

14 Q. Okay. We'll get to the Pool Well. Okay. So
15 we have -- okay. What's the casing size on the cold well
16 at that location?

17 A. I don't remember, but I'll gesture a foot.

18 Q. Okay. And the hot well at that location,
19 what's the casing size?

20 A. I don't know, but I'll just gesture a foot.

21 Q. Okay. So what water rights would be associated
22 with the cold well at that location?

23 A. You can't tell me?

24 MR. HONSINGER: I don't know, so...

25 Q. (BY MS. HOFSTETTER) You can look at Exhibit O

1 Can you tell from Exhibit O what water rights are
2 associated with the cold well at the Motorcycle Hot/Cold
3 Well location?

4 A. So the answer is, I'm not sure.

5 Q. Okay. What about the hot well at the
6 Motorcycle Hot/Cold Well location? Do you know the water
7 right number for the hot well?

8 A. I don't think that's still active.

9 Q. You don't think that that hot well is still
10 active?

11 A. No, I don't think the water right is still
12 active in it.

13 Q. Could you explain that.

14 A. Well, it had one at one time and somehow, you
15 know, it isn't there anymore. So I'm not sure what
16 happened to it.

17 Q. Do you remember the water right number that
18 used to be associated with the hot well?

19 A. No.

20 Q. Do you remember what happened such that the
21 water right associated with the hot well is no longer --
22 includes that location?

23 A. No, but I'm sure it's in these files.

24 Q. So would it be fair to say based on your
25 knowledge you do not believe that there are any water

1 rights currently associated with what's identified on
2 Exhibit M as the Motorcycle Hot/Cold Well?

3 MR. HONSINGER: Objection. I believe that
4 mischaracterizes the witness's testimony. Go ahead and
5 answer it if you can, Joe.

6 THE WITNESS: Well, number one, I don't know.
7 I think there was a right. I think it went away. I don't
8 think it has a right today.

9 Q. (BY MS. HOFSTETTER) And what about the cold
10 well? Does the cold well have a right today at that
11 location?

12 A. I believe so.

13 Q. Do you know the number for the cold well, the
14 water right?

15 MR. HONSINGER: Objection, asked and answered.

16 THE WITNESS: I couldn't find it on O.

17 MS. HOFSTETTER: Okay. Thank you.

18 THE WITNESS: But it's a point of diversion and
19 we use it. So, you know, the answer is it's just a matter
20 of trying to figure out which one of these it is.

21 MS. HOFSTETTER: Okay.

22 THE WITNESS: And I have one that's labeled
23 cold water right.

24 Q. (BY MS. HOFSTETTER) On Exhibit O?

25 A. Yeah, but I'm not sure which cold water right

1 that is.

2 Q. Which water right number are you looking at
3 Exhibit O?

4 A. Well, do you want my son to point at it?

5 Q. No, I'd like you to point at it. Well, better
6 yet, just read the number for the record.

7 A. 12540. But I'm not sure what cold water right
8 that's for. But we have a bigger sheet. Why don't I
9 cross reference it to the larger exhibit?

10 Q. Okay. Which exhibit would that be?

11 A. Exhibit N.

12 Q. Okay. Can I have one of the Exhibit Ns?

13 A. Sure. I looked up 12540 on Exhibit N and it's
14 relinquished. And then under that it says there's a
15 ground water for irrigation, which is 12540.

16 Q. Well, you know -- are you looking at page 2 of
17 Exhibit N?

18 A. Yeah.

19 Q. Because I see 12540.

20 A. Well, 540, it says draft.

21 Q. It says draft in one place and then up above it
22 says active.

23 A. Yeah, but that's 040 rather than 540.

24 Q. No, on the third line is 540.

25 A. Oh, you're right. Boy, this is confusing, if I

1 ever saw anything that is. It says active water
2 application 51 -- 57144.

3 So, anyway, let's assume -- we still don't know
4 whether that's the motorcycle. We're still not sure where
5 the location of that license is. But this is where, if I
6 could pull my file, then it's all cross referenced, pull
7 out that license, I can look at it, and I can tell you
8 exactly, you know, what all the --

9 Q. Okay.

10 A. This is kind of halfway --

11 Q. But what you're referring to is -- you're
12 saying you'd like to go into the ten boxes and find the
13 right file to figure out what water right is associated
14 with this well?

15 A. Yes.

16 Q. Okay. We can go off the record so you can do
17 that.

18 A. Okay.

19 Q. Okay.

20 (Off the record.)

21 MS. HOFSTETTER: Okay. We're back on the
22 record.

23 Q. (BY MS. HOFSTETTER) Mr. Terteling, were you
24 able to find the document that you were looking for?

25 A. No.

1 Q. What exactly were you looking for?

2 A. The number -- for the unknown number that I had
3 here, I was trying to back that up and see what it was and
4 there's -- since there's not a number for the Motorcycle
5 Hot, you know, my answer -- I answered earlier that I
6 thought it was a point of diversion, but I really don't
7 know, you know --

8 Q. What do you mean, the Motorcycle Cold -- are
9 you referring to the Motorcycle Cold now when you say, I
10 really don't know?

11 A. I'm confused on both of them. But the answer
12 is, I didn't find them in my record of what this number
13 was, so --

14 Q. So you were looking in your ten boxes of
15 documents --

16 A. Right.

17 Q. -- for the water right file for this particular
18 hot and cold -- Motorcycle Hot/Cold Well; is that correct?

19 A. I'm sure somewhere in there, you know, is the
20 history as to how it had a right and now it doesn't. So,
21 you know, other than a point of diversion, I don't know
22 what it is.

23 Q. Okay. So I just -- so you -- I just want to
24 summarize what happened, and tell me if I'm wrong. But
25 you looked in the ten boxes of documents you brought --

1 A. No, I looked in one box.

2 Q. You looked in the -- and how did you pick that
3 box?

4 A. That was the one I looked at last night.

5 Q. Okay. And so you thought it would be in that
6 box?

7 A. Yes.

8 Q. And just to recap. You were looking for the
9 water right numbers that --

10 A. Well, I'm not exactly sure what the numbers
11 are. You know, it just confuses me more. So the answer
12 is, I don't know, you know, where I'm -- where I am today

13 Q. Okay. So the question -- the answer -- I'm
14 just trying to figure out what the question is at this
15 point. The question was, what water right numbers are
16 associated with the Motorcycle Hot and/or Cold Wells? A
17 your answer to that question is?

18 A. I don't know.

19 Q. Thank you. Okay. Let's move on. I think we
20 kind of bounced up, and then we need to go back down and
21 pick up where we left off. Looking at Exhibit M -- let's
22 see. Okay. So the last well we -- and we just want to do
23 the TTCL property wells for now. There's an arrow, and it
24 appears to go with the language Old Artesian Flowing
25 Wells. Do you see that in Section 23, the language Old

1 Artesian Flowing Wells?

2 A. Yes.

3 Q. And it's -- and I think it goes with the arrow
4 that's pointing to a blue open circle in Section 22; is
5 that correct?

6 A. I don't think so.

7 Q. Well, what do you think the Old Artesian
8 Flowing Wells is referring to?

9 A. I don't think there's a line connected to it.

10 Q. Oh. So where are the Old Artesian Flowing
11 Wells?

12 A. I believe they're in that 40-acre area.

13 Q. Which 40-acre? Could you identify it?

14 A. Section 22, the northwest of the southeast.

15 Q. Okay. And could you describe what the Old
16 Artesian Flowing Wells are.

17 A. I've never seen them. If it's the one I'm
18 thinking about, there's a cluster of trees down there that
19 obviously are getting water from somewhere. And one of my
20 guys working for me years ago, you know what I'm saying,
21 five years ago, said I found some wells down in there,
22 which isn't unusual. There are punched holes, you know,
23 around a lot of this ground. And it also says to be
24 abandoned. Then there's a line drawn through it, to be
25 abandoned. So I'm not sure what it is.

1 Q. Is there any water right number associated with
2 the Old Artesian Flowing Wells?

3 A. There's springs in there somewhere. And I
4 don't see the -- there are flowing springs. So, you know,
5 whether they call it a flowing well or a spring there's
6 two different -- so let me run down through here.

7 Q. And you're referring now to Exhibit O; is that
8 correct?

9 A. Yeah. But it's not helping me, because there's
10 other springs. So I hit Terteling Springs, but I don't
11 believe it's that one. There's other springs that I
12 found. Hot springs. I have two soft water numbers that
13 I'm not sure where they are.

14 Q. Okay. So they may be associated with the
15 springs that are in the area of the Old Artesian Flowing
16 Wells?

17 A. Well, what I should go is to the next larger
18 exhibit and see if I can determine what they are.

19 Q. And which exhibit would that be?

20 A. N. I don't find anything that confirms it. I
21 can describe to you where the spring is, you know, what
22 does, how it flows.

23 Q. Okay. Why don't you just do that.

24 A. Okay. You're after the Old Artesian Flowing
25 Wells?

1 Q. Yes. Yes. And you mentioned, you know, that
2 basically there's a cluster of trees and the water comes
3 out of the ground; is that correct?

4 A. Right, but I don't see it on this map. I don't
5 see it designated as a spring.

6 Q. Okay. So in addition to those Old Artesian
7 Flowing Wells, you're saying there's a spring?

8 A. Yes.

9 Q. Okay. So why don't you describe what the
10 spring does.

11 A. It just flows out of the hill, and I can
12 remember my old cattleman putting perforated pipe back
13 there, and it flows out. And then to keep the grade --
14 you like to flow it level so it dumps into the stock water
15 tank so it doesn't freeze. So there's a couple of soft
16 water tanks where it goes into.

17 Q. Do you know the water right number for that
18 use?

19 A. I'm not sure which one it is. You know, we've
20 got stock water, and we've got springs, and I'm not sure
21 what number it is.

22 Q. Do you know if that spring is geothermal?

23 A. My assumption is that it's not.

24 Q. Why do you assume it's not?

25 A. Because it's surface water. You know, it's

1 coming up high, not 600 feet down in the ground.

2 Q. Okay. So I'm looking again at Exhibit M and
3 that circle with -- the blue circle with an arrow, and
4 basically on the line between the southeast and southwest
5 quarters in Section 22, and you say that that is not the
6 Old Artesian Flowing Wells?

7 A. No.

8 Q. What is that?

9 A. The Old Flowing Wells, that's the question you
10 had?

11 Q. Well, no, my question -- I believe your earlier
12 testimony was that the Old Artesian Flowing Wells was not
13 depicted by that blue circle with the arrow on the line
14 between the southwest and the southeast of Section 22. So
15 I'm asking you, what does that blue circle depict?

16 A. I think there's some old wells that I haven't
17 seen that are there that we talked about abandoning them.

18 Q. Are those wells in use presently?

19 A. No, other than they're seeping for irrigation
20 for the trees that they're located in.

21 Q. But that circle is not the Old Artesian Flowing
22 Wells. So these are different trees than the Old Artesian
23 Flowing Wells?

24 A. Well, the springs flow in that area and there's
25 some Old Artesian Wells that I haven't seen that -- you

1 know, being I haven't seen them, I don't know whether
2 they're flowing or not.

3 Q. Okay. So you're not -- I guess what I'm -- I'm
4 just trying to understand this map. And the blue circle
5 that's on the line between southeast and southwest
6 quarters may be the Old Artesian Flowing Wells, it may be
7 some springs, you're not sure?

8 A. That's correct.

9 Q. And would you know offhand if there are any
10 water rights associated with that blue circle?

11 A. If it's the springs, the answer is, yes.

12 Q. Okay. If it's the springs, what would the
13 water right number be?

14 A. I don't know, because I've got rights for stock
15 water, and I've got rights for springs, and I can't
16 differentiate which is which.

17 Q. Okay. Okay. Let's move on to the orange
18 circle that's right below that blue circle that's
19 identified as Proposed Greenhouse Well and then it's
20 crossed off. Do you see that?

21 A. Yes.

22 Q. Do you know why Proposed Greenhouse Well is
23 crossed off?

24 A. Because we put in a proposal to drill that
25 well, and you objected to it, so it's just hanging in

1 midspace.

2 Q. So that well has not been drilled yet?

3 A. That's correct.

4 Q. And by you objected, do you mean Edwards
5 Family, LLC, objected?

6 A. Yes, that's correct.

7 Q. And are you referring to the transfer
8 application to add points of diversion?

9 A. Yes, I believe so.

10 Q. So this orange circle in Section 22, Proposed
11 Greenhouse Well, is not constructed yet; is that correct?

12 A. That's correct.

13 Q. And if it is constructed, it would be a
14 geothermal well; is that correct?

15 A. That was the purpose of it.

16 Q. Okay. I just want to make sure we got all the
17 wells on Exhibit M that are on TTCI property. And I
18 believe you indicated Andy's Cold Well and Peaceful Cove
19 are on T-7 property?

20 A. Yes.

21 Q. Okay. I think we pretty much got them except
22 for moving -- the two Quail Hollow, Upper and Lower, those
23 are not on TTCI property; is that correct?

24 A. That's correct.

25 Q. Okay. So now let's go down to the Silkey,

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1 House, and Tiegs circles. Okay. So the Silkey -- one of
2 the circles identified is Silkey, parenthesis, Shed,
3 parenthesis. Do you see that?

4 A. Yes.

5 Q. Is that a geothermal well?

6 A. Yes.

7 Q. Do you know the water right number associated
8 with that well?

9 A. You're on the Shed?

10 Q. Yes.

11 A. 6313.

12 Q. Any others? Any other water right numbers
13 associated with that well?

14 A. That's what I've heard it referred to.

15 Q. Okay.

16 A. So the answer is, I don't know.

17 Q. And is that a geothermal well?

18 A. Well, wait a minute.

19 MR. HONSINGER: Objection, asked and answered.
20 Go ahead.

21 THE WITNESS: We're still on the Silkey Shed?

22 MS. HOFSTETTER: Yes.

23 THE WITNESS: I answered yes to that.

24 Q. (BY MS. HOFSTETTER) To which question, I'm
25 sorry?

1 A. Whether it was geothermal.

2 Q. Okay.

3 A. Yes, it is geothermal.

4 Q. Okay. Okay. So let's turn to the next one,
5 what's identified as the House. Do you know the water
6 right number or numbers associated with that well?

7 A. 6312.

8 Q. Any others?

9 A. Not that I know of.

10 Q. Is that geothermal?

11 A. Yes. You know, when you ask for other right
12 there's a point of diversion that's filed. Is that what
13 you're looking for, for another right, when it refers to
14 point of diversion?

15 Q. Well, what I'm asking is, you know, the water
16 rights associated with a particular point of diversion.
17 Each well is a point of diversion.

18 A. Okay.

19 Q. And so I'm asking for the water rights
20 associated -- water right numbers associated with each
21 point of diversion. Okay? Does that clarify what I'm
22 looking for?

23 A. No. But the next one I'm going to ask you to
24 identify the number for me.

25 Q. Okay. Okay. So any -- okay. So the -- okay.

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1 So the House is identified with water right number 63-12;
2 is that correct?

3 A. Yes.

4 Q. Okay. Okay. So -- and -- okay. Well,
5 let's -- and I'm losing track of what I already asked.

6 Did I -- is the House Well geothermal just for the record?

7 A. Yes.

8 Q. Thank you. What's identified as the Tiegs
9 Well --

10 A. What number is that?

11 Q. That was my question. I get to ask the
12 questions.

13 A. You know, I'm entitled to have you identify it
14 for me.

15 Q. Well, I'm just saying it's -- yeah, but
16 what's -- so do you -- I'm just -- you can answer I don't
17 know if you want. But do you know the water right number
18 associated with what's identified as the Tiegs Well?

19 A. When you say numbers, plural?

20 Q. It could be number or numbers, all the water
21 right numbers that would be associated with that well.

22 A. Associated to me also includes the point of
23 transfer.

24 Q. Right.

25 A. So you're going to cover that later?

1 Q. No. What I'm saying, at the present time --

2 A. Yes.

3 Q. -- I want to know what water right numbers are
4 associated with the Tiegs Well?

5 A. Okay. But it includes the transfer when you
6 say what water right numbers are there included in that.

7 Q. Right.

8 A. But are we going to cover the transfer later?

9 Q. Well, I'm talking as of the present right now.

10 A. Okay. The transfer's in there.

11 Q. So you know there's one transfer that's been
12 approved recently --

13 A. Yes.

14 Q. -- and then there's another one that is on
15 hold. So at the present time, what is -- what water right
16 numbers are approved for the Tiegs Well?

17 A. Well, the original one as you know is 63-15.

18 Q. Okay. Is that still approved for the Tiegs
19 Well?

20 A. That calls for a legal conclusion, or whatever
21 the word is. Whether it's approved, it's covered under
22 the Silkey Tiegs document.

23 Q. Okay.

24 A. So I'd say approved is a --

25 MR. HONSINGER: If you don't know, it's fine to

1 answer, I don't know, Joe.

2 THE WITNESS: Well, I think it's a legal
3 interpretation what approved means.

4 MS. HOFSTETTER: Okay.

5 THE WITNESS: And I don't think so.

6 MS. HOFSTETTER: Okay.

7 THE WITNESS: As a lay person.

8 (Off the record.)

9 MS. HOFSTETTER: Okay. Back on the record.

10 Q. (BY MS. HOFSTETTER) Are there any other water
11 right numbers associated with the Tiegs Well?

12 A. The answer is, I don't know, but there is a
13 transfer that's -- a couple of transfers. So we just used
14 63-15 to refer to the Tiegs Well.

15 Q. So do you know if any other water right
16 authorized diversion from the Tiegs Well, other than
17 63-15?

18 A. Other than the transfer, I don't know.

19 Q. And what transfer are you referring to?

20 A. When we transferred -- called a point of
21 diversion -- to use our Windsock Well.

22 Q. Okay. So that transfer -- is that the transfer
23 that roughly was approved in 2002? And you're referring
24 now to Exhibit P; is that correct?

25 A. I have 2000 written down.

1 Q. On Exhibit P?

2 A. No, on -- well, yes, on Exhibit P.

3 Q. Okay. So you believe that -- so you're talking
4 about the transfer that -- but that says application. So
5 the application that was filed in 2000?

6 A. Okay.

7 Q. Is that what you're saying?

8 A. Yes.

9 Q. Okay. So --

10 A. So you're saying roughly 2002 it was --

11 Q. Approved. So the -- but we can go off the date
12 that the application was submitted in 2000. That would be
13 fine.

14 A. Okay.

15 Q. But that application for transfer date,
16 October 2000, that was subsequently approved. Is that
17 your understanding?

18 A. Yes.

19 Q. And based on that approval, are there any other
20 water rights that can be diverted from the Tiegs Well
21 besides 63-15?

22 A. I don't know.

23 Q. Okay. Okay. And based on that same transfer
24 approval, are there any other rights besides --

25 A. Let me correct it. I'm not sure it transferred

1 the Tiegs right, because I don't think the Tiegs right
2 is -- it is whatever the legal word is for being approved.
3 So the other two Silkeys, I think, is what was
4 transferred, not the Tiegs.

5 Q. Okay. So let's go back to what's identified as
6 the Silkey, parenthesis, Shed Well, on Exhibit M. And the
7 transfer that we're talking about, the October 2000
8 transfer on Exhibit P that was later approved, did that
9 authorize any additional water rights besides 63-13 for
10 use at the Silkey Shed Well?

11 A. I don't know what the legal thing -- your legal
12 definition --

13 MR. HONSINGER: I'm going to object to the
14 question. It calls for a legal conclusion. But go ahead
15 and answer it, Joe.

16 THE WITNESS: Well, could you read it back?
17 Will you restate it?

18 MS. HOFSTETTER: I can restate it.

19 Q. (BY MS. HOFSTETTER) You know, we're talking
20 about this transfer application that was filed in 2000 --

21 A. Right.

22 Q. -- by TTCI and that was approved in about 2002.

23 A. Okay.

24 Q. And I'm asking under that transfer approval,
25 were any other water rights authorized for diversion at

1 what's identified as the Silkey, parenthesis, Shed Well on
2 Exhibit M, other than 63-13?

3 MR. HONSINGER: Same objection. Go ahead and
4 answer.

5 THE WITNESS: I think it includes 13 and 12 --
6 12 and 13.

7 Q. (BY MS. HOFSTETTER) Any others?

8 A. Not that I know of.

9 Q. Okay. And then what's identified as the House
10 Well on Exhibit M, did that transfer authorize the use of
11 any other water rights besides 63-12 at what's identified
12 as the House Well?

13 MR. HONSINGER: Same objection.

14 THE WITNESS: So it's 12 and 13, and I don't
15 recall any other well -- any other usage from those two
16 wells.

17 Q. (BY MS. HOFSTETTER) So are you saying that
18 transfer authorized the use of 63-12 and 63-13 at the
19 House Well?

20 MR. HONSINGER: Same objection.

21 THE WITNESS: Those, plus I don't recall any
22 other wells being involved.

23 Q. (BY MS. HOFSTETTER) So as of the present day,
24 do you know what water rights are authorized for use at
25 the House Well?

1 MR. HONSINGER: Objection, calls for a legal
2 conclusion.

3 THE WITNESS: But it's -- when you say what
4 rights are the House Well?

5 Q. (BY MS. HOFSTETTER) What rights can be
6 diverted at the House Well as of today under current
7 approval?

8 A. I don't even recall Silkey Tiegs talking
9 about -- I -- I guess there is a difference between 12 and
10 13 and Silkey Tiegs. I guess they're both in there. But
11 other than those, I don't -- I don't recall what other
12 rights, other than the transfers, but --

13 Q. I'm asking with regard to the transfer that's
14 been approved --

15 A. Okay.

16 Q. -- as of today, what water rights are
17 authorized for use at the House Well -- or authorized for
18 diversion at the House Well?

19 MR. HONSINGER: Objection, calls for a legal
20 conclusion. It's been asked and answered.

21 THE WITNESS: I do find it confusing --

22 MS. HOFSTETTER: What do you mean?

23 THE WITNESS: -- when you ask the question the
24 way you ask it at the House Well, you know, what rights
25 have been transferred at the House Well.

1 Q. (BY MS. HOFSTETTER) No. I asked what rights
2 are authorized for diversion at the House Well as of
3 today?

4 A. Well, this is -- all I recall is the Silkey,
5 Tiegs, both House have been -- I don't know if the word is
6 created or not, but certainly are usable and -- we can use
7 them there, or we can transfer any or all up to the
8 Windsock.

9 Q. Mr. Terteling, I'm asking you -- and I don't
10 want to belabor the point, and you can say I'm not sure,
11 if that's the answer to the question. But my question is,
12 what water rights are currently authorized for diversion
13 at the House Well?

14 MR. HONSINGER: Same objections.

15 Q. (BY MS. HOFSTETTER) Do you know the answer
16 that question?

17 A. Well, I've answered 63-12.

18 Q. Okay. Any others?

19 A. Not that I recall.

20 Q. Okay. Let's just ask the question again on the
21 Silkey -- the same question as far as the Silkey Shed
22 Well. What water rights are currently authorized for
23 diversion at the Silkey Shed Well?

24 MR. HONSINGER: Objection, asked and answered.
25 Calls for a legal conclusion.

1 THE WITNESS: 63-13 and I'm not sure of others.

2 Q. (BY MS. HOFSTETTER) Okay. And then what's
3 identified as the Tiegs Well on Exhibit M, what water
4 rights are currently authorized for diversion at the Tiegs
5 Well?

6 MR. HONSINGER: Same objection.

7 THE WITNESS: I think the right number is
8 63-15, unless I'm screwed up on all these. And I believe
9 there's restrictions on the usage of that water in the
10 Silkey Tiegs agreement.

11 Q. (BY MS. HOFSTETTER) Okay. Anything else
12 besides 63-15 that can be diverted at the Tiegs Well, to
13 your knowledge?

14 MR. HONSINGER: Same objection.

15 THE WITNESS: Well, I think it's a little more
16 complicated than that. We actually can use the water from
17 the Tiegs Well, but we can't exceed our Silkey rights in
18 quantity and, you know, flow.

19 Q. (BY MS. HOFSTETTER) So currently, as of today,
20 are you authorized to divert any water rights at the Tiegs
21 Well?

22 MR. HONSINGER: Same objections.

23 THE WITNESS: So here's your legal thing. When
24 you say water rights, I don't think we can divert the
25 water rights, but I think we can divert the water under

1 the Silkey rights.

2 MS. HOFSTETTER: Okay. So --

3 THE WITNESS: And I'm saying I think.

4 MS. HOFSTETTER: Okay.

5 THE WITNESS: You know, and I'm a lay person.

6 Q. (BY MS. HOFSTETTER) And by Silkey rights, what
7 water right numbers are you referring to?

8 A. 63-12 and 63-13. And I don't know whether
9 there's others subsequent to that or not.

10 Q. Okay. So is it your testimony that -- just to
11 make sure I'm clear on this -- that the water rights that
12 can be diverted at the Tiegs Well are 63-12 and 63-13 and
13 you're not sure whether there are others?

14 MR. HONSINGER: Objection, asked and answered.
15 Calls for a legal conclusion.

16 THE WITNESS: Well, what I'm saying all --
17 that's what I think as a lay person. Beyond that, I don't
18 know.

19 MS. HOFSTETTER: Okay. Thank you. I
20 appreciate that.

21 Q. (BY MS. HOFSTETTER) Okay. And just -- I don't
22 believe I've asked this question. Is the Tiegs Well a
23 geothermal well?

24 A. Yes.

25 Q. Okay. Okay. And we know that what's

1 identified on this map as Edwards Greenhouse Well is not
2 on TTCI property; is that correct?

3 A. That's correct.

4 Q. Okay. Now, let's just turn our attention to
5 the North Cold. And you indicated earlier that that is on
6 TTCI property, correct?

7 A. If it's the well I'm thinking of, the answer
8 is, yes.

9 Q. Okay. Do you know the water right number that
10 can be diverted from the TTCI North Cold Well?

11 A. Can you give me that water number to help me
12 identify it?

13 Q. Well, I don't -- I don't know it. I'm
14 wondering if you know it. You can look at Exhibit O.
15 You're laughing.

16 A. Well, it says Flora Cold, see transfer --

17 Q. What are you looking at exactly?

18 A. Okay. 31051.

19 Q. On Exhibit O?

20 A. Yes.

21 Q. Page 2?

22 A. Yes.

23 Q. Okay.

24 A. And it says, Flora Cold, see transfer 68559.

25 So now I got to look at the transfer, and it's not in

1 here.

2 Q. What do you mean it's not in here?

3 A. Well, I don't think I have 68559 transfer
4 elaborated here.

5 Q. Okay. So you're not -- is it correct to say
6 right now you're not sure what water right number or
7 numbers authorize diversion at the North Cold Well?

8 A. Well, it says Flora Cold. You know, I can only
9 assume, and assume isn't probably what you want. You want
10 a yes or no, and I'm not sure.

11 Q. Okay. Thank you. Now, is the North Cold Well,
12 is that geothermal?

13 A. No, not by the definition of cold.

14 Q. Excuse me, what's the definition of cold?

15 A. I don't know. It says that it's a cold well.

16 Q. Oh, I see what you're saying.

17 A. And it's white, not red.

18 Q. Okay. Okay. So based on the map legend, you
19 believe that the North Cold is a cold well, not
20 geothermal; is that correct?

21 A. Plus I felt it.

22 Q. Okay. So does it feel cold, or does it feel
23 hot?

24 A. What is it 68 -- 86 degrees? It's below 86.

25 Q. So would you call it a cold well then?

1 A. Yes.

2 Q. Thank you. Okay. Now, the South Cold Well you
3 indicated was on -- you believed it was on property owned
4 by your wife, Flinda Terteling; is that correct?

5 A. The answer is, I don't know. But looking at
6 the map it's so far south that it could be that well.

7 Q. Okay. But to the best of your knowledge, you
8 believe that what's identified as South Cold on Exhibit M
9 is intended to identify the well on your wife's property;
10 is that correct?

11 A. I don't know.

12 MR. HONSINGER: Objection, asked and answered.

13 THE WITNESS: I don't know. I didn't make this
14 map.

15 Q. (BY MS. HOFSTETTER) Okay. Do you know who
16 made this map?

17 A. Well, it says National Geographic on the
18 bottom. So I don't know if that helps.

19 Q. Do you know who put the labels on the map and
20 the boundary and the other information?

21 A. I can guess Ed Squires.

22 Q. Okay. And Ed Squires is your hydrologist; is
23 that correct?

24 A. Yes.

25 Q. Okay. So is -- so you're not sure what South

1 Cold refers to?

2 A. That is correct.

3 Q. And, therefore, I assume that you're not sure
4 about whether that well is in fact geothermal or cold?

5 A. It's cold.

6 Q. Okay. So if it's -- so you believe you know
7 what South Cold refers to; is that correct?

8 A. If it is the one on Woody Street, it is cold.

9 Q. Okay. And so -- okay. And the one on Woody
10 Street would be the one on your wife's property; is that
11 correct?

12 A. That's correct.

13 Q. Okay. Would you -- if it is the one on Woody
14 Street, would you happen to know the water right number
15 associated with South Cold?

16 A. I doubt that that's on here.

17 Q. On here, you mean Exhibit O?

18 A. Yes.

19 Q. Okay. So is the answer to that question then,
20 you don't know?

21 A. No. I said I doubt that it's on this list
22 because it's her water right, not Terteling Company's
23 water right, or T-7's water right.

24 Q. Okay. So my question is, do you know what
25 water right number would be associated with the well on

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1 your wife's property?

2 A. No, I do not know.

3 Q. Thank you.

4 MS. HOFSTETTER: Okay. So maybe we should go
5 off the record because -- yeah, let's go off the record
6 now.

7 (A lunch recess was taken.)

8 (Mr. Niznik did not rejoin the proceedings.)

9 MS. HOFSTETTER: And during the break we
10 discussed the fact that we had another deposition
11 scheduled for this afternoon for T-7, LLC. And
12 Mr. Honsinger suggested that we just combine the two
13 depositions. Would you like you to state on the record --

14 MR. HONSINGER: Sure. It's my suggestion we
15 simply combine the two depositions.

16 MS. HOFSTETTER: Because it's correct that
17 Mr. Joe Terteling is the representative for both entities?

18 MR. HONSINGER: That's correct.

19 MS. HOFSTETTER: Okay. So we're going to
20 proceed to combine the two depositions. And in that
21 regard, we're going to need to mark this next exhibit.
22 And maybe we should go off the record for a minute while
23 we do that.

24 (Off the record.)

25 (Deposition Exhibit No. Q was

1 marked for identification.)

2 Q. (BY MS. HOFSTETTER) Okay. Mr. Terteling, I've
3 handed you what's been marked as Exhibit Q. Have you seen
4 that document before?

5 A. Yes.

6 Q. Could you explain what that document is.

7 A. It's the duces tecum for -- I'm sure T-7 as
8 soon as I can find it on here -- yes, T-7, LLC.

9 Q. Okay. And are you also the representative
10 appearing for T-7, LLC, today?

11 A. I am for T-7, and T-7 owns the LLC. So the
12 answer is, yes.

13 Q. Okay. And I think we discussed that earlier in
14 this morning's deposition about the relationship between
15 Terteling Trust No. 7 and T-7, LLC?

16 A. That's correct.

17 Q. So is it correct to say that you're the
18 representative for T-7, LLC, appearing pursuant to
19 Exhibit Q?

20 A. I'm the representative of T-7 that owns T-7,
21 LLC. So I presume I'm representing both of them.

22 Q. Do you know which entity owns the water rights?
23 Is it T-7, LLC, or the Terteling Trust No. 7?

24 A. I'm not sure.

25 Q. Okay.

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1 A. But between the two of them, the answer is,
2 yes, one of them owns it.

3 Q. Okay. Well, I'll represent to you that the
4 water rights that we're here today to talk about were
5 claimed in the name of T-7, LLC.

6 A. Okay. And it was signed by Tom Terteling?

7 Q. Yeah. And I haven't, you know, dug into that
8 deeply, but I -- you know, and that's why I titled the
9 deposition notice for T-7, LLC.

10 Okay. But, in any event, you're also obviously
11 very familiar with the operations and structure of the
12 Terteling Trust No. 7; is that correct?

13 A. To the best of my memory, yes, very familiar.

14 Q. Okay.

15 A. I don't know about the very part.

16 Q. Okay. Okay. Okay. Now, as you know, on
17 pages 2 and following on Exhibit Q, certain documents are
18 requested to be brought with you to the deposition today.
19 Did you bring any additional documents in response to this
20 notice in addition to what you produced this morning?

21 A. No, it's all been laid out.

22 Q. Okay. So the production from this morning also
23 covers the production request in Exhibit Q; is that
24 correct?

25 A. Yes.

1 Q. Thank you. And what I'd like -- and that would
2 also include exhibits -- what's been marked as Exhibits J
3 through P; is that correct? J through P are these
4 exhibits that you provided this morning.

5 A. Yes.

6 Q. Okay. So J through P would also pertain to
7 T-7, LLC; is that correct?

8 A. I can't tell you that without looking at them.

9 Q. Okay. Well, let's just quickly go through
10 Exhibits J through P that were --

11 A. Certainly J has nothing to do with T-7.

12 Q. Okay. And what -- just for the record, could
13 you explain what J is.

14 A. It's the flow of the hot water to 36th Street.

15 Q. And the property in Exhibit J is owned by TTCI
16 is that correct?

17 A. Yes.

18 Q. Okay. I'm missing some exhibits, K. There it
19 is. Okay. Could you explain for the record what
20 Exhibit K is.

21 A. It's an ownership map of Section 22 and the
22 surrounding sections having both T-7 and TTCI's
23 properties.

24 Q. Do you know who prepared Exhibit K?

25 A. I did.

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1 Q. Okay. And, likewise, with Exhibit J, do you
2 know who prepared Exhibit J?

3 A. I put the red lines on it. I don't know who
4 drew the original print.

5 Q. Okay. Thank you. Okay. Now, I'm going to
6 hand you Exhibit L for identification.

7 A. Okay. That's a map including both T-7 and
8 TTCI's distribution system.

9 Q. And do you know who prepared Exhibit L?

10 A. I believe Ed Squires.

11 Q. Okay. And, again, Ed Squires is the
12 hydrologist for TTCI and T-7, LLC; is that correct?

13 A. Yes.

14 Q. And now I'm handing you what's been marked
15 Exhibit M. What is Exhibit M again?

16 A. It's a seven and a half minute quad map of the
17 properties of TTCI and T-7.

18 Q. And do you know who prepared Exhibit M?

19 A. I'm guessing Ed Squires.

20 Q. Okay. Thank you. And Exhibit N. Can you tell
21 me what Exhibit N is?

22 A. It's just a list of the rights that Terteling
23 has had over the years, both T-7 and TTCI's.

24 Q. And do you know who prepared Exhibit N?

25 A. No.

(208) 345-9611

1 Q. Do you know where it came from?

2 A. Well, only sarcastic. I just pulled it out of
3 the files, you know, when I was looking through them.

4 Q. Okay. Could you identify Exhibit O.

5 A. That's a list of T-7 and TTCI's water rights.

6 Q. Do you know who prepared Exhibit O?

7 A. I put them in this order, you know, I cut and
8 pasted. But, you know, I'd guess Andy did, but I'm not
9 sure.

10 Q. And do you mean Andy Terteling?

11 A. Yes.

12 Q. Okay. And then I'm handing you exhibit -- oh,
13 did I ask you what Exhibit O is?

14 A. It's a list of the water rights of T-7 and
15 TTCI.

16 Q. Okay. Thank you. And I'm handing you
17 Exhibit P. Could you explain what that is.

18 A. That's just some dates I wrote down last night
19 to help me put some time frames together.

20 Q. Okay. Thank you. Okay. Okay. So let's
21 continue on where we left off. And maybe we should
22 return -- since we've combined the two depositions, if you
23 will, we should perhaps also now talk about the T-7, LLC
24 wells that are identified on Exhibit M. Do we have
25 another Exhibit M?

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1 MR. HONSINGER: We do. Right here, Counsel.

2 MS. HOFSTETTER: Okay. Thank you.

3 Q. (BY MS. HOFSTETTER) Okay. So now we're going
4 to focus on the wells that are identified on the T-7
5 property. And I believe you said this morning that the
6 Terteling Springs Source was on the T-7 property; is that
7 correct?

8 A. There are springs in -- you're referring to M
9 where it calls it Terteling Springs?

10 Q. Terteling Springs Source, yes.

11 A. Yes, that's on T-7.

12 Q. Okay. And could you -- and I apologize if I'm
13 repeating myself. I don't remember what we discussed on
14 this one. But could you explain the diversion works on
15 that.

16 A. On the springs itself?

17 Q. Yes.

18 A. There's an Artesian well that flows, and it can
19 flow into a reservoir, or into a stock watering tank. And
20 there's also a booster pump that, you know, if I wanted to
21 get more water out of it, you can turn on and, you know,
22 flow it -- flow closer to its, you know, given rate.

23 Q. Okay. And what is that water used for?

24 A. When it goes into the stock watering tank, it's
25 for stock watering. When it goes into the reservoir, it's

1 commingled with other waters and it's used for -- we have
2 a fish license. We use it for recreation. You know,
3 there's esthetic value, wildlife and, you know, animals.
4 But, eventually, it winds up in the irrigation, you know,
5 down below -- down hill.

6 Q. Okay. Do you know the water right numbers
7 associated with the Terteling Springs Source on Exhibit M?

8 A. Let me see what 27649 is.

9 Q. And you're looking at Exhibit O for the record;
10 is that correct?

11 A. Yes. Yes. I believe that's correct, 27649.

12 Q. Okay. Any other water rights associated with
13 that?

14 A. But I think that one is the springs. I think
15 maybe what I described is the Cold Artesian Well when I
16 said there's a motor on it.

17 Q. Okay.

18 A. So I don't know that I didn't give you an
19 answer for the Cold Artesian Well, which we call the Three
20 Springs Well, versus the Flowing Three Springs that I
21 described as having three dug out areas, so...

22 Q. What's your understanding, I mean, of what the
23 Terteling Springs Source refers to on Exhibit M? I note
24 also there's another circle nearby.

25 A. What's called the Springs Well.

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1 Q. Okay. So --

2 A. I think I answered for the Springs Well.

3 Q. Okay. Which would be the other orange
4 circle --

5 A. Right.

6 Q. -- with the Terteling Springs next to it?

7 A. Well, that's where the Terteling Springs is,
8 unfortunately. But when I look at the arrows going to it,
9 I --

10 Q. Oh, I see.

11 A. I think I answered for the Terteling Springs
12 Well, not the Terteling Springs.

13 Q. Okay. So let's back up again. The Terteling
14 Springs Source, is that on T-7 property, or T7CI?

15 A. Yes, both of them are on T-7.

16 Q. Okay. And could you explain the diversion
17 system on the Terteling Springs Source.

18 A. Okay. That -- I've described that earlier
19 where it has three dug out areas -- thus the name the
20 three -- goes into a clutch and basin with a pipe. The
21 pipe goes under a road and dumps -- and is stored in a
22 reservoir.

23 Q. Okay. And what is that water used for?

24 A. Eventually, irrigation. But in the process,
25 while it's in the reservoir, it's used for fish

1 propagation, wildlife, you know, birds and ducks and gees
2 and animals and, you know, esthetics. And we actually
3 have a raft on it so, you know, recreation.

4 Q. Okay. So do you know the water right number or
5 numbers associated with that diversion and use?

6 A. I believe it's 27649.

7 Q. Okay. Any other water right numbers associated
8 with that source?

9 A. Oh, gosh, I don't know.

10 Q. Okay. All right. Okay. Do you know if this
11 is a geothermal source?

12 A. It's flowing out of the mountain and it's -- I
13 think it's incorrectly marked here in red.

14 Q. Okay.

15 A. I would say it should be clear. And when I
16 look -- 649, it does not say hot over here.

17 Q. You're looking at Exhibit O?

18 A. O, that's correct.

19 Q. Okay. So just to clarify. On Exhibit M you
20 believe the Terteling Springs Source is incorrectly
21 identified as a geothermal source?

22 A. Right, on M as a red dot. I think it should be
23 just a circle.

24 Q. Okay. Thank you. Now, let's move ahead to
25 what's identified on Exhibit M as Terteling Springs Well.

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1 A. Okay.

2 Q. Could you describe that diversion system?

3 A. That's the one I described earlier that comes
4 up as an Artesian Well. And when it has pressure, it can
5 flow either into the same reservoir as the springs, or it
6 can flow into a stock watering tank. And then there's a
7 pressure pump on it that if we want to increase the flow,
8 we can, you know, start it up.

9 Q. Okay. Is that a geothermal well?

10 A. It's a strange phenomena in that we have two
11 water rights that cover that well.

12 Q. Okay. Do you want to give me the two numbers?

13 A. Okay. 27621.

14 MR. HONSINGER: I think it's seven.

15 THE WITNESS: Oh, okay. It's 27671.

16 Q. (BY MS. HOFSTETTER) Okay. And are you readin
17 from Exhibit O now?

18 A. Yes.

19 Q. Okay. Could you repeat that number?

20 A. Okay. Go down -- oh, you're writing down --
21 27671.

22 Q. Okay.

23 A. And this is one we filed as hot.

24 Q. Okay.

25 A. And let me elaborate a little bit more. This

1 thing during different times of the year is sometimes
2 above 86 degrees, and sometimes below 86 degrees. So we
3 didn't know what to do with it. So we ended up talking to
4 IDWR and this is what we did. We filed to two different
5 reports, but combined -- they're not to exceed a certain
6 CFM.

7 Q. Do you mean CFS?

8 A. Yeah.

9 Q. Okay. So are you saying that -- I mean, what's
10 your understanding for why it sometimes is above
11 86 degrees and sometimes below 86 degrees?

12 A. I can only speculate probably in the old days
13 it's an old well, completed in two zones.

14 Q. Okay. And you said there was another water
15 right number for that well?

16 A. Yes, 31054.

17 Q. And you're reading now from Exhibit O; is that
18 correct?

19 A. That's correct. And it has not written off to
20 the right. And I drew a line through that not to say that
21 this is the cold -- when it's running cold, and the other
22 one -- the other one is when it's running hot.

23 Q. Okay. So let me -- it switches from hot to
24 cold?

25 A. Yes. Or from cold to hot, you know, take your

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1 pick.

2 Q. Okay.

3 A. It changes different times of the year.

4 Q. Okay. And what are the hot uses? What are the
5 uses of the hot water?

6 A. I think we flow into the reservoir where we
7 propagate fish.

8 Q. Okay. And what are the uses of the cold water?

9 A. It's the same as I've answered before. It goes
10 into the stock watering tank, it goes in the reservoir,
11 and the reservoir has the fish in it also. And then we
12 use it for the animal wildlife habitat, as well as the
13 birds and, you know, ducks and geese that live on it.
14 Then, you know, that flows into the esthetics of the trees
15 that are propagated from it. And then we have a raft on
16 it, so we also use it for recreation.

17 Q. So could you explain the diversion system for
18 that location.

19 A. Well, I've done it --

20 MR. HONSINGER: Asked and answered.

21 THE WITNESS: -- twice on how it flows up, goes
22 into the stock watering, goes into the reservoir, can have
23 a pump. So --

24 MS. HOFSTETTER: So is this the same --

25 THE WITNESS: -- my answer is the same as the

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1 last two times.

2 Q. (BY MS. HOFSTETTER) Okay. So is this the same
3 reservoir as you were -- for these -- for the Terteling
4 Springs Well --

5 A. Yes.

6 Q. -- as you were referring to for the Terteling
7 Springs Source?

8 A. Yes.

9 Q. Okay. Let's go down and look at Andy's --
10 what's identified as Andy's Cold Well. Could you describe
11 that diversion system and the use of that well.

12 A. Do you want the number, or do you already have
13 the number?

14 Q. You can give me the number. That's my next
15 question.

16 A. Okay. You asked for the diversion?

17 Q. Yeah.

18 A. What it is, is it's back in the hillside.

19 We've had concrete structures in there with collection
20 basins and pumps. The road recently was widened over the
21 top of it. So they moved it further to the east. So we
22 now have pressure tanks and pumps. And the tube itself
23 back into the original collection basin is still in place,
24 but it's buried under dirt. So from there it runs down
25 through our nursery and irrigates trees.

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1 Q. And what is the water number or numbers
2 associated with that well?

3 A. I think it's 31056.

4 Q. Are you looking at Exhibit O now?

5 A. Yes.

6 Q. Okay.

7 A. 31056.

8 Q. Okay. And -- let's see. Is that a geothermal
9 well?

10 A. It's showed as a blue circle on the drawing and
11 it does not say hot in back of it on O.

12 Q. So to your knowledge, is it probably not
13 geothermal?

14 A. I don't believe I've ever measured the
15 temperature of it. But whoever made the map, and whoever
16 filled out the form, didn't designate it as hot.

17 Q. Do you know how deep that well is?

18 A. No. I really don't think it's a well. I think
19 it's a spring. Oh, oh, guess what?

20 Q. What?

21 A. I'm describing a different system than the
22 well.

23 Q. Okay. So you're not describing Andy's Cold
24 Well?

25 A. No. I'm -- just north of Andy's is a spring

1 that flows down.

2 Q. Okay. So what you just told me is a different
3 source that's not depicted on Exhibit M; is that correct?

4 A. I'd say that's correct.

5 Q. Okay. So let's --

6 A. I think the number is correct.

7 Q. The water right number?

8 A. Yes.

9 Q. So 31056 is the water right number for Andy's
10 Cold Well?

11 A. That's correct.

12 Q. Okay. So let's go back to Andy's Cold Well.
13 And maybe you could describe the diversion system and the
14 use.

15 A. It just comes out of the ground. Used for
16 domestic for his house and for irrigation around the
17 house.

18 Q. And is it Artesian?

19 A. No.

20 Q. There's a pump on the well?

21 A. Yes.

22 Q. Okay.

23 A. Well, why I hesitated, it's in the well. It's
24 submersible not on, so...

25 Q. Okay. And do you know if that well is

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1 geothermal?

2 A. As I described earlier, it's in a blue circle
3 on the map, and it does not say hot in back of it.

4 Q. So you're assuming it's cold; is that correct?

5 A. I'll let you assume that.

6 Q. Okay. So you don't know -- you've never like
7 measured the water temperature yourself, so you don't
8 know?

9 A. No. But it's designated not hot here, and it's
10 designated not hot there. So you have two sources that we
11 provided.

12 Q. And the other -- so the two sources you're
13 referring to are Exhibit M and O both identified as not
14 hot; is that correct?

15 A. That is correct.

16 Q. Okay. Do you know how deep that well is?

17 A. No.

18 Q. Okay. So let's -- just for reference. Do you
19 know the water right number associated with the use -- the
20 spring use that you described earlier when I asked you
21 about Andy's Cold Well, but then you realized you were
22 discussing a spring use, not Andy's Cold Well? Do you
23 know the water right number associated with the spring
24 use -- the irrigation use I believe you said?

25 A. Okay.

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1 Q. Yeah. And let the record reflect --

2 A. Thank you.

3 Q. -- that Andy Terteling is pointing to Exhibit O
4 and providing the witness some information. Okay. So d
5 you know the water right number for the irrigation use?

6 A. Yes.

7 Q. Okay. What was that --

8 A. Thanks to the help from my son to help speed
9 this up a little bit. It's 3 -- with three 0s -- 0007.

10 Q. Okay. So the use you described first as being
11 associated with Andy's Cold Well that was actually
12 associated with nearby springs has water right number
13 63-30007; is that correct?

14 A. Yes.

15 Q. Okay. Thank you. Okay. And I'm going to have
16 to ask, again, if we can let the witness answer the
17 question. If the witness doesn't know the information, he
18 can say, I don't know. It's perfectly fine.

19 MR. HONSINGER: Counsel, it would certainly be
20 okay for us to point to something for the witness to
21 help -- to assist the witness, would it not?

22 MS. HOFSTETTER: I don't think so. Because
23 we're here today for the witness's testimony and I
24 think --

25 MR. HONSINGER: Okay. That's how you want it

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1 MS. HOFSTETTER: -- and we want to know the
2 information that the designated representative has. So,
3 thank you, though. Appreciate --

4 THE WITNESS: It's just a function of time,
5 so --

6 MS. HOFSTETTER: Yeah. Well -- yeah, but I --
7 yeah, I --

8 THE WITNESS: It's 2:00 o'clock.

9 MS. HOFSTETTER: No, I understand that. And if
10 you don't know, I mean, that makes --

11 THE WITNESS: Oh, I know.

12 MS. HOFSTETTER: -- that's a very quick answer.

13 THE WITNESS: I know. I just have to find it.

14 MS. HOFSTETTER: Okay. I know. Yeah. Okay.
15 Let's move on.

16 Q. (BY MS. HOFSTETTER) I guess the next one would
17 be what's identified on Exhibit M as the Peaceful Cove
18 Nursery Well. Could you describe that diversion system
19 and what that water is used for.

20 A. What it is, it's designated hot. It
21 irrigates -- well, no, not irrigates. First, it goes to
22 Andy's house to heat his house as a domestic home. Then
23 it goes through a hot tub and can go out and water the
24 shrubs below there which is where the -- if this is the
25 Nursery Well -- I'm not sure it's the Nursery Well. But

1 the one I'm thinking about that's designated hot is his
2 residential hot, and it goes through a hot tub, and then
3 goes out to irrigate.

4 Q. And by Andy Terteling, you mean Andy Terteling
5 your son who's here today?

6 A. Right. But I should use 5115 -- no,
7 5120 Cartwright.

8 Q. I'm sorry?

9 A. Fifty-one.

10 Q. That sounds like an address.

11 A. Huh?

12 Q. 5120 Cartwright, is that an address? I'm not
13 sure what you're referring to. Are you looking at
14 Exhibit O?

15 A. Yeah, it's 5120 Cartwright as an address.

16 Q. Okay. Andy's house is; is that correct?

17 A. Right. But when I say Andy's, it's technically
18 owned by T-7.

19 Q. But Andy lives in it?

20 ANDY TERTELING: No.

21 THE WITNESS: He has in the past, but not
22 today.

23 Q. (BY MS. HOFSTETTER) Okay. So who lives in the
24 house today?

25 A. Nobody. It's vacant.

1 Q. Okay. So it sounded to -- okay. So just -- is
2 there a water right number associated with the use you
3 described?

4 A. I believe it's 31059.

5 Q. Okay. And, again, just for the record, we're
6 not using the base number because it's the same, 63, for
7 all of these rights; is that correct?

8 A. That is correct.

9 Q. Okay. Okay. And is the Peaceful Cove Nursery
10 Well geothermal?

11 A. If it's one designated on this map, it's
12 designated in red. And on Exhibit O it's designated as
13 hot.

14 Q. Okay. Thank you. And I sense from one of your
15 earlier answers that the Peaceful Cove Nursery Well
16 shouldn't necessarily refer to the well at Andy's former
17 house. Is there another well that's also known as the
18 Peaceful Cove Nursery Well, in your opinion?

19 A. No. Rather than Andy's, it should be referred
20 to as 5115.

21 Q. Okay. 5120 or 5115?

22 A. 5120.

23 Q. Okay. Okay. So the well -- the geothermal
24 well at 5120, is that known as the Peaceful Cove Nursery
25 Well?

1 A. You know, I'm not familiar with -- you know,
2 this is Ed Squires' name for it. So, yes, it's in
3 Peaceful Cove. And whether it's a nursery well or whether
4 it's Andy's house, I think it's to heat Andy's house.

5 Q. Okay. So what -- do you know --

6 A. Which isn't Andy's house, which is
7 5120 Cartwright.

8 Q. Okay. Got you. I think I understand. Let's
9 just call it Andy's house for ease of reference. Okay.

10 So why do you suppose that it's identified -- I mean,
11 nursery well -- as Peaceful Cove Nursery Well? Nursery
12 well suggests that it's associated with a plant nursery,
13 not a domestic residence. So I'm asking, do you have any
14 idea why this well is identified as the Peaceful Cove
15 Nursery Well rather than 5120 Cartwright Well or --

16 MR. HONSINGER: Objection, calls for
17 speculation.

18 THE WITNESS: Ed Squires did it. But you say
19 plants. We've grown trees, so it's --

20 Q. (BY MS. HOFSTETTER) With this well -- using
21 the water from this well?

22 A. Both wells flow out into that area.

23 Q. Which two wells are you referring to?

24 A. The cold water well -- well -- and the springs.

25 So we've got springs, cold water well, which he uses

1 mostly around his house, and the hot water. That's
2 basically to heat his house and hot tub.

3 Q. Okay. So by the springs you're referring to
4 the use that we talked about earlier under water right
5 number 30007 --

6 A. Yes.

7 Q. -- correct?

8 A. Yes.

9 Q. And then by Andy's Cold Well -- or the well --
10 you're talking about the use -- the water right number
11 63-31056; is that correct?

12 A. Yes.

13 Q. And this Peaceful Cove Nursery Well --

14 A. Hot water well.

15 Q. -- is a hot water well, and it's also used to
16 grow trees?

17 A. You know, not really. It just goes from -- it
18 heats his house, it goes into the hot tub, and then it can
19 flow out in that direction.

20 Q. Okay.

21 A. But it can also go clear back to the creek and
22 dump into the creek. And probably the majority of the
23 time when it's running, it's probably dumping into the
24 creek, because you don't need to water trees in the middle
25 of the winter.

1 Q. Okay. So is there another well in this
2 vicinity that's not depicted in Exhibit M, to your
3 knowledge?

4 A. Not to my knowledge.

5 Q. Okay. Okay. Let's go next to what's
6 identified on Exhibit M as the Duck Pond Well.

7 A. Okay. Okay.

8 Q. And could you describe that well.

9 A. It's an Old Artesian Well that supplies water
10 for our duck pond.

11 Q. Is it geothermal?

12 A. I've never measured it. But it's -- on M it's
13 designated with a blue circle.

14 Q. Okay.

15 A. And it does not say hot in back of it on O.

16 Q. Okay. And do you know the water right number
17 that's associated with that well?

18 A. I believe it's 3 -- triple 0 -- 0006.

19 Q. It's delivered through -- is there a pump on
20 the well, or is it Artesian?

21 A. It's Artesian.

22 Q. Okay. Let's talk about what's been
23 identified -- what is that FM in a square -- oh, flow
24 meter. I see. The legend says flow meter. Okay. Never

25 mind. I answered my own question.

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1 A. Yeah, but I don't think so. I don't think
2 there's a flow meter on the Duck Pond Well.

3 Q. Okay. Is there a flow meter on Joe's Well?

4 A. Which one? Joe's?

5 Q. Yeah, the one right next to it.

6 MR. HONSINGER: Objection. There are two right
7 next to it.

8 Q. (BY MS. HOFSTETTER) Well, there's one Joe's
9 Well identified, isn't there, on this Exhibit M? One
10 circle -- one arrow, one circle, Joe's Well, is that
11 correct?

12 A. Well, the answer is I think so, but I'm not
13 sure.

14 Q. You think that there's a flow meter on Joe's
15 Well?

16 A. I think so. It's down in the hole.

17 Q. Okay.

18 A. But I can't tell you for sure, but I --

19 Q. Now, do you know why this is called Joe's Well?

20 A. 'Cause it supplies water to 5100 Cartwright.

21 Q. And is that your house?

22 A. Yes. Well, no, it's not my house. It's T-7's
23 house, which I'm living in.

24 Q. How long have you lived in that house?

25 A. Oh, '60.

1 Q. Sixty years?

2 A. 1960.

3 Q. Oh, since 1960. So you've lived in this house
4 uninterruptedly since 1960?

5 A. No. I went through a divorce. I moved out for
6 a while.

7 Q. What years were those?

8 A. I don't remember.

9 Q. Do you know how many years?

10 A. I'll say one.

11 Q. One year. And other than that one year, you've
12 lived in that house continuously since 1960?

13 A. Yes.

14 Q. Thank you.

15 A. Except I moved out during the construction.

16 Except we lived in there, too. The answer is, yes.

17 Q. Okay. Thank you. So could you explain the
18 diversion system for Joe's Well.

19 A. It goes into a pressure tank. Then it supplies
20 water to a barn, a shop, a milk house, a swimming pool
21 this house, and a playhouse.

22 Q. Whose playhouse?

23 A. That was my sister's.

24 Q. Okay. Okay.

25 A. And there's other faucets in the lawn that you

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1 can tap into, you know, the -- whatever you call it, the
2 nonfrost -- nonfreeze faucets.

3 Q. Okay. Do you know how deep this well is?

4 A. No.

5 Q. Is it Artesian?

6 A. No.

7 Q. Is it cold or hot?

8 A. It's designated in a blue circle. And I got to
9 look it up again. Let's see, 31050. It's not designated
10 on Exhibit O.

