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DEPARTMENT OF
WATER RESOURCES

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

In Re SRBA	)	
	)	
Case No. 39576	)	Subcase Nos. 63-30006, 63-31050, 63- 31051, 63-
	)	31053, 63-31056, 63-31060, 63-31062, 63-32895
	)	
	)	REPLY TO EDWARDS FAMILY, LLC'S
	)	RESPONSE MEMORANDUM IN OPPOSITION
	)	TO TERTELING MOTION FOR SUMMARY
	)	JUDGMENT
	)	
	)	

COMES NOW Claimants The Terteling Company, Inc, T-7, LLC, and the Estate of Steve Terteling (hereinafter collectively "Terteling") by and through their attorneys of record, Ringert Law, Chartered, and hereby submit this *Reply* to the Edwards Family, LLC's *Response Memorandum in Opposition to Terteling Motion for Summary Judgment* (hereinafter "*Response Memorandum*"). This *Reply* is supported by the record herein.

REPLY TO EDWARDS FAMILY, LLC'S RESPONSE MEMORANDUM IN OPPOSITION
TO TERTELING MOTION FOR SUMMARY JUDGMENT- Page 1

COPY

SUMMARY

Edwards Family, LLC (hereinafter “Edwards”) argues in its *Response Memorandum* that to avoid confusion during administration a remark defining whether a right is “cold” or “hot” must be included in all rights within the boundaries of Water District 63-S with a source of either “ground water” or “springs.” As discussed in both its *Memorandum in Support of Motion for Summary Judgment* filed in the above-captioned subcases, and its *Memorandum Opposing Edward Family, LLC’s Motion for Summary Judgment* filed in subcase nos. 63-12 *et. al.*, Terteling might not oppose a remark defining the rights that divert water from the Stewart Gulch Geothermal Aquifer (“SGGA”) if one had been proposed by Edwards for evaluation, but that there is no need for a remark stating that water rights are not diverted from the SGGA. Nothing in Edwards’ *Response Memorandum* in any way changes the conclusion that no such remark is necessary.

ARGUMENT

The primary problem that Edwards has with respect to its desire to identify water rights as being diverted from a “cold” water source is that it has failed to ever establish why it is “necessary” to do so in order to define or administer the water rights (as it must - *see* I.C. §42-1411(2)(j)). Edwards complains that Terteling has not absolutely established that the water rights to which Terteling’s *Motion for Summary Judgment* is directed are “cold” water rights, and for that reason alone, summary judgment must allegedly be denied. Unfortunately for Edwards, it misunderstands the true issue before the Court. The issue is not whether a water right is “cold” or “hot”¹, but

¹As a sidenote, although Edwards complains about the inability to tell the difference between “hot” and “cold” water right Partial Decrees, it has never explained how it is that the temperature of the subject water rights is to be determined so that the allegedly appropriate language can be inserted into the water rights. Will the Court require IDWR to measure the

whether the remarks proposed by Edwards are “necessary” to define or administer the water rights. The language is not necessary, and again, as discussed in Terteling’s *Memorandum Opposing Edward Family, LLC’s Motion for Summary Judgment* filed in subcase nos. 63-12 *et. al.*, the administration of these water rights is best left to the entity best equipped to handle it, and which is statutorily required to do so - the Idaho Department of Water Resources.²

Beyond the fact that the language is unnecessary, until it filed its *Response Memorandum*, Edwards failed to propose the specific language it desires in either the “hot” or the “cold” water rights. Now, it states that it “prefers” language that it has agreed to with certain other parties, but “is open to other language that effectively and unambiguously identifies the rights that are subject to District 63-S administration (and, also to leave no [sic] confusion, the ones that are not). It still has not proposed language it desires in the “hot” water rights. Accordingly, because there is no definitively proposed language before the court, the court must grant Terteling’s Motion for Summary Judgment as there are no “issues of fact” for the court to decide.

The best justification for the “necessity” of including language identifying “cold” and “hot” water rights that Edwards can come up with is that

[u]nless, the SRBA identifies which rights are subject to District 63-S administration

temperatures and report back to it and the parties? Will the parties be required to come up with their own lists of “hot” and “cold” water rights? Will Edwards be required to determine whether rights are “hot” or “cold” at their own expense and then make its proposed findings known to other parties? Will there be the opportunity to object to any findings, whether made by IDWR or the parties? We simply have no idea exactly how this determination is proposed to be made, and no idea how the process will work once it is made.

