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JUL 06 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. 63-30006, 63-31050, 63-31051, 63-31053,
	)	63-31056, 63-31060, 63-31062, and 63-32895
Case No. 39576	)	
	)	
	)	AFFIDAVIT OF DANA L. HOFSTETTER
	)	IN RESPONSE TO TERTELING SUMMARY
	)	JUDGMENT MOTION
	)	
	)	
	)	

STATE OF IDAHO)
COUNTY OF ADA) ss.

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 Water Right License No. 63-3603 that I obtained from the Idaho Department of Water Resources ("IDWR") Internet website.

(3) Attached hereto as Exhibit B is a true and correct copy of IDWR Transfer Approval No. 3990 that I obtained from the IDWR Internet website.

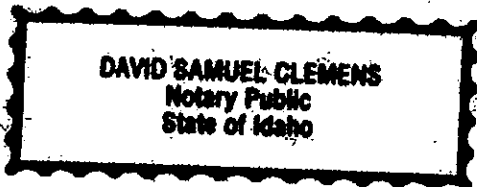
(4) Attached hereto as Exhibit C is a true and correct copy of a June 18, 2010, letter from Charles L. Honsinger to Jeff Peppersack of IDWR and Petition to Rescind Transfer No. 3990 that I learned of and obtained from the IDWR Internet website.

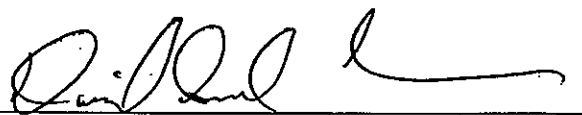
FURTHER YOUR AFFIANT SAYETH NAUGHT.

DATED this 2nd day of July 2010.


Dana L. Hofstetter

SUBSCRIBED AND SWORN to before me this 2nd day of July, 2010.




Notary Public in and for the State of Idaho
Residing at: BOISE, ID
My Commission Expires: 7/18/2014

CERTIFICATE OF SERVICE

I hereby certify that on this 2nd day of July, 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(s) indicated below:

Charles L. Honsinger

RINGERT LAW

455 S. Third

P.O. Box 2773

Boise, ID 83701-2773

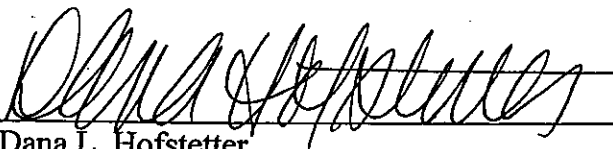
☒ U.S. Mail ☐ Overnight Delivery ☐ Hand-Delivery ☐ Facsimile

IDWR Document Depository

P.O. Box 83720

Boise, ID 83720-0098

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


Dana L. Hofstetter

State of Idaho
Department of Water Administration

WATER RIGHT LICENSE

License of Water Right No. 33602/63-3603 Priority April 26, 1967 Amount 1.03 cfs

THIS IS TO CERTIFY, that J. L. TERTELING

of Boise, Idaho, has complied with the terms and conditions of Permit No. 33602/63-3603 issued pursuant to Application for Permit dated April 26, 1967 and has submitted proof to the Department of Water Administration on May 14, 1970 that he has applied water to a beneficial use; an examination by the Department indicates that the works have a capacity for the diversion of 1.03 cfs of water from a ground water source tributary to _____, and that the permit holder has applied to a beneficial use & established a right to use water as follows:

Beneficial Use	Period of Use	Rate of Diversion	Annual Volume
<u>Irrigation</u>	from <u>March 15</u> to <u>Nov. 15</u>	at <u>1.03</u> cfs and	<u>351 acre feet or</u>
	from _____ to _____	at _____ cfs and	<u>4.5 af per acre</u>
	from _____ to _____	at _____ cfs and	
	(Both dates inclusive)		

Subject, however, to the condition that no more than 1.03 cfs of water be diverted at any one time, and that the amount of water to be diverted and to which such right is entitled and confirmed is for the purpose aforementioned and is limited to the amount which can actually be beneficially used and shall not exceed 351 acre feet per year, said waters to be diverted within the SW $\frac{1}{4}$ NW $\frac{1}{4}$, NE $\frac{1}{4}$ NW $\frac{1}{4}$ and NW $\frac{1}{4}$ SW $\frac{1}{4}$ of Sec. 22, Twp. 4 N, Rge. 2 E, B.M. in the County of Ada

Description and location of place of use:

Twp.	Range	Sec.	NE $\frac{1}{4}$				NW $\frac{1}{4}$				SW $\frac{1}{4}$				SE $\frac{1}{4}$				Totals
			NE $\frac{1}{4}$	NW $\frac{1}{4}$	SW $\frac{1}{4}$	SE $\frac{1}{4}$	NE $\frac{1}{4}$	NW $\frac{1}{4}$	SW $\frac{1}{4}$	SE $\frac{1}{4}$	NE $\frac{1}{4}$	NW $\frac{1}{4}$	SW $\frac{1}{4}$	SE $\frac{1}{4}$	NE $\frac{1}{4}$	NW $\frac{1}{4}$	SW $\frac{1}{4}$	SE $\frac{1}{4}$	
<u>4N</u>	<u>2E</u>	<u>22</u>					<u>3</u>	<u>5</u>	<u>3</u>		<u>20</u>	<u>22</u>		<u>12</u>		<u>13</u>			<u>78</u>

Total number of acres irrigated 78

NOTE: Modifications to or variance from this license must be made within the limits of Section 42-222, Idaho Code, or the applicable Idaho Law. This right may be forfeited by five years of non-use.

The right to the use of the water hereby confirmed is restricted and appurtenant to the lands or place of use herein described, as provided by the laws of Idaho.

Witness the seal and signature of the Director, affixed at Boise, Idaho, this 24 day of April, 19 74.

RECORDED

OCT 27 1992

Director

EXHIBIT

A

63-3603

Page 1 of 6

STATE OF IDAHO JUL 20 1992
DEPARTMENT OF WATER RESOURCES

Transfer No. 3290

APPLICATION FOR TRANSFER OF WATER RIGHT
PART 1

APPROVED

Name of applicant Terteling Trust No. 7 Phone 208-338-5200
Post Office address 877 West Main Street, Ste. 706, Boise, Idaho 83702

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 SHALLOWER PONDING DEPTHS

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

Right Number	Priority	Amount (cfs/ac-ft)	Nature of Use	Period of Use
<u>63-03603</u>	<u>4/26/1967</u>	<u>1.03</u>	<u>IRRIGATION</u>	<u>3/15</u> to <u>11/15</u>
<u>A63-03603</u>	<u>"</u>	<u>"</u>	<u>"</u>	<u>"</u> to <u>"</u>
<u> </u>	<u> </u>	<u> </u>	<u> </u>	<u> </u> to <u> </u>
<u> </u>	<u> </u>	<u> </u>	<u> </u>	<u> </u> to <u> </u>

2. Total amount of water being transferred 1.03 cubic feet per second and/or _____ acre-feet per annum.
3. Source of water Groundwater tributary to BOISE RIVER
4. Point(s) of Diversion:

Lot	%	%	%	Sec.	Twp.	Rge.	County	Local name for diversion
		NE	NW	22	4N	2E	Ada	artesian
		NW	SW	22	4N	2E	Ada	50 HP 16" well
		SW	NW	22	4N	2E	Ada	Hot water well
	SW	NE	NW	22	4N	2E	Ada	Proposed
	NW	SE	NW	22	4N	2E	Ada	Proposed
	NW	NE	NW	22	4N	2E	Ada	Proposed

5. Lands irrigated or place of use

5. Lands irrigated or place of use:

[illegible]

Total acres

• **Wiederholungsfragen**

EXHIBIT

B

PART 1**6. General Information:**

a. Description of diversion system A well - proposed surface diameter of 36", proposed
maximum well depth is 700'.

b. Are the lands from which you propose to transfer the water right subject to any liens, deeds of trust, mortgages, or contracts? Yes No 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:

d. Remarks:

ACTION OF THE DIRECTOR, DEPARTMENT OF WATER RESOURCES

This is to certify that I have examined Application for Transfer of Water Rights No. 63-03603

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

SEE ATTACHED SHEET FOR CONDITIONS OF APPROVAL.

Witness my hand this 5th day of October, 19 92.

[Signature]
CHIEF, WATER ALLOC. BUREAU

OCT 27 1992

CONDITIONS OF APPROVAL
Transfer of Water Right No. 63-03603

1. The change authorized by this transfer shall be accomplished within one (1) year of the date of this approval.
2. Failure to comply with the conditions of this transfer is cause for the director to issue an order to show cause why the approval of the transfer should not be rescinded.
3. Approval of this transfer does not preclude the opportunity for review of the validity of the water right(s) in the ongoing Snake River Basin Adjudication.
4. Right holder shall comply with the drilling permit requirements of Section 42-235, Idaho Code.
5. 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 described above.
6. Use of water with a temperature greater than 85 degrees Fahrenheit is not authorized under this right.
7. Use of low temperature geothermal water for irrigation purposes is prohibited, unless the heat is first removed through another beneficial use.
8. Approval of this transfer authorizes the diversion of water from one producing well only.

Dated this 5th day of October, 1992.

J. Glen Saylor
Chief, Water Alloc. Bureau

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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

1. Right evidenced by:

- a. Decree No. _____ Decreed to _____
in case of _____ vs. _____
dated _____ In _____ county of _____
- b. License No. AG-03603
63-03603 issued by the Idaho Department of Water Resources.
- c. Claim No. _____ on file with the Idaho Department of Water Resources.
- d. Transfer No. _____ which produced this right.

