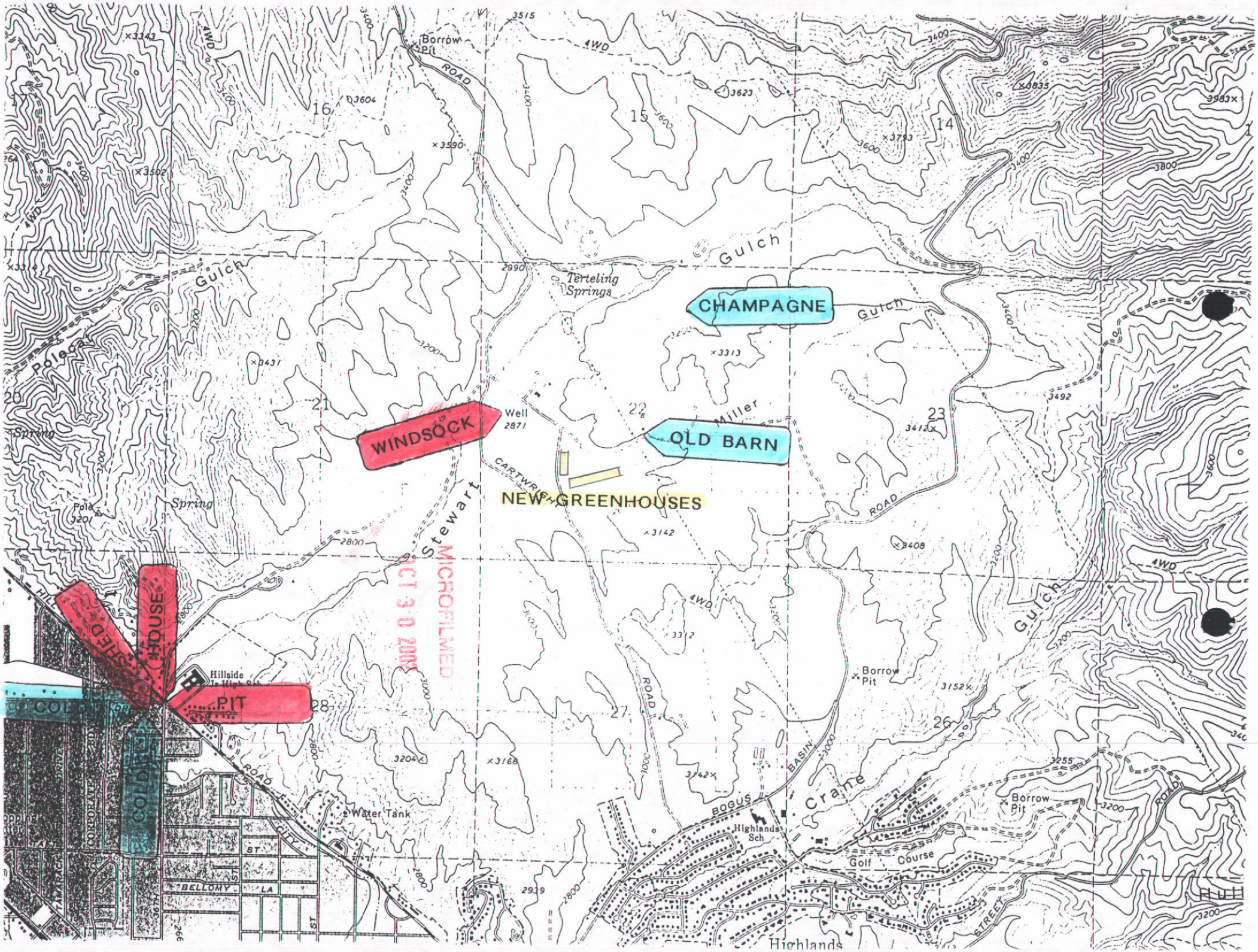

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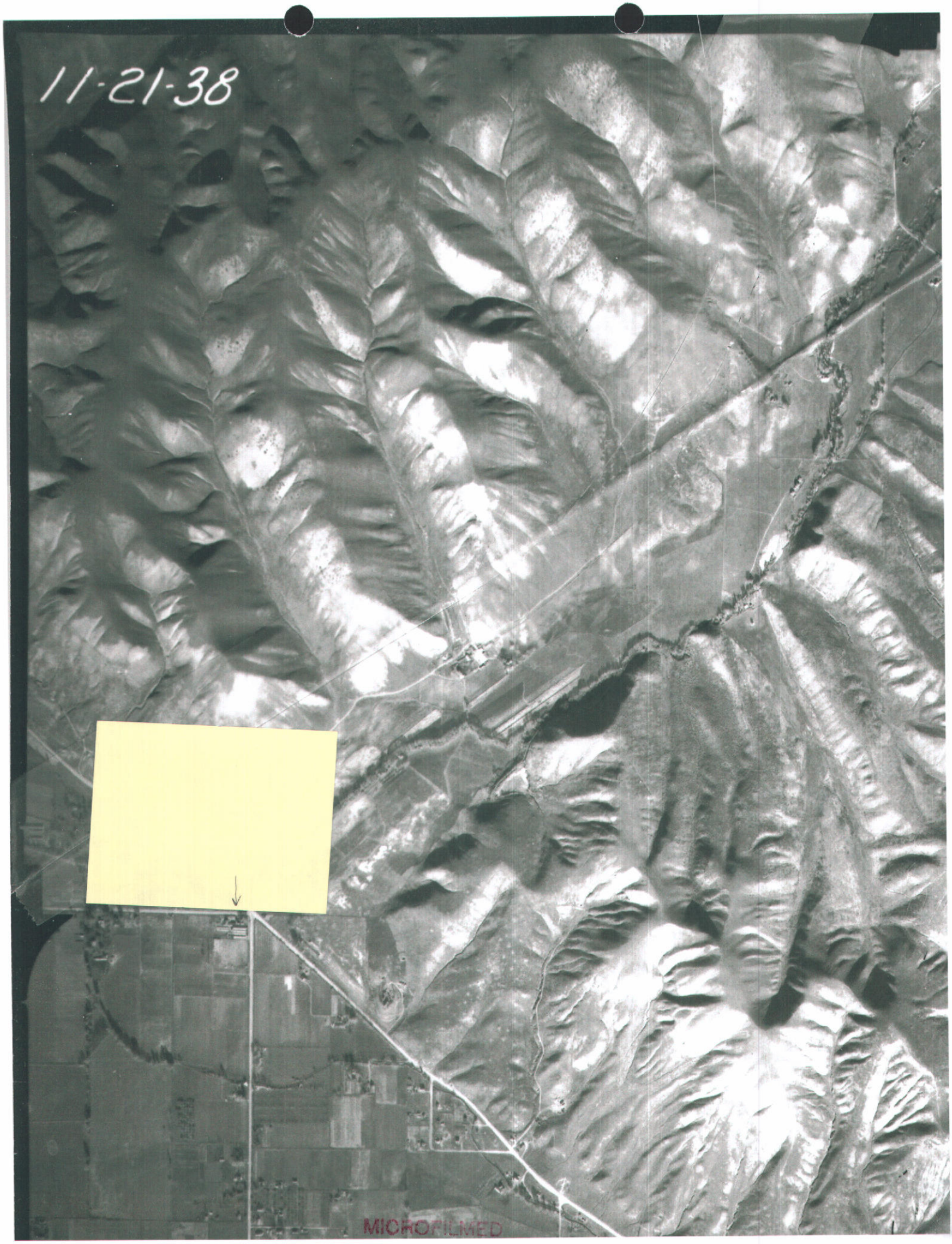

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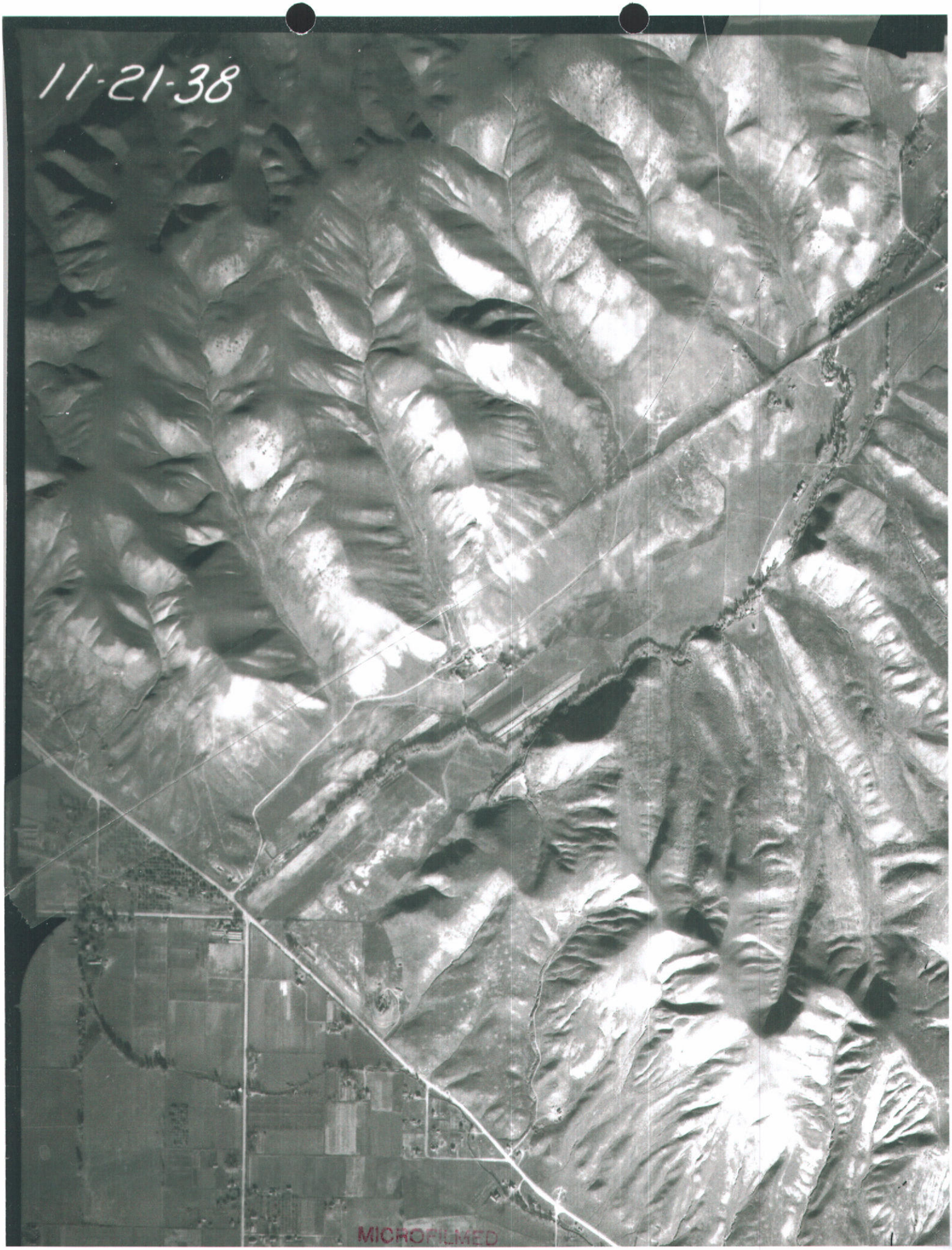

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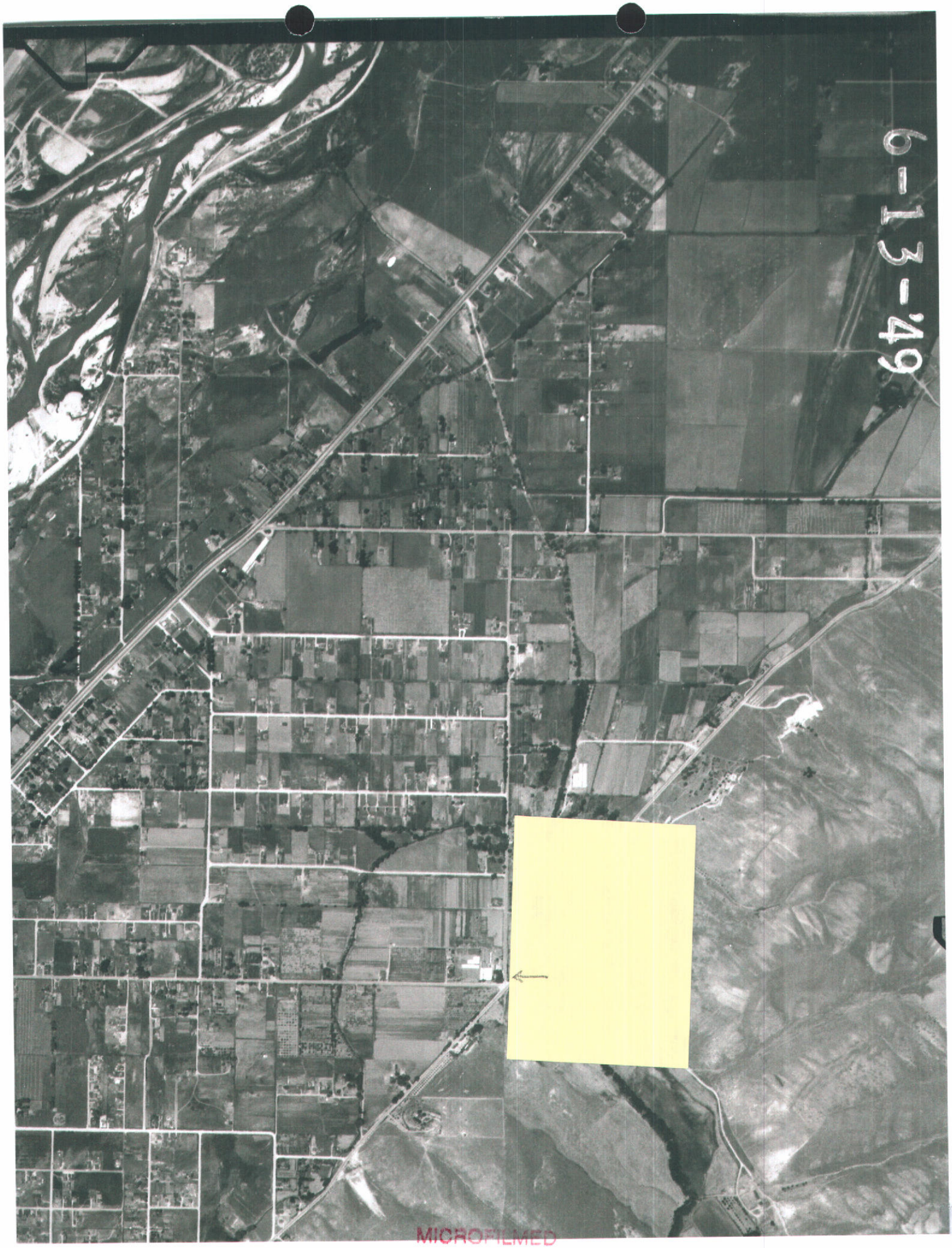

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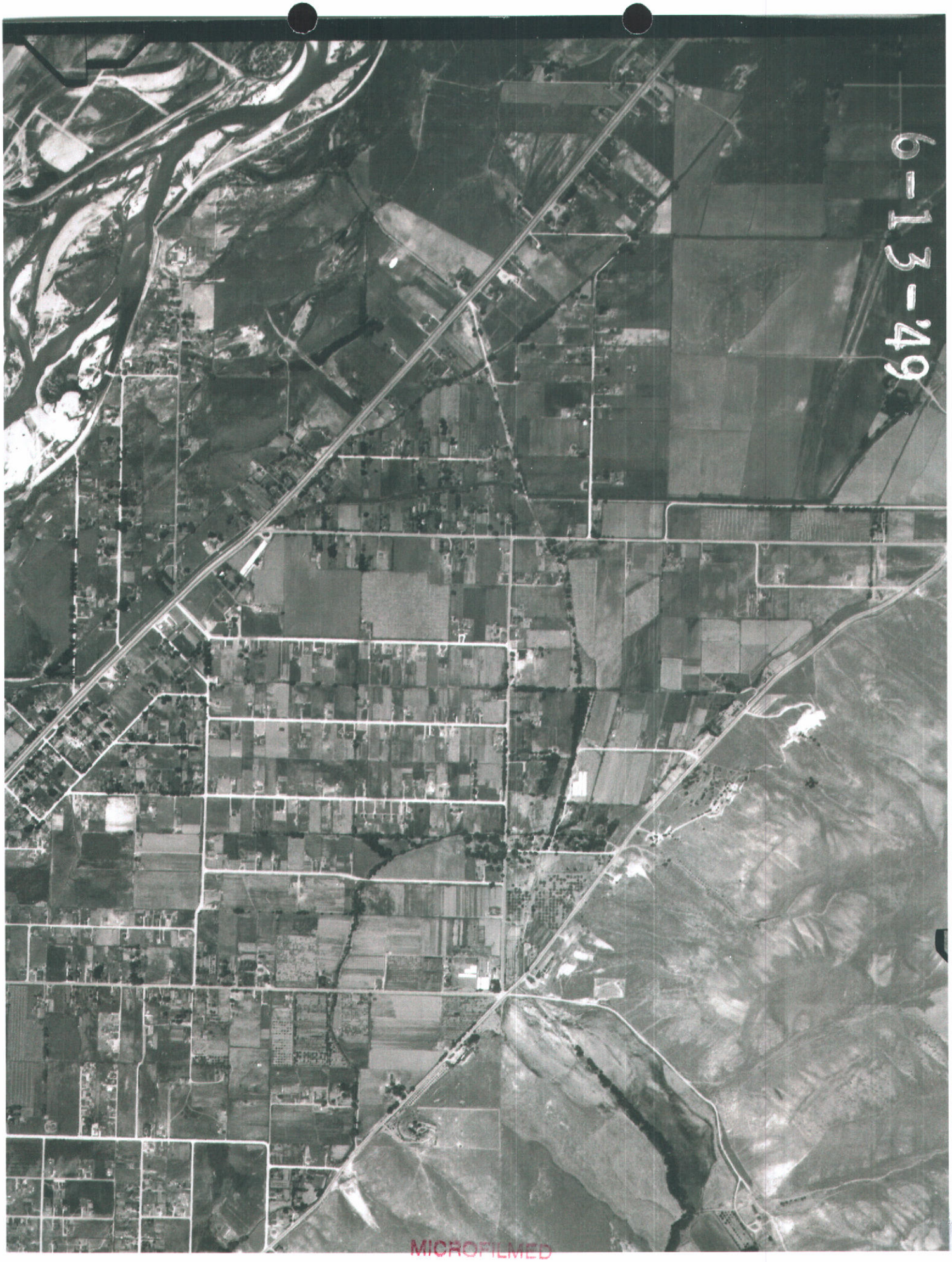

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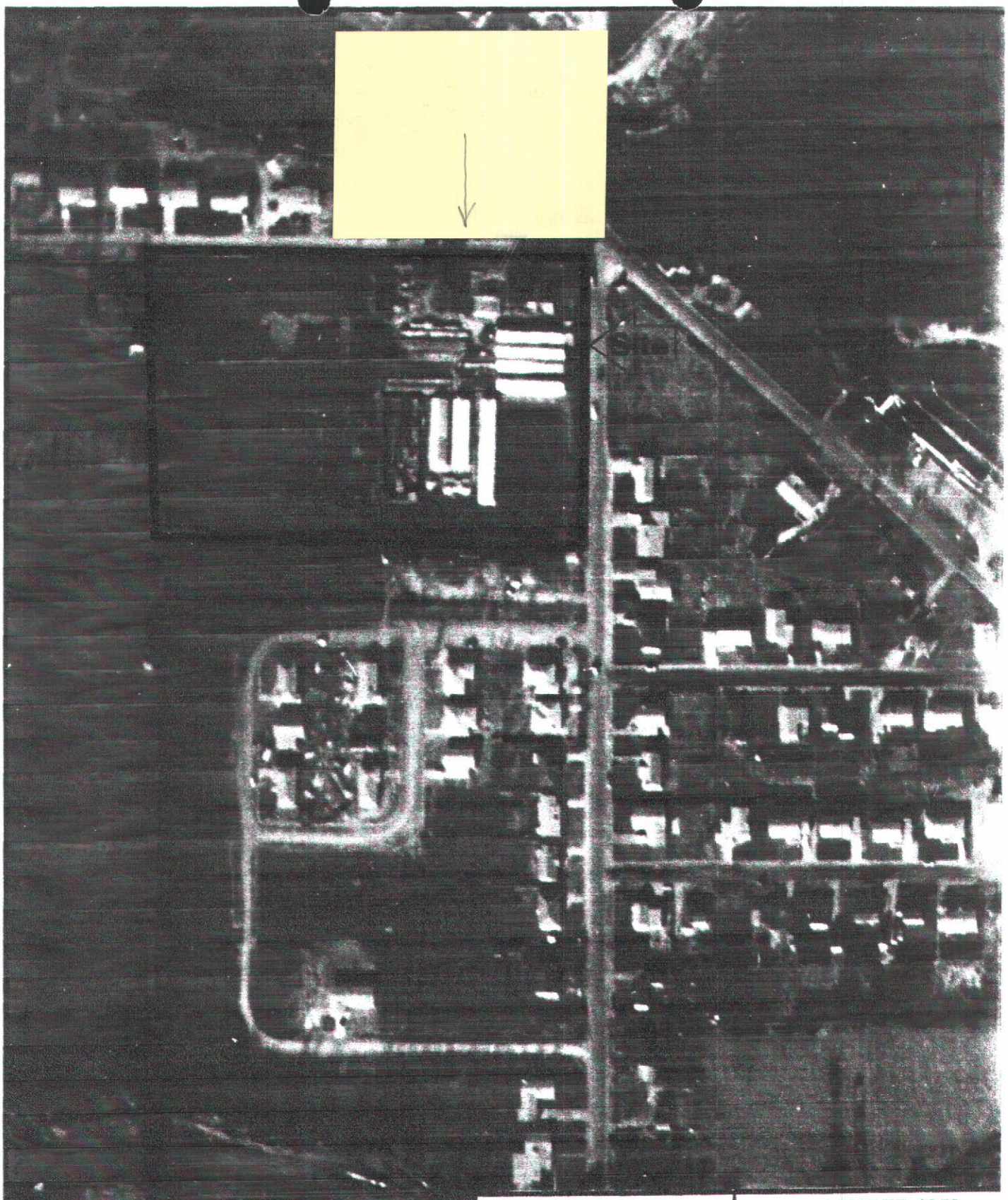
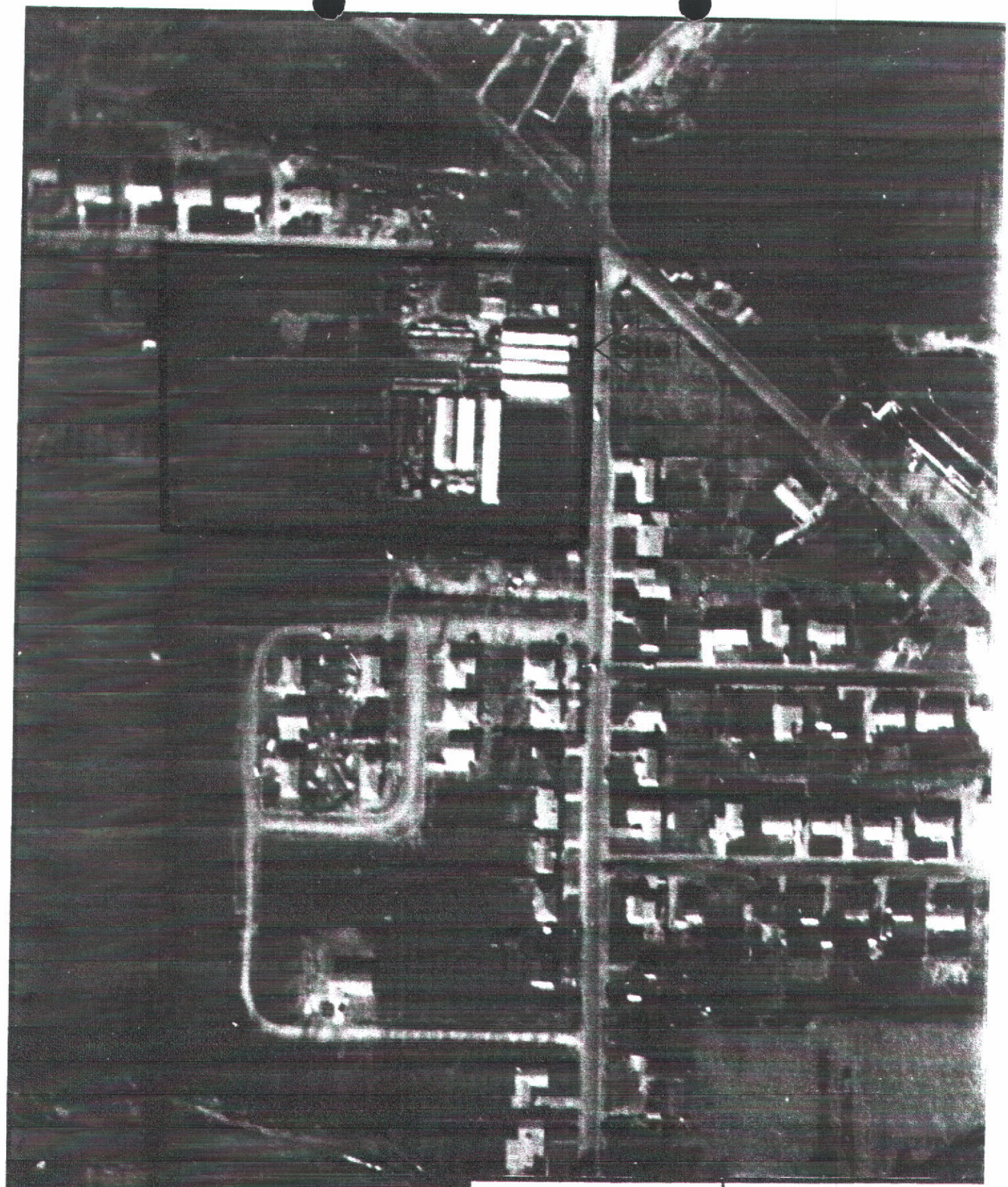


EnviroSearch 1605 North 13th Street Boise, Idaho 83702 USA (208) 345-8292	DECEMBER 1959 AERIAL PHOTOGRAPH FLORA COMPANY PROPERTY 3823 N. 36TH STREET BOISE, IDAHO		
B1862	2/3/97	SCALE: 1"=200'	APPENDIX 1

OCT 3 0 2002



EnviroSearch 1605 North 13th Street Boise, Idaho 83702 USA (208) 345-8292	DECEMBER 1959 AERIAL PHOTOGRAPH FLORA COMPANY PROPERTY 3823 N. 36TH STREET BOISE, IDAHO		
B1862	2/3/97	SCALE: 1"=200'	APPENDIX 1

OCT 3 0 2002

EnviroSearch
1605 North 13th Street
Boise, Idaho 83702 USA
(208) 345-8292

APRIL 1964
AERIAL PHOTOGRAPH

FLORA COMPANY PROPERTY
3823 N. 36TH STREET
BOISE, IDAHO

B1862	2/3/97	SCALE: 1"=200'	APPENDIX 1

MICROFILMED
OCT 3 0 2002

AFFIDAVIT OF PUBLICATION

I, Clyde Cornell, printer and co-publisher of The Kuna Herald, published weekly for more than 78 consecutive weeks at Kuna, Idaho, do solemnly swear that the notice as per clipping attached, was published weekly in the regular and entire issue of said newspaper and not in any supplement thereof, for

Two consecutive weeks as follows:
Commencing with the issue dated

February 14, 1964

and ending with the issue dated

February 21, 1964

Clyde Cornell

Subscribed and sworn to before me this

21 day of February, 1964

Edith M. Cornell
Notary Public for Idaho.

Residing at Kuna, Idaho.

RECEIVED
MAR 19 1964
...ment of Reclamation

NOTICE OF PROPOSED TRANSFER OF WATER RIGHT

Notice is hereby given that O. L. Milstead of 3823 N 36th, Boise, Idaho has applied to the State Reclamation Engineer of the State of Idaho for a certificate authorizing him to change the point of diversion and/or place of use of the waters of subterranean flow as follows:

Amount: 0.8 cubic feet per second. Priority: 7 inches - 7/1/21; 33 inches - 7/1/22; Point of diversion: NE ¼ SE ¼, Section 29, Township 4 N. Range 2 E., B.M. Place of Use:

To Be Transferred To

Point of diversion: NE SE 29; NW¼ SW¼, Section 28, Township 4N, Range 2E., B. M. Place of Use: No change

And that on the 28 day of February, 1964, at 10:00 o'clock A.M., at Room 107 Statehouse, Boise, Idaho, before the State Reclamation Engineer, or his authorized agent, the opportunity will be given to any and all persons to appear and present, for his consideration any reason or reasons why a certificate should not be issued authorizing such transfer.

CARL E. TAPPAN, State Reclamation Engineer

Feb. 14, 21, 1964.

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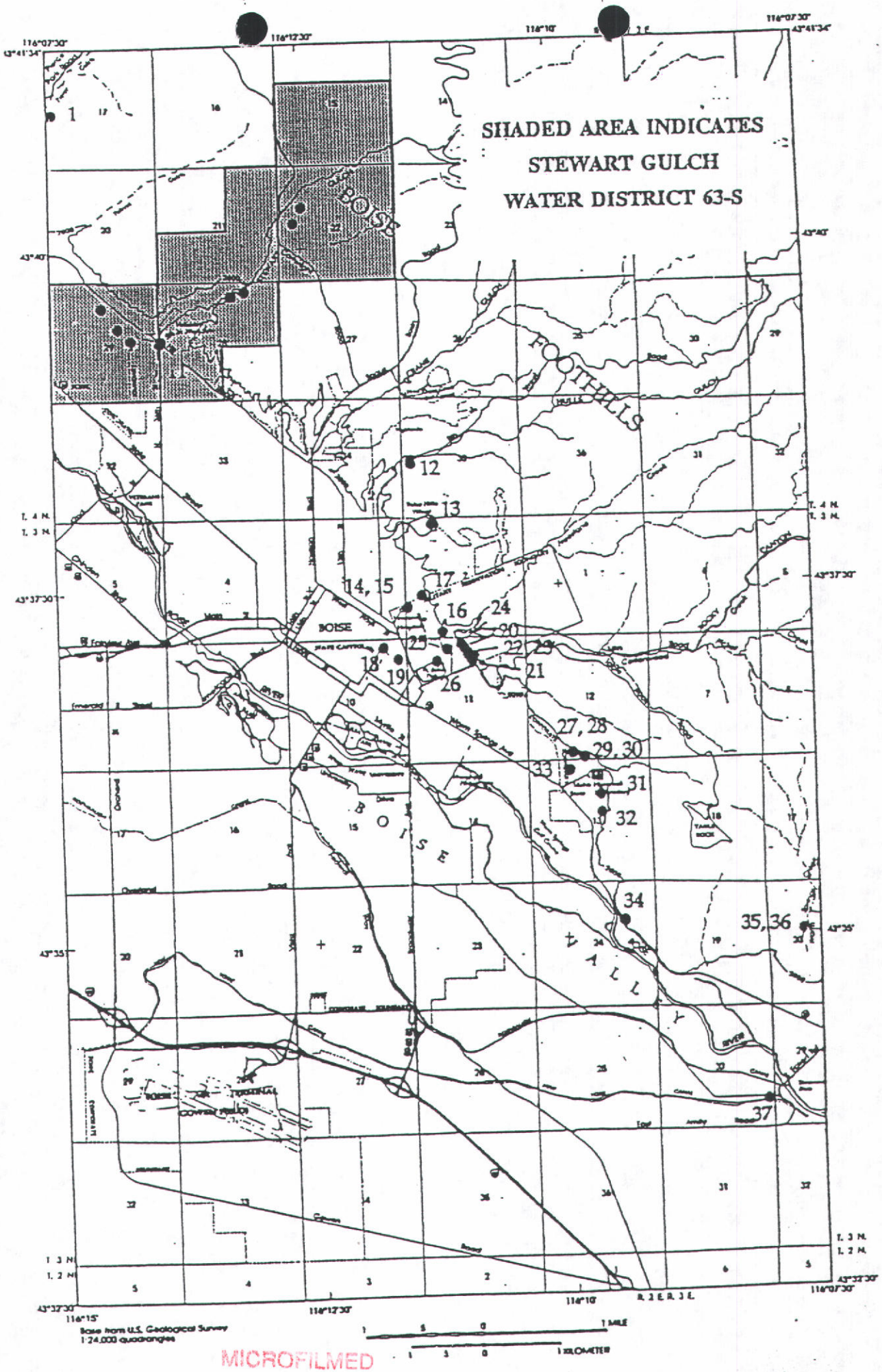

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FIGURE 1

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

No. 11748

FILED
AM
JUN 23 1932
STEPHEN UTTER, Clerk
By Thos. E. Powell Deputy

FRANCES SILKEY,

Plaintiff,

-vs-

[illegible] and J. RYAN,

Defendants.

Civil No. 11748

This matter is before the Court upon the motion of defendants to retain jurisdiction of this case until further order of the Court, and to modify the decree heretofore entered, so as to permit the defendants to use water from their wells which is available and to the extent to which their use will not deplete the supply available to and delivered to plaintiff's wells, and to continue the regulation of said wells in the Department of Reclamation until further order of this Court. In support of this motion, the defendants filed certain affidavits and a statement of measurements prepared by the Department of Reclamation of the State.

Plaintiff filed a countermotion to modify the allowance of water provisionally permitted by the terms of the decree to be withdrawn by the defendant Edwards, and instead to require the defendant Edwards to permanently seal said well or in lieu thereof to install a control or stop valve in the main pipe which may be kept locked and under the control of the Commissioner of Reclamation. In support of the countermotion, plain-

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EXHIBIT
tabbies
B

tiff filed affidavits. [illegible] motion and counter-motion were argued at the same time.

By paragraph XI of the decree this Court retained jurisdiction of this cause for a period of two years from the date thereof, to adjust the allowance of water permitted to be used from the wells of defendants in case it should thereafter appear from the records of measurements that more or less water than therein provisionally fixed may or should be permitted to flow from the wells of defendants or any of them without infringement of the rights therein decreed in accordance with their respective priorities.

By the decree as affirmed by the Supreme Court, the plaintiff Silkey was decreed a prior right to the use of forty miners inches of water over all of the defendants, the defendant Edwards was allotted fifteen miners inches of water between October 1st and April 1st of each year and twenty miners inches of water between April 1st and October 1st of each year, and the other defendants were denied the use of their wells for the time being. The retention of jurisdiction by this Court was limited to the defendants only.

The questions then for consideration at this time are as follows:

First: Do the measurements taken by the Department of Reclamation during this two-year period which has intervened since the entry of the decree disclose facts sufficient to modify the decree heretofore entered, so far as same affects defendants?

Second: Do these measurements disclose a change in conditions sufficient to justify a further

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OCT 30 2002

series of measurements and the keeping open of the decree for a further period.

The Supreme Court of this state has seen fit to depart from both the common law rule and the so-called American rule in the treatment of the subject of percolating waters and to apply to subterranean and percolating waters the same rules of priorities applied to surface waters. By the decree in this Court, affirmed in the Supreme Court, in this case, the rights of plaintiff have been adjudicated and determined. The attack made upon the decree at the hearing of defendants' motion was not based upon a determination of the duty of water under these wells; that is, as I understand it, that plaintiff's lands cannot efficiently handle and therefore do not need the quantity of water for which they have been given a prior right but rather, upon the contention that these wells of plaintiff in their present condition will not flow and cannot produce forty miners inches of water.

From an examination of the briefs submitted in the Supreme Court and the motion for rehearing there made, it appears that the arguments here made were urged in the Supreme Court and by it considered before judgment was entered in the Supreme Court.

An examination of the table of measurements now submitted does not in my opinion show a state of facts sufficient to authorize a modification of the former decree.

Having no authority, as I take it, in this proceeding to reduce the amount of water awarded to plaintiff, I am of the opinion that this table of measurements does not show that a continuation of jurisdiction will accomplish any good purpose. There has been no material change in the capacity of the wells,

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nor in their ability to follow. A continuation of the measurements does not appear justified in view of the facts now before the Court, and would simply mean that this litigation would be made interminable without any probable advantage gained for any of the parties involved.

I am therefore of the opinion that the decree as it now stands should be made permanent. Both defendants' motion to retain jurisdiction and to modify the decree, as well as plaintiff's countermotion, will therefore be denied. This decision, however, does not foreclose the rights of the parties by proper action to enforce the terms of the decree.

In view of the findings, an order in accordance with this memorandum has been entered as of June 8, 1932, and copy thereof is herewith inclosed for your information.

DATED this 22d day of June, 1932.

Charles E. Winstead
District Judge.

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OCT 3 1 1932

Exhibit "B"

STATE OF IDAHO)
: ss.
County of Ada)

I, R. W. FARIS, hereby certify that I am, and since the 1st day of April, 1931, have been, the duly appointed, qualified and acting Commissioner of Reclamation of the State of Idaho. That as such Commissioner of Reclamation I have had charge of the artesian wells described in that certain decree dated June 13, 1930, in the case of FRANCES SILKEY, Plaintiff, vs. H. W. TIEGS, THOMAS F. EDWARDS and J. RYAN, Defendants, which decree was entered and filed on June 13, 1930, in the District Court of the Third Judicial District of the State of Idaho, in and for Ada County, a certified copy of which was filed in the office of the Department of Reclamation of the State of Idaho on August 20, 1930.

That under and pursuant to the provisions of said decree, this Department has made measurements of the water flowing from the artesian wells of the parties to said suit, a copy of which measurements is hereto attached, marked Exhibit "A", and by reference made a part of this certificate.

I FURTHER CERTIFY that said measurements are true and correct, and have been made by the Commissioner of Reclamation of the State of Idaho or his assistants, and the same appear in and are a part of the records of this Department made in conformity with this decree.

Dated this 26th day of May, 1932.

R. W. Faris

Commissioner of Reclamation
of the State of Idaho

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EXHIBIT
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D

EXHIBIT "A"

Date	Actually Flowing	Ability to Flow
	SILKEY	
Aug. 22, 1930	27 inches	27 inches
July 7, 1931	20.5 "	20.5 "
Aug. 9, 1931	21.0 "	21.0 "
Aug. 24, 1931	21.0 "	21.0 "
Feb. 12, 1932	21.0 "	21.0 "
Mar. 18, 1932	14.0 "	21.0 "
Apr. 22, 1932	16.0 "	23.5 "
May 25, 1932	23.5 "	23.5 "
	EDWARDS	
Aug. 22, 1930	11.5 inches	
July 7, 1931	5.0 "	
Aug. 9, 1931	12.0 " (est.)	
Aug. 22, 1931	13.0 "	
Mar. 18, 1932	13.0 "	41.0 "
Apr. 22, 1932	4.0 " (est.)	42.5 "
May 25, 1932	4.0 " (est.)	42.5 "
	TIEGS	
July 7, 1931	1.0 inches (est.)	
Aug. 9, 1931	1.0 " "	
Aug. 22, 1931	1.0 " "	30.0 "
Mar. 18, 1932	1.0 " "	30.5 "
Apr. 22, 1932	1.0 " "	30.5 "
May 25, 1932	1.0 " "	29.0 "
	RYAN	
July 7, 1931	2.0 inches (est.)	
Aug. 9, 1931	2.0 " "	
Aug. 22, 1931	2.0 " "	
Mar. 18, 1932	2.0 " "	48.0 "
Apr. 22, 1932	2.0 " "	48.0 "
May 25, 1932	2.0 " "	47.0 "

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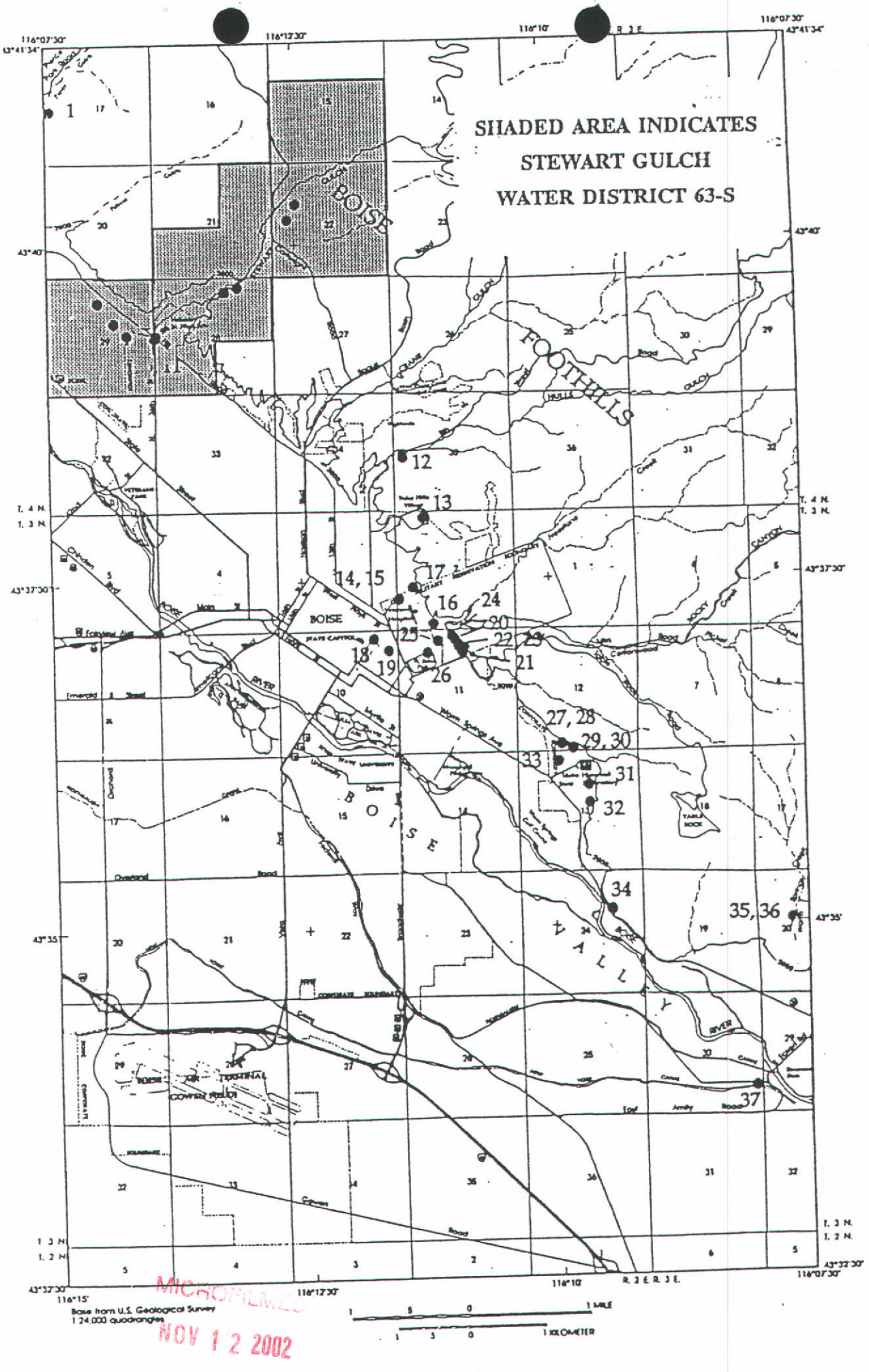

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NOV 12 2002

FIGURE 1

Evaluation of the Flora Company's Geothermal Discharge Weir

February 12, 2002

An evaluation of the data-record and adequacy of the Flora Company's discharge weir for monitoring flow and production volume from Flora's low-temperature geothermal wells with estimates of past geothermal water use.

A report prepared for
The Terteling Company

ATTACHMENT F
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FOR TRANSFER
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by
MICROFILMED Hydro Logic, Inc.

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Evaluation of the Flora Company's Geothermal Discharge Weir

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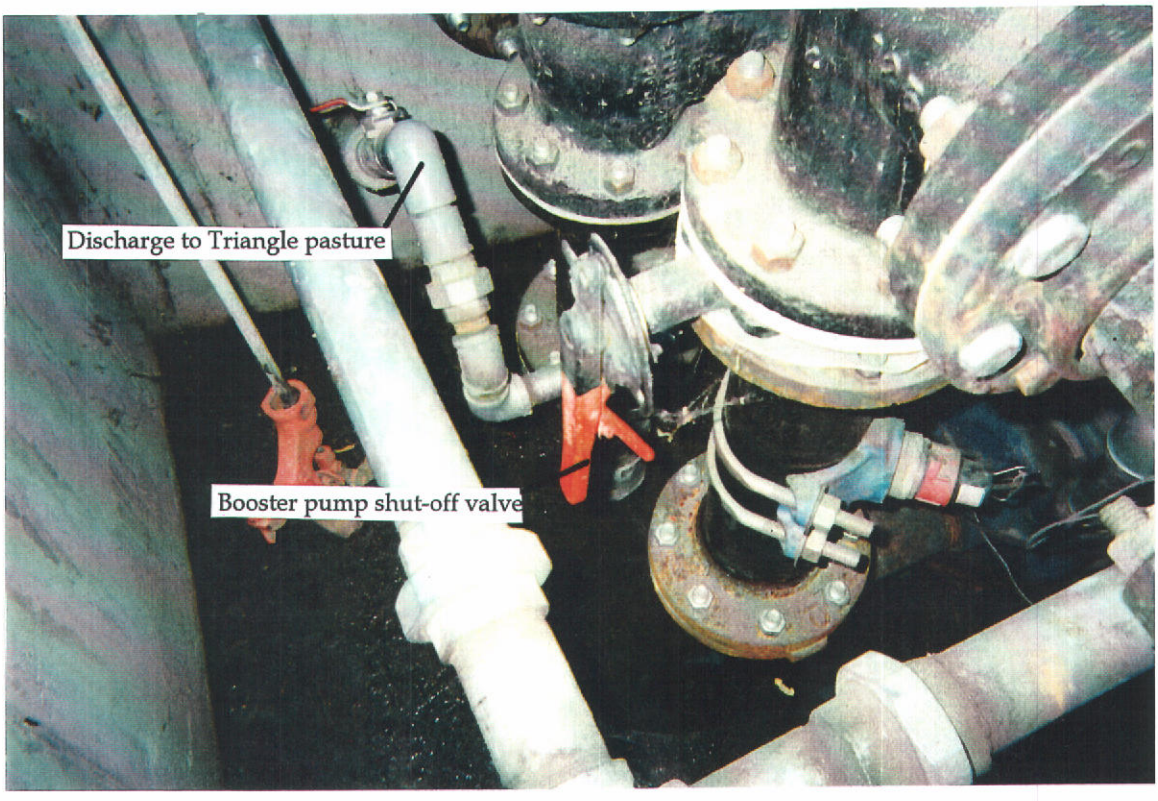
Figure 4.
The 90° V-notch weir used to gauge discharge from the Flora Company wells
October 1998

Figure 4.



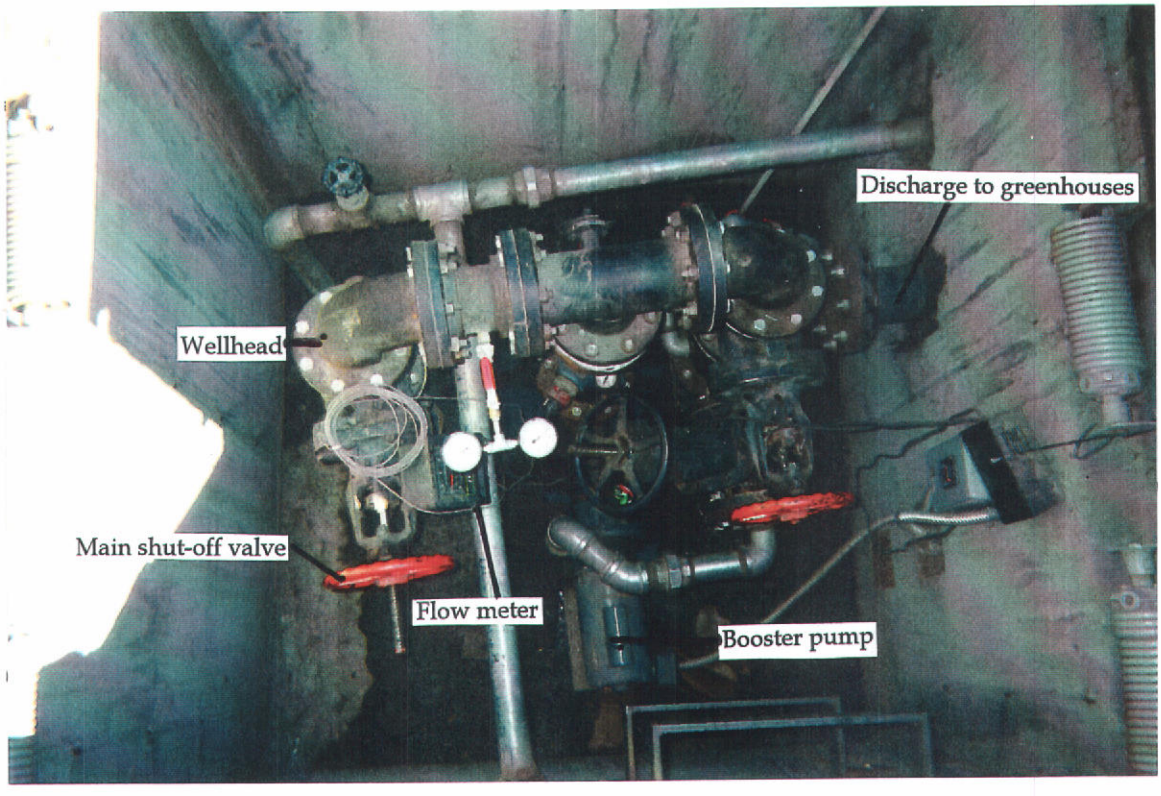


Figure 5.
Wellhead piping configuration for the Flora "Triangle" Well
October 1998

Figure 5.

Figure 6. Stevens F-type water level chart recorder installed on the stilling well of the Flora Co.'s geothermal effluent ditch. Staff gage of the 90° V-notch weir in background

Figure 6.

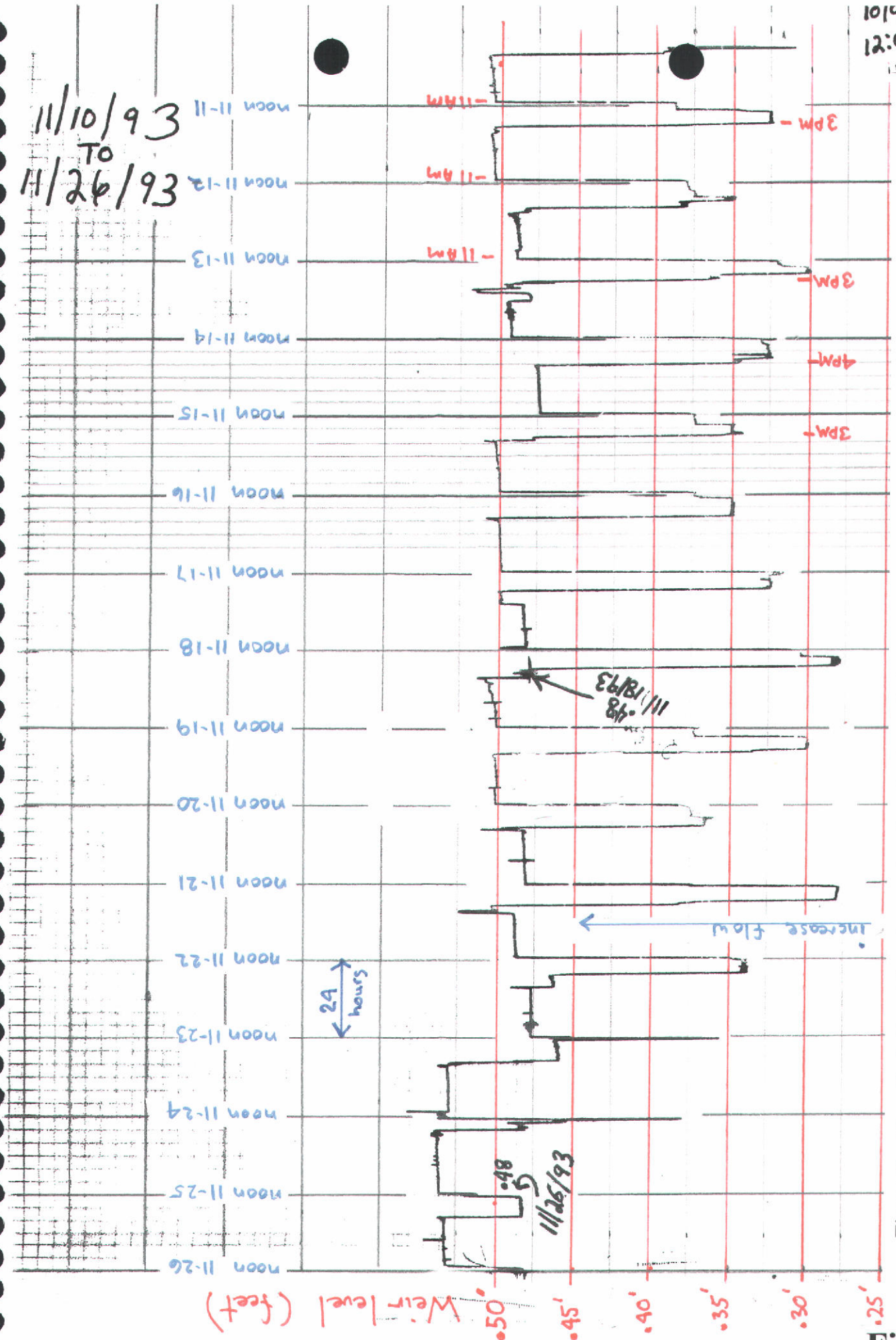


Figure 7. Flora Co.'s V-notch weir recorder chart for the period November 10, 1993-to-November 26, 1993 showing discharge variations due to the daily shutoff of the Silkey geothermal well pump during the warmest part of the day. During the late afternoon and night time hours, all of Flora's geothermal wells were being pumped at maximum discharge to heat the nursery greenhouses. During the day, the Silkey (Shed) well pump was turned off and the well was allowed to flow under natural artesian pressure while the other pumps continued to run. The vertical axis is water level at the weir gage in feet. See Table 6. for corresponding flow rates.

Figure 7.

Figure 8.

Figure 8.
Examples of the distribution/collection ditches for the Flora Company's geothermal water
October 1998

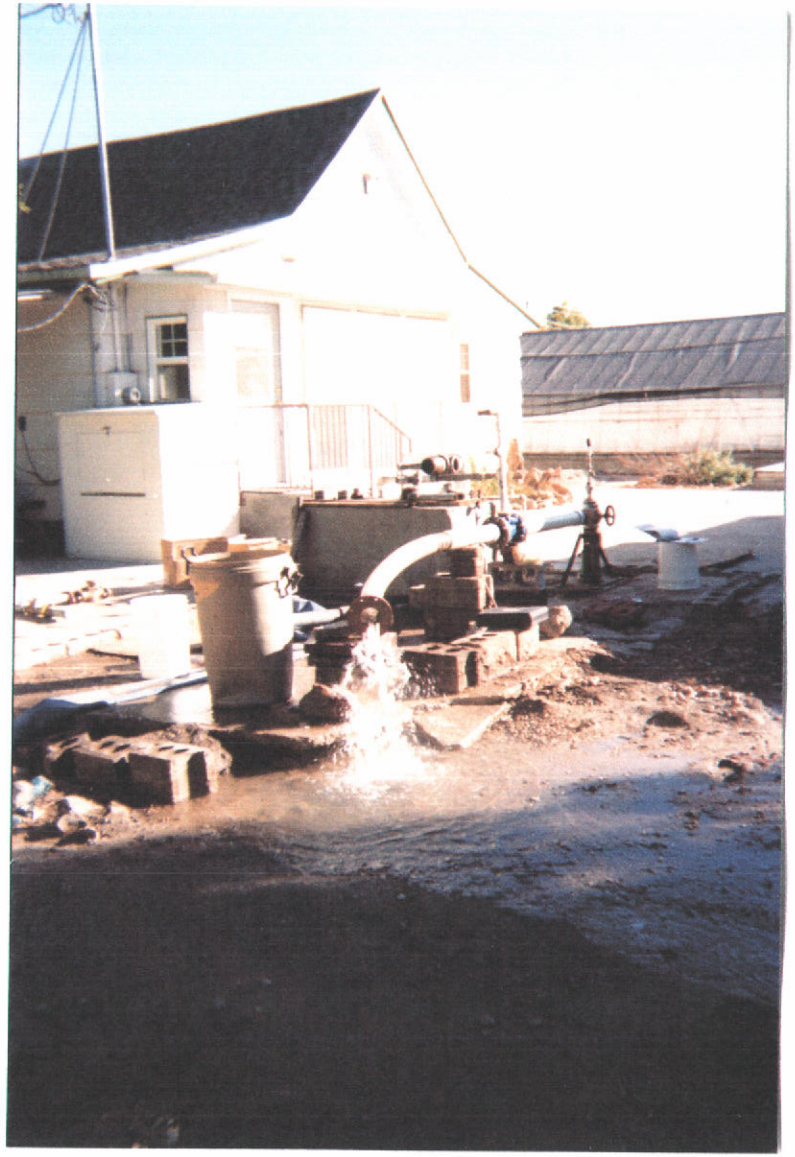


Figure 9.

Figure 9. Surface discharge of Flora Co.'s geothermal wells during testing in 2001. The right photograph is of the Silkey (Shed) well head during calibration of the flow-meter and step-discharge testing to determine the specific capacity of the well. Left photo shows testing of the Tiegs (Triangle) well for tuffaceous mudstone chips that have periodically lodged in the impeller vanes of the flow-meter (lower right of view) and impeded flow and volumetric readings. The excavation is the newly plumbed location for the Tiegs well flow-meter in a straight portion of the supply line pipe. The discharged water infiltrated rapidly into the site's sandy soils.

Figure 10. December 2001 photographs of the Flora Co. discharge weir. Upper view shows weir in an unmaintained and leaking condition at low flow with cinder block supports, caved (widened) ditch bank, and infilled weir box. Lower picture is the same view at higher flow showing significant leakage by-passing the V-notch of the weir.

Figure 11. December 2001 photos of the Flora Co. V-notch discharge weir. Weir box and surrounding ditch channel are lined with plastic sheeting to prevent surface water bypass and underflow leakage at the weir so that upstream ditch loss could be quantified.. Hydraulic communication to the stilling well and chart recorder float was maintained.

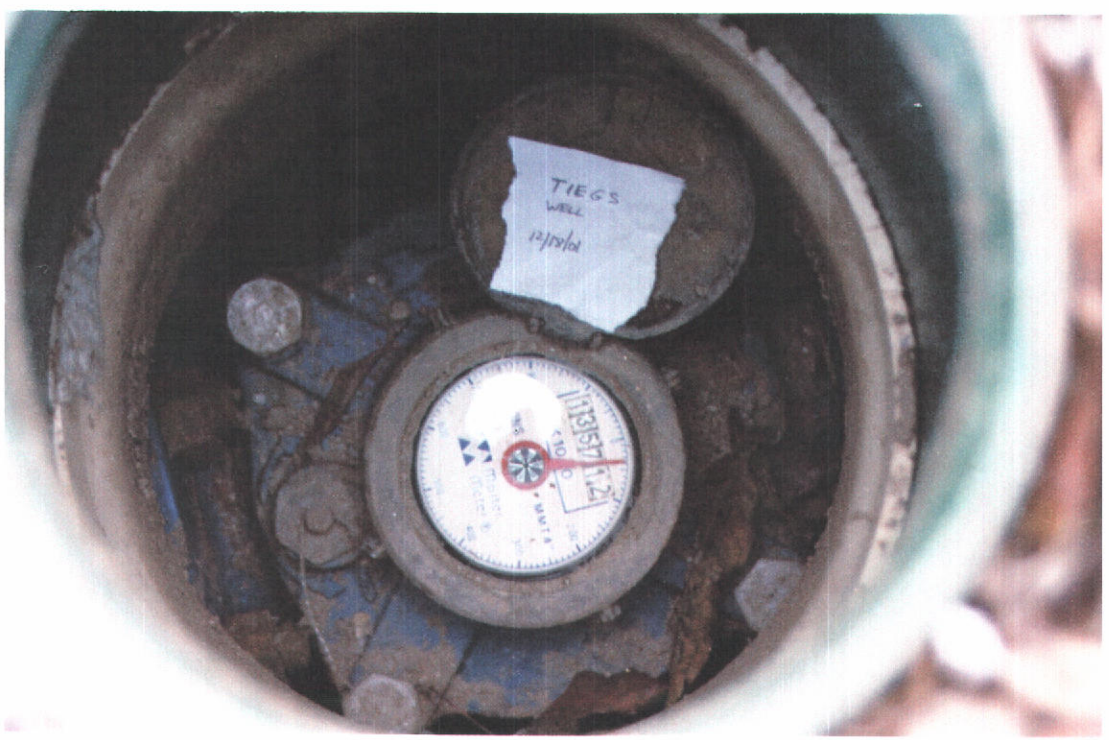


Figure 12. December 2001 photos of the Flora Co. Tiegs well flow-meter installation. Upper view shows the excavated main line from the Tiegs well 36-Street vault where the flow-meter was improperly installed and difficult to access. Lower photograph is of the installed flow-meter through its access port. The flow-meter installation is in straight pipe and meets manufacturer's specifications.

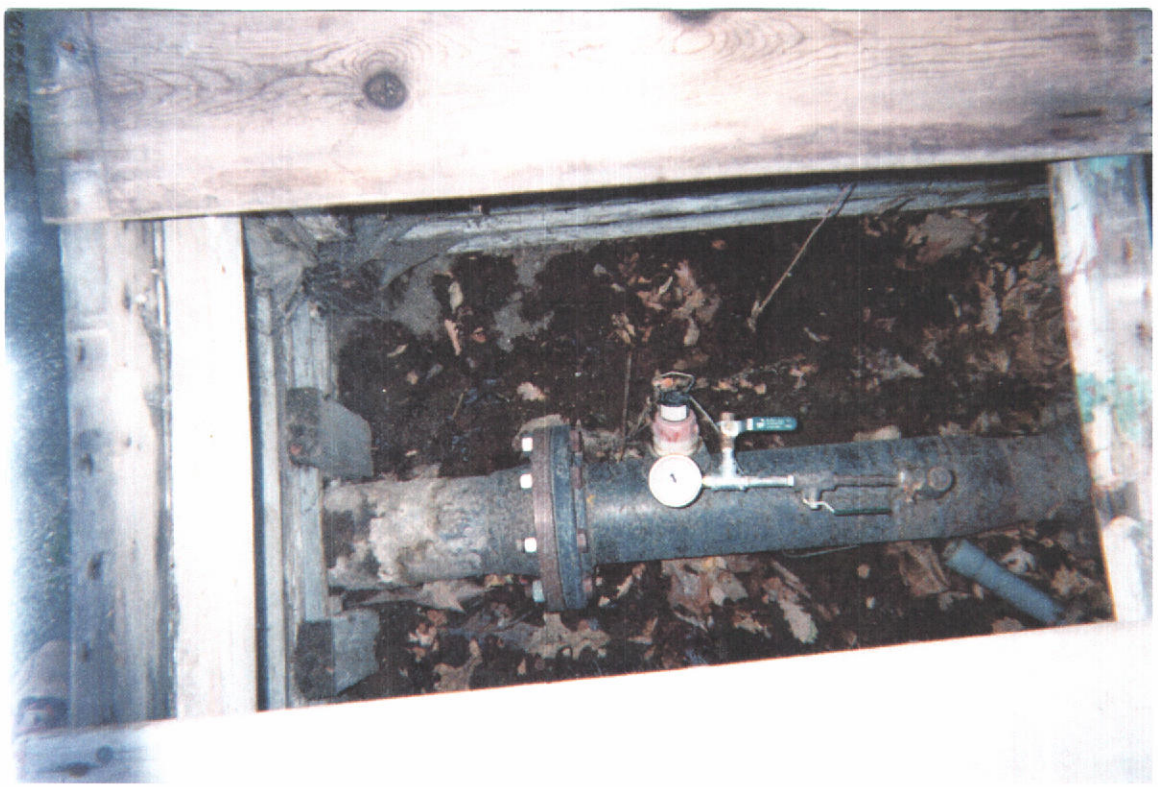


Figure 13. Photograph of the original Accum-U-Flo, insertion-type flow-meter for the Silkey well located in a wood-cased vault south of the well shed. The flow-meter was not operational since at least 1994.

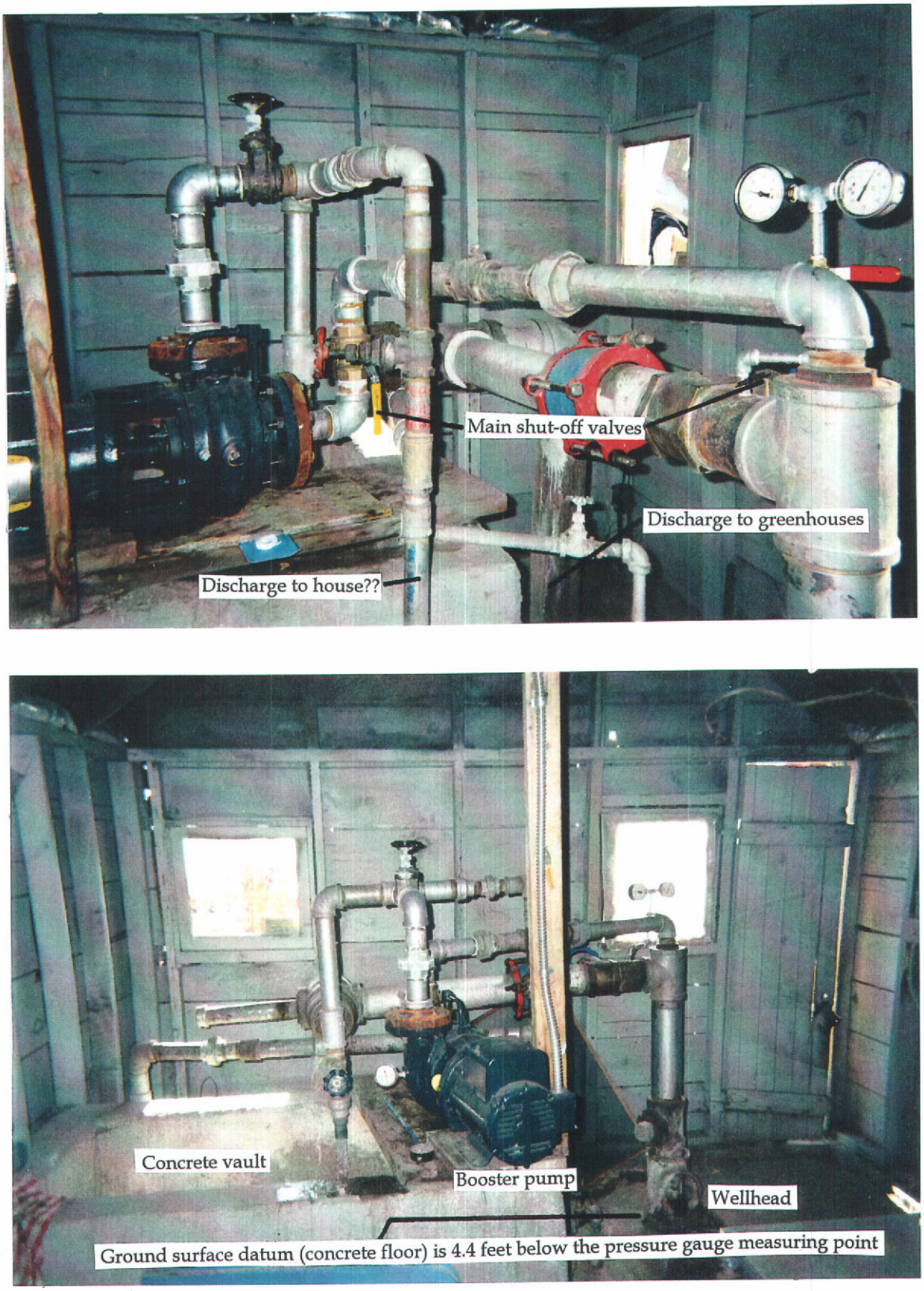
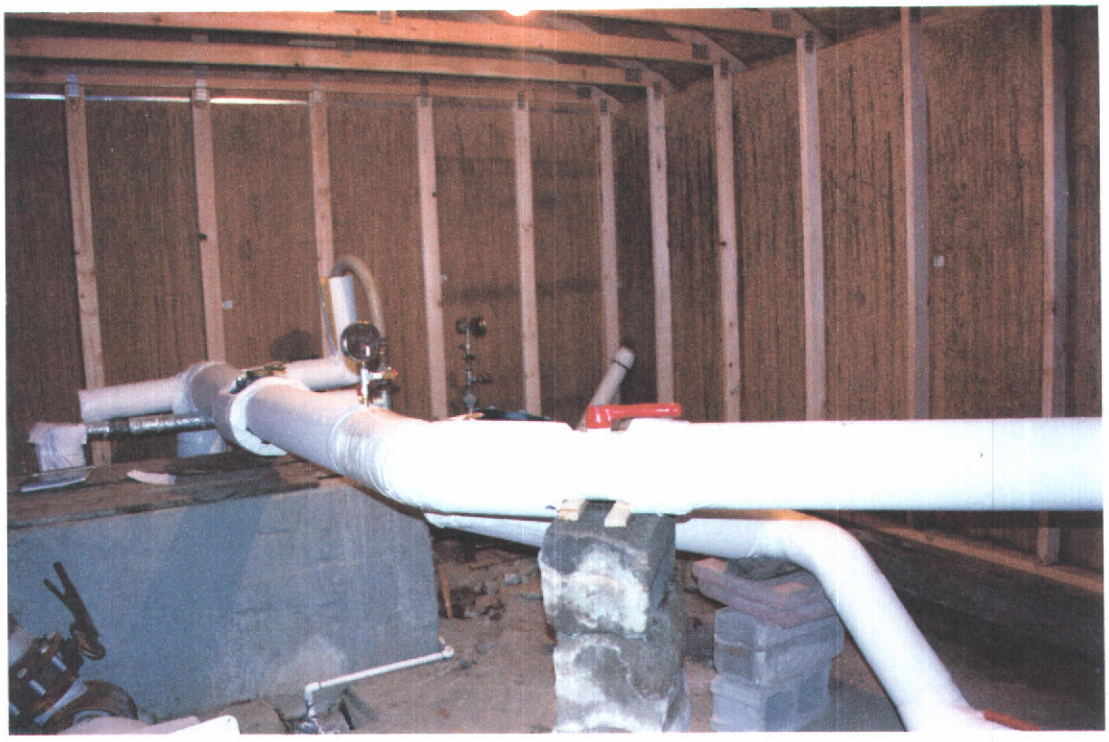


Figure 14
Wellhead piping configuration for the Flora "Shed" Well
October 1998

Figure 14.



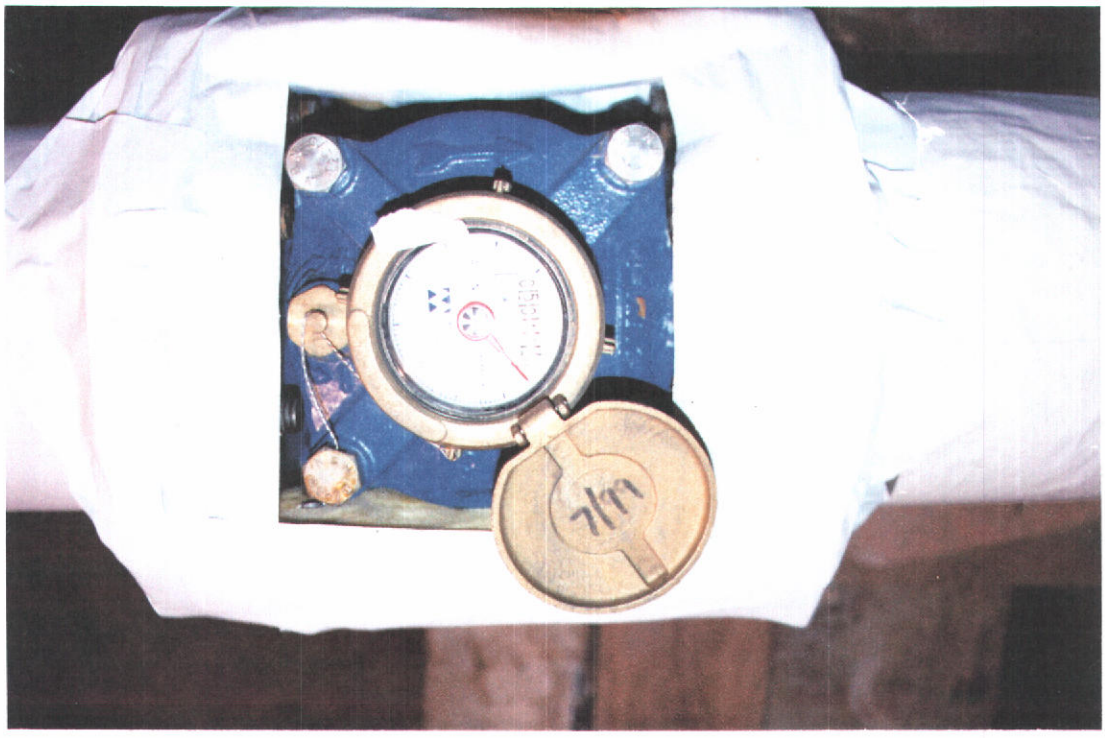


Figure 15. December 2001 photos of the Flora Co. Tiegs well flow-meter installation at the Silkey (Shed) well head. The flow-meter was originally installed in 1999 in an inefficient and contorted plumbing system. This new (December 2001) installation allows for the flow-meter to be installed in straight pipe with no nearby obstructions according to manufacturer's specifications.

Figure 16. December 2001 photos of the Flora Co. discharge weir. The weir had just previously been repaired, and the ditch bank backfilled, so that no surface water leakage could bypass the V-notch or measuring staff. The experiments confirmed that subsurface underflow of water, in conjunction with ditch losses, result in significant quantities of water escaping measurement at the weir.

Figure 16.

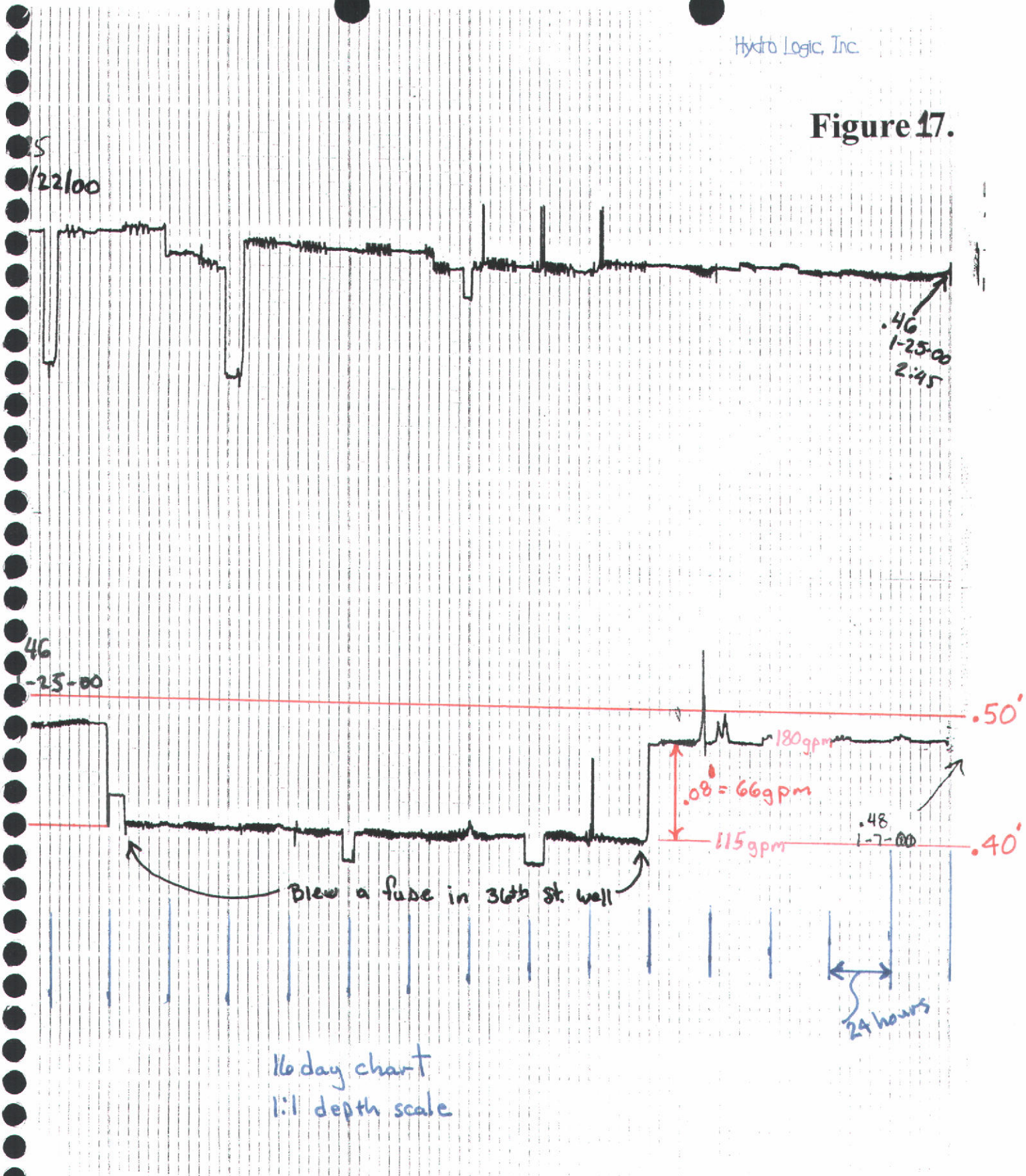


Figure 17. January 2000 recorder chart from the Flora Co. discharge weir. The weir level shows a lowering of water level due to a blown electrical fuse at the Tiegs well head. The interuption to electrical power caused the Tiegs pump to shut down with a commensurate lessening of flow. The 0.08-foot lowering (66 gpm) does not correspond to known measured pumping rates or artesian flow rates measured at the well. See text.

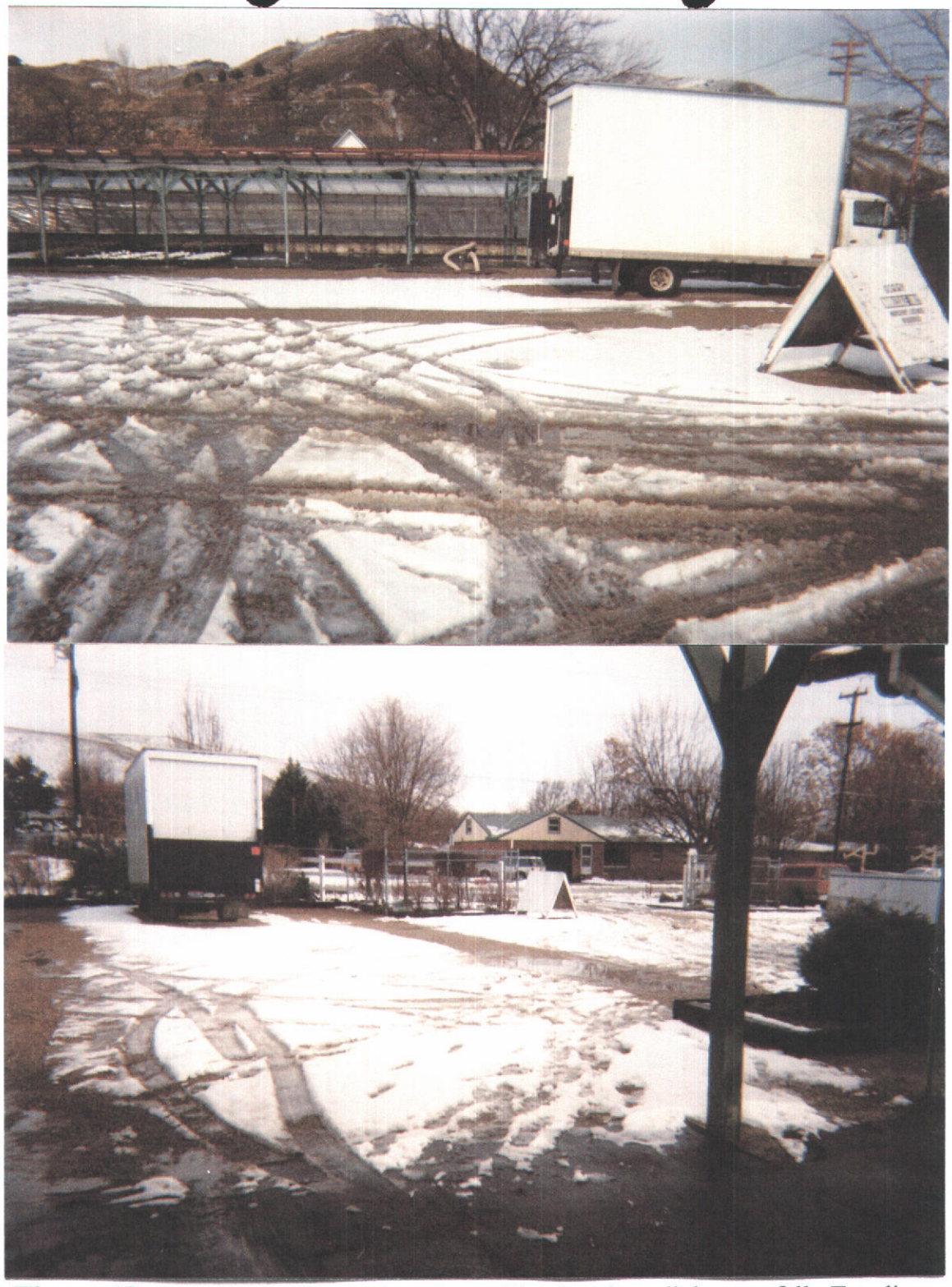


Figure 18. Photographs of the Flora Co. parking lot after a light snowfall. Two linear paths crossing the lot are snow free. The upper view looks North across the two thawed swaths (right to left). The farther melted line is directly over the geothermal water main feeding the nursery from the Tiegs well across 36th Street to the East (two pipes exiting at booster pump station). The cause of the nearer snow-free line (between truck and sign), presumably also a buried hot water line, is not presently known. Which direction the hot water is moving (toward or away from the nursery) has not yet been determined and it not easily investigated (short of digging up the pipe). The lower picture looks east along the buried Tiegs well water line. Questions exist whether the unknown flow is measured by the weir or by the well head flow-meters.

Figure 18.

Figure 19. Photograph of manhole in the 36th Street right-of-way that serves as the terminus for six small diameter pipelines. The origins and/or purposes of the individual pipes are not presently understood, although geothermal water flows are apparent at times. At the center of the manhole (drain?), approximately 10 gpm of geothermal water is flowing in this photograph. Flow through these lines is apparently not measured at the Flora Co, discharge weir. Whether the flows drain into the sandy soils beneath the site or are conducted to a storm sewer has not been determined.

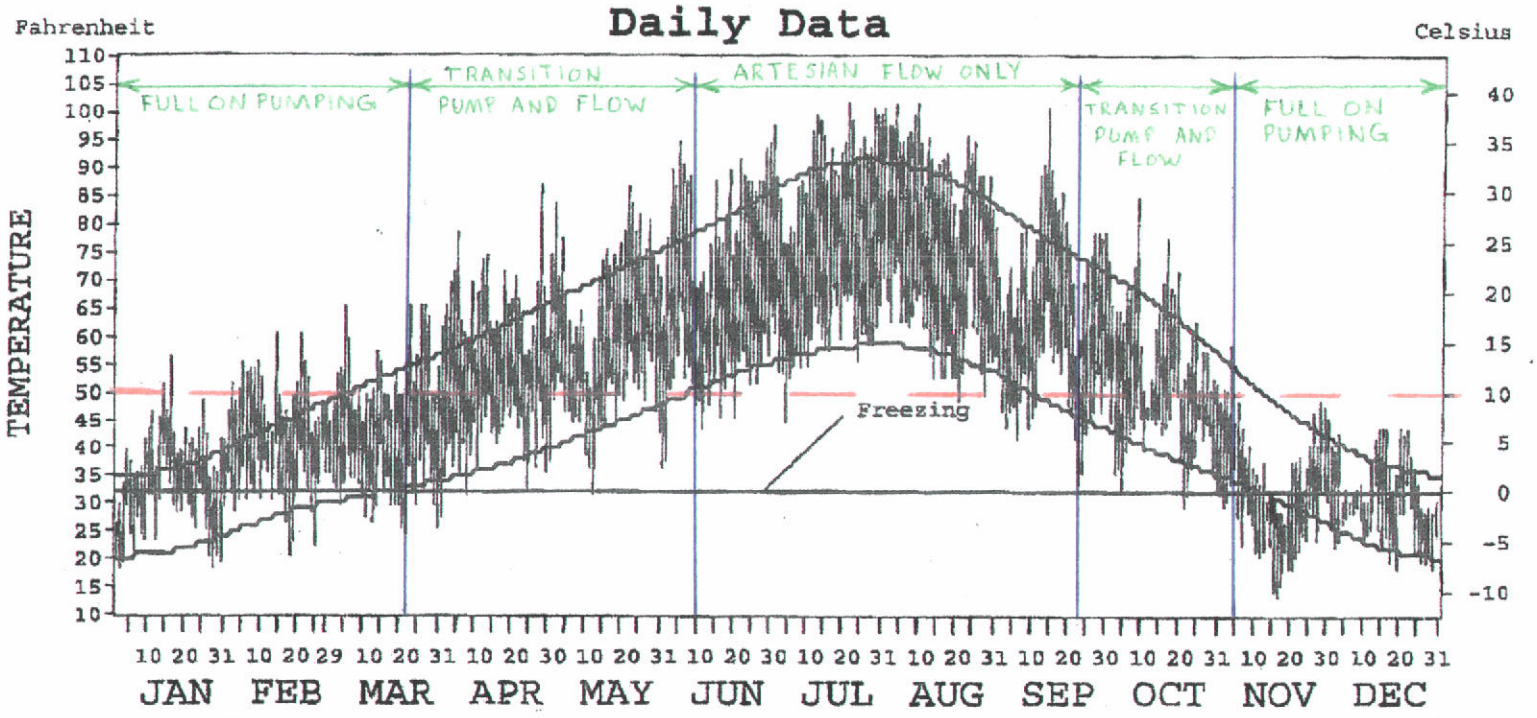


Figure 20. Graph showing daily temperature variation at the Boise Air Terminal for the year 2000 with respect to operation of the Flora Co. geothermal wells. In general, when the daily maximum falls below 50° F, all wells are operated at maximum capacity. When average minimum daily temperature remains above 50°F, only natural flows from the wells are utilized. The Spring and Fall periods of March-though-June and September-through-October are transitional "shoulder" seasons when combinations of flowing and pumping wells are used to regulate temperatures in the greenhouses. Source of temperature data is from the National Climatic Data Center.

Figure 20.

Figure 21.
Upper photo- "Shed" Well (Silkey) Pumphouse
Lower photo- "Triangle" Well (Tiegs) Concrete Vault
October 1998

Figure21.

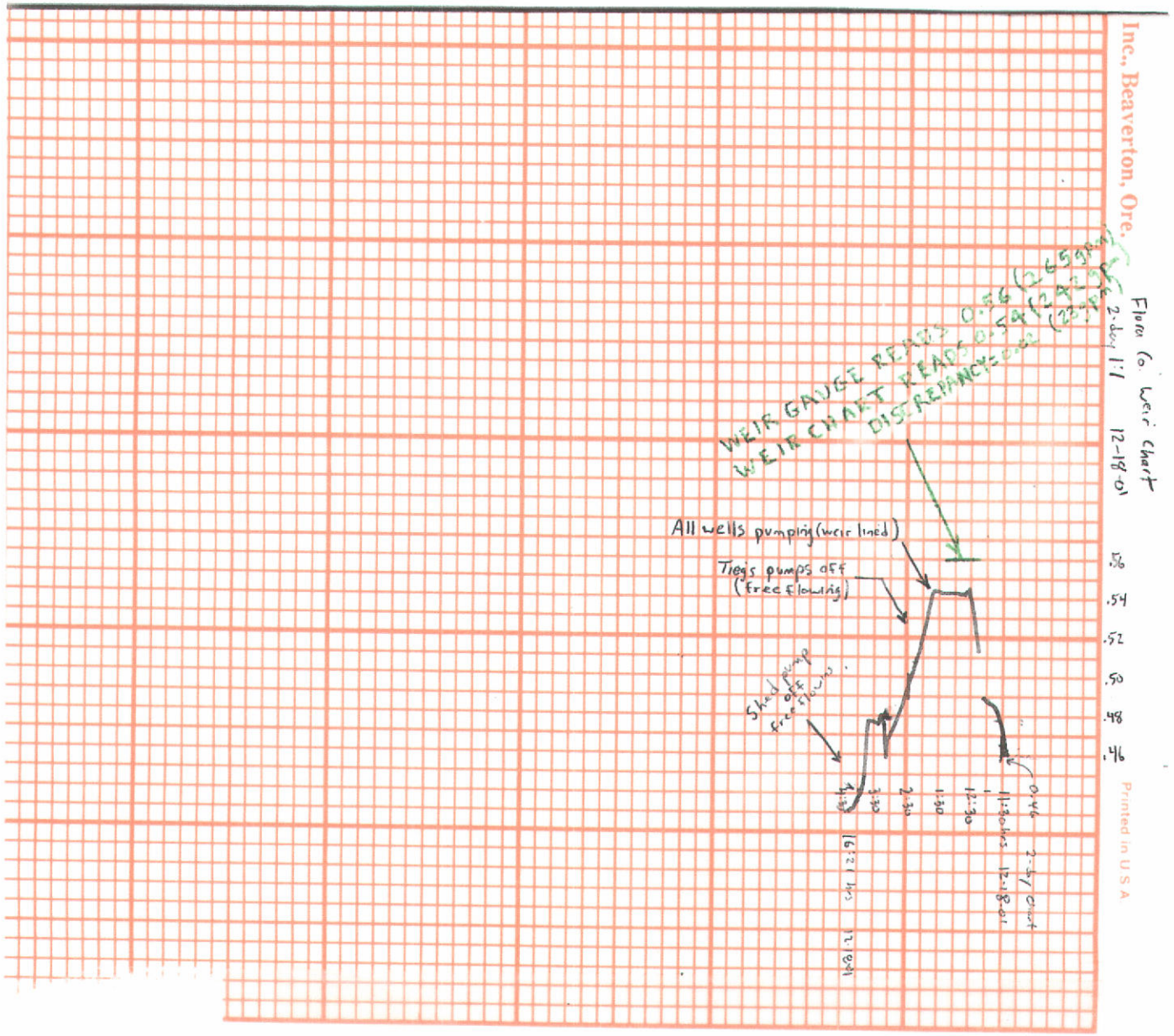


Figure 22. Stevens F-Type water-level recorder chart from the Flora Company geothermal effluent discharge weir during testing of the weir for accuracy of measurement. The chart was recorded at a time when surface overflow and subsurface underflow (past the weir) was obstructed by a lining of plastic sheeting (see Figure 11). With all of the Flora wells pumping the cumulative wellhead discharge was measured at 367 gpm compared to the chart which showed 0.54 feet or 242 gpm; a inconsistency of 125 gpm or measurement error of 34 percent less than actual flow. Most of the discrepancy is due to seepage losses from the unlined discharge canal prior to the weir. The Figure, however, shows that some of the error is due to a measurement inconsistency between the weir gage and the weir chart. Weir/chart errors of 0.05 feet (67 gpm) were observed.

Figure 22.

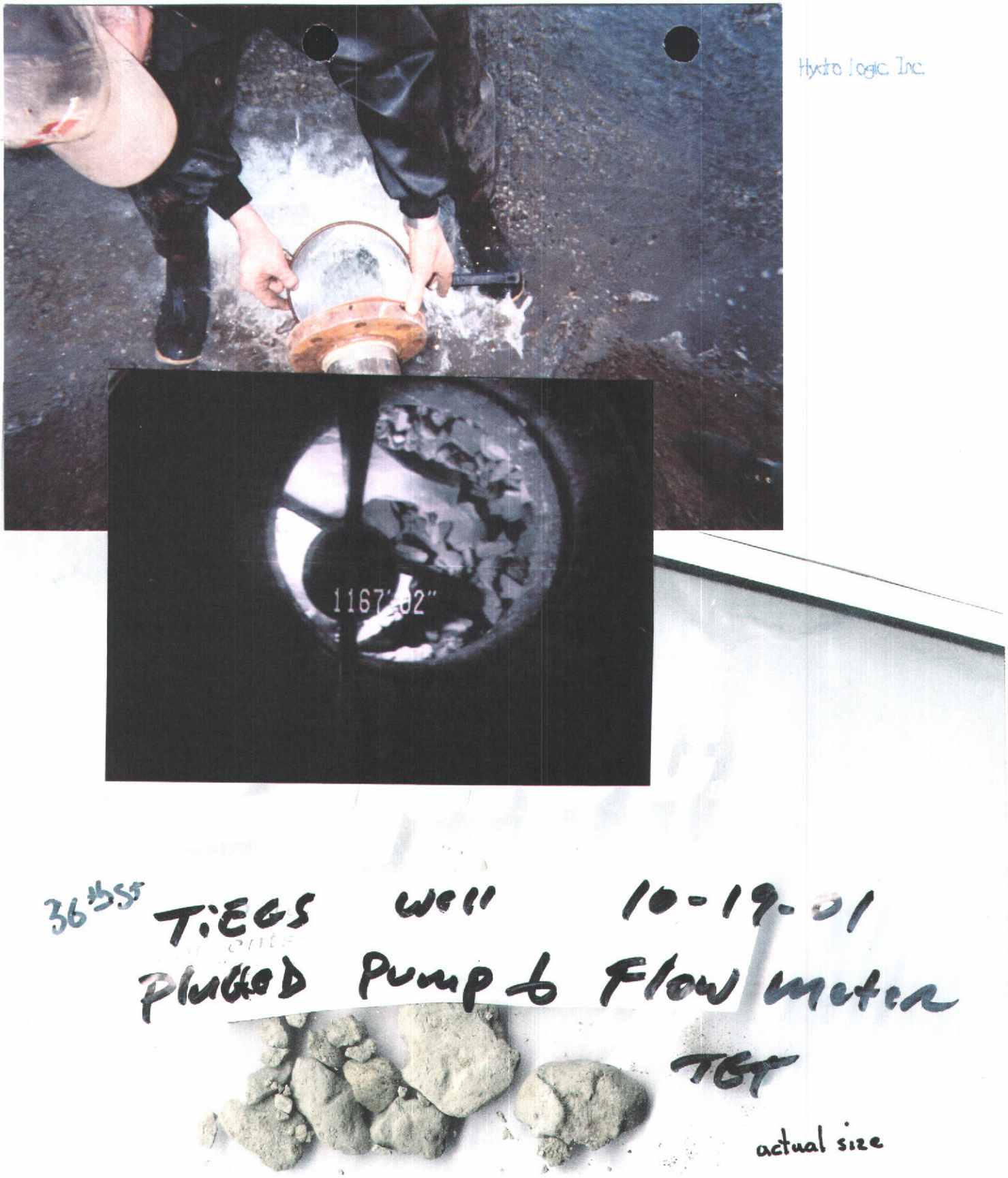
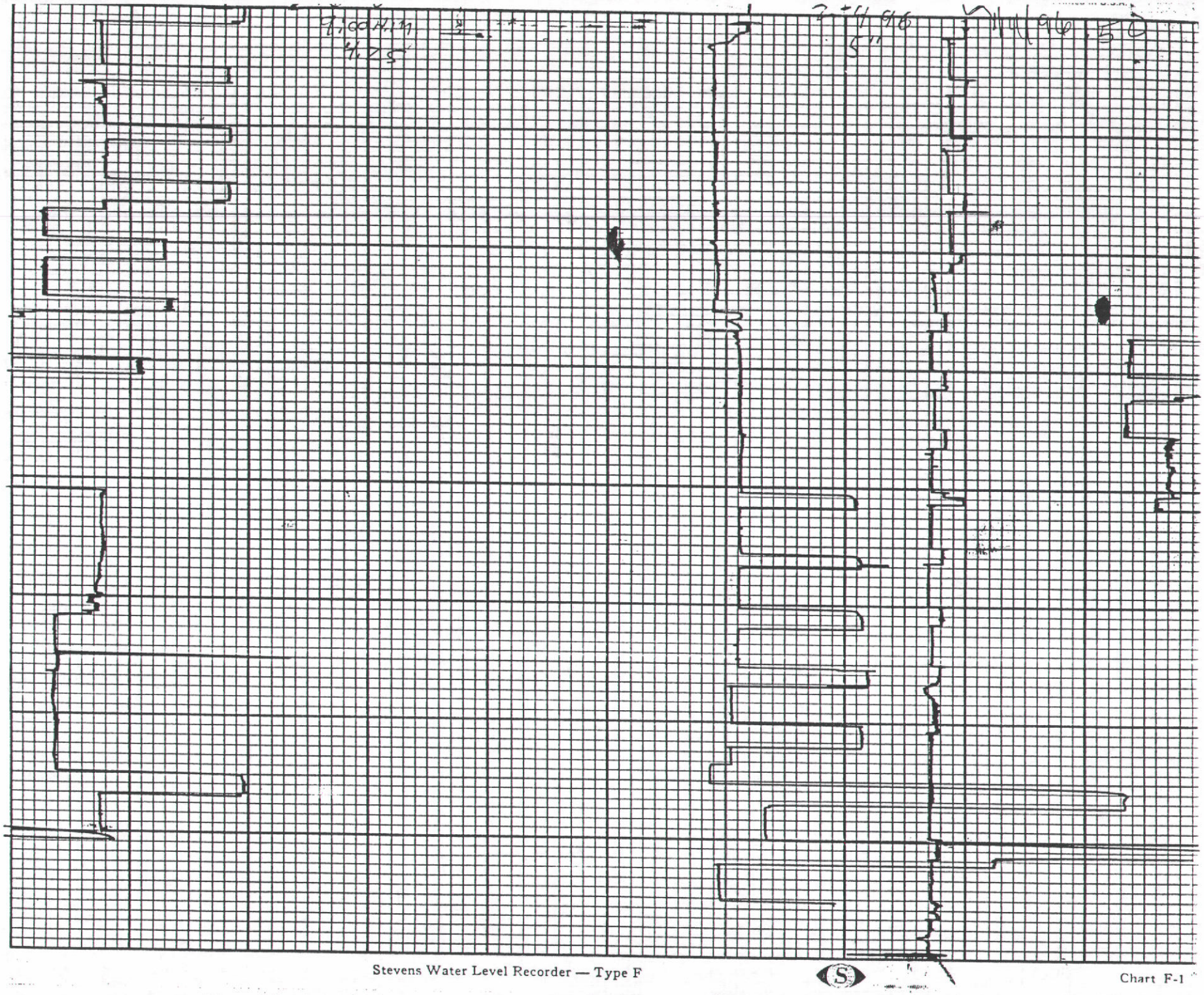


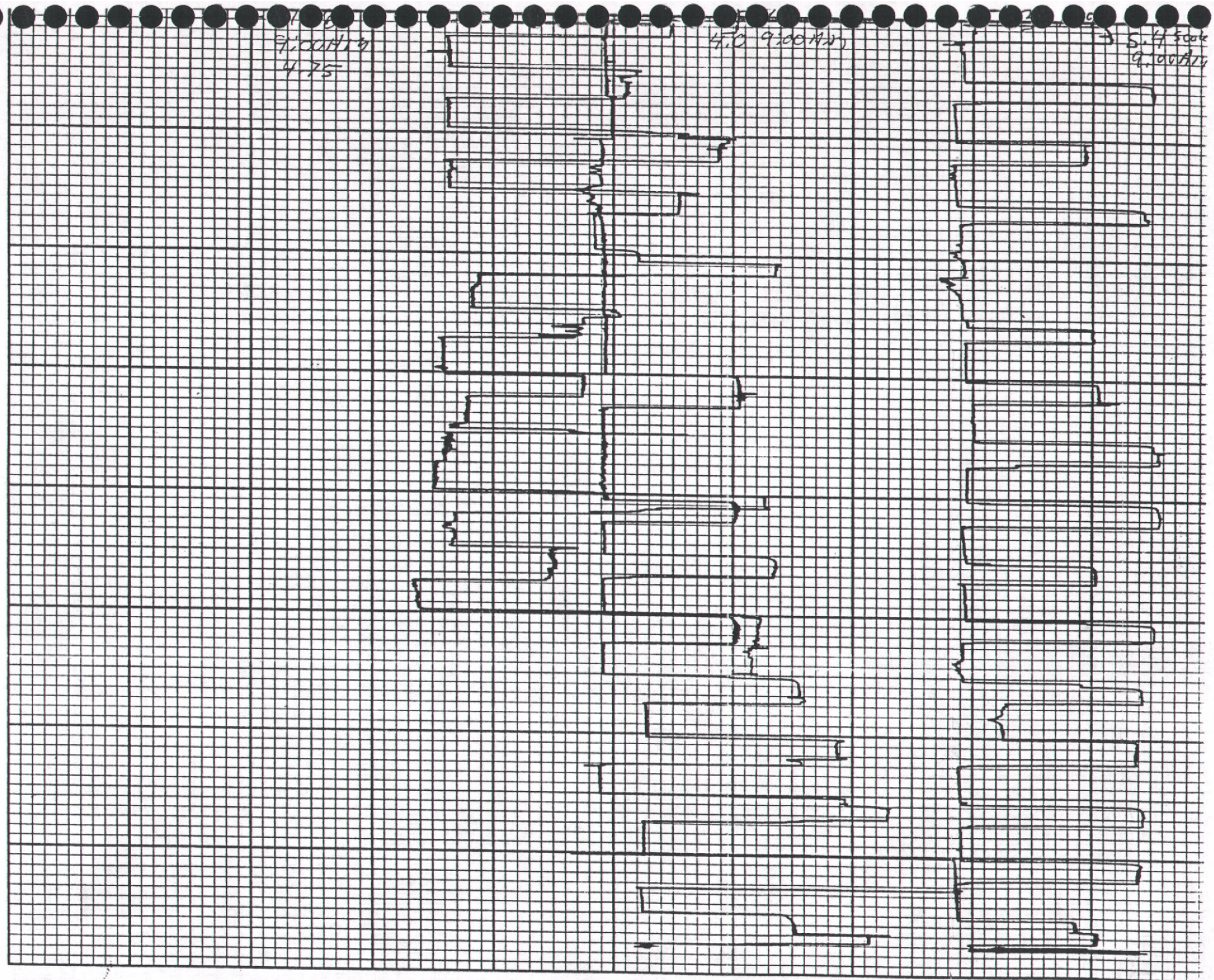
Figure 23. Photographs depicting the tuffaceous mudstone chips that are periodically produced from the Flora Company geothermal wells. The fragments of volcanic ash have low specific gravity and are easily lifted through the geothermal well casing in the flowing water. Upper photo shows the sieve sampling for the ash particles from the discharge stream of the Tiegs well. Center view is a down hole still photograph of the base of the 4-inch diameter well casing, at 1167 feet below ground, showing the void in the open hole completion of the well filled with larger chunks of the ash. Lower picture is of ashy siltstone fragments removed from the clogged Tiegs (36th Street) geothermal well's flow-meter and booster pump in 2001.

Figure 23.



Stevens Water Level Recorder — Type F

Chart F-1



Stevens Water Level Recorder — Type F

Chart F-1

Leupold & Stevens, Inc., Beaverton, Ore.

Printed in U.S.A.

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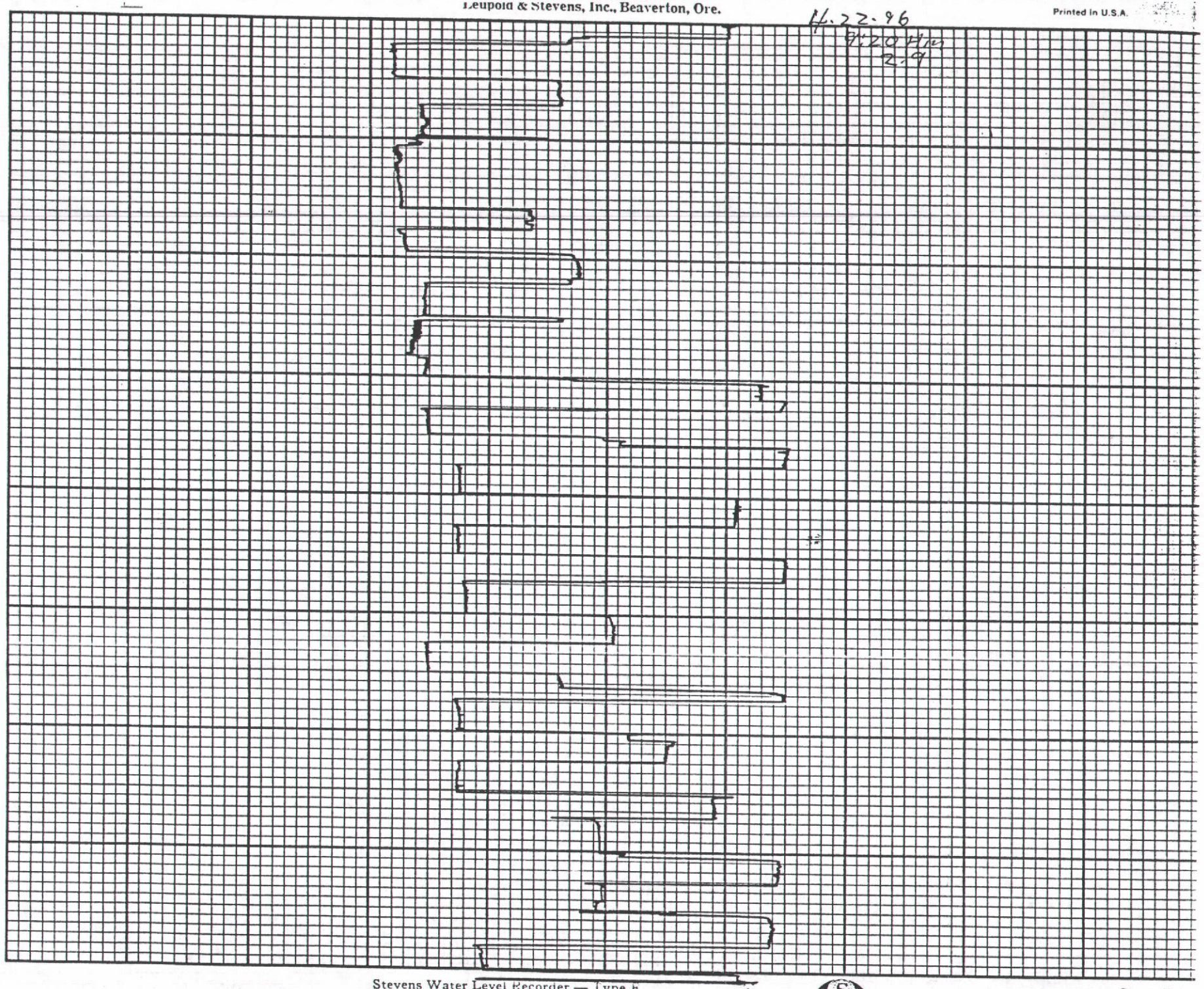
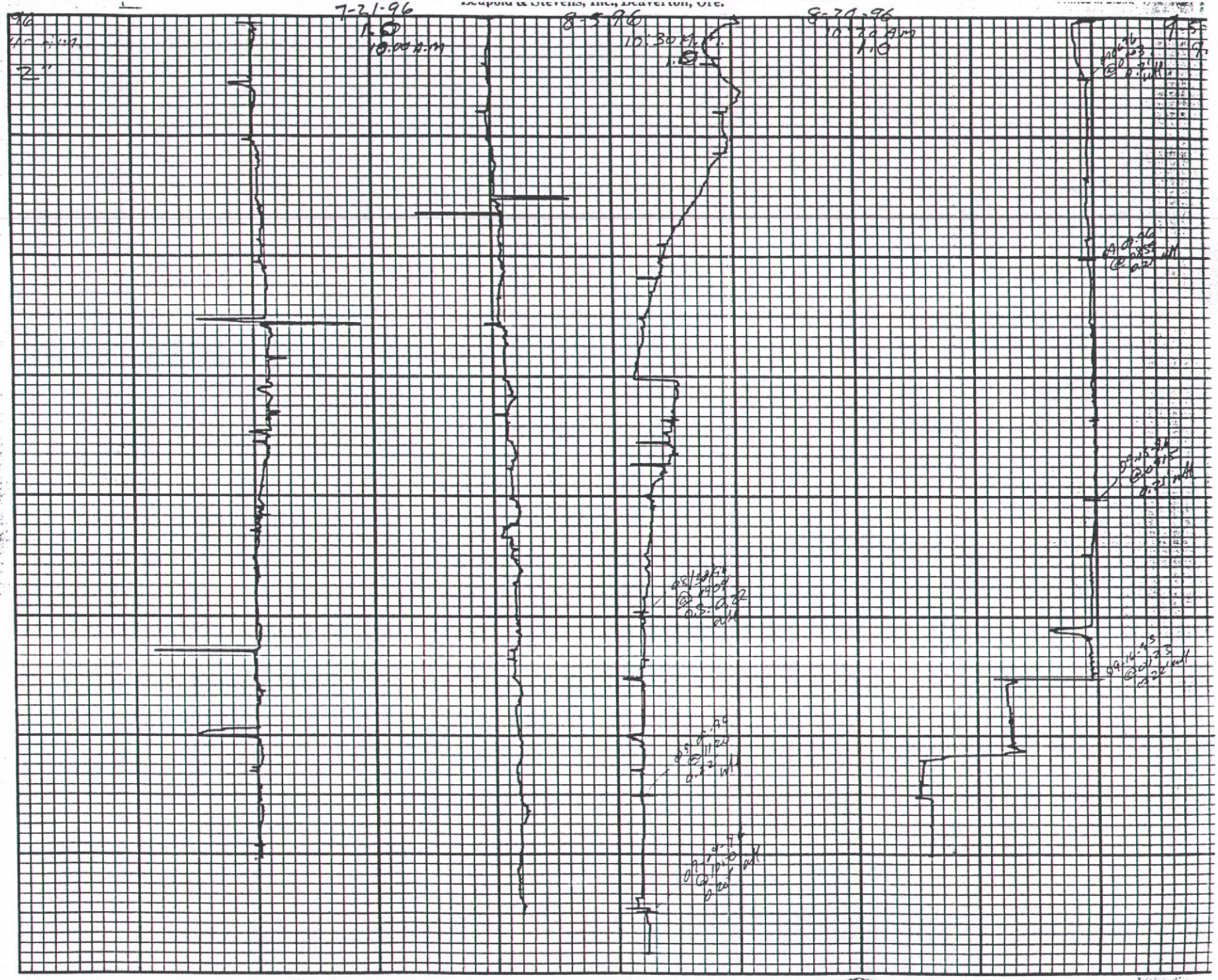


Stevens Water Level Recorder — Type F

Chart F-1

Stevens Water Level Recorder — Type F

Chart F-1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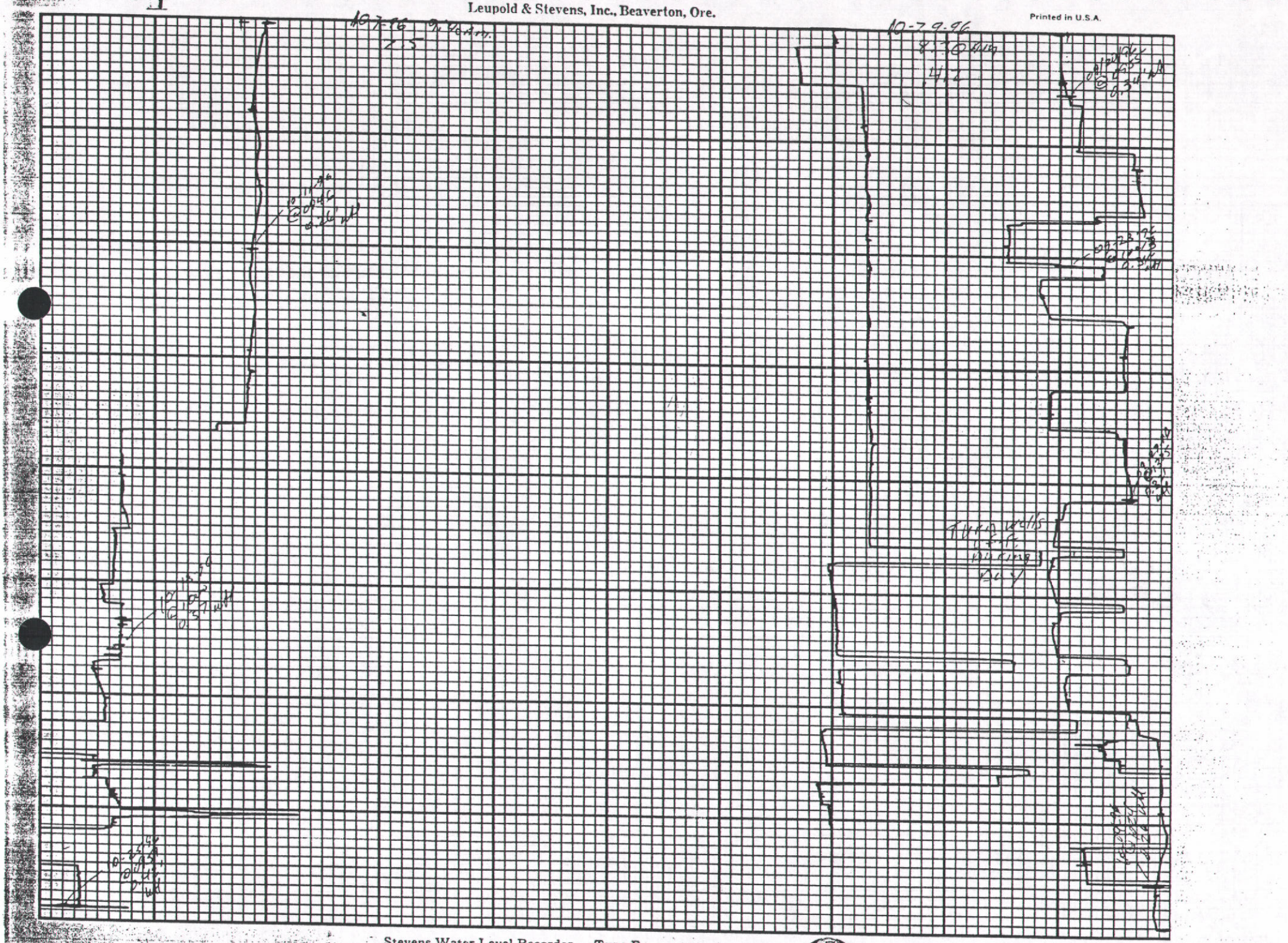
Stevens Water Level Recorder — Type F
Chart F-1


Leupold & Stevens, Inc., Beaverton, Ore.
Printed in U.S.A.
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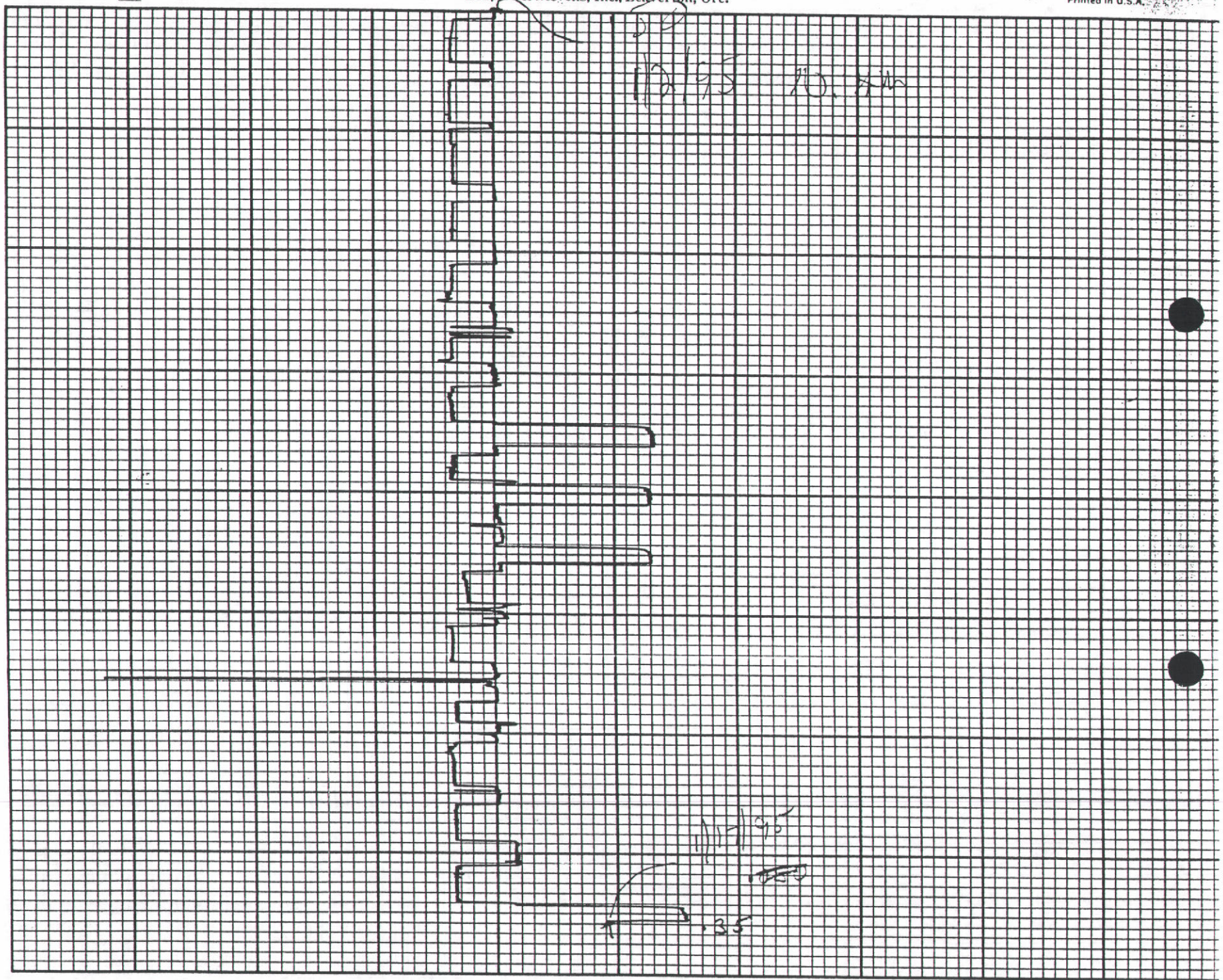
Stevens Water Level Recorder — Type F
Chart F-1

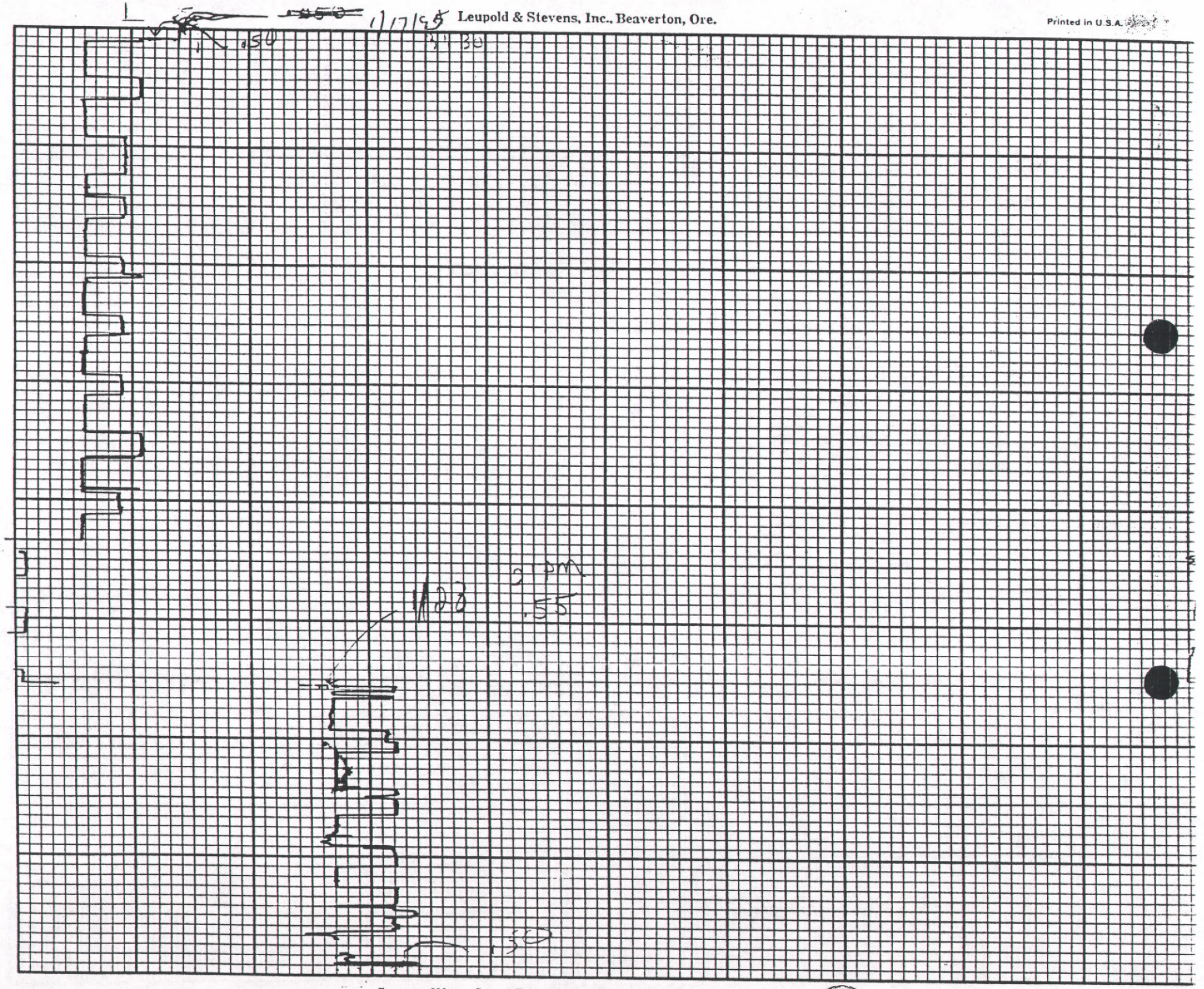
Leupold & Stevens, Inc., Beaverton, Ore.

Printed In U.S.A.



Stevens Water Level Recorder — Type F

Chart F-1

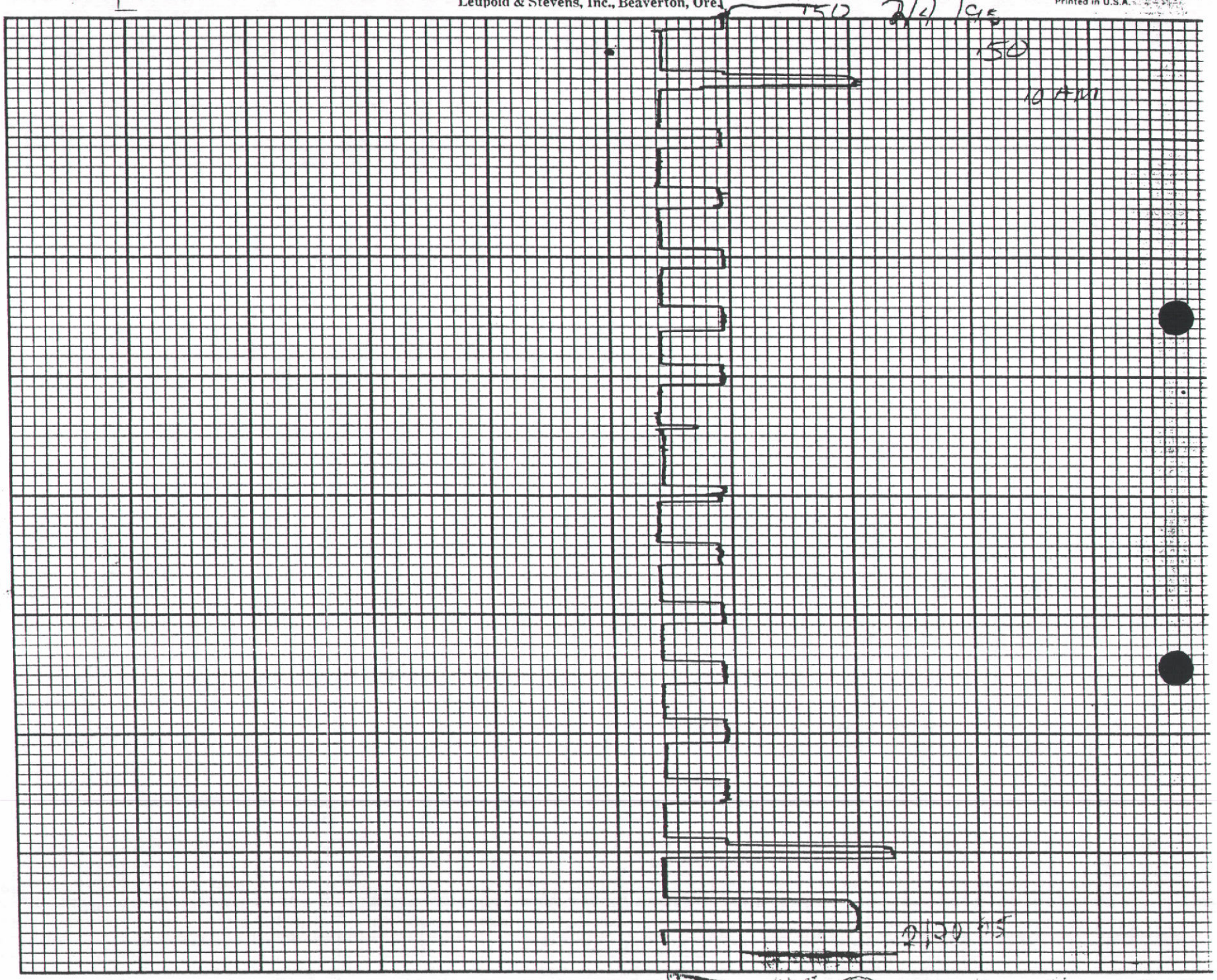


Stevens Water Level Recorder — Type F

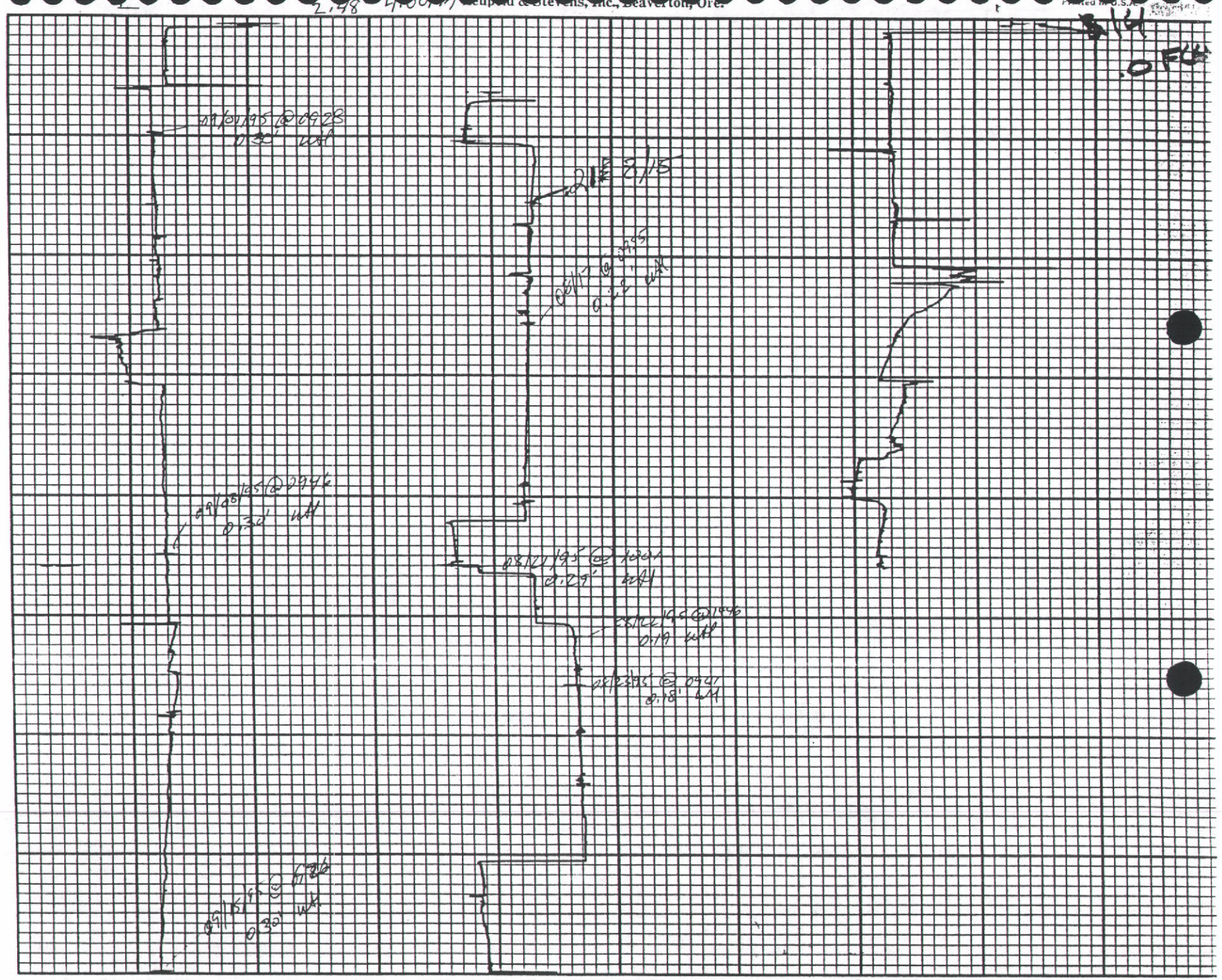
Chart F-1

Leupold & Stevens, Inc., Beaverton, Ore.

Printed in U.S.A.

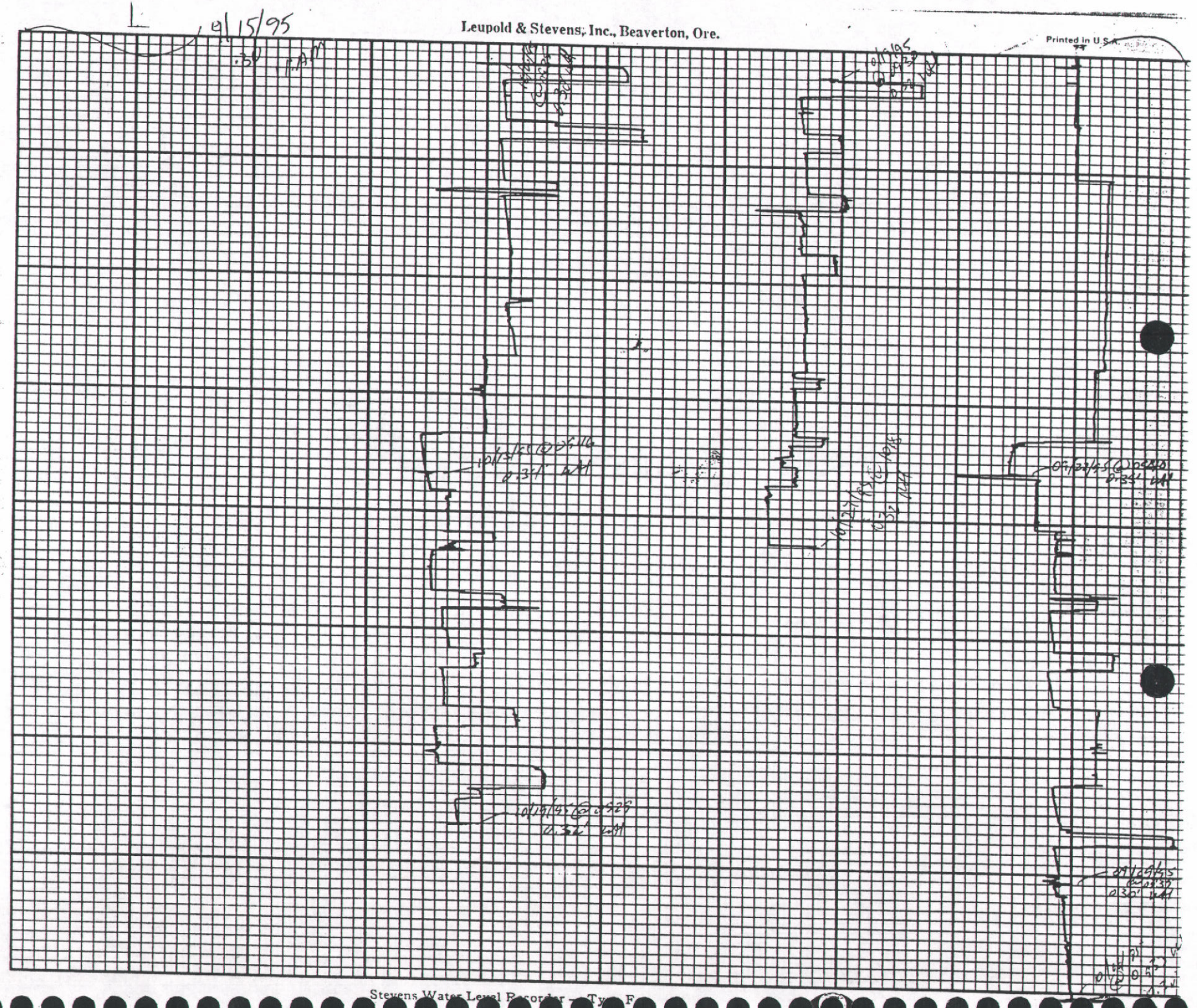


Stevens Water Level Recorder — Type F
Chart F-1



Stevens Water Level Recorder — Type F

Chart F-1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Leupold & Stevens, Inc., Beaverton, Ore.
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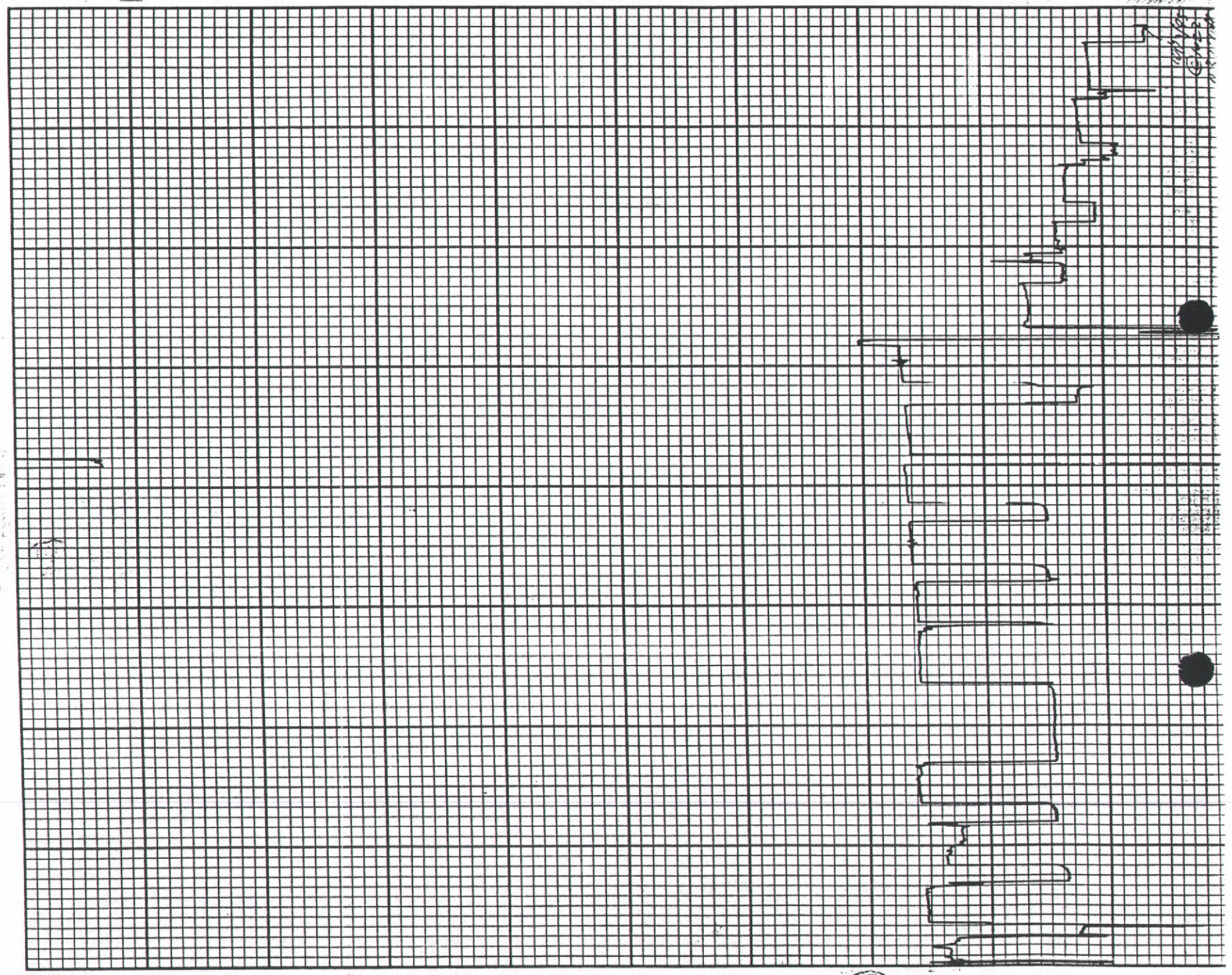
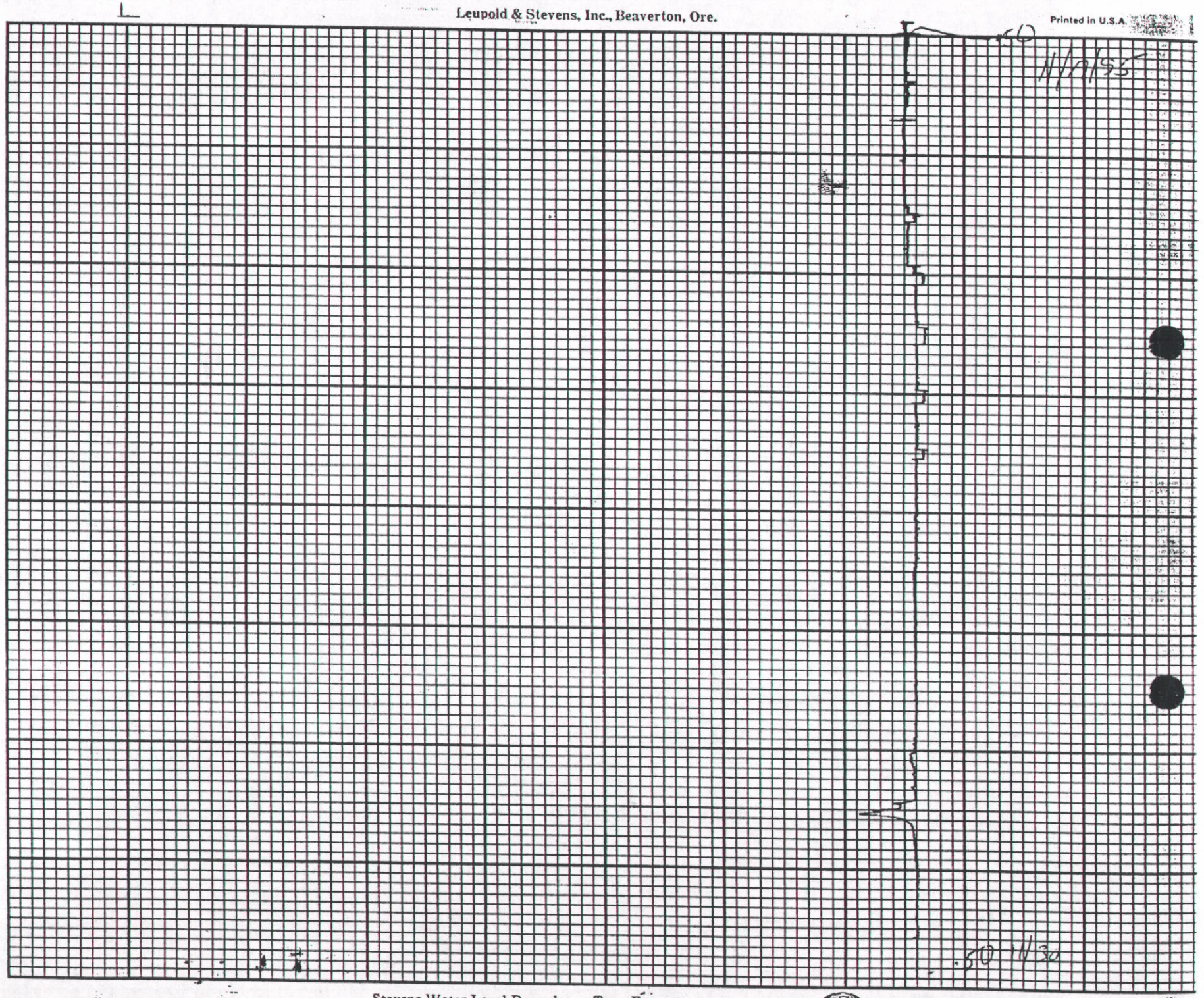
Stevens Water Level Recorder — Type F

Leupold & Stevens, Inc., Beaverton, Ore.



Stevens Water Level Recorder — Type F

Chart F-1



Stevens Water Level Recorder — Type F

Chart F-1

Leupold & Stevens, Inc., Beaverton, Ore.

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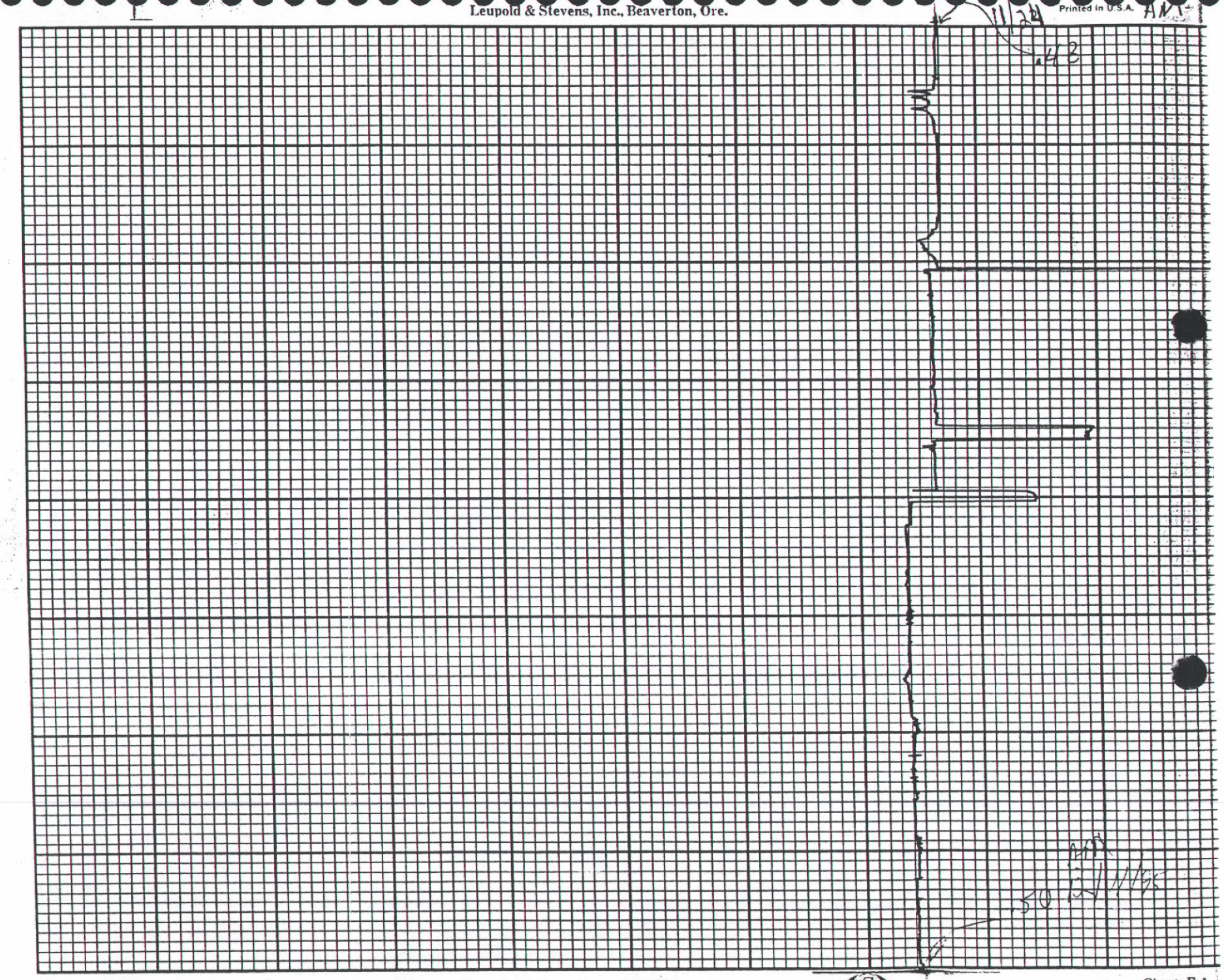
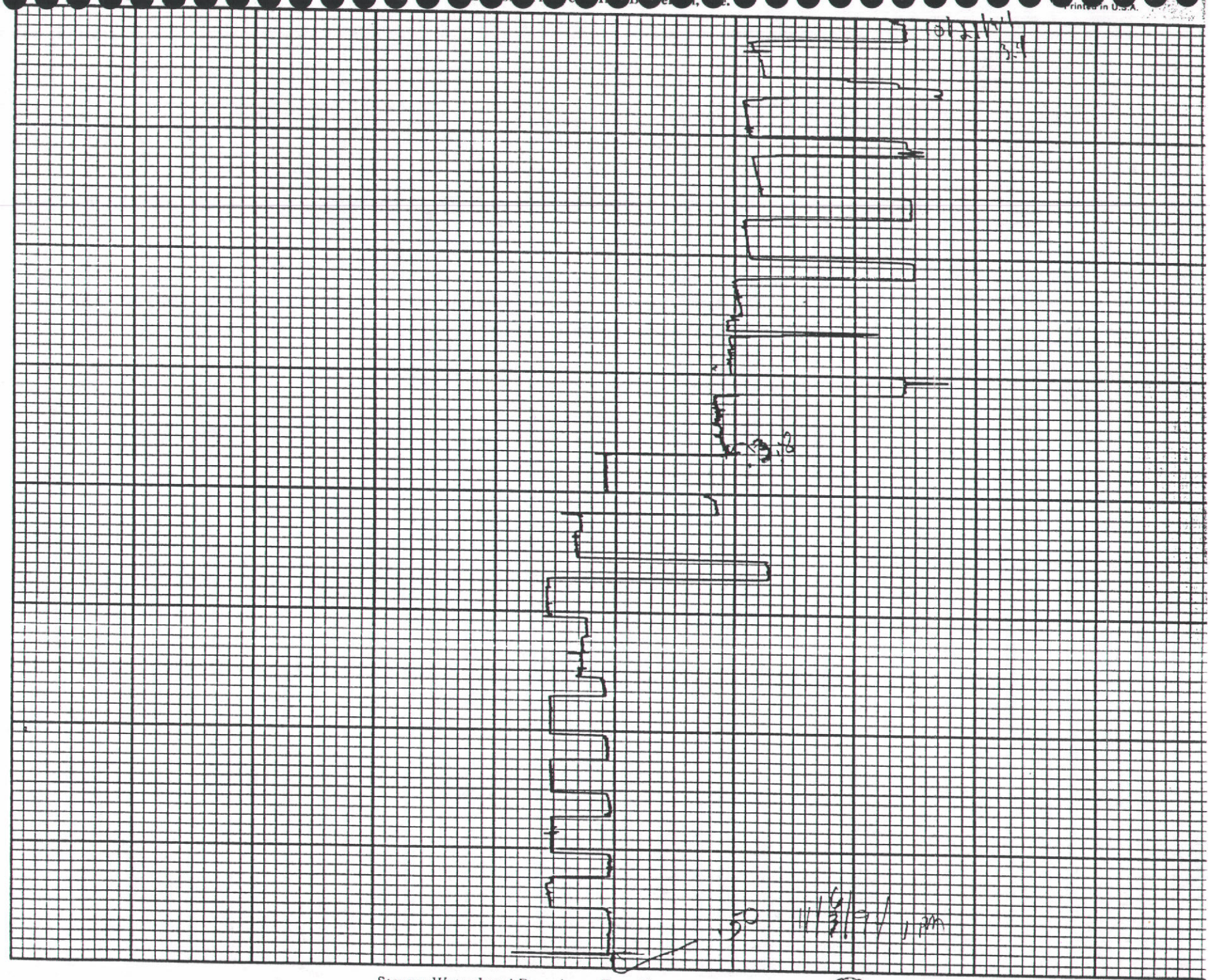


Stevens Water Level Recorder — Type F

Chart F-1



Stevens Water Level Recorder — Type F

Chart F-1

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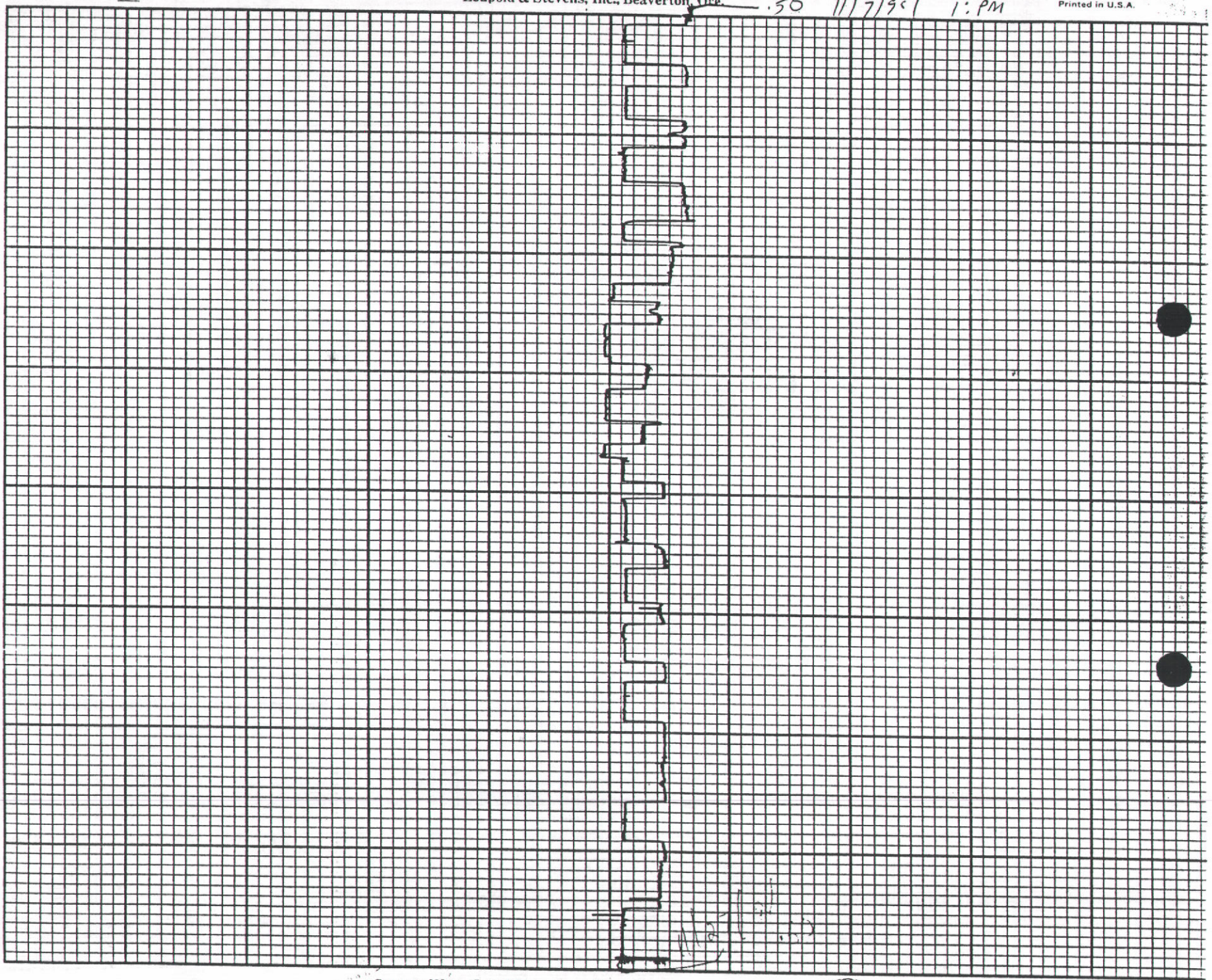
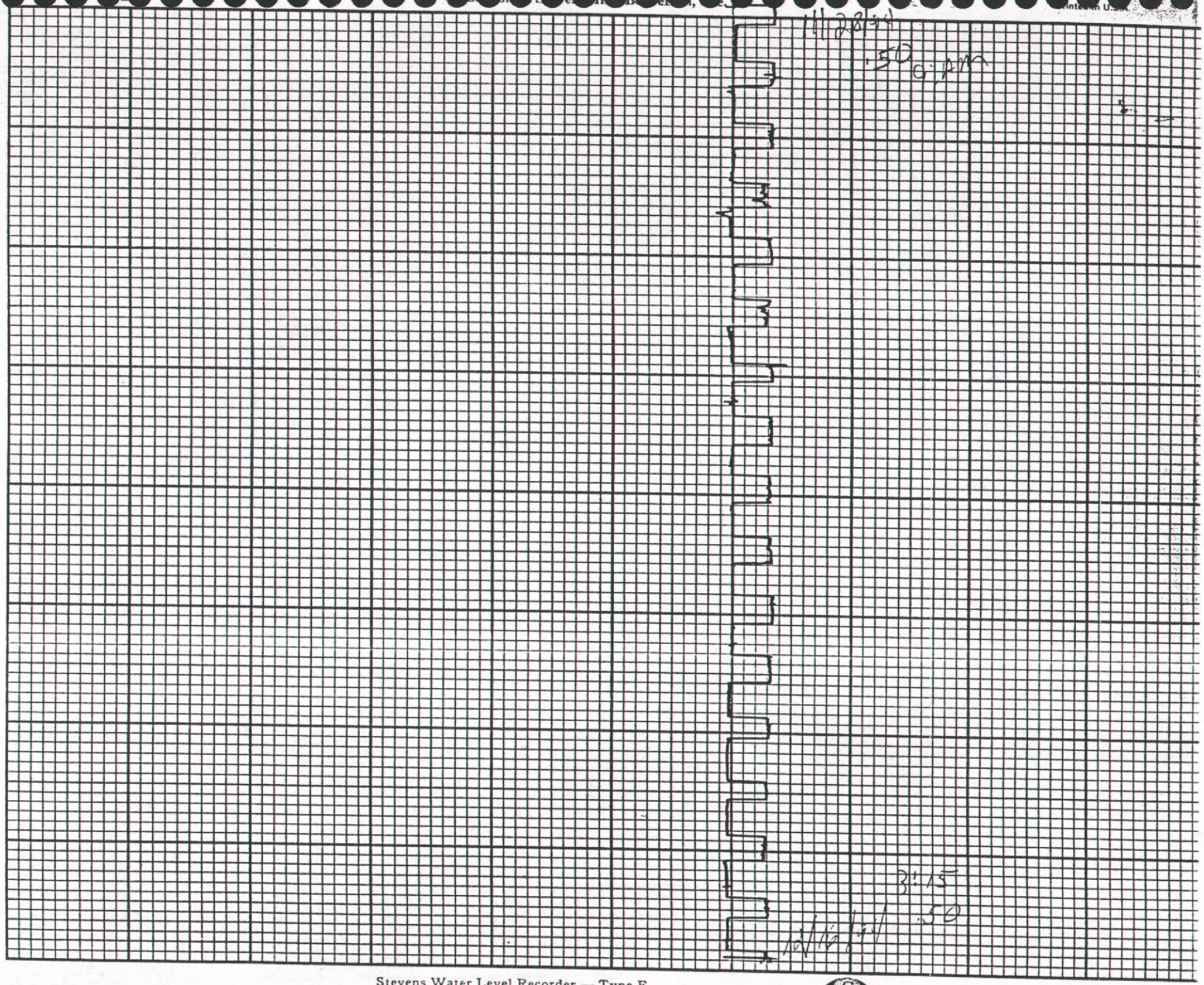


Stevens Water Level Recorder — Type F

Chart F-1

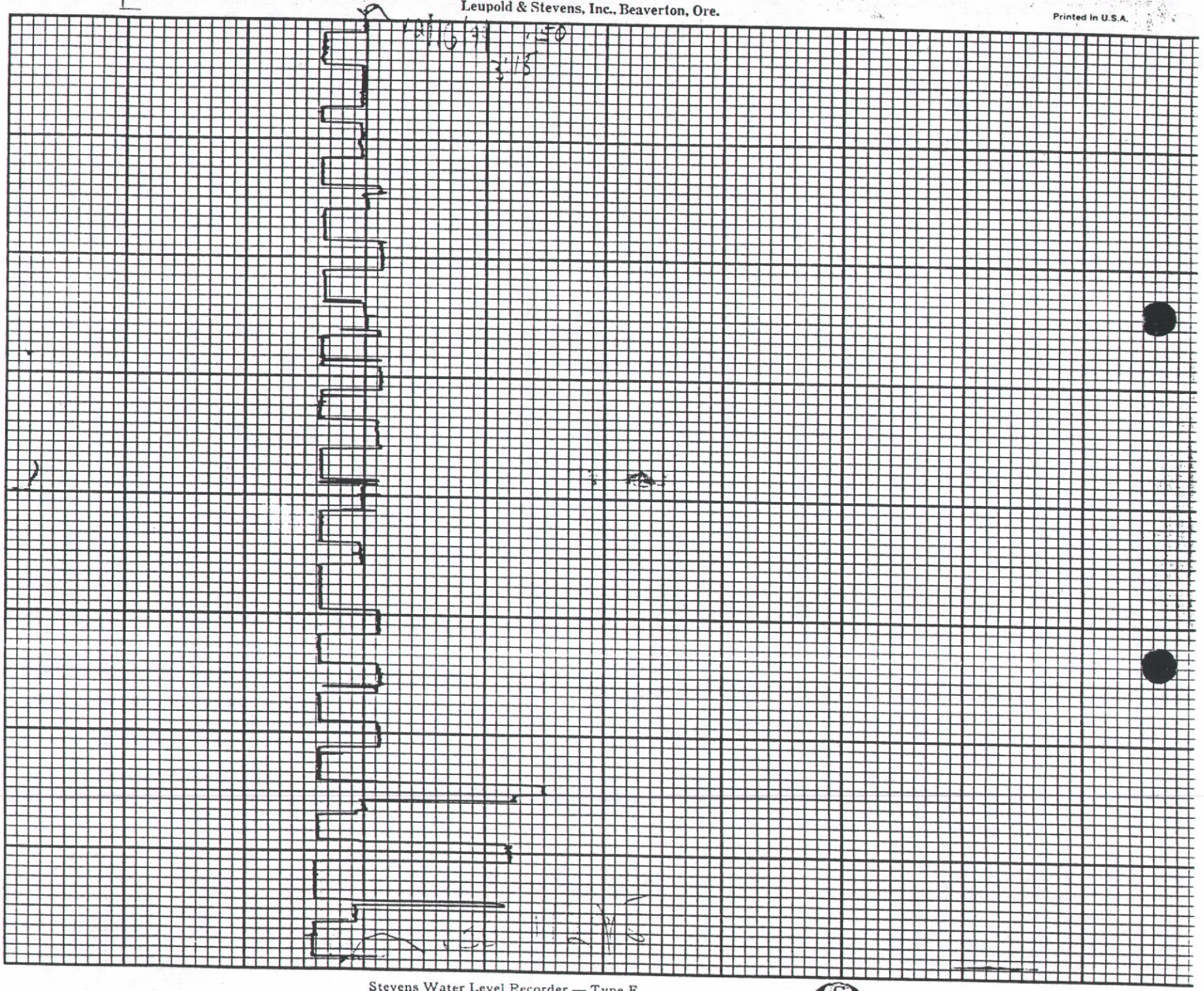


Stevens Water Level Recorder — Type F

Chart F-1

Leupold & Stevens, Inc., Beaverton, Ore.

Printed in U.S.A.



Stevens Water Level Recorder — Type F

Chart F-1

Leupold & Stevens, Inc., Beaverton, Ore.

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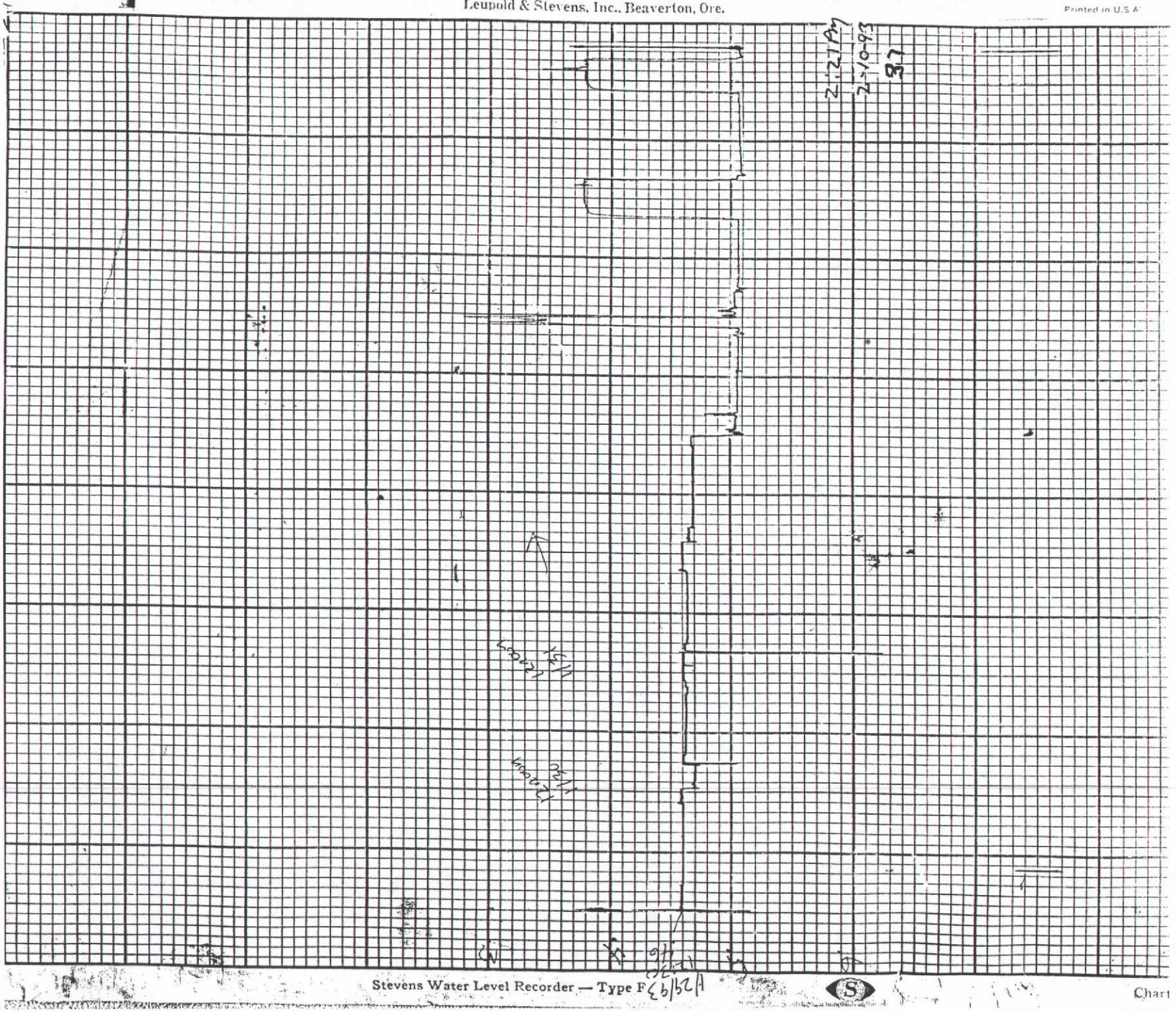
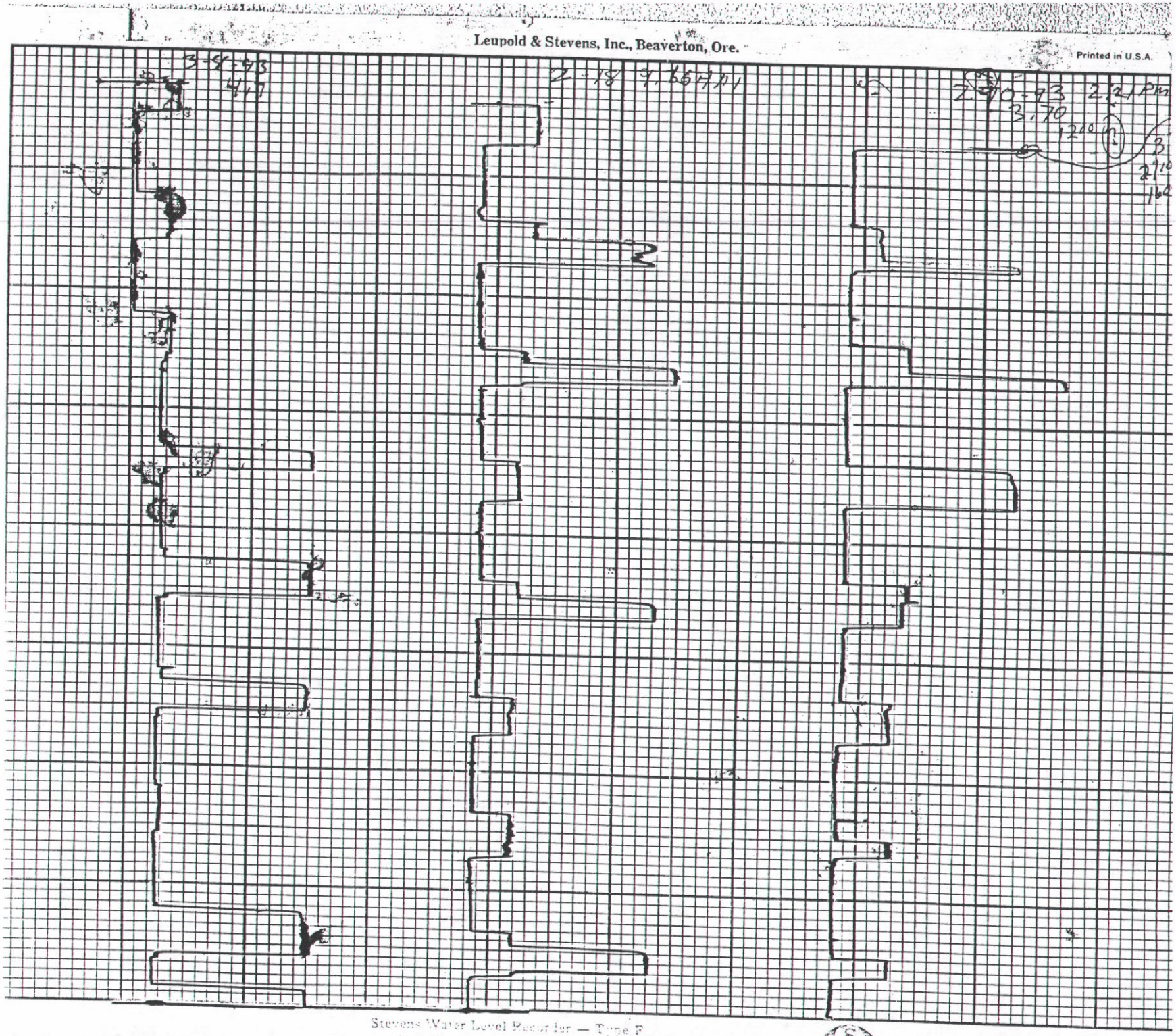


Stevens Water Level Recorder — Type F 6/52/1

Chart


Leupold & Stevens, Inc., Beaverton, Ore.
Printed in U.S.A.
Stevens Water Level Recorder — Type F

Leupold & Stevens, Inc., Beaverton, Ore.
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Hydro Logic Inc.

CALCULATIONS AND DESIGN DATA

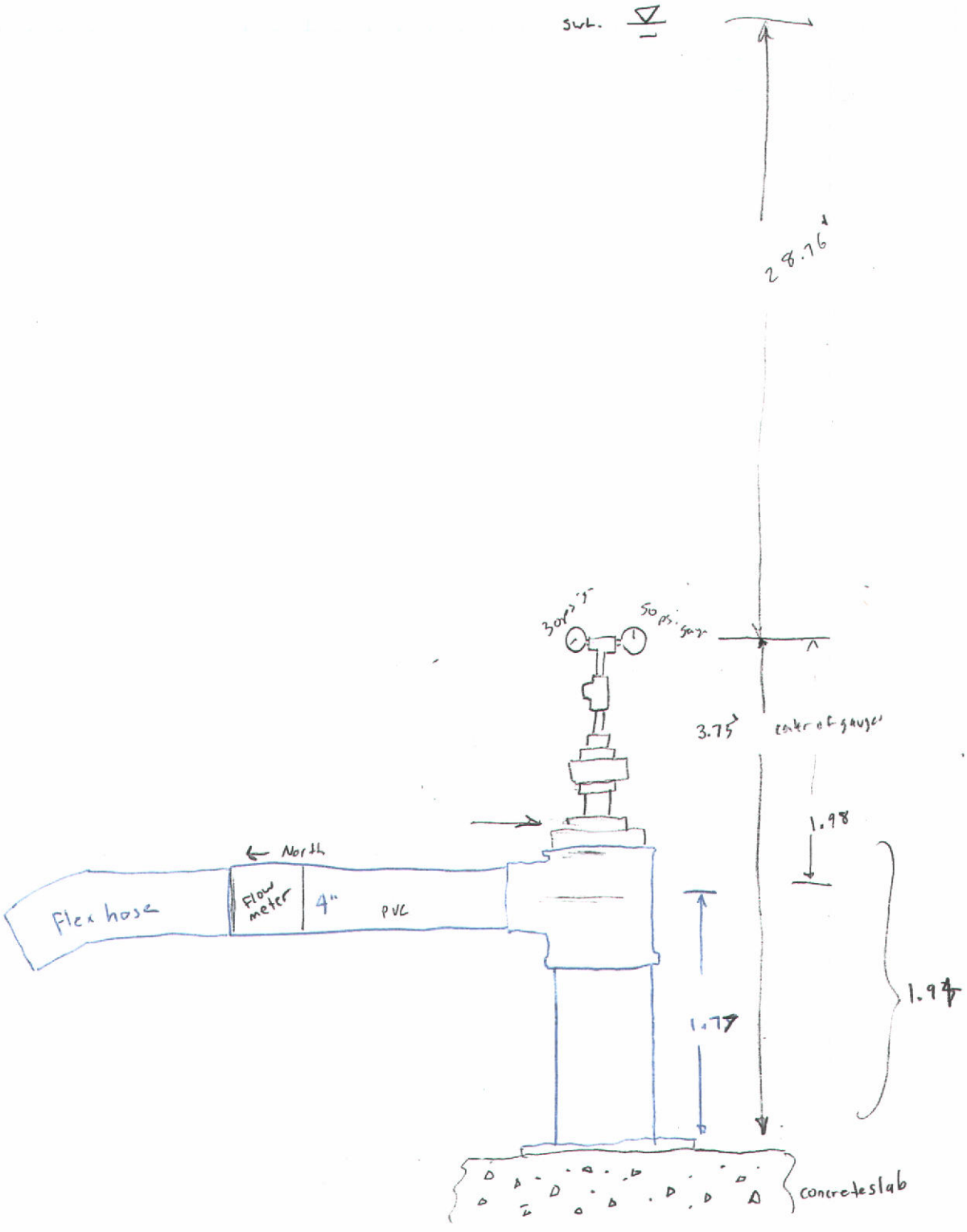
PREPARED BY B. Cavanagh

SUBJECT

DATE 10-18-01

Tertelling Flora - Silker shed well - Natural flow step testing

SHEET 4 OF 4



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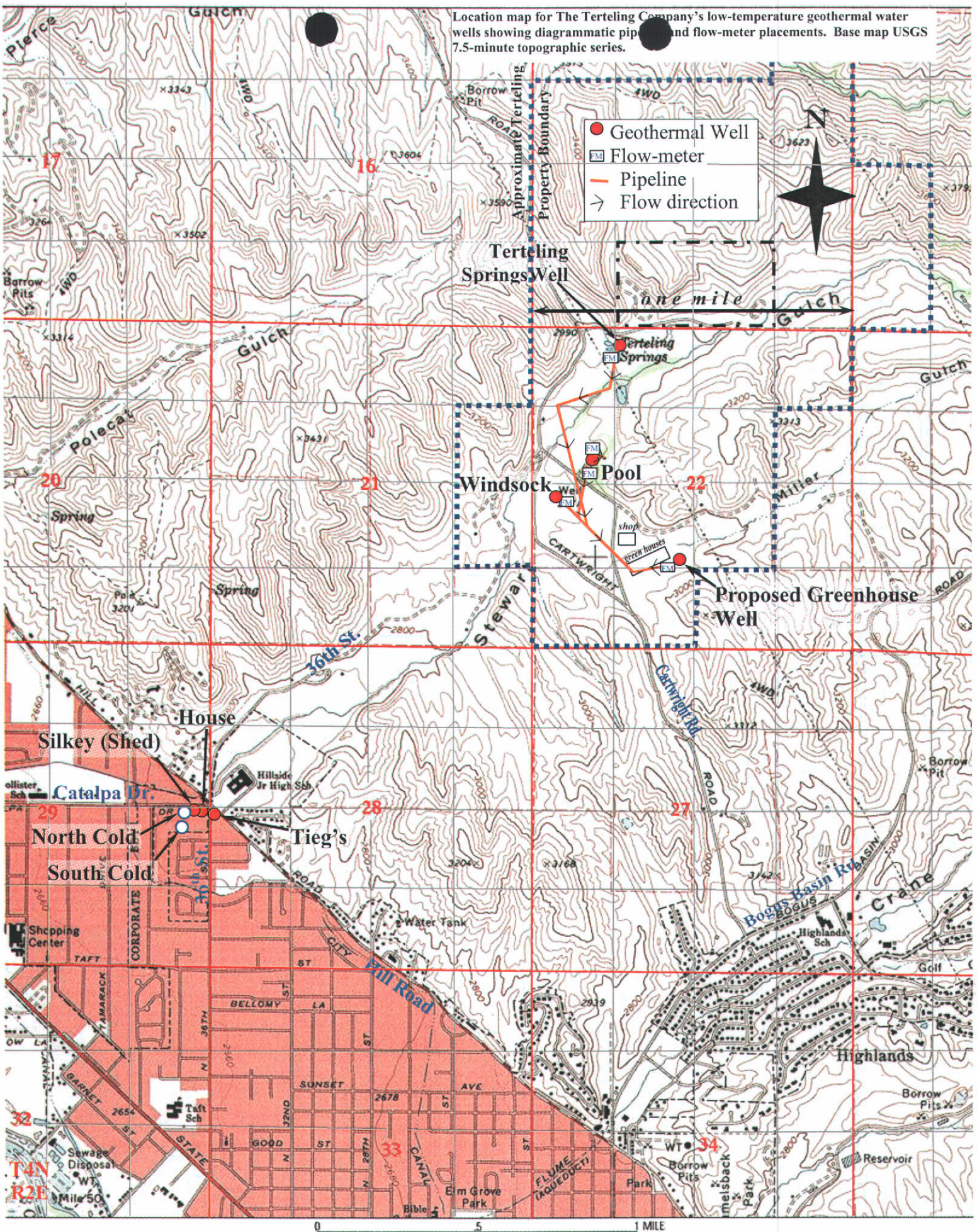


Hydro Logic Inc.
Boise, Idaho

Figure 1.

Hydro Logic Inc

Terteling Ranch Pool Geothermal Well

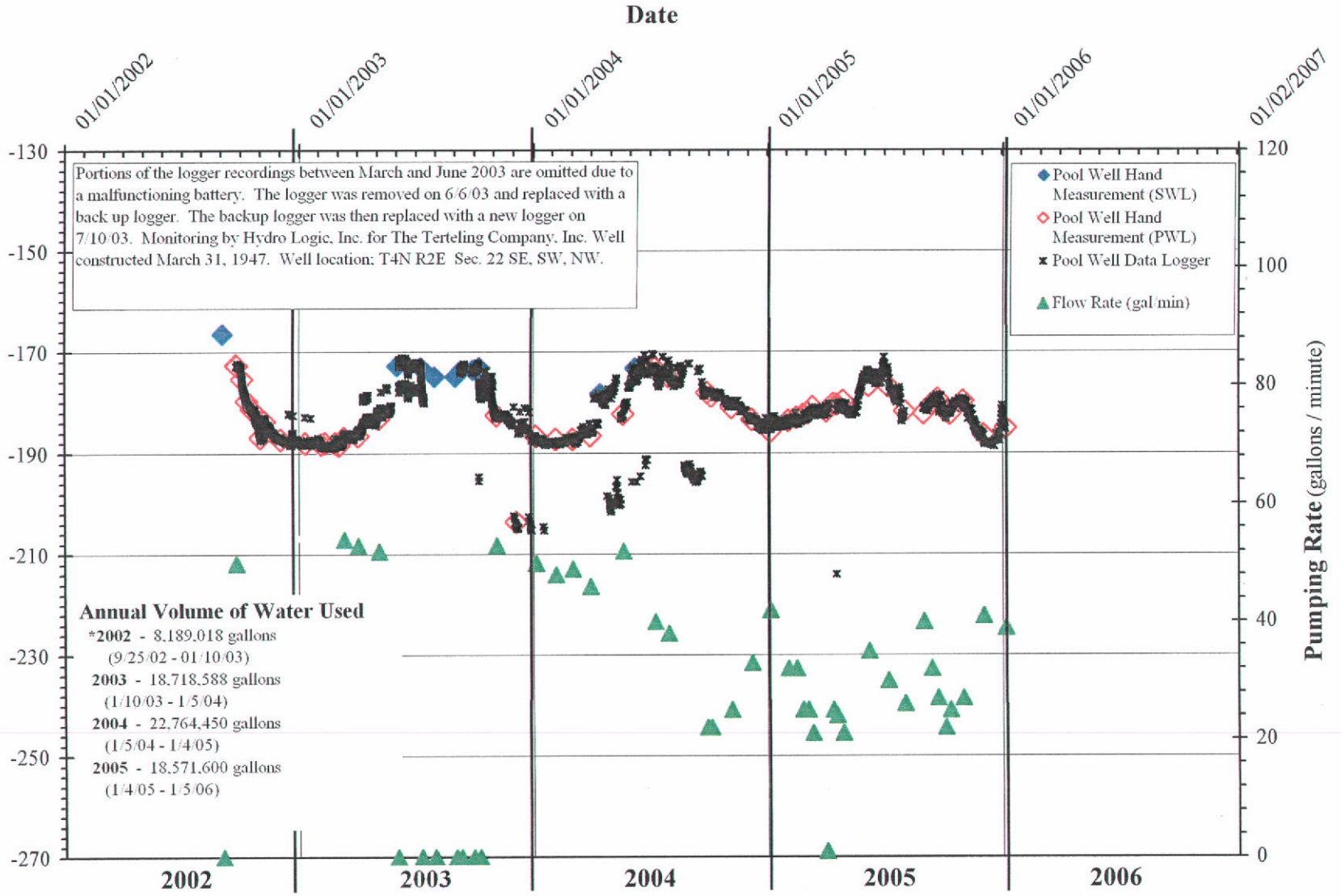


Figure 3.