11 Q. Okay. This is your own residence, but --

12 A. No. No. 31050 is the wrong number for Joe's
13 Well.

14 Q. Okay. Where did -- okay. You got that off
15 Exhibit O?

16 A. Yeah.

17 Q. Okay.

18 A. But that's not Joe's Well.

19 Q. Okay. So what is the water right number for
20 Joe's Well?

21 A. I'd say it's 31053.

22 Q. Okay. What is the water right number for
23 31050? What well or source does that refer to?

24 A. Fifty?

25 Q. Yeah.

1 A. That's the Pool Flowing Cold Artesian.
2 Q. Okay. And I don't think we've gotten to that
3 one.

4 A. No, you have not.

5 Q. Okay. Okay. So Joe's Well would be associated
6 with water right number 63-31053; is that correct?

7 A. Yes.

8 Q. Okay. And so it's -- that would be incorrectly
9 identified on Exhibit O?

10 A. I don't think -- well, no. No. I just grabbed
11 the wrong one.

12 Q. Okay. Okay. So you said it's identified on
13 Exhibits M and O as being not hot or --

14 A. That's correct.

15 Q. And, in your opinion, do you agree with that?

16 A. I've never tested it. But since it has two
17 sources, it says it's not hot, I'd rely on them.

18 Q. Okay. But this is the house that you've lived
19 in since 1960. I mean, aren't you familiar with the water
20 that goes out in the sprinklers and whether that's hot or
21 cold or --

22 A. Well, I agree it's, you know, below 86 degrees.

23 Q. Okay. Okay. I think the next -- and did you
24 say there was a flow meter on Joe's Well?

25 A. I'm thinking there is down in that hole, but

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1 it's been quite a few years since I've looked down in
2 there.

3 Q. Okay. So let's -- I think the next one down
4 is -- in the T-7 area is the Pool -- what's identified as
5 the Pool Well, although there doesn't appear to be an
6 arrow. But it looks like it would be associated with that
7 orange dot. Do you know the water right number associated
8 with the Pool Well -- or Pool -- it just says Pool?

9 A. Yeah. I think there's two water rights
10 associated with the Pool.

11 Q. And is that a well -- Pool Well or --

12 A. Yes.

13 Q. Okay. And two water right numbers. Could you
14 give them to me?

15 A. I believe the cooler one is 31050.

16 Q. Yes.

17 A. And the warmer one is 31052.

18 Q. Okay. And could you -- so is this another one
19 of those situations where the well taps both cold and hot
20 water?

21 A. Yes. But let me clarify the map on M. The
22 circle for the Pool cold water is not there if the upper
23 one is Joe's Well. And Joe's Well should be called
24 5100 Cartwright.

25 Q. Okay.

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1 A. Okay. So what was your question?

2 Q. Okay. Going back to what's identified just as
3 the Pool Well. It sounds like we have some other issues
4 that -- there's some other wells that aren't identified
5 and we can talk about those. But what's identified as the
6 Pool Well or the Pool -- it just says Pool -- and it looks
7 like it goes with that orange circle. What are the water
8 right numbers for the Pool?

9 A. Okay. I'll repeat that the cold --

10 Q. Okay.

11 A. -- is 31050.

12 Q. Okay.

13 A. And that is Artesian.

14 Q. Okay.

15 A. The hot one is 31052, which is pumped.

16 Q. Okay. And could you explain how -- is this one
17 well we're talking about at this location?

18 A. There's one large casing. Then there's a
19 smaller casing inside that. And the cold Artesian flows
20 between those two in the annular between the outside one
21 and the middle one. Then there's another hot water well
22 that's smaller that goes all the way down to the hot
23 water.

24 Q. Okay.

25 A. So you used the word concentric.

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1 Q. Okay. So you have -- do you know how deep the
2 inner casing is?

3 A. Around 600 to the hot water.

4 Q. Okay. And the outer casing?

5 A. I don't know, but I'm thinking a couple of
6 hundred feet. Probably less than a couple of hundred, but
7 that's a guess.

8 Q. Okay. Could you describe the use of the cold
9 water at that location, or the cooler water?

10 A. The Artesian water flows through a fountain
11 which is a series of drops and steps, goes through a water
12 way past the pool, which is enjoyable. It goes under the
13 steps into an upper pond, drops into the lower pond, which
14 has had fish in it. Goes from there to a caisson that
15 fills up full and has an electric pump in it to irrigate
16 the orchard.

17 And when we're not irrigating the orchard, it
18 goes on down through a series of three other ponds that do
19 have fish in them. And, ultimately, there's an irrigation
20 pump on the last pond that can irrigate with it or
21 recirculate it back up into the above reservoir.

22 Q. Okay. And can you describe the use of the
23 inner geothermal well at the Pool location.

24 A. Okay. It goes into the pool that's used for
25 the heat and it too --

1 Q. Into what pool? Is it a swimming pool?

2 A. Swimming pool, yeah.

3 Q. Okay.

4 A. Then it goes into the same caisson that has the
5 pump on it to irrigate the orchard and goes on down
6 through the lower three ponds. And then it can be -- the
7 water can be recirculated for irrigation.

8 Q. Okay. Now, it looks like from the map there is
9 a flow meter on that well?

10 A. There is on the hot. I don't believe there is
11 on the cold.

12 Q. Okay. So would it be your position that water
13 right 31050 is not a geothermal right?

14 A. It's not shown on the map, but it says cold on
15 Exhibit O.

16 Q. So would it be correct to say that 31050 is not
17 a geothermal right?

18 A. I think it'd be correct to say, yes. We do not
19 believe it's geothermal.

20 Q. Okay. What about -- and would it be correct to
21 say that water right 63-31052 is geothermal?

22 A. There's a red dot here next to Pool, and it
23 does say hot opposite it.

24 Q. And you're referring to the red dot on
25 Exhibit M?

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1 A. Right, and Exhibit O. We've designated it as
2 hot.

3 Q. Okay.

4 A. And it says Pool Well Hot, also. That's the
5 description of it.

6 Q. On Exhibit O?

7 A. O.

8 Q. Yeah, but Exhibit M only has one dot for the
9 Pool Well, apparently; is that correct?

10 A. Right. And there -- the one I think is red.

11 Q. So there's no way of telling from Exhibit M
12 that it's also a cold water diversion location; is that
13 correct?

14 A. Well, I'm confused with what Joe's Well is,
15 'cause that's Ed Squires. There's a domestic well, and
16 there's the flowing springs, and I think there's one
17 missing on map M.

18 Q. Okay. So could you describe the well that you
19 believe is missing that we haven't talked about yet.

20 A. No. We have talked about both of them.

21 Q. We've talked about Joe's Well and Pool. But
22 you said there's a well missing.

23 A. Well, there's only -- there's only one blue
24 circle there.

25 Q. For Joe's Well?

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1 A. Right.

2 Q. And you're saying the well associated with
3 31050 should have another circle?

4 A. One of the two, either the Pool or that one,
5 needs another blue circle.

6 Q. But I thought the Pool is one well?

7 A. Well -- well, well. Is it or isn't it? That's
8 a legal question.

9 Q. Or kind of a metaphysical question?

10 A. Yeah. Well, water going down the center of it
11 on the outside is flowing. So it has two water rights.
12 Is it one well or two wells?

13 MR. HONSINGER: I'm going to object to the
14 question. The witness is not a hydrogeologist. It sounds
15 like he doesn't know, but he can certainly speculate as to
16 whether or not it's one well or not.

17 THE WITNESS: I said it has two water rights.

18 Q. (BY MS. HOFSTETTER) Okay. And would it be
19 fair to say it taps into two different sources?

20 A. Yes.

21 Q. Okay. Thank you. Okay. Going now to what's
22 identified on this map, I believe, as the Windsock Well.
23 Could you give me the water right associated with the
24 Windsock Well.

25 A. Okay. This is confusing, but the initial

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1 number is 3603.

2 Q. And what do you mean by initial number?

3 A. Well, that's its water right number, but it's
4 also a point of diversion for the Silkey two wells, 12 and
5 13.

6 Q. Okay. And why is that confusing?

7 A. Well, I don't think under 3603 alone. You'd
8 find out that it's a POD.

9 Q. And what do you mean by POD?

10 A. Point of diversion.

11 Q. Okay. And could you describe the Windsock
12 Well, how deep it is, how large it is.

13 A. Again, I'm using 600 feet as a round number.
14 And it's about a little under a foot. And whether I
15 gestured eight inches, I don't know.

16 Q. About a foot in diameter?

17 A. Or eight-inch diameter.

18 Q. Okay. Eight inches to a foot diameter; is that
19 correct?

20 A. Yeah.

21 Q. Okay. Are you okay, Andy, over there? Do you
22 need some water?

23 ANDY TERTELING: I'm sorry.

24 MS. HOFSTETTER: No, it's okay.

25 ANDY TERTELING: I apologize.

1 MS. HOFSTETTER: Don't want to ignore you.
 2 ANDY TERTELING: I apologize.
 3 Q. (BY MS. HOFSTETTER) Okay. Okay. So is this
 4 an Artesian Well, or is it --
 5 A. No.
 6 Q. Okay. Is there a pump in the well?
 7 A. Yes.
 8 Q. And what size pump is in the well?
 9 A. At one time I had a 75 horse. I'm not sure
 10 what's on it today.
 11 Q. Okay. And have you ever measured the capacity
 12 of this well?
 13 A. Yes.
 14 Q. What's the capacity of the well?
 15 A. It's written on the door.
 16 Q. The door of the well house?
 17 A. Yes.
 18 Q. Okay. Do you know what that is?
 19 A. No.
 20 Q. Okay. Do you want to venture a guess as to
 21 what you recall?
 22 MR. HONSINGER: Objection, calls for
 23 speculation. But go ahead and answer if you know.
 24 Q. (BY MS. HOFSTETTER) Do you have a -- you know
 25 do you recall approximately what it might be?

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1 A. Well, I know it produces more than 200.
 2 Whether it can hit 300, I'm not sure.
 3 Q. And what do you mean by 200? What's the unit?
 4 A. GPM.
 5 Q. Okay. So you would -- you believe, to the best
 6 of your knowledge, somewhere between 200 and 300 GPM would
 7 be the capacity?
 8 A. No, no. It's way over 200.
 9 Q. Okay. But you believe it's probably less than
 10 300 GPM?
 11 A. I'm just throwing that out as a target.
 12 Q. Okay. But, I mean, is that your understanding
 13 of what you believe is --
 14 MR. HONSINGER: Objection, calls for
 15 speculation.
 16 MS. HOFSTETTER: Okay.
 17 THE WITNESS: Yeah. I don't believe -- I don't
 18 know.
 19 Q. (BY MS. HOFSTETTER) You don't know at all what
 20 the capacity is?
 21 A. It's written on the pump house wall.
 22 Q. Okay.
 23 A. That's all I know.
 24 Q. Okay.
 25 A. 'Cause when they tested it, I wrote it down,

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1 but I can't recall that number.
 2 Q. And by GPM, are you referring to gallons per
 3 minute?
 4 A. Yes.
 5 Q. Okay. Could you describe the uses of the
 6 Windsock Well.
 7 A. Okay. It goes through a main line to the --
 8 Q. And how big is that main line?
 9 A. I gestured six inches.
 10 Q. Okay.
 11 A. I'm really not sure. It goes to the nursery,
 12 but it can -- there's a two-inch that can turn off to the
 13 ag shop, but it's close, so it goes to the nursery. Then
 14 it's split. Some is pumped up higher. It goes through
 15 hydronic heaters and under the eaves. Some of it flows
 16 just from the natural pressure. Goes through a booster
 17 furnace that, I believe, has two million, whatever it is,
 18 of natural gas heat to preheat it if we need to.
 19 Then it splits and goes whatever direction that
 20 is, east and west, and it can go underneath through tubes
 21 in the floors. And some benches have tubes under the
 22 Some of it, after it's gone through there, is diverted to
 23 the south through three casita buildings. Then that all
 24 comes --
 25 Q. What's a casita building? I'm sorry.

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1 A. Just a round hoop house.
 2 Q. What's a round hoop house?
 3 A. It's round, like an igloo.
 4 Q. Is it like a residence?
 5 A. No, no, no, no, nursery -- greenhouse nursery
 6 Q. Okay. So are you talking about, you use this
 7 water to heat nurseries?
 8 A. Yes, it can.
 9 Q. Okay. And so you're talking about nursery
 10 buildings?
 11 A. Yeah, so far.
 12 Q. And the shop?
 13 A. Well, yeah, but I'm going to come back to the
 14 shop.
 15 Q. Okay. So far you've been talking about a
 16 nursery building?
 17 A. Right. Then it goes in to a building that
 18 stores basically wholesale items for the garden center.
 19 Then from there it goes into the ag shop. It goes to a
 20 distribution center there. Some of it splits and goes
 21 through some storage buildings to the east.
 22 Then it's all gathered up again on that south
 23 end of the shop. Routes around. It goes through two
 24 drops to take out any bad minerals in it, 'cause it goes
 25 into a pond, and can go past another south runway

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1 building. And then turns and goes in where there's
2 tropical plants along this pond. And also there's fish in
3 that lower pond. That's it that I recall. There's
4 probably more.

5 Q. Okay.

6 MR. HONSINGER: Counsel, we've been at this for
7 an hour. Can we go ahead and take a five-minute break?

8 MS. HOFSTETTER: Sure.

9 MR. HONSINGER: Thank you.

10 MS. HOFSTETTER: Thanks for reminding me,
11 'cause I would just keep going. I can't believe how fast
12 this time is going.

13 MR. HONSINGER: Uh-huh.

14 (A brief recess was taken.)

15 Q. (BY MS. HOFSTETTER) Okay. We were talking
16 about the Windsock Well, and you had identified three
17 water rights as associated with that well, 36-0312 and 13.
18 Do you know if there are any other water rights associated
19 with that well?

20 A. Oh, boy. I know it's a point of diversion, and
21 probably.

22 Q. Okay. But you're not sure?

23 A. No, I'm not sure.

24 Q. Do you know if that's a geothermal well?

25 A. Well, on the map Windsock is in red, and on

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1 3603 it's designated as hot.

2 Q. Okay. On Exhibit O it says that it's hot?

3 A. O, yes.

4 Q. And you use it for heating the greenhouses,
5 correct?

6 A. Et cetera.

7 Q. Yeah. So it must be geothermal, correct?

8 A. Yes.

9 Q. Thank you. Okay. And I believe your testimony
10 this morning was that 63-12 and 63-13 were also diverted
11 out of the Silkey, House, and Tiegs Wells, is that
12 correct, or some of both?

13 A. Not exactly.

14 Q. Okay.

15 A. The 12 and 13 flow into a system of valves that
16 also have booster pumps on them, have two booster pumps.
17 Fourteen also comes to there, is valved, but is shut off,
18 because it's being used for a measurement well, but --

19 Q. Do you mean 15?

20 A. Yes. Yeah.

21 Q. Okay.

22 A. Fourteen, yeah -- 15, thank you. The Tiegs
23 Well comes to that location, but the valve is shut. And
24 I'm not even sure there's not a padlock on it over there
25 in its own concrete place.

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1 Q. Okay. So my question is, 63-12 and 13 are
2 diverted at the Windsock Well; is that correct?

3 A. A portion of them.

4 Q. Okay.

5 A. It's a POD, a point of diversion, and we can
6 divert what we want up there and keep -- and use what we
7 want down at 36th Street.

8 Q. Okay. So what other wells can you divert 63-12
9 and 63 -- or 63-13 from besides the Windsock Well?

10 MR. HONSINGER: Objection, calls for a legal
11 conclusion. But answer it if you can.

12 THE WITNESS: I mentioned earlier that I don't
13 know -- there's another number, 75, that's -- 7595 that's
14 rattling around in my head, but I'd have to look that one
15 up.

16 Q. (BY MS. HOFSTETTER) Okay. So is that another
17 geothermal water right number?

18 A. I'm not sure what it is.

19 Q. Okay. Do you know what wells that would be
20 associated with, 7595?

21 A. I don't think it's on this list. Let me look
22 it up and see.

23 Q. And you're looking at Exhibit O now?

24 A. Yeah, 7595 is the Champagne Well. So I think
25 we can use the Champagne Well, but come back in case of a

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1 emergency and use the Windsock Well as a backup for the
2 Champagne.

3 Q. So you might be able to also divert 7595 out of
4 the Windsock Well? Is that what you're saying?

5 A. That's correct.

6 Q. Okay.

7 A. I think.

8 Q. It's pretty confusing stuff, isn't it?

9 A. Well, not really. It's hot and cold. I've
10 been working on other projects.

11 Q. But it's somewhat difficult to keep track of
12 what water rights go with what wells; is that correct?

13 A. It depends on --

14 MR. HONSINGER: Objection, relevance.

15 THE WITNESS: Depends on your brain power. You
16 know, I don't have a great memory, but I can figure things
17 out.

18 Q. (BY MS. HOFSTETTER) Okay. So back to -- let's
19 focus on water right number 63-12. Which wells on
20 Exhibit M are authorized for the diversion of 63-12?

21 MR. HONSINGER: Objection, calls for a legal
22 conclusion. He doesn't have the water right transfer in
23 front of him. Perhaps if he did, he might be able to say.

24 Q. (BY MS. HOFSTETTER) Well, I mean, can you
25 answer without looking at the transfer approval?

1 A. Actually, no.

2 Q. Okay. And what about water right number 63-13?
3 Which wells are authorized for diversion of water right
4 63-13?

5 MR. HONSINGER: Same objection.

6 THE WITNESS: Same answer for 12.

7 Q. (BY MS. HOFSTETTER) Okay. Same as the answer
8 you just provided for 63-12; is that correct?

9 A. Yes.

10 Q. Thank you. Okay. And 63-3603, which wells
11 besides the Windsock Well can you divert that water right
12 from under current approvals?

13 MR. HONSINGER: Objection. Again, the witness
14 does not have those approvals in front of him. If you
15 were to provide them to him, he might be able to answer
16 the question. If you can answer the question, go ahead
17 and answer it, Joe.

18 THE WITNESS: Other than point of diversion, I
19 can't -- I know generally what we do, how we transfer the
20 point of diversion. But what it says there, I'm sure it's
21 limited to the same flows that the Silkey Wells are
22 limited to.

23 Q. (BY MS. HOFSTETTER) Well, we're talking about
24 63-3603. And I asked, besides the Windsock Well, what
25 other wells are authorized for the diversion of that

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1 right, to your knowledge?

2 MR. HONSINGER: Same objection.

3 THE WITNESS: Let me look up the number you're
4 talking about. Give me the number again.

5 Q. (BY MS. HOFSTETTER) It's water right number
6 63-3603. And the question is, which wells are authorized
7 for diversion of that water right? And if you don't know,
8 Joe, you can just say, I don't know without looking at my
9 records.

10 A. Okay. I don't know. We talked about the
11 Silkeys, 12 and 13, and past that, I don't know.

12 Q. Okay. So you don't know for 63-3603 offhand?

13 A. That's correct.

14 Q. Okay. And 63-7595, do you know if there are
15 any other wells besides the Champagne Well that you
16 previously indicated for which that water right can be
17 diverted?

18 MR. HONSINGER: Objection, calls for a legal
19 conclusion.

20 THE WITNESS: I think I've answered -- okay.
21 Give me the number again.

22 MS. HOFSTETTER: 7595.

23 THE WITNESS: Okay. Again, that's a point of
24 diversion, which I don't have its information on
25 Exhibit O, so I'd have to guess, and I'd rather not.

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1 Q. (BY MS. HOFSTETTER) Okay. Now, let me just
2 you know, final -- I think we've talked about all of the
3 sources, dots identified on Exhibit M that are either on
4 property owned by TTCI or T-7. Are there any other wells
5 or spring, points of diversion in this area on Exhibit M
6 that's on property owned by TTCI or T-7 that are not
7 identified on this map, to your knowledge?

8 A. Yes.

9 Q. Okay. So how many of them are there, to your
10 knowledge, that are not on this map that should be?

11 A. Okay. There are no low temperature geothermal
12 wells.

13 Q. Okay.

14 A. But there are springs scattered all over the
15 place.

16 Q. Okay. And many of the spring sources have
17 points of diversion on them, but they're not on this map?
18 Is that what you're saying?

19 A. That's correct.

20 Q. Okay. So are there any wells, to your
21 knowledge, on TTCI property or T-7 property of any kind,
22 whether geothermal or cold, that should be depicted on
23 this map -- well, let's just say that are not depicted on
24 this map, but are on TTCI property or T-7 property?

25 A. Yes.

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1 MR. HONSINGER: I'm going to object. It's
2 already asked and answered at least part of it. He's
3 testified that at least one well -- at least -- there
4 should be at least one additional well located in the area
5 of the Pool Well.

6 Q. (BY MS. HOFSTETTER) Okay. And we talked abo
7 that one; is that correct?

8 A. Yes.

9 Q. Okay. Other than another circle that should be
10 for the cold Pool Well I believe you said; is that
11 correct?

12 A. Yes.

13 Q. Okay. Are there any other wells on TTCI or T-7
14 property in Exhibit M that should be depicted that are not
15 depicted?

16 A. There's a difference. Should be and are not --

17 Q. Okay. Let's just say are not -- that are
18 not -- are there any other --

19 A. Yes.

20 Q. -- wells on T-7 or TTCI property that are not
21 depicted on Exhibit M?

22 A. Yes.

23 Q. Okay. How many of those -- other than the Pool
24 Cold Well, which we just discussed, how many other wells
25 are not depicted on Exhibit M?

1 A. I'm thinking of one.

2 Q. Just one. And what well would that be?

3 A. It's not depicted on there, but it's on T-7's
4 ground.

5 Q. Okay. And what -- could you maybe mark the
6 approximate location with your pencil maybe with an X
7 or --

8 A. Okay.

9 Q. Can I see where you marked that? Okay. And
10 that -- it looks to me like you put an X in the southwest
11 of the northwest of Section 22; is that correct?

12 A. If you say so.

13 Q. Well, let me see. I'm looking where --

14 A. I have another sheet that I presented that had
15 all those. And you asked me why did I put all those
16 southwest and the northwest? Now you know.

17 Q. Okay. Okay. So you've marked up this exhibit?

18 A. Yeah, which you may shoot me for.

19 Q. Okay.

20 A. I just marked up another exhibit --

21 Q. Okay.

22 A. -- with an X.

23 Q. Okay. You put an X on Exhibit K to show the
24 missing --

25 A. Yeah. But you asked me whether the southwest

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1 and the northwest --

2 Q. Yeah.

3 A. Yes, you're correct.

4 Q. Okay. Thank you. Okay. Okay. So the well --
5 the X that you've marked in the southwest of the northwest
6 of Section 22, could you describe -- is that a cold water
7 well?

8 A. I've never measured it.

9 Q. Okay. So you don't know if it's geothermal or
10 cold?

11 A. It's like the Duck Pond Well. I've never
12 measured it -- neither of them.

13 Q. Okay. So I'm showing you Exhibit M that -- and
14 I've marked an X in the southwest and the northwest. Is
15 that X on this Exhibit M, is that approximately the
16 correct location for the well we're talking about?

17 A. Yeah, we're approximate.

18 Q. Okay. Okay. So you're not sure if it's cold
19 or hot water. Do you know the water right number
20 associated with that well?

21 A. It doesn't have a water right.

22 Q. It doesn't have a water right. Okay. Is it an
23 Artesian Well?

24 A. Yes. It's flowing through the surface.

25 Q. Okay. What is that water used for?

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1 A. It just runs down and waters some plants.

2 Q. And why do you call it a well?

3 A. 'Cause it has a steel casing sticking out of
4 the ground.

5 Q. Okay. Okay. But it has no water right number,
6 to your knowledge?

7 A. No. We didn't file on it. See, your second
8 question was, should be filed on. And my answer is, I
9 didn't think there was enough flow to worry. You know, I
10 doubt if it's two or three gallons a minute.

11 Q. Okay. So let's -- so is that -- that's the
12 only -- that one well, and then the cold Pool Well, those
13 are the only two wells on T-7 or T7CI property depicted c
14 Exhibit M that are not previously identified on Exhibit M?

15 A. The answer is no.

16 Q. There's more?

17 A. Yes.

18 Q. Okay. Where would -- how many more would yo
19 say?

20 A. I don't know. As I'm sitting here I'm just
21 recalling them.

22 Q. Okay. All right. Well, about -- so maybe you
23 should mark with Xs on Exhibit M --

24 A. Can I do it on the larger one, on K?

25 Q. Okay. You can mark on K.

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1 A. I'm a little more accurate. Do you want an X
2 or something else?

3 Q. No. I like an X just 'cause for consistency.
4 Okay. You just marked another X in the southwest of th
5 northwest of Section 22 on Exhibit K; is that correct?

6 A. Southwest, northwest, agree.

7 Q. Okay. And could you explain, is that a hot
8 water well, or cold water well?

9 A. I've never measured the temperature of it.
10 It's --

11 Q. Could you put a number two next to that X so
12 that -- and a number one next to the first X so we know
13 what we're talking about. Okay. So now we're talking
14 about 2X, right?

15 A. Yes.

16 Q. So you don't know if 2X is cold or hot?

17 A. I can guess, but I don't consider it hot.

18 Q. Okay. Do you have a water right number for
19 that well?

20 A. No.

21 Q. How deep is that well?

22 A. You know, I say, no. I'm not so sure that it
23 doesn't have a water right to it.

24 Q. Okay. Do you have an idea what that water
25 right number might be?

1 A. No, but I can describe it to you. It's a well,
2 you know, an old well. Used to flow. My father built a
3 lily pond out of concrete that it flowed into, and it had
4 fish and snails -- when I was this tall -- and four feet
5 above the ground. When we drilled the Cold Artesian Well
6 at the pool, it dried up.

7 Q. The 2X dried up?

8 A. Right.

9 Q. Okay.

10 A. Well, it no longer flows. It's down there
11 about eight feet.

12 Q. Okay. Okay. So are there any other wells on
13 T-7 or TTCI property other than the Pool cold and these
14 two ones you've marked with X on Exhibit K that are not
15 depicted on Exhibit M?

16 A. I mentioned to you as we were coming around the
17 corner that there's -- one of my guys, who's no longer
18 with us, said that there's a couple of wells out in these
19 trees, and I've never seen them.

20 Q. Okay.

21 A. But I believe him when he says there's a couple
22 of wells there. And it's designated -- should be --
23 should be abandoned. So it's --

24 Q. Oh, it's already designated --

25 A. Yeah.

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1 Q. -- on Exhibit M?

2 A. Right.

3 Q. Okay. Any more wells that are not depicted on
4 Exhibit M that --

5 A. Yes.

6 Q. Okay. If you want to mark them on Exhibit K.
7 You can just put a number next to them. Okay. You just
8 marked 3X. Could you explain -- is 3X a geothermal, or a
9 cold water well?

10 A. It's not marked hot. It's not flowing. It's
11 abandoned.

12 Q. Okay. So it's not in use presently?

13 A. That's correct.

14 Q. Do you know if there are any water rights
15 associated with that well?

16 A. I think it was abandoned so -- or denied.

17 Q. Okay. So is it -- has that well been properly
18 closed, to your knowledge?

19 A. No, I don't think it has been.

20 Q. Okay. Any other wells that are not depicted on
21 Exhibit M on T-7 and TTCI property?

22 A. Not that I recall at this time.

23 Q. Okay. Now, of the wells that you've either
24 marked with an X on Exhibit K, or that are identified on
25 Exhibit M, which ones are Artesian?

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1 MR. HONSINGER: Objection, it calls for a legal
2 conclusion regarding what Artesian means. And the witness
3 is not a hydrogeologist, and he might not have such
4 expertise. But go ahead and answer if you can.

5 THE WITNESS: My definition as a farmer is if
6 it's flowing. My understanding, if you're a geologist,
7 it's pressure that raises Artesian pressure up in the
8 hole.

9 Q. (BY MS. HOFSTETTER) Okay. So by flowing, you
10 mean that it doesn't require the use of a pump to get the
11 water to the surface; is that correct?

12 A. That's correct. It flows to the --

13 Q. Okay. So based on that -- that sort of lay
14 understanding of what Artesian means, which of the wells
15 that you've either X'd on Exhibit K, or that are depicted
16 on Exhibit M, are Artesian?

17 A. In the essence of time, could I look at O and
18 read which ones we've designated as Artesian?

19 Q. Sure.

20 A. I've stopped on the first two.

21 Q. Okay.

22 A. The Silkeys are not designated as Artesian, but
23 they're flowing.

24 Q. Okay. Now explain that one.

25 A. So using this as a reference -- I just got shot

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1 in the foot.

2 Q. Okay. I get your point. Well, then maybe you
3 should just look at Exhibit M and Exhibit K and tell us
4 which ones, in your knowledge, are Artesian. It sounds
5 like Exhibit O is not necessarily correct?

6 A. Here's 30006 has the word Artesian.

7 Q. And you're looking at Exhibit O?

8 A. Yes, 31050 has Artesian. Okay. Let me look at
9 Exhibit M. I assume we're not considering springs as
10 Artesian 'cause you asked for wells that are Artesian --

11 Q. Right.

12 A. -- that are flowing?

13 Q. Right. But could you -- I'd rather have the
14 well names just for consistency --

15 A. Okay.

16 Q. -- than the water right numbers. So if you
17 could just read the well names on Exhibit M that would
18 be -- or on Exhibit K.

19 A. Okay. The Terteling Springs Well flows
20 Artesian. And remember that has two rights, one hot and
21 one cold. You're interested in hot.

22 Q. And the hot one is the Artesian?

23 A. They're both.

24 Q. They're both Artesian.

25 A. The Duck Pond Well flows. The Pool cold. The

1 springs at 5120 -- no, no, it's a spring. Forget that.
2 On your map it says the Old Artesian Flowing Wells, and
3 those are the ones I don't know where they are.

4 Q. Okay. And that's Exhibit M that you're
5 referring to?

6 A. Yes. Then we have Silkey 12 and 13. And you
7 can put 15 in there if you want.

8 Q. So here you're referring to the Silkey Shed
9 Well, the House Well, and the Tiegs Well?

10 A. That's correct.

11 Q. Those are all Artesian?

12 A. Yes.

13 Q. And they're currently Artesian?

14 A. Yes, except the Tiegs, I think, is shut down.

15 Q. Okay.

16 A. Okay. I may have missed some, but I got some,
17 too.

18 Q. Okay. So, to the best of your knowledge, those
19 are the Artesian wells?

20 A. In the time I spent on it.

21 Q. Okay. Okay. So let's -- now, from our
22 discussions earlier, it sounds like T-7, LLC, which is
23 related to the Terteling Trust No. 7, and TTCI share
24 similar parties in interest, that being, your family and
25 your grandchildren and your sons being -- involved in

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1 being the shareholders and/or the beneficiaries?

2 A. I'd say, no.

3 Q. No. Why do you say no?

4 A. Well, they have different beneficiaries. They
5 have different trustees. They have, you know, different
6 managers and board of directors. They own different
7 properties.

8 But something you haven't talked about is that
9 they share some of this water that is connected in pipes.
10 They share it on the ratio of costs. T-7 pays 30 percent
11 of the cost, and TTCI pays 70 percent of the cost. So
12 there is a connection there.

13 Q. Okay. So, basically, they share use of the
14 wells?

15 A. Well, they're -- the wells are interconnected,
16 and the land is interconnected. So I'm sure this
17 afternoon we could go through each of the water rights on
18 the land and see where all this goes.

19 Q. Okay. And I don't think we need to do that in
20 any detail. But just so that -- you're basically saying
21 the distribution -- maybe we should turn to that other
22 exhibit that you provided of the distribution system. Is
23 that this one?

24 A. Yes.

25 Q. Okay.

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1 A. Exhibit L.

2 Q. Exhibit L. Is this showing the distribution
3 system -- the shared distribution system that you're
4 talking about?

5 A. Yes.

6 Q. Okay. So could you explain Exhibit L.

7 A. Well, what would be handy is if I had T-7's
8 overlay that's shown on the other maps overlaid on here.

9 Q. Okay. You mean the T-7 property?

10 A. Right. Because the property line goes
11 approximately here, outside the Champagne here, down h
12 here, here. So this center core is the T-7 ground and
13 then --

14 Q. And you're looking at Exhibit L, right?

15 A. That's correct. And then going back to the
16 east, high and low, and going to the southwest low is on
17 the corporation ground, and the wells are designated.

18 So -- and these wells are interconnected. You know, we
19 can pump from different ones at different times.

20 Q. So using Exhibit K, L, and M together, we can
21 sort out what part of the distribution diversion system is
22 on T-7 ground, and what part is on TTCI ground?

23 A. Yes.

24 Q. But what you're saying is it's a shared
25 diversion and distribution system, it's an interconnected

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1 system; is that correct?

2 A. Yes.

3 Q. Okay.

4 A. If that doesn't have any legal connotation to
5 it. To a farmer, yes.

6 Q. Well, inter -- I mean, in the practical sense
7 what we're looking at in Exhibit L -- I'm assuming the
8 blue lines are pipes?

9 A. Yes.

10 Q. And then you have the well. And I assume the
11 exhibit -- maybe you can talk about Exhibit L. But
12 Exhibit L just refers to geothermal wells; is that
13 correct?

14 A. No.

15 Q. Okay. Which wells are not geothermal on
16 Exhibit L?

17 A. Well, the largest one is the Windsock -- or the
18 Champagne.

19 Q. Okay.

20 A. This is our main well.

21 Q. Champagne?

22 A. Right. And that's why we call it that, 'cause
23 we're lucky to get up there.

24 Q. The rest of the wells are geothermal?

25 A. Well, Motorcycle has one hot and one cold.

1 Q. Okay.

2 A. Miller Gulch Well is strictly drinking water,
3 and it's cold. No, I'm wrong. That's a test well. When
4 I say Miller Gulch, I'm thinking of the Old Barn Well,
5 number two, it's cold and drinking. The Windsock is hot,
6 which we use for 12 and 13. The Pool is hot and cold.
7 And the hot can be connected to the -- there is a
8 connection there.

9 Q. So is it one interconnected system for cold and
10 hot wells, or is there a way to separate the hot water in
11 the distribution system from the cold water?

12 A. Well, the hot and the cold can go into the cold
13 distribution systems.

14 Q. The hot and the cold can go into the cold?

15 A. Right. But we only use the hot in case of an
16 emergency which -- you know, we actually used it last year
17 in the well drilling -- for some well drilling reason.

18 You know, it had to do with something like -- and I don't
19 know what. But it's rarely used, you know, once every
20 five years as far as I'm concerned. So the cold -- it's
21 connected to the cold. The springs flow into a separate
22 system that isn't shown on here. Here's the reservoir.
23 And there's a --

24 Q. And you're pointing to Exhibit L?

25 A. Yes. The black line is the reservoir. And

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1 that irrigation system is not shown on here.

2 Q. So could you -- but I also see the Windsock
3 Well as connected to this distribution system, which is a
4 geothermal well?

5 A. Yes.

6 Q. And so I'm -- so is this blue line actually two
7 different distribution systems, one exclusively hot, and
8 one hot and cold, or how -- I mean, 'cause it looks like
9 Windsock's tied in and Champagne's tied into the same
10 system?

11 A. They can be. There's a dozen valves in here.

12 Q. And you're pointing to the Windsock Well?

13 A. Yes. And I think this is -- no, they're
14 both -- there's two lines here. There's a rotary system
15 that comes off here with a round pivot on it right there.

16 Q. And you're pointing to the circular irrigated
17 area on Exhibit L that's just southwest of the Windsock
18 Well; is that correct?

19 A. But there's two lines that run --

20 Q. Could you answer the question?

21 A. Oh.

22 Q. For the record, southwest of the Windsock Well?

23 MR. HONSINGER: Objection, that's southeast.

24 THE WITNESS: I think it's east.

25 MS. HOFSTETTER: Oh, southeast --

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1 THE WITNESS: No, you're upside down.

2 MS. HOFSTETTER: -- of the Windsock Well; is
3 that correct --

4 THE WITNESS: Yes.

5 MS. HOFSTETTER: -- on Exhibit L? Yes?

6 THE WITNESS: Yes.

7 MS. HOFSTETTER: Thank you.

8 Q. (BY MS. HOFSTETTER) Okay. So that blue line
9 is actually two different systems?

10 A. That's what I think. I think there's a cold
11 line and a hot line there.

12 Q. Okay.

13 A. And the hot line is insulated.

14 Q. Okay. So I guess what I hear you saying is
15 that the system depicted on Exhibit L, which covers T-7
16 and the TTCI property, is an interconnected --
17 interconnected and you can segregate the hot water if you
18 want to?

19 A. The answer is, yes, but I'd say it the other
20 way around. The hot water is segregated unless there's an
21 emergency that we need to use it for irrigation as a
22 backup system, you know, for Champagne.

23 Q. Okay. So, for instance, you can use the

24 Windsock Well water in lieu of the Champagne Well water

25 A. But in lieu means that there's a problem with

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1 it. It's shut down.

2 Q. There's a problem with the Champagne Well?

3 A. Yes.

4 Q. Okay. Okay. So how do you -- why do you have
5 different ownership for T-7, LLC, property from TTCI
6 property? Why is -- you know, why are these 200 acres
7 owned by T-7 rather than TTCI?

8 MR. HONSINGER: Objection to the extent that it
9 calls for attorney/privileged -- attorney/client
10 privileged information.

11 THE WITNESS: The T-7 goes to males only. T-6
12 goes to males only. T-7 goes to male and female. So you
13 probably disagree with me, but I felt that the females
14 should get something of this.

15 MS. HOFSTETTER: I don't think I disagree with
16 that.

17 Q. (BY MS. HOFSTETTER) So what I hear you saying
18 is the T-6 Trust that's involved in TTCI was set up by
19 someone other than you?

20 A. My uncle and myself.

21 Q. Okay. So that is what it is. And you set up
22 the T-7 to have a somewhat different way of handling
23 things?

24 A. Right, distribution.

25 Q. Okay. Different way of distributing assets; is

1 that correct?

2 A. Yes.

3 Q. Okay. How long have you been affiliated with
4 the Terteling Company in some capacity?

5 A. Is that as an officer?

6 Q. In any capacity.

7 A. I worked summers with the predecessor, which
8 was called J. A. Terteling & Sons in '53, '54, '5, '6.

9 Then, eventually, J. A. Terteling & Sons changed its name
10 to J. A. Terteling & Sons, Inc., which is a corporation
11 from a partnership. Then I graduated from school in the
12 '60s. That's when I started full-time.

13 Q. In high school in the '60s?

14 A. No, college.

15 Q. Okay.

16 A. So then I started full-time in different
17 capacities. And, you know, you'd have to go back to the
18 ownership of which entity you were working for. 'Cause
19 kind of like this, if there were several entities, you
20 know, then you may work for three of them in one day if
21 you're working on three different projects.

22 Q. So was J. A. Terteling your father?

23 A. No, that's my grandfather.

24 Q. Oh, your grandfather. Okay. So

25 J. A. Terteling & Sons would refer to -- the sons would be

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1 one -- your father would be one of the sons, correct?

2 A. So I've been called a son of a son.

3 Q. Okay. Okay. And then so what I hear you
4 saying is J. A. Terteling & Sons became J. A. Terteling,
5 Inc., which later became the Terteling Company,
6 essentially; is that correct?

7 A. That's close enough. Not perfect, but it's
8 close.

9 Q. Okay. Thank you. Just for summary purposes.

10 Okay. Do you know when the Terteling Company, Inc., was
11 first formed?

12 A. You know, I guess in the mid-'60s.

13 Q. Okay.

14 A. But it might have been earlier. The mid-'60s
15 is the Terteling Company, Inc.

16 Q. Okay. So it's pretty fair to say -- I mean,
17 you've been involved with the Terteling Company since the
18 beginning?

19 A. No.

20 Q. Since before the beginning --

21 A. No.

22 Q. -- would that be --

23 A. No. My father and his brothers were in

24 business with my uncle. So which entity were you -- did
25 you name?

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1 Q. Well, the Terteling Company, Inc. --

2 A. Yes.

3 Q. -- in some capacity --

4 A. Yes, in Terteling Company, Inc., in the '60s.
5 The answer is, yes, mid-'60s.

6 Q. And when did you become president of the
7 Terteling Company, Inc.?

8 A. I'd say early on in -- maybe late '60s.

9 Q. Okay. And you've been president ever since
10 then?

11 A. Yes.

12 Q. Okay. And T-7, LLC -- and I see you're neith
13 a manager or a member of T-7, LLC; is that correct?

14 A. You said I'm neither?

15 Q. Neither.

16 A. I'd say that's correct.

17 Q. Okay. But you are a trustee of the Terteling
18 Trust No. 7, which owns a hundred percent?

19 A. If you want to correct it, you could call it
20 co-trustee.

21 Q. I'm sorry?

22 A. You could call it a co-trustee.

23 Q. You're a co-trustee of --

24 A. And four others.

25 Q. -- of the Terteling Trust No. 7; is that

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1 correct?

2 A. That is correct.

3 Q. Okay. How long have you been a trustee or a
4 co-trustee of Terteling Trust No. 7?

5 A. When it was formed.

6 Q. And when was that about? Approximately.

7 A. I can't even guess.

8 Q. A long time ago?

9 A. Long enough.

10 Q. Okay. 1960s you think?

11 A. I think before that.

12 Q. Okay. Okay.

13 A. You know, when I say before that, my oldest son
14 was born in '60, so it had to be after '60. It was
15 probably mid-'60s.

16 Q. Okay.

17 A. Which trust did you name?

18 Q. We were talking about No. 7.

19 A. Yeah. My oldest son is 60, so it was mid-'60s.

20 Q. Okay. And you're also the trustee of the Trust
21 No. 6, is that correct, a co-trustee?

22 A. Co-trustee.

23 Q. Is that correct?

24 A. Yes.

25 Q. And how long have you been a trustee of the

1 Trust No. 6?

2 A. Well, I'm guessing mid-'60s.

3 Q. Okay. I'm handing you what's been marked as
4 Exhibit C. And I have some extra copies. Do you know
5 what this -- and actually -- I'm actually going to hand
6 you also what's been marked -- well, let's just start with
7 Exhibit C for now. Do you know what this document is?

8 A. It says at the top that it's recommendation
9 for --

10 MR. HONSINGER: I'm going to ask you to give
11 the witness a chance to look through it --

12 MS. HOFSTETTER: Okay. That's fine.

13 MR. HONSINGER: -- to make sure he knows what
14 it is. You just handed me that.

15 MS. HOFSTETTER: I'm just handing him
16 Exhibit C, I believe.

17 MR. HONSINGER: Yeah. You've already handed me
18 Exhibit C.

19 MS. HOFSTETTER: Okay. Then I'll keep that.
20 Thank you.

21 MR. HONSINGER: Look all the way through it,
22 Joe.

23 MS. HOFSTETTER: Let me know when you're done
24 looking at that. Okay. Are you ready, Joe?

25 THE WITNESS: I'm still stuck on transfer of

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1 68558, trying to understand what that is.

2 Q. (BY MS. HOFSTETTER) You're reading page --
3 you're on page 2 of --

4 A. Three.

5 Q. -- of Exhibit C?

6 A. Page 3.

7 Q. Page 3. Oh, yeah, it says page 3, but it's
8 actually page 2 of Exhibit C. But, yeah, page 3 -- it
9 says page 3 at the bottom. Well, I don't think I'm going
10 to ask you very many detailed questions. Should we just
11 get started, or I can give you a few more minutes if you
12 like?

13 MR. HONSINGER: Counsel, maybe a better way to
14 do it is perhaps you represent to the witness what this
15 is, because there are numerous documents contained in this
16 package, Exhibit C.

17 Q. (BY MS. HOFSTETTER) Okay. So, Mr. Terteling
18 have you, you know, been able to determine with your
19 review so far what this -- what these documents are?
20 They're all similar type documents.

21 A. Okay. They -- the first one is a
22 recommendation for water rights, water right number 63-12
23 The second one is a recommendation for water rights under
24 63-13. The third one is a recommendation for water rights
25 under 63-15.

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1 Q. Yeah. And they're all the same. They're just
2 different water rights. So I'm just asking, have you seen
3 those documents before?

4 A. I flipped to 308.

5 Q. Yeah.

6 A. I don't remember what 308 is.

7 Q. You mean you don't remember what the water
8 right is --

9 A. Yeah.

10 Q. -- 63-308?

11 A. That's correct.

12 Q. Okay. Well, I can represent what these
13 documents are. These are director's report
14 recommendations in the SRBA for the water rights involv
15 in today's proceeding claimed by the Terteling Company,
16 Inc. Okay? And I just want to like walk through these
17 quickly, starting with the first one, 63-12. Is that a
18 geothermal right, do you know?

19 A. I think we've discussed it previously and
20 determined that -- we've said that it's hot.

21 Q. Okay. And 63-13, is that a geothermal right?

22 MR. HONSINGER: I'm going to object. The
23 documents speak for themselves. And I believe it's been
24 asked and answered.

25 Q. (BY MS. HOFSTETTER) Well, I'm going -- I ju

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1 want -- you know, I'm asking him to look at the first
2 line, and based on his knowledge, to identify if it's a
3 geothermal right in his opinion or not?

4 MR. HONSINGER: Same objection. But if you can
5 answer, Joe, go ahead.

6 Q. (BY MS. HOFSTETTER) Yeah. We're looking at
7 63-13 now. Is that a geothermal right?

8 A. We've discussed 13 before. It's designated on
9 the map in red, it's designated on our sheet we handed you
10 as hot, and it's designated -- the purpose of use is for
11 heating.

12 Q. Is that a yes?

13 A. We've said yes before.

14 Q. Okay. And 63 -- turning now to 63-15, is that
15 geothermal?

16 MR. HONSINGER: Standing objection if the
17 questions are all going to be the same.

18 THE WITNESS: And my answer is the same as the
19 last one on 12 and 13.

20 Q. (BY MS. HOFSTETTER) Okay. And 63-308, is that
21 geothermal?

22 A. I'm going to spend some time and figure out
23 what 308 is.

24 Q. Okay. So right now you can't say whether
25 that's geothermal or not just looking at that?

1 A. Well, I can, but I need time to look at it.
 2 The place of use says stock water and irrigation.
 3 Q. So what does that tell you?
 4 A. I don't see heating above it. I think the
 5 document speaks for itself, that it's -- it doesn't have
 6 the heat removed from it.

7 Q. So, in your opinion, is this a right for
 8 geothermal water or not?

9 MR. HONSINGER: Again, I'm going to object. It
 10 calls for a legal conclusion. The document speaks for
 11 itself. If you want the client to study it and determine
 12 whether or not, he can certainly offer you his opinion
 13 after he studies it.

14 THE WITNESS: I've mentioned that I don't know
 15 what 308 is.

16 MS. HOFSTETTER: Okay.

17 THE WITNESS: It's on neither of my two maps.
 18 It's -- oh, here it is on O. It's from Stewart Creek.

19 MS. HOFSTETTER: Yes.

20 THE WITNESS: You say creek? It's for stock
 21 water and irrigation. It's not designated as hot.

22 Q. (BY MS. HOFSTETTER) On Exhibit O are you
 23 saying?

24 A. Yes.

25 Q. Okay. So is this a geothermal right, 63-308?

1 MR. HONSINGER: Same objection.

2 THE WITNESS: After studying the document it
 3 says --

4 Q. (BY MS. HOFSTETTER) And which document are you
 5 referring to?

6 A. Page 184, 63-308.

7 Q. In Exhibit C?

8 A. Yes.

9 Q. Okay.

10 A. It says that it's used for stock water and
 11 irrigation on Exhibit O. It does not say that it's hot.
 12 So that we have not listed it as a hot water well.

13 Q. Okay. So you believe it is not a hot water
 14 right?

15 A. I believe if it was hot water, it was given a
 16 use for it, and I believe that it's from Stewart Creek. I
 17 think that's self-explanatory.

18 Q. Okay. And a use for hot water would be like
 19 what kind of use?

20 A. Removing the heat for beneficial purposes prior
 21 to using it for irrigation.

22 Q. Let's turn the page. And you see 63-3603?

23 A. Oh, I missed one.

24 Q. After 308, the next page should be, I believe,
 25 435.

1 A. Right, I have 3603.

2 Q. Okay. So is that a geothermal right?

3 A. We've designated it as hot.

4 Q. Okay. And where have you designated it as hot?

5 A. In Exhibit O.

6 Q. Okay. And is it on that basis that you're
 7 saying that it is a geothermal right?

8 A. It's also on Exhibit M in red, which would
 9 indicate that it's hot.

10 Q. Okay. Is there anything on Exhibit C,
 11 page 435, that would tell you it authorizes the diversion
 12 of geothermal water?

13 MR. HONSINGER: I would also suggest that he
 14 look at the second page of the exhibit, 3603.

15 MS. HOFSTETTER: Well, and he can look at both
 16 pages. I just --

17 MR. HONSINGER: Thank you.

18 MS. HOFSTETTER: -- want to hear his answer.
 19 Thank you.

20 THE WITNESS: Here's this transfer, 3990.

21 Q. (BY MS. HOFSTETTER) And are you looking at
 22 page 436 of Exhibit C?

23 A. Yes.

24 Q. Okay.

25 A. And it's -- 63-12 and 13 that's, I think, part

1 of the diversion. And it says that the water is
 2 120 degrees, which would -- degrees Fahrenheit. So what
 3 your question again?

4 Q. Well, I'm asking you to identify anything in
 5 Exhibit C, pages 435, 436 that confirms that 63-3603
 6 authorizes a diversion of geothermal water?

7 MR. HONSINGER: Object to the form of the
 8 question.

9 THE WITNESS: I think it goes back to Silkey 12
 10 and 13 and the diversion. I'm not sure whether it's --
 11 3990 is a diversion --

12 MS. HOFSTETTER: Okay.

13 THE WITNESS: -- or transfer, whatever you want
 14 to call it.

15 Q. (BY MS. HOFSTETTER) So I believe you're
 16 referring to some information on page 436?

17 A. That's correct.

18 Q. Okay. Is there anything on page 435 of
 19 Exhibit C which indicates that this authorizes the
 20 diversion of geothermal water?

21 MR. HONSINGER: Objection, the document speak
 22 for itself.

23 THE WITNESS: You know, I think this is
 24 incomplete, 'cause it talks about just the recommendation.
 25 I'd like to refresh my memory with the rest of the

1 documentation.

2 Q. (BY MS. HOFSTETTER) Well, I'm just -- I'm
3 really just limiting my question at this point to
4 Exhibit C. And you've already said on page 436 there is
5 some information that would indicate that this is a
6 geothermal right. So my question is just --

7 MR. HONSINGER: Objection, mischaracterizes the
8 witness's testimony, but go ahead.

9 Q. (BY MS. HOFSTETTER) Isn't that your testimony,
10 that there's some information on page 436 of Exhibit C
11 that indicates that the water is 120 degrees Fahrenheit
12 geothermal water?

13 A. It's referring to the transfer, and I believe
14 that the transfer is from 12 and 13.

15 Q. So is your answer to my question that page 436
16 does indicate that this water right is a geothermal water
17 right?

18 A. The water is 120 degrees.

19 Q. Would that make it geothermal?

20 A. Yes. Well, low temperature geothermal.

21 Q. Okay. So is it correct to say that there's
22 information on page 436 of Exhibit C that indicates that
23 this water right involves geothermal -- the diversion of
24 geothermal water?

25 MR. HONSINGER: Objection, the document speaks

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1 for itself. Calls for a legal conclusion.

2 MS. HOFSTETTER: It's actually a factual matter
3 as to whether there's information on page 436 that
4 indicates that this water right --

5 MR. HONSINGER: The document says what it says,
6 Counsel.

7 MS. HOFSTETTER: -- involves the diversion of
8 geothermal water; is that correct?

9 THE WITNESS: I'm trying to figure out how
10 these two relate to each other.

11 Q. (BY MS. HOFSTETTER) Pages 435 and 436?

12 A. Right. How do I know they follow each other?

13 Q. They are. They're part of the -- they're both
14 part of the SRBA director's report recommendation for
15 63-3603. I'll represent that to you.

16 A. Okay. Then on the bottom it also -- it refers
17 to right number 63-7595 --

18 Q. Yes.

19 A. -- as a diversion, so --

20 Q. Right. I'm not -- I mean, I'm not asking you
21 to -- I mean, I'm not trying to ask you a difficult
22 question, Mr. Terteling. I'm just trying to ask you
23 specifically -- I mean, I see what you're referring to on
24 page 436 regarding geothermal water. I'm just asking, is
25 there anything on page 435 of Exhibit C that would

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1 indicate that water right 63-3603 involves a diversion of
2 geothermal water?

3 A. But you've implied that the consecutive numbers
4 of pages 435 and 436, that they do go together?

5 Q. They do go together in the -- they're part of
6 the same director's report recommendation for 63-3603.

7 A. Then I'd say they go together. I don't know
8 why you asked me to separate just one page from the sec
9 page.

10 Q. Well, I'm just --

11 MR. HONSINGER: Good answer. Why don't we
12 ahead and take our five-minute break.

13 MS. HOFSTETTER: Okay.

14 MR. HONSINGER: It's 3:35.

15 (A brief recess was taken.)

16 (Deposition Exhibit No. R was
17 marked for identification.)

18 MS. HOFSTETTER: Okay. We're back on the
19 record.

20 Q. (BY MS. HOFSTETTER) And I'm going to ask y
21 one more time, Mr. Terteling, about page -- what's
22 identified as page 435 of Exhibit C. And just looking at
23 that page, can you tell if that water right involves the
24 diversion of geothermal water?

25 MR. HONSINGER: I'm going to object. The

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1 document speaks for itself, and the document contains
2 page 436. So I fail to see how you can ask the witness to
3 separate the two pages, Counsel.

4 MS. HOFSTETTER: Okay.

5 MR. HONSINGER: It makes no sense to me.

6 MS. HOFSTETTER: Okay.

7 MR. HONSINGER: But go ahead and answer if you
8 can.

9 Q. (BY MS. HOFSTETTER) Yes, please,
10 Mr. Terteling, would you answer just with regard to
11 page 435. Can you tell if this is a geothermal water from
12 page 435 alone?

13 A. Well, if you know that 3603 is the Windsock,
14 then you know that it's a geothermal well as designated on
15 Exhibit M and is listed on Exhibit O.

16 Q. Okay. So without consulting other information,
17 and looking only at page 435, are you saying that you
18 cannot tell that it's a geothermal right?

19 A. No.

20 MR. HONSINGER: Objection, mischaracterizes the
21 witness's testimony.

22 THE WITNESS: If I had the memory capacity to
23 remember 3603 was the Windsock Well, I know the Windsoc
24 Well is designated -- we've designated it as hot.

25 Q. (BY MS. HOFSTETTER) You designated it as hot?

1 A. On Exhibit M and O.

2 Q. Okay. Okay. Well, let's -- you know, in the
3 interest of time, we're going to move on. And I'm just
4 going to ask you to identify what's been marked as
5 Exhibit R for the record.

6 A. How did you get to R?

7 Q. Well, it's been added. And if you're not --
8 and I'm going to ask you to identify Exhibit R, and if
9 you're not familiar with it, I can represent to you what
10 it is.

11 A. It'd save time if you would.

12 Q. Okay. I'm going to represent to you that
13 Exhibit R is basically the same as Exhibit C, except it's
14 for the water rights that have been claimed and
15 recommended to T-7, LLC, in the SRBA. So, in other words,
16 it's director's report recommendations for the T-7, LLC,
17 rights that are involved in the proceeding we're here
18 today for. So have you seen these before?

19 A. I'm sure I've reviewed them at some time.

20 Q. Let's look at the first page of Exhibit R,
21 which is also -- it's page 1345. And can -- and do -- as
22 you'll note looking down the third line, it says source is
23 springs, tributary to Stewart Creek; is that correct?

24 A. Yes.

25 Q. Do you know if those springs are hot or cold?

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1 A. We've talked about them earlier, and the number
2 27649 as designated as a blue circle, and on Exhibit O it
3 does not say hot in back of it.

4 Q. So, therefore, on that basis you would say that
5 27649 does not authorize the diversion of a geothermal
6 resource; is that correct?

7 MR. HONSINGER: Objection, calls for a legal
8 conclusion. It's been asked and answered.

9 Q. (BY MS. HOFSTETTER) Could you answer the
10 question?

11 A. I don't know the legal thing, whether it
12 calls -- you know, legally what it says. But we've
13 designated it as not being hot, you know, on two sources
14 I've provided to you.

15 Q. And then those two sources would be what
16 exhibits again?

17 A. Exhibit M and O.

18 Q. Okay. So that's the basis of your belief that
19 this is -- that these springs are not geothermal; is that
20 correct?

21 A. Well, I'm familiar with the well, even though I
22 mentioned earlier that I have not measured the temperature
23 of it, but it's a spring. It's not a deep hot water well.
24 So I think you have to use some judgment.

25 Q. So is this a well under --

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1 A. No --

2 Q. -- this location, or it a -- is just a spring?

3 A. I said --

4 MR. HONSINGER: Objection, it says what it
5 says. The document says springs.

6 THE WITNESS: I said it's not a well.

7 MS. HOFSTETTER: Well, some -- and, excuse m
8 some of the wells do tap into springs, and so I wanted to
9 understand.

10 THE WITNESS: I don't know about that.

11 Q. (BY MS. HOFSTETTER) Okay. I'm sorry. Let's
12 make sure I understand. Is this water right 27649
13 diverted by a well?

14 A. No.

15 Q. It's not. Okay.

16 A. I don't think it is, if I have the right
17 number. We call it the Three Springs. And I described to
18 you twice earlier how the three things go back -- are
19 excavated and then the water flows from those.