²Notably, Edwards has not submitted any affidavit from the District 63 Watermaster, or from any IDWR employee stating that the “identification” sought by Edwards is necessary for administration to be accomplished.

(and which are not), the District 63-S watermaster will not be in a position even to know for certain which rights are subject to District 63-S administration.

Edwards' Response Memorandum, pp. 7-8. This line of reasoning of course truly “begs the questions”: (1) If the “hot” water rights that are subject to District 63-S administration are identified pursuant to Edwards’ proposed scheme (a concept with which Terteling does not necessarily agree, despite Edwards’ best efforts to cast Terteling’s ambivalence regarding the issue as “agreement”), exactly why is it necessary to identify “cold” water rights that are not subject to District 63-S administration? (2) Wouldn’t the “cold” water rights that are not identified as “hot” necessarily not be subject to District 63-S administration?

Terteling, while it may not agree with Edwards’ attempt to characterize the “hot” water rights within water district 63-S as such, understands why it is that Edwards desires that characterization. However, Terteling simply can not understand why it is necessary to characterize “cold” water rights within water district 63-S boundaries as such. Edwards does express concern about exactly this situation when it states that the approach of identifying only “hot” water rights

would leave ambiguous the administrative status of those ground water and spring rights that are diverted in District 63-S boundaries but have Partial Decrees omitting any reference to District 63-S applicability (or inapplicability).

Response Memorandum, p. 8. Again, exactly how including a remark that defines some water rights as “hot” and indicates they should be administered as part of District 63-S, while not including an opposing remark in “cold” water rights makes the administrative status of those rights “ambiguous” is beyond comprehension. The solution to Edwards’ apparent inability to understand is simple: if there are rights with a remark stating that they are to be administered as part of District 63-S, then they are to be so administered; those rights with no such remark are not part of District 63-S and

should, accordingly, not be administered as such.

Beyond the simplicity of the solution to Edwards' concern over "ambiguity", there is a significant existing problem with Edwards' proposal: as discussed in Terteling's *Memorandum Opposing Edward Family, LLC's Motion for Summary Judgment* filed in subcase nos. 63-12 *et. al.*, Partial Decrees of water rights within the Water District 63-S have already been issued without the "clarifying" language Edwards desires. *See i.e. Partial Decrees* in Subcase Nos. 63-31061 and 63-28364. As a result, if the language Edwards seeks is in fact placed in the Partial Decrees for both "cold" and "hot" water rights, there will be some cold water rights within the District 63-S boundary with the language, and other water rights within the boundary without the language, and this dichotomy might cause much confusion. This is exactly the situation that Edwards states it is seeking to avoid - but certainly has failed to avoid to this point. Terteling desires that the administration of water rights, rather than by the SRBA District Court, be accomplished by the entity to whom such administration statutorily belongs - the Idaho Department of Water Resources. *See* Chapter 6, Title 42, Idaho Code.

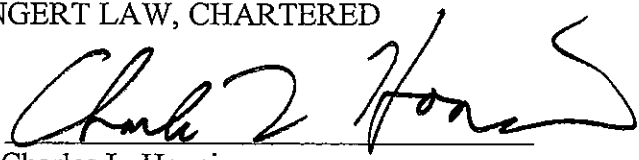
CONCLUSION

To avoid inserting itself into administration of water rights, and to avoid more confusion than already exists with respect to the language that is included in some already-issued water right Partial Decrees and not included in others within Water District 63-S, the Court must simply grant Terteling's Motion for Summary Judgment and cut off this absurd proposal.

Dated this 9th day of July, 2010.

RINGERT LAW, CHARTERED

By:

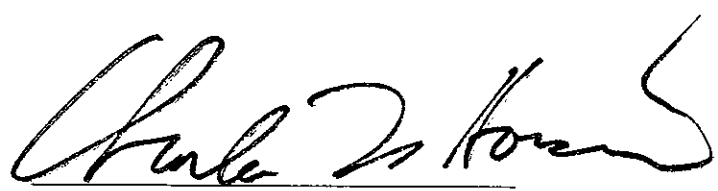

Charles L. Honsinger

CERTIFICATE OF MAILING

I hereby certify that service of the within and foregoing document was made this 9th day of July, 2010, by mailing a copy thereof, postage prepaid, to each of the parties listed below.

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