Terteling District 63-S Geothermal Water Production by Month with Accumulated Totals - 2005

TERTELING RANCH - WINDSOCK WELL

Field Measurements

measuring point (mp) = pump house floor = ground level

Time (24 hour clock)	Non-Pumping Water Level (feet bmp)	Pumping Water Level (feet bmp)	System Pressure (psi)	Flow Rate (gal/min)	Totalized Production (gallons)	Volume pumped from last reading (gallons)	Year to Date Volume (gallons)
01/04/2005 14:17		231.21	40.00	170.00	15,858,200	0	0
02/01/2005 13:42	149.30		33.00		24,211,500	8,353,300	8,353,300
02/14/2005 12:25	148.90		33.00		27,975,900	3,764,400	12,117,700
02/24/2005 14:15		199.71	41.00	170.00	31,017,600	3,041,700	15,159,400
03/04/2005 12:50	148.49		32.00		33,328,400	2,310,800	17,470,200
03/11/2005 15:39		205.30	36.00	150.00	35,288,200	1,959,800	19,430,000
04/01/2005 15:00		209.75	37.00	145.00	41,442,300	6,154,100	25,584,100
04/27/2005 15:33		229.20	36.00	200.00	48,870,900	7,428,600	33,012,700
06/06/2005 19:01		224.81	38.00	160.00	60,849,600	11,978,700	44,991,400
07/06/2005 16:11	143.37		31.00		65,503,100	4,653,500	49,644,900
08/01/2005 11:14	148.85		31.00		67,721,100	2,218,000	51,862,900
08/31/2005 10:33		221.82	37.00	160.00	69,899,900	2,178,800	54,041,700
10/04/2005 12:13		242.66	46.00	175.00	75,675,300	5,775,400	59,817,100
10/31/2005 14:28	145.90		32.00	0.00	81,428,000	5,752,700	65,569,800
12/02/2005 11:17		299.46	42.00	240.00	92,985,900	11,557,900	77,127,700
01/05/2006 12:54		280.03	42.00	220.00	5,855,500	12,869,600	89,997,300

TERTELING RANCH - MOTORCYCLE HOT WELL

Field Measurements

measuring point (mp) = top of 16-inch casing pump flange = 1.1 ft. above ground level

Time (24 hour clock)	Static Water Level (feet bmp)	Pumping Water Level (feet bmp)	System Pressure (psi)	Flow Rate (gal/min)	Totalized Production (gallons)	Volume pumped from last reading	Year to Date Volume (gallons)
01/04/2005 13:45	279.70		0.00	0.00	19,341,300	0	0
02/01/2005 12:32	280.50		0.00	0.00	19,341,300	0	0
02/14/2005 11:07	280.23		0.00	0.00	19,341,300	0	0
02/24/2005 13:02	280.39		0.00	0.00	19,341,300	0	0
03/04/2005 11:42	280.36		0.00	0.00	19,341,300	0	0
03/11/2005 14:11	280.40		0.00	0.00	19,341,300	0	0
04/01/2005 14:05	280.28		0.00	0.00	19,341,300	0	0
04/27/2005 15:15	278.05		0.00	0.00	19,341,300	0	0
06/06/2005 13:40	279.20		0.00	0.00	19,341,300	0	0
07/06/2005 14:03	277.60		0.00	0.00	19,341,300	0	0
08/01/2005 11:42	280.03		0.00	0.00	19,341,500	200	200
08/31/2005 12:09	280.63		0.00	0.00	19,341,500	0	200
10/04/2005 11:29	281.20		0.00	0.00	19,341,500	0	200
10/31/2005 13:37	281.68		0.00	0.00	19,341,500	0	200
12/02/2005 10:25	283.24		0.00	0.00	19,341,500	0	200
01/05/2006 11:16	283.29		0.00	0.00	19,341,500	0	200

TERTELING RANCH POOL WELL

Field Measurements

measuring point (mp) = top of 16" casing = top of discharge head flange plate

Date/Time (24 hour clock)	Non-Pumping Water Level (feet bmp)	Pumping Water Level (feet bmp)	System Pressure (psi)	Flow Rate (gal/min)	Totalized Production (gallons)	Volume pumped from last reading	Year to Date Volume (gallons)
01/04/2005 12:39		185.92	29.00	42.00	1,577,060	0	0
02/01/2005 13:31		183.79	23.50	32.00	3,121,870	1,544,810	1,544,810
02/14/2005 12:14		183.15	23.80	32.00	3,806,040	684,170	2,228,980
02/24/2005 13:56		182.64	17.20	25.00	4,341,620	535,580	2,764,560
03/04/2005 12:41		182.23	17.50	25.00	4,721,110	379,490	3,144,050
03/11/2005 15:17		181.10	15.80	21.00	5,036,600	315,490	3,459,540
04/01/2005 14:44		181.93	16.90	25.00	5,990,890	954,290	4,413,830
04/27/2005 14:32		179.92	15.80	21.00	6,990,600	999,710	5,413,540
06/06/2005 18:52		176.93		35.00	9,082,520	2,091,920	7,505,460
07/06/2005 16:02		177.05	11.00	30.00	510,010	1,427,490	8,932,950
08/01/2005 12:39		181.93	10.00	26.00	1,757,420	1,247,410	10,180,360
08/31/2005 11:09		182.38	2.00	40.00	3,305,580	1,548,160	11,728,520
10/04/2005 12:02		181.92	17.50	22.00	5,061,870	1,756,290	13,484,810
10/31/2005 14:17		179.89	18.50	27.00	6,221,450	1,159,580	14,644,390
12/02/2005 11:04		186.54	16.20	41.00	7,990,670	1,769,220	16,413,610
01/05/2006 12:09		185.22	19.20	39.00	148,660	2,157,990	18,571,600

FLORA CO. TIEGS (Triangle) WELL

Field Measurements

measuring point (mp) = 0.04 feet below sidewalk = 4.51 ft. above vault floor

Date/Time (24 hour clock)	Shut-In Pressure Head (ft above mp)	Pressure Head at Flow Rate (ft above mp)	Shut-in Pressure (psi)	Flow Rate (gal/min)	Totalized Production (gallons)	Volume pumped from last reading (gallons)	Year to Date Volume (gallons)
01/05/2005 10:32	21.60		9.35	0.00	169,688,000	0	0
02/01/2005 14:07	22.29		9.65	0.00	169,688,000	0	0
02/14/2005 12:50	22.98		9.95	0.00	169,688,000	0	0
02/24/2005 14:41	22.64		9.80	0.00	169,688,000	0	0
03/04/2005 13:22	22.64		9.80	0.00	169,688,000	0	0
03/11/2005 16:40	23.59		10.21	0.00	169,688,000	0	0
04/01/2005 15:22	23.33		10.10	0.00	169,688,000	0	0
04/27/2005 13:19	24.60		10.65	0.00	169,688,000	0	0
06/09/2005 11:09	26.57		11.50	0.00	169,688,000	0	0
07/06/2005 16:33	28.90		12.50	0.00	169,688,000	0	0
08/01/2005 13:29	23.59		10.21	0.00	169,688,000	0	0
08/31/2005 12:44	24.01		10.40	0.00	169,688,000	0	0
10/04/2005 12:45	22.18		9.60	0.00	169,688,000	0	0
10/31/2005 15:22	24.26		10.50	0.00	169,688,000	0	0
12/02/2005 12:15	19.87		8.60	0.00	169,688,000	0	0
01/05/2006 13:44	20.79		9.00	0.00	169,688,000	0	0

FLORA CO. - SILKEY (Shed) WELL

Field Measurements

measuring point (mp) = 3.38 feet above concrete pump house floor

Date/Time (24 hour clock)	Shut-In Pressure Head (ft above mp)	Pressure Head at Flow Rate (ft above mp)	Pressure at Flow Rate (psi)	Flow Rate (gal/min)	Totalized Production (gallons)	Volume pumped from last reading (gallons)	Year to Date Volume (gallons)
01/05/2005 11:29		17.32	7.50	56.60	171,085,000	0	0
02/01/2005 14:28		17.81	7.71	65.62	173,477,000	2,392,000	2,392,000
02/14/2005 13:12		17.67	7.65	63.16	174,588,000	1,111,000	3,503,000
02/24/2005 15:05		17.56	7.65	64.34	175,463,000	875,000	4,378,000
03/04/2005 13:45		17.32	7.50	62.48	176,155,000	692,000	5,070,000
03/11/2005 17:01		18.36	7.95	62.42	176,779,000	624,000	5,694,000
04/01/2005 15:41		17.90	7.75	62.89	178,607,000	1,828,000	7,522,000
04/27/2005 13:29	25.76	18.83	8.15	60.00	180,906,000	2,299,000	9,821,000
06/09/2005 11:24	25.41	20.10	8.70	70.00	184,783,000	3,877,000	13,698,000
07/06/2005 17:01	20.20	17.30	7.50	77.80	187,269,000	2,486,000	16,184,000
08/01/2005 13:43	24.37	14.78	6.40	74.60	190,129,000	2,860,000	19,044,000
08/31/2005 12:56	25.28	17.09	7.40	78.00	193,493,000	3,364,000	22,408,000
10/04/2005 13:07	23.56	14.44	6.25	72.70	197,215,000	3,722,000	26,130,000
10/31/2005 15:41	25.14	23.68	10.25	57.00	199,980,000	2,765,000	28,895,000
12/02/2005 12:38	21.25	17.32	7.50	61.60	202,798,000	2,818,000	31,713,000
01/05/2006 14:06	21.94	18.94	8.20	43.75	204,770,000	1,972,000	33,685,000

FLORA CO. - HOUSE (Office) WELL

Field Measurements

measuring point (mp) = 1.30 feet above concrete pump house floor

Date/Time (24 hour clock)	Shut-In Pressure Head (ft above mp)	Pressure Head at Flow Rate (ft above mp)	Pressure at Flow Rate (psi)	Flow Rate (gal/min)	Totalized Production (gallons)	Volume pumped from last reading (gallons)	Year to Date Volume (gallons)
01/05/2005 11:29	22.29			27.27	34,930,600	0	0
02/01/2005 14:28	22.29	8.25	8.25	7.64	35,622,000	691,400	691,400
02/14/2005 13:12	22.98	11.78	5.10	16.22	35,870,700	248,700	940,100
02/24/2005 15:05	22.70	16.40	7.10	11.87	36,103,900	233,200	1,173,300
03/04/2005 13:45	22.64	20.10	8.70	6.60	36,259,200	155,300	1,328,600
03/11/2005 17:01	23.33	20.79	9.00	6.70	36,326,000	66,800	1,395,400
04/01/2005 15:41	23.56	19.98	8.65	6.12	36,554,600	228,600	1,624,000
04/27/2005 13:25	22.52	21.48	9.30	6.50	36,802,300	247,700	1,871,700
06/09/2005 11:16	24.26	23.10	10.00	7.00	37,259,500	457,200	2,328,900
07/06/2005 16:55	28.40	25.10	10.85	6.80	37,530,600	271,100	2,600,000
08/01/2005 13:37	21.60	20.21	8.75	6.15	37,774,800	244,200	2,844,200
08/31/2005 12:51	21.70	20.43	8.85	6.47	38,062,600	287,800	3,132,000
10/04/2005 13:20	21.76	18.99	8.22	6.43	38,387,800	325,200	3,457,200
10/31/2005 15:52	24.72	17.09	7.40	13.00	38,881,500	493,700	3,950,900
12/02/2005 12:49	19.87	18.70	8.10	4.20	39,544,400	662,900	4,613,800
01/05/2006 14:22	21.02	20.21	8.75	1.88	40,065,600	521,200	5,135,000

TOTAL FLORA WATER RIGHTS TOTALS BY YEAR - 2002

Month	Windsock	Silkey	House	Total Volumes (Gal.)	Total Volumes (Acre/ft.)	Cumulative Total Volume (Acre/ft.)
January						
February						
March						
April						
May						
June						
July						
August			0			
September	990,000	134,000	0	1,124,000	3.4	
October	11,084,600	3,189,000	0	14,273,600	43.8	47.3
November	10,038,000	3,815,000	433,300	14,286,300	43.8	91.1
December	14,283,500	4,382,000	641,100	19,306,600	59.2	150.3
TOTAL ANNUAL	36,396,100	11,520,000	1,074,400	48,990,500	150.3	

TOTAL FLORA WATER RIGHTS TOTALS BY YEAR - 2003

Month	Windsock	Silkey	House	Total Volumes (Gal.)	Total Volumes (Acre/ft.)	Cumulative Total Volume (Acre/ft.)
January	8,164,700	2,831,000	317,900	11,313,600	34.7	34.7
February	9,231,200	3,202,000	447,100	12,880,300	39.5	74.2
March	7,774,600	3,591,000	298,300	11,663,900	35.8	110.0
April	7,013,500	3,975,000	339,000	11,327,500	34.8	144.8
May	4,251,200	3,765,000	251,500	8,267,700	25.4	170.2
June	0	4,674,000	297,100	4,971,100	15.3	185.4
July	-456,000	2,519,000	147,100	2,210,100	6.8	192.2
August	-68,200	3,998,000	475,800	4,405,600	13.5	205.7
September	3,187,400	3,381,000	73,800	6,642,200	20.4	226.1
October	4,468,900	2,439,000	402,200	7,310,100	22.4	248.5
November	8,477,800	2,666,000	739,500	11,883,300	36.5	285.0
December	8,687,000	2,778,000	919,400	12,384,400	38.0	323.0
TOTAL ANNUAL	60,732,100	39,819,000	4,708,700	105,259,800	323.0	

TOTAL FLORA WATER RIGHTS TOTALS BY YEAR - 2004

Month	Windsock	Silkey	House	Total Volumes (Gal.)	Total Volumes (Acre/ft.)	Cumulative Total Volume (Acre/ft.)
January	8,967,100	3,045,000	824,600	12,836,700	39.4	39.4
February	6,968,100	2,359,000	548,300	9,875,400	30.3	69.7
March			411,600	411,600	1.3	71.0
April	15,488,000	7,764,000	475,900	23,727,900	72.8	143.8
May	1,391,600	1,574,000	288,900	3,254,500	10.0	153.8
June	2,555,900	3,003,000		5,558,900	17.1	170.8
July		2,119,000	548,500	2,667,500	8.2	179.0
August	2,011,800	3,890,000	363,000	6,264,800	19.2	198.2
September	1,829,300	3,227,000	327,900	5,384,200	16.5	214.8
October	9,844,000	2,590,000	589,900	13,023,900	40.0	254.7
November	9,715,600	2,508,000	806,400	13,030,000	40.0	294.7
December	9,666,700	2,719,000	884,200	13,269,900	40.7	335.5
TOTAL ANNUAL	68,438,100	34,798,000	6,069,200	109,305,300	335.4	

TOTAL FLORA WATER RIGHTS TOTALS BY YEAR - 2005

Month	Windsock	Silkey	House	Total Volumes (Gal.)	Total Volumes (Acre/ft.)	Cumulative Total Volume (Acre/ft.)
January	8,353,300	2,392,000	691,400	11,436,700	35.1	35.1
February	9,116,900	2,678,000	637,200	12,432,100	38.2	73.3
March	8,113,900	2,452,000	295,400	10,861,300	33.3	106.6
April	7,428,600	2,299,000	247,700	9,975,300	30.6	137.2
May	11,978,700	3,877,000	457,200	16,312,900	50.1	187.3
June	4,653,500	2,486,000	271,100	7,410,600	22.7	210.0
July	2,218,000	2,860,000	244,200	5,322,200	16.3	226.3
August	2,178,800	3,364,000	287,800	5,830,600	17.9	244.2
September	5,775,400	3,722,000	325,200	9,822,600	30.1	274.4
October	5,752,700	2,765,000	493,700	9,011,400	27.7	302.0
November	11,557,900	2,818,000	662,900	15,038,800	46.2	348.2
December	12,869,600	1,972,000	521,200	15,362,800	47.1	395.3
TOTAL ANNUAL	89,997,300	33,685,000	5,135,000	128,817,300	395.3	

Notes: 1) Totals do not include Pool Well which is not a point of diversion for Flora Co. water rights.

Prepared for The Terteling Company Inc. by Hydro Logic Inc.

Hydro Logic Inc. - WORK IN PROGRESS

Table 1.

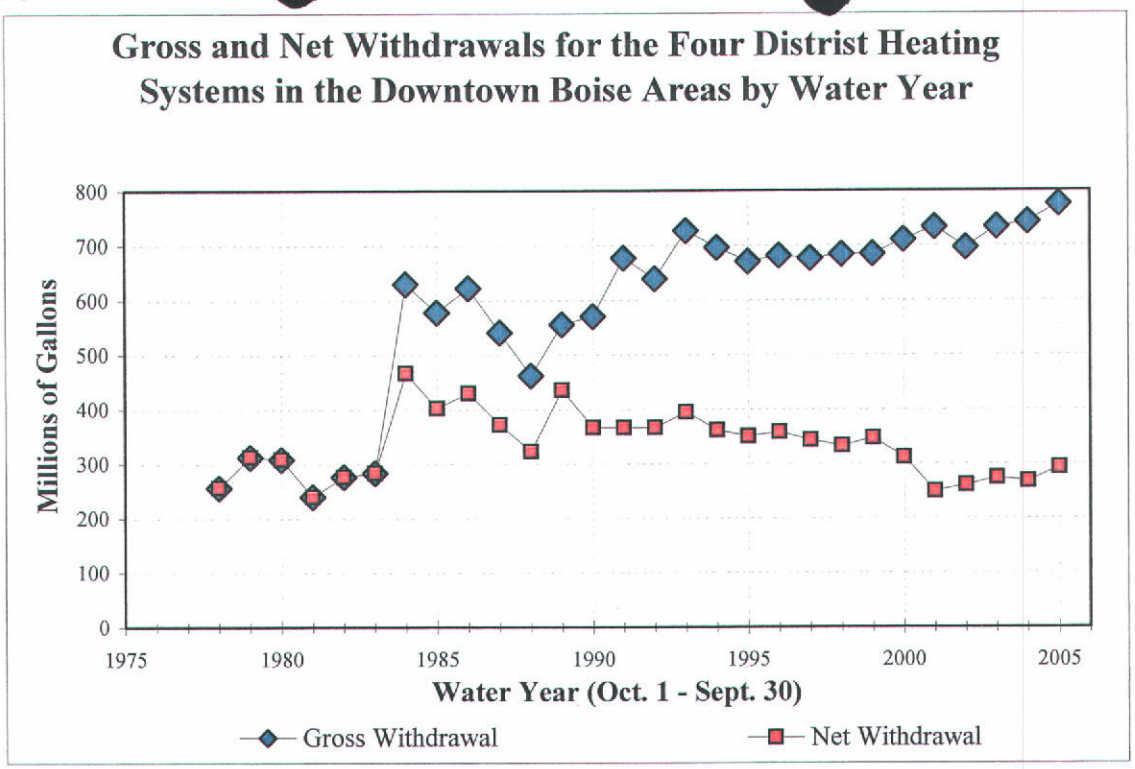


Figure 1. Gross and net withdrawals for the four district heating systems in the downtown Boise area for water years 1978 through 2005.

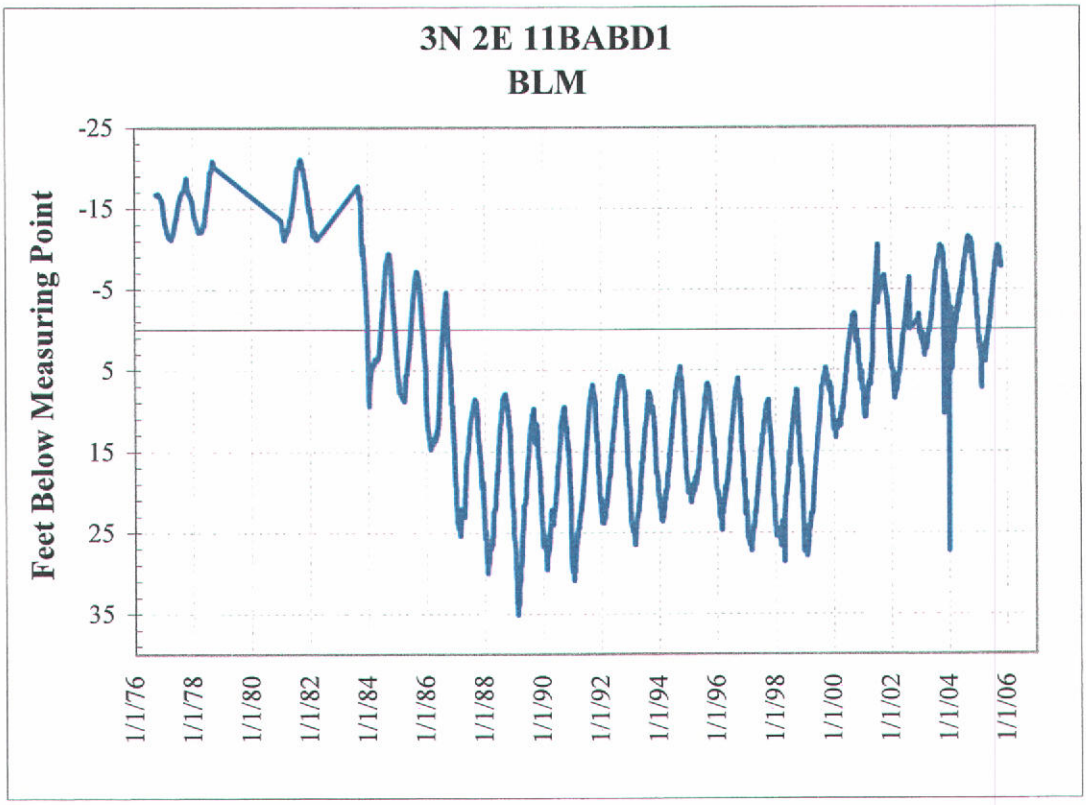


Figure 2. Water level hydrograph for the BLM well.

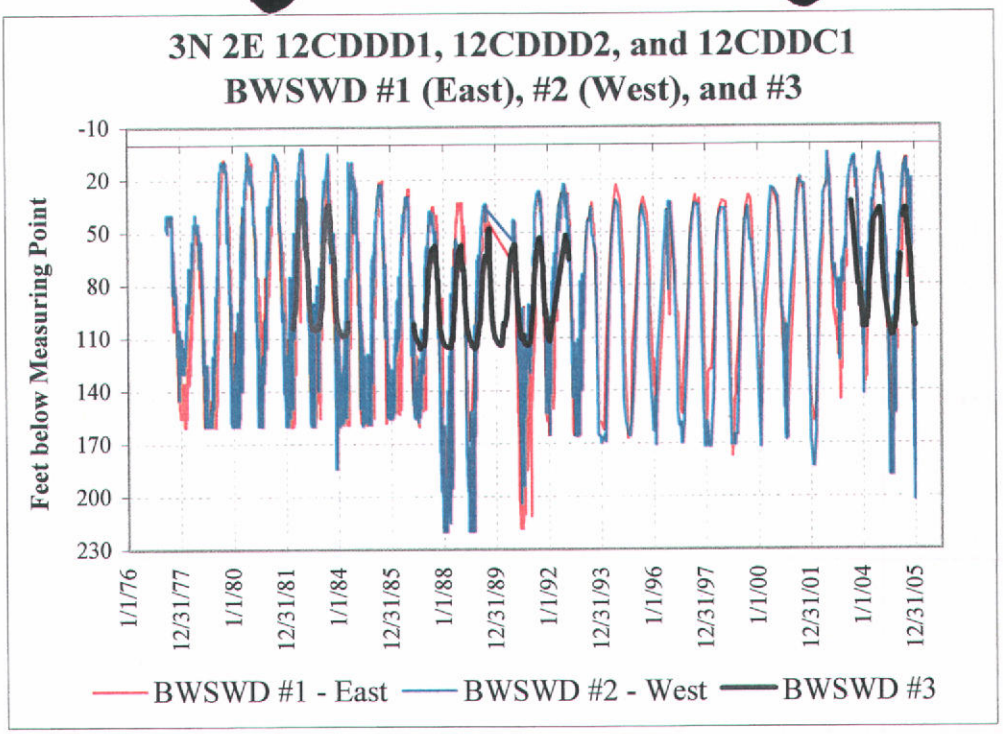


Figure 3. Water level hydrographs for the Boise Warm Springs Water District (BWSWD) wells.

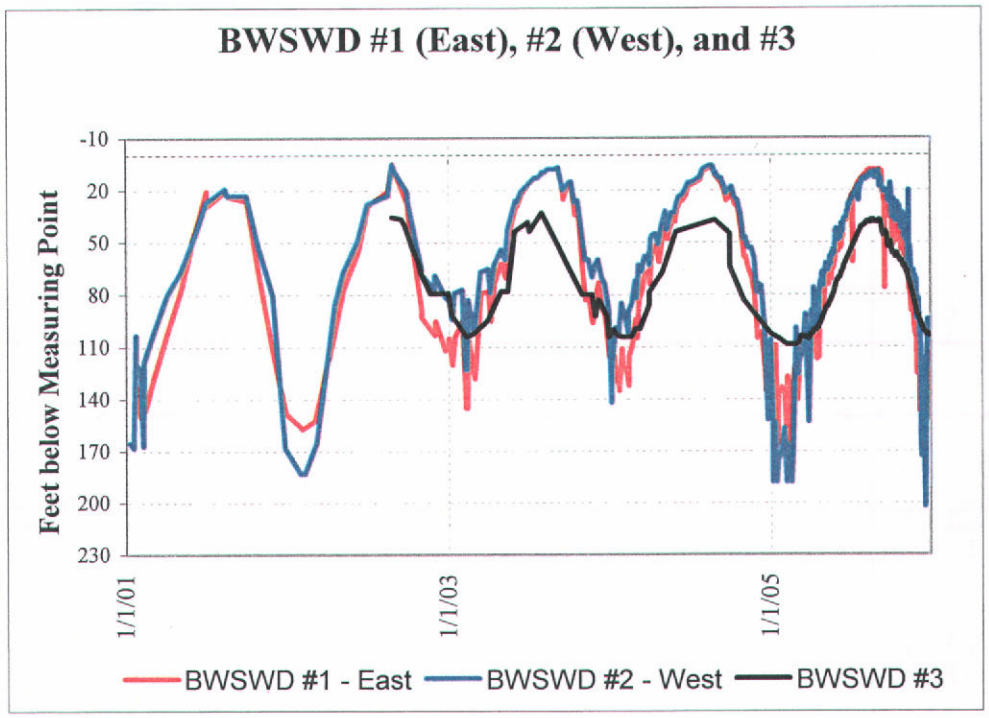


Figure 4. Water level hydrographs for the Boise Warm Springs Water District (BWSWD) wells, January 2001 to December 2005.

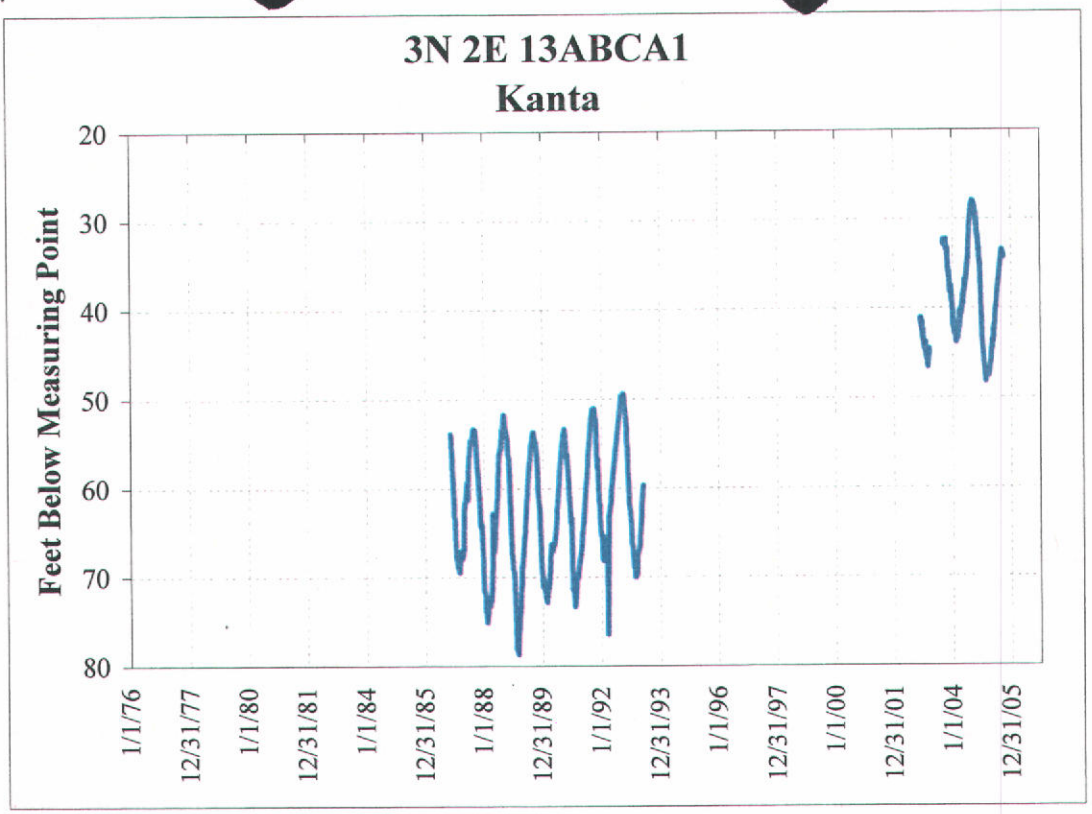


Figure 5. Water level hydrograph for the Kanta well.

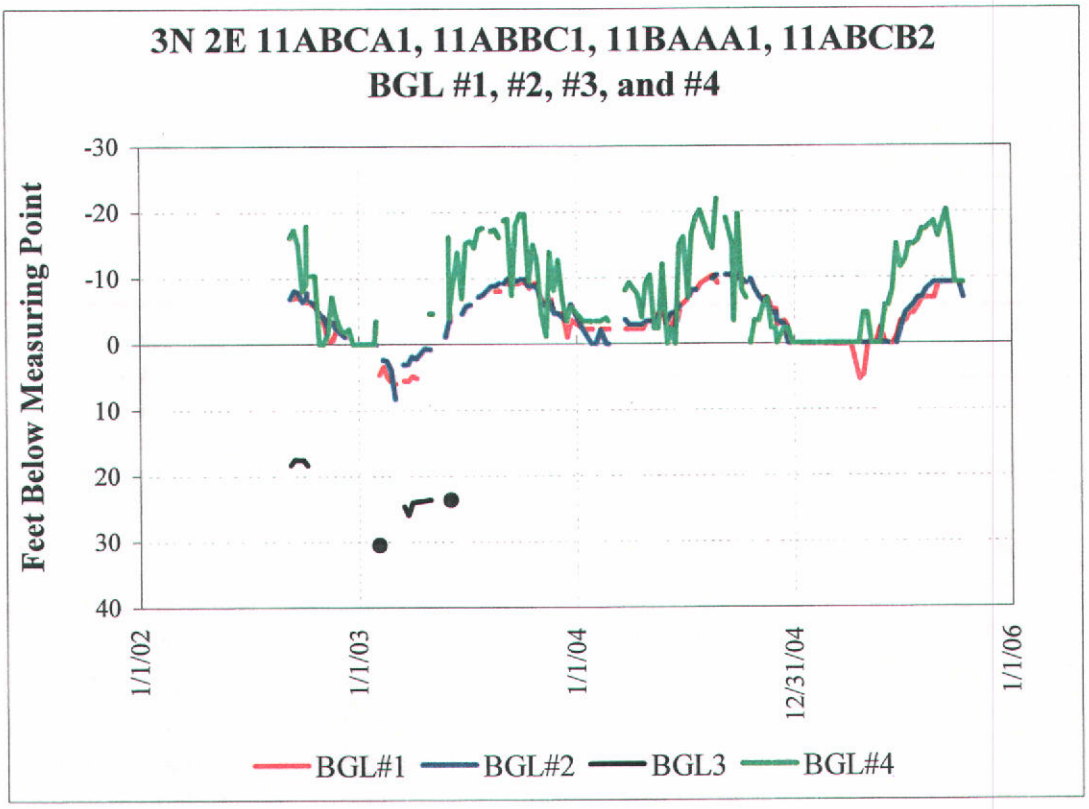


Figure 6. Water level hydrograph for the BGL #1, #2, #3, and #4 wells.

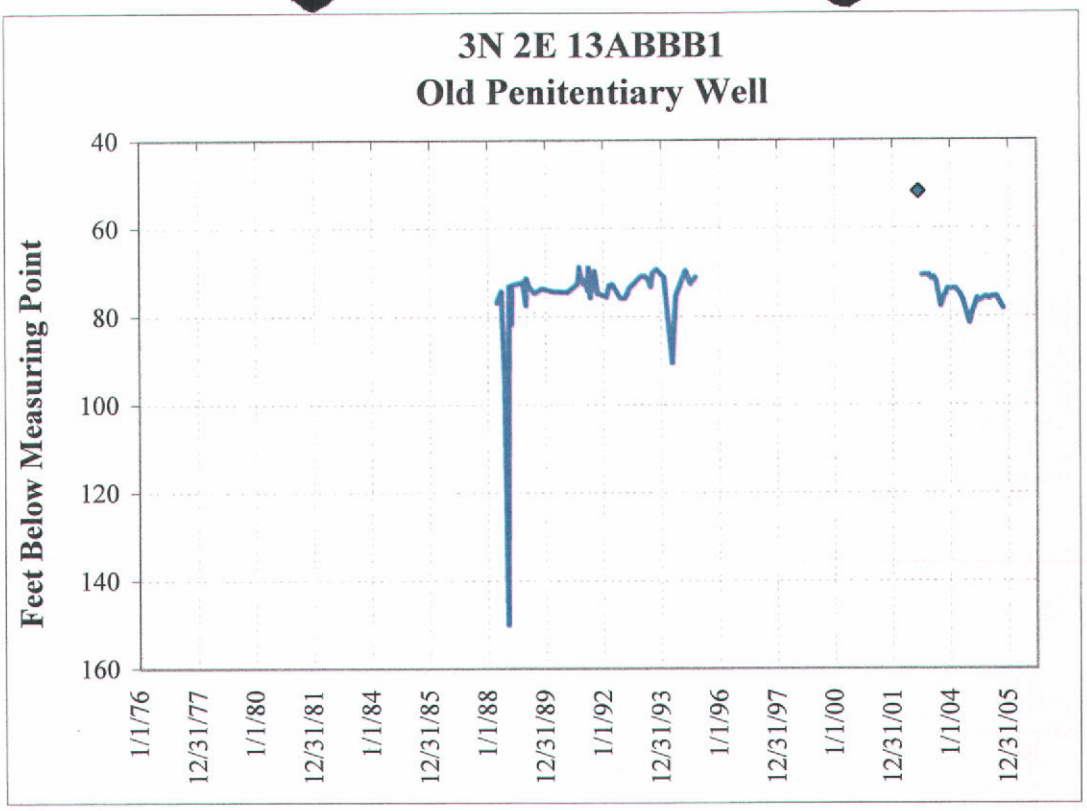


Figure 7. Water level hydrographs for the Old Penitentiary well.

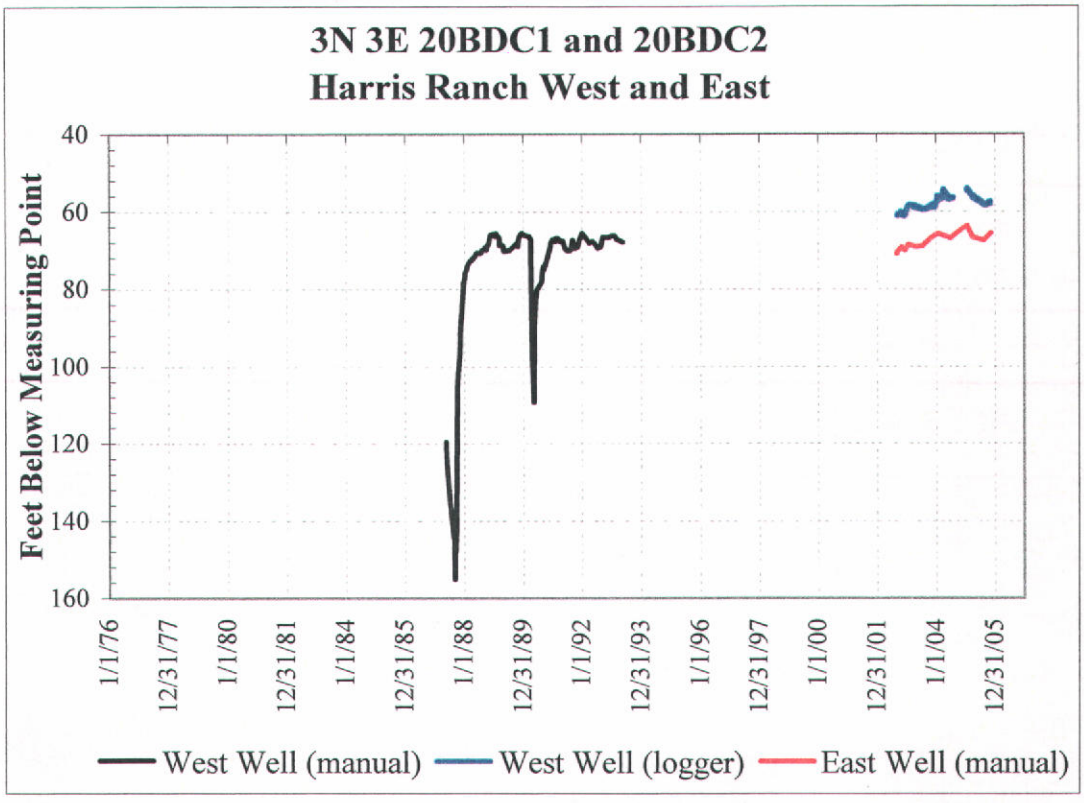


Figure 8. Water level hydrographs for the Harris Ranch wells.

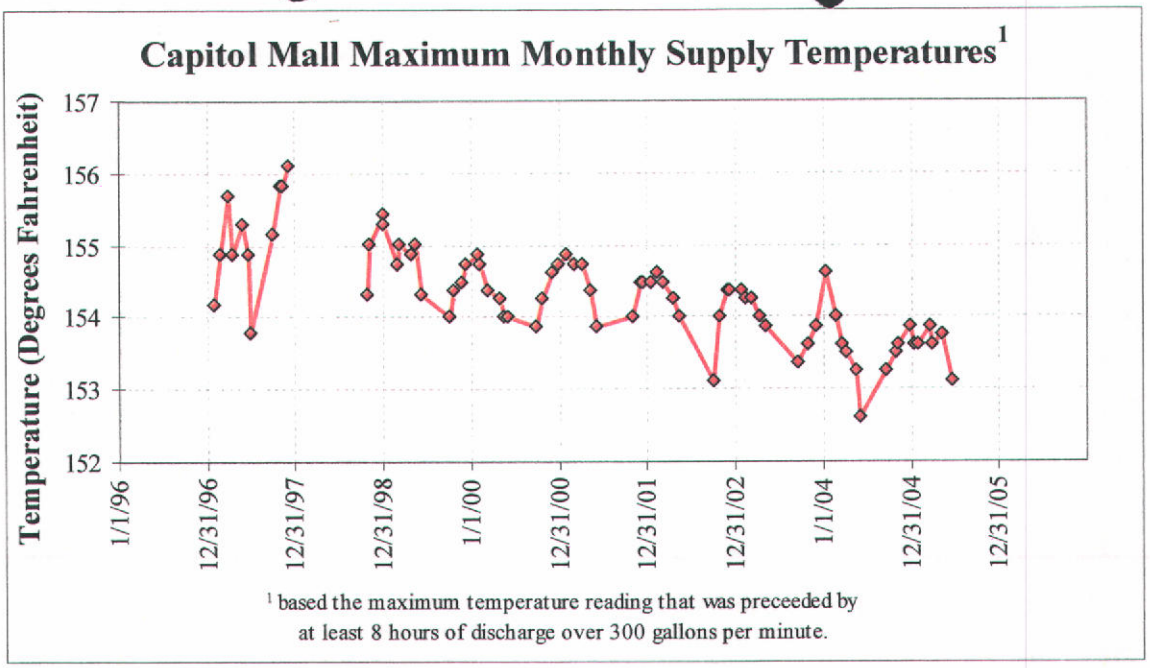


Figure 9. Maximum monthly water supply temperatures for the Capitol Mall geothermal system.

3. STEWART GULCH GROUND WATER DISTRICT 63S

Total withdrawals from WD63S wells for WY05 was 196.40 mgal (Figure 10), which was 16.2 million gallons greater than in WY04 - a change of nine percent[1]. Four of the seven production wells in WD63S (excluding the Whitehead well) had increases in withdrawals (Table 2).

Changes in ground water trends in WD63S were mixed in 2005. Typical of the observed water level patterns in the District, the Edwards Greenhouse well showed an increase in the minimum value from 2004 to 2005, but the latter part of 2005 was characterized by an overall decrease in water levels including a decrease in the maximum value of about 3.7 feet from 2004 to 2005 (Figure 11). The three nearby Flora Company wells exhibited the same pattern as the Edwards well (Figures 12-14). The Whitehead well, which is located between the Edwards and Flora Company wells has only been monitored since late 2004; however, it also showed a decline in water levels in 2005 (Figure 15).

Moving up Stewart Gulch, the two geothermal wells at the Quail Hollow Golf Course also showed similar patterns as the Flora and Edwards well (Figures 16 and 17). At the Terteling Ranch, the Windsock well had the lowest pumping water levels on record in early 2005, and the maximum values dropped 5.8 feet from mid 2004 to mid 2005 (Figure 18). The pumping water levels for the Pool well showed a major increase in the minimum values of about 20 feet, and a slight decrease in the maximum values from 2004 to 2005 (Figure 19). The Motorcycle Club Hot well had minimum values that increased 5.2 feet from early 2004 to early 2005, and maximum values that decreased 5.2 feet from mid 2004 to mid 2005 (Figure 20).

[1]This amount does not include data from the Whitehead well because production records for that well were partial in WY04.

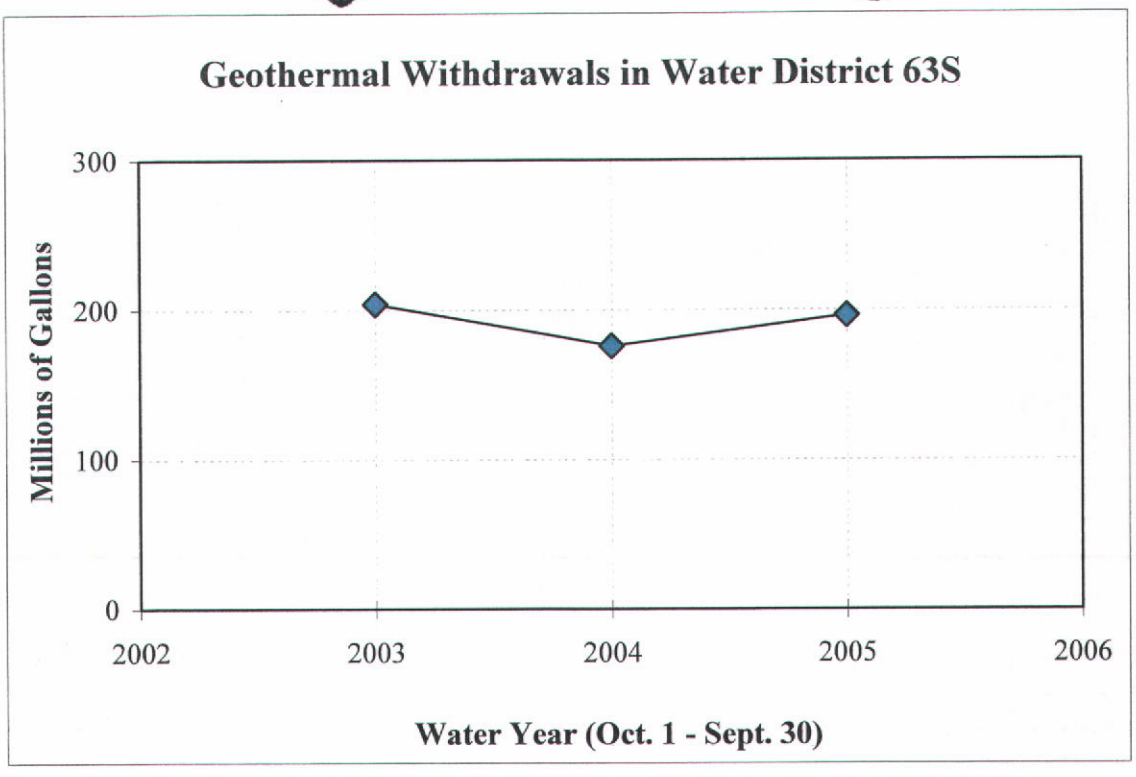


Figure 10. Geothermal withdrawals in Stewart Gulch Water District 63S for Water Years 2003-2005.

Table 2. Withdrawals from Stewart Gulch Water District 63S geothermal wells for Water Year 2005 (October 1, 2004 through September 30, 2005).

Well	Withdrawals in WY05 (gallons)	Change from WY04 (gallons)
Flora Company Tiegs (Triangle)	0	0
Flora Company Silkey (Shed)	33,770,048	-1,497,266
Flora Company House (Office)	5,728,467	-148,953
Edwards Greenhouse	35,677,800	-12,756,000
Terteling Ranch Windsock	85,363,052	+22,296,941
Terteling Ranch Pool	17,256,220	+1,866,809
Quail Hollow Golf Course Upper	13,286,400	+5,759,600
Quail Hollow Golf Course Lower	978,700	+722,000
Whitehead	4,339,274	NA[1]
Total	**196,399,961**	**+16,194,801[2]**

[1]Only partial production data were available in WY04.
[2]Does not include data for Whitehead well.

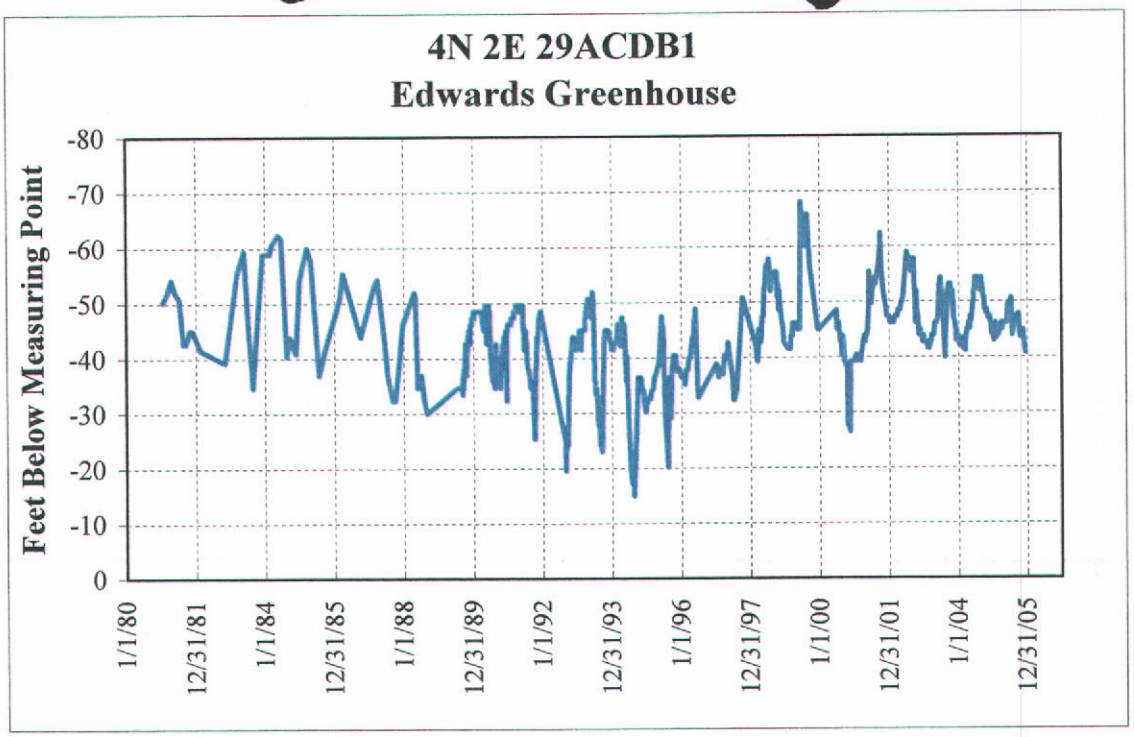


Figure 11. Water level hydrograph for the Edwards Greenhouse well.

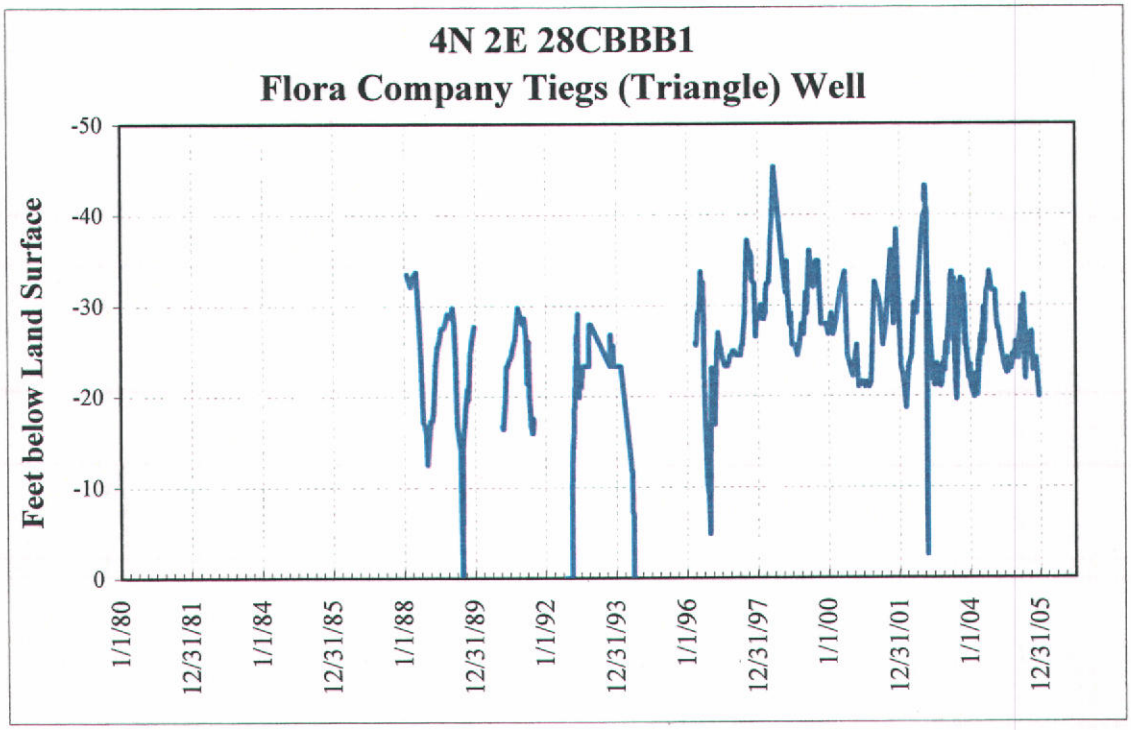


Figure 12. Water level hydrograph for the Flora Company Tiegs (Triangle) well.

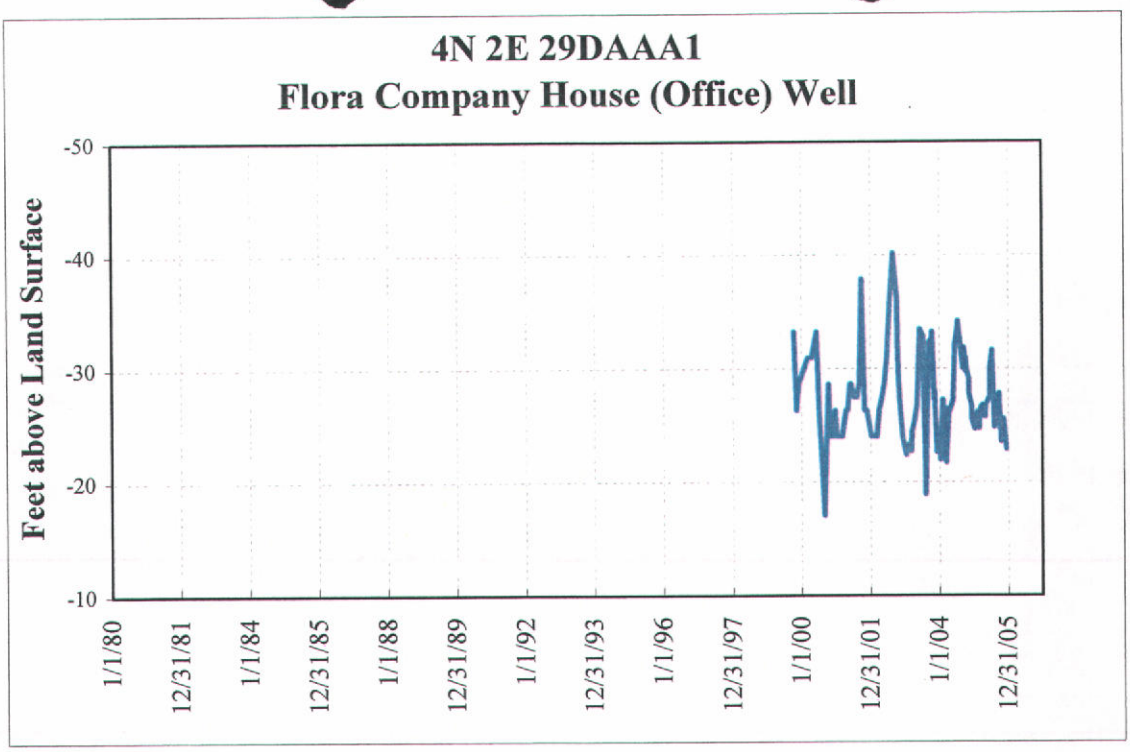


Figure 13. Water level hydrograph for the Flora Company House (Office) well.

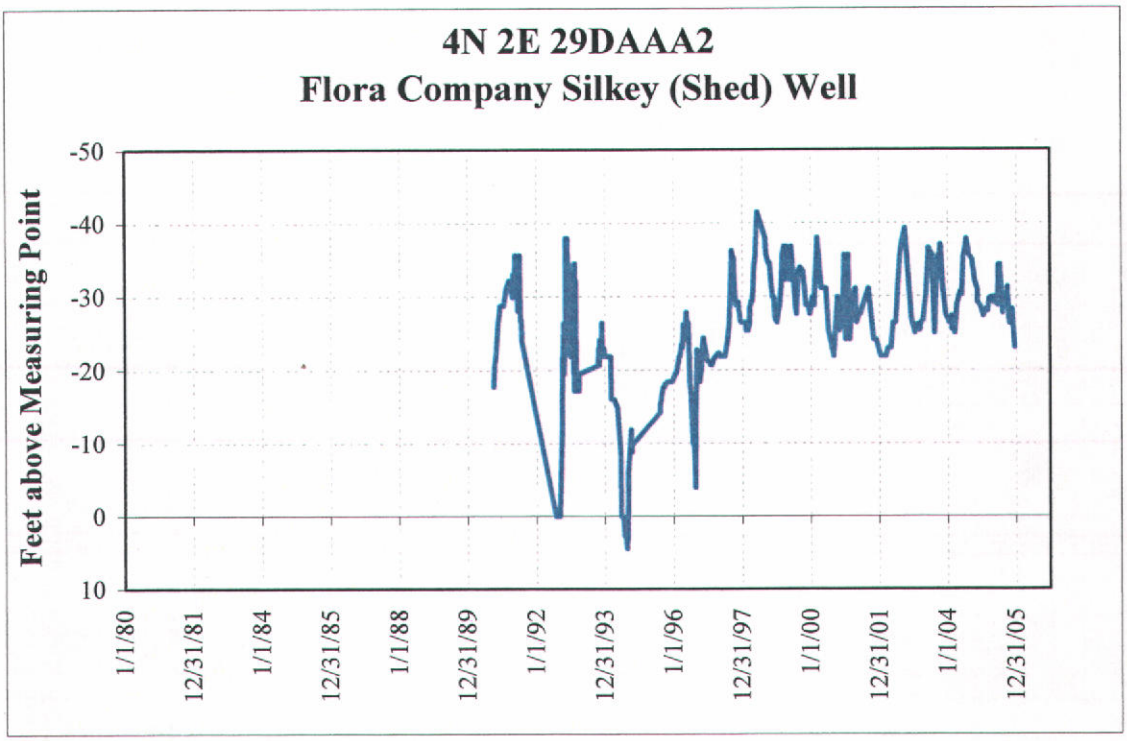


Figure 14. Water level hydrograph for the Flora Company Silkey (Shed) well.

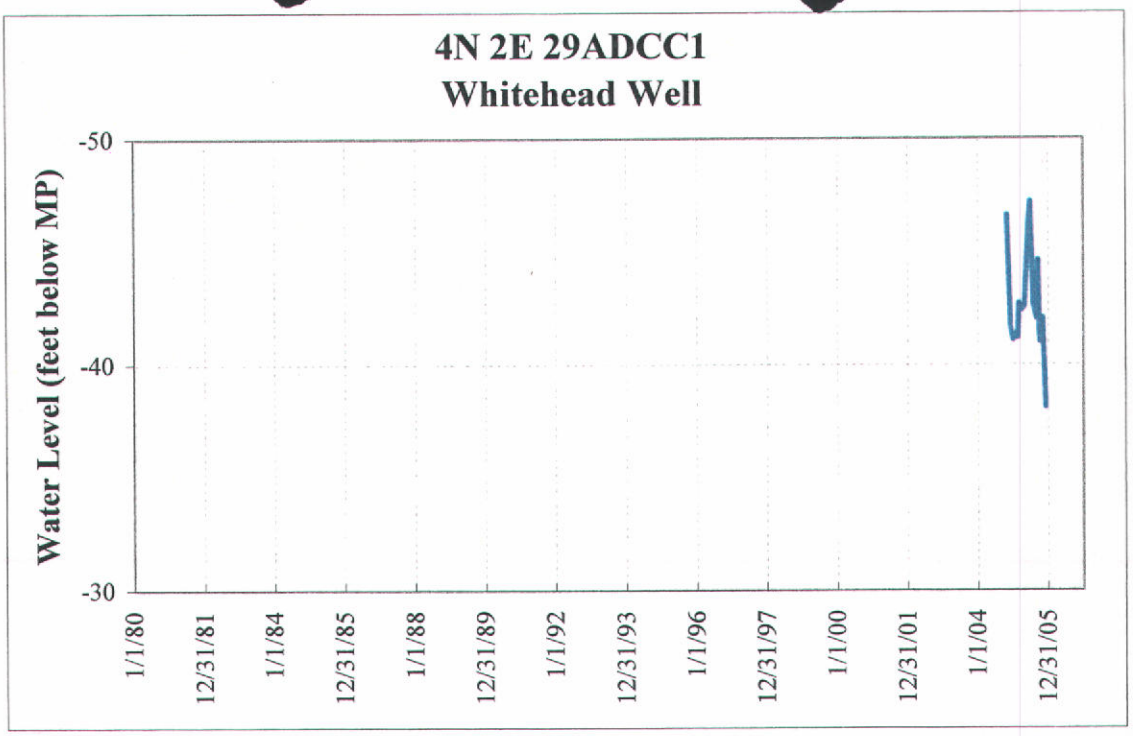


Figure 15. Water level hydrograph for the Whitehead well.

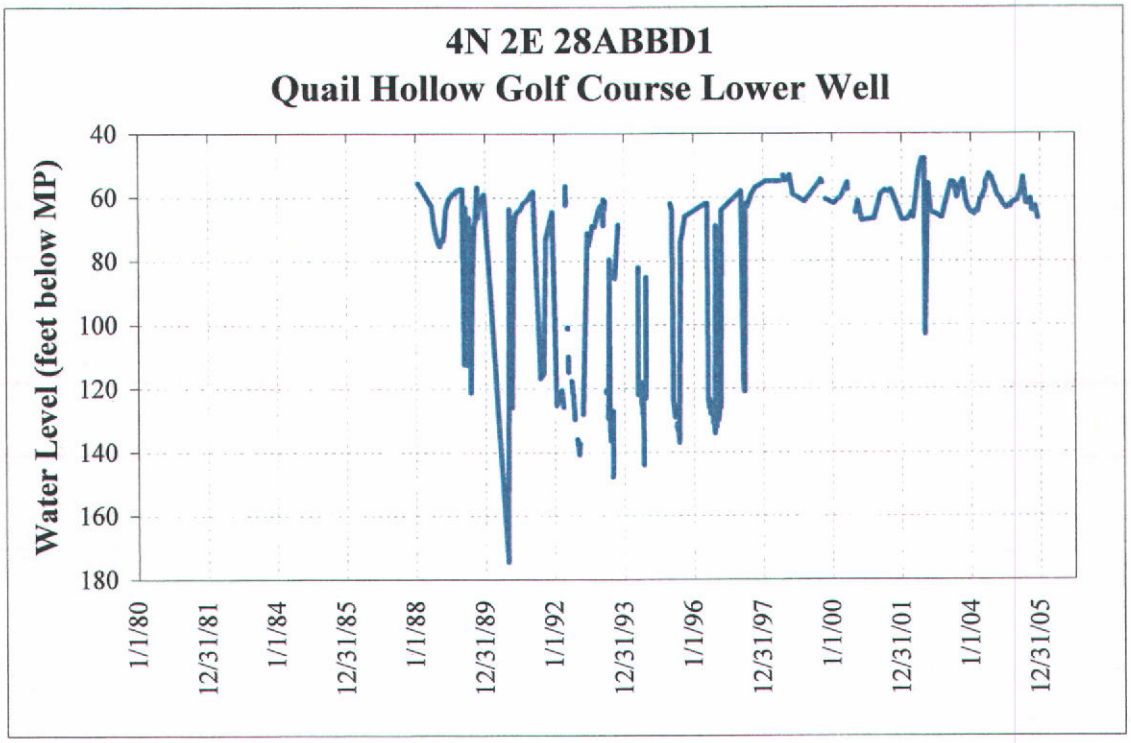


Figure 16. Water level hydrograph for the Quail Hollow Lower well.

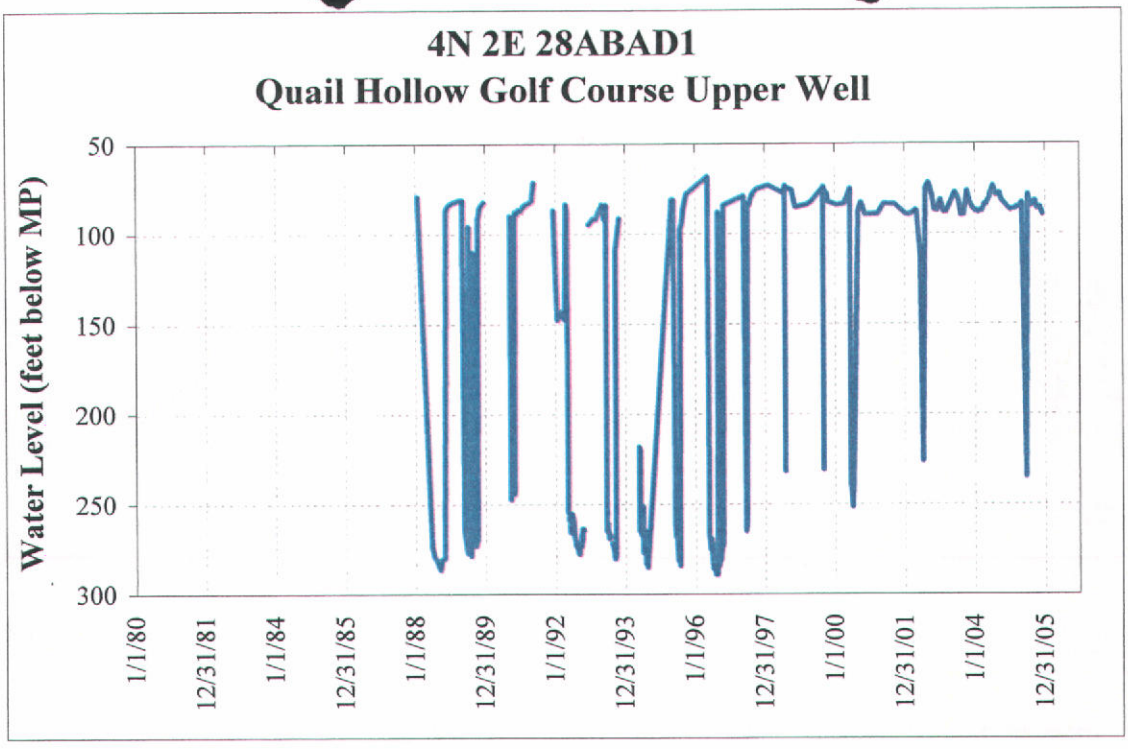


Figure 17. Water level hydrograph for the Quail Hollow Upper well.

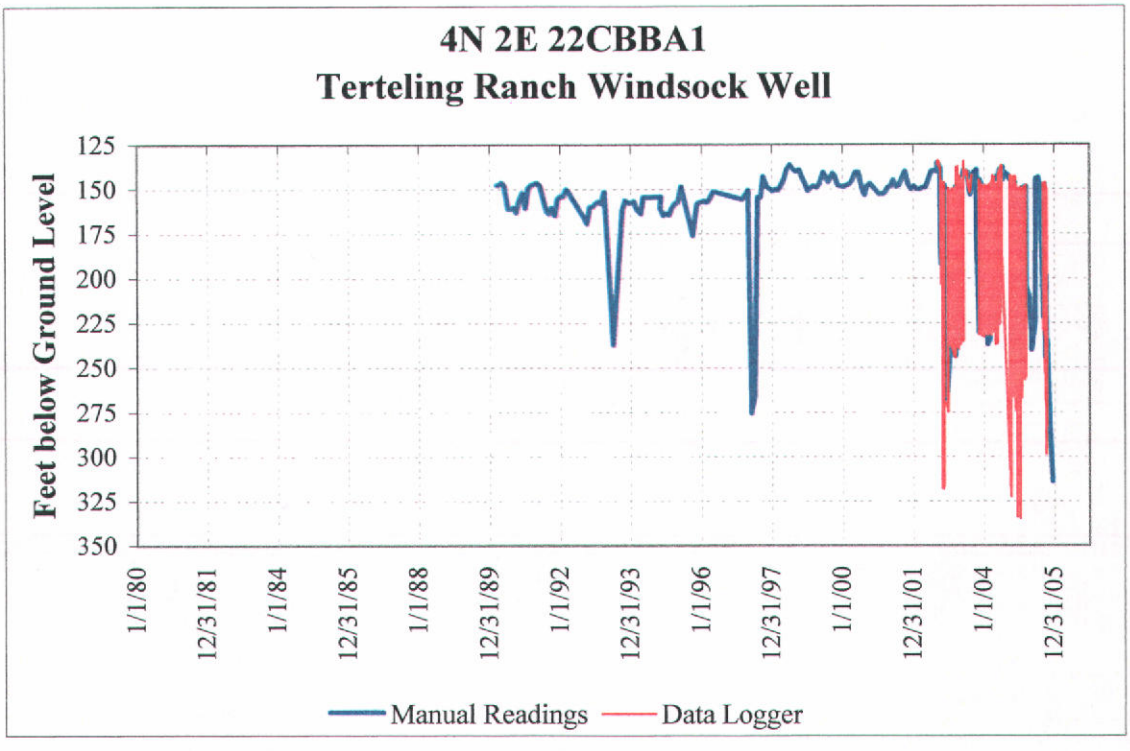


Figure 18. Water level hydrograph for the Terteling Ranch Windsock well.

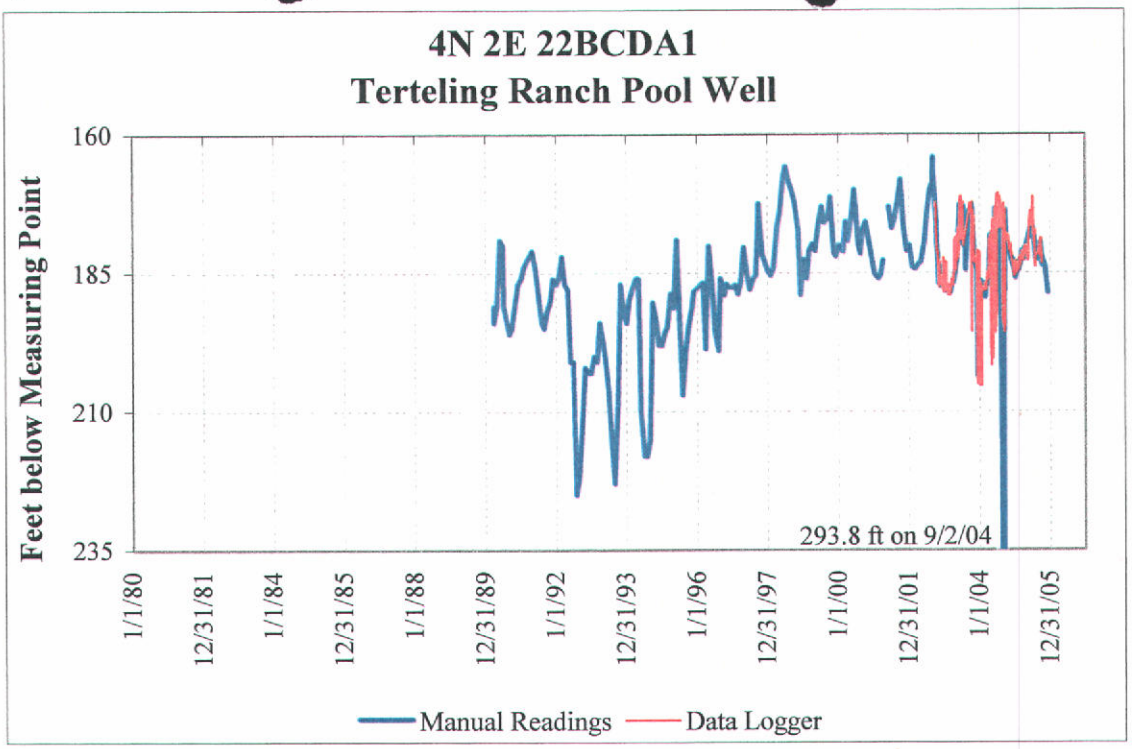


Figure 19. Water level hydrograph for the Terteling Ranch Pool well.

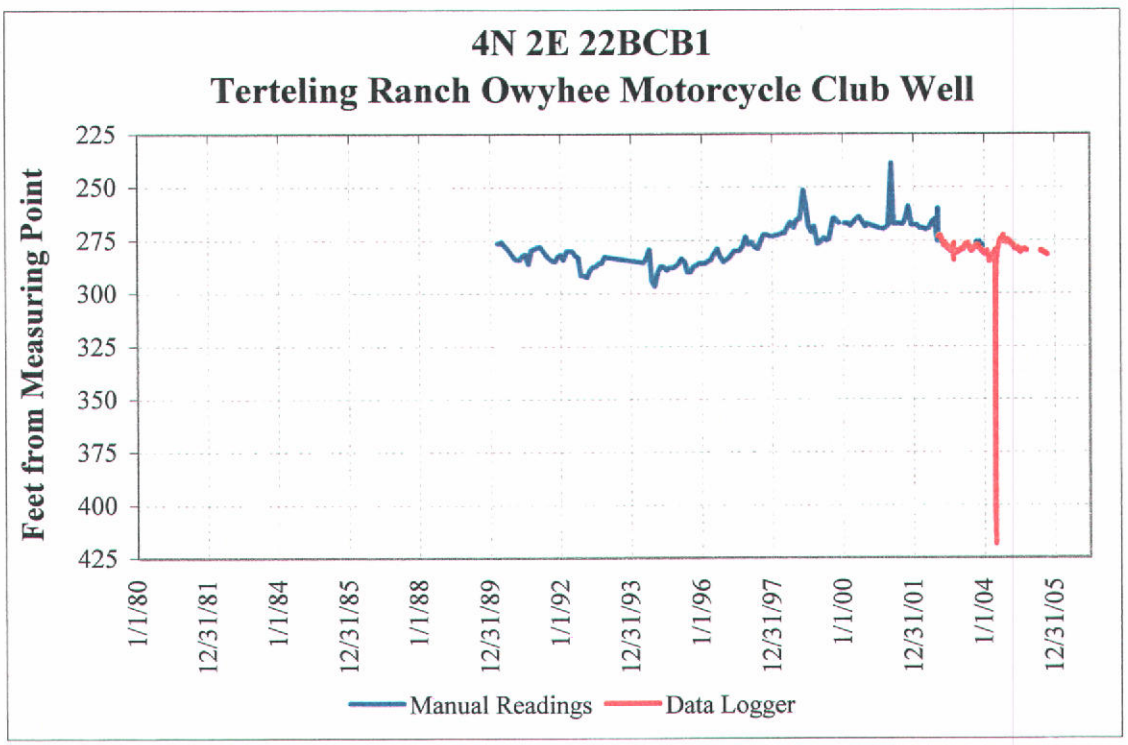
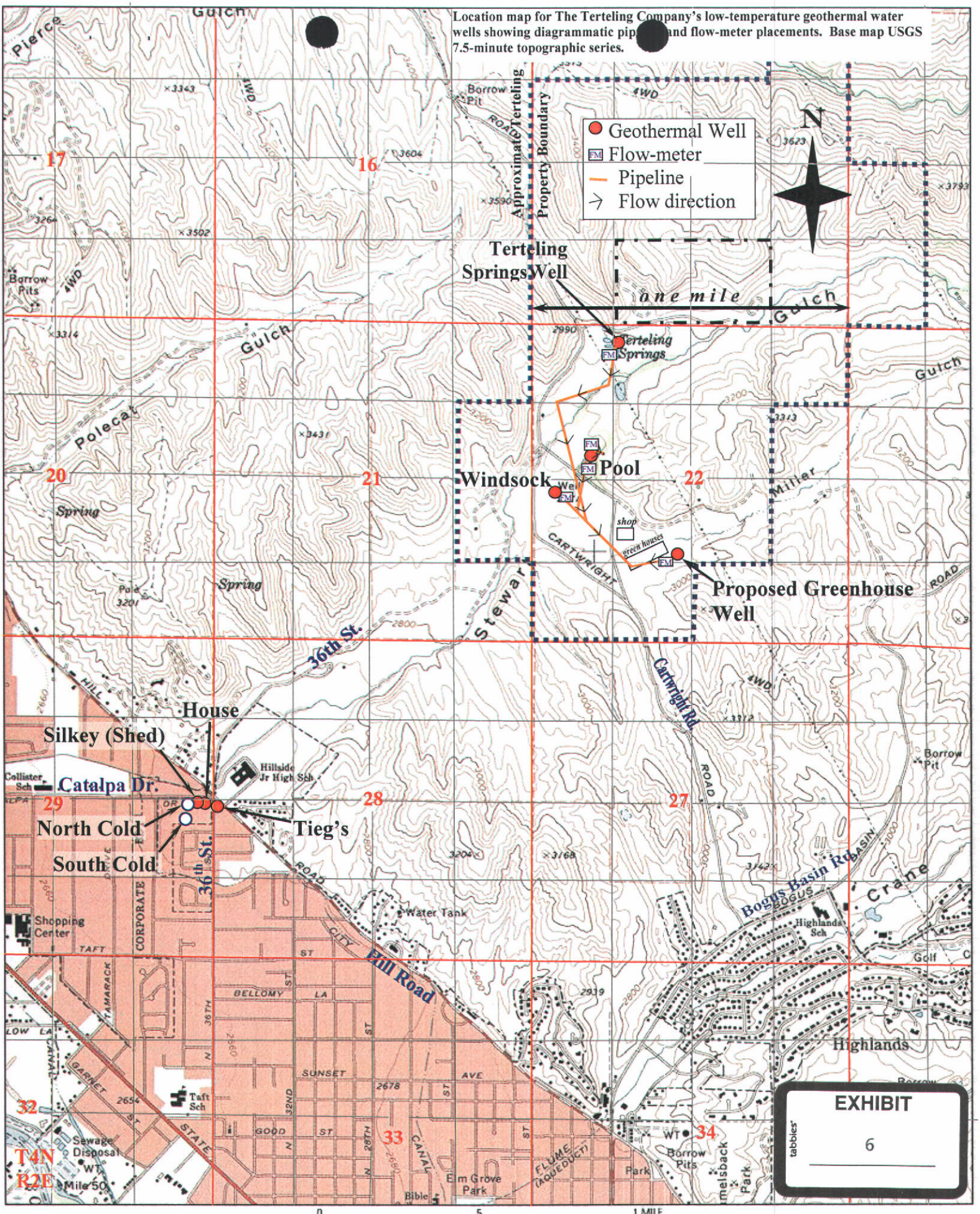


Figure 20. Water level hydrograph for the Terteling Ranch Motorcycle Club Hot well.



Hydro Logic Inc.
Boise, Idaho

Figure 1.

For any application f[redacted]ansfer, the department must determine w[redacted]er the proposed change will injure any other rights, whether junior or senior in priority to the right being changed. The following factors must be considered when processing a transfer and may require additional information from the applicant.

> **(7) Changing Aquifer Source**
>
> .....An application for transfer **proposing to change the point of diversion from one distinct aquifer to a totally separate aquifer is not approvable**, just as an application for transfer proposing to change the point of diversion for a surface water right from one distinct surface water source to a totally separate surface water source is not approvable.

We always give the applicant notice of problems, and a chance to address issues through correspondence. In this case, Ken says that there was a study done about 5 years ago to confirm the Motorcycle well was in a separate aquifer that resulted in redrawing the boundaries of 63S to exclude it. I am not sure how they can argue that it is the same at this point. You should notify them that the Motorcycle well cannot be included on the transfer approval. Allow a brief response time & continue processing as we discussed.

Let me know when other changes/corrections have been completed. The motorcycle well p/d will need to be deleted from workflow & the transfer approval document prior to final review. Call me if you want to discuss any of the above.

Pam

-----Original Message-----
From: Graves, Lori
Sent: Monday, May 23, 2005 2:08 PM
To: Skaggs, Pam
Subject: 71690 Terteling Co - Aquifer Question

It has been established that the motorcycle club well is located in a separate aquifer, but that shouldn't make a difference. We approve transfers on separate sources when a common diversion system is proposed. As Ken Neely stated, if some percentage of applicants' production is shifted to the motorcycle club well, the results would be beneficial to Water District 63S. Please let me know why including the motorcycle club well is an issue. Thx Pam. lg

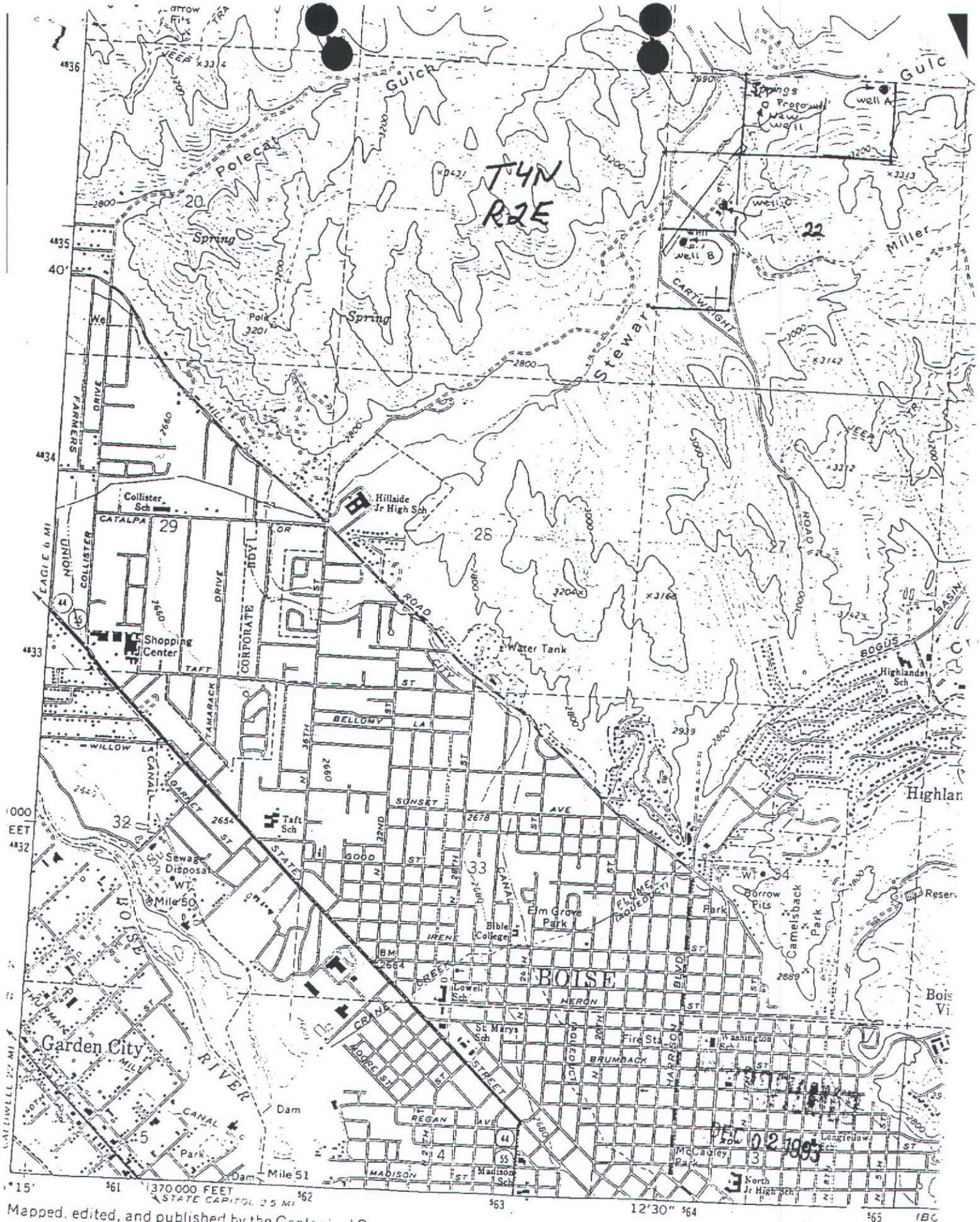
-----Original Message-----
From: Skaggs, Pam
Sent: Monday, May 23, 2005 1:39 PM
To: Graves, Lori
Cc: Curtis, Sharla
Subject: 71690 Terteling Co - 2ND REPLY

Hi Lori,

I have worked my way through this one again & still have a couple of questions/suggestions.

Jeff & I were wondering how we can add the Motorcycle Club well to the system, since you have already identified it as being separate aquifer from those located in the Stewart Gulch Water District? Your comments in the memo seem to support this. Or are all the geothermal wells in the BFGWMA somehow interconnected? Can you provide further explanation? If not, ask the applicant to provide justification for the inclusion of the MC well.

Injury to Other Water Rights: None anticipated. All proposed and existing wells, except the Motorcycle Club hot well, are located within the Stewart Gulch Water District 63S and are monitored and regulated by the water master of this district (Ken Neely). Although the Motorcycle Club hot well is located outside the district boundaries, monitoring data from this well is collected weekly and submitted to IDWR (Ken Neely) quarterly as part of the stipulated agreement related to the City of Boise's application for additional withdrawals in the Boise Front Geothermal Ground Water Management Area (BFGWMA). Ken stated that from a hydrologic point of view, if some percentage of applicants' production is shifted to the Motorcycle Club hot well, the results should be beneficial to Water District 63S since it has been established that the Motorcycle Club hot well is fault-separated from the geothermal wells in the district.



Mapped, edited, and published by the Geological Survey

ATTACHMENT B

Transfer No. _____

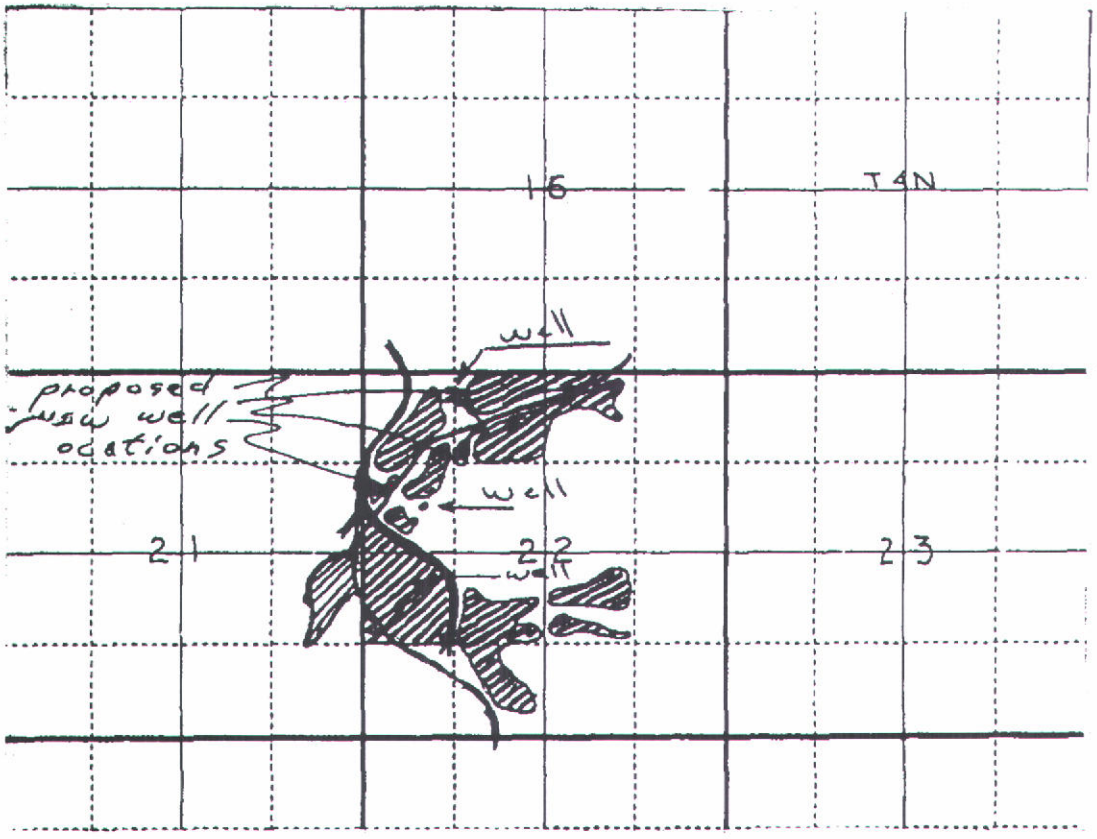
STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

APPLICATION FOR TRANSFER OF WATER RIGHT

PART 3

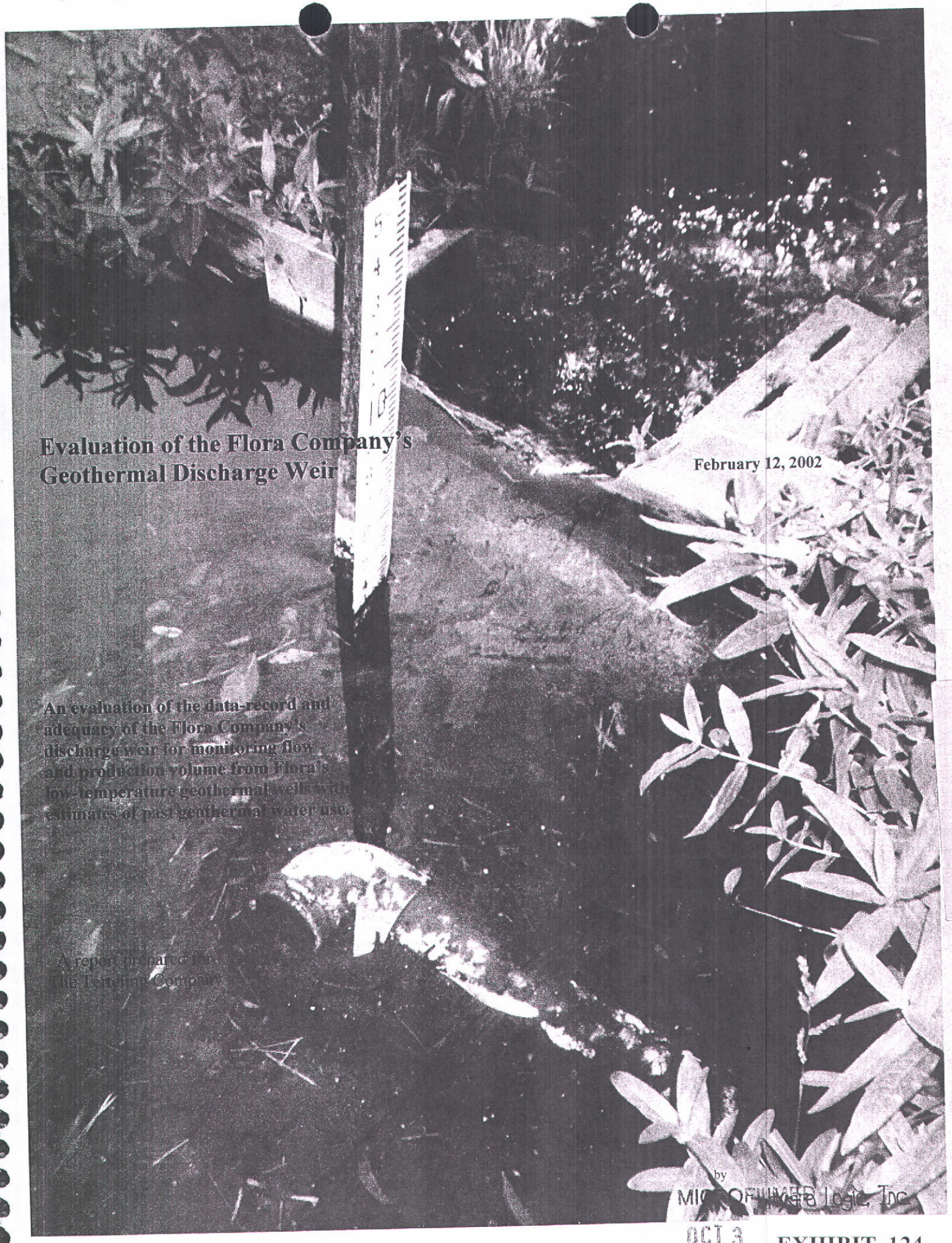
A. Draw a map or attach a USGS map indicating the new point(s) of diversion and/or the new place of use for rights described in part 1. Clearly depict the land by section, township and range number.

SEC. 22, T4N, R2E



RECEIVED
OCT 27 1992

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



Evaluation of the Flora Company's Geothermal Discharge Weir

February 12, 2002

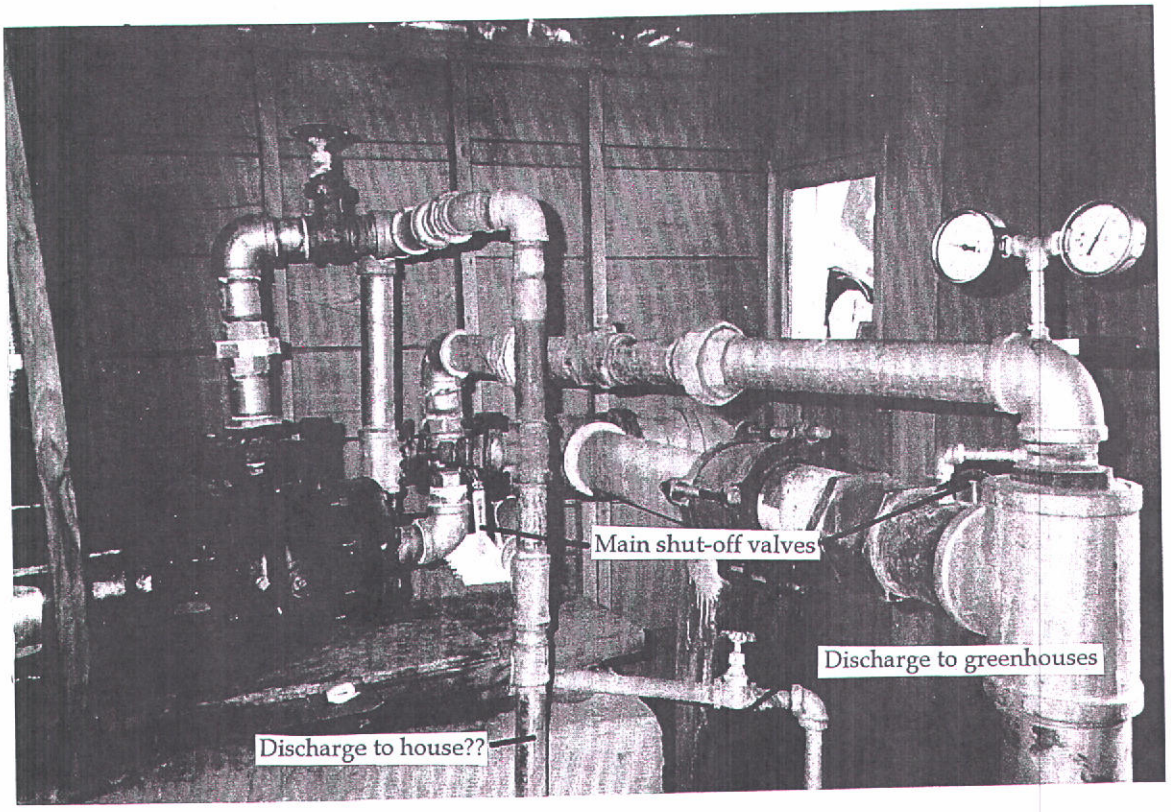
An evaluation of the data-record and adequacy of the Flora Company's discharge weir for monitoring flow and production volume from Flora's low-temperature geothermal wells with estimates of past geothermal water use.

A report prepared for
The Teitelring Company

by
MICROFILMED Logic, Inc.

OCT 3

EXHIBIT 124



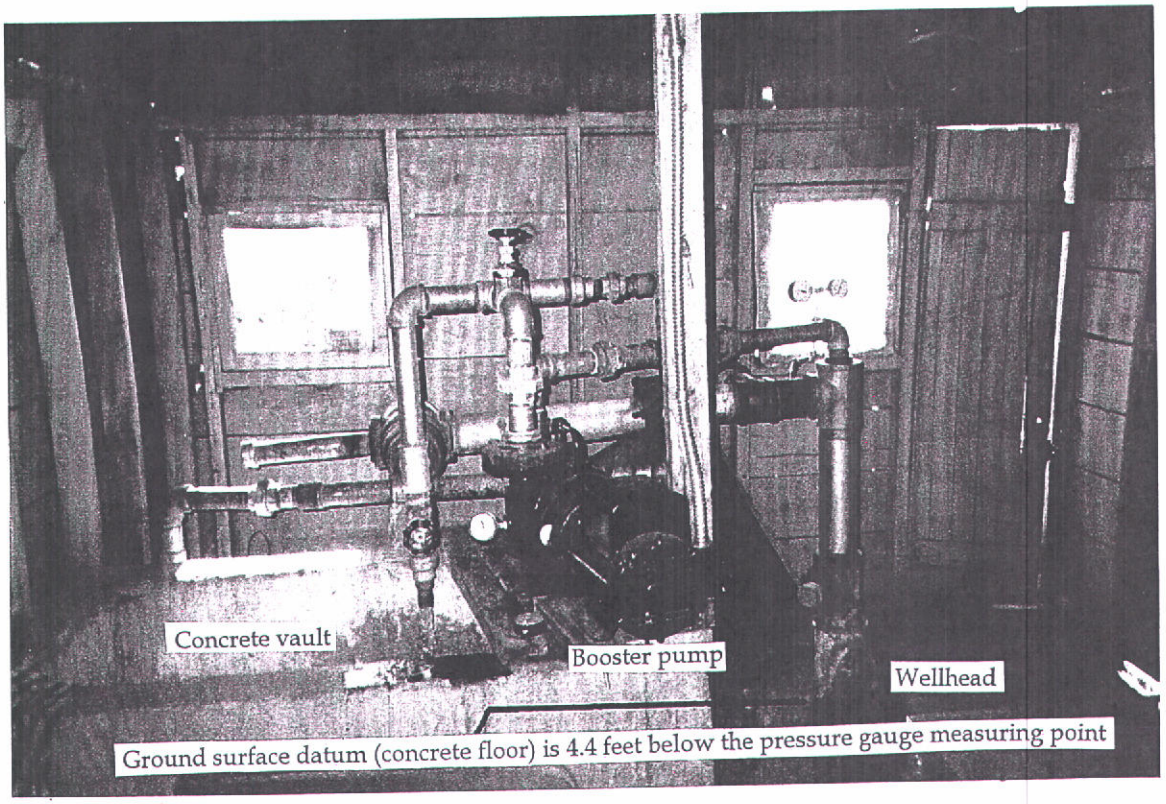
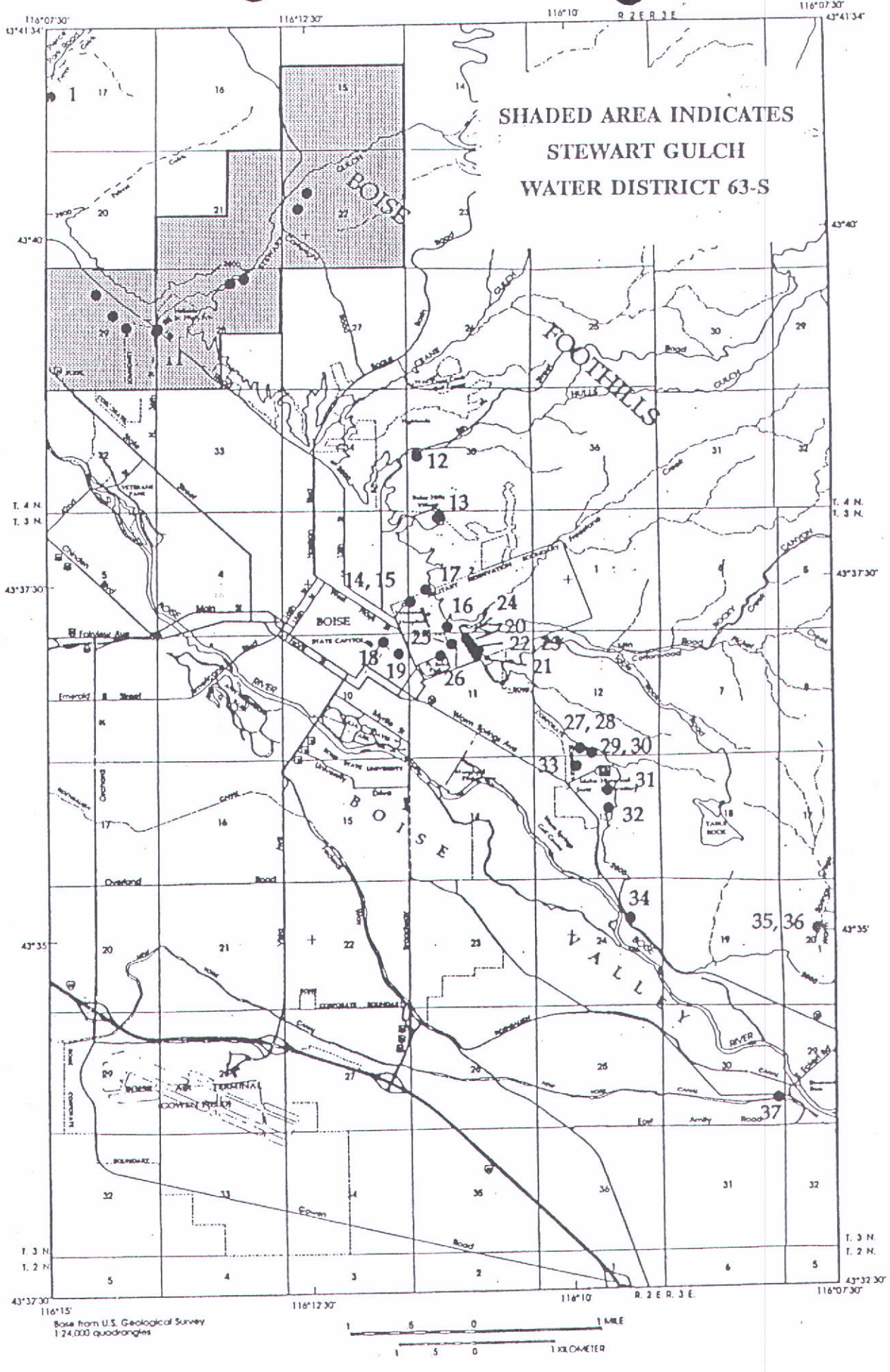


Figure 14
Wellhead piping configuration for the Flora "Shed" Well
October 1998

Figure 14.


SHADED AREA INDICATES
STEWART GULCH
WATER DISTRICT 63-S
BOISE
FOOTHILLS
BOISE
VALLEY
1
12
13
14, 15
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27, 28
29, 30
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32
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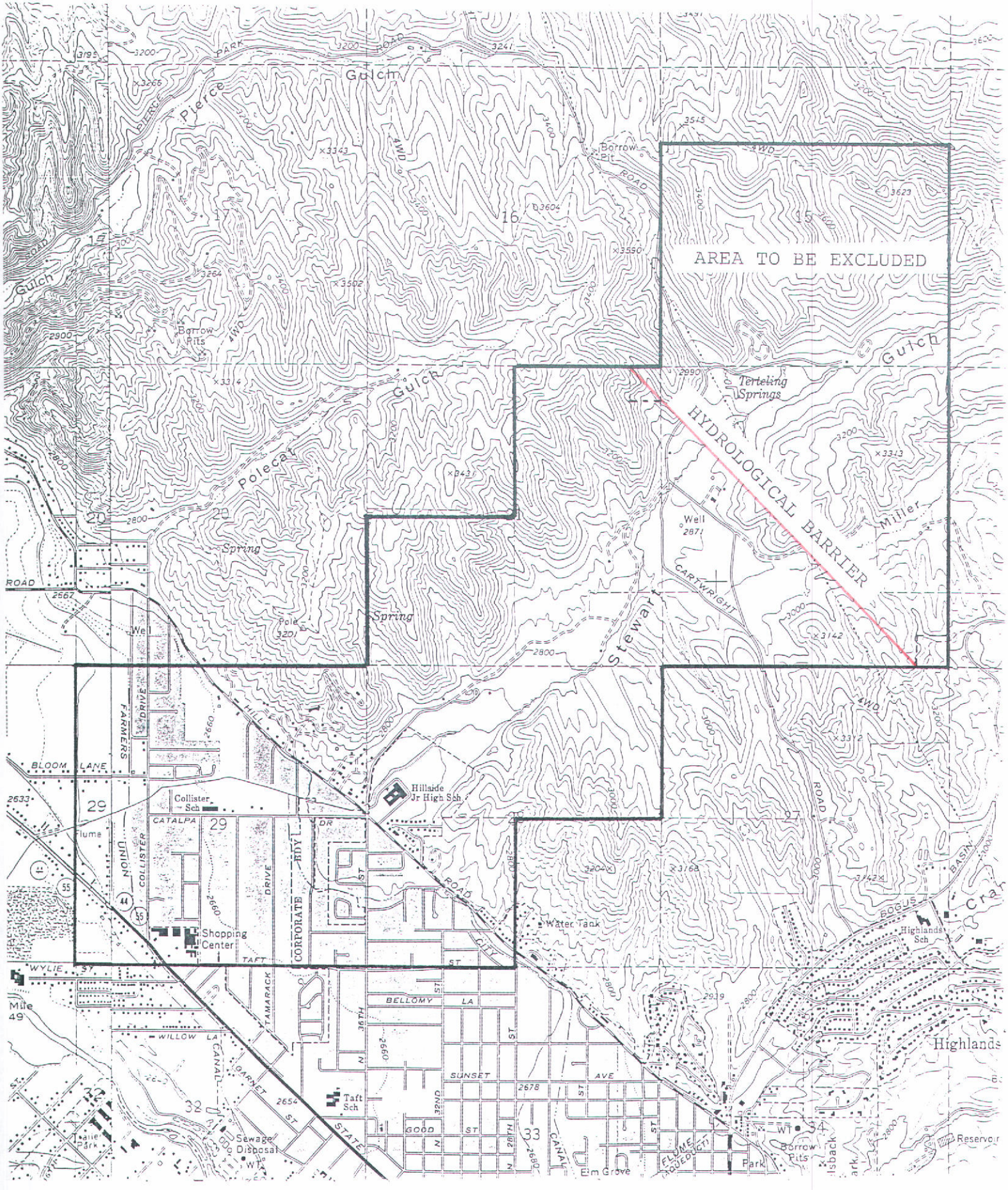
35, 36
37
R. 2 E.
R. 3 E.
T. 4 N.
T. 3 N.
T. 3 N.
T. 2 N.
Base from U.S. Geological Survey
1:24,000 quadrangles
1 MILE
1 KILOMETER

FIGURE 1

EXHIBIT A
TO PETITION OF TERTELING TRUST NO. 7
TO MODIFY BOUNDARIES OF WATER DISTRICT 63-S



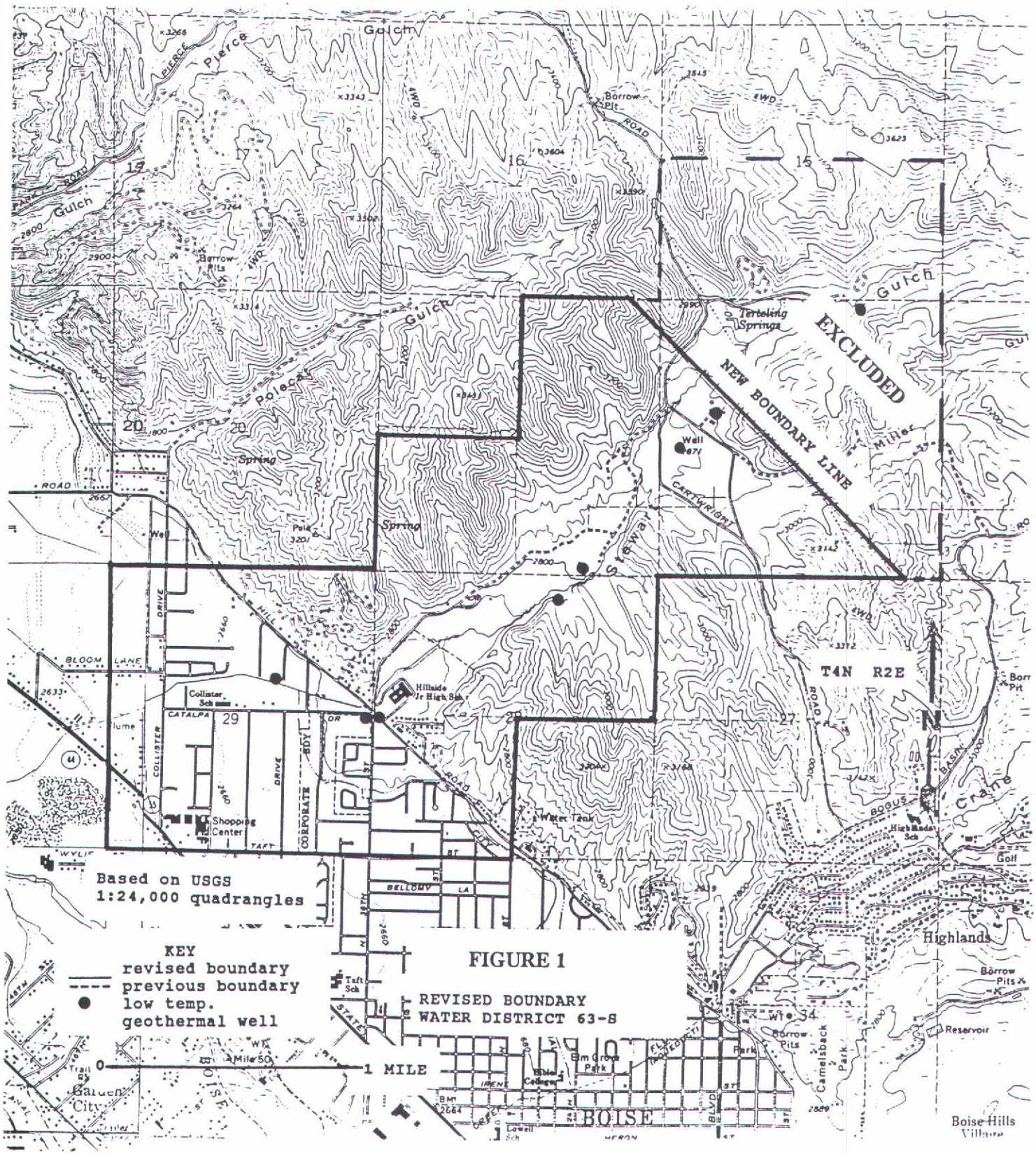


FIGURE 1

REVISED BOUNDARY
WATER DISTRICT 63-S

SEE
FOLDER
#2

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Transfer No. 5875-68558

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OCT 0 2 2000
WATER RESOURCES
WESTERN REGION

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

RECEIVED
DEC 2 0 2000
WATER RESOURCES
WESTERN REGION

APPLICATION FOR TRANSFER OF WATER RIGHT
PART 1

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:		
63-00012	07/01/1921	0.14 cfs	IRRIGATION	1/1	to	12/31
		0.14 cfs	STOCKWATER	1/1	to	12/31
		0.14 cfs	HEATING	1/1	to	12/31
		0.14 cfs	DOMESTIC	1/1	to	12/31
63-00013	07/01/1922	0.66 cfs	IRRIGATION	1/1	to	12/31
		0.66 cfs	STOCKWATER	1/1	to	12/31
		0.66 cfs	HEATING	1/1	to	12/31
		0.66 cfs	DOMESTIC	1/1	to	12/31
63-00015	3/23 07/01/1927	0.80 cfs	IRRIGATION	1/1	to	12/31
		0.80 cfs	STOCKWATER	1/1	to	12/31
		0.80 cfs	HEATING	1/1	to	12/31
		0.80 cfs	DOMESTIC	1/1	to	12/31

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 _____

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AMENDED
prior to legal notice
original

JMM 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					

TOTAL 7.5

6. General Information

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 APPLICABLE

c. 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

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OCT 2 0 2002

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_____.

_____

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OCT 2 0 2002

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 S.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

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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. GNR JGNE 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

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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.

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

MICRO

 Transfer No. _____

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.

Susan L. Hamel
(Notary Public)

My commission expires 3/22/2002

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OCT 3 6 2002

Transfer No. _____

FOR DEPARTMENT USE ONLY

Transfer contains 8 pages and 3 attachments

Received by dt Date 10-2-00 Protest by _

Prelim. check by RL Fee 290.00 W027031

Receipted by dt Date 10-3-00

Published in THE IDAHO STATESMAN Copies of protest forwarded by _____

Pub. dates 12/7+14/W -RL Hearing held by _____ Date _____

Watermaster recommendation request on _____ Recommended for ☐ approval ☐ denial

_____ rec'd. _____ by _____

Copy of transfer sent to line holder _____

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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 goethermal 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

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5875

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.

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EXHIBIT B - Warranty Deed

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OCT 3 0 2003

ADA CO. RECORDER PIONEER TITLE
J. DAVID NAVARRO
BOISE ID

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APR 0 3 1997
WATER RESOURCES
WESTERN REGION

WARRANTY DEED

'97 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:

FEE 12.00 DEP
RECORDED AT THE REQUEST OF

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: JLS

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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

Elizabeth Tullis Sec Treas

(i:\8975.29\doc\warrdd.1)

STATE OF IDAHO)
) ss.
County of Ada)

On this 14th 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 Treasurer 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.

JANET L. BLOSCH NOTARY PUBLIC STATE OF IDAHO

Janet L. Blosch
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°29' West a distance of 662.3 feet along the section line common to said Sections 28 and 29; thence North 89°11' West, parallel to the East and West quarter section line of said Section 29, a distance of 657.4 feet; thence North 0°39' East a distance of 662.3 feet, to the East and West quarter section line of said Section 29; thence South 89°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°29' West 1003.9 feet on the East line of said Section 29 marked by an iron pin; thence North 81°16' West 234.2 feet to a point; thence North 61°35' West 135.75 feet to a point; thence North 76°20' West 328.4 feet to a point, marked by an iron pin; thence North 0°39' East 838.2 feet to a point; thence South 89°05' East 657 feet to the POINT AND PLACE OF BEGINNING.

EXCEPT ditch and road rights-of-way.

* just = NESE

NO SENE or other tracts

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WESTERN REGION

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OCT 3 0 2002

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 0 3 1997
WATER RESOURCES
WESTERN REGION

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OCT 3 0 2002

EXHIBIT C - USGS Map

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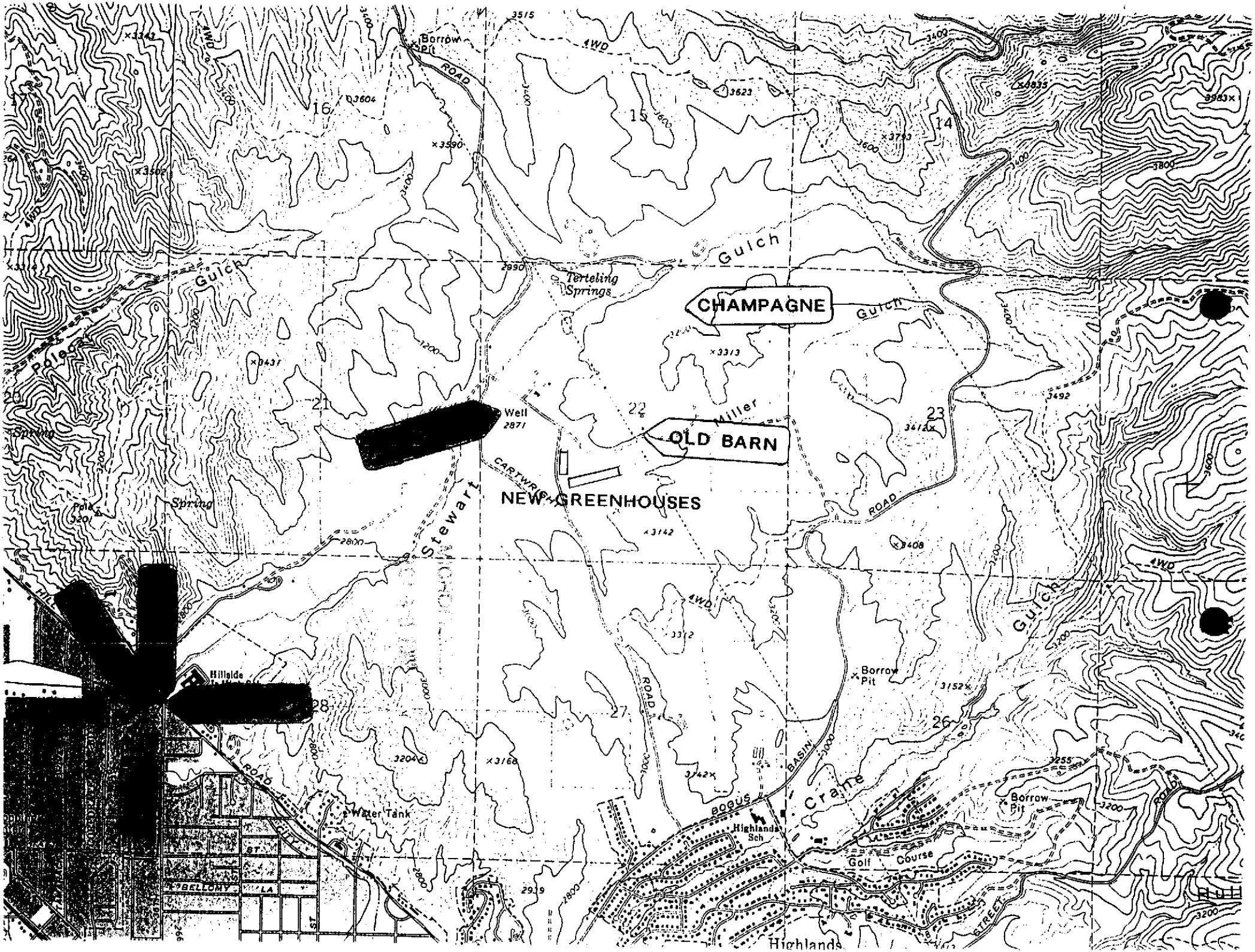
OCT 22 2012



CHAMPAGNE
OLD BARN
NEW GREENHOUSES
Terteling Springs
Well
2871
Gulch
Miller
Stewart
Crane
Borrow Pit
Water Tank
Highlands Sch
Golf Course
Highlands
BOGUS BASIN
ROAD
4WD
Spring
Pole
BELLOMY
LA
ST
STREET

Points Decided.

[1] From the definitions, it is apparent the Board is given jurisdiction by C. S., sec. 6273, to pass upon these contracts, not only as to the fee not exceeding $1 per month, and the services to be rendered, but also the feature involved herein.

The argument that C. S., sec. 6273, applies only to "agreements" is answered by the fact that the collectively and wholly inclusive term "all questions" is used in C. S., sec. 6273, and that the legislature did not intend C. S., sec. 6273, to be restricted to or by C. S., sec. 6262, since hospital contracts are nominated "agreements" in C. S., sec. 6230, and again so recognized in C. S., sec. 6230A, 1921 Sess. Laws, 476.

[2] Having jurisdiction to approve or determine, the Board may reject. (*Key v. Board of Education of Granville County*, 170 N. C. 123, 86 S. E. 1002; *Fuller v. Board of University and School Lands*, 21 N. D. 212, 129 N. W. 1029; *Melton v. Cherokee Oil & Gas Co.*, 67 Okl. 247, 170 Pac. 691; *Coker v. Watson*, 132 Okl. 199, 252 Pac. 829, 833.)

The Board did not exceed its jurisdiction, and the writ is therefore quashed. Costs to defendants.

Lee, C. J., and Budge, Varian and McNaughton, JJ., concur.

Petition for rehearing denied.

(No. 5651. December 7, 1931.)

FRANCES SILKEY, Respondent, v. H. W. TIEGS, THOMAS F. EDWARDS and J. RYAN, Appellants.

[5 Pac. (2d) 1049.]

WATER AND WATERCOURSES—SUBTERRANEAN WATER—APPROPRIATION—PRIORITIES—TRIAL—REOPENING OF CASE.

1. Granting or refusing motion to reopen case after it has been submitted for decision, but before judgment, is discretionary.

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OCT 3 0 2002

Points Decided.

2. In suit determining priority to subterranean hot water, denying new trial and refusing to reopen case for introduction of evidence showing leak in plaintiff's well *held* not abuse of discretion.

3. Percolating subterranean waters may be appropriated either by statutory permit method, or by actual diversion for beneficial use (C. S., secs. 5558, 5568, 5570, 5571, and sec. 5569, as amended by Laws 1929, chap. 281; Const., art. 15, sec. 3).

4. Valid appropriation of percolating subterranean waters, either by statutory permit method or by actual diversion for beneficial use, has priority over subsequent appropriation, however made (C. S., secs. 5558, 5568, 5570, 5571, and sec. 5569, as amended by Laws 1929, chap. 281; Const., art. 15, sec. 3).

5. Where court's findings are supported, judgment will not be reversed because different conclusion might be inferred.

6. As respects decree, inferior claimants of percolating subterranean waters could close and seal wells in lieu of equipping wells with valves, controlling works and measuring devices.

7. Decree adjudicating water priorities *held* not objectionable as awarding claimant forty miner's inches during nonirrigating season, without finding amount put to beneficial use during that season.

8. Court *held* authorized to retain jurisdiction of case involving water rights for two years and to incorporate in decree administrative provisions (C. S., sec. 5605 et seq., and sec. 5606).

9. Decree awarding subsequent appropriators water with priorities of certain date, but prohibiting subsequent appropriators from using water, *held* not inconsistent.

APPEAL from the District Court of the Third Judicial District, for Ada County. Hon. Dana E. Brinck, Judge.

Suit to quiet title in and to determine priorities of the use of subterranean hot water, and for injunction restraining defendants from operating their artesian wells in such manner as to deplete flow in plaintiff's wells. Judgment for plaintiff. Defendants appeal. *Affirmed.*

Publisher's Note.

3. Prescriptive rights in percolating waters, see note in 55 A. L. R. 1441. See, also, 27 R. C. L. 1285.

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T. L. Martin and Wm. M. Morgan, for Appellants.

It is a fundamental principle of constitutional law, which requires the citation of no authority to support it, that a state constitution is not a grant, but is a limitation upon the powers of the legislature, and the legislative branch of a state government may do whatever it is not prohibited from doing by the constitution. Exercising its powers, the legislature of Idaho has granted and regulated the right to use subterranean waters and has prescribed the means for establishing priorities in the rights to the use thereof. (C. S., secs. 5558, 5568 and 5569; *Speer v. Stephenson*, 16 Ida. 707, 102 Pac. 365; *Nielson v. Parker*, 19 Ida. 727, 115 Pac. 488; *Morris v. Bean*, 146 Fed. 423.)

Edwin Snow, for Respondent.

"Prior in time prior in right" applies to underground artesian waters. (*Hinton v. Little*, 50 Ida. 371, 296 Pac. 582.)

It was not the intention of the legislature to make the permit method the exclusive method of acquiring a water right. (*Nielson v. Parker*, 19 Ida. 727, 115 Pac. 488; *Morris v. Bean*, 146 Fed. 423; *Youngs v. Regan*, 20 Ida. 279, 118 Pac. 499.)

A court of equity has inherent power to insert in its decrees administrative provisions for their enforcement and to retain jurisdiction to see they are enforced. (Century Digest, "Equity," secs. 1053, 1054; Freeman on Judgments, 5th ed., secs. 33–37; *People v. Lyons*, 168 Ill. App. 396.)

VARIAN, J.—This case involves the right to the use of artesian hot water developed from wells upon the lands owned by the parties situate in Sections 28 and 29, Twp. 4 N., R. 2 E. B. M., in Ada county, lying on high ground north of the Soldiers' Home near Boise. The location and soil render them chiefly valuable for truck gardening purposes although hay and other crops are also grown thereon. The hot water from the wells is utilized to heat their homes and

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hotbeds as well as for irrigating crops. Appellant Tiegs' well is about 155 feet east of respondent's smaller well, which is 16 feet east of her larger well. Appellant Edwards' well is 1644 feet westerly from respondent's larger well and appellant Ryan's well is 1315 feet northerly from appellant Edwards' well, or about 2,950 feet northwesterly from the larger well of Mrs. Silkey, respondent.

This suit was brought by respondent to quiet title to certain waters appropriated by means of two artesian wells bored on her farm, and to enjoin appellants from using their wells in such manner as to deplete the flow in respondent's said wells.

The court found for respondent and among other things:

"That underlying the lands of the parties hereto, all of which lands are in the same immediate vicinity, is a supply of natural warm water forming an artesian basin; that the evidence is insufficient to establish that the water flows in a subterranean stream, and the court accordingly finds that said supply of water is water percolating underground through a stratum of material which stratum is more pervious than the adjacent material, with the result that with such pervious stratum being tapped by the wells of the respective parties hereto, water from such wells flowed and flows freely therefrom in copious streams to the surface of the ground by artesian pressure, and such pervious stratum and the water percolating therein is the common source of supply for each and every of the flowing artesian wells of the parties hereto, which wells are hereinafter more particularly described, such source of supply forming a natural underground artesian reservoir which underlies not all, but a part of the lands of the several parties hereto."

Respondent was decreed a prior right to the use of forty miner's inches of water, with the following priority; as to seven miner's inches from July 1, 1921, and from July 1, 1922, as to thirty-three miner's inches. Appellants were decreed rights to the use of water from their several wells with priorities as follows: Thomas F. Edwards, forty-two miner's inches from November 22, 1926; H. W. Tiegs, forty miner's

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inches from March 23, 1927; and J. Ryan, forty miner's inches from September 24, 1927. The decree fixes the duty of water for irrigation purposes at two miner's inches per acre. The following provisions are contained in the decree:

"(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 the terms of this decree.

"(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 miner's inches of water; from April 1st to October 1st of each year, said defendant Edwards may be permitted to flow from his said well and to use for beneficial purposes twenty miner's inches of water, or so much thereof as will not deplete the flow of plaintiff's wells below forty miner's inches. No water shall be permitted to flow or be used from the respective wells of the defendants Tiegs and Ryan, as it is hereby further determined 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

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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.

"(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.

"(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."

The case was tried by the court without a jury commencing January 6, 1930, and ending January 9, 1930. After decision by the court and before findings were filed, or decree

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entered, appellants, on March 5, 1930, moved to reopen the case upon the ground that they had discovered that there was a leak in the Silkey wells whereby a large quantity of the water flowing therein was lost, etc. The motion was renewed on March 29, 1930, based upon certain experiments conducted by appellants after the trial. These motions were submitted upon affidavits and, on June 13, 1930, were denied. The court then filed findings and entered decree herein. Appellants moved for a new trial, which was denied, and they now appeal from the order refusing to reopen the case, the order denying a new trial, and from the decree.

[1, 2] Granting or refusing a motion to reopen a case for the purpose of taking further or additional evidence, after it has been submitted for decision, but before entry of judgment, rests in the discretion of the trial judge. (*Froman v. First Nat. Bank*, 35 Ida. 10, 204 Pac. 145; *Parker v. Swett*, 188 Cal. 474, 205 Pac. 1065; *Denman v. Brennamen*, 48 Okl. 566, 149 Pac. 1105, L. R. A. 1915E, 1947; Bowers' Judicial Discretion of Trial Courts, p. 489; 26 R. C. L. 1042.)

The evidence taken at the trial showed that the hot water in controversy here was obtained at a depth of about 1200 feet, but nonflowing cold-water wells were found at a much less depth. The affidavits proffered tended to show that the water in certain shallow wells, bored after the trial, in the vicinity of respondent's wells, was warmer than the cold water wells in the vicinity of approximately the same depth. Appellants argue therefrom that there is a leak in one or both of respondent's wells. The affidavits show the warm condition of the water obtains in a test well bored nearest to one of appellant Tiegs' wells. A counter-affidavit by respondent is to the effect that earlier shallow wells on her property were cold, but that since the boring of the Tiegs' well one cold well lying southwest of said Tiegs well has been lukewarm. After carefully reading the affidavits we are of the opinion that the court did not abuse its discretion in refusing to reopen the case for further testimony. This evidence is far from clear and does not establish appellants' contention that there is a leakage of water from respondent's

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wells. Neither did the court err in denying the motion for a new trial.

The vital question raised by this appeal is whether subterranean waters may be appropriated by diversion and beneficial use without compliance with the statute (C. S, sec. 5569, as amended Sess. Laws 1929, chap, 281, p. 675) prescribing the procedure for obtaining a permit from the department of reclamation. Respondent relies entirely upon diversion and application to a beneficial use, having made no attempt to initiate a right under said sections of the statute, while appellants, at the date of the trial, had taken such steps. Their contention is, that subterranean waters can be validly appropriated in no other manner, and that by putting her water to a beneficial use respondent failed to establish a right thereto, or make an appropriation thereof.

The Constitution, art. 15, sec. 3, provides: "The right to divert and appropriate the unappropriated waters of any natural stream to beneficial uses, shall never be denied," and that "Priority of appropriation shall give the better right as between those using the water." It nowhere mentions subterranean waters. The legislature, in 1899 (Laws 1899, p. 380), passed an act, embodied in the present code as C. S., sec. 5558, reading: "The right to the use of the waters of rivers, streams, lakes, springs and of subterranean waters, may be acquired by appropriation."

As was said by Mr. Justice Budge (*Bower v. Moorman*, 27 Ida. 162, 180, Ann. Cas. 1917C, 99, 147 Pac. 496), in holding that subterranean waters appropriated by means of artesian wells might be appropriated under this statute:

"In the case of *Le Quime v. Chambers*, 15 Ida. 405, 98 Pac. 415, 21 L. R. A., N. S., 76, the court says in effect that percolating water is subject to appropriation under our statute, and as such will be recognized and protected by the courts."

In the recent case of *Hinton v. Little*, 50 Ida. 371, 296 Pac. 582, involving priorities of artesian water appropriations by diversion and application to a beneficial use, Mr. Justice Givens said:

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"We then have a clear statement in *Bower v. Moorman, supra,* to the effect that subterranean waters are the subject of appropriation. That being true, it follows that the judgment herein should be affirmed, since the waters here were appropriated by the respondents prior to the time that the appellants sought to take from their wells the amount of water now claimed by them."

Coming now to the precise question involved, this court held, in cases involving appropriation of surface waters, that the statutory method prescribed by C. S., secs. 5569, 5570, and 5571, was not exclusive, notwithstanding the provisions of C. S., sec. 5568, reading:

"All rights to divert and use the waters of this state for beneficial purposes shall hereafter be acquired and confirmed under the provisions of this chapter. And after the passage of this title all the waters of this state shall be controlled and administered in the manner herein provided."

Nielson v. Parker, 19 Ida. 727, 115 Pac. 488, holds, in effect, that diversion and application to a beneficial use is sufficient appropriation. See, also, *Morris v. Bean,* 146 Fed. 423, cited by both appellants and respondent.

It was held by this court, in *Short v. Praisewater,* 35 Ida. 691, 699, 208 Pac. 844, that waters of a spring, situate within the boundaries of a homestead entry, are subject to appropriation for a beneficial use with the consent of the entryman, the appropriation consisting of diversion and application to a beneficial use without attempting to follow the prescribed steps to appropriate water by the statutory method. And in *Youngs v. Regan,* 20 Ida. 275, 118 Pac. 499, involving the right to the use of water from springs and artesian wells, the trial court gave precedence to an appropriation under the statutory permit method (*supra*) over one who had diverted and applied the waters to a beneficial use prior to the application for a permit. This court reversed the decree and held that appellant had made the first appropriation of water from both springs and wells. (*Hinton v. Little, supra.* And in *Bower v. Moorman, supra,* and *Hinton v. Little, supra,* this court applied to appropriation

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of subterranean waters the rule promulgated by C. S., sec. 5561, "As between appropriators, the first in time is first in right."

[3, 4] We are constrained to hold, therefore, under the decisions cited, and by analogy to the decisions of this court involving appropriation of surface waters, as distinguished from underground waters, that percolating subterranean waters may be appropriated either by the statutory permit method (C. S., secs. 5569, 5570, 5571) or by actual diversion and application to a beneficial use; and that a valid appropriation first made under either method will have priority over a subsequent valid appropriation, however made. It is apparent that the principal advantage to be gained in pursuing the statutory permit method is that the priority then dates from the date of the permit, while the priority dates from the actual application of the water to a beneficial use in cases where the statutory method is not followed.

[5] Appellants attack the decree as not being supported, in many particulars, by the evidence; that the evidence fails to show that taking water from appellants' wells decreases the flow from respondent's wells; that the evidence does not establish that the water flowing in the hot wells of the parties comes from a common source, etc.; that respondent has not shown a right entitling her to the use of forty miner's inches of water; and that the finding and decree, to the effect that sixty miner's inches is the maximum amount of water that can be diverted from the artesian basin supplying the water to all the wells without depleting the supply available to respondent's well, is not supported. It is sufficient to say that there is ample evidence in the record to sustain all these findings. Appellants particularly criticise the testimony of the engineer, Mr. W. G. Sloan. After this suit was commenced the parties stipulated that certain experiments should be conducted for ascertaining the source of the waters in controversy. Mr. Sloan was selected by the respondent (plaintiff), and Mr. Gordon Smith, a civil engineer, by appellants. They proceeded to make tests and experiments from which certain data was

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obtained. This was agreed upon by the engineers and stands undisputed in the evidence. Mr. Sloan, testifying as an expert, was of opinion that the hot water in all the artesian wells of the parties came from the same basin, or source; that fifty to sixty miner's inches of water might be taken from the artesian basin without depleting the flow of respondent's wells, etc. Mr. Smith was not put upon the stand to dispute either the data or conclusions testified to by Mr. Sloan. We are now asked to take the data derived from the experiments of these engineers, assume the role of experts, and draw different conclusions from the facts than the judge who tried the case. The evidence was sufficient to sustain the trial court in his findings and judgment and we will not reverse the case because a different conclusion might be inferred therefrom by other persons. (*Wooten v. Dahlquist*, 42 Ida. 121, 244 Pac. 407; *Lus v. Pecararo*, 41 Ida. 425, 238 Pac. 1021; *Wolf v. Eagleson*, 29 Ida. 177, 157 Pac. 1122.)

Appellants assign as error what their counsel terms "a seasonal limitation upon the right of appellant, Edwards, to the use of the water," to which he is found entitled as set forth in paragraph seven of the decree, *supra*. The court decreed him forty-two miner's inches of water "for irrigation, domestic, stock, and heating purposes." The amount of water that he was permitted to flow from his well was "provisionally fixed and limited" as set out in paragraph seven of the decree, *supra*. As argued by respondent, this provision of the decree is clearly in the interest of appellant Edwards. He is permitted to use the excess normal flow from the basin, estimated at from fifteen to twenty inches above the forty miner's inches appropriated by respondent. The testimony indicates that there is more flow during the later period than in the first period mentioned in the decree. It is not an attempt to fix one duty of water for one part of the irrigation season and a higher duty for another part, as was the case in *Muir v. Allison*, 33 Ida. 146, 191 Pac. 206, cited by appellants, where the court held that one entitled to a continuous flow of the waters of a stream could not be deprived

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of his right thereto by decree without his consent. The purpose of the decree here is to provisionally fix the total amount of water to be taken from respondent's and appellant Edwards' wells. Sixty miner's inches is the amount found by the court to be the normal flow from said basin. In any event this provision is not final and is in effect an administrative one, subject to change by the trial court in case it should later develop that said appellant is entitled to more or less than the amounts so permitted to flow from his well. There is no force in the objection that the decree does not permit appellant Edwards to have any supervision, control over, or right of measurement over respondent's wells. That is a matter to be supervised and controlled by the commissioner of reclamation appointed, as a commissioner to enforce the operation of the decree, by the trial court.

[6] Again, appellants also object to paragraph eight of the decree, *supra*, contending that Ryan and Tiegs are shut off from the use of any water from their wells yet are compelled to install and maintain suitable and sufficient valves, controlling works, and measuring devices at their wells; that said valves and controlling works can be put to no useful purpose and thereby said appellants are deprived of their property without due process of law. Apparently the court intended to permit these parties to have the benefit of any water that might be determined to belong to them in case the operation of the wells under the administrative provisions of the decree should show that both respondent Silkey and appellant Edwards could be supplied to the full extent of their rights leaving a surplus for the later rights. If appellants are satisfied to close and seal their wells entirely, we see no reason why they should not be permitted to do so, and save the expense of installing measuring and controlling devices.

Appellants contend that the decree is in violation of the rights of appellants in that it awards to respondent forty miner's inches, as prior to the rights awarded to appellants, without reference to the quantity of water respondent puts to a beneficial use, and enjoins appellants Tiegs and Ryan

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from taking any water from their wells, etc. This contention cannot be sustained since paragraph six of the decree, among other things, provides:

"All rights herein decreed and allotted are decreed for beneficial use only, and none of the parties hereto, their agents or employees, or their successors in interest, shall have the right to permit his said well to flow or to use water therefrom in excess of the amount actually required for beneficial use."

Objection is made that the decree fixes the duty of water at two miner's inches per acre for irrigation purposes, awards respondent forty miner's inches without reference to the number of acres actually irrigated, and without limiting her rights "to take not to exceed two miner's inches per acre for each acre of land actually irrigated." The court found that respondent owned approximately twenty acres of land described in the decree. The decree awards forty miner's inches of water for use upon said land. The general clause (paragraph six) of the decree, quoted above, limits the right to use for irrigation purposes to the amount of water actually required for that purpose and fixes the duty of water at two miner's inches per acre for such purpose. We conclude the decree is sufficiently definite as to the particulars urged.

[7] Appellant urges that the decree is contrary to law in that it awards respondent forty miner's inches of water during the nonirrigation season without finding the amount of water she had put to a beneficial use during that season, or the amount necessary for such use, etc. In finding seven the court finds respondent appropriated, diverted, and applied to a beneficial use in irrigating, domestic, and other beneficial uses, on her lands, the total amount of forty miner's inches of water flowing to the surface from her wells under natural artesian pressure; that she has hot-houses on her land for forcing and starting early fruits and vegetables; that the water is piped through her residence and hot-houses for heating purposes; "and the whole flow of plaintiff's said wells, up to but not exceeding forty miner's inches of water, measured at plaintiff's well, is necessary to plaintiff for the

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beneficial uses above recited." Considering the facts of this case and the nature of the water right involved, this finding is deemed sufficient to support the award decreed.

[8] Appellants strenuously contend that the court was without power to incorporate in its decree certain administrative provisions (paragraphs eight and ten, *supra*), such as the appointment of the commissioner of reclamation, as a commissioner, to supervise the use of the water flowing from the wells, take measurements thereof from time to time, and keep a record thereof. They also complain that the court had no authority to retain jurisdiction of the cause for the period of two years for the purpose of adjusting the allowance of water permitted to be used from appellant's wells, etc. (paragraph eleven of the decree, *supra*).

Appellants' contention is that, the legislature having failed to provide by statute for the supervision and control of subterranean waters, the court was without authority to make such provision. It must be conceded that C. S., chap. 219, relating to distribution of water among appropriators, and particularly C. S., sec. 5606, therein, placing the immediate direction and control of "all of the streams to the canals and ditches diverting therefrom" in the hands of the department of reclamation, does not expressly contemplate its control of subterranean waters not in a defined stream.

The appointment of a commissioner (and we see no reason why the commissioner of reclamation should not act as such), to carry out the administrative provisions of the decree, is necessary under the facts presented by the case at bar. Otherwise respondent, having a prior right to the use of the waters of the artesian basin partly underlying her land and those of appellants, would be without a practical or adequate remedy, since the decree is not self-enforcing. Nor does the fact that the legislature has not legislated on this particular branch of the subject tie the hands of the court here. As was said by Mr. Justice White, in *Montezuma Canal Co. v. Smithville Canal Co.*, 218 U. S. 371, 31 Sup. Ct. 67, 54 L. ed. 1074, 1080 (see 11 Ariz. 99, 89 Pac. 512, for same case below):

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"But because it was within the legislative power to provide administrative machinery to supervise the common use of water in a flowing stream by those having a lawful right to appropriate the water of that stream for beneficial use, it does not result that the decree entered by the court below was in excess of its authority. On the contrary in view of the absence of legislative action on the subject, and of the necessity which manifestly existed for supervising the use of the stream by those having the right to take the water in accordance with the decree which, undoubtedly to that extent, the court was authorized to render, we think the action taken by the court did not transcend the bounds of judicial authority, and therefore is not justly amenable to the attack made upon it."

There being no definite procedure established by statute the court in this equitable suit had inherent power to enforce its decree in its own way. (See *Maloney v. Zipf*, 41 Ida. 30, 237 Pac. 632; *State v. Superior Court*, 101 Wash. 260, 172 Pac. 254.) Retaining jurisdiction of the cause for two years and the administrative provisions of the decree objected to by appellants were all framed for their benefit and were within the powers of a court of equity in the absence of express statutory provisions governing the matter. (*Salt Lake City v. Salt Lake City Water & Electrical Power Co.*, 24 Utah, 249, 67 Pac. 672, 61 L. R. A. 648; *Salt Lake City v. Utah & Salt Lake City Canal Co.*, 43 Utah, 519, 137 Pac. 638; *Heil v. Hubbell*, 80 Colo. 452, 252 Pac. 343; 21 C. J. 692; 2 Wiel on Water Rights in Western States, 3d ed., 1113.)

[9] Finally, it is urged that the decree is inconsistent in its provisions in that it awards appellants Tiegs and Ryan certain amounts of water with priorities dating March 23, 1927, and September 24, 1927, respectively, prohibits them from permitting any water to flow from their wells until further order of the court, and perpetually enjoins them from using the water awarded to them, even though neither respondent nor appellant Edwards is using all, or any part of, the water awarded to them.

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Points Decided.

Paragraph seven of the decree, *supra,* contains provisional administrative provisions and decrees that no water can, without injury to respondent's prior right, be permitted to flow from the Tiegs and Ryan wells. Paragraph nine enjoins all parties, successors in interest, etc., from any and all use of water from their respective wells except in the manner, to the extent, and for the purposes mentioned in the decree. Having determined that respondent's and appellant Edwards' rights are prior to those of appellants Tiegs and Ryan, and that there is insufficient water to satisfy the prior rights in full, the decree is right and not inconsistent in the particulars named.

The decree may be supplemented by the addition of a clause permitting appellants Tiegs and Ryan to permanently close and seal their hot water wells, in lieu of equipping them with valves, controlling, and measuring devices. When so supplemented the decree to stand affirmed. Cost to respondent.

Lee, C. J., and Budge, Givens and McNaughton, JJ., concur.

Petition for rehearing denied.

(No. 5746. December 8, 1931.)

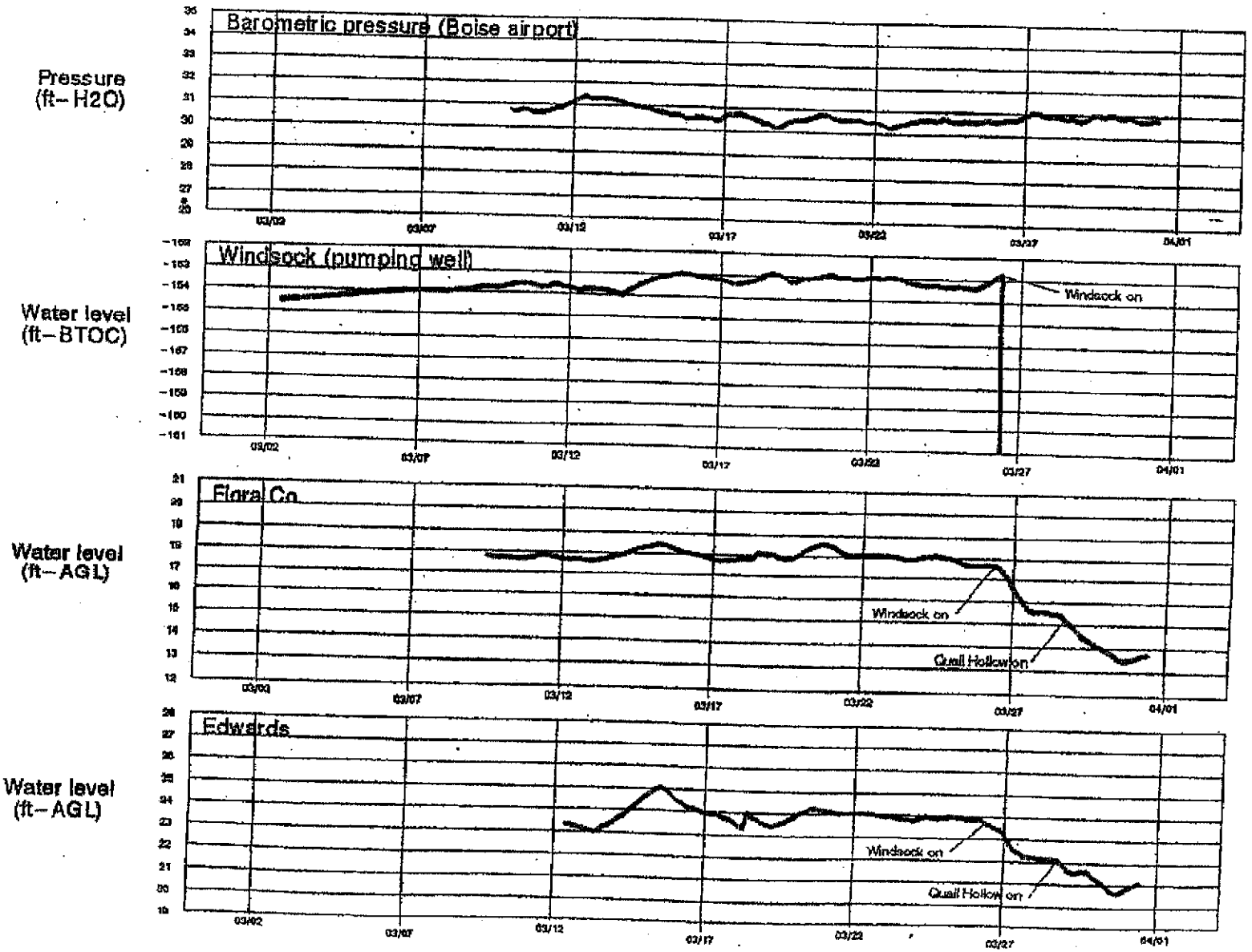
MRS. R. REINOEHL, Appellant, v. HAMACHER POLE & LUMBER COMPANY and STATE INSURANCE FUND, Respondents.

[6 Pac. (2d) 860.]

WORKMEN'S COMPENSATION LAW — CONSTRUCTION — INDUSTRIAL ACCIDENT—TICK BITE.

1. Tick bites resulting in Rocky Mountain spotted fever and death of lumber camp swamper *held* received "in course of employment," making death compensable (C. S., sec. 6217, sec. 6323, as amended by Laws 1927, chap. 106, sec. 20, and sec. 6324).

Hydrographs of the observation wells for the 1994 Stewart Gulch geothermal aquifer testing using the Terteling "Windsock" irrigation well as the pumping well. The diagrams show hydraulic interconnection between the Windsock well and the Edwards Greenhouses and Flora Co. nursery wells. The constant-discharge pumping of the Windsock well resulted in approximately 2 feet of decline in the piezometric head of the Flora Co. well and 1½ feet of decline in the Edwards Well. The minimal interference effects (drawdown), to the Edwards and Flora Co. wells, completely stabilized after 24 hours of pumping.



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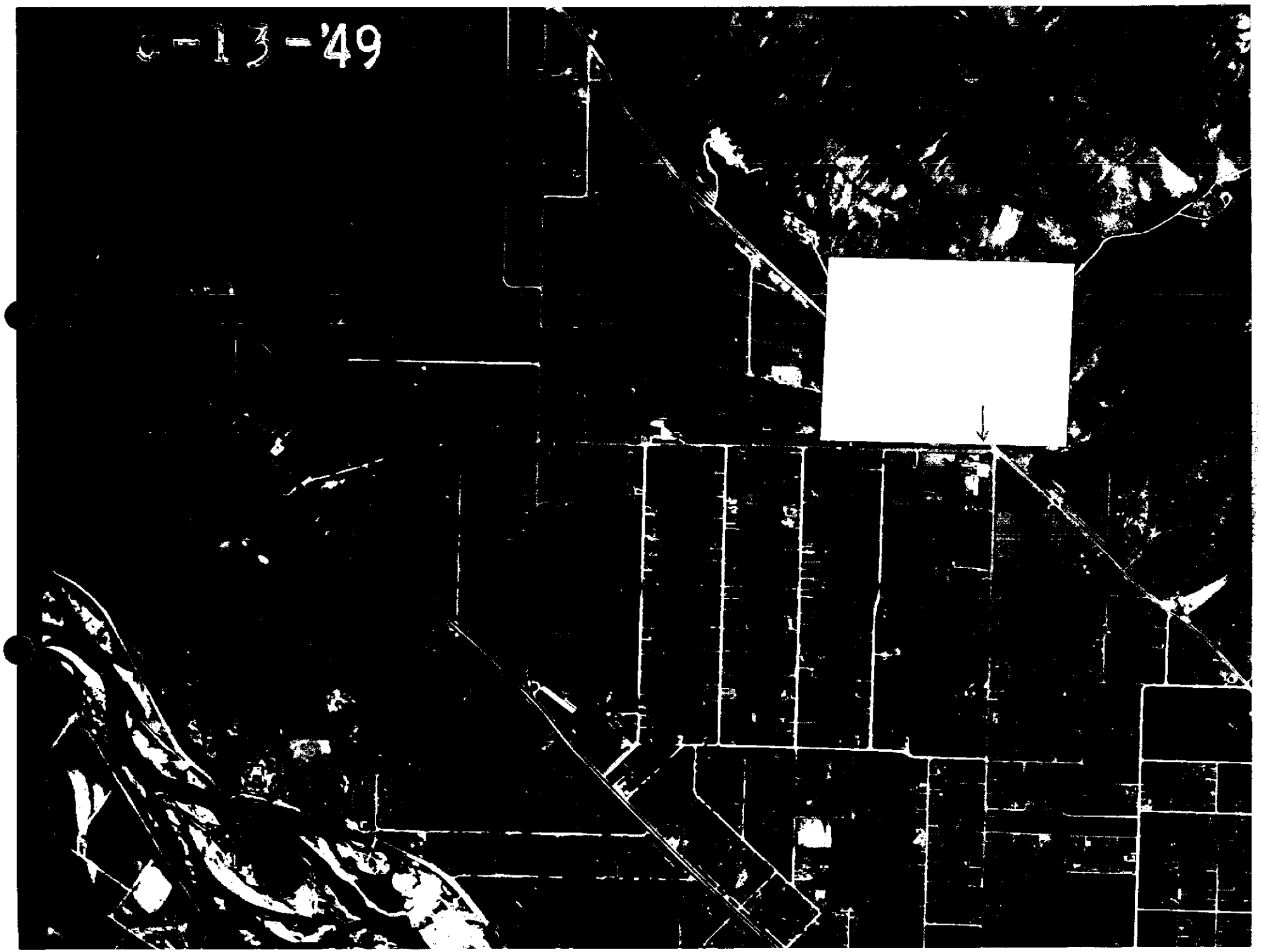
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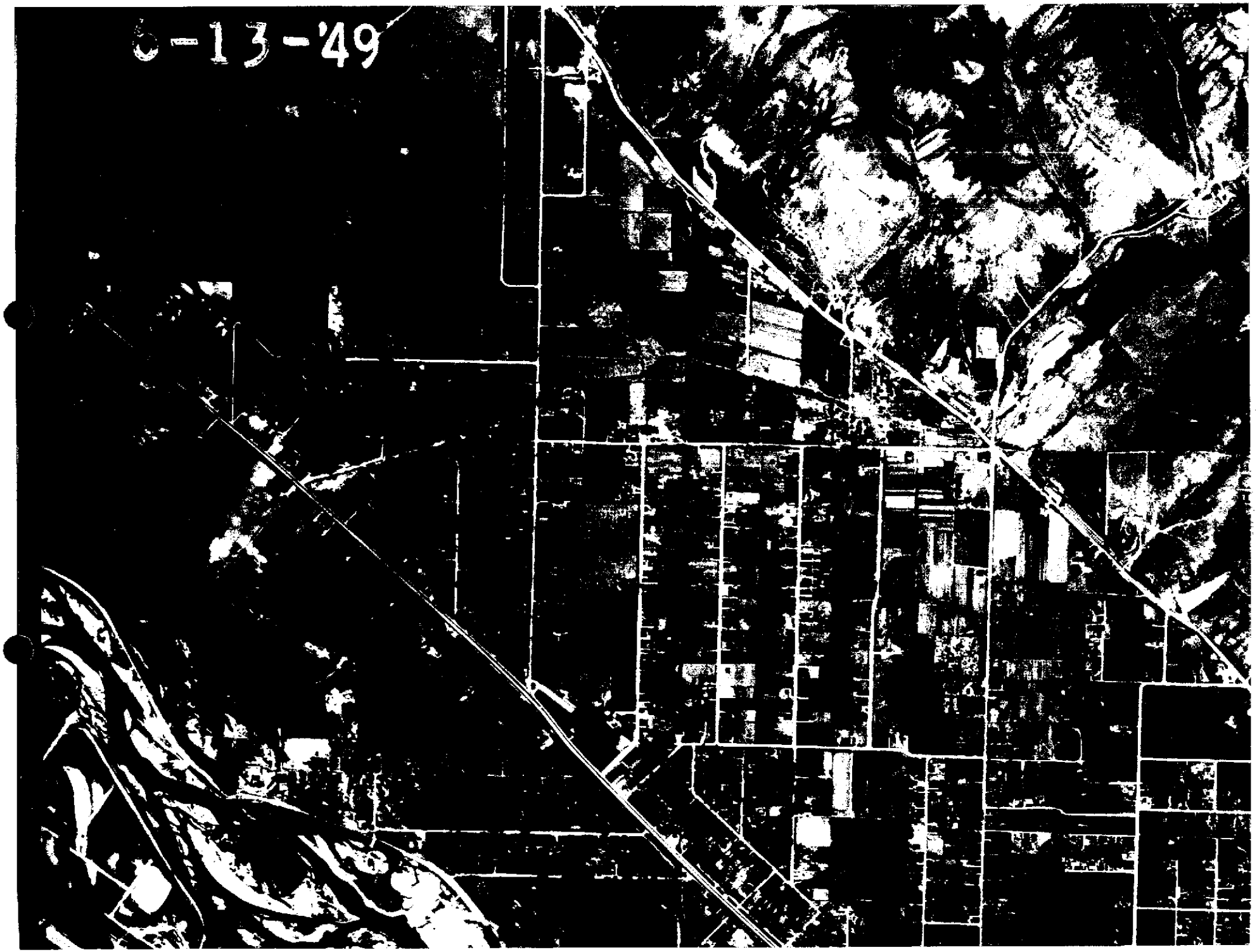
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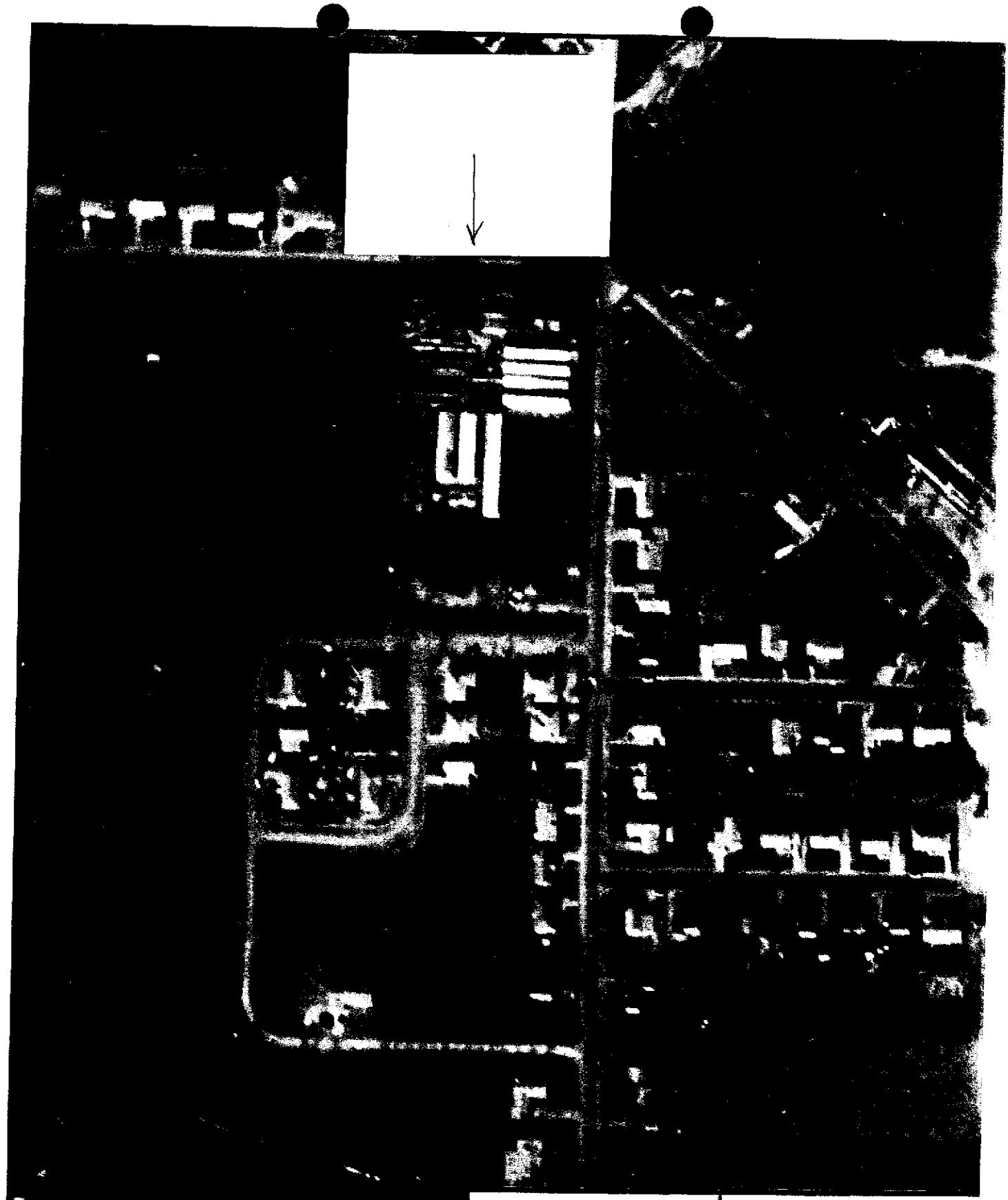
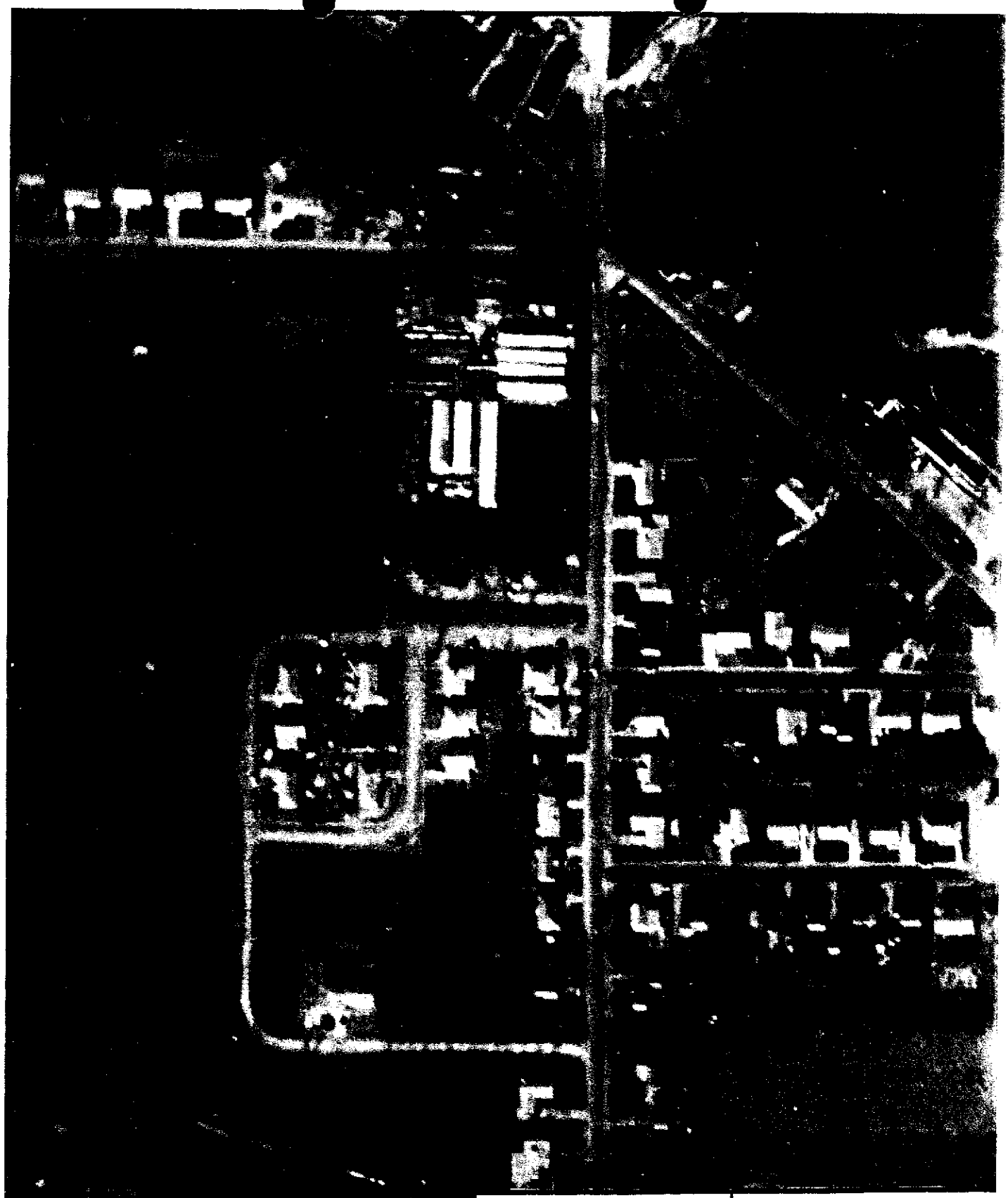


EnviroSearch
1605 North 13th Street
Boise, Idaho 83702 USA
(208) 345-8292

DECEMBER 1959
AERIAL PHOTOGRAPH

FLORA COMPANY PROPERTY
3823 N. 36TH STREET
BOISE, IDAHO

B1862	2/3/97	SCALE: 1"=200'	APPENDIX 1



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APRIL 1964
AERIAL PHOTOGRAPH

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B1862	2/3/97	SCALE: 1"=200'	APPENDIX 1

Case Number 11748

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

FRANCES SILCEY,)

Plaintiff,)

v.) DECREE.

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, 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 fully 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 constittes 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 the terms of this decree.

(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

63 (001) July 1, 1921, and with priority as to thirty-three miners inches of such water dating from July 1, 1922, said water being decreed 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

63-0012
63-0013

Form 20

Application For Transfer of Water Right

STATE OF IDAHO
County of Ada } ss.

O. L. M. Istead, being first duly sworn, deposes and says:

That his name is O. L. M. Istead; that he is of lawful age, a citizen of the United States and of the State of Idaho, and that his postoffice address is 3823 N. 36th Boise, Idaho

That he is the owner and using a certain water right, bearing ~~date of priority of June 13, 1920~~ 7" — 7-1-21 33" — 7-1-22, for 0.8 cubic feet per second of the waters of Subterranean County of Ada, State of Idaho, decreed to Francis Silky by decree of Judge Dana E. Brinck of the 3rd Judicial District of the State of Idaho, in and for the county of Ada, in the case of Silky -vs- Tiegs vs. , said decree bearing date of June 13, 1930 (or obtained by virtue of License No. , issued by the State Department of Reclamation of the State of Idaho, dated , 19 , bearing date of , 19) for the purpose of irrigating the following described lands situate, lying and being in Water District No. in the County of and State of Idaho, to-wit:

NE¼SE¼ - 29, 4N - 2E. heating ?

and is the person (or representative of the corporation) to whom such right so issued, or has become the owner thereof in the following manner, i.e. Purchase as per abstract of title of said water right hereto attached and made a part of this statement;

That said waters are now diverted from said stream in the Subterranean NE¼SE¼ of Section 29, Township 4N, Range 2E, B. M., and conducted to the above described lands through pipeline as per map herewith and of this affidavit made a part.

CHANGE IN PLACE OF USE

That affiant and petitioner desires to abandon the use of 0.8 cubic feet per second of said water upon the above described land, and to convey and use same upon the following tract, situate, lying and being in the County of Ada and State of Idaho, to-

That reasons for desiring to make such transfer are as follows: To have allowed by decree.

Vol. 5
Pg. 468

MICROFILMED

That he intends to divert and convey said 0.8 second feet of water to the tract of land last above described in the following manner and as per map accompanying this application:

Note—If this water right has heretofore been carried jointly in a ditch with other water, affiant should secure written consent of other owners or users to removal from its original carrier and file such consent with this affidavit.

CHANGE IN POINT OF DIVERSION

That affiant desires to change the point of diversion of said waters from the point above described to a point located in ~~NW 1/4~~ NE SE of ~~SW4/4~~ SE 29 of Section 28, Township 4N, Range 2E.BM and thereafter conduct same to the above described land through the ditch, as per map appended.

That his reasons for desiring to make such change are as follows: To be able to draw 40" as per decree

Petitioner asserts that no one will be injured by such transfer, or change in point of diversion, and that the change will be made at petitioner's own risk.

WHEREFORE, Affiant and Petitioner prays that the State Reclamation Engineer of the State of Idaho issue to him the proper certificate authorizing such change in point of diversion and/or place of use, in accordance with the provisions of Sections ~~42-108~~ and 42-222 of the Idaho Code.

L. Mustard
Applicant.

Subscribed and sworn to before me this 14 day of February, 1964.

E. W. Broadbent
Notary Public.

APPLICANT WILL ANSWER THE FOLLOWING QUESTIONS:

From what stream is the water diverted? Subterranean

Where is the diversion point located? NE4 SE4 29 NW4 SW4 - 28 - 4N - 2E.B.M.

Through what ditch is it now conducted? Pipeline

How much land is now irrigated by the water sought to be transferred? 20 acres

Give the description: NE4 SE4

What is the total amount of water in inches, or second feet, dedicated to said land? 1 cu ft

What kind of crops are being raised? Hothouse

How much water per acre is now required to irrigate said land? 2"

What will be the effect on the land now irrigated, if the use of water on it is discontinued?

Give location of new point of diversion, if change is to be made NE¼SE¼-29, NW¼SW¼-28-4N-2E.

Through what ditch will it be conducted after transfer? ~~NE¼SE¼-29, NW¼SW¼-28-4N-2E.~~

How much water will be required per acre to irrigate the land to which this water is transferred?

Do you claim any other water right for the land from which you seek to abandon the use of this water?

If so, give amount, date and source None

Is there any other water right for the land to which you seek to make ~~this~~ transfer? If so, give amount, date and source

Signed: L. M. Stead
Applicant.

STATE OF IDAHO,
County of } ss.

I, ..., Watermaster of .....

Water District No....., County of....., State of Idaho, whose postoffice address is....., have read or heard read the foregoing affidavit and petition of....., and, of my own knowledge, believe the same to be true as to all matters therein alleged, and that no one will be injured by the transfer prayed to be authorized; and I hereby endorse my approval of said petition, and request that the State Reclamation Engineer issue the certificate of transfer as petitioned; or (do not approve of the issuance of the certificate of transfer prayed for) for the following reasons:

Watermaster, District No.....

Dated at....., Idaho, this.....day of....., 19.....

Name of Applicant .....

SEC. SEC. SEC.

SEC. SEC. SEC.

SEC. SEC. SEC.

SEC. SEC. SEC.

SEC. SEC. SEC.

SEC. SEC. SEC.

Scale: 2 Inches—1 Mile. Draw Map in Ink.

AFFIDAVIT OF PUBLICATION

I, Clyde Cornell, printer and co-publisher of The Kuna Herald, published weekly for more than 78 consecutive weeks at Kuna, Idaho, do solemnly swear that the notice as per clipping attached, was published weekly in the regular and entire issue of said newspaper and not in any supplement thereof, for

Two consecutive weeks as follows:

Commencing with the issue dated

February 14, 1964

and ending with the issue dated

February 21, 1964

Clyde Cornell

Subscribed and sworn to before me this

21 day of February, 1964

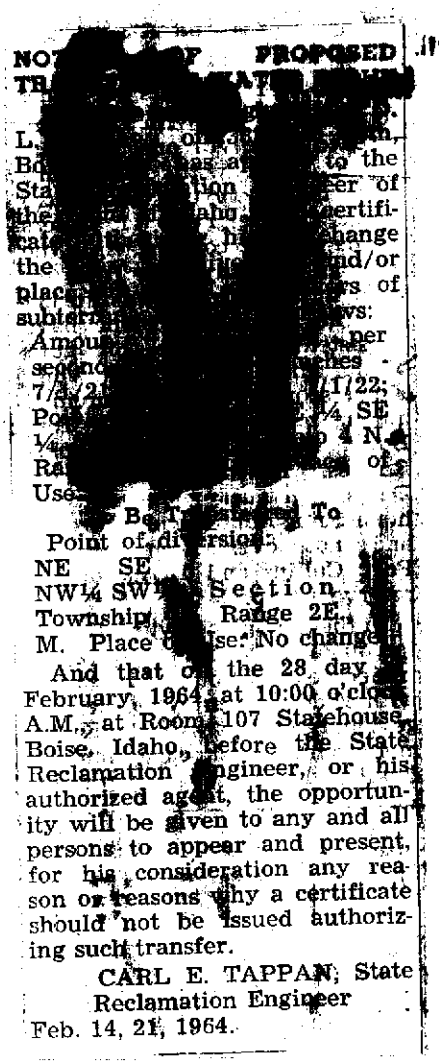
Edith M. Cornell

Notary Public for Idaho.

Residing at Kuna, Idaho.

RECEIVED
MAR 19 1964
Dept of Reclamation

NO[illegible] PROPOSED
TR[illegible]



L[illegible] Bo[illegible] to the Sta[illegible] of the [illegible] certificate [illegible] change the [illegible] and/or place [illegible] of subter[illegible]:

Amou[illegible] per second [illegible] 7/[illegible]/22; Po[illegible] SE ¼ [illegible] N. Ra[illegible] of Use[illegible]

[illegible] To

Point of di[illegible]:

NE SE [illegible]

NW¼ SW[illegible] Section [illegible] Township [illegible] Range 2E, [illegible] M. Place [illegible] Use: No change.

And that on the 28 day [illegible] February, 1964 at 10:00 o'clock A.M., at Room 107 Statehouse, Boise, Idaho, before the State Reclamation Engineer, or his authorized agent, the opportunity will be given to any and all persons to appear and present, for his consideration any reason or reasons why a certificate should not be issued authorizing such transfer.

CARL E. TAPPAN, State Reclamation Engineer

Feb. 14, 21, 1964.

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63-0012

STATE OF IDAHO

DEPARTMENT OF RECLAMATION

In the Matter of the Application of O. L. Milstead of 3823 North 36th St., Boise, Idaho, For a Change in Point of Diversion, Ada County, Idaho, Water District No. 12-A	ORDER GRANTING CHANGE IN POINT OF DIVERSION NO. 268

WHEREAS, On the 28th day of February, 1964, at the Department of Reclamation of the State of Idaho, at Boise, Idaho, this matter of an application of O. L. Milstead of 3823 North 36th St., Boise, Idaho, for a change in point of diversion of the waters of subterranean source, came on regularly for hearing, pursuant to the published notice, in due and statutory form; and

WHEREAS, No protest has been filed against the application, and the evidence filed by the applicant, with the application, shows that the water will be put to a higher and more beneficial use, and that no one will be injured thereby.

NOW, THEREFORE, IT IS HEREBY ORDERED, That the said application be, and the same is HEREBY GRANTED, and that a Certificate of Change in Point of Diversion be issued to the applicant herein.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the official seal of the Department of Reclamation of the State of Idaho to be hereunto affixed at Boise, Idaho, this 19th day of March, 1964.

(SEAL)

s/ CARL E. TAPPAN

CARL E. TAPPAN
State Reclamation Engineer

STATE OF IDAHO

DEPARTMENT OF RECLAMATION

CERTIFICATE FOR CHANGE IN POINT OF DIVERSION
OF DECREED WATER RIGHT NO. 268

THIS IS TO CERTIFY, That O. L. Milstead, of 3823 North 36th St., Boise, Idaho, is the owner of and using a certain water right of subterranean source as follows: 7 miners inches with priority of July 1, 1921; and 33 miners inches with priority of July 1, 1922; said water being decreed to Francis Silkey, by Judge Dana E. Brinck of the 3rd Judicial District of the State of Idaho, in and for the County of Ada, in the case of

FRANCIS SILKEY

Plaintiff

vs.

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

Defendants

said decree bearing date of June 13, 1930, and being appurtenant to the following described lands, to-wit:

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°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°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, acqueducts upon, leading to or used in connection with the above described land; all of said property containing approximately twenty acres;

That said decree has been entered in the records of the Department of Reclamation of the State of Idaho, at Boise, Idaho, in Volume No. 5 of Decrees, at Page 468 thereof;

And that now, upon the application of O. L. Milstead, made before the State Reclamation Engineer of the State of Idaho, for a Certificate of Change of Point of Diversion, and the said application having been granted, the right to change the point of diversion of 0.8 cubic feet per second of the waters of subterranean source is HEREBY GRANTED;

That said change of point of diversion shall not modify in effect said decreed water right or place of use;

Said water is to be limited at any given time to an amount actually needed and beneficially used, and shall not exceed the following amount, to-wit:

0.8 cubic feet per second of the waters of subterranean source as follows:

7 miners inches, with priority of July 1, 1921;
33 miners inches, with priority of July 1, 1922;

That the water right hereby transferred has heretofore been conducted from subterranean source through pipeline, with point of diversion in the NE¼SE¼, Section 29, Township 4 North, Range 2 E.B.M.,

That the water right hereby transferred will hereafter be conducted to said lands through pipeline, with points of diversion in the NE¼SE¼, Section 29, and the NW¼SW¼, Section 28, Township 4 North, Range 2 E.B.M.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the official seal of the Department of Reclamation of the State of Idaho to be hereunto affixed at Boise, Idaho, this 19th day of March, 1964.

(SEAL)

s/ CARL E. TAPPAN

CARL E. TAPPAN
State Reclamation Engineer

SEE
FOLDER
#2

HOFSTETTER LAW OFFICE

608 West Franklin Street
Boise, Idaho 83702

Dana@IdahoWaterLaw.com

Dana L. Hofstetter
Attorney at Law

Telephone: (208) 424-7800
Facsimile: (208) 424-8774

December 31, 2001

RECEIVED
DEC 3 1 2001
WATER RESOURCES
WESTERN REGION

Via U.S. Mail

Gary Spackman
c/o Sue Taylor
Western Region
Idaho Department of Water Resources
2735 Airport Way
Boise, Idaho 83705-5082

Re: Transfer Nos. 68558 (formerly 5875) and 68559 (formerly 5876)

Dear Ms. Taylor:

I enclose for filing with the Idaho Department of Water Resources an original *Estate of Paul Edwards and Edwards Family LLC's First set of Requests for Admission, Interrogatories and Requests for Production of Documents* for the above-referenced proceeding. I also enclose a copy of these discovery requests. After filing the original, please conform the copy with the filing date stamp and return the copy to me in the enclosed self-addressed and stamped envelope. ✓ 1-7-02

Thank you for your assistance. If you have any questions or suggestions, please let me know.

Sincerely,

HOFSTETTER LAW OFFICE, LLC

Dana L. Hofstetter

CC: Garnette Monnie w/ enclosures

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OCT 3 0 2002

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

Attorney for the Estate of Paul Edwards
and the Edwards Family LLC

RECEIVED
DEC 3 1 2001
WATER RESOURCES
WESTERN REGION

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

IN THE MATTER OF APPLICATION FOR TRANSFER OF WATER RIGHT NOS. 63-00012, 63-00013, AND 63-00015 (TRANSFER NO. 68558/5875) AND 63-31051 (TRANSFER NO. 68559/5876) IN THE NAME OF THE TERTELING, COMPANY, INC.	**THE ESTATE OF PAUL EDWARDS AND THE EDWARDS FAMILY LLC'S FIRST SET OF REQUESTS FOR ADMISSION, INTERROGATORIES AND REQUESTS FOR PRODUCTION OF DOCUMENTS**

TO: The Terteling Company, Inc., and its attorney of record.

YOU WILL PLEASE TAKE NOTICE that the Estate of Paul Edwards and the Edwards Family LLC hereby request that you answer under oath the following Requests for Admission, Interrogatories and respond to the Requests for Production of Documents within fifteen (15) days from service hereof, in accordance with the provisions of Rules 520, 521, 522, 524 and 527 of the Rules of Procedure of the Idaho Department of Water Resources and Rules 26, 33, 34 and 36 of the Idaho Rules of Civil Procedure.

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INSTRUCTIONS AND DEFINITIONS

In answering the Requests for Admission, Interrogatories and Requests for Production of Documents, furnish all information available so you, including information in the possession of your attorneys (and investigators, experts, etc., retained by you and your attorneys), not merely information known of your own personal knowledge. If you cannot respond to the following in full, after exercising due diligence to secure the information to do so, so state, then respond to the extent possible, specifying your inability to respond to the remainder, and stating whatever information and knowledge you have concerning the unanswered portion.

You may respond to the Requests for Production of Documents by producing for inspection and/or reproduction the originals or true and correct copies of the documents and items listed below, in whatever form, whether electronic, written, xeroxed, filmed or otherwise, at Hofstetter Law Office, 608 West Franklin Street, Boise, Idaho 83702, within fifteen (15) days of service hereof. This party will reimburse you for any reasonable copying expense incurred in complying with these Requests.

If there is any Request for Admission, Interrogatory or Request for Production of Documents to which you object in whole or in part, or as to which you claim a privilege in whole or in part, or as to which you claim protection form discovery in whole or in part, state the nature and basis of your objection or claim of protection from discovery, describe in detail the facts upon which you base your objection, and answer any remaining part to which you do not object, do not claim a privilege, or do not claim protection from discovery.

These Requests for Admission, Interrogatories and Requests for Production are deemed continuing, and your answers and responses thereto are to be supplemented as additional information and knowledge becomes available or known to you.

The following definitions will be used with respect to these Interrogatories and Requests:

1. The word "you" refers to the individually named party addressed herein, as well as that party's employees, directors, officers, members, trustees, beneficiaries, agents, attorneys, representatives, servants, and any expert witnesses expected to testify at hearing or trial.

2. The word "document" means any written, typed, graphic, electronically stored or printed matter, in its entirety, including any addenda, supplements, amendments, revisions, exhibits, and appendices thereto, in its original form (or copies thereof where bearing notations, memoranda or other written information not on the original) including, but not limited to, books, pamphlets, brochures, notebooks, correspondence, telegrams, notes or taped or sound recordings of any type of conversation or meeting or conference, notes or tape or sound recordings of any type of statement of witnesses, minutes of meetings, reports, photographs, memoranda, interoffice or intraoffice communications, chart notes, studies, analyses, governmental records, results of investigations, reviews, contracts, licenses, agreements, ledgers, books of account, vouchers, bank checks and drafts, invoices, charge

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slips, receipts, bills, working papers, data records, statistical records, costs sheets, stenographer's notebooks, desk calendars, appointment books, diaries, time sheets or logs, maps, computer input data, computer output data, computer runs, work sheets or work papers or other materials, including, without limitation, all such defined documents of which you are aware, which are in your possession, custody or control or which were submitted to your accountants or attorneys or submitted by your accountants or attorneys to you, or papers similar to any of the foregoing.

3. The word "person" means any natural person, partnership, firm or corporation or any other type of business or legal entity, its agents, employees and representatives.

4. If any document or portion thereof, which is responsive to any request herein, is or will be withheld from production, inspection or copying, please fully identify such document or portion thereof in your response, in accordance with definition 5 below, and fully describe in your response, the reason it is or will be withheld.

5. "Identify" or "identification" means

(a) In each instance wherein you are asked to "identify" or describe a document, your description should include, but not be limited to, the following:

(i) The name, address, telephone number, occupation, job title and employer of the present custodian of the document;

(ii) The date of the making of the document, and the name, address, telephone number, occupation, job title and employer of each person whose testimony could be used to authenticate such document and lay the foundation for its introduction into evidence;

(iii) The identity of author;

(iv) The title, date, and subject matter of the document;

(b) With respect to a verbal communication by personal means, "identify" means a complete statement setting forth the date, the approximate time and place, the name and address of each person present, whether any conversation was recorded and, if so, the name and address of the person who recorded it and the name and address of the person who has custody or possession of such recording, and whether any notes or memoranda were made of any conversations and, if so, the name and address of the person who made such notes or memoranda and the name and address of each person who has custody or possession of the original notes or memoranda.

(c) With respect to a telephone conversation, "identify" means a complete statement setting forth the date, the approximate time, the name of the person initiating the call, the location from which the call was placed, the words spoken or the substance of what was said by the person initiating the call and by the person called, whether anyone else listened in on one or both sides of such telephone conversation

and, if so, the name and address of such person, whether such conversation was recorded and, if so, the name and address of the person who recorded it and the name and address of the person who has custody or possession of much recording and whether any notes or memoranda were made of such conversation and, if so, the name and address of each person who has custody or possession of the original notes or memoranda.

(d) With respect to a document for which you claim a privilege, "identify" means the name of the person who prepared it, the name of the person who signed it or in whose name it was issued, the name of each person to whom it was addressed or circulated, the nature and substance of the writing and its title, if any, its date, and if it bears no date, the date when it was prepared, the physical location of the original and any copies of which you are aware, the name and address of each person having custody or control of the document, and the name and number of the file, if any, in which it is contained and the basis for the privilege for which you claim.

(e) When used in reference to a person, "identify" means the person's full name, state of incorporation (if applicable), last known business address, last known home address (if applicable), last known business, profession, or occupation, last known job title, list of officers, directors, agents, representatives and employees (if applicable) and relationship to you.

6. The term "knowledge" includes firsthand knowledge and information derived from any other source, including but not limited to hearsay knowledge.

7. "Describe" or "description" means to set forth all facts which exhaust your information, knowledge, and belief with respect to the subject matter of the discovery request.

8. "Diversion systems" refers to all the pumps, pipelines, wells and other facilities and equipment for diverting water from its source, conveying water to its place of use and applying water to use.

9. "New diversion systems" refers to the diversion systems proposed to be used to divert and use water under the Water Rights if the Transfers are approved.

10. "New places of use" means the places of use proposed for the Water Rights under the Transfers.

11. "Old places of use" means the places of use currently authorized for the Water Rights.

12. "*Silkey v. Tiegs* decree" refers to the June 13, 1930 decree in Ada County, Idaho District Court Case No. 11748, entitled *Silkey v. Tiegs* et al which you referenced in Transfer No. 68558.

13. "Transfer No. 68558" refers to the Application For Transfer of Water Right No. 5875 (renumbered No. 68558), as amended, you submitted to the Idaho Department of Water Resources and which is the subject matter of this proceeding.

14. "Transfer No. 68559" refers to Application For Transfer of Water Right No. 5876 (renumbered No. 68559), as amended, you submitted to the Idaho Department of Water Resources and which is the subject matter of this proceeding.

15. "Transfers" refers to Transfer No. 68558 and Transfer No. 68559.

16. "Related entity" refers to any trust, corporation, partnership, limited liability company, joint venture, sole proprietorship or any other kind of business or legal entity or other legal or business relationship in which J. L. Terteling, the President of The Terteling Company, Inc., has an interest.

17. "Water District 63-S" as used herein refers to the area within the boundaries of Water District 63-S as originally established by the December 5, 1989 Final Order issued by the Idaho Department of Water Resources Director, such area is depicted with shading in Figure 1 attached hereto.

18. "Water Rights" refers to Water Right Nos. 63-00012, 63-00013, 63-00015 and 63-31051 which are the subject of the Transfers.

REQUESTS FOR ADMISSION

REQUEST FOR ADMISSION NO. 1: Please admit that a copy of the *Silkey v. Tiegs* decree with the respective identifying water right numbers added in the margins is attached hereto as Exhibit A.

REQUEST FOR ADMISSION NO. 2: Please admit that Water Right No. 63-00012 is subject to the terms of the *Silkey v. Tiegs* decree.

REQUEST FOR ADMISSION NO. 3: Please admit that Water Right No. 63-00013 is subject to the terms of the *Silkey v. Tiegs* decree.

REQUEST FOR ADMISSION NO. 4: Please admit that Water Right No. 63-00015 is subject to the terms of the *Silkey v. Tiegs* decree.

REQUEST FOR ADMISSION NO. 5: Please admit that the *Silkey v. Tiegs* decree was made permanent by a Memorandum Decision filed June 23, 1932 in *Silkey v. Tiegs*, Ada County, Idaho District Court Civil Case No. 11748.

REQUEST FOR ADMISSION NO. 6: Please admit that a copy of the June 23, 1932 Memorandum Decision referenced in Request for Admission No. 5 is attached hereto as Exhibit B.

INTERROGATORIES

INTERROGATORY NO. 1: Please identify each person known to you or your attorneys who has or may have knowledge of any fact pertinent to any element of any of the Water Rights or the Transfers and state the subject matter of that knowledge. In your answer to this Interrogatory No. 1, please include each person who has been retained, hired, or relied upon by you, your agents or representatives to review any issues relating to the Water Rights or the Transfers.

INTERROGATORY NO. 2: Please identify each person you intend to call as a witness at any hearing or trial of this matter, and for each such person, state the substance of his or her expected testimony, and whether you, your agents, representatives and/or attorneys have obtained any oral or written statement from the witness.

INTERROGATORY NO. 3: Please identify each person whom you expect to call as an expert witness at any hearing or trial of this matter, and for each person, describe the qualifications upon which you intend to rely to establish the person as an expert witness (or in the alternative you may provide a copy of a current curriculum vitae for each such person), the

subject matter on which the expert is expected to testify, the substance of the opinions to which the expert is expected to testify, and the underlying facts and data upon which the expert opinions are based.

INTERROGATORY NO. 4: Please identify each documentary, written or tangible item of evidence you expect to introduce or use, or may use at any hearing or trial in this matter.

INTERROGATORY NO. 5: Please describe all geothermal water rights (including any domestic or stock water rights) which are diverted from water sources by wells or by any other means within Water District 63-S, including in your answer any identifying water right numbers and/or Snake River Basin Adjudication ("SRBA") claim numbers where such numbers have been assigned, complete descriptions of any water rights that have not been assigned water right numbers, locations and descriptions of any wells or other kinds of diversion systems, and for each such water right a statement of whether The Terteling Company, Inc., J. L. Terteling or any related entity has an interest of any kind in the water right and the nature of such interest.

INTERROGATORY NO. 6: Please describe the proposed irrigation uses in Transfer No. 68558 for water right no. 63-00012 both for the new places of use and the old places of use, including in your answer descriptions of diversion systems (pump brands, pump models, pump rated capacities in terms of flow and head, pump horsepower, pump curve information, well depths, well diameters, well locations, well construction dates, well driller report information, pipe sizes, pipe materials, pipe locations, irrigation method, sprinkler types and

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sizes, drip system types and sizes, engineering plans or drawings, etc.), crops to be grown (plant varieties, acreage or crop square footage, whether grown in greenhouses or outdoors, annual time period of growing each plant variety, annual yield for each plant variety, etc.), projected scheduling for implementation of such uses and whether any other water rights will be used in conjunction with water right no. 63-00012 to serve this irrigation use.

INTERROGATORY NO. 7: Please describe the proposed irrigation uses in Transfer No. 68558 for water right no. 63-00013 both for the new places of use and the old places of use, including in your answer descriptions of diversion systems (pump brands, pump models, pump rated capacities in terms of flow and head, pump horsepower, pump curve information, well depths, well diameters, well locations, well construction dates, well driller report information, pipe sizes, pipe materials, pipe locations, irrigation method, sprinkler types and sizes, drip system types and sizes, engineering plans or drawings, etc.), crops to be grown (plant varieties, acreage or crop square footage, whether grown in greenhouses or outdoors, annual time period of growing each plant variety, annual yield for each plant variety, etc.), projected scheduling for implementation of such uses and whether any other water rights will be used in conjunction with water right no. 63-00013 to serve this irrigation use.

INTERROGATORY NO. 8: Please describe the proposed irrigation uses in Transfer No. 68558 for water right no. 63-00015 both for the new places of use and the old places of use, including in your answer descriptions of diversion systems (pump brands, pump models, pump rated capacities in terms of flow and head, pump horsepower, pump curve information, well depths, well diameters, well locations, well construction dates, well driller report

information, pipe sizes, pipe materials, pipe locations, irrigation method, sprinkler types and sizes, drip system types and sizes, engineering plans or drawings, etc.), crops to be grown (plant varieties, acreage or crop square footage, whether grown in greenhouses or outdoors, annual time period of growing each plant variety, annual yield for each plant variety, etc.), projected scheduling for implementation of such uses and whether any other water rights will be used in conjunction with water right no. 63-00015 to serve this irrigation use.

INTERROGATORY NO. 9: Please describe the proposed heating uses in Transfer No. 68558 for water right no. 63-00012 both at the new places of use and the old places of use, including in your answer descriptions of diversion systems (pump brands, pump models, pump rated capacities in terms of flow and head, pump horsepower, pump curve information, well depths, well diameters, well locations, well construction dates, well driller report information, pipe sizes, pipe materials, pipe locations, heating method, heat transfer equipment types and sizes, engineering plans or drawings, etc.), nature of heating use (number and size of greenhouses to be served, plant varieties, growing volume and square footage, annual time period of growing each plant variety, annual yield for each plant variety, number and size of residential units served, number and size of swimming pools or other bathing facilities served, etc.), facilities to be heated (number and types of each structure or facility, square footage and volume of each facility, monthly target ambient temperatures of each facility, heating efficiencies, types of insulation, etc.) and whether any other water rights will be used in conjunction with water right no. 63-00012 to serve any such heating uses.

INTERROGATORY NO. 10: Please describe the proposed heating use in Transfer No. 68558 for water right no. 63-00013 both at the new places of use and the old places of

use, including in your answer descriptions of diversion systems (pump brands, pump models, pump rated capacities in terms of flow and head, pump horsepower, pump curve information, well depths, well diameters, well locations, well construction dates, well driller report information, pipe sizes, pipe materials, pipe locations, heating method, heat transfer equipment types and sizes, engineering plans or drawings, etc.), nature of heating uses (number and size of greenhouses to be served, plant varieties, growing volume and square footage, annual time period of growing each plant variety, annual yield for each plant variety, number and size of residential units served, number and size of swimming pools or other bathing facilities served, etc.), facilities to be heated (number and types of each structure or facility, square footage and volume of each facility, monthly target ambient temperatures of each facility, heating efficiencies, types of insulation, etc.), projected scheduling for implementation of such uses and whether any other water rights will be used in conjunction with water right no. 63-00013 to serve any such heating uses.

INTERROGATORY NO. 11: Please describe the proposed heating uses in Transfer No. 68558 for water right no. 63-00015 both at the new places of use and the old places of use, including in your answer descriptions of diversion systems (pump brands, pump models, pump rated capacities in terms of flow and head, pump horsepower, pump curve information, well depths, well diameters, well locations, well construction dates, well driller report information, pipe sizes, pipe materials, pipe locations, heating method, heat transfer equipment types and sizes, engineering plans or drawings, etc.), nature of heating uses (number and size of greenhouses to be served, plant varieties, growing volume and square footage, annual time period of growing each plant variety, annual yield for each plant variety,

number and size of residential units served, number and size of swimming pools or other bathing facilities served, etc.), facilities to be heated (number and types of each structure or facility, square footage and volume of each facility, monthly target ambient temperatures of each facility, heating efficiencies, types of insulation, etc.), projected scheduling for implementation of such uses and whether any other water rights will be used in conjunction with water right no. 63-00015 to serve any such heating uses.