20 Q. Okay.

21 A. And that's why we call it Three Springs because
22 of three excavations.

23 Q. Okay. Okay. Now, I'd like to go briefly back
24 to Exhibit C. And if you turn to what's identified at the
25 bottom as page 184 of Exhibit C.

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1 MR. HONSINGER: Use this one here, Joe.

2 THE WITNESS: Okay. What page?

3 MS. HOFSTETTER: 184. It's about six, seven
4 pages in.

5 Q. (BY MS. HOFSTETTER) Okay. Have you found
6 that?

7 A. Yes.

8 Q. Okay. And you see the name and address section
9 near the top?

10 A. Yes.

11 Q. And it has two entities, and that's Terteling
12 Trust No: 7, and the Terteling Company, Inc.?

13 A. Yes.

14 Q. And so is this water right owned by both T-7
15 and the Terteling Company?

16 A. I don't know.

17 MR. HONSINGER: Objection, calls for a legal
18 conclusion. The document speaks for itself.

19 Q. (BY MS. HOFSTETTER) Okay. Okay. Turning
20 Exhibits K and M again.

21 A. Let me ask a question.

22 Q. Yeah.

23 A. I can probably figure it out geologically -- or
24 you know, whose property it's on. You know, you didn't
25 ask me to figure it out. It's just -- it looks like two

1 mailing addresses to me.

2 Q. Oh, I don't think we need to figure it out.

3 But what you're saying is it should be one or the other,
4 not both?

5 A. That's what I think.

6 Q. Okay. Thank you. I was just wondering why
7 that -- and that's the only one I believe that's in both
8 names.

9 A. I think it's a mailing address that got
10 confused.

11 Q. Okay. So it's just -- it should be one or the
12 other, not both, is that what you believe?

13 MR. HONSINGER: Objection.

14 MS. HOFSTETTER: Either T-7 --

15 MR. HONSINGER: He's asked and answered it.

16 THE WITNESS: Unless it's used on both pieces
17 of property, which isn't impossible. You know, there's a
18 line that comes out of Stewart Creek. It could be on
19 TTCI's ground and T-7's ground.

20 Q. (BY MS. HOFSTETTER) But I think what you've
21 indicated, you know, when we looked at Exhibit L, is that
22 the water rights are used generally on both T-7 and
23 Terteling Company property, because it's a combined
24 distribution system. And it's the point of diversion that
25 determines ownership? Is that what you're saying?

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1 A. Or usage. I think it's more of whose ground
2 it's being used on. So it isn't impossible that it could
3 be used on both their pieces of ground. But if I had
4 time, I could go through and probably determine it.

5 Q. Okay. But I'm going to represent to you that
6 that, I believe, is the only water right in the proceeding
7 we're here for today that's in both -- in two different
8 entity's names.

9 A. Okay.

10 Q. And since you've already indicated that many of
11 the water rights are used on both properties --

12 A. Well, Stewart Creek dumps into the reservoir.
13 The reservoir could irrigate both pieces of property, but
14 I think it's primarily T-7's.

15 Q. Okay. So -- but isn't it -- wasn't it your
16 testimony earlier that it's a -- Exhibit L shows the
17 combined diversion system and that actually -- even though
18 the water rights might be owned by T-7 or the Terteling
19 Company, they could be used on either properties?

20 A. I'm thinking that's the cost distribution for
21 the water system. The creek water from the Black
22 Reservoir isn't shown on there, the distribution center
23 for the creek water.

24 Q. Isn't shown on --

25 A. On here. This is well water.

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1 Q. On Exhibit L?

2 A. That's correct.

3 Q. Okay. But I believe your testimony was, is
4 that many of the wells identified on Exhibit L -- the
5 water from the wells on Exhibit L is used either on T-7 or
6 the Terteling Company property; is that correct?

7 A. Well, I testified that it was the cost
8 distribution. But you can determine that the Champagne
9 water is the primary source. And if you follow those
10 lines down, it starts on TTCI's ground, goes across T-7's
11 ground, ends up on TTCI's ground on the east and the we

12 Q. Okay. So basically what you're saying is that
13 the well -- the water -- I'm trying to understand what
14 you're saying. I mean, I understand the cost distribution
15 that was shared -- the costs are shared 70/30 between TT
16 and T-7, correct?

17 A. We've said that eight times.

18 Q. Okay. And what costs are you talking about,
19 specifically?

20 A. Well costs. Power costs. Main lines costs.

21 Q. Okay. And so the combined distribution
22 system --

23 A. Let me take a step backwards.

24 Q. Okay.

25 A. I'm not a hundred percent sure that the power

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1 costs go to T-7 because of the crop grown and the cattle
2 that are fed. The income goes to TTCI.

3 Q. Okay.

4 A. So I'm not sure -- I actually don't know about
5 the power costs. But I kind of doubt they are distributed
6 on that ratio.

7 Q. Okay. Okay. But as far as the use of these
8 wells, and the interconnected system, these wells --
9 because of the interconnected system, isn't it true that
10 these wells can serve either T-7 or TTCI property as
11 depicted on Exhibit L?

12 A. Yes.

13 Q. Thank you. Okay. And I want to now switch --
14 I mean, Joe, we need to kind of move on because we want to
15 try to get done by 5:00 today. I want to switch your
16 attention over to Exhibit K and M.

17 A. Where am I?

18 MR. HONSINGER: K and M.

19 Q. (BY MS. HOFSTETTER) And just to remind you, A
20 has the wells identified on it and then M -- and then K
21 has the -- with X marks -- some additional wells that you
22 identified that were not included on M. So looking at
23 these two exhibits, do you know if reasonable pumping
24 levels have been determined for any of these wells?

25 MR. HONSINGER: Objection, calls for a legal

1 conclusion.

2 Q. (BY MS. HOFSTETTER) Could you answer the
3 question? Do you know if reasonable pumping levels have
4 been determined for any of these wells on K or M?

5 MR. HONSINGER: Same objection.

6 THE WITNESS: I'm sure the wells were tested
7 and the pipes set with tailpipes at a depth sufficient to,
8 you know, pump the water, but I don't recall, you know,
9 what those are.

10 Q. (BY MS. HOFSTETTER) Okay. So do you -- okay.
11 So do you know if anyone from the Idaho Department of
12 Water Resources or any court has determined reasonable
13 pumping levels for any of the wells on K or M?

14 MR. HONSINGER: Objection, calls for a legal
15 conclusion. Calls for speculation.

16 Q. (BY MS. HOFSTETTER) I believe it calls for a
17 factual answer as to whether you know if any court or the
18 Department of Water Resources has established reasonable
19 pumping levels for any of these wells on K or M?

20 MR. HONSINGER: Same objection.

21 THE WITNESS: I think our geologist and the
22 well driller that work together on estimating what the
23 production is from re-record the levels of the water.

24 MS. HOFSTETTER: Okay.

25 THE WITNESS: And as a farmer you prefer to

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1 pump from the lower water for irrigation rights or power
2 reasons. But to your question, I don't recall.

3 Q. (BY MS. HOFSTETTER) So you don't know -- or
4 you don't know if a court or the Department of Water
5 Resources has determined if any of these wells --

6 THE WITNESS: I don't recall.

7 MR. HONSINGER: Same objection.

8 Q. (BY MS. HOFSTETTER) You don't recall what?

9 A. Reading stuff from the IDWR on reasonable
10 pumping levels.

11 Q. So you don't recall reading anything about
12 reasonable pulling levels from IDWR?

13 MR. HONSINGER: Objection, asked and answered.
14 He's answered --

15 MS. HOFSTETTER: Well, I don't understand --

16 MR. HONSINGER: -- the question, so let's move
17 on.

18 MS. HOFSTETTER: I'm sorry. I don't understand
19 his answer. So can we just get to him clarify his answer.

20 MR. HONSINGER: Go ahead and answer the
21 question, Joe.

22 THE WITNESS: I don't recall. I don't know.

23 Q. (BY MS. HOFSTETTER) You don't recall what?

24 A. Reading anything on these wells about
25 reasonable pumping depth.

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1 Q. Okay. Okay. Thank you. Okay. Do you know --
2 now, I assume you know that the geothermal wells that are
3 identified -- well, let me ask you the question. Which of
4 the geothermal wells that are identified on Exhibits K and
5 M are within the District 63-S, the Stewart Gulch
6 Geothermal District?

7 MR. HONSINGER: I'm going to object to the form
8 of the question. Go ahead and answer it if you understand
9 it.

10 Q. (BY MS. HOFSTETTER) If you need clarification
11 you can ask for clarification on the question. But I'm
12 just -- of the geothermal wells -- and we've kind of
13 discussed that -- that are depicted on K and M, are they
14 all within this District 63-S Stewart Gulch Water
15 District?

16 A. I don't believe so.

17 Q. Okay. Which ones would not be within District
18 63-S --

19 MR. HONSINGER: Objection, calls for a legal
20 conclusion.

21 THE WITNESS: I don't know where the line for
22 63-S is, the north line.

23 Q. (BY MS. HOFSTETTER) Okay. But you are
24 familiar with District 63-S, correct?

25 A. It's a water district.

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1 Q. Okay. And have you attended water district
2 meetings?

3 A. Yes.

4 Q. Okay. And you're aware of the existence of
5 District 63-S, correct?

6 A. Yes. Could you show me a map of the northern
7 boundary of 63-S?

8 Q. I probably could. Actually, I don't believe I
9 could. I don't think I brought it, but -- so -- okay. So
10 my question is at this point, would you say that at least
11 some of the geothermal wells, if not all depicted on
12 Exhibits K and M, are within District 63-S?

13 A. Some with all --

14 MR. HONSINGER: Object --

15 MS. HOFSTETTER: Wait.

16 MR. HONSINGER: -- to the form of the question.

17 MS. HOFSTETTER: Excuse me?

18 THE WITNESS: -- are two different questions.

19 MR. HONSINGER: Joe, when I want to make an
20 objection, let me make an objection, and then you go ahead
21 and answer the question.

22 THE WITNESS: Okay.

23 MS. HOFSTETTER: Okay. Charlie, do you want to
24 get your objection on the record?

25 MR. HONSINGER: I think I did. I said I object.

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1 to the form of the question, and then go ahead and answer
2 if you can.

3 MS. HOFSTETTER: Okay. Let me start -- let me
4 rephrase the question.

5 MR. HONSINGER: And to make it easier for you,
6 if you're going to say the same question again, I'll just
7 object to the form of the question --

8 MS. HOFSTETTER: Okay.

9 MR. HONSINGER: -- now so that Joe can go ahead
10 and answer.

11 MS. HOFSTETTER: Well, I think you're saying
12 it's a compound question.

13 MR. HONSINGER: Yes.

14 Q. (BY MS. HOFSTETTER) Let me just make it a
15 noncompound question then. Are at least some of the
16 geothermal wells depicted on Exhibits K and M within
17 District 63-S?

18 A. Yes.

19 Q. Do you know if aquifer levels within District
20 63-S are rising or lowering?

21 MR. HONSINGER: Objection. The witness hasn't
22 been qualified as a hydrogeologist, but with that, go
23 ahead.

24 THE WITNESS: There's many reports. Some of
25 them conflicting.

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1 Q. (BY MS. HOFSTETTER) Okay. So what reports are
2 you aware of?

3 A. Ken Neely submitted his reports to the 63-S
4 meeting.

5 Q. And who is Ken Neely?

6 A. He's the watermaster for 63-S employed by the
7 IDWR.

8 Q. Okay. Any other reports?

9 A. Ed Squires monitors our wells. Plenty of those
10 monitoring information is in these boxes we brought to
11 you.

12 Q. And do you know what his opinion on the matter
13 is?

14 A. I've heard him say that it depends which well
15 and at what time you take the reading determines which
16 direction it's going.

17 Q. Right. But, I mean, overall the trend -- do
18 you know what his opinion is on the overall trend of
19 whether aquifer levels in District 63-S are rising,
20 staying the same, or decreasing?

21 MR. HONSINGER: Objection. Over what period of
22 time are we talking?

23 Q. (BY MS. HOFSTETTER) Could you answer the
24 question? Do you know what current trends are?

25 A. Well, talking about time frames, it varies.

1 But I believe it's gone up, and I believe it's gone down.

2 Q. When has it gone up?

3 A. I think the time after the time of our
4 transfer.

5 Q. Could you roughly estimate when that would have
6 been?

7 A. I'd say in '02.

8 Q. Okay. And has it been going up -- has the
9 aquifer level been going up from '02 to the present?

10 MR. HONSINGER: I'm going to have a standing
11 objection to this line of questioning. Again, the witness
12 is not an expert witness. To the extent that he knows, he
13 can answer the question. But he is not an expert in
14 hydrogeology, geology, or hydrology.

15 Q. (BY MS. HOFSTETTER) Okay. So what you're
16 aware of, recognizing that you're not an expert, of the
17 information that you're aware of, have aquifer levels been
18 rising from '02 -- 2002 to the present?

19 A. I think it's fluctuated within that time
20 period. I think it rose for a while, and it's gone down
21 for a while, and with the rain last month, it's probably
22 going up today.

23 Q. Okay. So what time period -- you know, the
24 information you have available to you and of which you're
25 aware. So from 2002 until when did the levels continue to

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1 rise?

2 MR. HONSINGER: Same objection.

3 THE WITNESS: When I looked at Ken Neely's
4 report -- and I've heard Ed say it depends on which wells,
5 at what time you pull that data from. And, obviously, I
6 don't know enough about it to know how that can change the
7 outcome.

8 Q. (BY MS. HOFSTETTER) Okay. So you're -- 'cause
9 I thought you testified a few questions ago that aquifer
10 levels have been rising since 2002 based on the
11 information you're aware of?

12 A. I think I saw a graph that showed it going up
13 for a while, and I've seen graphs today showing it's going
14 down for a while. But I know Ed, as an expert, you know,
15 is concerned about which wells, at which time the points
16 were taken from.

17 Q. So is it fair to say that you rely on the
18 opinion of Ed Squires in terms of determining whether
19 aquifer levels in District 63-S are rising or lowering?

20 A. I think he knows a lot more about it than I do.

21 Q. Okay. So do you rely on your -- does TTCI and
22 T-7, LLC, rely on their hydrologist, Ed Squires, for those
23 kind of determinations?

24 A. I don't know what relative importance it has.

25 Q. Well, I just need you to answer the question.

1 MR. HONSINGER: I think he's trying to.
2 THE WITNESS: Well, the word rely is a strong
3 word. And I kind of -- I think we use judgments on his
4 recommendations and summaries and analysis.

5 Q. (BY MS. HOFSTETTER) How long has Ed Squires
6 been advising TTCI with respect to --

7 A. Again, you use the word advise. I don't know
8 that he advises. But, let's say, ten years for a round
9 number, and it seems probably longer than that.

10 Q. So are you saying that Ed Squires has been
11 retained by TTCI for at least ten years to offer advice
12 regarding hydrogeology matters?

13 A. Well, rely and offer advice are strong words.
14 I think he's hired to present the data, and then we use
15 our own judgment on, you know, what's being presented, as
16 Ken Neely's stuff, we use our own judgment and, you know,
17 everybody else. It's quite a -- I wouldn't use the word
18 confusing, but challenging job to properly analyze these
19 things.

20 Q. Do you hire -- do you -- does TTCI employ any
21 other hydrogeologist to advise it?

22 A. Ed has two or three guys working for him. But
23 I've used a regular geologist that we had working for us,
24 master's degree in geology.

25 Q. What was his or her name?

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1 A. Tom Hood.

2 Q. And when did you last use him?

3 A. He passed away in the mid-'80s.

4 Q. Okay.

5 A. His name is in some of these reports, putting
6 them together.

7 Q. Okay.

8 A. And he did locate the Motorcycle Hot/Cold Well.

9 Q. Okay. So for the last -- you know, since that
10 time, since Mr. Hood passed away, have you used any -- has
11 TTCI or T-7, LLC, used any other hydrogeologist to advise
12 it besides Ed Squires and his employees?

13 A. Not by definition of hydrogeologist. We used a
14 civil engineer to do some of the work.

15 Q. Okay. Who would that be?

16 A. I've forgotten his name.

17 Q. Okay. And what was the nature of the work that
18 that civil engineer performed?

19 A. Just putting together some of the early water
20 things, the water permits.

21 Q. Okay. Water permit applications? Is that
22 what you're saying?

23 A. No. I think for the SRBA, you know, some of
24 the data to submit to them. And then it went to Jeff
25 Fereday.

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1 Q. And Jeff Fereday is an attorney, correct?

2 A. Yeah. He's not a -- but from the information
3 that the civil engineer put together, it went to an
4 attorney.

5 Q. Okay.

6 A. Actually, before Fereday, it was another guy,
7 Bill Collins, I think.

8 Q. And Bill Collins is another attorney; isn't
9 that correct?

10 A. Right.

11 Q. Okay.

12 A. But the data from the civil engineer went to
13 the attorney to put together.

14 Q. Okay. So this other civil engineer who you
15 don't recall the name of, when was the last time either
16 TTCI or T-7 employed him?

17 A. I'm guessing the end of the '80s.

18 Q. Okay. So anyone else that's performed
19 hydrologist, hydrogeologic --

20 A. Not other --

21 Q. -- work for T-7 or TTCI?

22 A. Not other than the people that work for Ed
23 Squires --

24 Q. Okay.

25 A. -- collect the data.

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1 Q. Okay. So is it --

2 A. I've talked to Terry Scanlan. You know, I've
3 listened to Norm Moore.

4 Q. Oh. And you're referring to Norm Young --

5 A. Yeah. Yeah.

6 Q. -- Edwards' expert?

7 A. I've listened to him.

8 Q. Okay. But as far as --

9 A. You know, Ken Neely.

10 Q. -- you have -- TTCI and T-7, LLC, has paid Ed
11 Squires for at least ten years for him and the other
12 engineers working for him to advise TTCI and T-7 as to
13 technical water right matters; is that correct?

14 A. That's four times I've objected to the word
15 advise. I don't consider him an advisor. I consider him
16 gathering data, and in the area of well completion, you
17 know, he recommends.

18 Q. Okay. So he recommends -- okay. And I assume
19 you pay him good money for what he does, is that correct
20 as opposed to bad money? No. I'm just saying, I assume
21 you pay him -- you compensate him well for providing his
22 services; is that correct?

23 A. He has an hourly rate that's gone up over the
24 years.

25 Q. Okay. So if advising isn't what you -- the

1 word you would use for what Ed Squires -- the services Ed
2 Squires performs, what words would you use to describe the
3 services that Ed Squires performs?

4 MR. HONSINGER: Objection, asked and answered.
5 He's already said recommend.

6 THE WITNESS: I agree that I've answered four
7 times.

8 MS. HOFSTETTER: Okay.

9 THE WITNESS: Same answer as before.

10 Q. (BY MS. HOFSTETTER) So is your answer that he
11 recommends --

12 A. I said on well completion that he recommends.
13 That was my answer.

14 Q. Okay. And does he do anything else besides
15 offer recommendations on well completion?

16 A. Well, he completes data, and then we look at
17 the data.

18 Q. Okay. And what do you mean by well completion?

19 A. Oh, the size of the perforation screens.

20 Q. Okay. So you say he recommends well
21 construction techniques and materials?

22 A. I'm not sure the word construction doesn't
23 overlap with the well drilling. But we work together to
24 try to complete the well for its maximum, you know,
25 potential and minimum drawdown.

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1 Q. Okay. Let me ask you this. I'm going to ask
2 you an open-ended question. You can describe it any way
3 you want, but I just need a complete answer. What
4 services does Ed Squires provide to TPCI and T-7?

5 A. His employees measure our wells, monitor the
6 automatic data logger type things -- that aren't brand
7 name data logger, but the recording instruments on the
8 wells. Then if we drill a well, you know, he advises --
9 or not advises, that's your darn word -- recommends
10 that -- I don't even know if he recommends -- we discuss,
11 you know, the options. And then he attends the 63-S
12 meetings, just 'cause he has a vast knowledge of the
13 underground water systems, and he's done a lot of
14 recording and analysis.

15 Q. And by 63-S meetings, you mean the Water
16 District 63-S; is that correct?

17 A. Right. Is there something else it's called?
18 Is there an airplane named 63-S? Not to my knowledge.

19 Q. And not to mine either, but I just want to
20 clarify. Okay. You mentioned he has a vast knowledge of
21 the underground systems, and your attorney objected before
22 because I was asking you technical questions that were
23 beyond your expertise. And, you know, I'm trying to put
24 all this together so I'm -- and you can use whatever word.
25 But does Ed Squires recommend to TPCI and T-7?

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1 information -- and interpret data about aquifer levels?

2 A. Compound question. Recommend and interpret a
3 two different questions.

4 Q. Okay. Interpret. Does Ed Squires interpret
5 aquifer information for TPCI and T-7?

6 A. Interpret for our discussion, yes.

7 Q. And would this aquifer information include
8 information about the Stewart Gulch Geothermal Aquifer
9 District 63-S?

10 A. Yes.

11 Q. And does TPCI and T-7, LLC, put some
12 significant weight in Ed Squires' interpretation of the
13 data?

14 A. Perhaps.

15 Q. Why do you say perhaps?

16 A. Because it isn't always a solid one thing. We
17 use judgment on all the information we get from all the
18 people.

19 Q. Okay. But you just mentioned he has a vast
20 knowledge of the aquifer systems.

21 A. And a master's degree in geology.

22 Q. And you're paying him compensation for his
23 recommendations, his interpretations, I assume; is that
24 correct?

25 MR. HONSINGER: Objection, it's been asked and

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1 answered.

2 Q. (BY MS. HOFSTETTER) Could you just answer the
3 question yes or no? Are you -- does TPCI and T-7 pay
4 Mr. Squires for his services?

5 MR. HONSINGER: Same objection. You've asked
6 that question -- he's answered yes.

7 THE WITNESS: Well, except for five times. I
8 said recommendation, no. But he presents the data and
9 then we analyze it.

10 Q. (BY MS. HOFSTETTER) Okay. The current
11 question on the table -- and so we can move on is --

12 A. She'd have to read it.

13 Q. Well, I'll rephrase it so that you can start
14 with a clean slate here. Does TPCI and T-7 pay Ed Squires
15 for his services?

16 MR. HONSINGER: Objection, asked and answered.
17 But go ahead and answer it, Joe.

18 THE WITNESS: I'd say, yes.

19 Q. (BY MS. HOFSTETTER) Okay. Thank you. Okay.
20 Okay. I'm going to hand you what's been marked as
21 Exhibit F. I seem to have lost one of my -- oh, here it
22 is. Okay. Okay. So have you seen this document before?

23 A. Yes.

24 Q. Okay. What is it?

25 A. It's the Case No. 11748 in the District Court

1 with the plaintiff of Silkey, and the defendants Tiegs,
2 Edwards, and Ryan.

3 Q. Okay. So you have seen this particular
4 document before?

5 A. Yes.

6 Q. Okay. So I assume you're aware of the Silkey
7 v. Tiegs case; is that correct?

8 A. As a layperson.

9 Q. When did you first become aware of this case?

10 A. I'd say probably around the time our Windsock
11 Well was shut down.

12 Q. What year? Could you give me an estimated
13 year?

14 A. I'd say the late '80s.

15 Q. And why was the Windsock Well shut down?

16 A. The Hunt Brothers, who own the Silkey rights,
17 made a call.

18 Q. Okay. And do you know which of the Terteling
19 Company rights were decreed in Silkey v. Tiegs?

20 MR. HONSINGER: Objection, calls for a legal
21 conclusion. But go ahead and answer if you can.

22 THE WITNESS: Well, I believe the two Silkeys,
23 12, 13, and then the Tiegs 15.

24 Q. (BY MS. HOFSTETTER) Okay. And I believe you
25 testified earlier that TTEI, the Terteling Company, Inc.,

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1 owned title to 63-12, 13, and 15; is that correct?

2 A. I believe so.

3 Q. When did the Terteling Company obtain title to
4 63-12, 13, and 15?

5 A. I believe in '91. No -- no, that's wrong.

6 That's the wrong day. '97.

7 Q. Okay. And by that you mean 1997?

8 A. Yeah.

9 Q. And how did the Terteling Company obtain title
10 to water right number 63-12, 13, and 15?

11 A. We purchased the ground that it applies to.

12 Q. Okay. So I'm going to hand you now -- why did
13 the Terteling Company purchase that property that was
14 associated with 63-12, 13, and 15?

15 A. It was a business decision.

16 Q. And could you explain what that purchase
17 offered the business.

18 A. Because the unique parcel of land, and it had
19 the geothermal rights that went with it.

20 Q. Okay. I'm going to hand you now Exhibit D.
21 And I'm going to ask you if you have seen this document
22 before?

23 A. Yes.

24 Q. Okay. Can you explain to me what this document
25 is.

(208) 345-9611

1 A. It's a Settlement Agreement dated January 2002
2 between the Terteling Company, Inc., and Edwards Famil
3 LLC.

4 Q. Okay. And do you know why the Terteling
5 Company entered into this agreement?

6 A. Yes.

7 Q. Why?

8 A. We were seeking a transfer of water from the
9 Silkey area up to our ranch and Edwards were objecting to
10 that.

11 Q. And so is this -- it's entitled Settlement
12 Agreement; is that true? Was that a settlement of the
13 Edwards' objection to the transfer?

14 A. And other things.

15 Q. What do you mean and other things?

16 A. It's been a while since I've read it. But
17 there are other things in here other than just what we
18 wanted to gain on removing the objection.

19 Q. Okay. But what other things did the Terteling
20 Company want to gain other than removing the objection?

21 A. I'd have to read it.

22 Q. Okay. So you don't recall, is that your
23 answer, without reading it?

24 A. That's correct.

25 Q. Okay. But at least a portion -- is it true to

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1 say that a portion of the reason for the Terteling Company
2 entering into it was the settlement of the Edwards'
3 objection to the transfer?

4 A. That was one of my reasons. I don't know
5 whether that's spelled out here or not.

6 Q. Okay. Does the Terteling Company view this
7 document, Exhibit D, as a binding, effective agreement?

8 MR. HONSINGER: Objection, calls for a legal
9 conclusion. The document speaks for itself. Go ahead and
10 answer it if you can.

11 THE WITNESS: Well, it has my son's Tom's
12 signature on it as an officer. But let me look what he
13 signed as. The board of directors included myself
14 authorizing him to sign. He does not have a title under
15 the Terteling Company. But as long as the board of
16 directors authorized him, he didn't need a title. So I'd
17 say it's binding if it hadn't been broken or violated.

18 Q. (BY MS. HOFSTETTER) And do you mean binding if
19 it hasn't been broken or violated by either of the
20 parties, or Edwards only? What do you mean by that, it's
21 still valid if it hasn't been broken or violated? What do
22 you mean exactly?

23 A. I'd say from our point of view from Edwards.

24 Q. Okay. So you're saying -- I just want to
25 understand what you're saying, is that as long as Edwards

1 hasn't violated the agreement, the Terteling Company would
2 view it is a binding, effective agreement?

3 A. Yes.

4 Q. Okay. I'm going to give you another exhibit,
5 Exhibit E. Have you seen this document before? So have
6 you -- do you recall seeing this document before?

7 A. This is signed by Keith Higginson,
8 H-i-g-g-i-n-s-o-n, on October '93.

9 Q. Correct.

10 A. I've seen documents in the file with his name
11 on them.

12 Q. So you're not sure if you've seen this one
13 specifically before or --

14 A. Well, I guess at the time I had. But I don't
15 recall other than seeing Higginson's name on reports in
16 the file.

17 Q. Okay. Well, I'm going to, you know -- and I
18 believe you mentioned earlier that the Windsock Well was
19 shut down in the late '80s because of a call -- a water
20 call; isn't that true? Wasn't that your testimony a
21 little earlier?

22 A. Yeah. But I -- when I say '80s, I don't know
23 what the time frame was.

24 Q. Yeah. But around that time period. Isn't that
25 true, that that's what you testified?

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1 A. Yeah. But I don't know exactly when the call
2 was.

3 Q. Okay. And I'm going to represent to you, you
4 know, this is an order involving a call from the late
5 '80s, early '90s by the then owners of the Silkey rights,
6 63-12 and 63-13, and this order resulted from that call.
7 And it's one of several that resulted. But, in any event,
8 I would like you to turn to page 5 of Exhibit E. Do you
9 see the chart at the top of that page?

10 A. Starting with the Hunt Brothers?

11 Q. Yes.

12 A. Yes.

13 Q. Okay. Do you see J. A. Terteling's name?

14 A. Yes.

15 Q. And can you identify the two water rights
16 listed as being owned by J. A. Terteling?

17 A. I can just read them off for you.

18 Q. Yeah, just read them off of page 5.

19 A. 63-03603 and 07595.

20 Q. Okay. And who is J. A. Terteling?

21 A. Well, I believe it's incomplete. But I
22 mentioned J. A. Terteling was my grandfather.

23 Q. Your grandfather, or your father?

24 A. My grandfather.

25 Q. What do you mean by incomplete?

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1 A. I don't think that was the corporate name at
2 that time.

3 Q. Oh, so the name on the -- as the owner is
4 incomplete?

5 A. That's correct.

6 Q. Okay.

7 A. It should be and Sons or and Sons, Inc. But I
8 don't even think that was correct at that time.

9 Q. Okay. What do you mean who -- as of 1993 when
10 this order came out, who would you -- what entity or
11 person would you believe owned these two water rights at
12 that time?

13 A. The 3603 is the Windsock Well. And I don't
14 know whether there was participated with the Terteling
15 Company and T-7, but it's on T-7's ground.

16 Q. Okay. And that would have been T-7's or TTCT's
17 ground as of 1993?

18 A. It would have been T-7's ground. But whether
19 it was participated in the well of the Windsock being
20 drilled, you know, I'd say probably.

21 Q. Okay. So that J. A. Terteling may not have
22 actually been the owner as of 1993 of those?

23 A. No, he was dead.

24 Q. Oh, he -- okay. And so -- and also

25 J. A. Terteling & Sons would not have been the owner as of

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1 1993 of those two rights; is that correct?

2 A. That is correct.

3 Q. Who would you believe as of 1993 would have
4 owned those two water rights?

5 A. Well, either myself as J. L. or T-7.

6 Q. And T-7 -- by T-7 you mean Terteling Trust
7 No. 7, 'cause the T-7, LLC, wasn't created yet; is that
8 correct?

9 A. That's correct.

10 Q. Okay. If you could look at page 1 of
11 Exhibit E, and two sentences right above the heading Order
12 Denying Petitions For Rehearing, it starts --

13 A. Two sentences above that, starting with the
14 department or --

15 Q. Yeah, starting --

16 A. Petitions?

17 Q. -- petitions for --

18 A. Okay.

19 Q. -- rehearing were received from both
20 J. L. Terteling and Quail Hollow during the month of
21 December 1992. Would that J. L. Terteling have been you?

22 A. Yes.

23 Q. And does that suggest that perhaps you owned
24 both of those water rights as of at least December 1992?

25 A. You said two water rights?

1 Q. Well, I'm just referring to the two water
2 rights identified on page 5. Remember the chart of water
3 rights?

4 A. The two Silkey rights?

5 MR. HONSINGER: I'm going to object. I don't
6 think the witness wrote this. So I don't think he has any
7 idea what whoever did write it was referring --

8 MS. HOFSTETTER: Yeah.

9 MR. HONSINGER: -- to when they wrote
10 J. A. Terteling.

11 MS. HOFSTETTER: Well, I'm just trying to
12 understand why on page 1 J. L. Terteling -- and who's
13 sitting in front of me right now -- would have filed a
14 petition for rehearing on this matter. So I'm asking him
15 if it's possible that in December 1992 he owned both of
16 these water rights --

17 THE WITNESS: But I asked both. Oh, oh, oh, I
18 know which both are. Okay.

19 Q. (BY MS. HOFSTETTER) Okay. Just to clarify.
20 63-3603 and 63-7595, is it possible that you individually
21 as J. L. Terteling owned both of those water rights as of
22 1992/1993?

23 A. Probably not. But if I protest it -- I could
24 have protested it in the capacity of either the president
25 of the Terteling Company, or as a trustee in T-7.

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1 Q. Okay.

2 A. So either I owned it, T-7 owned the Windsock,
3 and TTCI drilled the Champagne, so --

4 Q. Okay. So what you're saying basically is
5 that -- I'm trying to understand your testimony and I --
6 is that either you owned these two water rights, 3603,
7 7595 as of 1992/1993, or TTCI owned them, or Terteling
8 Trust No. 7 owned them, or some combination thereof; is
9 that correct?

10 A. That's correct.

11 Q. Thank you. Okay. Okay. So let me ask you, at
12 the time of this order on October 27, 1993, did either
13 J. A. Terteling, J. L. Terteling, TTCI, or T-7, Terteling
14 Trust No. 7, own any other water rights diverted from the
15 Stewart Gulch Geothermal Aquifer?

16 A. Yes.

17 Q. What other water rights would those be?

18 A. Pool Well.

19 Q. Okay. Any others?

20 A. I'm not sure when the two domestic wells at
21 5115 and 5120 were drilled.

22 Q. Any others?

23 A. Let me look at my list, what we call hot.

24 Q. Okay. And you're looking at Exhibit O now?

25 A. Yes. We have the Terteling Springs that is --

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1 one of them is hot and one of them is not. So Tertelin
2 Springs.

3 Q. And you would have had that as of 1993?

4 A. Yes. The 5120 is '94, and the 5115 is '94.

5 Q. What do you mean by '94?

6 A. 1994.

7 Q. So you didn't have title to those as of 1993?

8 A. We owned the ground. The wells didn't seem
9 be, you know, approved.

10 Q. Okay. So --

11 A. So not those two. Okay. Those are some that
12 we designated as hot.

13 Q. Okay. So as far as you know, as of October 2'
14 1993, TTCI, J. A. Terteling, J. L. Terteling, or T-7 --
15 what we're referring to as T-7 -- owned these two water
16 rights listed on page 5 as owned by J. A. Terteling --

17 A. No, no, no. J. is dead.

18 Q. Right. I know. But -- okay.

19 A. Don't say owned by J. A.

20 Q. Okay. Let me rephrase the question. I'll
21 rephrase the question. I'm trying to actually summarize
22 your testimony.

23 A. But can I simplify it?

24 Q. Sure.

25 A. The J. A. is probably a typo. It probably

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1 means J. L., because it refers to J. L. on the front page.

2 Q. Okay. Okay.

3 A. Probably a typo.

4 Q. That's helpful. So what I hear you just saying
5 is that in addition to 7595 and 3603, J. L. Terteling,
6 TTCI, and/or T-7 also owned any rights to the -- any
7 geothermal rights to the Pool Well, the Terteling Springs
8 Hot as of October 27, 1993; is that correct?

9 A. Yes.

10 Q. Okay. Any other rights from the Stewart
11 Gulch --

12 A. Not that I recall at this time.

13 Q. Thank you. Do you have any idea why the Pool
14 Well and the Terteling Springs Hot Well are not on the
15 chart on page 5?

16 MR. HONSINGER: Objection, calls for
17 speculation.

18 THE WITNESS: I'd say the Pool Well is
19 domestic.

20 Q. (BY MS. HOFSTETTER) Okay. Okay. And any
21 other reason why the Pool Well and the Terteling Springs
22 Hot well were not listed on page 5?

23 MR. HONSINGER: Same objection.

24 THE WITNESS: I don't know. But I objected to
25 them calling both of them at the same time. I think the

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1 junior rights should have been called first.

2 MS. HOFSTETTER: Okay.

3 THE WITNESS: I think Quail Hollow should have
4 been shut down first, not both at the same time. So I
5 remember this objection -- you know, that we objected to
6 that.

7 Q. (BY MS. HOFSTETTER) Oh, okay. Okay. But
8 you're referring to the decision of the Department, right?

9 A. No. I don't recall reading this. I haven't
10 had time to read it.

11 Q. Okay. I'm not going to ask you --

12 A. But I remember the event.

13 Q. Okay. But -- okay. So -- okay. Okay. So do
14 you have -- do you have any knowledge about why the
15 Terteling Springs Hot Well water right is not listed on
16 page 5?

17 MR. HONSINGER: I'm going to object again. He
18 didn't write this document, and so it calls for
19 speculation on his part.

20 THE WITNESS: To answer, I don't know why it's
21 not listed.

22 MS. HOFSTETTER: Okay. Thank you.

23 THE WITNESS: But that doesn't mean that it
24 should be listed. I don't think it should have been
25 listed, and I agree that it wasn't.

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1 Q. (BY MS. HOFSTETTER) Now, why do you think the
2 Tertelings Springs Hot Well should not have been listed on
3 page 5?

4 A. Insignificant.

5 Q. Okay.

6 A. What's the word, de minimis?

7 Q. Okay.

8 A. Is that the right word?

9 Q. And is it the same thing with the Pool Well?

10 A. No, I think it's domestic.

11 Q. Okay.

12 A. But I'm guessing as to what another person did.

13 And I have no idea --

14 Q. Okay.

15 A. -- you know, why they were or they weren't.

16 Q. Okay. Okay. And is it true based on your
17 knowledge that as of 1993 when this document issued, Hunt
18 Brothers did, in fact, own 12, 13, and 15?

19 A. I believe so.

20 Q. And is that who TTCI purchased the property
21 from, Hunt Brothers?

22 A. No.

23 Q. Who did TTCI purchase these rights from?

24 A. Flora, Inc.

25 Q. Okay. So there was another owner between Hunt

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1 Brothers and TTCI; is that correct?

2 A. Yes.

3 Q. Okay. Okay. We're getting short on time here,
4 so I'm going to --

5 A. Let Charlie point at the numbers.

6 Q. We'll let Charlie testify. No. What was your
7 position in this proceeding? I mean, you filed a petition
8 for rehearing. Do you recall what your position was?

9 A. I don't recall, but I can guess. But I'd like
10 to read it. Does this state my position?

11 Q. Yes. And I can represent, if you want to look
12 at -- I believe page 2, and you read the first full
13 paragraph on that page, specifically, there's a summary of
14 your position.

15 A. Okay. I read it.

16 Q. Okay. Is that an accurate summary of your
17 position?

18 A. It's probably a summary of what I wrote.

19 Q. Okay. So when they say in this paragraph: The
20 Terteling petition requested that the Department exclude
21 Terteling's wells from administration in Water District
22 63-S, was that your position?

23 MR. HONSINGER: Objection, it calls for
24 speculation. And, again, the --

25 MS. HOFSTETTER: Well, I'm just asking,

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1 factually, do you recall if that was your position?

2 MR. HONSINGER: Let me go ahead and finish my
3 objection. The witness didn't write this document, so,
4 again, it calls for speculation.

5 Q. (BY MS. HOFSTETTER) Okay. Could you answer
6 the question? Do you recall if that portion of
7 paragraph -- that paragraph on page 2 which I just read
8 adequately describes part of your position in that
9 proceeding?

10 A. I'm sure that in the files is my letter written
11 to IDWR, and it's been long enough that I said I recall
12 the event, but I don't exactly recall the written word.

13 Q. Okay. Do you recall what your position was at
14 all in this proceeding?

15 A. I mentioned earlier to you that I felt that
16 Quail Hollow should have been shut down before the
17 Terteling Company, 'cause we had a earlier water right
18 than they did. I thought IDWR was wrong to shut them bo
19 down at the same time.

20 Q. Anything else that you recall?

21 A. Well, that was my opinion at the time.

22 Q. Do you have any idea whether your position was
23 that Terteling -- as it states on page 2 of the paragraph,
24 first full paragraph starting: Specifically, the
25 Terteling petition requested that the Department exclude

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1 Terteling's wells from administration in Water District
2 63-S? Do you recall the basis for that, or the reasoning
3 for that position?

4 A. No. But I can speculate that Ed Squires was
5 analyzing the faults that create all the springs on the
6 ranch and was trying to determine whether the faults
7 blocked us from 63-S, or whether we were connected. And
8 I'd say since then, the lower wells have been proven to be
9 connected.

10 Q. Okay. Do you recall taking the position in
11 that proceeding as described in that paragraph, Terteling
12 petition requested eliminate protection for Artesian
13 pressure in the aquifer?

14 A. We were pumping at that time and our aux was
15 getting bored. We were relying on that water to irrigate
16 our crop, and it was the end of the summer, and we needed
17 that water so -- that's a strong position to take. But at
18 the time, under the circumstances, I think the Department
19 favors quoting that. So -- I've heard them quote that
20 before.

21 Q. Okay.

22 A. So I have reason to believe that's fairly
23 accurate at that time. I wouldn't say it's my position
24 today.

25 Q. Okay. Now, I'm -- looking at Exhibit M again.

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1 Remind me. The well identified as Silkey Shed, is that
2 flowing with Artesian pressure?

3 A. Yes.

4 Q. And the well identified next to that as House,
5 is that Artesian?

6 A. Yes.

7 Q. And what about the Tiegs Well, is that
8 Artesian?

9 A. It's shut in, but it has pressure.

10 Q. And what do you mean by it's shut in?

11 A. It's not flowing. But, yes, it has Artesian
12 pressure to it.

13 Q. So you shut it down, essentially?

14 A. I believe it's padlocked.

15 Q. Okay. So -- but if it -- if it was -- if the
16 valve was open on the Tiegs Well, it would flow?

17 A. Yes, that's what I mean, it has pressure -- it
18 has positive pressure to flow. And I'm not sure -- it
19 doesn't call negative pressure, but whatever it is, yes,
20 there's -- I've forgotten the pressure, 12 pounds or
21 something.

22 Q. Okay. So do you -- does TTCI currently use the
23 Silkey Well?

24 A. Yes.

25 Q. Does it use it under Artesian pressure?

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1 A. Yes.

2 Q. What about the House Well, is that currently
3 used?

4 A. Yes.

5 Q. Is that used with Artesian pressure?

6 A. Yes. But let me add. There's two backup
7 pumps. In case the pressure's not there, we can pump it.

8 Q. Okay. So which wells have the two backup
9 pumps?

10 A. The 12 and 13 and 15 the pumps -- they're all
11 manifold together, and the pumps are backups. It only
12 needed -- one pump can pump all three wells if you want
13 to.

14 Q. Okay. Okay. But you don't need to use the
15 pumps presently; is that correct?

16 A. It depends on how much water we want to divert.
17 If we wanted to divert a water right, I doubt if we could
18 do it with the pumps, the full right.

19 Q. Okay. So, in other words, if you wanted to
20 divert the full right from Silkey, and the House Well, and
21 the Tiegs Well, you're speculating that you'd probably
22 need to use the pumps?

23 A. Not speculating. We have to use the pumps
24 plus.

25 Q. Okay.

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1 A. I don't think those pumps are adequate to
2 deliver the full water right.

3 Q. Okay. But --

4 A. But we have pumped it and delivered the full
5 water right in the past.

6 Q. When was the last time you did that?

7 A. I don't know. It seems like five, six years
8 ago.

9 Q. Okay. Was that the last time that you pumped
10 the Silkey House and/or Tiegs Well?

11 A. I'm sure we've used these booster pumps since,
12 which we have. But we're using the large Windsock pump
13 pump most of the right under the diversion.

14 Q. Okay. So how do you decide how much of 12, 13
15 to divert at Windsock, and how much to divert at Silkey or
16 House?

17 A. Depends how much we want to heat at
18 36th Street. And we're not heating all that we want to
19 heat yet.

20 Q. Okay. Okay. But at times you can get what you
21 need from the Silkey and House Well without pumping; is
22 that correct?

23 A. At that location, but we have to pump the rest
24 at the Windsock.

25 Q. Okay. Okay. We're getting there. Okay. I'm

1 going to hand you Exhibit H. Okay. Do you recognize this
2 document? Have you seen this document before? Would you
3 like me to tell you what this document is?

4 A. It'd save time.

5 Q. I'll represent to you that this is the -- and I
6 believe your attorney, Charles Honsinger, prepared it, it
7 appears that way -- the objection that was filed to water
8 right 63-14 in the SRBA by the Terteling Company. And do
9 you recognize water right number 63-14?

10 A. That's the Edwards.

11 Q. Okay. I'm going to ask you to turn to page 2
12 of the document, Exhibit H. And you see that there's some
13 Xs in certain locations. The first X is with regard to
14 quantity; is that correct?

15 MR. HONSINGER: I'm going to object to this
16 line of questioning, as it calls for legal conclusions.
17 This is a document that the client did not -- the witness
18 did not prepare, and so it would be calling for
19 speculation and legal conclusions. But go ahead and
20 answer the questions.

21 And I'm presuming you're going to ask a lot of
22 questions about this, so I'm going to have a standing
23 objection to any of these types of questions, Counsel, and
24 hopefully, we can move through.

25 MS. HOFSTETTER: Yeah, I'm hoping, too.

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1 Q. (BY MS. HOFSTETTER) So I'm just going to ask
2 you if you understand what is meant in item number three,
3 quantity: Should be limited to quantities listed in
4 decree in Silkey v. Tiegs?

5 A. Yeah. I think we've all agreed that we'll
6 honor the Silkey v. Tiegs court case.

7 Q. Okay. And are you referring now by agreed to
8 the settlement agreement, Exhibit D?

9 A. Yes. But I'd like to refresh my memory that
10 it's in there. 'Cause that's why I think part of that is
11 all about --

12 Q. Okay.

13 A. -- we agreed to each other's acre feet.

14 Q. Okay. And looking at now to purpose of use on
15 Exhibit H, it says: Should be as specified in decree in
16 Silkey v. Tiegs. A condition should be added to specify
17 that irrigation use of this water right may only occur
18 after water has been diverted and used for its heat value.
19 Do you understand that -- I mean, do you understand what
20 is meant by this?

21 A. I think that's standard regulations today
22 that -- that's a given today.

23 Q. Okay. Now going down to the period of year, it
24 says: Should be as specified in decree in Silkey v.
25 Tiegs. Do you know what is meant there?

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1 MR. HONSINGER: Same objection, but go ahead
2 and answer, Joe.

3 THE WITNESS: It just says the period of year,
4 and then it added June 1930.

5 Q. (BY MS. HOFSTETTER) Well, that's the date, I
6 believe, of the Silkey v. Tiegs decree. I think it's just
7 a reference to the decision -- or the decree.

8 A. So period of years -- I don't know what period
9 of year means.

10 Q. Okay. Going down to the bottom of that page,
11 you see where it says E, Reasons Supporting Objections:
12 The water right is recommended outside of the parameters
13 of the decree in Silkey v. Tiegs by which it was
14 confirmed? Do you see that?

15 A. I see it, but I don't know what it means.

16 Q. Okay. Let's now turn to Exhibit I. And I'm
17 handing you a copy of Exhibit I. Can you identify this
18 document? Okay. Do you recognize what this document

19 A. Would you tell me what 5067 is, subcase?

20 Q. Okay. I'll represent to you that 63-5067 is a
21 water right -- one of the Edwards Family, LLC's, water
22 rights for a cold water well. And, again, this is the
23 Terteling Company's objection in the SRBA to the
24 director's report recommendation for 63-5067. And if you
25 can turn to page 2. Do you see where item seven is

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1 checked and it says should be: A condition be added
2 requiring that this water right be used for irrigation
3 purposes instead of water right number 63-14 to the extent
4 possible? Do you see that language?

5 A. I think it's self-explanatory.

6 Q. Could you explain what you think it means.

7 A. I'd just read it again. Do you want me to read
8 it?

9 Q. Well, I don't need you to read it. But, I
10 mean, do you recognize 63-14?

11 A. That's Edwards --

12 MR. HONSINGER: I'm going to object -- before
13 we go on. I'm going to have the same standing objection
14 to this document as I did to the last objection. So go
15 ahead and answer, Joe.

16 THE WITNESS: I'd just read it again. I think
17 it's self-explanatory.

18 Q. (BY MS. HOFSTETTER) I mean, what do you think
19 it means, in your own words? 'Cause I don't need you to
20 read it. What do you think it means?

21 A. Well, it's referring to 14, which is a hot
22 water right. The document before says you have to use the
23 heat before you use it for irrigation.

24 Q. Right.

25 A. So this says that the cold water right that you

1 have, which is 5067, should be used to the extent possible
2 instead of 14.

3 Q. And do you think that's a good position?

4 A. I think that's the position of IDWR.

5 Q. Do you agree with this position?

6 A. I am not at liberty to argue with the IDWR.

7 Q. I mean, this is the Terteling Company's

8 objection and it's a stated position --

9 A. Right. But I said this is the position of the
10 IDWR.

11 Q. Okay. And is it the position of the Terteling
12 Company?

13 A. I said I'm not arguing with the IDWR's
14 position.

15 Q. Are you supporting -- is the Terteling Company
16 supporting the IDWR's position?

17 A. I think for conservation for energy it makes
18 sense.

19 Q. And a conservation of the geothermal resource?

20 A. Yes.

21 Q. Again, going down on page 2 to provision E.

22 A. You know what, I was looking at provision E.

23 Q. Oh, you were?

24 A. What are you --

25 Q. I was talking about the purpose of use, but --

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1 A. Oh.

2 Q. Okay. So your testimony that you just had
3 referred to Exhibit E -- it referred to item E on
4 page 2 --

5 A. And that's the one I --

6 Q. -- of Exhibit I?

7 A. That's the one I read into the record.

8 Q. Okay. So could you just answer my question?

9 So what you just testified to that this -- that this is
10 the position of the Department and that you think it's
11 a -- I believe you said it's a good position, you were
12 referring to item E on page 2 of Exhibit I; is that
13 correct?

14 A. But it seems to me it applies to number seven.

15 Q. Okay. So your testimony that you just stated
16 applies both to item seven and E on page 2 of Exhibit I;
17 is that correct?

18 A. It says: A condition should be added. I'd
19 like to define what a condition is.

20 Q. Okay. Well, I think it says: A condition
21 should be added requiring that this water right be used
22 for irrigation purposes instead of 63-14 to the extent
23 possible. I think that describes the condition that's
24 being looked for.

25 A. Okay.

1 Q. Do you think that's an appropriate condition?

2 A. Yes.

3 Q. And does TTCI support that policy?

4 A. I believe everything's green. I used the word
5 conservation of energy, and I think it should be done that
6 way.

7 Q. And by conservation of energy in this context,
8 are you referring to conservation of the Stewart Gulch
9 Geothermal Resource?

10 A. I think I was more general, that you should
11 remove the heat for beneficial use prior to putting it to
12 irrigation.

13 Q. Okay. But in this context where we're
14 referring to 63-14, is it your understanding that this
15 provision refers to conserving the Stewart Gulch
16 Geothermal Resource?

17 A. I think to the extent that Silkey Tiegs -- or
18 the Edwards' right number 14 is -- you know, would be
19 involved with that. So -- you know, and, yes, 14 is a
20 part of 63-S.

21 Q. So you think that -- I mean, TTCI supports the
22 policy of trying to conserve the Stewart Gulch Geothermal
23 Aquifer; is that correct?

24 MR. HONSINGER: I'm going to object. I think
25 that mischaracterizes his testimony.

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1 THE WITNESS: And it's much broader than just
2 this one issue.

3 Q. (BY MS. HOFSTETTER) Okay. I understand you're
4 saying TTCI supports conservation of energy, generally.

5 A. Right.

6 Q. But I'm asking in the context of the Stewart
7 Gulch Geothermal Aquifer, does TTCI support conservation
8 of the Stewart Gulch Geothermal Aquifer?

9 A. Well, you know, I just objected in your earlier
10 document, I said it ought to be pumped. So in that
11 instance, the Department challenged with maximizing the
12 potential. So to me there's a little conflict. Yes, they
13 want to maximize the potential of the hot water. But we
14 agree that you don't want to use the hot water for
15 irrigation without removing the heat prior to that.

16 Q. I mean, is that policy TTCI's position in order
17 to protect the Stewart Gulch Geothermal Aquifer?

18 MR. HONSINGER: What do you mean to protect,
19 Counsel?

20 Q. (BY MS. HOFSTETTER) Could you answer the
21 question? Is the reason why TTCI supports using cold
22 water for irrigation to the extent possible in lieu of
23 geothermal water in order to conserve the aquifer -- the
24 geothermal aquifer to the extent possible?

25 MR. HONSINGER: I'm going to object. Conserve

1 to the extent possible could mean not using the water
2 rights at all.

3 MS. HOFSTETTER: Well, I'm just using TTCI's
4 own objection language. It says -- looking at Exhibit I:
5 A condition should be added requiring that this water
6 right be used for irrigation purposes instead of water
7 right 63-14 to the extent possible. And what I'm
8 hearing -- could you explain the basis for that position.

9 A. I've earlier stated --

10 MR. HONSINGER: I'm going to object, again.
11 The witness did not prepare this objection. It calls for
12 legal conclusions, and it calls for speculation. If you
13 can answer, go ahead, Joe.

14 THE WITNESS: But I've earlier stated a couple
15 of times that it's today's Department's mandate that you
16 remove the water from geothermal before irrigating.

17 Q. (BY MS. HOFSTETTER) I think you misstated that
18 when you said you remove the water. Do you mean remove
19 the heat?

20 A. Heat. Heat. Good. Thank you.

21 Q. Okay.

22 A. It is getting late.

23 Q. Okay. It's getting late, and I'd really like
24 to wrap it up, but I would like an answer -- I mean, it's
25 on the TTCI's own objection. And is that a policy that

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1 TTCI supports?

2 A. To me it was conservation of energy. It makes
3 sense.

4 Q. And as part -- and are you -- is TTCI, and T-7
5 for that matter, are they interested in trying to conserve
6 the aquifer to the extent possible?

7 A. I've never had a discussion with TTCI or T-7 on
8 their position. I'm speaking as an individual.

9 Q. Okay.

10 A. So green is the in thing, and that to me, you
11 know, is part of going green.

12 Q. But let me ask you this. You're here today as
13 the designated representative of T-7 and TTCI; is that
14 correct?

15 A. That is correct.

16 Q. Okay. So I need to ask you that question as
17 their representative. Is it -- does TTCI and T-7 believe
18 that it is a good policy to try to conserve the Stewart
19 Gulch Geothermal Aquifer to the extent possible?

20 MR. HONSINGER: I'm going to object. Again,
21 he's already stated that he has not had conversations with
22 TTCI or T-7 on those grounds, and so that he doesn't know.
23 It calls for speculation.

24 Q. (BY MS. HOFSTETTER) Could you answer the
25 question, Mr. Terteling?

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1 A. Well, I'll reanswer the question that I haven't
2 talked to either of them. And I understand they're their
3 representative, but I can only give you my personal
4 opinion, because I haven't had a conversation with those
5 two entities on the subject.

6 Q. Okay. And if you were to have a conversation
7 with those two entities, who would you talk to?

8 A. Well, TTCI, I'd talk to myself as president.

9 Q. Okay. And T-7?

10 A. Probably the other trustees, Tom and Andy.

11 Q. Okay. I mean, conservation -- let me ask the
12 question another way, Mr. Terteling. It's sort of a
13 motherhood and apple pie question. I don't mean --

14 MR. HONSINGER: Can we go off the record for a
15 minute?

16 MS. HOFSTETTER: Sure.

(Off-the-record discussion.)

MS. HOFSTETTER: Okay. Let's go on the record.

19 Q. (BY MS. HOFSTETTER) Now, looking at Exhibit I
20 item number seven on page 2 where it says should be: A
21 condition should be added requiring that this water right
22 be used for irrigation purposes instead of water right
23 number 63-14 to the extent possible. Is that statement an
24 accurate statement of TTCI's position?

25 A. Yes.

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1 Q. And why does TTCI take that position?

2 A. Mainly, because it's the Department of Water
3 Resources position.

4 Q. And do you know why it's the water resource --
5 Department of Water Resources position?

6 A. I've used the word conservation of energy
7 before.

8 Q. Okay. And is it true that TTCI believes that
9 the Stewart Gulch Geothermal Resources should be conserve
10 primarily for heating-related uses?

11 A. I think that's overly broad, and I haven't
12 really thought that through. So the answer is, I don't
13 know.

14 Q. Do you know why TTCI is supporting the
15 Department's position?

16 MR. HONSINGER: Objection, it's been asked and
17 answered it. He just answered it.

18 Q. (BY MS. HOFSTETTER) Could you answer the
19 question? Do you know why in this objection, Exhibit I,
20 TTCI is supporting the Department's position?

21 MR. HONSINGER: Objection, asked and answered.

MS. HOFSTETTER: Okay. Well, let's --

23 THE WITNESS: I think it's a good position, and
24 I think we agree with it.

25 Q. (BY MS. HOFSTETTER) And why do you think it's

1 a good position?

2 A. 'Cause it conserves energy.

3 Q. And does it also conserve the Stewart Gulch
4 Geothermal Aquifer?

5 A. Fourteen is in the Stewart Gulch Aquifer.

6 Q. I know that. Is that a yes?

7 A. You know, I think Edwards should already be
8 doing this. If they're irrigating with hot water, I think
9 they have a cold water well, and I think they have water
10 rights in the canal. I think that's what should be used.