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 attachment A. Check appropriate box below:

☐ Tax Notice

☐ Warranty Deed

☒ Other tax assessment notice

3. Source of water groundwater tributary to _____

4. Date or priority 04/26/1967

5. Water is used for the following purpose:

amount 1.03 for Irrigation purposes from 3/15 to 11/15
(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 1.03 cubic feet per second and/or 351 acre-feet per annum.

7. Point(s) of Diversion:

Lot	1/4	1/4	1/4	Sec.	Twp.	Rge.	County	Local name for diversion
		NE	NW	22	4N	2E	Ada	Artesian
		NW	SW	22	4N	2E	Ada	50 hp 16" well
		SW	NW	22	4N	2E	Ada	Hot water well

8. Lands irrigated or place of use:

Twp.	Rge.	Sec.	NE 1/4				NW 1/4				SW 1/4				SE 1/4				Totals
			NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	
4N	2E	22					3	5	3		20	22		12		13			78

Total acres 78

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

PART 2

Transfer No. _____

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

(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:

ALL OR NONE DEPENDING UPON SUCCESS
OF FINDING WATER AT SHALLOWER DEPTHS.

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
			NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	

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
			NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	

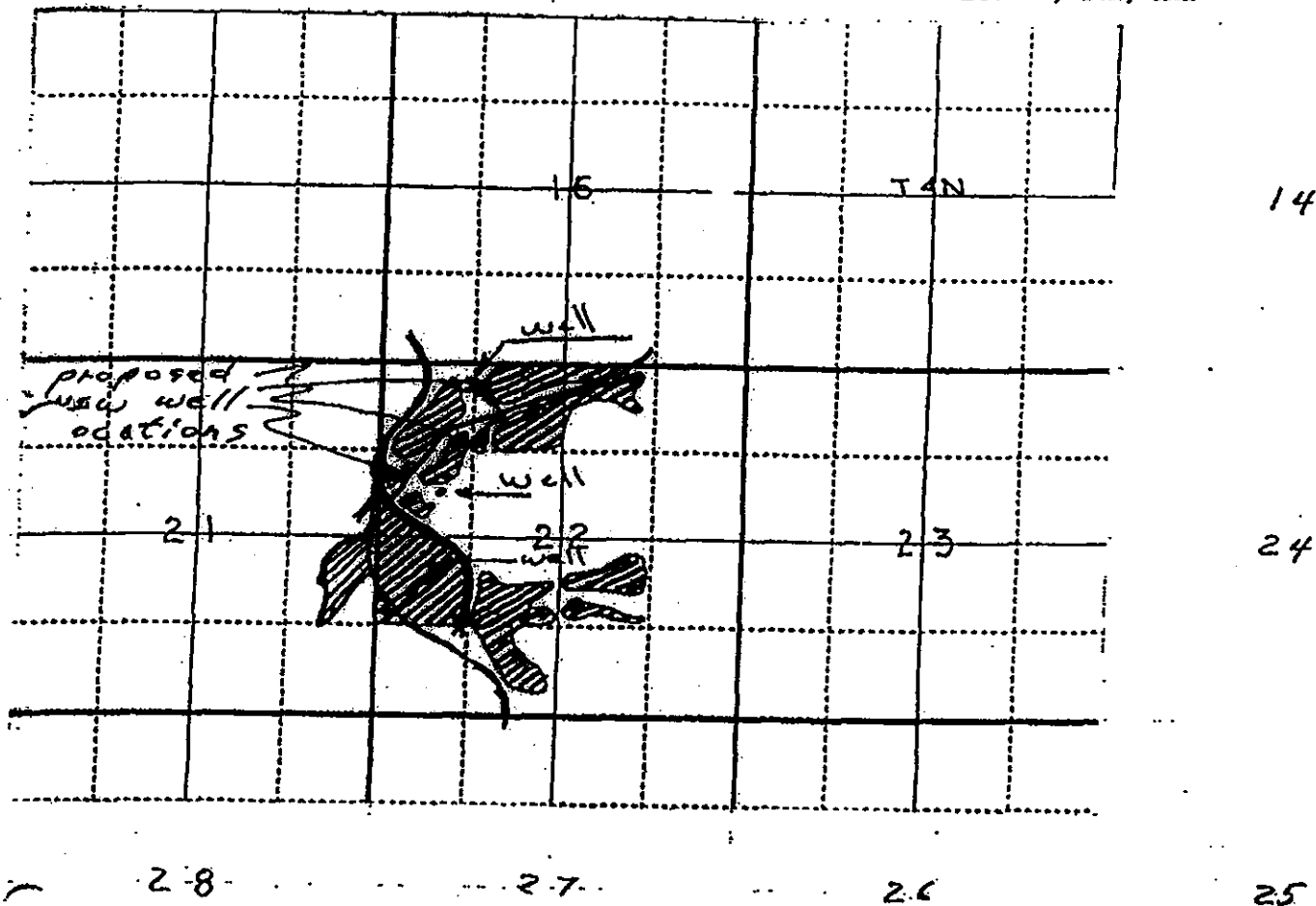
Total acres _____

RECORDED
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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.