INTERROGATORY NO. 12: Please describe the proposed stock water uses in Transfer No. 68558 for water right no. 63-00012 both at the new places of use and the old places of use, including in your answer descriptions of diversion systems (pump brands, pump models, pump rated capacities in terms of flow and head, pump horsepower, pump curve information, well depths, well diameters, well locations, well construction dates, well driller report information, pipe sizes, pipe materials, pipe locations, engineering plans or drawings, etc.), nature of stock water uses (location, type of stock, number of stock, periods of use, etc.), projected scheduling for implementation of such uses and whether any other water rights will be used in conjunction with water right no. 63-00012 to serve any such stock water uses.

INTERROGATORY NO. 13: Please describe the proposed stock water uses in Transfer No. 68558 for water right no. 63-00013 both at the new places of use and the old places of use, including in your answer descriptions of diversion systems (pump brands, pump models, pump rated capacities in terms of flow and head, pump horsepower, pump curve information, well depths, well diameters, well locations, well construction dates, well driller report information, pipe sizes, pipe materials, pipe locations, engineering plans or

drawings, etc.), nature of stock water uses (location, type of stock, number of stock, periods of use, etc.), projected scheduling for implementation of such uses and whether any other water rights will be used in conjunction with water right no. 63-00013 to serve any such stock water uses.

INTERROGATORY NO. 14: Please describe the proposed stock water uses in Transfer No. 68558 for water right no. 63-00015 both at the new places of use and the old places of use, including in your answer descriptions of diversion systems (pump brands, pump models, pump rated capacities in terms of flow and head, pump horsepower, pump curve information, well depths, well diameters, well locations, well construction dates, well driller report information, pipe sizes, pipe materials, pipe locations, engineering plans or drawings, etc.), nature of stock water uses (location, type of stock, number of stock, periods of use, etc.), projected scheduling for implementation of such uses and whether any other water rights will be used in conjunction with water right no. 63-00015 to serve any such stock water uses.

INTERROGATORY NO. 15: Please describe the proposed domestic uses in Transfer No. 68558 for water right no. 63-00012 both at the new places of use and the old places of use, including in your answer descriptions of diversion systems (pump brands, pump models, pump rated capacities in terms of flow and head, pump horsepower, pump curve information, well depths, well diameters, well locations, well construction dates, well driller report information, pipe sizes, pipe materials, pipe locations, engineering plans or drawings, etc.), nature of domestic uses (location, type of use- heating or otherwise, number, size and type of residential units to be served, periods of use, etc.), projected scheduling for implementation of

such uses and whether any other water rights will be used in conjunction with water right no. 63-00012 to serve any such domestic uses.

INTERROGATORY NO. 16: Please describe the proposed domestic uses in Transfer No. 68558 for water right no. 63-00013 both at the new places of use and the old places of use, including in your answer descriptions of diversion systems (pump brands, pump models, pump rated capacities in terms of flow and head, pump horsepower, pump curve information, well depths, well diameters, well locations, well construction dates, well driller report information, pipe sizes, pipe materials, pipe locations, engineering plans or drawings, etc.), nature of domestic uses (location, type of use- heating or otherwise, number, size and type of residential units to be served, periods of use, etc.), projected scheduling for implementation of such uses and whether any other water rights will be used in conjunction with water right no. 63-00013 to serve any such domestic uses.

INTERROGATORY NO. 17: Please describe the proposed domestic uses in Transfer No. 68558 for water right no. 63-00015 both at the new places of use and the old places of use, including in your answer descriptions of diversion systems (pump brands, pump models, pump rated capacities in terms of flow and head, pump horsepower, pump curve information, well depths, well diameters, well locations, well construction dates, well driller report information, pipe sizes, pipe materials, pipe locations, engineering plans or drawings, etc.), nature of domestic uses (location, type of use- heating or otherwise, number, size and type of residential units to be served, periods of use, etc.), projected scheduling for implementation of such uses and whether any other water rights will be used in conjunction with water right no. 63-00015 to serve any such domestic uses.

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INTERROGATORY NO. 18: Please describe all and any irrigation uses of water right no. 63-00012 since you obtained an ownership interest in water right no. 63-00012 to the present, including in your answer descriptions of diversion systems (pump brands, pump models, pump rated capacities in terms of flow and head, pump horsepower, pump curve information, well depths, well diameters, well locations, well construction dates, well driller report information, pipe sizes, pipe materials, pipe locations, irrigation methods, sprinkler types and sizes, drip system types and sizes, engineering plans or drawings, diversion measurements, rate of flow measurements, annual diversion volumes, monthly diversion volumes, peak diversion rates from each well, etc.), crops grown (plant varieties, acreage or square footage, whether grown in greenhouses or outdoors, annual time period of growing each plant variety, annual yield for each plant variety, etc.) and whether any other water rights were used in conjunction with water right no. 63-00012 to serve these irrigation uses.

INTERROGATORY NO. 19: Please describe all and any irrigation uses of water right no. 63-00013 since you obtained an ownership interest in water right no. 63-00013 to the present, including in your answer descriptions of diversion systems (pump brands, pump models, pump rated capacities in terms of flow and head, pump horsepower, pump curve information, well depths, well diameters, well locations, well construction dates, well driller report information, pipe sizes, pipe materials, pipe locations, irrigation methods, sprinkler types and sizes, drip system types and sizes, engineering plans or drawings, diversion measurements, rate of flow measurements, annual diversion volumes, monthly diversion volumes, peak diversion rates from each well, etc.), crops grown (plant varieties, acreage or square footage, whether grown in greenhouses or outdoors, annual time period of growing

each plant variety, annual yield for each plant variety, etc.) and whether any other water rights were used in conjunction with water right no. 63-00013 to serve these irrigation uses.

INTERROGATORY NO. 20: Please describe all and any irrigation uses of water right no. 63-00015 since you obtained an ownership interest in water right no. 63-00015 to the present, including in your answer descriptions of diversion systems (pump brands, pump models, pump rated capacities in terms of flow and head, pump horsepower, pump curve information, well depths, well diameters, well locations, well construction dates, well driller report information, pipe sizes, pipe materials, pipe locations, irrigation methods, sprinkler types and sizes, drip system types and sizes, engineering plans or drawings, diversion measurements, rate of flow measurements, annual diversion volumes, monthly diversion volumes, peak diversion rates from each well, etc.), crops grown (plant varieties, acreage or square footage, whether grown in greenhouses or outdoors, annual time period of growing each plant variety, annual yield for each plant variety, etc.) and whether any other water rights were used in conjunction with water right no. 63-00015 to serve these irrigation uses.

INTERROGATORY NO. 21: Please describe all and any heating uses of water right no. 63-00012 since you obtained an ownership interest in water right no. 63-00012 to the present, including in your answer descriptions of diversion systems (pump brands, pump models, pump rated capacities in terms of flow and head, pump horsepower, pump curve information, well depths, well diameters, well locations, well construction dates, well driller report information, pipe sizes, pipe materials, pipe locations, heating method, heat transfer equipment types and sizes, engineering plans or drawings, diversion measurements, rate of flow measurements, annual diversion volumes, monthly diversion volumes, peak diversion

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rates from each well, etc.), nature of heating uses (number and size of greenhouses served, plant varieties, growing volume and square footage, annual time period of growing each plant variety, annual yield for each plant variety, number and size of residential units served, number and size of swimming pools or other bathing facilities served, etc.), facilities heated (number and types of each structure or facility, square footage and volume of each facility, temperature measurements of each facility, heating efficiencies, types of insulation, etc.) and whether any other water rights were used in conjunction with water right no. 63-00012 to serve any such heating uses.

INTERROGATORY NO. 22: Please describe all and any heating uses of water right no. 63-00013 since you obtained an ownership interest in water right no. 63-00013 to the present, including in your answer descriptions of diversion systems (pump brands, pump models, pump rated capacities in terms of flow and head, pump horsepower, pump curve information, well depths, well diameters, well locations, well construction dates, well driller report information, pipe sizes, pipe materials, pipe locations, heating method, heat transfer equipment types and sizes, engineering plans or drawings, diversion measurements, rate of flow measurements, annual diversion volumes, monthly diversion volumes, peak diversion rates from each well, etc.), nature of heating uses (number and size of greenhouses served, plant varieties, growing volume and square footage, annual time period of growing each plant variety, annual yield for each plant variety, number and size of residential units served, number and size of swimming pools or other bathing facilities served, etc.), facilities heated (number and types of each structure or facility, square footage and volume of each facility, temperature measurements of each facility, heating efficiencies, types of insulation, etc.) and

whether any other water rights were used in conjunction with water right no. 63-00013 to serve any such heating uses.

INTERROGATORY NO. 23: Please describe all and any heating uses of water right no. 63-00015 since you obtained an ownership interest in water right no. 63-00015 to the present, including in your answer descriptions of diversion systems (pump brands, pump models, pump rated capacities in terms of flow and head, pump horsepower, pump curve information, well depths, well diameters, well locations, well construction dates, well driller report information, pipe sizes, pipe materials, pipe locations, heating method, heat transfer equipment types and sizes, engineering plans or drawings, diversion measurements rate of flow measurements, annual diversion volumes, monthly diversion volumes, peak diversion rates from each well, etc.), nature of heating uses (number and size of greenhouses served, plant varieties, growing volume and square footage, annual time period of growing each plant variety, annual yield for each plant variety, number and size of residential units served, number and size of swimming pools or other bathing facilities served, etc.), facilities heated (number and types of each structure or facility, square footage and volume of each facility, temperature measurements of each facility, heating efficiencies, types of insulation, etc.) and whether any other water rights were used in conjunction with water right no. 63-00015 to serve any such heating uses.

INTERROGATORY NO. 24: Please describe all and any stock water uses of water right no. 63-00012 since you obtained an ownership interest in water right no. 63-00012 to the present including in your answer descriptions of diversion systems (pump brands, pump models, pump rated capacities in terms of flow and head, pump horsepower, pump curve

information, well depths, well diameters, well locations, well construction dates, well driller report information, pipe sizes, pipe materials, pipe locations, engineering plans or drawings, diversion measurements, rate of flow measurements, annual diversion volumes, monthly diversion volumes, peak diversion rates from each well, etc.), nature of stock water uses (location, type of stock, number of stock, periods of use, etc.) and whether any other water rights were used in conjunction with water right no. 63-00012 to serve any such stock water uses.

INTERROGATORY NO. 25: Please describe all and any stock water uses of water right no. 63-00013 since you obtained an ownership interest in water right no. 63-00013 to the present including in your answer descriptions of diversion systems (pump brands, pump models, pump rated capacities in terms of flow and head, pump horsepower, pump curve information, well depths, well diameters, well locations, well construction dates, well driller report information, pipe sizes, pipe materials, pipe locations, engineering plans or drawings, diversion measurements, rate of flow measurements, annual diversion volumes, monthly diversion volumes, peak diversion rates from each well, etc.), nature of stock water uses (location, type of stock, number of stock, periods of use, etc.) and whether any other water rights were used in conjunction with water right no. 63-00013 to serve any such stock water uses.

INTERROGATORY NO. 26: Please describe all and any stock water uses of water right no. 63-00015 since you obtained an ownership interest in water right no. 63-00015 to the present including in your answer descriptions of diversion systems (pump brands, pump models, pump rated capacities in terms of flow and head, pump horsepower, pump curve

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information, well depths, well diameters, well locations, well construction dates, well driller report information, pipe sizes, pipe materials, pipe locations, engineering plans or drawings, diversion measurements, rate of flow measurements, annual diversion volumes, monthly diversion volumes, peak diversion rates from each well, etc.), nature of stock water uses (location, type of stock, number of stock, periods of use, etc.) and whether any other water rights were used in conjunction with water right no. 63-00015 to serve any such stock water uses.

INTERROGATORY NO. 27: Please describe all and any domestic uses of water right no. 63-00012 since you obtained an ownership interest in water right no. 63-00012 to the present, including in your answer descriptions of diversion systems (pump brands, pump models, pump rated capacities in terms of flow and head, pump horsepower, pump curve information, well depths, well diameters, well locations, well construction dates, well driller report information, pipe sizes, pipe materials, pipe locations, engineering plans or drawings, diversion measurements, rate of flow measurements, annual diversion volumes, monthly diversion volumes, peak diversion rates from each well, etc.), nature of domestic use (location, type of use- heating or otherwise, number, size and types of residential units served, periods of use, etc.) and whether any other water rights were used in conjunction with water right no. 63-00012 to serve any such domestic uses.

INTERROGATORY NO. 28: Please describe all and any domestic uses of water right no. 63-00013 since you obtained an ownership interest in water right no. 63-00013 to the present, including in your answer descriptions of diversion systems (pump brands, pump models, pump rated capacities in terms of flow and head, pump horsepower, pump curve

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information, well depths, well diameters, well locations, well construction dates, well driller report information, pipe sizes, pipe materials, pipe locations, engineering plans or drawings, diversion measurements, rate of flow measurements, annual diversion volumes, monthly diversion volumes, peak diversion rates from each well, etc.), nature of domestic use (location, type of use- heating or otherwise, number, size and types of residential units served, periods of use, etc.) and whether any other water rights were used in conjunction with water right no. 63-00013 to serve any such domestic uses.

INTERROGATORY NO. 29: Please describe all and any domestic uses of water right no. 63-00015 since you obtained an ownership interest in water right no. 63-00015 to the present, including in your answer descriptions of diversion systems (pump brands, pump models, pump rated capacities in terms of flow and head, pump horsepower, pump curve information, well depths, well diameters, well locations, well construction dates, well driller report information, pipe sizes, pipe materials, pipe locations, engineering plans or drawings, diversion measurements, rate of flow measurements, annual diversion volumes, monthly diversion volumes, peak diversion rates from each well, etc.), nature of domestic use (location, type of use- heating or otherwise, number, size and types of residential units served, periods of use, etc.) and whether any other water rights were used in conjunction with water right no. 63-00015 to serve any such domestic uses.

INTERROGATORY NO. 30: Please describe all and any other uses of water right nos. 63-00012, 63-00013 and/or 63-00015 besides irrigation, domestic, stock water or heating uses, since you obtained an ownership interest in water right nos. 63-00012, 63-00013, and 63-00015 to the present, including in your answer descriptions of diversion systems (pump

brands, pump models, pump rated capacities in terms of flow and head, pump horsepower, pump curve information, well depths, well diameters, well locations, well construction dates, well driller report information, pipe sizes, pipe materials, pipe locations, engineering plans or drawings, diversion measurements, rate of flow measurements, annual diversion volumes, monthly diversion volumes, peak diversion rates from each well, etc.), nature of other uses (location, type of use, periods of use, etc.) and whether any other water rights were used in conjunction with water right nos. 63-00012 , 63-00013 and/or 63-00015 to serve any such other uses.

INTERROGATORY NO. 31: Please describe all and any uses of water right no. 63-31051 since you obtained an ownership interest in water right nos. 63-31051 to the present, including in your answer descriptions of diversion systems (pump brands, pump models, pump rated capacities in terms of flow and head, pump horsepower, pump curve information, well depths, well diameters, well locations, well construction dates, well driller report information, pipe sizes, pipe materials, pipe locations, engineering plans or drawings, diversion measurements, rate of flow measurements, annual diversion volumes, monthly diversion volumes, peak diversion rates from each well, etc.), nature of uses (location, type of uses, periods of use, etc.) and whether any other water rights were used in conjunction with water right nos. 63-31051 to serve any such uses.

INTERROGATORY NO. 32: Please describe all proposed uses in Transfer No. 68559 for water right no. 63-31051 both at the new places of use and the old places of use, including in your answer descriptions of diversion systems (pump brands, pump models, pump rated capacities in terms of flow and head, pump horsepower, pump curve information, well depths,

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well diameters, well locations, well construction dates, well driller report information, pipe sizes, pipe materials, pipe locations, engineering plans or drawings, etc.), nature of uses (location, periods of use, etc.), projected scheduling for implementation of such uses and whether any other water rights will be used in conjunction with water right nos. 63-31051 to serve any such uses.

INTERROGATORY NO. 33: Please describe all and any uses of water right nos. 63-00012, 63-00013 and/or 63-00015 prior to when you obtained an ownership interest in water right nos. 63-00012, 63-00013, and 63-00015, including in your answer descriptions of diversion systems (pump brands, pump models, pump rated capacities in terms of flow and head, pump horsepower, pump curve information, well depths, well diameters, well locations, well construction dates, well driller report information, pipe sizes, pipe materials, pipe locations, descriptions of irrigation equipment, descriptions of crops grown, descriptions of stock served, descriptions of domestic units served, descriptions of greenhouses and other geothermally heated facilities, engineering plans or drawings, diversion measurements, rate of flow measurements, annual diversion volumes, monthly diversion volumes, peak diversion rates from each well, etc.), nature of uses (location, type of use, periods of use, years of each use, etc.) and whether any other water rights were used in conjunction with water right nos. 63-00012 , 63-00013 and/or 63-00015 to serve any such uses.

INTERROGATORY NO. 34: Please describe all and any uses of water right no. 63-31051 prior to when you obtained an ownership interest in water right no. 63-31051, including in your answer descriptions of diversion systems (pump brands, pump models, pump rated capacities in terms of flow and head, pump horsepower, pump curve information, well depths,

well diameters, well locations, well construction dates, well driller report information, pipe sizes, pipe materials, pipe locations, descriptions of irrigation equipment, acreage and descriptions of crops grown, descriptions of stock served, descriptions of domestic units served, engineering plans or drawings, diversion measurements, rate of flow measurements, annual diversion volumes, monthly diversion volumes, peak diversion rates from each well, etc.), nature of uses (location, types of use, periods of use, years of each use, etc.) and whether any other water rights were used in conjunction with water right no. 63-31051 to serve any such uses.

INTERROGATORY NO. 35: Please describe all facts which support your belief that the Transfers will not constitute an enlargement of any of the Water Rights, will not cause injury to any other water rights, are consistent with the conservation of water resources in the State of Idaho, and are in the local public interest.

INTERROGATORY NO. 36: Please describe all and any changes, repairs, modifications, maintenance, equipment additions, equipment upgrades, improvements, restoration, drilling or any other kind of work done to any portion of any of the diversion systems for any of the Water Rights since you obtained an ownership interest in the Water Rights to the present, including in your answer descriptions of diversion systems improvements (pump brands, pump models, pump rated capacities in terms of flow and head, pump horsepower, pump curve information, well depths, well diameters, well locations, well driller report information, pipe sizes, pipe materials, pipe locations, engineering plans or drawings, diversion measurements, rate of flow measurements, annual diversion volumes, monthly diversion volumes, peak diversion rates from each well, etc.), and the dates of any

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such work.

INTERROGATORY NO. 37: Please describe whether any measurements of diversions (flow rates, annual volumes, monthly volumes, peak diversion rates, etc.) or transmission (conveyance) losses have been made for any of the Water Rights or any associated diversion systems or portions thereof. Please identify each document which records, documents, or pertains to any such measurements.

INTERROGATORY NO. 38: If the answers to Requests for Admission Nos. 1 to 6 are anything other than an unqualified "admit":

(1) Identify and describe in detail the facts upon which you rely in making your response;

(2) Identify all individual(s) with knowledge regarding any such facts;

(3) Identify all documents relating in any way to your response(s); and

(4) Identify any witnesses and exhibits upon which you intend to rely to support your responses.

INTERROGATORY NO. 39: Please identify each person participating in the preparation of your responses to these discovery requests, and further specify the response(s) in which each such person participated.

REQUESTS FOR PRODUCTION OF DOCUMENTS

PRODUCTION REQUEST NO. 1: Please produce each document which you expect to introduce or use, or may use at any hearing or trial of this matter.

PRODUCTION REQUEST NO. 2: Please produce each document described, identified or relied upon by you in your response to any of the above Interrogatories.

PRODUCTION REQUEST NO. 3: Please produce each document pertaining in any way to any of the above Interrogatories or your responses thereto.

PRODUCTION REQUEST NO. 4: Please produce every document pertaining in any way to either of the Transfers or both of them.

PRODUCTION REQUEST NO. 5: Please produce every document which supports any aspect of the Transfers.

PRODUCTION REQUEST NO. 6: Please produce each document relating to, containing information about or describing the Water Rights or any of them or the use of any of them.

PRODUCTION REQUEST NO. 7: Please produce each document, including sales brochures and manuals, pertaining to any diversion systems associated with any of the Water Rights at any time.

PRODUCTION REQUEST NO. 8: Please produce each document pertaining to the sale of any crop associated with the Water Rights or any of them since the priority dates to the present.

PRODUCTION REQUEST NO. 9: Please produce each document pertaining to ditch, seepage, conveyance, or transmission losses, or diversion or irrigation efficiencies, associated with any diversion systems associated with the Water Rights or any of them.

PRODUCTION REQUEST NO. 10: Please produce each court order, decree, stipulation, contract, or agreement of any kind pertaining to any of the Water Rights.

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PRODUCTION REQUEST NO. 11: Please produce each document relating to power purchased or used in connection with any diversion systems associated with the Water Rights or any of them.

PRODUCTION REQUEST NO. 12: Please produce each map, aerial photograph or field survey of the new places of use or of the old places of use or of the diversion systems for the Water Rights.

PRODUCTION REQUEST NO. 13: Please produce each lease, rental agreement, or agreement of any kind for any part of the new places of use or old places of use.

PRODUCTION REQUEST NO. 14: Please produce pump performance curves for any pumps associated with delivering, conveying, or applying water to the old places of use and/or new places of use.

PRODUCTION REQUEST NO. 15: Please produce each document or record relating to diversion measurements associated with any of the Water Rights for any time period, including without limitation, measurement data such as rates of flow, annual volumes, monthly volumes, peak diversion rates, etc.

PRODUCTION REQUEST NO. 16: Please produce each document or other record relating to aquifer tests performed for any of the wells associated with any of the Water Rights.

PRODUCTION REQUEST NO. 17: Please produce each document or other record relating to projected water usage or well production levels for the water uses proposed in the Transfers.

PRODUCTION REQUEST NO. 18: Please produce each document or other record relating to any well tests or diversion systems production tests performed for any of the diversion systems, or portions thereof, associated with any of the Water Rights.

DATED this 28th day of December, 2001.

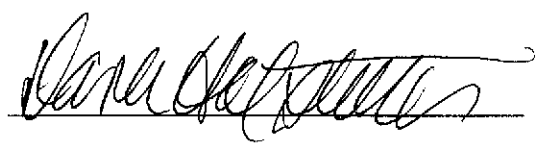
HOFSTETTER LAW OFFICE, LLC

Dana L. Hofstetter

CERTIFICATE OF SERVICE

I hereby certify that on the 28th day of December, 2001, I caused to be served a copy of the foregoing **First Set of Requests for Admission, Interrogatories, and Requests for Production** on the following person by the method indicated below:

John M. Marshall
Givens Pursley LLP
277 North 6th Street, Suite 200
P.O. Box 2720
Boise, ID 83701-2720
☐ U.S. Mail ☐ Fed Ex ✖ Hand Delivery ☐ Fax



Dana L. Hofstetter

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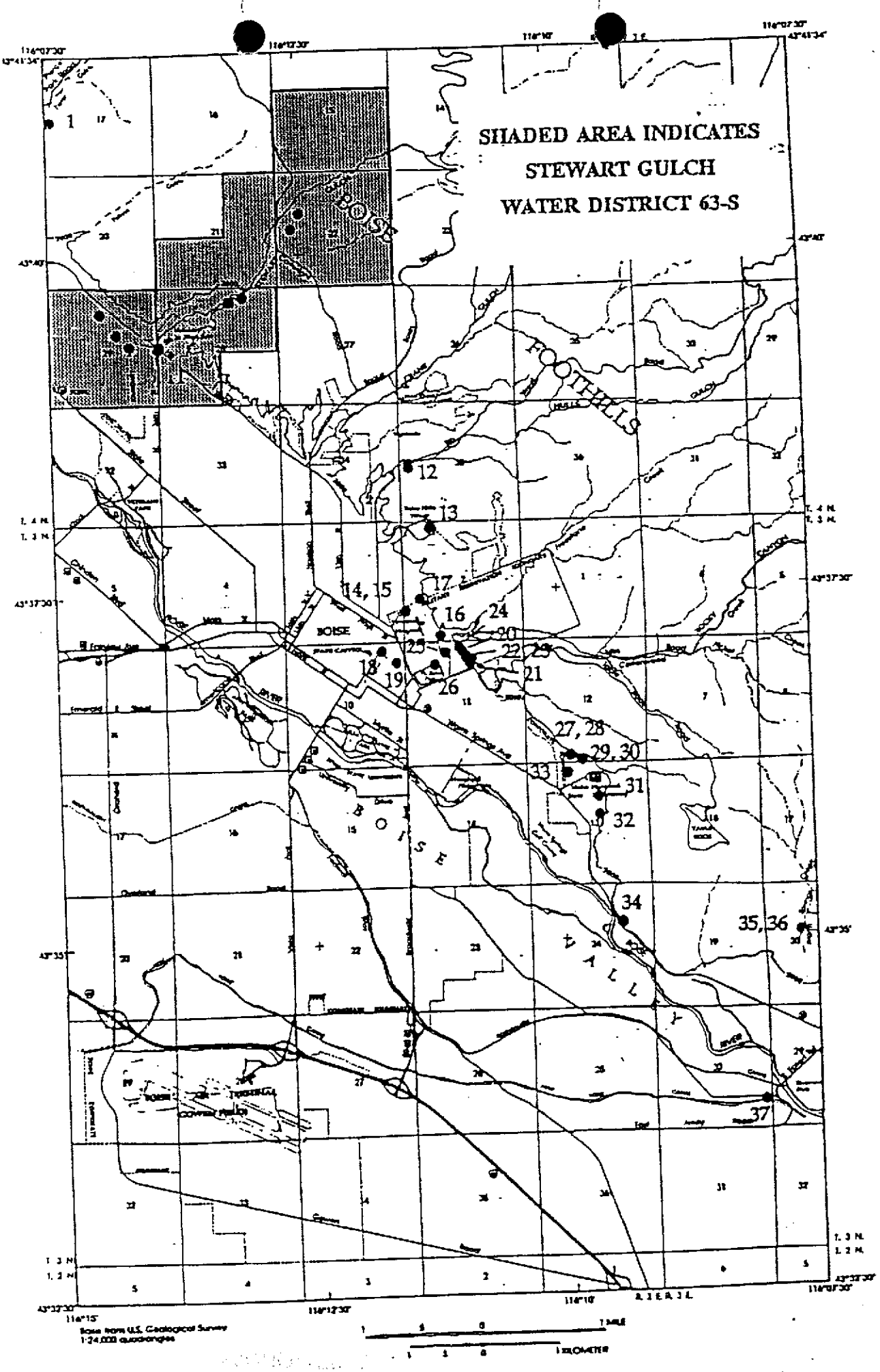
SHADED AREA INDICATES
STEWART GULCH
WATER DISTRICT 63-S
FOOTHILLS
BOISE
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12
13
14, 15
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17
18
19
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FIGURE 1

EXHIBIT "A"

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.)

Judge

DECREE.

This case came regularly on for trial before the court without a jury on the ____ day of January, 1930, 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 constittes 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

July 1, 1921, and with priority as to thirty-three miners inches of such water dating from July 1, 1922, said water being decreed 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°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°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, acqueducts upon, leading to or used in connection with the above described land;

all of said property containing approximately twenty acres.

(3) Defendant Thomas F. Edwards is hereby decreed the right to the use of forty-two 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 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 degree 50 minutes West a distance of 4.15 chains to an iron bar; thence north 74 degrees 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 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.

(4) That the defendant H. W. [illegible] 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 Tiegs aggregates approximately _____acres. Said right to be subject to the further provisions of this decree.

(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 (E½) of the Northeast Quarter

(NE¼) of the Northwest Quarter (NW¼) 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 equivalent 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 employees, or their successors in interest, shall have the right to permit his said well to flow or to use water therefrom 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 defendant 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 defendants 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, regulate and measure the flow of said wells.

(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)
(ss. Certificate
County of Ada.)

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 Rutter
Clerk.

By Ada Peterson Deputy.

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

NO. 11748
FILED
AM
JUN 23 1932
STEPHEN UTTER, Clerk
By Thos. E. Bagwell Deputy

FRANCES SILKEY,

Plaintiff,

-vs-

and J. RYAN,

Defendants.

Civil No. 11748

This matter is before the Court upon the motion of defendants to retain jurisdiction of this case until further order of the Court, and to modify the decree heretofore entered, so as to permit the defendants to use water from their wells which is available and to the extent to which their use will not deplete the supply available to and delivered to plaintiff's wells, and to continue the regulation of said wells in the Department of Reclamation until further order of this Court. In support of this motion, the defendants filed certain affidavits and a statement of measurements prepared by the Department of Reclamation of the State.

Plaintiff filed a counter-motion to modify the allowance of water provisionally permitted by the terms of the decree to be withdrawn by the defendant Edwards, and instead to require the defendant Edwards to permanently seal said well or in lieu thereof to install a control or stop valve in the main pipe which may be kept locked and under the control of the Commissioner of Reclamation. In support of the countermotion, plain-

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EXHIBIT
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tiff filed affidavits. [illegible] motion and countermotion were argued at the same time.

By paragraph XI of the decree this Court retained jurisdiction of this cause for a period of two years from the date thereof, to adjust the allowance of water permitted to be used from the wells of defendants in case it should thereafter appear from the records of measurement that more or less water than therein provisionally fixed [illegible] should be permitted to flow from the wells of defendants or any of them without infringement of the rights therein decreed in accordance with their respective priorities.

By the decree as affirmed by the Supreme Court, the plaintiff Silkey was decreed a prior right to the use of forty miners inches of water over all of the defendants, the defendant Edwards was allotted fifteen miners inches of water between October 1st and April 1st of each year and twenty miners inches of water between April 1st and October 1st of each year, and the other defendants were denied the use of their wells for the time being. The retention of jurisdiction by this Court was limited to the defendants only.

The questions then for consideration at this time are as follows:

First: Do the measurements taken by the Department of Reclamation during this two-year period which has intervened since the entry of the decree disclose facts sufficient to modify the decree heretofore entered, so far as same affects defendants?

Second: Do these measurements disclose a change in conditions sufficient to justify a further

series of measurements and the keeping open of the decree for a further period.

The Supreme Court of this state has seen fit to depart from both the common law rule and the so-called American rule in the treatment of the subject of percolating waters and to apply to subterranean flow percolating waters the same rules of priorities applied to surface waters. By the decree in this Court, affirmed in the Supreme Court, in this case, the rights of plaintiff have been adjudicated and determined. The attack made upon the decree at the hearing of defendants' motion was not based upon a determination of the duty of water under these wells; that is, as I understand it, that plaintiff's lands cannot efficiently handle and therefore do not need the quantity of water for which they have been given a prior right, but rather, upon the contention that these wells of plaintiff in their present condition will not flow and cannot produce forty miners inches of water.

From an examination of the briefs submitted in the Supreme Court and the motion for rehearing there made, it appears that the arguments here made were urged in the Supreme Court and by it considered before judgment was entered in the Supreme Court.

An examination of the table of measurements now submitted does not in my opinion show a state of facts sufficient to authorize a modification of the former decree.

Having no authority, as I take it, in this proceeding to reduce the amount of water awarded to plaintiff, I am of the opinion that this table of measurements does not show that a continuation of jurisdiction will accomplish any good purpose. There has been no material change in the capacity of the wells,

K-3

nor in their abili[illegible]ow. A continuation of the measurements does not appe[illegible]ified in view of the facts now before the Court, and would only mean that this litigation would be made interminable [illegible] any probable advantage gained for any of the parties involved.

I am therefore [illegible]e opinion that the decree as it now stands should be ma[illegible]manent. Both defendants' motion to retain jurisdiction [illegible]o modify the decree, as well as plaintiff's counter[illegible] will therefore be denied. This decision, however, do[illegible] foreclose the rights of the parties by proper action to [illegible]oce the terms of the decree.

In view of the [illegible], an order in accordance with this memorandum has been [illegible]ed as of June 8, 193[illegible], and copy thereof is herewith inclosed [illegible] your information.

DATED this 22d [illegible] of June, 1932.

Charles E. Cushman
District Judge.

K-4

HOFSTETTER LAW OFFICE

608 West Franklin Street
Boise, Idaho 83702
Dana@IdahoWaterLaw.com

Dana L. Hofstetter
Attorney at Law

Telephone: (208) 424-7800
Facsimile: (208) 424-8774

December 27, 2001

RECEIVED
DEC 27 2001
WATER RESOURCES
WESTERN REGION

Via Hand Delivery

Gary Spackman
c/o Sue Taylor
Western Region
Idaho Department of Water Resources
2735 Airport Way
Boise, Idaho 83705-5082

Re: Transfer Nos. 5875 and 5876

Dear Ms. Taylor:

I enclose for filing with the Idaho Department of Water Resources an original *Motion To Substitute Party and Memorandum in Support* and an original *Affidavit of Dana L. Hofstetter In Support of Motion to Substitute Party* for the above-referenced proceeding. I also enclose copies of both documents. After filing both originals, please conform the copies with today's filing date and return them to me in the enclosed self-addressed and stamped envelope. 12-27-01

Thank you for your assistance. If you have any questions or suggestions, please let me know.

Sincerely,

HOFSTETTER LAW OFFICE, LLC

Dana L. Hofstetter

CC: Garnette Monnie w/ enclosures

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RECEIVED
DEC 2 7 2001
WATER RESOURCES
WESTERN REGION

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

Attorney for the Estate of Paul Edwards
and the Edwards Family LLC

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR TRANSFER OF WATER RIGHT NOS. 63-00012, 63-00013, AND 63-00015 (TRANSFER NO. 5875) AND 63-31051 (TRANSFER NO. 5876) IN THE NAME OF THE TERTELING, COMPANY, INC.	**MOTION TO SUBSTITUTE PARTY AND MEMORANDUM IN SUPPORT**

Pursuant to Rules 202 and 260 of the Rules of Procedure of the Idaho Department of Water Resources, the Edwards Family LLC, 4106 Sand Creek, Boise, Idaho 83703, by and through its counsel of record, Dana L. Hofstetter, respectfully moves for an order granting substitution of the Edwards Family LLC for protestant Paul Edwards in this proceeding. This Motion is supported by the following Memorandum, the contemporaneously filed and served Affadavit of Dana L. Hofstetter in Support of Motion to Substitute Party and the record in this case. A hearing on this Motion is not requested unless the Hearing Officer or the Applicant, The Terteling Company, Inc., believes one is necessary.

MEMORANDUM

On December 29, 2000 Paul Edwards, together with his wife, Wilma Josephine Edwards, deeded land and water right nos. 63-00014, 63-05065 and 63-5067 to the Edwards Family LLC, an entity established to address estate planning matters.[1] *Affidavit of Dana L. Hofstetter In Support of Motion to Substitute Party.* Protection of these three water rights was the reason Paul Edwards had filed Protests in this proceeding shortly beforehand. See *Protests to Application for Transfer Nos. 5875 and 5876, Attachment A.* In July 2001, less than one year after filing the Protests and less than one year after transferring the water rights to the Edwards Family LLC, Paul Edwards passed away. *Affidavit of Dana L. Hofstetter In Support of Motion to Substitute Party.* As the successor in interest to Paul Edwards and as a result of his recent death, it is appropriate for the Edwards Family LLC to be substituted for Paul Edwards in this proceeding.

This substitution of party effectively would be a change of form, rather than a change of substance. The only change would be the name of the protestant. Garnette Monnie, Paul Edwards' daughter and the managing member of the Edwards Family LLC, has maintained an active role in this proceeding from the beginning, participating in all of the prehearing conferences and other meetings with the Applicant. *Affidavit of Dana L. Hofstetter In Support of Motion to Substitute Party.* The current hearing scheduling would not need to be

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[1] The warranty deed transferring the land noted that the conveyance included " all and singular the ... improvements, tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining, including, without limitation all water rights, the reversion and reversions, remainder and remainders, rents, issues and profits thereof ...." *Affidavit of Dana L. Hofstetter In Support of Motion to Substitute Party, Exhibit A.*

modified as a result of the substitution nor would any other changes in the proceeding be necessary. Id. The substitution simply is appropriate to reflect the current ownership of water right nos. 63-0014, 63-05065 and 63-05067 and should not affect the continuity of this proceeding by causing delays or by causing any other procedural or substantive changes.

CONCLUSION

For the foregoing reasons, the Edwards Family LLC respectfully requests that it be substituted for Paul Edwards as a party in this proceeding.

DATED this 27th day of December, 2001.

HOFSTETTER LAW OFFICE, LLC
For the Edwards Family LLC

By _____
Dana L. Hofstetter

CERTIFICATE OF SERVICE

I hereby certify that on the 27th day of December, 2001, I caused to be served copies of the foregoing **Motion To Substitute Party And Memorandum in Support** on the following persons by the methods indicated below:

John M. Marshall
Givens Pursley LLP
P.O. Box 2720
Boise, ID 83701-2720
✖ U.S. Mail ☐ Fed Ex ☐ Hand ✖ Fax

Dana L. Holstetter

E:\3006.1\5087

RECEIVED
DEC 27 2001
WATER RESOURCES
WESTERN REGION

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

Attorney for the Estate of Paul Edwards
and the Edwards Family LLC

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR TRANSFER OF WATER RIGHT NOS. 63-00012, 63-00013, AND 63-00015 (TRANSFER NO. 5875) AND 63-31051 (TRANSFER NO. 5876) IN THE NAME OF THE TERTELING, COMPANY, INC.	**AFFIDAVIT OF DANA L. HOFSTETTER IN SUPPORT OF MOTION TO SUBSTITUTE PARTY**

STATE OF IDAHO)
) ss.
COUNTY OF ADA)

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

(1) I am counsel of record for Paul Edwards and the Edwards Family LLC in this proceeding.

(2) Attached hereto as Exhibit A is a true and correct copy of the Warranty Deed dated December 29, 2000 by the terms of which Paul Edwards and his wife, Wilma Josephine Edwards, conveyed water right nos. 63-00014, 63-05065 and 63-05067 along with the associated land to the Edwards Family LLC, an Idaho limited liability company.

(3) Attached hereto as Exhibit B is a true and correct copy of the Articles of Organization for the Edwards Family LLC, that I printed on December 27, 2001 from the Idaho Secretary of State's internet web page. Paul Edwards and Wilma Josephine Edwards executed the Articles of Organization of the Edwards Family LLC as persons responsible for forming the limited liability company. It is my understanding that the Edwards Family LLC was established to address estate planning matters for Paul Edwards and Wilma Josephine Edwards.

(4) Attached hereto as Exhibit C is a true and correct copy of the Annual Report Form dated October 12, 2001 for the Edwards Family LLC, that I printed on December 27, 2001 from the Idaho Secretary of State's internet web page. It indicates that Garnette Monnie is the Managing Member of the Edwards Family LLC. Garnette Monnie is the daughter of Paul and Wilma Josephine Edwards.

(5) It is my understanding that Paul Edwards passed away on July 18, 2001.

(6) I anticipate that substitution of the Edwards Family LLC for Paul Edwards will have no material effect on this proceeding, either procedurally or substantively. Garnette Monnie, the managing member of the Edwards Family LLC, has maintained an active role in

this proceeding from the time of Protest filing to the present and has participated in all prehearing conferences and in all meetings with the Tertelings. There should be no need to change the current case scheduling as a result of this substitution of party.

FURTHER YOUR AFFIANT SAYETH NAUGHT.

DATED this 27th day of December, 2001.

DANA L. HOFSTETTER

SUBSCRIBED AND SWORN to before me this 27th day of December, 2001.

Notary Public in and for the State of Idaho

Residing at: Boise, Idaho

My Commission Expires: 10/11/2006

CERTIFICATE OF SERVICE

I hereby certify that on the 27th day of December, 2001, I caused to be served copies of the foregoing **Affidavit Of Dana L. Hofstetter In Support Of Motion To Substitute Party** on the following person by the methods indicated below:

John M. Marshall
Givens Pursley LLP
P.O. Box 2720
Boise, ID 83701-2720
✖ U.S. Mail ☐ Fed Ex ☐ Hand ✖ Fax

Dana L. Hofstetter

E:\3006.1\5090

ADA COUNTY RECORDER
J. DAVID NAVARRO
BOISE, IDAHO

RECORDED - REQUEST OF
Carl W. Harder
FEE 12.00 DEPUTY J. Hooper

WARRANTY DEED

2000 DE 29 PM 2:54 100104472

THIS INDENTURE is made December 29, 2000, by PAUL W. EDWARDS and WILMA JOSEPHINE EDWARDS, husband and wife ("Grantors"), and EDWARDS FAMILY LLC, an Idaho limited liability company ("Grantee").

AS PART OF THE FUNDING of Grantee, Grantors hereby grant, bargain, sell, convey and confirm to Grantee those certain parcels of real property situated in the County of Ada, State of Idaho, and more particularly described on Exhibit "A" attached to this Warranty Deed and incorporated by this reference;

TOGETHER with all and singular the buildings, structures, improvements, tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining, including, without limitation all water rights, the reversion and reversions, remainder and remainders, rents, issues and profits thereof;

SUBJECT TO all existing encumbrances, rights reserved by federal and state laws or in federal patents or state deeds; building or use restrictions, building and zoning regulations and ordinances of any governmental unit; easements of record; rights-of-way of record; taxes and assessments for the current year; exceptions that would be revealed by a physical inspection of the property; and liens or encumbrances created by or permitted to exist by Grantee;

TO HAVE AND TO HOLD said premises unto Grantee and its successors and assigns forever.

Grantors warrant to Grantee and its successors and assigns that Grantors are the owners of said premises in fee simple and that Grantors have the right and authority to convey the same to Grantee. Grantors covenant with Grantee and its successors and assigns that Grantors will defend said premises to the extent of the warranties herein against the lawful claims of all persons.

The current address of Grantee is 4106 Sand Creek Street, Boise, Idaho 83703.

IN WITNESS WHEREOF, this WARRANTY DEED has been duly executed by Grantors as of the day and year first above written.

Paul W Edwards
PAUL W. EDWARDS

Wilma Josephine Edwards
WILMA JOSEPHINE EDWARDS

EXHIBIT
tabbies
A

STATE OF IDAHO)
)
County of Ada)

On December 29, 2000, before me, Carl W. Harder, a Notary Public in and for said state, personally appeared PAUL W. EDWARDS and WILMA JOSEPHINE EDWARDS, husband and wife, known to me to be the persons whose names are subscribed to the within instrument, and acknowledged to me that they executed the same.

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

CARL W. HARDER NOTARY PUBLIC STATE OF IDAHO

Notary Public for Idaho
Residing at Boise, Idaho
My commission expires August 16, 2006

EXHIBIT "A"

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

#5 (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.

#4 (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.

#1 (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.

251

ARTICLES OF ORGANIZATION
LIMITED LIABILITY COMPANY

(Instructions on back of application)

FILED EFFECTIVE

DEC 29 1 41 PM '00

SECRE... STA... ...TE

1. The name of the limited liability company is: EDWARDS FAMILY LLC

2. The address of the initial registered office is: 516 S. CAPITOL BLVD., SUITE 224, BOISE, ID 83702 and the name of the initial registered agent at that address is: CARL W. HARDER

3. The mailing address for future correspondence: 4106 SAND CREEK STREET, BOISE, ID 83703

4. Management of the limited liability company will be vested in:

   Manager(s) [x] or Member(s) [ ] . (please check the appropriate box)

5. If management is to be vested in one or more manager(s), list the name(s) and address(es) of at least one initial manager. If management is to be vested in the members, list the name(s) and address(es) of at least one initial member.

Name	Address
PAUL W. EDWARDS	4106 SAND CREEK STREET, BOISE, ID 83703
W. JOSEPHINE EDWARDS	4106 SAND CREEK STREET, BOISE, ID 83703

6. Signature of at least one person responsible for forming the limited liability company:

Paul W Edwards

Josephine Edwards

IDAHO SECRETARY OF STATE
Secretary of State use only
12/29/2000 09:00
CK: 1055337 CT: 133960 BH: 369029
1 @ 100.00 = 100.00 ORGAN LLC # 2

W 13936

EXHIBIT
B

No. W 13936

Return to:
SECRETARY OF STATE
700 WEST JEFFERSON
PO BOX 83720
BOISE, ID 83720-0080

NO FILING FEE IF RECEIVED BY DUE DATE

Due no later than Dec 31, 2001
Annual Report Form

1. Limited Liability Company - Current Name (if applicable)
EDWARDS FAMILY LLC

4106 SAND CREEK ST

BOISE, ID 83703

2. Registered Agent and Office NO PO BOX
CARL W HARDER
516 S CAPITOL BLVD STE 224

BOISE, ID 83702

3. New Registered Agent Signature

4. Limited Liability Companies: Enter Names and Addresses of Managers.

Office held	Name	Street or P.O. Address	City	State	Zip
Managing Member	Garnette Nonnie	4021 Hill Rd	Boise	ID	83703

5. Organized Under the Laws of:
IDAHO
W 13936

6.
Signature Garnette Nonnie Date 10/17/01
Name (Type or Print) Garnette Nonnie Title owner

Issued 10/02/2001

Do Not Tape or Staple

3598

EXHIBIT
tabbies
C

GIVENS PURSLEY LLP

LAW OFFICES
277 North 6th Street, Suite 200
PO Box 2720, Boise, Idaho 83701
TELEPHONE: 208 388-1200
FACSIMILE: 208 388-1300
WEBSITE: www.givenspursley.com

Direct Dial: (208) 388-1234
E-Mail: s234@givenspursley.com

Gary G. Allen
Christopher J. Beeson
Michael C. Creamer
Emily MacMaster Durkee*
Thomas E. Dvorak
Roy Lewis Eiguren
Timothy P. Fearnside
Jeffrey C. Fereday
Amanda L. Keating
Karl T. Klein
Debora K. Kristensen
Anne C. Kunkel
Franklin G. Lee
David R. Lombardi
D. David Lorello, Jr.
Kevin T. Maloney
Kimberly D. Maloney
John M. Marshall
Kenneth R. McClure
Kelly Greene McConnell
Cynthia A. Melillo
Christopher H. Meyer
Kendall L. Miller
L. Edward Miller
Patrick J. Miller
Judson B. Montgomery
Angela K. Nelson
W. Hugh O'Riordan
Kenneth L. Pursley
Brad V. Sneed
Virginia L. Stukel
Conley E. Ward
Robert B. White

Raymond D. Givens
James A. McClure
Stephanie C. Westermeier
OF COUNSEL
*Licensed in California only

December 19, 2001

VIA US MAIL

Idaho Department of Water Resources
1301 N. Orchard
Boise, ID 83706

Re: Terteling Co. Inc.
Our File: 4465-7

Dear Clerk

Enclosed for filing, please find an original and one copy of NOTICE OF SERVICE. Please acknowledge receipt of this document by stamping the copy and returning it to me in the enclosed, self-addressed, stamped envelope. Please call me if you have any questions.

Sincerely,

Tina Smith

Tina N. Smith
Assistant to John M. Marshall

Enclosures
S:\CLIENTS\4465\7\Corr\2001-12-19 ltr clerk notice.doc

RECEIVED
DEC 2 0 2001
DEPARTMENT OF WATER RESOURCES

Jeffrey C. Fereday, ISB #2719
John M. Marshall, ISB #5628
GIVENS PURSLEY LLP
277 North 6th Street, Suite 200
P.O. Box 2720
Boise, ID 83701
(208) 388-1200
(208) 388-1300 (fax)

Attorneys for The Terteling Co.
S:\CLIENTS\4465\7\Discovery\Notice of Service.doc

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR TRANSFER OF WATER RIGHT NOS. 63-00012, 63-00013, 63-00015 (No. 68558) AND 63-31051 (No. 68559) IN THE NAME OF THE TERTELING CO. INC.	NOTICE OF SERVICE

The Terteling Co., Inc. ("Terteling") by and through its attorneys of record, Jeffrey C. Fereday and John M. Marshall of the firm Givens Pursley LLP, and pursuant to the Idaho Rules of Civil Procedure, hereby notifies Idaho Department of Water Resources that it served TERTELING'S FIRST DISCOVERY REQUESTS TO PROTESTANT EDWARDS to Dana L. Hofstetter, counsel for Protestant Edwards, via U.S. Mail on December 18, 2001.

Respectfully submitted this 18th day of December 2001.

GIVENS PURSLEY LLP

John M. Marshall

MICROFILMED

CERTIFICATE OF SERVICE

I hereby certify that on this 18th day of December 2001, I caused to be served a true and correct copy of the foregoing by the method indicated below, and addressed to the following:

Dana L. Hofstetter, Esq.
Hofstetter Law Offices
608 W. Franklin St.
Boise, ID 83702

X U.S. Mail
___ By hand
___ Overnight
___ Telecopy

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

X U.S. Mail
___ By hand
___ Overnight
___ Telecopy

John M. Marshall

MICRO

Jeffrey C. Fereday, ISB #2719
John M. Marshall, ISB #5628
GIVENS PURSLEY LLP
277 North 6th Street, Suite 200
P.O. Box 2720
Boise, ID 83701
(208) 388-1200
(208) 388-1300 (fax)

Attorneys for The Terteling Co.
S:\CLIENTS\4465\7\Discovery\Notice of Service.doc

RECEIVED
DEC 2 0 2001
WATER RESOURCES
WESTERN REGION

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR TRANSFER OF WATER RIGHT NOS. 63-00012, 63-00013, 63-00015 (No. 68558) AND 63-31051 (No. 68559) IN THE NAME OF THE TERTELING CO. INC.	NOTICE OF SERVICE

The Terteling Co., Inc. ("Terteling") by and through its attorneys of record, Jeffrey C. Fereday and John M. Marshall of the firm Givens Pursley LLP, and pursuant to the Idaho Rules of Civil Procedure, hereby notifies Idaho Department of Water Resources that it served TERTELING'S FIRST DISCOVERY REQUESTS TO PROTESTANT EDWARDS to Dana L. Hofstetter, counsel for Protestant Edwards, via U.S. Mail on December 18, 2001.

Respectfully submitted this 18th day of December 2001.

GIVENS PURSLEY LLP

John M. Marshall

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Dana L. Hofstetter, Esq.
Hofstetter Law Offices
608 W. Franklin St.
Boise, ID 83702

X U.S. Mail
___ By hand
___ Overnight
___ Telecopy

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

X U.S. Mail
___ By hand
___ Overnight
___ Telecopy

John M. Marshall

Jeffrey C. Fereday, ISB #2719
John M. Marshall, ISB #5628
GIVENS PURSLEY LLP
277 North 6th Street, Suite 200
P.O. Box 2720
Boise, ID 83701
(208) 388-1200
(208) 388-1300 (fax)

Attorneys for The Terteling Co.
S:\CLIENTS\4465\7\First discovery to Edwards.doc

RECEIVED
DEC 19 2001
WATER RESOURCES
WESTERN REGION

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR TRANSFER OF WATER RIGHT NOS. 63-00012, 63-00013, 63-00015 (No. 68558) AND 63-31051 (No. 68559) IN THE NAME OF THE TERTELING CO. INC.	TERTELING'S FIRST DISCOVERY REQUESTS TO PROTESTANT EDWARDS

The Terteling Co., Inc. ("Terteling") requests that Protestant Paul Edward (Edwards' Greenhouses) ("Edwards") answer, under oath, the following Interrogatories and Requests for Admission and serve a written response to the following Requests for Production of Documents within fifteen (15) days from the date of service hereof.

PRELIMINARY STATEMENT

1. In answering these Interrogatories, Requests for Admission, and Requests for Production, furnish all information available to you, including information in the possession of your attorneys (and investigators, employees, experts, etc., retained by you and your attorneys), not merely information known of your own personal knowledge.

2. If you cannot answer the following Interrogatories in full after exercising due diligence to secure the information to do so, answer to the extent possible, specify your inability to answer the remainder, and state whatever information and knowledge you have concerning the unanswered portion.

MICROFILMED
DEC 2 2 2002

3. Your answers to the following Interrogatories are to be supplemented as additional information and knowledge becomes available to you pursuant to the Idaho Rules of Civil Procedure.

4. This Request includes all Documents in your possession or under your control, including Documents in the possession of your attorneys, accountants, expert witnesses or other agents or persons from whom you have a legal right to obtain such Document.

5. All responsive Documents shall be produced as they are kept in the usual course of business or shall be organized and labeled to correspond with the categories of this request.

6. If, after responding to this request you acquire any Documents requested herein, or any information related to any Document herein, which is not reflected by any Documents produced or any response to these requests, you must file a supplemental response.

7. If any information which is requested herein is or will be withheld from production, inspection or copying (whether because it is claimed to be work product, communication from attorney to client, or is entitled to be withheld for any other reason) you shall make the claim expressly and shall describe the nature of the documents, communications, or things not produced or disclosed in a manner that will enable Terteling to assess the applicability of the privilege or protection. In addition, if any document is practically impossible of production, inspection, or copying, please fully identify such document and the reason for the practical impossibility.

8. Terteling requests that you serve answers to these interrogatories and requests for admission within fifteen (15) days of the date of service hereof. Terteling further requests that you serve responses to these Requests for Production and produce each of

the documents requested, or in the alternative provide copies of the documents requested, at the office of Givens Pursley LLP, 277 N. 6th Street, Boise, Idaho 83702 within fifteen (15) days of the date of service hereof.

DEFINITIONS

1. The term "you" and "your" means Edwards, its agents, or any of its representatives.

2. "Document" means and includes any and all tangible things and papers, whether written, recorded, graphic, typewritten, printed, photographed or otherwise produced or reproduced, and whether produced manually or by mechanical, electrical, electronic, other artificial process or a combination of these methods. The term "Document" includes, without limitation, originals and all copies no matter how or by whom prepared and all drafts.

3. "Identify" when used with respect to a person means to provide such person's full name, occupation, mailing and physical address, and telephone number.

4. "Person" means and includes any natural person, partnership, corporation, joint venture or other form of entity, and any combinations thereof.

5. "Protest" means the Protests filed on your behalf to Transfer Nos. 68558 and 68559.

6. "IDWR" means the Idaho Department of Water Resources.

7. "Transfer" means the Applications for Transfer Nos. 68558 and 68559.

INTERROGATORIES AND REQUESTS FOR ADMISSION

INTERROGATORY 1: Please identify who participated in drafting the answers to these interrogatories.

INTERROGATORY 2: Please identify each person having personal knowledge relating to the Application and/or Protest, and for each person, state in detail the factual substance of his or her personal knowledge.

INTERROGATORY 3: Please identify all witnesses you will call at the hearing in this matter.

INTERROGATORY 4: Please identify each expert witness you will call at the hearing in this matter, and for each please state:

(1) the subject matter on which the expert will testify;

(2) the substance of the opinions the expert is expected to testify about;

(3) the underlying facts and data upon which the expert opinions are based; and

(4) the education and/or experience that qualifies the witness as an expert.

INTERROGATORY 5: Please identify all documents and/or exhibits you or any of your witnesses, including experts, are going to use at the hearing in this matter.

INTERROGATORY 6: For each water right that authorizes you to use water on your property, please identify:

(1) the water right number,

(2) the details of how you divert and use water pursuant to that right, including but not limited to the quantity of water used, both the diversion rate and average annual diversion volume, and when, where and for what purpose you use it, including the specific times during the year when you use the water; and

(3) any changes you or any previous owner of your property have made to the way water is used.

INTERROGATORY 7: Do you believe that the Transfer will reduce the quantity of water you divert under any of your water rights, and if yes; for each water right, please identify all the facts that support this conclusion?

INTERROGATORY 8: Do you believe that the Transfer will result in you having to change the method or location of the diversion for any of your water rights?

INTERROGATORY 9: If your answer to Interrogatory 8 was yes, for each water right, please identify all facts that support this conclusion.

INTERROGATORY 10: Do you believe that the Transfer will result in you having to change the timing of the diversion for any of your water rights?

INTERROGATORY 11: If your answer to Interrogatory 10 was yes, for each water right, please identify all facts that support this conclusion.

INTERROGATORY 12: Please identify any instances in the past where you have had to alter the timing, method, or location of the diversion of any of your water rights, and for each instance, identify what you believe was the cause for the alteration.

INTERROGATORY 13: Do you believe that the Transfer will result in an increase in your cost of diverting water?

INTERROGATORY 14: If your answer to Interrogatory 13 was yes, for each water right, please identify all facts that support this conclusion.

INTERROGATORY 15: Do you believe that the Transfer will result in an enlargement of any of the rights proposed for transfer?

INTERROGATORY 16: If your answer to Interrogatory 15 was yes, for each water right, please identify all facts that support this conclusion.

INTERROGATORY 17: Please identify any instances in the past where the quantity of water available for diversion has been reduced below the diversion rate

authorized by your water rights, and for each instance, identify what you believe was the cause for the alteration.

REQUEST FOR ADMISSION 1: Please admit that the Transfer is consistent with the conservation of water resources in the State of Idaho.

REQUEST FOR ADMISSION 2: Please admit that the Transfer is in the public interest.

INTERROGATORY 18: If you deny Request for Admission 1 or 2, please identify why you believe the Transfer is not consistent with the conservation of water resources in the State of Idaho and/or is not in the public interest?

REQUEST FOR PRODUCTION OF DOCUMENTS

REQUEST FOR PRODUCTION 1: Any documents you identified in your responses to the Interrogatories or Requests for Admission above.

REQUEST FOR PRODUCTION 2: Any documents relating to the diversion and use of your water rights

REQUEST FOR PRODUCTION 3: Any documents relating to the diversion and use of the rights listed in the Transfer.

REQUEST FOR PRODUCTION 4: Any other documents in your possession that relate to this Transfer or your Protest to the Transfer.

REQUEST FOR PRODUCTION 5: A copy of any document indicating the structure and organization of your business, including but not limited to articles of organization, operating agreement(s), bylaws, or articles of incorporation.

Respectfully submitted this 18th day of December 2001.

GIVENS PURSLEY LLP

John M. Marshall

CERTIFICATE OF SERVICE

I hereby certify that on this 18th day of December 2001, I caused to be served a true and correct copy of the foregoing by the method indicated below, and addressed to the following:

Dana L. Hofstetter, Esq.
Hofstetter Law Offices
608 W. Franklin St.
Boise, ID 83702

X U.S. Mail
___ By hand
___ Overnight
___ Telecopy

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

X U.S. Mail
___ By hand
___ Overnight
___ Telecopy

John M. Marshall

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE

STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR TRANSFER OF WATER RIGHT NOS. 63-00012, 63-00013, AND 63-00015 (TRANSFER NO. 5875) AND 63-31051 (TRANSFER NO. 5876) IN THE NAME OF THE TERTELING COMPANY, INC.	)	**NOTICE OF HEARING**

On October 2, 2000, The Terteling Co., Inc. filed with the Department of Water Resources (IDWR) two applications for transfer of water rights. The applications were protested by Paul Edwards (Edwards' Greenhouses). The pre-hearing conferences held by IDWR on April 26, 2001 and on July 19, 2001 did not resolve the matter of protest.

IDWR has scheduled the matter for hearing on **Tuesday, Wednesday and Thursday, February 26, 27 and 28, 2002, in conference rooms A & B, ID Department of Water Resources, 1301 N. Orchard, Boise, Idaho 83706.** The hearing will begin at 9:00 a.m. on February 26, 2002. The hearing will be held in accordance with provisions of Chapters 2 and 17, Title 42 and Chapter 52, Title 67, Idaho Code and the adopted Rules of Procedure of the Department. A copy of the rules may be obtained from IDWR upon request. The presiding officer at the hearing will be Gary Spackman.

Discovery shall be completed on or before January 31, 2002.

The parties shall exchange prospective exhibits and witness lists on or before February 19, 2002. The parties shall mark their prospective exhibits for identification prior to the exchange. The applicant shall mark prospective exhibits with consecutive numbers. The protestant shall mark prospective exhibits with upper case alpha characters. If the protestant uses all available alpha characters, double alpha characters shall be used. (AA, BB, CC, etc.)

IDAPA Rule of Procedure 37.01.01.606 requires that you provide a copy of exhibits to each party and to the presiding officer.

MICROFILMED

The hearing will be conducted in a facility that meets the accessibility requirements of the Americans with Disabilities Act. If you require special accommodations in order to attend, participate in or understand the hearing, please advise the department within ten (10) days prior to the hearing.

All parties to the matter will have the opportunity to respond and present information and argument on all issues involved.

Dated this 20th day of November, 2001.

GARY SPACKMAN

CERTIFICATE OF MAILING

I hereby certify that on the 21st day of November, 2001, I mailed a true and correct copy, postage prepaid, of this Notice of Hearing to the following:

Sue Taylor
Senior Secretary

CERTIFIED MAIL

THE TERTELING CO INC
C/O JOHN M MARSHALL
GIVENS PURSLEY LLP
PO BOX 2720
BOISE ID 83701-2720

PAUL EDWARDS
C/O BEEMAN & HOFSTETTER PC
~~PO BOX 1427~~
BOISE ID 8370~~1-1427~~
changed 11-26-01 ST

MICROFILMED

CONFERENCE AND HEARING PROCEDURE

APPLICATION FOR TRANSFER

Section 42-222, Idaho Code, requires the department to consider the following issues in connection with an application for transfer:

1) Will the proposed transfer injure other water rights?

2) Will the proposed transfer constitute an enlargement in use of the original right?

3) Is the proposed transfer in the local public interest, where local public interest is defined as the affairs of the people in the area directly affected by the proposed use?

4) Is the proposed use contrary to conservation of water resources within the state of Idaho?

BURDEN OF PROOF

The applicant has the initial burden of proof of issues 1, 2 and 4 above and must provide evidence for the department to evaluate these criteria.

The initial burden of proof on issue 3 above lies with both the applicant and protestant as to factors which they are most knowledgeable and cognizant. The applicant has the ultimate burden of persuasion, however, for this issue.

PROCEDURE

The department generally conducts an informal conference with the parties to determine the issues and to try to settle a protested matter before a hearing is scheduled. If a hearing is held, the department will issue a written decision based on the hearing record.

CONFERENCE

The purpose of a prehearing conference is to provide the opportunity for the parties and the department to familiarize themselves with a contested matter and to attempt to resolve the matter. At the conference, the department may also formulate and simplify the issues, identify documents to avoid unnecessary proof, exchange proposed exhibits or prepared testimony, limit witnesses, discuss settlement offers, schedule hearings, establish procedure at hearings and address other matters that may expedite orderly conduct and disposition of the proceeding or its settlement.

MICROFILMED

HEARING

The department will tape record the hearing. Copies of a hearing tape are available upon written request and the payment of the cost of reproducing the tape.

The hearing likely will be conducted by a hearing officer appointed by the Director rather than the Director himself. If so, the hearing officer will prepare a recommended order for the Director's consideration. Parties can file exceptions to a recommended order, briefs in support of the exceptions or may request oral argument. Parties may seek judicial review of any final order issued by the Director.

Parties may, by written stipulation, waive their right to a recommended order, particularly when a shortened decision process is desirable or necessary. Such a waiver does not eliminate any rights of the parties in connection with the final order of the Director and judicial review of the order.

EXHIBITS

A party who plans to offer an exhibit as part of the hearing record must provide a copy of the proposed exhibit to the parties and to the hearing officer prior to any scheduled hearing.

AMERICANS WITH DISABILITIES ACT

Any hearing scheduled will be conducted in a facility which meets the accessibility requirements of the Americans with Disabilities Act. If you require special accommodations in order to attend, participate in or understand the hearing please advise the department within ten (10) days prior to the hearing.

HOFSTETTER LAW OFFICE

608 West Franklin Street
Boise, Idaho 83702

Dana@IdahoWaterLaw.com

Dana L. Hofstetter
Attorney at Law

Telephone: (208) 424-7800
Facsimile: (208) 424-8774

October 17, 2001

RECEIVED
OCT 18 2001
WATER RESOURCES
WESTERN REGION

Via Facsimile and U.S. Mail

Gary Spackman
Western Region
Idaho Department of Water Resources
2735 Airport Way
Boise, Idaho 83705-5082

Re: Water Right Transfer Nos. 5875 and 5876

Dear Mr. Spackman:

Due to the schedules of the Tertelings and their counsel, it appears that the hearing in the above-referenced matter cannot be held until February 2002. While we desire to accommodate these schedules, I note that issues concerning the use of new data may arise as a result of the scheduling of the hearing during the next heating season.

If the hearing covers all information up to the date of the hearing, there may not be adequate time to address this new data through discovery or through the assessment of aquifer impacts. Therefore, if a February hearing date is scheduled, we would request that a data cut off date also be scheduled well in advance of any discovery deadline to ensure that any data that may arise can be adequately addressed through discovery, can be properly evaluated prior to hearing and also can be subject to pre-hearing motions.

While we seek to have adequate time to evaluate any new data that may arise, we also recognize that some of this data may have little relevancy in the upcoming proceeding. Recent changes in wells and/or pumps may have improved historic diversion capacities. Due to these changes, we expect that diversion data from the upcoming season actually may be of little value in assessing historic diversions and it may be appropriate simply to exclude from the proceeding certain data from the upcoming heating season. Therefore, in any event, we will reserve the right to seek to exclude from the scope of this proceeding data from the upcoming heating season.

MICROFILMED
OCT 26 2001

A hearing during the last week of February would be preferable for us to one in early or mid-February. The pre-Valentine's Day season is a busy one for Edwards Greenhouses and I will be in Utah in mid-February. Please let me know if you have any questions about the matters in this letter. Thank you for your consideration.

Sincerely,

HOFSTETTER LAW OFFICE

Dana L. Hofstetter

cc: John Marshall
Garnette Monnie
Terry Scanlan
E:\3006\5062

MICROFILMED
OCT 2 6 2001

GIVENS PURSLEY LLP

LAW OFFICES
277 North 6th Street, Suite 200
PO Box 2720, Boise, Idaho 83701
TELEPHONE: 208 388-1200
FACSIMILE: 208 388-1300
WEBSITE: www.givenspursley.com

Direct Dial: (208) 388-1270
E-Mail: jmm@givenspursley.com

Gary G. Allen
Christopher J. Beeson
Michael C. Creamer
Thomas E. Dvorak
Roy Lewis Eiguren
Timothy P. Fearnside
Jeffrey C. Fereday
Amanda L. Keating
Karl T. Klein
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Brad V. Sneed
Virginia L. Stukel
Conley E. Ward
Robert B. White

Raymond D. Givens
James A. McClure
Stephanie C. Westermeier
OF COUNSEL

RECEIVED
SEP 12 2001
WATER RESOURCES
WESTERN REGION

September 11, 2001

VIA US MAIL

Gary Spackman
Idaho Department of Water Resources
2735 Airport Way
Boise, Idaho 83701

Re: Hearing Dates for Edwards' Protests to Terteling Co., Inc. Transfers
Our File: 4465-7

Dear Gary:

Thank you for your letter dated September 4, 2001 requesting available dates for hearing in this matter. The Terteling Co., Inc. is unavailable for a hearing any time during the months of November and December. The Tertelings will be out of the country for a good part of December and I have scheduling deadlines in four other matters throughout November and early December that preclude my availability for hearing during this time. Accordingly, we request that the Department set this matter for hearing in February, which is the first time the Tertelings, their attorneys and experts are all available.

Sincerely,

John M. Marshall

JMM
cc: The Terteling Co., Inc.
S:\CLIENTS\4465\7\Corr\JM ltr to Spackman re hearing date.doc

MICROFILMED
SEP 12 2001

HOFSTETTER LAW OFFICE

608 West Franklin Street
Boise, Idaho 83702
Dana@IdahoWaterLaw.com

Dana L. Hofstetter
Attorney at Law

Telephone: (208) 424-7800
Facsimile: (208) 424-8774

September 7, 2001

RECEIVED
SEP 10 2001
WATER RESOURCES
WESTERN REGION

Gary Spackman
Western Region
Idaho Department of Water Resources
2735 Airport Way
Boise, Idaho 83705-5082

Re: Water Right Transfer Nos. 5875 and 5876

Dear Mr. Spackman:

In response to your September 4, 2001 letter, I enclose calendars for November and December 2001 with X's marking Terry Scanlan's, Garnette Monnie's and my unavailable dates. Please let us know if you need any additional information.

Thank you for your attention to this matter.

Sincerely,

HOFSTETTER LAW OFFICE

Dana L. Hofstetter

Enclosures
cc: Garnette Monnie (w/ enclosures)
Terry Scanlan (w/ enclosures)
E:\3006\5030

MICROFILMED
OCT 3 0 2002

November

Sun	*Mon*	*Tue*	*Wed*	*Thu*	*Fri*	*Sat*
				1	2	3
4	5	6	7	8	9	10
11	12	13	14	15	16	17
18	19	20	21	22	23	24
25	26	27	28	29	30	

2001

December

Sun	Mon	Tue	Wed	Thu	Fri	Sat
						1
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9	10	11	12	13	14 X	15
16	17 X	18 X	19 X	20 X	21 X	22
23	24 X	25 X	26 X	27 X	28 X	29
30	31 X					

2001

State of Idaho
DEPARTMENT OF WATER RESOURCES
Western Region, 2735 Airport Way, Boise, Idaho 83705-5082 - (208) 334-2190
FAX (208) 334-2348

DIRK KEMPTHORNE
Governor

KARL J. DREHER
Director

September 4, 2001

THE TERTELING CO INC
C/O JOHN MARSHALL
GIVENS PURSLEY LLP
PO BOX 2720
BOISE ID 83701-2720

PAUL EDWARDS
C/O DANA HOFSTETTER
608 W FRANKLIN ST
BOISE ID 83702

Ladies and Gentlemen:

Enclosed are calendars for the months of November and December, 2001. Please mark dates you are **unavailable** during the two months and return them within two weeks of receiving this letter. After the expiration of two weeks, this office will shortly schedule a hearing if the matter is not resolved informally.

If this office can be of further assistance, please contact us.

Sincerely,

Gary Spackman

Gary Spackman

GS:st

Encl: Calendars

MEMORANDUM

To: Application for Transfer File Nos. 68558 and 68559 in the Name of Terteling Co. (Water Right Nos. 63-00012, 00013, 00015, & 63-31051)

From: Gary Spackman

Re: The Prehearing Conference and Hearing

Date: August 24, 2001

On July 19, 2001, I conducted a prehearing conference for the above protested applications for transfer. The applicant, the protestant, and their respective attorneys attended. The parties attempted to negotiate a settlement. At the end of the prehearing conference, the parties felt that a settlement had been tentatively reached. I received a telephone call the next day, and was told the parties had continued to meet and had, in principle, agreed to settle the protest to the contested case. I left the hearing scheduled in case the settlement was not successful. I did not hear anything from the parties verbally or in writing until approximately one week before the hearing scheduled for August 22, 2001. Dana Hofstetter, attorney for Paul Edwards, the protestant, called and stated that the settlement negotiations were unsuccessful, but that the hearing was scheduled without sufficient time for preparation. I also received a telephone call from John Marshall, attorney for the Terteling Co., who agreed that the hearing should be postponed. As a result, the hearing was not held.

John Marshall told me he would discuss prospective hearing dates with Dana Hofstetter, and would communicate with me. This file should be held for a period of two weeks, and should be called up for further review.

HOFSTETTER LAW OFFICE
608 West Franklin Street
Boise, Idaho 83702
Phone: (208) 424-7800
Fax: (208) 424-8774
E-Mail: Dana@IdahoWaterLaw.com

FAX COVER SHEET

DATE: August 13, 2001

TO: Gary Spackman Fax: 334-2348

FROM: Dana Hofstetter

RE: Tertling Transfers

MESSAGE: _____

The information contained in this facsimile may be confidential information or attorney work product or both and is for the exclusive use of the intended recipient listed above. Any reading, disclosure, use or reproduction of this communication other than by the intended recipient is prohibited. If you have received this communication in error, please notify us by collect telephone call immediately and return the communication to us by U. S. Mail.

NUMBER OF PAGES BEING TRANSMITTED (INCLUDING THIS PAGE) = 3

IF ALL PAGES ARE NOT RECEIVED, PLEASE CALL **(208) 424-7800.**

ORIGINAL BY MAIL: YES ____ NO X

MICROFILMED

HOFSTETTER LAW OFFICE

608 West Franklin Street
Boise, Idaho 83702
Dana@IdahoWaterLaw.com

Dana L. Hofstetter
Attorney at Law

Telephone: (208) 424-7800
Facsimile: (208) 424-8774

August 10, 2001

Via Facsimile 388-1300

John Marshall
Givens Pursley LLP
P.O. Box 2720
Boise, ID 83701-2720

Re: The Terteling Company's Water Right Transfer Nos. 5875 and 5876

Dear John:

I received your letter by facsimile earlier today. At this point, I don't think it is realistic to proceed with a hearing on August 22. We have been focusing our collective energies on finalizing the written terms of the settlement our clients reached in principle on July 24 and 25, rather than conducting discovery or otherwise preparing for hearing. We are very close to finalizing the written agreement and I believe we should continue to focus on that. If, for some reason, we do not finalize the settlement next week, at that point there would not be sufficient time to prepare for a hearing on the August 22 and I would need to ask the Department to extend the hearing date. However, I believe that we are very close to finalizing the settlement document and a hearing likely will not be necessary.

Sincerely,

HOFSTETTER LAW OFFICE

Dana L. Hofstetter

DLH:sh
cc: Gary Spackman
E:\3006\5005

GIVENS PURSLEY LLP

LAW OFFICES
277 North 6th Street, Suite 200
PO Box 2720, Boise, Idaho 83701
TELEPHONE: 208 388-1200
FACSIMILE: 208 388-1300
WEBSITE: www.givenspursley.com

Gary G. Allen
Christopher J. Beeson
Michael C. Creamer
Thomas E. Dvorak
Roy Lewis Eiguren
Jacqueline M. Fearnside
Timothy F. Fearnside
Jeffrey C. Fereday
Amanda L. Keeling
Karl T. Klein
Debora K. Kristensen
Franklin B. Lee

David R. Lombardi
D. Bond Lovelle, Jr.
Kevin T. Maloney
Kimberly D. Maloney
John M. Marshall
Kaymish R. McClure
Kelly Greene McConnell
Cynthia A. Melillo
Christopher H. Meyer
Kendall L. Miller
L. Edward Miller
Patrick J. Miller

Judson B. Montgomery
Angela K. Nelson
W. Hugh O'Riordan
Kenneth L. Pursley
Virginia L. Sudan
Conley Ward
Stephanie C. Westermeier
Robert B. White

Raymond D. Givens
James A. McClure
OF COUNSEL

Direct Dial: (208) 388-1279
E-Mail: jmm@givenspursley.com

August 10, 2001

VIA FACSIMILE

Dana L. Hofstetter, Esq.
Hofstetter Law Offices
608 W. Franklin Street
Boise, ID 83702

Re: Terteling Co., Inc. Transfer Applications
Our File: 4465-7

Dear Dana:

Pursuant to our agreed upon scheduling order in this matter, all notices of deposition are due to opposing parties today. The Terteling Co., Inc. has determined that it does not seek to depose any witnesses in preparation for the hearing scheduled for August 22 2001. Of course, we are hopeful that we can finalize the settlement agreement prior to the date set for hearing.

Sincerely,

John M. Marshall

JMM/nlg
cc: The Terteling Company
S:\CLIENTS\4465\7\Corr\JMMltrtoDonarenewsettlementprop

RECEIVED
2001 AUG 13 PM 2:02

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE

STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR TRANSFER OF WATER RIGHT NOS. 63-00012, 63-00013, 63-00015 (TRANSFER NO. 68558) AND 63-31051 (TRANSFER NO. 68559) IN THE NAME OF THE TERTELING COMPANY, INC.	**NOTICE OF PREHEARING CONFERENCE AND NOTICE OF HEARING**

On October 2, 2000, The Terteling Co., Inc. filed with the Department of Water Resources (Department) two applications for transfer of water rights. The applications were protested by Paul Edwards (Edwards' Greenhouses). The prehearing conference held on April 26, 2001 did not resolve the matter of protest.

The Department has set the contested case for a second prehearing conference to be held on **Thursday, July 19, 2001, at 2:00 p.m. at the Idaho Department of Water Resources, Western Region, 2735 Airport Way, Boise, Idaho 83705.**

The Department has also scheduled the matter for hearing to be held on **Wednesday and Thursday, August 22 and 23, 2001, at the State Office of the Idaho Department of Water Resources, 1301 N. Orchard, upstairs conference rooms A & B, Boise, Idaho 83706. The hearing will begin at 9:00 a.m. each day.**

The prehearing conference and the hearing will be held in accordance with provisions of Chapters 2 and 17, Title 42 and Chapter 52, Title 67, Idaho Code and the adopted Rules of Procedure of the Department. A copy of the rules may be obtained from IDWR upon request. The presiding officer at the hearing will be Gary Spackman.

The prehearing conference and the hearing will be conducted in a facility that satisfies the accessibility requirements of the Americans with Disabilities Act. If you require special accommodations in order to attend, participate in or understand the conference, please advise the department (10) days prior to the conference.

Dated this 6th day of July, 2001.

Gary Spackman

CERTIFICATE OF MAILING

I hereby certify that on the 6th day of July, 2001 I mailed a true and correct copy, postage prepaid, of this Notice of Prehearing Conference to the applicant(s) and protestant(s) listed:

Sue Taylor
Senior Secretary

THE TERTELING CO INC
C/O JOHN M MARSHALL
GIVENS PURSLEY LLP
PO BOX 2720
BOISE ID 83701-2720

PAUL EDWARDS
C/O BEEMAN & HOFSTETTER PC
PO BOX 1427
BOISE ID 83701-1427

CONFERENCE AND HEARING PROCEDURE

APPLICATION FOR TRANSFER

Section 42-222, Idaho Code, requires the department to consider the following issues in connection with an application for transfer:

1) Will the proposed transfer injure other water rights?

2) Will the proposed transfer constitute an enlargement in use of the original right?

3) Is the proposed transfer in the local public interest, where local public interest is defined as the affairs of the people in the area directly affected by the proposed use?

4) Is the proposed use contrary to conservation of water resources within the state of Idaho?

BURDEN OF PROOF

The applicant has the initial burden of proof of issues 1, 2 and 4 above and must provide evidence for the department to evaluate these criteria.

The initial burden of proof on issue 3 above lies with both the applicant and protestant as to factors which they are most knowledgeable and cognizant. The applicant has the ultimate burden of persuasion, however, for this issue.

PROCEDURE

The department generally conducts an informal conference with the parties to determine the issues and to try to settle a protested matter before a hearing is scheduled. If a hearing is held, the department will issue a written decision based on the hearing record.

CONFERENCE

The purpose of a prehearing conference is to provide the opportunity for the parties and the department to familiarize themselves with a contested matter and to attempt to resolve the matter. At the conference, the department may also formulate and simplify the issues, identify documents to avoid unnecessary proof, exchange proposed exhibits or prepared testimony, limit witnesses, discuss settlement offers, schedule hearings, establish procedure at hearings and address other matters that may expedite orderly conduct and disposition of the proceeding or its settlement.

HEARING

The department will tape record the hearing. Copies of a hearing tape are available upon written request and the payment of the cost of reproducing the tape.

The hearing likely will be conducted by a hearing officer appointed by the Director rather than the Director himself. If so, the hearing officer will prepare a recommended order for the Director's consideration. Parties can file exceptions to a recommended order, briefs in support of the exceptions or may request oral argument. Parties may seek judicial review of any final order issued by the Director.

Parties may, by written stipulation, waive their right to a recommended order, particularly when a shortened decision process is desirable or necessary. Such a waiver does not eliminate any rights of the parties in connection with the final order of the Director and judicial review of the order.

EXHIBITS

A party who plans to offer an exhibit as part of the hearing record must provide a copy of the proposed exhibit to the parties and to the hearing officer prior to any scheduled hearing.

AMERICANS WITH DISABILITIES ACT

Any hearing scheduled will be conducted in a facility which meets the accessibility requirements of the Americans with Disabilities Act. If you require special accommodations in order to attend, participate in or understand the hearing please advise the department within ten (10) days prior to the hearing.

FAX COVER SHEET

JOHN M. MARSHALL
GIVENS PURSLEY LLP
Suite 200, Park Place
277 North Sixth Street
Post Office Box 2720
Boise, Idaho 83701-2720
Telephone: 208-388-1287
Fax: 208-388-1300
Email: jmm@givenspursley.com
Website: www.givenspursley.com

DATE: Tuesday, June 19, 2001

PAGES (INCLUDING COVER): 3

ORIGINAL TO FOLLOW: No

RE: **The Terteling Co., Inc Application for Transfer Numbers 68558 and 68559**
Client/Matter No.: 4465/7

TO: Gary L. Spackman
Western Regional Director
Idaho Department of Water Resources
2735 Airport Way
Boise, Idaho 83705-5082
Telephone No.: 334-2190

SEND TO FAX PHONE: (334-2348)

MESSAGE:

Please see attached.

-John M. Marshall

cc: The Terteling Co., Inc. (via facsimile 381-5200)
Dana Hofstetter (via facsimile 388-8400)

If this fax does not transmit fully or is difficult to read, please contact Tina at (208) 388-1256.

CONFIDENTIALITY NOTICE

This facsimile may contain confidential information that is protected by the attorney-client or work product privilege. It is intended only for the use of the individual(s) named above. If you are not a named recipient or an employee responsible for delivering the facsimile, you are instructed not to deliver, distribute or copy this facsimile, nor should you disclose its contents or take any action in reliance on the information it contains. If you have received this facsimile in error, please notify us immediately by telephone to arrange for the return of the transmitted documents to us. Thank you.

S:\CLIENTS\4465\7\Fax\Spackman - JMM.dot

GIVENS PURSLEY LLP

LAW OFFICES
277 North 6th Street, Suite 200
PO Box 2720, Boise, Idaho 83701
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Kenneth L. Pursley
Virginia L. Stukel
Conley Ward
Stephanie C. Westermeier
Robert B. White
Raymond D. Givens
James A. McClure
(OF COUNSEL)

June 19, 2001

VIA FACSIMILE

Gary L. Spackman
Western Region Director
Idaho Department of Water Resources
2735 Airport Way
Boise, ID 83705-5082

Re: The Terteling Co, Inc. Application For Transfer Numbers 68558 and 68559
Our File: 4465-7

Dear Gary:

I write on behalf of the Terteling Co., Inc. ("Terteling") to formally request that the Department promptly set a hearing date for the protests filed by Edwards' Greenhouses to Terteling's transfer applications. Terteling requests that the Department schedule this hearing as quickly as possible, preferably at end of July or early August at the latest. Terteling also believes that a second pre-hearing conference would benefit the parties.

I understand that the Department is working with Edwards and their attorneys to identify a hearing date late in August or September. We specifically request that the hearing on this matter occur sooner. Terteling has patiently worked through processing delays, publication errors and previous unavailability of the Protestant in this application and protest process. As a result, the transfer applications are nearly nine months old.

MICROFILMED
OCT 3 0 2001

The proposed transfers directly affect significant capital investments made by Terteling. It needs to know where to build its greenhouses. Unless this matter is scheduled for hearing soon, Terteling's investment will sit idle during the upcoming heating season.

Terteling has tried to settle with the Protestant, and it still holds out hope that settlement is possible. However, after waiting several weeks for a response from Edwards to a written proposal, Terteling is not confident that a hearing can be avoided. A hearing set near the end of July or early August would give the parties over six weeks to prepare for hearing. We can see no reason why this is not enough time. The parties have already exchanged information and engaged in extensive discussions about the proposed transfers and the protests. A pre-hearing conference in the interim would serve only as an opportunity to settle and would not interfere with preparation for hearing. This conference should be set late this month or in early July.

Our law firm is available anytime in July or early August to participate in the hearing. The Tertelings hydrogeologist, who is essential to the hearing, will be out July 26 through August 2. We look forward to a hearing from you soon.

Sincerely,

John M. Marshall

JMM/tma
cc: The Terteling Co., Inc. (via facsimile)
Dana Hofstetter (via facsimile)
S:\CLIENTS\4465\7\Corr\Spackman re hearing 6.19.01.doc

CONVERSATION MEMORANDUM

DATE 6/4/01

FILE T. 68558
T. 68559

NAME OF PARTY John Marshall for Tertelig

EMPLOYEE FR

RE: CONFERENCE + HEARING

PER 4/26/01 CONFERENCE, 6/1 WAS deadline to SETTLE or SCHEDULE a HEARING. DISCUSSED POSSIBLE SECOND CONFERENCE AT 4/26 MEETING.

TERTELING NOW REQUESTS SCHEDULING OF SECOND CONFERENCE ASAP WITH INCLUSION OF HEARING SCHEDULED VIA SOME NOTICE.

THIS MIGHT BE EFFECTIVE IN REACHING SETTLEMENT.

MICROFILMED
OCT 30 2002

ROSTER OF ATTENDANCE

IDAHO DEPARTMENT OF WATER RESOURCES
2735 AIRPORT WAY, BOISE, IDAHO 83705

Re: Application for Transfer Nos. 5875 and 5876 in the Name of The Terteling Company, Inc.

Place: IDWR Western Region, 2735 Airport Wy, Boise, Idaho 83705

Date: April 26, 2001

Conducted by: Steve Lester for: Gary Spackman

NAME	ADDRESS
Tom Terteling	3823 N 36th Boise, 83703
Flinda Terteling	" " "
Joe "	" "
for Terteling John Marshall	277 N. 6th St " 83702
Ed Squires	988 S. Longmont Ste 100 Boise 83706
Garnette Monnie	4106 Sandcreek (WORK) 4021 Hill Rd (HOME) Boise 83703
Terry Scanlan	600 E. River Park Lane #105, Boise 06
for Edwards (Monnie) Dana Hofstetter	P.O. Box 1427 Boise 83701

MICROFILMED

OCT [illegible]

Terteling Transfers

4/26/01

Terteling bought Flora 1997.

Silkey rights do not flow @ decreed rate,
3 wells : 4", pumping rate limited by size of
well casings.

Edwards well does flow w/o pumping.

Historical data

Flora wells - poor meters &/or poor installation
- weir @ end of property not properly maintained
- current info w/ 1 new meter properly placed @ Tiegs (Triangle) well ≈ 365 gpm (see handout).
- downhole camera Tiegs well 2 wks. ago, very good condition.

Ed thinks lack of flow is due to pressure decrease from jr. pumper(s) ... currently = golf course.

Windsock well - not used irrig except back up pld (only needed once so far).

MICROFILMED
OCT 0 2002

- only plans to use for greenhouses so will be limited Q/volume.

HAS forfeiture occurred w/ rate of flow? or not since pressure ↓ & flow ↓ so "defense" if needed?

What is projected volume for new site from Windsock well?

Can Testeling + Edwards work together to max. their sr. uses & minimize jr. irrig. uses?

Parties will meet w/o IAWR & work on settlement.

Possible 2nd conf. if can't resolve soon.
After that, schedule hearing if not resolved.

Parties may look into reactivating 635 w.d. & maybe IAWR help in build better w.d. model for this unique situation.

action

Call up 6/1/01 if haven't rec'd settlement or other progress by then.

Send letter
1) confirm 6/1 call up
2) request add'tl info needed to verify WRS & show before/after uses re injury etc.

MICROFILMED

04/25/01 Submitted by Teerling 4/26/01

Flora hot water rates by being pumped

WELL	FLOW	
Tiegs triangle	230 gpm	– NEW flowmeter installed, this is result
Silkey house	39	} older "I read this, trying to install flowmeters more properly to get more ~~accurate~~ accurate data
Silkey shed	96	
Total Flow	365	

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE

STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR TRANSFER OF WATER RIGHT NOS. 63-00012, 63-00013, 63-00015 (TRANSFER NO. 5875) AND 63-31051 (TRANSFER NO. 5876) IN THE NAME OF THE TERTELING COMPANY, INC.)	)))))))	**NOTICE OF PREHEARING CONFERENCE**

On October 2, 2000, The Terteling Co., Inc. filed with the Department of Water Resources (Department) two applications for transfer of water rights. The applications were protested by Paul Edwards (Edwards' Greenhouses).

The Department has set the contested case for a prehearing conference to be held on **Thursday, April 26, 2001, at 10:00 a.m. at the Idaho Department of Water Resources, Western Region, 2735 Airport Way, Boise, Idaho 83705.** The conference will be held in accordance with provisions of Chapters 2 and 17, Title 42, and Chapter 52, Title 67, of the Idaho Code, the adopted Rules of Procedure of the Department of Water Resources, and Rules 40 and 45 of the adopted Rules of Water Appropriation of the Department of Water Resources.

The prehearing conference will be conducted in a facility which satisfies the accessibility requirements of the Americans with Disabilities Act. If you require special accommodations in order to attend, participate in or understand the conference, please advise the department (10) days prior to the conference.

Dated this 2nd day of April 2001.

Gary Spackman

MICROFILMED

CERTIFICATE OF MAILING

I hereby certify that on the 2nd day of April 2001 I mailed a true and correct copy, postage prepaid, of this Notice of Prehearing Conference to the applicant(s) and protestant(s) listed:

Sue Taylor
Senior Secretary

THE TERTELING CO INC
C/O JOHN M MARSHALL
GIVENS PURSLEY LLP
PO BOX 2720
BOISE ID 83701-2720

PAUL EDWARDS
C/O BEEMAN & HOFSTETTER PC
PO BOX 1427
BOISE ID 83701-1427

CONFERENCE AND HEARING PROCEDURE

APPLICATION FOR TRANSFER

Section 42-222, Idaho Code, requires the department to consider the following issues in connection with an application for transfer:

1) Will the proposed appropriation injure other water rights?

2) Will the proposed transfer constitute an enlargement in use of the original right?

3) Is the proposed transfer in the local public interest, where local public interest is defined as the affairs of the people in the area directly affected by the proposed use?

4) Is the proposed use contrary to conservation of water resources within the state of Idaho?

BURDEN OF PROOF

The applicant has the initial burden of proof of issues 1, 2 and 4 above and must provide evidence for the department to evaluate these criteria.

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HEARING

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The hearing likely will be conducted by a hearing officer appointed by the Director rather than the Director himself. If so, the hearing officer will prepare a recommended order for the Director□s consideration. Parties can file exceptions to a recommended order, briefs in support of the exceptions or may request oral argument. Parties may seek judicial review of any final order issued by the Director.

Parties may, by written stipulation, waive their right to a recommended order, particularly when a shortened decision process is desirable or necessary. Such a waiver does not eliminate any rights of the parties in connection with the final order of the Director and judicial review of the order.

EXHIBITS

A party who plans to offer an exhibit as part of the hearing record must provide a copy of the proposed exhibit to the parties and to the hearing officer prior to any scheduled hearing.

AMERICANS WITH DISABILITIES ACT

Any hearing scheduled will be conducted in a facility which meets the accessibility requirements of the Americans with Disabilities Act. If you require special accommodations in order to attend, participate in or understand the hearing please advise the department within ten (10) days prior to the hearing.

RECEIVED

FEB 2 3 2001

WATER RESOURCES
WESTERN REGION

LEGAL NOTICE
NOTICE OF CORRECTED PROPOSED CHANGE OF WATER RIGHTS, TRANSFER NOS. 68558 AND 68559

TERTELING COMPANY INC. of 3823 N. 36th St., Boise ID 83703 applied to the Department of Water Resources to change the Point of Diversion and Place of Use pursuant to I.C. § 42-222. The legal notice published on December 7 and 14, 2000, incorrectly listed the proposed Place of Use. The corrected legal notice follows for ground water rights in Ada County:

All sections in this notice are in T4N R2E.

Transfer 68558 (formerly no. 5875) includes 3 decreed rights from 3 hot water wells. Wells are in NWSW S28 & NESE S29 and are used for irrigation, heating, domestic, stock and other uses associated with "Flora Greenhouse" in NWSW S28 and SENE & NESE S29. Periods of use and numbers of acres are unclefined in the decreed rights but are listed as year around use and irrigation of 7.5 acres in Snake River Basin Adjudication (SRBA) claims filed on these rights.

#63-00012, priority 7-1-1921 for .14 cfs.
#63-00013, priority 7-1-1922 for .66 cfs.
#63-00015, priority 3-23-1927 for .80 cfs.

Total from these wells, a.k.a. Silkey & Tiegs Wells, is 1.60 cfs.

Transfer 68559 (formerly no. 5876) includes SRBA Beneficial Use Claim **#A63-31051** for 2 cold water wells to irrigate 6 acres and provide commercial water for the same business. Priority date is 7-1-1921 for .12 cfs for year around uses. Wells and use are in NESE S29. Flora Greenhouse is at 36th St. and Hill Road.

PROPOSED CHANGES

Transfer 68558 proposes to move the greenhouse business to an existing hot water well, a.k.a. Windsock Well. Windsock Well and business relocation sites are near Cartwright Road in SW 1/4 S22, about 1.5 miles northeast of Flora Greenhouse.

Transfer 68559 proposes a similar move to the same relocation site but will use 2 existing cold water wells in NWNE & NWSE S22, a.k.a. Champagne and Old Barn Wells.

Both transfers propose to use amounts of hot or cold water as recorded above for the greenhouse
business to be moved. A reduced portion of any of these rights might remain at the current business site while the new business site is brought into production. Therefore, the rights might be used at either or both sites in some combination not to exceed the limits of the rights. Total irrigation will not exceed 7.5 acres. New well drilling is not proposed.

Any protest against approval of the proposed changes must be filed with the Department of Water Resources, Western Region, 2735 Airport Way, Boise, ID 83705-5082, together with a protest fee of $25 for each protested application on or before March 5, 2001. The protestant must also send a copy of the protest to the applicant.

Karl J. Dreher, Director

Pub. Feb. 15,22, 2001 9576

The Idaho Statesman

P.O. Box 40, Boise, Idaho 83707-0040

LEGAL ADVERTISING PROOF OF PUBLICATION

Account #	DTI#	Identification	Amount:
047628	402192	NOTICE OF CORRECTED PROPOSED CHANGE	$127.80

Ordered by:	P.O. #	Rate	Run Dates
SUE TAYLOR		NT	FEBRUARY 15, 22, 2001

IDAHO DEPARTMENT OF WATER RESOURCES WEST
2735 AIRPORT WAY
BOISE, IDAHO 83705

Number of Lines: 80

Affidavit	Legal #
1	9576

RECEIVED
FEB 23 2001
WATER RESOURCES
WESTERN REGION

JANICE HILDRETH, being duly sworn, deposes and says: That she is the Principal Clerk of *The Idaho Statesman,* a daily newspaper printed and published at Boise, Ada County, State of Idaho, and having a general circulation therein, and which said newspaper has been continuously and uninterruptedly published in said County during a period of twelve consecutive months prior to the first publication of the notice, a copy of which is attached hereto: that said notice was published in *The Idaho Statesman,* in conformity with Section 60-108, Idaho Code, as amended for: TWO

[X] consecutive weekly [ ] single
[ ] consecutive daily [ ] odd skip
insertion(s)

beginning with the issue of: FEBRUARY 15, 2001
and ending with the issue of: FEBRUARY 22, 2001

Janice Hildreth

STATE OF IDAHO)
)ss
COUNTY OF ADA)

On this 22 day of FEBRUARY in the year of 2001 before me, a Notary Public, personally appeared before me Janice Hildreth known or identified to me to be the person whose name subscribed to the within instrument, and being by me first duly sworn, declared that the statements therein are true, and acknowledged to me that she executed the same.

SONDRA L. BRIGHTMAN NOTARY PUBLIC STATE OF IDAHO

Sondra L. Brightman

Notary Public for Idaho
Residing at: Boise, Idaho
My Commission expires: 6/20/06

MICROFILMED

State of Idaho
DEPARTMENT OF WATER RESOURCES
Western Region, 2735 Airport Way, Boise, Idaho 83705-5082 - (208) 334-2190
FAX (208) 334-2348

DIRK KEMPTHORNE
Governor

KARL J. DREHER
Director

February 12, 2001

PAUL EDWARDS
C/O BEEMAN & HOFSTETTER PC
PO BOX 1427
BOISE ID 83701-1427

Re: Application for Transfer Nos. 68558 and 68559

Dear Protestant:

This letter is to inform you of additional legal notices for the above referenced applications for transfer filed by Terteling Company, Incorporated. Please note the new application numbers assigned to these filings. Renumbering is due to the department's new computer system and does not otherwise change the applications.

The original legal notices were published incorrectly last December. A notice of correction will be published on February 15 and 22, 2001 as noted in the attached copy of the correction notice. Your protests against the transfer applications remain active. It is not necessary to refile your protests.

The prehearing conference scheduled for February 21, 2001 is canceled and will be rescheduled. This office will work with the parties to reschedule a conference in the next few weeks.

Please contact this office if you need more information in this regard.

Sincerely,

Steve Lester
Water Rights Supervisor

Enclosure

CC: Terteling Co., Inc., C/O John Marshall

MICROFILMED

NOTICE OF CORRECTED PROPOSED CHANGE OF WATER RIGHTS, TRANSFER NOS. 68558 AND 68559

TERTELING COMPANY INC. of 3823 N. 36th St., Boise ID 83703 applied to the Department of Water Resources to change the Point of Diversion and Place of Use pursuant to I.C. § 42-222. The legal notice published on December 7 and 14, 2000, incorrectly listed the proposed Place of Use. The corrected legal notice follows for ground water rights in Ada County:

All sections in this notice are in T4N R2E.

Transfer 68558 (formerly no. 5875) includes 3 decreed rights from 3 hot water wells. Wells are in NWSW S28 & NESE S29 and are used for irrigation, heating, domestic, stock and other uses associated with "Flora Greenhouse" in NWSW S28 and SENE & NESE S29. Periods of use and numbers of acres are undefined in the decreed rights but are listed as year around use and irrigation of 7.5 acres in Snake River Basin Adjudication (SRBA) claims filed on these rights.

#63-00012, priority 7-1-1921 for .14 cfs.
#63-00013, priority 7-1-1922 for .66 cfs.
#63-00015, priority 3-23-1927 for .80 cfs.
Total from these wells, a.k.a. Silkey & Tiegs Wells, is 1.60 cfs.

Transfer 68559 (formerly no. 5876) includes SRBA Beneficial Use Claim **#A63-31051** for 2 cold water wells to irrigate 6 acres and provide commercial water for the same business. Priority date is 7-1-1921 for .12 cfs for year around uses. Wells and use are in NESE S29. Flora Greenhouse is at 36th St. and Hill Road.

PROPOSED CHANGES

Transfer 68558 proposes to move the greenhouse business to an existing hot water well, a.k.a. Windsock Well. Windsock Well and business relocation sites are near Cartwright Road in SW ¼ S22, about 1.5 miles northeast of Flora Greenhouse.

Transfer 68559 proposes a similar move to the same relocation site but will use 2 existing cold water wells in NWNE & NWSE S22, a.k.a. Champagne and Old Barn Wells.

Both transfers propose to use amounts of hot or cold water as recorded above for the greenhouse business to be moved. A reduced portion of any of these rights might remain at the current business site while the new business site is brought into production. Therefore, the rights might be used at either or both sites in some combination not to exceed the limits of the rights. Total irrigation will not exceed 7.5 acres. New well drilling is not proposed.

Any protest against approval of the proposed changes must be filed with the Department of Water Resources, Western Region, 2735 Airport Way, Boise, ID 83705-5082, together with a protest fee of $25 for each protested application on or before March 5, 2001. The protestant must also send a copy of the protest to the applicant.

Karl J. Dreher, Director

Published on February 15 and 22, 2001.

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CONVERSATION MEMORANDUM

DATE 2/7/01

FILE T. 68558
68559

NAME OF PARTY John Marshall for Tertling Co.

EMPLOYEE RL

RE: Rescheduling Conference & Possible Transfer Amendment

Attorney called in response to notice of correction I faxed to him. Correction notice will run 2-15 & 2-22 with 3-5 protest deadline.

Protest conference from original legal notice process is 2-22 & probably should be postponed due to possibility for additional protests.

Also, Tertling might amend transfer to add possible new well to be drilled. That would cause yet another legal notice.

To minimize legal notice process, Tertling hopes to decide a need for amendment by 2-8. Attorney will let me know by 2-8 if will amend....

if yes - contact Newspapers to cancel correction notice, include it as part of amendment notice

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OCT 30 2002

no - allow correction notice to proceed

either case - postpone 2-22 conference?

- send comment letter to protestant
- if amended, send comment letter to same mailing list (if any) as in original notice.

State of Idaho
DEPARTMENT OF WATER RESOURCES
Western Region, 2735 Airport Way, Boise, Idaho 83705-5082 - (208) 334-2190
FAX (208) 334-2348

DIRK KEMPTHORNE
Governor

KARL J. DREHER
Director

02/07/2001

Legal Notice Department
IDAHO STATESMAN
PO BOX 40
BOISE ID 83707

RE: Transfer No. 68558 and 68559
Water Right No(s). 63-12 63-13 63-15 63-31051
Application for Water Right Nos. 63-31138 and 63-31149

Dear LEGAL NOTICE DEPARTMENT:

Enclosed you will find a legal notice which we wish to have published in your newspaper on the dates indicated (once a week for two consecutive weekly issues). If you cannot publish the notice on the proposed dates, please contact us immediately.

An affidavit of publication must be submitted to the Department along with the publication bill. Please send the affidavit and bill to this office before 03/05/2001. Your cooperation is appreciated.

Sincerely

Sue Taylor
Senior Secretary

MICROFILMED

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All sections in this notice are in T4N R2E.

Transfer 68558 (formerly no. 5875) includes 3 decreed rights from 3 hot water wells. Wells are in NWSW S28 & NESE S29 and are used for irrigation, heating, domestic, stock and other uses associated with "Flora Greenhouse" in NWSW S28 and SENE & NESE S29. Periods of use and numbers of acres are undefined in the decreed rights but are listed as year around use and irrigation of 7.5 acres in Snake River Basin Adjudication (SRBA) claims filed on these rights.

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Karl J. Dreher, Director

Published on February 15 and 22, 2001.

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FEB 2 0 2001

NOTICE OF CORRECTED PROPOSED CHANGE OF WATER RIGHTS, TRANSFER NOS. 68558 AND 68559

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Any protest against approval of the proposed changes must be filed with the Department of Water Resources, Western Region, 2735 Airport Way, Boise, ID 83705-5082, together with a protest fee of $25 for each protested application on or before March 5, 2001. The protestant must also send a copy of the protest to the applicant.

Karl J. Dreher, Director

Published on February 15 and 22, 2001.

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DEC 3 0 2002

Lester, Steve

From: Grindle, Dave
Sent: Thursday, February 01, 2001 10:31 AM
To: Lester, Steve
Cc: Spackman, Gary; Peppersack, Jeff; Keen, Shelley
Subject: RE: Terteling Transfers

The data has been placed in the appropriate tables to complete the initial entry of the transfer data. Modifications of the proposed rights must still take place.

the following should aid in finding the data in the work flow.

TransferNumber	WaterApplicationID	TransferapprovalID
5875	68558	5170
5876	68559	5171

Any other questions feel free to ask.

Dave

-----Original Message-----
From: Lester, Steve
Sent: Thursday, February 01, 2001 9:09 AM
To: Grindle, Dave
Cc: Spackman, Gary; Peppersack, Jeff; Keen, Shelley
Subject: Terteling Transfers

Dave:

I'm writing to request completion of moving transfer applications 5875 and 5876 from VAX to Workflow per your January 17 email. You said it would be better for you to do that than for me to create new versions in Workflow.

These protested transfers need to be re-advertised asap. We missed the advertising deadline for the first half of February. Our next deadline is February 7 to advertise in the last half of February. If we miss that one, we are looking at March for re-advertising.

I know you have way too much to do and everything is urgent. I'll join the "urgent" crowd ... we need to find a way to make progress in these transfers. Please advise me of the next step in that regard, and let me know if I can do anything to help.

Thanks for your help.

Steve

Re-Advertising delayed until workflow tables were enabled by S.O., OK to proceed 2/1/01

MICROFILMED
OCT 18 2002

November 26, 1999

T 68558

RECEIVED
DEC 22 2000
WATER RESOURCES
WESTERN REGION

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

NOTICE OF PROTEST

This form may be used to file a protest with the department under sections 42-108B, 42-203A, 42-203C, 42-211, 42-222 and 42-224, Idaho Code. The department will also accept a timely protest not completed on this form if it contains the same information.

1. Matter being protested Application for Transfer No. 5875 in the name of The Terteling Company, Inc.
2. Name of protestant Paul Edwards (Edwards' Greenhouses)
3. Protestant's Representative for service (If different than protestant)

   Josephine P. Beeman or Dana L. Hofstetter, Beeman & Hofstetter, P.C.
4. Service mailing address P. O. Box 1427, Boise, Idaho 83701-1427
5. Service telephone no. (208) 388-8900 Fax (208) 388-8400
6. Basis of protest (including statement of facts and law upon which the protest is based)

   See Attachment A.

   (additional pages may be attached to describe nature of the protest)
7. What would resolve your protest?

   See Attachment A.

I hereby, acknowledge that if I, or my designated representative, fails to appear at any regularly scheduled conference or hearing in the matter of which I have been notified at the address above, the department may issue a notice of proposed default against me in this matter for failure to appear. I also verify that I have served a copy of this protest upon the applicant.

Signed this 22nd day of December, 2000.

Protestant

Dana Hofstetter

Protestant's Representative

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DEC 29 2002

Attachment A to Protest to Transfer No. 5875

6. The three geothermal water rights proposed for transfer (63-00012, 63-00013, and 63-00015) and the geothermal water right utilized by Edwards' Greenhouses (63-00014) were decreed in 1930 (*Silkey v. Tiegs*) and found to share a common geothermal resource. Pursuant to *Idaho Code* § 42-222, the Protestant seeks to ensure that the proposed changes will be consistent with the extent of past beneficial use, will not injure Edwards' Greenhouses' water rights, and will not constitute water right enlargements. Additionally, the Protestant seeks confirmation that the proposed changes are consistent with the conservation of water resources in Idaho, are in the local public interest, and comply with the other requirements of § 42-222 and Idaho law.

7. (1) Data confirming the extent of past use of the water rights proposed for transfer; (2) a technical analysis of the effects of the proposed transfer on the geothermal aquifer; and (3) conditions of approval and limits on future use at each diversion point that would assure that the proposed changes will not injure Edwards' Greenhouses' water rights or constitute water right enlargements.

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OCT 2 6 2009

NOTE:

A protestant is required to timely file a protest with the department together with a $25.00 protest fee for each application being protested in order for the protestant to be considered a full party by the department. In addition, the department's Rule of Procedure, IDAPA 37.01.01203, requires a protestant to send a copy of a protest to the applicant.

INSTRUCTIONS

1. The matter being protested must be clearly identified. A typical matter is identified by the application number such as "Application for Permit No. _____ in the name of _____" or "Application for Transfer No. _____ in the name of _____."

2. Show the name of the protestant. Only one (1) protestant may be shown per protest form. If this protest form is signed by more than one person, the hearing officer will consider the first signer as the official protestant and the representative for service of documents.

3. If the protestant is represented by an attorney or other authorized representative, show the representative's name. The department then will serve documents on the representative and upon the protestant if specifically requested.

4. Show the address where the department is to serve the documents. This should be the address of the authorized representative unless the protestant does not designate a representative.

5. Show the telephone number of the authorized representative unless the protestant does not designate a service representative.

6. Specifically describe the nature of the protest.

7. Describe the relief being sought by the protestant.

FOR DEPARTMENT USE ONLY

Received by _____ Date 12/22/00 Time 2:40

$25.00 fee Receipted by _____ # W027253 Date 12/22/00

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DEC 3 5 2002

The Idaho Statesman

P.O. Box 40, Boise, Idaho 83707-0040

RECEIVED
DEC 19 2000
WATER RESOURCES
WESTERN REGION

LEGAL ADVERTISING PROOF OF PUBLICATION

Account #	DTI#	Identification	Amount:
047628	373205	PROPOSED CHANGE OF WATER	$136.56

Ordered by:	P.O. #	Rate	Run Dates
SUE TAYLOR		TT	DECEMBER 7, 14, 2000

STATE OF IDAHO
DEPT. OF WATER RESOURCES WESTERN REG.
2735 AIRPORT WAY
BOISE, IDAHO 83705 - 5082

Number of Lines	
42X2	
Affidavit	Legal #
1	9014

JANICE HILDRETH, being duly sworn, deposes and says: That she is the Principal Clerk of *The Idaho Statesman,* a daily newspaper printed and published at Boise, Ada County, State of Idaho, and having a general circulation therein, and which said newspaper has been continuously and uninterruptedly published in said County during a period of twelve consecutive months prior to the first publication of the notice, a copy of which is attached hereto: that said notice was published in *The Idaho Statesman,* in conformity with Section 60-108, Idaho Code, as amended for: TWO

[X] consecutive weekly [ ] single

[ ] consecutive daily [ ] odd skip
insertion(s)

beginning with the issue of: DECEMBER 7 2000

and ending with the issue of: DECEMBER 14 2000

Janice Hildreth

STATE OF IDAHO)
)ss
COUNTY OF ADA)

On this 7 day of DECEMBER in the year of 2000 before me, a Notary Public, personally appeared before me Janice Hildreth known or identified to me to be the person whose name subscribed to the within instrument, and being by me first duly sworn, declared that the statements therein are true, and acknowledged to me that she executed the same.

Sondra L. Brightman

Notary Public for Idaho
Residing at: Boise, Idaho
My Commission expires: 6/20/06

SONDRA L. BRIGHTMAN
NOTARY PUBLIC
STATE OF IDAHO

MICROFILMED
OCT 30 2002

RECEIVED
DEC 19 2000
WATER RESOURCES
WESTERN REGION

LEGAL NOTICE
NOTICE OF PROPOSED CHANGE OF WATER RIGHTS, TRANSFER NOS. 5875 AND 5876

TERTELING COMPANY INC. of 3823 N. 36th St., Boise ID 83703 has applied to the Department of Water Resources to change the Point of Diversion and Place of Use pursuant to I.C. § 42-222 for the following ground water rights in Ada County:

All sections in this notice are in T4N R2E.

Transfer 5875 includes 3 decreed rights from 3 hot water wells. Wells are in NWSW S28 & NESE S29 and are used for irrigation, heating, domestic, stock and other uses associated with "Flora Greenhouse" in NWSW S28 and SENE & NESE S29. Period of use is undefined in the rights but is listed as year around use in Snake River Basin Adjudication (SRBA) claims filed on these rights.

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Total from these wells, a.k.a. Silkey & Tiegs Wells, is 1.60 cfs.

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PROPOSED CHANGES

Transfer 5875 proposes to move the greenhouse business to an existing hot water well, a.k.a. Windsock Well. Windsock Well and business relocation sites are near Cartwright Road in SW 14 S22, about 1.5 miles northeast of Flora Greenhouse.

Transfer 5876 proposes a similar move to the same relocation site but will use 2 existing cold water wells in NWNE & NOOSE S22, a.k.a. Champagne and Old Barn Wells.

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Any protest against approval of the proposed change must be filed with the Department of Water Resources, Western Region, 2735 Airport Way, Boise, ID 837055082, together with a protest fee of $25 for each application on or before December 26, 2000. The protestant must also send a copy of the protest to the applicant.

Karl J. Dreher, Director

Pub. Dec. 7,14, 2000

9014

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE

STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR TRANSFER OF WATER RIGHT NOS. 63-00012, 63-00013, 63-00015 (TRANSFER NO. 5875) AND 63-31051 (TRANSFER NO. 5876) IN THE NAME OF THE TERTELING COMPANY, INC.)	**NOTICE OF PREHEARING CONFERENCE**

On October 2, 2000, The Terteling Co., Inc. filed with the Department of Water Resources (Department) two applications for transfer of water rights. The applications were protested by Paul Edwards (Edwards' Greenhouses).

The Department has set the contested case for a prehearing conference to be held on **Wednesday, February 21, 2001, at 10:00 a.m. at the Idaho Department of Water Resources, Western Region, 2735 Airport Way, Boise, Idaho 83705.** The conference will be held in accordance with provisions of Chapters 2 and 17, Title 42, and Chapter 52, Title 67, of the Idaho Code, the adopted Rules of Procedure of the Department of Water Resources, and Rules 40 and 45 of the adopted Rules of Water Appropriation of the Department of Water Resources.

The prehearing conference will be conducted in a facility which satisfies the accessibility requirements of the Americans with Disabilities Act. If you require special accommodations in order to attend, participate in or understand the conference, please advise the department (10) days prior to the conference.

Dated this 9th day of January 2001.

Gary Spackman

MICROFILMED
OCT 30 2002

CERTIFICATE OF MAILING

I hereby certify that on the 10TH day of January 2001 I mailed a true and correct copy, postage prepaid, of this Notice of Prehearing Conference to the applicant(s) and protestant(s) listed:

Sue Taylor
Senior Secretary

THE TERTELING CO INC
C/O JOHN M MARSHALL
GIVENS PURSLEY LLP
PO BOX 2720
BOISE ID 83701-2720

PAUL EDWARDS
C/O BEEMAN & HOFSTETTER PC
PO BOX 1427
BOISE ID 83701-1427

MICROFILMED
OCT 3 0 2002

CONFERENCE AND HEARING PROCEDURE

APPLICATION FOR TRANSFER

Section 42-222, Idaho Code, requires the department to consider the following issues in connection with an application for transfer:

1) Will the proposed appropriation injure other water rights?

2) Will the proposed transfer constitute an enlargement in use of the original right?

3) Is the proposed transfer in the local public interest, where local public interest is defined as the affairs of the people in the area directly affected by the proposed use?

4) Is the proposed use contrary to conservation of water resources within the state of Idaho?

BURDEN OF PROOF

The applicant has the initial burden of proof of issues 1, 2 and 4 above and must provide evidence for the department to evaluate these criteria.

The initial burden of proof on issue 3 above lies with both the applicant and protestant as to factors which they are most knowledgeable and cognizant. The applicant has the ultimate burden of persuasion, however, for this issue.

PROCEDURE

The department generally conducts an informal conference with the parties to determine the issues and to try to settle a protested matter before a hearing is scheduled. If a hearing is held, the department will issue a written decision based on the hearing record.

CONFERENCE

The purpose of a prehearing conference is to provide the opportunity for the parties and the department to familiarize themselves with a contested matter and to attempt to resolve the matter. At the conference, the department may also formulate and simplify the issues, identify documents to avoid unnecessary proof, exchange proposed exhibits or prepared testimony, limit witnesses, discuss settlement offers, schedule hearings, establish procedure at hearings and address other matters that may expedite orderly conduct and disposition of the proceeding or its settlement.

MICRO
OCT 3 0 2002

CONFERENCE AND HEARING PROCEDURE

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State of Idaho
DEPARTMENT OF WATER RESOURCES
Western Region, 2735 Airport Way, Boise, Idaho 83705-5082 - (208) 334-2190
FAX (208) 334-2348

DIRK KEMPTHORNE
GOVERNOR

KARL J. DREHER
DIRECTOR

January 10, 2001

THE TERTELING CO INC
C/O JOHN M MARSHALL, GIVENS PURSLEY LLP
PO BOX 2720
BOISE ID 83701-2720

Re: Application for Transfer of Permit Nos. 63-00012, 63-00013, and 63-00015 (Transfer No. 5875) and 63-31051 (Transfer No. 5876).

Dear Applicant:

Enclosed please find a copy of the protest(s) filed against the above-referenced applications for transfer. You should be aware that the following are the criteria we consider when either approving or denying an application for transfer:

1. Will other water rights be injured by the transfer?

2. Will the change constitute an enlargement in the use of the original right?

3. Will the proposed change conflict with the local public interest?

4. Will the proposed use be contrary to conservation of water resources within the state of Idaho?

Enclosed is a Notice of Prehearing Conference scheduled for February 21, 2001 at the Idaho Department of Water Resources, Western Region, Boise, Idaho. At the conference, the department will review possibilities for resolution of the protest. If the matter cannot be resolved at that time, a formal hearing will be arranged for a future date.

The department suggests you contact the protestant(s) directly in an effort to determine what is proposed by the application and to attempt to resolve the protest. Direct, sincere conversation between the parties prior to initiation of formal proceedings can often resolve a protest.

If we may be of assistance, please contact us.

Sincerely,

Gary Spackman

GS:st
Enclosure: Copy of Protests
Notice of Prehearing Conference

State of Idaho
DEPARTMENT OF WATER RESOURCES
Western Region, 2735 Airport Way, Boise, Idaho 83705-5082 - (208) 334-2190
FAX (208) 334-2348

DIRK KEMPTHORNE
GOVERNOR

KARL J. DREHER
DIRECTOR

January 9, 2001

PAUL EDWARDS
C/O BEEMAN & HOFSTETTER PC
PO BOX 1427
BOISE ID 83701-1427

Re: Application for Transfer Nos. 5875 and 5876

Dear Protestant:

This office acknowledges receipt of your protest opposing the above-referenced applications for transfer. The following are the criteria we consider when either approving or denying an application for transfer:

1. Will other water rights be injured by the transfer?

2. Will the change constitute an enlargement in the use of the original right?

3. Will the proposed change conflict with the local public interest?

4. Will the proposed use be contrary to conservation of water resources within the state of Idaho?

Enclosed is a Notice of Prehearing Conference scheduled for February 21, 2001, at 10:00 a.m. at the Idaho Department of Water Resources, Western Region, Boise ID 83705. At the conference, the department will review possibilities for resolution of the protest. If the matter cannot be resolved at that time, a formal hearing will be arranged for a future date.

The department suggests you contact the protestant(s) directly in an effort to determine what is proposed by the application and to attempt to resolve the protest. Direct, sincere conversation between the parties prior to initiation of formal proceedings can often resolve a protest.

If we may be of assistance, please contact us.

Sincerely,

Gary Spackman

GS:st
Encl. Notice of Conference
Copy of Application

MICRO

November 26, 1999

RECEIVED
DEC 22 2000
WATER RESOURCES
WESTERN REGION

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

NOTICE OF PROTEST

This form may be used to file a protest with the department under sections 42-108B, 42-203A, 42-203C, 42-211, 42-222 and 42-224, Idaho Code. The department will also accept a timely protest not completed on this form if it contains the same information.

1. Matter being protested Application for Transfer No. 5875 in the name of The Terteling Company, Inc.
2. Name of protestant Paul Edwards (Edwards' Greenhouses)
3. Protestant's Representative for service (If different than protestant)

   Josephine P. Beeman or Dana L. Hofstetter, Beeman & Hofstetter, P.C.
4. Service mailing address P. O. Box 1427, Boise, Idaho 83701-1427
5. Service telephone no. (208) 388-8900 Fax (208) 388-8400
6. Basis of protest (including statement of facts and law upon which the protest is based)

   See Attachment A.

   (additional pages may be attached to describe nature of the protest)
7. What would resolve your protest?

   See Attachment A.

I hereby, acknowledge that if I, or my designated representative, fails to appear at any regularly scheduled conference or hearing in the matter of which I have been notified at the address above, the department may issue a notice of proposed default against me in this matter for failure to appear. I also verify that I have served a copy of this protest upon the applicant.

Signed this 22nd day of December, 2000.

Protestant

Dana Hofstetter

Protestant's Representative

MICRO...

DEC 3 0 2002

Attachment A to Protest to Transfer No. 5875

6. The three geothermal water rights proposed for transfer (63-00012, 63-00013, and 63-00015) and the geothermal water right utilized by Edwards' Greenhouses (63-00014) were decreed in 1930 (*Silkey v. Tiegs*) and found to share a common geothermal resource. Pursuant to *Idaho Code* § 42-222, the Protestant seeks to ensure that the proposed changes will be consistent with the extent of past beneficial use, will not injure Edwards' Greenhouses' water rights, and will not constitute water right enlargements. Additionally, the Protestant seeks confirmation that the proposed changes are consistent with the conservation of water resources in Idaho, are in the local public interest, and comply with the other requirements of § 42-222 and Idaho law.

7. (1) Data confirming the extent of past use of the water rights proposed for transfer; (2) a technical analysis of the effects of the proposed transfer on the geothermal aquifer; and (3) conditions of approval and limits on future use at each diversion point that would assure that the proposed changes will not injure Edwards' Greenhouses' water rights or constitute water right enlargements.

NOTE:

A protestant is required to timely file a protest with the department together with a $25.00 protest fee for each application being protested in order for the protestant to be considered a full party by the department. In addition, the department's Rule of Procedure, IDAPA 37.01.01203, requires a protestant to send a copy of a protest to the applicant.

INSTRUCTIONS

1. The matter being protested must be clearly identified. A typical matter is identified by the application number such as "Application for Permit No. _____ in the name of _____" or "Application for Transfer No. _____ in the name of _____."

2. Show the name of the protestant. Only one (1) protestant may be shown per protest form. If this protest form is signed by more than one person, the hearing officer will consider the first signer as the official protestant and the representative for service of documents.

3. If the protestant is represented by an attorney or other authorized representative, show the representative's name. The department then will serve documents on the representative and upon the protestant if specifically requested.

4. Show the address where the department is to serve the documents. This should be the address of the authorized representative unless the protestant does not designate a representative.

5. Show the telephone number of the authorized representative unless the protestant does not designate a service representative.

6. Specifically describe the nature of the protest.

7. Describe the relief being sought by the protestant.

FOR DEPARTMENT USE ONLY

Received by _____ Date 12/22/00 Time 2:40

$25.00 fee Receipted by _____ # W027253 Date 12/22/00

MICRO...
DEC 3 1 2000

GIVENS PURSLEY LLP

LAW OFFICES
277 North 6th Street, Suite 200
PO Box 2720, Boise, Idaho 83701
TELEPHONE: 208 388-1200
FACSIMILE: 208 388-1300

Gary G. Allen
Christopher J. Beeson
Michael C. Creamer
Thomas E. Dvorak
Roy Lewis Eiguren
Jacqueline M. Fearnside
Jeffrey C. Fereday
Richard W. Jankowski
Amanda L. Keating
Kart T. Klein
Debora K. Kristensen
Franklin G. Lee
David R. Lombardi
D. David Lorello, Jr.
Kimberly D. Maloney
John M. Marshall
Kenneth R. McClure
Kelly Greene McConnell
Cynthia A. Melillo
Christopher H. Meyer
Kendall L. Miller
L. Edward Miller
Patrick J. Miller
Judson B. Montgomery
Angela K. Nelson
W. Hugh O'Riordan
Kenneth L. Pursley
Virginia L. Stukel
Conley Ward
Stephanie C. Westermeier
Robert B. White
Matthew S. Wiese

Raymond D. Givens
James A. McClure
OF COUNSEL

December 19, 2000

RECEIVED
DEC 20 2000
WATER RESOURCES
WESTERN REGION

VIA US MAIL

Steve Lester
Water Rights Supervisor
State of Idaho Department of Water Resources
2735 Airport Way
Boise, Idaho 83705-5082

RE: Transfer Applications Nos. 5875 and 5876 for Terteling Co.
Our File: 4465-7

Dear Steve:

I received you letter dated December 11, 2000 regarding amendments to the above referenced transfers. I initialed and dated both transfers as requested to confirm the minor changes we talked about. I am enclosing a revised Exhibit A for transfer no. 5876 that explains that irrigation of plants in the greenhouse will be covered under the commercial purpose of use.

For transfer 5875, I elected to simply include an acreage total of 7.5 acres for the irrigation purpose of use. I am reluctant to eliminate the irrigation purpose of use here because these decreed rights do not include a commercial use that could include the irrigation use. As you know, this transfer does not seek a change in the nature of use, but rather seeks to use these decreed rights in the same manner they have been historically used. For this reason, we are listing the purposes of use as they appear in the decree. We would not be opposed if the Department changed the irrigation use to a commercial use as a matter of administrative convenience reflecting more refined purpose of use definitions since the *Silkey v. Tiegs* decree, but we are not seeking a transfer of the nature of use as defined by Idaho Code § 42-222.

MICRO
OCT 2 9 2002

Please let me know if you need anymore information. I look forward to working with you to complete these two transfers.

Sincerely,

John M. Marshall

Encl (2): Transfer application no. 5875
Transfer application no. 5876 (with Revised Exhibit A)

JMM:nlg
GENIE.SYS:DATA:CLIENTS:4465:7:Corr:12-00 ltr to Lester re amend

MICH
OCT 3 0 200

State of Idaho
DEPARTMENT OF WATER RESOURCES
Western Region, 2735 Airport Way, Boise, Idaho 83705-5082 - (208) 334-2190
FAX (208) 334-2348

DIRK KEMPTHORNE
GOVERNOR

KARL J. DREHER
DIRECTOR

December 11, 2000

JOHN MARSHALL
GIVENS PURSLEY LLP
PO BOX 2720
BOISE ID 83701-2720

Re: Transfer Application Nos. 5875 and 5876 for Terteling Company Inc.

Dear John:

Enclosed are original portions of the above referenced transfer applications. Revisions based on our recent telephone conversations are noted for your review and approval. Most of the changes are minor to conform the applications to the current or proposed water rights.

The substantive revisions are listed below.

Transfer No. 5875 – If irrigation as traditionally defined will remain for the rights, list the total number of acres in Part 1B, item 5. The total would be assumed to equal 7.5 acres in some combination of the identified tracts. If irrigation use will be retained but the number of acres will not be identified, replace the number of acres per tract with an "I" for irrigation. Explain the reasoning for a non-traditional irrigation description in that situation. The latter case might reference irrigation use operating as commercial use in the greenhouse scenario – a cosmetic difference between language of the original decree and modern terminology instead of a real change in nature of use. I am not sure how the non-traditional irrigation proposal would be viewed by IDWR administrators. They might prefer a change in nature of use proposal.

Transfer No. 5876 – Irrigation use was deleted from Part 1 as we discussed. Explain the reasoning for this action. The explanation could compliment non-traditional irrigation use retained in the decreed rights.

For both transfers, please include clarifying remarks in either the remarks section of the applications or in an exhibit (revised Exhibit A in each case?). The balance of the original transfer applications, consisting of the other exhibits, remains at this office.

Please provide your written response within thirty (30) days to keep the transfer applications in good standing. Thank you for your attention to these matters.

Sincerely,

Steve Lester
Water Rights Supervisor

Enclosure

MICR
OCT 3 0 2000

CONVERSATION MEMORANDUM

DATE 12/8/00

FILE T. 5875
T. 5876

NAME OF PARTY John Marshall atty. for Tepteling

EMPLOYEE JR

RE: Amended versions

Pre-publication phone conv. with John resulted in verbal ok to amend transfers for publication & follow up with approval of amended details.

Ads were prepared & sent to newspaper to avoid the expected delay that will come with mid-December conversion to new dBase system.

Unfortunately, the completion of amended details was not achieved prior to mailing of comment letters. Although nothing critical should occur from ~~the~~ this, some confusion may result in readers' review of the applications. But legal notice plus copies of transfers are sufficient to explain situation to readers.

Ok to amend as done w/ inclusion of the following:

A63-31051 T. 5876 Part 1 - Delete irrigation use & # acres. Use has been for greenhouse where commercial includes the use co-described as irrigation.

T. 5875 - Consider keep in as use but delete acres and add Remark that irr is commercial use greenhouse setting.

MICROFILMED
OCT 30 2002

State of Idaho
DEPARTMENT OF WATER RESOURCES
Western Region, 2735 Airport Way, Boise, Idaho 83705-5082 - (208) 334-2190
FAX (208) 334-2348

DIRK KEMPTHORNE
GOVERNOR

KARL J. DREHER
DIRECTOR

December 5, 2000

D SEE & E TULLIS
FLORA CO
3823 N 36
BOISE ID 83703

Re: Application for Transfer No. 5875 in the Name of Terteling Company Inc.
Application for Transfer No. 5876 in the Name of Terteling Company Inc.

Dear Sir:

Enclosed are copies of the above-referenced applications for transfer which may be of interest to your agency. Please review the applications and submit any comments you may have.

This office normally completes the processing of an application within a six-week period and is required to take final action shortly thereafter. However, if you desire to file a formal protest against the approval of this application(s), your written protest along with the $25.00 protest fee must be received in this office by December 26, 2000.

If you have any questions regarding the application, please contact this office.

Sincerely,

Gary Spackman

GS:lm

Encl: Copy of Application

MICROFILMED
OCT 3 0 2002

State of Idaho
DEPARTMENT OF WATER RESOURCES
Western Region, 2735 Airport Way, Boise, Idaho 83705-5082 - (208) 334-2190
FAX (208) 334-2348

DIRK KEMPTHORNE
GOVERNOR

KARL J. DREHER
DIRECTOR

NOVEMBER 30, 2000

Legal Notices Department
THE IDAHO STATESMAN
PO BOX 40
BOISE, ID 83707

Dear Legal Dept.:

Enclosed you will find a legal notice which we wish to have published on the dates indicated (once a week for two consecutive weekly issues) in your newspaper. If you cannot publish the notice on the proposed dates, please contact us immediately.

An affidavit of publication must be submitted to the Department along with the publication bill. Your cooperation is appreciated.

Please send the affidavit of publication and publication billing to this office before DECEMBER 26, 2000.

Yours truly,

SUE TAYLOR
Secretary/Office Coordinator

Encl.

MICROFILMED
OCT 2 0 2000

RECEIPT
For Monies Paid
to the
Idaho Department of Water Resources

Receipt No:

W027031

Date:
Time:
10/ 3/2000
08:37:10

Received
From:

GIVENS PURSLEY LLP

Type of Payment		Program Acct	Amount
TWO APPS FOR TRANSFER *	62105	229 21 1155	390.00
		Total	$ 390.00

CHECK 28090

Region: WESTERN Signature: Sue Taylor

* $290 hot water wells transfer
$100 cold " " transfer
$390 ok -SL 11/29/00

MICRO
OCT 30 2000

GIVENS PURSLEY LLP

LAW OFFICES
277 North 6th Street, Suite 200
PO Box 2720, Boise, Idaho 83701
TELEPHONE: 208 388-1200
FACSIMILE: 208 388-1300

Gary G. Allen
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Michael C. Creamer
Thomas E. Dvorak
Roy Lewis Eiguren
Jacqueline M. Fearnside
Jeffrey C. Fereday
Richard W. Jankowski
Amanda L. Keating
Karl T. Klein
Debora K. Kristensen
Franklin G. Lee
David R. Lombardi
Kimberly D. Maloney
John M. Marshall
Kenneth R. McClure
Kelly Greene McConnell
Cynthia A. Melillo
Christopher H. Meyer
L. Edward Miller
Patrick J. Miller
Judson B. Montgomery
Angela K. Nelson
W. Hugh O'Riordan
Kenneth L. Pursley
Virginia L. Stukel
Conley Ward
Stephanie C. Westermeier
Robert B. White
Raymond D. Givens
James A. McClure
OF COUNSEL

September 29, 2000

RECEIVED
OCT 0 2 2000
WATER RESOURCES
WESTERN REGION

VIA US MAIL

Steve Lester
Western Region
Idaho Department of Water Resources
2735 Airport Way
Boise, ID 83705-5082

RE: Transfer of Terteling Water Rights
Our File: 4465-7

Dear Steve:

Enclosed please find two transfer applications filed in behalf of the Terteling Company, Inc. along with the required fee of $390. We look forward to working with you on the processing of these applications.

Sincerely,

John M. Marshall

Encl: (2)

cc: Tom Terteling

MICROFILMED
OCT 30 2000

NOTICE OF PROPOSED CHANGE OF WATER RIGHTS, TRANSFER NOS. 5875 AND 5876

TERTELING COMPANY INC. of 3823 N. 36th St., Boise ID 83703 has applied to the Department of Water Resources to change the Point of Diversion and Place of Use pursuant to I.C. § 42-222 for the following ground water rights in Ada County:

All sections in this notice are in T4N R2E.
Transfer 5875 includes 3 decreed rights from 3 hot water wells. Wells are in NWSW S28 & NESE S29 and are used for irrigation, heating, domestic, stock and other uses associated with "Flora Greenhouse" in NWSW S28 and SENE & NESE S29. Period of use is undefined in the rights but is listed as year around use in Snake River Basin Adjudication (SRBA) claims filed on these rights.

#63-00012, priority 7-1-1921 for .14 cfs.
#63-00013, priority 7-1-1922 for .66 cfs.
#63-00015, priority 3-23-1927 for .80 cfs.
Total from these wells, a.k.a. Silkey & Tiegs Wells, is 1.60 cfs.

Transfer 5876 includes SRBA Beneficial Use Claim **#A63-31051** for 2 cold water wells to irrigate 6 acres and provide commercial water for the same business. Priority date is 7-1-1921 for .12 cfs for year around uses. Wells and use are in NESE S29. Flora Greenhouse is at 36th St. and Hill Road.

PROPOSED CHANGES

Transfer 5875 proposes to move the greenhouse business to an existing hot water well, a.k.a. Windsock Well. Windsock Well and business relocation sites are near Cartwright Road in SW ¼ S22, about 1.5 miles northeast of Flora Greenhouse.
Transfer 5876 proposes a similar move to the same relocation site but will use 2 existing cold water wells in NWNE & NWSE S22, a.k.a. Champagne and Old Barn Wells.
Both transfers propose to use amounts of hot or cold water as recorded above for the greenhouse business to be moved. A reduced portion of any of these rights might remain at the current business site while the new business site is brought into production. Therefore, the rights might be used at either or both sites in some combination not to exceed the limits of the rights. New well drilling is not proposed in the transfer applications.

Any protest against approval of the proposed change must be filed with the Department of Water Resources, Western Region, 2735 Airport Way, Boise, ID 83705-5082, together with a protest fee of $25 for each application on or before December 26, 2000. The protestant must also send a copy of the protest to the applicant.

Karl J. Dreher, Director

Published in The Idaho Statesman on December 7 and 14, 2000.

MICROFILMED
OCT 3 0 2002

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

IN THE MATTER OF THE BOISE FRONT LOW TEMPERATURE GEOTHERMAL RESOURCE GROUND WATER MANAGEMENT AREA	)	**FINAL ORDER EXTENDING MORATORIUM**

WHEREAS, on June 15, 1987, the Director of the Idaho Department of Water Resources (IDWR) designated the Boise Front Low Temperature Geothermal Resource Ground Water Management Area in Ada County, Idaho, due to reported declines in aquifer water levels and water pressure; and

WHEREAS, on June 11, 1988, IDWR issued an order establishing a five (5) year moratorium to prevent further development or additional use of the low temperature geothermal water resource (resource); and

WHEREAS, on July 7, 1998, IDWR advised the users of the resource that IDWR was reviewing the need for the moratorium and whether it should be modified or extended. IDWR requested written comments on the nature of the action IDWR should take in connection with the expiring moratorium; and

WHEREAS, six (6) parties submitted written comment to IDWR. All major users supported extending the moratorium for an additional five (5) years.

NOW THEREFORE, pursuant to Section 42-1805(7), Idaho Code, and IDAPA Rule 37.03.08055 (Water Appropriation Rule 55), IT IS HEREBY ORDERED that:

(1) The order dated June 10, 1988 which established a moratorium on further development and additional use of the low temperature geothermal water resource in the Boise Front Ground Water Management area is extended.

(2) The provisions of this order are effective for five (5) years from the date issued unless rescinded or modified by order of a court of competent jurisdiction or unless rescinded or modified by order of the Director.

Dated this 1st day of September, 1998.

KARL J. DREHER
Director

MICRO
OCT 2 8 2002

March 19, 1964

Re: Change in Point of Diversion
No. 268

Mr. O. L. Milstead,
3823 North 36th St.,
Boise, Idaho.

Dear Mr. Milstead:

We enclose Certificate of Change in Point of Diversion No. 268, together with Departmental Receipt No. G-9617, which was issued in the amount of $1.00 covering the recording fee of the above mentioned transfer.

Very truly yours,

CARL E. TAPPAN
State Reclamation Engineer
By

ROBERT W. HAMILTON
Supervisor of Water Distribution

Encl. - Certificate No. 268
Receipt No. G-9617
RWH:pmk

March 16, 1964

Re: Change in Point of Diversion

Mr. O. L. Milstead,
3823 N. 36th,
Boise, Idaho.

Dear Mr. Milstead:

This is to inform you that the Certificate for Change in Point of Diversion is being held up pending receipt of the Affidavit of Publication which the Kuna Herald will furnish you.

Upon receipt of this Affidavit, the Certificate of Transfer will be issued.

Very truly yours,

CARL E. TAPPAN
State Reclamation Engineer
By

ROBERT W. HAMILTON
Supervisor of Water Distribution

RWH:pmk

Mrs. Cornell brought the copy of the tear-sheet into the office on Friday, February 14, 1964.

$1.00 in currency attached to Application

STATE OF IDAHO

DEPARTMENT OF RECLAMATION

Boise, Idaho

February 7, 1964

The Kuna Herald
Kuna, Idaho

Gentlemen:

Enclosed you will find notice for publication, once a week for two consecutive weeks prior to February 28, 1964 the date set for hearing; the expense of the publication is to be paid by the applicant O. L. Wilstead of 3823 N 36th, Boise, Idaho to whom you should furnish proof of publication on or prior to the date set for hearing.

Please acknowledge receipt of this notice and furnish this office with a copy or tear-sheet of the first publication.**

Very truly yours,
CARL E. TAPPAN
State Reclamation Engineer
By

Robert W. Hamilton
Supervisor of Water Distribution

** If the first copy is not received in this office for checking purposes and errors appear in subsequent issues, it is possible that re-publication of corrected copy will be at your own expense.

Encl.

NOTICE OF PROPOSED TRANSFER OF WATER RIGHT

Notice is hereby given that O. L. Hilstead of 3823 N 36th, Boise, Idaho has applied to the State Reclamation Engineer of the State of Idaho for a certificate authorizing him to change the point of diversion and/or place of use of the waters of subterranean flow as follows:

Amount: 0.8 cubic feet per second. Priority: 7 inches - 7/1/21; 33 inches - 7/1/22

Point of diversion: NE ¼ SE ¼, Section 29, Township 4 N. Range 2 E., B.M.

Place of Use:

To Be Transferred To

Point of diversion: NE ¼ SE ¼, Section 29; SW ¼ SW ¼, Section 28, Township 4 N., Range 2 E., B. M.

Place of Use: No change

And that on the 28 day of February, 19 64, at 10:00 o'clock A.M., at Room 107 Statehouse, Boise, Idaho, before the State Reclamation Engineer, or his authorized agent, the opportunity will be given to any and all persons to appear and present, for his consideration any reason or reasons why a certificate should not be issued authorizing such transfer.

Carl F. Tolman

State Reclamation Engineer

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

AMENDED TRANSFER OF WATER RIGHT *AMENDED*

TRANSFER NO. 68558

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

MICROFILMED
OCT 3 0 2002

L. Glenn Saxton
Chief, Water Allocation Bureau

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

BENEFICIAL USE	From	To	Diversion Rate	Volume
HEATING	01/01	12/31	0.14 CFS	101.4 AF
DOMESTIC	01/01	12/31	0.04 CFS	0.6 AF
IRRIGATION	01/01	12/31	0.14 CFS	38.0 AF
			0.14 CFS	101.4 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: HEATING & DOMESTIC

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

MICROFILMED
OCT 3 0 2002

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.

MICROFILMED
OCT 3 0 2002

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

MICROFILMED
OCT 3 0 2002

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

BENEFICIAL USE	From	To	Diversion Rate	Volume
IRRIGATION	01/01	12/31	0.66 CFS	38.0 AF
DOMESTIC	01/01	12/31	0.04 CFS	0.6 AF
HEATING	01/01	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				

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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.

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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

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OCT 16 2002

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

BENEFICIAL USE	From	To	Diversion Rate	Volume
DOMESTIC	01/01	12/31	0.04 CFS	0.6 AF
IRRIGATION	01/01	12/31	0.80 CFS	38.0 AF
HEATING	01/01	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

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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.

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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

L. Glen Saxton

Chief, Water Allocation Bureau

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OCT 30 2002

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 (1931) 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

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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:

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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

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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

Deborah J. Gibson
Administrative Assistant
Water Allocation Bureau

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AUG 21 2002

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE

STATE OF IDAHO

IN THE MATTER OF TRANSFER NO. 68558 IN THE NAME OF THE TERTLING COMPANY INC.	**ORDER GRANTING PETITION FOR RECONSIDERATION**

This matter having come before the Department of Water Resources (Department) as a petition to reconsider the approval of a water right transfer, the Department makes the following Findings of Fact, Conclusions of Law, and Order:

FINDINGS OF FACT

1. On June 3, 2002 the Department approved Water Right Transfer No. 68558 (transfer) in the form of a preliminary order (order). A Copy of the order was mailed to The Tertling Company Inc. (applicant) on June 4, 2002.

2. On June 18, 2002, the Department received a Petition for Reconsideration (petition) in connection with the order from John Marshall, attorney, on behalf of the applicant. The petitioner seeks a change to one of the conditions of the approval of the transfer.

CONCLUSIONS OF LAW

1. Section 67-5243(3) , *Idaho Code*, provides in pertinent part as follows:

> Unless otherwise provided by statute or rule, any party may file a motion for reconsideration of a recommended order or a preliminary order within fourteen (14) days of the issuance of that order. The presiding officer shall render a written order disposing of the petition.

2. The petition was filed timely.

3. The Department should grant the petition pursuant to Section 67-5243(3), *Idaho Code*, so that it can review the issue raised by the petitioner and make any changes to the transfer, if appropriate, by amending the transfer and re-issuing as a new preliminary order.

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ORDER

IT IS HEREBY ORDERED that the petition is **GRANTED** pursuant to Section 67-5243(3), *Idaho Code*, so that the Department can review the issue raised by the petitioner in the petition.

Dated this 5th day of July, 2002.

L. GLEN SAXTON
Chief, Water Allocation Bureau

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STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

TRANSFER OF WATER RIGHT

TRANSFER NO. 68558

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 3rd day of June 2002

L. Glenn Saxton
Chief, Water Allocation Bureau

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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

BENEFICIAL USE	From	To	Diversion Rate	Volume
HEATING	01/01	12/31	0.14 CFS	101.4 AF
DOMESTIC	01/01	12/31	0.04 CFS	0.6 AF
IRRIGATION	01/01	12/31	0.14 CFS	38.0 AF
			0.14 CFS	101.4 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: HEATING & DOMESTIC

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

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OCT 3 0 2002

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. 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.

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. 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 IDWRs 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.

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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.

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 3rd day of June, 20 02

Chief, Water Allocation Bureau

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OCT 3 0 2002

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

BENEFICIAL USE	From	To	Diversion Rate	Volume
IRRIGATION	01/01	12/31	0.66 CFS	38.0 AF
DOMESTIC	01/01	12/31	0.04 CFS	0.6 AF
HEATING	01/01	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				

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OCT 2 0 2003

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. 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.

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. 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 IDWRs 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.

MICROFILMED
OCT 30 2002

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.

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 3rd day of June, 20 02

Chief, Water Allocation Bureau

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OCT 2 0 2002

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

BENEFICIAL USE	From	To	Diversion Rate	Volume
DOMESTIC	01/01	12/31	0.04 CFS	0.6 AF
IRRIGATION	01/01	12/31	0.80 CFS	38.0 AF
HEATING	01/01	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

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OCT 3 0 2002

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. 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.

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. 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 IDWRs 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.

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OCT 3 0 2007

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.

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 3rd day of June, 2002

L. Lew Saxton

Chief, Water Allocation Bureau

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OCT 0 8 2002

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE
STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR TRANSFER OF WATER RIGHT NO. 63-00012, 63-00013, 63-00015 (No. 68558), AND 63-31051 (No. 68559) IN THE NAME OF THE TERTELING COMPANY, INC	**ORDER SUSPENDING PROTESTS AND VACATING HEARING**

FINDINGS OF FACT

1. On October 2, 2000, The Terteling Company, Inc. ("Terteling") filed two Applications for Transfer of Water Right, designated nos. 68558 and 68559 (the "transfers"), with the Idaho Department of Water Resources ("IDWR").

2. On December 22, 2000 Edwards Family, LLC ("Edwards"), through a predecessor entity, filed protests (the "protests") to the transfers.

3. On January 24, 2002, Terteling and Edwards executed a settlement agreement that resolves the protests, contingent on an order from IDWR approving the transfers that is consistent with the terms of the settlement agreement.

4. Paragraph 1 of the January 24, 2002 settlement agreement states that Edwards shall file documents suspending the protests with IDWR, pending approval of the transfers that caps the annual diverted volume of water rights 63-00012, 63-00013, and 63-00015 to a maximum of 400 AF.

5. On February 5, 2002, Edwards filed the settlement agreement with IDWR.

ORDER

Based on the foregoing, IDWR makes the following order:

1. In accordance with the terms of the January 24, 2002 settlement agreement on file with IDWR, the protests are suspended pending a final order from IDWR on the transfers.

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OCT 2 3 2002

2. The hearing currently scheduled for February 27, 28 and March 1, 2002 in this matter is vacated.

3. IDWR will issue a decision and order on the transfers in due course. The decision will be a preliminary order. The issues raised by the protests will be resolved by the preliminary order. If Edwards determines that the preliminary decision does not adequately address the issues raised by its protests, Edwards may reassert the protests and Edwards is entitled to all procedural protections afforded by law and the rules of IDWR, including the right to a hearing.

DATED this 12th day of February 2002.

Gary Spackman

CERTIFICATE OF MAILING

I hereby certify that on this 12th day of February 2002, I caused to be served a true and correct copy of the foregoing addressed to the following:

Sue Taylor
Senior Secretary

THE TERTELING CO INC
C/O JOHN M MARSHALL
GIVENS PURSLEY LLP
PO BOX 2720
BOISE ID 83701-2720

PAUL EDWARDS
C/O DANA HOFSTETTER
HOFSTETTER LAW OFFICES
608 W FRANKLIN
BOISE ID 83702

MICROFILMED
OCT 30 2002

State of Idaho
DEPARTMENT OF WATER RESOURCES
1301 North Orchard Street, Boise, ID 83706 - P.O. Box 83720, Boise, ID 83720-0098
Phone: (208) 327-7900 Fax: (208) 327-7866 Web Site: www.idwr.state.id.us

DIRK KEMPTHORNE
Governor

KARL J. DREHER
Director

October 11, 2002

THE TERTELING CO INC
3823 N 36TH ST
BOISE ID 83703

RE: Transfer No.: 68558 - Water Right 63-12, 63-13, 63-15
Transfer Approval Notice

Dear Water Right Holder(s):

The Department of Water Resources has issued the enclosed approved Transfer of Water Right(s). Please be sure to thoroughly review the conditions of approval and remarks listed on the approval document.

The Transfer of Water Right(s) is a PRELIMINARY ORDER issued by the Department pursuant to section 67-5243, Idaho Code. It can and will become a final order without further action by the Department unless the APPLICANT petitions for reconsideration or files an exception and/or brief within fourteen (14) days of the service date as described in the enclosed information sheet.

ANY PERSON aggrieved by any decision, determination, order or action of the Department and who has not previously been afforded an opportunity for a hearing on the matter may request a hearing pursuant to section 42-1701A(3), Idaho Code. A written petition contesting the action of the Department and requesting a hearing shall be filed within fifteen (15) days after receipt of the denial or conditional approval.

Please note that water right owners are required to report any change of water right ownership and/or mailing address to the Department within 120 days of the change. Failure to report these changes could result in a $100 late filing fee. Contact any office of the Department or visit the Department's homepage on the Internet to obtain the proper forms and instructions.

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OCT 2002

If you have any questions, please contact me at 208-327-7940.

Sincerely,

Pamela S. Skaggs

for Jeff Peppersack, Manager
Water Rights Permits Section

JP:klt

Enclosure(s)

cc: Michael Creamer, Givens Pursley, PO Box 2720, Boise, ID 83702-2720
Dana Hofstetter, Hofstetter Law Office, 608 W. Franklin St, Boise, ID 83702

MICROFILMED
NOV 12 2002

CERTIFICATE OF SERVICE

I hereby certify that on October 11, 2002 I mailed a true and correct copy, postage prepaid, of the foregoing TRANSFER APPROVAL to the person(s) listed below:

RE: TRANSFER NO. 68558 - WATER RIGHTS 63-12, 63-13, 63-15

THE TERTELING CO INC
3823 N 36TH ST
BOISE ID 83703

GIVENS PURSLEY LLP
ATTN MICHAEL CREAMER
PO BOX 2720
BOISE ID 83701-2720

DANA HOFSTETTER
HOFSTETTER LAW OFFICE
608 W FRANKLIN ST
BOISE ID 83702

Kari Lynn Townsend
Secretary

MICROFILMED
NOV 12 2002

EXPLANATORY INFORMATION TO ACCOMPANY A PRELIMINARY ORDER

The accompanying order or approved document is a "**Preliminary Order**" issued by the department pursuant to section 67-5243, Idaho Code. It can and will become a final order without further action of the Department of Water Resources (department) unless a party petitions for reconsideration, files an exception and brief, or requests a hearing as further described below:

PETITION FOR RECONSIDERATION

Any party may file a petition for reconsideration of a preliminary order with the department within fourteen (14) days of the service date of this order. The department will act on a petition for reconsideration within twenty-one (21) days of its receipt, or the petition will be considered denied by operation of law. See Section 67-5243(3) Idaho Code.

EXCEPTIONS AND BRIEFS

Within fourteen (14) days after (a) the service date of a preliminary order, (b) the service date of a denial of a petition for reconsideration from this preliminary order, or (c) the failure within twenty-one (21) days to grant or deny a petition for reconsideration from this preliminary order, any party may in writing support or take exceptions to any part of a preliminary order and may file briefs in support of the party's position on any issue in the proceeding with the Director. Otherwise, this preliminary order will become a final order of the agency.

REQUEST FOR HEARING

Unless a right to a hearing before the department or the Idaho Water Resource Board (Board) is otherwise provided by statute, any person aggrieved by any final decision, determination, order or action of the Director of the department and who has not previously been afforded an opportunity for a hearing on the matter may request a hearing pursuant to section 42-1701A(3), Idaho Code. A written petition contesting the action of the Director and requesting a hearing shall be filed within fifteen (15) days after receipt of the denial or conditional approval.

ORAL ARGUMENT

If the Director grants a petition to review the preliminary order, the Director shall allow all parties an opportunity to file briefs in support of or taking exceptions to the preliminary order and may schedule oral argument in the matter before issuing a final order. If oral arguments are to be heard, the Director will within a reasonable time period notify each party of the place, date and hour for the argument of the case. Unless the Director orders otherwise, all oral arguments will be heard in Boise, Idaho.

CERTIFICATE OF SERVICE

All exceptions, briefs, requests for oral argument and any other matters filed with the Director in connection with the preliminary order shall be served on all other parties to the proceedings in accordance with IDAPA Rules 37.01.01302 and 37.01.01303 (Rules of Procedure 302 and 303).

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FINAL ORDER

The Director will issue a final order within fifty-six (56) days of receipt of the written briefs, oral argument or response to briefs, whichever is later, unless waived by the parties or for good cause shown. The Director may remand the matter for further evidentiary hearings if further factual development of the record is necessary before issuing a final order. The department will serve a copy of the final order on all parties of record.

Section 67-5246(5), Idaho Code, provides as follows:

> Unless a different date is stated in a final order, the order is effective fourteen (14) days after its issuance if a party has not filed a petition for reconsideration. If a party has filed a petition for reconsideration with the agency head, the final order becomes effective when:
>
> (a) the petition for reconsideration is disposed of; or
> (b) the petition is deemed denied because the agency head did not dispose of the petition within twenty-one (21) days.

APPEAL OF FINAL ORDER TO DISTRICT COURT

Pursuant to sections 67-5270 and 67-5272, Idaho Code, if this preliminary order becomes final, any party aggrieved by the final order or orders previously issued in this case may appeal the final order and all previously issued orders in this case to district court by filing a petition in the district court of the county in which:

i. A hearing was held,
ii. The final agency action was taken,
iii. The party seeking review of the order resides, or
iv. The real property or personal property that was the subject of the agency action is located.

The appeal must be filed within twenty-eight (28) days of this preliminary order becoming final. See section 67-5273, Idaho Code. The filing of an appeal to district court does not itself stay the effectiveness or enforcement of the order under appeal.

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NOV 12 2002

State of Idaho
DEPARTMENT OF WATER RESOURCES
1301 North Orchard Street, Boise, ID 83706 - P.O. Box 83720, Boise, ID 83720-0098
Phone: (208) 327-7900 Fax: (208) 327-7866 Web Site: www.idwr.state.id.us

DIRK KEMPTHORNE
Governor

KARL J. DREHER
Director

August 28, 2002

Michael C. Creamer
GIVENS, PURSLEY & HUNTLEY
277 N. 6th St., Suite 200
P.O. Box 2720
Boise, ID 83701

Dana Hofstetter
Hofstetter Law Office, PLLC
608 West Franklin St.
Boise, ID 83702

RE: AMENDED TRANSFER NO. 68558 - DRAFT

Dear Mr. Creamer and Ms. Hofstetter:

Enclosed please find a draft amended transfer in the name of The Terteling Company, Inc. for your review of the conditions of approval.

Please submit any corrections or comments you may have within fourteen (14) days of the date of this letter. If you have questions, please feel free to contact me.

Sincerely,

L. Glen Saxton

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

Encl: 1

c: Gary Spackman - IDWR

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SEP 12 2002

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

AMENDED TRANSFER OF WATER RIGHT *AMENDED*

TRANSFER NO. 68558

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				GROUND WATER
63-13	AJC/Decreed	07/01/1922	0.66 cfs				GROUND WATER
63-15	AJC/Decreed	03/23/1927	0.80 cfs				GROUND WATER

Purpose of Transfer (Changes Proposed)

Current Number	Split	POD	POU	Add POD	Place 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	499.0 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		**0.80 cfs**	**400.0 af**	**6.0**	**15.0**		N/A	N/A	N/A	N/A

Detailed Water Right Description(s) attached

Dated this _____ day of _____, 20__

DRAFT

_____
Chief, Water Allocation Bureau

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NOV 12 2002

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

DRAFT

Priority Date: 07/01/1921

Source: GROUND WATER

BENEFICIAL USE	From	To	Diversion Rate	Volume
HEATING	01/01	12/31	0.14 CFS	101.4 AF
DOMESTIC	01/01	12/31	0.04 CFS	0.6 AF
IRRIGATION	01/01	12/31	0.14 CFS	38.0 AF
			0.14 CFS	101.4 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: HEATING & DOMESTIC

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

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NOV 1 2 2002

DRAFT

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.

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NOV 12 2002

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 _____ day of _____, 20____

DRAFT

_____
Chief, Water Allocation Bureau

MICROFILMED
NOV 12 2002

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

DRAFT

Priority Date: 07/01/1922

Source: GROUND WATER

BENEFICIAL USE	From	To	Diversion Rate	Volume
IRRIGATION	01/01	12/31	0.66 CFS	38.0 AF
DOMESTIC	01/01	12/31	0.04 CFS	0.6 AF
HEATING	01/01	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				

MICROFILMED
NOV 1 2 2002

DRAFT

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.

MICROFILMED
NOV 12 2002

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 _____ day of _____, 20____

DRAFT

_____

Chief, Water Allocation Bureau

MICROFILMED
NOV 12 2012

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.

DRAFT

Right Holder: THE TERTELING COMPANY INC
3823 N 36TH ST
BOISE ID 83703

Priority Date: 03/23/1927

Source: GROUND WATER

BENEFICIAL USE	From	To	Diversion Rate	Volume
DOMESTIC	01/01	12/31	0.04 CFS	0.6 AF
IRRIGATION	01/01	12/31	0.80 CFS	38.0 AF
HEATING	01/01	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

MICROFILMED
2001 12 2002

DRAFT

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.

MICR...

NOV 1 2 2012

DRAFT

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 _____ day of _____, 20_____

_____

Chief, Water Allocation Bureau

MICRO [illegible]

[illegible] 2002

HOFSTETTER LAW OFFICE

608 West Franklin Street
Boise, Idaho 83702

Dana@IdahoWaterLaw.com

Dana L. Hofstetter
Attorney at Law

Telephone: (208) 424-7800
Facsimile: (208) 424-8774

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AUG 19 2002
Department of Water Resources

RECEIVED
AUG 12 2002
WATER RESOURCES
WESTERN REGION

August 9, 2002

Via Facsimile and U.S. Mail

Gary Spackman
Western Region
Idaho Department of Water Resources
2735 Airport Way
Boise, Idaho 83705-5082

Re: Water Right Transfer No. 68558

Dear Mr. Spackman:

The Edwards Family LLC ("Edwards") has decided to withdraw its *Response to Petition for Reconsideration* and two supporting *Affidavits* which it filed in the above-referenced matter on July 29, 2002. Edwards has decided to withdraw these documents to avoid litigation which The Terteling Company indicated it immediately would commence unless these documents were withdrawn.

As you may know, the Tertelings assert that Edwards breached the *Settlement Agreement* by filing the *Response to Petition for Reconsideration*. Edwards believes its filing of the *Response to Petition for Reconsideration* was consistent with the *Settlement Agreement* which provided for suspension, rather than withdrawal, of the Edwards *Protests*. Further, Edwards believes its filing of the *Response to Petition for Reconsideration* was in accord with paragraph three of the February 12, 2002 *Order Suspending Protests and Vacating Hearing*. Edwards expects it would prevail if The Terteling Company were to file a breach of contract lawsuit; but Edwards also believes that having to defend a lawsuit for filing a *Response* on a subject relating to the Idaho Department of Water Resources' regulatory obligations and authorities is not required, since the Idaho Department of Water Resources can address these matters without Edwards' involvement.

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NOV 12 2002

Edwards also would like to request that the Tertelings' *Motion to Strike* and supporting *Affidavit* be withdrawn. The withdrawal of Edwards' *Response to Petition for Reconsideration* results in the Tertelings' *Motion to Strike* being no longer relevant. Further, the *Motion to Strike* and the supporting *Affidavit of T. E. Terteling* contain substantive material relating to confidential settlement negotiations in violation of the Idaho Department of Water Resources' Rule of Procedure 610. Additionally, Edwards does not concur with the Tertelings' description of the content of those settlement negotiations.

Thank you for your consideration in this matter.

Sincerely,

HOFSTETTER LAW OFFICE, LLC

Dana L. Hofstetter

cc: Glen Saxton
John Marshall

E:/3006.1/5314

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NOV 12 2002

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AUG - 9 2002
Department of Water Resources

Hofstetter Law Office
608 West Franklin Street
Boise, Idaho 83702
Phone: (208) 424-7800
Fax: (208) 424-8774
E-Mail: Dana@IdahoWaterLaw.com

FAX COVER SHEET

August 9, 2002

TO:	Gary Spackman	**Fax:**	334-2348
CC:	Glen Saxton		327-7866
	John Marshall		388-1300

FROM: Dana Hofstetter

The information contained in this facsimile may be confidential information or attorney work product or both and is for the exclusive use of the intended recipient listed above. Any reading, disclosure, use or reproduction of this communication other than by the intended recipient is prohibited. If you have received this communication in error, please notify us by collect telephone call immediately and return the communication to us by U. S. Mail.

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ORIGINAL BY MAIL: YES ____ NO __X

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NOV 12 2002

HOFSTETTER LAW OFFICE

608 West Franklin Street
Boise, Idaho 83702

Dana@IdahoWaterLaw.com

Dana L. Hofstetter
Attorney at Law

Telephone: (208) 424-7800
Facsimile: (208) 424-8774

August 9, 2002

Via Facsimile and U.S. Mail

Gary Spackman
Western Region
Idaho Department of Water Resources
2735 Airport Way
Boise, Idaho 83705-5082

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MICROFILMED
AUG 12 2002

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Thank you for your consideration in this matter.

Sincerely,

HOFSTETTER LAW OFFICE, LLC

Dana L. Hofstetter

cc: Glen Saxton
John Marshall

E:/3006.1/5314

MICROFILMED
AUG 12 2002

U.S. Postal Service
CERTIFIED MAIL RECEIPT
Domestic Mail Only; No Insurance Coverage Prov)

7000 1670 0013 9129 8730

OFFICIAL USE

Postage	$
Certified Fee	
Return Receipt Fee (Endorsement Required)	
Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	$

8/9/02

Postmark Here

dg

Sent To: Dana L. Hofstetter

Street, Apt. No.; or PO Box No.: 605 W Franklin St.

City, State, ZIP+4: Boise Id. 83702

PS Form 3800, May 2000 — See Reverse for Instructions

Certified Mail Provides:

- A m[redacted] receipt
- A u[redacted]dentifier for your mailpiece
- A signature upon delivery
- A record of delivery kept by the Postal Service for two years

Important Reminders:

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- Certified Mail is *not* available for any class of international mail.
- NO INSURANCE COVERAGE IS PROVIDED with Certified Mail. For valuables, please consider Insured or Registered Mail.
- For an additional fee, a *Return Receipt* may be requested to provide proof of delivery. To obtain Return Receipt service, please complete and attach a Return Receipt (PS Form 3811) to the article and add applicable postage to cover the fee. Endorse mailpiece "Return Receipt Requested". To receive a fee waiver for a duplicate return receipt, a USPS postmark on your Certified Mail receipt is required.
- For an additional fee, delivery may be restricted to the addressee or addressee's authorized agent. Advise the clerk or mark the mailpiece with the endorsement *"Restricted Delivery"*.
- If a postmark on the Certified Mail receipt is desired, please present the article at the post office for postmarking. If a postmark on the Certified Mail receipt is not needed, detach and affix label with postage and mail.

IMPORTANT: Save this receipt and present it when making an inquiry.

U.S. Postal Service
CERTIFIED MAIL RECEIPT
Domestic Mail Only; No Insurance Coverage Prov

7000 1670 0013 9129 8747

Postage	$
Certified Fee	
Return Receipt Fee (Endorsement Required)	
Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	$

8/9/02
Postmark Here

dlg

Sent To: Jeffrey C Fereday
Street, Apt. No.; or PO Box No.: P.O. Box 2720
City, State, ZIP+4: Boise, Id 83701-2720

PS Form 3800, May 2000 — See Reverse for Instructions

Certified Mail Provides:

- A m[redacted] receipt
- A u[redacted]dentifier for your mailpiece
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- For an additional fee, delivery may be restricted to the addressee or addressee's authorized agent. Advise the clerk or mark the mailpiece with the endorsement *"Restricted Delivery"*.
- If a postmark on the Certified Mail receipt is desired, please present the article at the post office for postmarking. If a postmark on the Certified Mail receipt is not needed, detach and affix label with postage and mail.

IMPORTANT: Save this receipt and present it when making an inquiry.

SENDER: *COMPLETE THIS SECTION*

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

DANA L HOFSTETTER
608 W FRANKLIN ST
BOISE ID 83702

63-12

MICROFILMED
NOV 2 2002

COMPLETE THIS SECTION ON DELIVERY

A. Received by (Please Print Clearly) Dana Hofstetter B. Date of Delivery 5/12/02

C. Signature
X [signature] ☐ Agent ☐ Addressee

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type
☑ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? *(Extra Fee)* ☐ Yes

2. Article Number *(Copy from service label)*
7000167000139129873O

PS Form 3811, July 1999 Domestic Return Receipt 102595-00-M-0952

UNITED STATES POSTAL SERVICE

First-Class Mail
Postage & Fees Paid
USPS
Permit No. G-10

• Sender: Please print your name, address, and ZIP+4 in this box •

RECEIVED
AUG 14 2002
Department of Water Resources

IDAHO DEPT OF WATER RESOURCES
ATTN DEBORAH GIBSON
1301 N ORCHARD ST
BOISE ID 83706

MICROFILMED
NOV 12 2002

SENDER: *COMPLETE THIS SECTION*

- Complete items 1 [illegible] nd 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

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

MICROFILMED
NOV 02 2002

63-12

2. Article Number *(Copy from service label)*
70001670001391298747

COMPLETE THIS SECTION ON DELIVERY

A. Received by *(Please [illegible] Clearly)*
JOSH FRATES

B. Date of Delivery

C. Signature
X [signature]

☐ Agent
☐ Addressee

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type
☑ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? *(Extra Fee)* ☐ Yes

PS Form 3811, July 1999 Domestic Return Receipt 102595-00-M-0952

UNITED STATES POSTAL SERVICE

First-Class Mail
Postage & Fees Paid
USPS
Permit No. G-10

• Sender: Please print your name, address, and ZIP+4 in this box •

IDAHO DEPT OF WATER
RESOURCES
ATTN DEBORAH GIBSON
1301 N ORCHARD ST
BOISE ID 83706

MICROFILMED
NOV 12 2002

RECEIVED
AUG 14 2002

Department of Water Resources

706=2237

State of Idaho
DEPARTMENT OF WATER RESOURCES
1301 North Orchard Street, Boise, ID 83706 - P.O. Box 83720, Boise, ID 83720-0098
Phone: (208) 327-7900 Fax: (208) 327-7866 Web Site: www.idwr.state.id.us

DIRK KEMPTHORNE
Governor

KARL J. DREHER
Director

August 9, 2002

Re: In the matter of Application for Transfer No. 68558 in the name of Terteling Company, Inc.

Dear Interested Parties:

The Department of Water Resources (department) has issued the enclosed **Amended Preliminary Order and Order Denying Petition for Reconsideration** pursuant to section 67-5243, Idaho Code. **It can and will become a final order without further action of the Department unless a party petitions for reconsideration or files an exception and/or brief as described in the enclosed information sheet**.

If you have any questions, please call me at (208) 327-7953.

Sincerely,

Deborah J. Gibson

Deborah J. Gibson
Administrative Assistant
Water Allocation Bureau

Enclosures
c: IDWR - Regional Office Manager

MICROFILMED
NOV 12 2002

Responding To Preliminary Orders Issued By The Idaho Department Of Water Resources

The accompanying order is a **Preliminary Order** issued by the Idaho Department of Water Resources (department) pursuant to section 67-5243, Idaho Code. **It can and will become a final order without further action of the department unless a party petitions for reconsideration within fourteen (14) days after issuance as further described below:**

PETITION FOR RECONSIDERATION

Any party may file a petition for reconsideration of a preliminary order with the hearing officer within fourteen (14) days of the service date of this order. The hearing officer will act on a petition for reconsideration within twenty-one (21) days of its receipt, or the petition will be considered denied by operation of law. See section 67-5243(3) Idaho Code.

EXCEPTIONS AND BRIEFS

Within fourteen (14) days after (a) the service date of a preliminary order, (b) the service date of a denial of a petition for reconsideration from this preliminary order, or (c) the failure within twenty-one (21) days to grant or deny a petition for reconsideration from this preliminary order, any party may in writing support or take exceptions to any part of a preliminary order and may file briefs in support of the party's position on any issue in the proceeding to the Director. Otherwise, this preliminary order will become a final order of the agency.

If any party appeals or takes exceptions to this preliminary order, opposing parties shall have fourteen (14) days to respond to any party's appeal. Written briefs in support of or taking exceptions to the preliminary order shall be filed with the Director. The Director retains the right to review the preliminary order on his own motion.

ORAL ARGUMENT

If the Director grants a petition to review the preliminary order, the Director shall allow all parties an opportunity to file briefs in support of or taking exceptions to the preliminary order and may schedule oral argument in the matter before issuing a final order. If oral arguments are to be heard, the Director will within a reasonable time period notify each party of the place, date and hour for the argument of the case. Unless the Director orders otherwise, all oral arguments will be heard in Boise, Idaho.

MICROFILMED
NOV 12 2002

CERTIFICATE OF SERVICE

All exceptions, briefs, requests for oral argument and any other matters filed with the Director in connection with the preliminary order shall be served on all other parties to the proceedings in accordance with Rules of Procedure 302 and 303.

FINAL ORDER

The Department will issue a final order within fifty-six (56) days of receipt of the written briefs, oral argument or response to briefs, whichever is later, unless waived by the parties or for good cause shown. The Director may remand the matter for further evidentiary hearings if further factual development of the record is necessary before issuing a final order. The department will serve a copy of the final order on all parties of record.

Section 67-5246(5), Idaho Code, provides as follows:

> Unless a different date is stated in a final order, the order is effective fourteen (14) days after its issuance if a party has not filed a petition for reconsideration. If a party has filed a petition for reconsideration with the agency head, the final order becomes effective when:
>
> (a) the petition for reconsideration is disposed of; or
> (b) the petition is deemed denied because the agency head did not dispose of the petition within twenty-one (21) days.

APPEAL OF FINAL ORDER TO DISTRICT COURT

Pursuant to sections 67-5270 and 67-5272, Idaho Code, if this preliminary order becomes final, any party aggrieved by the final order or orders previously issued in this case may appeal the final order and all previously issued orders in this case to district court by filing a petition in the district court of the county in which:

i. A hearing was held,
ii. The final agency action was taken,
iii. The party seeking review of the order resides, or
iv. The real property or personal property that was the subject of the agency action is located.

The appeal must be filed within twenty-eight (28) days of this preliminary order becoming final. See section 67-5273, Idaho Code. The filing of an appeal to district court does not itself stay the effectiveness or enforcement of the order under appeal.

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NOV 12 2002

P.01

TRANSACTION REPORT

AUG-09-02 FRI 09:03 AM

BROADCAST

DATE	START	RECEIVER	TX TIME	PAGES	TYPE	NOTE	M#
AUG-09	08:56 AM	93881300	2'51"	5	SEND	(M) OK	126
	08:59 AM	94248774	1'41"	5	SEND	(M) OK	126
	09:01 AM	93342348	1'42"	5	SEND	(M) OK	126
		TOTAL		6M 14S	PAGES:	15	

IDAHO DEPARTMENT OF
WATER RESOURCES

Fax

To:	John M. Marshall & Dana L. Hofstetter	**From:**	Deborah J. Gibson
Fax:	388-1300 & 424-8774	**Date:**	August 9, 2002
Phone:		**Pages:**	4
Re:	Application for Transfer No. 68558, in the name of Terteling Company, Inc.	**CC:**	Gary Spackman 334-2348

RECEIVED
AUG 12 2002

August 9, 2002

Department Orders Routing list:
(These documents are also available at http://www.idwr.state.id.us/info/pio/orders.htm)

NORTHERN - Bob Haynes

SOUTHERN - Allen Merritt

EASTERN - Ron Carlson / Skip Jones

WESTERN - Gary Spackman

SODA SPRINGS – Cindy Bird

LEWISTON – Greg Taylor

Legal Division - Phil Rassier

Adjudication Bureau - Dave Tuthill

Information Officer - Dick Larsen

Water Allocation Bureau - Glen Saxton

Water Distribution Section - Tim Luke / Steve Burrell / Dayna Ball / Bob Foster (Salmon)

Water Permits Section - Jeff Peppersack / Shelley Keen

Administration - Norm Young

Planning - Bill Graham

One copy is routed to:

Darla Block _____
Sharla Curtis _____
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Kay Walker _____
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Kari Lynn Townsend _____
Vault _____

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AUG 12 2002

GIVENS PURSLEY LLP

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Department of Water Resources

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Conley E. Ward
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Raymond D. Givens
James A. McClure
Stephanie C. Westermeier
OF COUNSEL

August 7, 2002

VIA HAND DELIVERY

Idaho Department of Water Resources
1301 N. Orchard St.
P.O. Box 83720
Boise, ID 83720-0098

Re: In the Matter of Transfer No. 68558
Our File: 4465-7

Dear Clerk:

Enclosed for filing, please find Amended Certificate of Service in the above captioned case. The Certificate of Service that was attached to the Motion to Strike Edwards Family LLC's Response to Petition for Reconsideration and Supporting Affidavits and Affidavit of T. E. Terteling indicated that these documents were served to Dana L. Hofstetter via telecopy on August 5, 2002, when actually the documents were not received by Ms. Hofstetter's office until the morning of August 6, 2002. I attempted to send the documents by telecopy to Ms. Hofstetter on the afternoon of August 5, 2002, and left the facsimile machine on automatic redial when I left work in the evening. Ms. Hofstetter's facsimile machine did not accept the transmission until the morning of August 6, 2002.

If you have any questions, please call me.

Sincerely,

Tina N. Smith
Assistant to John M. Marshall

Enclosures
cc: Dana L. Hofstetter, Esq.
S:\Clients\4465\7\Corr\2002-8-7 IDWR clerk amened cert.doc

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Department of Water Resources

Jeffrey C. Fereday
John M. Marshall
GIVENS PURSLEY LLP
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Boise, Idaho 83701-2720
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S:\Clients\4465\7\Pleadings on Pressure Issue\amended cert of service.doc

Attorneys for The Terteling Co., Inc.

BEFORE THE STATE OF IDAHO DEPARTMENT OF WATER RESOURCES

IN THE MATTER OF TRANSFER NO. 68558

AMENDED CERTIFICATE OF SERVICE

I hereby certify that on the 6th day of August, 2002, I caused to be served a true and correct copy of Motion to Strike Edwards Family LLC's Response to Petition for Reconsideration and Supporting Affidavits and Affidavit of T. E. Terteling by the method indicated below, and addressed to the following:

Dana L. Hofstetter, Esq.
Hofstetter Law Offices
608 W. Franklin St.
Boise, ID 83702

____ U.S. Mail
____ By hand
____ Overnight
__✓__ Telecopy

Tina Smith

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NOV 12 2002

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AUG - 7 2002
Department of Water Resources

GIVENS PURSLEY LLP

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Robert B. White

Raymond D. Givens
James A. McClure
Stephanie C. Westermeier
OF COUNSEL

August 6, 2002

VIA US MAIL

L. Glen Saxton
Idaho Department of Water Resources
1301 N. Orchard St.
P.O. Box 83720
Boise, ID 83720-0098

Re: In the Matter of Transfer No. 68558
Our File: 4465-7

Dear Glen:

I am enclosing the original Stipulation Allowing The Terteling Company, Inc. to Exercise Water Rights 63-12, 63-13 and 63-15 in Accordance with the Preliminary Order Approving Transfer Number 68558, and a draft Order. I faxed copies of these documents earlier today for filing.

I am also enclosing a copy of the Stipulation. Please date stamp the Stipulation and return it to me in the enclosed, self-addressed, stamped envelope. If you have any questions, please call me.

Sincerely,

John M. Marshall

JMM/tns
Enclosures
S:\Clients\4465\7\Corr\2002-8-6 saxton original stip.doc

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Attorneys for The Terteling Co., Inc.

Dana L. Hofstetter
HOFSTETTER LAW OFFICE, LLC
608 West Franklin Street
Boise, Idaho 83702
Telephone: 208-424-7800
Facsimile: 208-4248774

Attorney for Edwards Family LLC

S:\Clients\4465\7\Pleadings on Pressure Issue\Stipulation to pump under prelim order - Hofstetter edit.doc

BEFORE THE STATE OF IDAHO DEPARTMENT OF WATER RESOURCES

IN THE MATTER OF TRANSFER NO. 68558	**STIPULATION ALLOWING THE TERTELING COMPANY, INC. TO EXERCISE WATER RIGHTS 63-12, 63-13 AND 63-15 IN ACCORDANCE WITH THE PRELIMINARY ORDER APPROVING TRANSFER NUMBER 68558**

STUPULATION

The Terteling Company Inc. ("Terteling") and Edwards Family LLC ("Edwards") stipulate as follows:

1. On June 3, 2002, the Idaho Department of Water Resources ("Department") issued a Preliminary Order approving Transfer No. 68558 in the name of Terteling subject to certain conditions.

2. On June 18, 2002, Terteling filed a Petition for Reconsideration requesting the Department amend Condition No. 9 of the Preliminary Order.

3. On July 26, 2002, Edwards filed a Response to Petition for Reconsideration, asserting that Condition no. 9 should be retained without amendment.

4. Resolution of the dispute over Condition No. 9 potentially could take several weeks or even several months.

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5. Terteling immediately needs to finalize business plans on how and where it will operate during the upcoming fall and winter.

6. Terteling and Edwards stipulate that the Department may enter a temporary order permitting Terteling to divert water rights 63-12, 63-13 and 63-15 in accordance with the terms and conditions of the Preliminary Order while the Department resolves the dispute about the wording of Condition No. 9.

Respectfully submitted this 5th day of August 2002

GIVENS PURSLEY LLP

John M. Marshall
Attorneys for The Terteling Company, Inc.

HOFSTETTER LAW OFFICE

Dana L. Hofstetter
Attorney for Edwards Family LLC

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CERTIFICATE OF SERVICE

I hereby certify that on this 6th day of August, 2002, I caused to be served a true and correct copy of the foregoing by the method indicated below, and addressed to the following:

Dana L. Hofstetter, Esq.
Hofstetter Law Offices
608 W. Franklin St.
Boise, ID 83702

____ U.S. Mail
____ By hand
____ Overnight
__✓__ Telecopy

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

____ U.S. Mail
____ By hand
____ Overnight
__✓__ Telecopy

Tina Smith

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AUG - 6 2002
Department of Water Resources

GIVENS PURSLEY LLP

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Conley E. Ward
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Raymond D. Givens
James A. McClure
Stephanie C. Westermeier
OF COUNSEL

August 5, 2002

VIA US MAIL

Idaho Department of Water Resources
1301 N. Orchard St.
P.O. Box 83720
Boise, ID 83720-0098

Re: In the Matter of Transfer No. 68558
Our File: 4465-7

Dear Clerk:

Enclosed please find MOTION TO STRIKE EDWARDS FAMILY LLC'S RESPONSE TO PETITION FOR RECONSIDERATION AND SUPPORTING AFFIDAVITS and AFFIDAVIT OF T. E. TERTELING in the above referenced matter. I previously faxed the Department copies of these two documents for filing.

If you have any questions, please call me.

Sincerely,

Tina N. Smith
Assistant to John M. Marshall

Enclosures
cc: Tom E. Terteling
S:\Clients\4465\7\Corr\2002-8-5 IDWR strike.doc

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S:\Clients\4465\7\Pleadings on Pressure Issue\Motion to strike Edwards Response.doc

Attorneys for The Terteling Co., Inc.

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Department of Water Resources

BEFORE THE STATE OF IDAHO DEPARTMENT OF WATER RESOURCES

IN THE MATTER OF TRANSFER NO. 68558

MOTION TO STRIKE EDWARDS FAMILY LLC'S RESPONSE TO PETITION FOR RECONSIDERATION AND SUPPORTING AFFIDAVITS

MOTION

The Terteling Company, Inc. ("Terteling") files this Motion to Strike Edwards Family LLC's ("Edwards") Response to Petition for Reconsideration and Supporting Affidavits. By this motion, Terteling seeks an order from the Idaho Department of Water Resources ("Department") striking (1) the Response to Petition for Reconsideration, (2) the Affidavit of Terry M. Scanlan, P.E. in Support of Response to Petition for Reconsideration, and (3) the Affidavit of Dana L. Hofstetter in Support of Response to Petition for Reconsideration, all served on July 26, 2002 (collectively the "Edwards Response"). The Edwards Response was filed several weeks after the deadline for responsive pleadings and is expressly prohibited by a Settlement Agreement between Terteling and Edwards on file with the Department. Terteling would be highly prejudiced if the Department does not strike the Edwards Response.

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Terteling requests expedited consideration of this motion and an order no later than Wednesday, August 7, 2002 because Terteling may need to exercise alternate legal remedies to enforce the Settlement Agreement to preclude Edwards' participation.

1. Edwards' Response is grossly late, and consideration of it would be highly prejudicial to Terteling.

Following issuance of a preliminary order in an administrative proceeding, interested parties and the administrative agency have short timeframes in which to act before the preliminary order becomes final. Idaho Code § 67-5243. The law ensures that the parties involved can move quickly through the administrative process and obtain a final administrative decision in a timely manner. Accordingly, parties contesting a preliminary order have only 14 days to file either a petition for reconsideration or exceptions with the agency head. *Id.* If a petition for reconsideration is filed, the agency then has 21-days to dispose of the petition. *Id.*

In this case, the Department issued its Preliminary Order approving Transfer No. 68558 on June 4, 2002, a copy of which was mailed to Edwards. Terteling field a timely Petition for Reconsideration contesting only Condition No. 9 of the transfer on June 18, 2002. Despite the tight timeframes mandated by the Idaho Administrative Procedures Act, Edwards delayed 52 days after the issuance of the Preliminary Order, and 38 days after the filing of the Petition for Reconsideration to weigh in with the Edwards Response.

By rule, Terteling should have obtained a ruling on its Petition for Reconsideration by July 5, 2002 (21 days after Terteling filed its Petition for Reconsideration (Idaho Code § 67-5243(3)). At the very least, Terteling was entitled to know prior to this time that Edwards was going to seek to participate in the Petition for Reconsideration—in violation of the Settlement Agreement between the parties—with the threat of indefinitely delaying a final order.

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Both Edwards and the Department are aware Terteling is operating under severe time constraints. The hot summer months are the only slow time in the greenhouse business where an operation can be moved to a new location. Affidavit of T. E. Terteling ("Terteling Aff."). Consequently, Terteling worked diligently this winter and spring to settle the protest with Edwards and to provide supporting documentation to the Department to facilitate review of the pending transfer. Upon receipt of the Preliminary Order in early June 2002, Terteling reviewed the rules of procedure and determined that it could file a petition for reconsideration on an ancillary condition imposed by the Preliminary Order and have a final order by no later than mid-July 2002. *Id.* Based on its review of the rules, its expectations of timely review under legally imposed deadlines, and the fact that the Preliminary Order was consistent with the Settlement Agreement between Terteling and Edwards (regardless of the outcome of the Petition for Reconsideration), Terteling reasonably determined to begin moving its greenhouse operation to a new location approved in the Preliminary Order. *Id.*

Terteling has now irrevocably committed to moving its greenhouse operation to a new location. If it cannot divert geothermal water at the new location this fall and winter, it will not be able to conduct business this year and will suffer significant monetary damage in lost sales, inventory and infrastructure investments, not to mention lost customer good will. Terteling Aff.

As discussed above, Terteling was supposed to have an answer on its Petition for Reconsideration by July 5, 2002. Rather than disposing of the Petition for Reconsideration within the 21-day timeframe, the Department took the unusual step of granting the Petition for Reconsideration on July 5, 2002 for the limited purpose of reviewing the issue raised by the Petition for Reconsideration. While unusual, Terteling did not object because it believed a timely review by the Department on the merits was more desirable than a denial based on the

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expiration of a review period where the Department had not taken the opportunity to review the Petition for Reconsideration. *Id.* Terteling expected a timely review thereafter by the Department of the Petition for Reconsideration. Terteling never agreed that the extra time the Department needed to consider the Petition for Reconsideration opened the door for late responses by others up to three weeks after the Department was supposed to have ruled on the Petition for Reconsideration in the first instance.

If the Department is going to review the untimely Edwards Response and use it to further delay its decision on the Petition for Reconsideration, the result is to inappropriately place Terteling in the position of not having a final order upon which it can legally conduct its business.

Indeed, by no fault of its own, Terteling has been placed in a catch-22 situation by Edwards' and the Departments' failure to abide by procedural timeframes. Terteling needs a final order on its transfer to conduct its business. However, if the Department is going to consider the untimely Edwards Response, Terteling is entitled to submit a reply to arguments raised by Edwards, which would further delay the issuance of a final order.

Moreover, even if Terteling were permitted to pump under the preliminary order and conduct business this year, Terteling still would be prejudiced by Edwards' participation in an issue contrary to the Settlement Agreement between the parties. As discussed in detail in Section 2 below, the Settlement Agreement expressly requires Edwards to suspend its participation in these administrative proceedings subject only to ensuring that diversion volume limitation is included in the transfer approval (which has been included). Allowing participation by Edwards on the issue of protecting artesian pressures violates the terms of the Settlement Agreement and prejudices Terteling.

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The prejudice to Terteling can be avoided only by striking the untimely Edwards Response, giving it no weight or consideration, and quickly ruling on the Petition for Reconsideration.

2. The Settlement Agreement between Edwards and Terteling in this matter expressly precludes Edwards from contesting Terteling's Petition for Reconsideration.

Edwards does not have standing in this case to challenge the Petition for Reconsideration. In accordance with a Settlement Agreement signed by Terteling and Edwards on January 24, 2002 to resolve Edwards' Protests to this transfer, Edwards and Terteling agreed to resolve Edwards' Protest by limiting the total annual diversion volume under Terteling's water rights to 400 AF. Pursuant to the Agreement, Edwards was to have suspended its Protest, subject only to review of the final order from the Department that limited the maximum annual diversion volume of the Terteling's rights to no more than 400 AF. Settlement Agreement, Paragraph 1. (The Settlement Agreement is part of the record in this matter. A copy is also attached hereto as Attachment A).

Edwards never formally complied with Paragraph 1. Instead, it simply forwarded the Settlement Agreement to the Department for filing. After receiving a copy of the Settlement Agreement, the Department issued an Order Suspending Protests and Vacating Hearing that states "the protests are suspended pending a final order from IDWR on the transfers." To give this order any meaning, and to make it consistent with the intent of the parties to resolve the Protest, this must mean that Edwards is precluded from further participation in the administrative proceeding excepting review of the final order to ensure that the maximum annual diversion under Transfer No. 68558 is capped at 400 AF. The Department should enforce its order suspending Edwards' Protest and strike the Edwards Response.

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The Department's Order Suspending Protests also states that Edwards (at least in the Department's view) could restate its Protest if the preliminary order did not address the issues raised in Edwards' Protest. While this portion of the Order is inconsistent with the Settlement Agreement that expressly resolves Edwards Protest, it only provides Edwards a limited opportunity to formally reassert its Protest if it does not like the preliminary order. This provision does not allow Edwards the unfettered right to reengage in the administrative process to argue in favor of a condition imposed by the Department but that was specifically excluded by the parties in a comprehensive settlement agreement.