11 Q. Why?

12 A. Because it conserves energy.

13 Q. Does it have anything to do with conserving the
14 Stewart Gulch Geothermal Resource?

15 A. I've answered that 14 is in 63-S's area of
16 concern.

17 Q. Does TICI care at all about conserving the
18 Stewart Gulch Geothermal Resource?

19 MR. HONSINGER: Objection. Now you're getting
20 argumentative, Counsel.

21 THE WITNESS: I think I've answered it four
22 times in my own way.

23 Q. (BY MS. HOFSTETTER) And what do you think the
24 answer is --

25 MR. HONSINGER: Objection, asked and answered.

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1 MS. HOFSTETTER: -- to that question?

2 THE WITNESS: My answer is the same as it was
3 before, last four times.

4 Q. (BY MS. HOFSTETTER) Okay. So you're not going
5 to answer the question whether TICI or T-7 are interested
6 in conserving the Stewart Gulch Geothermal Resource?

7 MR. HONSINGER: Objection. He has answered the
8 question.

9 MS. HOFSTETTER: Okay. Well, then I would ask
10 that -- I don't think I've asked the question exactly in
11 that -- in those words, and I would ask that he answer the
12 question in those words. And I'll restate the question.

13 Q. (BY MS. HOFSTETTER) Does T-7 and TICI care
14 about conserving the Stewart Gulch Geothermal Aquifer?

15 A. I think we've had a discussion four times in
16 the past, and I'll stand on the previous four answers.

17 Q. Why won't you give me a yes or no answer to
18 that question?

19 A. I don't think it's that simple.

20 Q. Explain to me what you mean by that.

21 A. Life isn't that simple. The whole world isn't
22 yes or no answers.

23 Q. Well, explain then why it's not a simple
24 answer, please.

25 A. I think that would call for intelligence

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1 greater than mine. It's above my pay level.

2 Q. I mean, in all due respect, I don't think it's
3 a complicated question. Conservation of the geothermal
4 resource, is that a good objective?

5 MR. HONSINGER: The witness has given you his
6 answer. You just won't accept it, Counsel. I'm going to
7 terminate the deposition in two more minutes if you don't
8 move on.

9 Q. (BY MS. HOFSTETTER) Is the witness refusing
10 answer the question?

11 MR. HONSINGER: The witness has answered the
12 question.

13 THE WITNESS: And it is the same answer as the
14 last four.

15 Q. (BY MS. HOFSTETTER) Which is?

16 A. I'm not going to repeat it. You can have the
17 gal read them back.

18 Q. Okay. Well, I'm interpreting that as refusing
19 to answer the question.

20 A. No, I'm not refusing to answer. I have
21 answered the question.

22 MS. HOFSTETTER: Okay. I think we can go off
23 the record now.

24 (Off-the-record discussion.)

25 MS. HOFSTETTER: We can go back on the record.

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1 I have no further questions. Mr. Honsinger, do you have
2 any questions?

3 MR. HONSINGER: I have a couple of
4 clarification questions.

5

6 EXAMINATION

7 BY MR. HONSINGER:

8 Q. Joe, counsel asked you a couple of questions
9 about the Pool Well -- the Hot Pool Well, and I think you
10 testified that the Hot Pool Well goes through, heats the
11 pool, and then it is combined into a common system after
12 it heats the pool. What I wanted to ask you, Joe, is does
13 the Hot Pool Well also heat your home?

14 A. The answer is yes.

15 Q. Okay.

16 A. And probably other things.

17 Q. Okay.

18 A. You know, there are other buildings, shops,
19 also.

20 Q. Okay. With respect to Andy's Hot Well, Joe, I
21 think you testified that that was -- in your testimony I
22 think you testified that it was water right number 31059.
23 And I would like you to look at Exhibit O, if we can find
24 it here. Here we go. And I'm going to point you to the
25 second page of Exhibit O and ask you to look at 31057 and

1 31059. And I think you testified that 31059 was Andy's
2 Hot Well. Looking at the address, 5115, do you believe
3 that's correct?

4 A. No, that's wrong. That's Tom's Well.

5 Q. Okay. So then do you believe that 31057, the
6 5120 Cartwright Hot Well is, in fact, Andy's Hot Well?

7 A. Yes.

8 Q. Okay. Joe, counsel handed you Exhibits C and R
9 which contain various water right recommendations. Do you
10 recall Exhibit C and R? I'm not asking you to look
11 through them. I'm just asking you if you remember them?

12 A. I remember them.

13 Q. Okay. Joe, are you a watermaster?

14 A. No.

15 Q. Are you a water rights professional?

16 A. No.

17 Q. Do you read these descriptions on a regular
18 basis?

19 A. No.

20 Q. All right. So you're not altogether familiar
21 with the descriptions, are you, with the form of the
22 description?

23 A. Well, it's memory of them. You know, if I have
24 time, I can take it and go to a map.

25 Q. Right.

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1 A. But it may take me a half hour.

2 Q. Okay. And so you're -- but you're not familiar
3 with reading these things on a regular basis, so you don't
4 know exactly where to go when you're looking for
5 information; is that correct?

6 A. Well, that's why I prepared a list of
7 Exhibit O, you know, so I could reference them.

8 MR. HONSINGER: Okay. I don't have any further
9 questions, Counsel.

10 MS. HOFSTETTER: I have just one brief
11 follow-up question.

12 FURTHER EXAMINATION

13 BY MS. HOFSTETTER:

14 Q. You mentioned that 63-31057 is the water right
15 for Andy's Hot Well instead of 63-31059; is that correct?

16 A. Okay. Andy's is 61057 -- or 56.

17 Q. Okay. Could you identify the --

18 A. You know what --

19 Q. Looking at Exhibit O -- is that correct, you're
20 looking at Exhibit O?

21 A. Yes.

22 Q. Okay. Could you identify the number for Andy's
23 Hot Well from Exhibit O?

24 A. I think it's 31056, unless it's too late in the

1 day, so --

2 Q. I think your testimony just a couple of
3 questions ago was that it was 63-31057.

4 A. Oh, gosh. Can Charlie point at it? It's after
5 5:00.

6 Q. Okay.

7 A. 5:20.

8 Q. We'll let it go. I was just -- my question
9 was, since 63-31059 is not Andy's Hot Well, do you know
10 what the water right 63-31059 -- which well that goes to?

11 A. I think I testified it's Tom's.

12 Q. Tom. Which one on Exhibit M, again, which
13 well?

14 MR. HONSINGER: We're going to have to organi-
15 exhibits after we're done here.

16 MS. HOFSTETTER: Do you have an M over there

17 MR. HONSINGER: I'm sure I do.

18 MS. HOFSTETTER: I don't think I have an M.

19 MR. HONSINGER: Here we go.

20 Q. (BY MS. HOFSTETTER) Okay. So 31059, whic
21 well does that go with?

22 A. 31059 says Tom. Is that wrong? It must be too
23 late in the day.

24 Q. Okay. All right.

25 MR. HONSINGER: Yeah, that's -- Counsel, that's

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1 correct.

2 MS. HOFSTETTER: What's correct?

3 MR. HONSINGER: 31059 does show on O -- on
4 Exhibit O as being the 5115 Hot Well, which is also
5 referred to on Exhibit M as Tom's Hot Well.

6 MS. HOFSTETTER: Okay.

7 THE WITNESS: That's what it says.

8 MS. HOFSTETTER: Okay. And, Charlie, what
9 is -- just for the record --

10 MR. HONSINGER: I'm not trying to testify
11 there. I'm trying to say what the exhibits show.

12 MS. HOFSTETTER: Okay. And just as far as
13 Andy's Hot Well, Charlie, what water right, is your
14 understanding, goes with Charlie's Hot Well -- I mean,
15 Andy's Hot Well?

16 MR. HONSINGER: I wish I had a hot well, but I
17 don't. And my understanding of Andy's Hot Well is that
18 it's 63-31057.

19 MS. HOFSTETTER: Okay. Thank you. I have no
20 further questions.

21 MR. HONSINGER: All right. One last question.

22

23 FURTHER EXAMINATION

24 BY MR. HONSINGER:

25 Q. Joe, is it kind of late in the day? Are you

1 getting a little bit confused after all these water right
2 numbers?

3 A. Well, I'm not doing too good.

4 MR. HONSINGER: No further questions.

5 MS. HOFSTETTER: Okay. Thank you.

6 (The deposition was concluded at 5:22 p.m.)

7 (Signature requested.)
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REPORTER'S CERTIFICATE

I, MARIA D. GLODOWSKI, CSR No. 725, Certified
Shorthand Reporter, certify;

That the foregoing proceedings were taken before
me at the time and place therein set forth, at which time
the witness was put under oath by me;

That the testimony and all objections made were
recorded stenographically by me and were thereafter
transcribed by me, or under my direction;

That the foregoing is a true and correct record
of all testimony given, to the best of my ability;

I further certify that I am not a relative or
employee of any attorney or party, nor am I financially
interested in the action.

IN WITNESS WHEREOF, I set my hand and seal this

17th day of June 2010.

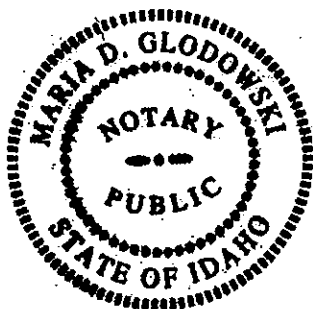
Maria D. Glodowski

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Notary Public

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My Commission expires August 21, 2015.

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Facsimile: (208) 424-8774
Email: Dana@IdahoWaterLaw.com

Attorney for Edwards Family LLC

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

In Re SRBA

Case 39576

) Subcase Nos. 63-12, 63-13, 63-14,
) 63-15, 63-16, 63-308, 63-2103A,
) 63-2103B, 63-3603, 63-4037, 63-5067,
) 63-5195, 63-7595, 63-9758, 63-21875,
) 63-27649, 63-27671, 63-30006, 63-30007,
) 63-31050, 63-31051, 63-31052, 63-31053,
) 63-31054, 63-31055, 63-31056, 63-31057,
) 63-31058, 63-31059, 63-31060, 63-31062,
) 63-32895

) NOTICE OF DEPOSITION DUCES
) TECUM: 30(b)(6) (The Terteling Company, Inc.)

TO: THE TERTELENG COMPANY, INC., AND ITS COUNSEL OF RECORD,
CHARLES L. HONSINGER

PLEASE TAKE NOTICE that Edwards Family LLC, by and through its counsel of record, Hofstetter Law Office, L.L.C, will take your deposition upon oral examination pursuant to Rules 26, 28, 30, 32 and 34 of the Idaho Rules of Civil Procedure. You are to appear for the taking of your deposition commencing at 9:30 a.m. on June 14, 2010, at the offices of M&M Court Reporting Service, 421 West Franklin Street, Boise, Idaho 83702 before M & M Court Reporting Service or some other officer authorized to administer oaths.

NOTICE OF TAKING DEPOSITION DUCES TECUM: 30(b)(6)-1-



Pursuant to I.R.C.P. 30(b)(6), you are to designate one or more officers, directors, managing agents, or other persons who will be present at the time and place indicated to testify on behalf of The Terteling Company, Inc. concerning the organization, structure and ownership of The Terteling Company, Inc., the assets of The Terteling Company, Inc. and the diversion, application, and use of its above-captioned water rights and its Claims, Objections and Responses in the above-captioned Snake River Basin Adjudication ("SRBA") subcases. This deposition will continue from day to day until completed. All parties to the above-identified subcases are invited to attend and participate in the manner provided for in the Idaho Rules of Civil Procedure.

Consistent with the terms of Attachment A hereto, the deponent is required to bring to said deposition all documents of any type that relate in any way to the organization and ownership of The Terteling Company, Inc., The Terteling Company, Inc.'s assets, and the diversion, application, and use of its water rights and its Claims, Objections and Responses in the SRBA including, but not limited to, the following documents:

1. All documents supporting The Terteling Company, Inc.'s ownership of the water rights it has claimed in the SRBA.
2. All documents containing, evidencing or describing whether the water source of any of the water rights claimed by The Terteling Company, Inc. in the SRBA, is, is not, or is composed of, in whole or in part, a low temperature geothermal resource or other geothermal resource as classified in Idaho Code § 42-230.
3. All documents, including sales brochures and manuals and pump performance curves and well driller's reports, pertaining to any diversion, conveyance,

delivery or application systems, including associated equipment, used to divert, convey or apply water to the places of use under the water rights claimed in the SRBA by The Terteling Company, Inc..

4. All documents relating to the organization of and the parties holding ownership interests in The Terteling Company, Inc. and if any of the parties in the organizational or ownership structure of The Terteling Company, Inc. are entities, all documents relating to the organization and ownership of those entities also. Such documents should include, without limitation, documents identifying The Terteling Company, Inc.'s officers, directors, and shareholders and the quantity and nature of the respective ownership interests of any shareholders.

5. All documents supporting The Terteling Company, Inc.'s SRBA Claims, Objections or Responses or any portion of its SRBA Claims, Objections or Responses in the above-captioned subcases.

6. All documents in contradiction of The Terteling Company, Inc.'s SRBA Claims, Objections or Responses or any portion of its SRBA Claims, Objections or Responses in the above-captioned SRBA subcases.

7. All documents concerning or in any way pertaining to the Stewart Gulch Geothermal Aquifer.

RESPECTFULLY SUBMITTED this 14th day of May, 2010.

HOFSTETTER LAW OFFICE, L.L.C.

By


Dana L. Hofstetter

CERTIFICATE OF SERVICE

I hereby certify that on the 14th day of May, 2010, I caused to be served copies of the foregoing Notice of Taking Deposition Duces Tecum: 30(b)(6) by the methods indicated below:

Idaho Department of Water Resources
Document Depository
P. O. Box 83720
Boise, Idaho 83720-0098
☒ U.S. Mail ☐ Fed Ex ☐ Hand ☐ Fax

Andrew Waldera
Moffatt Thomas
P.O. Box 829
Boise, Idaho 83701
☐ U.S. Mail ☐ Fed Ex ☐ Hand ☒ Fax

Charles Honsinger
Ringert Law
P.O. Box 2773
Boise, Idaho 83701-2773
☐ U.S. Mail ☐ Fed Ex ☐ Hand ☒ Fax

David Niznik
Diane Peck-Niznik
3911 Whitehead
Boise, Idaho 83703
☒ U.S. Mail ☐ Fed Ex ☐ Hand ☐ Fax

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Dana L. Hofstetter

ATTACHMENT A

Definitions

The following definitions shall apply for the purpose of identifying documents and tangible things that fall within the scope of this Notice:

"Document" or "Documents" means all written, drawn, typed, printed, recorded, photostatted, computer-generated, microfiche, microfilmed or graphic matters, of any kind, whether produced, reproduced or stored on paper, cards, disc, tape, film, electronic facsimile, computer storage or any other media, whether an original, master, duplicate, marked copy, translation or draft, regardless of origin, whether sent or received, including but not limited to: accounts, advertisements, affidavits, agreements, analyses, appraisals, applications, appointment books, appointment calendars, bank checks, bill blueprints, books, bookkeeping entries, bulletins, business records, cablegrams, cache logs, calculations, canceled checks, cashiers checks, catalogs, charts, checks, check stubs, circulars, communications, compilations, computer printouts, computer source code and object code, computer tapes, contracts, correspondence, court filings, day books, data, declarations, depositions, desk calendars, diagrams, diaries, diary entries, documents, drafts, drawings, electronic mail, engineering drawings, designs and plans, as-built documents, expense reports, extracts, files, financial statements, flowcharts, forecasts, graphs, graphic portrayals of any kind, invoices, itineraries, interview notes, interoffice communications, legal documents, ledgers, letters, lists, letters of credit, logs, log books, mailgrams, manuals, maps, memoranda, minutes, notebooks, note pads, notes, pamphlets, papers, periodicals, photographs, plans, plats, pleadings, projections, proposals, prospectuses, publications, receipts, records, reports, returns, sketches, speeches, sound recordings, studies, summaries, solicitations, tapes, tax returns, fax, telegrams, telephone logs, tickets, time records, time sheets, transcriptions, transcripts, travel reports, travel vouchers, vouchers, working papers, worksheets, and all other papers, writings, drawings, graphs, charts, photographs, data compilations in whatever form, recordings, or physical things containing information including all original and amended versions of the documents, preliminary and subsequent drafts or marginal notes appearing on any documents.

"Document" shall further collectively include the original, duplicate original and any or all copies or reproductions of the original document, to the extent that any or all copies are different in any way from the original document, whether by interlineation, receipt stamps, notation, indication of copies sent or received otherwise, which are within your possession, custody or control.

Whenever the terms "relate to," "relating to," "pertain to," "pertains to," "pertaining to," "in conjunction with," or "concerning" are used herein, they shall mean consisting of, referring to, alluding to, responding to, connection with, commenting on, in respect of, about, regarding, discussing, showing, documenting, describing, disclosing, employing, defining, stating, explaining, summarizing, mentioning, reflecting, containing, analyzing, constituting, evidencing, reflecting on, arising out of, or in any way or manner legally, factually, or logically connected with the subject matter of the inquiry.

The words "and" and "or" shall be construed either disjunctively or conjunctively as necessary to bring within the scope of the discovery request all responses that might otherwise be construed to be outside its scope.

"Deponent" means the person or entity named in this Notice who is to be deposed.

Instructions

All documents which are provided for inspection shall be provided as they are kept in the usual course of business or shall be organized and labeled in a manner which clearly identifies and indicates that the documents are being provided in response to a particular item.

If any documents or categories of documents called for cannot be provided in full or in part, the witness responding shall state in writing the reasons for the inability to provide all or any portion of the documents or categories of documents called for, and serve those reasons at the time of the deposition.

If any document called for is withheld on the grounds of any privilege, the Deponent withholding such document(s) shall specify the basis of such privilege and provide a complete description of the document, including the date, all addressees, all authors or preparers, all recipients of copies, subject matter, number of pages (including all attachments, appendices, etc.), and other relevant circumstances sufficient to enable the Court to decide whether the privilege has been properly invoked. The Deponent shall nonetheless provide any portion of the document, which is not privileged.

The Deponent shall provide all responsive documents in its, his or her possession, custody, and control, whether actual or constructive.

Basin Seq. Suf. Basis Status Blot ID Owner(s) Source Table

63	12	Decreed	Active	550157	THE TERTELING CO INC (Cu)	wrAdjudicationClaim	✓
63	13	Decreed	Active	550159	THE TERTELING CO INC (Cu)	wrAdjudicationClaim	✓
63	15	Decreed	Active	550160	THE TERTELING CO INC (Cu)	wrAdjudicationClaim	✓
63	308	Decreed	Active	180638	TERTELING TRUST NO 7 (Cu)	wrAdjudicationClaim	✓
63	3803	License	Active	280386	THE TERTELING CO INC (Cu)	wrAdjudicationClaim	✓
63	7595	License	Active	280392	THE TERTELING CO INC (Cu)	wrAdjudicationClaim	✓
63	31051	Beneficial Use	Active	550153	THE TERTELING CO INC (Cu)	wrAdjudicationClaim	✓
63	31058	Beneficial Use	Active	423099	THE TERTELING CO INC (Cu)	wrAdjudicationClaim	✓
63	31059	Beneficial Use	Active	423100	THE TERTELING CO INC (Cu)	wrAdjudicationClaim	✓
63	31060	Beneficial Use	Active	422783	THE TERTELING CO INC (Cu)	wrAdjudicationClaim	✓
63	31061	Beneficial Use	Active	422784	THE TERTELING CO INC (Cu)	wrAdjudicationClaim	✓
63	31062	Beneficial Use	Active	422968	THE TERTELING CO INC (Cu)	wrAdjudicationClaim	✓
85	4040	Beneficial Use	Active	378448	THE TERTELING CO INC (Cu)	wrAdjudicationClaim	Disallowed
85	7450	License	Active	279508	THE TERTELING CO INC (Cu)	wrAdjudicationClaim	PD Issued
85	7451	License	Active	323108	THE TERTELING CO INC (Cu)	wrAdjudicationClaim	PD Issued
85	7452	License	Active	279690	THE TERTELING CO INC (Cu)	wrAdjudicationClaim	PD Issued
85	22031 A	Beneficial Use	Active	425086	THE TERTELING CO INC (Cu)	wrAdjudicationClaim	PD Issued
85	22291	Beneficial Use	Active	544712	THE TERTELING CO INC (Cu)	wrAdjudicationClaim	PD Issued
85	22293	Beneficial Use	Active	544722	THE TERTELING CO INC (Cu)	wrAdjudicationClaim	PD Issued
85	22295	Beneficial Use	Active	544739	THE TERTELING CO INC (Cu)	wrAdjudicationClaim	PD Issued
85	12	Decreed	Active	560186	THE TERTELING CO INC (Cu)	wrAdjudicationRecomm.	✓
85	13	Decreed	Active	560187	THE TERTELING CO INC (Cu)	wrAdjudicationRecomm.	✓
85	15	Decreed	Active	560188	THE TERTELING CO INC (Cu)	wrAdjudicationRecomm.	✓
85	31051	Beneficial Use	Active	560185	THE TERTELING CO INC (Cu)	wrAdjudicationRecomm.	✓
85	7450	License	Active	545342	THE TERTELING CO INC (Cu)	wrAdjudicationRecomm.	PD Issued
85	7451	License	Active	545344	THE TERTELING CO INC (Cu)	wrAdjudicationRecomm.	PD Issued
85	7452	License	Active	545343	THE TERTELING CO INC (Cu)	wrAdjudicationRecomm.	PD Issued
85	22031 A	Beneficial Use	Active	545350	THE TERTELING CO INC (Cu)	wrAdjudicationRecomm.	PD Issued
85	22291	Beneficial Use	Active	545351	THE TERTELING CO INC (Cu)	wrAdjudicationRecomm.	PD Issued
85	22293	Beneficial Use	Active	545353	THE TERTELING CO INC (Cu)	wrAdjudicationRecomm.	PD Issued
85	22295	Beneficial Use	Active	545352	THE TERTELING CO INC (Cu)	wrAdjudicationRecomm.	PD Issued

Basin Seq# Suf Basis Status Right ID Owner(s) Source Table

63	12540			Active	110398	THE TERTELING CO INC (Cu)	wrWaterApplication	Western Hold Drawer
63	27670	Decreed		Active	119785	THE TERTELING CO INC (Cu)	wrWaterRight	PD Issued
63	28384	Decreed		Active	126717	THE TERTELING CO INC (Cu)	wrWaterRight	PD Issued
65	22013	Decreed		Active	545345	THE TERTELING CO INC (Cu)	wrWaterRight	PD Issued
65	22016	Decreed		Active	545346	THE TERTELING CO INC (Cu)	wrWaterRight	PD Issued
65	22018	Decreed		Active	545347	THE TERTELING CO INC (Cu)	wrWaterRight	PD Issued
65	22019	Decreed		Active	545348	THE TERTELING CO INC (Cu)	wrWaterRight	PD Issued
65	22021	Decreed		Active	545349	THE TERTELING CO INC (Cu)	wrWaterRight	PD Issued

Basin	Seq#	Suf	Basis	Status	Right ID	Owner(s)	Source Table	
63	27649		Beneficial Use	Active	190606			
63	27671		Beneficial Use	Active	125220	T-7 LLC (Current)	wrAdjudicationClaim	✓
63	30006		Beneficial Use	Active	338726	T-7 LLC (Current)	wrAdjudicationClaim	✓
63	30007		Beneficial Use	Active	338727	T-7 LLC (Current)	wrAdjudicationClaim	✓
63	31050		Beneficial Use	Active	423091	T-7 LLC (Current)	wrAdjudicationClaim	✓
63	31052		Beneficial Use	Active	423093	T-7 LLC (Current)	wrAdjudicationClaim	✓
63	31053		Beneficial Use	Active	423094	T-7 LLC (Current)	wrAdjudicationClaim	✓
63	31054		Beneficial Use	Active	423095	T-7 LLC (Current)	wrAdjudicationClaim	✓
63	31055		Beneficial Use	Active	423096	T-7 LLC (Current)	wrAdjudicationClaim	✓
63	31056		Beneficial Use	Active	423097	T-7 LLC (Current)	wrAdjudicationClaim	✓
63	31057		Beneficial Use	Active	423098	T-7 LLC (Current)	wrAdjudicationClaim	✓

12/12/2005

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

RIGHT NUMBER: 63-12

NAME AND ADDRESS: THE TERTELING CO INC
3823 N 36TH ST
BOISE ID 83703

SOURCE: GROUND WATER

TRIBUTARY:

QUANTITY: 0.140 CFS
101.40 AFY

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.

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.

PRIORITY DATE: 07/01/1921

POINT OF DIVERSION: T04N R02E S22 NWSW Within ADA County
T04N R02E S28 NWSW Within ADA County
T04N R02E S29 NESE Within ADA County
T04N R02E S29 NESE Within ADA County

PURPOSE AND PERIOD OF USE:

PURPOSE OF USE	PERIOD OF USE	QUANTITY
HEATING	01/01 12/31	0.140 CFS 101.40 AFY
DOMESTIC	01/01 12/31	0.040 CFS 0.60 AFY
IRRIGATION	01/01 12/31	0.140 CFS 38.00 AFY

Domestic use is for business offices.

Irrigation use is for inside commercial greenhouses and outside irrigation.

PLACE OF USE: IRRIGATION Within ADA County

T04N R02E S22	NESW	7.00	T04N R02E S22	SESW	0.50
T04N R02E S29	NESE	7.50			

HEATING Within ADA County

T04N R02E S22	NESW		T04N R02E S22	SESW	
T04N R02E S29	NESE				

DOMESTIC Within ADA County

T04N R02E S22	NESW		T04N R02E S22	SESW	
T04N R02E S29	NESE				

15 ACRES TOTAL

Right 63-12 is limited to the irrigation of 6.0 acres within the place of use described above in a single irrigation season.

The rights listed below are limited to the irrigation of a combined total of 171 acres in a single irrigation season. Combined Right Nos.: 63-12, 63-13, 63-15, 63-308, 63-3603, 63-7595, 63-27649, 63-27671, 63-31053, 63-31054, 63-31055, 63-31054.

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.



EXPLANATORY MATERIAL: BASIS OF CLAIM - Decreed

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. Tieg's 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.

This water right is subject to the terms of an Agreement dated January 24, 2002, recorded at the Ada County Recorder's Office on August 27, 2002 as Instrument No. 102097169.

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.

Use of water under this water right will be regulated by the watermaster of State Water District No. 63-S, Stewart Gulch.

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.

The right holder shall accomplish the change authorized by transfer no. 68558 within one year of the date of the transfer approval.

Diversion and use of water from the Windsock well is contingent upon continued activity of Water District 63-S.

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.

Water is 120 degrees F geothermal water.

Prior to diversion of water under approved transfer no. 68558, 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.

The Silkey v. Tieg's decree specifically addressed the protected artesian pressure in the aquifer. The Department, in deference to the Silkey decree, will refrain from examining whether the artesian pressure in Stewart Gulch constitutes a reasonable pumping level and is in the public interest pursuant to I.C. 42-226 unless and until a contrary determination is made in an appropriate judicial or administrative proceeding.

The Director maintains jurisdiction of transfer no. 68558 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.

12/12/2005

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

RIGHT NUMBER: 63-13

NAME AND ADDRESS: THE TERTELING CO INC
3823 N 36TH ST
BOISE ID 83703

SOURCE: GROUND WATER

TRIBUTARY:

QUANTITY: 0.660 CFS
400.00 AFY

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.

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.

PRIORITY DATE: 07/01/1922

POINT OF
DIVERSION: T04N R02E S22 NWSW Within ADA County
T04N R02E S28 NWSW Within ADA County
T04N R02E S29 NESE Within ADA County
T04N R02E S29 NESE Within ADA County

PURPOSE AND
PERIOD OF USE:

PURPOSE OF USE	PERIOD OF USE	QUANTITY
IRRIGATION	01/01 12/31	0.660 CFS 38.00 AFY
DOMESTIC	01/01 12/31	0.040 CFS 0.60 AFY
HEATING	01/01 12/31	0.660 CFS 400.00 AFY

Domestic use is for business offices.

Irrigation use is for inside commercial greenhouses and outside irrigation.

PLACE OF USE: IRRIGATION Within ADA County

T04N R02E S22	NESW	7.00	T04N R02E S22	SESW	0.50
T04N R02E S29	NESE	7.50			

HEATING Within ADA County

T04N R02E S22	NESW		T04N R02E S22	SESW	
T04N R02E S29	NESE				

DOMESTIC Within ADA County

T04N R02E S22	NESW		T04N R02E S22	SESW	
T04N R02E S29	NESE				

15 ACRES TOTAL

The rights listed below are limited to the irrigation of a combined total of 171 acres in a single irrigation season. Combined Right Nos.: 63-12, 63-13, 63-15, 63-308, 63-3603, 63-7595, 63-27649, 63-27671, 63-31053, 63-31054, 63-31055, 63-31054.

Right 63-13 is limited to the irrigation of 6.0 acres within the place of use described above in a single irrigation season.

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.

EXPLANATORY MATERIAL: BASIS OF CLAIM - Decreed

The Director maintains jurisdiction of transfer no. 68558 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.

Diversion and use of water from the Windsock well is contingent upon continued activity of Water District 63-S.

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.

The Silkey v. Tiegs decree specifically addressed the protected artesian pressure in the aquifer. The Department, in deference to the Silkey decree, will refrain from examining whether the artesian pressure in Stewart Gulch constitutes a reasonable pumping level and is in the public interest pursuant to I.C. 42-226 unless and until a contrary determination is made in an appropriate judicial or administrative proceeding.

Water is 120 degrees F geothermal water.

Use of water under this water right will be regulated by the watermaster of State Water District No. 63-S, Stewart Gulch.

The right holder shall accomplish the change authorized by transfer no. 68558 with one year of the date of approval.

Prior to diversion of water under transfer no. 68558, 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.

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.

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.

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.

This water right is subject to the terms of an Agreement dated January 24, 2002, recorded at the Ada County Recorder's Office on August 27, 2002 as Instrument No. 102097169.

12/12/2005

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

RIGHT NUMBER: 63-15
NAME AND ADDRESS: THE TERTELING CO INC
1823 N 36TH ST
BOISE ID 83703

SOURCE: GROUND WATER
QUANTITY: 0.800 CFS
400.00 APY

TRIBUTARY:

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.

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.

PRIORITY DATE: 03/23/1927

POINT OF
DIVERSION: T04N R02E S22 NWSW Within ADA County
T04N R02E S28 NWSW Within ADA County
T04N R02E S29 NESE Within ADA County
T04N R02E S29 NESE Within ADA County

PURPOSE AND
PERIOD OF USE:

PURPOSE OF USE	PERIOD OF USE	QUANTITY
DOMESTIC	01/01 12/31	0.040 CFS 0.60 APY
IRRIGATION	01/01 12/31	0.800 CFS 38.00 APY
HEATING	01/01 12/31	0.800 CFS 400.00 APY

Domestic use is for business offices.

Irrigation use is for inside commercial greenhouses and outside irrigation.

PLACE OF USE: IRRIGATION Within ADA County

T04N R02E S22	NESW	7.00	T04N R02E S22	SESW	0.50
T04N R02E S29	NESE	7.50			

HEATING Within ADA County

T04N R02E S22	NESW		T04N R02E S22	SESW	
T04N R02E S29	NESE				

DOMESTIC Within ADA County

T04N R02E S22	NESW		T04N R02E S22	SESW	
T04N R02E S29	NESE				

15 ACRES TOTAL

The rights listed below are limited to the irrigation of a combined total of 171 acres in a single irrigation season. Combined Right Nos.: 63-12, 63-13, 63-15, 63-308, 63-3603, 63-7595, 63-27649, 63-27671, 63-31053, 63-31054, 63-31055, 63-31054.

Right 63-15 is limited to the irrigation of 6.0 acres within the place of use described above in a single irrigation season.

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.

EXPLANATORY MATERIAL: BASIS OF CLAIM - Decreased

The Director maintains jurisdiction of transfer no. 68558 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.

Diversion from the Windsack 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 Windsack well is causing the significant reduction in pressure; (b) curtail diversion of water from the Windsack well; or (c) require mitigation for diversion of water from the Windsack well.

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.

Diversion and use of water from the Windsack well is contingent upon continued activity of Water District 63-S.

Prior to diversion of water under transfer no. 68558, 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.

Water is 120 degree F geothermal water.

This water right is subject to the terms of an Agreement dated January 24, 2002, recorded at the Ada County Recorder's Office on August 27, 2002, as Instrument No. 102097169.

Use of water under this water right will be regulated by the watermaster of State Water District No. 63-S, Stewart Gulch.

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.

The right holder shall accomplish the change authorized by transfer no. 68558 within one year of the date of approval.

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.

The Silkey v. Tiegs decree specifically addressed the protected artesian pressure in the aquifer. The Department, in deference to the Silkey decree, will refrain from examining whether the artesian pressure in Stewart Gulch constitutes a reasonable pumping level and is in the public interest pursuant to I.C. 42-226 unless and until a contrary determination is made in an appropriate judicial or administrative proceeding.

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.

12/12/2005

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

RIGHT NUMBER: 63-308
NAME AND ADDRESS: TERTELING TRUST NO 7
3823 N 36TH ST
BOISE ID 83703

THE TERTELING CO INC
3823 N 36TH ST
BOISE ID 83703

SOURCE: STEWART CREEK TRIBUTARY: BOISE RIVER

QUANTITY: 0.780 CFS
The quantity of water under this right for stockwater use shall not exceed 13,000 gallons per day.

PRIORITY DATE: 07/23/1899

POINT OF DIVERSION: T04N R02E S22 NENW Within ADA County
T04N R02E S22 NWNW Within ADA County

PURPOSE AND PERIOD OF USE:

PURPOSE OF USE	PERIOD OF USE	QUANTITY
IRRIGATION	03/01 11/15	0.240 CFS
STOCKWATER	01/01 12/31	0.040 CFS
AESTHETIC STORAGE	01/01 12/31	17.00 AFY
IRRIGATION STORAGE	03/01 11/15	17.00 AFY

PLACE OF USE: IRRIGATION Within ADA County
T04N R02E S22 NWNW 5.00 T04N R02E S22 S2NW 11.00
IRRIGATION STORAGE Within ADA County
T04N R02E S22 NWNW T04N R02E S22 S2NW
AESTHETIC STORAGE Within ADA County
T04N R02E S22 NWNW T04N R02E S22 S2NW
STOCKWATER SAME AS IRRIGATION

16 ACRES TOTAL

The rights listed below are limited to the irrigation of a combined total of 171 acres in a single irrigation season. Combined Right Nos.: 63-12, 63-13, 63-15, 63-308, 63-3603, 63-7595, 63-27649, 63-27671, 63-31053, 63-31054, 63-31055, 63-31054.

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 for stockwater use is not a determination of historical beneficial use.

EXPLANATORY MATERIAL: BASIS OF CLAIM - Decreed

Right includes accomplished change in points of diversion pursuant to Section 42-1425, Idaho Code.

Stockwater use is for 25 llamas.

Right includes accomplished change in purpose of use pursuant to Section 42-1425, Idaho Code.

12/12/2005

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

RIGHT NUMBER: 63-3603

NAME AND ADDRESS: THE TERTELING CO INC
3823 N 36TH ST
BOISE ID 83703

SOURCE: GROUND WATER

TRIBUTARY:

QUANTITY: 1.030 CFS

This right when combined with all other rights shall provide no more than .02 cfs per acre nor more than 4.5 afa per acre for irrigation of the lands above.

The rights listed below are limited to a total combined diversion rate of 2.83 cfs and to a total combined annual diversion volume of 771.5 AF. Combined Right Nos.: 63-3603, 63-7595.

PRIORITY DATE: 04/26/1967

POINT OF
DIVERSION: T04N R02E S22 NENW Within ADA County
T04N R02E S22 SWNW Within ADA County
T04N R02E S22 NWSW Within ADA County

PURPOSE AND
PERIOD OF USE:

PURPOSE OF USE

PERIOD OF USE

QUANTITY

IRRIGATION

03/15' 11/15

1.030 CFS
351.00 AFY

The use of water for irrigation under this right may begin as early as March 1, provided other elements of the right are not exceeded. The use of water before March 15 under this remark is subordinate to all water rights having no subordinated early or late irrigation use and a priority date earlier than the date a partial decree is entered for this right.

PLACE OF USE: IRRIGATION Within ADA County

T04N R02E S22	NENW	3.00	T04N R02E S22	NWNW	5.00
T04N R02E S22	SWNW	3.00	T04N R02E S22	NESW	20.00
T04N R02E S22	NWSW	22.00	T04N R02E S22	SESW	12.00
T04N R02E S22	NWSE	13.00			

78 ACRES TOTAL

The rights listed below are limited to the irrigation of a combined total of 171 acres in a single irrigation season. Combined Right Nos.: 63-3603, 63-7595.

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.

EXPLANATORY MATERIAL: BASIS OF CLAIM - License

Approval of transfer no. 3990 authorizes the diversion of water from one producing well only.

The right holder shall accomplish the change authorized by transfer no. 3990 within one (1) year of the date of its approval.

Right holder shall comply with the drilling permit requirements of Section 42-235, Idaho Code.

Water is 120 degrees F geothermal water.

Transfer 3990 does not authorize the use of water with a temperature greater than 85 degrees F.

Right No. 63-7595 is also diverted through two of the points of diversion described above.

Failure of the right holder to comply with the conditions of transfer no. 3990 is cause for the Director to issue an order cause why the approval of the transfer should not be rescinded.

This right is subject to regulation by the watermaster of Water District 63S.

12/12/2005

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

RIGHT NUMBER: 63-7595

NAME AND ADDRESS: THE TERTELING CO INC
3823 N 36TH ST
BOISE ID 83703

SOURCE: GROUND WATER

TRIBUTARY:

QUANTITY: 1.800 CFS
420.50 AFY

The rights listed below are limited to a total combined diversion rate of 2.83 cfs and to a total combined annual diversion volume of 771.5 AF. Combined Right Nos.: 63-3603, 63-7595.

PRIORITY DATE: 03/07/1973

POINT OF
DIVERSION: T04N R02E S22 NWNE Within ADA County
T04N R02E S22 NENW Within ADA County
T04N R02E S22 SWNW Within ADA County
T04N R02E S22 NWSW Within ADA County

PURPOSE AND
PERIOD OF USE:

PURPOSE OF USE	PERIOD OF USE	QUANTITY
STOCKWATER	01/01 12/31	0.050 CFS 2.00 AFY
IRRIGATION	03/15 11/15	1.800 CFS 418.50 AFY

The use of water for irrigation under this right may begin as early as March 1 provided other elements of the right are not exceeded. The use of water before March 15 under this remark is subordinate to all water rights having no subordinated early or late irrigation use and a priority date earlier than the date a partial decree is entered for this right.

PLACE OF USE: IRRIGATION Within ADA County

T04N R02E S21	SENE	1.00	T04N R02E S21	NESE	8.00
T04N R02E S22	NWNE	8.00	T04N R02E S22	NENW	11.00
T04N R02E S22	NWNW	10.00	T04N R02E S22	SWNW	27.00
T04N R02E S22	SENW	1.00	T04N R02E S22	NESW	3.00
T04N R02E S22	NWSW	14.00	T04N R02E S22	SWSW	3.00
T04N R02E S22	SESW	3.00	T04N R02E S22	NWSE	4.00

STOCKWATER Within ADA County

T04N R02E S22 SWNW

93 ACRES TOTAL

The rights listed below are limited to the irrigation of a combined total of 171 acres in a single irrigation season. Combined Right Nos.: 63-3603, 63-7595

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.

EXPLANATORY MATERIAL: BASIS OF CLAIM - License

Right No. 63-3603 is also diverted through two of the points of diversion described above.

The right holder shall use the full allotment of his surface water right, to the extent it is available, in conjunction with groundwater diverted pursuant to this right.

The right holder shall either install a measuring device or provide a certified measurement by a professional engineer or install an access port or other device as specified by the Department.

Diversion and use of low temperature geothermal resource water under the terms of the license is subject to the control of the watermaster of State Water District No. 63S, Stewart Gulch, upon a determination of interconnection with other low temperature geothermal users in the district.

Water is 120 degrees F geothermal water.

This right when combined with all other rights shall provide no more than .02 cfs per acre nor more than 4.5 afa per acre for the lands above.

Stockwater use is for 150 mixed stock.

12/12/2005

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

RIGHT NUMBER: 63-31051

NAME AND ADDRESS: THE TERTELING CO INC
3823 N 36TH ST
BOISE ID 83703

SOURCE: GROUND WATER

TRIBUTARY:

QUANTITY: 0.120 CFS
38.00 AFY

The total instantaneous diversion of water from all points of diversion under Right 63-31051 shall not exceed 0.12 cfs, nor total combined annual volume of 38.0 af.

Rights 63-12, 63-13, 63-15 and 63-31051 when combined shall not exceed a total annual maximum diversion volume of 38.0 af for the irrigation of 6.0 total acres included under commercial use of this right.

PRIORITY DATE: 07/01/1921

POINT OF
DIVERSION: T04N R02E S22 NWNE Within ADA County
T04N R02E S22 NWSE Within ADA County
T04N R02E S29 NESE Within ADA County
T04N R02E S29 NESE Within ADA County

PURPOSE AND
PERIOD OF USE:

PURPOSE OF USE	PERIOD OF USE	QUANTITY
COMMERCIAL	01/01 12/31	0.120 CFS 38.00 AFY

Commercial use is for inside greenhouses, associated outside irrigation and other miscellaneous business related uses.

PLACE OF USE: COMMERCIAL Within ADA County

T04N R02E S22	NESW	T04N R02E S22	SESW
T04N R02E S29	NESE		

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.

EXPLANATORY MATERIAL: BASIS OF CLAIM - Beneficial Use

Use of water under this right may be affected by an agreement between the protestant and the right holder.

The right holder shall accomplish the change authorized by this transfer within <one> year(s) of the date of this approval.

Prior to diversion of water under this approval, the right holder shall provide a means of measurement acceptable to the Department from all authorized points of diversion which will allow determination of the total rate of diversion.

After specific notification by the Department, the right holder shall measure the diversion or shall enter into an agreement with the Department to determine the amount of water diverted from power records and shall annually report the information to the Department.

Failure of the right holder to comply with the conditions of this transfer is cause for the Director to rescind approval of the transfer.

AMENDED DIRECTOR'S REPORT

Subcase No. 63-31058

In Re SRBA

Twin Falls County Civil Case No. 39576

Report to the SRBA District Court

**Prepared by the Idaho Department of Water Resources
Gary Spackman, Interim Director
Carter Fritschle, Manager, Adjudication Section**

June 10, 2010

DESCRIPTIVE SUMMARY

This is an Amended Director's Report submitted by the Interim Director of the Idaho Department of Water Resources.

DISCUSSION

Pursuant to the *Order Granting Motion to File Amended Notice of Claim and Order Setting Deadlines* issued by Special Master Booth on January 30, 2009, and the subsequent *Third Order Amending Deadlines* issued by Special Master Booth on May 26, 2010, the Interim Director submits the attached Amended Director's Report for filing with the Court.


Carter Fritschle
Manager, Adjudication Section

Amended Director's Report
Right No. 63-31058

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

RIGHT NUMBER: 63-31058

NAME AND ADDRESS: THE TERTEILING CO INC
3858 GARDEN CENTER WY STE 300
BOISE ID 83703

SOURCE: SPRING
STEWART CREEK

TRIBUTARY: STEWART CREEK
TRIBUTARY: BOISE RIVER

QUANTITY: 1.000 CFS

The quantity of water under this right for stockwater use shall not exceed 13,000 gallons per day.

PRIORITY DATE: 01/01/1945

POINT OF DIVERSION:

T04N R02E S14 SESW Within ADA County
T04N R02E S14 SESW Within ADA County
T04N R02E S14 SESW Within ADA County
T04N R02E S14 SWSE Within ADA County

PURPOSE AND
PERIOD OF USE:

<u>PURPOSE OF USE</u>	<u>PERIOD OF USE</u>	<u>QUANTITY</u>
STOCKWATER STORAGE	01/01 12/31	2.00 AFY
IRRIGATION	03/15 11/15	0.320 CFS
STOCKWATER	01/01 12/31	0.040 CFS

PLACE OF USE:

IRRIGATION in ADA County

T04N R02E S14	SWSW	9.80	T04N R02E S14	SESW	5.00
T04N R02E S15	SESE	1.00			

STOCKWATER same as IRRIGATION

15.8 ACRES TOTAL

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 for stockwater use is not a determination of historical beneficial use.

EXPLANATORY MATERIAL: BASIS OF CLAIM - Beneficial Use

Stockwater use is for 300 head of range cattle.

Amended Director's Report
Right No. 63-31058

CERTIFICATE OF SERVICE

I certify that on JUNE 11, 2010, I served the original and/or copies of this form, including all attachments, to the following persons by delivering the original and/or copies, as follows:

1. Original to:

Clerk of the District Court
Snake River Basin Adjudication
253 Third Avenue North
P.O. Box 2707
Twin Falls, Idaho 83303-2707

☐ Overnight Mail
☒ Regular Mail
☐ Hand-Delivered
☒ Facsimile

2. Copies to:

UNITED STATES OF AMERICA
Represented by:
U.S. DEPARTMENT OF JUSTICE
ENVIRONMENT & NATURAL RESOURCES
550 WEST FORT STREET, MSC 033
BOISE, ID 83724

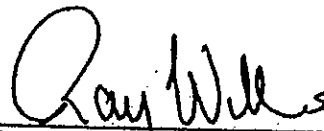
STATE OF IDAHO
Represented by:
NATURAL RESOURCES DIVISION CHIEF
STATE OF IDAHO
ATTORNEY GENERAL'S OFFICE
P.O. BOX 44449
BOISE, ID 83711-4449

DIRECTOR OF IDWR
P.O. BOX 83720
BOISE, ID 83720-0098

THE TERTELING CO., INC.
Represented by:
CHARLES L. HONSINGER
455 S. THIRD STREET
P.O. BOX 2773
BOISE, ID 83701-2773

EDWARDS FAMILY, LLC
Represented by:
DANA L. HOFSTETTER
608 WEST FRANKLIN STREET
BOISE, ID 83702

ADA COUNTY COURTHOUSE
200 W. FRONT STREET
BOISE, ID 83702-7300

A handwritten signature in cursive script, appearing to read "Ray Williams", written over a horizontal line.

Signature of person delivering form

12/12/2005

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

RIGHT NUMBER: 63-31059

NAME AND ADDRESS: THE TERTELINO CO INC
3823 N 36TH ST
BOISE ID 83703

SOURCE: GROUND WATER

TRIBUTARY:

QUANTITY: 0.020 CFS

The quantity of water under this right for domestic use shall not exceed 13,000 gallons per day.

PRIORITY DATE: 07/01/1994

POINT OF
DIVERSION: T04N R02E S21 NESE Within ADA County

PURPOSE AND
PERIOD OF USE:

PURPOSE OF USE

PERIOD OF USE

QUANTITY

DOMESTIC

01/01 12/31

0.020 CFS

Domestic use is for heating 1 home.

PLACE OF USE: DOMESTIC Within ADA County
T04N R02E S21 NESE

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

The quantity of water decreed for this water right for domestic use is not a determination of historical beneficial use.

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.

EXPLANATORY MATERIAL: BASIS OF CLAIM - Beneficial Use

Property is also known as 5115 Cartwright Rd., Boise, Idaho.

12/12/2005

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

RIGHT NUMBER: 63-31060

NAME AND ADDRESS: THE TERTELING CO INC
3823 N 36TH ST
BOISE ID 83703

SOURCE: GROUND WATER

TRIBUTARY:

QUANTITY: 0.040 CFS

The quantity of water under this right for domestic and stockwater uses shall not exceed 13,000 gallons per day.

PRIORITY DATE: 01/01/1910

POINT OF

DIVERSION: T04N R02E S14 SESW Within ADA County .

PURPOSE AND
PERIOD OF USE:

PURPOSE OF USE

PERIOD OF USE

QUANTITY

DOMESTIC

01/01 12/31

0.040 CFS

STOCKWATER

01/01 12/31

0.040 CFS

Domestic use is for 1 home and up to one-half acre irrigation.

PLACE OF USE: STOCKWATER Within ADA County

T04N R02E S14 SESW

DOMESTIC Within ADA County

T04N R02E S14 SESW

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

The quantity of water decreed for this water right for domestic use and stockwater use is not a determination of historical beneficial use.

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.

EXPLANATORY MATERIAL: BASIS OF CLAIM - Beneficial Use

Stockwater use is for 15 range cattle.

12/12/2005

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

RIGHT NUMBER: 63-31061

NAME AND ADDRESS: THE TERTELING CO INC
3823 N 36TH ST
BOISE ID 83703

SOURCE: SPRING

TRIBUTARY: STEWART CREEK

QUANTITY: 0.040 CFS

When combined with water right 63-28364 the quantity of water under this right for domestic and stockwater uses shall not exceed 13,000 gallons per day.

PRIORITY DATE: 03/01/1938

POINT OF

DIVERSION: T04N R02E S21 SWNE Within ADA County

PURPOSE AND
PERIOD OF USE:

PURPOSE OF USE

PERIOD OF USE

QUANTITY

STOCKWATER

01/01 12/31

0.040 CFS

DOMESTIC

01/01 12/31

0.040 CFS

Domestic use is for 1 home and up to .5 acre of irrigation.

PLACE OF USE:

STOCKWATER Within ADA County

T04N R02E S21 NESE

DOMESTIC Within ADA County

T04N R02E S21 NESE

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

EXPLANATORY MATERIAL: BASIS OF CLAIM - Beneficial Use

Stockwater use is for 10 range cattle.

The quantity of water decreed for this water right for domestic use and stockwater use is not a determination of historical beneficial use.

Property is also known as 5115 Cartwright Rd, Boise, Idaho.

12/12/2005

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

RIGHT NUMBER: 63-31062

NAME AND ADDRESS: THE TERTELING CO INC
3823 N 36TH ST
BOISE ID 83703

SOURCE: GROUND WATER

TRIBUTARY:

QUANTITY: 0.060 CFS
4.50 AFY

The quantity of water under this right for domestic and stockwater uses shall not exceed 13,000 gallons per day.

PRIORITY DATE: 01/01/1938

POINT OF

DIVERSION:

T04N R02E S22 NWSE Within ADA County

PURPOSE AND
PERIOD OF USE:

PURPOSE OF USE

PERIOD OF USE

QUANTITY

STOCKWATER

01/01 12/31

0.040 CFS

DOMESTIC

01/01 12/31

0.040 CFS

IRRIGATION

03/01 11/15

0.020 CFS

4.50 AFY

Domestic use is for 1 home and up to one-half acre irrigation.

PLACE OF USE:

IRRIGATION Within ADA County

T04N R02E S22 NWSE 1.00

STOCKWATER Within ADA County

T04N R02E S22 NWSE

DOMESTIC Within ADA County

T04N R02E S22 NWSE

1 ACRES TOTAL

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

The quantity of water decreed for this water right for domestic use and stockwater use is not a determination of historical beneficial use.

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.

EXPLANATORY MATERIAL: BASIS OF CLAIM - Beneficial Use

Stockwater use is for 10 range cattle.

SETTLEMENT AGREEMENT

This Settlement Agreement (the "Agreement") is made and entered into this 24th day of January, 2002, between The Terteling Company, Inc., an Idaho corporation ("Terteling"), and the Edwards Family, LLC, an Idaho Limited Liability Corporation ("Edwards"). Terteling and Edwards may be referred to hereinafter individually as "Party" or collectively as the "Parties."

Recitals and Background Information

A. Terteling represents that it owns Water Right Nos. 63-00012, 63-00013 and 63-00015, which were decreed in *Silkey v. Tiegs*, Ada County Case No. 11748, on review 51 Idaho 344 (1931) and 54 Idaho 126 (1934) ("*Silkey v. Tiegs*"). *Silkey v. Tiegs* adjudicated rights to use geothermal water from an aquifer referred to herein as the Stewart Gulch Geothermal Aquifer. Water Right Nos. 63-00012 and 63-00013 (the "Silkey Rights") are the two most senior water rights decreed in *Silkey v. Tiegs* with priority dates of July 1, 1921 and July 1, 1922 respectively. Water Right No. 63-00015 (the "Tiegs Right") is designated in *Silkey v. Tiegs* with a priority date of March 23, 1927.

B. Edwards represents that it owns Water Right No. 63-00014 (the "Edwards Right"), which was decreed in *Silkey v. Tiegs* with a priority date of November 22, 1926. The Edwards Right is diverted from a well located in SE $\frac{1}{4}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$ Section 29, Township 4 North, Range 2 East, Boise Meridian (the "Edwards Well").

C. By Final Orders dated December 5, 1989 and December 1, 1992, the Department established Water District 63-S (the "District") and implemented watermaster administration of water rights diverted from the Stewart Gulch Geothermal Aquifer in the District. As of the date of this Agreement, the District is not active.

D. The Parties estimate that the total sustainable volume of water that can be diverted annually from the Stewart Gulch Geothermal Aquifer is approximately between 650 AFA to 750 AFA.

E. On October 2, 2000, Terteling filed with the Department an Application for Transfer of Water Right for the Silkey and Tiegs Rights (Transfer No. 68558), seeking approval to divert and use these rights from an alternate point of diversion (the "Windsock Well") in the

NW¼ SW¼ Section 22, Township 4 North, Range 2 East, Boise Meridian, and at a new place of use in Section 22, Township 4 North, Range 2 East, Boise Meridian. The land, including place of use and diversion points, currently associated with the Silkey and Tiegs Rights is described in Exhibit A hereto. The land on which the Silkey and Tiegs Rights' proposed alternate point of diversion and new place of use is located is described in Exhibit B hereto. Also, on October 2, 2000, Terteling filed with the Department an Application for Transfer of Water Right (Transfer No. 68559) for diversion and use of cold water at locations near the Windsock Well. These two Applications for Transfer of Water Right (Transfer Nos. 68558 and 68559), as amended, will be referred to herein as the Transfers. Paul Edwards, a principal of Edwards, filed protests against the Transfers on December 22, 2000 (the "Protests"). Edwards' land associated with Water Right No. 63-00014 is described in Exhibit C hereto.

F. The Parties believe it is in their mutual interests to resolve the Protests and to enter into a comprehensive agreement to mutually protect their most senior water rights in the Stewart Gulch Geothermal Aquifer.

NOW, THEREFORE, in consideration of the mutual promises and covenants hereinafter expressed, the Parties agree as follows:

1. **Withdrawal of Protests.** Within five days after execution of this Agreement by both Parties, Edwards shall file with the Department appropriate documents suspending Paul Edwards' Protests to the Transfers pending the Department's approval of the Transfers that caps the maximum combined annual diverted volume for the Silkey and Tiegs rights at 400 AFA.
2. **Reactivation of District 63-S.** Within ten days of the Department's approval of the Transfers, the Parties will file a petition with the Department requesting a special meeting of the water right holders of the District for the purpose of reactivating the District by appointment of a watermaster for administration of water rights and by reinstituting measurement and reporting for water rights in the District. Thereafter, in subsequent years, the Parties shall use all reasonable efforts to ensure the continued appointment of a District watermaster and implementation of the District measurement and reporting program. The Parties shall use all reasonable efforts to ensure that the District's measurement and reporting program includes the kind of measurement and reporting described in Section 3 of this Agreement.
3. **Measurement and Reporting.** The Parties shall install and maintain meters on all

of their wells in the District for the purpose of measuring and recording total diverted volumes. Total diverted volumes shall be reported quarterly to the watermaster, which report shall include the total volume diverted for each well either owned by them or used by them in the District for the preceding quarter.

4. **Diverted Volumes.** Terteling shall divert a combined maximum total of 400 AFA from the Stewart Gulch Geothermal Aquifer under the Silkey and Tiegs Rights and Edwards shall divert a maximum of 250 AFA from the Stewart Gulch Geothermal Aquifer under the Edwards Right.

5. **Diversion Rate.** Each Party may divert water at the rates ultimately authorized by the respective final Snake River Basin Adjudication ("SRBA") partial decrees for the Silkey Rights and the Edwards Right.

6. ***Silkey v. Tiegs.*** The parties shall take the following steps to protect their senior Silkey and Edwards Rights pursuant to the *Silkey v. Tiegs* decree:

- (a) The Parties shall use all reasonable efforts to ensure that the Department's Boise Front Low Temperature Geothermal Resource Ground Water Management Area moratorium (or some other substantially similar Department moratorium that also includes the Stewart Gulch Geothermal Aquifer) remains in effect to prevent the development of new water rights diverted from the Stewart Gulch Geothermal Aquifer. The Parties also shall use all reasonable efforts to seek and obtain an area of drilling concern designation pursuant to Idaho Code § 42-238(15) or another appropriate regulatory designation, order, determination, decision, etc. from the Department to prohibit development in the Stewart Gulch Geothermal Aquifer of any new water rights that are exempted from Department water right permitting and licensing requirements, such as domestic water rights. Thereafter, the Parties shall use all reasonable efforts to have the Department maintain such designation, order, determination, decision, or other regulatory mechanism.
- (b) The Parties also shall use all reasonable efforts to ensure that the Department continues to include the Stewart Gulch Geothermal Aquifer either in a designated ground water management area, such as the Boise Front Ground Water Management Area, in a designated critical ground water area or in some other substantially similar designated area under Idaho law. The Parties shall use all reasonable efforts so that the Department

issues, implements, and maintains such orders or some other similar regulatory mechanism to ensure that the diverted volumes to the maximum extent provided for in Section 4 of this Agreement are available to fulfill the senior Silkey and Edwards Rights.

