

HOFSTETTER LAW OFFICE

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September 10, 2013

RECEIVED

SEP 11 2013

WATER RESOURCES
WESTERN REGION

Via Facsimile and U.S. Mail

Director
Idaho Department of Water Resources
Western Region
2735 Airport Way
Boise, Idaho 83705

Re: Application for Permit No. 63-12540; Application for Transfer Nos. 78280
and 78282 – The Terteling Company, Inc.

Dear Director:

On behalf of Edwards Family LLC (Edwards), which is associated with Edward Greenhouses, a longstanding Boise family business and the oldest greenhouse business in the United States that relies on low-temperature geothermal water. Use of water in accordance with Right No. 63-14 is essential to the continuing operation of Edwards Greenhouses, a source of income to many families in the Boise area. I hereby provide the following comments regarding the above-referenced Applications. This letter of concern is being submitted as explained in my September 3, 2013, letter.

The above-referenced Applications provide for the drilling of two new wells, that in combination with four existing wells will serve an additional 95 irrigated acres for a total of 298 acres within a shared 357-acre permissible place of use. It is not clear whether one of the two new wells will be located within Water District 63-S. However at least one of the existing wells involved (the Windsock well) is low-temperature geothermal and located within Water District 63-S. It is noted that all of the wells would be located within the boundaries of Water District 63-S, if Water District 63-S boundaries had not been scaled back as a result of a Petition filed by an entity related to the Applicant in 1995.

There remain substantial questions whether the Water District boundaries should have been modified and Edwards encourages the Idaho Department of Water Resources ("IDWR") to revisit this issue in the context of these applications. What is now referred to as Water District 63-S has a long history and, in fact, is likely the first administratively regulated ground water aquifer in Idaho. *See* *Silkey v. Tiegs*, 51 Idaho 344 (1931) and 54 Idaho 126 (1934). Water District 63-S has had water supply issues over the years and efforts remain ongoing to encourage the low-temperature geothermal resources in Water District 63-S to be used only for their heat value, and it is generally recognized that protection for the aquifer precludes new appropriation from the aquifer. Terteling and Edwards entered into a Settlement Agreement on or about January 24, 2002, in connection with Terteling's Transfer Application No. 68558 by which Terteling agreed to an annual volume limitation on its diversions from the geothermal aquifer in recognition of its limited capacity. Further, Terteling sought to have restrictions placed on the senior Edward Family geothermal right, 63-14, in the SRBA.

To the extent the subject applications would or could result in the appropriation of additional water from the Stewart Gulch low-temperature geothermal Aquifer, over what is already authorized, they should be denied. Enlargement of the irrigated acres, as proposed, could effectively allow an increased use of the low-temperature geothermal water. This would be inconsistent with IDWR policy with respect to the low temperature geothermal aquifer, the long history of the Stewart Gulch Geothermal Aquifer establishing its limited sustainability, and the prior agreement between Edwards and Terteling. Further, it appears that it could be difficult to impossible to administer the wells and rights subject to these Applications to ensure that there would be no additional diversions of the geothermal resource.

Current IDWR policy requires applications for new permits to identify the water-bearing zone that will be tapped by the wells. IDWR is requiring mitigation for depletions to surface water sources for ground water appropriated upstream from Star unless the water-bearing zone is below 200 feet. It is noted that it could be difficult for the Applicant to comply with this requirement without tapping into the low-temperature geothermal source.

If surface water is used on the same place of use as the rights being transferred, it would help conserve both the cold ground water and the low-temperature sources if the surface water were required to be used whenever available. However, it also is not clear how IDWR can administer the combined use of these rights in an integrated system to limit the use of low-temperature geothermal to the previously authorized number of acres and to insure that cold water sources are used first. The fact that some (but not all) of the subject wells would be technically outside of current Water District 63-S boundaries

would further complicate the administration of these rights after the proposed transfers and thereby increase water district assessments to all rightholders in the District.

On behalf of Edwards, I request that IDWR deny these pending applications if the Edward's right to use the low-temperature geothermal water will be injured. If any or all of the applications are approved, the approval should be conditioned to assure that the rights can be effectively and efficiently administered to prevent injury to the Edward's geothermal right and to prevent any additional diversions from the geothermal aquifer.

Thank you for your consideration of these comments. Please let me know if you have any questions.

Sincerely,

HOFSTETTER LAW OFFICE, LLC



Dana L. Hofstetter

cc: Charles Honsinger
E:/3006.1/10550

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Dear Director:

On behalf of Edwards Family LLC, which is associated with Edward Greenhouses, a longstanding Boise family business that relies on geothermal water from the Stewart Gulch Geothermal Aquifer (Water District 63-S), I hereby provide notice of Edwards Family LLC's intention to submit a letter of concern regarding the above-referenced Applications within the next week.

Sincerely,

HOFSTETTER LAW OFFICE, LLC



Dana L. Hofstetter

cc: Charles Honsinger

E/3006.1/10550