The Department has suspended Edwards' Protest. Edwards effectively is no longer a party to this matter. In accordance with the Settlement Agreement and the Department's Order Suspending Protests, Edwards must be excluded from participation in this matter with the one exception of ensuring that the Terteling's rights at issue are capped at 400AFA. If that were to have happened (which it did not) Edwards would have been permitted to reassert its Protest.

However, allowing additional participation by Edwards would completely undercut the Settlement Agreement, which specifically calls out the conditions upon which the parties resolved Edwards' Protest—that is a maximum annual diversion volume of 400 AF. Since the Preliminary Order does limit the annual diversion volume under the transfer to 400 AF, and this condition has not been challenged in the Petition for Reconsideration, Edwards is not a party with standing to contest the Terteling's Petition for Reconsideration.

Condition No. 9, the condition challenged by Terteling in the Petition for Reconsideration, that in its current form protects the artesian pressures of other rights, is directly contrary to the Settlement Agreement. When the parties negotiated the Settlement Agreement, they specifically removed any protection of artesian pressures and determined that pressure

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levels would be protected by the imposed volume limitations and other provisions of the Settlement Agreement. Terteling Aff. By advocating against alteration of Condition No. 9, Edwards is trying to backdoor its way into getting something out of the Settlement Agreement that the parties specifically removed from the Settlement Agreement. The Department should not sanction this conduct. Instead, the Department should protect the integrity of the settlement process and act in accordance with the terms of the Settlement Agreement by striking the Edwards Response.

If the Department does not enforce the Settlement Agreement to exclude the Edwards Response, and will not strike the Edwards Response on grounds that its untimely and overly prejudicial to Terteling, Terteling requests that the Department issue an order to this effect as soon as possible, and no later than 12:00 p.m. on Wednesday, August 7, 2002 so that Terteling can take appropriate legal action to enforce the Settlement Agreement.

For all the reasons stated herein, Terteling requests an order striking the Edwards Response.

Respectfully submitted this 5th day of August, 2002

GIVENS PURSLEY LLP

John M. Marshall

CERTIFICATE OF SERVICE

I hereby certify that on this 5th day of August, 2002, I caused to be served a true and correct copy of the foregoing by the method indicated below, and addressed to the following:

Dana L. Hofstetter, Esq.
Hofstetter Law Offices
608 W. Franklin St.
Boise, ID 83702

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____ By hand
____ Overnight
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Gary Spackman
Idaho Department of Water Resources
Western Region
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Boise, ID 83705

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Boise, ID 83720-0098

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____ Overnight
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Tina Smith

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AUG 12 2002

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

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

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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

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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

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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

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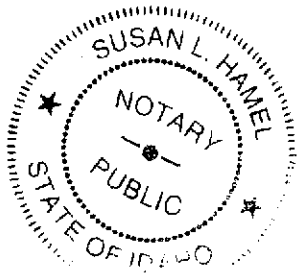
DEC 12 2002

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.

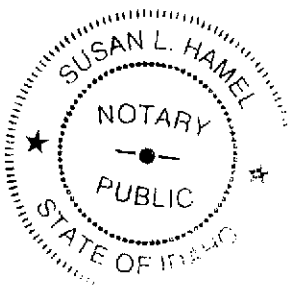


Susan L. Hamel
Notary Public for the State of Idaho
Residing in Kuna, ID Ada County
My Commission Expires: 03/22/2002

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

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NOV 12 2002

RECEIVED
AUG - 6 2002
Department of Water Resources

Jeffrey C. Fereday
John M. Marshall
GIVENS PURSLEY LLP
277 North Sixth Street, Suite 200
P.O. Box 2720
Boise, Idaho 83701-2720
Telephone: 208-388-1200
Facsimile: 208-388-1300
S:\Clients\4465\7\Pleadings on Pressure Issue\Terteling Affidavit.doc

Attorneys for The Terteling Co., Inc.

BEFORE THE STATE OF IDAHO DEPARTMENT OF WATER RESOURCES

IN THE MATTER OF TRANSFER NO. 68558

AFFIDAVIT OF T. E. TERTELING

STATE OF IDAHO)
ss.
County of Ada)

T. E. Terteling, being first duly sworn upon oath, deposes and says:

1. I am the water rights manager for The Terteling Company, Inc. ("Terteling"). I have personal knowledge of the facts I testify to herein.

2. On October 2, 2000 The Terteling Company, Inc. ("Terteling") filed an Application for Transfer, later designated as Transfer No. 68558 by the Idaho Department of Water Resources ("Department").

3. On December 22, 2000, Paul Edwards (later changed to Edwards Family LLC) ("Edwards") filed a protest to Transfer No. 68558 ("Protest").

4. On January 24, 2002, Teretling and Edwards entered into a Settlement Agreement that resolved Edwards' Protest by an agreement capping the maximum annual diversion volumes for the parties' water rights. The Terteling's water rights at issue in Transfer No. 68558 are capped by the Settlement Agreement at 400 AFA.

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5. As part of the Settlement Agreement, Edwards is required to have suspended its Protest pending a final order from the Department capping the maximum annual diverted volume for the Terteling's water rights at issue in Transfer No. 68558 at 400 AF. Edwards never formally complied with this obligation under the Settlement Agreement.

6. On June 4, 2002, the Department issued a Preliminary Order approving Transfer No. 68558 and imposing a 400 AF cap on the annual diversion volume under the Terteling's rights at issue in Transfer No. 68558. The Preliminary Order also included a condition that defined injury to other rights in terms of protecting artesian pressures ("Condition No. 9").

7. The Settlement Agreement specifically removed protection of artesian pressure as a condition of Edward's suspension of its Protest.

8. Upon receipt of the Preliminary Order in early June 2002, we reviewed the rules of procedure and determined that we could file a petition for reconsideration on Condition No. 9 and have a final order on Transfer No. 68558 by no later than July 2002. Because we determined that we would have final order by mid July, and because the Preliminary Order was consistent with the Settlement Agreement between Terteling and Edwards (regardless of the outcome of the Petition for Reconsideration), we decided to move our greenhouse operation to a new location approved in the Preliminary Order this summer. We also relied on the Settlement Agreement between Terteling and Edwards that prohibits Edwards from further participation in the administrative proceedings in Transfer No. 68558.

9. The hot summer months are the only slow time in the greenhouse business where an operation can be moved to a new location. Consequently, if we were going to move our operation to a new location this year, it had to be done this summer. To facilitate a decision on Transfer No. 68558 that would allow us to move our greenhouse operation to the new site, we

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worked diligently this past winter and spring to settle Edwards' Protest and then to provide supporting documentation to the Department to facilitate review of the pending transfer consistent with the terms of the Settlement Agreement.

10. Terteling has now irrevocably committed to moving its greenhouse operation to a new location. If it cannot divert geothermal water at the new location this fall and winter, it will not be able to conduct business this year because it will not be able to heat its greenhouses. I estimate that the losses to our company would be in the range of $500,000 in lost sales and inventory and infrastructure investments. We also could lose untold amounts of customer good will if we are unable to deliver product this business year.

11. On July 5, 2002 the Department served us with an Order Granting Petition for Reconsideration for the limited purpose of reviewing the issue raised by the Petition for Reconsideration. We believe the Department should have issued a ruling disposing of the Petition for Reconsideration by this date, but we did not object because we believed a timely review by the Department on the merits was more desirable than a denial based on the expiration of a review period where the Department had not taken the opportunity to review the Petition for Reconsideration.

12. By agreeing that the Department should be afforded more time to review the Petition for Reconsideration, we never intended that the timeframe for consideration would extend more than a couple of weeks and certainly never intended to allow the Department to accept and consider late responses to the Petition for Reconsideration by other individuals.

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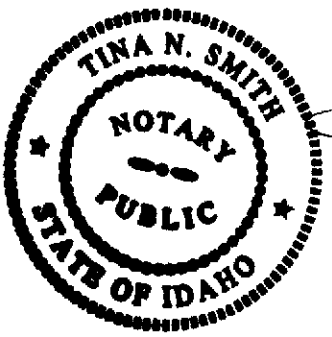
Respectfully submitted this 5th day of August 2002.

Tom E. Terteling

SUBSCRIBED AND SWORN To before me on this the 5th day of August, 2001.



NOTARY PUBLIC FOR IDAHO
Residing at Boise, Idaho
My Commission Expires:

MICROFILMED
NOV 12 2002

CERTIFICATE OF MAILING

I certify that on this 5th day of August, 2002, I caused to be served a true and correct copy of the foregoing by the method indicated below, and addressed to the following:

Dana L. Hofstetter, Esq.
Hofstetter Law Offices
608 W. Franklin St.
Boise, ID 83702

____ U.S. Mail
____ By hand
____ Overnight
__✓__ Telecopy

Gary Spackman
Idaho Department of Water Resources
Western Region
2735 Airport Way
Boise, ID 83705

____ U.S. Mail
____ By hand
____ Overnight
__✓__ Telecopy

Idaho Department of Water Resources
1301 N. Orchard St.
P.O. Box 83720
Boise, ID 83720-0098

____ U.S. Mail
____ By hand
____ Overnight
__✓__ Telecopy

Tina Smith

MICROFILMED
AUG 12 2002

FAX COVER SHEET

DATE: Tuesday, August 6, 2002

PAGES (INCLUDING COVER): 8

ORIGINAL TO FOLLOW: Yes

RE: Transfer No. 68558
Client/Matter No.: 4465-7

JOHN M. MARSHALL
GIVENS PURSLEY LLP
Suite 200, Park Place
277 North Sixth Street
Post Office Box 2720
Boise, Idaho 83701-2720
Telephone: 208-388-1270
Fax: 208-388-1300
Email: jmm@givenspursley.com
Website: www.givenspursley.com

TO: Glen Saxton
Company: Idaho Department of Water Resources
Phone: 327-7955
Fax: 327-7866

RECEIVED
AUG - 6 2002
Department of Water Resources

MESSAGE:

Please see attached letter with Stipulation for filing.

cc: Gary L. Spackman
The Terteling Company, Inc.
Dana L. Hofstetter

If this fax does not transmit fully or is difficult to read, please contact Tina Smith at (208) 388-1234.

CONFIDENTIALITY NOTICE

This facsimile may contain confidential information that is protected by the attorney-client or work product privilege. It is intended only for the use of the individual(s) named above. If you are not a named recipient or an employee responsible for delivering the facsimile, you are instructed not to deliver, distribute or copy this facsimile, nor should you disclose its contents or take any action in reliance on the information it contains. If you have received this facsimile in error, please notify us immediately by telephone to arrange for the return of the transmitted documents to us. Thank you.

S:\Clients\4465\7\Fax\2002-8-6 Saxton stip.doc

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NOV 12 2002

GIVENS PURSLEY LLP

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PO Box 2720, Boise, Idaho 83701
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David R. Lombardi
D. David Lorello, Jr.
Kevin T. Maloney
Kimberly D. Maloney
John M. Marshall
Kenneth R. McClure
Kelly Greene McConnell
Cynthia A. Melillo
Christopher H. Meyer
Kendall L. Miller
L. Edward Miller
Patrick J. Miller
Judson B. Montgomery
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Deborah E. Nelson
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Kenneth L. Pursley
Brad V. Snead
Conley E. Ward
Robert B. White

Raymond D. Givens
James A. McClure
Stephanie C. Westermeier
OF COUNSEL

August 6, 2002

VIA FACSIMILE

Glen Saxton
Idaho Department of Water Resources
1301 N. Orchard St.
P.O. Box 83720
Boise, ID 83720-0098

Re: In the Matter of Transfer No. 68558
Our File: 4465-7

Dear Glen:

Attached for filing, please find a Stipulation Allowing The Terteling Company, Inc. ("Terteling") to Exercise Water Rights 63-12, 63-13, and 63-15 in Accordance with the Preliminary Order Approving Transfer Number 68558, which has been signed by Terteling and Edwards Family LLC ("Edwards"). Pursuit to the Stipulation, Terteling requests a temporary order allowing Terteling to divert water in accordance with the Department's June 4, 2002 Preliminary Order while Terteling, Edwards and the Department address the wording of Condition No. 9. For your convenience, I have also attached a draft Order.

If you have any questions, please call me.

Sincerely,

John M. Marshall

JMM/tns
Enclosures
cc: Gary L. Spackman
The Terteling Company, Inc.
Dana L. Hofstetter
S:\Clients\4465\7\Corr\2002-8-6 saxton stip.doc

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NOV 12 2002

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John M. Marshall
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277 North Sixth Street, Suite 200
P.O. Box 2720
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Telephone: 208-388-1200
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Dana L. Hofstetter
HOFSTETTER LAW OFFICE, LLC
608 West Franklin Street
Boise, Idaho 83702
Telephone: 208-424-7800
Facsimile: 208-4248774

Attorney for Edwards Family LLC

Attorneys for The Terteling Co., Inc.
S:\Clients\4465\7\Pleadings on Pressure Issue\Stipulation to pump under prelim order - Hofstetter edit.doc

BEFORE THE STATE OF IDAHO DEPARTMENT OF WATER RESOURCES

IN THE MATTER OF TRANSFER NO. 68558	**STIPULATION ALLOWING THE TERTELING COMPANY, INC. TO EXERCISE WATER RIGHTS 63-12, 63-13 AND 63-15 IN ACCORDANCE WITH THE PRELIMINARY ORDER APPROVING TRANSFER NUMBER 68558**

STUPULATION

The Terteling Company Inc. ("Terteling") and Edwards Family LLC ("Edwards") stipulate as follows:

1. On June 3, 2002, the Idaho Department of Water Resources ("Department") issued a Preliminary Order approving Transfer No. 68558 in the name of Terteling subject to certain conditions.

2. On June 18, 2002, Terteling filed a Petition for Reconsideration requesting the Department amend Condition No. 9 of the Preliminary Order.

3. On July 26, 2002, Edwards filed a Response to Petition for Reconsideration, asserting that Condition no. 9 should be retained without amendment.

4. Resolution of the dispute over Condition No. 9 potentially could take several weeks or even several months.

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5. Terteling immediately needs to finalize business plans on how and where it will operate during the upcoming fall and winter.

6. Terteling and Edwards stipulate that the Department may enter a temporary order permitting Terteling to divert water rights 63-12, 63-13 and 63-15 in accordance with the terms and conditions of the Preliminary Order while the Department resolves the dispute about the wording of Condition No. 9.

Respectfully submitted this 5th day of August 2002

GIVENS PURSLEY LLP

John M. Marshall
Attorneys for The Terteling Company, Inc.

HOFSTETTER LAW OFFICE

Dana L. Hofstetter
Attorney for Edwards Family LLC

MICROFILMED
SEP 12 2002

CERTIFICATE OF SERVICE

I hereby certify that on this 6th day of August, 2002, I caused to be served a true and correct copy of the foregoing by the method indicated below, and addressed to the following:

Dana L. Hofstetter, Esq.
Hofstetter Law Offices
608 W. Franklin St.
Boise, ID 83702

___ U.S. Mail
___ By hand
___ Overnight
✓ Telecopy

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

___ U.S. Mail
___ By hand
___ Overnight
✓ Telecopy

Tina Smith

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NOV 12 2002

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE
STATE OF IDAHO

IN THE MATTER OF TRANSFER NO. 68558	**ORDER ALLOWING THE TERTELING COMPANY, INC. TO EXERCISE WATER RIGHTS 63-12, 63-13 AND 63-15 IN ACCORDANCE WITH THE PRELIMINARY ORDER APPROVING TRANSFER NUMBER 68558**

FINDINGS OF FACT

1. On October 2, 2000, The Terteling Company, Inc. ("Terteling") filed an Application for Transfer of Water Right, designated no. 68558 (the "transfer"), with the Idaho Department of Water Resources ("IDWR").

2. On December 22, 2000 Edwards Family LLC ("Edwards") filed a protest to the transfer.

3. On February 5, 2002, Edwards and Terteling filed a Settlement Agreement resolving Edwards' protest.

4. On February 12, 2002 IDWR issued an Order suspending Edwards' protest.

5. On June 3, 2002, IDWR issued a Preliminary Order approving Transfer No. 68558 in the name of Terteling subject to certain conditions.

6. On June 18, 2002, Terteling filed a Petition for Reconsideration requesting IDWR amend Condition No. 9 of the Preliminary Order.

7. On July 26, 2002, Edwards filed a Response to Petition for Reconsideration, asserting that Condition No. 9 should be retained without amendment.

8. On August 6, 2002 Edwards and Terteling filed a Stipulation Allowing Terteling to Exercise Water Rights 63-12, 63-13 and 63-15 in Accordance with the Preliminary Order Approving Transfer Number 68558.

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ORDER

Based on the foregoing, it is hereby ORDERED that Terteling shall be permitted to divert water rights 63-12, 63-13 and 63-15 in accordance with the terms and conditions of the Preliminary Order dated June 4, 2002 while Terteling, Edwards and IDWR address the wording of Condition No. 9.

Dated this ____ day of August 2002

L. Glen Saxton
CHIEF, WATER ALLOCATION BUREAU

MICROFILMED
NOV 12 2002

CERTIFICATE OF SERVICE

I hereby certify that on this _____ day of August, 2002, I caused to be served a true and correct copy of the foregoing by the method indicated below, and addressed to the following:

Dana L. Hofstetter, Esq.
Hofstetter Law Offices
608 W. Franklin St.
Boise, ID 83702

____ U.S. Mail
____ By hand
____ Overnight
____ Telecopy

Jeffrey C. Fereday
John M. Marshall
GIVENS PURSLEY LLP
P.O. Box 2720
Boise, ID 83701

____ U.S. Mail
____ By hand
____ Overnight
____ Telecopy

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NOV 12 2002

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE
STATE OF IDAHO

IN THE MATTER OF TRANSFER NO. 68558

ORDER ALLOWING THE TERTELING COMPANY, INC. TO EXERCISE WATER RIGHTS 63-12, 63-13 AND 63-15 IN ACCORDANCE WITH THE PRELIMINARY ORDER APPROVING TRANSFER NUMBER 68558

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Dated this ____ day of August 2002

L. Glen Saxton
CHIEF, WATER ALLOCATION BUREAU

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NOV 12 2002

CERTIFICATE OF SERVICE

I hereby certify that on this _____ day of August, 2002, I caused to be served a true and correct copy of the foregoing by the method indicated below, and addressed to the following:

Dana L. Hofstetter, Esq.
Hofstetter Law Offices
608 W. Franklin St.
Boise, ID 83702

____ U.S. Mail
____ By hand
____ Overnight
____ Telecopy

Jeffrey C. Fereday
John M. Marshall
GIVENS PURSLEY LLP
P.O. Box 2720
Boise, ID 83701

____ U.S. Mail
____ By hand
____ Overnight
____ Telecopy

_____

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NOV 1 2 2002

FAX COVER SHEET

JOHN M. MARSHALL
GIVENS PURSLEY LLP
Suite 200, Park Place
277 North Sixth Street
Post Office Box 2720
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Telephone: 208-388-1270
Fax: 208-388-1300
Email: jmm@givenspursley.com
Website: www.givenspursley.com

DATE: Tuesday, August 6, 2002

PAGES (INCLUDING COVER): 8

ORIGINAL TO FOLLOW: Yes

RE: Transfer No. 68558
Client/Matter No.: 4465-7

TO: Glen Saxton
Company: Idaho Department of Water Resources
Phone: 327-7955
Fax: 327-7866

MESSAGE:

Please see attached letter with Stipulation for filing.

cc: Gary L. Spackman
The Terteling Company, Inc.
Dana L. Hofstetter

MICROFILMED
AUG 12 2002

If this fax does not transmit fully or is difficult to read, please contact Tina Smith at (208) 388-1234.

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This facsimile may contain confidential information that is protected by the attorney-client or work product privilege. It is intended only for the use of the individual(s) named above. If you are not a named recipient or an employee responsible for delivering the facsimile, you are instructed not to deliver, distribute or copy this facsimile, nor should you disclose its contents or take any action in reliance on the information it contains. If you have received this facsimile in error, please notify us immediately by telephone to arrange for the return of the transmitted documents to us. Thank you.

S:\Clients\4465\7\Fax\2002-8-6 Saxton stip.doc

GIVENS PURSLEY LLP

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FACSIMILE: 208 388-1300
WEBSITE: www.givenspursley.com

Direct Dial: (208) 388-1270
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Brad V. Snead
Conley E. Ward
Robert B. White
Raymond D. Givens
James A. McClure
Stephanie C. Westermeier
OF COUNSEL

August 6, 2002

VIA FACSIMILE

Glen Saxton
Idaho Department of Water Resources
1301 N. Orchard St.
P.O. Box 83720
Boise, ID 83720-0098

Re: In the Matter of Transfer No. 68558
Our File: 4465-7

Dear Glen:

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If you have any questions, please call me.

Sincerely,

John M. Marshall

JMM/tns
Enclosures
cc: Gary L. Spackman
The Terteling Company, Inc.
Dana L. Hofstetter
S:\Clients\4465\7\Corr\2002-8-6 saxton stip.doc

MICROFILMED
AUG 12 2002

Jeffrey C. Fereday
John M. Marshall
GIVENS PURSLEY LLP
277 North Sixth Street, Suite 200
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Telephone: 208-388-1200
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Attorneys for The Terteling Co., Inc.

Dana L. Hofstetter
HOFSTETTER LAW OFFICE, LLC
608 West Franklin Street
Boise, Idaho 83702
Telephone: 208-424-7800
Facsimile: 208-4248774

Attorney for Edwards Family LLC

S:\Clients\4465\7\Pleadings on Pressure Issue\Stipulation to pump under prelim order - Hofstetter edit.doc

BEFORE THE STATE OF IDAHO DEPARTMENT OF WATER RESOURCES

IN THE MATTER OF TRANSFER NO. 68558	**STIPULATION ALLOWING THE TERTELING COMPANY, INC. TO EXERCISE WATER RIGHTS 63-12, 63-13 AND 63-15 IN ACCORDANCE WITH THE PRELIMINARY ORDER APPROVING TRANSFER NUMBER 68558**

STUPULATION

The Terteling Company Inc. ("Terteling") and Edwards Family LLC ("Edwards") stipulate as follows:

1. On June 3, 2002, the Idaho Department of Water Resources ("Department") issued a Preliminary Order approving Transfer No. 68558 in the name of Terteling subject to certain conditions.

2. On June 18, 2002, Terteling filed a Petition for Reconsideration requesting the Department amend Condition No. 9 of the Preliminary Order.

3. On July 26, 2002, Edwards filed a Response to Petition for Reconsideration, asserting that Condition no. 9 should be retained without amendment.

4. Resolution of the dispute over Condition No. 9 potentially could take several weeks or even several months.

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5. Terteling immediately needs to finalize business plans on how and where it will operate during the upcoming fall and winter.

6. Terteling and Edwards stipulate that the Department may enter a temporary order permitting Terteling to divert water rights 63-12, 63-13 and 63-15 in accordance with the terms and conditions of the Preliminary Order while the Department resolves the dispute about the wording of Condition No. 9.

Respectfully submitted this 5th day of August 2002

GIVENS PURSLEY LLP

John M. Marshall
Attorneys for The Terteling Company, Inc.

HOFSTETTER LAW OFFICE

Dana L. Hofstetter
Attorney for Edwards Family LLC

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AUG 12 2002

CERTIFICATE OF SERVICE

I hereby certify that on this 6th day of August, 2002, I caused to be served a true and correct copy of the foregoing by the method indicated below, and addressed to the following:

Dana L. Hofstetter, Esq.
Hofstetter Law Offices
608 W. Franklin St.
Boise, ID 83702

___ U.S. Mail
___ By hand
___ Overnight
✓ Telecopy

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

___ U.S. Mail
___ By hand
___ Overnight
✓ Telecopy

Tina Smith

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BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE
STATE OF IDAHO

IN THE MATTER OF TRANSFER NO. 68558

ORDER ALLOWING THE TERTELING COMPANY, INC. TO EXERCISE WATER RIGHTS 63-12, 63-13 AND 63-15 IN ACCORDANCE WITH THE PRELIMINARY ORDER APPROVING TRANSFER NUMBER 68558

FINDINGS OF FACT

1. On October 2, 2000, The Terteling Company, Inc. ("Terteling") filed an Application for Transfer of Water Right, designated no. 68558 (the "transfer"), with the Idaho Department of Water Resources ("IDWR").

2. On December 22, 2000 Edwards Family LLC ("Edwards") filed a protest to the transfer.

3. On February 5, 2002, Edwards and Terteling filed a Settlement Agreement resolving Edwards' protest.

4. On February 12, 2002 IDWR issued an Order suspending Edwards' protest.

5. On June 3, 2002, IDWR issued a Preliminary Order approving Transfer No. 68558 in the name of Terteling subject to certain conditions.

6. On June 18, 2002, Terteling filed a Petition for Reconsideration requesting IDWR amend Condition No. 9 of the Preliminary Order.

7. On July 26, 2002, Edwards filed a Response to Petition for Reconsideration, asserting that Condition No. 9 should be retained without amendment.

8. On August 6, 2002 Edwards and Terteling filed a Stipulation Allowing Terteling to Exercise Water Rights 63-12, 63-13 and 63-15 in Accordance with the Preliminary Order Approving Transfer Number 68558.

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ORDER

Based on the foregoing, it is hereby ORDERED that Terteling shall be permitted to divert water rights 63-12, 63-13 and 63-15 in accordance with the terms and conditions of the Preliminary Order dated June 4, 2002 while Terteling, Edwards and IDWR address the wording of Condition No. 9.

Dated this ____ day of August 2002

L. Glen Saxton
CHIEF, WATER ALLOCATION BUREAU

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AUG 1 2 2002

CERTIFICATE OF SERVICE

I hereby certify that on this _____ day of August, 2002, I caused to be served a true and correct copy of the foregoing by the method indicated below, and addressed to the following:

Dana L. Hofstetter, Esq.
Hofstetter Law Offices
608 W. Franklin St.
Boise, ID 83702

____ U.S. Mail
____ By hand
____ Overnight
____ Telecopy

Jeffrey C. Fereday
John M. Marshall
GIVENS PURSLEY LLP
P.O. Box 2720
Boise, ID 83701

____ U.S. Mail
____ By hand
____ Overnight
____ Telecopy

_____

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AUG 12 2002

FAX COVER SHEET

JOHN M. MARSHALL
GIVENS PURSLEY LLP
Suite 200, Park Place
277 North Sixth Street
Post Office Box 2720
Boise, Idaho 83701-2720
Telephone: 208-388-1270
Fax: 208-388-1300
Email: jmm@givenspursley.com
Website: www.givenspursley.com

DATE: Monday, August 5, 2002

PAGES (INCLUDING COVER): 21

ORIGINAL TO FOLLOW: Yes

RE: Transfer No. 68558
Client/Matter No.: 4465-7

TO: Clerk
Company: IDWR
Phone: 327-7900
Fax: 327-7866

MESSAGE:

Clerk:

Attached for filing please find MOTION TO STRIKE EDWARDS FAMILY LLC'S RESPONSE TO PETITION FOR RECONSIDERATION AND SUPPORTING AFFIDAVITS and AFFIDAVIT OF T. E. TERTELING in the above referenced matter. I will send the originals via us mail.

If you have any questions, please call me.

- Tina N. Smith
Assistant to John M. Marshall

If this fax does not transmit fully or is difficult to read, please contact Tina Smith at (208) 388-1234.

CONFIDENTIALITY NOTICE

This facsimile may contain confidential information that is protected by the attorney-client or work product privilege. It is intended only for the use of the individual(s) named above. If you are not a named recipient or an employee responsible for delivering the facsimile, you are instructed not to deliver, distribute or copy this facsimile, nor should you disclose its contents or take any action in reliance on the information it contains. If you have received this facsimile in error, please notify us immediately by telephone to arrange for the return of the transmitted documents to us. Thank you.

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Jeffrey C. Fereday
John M. Marshall
GIVENS PURSLEY LLP
277 North Sixth Street, Suite 200
P.O. Box 2720
Boise, Idaho 83701-2720
Telephone: 208-388-1200
Facsimile: 208-388-1300
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Attorneys for The Terteling Co., Inc.

BEFORE THE STATE OF IDAHO DEPARTMENT OF WATER RESOURCES

IN THE MATTER OF TRANSFER NO. 68558	**MOTION TO STRIKE EDWARDS FAMILY LLC'S RESPONSE TO PETITION FOR RECONSIDERATION AND SUPPORTING AFFIDAVITS**

MOTION

The Terteling Company, Inc. ("Terteling") files this Motion to Strike Edwards Family LLC's ("Edwards") Response to Petition for Reconsideration and Supporting Affidavits. By this motion, Terteling seeks an order from the Idaho Department of Water Resources ("Department") striking (1) the Response to Petition for Reconsideration, (2) the Affidavit of Terry M. Scanlan, P.E. in Support of Response to Petition for Reconsideration, and (3) the Affidavit of Dana L. Hofstetter in Support of Response to Petition for Reconsideration, all served on July 26, 2002 (collectively the "Edwards Response"). The Edwards Response was filed several weeks after the deadline for responsive pleadings and is expressly prohibited by a Settlement Agreement between Terteling and Edwards on file with the Department. Terteling would be highly prejudiced if the Department does not strike the Edwards Response.

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Terteling requests expedited consideration of this motion and an order no later than Wednesday, August 7, 2002 because Terteling may need to exercise alternate legal remedies to enforce the Settlement Agreement to preclude Edwards' participation.

1. **Edwards' Response is grossly late, and consideration of it would be highly prejudicial to Terteling.**

Following issuance of a preliminary order in an administrative proceeding, interested parties and the administrative agency have short timeframes in which to act before the preliminary order becomes final. Idaho Code § 67-5243. The law ensures that the parties involved can move quickly through the administrative process and obtain a final administrative decision in a timely manner. Accordingly, parties contesting a preliminary order have only 14 days to file either a petition for reconsideration or exceptions with the agency head. *Id.* If a petition for reconsideration is filed, the agency then has 21-days to dispose of the petition. *Id.*

In this case, the Department issued its Preliminary Order approving Transfer No. 68558 on June 4, 2002, a copy of which was mailed to Edwards. Terteling field a timely Petition for Reconsideration contesting only Condition No. 9 of the transfer on June 18, 2002. Despite the tight timeframes mandated by the Idaho Administrative Procedures Act, Edwards delayed 52 days after the issuance of the Preliminary Order, and 38 days after the filing of the Petition for Reconsideration to weigh in with the Edwards Response.

By rule, Terteling should have obtained a ruling on its Petition for Reconsideration by July 5, 2002 (21 days after Terteling filed its Petition for Reconsideration (Idaho Code § 67-5243(3)). At the very least, Terteling was entitled to know prior to this time that Edwards was going to seek to participate in the Petition for Reconsideration—in violation of the Settlement Agreement between the parties—with the threat of indefinitely delaying a final order.

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Both Edwards and the Department are aware Terteling is operating under severe time constraints. The hot summer months are the only slow time in the greenhouse business where an operation can be moved to a new location. Affidavit of T. E. Terteling ("Terteling Aff."). Consequently, Terteling worked diligently this winter and spring to settle the protest with Edwards and to provide supporting documentation to the Department to facilitate review of the pending transfer. Upon receipt of the Preliminary Order in early June 2002, Terteling reviewed the rules of procedure and determined that it could file a petition for reconsideration on an ancillary condition imposed by the Preliminary Order and have a final order by no later than mid-July 2002. *Id.* Based on its review of the rules, its expectations of timely review under legally imposed deadlines, and the fact that the Preliminary Order was consistent with the Settlement Agreement between Terteling and Edwards (regardless of the outcome of the Petition for Reconsideration), Terteling reasonably determined to begin moving its greenhouse operation to a new location approved in the Preliminary Order. *Id.*

Terteling has now irrevocably committed to moving its greenhouse operation to a new location. If it cannot divert geothermal water at the new location this fall and winter, it will not be able to conduct business this year and will suffer significant monetary damage in lost sales, inventory and infrastructure investments, not to mention lost customer good will. Terteling Aff.

As discussed above, Terteling was supposed to have an answer on its Petition for Reconsideration by July 5, 2002. Rather than disposing of the Petition for Reconsideration within the 21-day timeframe, the Department took the unusual step of granting the Petition for Reconsideration on July 5, 2002 for the limited purpose of reviewing the issue raised by the Petition for Reconsideration. While unusual, Terteling did not object because it believed a timely review by the Department on the merits was more desirable than a denial based on the

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expiration of a review period where the Department had not taken the opportunity to review the Petition for Reconsideration. *Id.* Terteling expected a timely review thereafter by the Department of the Petition for Reconsideration. Terteling never agreed that the extra time the Department needed to consider the Petition for Reconsideration opened the door for late responses by others up to three weeks after the Department was supposed to have ruled on the Petition for Reconsideration in the first instance.

If the Department is going to review the untimely Edwards Response and use it to further delay its decision on the Petition for Reconsideration, the result is to inappropriately place Terteling in the position of not having a final order upon which it can legally conduct its business.

Indeed, by no fault of its own, Terteling has been placed in a catch-22 situation by Edwards' and the Departments' failure to abide by procedural timeframes. Terteling needs a final order on its transfer to conduct its business. However, if the Department is going to consider the untimely Edwards Response, Terteling is entitled to submit a reply to arguments raised by Edwards, which would further delay the issuance of a final order.

Moreover, even if Terteling were permitted to pump under the preliminary order and conduct business this year, Terteling still would be prejudiced by Edwards' participation in an issue contrary to the Settlement Agreement between the parties. As discussed in detail in Section 2 below, the Settlement Agreement expressly requires Edwards to suspend its participation in these administrative proceedings subject only to ensuring that diversion volume limitation is included in the transfer approval (which has been included). Allowing participation by Edwards on the issue of protecting artesian pressures violates the terms of the Settlement Agreement and prejudices Terteling.

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The prejudice to Terteling can be avoided only by striking the untimely Edwards Response, giving it no weight or consideration, and quickly ruling on the Petition for Reconsideration.

2. The Settlement Agreement between Edwards and Terteling in this matter expressly precludes Edwards from contesting Terteling's Petition for Reconsideration.

Edwards does not have standing in this case to challenge the Petition for Reconsideration. In accordance with a Settlement Agreement signed by Terteling and Edwards on January 24, 2002 to resolve Edwards' Protests to this transfer, Edwards and Terteling agreed to resolve Edwards' Protest by limiting the total annual diversion volume under Terteling's water rights to 400 AF. Pursuant to the Agreement, Edwards was to have suspended its Protest, subject only to review of the final order from the Department that limited the maximum annual diversion volume of the Terteling's rights to no more than 400 AF. Settlement Agreement, Paragraph 1. (The Settlement Agreement is part of the record in this matter. A copy is also attached hereto as Attachment A).

Edwards never formally complied with Paragraph 1. Instead, it simply forwarded the Settlement Agreement to the Department for filing. After receiving a copy of the Settlement Agreement, the Department issued an Order Suspending Protests and Vacating Hearing that states "the protests are suspended pending a final order from IDWR on the transfers." To give this order any meaning, and to make it consistent with the intent of the parties to resolve the Protest, this must mean that Edwards is precluded from further participation in the administrative proceeding excepting review of the final order to ensure that the maximum annual diversion under Transfer No. 68558 is capped at 400 AF. The Department should enforce its order suspending Edwards' Protest and strike the Edwards Response.

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The Department's Order Suspending Protests also states that Edwards (at least in the Department's view) could restate its Protest if the preliminary order did not address the issues raised in Edwards' Protest. While this portion of the Order is inconsistent with the Settlement Agreement that expressly resolves Edwards Protest, it only provides Edwards a limited opportunity to formally reassert its Protest if it does not like the preliminary order. This provision does not allow Edwards the unfettered right to reengage in the administrative process to argue in favor of a condition imposed by the Department but that was specifically excluded by the parties in a comprehensive settlement agreement.

The Department has suspended Edwards' Protest. Edwards effectively is no longer a party to this matter. In accordance with the Settlement Agreement and the Department's Order Suspending Protests, Edwards must be excluded from participation in this matter with the one exception of ensuring that the Terteling's rights at issue are capped at 400AFA. If that were to have happened (which it did not) Edwards would have been permitted to reassert its Protest.

However, allowing additional participation by Edwards would completely undercut the Settlement Agreement, which specifically calls out the conditions upon which the parties resolved Edwards' Protest—that is a maximum annual diversion volume of 400 AF. Since the Preliminary Order does limit the annual diversion volume under the transfer to 400 AF, and this condition has not been challenged in the Petition for Reconsideration, Edwards is not a party with standing to contest the Terteling's Petition for Reconsideration.

Condition No. 9, the condition challenged by Terteling in the Petition for Reconsideration, that in its current form protects the artesian pressures of other rights, is directly contrary to the Settlement Agreement. When the parties negotiated the Settlement Agreement, they specifically removed any protection of artesian pressures and determined that pressure

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levels would be protected by the imposed volume limitations and other provisions of the Settlement Agreement. Terteling Aff. By advocating against alteration of Condition No. 9, Edwards is trying to backdoor its way into getting something out of the Settlement Agreement that the parties specifically removed from the Settlement Agreement. The Department should not sanction this conduct. Instead, the Department should protect the integrity of the settlement process and act in accordance with the terms of the Settlement Agreement by striking the Edwards Response.

If the Department does not enforce the Settlement Agreement to exclude the Edwards Response, and will not strike the Edwards Response on grounds that its untimely and overly prejudicial to Terteling, Terteling requests that the Department issue an order to this effect as soon as possible, and no later than 12:00 p.m. on Wednesday, August 7, 2002 so that Terteling can take appropriate legal action to enforce the Settlement Agreement.

For all the reasons stated herein, Terteling requests an order striking the Edwards Response.

Respectfully submitted this 5th day of August, 2002

GIVENS PURSLEY LLP

John M. Marshall

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AUG 12 2002

CERTIFICATE OF SERVICE

I hereby certify that on this 5th day of August, 2002, I caused to be served a true and correct copy of the foregoing by the method indicated below, and addressed to the following:

Dana L. Hofstetter, Esq. Hofstetter Law Offices 608 W. Franklin St. Boise, ID 83702	___ U.S. Mail ___ By hand ___ Overnight ✓ Telecopy
Gary Spackman Idaho Department of Water Resources Western Region 2735 Airport Way Boise, ID 83705	___ U.S. Mail ___ By hand ___ Overnight ✓ Telecopy
Idaho Department of Water Resources 1301 N. Orchard St. P.O. Box 83720 Boise, ID 83720-0098	___ U.S. Mail ___ By hand ___ Overnight ✓ Telecopy

Tina Smith

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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

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

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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

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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

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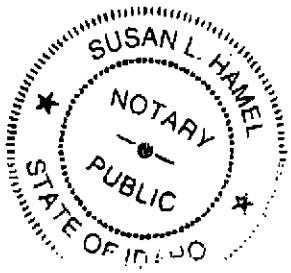
NOV 12 2002

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.

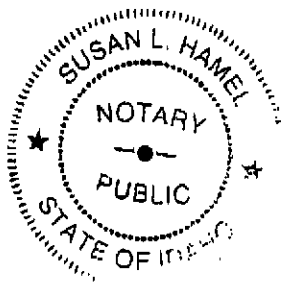


Susan L. Hamel
Notary Public for the State of Idaho
Residing in Kuna, ID Ada County
My Commission Expires: 03/22/2002

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

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NOV 12 2002

Jeffrey C. Fereday
John M. Marshall
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Facsimile: 208-388-1300
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Attorneys for The Terteling Co., Inc.

BEFORE THE STATE OF IDAHO DEPARTMENT OF WATER RESOURCES

IN THE MATTER OF TRANSFER NO. 68558	**AFFIDAVIT OF T. E. TERTELING**

STATE OF IDAHO)
ss.
County of Ada)

T. E. Terteling, being first duly sworn upon oath, deposes and says:

1. I am the water rights manager for The Terteling Company, Inc. ("Terteling"). I have personal knowledge of the facts I testify to herein.

2. On October 2, 2000 The Terteling Company, Inc. ("Terteling") filed an Application for Transfer, later designated as Transfer No. 68558 by the Idaho Department of Water Resources ("Department").

3. On December 22, 2000, Paul Edwards (later changed to Edwards Family LLC) ("Edwards") filed a protest to Transfer No. 68558 ("Protest").

4. On January 24, 2002, Teretling and Edwards entered into a Settlement Agreement that resolved Edwards' Protest by an agreement capping the maximum annual diversion volumes for the parties' water rights. The Terteling's water rights at issue in Transfer No. 68558 are capped by the Settlement Agreement at 400 AFA.

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5. As part of the Settlement Agreement, Edwards is required to have suspended its Protest pending a final order from the Department capping the maximum annual diverted volume for the Terteling's water rights at issue in Transfer No. 68558 at 400 AF. Edwards never formally complied with this obligation under the Settlement Agreement.

6. On June 4, 2002, the Department issued a Preliminary Order approving Transfer No. 68558 and imposing a 400 AF cap on the annual diversion volume under the Terteling's rights at issue in Transfer No. 68558. The Preliminary Order also included a condition that defined injury to other rights in terms of protecting artesian pressures ("Condition No. 9").

7. The Settlement Agreement specifically removed protection of artesian pressure as a condition of Edward's suspension of its Protest.

8. Upon receipt of the Preliminary Order in early June 2002, we reviewed the rules of procedure and determined that we could file a petition for reconsideration on Condition No. 9 and have a final order on Transfer No. 68558 by no later than July 2002. Because we determined that we would have final order by mid July, and because the Preliminary Order was consistent with the Settlement Agreement between Terteling and Edwards (regardless of the outcome of the Petition for Reconsideration), we decided to move our greenhouse operation to a new location approved in the Preliminary Order this summer. We also relied on the Settlement Agreement between Terteling and Edwards that prohibits Edwards from further participation in the administrative proceedings in Transfer No. 68558.

9. The hot summer months are the only slow time in the greenhouse business where an operation can be moved to a new location. Consequently, if we were going to move our operation to a new location this year, it had to be done this summer. To facilitate a decision on Transfer No. 68558 that would allow us to move our greenhouse operation to the new site, we

worked diligently this past winter and spring to settle Edwards' Protest and then to provide supporting documentation to the Department to facilitate review of the pending transfer consistent with the terms of the Settlement Agreement.

10. Terteling has now irrevocably committed to moving its greenhouse operation to a new location. If it cannot divert geothermal water at the new location this fall and winter, it will not be able to conduct business this year because it will not be able to heat its greenhouses. I estimate that the losses to our company would be in the range of $500,000 in lost sales and inventory and infrastructure investments. We also could lose untold amounts of customer good will if we are unable to deliver product this business year.

11. On July 5, 2002 the Department served us with an Order Granting Petition for Reconsideration for the limited purpose of reviewing the issue raised by the Petition for Reconsideration. We believe the Department should have issued a ruling disposing of the Petition for Reconsideration by this date, but we did not object because we believed a timely review by the Department on the merits was more desirable than a denial based on the expiration of a review period where the Department had not taken the opportunity to review the Petition for Reconsideration.

12. By agreeing that the Department should be afforded more time to review the Petition for Reconsideration, we never intended that the timeframe for consideration would extend more than a couple of weeks and certainly never intended to allow the Department to accept and consider late responses to the Petition for Reconsideration by other individuals.

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Respectfully submitted this 5th day of August 2002.

Tom E. Terteling

SUBSCRIBED AND SWORN To before me on this the 5th day of August, 2001.

TINA N. SMITH NOTARY PUBLIC STATE OF IDAHO

NOTARY PUBLIC FOR IDAHO
Residing at Boise, Idaho
My Commission Expires:

CERTIFICATE OF MAILING

I certify that on this 5th day of August, 2002, I caused to be served a true and correct copy of the foregoing by the method indicated below, and addressed to the following:

Dana L. Hofstetter, Esq. Hofstetter Law Offices 608 W. Franklin St. Boise, ID 83702	____ U.S. Mail ____ By hand ____ Overnight ✓ Telecopy
Gary Spackman Idaho Department of Water Resources Western Region 2735 Airport Way Boise, ID 83705	____ U.S. Mail ____ By hand ____ Overnight ✓ Telecopy
Idaho Department of Water Resources 1301 N. Orchard St. P.O. Box 83720 Boise, ID 83720-0098	____ U.S. Mail ____ By hand ____ Overnight ✓ Telecopy

Tina Smith

Tina Smith

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

Attorney for Edwards Family LLC

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR TRANSFER OF WATER RIGHT NOS. 63-00012, 63-00013, AND 63-00015 (TRANSFER NO. 68558) IN THE NAME OF THE TERTELING COMPANY, INC.	**RESPONSE TO PETITION FOR RECONSIDERATION**

The Edwards Family LLC, by and through its counsel of record, Dana L. Hofstetter of Hofstetter Law Office, LLC, respectfully submits this *Response to Petition for Reconsideration.* As discussed below and in the accompanying *Affidavits of Terry M. Scanlan, P.E. and Dana L. Hofstetter*, the Edwards Family LLC diverts water from the Stewart Gulch geothermal aquifer from an artesian well and supports retention of the references to artesian pressure in Transfer No. 68558, Condition of Approval No. 9.

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I. There is a Historical Basis for Protection of Artesian Pressure in the Stewart Gulch Geothermal System.

A review of the history of the Stewart Gulch geothermal system confirms the presence of artesian pressure in the aquifer and the longstanding recognition that artesian pressure represented a protectable component of these geothermal water rights. Transfer Condition No. 9, as originally issued, is consistent with this history and should be retained unchanged.

Regulation of the Stewart Gulch geothermal system began with the case of *Silkey v. Tiegs* in the early 1930's. The Terteling Company's water rights, which are the subject of Transfer No. 68558, and the Edwards Family LLC's geothermal water right no. 63-00014 were involved, along with other geothermal rights diverted from the Stewart Gulch area, in these proceedings. The *Silkey v. Tiegs* district court decision, which was affirmed by the Idaho Supreme Court (twice), recognized that the geothermal rights in the Stewart Gulch area were diverted from wells under artesian pressure and established that the artesian pressure by which these water rights were diverted were subject to regulatory protection. *Affidavit of Dana L. Hofstetter, Exhibits A , B and C.* In fact, the *Silkey* decree reduced diversions under the Edwards right and precluded diversions under other rights entirely, including The Terteling Company's right no. 63-00015, in order to protect the artesian pressure in the wells associated with the most senior Silkey rights (nos. 63-00012 and 63-00013).[1] *Id.*

[1] Pursuant to *the Silkey v. Tiegs* court's direction, the then Department of Reclamation took measurements of the various geothermal wells involved and established the maximum flow rates under artesian pressure from each of the subject wells. *Affidavit of Dana L. Hofstetter, Exhibit D.* These measurements confirm that the full water

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While the *Silkey v. Tiegs* decree focused on protection of the plaintiff Silkey's artesian pressure, it established more broadly that artesian pressures, at least with respect to the water rights at issue in the case, were a protectable interest subject to administrative regulation. *Silkey v. Tiegs* recognized that artesian pressures in the Stewart Gulch geothermal system were a part of the resource and constituted a component interest of a water right protectable by administrative regulation. As successors in interest to the water rights decreed in *Silkey v. Tiegs,* both The Terteling Company, Inc. and the Edwards Family LLC are subject to that principle and, indeed, the Edwards right, along with other rights, were restricted over an extended period of time as a result of that principle. After artesian pressure is decreed to be a protectable interest in a call proceeding by a senior water right holder, a successor in interest to those water rights should not be able to impair the artesian pressures of junior water right holders in a subsequent transfer proceeding.

Despite the drastic administrative controls in the *Silkey v. Tiegs* decree, it appears that the Silkey wells continued to experience some difficulty over the years in obtaining authorized diversion quantities with artesian pressure alone. It was such a shortfall which lead to a Transfer Application in 1964 to add a point of diversion from the Tiegs well (which no longer could be used to divert the Tiegs right no. 63-00015 pursuant to *Silkey v. Tiegs).*[2]

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right quantity of 42 miner's inches under the Edwards right no. 63-00014 could be diverted from the Edwards well with artesian pressure. The data also confirm that at the time of the *Silkey v. Tiegs* proceedings, the wells under which the senior Silkey rights were diverted were not capable of producing a full 40 miner's inches with artesian pressure and, instead, only could produce about half of this flow. *Id*

[2] The 1964 Transfer Application notes, as the reason for that Transfer: "To be able to draw the 40 [inches] as per decree." *Affidavit of Dana L. Hofstetter, Exhibit E.*

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Difficulty with the artesian wells associated with Silkey water right nos. 63-00012 and 63-00013 again became at issue in the late 1980's and early 1990's when the then owner of those rights, instituted proceedings to create Water District 63-S and sought further restrictions on diversions from the geothermal resource. In a December 1, 1992 Order, the Idaho Department of Water Resources recognized the continuing affect of the *Silkey v. Tiegs* decree and ordered that the watermaster of the newly formed Water District 63-S would administer the water rights to protect artesian pressures in accordance with the laws of prior appropriation. *Affidavit of Dana L. Hofstetter, Exhibit G.* In a manner similar to the current Petition for Reconsideration, Terteling Trust No. 7 and J. L. Terteling, then holding junior water right nos. 63-3603 and 63-7595, filed a Petition for Rehearing on this Order, asserting *inter alia* that the provisions protecting artesian pressures in the aquifer should be revised to establish reasonable pumping levels. *Affidavit of Dana L. Hofstetter, Exhibit H.* In ruling on the Petition for Rehearing, the Department continued to assert its position that, pursuant to the terms of *Silkey v. Tiegs,* artesian pressure should continue to be protected in the Stewart Gulch region until the matter would be addressed in the Snake River Basin Adjudication. *Affidavit of Dana L. Hofstetter, Exhibit H.*

In 1997, The Terteling Company, Inc. purchased the senior Silkey rights, water right nos. 63-00012 and 63-00013, as well as the Tiegs right, no. 63-00015. *See Transfer Application No. 68558, Attachment.* In the current Transfer, The Terteling Company seeks to add its Windsock well, which is equipped with a pump, as a point of diversion for the old Silkey rights. In The Terteling Company, Inc.'s pending Petition for Reconsideration, Terteling notes that by moving water right nos. 63-00012 and 63-00013 to the pumped

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Windsock well it "effectively is giving up the special artesian protection associated with these water rights." *Petition for Reconsideration* at 2. Further, Terteling asserts that the general principle of artesian pressure protection recognized in *Silkey v. Tiegs* will disappear along with this Transfer. *Id.* While The Terteling Company has chosen to add a point of diversion and, thereby, relinquish its claim to maintenance of artesian pressure, it does not follow that the Edwards Family LLC's historical artesian water use may be impaired as a result. Condition No. 9 aims to ensure that artesian pressure, a historically protected interest recognized under *Silkey v. Tiegs*, is not significantly impaired for junior users as a result of the Transfer.

From the time of the *Silkey v. Tiegs* decree to the present, it appears that the Edwards right, no. 63-00014, has been diverted from the same artesian well largely without the use of a pump. *Affidavit of Terry M. Scanlan.* Data from the early 1980's shows shut-in pressures at the Edwards well ranging from 17 to 25 3/4 pounds per square inch ("psi"). *Affidavit of Dana L. Hofstetter, Exhibit J.* While data from the late 1980's and early 1990's shows shut-in pressures at the Edwards well somewhat below these measurements, after the establishment of District 63-S and the inception of watermaster regulation, shut-in pressures at the Edwards well have rebounded to their current levels of approximately 15 to 30 psi. *Affidavit of Terry M. Scanlan.* The Edwards Greenhouses enterprise relies on the geothermal water diverted under right no. 63-00014 to heat its greenhouses in cold weather. *Id.* If the artesian pressure in its well is significantly affected, damage to its crops and substantial costs could result. *Id.* During the Stewart Gulch Water District proceedings, it was established that the Tertelings' Windsock well was hydrologically linked with several

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other geothermal wells, including the Edwards well. *Affidavit of Dana L. Hofstetter, Exhibit I, Finding of Fact No. 5.* Therefore, there is no question of the potential for injury to the Edwards well as a result of this Transfer. This potential for injury requires retention of Condition No. 9 in its current form.

II. The Statutory Transfer Criteria in Idaho Code § 42-222 Require Protection of Current Artesian Pressures in Stewart Gulch.

Under the statutory transfer criteria, the Department must ensure that a transfer: 1. does not injure other water rights; 2. does not constitute an enlargement in use; 3. is consistent with the conservation of water resources; and 4. is in the local public interest. Condition No. 9, as originally drafted, ably addresses these statutory obligations of the Department.

The addition of a point of diversion provides increased capacity and the potential for increased diversions over historical levels. Also, where as here, the new point of diversion has an established hydrologic connection with other wells, there is the potential for significant impacts. Condition No. 9 recognizes the existing artesian wells in the geothermal resource and provides that significant reductions in current artesian pressures should not occur as a result of diversions from the Windsock well. In this way, Condition No. 9 aims to meet the Department's obligation to ensure that there will be no injury to other water users (both juniors and seniors) as a result of the Transfer.

Additionally, the artesian pressure aspect of Condition No. 9 ensures that the Transfer does not result in enlargement of use of the original right. Present artesian pressures serve as a yardstick for evaluating whether aquifer conditions have significantly changed, including as a result of increased diversions from the source. Maintenance of

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current artesian pressures is particularly important where, as here, there is little available data on the extent of historical diversions under the rights subject to the Transfer.

The long established artesian pressure at the Edwards well also is a good indicator of the status of the aquifer system and provides for conservation of the resource. The artesian pressure criterion ensures that the Transfer is consistent with the conservation of water resources by requiring that preventative steps be undertaken to maintain artesian pressures and to avoid diversions resulting in the mining of the geothermal aquifer. Requiring that the Transfer not significantly affect artesian pressure is appropriate and, indeed, required under the statutory mandate concerning conservation of the resource.

The Edwards right continues to be diverted from the same historical well from which the water right originally was developed in the 1920's. *Affidavit of Terry M. Scanlan*. While the artesian pressure of the Edwards well has decreased over time, in recent years the shut-in pressure at the Edwards well generally has been above 15 pounds per square inch. *Id.* Any significant reduction below 15 pounds per square inch could mean that the Edwards Family LLC would need to install and maintain equipment at significant cost to obtain the diversions necessary for its operations. *Id.* These costs potentially could affect the economics of the Edwards Greenhouses operation and its ability to remain a going concern. In this regard, Condition No. 9 also addresses the local public interest criteria in the transfer statute and helps ensure that a long term local business enterprise, providing significant local employment opportunities, remains a viable operation.

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In summary, Condition No. 9 is well designed to ensure that the Department's Transfer Approval satisfies applicable statutory requirements. Accordingly, the Condition should remain as originally drafted.

III. The Weight of Authority Provides that the Reasonable Pumping Level Standard Is Not Intended to Apply to Rights Like the Edwards Right.

The reasonable pumping level standard requested by The Terteling Company derives from Idaho's Ground Water Act, enacted in 1951. *Idaho Code § 42-226.* However, requirements in the Ground Water Act are not deemed to be applicable to wells predating enactment of the applicable statutory provision. *See Parker v. Wallentine,* 103 Idaho 506, 650 P.2d 648 (1982). Since the reasonable pumping level provision in the Ground Water Act was enacted in 1951, it would not apply in the case of pre-1951 rights like the Edwards right. To avoid any confusion on this matter, the Ground Water Act now specifically provides that water rights predating the Act are not affected by its terms: "This act shall not affect the rights to the use of ground water in this state acquired before its enactment." *Idaho Code § 42 -226.* Accordingly, the reasonable pumping level language which is promoted by The Terteling Company is not applicable to the Edwards right or other rights predating the Ground Water Act and should not be incorporated into Condition No. 9.

It also should be noted that the Ground Water Act contains a provision specifically recognizing that artesian pressure values for low temperature geothermal resources can be determined to constitute a "reasonable pumping level' upon the determination of the

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Department:

> In determining a reasonable ground water pumping level or levels, the director of the department of water resources shall consider and protect the thermal and/or artesian pressure values for low temperature geothermal resources and for geothermal resources to the extent that he determines such protection is in the public interest.

Idaho Code § 42-226. This provision indicates that even for post-1951 rights, involving low temperature geothermal resources, protection of artesian pressure values as reasonable pumping levels is appropriate when it is in the public interest.

In summary, the reasonable pumping level revisions that The Terteling Company seeks are not applicable to the Edwards well and any other wells in the geothermal resource predating the Ground Water Act. Further, even post-1951 low temperature geothermal water rights may have protected artesian pressure values pursuant to the provisions of the Ground Water Act. The proposed reasonable pumping level language, apparently eschewing protection of artesian pressure values for the Stewart Gulch's low temperature geothermal rights, is not consistent with applicable statutory provisions and should not be included in Condition No. 9.

IV. Conclusion.

For the foregoing reasons, the language in Condition No. 9, as originally drafted, should be retained.

DATED this 26th day of July, 2002.

DANA L. HOFSTETTER

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CERTIFICATE OF SERVICE

I hereby certify that on the 26th day of July, 2002, I caused to be served copies of the foregoing **Response To Petition For Reconsideration** on the following persons by the methods indicated below:

John M. Marshall
Givens Pursley LLP
P.O. Box 2720
Boise, ID 83701-2720
✖ U.S. Mail ☐ Fed Ex ☐ Hand ☐ Fax

Dana L. Hofstetter

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WATER RESOURCES
WESTERN REGION

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

Attorney for Edwards Family LLC

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR TRANSFER OF WATER RIGHT NOS. 63-00012, 63-00013, AND 63-00015 (TRANSFER NO. 68558) IN THE NAME OF THE TERTELING COMPANY, INC.	**AFFIDAVIT OF TERRY M. SCANLAN, P.E. IN SUPPORT OF RESPONSE TO PETITION FOR RECONSIDERATION**

STATE OF IDAHO)
) ss.
COUNTY OF ADA)

Terry M. Scanlan, being first being duly sworn upon oath, deposes and says:

1. I am a consulting engineer doing business as Scanlan Engineering at 600 East River Park Lane, Suite 105, Boise, ID 83706.

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2. My educational background includes Bachelors' and Masters' degrees in geological engineering from the University of Idaho granted in 1983 and 1986, respectively. I am registered as a professional engineer and as a professional geologist in the State of Idaho. I currently serve on the Idaho Board of Registration for Professional Geologists.

3. My work experience includes over seven years as Principal Engineer and Hydrogeologist for Scanlan Engineering. This work has consisted primarily of consulting on water right and water supply matters, including preparation of applications for numerous water right permits and transfers. My water supply consulting has focused on irrigation, municipal, and industrial projects. My consulting work also has included investigations of water rights and SRBA claims. Prior to forming Scanlan Engineering, I was employed by the firm of Montgomery Watson for eight years working on water supply, water right, and environmental projects. I was employed by the U.S. Geological Survey from 1984 through 1986, and by the Idaho Bureau of Mines (now the Idaho Geological Survey) in 1982 and 1983.

4. One of my clients is the Edwards Family LLC, which is the owner of water right no. 63-00014 and the associated geothermal well (the "Edwards well").

5. On several occasions, I have visited the Edwards well and the associated Edwards Greenhouses property. Edwards Greenhouses is a commercial enterprise selling greenhouse plants to the retail public. I am familiar with recent measurement data for the Edwards well and the operation and use of the Edwards well. The geothermal water diverted

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from the Edwards well is used to heat the greenhouses comprising the Edwards Greenhouses enterprise.

6. Based on my observations regarding the location of the Edwards well and its construction and review of water right documentation for water right no. 63-00014, it is my understanding that the Edwards well which remains in operation today is the same Edwards well that was drilled in the 1920's for development of water right no. 63-00014.

7. The Edwards well currently is operated with artesian pressure without the use of a pump. While the well is equipped with a pump, the pump typically is not used.

8. Attached hereto as Exhibit 1 is a chart of measured shut-in pressure at the Edwards well from the year 1980 through the year 2000. I obtained this chart from Ken Neely of the Idaho Department of Water Resources. Shut-in pressure is a measure of artesian pressure. Since the conclusion of the District 63-S proceedings in the early 1990's, artesian pressure at the Edwards well has rebounded such that it typically exceeds a shut-in pressure of 15 pounds per square inch ("psi") during the heating season.

9. If the artesian pressure in the Edwards well were to drop below 15 psi on a regular basis during the heating season, the Edwards Family LLC likely would need to pump to maintain adequate water flows. Increased costs as a result of pumping would include the costs associated with electrical utility service and, in the event of a significant decline or loss of artesian pressure, possibly also well improvement and equipment costs (redrilling well, new casing, pump, generator, etc.) to ensure uninterrupted water supply during critical

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periods. These increased costs could be significant and could affect the profitability of the Edwards Greenhouses enterprise.

FURTHER YOUR AFFIANT SAYETH NAUGHT.

DATED this 25th day of July, 2002.

Terry M Scanlan

TERRY M. SCANLAN

SUBSCRIBED AND SWORN to before me this 25th day of July, 2002.

Notary Public in and for the State of Idaho
Residing at: Boise, ID
My Commission Expires: Feb. 13, 2003

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CERTIFICATE OF SERVICE

I hereby certify that on the 26th day of July, 2002, I caused to be served copies of the foregoing **Affidavit Of Terry M. Scanlan In Support Of Response To Petition For Reconsideration** on the following persons by the methods indicated below:

John M. Marshall
Givens Pursley LLP
P.O. Box 2720
Boise, ID 83701-2720
✖ U.S. Mail ☐ Fed Ex ☐ Hand ☐ Fax

Dana L. Hofstetter

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Edwards Greenhouse Geothermal Well

IDWR, KNEELY, January 2001

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MAR 12 2002

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WATER RESOURCES
WESTERN REGION

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Attorney for Edwards Family LLC

BEFORE THE DEPARTMENT OF WATER RESOURCES OF THE STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR TRANSFER OF WATER RIGHT NOS. 63-00012, 63-00013, AND 63-00015 (TRANSFER NO. 68558) IN THE NAME OF THE TERTELING COMPANY, INC.	**AFFIDAVIT OF DANA L. HOFSTETTER IN SUPPORT OF RESPONSE TO PETITION FOR RECONSIDERATION**

STATE OF IDAHO)
) ss.
COUNTY OF ADA)

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

1. I am the attorney of record for the Edwards Family LLC in this proceeding.

2. Attached hereto as Exhibit A is a true and correct copy of the June 13,1930, *Silkey v. Tiegs* decree of the Third Judicial District of the State of Idaho.

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3. Attached hereto as Exhibit B is a true and correct copy of *Silkey v. Tiegs,* 51 Idaho 344, 5 P.2d 1049 (1931).

4. Attached hereto as Exhibit C is a true and correct copy of *Silkey v. Tiegs,* 54 Idaho 126, 28 P.2d 1037 (1934).

5. Attached hereto as Exhibit D is a true and correct copy of the May 26, 1932, Affidavit of R.W. Faris, the Commissioner of Reclamation of the State of Idaho, that I obtained from the Third Judicial District of the State of Idaho's file for *Silkey v. Tiegs,* Case No. 11748.

6. Attached hereto as Exhibit E is a true and correct copy of the February 4, 1964, Application for Transfer for water right nos. 63-00012 and 63-00013 that I obtained from the Idaho Department of Water Resources' file for water right no. 63-00012.

7. Attached hereto as Exhibit F is a true and correct copy of the Idaho Department of Water Resources December 5, 1989, Final Order Adopting Proposed Memorandum Decision and Order, *In the Matter of Creation of Water District 63-S, Stewart Gulch.*

8. Attached hereto as Exhibit G is a true and correct copy of the December 1, 1992, Idaho Department of Water Resources Final Memorandum Decision and Order, *In the Matter of Request for Groundwater Regulation: Decreed Water Right Nos. 63-0012, 63-0013, 63-0014, 63-0015 and 63-0016; Claim No. 63-4037P and Permit No. 63-9758.*

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9. Attached hereto as Exhibit H is a true and correct copy of the October 27, 1993, Idaho Department of Water Resources Order Denying Petitions for Rehearing and Amended Final Memorandum Decision and Order, *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.*

10. Attached hereto as Exhibit I is a true and correct copy of the December 8, 1995, Idaho Department of Water Resources Final Order, *In the Matter of A Petition to Modify the Boundaries of Water District 63-S.*

11. Attached hereto as Exhibit J is a true and correct copy of an August 9, 1983, letter from Robert H. Griffiths, P.E. to L. Glen Saxton of the Idaho Department of Water Resources that I obtained from the Idaho Department of Water Resources file for Decree 63-A-2W.

FURTHER YOUR AFFIANT SAYETH NAUGHT.

DATED this 25th day of July, 2002.

DANA L. HOFSTETTER

SUBSCRIBED AND SWORN to before me this 25th day of July, 2002.

Notary Public in and for the State of Idaho
Residing at: Boise, ID
My Commission Expires: Feb. 13, 2003

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CERTIFICATE OF SERVICE

I hereby certify that on the 26th day of July, 2002, I caused to be served copies of the foregoing **Affidavit of Dana L. Hofstetter In Support Of Response To Petition For Reconsideration** on the following persons by the methods indicated below:

John M. Marshall
Givens Pursley LLP
P.O. Box 2720
Boise, ID 83701-2720
✖ U.S. Mail ☐ Fed Ex ☐ Hand ☐ Fax

Dana L. Hofstetter

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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.

DECREE.

This case came regularly on for trial before the court without a jury on the ____ day of January, 1930, 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 May 1, 1921, and with pri

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July 1, 1921, and with priority as to thirty-three miners inches of such water dating from July 1, 1922, said water being decreed 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

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of said section twenty-nine (29), a distance of six hundred fifty-seven and four-tenths (657.4) feet; thence north 0°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°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 acres.

(3) Defendant Thomas F. Edwards is hereby decreed the right to the use of forty-two 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 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 degree 50 minutes West a distance of 4.15 chains to an iron bar; thence north 74 degrees 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 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.

(4) That the defendant H. W. [illegible] 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;

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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 0.64 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.

(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 (E½) of the Northeast Quarter

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(NE¼) of the Northwest Quarter (NW¼) 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 equivalent 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 employees, or their successors in interest, shall have the right to permit his said well to flow or to use water therefrom 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 defendant 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 defendants 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

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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.

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(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)
(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.

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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 Rees
Clerk

By Ada Peterson Deputy.

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Points Decided.

[1] From the definitions, it is apparent the Board is given jurisdiction by C. S., sec. 6273, to pass upon these contracts, not only as to the fee not exceeding $1 per month, and the services to be rendered, but also the feature involved herein.

The argument that C. S., sec. 6273, applies only to "agreements" is answered by the fact that the collectively and wholly inclusive term "all questions" is used in C. S., sec. 6273, and that the legislature did not intend C. S., sec. 6273, to be restricted to or by C. S., sec. 6262, since hospital contracts are nominated "agreements" in C. S., sec. 6230, and again so recognized in C. S., sec. 6230A, 1921 Sess. Laws, 476.

[2] Having jurisdiction to approve or determine, the Board may reject. (*Key v. Board of Education of Granville County*, 170 N. C. 123, 86 S. E. 1002; *Fuller v. Board of University and School Lands*, 21 N. D. 212, 129 N. W. 1029; *Mellon v. Cherokee Oil & Gas Co.*, 67 Okl. 247, 170 Pac. 691; *Coker v. Watson*, 132 Okl. 199, 252 Pac. 829, 833.)

The Board did not exceed its jurisdiction, and the writ is therefore quashed. Costs to defendants.

Lee, C. J., and Budge, Varian and McNaughton, JJ., concur.

Petition for rehearing denied.

(No. 5651. December 7, 1931.)

FRANCES SILKEY, Respondent, v. H. W. TIEGS, THOMAS F. EDWARDS and J. RYAN, Appellants.

[5 Pac. (2d) 1049.]

WATER AND WATERCOURSES—SUBTERRANEAN WATER—APPROPRIATION—PRIORITIES—TRIAL—REOPENING OF CASE.

1. Granting or refusing motion to reopen case after it has been submitted for decision, but before judgment, is discretionary.

Points Decided.

2. In suit determining priority to subterranean hot water, denying new trial and refusing to reopen case for introduction of evidence showing leak in plaintiff's well *held* not abuse of discretion.

3. Percolating subterranean waters may be appropriated either by statutory permit method, or by actual diversion for beneficial use (C. S., secs. 5558, 5568, 5570, 5571, and sec. 5569, as amended by Laws 1929, chap. 281; Const., art. 15, sec. 3).

4. Valid appropriation of percolating subterranean waters, either by statutory permit method or by actual diversion for beneficial use, has priority over subsequent appropriation, however made (C. S., secs. 5558, 5568, 5570, 5571, and sec. 5569, as amended by Laws 1929, chap. 281; Const., art. 15, sec. 3).

5. Where court's findings are supported, judgment will not be reversed because different conclusion might be inferred.

6. As respects decree, inferior claimants of percolating subterranean waters could close and seal wells in lieu of equipping wells with valves, controlling works and measuring devices.

7. Decree adjudicating water priorities *held* not objectionable as awarding claimant forty miner's inches during nonirrigating season, without finding amount put to beneficial use during that season.

8. Court *held* authorized to retain jurisdiction of case involving water rights for two years and to incorporate in decree administrative provisions (C. S., sec. 5605 et seq., and sec. 5606).

9. Decree awarding subsequent appropriators water with priorities of certain date, but prohibiting subsequent appropriators from using water, *held* not inconsistent.

APPEAL from the District Court of the Third Judicial District, for Ada County. Hon. Dana E. Brinck, Judge.

Suit to quiet title in and to determine priorities of the use of subterranean hot water, and for injunction restraining defendants from operating their artesian wells in such manner as to deplete flow in plaintiff's wells. Judgment for plaintiff. Defendants appeal. *Affirmed.*

Publisher's Note.

3. Prescriptive rights in percolating waters, see note in 55 A. L. R. 1441. See, also, 27 R. C. L. 1285.

tabbies EXHIBIT B

T. L. Martin and Wm. M. Morgan, for Appellants.

It is a fundamental principle of constitutional law, which requires the citation of no authority to support it, that a state constitution is not a grant, but is a limitation upon the powers of the legislature, and the legislative branch of a state government may do whatever it is not prohibited from doing by the constitution. Exercising its powers, the legislature of Idaho has granted and regulated the right to use subterranean waters and has prescribed the means for establishing priorities in the rights to the use thereof. (C. S., secs. 5558, 5568 and 5569; *Speer v. Stephenson*, 16 Ida. 707, 102 Pac. 365; *Nielson v. Parker*, 19 Ida. 727, 115 Pac. 488; *Morris v. Bean*, 146 Fed. 423.)

Edwin Snow, for Respondent.

"Prior in time prior in right" applies to underground artesian waters. (*Hinton v. Little*, 50 Ida. 371, 296 Pac. 582.)

It was not the intention of the legislature to make the permit method the exclusive method of acquiring a water right. (*Nielson v. Parker*, 19 Ida. 727, 115 Pac. 488; *Morris v. Bean*, 146 Fed. 423; *Youngs v. Regan*, 20 Ida. 279, 118 Pac. 499.)

A court of equity has inherent power to insert in its decrees administrative provisions for their enforcement and to retain jurisdiction to see they are enforced. (Century Digest, "Equity," secs. 1053, 1054; Freeman on Judgments, 5th ed., secs. 33–37; *People v. Lyons*, 168 Ill. App. 396.)

VARIAN, J.—This case involves the right to the use of artesian hot water developed from wells upon the lands owned by the parties situate in Sections 28 and 29, Twp. 4 N., R. 2 E. B. M., in Ada county, lying on high ground north of the Soldiers' Home near Boise. The location and soil render them chiefly valuable for truck gardening purposes although hay and other crops are also grown thereon. The hot water from the wells is utilized to heat their homes and

hotbeds as well as for irrigating crops. Appellant Tiegs' well is about 155 feet east of respondent's smaller well, which is 16 feet east of her larger well. Appellant Edwards' well is 1644 feet westerly from respondent's larger well and appellant Ryan's well is 1315 feet northerly from appellant Edwards' well, or about 2,950 feet northwesterly from the larger well of Mrs. Silkey, respondent.

This suit was brought by respondent to quiet title to certain waters appropriated by means of two artesian wells bored on her farm, and to enjoin appellants from using their wells in such manner as to deplete the flow in respondent's said wells.

The court found for respondent and among other things:

"That underlying the lands of the parties hereto, all of which lands are in the same immediate vicinity, is a supply of natural warm water forming an artesian basin; that the evidence is insufficient to establish that the water flows in a subterranean stream, and the court accordingly finds that said supply of water is water percolating underground through a stratum of material which stratum is more pervious than the adjacent material, with the result that with such pervious stratum being tapped by the wells of the respective parties hereto, water from such wells flowed and flows freely therefrom in copious streams to the surface of the ground by artesian pressure, and such pervious stratum and the water percolating therein is the common source of supply for each and every of the flowing artesian wells of the parties hereto, which wells are hereinafter more particularly described, such source of supply forming a natural underground artesian reservoir which underlies not all, but a part of the lands of the several parties hereto."

Respondent was decreed a prior right to the use of forty miner's inches of water, with the following priority; as to seven miner's inches from July 1, 1921, and from July 1, 1922, as to thirty-three miner's inches. Appellants were decreed rights to the use of water from their several wells with priorities as follows: Thomas F. Edwards, forty-two miner's inches from November 22, 1926; H. W. Tiegs, forty miner's

inches from March 23, 1927; and J. Ryan, forty miner's inches from September 24, 1927. The decree fixes the duty of water for irrigation purposes at two miner's inches per acre. The following provisions are contained in the decree:

"(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 the terms of this decree.

"(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 miner's inches of water; from April 1st to October 1st of each year, said defendant Edwards may be permitted to flow from his said well and to use for beneficial purposes twenty miner's inches of water, or so much thereof as will not deplete the flow of plaintiff's wells below forty miner's inches. No water shall be permitted to flow or be used from the respective wells of the defendants Tiegs and Ryan, as it is hereby further determined 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.

"(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.

"(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."

The case was tried by the court without a jury commencing January 6, 1930, and ending January 9, 1930. After decision by the court and before findings were filed, or decree

entered, appellants, on March 5, 1930, moved to reopen the case upon the ground that they had discovered that there was a leak in the Silkey wells whereby a large quantity of the water flowing therein was lost, etc. The motion was renewed on March 29, 1930, based upon certain experiments conducted by appellants after the trial. These motions were submitted upon affidavits and, on June 13, 1930, were denied. The court then filed findings and entered decree herein. Appellants moved for a new trial, which was denied, and they now appeal from the order refusing to reopen the case, the order denying a new trial, and from the decree.

[1, 2] Granting or refusing a motion to reopen a case for the purpose of taking further or additional evidence, after it has been submitted for decision, but before entry of judgment, rests in the discretion of the trial judge. (*Froman v. First Nat. Bank*, 35 Ida. 10, 204 Pac. 145; *Parker v. Swett*, 188 Cal. 474, 205 Pac. 1065; *Denman v. Brennamen*, 48 Okl. 566, 149 Pac. 1105, L. R. A. 1915E, 1947; Bowers' Judicial Discretion of Trial Courts, p. 489; 26 R. C. L. 1042.)

The evidence taken at the trial showed that the hot water in controversy here was obtained at a depth of about 1200 feet, but nonflowing cold-water wells were found at a much less depth. The affidavits proffered tended to show that the water in certain shallow wells, bored after the trial, in the vicinity of respondent's wells, was warmer than the cold water wells in the vicinity of approximately the same depth. Appellants argue therefrom that there is a leak in one or both of respondent's wells. The affidavits show the warm condition of the water obtains in a test well bored nearest to one of appellant Tiegs' wells. A counter-affidavit by respondent is to the effect that earlier shallow wells on her property were cold, but that since the boring of the Tiegs' well one cold well lying southwest of said Tiegs well has been lukewarm. After carefully reading the affidavits we are of the opinion that the court did not abuse its discretion in refusing to reopen the case for further testimony. This evidence is far from clear and does not establish appellants' contention that there is a leakage of water from respondent's wells. Neither did the court err in denying the motion for a new trial.

The vital question raised by this appeal is whether subterranean waters may be appropriated by diversion and beneficial use without compliance with the statute (C. S, sec. 5569, as amended Sess. Laws 1929, chap, 281, p. 675) prescribing the procedure for obtaining a permit from the department of reclamation. Respondent relies entirely upon diversion and application to a beneficial use, having made no attempt to initiate a right under said sections of the statute, while appellants, at the date of the trial, had taken such steps. Their contention is, that subterranean waters can be validly appropriated in no other manner, and that by putting her water to a beneficial use respondent failed to establish a right thereto, or make an appropriation thereof.

The Constitution, art. 15, sec. 3, provides: "The right to divert and appropriate the unappropriated waters of any natural stream to beneficial uses, shall never be denied," and that "Priority of appropriation shall give the better right as between those using the water." It nowhere mentions subterranean waters. The legislature, in 1899 (Laws 1899, p. 380), passed an act, embodied in the present code as C. S., sec. 5558, reading: "The right to the use of the waters of rivers, streams, lakes, springs and of subterranean waters, may be acquired by appropriation."

As was said by Mr. Justice Budge (*Bower v. Moorman*, 27 Ida. 162, 180, Ann. Cas. 1917C, 99, 147 Pac. 496), in holding that subterranean waters appropriated by means of artesian wells might be appropriated under this statute:

"In the case of *Le Quime v. Chambers*, 15 Ida. 405, 98 Pac. 415, 21 L. R. A., N. S., 76, the court says in effect that percolating water is subject to appropriation under our statute, and as such will be recognized and protected by the courts."

In the recent case of *Hinton v. Little*, 50 Ida. 371, 296 Pac. 582, involving priorities of artesian water appropriations by diversion and application to a beneficial use, Mr. Justice Givens said:

"We then have a clear statement in *Bower v. Moorman, supra,* to the effect that subterranean waters are the subject of appropriation. That being true, it follows that the judgment herein should be affirmed, since the waters here were appropriated by the respondents prior to the time that the appellants sought to take from their wells the amount of water now claimed by them."

Coming now to the precise question involved, this court held, in cases involving appropriation of surface waters, that the statutory method prescribed by C. S., secs. 5569, 5570, and 5571, was not exclusive, notwithstanding the provisions of C. S., sec. 5568, reading:

"All rights to divert and use the waters of this state for beneficial purposes shall hereafter be acquired and confirmed under the provisions of this chapter. And after the passage of this title all the waters of this state shall be controlled and administered in the manner herein provided."

Nielson v. Parker, 19 Ida. 727, 115 Pac. 488, holds, in effect, that diversion and application to a beneficial use is sufficient appropriation. See, also, *Morris v. Bean,* 146 Fed. 423, cited by both appellants and respondent.

It was held by this court, in *Short v. Praisewater,* 35 Ida. 691, 699, 208 Pac. 844, that waters of a spring, situate within the boundaries of a homestead entry, are subject to appropriation for a beneficial use with the consent of the entryman, the appropriation consisting of diversion and application to a beneficial use without attempting to follow the prescribed steps to appropriate water by the statutory method. And in *Youngs v. Regan,* 20 Ida. 275, 118 Pac. 499, involving the right to the use of water from springs and artesian wells, the trial court gave precedence to an appropriation under the statutory permit method (*supra*) over one who had diverted and applied the waters to a beneficial use prior to the application for a permit. This court reversed the decree and held that appellant had made the first appropriation of water from both springs and wells. (*Hinton v. Little, supra.* And in *Bower v. Moorman, supra,* and *Hinton v. Little, supra,* this court applied to appropriation

of subterranean waters the rule promulgated by C. S., sec. 5561, "As between appropriators, the first in time is first in right."

[3, 4] We are constrained to hold, therefore, under the decisions cited, and by analogy to the decisions of this court involving appropriation of surface waters, as distinguished from underground waters, that percolating subterranean waters may be appropriated either by the statutory permit method (C. S., secs. 5569, 5570, 5571) or by actual diversion and application to a beneficial use; and that a valid appropriation first made under either method will have priority over a subsequent valid appropriation, however made. It is apparent that the principal advantage to be gained in pursuing the statutory permit method is that the priority then dates from the date of the permit, while the priority dates from the actual application of the water to a beneficial use in cases where the statutory method is not followed.

[5] Appellants attack the decree as not being supported, in many particulars, by the evidence; that the evidence fails to show that taking water from appellants' wells decreases the flow from respondent's wells; that the evidence does not establish that the water flowing in the hot wells of the parties comes from a common source, etc.; that respondent has not shown a right entitling her to the use of forty miner's inches of water; and that the finding and decree, to the effect that sixty miner's inches is the maximum amount of water that can be diverted from the artesian basin supplying the water to all the wells without depleting the supply available to respondent's well, is not supported. It is sufficient to say that there is ample evidence in the record to sustain all these findings. Appellants particularly criticise the testimony of the engineer, Mr. W. G. Sloan. After this suit was commenced the parties stipulated that certain experiments should be conducted for ascertaining the source of the waters in controversy. Mr. Sloan was selected by the respondent (plaintiff), and Mr. Gordon Smith, a civil engineer, by appellants. They proceeded to make tests and experiments from which certain data was

obtained. This was agreed upon by the engineers and stands undisputed in the evidence. Mr. Sloan, testifying as an expert, was of opinion that the hot water in all the artesian wells of the parties came from the same basin, or source; that fifty to sixty miner's inches of water might be taken from the artesian basin without depleting the flow of respondent's wells, etc. Mr. Smith was not put upon the stand to dispute either the data or conclusions testified to by Mr. Sloan. We are now asked to take the data derived from the experiments of these engineers, assume the role of experts, and draw different conclusions from the facts than the judge who tried the case. The evidence was sufficient to sustain the trial court in his findings and judgment and we will not reverse the case because a different conclusion might be inferred therefrom by other persons. (*Wooten v. Dahlquist*, 42 Ida. 121, 244 Pac. 407; *Lus v. Pecararo*, 41 Ida. 425, 238 Pac. 1021; *Wolf v. Eagleson*, 29 Ida. 177, 157 Pac. 1122.)

Appellants assign as error what their counsel terms "a seasonal limitation upon the right of appellant, Edwards, to the use of the water," to which he is found entitled as set forth in paragraph seven of the decree, *supra*. The court decreed him forty-two miner's inches of water "for irrigation, domestic, stock, and heating purposes." The amount of water that he was permitted to flow from his well was "provisionally fixed and limited" as set out in paragraph seven of the decree, *supra*. As argued by respondent, this provision of the decree is clearly in the interest of appellant Edwards. He is permitted to use the excess normal flow from the basin, estimated at from fifteen to twenty inches above the forty miner's inches appropriated by respondent. The testimony indicates that there is more flow during the later period than in the first period mentioned in the decree. It is not an attempt to fix one duty of water for one part of the irrigation season and a higher duty for another part, as was the case in *Muir v. Allison*, 33 Ida. 146, 191 Pac. 206, cited by appellants, where the court held that one entitled to a continuous flow of the waters of a stream could not be deprived

of his right thereto by decree without his consent. The purpose of the decree here is to provisionally fix the total amount of water to be taken from respondent's and appellant Edwards' wells. Sixty miner's inches is the amount found by the court to be the normal flow from said basin. In any event this provision is not final and is in effect an administrative one, subject to change by the trial court in case it should later develop that said appellant is entitled to more or less than the amounts so permitted to flow from his well. There is no force in the objection that the decree does not permit appellant Edwards to have any supervision, control over, or right of measurement over respondent's wells. That is a matter to be supervised and controlled by the commissioner of reclamation appointed, as a commissioner to enforce the operation of the decree, by the trial court.

[6] Again, appellants also object to paragraph eight of the decree, *supra*, contending that Ryan and Tiegs are shut off from the use of any water from their wells yet are compelled to install and maintain suitable and sufficient valves, controlling works, and measuring devices at their wells; that said valves and controlling works can be put to no useful purpose and thereby said appellants are deprived of their property without due process of law. Apparently the court intended to permit these parties to have the benefit of any water that might be determined to belong to them in case the operation of the wells under the administrative provisions of the decree should show that both respondent Silkey and appellant Edwards could be supplied to the full extent of their rights leaving a surplus for the later rights. If appellants are satisfied to close and seal their wells entirely, we see no reason why they should not be permitted to do so, and save the expense of installing measuring and controlling devices.

Appellants contend that the decree is in violation of the rights of appellants in that it awards to respondent forty miner's inches, as prior to the rights awarded to appellants, without reference to the quantity of water respondent puts to a beneficial use, and enjoins appellants Tiegs and Ryan

from taking any water from their wells, etc. This contention cannot be sustained since paragraph six of the decree, among other things, provides:

"All rights herein decreed and allotted are decreed for beneficial use only, and none of the parties hereto, their agents or employees, or their successors in interest, shall have the right to permit his said well to flow or to use water therefrom in excess of the amount actually required for beneficial use."

Objection is made that the decree fixes the duty of water at two miner's inches per acre for irrigation purposes, awards respondent forty miner's inches without reference to the number of acres actually irrigated, and without limiting her rights "to take not to exceed two miner's inches per acre for each acre of land actually irrigated." The court found that respondent owned approximately twenty acres of land described in the decree. The decree awards forty miner's inches of water for use upon said land. The general clause (paragraph six) of the decree, quoted above, limits the right to use for irrigation purposes to the amount of water actually required for that purpose and fixes the duty of water at two miner's inches per acre for such purpose. We conclude the decree is sufficiently definite as to the particulars urged.

[7] Appellant urges that the decree is contrary to law in that it awards respondent forty miner's inches of water during the nonirrigation season without finding the amount of water she had put to a beneficial use during that season, or the amount necessary for such use, etc. In finding seven the court finds respondent appropriated, diverted, and applied to a beneficial use in irrigating, domestic, and other beneficial uses, on her lands, the total amount of forty miner's inches of water flowing to the surface from her wells under natural artesian pressure; that she has hot-houses on her land for forcing and starting early fruits and vegetables; that the water is piped through her residence and hot-houses for heating purposes; "and the whole flow of plaintiff's said wells, up to but not exceeding forty miner's inches of water, measured at plaintiff's well, is necessary to plaintiff for the

beneficial uses above recited." Considering the facts of this case and the nature of the water right involved, this finding is deemed sufficient to support the award decreed.

[8] Appellants strenuously contend that the court was without power to incorporate in its decree certain administrative provisions (paragraphs eight and ten, *supra*), such as the appointment of the commissioner of reclamation, as a commissioner, to supervise the use of the water flowing from the wells, take measurements thereof from time to time, and keep a record thereof. They also complain that the court had no authority to retain jurisdiction of the cause for the period of two years for the purpose of adjusting the allowance of water permitted to be used from appellant's wells, etc. (paragraph eleven of the decree, *supra*).

Appellants' contention is that, the legislature having failed to provide by statute for the supervision and control of subterranean waters, the court was without authority to make such provision. It must be conceded that C. S., chap. 219, relating to distribution of water among appropriators, and particularly C. S., sec. 5606, therein, placing the immediate direction and control of "all of the streams to the canals and ditches diverting therefrom" in the hands of the department of reclamation, does not expressly contemplate its control of subterranean waters not in a defined stream.

The appointment of a commissioner (and we see no reason why the commissioner of reclamation should not act as such), to carry out the administrative provisions of the decree, is necessary under the facts presented by the case at bar. Otherwise respondent, having a prior right to the use of the waters of the artesian basin partly underlying her land and those of appellants, would be without a practical or adequate remedy, since the decree is not self-enforcing. Nor does the fact that the legislature has not legislated on this particular branch of the subject tie the hands of the court here. As was said by Mr. Justice White, in *Montezuma Canal Co. v. Smithville Canal Co.*, 218 U. S. 371, 31 Sup. Ct. 67, 54 L. ed. 1074, 1080 (see 11 Ariz. 99, 89 Pac. 512, for same case below):

"But because it was within the legislative power to provide administrative machinery to supervise the common use of water in a flowing stream by those having a lawful right to appropriate the water of that stream for beneficial use, it does not result that the decree entered by the court below was in excess of its authority. On the contrary in view of the absence of legislative action on the subject, and of the necessity which manifestly existed for supervising the use of the stream by those having the right to take the water in accordance with the decree which, undoubtedly to that extent, the court was authorized to render, we think the action taken by the court did not transcend the bounds of judicial authority, and therefore is not justly amenable to the attack made upon it."

There being no definite procedure established by statute the court in this equitable suit had inherent power to enforce its decree in its own way. (See *Maloney v. Zipf*, 41 Ida. 30, 237 Pac. 632; *State v. Superior Court*, 101 Wash. 260, 172 Pac. 254.) Retaining jurisdiction of the cause for two years and the administrative provisions of the decree objected to by appellants were all framed for their benefit and were within the powers of a court of equity in the absence of express statutory provisions governing the matter. (*Salt Lake City v. Salt Lake City Water & Electrical Power Co.*, 24 Utah, 249, 67 Pac. 672, 61 L. R. A. 648; *Salt Lake City v. Utah & Salt Lake City Canal Co.*, 43 Utah, 519, 137 Pac. 638; *Heil v. Hubbell*, 80 Colo. 452, 252 Pac. 343; 21 C. J. 692; 2 Wiel on Water Rights in Western States, 3d ed., 1113.)

[9] Finally, it is urged that the decree is inconsistent in its provisions in that it awards appellants Tiegs and Ryan certain amounts of water with priorities dating March 23, 1927, and September 24, 1927, respectively, prohibits them from permitting any water to flow from their wells until further order of the court, and perpetually enjoins them from using the water awarded to them, even though neither respondent nor appellant Edwards is using all, or any part of, the water awarded to them.

Paragraph seven of the decree, *supra*, contains provisional administrative provisions and decrees that no water can, without injury to respondent's prior right, be permitted to flow from the Tiegs and Ryan wells. Paragraph nine enjoins all parties, successors in interest, etc., from any and all use of water from their respective wells except in the manner, to the extent, and for the purposes mentioned in the decree. Having determined that respondent's and appellant Edwards' rights are prior to those of appellants Tiegs and Ryan, and that there is insufficient water to satisfy the prior rights in full, the decree is right and not inconsistent in the particulars named.

The decree may be supplemented by the addition of a clause permitting appellants Tiegs and Ryan to permanently close and seal their hot water wells, in lieu of equipping them with valves, controlling, and measuring devices. When so supplemented the decree to stand affirmed. Cost to respondent.

Lee, C. J., and Budge, Givens and McNaughton, JJ., concur.

Petition for rehearing denied.

(No. 5746. December 8, 1931.)

MRS. R. REINOEHL, Appellant, v. HAMACHER POLE & LUMBER COMPANY and STATE INSURANCE FUND, Respondents.

[6 Pac. (2d) 860.]

WORKMEN'S COMPENSATION LAW — CONSTRUCTION — INDUSTRIAL ACCIDENT—TICK BITE.

1. Tick bites resulting in Rocky Mountain spotted fever and death of lumber camp swamper *held* received "in course of employment," making death compensable (C. S., sec. 6217, sec. 6323, as amended by Laws 1927, chap. 106, sec. 20, and sec. 6324).

Argument for Appellants.

(No. 5938. January 18, 1934.)

FRANCES SILKEY, Respondent, v. H. W. TIEGS, THOMAS F. EDWARDS and J. RYAN, Appellants.

[28 Pac. (2d) 1037.]

WATER AND WATERCOURSES—APPROPRIATION—PRIORITIES—APPEAL AND ERROR—LAW OF THE CASE.

1. Trial court's findings on sufficient evidence as to quantity of water used and available for use by plaintiff from her wells before defendants' wells were operated and determination of parties' priorities became law of case on affirmance by supreme court.

2. Burden was on parties, moving to modify affirmed decree adjudicating water priorities, to sustain motion by direct and convincing testimony.

3. First appropriator of water has first right thereto and cannot be deprived thereof, in absence of clear, convincing evidence that he would not be injured or affected by subsequent appropriator's diversion of water.

4. Burden was on party, moving to close well of one of parties moving to modify affirmed decree adjudicating water priorities, to sustain motion by direct and convincing testimony.

5. Affidavits of parties moving to modify affirmed decree adjudicating water priorities *held* insufficient to warrant decrease of amount awarded prior appropriator filing counter-affidavit.

APPEAL from the District Court of the Third Judicial District, for Ada County. Hon. Charles E. Winstead, Judge.

Appeal from denial of motion to modify affirmed decree. *Affirmed.*

Edwin Snow, for Respondent.

T. L. Martin, for Appellants.

Publisher's Note.

3. See 27 R. C. L. 1269 (8 Perm. Supp., p. 6062).

Opinion of the Court—Givens, J.

GIVENS, J.—Respondent and appellants separate appropriators of water from an artesian basin, were adjudicated priorities June 13, 1930, the court retaining provisional supervision for two years, authorizing the Commissioner of Reclamation to make measurements and tests, the wells of Tiegs and Ryan to be fitted with measuring devices, otherwise to remain closed, contemplating if such action would thereby appear justified, allowing increased amounts to the junior appropriators within the limits of their appropriations. Appellants sought unavailingly (*Silkey v. Tiegs*, 51 Ida. 344, 5 Pac. (2d) 1049) relief both from such priorities and the provisional feature.

Before the expiration of the two years, appellants petitioned the trial court to continue such provisional jurisdiction and tests thereunder and:

"That until further order of the court, said commissioner shall permit such quantity of water to flow from the wells of defendants as shall be available to them, without depleting the flow from plaintiff's wells below 21 miners inches;

"That such other and further order be made and entered as shall be necessary to permit defendants to use the available supply of water from their wells, the use of which will not deplete the amount available to and discharged by plaintiff's wells, as shown by the measurements made and to be made by said Commissioner of Reclamation." Respondent asked to have the Edwards well closed entirely.

Appellants' motion was supported by their respective affidavits all in substance as follows: That their wells (except Edwards') have remained closed since June, 1930, with the exception of a very slight intermittent flow, of such small amounts as to not affect the artesian basin, and that Edwards did not use the full amount decreed to him; and the Commissioner of Reclamation's measurements of discharges and available discharges from all wells.

Respondent filed a counter-affidavit to the effect that appellants had used more water than they asserted (which was denied by one of the appellants), also that another well

opened by one not a party to the proceedings, subsequent to the first trial of the action herein, tapped the basin.

Appellants argue now, as on the first appeal, and on application for rehearing, that respondent never has been able to obtain more than 21 inches from her wells, that there is 140 inches of water available in the basin and that the withdrawal of that amount, or at least 60 inches, does not and never has injuriously affected respondent and that not to permit such withdrawal is to permit such excess to be wasted by not being put to a beneficial use, with no corresponding benefit to respondent.

[1] In the first trial the court in effect found upon sufficient though conflicting evidence that respondent had used and there was available for use from her wells 40 inches, prior to the time appellants' wells were operated; this upon affirmance became the law of the case and a final adjudication of her rights, as did the determination of appellants' priorities. (*Joyce v. Murphy Land etc. Co.*, 35 Ida. 549, 208 Pac. 241; *South Boise Water Co. v. McDonald*, 50 Ida. 409, 296 Pac. 591; *St. John Irr. Co. v. Danforth*, 50 Ida. 513, 298 Pac. 365.)

Appellants now urge as a basis of their right to have respondent's heretofore determined prior amount of water decreased, that she cannot now obtain that amount, though the determination of this precise issue by the trial court in the previous trial was based upon the conclusion that the appellants were responsible for such decrease, if any.

[2-4] The trial court by denying appellants' motion herein indicated he was not satisfied the provisional tests entitled them to more water, without interference with respondent's prior right. The burden was on appellants herein to sustain their motion by direct and convincing testimony, this language in *Moe v. Harger*, 10 Ida. 302, 77 Pac. 645, being particularly apt:

"This court has uniformly adhered to the principle announced both in the constitution and by the statute that the first appropriator has the first right; and it would take more than a theory, and, in fact, clear and convincing evidence in any given case, showing that the prior appropriator would not be injured or affected by the diversion of a subsequent appropriator, before we could depart from a rule so just and equitable in its application and so generally and uniformly applied by the courts. Theories neither create nor produce water, and when the volume of a stream is diverted and seventy-five per cent of it never returns to the stream, it is pretty clear that not exceeding twenty-five per cent of it will ever reach the settler and appropriator down the stream and below the point of diversion by the prior user." (*Josslyn v. Daly*, 15 Ida. 137, 96 Pac. 568.) Likewise as to respondent's motion with respect to entirely closing the Edwards well.

[5] Each counsel has diametrical theories as to what the evidence warrants as to the water their respective clients should receive. No engineer enlightens us, and adherence to the rule requiring protection of the prior appropriator, precludes relief to appellants on the showing presented.

The affidavits and showings above detailed are not sufficient to show that any good, without possible continuing hazard to respondent's rights, would be accomplished by continuing the provisional portion of the decree, even though the affirmance of the former decree was not an adjudication that two years was the maximum period for such study, fixing that as the limit, which point we do not decide, as unnecessary.

The judgment is therefore affirmed; costs awarded to respondent.

Budge, C. J., Holden and Wernette, JJ., and Rice, D. J., concur.

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Exhibit "B"

STATE OF IDAHO)
: ss.
County of Ada)

I, R. W. PARRIS, hereby certify that I am, and since the 1st day of April, 1931, have been, the duly appointed, qualified and acting Commissioner of Reclamation of the State of Idaho. That as such Commissioner of Reclamation I have had charge of the artesian wells described in that certain decree dated June 13, 1930, in the case of FRANCES SILKEY, Plaintiff, vs. H. W. TIEGS, THOMAS F. EDWARDS and J. RYAN, Defendants, which decree was entered and filed on June 13, 1930, in the District Court of the Third Judicial District of the State of Idaho, in and for Ada County, a certified copy of which was filed in the office of the Department of Reclamation of the State of Idaho on August 20, 1930.

That under and pursuant to the provisions of said decree, this Department has made measurements of the water flowing from the artesian wells of the parties to said suit, a copy of which measurements is hereto attached, marked Exhibit "A", and by reference made a part of this certificate.

I FURTHER CERTIFY that said measurements are true and correct, and have been made by the Commissioner of Reclamation of the State of Idaho or his assistants, and the same appear in and are a part of the records of this Department made in conformity with this decree.

Dated this 26th day of May, 1932.

R. W. Parris

Commissioner of Reclamation
of the State of Idaho

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EXHIBIT "A"

Date	Actually Flowing	Ability to Flow
SILKEY		
Aug. 22, 1930	27 inches	27 inches
July 7, 1931	20.5 "	20.5 "
Aug. 9, 1931	21.0 "	21.0 "
Aug. 24, 1931	21.0 "	21.0 "
Feb. 12, 1932	21.0 "	21.0 "
Mar. 18, 1932	14.0 "	21.0 "
Apr. 22, 1932	16.0 "	23.5 "
May 25, 1932	23.5 "	23.5 "
EDWARDS		
Aug. 22, 1930	11.5 inches	
July 7, 1931	5.0 "	
Aug. 9, 1931	12.0 " (est.)	
Aug. 22, 1931	13.0 "	
Mar. 18, 1932	13.0 "	41.0 "
Apr. 22, 1932	14.0 " (est.)	42.5 "
May 25, 1932	14.0 " (est.)	42.5 "
TIMOS		
July 7, 1931	1.0 inches (est.)	
Aug. 9, 1931	1.0 " "	
Aug. 22, 1931	1.0 " "	30.0 "
Mar. 18, 1932	1.0 " "	30.5 "
Apr. 22, 1932	1.0 " "	30.5 "
May 25, 1932	1.0 " "	29.0 "
RYAN		
July 7, 1931	2.0 inches (est.)	
Aug. 9, 1931	2.0 " "	
Aug. 22, 1931	2.0 " "	
Mar. 18, 1932	2.0 " "	48.0 "
Apr. 22, 1932	2.0 " "	48.0 "
May 25, 1932	2.0 " "	47.0 "

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63-0012
63-0013

Form 20

Application For Transfer of Water Right

STATE OF IDAHO
County of Ada } ss.

O. L. Milstead, being first duly sworn, deposes and says:

That his name is O. L. Milstead; that he is of lawful age, a citizen of the United States and of the State of Idaho, and that his postoffice address is 3823 N. 36th Boise, Idaho

That he is the owner and using a certain water right, bearing date of priority of ~~June 13~~ 7" — 7-1-21 33" — 7-1-21, 19~~30~~, for 0.8 cubic feet per second of the waters of Subterranean County of Ada, State of Idaho, decreed to Francis Silkey by decree of Judge Dana C. Brinck of the 3rd Judicial District of the State of Idaho, in and for the county of Ada, in the case of Silkey -vs- Tiegs vs. ....., said decree bearing date of June 13, 1930 (or obtained by virtue of License No....., issued by the State Department of Reclamation of the State of Idaho, dated....., 19....., bearing date of....., 19.....) for the purpose of irrigating the following described lands situate, lying and being in Water District No..... in the County of.....and State of Idaho, to-wit:

NE¼SE¼ - 29; 4N - 2E.
heating ?

.....and is the person (or representative of the corporation) to whom such right so issued, or has become the owner thereof in the following manner, i.e. Purchase as per abstract of title of said water right hereto attached and made a part of this statement;

That said waters are now diverted from said stream in the Subterranean NE¼SE¼ of Section 29, Township 4N, Range 2E, B. M., and conducted to the above described lands through pipeline as per map herewith and of this affidavit made a part.

CHANGE IN PLACE OF USE

That affiant and petitioner desires to abandon the use of 0.8 cubic feet per second of said water upon the above described land, and to convey and use same upon the following tract, situate, lying and being in the County of Ada and State of Idaho, to-wit:

That reasons for desiring to make such transfer are as follows: To have allowed by decree.

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What is the total amount of water in inches, or second feet, dedicated to said land? None

What kind of crops are being raised? Hayland

How much water per acre is now required to irrigate said land? 2"

What will be the effect on the land now irrigated, if the use of water on it is discontinued?

Give location of new point of diversion, if change is to be made NE¼SE¼-29, NW¼SW¼-28-4N-2E.

Through what ditch will it be conducted after transfer? ~~NE¼SE¼-29-~~ ~~NW¼SW¼-28-4N-2E.~~

How much water will be required per acre to irrigate the land to which this water is transferred?

Do you claim any other water right for the land from which you seek to abandon the use of this water?

If so, give amount, date and source None

Is there any other water right for the land to which you seek to make ~~this transfer~~? If so, give amount, date and source

Signed [signature] Applicant.

STATE OF IDAHO,
County of } ss.

I, ..., Watermaster of .....

Water District No....., County of....., State of Idaho, whose postoffice address is....., have read or heard read the foregoing affidavit and petition of....., and, of my own knowledge, believe the same to be true as to all matters therein alleged, and that no one will be injured by the transfer prayed to be authorized; and I hereby endorse my approval of said petition, and request that the State Reclamation Engineer issue the certificate of transfer as petitioned; or (do not approve of the issuance of the certificate of transfer prayed for) for the following reasons:

Watermaster, District No.....

Dated at....., Idaho, this.....day of....., 19.....

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That he intends to divert and convey said 0.8 second feet of water to the tract of land last above described in the following manner and as per map accompanying this application:

Note—If this water right has heretofore been carried jointly in a ditch with other water, affiant should secure written consent of other owners or users to removal from its original carrier and file such consent with this affidavit.

CHANGE IN POINT OF DIVERSION

That affiant desires to change the point of diversion of said waters from the point above described to a point located in NE NW ¼ of SE SW ¼ of Section 27 28, Township 4N, Range 2E.B.M and thereafter conduct same to the above described land through the ditch, as per map appended.

That his reasons for desiring to make such change are as follows: To be able to draw 40" as per decree

Petitioner asserts that no one will be injured by such transfer, or change in point of diversion, and that the change will be made at petitioner's own risk.

WHEREFORE, Affiant and Petitioner prays that the State Reclamation Engineer of the State of Idaho issue to him the proper certificate authorizing such change in point of diversion and/or place of use, in accordance with the provisions of Sections 42-108 and 42-222 of the Idaho Code.

L. Mitchell
Applicant.

Subscribed and sworn to before me this 4 day of February, 1964

E. H. Broadbent
Notary Public.

APPLICANT WILL ANSWER THE FOLLOWING QUESTIONS:

From what stream is the water diverted? Subterranean

Where is the diversion point located? NE¼ SE¼ 29 NW¼ SW¼ - 28 - 4N - 2E.B.M.

Through what ditch is it now conducted? Pipeline

How much land is now irrigated by the water sought to be transferred? 20 acres

Give the description: NE¼ SE¼

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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.

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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 Nos. 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

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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

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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
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Kenneth R. Arment
Brady, Saetrum & Lerma
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M. E. and R. E. Ryan
4504 Foothill Dr.
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J. A. Terteling
877 W. Main, Rm. 706
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Michael C. Creamer
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P. O. Box 2720
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Ray F. Stralow
3911 Whitehead
Boise, ID 83703

RITA I. FLECK
Secretary/Records Manager

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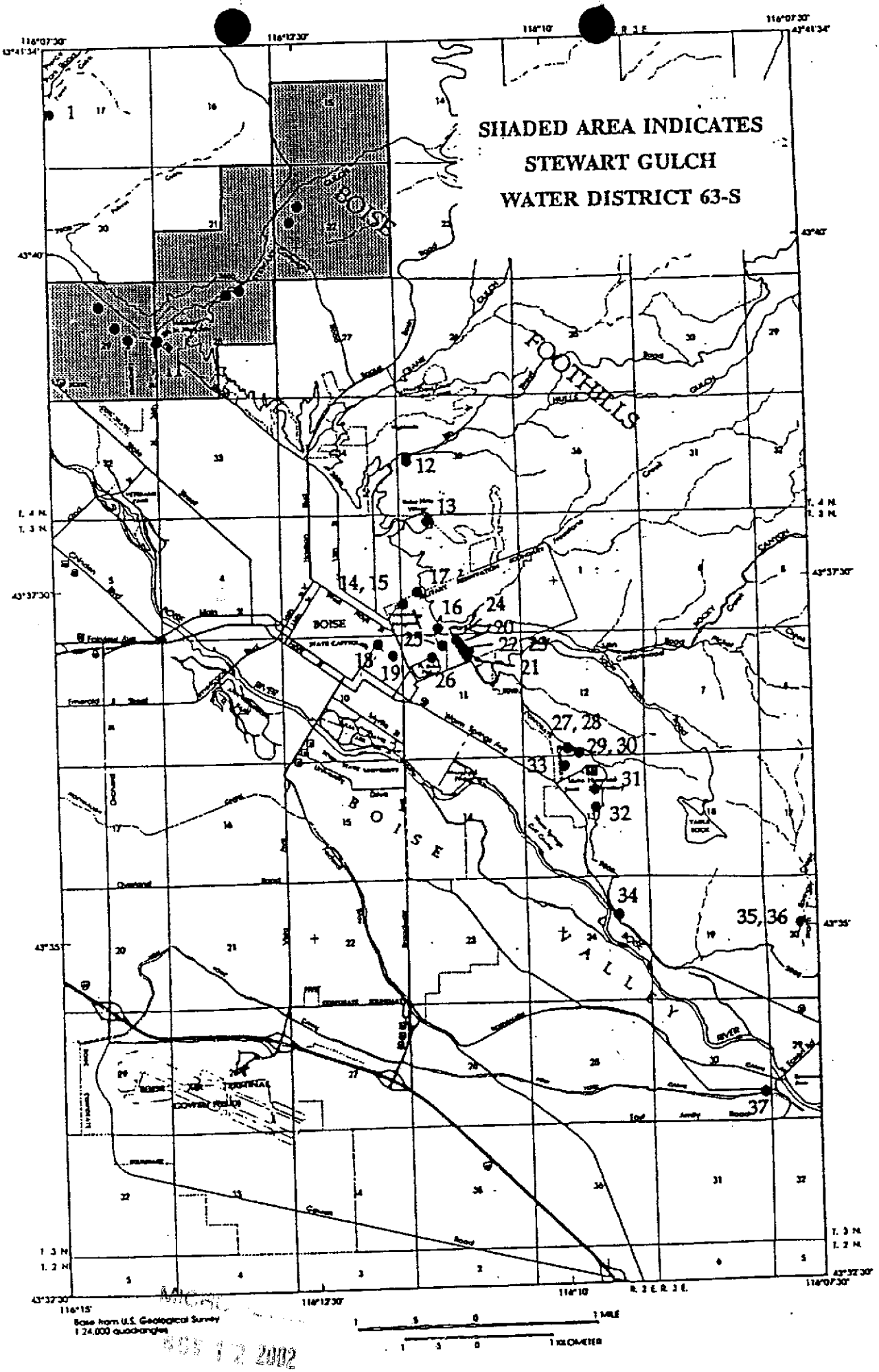
SHADED AREA INDICATES
STEWART GULCH
WATER DISTRICT 63-S
BOISE
FOOTHILLS
BOISE
VALLEY
1
12
13
14, 15
16
17
18
19
21
22, 23
24
25
26
27, 28
29, 30
31
32
33
34
35, 36
37
Base from U.S. Geological Survey
1:24,000 quadrangles

FIGURE 1

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE

STATE OF IDAHO

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

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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

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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

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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.

Owner	Adjudication Claim No.	Water Right No.
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

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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 . . . .

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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-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 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

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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

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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

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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

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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

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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.

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

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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

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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 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 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

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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.

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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 Reharing 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
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Jeffrey C Fereday
Givens Pursley et al
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Ray F Stralow

3911 Whitehead
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Michael C Creamer
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PO Box 2720
Boise, ID 83701

M E and R E Ryan

4505 Foothill Dr
Boise, ID 83703

Karen L. Gustafson
Senior Secretary

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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:

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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 NW¼SW¼ 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.:

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a) Flora well no. 1 in the NW¼SW¼ Section 28 and well no. 2 in the NE¼SE¼ Section 29;

b) Edwards well in the SW¼NE¼ Section 29; and

c) Golf Course well no. 1 in the SW¼SE¼ Section 21 and well no. 2 in the NW¼NE¼ Section 28.

6. Petitioner's Motorcycle Club well (TMC well) is located in the NW¼NE¼ 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);

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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).

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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

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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

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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,

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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.

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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

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GRIFFITHS ENGINEERS & SURVEYORS

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AUG 23 1983
Department of Water Resources

19 August 1983

L. Glenn Saxton
Chief, Operations Bureau
Idaho Department of Water Resources
450 W. State Street
Boise, Idaho 83720

Dear Mr. Saxton;
Mr. Paul Edwards, Edwards Greenhouse, 4106 Sand Creek Road, Boise, Idaho 83703 has given me your letter of 06 June 1983 and requested I respond to your request for clarification of the data which he had furnished to you.

I am enclosing a copy of the data collected to date by means of a number of observations of the performance of the Edwards Warm Well.

The Operating Flow was measured, using a stop watch and two 55 gallon barrels. The resulting data was reduced to Gallons per Minutes by using conventional mathematical proceedures.

The Operating Pressure is the pressure observed in the four inch pipe at the top of the well while the water supply was being used for heating purposes in the Greenhouse and other structures on the Edwards property. The pressure was observed using a conventional 3 1/2 inch diameter dial Bourdon Tube type pressure gauge. The gauge was purchased, calibrated and dedicated to the observations at this well. The units measured are Pounds per Square Inch (PSI).

The Maximum Flow is measured using the procedure outlined above for measuring the Operating Flow. Following the observation of the Operating Pressure, the valve to the Greenhouse is slowly closed while the waste valve is slowly opened. When the Greenhouse valve is completely closed and the opening of the waste valve has been balanced to the same pressure observed under the operating condition, it is assumed that the flow to waste is then equal to the previous flow to the Greenhouse. The Maximum Flow is then measured in accordance with the previously described procedure.

The Shut-In Pressure is measured using the previously described dial type pressure gauge after all of the discharge valves have been closed for a period of ten (10) minutes. It has been observed that the pressure rise in this well is extremely fast and that the pressure will stabilize at the maximum within four minutes after the valves have been closed . The pressure at twenty minutes after closure of the valves does not show a measureable increase over the ten minute observation.

The Temperature is measured with a Taylor mercury thermometer having a range of 0 Degrees to 220 Degrees Fahrenheit. The thermometer is graduated every two Degrees and may be read to the nearest Degree without difficulty.

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Other data observed and recorded but not presented in this transmittal are the Temperature and Flow of the water discharged from the annular space between the twelve inch casing and the four inch discharge pipe, the Temperature and Rate of Flow of the water leaking past the gate valve on the waste discharge and the residual pressure observed while the well is flowing directly to the atmosphere.

The Edwards Warm Well was included in the adjudication by the District Court as Case No. 11748 on 19 August 1930. The Point of Diversion and the Area of Use are both in the SW1/4, NE1/4, Section 29, Township 4 North, Range 2 East, Boise Meridian, Ada County, Idaho.

Mr. Edwards has in his possession the original of his father's diary in which references are made to the drilling of various wells in this vicinity, the amounts of water used and the dates and depth of various wells. The Edwards Warm Well has eight-inch casing to an unknown depth and four-inch casing to a depth of 1,195 feet. A diary entry indicates that the Edwards Well was started on 10 August 1926 and completed on 03 November 1926. Another entry indicates that the Tieg Well was started in November 1926 and completed in May 1927 at a depth of 1,240 feet. A third entry indicates that the First Ryan Well was completed to a depth of 1,325 feet on 12 May 1927 and the Second Ryan Well was completed in September 1927 to a depth of 1,145 feet.

Mr. Edwards believes that the base data collected under this program will be useful to both the Department of Water Resources and his Consulting Geologists in order to maintain a continuig record of the performance of the acquifer and its relationship to this well and other wells utilizing the same acquifer.

Either Mr. Edwards or I would appreciate your suggestions in regard to the collection of data and we will be pleased to provide you with any additional information which you may consider relevant to the Edwards Well.

Sincerely,

Robert H. Griffiths

Robert H. Griffiths, P.E.

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Edwards Well

Date	Operating Flow Gallons Per Minute GPM	Operating Pressure Pounds Per Square Inch PSI	Maximun Flow Gallons Per Minute GPM	Shut-In Pressure Pounds Per Square Inch PSI	Temperature Degrees Fahrenheit °F
19JAN81	NA	NA	264	21 3/4	
20JAN81	NA	NA	NA	NA	115
05MAR81	NA	13 1/2	264	22 1/2	118
17APR81	NA	14 1/2	265	23 1/2	118
27MAY81	NA	14	254	22 1/2	118
08JUL81	139	13	237	22	118
20AUG81	125	12 1/2	236	18 1/2	118
18SEP81	119	12 1/2	247	18 1/2	118
29OCT81	167	11	256	19 1/2	116
24NOV81	156	11 1/4	255	19 1/2	116
31DEC81	NA	12	NA	NA	118
18FEB82	165	9 3/4	265	18	NA
10AOR82	NA	6	NA	NA	118
12A@R82	NA	14 1/2	NA	NA	118
03NOV82	146	12 1/4	245	17	118
29DEC82	NA	13 1/2	NA	NA	117
16MAR83	160	15 1/2	265	24	116
11APR83	NA	16	NA	NA	NA
25MAY83	147	18	266	25 3/4	118
01JUL83	NA	15	NA	NA	118
08JUL83	116	15	244	20	117

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State of Idaho
DEPARTMENT OF WATER RESOURCES
1301 North Orchard Street, Boise, ID 83706 - P.O. Box 83720, Boise, ID 83720-0098
Phone: (208) 327-7900 Fax: (208) 327-7866 Web Site: www.idwr.state.id.us

DIRK KEMPTHORNE
Governor

KARL J. DREHER
Director

June 8, 2000

THE TERTELING COMPANY INC
3823 N 36TH ST
BOISE ID 83703

RE: Order In the Matter of Transfer No. 68558 - Water Rights 63-12, 13, 15

Dear Water Right Holder(s):

Enclosed please find Order Granting Petition for Reconsideration issued by the department in reference to the above listed information.

If you have any questions regarding this matter, please call me at 327-7940.

Sincerely,

for Jeff Peppersack, Manager
Water Right Permits Section

JP:klt

Enclosure

cc: Dana Hofstetter, Hofstetter Law Offices, 608 W. Franklin St., Boise, ID 83702
John Marshall, Givens Pursley, PO Box 2720, Boise, ID 83701-2720

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WESTERN REGION

GIVENS PURSLEY LLP

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D. David Lorello, Jr.
Kevin T. Maloney
Kimberly D. Maloney
John M. Marshall
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Christopher H. Meyer
Kendall L. Miller
L. Edward Miller
Patrick J. Miller
Judson B. Montgomery
Angela K. Nelson
Deborah E. Nelson
W. Hugh O'Riordan
Kenneth L. Pursley
Brad V. Sneed
Conley E. Ward
Robert B. White

Raymond D. Givens
James A. McClure
Stephanie C. Westermeier
OF COUNSEL

June 18, 2002

VIA HAND DELIVERY

RECEIVED
Department of Water Resources

Idaho Department of Water Resources
1301 N. Orchard
Boise, ID 83706

Re: Terteling Co. Inc.; Matter of Transfer No. 68558
Our File: 4465-7

Dear Clerk

Enclosed for filing, please find the original of PETITION FOR RECONSIDERATION in the above stated matter.

Please call me if you have any questions.

Sincerely,

Tina N. Smith
Assistant to John M. Marshall

Enclosures
cc: Tom Terteling
S:\Clients\4465\7\Corr\2002-6-18 ltr clerk Petition.doc

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Jeffrey C. Fereday
John M. Marshall
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277 North Sixth Street, Suite 200
P.O. Box 2720
Boise, Idaho 83701-2720
Telephone: 208-388-1200
Facsimile: 208-388-1300
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Attorneys for The Terteling Co., Inc.

BEFORE THE STATE OF IDAHO DEPARTMENT OF WATER RESOURCES

IN THE MATTER OF TRANSFER NO. 68558	PETITION FOR RECONSIDERATION

PETITION

This is a petition by the Terteling Company Inc. ("Terteling") for reconsideration of the Department's Preliminary Order for Transfer No. 68558 – water rights 63-12, 63-13 and 63-15. This petition concerns only Condition of Approval No. 9. Terteling requests that the Department amend the condition as follows:

> Diversion for the Windsock well shall not significantly reduce ~~artesian pressure~~ pumping levels for water rights bearing a priority dates earlier than December 20, 2000, describing points of diversion within Water District 63-S, below a reasonable pumping level. A significant reduction is defined as a significant decline in ~~pressure~~ pumping levels below historical ~~pressure reductions~~ pumping levels caused by diverting from the wells in the Silkey v. Tiegs decree. . . .

This proposed change replaces references to artesian pressure with reference to reasonable pumping level. The requested change would recognize that the unique protection of

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artesian pressure in the *Silkey v. Tiegs* decree that appears to drive the language in the currnet condition applies only to the applicant's rights 63-12 and 63-13.

The *Silkey v. Tiegs* decree (copy attached) specifically protects the artesian flows associated with water rights 63-12 and 63-13. To protect these artesian flows, the court ordered a partial curtailment of right no. 63-14 and total curtailment of rights 63-15 and 63-16, the other rights in existence at that time. In other words, the *Silkey v. Tiegs* decree protects the artesian pressures associated only with rights 63-12 and 63-13. The decree does nothing to protect the artesian pressures of other rights. The Condition No. 9 in the Preliminary Order turns the special protection afforded to rights 63-12 and 63-13 on its head and makes these rights responsible for maintaining the artesian pressure of rights that, in accordance with the decree, should not even be diverting.

By moving a portion of rights 63-12 and 63-13 to the Windsock Well, Terteling effectively is giving up the special artesian pressure protection associated with these water rights. The Condition No. 9 as currently written penalizes Terteling for a transfer that should ease the administrative burden in District 63-S by eliminating the pressure protection in *Silkey v. Tiegs* and imposing it on Terteling's rights instead. While Terteling agrees that its transfer cannot injury existing rights, the addition of a special artesian pressure protection condition is not warranted because, as discussed above, *Silkey v. Tiegs* protects the artesian pressure only for rights 63-12 and 63-13. Existing rights therefore should be protected by standard reasonable economic pumping level language instead.

Terteling also requests that the Department insert the word "significant" to modify the phrase "decline in pressure." This proposed change would clarify the definition of injury by ensuring that a "significant reduction" is not defined as any decline. Without the insertion of the

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word "significant" as proposed, a water user could argue that the current condition protects against any decline in historic pressure.

For these reasons Terteling requests an amendment of Condition No. 9 as indicated above.

Respectfully submitted this 18th day of June, 2002

GIVENS PURSLEY LLP

John M. Marshall

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CERTIFICATE OF SERVICE

I hereby certify that on this _____ day of June, 2002, I caused to be served a true and correct copy of the foregoing by the method indicated below, and addressed to the following:

Dana L. Hofstetter, Esq.
Hofstetter Law Offices
608 W. Franklin St.
Boise, ID 83702

____ U.S. Mail
__✓__ By hand
____ Overnight
____ Telecopy

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

____ U.S. Mail
__✓__ By hand
____ Overnight
____ Telecopy

Tina Smith

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JUN 12 2002

(1)

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.) DECREE.

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, 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 constittes 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 the terms of this decree.

63 0012 Trans #248

(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 p;ri

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July 1, 1921, and with priority as to thirty-three miners inches of such water dating from July 1, 1922, said water being decreed 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

JUN 21 1996

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

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of said section twenty-nine (29), a distance of six hundred fifty-seven and four-tenths (657.4) feet; thence north 0°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°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, acqueducts upon, leading to or used in connection with the above described land;

all of said property containing approximately twenty acres.

63 0014

(3) Defendant Thomas F. Edwards is hereby decreed the right to the use of forty-two 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 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 degree 50 minutes West a distance of 4.15 chains to an iron bar; thence north 74 degrees 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.

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Also:

Commencing at a point 14.96 chains North of the

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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 0015

(4) That the defendant H. W. Tiegs 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 March 23, 1927, said water to be appurtenant to the following described land;

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NOV 12 2002

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 Tiegs aggregates approximately _____acres. Said right to be subject to the further provisions of this decree.

JUN 2 1 1996

63 0016 (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 (E½) of the Northeast Quarter

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NOV 12 2002

(NE¼) of the Northwest Quarter (NW¼) 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 equivalent 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 employees, or their successors in interest, shall have the right to permit his said well to flow or to use water therefrom 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 defendantEdwards 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 defendant 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 defendants 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

JUN 2 1 1996

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.

JUN 21 1996

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OCT 12 2002

(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.

JUN 21 1996

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.

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NOV 12 2002

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 Rutter
Clerk

By Ann Peterson Deputy.

JUN 2 1 1996

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NOV 1 2 2002

State of Idaho
DEPARTMENT OF WATER RESOURCES
1301 North Orchard Street, Boise, ID 83706 - P.O. Box 83720, Boise, ID 83720-0098
Phone: (208) 327-7900 Fax: (208) 327-7866 Web Site: www.idwr.state.id.us

DIRK KEMPTHORNE
Governor

KARL J. DREHER
Director

June 4, 2002

THE TERTELING COMPANY INC
3823 N 36TH ST
BOISE ID 83703

RE: Transfer No.: 68558 - Water Rights 63-12, 63-13, 63-15
Transfer Approval Notice

Dear Water Right Holder(s):

The Department of Water Resources has issued the enclosed approved Transfer of Water Right(s). Please be sure to thoroughly review the conditions of approval and remarks listed on the approval document.

The Transfer of Water Right(s) is a PRELIMINARY ORDER issued by the Department pursuant to section 67-5243, Idaho Code. It can and will become a final order without further action by the Department unless the APPLICANT petitions for reconsideration or files an exception and/or brief within fourteen (14) days of the service date as described in the enclosed information sheet.

ANY PERSON aggrieved by any decision, determination, order or action of the Department and who has not previously been afforded an opportunity for a hearing on the matter may request a hearing pursuant to section 42-1701A(3), Idaho Code. A written petition contesting the action of the Department and requesting a hearing shall be filed within fifteen (15) days after receipt of the denial or conditional approval.

Please note that water right owners are required to report any change of water right ownership and/or mailing address to the Department within 120 days of the change. Failure to report these changes could result in a $100 late filing fee. Contact any office of the Department or visit the Department's homepage on the Internet to obtain the proper forms and instructions.

If you have any questions, please contact me at 208-327-7940.

Sincerely,

Pamela S. Skaggs

for Jeff Peppersack, Manager
Water Rights Permits Section

JP:klt
Enclosure(s)
cc: John Marshall, Givens Pursley, LLP
Paul Edwards, c/o Dana Hofstetter, Hofstetter Law Offices

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OCT 2 0 2002

CERTIFICATE OF SERVICE

I hereby certify that on June 4, 2002 I mailed a true and correct copy, postage prepaid, of the foregoing TRANSFER APPROVAL to the person(s) listed below:

RE: TRANSFER NO. 68558 - WATER RIGHTS 63-12, 63-13, 63-15

THE TERTELING COMPANY INC
3823 N 36TH ST
BOISE ID 83703

Kari Lynn Townsend
Secretary

MICROFILMED
OCT 3 0 2002

EXPLANATORY INFORMATION TO ACCOMPANY A PRELIMINARY ORDER

The accompanying order or approved document is a **"Preliminary Order"** issued by the department pursuant to section 67-5243, Idaho Code. It can and will become a final order without further action of the Department of Water Resources (department) unless a party petitions for reconsideration, files an exception and brief, or requests a hearing as further described below:

PETITION FOR RECONSIDERATION

Any party may file a petition for reconsideration of a preliminary order with the department within fourteen (14) days of the service date of this order. The department will act on a petition for reconsideration within twenty-one (21) days of its receipt, or the petition will be considered denied by operation of law. See Section 67-5243(3) Idaho Code.

EXCEPTIONS AND BRIEFS

Within fourteen (14) days after (a) the service date of a preliminary order, (b) the service date of a denial of a petition for reconsideration from this preliminary order, or (c) the failure within twenty-one (21) days to grant or deny a petition for reconsideration from this preliminary order, any party may in writing support or take exceptions to any part of a preliminary order and may file briefs in support of the party's position on any issue in the proceeding with the Director. Otherwise, this preliminary order will become a final order of the agency.

REQUEST FOR HEARING

Unless a right to a hearing before the department or the Idaho Water Resource Board (Board) is otherwise provided by statute, any person aggrieved by any final decision, determination, order or action of the Director of the department and who has not previously been afforded an opportunity for a hearing on the matter may request a hearing pursuant to section 42-1701A(3), Idaho Code. A written petition contesting the action of the Director and requesting a hearing shall be filed within fifteen (15) days after receipt of the denial or conditional approval.

ORAL ARGUMENT

If the Director grants a petition to review the preliminary order, the Director shall allow all parties an opportunity to file briefs in support of or taking exceptions to the preliminary order and may schedule oral argument in the matter before issuing a final order. If oral arguments are to be heard, the Director will within a reasonable time period notify each party of the place, date and hour for the argument of the case. Unless the Director orders otherwise, all oral arguments will be heard in Boise, Idaho.

CERTIFICATE OF SERVICE

All exceptions, briefs, requests for oral argument and any other matters filed with the Director in connection with the preliminary order shall be served on all other parties to the proceedings in accordance with IDAPA Rules 37.01.01302 and 37.01.01303 (Rules of Procedure 302 and 303).

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OCT 2 0 2003

FINAL ORDER

The Director will issue a final order within fifty-six (56) days of receipt of the written briefs, oral argument or response to briefs, whichever is later, unless waived by the parties or for good cause shown. The Director may remand the matter for further evidentiary hearings if further factual development of the record is necessary before issuing a final order. The department will serve a copy of the final order on all parties of record.

Section 67-5246(5), Idaho Code, provides as follows:

> Unless a different date is stated in a final order, the order is effective fourteen (14) days after its issuance if a party has not filed a petition for reconsideration. If a party has filed a petition for reconsideration with the agency head, the final order becomes effective when:
>
> (a) the petition for reconsideration is disposed of; or
> (b) the petition is deemed denied because the agency head did not dispose of the petition within twenty-one (21) days.

APPEAL OF FINAL ORDER TO DISTRICT COURT

Pursuant to sections 67-5270 and 67-5272, Idaho Code, if this preliminary order becomes final, any party aggrieved by the final order or orders previously issued in this case may appeal the final order and all previously issued orders in this case to district court by filing a petition in the district court of the county in which:

i. A hearing was held,
ii. The final agency action was taken,
iii. The party seeking review of the order resides, or
iv. The real property or personal property that was the subject of the agency action is located.

The appeal must be filed within twenty-eight (28) days of this preliminary order becoming final. See section 67-5273, Idaho Code. The filing of an appeal to district court does not itself stay the effectiveness or enforcement of the order under appeal.

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OCT 2 8 2002

TRANSFER REVIEW SHEET

(05-01)

TRANSFER # 5875/68558 DATE REVIEWED 5-23-2002 CS

SPLIT___ POD___ ADD POD___ POU___ PERIOD___ or NATURE___ of USE

No Activity

ALL OF RIGHT(S) W=Water Right (C)=SRBA Claim R=SRBA Recommendation

C/63-12	/	/	/	/
C/63-13	/	/	/	/
C/63-15	/	/	/	/
/	/	/	/	/

PART OF RIGHTS(S) (Unchanged) (Changed)

/	to	/	/
/	to	/	/
/	to	/	/
/	to	/	/
/	to	/	/
/	to	/	/
/	to	/	/
/	to	/	/
/	to	/	/
/	to	/	/
/	to	/	/

Standard Season N/A 3-1 to 11-15 Commercial Standard Volume N/A 4.5/3.5

(1) ✓ Priority (2) ✓ Use (3) ___ Season/W61 (4) ✓ Rate (5) ___ Volume

(6) ✓ Source (7) ___ P/D (8) ___ P/U (9) ✓ Proof/Owner (10) ✓ Map

(11) 63-S Water District (12) Yes Pertinent Conditions (13) NO Expansion w/limits

WM/Rcvd Not Active

Settlement Agreement
Region Recommendations

*No Stock use per John Marshall — rate by heating use - cooled water to IRR

(2) IRR vs COMM use for greenhouses - IRR inside & outside greenhouses per app.

(3) Yr. round use supports COMM use. After heat used available for IRR

(5) Max. Vol per settlement agreement & supported by HydroLogic Inc report that was reviewed by region staff & Ken Neely. = 400 afa DOM .6 af IRR 38 af

(7) Add P/Ds Heat = VDR to 400 (yr round use)

(8) Change P/U - Create P/U to develop new site + combined rt limits

*5-28-02 Telephone Conversation & Message (Response) John Marshall. - No Stock use & .6 af for Dom. in-house use in offices okay.

Conditions/Remarks O20, R04, T18, WB4, T02, ~~R61~~, W27/6 w/in 15.6 pp/u
Irrigation use for green houses, outside IRR T07, T08, T09, W35
No Div. under 63-15 until further notice of the court.
Settlement Agreement & Conditions recommended by Gary Spackman, Region Manager.

WRs for Update Comments 63-12 ✓/13 ✓/15 ✓ 6-3-2002 CS

Database Updated to Reflect Final Action Amended Approval Issued 10-9-02 Copy e-mailed to AJ Staff.

✓ Copy to: Paul Edwards (Protestant)
C/O Dana Hofstetter
Hofstetter Law Offices
608 W Franklin
Boise ID 83702

Idaho Secretary of State
Viewing Business Entity

[New Search] [Back to Summary]
[Get a certificate of existence for TERTELING COMPANY, INC. (THE)]

TERTELING COMPANY, INC. (THE)

3823 N 36TH STREET
BOISE, ID 83703

Type of Business: CORPORATION, GENERAL BUSINESS
Status: GOODSTANDING, NOTDET SENT 01 Mar 2002
State of Origin: IDAHO
Date of Origination/Authorization: 01 Feb 1944
Current Registered Agent: J. L. TERTELING
3823 N. 36TH STREET
BOISE, ID 83703
Organizational ID / Filing Number: C21391
Number of Authorized Stock Shares: 1
Date of Last Annual Report: 01 Mar 2002

Amendments:

Amendment 0 filed 01 Feb 1944	INCORPORATION	View Document Online Download (TIFF format)
Amendment 1 filed 27 Mar 1958	OTHER - DELETE ARTICLE V	View Document Online Download (TIFF format)
Amendment 2 filed 31 Mar 1958	MERGED WITH WESTERN EQUIPMENT COMPANY	View Document Online Download (TIFF format)
Amendment 3 filed 22 Dec 1977	OTHER - AMEND ARTICLE V	View Document Online Download (TIFF format)
Amendment 4 filed 31 Oct 1978	NAME CHANGED TO TERTELING COMPANY, INC. (THE)	View Document Online Download (TIFF format)
Amendment 5 filed 17 Nov 1978	OTHER - AMEND ARTICLE V	View Document Online Download (TIFF format)
Amendment 6 filed 27 Feb 1979	ARTICLES RESTATEMENT	View Document Online Download (TIFF format)
Amendment 7 filed 24 May 1979	OTHER - RA	View Document Online Download (TIFF format)
Amendment 10 filed 20 Dec	REINSTATEMENT	View Document Online

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OCT 30 2002

1983		Download (TIFF format)
Amendment 8 filed 20 Dec 1983	OTHER - CHANGE RO TO 1755 WESTGATE DRIVE, BOISE	
Amendment 9 filed 02 Apr 1990	OTHER - ADD ARTICLE VIII	View Document Online Download (TIFF format)
Amendment 11 filed 07 Mar 1997	OTHER - AMEND ART V - DIRECTORS	View Document Online Download (TIFF format)

Annual Reports:

Report for year 1987	ANNUAL REPORT	View Document Online Download (TIFF format)
Report for year 1988	ANNUAL REPORT	View Document Online Download (TIFF format)
Report for year 1989	ANNUAL REPORT	View Document Online Download (TIFF format)
Report for year 1990	ANNUAL REPORT	View Document Online Download (TIFF format)
Report for year 1991	ANNUAL REPORT	View Document Online Download (TIFF format)
Report for year 1992	ANNUAL REPORT	View Document Online Download (TIFF format)
Report for year 1993	ANNUAL REPORT	View Document Online Download (TIFF format)
Report for year 1994	ANNUAL REPORT	View Document Online Download (TIFF format)
Report for year 1995	ANNUAL REPORT	View Document Online Download (TIFF format)
Report for year 1996	ANNUAL REPORT	View Document Online Download (TIFF format)
Report for year 1997	ANNUAL REPORT	View Document Online Download (TIFF format)
Report for year 1998	ANNUAL REPORT	View Document Online Download (TIFF format)
Report for year 1999	ANNUAL REPORT	View Document Online Download (TIFF format)
Report for year 2000	CHANGE ADDRESS	View Document Online Download (TIFF format)
Report for year 2000	ANNUAL REPORT	View Document Online Download (TIFF format)
Report for year 2002	ANNUAL REPORT	View Document Online Download (TIFF format)

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OCT 3 0 2002

No. C 21391

Return to:
SECRETARY OF STATE
700 WEST JEFFERSON
PO BOX 83720
BOISE, ID 83720-0080

NO FILING FEE IF RECEIVED BY DUE DATE

Due no later than Feb 28, 2002
Annual Report Form

1. Mailing Address - Correct or Mailing Address

TERTELING COMPANY, INC. (THE)
J. L. TERTELING
3823 N 36TH STREET

BOISE, ID 83703

2. Registered Agent and Office NO PO BOX

J. L. TERTELING
3823 N. 36TH STREET

BOISE, ID 83703

3. New Registered Agent Signature

4. Corporations: Enter Names and Business Addresses of President, Secretary and Directors.

Office held	Name	Street or P.O. Address	City	State	Zip
President	J.L. Terteling	3823 N. 36th Street	Boise	ID	83703
Secretary	F. F. Terteling	3823 N. 36th Street	Boise	ID	83703
Director	J. L. Terteling	3823 N. 36th Street	Boise	ID	83703
Director	J. K. Gallagher	3823 N. 36th Street	Boise	ID	83703

5. Organized Under the Laws of:

IDAHO
C 21391

6.
Signature [signature] Date 27 FEB 02
Name (Typed or Printed) J. L. Terteling Title President

Issued 12/03/2001 **Do Not Tape or Staple** 2921

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OCT 3 0 2002

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MAY 22 2002
Department of Water Resources

HOFSTETTER LAW OFFICE

608 West Franklin Street
Boise, Idaho 83702
Dana@IdahoWaterLaw.com

Dana L. Hofstetter
Attorney at Law

Telephone: (208) 424-7800
Facsimile: (208) 424-8774

May 17, 2002

RECEIVED
MAY 21 2002
WATER RESOURCES
WESTERN REGION

Via Facsimile

Lori Graves
Western Region
Idaho Department of Water Resources
2735 Airport Way
Boise, Idaho 83705-5082

Re: Transfer Nos. 68558 (formerly 5875) and 68559 (formerly 5876)

Dear Ms. Graves:

I would like to thank you and Steve Lester for recently providing me copies of: 1. Hydro Logic Inc.'s February 12, 2002 report entitled, "Evaluation of the Flora Company's Geothermal Discharge Weir;" 2. John Marshall's February 15 and March 13, 2002 letters; and 3. your May 1, 2002 Memoranda regarding Transfer File Nos. 68558 and 68559. I also appreciate the opportunity you provided to comment on the recommendations in your May 1, 2002 Memoranda..

The bulk of the recommendations in the May 1 Memorandum regarding Transfer Nos. 68558 and 68559 appear to be consistent with the January 24, 2002 Settlement Agreement entered into by The Terteling Company and the Edwards Family LLC. There are a few areas, however, where I believe that clarifications or revisions to the recommendations are necessary to ensure consistency with the Settlement Agreement.

Section 3 of the Settlement Agreement requires the measurement, recording and reporting of total diverted volumes on all wells The Terteling Company uses or owns in District 63-S. The first two recommendations in the May 1 Memorandum for Transfer No. 68558 indicate that a suitable measurement, recording and reporting program should be required. I request that the measurement, recording and reporting requirements ultimately specified in the Transfer approval include the measurement, recording and reporting criteria agreed upon by the parties in the Settlement Agreement.

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OCT 30 2002

Under the *Silkey v. Tiegs* decree, water right nos. 63-00012 and 63-00013 together totaled a maximum of 0.80 cubic feet per second (cfs) and water right no. 63-00015, although recognized for 0.80 cfs, was prohibited from diversion due to impacts on senior users. This judicial restriction in the *Silkey v. Tiegs* decree remains in place today. Accordingly, the Settlement Agreement, in Section 7, notes, "The Transfers do not authorize Terteling to divert water under the Tiegs right [63-00015]." Thus, consistent with the Settlement Agreement and the *Silkey v. Tiegs* decree, a maximum combined flow of 0.80 cfs (under rights 63-00012 and 63-00013) should be recommended in the Transfer approval.

Section 9 of the Settlement Agreement provides that any irrigation use of geothermal water under water right nos. 63-00012 and 63-00013 shall only occur after the heat is first removed by another beneficial use. This provision should be added as a condition to the extent that irrigation is a recognized use of these two water rights under the Transfer approval. I note that the Department has required this condition in similar Transfer approvals, such as condition 7 of Transfer Approval No. 3990 (water right no. 63-03603). Since the beneficial use right no. 63-31051 appears to be based on irrigation of the same 6 acres at the Flora site, it appears that recommending irrigation under right nos 63-00012 and 63-00013 as well as under 63-31051 would result in water right enlargements unless the irrigation portions of the three rights are deemed to be supplemental. Because right no. 63-31051 is claimed with the same priority date and place of use as water right no. 63-00012, it appears to represent the irrigation portion of 63-00012 rather than a supplemental right, however. Thus, it appears inappropriate to recommend the same 6 acres of irrigation both under 63-00012/13 and 63-31051.

Finally, I would request that the Edwards' Protests remain suspended even after a consistent approval is issued as the final Settlement Agreement does not provide for formal withdrawal of the Protests. There should be no need either to activate or to withdraw the Protests upon issuance of a consistent final approval.

Thank you for your assistance. If you have any questions or suggestions, please let me know.

Sincerely,

HOFSTETTER LAW OFFICE, LLC

Dana L. Hofstetter

cc: Steve Lester
John Marshall
E:/3006.1/5254

RECEIVED
MAY 2002

RECEIVED
MAY 21 2002
Department of Water Resources

HOFSTETTER LAW OFFICE
608 West Franklin Street
Boise, Idaho 83702
Phone: (208) 424-7800
Fax: (208) 424-8774
E-Mail: Dana@IdahoWaterLaw.com

FAX COVER SHEET

DATE: May 17, 2002

TO:	Lori Graves	**Fax:**	334-2348
CC:	Steve Lester		334-2348
	John Marshall		388-1300

FROM: Dana Hofstetter

RE: Terteling Transfers

The information contained in this facsimile may be confidential information or attorney work product or both and is for the exclusive use of the intended recipient listed above. Any reading, disclosure, use or reproduction of this communication other than by the intended recipient is prohibited. If you have received this communication in error, please notify us by collect telephone call immediately and return the communication to us by U. S. Mail.

NUMBER OF PAGES BEING TRANSMITTED (INCLUDING THIS PAGE) = 3

IF ALL PAGES ARE NOT RECEIVED, PLEASE CALL **(208) 424-7800.**

ORIGINAL BY MAIL: YES _____ NO __X__

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JUL 3 0 2002

HOFSTETTER LAW OFFICE

608 West Franklin Street
Boise, Idaho 83702
Dana@IdahoWaterLaw.com

Dana L. Hofstetter
Attorney at Law

Telephone: (208) 424-7800
Facsimile: (208) 424-8774

May 17, 2002

Via Facsimile

Lori Graves
Western Region
Idaho Department of Water Resources
2735 Airport Way
Boise, Idaho 83705-5082

Re: Transfer Nos. 68558 (formerly 5875) and 68559 (formerly 5876)

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MAY 20 2002

Under the *Silkey v. Tiegs* decree, water right nos. 63-00012 and 63-00013 together totaled a maximum of 0.80 cubic feet per second (cfs) and water right no. 63-00015, although recognized for 0.80 cfs, was prohibited from diversion due to impacts on senior users. This judicial restriction in the *Silkey v. Tiegs* decree remains in place today. Accordingly, the Settlement Agreement, in Section 7, notes, "The Transfers do not authorize Terteling to divert water under the Tiegs right [63-00015]." Thus, consistent with the Settlement Agreement and the *Silkey v. Tiegs* decree, a maximum combined flow of 0.80 cfs (under rights 63-00012 and 63-00013) should be recommended in the Transfer approval.

Section 9 of the Settlement Agreement provides that any irrigation use of geothermal water under water right nos. 63-00012 and 63-00013 shall only occur after the heat is first removed by another beneficial use. This provision should be added as a condition to the extent that irrigation is a recognized use of these two water rights under the Transfer approval. I note that the Department has required this condition in similar Transfer approvals, such as condition 7 of Transfer Approval No. 3990 (water right no. 63-03603). Since the beneficial use right no. 63-31051 appears to be based on irrigation of the same 6 acres at the Flora site, it appears that recommending irrigation under right nos 63-00012 and 63-00013 as well as under 63-31051 would result in water right enlargements unless the irrigation portions of the three rights are deemed to be supplemental. Because right no. 63-31051 is claimed with the same priority date and place of use as water right no. 63-00012, it appears to represent the irrigation portion of 63-00012 rather than a supplemental right, however. Thus, it appears inappropriate to recommend the same 6 acres of irrigation both under 63-00012/13 and 63-31051.

Finally, I would request that the Edwards' Protests remain suspended even after a consistent approval is issued as the final Settlement Agreement does not provide for formal withdrawal of the Protests. There should be no need either to activate or to withdraw the Protests upon issuance of a consistent final approval.

Thank you for your assistance. If you have any questions or suggestions, please let me know.

Sincerely,

HOFSTETTER LAW OFFICE, LLC

Dana L. Hofstetter

cc: Steve Lester
John Marshall
E:/3006.1/5254

RECEIVED

MAY 1 [illegible]

Department of Water Resources

hot water wells

Form 222a
July 2000

WESTERN REGION TRANSFER ANALYSIS

Applicant Textile Company Inc. Transfer No. 5875 = 68558

Reviewed by JC Date 11/29/00

1. Right number(s) 63-00012 63-00013 63-00015

2. Type of right ✓ Decree ___ License ___ Stat. Claim ___ BU Claim

3. Purpose of transfer ___ Change P/D ✓ Add P/D ✓ Change P/U

___ Change N/U ___ Change Period ___ Split Right

___ Other: _____

4. **Check Existing Right**

✓ Source ✓ Priority ✓ Amount
✓ Purpose ✓ Period ✓ SRBA Claim
✓ Description of original point(s) of diversion
✓ Description of original place of use
✓ Overlapping rights for original P/D &/or P/U

5. **Check Proposed Right** for amount of land &/or water transferred:

a. ✓ Analysis memo – *always include unless justify why not needed* DATA = 5/1/02

b. ✓ All of right

c. NA Part of right – *Note: Part B should normally be completed only if part of right is owned by applicant*

d. ✓ Description of point(s) of diversion

e. ✓ Description of place of use

f. ✓ Map showing proposed P/D &/or P/U

g. ✓ Correct notarized signature and fee – *new fees* effective July 1, 2000

h. ✓ Proof of ownership of right &/or land from which water is transferred – see SRBA files + SL's 4/30/02 notes

i. ✓ Expansion in use of right: check rate of flow, diversion volume and consumptive volume. Discuss in memo.

j. NA Surface water source: IDFG letter; notify Water Planning Bureau if protected river or minimum flow reach.

✓ DATA entry checked by LG date 5/3/02

k. ✓ Overlapping rights for current & proposed scenarios

Current See memo

Proposed " "

l. ✓ SRBA Claim(s) " "

m. ✓ Comment letters ✓ Yes (also see #2 below) ___ No

✓ Water District # 635

✓ Other

635 is inactive so N/A

- mailing list for members of water district - ask LG for current list; ~~plus JAYON in A63-00012A (FLORA CO.)~~

SEE MG for explanation, JG

PUBLICATION REVIEW

1. Legal Notice electronically sent to S.O. ✓ Yes JG 11/30/00

2. Comment Letters

Watermaster comments requested on _____, received on _____

Other comment letters: ___ See attached information

3. Affidavit of publication received: ✓ Yes 3-7-01 (republished 2-15-01)

4. Published correctly: ___ Yes ✓ No

If No, re-publication required: ✓ Yes ___ No republished 2/15 & 22/01 (correction of newspaper error)

5. Protests received: ✓ Yes ___ No ___ *If yes*, acknowledgement sent

RECOMMENDATIONS

1. ✓ Approve ✓ See attached memo

2. ___ Deny due to _____

3. Conditions of Approval See memo by Gary Spackman dated 5/10/02.

4. Recommended by Gary S Date 5/10/02

FORWARDING FILE TO S.O.

1. Copies made for Region file (see attached supplemental page): ✓ Yes

2. File forwarded to S.O. by St Date 5-14-02 pam & adj.

RECEIVED
MAY 21 2002
Department of Water Resources

HOFSTETTER LAW OFFICE
608 West Franklin Street
Boise, Idaho 83702
Phone: (208) 424-7800
Fax: (208) 424-8774
E-Mail: Dana@IdahoWaterLaw.com

FAX COVER SHEET

DATE: May 17, 2002

TO:	Lori Graves	**Fax:**	334-2348
CC:	Steve Lester		334-2348
	John Marshall		388-1300

FROM: Dana Hofstetter

RE: Terteling Transfers

The information contained in this facsimile may be confidential information or attorney work product or both and is for the exclusive use of the intended recipient listed above. Any reading, disclosure, use or reproduction of this communication other than by the intended recipient is prohibited. If you have received this communication in error, please notify us by collect telephone call immediately and return the communication to us by U. S. Mail.

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IF ALL PAGES ARE NOT RECEIVED, PLEASE CALL **(208) 424-7800.**

ORIGINAL BY MAIL: YES _____ NO __X__

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OCT 3 0 2002

HOFSTETTER LAW OFFICE

608 West Franklin Street
Boise, Idaho 83702
Dana@IdahoWaterLaw.com

Dana L. Hofstetter
Attorney at Law

Telephone: (208) 424-7800
Facsimile: (208) 424-8774

May 17, 2002

Via Facsimile

Lori Graves
Western Region
Idaho Department of Water Resources
2735 Airport Way
Boise, Idaho 83705-5082

Re: Transfer Nos. 68558 (formerly 5875) and 68559 (formerly 5876)

Dear Ms. Graves:

I would like to thank you and Steve Lester for recently providing me copies of: 1. Hydro Logic Inc.'s February 12, 2002 report entitled, "Evaluation of the Flora Company's Geothermal Discharge Weir;" 2. John Marshall's February 15 and March 13, 2002 letters; and 3. your May 1, 2002 Memoranda regarding Transfer File Nos. 68558 and 68559. I also appreciate the opportunity you provided to comment on the recommendations in your May 1, 2002 Memoranda..

The bulk of the recommendations in the May 1 Memorandum regarding Transfer Nos. 68558 and 68559 appear to be consistent with the January 24, 2002 Settlement Agreement entered into by The Terteling Company and the Edwards Family LLC. There are a few areas, however, where I believe that clarifications or revisions to the recommendations are necessary to ensure consistency with the Settlement Agreement.

Section 3 of the Settlement Agreement requires the measurement, recording and reporting of total diverted volumes on all wells The Terteling Company uses or owns in District 63-S. The first two recommendations in the May 1 Memorandum for Transfer No. 68558 indicate that a suitable measurement, recording and reporting program should be required. I request that the measurement, recording and reporting requirements ultimately specified in the Transfer approval include the measurement, recording and reporting criteria agreed upon by the parties in the Settlement Agreement.

MICROFILMED

Under the *Silkey v. Tiegs* decree, water right nos. 63-00012 and 63-00013 together totaled a maximum of 0.80 cubic feet per second (cfs) and water right no. 63-00015, although recognized for 0.80 cfs, was prohibited from diversion due to impacts on senior users. This judicial restriction in the *Silkey v. Tiegs* decree remains in place today. Accordingly, the Settlement Agreement, in Section 7, notes, "The Transfers do not authorize Terteling to divert water under the Tiegs right [63-00015]." Thus, consistent with the Settlement Agreement and the *Silkey v. Tiegs* decree, a maximum combined flow of 0.80 cfs (under rights 63-00012 and 63-00013) should be recommended in the Transfer approval.

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Finally, I would request that the Edwards' Protests remain suspended even after a consistent approval is issued as the final Settlement Agreement does not provide for formal withdrawal of the Protests. There should be no need either to activate or to withdraw the Protests upon issuance of a consistent final approval.

Thank you for your assistance. If you have any questions or suggestions, please let me know.

Sincerely,

HOFSTETTER LAW OFFICE, LLC

Dana L. Hofstetter

cc: Steve Lester
John Marshall
E:/3006.1/5254

RECEIVED

MAY 1 [illegible]

Department of Water Resources

hot water wells

Form 222a
July 2000

WESTERN REGION TRANSFER ANALYSIS

Applicant Teufel Company Inc. Transfer No. 5875 = 68558

Reviewed by [illegible] Date 11/29/00

1. Right number(s) 63-00012 63-00013 63-00015

2. Type of right ✓ Decree ___ License ___ Stat. Claim ___ BU Claim

3. Purpose of transfer ___ Change P/D ✓ Add P/D ✓ Change P/U

___ Change N/U ___ Change Period ___ Split Right

___ Other: _____

4. **Check Existing Right**

✓ Source ✓ Priority ✓ Amount
✓ Purpose ✓ Period ✓ SRBA Claim
✓ Description of original point(s) of diversion
✓ Description of original place of use
✓ Overlapping rights for original P/D &/or P/U

5. **Check Proposed Right** for amount of land &/or water transferred:

a. ✓ Analysis memo – *always include unless justify why not needed* Date = 5/1/02

b. ✓ All of right

c. N/A Part of right – *Note: Part B should normally be completed only if part of right is owned by applicant*

d. ✓ Description of point(s) of diversion

e. ✓ Description of place of use

f. ✓ Map showing proposed P/D &/or P/U

g. ✓ Correct notarized signature and fee – *new fees* effective July 1, 2000

h. ✓ Proof of ownership of right &/or land from which water is transferred – see SRBA files + SL's 4/30/02 Notes

i. ✓ Expansion in use of right: check rate of flow, diversion volume and consumptive volume. Discuss in memo.

j. N/A Surface water source: IDFG letter; notify Water Planning Bureau if protected river or minimum flow reach.

✓ Data entry checked by LG date 5/3/02

k. ✓ Overlapping rights for current & proposed scenarios

Current See memo

Proposed " "

l. ✓ SRBA Claim(s) " "

m. ✓ Comment letters ✓ Yes (also see #2 below) ___ No

✓ Water District # 635

✓ Other

635 is inactive so N/A

- Mailing list for members of water district - ask LG for current lists.

~~plus JAYON in A63-00012A (FLORA CO.)~~

SEE memo for explanation ugr

PUBLICATION REVIEW

1. Legal Notice electronically sent to S.O. ✓ Yes 11/30/00

2. Comment Letters

Watermaster comments requested on _____, received on _____

Other comment letters: ___ See attached information

3. Affidavit of publication received: ✓ Yes 3-7-01 (republished 2-15-01)

4. Published correctly: ___ Yes ✓ No

If No, re-publication required: ✓ Yes ___ No republished 2/15 & 22/01 (correction of newspaper error)

5. Protests received: ✓ Yes ___ No ___ *If yes*, acknowledgement sent

RECOMMENDATIONS

1. ✓ Approve ✓ See attached memo

2. ___ Deny due to _____

3. Conditions of Approval See memo by Gary Spackman dated 5/10/02.

4. Recommended by Gary S Date 5/10/02

FORWARDING FILE TO S.O.

1. Copies made for Region file (see attached supplemental page): ✓ Yes

2. File forwarded to S.O. by [illegible] Date 5-14-02 pam & adj.

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Total Postage & Fees	**$**

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OCT 30 2002

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THE TERTELING CO INC
C/O JOHN M MARSHALL
GIVENS PURSLEY LLP
PO BOX 2720
BOISE ID 83701-2720

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DANA HOFSTETTER
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BOISE ID 83701-1427

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Return Receipt Fee (Endorsement Required)	
Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	**$**

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THE TERTELING CO INC
C/O JOHN M MARSHALL
GIVENS PURSLEY LLP
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Return Receipt Fee (Endorsement Required)	1.50
Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	$ 3 94

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C/O JOHN M MARSHALL
GIVENS PURSLEY LLP
PO BOX 2720
BOISE ID 83701-2720

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Article Sent To:

Postage	$
Certified Fee	
Return Receipt Fee (Endorsement Required)	
Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	**$**

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Nam PAUL EDWARDS
DANA HOFSTETTER

Stre 608 W FRANKLIN

City BOISE ID 83702

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CERTIFIED MAIL RECEIPT

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7099 3220 0006 2264 9942

Article Sent To:

Postage	$ .34
Certified Fee	2.10
Return Receipt Fee (Endorsement Required)	MUMS 0
Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	$ 3 94

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PAUL EDWARDS
C/O BEEMAN & HOFSTETTER PC
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BOISE ID 83701-1427

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IMPORTANT: Save this receipt and present it when making an inquiry.

SENDER: *COMPLETE THIS SECTION*

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- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

PAUL EDWARDS
DANA HOFSTETTER
608 W FRANKLIN
BOISE ID 83702

COMPLETE THIS SECTION ON DELIVERY

A. Received by *(Please Print Clearly)* Dana Hofstetter

B. Date of Delivery 11/27/01

C. Signature

X [signature] ☐ Agent ☐ Addressee

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

MICROFILMED
OCT 3 0 2002

3. Service Type

☑ Certified Mail ☐ Express Mail
☐ Registered ☑ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? *(Extra Fee)* ☐ Yes

2. Article Number *(Copy from service label)*

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PS Form 3811, July 1999 Domestic Return Receipt 102595-99-M-1789

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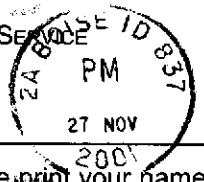

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Postage & Fees Paid
USPS
Permit No. G-10

• Sender: Please print your name, address, and ZIP+4 in this box •

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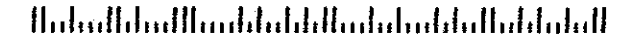
WATER RESOURCES
WESTERN REGION

MICROFILMED

OCT 3 0 2002

DEPARTMENT OF WATER RESOURCES
2735 AIRPORT WAY
BOISE, IDAHO 83705-5082

06



SENDER: *COMPLETE THIS SECTION*

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

THE TERTELING CO INC
C/O JOHN M MARSHALL
GIVENS PURSLEY LLP
PO BOX 2720
BOISE ID 83701-2720

MICROFILMED

COMPLETE THIS SECTION ON DELIVERY

A. Received by *(Please Print Clearly)* JOSHUA S. FRAEY — B. Date of Delivery 7-9-01

C. Signature — ☑ Agent ☐ Addressee

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type
☑ Certified Mail ☐ Express Mail
☐ Registered ☑ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? *(Extra Fee)* ☐ Yes

2. Article Number *(Copy from service label)*
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PS Form 3811, July 1999 — Domestic Return Receipt — 102595-99-M-1789

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C/O JOHN M MARSHALL
GIVENS PURSLEY LLP
PO BOX 2720
BOISE ID 83701-2720

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D SEE & E TULLIS
FLORA CO
3823 N 36
BOISE ID 83703

Daniel & Elizabeth 345-4408 fax 345-9285

~~TERTLING TRUST NO 7~~
~~877 W MAIN STE 706~~
~~BOISE ID 83702~~

Tertling office
Joe & Tom
338-5200 (w)
~~338-5205~~ (Tom's direct work Line)
381-5213
fax - 338-5205
Tom 336-1166 (h)

MARY OR ROSE RYAN 342-8498
4504 FOOTHILLS DR
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W F RINGERT
RINGERT CLARK CHRT LAW 342-4591
PO BOX 2773 Atty for Nelson
BOISE ID 83701-2773 fax 342-4657

DAVE HENDRICKSON Quail Hollow golf course 344-7807
4520 N 36
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~~388~~ 388-3839 tel+fax
KENNETH R ARMENT PA Atty. for golf course
1770 W STATE ST STE 339
BOISE ID 83702

REBULER MAIL ONLY
SHERMAN NELSON 342-0380 (h) 364-1200 (w)
4015 WHITEHEAD ST
BOISE ID 83703
("Straw well")

WILLIAM R SNYDER 336-9080
PO BOX 961
BOISE ID 83701 fax 343-4539
Atty. for Flora

SUSAN D MINER 344-6000 Atty. for Edwards
HAWLEY TROXELL ET AL
PO BOX 1617
BOISE ID 83701

J FEREDAY & M CREAMER 342-6571
GIVENS PURSLEY ET AL Atty for ? Vacant golf course Laid over
PO BOX 2720
BOISE ID 83701

12/8/00 update for any future mailings:
John Marshall c Givens Pursley
Represents Tertling in transfers.
Send copy of correspondence to him at address as shown on pg 1 of transfers

WILLIAM D COLLINS 336-5200
WESTBERG MCCABE & COLLINS fax 336-2121
PO BOX 2836 Atty. for Tertling
BOISE ID 83701

~~MIKE &~~ GARNETTE MONNIE
EDWARDS GREENHOUSES 342-7548
4106 SAND CREEK fax 336-0969
BOISE ID 83703

~~WATERMASTER~~ ED YOUNG 343-8605 (h)
2320 N ~~21ST~~
~~BOISE ID 83702~~

~~WILLIAM A HARENBERG~~ 344-2369
3927 GARNET ST
~~BOISE ID 83703-5127~~

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T. 5875
T. 5876

MEMORANDUM

To: File nos. 63-00012, 63-0013, & 63-0015 (Application for transfer no. 68558) in the name of The Terteling Co.
From: Gary Spackman
Date: May 9, 2002

Re: Proposed Conditions of Approval

I recommend that the Idaho Department of Water Resources (IDWR) approve application for transfer no. 68558. Please refer to a memo written by Lori Graves, dated May 1, 2002 for details about the application for transfer. I recommend the following conditions of approval, some of which were proposed as conditions of approval to resolve a protest filed by Edwards Family, LLC.

1. Measuring devices and lockable controlling works of a type acceptable to the Department shall be permanently installed and maintained as part of the diverting works for each point of diversion.

2. Diversion of water under this right shall be subject to the control of the watermaster of water district no. 63-S, Stewart Gulch.

3. Within one year of the approval of this transfer, water district no. 63-S shall be activated and a watermaster elected. Diversion and use of water from the Windsock well is contingent upon continued activity of water district no. 63-S.

4. 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.

5. 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.

6. The combined flow rate from all the water rights and all of the points of diversion is limited to 0.86 cfs.

7. The annual volume diverted for all the water rights and all of the points of diversion is limited to 400 acre-feet.

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8. 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 no. 63S. 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.

9. The water diverted under this water right shall first be beneficially used for a purpose that utilizes the heat in the water prior to its use for irrigation or other beneficial use that does not utilize the heat in the water.

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Graves, Lori

From: Lester, Steve
Sent: Tuesday, March 12, 2002 7:55 AM
To: Graves, Lori
Subject: FW: Flora Geothermal Weir Report and Pending Transfer

fyi from Ed.

Steve

-----Original Message-----
From: Hydro [mailto:hydrologic@qwest.net]
Sent: Monday, March 11, 2002 1:50 PM
To: Neely, Ken (Neely, Ken)
Cc: Lester Steve
Subject: Flora Geothermal Weir Report and Pending Transfer

Dear Ken:

I understand that the task of reviewing my weir report has come under your balliwick. I wanted to let you know that you can feel free to call anytime with any questions on our methodology and/or conclusions that you may have. I am very pleased that you were able to join us for the field visit for a hands on tour of our findings. There are two items I can shed a bit more light on:

1) The "mystery" of the unknown geothermal line has been resolved. This is the snow-free lineation in the parking lot other than the main geothermal feed line. Although we do not know everything about its origin, it has been confirmed that the buried line carries water towards Flora and that the effluent enters the collection canals and is measured by the weir (or at least 60% of it is).

2) It has been determined that about 17 gpm at the Office well does not run through a flow meter under certain conditions.

These discoveries do not change the equation much because one is a plus and the other a minus of relatively small proportions although 17 gpm amounts to an acre-foot every two weeks.

Ed

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MEMORANDUM

TO: JAN SHURTE

FROM: NICK SPENCER NBS

RE: FLORA/TERTELING CONVEYANCE

DATE: NOVEMBER 19, 2001

Issue: At the time Flora conveyed to Terteling 1.5 acres less property than had been conveyed to it by Hunt Bros., was it proper for IDWR to split the appurtenant water rights in order to retain a *pro rata* share of the appurtenant water rights on the parcel that had not been conveyed to Terteling?

Conclusion: The water rights should not have been split. A review of the relevant deeds reveals that the 1.5 acre parcel in question had already been conveyed to the Petersons. The deed from Flora to the Petersons establishes that Flora retained ownership of the water rights appurtenant to the parcel conveyed to the Petersons. The deed from Flora to Terteling establishes that Flora intended to convey all of its water rights to Terteling, including the water rights Flora retained in the conveyance to the Petersons. Therefore Terteling owns the water rights appurtenant to the 1.5 acre parcel, but it does not own the underlying parcel itself. Accordingly, it needs to file a transfer to move those water rights off of the 1.5 acre parcel and onto other property it owns.

Discussion: By corporate warranty deed dated November 15, 1991, Hunt Bros. Floral, Inc., ("Hunt Bros.") conveyed to Flora Company ("Flora") two parcels of real property ("Parcel 1" and "Parcel 2") and the water rights appurtenant to those parcels. Unfortunately the description of the water rights conveyed by the deed is confusing and I suspect that a court could find it ambiguous. The description reads as follows:

> 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 decreed rights under Silkey v. Tieg's, et al., Case No. 11748 Ada County, Idaho District Court, dated June 30, 1930; and rights accrued under Claim No.s' 63-0012, 63-0013 and 63-0015 IDWR, to include forty-one (41) miner's inches for irrigation, stock, domestic, heating and other beneficial uses. [Emphasis added.]

If the description had ended at the semicolon it would have been reasonably clear. However, it went on to expressly reference three water rights by number, and to specify that the rights being conveyed included 41 inches of water. Unfortunately, the three rights in question contain 80 inches of water. Thus the question that immediately comes to mind is whether the full 80 inches or only 41 inches were intended to be conveyed.

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I think that the language can be construed to show an intent to convey the entire 80 inches. First, the description begins by specifying that "all" of the water rights are being conveyed. The list of the types of rights to be included also evidences an intent to be inclusive. The description then contains a clarifying sentence to the effect that the rights being conveyed are "not limited to" rights decreed in Silkey v. Tiegs. Again, this is language of inclusion, not exclusion. The remainder of the description then contains a phrase that could be construed as language of limitation: "to include forty-one (41) miner's inches...." Since the total quantity of all the rights is 80 inches, this language creates an impression of limitation, viz. that only 41 inches is being conveyed. However, the phrase does not need to be read that way, and given that all of the other language is language of inclusion, I do not believe that it should be read as language of limitation. Rather, it is language indicating an excess of caution. The grantor appears to simply be trying to emphasize that included within the universe of "all" of the water rights, is 41 inches for specific enumerated uses. In other words, the universe of all the rights (80 inches) includes within it 41 inches.

I believe this is the most sensible way to read the language. However, it is confusing. Were it to become the subject of litigation, and the court were faced with trying to construe it, the judge could well find the language ambiguous. If he were to do so, such a finding would allow him to consider evidence outside the four corners of the deed to determine what the intention of the parties to the transaction was. The best evidence of such intent is how the parties themselves construed the language, as established through their subsequent conduct. In this case we have evidence in the form of two subsequent deeds showing how the grantee—Flora—construed the language. Those deeds show that Flora believed it had been conveyed all of the water rights because in its subsequent conveyance to The Terteling Company, Inc., ("Terteling") it conveyed away all of the water rights.

Before reviewing the Flora to Terteling conveyance, one first should consider the preceding conveyance from Flora to Michael E. and Beth E. Peterson ("the Petersons'). (A copy of that deed, dated March 20, 1996 is attached.) That deed conveys Parcel 2, the 1.5 acres in question, to the Petersons. However, the deed contains the following express exception from the conveyance:

> EXCEPTIONS FROM CONVEYANCE: Specifically excepted from this conveyance, and retained by Grantor for itself and its sucessors and assigns, are the geothermal well located in the northerly tip of the above described parcel along with and [sic] any and all water rights, including geothermal rights, associated with the above described parcel. [Emphasis added.]

This language clearly and unambiguously retains to Flora all of the water rights appurtenant to the parcel being conveyed to the Petersons.

About eleven months later, in a deed dated February 14, 1997, Flora conveyed Parcel 1 to Terteling, along with water rights. The description of these water rights, along with the geothermal well on the Peterson property and companion easement for its

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use compose the entirety of Schedule II to that deed, a copy of which you already have. The description is too long to quote in its entirety. Suffice it to say at this point that it conveys all of the water rights described in the deed from Hunt Bros. to Flora in the same all-inclusive language, except that it drops the confusing reference to 41 inches. Instead it expressly states that water right numbers 63-0012, 63-0013, and 63-0015, as claimed in the SRBA, total the full 80 inches. To further address the confusing language in the Hunt Bros. to Flora deed, it incorporates by reference the water right description in that deed. Clearly the purpose for this reference is to insure that should it ultimately be determined that the Hunt Bros. to Flora deed conveyed more or different water rights than Flora had been aware of (i.e. more than the 80 inches) those more and different rights that may have been conveyed to Flora by Hunt Bros. were likewise being conveyed on by Flora to Terteling.

Schedule II additionally expressly conveys to Terteling the geothermal well on Parcel 2 that had been retained by Flora, as well as all of the water rights on Parcel 2, which Flora had retained in its deed to the Petersons.

Thus it appears reasonably clear that Terteling has had conveyed to it all of the water rights—whatever they may be, and including the entire 80 inches—that were appurtenant to Parcel 1 and Parcel 2. Parcel 2 was sold to the Petersons without water rights. Terteling now owns all of the water rights that were appurtenant to Parcel 2, but since Terteling does not own the underlying acres themselves, cannot without the permission of the Petersons use those rights on the Peterson property.

Therefore, IDWR should not have split the water rights between Parcel 1 and Parcel 2 except to the extent necessary to show that the rights had been severed from Parcel 2, and that Terteling owns those rights, while the Petersons own the underlying acres. Since Terteling cannot use the rights that were severed from the Peterson parcel, it needs to file a transfer as soon as practically possible to move the rights onto other acres before they are forfeited for nonuse.

MEMORANDUM

DATE: 5/1/2002

FROM: Lori Graves

TO: Transfer File No. 68558

Attachments

A. Overview
B. Flora Site Warranty Deed
C. USGS Map
D. Settlement Agreement Dated 2/5/02
E. John Marshall's Supporting Letter Dated 2/15/02
F. The Hydro Logic Report Titled "Evaluation of the Flora Company's Geothermal Discharge Weir"

Brief

Applicants propose to combine three decreed geothermal rights, aka the Flora rights, plus add a fourth existing geothermal well, aka the Windsock well, to reflect an interconnected system. Applicants also wish to change the P/U to allow for moving some or all of the greenhouse operation to the vicinity of the Windsock well, aka the Tertling site, located up gradient in the geothermal aquifer from the Flora wells. Applicants are unsure of the results from the move and wish to keep the arrangement flexible, proposing to not exceed the transfer limits at one or both locations.

Edwards Family, which also diverts water from the same geothermal aquifer, protested the transfer, fearing injury to their rights because of an enlargement of geothermal water as a result of the transfer. Applicants then hired Hydro Logic to evaluate and determine the annual production volumes under the rights that have been historically used at Flora.

Ken Neely and I reviewed Hydro Logic's final report and concluded that it had done a professional and thorough job compiling and interpreting the available data for the Flora system. Based on the report findings, Edwards Family reached a settlement with the applicants, contingent upon the transfer being approved with a volume limitation of 400 afa.

Ownership

Flora Site: The original rights were claimed in the SRBA as decreed. The rights describe 6 acres irrigated in Parcel 1,West of 36th St. and 1.5 acres irrigated in Parcel 2, East of 36th St. The claims were split in the SRBA based on submitted ownership documentation, then recombined after clarification of the ownership documents by SRBA legal staff.

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IDWR concluded that, in 1996, Flora sold Parcel 2 to the Petersons without water rights, but retained access to the well located in Parcel 2. In 1997, Turteling purchased Parcel 1, which included all the Flora water rights, wells, and easements. See Attachment C. Also see Nick Spencer's memo dated 11/9/01included in reviewer's notes.

Tertling Site: Confirmed as applicant via Ada County Assessor.

Historical Beneficial Use

Evidence submitted and/or referenced in this transfer package leaves little doubt that the Flora wells have been historically used to some extent for the uses described. Ed Squires, with Hydro Logic, stated that the limited site measurements he found for the Flora wells date back to the 1920's. John Marshall, applicants' attorney, also submitted aerial photos depicting the Flora site for years 1938, 1949, 1959 and 1964. Maps and aerial photography available to the department, dating from the early 1970's up to the year 2000, also indicates beneficial use occurring at the Flora site.

Flora rights 63-00012 and 63-00013 are the most senior rights in the Silkey v. Tiegs decree. Flora right 63-00015 was also decreed, but with an administrative provision preventing its use, until further ordered from the court, in favor of maintaining flows and artesian pressures for the more senior rights. Because the owners have been administratively prevented from using this right does not constitute forfeiture.

Transfer Amounts

The transfer lists 7.5 acres irrigation. This accounts for total irrigated acres in Parcels 1 and 2, which Flora once owned. Parcel 2 has not been irrigated since at least March, 1996, when the Petersons purchased the parcel without water rights. By the time the transfer was received in October, 2000, five irrigation seasons had lapsed (assuming parcel 2 had been irrigated the season prior to sale). Only 6 acres in parcel 1 should be recognized for irrigation use. The 1.5 acres in parcel 2 should not be counted due to non-use. John Marshall's attached letter dated February 15, 2002, is consistent with this recommendation in which he contends the current Flora site consists of 7 total acres; 6 acres irrigated and 1 acre for buildings and pavement.

The transfer flow rates reflect the decreed flow rates for a total of 1.6 cfs. Volume amounts were not decreed. As described above, applicants and protestants agreed that 400 afa was an acceptable volume limitation to insure that the proposed change did not constitute an enlargement. Several reasons explaining the conservative nature of the 400 afa amount were accurately documented in the Executive Summary located in the beginning of Hydro Logic's report.

Table 4 in the report also shows that the maximum combined flow rate ever measured from the three Flora hot wells was 386 GPM. Based on this data, the combined diversion rate from the hot wells should be limited to .86 cfs (386 GPM). Ed Squires agreed with this conclusion.

Overlaps

Flora Site: Claim 63-31051 represents two cold water wells used for commercial uses associated with the business operation. See accompaning transfer no. 68559.

Tertling Site: Two licenses are used for irrigation of 178 acres at the proposed P/U. Right 63-3603 lists three wells in S22 as alternate points of diversion per approved transfer no.3990; the Pool well (SWNW), the Tertling artesian hot well (NENW), and the Windsock well (NWSW). According to the SRBA claim, the only wells used alternately are the Windsock well and a well located in the NWNE, aka the Motorcycle well, that was connected to the Windsock well in 1978. In 1997 the Champaign well was successfully drilled in the NWNE per approved transfer no. 4202 and is used as a third alternate source for irrigation. The right is conditioned that water can be diverted from only one of the wells at a time.

Right 63-7595 lists four points of diversion in S22 per approved transfer no. 4202; the Windsock well (NWSW), the Motorcycle well (NWNE) the Champaign well (NWNE) and the Pool well (SWNW). Unlike right 63-3603, this license was not conditioned to use only one well at a time. This explains why the Pool well was included on SRBA claim 63-7595 and not claim 63-3603. According to the claims, the Pool well is only used for domestic and stockwater uses and is not tied to the irrigation system.

This transfer lists the Windsock well as the ground water source to be used in S22 for the uses described. Please note that this well is also used as an alternate irrigation source for right 63-3603 and as a supplemental irrigation source for right 63-7595.

SRBA

The SRBA claims were filed for the associated water rights.
The transfer package was reviewed with SRBA staff. They confirmed the validity of the associated water right claims and agree with the recommendations of this memo. Copies of this transfer and memo have been submitted to the SRBA files.

Possible Injury

According to John Marshall, the proposed transfer will benefit existing rights by moving the two most senior rights in the Stewart Gulch Geothermal Aquifer away from wells where artesian flows are protected by the Silkey v. Tiegs decree. After the transfer, the primary P/D will be the Windsock well, which has been tested for its effects on surrounding geothermal wells that pump during the winter heating season. The tests proved that pumping the Windsock well, even during times of declining aquifer pressures, did not injure existing ground water rights. When the Windsock well was pumped for irrigation, no water rights in Water District 63-S experienced any documented problems except the wells from which applicant now proposes to transfer.

The Stewart Gulch Water District 63-S was formed in 1992, but is currently not active. A boundary was determined for the District, which included domestic hot water users. Regardless of status or priority, the uses and rights described in the transfer are subordinate to the domestic hot water wells within the District 63-S boundary. The transfer needs to be conditioned to insure the domestic users' protection.

Edwards also divert water from the Stewart Gulch Geothermal Aquifer and protested the transfer for fear of possible injury. As a result, a settlement agreement was reached which limits the Flora rights to a combined diversion volume of no more than 400 afa. Re-activation of Water District 63-S was also part of the settlement agreement.

Recommendations

Install suitable measuring and recording equipment on the Windsock well that is acceptable to the Department.

Implement a high quality monitoring and reporting program as recommended on no. 2, page 11 of the Hydro Logic report.

Limit combined flow rate to .86 cfs.

Limit combined diversion volume to 400 afa.

Limit irrigation to 6 acres and .02 cfs/acre.

If the diversion of the Windsock well is found to have more impact on the water available to existing rights in the Stewart Gulch Geothermal Aquifer than the impact of the presently installed system, the right holder shall cease to use the proposed well and return to the original operation.

List standard water district controls assuming the re-activation of Water District 63-S.

Carry over the administrative provision ordered from the court in the Silkey v. Tiegs Decree for water right 63-00015.

Update the protest status in the data base from "Suspended Protest" to "Withdrawn" if the transfer approval is consistent with the settlement agreement (Attachment D).

MEMORANDUM

DATE: 3/12/2002

FROM: Lori Graves

TO: Steve Lester

RE: Flora's Hot Wells

Steve, I agree with Ken's conclusions regarding Ed's evaluation. I feel Ed did a great job considering the limited information that he had to work with. Based on the supporting data in Ed's report, 400 afa proposed for transfer appears to be a very reasonable estimate in regards to the historical volumetric use of water from Flora's hot wells.

The total flow rate listed for transfer is 1.6 cfs. Table 4 of Ed's report shows that the maximum combined flow rate measured from Flora's three hot wells was 386 GPM. Based on this data, the combined diversion rate from the hot wells needs to be limited to .86 cfs or 386 GPM.

Memorandum

To: Lori Graves

From: Ken Neely

Date: 3/11/2002

Re: Flora Report.

Based on the information that Ed Squires provided to us at the site visit to Flora Company, Inc., on February 12, 2002, and on the report "Evaluation of the Flora Company's Geothermal Discharge Weir", I conclude that Hydro Logic, Inc., has done a thorough job compiling and interpreting the available data for the Flora system. Their flow estimations are based on measured data, historic records, and an interview with the person who has operated the system for about 7 years. Of course, a number of assumptions had to be made regarding the flows. However, Ed has done a very good job documenting those assumptions and the reasoning behind his estimates. I did not do any calculation checks to verify Ed's work. If that is required, it will take a considerable amount of my time. However, I don't think that is necessary as I feel that Ed's work was done well.

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Direct Dial: (208) 388-1270
E-Mail: jmm@givenspursley.com

February 15, 2002

VIA HAND DELIVERY

Gary Spackman
Idaho Department of Water Resources
2735 Airport Way
Boise, Idaho 83701

Re: The Terteling Company, Inc.'s Applications for Transfer Nos. 68558 and 68559
Our File: 4465-7

Dear Gary:

I am enclosing materials in support of The Terteling Company, Inc.'s ("Terteling") Applications for Transfer Nos. 68558 and 68559. These materials and this accompanying discussion are intended to address the issues that Idaho Code § 42-222 requires the Department to consider in transfer proceedings.

Transfer No. 68558 (hot water wells)

Transfer no. 68558 requests a transfer of the place of use and points of diversion for decreed water rights 63-00012, 63-00013 and 63-00015 (the "Flora Rights"). All three rights were decreed in *Silkey v. Tiegs*, Ada County Case No. 11748, and have been administered by the Department over the past several years as part of Water District 63-S, which covers diversions of water from a low-temperature geothermal resource commonly referred to as the Stewart Gulch Geothermal Aquifer. The transfer application seeks to move the points of diversion for the Flora Rights from three flowing artesian wells to a single pumped well, known as the Windsock well, that is also located within District 63-S.

Edwards Family, LLC ("Edwards"), which also diverts water from the Stewart Gulch Geothermal Aquifer, protested transfer no. 68558 to ensure that the proposed transfer would not injure Edwards' water right. Protracted negotiations lead to a Settlement Agreement between Terteling and Edwards that has been filed with the Department. Boiled down to its essentials, the Settlement Agreement limits the Flora Rights to a maximum annual combined diversion

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volume of 400 AF. The settlement is contingent upon an order approving the transfers that includes a volume limitation for the Flora Rights of no more or less than 400 AF.

The parties also agree to a maximum annual diverted volume for Edwards' right and to reactivate Water District 63-S. However, these issues are not part of this transfer and do not require the Department's acceptance as part of this transfer proceeding.

Terteling submits the following information to support an annual volume of 400 AF for the Flora Rights and to satisfy the Idaho Code § 42-222 criteria:

1. The proposed change does not constitute an enlargement.

To ensure that this transfer does not result in an enlargement, Terteling proposes to limit the annual diversion volume of the Flora rights to 400 AF. We believe that this volume limitation is conservative and will ensure that future diversions from the Flora Rights are no greater than, and probably less than, the historic beneficial use of water made under the Flora Rights.

The 400 AF number is supported by the enclosed report from Ed Squires, entitled "Evaluation of the Flora Company's Geothermal Discharge Weir," that examines a 9-year weir chart record at the Flora site to estimate annual production volumes under the Flora Rights. Lori Graves and Ken Neeley from the Department accompanied Mr. Squires on a site visit to the Flora property on February 12, 2002 where Mr. Squires demonstrated and explained the methodology behind his report.

Mr. Squires' report focuses on data from 1993/1994 because that timeframe has the most complete data set. There are several factors about that time period that underscore the conservative nature of Mr. Squires' volume estimates.

First, during 1993 and 1994, the Stewart Gulch Geothermal Aquifer experienced the lowest ever recorded aquifer pressures. Pressures were so low that the owners of the Flora Rights were forced to make delivery calls against junior users in the aquifer after water levels declined at the Flora site to the point where the wells could divert only very limited quantities of water or no water at all.[1] Water that would have been diverted and put to beneficial use was physically unavailable for part of this time period reviewed by Mr. Squires.

Second, the 1993/1994 heating season was relatively warm. As Mr. Squires indicates in his report, a colder year would drive the diversion volumes higher.

In short, the weir record artificially underestimates the beneficial use of water under the Flora Rights. Therefore, an annual diversion volume of 400 AF is a conservative estimate that protects against any enlargement of the Flora Rights in this transfer.

[1] The Department's files for Water District 63-S document these actions.

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2. No other water rights are injured by the transfer.

The proposed transfer will not injure any existing water rights. On the contrary, the proposed transfer will benefit existing rights by moving the two most senior rights in the Stewart Gulch Geothermal Aquifer (or at least a significant portion of them) away from wells where artesian flows are protected by the *Silkey v. Tiegs* decree. After the transfer, the primary point of diversion will be the existing Windsock Well.

Also, the proposed new point of diversion for the Flora Rights, the Windsock Well, has been tested for its effects on surrounding geothermal wells that pump during the winter heating season. The tests prove that pumping the Windsock Well, even during times of declining aquifer pressures, does not injure existing ground water rights. The attached hydrograph from a 1994 well test show that water level drawdowns in surrounding wells are minimal and stabilize quickly.

Further, Terteling formerly used the Windsock Well to divert right no. 63-3603. During the time when the Windsock Well was pumping, no water rights in Water District 63-S experienced any documented problems except the wells from which Terteling now proposes to transfer the Flora Rights.

3. The change is in the local public interest.

The local public interest is a minor issue in this case. This transfer proposes to move existing, long-established uses associated with a commercial greenhouse facility to a new location where the water will be diverted from the same aquifer for the same purposes. The new greenhouse facility is located on private land that is owned by the applicant.

4. The proposed change is consistent with the conservation of water resources in the State of Idaho.

We understand that this consideration concerns transfers of large quantities of water and/or out-of-state transfers. As such, it does not apply in this transfer. In any event, the diversion quantities proposed in the transfer are consistent with the *Silkey v. Tiegs* decree and generally accepted norms.

Transfer No. 68559 (cold water wells)

Transfer no. 68559 proposes to move the cold-water commercial uses represented by right no. 63-31051 to the new greenhouse site. Because water right 63-31051 is a beneficial use water right, Terteling is submitting information that proves the right's existence as claimed as part of the information satisfying the statutory criteria under Idaho Code § 42-222.

1. The proposed change in the transfer does not constitute an enlargement.

To prevent enlargement of right no. 63-31051, Terteling proposes to continue diverting the same quantity under right no. 63-31051 after the transfer as it has in the past. The historic diversion rate and volume for this right must be estimated because there are no flow meters on either of the two wells used to divert this right.

The commercial use currently made with water at the Flora site is primarily irrigation of potted plants (as opposed to cultivated lands). There is also some irrigation of landscaped areas, domestic-type uses inside an office building and other miscellaneous commercial uses such as dust control.

We estimate the historic flow rate for right no. 36-31051 at 0.12 cfs by assuming a rate of 0.02 cfs per acre for the irrigation of approximately 6 acres. Attached aerial photographs of the site show irrigation and/or greenhouse operations on the entire Flora site, which is approximately 7 acres. We estimate that buildings and pathways cover approximately 1 acre.

For the diversion volume, the Department generally estimates that the annual irrigation requirement for crops in the Boise Valley is 4.5 AF for an irrigation season that begins on March 1 and ends on November 15. Again, assuming historical irrigation of 6 acres, and assuming a year-round diversion because plants are grown in the winter as well as the irrigation season at the Flora site, the estimated maximum diversion volume for this right would be 38 AF.[2] Terteling expects that right no. 63-31051 can be limited accordingly.

2. No other water rights are injured by the transfer.

The relatively small amounts of water diverted under right no. 63-31051 will be diverted from existing cold-water wells from which water has previously been diverted without any documented problems. Diverting right no. 63-31051 from these wells is not expected to cause any problems with surrounding wells.

Terteling claims a priority date of July 7, 1921 for right no. 63-31051. This date is consistent with the priority date of right no. 63-00012, the most senior geothermal right decreed in *Silkey v. Tiegs*. The Idaho Supreme Court decision ratifying the district court's decision in *Silkey v. Tiegs* confirms that cold water wells existed at the Flora site along with the hot water wells that were adjudicated in *Silkey v. Tiegs*: "A counter-affidavit by respondent [Silkey] is to the effect that earlier shallow wells on her property were cold, but that since the boring of the Tiegs well one cold well lying southwest of the said Tiegs well has been lukewarm." *Silkey v. Tiegs*, 51 Idaho 344, 350 (1931) (emphasis added). This decision, a copy of which is attached, confirms that Silkey, the former owner of the Flora site, had cold water wells on her property at least as early as her hot wells, the first of which existed as of July 7, 1921.