7. **The Tiegs Right.** The Transfers do not authorize Terteling to divert water under the Tiegs Right.

8. **Snake River Basin Adjudication.** The Parties shall use all reasonable efforts to establish the Stewart Gulch Geothermal Aquifer as a separate source in the SRBA for purposes of water right administration. The Parties agree that their respective SRBA claims shall be consistent with the terms of this Agreement, including the total annual combined diverted volume of 400 AFA for the Silkey and Tiegs Rights and the total annual diverted volume of 250 AFA for the Edwards Right. The Parties on behalf of themselves and any related individuals or entities agree that they will not assert or argue in the SRBA that the total combined annual diverted volume for the Silkey and Tiegs Rights is greater or less than 400 AFA and that total annual diverted volume for the Edwards Right is greater or less than 250 AFA. The Parties agree to undertake all reasonable and appropriate efforts to have the SRBA decrees for Water Right Nos. 63-00012, 63-00013, 63-00014 and 63-00015 reference this Agreement in substantially the following manner: "This water right is subject to the terms of an Agreement dated _____, 2002 recorded at the Ada County Recorder's Office as Instrument No. _____."

9. **Heating Purposes.** The Parties shall utilize water diverted under Water Right Nos. 63-00012, 63-00013, and 63-00014 primarily for heating purposes. Any other use of water diverted under Water Right Nos. 63-00012, 63-00013, and 63-00014, such as for irrigation, only shall occur after the heat is removed by another beneficial use.

10. **Closure of Wells.** If either Party ceases use (including monitoring) of any wells in the Stewart Gulch Geothermal Aquifer for five consecutive years, the Party shall immediately close and appropriately seal such wells. The wells shall be closed and sealed in such a way to prevent any leakage or loss of the geothermal resource.

11. **Department Approval of Transfers.** The Parties agree that the terms of this Agreement are contingent upon the Department's approval of the Transfers that include a

combined total annual diversion volume for the Silkey and Tiegs Rights of no more than and no less than 400 AFA.

12. **Recording of Agreement.** Within ten (10) days after the Department's approval of the Transfers, the Parties shall record this Agreement at the Ada County, Idaho Recorder's Office. The provisions of this Agreement shall be covenants and perpetual servitudes running with Water Right Nos. 63-00012, 63-00013, 63-00014, and 63-00015, and the associated lands, including any new lands to which these water rights are transferred.

13. **Communications.** All communications and submission of measurement data to the Parties pursuant to this Agreement shall be addressed as follows:

The Terteling Company, Inc. (Terteling)
3823 N. 36th Street
Boise, ID 83703
Ph. (208) 381-5205

Garnette Monnie (Edwards)
Edwards Greenhouses
4106 Sand Creek
Boise, ID 83703-4028
Ph. (208) 342-7548

The parties agree to notify each other regarding any changes in the names and/or addresses listed above.

14. **General.** The Parties acknowledge that both Parties and their attorneys have reviewed and participated in drafting this Agreement. The headings of the sections of this Agreement have been inserted for the convenience of reference only and shall not affect any construction or interpretation of this Agreement. This Agreement is the entire agreement of the Parties with respect to the Transfers and with respect to the matters addressed herein concerning Water Right Nos. 63-00012, 63-00013, 63-00014, and 63-00015. This Agreement may be modified only with the mutual written consent of both Parties. Except as otherwise provided in this Agreement, any waivers hereunder must be in writing. No waiver of any right or remedy in the event of default hereunder shall constitute a waiver of such right or remedy in the event of any subsequent default. This Agreement shall be governed in all respects by the laws of the State of Idaho. This Agreement is for the benefit only of the Parties hereto and shall inure to the benefit of and bind the heirs, personal representatives, successors and assigns of the Parties hereto. The

invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provision hereof. In the event of a court proceeding or other legal action regarding the breach or violation of this Agreement, the prevailing party shall be entitled to reasonable attorney's fees and costs. The Parties each represent that they are authorized to enter into this Agreement.

IN WITNESS WHEREOF, the Parties hereto have exercised this instrument the day and year first above written.

THE TERTELING COMPANY, INC.

By 
T.E. Terteling

EDWARDS FAMILY, LLC

By 
Garnette Monnie, Member

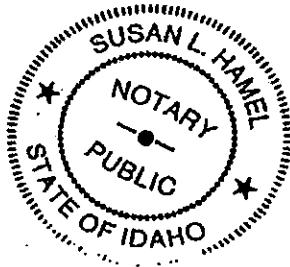
STATE OF IDAHO)

County of Ada)

) ss:

On this 24th day of January, 2002, before me the undersigned Notary Public, personally appeared T.E. Terteling, known to me to be an authorized agent of THE TERTELING COMPANY, INC., the entity that executed the foregoing instrument.

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



Susan L. Hamel
Notary Public for the State of Idaho
Residing in Kuna, ID Ada County
My Commission Expires: 03/22/2002

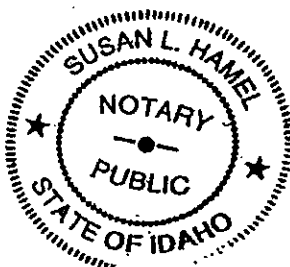
STATE OF IDAHO)

County of Ada)

) ss:

On this 24th day of January, 2002, before me the undersigned Notary Public, personally appeared Garnette Monnie, known to me to be a member of EDWARDS FAMILY, LLC, the entity that executed the foregoing instrument.

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



Susan L. Hamel
Notary Public for the State of Idaho
Residing in Kuna, ID Ada County
My Commission Expires: 03/22/2002

EXHIBIT A

That portion of Section 29, Township 4 North, Range 2 East, Boise Meridian, in the County of Ada, State of Idaho, more particularly described as follows:

Commencing at the quarter section corner common to Sections numbered 28 and 29, in Township 4 North, Range 2 East, the REAL PLACE OF BEGINNING; thence South $0^{\circ}29'$ West a distance of 662.3 feet along the section line common to said Sections 28 and 29; thence North $89^{\circ}11'$ West, parallel to the East and West quarter section line of said Section 29, a distance of 657.4 feet; thence North $0^{\circ}39'$ East a distance of 662.3 feet, to the East and West quarter section line of said Section 29; thence South $89^{\circ}11'$ East, along said quarter section line, 656.5 feet to the PLACE OF BEGINNING.

EXCEPT any portion lying within the following:

Commencing at the quarter section corner common to Sections 28 and 29, Township 4 North, Range 2 East, of the Boise Meridian, marked by a stone; thence South along the East line of said Section 29, a distance of 437.2 feet to a point the same being the TRUE POINT AND PLACE OF BEGINNING; thence continuing South $0^{\circ}29'$ West 1003.9 feet on the East line of said Section 29 marked by an iron pin; thence North $81^{\circ}16'$ West 234.2 feet to a point; thence North $61^{\circ}35'$ West 135.75 feet to a point; thence North $76^{\circ}20'$ West 328.4 feet to a point, marked by an iron pin; thence North $0^{\circ}39'$ East 838.2 feet to a point; thence South $89^{\circ}05'$ East 657 feet to the POINT AND PLACE OF BEGINNING.

EXCEPT ditch and road rights-of-way.

EXHIBIT B

SW 1/4 of Section 22, Township 4 North, Range 2 East of the Boise Meridian, Ada County, Idaho.

Exhibit "C"

Those certain parcels of real property situated in the County of Ada, State of Idaho, more particularly described as follows:

- (A) Lots One through Four, inclusive, Block 1, of Thomas F. Edwards Subdivision situate in Section 29, Township 4 North Range 2 East of the Boise Meridian, in Ada County, State of Idaho.
- (B) Lots 20 through 22, inclusive, of Block 1, of the Thomas F. Edwards Subdivision, according to the plat thereof, records of Ada County, State of Idaho.
- (C) Permit to use hot and cold water from Lot 1, Block 1, of Thomas F. Edwards Subdivision, Ada County, State of Idaho.
- (D) A parcel of land in Southwest Quarter of Northeast Quarter of Section 29, Township 4 N., Range 2 E. B. M., Ada County, State of Idaho, and more particularly described as follows: Commencing at a point 10.86 chains North of the center of Section 29, thence S. 74° 43' E. 15.32 chains to an iron bar located at the Southeast Corner of Thomas F. Edwards' land, the true point of beginning; Thence N. 1° 15' E. 3.40 chs. to a piece of iron pipe; Thence S. 72° 30' E. 2.22 chains to a piece of iron pipe; thence S. 23° 05' E. 3.18 chains to a piece of iron pipe; thence N. 74° 43' West 3.55 chains to iron bar, the place of beginning, containing 0.98 (98/100) acres.
- (E) Beginning at the Northeast Corner of the Southwest Quarter of the Northeast Quarter of Section 29, Township 4 North, Range 2 East, B. M., Ada County, Idaho; thence South 358.38 feet; thence East 58.83 feet; thence South 285.09 feet to an iron rod; thence West 265.83 feet to an iron rod; thence South 24 feet to an iron pipe; thence North 72 degrees 30 minutes West 21.13 feet to the real point of beginning; thence North 72 degrees 30 minutes West 125.39 feet; thence North 1 degree 50 minutes East 49.50 feet; thence North 1 degree 20 minutes East 19.70 feet; thence South 88 degrees East 120 feet; thence South 1 degree 20 minutes West 104.11 feet to the real point of beginning;

EXCEPTING Any portion which may lie in Tamarack Drive.
- (F) Beginning at the Northeast Corner of the Southwest Quarter of the Northeast Quarter (SW1/4NE1/4) Section 29, T. 4N., R. 2E., B. M. Thence South 358.38 feet to a point, thence East 58.83 feet, thence South 285.09 feet to an iron rod, thence West 265.83 feet to the real point of beginning, thence South 24.0 feet, to

an iron pipe, thence N. 72 degrees 30 minutes West 21.13 feet to a point, thence North 1 degree 20 minutes East 104.11 feet to a point, thence S. 88 degrees 40 minutes E. 20.64 feet to a point, thence S. 1 degree 20 minutes W. 85.97 feet to the real point of beginning.

JAN. -31' 02 (THU) 15:31

GIVEN: OURSLEY LLP

TEL: 893881300

P.003/003

01/31/02 10:42

208 381 5200

TERTELING CO INC

0001

January 22, 2002

THE TERTELING COMPANY, INC.

BOARD OF DIRECTORS MINUTES WITHOUT A MEETING

The below signed Directors, who represent all of the Directors of The Terteling Company, Inc. without a notice or a formal meeting, approve said resolution provided a simple majority of all Directors so signify by their signatures below.

WHEREAS The Terteling Company, Inc. filed two applications with the Idaho Department of Water Resources on October 2, 2000 to transfer its rights under *Silkey v. Tiegs* (geothermal rights) and a cold water right currently located on the Flora Co. property at 3623 N. 36th Street, Boise, Idaho, to the Corporation's property located in Section 22, Ada County, for use at 4988 Peaceful Cove Lane, Boise, Idaho.

WHEREAS another senior water rights owner under *Silkey v. Tiegs*, Paul Edwards, filed protests against the transfers on December 22, 2000.

WHEREAS the Corporation and Edwards have reached agreement whereby Edwards agrees to withdraw its protest to the Idaho Department of Water Resources.

WHEREAS the Corporation desires to have T. E. Terteling execute the Settlement Agreement between Edwards and the Corporation on behalf of the Corporation.

THEREFORE, BE IT RESOLVED that the Board of Directors authorizes T. E. Terteling to execute the Settlement Agreement on behalf of The Terteling Company, Inc.

Disapproved:

Approved:

James K. Miller, Jr.
T. E. Terteling

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

IN THE MATTER OF REQUEST FOR
GROUND WATER REGULATION: DECREED
RIGHT NOS. 63-0012, 63-0013
63-0014, 63-0015 & 63-0016, CLAIM
NO. 63-4037 AND PERMIT NO. 63-9758

) ORDER DENYING PETITIONS
) FOR REHEARING AND
) AMENDED FINAL MEMORANDUM
) DECISION AND ORDER

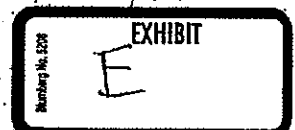
This matter came before the Idaho Department of Water Resources (Department) as a petition to form a water district and as a response to an Order to Show Cause why the Department should not prohibit or limit the diversion of water under certain ground water rights. On December 5, 1989, the Department issued a final Order creating Water District 63-S to control the distribution of water from the low temperature geothermal aquifer in Stewart Gulch. That final Order did not address the show cause matter and reserved any decision on certain unresolved legal issues pertaining to the Department's authority under the Ground Water Act. Those legal issues reserved in the December 5, 1989 final Order are addressed by the Department during these proceedings.

The Department issued a proposed decision on September 24, 1990, and exceptions were filed by Tee Ltd. (Quail Hollow) and Hunt Bros. Floral, Inc. (Hunt Bros.). On December 1, 1992, the Department issued a Final Memorandum Decision and Order that included Department responses to exceptions filed by Quail Hollow and Hunt Bros. Petitions for Rehearing were received from both J. L. Terteling and Quail Hollow during the month of December, 1992, raising several issues. The Department in this order addresses the issues raised in the petitions for rehearing and amends the Final Memorandum Decision and Order. ✓

ORDER DENYING PETITIONS FOR REHEARING

On December 22, 1992, Terteling Trust No. 7 and J. L. Terteling (herein collectively "Terteling") filed a Petition for

ORDER DENYING PETITIONS FOR REHEARING AND
AMENDED FINAL MEMORANDUM DECISION AND ORDER - Page 1



Rehearing before the Department advocating that the Department's Final Memorandum Decision and Order be modified in several respects.

Specifically, the Terteling petition requested that the Department exclude Terteling's wells from administration in Water District No. 63-S, appoint a local ground water board, eliminate protection for artesian pressure in the aquifer and correct an inconsistency in the Conclusions of Law of the Department's final decision.

On December 30, 1992, Quail Hollow filed a late Petition for Rehearing and Joinder in Terteling Petition for Rehearing with the Department requesting the Department reconsider its final order and appoint a local ground water board and establish reasonable ground water pumping levels in the aquifer.

Terteling's Petition for Rehearing and Quail Hollow's Petition for Rehearing are DENIED. The Department addresses the issues raised in the petitions by amending its Final Memorandum Decision and Order in the following manner:

A. Finding of Fact No. 10 will remain unchanged in the Amended Final Memorandum Decision as there appears to be a general interconnection between all the wells in the aquifer. The final order is amended to recognize the option of excluding the Terteling wells from regulation under Water District No. 63-S if it can be demonstrated that there is no interconnection with the other wells in the aquifer.

B. The Department declines to appoint a local ground water board. The issues raised in the petitions for rehearing do not involve a senior ground water right alleging injury because of interference from a junior ground water right as contemplated under Idaho Code § 42-237(b). Moreover, formation of a local ground water board is unnecessary in view of the changes incorporated in the Department's Amended Final Memorandum Decision and Order.

C. The Department will regulate Water District No. 63-S pursuant to the terms of the Silkey v. Tiegs decree pending

Memorandum Decision and Order that included Department responses to the exceptions filed by Quail Hollow and Hunt Bros.

19. The Department has been informed that Hunt Bros. no longer own the property, and the current owner is "Flora Company."

20. A matter herein expressed as a Finding of Fact which is later deemed to be a Conclusion of Law is hereby made a Conclusion of Law.

CONCLUSIONS OF LAW

1. Idaho's Constitution provides that all waters within the state are subject to the regulation and control of the state. Idaho Const. art. XV § 1, provides:

Use of waters a public use. - The use of all waters now appropriated, or that may hereafter be appropriated for sale, rental or distribution; also of water originally appropriated for private use, but which after such appropriation has heretofore been, or may hereafter be sold, rented, or distributed, is hereby declared to be a public use, and subject to the regulations and control of the state in the manner prescribed by law.
(Emphasis added).

2. The state has a statutory duty to supervise the appropriation and allotment of the water resources of the state to water users who divert the water for beneficial use. Idaho Code § 42-101 (1990) prescribes in part:

Nature of property in water. - Water being essential to the industrial prosperity of the state, and all agricultural development throughout the greater portion of the state depending upon its just apportionment to, and economical use by, those making a beneficial application of the same, its control shall be in the state, which, in providing for its use, shall equally guard all the various interests involved. All the waters of the state, when flowing in their natural channels, including the waters of all natural spring and lakes within the boundaries of the state are declared to be the property of the state, whose duty it shall be to supervise their appropriation and allotment to those diverting the same therefrom for any beneficial purpose.

(Emphasis added).

3. The state's duty to supervise the appropriation of water

applies to all subterranean waters as well as to surface waters within the state. I.C. § 42-103.

4. The low temperature geothermal waters at issue in this action have been the subject of previous litigation in which the court applied the general water laws and principles under Idaho law. The Idaho Court, citing Hinton v. Little, 50 Idaho 371, 296 P. 582 (1931), specifically acknowledged that the underground artesian waters at issue in this matter are subject to the laws of prior appropriation. Silkey v. Tiegs, 51 Idaho 344, 5 P.2d 1049 (1931).

5. The proposed decision issued earlier discussed at length the authority of the Director to regulate diversions and require a reasonable pumping level even before the passage of the Ground Water Act in 1951. The entire discussion has been omitted because the Department is not required to determine a reasonable pumping level in this case.

6. ~~The Silkey decree established that artesian pressure should be protected from further declines.~~

7. Because the Silkey decree specifically addressed and protected artesian pressure in the aquifer; the Department, in deference to the Silkey decree, ~~will refrain from examining whether the artesian pressure in Stewart Gulch constitutes a reasonable pumping level and is in the public interest pursuant to I.C. § 42-226 until such time as the court addresses the issue in the Snake River Basin Adjudication.~~

8. The watermaster of Water District No. 63-S must administer the waters of Stewart Gulch ~~in accordance with the provisions of the Silkey v. Tiegs decree, including the protection of the artesian pressure necessary to deliver water to the prior appropriators. I.C. §§ 42-237a and 42-607.~~

9. Hunt Bros., or its successors, is entitled to full use of its water rights in order of priority from the point of diversion it has acquired, including the Tiegs well.

10. Water users from the Ryan well and the Stralow well may

continue to divert water for domestic purposes, provided the use does not cause significant decline in the artesian pressure for any diversion which causes injury to earlier in time water rights.

11. Matter herein expressed as a Conclusion of Law which is later deemed to be a Finding of Fact is hereby made a Finding of Fact.

ORDER

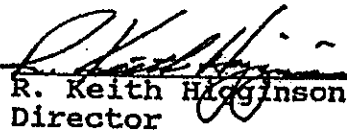
IT IS HEREBY ORDERED that the Watermaster of Water District No. 63-S shall administer the ground water in the water district under the terms of the Silkey v. Tiegs decree and according to the laws of prior appropriation.

IT IS FURTHER ORDERED that the Watermaster of Water District No. 63-S shall, upon his determination that there is not sufficient water that can be delivered by artesian pressure to fill a senior ground water right, limit or prohibit withdrawals from wells within the water district having a later priority. The Department will consider altering the boundaries of Water District No. 63-S to eliminate regulation of a well if its owners demonstrate to the satisfaction of the Director of the Idaho Department of Water Resources that regulation of the wells will not impact the water availability to the other well in the aquifer having a senior right and should not, therefore, be regulated within Water District No. 63-S.

IT IS FURTHER ORDERED that ~~this Amended Final Memorandum Decision and Order shall only govern the administration of low temperature geothermal ground water from Water District No. 63-S until such time as the water rights are adjudicated and all other relevant matters necessary to define the rights are addressed in Twin Falls County Case No. 39576 (Snake River Basin Adjudication).~~

This order is not intended to preclude or limit any wateruser from advancing any legal argument or defense before the District Court in Twin Falls County Case No. 39576 involving any issue raised or ruled upon by the Department in its Amended Final Memorandum Decision and Order.

Dated this 27th day of OCTOBER, 1993.


R. Keith Higginson
Director

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 27th day of OCTOBER, 1993, I mailed a true and correct copy of the foregoing Order Denying Petitions for Rehearing and Amended Final Memorandum Decision and Order, postage prepaid to the following:

William F Ringert
Ringert, Clark et al
PO Box 2773
Boise, ID 83701

J A Terteling
877 W Main Rm. 706
Boise, ID 83702

Susan D Miner
Hawley, Troxell et al
PO Box 1617
Boise, ID 83701

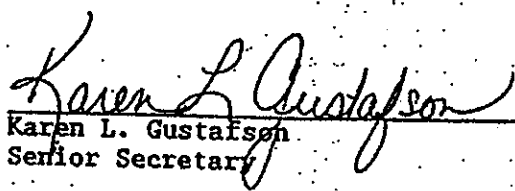
Jeffrey C Fereday
Givens Pursley et al
PO Box 2720
Boise, ID 83701

Kenneth R Arment
Brady, Saetrum & Lerma
PO Box 1398
Boise, ID 83701

Ray F Stralow
3911 Whitehead
Boise, ID 83703

Michael C Creamer
Givens Pursley et al
PO Box 2720
Boise, ID 83701

M E and R E Ryan
4505 Foothill Dr
Boise, ID 83703


Karen L. Gustafson
Senior Secretary

Case Number 11748

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR ADA COUNTY.

FRANCIS SILKEY,

Plaintiff,

v.

H. W. TIGGS, THOMAS F.
EDWARDS and J. RYAN,

Defendants.

This case came regularly on, for trial, before the court without a jury on the ____ day of January, 1930, when Edwin Snow appearing as attorney for plaintiff, and Wm. M. Morgan and T. L. Martin appearing as attorneys for the defendants. Whereupon the case was heard and submitted and duly considered; and the court having made and filed herein its decision, findings of fact and conclusions of law,

NOW THEREFORE, on motion of plaintiff, it is ORDERED, ADJUDGED AND DECREED as follows:

(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:

(2) Plaintiff is hereby decreed a prior right to the use of forty miners inches of said water flowing from her said wells located on the land hereinafter described, said quantity of water to be measured at said wells with priority as to seven miners inches of such water dating from

July 1, 1921, and with pri

EXHIBIT

F

63 0013 July 1, 1921, and with priority as to thirty-three miners, inches
of such water dating from July 1, 1922, said water being de-
creed for irrigation, stock, domestic, heating and other
beneficial uses upon the following described lands.

* Commencing at the quarter section corner common
to sections numbered twenty-eight (28) and twenty-
nine (29) in Township numbered four (4) North of
Range numbered two (2) East of Boise Meridian, thence
south 29' west a distance of 662.3 feet, along the
section line common to said sections 28 and 29 to the
real place of beginning, thence south 29' west a distance
of 778.8 feet along said section line common to sections
28 and 29 to an iron pin; thence north 81°16' west a
distance of two hundred twenty-four and two-tenths
(224.2) feet along the south bank of Boise City Canal
Company ditch, to a point; thence north 61°35' west a
distance of one hundred thirty-five and three quarters
(135.3/4) feet to a point, thence north 76°20' west a
distance of three hundred twenty-eight and four-tenths
(328.4) feet, to an iron pin; thence north 39' east a
distance of 613.1 feet; thence south 89°11' east a
distance of 657.4 feet to the place of beginning; all
being in Section 29, Township 4 North, Range 2 East
Boise Meridian in Ada County, Idaho; also.

Commencing at the quarter section corner common
to Sections numbered twenty-eight (28) and Twenty-nine (29)
in Township Four (4) North, Range Two (2) East of Boise
Meridian, the real place of beginning, thence south 0°29'
west a distance of six hundred sixty-two and three-tenths
(662.3) feet along the section line common to said sections
twenty-eight (28) and twenty-nine (29); thence north 89°11'
west, parallel to the east and west quarter section line

of said section twenty-nine (29), a distance of six hundred fifty-seven and four-tenths (657.4) feet; thence north $0^{\circ}39'$ east a distance of six hundred sixty-two and three tenths (662.3) feet, to the east and west quarter section line of said section twenty-nine (29); thence south $89^{\circ}11'$ east, along said quarter section line, six hundred and fifty-six and five-tenths (656.5) feet to the place of beginning, containing ten acres of land, more or less, together with all water rights, water, ditches, aqueducts upon, leading to or used in connection with the above described land;

all of said property containing approximately twenty

63 0014

(3) Defendant Thomas F. Edwards is hereby decreed the right to the use of ~~feet~~ two ~~inches~~ inches of water from his well (measured at said well) located on his land hereinafter described, for irrigation, domestic stock and heating purposes with priority dating from November 22, 1926, said water to be appurtenant to the following described land;

Commencing at a point 10.86 chains north of the center of Section 29, Township 4 North, Range 2 E.B.M., a stone, and thence north a distance of 4.10 chains to an iron bar; thence south 75° degrees, East a distance of 15.43 chains to an iron pipe; thence South $1^{\circ}50$ minutes West a distance of 4.15 chains to an iron bar; thence north $74^{\circ}43$ minutes west a distance of 15.32 chains to a stone, the place of beginning, containing six and fifteen-hundredths acres, more or less.

Also:

Commencing at a point 14.96 chains North of the

center of Section twenty-nine (29), Township Four (4) North, Range Two (2) east of Boise Meridian; thence running South 75 degrees East 7.91 chains; thence North 12.68 chains; thence North 47 degrees 30 minutes West 10.40 chains; thence south 17.89 chains to the place of beginning. Area Eleven and 67/100 (11.67) acres more or less.

Also:

Commencing at a point 14.96 chains North and 7.91 chains South 75 degrees and 30 minutes East from the center of Section 29, Township 4 North, Range 2 East of the Boise Meridian; thence South 75 degrees and 30 minutes East a distance of 7.51 chains to an iron pipe; thence north 1 degree and 20 minutes East a distance of 6.33 chains to an iron pipe; thence North 22 degrees and 50 minutes East a distance of 1.38 chains to a point; thence North 48 degrees and 10 minutes West a distance of 10.67 chains to a post set in concrete; thence South a distance of 12.83 chains to the place of beginning containing Seven and Seventy-six (7.76) Hundredths acres more or less.

Said land belonging to Defendant Edwards aggregates 25.58 acres.

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

63 6615 (4) That the defendant H. W. TEEBART hereby decreed the right to the use of forty miners' inches of water from his well (measured at said well) located on his land hereinafter described for irrigation, domestic, stock and heating purposes, with priority dating from March 23, 1927; said water to be appurtenant to the following described land;

... J. Ryan (8)

Commencing at the Quarter Corner on the West line of Section 28, Township 4 North, Range 2 East of the Boise Meridian; thence south along the West line of said Section 28, 1137 feet, thence East 683 feet, more or less, to the West line of the Leonard M. 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 17.26 chains along the Section line; thence South 89 minutes 53 seconds East 10.29 chains to a point; thence North 20 minutes east 8.55 chains to the center of the County Road; thence North 47 degrees 53 minutes West 13.00 chains to the East and West quarter section line; thence North 89 degrees and 28 minutes West 9.54 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.

(8) That defendant J. Ryan is hereby decreed the right to the use of forty miners inches of water from his 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

... 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
deed.

(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

TO HON. JOHN (L-12) HONORARY
COMMISSIONER OF RECLAMATION (2245) OF RECLAMATION

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.

NOT RECORDED
JUN 14 1930

(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. Brinok, District Judge.

Entered and Filed Jun 13, 1930.

Stephen Utter, Clerk

State of Idaho } ss.
County of Ada. }

Certificate

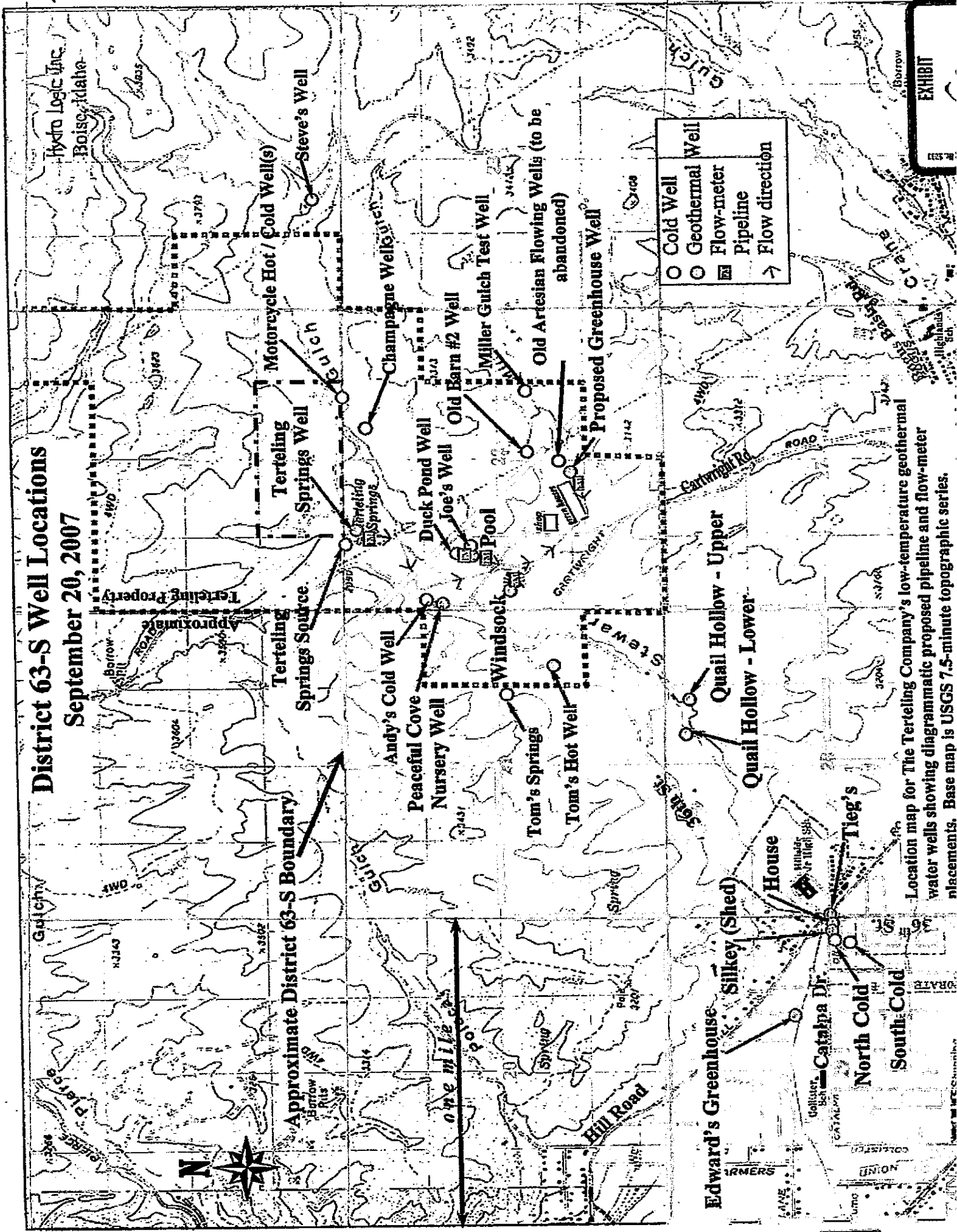
I, STEPHEN UTTER, Clerk of the District Court of the Third Judicial District of the State of Idaho, in and for the County of Ada, do hereby certify that the foregoing is a true and correct copy of the original DECREE filed in the above entitled action and remaining now on file in my office at Boise City,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

District 63-S Well Locations

September 20, 2007



Location map for The Terteling Company's low-temperature geothermal water wells showing diagrammatic proposed pipeline and flow-meter placements. Base map is USGS 7.5-minute topographic series.

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)

A. Subcase 63-00014
(Insert water right no.)

STANDARD FORM 1
OBJECTION

Please fill in the following information:

B. NAME AND ADDRESS OF PERSON OBJECTING

Name: THE TERTELING CO INC.

Address: 3823 North 36th Street
Boise, Idaho 83703

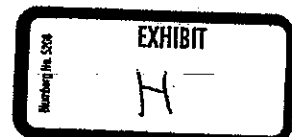
Daytime Phone: 208 338-5200

Name & Address of Attorney, if any:
Charles L. Honsinger
Ringert Clark Chartered
P.O. Box 2773
Boise, ID 83701

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

Name: EDWARDS FAMILY LLC

Address: 4106 Sand Creek
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: Limited to quantities listed in decree in *Silkey v. Tiegs*, Ada County Case No. 11748 (June 13, 1930)
4. ☐ **Priority Date**
Should be: _____
5. ☐ **Point(s) of Diversion**
Should be: _____
6. ☐ **Instream Flow Description**
Should be: _____
7. ☒ **Purpose(s) of Use**
Should be: As specified in decree in *Silkey v. Tiegs*, Ada County Case No. 11748 (June 13, 1930). A condition should be added to specify that irrigation use of this water right may only occur after water has been diverted and used for its heat value.
8. ☒ **Period of Year**
Should be: As specified in decree in *Silkey v. Tiegs*, Ada County Case No. 11748 (June 13, 1930)
9. ☐ **Place of Use**
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):** The water right is recommended outside of the parameters of the decree in *Silkey v. Tiegs*, Ada County Case No. 11748 (June 13, 1930) by which it was confirmed.

F.

VERIFICATION (must be completed)

State of Idaho

)

) ss.

County of Ada

)

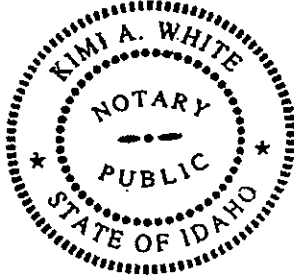
Charles L. Honsinger, duly sworn, upon oath, deposes and says:

That I am the party/claimant filing this objection, as defined by I. C. §§ 42-1401A (1) and/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.

Charles L. Honsinger

Charles L. Honsinger

Subscribed and sworn to before me on: April 19, 2020



Kimi A. White
Notary Public for Idaho
Residing at: Pose, Idaho
My Commission Expires: 12/11/20

INSTRUCTIONS FOR MAILING

You must mail the objection, to the Clerk of the Court. FAX filings will no be accepted. You must also send a copy to all the parties listed below in the Certificate of Mailing.

CERTIFICATE OF MAILING

I certify that on April 20, 2006, I mailed the original and copies of this objection, including all attachments, to the following by Federal Express:

1. Original to:

Clerk of the District Court
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 by U.S. Mail:

Name: EDWARDS FAMILY LLC

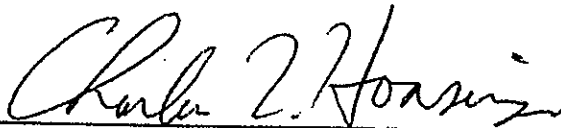
Address: 4106 Sand Creek
Boise, Idaho 83703

3. Copies by U.S. Mail to:

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

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

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



Signature of Objector or attorney
mailing on Objector's behalf

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)

A.)

Subcase 63-5067

(Insert water right no.)

**STANDARD FORM 1
OBJECTION**

Please fill in the following information:

B. NAME AND ADDRESS OF PERSON OBJECTING

Name: THE TERTELING CO INC.

Address: 3823 North 36th Street
Boise, Idaho 83703

Daytime Phone: 208 338-5200

Name & Address of Attorney, if any:
Charles L. Honsinger
Ringert Clark Chartered
P.O. Box 2773
Boise, ID 83701

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

Name: EDWARDS FAMILY LLC

Address: 4106 Sand Creek
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(s) of Diversion**
Should be: _____
6. ☐ **Instream Flow Description**
Should be: _____
7. ☒ **Purpose(s) of Use**
Should be: A condition should be added requiring that this water right be used for irrigation purposes instead of water right no. 63-00014 to the extent possible.
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):

This cold water right should be used for irrigation purposes to the extent possible in place of geothermal water right no. 63-00014 which has been recommended with the same place of use as this water right.

F.

VERIFICATION (must be completed)

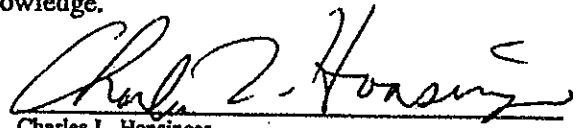
State of Idaho

County of Ada

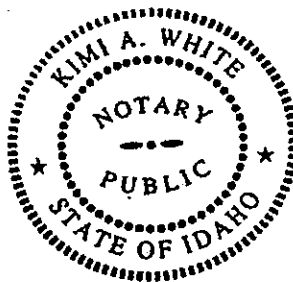
)
) ss.
)

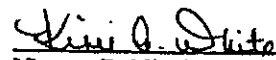
Charles L. Honsinger, duly sworn, upon oath, deposes and says:

That I am the party/claimant filing this objection, as defined by I. C. §§ 42-1401A (1) and/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.


Charles L. Honsinger

Subscribed and sworn to before me on: April 19, 2006




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

INSTRUCTIONS FOR MAILING

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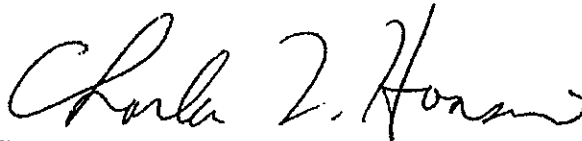
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United States Department of Justice
Environment and Natural Resource Division
550 West Fort Street, MSC 033
Boise, ID 83724

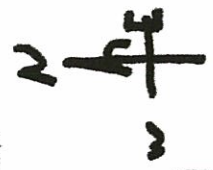
Chief, Natural Resources Division
Office of the Attorney General
State of Idaho
PO Box 44449
Boise, ID 83711-4449



Signature of Objector or attorney
mailing on Objector's behalf

CATALPA STREET

36TH STREET



3713 WOODY
36TH - HOWE
TIES

WATER WAY

Master Down

Townhome

Live/Work

Commercial & Retail

EXHIBIT

Blending No. 5208

3713 WOODY

37th Street Garden Plans City Plan

3604

3590

3623

15

OMC

SE SE
SE SE
Guich

2990

Terteling
Springs

WNE WNE

T-7

SW 1/4 Sec 14

3313

SW SE
Miller

21

3X

Well
2871

22

CARTWRIGHT

3142

Stewart

SE SE

SWD

3312

ROAD

YELLOW
T-7

KEY

- gation Pipelines
- d Water Wells
- othermal Water Wells
- ler Gulch Test Well

N



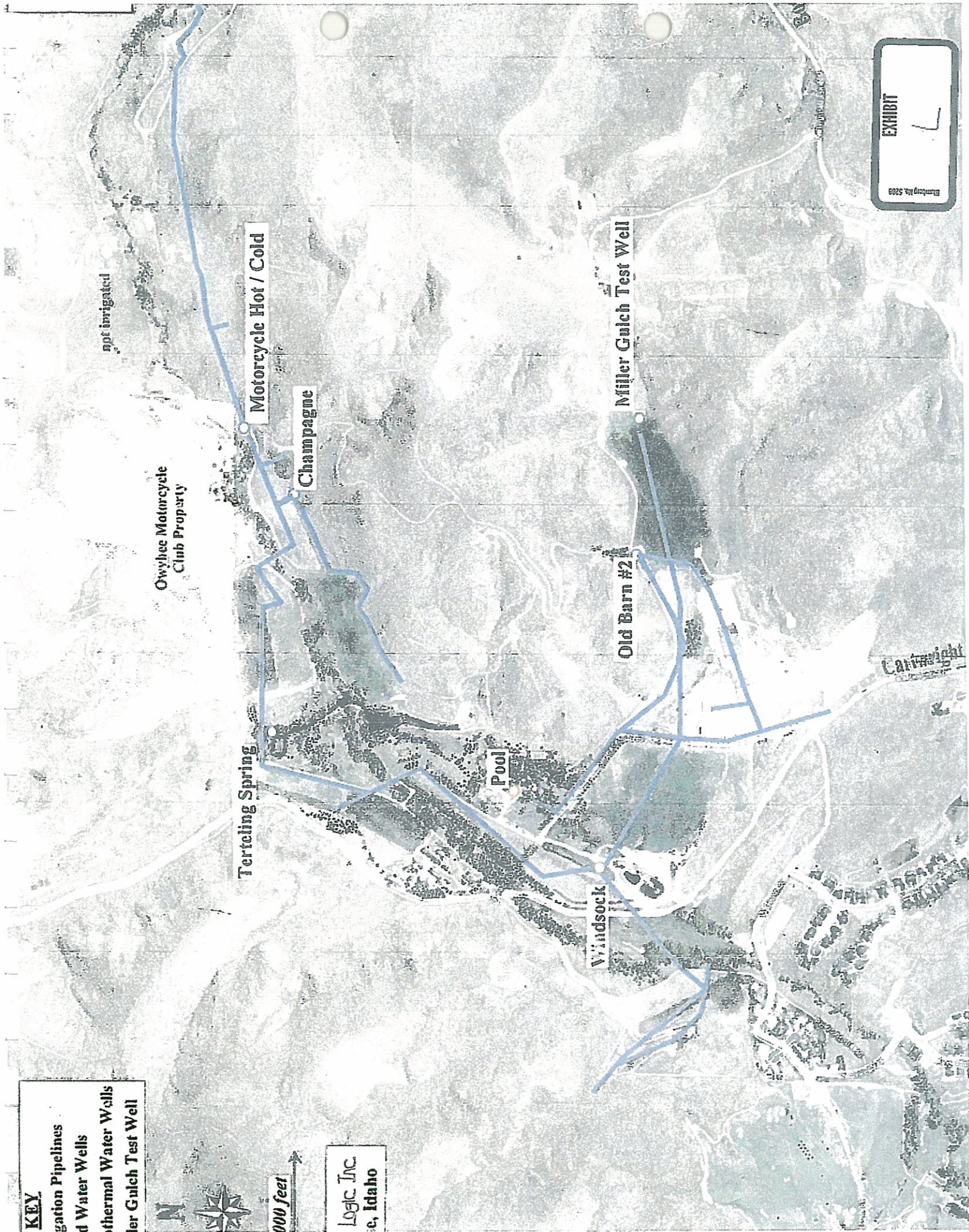
000 feet

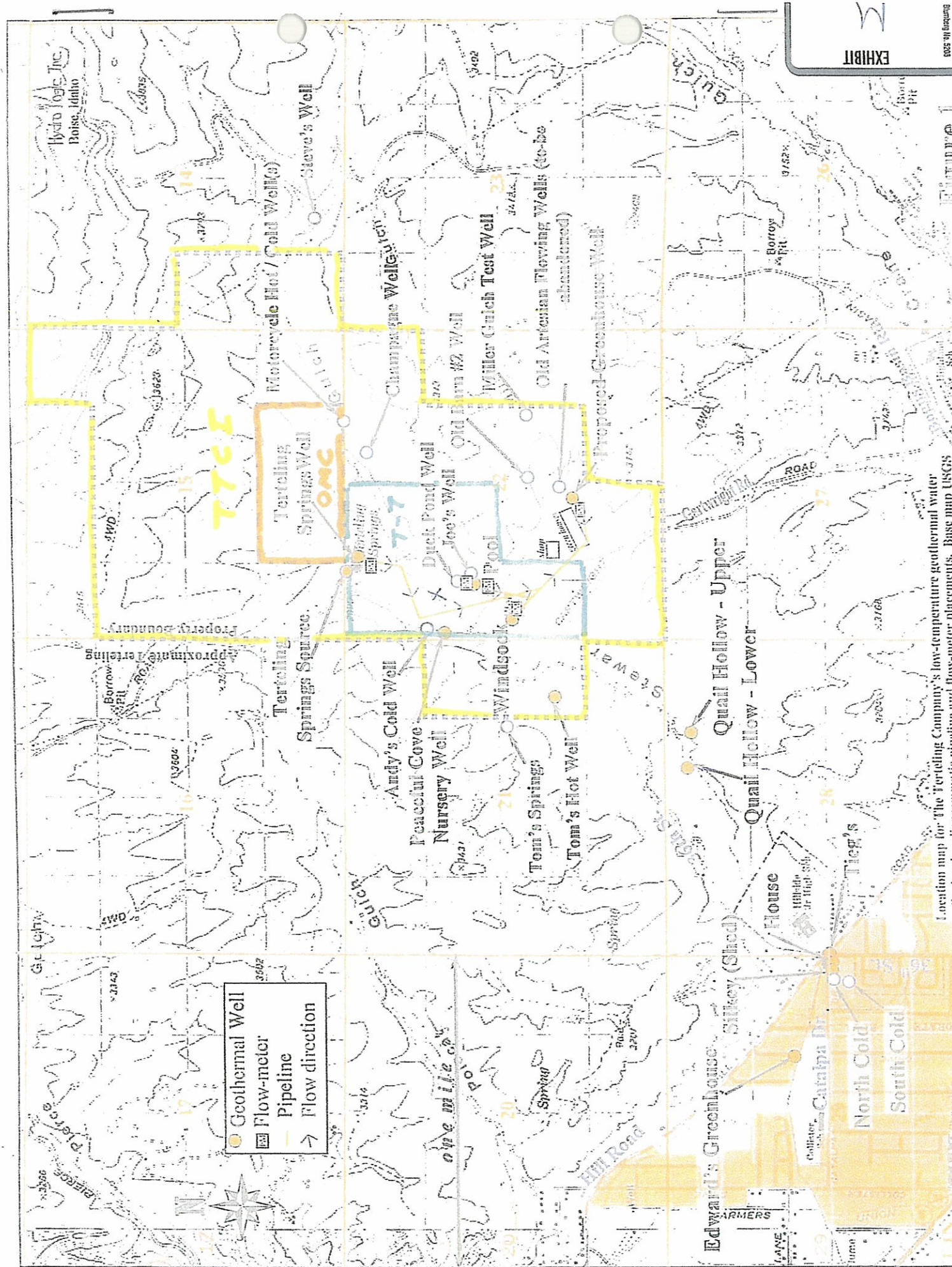
Logic, Inc.
e, Idaho

EXHIBIT

7

Blanking No. 5009





The Tertelling Co.

Pat. Sequence	Suffix	Basis	Status	Right ID	Priority Date	Rate(cfs)	Volume(ac)	Source	Water Use(s)	Owner(s)	Version	Source Table	App. ID
63	12	Decreed	Active	560157	7/1/1921	0.14	101.4	GROUND WATER	AESTHETIC, COMMERCIAL	THE TERTELLING CO.	1	wrAdjudicationClaim	
63	12B	Decreed	See Remarks	424720	7/1/1921	0.11		GROUND WATER	DOMESTIC, HEATING, IRRIGATION	THE TERTELLING CO.	1	wrAdjudicationClaim	
63	13	Decreed	Active	560159	7/1/1922	0.66	400	GROUND WATER	AESTHETIC, COMMERCIAL	THE TERTELLING CO.	1	wrAdjudicationClaim	
63	13B	Decreed	See Remarks	424752	7/1/1922	0.53		GROUND WATER	DOMESTIC, HEATING, IRRIGATION	THE TERTELLING CO.	1	wrAdjudicationClaim	
63	15	Decreed	Active	560160	3/23/1927	0.8	400	GROUND WATER	AESTHETIC, COMMERCIAL	THE TERTELLING CO.	1	wrAdjudicationClaim	
63	15B	Decreed	See Remarks	424767	3/23/1927	0.64		GROUND WATER	DOMESTIC, HEATING, IRRIGATION	THE TERTELLING CO.	1	wrAdjudicationClaim	
63	308	Decreed	Active	190638	1899-07-23	1		STEWART CREEK	AESTHETIC STORAGE, GROUND WATER	THE TERTELLING TRUST	1	wrAdjudicationClaim	
63	2628	License	Active	579523	1/3/1946	0.17		GROUND WATER	IRRIGATION	THE TERTELLING CO.	1	wrAdjudicationClaim	
63	3603	License	Active	280386	4/26/1967	1.03		GROUND WATER	IRRIGATION	THE TERTELLING CO.	1	wrAdjudicationClaim	
63	7595	License	Active	280392	3/7/1973	2	468.7	GROUND WATER	DOMESTIC, IRRIGATION, STOCKWATER	THE TERTELLING CO.	1	wrAdjudicationClaim	
63	7720	Reflected	Active	338694	2/22/1973	1.43		SPRINGS		THE TERTELLING CO.	1	wrAdjudicationClaim	
63	27670	Beneficial Use	Closed	190729	1899-12-31	0.02		GROUND WATER	DOMESTIC, STOCKWATER	THE TERTELLING CO.	1	wrAdjudicationClaim	
63	28364	Beneficial Use	Closed	188167	12/31/1920	0.04		GROUND WATER	AESTHETIC, COMMERCIAL	THE TERTELLING CO.	1	wrAdjudicationClaim	
63	31051	Beneficial Use	Active	560153	7/1/1921	0.12	38	SPRING, STEWART CREEK	IRRIGATION, STOCKWATER	THE TERTELLING CO.	1	wrAdjudicationClaim	
63	31058	Beneficial Use	Active	423099	1/1/1910	0.04		GROUND WATER	DOMESTIC	THE TERTELLING CO.	1	wrAdjudicationClaim	
63	31059	Beneficial Use	Active	423100	7/1/1994	0.02		GROUND WATER	DOMESTIC, IRRIGATION	THE TERTELLING CO.	1	wrAdjudicationClaim	
63	31060	Beneficial Use	Active	422783	1/1/1910	0.04	15	GROUND WATER	DOMESTIC, IRRIGATION	THE TERTELLING CO.	1	wrAdjudicationClaim	
63	31061	Beneficial Use	Active	422794	12/31/1920	0.06		SPRING		THE TERTELLING CO.	1	wrAdjudicationClaim	
63	31062	Beneficial Use	Active	422968	1/1/1938	0.06		GROUND WATER	DOMESTIC, IRRIGATION	THE TERTELLING CO.	1	wrAdjudicationClaim	
63	31066	Beneficial Use	Closed	428017	12/31/1920	0.06		GROUND WATER	DOMESTIC, IRRIGATION	THE TERTELLING CO.	1	wrAdjudicationClaim	
63	32197	Beneficial Use	Closed	594806	1/1/1946	0.02		GROUND WATER	IRRIGATION	THE TERTELLING CO.	1	wrAdjudicationClaim	
63	33148	Beneficial Use	Active	622275	1891-05-01	0.04		STEWART GULCH	STOCKWATER	THE TERTELLING CO.	1	wrAdjudicationClaim	
63	12	Decreed	Active	560186	7/1/1921	0.14	101.4	GROUND WATER	AESTHETIC, COMMERCIAL	THE TERTELLING CO.	1	wrAdjudicationClaim	
63	13	Decreed	Active	560187	7/1/1922	0.66	400	GROUND WATER	DOMESTIC, HEATING, IRRIGATION	THE TERTELLING CO.	1	wrAdjudicationRecommendation	
63	15	Decreed	Active	560188	3/23/1927	0.8	400	GROUND WATER	DOMESTIC, HEATING, IRRIGATION	THE TERTELLING CO.	1	wrAdjudicationRecommendation	
63	308	Decreed	Active	589719	1899-07-23	0.28		STEWART CREEK	AESTHETIC STORAGE, IRRIGATION	THE TERTELLING CO.	1	wrAdjudicationRecommendation	
63	2628	License	Disallowed	589726	1/3/1946	0.17		GROUND WATER	IRRIGATION	THE TERTELLING CO.	1	wrAdjudicationRecommendation	
63	3603	License	Active	595288	4/26/1967	1.03		GROUND WATER	IRRIGATION	THE TERTELLING CO.	1	wrAdjudicationRecommendation	
63	7595	License	Active	595250	3/7/1973	1.8	420.5	GROUND WATER	IRRIGATION, STOCKWATER	THE TERTELLING CO.	1	wrAdjudicationRecommendation	
63	7720	Reflected	Active	338698	2/22/1973	1.43		GROUND WATER	DOMESTIC, IRRIGATION	THE TERTELLING CO.	1	wrAdjudicationRecommendation	
63	16950	Beneficial Use	Closed	378932	3/20/1973	0.04		GROUND WATER	DOMESTIC	THE TERTELLING CO.	1	wrAdjudicationRecommendation	
63	16951	Beneficial Use	Closed	378933	6/10/1960	0.03		GROUND WATER	DOMESTIC	THE TERTELLING CO.	1	wrAdjudicationRecommendation	
63	27670	Beneficial Use	Closed	119795	1899-12-31	0.02		SPRINGS		THE TERTELLING CO.	1	wrAdjudicationRecommendation	
63	31051	Beneficial Use	Active	560185	7/1/1921	0.12	38	GROUND WATER	STOCKWATER	THE TERTELLING CO.	1	wrAdjudicationRecommendation	
63	31058	Beneficial Use	Disallowed	595527	1/1/1910	0.04		SPRING, STEWART CREEK	COMMERCIAL	THE TERTELLING CO.	1	wrAdjudicationRecommendation	
63	31059	Beneficial Use	Active	593720	7/1/1994	0.02		GROUND WATER	DOMESTIC	THE TERTELLING CO.	1	wrAdjudicationRecommendation	
63	31060	Beneficial Use	Active	595529	1/1/1910	0.04		GROUND WATER	DOMESTIC, STOCKWATER	THE TERTELLING CO.	1	wrAdjudicationRecommendation	
63	31061	Beneficial Use	Active	593705	3/1/1938	0.04		SPRING		THE TERTELLING CO.	1	wrAdjudicationRecommendation	
63	31062	Beneficial Use	Active	595505	1/1/1938	0.06	4.5	GROUND WATER	DOMESTIC, IRRIGATION	THE TERTELLING CO.	1	wrAdjudicationRecommendation	
63	31066	Beneficial Use	Disallowed	593718	3/1/1938	0.06		GROUND WATER	IRRIGATION	THE TERTELLING CO.	1	wrAdjudicationRecommendation	

63	32197	Beneficial Use	Closed	595324	1/1/1946	0.02		STEWART GULCH STOCKWATER	THE TERTEL	1	wrAdjudicationRecommendation	
63	32597	Decreed	Closed	610739	1899-07-23	0.19		STEWART CREE IRRIGATION	THE TERTEL	1	wrAdjudicationRecommendation	
63	12540		Active	110399	6/24/1999	1.1		GROUND WATER IRRIGATION	THE TERTELING CO	wrWaterApplication		57144
63	31999		Closed	581351	8/16/2004	0.11		WASTE WATER HEATING	TERTELING, FLINDA	wrWaterApplication		71565
63	16950	Decreed	Active	378932	3/20/1973	0.04		GROUND WATER DOMESTIC	THE TERTELING CO	wrWaterRight		
63	16951	Decreed	Active	378933	6/10/1960	0.03		GROUND WATER DOMESTIC	THE TERTELING CO	wrWaterRight		
63	27670	Decreed	Active	119795	1899-12-31	0.02		SPRINGS	THE TERTELING CO	wrWaterRight		
63	28364	Decreed	Active	128717	12/31/1920	0.04		GROUND WATER DOMESTIC, STOCKWATER	THE TERTELING CO	wrWaterRight		
63	32197	Decreed	Active	595324	1/1/1946	0.02		STEWART GULCH STOCKWATER	THE TERTELING CO	wrWaterRight		
63	32597	Decreed	Active	610739	1899-07-23	0.19		STEWART CREE IRRIGATION	THE TERTELING CO	wrWaterRight		
63	12040		Relinquished	59438					THE TERTELING CO	wrWaterRight		
63	12540		DRAFT	575743	6/24/1999	1.1		GROUND WATER IRRIGATION	THE TERTELING CO	wrWaterPermit		
63	12		Closed	280267	7/1/1921	0.14		GROUND WATER DOMESTIC, HEATING, IRRIGATION, STOCKWATER	xrFromAdjClaimList			68558
63	12		Closed	550157	7/1/1921	0.14	101.4	GROUND WATER AESTHETIC, COMMERCIAL, DOMESTIC, HEATING, IRRIGATION	xrToAdjClaimList			68558
63	12		Active	580186	7/1/1921	0.14	101.4	GROUND WATER DOMESTIC, HEATING, IRRIGATION	xrFromAdjClaimList			71690
63	12		Active	583315	7/1/1921	0.14	101.4	GROUND WATER DOMESTIC, HEATING, IRRIGATION	xrToAdjClaimList			71690
63	13		Closed	280268	7/1/1922	0.66		GROUND WATER DOMESTIC, HEATING, IRRIGATION, STOCKWATER	xrFromAdjClaimList			68558
63	13		Closed	550159	7/1/1922	0.66	400	GROUND WATER AESTHETIC, COMMERCIAL, DOMESTIC, HEATING, IRRIGATION	xrToAdjClaimList			68558
63	13		Active	560187	7/1/1922	0.66	400	GROUND WATER DOMESTIC, HEATING, IRRIGATION	xrFromAdjClaimList			71690
63	13		Active	583316	7/1/1922	0.66	400	GROUND WATER DOMESTIC, HEATING, IRRIGATION	xrToAdjClaimList			71690
63	15		Closed	280269	3/23/1927	0.8		GROUND WATER DOMESTIC, HEATING, IRRIGATION	xrFromAdjClaimList			68558
63	15		Closed	550160	3/23/1927	0.8	400	GROUND WATER DOMESTIC, HEATING, IRRIGATION, STOCKWATER	xrToAdjClaimList			68558
63	15		Active	560188	3/23/1927	0.8	400	GROUND WATER AESTHETIC, COMMERCIAL, DOMESTIC, HEATING, IRRIGATION	xrFromAdjClaimList			71690
63	15		Active	583317	3/23/1927	0.8	400	GROUND WATER DOMESTIC, HEATING, IRRIGATION	xrToAdjClaimList			71690
63	3603		Active - INCOMPL	595288	4/28/1967	1.03		GROUND WATER IRRIGATION	xrFromAdjClaimList			73897
63	3603		Active - INCOMPL	613017	4/28/1967	1.03		GROUND WATER IRRIGATION	xrToAdjClaimList			73897
63	31051		Closed	423092	7/1/1921	0.12		GROUND WATER COMMERCIAL, IRRIGATION	xrFromAdjClaimList			68559
63	31051		Closed	550153	7/1/1921	0.12	38	GROUND WATER AESTHETIC, COMMERCIAL	xrToAdjClaimList			68559
T-7 LLC												
63	27649	Beneficial Use	Active	190606	1899-06-01	0.07	17	SPRINGS	Source	Water Use(s)	Owner(s)	Version
63	27671	Beneficial Use	Active	125220	12/31/1925	0.05		GROUND WATER	AESTHETIC STORAGE, IRRIGATION	IRRIGATION	T-7 LLC (Current)	wrAdjudicationClaim
63	30006	Beneficial Use	Active	338726	12/31/1925	0.04		GROUND WATER	FISH PROPAGATION, IRRIGATION	IRRIGATION	T-7 LLC (Current)	wrAdjudicationClaim
63	30007	Beneficial Use	Active	338727	1899-12-31	0.02		SPRING	AESTHETIC STORAGE, IRRIGATION	IRRIGATION	T-7 LLC (Current)	wrAdjudicationClaim
63	31050	Beneficial Use	Active	423091	4/24/1948	0.02		GROUND WATER	AESTHETIC, FISH PROPAGATION	IRRIGATION	T-7 LLC (Current)	wrAdjudicationClaim
63	31052	Beneficial Use	Active	423093	4/24/1948	0.12	3	GROUND WATER	AESTHETIC, AESTHETIC	IRRIGATION	T-7 LLC (Current)	wrAdjudicationClaim
63	31053	Beneficial Use	Active	423094	1/1/1938	0.06		GROUND WATER	DOMESTIC, IRRIGATION	IRRIGATION	T-7 LLC (Current)	wrAdjudicationClaim
63	31054	Beneficial Use	Active	423095	11/1/1940	0.06	17	GROUND WATER	AESTHETIC, FIRE PROTECTION	IRRIGATION	T-7 LLC (Current)	wrAdjudicationClaim
63	31055	Beneficial Use	Active	423096	1/1/1938	0.04		STEWART CREE	AESTHETIC STORAGE, IRRIGATION	IRRIGATION	T-7 LLC (Current)	wrAdjudicationClaim
63	31056	Beneficial Use	Active	423097	6/1/1930	0.04		GROUND WATER	DOMESTIC, IRRIGATION	IRRIGATION	T-7 LLC (Current)	wrAdjudicationClaim
63	31057	Beneficial Use	Active	423098	6/20/1994	0.02		GROUND WATER	DOMESTIC	IRRIGATION	T-7 LLC (Current)	wrAdjudicationClaim

[illegible]

Water Right # Name
63-12 Silkey #1

Priority Date
7/1/1921

Quantity
0.14 cfs

GPM
62.8362

Hot

63-13 Silkey #2

Hot

296.228

63-15 Tiegs

Hot

359.064

63-308 Stewart Creek

125.672

63-3603 Windsock

Hot

1.03 cfs

63-7595 Champagne

2.00 cfs

63-12540 Cold Water Right (used with 7595+36)

1.1 cfs

63-12540 Ground Water

1.1 Active

63-27649 Terteling Springs

.066 cfs

63-27671 T-Springs Hot (also 31054)

.045 cfs Hot

63-28364 Domestic/Stock(10) 6073 Cartwright

0.04 Deceerd

63-30006 Duck Pond Flowing Artesian Well

0.04 cfs

63-30007 AJT Nursery Spring (Peaceful Cove)

0.022 cfs



63-31050	Pool Flowing Artesian Cold	4/24/1948.020 (measured .092)	
63-31051	Flora Cold (See Transfer #68559)	7/1/1921	0.12
63-31052	Pool Well Hot	4/24/1948	0.12 Hot
63-31053	Water works 5100 Cold	1/1/1938	0.04
63-31054	T-Springs Hot (also 27671) Also see 63-27649, T-springs	11/1/1940	0.055 ~~Hot~~
63-31055	Stewart Creek	1/1/1938	0.04
63-31056	5120 Cartwright Domestic Well 300 range cattle, 2 acres irrigation	1/1/1938	0.04
63-31057	5120 Cartwright Hot Well Also see 63-30007 (P.C.N. Spring)	6/20/1994	0.02 Hot
63-31058	7000 Bogus (irrigation)	1/1/1910	0.04
63-31059	5115 Hot Well	7/1/1994	0.02 Hot
63-31060	7000 Bogus	1/1/1910	0.04
63-31061	5115 Tom's Springs	3/1/1938	0.04 Partial Decree
63-31062	Old Barn Well	1/1/1938	0.06
63-31086	5115 Tom's Well	12/31/1920	0.06 Disallowed Right

63-32197	Stock Water	1/1/1946	0.02 cfs	Partial Decree
63-32198	Stock Water	6/12/1944	0.02	Partial Decree
63-32597	Irrigation <i>Stewart Creek</i>	7/23/1899	0.19 cfs	Partial Decree 9.4 acres
63-32895	Tamarack Domestic		0.02 cfs	SLT Estate
63-32972	Sth Runway Pond	1/29/2008	6.5	
63-33148	Springs, "ponderosa" & above sand field	5/1/1891	?	Recommended
94-7293	Spring for 1 Red Horse house	8/9/1985	0.01	License
94-7329	Spring for 3 Red Horse houses	8/15/1990	0.04	License

1930 JAN SILKEY / TIEGS

EDWARDS OCT 1 to APR 1 15" = 135 GPM

APR 1 to OCT 1 20" = 180

SILKEY

40" = 360 GPM

1944 JNT PURCHASED 160 AC

1947 POOL WELL DRILLED 50+ GPM

1966'S T-7 CHANGED

~~1967~~
1967 WINDSOCK DRILLED

1973 CHAMPAGNE

1980'S JLT 40 AC TO T-7

1989 3 92 63-5 FORMER

1991 HUNT SOLD TO FLORA INC

1997 FLORA INC SELLS TO TFCI

1996 JLT TACKLES TO PAUL EDWARDS

2000 OCT. TFCI APPLICATION TRANSFER TO WINDSOCK

2002 AMENDED AN ALTERNATE POINT OF DIVERSION

1993 CALL ON WINDSOCK

2002 JAN. SETTLEMENT AGREEMENT W/ EDWARDS

CARS VOLUME @ 400 AFA FOR TFCI \$ 250 FOR E.