SEC. 22, T4N, R2E



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

35 **RECEIVED** 36
OCT 27 1992

4N
2E+

PART 3**B. CHANGES IN NATURE OF USE**

1	New Nature of Use	Amount (cfs/ac-ft)	Hours/days/year	Period of Use
				to
				to

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

3. Describe effects on other 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.

J. L. Terteling, Trustee, Terteling Trust No. 7

SS

(Signature of Applicant)

Subscribed and sworn to before me this 17th day of July, 1992.

Flinda A. Dwyer

(Notary Public)

My commission expires 5-7-97

FOR DEPARTMENT USE ONLY

Transfer contains _____ pages and _____ attachments

Received by MM Date 7-20-92

Protest filed by _____

Prelim. check by _____ Fee \$50.00

Receipted by JLD Date 7-20-92

Published in Salinas Stateman

Copies of protest forwarded by _____

Pub. dates 8/6 & 8/13/92

Hearing held by _____ Date _____

Watermaster recommendation requested on _____

Recommended for ☒ approval ☐ denial

_____ rec'd. _____

by DW

Copy of transfer sent to lien holder _____

MICROFILMED
OCT 27 1992

JUN 18 2010

DEPARTMENT OF
WATER RESOURCES

June 18, 2010

Delivered by Hand

Jeff Peppersack
Bureau Chief
Water Allocation Bureau
Idaho Department of Water Resources

Laura E. Burri
Adam S. Christenson
Jeffrey R. Christenson
David R. Claiborne
S. Bryce Farris
Jon C. Gould
David Hammerquist
Charles L. Honsinger **
James P. Kaufman
Jennifer Reid Mahoney
James G. Reid *
Daniel V. Steenson

Re: Transfer No. 3990/Water Right no. 63-3603

Dear Jeff:

Enclosed herewith, please find a Petition to Rescind the above referenced approved Transfer of Water Right no. 63-3603. As you and I discussed earlier today, the proposed points of diversion approved under the Transfer were never constructed, and the Transfer Application itself did not properly represent all points of diversion of water right no. 63-3603 at the time.

As we also discussed, we are working with Vicky Music of IDWR's Adjudication Bureau in an effort to resolve issues with this and other water rights claimed in the SRBA by my client. It is at her suggestion that I am submitting this petition. I invite you to contact myself, Ms. Music, or Nick Spencer should you need additional information or analysis to resolve the issues raised by this Petition. Finally, I request that, to the extent possible, IDWR expedite the processing of this Petition so that we can resolve the issues in the SRBA with Ms. Music and Mr. Spencer prior to upcoming deadlines. I am sorry to request this expedition as I am sure it further burdens your already busy schedule, but I simply must do so.

Thank you for your help earlier today, and for your expected cooperation with this matter. As mentioned above, please contact me with any questions or concerns you may have.

Sincerely,


Charles L. Honsinger

cc: Vicky Music
Nick Spencer
Joe Terteling
Ed Squires

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JUN 18 2010

DEPARTMENT OF
WATER RESOURCES

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

Attorneys for Petitioners T-7, LLC/The Terteling Company, Inc.

BEFORE THE IDAHO DEPARTMENT OF WATER RESOURCES

IN THE MATTER OF APPROVED
TRANSFER NO. 3990

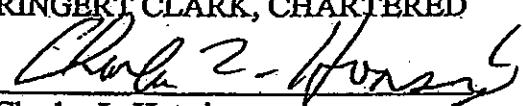
PETITION TO RESCIND TRANSFER

COMBS NOW, T-7, LLC, the successor in interest to Terteling Trust No. 7, together with The Terteling Company, Inc., the recommended owner of water right no. 63-3603 in the Snake River Basin Adjudication, by and through their attorneys Ringert Law, Chartered, and hereby Petition the Idaho Department of Water Resources to rescind Transfer No. 3990, approved on October 5, 1992. This Petition is made for the reason that the proposed new point(s) of diversion approved under Transfer no. 3990 were never constructed, and for the reason that the existing points of diversion listed by the applicant for Transfer no. 3990 erroneously failed to include all existing points of diversion.

Dated this 18th day of June, 2010.

RINGERT CLARK, CHARTERED

By


Charles L. Honsinger
Attorneys for Petitioners T-7, LLC and
The Terteling Company, Inc.