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[2] (4.5 AF/acre x 6 acres) / 8.5 months x 12 months = 38 AF/year

3. The change is in the local public interest.

See discussion on local public interest above.

4. The proposed change is consistent with the conservation of water resources in the State of Idaho.

See discussion on conservation of water resources above.

For all the reasons discussed above, and based on the enclosed documents, Terteling requests that the Department issue an order that approves applications for transfer nos. 68558 and 68559. Please call if you need any additional information.

Sincerely,

John M. Marshall

JMM/tns

Enclosures:
1. Evaluation of the Flora Company's Geothermal Discharge Weir
2. Aerial photographs of Flora site for years 1938, 1949, 1959, 1964
3. 1994 hydrograph of Edwards and Flora wells
4. Copy of *Silkey v. Tiegs*, 51 Idaho 344 (1931)

cc: The Terteling Co., Inc. (w/o enclosures)
Ed Squires (w/o enclosures)

S:\Clients\4465\7\Corr\2002-02-13 JM ltr to Spackman re transfers.doc

MICROFILMED

HOFSTETTER LAW OFFICE

608 West Franklin Street
Boise, Idaho 83702
Dana@IdahoWaterLaw.com

Dana L. Hofstetter
Attorney at Law

Telephone: (208) 424-7800
Facsimile: (208) 424-8774

February 5, 2002

Via Hand Delivery

Gary Spackman
Western Region
Idaho Department of Water Resources
2735 Airport Way
Boise, Idaho 83705-5082

RECEIVED
FEB 05 2002
WATER RESOURCES
WESTERN REGION

Re: Transfer Nos. 68558 (formerly 5875) and 68559 (formerly 5876)

Dear Mr. Spackman:

I enclose for filing with the Idaho Department of Water Resources a copy of the Settlement Agreement entered into by The Terteling Company, Inc and the Edwards Family, LLC in resolution of the above-referenced Transfer Applications. As you will note, Section 1 of the Agreement provides for suspension of the Edwards Family, LLC's Protests "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." The Edwards Family, LLC ultimately expects to withdraw the Protests if the Department's approval is consistent with the terms of the Settlement Agreement and upon the recording of the Settlement Agreement (and a Power of Attorney for Tom Terteling as an agent of The Terteling Company) pursuant to Section 12 of the Agreement.

Thank you for your assistance. If you have any questions or suggestions, please let me know. Please also let me know if you would like to have a meeting with the parties to discuss the Settlement Agreement.

Sincerely,

HOFSTETTER LAW OFFICE, LLC

Dana L. Hofstetter

cc: John Marshall w/ enclosure

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FEB 0 5 2002
WATER RESOURCES
WESTERN REGION

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

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

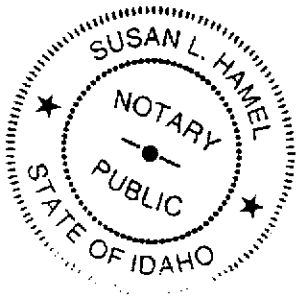
EDWARDS FAMILY, LLC

By Garnette Monnie
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.

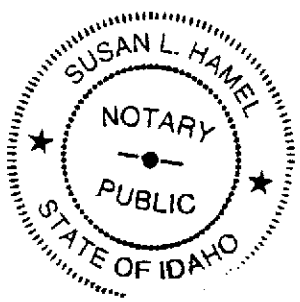


Susan L. Hamel
Notary Public for the State of Idaho
Residing in Kuna, ID Ada County
My Commission Expires: 03/22/2002

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°29' West a distance of 662.3 feet along the section line common to said Sections 28 and 29; thence North 89°11' West, parallel to the East and West quarter section line of said Section 29, a distance of 657.4 feet; thence North 0°39' East a distance of 662.3 feet, to the East and West quarter section line of said Section 29; thence South 89°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°29' West 1003.9 feet on the East line of said Section 29 marked by an iron pin; thence North 81°16' West 234.2 feet to a point; thence North 61°35' West 135.75 feet to a point; thence North 76°20' West 328.4 feet to a point, marked by an iron pin; thence North 0°39' East 838.2 feet to a point; thence South 89°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.

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 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. 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:

_____

_____

Jeffrey C. Fereday, ISB #2719
John M. Marshall, ISB #5628
GIVENS PURSLEY LLP
277 North 6th Street, Suite 200
P.O. Box 2720
Boise, ID 83701
(208) 388-1200
(208) 388-1300 (fax)

Attorneys for The Terteling Co.
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RECEIVED
JAN 23 2002
WATER RESOURCES
WESTERN REGION

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR TRANSFER OF WATER RIGHT NOS. 63-00012, 63-00013, 63-00015 (No. 68558) AND 63-31051 (No. 68559) IN THE NAME OF THE TERTELING CO. INC.	NOTICE OF SERVICE

The Terteling Co., Inc. ("Terteling") by and through its attorneys of record, Jeffrey C. Fereday and John M. Marshall of the firm Givens Pursley LLP, and pursuant to the Idaho Rules of Civil Procedure, hereby notifies Idaho Department of Water Resources that it served TERTELING'S RESPONSES TO EDWARDS FIRST SET OF REQUESTS FOR ADMISSION, INTERROGATORIES AND REQUESTS FOR PRODUCTION OF DOCUMENTS to Dana L. Hofstetter, counsel for Protestant Edwards, via U.S. Mail on January 14, 2002.

Respectfully submitted this 22nd day of January, 2002.

GIVENS PURSLEY LLP

John M. Marshall

CERTIFICATE OF SERVICE

I hereby certify that on this 22 day of January, 2002, I caused to be served a true and correct copy of the foregoing by the method indicated below, and addressed to the following:

Dana L. Hofstetter, Esq.
Hofstetter Law Offices
608 W. Franklin St.
Boise, ID 83702

X U.S. Mail
___ By hand
___ Overnight
___ Telecopy

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

X U.S. Mail
___ By hand
___ Overnight
___ Telecopy

John M. Marshall

GIVENS PURSLEY LLP

LAW OFFICES
277 North 6th Street, Suite 200
PO Box 2720, Boise, Idaho 83701
TELEPHONE: 208 388-1200
FACSIMILE: 208 388-1300
WEBSITE: www.givenspursley.com

Direct Dial: (208) 388-1234
E-Mail: s234@givenspursley.com

Gary G. Allen
Christopher J. Beeson
Michael C. Creamer
Emily MacMaster Durkee*
Thomas E. Dvorak
Roy Lewis Eiguren
Timothy P. Feamside
Jeffrey C. Fereday
Amanda L. Keating
Karl T. Klein
Debora K. Kristensen
Anne C. Kunkel
Franklin G. Lee
David R. Lombardi
D. David Lorello, Jr
Kevin T. Maloney
Kimberly D. Maloney
John M. Marshall
Kenneth R. McClure
Kelly Greene McConnell
Cynthia A. Melillo
Christopher H. Meyer
Kendall L. Miller
L. Edward Miller
Patrick J. Miller
Judson B. Montgomery
Angela K. Nelson
W. Hugh O'Riordan
Kenneth L. Pursley
Brad V. Sneed
Virginia L. Stukel
Conley E. Ward
Robert B. White

Raymond D. Givens
James A. McClure
Stephanie C. Westermeier
OF COUNSEL
*Licensed in California only

January 22, 2002

VIA US MAIL

Idaho Department of Water Resources
1301 N. Orchard
Boise, ID 83706

Re: Terteling Co. Inc.
Our File: 4465-7

Dear Clerk

Enclosed for filing, please find an original and one copy of NOTICE OF SERVICE. Please acknowledge receipt of this document by stamping the copy and returning it to me in the enclosed, self-addressed, stamped envelope. Please call me if you have any questions.

Sincerely,

Tina N. Smith
Assistant to John M. Marshall

Enclosures
S:\CLIENTS\4465\7\Corr\2002-1-22 ltr clerk notice.doc

RECEIVED
JAN 28 2002
WATER RESOURCES
WESTERN REGION

Jeffrey C. Fereday, ISB #2719
John M. Marshall, ISB #5628
GIVENS PURSLEY LLP
277 North 6th Street, Suite 200
P.O. Box 2720
Boise, ID 83701
(208) 388-1200
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Attorneys for The Terteling Co.
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BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR TRANSFER OF WATER RIGHT NOS. 63-00012, 63-00013, 63-00015 (No. 68558) AND 63-31051 (No. 68559) IN THE NAME OF THE TERTELING CO. INC.	NOTICE OF SERVICE

The Terteling Co., Inc. ("Terteling") by and through its attorneys of record, Jeffrey C. Fereday and John M. Marshall of the firm Givens Pursley LLP, and pursuant to the Idaho Rules of Civil Procedure, hereby notifies Idaho Department of Water Resources that it served TERTELING'S RESPONSES TO EDWARDS FIRST SET OF REQUESTS FOR ADMISSION, INTERROGATORIES AND REQUESTS FOR PRODUCTION OF DOCUMENTS to Dana L. Hofstetter, counsel for Protestant Edwards, via U.S. Mail on January 14, 2002.

Respectfully submitted this 22nd day of January, 2002.

GIVENS PURSLEY LLP

John M. Marshall

CERTIFICATE OF SERVICE

I hereby certify that on this 22 day of January, 2002, I caused to be served a true and correct copy of the foregoing by the method indicated below, and addressed to the following:

Dana L. Hofstetter, Esq.
Hofstetter Law Offices
608 W. Franklin St.
Boise, ID 83702

X U.S. Mail
___ By hand
___ Overnight
___ Telecopy

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

X U.S. Mail
___ By hand
___ Overnight
___ Telecopy

John M. Marshall

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE
STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR TRANSFER OF WATER RIGHT NOS. 63-00012, 63-00013, AND 63-00015 (TRANSFER NO. 5875) AND 63-31051 (TRANSFER NO. 5876) IN THE NAME OF THE TERTELING COMPANY, INC.	)	**AMENDED NOTICE OF HEARING**

The hearing scheduled on Tuesday, Wednesday and Thursday, February 26, 27 and 28, 2002, has been moved back one day and will be held **Wednesday, Thursday and Friday, February 27, 28 and March 1, 2002, in conference rooms A & B, ID Department of Water Resources, 1301 N. Orchard, Boise, Idaho 83706.** The hearing will begin at 9:00 a.m. on February 27, 2002.

Dated this 16th day of January 2002.

GARY SPACKMAN

CERTIFICATE OF MAILING

I hereby certify that on the 16TH day of January 2002, I mailed a true and correct copy, postage prepaid, of this Amended Notice of Hearing to the following:

Sue Taylor
Senior Secretary

CERTIFIED MAIL

THE TERTELING CO INC
C/O JOHN M MARSHALL
GIVENS PURSLEY LLP
PO BOX 2720
BOISE ID 83701-2720

PAUL EDWARDS
C/O DANA HOFSTETTER
HOFSTETTER LAW OFFICES
608 W FRANKLIN
BOISE ID 83702

HOFSTETTER LAW OFFICE

608 West Franklin Street
Boise, Idaho 83702

Dana@IdahoWaterLaw.com

Dana L. Hofstetter
Attorney at Law

Telephone: (208) 424-7800
Facsimile: (208) 424-8774

January 7, 2002

RECEIVED
JAN 09 2002
WATER RESOURCES
WESTERN REGION

Via U.S. Mail

Gary Spackman
c/o Sue Taylor
Western Region
Idaho Department of Water Resources
2735 Airport Way
Boise, Idaho 83705-5082

Re: Transfer Nos. 68558 (formerly 5875) and 68559 (formerly 5876)

Dear Ms. Taylor:

I enclose for filing with the Idaho Department of Water Resources an original of *The Estate of Paul Edwards and Edwards Family LLC's Responses to Terteling's First Discovery Requests* for the above-referenced proceeding. I also enclose a copy of these discovery responses. After filing the original, please conform the copy with the filing date stamp and return the conformed copy to me in the enclosed self-addressed and stamped envelope.

Done 119102 KH

Thank you for your assistance. If you have any questions or suggestions, please let me know.

Sincerely,

HOFSTETTER LAW OFFICE, LLC

Dana L. Hofstetter

MICRO...

RECEIVED
JAN 0 9 2002
WATER RESOURCES
WESTERN REGION

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

Attorney for the Estate of Paul Edwards
and the Edwards Family LLC

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR TRANSFER OF WATER RIGHT NOS. 63-00012, 63-00013, AND 63-00015 (TRANSFER NO. 68558/5875) AND 63-31051 (TRANSFER NO. 68559/5876) IN THE NAME OF THE TERTELING, COMPANY, INC.	**THE ESTATE OF PAUL EDWARDS AND THE EDWARDS FAMILY LLC'S RESPONSES TO TERTELING'S FIRST DISCOVERY REQUESTS**

Come now the Estate of Paul Edwards and the Edwards Family LLC (collectively, hereinafter "Edwards"), by and through their counsel of record, Dana L. Hofstetter of Hofstetter Law Office, LLC, pursuant to Rules 520, 521, 522, 524 and 527 of the Rules of Procedure of the Idaho Department of Water Resources and Rules 26, 33, 34, and 36 of the Idaho Rules of Civil Procedure, and hereby respond to *Terteling's First Discovery Requests to Protestant Edwards* as follows.

RESPONSES TO

INTERROGATORIES AND REQUESTS FOR ADMISSION

INTERROGATORY 1: Please identify who participated in drafting the answers to these interrogatories.

RESPONSE: Dana L.Hofstetter, Hofstetter Law Office, LLC
608 West Franklin Street, Boise, Idaho 83702
Telephone: 424-7800.

Terry Scanlan, Scanlan Engineering
600 East River Park Lane, Suite 105, Boise, Idaho 83706,
Telephone: 383-4140.

Garnette Monnie, Manager, Edwards Family LLC
4106 Sand Creek, Boise, Idaho 83703
Telephone: 342-7548.

INTERROGATORY 2: Please identify each person having personal knowledge relating to the Application and/or Protest, and for each person, state in detail the factual substance of his or her personal knowledge.

RESPONSE: Objection. Overbroad. Requests information in the possession of Terteling. Requests information subject to the attorney client privilege and the attorney work product doctrine. Vague and ambiguous since the term "Application" is not defined. Without waiving these objections and reserving the right to reassert the same, Edwards responds as follows: In addition to various Idaho Department of Water Resources personnel, the persons identified in response to Interrogatory No. 1 above also have information relating to the Transfer and the Protest. Ms. Monnie has information concerning the potential impacts of the Transfer on the Edwards Family LLC's water rights and the associated Edwards Greenhouse, Inc.'s operations. Please refer to the response to Interrogatory No. 4 below for a description of Mr.

Scanlan's anticipated testimony. Investigation and discovery in this proceeding remains underway. Accordingly, Edwards reserves the right to supplement this response if more information becomes available.

INTERROGATORY 3: Please identify all witnesses you will call at the hearing in this matter.

RESPONSE: Edwards currently expects to call the following witnesses:

Terry Scanlan, Scanlan Engineering
600 East River Park Lane, Suite 105, Boise, Idaho 83706
Telephone: 383-4140.

Garnette Monnie, Manager, Edwards Family LLC
4106 Sand Creek, Boise, Idaho 83703
Telephone: 342-7548.

Investigation and discovery in this proceeding remains underway. Accordingly, Edwards reserves the right to supplement this response when additional witnesses are determined.

INTERROGATORY 4: Please identify each expert witness you will call at the hearing in this matter, and for each please state:

(1) the subject matter on which the expert will testify;

(2) the substance of the opinions the expert is expected to testify about;

(3) the underlying facts and data upon which the expert opinions are based; and

(4) the education and/or experience that qualifies the witness as an expert.

RESPONSE: The following expert witness currently is expected to testify at the hearing:

Terry Scanlan, Scanlan Engineering
600 East River Park Lane, Suite 105, Boise, Idaho 83706
Telephone: 383-4140.

(1) Mr. Scanlan will testify concerning the applicable statutory criteria of Idaho Code §42-222.

(2) Mr. Scanlan is expected to testify that without appropriate conditions, the Transfer will cause injury to other water rights, will constitute an enlargement, will be inconsistent with the conservation of water resources, and will not be in the public interest.

(3) Mr. Scanlan's opinions are based on information about historical water use, including diversion information relating to the *Silkey v. Tiegs* decree which is in the possession of the Idaho Department of Water Resources (IDWR), and other diversion records in the possession of IDWR, and hydrographs for geothermal wells in the Stewart Gulch Geothermal Aquifer in the possession of IDWR and/or Terteling.

(4) Mr. Scanlan's curriculum vitae is attached.

Since discovery and investigation continues, Edwards reserves the right to identify additional expert witnesses and to further supplement the information in this response in other respects also.

INTERROGATORY 5: Please identify all documents and/or exhibits you or any of your witnesses, including experts, are going to use at the hearing in this matter.

RESPONSE: Edwards expects to use the *Silkey v. Tiegs* decree and, possibly, other filings in that case as evidence at hearing. However, Edwards has not yet identified all of the documents and exhibits that will be used at hearing. This response will be supplemented as such materials are identified.

INTERROGATORY 6: For each water right that authorizes you to use water on your property, please identify:

(1) the water right number,

(2) the details of how you divert and use water pursuant to that right, including but not limited to the quantity of water used, both the diversion rate and average annual diversion volume, and when, where and for what purpose you use it, including the specific times during the year when you use the water; and

(3) any changes you or any previous owner of your property have made to the way

water is used.

RESPONSE: Objection. Vague. Ambiguous. The term "property" is not defined.

Without waiving these objections and reserving the right to reassert the same, Edwards responds as follows:

(1) Edwards owns water right nos. 63-00014, 63-05065 and 63-05067. Additionally, Edwards has an interest in Boise City Canal Company water rights.

(2) 63-00014 is used to heat greenhouses, offices and an apartment during the heating season. Additionally, a small amount of water flows during the non-heating season to prevent oxidation of the old pipelines and casing. The geothermal water is diverted from a well by artesian pressure. While the well is equipped with a pump, the pump typically is not used. Diversion records are submitted regularly to IDWR and can be obtained from the agency.

63-05065 is used for lawn irrigation associated with a domestic residence. The water is diverted from a well by pumping and is applied to the lawn by a sprinkler system. Diversion measurements are not taken for this water right.

63-05067 is used for year round irrigation associated with greenhouse plants, as well as irrigation of outdoor fields, gardens and lawns by a combination of sprinkler, surface, drip and hose nozzle irrigation methods. This water right also supplies sinks, toilets and shower facilities. The water is diverted from two wells. The system is equipped with two pumps, a 1½ horsepower pump and a 5 horsepower pump. Diversion measurements are not taken for this water right.

The Boise City Canal Company water rights are for field irrigation use during the irrigation season. This water is delivered by the Boise City Canal Company ditch system. Measurements are not taken by Edwards for this water.

(3) Portions of the heating systems for the greenhouses have been periodically replaced as heating technology improves.

INTERROGATORY 7: Do you believe that the Transfer will reduce the quantity of water you divert under any of your water rights, and if yes; for each water right, please identify all the facts that support this conclusion?

RESPONSE: Without appropriate conditions, the Transfer could cause injury to Edwards' water rights. A purpose of this proceeding is to ensure that the Transfer will not cause injury to Edwards' water rights.

INTERROGATORY 8: Do you believe that the Transfer will result in you having to change the method or location of the diversion for any of your water rights?

RESPONSE: *See* response to Interrogatory No. 7 which is incorporated herein as if set forth in full.

INTERROGATORY 9: If your answer to Interrogatory 8 was yes, for each water right, please identify all facts that support this conclusion.

RESPONSE: With respect to water right no. 63-00014, the following information indicates that the Transfer could cause injury: The *Silkey v. Tiegs* decree prohibited the diversion and use of water right no. 63-00015 for over 70 years as a result of claimed impacts on senior water rights from the same geothermal resource. Nevertheless, the Transfer includes water right no. 63-00015. Recommencing diversion of water right no. 63-00015 after more than 70 years of non-use would result in an enlargement in use that could impact the quantities and artesian pressures available to Edwards under its senior water right no. 63-00014. Aquifer tests conducted on the "Windsock" well, a proposed new point of diversion under the Transfer, indicated that the Windsock, Edwards, Silkey and Tiegs geothermal wells are hydraulicly connected. Thus, any increases in historical diversion rates or annual diverted volumes as a result of the Transfer, may reduce artesian pressures and aquifer water levels at the Edwards

well. Investigation and discovery remains on going. Therefore, Edwards reserves the right to supplement this response if more information becomes available.

INTERROGATORY 10: Do you believe that the Transfer will result in you having to change the timing of the diversion for any of your water rights?

RESPONSE: Objection. The term "change the timing" is vague and ambiguous. Without waiving this objection and reserving the right to reassert the same, Edwards responds as follows: Most of Edwards' ground water uses are seasonal in nature. Therefore, changing the timing of diversions does not appear to be an option. Any increases in historical diversion rates or annual diverted volumes as a result of the Transfer may reduce artesian pressures and aquifer water levels at the Edwards well, thereby affecting water availability and Edwards' ability to meet seasonal peak water needs. *See also* response to Interrogatory No. 7 above which is incorporated herein as if set forth in full.

INTERROGATORY 11: If your answer to Interrogatory 10 was yes, for each water right, please identify all facts that support this conclusion.

RESPONSE: *See* responses to Interrogatory Nos. 9 and 10 above which are incorporated herein as if set forth in full.

INTERROGATORY 12: Please identify any instances in the past where you have had to alter the timing, method, or location of the diversion of any of your water rights, and for each instance, identify what you believe was the cause for the alteration.

RESPONSE: Objection. The term "timing" is vague and ambiguous. Without waiving this objection and reserving the right to reassert the same, Edwards responds as follows: During the late 1980's a pump was installed on the Edwards' geothermal well for the first time. On information and belief, irrigation use of the geothermal resource by the Quail Hollow Golf

Course and by the Windsock well had depleted aquifer water levels to the point where there was concern that artesian pressures at the Edwards well were not adequate to maintain sufficient geothermal water flow to the Edwards' greenhouses. The pump was used periodically during the late 1980's and early 1990's.

INTERROGATORY 13: Do you believe that the Transfer will result in an increase in your cost of diverting water?

RESPONSE: Any increases in historical diversion rates or annual diverted volumes as a result of the Transfer, may reduce artesian pressures and aquifer water levels at the Edwards well, thereby potentially necessitating pumping to maintain adequate water flows. Increased costs as a result of pumping would include both the costs associated with electrical utility service and also well improvement and equipment costs (redrilling well, new casing, pump, generator, etc.) to ensure uninterrupted water supply during critical periods. *See also* response to Interrogatory No. 7 which is incorporated herein as if set forth in full. Since investigation and discovery proceeds, Edwards reserves the right to supplement this response if more information becomes available.

INTERROGATORY 14: If your answer to Interrogatory 13 was yes, for each water right, please identify all facts that support this conclusion.

RESPONSE: *See* responses to Interrogatory Nos. 9 and 13 which are incorporated herein as if set forth in full.

INTERROGATORY 15: Do you believe that the Transfer will result in an enlargement of any of the rights proposed for transfer?

RESPONSE: Without appropriate conditions, the Transfer could result in water right enlargements. A purpose of this proceeding is to ensure that the Transfer will not result in enlargements of any of the water rights.

INTERROGATORY 16: If your answer to Interrogatory 15 was yes, for each water right, please identify all facts that support this conclusion.

RESPONSE: The Transfer proposes to recommence diversion of water right no. 63-00015 after more than 70 years of non-use. The Transfer proposes the addition of new points of diversion and new places of use. This presents the potential for increases in diversions as a result of increased diversion capacity and expanded uses. *See also* response to Interrogatory No. 9 above which is incorporated herein as if set forth in full. Since discovery and investigation continues, Edwards reserves the right to supplement this response if more information becomes available.

INTERROGATORY 17: Please identify any instances in the past where the quantity of water available for diversion has been reduced below the diversion rate authorized by your water rights, and for each instance, identify what you believe was the cause for the alteration.

RESPONSE: Objection. The term "water available for diversion" is vague and ambiguous. Without waiving this objection and reserving the right to reassert the same, Edwards responds as follows: The *Silkey v. Tiegs* decree limited the allowed diversion rate of water right no. 63-00014 to a quantity below the maximum rate authorized for the water right. *See also* response to Interrogatory No. 12 which is incorporated herein as if set forth in full.

Since investigation and discovery continues, Edwards reserves the right to supplement this response if further information becomes available.

REQUEST FOR ADMISSION 1: Please admit that the Transfer is consistent with the conservation of water resources in the State of Idaho.

RESPONSE: Objection. Requests a legal conclusion. Without waiving this objection and reserving the right to reassert the same, Edwards responds as follows: Deny.

REQUEST FOR ADMISSION 2: Please admit that the Transfer is in the public interest.

RESPONSE: Objection. Requests a legal conclusion. Without waiving this objection and reserving the right to reassert the same, Edwards responds as follows: Deny.

INTERROGATORY 18: If you deny Request for Admission 1 or 2, please identify why you believe the Transfer is not consistent with the conservation of water resources in the State of Idaho and/or is not in the public interest?

RESPONSE: Without appropriate conditions, the Transfer may result in diversions from the Stewart Gulch Geothermal Aquifer that exceed its sustainable yield, thereby threatening the long term availability of this important water resource. Without appropriate conditions, the Transfer may cause injury to the Edwards' greenhouse operation which has been an important locally owned business and local employer for over 70 years. Since investigation and discovery continues, Edwards reserves the right to supplement this response if more information becomes available.

RESPONSES TO

REQUESTS FOR PRODUCTION OF DOCUMENTS

REQUEST FOR PRODUCTION 1: Any documents you identified in your responses to the Interrogatories or Requests for Admission above.

RESPONSE: Terry Scanlan's curriculum vitae is attached. Any other documents identified in the responses above involve the subject proceeding, the *Silkey v. Tiegs* court proceedings, or IDWR Water District 63-S proceedings and are on file with IDWR, are available from court records and/or already are in the possession of Terteling or its consultant. An appointment may be made with Hofstetter Law Office, LLC to inspect and copy such documents. This response will be supplemented if further responsive documentation becomes available through continuing discovery and investigation.

REQUEST FOR PRODUCTION 2: Any documents relating to the diversion and use of your water rights.

RESPONSE: Objection. Attorney client privilege. Attorney work product doctrine. Overbroad. Burdensome. Vague. Ambiguous. Without waiving these objections and reserving the right to reassert the same, Edwards responds as follows: The non-privileged documents subject to discovery that are responsive to this Request are measurement records on file with IDWR (*e.g.* Water District 63-S files, water right no. 63-00014 files and *Silkey v. Tiegs* files) and/or are records available in *Silkey v. Tiegs* court files. Terteling may make an appointment with Hofstetter Law Office, LLC to inspect and copy such non-privileged and discoverable documents in Edwards' possession that are responsive to this Request. This response will be

supplemented if further responsive discoverable documentation becomes available through continuing discovery and investigation.

REQUEST FOR PRODUCTION 3: Any documents relating to the diversion and use of the rights listed in the Transfer.

RESPONSE: Objection. Attorney client privilege. Attorney work product. Vague. Ambiguous. Rule of Evidence 408. Without waiving these objections and reserving the right to reassert the same, Edwards responds as follows: The non-privileged documents subject to discovery that are responsive to this Request are measurement records on file with IDWR (*e.g.* Water District 63-S files, water right files and *Silkey v. Tiegs* files), are records available in *Silkey v. Tiegs* court files and/or are documents in the possession of Terteling. An appointment may be made with Hofstetter Law Office, LLC to inspect and copy such non-priveleged and discoverable documents in Edwards' possession that are responsive to this Request. This response will be supplemented if further responsive discoverable documentation becomes available through continuing discovery and investigation.

REQUEST FOR PRODUCTION 4: Any other documents in your possession that relate to this Transfer or your Protest to the Transfer.

RESPONSE: Objection. Attorney client privilege. Attorney work product. Overbroad. Burdensome. Vague. Ambiguous. Rule of Evidence 408. Without waiving these objections and reserving the right to reassert the same, Edwards responds as follows: The non-privileged documents subject to discovery that are responsive to this Request are on file with IDWR (*e.g.* Water District 63-S files, water right files and *Silkey v. Tiegs* files), are records available in *Silkey v. Tiegs* court files and/or are documents in the possession of Terteling. An appointment may be made with Hofstetter Law Office, LLC to inspect and copy non-privileged discoverable

documents in Edwards' possession that are responsive to this Request. This response will be supplemented if further discoverable responsive documentation becomes available through continuing discovery and investigation.

REQUEST FOR PRODUCTION 5: A copy of any document indicating the structure and organization of your business, including but not limited to articles of organization, operating agreement(s), bylaws, or articles of incorporation.

RESPONSE: Objection. Attorney client privilege. Overbroad. Burdensome. Not Relevant. Beyond the scope of discovery. Without waiving these objections and reserving the right to reassert the same, Edwards responds as follows: A copy of the deed evidencing the Edwards Family LLC's ownership of water right nos. 63-00014, 63-05065 and 63-05067 as well as a copy of the Edwards Family LLC's Articles of Organization and Annual Report previously have been provided to counsel for Terteling as an attachment to the Affidavit of Dana L. Hofstetter in Support of Motion to Substitute Party.

DATED this 7th day of January, 2002.

HOFSTETTER LAW OFFICE, LLC

By _____
Dana L. Hofstetter
Attorney for the Estate of Paul Edwards
and the Edwards Family LLC

CERTIFICATE OF SERVICE

I hereby certify that on the 7th day of January, 2002, I caused to be served a copy of the foregoing **Responses to Terteling's First Discovery Requests** on the following person by the method indicated below:

John M. Marshall
Givens Pursley LLP
P.O. Box 2720
Boise, ID 83701-2720
✖ U.S. Mail ☐ Fed Ex ☐ Hand Delivery ☐ Fax

Dana L. Hofstetter

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TERRY M. SCANLAN
ENGINEER / HYDROGEOLOGIST

EDUCATION: B.S. Geological Engineering, University of Idaho, 1983
M.S. Geological Engineering, University of Idaho, 1986

REGISTRATION: Professional Geologist - Idaho (1989, #646), Oregon (#G1311)
Professional Engineer - Idaho (1990, #6266)

SUMMARY:

Mr. Scanlan is the Principal Engineer and Hydrogeologist for Scanlan Engineering. He has over fifteen years of professional experience in hydrogeology, environmental engineering, and water resource engineering. He currently serves on the Idaho Board of Registration for Professional Geologists.

Mr. Scanlan' work experience has focused on aquifer and well testing, well design and construction, surface water and ground water pump systems, water development studies, and water rights. Mr. Scanlan also has experience in geothermal resource development, hydrocarbon and hazardous waste contamination investigations, mining related environmental studies, groundwater drainage investigations, soils and geotechnical investigations, geologic mapping, and wastewater land application studies.

REPRESENTATIVE PROJECT EXPERIENCE:

Groundwater Development

- Groundwater development projects at more than 50 sites in Idaho for public and private water utilities, subdivisions, schools, and industries including production well and pump design, aquifer pumping tests, exploration drilling programs, and groundwater development studies.

- Design, construction monitoring, and testing of three 1,000 to 1,200-foot, high capacity industrial water supply wells and pump systems for Micron Technology in Boise Idaho. Mr. Scanlan has also provided consulting services regarding long-term water supply management, water rights, pipelines, pumping stations, aquifer recharge and wastewater issues.

- Irrigation well and pump system design, surface water pump system design, construction monitoring, and well testing at municipal parks in Boise, Idaho. These projects have included work on approximately 80 well and pump systems.

- Evaluations of public water system facilities and water quality in community water systems in northern and southern Idaho.

TERRY M. SCANLAN (continued)

- Design, construction, and testing of salt water production wells for large aquarium projects in Guam and Taiwan.

- Evaluation of groundwater potential for snowmaking supplies at Sun Valley and Bogus Basin ski areas, and design and testing of the water supply well for the snow making system at Sun Valley.

- Evaluation and testing of infiltration galleries and Ranney Collectors at the following locations: Clallam/Cline Irrigation District, Sequim, Washington (horizontal gallery, Dungeness River), Irrigon Fish Hatchery, Irrigon, Oregon (three Ranney Collectors, Columbia River), Umatilla Fish Hatchery Irrigon, Oregon (Ranney Collector, Columbia River), Marden Street Water Treatment Plant, Boise, Idaho (three Ranney Collectors, Boise River), and Ann Morrison Park, Boise, Idaho (horizontal gallery, Boise River).

- Groundwater development studies, well construction, and aquifer testing for fish hatchery projects in the Columbia, Umatilla, Walla Walla, Imnaha, and Grand Ronde river basins of Oregon for the Bonneville Power Administration. These projects included test well drilling and aquifer tests at ten locations, with well construction in alluvial and basalt aquifers.

- Hydrogeologic investigations, groundwater exploration drilling, and design, construction, and testing of production wells for municipal groundwater supply in Olympia, Washington.

- Design of the domestic supply, mine-pit dewatering, and industrial supply wells for the Beartrack mining project at Leesburg, Idaho.

- Resident Geologist during drilling and completion of a 3,015-foot water supply well at Wright, Wyoming.

- Evaluation of the groundwater aquifers of northwest North Dakota as part of the NAWS regional water supply system.

Water Rights

- Preparation of numerous water right transfers and water right permit applications for public and private clients in Idaho.

- Evaluation of surface water and groundwater interactions, well interference, irrigation development, and consumptive water use related to water right transfers in the Boise Valley, Wood River Valley, Mud Lake, Magic Valley, Big Lost River, and Little Lost River areas of Idaho.

- Evaluation and measurement of flow from springs involved in water right disputes along the Snake River near Twin Falls, Idaho.

TERRY M. SCANLAN (continued)

- Investigations related to Snake River Basin Adjudication claims, including calculation of irrigation requirements and seepage losses, measurement of irrigation diversion rates, determination of historically irrigated areas.

- Expert witness testimony concerning water use, well interference and the interaction of surface water and groundwater for clients in southern Idaho.

- Evaluation of irrigation diversions, natural flow, return flow and storage accounting on the Payette River system for the Payette Water Users Association.

- Evaluation of Federal and Tribal in-stream flow claims in the Snake and Salmon River Basins.

- Preparation of mitigation plans to allow groundwater diversions for irrigation and industrial use in moratorium areas or groundwater management areas in the Boise River and Snake River basins.

Geothermal

- Aquifer testing and high-capacity variable-speed pump system design for deep geothermal space-heating wells at the College of Southern Idaho.

- Geothermal aquifer investigations, well testing, production well and pump design, and water-level monitoring for J.R. Simplot Company at aquaculture facilities in Caldwell and Grand View, Idaho.

- Drilling supervision and hydraulic fracturing of a 2,300-foot geothermal injection well for the Veterans Administration Medical Center in Boise, Idaho.

- Project manager for detailed study of the Boise Front Geothermal Aquifer for the City of Boise and Boise Warm Springs Water District. The study included computer modeling of hydraulic and thermal impacts of increased geothermal fluid production and spent fluid injection. Mr. Scanlan served as project manager for design, construction, and testing of a 3,200-foot geothermal injection well for the City.

- Geothermal resource monitoring associated with production and injection wells for Oregon Trail Mushroom Company in Vale, Oregon.

Environmental

- Wastewater land application projects, including site characterizations, soil and groundwater investigations, or permit preparation, for the following clients: Mountain Home, Idaho (municipal), IBP, Inc. and Armour Fresh Meats (meat processing), Micron Technology (semiconductor), J.R. Simplot Company (potato

TERRY M. SCANLAN (continued)

processing at three sites), Carnation (tomato processing), Simplot Dairy Products and Sorrento Lactalis (cheese production) and several mining clients (treated cyanide solutions).

- Baseline groundwater and surface water monitoring studies, groundwater characterization for permitting and environmental impact statements at mining projects, and water supply development in Idaho (Leesburg, Stibnite, Sunbeam), Oregon (Grassy Mountain, Farewell Bend), South Dakota (Lead), and Nevada (Eureka, Lovelock).

- Investigation of shallow groundwater contamination from mine tailings in Butte, Montana for ARCO, including the drilling of approximately thirty monitor wells and Hydropunch borings, aquifer testing, and water quality sampling.

- Investigation and/or remediation of soil and groundwater contamination resulting from petroleum (gasoline, diesel, heating oil, hydraulic oil, and jet fuel) at more than 30 locations in Idaho, Oregon, Washington, and Wisconsin. Remedial designs have included soil land farming, venting systems, and free and dissolved product extraction systems. Groundwater treatment technologies utilized have included air stripping, carbon adsorption, and enhanced biodegradation.

PREVIOUS EMPLOYMENT:

Montgomery Watson (1986-1993)

Prior to forming Scanlan Engineering in 1994, Mr. Scanlan was a Supervising Hydrogeologist for Montgomery Watson in Boise, Idaho. In that position, he managed and conducted investigations related to groundwater development and groundwater contamination at locations throughout the western United States.

U.S. Geological Survey (1984-1986)

Mr. Scanlan was employed by the United States Geological Survey as a field assistant in the geologic division prior to joining Montgomery Watson in 1986. Responsibilities included geologic mapping, landslide hazard evaluation, and mineral potential studies. Mr. Scanlan worked on the Challis and Hailey 2° Quadrangle CUSMAP programs.

Idaho Geological Survey (1982-1983)

As a geologic field assistant, Mr. Scanlan mapped geology in various parts of central Idaho. He was involved in the River-of-No-Return Wilderness mineral evaluation study and the Challis 2° Quadrangle CUSMAP program.

TERRY M. SCANLAN (continued)

ORGANIZATIONS:

Idaho Association of Professional Geologists
Idaho Groundwater Association
National Groundwater Association - Association of Ground Water Scientists and Engineers

PUBLICATIONS:

Kiilsgaard, T.H., T.M. Scanlan, and D.E. Stewart, 1997, Geology of the Boise Basin Vicinity, Boise, Ada, and Elmore Counties, Idaho. Idaho Geological Survey, Map No. 7.

ATTACHMENT

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TECHNICAL MEMORANDUM

TO: Joe Terteling/ The Terteling Company/ Boise, Idaho

FROM: Ed Squires/ Hydro Logic, Inc./ Boise, Idaho

DATE: February 12, 2002

SUBJECT: Evaluation of the data-record and adequacy of the Flora Company's 90° V-notch discharge weir for monitoring flow rates and production volume from Flora Co.'s low-temperature geothermal wells with estimates of past geothermal water production.

EXECUTIVE SUMMARY

New wellhead pressure gages and good-quality flow-meters were installed on the Flora Company's (Flora) geothermal wells and field-calibrated to measured groundwater flows. Natural artesian and pumped flows from the wells were measured and compared against an existing V-notch weir that has been used to gage the nursery's geothermal discharge for the last nine-year period. These experiments show that significant ditch losses (leakage from the nursery's system of unlined effluent collection ditches), along with other factors, result in 35-to-55 percent of the wells' discharge not being measured by the weir at maximum discharge. Continuous chart records from the weir's water-level recorder were reviewed and analyzed for the nine years ending in March of 2001. Unfortunately, the record does not provide a meaningful accounting of past beneficial use for, either, volume pumped or instantaneous flow rate from Flora's hot wells. The continuous chart record does provide an indication of seasonal water use patterns which, when coupled with measured flow rates of individual wells and known operational practices, can be used to estimate Flora's past annual production volumes and flow rates from the geothermal aquifer.

Other than the weir data record, the only additionally available water production figures are from measurements of flow-meters installed and measured for the years 2000 and 2001 . Because these meters were improperly plumbed into the contorted wellhead piping of the Tiegs well vault and the Silkey shed, and because of recurring problems with clogging of the pumps and flow-meters with ash fragments produced from the unscreened geothermal wells, these data (annual withdrawal of 332 and 319 acre feet, respectively) are considered suspect and are known to be low.

The combined maximum instantaneous discharge rate from the three Flora wells was measured at 386 gallons per minute (gpm) at current (2001-2002) aquifer pressures. Flora's annual production volume is estimated to range between 318-to-380 acre feet for an average temperature year with usage exceeding 400 acre feet predicted for an unusually cold temperature year.

INTRODUCTION

The Flora Company (Flora) owns and operates three geothermal wells for the space heating of greenhouses in northwest Boise, Idaho (Figure 1). These deep artesian-flowing wells, originally the Silkey and Tiegs wells, have operated for 77 years without good monitoring devices. Prior to 1988, artesian groundwater flow measurements and aquifer pressure data of the Flora geothermal wells (formerly the Silkey and Tiegs wells) were limited to a handful of site measurements in the 1920's and 1930's and two spot measurements by the U.S. Geological Survey (USGS) in 1947 and 1978 (Appendix A). Beginning in 1990 and 1988, respectively, the Silkey and Tiegs wells' shut-in pressures were monitored and documented in response to the creation of Water District 63-S by the State of Idaho (Figures 2 and 3). Water production and flow measurements of Flora's three geothermal wells were not recorded until April of 1992 when the Idaho Department of Water Resources (IDWR) installed a 90° V-notch weir on Flora's geothermal effluent discharge ditch (Figure 4). A Stevens F-Type water-level chart recorder was installed at the weir in 1993 and a fairly complete record of the weir water-level is available for the nine year period to date (Appendix B).

Owing to antiquated wellhead plumbing, the absence of properly installed quality flow-meters, a continually changing ownership, and an unmapped distribution system, actual flow and/or production volume through the plumbing system (from the wells) was not measured or reconciled with the weir measurements until December of 2001 after calibrated flow-meters had been properly installed on the three Flora wells.

At the direction of The Terteling Company, Ed Squires attempted to measure the discharge from the Flora wells in 1994 during a series of measurements of the geothermal wells in District 63-S. This testing had the cooperation of Daniel See who owned and operated the Flora nursery at that time. The Signet "Accum-U-Flo", insertion-type flow-meters that were installed on the wells were suspected as being inoperative or at least inaccurate at that time (Figure 5). For example, the Tiegs well flow-meter indicated 600 gallons per minute (gpm) of flow that Mr. See believed was being produced from the well. The Silkey well flow-meter was clearly not indicating flow or volume pumped.

In the Fall of 1998, following purchase of Flora by The Terteling Company, the well field monitoring system at Flora was re-evaluated (Squires, 1998). It was concluded that 1) less flow reaches the weir than is pumped from the wells, 2) the existing flow-meters were inoperative, 3) pressure gages were inaccurate, and 4) that the flow from the wells could not be properly measured without alterations to the wellhead piping (Squires, 1998). Squires recommended that 1) the wellheads be re-plumbed to allow proper installation of good quality flow-meters, 2) high-quality pairs of pressure gages be installed at each wellhead, 3) conduct quantitative flow-testing of the wells, and 4) review and evaluate the accuracy and meaningfulness of the discharge weir record. Shortly after The Terteling Company took ownership, new flow-meters were installed into the existing plumbing of the Silkey well shed and the Tiegs well vault. Readings from these installations were submitted to IDWR and the Excel spreadsheet printouts are included as Appendix C. The Tiegs well flow-meter was moved out of the small

constricted vault on 36th Street (Figure 5) and re-plumbed into a straight portion of the main feed pipeline (Figures 9 and 12). The original 198? Silkey well insertion flow-meter (Figure 13) was abandoned from its location in the "coffin box" outside of pump house and a new "Master-Meter" impeller flow-meter installed in the existing plumbing at the Silkey well-head (Figure 14) from 1999-to-2001. In December of 2001, the flow-meter was field calibrated and re-plumbed into the newly configured wellhead plumbing of a rebuilt pump house (Figure 15). As of December 2001, the monitoring equipment at Flora was properly installed to manufacturers' specifications for accurate measurement.

FLORA CO.'S 90° V-NOTCH WEIR

Installation and length of record.

In April of 1992 Ken Neely and Steve Lester of the Idaho Department of Water Resources (IDWR) installed a 90° V-notch weir on the Flora Co.'s geothermal effluent collection ditch (Figure 4). The weir installation was in response to the monitoring requirements of the Boise Front Groundwater Management Area and the newly created District 63-S Water District (December 5, 1989). Since the weir was set up, it has been continuously monitored. The first year (1992), daily readings of the weir were manually entered into a log. Beginning in February 1993, a cable-and-float Stevens F-Type water level recorder (Figure 6) with stilling well and water-level staff was installed and continuous recorder charts are available to the present time (Appendix B).

The weir data:

Although the accuracy and reliability of the Flora weir data came into question during measurements of the Stewart Gulch geothermal wells in 1994 (Squires, unpublished data) and, again, during a preliminary evaluation of the Flora wells in 1998 (Squires, 1988), the weir data was never correlated to measured flows or production volumes from the hot wells. This is largely due to the fact that the well discharge had not been accurately measured since a site visit by the USGS in 1947 (Nace, 1947) and because an adequate means of measuring the flow through the existing distribution system did not exist until the piping was re-plumbed with new flow-meters and pressure gages in 2001.

In March of 2001, Hydro Logic, Inc. copied the Flora Co. weir recorder chart file in its entirety. Every chart from the working file of IDWR hydrogeologist Ken Neeley was copied, organized chronologically, reviewed, and interpreted for the purposes of this analysis (Appendix B).

A review of the nine-year recorder-chart record indicates that the readings have been remarkably consistent over the years. Maximum wintertime use typically registered at 0.52-to-0.54 feet (~220-240 gpm) and flows through the system, under natural artesian pressures, have consistently been recorded around 0.28 –to-0.33 feet (47-to-71 gpm). Refer to Appendix B and Figure 7 for examples.

As previously stated, the weir had never been quantitatively checked against flow from the geothermal wells. Recent calibration indicates that the weir levels have consistently reflected less flow than was being produced by the geothermal wells. The weir charts have provided a somewhat accurate (albeit difficult to interpret) record of the wells in terms of timing of high versus low daily demand cycles and year-round use patterns (Figure 7). In other words, the weir charts show the daily periods that booster pumps were operating to drive geothermal water through the heating distribution system versus the daily hours that natural artesian pressure was allowed to drive the system.

Problems with the weir data:

1) Ditch losses are significant. The surface soils, underlying the nursery effluent collection laterals (Figure 8) and the discharge ditch (back cover), consist of sandy permeable materials of the Stewart Gulch Fan and the river floodplain gravels of the present day Boise River. It is not surprising that a significant portion of the nursery effluent water is recharged to the shallow gravel aquifer through these sandy soils prior to its reaching the discharge weir. Open-discharge pumping tests of the geothermal wells, directly on the land surface surrounding the wells, have shown rapid infiltration of the applied water (Figure 9). On-site excavation projects and water well Driller's Reports (Appendix D) support the presence of permeable materials at land surface, and extending to a depth of 58-feet below the Flora site.

2) The physical construction of the weir allows underflow and, at times, surface leakage to bypass the weir. The soft and uncompacted soils of the ditch bank are easily eroded so that water impounded by the weir is backed up to spill off around the sides of the weir when it is not regularly maintained (Figure 10). The sandy soils underlying the weir allow a measurable amount of underflow to escape measurement by the weir. HLI recently calibrated the newly plumbed flow meters on the Flora Co. wells. Subsequently we compared the well flows to the discharge weir readings to find discrepancies of 20-to-55 percent between the two data sets (Table 1). The wellhead flow-meters were calibrated under flowing and pumping conditions by timed filling of a 32-gallon drum. In more than one series of tests, the cumulative discharge from the geothermal wells was precisely measured at 386 gpm while the discharge weir consistently read 0.56 feet (Table 1). The total flow (all three wells pumping) recorded by the V-notch weir (265 gpm) is only 54 gpm more than the measured pumped flow from the Tiegs well alone (211 gpm). These data show that approximately 121 gpm of the cumulative well discharge is not measured at the weir. In an attempt to better quantify the ditch loss versus the weir loss (surface overflow and subsurface underflow) the weir box was lined with plastic sheeting. The entire weir and surrounding ditch bank were covered with the plastic liner extended upstream from the weir for about 6-feet (Figure 11). With all wells running at a discharge rate of 367 gpm, the lined weir reading was 0.56 feet which equates to 265 gpm (Table 2). Therefore, the unmeasured quantity of well discharge, with the weir (and

surrounding ditch) lined, is 102 gpm. This equates to a discrepancy of 28 percent (Table 1) of unaccounted for water lost to leakage within the shallow ditch system prior to the weir at maximum flows. The calibration shows that the measurement error increases proportional to flow rate. Tabulated measurements (Table 1) show that the percentage of unmeasured water ranges between 18-to-55 percent from low-to-high flow rates when the weir is in disrepair. Even with a fully lined weir box and stream bed in the vicinity of the weir, the percentage of unaccounted water was 28 percent at the weir gage and 34 percent as recorded by the weir chart. This is interpreted to support our conclusion that the ditch losses are significant with the expected result that more head in the ditch causes more leakage (induced infiltration). The weir data may be additionally complicated by differing discharge paths (ditches) of the individual wells; i.e. the length and size of the collection laterals vary depending on which wells are being used and where.

3) Underflow losses at the weir are significant. To better separate surface water losses from underflow (through the ground) losses at the weir, the plastic stream liner of Figure 11 was removed and the ditch bank repaired so that no surface water leakage was present (Figure 16). Flow from the wells was measured again (332 gpm) and compared to the weir chart (200 gpm) and the weir staff gage (265 gpm) readings. These data indicate a 40 percent measurement error between the weir chart reading and the pumped flow from the wells and a 20 percent error between the weir chart and weir gage (Table 1). In all cases, less than actual flow is recorded by the weir. The factors causing the discrepancy between the chart recorder and the weir gage are related to: 1) mechanical "slack" and/or frictional resistance in the cable and float system of the stilling well, and/or 2) obstruction in the hydraulic communication between stilling well and the ditch. Documented discrepancies between flow measured by the weir versus flow recorded by the chart were observed to be off by as much as 65 gpm. The discrepancies were less when the float was dropping (stretching the cable taut) and more when flows were increasing (possible inadequate counterweight). This is not surprising considering the float-and-cable chart recorder could easily have 0.05 feet of "slack" in an unmaintained system. Owing to the nature of the widening-upward V-notch weir, a 0.05-foot measurement error, at maximum Flora Co. well flows, would result in measurement errors of 65 gpm (Table 2).

4) The Flora discharge-weir chart-record is incomplete, uneven in quality, and not closely calibrated with the weir gage. Some charts have no written notations at all (Appendix B) and a complete year-long record is not available for most years. The charts were recorded at various chart speeds from 7-days-to-32-days in duration. Chart speeds are not documented and must be "recovered" from the daily fluctuations in flow. Similarly, the gearing ratio is not documented but appears to have been consistent at 1:1. Most of the charts have only the beginning date, time, and water level notated making it difficult to check the tracking and/or to match up the data from successive charts.

5) The changes in flow rates, as recorded by the weir, do not match the documented flow rates between artesian flows versus pumped water from the wells. For example, during the mid-winter heating period of January/February 2000, the weir chart shows nearly constant readings between 0.46-to-0.48 feet (162.5-to-181 gpm) with all wells pumping (Figure 17). The chart shows a decrease in flow over the weir during the 9-day period from January 13-to-January 21 owing to a "blown fuse in the 36th Street (Tiegs) well" (Figure 17). The drop in flow, as recorded by the chart, was 0.08-foot which correlates to a drop in flow of 66 gpm (Table 2). The resultant flow over the weir, with Silkey and house wells pumping and Tiegs well flowing, would then be 115 gpm (according to the weir). From our measured flows, we estimate that approximately 230 gpm should have been discharging from the wells with Tiegs well flowing and Silkey/House wells pumping; a discrepancy of 50 percent. It can be shown that the Silkey well, alone, flows though the Flora system at 95 gpm under natural artesian pressure. Therefore, the weir recordings do not directly or proportionally reflect true flow rates from the Flora wells.

6) All Flora's geothermal discharge waters may not be diverted through the weir. The underground distribution/collection piping system for the Flora Greenhouses is not well mapped or completely known. For example, during the winter of 2000, and after a light snowfall of several inches, it was noted that a one-foot wide swath of Flora's parking lot had melted clear of snow (Figure 18). This linear snow-free path is distinct from the buried Tiegs well piping which brings geothermal water across 36th Street to the nursery (this buried hot water line also melts the land surface clear of snow). Whether this line conducts some flow to the storm sewer, or to some drain other than the discharge weir ditch, remains unknown. At another location, a manhole in 36th Street has 6 open-ended pipes that are believed to be associated with the present and/or past nursery operations (Figure 19). Some of these pipes have been observed to flow approximately 10 gpm during winter months. The sources of these flows are not presently known.

<u>What the weir data does tell us:</u>

The weir recorder charts are useful as an indicator of general year-round usage trends. It is apparent, in the chart data, when all pumps were running and/or when only natural artesian flows were driving the system. The various combinations of pumped water versus natural flows, from the three wells, can be estimated from careful analysis of the weir chart-recorder data with respect to known past operational procedures.

In general, it is apparent that all available pumps ran continuously for several months during periods of mid-winter cold weather (maximum water use from wells). During summer months, only a portion of the natural artesian flow was used. In between the peak winter demand and summer (low-flow) seasons, various combinations of natural flow and pumped water from the wells were used depending on the vagaries of seasonal temperature fluctuations, the amount of cloud cover, the type and stage of the bedding plants, and the timing of electrical power usage/demand charges.

Typical seasonal use patterns (from the weir data):

If we take an average-to-warm temperature year beginning in mid-November 1995 (Table 3), a typical operations schedule would be 3+-months continuous pumping from all three wells (Appendix B) through mid February. This peak demand period would be followed by 7 weeks of all wells pumping for 16 hours/day and one well pumping/one well flowing for the other 8 hours/day until the end of the first week in April (Appendix B). For the next 4 weeks, all wells pump continuously for 12 hours/day and one well pumps/one well flows for the other 12 hours/day (Appendix B). Beginning in early May and continuing through the summer months to early September (four months), only natural flows from the Silkey well were diverted. For the period of mid-September-to-mid–November (the remainder of the 12-month period) all wells were allowed to flow for 12 hours/day. During the remaining 12 hours of the day, the Silkey well was pumped while the Tiegs well was allowed to free-flow (Appendix B). Simplified even further; there is a "full on" pumping season and a low-flow summer season separated by two variable "transition" seasons. The length of the various segments change somewhat over the years, and from owner-to-owner, but the general scenario rings true (Figure 20).

Typical Flora nursery water use (from interview with Meaghan Rader):

Meaghan Rader is a horticulturist and the present operations manager of the Flora Nursery. She began working at Flora in 1995 in the position of Head Grower for Daniel See, the owner at that time. According to Meaghan, in a typical year the operation of the geothermal wells was according to the following schedule.

During summer, the Silkey well was operated under natural flowing conditions and the Tiegs well was shut in. Through the early Fall months both the Silkey and Tiegs wells were flowed using their natural artesian pressure heads to drive the heat distribution system at Flora. By late Fall, some quantity of pumped water from the Silkey well was needed for heating. Beginning in about mid October, "and whenever the ambient outside temperature was below about 50 °F" (Figure 20), maximum pumped discharge was required for nursery operations. As temperatures warmed in Spring, pumping from the Tiegs well was curtailed. The Tiegs well was allowed to flow continuously with the Silkey well remaining in pumping mode. Silkey pumping was gradually cut back as the natural flow from both wells satisfied demand. Ultimately, the Tiegs well was shut in and only the flow from the Silkey well was used.

Two main underlying factors controlled pump operations in the transitional seasons. The first has to do with the different natural flow rates and pump capacities of the three wells with respect to electrical power demand. For example, if two wells flowing under natural artesian pressure head could supply the same demand as one well pumping, the two wells were used to avoid electrical demand charges. The second control is related to the Tiegs well being below ground in a locked vault on the opposite side of 36th Street from the Flora Co. whereas the Silkey well was above-ground and adjacent to the nursery office building where it was easily accessible (Figure 21). Therefore, the least accessible well

(Tiegs) was generally left in continuous pumping or flowing mode and the greenhouse temperatures regulated using the Silkey well in off, pumping, or flowing modes. The weir charts clearly reflect the typical daily routine of the Silkey well pump being switched off at the start of work each morning and re-started at the end of the work day (8AM-to-4PM). This 8-hour flow/16-hour pump routine is the most prevalent pattern in the weir chart data for the Fall and Spring (Figure 7).

Estimated yearly geothermal water volume:

Given the data record described above, Flora's past annual water use can be estimated (Table 4) by using values of measured flows/pumping rates of the three wells (Table 5), and plugging them into the above use schedule (as inferred from the weir charts).

Using the winter 1993-1994 weir chart record (the most complete and legible), the following volumetric (total acre-feet used) calculation is presented on Table 4. For purposes of this exercise, the following assumptions are made:

1) The flow rates of the three Flora geothermal wells, as calibrated and measured in December of 2001, are applicable.
2) Water use patterns and flowing/pumping well combinations interpreted from the weir data and personal interviews with operations staff are accurate.
3) The V-notch weir was probably in good condition the year (1993) the stilling well and staff gage were installed (the weir itself was installed the year earlier).
4) The 1993-1994 heating season was an average to warm temperature year with less than average number of heating degree days (Table 3).
5) The 1993-1994 heating season was a year of lowest recorded aquifer pressures (and lowest production volume) with associated water rights interference disputes and insufficient geothermal water supply (Figures 2 and 3).
6) The 1993-1994 weir chart record is one of the most complete and readable years (Appendix B).
7) Because the 1993-1994 weir record is missing 67 days, the period of use from July 5th-to-September 1st has been recovered from the same period in 1995 for which data exists (Appendix B).
8) The tabulated individual well discharge rates have been adjusted to reflect lower discharge at higher system pressures (Table 1).
9) Owing to the complexity of 6 different flow/pumping rates (three wells) the relatively small contribution of the House geothermal well has been treated as follows: The House well maximum discharge (28-38 gpm) is included in the "all wells pumping" peak season heating flows. This is equivalent to 132 days "full on pumping". We estimate that the well would be completely shut in for 90 days during the summer months. This leaves 143 days where the contribution of the House well is not considered by Table 4. Assuming the well operated ½-time, an additional 12 acre feet of water volume should be added to the average annual volume calculation.

Employing the above assumptions results in a calculated annual withdrawal volume of 316-to-390 acre feet for an average-to-warm temperature year; depending on how the weir data is interpreted with respect to operating wells and plus any unaccounted for flows. During a cold year (there were none during the term of weir chart data) or if aquifer pressures were to increase, usage would be higher. By comparison, simply plugging in the values from the weir table (Table 2) annual usage would be 200 acre feet (Table 6) which is consistent with losses measured in the ditch and measurement errors.

Interestingly, the pumped maximum flow through the system today, is very similar to the natural flow through the system measured by the USGS in 1947. In other words, the decline in aquifer pressure has been compensated for with the centrifugal booster pumps now used to pressurize the distribution system. In both cases, the individual flow rates from wells are similar. Although maximum pumping rates have probably remained fairly consistent over the nine-year period (wellhead pressure reduced to zero), natural artesian flow has likely varied (decreased) somewhat in response to changes in aquifer pressures, wellhead plumbing, and pump configurations (more friction). Through interviews with Meaghan Rader and Joe Terteling, it is clear that the water distribution system has been in a continuous state of flux for many years with various attempts to maximize flow from the wells in the face of lowering artesian pressure within the aquifer. Other than aquifer pressure, the single largest factor controlling flow from the Flora geothermal wells is the 1,165 foot long, 4-inch diameter well casing and associated frictional head losses which constrain the amount of water that can be produced from the wells.

Other than the weir data record, the only additionally available water production figures are from measurements of flow-meters installed and measured for the years 2000 and 2001. Spreadsheet printouts from Meaghan Rader are included as Appendix C and a condensed tabulation is included as Table 7. Because these meters were improperly plumbed into the contorted wellhead piping of the Tiegs well vault and the Silkey shed, and because of recurrent problems with clogging of the pumps and flow-meters with ash fragments produced from the unscreened geothermal wells, these data (annual withdrawal of 332 and 319 acre feet, respectively) are considered suspect and are known to be low.

CONCLUSIONS

1) The Flora 90° V-notch weir is not a useful indicator of discharge flow-rates or of geothermal water production volume at the Flora greenhouses. Measurement losses of 40 percent have been recognized through a maintained weir (Table 1) and errors of 55 percent are possible when the weir is not maintained (Figure 10). The nine-year term of record (Stevens F-Type water-level recorder charts) is inaccurate and, by itself, essentially useless for estimating historical use from the Flora hot wells. Figure 22 shows errors between the weir gage and weir chart.

2) The 90° V-notch weir chart-record does provide some indication of seasonal water use by recording daily water-level fluctuations in response to well pumping cycles versus periods of natural artesian flows from the wells. Analysis and interpretation of this uneven data record is not straight forward or conclusive.

3) The calibrated flow-meters and new pressure gages recently installed on the re-plumbed wellheads of the Flora geothermal wells will provide a much easier method of measuring flow rates and pumped volumes compared to the weir chart recorder that has been operated for the previous nine-year period. The data record from this point forward, provided the measurements are read and documented on a regular basis, will be more accurate and supportive in terms of understanding water use, aquifer pressures, and sustainable yield from the geothermal aquifer.

4) Average volumetric geothermal water use, based upon measured natural flows and pumping rates (through the Flora system) and interpretation of the available past data record, is estimated to range between 319-to-380 acre feet per annum during an average temperature year. These estimates fit reasonably well with the measured ditch losses and weir measurement errors documented above. Weir chart data is not available for a colder than average year. Without an increase in aquifer pressures, additional geothermal water is not available during mid-winter months because all of the Flora wells are already at maximum pumping rates (wellhead pressure equal to zero psi) during those months in an average year. However, in an unusually cold year, the "full-on" pumping period would be extended into the Spring and Fall months and the "shoulder" seasons would use more water as well. Assuming that the "full-on" pumping season was to be lengthened by 30 days with the Spring and Fall "transitional" seasons remaining much as they are. By adding the increased wintertime production volume, and subtracting 30 days of summertime flow, an additional 30-to-35 acre feet of hot water could be consumed during a cold year. Additional water volume would be used if aquifer pressures were to rise because more water could be diverted under natural pressure head without having to incur electrical power expense to pump the water. Some smaller volume is probably unaccounted for through leaking pipes and unknown discharges referenced previously. Therefore, a withdrawal volume of 400 acre feet of geothermal water is not an unreasonable annual volume to be diverted by Flora during a colder than average temperature year.

RECOMMENDATIONS

1) Discontinue monitoring of the weir. It is time consuming and the data is generally useless for quantifying flows. Now that the geothermal wells are equipped with good-quality totalizing flow meters, the weir measurements are unnecessary. Submit a letter report on the well/weir measurements to IDWR and follow up by conducting an on-site field trip demonstrating the inaccuracy of the weir to IDWR personnel from the State and Regional offices prior to dismantling the weir monitoring station.

2) Implement a high-quality monitoring and reporting program. Measured parameters should include: Aquifer shut-in pressure, well-head pressure under pumping conditions, artesian flow or pumping discharge rate for each well, totalized production volume for the period between readings, and water temperature. Weekly readings should be adequate, but close attention should be directed to inconsistencies in the data which may indicate blockages and associated under-recording of the production volume. Observing for lower than usual pressure, water availability, and/or discharge amounts should be part of the general monitoring regimen. Similarly, weekly wellhead flow and volume-pumped calculations should be used to indicate whether the flow-meters and wells are operating properly. Although the Silkey well has been screened to occlude the tuffaceous mudstone (ash) fragments that are periodically produced from the well's open hole completion into volcanic rocks, the Tiegs well has not yet been renovated in the same way. We know that ash particles from the Tiegs well have previously blocked flow-meters and even pump impellers (Figure 23). Therefore, the distribution system is likely impeded and/or blocked at times as well. Through regular measurement, such irregularities can be identified quickly and rectified to ensure maximum production and measurement accuracy.

3) Install well screen over the completion interval of the Tiegs well. Whether the Tiegs well is to remain a production supply well or if it is to become a long-term designated monitoring well, the caving ash layer at 1160 feet (Figure 23) should be occluded from the well by screening of the completion interval. If the well is to remain a supply well, the same periodic occurrences of ash chips that have been problematic to flow-meters, pumps, and the distribution system can be expected to continue. If the well is to become a designated (non-pumped) monitoring well, there is some danger that the well could close off over an extended shut-in period. Concern lies with the accumulation of ash fragments at the end of the casing. Without continuous flow through these materials, a possibility of ash build-up and blockage of the well casing exists to the extent that pressure fluctuations in the aquifer would not be accurately transmitted through the water column in the well. The overhead electrical power lines serve as an obstacle to working over this well. However, Idaho Power Co. has determined that the lines can be sheathed while equipment is operated over the well.

4) To the extent possible, summertime and warm-weather water use should be curtailed and aquifer volume conserved. By not producing (wasting) geothermal water when it is not needed, aquifer pressures will increase with the result that more water will be available during the high use months. With an increase in the natural flows (artesian pressure), electrical power costs will be reduced.

REFERENCES

Nace, R.L., 1947, Handwritten field notes and observations from site visit with R.H. Thomson of the State Bureau of Reclamation, US Geological Survey Site Schedule (4p).

Squires, E., 1998, Preliminary Evaluation of the Specific Capacity, Interference Effects and Water Rights for the Flora Company Low Temperature Geothermal Well, Professional report to The Terteling Company, 45p.

FIGURES

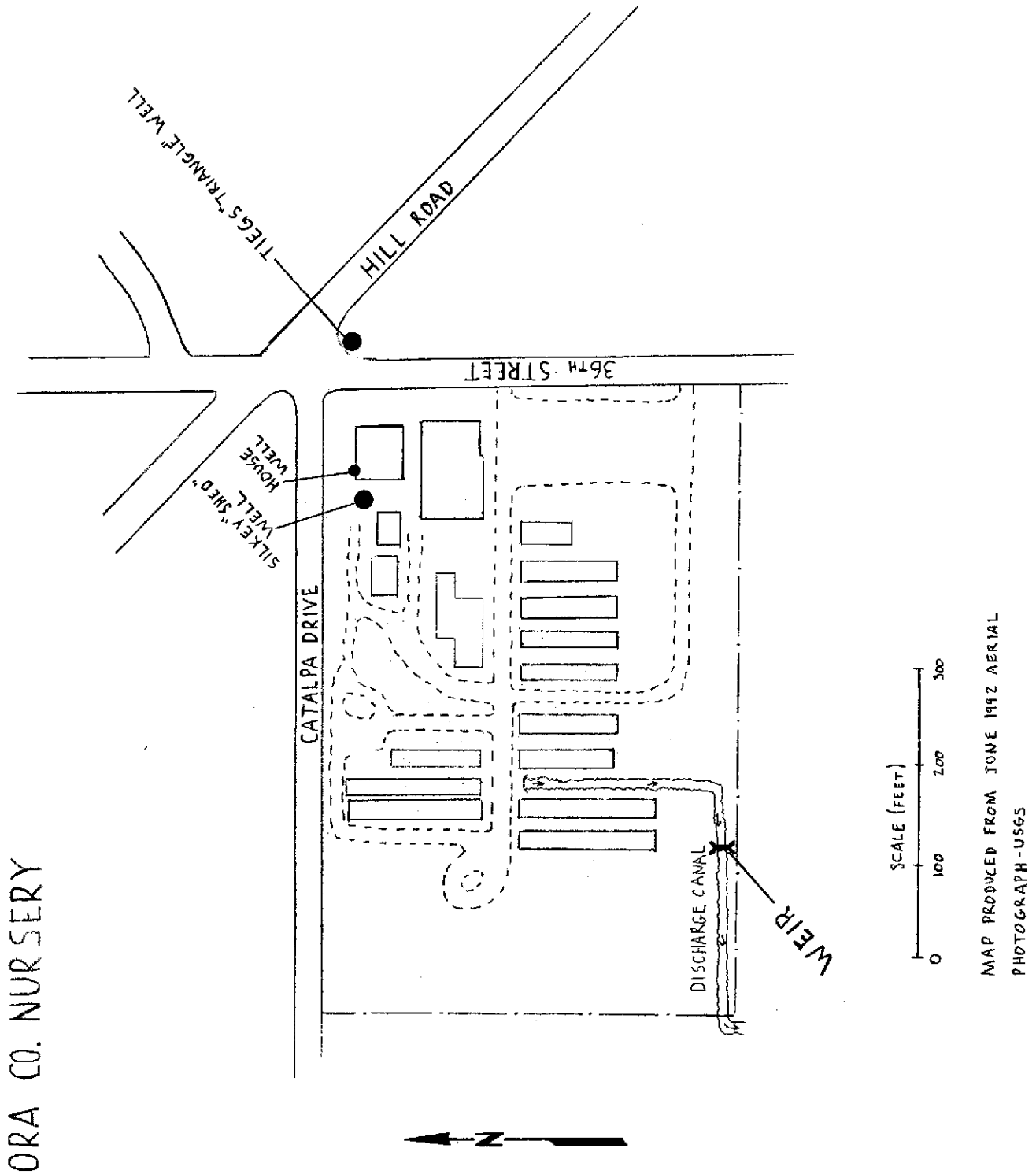


FIGURE 1. SKETCH MAP OF THE FLORA COMPANY GREENHOUSES IN NORTHWEST BOISE ID SHOWING THE LOCATIONS OF ITS THREE GEOTHERMAL WELLS AND DISCHARGE WEIR.

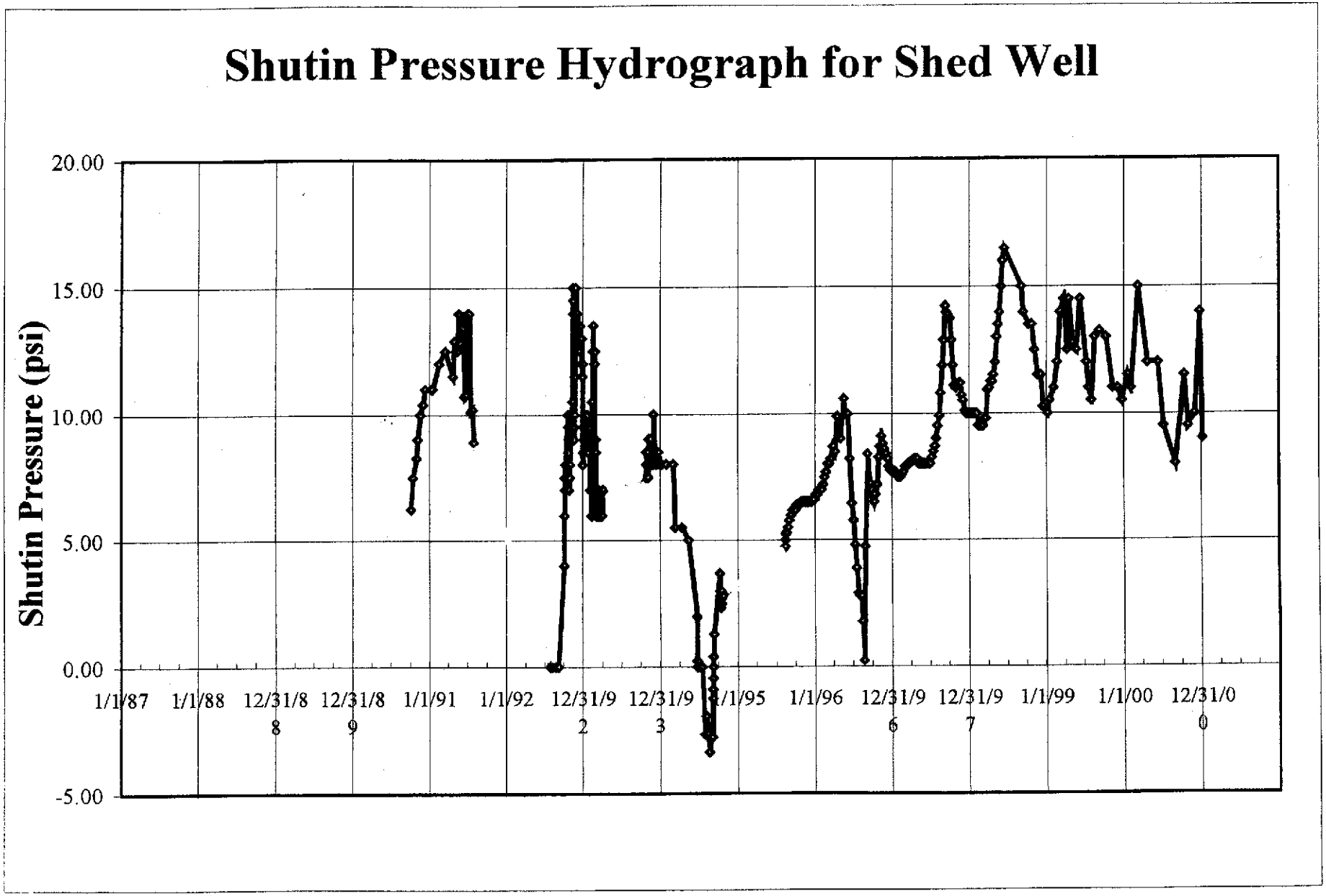


Figure 2.

Figure 2. Hydrograph of the Flora Co.'s Silkey (Shed) well artesian "shut-in" pressures for the period 1990-to-2000. Plot courtesy of Ken Neeley of the Idaho Department of Water Resources.

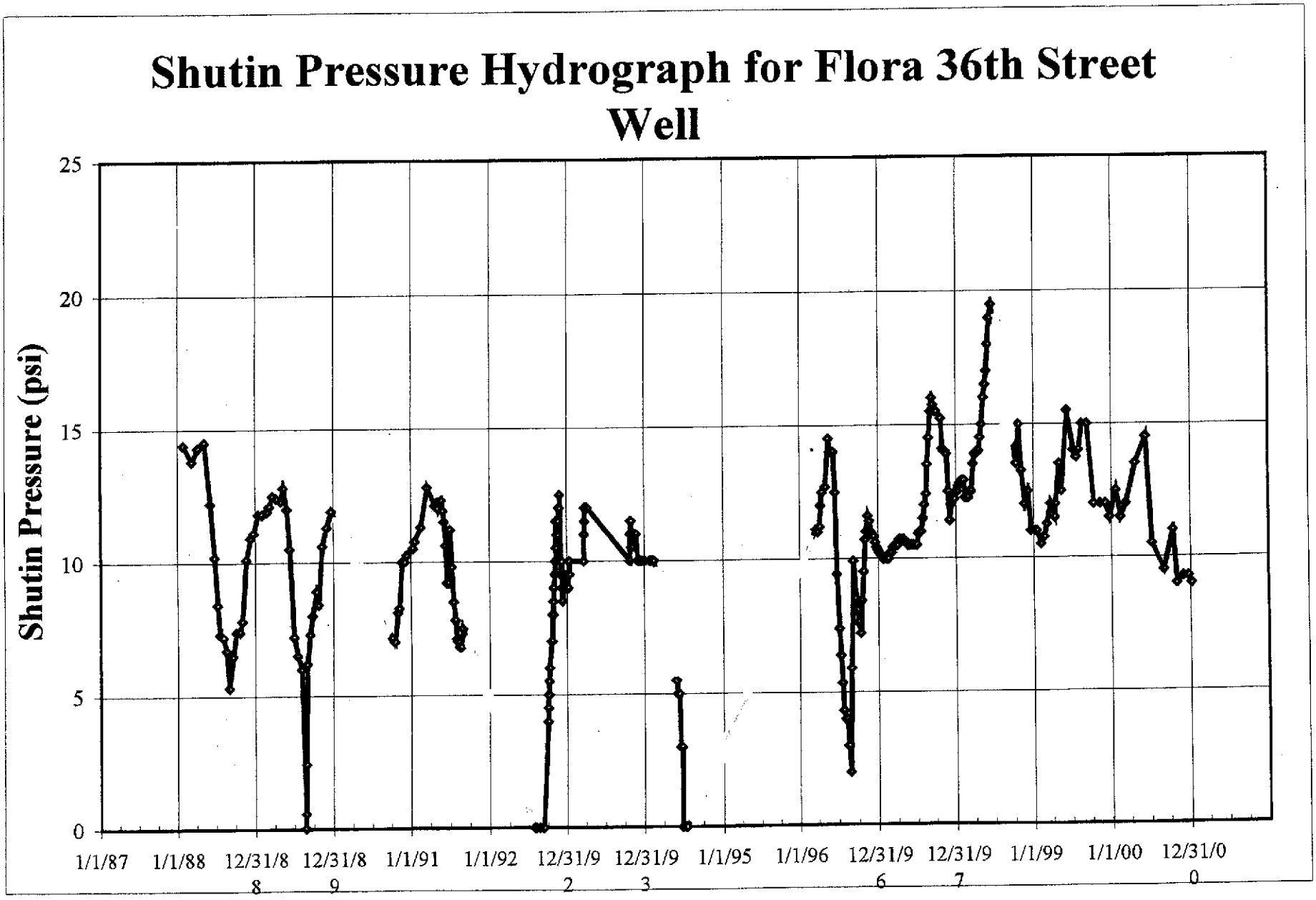


Figure 3. Hydrograph of the Flora Co.'s Tiegs (Triangle or 36th Street) well artesian "shut-in" pressures for the period 1988-to-2000. Plot courtesy of Ken Neeley of the Idaho Department of Water Resources.

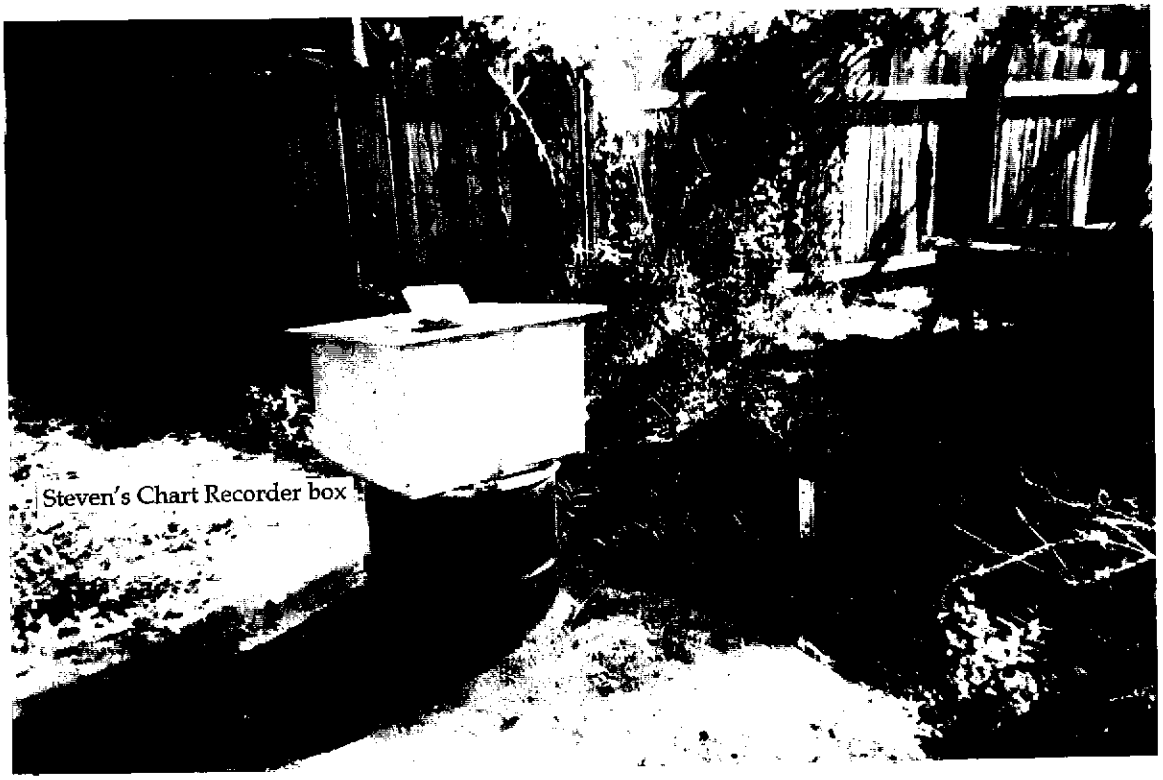
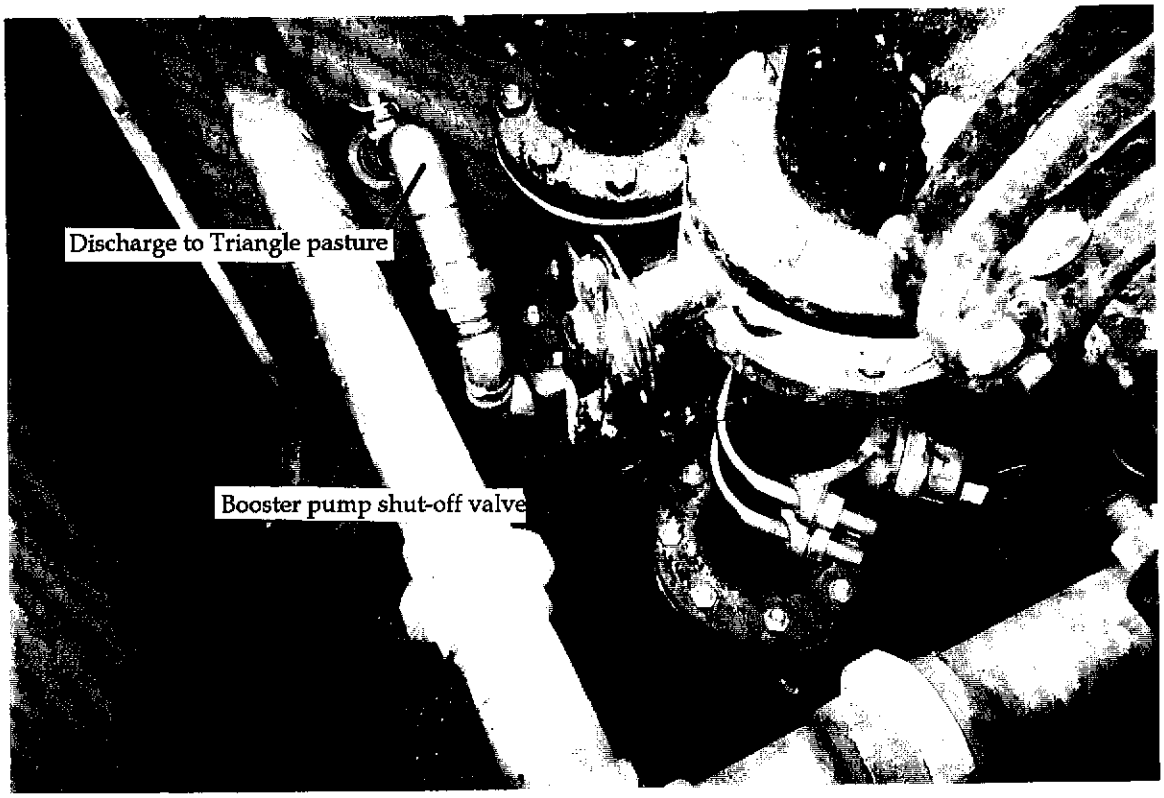


Figure 4.
The 90° V-notch weir used to gauge discharge from the Flora Company wells
October 1998

Figure 4.



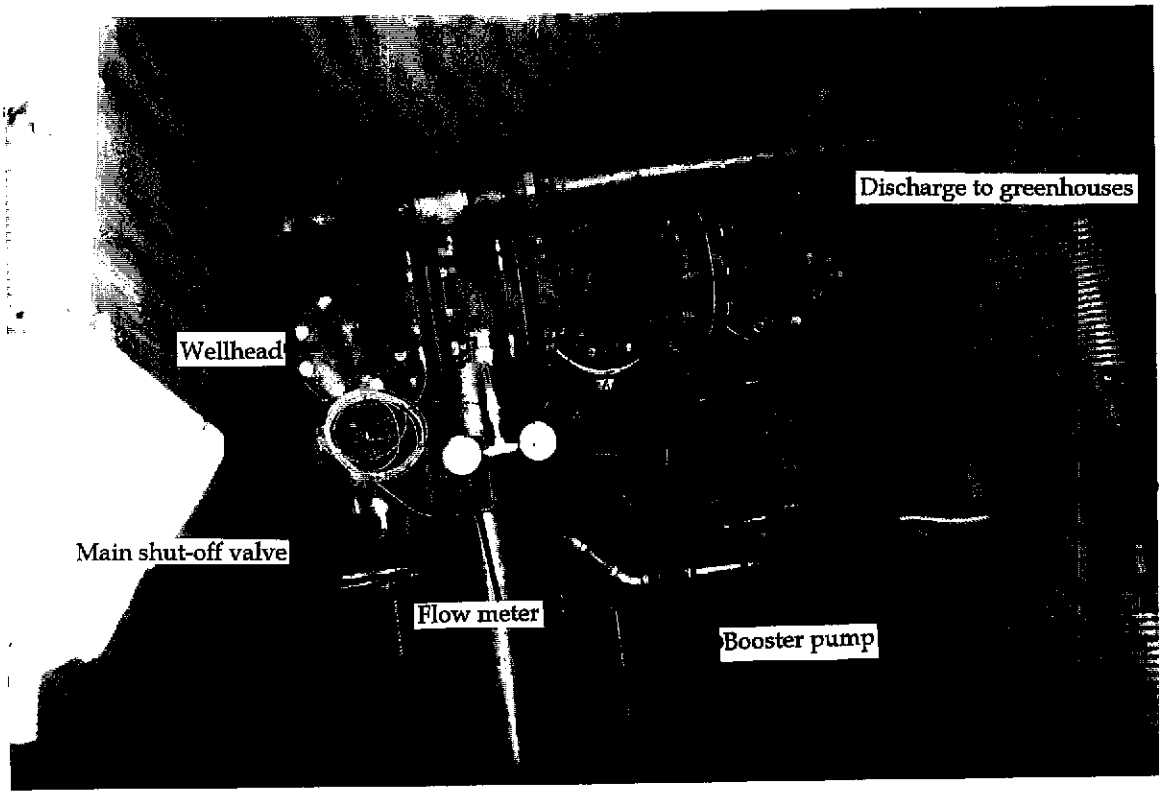


Figure 5.
Wellhead piping configuration for the Flora "Triangle" Well
October 1998

Figure 5.

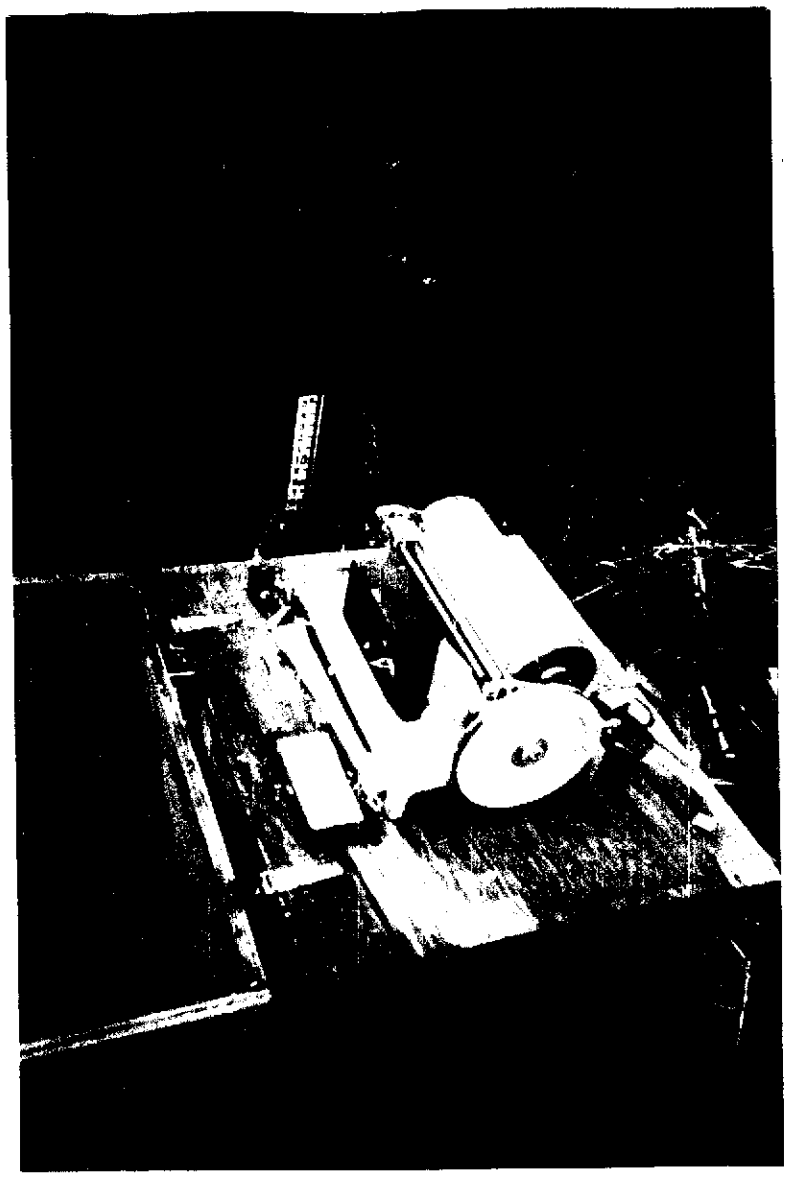


Figure 6. Stevens F-type water level chart recorder installed on the stilling well of the Flora Co.'s geothermal effluent ditch. Staff gage of the 90° V-notch weir in background

Figure 6.

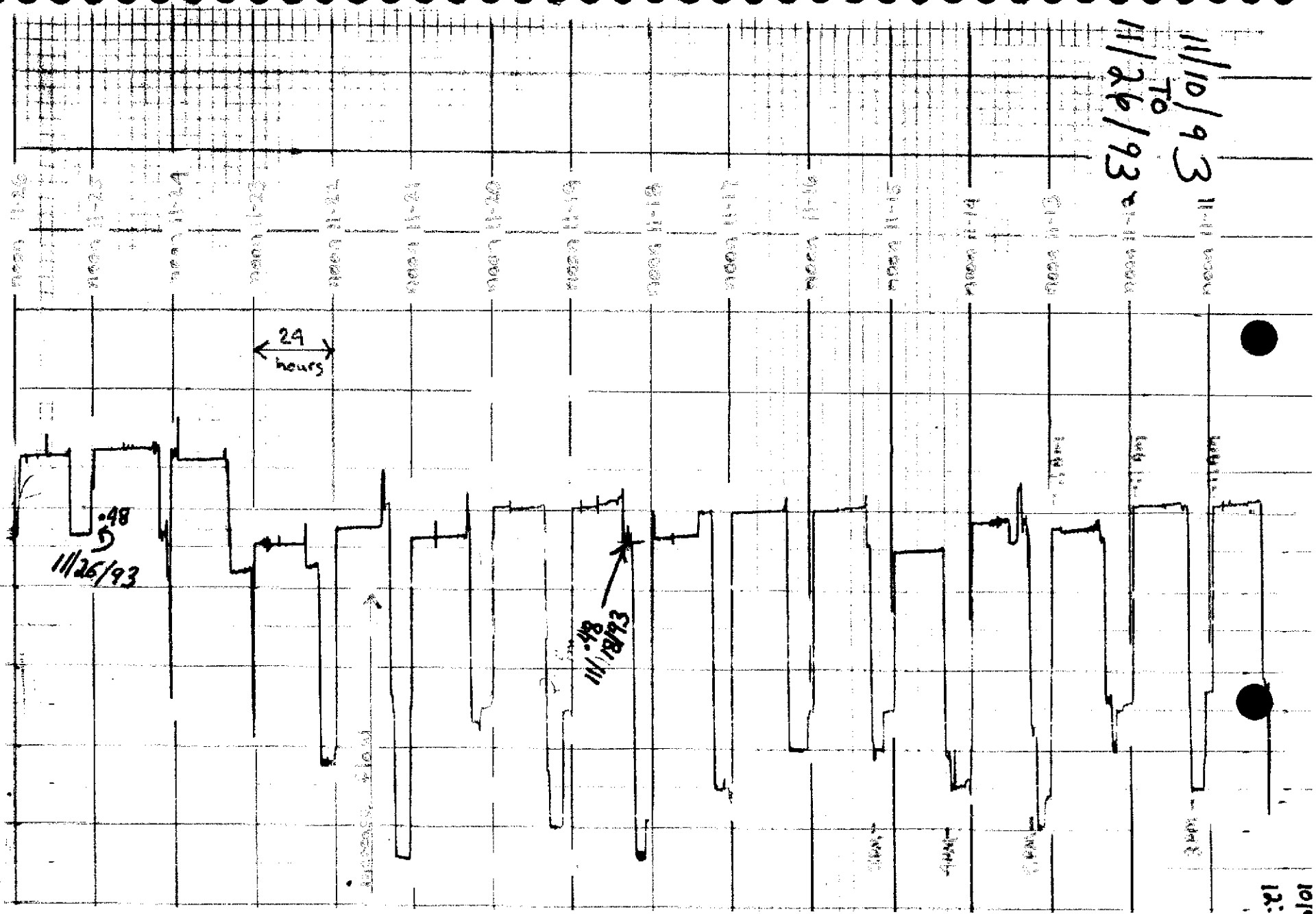


Figure 7. Flora Co.'s V-notch weir recorder chart for the period November 10, 1993-to-November 26, 1993 showing discharge variations due to the daily shutoff of the Silkey geothermal well pump during the warmest part of the day. During the late afternoon and night time hours, all of Flora's geothermal wells were being pumped at maximum discharge to heat the nursery greenhouses. During the day, the Silkey (Shed) well pump was turned off and the well was allowed to flow under natural artesian pressure while the other pumps continued to run. The vertical axis is water level at the weir gage in feet. See Table 6. for corresponding flow rates.

Figure 7.

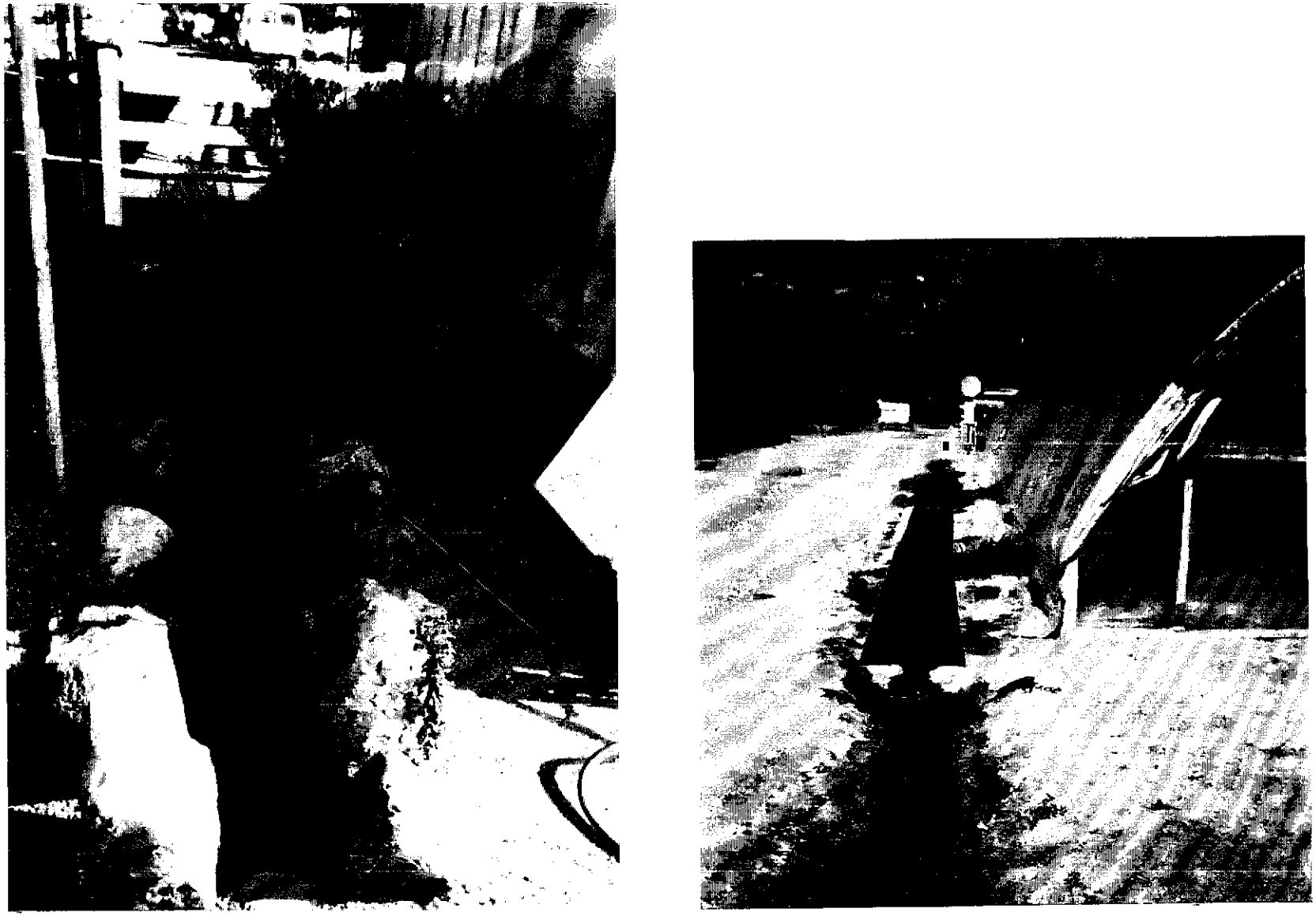


Figure 8.
Examples of the distribution/collection ditches for the Flora Company's geothermal water
October 1998

Figure 8.

Figure 9.

Figure 9. Surface discharge of Flora Co.'s geothermal wells during testing in 2001. The right photograph is of the Silkey (Shed) well head during calibration of the flow-meter and step-discharge testing to determine the specific capacity of the well. Left photo shows testing of the Tiegs (Triangle) well for tuffaceous mudstone chips that have periodically lodged in the impeller vanes of the flow-meter (lower right of view) and impeded flow and volumetric readings. The excavation is the newly plumbed location for the Tiegs well flow-meter in a straight portion of the supply line pipe. The discharged water infiltrated rapidly into the site's sandy soils.

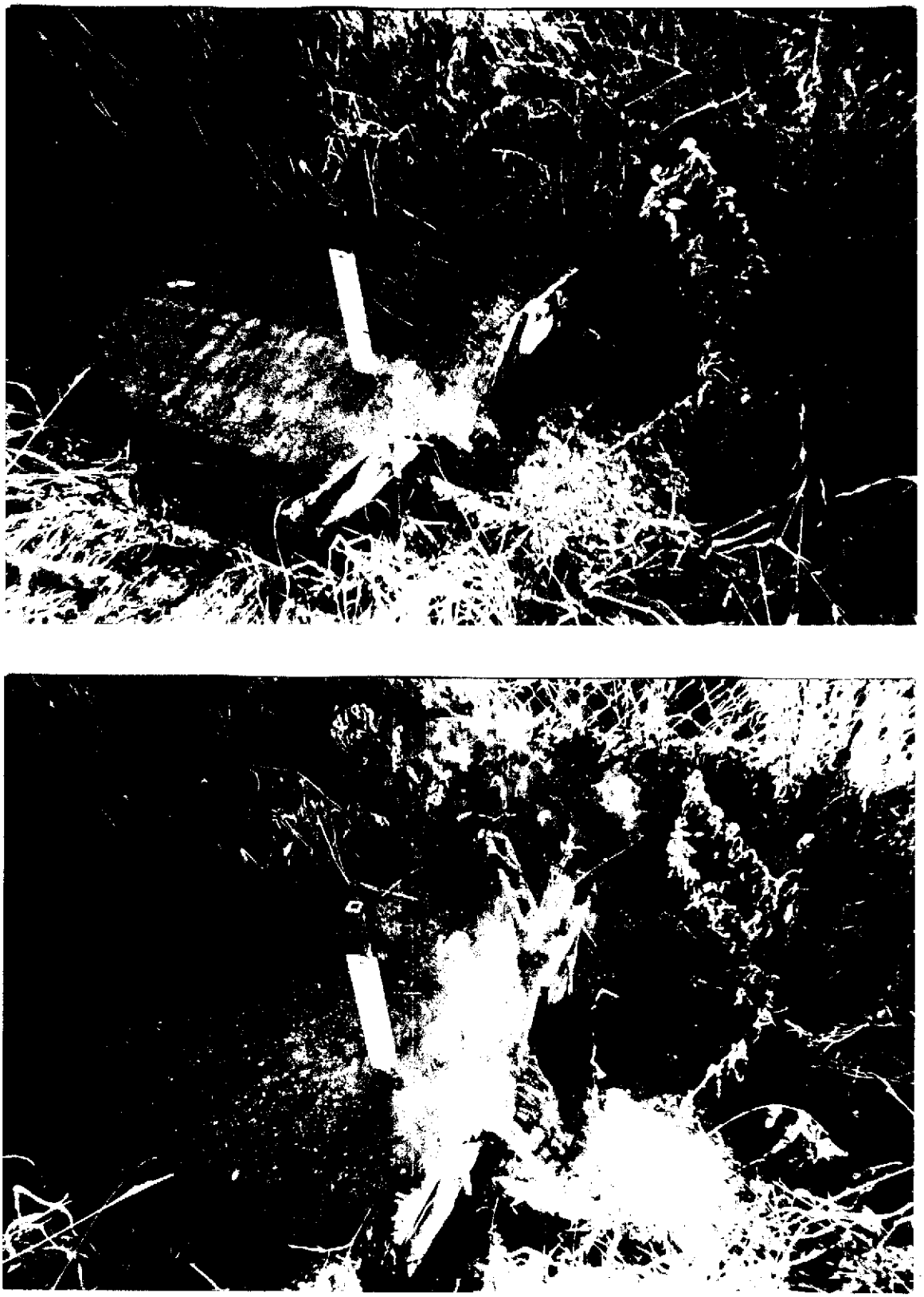


Figure 10. December 2001 photographs of the Flora Co. discharge weir. Upper view shows weir in an unmaintained and leaking condition at low flow with cinder block supports, caved (widened) ditch bank, and infilled weir box. Lower picture is the same view at higher flow showing significant leakage by-passing the V-notch of the weir.

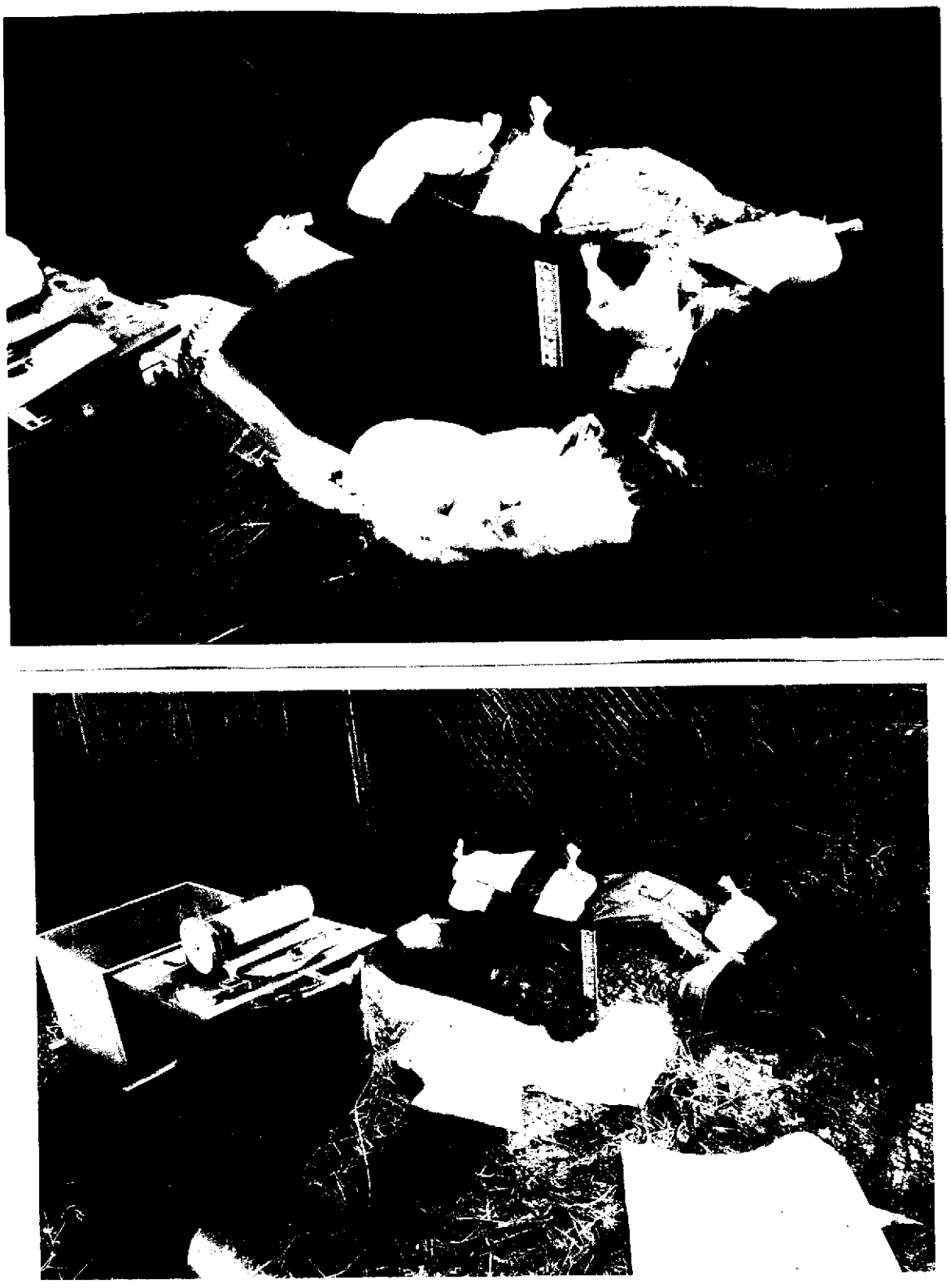


Figure 11. December 2001 photos of the Flora Co. V-notch discharge weir. Weir box and surrounding ditch channel are lined with plastic sheeting to prevent surface water bypass and underflow leakage at the weir so that upstream ditch loss could be quantified.. Hydraulic communication to the stilling well and chart recorder float was maintained.

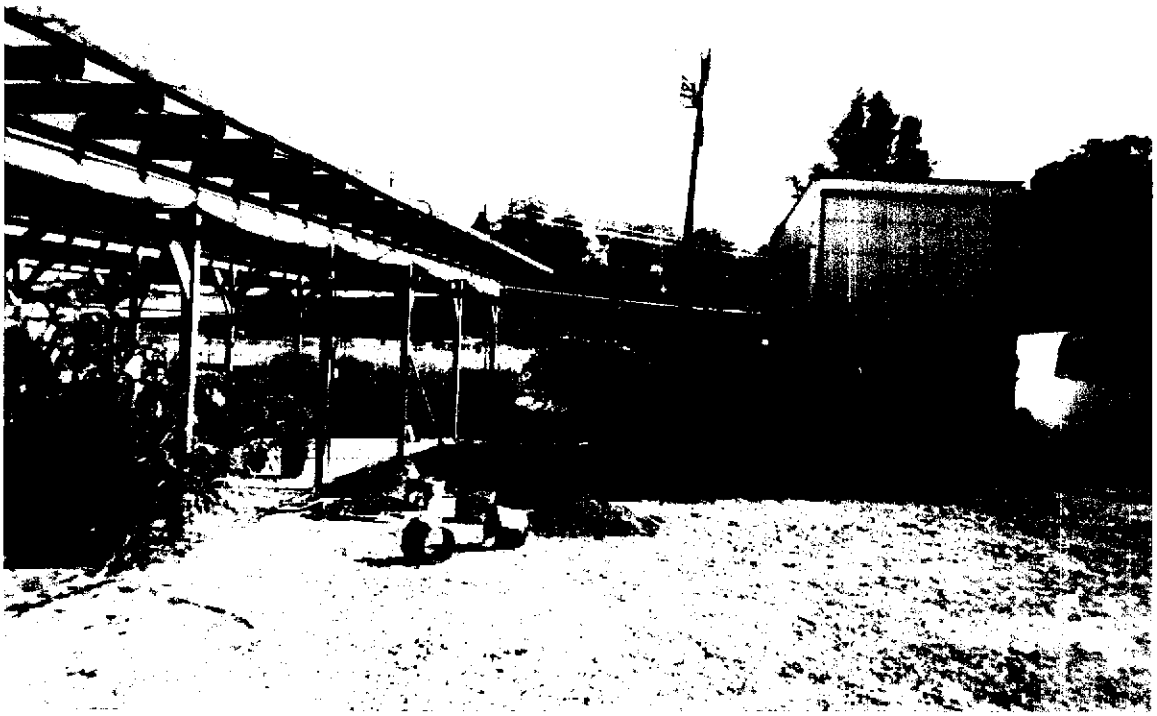


Figure 12. December 2001 photos of the Flora Co. Tiegs well flow-meter installation. Upper view shows the excavated main line from the Tiegs well 36-Street vault where the flow-meter was improperly installed and difficult to access. Lower photograph is of the installed flow-meter through its access port. The flow-meter installation is in straight pipe and meets manufacturer's specifications.

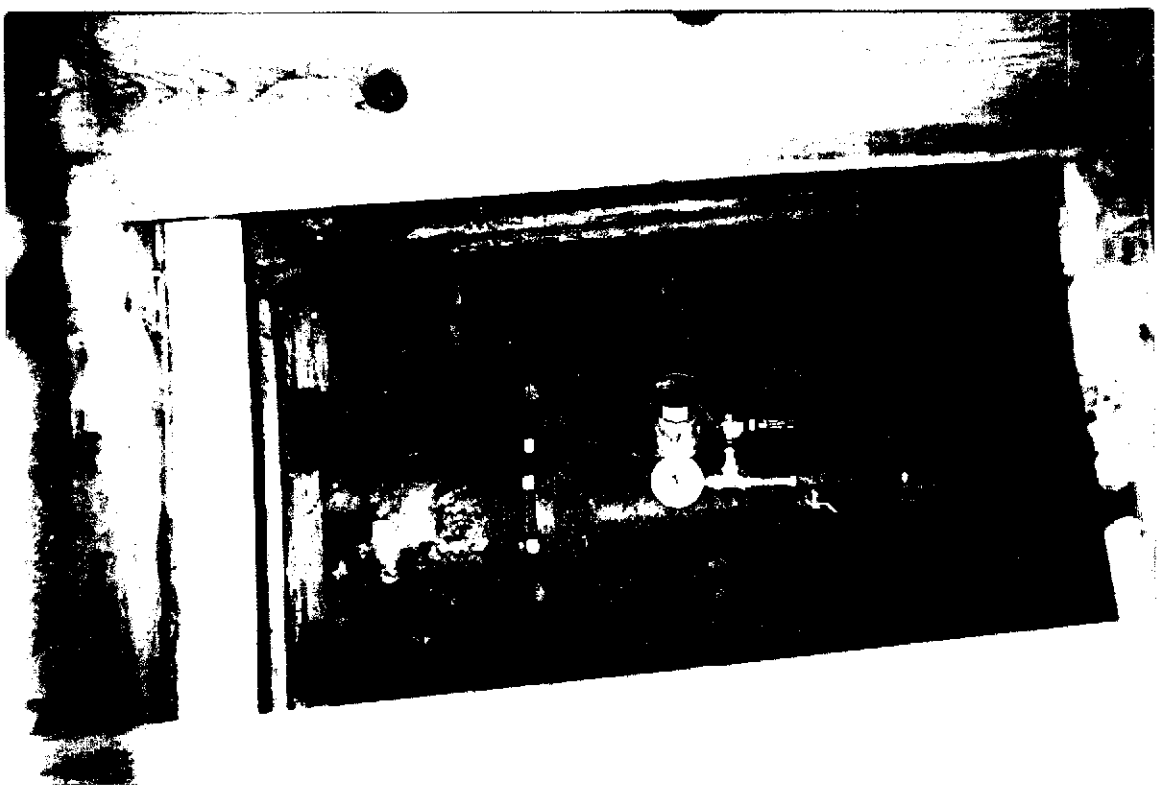
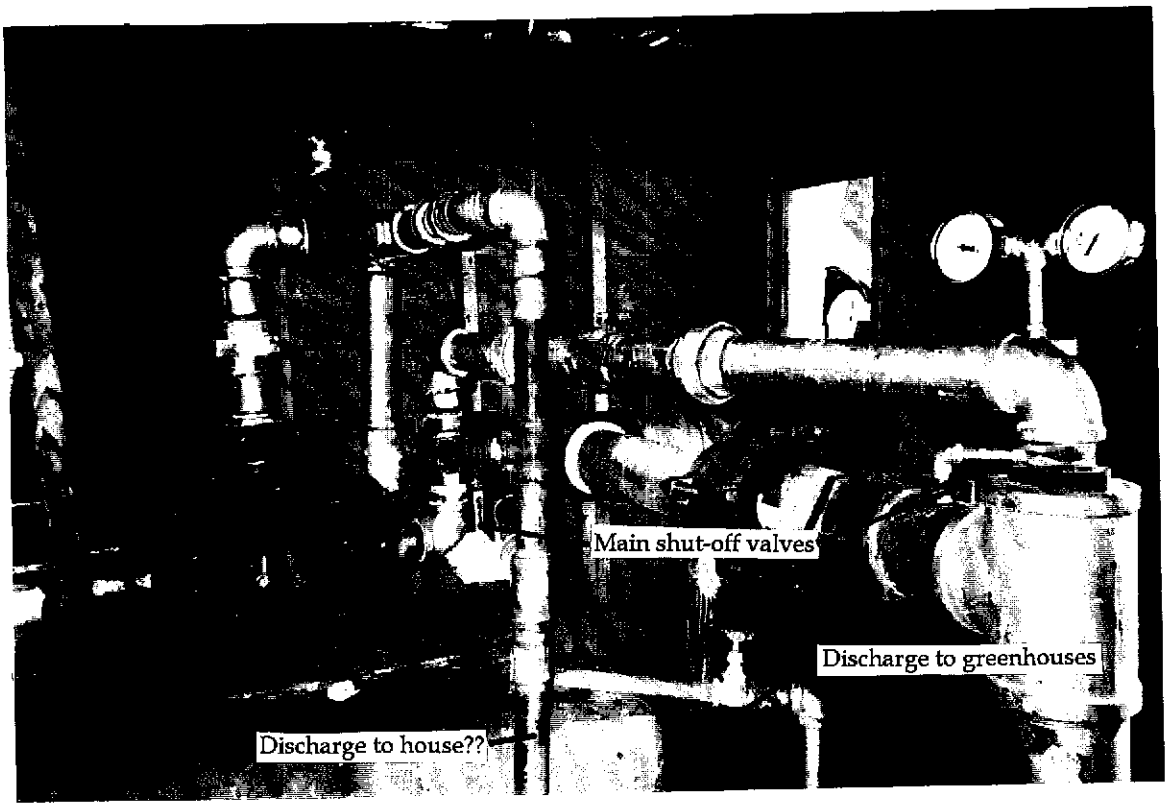


Figure 13. Photograph of the original Accum-U-Flo, insertion-type flow-meter for the Silkey well located in a wood-cased vault south of the well shed. The flow-meter was not operational since at least 1994.



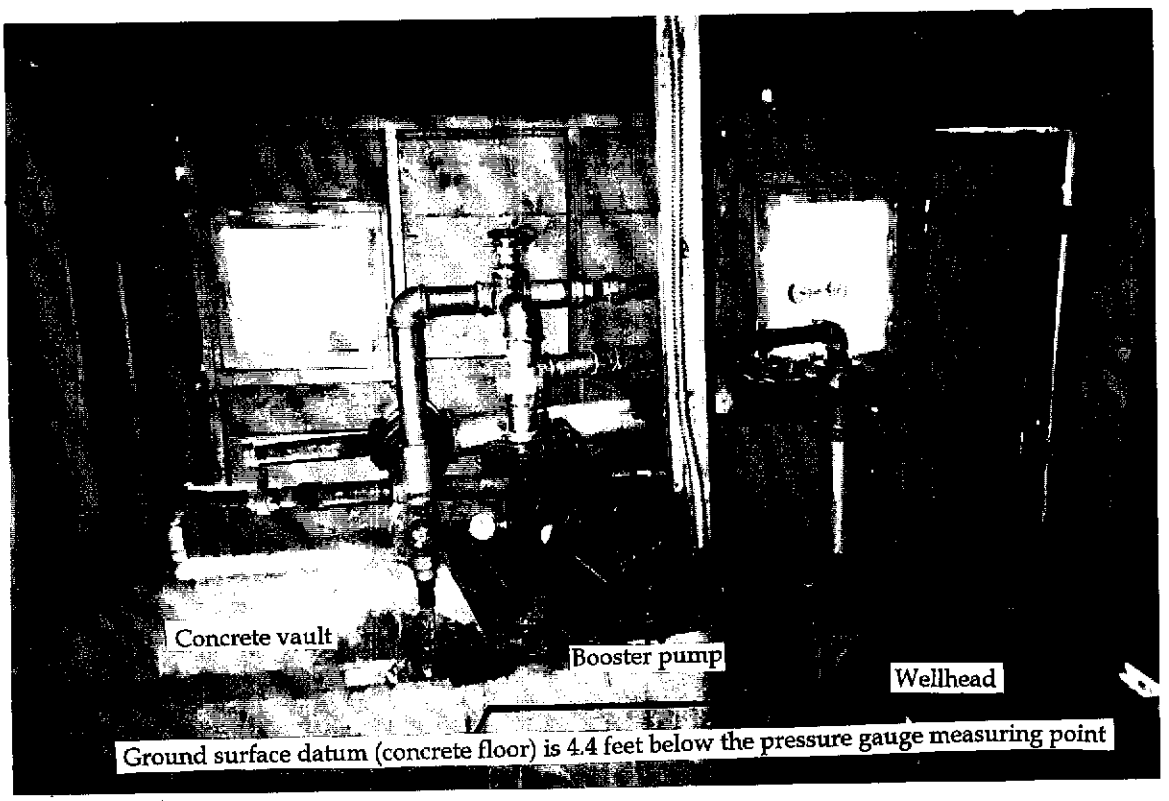


Figure 14
Wellhead piping configuration for the Flora "Shed" Well
October 1998

Figure 14.

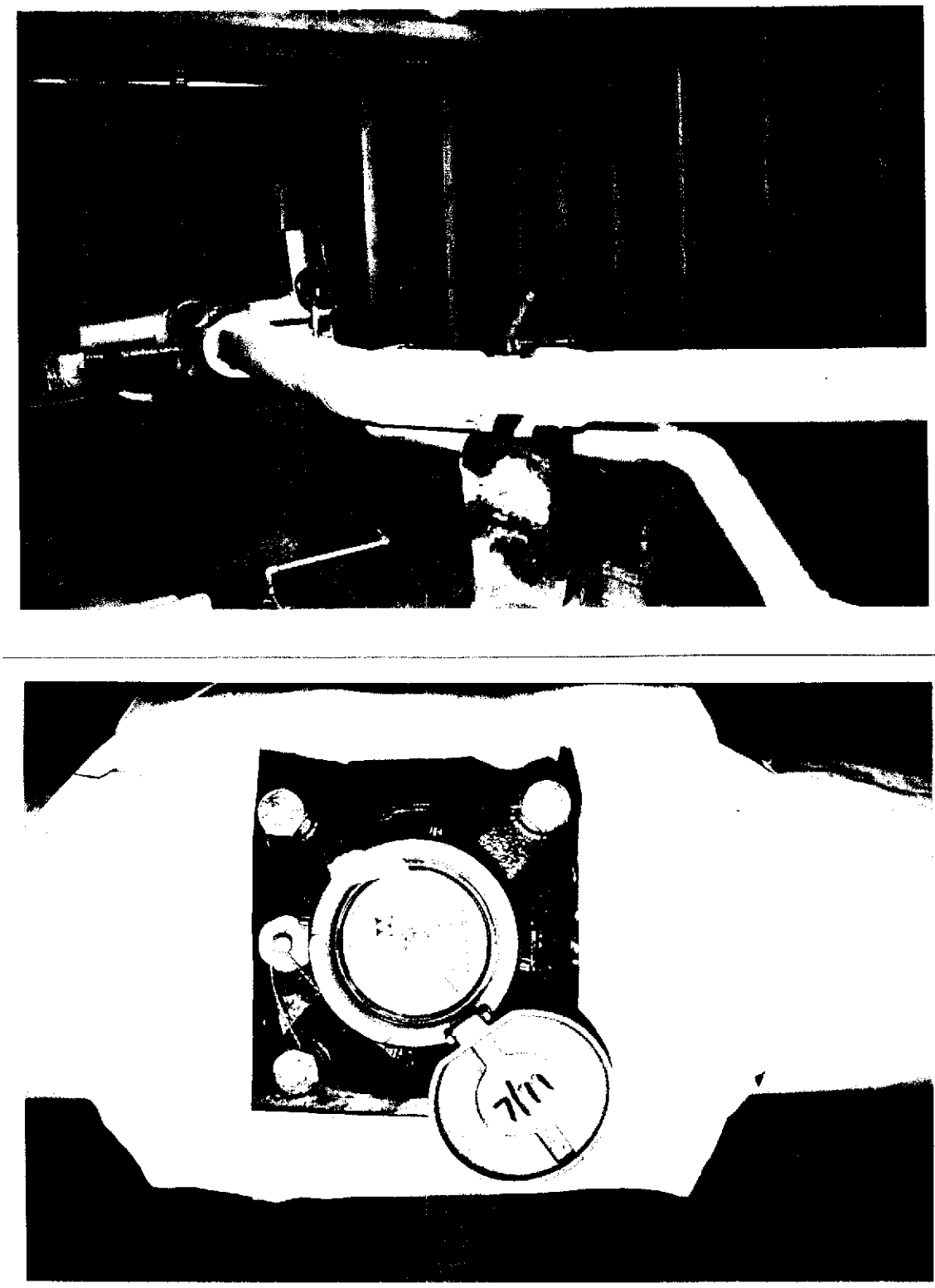


Figure 15. December 2001 photos of the Flora Co. Tiegs well flow-meter installation at the Silkey (Shed) well head. The flow-meter was originally installed in 1999 in an inefficient and contorted plumbing system. This new (December 2001) installation allows for the flow-meter to be installed in straight pipe with no nearby obstructions according to manufacturer's specifications.

Figure 16. December 2001 photos of the Flora Co. discharge weir. The weir had just previously been repaired, and the ditch bank backfilled, so that no surface water leakage could bypass the V-notch or measuring staff. The experiments confirmed that subsurface underflow of water, in conjunction with ditch losses, result in significant quantities of water escaping measurement at the weir.

Figure 16.

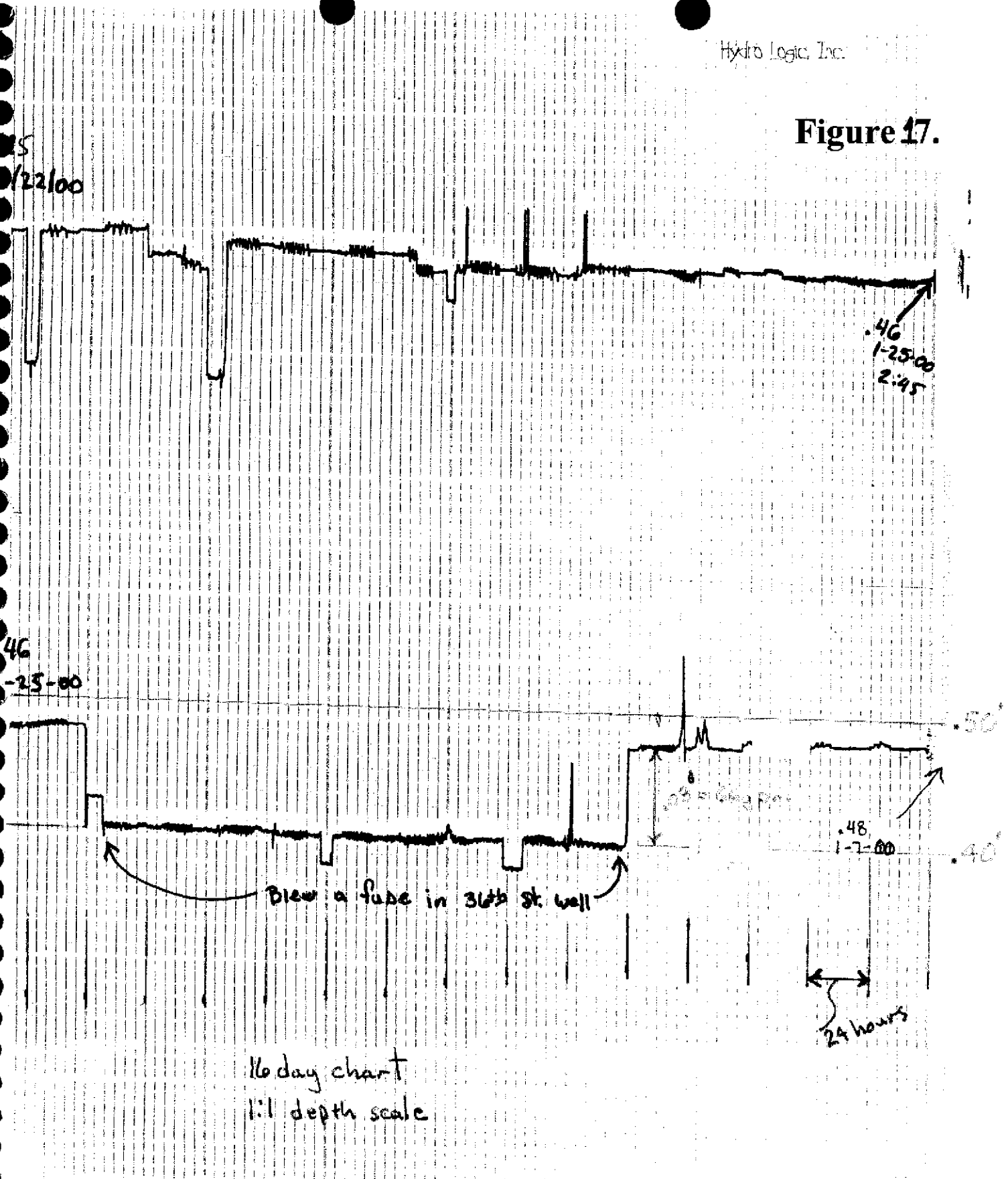


Figure 17. January 2000 recorder chart from the Flora Co. discharge weir. The weir level shows a lowering of water level due to a blown electrical fuse at the Tiegs well head. The interuption to electrical power caused the Tiegs pump to shut down with a commensurate lessening of flow. The 0.08-foot lowering (66 gpm) does not correspond to known measured pumping rates or artesian flow rates measured at the well. See text.

Figure 18. Photographs of the Flora Co. parking lot after a light snowfall. Two linear paths crossing the lot are snow free. The upper view looks North across the two thawed swaths (right to left). The farther melted line is directly over the geothermal water main feeding the nursery from the Tiegs well across 36th Street to the East (two pipes exiting at booster pump station). The cause of the nearer snow-free line (between truck and sign), presumably also a buried hot water line, is not presently known. Which direction the hot water is moving (toward or away from the nursery) has not yet been determined and it not easily investigated (short of digging up the pipe). The lower picture looks east along the buried Tiegs well water line. Questions exist whether the unknown flow is measured by the weir or by the well head flow-meters.

Figure 18.

Figure 19. Photograph of manhole in the 36th Street right-of-way that serves as the terminus for six small diameter pipelines. The origins and/or purposes of the individual pipes are not presently understood, although geothermal water flows are apparent at times. At the center of the manhole (drain?), approximately 10 gpm of geothermal water is flowing in this photograph. Flow through these lines is apparently not measured at the Flora Co, discharge weir. Whether the flows drain into the sandy soils beneath the site or are conducted to a storm sewer has not been determined.

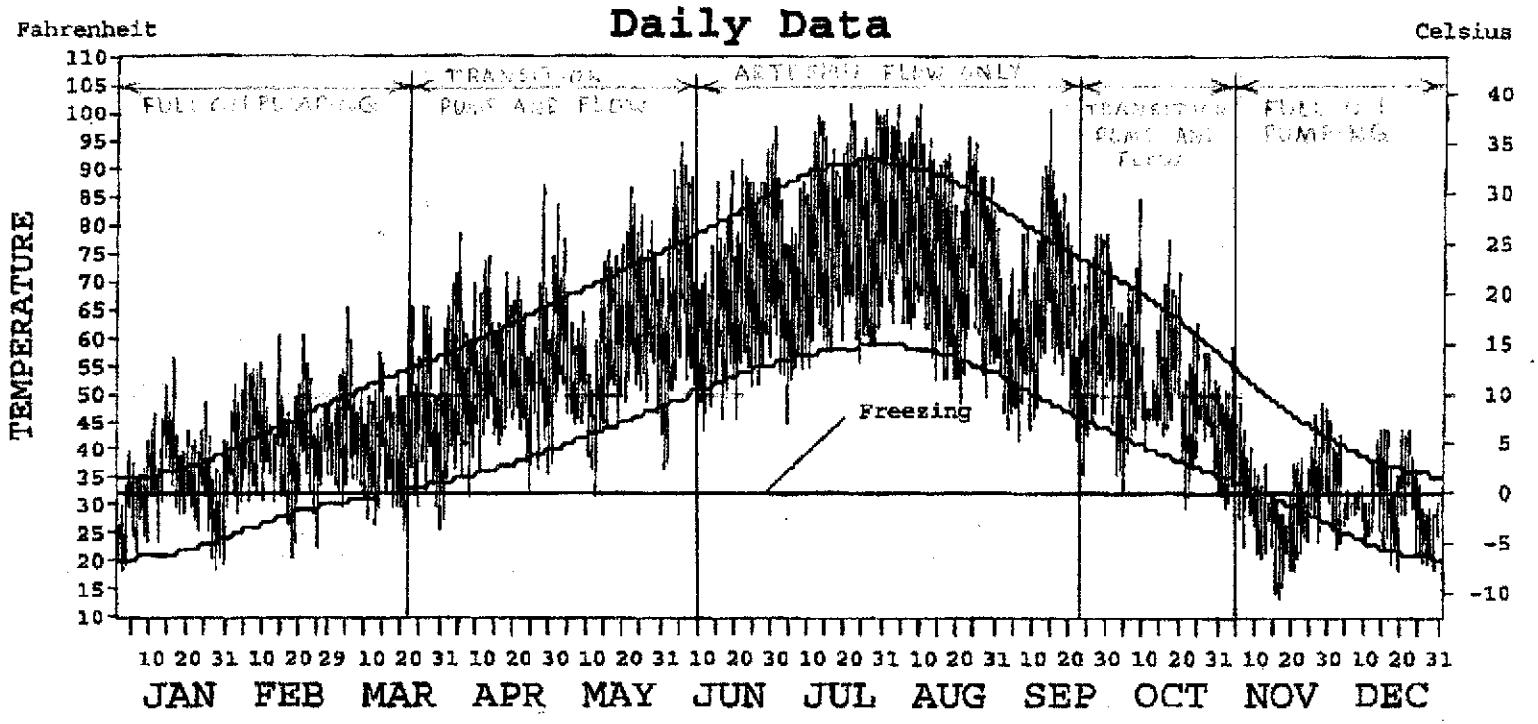


Figure 20. Graph showing daily temperature variation at the Boise Air Terminal for the year 2000 with respect to operation of the Flora Co. geothermal wells. In general, when the daily maximum falls below 50° F, all wells are operated at maximum capacity. When average minimum daily temperature remains above 50°F, only natural flows from the wells are utilized. The Spring and Fall periods of March-though-June and September-through-October are transitional "shoulder" seasons when combinations of flowing and pumping wells are used to regulate temperatures in the greenhouses. Source of temperature data is from the National Climatic Data Center.

Figure 20.

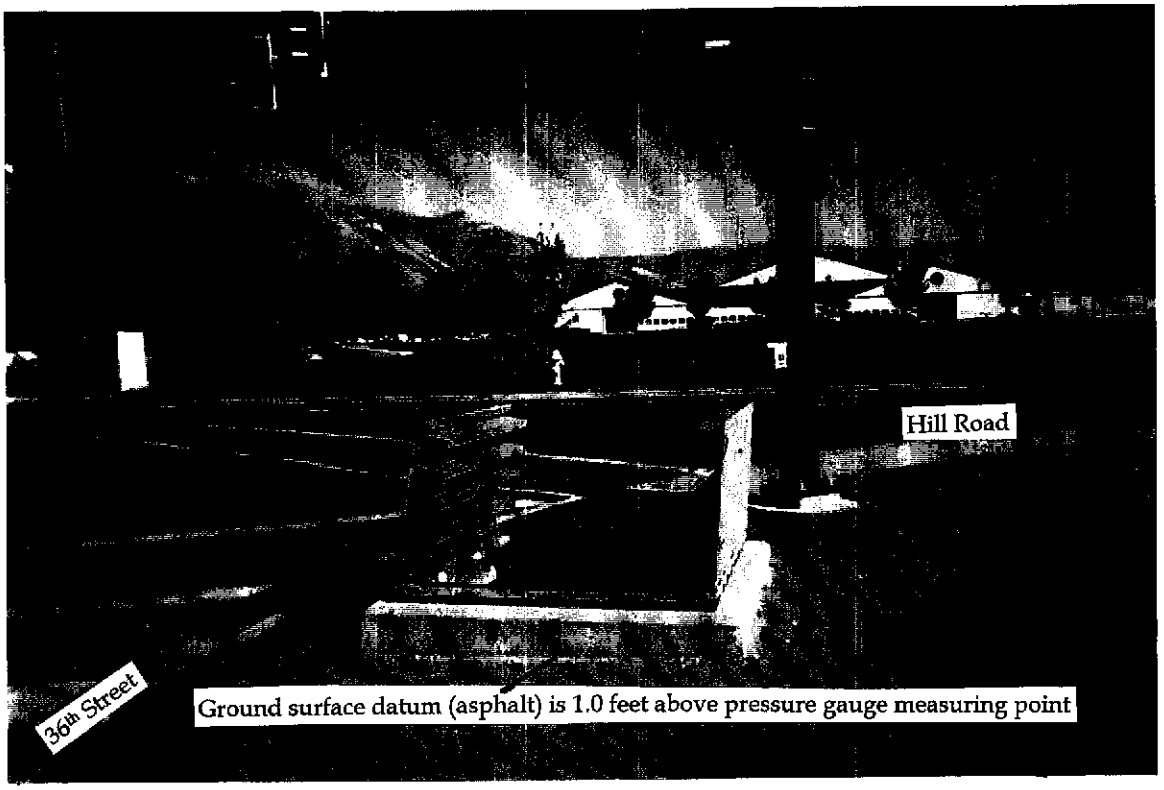


Figure 21.
Upper photo- "Shed" Well (Silkey) Pumphouse
Lower photo- "Triangle" Well (Tiegs) Concrete Vault
October 1998

Figure21.

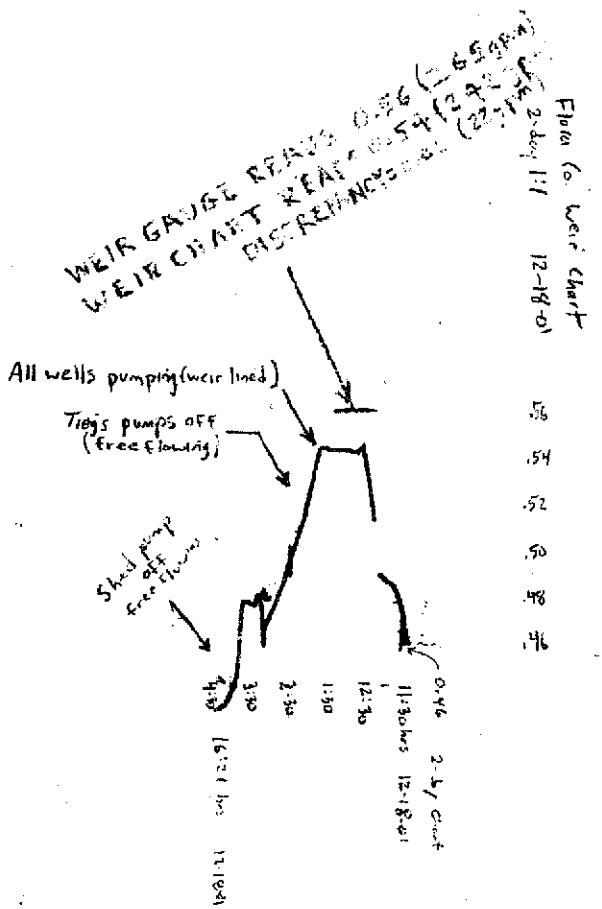


Figure 22. Stevens F-Type water-level recorder chart from the Flora Company geothermal effluent discharge weir during testing of the weir for accuracy of measurement. The chart was recorded at a time when surface overflow and subsurface underflow (past the weir) was obstructed by a lining of plastic sheeting (see Figure 11). With all of the Flora wells pumping the cumulative wellhead discharge was measured at 367 gpm compared to the chart which showed 0.54 feet or 242 gpm; a inconsistency of 125 gpm or measurement error of 34 percent less than actual flow. Most of the discrepancy is due to seepage losses from the unlined discharge canal prior to the weir. The Figure, however, shows that some of the error is due to a measurement inconsistency between the weir gage and the weir chart. Weir/chart errors of 0.05 feet (67 gpm) were observed.

Figure 22.

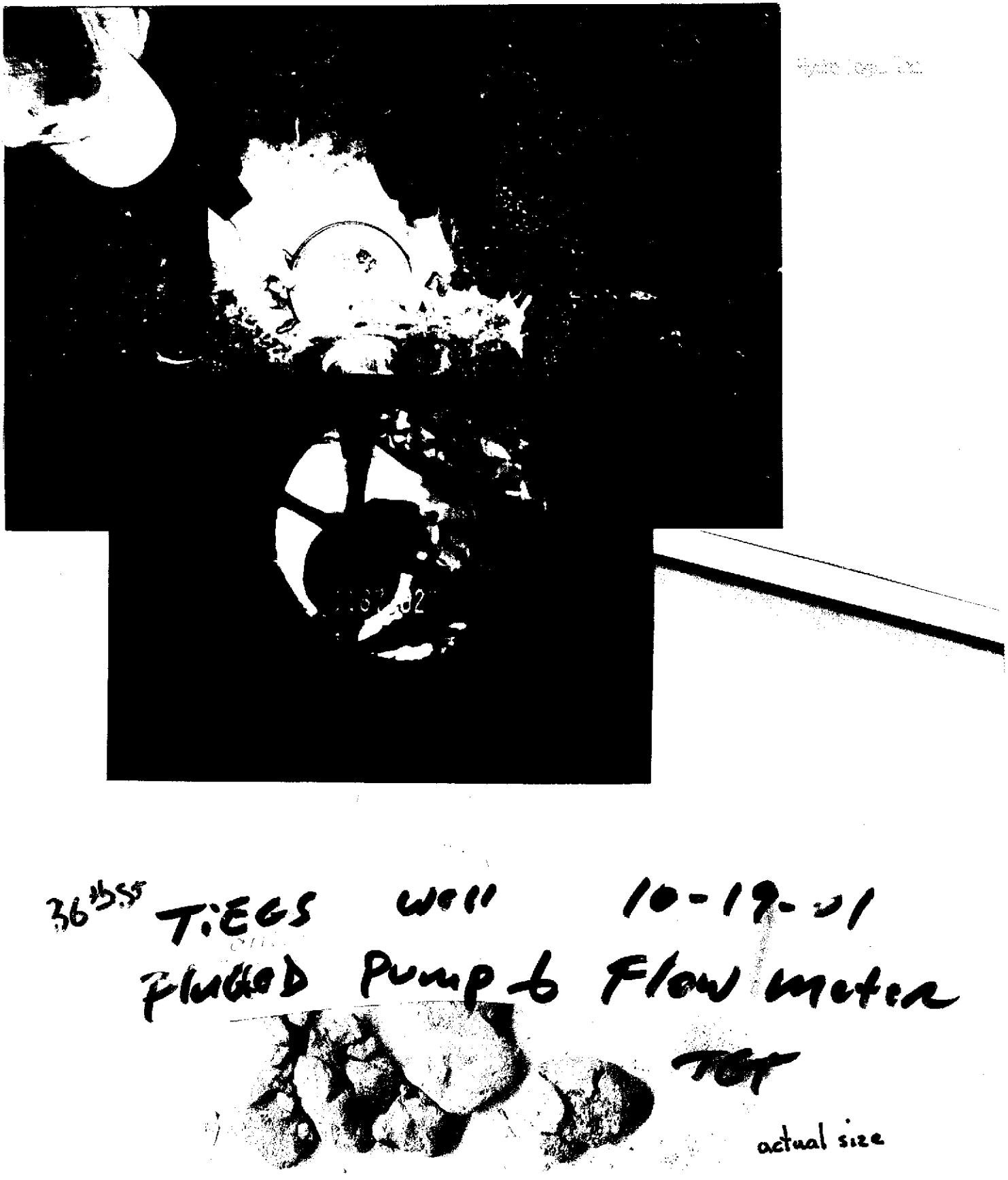


Figure 23. Photographs depicting the tuffaceous mudstone chips that are periodically produced from the Flora Company geothermal wells. The fragments of volcanic ash have low specific gravity and are easily lifted through the geothermal well casing in the flowing water. Upper photo shows the sieve sampling for the ash particles from the discharge stream of the Tiegs well. Center view is a down hole still photograph of the base of the 4-inch diameter well casing, at 1167 feet below ground, showing the void in the open hole completion of the well filled with larger chunks of the ash. Lower picture is of ashy siltstone fragments removed from the clogged Tiegs (36th Street) geothermal well's flow-meter and booster pump in 2001.

Figure 23.

TABLES

TABLE 1.

Date of Site Visit	Weir Condition	Water Source	Flow meter Discharge (gpm)	Weir Stick Reading (ft.)	Weir Discharge (gpm)	Weir Chart (ft.)	Unaccounted for Water (gpm)	Error % Gauge	Error % Chart
12/14/01	Un-lined	Silkey (natural flow through pump	93	0.33	66		27	29%	
	Un-lined	Tiegs (natural flow through both pumps)	65	0.29	52		13	20%	
	Un-lined	Tiegs (natural flow through pump 1, bypass pump2)	72	0.3	56		16	22%	
	Un-lined	Tiegs (natural flow through pump 2, bypass pump1)	55	0.28	48		7	13%	
	Un-lined	Silkey, Tiegs, Office wells pumping	386	0.56	265		121	31%	
12/18/01	Un-lined	Silkey, Tiegs, Office wells pumping	363	0.48	181	0.46	182	50%	55%
	Lined	Silkey, Tiegs, Office wells pumping	367	0.56	265	0.5425	102	28%	34%
	Lined	Silkey flowing, Tiegs flowing, Office pumping	165	0.44	145		20	12%	
1/21/02	Lined	Silkey, Tiegs, Office wells pumping	256	0.52	220	0.51	36	14%	18%
	Weir Repaired	Silkey, Tiegs, Office wells pumping	256	0.52	220	0.48	36	14%	29%
	Weir Repaired	Silkey, Tiegs, Office wells pumping	332	0.56	265	0.5	67	20%	40%

Table 1. Tabulated natural artesian flows and pumped discharge rates from the Flora Co.'s geothermal wells in northwest Boise with respect to the measured flows at the Flora Co.'s discharge weir gage and chart-recorder. On-site measurements were taken during the winter of 2001 using calibrated wellhead flow-meters except where otherwise noted. The differences in flows between the wells' discharges and the weir discharge are evidence of significant ditch losses (infiltration) between the wells and the weir.

Table 2. Flow over 90° V-notch weirs in cubic feet per second.

INSTRUCTIONS

Column 1--Date.

Column 2--Head. Measure head (height) of water from bottom of V Notch to water level surface. If staff gage is installed, read head directly from staff gage.

Column 3--Discharge (Q). Read discharge (in sec-feet) from table.

Column 4--Discharge. Convert discharge (Q) from sec-feet to gallons per minute by multiplying Q in column 3 by 449.

Table 5. Flow over 90° V-notch weirs in cubic feet per second.*

Head H		Discharge Q	Head H		Discharge Q	Head H		Discharge Q
Feet or Inches		Sec-feet	Feet or Inches		Sec-feet	Feet or Inches		Sec-feet
.10	1-3/16	0.008	.50	6	0.445	.90	10-13/16	1.92
.11	1-5/16	0.010	.51	6-1/8	0.468	.91	10-15/16	1.97
.12	1-7/16	0.012	.52	6-1/4	0.491	.92	11-1/16	2.02
.13	1-9/16	0.016	.53	6-3/8	0.515	.93	11-3/16	2.08
.14	1-11/16	0.019	.54	6-1/2	0.539	.94	11-1/4	2.13
.15	1-13/16	0.022	.55	6-5/8	0.564	.95	11-3/8	2.19
.16	1-15/16	0.026	.56	6-3/4	0.590	.96	11-1/2	2.25
.17	2-1/16	0.031	.57	6-13/16	0.617	.97	11-5/8	2.31
.18	2-3/16	0.035	.58	6-15/16	0.644	.98	11-3/4	2.37
.19	2-1/4	0.040	.59	7-1/16	0.672	.99	11-7/8	2.43
.20	2-3/8	0.046	.60	7-3/16	0.700	1.00	12	2.49
.21	2-1/2	0.052	.61	7-5/16	0.730	1.01	12-1/8	2.55
.22	2-5/8	0.058	.62	7-7/16	0.760	1.02	12-1/4	2.61
.23	2-3/4	0.065	.63	7-9/16	0.790	1.03	12-3/8	2.68
.24	2-7/8	0.072	.64	7-11/16	0.822	1.04	12-1/2	2.74
.25	3	0.080	.65	6-13/16	0.854	1.05	12-5/8	2.81
.26	3-1/8	0.088	.66	7-15/16	0.887	1.06	12-3/4	2.87
.27	3-1/4	0.096	.67	8-1/16	0.921	1.07	12-13/16	2.94
.28	3-3/8	0.106	.68	8-3/16	0.955	1.08	12-15/16	3.01
.29	3-1/2	0.115	.69	8-1/4	0.991	1.09	13-1/16	3.08
.30	3-5/8	0.125	.70	8-3/8	1.03	1.10	13-3/16	3.15
.31	3-3/4	0.136	.71	8-1/2	1.06	1.11	13-5/16	3.22
.32	3-13/16	0.147	.72	8-5/8	1.10	1.12	15-7/16	3.30
.33	3-15/16	0.159	.73	8-3/4	1.14	1.13	13-9/16	3.37
.34	4-1/16	0.171	.74	8-7/8	1.18	1.14	13-11/16	3.44
.35	4-3/16	0.184	.75	9	1.22	1.15	13-13/16	3.52
.36	4-5/16	0.197	.76	9-1/8	1.26	1.16	13-15/16	3.59
.37	4-7/16	0.211	.77	9-1/4	1.30	1.17	14-3/16	3.67
.38	4-9/16	0.225	.78	9-3/8	1.34	1.18	14-5/16	3.75
.39	4-11/16	0.240	.79	9-1/2	1.39	1.19	14-1/4	3.83
.40	4-13/16	0.256	.80	9-5/8	1.43	1.20	14-3/8	3.91
.41	4-15/16	0.272	.81	9-3/4	1.48	1.21	14-1/2	3.99
.42	5-1/16	0.289	.82	9-13/16	1.52	1.22	14-5/8	4.07
.43	5-3/16	0.306	.83	9-15/16	1.57	1.23	14-3/4	4.16
.44	5-1/4	0.324	.84	10-1/16	1.61	1.24	14-7/8	4.24
.45	5-3/8	0.343	.85	10-3/16	1.66	1.25	15	4.33
.46	5-1/2	0.362	.86	10-5/16	1.71			
.47	5-5/8	0.382	.87	10-7/16	1.76			
.48	5-3/4	0.403	.88	10-9/16	1.81			
.49	5-7/8	0.424	.89	10-11/16	1.86			

TABLE 3.

HEATING DEGREE DAYS (base 65°F) 2000 BOISE, ID (BOI)

YEAR	JUL	AUG	SEP	OCT	NOV	DEC	JAN	FEB	MAR	APR	MAY	JUN	TOTAL
1971-72	10	6	210	492	753	1069	1047	818	598	543	196	45	5785
1972-73	11	0	222	406	727	1270	1056	708	673	470	182	91	5816
1973-74	4	13	103	382	692	817	1099	728	687	452	304	42	5323
1974-75	10	11	53	391	689	983	1132	782	721	607	275	76	5730
1975-76	6	21	74	399	759	1035	1013	886	858	524	189	132	5896
1976-77	3	36	76	434	720	1097	1418	868	772	342	358	7	6131
1977-78	8	32	145	362	758	853	859	744	500	488	329	74	5152
1978-79	5	38	173	370	841	1171	1503	855	668	481	241	72	6418
1979-80	5	2	26	326	903	899	1070	725	736	367	257	133	5449
1980-81	0	41	104	409	750	983	957	783	631	432	315	97	5502
1981-82	15	5	137	497	624	915	1240	974	729	586	312	86	6120
1982-83	27	2	182	432	863	1030	897	653	622	530	309	92	5629
1983-84	38	0	145	338	682	1290	1353	1004	710	566	328	162	6616
1984-85	0	8	204	557	771	1299	1412	1093	895	398	226	53	6916
1985-86	0	26	259	509	1113	1619	1097	668	522	499	280	15	6607
1986-87	35	2	259	376	733	1141	1149	761	639	287	140	41	5563
1987-88	23	18	86	306	722	990	1198	780	686	359	261	59	5488
1988-89	4	5	157	178	724	1169	1242	1166	656	356	276	30	5963
1989-90	0	29	97	421	759	1064	951	858	633	303	286	82	5483
1990-91	6	10	26	430	710	1449	1252	651	676	493	306	100	6109
1991-92	0	0	55	409	822	1026	982	657	492	308	92	54	4897
1992-93	6	40	118	340	907	1124	1239	1004	715	501	140	155	6289
1993-94	53	45	124	367	960	975	993	839	579	378	148	64	5525
1994-95	9	1	34	449	967	1066	887	652	657	499	255	111	5587
1995-96	5	23	86	485	610	984	1000	859	636	447	292	55	5482
1996-97	1	6	162	405	703	883	1013	783	601	473	128	41	5199
1997-98	18	0	61	410	651	1040	803	684	635	452	270	85	5109
1998-99	0	0	51	408	635	1058	914	778	652	520	311	95	5422
1999-00	8	13	101	324	535	1017	949	673	663	315	179	41	4818
2000-	4	0	128	389	960	1044							

WBAN : 24131

AVERAGE TEMPERATURE (°F) 2000 BOISE, ID (BOI)

YEAR	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC	ANNUAL
1971	33.9	37.5	40.2	49.2	60.0	64.9	74.7	78.6	59.2	49.0	39.7	30.2	51.4
1972	30.9	36.5	45.5	46.7	60.6	67.6	73.5	74.5	58.8	51.7	40.5	23.8	50.9
1973	30.7	39.4	43.0	49.1	60.5	67.6	75.6	73.0	63.1	52.4	41.7	38.4	52.9
1974	29.4	38.7	42.6	49.7	55.4	71.7	73.8	71.7	65.3	52.2	41.7	33.2	52.1
1975	28.2	36.9	41.5	44.5	56.2	64.4	78.3	70.0	65.5	52.3	39.5	31.4	50.7
1976	32.2	34.2	37.1	47.3	59.3	62.6	73.1	67.7	64.1	50.8	40.9	29.3	49.9
1977	19.0	33.8	39.8	54.1	53.7	70.2	72.7	73.6	62.0	53.2	39.6	37.3	50.8
1978	37.0	38.2	48.7	48.5	54.3	64.5	72.8	69.9	61.4	52.8	36.7	27.0	51.0
1979	16.2	34.3	43.2	48.7	57.8	66.7	74.1	71.2	67.3	54.4	34.7	35.8	50.4
1980	30.3	39.8	41.1	52.6	57.2	62.6	72.9	67.2	62.6	51.6	39.8	33.1	50.9
1981	33.9	36.8	44.5	50.3	54.7	63.2	71.0	74.2	63.7	48.7	44.0	35.3	51.7
1982	24.8	30.0	41.3	45.2	54.9	65.8	70.1	72.7	60.4	50.9	36.0	31.5	48.6
1983	35.9	41.5	44.6	47.1	56.5	63.8	69.4	74.9	60.8	53.8	42.0	23.2	51.1
1984	21.2	30.2	41.9	45.9	54.8	61.7	74.2	75.5	60.1	46.9	39.1	22.9	47.9
1985	19.1	25.8	36.0	51.6	58.5	67.2	77.7	69.2	56.2	48.4	27.7	12.6	45.8
1986	29.4	41.0	48.0	48.3	59.1	72.0	69.6	75.9	57.4	52.6	40.4	28.0	51.8
1987	27.8	37.6	44.2	56.0	62.3	70.2	71.2	70.0	65.6	54.9	40.7	32.9	52.8
1988	26.1	37.8	42.6	52.7	57.9	70.7	74.6	71.6	61.7	59.9	40.7	27.0	51.9
1989	24.7	23.2	43.7	53.1	56.3	68.5	77.0	70.0	63.3	51.2	39.4	30.4	50.1
1990	34.2	34.1	44.3	54.7	55.7	66.9	76.2	74.0	69.9	51.0	41.2	18.1	51.7
1991	24.4	41.6	43.0	48.3	54.9	62.6	75.7	76.6	65.8	51.8	37.4	31.7	51.2
1992	33.1	42.1	48.9	54.9	64.3	69.8	71.4	73.9	63.4	54.4	34.5	28.5	53.3
1993	24.8	28.9	41.7	48.1	63.1	61.9	65.0	68.6	63.0	53.2	32.8	33.9	48.7
1994	32.7	34.7	46.1	52.6	61.0	67.9	77.0	76.1	66.8	50.3	32.6	30.4	52.4
1995	36.2	41.5	43.6	48.2	56.9	63.9	73.4	71.2	65.7	49.2	44.4	33.1	52.3
1996	32.5	35.1	44.2	50.0	55.4	66.7	76.7	74.8	61.8	52.4	41.3	36.3	52.3
1997	32.1	36.8	45.4	48.9	62.9	66.0	72.8	75.6	67.7	52.0	43.0	31.2	52.9
1998	38.9	40.2	44.3	49.9	56.3	63.4	79.2	76.7	69.8	51.7	43.7	30.7	53.7
1999	35.3	37.0	43.8	47.5	55.8	66.3	73.7	75.1	64.0	54.3	46.9	31.9	52.6
2000	34.2	41.7	43.4	54.3	59.7	68.6	76.1	75.9	63.0	52.3	32.7	31.1	52.8
POR= 101 YRS	29.7	35.6	42.4	49.8	57.8	65.5	74.3	72.3	62.9	52.3	40.1	31.5	51.2

published by: NCDC Asheville, NC

WBAN : 24131

Table 3. 30-year temperature data for Boise, Idaho (National Climatic Data Center).

TABLE 4.

Begin Date	End Date	Days	Minutes/Day (at rate)	Total Minutes	Rate (gal./min.)	Gallons Produced	Acre Feet	Cumulative Acre Feet	Wells in Operation (assumed combinations)	V-Notch Weir Chart Reading
9/22/93	10/17/93	25	960	24,000	140	3,360,000	10.31	6.63	Silkey flow, Tiegs flow	0.32
9/22/93	10/17/93	25	480	12,000	72	864,000	2.65	9.28	Tiegs flow	0.20
10/17/93	10/22/93	5	960	4,800	292	1,401,600	4.30	13.58	Silkey flow, Tiegs pumping	0.47
10/17/93	10/22/93	5	480	2,400	90	216,000	0.66	14.25	Silkey flow	0.25
10/25/93	11/7/93	13	960	12,480	292	3,644,160	11.18	25.43	Silkey flow, Tiegs pumping	0.47
10/25/93	11/7/93	13	480	6,240	90	561,600	1.72	27.15	Silkey flow	0.25
11/10/93	11/23/93	13	960	12,480	292	3,644,160	11.18	38.34	Silkey flow, Tiegs pumping	0.47
11/10/93	11/23/93	13	480	6,240	140	873,600	2.68	41.02	Silkey flow, Tiegs flow	0.30
11/23/93	11/26/93	3	960	2,880	386	1,111,680	3.41	44.43	All wells pumping	0.51
11/23/93	11/26/93	3	480	1,440	292	420,480	1.29	45.72	Silkey flow, Tiegs pumping	0.47
11/29/93	12/16/93	17	960	16,320	386	6,299,520	19.33	65.05	All wells pumping	0.52
11/29/93	12/16/93	17	480	8,160	292	2,382,720	7.31	72.36	Silkey flow, Tiegs pumping	0.47
12/16/93	12/31/93	15	1440	21,600	386	8,337,600	25.59	97.95	All wells pumping	0.52
12/16/93	*1/15/94*	26	1440	37,440	386	14,451,840	44.35	142.30	All wells pumping	0.52
1/16/94	2/11/94	26	1440	37,440	386	14,451,840	44.35	186.65	All wells pumping	0.52-0.55
2/12/94	2/24/94	13	960	12,480	386	4,817,280	14.78	201.44	All wells pumping	0.52
2/12/94	2/24/94	13	480	6,240	292	1,822,080	5.59	207.03	Silkey flow, Tiegs pumping	0.47
2/25/94	3/1/94	5	1440	7,200	292	2,102,400	6.45	221.81	Silkey flow, Tiegs pumping	0.47
3/2/94	3/14/94	13	960	12,480	292	3,644,160	11.18	233.00	Silkey flow, Tiegs pumping	0.47
3/2/94	3/14/94	13	480	6,240	211	1,316,640	4.04	237.04	Tiegs pumping	0.37
3/15/94	3/18/94	4	1440	5,760	386	2,223,360	6.82	243.86	All wells pumping	0.52
3/19/94	3/20/94	2	960	1,920	386	741,120	2.27	246.14	All wells pumping	0.52
3/19/94	3/20/94	2	480	960	140	134,400	0.41	246.55	Silkey flow, Tiegs flow	0.32
3/21/94	3/25/94	5	1440	7,200	386	2,779,200	8.53	255.08	All wells pumping	0.52
3/26/94	4/4/94	10	960	9,600	386	3,705,600	11.37	266.45	All wells pumping	0.50
/26/94	4/4/94	10	480	4,800	140	672,000	2.06	268.51	Silkey flow, Tiegs flow	0.32
/5/94	4/8/94	4	1440	5,760	386	2,223,360	6.82	275.33	All wells pumping	0.50
/9/94	5/5/94	27	840	22,680	386	8,754,480	26.87	302.20	All wells pumping	0.50
/9/94	5/5/94	27	600	16,200	140	2,268,000	6.96	309.16	Silkey flow, Tiegs flow	0.32
/6/94	5/16/94	11	1440	15,840	90	1,425,600	4.38	313.54	Silkey flow	0.20-0.25
/17/94	5/23/94	7	980	6,860	386	2,647,960	8.13	321.66	All wells pumping	0.52
/17/94	5/23/94	7	480	3,360	140	470,400	1.44	323.11	Silkey flow, Tiegs flow	0.33
/24/94	6/16/94	23	1440	33,120	90	2,980,800	9.15	332.25	Silkey flow	0.19-0.25
/17/94	7/14/94	28	1440	40,320	90	3,628,800	11.14	343.39	Silkey flow	0.20
/15/95	*8/31/95*	*46*	*1440*	*66,240*	*90*	*5,961,600*	*18.30*	*361.69*	*Silkey flow (1995)*	*0.18-0.22*
/1/95	*9/21/95*	*21*	*1440*	*30,240*	*140*	*4,233,600*	*12.99*	*374.68*	*Silkey flow, Tiegs flow (1995)*	*0.30*

TABLE 4

Table 4. Calculated annual production volume from the Flora geothermal wells. Tabulated seasonal pumping/flowing discharge rates from the Flora geothermal wells for a one-year period using measured flow/pump rates of the individual wells and pump/flow cycles inferred from discharge weir data and interviews with system operators. Estimated annual volume pumped is 375 acre feet. Estimate is considered to be conservatively low because of the relatively warm temperature year of analysis and the omission of some water production from the Office well from the analysis.

TABLE 5.

Water Source	Rate (gpm)
Silkey pumping	138
Tiegs pumping	211
Office pumping	37
Silkey flowing	93
Tiegs flowing	72
Office flowing	25*
Silkey flowing, Tiegs flowing, Office pumping	165
Silkey pumping, Tiegs flowing, Office pumping	202
Silkey pumping, Tiegs pumping, Office pumping	386
Silkey flowing, Tiegs pumping, Office pumping	329*
Silkey flowing, Tiegs flowing, Office flowing	165*
Silkey pumping, Tiegs flowing, Office flowing	234*
Silkey pumping, Tiegs pumping, Office flowing	374*
Silkey flowing, Tiegs pumping, Office flowing	329*
* = estimated	

Table 5. Tabulated natural flow and pumping discharge rates from the Flora geothermal wells in northwest Boise. On-site measurements during winter 2001 using calibrated flow-meters except where estimated. These data serve as the basis for the estimated annual production volume of Table 4.

TABLE 6.

Begin Date	End Date	Days	Minutes/Day (at rate)	Total Minutes	Rate (gal./min.)	Gallons Produced	Acre Feet	Cumulative Acre Feet	Wells in Operation (assumed combinations)	V-Notch Weir Chart Reading
9/22/93	10/17/93	25	960	24,000	66	1,584,000	4.86	6.63	Silkey flow, Tiegs flow	0.32
9/22/93	10/17/93	25	480	12,000	20	240,000	0.74	7.37	Tiegs flow	0.20
10/17/93	10/22/93	5	960	4,800	171	820,800	2.52	9.89	Silkey flow, Tiegs pumping	0.47
10/17/93	10/22/93	5	480	2,400	36	86,400	0.27	10.15	Silkey flow	0.25
10/25/93	11/7/93	13	960	12,480	171	2,134,080	6.55	16.70	Silkey flow, Tiegs pumping	0.47
10/25/93	11/7/93	13	480	6,240	36	224,640	0.69	17.39	Silkey flow	0.25
11/10/93	11/23/93	13	960	12,480	171	2,134,080	6.55	23.94	Silkey flow, Tiegs pumping	0.47
11/10/93	11/23/93	13	480	6,240	56	349,440	1.07	25.01	Silkey flow, Tiegs flow	0.30
11/23/93	11/26/93	3	960	2,880	210	604,800	1.86	26.87	All wells pumping	0.51
11/23/93	11/26/93	3	480	1,440	171	246,240	0.76	27.62	Silkey flow, Tiegs pumping	0.47
11/29/93	12/16/93	17	960	16,320	220	3,590,400	11.02	38.64	All wells pumping	0.52
11/29/93	12/16/93	17	480	8,160	171	1,395,360	4.28	42.92	Silkey flow, Tiegs pumping	0.47
12/16/93	12/31/93	15	1440	21,600	220	4,752,000	14.58	57.51	All wells pumping	0.52
12/16/93	*1/15/94*	26	1440	37,440	220	8,236,800	25.28	82.78	All wells pumping	0.52
1/16/94	2/11/94	26	1440	37,440	242	9,060,480	27.81	110.59	All wells pumping	0.52-0.55
2/12/94	2/24/94	13	960	12,480	220	2,745,600	8.43	119.02	All wells pumping	0.52
2/12/94	2/24/94	13	480	6,240	171	1,067,040	3.27	122.29	Silkey flow, Tiegs pumping	0.47
2/25/94	3/1/94	5	1440	7,200	171	1,231,200	3.78	130.72	Silkey flow, Tiegs pumping	0.47
3/2/94	3/14/94	13	960	12,480	171	2,134,080	6.55	137.27	Silkey flow, Tiegs pumping	0.47
3/2/94	3/14/94	13	480	6,240	95	592,800	1.82	139.09	Tiegs pumping	0.37
3/15/94	3/18/94	4	1440	5,760	220	1,267,200	3.89	142.97	All wells pumping	0.52
3/19/94	3/20/94	2	960	1,920	220	422,400	1.30	144.27	All wells pumping	0.52
3/19/94	3/20/94	2	480	960	66	63,360	0.19	144.47	Silkey flow, Tiegs flow	0.32
3/21/94	3/25/94	5	1440	7,200	220	1,584,000	4.86	149.33	All wells pumping	0.52
3/26/94	4/4/94	10	960	9,600	200	1,920,000	5.89	155.22	All wells pumping	0.50
3/26/94	4/4/94	10	480	4,800	66	316,800	0.97	156.19	Silkey flow, Tiegs flow	0.32
4/5/94	4/8/94	4	1440	5,760	200	1,152,000	3.54	159.73	All wells pumping	0.50
4/9/94	5/5/94	27	840	22,680	200	4,536,000	13.92	173.65	All wells pumping	0.50
4/9/94	5/5/94	27	600	16,200	66	1,069,200	3.28	176.93	Silkey flow, Tiegs flow	0.32
5/6/94	5/16/94	11	1440	15,840	28	443,520	1.36	178.29	Silkey flow	0.20-0.25
5/17/94	5/23/94	7	980	6,860	220	1,509,200	4.63	182.92	All wells pumping	0.52
5/17/94	5/23/94	7	480	3,360	71	238,560	0.73	183.65	Silkey flow, Tiegs flow	0.33
5/24/94	6/16/94	23	1440	33,120	27	894,240	2.74	186.40	Silkey flow	0.19-0.25
6/17/94	7/14/94	28	1440	40,320	20	806,400	2.47	188.87	Silkey flow	0.20
7/15/95	*8/31/95*	*46*	*1440*	*66,240*	*22*	*1,457,280*	*4.47*	*193.34*	*Silkey flow (1995)*	*0.18-0.22*
9/1/95	*9/21/95*	*21*	*1440*	*30,240*	*56*	*1,693,440*	*5.20*	*198.54*	*Silkey flow, Tiegs flow (1995)*	*0.30*

Table 6. Calculated annual production volume from the Flora discharge weir. Tabulated seasonal discharge rates from the Flora discharge weir for a one-year period. Continuous data from the weir's chart recorder for the period beginning 9/22/93 and ending 7/14/94 were used. Data from the following year, for the period beginning 7/15/95 to 9/21/95, were used in lieu of missing data for the same period in 1994 (italics). The estimated annual production volume (199 acre feet) is known to be significantly low owing to seepage losses from the geothermal effluent collection ditches (see text).

TABLE 7.

2001 Totals		
Location/Date	**Totalizer (gal.) / Period Usage (gal.)**	**Total Acre-Feet**
Silkey (Shed) Bypass		
January 4, 2001	34,403,000	
August 31, 2001	41,765,000	
	7,362,000	22.6
Silkey (Shed) Pump		
April 13, 2001	42,496,600	
January 9, 2002	61,942,000	
	19,445,400	59.7
Tiegs (36th St.)		
January 5, 2001	75,632,000	
January 8, 2002	145,156,000	
	69,524,000	213.4
Office (House)		
March 5, 2001	12,482,700	
February 1, 2002	20,167,800	
	7,685,100	23.6
		319.3

2000 Totals		
Silkey (Shed) Bypass		
December 29, 1999	8,767,000	
December 21, 2000	34,403,000	
	25,636,000	78.7
Silkey (Shed) Pump		
December 22, 1999	7,597,700	
December 21, 2000	28,354,200	
	20,756,500	63.7
Tiegs (36th St.)		
December 22, 1999	17,077,000	
December 21, 2000	71,628,000	
	54,551,000	167.4
Office (House)		
December 22, 1999	2,536,000	
December 21, 2000	9,743,300	
	7,207,300	22.1
		331.9

Table 7. Geothermal water production volumes for 2000 and 2001 as measured and reported by the Flora Company. Data condensed from Flora spreadsheets (Appendix C). Annual production volumes are considered low (see report text for details).

APPENDIX A.

United States Geological Survey's
"Site Schedules"and site-visit field-notes for the
Flora Co. Tiegs (36th Street or Millstead),
Silkey #1 (Shed), and **"Office"** (Silkey #2 or House)
Low-Temperature Geothermal Wells.

A. USGS "Site Schedule" for the
Flora Co. "36th Street" (Millstead)
Low-Temperature Geothermal Well. 1978

Milstead well (by ~~[illegible]~~ road?)

FORM NO. _____ SITE NO. 04N-02E-28cbbb1

IDAHO DISTRICT
GEOLOGICAL SURVEY
WATER RESOURCES DIVISION

Recorded by D.K. O'DELL Date 10-26-78

SITE SCHEDULE

Check One ✓ English ___ Metric Units

GENERAL SITE DATA (0)

Site Ident No 5: 4,3,3,9,1,8,1,1,6,1,3,5,7,0,1 19 | RG Number R-0 | Transaction T- (A) D M V — add, delete, modify, verified

Site-Type 2- C D H I M P T (W) — collector, drain, sinkhole, connector, multiple, pond, tunnel or shaft, well | Data Reliability 3- (C) U L M — field checked, unchecked, location not accurate, minimal data | Reporting Agency 4- U,S,G,S

Project No. 5- 1,D,-7,0-0,7,3 | District 6- 1,6 | State 7- 1,6 | County (or town) ADA | 8- 0,0,1

Latitude 9- 4,3,9,1,8 (deg min sec) | Longitude 10- 1,1,6,1,3,5,0 (deg min sec) | Lat-Long Accuracy 11- (S) F T M — sec, 5 sec, 10 sec, Min

Local Number 12- 04W 02E 28CBBL | Land Net Loc. 13- NW NW SW S 28 T 04N R 02E B — 1/4 1/4 1/4 section, township, range, meridian

Location Map 14- BOISE NORTH | Scale 15- 24,000

Altitude 15- 2,6,9,5.,0,0 | Method of Measurement 17- A L (M) — altimeter, level, map | Accuracy 18- 20.

Topo Setting 19- D C E (F) H K L Ø P S T U V W — depression, stream channel, dune, flat, hilltop, sink, swamp, offshore, pediment, hillside, terrace, undulating, valley flat, upland draw | Hydrologic Unit (OWDC) 20- 1,7,0,5,0,1,1,4

Date of First Construction/Completion 21- 0,5/0,1/1,9,2,7 (month day year) | Use of Site 23- A D E G H Ø M P R S T U (W) X Z — anode, drain, geothermal, seismic, heat, observation, mine, oil or gas, recharge, repress, test, unused, withdrawal, waste, destroyed

Use of Water 24- A B C D E F H (I) M N P R S T U Y Z — air cond., bottling, commercial, dewater, power, fire, domestic, irrigation, medicinal, industrial, public supply, recreation, stock, institution, unused, desal, other

Secondary Water Use 25- C | Tertiary Use of Water 26- | Depth of Hole 27- 1,2,4,0.,0,0 | Depth of Well 28- 1,2,4,0.,0,0 | Source of Depth Data ① 29- Ø

Water Level 30- -6,8.,6,4 | Data Measured 31- 10/23/1,9,4,7 (month day year) | Source ① 33- S

Method of Measurement 34- A C E (G) H L M R S T V Z — airline, calibrated, estimated, pressure gage, calibrated, pressure gage, geophysical, logs, manometer, reported, steel tape, electric, calibrated, steel tape, electric tape, other

Site Status 37- D E F G H Ø P R S T V X Z — dry, recently flowing, flowing, nearby, recently flowing, nearby, obstruction, pumping, recently pumped, nearby, pumping, nearby, recently pumped, foreign substance, surface water affects, other | Activity Status 273-

Source of Geohydrologic Data ① 36- S | Pump Used 35- M — or | Measuring Point 200- .0.,5.0 | Measuring Point Date 201- 10/23/1,9,4,7 (month day year)

OWNER IDENTIFICATION (1)

R-158 | T- (A) D M — add, delete, modify | Date of Ownership 158 # 10/23/1,9,4,7 (month day year)

Name: Last 161- MILSTEAD | First 162- FLORAL | Middle Initial 163-

OTHER SITE IDENTIFICATION NUMBERS (1)

R-189 | T- A D M — add, delete, modify | Ident 190 # | Assigner 191-

New Card Same R & T | Ident 190 # | Assigner 191-

SITE VISIT DATA (1)

R-186 | T- (A) D M — add, delete, modify | Date of Visit 187# 10/23/1,9,4,7 (month day year) 23/12/1969 | Name of Person 188- WAGE R L DION NP

FIELD WATER QUALITY MEASUREMENTS (1)

R-192 | T- (A) D M — add, delete, modify | Date 193 # 03/24/1,9,2,0 (month day year) | Geohydrologic Unit 195 # 1,1,2,1,D,H,O

New Card Same R thru 195

Temperature 196 # 0,0,0,1,0 | Degrees C 197- 4,5.5

Conductance 196 # 0,0,0,9,5 | µ Mhos 197- 2,7,0.