TFCI 70% T-7 30%



Dana L. Hofstetter, ISB #3867
HOFSTETTER LAW OFFICE, LLC
608 West Franklin Street
Boise, Idaho 83702
Telephone: (208) 424-7800
Facsimile: (208) 424-8774
Email: Dana@IdahoWaterLaw.com

DISTRICT COURT - SRBA	
Fifth Judicial District	
County of Twin Falls - State of Idaho	
MAY 14 2010	
By _____	Clerk
Deputy Clerk	

Attorney for Edwards Family LLC

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

In Re SRBA

Case 39576

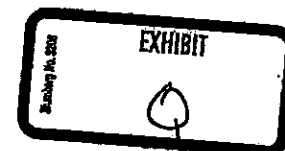
)
)
) Subcase Nos. 63-12, 63-13, 63-14,
) 63-15, 63-16, 63-308, 63-2103A,
) 63-2103B, 63-3603, 63-4037, 63-5067,
) 63-5195, 63-7595, 63-9758, 63-21875,
) 63-27649, 63-27671, 63-30006, 63-30007,
) 63-31050, 63-31051, 63-31052, 63-31053,
) 63-31054, 63-31055, 63-31056, 63-31057,
) 63-31058, 63-31059, 63-31060, 63-31062,
) 63-32895

)
)
) NOTICE OF DEPOSITION DUCES
) TECUM: 30(b)(6) (T-7, LLC)

TO: T-7, LLC, AND ITS COUNSEL OF RECORD, CHARLES L. HONSINGER

PLEASE TAKE NOTICE that Edwards Family LLC, by and through its counsel of record, Hofstetter Law Office, L.L.C, will take your deposition upon oral examination pursuant to Rules 26, 28, 30, 32 and 34 of the Idaho Rules of Civil Procedure. You are to appear for the taking of your deposition commencing at 1:30 p.m. on June 14, 2010, at the offices of M&M Court Reporting Service, 421 West Franklin Street, Boise, Idaho 83702 before M & M Court Reporting Service or some other officer authorized to administer oaths.

NOTICE OF TAKING DEPOSITION DUCES TECUM: 30(b)(6)-1-



Pursuant to I.R.C.P. 30(b)(6), you are to designate one or more officers, directors, managing agents, or other persons who will be present at the time and place indicated to testify on behalf of T-7, LLC concerning the organization, structure and ownership of T-7, LLC, the assets of T-7, LLC and the diversion, application, and use of its above-captioned water rights and its Claims, Objections and Responses in the above-captioned Snake River Basin Adjudication ("SRBA") subcases. This deposition will continue from day to day until completed. All parties to the above-identified subcases are invited to attend and participate in the manner provided for in the Idaho Rules of Civil Procedure.

Consistent with the terms of Attachment A hereto, the deponent is required to bring to said deposition all documents of any type that relate in any way to the organization and ownership of T-7, LLC, T-7, LLC's assets, and the diversion, application, and use of its water rights and its Claims, Objections and Responses in the SRBA including, but not limited to, the following documents:

1. All documents supporting T-7, LLC's ownership of the water rights it has claimed in the SRBA.
2. All documents containing, evidencing or describing whether the water source of any of the water rights claimed by T-7, LLC in the SRBA, is, is not, or is composed of, in whole or in part, a low temperature geothermal resource or other geothermal resource as classified in Idaho Code § 42-230.
3. All documents, including sales brochures and manuals and pump performance curves and well driller's reports, pertaining to any diversion, conveyance,

delivery or application systems, including associated equipment, used to divert, convey or apply water to the places of use under the water rights claimed in the SRBA by T-7, LLC.

4. All documents relating to the organization of and the parties holding ownership interests in T-7, LLC and if any of the parties in the organizational or ownership structure of T-7, LLC are entities, all documents relating to the organization and ownership of those entities also. Such documents should include, without limitation, documents identifying T-7, LLC's officers, members, managers, directors, and shareholders and the quantity and nature of the respective ownership interests of any shareholders.

5. All documents supporting T-7, LLC's SRBA Claims, Objections or Responses or any portion of its SRBA Claims, Objections or Responses in the above-captioned subcases.

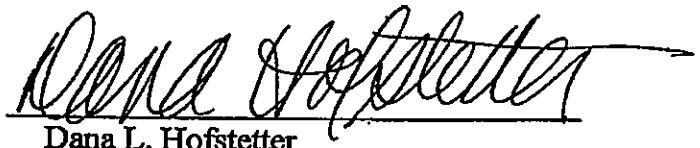
6. All documents in contradiction of T-7, LLC's SRBA Claims, Objections or Responses or any portion of its SRBA Claims, Objections or Responses in the above-captioned SRBA subcases.

7. All documents concerning or in any way pertaining to the Stewart Gulch Geothermal Aquifer.

RESPECTFULLY SUBMITTED this 14th day of May, 2010.

HOFSTETTER LAW OFFICE, L.L.C.

By


Dana L. Hofstetter

CERTIFICATE OF SERVICE

I hereby certify that on the 14th day of May, 2010, I caused to be served copies of the foregoing Notice of Taking Deposition Duces Tecum: 30(b)(6) by the methods indicated below:

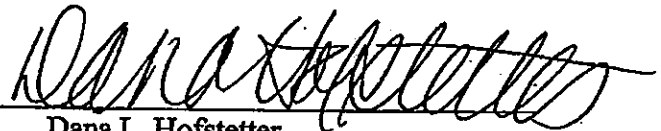
Idaho Department of Water Resources
Document Depository
P. O. Box 83720
Boise, Idaho 83720-0098
☒ U.S. Mail ☐ Fed Ex ☐ Hand ☐ Fax

Andrew Waldera
Moffatt Thomas
P.O. Box 829
Boise, Idaho 83701
☐ U.S. Mail ☐ Fed Ex ☐ Hand ☒ Fax

Charles Honsinger
Ringert Law
P.O. Box 2773
Boise, Idaho 83701-2773
☐ U.S. Mail ☐ Fed Ex ☐ Hand ☒ Fax

David Niznik
Diane Peck-Niznik
3911 Whitehead
Boise, Idaho 83703
☒ U.S. Mail ☐ Fed Ex ☐ Hand ☐ Fax

D:\3006.3\9250


Dana L. Hofstetter

ATTACHMENT A

Definitions

The following definitions shall apply for the purpose of identifying documents and tangible things that fall within the scope of this Notice:

"Document" or "Documents" means all written, drawn, typed, printed, recorded, photostatted, computer-generated, microfiched, microfilmed or graphic matters, of any kind, whether produced, reproduced or stored on paper, cards, disc, tape, film, electronic facsimile, computer storage or any other media, whether an original, master, duplicate, marked copy, translation or draft, regardless of origin, whether sent or received, including but not limited to: accounts, advertisements, affidavits, agreements, analyses, appraisals, applications, appointment books, appointment calendars, bank checks, bill blueprints, books, bookkeeping entries, bulletins, business records, cablegrams, cache logs, calculations, canceled checks, cashiers checks, catalogs, charts, checks, check stubs, circulars, communications, compilations, computer printouts, computer source code and object code, computer tapes, contracts, correspondence, court filings, day books, data, declarations, depositions, desk calendars, diagrams, diaries, diary entries, documents, drafts, drawings, electronic mail, engineering drawings, designs and plans, as-built documents, expense reports, extracts, files, financial statements, flowcharts, forecasts, graphs, graphic portrayals of any kind, invoices, itineraries, interview notes, interoffice communications, legal documents, ledgers, letters, lists, letters of credit, logs, log books, mailgrams, manuals, maps, memoranda, minutes, notebooks, note pads, notes, pamphlets, papers, periodicals, photographs, plans, plats, pleadings, projections, proposals, prospectuses, publications, receipts, records, reports, returns, sketches, speeches, sound recordings, studies, summaries, solicitations, tapes, tax returns, fax, telegrams, telephone logs, tickets, time records, time sheets, transcriptions, transcripts, travel reports, travel vouchers, vouchers, working papers, worksheets, and all other papers, writings, drawings, graphs, charts, photographs, data compilations in whatever form, recordings, or physical things containing information including all original and amended versions of the documents, preliminary and subsequent drafts or marginal notes appearing on any documents.

"Document" shall further collectively include the original, duplicate original and any or all copies or reproductions of the original document, to the extent that any or all copies are different in any way from the original document, whether by interlineation, receipt stamps, notation, indication of copies sent or received otherwise, which are within your possession, custody or control.

Whenever the terms "relate to," "relating to," "pertain to," "pertains to," "pertaining to," "in conjunction with," or "concerning" are used herein, they shall mean consisting of, referring to, alluding to, responding to, connection with, commenting on, in respect of, about, regarding, discussing, showing, documenting, describing, disclosing, employing, defining, stating, explaining, summarizing, mentioning, reflecting, containing, analyzing, constituting, evidencing, reflecting on, arising out of, or in any way or manner legally, factually, or logically connected with the subject matter of the inquiry.

The words "and" and "or" shall be construed either disjunctively or conjunctively as necessary to bring within the scope of the discovery request all responses that might otherwise be construed to be outside its scope.

"Deponent" means the person or entity named in this Notice who is to be deposed.

Instructions

All documents which are provided for inspection shall be provided as they are kept in the usual course of business or shall be organized and labeled in a manner which clearly identifies and indicates that the documents are being provided in response to a particular item.

If any documents or categories of documents called for cannot be provided in full or in part, the witness responding shall state in writing the reasons for the inability to provide all or any portion of the documents or categories of documents called for, and serve those reasons at the time of the deposition.

If any document called for is withheld on the grounds of any privilege, the Deponent withholding such document(s) shall specify the basis of such privilege and provide a complete description of the document, including the date, all addressees, all authors or preparers, all recipients of copies, subject matter, number of pages (including all attachments, appendices, etc.), and other relevant circumstances sufficient to enable the Court to decide whether the privilege has been properly invoked. The Deponent shall nonetheless provide any portion of the document, which is not privileged.

The Deponent shall provide all responsive documents in its, his or her possession, custody, and control, whether actual or constructive.

12/12/2005

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

RIGHT NUMBER: 63-27649

NAME AND ADDRESS: T-7 LLC
3823 N 36TH ST
BOISE ID 83703

SOURCE: 3- SPRINGS

TRIBUTARY: STEWART CREEK

QUANTITY: 0.066 CFS
17.00 AFY

This right when combined with all other rights shall provide no more than .02 cfs per acre.

The rights listed below are limited to a total combined diversion rate of 0.12 cfs. Combined Right Nos.: 63-27649, 63-27671, 63-31054, 63-31055

PRIORITY DATE: 06/01/1899

POINT OF DIVERSION: T04N R02E S22 NENW Within ADA County
T04N R02E S22 NWNW Within ADA County

PURPOSE AND PERIOD OF USE:

PURPOSE OF USE	PERIOD OF USE	QUANTITY
IRRIGATION STORAGE	01/01 12/31	17.00 AFY
IRRIGATION	03/01 11/15	0.066 CFS
RECREATION STORAGE	01/01 12/31	17.00 AFY
AESTHETIC STORAGE	01/01 12/31	17.00 AFY

PLACE OF USE:

IRRIGATION Within ADA County			
T04N R02E S22	NENW	2.00	T04N R02E S22 NENW 2.00
T04N R02E S22	NWNW	2.00	
RECREATION STORAGE Within ADA County			
T04N R02E S22	NENW		T04N R02E S22 SENW
AESTHETIC STORAGE Within ADA County			
T04N R02E S22	NENW		T04N R02E S22 SENW

6 ACRES TOTAL

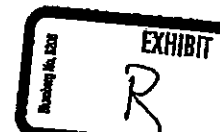
The rights listed below are limited to the irrigation of a combined total of 17 acres in a single irrigation season. Combined Right Nos.: 63-27649, 63-27671, 63-31054, 63-31055.

The rights listed below are limited to the irrigation of a combined total of 171 acres in a single irrigation season. Combined Right Nos.: 63-12, 63-13, 63-15, 63-308, 63-3603, 63-7593, 63-27649, 63-27671, 63-31053, 63-31054, 63-31055, 63-31054.

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.

EXPLANATORY MATERIAL: BASIS OF CLAIM - Beneficial Use



12/12/2005

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

RIGHT NUMBER: 63-27671 *T Springs Hot*

NAME AND ADDRESS: T-7 LLC
3823 N 36TH ST
BOISE ID 83703

SOURCE: GROUND WATER

TRIBUTARY:

QUANTITY: 0.045 CFS
23.21 APY

The rights listed below are limited to a total combined diversion rate of 0.12 cfs. Combined Right Nos.: 63-27649, 63-27671, 63-31054, 63-31055.

The rights listed below are limited to a total combined diversion rate of 0.055 cfs and to a total combined annual diversion volume of 28.36 AF. Combined Right Nos.: 63-3603, 63-27671, 63-31054.

PRIORITY DATE: 01/01/1938

POINT OF
DIVERSION: T04N R02E S22 NENW Within ADA County

PURPOSE AND
PERIOD OF USE:

<u>PURPOSE OF USE</u>	<u>PERIOD OF USE</u>	<u>QUANTITY</u>
FISH PROPAGATION	01/01 12/31	0.045 CFS 23.21 APY
IRRIGATION	03/01 11/15	0.045 CFS 23.21 APY

PLACE OF USE: IRRIGATION Within ADA County

T04N R02E S22 SWNW 8.00

FISH PROPAGATION Within ADA County

T04N R02E S22 NENW T04N R02E S22 SWNW
8 ACRES TOTAL

The rights listed below are limited to the irrigation of a combined total of 17 acres in a single irrigation season. Combined Right Nos.: 63-27649, 63-27671, 63-31054, 63-31055.

The rights listed below are limited to the irrigation of a combined total of 171 acres in a single irrigation season. Combined Right Nos.: 63-12, 63-13, 63-15, 63-308, 63-3603, 63-7595, 63-27649, 63-27671, 63-31053, 63-31054, 63-31055, 63-31054.

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.

EXPLANATORY MATERIAL: BASIS OF CLAIM - Beneficial Use

Water is 97 F temperature geothermal water.

Right Nos. 63-3603 and 63-31054 are also diverted through point of diversion described above.

12/12/2005

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

RIGHT NUMBER: 63-30006

NAME AND ADDRESS: T-7 LLC
3823 N 36TH ST
BOISE ID 83703

SOURCE: GROUND WATER

TRIBUTARY:

QUANTITY: 0.040 CFS
1.00 AFY

PRIORITY DATE: 03/01/1938

POINT OF
DIVERSION: T04N R02E S22 SWNW Within ADA County

PURPOSE AND
PERIOD OF USE:

<u>PURPOSE OF USE</u>	<u>PERIOD OF USE</u>	<u>QUANTITY</u>
AESTHETIC STORAGE	01/01 12/31	1.00 AFY
RECREATION STORAGE	01/01 12/31	1.00 AFY

PLACE OF USE: RECREATION STORAGE Within ADA County

T04N R02E S22 SWNW

AESTHETIC STORAGE Within ADA County

T04N R02E S22 SWNW

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.

EXPLANATORY MATERIAL: BASIS OF CLAIM - Beneficial Use

12/12/2005

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

RIGHT NUMBER: 63-30007
NAME AND ADDRESS: T-7 LLC
3823 N 36TH ST
BOISE ID 83703

SOURCE: SPRING
QUANTITY: 0.022 CFS
PRIORITY DATE: 03/01/1938

TRIBUTARY: STEWART GULCH CREEK

POINT OF
DIVERSION: T04N R02E S22 MWNW Within ADA County

PURPOSE AND
PERIOD OF USE:

<u>PURPOSE OF USE</u>	<u>PERIOD OF USE</u>	<u>QUANTITY</u>
IRRIGATION	03/01 11/15	0.022 CFS
Irrigation is for a nursery/greenhouses.		

PLACE OF USE: IRRIGATION Within ADA County

T04N R02E S22	MWNW	3.00	T04N R02E S22	SWNW	3.50
6.5 ACRES TOTAL					

The rights listed below are limited to the irrigation of a combined total of 171 acres in a single irrigation season. Combined Right Nos.: 63-12, 63-13, 63-15, 63-308, 63-3603, 63-7595, 63-27649, 63-27671, 63-31053, 63-31054, 63-31055, 63-31054.

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.

EXPLANATORY MATERIAL: BASIS OF CLAIM - Beneficial Use

12/12/2005

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

RIGHT NUMBER: 63-31050
NAME AND ADDRESS: T-7 LLC
3823 N 36TH ST
BOISE ID 83703

SOURCE: GROUND WATER
QUANTITY: 0.020 CFS
4.50 AFY

TRIBUTARY:

This right when combined with all other rights shall provide no more than .02 cfs per acre.
The quantity of water under this right for stockwater use shall not exceed 13,000 gallons per day.

PRIORITY DATE: 04/24/1948
POINT OF DIVERSION: T04N R02E S22 SWNW Within ADA County
PURPOSE AND PERIOD OF USE:

PURPOSE OF USE	PERIOD OF USE	QUANTITY
AESETHETIC	01/01 12/31	0.020 CFS
IRRIGATION	03/01 11/15	0.020 CFS
STOCKWATER	01/01 12/31	4.50 AFY
		0.020 CFS

PLACE OF USE: IRRIGATION Within ADA County
T04N R02E S22 SWNW 1.00
STOCKWATER Within ADA County
T04N R02E S22 SWNW
AESETHETIC Within ADA County
T04N R02E S22 SWNW
1 ACRES TOTAL

The rights listed below are limited to the irrigation of a combined total of 171 acres in a single irrigation season. Combined Right Nos.: 63-12, 63-13, 63-15, 63-308, 63-3603, 63-7595, 63-27649, 63-27671, 63-31053, 63-31054, 63-31055.

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

The quantity of water decreed for this water right for stockwater use is not a determination of historical beneficial use.

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.

EXPLANATORY MATERIAL: BASIS OF CLAIM - Beneficial Use

Property is also known as 5100 N. Cartwright Rd., Boise, Idaho.

Stockwater use is for 10 llamas.

Right No. 63-31053 is also diverted through point of diversion described above. Right Nos. 63-3603, 63-7595 and 63-31052 are also diverted through the point of diversion described above but the source for these rights is a geothermal aquifer.

12/12/2005

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

RIGHT NUMBER: 63-31052

NAME AND ADDRESS: T-7 LLC
3823 N 36TH ST
BOISE ID 83703

SOURCE: GROUND WATER

TRIBUTARY:

QUANTITY: 0.120 CFS
79.64 AFY

This right when combined with all other rights shall provide no more than .02 cfs per acre.

PRIORITY DATE: 04/24/1948

POINT OF
DIVERSION: T04N R02E S22 SWNW Within ADA County

Right Nos. 63-3603 and 63-7595 are also diverted through point of diversion described above. Right No. 31-31050 is also diverted through the point of diversion described above but the source is a cold water aquifer.

PURPOSE AND
PERIOD OF USE:

PURPOSE OF USE	PERIOD OF USE	QUANTITY
AESTHETIC	01/01 12/31	0.120 CFS
IRRIGATION	03/01 11/15	0.120 CFS 3.00 AFY
RECREATION	01/01 12/31	0.120 CFS
AESTHETIC STORAGE	01/01 12/31	3.00 AFY
HEATING	01/01 12/31	0.120 CFS 79.64 AFY

PLACE OF USE: IRRIGATION Within ADA County
T04N R02E S22 SWNW 1.00
HEATING Within ADA County
T04N R02E S22 SWNW
AESTHETIC Within ADA County
T04N R02E S22 SWNW
RECREATION same as IRRIGATION

1 ACRES TOTAL

The rights listed below are limited to the irrigation of a combined total of 171 acres in a single irrigation season. Combined Right Nos.: 63-12, 63-13, 63-15, 63-308, 63-3603, 63-7595, 63-27649, 63-27671, 63-31053, 63-31054, 63-31055, 63-31054.

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.

This right is subject to regulation by the watermaster of Water District 63S.

EXPLANATORY MATERIAL: BASIS OF CLAIM - Beneficial Use

Water is 125 degrees F temperature geothermal water.

Property is also known as 5100 N. Cartwright Rd., Boise, Idaho.

12/12/2005

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

RIGHT NUMBER: 63-31053

NAME AND ADDRESS: T-7 LLC
3823 N 36TH ST
BOISE ID 83703

SOURCE: GROUND WATER

TRIBUTARY:

QUANTITY: 0.040 CFS
4.50 APY

The quantity of water under this right for domestic use shall not exceed 13,000 gallons per day.

PRIORITY DATE: 01/01/1938

POINT OF DIVERSION: T04N R02E S22 SWNW Within ADA County

PURPOSE AND PERIOD OF USE:

PURPOSE OF USE	PERIOD OF USE	QUANTITY
DOMESTIC	01/01 12/31	0.020 CFS
IRRIGATION	03/01 11/15	0.020 CFS
		4.50 APY

Domestic use is for internal use in 1 home.

PLACE OF USE: IRRIGATION Within ADA County

T04N R02E S22 SWNW 1.00

DOMESTIC Within ADA County

T04N R02E S22 SWNW

1 ACRES TOTAL

The rights listed below are limited to the irrigation of a combined total of 171 acres in a single irrigation season. Combined Right Nos.: 63-12, 63-13, 63-15, 63-308, 63-3603, 63-7595, 63-27649, 63-27671, 63-31053, 63-31054, 63-31055, 63-61054.

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

The quantity of water decreed for this water right for domestic use is not a determination of historical beneficial use.

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.

EXPLANATORY MATERIAL: BASIS OF CLAIM - Beneficial Use

Property is also known as 5100 N Cartwright Rd., Boise, Idaho.

Right No. 63-31050 is also diverted through point of diversion described above. Right Nos. 63-3603, 63-7595 and 63-31052 are also diverted through the point of diversion described above but the source for these rights is a geothermal aquifer.

12/12/2005

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

RIGHT NUMBER: 63-31054
NAME AND ADDRESS: T-7 LLC
3823 N 36TH ST
BOISE ID 83703

SOURCE: GROUND WATER
QUANTITY: 0.055 CFS
9.00 APY

TRIBUTARY:

The rights listed below are limited to a total combined diversion rate of 0.12 cfs. Combined Right Nos.: 63-27649, 63-27671, 63-31054, 63-31055.

The quantity of water under this right for stockwater use shall not exceed 13,000 gallons per day.

PRIORITY DATE: 11/01/1940

POINT OF DIVERSION: T04N R02E S22 NENW Within ADA County

PURPOSE AND PERIOD OF USE:

PURPOSE OF USE	PERIOD OF USE	QUANTITY
IRRIGATION	03/01 11/15	0.055 CFS 9.00 APY
FIRE PROTECTION	01/01 12/31	0.055 CFS
AESTHETIC	01/01 12/31	0.055 CFS
RECREATION	01/01 12/31	0.055 CFS
STOCKWATER	01/01 12/31	0.055 CFS

PLACE OF USE:

<u>IRRIGATION Within ADA County</u>			
T04N R02E S22	S22	2.00	
<u>STOCKWATER Within ADA County</u>			
T04N R02E S22	NENW		T04N R02E S22 SENW
<u>RECREATION Within ADA County</u>			
T04N R02E S22	NENW		T04N R02E S22 SENW
<u>FIRE PROTECTION Within ADA County</u>			
T04N R02E S22	NENW		T04N R02E S22 SENW
<u>AESTHETIC Within ADA County</u>			
T04N R02E S22	NENW		T04N R02E S22 SENW

2 ACRES TOTAL

The rights listed below are limited to the irrigation of a combined total of 17 acres in a single irrigation season. Combined Right Nos.: 63-27649, 63-27671, 63-31054, 63-31055.

The rights listed below are limited to the irrigation of a combined total of 171 acres in a single irrigation season. Combined Right Nos.: 63-12, 63-13, 63-15, 63-308, 63-3603, 63-7595, 63-27649, 63-27671, 63-31053, 63-31054, 63-31055, 63-31054.

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 for stockwater use is not a determination of historical beneficial use.

EXPLANATORY MATERIAL: BASIS OF CLAIM - Beneficial Use

Water is 97 F temperature geothermal water.

Right Nos. 63-3603, 63-27671 are also diverted through point of diversion described above.

Stockwater use is for 300 head mixed stock: llamas, horses, range cattle.

12/12/2005

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

RIGHT NUMBER: 63-31055

NAME AND ADDRESS: T-7 LLC
3823 N 36TH ST
BOISE ID 83703

SOURCE: STEWART CREEK

TRIBUTARY: BOISE RIVER

QUANTITY: 0.040 CFS
1.00 AFY

The quantity of water under this right for stockwater use shall not exceed 13,000 gallons per day.

The rights listed below are limited to a total combined diversion rate of 0.12 cfs. Combined Right Nos.: 63-27649, 63-27671, 63-31054, 63-31055.

PRIORITY DATE: 01/01/1938

POINT OF
DIVERSION: T04N R02E S22 NWNE Within ADA County
T04N R02E S22 NENW Within ADA County
T04N R02E S22 NENW Within ADA County

PURPOSE AND
PERIOD OF USE:

PURPOSE OF USE	PERIOD OF USE	QUANTITY
STOCKWATER STORAGE	01/01 12/31	1.00 AFY
AESTHETIC STORAGE	01/01 12/31	1.00 AFY
IRRIGATION	03/01 11/15	0.040 CFS
IRRIGATION STORAGE	01/01 12/31	1.00 AFY

PLACE OF USE:

IRRIGATION Within ADA County
T04N R02E S22 NENW 5.00
STOCKWATER STORAGE Within ADA County
T04N R02E S22 NENW T04N R02E S22 NENW
T04N R02E S22 SENW
AESTHETIC STORAGE Within ADA County
T04N R02E S22 NENW T04N R02E S22 NENW
T04N R02E S22 SENW

5 ACRES TOTAL

The rights listed below are limited to the irrigation of a combined total of 17 acres in a single irrigation season. Combined Right Nos.: 63-27649, 63-27671, 63-31054, 63-31055.

The rights listed below are limited to the irrigation of a combined total of 171 acres in a single irrigation season. Combined Right Nos.: 63-12, 63-13, 63-15, 63-308, 63-3603, 63-7595, 63-27649, 63-27671, 63-31053, 63-31054, 63-31055, 63-31054.

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 for stockwater use is not a determination of historical beneficial use.

EXPLANATORY MATERIAL: BASIS OF CLAIM - Beneficial Use

Stockwater use is for 25 llamas.

12/12/2005

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

RIGHT NUMBER: 63-31056

NAME AND ADDRESS: T-7 LLC
3823 N 36TH ST
BOISE ID 83703

SOURCE: GROUND WATER

TRIBUTARY:

QUANTITY: 0.040 CFS
9.00 APY

The quantity of water under this right for domestic and stockwater uses shall not exceed 13,000 gallons per day.

This right when combined with all other rights shall provide no more than .02 cfs per acre.

PRIORITY DATE: 01/01/1938

POINT OF
DIVERSION: T04N R02E S22 SWNW Within ADA County

PURPOSE AND
PERIOD OF USE:

PURPOSE OF USE	PERIOD OF USE	QUANTITY
IRRIGATION	03/01 11/15	0.040 CFS
		9.00 APY
STOCKWATER	01/01 12/31	0.040 CFS
DOMESTIC	01/01 12/31	0.020 CFS

Domestic use is for internal use in 1 home.

PLACE OF USE: IRRIGATION Within ADA County
T04N R02E S22 SWNW 2.00
STOCKWATER Within ADA County
T04N R02E S22 SWNW
DOMESTIC Within ADA County
T04N R02E S22 SWNW

2 ACRES TOTAL

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

The quantity of water decreed for this water right for domestic use and stockwater use is not a determination of historical beneficial use.

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.

EXPLANATORY MATERIAL: BASIS OF CLAIM - Beneficial Use

Property is also known as 5120 Cartwright Rd., Boise, Idaho.

Stockwater use is for 300 range cattle.

12/12/2005

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

RIGHT NUMBER: 63-31057

NAME AND ADDRESS: T-7 LLC
3823 N 36TH ST
BOISE ID 83703

SOURCE: GROUND WATER

TRIBUTARY:

QUANTITY: 0.020 CFS

PRIORITY DATE: 06/20/1994

POINT OF
DIVERSION: T04N R02E S22 SWNW Within ADA County

PURPOSE AND
PERIOD OF USE:

PURPOSE OF USE

PERIOD OF USE

QUANTITY

DOMESTIC

01/01 12/31

0.020 CFS

Domestic use is for heating 1 home.

PLACE OF USE: DOMESTIC Within ADA County

T04N R02E S22 SWNW

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.

EXPLANATORY MATERIAL: BASIS OF CLAIM - Beneficial Use

Property is also known as 5120 N Cartwright Rd., Boise, Idaho.

Right No. 63-30007 is also diverted through point of diversion described above.

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

In Re SRBA) Subcase Nos. 63-12, 63-13, 63-14,
Case 39576) 63-15, 63-16, 63-308, 63-2103A,
) 63-2103B, 63-3603, 63-4037,
) 63-5067, 63-5195, 63-7595, 63-9758,
) 63-21875, 63-27649, 63-276761,
) 63-30006, 63-30007, 63-31050,
) 63-31051, 63-31052, 63-31053,
) 63-31054, 63-31055, 63-31056,
) 63-31057, 63-31058, 63-31059,
) 63-31060, 63-31062, 63-32895

COPY

DEPOSITION OF EDWARD SQUIRES

June 15, 2010

REPORTED BY:

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EXHIBIT

○

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

In Re SRBA) Subcase Nos. 63-12, 63-13, 63-14,
Case 39576) 63-15, 63-16, 63-308, 63-2103A,
) 63-2103B, 63-3603, 63-4037,
) 63-5067, 63-5195, 63-7595, 63-9758,
) 63-21875, 63-27649, 63-276761,
) 63-30006, 63-30007, 63-31050,
) 63-31051, 63-31052, 63-31053,
) 63-31054, 63-31055, 63-31056,
) 63-31057, 63-31058, 63-31059,
) 63-31060, 63-31062, 63-32895

DEPOSITION OF EDWARD SQUIRES
June 15, 2010

REPORTED BY:

COLLEEN P. KLINE, CSR No. 345

Notary Public

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1 THE DEPOSITION OF EDWARD SQUIRES was
2 taken on behalf of the Edwards Family, LLC, at
3 the offices of M & M Court Reporting Service,
4 located 421 West Franklin Street, Boise, Idaho,
5 commencing at 9:35 a.m., on June 15, 2010, before
6 Colleen P. Kline, Certified Shorthand Reporter
7 and Notary Public within and for the State of
8 Idaho, in the above-entitled matter.
9 APPEARANCES:
10 For the Edwards Family, LLC:
11 Hofstetter Law Office, LLC
12 BY MS. DANA L. HOFSTETTER
13 608 West Franklin Street
14 Boise, Idaho 83702
15 For the Terteling Company, Incorporated:
16 Ringert Law
17 BY MR. CHARLES L. HONSINGER
18 455 S. 3rd
19 P.O. Box 2773
20 Boise, Idaho 83701-2773
21 ALSO PRESENT: Mr. Joe Terteling
22
23
24
25

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M & M COURT REPORTING

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1 EDWARD SQUIRES,
2 first duly sworn to tell the truth relating to
3 said cause, testified as follows:
4 MS. HOFSTETTER: Before we went on the
5 record, Mr. Honsinger explained that there were
6 certain things that he would like to put on the
7 record. So I'll give him that opportunity.
8 MR. HONSINGER: Okay. Ms. Hofstetter,
9 this witness, Mr. Squires, has not yet been
10 proffered as any expert witness. If you read our
11 discovery responses yesterday, which I know you
12 may not have had a chance to do, you will notice
13 that he is a rebuttal expert witness.
14 We do not yet know what your experts,
15 if you even have an experts, opinions will be.
16 So to that extent Mr. Squires won't be testifying
17 about any opinions he may or may not hold until
18 we know what your experts' opinions may be.
19 We did provide you with a copy of his
20 curriculum vitae, and we would certainly invite
21 you to question him in those matters, and in the
22 interest of saving time later. And Mr. Squires
23 also did some initial claim work for the
24 Tertelings, and you may also question him
25 regarding those matters.

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1 But as far as the opinions he holds, he
2 doesn't know what opinions he may hold. We don't
3 anticipate calling him, unless you proffer an
4 expert witness. So I don't see that Mr. Squires'
5 testimony will give much to us today.

6 MS. HOFSTETTER: And I did have a
7 chance to scan the discovery that you served on
8 me yesterday. And I did notice that, you know,
9 it appeared to me that Mr. Squires had not yet
10 been asked to render any opinions in this case.
11 So I did take note of that.

12 And so I do think that accordingly, our
13 examination today will be fairly limited, and
14 maybe focus on his background and experience.
15 And then we may need to continue the deposition
16 in the event that he is called upon to offer
17 opinions in the case that he will be testifying
18 about in the future.

19 MR. HONSINGER: You may attempt to
20 continue the deposition. I will not agree, and
21 we may have to take that up with the court.

22 MS. HOFSTETTER: Okay. We can
23 certainly do that.

24 MR. HONSINGER: Okay. That's fine.

25 MS. HOFSTETTER: I think we recognize

1 Rule 26(b)(4) applies to the deposition of an
2 expert witness.

3 MR. HONSINGER: Yes. As does
4 26(b)(4)(b).

5 MS. HOFSTETTER: As far as 26(b)(4)(b)
6 is a --

7 MR. HONSINGER: A witness not
8 anticipating to be called at trial. And we do
9 not yet know if this witness will be.

10 MS. HOFSTETTER: Yes, exactly. And so
11 I think we recognize that. And what I hear you
12 saying, and correct me if I'm wrong, is that at
13 this point in time, Mr. Squires has not been
14 asked by Terteling Company or T-7, LLC to render
15 any opinions -- is not expected to testify on
16 behalf of the T-7 or TTCL, The Terteling Company,
17 Incorporated, at trial.

18 MR. HONSINGER: That's correct.

19 MS. HOFSTETTER: Okay. So let's
20 proceed accordingly. And I have a few exhibits.

21 (Exhibit A marked.)

22 EXAMINATION

23 QUESTIONS BY MS. HOFSTETTER:

24 Q. Good morning, Mr. Squires.

25 A. Good morning.

1 Q. I'm handing you what's been marked as
2 Exhibit A, and ask if you've seen this document
3 before? Have you seen this document before?

4 A. Just a moment, please. Yes, I have.

5 Q. Okay. First of all, I probably should
6 have you state your name and address for the
7 record. And your business address will be fine.

8 A. Okay. My name is Edward Squires. My
9 business address of Hydro Logic, Inc., and that's
10 three words. It is 1002 West Franklin Street,
11 Boise, Idaho 83702.

12 Q. Okay.

13 A. Just down the street as it turns out.

14 Q. Yes, a good street.

15 A. As yours.

16 Q. Yes, it is.

17 Okay. So you said you had seen the
18 Exhibit A before. Is this the Deposition Notice
19 pursuant to you appearing here today?

20 A. Yes.

21 Q. And have you brought any documents with
22 you? Beginning on page 2 of Exhibit A, there is
23 a production request. Have you brought any
24 documents with you today in connection with that
25 production request?

1 A. No, I haven't.

2 Q. Okay. Could you state what profession
3 you are in?

4 A. I am a geologist, a Registered
5 Professional Geologist in the State of Idaho.
6 And my main area of expertise and practice is in
7 the practice of hydrogeology.

8 Q. And could you explain what hydrogeology
9 is?

10 A. It is the study, evaluation, and
11 interpretation of ground water.

12 Q. And would that include geothermal
13 ground water?

14 A. All ground water.

15 (Exhibit B marked.)

16 Q. (BY MS. HOFSTETTER) Okay. And in the
17 discovery I was served with yesterday, I did
18 obtain copies of your curriculum vitae. So if
19 you can just confirm that Exhibit B is a
20 complete, and accurate, up-to-date description of
21 your educational background and professional
22 experience. And, perhaps, you know, we don't
23 need to go into a detailed discussion about that.

24 A. Yes, it is.

25 Q. Okay. And it's up to date?

1 A. Yes.

2 Q. Okay. Have you testified as an expert
3 at any trials within the last four years?

4 A. And I assume that the administrative
5 hearings are trials, or, no?

6 Q. Yes, let's consider administrative as
7 well as court --

8 A. Yes.

9 Q. -- hearings, and trials?

10 A. Yes, I have.

11 Q. Okay. Could you identify the cases
12 that you did so?

13 A. I will try to remember. The most
14 recent one was the M 3 Eagle matter before the
15 Department of Water Resources.

16 Q. And would that be the Idaho Department
17 of Water Resources?

18 A. Yes.

19 Q. Any others within the last four years?

20 A. You know, I'm certain that there is.
21 It will take me a minute to remember them,
22 probably, if you want me to.

23 Q. Okay. Yes.

24 A. I believe the Ringle matter in Round
25 Valley was within the last four years. I can't

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1 recall exactly the dates, but another
2 administrative water right hearing before the
3 Department. I have also -- oh, and it means
4 testifying, not just being in an administrative
5 hearing --

6 Q. Right.

7 A. -- providing the expert.

8 Q. Right. Actually, testifying, or also
9 providing a written affidavit of your testimony;
10 so either testifying in person, or providing a
11 written affidavit?

12 A. You know, I can't. I'm just drawing a
13 blank.

14 Q. Okay. So let's discuss briefly of who
15 you were representing in the M 3 Eagle
16 proceeding, and who you were working on behalf
17 of, and the nature of your involvement in that
18 proceeding.

19 A. I was working on behalf of M 3 Eagle,
20 LLC an Eagle limited liability company. A
21 developer of a 6,000 unit planned community
22 development in the foothills north of Eagle. And
23 my company did the hydrogeologic evaluations for
24 that project, and it included the
25 characterization of ground water availability.

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1 It involved drilling a number of test drillings,
2 reporting upon a number of exploratory test
3 wells, conducting several aquifer tests.

4 We did geochemistry studies, geologic
5 mapping. And we constructed a numerical ground
6 water model for the north Ada County area in that
7 study. And I was the lead investigator in that
8 project.

9 Q. Okay. And I believe you mentioned that
10 you were the one who testified at the hearing as
11 to those matters?

12 A. I was one of the experts, yes.

13 Q. One of the experts on behalf of M 3?

14 A. Yes.

15 Q. Okay. And this proceeding was in the
16 context of an application for a new water right?

17 A. Yes, it was.

18 Q. Okay. Could you briefly describe the
19 Ringle matter, and what function you served in
20 that proceeding?

21 A. The Ringle matter was another ground
22 water application in Round Valley, Idaho.

23 Q. And where is that? Roughly, where is
24 that? What county is that located?

25 A. That is in Payette County, I believe.

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1 And it was a contested water right application
2 that also involved hydrogeologic
3 characterization, and expert testimony on the
4 availability of ground water.

5 I also remember now that I was also an
6 expert witness, and I believe again, this was in
7 the last four years, maybe it hasn't been, but
8 also in the Tamarack Resort matter.

9 Q. Okay.

10 A. I have also been -- I was also involved
11 in a Teton -- recently in a Teton valley water
12 right contested application; Ruskin Vest versus
13 Boyd Smith, a surface water ground water
14 application in the Teton valley this last winter.

15 Q. Okay. Well, let me know when they come
16 to mind. I'll write them, and we'll get to them.

17 But let's just finish up on the Round
18 Valley real quickly. Was that another
19 subdivision development project, or was it some
20 other kind of project?

21 A. No, it was in a ground water
22 development project for irrigation.

23 Q. Okay. And again, did you testify at
24 the hearing in that matter?

25 A. I attended, I think, it was a

1 pre-hearing conference. And I can't remember now
2 if it went all the way to hearing. I know I
3 testified at a -- well, it must have been
4 since -- you know, I can't remember if it was a
5 hearing or a pre-hearing conference.

6 Q. Okay. But you were involved either
7 way?

8 A. I was involved, and I was asked my
9 opinion, and I did give my opinions.

10 Q. Okay. And who were you representing in
11 that proceeding?

12 A. Mr. Dave Ringle.

13 Q. And was he the applicant?

14 A. Yes, he was.

15 Q. Okay.

16 A. I have also just recalled that I'm
17 currently an expert witness in a contested water
18 rights matter south of Boise. And it is the
19 Tyson Fine Foods application. And I am the
20 expert witness for the State of Idaho, the Idaho
21 Department of Corrections. And that is an
22 ongoing matter that has had, I think, three
23 pre-hearing conferences now. And there has not
24 been a hearing.

25 I'm also an expert witness at the

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1 current time for Pacific West Land in the east
2 Boise area, in the matter of the Intermountain
3 water and sewer application. And I'm also an
4 expert witness for Micron Technology at the
5 current time for Patriot -- what is it -- I
6 can't -- I can't think of the exact name of the
7 applicant. But I am an expert for the
8 protestant, which is Micron Technology.

9 Q. So let's briefly discuss the Tamarack
10 Resort work. Were you representing Tamarack?

11 A. Yes, I was.

12 Q. And what was the nature of the
13 proceeding that you were involved in?

14 A. It was a large reasonably anticipated
15 future needs water right application for
16 municipal use for a large community, the Tamarack
17 Resort. And it involved, again, characterizing
18 the subsurface geology, and showing the
19 sustainability and availability of ground water
20 for that use.

21 Q. Okay. So did you testify at the
22 hearing in the matter?

23 A. Yes, at the pre-hearing conferences and
24 at the hearing. And I was also involved with the
25 development of that application. As I am in most

1 of the applications that I'm involved with.

2 Q. Okay.

3 A. I also recognize now that I -- it just
4 slipped my mind, again. But another application
5 that I'm currently involved with.

6 Q. Okay. Was the Tamarack project, was
7 that a ground water project?

8 A. Ground water and surface water project.

9 Q. Okay.

10 A. I was also involved in the contested
11 hearing in the Ola, Idaho area just a couple of
12 years ago, and I represented Jack Mooers,
13 M-o-o-e-r-s, at the Eagle Peak Ranch in a
14 protested hearing, and he was the applicant. And
15 that had at least two pre-hearing conferences.
16 And I don't think it went all the way to hearing.
17 But I did provide expert opinion, and also
18 monitoring, and interpretation of ground and
19 surface water.

20 Q. Okay. So could you just briefly in a
21 couple of sentences maybe explain the nature of
22 the Teton Valley application, and who you
23 represented, and what you did?

24 A. Yeah, I represented the Sundowner
25 Ranch, LLC, owned by Ruskin A. Vest, V-e-s-t. He

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1 was a protestant against the Teton Ranch, which
2 was applying for surface water from South Leigh
3 Creek. That's spelled, L-e-i-g-h. And it was
4 also a ground water storage and withdrawal
5 application.

6 Q. And was this another administrative
7 proceeding before the Idaho Department of Water
8 Resources?

9 A. It was.

10 Q. And did you provide either written or
11 oral testimony in the case?

12 A. I provided -- I did not appear at the
13 pre-conference hearing, and it did not go to
14 hearing. There were, I think, three
15 pre-conference hearings, and I provided -- I
16 evaluated the ground water model, and the
17 application for the protestant, and
18 provided -- and provided my interpretation, and
19 my expert opinion of the effects of the proposed
20 diversions, and worked closely with the attorneys
21 on settlement conditions, which ultimately
22 prevailed.

23 Q. Okay. Now, could you briefly explain
24 your role and the nature of the Tyson Fine Foods
25 matter?

1 A. Yes, I have been retained by the Idaho
2 Department of Corrections to evaluate an
3 application for ground water withdrawals close to
4 the Idaho State Correctional Facility south of
5 Boise. And I evaluated the available monitoring
6 data, aquifer test data, and for the potential
7 effects of that diversion on my client's water
8 rights.

9 Q. Okay.

10 A. I also recall now, and again, I'm not
11 sure this was within the last four years. It was
12 probably close. But I was also an expert for a
13 number of cities. For the City of Caldwell, and
14 the City of Meridian in the IMAP application by
15 United Water Idaho. And I worked on that. There
16 were at least two, maybe three pre-hearing
17 conferences. And I represented the cities, who
18 were the protestants, in United Water Idaho's
19 Municipal Application Package for a future needs
20 water right.

21 Q. Okay. Well, you know, just so for the
22 interest of time --

23 A. Yes.

24 Q. -- we probably should limit today to
25 this question, to just what you've actually

Page 18

1 testified in, and not necessarily the pre-hearing
2 conference.

3 A. Okay.

4 Q. Because that's normally not an official
5 hearing. It's more of a settlement-type meeting.
6 So if you could try to focus on the ones that I
7 recognize that you have vast experience in this
8 area. I just want to focus on the ones in the
9 last four years that you actually provided
10 written or oral testimony to.

11 A. I understand.

12 Q. Okay. So the next one that you
13 mentioned, the next one was Pacific West Land
14 Intermountain. Did you provide testimony either
15 written or oral in that case?

16 A. No. In fact, the hearing has not been
17 set yet.

18 Q. Okay. So is it your understanding,
19 you've been hired to provide testimony --

20 A. Yes.

21 Q. -- in the case?

22 A. Yes, I have.

23 Q. And you've mentioned that Micron -- you
24 represent Micron, or work for Micron in
25 connection with a protest. And it sounds like

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1 that has not gone to hearing yet either?

2 A. That is correct.

3 Q. So you may testify to that, but you
4 haven't yet testified?

5 A. That is correct.

6 Q. And with regard to the Jack Mooers
7 Eagle Peak Ranch matter, have you testified at
8 that yet, or you may testify, or is that
9 concluded at this point?

10 A. As my memory serves me, I don't think
11 we went to a formal hearing. I know that I did
12 offer comments, and provide an overview of my
13 findings. And I think it was a pre-hearing.

14 Q. Okay. And if you think of any others,
15 let me know as we go along. I mean, I know you
16 are involved in a lot of things, and it's hard to
17 keep track of them all.

18 And with regard to a deposition.
19 Within the last four years, have you participated
20 in any other depositions besides today's?

21 A. I can't recall right now.

22 Q. Okay. So it's possible. Have you
23 participated in depositions before?

24 A. Yes, I have.

25 Q. And was that in your expert capacity?

Page 20

1 A. Yes.

2 Q. And could you approximate about how
3 many times you've participated, you've been the
4 witness in an expert deposition?

5 A. I would say, a half a dozen.

6 Q. Okay. Thank you. And I presume that
7 would always be in some sort of a water-related
8 matter?

9 A. Yes.

10 Q. Okay. If we could turn back to Exhibit
11 B, your curriculum vitae. And I would just like
12 to confirm for the record, so that we don't need
13 to, you know, discuss further your educational
14 background, or your professional experience.

15 Is this Exhibit B a good reflection of
16 your education background and your professional
17 experience?

18 A. Yes.

19 Q. And in the registration section on page
20 1, does that include your professional
21 registrations?

22 A. Yes, I have Certificate 968. I'm also
23 a Registered Professional Geologist in the state
24 of Arizona.

25 Q. Okay. The Arizona registration is not

1 on this?

2 A. That is correct. I just received that,
3 and I actually don't know the number, but...

4 Q. Okay. Any other certifications,
5 registrations that are not on this list here?

6 A. No.

7 Q. Okay. And I believe at the end, I
8 saw -- and turning to page 5, approximately,
9 there is a list of your employments. Is this a
10 complete list of your employment history, your
11 professional employment history?

12 A. Yes.

13 Q. Okay. And then the publications that
14 begins right below that, and continues on for
15 about two pages. Is this an all inclusive list
16 of all your professional publications?

17 A. No, it's just a representative list.
18 And it's not just publications, but also reports.
19 Because I think of publications as things that
20 were actually peer reviewed. And so, obviously,
21 in my career I would bore you to death with a
22 list of professional reports. But it's intended
23 of an indication of the type of work that I
24 engage in.

25 Q. Okay.

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1 A. I would also mention, that the reason
2 that my Arizona licensure is not on here, is that
3 I received the formal number on the 22nd of this
4 month. So it's that recent.

5 Q. Okay. Well, congratulations.

6 A. Thank you.

7 Q. So do you also do some work in Arizona?

8 A. I do.

9 MR. HONSINGER: You mean the 22nd of
10 last month?

11 THE WITNESS: The 22nd of this month.
12 I've been approved. But the official -- my
13 official number comes out the 22nd of this month.

14 Q. (BY MS. HOFSTETTER) Okay. So you are
15 not really legal in Arizona until the 22nd of
16 this month?

17 A. I guess that's correct. I've been
18 approved by the board, but I don't get my stamp
19 until the 22nd.

20 Q. Okay. If I could, I would like to turn
21 your attention to the last page of the Exhibit B.
22 And I note near the bottom of the list of your
23 reports and publications, analysis of historical
24 and current water level production data from the
25 Boise geothermal system. Could you briefly

1 describe in a few sentences, the nature of that
2 work, and who you were performing that work for?

3 A. Sure. At the time, I was a student at
4 Boise State University. And one of my professor
5 mentors was conducting research on the Boise area
6 geothermal system, and that's Dr. Charles Waag,
7 W-a-a-g, and Dr. Spencer H. Wood of Boise State
8 University. And I was employed by them to
9 monitor water levels in the geothermal system, to
10 enter the data, and plot the water level data.
11 And I was involved in this abstract with a number
12 of other faculty and students.

13 Q. And the Boise geothermal system, would
14 that include the Stewart Gulch Geothermal
15 Aquifer?

16 A. In that publication, it does not.

17 Q. If we could, I would like to turn to
18 page 2 of Exhibit B in the category of
19 "Geothermal."

20 A. Uh-huh.

21 Q. Item No. 2, do you see that water level
22 monitoring of the Terteling Ranch and Floral
23 Nursery geothermal wells 1993 to the present.
24 Could you briefly describe the nature of that
25 work?

Page 24

1 A. Yes, I've been employed by the
2 Terteling Company, Incorporated to monitor
3 geothermal water levels in their 36 Street
4 property, and also geothermal wells on their
5 ranch in Stewart Gulch, since 1993. And those
6 water levels are reported quarterly to the
7 Department of Water Resources.

8 Q. Okay. And so have you been doing this
9 work continuously from 1993 to the present?

10 A. Yes.

11 Q. And could you name some of the names,
12 just to give us the reference point, either the
13 water right numbers, or the names for the
14 geothermal wells on the Terteling Ranch that you
15 monitor?