Other (STORET) Parameter 196 # | Value 197-

Other (STORET) Parameter 196 # | Value 197-

FOOT NOTES:

① Source of Data Codes:

S (reporting agency) D (driller) Ø (owner) A (other gov't. reported) R (other reported) L (logs) G (geologist) Z (other)

PC 6/15/79

SITE DATA UPDATED/STORED

GWSI DATE 11/3/80 AA

UNIT 2/29/88 AA

WELL CONSTRUCTION DATA (1)

R = 56 * | T = (A) D M * (add, delete, modify) | Entry No 59 # 1 * | Date of Construction Completion 60 = 05/01/1927 * (month / day / year) | Source of ① Const. Data 64 = Ø *

Name of Contractor/Driller 63 = *

Method of Construction 65 = A (air-, rotary) B (bored, or augered) (C) (cable-, tool) D (dug) H (hydraulic, rotary) J (jetted) P (air-per-cussion) R (reverse, rotary) T (trenching) V (driven) W (drive, wash) Z (other) *

Finish 66 = C (porous, concrete) F (gravel w. perf) G (gravel, screen) H (horizontal, gallery) Ø (open, end) P (perforated, or slotted) S (screen) T (sand point) W (walled) (X) (open, hole) Z (other) *

Type of Seal 67 = B (bentonite) C (clay) G (cement, other grout) Z *

Bottom of Seal 68 = *

Method of Development 69 = A (air-lift, pump) B (bailed) C (compressed air) J (jetted) N (none) P (other, pump) S (surged) Z (other) *

Number of Hours in Development 70 = *

Special Treatment During Development 71 = C (chemicals, dry ice) D (explosives, deflocculent) E (hydrofracturing) F (mechanical) H (other) M Z *

DIMENSIONS OF THE HOLE CONSTRUCTED (2)

R = 72 * | T = (A) D M * (add, delete, modify) | Construction Entry No 59 # 1 *

New Card for Each Hole Segment Same R, T & Field 59

Top of Hole Segment Below LSD	Bottom of Hole Segment below LSD	Diameter of Hole Segment
73 # 0.00 *	74 = 1240.00 *	75 = 4.00 *
73 # *	74 = *	75 = *
73 # *	74 = *	75 = *
73 # *	74 = *	75 = *
73 # *	74 = *	75 = *

CASING SCHEDULE (2)

R = 75 * | T = (A) D M * (add, delete, modify) | Construction Entry No 59 # 1 *

New Card for Each Casing With Same R, T & Field 59

Top of Casing Segment Below LSD	Bottom of Casing Segment Below LSD	Diameter of Casing Segment	Casing Material ⑤	Thickness of Casing
77 # 0.00 *	78 = 1900.00 *	79 # 4.00 *	80 = S *	81 = *
77 # *	78 = *	79 # *	80 = *	81 = *
77 # *	78 = *	79 # *	80 = *	81 = *
77 # *	78 = *	79 # *	80 = *	81 = *
77 # *	78 = *	79 # *	80 = *	81 = *

OPENINGS SCHEDULE (2)

R = 82 * | T = (A) D M * (add, delete, modify) | Construction Entry No 59 # 1 *

New Card for Each Open Section With Same R, T and Field 58

	(Openings Data)	(Openings Data)	(Openings Data)
Top of Section Below LSD	83 # 400.00 *	83 # *	83 # *
Bottom of Section Below LSD	84 = 1240.00 *	84 = *	84 = *
Type of Openings ⑥	85 = X *	85 = *	85 = *
Type of Material ⑦	86 = *	86 = *	86 = *
Diameter of Open Section	87 = 4.00 *	87 = *	87 = *
Width of Opening	88 = *	88 = *	88 = *
Length of Opening	89 = *	89 = *	89 = *

FOOT NOTES:

① Source of Data Codes:

S (reporting agency) D (driller) Ø (owner) A (other gov't agency) R (other reported) L (logs) G (geologist) Z (other)

⑤ Casing Material Codes

B (brick) C (concrete) G (galv. iron) I (wrought iron) M (other metal) P (PVC or plastic) R (rock or stone) S (steel) T (tile) U (coated steel) W (wood) Z (other)

⑥ Type of Openings Codes

F (fracture) L (louvered, shuttered) M (mesh) P (perforated or slotted) R (wire-wound) S (screen, (unknown)) T (sand point) W (walled) X (open, hole) Z (other)

⑦ Type of Material Codes for Open Sections

B (brass or, bronze) C (concrete) G (galv. iron) I (wrought iron) M (other metal) P (PVC or, plastic) R (stainless steel) S (steel) T (tile) Z (other)

PRODUCTION DATA (1)

R = 134 (146) * (flowing, pumped)
T = (A) D M * (add, modify)
Entry No 147# 1 *
Date 148 = 10/23/1947 * (day, year)
Discharge: 150 = 189.80 *
Source of Data ① 161 = S *

Method of Measurement 152 = B C E F M O P R T U V (W) Z *
(bailer, current meter, estimated, flume, totaling meter, orifice, pitot-tube, reported, trajectory, venturi, volumetric, weir, other)

Production Level 153 = *
Static Level 154 = *
Source ① of Data 155 = *
Specific Capacity 272 = *

Method of Measurement 156 = A C E G H L M R S T V Z *
(airline, calibrated, estimated, pressure, calibrated, geophysical, manometer, reported, steel electric, calibrated, other airline, gage pressure gage, tape, steel tape, electric tape)

Pumping Period 157 = *

LIFT DATA (1)

R = 42 *
T = A D M * (add, delete, modify)
Type of Lift 43 # A B C J P R S T U Z * (air, bucket, centrifugal, jet, piston, rotary, submergible, turbine, unknown, other)
Entry No 254 # *

Pump Intake Setting 44 = *
Type of Power 45 = D E G H L N W Z * (diesel, electric, gasoline, hand, LP gas, natural gas, windmill, other)

Date 38 = / / * (month, day, year)
Horsepower 46 = *

MAJOR PUMP DATA (2)

R = 47 *
T = A D M * (add, delete, modify)
Type of Lift 43 # *
Lift Entry No 254 # *
Manufacturer of Pump 48 = *

Serial No of Pump 49 = *
Name of Power Company 50 = *

Power Company Account No 51 = *
Power Meter No 52 = *
Pump Rating 53 = *

Person or Company Who Maintains the Pump 54 = *
Additional Lift 255 = *
Rated Pump Capacity 268 = *

STANDBY POWER DATA (2)

(See LIFT DATA for codes of fields 43 and 56 below)

R = 55 *
T = A D M * (add, delete, modify)
Type of Lift 43 # *
Type of Power 56 = *
Horsepower 57 = *
Lift Entry No 254 # *

AVAILABLE LOG DATA (1)

R = 198 *
T = A D M * (add, delete, modify)
New Card for Each Log Type Same R & T

Type of Log ②	Begin Depth	End Depth	Source of Data ①
199 # *	200 = *	201 = *	202 = *
199 # *	200 = *	201 = *	202 = *
199 # *	200 = *	201 = *	202 = *
199 # *	200 = *	201 = *	202 = *

WATER QUALITY DATA COLLECTION (1)

R = 114 *
T = (A) D M * (add, delete, modify)
Begin Year 115 # 1970 *
End Year 116 = 1970 *
Source Agency 117 = USGS *
Frequency of Collection ③ 118 = 0 *
Network Site 257 # 3 *
Type of Analyses ④ 120 = E *

WATER LEVEL DATA COLLECTION (1)

R = 121 *
T = (A) D M * (add, delete, modify)
Begin Year 122 # 1947 *
End Year 123 = 1947 *
Source Agency 124 = USGS *
Frequency of Collection ③ 125 = 0 *
Network Site 258 # 3 *

WATER PUMPAGE/WITHDRAWAL DATA COLLECTION (1)

R = 127 *
T = A D M * (add, delete, modify)
Begin Year 128 # *
End Year 129 = *
Source Agency 130 = *
Frequency of Collection ③ 131 = *
Network Site 259 = *
Method of Collection 133 = C E M Z * (calculated, estimated, metered, other)

OTHER DATA AVAILABLE (1)

R = 180 *
T = A D M * (add, delete, modify)
Type of Data 181 # *
Loc 182 = C D Z * (cooperator, district, other)
Format 261 = F M P Z * (files, machine, published, other readable)

New Card Same R & T
Type of Data 181 # *
Loc 182 = C D Z *
Format 261 = F M P Z *

FOOT NOTES:

① Source of Data Codes:
S (reporting agency) D (driller, owner, other gov't.) Ø (other reported) A (logs, geologist, other) R L G Z

② Type of Log Codes
A (time) B (collar) C (caliper) D (driller's conduct) E (electric) F (fluid) G (geologist) H (magnetic) I (induction) J (gamma ray) K
L (laterlog) M (microlog) N (neutron) Ø (μ later) P (photo) Q (radio-active) S (sonic) T (temp.) U (gamma fluid) V (other gamma velocity) Z

③ Frequency of Collection Codes
A (annual) B (bi-monthly) C (continuous) D (daily) F (semi-monthly) I (intermittent) M (monthly) Ø (one time only) Q (quarter annual) S (semi-annual) W (weekly) Z (other)

④ Type of Quality Analyses Codes
A (physical) B (common chemical) C (trace elements) D (pesticides) E (nutrients) F (sanitary) G (codes B&D) H (codes B&E) J (codes B&F) K (codes D&E) L (codes C,D&E) M (all or most) Z (other)

GEOHYDROLOGIC UNIT DESCRIPTIONS (1)

R = 90 * | T = (A) D M * (add, delete, modify) | Entry No 256 # 1 * | Depth to Top 91 = * | Depth to Bottom 92 = *

304=P*

Unit Identifier 93 = 112IDAO * | Lithology 96 = * | Lithologic Modifier 97 = *

AQUIFER DATA (2)

R = 94 * | T = (A) D M * (add, delete, modify) | Geohydrologic Unit Entry No 256 # 1 *

Date 95 # 08/12/1969 * (month day year) | Water Level 126 = * | % Water Contributed 132 = 100 *

GEOHYDROLOGIC UNIT DESCRIPTIONS (1)

R = 90 * | T = A D M * (add, delete, modify) | Entry No 256 # * | Depth to Top 91 = * | Depth to Bottom 92 = *

Unit Identifier 93 = * | Lithology 96 = * | Lithologic Modifier 97 = *

AQUIFER DATA (2)

R = 94 * | T = A D M * (add, delete, modify) | Geohydrologic Unit Entry No 256 # *

Date 95 # / / * (month day year) | Water Level 126 = * | % Water Contributed 132 = *

PERTINENT REMARKS

R = 183 * | T = (A) * (add)

New Card Same R&T

311#1* 311#2*

185 = 'Latitude and Longitude Refined From '* FT '*

185 = '433918 and 116367 '* '*

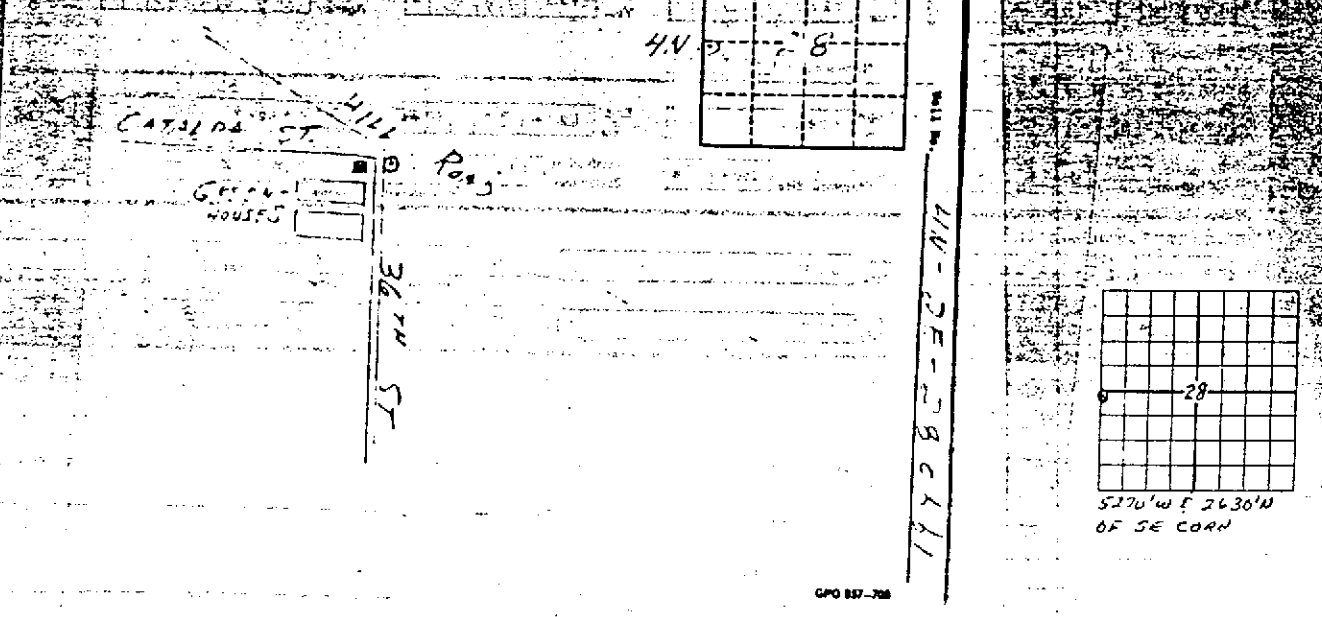
185 = '*

NOTES:

R = 183* T = A* 311#3* 183 = 'LAT, LONG AND DISTANCE'*

R = 183* T = A* 311#4* 183 = 'FROM SEC COR HAS BEEN'*

R = 183* T = A* 311#5* 183 = 'DIGITIZED'*



GPO 857-708

FORM NO. 9-1904-E

U.S. DEPT. OF INTERIOR
GEOLOGICAL SURVEY
WATER RESOURCES DIVISION

GROUND WATER SITE INVENTORY
WATER-LEVEL DATA

gage = ft(x) = 2.31 ft / #psi

COUNTY Ada LOCAL WELL NO. 04N 02E 28CBBB1 OWNER Milstead Floral

Site Ident. No. 433918116135701 (5–19) Water Level Data R=234 T=A Method of W/L Selection from Recorder 240= M N A P (max daily value; min daily value; 12:00 Midnight noon Reading)

Meas. Point R=320 T= A D M (add delete modify) M. P. Begin Date 321= 01/29/1989

M. P. End Date 322= M. P. Height 323= 0.00 ABOVE BELOW LSD AT LSD

M.P. Remark 324= M.P. NO. 2- TOP OF PIPE AT OWNERS PRESSURE GAGE

Date M.P. Punched By

DATE	WATER LEVEL (BELOW LSD)	STATUS	METHOD	HOLD	CUT	DEPTH BELOW LSD	MEAS BY TIME	REMARKS	DATE PUNCHED
235 # 08/28/1989	237 = -14.32	238 = E	239 = H	6.2 psi x 2.31 = 14.32			1620	owners gage = 4.2 psi 10 min. shut in	8/24
235 # 09/11/1989	237 = -16.86	238 = E	239 = H	7.3 x 2.31 = 16.86			1355	flowing on arrival / owners shut in 10 min	page 5.8
235 # 09/22/1989	237 = -18.48	238 = E	239 = H	8.0 x 2.31 = 18.48			1706	shut-in 10 min	
235 #	237 =	238 =	239 =						
235 # 10/10/1989	237 = -20.56	238 = E	239 = H	8.9 x 2.31 = 20.56			1417	shut-in 10 min	
235 #	237 =	238 =	239 =						
235 # 10/20/1989	237 = -19.40	238 = E	239 = H	8.4 x 2.31 = 19.40			1320	shut in 10 mins	
235 #	237 =	238 =	239 =						
235 # 11/07/1989	237 = -24.49	238 = E	239 = H	16.6 x 2.31 = 24.49			1110	shut in 10 min.	entered
235 #	237 =	238 =	239 =						
235 # 11/27/1989	237 = -26.10	238 = E	239 = H	11.3 x 2.31 = 26.10			1510	shut-in 10 min.	
235 #	237 =	238 =	239 =						
235 # 12/20/1989	237 = -27.49	238 = E	239 = H	11.9 x 2.31 = 27.49			1515	shut-in 10 min.	
235 #	237 =	238 =	239 =						
235 #	237 =	238 =	239 =						
235 #	237 =	238 =	239 =						
235 #	237 =	238 =	239 =						
235 #	237 =	238 =	239 =						
235 #	237 =	238 =	239 =						

Site Status 238= D E F G H N O P R S T V W X Z

dry, recently flowed, flowing, nearby, recently flowing, nearby, recently discontinued flowing, measurement, obstruction, pumping, recently pumped, nearby, pumping, nearby, recently pumped, foreign substance, well, destroyed, surface, other water effects

Method of Measurement 239= A C E G H L M R S T V Z

airline, calibrated airline, estimated, pressure gage, calibrated, pressure gage, geophysical logs, manometer, reported, steel tape, electric tape, calibrated, electric tape, other

B. USGS "Site Schedule" for the **Flora Co. "Shed"** (Silkey #1) Low-Temperature Geothermal Well, 1988.

Stikey wells

FORM NO. 9-1904
Revised May 1987

U.S. DEPT. OF THE INTERIOR
GEOLOGICAL SURVEY
WATER RESOURCES DIVISION

WELL NO. 04N 02E 29DAA
DAA1

County Ada

Recorded by _____
Date _____

SITE SCHEDULE

2-GENERAL SITE DATA (R0)

Reporting Agency (4) USGS
Site Ident. No. (1) 433919116355901
Project No. (5) ID-88-109
Station Name (32) 04N 02E 29 DAA1
Latitude (9) 433919 (deg min sec)
Longitude (10) 1116358 (deg min sec)
Lat-Long Accuracy (11) S (sec, 5 sec, 10 sec, min)
District (6) 16
State (7) 16
County (8) 001
Land Net Location (30) NE NE SE S29 T04N R02E (¼ ¼ ¼ Section Township Range)
Location Map (14) BOISE NORTH
Scale (15) 24000
Altitude (16) 2695.
Method of Measurement (17) A L (M) (altimeter, level, map)
Accuracy (18) 005
Hydrologic Unit (OWDC) (20) 17050114
Drainage Basin Code (801*)
Topographic Setting (19) (A alluvial fan, B playa, C stream channel, D depression, E dunes, F flat, G flood plain, H high relief, I island, L lake, M marsh, O open slope, P pediment, S shore, T terrace, U undulating, V valley, W flat, X other)
Agency Use (803*) A I (O) (active, inactive, inventory discont., data only)
Date Inventoried (711*) 10-23-1947 (Month Day Year)
Station Type (802*) 5 6 (sampling, well, other, explanation)
Data Type (804*) 1 2 (WL cont., WL int., other explanation)
Instruments (805*) 1 2 (digital recorder, graphic recorder, other explanation)
Remarks (806*)
Data Reliability (3) C (checked, unchecked, location not accurate, minimal data)
Site Type (2) C D E H I M O P T (W) X (collector, drain, excavation, sink, connector, tunnel, well, test hole or well, pit, prod., or shaft, other)
Date of Construction (21) Fall 10-00-1921 (Date Month Day Year)
Use of Site (23) A C D E G H M O P R S T U (W) X Z (anode, standby, drain, geothermal, seismic, heat, mine, observation, oil or gas, recharge, repress, test, unused, withdrawal, waste, destroyed)
Secondary Site Use (301) E
Tertiary Site Use (302)
Use of Water (24) (A air cond., B bottling, C commercial, D domestic, E power, F fire, H irrigation, I industrial cooling, J mining, K medicinal, M municipal, N industrial, P public supply, R recreation, S stock, T institution, U unused, V desal, Z other)
Secondary Water Use (25) H
Tertiary Water Use (26)
Aquifer Type (713*) ① U N C M X
Primary Aquifer (714*) 1210HP
Depth of Hole (27)
Depth of Well (28) 1200.
Source of Depth Data (29) ② Z
Water Level (30)
Date Measured (31) (Month Day Year)
Source of Water Level Data (33) ③ Z
Method of Measurement (34) A B C E G H L M N R S T V Z (airline, analog, calibrated airline, estimated, pressure gage, calibrated pressure gage, geophysical logs, manometer, non-rec. gage, reported, steel electric tape, calibrated, electric tape, other)
Site Status (37) D E F G H I J N O P R S T V W X Z (dry, recently flowing, flowing, nearby flowing, nearby recently flowing, injector site, inj-site monitor, discon., mass. obstruction, pumping, recently pumped, nearby pumping, nearby recently pumped, foreign substance, well destroyed, surface water effects, other)

4-CONSTRUCTION LIFT DATA (R42)

Record Type (752*) LIFT
Record Sequence No. (254*)
Motor
Motor Ser. No.
Type of Lift (43*) A B C J P R S T U Z (air, bucket, centrifugal, jet, piston, rotary, submergible, turbine, unknown, other)
Date (38) (Month Day Year)
Pole No.
Pump Intake Setting (44)
Type of Power (45) D E G H L N W Z (diesel, electric, gasoline, hand, LP gas, natural gas, windmill, other)
Horsepower (46)

MAJOR PUMP DATA (R47)

Manufacturer of Pump (48)
Serial No. of Pump (49)
Power Company (50)
Power Co. Account No. (51)
Power Meter No. (52)
Pump Rating (53)
Additional Lift (255)
Maintainer of Pump (54)
Rated Capacity (268)

STANDBY POWER DATA (R55)

Type of Power (56)
Horsepower (57)

FOOTNOTES:

① Aquifer Type
- U - Unconfined Single Aquifer
- N - Unconfined Multiple Aquifer
- C - Confined Single Aquifer
- M - Confined Multiple Aquifer
- X - Mixed (Confined & Unconfined) Multiple Aquifers

② Source of Data Codes (A other agency, B geologist, E log, M memory, O owner, R other reporting agency, S reporting other agency, Z other)

Entered by _____ Date _____

Verified by _____ Date _____

Record Type (75*) C,O,N,S Record Sequence No. (725*) Date of Construction (30) month day year

Name of Contractor (33) Source of Data (34)

Method of Construction (105) S B C D J I Y 3 4 W Z
(1)= bored or cabled dug, hydraulic jetted, air jet, rotary, augered, cable, rotary, percussion, driven, reaming, driven other than,

Casing (82) A F G H O P S T W Z
(1)= porous gravel w gravel concrete, perf., screen, horizontal open perforated, screen, gallery, and or slotted, wire wound, joint, pipe, other

Type of Seal (97) B C G S Z
(1)= bentonite, clay, cement grout, sand, other

Bottom of Seal (98) Method of Development (99) A B C J N P S Z
(1)= air-lift bailed, compressed, jetted, none, other surged, pump, pump,

No. of hrs. in Development (70) Special Treatment (71) C D E F H M Z
(1)= chemicals, dry ice, explosives, perforated, hydrofracturing, sandblast, other

4-HOLE DATA (R72)

Record Type (756*) H,O,L,E

Record Sequence No. (724*)	Sequence No. of Parent Record (59*)	Top of Hole Segment Below LSD(73*)	Bottom of Hole Segment Below LSD (74)	Diameter of Hole Segment (75)

4-CASING DATA (R76)

Record Type (758*) C,S,N,G

Record Sequence No. (725*)	Sequence No. of Parent Record (59*)	Top of Casing Segment Below LSD (77*)	Bottom of Casing Segment Below LSD (78)	Diameter of Casing Segment (79*)	Casing Material (80) ③	Thickness of Casing (81)

4-OPENINGS DATA (R82)

Record Type (760*) O,P,E,N

Record Sequence No. (726*)			
Sequence No. of Parent Record (59*)			
Depth to Top of Interval (83*)			
Depth to Bottom of Interval (84)			
Diameter of Interval (87)			
Type of Material (86) ④			
Type of Opening (85) ⑤			
Length of Opening (89)			
Width of Opening (88)			

4-MINOR REPAIRS (R164*)

Record Type (762) R,E,P,R Record Sequence No. (165*)

Nature of Repair (100) B C D I L O P S Z
(1)= blocked off, cleaned, deepened, pump intake lowered, other installed, perforated or slotted, plugged screen back, replaced, other

Date (107) month day year

Name of Contractor (169) Percentage Performance Change (170)

FOOTNOTES:

③ Source of Data Codes

A D G I M O R S Z
(1)= other driller, geologist, logs, memory, owner, reporting agency, other reported, agency,

④ Type of Material Codes for Open Section

A C I M P R S T W Z
(1)= asbestos, concrete, galv. iron, iron, metal, plastic, steel, wrought iron, other PVC or plastic, tile, other

⑤ Casing Material Codes

B C D G L M P R S T W S Z
(1)= brick, concrete, cooper, galv. iron, metal, plastic, PVC or rock or steel, stone, tile, treated wood, other steel,

⑥ Type of Openings

C L M P R S T W Z
(1)= aperture, louvered, mitered, mesh, perforated or slotted, screen, sand casing, wire wrapped, other

Record Type (700*) G,E,O Record Sequence No. (714*) 0 Parent Sequence No. (729*)

Depth to Top of Unit (91) ____ ft Depth to Bottom of Unit (92) ____ ft

Aquifer Identifier (93*) [illegible] Lithology (96) ____ Contributing Unit (304) ____
(primary, secondary, minor, unknown contributing)

Lithologic Modifier/Description (97) ____
(additional codes)

7-AQUIFER DATA (R94)

Record Type (750*) A,Q,F,R Record Sequence No. (742*) ____ Parent Sequence No. (729*) ____

Date (95*) ____ (Month Day Year) Water Level (126) ____ % of Water Contributed (132) ____

5-DISCHARGE/PRODUCTION DATA (R134,R146)

Sequence No. (147*) ____ Date (148) 10-23-1941 (Month Day Year) Type of Discharge (93*) F P (Flowing, Pumped) Discharge (150) 30.5

Source of Data (151) ____ Method of Measurement (152) A B C D E F M O P R T U V W Z
(acoustic meter, current meter, doppler meter, estimated, flume, orifice, pitot-tube meter, reported, trajectory, venturi, volumetric, weir, other)

Production Level (153) ____ ft Static Level (154) ____ ft Source of Level Data (155) ____

Method of Measurement (156) A B C E G H L M N R S T V Z
(airline, analog, calibrated airline, estimated, pressure gage, calibrated pressure gage, geophysical logs, manometer, non-rec gage, reported, steel tape, electric tape, calibrated tape, electric tape, other)

Pumping Period (157) ____ hr Specific Capacity (272) ____ gpm/ft Drawdown (309) ____ ft

5-NETWORK DATA COLLECTION (R114,QW)(R121,WL)(R127,WD)

Record Type (750*) N,E,T,W Sequence No. (730*) ____ Type of Network (706*) QW WL WD (water quality, water level, purpose withdrawal) Type of Analyses (120.) ____

Begin Year (115*,122,128) ____ End Year (116,123,129) ____ Source Agency (117*,124,130) ____ Frequency of Collection (118,125,131) ____

Method of Collection (-,133) C E M Z (calculated, estimated, metered, other) Analyzing Agency (307,-) ____ Primary Network (257*,258,259) 1 2 3 4 (national, district, project, cooperator) Secondary Network (708) ____

Sequence No. (730*) ____ Type of Network (706*) QW WL WD (water quality, water level, purpose withdrawal) Primary Network (257*) ____

Begin Year (115*) ____ End Year (116) ____ Source Agency (117*) ____ Frequency (119) ____

5-FIELD WATER QUALITY MEASUREMENTS (R192)

Record Type (776*) Q,U,A,L Sequence No. (738*) ____ (Aquifer Sampled) Geohydrologic Unit (195*) ____ Date (193*) ____ (Month Day Year)

Temperature (196*) 0,0,0,1,0 Degrees C (197) ____ Other Parameter (196*) ____ Value (197) ____

Conductance (196*) 0,0,0,9,5 µS/cm (197) ____ Other Parameter (196*) ____ Value (197) ____

5-LOGS (R198)

Record Type (778*) L,O,G,S

Sequence No. (739*)	Type of Log (199*)	Begin Depth (200)	End Depth (201)	Source of Data (202)

5-MISCELLANEOUS VALUES RECORD (R250)

Record Type (784*) M,S,V,L Sequence No. (313*) ____ Misc-Value-4 (253) ____

FOOTNOTES:

Source of Data Codes: A D G L M O R S Z
(other gov't, driller, geologist, logs, memory, owner, other reported, reporting agency, other)

Frequency of Collection Codes: A B C D F I M J O Q S W Z 1 2 3 4 5
(annual, bimonthly, continuous, daily, semi-monthly, intermittent, monthly, one time only, quarter year, semi-annual, weekly, other, bi-annually, every 2 years, every 3 years, every 4 years, every 5 years)

Type of Quality Analyses Codes: A B F D 2 3 4 5 6 7 8 9 M Z
(physical, common ions, trace elements, pesticides, nutrients, military, codes not used, codes not used, codes not used, codes not used, codes not used, codes not used, all of the above, year, codes not used (district), codes other needed)

Type of Log Codes: A B C D E F I H K L M O P R
(time, dollar, caliper, differential, electric, fluid conduct, geologist, magnetic, nuclear, gamma spectrometer, scattering, microlog, acoustic, caliper, other)

Owner 1988 = Bob Hunt

3-OWNER IDENTIFICATION (R138)

Record Type (768*) O,W,N,R Sequence No. (713#*) 001 Date (159#) 00-00-1921 (Month Day Year)

Last Name (161#) SILKEY First Name (162) FRANCES Middle Initial (163)

3-SITE VISITS DATA (R136)

Site visits - 1988, Parliman - Young

Record Type (774*) V,I,S,T Sequence No. (737#*) 001 Date (187#) 10-23-1947 (Month Day Year)

Name (188) NACE

5-OTHER DATA AVAILABLE (R130)

Record Type (772*) O,T,D,T Sequence No. (312#) Location (132) C D R Z (coop- dis- reporting other erator, trict, agency,) Format (261) F M P Z (files, machine published, other readable,)

Data Type (181)

5-OTHER SITE IDENTIFIERS (R139)

Record Type (770*) O,T,I,D

Sequence No. (736#*) Identifier (190#) Assigner (191)

5-REMARKS (R133)

Record Type (789*) R,M,K,S

Sequence No. (311#) Date (184*) (Month Day Year)

Remarks (185')

Sequence No. (311#) Date (184*) (Month Day Year)

Remarks (185')

Sequence No. (311#) Date (184*) (Month Day Year)

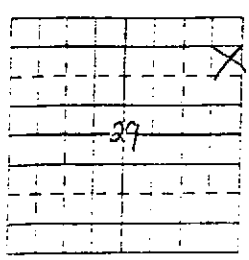
Remarks (185')

NOTES: Owner 1988: Robert Hunt - "The Flower Shoppe and Greenhouse"
3823 N. 36th
Boise Id 83703
344-3751

old well by north corner of home

USC diagram on old 1-3 schedule

4N 2E 29DAAA1
NE 1/4 NE 1/4 SE 1/4



9-185—July 1935
Revised

UNITED STATES
DEPARTMENT OF THE INTERIOR
GEOLOGICAL SURVEY
WATER RESOURCES BRANCH

WELL SCHEDULE

Date Oct. 23, 1947 Field No. 4N2E

Record by R.L. Nace Office No. 29da1

Source of data Owner; Obs.; Idaho Dist. Court Records.

1. *Location:* State Idaho County Ada

Map Air Photo BLM 10-42

___ ¼ ___ ¼ sec. ___ T ___ N S R ___ E W

2. *Owner:* O.L. Millstead Address ___

Tenant ___ Address ___

Driller ___ Address ___

3. *Topography* Upper terrace at foothill

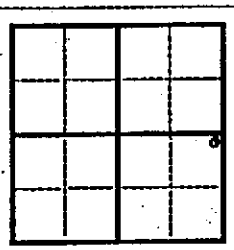
4. *Elevation* ___ ft. above below ___

5. *Type:* Dug, drilled, driven, bored, jetted Fall 1931

6. *Depth:* Rept. 1200± ft. Meas. ___ ft.

7. *Casing:* Diam. 2 in., to ___ in., Type ___

Depth ___ ft., Finish ___



8. *Chief Aquifer* ___ From ___ ft. to ___ ft.

Others ___

9. *Water level* Flowing ft. repts. meas. Oct. 23 1947 above below L.S.D.

___ which is ___ ft. above below surface

10. *Pump:* Type None Capacity ___ G. M. ___

Power: Kind ___ Horsepower ___

11. *Yield:* Flow 40± G. M. Pump ___ G. M., Meas., Rept. Est. 10/23/47

Drawdown — ft. after ___ hours pumping ___ G. M.

12. *Use:* Dom., Stock, PS, RR., Ind., Irr., Obs. Irr.; hot house & greenhouse

Adequacy, permanence ___

13. *Quality* ___ Temp 103 °F

Taste, odor, color ___ Sample Yes No

Unfit for ___

14. *Remarks:* (Log, Analyses, etc.) ___

SCRANTON SHEET SCHEDULE NO. 1 8

DELETED DATE

5084/1

15 ¼

U. S. GOVERNMENT PRINTING OFFICE 8—7478

NOTEBOOK SHEET

Name 4N2E 29 da1-2

Following discharge measurements, from files of Idaho State Reclamation Eng'r, are the combined discharges of wells 29 da1 and da2.

Date	Actual Discharge when visited		Discharge when Fully opened	
	Min. In.	GPM	Min. In.	GPM
Aug. 22, 1930	27	242	27	242
July 7, 1931	20.5	184	20.5	184
Aug. 9	21.0	188.5	21.0	188.5
Aug. 24	21.0	188.5	21.0	188.5
Feb. 12, 1932	21.0	188.5	21.0	188.5
Mar. 18	14	125.7	21.0	188.5
Apr. 22	6.0	53.8	23.5	210.5
May 25	23.5	210.5	23.5	210.5
July 20, 1943	21 (partly est.)			

Pressures:

Aug. 21, 1930 – 31 lbs (by Geo. N. Carter)

July 22, 1943 – 30 lbs (by Roy Thompson) (Gage would not register above 30 lbs.)

Reported discharge in 1924-1925 was 42 inches.

2 of 4

NOTEBOOK SHEET

Name Wells 28cb1, 29da1, da1-2, da1-2 Date Oct. 23, 1947

These wells were visited Oct. 23, 1947 in company with James Trail and Roy W. Thompson, Idaho State Bureau of Reclamation. Well 28cb1 was found partly opened and flowing to the Millstead Greenhouses. Wells 29da1 and 29da2 were shut off and the discharge was measured at a 2" outlet at the north side of the row of greenhouses. The discharge was then determined as 96.95 gpm. The well control valve was then fully opened and the total discharge through the 2" pipe was then measured as 189.8 gpm.

Well 28cb1 was left fully open; wells 29da1 and da2 were then fully opened and flowed through a 2" discharge pipe near that for 28cb1. The total aggregate flow of all three wells was then measured. It was 337.1 gpm. Therefore the combined discharge of wells 29da1 and da2 was (337.1 – 189.8 = 147.3) by simple arithmetic by this method of determination. The combined discharge of wells 29da1 and da2 was also measured with 28cb1 closed and was meas. as 156.52 gpm. In other words, the 2 wells flowed 9.22 gpm. less when 28cb1 was open than when it was closed, according to these measurements. However, this small am't is well within the range of error of the methods employed. It is concluded that at least for the short period of this test, there was no mutual interference of wells 28cb1 and 29da1-2.

3 of 4

NOTEBOOK SHEET

Name 4N2E 29 da1-2

Water Rights involving wells 28cb1, 29ac1-2, and 29da1-2 were decreed by Idaho Dist. Court, Third Judicial Dist., Ada County, Idaho, Case No. 11748, in the case of Frances Silkey, Plaintiff, vs. H.W. Tiegs, Thomas F. Edwards, and J. Ryan.

Decree:

1. All wells derive water from same artesian basin
2. Basin has a safe yield of 60 miner's inches
3. Duty of water will be 2 inches per acre.
4. Awarded to
   a. Frances Silkey – priority from July 1, 1921 of 7 inches; priority from July 1, 1922 of 33 in.; for about 20 acres land; use for stock, irr., heating and other beneficial uses.
   b. Thomas F. Edwards – priority from Nov. 22, 1926 of 42 in. for about 25.58 acres; may actually use 15 in. from Oct. 1 to April 1, and 20 in. from April 1 to Oct. 1, or so much as will not deplete flow of Silkey wells.
   c. H.W. Tiegs – priority from March 23, 1927 of 40 in., but well must be closed [illegible] cannot flow without depleting Silkey wells.
   d. J. Ryan – priority from Sept. 24, 1922 of 40 inches for 20 inches, but well must be closed, as it cannot flow without depleting Silkey wells.

4 of 4

9-185—July 1935
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UNITED STATES
DEPARTMENT OF THE INTERIOR
GEOLOGICAL SURVEY
WATER RESOURCES BRANCH

WELL SCHEDULE

Date Oct. 23, 1947 Field No. 4N2E

Record by R. L. Nace Office No. 29da3

Source of data Owner

1. *Location:* State Idaho County Ada
   Map Air Photo BUJ 10-42
   ____ ¼ ____ ¼ sec. ____ T ____ N/S R ____ E/W
2. *Owner:* O. L. Millstead Address Boise, Idaho
   Tenant ____ Address ____
   Driller John Cowe & Son Address Boise
3. *Topography* Upper terrace, at Foothills
4. *Elevation* ____ ft. above/below ____
5. *Type:* Dug, drilled, driven, bored, jetted ____ 1937
6. *Depth:* Rept. 50 ± ft. Meas. ____ ft.
7. *Casing:* Diam. 4 in., to ____ in., Type ____
   Depth 50 ft., Finish ____
8. *Chief Aquifer* ____ From ____ ft. to ____ ft.
   Others ____
9. *Water level* 24 ± ft. rept./meas. Oct. 23 1947 above/below LSD
   ____ which is ____ ft. above/below surface
10. *Pump:* Type Pressure system Capacity — G. M. —
    Power: Kind — Horsepower —
11. *Yield:* Flow — G. M. Pump ____ G. M., Meas., Rept. Est. ____
    Drawdown ____ ft. after ____ hours pumping ____ G. M.
12. *Use:* Dom., Stock, PS, RR., Ind., Irr., Obs. Cold water house supply
    Adequacy permanence Reptd. adequate
13. *Quality* ____ Temp ____ °F.
    Taste, odor, color ____ Sample Yes/No ____
    Unit for ____
14. *Remarks:* (Log, Analyses, etc.) ____

In yard 100 feet house & 10' S of wooden picket fence

SCHEDULE NO. 2-13-38

SCHEDULE NO. 50843

DELETED DATE

181

U.S. GOVERNMENT PRINTING OFFICE 6—7478

Combined with [illegible] 50843

[illegible] Frances Silkey

[illegible] pressure because [illegible] leaky [illegible] around outside of casing

[illegible]

WELL SCHEDULE

WATER RESOURCES BRANCH
GEOLOGICAL SURVEY
DEPARTMENT OF THE INTERIOR
UNITED STATES

9-185—July 1935
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Combined discharge of this and 2" well [illegible]
2" well [illegible] closed and disch. of 4" well
was [illegible] therefore, discharge of [illegible]
well [illegible] these discharges [illegible] through
discharge pipe.

Former owner was Frances Silkey

9-185—July 1935
Revised

UNITED STATES
DEPARTMENT OF THE INTERIOR
GEOLOGICAL SURVEY
WATER RESOURCES BRANCH

5 p h 33 [illegible]

WELL SCHEDULE

Date Oct. 23, 1947 Field No. 4N 2E

Record by R. L. Nace Office No. 29da2

Source of data Obs.; District Court Records

1. *Location:* State Idaho County Ada
   Map Air Photo BUJ 10-42
   ___ ¼ ___ ¼ sec. ___ T ___ N/S R ___ E/W
2. *Owner:* O. L. Millstead Address
   Tenant Address
   Driller Address
3. *Topography* Upper terrace near foothills
4. *Elevation* ___ ft. above/below
5. *Type:* Dug, (drilled), driven, bored, jetted Oct. 1922
6. *Depth:* Rept. 1,224 ft. Meas. ___ ft.
7. *Casing:* Diam. 4" in., to ___ in., Type ___
   Depth ___ ft., Finish ___
8. *Chief Aquifer* ___ From ___ ft. to ___ ft.
   Others ___
9. *Water level* + 30.8 lbs (small gauge) ft. rept./meas. Oct. 23 1947 (above)/below bend of valve on horizontal 2" discharge pipe which is 1.8 ft. (above)/below surface
10. *Pump:* Type None Capacity — G. M.
    Power: Kind — Horsepower ___
11. *Yield:* Flow 115.7 G. M., Pump ___ G. M., (Meas.), Rept. Est. [illegible]
    Drawdown ___ ft. ___ hours pumping ___ G. M.
12. *Use:* Dom., Stock, PS., RR., Ind., (Irr.), Obs. Irr.; heat house & greenhouse
    Adequacy, permanence ___
13. *Quality* ___ Temp Rep'd 114 °F
    Taste, odor, color ___ Sample Yes/No
    Unfit for ___
14. *Remarks:* (Log, Analyses, etc.)

In small shed 25' W of NW cor of house

SEE STATION SCHEDULE NO.

DELETED DATE

59847

C. USGS "Site Schedule" for the **Flora Co. "Office"** (Silkey #2) Low-Temperature Geothermal Well, 1988

Silkey wells

FORM NO. 9-1904-
Revised May 1987

U.S. DEPT. OF THE INTERIOR
GEOLOGICAL SURVEY
WATER RESOURCES DIVISION

WELL NO. 04N 02E 29DAAA 2

County Ada

Recorded by _____
Date _____

SITE SCHEDULE

2-GENERAL SITE DATA (R0)

Reporting Agency (4) USGS
Site Ident. No. (1) 433919116 359 01
Project No. (5) 10-88-103
Station Name (12) 04N 02E 29DAAA2
Latitude (9) 43 39 19 (deg min sec)
Longitude (10) 116 13 59 (deg min sec)
Lat-Long Accuracy (11) S F T M (sec, 5 sec, 10 sec, min)
District (6) 16
State (7) 16
County (8) 001
Land Net Location (3) NENESES 29 T 04N 02E B (a b c section township range meridian)
Location Map (14) BOISE NORTH
Scale (15) 24000
Altitude (16) 2695.
Method of Measurement (17) A L M (air, level, map meter)
Accuracy (18) 005
Hydrologic Unit (OWDC) (20) 17050114
Drainage Basin Code (801*)
Topographic Setting (19) A B C D E G H K L M O P S T U V W (alluvial fan, playa, stream channel, depression, dunes, flat, flood plain, hill, top, sink hole, swamp, mangrove, swamp, offshore, pediment, hill side, terrace, undulating, valley flat, upland draw)
Agency Use (803*) A I O (active, inactive, inventory or discont, data only)
Date Inventoried (711*) 10-23-1947 (Month Day Year)
Station Type (802*) 5 6 (spring, well, other, explanation)
Data Type (804*) 1 2 (WL cont., WL int., other, explanation)
Instruments (805*) 1 2 (digital recorder, graphic recorder, other, explanation)
Remarks (806*)
Data Reliability (3) C U L M (field checked, unchecked, location not accurate, minimal data)
Site Type (2) C D E H I M O P T W X (collector, drain, excavation, sink hole, connector, well, multiple, cut crop, pond, tunnel or chart, well, test hole)
Date of Construction (21) 10-00-1922 (Month Day Year)
Use of Site (23) A C D E G H M O P R S T U W X Z (anode, standby, drain, geothermal, seismic, heat, mine, observation, oil or gas, recharge, repress, test, unused, withdrawal, waste, destroyed)
Secondary Site Use (301) E
Tertiary Site Use (302)
Use of Water (24) A B C D E F H I J K M N P Q R S T U Y Z (air cond., bottling, commercial, dewater, power, fire, domestic, irrigation, industrial (cooling), mining, medicinal, industrial, public supply, aquaculture, recreation, stock, institution, unused, desal, other)
Secondary Water Use (25) H
Tertiary Water Use (26)
Aquifer Type (713*) ① U N C M X
Primary Aquifer (714*) 112 2 2 H 0
Depth of Hole (27)
Depth of Well (28) 1224.
Source of Depth Data (29) ② R
Water Level (30)
Date Measured (31) (Month Day Year)
Source of Water Level Data (33) ②
Method of Measurement (34) A B C E G H L M N R S T V Z (airline, analog, calibrated airline, estimated, pressure gage, calibrated pressure gage, geophysical logs, manometer, non-rec. gage, reported, steel tape, electric tape, calibrated electric tape, other)
Site Status (37) D E F G H I J N O P R S T V W X Z (dry, recently flowing, flowing, nearby flowing, nearby recently flowing, injector site, inj-site monitor, meas. discon., obstruction, pumping, recently pumped, nearby pumping, nearby recently pumped, foreign substance, well destroyed, surface water effects, other)

4-CONSTRUCTION LIFT DATA (R42)

Motor _____
Record Type (752*) L I F T
Record Sequence No. (254*)
Motor Ser. No. _____
Type of Lift (43*) A B C J P R S T U Z (air, bucket, centrifugal, jet, piston, rotary, submergible, turbine, unknown, other)
Date (38) (Month Day Year)
Pole No. _____
Pump Intake Setting (44)
Type of Power (45) D E G H L N W Z (diesel, electric, gasoline, hand, LP gas, natural gas, windmill, other)
Horsepower (46)

MAJOR PUMP DATA (R47)

Manufacturer of Pump (48)
Serial No. of Pump (49)
Power Company (50)
Power Co. Account No. (51)
Power Meter No. (52)
Pump Rating (53)
Additional Lift (255)
Maintainer of Pump (54)
Rated Capacity (268)

STANDBY POWER DATA (R55)

Type of Power (56)
Horsepower (57)

FOOTNOTES:

① Aquifer Type
- U - Unconfined Single Aquifer
- N - Unconfined Multiple Aquifer
- C - Confined Single Aquifer
- M - Confined Multiple Aquifer
- X - Mixed (Confined & Unconfined) Multiple Aquifers

② Source of Data Codes: A B C L M O R S Z (other driller, geologist, logs, memory, owner, other reported, reporting agency, other)

Entered by _____ Date _____

Verified by _____ Date _____

Record Type (756*) C,O,N,S

Record Sequence No. (725a*)

Date of Construction (50) Month Day Year

Source of Data (94)

Method of Construction (53) A B C D H J T W Z
Air-, auger or cable tool, backhoe, bored, cable tool, dozer, driven, jetted, reversing, other
blast, augered, rotary, suction, unknown

Type of Well (67) A C G H O P S T U X
Bored, dug, driven, gravel horizontal open perforated, screen, sand slotted, test other
concrete, cort., screen, gallery, mod, of slotted, point, hole,

Type of Seal (97) B C G N Z
Bentonite, clay, cement, none, other
grout

Bottom of Seal (68)

Method of Development (99) A B C J N P S Z
Air-lift bailed, compressed, jetted, none, other surged, other
pump,

No. of Yrs. in Development (70)

Special Treatment (71) C D E F H M Z
Chemicals, dry ice, explosives, hydrofracturing, mechanical, other

4-HOLE DATA (R72)

Record Type (756*) H,O,L,E

Record Sequence No. (725a*)	Sequence No. of Parent Record (59a)	Top of Hole Segment Below LSD(73a)	Bottom of Hole Segment Below LSD (74)	Diameter of Hole Segment (75)

4-CASING DATA (R76)

Record Type (758*) C,S,N,G

Record Sequence No. (725a*)	Sequence No. of Parent Record (59a)	Top of Casing Segment Below LSD (77a)	Bottom of Casing Segment Below LSD (78)	Diameter of Casing Segment (79a)	Casing ③ Material (80)	Thickness of Casing (81)

4-OPENINGS DATA (R82)

Record Type (760*) O,P,E,N

Record Sequence No. (726a*)			
Sequence No. of Parent Record (59a)			
Depth to Top of Interval (83a)			
Depth to Bottom of Interval (84)			
Diameter of Interval (87)			
Type of Material (86) ④			
Type of Opening (85) ⑤			
Length of Opening (89)			
Width of Opening (88)			

4-MINOR REPAIRS (R164*)

Record Type (762) R,E,P,R

Record Sequence No. (165a*)

Nature of Repair (166) B C D I L O P S Z
Blocked cleaned, deepened, pump intake lower, perforated or plugged screen other
off, lowered, installed, slotted, back, replaced,

Date (167) Month Day Year

Name of Contractor (169)

Percentage Performance Change (170)

FOOTNOTES:

① Source of Data Codes

A B G L M O R S Z
Appraisal, driller, hydrologist, logs, memory, owner, other reporting other
agency, reported, agency,

② Casing Material Codes

B F O G L M P R S T U W Z
Brick, concrete, copper, galv. wrought other PVC or rock or steel, tile, coated wood, other
iron, iron, metal, plastic, stone, steel,

③ Material Codes for Open Section

A C I L M P R S T W X Z
Asbestos, bar, cement, clay, concrete, fiberglass, gravel, PVC, rock, saw cut slot, steel, tile, wood, other
mat, mix, metal, plastic, type

④ Type of Openings

F L M P R S T W X Z
Fractured, louvered, mesh, perforated or slotted screen, sand wire wrapped, open other
cuttings, punch, unknown) point, wound, (unknown) point, slots,

Record Type (748*) G,E,O,H — Record Sequence No. (721*) 0 — Parent Sequence No. (724*)

Depth to Top of Unit (1) — Depth to Bottom of Unit (2)

Aquifer Identifier (93*) 1,1,2,3,5,H,9 — Location (3) (20) — Attributing Code (234)

Lithologic Modifier Description (97)

7-AQUIFER DATA (R94)

Record Type (750*) A,Q,F,R — Record Sequence No. (742a*) — Parent Sequence No. (724*)

Date (95a*) Month Day Year — Water Level (126) — No. of Water Contributed (123)

5-DISCHARGE/PRODUCTION DATA (R134,R146)

Sequence No. (147a*) — Date (148) Month Day Year — Type of Discharge (93*) F P (flowing, pumped) — Discharge (59)

Source of Data (151) (1) — Method of Measurement (153) A B C D E F I O P R T U V W Z (acoustic meter, current meter, doppler meter, estimated, flume, orifice, pitot tube meter, reported, trajectory, venturi meter, volumetric, weir, other)

Production Level (153) — Static Level (154) — Source of Level Data (155) (1)

Method of Measurement (156) A B C G H I M N R S T Z (airline, analog, calibrated orifice, estimated, pressure gage, calibrated pressure gage, geophysical log, manometer, non-rec. gage, reported, steel tape, electric tape, altitude gage, other)

Pumping Period (157) — Specific Capacity (272) — Drawdown (309)

5-NETWORK DATA COLLECTION (R114,QW)(R121,WL)(R127,WD)

Record Type (780*) N,E,T,W — Sequence No. (730a*) — Type of Network (70a*) QW WL WD (water quality, water level, withdrawal) — Type of Analyses 120. (2)

Begin Year (115a,122,128) — End Year (116,123,129) — Source Agency (117a,124,130) — Frequency of Collection (118,125,131) (3)

Method of Collection (-,133) C E M Z (calculated, estimated, metered, other) — Analyzing Agency (307,-) — Primary Network (257a,258,259) 1 2 3 4 (national, district, project, cooperator) — Secondary Network (708)

Sequence No. (730a*) — Type of Network (70a*) QW WL WD (water quality, water level, withdrawal) — Primary Network (257a*)

Begin Year (115a) — End Year (116) — Source Agency (117a) — Frequency (119)

5-FIELD WATER QUALITY MEASUREMENTS (R192)

Record Type (776*) Q,U,A,L — Sequence No. (738a*) — (Aquifer Sampled) Geohydrologic Unit (195a) — Date (193a) Month Day Year

Temperature (196a) 0,0,0,1,0 — Degrees C (197) — Other Parameter (196a) — Value (197)

Conductance (196a) 0,0,0,9,5 — µS/cm (197) — Other Parameter (196a) — Value (197)

5-LOGS (R198)

Record Type (778*) L,O,G,S

Sequence No. (739a)	Type of Log (199a) (5)	Begin Depth (200)	End Depth (201)	Source of Data (202) (1)

5-MISCELLANEOUS VALUES RECORD (R250)

Record Type (734*) M,S,V,L — Sequence No. (313a*) — Misc. Value-4 (253)

FOOTNOTES:

(1) Source of Data Codes: A other driller, D geologist, G log, L memory, M owner, O other reported, R reporting other agency, S

(3) Frequency of Collection Codes: A annual, B bimonthly, C continuous, D daily, F event, I intermittent, M monthly, N none, Q quarterly, S semi-annual, T triennial, W weekly, Z other, 1 annually, 2 every 2 years, 3 every 3 years, 4 every 4 years, 5 every 5 years

(4) Type of Quality Analyses Codes: 1 physical, 2 inorganics, 3 trace elements, 4 pesticides, 5 isotopes, 6 bacteria, 7 sanitary, 8 radiochemical, 9 gas, A gas, B gas, C gas, D gas, E gas, F gas, G gas, H gas, I gas, J gas, K gas, L gas, M gas, N gas, O gas, P gas, Q gas, R gas, S gas, T gas, U gas, V gas, W gas, X gas, Y gas, Z gas, other

(5) Type of Log Codes: 1 [illegible], 2 [illegible], 3 [illegible], 4 [illegible], 5 [illegible], 6 [illegible], 7 [illegible], 8 [illegible], 9 [illegible], A [illegible], B [illegible], C [illegible], D [illegible], E [illegible], F [illegible], G [illegible], H [illegible], I [illegible], J [illegible], K [illegible], L [illegible], M [illegible], N [illegible], O [illegible], P [illegible], Q [illegible], R [illegible], S [illegible], T [illegible], U [illegible], V [illegible], W [illegible], X [illegible], Y [illegible], Z [illegible]

Owners, [illegible] O.L. [illegible]
1989 Bob Hunt

5-OWNER IDENTIFICATION (R188)

Record Type (768*) O,W,N,R Sequence No. (719#*) 001 Date (159#) 10-00-1922 (Month Day Year)

Last Name (161#) SILKEY First Name (162) FRANCES Middle Initial (163)

5-SITE VISITS DATA (R136)

Site visit 1989 - Perlman and Young

Record Type (774*) V,I,S,T Sequence No. (737#*) 001 Date (187#) 10-23-1947 (Month Day Year)

Name (188) NACE

5-OTHER DATA AVAILABLE (R130)

Record Type (772*) O,T,D,T Sequence No. (312#) Location (182) C D R Z (Coop, dist, reporting other erator, trict, agency,) Format (261) F M P Z (files, machine published, other readable,)

Data Type (181)

5-OTHER SITE IDENTIFIERS (R189)

Record Type (770*) O,T,I,D

Sequence No. (736#*) Identifier (190#) Assigner (191)

5-REMARKS (R183)

Record Type (789*) R,M,K,S

Sequence No. (311#) Date (184*) (Month Day Year)

Remarks (185')

Sequence No. (311#) Date (184*) (Month Day Year)

Remarks (185')

Sequence No. (311#) Date (184*) (Month Day Year)

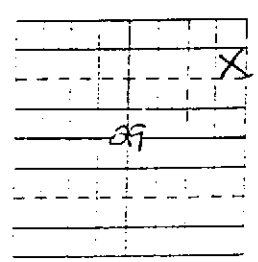
Remarks (185')

NOTES: Owner 1989 Bob Hunt "The Flower Shoppe and Greenhouse"
3823 N. 36th
Boise Id 83703
344-3757

old well in shed by home

Use diagram on old 5x8 schedule

4N2E 29DAAA2



9-185—July 1935
Revised

UNITED STATES
DEPARTMENT OF THE INTERIOR
GEOLOGICAL SURVEY
WATER RESOURCES BRANCH

WELL SCHEDULE

Date Oct. 23, 1947 Field No. 4N 2E

Record by R. L. Nace Office No. 29da2

Source of data Obs.; District Court Records

1. *Location:* State Idaho County Ada
   Map Air Photo BUJ 10-42
   ____ ¼ ____ ¼ sec. ____ T ____ N/S R ____ E/W
2. *Owner:* O. L. Millstead Address ____
   Tenant ____ Address ____
   Driller ____ Address ____
3. *Topography* Upper terrace near foothills
4. *Elevation* ____ ft. above/below ____
5. *Type:* Dug, drilled, driven, bored, jetted Oct. 1922
6. *Depth:* Rept. 1,224 ft. Meas. ____ ft.
7. *Casing:* Diam. 4" in., to ____ in., Type ____
   Depth ____ ft., Finish ____
8. *Chief Aquifer* ____ From ____ ft. to ____ ft.
   Others ____
9. *Water level* + 30.8 lbs (small gauge) ft. rept./meas. Oct. 23 1947 above/below bond of 2" valve on horizontal 2" discharge pipe which is 1.8 ft. above/below surface
10. *Pump:* Type None Capacity — G. M. —
    Power: Kind — Horsepower —
11. *Yield:* Flow 115.7 G. M. Pump ____ G. M. Meas., Rept. Est. 10/23/47
    Drawdown ____ ft. after ____ hours pumping ____ G. M.
12. *Use:* Dom., Stock, Fl., RR., Ind. Irr., Obs. Irr.; heat house & greenhouse
    Adequacy, permanence ____
13. *Quality* ____ Temp Rept'd 114°F.
    Taste, odor, color ____ Sample Yes/No ____
    Unfit for ____
14. *Remarks:* (Log, Analyses, etc.) ____

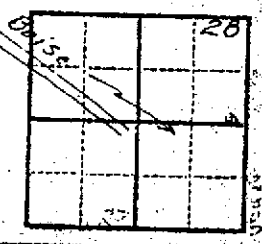
In small shed 25' W of NW cor of house

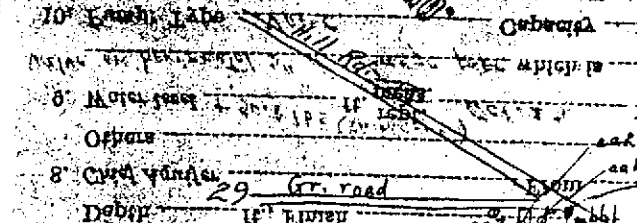
SCRANTON SITE/SCHEDULE NO.
DELETED DATE

50842

U.S. GOVERNMENT PRINTING OFFICE 8—7473

Combined discharge of this and 2" well was 150.52 gpm. 2" well was closed and disch. of 4" well was 115.7 gpm. Therefore, discharge of 2" well was 34.8 gpm. These discharges were through a 2" discharge pipe.





2/ Former owner was Frances Silkey

WELL SCHEDULE

WATER RESOURCES BRANCH
GEOLOGICAL SURVEY
DEPARTMENT OF THE INTERIOR
UNITED STATES

9-185—July 1935
Revised

9-185—July 1935
Revised

UNITED STATES
DEPARTMENT OF THE INTERIOR
GEOLOGICAL SURVEY
WATER RESOURCES BRANCH

WELL SCHEDULE

Date Oct. 23, 1947 Field No. 4N2E

Record by RL Nace Office No. 29 da 1

Source of data Owner; Obs.; Idaho Dist. Court Records.

1. *Location:* State Idaho County Ada

Map Air Photo BUJ 10-42

¼ ¼ sec. T N/S R E/W

2. *Owner:* O.L. Millstead Address

Tenant Address

Driller Address

3. *Topography* Upper terrace at Foothill

4. *Elevation* ft. above/below

5. *Type:* Dug, drilled, driven, bored, jetted Fall 1921

6. *Depth:* Rept. 1200 ± ft. Meas. ft.

7. *Casing:* Diam. 2 in., to in., Type

Depth ft., Finish

8. *Chief Aquifer* From ft. to ft.

Others

9. *Water level* Flowing ft. obs. ~~rept.~~ ~~meas.~~ Oct. 23 1947 above/below LSD

which is ft. above/below surface

10. *Pump:* Type None Capacity G. M.

Power: Kind Horsepower

11. *Yield:* Flow 40.8 G. M. Pump — G. M., Meas., Rept. Est. 10/23/47

Drawdown — ft. after hours pumping G. M.

12. *Use:* Dom., Stock, PS, RR, Ind., Irr., Obs. Irr.; heat house & greenhouse

Adequacy, permanence

13. *Quality* Temp 103 °F

Taste, odor, color Sample Yes/No

Unfit for

14. *Remarks:* (Log, Analyses, etc.)

50841

At NW cor. of house

SCRANTON SITE/SCHEDULE NO.
DELETED DATE 4/13/78

Combined [illegible] 50841

2/ Frances Silkey

9/ Did not measure pressure because casing is leaky and water stops around outside of casing.

DELETED DATE
SCHEDULE NO.

WELL SCHEDULE

WATER RESOURCES BRANCH
GEOLOGICAL SURVEY
DEPARTMENT OF THE INTERIOR
UNITED STATES

9-183—July 1935
Revised

UNITED STATES
DEPARTMENT OF THE INTERIOR
GEOLOGICAL SURVEY
WATER RESOURCES BRANCH

WELL SCHEDULE

Date Oct. 23, 1947 Field No. 4N2E

Record by R. L. Nace Office No. 29da3

Source of data Owner

1. *Location:* State Idaho County Ada

Map Air Photo BUS 10-42

___ ¼ ___ ¼ sec. ___ T ___ N/S R ___ E/W

2. *Owner:* O. L. Millstead Address Boise, Idaho

Tenant ___ Address ___

Driller John Cowe & Son Address Boise

3. *Topography* Upper terrace, at Foothills

4. *Elevation* ___ ft. above/below ___

5. *Type:* Dug, drilled, driven, bored, jetted ___ 1937

6. *Depth:* Rept. 50 ± ft. Meas. ___ ft.

7. *Casing:* Diam. 4 in., to ___ in., Type ___

Depth 50 ft., Finish ___

8. *Chief Aquifer* ___ From ___ ft. to ___ ft.

Others ___

9. *Water level* 24 ± ft. rept./meas. Oct. 23 1947 above/below LSD

___ which is ___ ft. above/below surface

10. *Pump:* Type Pressure system Capacity — G. M. —

Power: Kind — Horsepower —

11. *Yield:* Flow — G. M., Pump ___ G. M., Meas., Rept. Est. ___

Drawdown ___ ft. after ___ hours pumping ___ G. M.

12. *Use:* Dom., Stock, PS, RR., Ind., Irr., Obs. Cold water house supply

Adequate permanence Reptd. adequate

13. *Quality* ___ Temp ___ °F.

Taste, odor, color ___ Sample Yes/No ___

Sent for ___

14. *Remarks:* (Log, Analyses, etc.) ___

In yard 100' S of house & 10' S of wooden pickets & fence

SCANNED DATE 27 JUL 1937

SCANNED DATE 27 JUL 1937

1081

U. S. GOVERNMENT PRINTING OFFICE

NOTEBOOK SHEET

Name 4N2E 29 da1-2

Following discharge measurements, from files of Idaho State Reclamation Eng'r, are the combined discharges of wells 29 da1 and da2.

Date	Actual Discharge when visited		Discharge when Fully opened	
	Min. In.	GPM	Min. In.	GPM
Aug. 22, 1930	27	242	27	242
July 7, 1931	20.5	184	20.5	184
Aug. 9	21.0	188.5	21.0	188.5
Aug. 24	21.0	188.5	21.0	188.5
Feb. 12, 1932	21.0	188.5	21.0	188.5
Mar. 18	14	125.7	21.0	188.5
Apr. 22	6.0	53.8	23.5	210.5
May 25	23.5	210.5	23.5	210.5
July 20, 1943	21 (partly est.)			

Pressures:
Aug. 21, 1930 – 31 lbs (by Geo. N. Carter)
July 22, 1943 – 30 lbs (by Roy Thompson) (Gage would not register above 30 lbs.

Reported discharge in 1924-1925 was 42 inches.

2 of 4

NOTEBOOK SHEET

Name Wells 28cb1, 29ac1, 29da1-2, da1-2 Date Oct. 23, 1947

These wells were visited Oct. 23, 1947 in company with James Trail and Roy W. Thompson, Idaho State Bureau of Reclamation. Well 28cb1 was found partly opened and flowing to the Millstead Greenhouses. Wells 29da1 and 29da2 were shut off and the discharge was measured at a 2" outlet at the north side of the row of greenhouses. The discharge was then determined as 96.95 gpm. The well control valve was then fully opened and the total discharge through the 2" pipe was then measured as 189.8 gpm.

Well 28cb1 was left fully open; wells 29da1 and da2 were then fully opened and flowed through a 2" discharge pipe near that for 28cb1. The total aggregate flow of all three wells was then measured. It was 337.1 gpm. Therefore the combined discharge of wells 29da1 and da2 was (337.1 – 189.8 = 147.3) by simple arithmetic by this method of determination. The combined discharge of wells 29da1 and da2 was also measured with 28cb1 closed and was meas. as 156.52 gpm. In other words, the 2 wells flowed 9.22 gpm. less when 28cb1 was open than when it was closed, according to these measurements. However, this small am't is well within the range of error of the methods employed. It is concluded that at least for the short period of this test, there was no mutual interference of wells 28cb1 and 29da1-2.

3 of 4

NOTEBOOK SHEET

Date 4N2E 29 da1-2

Water Rights involving wells 28cb1, 29ac1-2, and 29da1-2 were decreed by Idaho Dist. Court, Third Judicial Dist., Ada County, Idaho; Case No. 11748, in the case of Frances Silkey, Plaintiff, vs H.W. Tiegs, Thomas F. Edwards, and J. Ryan.

Decree:
1. All wells derive water from same artesian basin
2. Basin has a safe yield of 60 miner's inches
3. Duty of water will be 2 inches per acre.
4. Awarded to
   a. Frances Silkey – priority from July 1, 1921 of 7 inches; priority from July 1, 1922 of 33 in.; for about 20 acres land; use for stock, irr., heating and other beneficial uses.
   b. Thomas F. Edwards – priority from Nov. 22, 1926 of 42 in. for about 25.58 acres; may actually use 15 in. from Oct. 1 to April 1, and 20 in. from April 1 to Oct. 1, or so much as will not deplete flow of Silkey wells.
   c. H.W. Tiegs – priority from March 23, 1927 of 40 in. but well must be closed as it cannot flow without depleting Silkey wells.
   d. J. Ryan – priority from Sept. 24, 1927 of 40 inches for 20 inches, but well must be closed as it cannot flow without depleting Silkey's wells.

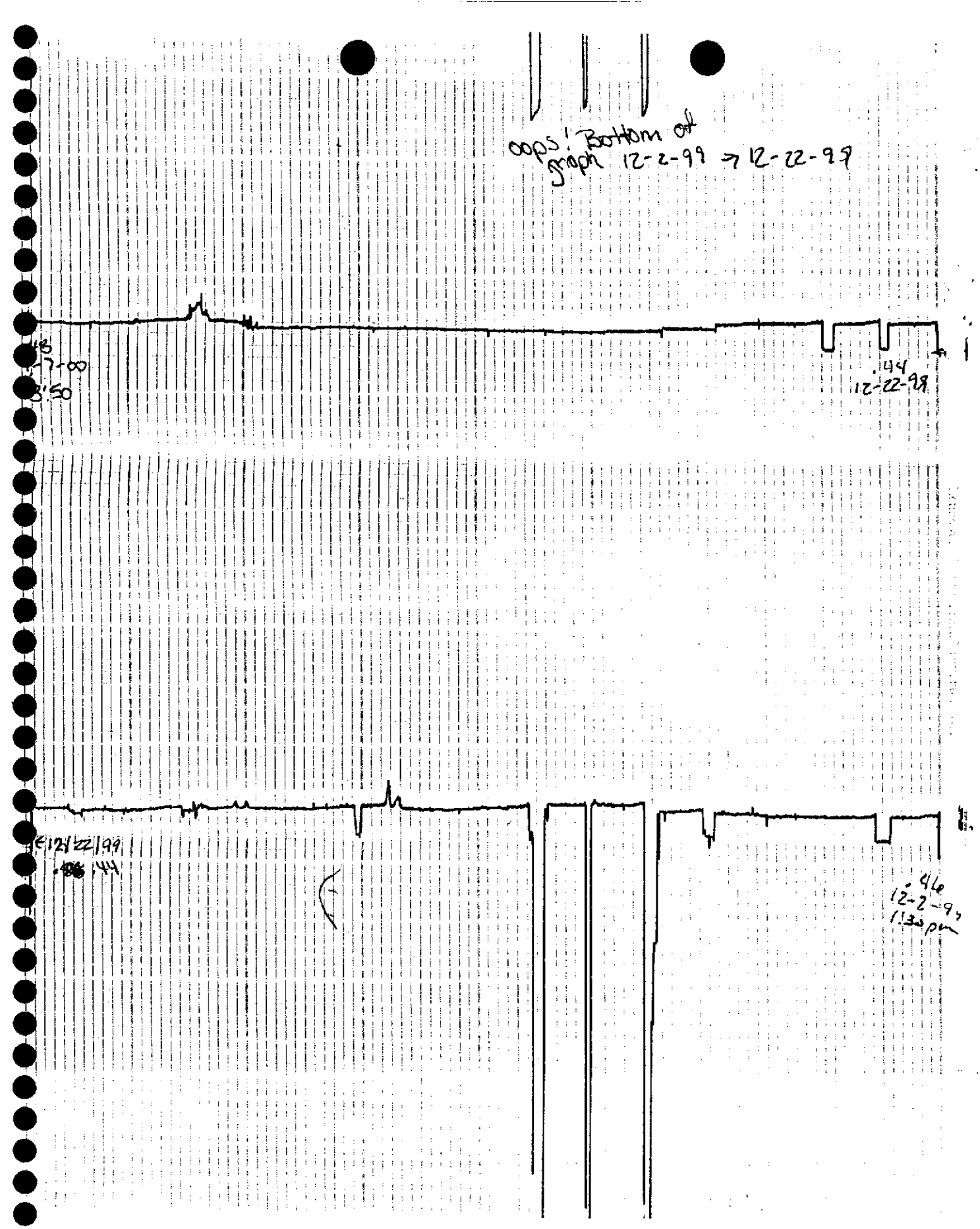
4 of 4

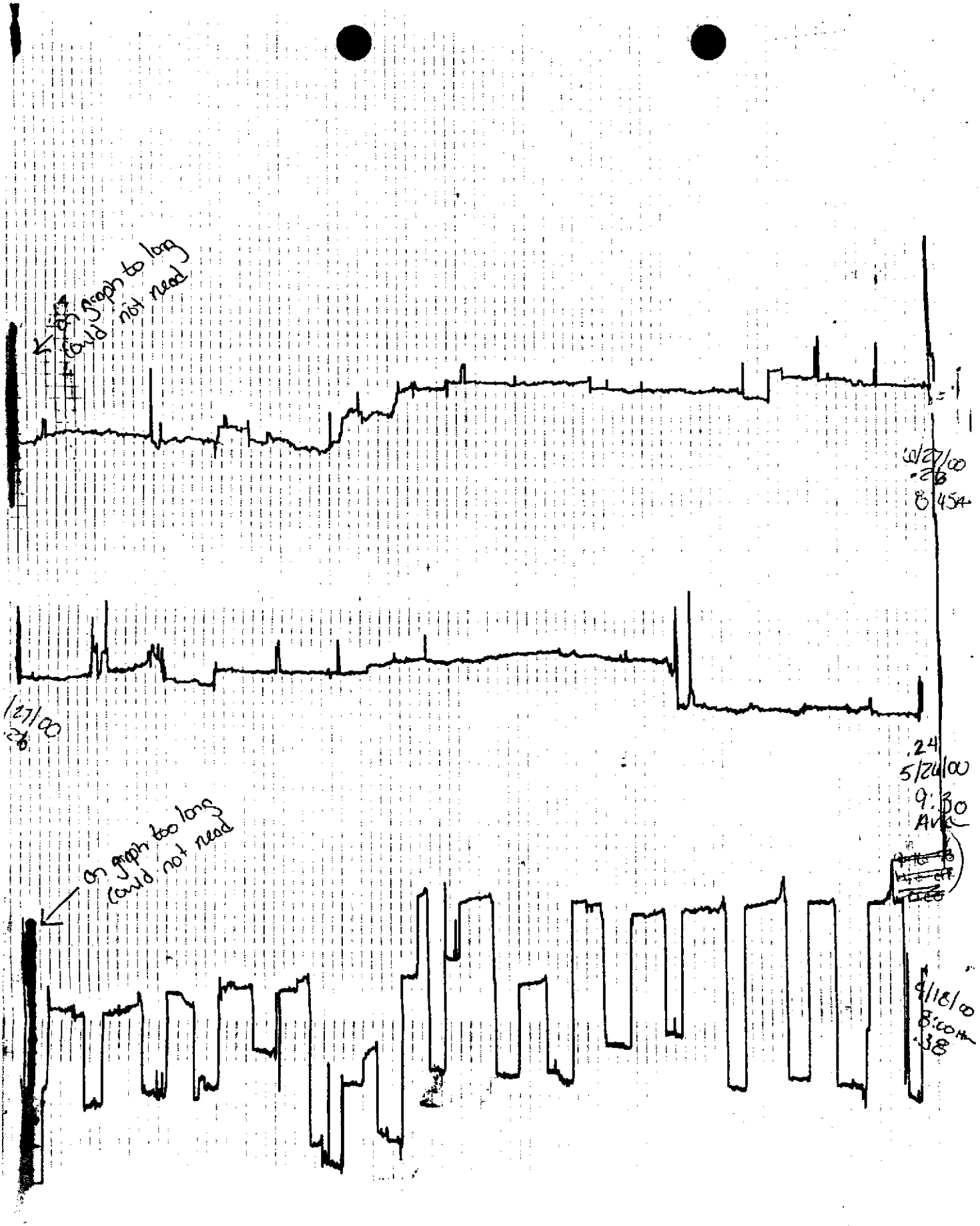
APPENDIX B.

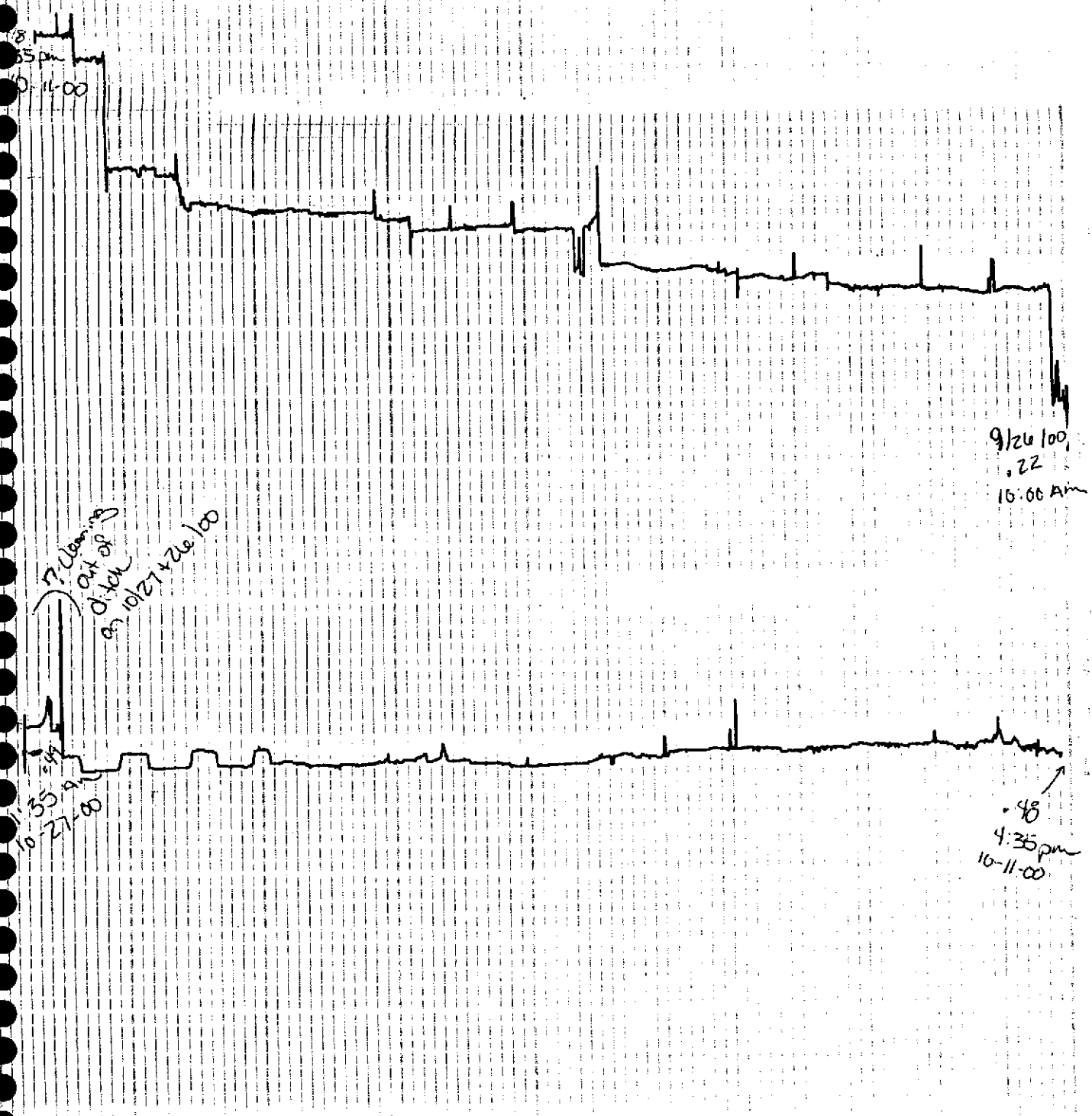
Discharge Weir Charts for the Flora Co. Low-Temperature Geothermal Wells, 1993-2000.

Stevens F-Type, water level recorder charts from the low temperature geothermal discharge canal of the Flora Co. property.

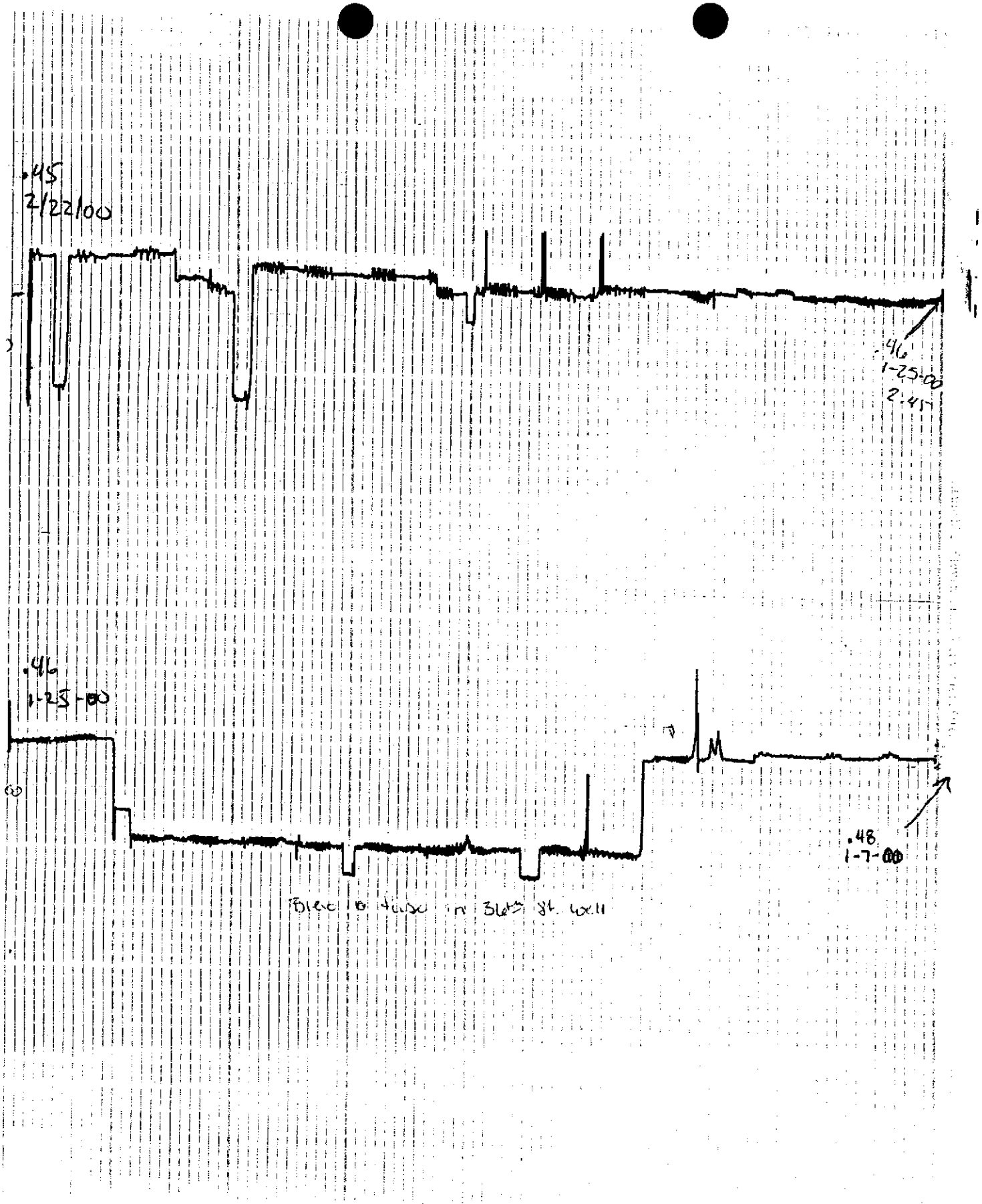
A. Discharge Weir Charts for the Flora Co. Low-Temperature Geothermal Wells for year 2000.

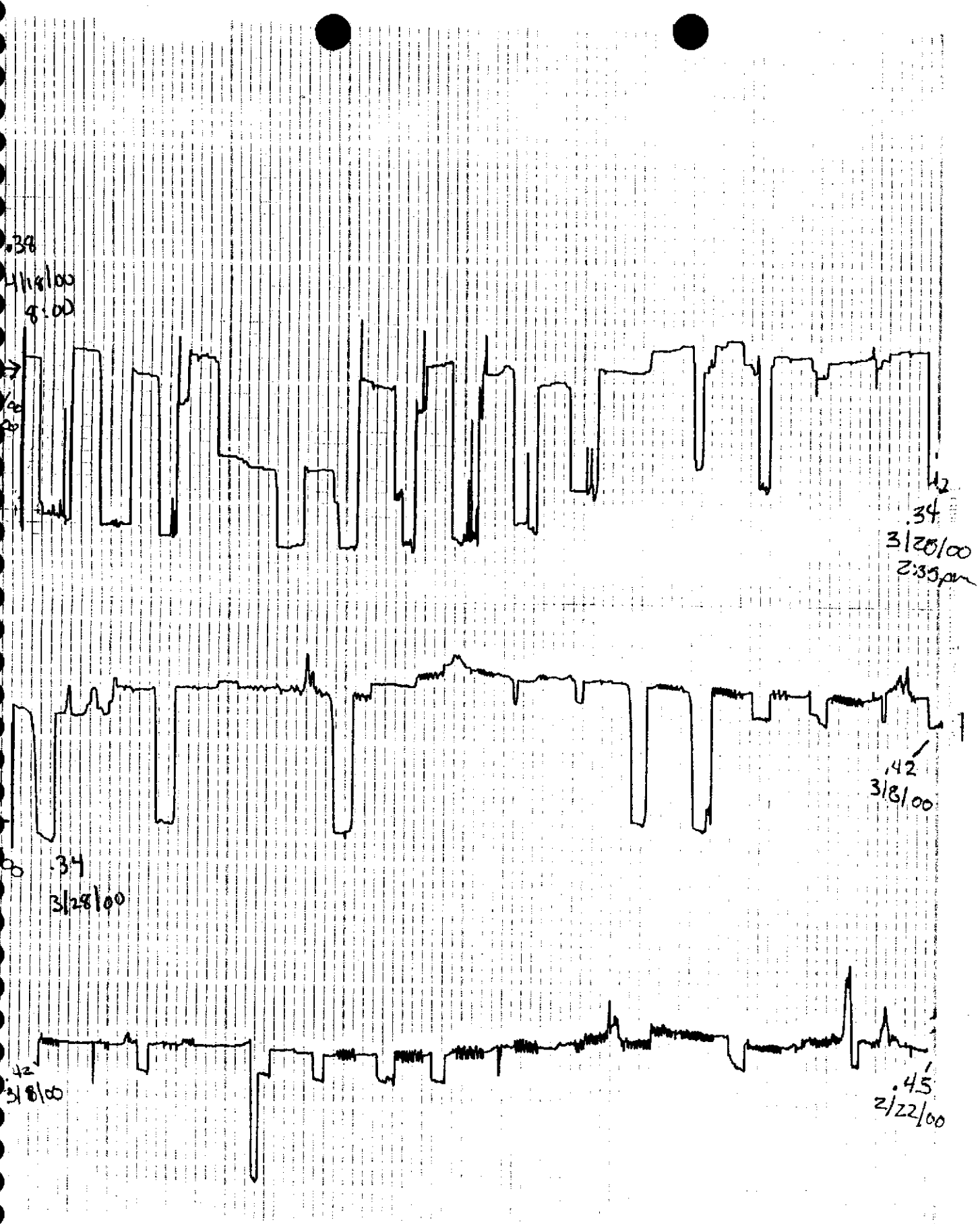

oops! Bottom of graph 12-2-99 → 12-22-99
18
17-00
3'50
44
12-22-98
12/22/99
46
12-2-99
1:30 pm


on graph to long
could not read
6/27/00
.26
8:45A
/27/00
.26
.24
5/24/00
9:30
AM
on graph too long
could not read
9/18/00
8:00AM
.38

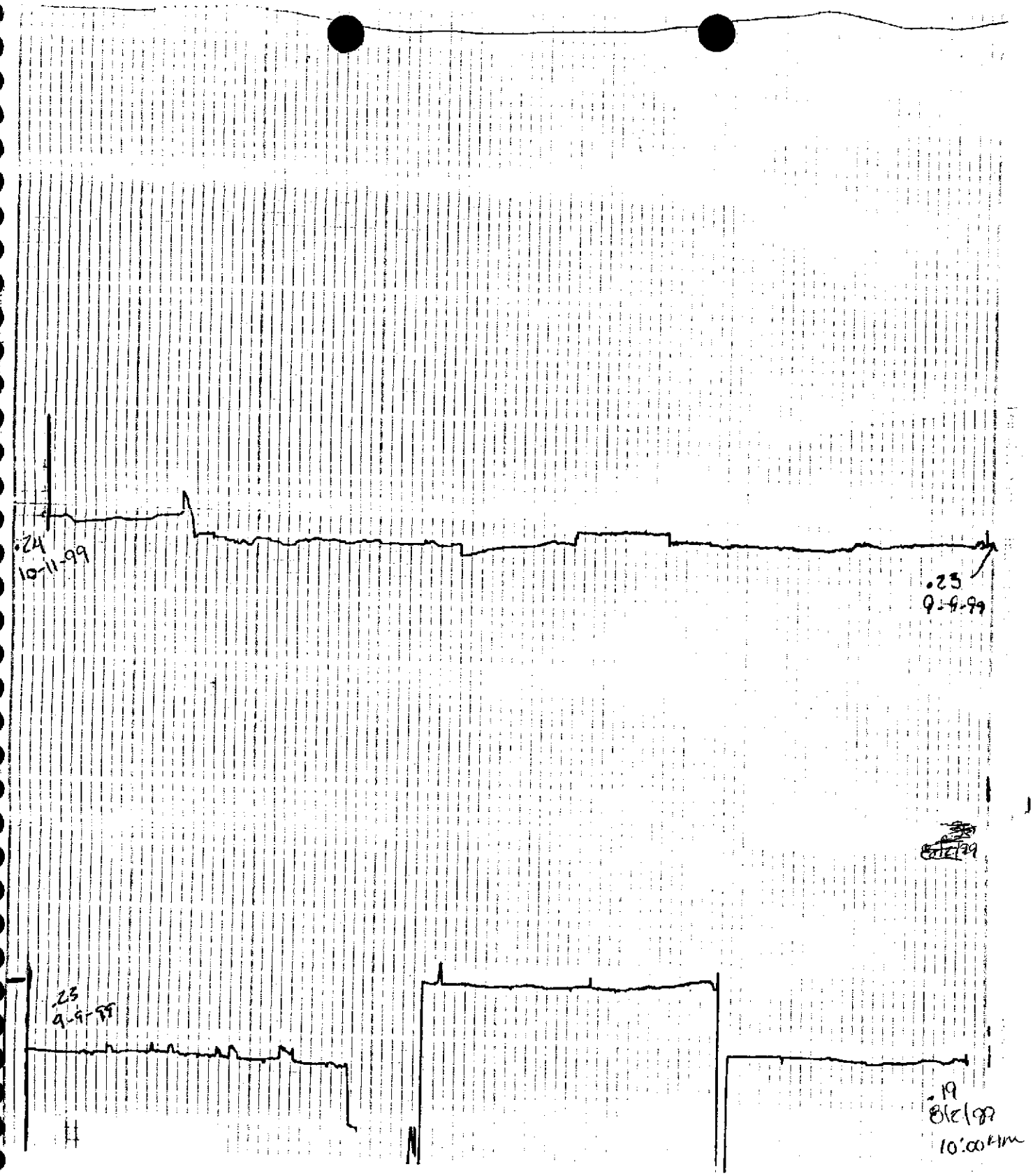


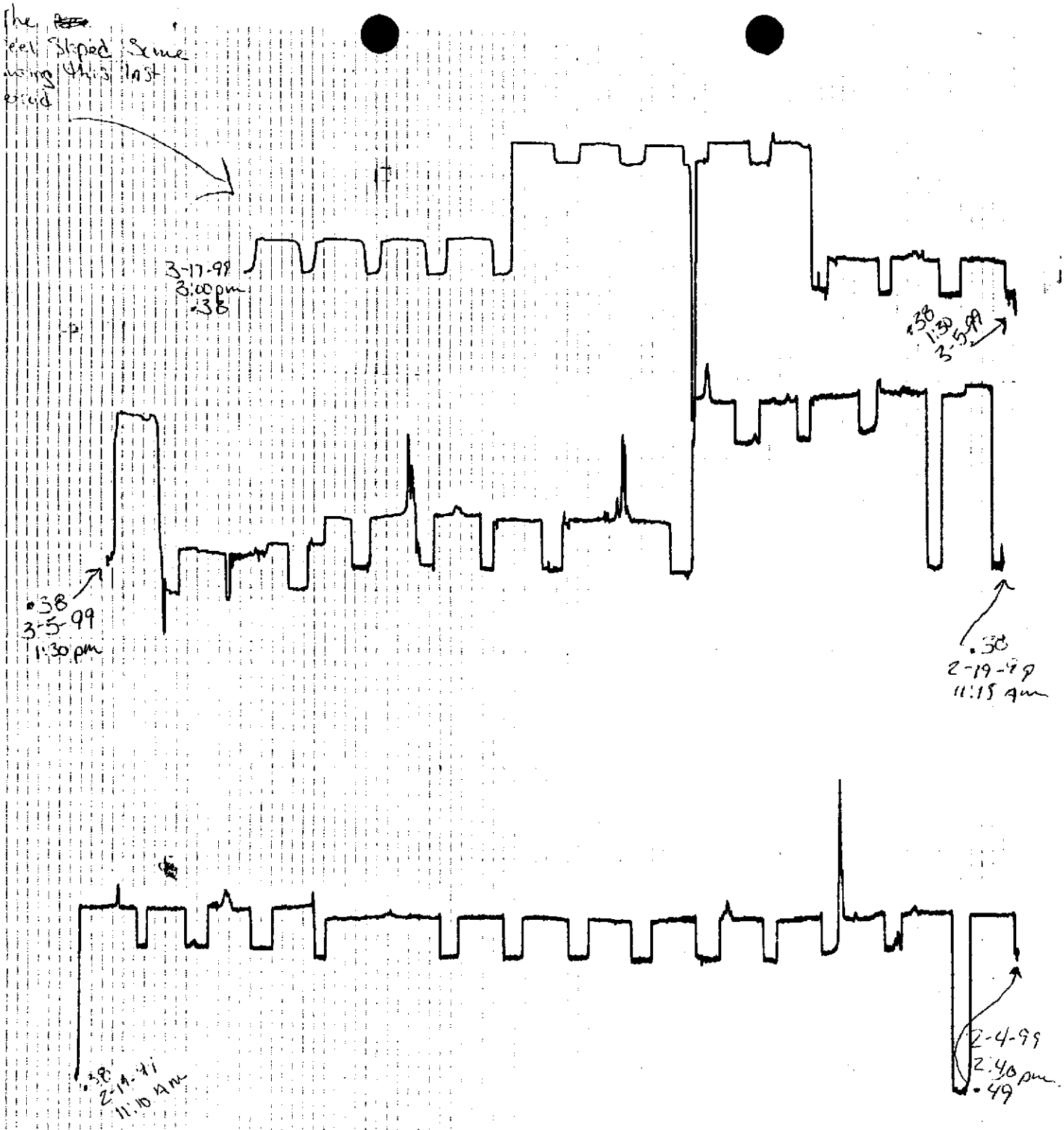
.18
35 pm
10-11-00
9/26/00
.22
10:00 Am
17 Cleaning out of ditch on 10/27+26/00
.44
11:35 Am
10-27-00
.48
4:35 pm
10-11-00


.45
2/22/00
.46
1-25-00
2.45
.46
1-25-00
.48
1-7-00

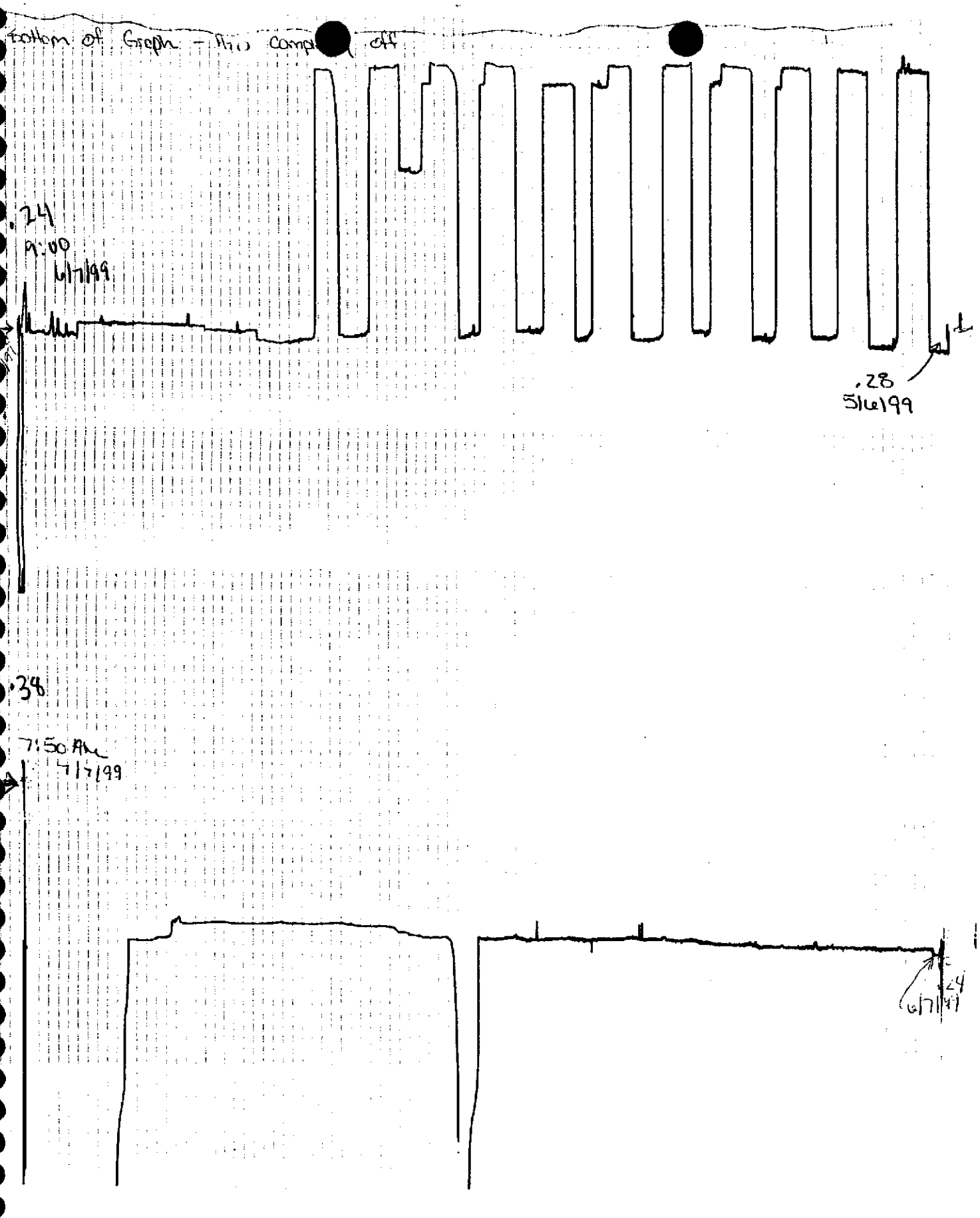

.38
1/18/00
8:00
.42
.34
3/20/00
2:35 pm
1
.42
3/8/00
.34
3/28/00
.42
3/8/00
.45
2/22/00

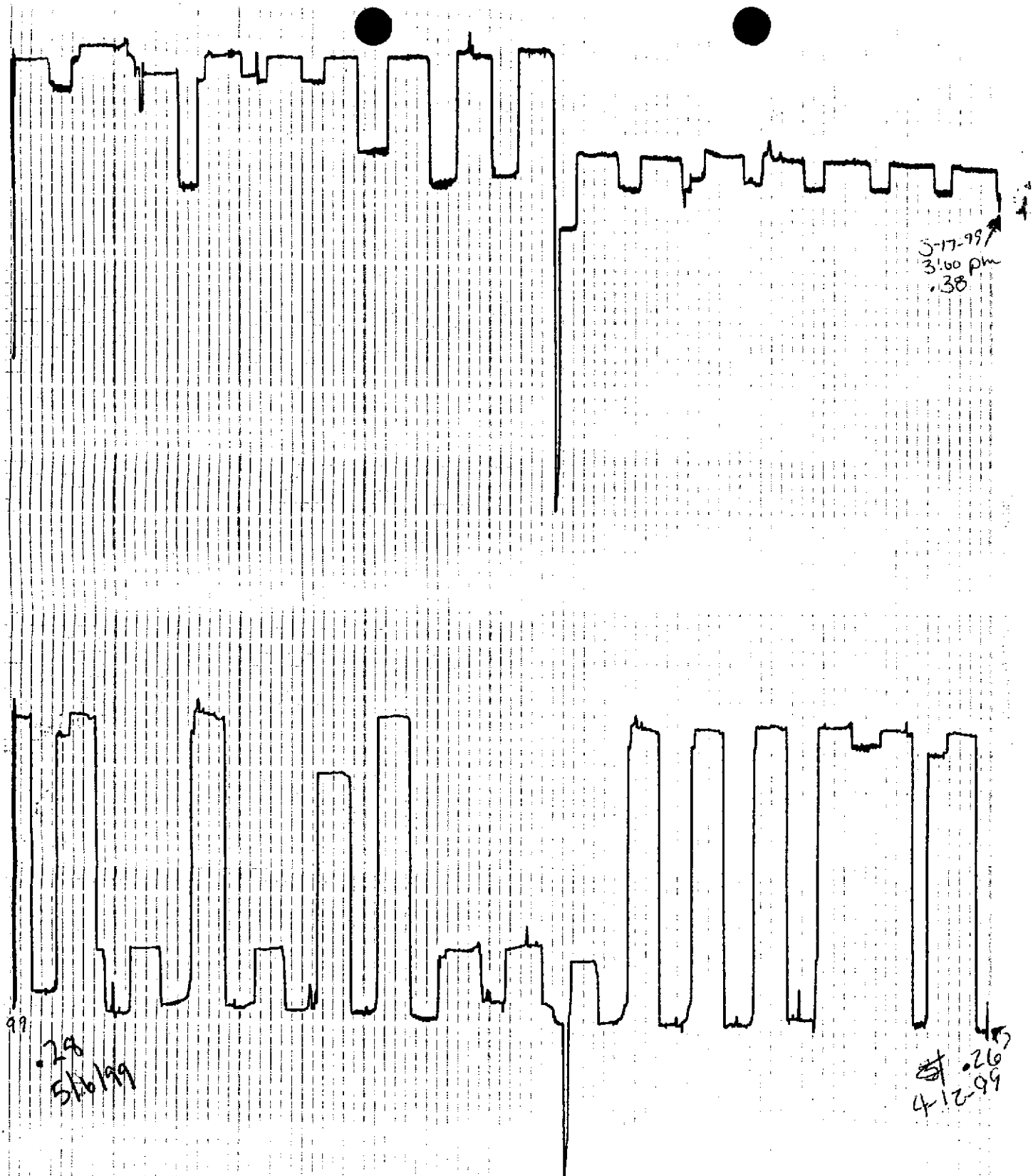
B. Discharge Weir Charts for the Flora Co. Low-Temperature Geothermal Wells for 1999.

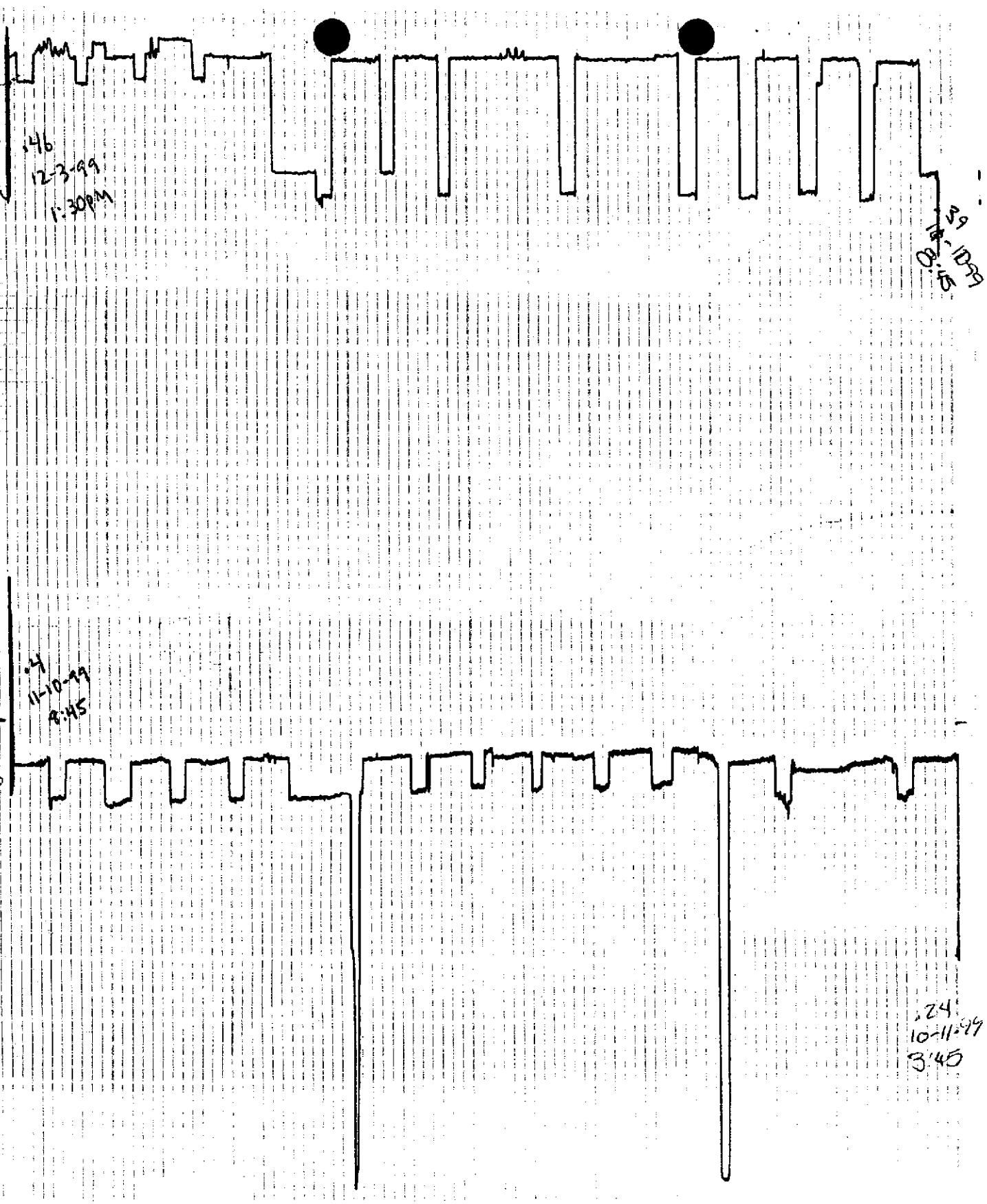

.24
10-11-99
.23
9-9-99
.23
9-9-99
.19
8/2/99
10:00AM

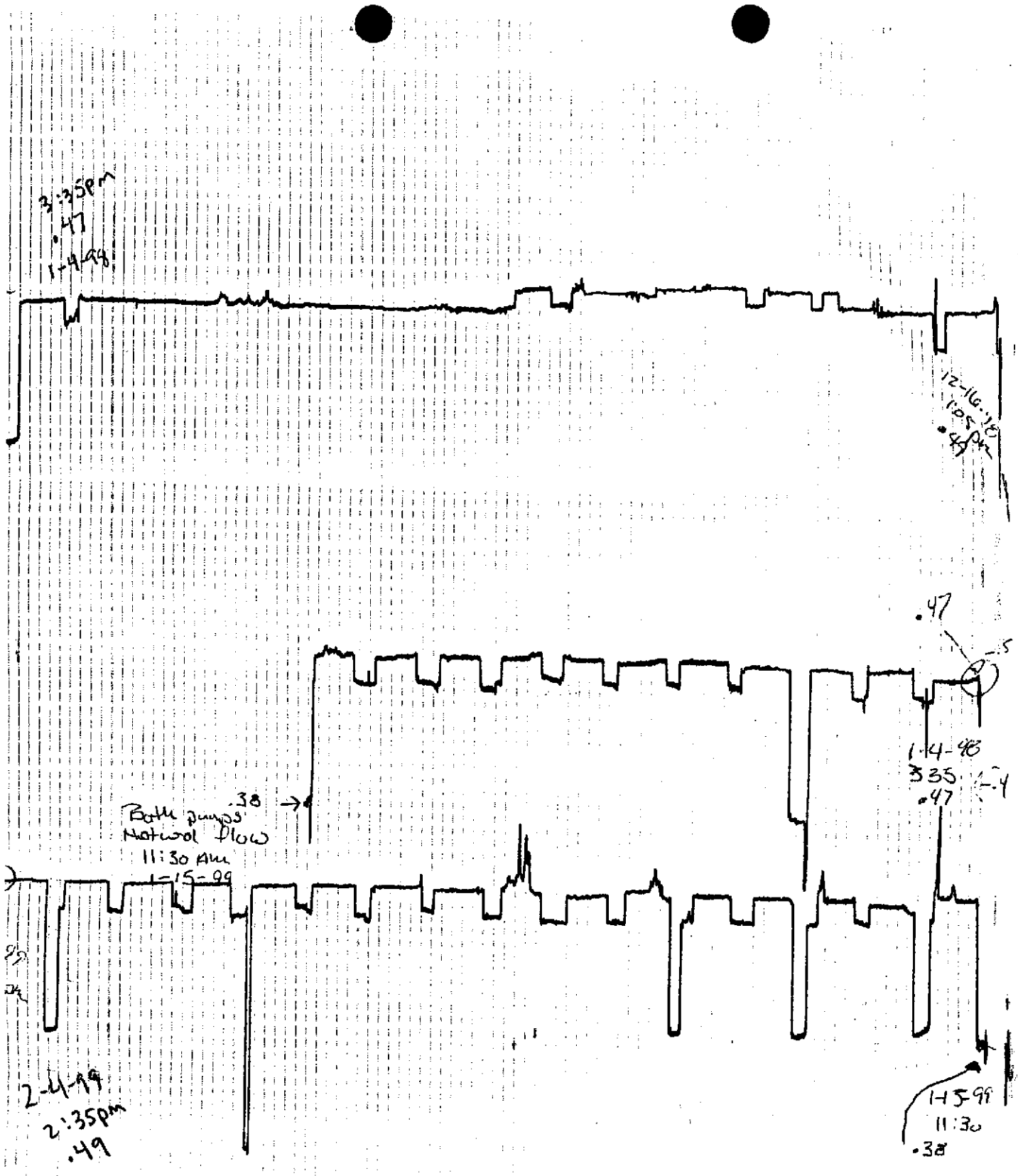


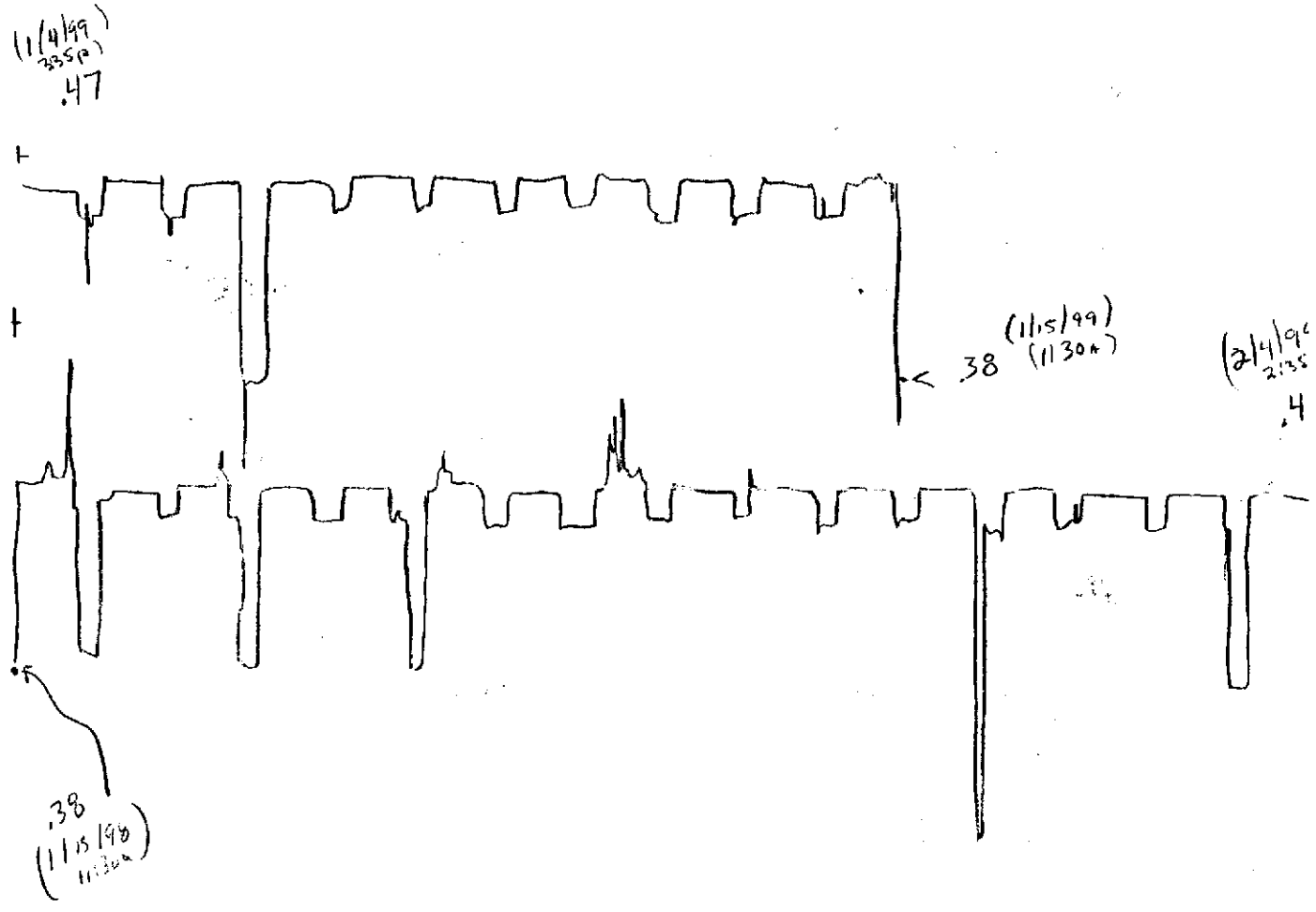
3-17-99
3:00 pm
.38
.38
1:30
3-5-99
.38
3-5-99
1:30 pm
.38
2-19-99
11:15 Am
.38
2-19-99
11:10 Am
2-4-99
2:40 pm
.49

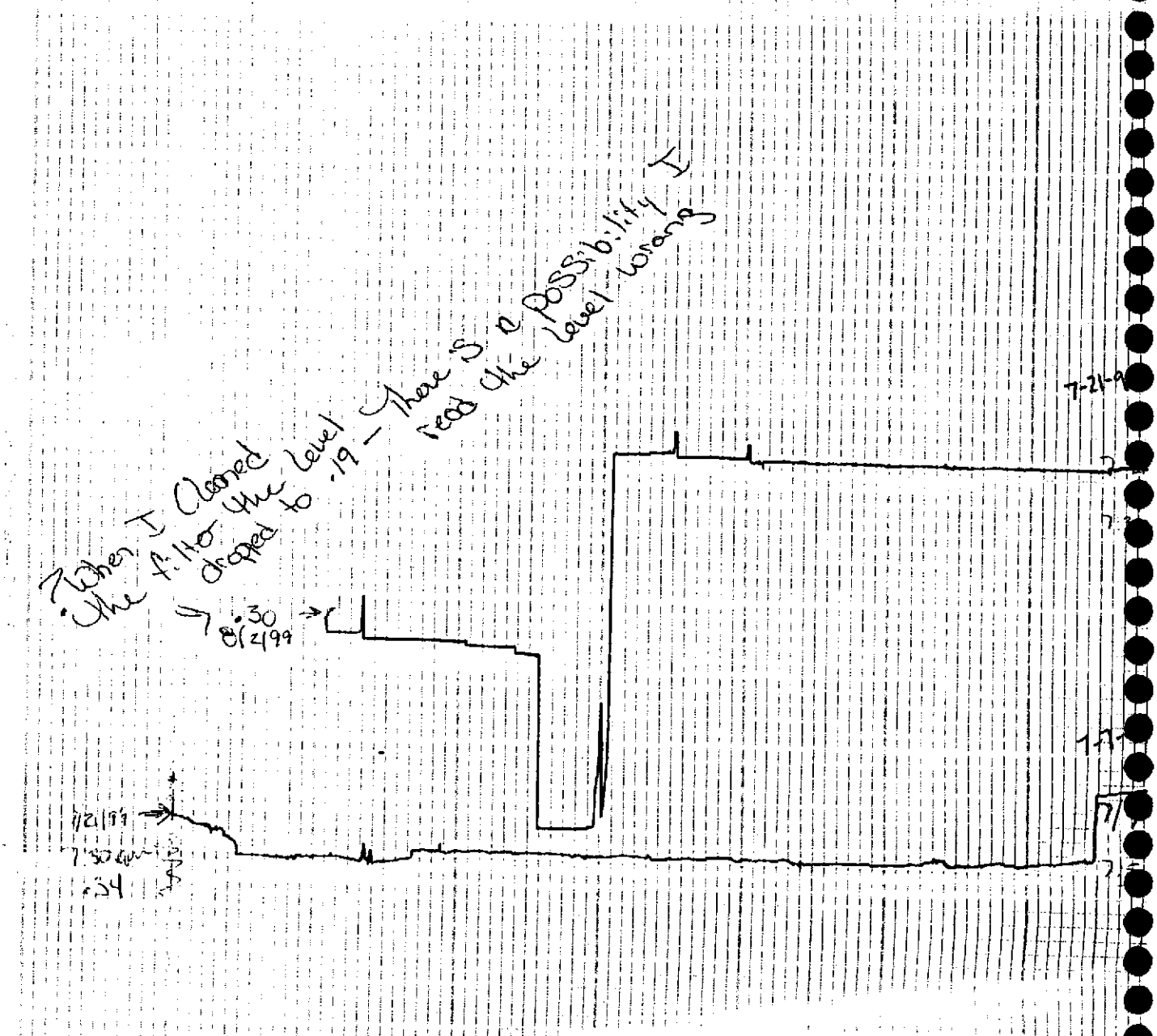

Bottom of Graph - Air Compressor off
.24
9:00
6/7/99
.28
5/6/99
.34
7:50 AM
6/7/99
.24
6/7/99


5-17-99
3:00 pm
.38
99
.29
5/6/99
.26
4-12-99

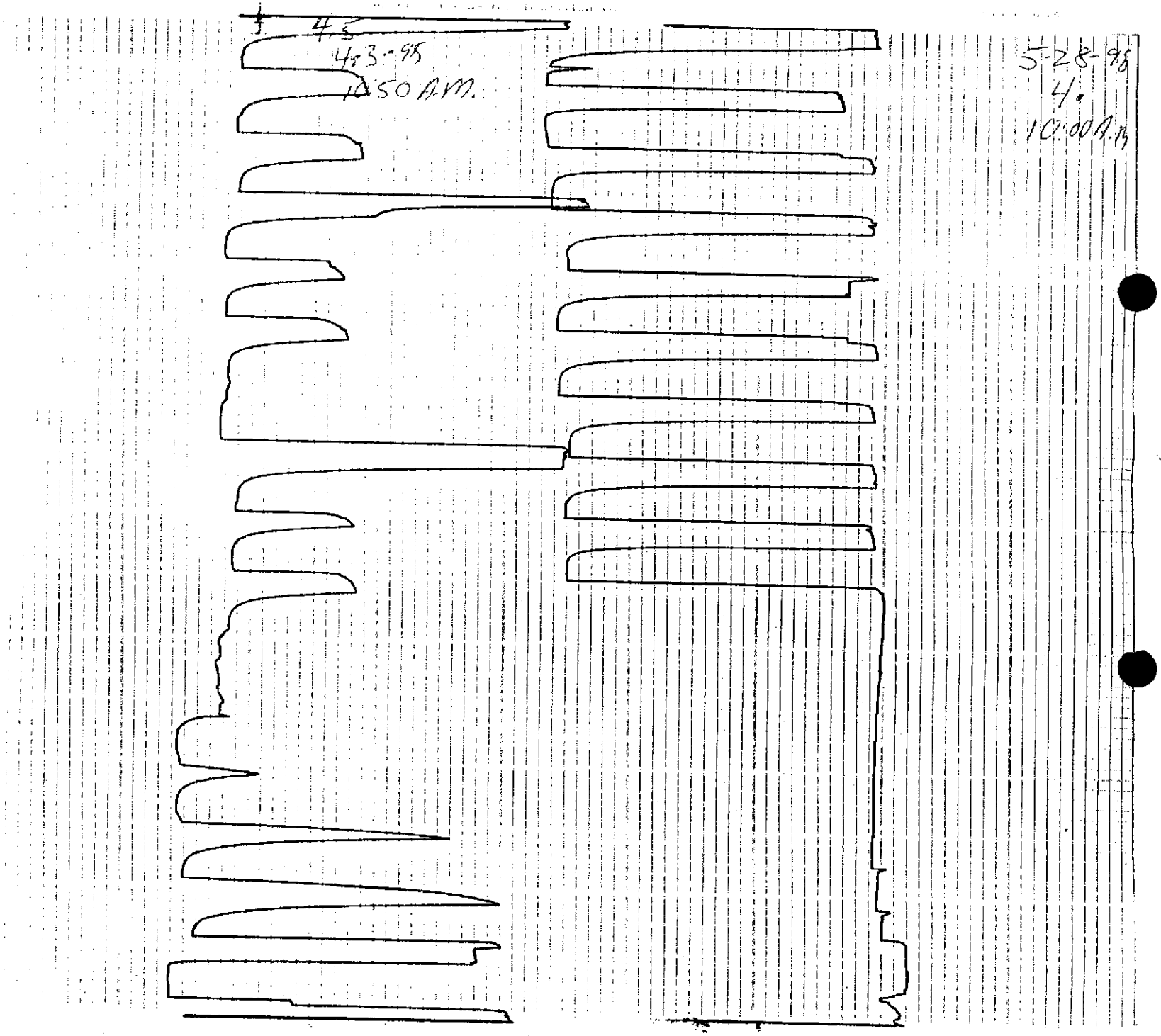

.46
12-3-99
1:30PM
.39
12-1099
8:45
.4
11-10-99
9:45
.24
10-11-99
3:45


3:35pm
.47
1-4-99
12-16-98
1:05pm
.47
.5
1-4-99
335
.47
.4
.38
Both pumps
Natural flow
11:30 AM
1-5-99
2-4-99
2:35pm
.49
1-5-99
11:30
.38

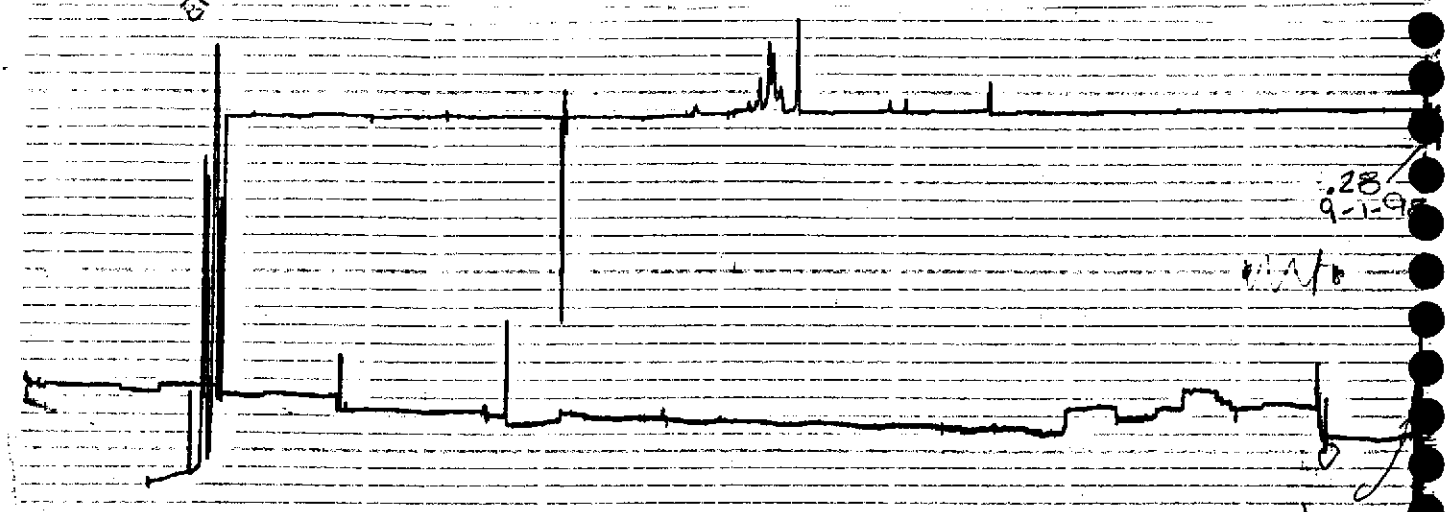

(1/4/99)
335(P)
.47
.38
(1/15/99)
(1130A)
(2/4/9
2135
.4
.38
(1/15/98)
1130A


When I Cleaned the filter the level dropped to .19 - There's a possibility I read the level wrong
.30
8/2/99
7/21/99
7:30 am
.34
7-21-9

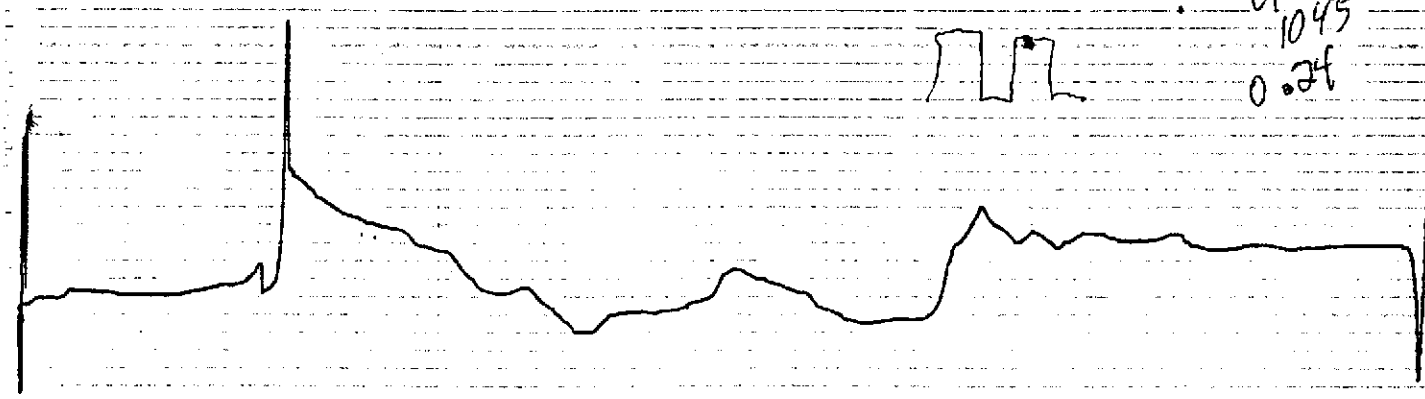
C. Discharge Weir Charts for the Flora Co. Low-Temperature Geothermal Wells for 1998.

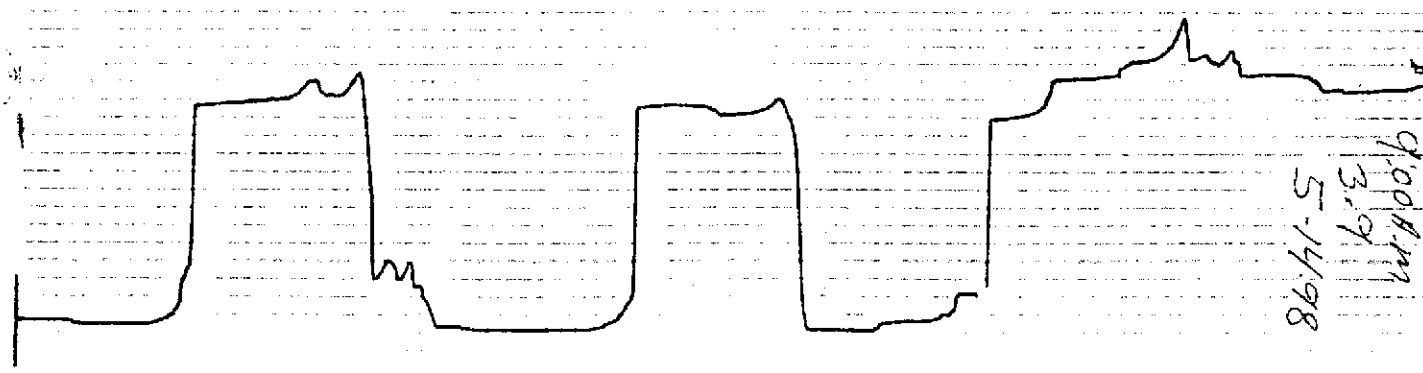

4-3-95
10:50 A.M.
5-28-95
4.
10:00 A.M.

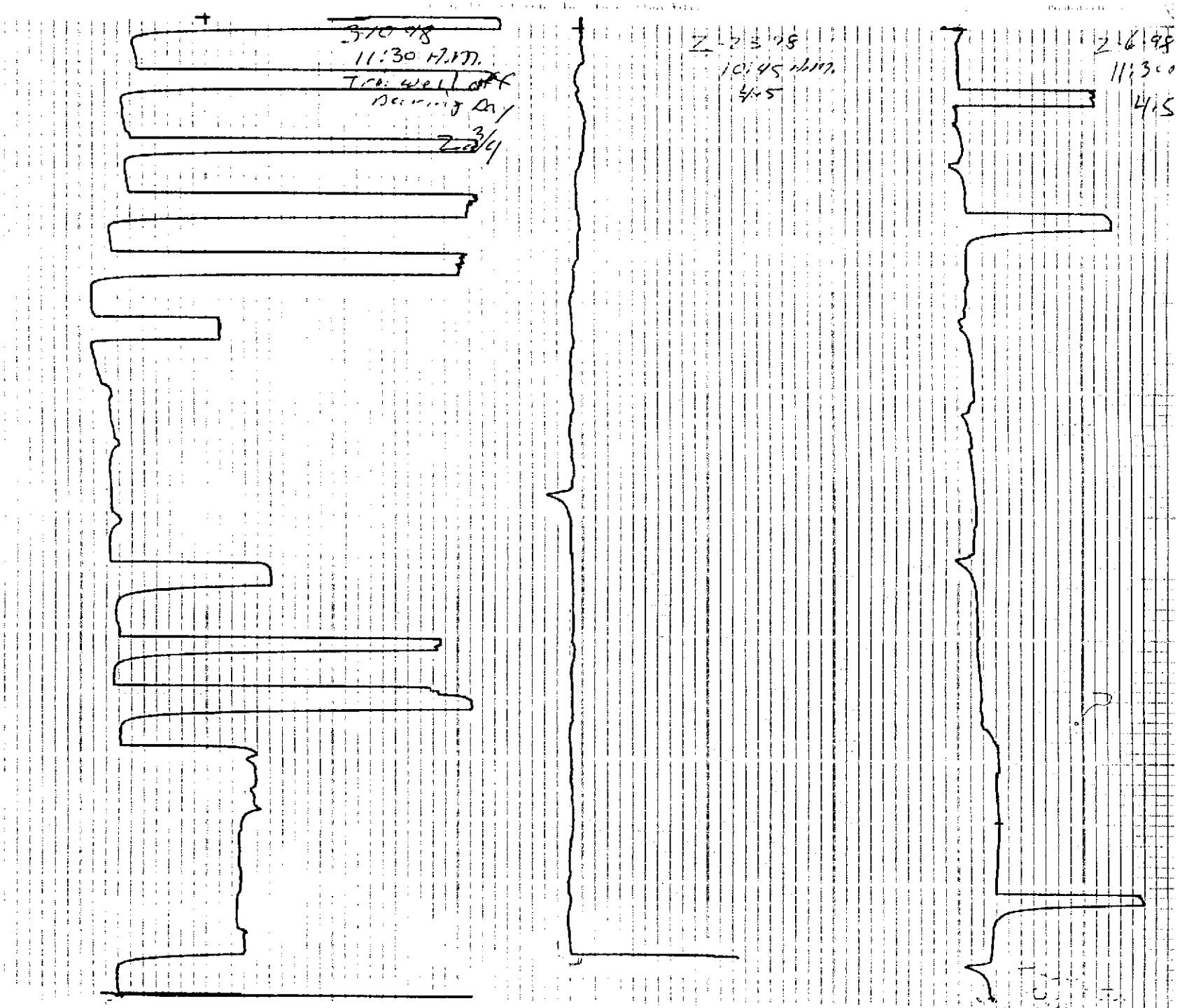
End 9-16-98 – H_2O testing & Changing out of pressure gages on 9-15-98

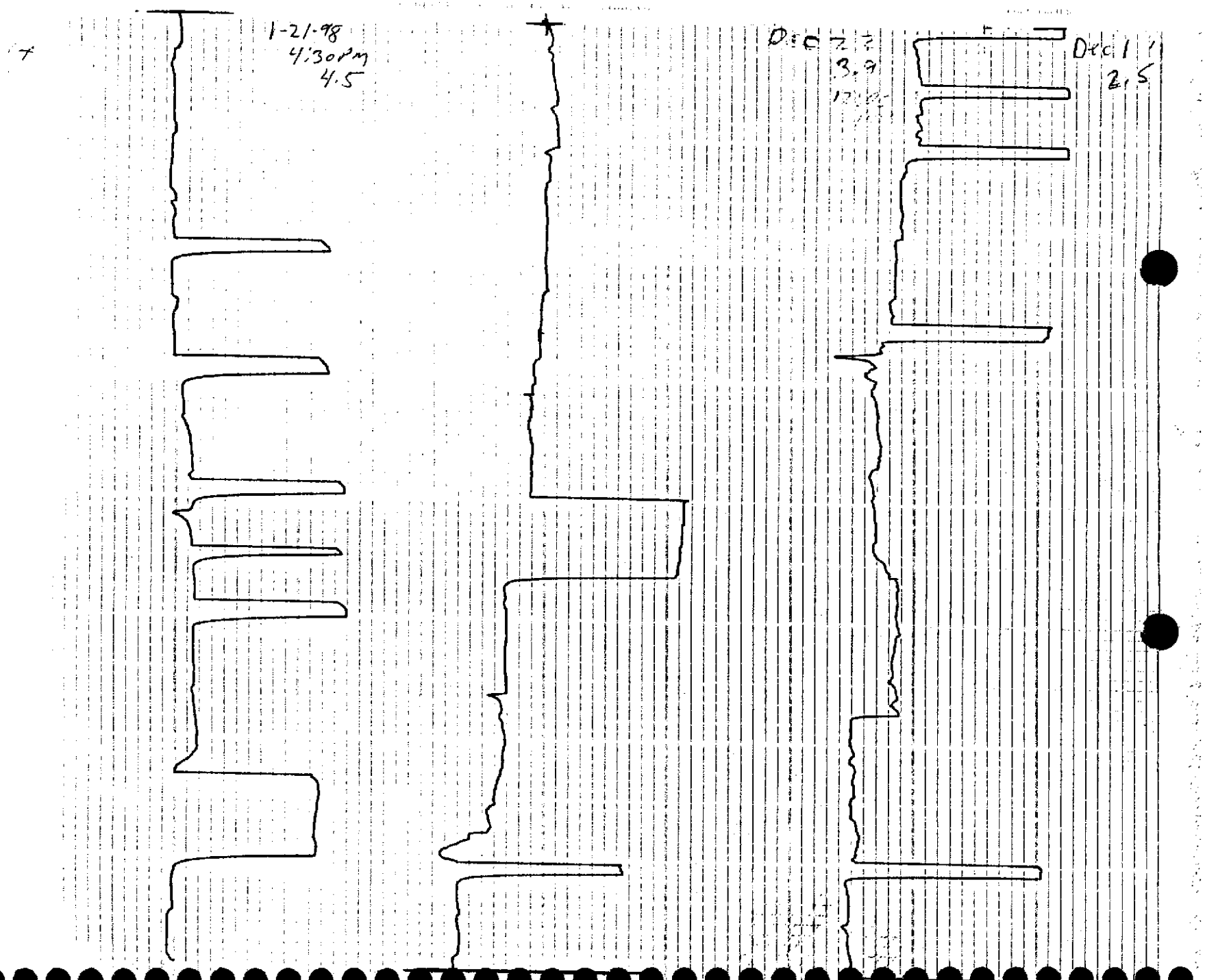


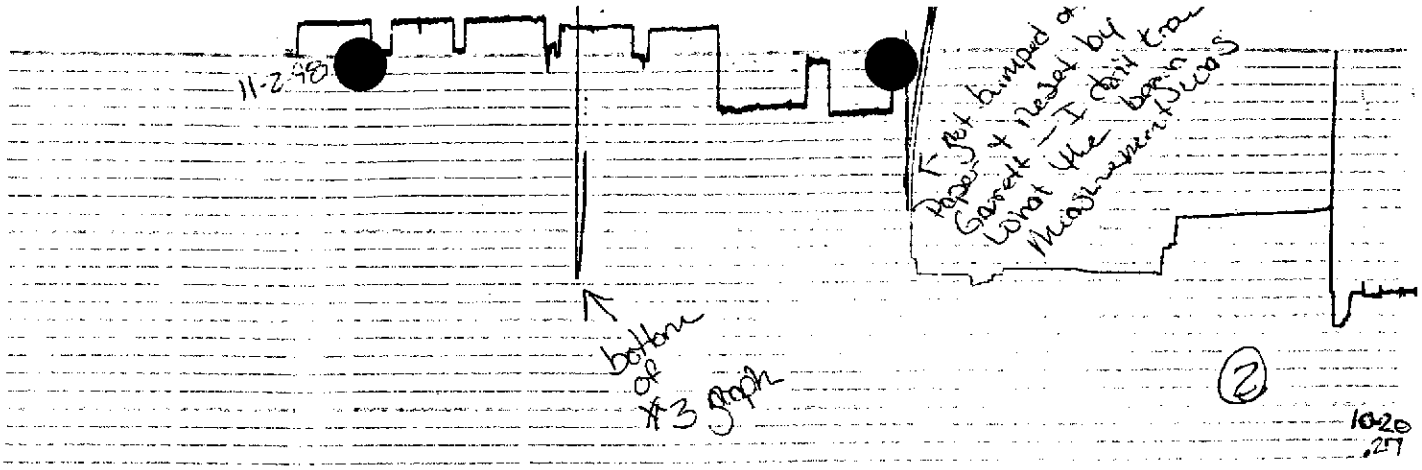
8/13/98
1045
0.24

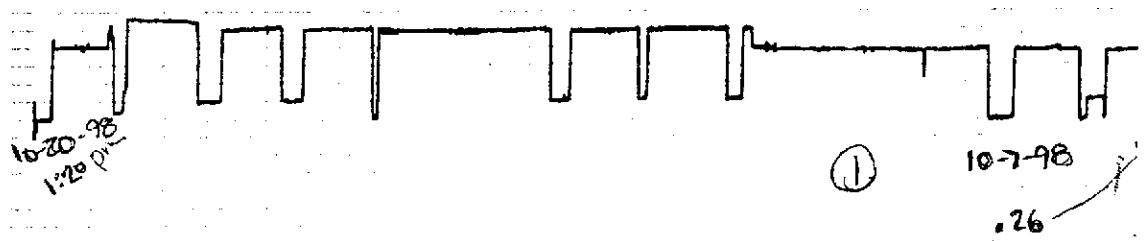


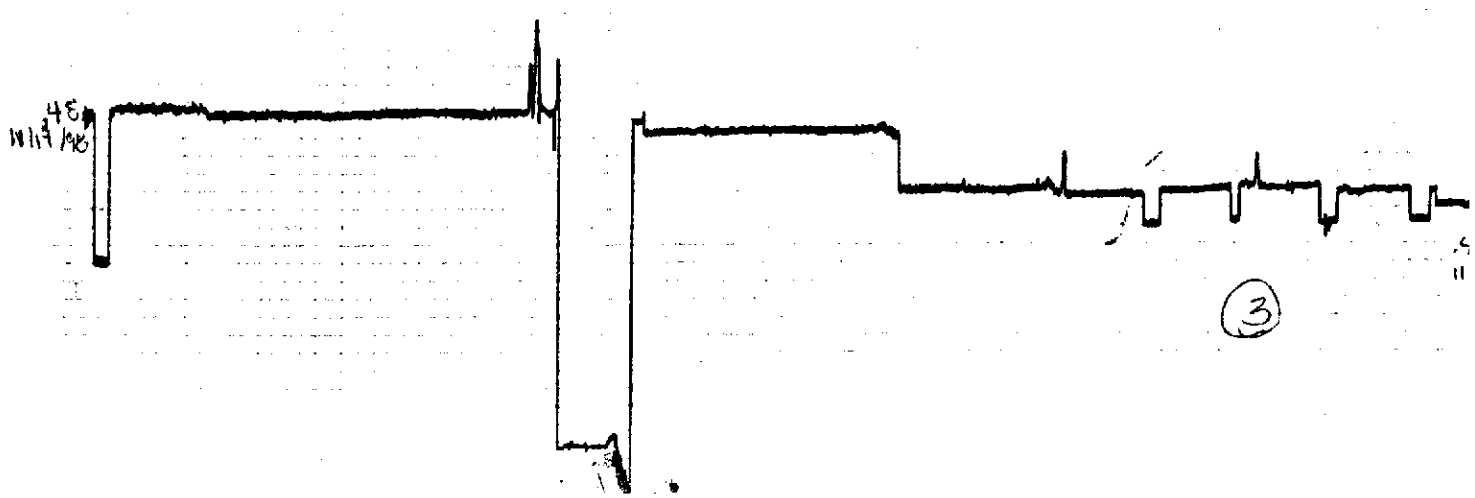


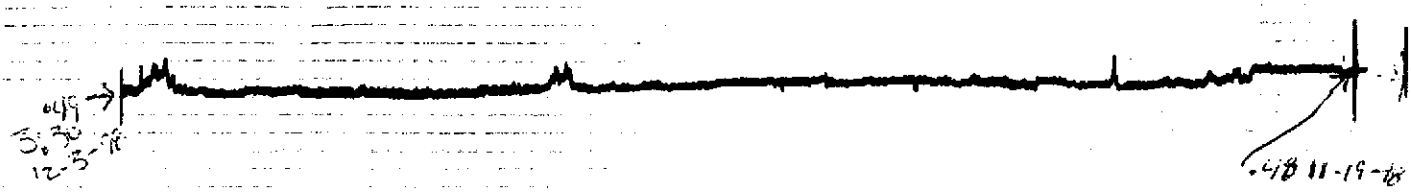

3/10 98
11:30 A.M.
Tree well off
morning day
2 3/4
2/25/98
10:45 a.m.
4.5
2/6/98
11:30
4.5

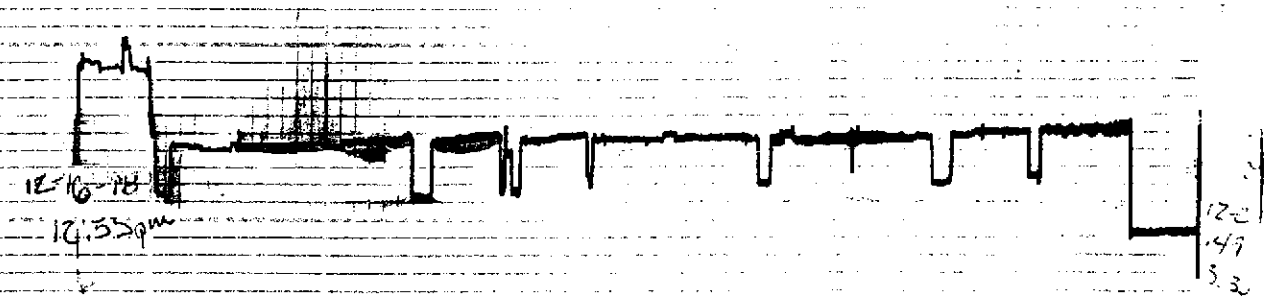

1-21-98
4:30pm
4.5
3.9
2.5


11-2-98
bottom of #3 graph
Paper + reset by Garrett — I don't know what the begin measurements was
2
10-20
.27

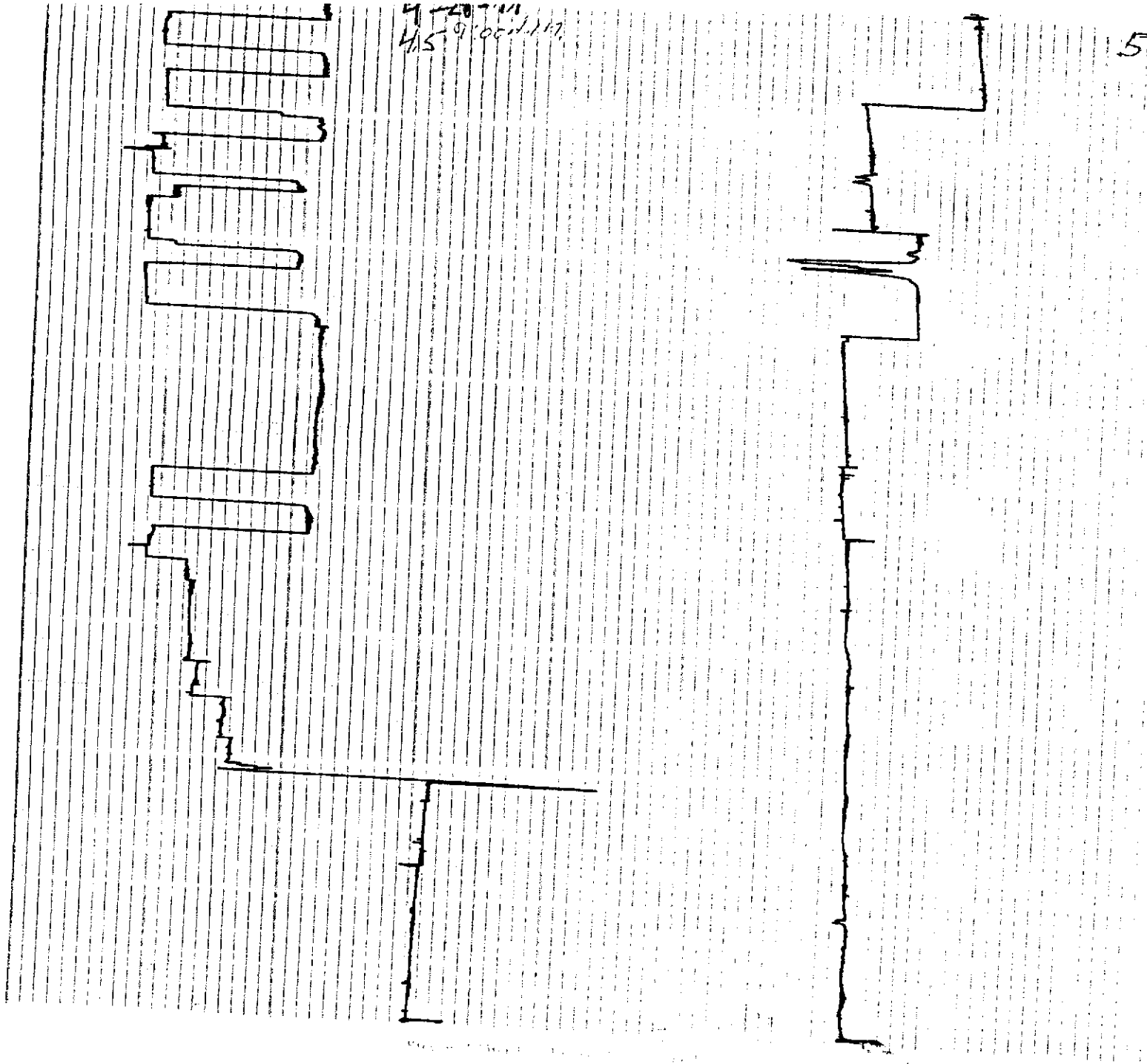

10-20-98
1:20 pm
1
10-7-98
.26

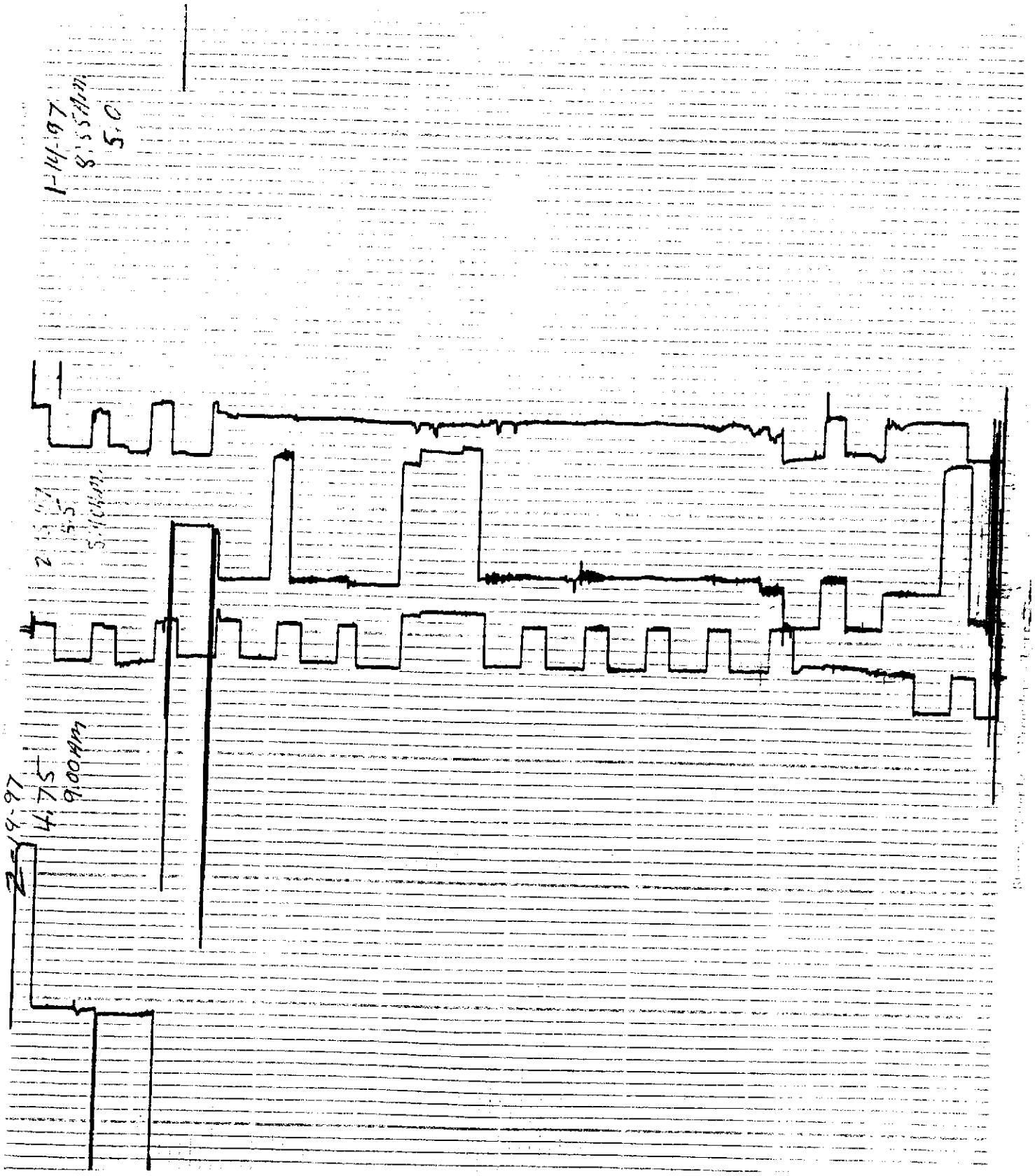

48
11/17/98
3

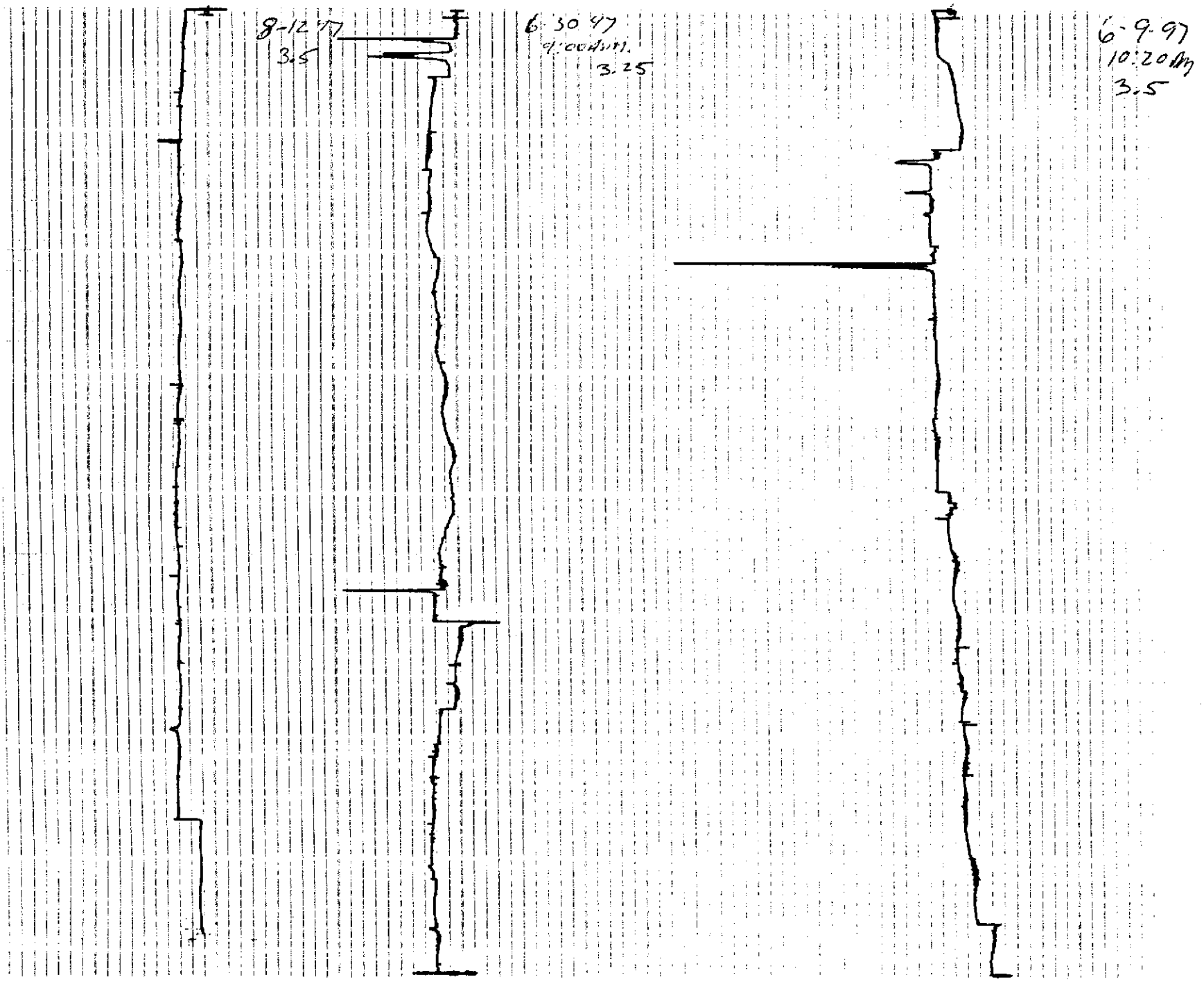

.49
5:30
12-3-18
.48 11-19-18

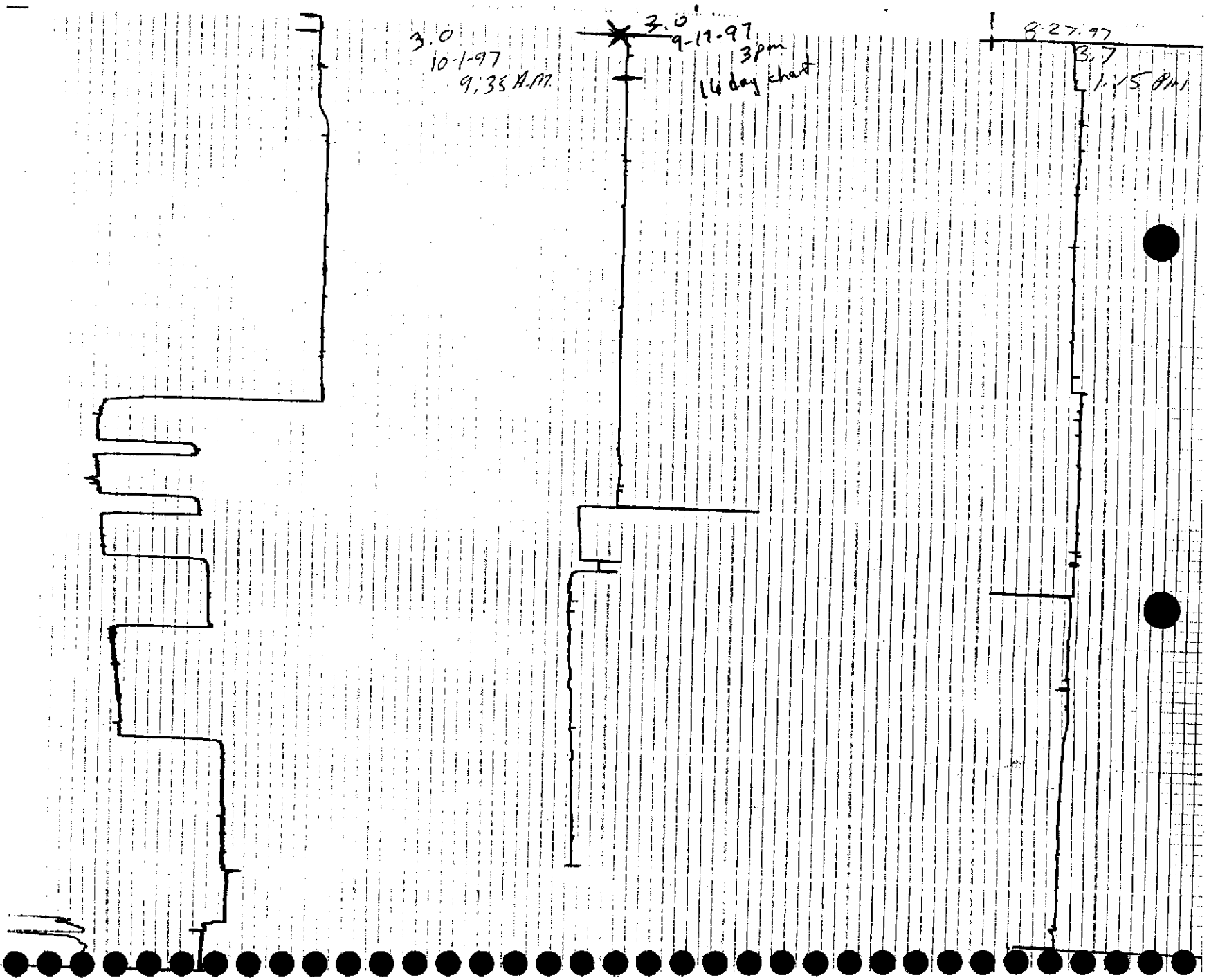

12-16-18
12:55pm
12-2
.49
5.3

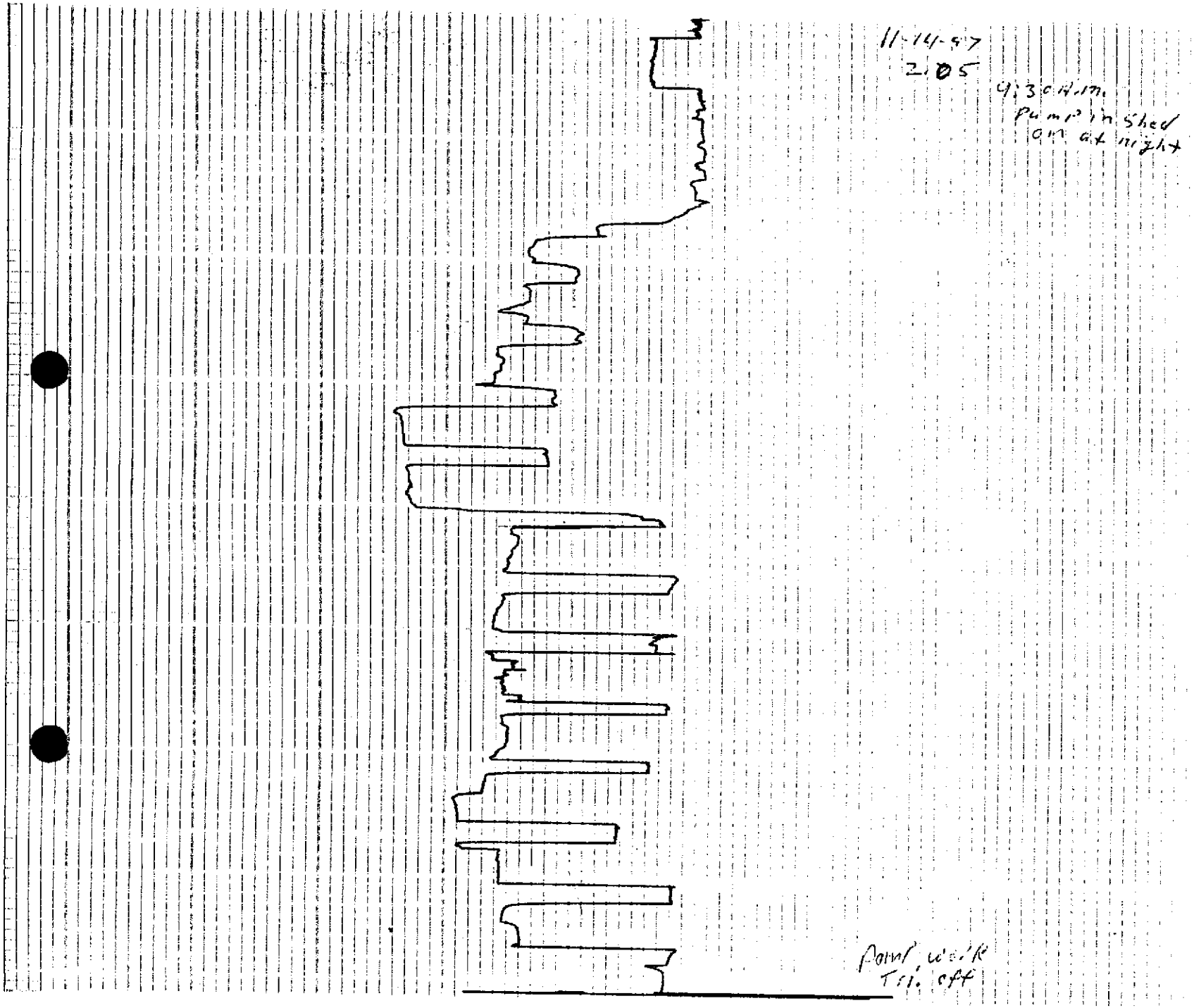
D. Discharge Weir Charts for the Flora Co. Low-Temperature Geothermal Wells for 1997.

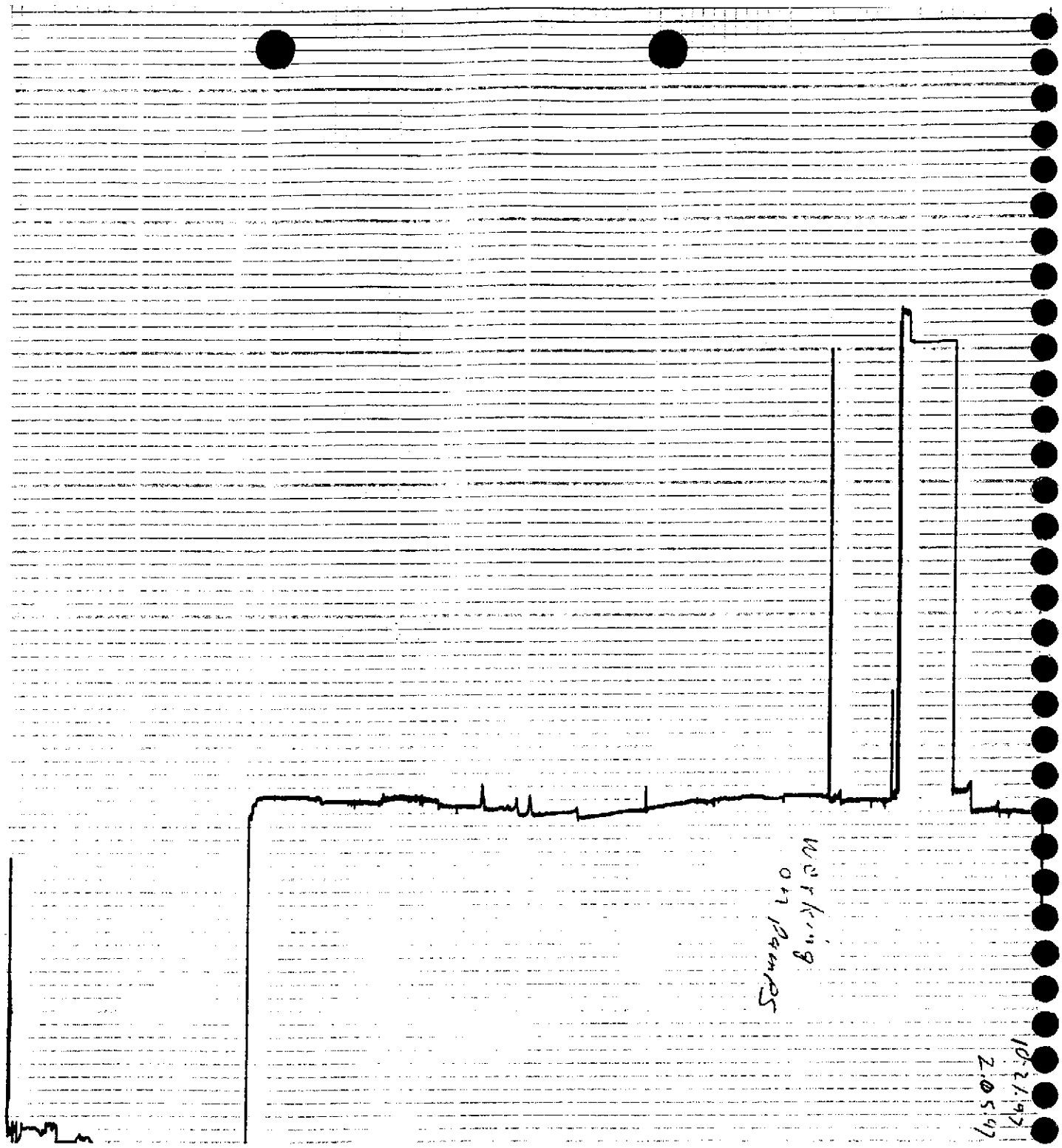

5-21-97
6:30AM
2.7


1-14-97
8:55AM
5.0
2-19-97
4.75
9.00AM

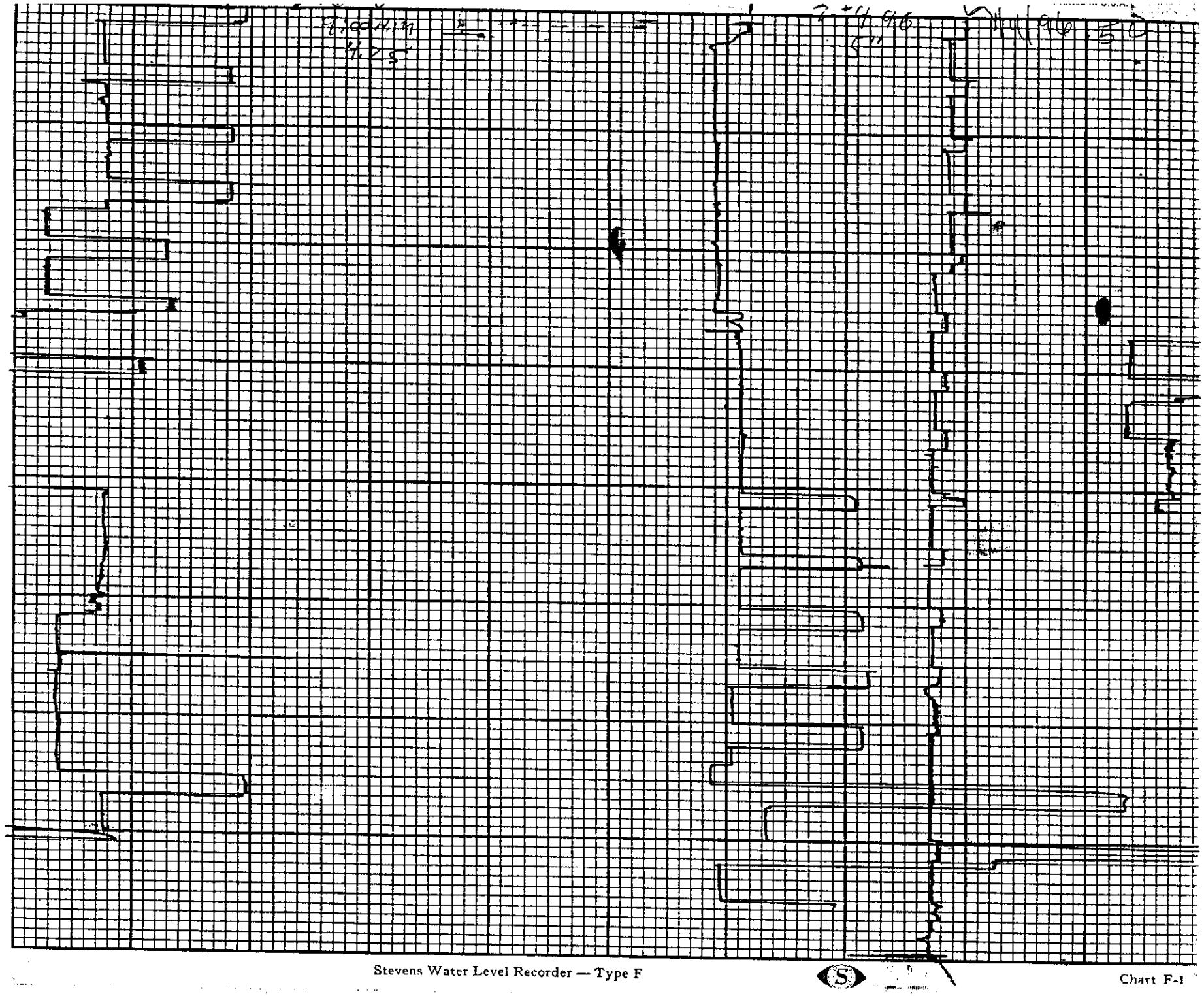

8-12-97
3.5
6 30 97
9:00Am.
3.25
6-9-97
10:20Am
3.5


3.0
10-1-97
9:35 A.M.
3.0
9-17-97
3pm
16 day chart
8-27-97
3.7
1:15 PM


11-14-97
2.05
4:30 a.m.
Pump shed
on at night
Pump work
Tri. off

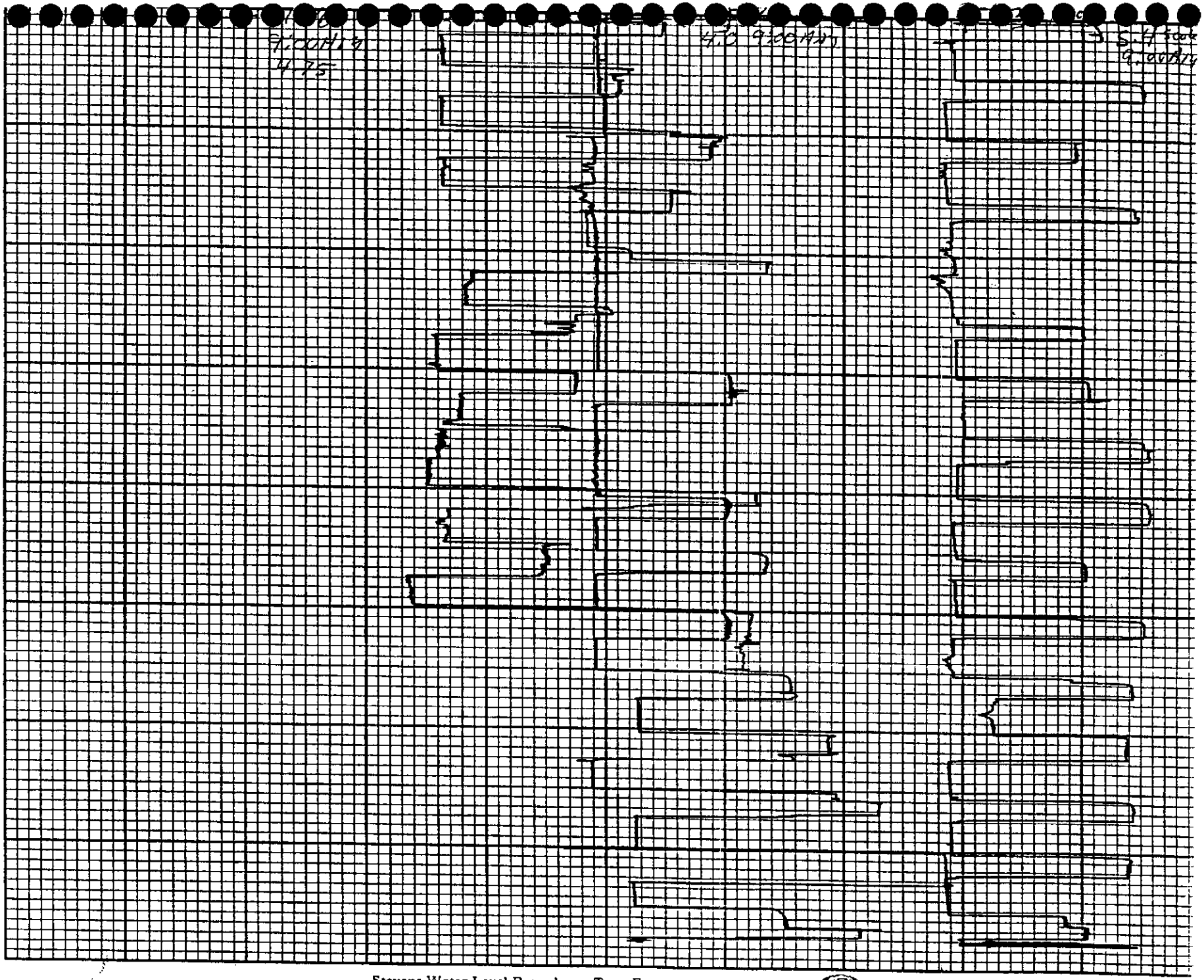

working on pumps
10.21.97
2.05.97

E. Discharge Weir Charts for the Flora Co. Low-Temperature Geothermal Wells for 1996.



Stevens Water Level Recorder — Type F

Chart F-1



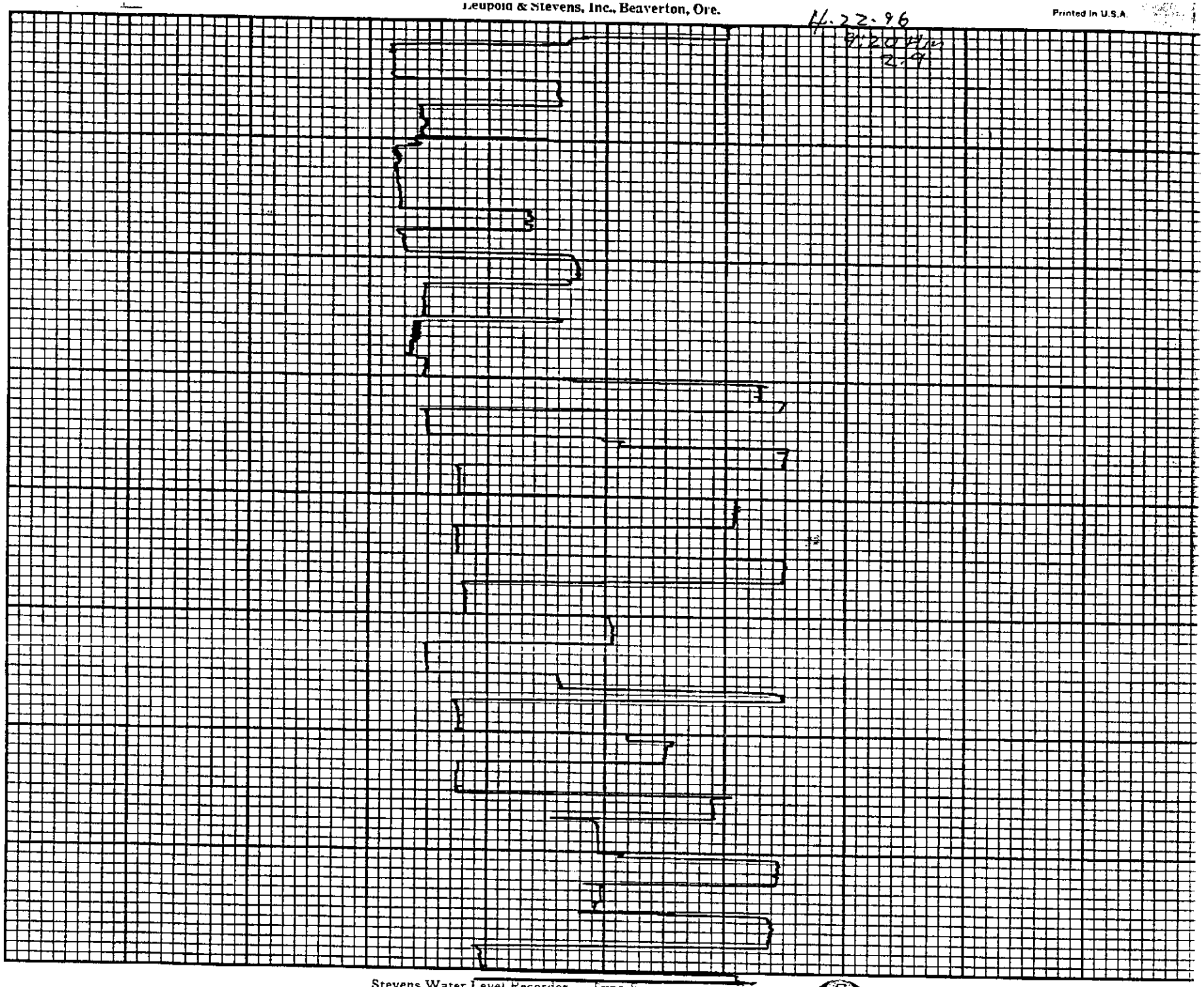
Stevens Water Level Recorder — Type F

Chart F-1

Leupold & Stevens, Inc., Beaverton, Ore.

Printed in U.S.A.

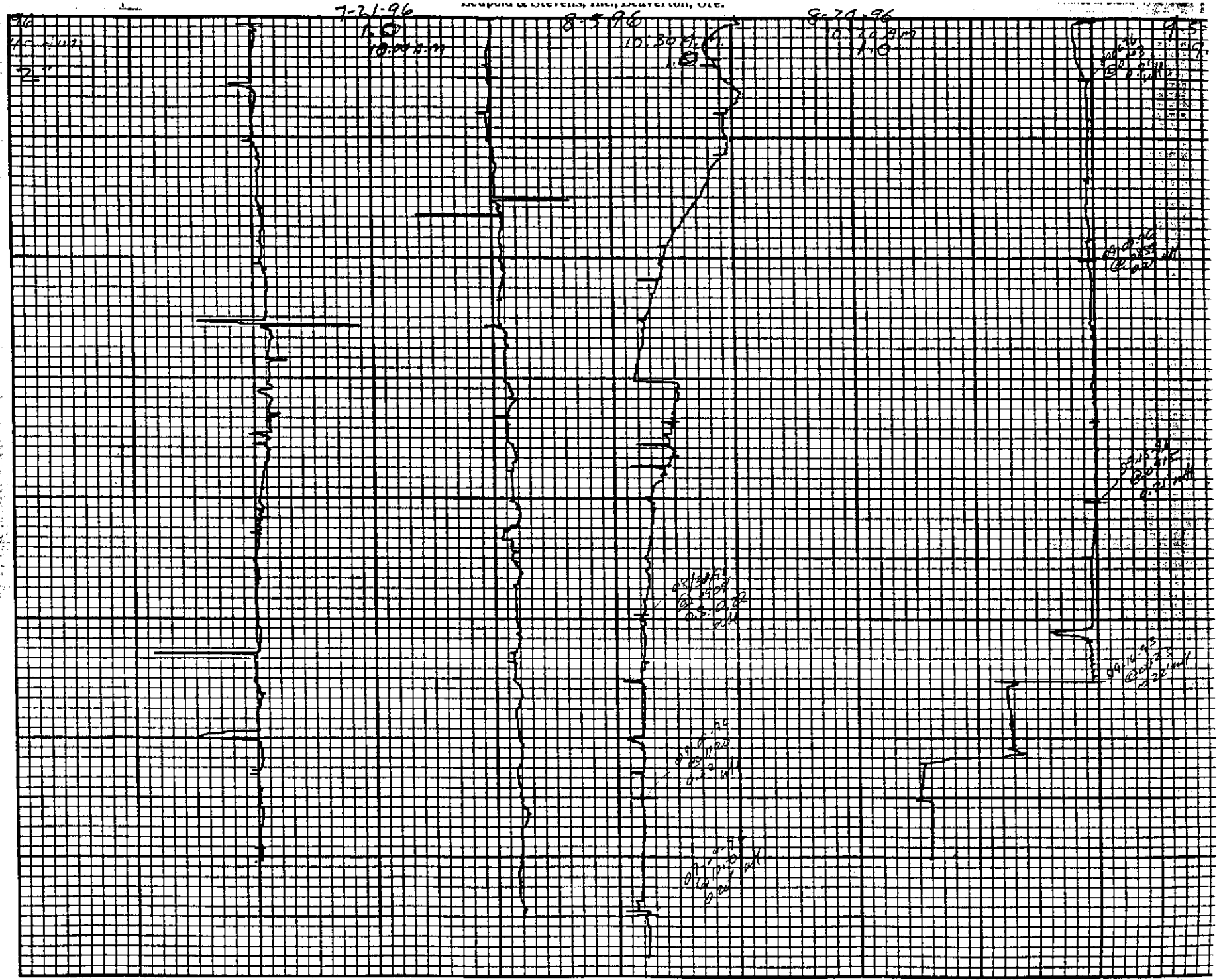
4.22.96
9:20 AM
2.9



Stevens Water Level Recorder — Type F

Chart F-1

Stevens Water Level Recorder — Type F
S
Chart F-1

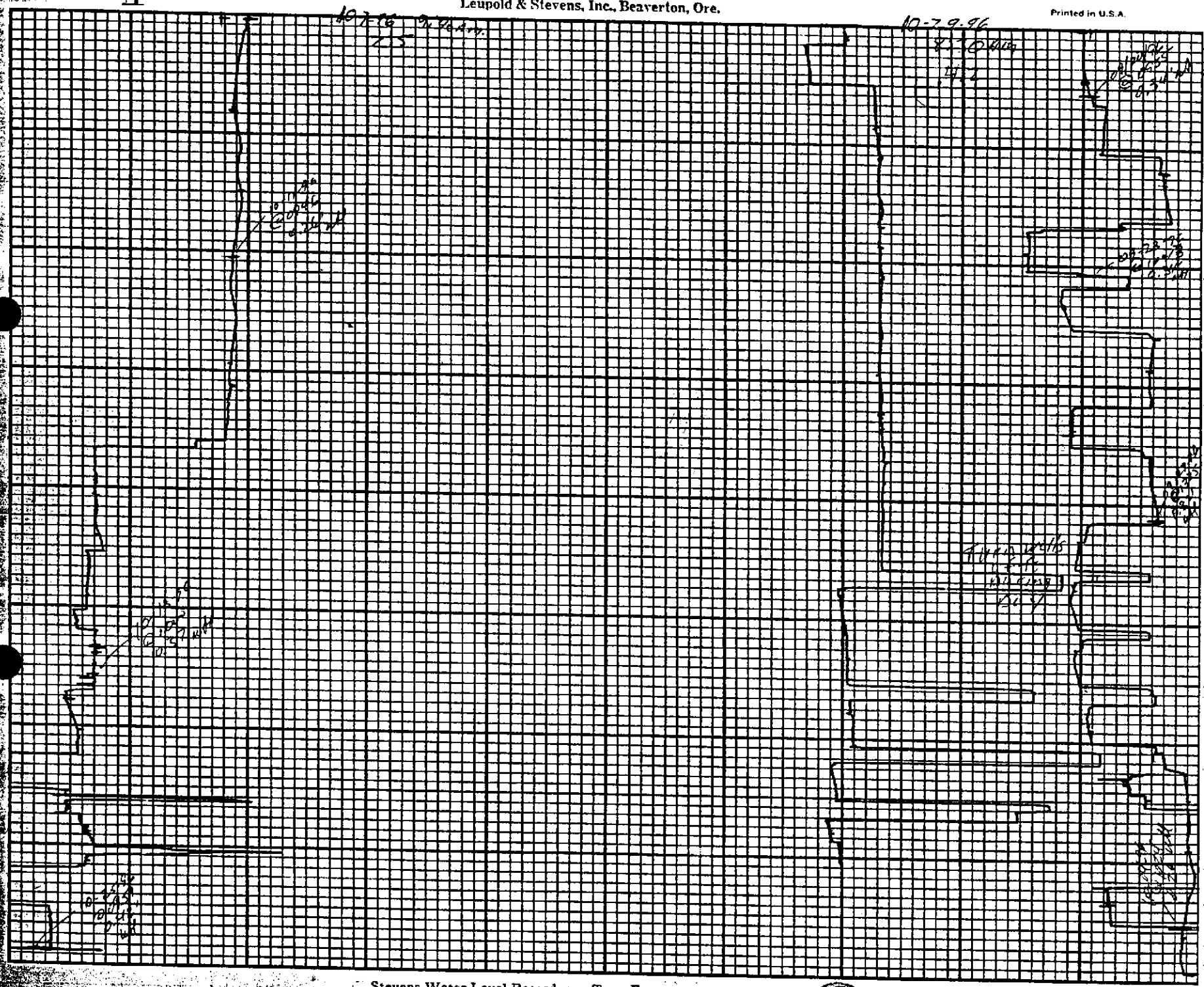


Stevens Water Level Recorder — Type F

Chart F-1

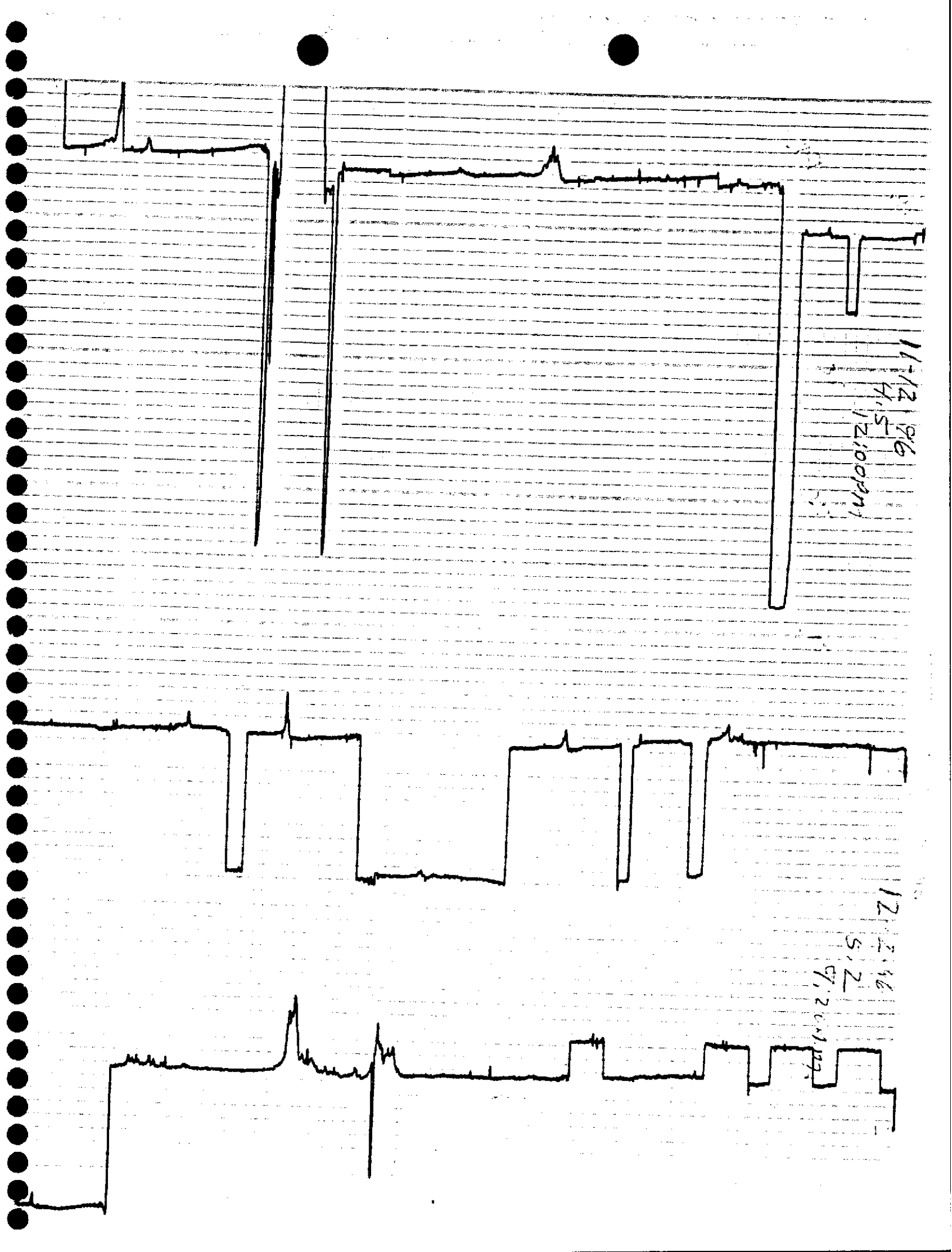
Leupold & Stevens, Inc., Beaverton, Ore.

Printed in U.S.A.



Stevens Water Level Recorder — Type F

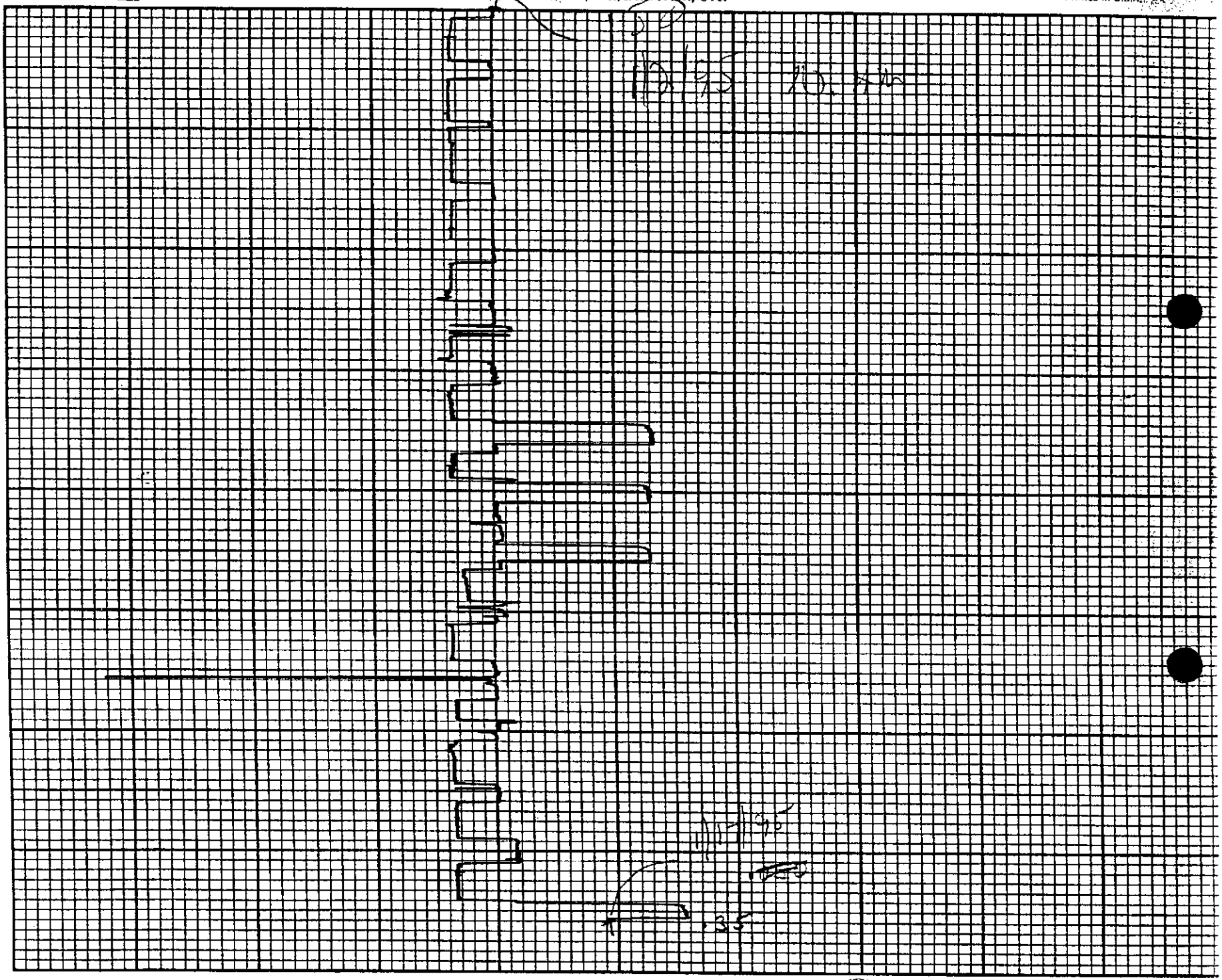
Chart F-1


11-12-96
4.5
12:00pm
12-2-96
5.2

F. Discharge Weir Charts for the Flora Co. Low-Temperature Geothermal Wells for 1995.

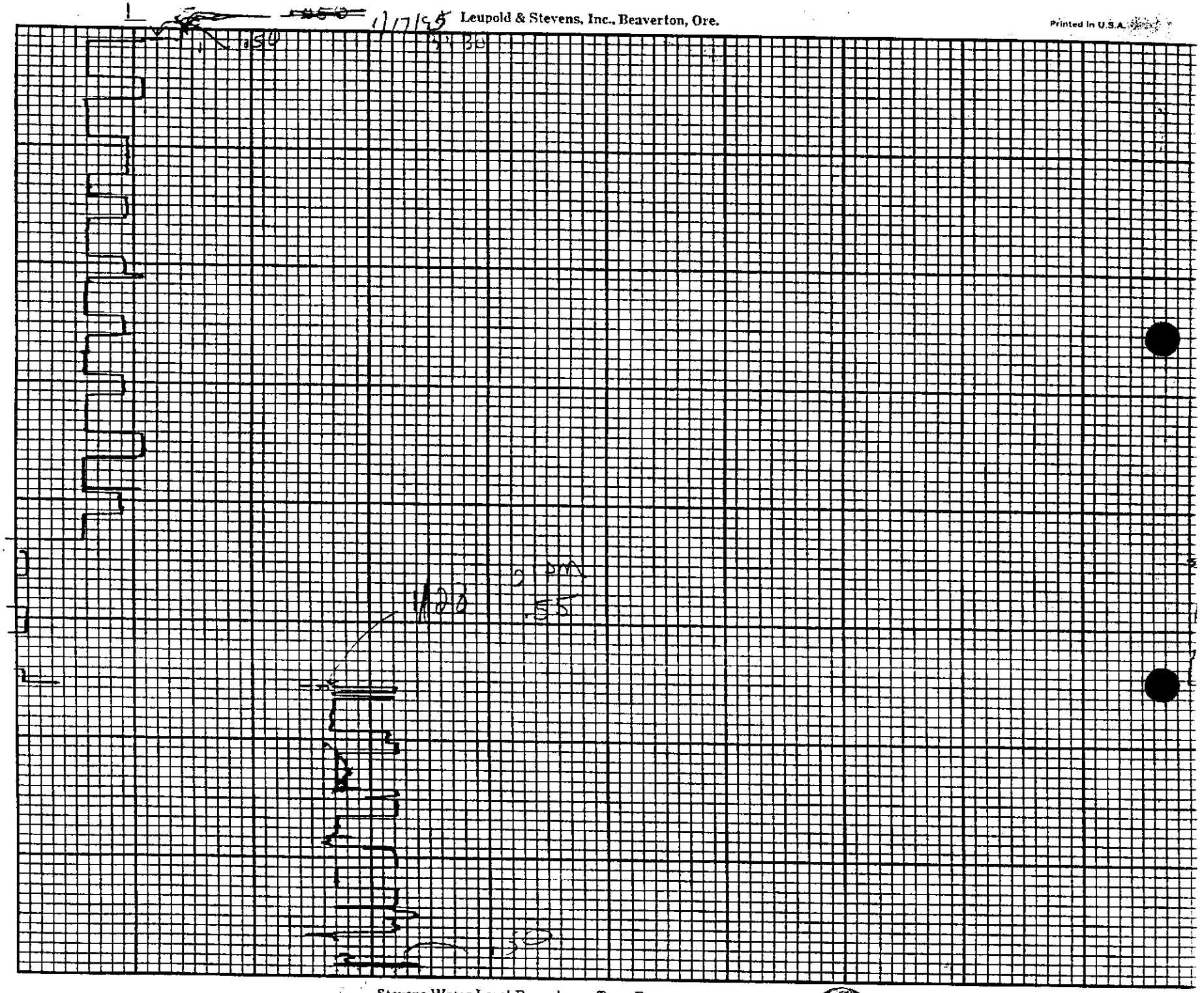
Leupold & Stevens, Inc., Beaverton, Ore.

Printed in U.S.A.



Stevens Water Level Recorder — Type F

Chart F-1

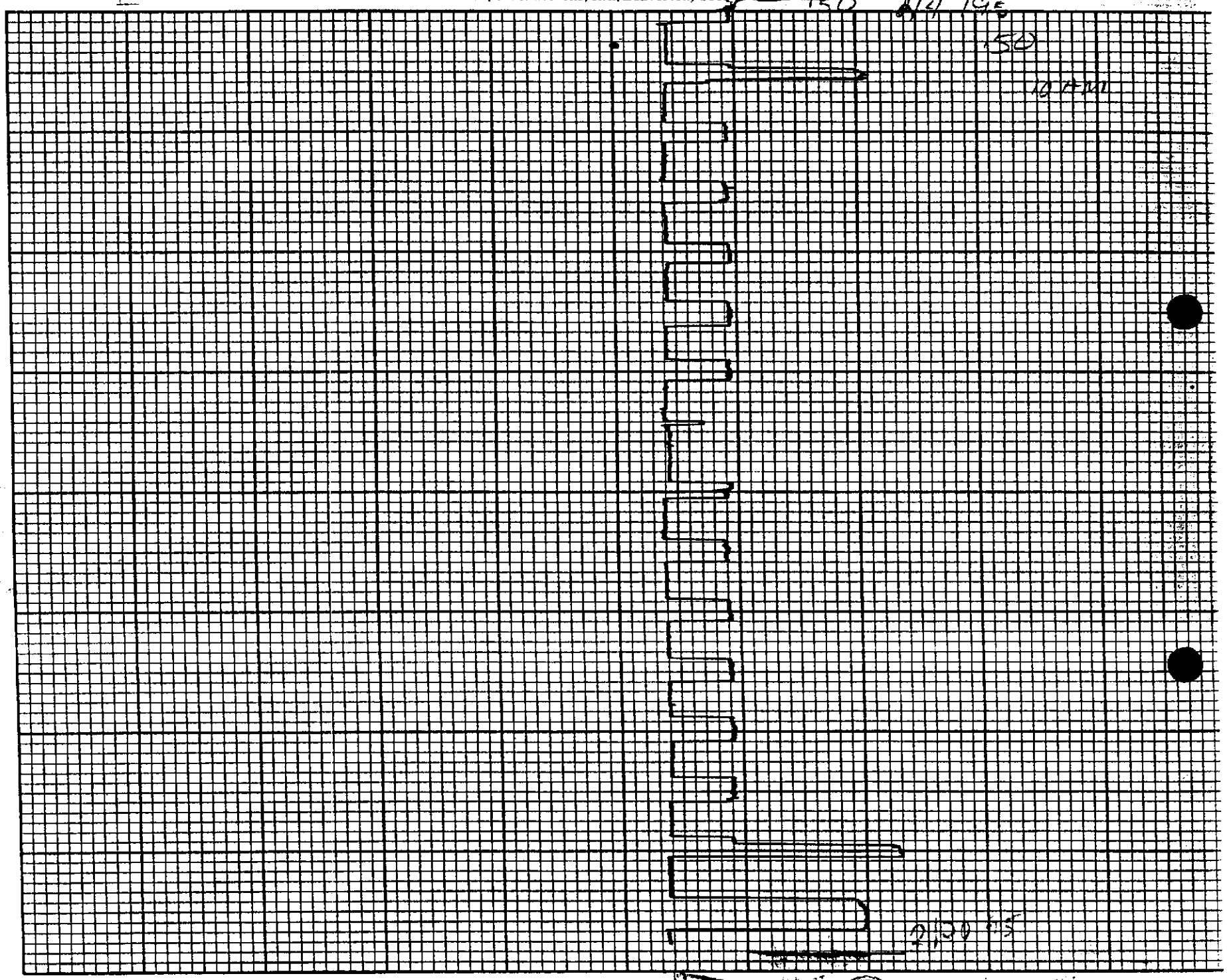


Stevens Water Level Recorder — Type F

Chart F-1

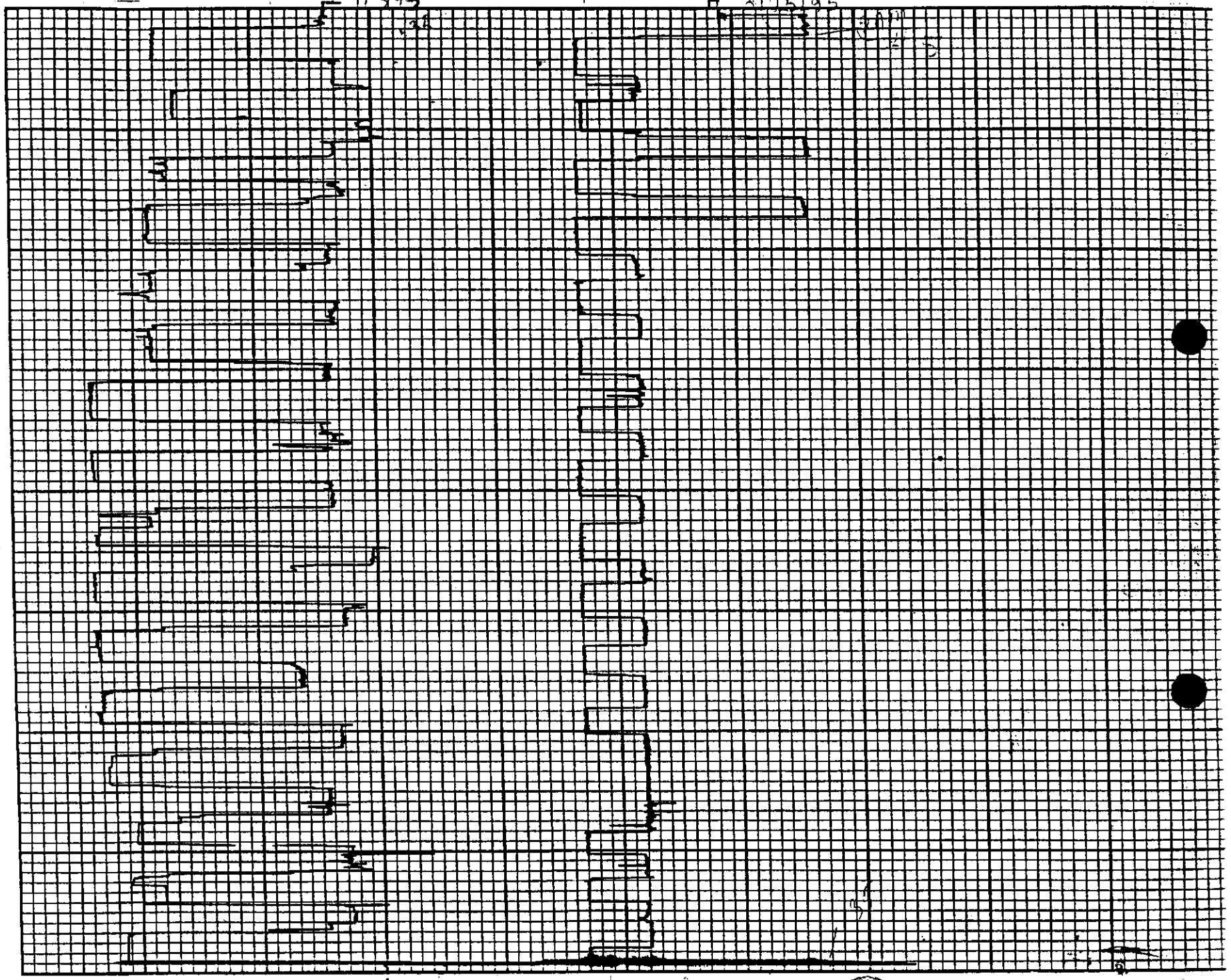
Leupold & Stevens, Inc., Beaverton, Ore.

Printed in U.S.A.



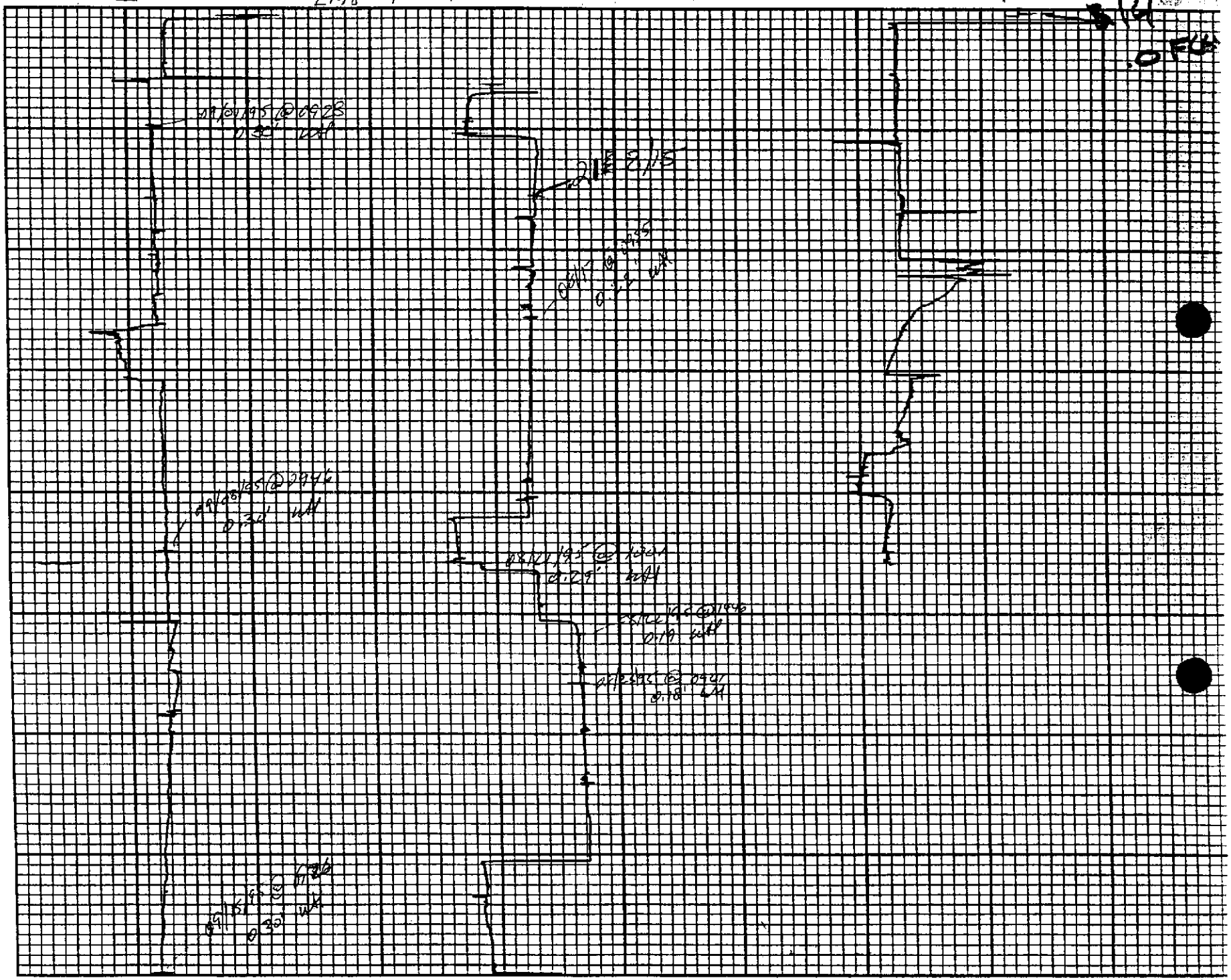
Stevens Water Level Recorder — Type F

Chart F-1



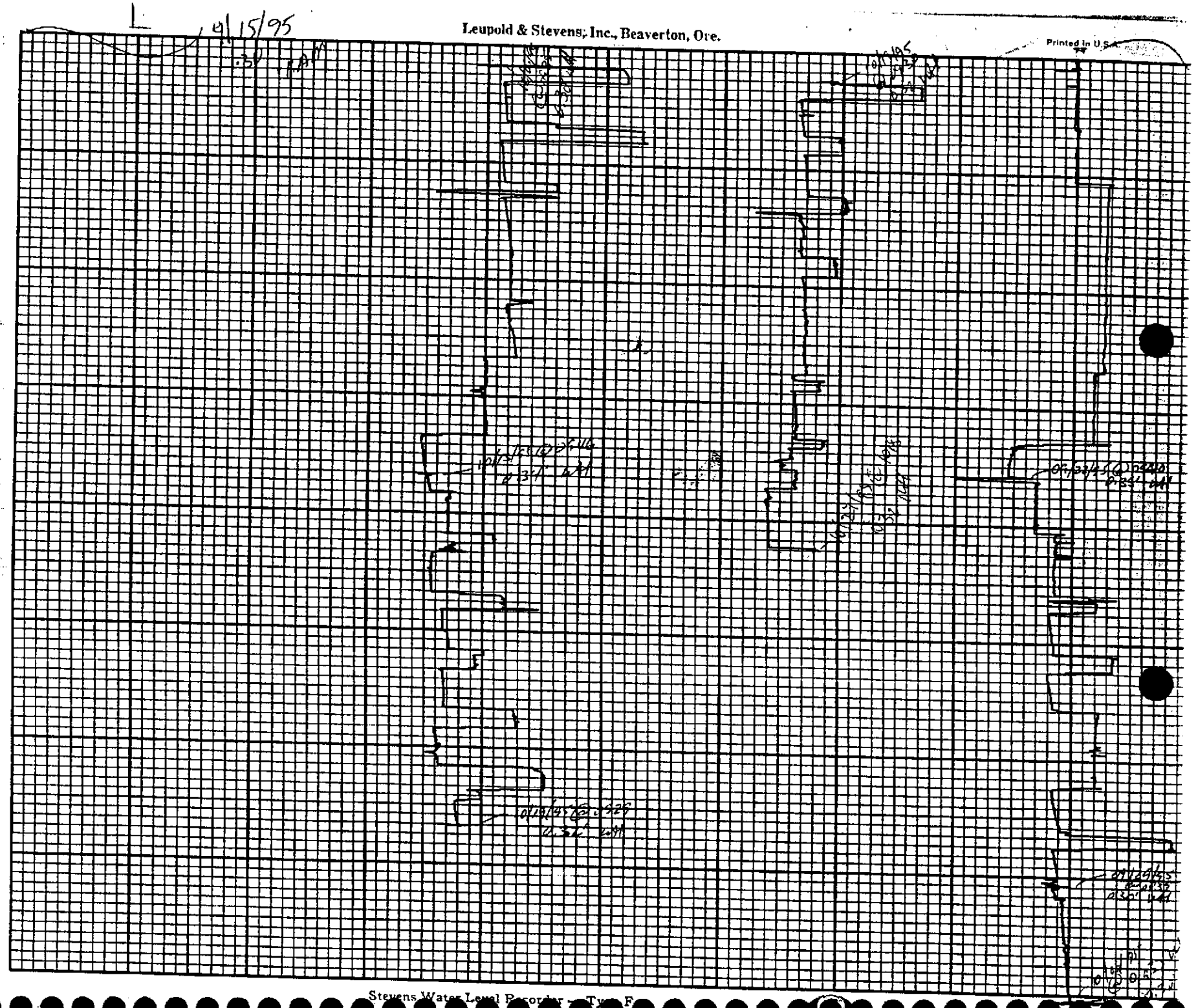
Stevens Water Level Recorder — Type F

Chart F-1

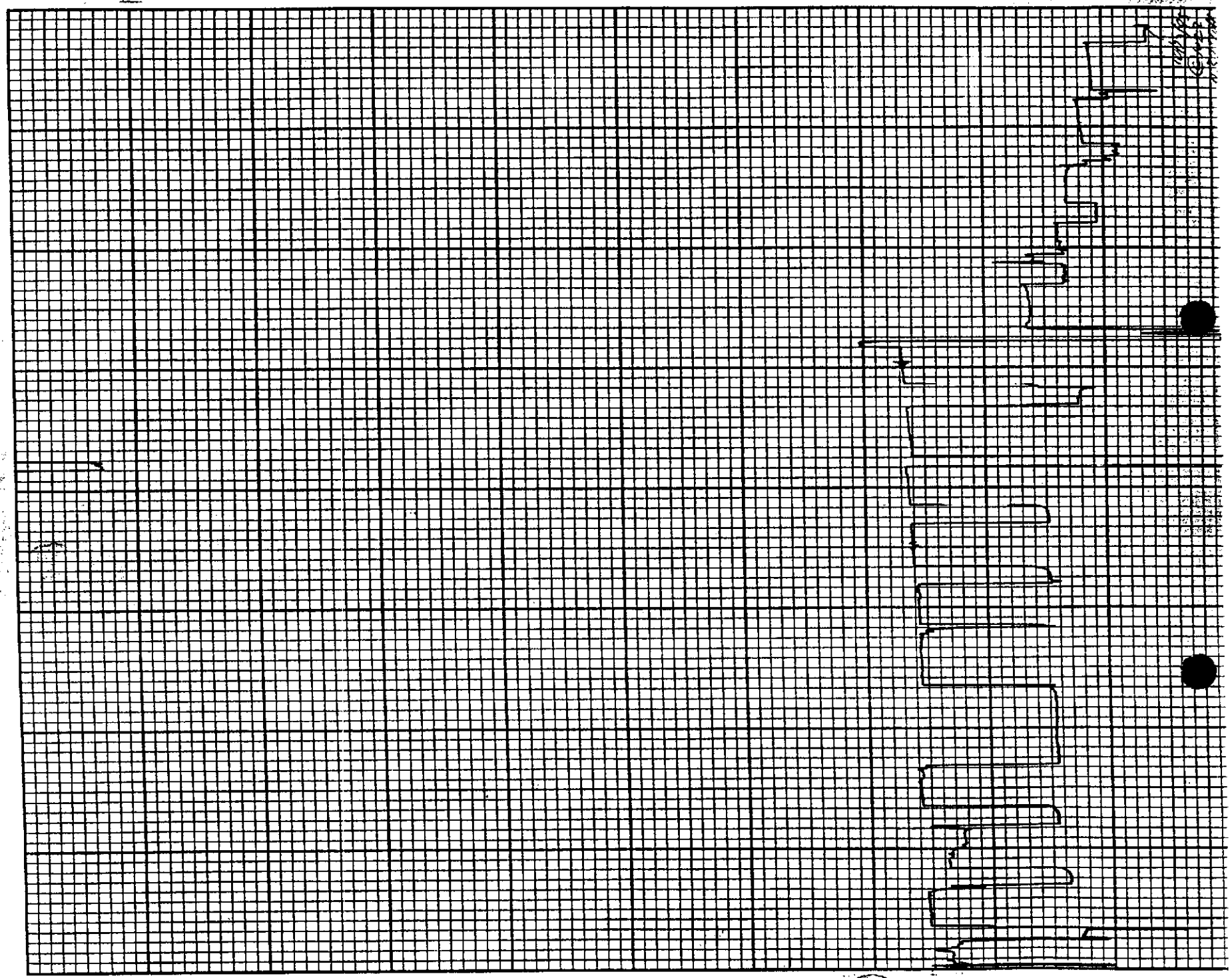


Stevens Water Level Recorder — Type F

Chart F-1


Leupold & Stevens, Inc., Beaverton, Ore.
Printed in U.S.A.
Stevens Water Level Recorder — Type F

Leupold & Stevens, Inc., Beaverton, Ore.

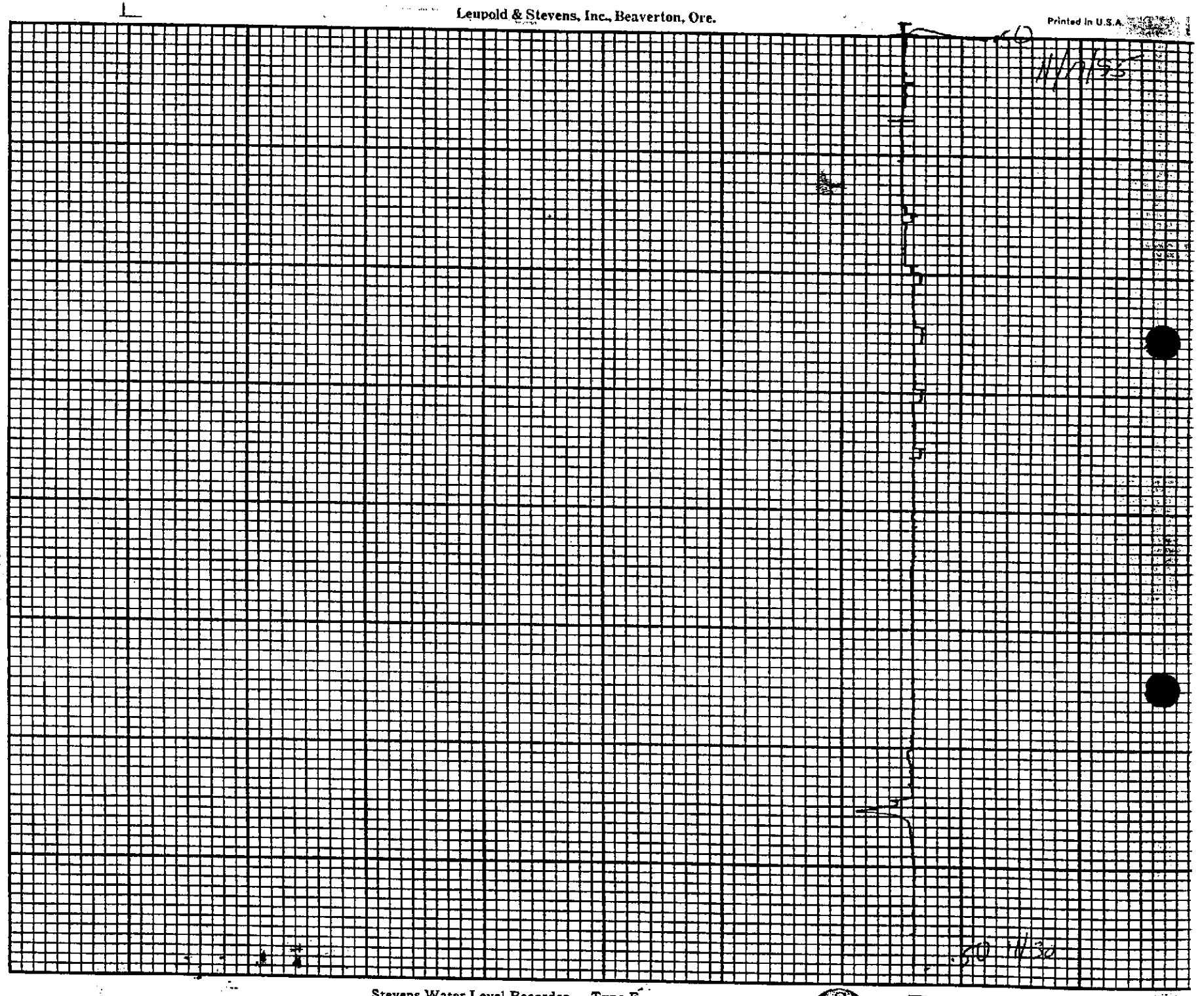


Stevens Water Level Recorder — Type F

Chart F-1

Leupold & Stevens, Inc., Beaverton, Ore.

Printed in U.S.A.

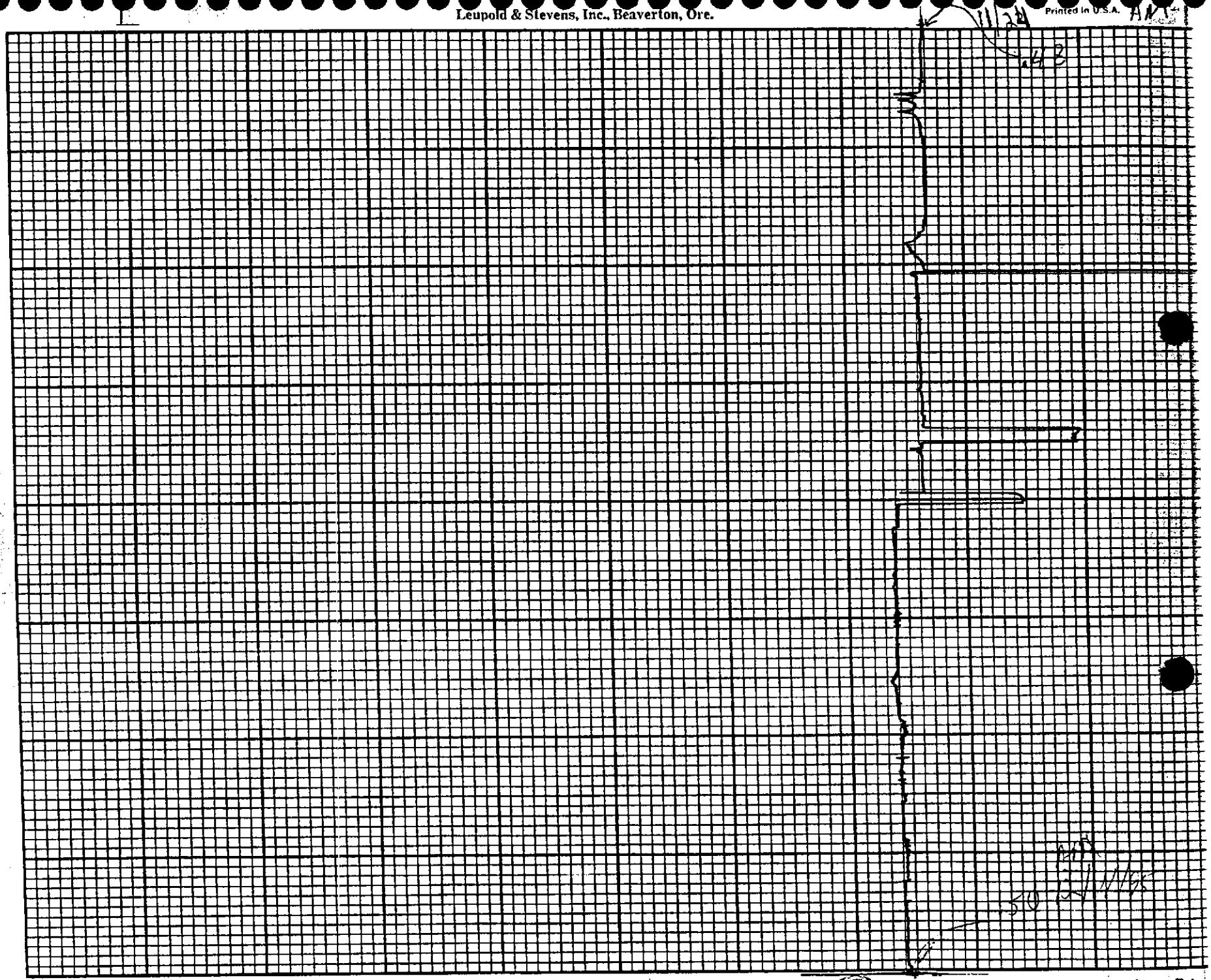


Stevens Water Level Recorder — Type F

Chart F-1

Leupold & Stevens, Inc., Beaverton, Ore.

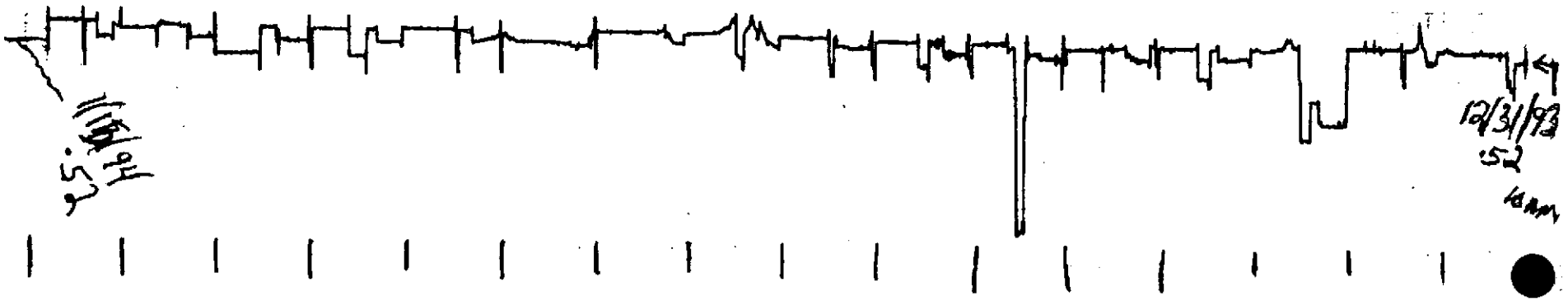
Printed in U.S.A.

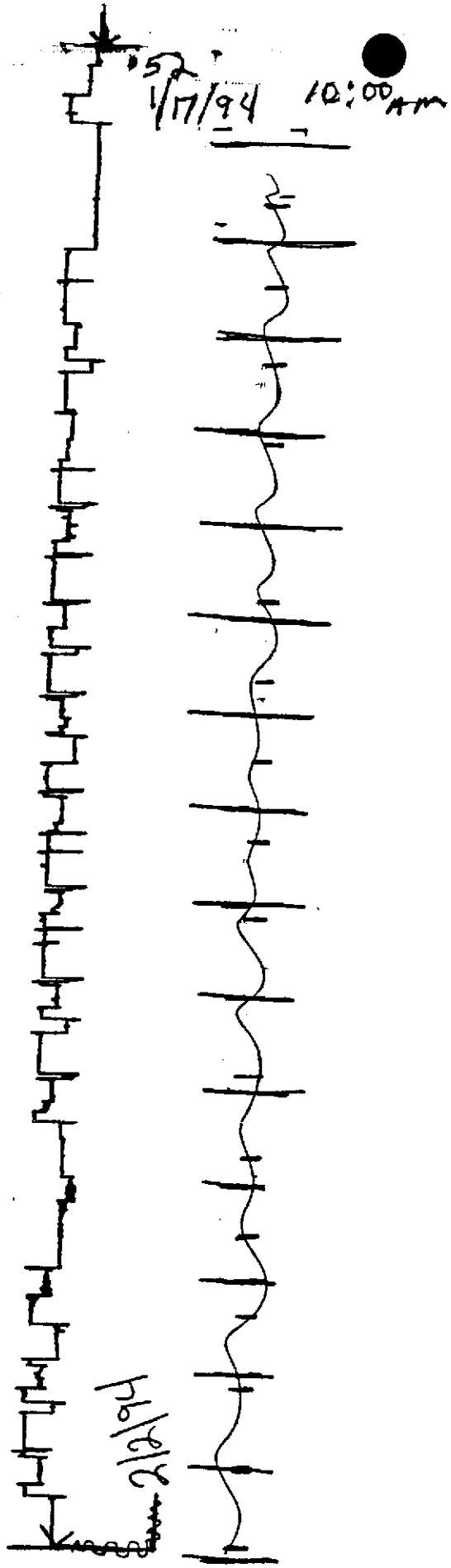


Stevens Water Level Recorder — Type F

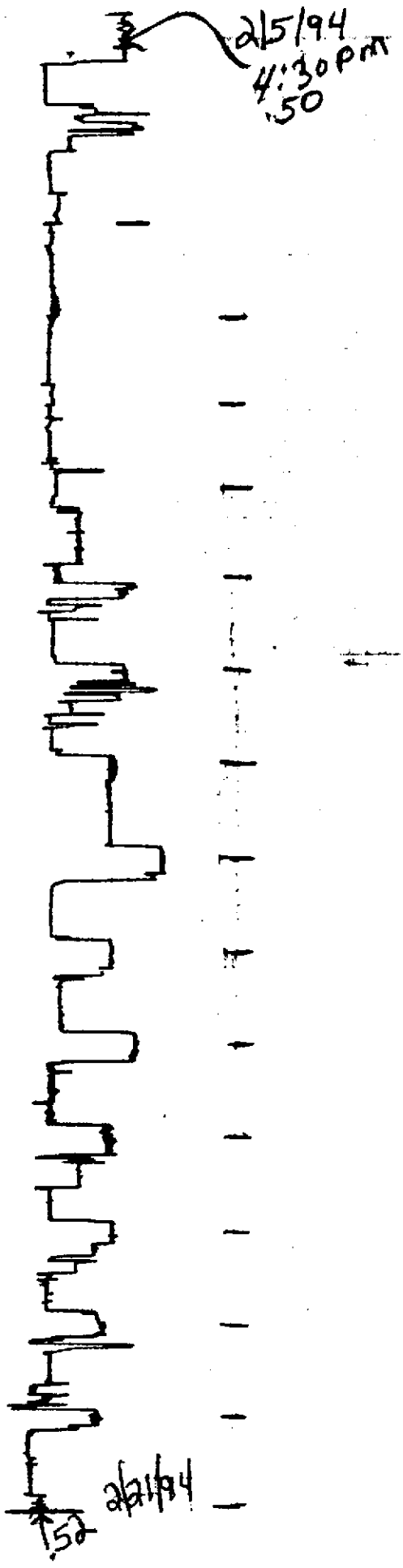
Chart F-1

G. Discharge Weir Charts for the Flora Co. Low-Temperature Geothermal Wells for 1994.

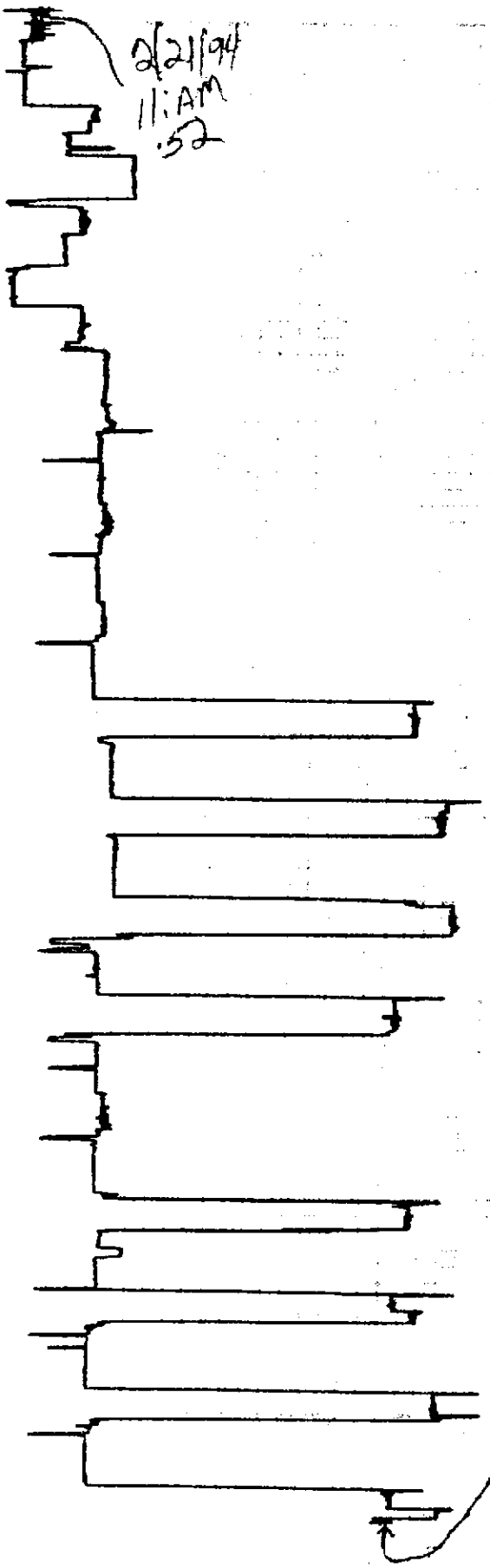

12/31/93
52



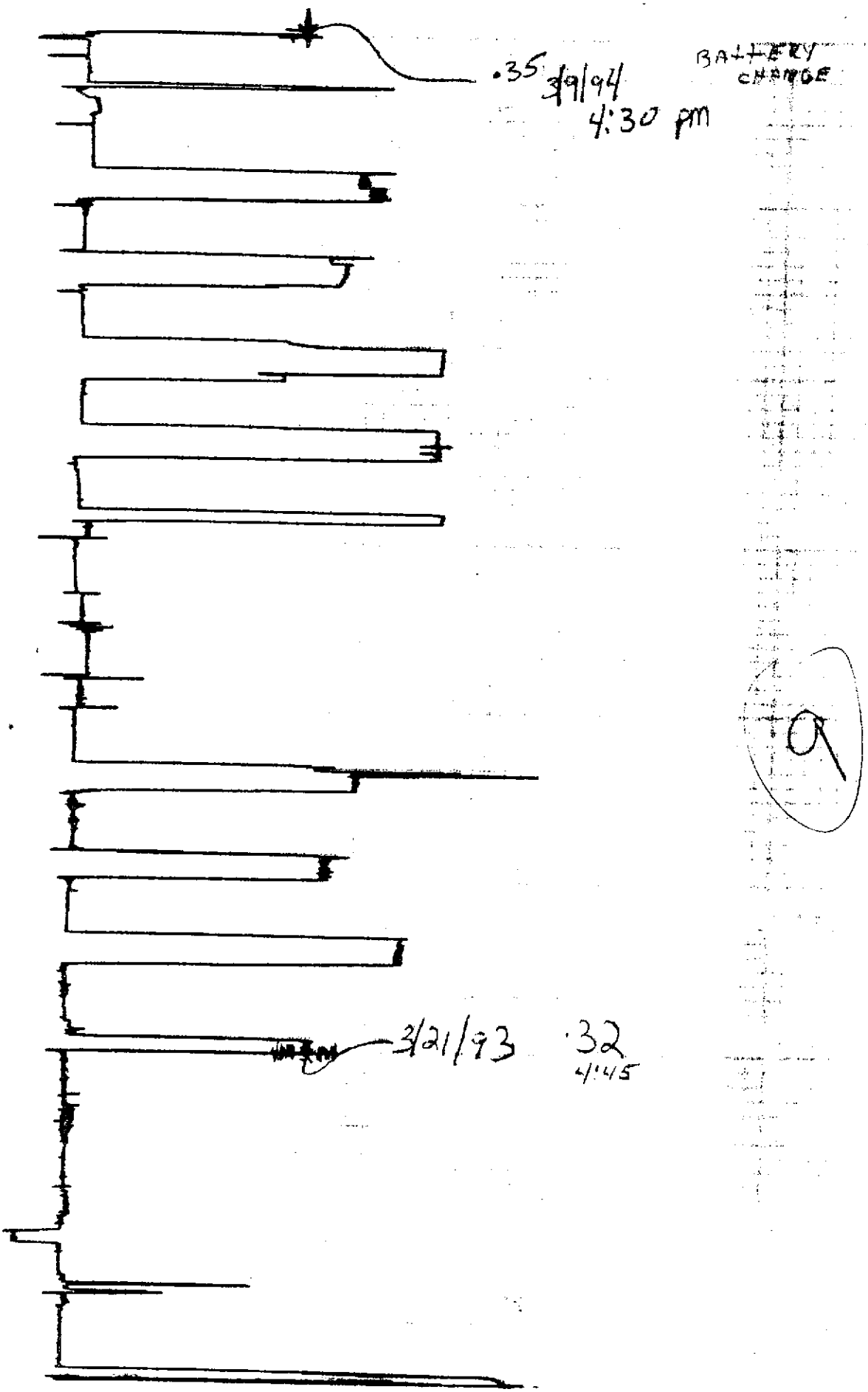
6

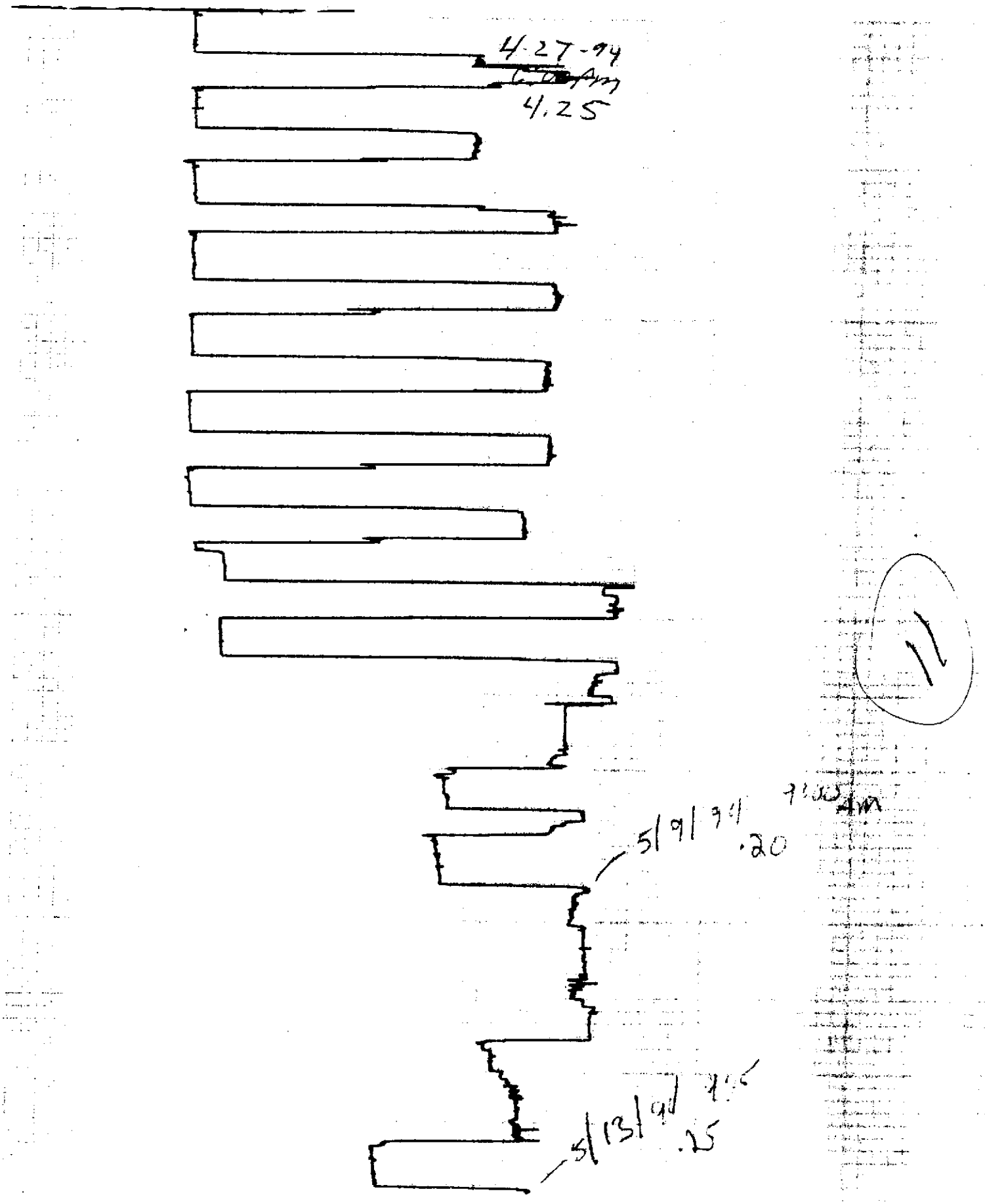


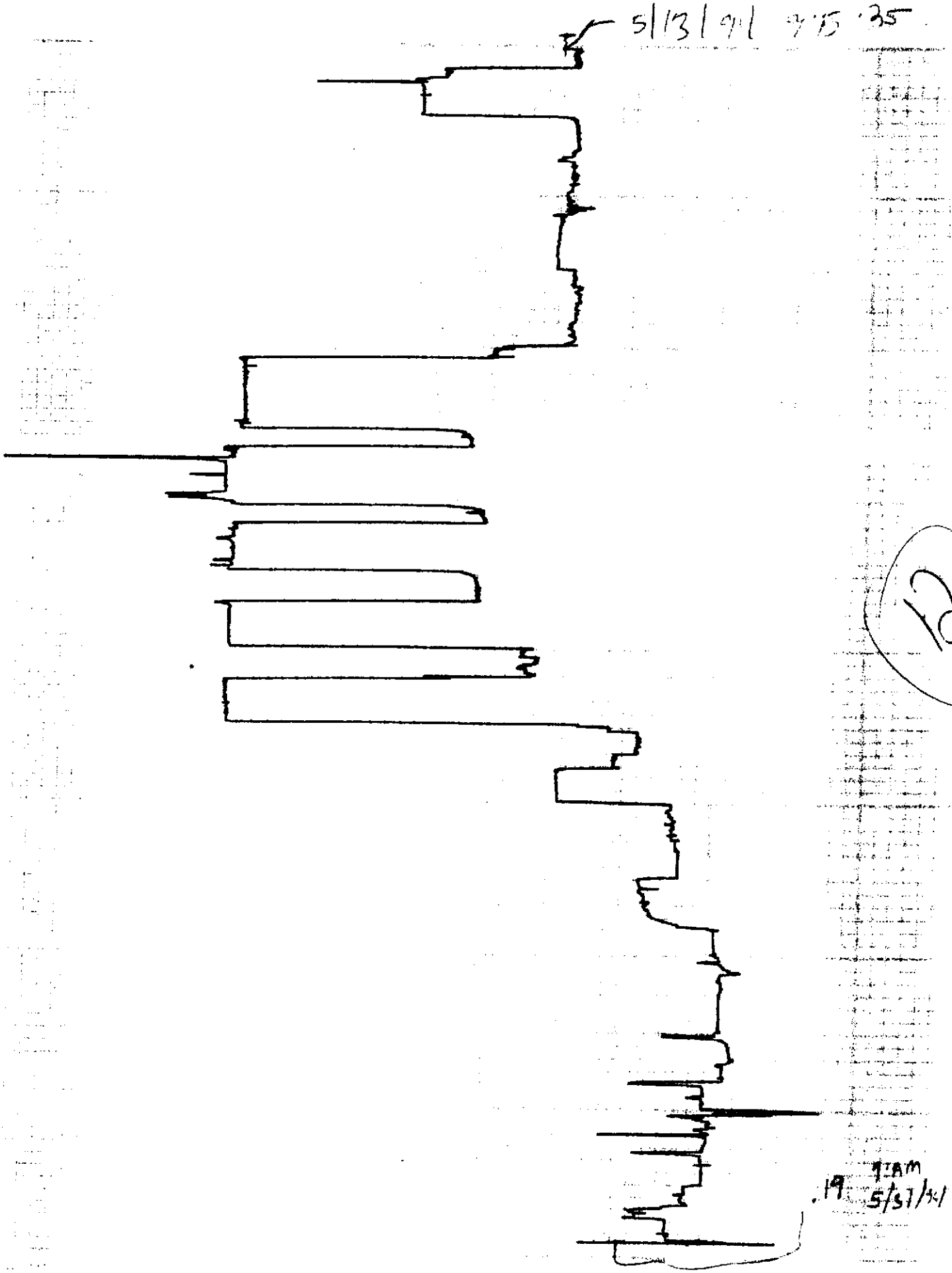
7



4

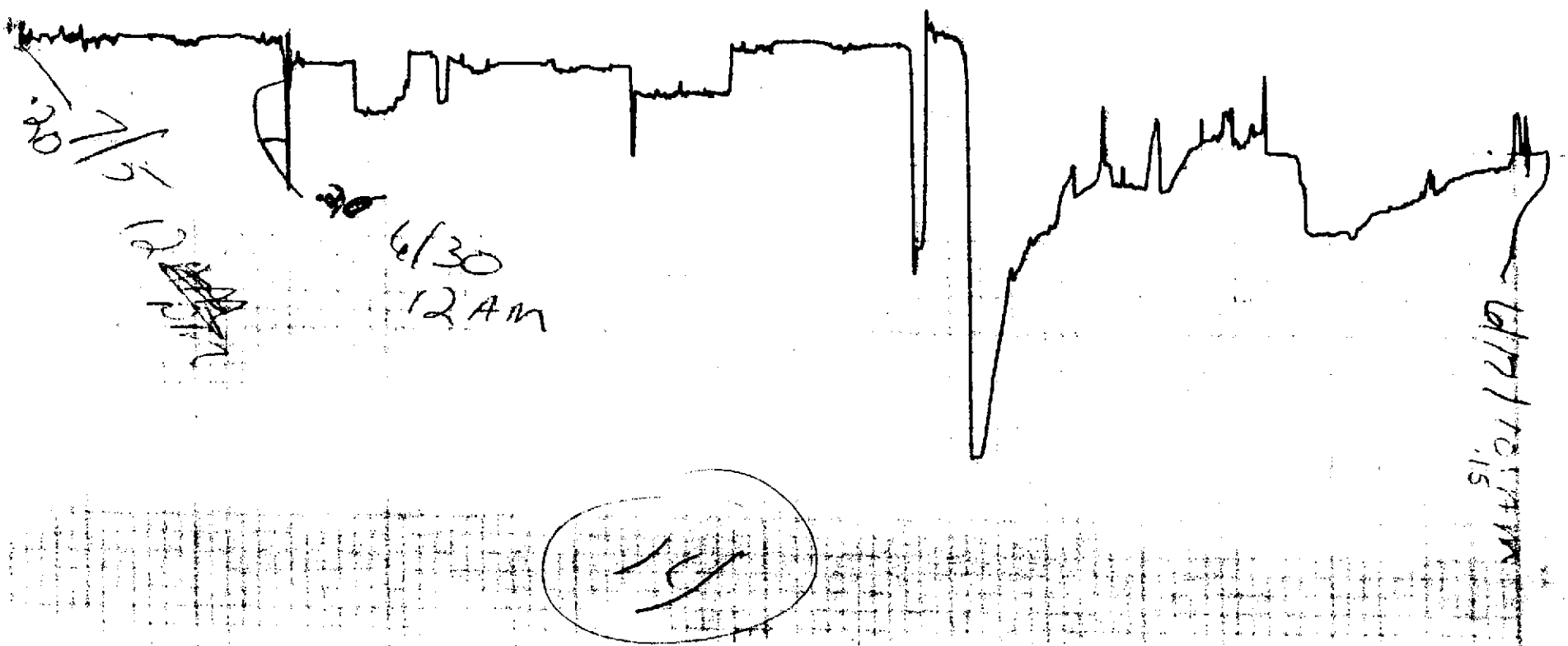

.35 3/9/94
4:30 pm
BATTERY CHARGE
3/21/93 .32
4:45

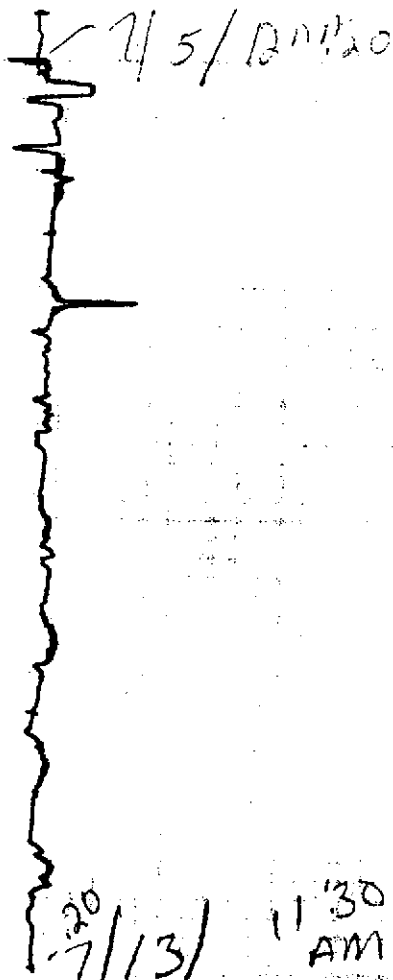

4-27-94
4.25
5/9/94
.20
5/13/94
.25

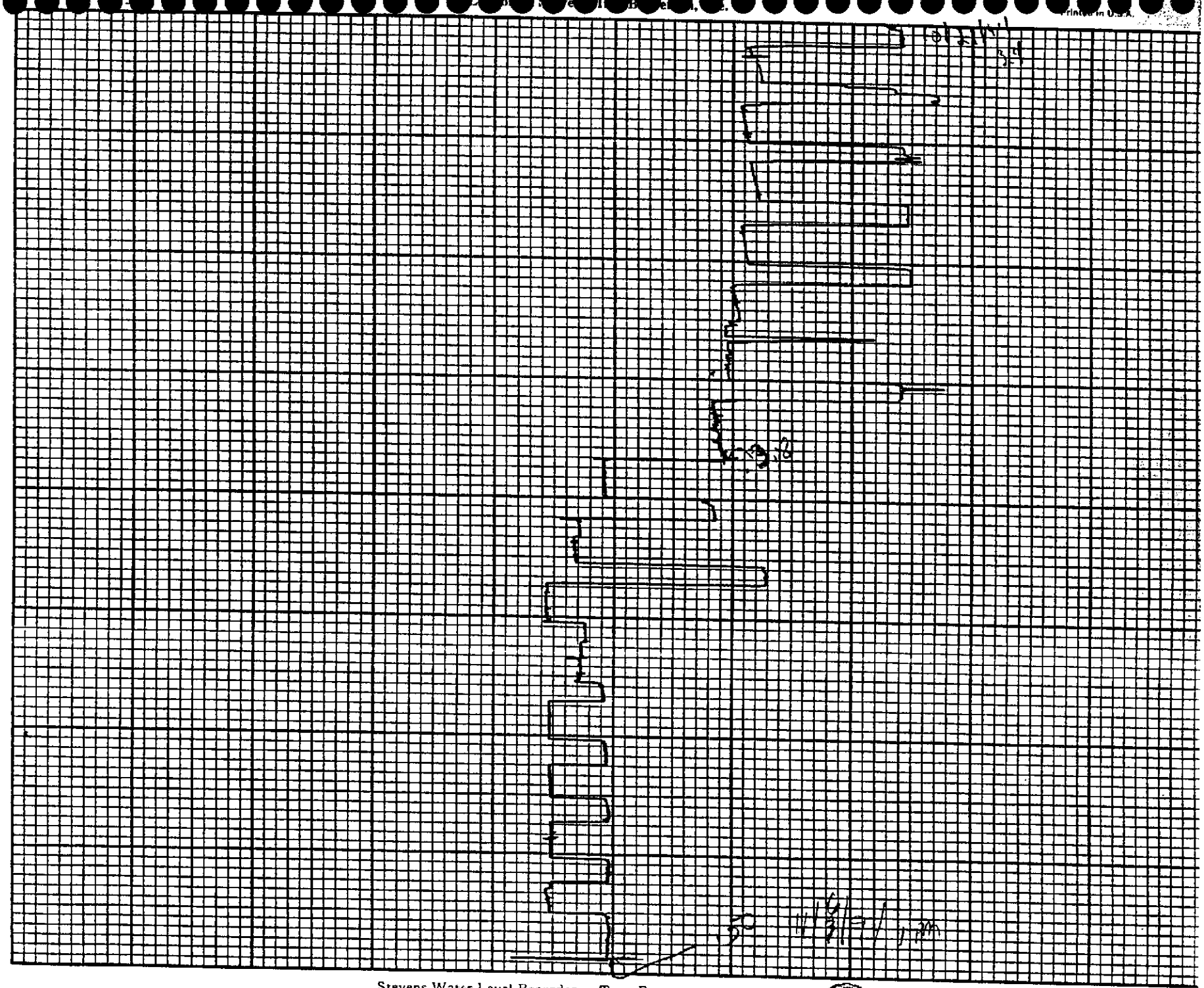


12

'69 5/31/71 9 AM


6/30
12 AM

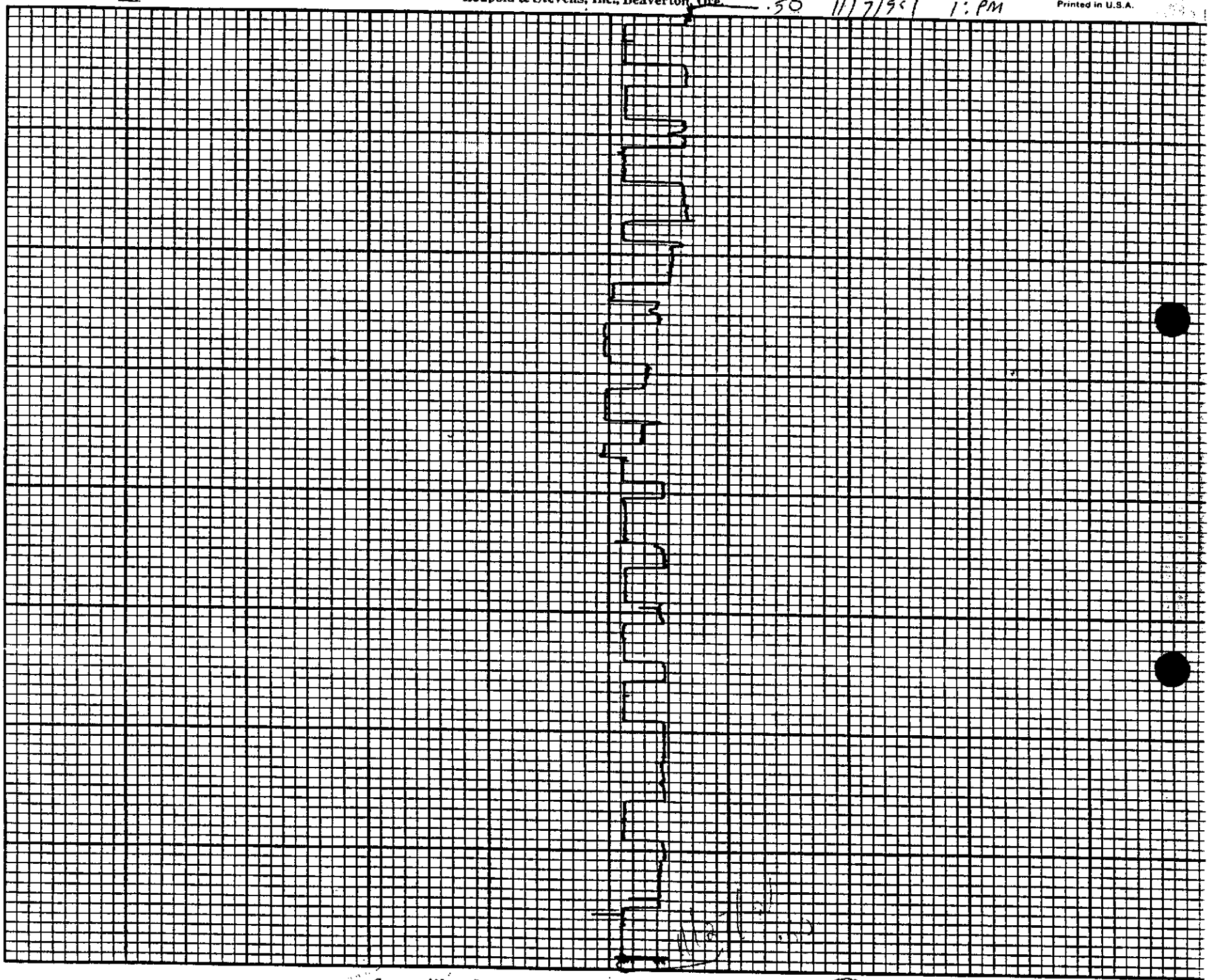

7/5/12 AM 20
20
7/13/
11:30
AM



Stevens Water Level Recorder — Type F

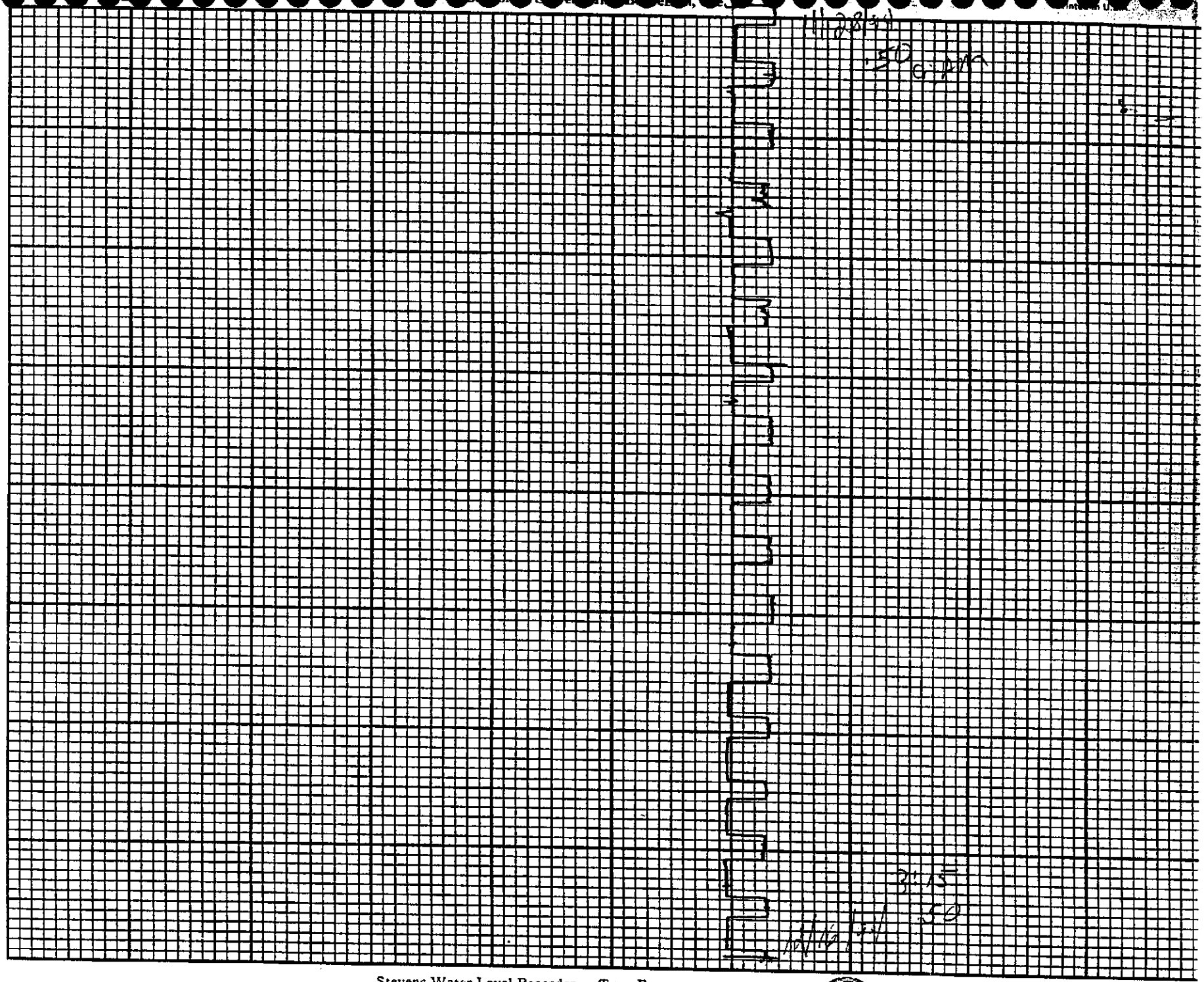
Chart F-1

Leupold & Stevens, Inc., Beaverton, Ore. .50 11/7/95 1: PM Printed in U.S.A.



Stevens Water Level Recorder — Type F

Chart F-1

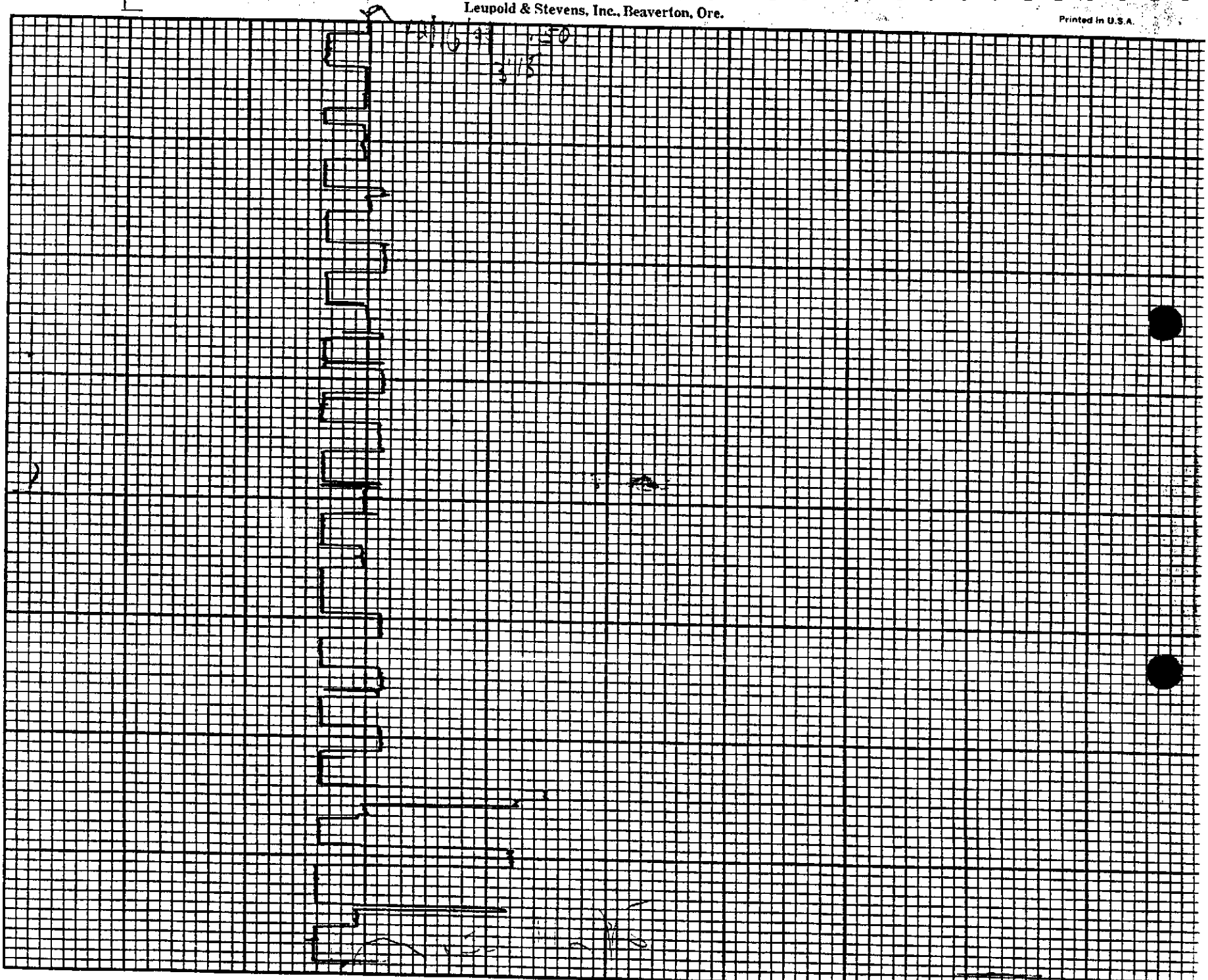


Stevens Water Level Recorder — Type F

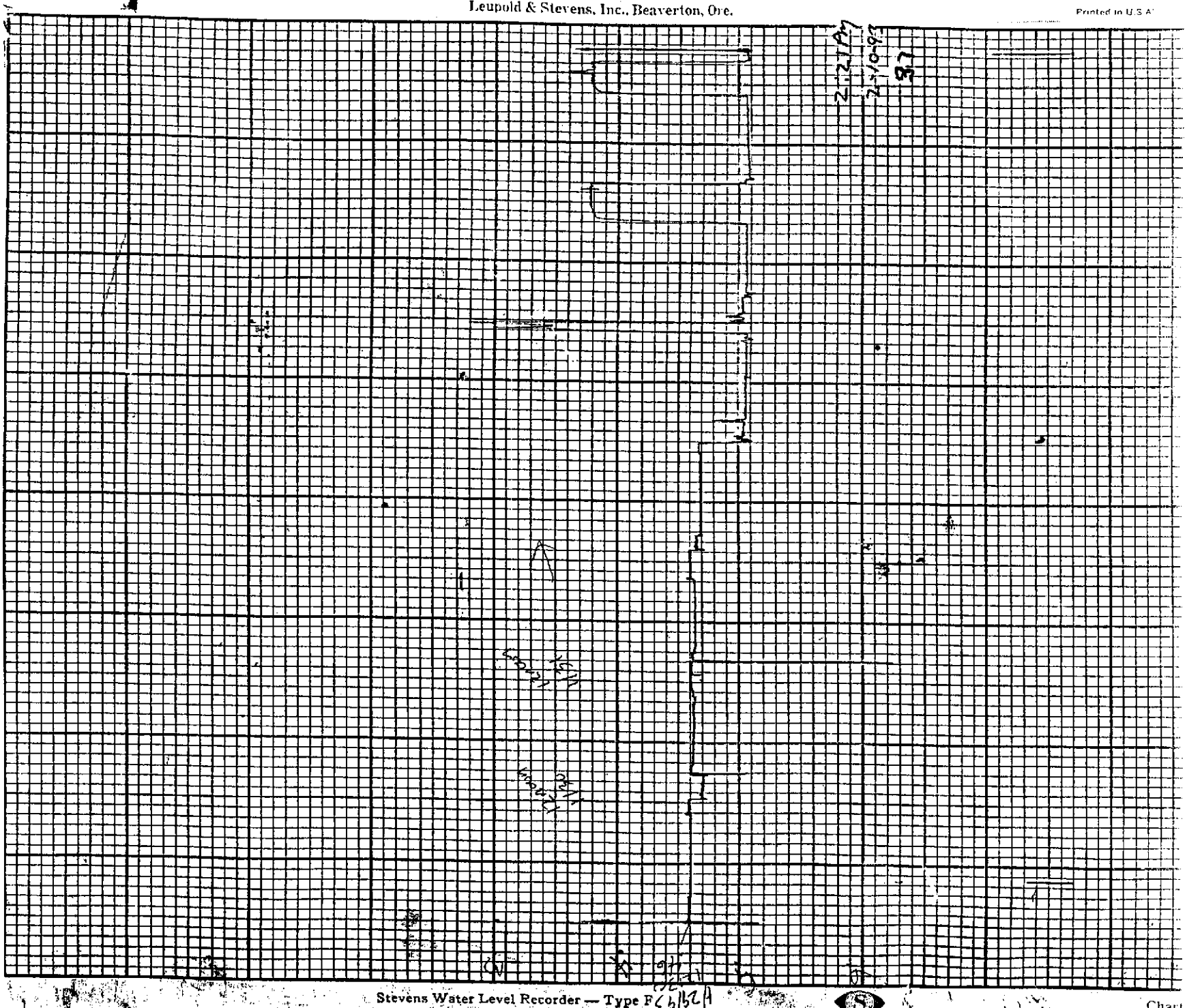
Chart F-1

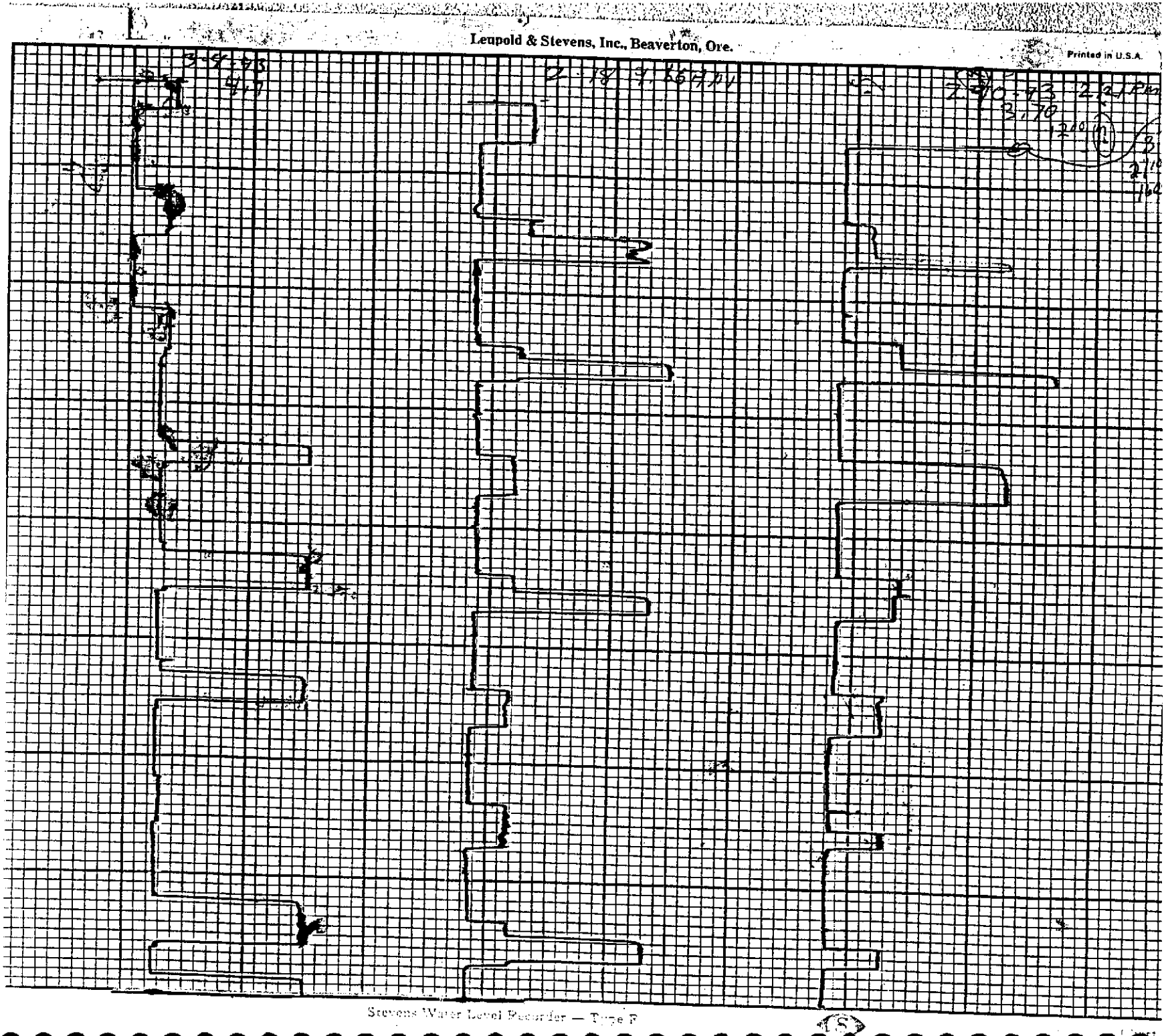
Leupold & Stevens, Inc., Beaverton, Ore.

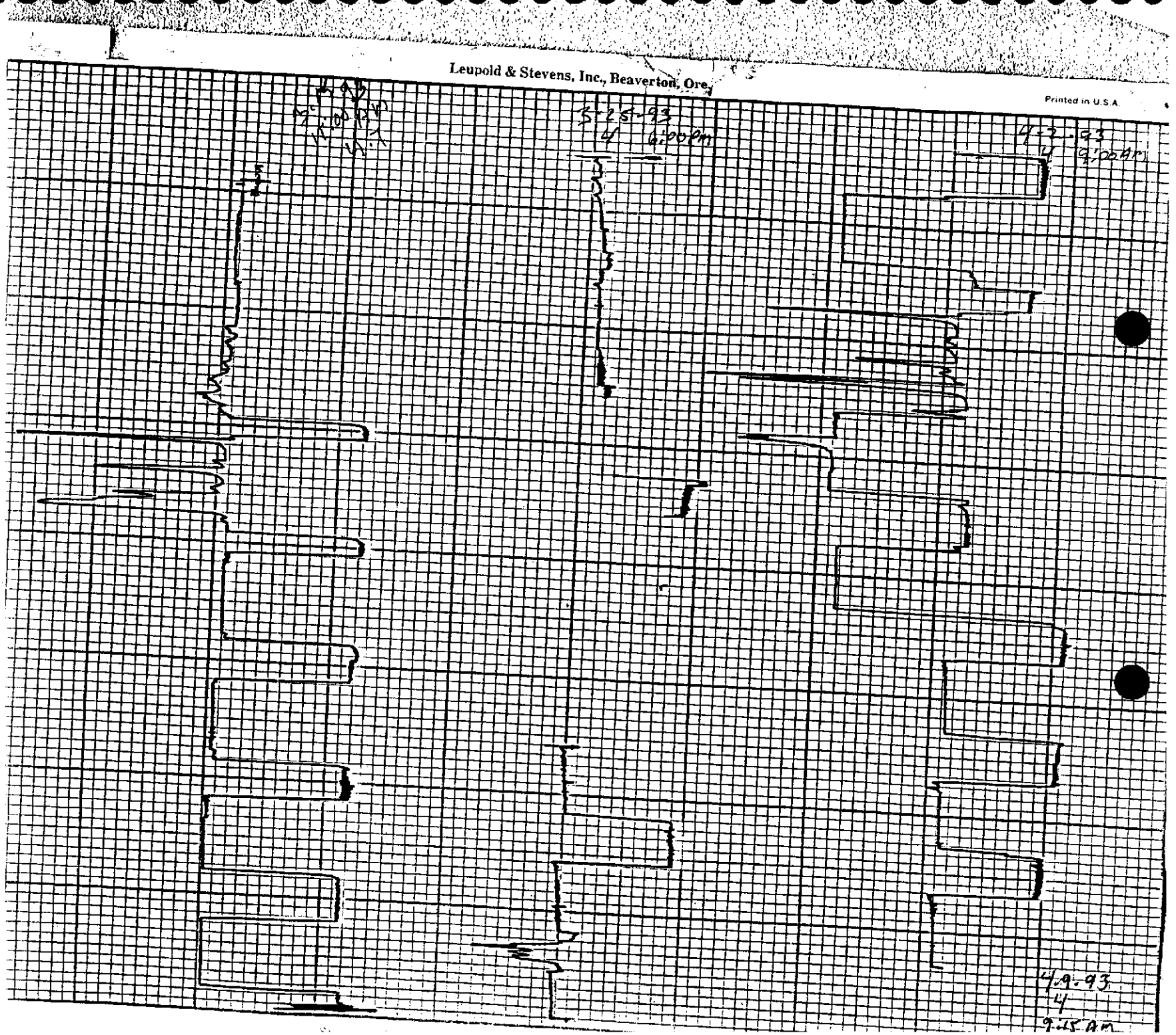
Printed in U.S.A.

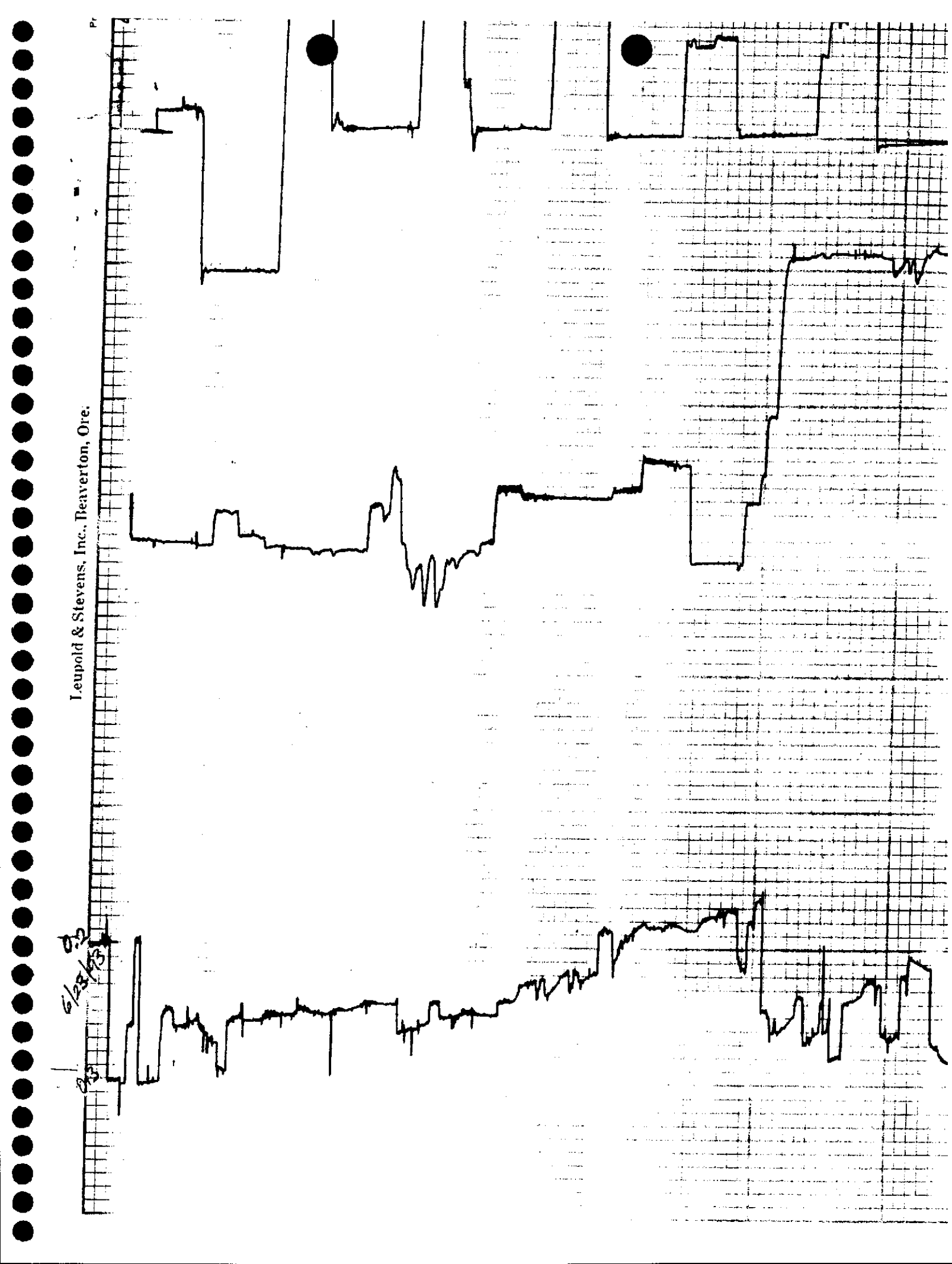


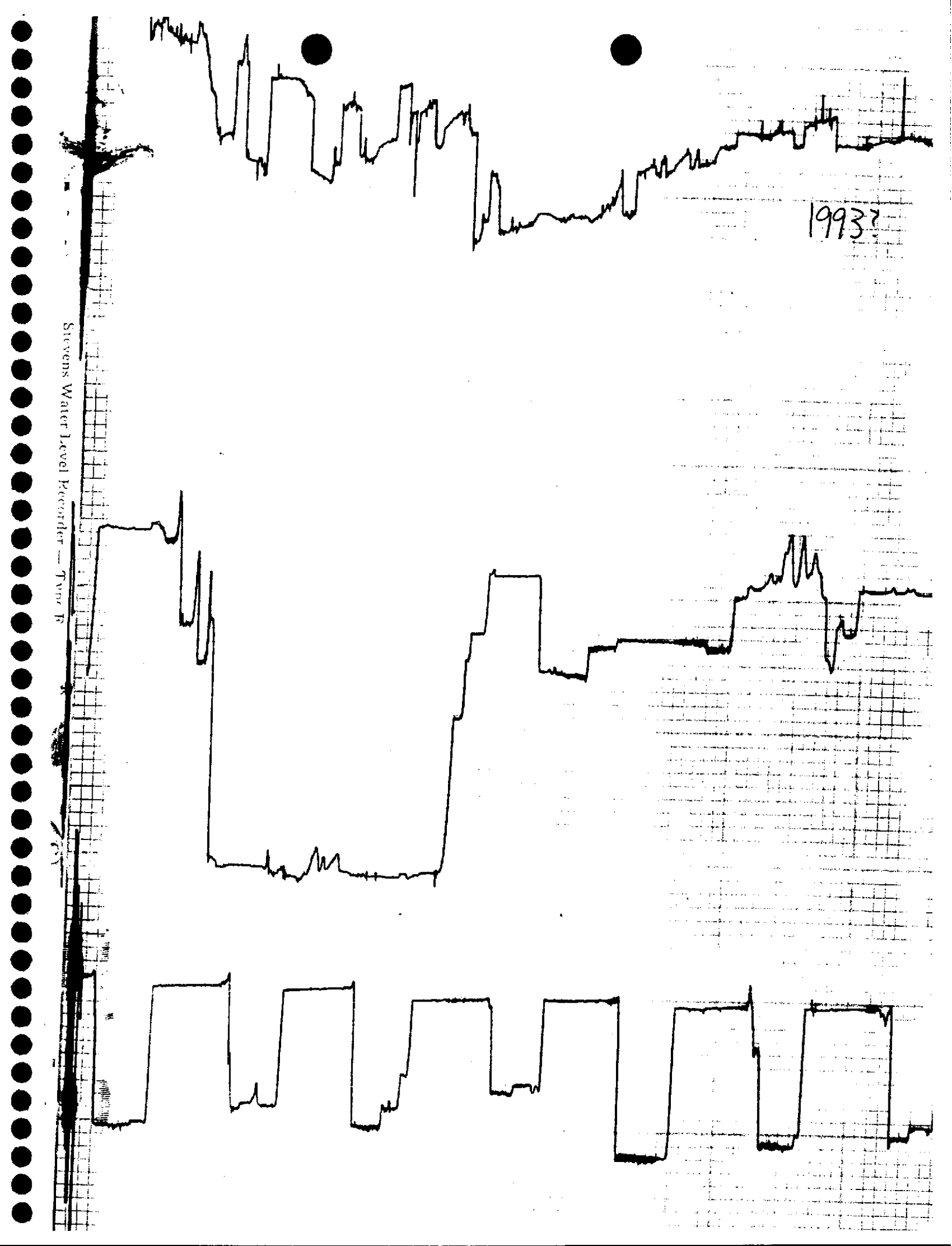
H. Discharge Weir Charts for the Flora Co. Low-Temperature Geothermal Wells for 1993.

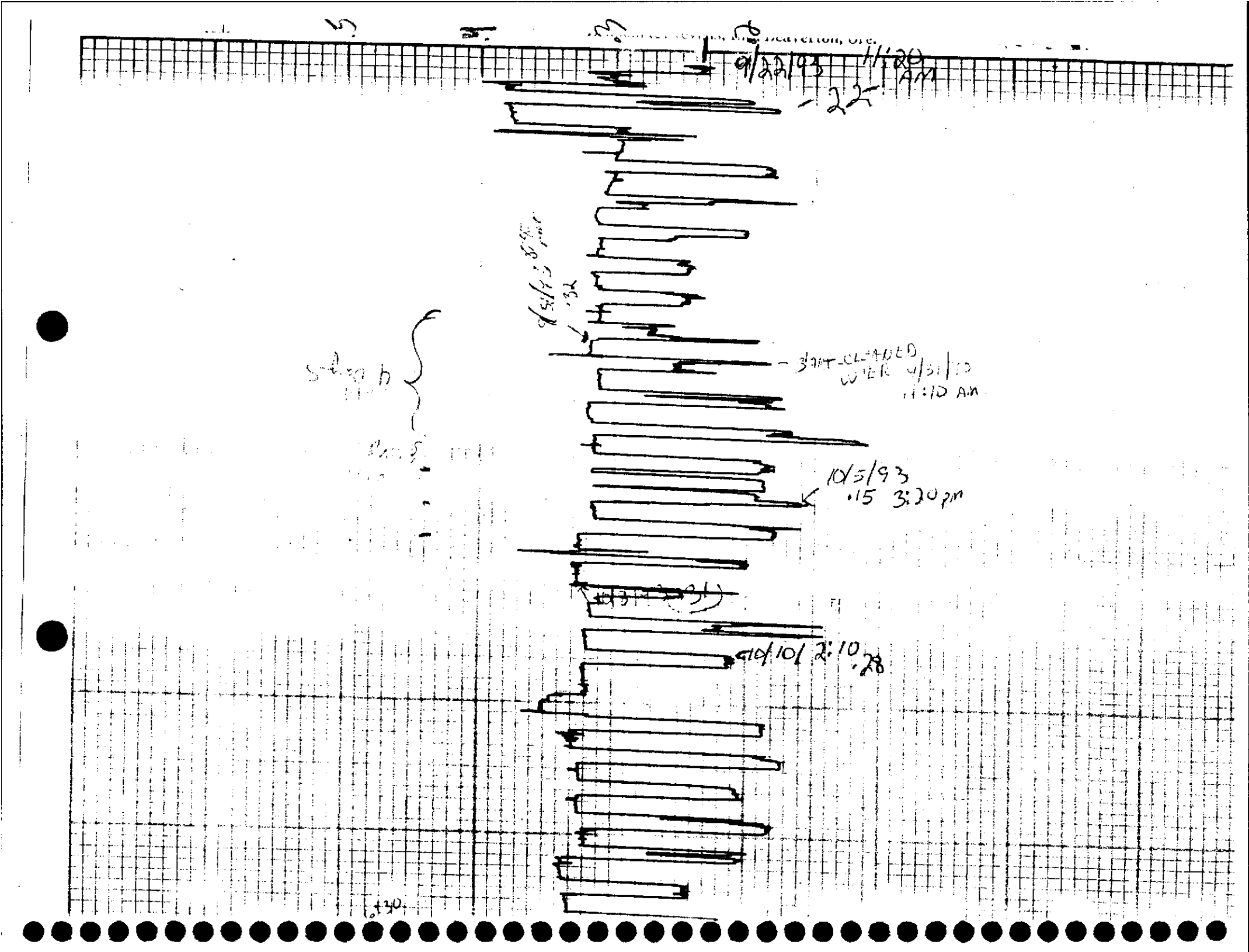

Leupold & Stevens, Inc., Beaverton, Ore.
Printed in U.S.A.
Stevens Water Level Recorder — Type F
Chart

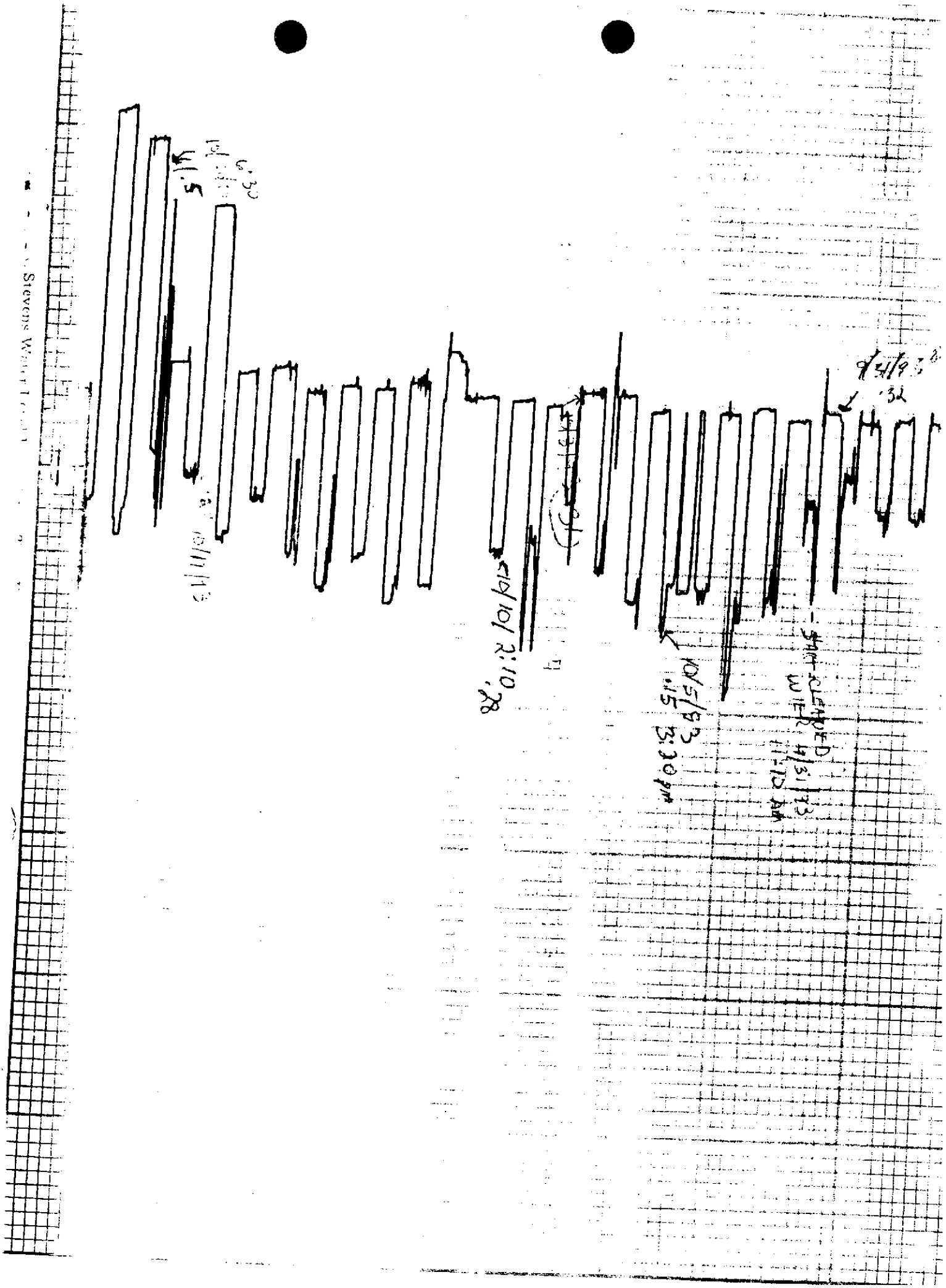

Leupold & Stevens, Inc., Beaverton, Ore.
Printed in U.S.A.
Stevens Water Level Recorder — Type F


Leupold & Stevens, Inc., Beaverton, Ore.
Printed in U.S.A.
3-25-93
4
6:00pm
4-2-93
4
9:00am
4.9.93
4
9:45 Am


Leupold & Stevens, Inc., Beaverton, Ore.
6/28/93


1993?
Stevens Water Level Recorder — Type F

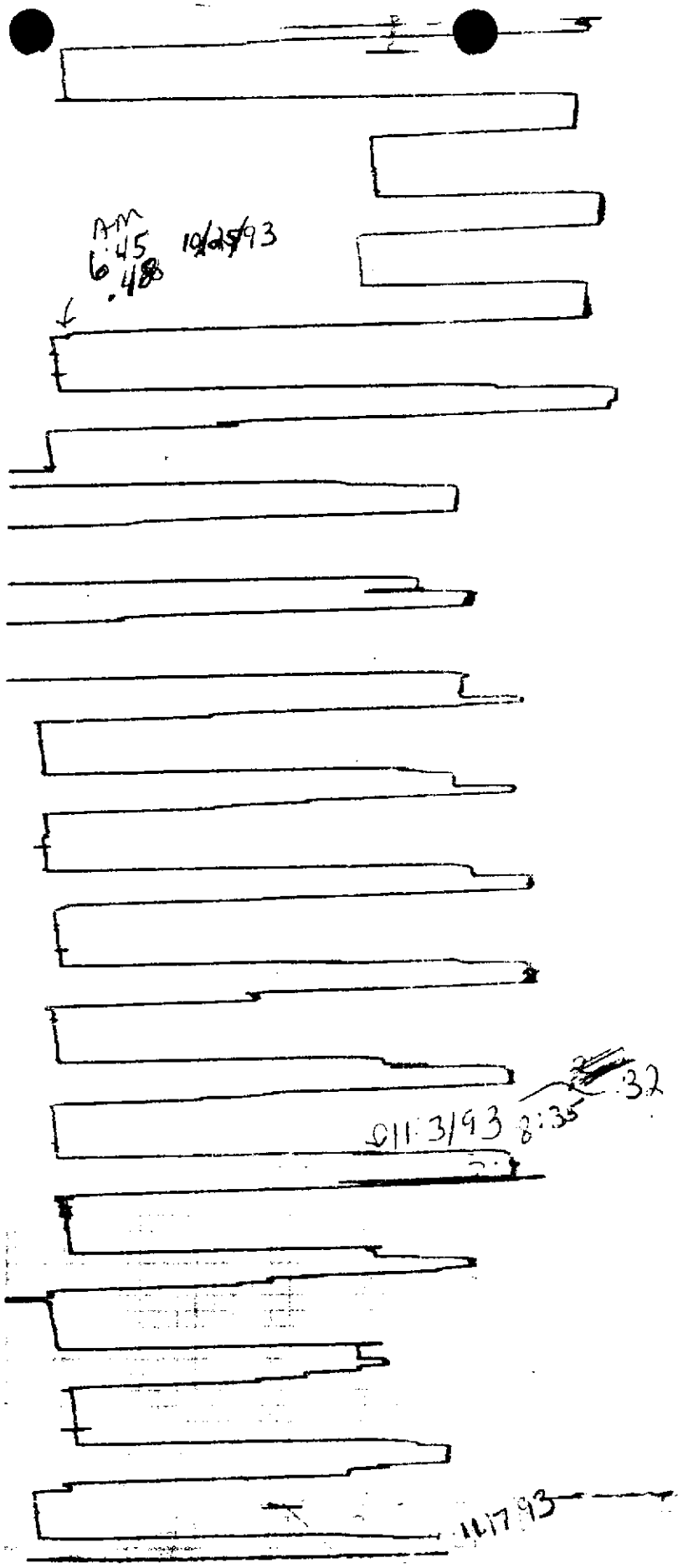

9/22/93 11:20 AM
-22-
9/24/93 .32
START-CLEANED WATER 9/21/93 11:10 AM
10/5/93 .15 3:20 pm
10/10/93 2:10 .28



Stevens Water Level
4/5
6:30
10/11/93
10/10/ 2:10
.28
10/5/93
.15 3:30 pm
START CLEANED
WIER 4/31/93
11:10 AM
9/31/93
.32

10/24/93
TO
11/7/93

AM
6:45
.48
10/25/93



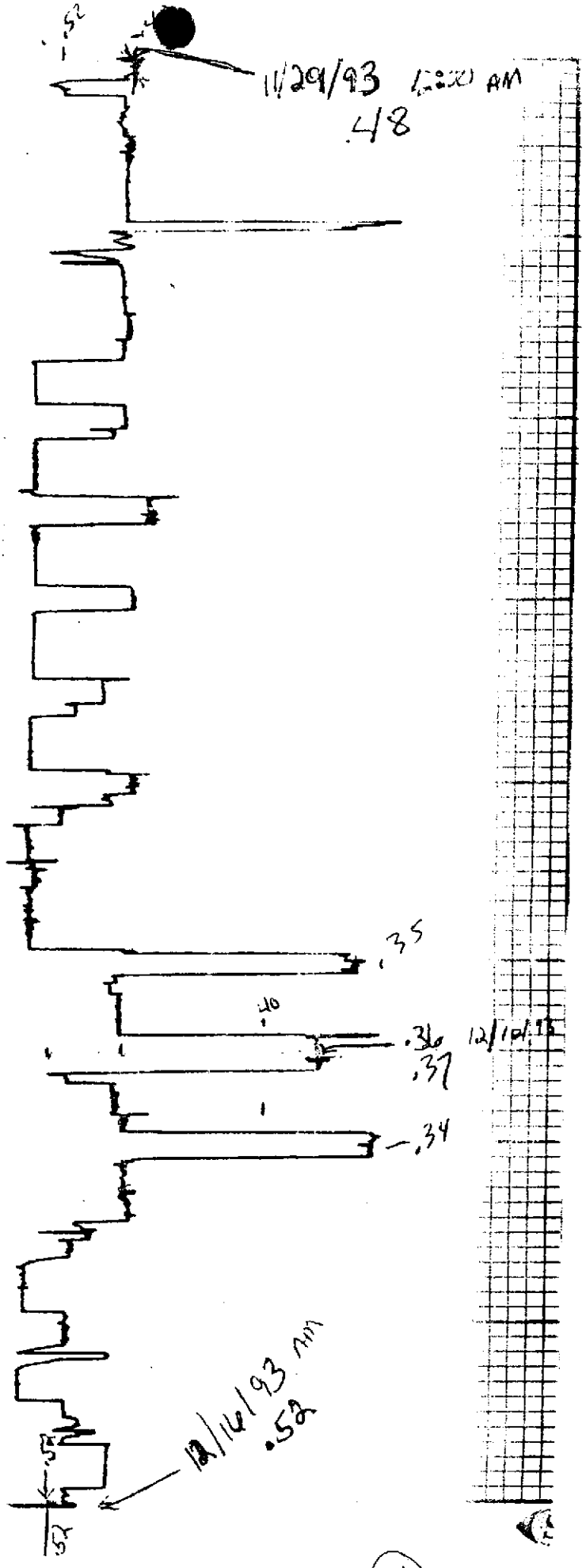
011 3/93 8:35 .32

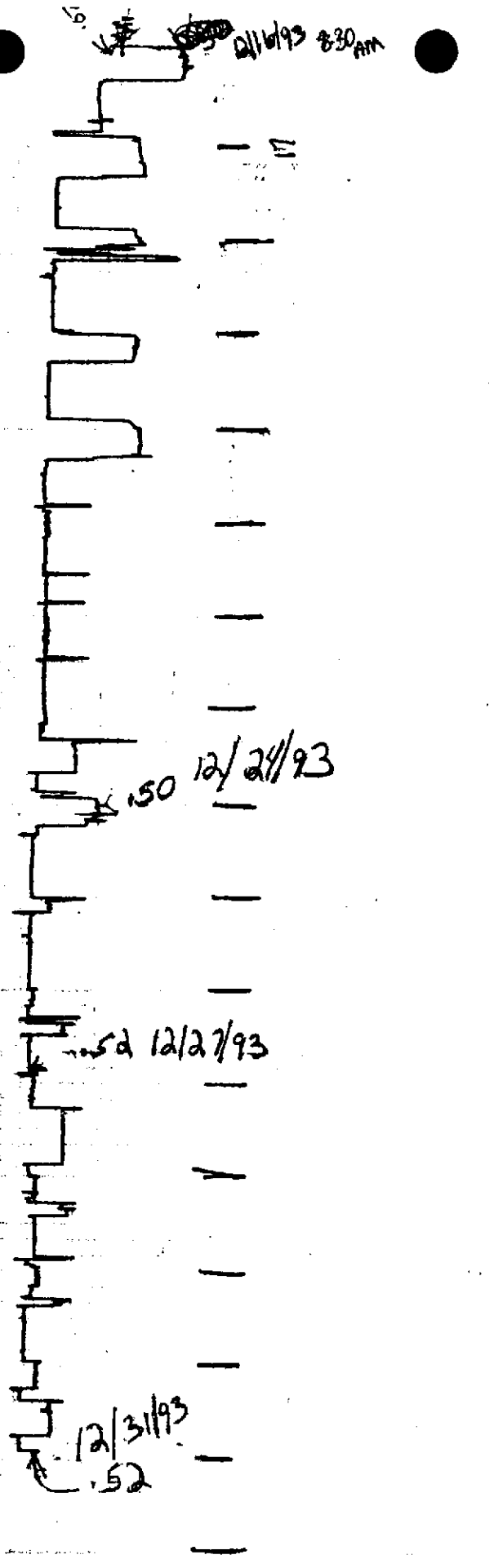
11/7/93

Recorde

3

11/29/93
TO
12/16/93




12/6/93 830 AM
.50 12/24/93
.52 12/27/93
12/31/93
.52

I. Weir Discharge Data Logs for the Flora Co. Low-Temperature Geothermal Wells for 1992.

WEIR DISCHARGE DATA LOG

Owner FLORA CO.

Address 3823 N. 36th

Measuring point description WEIR

DATE mm/dd/yr	HEAD feet or inches	DISCHARGE (Q) sec-feet	DISCHARGE gallons per minute (Q x 449)
1/8/93	4.5		
1/26	4.5		
1/28	4.5		

WEIR DISCHARGE DATA LOG

Owner FLORA CO.

Address 3823 N. 36th

Measuring point description WEIR

DATE mm/dd/yr	HEAD feet or inches	DISCHARGE (Q) sec-feet	DISCHARGE gallons per minute (Q x 449)
12/1/92	.50	.445	
12/2/92	.50	.445	
12/3/92	.50	.445	
12/4/92	.50	.445	
12/7/92	.50	.445	
12/8	.50	.445	
12 9	.50	.445	
12 10	.50	.445	
12/11	.50	.445	
12/12	.50	.445	
12/15	WASHED OUT	—	

WEIR DISCHARGE DATA LOG

Owner FLORA CO.

Address 3823 N. 36~~th~~

Measuring point description

DATE mm/dd/yr	HEAD feet or inches	DISCHARGE (Q) sec-feet	DISCHARGE gallons per minute (Q x 449)
11/2	.36	.197	
11/3	.36	.197	
11/4	.36	.197	
11/5	.36	.197	
11/6	.37	~~.197~~ .211	
11/9	.37	.211	
11/10	.40	.256	
11/11	.39	.240	
11/12	.39	.240	
11/13	.40	.256	
11/16	.36	.197	
11/17	.40	.256	
11/18	.39	.240	
11/19	.40	.256	
11/20	.40	.256	
11/23	.40	.256	
11/24	.48	.403	
11/25	.48	.403	
11/27	-	-	
11/30	.49	.424	

WEIR DISCHARGE DATA LOG

Owner FLORA CO.

Address

Measuring point description WIER

DATE mm/dd/yr	HEAD feet or inches	DISCHARGE (Q) sec-feet	DISCHARGE gallons per minute (Q x 449)
10/28/92	.37	.211	
10/28/92	.30	.125	
29/92	.30	.125	
29/92	.31	.136	

240
90
340
30
370

WEIR DISCHARGE DATA LOG

Owner FLORA CO.

Address _____

Measuring point description _____

	DATE mm/dd/yr	HEAD feet or inches	DISCHARGE (Q) sec-feet	DISCHARGE gallons per minute (Q x 449)
AM	10/15/92	.27	0.96	
PM	10/15/92	.27	0.96	
AM	10/16 92	.27	.096	
PM	10/16 92	.27	.096	
	10/18	.27	.096	
	10/18	.27	.096	
	10/19	.27	.096	
	10/19	.26	.088	
	10/20	.27	.096	
	10/20	.26	.088	
	10/21	.26	.088	
PM	10/21	.27	.096	
	10/22	.32	.147	
	11/22	.32	.147	
	23	.32	.147	
	24			
	25			
	26	.26	.088	
	27	.27	.096	
	27	3.5	.134	
	28	3.5	.134	

3.7

WEIR DISCHARGE DATA LOG

Owner FLORA CO.
Address 3823 N. 36th
Measuring point description WEIR

	DATE mm/dd/yr	HEAD feet or inches	DISCHARGE (Q) sec-feet	DISCHARGE gallons per minute (Q x 449)
	10/1/92	.25	.080	35.92
	10/1/92	.25	.080	35.92
9:20a	10/2/92	.25	.080	35.92
4.05in	10 "	.29	.106	47.59
RAINING*	10/3/92	.28	.106	47.59
	10/4/92	.25	.080	35.92
8:00	10/5/92	.25	.080	35.92
5.05	10/5/92	.26	.088	39.51
	10/6/92	.25	.080	35.92
	10/6 92	.27	.096	43.10
	10/7/92	.25	.080	35.92
	10/7 92	.26	.088	39.51
		.25	.080	35.92

APPENDIX C.

Flora Company tabulated data of shut-in pressures, flows, and usage for various periods between September 1, 1998 and February 1, 2001.

Flora Company shut-in pressure readings
shed well, pump

2/6/02

DATE	SHUT-IN PRESSURE (PSI)	FLOW	TIME	IN FLOW SINCE PREVIOUS READING	CUMULATIVE WATER USAGE	COMMENTS
September 1, 1998	15.00		1:20 PM	-	-	Read the flow meter incorrectly
September 11, 1998	14.00	231,725	2:00 PM	-	-	
October 7, 1998	13.50	248,732	1:20 PM	17,007	17,007.00	new pressure guage
October 20, 1998	13.50	280,679	1:05 PM	31,947	48,954.00	
November 2, 1998	12.50	318,447	2:15 PM	37,768	86,722.00	natural flow open at 36th St.
November 18, 1998	11.50	345,066	12:00 PM	26,619	113,341.00	trouble
December 3, 1998	11.50	345,501	3:30 PM	435	113,776.00	
December 16, 1998	10.25	356,020	1:40 PM	10,519	124,295.00	pump on at 36th St.
Total Partial Year 1998					**124,295.00**	
January 7, 1999	10.00	356,020	8:45 AM	-	-	flow meter not working
January 15, 1999	10.50	363,870	8:30 AM	7,850	7,850.00	flow meter is still not working consistantly
February 4, 1999	11.00	385,519	2:20 PM	21,649	29,499.00	flow meter broken
February 19, 1999	12.00	417,534	4:20 PM	32,015	61,514.00	flow meter broken
March 5, 1999	14.00	435,508	10:30 AM	17,974	79,488.00	flow meter broken
March 22, 1999	14.50	435,508	4:30 PM	-	79,488.00	flow meter broken
April 7, 1999	12.50	435,508	3:30 PM	-	79,488.00	flow meter broken
April 16, 1999	14.50	435,508	9:20 AM	-	79,488.00	flow meter broken
May 3, 1999	12.75	435,508	11:00 AM	-	79,488.00	flow meter broken
May 21, 1999	12.50	435,508	8:25 AM	-	79,488.00	flow meter broken
June 7, 1999	14.50	435,508	8:45 AM	-	79,488.00	flow meter broken
July 8, 1999	12.00	435,508	10:15 AM	-	79,488.00	flow meter broken
July 21, 1999	11.00	435,508	7:50 AM	-	79,488.00	flow meter broken
August 2, 1999	10.50	-	8:30 AM	-	79,488.00	New Flow Meter
August 18, 1999	13.00	100	9:30AM	100	79,588.00	
September 9, 1999	13.25	100	9:00AM	-	79,588.00	
October 11, 1999	13.00	1,456,300	4:00PM	1,456,200	1,535,788.00	Pump on for Winter
November 10, 1999	11.00	4,044,500	8:10AM	2,588,200	4,123,988.00	
December 3, 1999	11.00	6,007,800	1:20PM	1,963,300	6,087,288.00	
December 22, 1999	10.50	7,597,700	9:40AM	1,589,900	7,677,188.00	
Total Year 1999					**7,677,188.00**	
January 18, 2000	11.50	9,944,100	12:00 PM	2,346,400	2,346,400.00	
February 2, 2000	11.00	11,294,100	2:00 PM	1,350,000	3,696,400.00	
March 7, 2000	15.00	14,065,300	11:00 AM	2,771,200	6,467,600.00	
April 19, 2000	12.00	16,961,800	8:20 AM	2,896,500	9,364,100.00	
June 7, 2000	12.00	20,509,800	11:05 AM	3,548,000	12,912,100.00	

Flora Company shut-in pressure readings
shed well, pump

2/6/02

DATE	SHUT-IN PRESSURE (PSI)	FLOW	TIME	IN FLOW SINCE PREVIOUS READING	CUMULATIVE WATER USAGE	COMMENTS
July 5, 2000	9.50	20,509,800	3:00 PM	-	12,912,100.00	
August 28, 2000	8.00	20,509,800	3:35 PM	-	12,912,100.00	
October 10, 2000	11.50	21,355,800	4:05 PM	846,000	13,758,100.00	
October 27, 2000	9.50	23,076,100	11:00 AM	1,720,300	15,478,400.00	opened for Winter, 2 other pumps running
November 28, 2000	10.00	26,292,000	3:30 PM	3,215,900	18,694,300.00	
December 21, 2000	14.00	28,354,200	9:30 AM	2,062,200	20,756,500.00	office pump off during pressure reading
Total Year 2000					**20,756,500.00**	
January 4, 2001	9.00	29,875,600	9:45 AM	1,521,400	1,521,400.00	
January 29, 2001	14.00	32,696,300	4:45 PM	2,820,700	4,342,100.00	
February 14, 2001	9.00	34,604,800	4:45 PM	1,908,500	6,250,600.00	
March 5, 2001	10.50	37,116,500	8:00 AM	2,511,700	8,762,300.00	
April 13, 2001	12.00	42,496,600	2:30 PM	5,380,100	14,142,400.00	
April 30, 2001	10.00	44,205,100	?	1,708,500	15,850,900.00	
May 24, 2001	10.50	45,266,400	8:30AM	1,061,300	16,912,200.00	
June 8, 2001	10.50	45,744,200	8:15AM	477,800	17,390,000.00	
July 6, 2001	?	45,744,200	7:00AM	-	17,390,000.00	
August 6, 2001	?	46,419,000	11:40AM	674,800	18,064,800.00	
August 31, 2001	12.00	47,285,400	7:20AM	866,400	18,931,200.00	
September 28, 2001		47,285,400		-	18,931,200.00	Temporarily Disabled
October 24, 2001	?	42,389,000		-	18,931,200.00	flow reading
October 26, 2001	9.00	42,741,000	1:00PM	352,000	19,283,200.00	
November 21, 2001	9.00	47,805,000	1:45pm	5,064,000	24,347,200.00	
January 9, 2002	8.00	57,192,000	8:30am	9,387,000	33,734,200.00	
February 1, 2002	8.00	61,942,000	1:45pm	4,750,000	38,484,200.00	
				(61,942,000)	(23,457,800.00)	
				-	(23,457,800.00)	
				-	(23,457,800.00)	
				-	(23,457,800.00)	
				-	(23,457,800.00)	
				-	(23,457,800.00)	
				-	(23,457,800.00)	
				-	(23,457,800.00)	
				-	(23,457,800.00)	
				-	(23,457,800.00)	
				-	(23,457,800.00)	

191,571.43
206,521.74

Flora Company shut-in pressure readings
shed well, pump

2/6/02

DATE	SHUT-IN PRESSURE (PSI)	FLOW	TIME	IN FLOW SINCE PREVIOUS READING	CUMULATIVE WATER USAGE	COMMENTS
				-	(23,457,800.00)	
				-	(23,457,800.00)	
				-	(23,457,800.00)	
				-	(23,457,800.00)	
				-	(23,457,800.00)	
				-	(23,457,800.00)	
				-	(23,457,800.00)	
				-	(23,457,800.00)	
				-	(23,457,800.00)	
				-	(23,457,800.00)	
				-	(23,457,800.00)	
				-	(23,457,800.00)	
				-	(23,457,800.00)	
				-	(23,457,800.00)	
				-	(23,457,800.00)	
				-	(23,457,800.00)	
				-	(23,457,800.00)	
				-	(23,457,800.00)	
				-	(23,457,800.00)	
				-	(23,457,800.00)	
				-	(23,457,800.00)	
				-	(23,457,800.00)	
				-	(23,457,800.00)	
				-	(23,457,800.00)	
				-	(23,457,800.00)	
				-	(23,457,800.00)	
				-	(23,457,800.00)	
				-	(23,457,800.00)	
				-	(23,457,800.00)	
				-	(23,457,800.00)	
				-	(23,457,800.00)	
				-	(23,457,800.00)	
				-	(23,457,800.00)	
				-	(23,457,800.00)	
				-	(23,457,800.00)	
				-	(23,457,800.00)	
				-	(23,457,800.00)	
				-	(23,457,800.00)	

DATE	SHUT-IN PRESSURE (PSI)	FLOW	TIME	DIFFERENCE IN FLOW SINCE PREVIOUS READING	CUMULATIVE WATER USAGE	COMMENTS
August 18, 1999	13.00	1,777,000	9:30AM	1,777,000	1,777,000.00	
September 9, 1999	13.25	4,730,000	9:00AM	2,953,000	4,730,000.00	
October 11, 1999	13.00	8,677,000	4:00PM	3,947,000	8,677,000.00	
November 10, 1999	11.00	8,767,000	8:10AM	90,000	8,767,000.00	Bypass closed for Winter
December 3, 1999	11.00	8,767,000	1:20PM	-	8,767,000.00	
December 22, 1999	10.50	8,767,000	9:40AM	-	8,767,000.00	
Total partial Year 1999					**8,767,000.00**	
January 18, 2000	11.50	8,767,000	12:00PM	-	-	
February 2, 2000	11.00	8,767,000	2:00 PM	-	-	
March 7, 2000	15.00	8,789,000	11:00 AM	22,000	22,000.00	
April 19, 2000	12.00	8,789,000	8:20 AM	-	22,000.00	
June 7, 2000	12.00	9,981,000	11:10 AM	1,192,000	1,214,000.00	Bypass open for summer
July 5, 2000	9.50	13,393,000	3:00 PM	3,412,000	4,626,000.00	
August 28, 2000	8.00	26,672,000	3:35 PM	13,279,000	17,905,000.00	
October 10, 2000	11.50	34,361,000	4:05 PM	7,689,000	25,594,000.00	Closed for winter months
October 27, 2000	9.50	34,361,000	11:00 AM	-	25,594,000.00	
November 28, 2000	10.00	34,361,000	3:30 PM	-	25,594,000.00	
December 21, 2000	14.00	34,403,000	9:30 AM	42,000	25,636,000.00	
Total Year 2000					**25,636,000.00**	
January 4, 2001	9.00	34,403,000	9:45 AM	-	-	
January 29, 2001	14.00	34,439,000	4:45 PM	36,000	36,000.00	
February 14, 2001	9.00	34,452,000	4:45 PM	13,000	49,000.00	
March 5, 2001	10.50	34,458,000	8:00 AM	6,000	55,000.00	
April 13, 2001	12.00	34,458,000	2:30 PM	-	55,000.00	
April 30, 2001	10.00	34,658,000	?	200,000	255,000.00	
May 24, 2001	?	34,658,000	8:30am	-	255,000.00	
June 8, 2001	10.50	34,658,000	8:15am	-	255,000.00	
July 6, 2001	9.50	36,863,000	7:00am	2,205,000	2,460,000.00	
August 6, 2001	?	39,501,000	11:40am	2,638,000	5,098,000.00	
August 31, 2001	?	41,765,000	7:20am	2,264,000	7,362,000.00	
Total Partial Year 2001					**7,362,000.00**	
New Piping system - One flow Meter for All of flow						

Flora Company shut-in pressure readings
36th st. well

2/6/02

DATE	SHUT-IN PRESSURE (PSI)	FLOW	TIME	DIFFERENCE IN FLOW SINCE PREVIOUS READING	CUMULATIVE WATER USAGE per Year	COMMENTS
September 1, 1998	?	?	1:35 PM	-	-	I incorrectly took the readings
October 7, 1998	13.50	?	1:25 PM	-	-	I incorrectly took the readings
October 20, 1998	15.00	90,128	1:45 PM	90,128	90,128.00	
November 2, 1998	13.25	90,365	2:20 PM	237	90,365.00	
November 18, 1998	12.00	168,878	12:00 PM	78,513	168,878.00	
December 3, 1998	12.50	312,628	3:30 PM	143,750	312,628.00	
December 16, 1998	11.00	434,074	1:45 PM	121,446	434,074.00	
Partial Total 1998					**434,074.00**	
January 7, 1999	11.00	637,080	8:50 PM	203,006	203,006.00	
January 15, 1999	11.00	710,642	8:30 PM	73,562	276,568.00	
February 5, 1999	10.50	901,137	9:30 AM	190,495	467,063.00	
February 19, 1999	10.75	1,031,415	4:15 PM	130,278	597,341.00	
March 5, 1999	11.25	1,115,502	10:30 AM	84,087	681,428.00	
March 22, 1999	12.00	1,214,307	4:30 PM	98,805	780,233.00	
April 12, 1999	11.50	1,387,974	9:00 AM	173,667	953,900.00	
April 16, 1999	12.00	1,413,960	9:15 AM	25,986	979,886.00	
May 3, 1999	13.50	1,469,502	11:00 AM	55,542	1,035,428.00	
May 14, 1999	12.50	1,537,882	11:45 AM	68,380	1,103,808.00	
June 8, 1999	15.50	1,554,465	1:25 PM	16,583	1,120,391.00	
July 8, 1999	14.00	1,554,466	10:25 AM	1	1,120,392.00	
July 21, 1999	13.75	1,617,816	8:00 AM	63,350	1,183,742.00	
August 2, 1999	14.00	84,000	8:30 AM	84,000	1,267,742.00	New flow Meter (x1000)
August 18, 1999	15.00	639,000	9:10AM	555,000	1,822,742.00	
September 9, 1999	15.00	639,000	9:00AM	-	1,822,742.00	
October 11, 1999	12.00	639,000	8:30AM	-	1,822,742.00	
November 10, 1999	12.00	5,926,000	8:30 AM	5,287,000	7,109,742.00	Pump on for Winter
December 3, 1999	12.00	11,979,000	1:45PM	6,053,000	13,162,742.00	
December 22, 1999	11.50	17,077,000	9:50AM	5,098,000	18,260,742.00	
Total Year 1999					**18,260,742.00**	
January 21, 2000	12.50	23,670,000	8:15 AM	6,593,000	6,593,000.00	
February 9, 2000	11.50	28,877,000	3:00 PM	5,207,000	11,800,000.00	
March 7, 2000	12.00	36,065,000	11:00 AM	7,188,000	18,988,000.00	
April 19, 2000	13.50	46,125,000	9:00 AM	10,060,000	29,048,000.00	
June 7, 2000	14.50	50,228,000	11:15 AM	4,103,000	33,151,000.00	
July 5, 2000	10.50	50,228,000	3:30 PM	-	33,151,000.00	

Flora Company shut-in pressure readings
36th st. well

2/6/02

DATE	SHUT-IN PRESSURE (PSI)	FLOW	TIME	DIFFERENCE IN FLOW SINCE PREVIOUS READING	CUMULATIVE WATER USAGE per Year	COMMENTS
August 28, 2000	9.50	50,228,000	3:40 PM	-	33,151,000.00	
October 10, 2000	11.00	51,963,000	4:25 PM	1,735,000	34,886,000.00	
October 27, 2000	9.00	56,597,000	11:20 AM	4,634,000	39,520,000.00	2 OTHER PUMPS ON
November 28, 2000	9.25	65,399,000	3:45 PM	8,802,000	48,322,000.00	
December 21, 2000	9.25	71,628,000	11:00 AM	6,229,000	54,551,000.00	
Total Year 2000					**54,551,000.00**	
January 5, 2001	9.00	75,632,000	9:30 AM	4,004,000	4,004,000.00	
February 2, 2001	9.25	83,038,000	4:00 PM	7,406,000	11,410,000.00	
February 14, 2001	9.00	86,184,000	4:45 PM	3,146,000	14,556,000.00	
March 5, 2001	9.25	90,304,000	8:15 AM	4,120,000	18,676,000.00	
April 13, 2001	14.00	96,821,000	2:45 PM	6,517,000	25,193,000.00	
April 30, 2001	?	?	?		25,193,000.00	
May 24, 2001	?	105,132,000	8:30AM	8,311,000	33,504,000.00	
June 8, 2001	13.00	108,474,000	8:00AM	3,342,000	36,846,000.00	
July 6, 2001	11.00	113,713,000	7:10am	5,239,000	42,085,000.00	
August 6, 2001	12.00	113,713,000	11:45am	-	42,085,000.00	
August 31, 2001	14.00	113,713,000	7:30am	-	42,085,000.00	
September 28, 2001	15.50	113,713,000	2:50pm	-	42,085,000.00	
October 26, 2001	12.00	120,073,000	1:15pm	6,360,000	48,445,000.00	
November 21, 2001	16.50	127,469,000	1:30pm	7,396,000	55,841,000.00	
January 8, 2002	10.00	141,823,000	8:35am	14,354,000	70,195,000.00	292,938.78
February 1, 2002	9.50	145,156,000	2:00pm	3,333,000	73,528,000.00	144,913.04
				-	73,528,000.00	
				-	73,528,000.00	
				-	73,528,000.00	
				-	73,528,000.00	
				-	73,528,000.00	
				-	73,528,000.00	
				-	73,528,000.00	
				-	73,528,000.00	
				-	73,528,000.00	
				-	73,528,000.00	
				-	73,528,000.00	
				-	73,528,000.00	
				-	73,528,000.00	

Flora Company shut-in pressure readings
36th st. well

2/6/02

DATE	SHUT-IN PRESSURE (PSI)	FLOW	TIME	DIFFERENCE IN FLOW SINCE PREVIOUS READING	CUMULATIVE WATER USAGE per Year	COMMENTS
				-	73,528,000.00	
				-	73,528,000.00	
				-	73,528,000.00	
				-	73,528,000.00	
				-	73,528,000.00	
				-	73,528,000.00	
				-	73,528,000.00	
				-	73,528,000.00	
				-	73,528,000.00	
				-	73,528,000.00	
				-	73,528,000.00	
				-	73,528,000.00	
				-	73,528,000.00	
				-	73,528,000.00	
				-	73,528,000.00	
				-	73,528,000.00	
				-	73,528,000.00	
				-	73,528,000.00	
				-	73,528,000.00	
				-	73,528,000.00	
				-	73,528,000.00	
				-	73,528,000.00	
				-	73,528,000.00	
				-	73,528,000.00	
				-	73,528,000.00	
				-	73,528,000.00	
				-	73,528,000.00	
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				-	73,528,000.00	
				-	73,528,000.00	
				-	73,528,000.00	
				-	73,528,000.00	
				-	73,528,000.00	
				-	73,528,000.00	
				-	73,528,000.00	
				-	73,528,000.00	
				-	73,528,000.00	
				-	73,528,000.00	
				-	73,528,000.00	
				-	73,528,000.00	
				-	73,528,000.00	
				-	73,528,000.00	
				-	73,528,000.00	
				-	73,528,000.00	
				-	73,528,000.00	
				-	73,528,000.00	
				-	73,528,000.00	
				-	73,528,000.00	

Flora Company shut-in pressure readings
36th st. well

2/6/02

DATE	SHUT-IN PRESSURE (PSI)	FLOW	TIME	DIFFERENCE IN FLOW SINCE PREVIOUS READING	CUMULATIVE WATER USAGE per Year	COMMENTS
				-	73,528,000.00	
				-	73,528,000.00	
				-	73,528,000.00	
				-	73,528,000.00	
				-	73,528,000.00	
				-	73,528,000.00	
				-	73,528,000.00	
				-	73,528,000.00	
				-	73,528,000.00	

Flora Company Shut - in Pressure Readings
office well

2/6/02

DATE	SHUT-IN PRESSURE (PSI)	FLOW	TIME	DIFFERENCE IN FLOW SINCE PREVIOUS READING	CUMULATIVE WATER USAGE	COMMENTS
May 3, 1999	12.00	211,500	11:00 AM	211,500	211,500	first reading
May 21, 1999	12.00	468,900	9:30 AM	257,400	468,900	
June 8, 1999	13.00	607,600	1:00 PM	138,700	607,600	
July 1, 1999	13.00	607,600	10:20 AM	-	607,600	
July 21, 1999	12.00	607,600	7:50 AM	-	607,600	
August 2, 1999	12.00	607,600	8:30 AM	-	607,600	
August 18, 1999	14.50	610,300	9:20AM	2,700	610,300	
September 9, 1999	14.50	689,100	8:50AM	78,800	689,100	
October 14, 1999	13.00	1,189,200	11:20AM	500,100	1,189,200	
November 10, 1999	10.00	1,836,500	10:15AM	647,300	1,836,500	
December 3, 1999	11.00	2,297,600	1:15PM	461,100	2,297,600	
December 22, 1999	10.50	2,536,100	9:45 AM	238,500	2,536,100	
Total Partial Year 1999					**2,536,100**	
January 18, 2000	11.00	2,729,800	12:00 PM	193,700	193,700	
February 2, 2000	11.00	2,805,700	2:00 PM	75,900	269,600	
March 7, 2000	12.00	2,897,600	11:00 AM	91,900	361,500	
April 19, 2000	12.00	3,426,900	8:20 AM	529,300	890,800	
June 7, 2000	13.00	4,738,700	11:15 AM	1,311,800	2,202,600	
July 5, 2000	10.00	5,431,400	3:00 PM	692,700	2,895,300	
August 28, 2000	6.00	6,765,700	3:40 PM	1,334,300	4,229,600	
October 10, 2000	11.00	7,816,000	4:10 PM	1,050,300	5,279,900	
October 27, 2000	9.00	7,888,100	11:15 AM	72,100	5,352,000	
November 28, 2000	9.00	8,991,000	3:30 PM	1,102,900	6,454,900	
December 21, 2000	10.00	9,743,300	10:30 AM	752,300	7,207,200	
Total Year 2000					**7,207,200**	
January 5, 2001	9.00	10,277,400	9:30 AM	534,100	534,100	
January 29, 2001	9.00	11,051,900	4:45 PM	774,500	1,308,600	
February 14, 2001	9.00	11,512,800	4:45 PM	460,900	1,769,500	
March 5, 2001	9.00	12,482,700	8:00 AM	969,900	2,739,400	
April 13, 2001	10.00	13,877,300	2:30 PM	1,394,600	4,134,000	
April 30, 2001	10.00	14,382,800	?	6,494,700	11,846,700	
May 24, 2001	11.00	14,787,000	8:30am	5,796,000	12,250,900	
June 8, 2001	11.00	15,096,100	8:15am	5,352,800	12,560,000	
July 6, 2001	10.50	15,596,300	7:05am	5,318,900	5,853,000	
August 6, 2001	10.50	16,355,400	11:35am	5,303,500	6,612,100	

Flora Company Shut - in Pressure Readings
office well

2/6/02

DATE	SHUT-IN PRESSURE (PSI)	FLOW	TIME	DIFFERENCE IN FLOW SINCE PREVIOUS READING	CUMULATIVE WATER USAGE	COMMENTS	
August 31, 2001	11.00	16,972,800	7:25am	5,460,000	7,229,500		
September 28, 2001	15.00	17,128,500	5:15pm	4,645,800	7,385,200		
October 26, 2001	10.00	17,208,700	1:10pm	3,331,400	7,465,400		
November 21, 2001	10.00	18,021,300	1:45pm	812,600	8,278,000		
January 8, 2002	9.00	19,449,600	8:30am	1,428,300	9,706,300		29,148.98
February 1, 2002	9.00	20,167,800	1:45pm	718,200	10,424,500		31,226.09
				-	10,424,500		
				-	10,424,500		
				-	10,424,500		
				-	10,424,500		
				-	10,424,500		
				-	10,424,500		
				-	10,424,500		
				-	10,424,500		

APPENDIX D.

Idaho Department of Water Resources Well
Driller's Reports of the Flora Company's shallow cold water
domestic/irrigation wells drilled by Stevens (1977) and Riverside (1999).

07/23/99 09:35 ☎208 381 5200 TERTELING CO INC 001

Post-it® Fax Note 7671	Date 7/2	# of pages ▶ 1
To EP SQuires	From Tom T	
Co./Dept.	Co.	
Phone #	Phone # 381-5213	
Fax # 342-3100	Fax #	

Idaho
of Water Resources

LER'S REPORT

the Director, Department of Water Resources within
or abandonment of the well

Address 3709 Hawthorne Drive Boise

Owner Same No

2. NATURE OF WORK

☒ New well ☐ Deepened ☐ Replacement

☐ Abandoned (describe method of abandoning)

3. PROPOSED USE

☐ Domestic ☒ Irrigation ☐ Test ☐ Other (specify type)

☐ Municipal ☐ Industrial ☐ Stock ☐ Waste Disposal or Injection

4. METHOD DRILLED

☒ Cable ☐ Rotary ☐ Dug ☐ Other

5. WELL CONSTRUCTION

Diameter of hole 8 inches Total depth 65 feet

Casing schedule ☒ Steel ☐ Concrete

Thickness	Diameter	From	To
.250 inches	8 inches	18" feet	49 feet
.250 inches	6 inches	31 feet	51 feet
.250 inches	6 inches	58 feet	65 feet
inches	inches	feet	feet
inches	inches	feet	feet

Was casing drive shoe used? ☐ Yes ☒ No

Was a packer or seal used? ☐ Yes ☒ No

Perforated? ☐ Yes ☒ No

How perforated? ☐ Factory ☐ Knife ☐ Torch

Size of perforation ____ inches by ____ inches

Number	From	To
perforations	feet	feet
perforations	feet	feet
perforations	feet	feet

Well screen installed? ☒ Yes ☐ No

Manufacturer's name Johnson

Type stainless steel Model No. 405

Diameter 6 Slot size 35 Set from 51 feet to 58 feet

Diameter Slot size ____ Set from ____ feet to ____ feet

Gravel packed? ☒ Yes ☐ No Size of gravel #8 sand

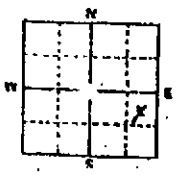
Placed from 31 feet to 65 feet

Surface seal depth 18' Material used in seal ☐ Cement grout ☒ Puddling clay ☒ Well cuttings

Sealing procedure used ☐ Slurry pit ☒ Temporary surface casing ☒ Overbore to seal depth

6. LOCATION OF WELL

Sketch map location must agree with written location.



Subdivision Name ____

Lot No. ____ Block No. ____

County Ada

N/E ¼ S/E ¼ Sec. 29 T. 4 N/S R. 2 E/W

7. WATER LEVEL

Water water level 39 feet below land surface

Flowing? ☐ Yes ☐ No G.P.M. ____

Temperature ____ Quality ____

Artesian closed in pressure ____ P.S.I.

Controlled by ☐ Valve ☐ Cap ____ Gage ____

8. WELL TEST DATA

☒ Pump ☐ Bailer ☐ Other

Discharge G.P.M.	Draw Down	Hours Pumped
70+	6'	30 min.

9. LITHOLOGIC LOG

Hole Diam.	Depth From	Depth To	Material	Water Yes	Water No
8	0	39	sandy topsoil	X	
	39	40	clay		X
	40	41'6"	cemented sand	X	
	41'6"	42	clay		X
	42	52	cemented sand & gravel	X	
	52	58	sand & gravel	X	
	58	65	blue clay		X

10.

Work started 4/9/77 finished 4/16/77

11. DRILLERS CERTIFICATION

Firm Name M.E. Stevens & Sons Firm No. 153

Address 3709 Hawthorne Drive Date 4/18/77

Signed by (Firm Official) [signature]

and

(Operator) [signature]

USE ADDITIONAL SHEETS IF NECESSARY FORWARD THE WHITE COPY TO THE DEPARTMENT

APPENDIX E.

Field notes from site visits to the Flora Company property by Hydro Logic Inc. (Brian Cavanagh) from October 18, 2001 to January 21, 2002. Notes include recordings of flow meter calibrations, flow rate measurements, shut-in pressures, weir readings, and weir chart readings.

Hydro Logic Inc. | CALCULATIONS AND DESIGN DATA | PREPARED BY B Cavanaugh

SUBJECT | DATE 10-18-01

Terteling - Florn Shed - Silkey well | SHEET 1 OF 4

12:15 arrive, Doug Hunt, Jerry, Tim & Tom Terteling met me at Florn Co, Doug Hunt stayed & helped me quantify the flow from the flowmeter for each of the steps

12:18 shed well = 12 psi x 2.31 = 27.72 ft

12:28 turn off 36th St well pump

12:31

		Shed well	36st Well	
	12:31		12.7	averaged
	12:34		12.8	averaged
	12:35		12.8	averaged
	12:38	12.4 & 11.9		
	12:42	12.4 & 11.9		
	12:50		13 & 13	
	12:52		13.1 & 13.2	
	12:56	12.1 & 11.8		
20gpm	13:40		13.1 & 13.2	
40gpm	14:11		13.1 & 13.2	
60gpm	14:30		13.3 & 13.3	
80	14:48		13.3 & 13.3	
100	15:09		13.3 & 13.3	
120	15:42		13.2 & 13.2	

Readings of shut in pressure during step test of Shed well

Hydro Logic Inc. | CALCULATIONS AND DESIGN DATA | PREPARED BY B. Cavanagh

SUBJECT: Flowing Step Test | DATE 10-18-01

Terteling Flora Co Silkey Shed well | SHEET 2 OF 4

30 gal in 15 seconds

Shed well - Natural flow steptesting / flowmeter calibration w/ 32 gallon trashcan.

Time	PSI	Flow meter reading		Discharge barrel	
12:44	12.4 & 11.9			12.15 x 2.31	28.07 Feet agl
12:58	on .03	wide open	130 gpm	30 gallons in 13 seconds	138 gpm
				30 gallons in 13.5 seconds	133
13:04	off	12.8 & 12.3			
13:06		12.9 & 12.6			

"20 gpm"

13:07 on	12.6 & 11.9 psi	8 gpm	28 gpm	
13:28	12.5 & 12.1	25 gpm	14 seconds / 5 gal = 20 gpm	
(37) 13:33	12.4 & 12.1	24 gpm	14 seconds / 5 gal = 20 gpm	
13:38	12.4 & 12.1		15 seconds / 5 gal = 20 gpm	12.3 = 28.41
13:48	12.5 & 12.1	28 gpm		no change in 36" well.
13:48 off				

"40 gpm"

13:49 on	12.6 & 12.2			
13:59				
14:00	11.6 & 11.2	40 gpm	30 gallons = 45 seconds = 40 gpm	11.4 psi x 2.31 = 26.33
(23) 14:09	11.6 & 11.2	40 gpm		SC = 40 / 1.74 = 23
14:11	11.6 & 11.2	40 gpm		
14:12	off			

"60 gpm"

112.0 deg. F | Cs: 340uS | [illegible] 9.25

14:13 on	12.6 & 12.2			
(21) 14:17	10.2 & 10.1	57 gpm	30 gal. in 30 seconds	= 23.45 feet
14:22	10.2 & 10.1	57 gpm	30 gal. in 30 sec	dd = 4.62
14:32 off	10.2 & 10.1			SC = 60/4.62 = 12

"80 gpm" 30 gal. = 22.5 sec

14:33 on	12.6 & 12.3 ← (used this average for static water level for plots)			
14:36	7.9 & 8.0	77 gpm	30 gallons in 22.5 seconds = 80 gpm	= 18.48
14:43	8.0 & 8.0			
14:44 17:83	8.0 & 8.0	77 gpm	30 gallons in 22.5 seconds = 80 gpm	dd = 7.59
14:54	off			SC = 8.0

"100 gpm" 30 gal. in 18 seconds

14:58 on	12.6 & 12.3			
15:00	6.2 & 6.2 psi	93 gpm	100 gpm 30 gal. 18 sec	6.1 x 2.31 = 14.09 ft
15:06	6.1 & 6.1	93 gpm	100 gpm 30 gal. 18 sec	dd = 13.98
15:12	6.1 & 6.2			SC = 7.2
15:19	6.1 & 6.2 off			

Hydro Logic Inc.	CALCULATIONS AND DESIGN DATA	PREPARED BY B. Cavanagh
SUBJECT		DATE 10-18-01
Terteling Flora shed well		SHEET 3 OF 4

	PSI	METER	"120 gallons"	(30 gallons in 15 seconds target)
15:20	12.3 & 12.6			2.8 x 2.31 = 6.47 Feet dd = 21.60
15:22 on				
15:25	2.6 & 2.9	120 gpm		30 gallons in 15 seconds = 120 T = 113°F Sc = 5.56
15:36	2.6 & 3.0			
15:42	2.6 & 3.0			
15:43 off				

		gauge acting fm / meter	"30 gpm"	
15:45	12.6 & 12.3			11.8 x 2.31 = 27.26
15:46 on	11.8 & 11.8	500 gpm ??		dd = 0.812 Sc =
15:57	11.7 & 11.7	30 gpm		5 gallons in 10 seconds
16:07 off	11.7 & 11.7	30 gpm		30 gallons in 60 seconds pH = 9.33 Cs = 332 mS

22 min

		Meter	"50 gpm"	5 gallons = 6 seconds or 30 gal. in 36 sec.
16:08 on	12.6 & 12.3			10.55 x 2.31 = 24.37
16:12	10.5 & 10.6			5 gal in 6 seconds & 30 gal. in 36 seconds
16:17		49 gpm		dd = 3.70
16:21	10.6 & 10.7	T = 113° deg F		Sc = 13.51
16:22 off				

14 min

Notes at end of day when Meaghan is turning on Tiegs well for the night. I am at Shed well head.

16:23 12.7 & 12.5 shut in Pressures at Shed well

16:25 Megan turning on artesian and two pumps

16:28 no change in Shed well well head slight 0.1 mm vibration ?? ← watching shut-in pressure at Shed well looking for interference

16:31 Megan stops by Shed well well head - something is quite right

16:36 megan stops by everything seems to be working - Flowmeter must not be working

16:37 12.7 & 12.5

16:42 12.7 & 12.5

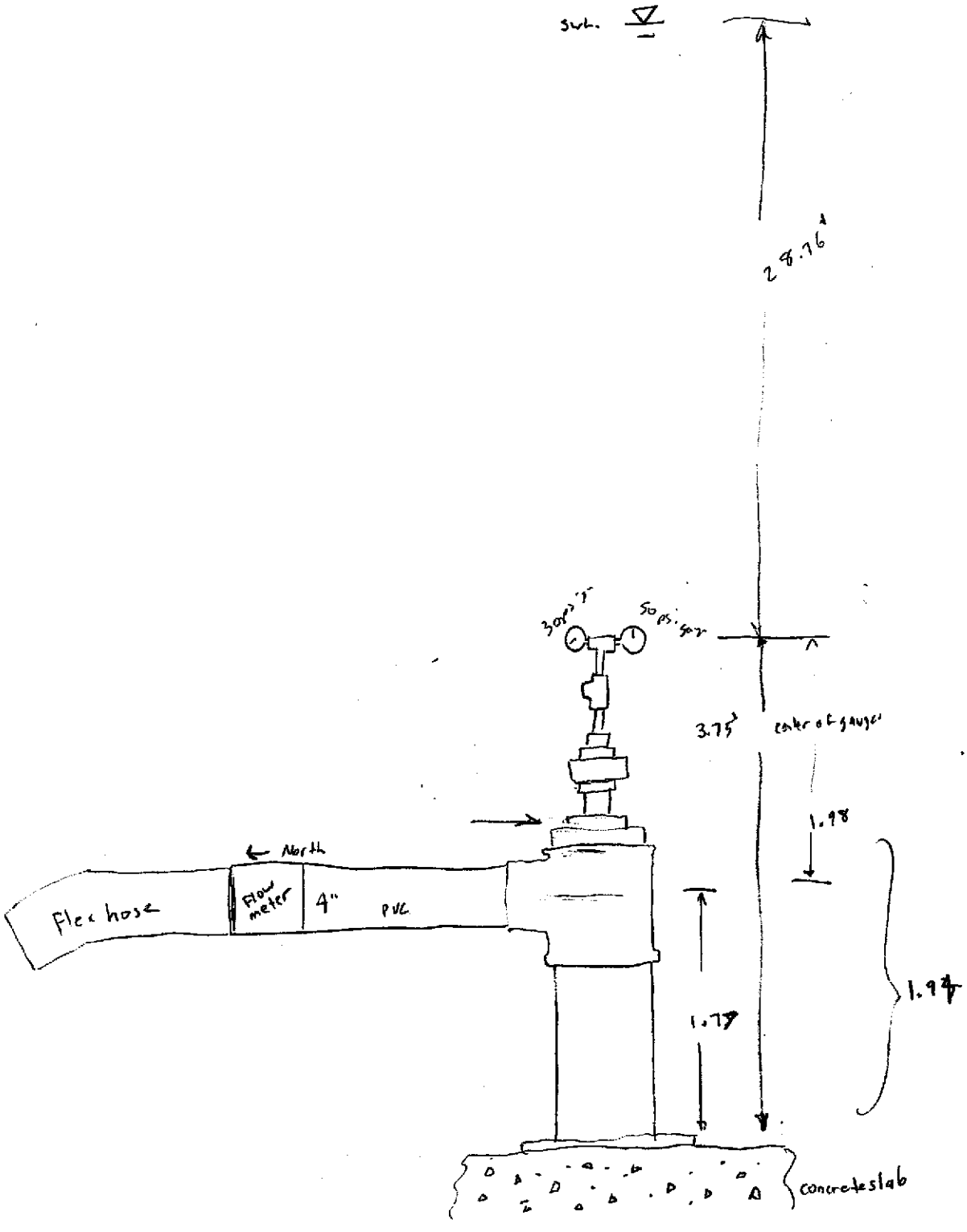
17:00 Walked w/ Megan and the booster pump in well vault is running but not the other one in parking lot - it is tripping the breaker and won't turn on. It hum's for a few seconds only, she will try to get it fixed for tomorrow

17:01 psi = 12.6 & 12.3

Hydro Logic Inc. | CALCULATIONS AND DESIGN DATA | PREPARED BY B. Cavanagh

SUBJECT | DATE 10-19-01

Terteling Flora - Silkey shed well - Natural flow step testing | SHEET 4 OF 4



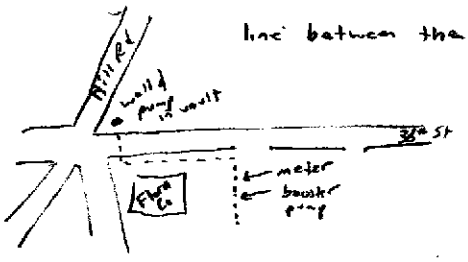
130
26.1

Hydro Logic Inc. | CALCULATIONS AND DESIGN DATA | PREPARED BY B. Cavanagh

SUBJECT | DATE 10-19-01

Tertelin - Flora - Calibration of (Tregs) 36th St. well Flowmeter | SHEET 1 OF 1

10:45 - arrive - Tom Tertelin shows me rock stone chip's that had plugged up the flowmeter located beneath ground level in parking lot. This flow meter is from the 36th St well. It is in line between the two pumps (boosters)



50 gpm 5 gallons in 6 seconds
30 gal. in 36 sec

60 gpm 30 gal. in 30 seconds

100 gallons
30 gal. in 18 seconds

11:00 shed pressure - 14psi & 13.6

master meter 4"
totalizer 117776 x 1000

Flow Calibration of 36th St well - Flora Co

50 gpm

11:13 Fills 30 gal in 36 sec. meter reads 50 gallons in 61 seconds

60 gpm

11:20 fills 30 gal. in 30 seconds meter reads 60 gallons in 60 seconds

100 gpm

11:27 fills 30 gal. in 18 seconds med reads 100 gallons in 62 seconds

totalizer 117778 x 1000

11:30 off.

11:38 Dag & Jerry hook up the flex hose to where the meter was via an elbow to let the pipe clean themselves out. ~ looks like 8gpm check shed well no change in pressure 14psi & 13.6

11:43 turn on pump flow ~ 150-200 gpm

11:49 Jerry is catching chunks up to pebble size (2cm) of rock stone chips check shed well no change 14psi & 13.6

11:51 ~4-5 cc of 2-6 mm chunks & grey rock stone

11:56 check shed well no change 14psi & 13.6

11:59 off

12:05 leave

Hydro Logic Inc

CALCULATIONS AND DESIGN DATA

PREPARED BY B. CAVANAGH

SUBJECT · Observations of combinations of flows through system and weir

DATE 12-14-01

Flora Co SHED WELL FLOW ONLY

SHEET 1 OF 5

	4" flow meter Tregs well	4" flow meter 52338 x 1000 gal. Shed well	2" flow meter House well	weir stick
9:00 shut in pressures for 3 wells	11.2 & 11.5	7 psi & 10.3	11.5 & 9.5 note: dark blue or green gate valve leaks light blue valve must be closed also	0.13
9:28	wells closed off	well closed off	well closed off	draining
9:57	12 & 12	7.2 & 10.3	11.5 & 9.5	
10:06				0.12
10:13				0.10
10:16	off	begin flow (max) 20 psi 95 gpm	off	
10:22	12 & 12.2 (booster 2 soh)		11.5 & 9.5	
10:57 Town stops by		93 gpm 10 psi system pressure 1.9 psi	11.5 & 9.5	
11:29	10 psi on booster pump back pressure 5 & 5.3 back pressure			0.30
12:03		93 gpm system pressure 1.8 psi	11.5 & 9.5	
12:06		well heads 1.5 & 5 psi		0.33
12:12	10.5 psi booster pump back pressure		11.5 & 9.5	
12:16	5 & 5.3 back pressure 12.2 & 12.1			
12:34				0.33
12:36	10.5 psi booster			
12:40	5.1 & 5.4 well head back pressure 12.1 & 12.2 shut in well head pressure			
12:45		2.7 pipe pressure 93 gpm 1.5 & 5.1 psi	System PSI Shut of shed well 40 ft 11.5 & 9.5 (no back pressure)	
12:50		4.90		
13:15		back pressure in line 2.3 psi well head: 1.5 & 5.1 90 gpm	5 psi	
13:20				0.33
13:22	booster pump 10.8 psi 5.6 & 5.7 well head back pressure 12.5 & 12.5 shut in pressure		11.5 psi	
13:27		OFF 52355 x 1000 gal.		

Flow of shed well only through system

Hydro Logic Inc.

CALCULATIONS AND DESIGN DATA

PREPARED BY B. Cavanagh

SUBJECT

DATE 12/14/01

FLORA CO - observations of combinations of flows through the system

SHEET 2 OF 5

TIME	TIEGS	SHED (Shed well flow off system draining)	INLINE PSI	HOUSE	WEIR
13:31	134 4547 X 1000	8.2 & 12.1	0.0	11.5	
13:37	back press 2.6 & 3.0				
14:40	12.5 & 12.5 shutin psi				0.14
13:47					
13:53	2.6 & 3.0 back pressure	11.2 8.1		11.5	
13:57	12.6 & 12.6 shutin				
14:03	booster pump 6.8 psi backpressure				0.10
14:11	system psi: 3.0 & 7.0				
14:13	Free flow wide open bypass both pumps				
14:13	4.5 & 4.3 wellhead				
14:17	58 gpm (10psi in booster pump #2)				
14:25		0.0 back pressure	3.0 back pressure	11.5	
14:27		8.0 & 11.10			
14:30					0.26
15:13	4.5 & 4.6				
15:16	0-60 gpm				
15:18	direct flow through booster (3)	back pressure: 0 8 & 11 psi wellhead	3.0 psi	11.5	
15:21					0.28
15:27	Flow through pump #1 wellhead 5 & 5 psi				
15:32	78 gpm (2) booster pump: 11 psi				
15:33		1.5 psi - system wellhead 8 & 11.0	4 psi	11.5	
15:38					0.30
15:43	72 gpm (11 psi booster #1)				
15:45	5.5 & 5.5 psi wellhead				
15:48		1.5 psi system wellhead 8 & 11.0		11.5 psi	
15:52	booster 3 Begin flow through 1 & 2 natural flow				0.30
15:54	@ 65 gpm				
16:00	6.2 & 6.4	1.5 system wellhead 8 & 11.0	4.5	11.5	
16:09	booster (2) - 11.2 psi 65 gpm 6.4 & 6.1 wellhead psi				0.29
16:18					0.29
16:22	6.1 & 6.3				

Flow of Tiegs free flow bypassing both pumps (60gpm)

Tieg's max free flow = 72gpm

Tiegs free flow through booster (3) bypass booster (2) = 72 gpm

Tiegs free flow through both pumps 45 gpm

Hydro Logic Inc — CALCULATIONS AND DESIGN DATA — PREPARED BY B. Cavanagh

SUBJECT: FLORA CO - Observations of flows through the system

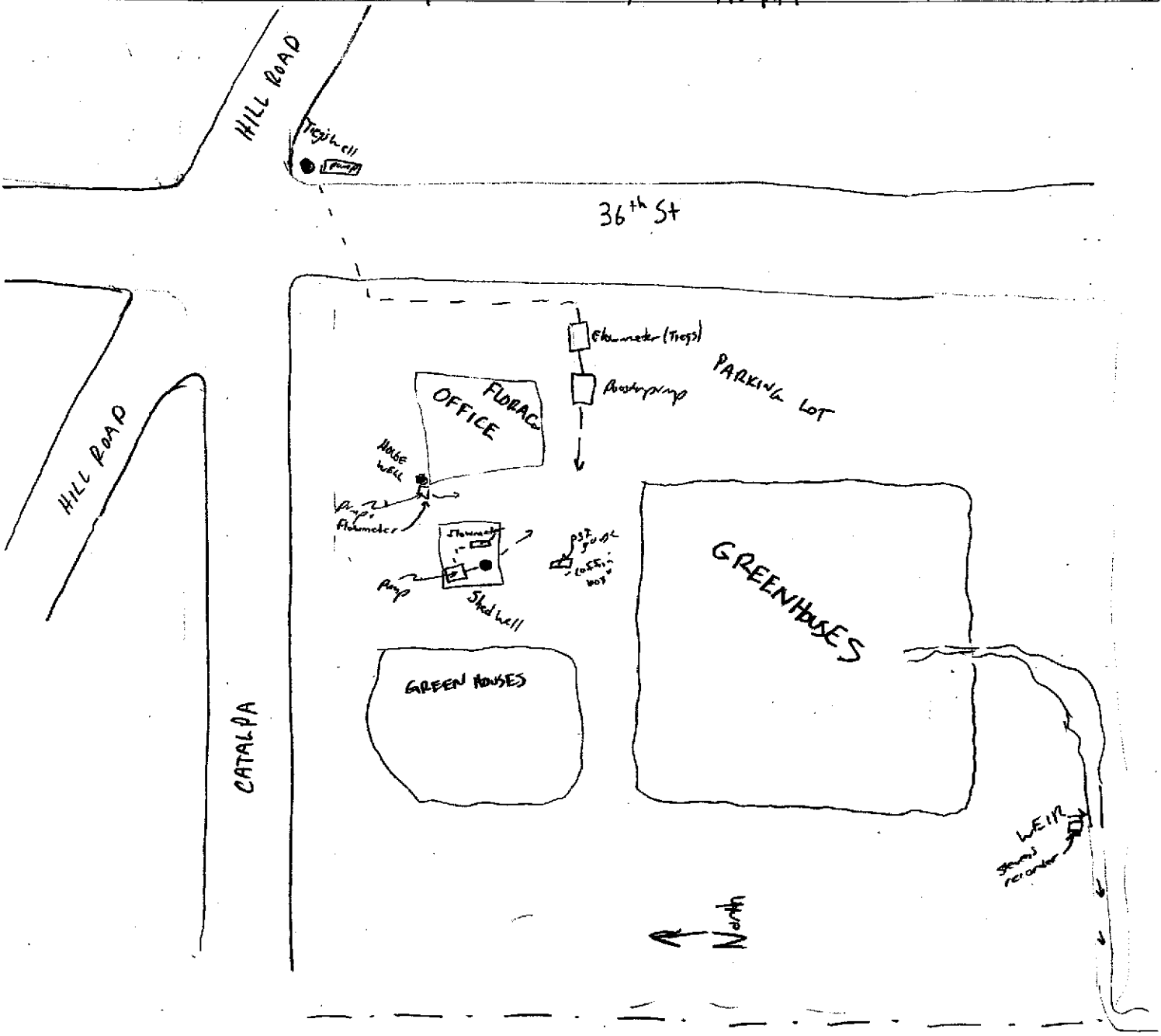
DATE: 12-14-01

SHEET 3 OF 5

	TIEGS	SHED	IN-LINE	HOME	WEIR
16:22	Tiegs booster ① flow through #2				
16:23	5.3, 5.5				
16:27	Q=52 gpm booster ② = 10 psi				
16:30		system < 1.0 & 11.0 wellhead	4 psi	11.5 wellhead 0.0 back pressure	
6:34					0.28
	booster 2 = 10.2 psi				
16:38	Q=55 gpm 5 & 5.3				
16:40					
16:44		system = <1.0 8.0 & 11.0 wellhead		11.5 wellhead 0.0 back pressure	
:44					0.28
6:55	all pumps	running			
6:58				37 gpm 22 p.s. system <1.0 wellhead	
7:00		138 gpm 19.4 psi system wellhead <0.1			
7:05	211 gpm booster ② 29 psi			total = 386 gpm	0.56 - quite a bit of leakage could be up to 0.58?

Tiegs well free flow bi-pass booster ① flows through booster ② = 55 gpm

All pumps running = 386 gpm


HILL ROAD
Irrig. well
pump
36th St
HILL ROAD
Flowmeter (Trays)
Booster pump
PARKING LOT
FLORAC OFFICE
House well
Pump
Flowmeter
Flowmeter
Pump
Shed well
GREENHOUSES
GREEN HOUSES
CATALPA
WEIR
N

Hydro Logic Inc. | CALCULATIONS AND DESIGN DATA | PREPARED BY B. Cavanagh

SUBJECT | DATE 12-14-01

Flora Co. - Site visit to quantify system flows by running pumps, natural flows, and combinations of pumping and natural flows. | SHEET (B) 5 OF 5

Initial Plan to quantify the flows:

1) Shed well flow ont in system Tiegs off

2) Tiegs on Shed off

3) shed pump on Tieg off

4) Tieg pump on Shed off

5) both pumps on

6) one pump on one flowing

6) other pump on other flowing

8:57 Tiegs well shutin 11.2 & 11.5
added booster pump last summer

Ask Megan about:

1) - Prior owners - schedule of wells (Flowing in summer?)

2) wells on all time? time off for both?

Meaghan's recollection of well usage in the past.

SUMMER		FALL	water
SHED BYPASS for neighbors Picnics Tiegs off June - Aug	TIEGS SHUT FLOW ONLY LATE SPRING TO FALL	FLOW both MID OCT full flow	50° 4 pumps all (3) wells

Hydrologic Inc. — CALCULATIONS AND DESIGN DATA

PREPARED BY: B. Cavanaugh

DATE: 12-18-01

SUBJECT: Flora Co. - Weir Testing when lined with plastic

SHEET 1 OF 2

10:45 Meet up w/ Jerry - he says all four pumps are running - every once in a while he'll turn it into the house

11:02 House well 24 gpm — 25 psi system
Shed well 137 gpm — 22.5 system (psi)
Tiegs 202 gpm — booster ② 21 psi

24
137
202
363

11:11 coffin: 25 psi

11:25 Change weir chart to 2-day.
currently reading 0.46

11:41 weir = 0.48

12:05 begin damming - or re-lining the weir w/ sandbags and clear polyethylene sheeting (plastic sheeting used for the greenhouses from Reedy)

12:40 finished re-lining the weir for (it took me to complete approx 20-30 min?) (two guppies escaped from the neighboring yard on the SW side of the weir)

12:42 Weir measuring stick reading 0.56 chart recording 0.5425

13:03 Shed Well = 137 gpm (pumping)
13:04 House well = 25 gpm (pumping)
13:25 Tiegs well = 205 gp- (both pumps)

181

13:30 Turn Tiegs pump #2 off (parking lot) Q = 140 going through pool

13:33 open pump 2 bypass valve Q = 147

13:38 Tiegs booster pump #1 off (vault)

13:42 Q = 40 gpm

14:21 weir reads 0.47

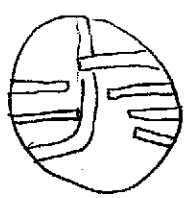
14:30 weir reads 0.46 chart reads 0.495

14:35 coffin pressure gauge 12 psi
House well system pressure 12 psi
Shed well system pressure = 9 psi.

14:40 Shed well Q = 145
~~Shed well~~

Manhole in front of office on 36th St
leaking pipe ~ 10 gpm through rusted out pipe (1") - water is warm
silver tag on another pipe reads "Discharge, Tom's office downstairs"

(7) seven pipes total



North

15:11 Weir stick reads 0.46 - (poke hole in plastic to expose intake to float possibly plastic slowing down decrease in water level on chart?)

15:14 Weir stick reads 0.48 Beginning to rain

15:23 weir stick reads 0.47

15:33 Shed well a = 137 gpm system pressure 8.7 coffin PSI = 12, House = 12 psi

15:39 weir stick = 0.47

15:42 Trejo well shutoff - free flowing, Shed free flowing, House well pumping

15:43 system psi = 9.7 shed well system

15:45 Shed well = Q = 80 gpm [weir head psi = 2.5 & 6.5]

15:46 House well system psi = 7.0 & 25 gpm

15:46 Coffin box psi = 7.5

15:51 Trejo a = 60 gpm

16:17 weir stick = 0.44

Hydro Logic Inc. | CALCULATIONS AND DESIGN DATA | PREPARED BY: B. Cavanagh

SUBJECT | DATE: 1/21/02

Flora co - Taking away plastic liner and fixing overland-sideflow at the weir with particle board and bentonite chip. | SHEET | OF

1/21/02
B. Cavanagh

14:27 Tiegs Q = 95 gpm booster ② off booster ① on 143980 x 1000 gal.

14:32 Silkeysled Q = 135 gpm booster pump on 46 psi system pressure 059801 x 1000 gal

14:35 House well Q = 26 gpm booster pump on 18 psi 198549 00 gal.

coffin = 17 psi

14:45 weir stick reads 0.56 (Cu-notch partially obstructed by wood stick) causing higher stick readings (Recorder = 0.58)

15:14 Chart reads 0.51 Stick reads 0.52

15:43 Liner taken away and sides of weir reconstructed with bentonite to prevent future "mining" of the sides of the weir used 5 gallons of 3/8 chip bentonite and 1 gallon 5/8" chip bentonite

15:44 weir stick reads 0.52 (0.52) chart reads 0.48

16:30 Tiegs booster ② off (now ①&② on)
Q = 170 gpm Tiegs
16:43 weir reads 0.55 weir chart reads 0.495

	45
weir reads 220	135
	26
	256

16:50 Shed well Q = 137 gpm booster pump on
16:52 House well = Q = 25 gpm
16:53 Tiegs Q = 170
332

16:57 Weir reads 0.56 (206 / 40%) chart reads 0.5 (200 / 40%)

Charts readings read from current chart on stevens recorder

BEFORE THE DEPARTMENT OF WATER RESOURCES

FOR THE STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR TRANSFER NO. 71690 IN THE NAME OF THE TERTELING COMPANY, INC.	))))	**PREHEARING ORDER**

A prehearing conference in the above-referenced matter was held on February 10, 2006, with all parties present. This Prehearing Order issues as a result of the discussions at the prehearing conference and pursuant to IDAPA 37.01.01.513, and shall control the course of these proceedings.

Information Disclosures.

On or before **March 17, 2006,** each party shall serve on the other parties an information exchange that shall include the following information that is in their possession:

a. A names of all persons who have specific knowledge regarding material facts directly related to Transfer No. 71690, together with a brief narrative summary of the listed person's knowledge, and an indication whether the party intends to call that person to testify at the hearing.

b. A list of any expert witnesses with specific opinions related to Transfer No. 71690, together with a brief narrative summary of that opinion, and an indication whether the party intends to call that expert to testify at the hearing.

c. A list, with a copy, of all documents, expert reports or prepared testimony, audio-recordings, pictures, and all other items containing information directly relevant to Transfer No. 71690, as well as a separate description of all documents, expert reports, prepared testimony, and exhibits intended to be introduced into evidence at the hearing, with copies pre-numbered as follows:

Terteling Co:	1-99.
Edwards:	100-199.

Failure to fully comply with this information exchange may lead to delays in the hearing and/or exclusion of withheld information from the hearing. Discovery may be allowed by the Hearing Officer following the information exchange in response to a motion requesting discovery by any party that identifies specifically the requested discovery and why it is needed.

Request for Staff Memorandum.

The Hearing Officer will request a staff memorandum from IDWR. Any such memorandum will be due on **March 17, 2006.**

Settlement Discussions.

Settlement negotiations in this matter, including discussions solely between experts hired by the respective parties, are inadmissible at hearing pursuant to IDAPA 37.01.01.610.

Hearing.

The evidentiary hearing in this matter is tentatively set for **APRIL 20-21, 2006.** A separate notice of hearing shall be served on the parties.

Dated this 17th day of February, 2006.

Peter R. Anderson
Hearing Officer

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 18th day of February, 2006, the above and foregoing document was served on the following by placing a copy of the same in the United States mail, postage prepaid and properly addressed to the following:

CHARLES L. HONSINGER
RINGERT CLARK
PO BOX 2773
BOISE ID 83701-2773

DANA L HOFSTETTER
HOFSTETTER LAW OFFICE
608 W FRANKLIN ST
BOISE ID 83702

Victoria Wigle
Administrative Assistant to the Director
Idaho Department of Water Resources

-ROSTER OF ATTENDANCE-

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

IDWR PREHEARING CONFERENCE

February 10, 2006

NAME	ADDRESS	REPRESENTING
Charlie Honsinger	P.O. 2773, Boise 83701 ~~410 Riverview Dr. B~~	The Terteling Co
Tom Terteling	3823 N. 36th Boise 83703	" "
Ed Squires	1002 W. Franklin St. 83702	The Terteling Co.
Norm Young	3314 GRACE St Boise 83703	ERO / EDWARDS
Dana Hofstetter	608 WEST Franklin ST Boise 83702,	Edwards
Garnette Monnie	4021 Hill Rd Boise 83703	Edwards.

BEFORE THE DEPARTMENT OF WATER RESOURCES

FOR THE STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR TRANSFER NO. 71690 IN THE NAME OF THE TERTELING COMPANY, INC.	))))	**NOTICE OF PREHEARING CONFERENCE**

The Department of Water Resources has scheduled this matter for an informal prehearing conference as follows:

Date:	Friday, February 10, 2006
Location:	Idaho Department of Water Resources Conference Rooms C&D Boise, Idaho (208) 287-4800
Time:	1:30 p.m.

The prehearing conference will be held in accordance with the provisions of Chapters 2 and 17, Title 42 and Chapter 52, Title 67, Idaho Code, and the adopted Rules of Procedure of the department. IDAPA 37.01.01. The Department's authority to hold hearings in this matter is based in I.C. § 42-222.

The prehearing conference will be conducted in a facility meeting the accessibility requirements of the Americans with Disabilities Act. If you require special accommodations in order to attend, participate in or understand the hearing, please advise the Department within ten (10) days prior to the prehearing conference.

Dated this 27th day of January, 2006.

Peter R. Anderson
Hearing Officer

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 27th day of January, 2006, the above and foregoing document was served on the following by placing a copy of the same in the United States mail, postage prepaid and properly addressed to the following:

CHARLES L. HONSINGER
RINGERT CLARK
PO BOX 2773
BOISE ID 83701-2773

DANA L HOFSTETTER
HOFSTETTER LAW OFFICE
608 W FRANKLIN ST
BOISE ID 83702

Victoria Wigle
Administrative Assistant to the Director
Idaho Department of Water Resources

BEFORE THE DEPARTMENT OF WATER RESOURCES

FOR THE STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR TRANSFER NO. 71690 IN THE NAME OF THE TERTELING COMPANY, INC.	**ORDER APPOINTING HEARING OFFICER**

This matter having come before the Idaho Department of Water Resources (department), as a result of protests filed against the referenced applications, the department makes the following Order:

ORDER

IT IS THEREFORE, HEREBY ORDERED that Peter R. Anderson is appointed effectively December 9, 2005 to serve as hearing officer, and is authorized to hear this matter on behalf of the Idaho Department of Water Resources pursuant to IDAPA Rules 37.01.01.410-413 and the provisions of chapter 52, title 67, Idaho Code.

Dated this 9th day of December, 2005.

Karl J. Dreher
Director

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 12th day of December, 2005, the above and foregoing document was served on the following by placing a copy of the same in the United States mail, postage prepaid and properly addressed to the following:

CHARLES L. HONSINGER
RINGERT CLARK
PO BOX 2773
BOISE ID 83701-2773

DANA L HOFSTETTER
HOFSTETTER LAW OFFICE
608 W FRANKLIN ST
BOISE ID 83702

Victoria Wigle
Administrative Assistant to the Director
Idaho Department of Water Resources

RECEIVED
MAR 17 2006
DEPARTMENT OF
WATER RESOURCES

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

Attorneys for Applicant The Terteling Company, Inc.

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.	INFORMATION EXCHANGE OF THE TERTELING COMPANY, INC.

COMES NOW, the applicant, The Terteling Company, Inc., by and through its attorneys of record, Ringert Clark, Chartered, and, pursuant to the Prehearing Order issued by the Hearing Officer in the above captioned matter on February 17, 2006, hereby submits to the Protestant and to the Hearing Officer the information required by that Prehearing Order.

1. Names of All Persons with Specific Knowledge: The following individuals have specific knowledge regarding material facts that are related to Transfer No. 71690. At this time, The Terteling Company, Inc. intends to call each person listed as a witness. The knowledge possessed by each person is summarized immediately after the person's name is listed.

A. J. L. Terteling: Mr. Terteling is the President of The Terteling Company, Inc. He is aware of all current uses of Water Right Nos. 63-00012, 63-00013 and 63-00015, including the use of water in the greenhouses. He is aware of existing and ongoing monitoring of those water rights. He has knowledge regarding the system that diverts and

distributes water pursuant to those water rights. He has knowledge regarding the existing wells proposed as points of diversion under this transfer. He has knowledge as to whether the transfer is consistent with the conservation of water resources in Idaho, as to whether the transfer is in the local public interest as defined by I.C. §42-202B, and whether the change will adversely affect the local economy.

B. T.E. Terteling: Mr. Terteling is the Vice-President of The Terteling Company, Inc. He has knowledge regarding the system that diverts and distributes water pursuant to those water rights, and the ongoing and proposed monitoring of the system and wells under this proposed transfer. He has knowledge as to whether the transfer is consistent with the conservation of water resources in Idaho, as to whether the transfer is in the local public interest as defined by I.C. §42-202B, and whether the change will adversely affect the local economy.

C. Ken Neeley: Mr. Neeley is an employee of the Idaho Department of Water Resources who is also the Water District 63-S Watermaster. He has knowledge regarding the use of the water rights that are subject to this proposed transfer, and is aware of monitoring practices and procedures currently in place.

2. Name of Expert Witness: At this time, The Terteling Company, Inc. intends to call the following expert witness to testify at the hearing in this matter:

A. Ed Squires: Mr. Squires is a hydrogeologist and licensed beneficial use examiner who will testify that proposed Transfer No. 71690 will not injure other water rights, and will not constitute an enlargement of the original water right. He is familiar with the monitoring of the existing distribution and diversion system. His opinion is summarized

in the attached report.

3. Exhibit List: The Terteling Company, Inc. intends to introduce the following exhibits (copies of which are included herewith) into evidence at the hearing of this matter:

1. Approved Transfer No. 68558 (October 9, 2002)
2. Letter from Charles Honsinger to Lori Graves (June 6, 2005)
3. Curriculum Vitae - Ed Squires, R.P.G.
4. Technical Memorandum dated March 15, 2006 by Ed Squires, R.P.G. including all attachments and figures.
5. Second Amended Application for Transfer no. 71690
6. Map showing proposed points of diversion and distribution system under Transfer no. 71690
7. Notice of Protest to Application for Transfer No. 71690
8. The Terteling Company Inc. reserves the right to introduce any and all documents, photographs, maps, etc. contained in IDWR's file for Transfer No. 71690

DATED This 17th day of March, 2006.

Charles L. Honsinger
RINGERT CLARK, CHARTERED

CERTIFICATE OF MAILING

I hereby certify that service of the within and foregoing document was made this 17th day of March , 2006, by mailing a copy thereof, postage prepaid, to each of the parties listed below.

Dana L. Hofstetter
Hofstetter Law Office, LLC
608 W. Franklin St.
Boise, ID 83702

Charles L. Honsinger

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

AMENDED TRANSFER OF WATER RIGHT *AMENDED*

TRANSFER NO. 68558

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, 20 02

Chief, Water Allocation Bureau

EXHIBIT
1
tabbies

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

BENEFICIAL USE	From	To	Diversion Rate	Volume
~~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. 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: HEATING & DOMESTIC

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. 63-12
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

BENEFICIAL USE	From	To	Diversion Rate	Volume
IRRIGATION	01/01	12/31	0.66 CFS	38.0 AF
DOMESTIC	01/01	12/31	0.04 CFS	0.6 AF
HEATING	01/01	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, 2007

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

BENEFICIAL USE	From	To	Diversion Rate	Volume
DOMESTIC	01/01	12/31	0.04 CFS	0.6 AF
IRRIGATION	01/01	12/31	0.80 CFS	38.0 AF
HEATING	01/01	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

RINGERT
CLARK
CHARTERED
LAWYERS

Laura E. Burri
Jeffrey R. Christenson
David P. Claiborne
D. Blair Clark
S. Bryce Farris
David Hammerquist
Charles L. Honsinger
James P. Kaufman
Jennifer Reid Mahoney
James G. Reid
Daniel V. Steenson
Allyn L. Sweeney

William F. Ringert, of Counsel
Samuel Kaufman (1921-1986)

June 6, 2005

Lori Graves
Department of Water Resources
Western Regional Offices
2735 Airport Way
Boise, Idaho 83705-5082

Re: Second Amended Application for Transfer of Water Right Nos. 63-12, 63-13 and 63-15 filed by The Terteling Company, Inc.

Dear Lori:

Your recent e-mail message informed my clients and I that the above-referenced transfer application could not be approved with the "Motorcycle Hot Well" as a point of diversion. The reason for your determination is that the "Motorcycle Hot Well" is completed into a different aquifer than the other wells proposed as points of diversion per the above-referenced transfer.

My clients agree with you that, based upon your clarification of the nature of the separate aquifers, the "Motorcycle Hot Well" located in T4n R2E, Section 22 NWNE should be removed from the transfer. It is my understanding that with this change, the application will be advertised the first two weeks of July.

Based upon your clarification, my clients intend to file an application to inject and recover geothermal water from Motorcycle Hot Well. We will contact you prior to filing such an application for discussion of the same.

Please contact me with any further questions or concerns regarding the above-referenced transfer application.

Sincerely,

Charles L. Honsinger

cc: Tom Terteling
Ed Squires

EXHIBIT
2

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. Osiensky (U of I) advisors.

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Professional Well Log Analyst, 1995
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OVERVIEW

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1995-present	Adjunct graduate faculty; Boise State University Department of Geosciences.
1992-1994	Consulting Hydrogeologist. S.H. Wood and Associates, Boise, Idaho.
1990-1993	Staff Technician; Geophysical Well-logging Unit, Boise State University.
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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, Abandonemnt, 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).

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 Granophyres in the Vandfaldalen 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.

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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, Abandonemnt, 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).

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 Granophyres in the Vandfaldalen 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.

Hydro Logic, Inc.

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TECHNICAL MEMORANDUM

TO: Charlie L. Honsinger / Ringert Clark Chartered Lawyers / Boise, Idaho

FROM: Ed Squires, R.P.G. / Hydro Logic, Inc., Boise, Idaho

DATE: March 15, 2006

SUBJECT: Hydrogeologic Issues Relative to Water Right Transfer No. 71690

Overview

The Terteling Company, Inc. (TTCI) owns and uses low-temperature geothermal ground water rights Nos. 63-12, 63-13, and 63-15 for commercial and domestic heating purposes in the Stewart Gulch area of the Boise Foothills. TTCI seeks to add three points of diversion (wells) to the existing water rights through a transfer application. No changes are proposed to the place of use, nature of use, season of use, diversion rate, or diversion volume of the water rights. Two of the proposed new points of diversion are existing wells and one new well is proposed to be drilled (Figure 1). The Pool well is known to be in direct hydraulic connection to the existing points of diversion (Figure 2) and the new "Greenhouse" well is expected to be in direct hydraulic connection to the existing wells covered by these water rights. The goal of the transfer application is to provide TTCI with redundant source ("firm capacity"), back-up pumping plants, and flexibility in supplying low-temperature geothermal water to existing approved uses. TTCI has proposed changes to its existing comprehensive low-temperature geothermal monitoring plan to include the new points of diversion. Owing to the close proximity of the proposed additional wells, within an existing well field (Figure 1), only a minimal increase in field monitoring operations is necessary to incorporate measurement of the proposed points of diversion in an existing monitoring network.

Introduction

Hydro Logic, Inc. has been asked to conduct an analysis of the potential effects of the proposed transfer with respect to injury to existing water rights, and the potential for an enlargement of use of TTCI's water rights as a result of the transfer. Of particular concern, with respect to the issue of enlargement, is how the resultant changes to the water rights in question will be monitored and administered by IDWR and/or the water master of State Water District 63-S. This technical memorandum is aimed at explaining the expected effects of the proposed transfer on the hydrogeological regime within the low-temperature geothermal aquifer beneath Stewart Gulch and to describe the proposed monitoring protocol.

The Potential for Injury to Existing Water Rights as a Result of the Proposed Transfer

Hydrogeologic Framework

As a result of 1) long-term aquifer pressure monitoring, 2) deep water well drilling projects, 3) sub-surface seismic reflection surveys, and 4) highly controlled aquifer testing using multiple observation wells, the hydrogeologic framework of the low-temperature geothermal aquifer in Stewart Gulch is fairly well understood. Hydraulic interconnection between existing wells is well documented in previous studies and it is known that TTCI's Pool and Windsock wells are hydraulically interconnected to the Old Flora, Co. wells (Silkey, Tiegs, & Office) and to the Edwards Greenhouse low temperature geothermal well (Figure 2).

EXHIBIT 4

Sustainable Withdrawal Volume (Safe Yield) of the Aquifer

In general, well-to-well short-term interference effects between wells are not pronounced and they do not prevent the associated water rights from being diverted; even within the small diameter wells dependent upon above-ground flowing artesian conditions. Longer-term interference effects, directly related to the volumes of geothermal water withdrawn from the aquifer have been the cause of administrative calls for water and in some water rights being curtailed in past years. The water shortages of the past, which only occurred during the overlap of the heating and irrigation seasons in the spring and fall of the year, have not occurred since the use of geothermal water for large scale irrigation has been curtailed in Stewart Gulch. In other words, previous injuries to existing water rights were a result of annual withdrawal volume from the aquifer rather than overlapping cones of depressions of pumping/flowing wells.

Previous Transfer No. 68558

Transfer No. 68558, approved in October of 2002, changed the place of use to add the Terteling Ranch as a place of use that previously only included the Old Flora Greenhouses property at 36th and Hill Roads. This transfer, that also added the Windsock well as a point of diversion, allowed TTCI to move the bulk of its low-temperature geothermal water production to the Stewart Gulch site; further away from other existing geothermal water users. With the approval of this transfer, 70-to-80 percent of TTCI's low-temperature geothermal water production was moved to the Windsock well. Monitoring of the aquifer over the last several years has shown no significant effects to the aquifer from this change in withdrawal location (Figure 3, Table 1).

TTCI's 2005 Water Use

In 2005, TTCI used 395.3 acre-feet of its full annual allotment of 400 acre-feet of low-temperature geothermal ground water. This is the same volume of ground water that was withdrawn at the Old Flora Co. greenhouses prior to the Transfer No. 68558 under previous ownership (Table 2). Judging from the long-term monitoring of the aquifer, the change in where the water was withdrawn had no observable effect on general piezometric heads across the aquifer (Appendix A). This observation supports our contention that it is the overall yearly withdrawal of water from the aquifer that controls aquifer pressures as opposed to near-well pressure declines from pumping wells.

Effects of the Proposed Transfer on Existing Water Rights

The proposed transfer has no effect on the withdrawal volume of the water rights subject to the transfer. TTCI does not intend to, and cannot, withdraw more water than authorized under its water rights. All of the additional points of diversion (wells) proposed by the transfer application are located on the Terteling Ranch and are more distant from the water supply wells of existing water users. Indeed, given that the transfer is approved as proposed and TTCI were to use any of the other points of diversion to produce the same amount of water, we predict that the effect on the aquifer would be no different than the effects of the 2005 pumping season. Therefore, we hold that there is not a potential for injury as a result of the changes proposed by the transfer.

The Potential for Enlargement in Water Use as a Result of the Proposed Transfer

State Water District 63-S

All of the wells proposed as points of diversion under the transfer application are located within State Water District 63-S. The District is active and a water master regularly (monthly) monitors and reports (annually) aquifer pressures and water usage for Water District 63-S.

Administration

Four of the six wells proposed as points of diversion under the subject transfer are already equipped with flow and volume monitoring equipment and they are regularly visited (measured) by the District water master and by TTCI. Approval of the transfer as proposed, would result in two additional monitoring points. The existing Springs well is not currently visited by the water master but its location is directly between two regular stops of the water master's rounds. Similarly, the proposed new Greenhouse Well location is not currently visited but does have good access on gravel surfaces just a few hundred yards from currently monitored wells. The Pool well is already visited by the water master and by TTCI's monitoring contractor. All proposed points of diversion have good access by car to within a few steps of the well head at every location (Figure 1).

Boise Front Geothermal Ground Water Management Area Monitoring Network

Separate from Water District 63-S, and in conjunction with requirements of the Boise Front Geothermal Ground Water Management Area (BFGWMA), TTCI's geothermal wells are also monitored under a more rigorous plan according to a stipulated agreement between low-temperature geothermal water users (Appendix B). Under this monitoring plan, which is approved and is regulated by IDWR, many of the wells subject to the proposed transfer, are already equipped with continuously recording data-loggers and are field-measured monthly and weekly depending on the time of year. TTCI has proposed matching flow-control and monitoring devices for any new points of diversion resulting from the transfer. Additionally, a second flow-meter/volume-totalizer and control valve is planned for the Pool well to ensure accurate monitoring and administration of two separate water rights as is explained below. TTCI has a long and well established record of responsible monitoring and reporting of its water use and aquifer pressures.

Enlargement of Use Issues.

The TTCI water rights subject to this transfer were beneficially used in 2005 when 395 acre feet of the available 400 acre-feet of production was documented by the water master. Four points of diversion currently exist for these water rights. Therefore, the proposed addition of three points of diversion (wells) poses no new issues relative to administration of the water rights. In other words, the existing well field used to produce the water rights is already capable of diverting more water than is authorized under the water rights. All of the appurtenant wells are equipped with monitoring devices and all water use is monitored to prevent enlargement of use under the water rights. Under the proposed transfer application the three additional points of diversion would be similarly equipped and monitored.

TTCI Pool Well Issues.

There is an increased need for additional monitoring at the Pool well owing to the Pool well being an existing point of diversion for water right No. 63-31052. TTCI has proposed installing a second flow-meter at the Pool well whereby the existing heating water uses would continue to be monitored by the currently installed flow meter while any additional water production from the well, under the proposed water rights transfer, would be monitored by a separate designated flow metering device installed in the line to the new use. In this way, any water usage from the Pool Well, beyond its current authorized uses, would be monitored separately by the second flow-meter installed in a separate water main line to the newly added use. In conjunction with the flow-metering instruments, a lockable flow-control valve will be installed in the new water line at the Pool well in accord with Water District 63-S requirements.

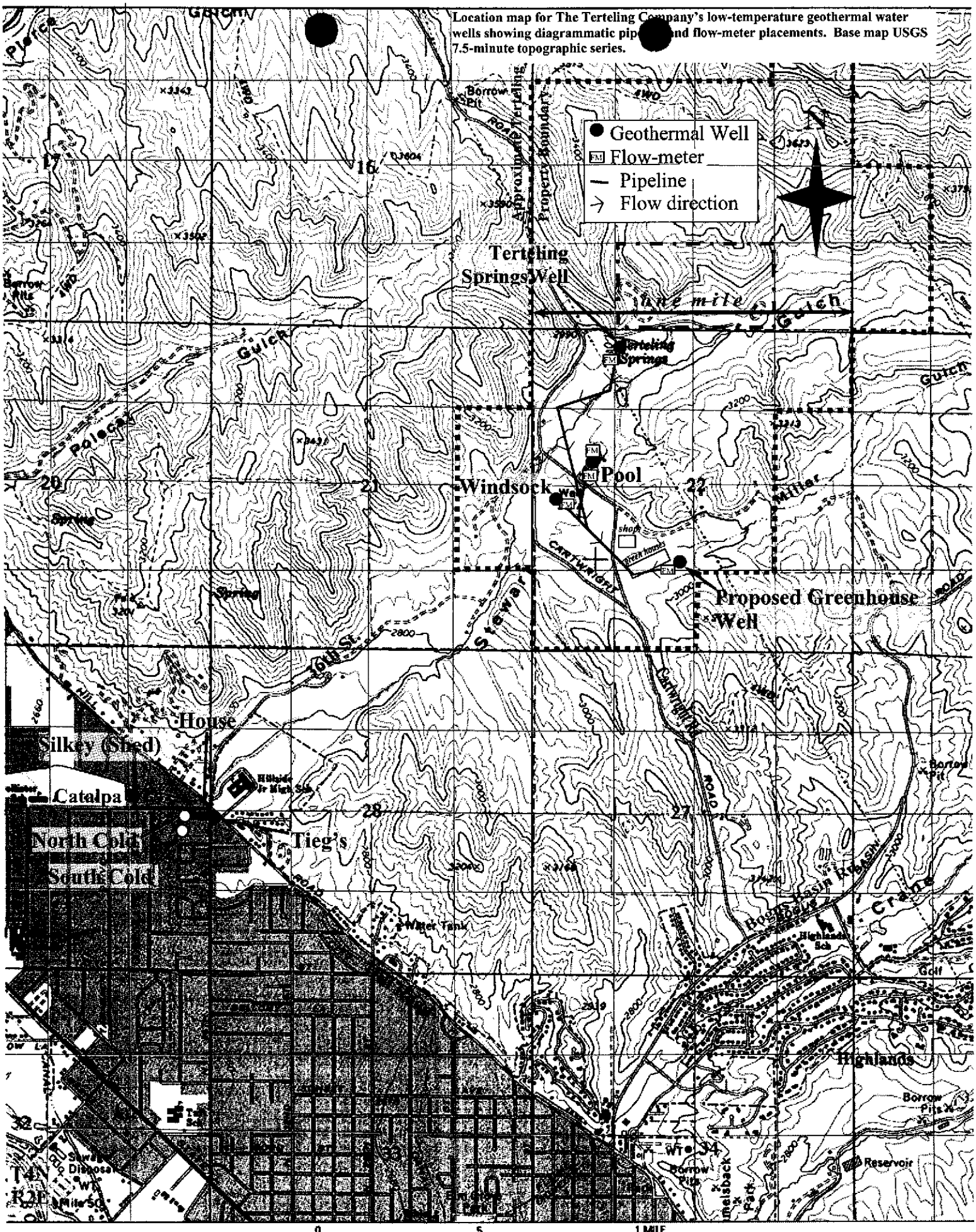
Enlargement Summary.

The bottom line with respect to enlargement is that the water rights subject to the transfer have an annual diversion volume of 400 acre-feet. The 400 acre-foot volume of ground water allowed under these rights has been documented as being used as recently as last year for current heating uses. No additional volume diversions are authorized under the water rights or by this transfer.

Aquifer pressures and water use for TTCI's low-temperature geothermal wells in Stewart Gulch are monitored and reported to IDWR under two separate and distinct monitoring programs, both of which are, approved and regulated by IDWR. First of all, the Water Master for State Water District 63-S monitors aquifer pressures and water use on a monthly (and periodically weekly) basis with yearly reporting. Secondly, a formally approved monitoring protocol (Appendix C) is followed by TTCI as part of a stipulated settlement agreement which is administered by IDWR.

The hydraulic interconnectivity within the geothermal aquifer is well understood and predictable to the extent that pumping cycles of the various water users can be identified in the water level hydrographs of continuously monitored wells. For wells equipped with continuously recording data-loggers, the various diversion flow rates of individual wells are easily calibrated to pumping water levels and/or above ground artesian pressure levels at the well head. Therefore, TTCI's maximum instantaneous flow rate of 359 gallons per minute (from any combination of wells) is completely documented by the water level/artesian pressure recordings and subject to review by the Water Master for any time period.

FIGURES



Hydro Logic Inc.
Boise, Idaho

Figure 1.

Figure 2.