16 A. On the Terteling Ranch, we monitor the
17 Terteling pool. We monitor the Terteling wind
18 soak well. We monitor the motorcycle hot well.
19 And you are interested in only geothermal,
20 correct?

21 Q. Correct.

22 A. We also monitor the Terteling springs
23 well. And I believe that is -- those are the low
24 geothermal wells on the Terteling Ranch.

25 Q. And by Terteling Ranch, does Terteling

1 Ranch include both the property owned by the
2 Terteling Company, Incorporated, and T-7?
3 A. Yes.
4 Q. Can you identify the wells on the
5 Floral Nursery property that you monitor?
6 A. Yes, we monitor the Silkey well, also
7 known as the shed well. We monitor the Tieg
8 well, T-i-e-g-s, also known as the triangle well,
9 and we monitor the office well.
10 Q. Okay. And Item No. 3 on page 2 of
11 Exhibit B, BWSWD, stands for Boise Warm Springs
12 Water District; is that correct?
13 A. Yes.
14 Q. And what is UWID stand for?
15 A. United Water Idaho.
16 Q. Okay. And Item No. 3, it looks like
17 that work is performed for a number of different
18 clients; is that correct?
19 A. Yes.
20 Q. Now, item No. 6 on the next page,
21 under, geothermal evaluation historical weir flow
22 data and geothermal water use of the Floral
23 Nursery 1921 to 2002, and I'm assuming that you
24 weren't there in 1921. But did you review
25 historic records?

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1 A. From between those dates, yes.
2 Q. And was that in connection with a
3 proceeding or --
4 A. It was in connection with a low
5 temperature geothermal transfer proceeding. And
6 I represented the Terteling Company,
7 Incorporated.
8 Q. And do you remember the transfer number
9 on that proceeding?
10 A. I don't.
11 Q. And would that transfer proceeding also
12 be the same transfer proceeding that's referenced
13 in item No. 9 below that?
14 A. Yes.
15 Q. And item No. 11, was the Terteling
16 Company your client for item No. 11 below that?
17 A. Yes.
18 Q. Going back to item No. 2 on the
19 preceding page. When did you begin monitoring
20 the Floral Nursery geothermal wells. Because I
21 believe in 1993, the Terteling Company did not
22 own that property. So would you have started
23 monitoring the Floral Nursery wells after 1993
24 when the Terteling Company purchased the
25 property, or were you already monitoring prior to

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1 their purchase?
2 A. I did a fair number of measurements,
3 and monitoring, and aquifer test measurements in
4 the Floral wells, still in the employ of the
5 Terteling Company, when it was owned by Dan See
6 and the Floral Company, before the purchase.
7 Q. So were you involved in any capacity in
8 the water call proceedings during the beginning
9 of the late '80s and continuing to the 1990s?
10 A. I was.
11 Q. And who were you working for in that
12 proceeding?
13 A. I represented the Terteling Company,
14 Incorporated.
15 Q. But that would have been before they
16 purchased the Floral property; is that correct?
17 A. That's correct.
18 (Exhibit C marked.)
19 Q. (BY MS. HOFSTETTER) I'm going to hand
20 you Exhibit C. And just ask if you've seen this
21 document before?
22 A. Yes, I have.
23 Q. Do you remember when you first saw this
24 document?
25 A. Well, I was involved on behalf of the

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1 Terteling Company when this matter came before
2 the Department of Water Resources.
3 Q. And so on page 5 of Exhibit C, where
4 you see a list of the water right owners
5 involved. Would you have been involved on behalf
6 in connection with the Terteling Company on the
7 two water rights listed under as owned by J. A.
8 Terteling?
9 A. Yes.
10 (Exhibit D marked.)
11 Q. (BY MS. HOFSTETTER) Okay. I'm going
12 to hand you what's been marked as Exhibit D. And
13 ask you, have you seen this document before?
14 A. I have.
15 Q. And do you recall when you first saw
16 this document?
17 A. I believe it was during the
18 administrative hearing proceedings and settlement
19 discussions between Edwards Greenhouses, and the
20 Terteling Company, Incorporated, related to the
21 transfer that we spoke about earlier.
22 Q. Okay. And were you advising the
23 Terteling Company in that proceeding?
24 A. Yes. And by the way, it was transfer
25 No. 68558.

1 Q. Okay. And you see that on?
 2 A. I see that on here.
 3 MS. HOFSTETTER: I think we can go off
 4 the record for a minute.
 5 (A recess was had.)
 6 (Exhibits E and F marked.)
 7 MS. HOFSTETTER: We'll go back on the
 8 record.
 9 Q. (BY MS. HOFSTETTER) First of all, I'll
 10 ask Mr. Squires. During the break, did any other
 11 proceedings come to mind in which you've
 12 testified in the last four years, that you didn't
 13 mention earlier?
 14 A. Yes.
 15 Q. Okay.
 16 A. I can think of two additional ones.
 17 Q. Okay. Could you explain what those
 18 were about?
 19 A. One was I represented Naylor Farms, and
 20 I'm trying to think of the county in northern
 21 Idaho; Moscow. And right now I'm drawing a blank
 22 on the county. But I represented Naylor Farms in
 23 a contested water right application against the
 24 City of Moscow, the City of Pullman, and some
 25 other local activist groups.

1 And I also represented Idaho Power
 2 Company in a contested water rights hearing,
 3 where I testified in the Pissimeroy Valley,
 4 having to do with a fish hatchery development up
 5 there.
 6 Q. Okay. Any others that you recall at
 7 this point?
 8 A. No.
 9 Q. Okay. So the Naylor Farms was the
 10 applicant in the proceeding?
 11 A. Yes.
 12 Q. And was it a ground water --
 13 A. Ground water.
 14 Q. -- application?
 15 A. Uh-huh.
 16 Q. And do you know the approximate year
 17 which you testified?
 18 A. I would say, 2007.
 19 Q. Okay. And that was before the Idaho
 20 Department of Water Resources?
 21 A. That's correct.
 22 Q. And the Idaho Power proceeding, who was
 23 the applicant in that proceeding; do you recall?
 24 A. Idaho Power Company.
 25 Q. And was it a water right application?

1 A. It was.
 2 Q. And did you offer testimony in that?
 3 A. Yes.
 4 Q. And that was before the Idaho
 5 Department of Water Resources?
 6 A. Yes.
 7 Q. Was that a ground water application?
 8 A. Yes.
 9 MS. HOFSTETTER: Okay. Thank you,
 10 Mr. Squires.
 11 Before we go off the record for today,
 12 I've spoken with Mr. Honsinger about marking as
 13 Exhibits E and F, excerpts from the discovery
 14 responses that T-7, LLC, and the Terteling
 15 Company, Inc. served yesterday. And the excerpts
 16 relate to the expert witness issue that we
 17 discussed earlier.
 18 And indicate further, that Mr. Squires
 19 is not expected to testify at the trial in this
 20 matter, unless he is needed as a rebuttal
 21 witness. Is that correct, Mr. Honsinger?
 22 MR. HONSINGER: That's correct at this
 23 time. I might also offer that the discovery
 24 deadline has not yet passed, but I don't
 25 anticipate changing these discovery responses,

1 although we may.
 2 MS. HOFSTETTER: Okay. And what's been
 3 marked Exhibits E and F are true and correct
 4 excerpts of the discovery responses you served
 5 yesterday?
 6 MR. HONSINGER: I'm not a witness in
 7 this matter. I want to make that clear. But so
 8 my answer is not under oath, in other words.
 9 But, yes, to the best of my knowledge, yes,
 10 that's correct.
 11 MS. HOFSTETTER: Thank you.
 12 And as indicated earlier, Edwards
 13 Family, LLC continues this right to continue this
 14 deposition of Mr. Squires if he is identified as
 15 a rebuttal, or otherwise expert witness to
 16 testify at trial.
 17 MR. HONSINGER: And the Terteling
 18 Company, Inc. and T-7, LLC reserve the right to
 19 contest that continuance. But we can discuss
 20 that at another time.
 21 MS. HOFSTETTER: Thank you. We can go
 22 off the record. Thank you.
 23 (Deposition concluded at 10:38 a.m.)
 24 (Signature requested.)
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REPORTER'S CERTIFICATE

I, COLLEEN P. KLINE, CSR No. 345, Certified
Shorthand Reporter, certify:

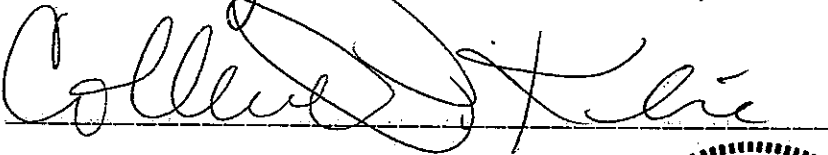
That the foregoing proceedings were taken
before me at the time and place therein set
forth, at which time the witness was put under
oath by me;

That the testimony and all objections made
were recorded stenographically by me and
transcribed by me or under my direction;

That the foregoing is a true and correct
record of all testimony given, to the best of my
ability;

I further certify that I am not a relative
or employee of any attorney or party, nor am I
financially interested in the action.

IN WITNESS WHEREOF, I set my hand and seal
this 16th day of June, 2010.



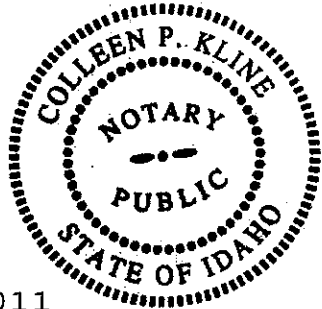
COLLEEN P. KLINE, CSR

Notary Public

P.O. Box 2636

Boise, Idaho 83701-2636

My commission expires September 17, 2011



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testified 4:3 9:2 11:10 13:3 18:1 19:4,7 29:12 30:3 30:17 testify 6:15 12:23 14:21 19:3,8 31:19 32:16 testifying 4:16 5:17 10:4,8,10 testimony 3:2 5:5 10:9 12:3 16:11 18:10,14,19 31:2 tests 11:3 Teton 12:11,11,14 15:22 16:1 Thank 20:6 22:6 31:9 32:11,21,22 things 4:6 19:16 21:19 think 5:12,25 6:11 12:25 13:22 14:6 15:16 16:14 19:10 19:13,14 21:19 29:3,16,20 three 7:10 13:22 16:14 17:16 Tiegs 25:7 time 4:22 6:13 14:1 14:5 17:22 23:3 31:23 32:20 times 20:3 today 5:5,13 7:19 7:24 17:24 31:11 today's 19:20 track 19:17 transfer 26:5,8,11 26:12 28:21,24 trial 6:8,17 31:19 32:16 trials 9:3,5,9 triangle 25:8 true 32:3 truth 4:2 try 9:13 18:6 trying 29:20 TTCI 6:16 turn 20:10 22:20	23:17 turning 21:8 turns 7:13 TWIN 1:2 two 15:15 17:16 21:15 28:7 29:16 type 21:23 Tyson 13:19 16:24 T-i-e-g-s 25:8 T-7 3:20 6:14,16 25:2 31:14 32:18 U Uh-huh 23:20 30:15 ultimately 16:21 understand 18:11 understanding 18:18 unit 10:21 United 17:15,18 25:15 University 23:4,8 up-to-date 8:20 use 14:16,20 25:22 UWID 25:14 V valley 9:25 11:22 12:11,14,18 15:22 30:3 vast 18:7 versus 12:12 Vest 12:12 15:25 vitae 3:10 4:20 8:18 20:11 V-e-s-t 15:25 W Waag 23:6 want 9:22 18:8 32:7 Warm 25:11 water 8:11,13,14 9:15,17 10:2,25 11:6,16,22 12:1,4 12:11,13,13,21 13:17 14:3,15,19	15:7,8,8,19 16:2,4 16:7,16 17:3,7,15 17:18,20 22:24 23:9,10,21 24:3,6 24:7,13 25:12,15 25:22 27:8 28:2,4 28:7 29:23 30:2 30:12,13,20,25 31:5,7 water-related 20:7 way 13:2,7 15:16 28:24 weir 25:21 wells 11:3 23:23 24:4,14,24 25:4 26:20,23 27:4 went 4:4 13:2 15:16 19:11 weren't 25:24 West 2:4,13 7:10 14:1 18:13 we'll 12:16 29:7 wind 24:17 winter 12:14, withdrawal 16:4 withdrawals 17:3 witness 4:9,10,13 5:4 6:2,7,9 12:6 13:17,20,25 14:4 20:4 22:11 31:16 31:21 32:6,15 Wood 23:7 words 7:10 32:8 work 4:23 14:10 18:24 21:23 22:7 23:2,2,25 24:9 25:17 worked 16:20 17:15 working 10:16,19 27:11 write 12:16 written 10:9,11 16:10 18:10,15 wrong 6:12 W-a-a-g 23:7 X	X 3:1,6 Y Yeah 15:24 year 30:16 years 9:3,19,25 12:7 15:12 17:11 18:9 19:19 29:12 yesterday 4:11 5:8 8:17 31:15 32:5 1 1 20:20 10:38 32:23 1002 7:10 11 26:15,16 15 1:18 2:5 1921 25:23,24 1990s 27:9 1993 23:23 24:5,9 26:21,23 2 2 7:22 23:18,21 25:10 26:18 2002 25:23 2007 30:18 2010 1:18 2:5 22nd 22:3,9,11,13 22:15,19 26(b)(4) 6:1 26(b)(4)(b) 6:4,5 27 3:11 2773 2:19 28 3:14 29 3:15,20 3 3 9:14 10:15,19 11:13 25:10,16 3rd 2:18 345 1:23 36 24:3 39576 1:5 4 421 2:4 455 2:18	5 5 21:8 28:3 6 6 25:20 6,000 10:21 608 2:13 63-12 1:4 63-13 1:4 63-14 1:4 63-15 1:5 63-16 1:5 63-2103A 1:5 63-2103B 1:6 63-21875 1:8 63-27649 1:8 63-276761 1:8 63-30006 1:9 63-30007 1:9 63-308 1:5 63-31050 1:9 63-31051 1:10 63-31052 1:10 63-31053 1:10 63-31054 1:11 63-31055 1:11 63-31056 1:11 63-31057 1:12 63-31058 1:12 63-31059 1:12 63-31060 1:13 63-31062 1:13 63-32895 1:13 63-3603 1:6 63-4037 1:6 63-5067 1:7 63-5195 1:7 63-7595 1:7 63-9758 1:7 68558 28:25 7 7 3:3,8 8 8 3:10 80s 27:9 83701-2773 2:20
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Attorney for Edwards Family LLC

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

In Re SRBA

Case 39576

)
) Subcase Nos. 63-12, 63-13, 63-14,
) 63-15, 63-16, 63-308, 63-2103A,
) 63-2103B, 63-3603, 63-4037, 63-5067,
) 63-5195, 63-7595, 63-9758, 63-21875,
) 63-27649, 63-27671, 63-30006, 63-30007,
) 63-31050, 63-31051, 63-31052, 63-31053,
) 63-31054, 63-31055, 63-31056, 63-31057,
) 63-31058, 63-31059, 63-31060, 63-31062,
) 63-32895
)

) NOTICE OF DEPOSITION DUCES
) TECUM

TO: THE TERTELING COMPANY, INC. AND T-7, LLC, AND THEIR COUNSEL
OF RECORD, CHARLES L. HONSINGER

PLEASE TAKE NOTICE that Edwards Family, LLC, will take testimony upon oral examination of The Terteling Company, Inc. and T-7, LLC's expert, Ed Squires, before a certified court reporter from the offices of M&M Court Reporting Service, 421 West Franklin Street, Boise, Idaho 83702 on Tuesday, June 15, 2010, at 9:30 a.m., and continuing thereafter from day to day until completed, at M&M Court Reporting Service, 421 West

NOTICE OF DEPOSITION DUCES TECUM (ED SQUIRES) - 1



Franklin Street, Boise, Idaho 83702, at which time and place you are notified to appear and take such part in the examination as you may deem proper.

The deponent, Ed Squires (hereinafter referred to as "you"), is required to produce the following documents or things for inspection and/or copying at said deposition:

All documents, notes, writings, correspondence, records or reports, produced, created or written by you, including any prior testimony or statements given by you, whether recorded stenographically or otherwise, which reflect your opinions in these SRBA Subcases, relate in any way to the January 24, 2002 Settlement Agreement between The Terteling Company, Inc. and the Edwards Family, LLC or relate in any way to the issues in these SRBA Subcases.

All documents, email and correspondence received and/or supplied to you in connection with these SRBA Subcases or the January 24, 2002 Settlement Agreement between The Terteling Company, Inc. and the Edwards Family, LLC.

Any and all notes, highlighting, or markups you made of any documents or materials (including electronic versions) which you reviewed in connection with these SRBA Subcases or the January 24, 2002 Settlement Agreement between The Terteling Company, Inc. and the Edwards Family, LLC.

All drafts of your reports as well as your final reports in connection with these SRBA Subcases, relating to the January 24, 2002 Settlement Agreement between The Terteling Company, Inc. and the Edwards Family, LLC, relating to the issues in these SRBA Subcases, or relating to the Stewart Gulch Geothermal Aquifer and any and all correspondence, notes, checklists, or any form of writing, electronic or otherwise, of conferences between you and The Terteling Company, Inc. and T-7, LLC's counsel concerning such matters.

All facts and data underlying your expert opinion in these SRBA Subcases, including complete copies of any articles, journals, text excerpts, or other material upon which you rely in forming your opinions.

Any and all articles, literature, treatises journals, textbooks, practice guides, protocols, or other materials reviewed and/or considered by you in connection with these SRBA Subcases.

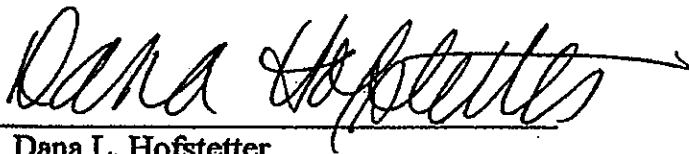
A copy of your curriculum vitae, which is current to the date of your deposition.

This deposition shall be taken pursuant to the Idaho Rules of Civil Procedure.

RESPECTFULLY SUBMITTED this 14th day of May, 2010.

HOFSTETTER LAW OFFICE, L.L.C.

By

A handwritten signature in cursive script, appearing to read "Dana Hofstetter", written over a horizontal line.

Dana L. Hofstetter

CERTIFICATE OF SERVICE

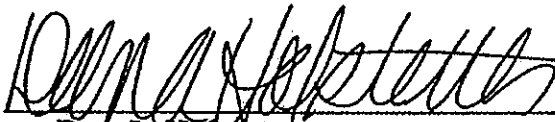
I hereby certify that on the 14th day of May, 2010, I caused to be served copies of the foregoing Notice of Taking Deposition Duces Tecum by the methods indicated below:

Idaho Department of Water Resources
Document Depository
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Boise, Idaho 83720-0098
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Moffatt Thomas
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Boise, Idaho 83701
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Ringert Law
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David Niznik
Diane Peck-Niznik
3911 Whitehead
Boise, Idaho 83703
☒ U.S. Mail ☐ Fed Ex ☐ Hand ☐ Fax


Dana L. Hofstetter

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Edward Squires, R.P.G.

EDUCATION

M.S. Interdisciplinary Hydrogeology, 1992, Boise State University, Boise, Idaho.

Advisors: Dr. S.H. Wood (BSU) and Dr. J.L. Osienky (U of I).

B.S. Geology, groundwater emphasis, cum laude, 1990, Boise State University, Boise, Idaho.

Advisor: Dr. C. M. White.

Thesis: Hydrogeologic Framework of the Boise Aquifer System, Ada County, Idaho.

REGISTRATION

Registered Professional Geologist, since 1999, Certificate No. 968

Professional Well Log Analyst, since 1995

Certified Water Right Examiner, Certification No. 09-125

OVERVIEW

Ed Squires is the President and Managing Hydrogeologist for Hydro Logic, Inc. of Boise, Idaho. Before starting his own consulting firm in 1999, he served for 6 years as Manager of the Geosciences Department and Company Hydrogeologist for United Water Idaho, Inc. In that capacity, Mr. Squires has consulted on a variety of water resource projects to the United Water Resources group of companies around the United States. He has been part of the adjunct graduate faculty at Boise State University's Department of Geosciences since 1995, regularly teaching a curriculum course in Field Hydrogeology and serving as a guest lecturer for other water-related coursework. Prior to his tenure at United Water Idaho, Mr. Squires worked as a hydrogeologist for S.H. Wood and Associates and has over twenty years of hands-on groundwater and geophysical experience.

Mr. Squires' professional career and current practice emphasizes all aspects of responsible groundwater development, water rights, and resource protection. He has conducted extensive research and published several reports on the groundwater and subsurface hydrogeology of the Boise River Valley since publication of his Masters Thesis, entitled "Hydrogeologic Framework of the Boise Aquifer System, Ada County, Idaho". Mr. Squires served three years on the Technical Advisory Committee of the Treasure Valley Hydrologic Project and has been a member of the Southeast Boise Groundwater Management Area Committee, formed as a result of his research in Southeast Boise, since 1994. He recently served on the Technical Advisory Committee for the Hydrogeologic Framework and Computer Modeling Project for the Boise Front Geothermal Groundwater Management Area and was been appointed by the Director to the Negotiated Rulemaking Committee to draft new administrative rules for well drilling in the State of Idaho. Ed currently is an active member of the Technical Working Group for North Ada County studies at IDWR at the request of the Director.

Mr. Squires has designed and supervised the construction of over 300 large bore, high capacity water supply wells averaging 500 feet deep in sedimentary and volcanic aquifers. He has designed, supervised the construction, developed, and tested more than 60 deep (500-to-1000 feet) exploratory test/observation wells in addition to multiple geothermal and irrigation well development projects. In addition to new well installations, Mr. Squires has run down hole camera surveys and borehole geophysical logs in hundreds of wells throughout the Western States and has been in charge of rehabilitative maintenance/reconstruction of over 100 older wells.

Mr. Squires is a registered Professional Geologist (No. 968) in Idaho and a Professional Well Log Analyst. He is a member of the National Groundwater Association, the Association of Ground Water Scientists and Engineers,



and is a Certified Water Rights Examiner in the State of Idaho (10-125).

REPRESENTATIVE PROJECT EXPERIENCE

Groundwater Development

- 1) Design, construction oversight, development, and testing of over 300 large bore, high capacity production supply wells for public drinking water systems, municipalities, and private utilities.
- 2) Designed, organized, and supervised 14 regional scale, long-term aquifer tests including those for the State of Idaho Department of Corrections, United Water Idaho, Inc., Water District 63-S, Mesa Water Corporation, Tamarack Resort, Crane Creek Country Club, Wickenburg Ranch, and M3 Eagle.
- 3) Conducted and interpreted borehole geophysical logs in newly drilled wells and provided design information for hundreds of well projects for industrial, commercial, agricultural, and municipal wells in the western U.S.
- 4) Testing/analysis of United Water Idaho's infiltration galleries (Ranney Collectors) along the Boise River.
- 5) Pumping test analysis and pumping plant design of municipal supply wells for the Cities of Caldwell, Meridian, Kuna, and Garden City.
- 6) Ground water quality and water geochemistry evaluations for the Cities of Meridian, Caldwell, Kuna, and Garden City, United Water Idaho, Capitol Water Corp., Tamarack Resort, and Pepsico USA, SSI Food Industries, Idaho Power Company, Wickenburg Ranch, and numerous other commercial and subdivision clients.
- 7) Hydrogeologic and geophysical investigations for groundwater supply projects for the Idaho cities of Boise, Meridian, Caldwell, Mountain Home, Nampa, Greenleaf, Kuna, Marsing, Buhl, Rupert, Eagle, Cascade, Donnelly, Victor, Star, Emmett, Glenns Ferry, and Notus. Also the Cities of Hawthorne NV, Mt. Vernon OR, LaGrande OR, Island City OR, and Walla Walla WA.

Geothermal

- 1) Water-level monitoring and data analysis of the BWSWD Well #3, Kanta-Yanke, Behrman, Quarryview Park, Koch, and BLM geothermal wells 1984-1987.
- 2) Water-level monitoring of the Terteling Ranch and Flora Nursery geothermal wells 1993- present.
- 3) Geophysical investigations of the BWSWD #1 and #2, Kanta, BLM, Ranch, UWID Cartwright, Crane Creek Country Club, Simplot Ranch, Jeker Ranch wells.
- 4) Six-well, aquifer testing of the Crane Creek area geothermal wells using the Simplot Ranch, Crane Creek GC, and UWID wells as pumping wells. Settled UWID/Simplot water rights dispute - (194-1995).

- 5) Project manager for the rehabilitation of the Terteling Ranch Pool, Motorcycle Club, and Windsock geothermal wells – 1990's.
- 6) Evaluation of historical weir flow data and geothermal water use at Flora Nursery – 1921-2002.
- 7) Co-leader of the Treasure Valley Hydrologic Project Foothills Field Trip to view exposed geothermal aquifer rocks along the Boise Front 1998.
- 8) Conducted geophysical surveys for the J.R. Simplot Co.'s Aquaculture Project in Caldwell, ID.
- 9) Expert witness for Flora Nursery during protested geothermal Transfer application 2001-2002.
- 10) Expert witness for The Terteling Company during protested Petition by the City of Boise to increase geothermal water withdraws from the Boise Geothermal Aquifer 2002.
- 11) Hydrogeologic Framework Refinement and Simulation of Hydraulic Head and Temperature in the Boise Geothermal Aquifer -Technical Advisory Committee member 2002.
- 12) Co-author of the Boise Front Geothermal Aquifer Monitoring Plan June 2002.
- 13) Project manager for the geothermal exploration drilling and seismic reflection surveys project at Tamarack Resort 2005.

Aquifer Recharge

- 1) Project manager for the United Water Idaho, Inc.'s Swift Aquifer Storage and Recovery project (aquifer recharge) in West Boise, Idaho, 1996-1999.
- 2) Consulting hydrogeologist to United Water Resources for various aquifer recharge projects along the east coast 1996-1999.
- 3) Geophysical and hydrogeological consultant to the State of Idaho Department of Water Resources' Managed Recharge Project including providing open-hole geophysical logs and borehole video 2000.
- 4) In-situ Aquifer Storage and Recovery project for dissolved iron concentrations in ground water in the Tamarack Resort municipal supply Well #7 ; successful elimination of iron 2004.
- 5) Attended two international ASR conferences and two recharge conferences in the US.
- 6) Member of the National Groundwater Association's ASR Task Force, 2009-2010
- 7) City of Meridian ASR Evaluation for City Well #23, 2009.

Water rights

- 1) Preparation, filing, and follow-through of numerous water right transfers and water right permit applications and transfers for public utilities, municipalities, the State of Idaho, commercial, and agricultural water users in Idaho.
- 2) Evaluation of surface water rights and filing of transfer applications in Little Salmon River Valley.
- 3) Expert witness in Basinwide Issue #5 – Conjunctive Management of Water Resources in Idaho.
- 4) Expert witness in all manner of water right disputes, protests, and well interference issues before the Idaho Department of Water Resources including groundwater/surface water interactions
- 5) Evaluations and filing of claims in the Snake River Basin Adjudication.
- 6) Certified Water Right Examiner in the State of Idaho regularly conducting field licensing examinations and evaluations of pumping systems including determination of historical use.
- 7) Continual involvement in the interpretation and application of the tenets of the State of Idaho Water Code with respect to groundwater resource development and management.
- 8) Project manager for United Water Idaho, Inc. concerning the implementation of the 1996 Municipal Water Rights Statute 1994-1999.
- 9) Successful "Municipal" water rights application for the Idaho Dept. of Transportation for its Issac's Canyon Rest Area near Boise. 1st use of 1996 Municipal Water Rights Statute for the State of Idaho.
- 10) Co-author of the first successful municipal "future needs" water right application in Idaho and three pending subsequent future needs applications.
- 11) Water rights consultant to the Idaho Department of Corrections for several facility locations.

Groundwater Development Feasibility Studies

- 1) Design, construction oversight, development, water quality testing, and monitoring of over 50 deep (500-1000 feet) exploratory test-well and piezometer nest installations for municipal and industrial water providers in Southwest Idaho..
- 2) Groundwater Feasibility Study For Idaho Power Co.'s Pahsimeroi Fish Hatchery, Lemhi, County, Idaho.
- 3) Reconnaissance Level Groundwater Feasibility Study for the Idaho Power Company's Oxbow Fish Hatchery at the Confluence of Pine Creek With the Snake River in the Hells Canyon Reach, Baker County, Oregon.

- 4) Hydrogeologic Evaluation of Groundwater Quality and Yield Beneath the Idaho Power Company's Pahsimeroi Fish Hatchery – Upper Facility.
- 5) Analysis of the 2001 Aquifer Testing for the Municipal Water Supply of the Proposed WestRock Resort, Donnelly, Valley County, Idaho.
- 6) Groundwater Conditions and Hydraulic Testing of the Boise Fan-Aquifer of Southeast Boise River Valley, Ada County, Idaho.
- 1) Evaluation of the Hydrogeologic Framework and Groundwater Production Potential of the Kings River Valley, Nevada.

Resource Protection

- 1) Investigation, design and oversight of the decommissioning and proper abandonment of 46 aging and unsealed large-bore production well using perforate-and-pressure grouting techniques.
- 2) Design and oversight of the pressure grout sealing and rehabilitation of four high-yield unsealed wells.
- 3) Development and implementation of a baseline (pre-development) surface water quality monitoring plan for the proposed Tamarack Resort, Donnelly, ID.
- 4) Served two years representing the City's of Meridian, Caldwell, and Kuna on the negotiated rulemaking committee for revision of Idaho's administrative rules for well drilling at request of the Director of the Department of Water Resources.

EMPLOYMENT

1999-present President and Managing Hydrogeologist; Hydro Logic, Inc.

1995-present Adjunct graduate faculty; Boise State University Department of Geosciences.

1994-1999 Sr. Hydrogeologist (RPG) United Water Idaho, Inc.; Geosciences Department Head.

1992-1994 Consulting Hydrogeologist. S.H. Wood and Associates, Boise, Idaho.

1990-1993 Staff Technician; Geophysical Well-logging Unit, Boise State University.

1989 summer Idaho Geological Survey; Idaho Initiative. Albion Range field-mapping.

1989 Internship; Boise Water Corp.; Digital Data Acquisition for Groundwater Studies.

1988 summer White/Naslund National Science Foundation Research Expedition to Kangerslugsuaag region of arctic East Greenland. Team member in charge of field mapping.

1987 summer Research assistant at BSU on hydrogeological studies. Design, construction, and operation of Boise State University's truck-mounted geophysical well-logging unit. Thin-section and X-ray diffraction laboratory manager.

PUBLICATIONS AND REPRESENTATIVE PROFESSIONAL REPORTS

Options For Improving Groundwater Quality in the City of Meridian Well #23, May 5, 2009 Technical memorandum to Public Works Director Tom Barry including a detailed evaluation for the potential for Aquifer Storage and

Recovery.

A Nine-Day Constant-Rate-Discharge Aquifer Test of the SVR #7 Test Well In Big Gulch, North Ada County, Idaho,

Consultant's report issued January 20, 2009

Ground Water Level Measurements the Northern Ada County Area Including the Proposed M3 Eagle Planned Community, to Dennis E. Owsley of the Idaho Department of Water Resources, Consultant's report issued March, 19. Hydro Logic, Inc., 2008a. Technical Memorandum.

Modeling of Groundwater Flow in the Pierce Gulch Sand Aquifer: Five Models: History, Updates and Predictions of Impacts Caused by Pumping at the M3 Eagle Planned Residential Community, Ada County, Idaho. Consultant's report issued November 26. Hydro Logic, Inc., 2008c.

M3 Eagle Regional Hydrogeologic Characterization, North Ada, Canyon and Gem Counties, Idaho One-Year Progress Report. Consultant's report issued May 4. Squires, E., Utting, M., and Pearson, L.H., 2007.

Re-analysis of 16 Aquifer Tests in the Greater Eagle-Star Area of North Ada County, Idaho. Consultant's report issued July 4. Utting, M. and Squires, E., 2008.

Movement of Dissolved Constituents From Surface to Groundwater and Analysis of Hydrochemical Trends in the Boise Aquifer, 2006, research paper in preparation with D. Glanzman.

Baseline Surface Water Quality Estimation For Streams In the Tamarack Resort Area, Donnelly, Valley County, Idaho: 2006, a four-year study to develop baseline geochemical signatures and annual flow rates/volumes for six area streams using the Probability Plot Analysis method.

Hydrogeologic Evaluation of the Feasibility for Ground Water Development Beneath the Miller Gulch Area of the Terteling Ranch in the Boise Foothills, Ada County, Idaho With Emphasis on Water Quality / Geochemistry: 2005, a report on the drilling, design, construction, and sampling of the Miller Gulch exploratory test-well bore and piezometer nest.

Options for Additional Ground Water Development and Replacement of the City of Caldwell's #7 Supply Well: 2005, a report on the drilling, design, construction, and sampling of an exploratory test-well and long-term dedicated piezometer nest/monitoring well at the City of Caldwell's existing municipal water supply well site, prepared for the City of Caldwell, Idaho Department of Public Works.

Boise Valley Groundwater Geochemistry – Origin, Infiltration Rate, and Transport Characteristics: 2005, abstract submitted to the 15th Annual Goldschmidt Meeting of international geochemists, co-author with Dick Glanzman, CH2M Hill. 4. Denver.

Treasure Valley Hydrologic Project Seismic Survey and Hydrogeologic Framework Study, 2003, research paper in preparation with Dr. S.H. Wood, and Lee Liberty of BSU.

Compilation of Drilling, Geological, Geophysical, Geochemical, and Hydraulic Testing Data for the City of Meridian, Idaho's Groundwater Supply: Including Detailed Well-Construction Information and Aquifer Pressure Measurements From a Long-Term Groundwater Monitoring Well Network, 2003, data compilation from a ten-year hydrogeologic study, funded by the City of Meridian.

City of Meridian, Idaho Source Water Protection Plan: 2003, prepared for the Idaho Department of Environmental Quality and the City of Meridian Department of Public Works.

Details of Drilling, Construction, and Hydraulic Testing of the Idaho State Correctional Institution #4 Supply Well, 2002, a report prepared for the Idaho Division of Public Works.

Results and Analysis of the 2001 Aquifer Testing for the Municipal Water Supply of the Proposed WestRock Resort, Donnelly, Valley County, Idaho: 2002, A report prepared for the Idaho Department of Water Resources.

Causative Factors of Detachment of the Mountain Home #1 Municipal Supply Well Pump With Details of the Recovery Effort: 2002, A report prepared for Ringert Clark Chartered Lawyers.

Evaluation, Abandonment, and Proposed Replacement of the Capitol Water Corporation's #5 (Lubkin) Municipal Supply Well 1999-2002: 2001, A report on the history of repair, the occurrence of volatile organic compounds, and the abandonment of an aging supply well in preparation for replacement of the #5 well with a new facility.

Preliminary Evaluation of the Well Construction, Present Down Hole Conditions, and Sustainable Yield of the Garden City #5 Municipal Well: 2001, A report the Garden City Public Works Department.

Stratigraphic Studies of the Boise (Idaho) Aquifer System Using Borehole Geophysical Logs With Emphasis on Facies Identification of Sand Aquifers: 2000, Report to the Treasure Valley Hydrologic Project, Idaho Department of

Water Resources, (co author with Dr. S.H. Wood).

- Geophysical signatures of lacustrine facies: Experience from Hydrostratigraphic Studies of temperate Neogene Lake Idaho sediments and aquifers, U.S.A., Abstract of the General symposium, 3-1 Lacustrine Sedimentation, 31st International Geological congress, Rio de Janeiro, Brazil, August 6-11, 2000 Wood, S.H., Liberty, L., and Squires, E.
- Hydrogeology, Geochemistry, and Well Construction of the Treasure Valley Hydrologic Project Monitoring Well #1, Ada County, Idaho; 1999, Final report to the Technical Advisory Committee (co-author).
- Supporting Data for the Groundwater Conditions and Aquifer Testing of the Tenmile Ridge Area of South Boise, Ada County, Idaho; 1998.
- Implications of Well-Construction to Aquifer Water-Quality: Some Observations; (principal author), 1997, Southwest Idaho Subsection - Pacific Northwest Section of the American Water Works Association; in Southwest Idaho As An Example of Ground Water Development in the Northwest Intermountain Region, Speakers Expanded Abstracts
- City of Meridian #15 Production Well: Discovery of a New, Good-Quality Aquifer; 1994, Professional report to the City of Meridian, Idaho.
- Groundwater Conditions and Hydraulic Testing of the Boise-Fan Aquifer of Southeast Boise River Valley, Ada County, Idaho; 1993, Report to Boise Water Corporation. (principal author).
- City of Meridian #14 Production Well; 1993, A new large-capacity municipal-supply well is completed in response to unprecedented 18% growth. Report to City of Meridian, Idaho.
- Hydrogeologic Framework of the Boise Aquifer System, Ada County Idaho; 1992, Project Completion Technical Report, Idaho Water Resources Research Institute, University of Idaho, Moscow, Idaho, 109 pages. (principal author)
- An Irrigation Well for the Les Bois Invitational Soccer Tournament Incorporated, 1992, professional report to Boise Water Corporation, 42 pages. (sole author)
- Hydrogeologic Investigation for the Proposed State of Idaho, Department of Transportation Blacks Creek Rest Area, Ada County, Idaho; 1992, report to Idaho Department of Transportation, 38 pages. (principal author)
- Investigation of Groundwater in the Tenmile Ridge Area of South Boise, Idaho; 1989, Report to Boise Water Corporation. (principal author)
- Origin of Granophytes in the Vandfalsdalen Macrodike, East Greenland; 1989, Evidence for Assimilation and Magma Mixing. GSA Abs. with Programs. (co-author)
- Crustal Assimilation and Coexisting Silicic and Mafic Magmas in the Vandfaldalen Macrodike, East Greenland: Continental Magmatism Abstracts (IAVCEI); New Mexico Bureau of Mines and Mineral Resources Bulletin 131. (co-author)
- Analysis of Historical and Current Water-level and Production Data from the Boise Geothermal System; 1988, Geological Society of America Abstracts. (co-author)
- Preliminary Geology and Hydrogeology of the Mayfield/Orchard Area, Elmore and Ada Counties, Southwest Idaho; 1988, (Best Undergraduate Paper in Physical Sciences), in Program and Abstracts, 30th Annual Meeting of the Idaho Academy of Science. (sole author)
- Geologic Study of Groundwater in Deep Wells, Southeast Boise Area; 1987, Report to Boise Water Corporation.

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

IN THE MATTER OF REQUEST FOR
GROUND WATER REGULATION: DECREED
RIGHT NOS. 63-0012, 63-0013
63-0014, 63-0015 & 63-0016, CLAIM
NO. 63-4037 AND PERMIT NO. 63-9758

) ORDER DENYING PETITIONS
) FOR REHEARING AND
) AMENDED FINAL MEMORANDUM
) DECISION AND ORDER
)

This matter came before the Idaho Department of Water Resources (Department) as a petition to form a water district and as a response to an Order to Show Cause why the Department should not prohibit or limit the diversion of water under certain ground water rights. On December 5, 1989, the Department issued a final Order creating Water District 63-S to control the distribution of water from the low temperature geothermal aquifer in Stewart Gulch. That final Order did not address the show cause matter and reserved any decision on certain unresolved legal issues pertaining to the Department's authority under the Ground Water Act. Those legal issues reserved in the December 5, 1989 final Order are addressed by the Department during these proceedings.

The Department issued a proposed decision on September 24, 1990, and exceptions were filed by Tee Ltd. (Quail Hollow) and Hunt Bros. Floral, Inc. (Hunt Bros.). On December 1, 1992, the Department issued a Final Memorandum Decision and Order that included Department responses to exceptions filed by Quail Hollow and Hunt Bros. Petitions for Rehearing were received from both J. L. Terteling and Quail Hollow during the month of December, 1992, raising several issues. The Department in this order addresses the issues raised in the petitions for rehearing and amends the Final Memorandum Decision and Order. W

ORDER DENYING PETITIONS FOR REHEARING

On December 22, 1992, Terteling Trust No. 7 and J. L. Terteling (herein collectively "Terteling") filed a Petition for

ORDER DENYING PETITIONS FOR REHEARING AND
AMENDED FINAL MEMORANDUM DECISION AND ORDER - Page 1

EXHIBIT

C

Rehearing before the Department advocating that the Department's Final Memorandum Decision and Order be modified in several respects.

Specifically, the Terteling petition requested that the Department exclude Terteling's wells from administration in Water District No. 63-S, appoint a local ground water board, eliminate protection for artesian pressure in the aquifer and correct an inconsistency in the Conclusions of Law of the Department's final decision.

On December 30, 1992, Quail Hollow filed a late Petition for Rehearing and Joinder in Terteling Petition for Rehearing with the Department requesting the Department reconsider its final order and appoint a local ground water board and establish reasonable ground water pumping levels in the aquifer.

Terteling's Petition for Rehearing and Quail Hollow's Petition for Rehearing are DENIED. The Department addresses the issues raised in the petitions by amending its Final Memorandum Decision and Order in the following manner:

A. Finding of Fact No. 10 will remain unchanged in the Amended Final Memorandum Decision as there appears to be a general interconnection between all the wells in the aquifer. The final order is amended to recognize the option of excluding the Terteling wells from regulation under Water District No. 63-S if it can be demonstrated that there is no interconnection with the other wells in the aquifer.

B. The Department declines to appoint a local ground water board. The issues raised in the petitions for rehearing do not involve a senior ground water right alleging injury because of interference from a junior ground water right as contemplated under Idaho Code § 42-237(b). Moreover, formation of a local ground water board is unnecessary in view of the changes incorporated in the Department's Amended Final Memorandum Decision and Order.

C. The Department will regulate Water District No. 63-S pursuant to the terms of the Silkey v. Tiegs decree pending

adjudication of the affected rights in Twin Falls County Case No. 39576 (Snake River Basin Adjudication). Legal issues involving the establishment of reasonable pumping levels and the protection of artesian pressure raised in the petitions for rehearing can be raised before the court in the Snake River Basin Adjudication.

D. The inconsistency in the Conclusions of Law identified by the Terteling petition for rehearing is corrected by the deletion of Conclusion of Law No. 11 from the Department's original decision.

AMENDED FINAL MEMORANDUM DECISION AND ORDER

FINDINGS OF FACT

1. On August 22, 1989, Hunt Bros. Floral, Inc. (Hunt Bros.) filed a petition with the Department requesting the creation of a water district and the appointment of a watermaster for the Stewart Gulch Low Temperature Geothermal Basin located in the vicinity of 36th Street and Hill Road in Boise, Idaho. On the same date, Hunt Bros. requested that the Department issue a summary order prohibiting any further withdrawals of water from certain wells operated by Quail Hollow Golf Club (Quail Hollow) within the basin.
2. On August 25, 1989, the Department issued an Order to Show Cause directing certain well owners in the Stewart Gulch Low Temperature Geothermal area to show cause why the Department should not issue an order prohibiting withdrawals from their respective wells.
3. On September 7, 1989, the Department commenced a hearing on the Petition to Create a Water District and on the request for issuance of an order prohibiting further withdrawals from the Quail Hollow wells.
4. The hearing was reconvened by the Department on September 13, 1989 and September 14, 1989 to allow the participants additional time to introduce evidence on the matters at issue.
5. Preliminary investigations by the Department and testimony at the hearing indicate that during pumping in the late summer Quail Hollow Golf Club's irrigation wells interfere with the

artesian pressure and the delivery of hot water to wells owned by Hunt Bros., the senior water right holders in the case of Silkey v. Tiegs, et al., Ada County Case No. 11748, June 13, 1930.

6. The rights to the use of low temperature geothermal ground water from certain wells in the vicinity of 36th Street and Hill Road in Boise, Idaho were decreed in the Silkey case. The court found that water to supply the rights was diverted from a common and interconnected source.

7. The Silkey decree recognized that the ground water in Stewart Gulch was diverted by means of artesian pressure and directed the Department to regulate and measure the flows of the wells and to create a water district under the applicable law.

8. Water right identification numbers and the current users of water as confirmed by the Silkey decree are as follows:

Hunt Bros. Floral, Inc. - 63-0012
63-0013
63-0015

Edwards Greenhouses - 63-0014

M. E. or R. E. Ryan - 63-0016

9. Quail Hollow operates two wells for irrigation purposes under Claim No. 63-4037 and Permit No. 63-9758. Claim No. 63-4037 claims a priority date of October 1, 1931. Permit No. 63-9758 has a priority date of June 30, 1981.

10. Department records and testimony indicate that the water supply for the wells owned by J. A. Terteling and the well owned by Raymond F. Stralow appear to be interconnected to the same water supply described in the Silkey decree and used for irrigation by Quail Hollow.

11. The following is a list of adjudication claim numbers assigned to claims filed by the well owners for water rights in the Snake River Basin Adjudication.

<u>Owner</u>	<u>Adjudication Claim No.</u>	<u>Water Right No.</u>
Hunt Bros.	A63-0012	63-0012
	A63-0013	63-0013
	A63-0015	63-0015
Edwards Greenhouse	A63-0014	63-0014
M.E. or R.E. Ryan	A63-0016	63-0016
Quail Hollow		
a) Victor L. Nibler	A63-4037	63-04037
b) TEE Limited	(No Claim Filed)	63-09758
J.A. Terteling	A63-03603	63-03603
	A63-07595	63-07595
Raymond Stralow	A63-05195	63-05195

12. Evidence at the hearing established that Hunt Bros. acquired the Tiegs well, and began diverting water under its water right entitlement from the Tiegs well. Evidence also established that the nature of use by Hunt Bros. has changed, both by a transfer which was approved in 1954, and by transfers accomplished without recording.

13. There was no evidence of forfeiture by Hunt Bros. or the other right holders.

14. The Silkey decree prohibited diversion of water from the Tiegs well and the Ryan well. Both of these wells have been used for diversion of water.

15. In response to the petition to create a water district, the Department issued an order dated December 5, 1989 creating Water District No. 63-S for the low temperature geothermal water resource in Stewart Gulch.

16. The order creating a water district, dated December 5, 1989, did not address the show cause matter and reserved any decision on certain unresolved legal issues pertaining to the Department's authority under the Ground Water Act.

17. The Department issued a Proposed Decision and Order for the show cause order on September 24, 1990.

18. On December 1, 1992, the Department issued a Final

Memorandum Decision and Order that included Department responses to the exceptions filed by Quail Hollow and Hunt Bros.

19. The Department has been informed that Hunt Bros. no longer own the property, and the current owner is "Flora Company."

20. A matter herein expressed as a Finding of Fact which is later deemed to be a Conclusion of Law is hereby made a Conclusion of Law.

CONCLUSIONS OF LAW

1. Idaho's Constitution provides that all waters within the state are subject to the regulation and control of the state. Idaho Const. art. XV § 1, provides:

Use of waters a public use. - The use of all waters now appropriated, or that may hereafter be appropriated for sale, rental or distribution; also of water originally appropriated for private use, but which after such appropriation has heretofore been, or may hereafter be sold, rented, or distributed, is hereby declared to be a public use, and subject to the regulations and control of the state in the manner prescribed by law.
(Emphasis added).

2. The state has a statutory duty to supervise the appropriation and allotment of the water resources of the state to water users who divert the water for beneficial use. Idaho Code § 42-101 (1990) prescribes in part:

Nature of property in water. - Water being essential to the industrial prosperity of the state, and all agricultural development throughout the greater portion of the state depending upon its just apportionment to, and economical use by, those making a beneficial application of the same, its control shall be in the state, which, in providing for its use, shall equally guard all the various interests involved. All the waters of the state, when flowing in their natural channels, including the waters of all natural spring and lakes within the boundaries of the state are declared to be the property of the state, whose duty it shall be to supervise their appropriation and allotment to those diverting the same therefrom for any beneficial purpose

(Emphasis added).

3. The state's duty to supervise the appropriation of water

applies to all subterranean waters as well as to surface waters within the state. I.C. § 42-103.

4. The low temperature geothermal waters at issue in this action have been the subject of previous litigation in which the court applied the general water laws and principles under Idaho law. The Idaho Court, citing Hinton v. Little, 50 Idaho 371, 296 P. 582 (1931), specifically acknowledged that the underground artesian waters at issue in this matter are subject to the laws of prior appropriation. Silkey v. Tiegs, 51 Idaho 344, 5 P.2d 1049 (1931).

5. The proposed decision issued earlier discussed at length the authority of the Director to regulate diversions and require a reasonable pumping level even before the passage of the Ground Water Act in 1951. The entire discussion has been omitted because the Department is not required to determine a reasonable pumping level in this case.

6. ~~The Silkey decree established that artesian pressure should be protected from further declines.~~

7. Because the Silkey decree specifically addressed and protected artesian pressure in the aquifer, the Department, in deference to the Silkey decree, ~~will refrain from examining whether the artesian pressure in Stewart Gulch constitutes a reasonable pumping level and is in the public interest pursuant to I.C. § 42-226 until such time as the court addresses the issue in the Snake River Basin Adjudication.~~

8. The watermaster of Water District No. 63-S must administer the waters of Stewart Gulch ~~in accordance with the provisions of the Silkey v. Tiegs decree, including the protection of the artesian pressure necessary to deliver water to the prior appropriators.~~ ~~I.C. §§ 42-237a and 42-607.~~

9. Hunt Bros., or its successors, is entitled to full use of its water rights in order of priority from the point of diversion it has acquired, including the Tiegs well.

10. Water users from the Ryan well and the Stralow well may

continue to divert water for domestic purposes, provided the use does not cause significant decline in the artesian pressure for any diversion which causes injury to earlier in time water rights.

11. Matter herein expressed as a Conclusion of Law which is later deemed to be a Finding of Fact is hereby made a Finding of Fact.

ORDER

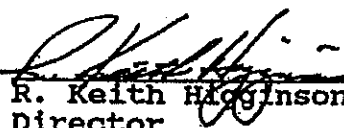
IT IS HEREBY ORDERED that the Watermaster of Water District No. 63-S shall administer the ground water in the water district under the terms of the Silkey v. Tiegs decree and according to the laws of prior appropriation.

IT IS FURTHER ORDERED that the Watermaster of Water District No. 63-S shall, upon his determination that there is not sufficient water that can be delivered by artesian pressure to fill a senior ground water right, limit or prohibit withdrawals from wells within the water district having a later priority. The Department will consider altering the boundaries of Water District No. 63-S to eliminate regulation of a well if its owners demonstrate to the satisfaction of the Director of the Idaho Department of Water Resources that regulation of the wells will not impact the water availability to the other well in the aquifer having a senior right and should not, therefore, be regulated within Water District No. 63-S.

IT IS FURTHER ORDERED that ~~this Amended Final Memorandum Decision and Order shall only govern the administration of low temperature geothermal ground water from Water District No. 63-S until such time as the water rights are adjudicated and all other relevant matters necessary to define the rights are addressed in Twin Falls County Case No. 39576 (Snake River Basin Adjudication).~~

This order is not intended to preclude or limit any wateruser from advancing any legal argument or defense before the District Court in Twin Falls County Case No. 39576 involving any issue raised or ruled upon by the Department in its Amended Final Memorandum Decision and Order.

Dated this 27th day of October, 1993.


R. Keith Higginson
Director

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 27th day of October, 1993, I mailed a true and correct copy of the foregoing Order Denying Petitions for Rehearing and Amended Final Memorandum Decision and Order, postage prepaid to the following:

William F Ringert
Ringert, Clark et al
PO Box 2773
Boise, ID 83701

J A Terteling
877 W Main Rm 706
Boise, ID 83702

Susan D Miner
Hawley, Troxell et al
PO Box 1617
Boise, ID 83701

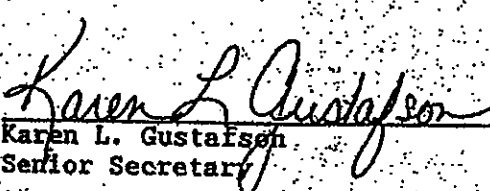
Jeffrey C Fereday
Givens Pursley et al
PO Box 2720
Boise, ID 83701

Kenneth R Arment
Brady, Saetrum & Lerma
PO Box 1398
Boise, ID 83701

Ray F Stralow
3911 Whitehead
Boise, ID 83703

Michael C Creamer
Givens Pursley et al
PO Box 2720
Boise, ID 83701

M E and R E Ryan
4505 Foothill Dr
Boise, ID 83703


Karen L. Gustafson
Senior Secretary

SETTLEMENT AGREEMENT

This Settlement Agreement (the "Agreement") is made and entered into this 24th day of January, 2002, between The Terteling Company, Inc., an Idaho corporation ("Terteling"), and the Edwards Family, LLC, an Idaho Limited Liability Corporation ("Edwards"). Terteling and Edwards may be referred to hereinafter individually as "Party" or collectively as the "Parties."

Recitals and Background Information

A. Terteling represents that it owns Water Right Nos. 63-00012, 63-00013 and 63-00015, which were decreed in *Silkey v. Tiegs*, Ada County Case No. 11748, *on review* 51 Idaho 344 (1931) and 54 Idaho 126 (1934) ("*Silkey v. Tiegs*"). *Silkey v. Tiegs* adjudicated rights to use geothermal water from an aquifer referred to herein as the Stewart Gulch Geothermal Aquifer. Water Right Nos. 63-00012 and 63-00013 (the "Silkey Rights") are the two most senior water rights decreed in *Silkey v. Tiegs* with priority dates of July 1, 1921 and July 1, 1922 respectively. Water Right No. 63-00015 (the "Tiegs Right") is designated in *Silkey v. Tiegs* with a priority date of March 23, 1927.

B. Edwards represents that it owns Water Right No. 63-00014 (the "Edwards Right"), which was decreed in *Silkey v. Tiegs* with a priority date of November 22, 1926. The Edwards Right is diverted from a well located in SE¼ SW¼ NE¼ Section 29, Township 4 North, Range 2 East, Boise Meridian (the "Edwards Well").

C. By Final Orders dated December 5, 1989 and December 1, 1992, the Department established Water District 63-S (the "District") and implemented watermaster administration of water rights diverted from the Stewart Gulch Geothermal Aquifer in the District. As of the date of this Agreement, the District is not active.

D. The Parties estimate that the total sustainable volume of water that can be diverted annually from the Stewart Gulch Geothermal Aquifer is approximately between 650 AFA to 750 AFA.

E. On October 2, 2000, Terteling filed with the Department an Application for Transfer of Water Right for the Silkey and Tiegs Rights (Transfer No. 68558), seeking approval to divert and use these rights from an alternate point of diversion (the "Windsock Well") in the



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NW¼ SW¼ Section 22, Township 4 North, Range 2 East, Boise Meridian, and at a new place of use in Section 22, Township 4 North, Range 2 East, Boise Meridian. The land, including place of use and diversion points, currently associated with the Silkey and Tiegs Rights is described in Exhibit A hereto. The land on which the Silkey and Tiegs Rights' proposed alternate point of diversion and new place of use is located is described in Exhibit B hereto. Also, on October 2, 2000, Terteling filed with the Department an Application for Transfer of Water Right (Transfer No. 68559) for diversion and use of cold water at locations near the Windsock Well. These two Applications for Transfer of Water Right (Transfer Nos. 68558 and 68559), as amended, will be referred to herein as the Transfers. Paul Edwards, a principal of Edwards, filed protests against the Transfers on December 22, 2000 (the "Protests"). Edwards' land associated with Water Right No. 63-00014 is described in Exhibit C hereto.

F. The Parties believe it is in their mutual interests to resolve the Protests and to enter into a comprehensive agreement to mutually protect their most senior water rights in the Stewart Gulch Geothermal Aquifer.

NOW, THEREFORE, in consideration of the mutual promises and covenants hereinafter expressed, the Parties agree as follows:

1. **Withdrawal of Protests.** Within five days after execution of this Agreement by both Parties, Edwards shall file with the Department appropriate documents suspending Paul Edwards' Protests to the Transfers pending the Department's approval of the Transfers that caps the maximum combined annual diverted volume for the Silkey and Tiegs rights at 400 AFA.

2. **Reactivation of District 63-S.** Within ten days of the Department's approval of the Transfers, the Parties will file a petition with the Department requesting a special meeting of the water right holders of the District for the purpose of reactivating the District by appointment of a watermaster for administration of water rights and by reinstituting measurement and reporting for water rights in the District. Thereafter, in subsequent years, the Parties shall use all reasonable efforts to ensure the continued appointment of a District watermaster and implementation of the District measurement and reporting program. The Parties shall use all reasonable efforts to ensure that the District's measurement and reporting program includes the kind of measurement and reporting described in Section 3 of this Agreement.

3. **Measurement and Reporting.** The Parties shall install and maintain meters on all

of their wells in the District for the purpose of measuring and recording total diverted volumes. Total diverted volumes shall be reported quarterly to the watermaster, which report shall include the total volume diverted for each well either owned by them or used by them in the District for the preceding quarter.

4. **Diverted Volumes.** Terteling shall divert a combined maximum total of 400 AFA from the Stewart Gulch Geothermal Aquifer under the Silkey and Tiegs Rights and Edwards shall divert a maximum of 250 AFA from the Stewart Gulch Geothermal Aquifer under the Edwards Right.

5. **Diversion Rate.** Each Party may divert water at the rates ultimately authorized by the respective final Snake River Basin Adjudication ("SRBA") partial decrees for the Silkey Rights and the Edwards Right.

6. **Silkey v. Tiegs.** The parties shall take the following steps to protect their senior Silkey and Edwards Rights pursuant to the *Silkey v. Tiegs* decree:

(a) The Parties shall use all reasonable efforts to ensure that the Department's Boise Front Low Temperature Geothermal Resource Ground Water Management Area moratorium (or some other substantially similar Department moratorium that also includes the Stewart Gulch Geothermal Aquifer) remains in effect to prevent the development of new water rights diverted from the Stewart Gulch Geothermal Aquifer. The Parties also shall use all reasonable efforts to seek and obtain an area of drilling concern designation pursuant to Idaho Code § 42-238(15) or another appropriate regulatory designation, order, determination, decision, etc. from the Department to prohibit development in the Stewart Gulch Geothermal Aquifer of any new water rights that are exempted from Department water right permitting and licensing requirements, such as domestic water rights. Thereafter, the Parties shall use all reasonable efforts to have the Department maintain such designation, order, determination, decision, or other regulatory mechanism.

(b) The Parties also shall use all reasonable efforts to ensure that the Department continues to include the Stewart Gulch Geothermal Aquifer either in a designated ground water management area, such as the Boise Front Ground Water Management Area, in a designated critical ground water area or in some other substantially similar designated area under Idaho law. The Parties shall use all reasonable efforts so that the Department

issues, implements, and maintains such orders or some other similar regulatory mechanism to ensure that the diverted volumes to the maximum extent provided for in Section 4 of this Agreement are available to fulfill the senior Silkey and Edwards Rights.

7. **The Tiegs Right.** The Transfers do not authorize Terteling to divert water under the Tiegs Right.

8. **Snake River Basin Adjudication.** The Parties shall use all reasonable efforts to establish the Stewart Gulch Geothermal Aquifer as a separate source in the SRBA for purposes of water right administration. The Parties agree that their respective SRBA claims shall be consistent with the terms of this Agreement, including the total annual combined diverted volume of 400 AFA for the Silkey and Tiegs Rights and the total annual diverted volume of 250 AFA for the Edwards Right. The Parties on behalf of themselves and any related individuals or entities agree that they will not assert or argue in the SRBA that the total combined annual diverted volume for the Silkey and Tiegs Rights is greater or less than 400 AFA and that total annual diverted volume for the Edwards Right is greater or less than 250 AFA. The Parties agree to undertake all reasonable and appropriate efforts to have the SRBA decrees for Water Right Nos. 63-00012, 63-00013, 63-00014 and 63-00015 reference this Agreement in substantially the following manner: "This water right is subject to the terms of an Agreement dated _____, 2002 recorded at the Ada County Recorder's Office as Instrument No. _____."

9. **Heating Purposes.** The Parties shall utilize water diverted under Water Right Nos. 63-00012, 63-00013, and 63-00014 primarily for heating purposes. Any other use of water diverted under Water Right Nos. 63-00012, 63-00013, and 63-00014, such as for irrigation, only shall occur after the heat is removed by another beneficial use.

10. **Closure of Wells.** If either Party ceases use (including monitoring) of any wells in the Stewart Gulch Geothermal Aquifer for five consecutive years, the Party shall immediately close and appropriately seal such wells. The wells shall be closed and sealed in such a way to prevent any leakage or loss of the geothermal resource.

11. **Department Approval of Transfers.** The Parties agree that the terms of this Agreement are contingent upon the Department's approval of the Transfers that include a

combined total annual diversion volume for the Silkey and Tiegs Rights of no more than and no less than 400 AFA.

12. Recording of Agreement. Within ten (10) days after the Department's approval of the Transfers, the Parties shall record this Agreement at the Ada County, Idaho Recorder's Office. The provisions of this Agreement shall be covenants and perpetual servitudes running with Water Right Nos. 63-00012, 63-00013, 63-00014, and 63-00015, and the associated lands, including any new lands to which these water rights are transferred.

13. Communications. All communications and submission of measurement data to the Parties pursuant to this Agreement shall be addressed as follows:

The Terteling Company, Inc. (Terteling)
3823 N. 36th Street
Boise, ID 83703
Ph. (208) 381-5205

Garnette Monnie (Edwards)
Edwards Greenhouses
4106 Sand Creek
Boise, ID 83703-4028
Ph. (208) 342-7548

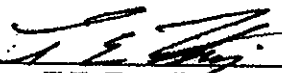
The parties agree to notify each other regarding any changes in the names and/or addresses listed above.

14. General. The Parties acknowledge that both Parties and their attorneys have reviewed and participated in drafting this Agreement. The headings of the sections of this Agreement have been inserted for the convenience of reference only and shall not affect any construction or interpretation of this Agreement. This Agreement is the entire agreement of the Parties with respect to the Transfers and with respect to the matters addressed herein concerning Water Right Nos. 63-00012, 63-00013, 63-00014, and 63-00015. This Agreement may be modified only with the mutual written consent of both Parties. Except as otherwise provided in this Agreement, any waivers hereunder must be in writing. No waiver of any right or remedy in the event of default hereunder shall constitute a waiver of such right or remedy in the event of any subsequent default. This Agreement shall be governed in all respects by the laws of the State of Idaho. This Agreement is for the benefit only of the Parties hereto and shall inure to the benefit of and bind the heirs, personal representatives, successors and assigns of the Parties hereto. The

invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provision hereof. In the event of a court proceeding or other legal action regarding the breach or violation of this Agreement, the prevailing party shall be entitled to reasonable attorney's fees and costs. The Parties each represent that they are authorized to enter into this Agreement.

IN WITNESS WHEREOF, the Parties hereto have exercised this instrument the day and year first above written.

THE TERTELING COMPANY, INC.

By 
T.E. Terteling

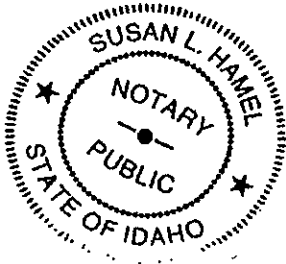
EDWARDS FAMILY, LLC

By 
Garnette Monnie, Member

STATE OF IDAHO)
) ss:
County of Ada)

On this 24th day of January, 2002, before me the undersigned Notary Public, personally appeared T.E. Terteling, known to me to be an authorized agent of THE TERTELING COMPANY, INC., the entity that executed the foregoing instrument.

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

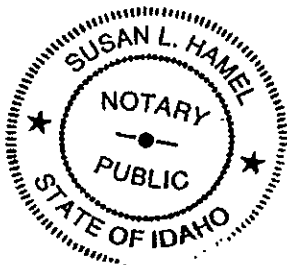


Susan L. Hamel
Notary Public for the State of Idaho
Residing in Kuna, ID Ada County
My Commission Expires: 03/22/2002

STATE OF IDAHO)
) ss:
County of Ada)

On this 24th day of January, 2002, before me the undersigned Notary Public, personally appeared Garnette Monnie, known to me to be a member of EDWARDS FAMILY, LLC, the entity that executed the foregoing instrument.

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



Susan L. Hamel
Notary Public for the State of Idaho
Residing in Kuna, ID Ada County
My Commission Expires: 03/22/2002

EXHIBIT A

That portion of Section 29, Township 4 North, Range 2 East, Boise Meridian, in the County of Ada, State of Idaho, more particularly described as follows:

Commencing at the quarter section corner common to Sections numbered 28 and 29, in Township 4 North, Range 2 East, the REAL PLACE OF BEGINNING; thence South $0^{\circ}29'$ West a distance of 662.3 feet along the section line common to said Sections 28 and 29; thence North $89^{\circ}11'$ West, parallel to the East and West quarter section line of said Section 29, a distance of 657.4 feet; thence North $0^{\circ}39'$ East a distance of 662.3 feet, to the East and West quarter section line of said Section 29; thence South $89^{\circ}11'$ East, along said quarter section line, 656.5 feet to the PLACE OF BEGINNING.

EXCEPT any portion lying within the following:

Commencing at the quarter section corner common to Sections 28 and 29, Township 4 North, Range 2 East, of the Boise Meridian, marked by a stone; thence South along the East line of said Section 29, a distance of 437.2 feet to a point the same being the TRUE POINT AND PLACE OF BEGINNING; thence continuing South $0^{\circ}29'$ West 1003.9 feet on the East line of said Section 29 marked by an iron pin; thence North $81^{\circ}16'$ West 234.2 feet to a point; thence North $61^{\circ}35'$ West 135.75 feet to a point; thence North $76^{\circ}20'$ West 328.4 feet to a point, marked by an iron pin; thence North $0^{\circ}39'$ East 838.2 feet to a point; thence South $89^{\circ}05'$ East 657 feet to the POINT AND PLACE OF BEGINNING.

EXCEPT ditch and road rights-of-way.

EXHIBIT B

SW 1/4 of Section 22, Township 4 North, Range 2 East of the Boise Meridian, Ada
County, Idaho.

Exhibit "C"

Those certain parcels of real property situated in the County of Ada, State of Idaho, more particularly described as follows:

- (A) Lots One through Four, inclusive, Block 1, of Thomas F. Edwards Subdivision situate in Section 29, Township 4 North Range 2 East of the Boise Meridian, in Ada County, State of Idaho.
- (B) Lots 20 through 22, inclusive, of Block 1, of the Thomas F. Edwards Subdivision, according to the plat thereof, records of Ada County, State of Idaho.
- (C) Permit to use hot and cold water from Lot 1, Block 1, of Thomas F. Edwards Subdivision, Ada County, State of Idaho.
- (D) A parcel of land in Southwest Quarter of Northeast Quarter of Section 29, Township 4 N., Range 2 E. B. M., Ada County, State of Idaho, and more particularly described as follows: Commencing at a point 10.86 chains North of the center of Section 29, thence S. 74° 43' E. 15.32 chains to an iron bar located at the Southeast Corner of Thomas F. Edwards' land, the true point of beginning; Thence N. 1°15' E. 3.40 chs. to a piece of iron pipe; Thence S. 72° 30' E. 2.22 chains to a piece of iron pipe; thence S. 23°05' E. 3.18 chains to a piece of iron pipe; thence N. 74°43' West 3.55 chains to iron bar, the place of beginning, containing 0.98 (98/100) acres.
- (E) Beginning at the Northeast Corner of the Southwest Quarter of the Northeast Quarter of Section 29, Township 4 North, Range 2 East, B. M., Ada County, Idaho; thence South 358.38 feet; thence East 58.83 feet; thence South 285.09 feet to an iron rod; thence West 265.83 feet to an iron rod; thence South 24 feet to an iron pipe; thence North 72 degrees 30 minutes West 21.13 feet to the real point of beginning; thence North 72 degrees 30 minutes West 125.39 feet; thence North 1 degree 50 minutes East 49.50 feet; thence North 1 degree 20 minutes East 19.70 feet; thence South 88 degrees East 120 feet; thence South 1 degree 20 minutes West 104.11 feet to the real point of beginning;

EXCEPTING Any portion which may lie in Tamarack Drive.

- (F) Beginning at the Northeast Corner of the Southwest Quarter of the Northeast Quarter (SW1/4NE1/4) Section 29, T. 4N., R. 2E., B. M. Thence South 358.38 feet to a point, thence East 58.83 feet, thence South 285.09 feet to an iron rod, thence West 265.83 feet to the real point of beginning, thence South 24.0 feet, to

an iron pipe, thence N. 72 degrees 30 minutes West 21.13 feet to a point, thence North 1 degree 20 minutes East 104.11 feet to a point, thence S. 88 degrees 40 minutes E. 20.64 feet to a point, thence S. 1 degree 20 minutes W. 85.97 feet to the real point of beginning.

JAN -31' 02 (THU) 15:31

GIVEN: MURSLEY LLP

TEL: 208 388 1300

P. 003/003

01/31/02 10:42

208 381 5200

TERTELING CO INC

001

January 22, 2002

THE TERTELING COMPANY, INC.

BOARD OF DIRECTORS MINUTES WITHOUT A MEETING

The below signed Directors, who represent all of the Directors of The Terteling Company, Inc. without a notice or a formal meeting, approve said resolution provided a simple majority of all Directors so signify by their signatures below.

WHEREAS The Terteling Company, Inc. filed two applications with the Idaho Department of Water Resources on October 2, 2000 to transfer its rights under *Silkey v. Tieg* (geothermal rights) and a cold water right currently located on the Flora Co. property at 3823 N. 38th Street, Boise, Idaho, to the Corporation's property located in Section 22, Ada County, for use at 4988 Peaceful Cove Lane, Boise, Idaho.

WHEREAS another senior water rights owner under *Silkey v. Tieg*, Paul Edwards, filed protests against the transfers on December 22, 2000.

WHEREAS the Corporation and Edwards have reached agreement whereby Edwards agrees to withdraw his protest to the Idaho Department of Water Resources.

WHEREAS the Corporation desires to have T. E. Terteling execute the Settlement Agreement between Edwards and the Corporation on behalf of the Corporation.

THEREFORE, BE IT RESOLVED that the Board of Directors authorizes T. E. Terteling to execute the Settlement Agreement on behalf of The Terteling Company, Inc.

Disapproved:

Approved:

James K. Miller
T. E. Terteling

ADA COUNTY RECORDER
J. DAVID NAVARRO
BOISE, IDAHO

RECORDED - REQUEST OF

Partling Co. & Edwards Family Ltd.
FEE *3.00* DEPUTY *Decker*

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**This sheet has been added to document
to accommodate recording information.**

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

Attorneys for Claimant 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

)
) SUBCASE NOS. 63-00012, 63-00013,
) 63-00015, 63-00308, 63-03603, 63-07595,
) 63-31051, 63-31058, 63-31059, 63-31060,
) and 63-31062
)

) THE TERTELING COMPANY, INC.'S
) ANSWERS TO EDWARDS FAMILY,
) LLC'S FIRST SET OF
) INTERROGATORIES AND REQUESTS
) FOR PRODUCTION
)
)

Claimant, The Terteling Company, Inc. (hereinafter "TTCI") hereby responds to discovery by submitting these Answers to Edwards Family, LLC's First Set of Interrogatories and Request for Production pursuant to Rules 26 and 33 of the Idaho Rules of Civil Procedure.

GENERAL OBJECTIONS

1. Claimant has not completed its own investigations and/or discovery. Accordingly, the answers that follow are based upon the best knowledge, information and beliefs of Claimant at this time. Claimant reserves the right to make any further answers if it appears that any omission

THE TERTELING COMPANY, INC.'S ANSWERS TO EDWARDS FAMILY, LLC'S FIRST SET OF INTERROGATORIES AND REQUESTS FOR PRODUCTION - Page 1

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EXHIBIT

E

or error has been made in connection with these answers or that more accurate information is or has become available. These answers are made without prejudice to Claimant's right to use in later discovery or to present at trial, such evidence as may later be discovered or evaluated.

2. Claimant objects to the definitions and instructions to the extent that they purport to require discovery answers beyond that required under the Idaho Rules of Civil Procedure. These answers are provided in accordance with the Idaho Rules of Civil Procedure irrespective of any definitions and instructions that may accompany these interrogatories.

3. These answers are made subject to all objections as to competence, relevance, materiality, and admissibility. These answers are subject to all objections that would require the exclusion of any statement, material, or information herein provided if such request were asked of or any statement, material, or information provided were made by witnesses present and testifying at the formal hearing or trial on this matter. All such objections are reserved and may be interposed at the time of the hearing or trial on this matter.

4. Claimant specifically objects to these discovery requests to the extent that they seek information protected by the attorney-client privilege, the attorney work product doctrine, and the rules governing the discovery of facts of experts as set forth in Rule 26(b)(4), Idaho Rules of Civil Procedure. This objection is intended to apply to all of the discovery requests that seek such information and will not be repeated specifically for each interrogatory to which it applies. Claimant has, to the extent possible, construed each interrogatory as requesting only information and/or documents not subject to any applicable protection.

5. No incidental or implied admissions are intended. The fact that Claimant has

responded to any discovery request or part thereof should not be taken as an admission that Claimant accepts that the discovery request or the response or objection thereto constitutes admissible evidence. Similarly, the fact that Claimant has responded to all or part of a request is not intended to and shall not be construed to be a waiver by Claimant of all or part of any objection to other requests. Claimant's answers to any discovery requests herein do not constitute a waiver of Claimant's right to object to any future additional or supplemental requests regarding the same or similar matters.

INTERROGATORY NO. 1: Please set forth the name, address, telephone number, and occupation of each and every individual known to you or your counsel who has knowledge of or who purports to have knowledge relating to any or all of your Claims (whether in support or in contradiction thereof), relating to any or all of the SRBA Director's Report Recommendations for your Claims, relating to any or all Objections filed in the SRBA Director's Report Recommendations for your Claims, or relating to any or all Responses filed to any filed Objections for your Claims, and set forth a full and accurate summary of the knowledge possessed by each such person.

ANSWER TO INTERROGATORY NO. 1: Objection. The interrogatory is compound, overbroad, burdensome, ambiguous and vague, and at least some of the information requested is in the possession of and/or equally available to Edwards Family, LLC. Notwithstanding its objections and without waiving the same, TTCI responds as follows:

1. J.L. Terteling
The Terteling Company, Inc.
3858 Garden Center Way, Suite 300
Boise, ID 83703
(208)229-4491

Mr. Terteling is a principal in TTCI. He is aware of facts and circumstances surrounding the filing of TTCI's claims in the SRBA, and of the filing of objections by TTCI to its claims in the SRBA. He is aware of facts and circumstances surrounding the use of each water right claimed by TTCI in the SRBA, and is aware of the facts and circumstances surrounding the basis for objections filed by TTCI to other water rights in the SRBA.

2. A.J. Terteling
The Terteling Company, Inc.
3858 Garden Center Way, Suite 300
Boise, ID 83703
(208)229-4491

Mr. Terteling is a principal in TTCI. He is aware of facts and circumstances surrounding at least some of TTCI's objections to its claims in the SRBA. He is aware of facts and circumstances surrounding the use by TTCI of at least some of its water rights that are claimed in the SRBA and is aware of the facts and circumstances surrounding the basis for at least some of the objections filed by TTCI to other water rights in the SRBA.

3. T.E. Terteling
The Terteling Company, Inc.
3858 Garden Center Way, Suite 300
Boise, ID 83703
(208)229-4491

Mr. Terteling is a principal in TTCI. He is aware of facts and circumstances surrounding at least some of TTCI's objections to its claims in the SRBA. He is aware of facts and circumstances surrounding the use by TTCI of at least some of its water rights that are claimed in the SRBA and is aware of the facts and circumstances surrounding the basis for at least some of the objections filed by TTCI to other water rights in the SRBA.

4. Vicky Music
IDWR Western Regional Offices
2735 Airport Way
Boise, ID 83705-5082
(208)334-2190

Ms. Music is an IDWR water right agent. She was involved in the preparation of the recommendations of many of TTCI's water rights and of water rights held by other parties in the area. She has also been involved with Water District 63-S.

5. Jan Shurte
IDWR Western Regional Offices
2735 Airport Way
Boise, ID 83705-5082
(208)334-2190

Ms. Music is an IDWR water right agent. She was involved in the preparation of the recommendations of many of TTCI's water rights and of water rights held by other parties in the area. She has also been involved with Water District 63-S.

6. Garnette Edwards
4106 Sand Creek Street
Boise, Idaho 83703

Ms. Edwards is a principal in Edwards Family, LLC. She is aware of facts and circumstances surrounding Edwards Family, LLC's objections to TTCI water rights.

7. Norm Young
ERO Resources
3314 Grace Street
Boise, ID 83703

Mr. Young is listed as a witness in this matter by Edwards Family, LLC. The extent of his knowledge regarding this matter is currently unknown.

8. Ed Squires
Hydro Logic, Inc.
1002 W. Franklin
Boise, ID 83701
(208)342-8369

Mr. Squires is a hydrogeologist who has been retained by TTCI for many years to assist TTCI in investigating various physical attributes of its own water rights, and other parties' water rights. He is aware of the physical attributes surrounding the diversions of water rights claimed by TTCI, and surrounding the use of the same.

9. Terry Scanlan
SPF Water Engineering
300 E. Mallard Drive, Suite 350
Boise, ID 83706
(208)383-4140

M. Scanlan is an engineer who has previously worked for Edwards Family, LLC in an administrative protest against a prior TTCI transfer application. Mr. Scanlan may have some information regarding the physical attributes of water rights held by TTCI.

10. Ken Neely
Idaho Department of Water Resources
322 E. Front Street
Boise, ID 83720-0098
(208)287-4800

Mr. Neely is the Water District 63-S watermaster. He is aware of facts and circumstances regarding the use of low-temperature geothermal water by TTCI, Edwards Family, LLC, and by various other parties holding and/or claiming water rights within Water District 63-S. Because of his monitoring duties, Mr. Neely may be aware of the physical attributes of wells that are the points of diversion for TTCI and Edwards Family, LLC water rights, in addition to wells owned by other parties within Water District 63-S.

11. Unknown Engineer

TTCI employed an engineer during the early portion of the Snake River Basin Adjudication to assist it in preparing claims. TTCI is unaware of the engineer's name, address or phone number.

12. Dana Hofstetter
Hofstetter Law Offices
608 W. Franklin Street
Boise, ID 83702

Ms. Hofstetter is the attorney for Edwards Family, LLC. She may be aware of various facts, circumstances and theories that form the basis for objections filed by Edwards Family, LLC to water rights claimed in the SRBA by TTCI.

13. Other IDWR employees, agents, officers, former employees and/or personnel

Other IDWR personnel may have been involved in the preparation of the recommendations of TTCI's water rights, and may have been otherwise involved with TTCI's water rights or with Water District 63-S.

14. Rebuttal Witnesses

TTCI does not know at this time what rebuttal witnesses, if any, it will call to testify at

the trial of this matter.

INTERROGATORY NO. 2: Please set forth the name, address, telephone number, and occupation of each person you may call as a witness at the trial in these Subcases, and for each such witness, state the substance of his/her expected testimony.

ANSWER TO INTERROGATORY NO. 2: Objection. The interrogatory is compound, overbroad, burdensome, ambiguous and vague, and at least some of the information requested is in the possession of and/or equally available to Edwards Family, LLC. Moreover, TTCI has not yet determined what witnesses, if any, it will call to testify at the trial in these subcases. Notwithstanding its objections and without waiving the same, TTCI responds as follows: TTCI may call as witnesses any of the individuals listed in Answer to Interrogatory No. 1.

INTERROGATORY NO. 3: Please identify each person whom you may call as an expert witness at the trial of these Subcases and state the subject matter on which such expert witness is expected to testify, the substance of the facts to which such expert witness is expected to testify, and the substance of the opinions to which such expert witness is expected to testify as required by Rule 26(b)(4) of the Idaho Rules of Civil Procedure together with all of the underlying facts and data as required by Rule 705 of the Idaho Rules of Evidence.

ANSWER TO INTERROGATORY NO. 3: Objection. The interrogatory is compound, overbroad, burdensome, ambiguous and vague. Moreover, TTCI has not yet determined if it will, in fact call any expert witnesses at the trial in these subcases. Notwithstanding its objections and without waiving the same, TTCI responds as follows: It may call IDWR

employees, including Vicky Music, to testify regarding IDWR's recommendations of the water rights captioned above. The underlying facts and data supporting Ms. Music's recommendations are contained in IDWR's SRBA claim files and water right back files for the above-captioned water rights, and are available on the IDWR website, but will also be made available for Edwards' Family, LLC's review and copying. It is also possible that Ed Squires may be called as a rebuttal expert depending upon the type of expert evidence that Edwards Family, LLC puts on in these subcases

INTERROGATORY NO. 4: Please identify each person with whom you or your representatives have communicated seeking information which in any way relates to any or all of your Claims (including, without limitation, any or all of the SRBA Director's Report Recommendations for them, any or all Objections filed to such SRBA Director's Report Recommendations, or any or all Responses filed to any such Objections).

ANSWER TO INTERROGATORY NO. 4: Objection. The interrogatory is compound, overbroad, burdensome, ambiguous and vague, requests information subject to I.R.E. 408, requests information subject to the attorney work product doctrine and attorney client privilege, and at least some of the information requested is in the possession of and/or equally available to Edwards Family, LLC. Notwithstanding its objections and without waiving the same, TTCI responds as follows: Such individuals include, but are not limited to, Vicky Music, Jan Shurte, David Tuthill, Nicholas B. Spencer, Ken Neely, Sean Vincent, Lori Graves, other IDWR employees/personnel, Ed Squires, Norm Young, J.L. Terteling, T.E. Terteling, A.J. Terteling, Garnette Edwards, Paul Edwards, Dana Hofstetter, unknown engineer employed by TTCI to assist in claim preparation.

DATED this 14th day of June, 2010.

RINGERT LAW CHARTERED

By: Charles L. Honsinger
Charles L. Honsinger, Attorney for
T-7, LLC and The Terteling Company, Inc.

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 14th day of June, 2010, I caused to be served a true and correct copy of the foregoing document by hand-delivery ~~US mail~~, postage prepaid, to each of the parties listed below. C.L.H.

Dana L. Hofstetter
Hofstetter Law Office, LLC
608 W. Franklin St.
Boise, ID 83702

Charles L. Honsinger
Charles L. Honsinger

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

Attorneys for Claimant T-7, LLC

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

)
) SUBCASE NOS. 63-27649, 63-27671,
) 63-30006, 63-30007, 63-31050, 63-31053,
) 63-31054, 63-31055, 63-31056
) and 63-31057

)
) T-7, LLC'S ANSWERS TO EDWARDS
) FAMILY, LLC'S FIRST SET OF
) INTERROGATORIES AND REQUESTS
) FOR PRODUCTION

Claimant, T-7, LLC, hereby responds to discovery by submitting these Answers to Edwards Family, LLC's First Set of Interrogatories and Request for Production pursuant to Rules 26 and 33 of the Idaho Rules of Civil Procedure.

GENERAL OBJECTIONS

1. Claimant has not completed its own investigations and/or discovery. Accordingly, the answers that follow are based upon the best knowledge, information and beliefs of Claimant at this time. Claimant reserves the right to make any further answers if it appears that any omission or error has been made in connection with these answers or that more accurate information is or has

T-7, LLC'S ANSWERS TO EDWARDS FAMILY, LLC'S FIRST SET OF INTERROGATORIES
AND REQUESTS FOR PRODUCTION - Page 1

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EXHIBIT

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become available. These answers are made without prejudice to Claimant's right to use in later discovery or to present at trial, such evidence as may later be discovered or evaluated.

2. Claimant objects to the definitions and instructions to the extent that they purport to require discovery answers beyond that required under the Idaho Rules of Civil Procedure. These answers are provided in accordance with the Idaho Rules of Civil Procedure irrespective of any definitions and instructions that may accompany these interrogatories.

3. These answers are made subject to all objections as to competence, relevance, materiality, and admissibility. These answers are subject to all objections that would require the exclusion of any statement, material, or information herein provided if such request were asked of or any statement, material, or information provided were made by witnesses present and testifying at the formal hearing or trial on this matter. All such objections are reserved and may be interposed at the time of the hearing or trial on this matter.

4. Claimant specifically objects to these discovery requests to the extent that they seek information protected by the attorney-client privilege, the attorney work product doctrine, and the rules governing the discovery of facts of experts as set forth in Rule 26(b)(4), Idaho Rules of Civil Procedure. This objection is intended to apply to all of the discovery requests that seek such information and will not be repeated specifically for each interrogatory to which it applies. Claimant has, to the extent possible, construed each interrogatory as requesting only information and/or documents not subject to any applicable protection.

5. No incidental or implied admissions are intended. The fact that Claimant has responded to any discovery request or part thereof should not be taken as an admission that Claimant

accepts that the discovery request or the response or objection thereto constitutes admissible evidence. Similarly, the fact that Claimant has responded to all or part of a request is not intended to and shall not be construed to be a waiver by Claimant of all or part of any objection to other requests. Claimant's answers to any discovery requests herein do not constitute a waiver of Claimant's right to object to any future additional or supplemental requests regarding the same or similar matters.

INTERROGATORY NO. 1: Please set forth the name, address, telephone number, and occupation of each and every individual known to you or your counsel who has knowledge of or who purports to have knowledge relating to any or all of your Claims (whether in support or in contradiction thereof), relating to any or all of the SRBA Director's Report Recommendations for your Claims, relating to any or all Objections filed in the SRBA Director's Report Recommendations for your Claims, or relating to any or all Responses filed to any filed Objections for your Claims, and set forth a full and accurate summary of the knowledge possessed by each such person.

ANSWER TO INTERROGATORY NO. 1: Objection. The interrogatory is compound, overbroad, burdensome, ambiguous and vague, and at least some of the information requested is in the possession of and/or equally available to Edwards Family, LLC. Notwithstanding its objections and without waiving the same, T-7, LLC responds as follows:

1. **J.L. Terteling**
The Terteling Company, Inc.
3858 Garden Center Way, Suite 300
Boise, ID 83703
(208)229-4491

Mr. Terteling is a principal in T-7, LLC. He is aware of facts and circumstances surrounding the filing of T-7, LLC's claims in the SRBA, and of the filing of objections by T-

7, LLC to its claims in the SRBA. He is aware of facts and circumstances surrounding the use of each water right claimed by T-7, LLC in the SRBA, and is aware of the facts and circumstances surrounding the basis for objections filed by T-7, LLC to other water rights in the SRBA.

2. **A.J. Terteling**
The Terteling Company, Inc.
3858 Garden Center Way, Suite 300
Boise, ID 83703
(208)229-4491

Mr. Terteling is a principal in T-7, LLC. He is aware of facts and circumstances surrounding at least some of T-7, LLC's objections to its claims in the SRBA. He is aware of facts and circumstances surrounding the use by T-7, LLC of at least some of its water rights that are claimed in the SRBA and is aware of the facts and circumstances surrounding the basis for at least some of the objections filed by T-7, LLC to other water rights in the SRBA.

3. **T.E. Terteling**
The Terteling Company, Inc.
3858 Garden Center Way, Suite 300
Boise, ID 83703
(208)229-4491

Mr. Terteling is a principal in T-7, LLC. He is aware of facts and circumstances surrounding at least some of T-7, LLC's objections to its claims in the SRBA. He is aware of facts and circumstances surrounding the use by T-7, LLC of at least some of its water rights that are claimed in the SRBA and is aware of the facts and circumstances surrounding the basis for at least some of the objections filed by T-7, LLC to other water rights in the SRBA.

4. **Vicky Music**
IDWR Western Regional Offices
2735 Airport Way
Boise, ID 83705-5082
(208)334-2190

Ms. Music is an IDWR water right agent. She was involved in the preparation of the recommendations of many of T-7, LLC's water rights and of water rights held by other parties in the area. She has also been involved with Water District 63-S.

5. **Jan Shurte**
IDWR Western Regional Offices

2735 Airport Way
Boise, ID 83705-5082
(208)334-2190

Ms. Music is an IDWR water right agent. She was involved in the preparation of the recommendations of many of T-7, LLC's water rights and of water rights held by other parties in the area. She has also been involved with Water District 63-S.

6. Garnette Edwards
4106 Sand Creek Street
Boise, Idaho 83703

Ms. Edwards is a principal in Edwards Family, LLC. She is aware of facts and circumstances surrounding Edwards Family, LLC's objections to T-7, LLC water rights.

7. Norm Young
ERO Resources
3314 Grace Street
Boise, ID 83703

Mr. Young is listed as a witness in this matter by Edwards Family, LLC. The extent of his knowledge regarding this matter is currently unknown.

8. Ed Squires
Hydro Logic, Inc.
1002 W. Franklin
Boise, ID 83701
(208)342-8369

Mr. Squires is a hydrogeologist who has been retained by T-7, LLC for many years to assist T-7, LLC in investigating various physical attributes of its own water rights, and other parties' water rights. He is aware of the physical attributes surrounding the diversions of water rights claimed by T-7, LLC, and surrounding the use of the same.

9. Terry Scanlan
SPF Water Engineering
300 E. Mallard Drive, Suite 350
Boise, ID 83706
(208)383-4140

M. Scanlan is an engineer who has previously worked for Edwards Family, LLC in an administrative protest against a prior T-7, LLC transfer application. Mr. Scanlan may have

some information regarding the physical attributes of water rights held by T-7, LLC.

10. Ken Neely
Idaho Department of Water Resources
322 E. Front Street
Boise, ID 83720-0098
(208)287-4800

Mr. Neely is the Water District 63-S watermaster. He is aware of facts and circumstances regarding the use of low-temperature geothermal water by T-7, LLC, Edwards Family, LLC, and by various other parties holding and/or claiming water rights within Water District 63-S. Because of his monitoring duties, Mr. Neely may be aware of the physical attributes of wells that are the points of diversion for T-7, LLC and Edwards Family, LLC water rights, in addition to wells owned by other parties within Water District 63-S.

11. Unknown Engineer

T-7, LLC employed an engineer during the early portion of the Snake River Basin Adjudication to assist it in preparing claims. T-7, LLC is unaware of the engineer's name, address or phone number.

12. Dana Hofstetter
Hofstetter Law Offices
608 W. Franklin Street
Boise, ID 83702

Ms. Hofstetter is the attorney for Edwards Family, LLC. She may be aware of various facts, circumstances and theories that form the basis for objections filed by Edwards Family, LLC to water rights claimed in the SRBA by T-7, LLC.

13. Other IDWR employees, agents, officers, former employees and/or personnel

Other IDWR personnel may have been involved in the preparation of the recommendations of T-7, LLC's water rights, and may have been otherwise involved with T-7, LLC's water rights or with Water District 63-S.

14. Rebuttal Witnesses

T-7, LLC does not know at this time what rebuttal witnesses, if any, it will call to testify at the trial of this matter.

INTERROGATORY NO. 2: Please set forth the name, address, telephone number, and occupation of each person you may call as a witness at the trial in these Subcases, and for each such witness, state the substance of his/her expected testimony.

ANSWER TO INTERROGATORY NO. 2: Objection. The interrogatory is compound, overbroad, burdensome, ambiguous and vague, and at least some of the information requested is in the possession of and/or equally available to Edwards Family, LLC. Moreover, T-7, LLC has not yet determined what witnesses, if any, it will call to testify at the trial in these subcases. Notwithstanding its objections and without waiving the same, T-7, LLC responds as follows: T-7, LLC may call as witnesses any of the individuals listed in Answer to Interrogatory No. 1.

INTERROGATORY NO. 3: Please identify each person whom you may call as an expert witness at the trial of these Subcases and state the subject matter on which such expert witness is expected to testify, the substance of the facts to which such expert witness is expected to testify, and the substance of the opinions to which such expert witness is expected to testify as required by Rule 26(b)(4) of the Idaho Rules of Civil Procedure together with all of the underlying facts and data as required by Rule 705 of the Idaho Rules of Evidence.

ANSWER TO INTERROGATORY NO. 3: Objection. The interrogatory is compound, overbroad, burdensome, ambiguous and vague. Moreover, T-7, LLC has not yet determined if it will, in fact call any expert witnesses at the trial in these subcases. Notwithstanding its objections and without waiving the same, T-7, LLC responds as follows: It may call IDWR employees, including Vicky Music, to testify regarding IDWR's recommendations of the water

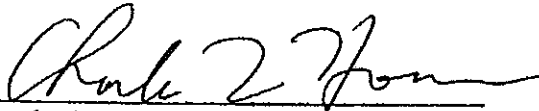
rights captioned above. The underlying facts and data supporting Ms. Music's recommendations are contained in IDWR's SRBA claim files and water right back files for the above-captioned water rights, and are available on the IDWR website, but will also be made available for Edwards' Family, LLC's review and copying. It is also possible that Ed Squires may be called as a rebuttal expert depending upon the type of expert evidence that Edwards Family, LLC puts on in these subcases.

INTERROGATORY NO. 4: Please identify each person with whom you or your representatives have communicated seeking information which in any way relates to any or all of your Claims (including, without limitation, any or all of the SRBA Director's Report Recommendations for them, any or all Objections filed to such SRBA Director's Report Recommendations, or any or all Responses filed to any such Objections).

ANSWER TO INTERROGATORY NO. 4: Objection. The interrogatory is compound, overbroad, burdensome, ambiguous and vague, requests information subject to I.R.E. 408, requests information subject to the attorney work product doctrine and attorney client privilege, and at least some of the information requested is in the possession of and/or equally available to Edwards Family, LLC. Notwithstanding its objections and without waiving the same, T-7, LLC responds as follows: Such individuals include, but are not limited to, Vicky Music, Jan Shurte, David Tuthill, Nicholas B. Spencer, Ken Neely, Sean Vincent, Lori Graves, other IDWR employees/personnel, Ed Squires, Norm Young, J.L. Terteling, T.E. Terteling, A.J. Terteling, Garnette Edwards, Dana Hofstetter, unknown engineer employed by T-7, LLC to assist in claim preparation.

DATED this 14th day of June, 2010.

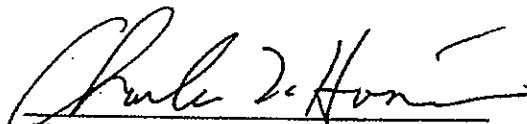
RINGERT LAW CHARTERED

By: 
Charles L. Honsinger, Attorney for
T-7, LLC and The Terteling Company, Inc.

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 14th day of June, 2010, I caused to be served a true and correct copy of the foregoing document by hand delivery, to each of the parties listed below.

Dana L. Hofstetter
Hofstetter Law Office, LLC
608 W. Franklin St.
Boise, ID 83702


Charles L. Honsinger

RINGERT LAW

CHARTERED LAWYERS

January 29, 2010

Transmitted by U.S. Mail

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

Andy Waldera
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Boise, ID 83701-0829
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Laura E. Burri
Adam S. Christenson
Jeffrey R. Christenson
David P. Claiborne
S. Bryce Farris
Jon C. Gould
David Hammerquist
Charles L. Honsinger **
James P. Kaufman
Jennifer Reid Mahoney
James G. Reid *
Daniel V. Steenson

David Niznik
3911 Whitehead
Boise, ID 83703

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

Re: Water District 63-S Low Temperature Geothermal Water Rights Settlement
Discussions in the Snake River Basin Adjudication

Dear settlement discussion participants:

At the Terteling Company, Inc.'s request, hydrogeologist Ed Squires has run a simple regression analysis using the available water level data from the Edwards well for the period from 2002 to 2008 (the most recent period of available and consistent water level data). The selected data are from a period after the aquifer "settled down" from the wide fluctuations experienced during the 1980's and 1990's when groundwater withdrawals for irrigation lessened significantly and aquifer pressures recovered dramatically for several years. A copy of the resulting plot is enclosed for your information. The regression analysis establishes that water levels in the Stewart Gulch geothermal wells have been (and are) dropping at an average rate of about 0.63 feet per year. These declines are occurring at an overall withdrawal volume that is significantly less than the cumulative diversion rate of the licensed water right holders; they are also occurring even though the overall withdrawal rate from the aquifer is currently decreasing by about 2.8 acre-feet per year. In the event of future colder winters and drier summers necessitating additional withdrawals, or in the event of District 63-S water users otherwise producing a greater percentage of their water rights, further aquifer pressure declines are expected to be significant.

455 South Third Street PO Box 2773 Boise, Idaho 83701 208.342.4591 FAX 208.342.4657

www.ringertlaw.com

EXHIBIT

Blumberg No. 2306

P

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SRBA Geothermal Water Rights Settlement Participants

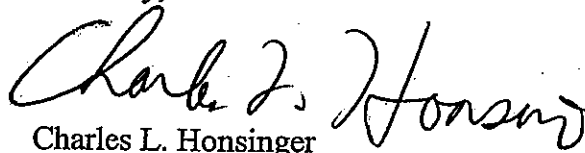
January 29, 2010

Page 2

Accordingly, The Terteling Company, Inc. believes it is premature to set a "trigger water level" that would incur administration of wells and water users in District 63-S, and will not agree to any "trigger levels" in the aquifer that serve to act as markers for purposes of determining when pumping will be curtailed. This is because the data and analysis suggest that any "trigger level" set will certainly be reached - it is only a matter of time until all water users will need to use pumps, rather than artesian (above ground) pressures to obtain their water rights.

Thus, based upon this regression analysis and the Terteling Company Inc.'s position resulting therefrom, settlement in the Snake River Basin Adjudication of the overriding issue raised by Edwards' objections (the protection of aquifer pressures) seems to be impossible. We thank you all for your participation in the settlement discussions. Unfortunately, it appears that the only method of resolving these objections is through litigation.

Sincerely,

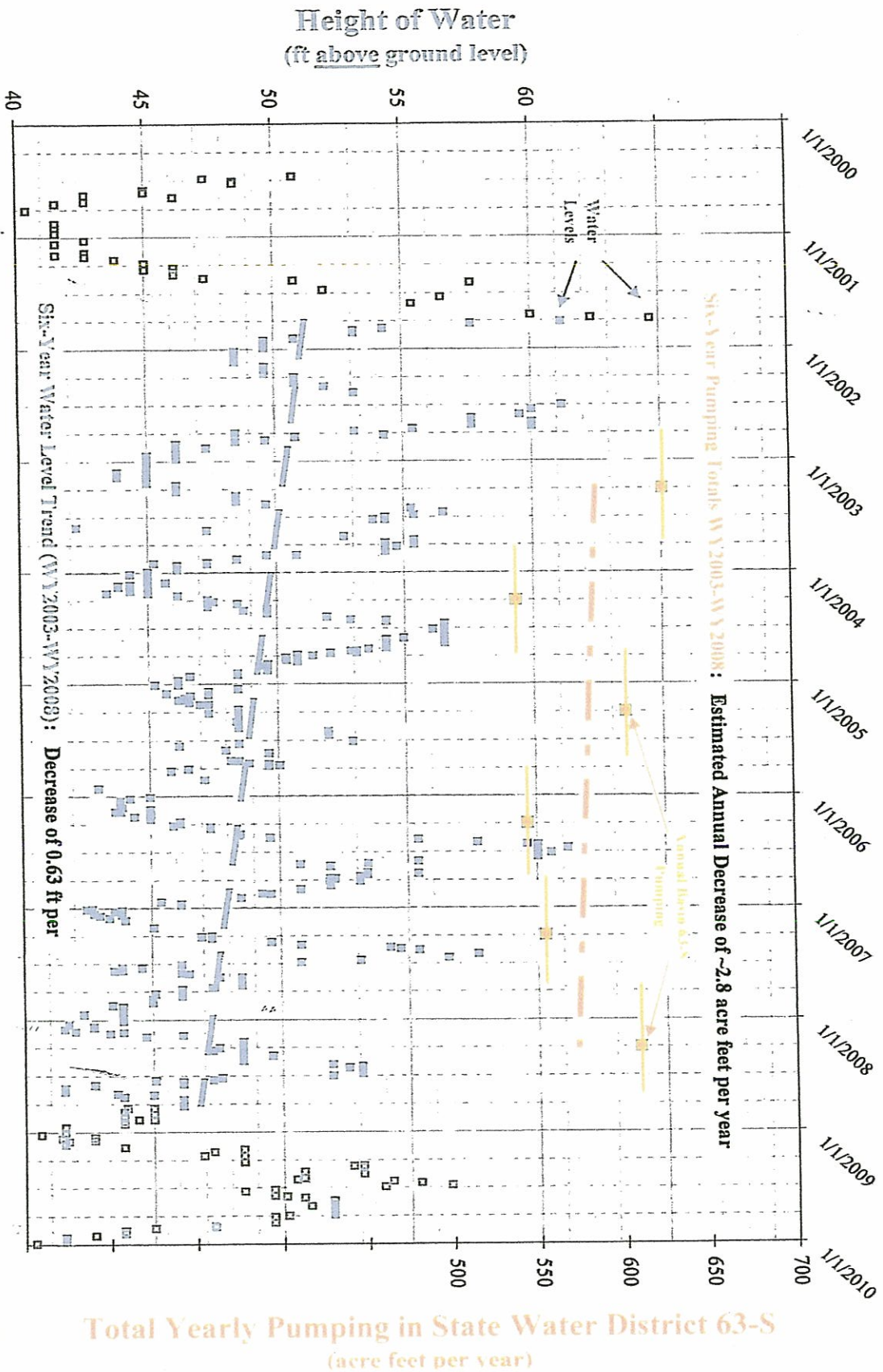


Charles L. Honsinger

enclosure

cc: Client
Ed Squires

Comparison of State Water District 63-S Total Low-Temperature Geothermal Groundwater Production with Aquifer Pressures in the Edwards Greenhouse Well 4N/2E 29ACDB1:
 Linear Regression of IDWR's Most Recent Complete Data Set (WY2003-WY2008)



1 **WESTBERG, McCABE & COLLINS**

2 **CHARTERED**

3 ATTORNEYS & COUNSELORS AT LAW

4 733 NORTH SEVENTH STREET
P.O. BOX 2836
BOISE, IDAHO 83701-2836

5 TELEPHONE: (208) 336-5200

6 ATTORNEYS FOR: **Appellant**

7 **IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE**
8 **STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA**

9 **TERTELING TRUST NO. 7,**
10 **Appellant,**

11 **vs.**

12 **THE IDAHO DEPARTMENT OF**
13 **WATER RESOURCES,**

14 **Respondent.**
15

FILED 3:30
A.M. P.M.

NOV 24 1993

BY DAVID NAVARRO, CLERK
CLERK

Case No.

97293

**PETITION FOR REVIEW AND
NOTICE OF APPEAL**

16 **TO: THE IDAHO DEPARTMENT OF WATER RESOURCES:**

17 **YOU WILL PLEASE TAKE NOTICE** that the Appellant appeals to the
18 **District Court of the Fourth Judicial District in and for Ada County**
19 **pursuant to the provisions of Idaho Code, Section 67-5270, 42-237e,**
20 **42-1701A and Rule 83(c), I.R.C.P.**

21 **1. This Appeal is from the Idaho Department of Water**
22 **Resources.**

23 **PETITION FOR REVIEW
AND NOTICE OF APPEAL**
terteling\appeal.ptn



1 2. This Appeal is being taken to the District Court of the
2 Fourth Judicial District of the State of Idaho, in and for the
3 County of Ada.

4 3. The Appeal is from the Order Denying Appellant's Petition
5 For Rehearing and Amended Final Memorandum Decision and Order
6 entered October 27, 1993 in that certain action before the
7 Department of Water Resources of the State of Idaho entitled "In The
8 Matter Of Request For Groundwater Regulation: Decreed Rights No.'s
9 63-0012, 63-0013, 63-0014, 63-0015 and 63-0016, Claim No. 63-4037
10 and Permit No. 63-9758."

11 4. This Appeal is taken upon matters of law and fact.

12 5. The testimony in proceedings before the Department of Water
13 Resources were recorded by electronic tape recording and are held by
14 the Department of Water Resources.

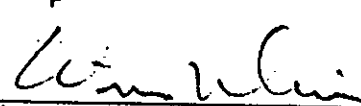
15 6. The Appellant asserts the following issues on Appeal:

16 (a) The Department erred in finding that the wells of the
17 Appellant were in a common ground water supply with the wells
18 of other water right holders and subject to regulation.
19
20
21

- 1 (b) The Department erred in failing to form a local ground
2 water board pursuant to the provisions of Idaho Code, Section
3 42-237b.
- 4 (c) The Department erred in concluding that artisan pressure
5 in wells is a protectable element of a water right.
- 6 (d) The Department erred in not establishing a reasonable
7 ground water pumping level.
- 8 (e) The Department erred in concluding that the ground water
9 should not be distributed according to Idaho Code, § 42-237a.
- 10 (f) The Department erred in concluding that Appellant's water
11 rights should be distributed in accordance with Silkey v.
12 Tiegs, 51 Idaho 344, 5P.2d 1049 (1931)
- 13 (g) Such other issues as Appellant may hereafter raise as
14 provided by Rule 83(f), I.R.C.P.

15 DATED this 24th day of November, 1993.

16 WESTBERG, MCCABE & COLLINS, Ctd.

17
18 
19 _____
20 William D. Collins
21 Attorneys for Appellant

22 PETITION FOR REVIEW
23 AND NOTICE OF APPEAL
terteling\appeal.ptn

CERTIFICATE OF MAILING

I hereby certify that a true and correct copy of the foregoing
PETITION FOR REVIEW AND NOTICE OF APPEAL was mailed, postage
prepaid, to the following on this 24th day of November, 1993:

Sherman Nelson
c/o William F. Ringert
Ringert, Clark et al.
P.O. Box 2773
Boise, ID 83701

Quail Hollow Golfcourse
Kenneth R. Arment
P.O. Box 448
Boise, ID 83701

Ray F. Stralow
3911 Whitehead
Boise, ID 83703

M.E. and R.E. Ryan
4505 Foothill Dr.
Boise, ID 83703

Flora Co.
c/o William R. Snyder
P.O. Box 2338
Boise, ID 83701

Edwards Greenhouse
c/o Paul W. Edwards
4203 Catalpa Dr.
Boise, ID 83703

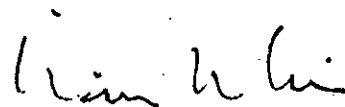
R. Keith Higginson
Director
1301 North Orchard
Boise, ID 83706

David R. Tuthill, Jr.
Western Region Office
2735 Airport Way
Boise, ID 83705

Boise City
c/o Jeffrey C. Fereday
Givens, Pursley et al.
P.O. Box 2720
Boise, ID 83701

Susan D. Miner
Hawley, Troxel et al.
P.O. Box 1617
Boise, ID 83701

WESTBERG, MCCABE & COLLINS, Ctd.


William D. Collins

PETITION FOR REVIEW
AND NOTICE OF APPEAL
terteling\appeal.ptn

KOWETT

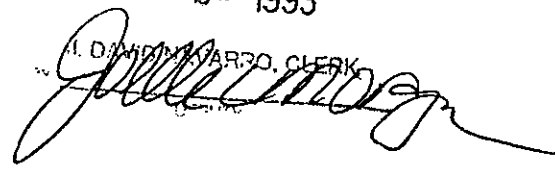
Kenneth R. Arment
Gery W. Edson, P.A.
280 North 8th Street
Suite 132
P.O. Box 448
Boise, Idaho 83701
Telephone: (208) 345-8700
Facsimile: (208) 389-9449

Attorneys for Quail Hollow Golf Club

FILED
P.M. 2:00

DEC 22 1993

J. D. WILSON, CLERK



IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

IN THE MATTER OF REQUEST FOR)
GROUNDWATER REGULATION:)
DECREED RIGHT NOS. 63-0012,)
63-0013, 63-0014, 63-0015,)
AND 63-0016, CLAIM NO. 63-4037)
AND PERMIT NO. 63-9758)

Case No. 97293

TERTELING TRUST NO. 7,)

Appellant,)

vs.)

THE IDAHO DEPARTMENT OF)
WATER RESOURCES,)

Respondent.)

JOINDER IN PETITION
FOR REVIEW AND NOTICE
OF APPEAL

TO: CLERK OF THE ABOVE-ENTITLED COURT AND TO ALL COUNSEL
OF RECORD, AND THE IDAHO DEPARTMENT OF RESOURCES:

PLEASE TAKE NOTICE that David E. Hendrickson dba Quail Hollow Golf
Club, and the successor in interest to Tee Limited (hereinafter "Quail Hollow"), seeks

joinder in the appeal to the District Court of the Fourth Judicial District in and for Ada County in the above-entitled matter pursuant to the provisions of Idaho Code, Sections 67-5770, 42-237e, 42-1701A and IRCP Rule 83(c).

In support of this joinder in Terteling Trust No. 7's petition for review and notice of appeal, Quail Hollow states the following:

1. This appeal is from the Idaho Department of Water Resources' ("IDWR") order denying petitions for rehearing and amended final memorandum decision and order dated October 27, 1993. Quail Hollow did not receive notice of the administrative decision until after November 24, 1993 since a copy of the Final Memorandum Decision and Order was sent to an incorrect address. A similar mistake occurred with the IDWR's December 1, 1992 Order, which counsel for Tee Limited, the predecessor in interest to Quail Hollow, did not receive timely notice as it was sent to the same incorrect address as the October, 1993 Order.
2. Quail Hollow joins in the five specific issues on appeal raised by Terteling Trust No. 7.
3. In addition, Quail Hollow specifically claims as error Findings Of Fact No. 13 and Conclusions of Law Nos. 5 - 10. The IDWR is incorrect in selectively enforcing mandatory requirements under the *Silkey v. Tiegs* decree and avoiding its statutory duties to establish a reasonable ground water pumping level and discriminating against Quail Hollow's unrecorded water right while allowing delivery of others. These actions have resulted in Quail Hollow Golf Club being shut down in violation of the State's constitutional prior appropriation doctrine.

Boise City
c/o Jeffrey C. Fereday
Givens, Pursley, Webb,
& Huntley
P.O. Box 2720
Boise, ID 83701

A handwritten signature in cursive script, appearing to read "Ken Arment", written in dark ink.

Kenneth R. Arment

NO. STIP
FILED
A.M. _____ P.M. 330

JUN 30 1997

J. DAVID NAVARRO, Clerk
By _____
DEPUTY

NO. 02052
FILED
A.M. _____ P.M. 355

JUN 30 1997

J. DAVID NAVARRO, Clerk
By _____
DEPUTY

ALAN G. LANCE
Attorney General

JOHN W. HOMAN
Deputy Attorney General
Department of Water Resources
P. O. Box 83720
Boise, Idaho 83720-0098
Telephone: (208) 327-7920
Fax: (208) 327-7866

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

IN THE MATTER OF A PETITION
TO MODIFY THE BOUNDARIES OF
WATER DISTRICT NO. 63-S

Case No. 97293

TERTELING TRUST NO. 7,
Petitioner,

STIPULATION FOR
DISMISSAL AND ORDER

COME NOW, the Petitioners, Terteling Trust No. 7 and Dave Hendrickson dba Quail Hollow Golf Club, and Respondents Idaho Department of Water Resources (Department) and Flora Co., by and through their respective counsel of record in Ada County Case No. 97293 do stipulate as follows:

1. The Petitioners and Respondents agree and stipulate that all protests involving the application to transfer No. 4804 before the Idaho Department of Water Resources have been resolved and settled.

2. The Petitioners and Respondents further agree and stipulate that dismissal of this action shall not preclude or limit any party from asserting any legal argument or defense involving any claim to a water right in Twin Falls County case No. 39576.

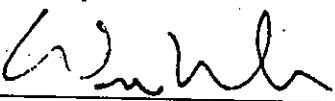
3. The Petitioners and Respondents further agree and stipulate that all parties to this agreement will bear their own costs and attorney fees incurred in this action.

4. The Petitioners and Respondents further agree and stipulate that all matters at issue in this appeal are no longer of immediate controversy and the parties request that the court dismiss Case No. 97293.

IN WITNESS WHEREOF, the parties have executed this agreement on the date following their respective signatures.

PETITIONERS

Terteling Trust No. 7

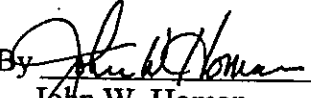
By 
William D. Collins
Westberg, McCabe & Collins

Dave Hendrickson dba Quail Hollow Golf Club

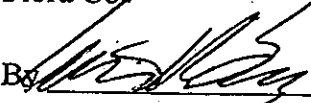
By  6/30/97
Kenneth R. Arment, P.A.

RESPONDENTS

Idaho Department of Water
Resources

By  6/30/97
John W. Homan
Deputy Attorney General

Flora Co.

By  6-30-97
William R. Snyder
Coffin, Snyder & Mathews

ORDER

IT IS HEREBY ORDERED that upon review of the foregoing Stipulation and good cause appearing therefor, Ada County Case No. 97293 is dismissed.

DATED this 30 day of JUNE, 1997.

A handwritten signature in dark ink, appearing to read "Joel D. Horton", is written over a horizontal line.

JOEL D. HORTON

District Judge

CERTIFICATE OF SERVICE

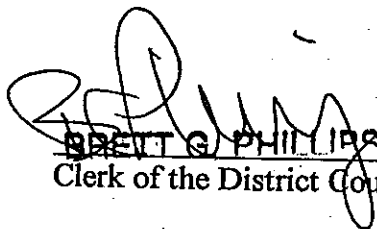
I HEREBY CERTIFY that on this 30 day of July, 1997, I mailed a true and correct copy of the foregoing **STIPULATION FOR DISMISSAL AND ORDER** on the following person listed below by U.S. mail, postage prepaid and addressed as follows:

William D. Collins
WESTBERG, McCABE & COLLINS
733 N. 7th Street
P. O. Box 2836
Boise, ID 83701-2836

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Attorney at Law
1770 W. State St., Ste. 339
Boise, Idaho 83702

William R. Snyder
Thomas A. Donovan
COFFIN, SNYDER & MATTHEWS
520 West Franklin Street, Upper Level
P. O. Box 2338
Boise, Idaho 83701

John W. Homan
Idaho Department of Water Resources
1301 N. Orchard
Boise, ID 83706


BRET G. PHILLIPS
Clerk of the District Court