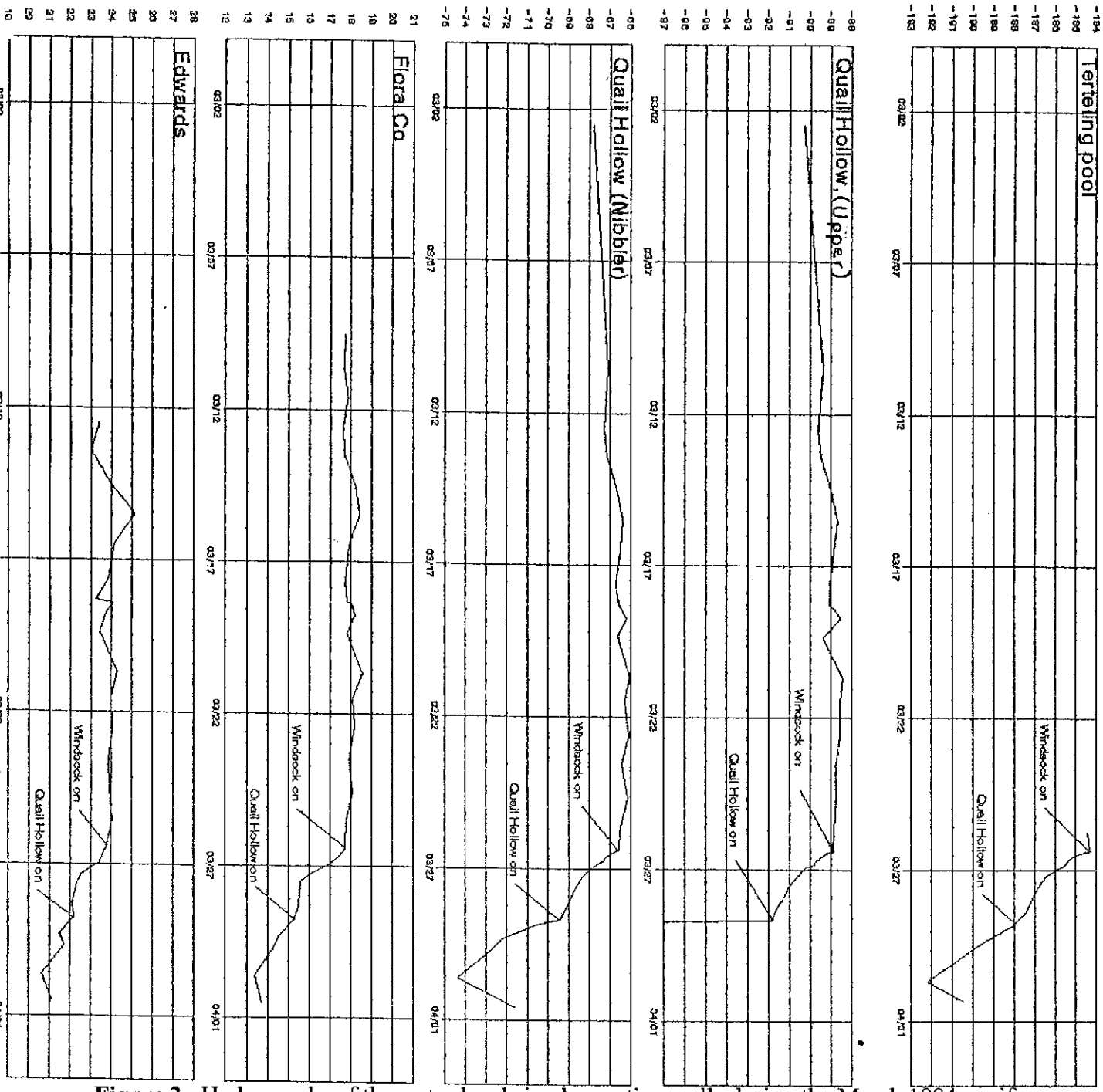


Figure 2. Hydrographs of the water levels in observation wells during the March 1994 aquifer testing of low-temperature geothermal water wells in Stewart Gulch. Shown is the water level drawdown response in five wells within State Water District 63-S from the pumping of the Terteling ranch Windsock Well and the Quail Hollow Upper Well. This testing confirms a direct hydraulic interconnection between the plotted wells within the geothermal aquifer.

Terteling Ranch Pool Geothermal Well

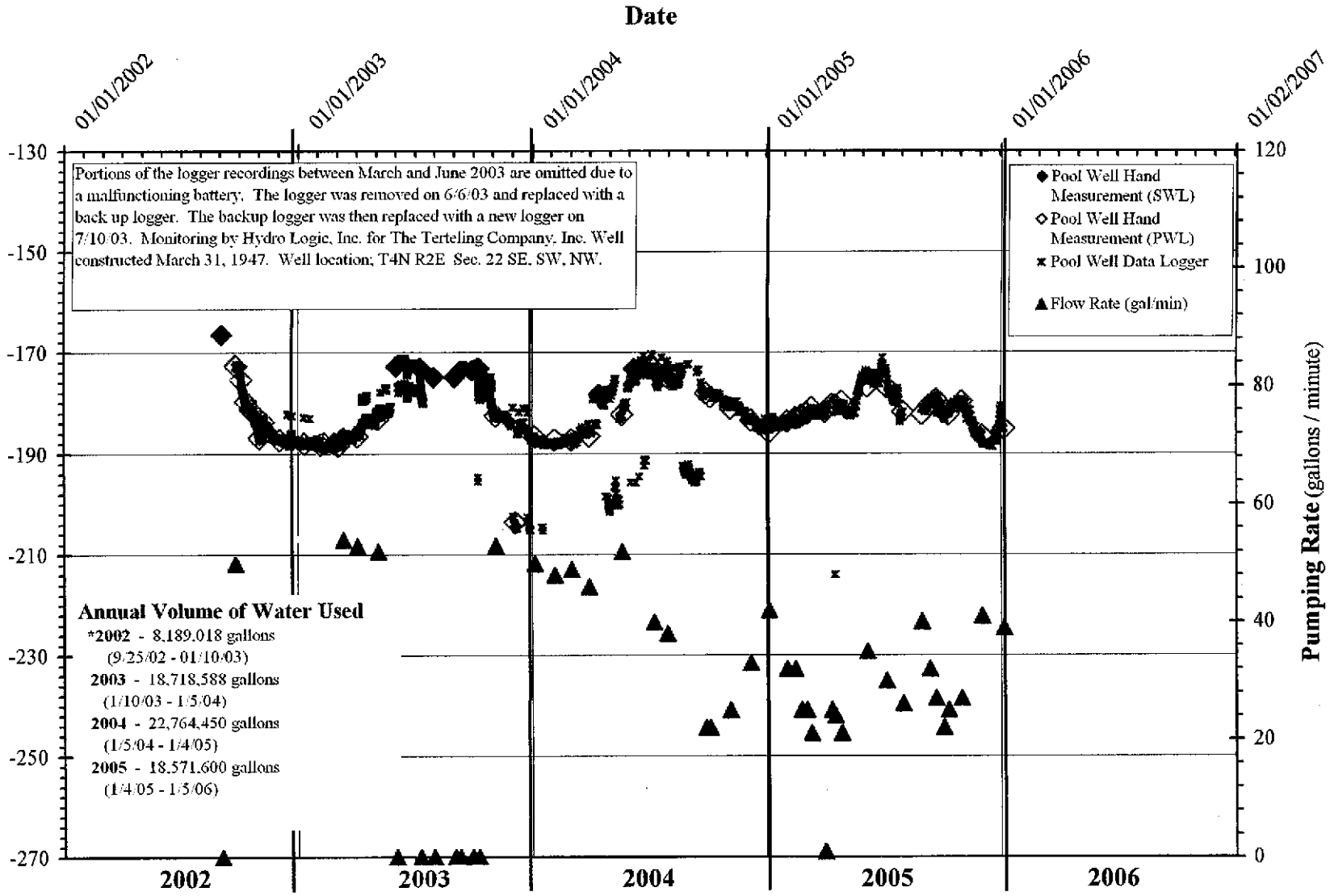


Figure 3.

TABLES

Terteling District 63-S Geothermal Water Production by Month with Accumulated Totals - 2005

TERTELING RANCH - WINDSOCK WELL

Field Measurements

measuring point (mp) = pump house floor = ground level

Time (24 hour clock)	Non-Pumping Water Level (feet bmp)	Pumping Water Level (feet bmp)	System Pressure (psi)	Flow Rate (gal/min)	Totalized Production (gallons)	Volume pumped from last reading (gallons)	Year to Date Volume (gallons)
01/04/2005 14:17		231.21	40.00	170.00	15,858,200	0	
02/01/2005 13:42	149.30		33.00		24,211,500	8,353,300	
02/14/2005 12:25	148.90		33.00		27,975,900	3,764,400	
02/24/2005 14:15		199.71	41.00	170.00	31,017,600	3,041,700	
03/04/2005 12:50	148.49		32.00		33,328,400	2,310,800	
03/11/2005 15:39		205.30	36.00	150.00	35,288,200	1,959,800	
04/01/2005 15:00		209.75	37.00	145.00	41,442,300	6,154,100	
04/27/2005 15:33		229.20	36.00	200.00	48,870,900	7,428,600	
06/06/2005 19:01		224.81	38.00	160.00	60,849,600	11,978,700	
07/06/2005 16:11	143.37		31.00		65,503,100	4,653,500	
08/01/2005 11:14	148.85		31.00		67,721,100	2,218,000	
08/31/2005 10:33		221.82	37.00	160.00	69,899,900	2,178,800	
10/04/2005 12:13		242.66	46.00	175.00	75,675,300	5,775,400	
10/31/2005 14:28	145.90		32.00	0.00	81,428,000	5,752,700	
12/02/2005 11:17		299.46	42.00	240.00	92,985,900	11,557,900	
01/05/2006 12:54		280.03	42.00	220.00	5,855,500	12,869,600	

TERTELING RANCH - MOTORCYCLE HOT WELL

Field Measurements

measuring point (mp) = top of 16-inch casing pump flange = 1.1 ft. above ground level

Time (24 hour clock)	Static Water Level (feet bmp)	Pumping Water Level (feet bmp)	System Pressure (psi)	Flow Rate (gal/min)	Totalized Production (gallons)	Volume pumped from last reading	Year to Date Volume (gallons)
01/04/2005 13:45	279.70		0.00	0.00	19,341,300	0	
02/01/2005 12:32	280.50		0.00	0.00	19,341,300	0	
02/14/2005 11:07	280.23		0.00	0.00	19,341,300	0	
02/24/2005 13:02	280.39		0.00	0.00	19,341,300	0	
03/04/2005 11:42	280.36		0.00	0.00	19,341,300	0	
03/11/2005 14:11	280.40		0.00	0.00	19,341,300	0	
04/01/2005 14:05	280.28		0.00	0.00	19,341,300	0	
04/27/2005 15:15	278.05		0.00	0.00	19,341,300	0	
06/06/2005 13:40	279.20		0.00	0.00	19,341,300	0	
07/06/2005 14:03	277.60		0.00	0.00	19,341,300	0	
08/01/2005 11:42	280.03		0.00	0.00	19,341,500	200	
08/31/2005 12:09	280.63		0.00	0.00	19,341,500	0	
10/04/2005 11:29	281.20		0.00	0.00	19,341,500	0	
10/31/2005 13:37	281.68		0.00	0.00	19,341,500	0	
12/02/2005 10:25	283.24		0.00	0.00	19,341,500	0	
01/05/2006 11:16	283.29		0.00	0.00	19,341,500	0	

TERTELING RANCH POOL WELL

Field Measurements

measuring point (mp) = top of 16" casing = top of discharge head flange plate

Date/Time (24 hour clock)	Non-Pumping Water Level (feet bmp)	Pumping Water Level (feet bmp)	System Pressure (psi)	Flow Rate (gal/min)	Totalized Production (gallons)	Volume pumped from last reading
01/04/2005 12:39		185.92	29.00	42.00	1,577,060	0
02/01/2005 13:31		183.79	23.50	32.00	3,121,870	1,544,810
02/14/2005 12:14		183.15	23.80	32.00	3,806,040	684,170
02/24/2005 13:56		182.64	17.20	25.00	4,341,620	535,580
03/04/2005 12:41		182.23	17.50	25.00	4,721,110	379,490
03/11/2005 15:17		181.10	15.80	21.00	5,036,600	315,490
04/01/2005 14:44		181.93	16.90	25.00	5,990,890	954,290
04/27/2005 14:32		179.92	15.80	21.00	6,990,600	999,710
06/06/2005 18:52		176.93		35.00	9,082,520	2,091,920
07/06/2005 16:02		177.05	11.00	30.00	510,010	1,427,490
08/01/2005 12:39		181.93	10.00	26.00	1,757,420	1,247,410
08/31/2005 11:09		182.38	2.00	40.00	3,305,580	1,548,160
10/04/2005 12:02		181.92	17.50	22.00	5,061,870	1,756,290
10/31/2005 14:17		179.89	18.50	27.00	6,221,450	1,159,580
12/02/2005 11:04		186.54	16.20	41.00	7,990,670	1,769,220
01/05/2006 12:09		185.22	19.20	39.00	148,660	2,157,990

FLORA CO. TIEGS (Triangle) WELL

Field Measurements

measuring point (mp) = 0.04 feet below sidewalk = 4.51 ft. above vault floor

Date/Time (24 hour clock)	Shut-In Pressure Head (ft above mp)	Pressure Head at Flow Rate (ft above mp)	Shut-in Pressure (psi)	Flow Rate (gal/min)	Totalized Production (gallons)	Volume pumped from last reading (gallons)
01/05/2005 10:32	21.60		9.35	0.00	169,688,000	0
02/01/2005 14:07	22.29		9.65	0.00	169,688,000	0
02/14/2005 12:50	22.98		9.95	0.00	169,688,000	0
02/24/2005 14:41	22.64		9.80	0.00	169,688,000	0
03/04/2005 13:22	22.64		9.80	0.00	169,688,000	0
03/11/2005 16:40	23.59		10.21	0.00	169,688,000	0
04/01/2005 15:22	23.33		10.10	0.00	169,688,000	0
04/27/2005 13:19	24.60		10.65	0.00	169,688,000	0
06/09/2005 11:09	26.57		11.50	0.00	169,688,000	0
07/06/2005 16:33	28.90		12.50	0.00	169,688,000	0
08/01/2005 13:29	23.59		10.21	0.00	169,688,000	0
08/31/2005 12:44	24.01		10.40	0.00	169,688,000	0
10/04/2005 12:45	22.18		9.60	0.00	169,688,000	0
10/31/2005 15:22	24.26		10.50	0.00	169,688,000	0
12/02/2005 12:15	19.87		8.60	0.00	169,688,000	0
01/05/2006 13:44	20.79		9.00	0.00	169,688,000	0

FLORA CO. - SILKEY (Shed) WELL

Field Measurements

measuring point (mp) = 3.38 feet above concrete pump house floor

Date/Time (24 hour clock)	Shut-In Pressure Head (ft above mp)	Pressure Head at Flow Rate (ft above mp)	Pressure at Flow Rate (psi)	Flow Rate (gal/min)	Totalized Production (gallons)	Volume pumped from last reading (gallons)
01/05/2005 11:29		17.32	7.50	56.60	171,085,000	0
02/01/2005 14:28		17.81	7.71	65.62	173,477,000	2,392,000
02/14/2005 13:12		17.67	7.65	63.16	174,588,000	1,111,000
02/24/2005 15:05		17.56	7.65	64.34	175,463,000	875,000
03/04/2005 13:45		17.32	7.50	62.48	176,155,000	692,000
03/11/2005 17:01		18.36	7.95	62.42	176,779,000	624,000
04/01/2005 15:41		17.90	7.75	62.89	178,607,000	1,828,000
04/27/2005 13:29	25.76	18.83	8.15	60.00	180,906,000	2,299,000
06/09/2005 11:24	25.41	20.10	8.70	70.00	184,783,000	3,877,000
07/06/2005 17:01	20.20	17.30	7.50	77.80	187,269,000	2,486,000
08/01/2005 13:43	24.37	14.78	6.40	74.60	190,129,000	2,860,000
08/31/2005 12:56	25.28	17.09	7.40	78.00	193,493,000	3,364,000
10/04/2005 13:07	23.56	14.44	6.25	72.70	197,215,000	3,722,000
10/31/2005 15:41	25.14	23.68	10.25	57.00	199,980,000	2,765,000
12/02/2005 12:38	21.25	17.32	7.50	61.60	202,798,000	2,818,000
01/05/2006 14:06	21.94	18.94	8.20	43.75	204,770,000	1,972,000

FLORA CO. - HOUSE (Office) WELL

Field Measurements

measuring point (mp) = 1.30 feet above concrete pump house floor

Date/Time (24 hour clock)	Shut-In Pressure Head (ft above mp)	Pressure Head at Flow Rate (ft above mp)	Pressure at Flow Rate (psi)	Flow Rate (gal/min)	Totalized Production (gallons)	Volume pumped from last reading (gallons)
01/05/2005 11:29	22.29			27.27	34,930,600	0
02/01/2005 14:28	22.29	8.25	8.25	7.64	35,622,000	691,400
02/14/2005 13:12	22.98	11.78	5.10	16.22	35,870,700	248,700
02/24/2005 15:05	22.70	16.40	7.10	11.87	36,103,900	233,200
03/04/2005 13:45	22.64	20.10	8.70	6.60	36,259,200	155,300
03/11/2005 17:01	23.33	20.79	9.00	6.70	36,326,000	66,800
04/01/2005 15:41	23.56	19.98	8.65	6.12	36,554,600	228,600
04/27/2005 13:25	22.52	21.48	9.30	6.50	36,802,300	247,700
06/09/2005 11:16	24.26	23.10	10.00	7.00	37,259,500	457,200
07/06/2005 16:55	28.40	25.10	10.85	6.80	37,530,600	271,100
08/01/2005 13:37	21.60	20.21	8.75	6.15	37,774,800	244,200
08/31/2005 12:51	21.70	20.43	8.85	6.47	38,062,600	287,800
10/04/2005 13:20	21.76	18.99	8.22	6.43	38,387,800	325,200
10/31/2005 15:52	24.72	17.09	7.40	13.00	38,881,500	493,700
12/02/2005 12:49	19.87	18.70	8.10	4.20	39,544,400	662,900
01/05/2006 14:22	21.02	20.21	8.75	1.88	40,065,600	521,200

TOTAL FLORA WATER RIGHTS TOTALS BY YEAR - 2002

Month	Windsock	Silkey	House	Total Volumes (Gal.)	Total Volumes (Acre/ft.)	Cumulative Total Volume (Acre/ft.)
January						
February						
March						
April						
May						
June						
July						
August			0			
September	990,000	134,000	0	1,124,000	3.4	
October	11,084,600	3,189,000	0	14,273,600	43.8	**47.3**
November	10,038,000	3,815,000	433,300	14,286,300	43.8	**91.1**
December	14,283,500	4,382,000	641,100	19,306,600	59.2	**150.3**
TOTAL ANNUAL	**36,396,100**	**11,520,000**	**1,074,400**	**48,990,500**	**150.3**	

TOTAL FLORA WATER RIGHTS TOTALS BY YEAR - 2003

Month	Windsock	Silkey	House	Total Volumes (Gal.)	Total Volumes (Acre/ft.)	Cumulative Total Volume (Acre/ft.)
January	8,164,700	2,831,000	317,900	11,313,600	34.7	**34.7**
February	9,231,200	3,202,000	447,100	12,880,300	39.5	**74.2**
March	7,774,600	3,591,000	298,300	11,663,900	35.8	**110.0**
April	7,013,500	3,975,000	339,000	11,327,500	34.8	**144.8**
May	4,251,200	3,765,000	251,500	8,267,700	25.4	**170.2**
June	0	4,674,000	297,100	4,971,100	15.3	**185.4**
July	-456,000	2,519,000	147,100	2,210,100	6.8	**192.2**
August	-68,200	3,998,000	475,800	4,405,600	13.5	**205.7**
September	3,187,400	3,381,000	73,800	6,642,200	20.4	**226.1**
October	4,468,900	2,439,000	402,200	7,310,100	22.4	**248.5**
November	8,477,800	2,666,000	739,500	11,883,300	36.5	**285.0**
December	8,687,000	2,778,000	919,400	12,384,400	38.0	**323.0**
TOTAL ANNUAL	**60,732,100**	**39,819,000**	**4,708,700**	**105,259,800**	**323.0**	

TOTAL FLORA WATER RIGHTS TOTALS BY YEAR - 2004

Month	Windsock	Silkey	House	Total Volumes (Gal.)	Total Volumes (Acre/ft.)	Cumulative Total Volume (Acre/ft.)
January	8,967,100	3,045,000	824,600	12,836,700	39.4	**39.4**
February	6,968,100	2,359,000	548,300	9,875,400	30.3	**69.7**
March			411,600	411,600	1.3	**71.0**
April	15,488,000	7,764,000	475,900	23,727,900	72.8	**143.8**
May	1,391,600	1,574,000	288,900	3,254,500	10.0	**153.8**
June	2,555,900	3,003,000		5,558,900	17.1	**170.8**
July		2,119,000	548,500	2,667,500	8.2	**179.0**
August	2,011,800	3,890,000	363,000	6,264,800	19.2	**198.2**
September	1,829,300	3,227,000	327,900	5,384,200	16.5	**214.8**
October	9,844,000	2,590,000	589,900	13,023,900	40.0	**254.7**
November	9,715,600	2,508,000	806,400	13,030,000	40.0	**294.7**
December	9,666,700	2,719,000	884,200	13,269,900	40.7	**335.5**
TOTAL ANNUAL	**68,438,100**	**34,798,000**	**6,069,200**	**109,305,300**	**335.4**	

TOTAL FLORA WATER RIGHTS TOTALS BY YEAR - 2005

Month	Windsock	Silkey	House	Total Volumes (Gal.)	Total Volumes (Acre/ft.)	Cumulative Total Volume (Acre/ft.)
January	8,353,300	2,392,000	691,400	11,436,700	35.1	**35.1**
February	9,116,900	2,678,000	637,200	12,432,100	38.2	**73.3**
March	8,113,900	2,452,000	295,400	10,861,300	33.3	**106.6**
April	7,428,600	2,299,000	247,700	9,975,300	30.6	**137.2**
May	11,978,700	3,877,000	457,200	16,312,900	50.1	**187.3**
June	4,653,500	2,486,000	271,100	7,410,600	22.7	**210.0**
July	2,218,000	2,860,000	244,200	5,322,200	16.3	**226.3**
August	2,178,800	3,364,000	287,800	5,830,600	17.9	**244.2**
September	5,775,400	3,722,000	325,200	9,822,600	30.1	**274.4**
October	5,752,700	2,765,000	493,700	9,011,400	27.7	**302.0**
November	11,557,900	2,818,000	662,900	15,038,800	46.2	**348.2**
December	12,869,600	1,972,000	521,200	15,362,800	47.1	**395.3**
TOTAL ANNUAL	**89,997,300**	**33,685,000**	**5,135,000**	**128,817,300**	**395.3**	

Notes: 1) Totals do not include Pool Well which is not a point of diversion for Flora Co. water rights.

Prepared for The Terteling Company Inc. by Hydro Logic Inc.

Hydro Logic Inc. - WORK IN PROGRESS

Table 1.

TABLE 2.

Begin Date	End Date	Days	Minutes/Day (at rate)	Total Minutes	Rate (gal./min.)	Gallons Produced	Acre Feet	Cumulative Acre Feet	Wells in Operation (assumed combinations)	V-Notch Weir Chart Reading
9/22/1993	10/17/1993	25	960	24,000	140	3,360,000	10.31	6.63	Silkey flow, Tiegs flow	0.32
9/22/1993	10/17/1993	25	480	12,000	72	864,000	2.65	9.28	Tiegs flow	0.20
10/17/1993	10/22/1993	5	960	4,800	292	1,401,600	4.30	13.58	Silkey flow, Tiegs pumping	0.47
10/17/1993	10/22/1993	5	480	2,400	90	216,000	0.66	14.25	Silkey flow	0.25
10/25/1993	11/7/1993	13	960	12,480	292	3,644,160	11.18	25.43	Silkey flow, Tiegs pumping	0.47
10/25/1993	11/7/1993	13	480	6,240	90	561,600	1.72	27.15	Silkey flow	0.25
11/10/1993	11/23/1993	13	960	12,480	292	3,644,160	11.18	38.34	Silkey flow, Tiegs pumping	0.47
11/10/1993	11/23/1993	13	480	6,240	140	873,600	2.68	41.02	Silkey flow, Tiegs flow	0.30
11/23/1993	11/26/1993	3	960	2,880	386	1,111,680	3.41	44.43	All wells pumping	0.51
11/23/1993	11/26/1993	3	480	1,440	292	420,480	1.29	45.72	Silkey flow, Tiegs pumping	0.47
11/29/1993	12/16/1993	17	960	16,320	386	6,299,520	19.33	65.05	All wells pumping	0.52
11/29/1993	12/16/1993	17	480	8,160	292	2,382,720	7.31	72.36	Silkey flow, Tiegs pumping	0.47
12/16/1993	12/31/1993	15	1440	21,600	386	8,337,600	25.59	97.95	All wells pumping	0.52
12/16/1993	*1/15/1994*	26	1440	37,440	386	14,451,840	44.35	142.30	All wells pumping	0.52
1/16/1994	2/11/1994	26	1440	37,440	386	14,451,840	44.35	186.65	All wells pumping	0.52-0.55
2/12/1994	2/24/1994	13	960	12,480	386	4,817,280	14.78	201.44	All wells pumping	0.52
2/12/1994	2/24/1994	13	480	6,240	292	1,822,080	5.59	207.03	Silkey flow, Tiegs pumping	0.47
2/25/1994	3/1/1994	5	1440	7,200	292	2,102,400	6.45	221.81	Silkey flow, Tiegs pumping	0.47
3/2/1994	3/14/1994	13	960	12,480	292	3,644,160	11.18	233.00	Silkey flow, Tiegs pumping	0.47
3/2/1994	3/14/1994	13	480	6,240	211	1,316,640	4.04	237.04	Tiegs pumping	0.37
3/15/1994	3/18/1994	4	1440	5,760	386	2,223,360	6.82	243.86	All wells pumping	0.52
3/19/1994	3/20/1994	2	960	1,920	386	741,120	2.27	246.14	All wells pumping	0.52
3/19/1994	3/20/1994	2	480	960	140	134,400	0.41	246.55	Silkey flow, Tiegs flow	0.32
3/21/1994	3/25/1994	5	1440	7,200	386	2,779,200	8.53	255.08	All wells pumping	0.52
3/26/1994	4/4/1994	10	960	9,600	386	3,705,600	11.37	266.45	All wells pumping	0.50
3/26/1994	4/4/1994	10	480	4,800	140	672,000	2.06	268.51	Silkey flow, Tiegs flow	0.32
4/5/1994	4/8/1994	4	1440	5,760	386	2,223,360	6.82	275.33	All wells pumping	0.50
4/9/1994	5/5/1994	27	840	22,680	386	8,754,480	26.87	302.20	All wells pumping	0.50
4/9/1994	5/5/1994	27	600	16,200	140	2,268,000	6.96	309.16	Silkey flow, Tiegs flow	0.32
5/6/1994	5/16/1994	11	1440	15,840	90	1,425,600	4.38	313.54	Silkey flow	0.20-0.25
5/17/1994	5/23/1994	7	980	6,860	386	2,647,960	8.13	321.66	All wells pumping	0.52
5/17/1994	5/23/1994	7	480	3,360	140	470,400	1.44	323.11	Silkey flow, Tiegs flow	0.33
5/24/1994	6/16/1994	23	1440	33,120	90	2,980,800	9.15	332.25	Silkey flow	0.19-0.25
6/17/1994	7/14/1994	28	1440	40,320	90	3,628,800	11.14	343.39	Silkey flow	0.20
7/15/1995	*8/31/1995*	*46*	*1440*	*66,240*	*90*	*5,961,600*	*18.30*	*361.69*	*Silkey flow (1995)*	*0.18-0.22*
9/1/1995	*9/21/1995*	*21*	*1440*	*30,240*	*140*	*4,233,600*	*12.99*	*374.68*	*Silkey flow, Tiegs flow (1995)*	*0.30*

Table 2. Calculated annual production volume from the Flora geothermal wells. Tabulated seasonal pumping/flowing discharge rates from the Flora geothermal wells for a one-year period using measured flow/pump rates of the individual wells and pump/flow cycles inferred from discharge weir data and interviews with system operators. Estimated annual volume pumped is 375 acre feet. Estimate is considered to be conservatively low because of the relatively warm temperature year of analysis and the omission of some water production from the Office well from the analysis.

APPENDICES

Appendix A.

Review of Boise Front Geothermal Monitoring Data for Water Year 2005 (October1, 2004 – September 30, 2005

K. W. Neely, Technical Hydrogeologist
Idaho Department of Water Resources
February 1, 2005

Review of Boise Front Geothermal Monitoring Data for Water Year 2005 (October 1, 2004 – September 30, 2005)

Kenneth W. Neely, Technical Hydrogeologist
Idaho Department of Water Resources (IDWR)
February 1, 2006

1. EXECUTIVE SUMMARY

Monitoring results for Water Year 2005 (WY05) showed that net withdrawals from the four downtown Boise geothermal district heating systems was 293.4 million gallons (mgal), which is about 9.5% higher than the net withdrawals in Water Year 2004 (WY04). Overall, water levels[1] in the downtown area of the Boise Front geothermal system declined in 2005 from the previous year. Peak water levels decreased just over one foot in the BLM well, which is the primary monitoring well in the downtown area of the Boise Front geothermal system. The greatest water level change occurred in the Boise Warm Springs Water District West well where the minimum water level decreased 46 feet from 2004 to 2005. Maximum monthly water temperatures continued to decline in the water withdrawn from the State of Idaho Capitol Mall production well.

For Stewart Gulch Ground Water District 63S (WD63S), total ground water withdrawal was 196.4 mgal, which was about 9% higher than in WY04. In general, the minimum water levels were higher in early 2005 than they were in early 2004. However, the maximum water levels in mid 2005 did not recover to the levels of 2004, and the overall status of ground water levels in the District by late 2005 was lower than 2004.

2. DOWNTOWN BOISE/HARRIS RANCH

In WY05, gross and net withdrawals from the four downtown Boise district heating systems were 775.6 and 293.4 mgal, respectively (Table 1). Gross withdrawals were about 4% more in WY05 than in the previous water year, and net withdrawals were about 9.5% higher, with the majority of this increase attributed to the City system (Table 1). About 62 percent of the fluids were re-injected, which is a decrease of approximately 2% from the previous year. After dropping sharply in Water Year 2001 (WY01), net withdrawals have risen from 249.3 mgal (WY01) to 293.5 mgal (WY05), which is about an 18% increase over this time period (Figure 1).

Overall, water levels in the Boise Front geothermal system declined in 2005 from the previous year. The peak water level in the BLM well was 1.1 feet lower in 2005 than in 2004 (Figure 2). Minimum water level patterns in the BLM well have been inconsistent over the last three years.

Water levels in the BWSWD East, West, and #3 wells were all lower in 2005 than in 2004 (Figure 3). The minimum water levels in early 2005 were 33 and 46 feet lower than

[1]For flowing wells, pressure readings were converted to the equivalent feet below measuring points.

in 2004 for the East and West Wells, respectively (the minimum values for these two wells generally occur annually in January – March). For the West Well, this declining trend started in 2003 when the minimum water level dropped 19 feet from 2003 to 2004. The East Well, however, had a higher minimum value in 2004 than in 2003. The maximum values for the East and West wells were 2 feet and 3 feet lower, respectively, in 2005 than in 2004. The peak water level in the BWSWD #3 was only 0.07 feet lower in 2005 than in 2004; however, the minimum value, which occurred in March 2005, was 4.6 feet lower than the minimum value in 2004 (Figure 4).

The minimum water level in the Kanta well declined about 4.4 feet from March 2004 to March 2005 (Figure 5). BGL #1's minimum water level dropped about 7.7 feet from March 2004 to March 2005, but the minimum value was still higher than the minimum value in 2003 (Figure 6). Water levels in the Old Penitentiary well have shown an overall decline of about six feet since late 2002; however the decline was less in 2005 than in previous years (Figure 7). After over two years of steady water level increases (with some seasonal cycling), water levels in the Harris Ranch wells declined about 3.9 feet from January 2005 to August 2005 (Figure 8). This decline is the largest in the recent (2002-2005) water level records for the Harris wells.

The maximum monthly water supply temperatures in the Capitol Mall Production well continued to decline in WY05 (Figure 9). Maximum monthly water temperatures during the water year were all below 154 degrees Fahrenheit (F) for the first time on record. Since December, 1998, the maximum monthly water temperature has dropped 1.54 degrees F which is equates to 0.26 degrees F per year. The trend since 1998 is statistically significant at a greater than 95% confidence level.

Table 1. Production from the four district geothermal heating systems in the downtown Boise area for Water Year 2005 (October 1, 2004 through September 30, 2005).

System	Gross Withdrawals (gallons) and percent change from WY04 to WY05	Net Withdrawals[1] (gallons) and percent change from WY04 to WY05
Boise Warm Springs Water District	248,354,024 (+5%)	248,354,024 (+5%)
Capitol Mall	134,634,190 (-5%)	0 (NC[2])
City of Boise	195,088,046 (+4%)	45,081,820 (+48%)
Veterans Administration	197,552,789 (+11%)	0 (NC)
Total	**775,626,049 (+4%)**	**293,435,844 (+9.5%)**

[1]Net Withdrawals equal Gross Withdrawals minus Injection amounts.
[2]NC = No change.

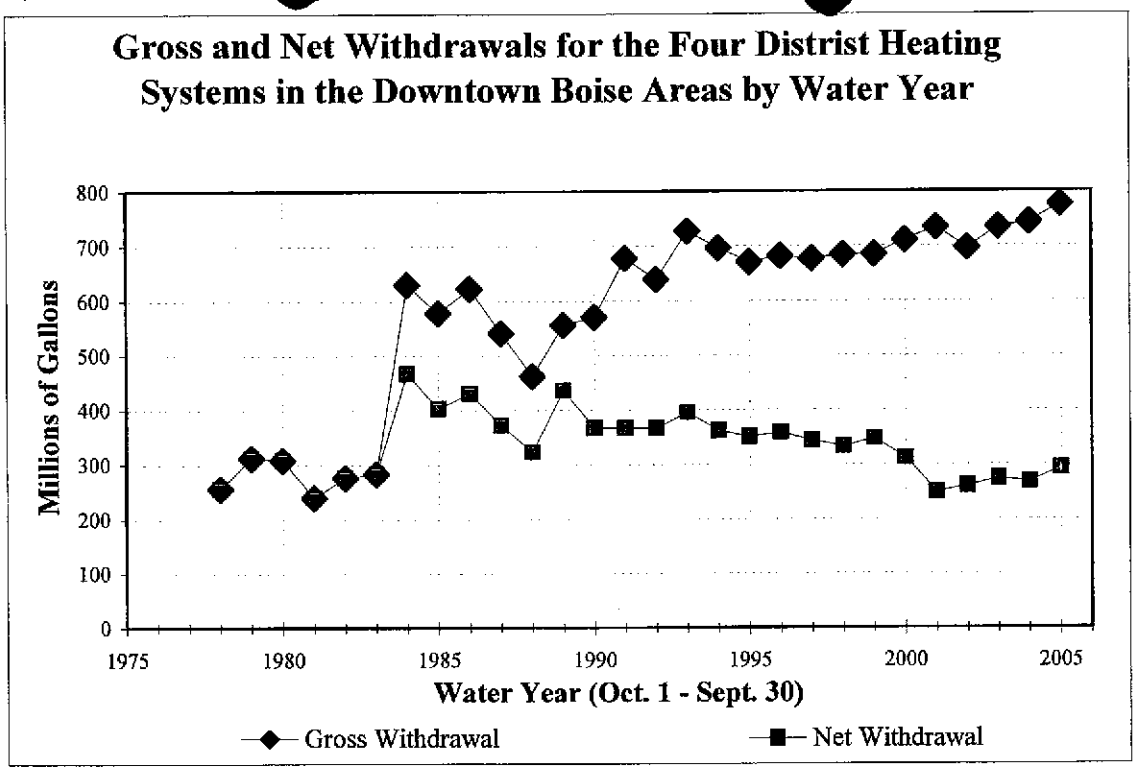


Figure 1. Gross and net withdrawals for the four district heating systems in the downtown Boise area for water years 1978 through 2005.

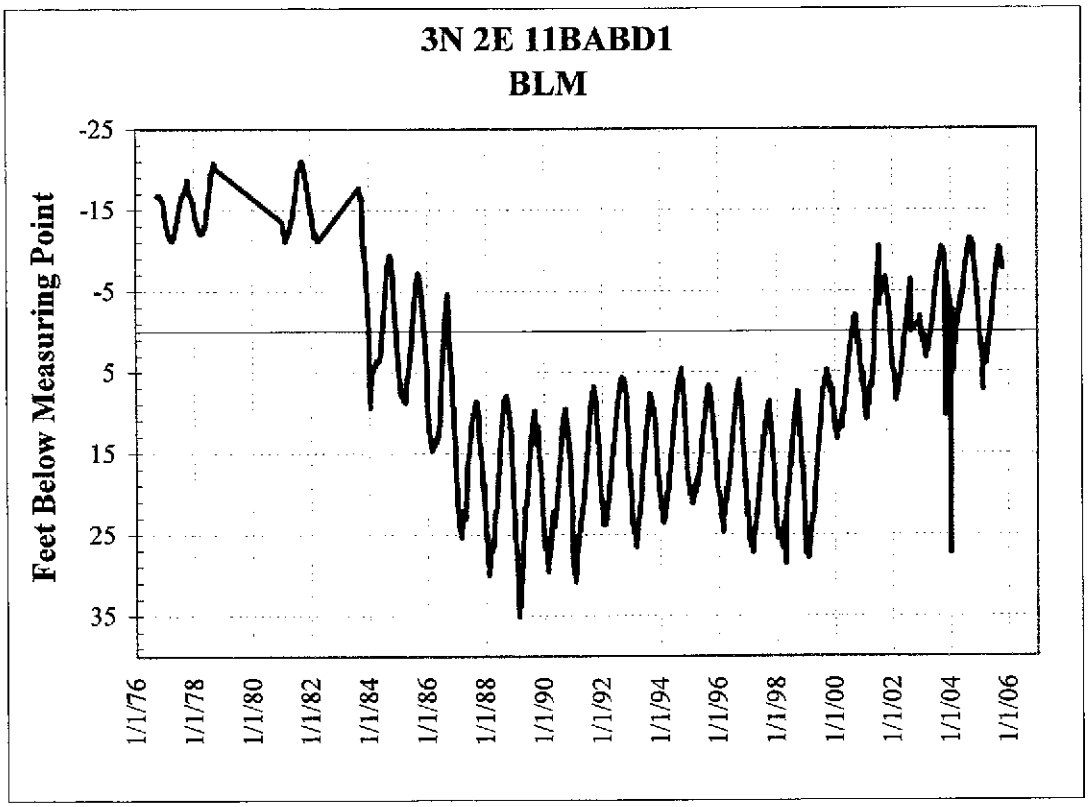


Figure 2. Water level hydrograph for the BLM well.

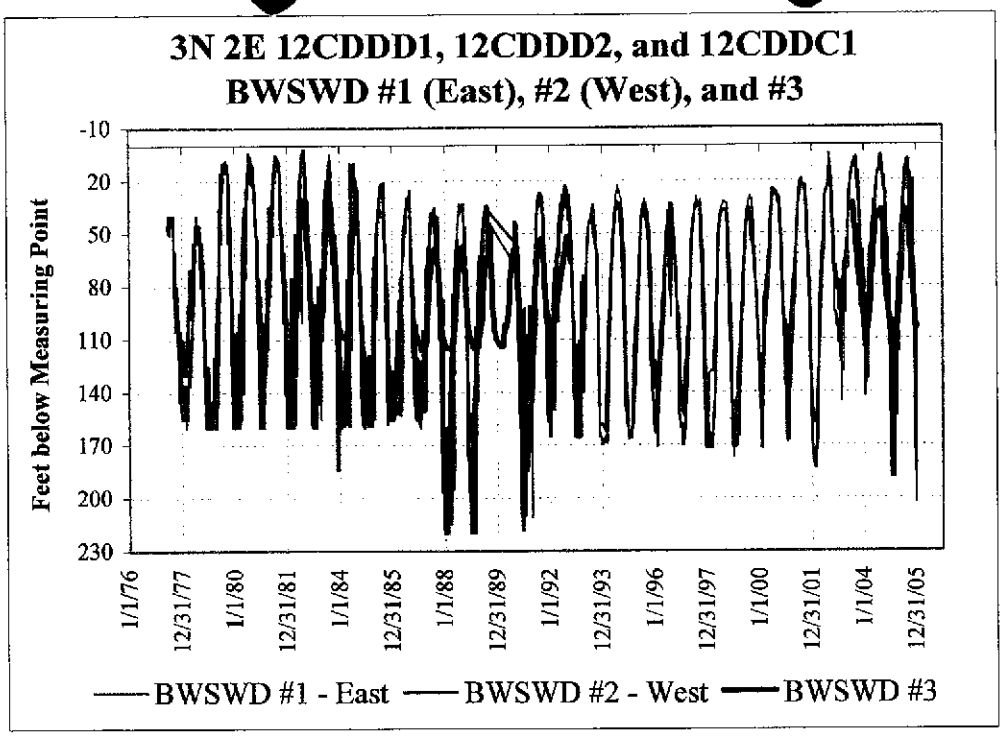


Figure 3. Water level hydrographs for the Boise Warm Springs Water District (BWSWD) wells.

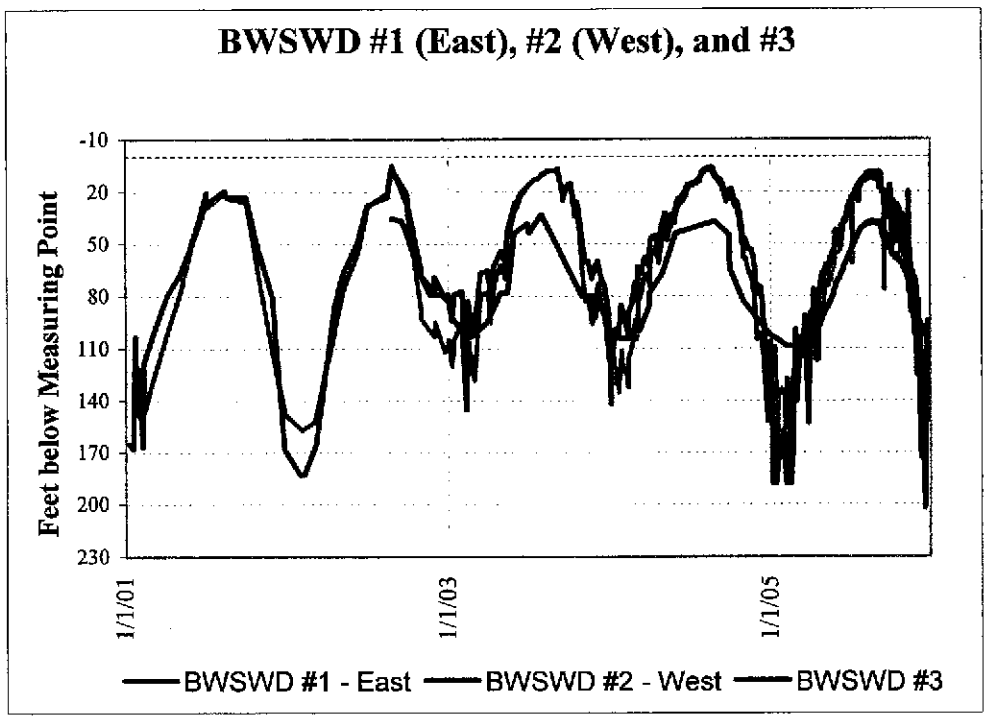


Figure 4. Water level hydrographs for the Boise Warm Springs Water District (BWSWD) wells, January 2001 to December 2005.

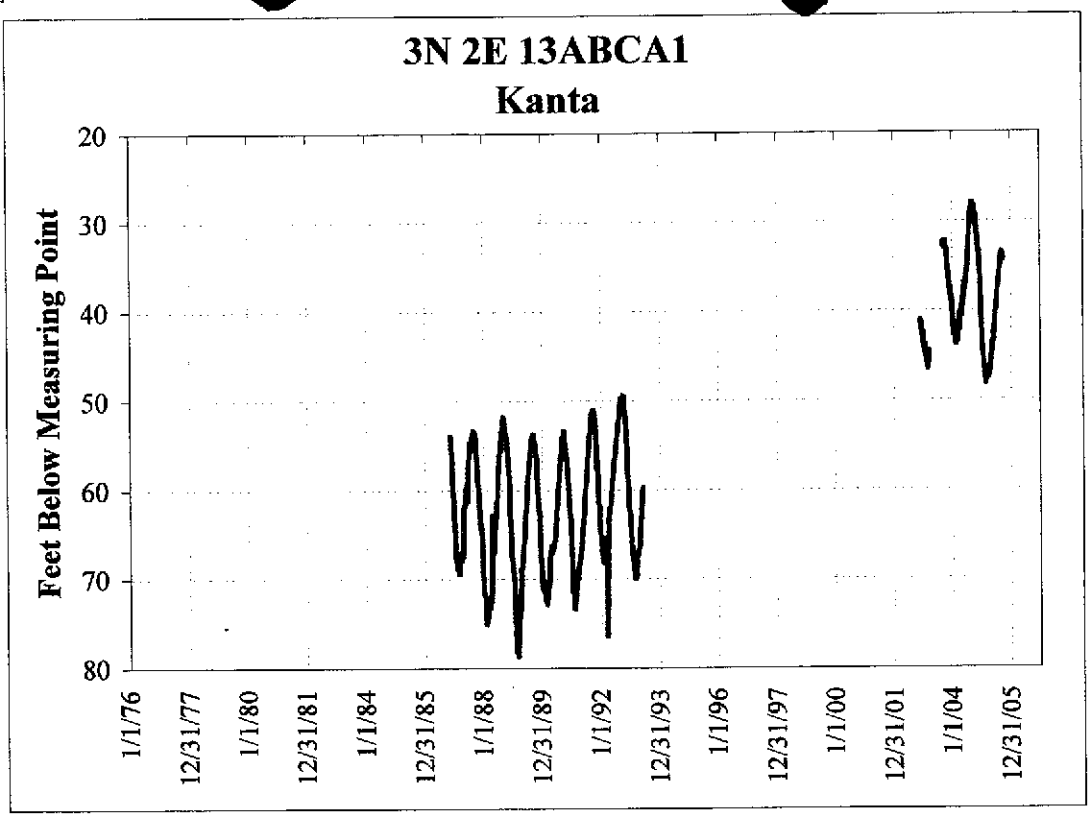


Figure 5. Water level hydrograph for the Kanta well.

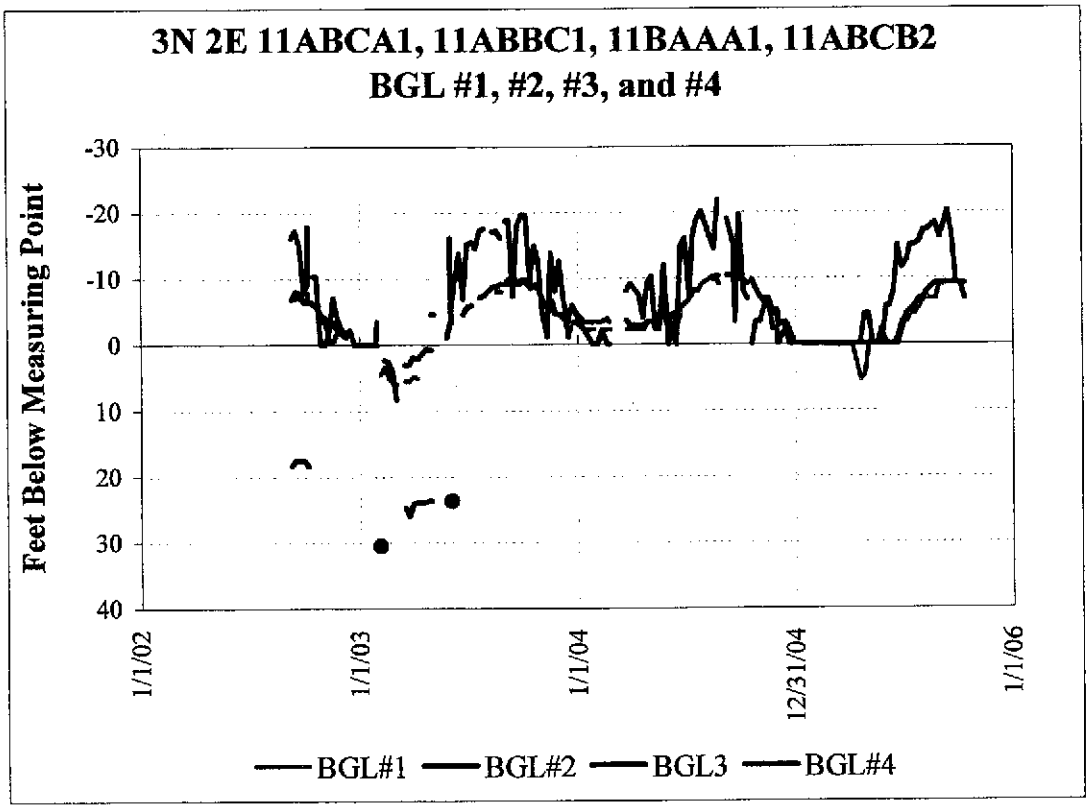


Figure 6. Water level hydrograph for the BGL #1, #2, #3, and #4 wells.

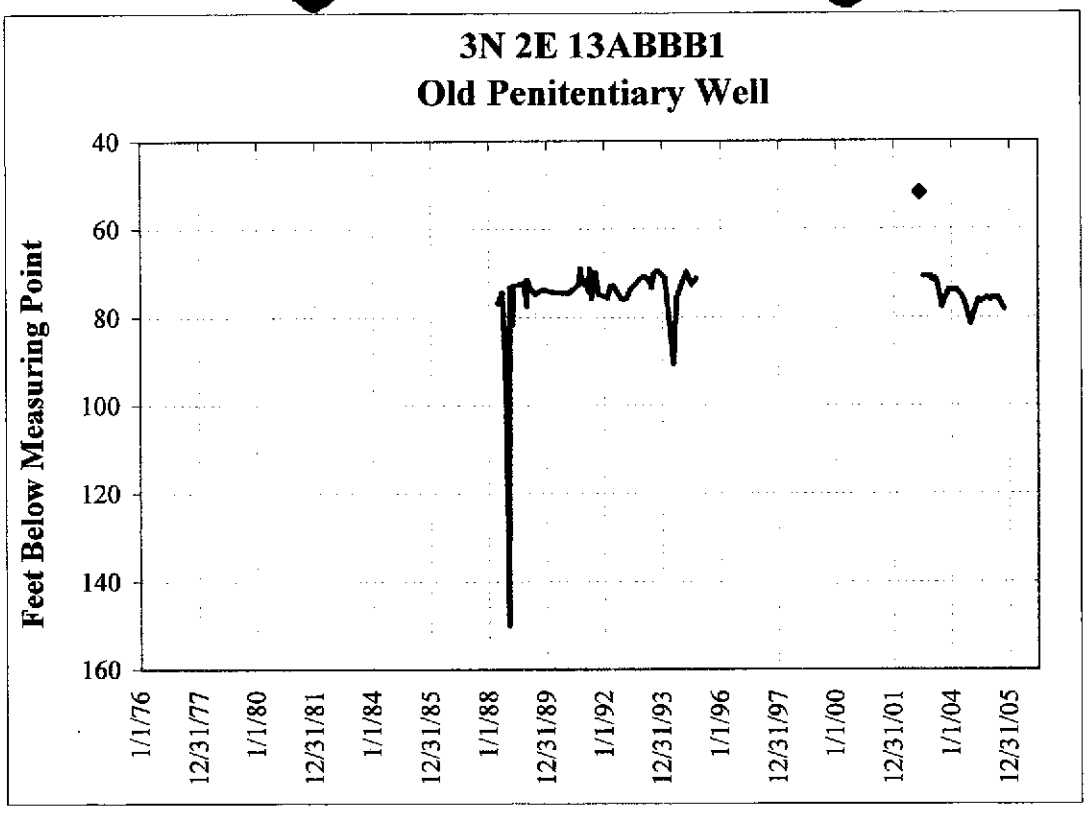


Figure 7. Water level hydrographs for the Old Penitentiary well.

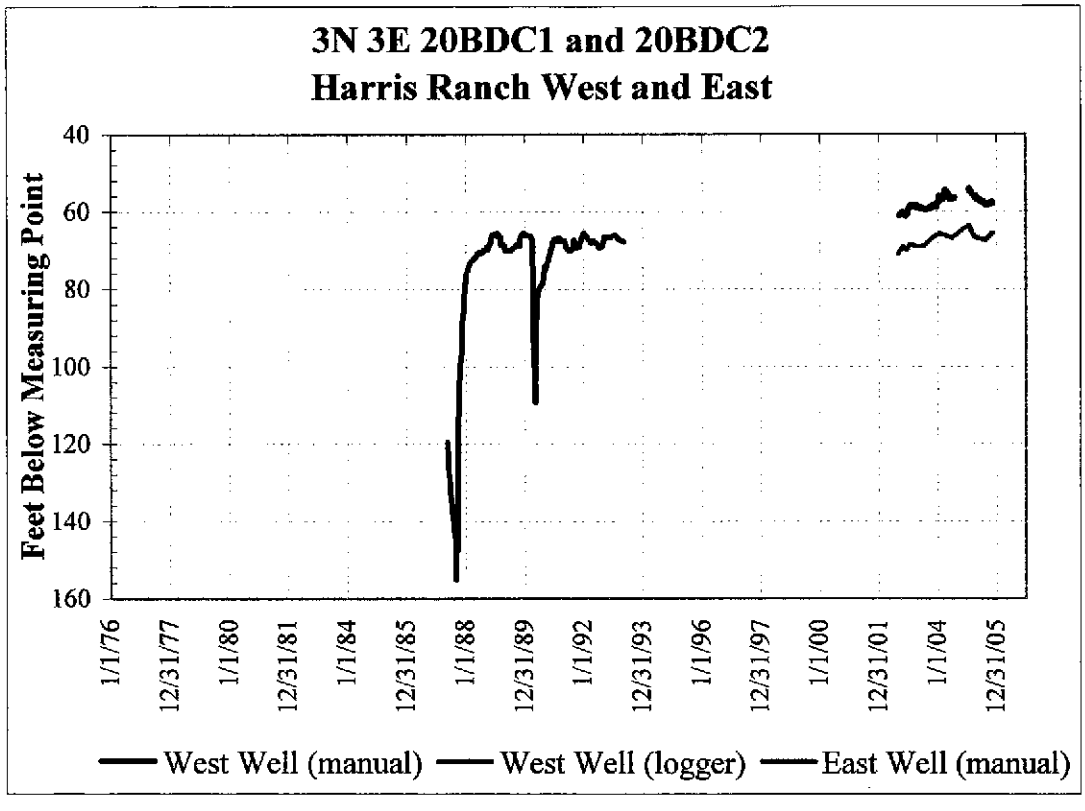


Figure 8. Water level hydrographs for the Harris Ranch wells.

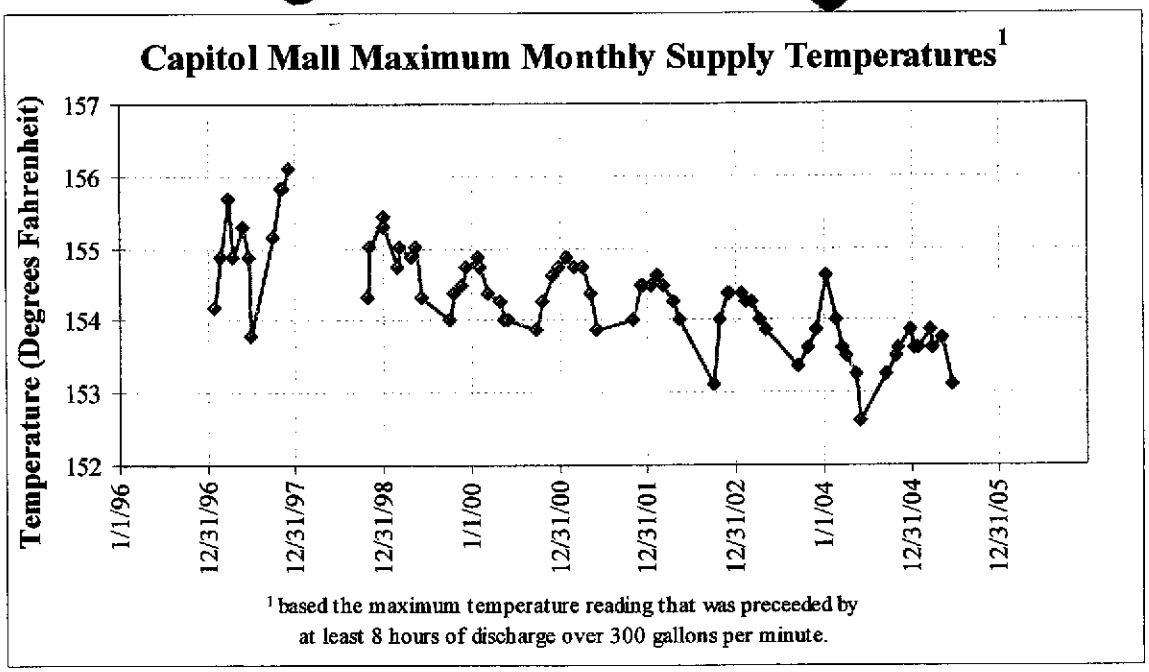


Figure 9. Maximum monthly water supply temperatures for the Capitol Mall geothermal system.

3. STEWART GULCH GROUND WATER DISTRICT 63S

Total withdrawals from WD63S wells for WY05 was 196.40 mgal (Figure 10), which was 16.2 million gallons greater than in WY04 - a change of nine percent[1]. Four of the seven production wells in WD63S (excluding the Whitehead well) had increases in withdrawals (Table 2).

Changes in ground water trends in WD63S were mixed in 2005. Typical of the observed water level patterns in the District, the Edwards Greenhouse well showed an increase in the minimum value from 2004 to 2005, but the latter part of 2005 was characterized by an overall decrease in water levels including a decrease in the maximum value of about 3.7 feet from 2004 to 2005 (Figure 11). The three nearby Flora Company wells exhibited the same pattern as the Edwards well (Figures 12-14). The Whitehead well, which is located between the Edwards and Flora Company wells has only been monitored since late 2004; however, it also showed a decline in water levels in 2005 (Figure 15).

Moving up Stewart Gulch, the two geothermal wells at the Quail Hollow Golf Course also showed similar patterns as the Flora and Edwards well (Figures 16 and 17). At the Terteling Ranch, the Windsock well had the lowest pumping water levels on record in early 2005, and the maximum values dropped 5.8 feet from mid 2004 to mid 2005 (Figure 18). The pumping water levels for the Pool well showed a major increase in the minimum values of about 20 feet, and a slight decrease in the maximum values from 2004 to 2005 (Figure 19). The Motorcycle Club Hot well had minimum values that increased 5.2 feet from early 2004 to early 2005, and maximum values that decreased 5.2 feet from mid 2004 to mid 2005 (Figure 20).

[1]This amount does not include data from the Whitehead well because production records for that well were partial in WY04.

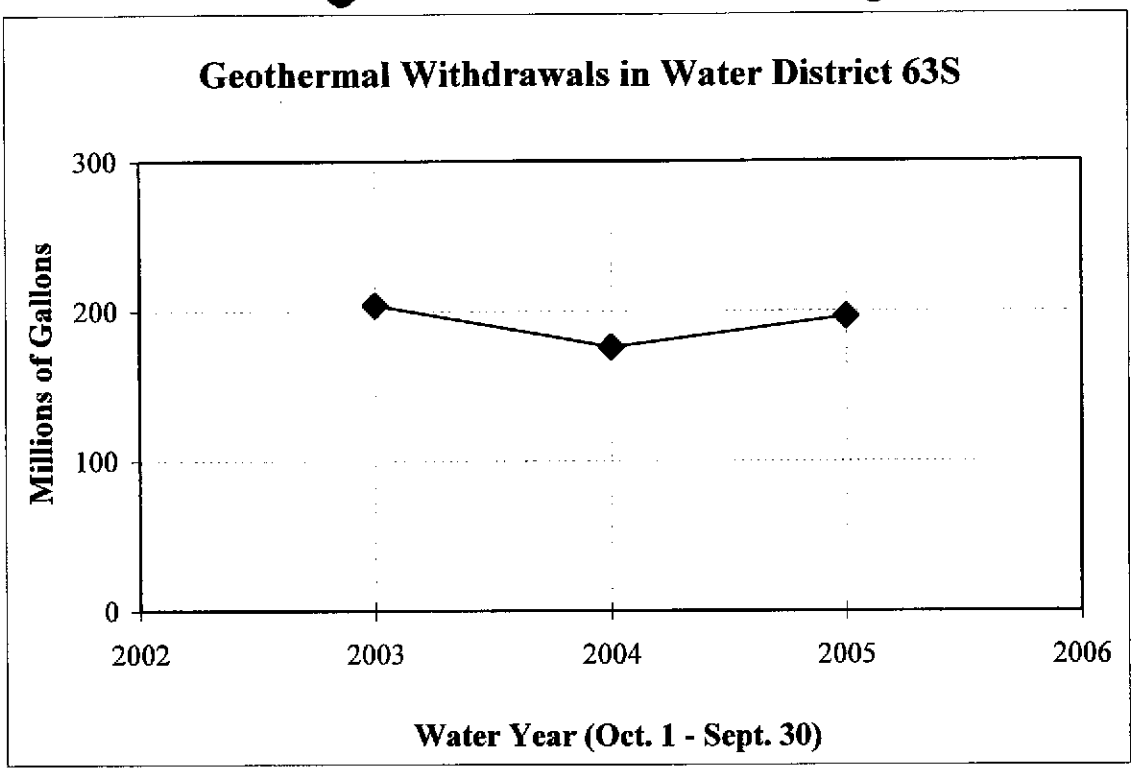


Figure 10. Geothermal withdrawals in Stewart Gulch Water District 63S for Water Years 2003-2005.

Table 2. Withdrawals from Stewart Gulch Water District 63S geothermal wells for Water Year 2005 (October 1, 2004 through September 30, 2005).

Well	Withdrawals in WY05 (gallons)	Change from WY04 (gallons)
Flora Company Tiegs (Triangle)	0	0
Flora Company Silkey (Shed)	33,770,048	-1,497,266
Flora Company House (Office)	5,728,467	-148,953
Edwards Greenhouse	35,677,800	-12,756,000
Terteling Ranch Windsock	85,363,052	+22,296,941
Terteling Ranch Pool	17,256,220	+1,866,809
Quail Hollow Golf Course Upper	13,286,400	+5,759,600
Quail Hollow Golf Course Lower	978,700	+722,000
Whitehead	4,339,274	NA[1]
Total	**196,399,961**	**+16,194,801**[2]

[1]Only partial production data were available in WY04.
[2]Does not include data for Whitehead well.

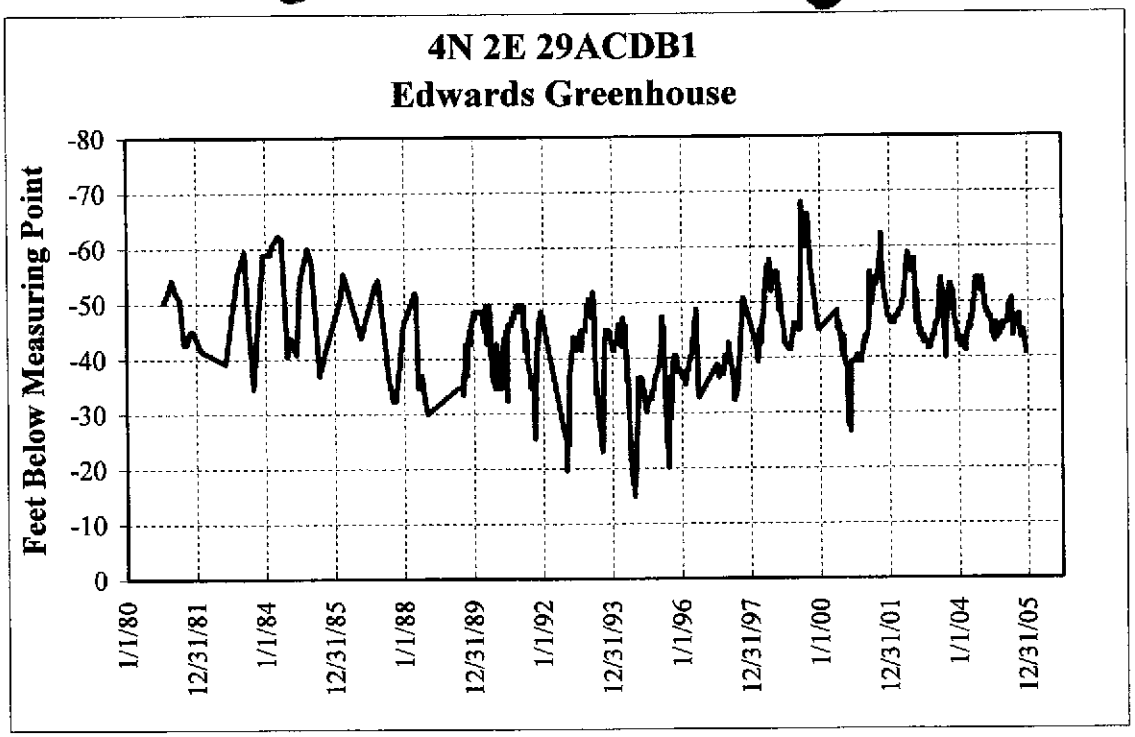


Figure 11. Water level hydrograph for the Edwards Greenhouse well.

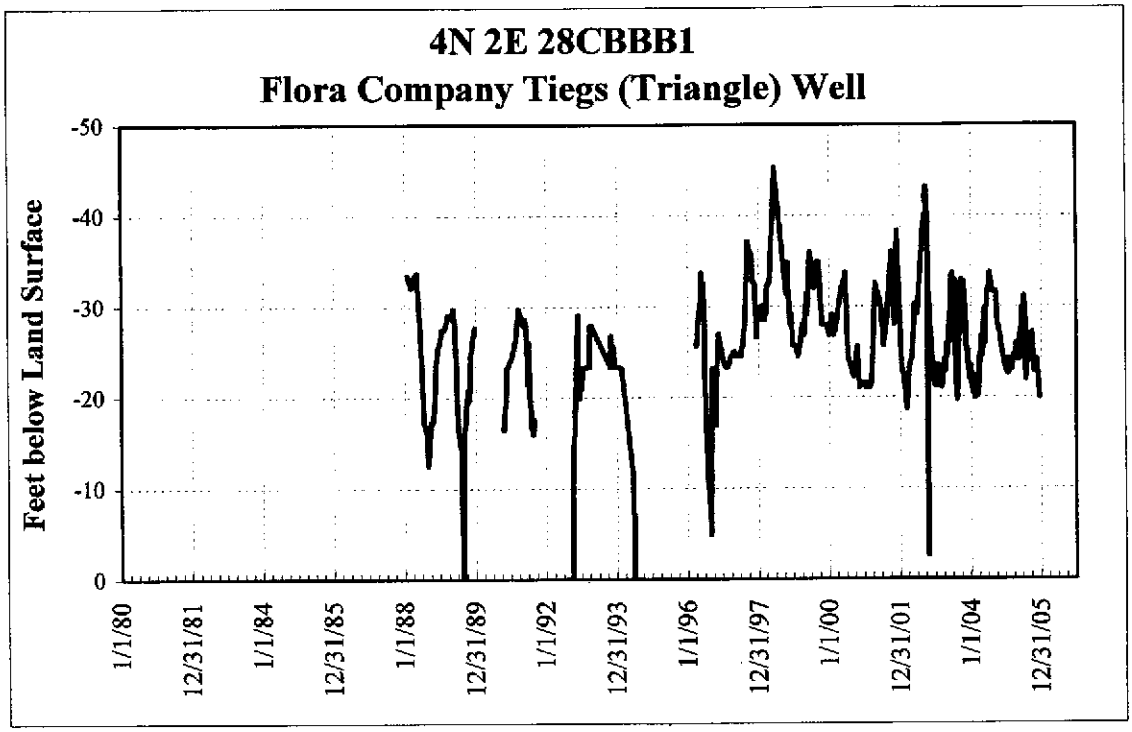


Figure 12. Water level hydrograph for the Flora Company Tiegs (Triangle) well.

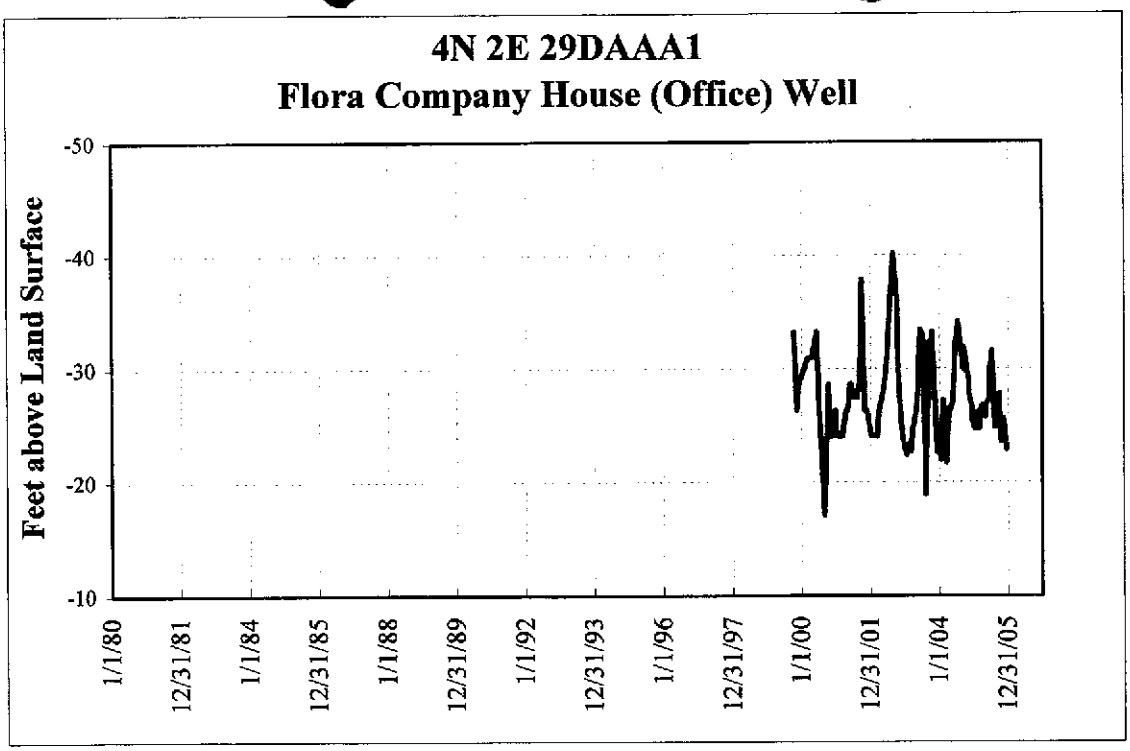


Figure 13. Water level hydrograph for the Flora Company House (Office) well.

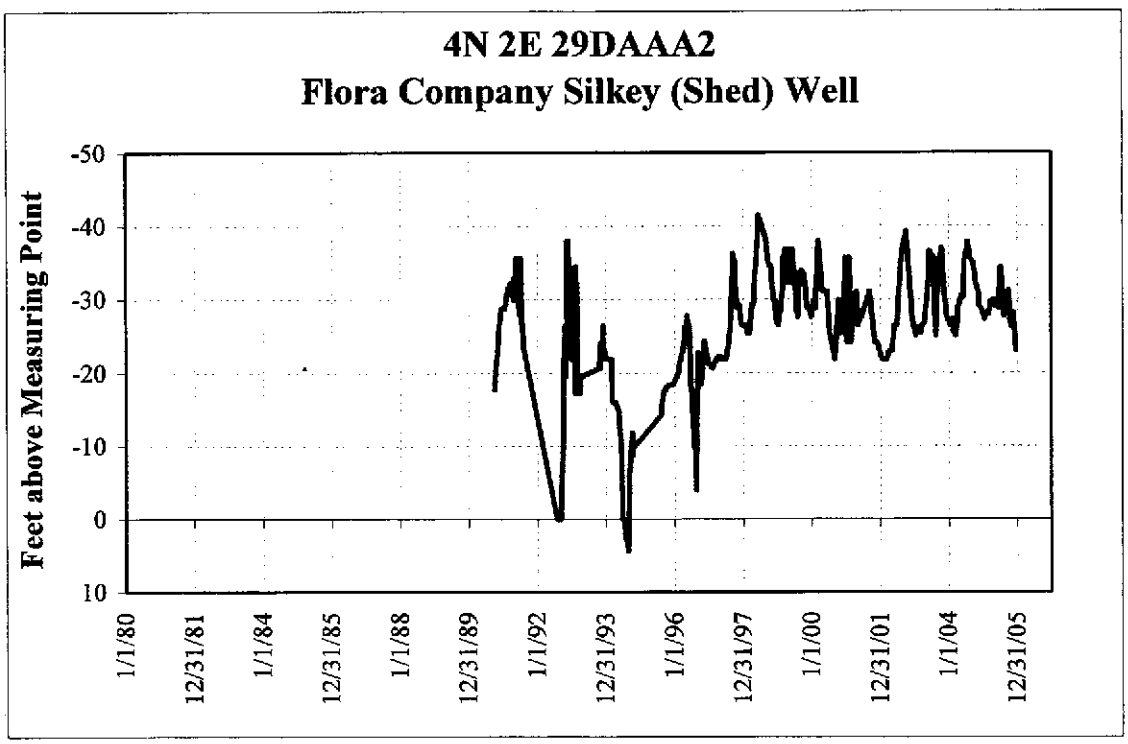


Figure 14. Water level hydrograph for the Flora Company Silkey (Shed) well.

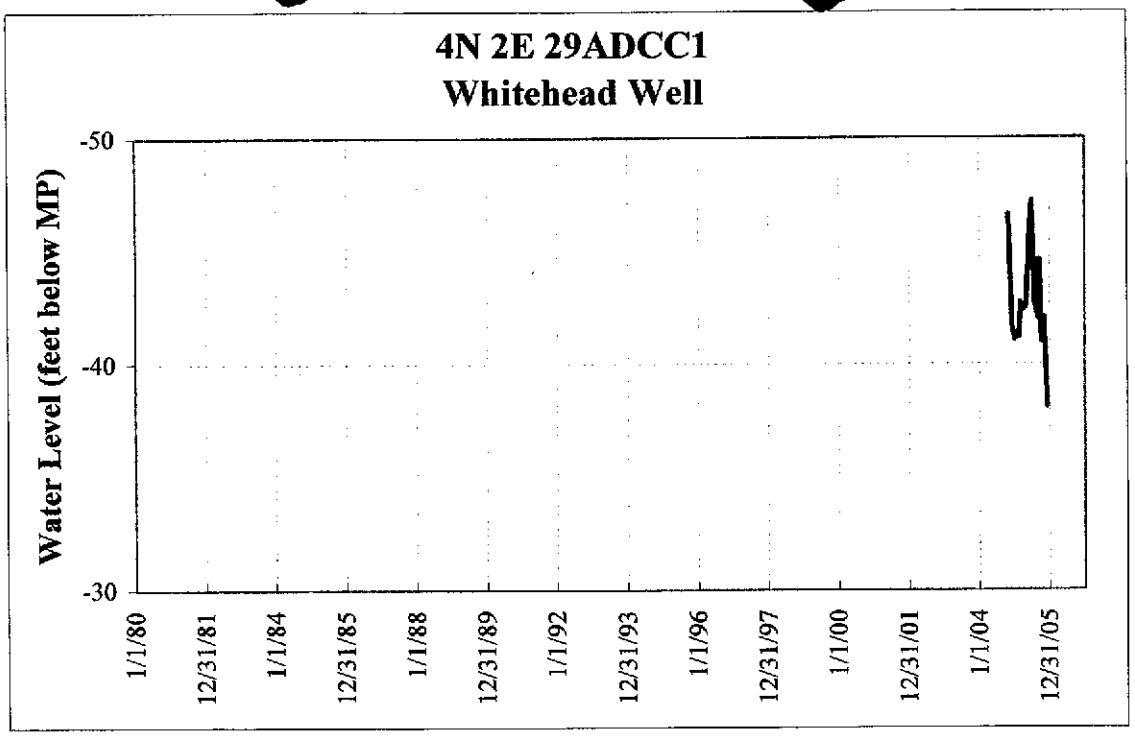


Figure 15. Water level hydrograph for the Whitehead well.

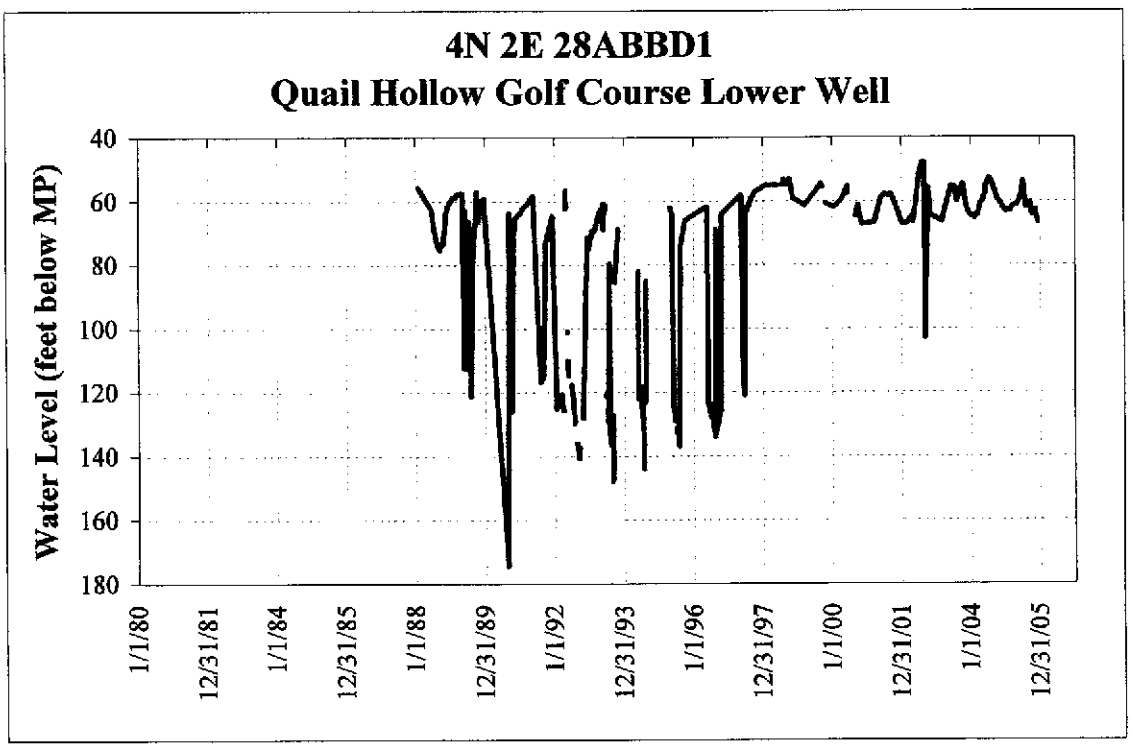


Figure 16. Water level hydrograph for the Quail Hollow Lower well.

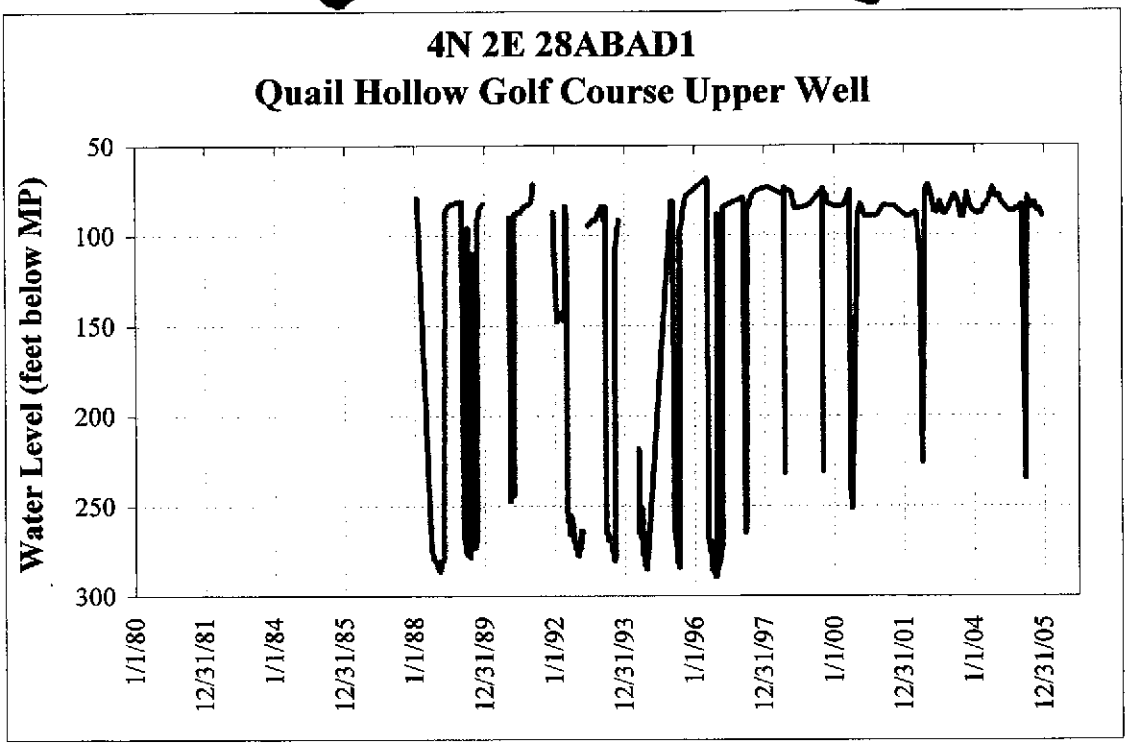


Figure 17. Water level hydrograph for the Quail Hollow Upper well.

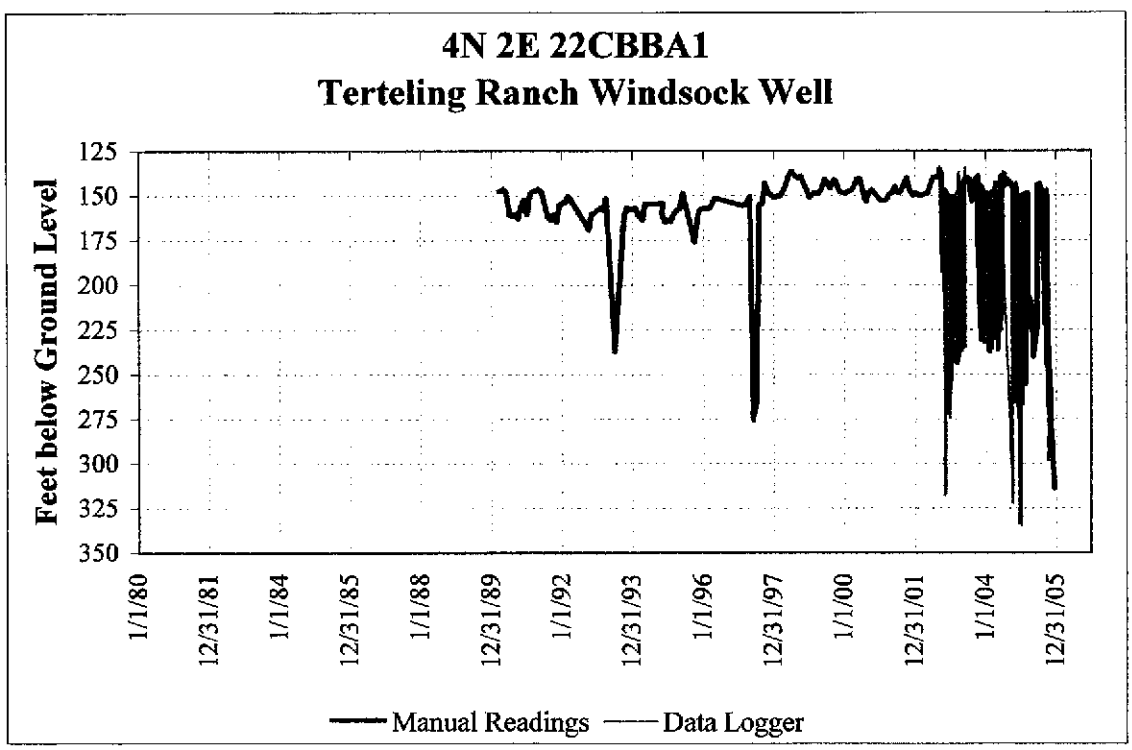


Figure 18. Water level hydrograph for the Terteling Ranch Windsock well.

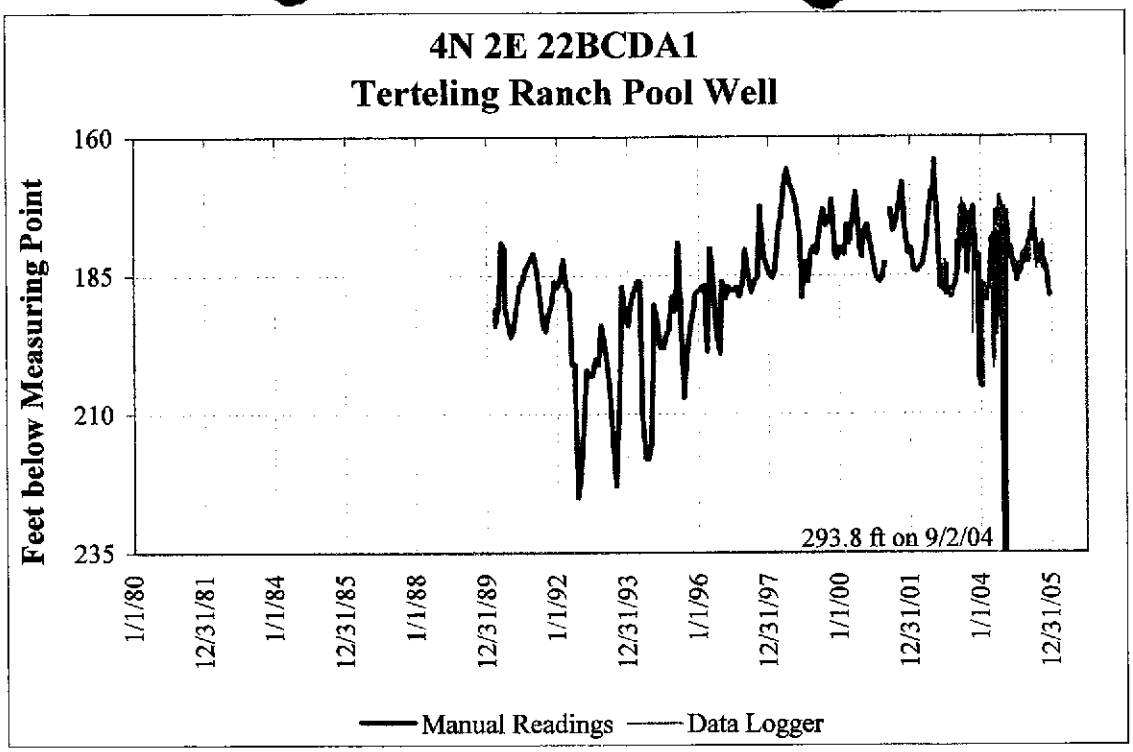


Figure 19. Water level hydrograph for the Terteling Ranch Pool well.

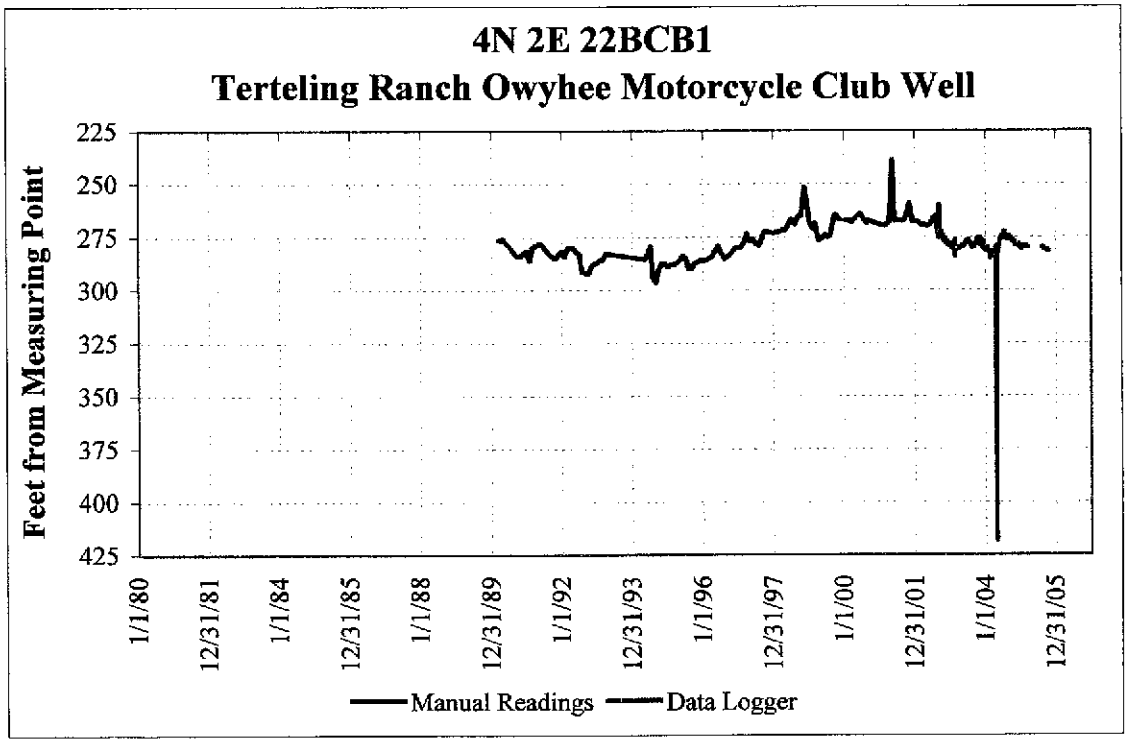


Figure 20. Water level hydrograph for the Terteling Ranch Motorcycle Club Hot well.

Appendix B.

Boise Front Geothermal Aquifer Monitoring and Reporting Plan

BOISE FRONT GEOTHERMAL AQUIFER MONITORING AND REPORTING PLAN

Designated Long-Term Observation Well Monitoring. Commencing on the later of August 15, 2002 or the effective date of this Plan, water level/wellhead pressure data shall be collected at least weekly and reported at least quarterly to IDWR for the wells listed on Table 1 for purposes of this Agreement. The Party designated in the table as responsible for each well shall complete the collection and reporting of data for that well at the Party's own expense. For the wells listed in Table 1 that are equipped with pressure transducers and data loggers, manual measurements (steel tape, electric line, or pressure gage) shall be collected at least weekly during the months of September and February for verification purposes. Transducer/data loggers shall be downloaded semiannually in June and December.

Production and Injection Well Monitoring. Commencing on the later of August 15, 2002 or the effective date of this Plan, each Party shall at its own expense collect at least weekly and report at least quarterly to IDWR (1) the production (instantaneous and totalized flow) and discharge temperature data for the geothermal production wells operated by the Party and (2) injection volume (instantaneous and totalized flow) and injection temperature in any injection well operated by the Party within the BFGMA (Boise Front Groundwater Management Area). These wells are listed in Table 2. Each Party shall also collect water level/well head pressure from their respective production and injection wells on a weekly basis during the following 6-week periods: September 1 through October 12 and February 1 through March 14. For purposes of this Agreement, the City shall collect and report production and discharge temperature data for its existing production wells at the City Well House No. 2 and water level/pressure data for its existing production wells at each of the three City production wells.

Secondary Observation Well Monitoring. Additional wells to be monitored for water levels are listed in Table 3. Data from this monitoring may be useful for aquifer modeling purposes or other studies.

BLM, Harris, Quail Hollow, and VA Wells. The parties shall reasonably cooperate with each other and with the IDWR to assure that BLM, Harris Warm Springs Creek (Harris), Quail Hollow Golf Course (Quail Hollow), and VA well data continues to be collected and reported to IDWR and is available to each of the Parties. These non-party wells are listed in Table 4. The IDWR shall to the extent of its authority require the following: VA and Quail Hollow shall collect water level/well head pressure, production (instantaneous and totalized flow), and discharge temperature data for their respective geothermal production wells. The VA shall collect wellhead pressure,

3 reference point elevation (GPS) National Geodetic Vertical Datum, 1929 ("NGVD 29")

4. description of measuring equipment (including model numbers, serial numbers and calibration information for flow meters)

5. name, address, and telephone number for individual responsible for submitting monitoring data

6. remarks regarding monitoring methods or protocol

7. All well heads where pressure measurements are taken shall be equipped with quality 0-50 psi double- pressure gage clusters with isolation valves.

8. Water level sounding tubes shall be installed as appropriate when pumps are pulled for servicing.

Effective Date: This Plan shall be effective upon acceptance by the Director of IDWR.

Review and Modification. This plan shall be subject to periodic review and modification. This plan may be modified only by means of a written agreement signed by each of the Parties. A modification shall not be binding upon IDWR unless accepted by the Director.

RECEIVED
APR 2 1 2005
WATER RESOURCES
WESTERN REGION

COPY

Transfer No. _____

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 X 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 (cfs/ac-ft)	Nature	Period of Use		
63-12	07/01/1921	.14 cfs	Domestic, Heating, Irr.	1/1	to	12/31
63-13	07/01/1922	.66 cfs	Domestic, Heating, Irr.	1/1	to	12/31
63-15	03/23/1927	.80 cfs	Domestic, Heating, Irr.	1/1	to	12/31

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
		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)
		SW	NW	22	4N	2E	ADA	Pool Well
		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

EXHIBIT
tabbies
5

Transfer No. _____

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 interconnnected 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

Transfer No. _____

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

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

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

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. _____

Transfer No. _____

PART 2

10. To your knowledge, has any portion of the water right undergone a period of five or more consecutive ears 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

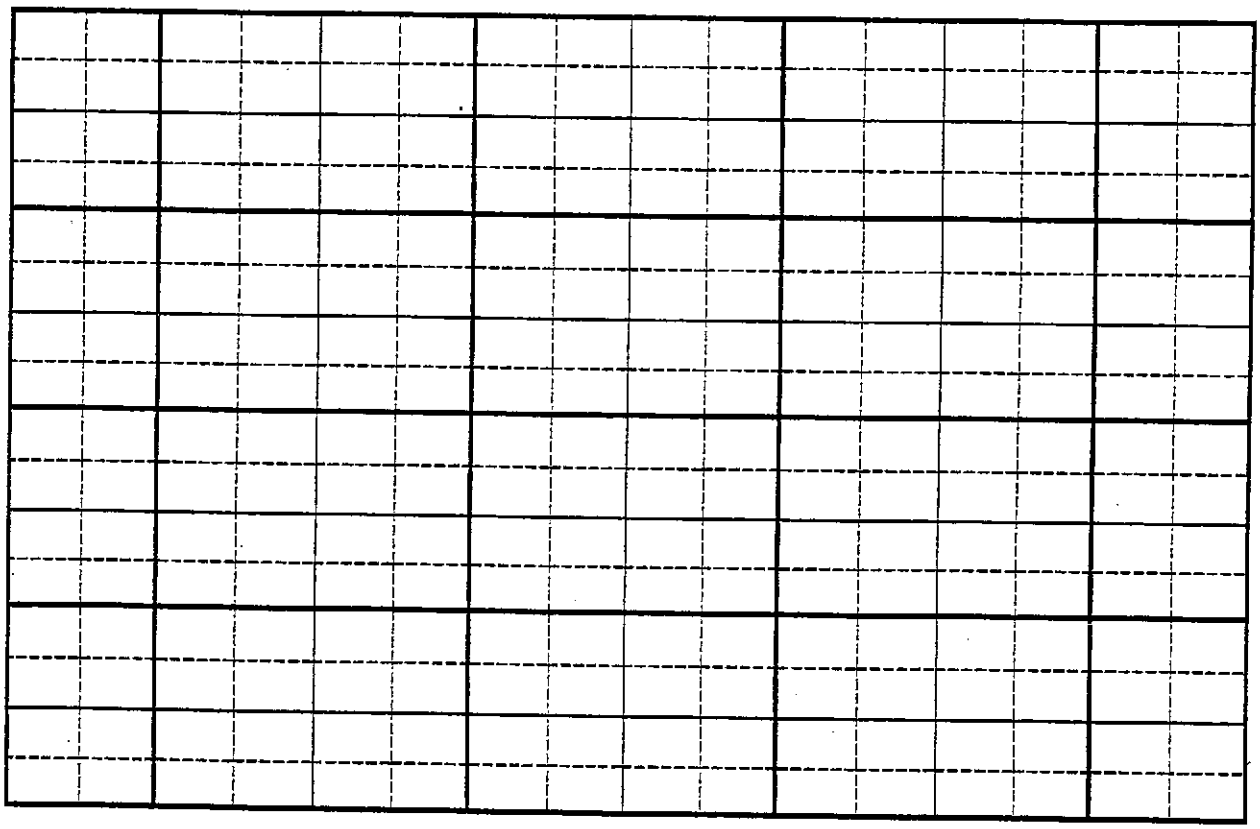
Total acres _____

Transfer No. _____

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.



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

Transfer No. _____

PART 3

B. CHANGES IN NATURE OF USE

1. New Nature of Use	Amount	Hours/days/year	Period of Use
			_____ 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.

PRESIDENT
(Signature of Applicant)

SUSAN L. HAMEL NOTARY PUBLIC STATE OF IDAHO

Subscribed and sworn to before me this 21st day of April, 2005.

My commissions expires 03/27/2008

(Notary Public) Susan L. Hamel

FOR DEPARTMENT USE ONLY

Transfer contains _____ pages and _____ attachments

Received by _____ Date _____ Protest filed by _____

Prelim. check by _____ Fee _____

Receipted 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 _____

Transfer No. _____

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.

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:

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.

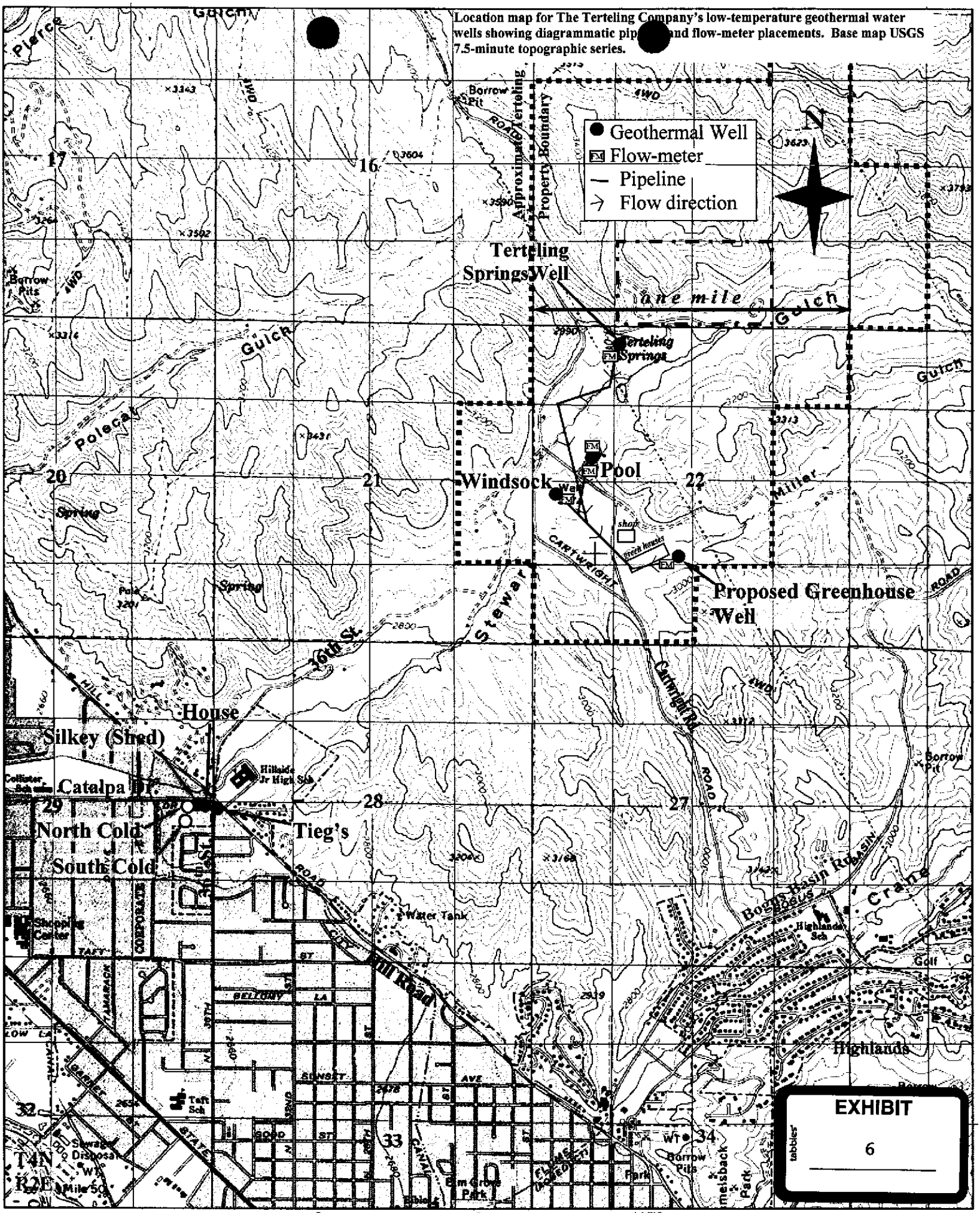
2. The flow rate and volume of all diversions of water pursuant to water right nos. 63-12, 63-13 and 63-15 shall be monitored, and reported quarterly to the water master of Water District 63-S in accordance with the attached monitoring plan.

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.



Printed from TOPO! ©2000 National Geographic Holdings (www.topo.com)

Hydro Logic Inc.
Boise, Idaho

Figure 1.

EXHIBIT
6

11/99

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

RECEIVED
SEP 06 2005
WATER RESOURCES
WESTERN REGION

NOTICE OF PROTEST

This form may be used to file a protest with the department under sections 42-108B, 42-203A, 42-203C, 42-211, 42-222 and 42-224, Idaho Code. The department will also accept a timely protest not completed on this form if it contains the same information.

1. Matter being protested Application for Transfer No. 71690.

2. Name of protestant Edwards Family LLC.

3. Protestant's Representative for service (If different than protestant)

   Dana L. Hofstetter, Hofstetter Law Office, LLC.

4. Service mailing address 608 West Franklin Street, Boise, Idaho 83702.

5. Service telephone no. (208) 424-7800.

6. Basis of protest (including statement of facts and law upon which the protest is based)

   The proposed changes could injure other water rights, could constitute an enlargement in use of the original water rights, are inconsistent with conservation of the geothermal resource, are not in the local public interest and could affect the local economy.

   (additional pages may be attached to describe nature of the protest)

7. What would resolve your protest? Appropriate restrictions and conditions on any approval, including without limitation, the following: Inclusion of the conditions of the prior Transfer No. 68558 approval; recognition of the restrictions of *Silkey v. Tiegs* for junior uses from the Stewart Gulch Geothermal Aquifer, application of the IDWR policy requiring separate transfer applications for separate diversion systems; either inclusion of the Motorcycle well within Water District 63-S or its removal from the scope of the Transfer; delay of Transfer processing while the associated water rights remain pending in the SRBA.

I hereby, acknowledge that if I, or my designated representative, fails to appear at any regularly scheduled conference or hearing in the matter of which I have been notified at the address above, the department may issue a notice of proposed default against me in this matter for failure to appear. I also verify that I have served a copy of this protest upon the applicant.

Signed this 6th day of September, 2005.

Protestant

Dana Hofstetter

Protestant's Representative

EXHIBIT
7

NOTE:

A protestant is required to timely file a protest with the department together with a $25.00 protest fee for each application being protested in order for the protestant to be considered a full party by the department. In addition, the department's Rule of Procedure, IDAPA 37.01.01203, requires a protestant to send a copy of a protest to the applicant.

INSTRUCTIONS

1. The matter being protested must be clearly identified. A typical matter is identified by the application number such as "Application for Permit No. _____ in the name of _____" or "Application for Transfer No. _____ in the name of _____."

2. Show the name of the protestant. Only one (1) protestant may be shown per protest form. If this protest form is signed by more than one person, the hearing officer will consider the first signer as the official protestant and the representative for service of documents.

3. If the protestant is represented by an attorney or other authorized representative, show the representative's name. The department then will serve documents on the representative and upon the protestant if specifically requested.

4. Show the address where the department is to serve the documents. This should be the address of the authorized representative unless the protestant does not designate a representative.

5. Show the telephone number of the authorized representative unless the protestant does not designate a service representative.

6. Specifically describe the nature of the protest.

7. Describe the relief being sought by the protestant.

FOR DEPARTMENT USE ONLY

Received by _____ Date 9/6/05 Time 5:00 pm

$25.00 fee Receipted by _____ # WO33376 Date 9/6/05

RECEIVED
MAR 0 2 2006
DEPARTMENT OF
WATER RESOURCES

MEMORANDUM

To: Peter Anderson, Hearing Officer
From: J. Westra, Western Reg.
March 1, 2006

RE: Request for Staff Memorandum
Terteling Company, Inc. Transfer #71690

This is in response to your request for a staff memorandum regarding the Terteling Company Transfer #71690. File #71690 contains processing analysis and mapping from the regional office. We do not wish to submit additional analysis, memorandums, or information relating to the transfer application.

Thank you for the invitation and request

BEFORE THE DEPARTMENT OF WATER RESOURCES

FOR THE STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR TRANSFER NO. 71690 IN THE NAME OF THE TERTELING COMPANY, INC.	))))	**REQUEST FOR STAFF MEMORANDUM**

WHEREAS IDAPA 37.01.01.600 allows the Idaho Department of Water Resources ("IDWR's") "experience, technical competence and specialized knowledge" to be used in the evaluation of evidence; and

WHEREAS IDAPA 37.01.01.602 allows a hearing officer to notice technical or scientific facts within IDWR's specialized knowledge, including agency staff memoranda and data; and

WHEREAS the hearing officer is not an employee of IDWR and has no means to utilize IDWR's experience, technical competence and specialized knowledge other than by querying IDWR;

THEREFORE the hearing officer invites IDWR to present staff memoranda regarding the above-captioned matter, which could include, without limitation:

1. An analysis by IDWR staff of whether the application at issue should be granted and, if so, any conditions that should be placed on that approval;

2. Any IDWR memoranda applicable to this application; and

3. A G.I.S. map showing the proposed places of use and points of diversion as described by the applicant.

Any such staff memoranda shall be submitted to the hearing officer on or before March 17, 2006, and served upon the parties to this matter. IDWR would be required to make relevant staff available for cross-examination at any hearing set in this matter pursuant to IDAPA 37.01.01.201 and 602.

Dated this 17th day of February, 2006.

Peter R. Anderson
Hearing Officer

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 18th day of February, 2006, the above and foregoing document was served on the following by placing a copy of the same in the United States mail, postage prepaid and properly addressed to the following:

CHARLES L. HONSINGER
RINGERT CLARK
PO BOX 2773
BOISE ID 83701-2773

DANA L HOFSTETTER
HOFSTETTER LAW OFFICE
608 W FRANKLIN ST
BOISE ID 83702

Victoria Wigle
Administrative Assistant to the Director
Idaho Department of Water Resources

RECEIVED
FEB 0 9 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.	**RESPONSE TO MOTION TO COMPEL DISCOVERY**

Edwards Family LLC, by and through its counsel of record, Dana L. Hofstetter of Hofstetter Law Office, LLC, respectfully submits this *Response to Motion to Compel Discovery.*

Rule 521 of the Idaho Department of Water Resources' Rules of Procedure provides for motions to authorize discovery and, also, where previously authorized discovery is not responded to, motions to compel discovery. Therefore, it appears that the Applicant's motion should be styled as a "Motion to Authorize Discovery," rather than a "Motion to Compel Discovery." In any event, IDWR Rule 521 requires that the Applicant provides the

the specific discovery requests in connection with seeking "an order authorizing the **requested** discovery." However, the Applicant's Motion does not attach the specific discovery sought to be authorized (proposed deposition notices, interrogatories, requests for production, *etc.*). IDWR Rules also indicate that an explanation should be provided establishing how the specific discovery requests serve a "purpose allowed by statute, the Idaho Rules of Civil Procedure, or rule or order of the agency." IDAPA 37.01.01.522-.524. This information is necessary to properly evaluate and respond to the appropriateness of the requested discovery.

In an instance such this, where discovery is sought by the Applicant who has the burdens of persuasion and production and ordinarily would have access to the best information available about the changes sought in the Transfer Application, the scope of relevant and appropriate discovery, if any, of other parties should be very limited and only as demonstrated to be necessary and authorized under the law.

Conclusion.

For the foregoing reasons, Edwards Family LLC requests that the Hearing Officer requires the Applicant to provide copies of the requested discovery and the legal basis under which the requested discovery is allowed by statute, the Idaho Rules of Civil Procedure, agency rule or order and thereafter provides Edwards Family LLC an opportunity to respond to the specific discovery sought.

DATED this 8th day of February, 2006.

DANA L. HOFSTETTER

CERTIFICATE OF SERVICE

I hereby certify that on the 8th day of February, 2006, I caused to be served copies of the foregoing **Response To Motion to Compel Discovery** 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

Peter R. Anderson
Hearing Officer
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

E:\3006.1\6762

HOFSTETTER LAW OFFICE
608 West Franklin Street
Boise, Idaho 83702
Dana@IdahoWaterLaw.com

Dana L. Hofstetter
Attorney at Law

Telephone: (208) 424-7800
Facsimile: (208) 424-8774

RECEIVED KARL
FEB 09 2006
DEPARTMENT OF
WATER RESOURCES

February 8, 2006

Assistant to Director
Idaho Department of Water Resources
P.O. Box 83720
Boise, Idaho 83720-0098

Re: Application for Transfer No. 71690 – The Terteling Company, Inc.

Dear Assistant to Director:

Enclosed are the original and a copy of the following document in the above-referenced case:

Response to Motion to Compel

Please file the original, conform the copy and return the conformed copy in the enclosed addressed and stamped envelope. Thank you for your assistance.

Sincerely,

HOFSTETTER LAW OFFICE, LLC

Dana L. Hofstetter

E:/3006.1/6782

RECEIVED
FEB 09 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.	**RESPONSE TO MOTION TO COMPEL DISCOVERY**

Edwards Family LLC, by and through its counsel of record, Dana L. Hofstetter of Hofstetter Law Office, LLC, respectfully submits this *Response to Motion to Compel Discovery.*

Rule 521 of the Idaho Department of Water Resources' Rules of Procedure provides for motions to authorize discovery and, also, where previously authorized discovery is not responded to, motions to compel discovery. Therefore, it appears that the Applicant's motion should be styled as a "Motion to Authorize Discovery," rather than a "Motion to Compel Discovery." In any event, IDWR Rule 521 requires that the Applicant provides the

the specific discovery requests in connection with seeking "an order authorizing the **requested** discovery." However, the Applicant's Motion does not attach the specific discovery sought to be authorized (proposed deposition notices, interrogatories, requests for production, *etc.*). IDWR Rules also indicate that an explanation should be provided establishing how the specific discovery requests serve a "purpose allowed by statute, the Idaho Rules of Civil Procedure, or rule or order of the agency." IDAPA 37.01.01.522-.524. This information is necessary to properly evaluate and respond to the appropriateness of the requested discovery.

In an instance such this, where discovery is sought by the Applicant who has the burdens of persuasion and production and ordinarily would have access to the best information available about the changes sought in the Transfer Application, the scope of relevant and appropriate discovery, if any, of other parties should be very limited and only as demonstrated to be necessary and authorized under the law.

Conclusion.

For the foregoing reasons, Edwards Family LLC requests that the Hearing Officer requires the Applicant to provide copies of the requested discovery and the legal basis under which the requested discovery is allowed by statute, the Idaho Rules of Civil Procedure, agency rule or order and thereafter provides Edwards Family LLC an opportunity to respond to the specific discovery sought.

DATED this 8th day of February, 2006.

DANA L. HOFSTETTER

CERTIFICATE OF SERVICE

I hereby certify that on the 8th day of February, 2006, I caused to be served copies of the foregoing **Response To Motion to Compel Discovery** 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

Peter R. Anderson
Hearing Officer
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

E:\3006.1\6762

RECEIVED
JAN 18 2006
DEPARTMENT OF
WATER RESOURCES

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

Attorneys for Applicant The Terteling Company, Inc.

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.	REQUEST FOR HEARING AND FOR RESOLUTION OF PENDING MOTION TO COMPEL DISCOVERY

COMES NOW, the applicant, The Terteling Company, Inc., by and through its attorneys of record, Ringert Clark, Chartered, and hereby requests the Hearing Officer to set a hearing in the above-referenced matter without a pre-hearing conference as is discussed in correspondence dated September 14, 2005 from counsel for applicant. The applicant also requests that the Hearing Officer act to grant applicant's September 14, 2005 *Motion to Compel Discovery*.

DATED This 18th day of January, 2006.

Charles L. Honsinger
RINGERT CLARK, CHARTERED

Req. Hrg & Res.
motion to Compel

CERTIFICATE OF MAILING

I hereby certify that service of the within and foregoing document was made this 18th day of January, 2006, by mailing a copy thereof, postage prepaid, to each of the parties listed below.

Dana L. Hofstetter
Hofstetter Law Office, LLC
608 W. Franklin St.
Boise, ID 83702

Charles L. Honsinger

Hydro Logic, Inc.

1002 W. Franklin Street, Boise, ID 83702 (208) 342-8369, (Fax) 342-3100, hydrologic@qwest.net

October 13, 2004

RECEIVED

OCT 15 2004

WATER RESOURCES
WESTERN REGION

Mr. Norman C. Young
ERO Resources Corp.
1106 N. Cole Road, Suite C.
Boise, Idaho 83704-8661

Subject: Reconstruction of the Windsock Low-Temperature Geothermal Well and Proposed Water Rights Transfer Application in State Water District 63-S

Dear Norm:

I wanted to thank you for taking the time to discuss State Water District 63-S with me yesterday with respect to The Terteling Company's (TTCI) reconstruction of their Windsock geothermal well. From that discussion, I believe that you and I are in agreement as to the technical aspects of managing the low-temperature geothermal aquifer, and also, that our respective clients have the same goal of protecting the aquifer from over-appropriation to preserve its use for future generations without contentious (and expensive) fighting over water rights.

TTCI has been very proactive in this area and has contributed significantly to the scientific body of evidence for the subsurface aquifer system through studies they have commissioned and data placed into the public domain. TTCI's efforts to reactivate the State Water District 63-S and to promote responsible monitoring and reporting of water use have been successful and effective towards accomplishing the goals stated above. TTCI has established a history of responsibly sealing its geothermal wells to reduce unnecessary waste of heat and to protect the resource; the recent Windsock well reconstruction is the fourth geothermal well to be sealed from land surface to the top of the geothermal aquifer with expensive bentonite-based grouts pumped into place under pressure. TTCI has been proactive in preventing unauthorized new uses from the aquifer and has promoted the capping of unused free-flowing artesian geothermal wells during summer months. We have approached the IDWR with a proposal that does not penalize water users with forfeiture for non use (conservation) of the geothermal waters that we hope will ultimately result in increases in aquifer pressures. TTCI has pursued these actions rather than sending a call to deliver its senior water rights protected under the Silkey vs. Tiegs decree. In all of these activities, TTCI has striven to be transparent by prior notification of the other District water users and by seeking the approval of the IDWR every step of the way.

As you are aware, TTCI has filed an application for transfer with the Idaho Department of Water Resources to add all of its hot wells as points of diversion for its geothermal water rights without increasing the total annual volume of water extracted from the aquifer. Indeed, if this transfer application is approved by IDWR, the level of monitoring of TTCI's use of the geothermal system and water production will be enhanced and more easily accounted for. Their proactive approach toward a goal of avoiding a long drawn-out and expensive administrative water rights proceeding has included the following:

1) Tom Terteling and Ed Squires met with Garnette Money (Edwards Greenhouses), Dana Hofstetter, and Lori Graves of IDWR to present the proposed tenets of the transfer application at last year's annual water district meeting and to address any concerns Edwards may have with the proposed transfer.

2) Edwards and Hofstetter law offices were provided with the revised (based on comments by Dana Hofstetter) transfer application at the same time it was filed with IDWR.

3) IDWR's processing of the transfer has resulted in additional modifications and concessions by TTCI to satisfy additional concerns raised by Edwards.

4) I have made ERO Resources aware that Hydro Logic, Inc. is available to address any questions you, Edwards, or their attorney may have with the proposed transfer prior to its advertisement and public comment period.

TTCI has requested that I respond to any and all data requests, questions, or concerns by Edwards in a proactive approach to avoid an unnecessary and expensive (to both parties) administrative proceeding. TTCI believes the transfer is beneficial to Edwards and the geothermal resource. In attempting to be as transparent and open as possible, TTCI is promoting a cooperative management policy between district water users that we hope will begin to replace the suspicious, uncooperative, and often litigious interactions of the past.

Having said all of that, I want to reiterate TTCI's offer of up-front, proactive cooperation. Given the time, energy, and expense TTCI has committed to this, including the offer above, it would be seen as very disingenuous for TTCI's transfer application to receive a protest from Edwards without having worked through any concerns that have not heretofore been expressed. Please pass our offer along to your client and please let us know if there are any aspects of the transfer application that we need to explain or address and we will make ourselves available. Similarly, if your clients would like to meet face-to-face with the Terteling family, or if they would like you and I to meet, or if you or your clients would like to have a tour of the Flora Greenhouses facilities and the low-temperature geothermal wells subject to the transfer application, we are more than happy to arrange such a tour to your client's schedule.

Respectfully,

Ed Squires

c: Charles L. Honsinger, Ringert Clark
Tom E. Terteling, The Terteling Company, Inc.
Steve Lester, Idaho Department of Water Resources, Western Regional Office
Ken Neely, Idaho Department of Water Resources, State Office

Graves, Lori

From: Neely, Ken
Sent: Monday, August 23, 2004 1:52 PM
To: Keen, Shelley; Peppersack, Jeff; Graves, Lori
Subject: FW: Emergency Request for Temporary Point of Diversion Change in District 63-S, August 23, 2004
Importance: High

From my perspective as the Water Master's for Water District 63S, I do not have any objectives to this request.

Ken Neely

Kenneth W. Neely, Technical Hydrogeologist
Idaho Department of Water Resources
Hydrology Section - Ground Water Monitoring
1301 N. Orchard Street
Boise, ID 83705
208.327.5455 (phone)
208.327.7866 (fax)
http://www.idwr.state.id.us/hydrologic/

-----Original Message-----
From: Ed Squires [mailto:ed@hydrologicinc.net]
Sent: Monday, August 23, 2004 1:06 PM
To: Glen Saxton
Cc: Charles L. Honsinger; Dave Hendrickson ; Steve Lester; Garnette Monnie; Neely, Ken; Tom E. Terteling ; Keen W. Shelley ; Jeff Peppersack ; L. Graves; Rob Whitney
Subject: Emergency Request for Temporary Point of Diversion Change in District 63-S, August 23, 2004
Importance: High

Dear Glen:

On behalf of my client, the Terteling Company, I have the following emergency request for IDWR permission to use an alternate point of diversion for temporary diversion of low-temperature geothermal ground water within the State Water District 63-S! Here are the facts of the situation behind our request:

1) The Terteling Company (TTCI) notified the water master and other District water users of its intention to conduct maintenance on its Windsock geothermal well during the non-heating season of July and August of this year.

2) A cable-tool work-over rig was set up over the well and the inside wall of the casing was cleaned using a de-scaling tool and a wire brush to remove accumulated encrustation.

3) Upon completion of the well work, a down hole camera inspection of the well showed a severely corroded casing that is subject to immediate catastrophic collapse (see attached down hole still photographs).

4) Owing to the compromised condition of the 34-year-old casing, TTCI is justifiably concerned about reinstallation of its pumping plant in the well and about the potential for failure of the well during the cold winter months of 2004 when it is being pumped at capacity for space heating purposes. The Windsock well is currently the only source of low-temperature geothermal groundwater for the Flora Co. greenhouses in Stewart Gulch. Arrangements are being made to install a new liner casing and to pressure grout seal the new casing into place for the long term. Rob Whitney of the IDWR Western Regional Office will be notified of any proposed changes to

well construction.

5) The newly recognized problems with the well could not come at a worse time with the recent onset of cooler weather and approaching fall and winter heating season (TTCI's present greenhouse stock require heat when the temperature drops below 60 degrees).

6) Although TTCI is expediting the new well materials to Boise, the well repairs and pump installation will require some time to accomplish and the well will not be on line for the early portion of the heating season.

7) To that end, TTCI requests permission from IDWR, and the water master of District 63-S, to temporarily divert a portion of its water rights Nos. 63-12, 63-13, And 63-15 from its low-temperature geothermal "Pool Well" for space heating purposes within the nearby greenhouses.

8) It has been shown through extensive monitoring and hydraulic testing of the TTCI wells (monitoring and measurements of which the water master and the IDWR are aware) that the Pool well and Windsock wells are hydraulically interconnected within the geothermal aquifer and that they draw from a common groundwater source. Indeed, TTCI has a pending Transfer application (filed April 9th, 2004) that seeks to add the TTCI Pool well as a point of diversion for water right Nos. 63-12, 63-13, and 63-15. The Pool Well point of diversion is farther away from the wells of existing District 63-S water users than the Windsock well. Additionally, the Pool well is produced at a lower instantaneous diversion rate that the Windsock well.

9) In consideration of all of the above, TTCI requests that it be allowed, under an emergency situation, to be able to divert a portion of its geothermal water rights through the Pool well for space heating of the Flora Co. greenhouses during the early portion of the space heating season until its Windsock well can be properly repaired and returned to service. It is anticipated that 30 days may be necessary to effect the necessary changes and to equip the Windsock well with a different pump (owing to the proposed smaller diameter casing sleeve). Although the Pool well cannot produce the entire water right, it can probably keep the present greenhouse crop from perishing during the early part of the heating season when outside ambient temperatures are not extreme.

10) The Pool well will be monitored for volume pumped and the total volume pumped from the TTCI Pool well during this temporary period, will be subtracted from the 400 acre foot annual water right allotment of the Windsock well under water rights Nos. 63-12, 63-13, and 63-15.

11) TTCI will keep the District 63-S water master apprised of the situation with regular (bi-weekly) updates. TTCI further understands that the proposed temporary use is subject to the water master's discretion with respect to any unforeseen (and unexpected) effects on other District water users. It is my professional opinion, based upon years of monitoring and study of the Stewart Gulch low-temperature geothermal aquifer, that there will be no negative effects to existing water users in District 63-S from the proposed change. Indeed, the volume of water produced from the TTCI low-temperature wells will be less than if the Windsock well were being pumped.

12) I need to express that this is an urgent request needing immediate resolution to prevent loss of this season's greenhouse stock or the expenditure of large amounts of money for space heating using alternate means such as natural gas fired heaters. This request id especially important given that nighttime temperatures in Boise dropped well below 60F last night, and are expected to drop lower tonight and later this week.

Please discuss this at IDWR and let me know of your decision as soon as possible. Thank you for any expeditious review you can direct to this situation.

Respectfully,

Ed Squires
Hydro Logic, Inc.
342-8369

13) emergency
14) problemsThe wellUpon cleaning of the well, including wire-brushing of the inside

State of Idaho
DEPARTMENT OF WATER RESOURCES
Western Region, 2735 Airport Way, Boise, Idaho 83705-5082 - (208) 334-2190
FAX (208) 334-2348

DIRK KEMPTHORNE
Governor
KARL J. DREHER
Director

September 14, 2005

Charles Honsinger, Atty.
Ringert Clark Chartered
PO Box 2773
Boise ID 83701

RE: Application for Transfer #71690- Terteling

Dear Mr. Honsinger:

This letter is to acknowledge your 9/14/05 letter requesting the scheduling of a hearing and a motion to compel Discovery. I have forwarded the request and motion to our State Office Administration for the apointment of a hearing officer, and the facilitation of the hearing process.

Should you have any questions, please contact me at the Western Regional Office, phone 334-2190.

Sincerely,

John Westra, Manager
Western Region.

cc: T Terteling
D. Hofstetter

MEMORANDUM

To: Gary Spackman, Debbie Gibson
From: J. Westra
Date: 9/14/05

RE: Application for Transfer #71690 Protested
Request for Hearing & Discovery

I recently received the enclosed request from C. Honsinger for the scheduling of a hearing and an order granting discovery. The applicant would like to forego a prehearing conference, and move directly to a hearing.

Thanks

HearingRequest

RINGERT
CLARK
CHARTERED
LAWYERS

RECEIVED
SEP 14 2005
WATER RESOURCES
WESTERN REGION

Laura E. Burri
Jeffrey R. Christenson
David P. Claiborne
D. Blair Clark
S. Bryce Farris
David Hammerquist
Charles L. Honsinger
James P. Kaufman
Jennifer Reid Mahoney
James G. Reid
Daniel V. Steenson
Allyn L. Sweeney

William F. Ringert, of Counsel
Samuel Kaufman (1921-1986)

September 14, 2005

John Westra
Regional Manager
Department of Water Resources
Western Regional Offices
2735 Airport Way
Boise, Idaho 83705-5082

Re: Application for Transfer No. 71690

Dear Mr. Westra:

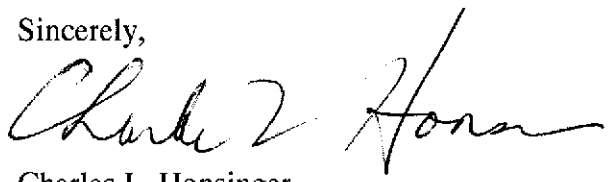
As you may be aware, Edwards Family, LLC has filed a Notice of Protest to the above-referenced transfer application filed by my clients, The Terteling Company, Inc. As explained in my December 22, 2004 letter to Steve Lester and Lori Graves, my clients have expended considerable time, energy and expense to address issues that Edwards Family, LLC may have with the transfer application prior to its filing and publication. My clients have met with the principle of Edwards Family, LLC, have made their expert available to meet with Edwards Family, LLC's consultants, and have made it known both to Edwards Family, LLC and its counsel that they welcome further discussion of the issues in an effort to educate all parties and resolve the same.

Despite my clients' efforts, Edwards Family, LLC filed a protest to the transfer literally at the last possible moment. The protest requests removal of a well from the "scope of the Transfer" which is not listed as a point of diversion proposed by the transfer. It is apparent from this fact that Edwards Family, LLC was determined to file the protest irrespective of any attempts my clients made or might have made to resolve issues.

Given the facts listed above, my clients believe that the most efficient use of IDWR's resources with regard to this matter is to simply set a hearing as soon as possible, rather than proceeding to a prehearing conference. To that end, I suggest that IDWR immediately request available hearing dates for the next three months from the parties. To further expedite the process in this matter, I enclose herewith a Motion for Order Permitting Discovery for your consideration and immediate action. I urge you to issue an Order permitting the initiation of discovery so that the parties can immediately move towards an expeditious resolution of this matter..

I look forward to hearing from you that this matter will be set for hearing expeditiously, and look forward to your Order Authorizing the Initiation of Discovery. Please contact me with questions or concerns.

Sincerely,



Charles L. Honsinger

cc: Tom Terteling
Ed Squires
Dana Hofstetter

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SEP 14 2005
WATER RESOURCES
WESTERN REGION

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

Attorneys for Applicant The Terteling Company, Inc.

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.	MOTION TO COMPEL DISCOVERY

COMES NOW, the applicant, The Terteling Company, Inc., by and through its attorneys of record, Ringert Clark, Chartered, and hereby moves the Idaho Department of Water Resources for an Order permitting the initiation of discovery in this matter. This motion is made pursuant to IDAPA 37.01.01.521

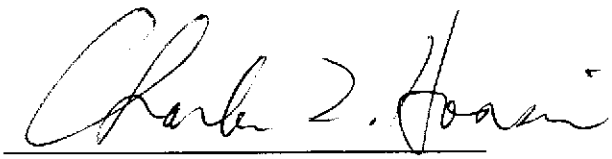
DATED This 14th day of September, 2005.

Charles L. Honsinger
RINGERT CLARK, CHARTERED

CERTIFICATE OF MAILING

I hereby certify that service of the within and foregoing Stipulation to Withdrawal of Protest was made this 14th day of September, 2005, by mailing a copy thereof, postage prepaid, to each of the parties listed below.

Dana L. Hofstetter
Hofstetter Law Office, LLC
608 W. Franklin St.
Boise, ID 83702



Charles L. Honsinger

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SEP 14 2005
WATER RESOURCES
WESTERN REGION

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

Attorneys for Applicant The Terteling Company, Inc.

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.	MOTION TO COMPEL DISCOVERY

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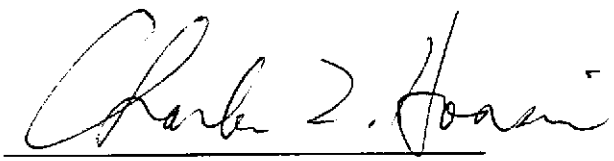
DATED This 14th day of September, 2005.

Charles L. Honsinger
RINGERT CLARK, CHARTERED

CERTIFICATE OF MAILING

I hereby certify that service of the within and foregoing Stipulation to Withdrawal of Protest was made this 14th day of September, 2005, by mailing a copy thereof, postage prepaid, to each of the parties listed below.

Dana L. Hofstetter
Hofstetter Law Office, LLC
608 W. Franklin St.
Boise, ID 83702



Charles L. Honsinger

11/99

RECEIVED
SEP 0 6 2005
WATER RESOURCES
WESTERN REGION

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

NOTICE OF PROTEST

This form may be used to file a protest with the department under sections 42-108B, 42-203A, 42-203C, 42-211, 42-222 and 42-224, Idaho Code. The department will also accept a timely protest not completed on this form if it contains the same information.

1. Matter being protested Application for Transfer No. 71690 .

2. Name of protestant Edwards Family LLC .

3. Protestant's Representative for service (If different than protestant)

   Dana L. Hofstetter, Hofstetter Law Office, LLC .

4. Service mailing address 608 West Franklin Street, Boise, Idaho 83702 .

5. Service telephone no. (208) 424-7800 .

6. Basis of protest (including statement of facts and law upon which the protest is based)

   The proposed changes could injure other water rights, could constitute an enlargement in use of the original water rights, are inconsistent with conservation of the geothermal resource, are not in the local public interest and could affect the local economy .

   (additional pages may be attached to describe nature of the protest)

7. What would resolve your protest? Appropriate restrictions and conditions on any approval, including without limitation, the following: Inclusion of the conditions of the prior Transfer No. 68558 approval; recognition of the restrictions of *Silkey v. Tiegs* for junior uses from the Stewart Gulch Geothermal Aquifer, application of the IDWR policy requiring separate transfer applications for separate diversion systems; either inclusion of the Motorcycle well within Water District 63-S or its removal from the scope of the Transfer; delay of Transfer processing while the associated water rights remain pending in the SRBA .

I hereby, acknowledge that if I, or my designated representative, fails to appear at any regularly scheduled conference or hearing in the matter of which I have been notified at the address above, the department may issue a notice of proposed default against me in this matter for failure to appear. I also verify that I have served a copy of this protest upon the applicant.

Signed this 6th day of September, 2005.

Protestant

Protestant's Representative

PROTEST

NOTE:

A protestant is required to timely file a protest with the department together with a $25.00 protest fee for each application being protested in order for the protestant to be considered a full party by the department. In addition, the department's Rule of Procedure, IDAPA 37.01.01203, requires a protestant to send a copy of a protest to the applicant.

INSTRUCTIONS

1. The matter being protested must be clearly identified. A typical matter is identified by the application number such as "Application for Permit No. _____ in the name of _____" or "Application for Transfer No. _____ in the name of _____."

2. Show the name of the protestant. Only one (1) protestant may be shown per protest form. If this protest form is signed by more than one person, the hearing officer will consider the first signer as the official protestant and the representative for service of documents.

3. If the protestant is represented by an attorney or other authorized representative, show the representative's name. The department then will serve documents on the representative and upon the protestant if specifically requested.

4. Show the address where the department is to serve the documents. This should be the address of the authorized representative unless the protestant does not designate a representative.

5. Show the telephone number of the authorized representative unless the protestant does not designate a service representative.

6. Specifically describe the nature of the protest.

7. Describe the relief being sought by the protestant.

FOR DEPARTMENT USE ONLY

Received by _____ Date 9/6/05 Time 5:00pm

$25.00 fee Receipted by _____ # W033376 Date 9/6/05

The Idaho Statesman

RECEIVED
AUG 29 2005
WATER RESOURCES
WESTERN REGION

P.O. Box 40, Boise, Idaho 83707-0040

LEGAL ADVERTISING PROOF OF PUBLICATION

Account #	DTI#	Identification	Amount:
047628	1334304	PROPOSED CHANGE	$70.52

Attention:	P.O. #	Run Dates
STEVE LESTER		AUGUST 18, 25, 2005

IDAHO DEPT. WATER RESOURCES WEST
2735 AIRPORT WY.
BOISE, ID 83705

Number of Lines: 42

Affidavit	Legal #
1	23290

LEGAL NOTICE
PROPOSED CHANGE OF WATER RIGHT

The Terteling Company, Inc. of 3823 N. 36th St., Boise ID 83703 filed Application No. 71690 to transfer three water rights with 1921 to 1927 priority dates from geothermal ground water totaling .86 cfs in the Stewart Gulch area. Currently, the rights cover heating, domestic and irrigation uses for a greenhouse operation near 36th St. and Hill Rd., which uses three geothermal wells, and heating and irrigation uses for a greenhouse operation near Cartwright Rd., which uses one geothermal well. The purpose of the transfer is to add 3 geothermal wells near Cartwright Rd. (2 existing and 1 proposed). Water will continue to be used in Stewart Gulch for the greenhouse operations described above.

For specific details regarding the application, please contact the Idaho Department of Water Resources (IDWR) Western Region at 208-334-2190 or visit www.idwr.idaho.gov with detail provided under "new water right applications". Protests may be submitted based on the criteria of Sec 42-222, Idaho Code. Any protest against the proposed change must be filed with IDWR Western Region, 2735 Airport Wy, Boise ID 83705-5082 together with a protest fee of $25.00 for each application on or before 9/6/2005. The protestant must also send a copy of the protest to the applicant.

KARL J DREHER, Director

Pub. Aug.18,25, 2005 23290

JANICE HILDRETH, being duly sworn, deposes and says: That she is the Principal Clerk of *The Idaho Statesman,* a daily newspaper printed and published at Boise, Ada County, State of Idaho, and having a general circulation therein, and which said newspaper has been continuously and uninterruptedly published in said County during a period of twelve consecutive months prior to the first publication of the notice, a copy of which is attached hereto: that said notice was published in The Idaho Statesman, in conformity with Section 60-108, Idaho Code, as amended, for:

TWO

[X] consecutive weekly [ ] single
[ ] consecutive daily [ ] odd skip
insertion(s)

beginning issue of: AUGUST 18, 2005
ending issue of: AUGUST 25, 2005

Janice Hildreth

STATE OF IDAHO)
.ss
COUNTY OF ADA)

On this 25 day of AUGUST in the year of 2005 before me, a Notary Public, personally appeared before me Janice Hildreth known or identified to me to be the person whose name subscribed to the within instrument, and being by me first duly sworn, declared that the statements therein are true, and acknowledged to me that she executed the same.

Kerry Bingman

Notary Public for Idaho
Residing at: Boise, Idaho
My Commission expires: 3-27-09

6/05

RECEIVED
AUG 26 2005
WATER RESOURCES
WESTERN REGION

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

RECOMMENDATION OF WATER MASTER

Application No: 71690

Applicant's Name: The Terteling Company, Inc

Watermaster's Recommendation:

a) X I do not oppose approval of this application.

b) _____ I do not oppose approval of this application if it is conditioned as follows: ☐ Cannot divert after June 15 unless contacts me first.

Other conditions: _____

c) _____ I oppose approval of this application for the following reasons:

d) _____ Additional comments: _____

Dated this 26th day of August, 2005

Water District No: 635

Watermaster's signature

Use reverse side of page if you need more space.

MEMORANDUM

TO: Transfer File No. 71690

FROM: Lori Graves

DATE: 8/4/2005

RE: Evaluation of Sufficiency of Information Submitted

Brief: Applicants propose adding 6 geothermal wells (5 existing and 1 proposed) to their existing geothermal system and expand their place of use for heating for flexibility and backup purposes. The well sites are located near Cartwright Road in Stewart Gulch north of Boise.

Contact person for the applicant is Charlie Honsinger.

Authority to File: Applicants are owners of record.

Water Right Validity: Rights presumed to be valid based on pending SRBA recommendations. Claims were verified for previous transfer no. 68558 approved 10/09/2002.

Injury to Other Water Rights: None anticipated. All proposed and existing wells, except the Motorcycle Club hot well, are located within the Stewart Gulch Water District 63S and are monitored and regulated by the water master of this district (Ken Neely). Although the Motorcycle Club hot well is located outside the district boundaries, monitoring data from this well is collected weekly and submitted to IDWR (Ken Neely) quarterly as part of the stipulated agreement related to the City of Boise's application for additional withdrawals in the Boise Front Geothermal Ground Water Management Area (BFGWMA). Ken stated that from a hydrologic point of view, if some percentage of applicants' production is shifted to the Motorcycle Club hot well, the results should be beneficial to Water District 63S since it has been established that the Motorcycle Club hot well is fault-separated from the geothermal wells in the district.

Enlargement of Use: No change in nature of use has been proposed.

Local Public Interest: No negative impacts are anticipated.

Beneficial Use/Conservation of Water Resources: Applicants proposed beneficial use consistent with conservation of water resources in Idaho.

Review of the application finds there is no clear inconsistency with criteria of I.C. § 42-222 preventing processing of this application.

Additional Information: A letter was sent to Charlie Honsinger on 8/13/04 requesting additional information relative to the original transfer, including submittal of a monitoring plan and system diagram. The requested information was submitted with a letter from Charlie Honsinger 8/31/2004. Steve Lester and I met with Charlie Honsinger and Ed Squires on 11/10/04 and 12/10/04 regarding the intent of the transfer. An amended transfer was received 12/23/04 as a result of these meetings. Please see discussion below for further information.

Ken Neely was asked to review the original transfer. His response dated 8/6/2004 is located in the file. Ken was then asked to review the amended transfer. His response dated 1/7/2005 is also included.

Members of Water District 63S will be sent notice of this application including Garnette Monnie of Edwards Greenhouse and their attorney, Dave Hendrickson of Quail Hollow Golf Course, Mary and Rose Ryan, and the Whitehead Well Users c/o Helen Miller.

Discussion: Transfer no. 68558 was approved in 2002, which allowed applicants to combine three decreed geothermal rights and wells, aka the Flora wells, that provide water to the original Flora Greenhouse operation located at the intersection of Hill Road and 36th Street. The transfer also allowed applicants to add a fourth geothermal well, aka the Windsock well, to the rights and move some or all of the Flora Greenhouse operation up gradient in the geothermal aquifer near the Windsock well. The new greenhouse site is located in Stewart Gulch above Quail Hollow Golf Course adjacent to Cartwright Road. The transfer was protested by Edwards Greenhouses, which also divert water from the same geothermal aquifer. As a result, approved transfer 68558 was made subject to a settlement agreement reached between the protestants and the applicants. This transfer will remain subject to that agreement and conditions listed on approved transfer 68558.

The 34 year old Windsock well is currently the only source of geothermal water for the new Flora Greenhouse operation located in Stewart Gulch. Applicants filed this transfer because they are concerned that the well may potentially fail when pumped at capacity for heating the greenhouses during the winter months. A down-hole camera inspection was conducted on the well in August 2004, which revealed a severely corroded casing subject to collapse. As a result, arrangements have been made to install a new liner casing and to pressure grout seal the new casing into place for the long term. Due to delays involved with the well repairs, applicants requested permission in late 2004 to temporarily divert a portion of water rights 63-12, 13 and 15 from their low temperature geothermal "Pool" well for space heating purposes within the new Flora Greenhouses. The Pool well is one of the six proposed wells listed on this transfer. The request was approved under a water bank lease.

The monitoring plan mentioned above under "Injury" is applicants' BFGWMA monitoring plan that was required by an order accepting settlement issued by the Director dated September 6th, 2002, related to the City of Boise's request for additional

withdrawals in the BFGWMA involving water rights 63-9138 and 63-9139. A copy of that monitoring plan is attached to applicants response letter dated 8/31/2004. Six of the ten wells listed as points of diversion on this transfer are currently subject to that monitoring plan and are equipped with monitoring, reporting and controlling works. These wells include the Flora and Windsock wells along with the Motorcycle Club hot well and the Pool well. Applicants stated that they plan to similarly equip the other four proposed diversion points upon approval of this transfer. These four wells have not been subject to the BFGWMA or Water District 63S provisions because one is proposed, and the other three were drilled as domestic wells. Once the transfer is approved, all ten wells will be subject to the BFGWMA provisions and nine of the ten wells, excluding the Motorcycle Club hot well, will be subject to Water District 63S provisions. Fortunately, Ken Neely, with IDWR, manages the data collection from both designations.

Note: Applicants current BFGWMA monitoring plan will need to be updated to include an additional four points of diversion once this transfer is approved.

Overlaps: The following table identifies the water rights associated with each proposed well. These rights have yet to be reviewed and recommended in the SRBA.

P/D	Water Right #
T4N R2E S28 NWSW (Flora Tiegs Well)	63-12, 13, 15
S29 NESE (Flora Silkey Well)	63-12, 13, 15
S29 NESE (Flora Office Well)	63-12, 13, 15
S22 NWSW (Windsock Well)	63-12, 13, 15, 3603, 7595
S22 SWNW (Pool Well, aka Joe's Well)	63-3603, 7595, 31050, 31052
S22 NWNE (Motorcycle Hot Well)	63-3603, 7595
S21 NESE (Tom's Hot Well)	63-31059
S22 NENW (Terteling Springs Well)	63-31054
S22 SWNW (Peaceful Cove Well, Aka Andy's Well)	63-31057

The Pool well is both a cold water well and a hot water well. The well is 10" to 150', which produces artesian cold water. Inside the 10" is an 8" casing to 524', which produces artesian hot water. 63-31050 represents the cold water uses and 63-31052 represents the hot water uses. The pool well is also a back-up well for irrigation rights 63-3603 and 63-7595. Per Charlie Honsinger, SRBA claim 63-31054 represents the Terteling Springs well, however lists the wrong p/d. Charlie submitted an amended claim 1/06/2005 to correct the p/d location.

Other overlaps represent separate cold water wells n/a to this transfer and include rights 63-30006, 31051, 31053, 31056 and 28364.

Note: Although the Motorcycle Hot well, Pool well and Windsock well are listed as p/ds on irrigation rights 63-7603 and 63-7595, the primary source for these rights is a cold

water well, aka the Champagne well, located in the NWNE S22 (added to the rights per approved transfers T3990 and T4202).

The overlapping rights listed above should not be added as associated rights to this transfer since there are no conditional limitations applicable.

Amended Transfer 12/23/2004: Charlie was notified that the location of the proposed well listed on the original transfer did not match well's location of the attached map and that domestic/heating uses were listed in areas not covered by rights 63-12, 63-13 and 63-15. Charlie Honsinger stated that the proposed well location and domestic expansion was in error, but the expanded heating use was intentional. He explained that the applicants want heating use under rights 63-12, 63-13 and 63-15 to cover Joe Terteling's house, Tom Terteling's house, and Andy Terteling's house. The problem is that these homes are covered with the following SRBA claims for heating use: 63-31052 (Pool well for Joe's house), 63-31057 (Peaceful Cove well for Andy's house) and 63-31059 (Tom's hot well for Tom's house). The SRBA claims were not listed on the transfer, however, their points of diversion and places of use were. As a result, Charlie Honsinger was informed that it appeared the transfer would result in a water right "stacking" situation, which is not authorized under department guidelines.

Charlie then arranged a meeting 11/10/04 with Ed Squires, Steve Lester and myself to discuss the intent of the transfer and possible solutions. Charlie explained that because the SRBA claims are located in the Water District 63S and have later priority dates, Joe Terteling was afraid that the domestic heating uses under the claims would be shut off if there was a call for water. According to Steve Lester, the likelihood of this happening was virtually nonexistent, but theoretically possible. Applicants want the ability to heat the homes with water authorized under rights 63-12, 63-13 and 63-15 only during times of curtailment. Steve asked Charlie to provide a structured plan that was manageable and would not result in an expansion of the water rights.

Charlie arranged another meeting on 12/10/04 to discuss the possibility of using the Pool well as a back-up source at all times, rather than only during times of curtailment. The reason for this request is to avoid having to ask the department for temporary approval again during times of possible well failure. Charlie was asked to provide a structured plan that was manageable and would not result in an expansion of the water rights. Steve also asked Charlie to propose conditions for the transfer.

An amended transfer was received on 12/23/04 along with a detailed narrative addressing the purposes of the transfer and suggesting proposed conditions. The amended transfer appears acceptable because applicants have proposed that all the points of diversion will be equipped with calibrated, high quality totalizing flow meters located in key locations where diversions from the wells for rights 63-12, 63-13 and 63-15 can be monitored separately from diversions from the wells for other rights and will be monitored and

reported quarterly to the watermaster in accordance to the attached BFGWMA monitoring plan.

As stated in Charlie Honsinger's letter dated 12/22/04, in an effort to prevent a protest, applicants have met with and have provided Edwards Greenhouses with all information necessary to evaluate the transfer application. Applicants have also requested three years to complete the transfer.

Amended Transfer 4/21/2005: Applicants submitted an amended transfer listing eight wells rather than ten. Tom's well and the Peaceful Cove well aka Andy's well were removed. To prevent the possibility of expansion and/or stacking, they decided not to pursue domestic heating uses at the three homes (Joe's, Tom's and Andy's) during times of possible curtailment in Water District 63-S. Heating uses for these three homes will be only covered under claims 63-31052, 63-31057 and 63-31059.

Charlie Honsinger also submitted a letter dated 5/17/2005 that asked the department to evaluate the water rights listed in this transfer as they were approved per transfer no. 68558. Charlie submitted this request because the applicant's amended SRBA claims 63-12, 63-13 and 63-15 in 2004, after the approval of transfer no. 68558, to include commercial and aesthetic uses. SRBA staff confirmed that the rights will be recommended as approved per transfer 68558.

Although the proposed diversions are listed in 40 acre tracts, they were data entered in workflow to the 10 acre tract per the latest attached map and Pam Skaggs' request.

Change Per Parallel Processing 6/1/2005: Department administration confirmed that since the Motorcycle well is located in a separate aquifer, it cannot be approved as part of the transfer proposal. Although it would benefit Water District 63S because it would be drawing from a separate aquifer, diversion from the well would act like a new appropriation in the Motorcycle well's aquifer. See excerpts from 5c(7) of the Transfer Memo regarding injury to other water rights/changing aquifer source.

A study was done about 5 years ago by Ed Squires for Joe Terteling confirming that the Motorcycle well was in a separate aquifer, which resulted in redrawing the boundaries of Water District 63S to exclude it. As a result, the Motorcycle well cannot be included on the transfer approval. Charlie Honsinger was notified of this change 5/25/2005.

Conditions: Assuming protests are not filed and/or other information does not contradict the above analysis, and assuming it is determined the application should be approved, the conditions listed on the draft transfer approval should be applied.

Graves, Lori

To: clh@ringertclark.com
Subject: Terteling Transfer-Motorcycle Well

Charlie, the Motorcycle well is located in a separate aquifer & it cannot be approved as part of the Terteling transfer no. 71690. It would benefit WD 63S because it would be drawing from a separate aquifer, but diversion from the well would act like a new appropriation in the Motorcycle well's aquifer. See excerpts from the Transfer Memo below, 5c.(7).

5c. Injury to Other Water Rights

For any application for transfer, the department must determine whether the proposed change will injure any other rights, whether junior or senior in priority to the right being changed. The following factors must be considered when processing a transfer and may require additional information from the applicant.

(7) Changing Aquifer Source

.....An application for transfer **proposing to change the point of diversion from one distinct aquifer to a totally separate aquifer is not approvable**, just as an application for transfer proposing to change the point of diversion for a surface water right from one distinct surface water source to a totally separate surface water source is not approvable.

There was a study done about 5 years ago by Ed Squires for Mr. Terteling confirming that the Motorcycle well was in a separate aquifer that resulted in redrawing the boundaries of 63S to exclude it. As a result, the Motorcycle well cannot be included on the transfer approval. Please let me know if you have any comments and/or questions Charlie.

Lori Graves
Sr. Water Resource Agent
IDWR, Western Region

Is there problem w/ some email printing w/ new PC ... no date or from info here?
-K 8/10/05

July 2004

OK TO PROCESS RE AJ... WAS A/READY FOR ALONG IN PROCESSING -SL

WESTERN REGION TRANSFER REVIEW CHECKLIST

Applicant Terteling Company Inc **Transfer #** 71690

RIGHTS INVOLVED (WR or AJ records being transferred)

Record #	63-12	63-13	63-15	
	WR or (AJ)	WR or (AJ)	WR or (AJ)	WR or AJ
RightID Correct	YES for all records – work with SO until correct record is selected			
Split	Y or (N)	Y or (N)	Y or (N)	Y or N
Changed Part #				
Unchanged Part #				

COMMENT LETTERS / Y = see below ____ N

	Date requested	Date received
/ Water District # 63S	8/11/05	8-15-05
____ IDFG		
____ Delivery organization *		
/ Other 5 parties listed *	8/11/05	

* list here or see attached

1. Whitehead Well Users c/o Helen Miller 4023 N Whitehead St Boise Id 83703

2. Mary & Rose Ryan 4504 Foothills Dr Boise Id 83703

3. Edwards Family LLC c/o Barnette Monroe 4106 Sand Ck Boise Id 83703

LEGAL NOTICE

Statewide ads	____ Y	/ N
Affidavit(s) received	____ Y	____ N
Published correctly	____ Y	____ N = see below
Republished correctly	____ Y	____ N
Protest(s) received	____ Y	____ N

Protest deadline 9/6/05

4. Hofstetter Law Office LLC Attn: Dana Hofstetter 608 W Franklin St Boise Id 83702

5. Quail Hollow Golf Course c/o Dave Hendrickson 4520 N 36th St Boise Id 83703

CONDITIONS

Transfer # 71690 Page 2

GROUNDWATER:
DRILLING PERMIT (-046)
DP upgrade req'd __Y __ N (contact GW staff)

WMD	- North/East/West
≤ 0.24 cfs/5 acres	- No MD
> 0.24 cfs/5 acres	- 067
~~WMD~~	
≤ 0.24 cfs/5 acres	- No MD
> 0.24 cfs/5 acres	- 01M or 01Q

SURFACE WATER:

WD	~~-R05~~ R04
≤ 0.20 cfs/others	- R02, 01P or No MD
> 0.20 cfs	- R43 modified
~~WD~~, SPRINGS/SINK, INACTIVE WD & REST OF STATE	
≤ 0.24 cfs/5 acres	- No MD
>0.24 cfs/5 acres	- 01M or 01Q

STANDARD SEASON 3/1 to 11/15 (use X61 if extended season)
STANDARD VOLUME 4.5 af/ac
CONSUMPTIVE USE VOLUME 3.5 af/ac

SUPPLEMENTAL - 065-104 (where irrigation is the only use)
SUPPLEMENTAL - 100-105 (where there are other uses besides irrigation)

USES:

STORAGE	- 18C-R02-01P-18B-NA
IRR ≤ 5 ac	- R66/R67/R68/R69 (0.03 cfs/ac)
> 5 ac	- R62/R63/R64/R65 (0.02 cfs/ac)
Volume only	- R58/R59/R60/R61
STOCKWATER	- R37 (all BLM/USFS)
MINING- 054-106	
FISH PROP	- 029 (70's basins only)-007-122-106
HEAT/COOL	- R07 (injection well)
FIRE PROT.	- 077
DAIRY	- 082 (zoning if a concern)-106-WD8

USES:

POWER	- 17H-17K (+uses)-025-106
MUNICIPAL	
Restricted area	- 022-075 RAFN – 007-109-X64
Irr., GW supp to SW	- 102
DOMESTIC	
Surface water	- WB5 (Big Wood or Boise above Star Bridge)
	- 27A (Payette River)
>1 in restricted area	- 070-071-075(no parks/common areas, etc)
Irr use listed separate	- WB5

MISC CONDITIONS/REMARKS:

(T07) - 1 yr to develop
(T08) - comply or rescind
T17 - >1 pd, measure all (use w/ WB4)
T18 - Special T17 & R43 combined - multiple pds in WD

Protested (020)-X19 modified
Water Quality - 106-R07

X27 - Number of acres/season in ppu
(X35) – Combined totals of multiple rts
083 - replaces C11 (enlargement rights)

X49 - measure p/'d's (source chg'd to orig trib)
X51 - 2+ yrs to develop
X53 - Use ltd to orig. source availability
X54 - forfeited ac/rate (used rarely)
X55 - (transfer shrinks total water to less ac)
004 - no right-of-way
X58 - pending claim (statutory or AJ b/u claim)
X61 - extended irr season
X62 - replaces N11 and N13
X63 - replaces C12
(WB4) - + p/ds, cfs & afa (used with T17)
WD8 - land application of waste water
01Q - used instead of 01M when there's another meas. Cond (i.e. T17 & 01M)

Apply one to chg'd & unchg'd rts that are subject to SRBA:
(T09) - on-going SRBA (no Dir Rpt yet)
T19 - replaces C18 (if at Directors Report or Partial Decree stage)

T20 – use only on unchg'd rts not subject to SRBA

Additional Information: Conditions approved on x-fer 68558 + 046 and special general conditions.

Shape files completed by _____ **Date** 1/12/05

Initial Review by _____ **Date** 1/4/05

SO Review by _____ } ? incomplete

Regional Manager Review by _____ ____

Scanning completed and file forwarded to State Office by _____ ____

July 2004

SUPPLEMENTAL TRANSFER REVIEW CHECKLIST

▶ E'folder name Terteling Co. 71690
(applicant last name + transfer application #)

▶ Right Numbers * 63-12, 63-13, 63-15

▶ Legal Notice Word file name Transfer 71690 - Terteling

saved at "Taylor" folder in AW02Common

▶ Emails Reviewer, check one:

____ WR record transferred ___/___ AJ record transferred

Reviewer, check one for Email sent, include e'folder name & brief sentence about purpose of transfer:

____ WR record = Pam ___/___ AJ record = Don, copy to Pam & Jan

SCANNING

Note: underline = label/profile scanned documents, also see PowerDocs User Guide, Appendix B & C.

▶ **PowerDocs:** Application (amended if applicable) with attachments ✓

▶ **PowerDocs:** Correspondence legal notice - ad & cover letter/email ✓

▶ **AO12 E'folder:** Draft approval ✓

▶ **AO12 E'folder:** Review memo lg

▶ **AO12 E'folder:** Review memo attachment ____

BEFORE FILE SENT TO STATE OFFICE

▶ Review memo/Review memo attachment scanned to PowerDocs ____

▶ Other permanent documents at E'folder scanned to PowerDocs ____

▶ All remaining permanent documents scanned to PowerDocs ____

▶ Green scanning sheet completed & added to transfer file ____

OMPLETED FORM IN ALL WESTERN WR FILES LISTED

HOFSTETTER LAW OFFICE

608 West Franklin Street
Boise, Idaho 83702

Dana@IdahoWaterLaw.com

Dana L. Hofstetter
Attorney at Law

Telephone: (208) 424-7800
Facsimile: (208) 424-8774

RECEIVED
MAR 21 2006
DEPARTMENT OF
WATER RESOURCES

March 17, 2006

Assistant to Director
Idaho Department of Water Resources
P.O. Box 83720
Boise, Idaho 83720-0098

Re: Application for Transfer No. 71690 – The Terteling Company, Inc.

Dear Assistant to Director:

Enclosed are the original (with Exhibits 100-141) and a copy (without Exhibits) of the following document in the above-referenced case:

EDWARDS FAMILY LLC'S INFORMATION DISCLOSURE PURSUANT TO FEBRUARY 17, 2006 PREHEARING ORDER

Please file the original (with Exhibits 100-141), conform the copy and return the conformed copy in the enclosed addressed and stamped envelope. Thank you for your assistance.

Sincerely,

HOFSTETTER LAW OFFICE, LLC

Dana Hofstetter

Dana L. Hofstetter

E:/3006.1/6827

RECEIVED
MAR 21 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

ORIGINAL

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.	**EDWARDS FAMILY LLC'S INFORMATION DISCLOSURE PURSUANT TO FEBRUARY 17, 2006 PREHEARING ORDER**

Edwards Family LLC, by and through its counsel of record, Dana L. Hofstetter of Hofstetter Law Office, LLC, respectfully submits this *Information Disclosure Pursuant to February 17, 2006 Prehearing Order*. To the extent that additional information subsequently is identified, Edwards Family LLC reserves the right to supplement this Information Disclosure.

a. Names of All Persons Who Have Specific Knowledge Regarding Material Facts Directly Related to Transfer No. 71690.

Ken Neely, District 63-S Watermaster. Mr. Neely has knowledge about the Water District 63-SWatermaster's responsibilities, the operations of Water District 63-S and the impact of the proposed Transfer on the operations of Water District 63-S. Mr. Neely may be called to testify.

Norm Young, ERO Resources, Technical Consultant. At the Applicant's invitation and accompanied by a representative of the Applicant, Mr. Young recently viewed the proposed additional points of diversion and places of use under the Transfer Application. Mr. Young is expected to testify.

b. A List of Any Expert Witnesses With Specific Opinions Related to Transfer No. 71690.

Norm Young, ERO Resources, Technical Consultant. Mr. Young is expected to testify regarding the following opinions:

Adding the proposed points of diversion to Water Rights 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 opinion is based upon:

1) 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. 71690 should be conditioned to require that all resulting increased costs incurred by Water District 63-S will be paid by the applicant.

2) 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.

3) 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 new 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 Right Nos. 63-12, -13, and -15 when water from the proposed backup well is available for delivery to the greenhouses

4) Transfer No. 71690 proposes to add points of diversion for which Snake River Basin Adjudication ("SRBA") claims for other water rights have 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 irrigation as a use overlapping with the irrigation place of use claimed under Right Nos. 63-12, -13, and -15. If approved, in order to avoid resulting enlargement and injury, Transfer No. 71690 should be conditioned to:

a) Provide for the watermaster to be informed at all times about which right is being diverted;

b) Extend the scope of watermaster regulation to include the places of use;

c) 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

d) Assess the rate and volume of diversion starting with the oldest priority right and continuing in priority sequence from each point of diversion.

5) IDWR policy requires that the processing of Transfer No. 71690 be delayed until the rights listed in the application and other rights associated with 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. 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 filed 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 result in an enlargement in use of water under the rights and may injure the water rights of others.

6) IDWR policy requires separate transfer applications for the two 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.

7) 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 the Terteling Springs well to be regulated as part of Water District 63-S. 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.)

8) 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 on agreements between the parties, enlargement and injury will occur.

c. A List of all Documents, Expert Reports or Prepared Testimony, Audio-Recordings, Pictures, and all Other Items Containing Information Directly Relevant to Transfer No. 71690, As Well As a Separate Description of All Documents, Expert Reports, Prepared Testimony, and Exhibits Intended to be Introduced Into Evidence at the Hearing.

Any and all documents and other materials that are in the files of the Idaho Department of Water Resources and that relate in any way to Transfer No. 71690, Water District 63-S, any geothermal rights or claims diverted from the Stewart Gulch Geothermal Aquifer, *Silkey v. Tiegs* related documents and filings, and prior Transfer Nos. 3990, 4202 and 68558. Copies of such documents which may be introduced as evidence at the hearing are attached hereto as Exhibits 100-141. (Any of the filings in

the subject case, such as the Transfer Application, which may be referred to at hearing, are not identified as exhibits since they already are part of the record in this proceeding. Also, any applicable statutes and any applicable policies, guidance or regulations of the Department may be referred to at the hearing without being identified as an exhibit here.)

DATED this 17th day of March, 2006.

HOFSTETTER LAW OFFICE, LLC
for Edwards Family LLC

DANA L. HOFSTETTER

CERTIFICATE OF SERVICE

I hereby certify that on the 17th day of March, 2006, I caused to be served copies of the foregoing **Edwards Family LLC's Information Disclosure Pursuant to February 17, 2006 Prehearing Order** 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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RECEIVED
[illegible]
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

ORIGINAL

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.	**EDWARDS FAMILY LLC'S INFORMATION DISCLOSURE PURSUANT TO FEBRUARY 17, 2006 PREHEARING ORDER** **EXHIBITS 100-141**

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.

DECREE.

This case came regularly on for trial before the court without a jury on the ____ day of January, 1930, 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 constittes 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 May 1, 1921, and with pri

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July 1, 1921, and with priority as to thirty-three miners inches of such water dating from July 1, 1922, said water being decreed 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°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°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~~

(3) Defendant Thomas F. ~~Edwards~~ is hereby decreed the right to the use of ~~forty-two 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 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 degree 50 minutes West a distance of 4.15 chains to an iron bar; thence north 74 degrees 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 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 ~~26.58 acres~~.

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

(4) That the defendant H. W. [illegible] 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 Tiegs aggregates approximately _____acres.

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

(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 (E½) of the Northeast Quarter

(NE¼) of the Northwest Quarter (NW¼) 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 equivalent 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 employees, or their successors in interest, shall have the right to permit his said well to flow or to use water therefrom 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 defendant 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 defendants 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, regulate and measure the flow of said wells.

(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)
) ss. Certificate
County of Ada.)

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 Rutter
Clerk

By Ina Peterson Deputy.

MEMORANDUM

TO: Transfer File No. 71690

FROM: Lori Graves

DATE: 8/4/2005

RE: Evaluation of Sufficiency of Information Submitted

Brief: Applicants propose adding 6 geothermal wells (5 existing and 1 proposed) to their existing geothermal system and expand their place of use for heating for flexibility and backup purposes. The well sites are located near Cartwright Road in Stewart Gulch north of Boise.

Contact person for the applicant is Charlie Honsinger.

Authority to File: Applicants are owners of record.

Water Right Validity: Rights presumed to be valid based on pending SRBA recommendations. Claims were verified for previous transfer no. 68558 approved 10/09/2002.

Injury to Other Water Rights: None anticipated. All proposed and existing wells, except the Motorcycle Club hot well, are located within the Stewart Gulch Water District 63S and are monitored and regulated by the water master of this district (Ken Neely). Although the Motorcycle Club hot well is located outside the district boundaries, monitoring data from this well is collected weekly and submitted to IDWR (Ken Neely) quarterly as part of the stipulated agreement related to the City of Boise's application for additional withdrawals in the Boise Front Geothermal Ground Water Management Area (BFGWMA). Ken stated that from a hydrologic point of view, if some percentage of applicants' production is shifted to the Motorcycle Club hot well, the results should be beneficial to Water District 63S since it has been established that the Motorcycle Club hot well is fault-separated from the geothermal wells in the district.

Enlargement of Use: No change in nature of use has been proposed.

Local Public Interest: No negative impacts are anticipated.

Beneficial Use/Conservation of Water Resources: Applicants proposed beneficial use consistent with conservation of water resources in Idaho.

Review of the application finds there is no clear inconsistency with criteria of I.C. § 42-222 preventing processing of this application.

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Additional Information: A letter was sent to Charlie Honsinger on 8/13/04 requesting additional information relative to the original transfer, including submittal of a monitoring plan and system diagram. The requested information was submitted with a letter from Charlie Honsinger 8/31/2004. Steve Lester and I met with Charlie Honsinger and Ed Squires on 11/10/04 and 12/10/04 regarding the intent of the transfer. An amended transfer was received 12/23/04 as a result of these meetings. Please see discussion below for further information.

Ken Neely was asked to review the original transfer. His response dated 8/6/2004 is located in the file. Ken was then asked to review the amended transfer. His response dated 1/7/2005 is also included.

Members of Water District 63S will be sent notice of this application including Garnette Monnie of Edwards Greenhouse and their attorney, Dave Hendrickson of Quail Hollow Golf Course, Mary and Rose Ryan, and the Whitehead Well Users c/o Helen Miller.

Discussion: Transfer no. 68558 was approved in 2002, which allowed applicants to combine three decreed geothermal rights and wells, aka the Flora wells, that provide water to the original Flora Greenhouse operation located at the intersection of Hill Road and 36th Street. The transfer also allowed applicants to add a fourth geothermal well, aka the Windsock well, to the rights and move some or all of the Flora Greenhouse operation up gradient in the geothermal aquifer near the Windsock well. The new greenhouse site is located in Stewart Gulch above Quail Hollow Golf Course adjacent to Cartwright Road. The transfer was protested by Edwards Greenhouses, which also divert water from the same geothermal aquifer. As a result, approved transfer 68558 was made subject to a settlement agreement reached between the protestants and the applicants. This transfer will remain subject to that agreement and conditions listed on approved transfer 68558.

The 34 year old Windsock well is currently the only source of geothermal water for the new Flora Greenhouse operation located in Stewart Gulch. Applicants filed this transfer because they are concerned that the well may potentially fail when pumped at capacity for heating the greenhouses during the winter months. A down-hole camera inspection was conducted on the well in August 2004, which revealed a severely corroded casing subject to collapse. As a result, arrangements have been made to install a new liner casing and to pressure grout seal the new casing into place for the long term. Due to delays involved with the well repairs, applicants requested permission in late 2004 to temporarily divert a portion of water rights 63-12, 13 and 15 from their low temperature geothermal "Pool" well for space heating purposes within the new Flora Greenhouses. The Pool well is one of the six proposed wells listed on this transfer. The request was approved under a water bank lease.

The monitoring plan mentioned above under "Injury" is applicants' BFGWMA monitoring plan that was required by an order accepting settlement issued by the Director dated September 6th, 2002, related to the City of Boise's request for additional

withdrawals in the BFGWMA involving water rights 63-9138 and 63-9139. A copy of that monitoring plan is attached to applicants response letter dated 8/31/2004. Six of the ten wells listed as points of diversion on this transfer are currently subject to that monitoring plan and are equipped with monitoring, reporting and controlling works. These wells include the Flora and Windsock wells along with the Motorcycle Club hot well and the Pool well. Applicants stated that they plan to similarly equip the other four proposed diversion points upon approval of this transfer. These four wells have not been subject to the BFGWMA or Water District 63S provisions because one is proposed, and the other three were drilled as domestic wells. Once the transfer is approved, all ten wells will be subject to the BFGWMA provisions and nine of the ten wells, excluding the Motorcycle Club hot well, will be subject to Water District 63S provisions. Fortunately, Ken Neely, with IDWR, manages the data collection from both designations.

Note: Applicants current BFGWMA monitoring plan will need to be updated to include an additional four points of diversion once this transfer is approved.

Overlaps: The following table identifies the water rights associated with each proposed well. These rights have yet to be reviewed and recommended in the SRBA.

P/D	Water Right #
T4N R2E S28 NWSW (Flora Tiegs Well)	63-12, 13, 15
S29 NESE (Flora Silkey Well)	63-12, 13, 15
S29 NESE (Flora Office Well)	63-12, 13, 15
S22 NWSW (Windsock Well)	63-12, 13, 15, 3603, 7595
S22 SWNW (Pool Well, aka Joe's Well)	63-3603, 7595, 31050, 31052
S22 NWNE (Motorcycle Hot Well)	63-3603, 7595
S21 NESE (Tom's Hot Well)	63-31059
S22 NENW (Terteling Springs Well)	63-31054
S22 SWNW (Peaceful Cove Well, Aka Andy's Well)	63-31057

The Pool well is both a cold water well and a hot water well. The well is 10" to 150', which produces artesian cold water. Inside the 10" is an 8" casing to 524', which produces artesian hot water. 63-31050 represents the cold water uses and 63-31052 represents the hot water uses. The pool well is also a back-up well for irrigation rights 63-3603 and 63-7595. Per Charlie Honsinger, SRBA claim 63-31054 represents the Terteling Springs well, however lists the wrong p/d. Charlie submitted an amended claim 1/06/2005 to correct the p/d location.

Other overlaps represent separate cold water wells n/a to this transfer and include rights 63-30006, 31051, 31053, 31056 and 28364.

Note: Although the Motorcycle Hot well, Pool well and Windsock well are listed as p/ds on irrigation rights 63-7603 and 63-7595, the primary source for these rights is a cold

water well, aka the Champagne well, located in the NWNE S22 (added to the rights per approved transfers T3990 and T4202).

The overlapping rights listed above should not be added as associated rights to this transfer since there are no conditional limitations applicable.

Amended Transfer 12/23/2004: Charlie was notified that the location of the proposed well listed on the original transfer did not match well's location of the attached map and that domestic/heating uses were listed in areas not covered by rights 63-12, 63-13 and 63-15. Charlie Honsinger stated that the proposed well location and domestic expansion was in error, but the expanded heating use was intentional. He explained that the applicants want heating use under rights 63-12, 63-13 and 63-15 to cover Joe Terteling's house, Tom Terteling's house, and Andy Terteling's house. The problem is that these homes are covered with the following SRBA claims for heating use: 63-31052 (Pool well for Joe's house), 63-31057 (Peaceful Cove well for Andy's house) and 63-31059 (Tom's hot well for Tom's house). The SRBA claims were not listed on the transfer, however, their points of diversion and places of use were. As a result, Charlie Honsinger was informed that it appeared the transfer would result in a water right "stacking" situation, which is not authorized under department guidelines.

Charlie then arranged a meeting 11/10/04 with Ed Squires, Steve Lester and myself to discuss the intent of the transfer and possible solutions. Charlie explained that because the SRBA claims are located in the Water District 63S and have later priority dates, Joe Terteling was afraid that the domestic heating uses under the claims would be shut off if there was a call for water. According to Steve Lester, the likelihood of this happening was virtually nonexistent, but theoretically possible. Applicants want the ability to heat the homes with water authorized under rights 63-12, 63-13 and 63-15 only during times of curtailment. Steve asked Charlie to provide a structured plan that was manageable and would not result in an expansion of the water rights.

Charlie arranged another meeting on 12/10/04 to discuss the possibility of using the Pool well as a back-up source at all times, rather than only during times of curtailment. The reason for this request is to avoid having to ask the department for temporary approval again during times of possible well failure. Charlie was asked to provide a structured plan that was manageable and would not result in an expansion of the water rights. Steve also asked Charlie to propose conditions for the transfer.

An amended transfer was received on 12/23/04 along with a detailed narrative addressing the purposes of the transfer and suggesting proposed conditions. The amended transfer appears acceptable because applicants have proposed that all the points of diversion will be equipped with calibrated, high quality totalizing flow meters located in key locations where diversions from the wells for rights 63-12, 63-13 and 63-15 can be monitored separately from diversions from the wells for other rights and will be monitored and

reported quarterly to the watermaster in accordance to the attached BFGWMA monitoring plan.

As stated in Charlie Honsinger's letter dated 12/22/04, in an effort to prevent a protest, applicants have met with and have provided Edwards Greenhouses with all information necessary to evaluate the transfer application. Applicants have also requested three years to complete the transfer.

Amended Transfer 4/21/2005: Applicants submitted an amended transfer listing eight wells rather than ten. Tom's well and the Peaceful Cove well aka Andy's well were removed. To prevent the possibility of expansion and/or stacking, they decided not to pursue domestic heating uses at the three homes (Joe's, Tom's and Andy's) during times of possible curtailment in Water District 63-S. Heating uses for these three homes will be only covered under claims 63-31052, 63-31057 and 63-31059.

Charlie Honsinger also submitted a letter dated 5/17/2005 that asked the department to evaluate the water rights listed in this transfer as they were approved per transfer no. 68558. Charlie submitted this request because the applicant's amended SRBA claims 63-12, 63-13 and 63-15 in 2004, after the approval of transfer no. 68558, to include commercial and aesthetic uses. SRBA staff confirmed that the rights will be recommended as approved per transfer 68558.

Although the proposed diversions are listed in 40 acre tracts, they were data entered in workflow to the 10 acre tract per the latest attached map and Pam Skaggs' request.

Change Per Parallel Processing 6/1/2005: Department administration confirmed that since the Motorcycle well is located in a separate aquifer, it cannot be approved as part of the transfer proposal. Although it would benefit Water District 63S because it would be drawing from a separate aquifer, diversion from the well would act like a new appropriation in the Motorcycle well's aquifer. See excerpts from 5c(7) of the Transfer Memo regarding injury to other water rights/changing aquifer source.

A study was done about 5 years ago by Ed Squires for Joe Terteling confirming that the Motorcycle well was in a separate aquifer, which resulted in redrawing the boundaries of Water District 63S to exclude it. As a result, the Motorcycle well cannot be included on the transfer approval. Charlie Honsinger was notified of this change 5/25/2005.

Conditions: Assuming protests are not filed and/or other information does not contradict the above analysis, and assuming it is determined the application should be approved, the conditions listed on the draft transfer approval should be applied.

Graves, Lori

To: clh@ringertclark.com
Subject: Terteling Transfer-Motorcycle Well

Charlie, the Motorcycle well is located in a separate aquifer & it cannot be approved as part of the Terteling transfer no. 71690. It would benefit WD 63S because it would be drawing from a separate aquifer, but diversion from the well would act like a new appropriation in the Motorcycle well's aquifer. See excerpts from the Transfer Memo below, 5c.(7).

5c. Injury to Other Water Rights

For any application for transfer, the department must determine whether the proposed change will injure any other rights, whether junior or senior in priority to the right being changed. The following factors must be considered when processing a transfer and may require additional information from the applicant.

(7) Changing Aquifer Source

.....An application for transfer **proposing to change the point of diversion from one distinct aquifer to a totally separate aquifer is not approvable**, just as an application for transfer proposing to change the point of diversion for a surface water right from one distinct surface water source to a totally separate surface water source is not approvable.

There was a study done about 5 years ago by Ed Squires for Mr. Terteling confirming that the Motorcycle well was in a separate aquifer that resulted in redrawing the boundaries of 63S to exclude it. As a result, the Motorcycle well cannot be included on the transfer approval. Please let me know if you have any comments and/or questions Charlie.

Lori Graves
Sr. Water Resource Agent
IDWR, Western Region

Is there problem w/ some email printing w/ new PC ... no date or from info here?

-R 8/10/05

EXHIBIT 102

Graves, Lori

From: Graves, Lori
Sent: Wednesday, July 20, 2005 4:04 PM
To: Skaggs, Pam
Cc: Curtis, Sharla
Subject: RE: 71690 Terteling Co -Status Check

Pam, please read the last page of my memo. Sharla updated the draft approval and ArcView based on the 4/21/05 and 6/1/05 info addressed in my memo. We are waiting for a green light to advertise. Let me know what you think. Thx Pam. lg

-----Original Message-----
From: Skaggs, Pam
Sent: Wednesday, July 20, 2005 11:52 AM
To: Graves, Lori
Subject: 71690 Terteling Co -Status Check

Lori,

I have lost track of where we are on this one. This is the last e-mail I have. Did we finish up all the issues or are you waiting on something? Me?? Anyway, let me know where we are.

Pam

-----Original Message-----
From: Skaggs, Pam
Sent: Tuesday, May 24, 2005 2:28 PM
To: Graves, Lori
Subject: 71690 Terteling Co - Document non-approval of Motorcycle well

They don't need to Amend the transfer for us not to include it on the approval. Update your memo to explain why we cannot approve the one requested well. That should be sufficient documentation.

Pam

-----Original Message-----
From: Graves, Lori
Sent: Tuesday, May 24, 2005 2:19 PM
To: Skaggs, Pam
Subject: RE: 71690 Terteling Co - Aquifer Question

Thanks Pam. Will this issue require another transfer amendment or can I just notify Charlie Honsinger that the well will not be included based on the information below?

-----Original Message-----
From: Skaggs, Pam
Sent: Tuesday, May 24, 2005 1:56 PM
To: Graves, Lori
Subject: 71690 Terteling Co - Aquifer Question

Lori,

I discussed this with Jeff & had a conversation with Ken Neely to confirm facts regarding the wells. The Motorcycle well is located in a separate aquifer & it cannot be approved as part of this transfer. It would benefit WD 63S because it would be drawing from a separate aquifer, but diversion from the well would act like a new appropriation in the Motorcycle well's aquifer. See excerpts from the Transfer Memo below, 5c.(7).

5c. Injury to Other Water Rights

EXHIBIT 103

For any application f[redacted]ansfer, the department must determine w[redacted]er the proposed change will injure any other rights, whether junior or senior in priority to the right being changed. The following factors must be considered when processing a transfer and may require additional information from the applicant.

> **(7) Changing Aquifer Source**
>
> .....An application for transfer **proposing to change the point of diversion from one distinct aquifer to a totally separate aquifer is not approvable**, just as an application for transfer proposing to change the point of diversion for a surface water right from one distinct surface water source to a totally separate surface water source is not approvable.

We always give the applicant notice of problems, and a chance to address issues through correspondence. In this case, Ken says that there was a study done about 5 years ago to confirm the Motorcycle well was in a separate aquifer that resulted in redrawing the boundaries of 63S to exclude it. I am not sure how they can argue that it is the same at this point. You should notify them that the Motorcycle well cannot be included on the transfer approval. Allow a brief response time & continue processing as we discussed.

Let me know when other changes/corrections have been completed. The motorcycle well p/d will need to be deleted from workflow & the transfer approval document prior to final review. Call me if you want to discuss any of the above.

Pam

-----Original Message-----
From: Graves, Lori
Sent: Monday, May 23, 2005 2:08 PM
To: Skaggs, Pam
Subject: 71690 Terteling Co - Aquifer Question

It has been established that the motorcycle club well is located in a separate aquifer, but that shouldn't make a difference. We approve transfers on separate sources when a common diversion system is proposed. As Ken Neely stated, if some percentage of applicants' production is shifted to the motorcycle club well, the results would be beneficial to Water District 63S. Please let me know why including the motorcycle club well is an issue. Thx Pam. lg

-----Original Message-----
From: Skaggs, Pam
Sent: Monday, May 23, 2005 1:39 PM
To: Graves, Lori
Cc: Curtis, Sharla
Subject: 71690 Terteling Co - 2ND REPLY

Hi Lori,

I have worked my way through this one again & still have a couple of questions/suggestions.

Jeff & I were wondering how we can add the Motorcycle Club well to the system, since you have already identified it as being separate aquifer from those located in the Stewart Gulch Water District? Your comments in the memo seem to support this. Or are all the geothermal wells in the BFGWMA somehow interconnected? Can you provide further explanation? If not, ask the applicant to provide justification for the inclusion of the MC well.

Injury to Other Water Rights: None anticipated. All proposed and existing wells, except the Motorcycle Club hot well, are located within the Stewart Gulch Water District 63S and are monitored and regulated by the water master of this district (Ken Neely). Although the Motorcycle Club hot well is located outside the district boundaries, monitoring data from this well is collected weekly and submitted to IDWR (Ken Neely) quarterly as part of the stipulated agreement related to the City of Boise's application for additional withdrawals in the Boise Front Geothermal Ground Water Management Area (BFGWMA). Ken stated that from a hydrologic point of view, if some percentage of applicants' production is shifted to the Motorcycle Club hot well, the results should be beneficial to Water District 63S since it has been established that the Motorcycle Club hot well is fault-separated from the geothermal wells in the district.

Workflow & View look really good.

The **Purpose of Transfer** should be changed to reflect only the addition of wells.
The **Pool well** appears to be located within the **SE**SWNW instead of the NESWSW.
Conditions:

Update the WM condition from R04 to **R05**.

Add back **edited T18** for "lockable controlling works" & "WM control". No measuring device needed/already covered.

Add back the phrase "**Unless otherwise determined by the Snake River Basin Adjudication, "** to condition #9 on 63-12 & all the other rights. AJ took it off the recommendations, but decrees are still pending. Also, you have correctly edited the condition to identify all the wells in Sec. 22, but need to also edit the other references to the Windsock well in the condition to "wells in Sec. 22" & match the verb for the plural wells.

Add back a portion of one of Transfer 68558 conditions that reads, **"Diversion and use of water from the wells in Sec. 22, T04N, R02E is contingent upon continued activity of Water District 63-S."** The water district is already active, so we can delete that part of the previous condition & substitute the multiple wells instead of just the Windsock well.

Delete X27 under each right since the combined right limit shows the same limit.

Please respond to the question about the separate aquifers. If they are not interconnected, we will not approve the Motorcycle Club well as part of the approval. When this issue is resolved & all the other minor changes completed, we may be ready for advertising. Let me know when you want me to look again or if you want to discuss anything.

Pam

-----Original Message-----
From: Curtis, Sharla
Sent: Wednesday, May 18, 2005 8:39 AM
To: Skaggs, Pam
Subject: 71690 Terteling Co -FIRST RESPONSE

Hi Pam. Lori and I have worked all the bugs out of this one (at least we think we have) and it's ready for you to have a second look. Lori's review memo covers the items you had questions about, I believe.

Thanks, Pam.

-----Original Message-----
From: Skaggs, Pam
Sent: Wednesday, March 16, 2005 2:03 PM
To: Graves, Lori
Cc: Curtis, Sharla
Subject: 71690 Terteling Co -FIRST REPLY

Hi Lori,

I have looked over this transfer & have a couple of problems.

The foremost is the uses associated with these rights.
Transfer 68558 was approved in Oct. 2002 identifying Heating, Domestic & Irrigation uses.
The AJ Claims were Amended in March 2004 at the claimant's request to include Aesthetic & Commercial uses pursuant to Idaho Code 42-1425 at the highest rate & volume for each right. What exactly are the Aesthetic & Commercial uses claimed & why don't they create an enlargement of use since no adjustments to existing uses was made? Will need to define these uses in conditions also if included on transfer. Jeff wants justification for the added uses from AJ staff prior to including on the transfer approval. If not, we could proceed without the additional uses & AJ can address later.

Th[redacted]nsfer application only identifies Heating, [redacted]estic & Irrigation on Part 1, but shows C for Commercial use in the POU description.
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Probably want to address primary problem above before working on these database problems.
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Regardless of final pou requested for each use, workflow & arc view need to match.

The points of diversion should be identified to the 10 acre tract since they are mostly existing wells clearly identified on the map & well known. Even the proposed new well seems to be specifically located near the green house & is clearly identified on the map.

Conditions look generally good. I will forward a Draft Approval to Jeff to review the non-standard conditions while you address the above. Let me know if you can clarify any of the above from your review.

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From: Curtis, Sharla
Sent: Wednesday, January 19, 2005 6:19 AM
To: Skaggs, Pam
Subject: 71690 Terteling Co -FIRST CONTACT

Hi Pam. This has been reviewed and prepared for S.O. review by Lori (she even did all the data entry to keep in practice). Lots of conditions. Have fun?????

Workflow & [redacted] View look really good. [redacted]

The **Purpose of Transfer** should be changed to reflect only the addition of wells.
The **Pool well** appears to be located within the **SE**SWNW instead of the NESWSW.
Conditions:

Update the WM condition from R04 to **R05**.

Add back **edited T18** for "lockable controlling works" & "WM control". No measuring device needed/already covered.

Add back the phrase **"Unless otherwise determined by the Snake River Basin Adjudication, "** to condition #9 on 63-12 & all the other rights. AJ took it off the recommendations, but decrees are still pending. Also, you have correctly edited the condition to identify all the wells in Sec. 22, but need to also edit the other references to the Windsock well in the condition to "wells in Sec. 22" & match the verb for the plural wells.

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Hi Pam. This has been reviewed and prepared for S.O. review by Lori (she even did all the data entry to keep in practice). Lots of conditions. Have fun?????

Lester, Steve

To: Graves, Lori
Subject: 71690 The Terteling Co Inc - Draft Approval Conditions

Lori:

Jeff clarified things to allow Western to send a letter. Please draft a letter to Charlie including these thoughts:

- transfer policy provides that a change which would not result in an equivalent reduction in beneficial use under the original rights will be presumed to be an enlargement

- a "sliding scale of beneficial use" in which a variable amount of greenhouse use would be reduced to provide water to heat homes does not provide assurance that an enlargement would be avoided

- an "advance notice sliding scale" in which the amount of greenhouse use to be reduced to provide water to heat homes might avoid enlargement if the owner were to quantify the proposed reduction at the beginning of each "heating season"

- it is hard to imagine how this approach would be realistic since the whole idea hinges on an unexpected curtailment of junior rights for the homes

- instead of a sliding scale approach, a permanent reduction in greenhouse use to provide enough water to heat the homes under senior rights could be proposed in a manner to avoid an enlargement of use

- the current proposal to heat homes under senior rights if junior rights were curtailed is presumed to be an enlargement of use that cannot be approved

- application to be rejected or denied if a timely written reply is not received within the next thirty days to: rebut the presumption of enlargement, amend the application to avoid the presumption of enlargement, or request a delay in processing of up to one year

Let me know if you need any help preparing the draft. Please let me see the draft before any mailing occurs.

Steve

-----Original Message-----
From: Lester, Steve
Sent: Thursday, March 24, 2005 7:58 AM
To: Peppersack, Jeff
Subject: RE: WESTERN REPLY TO: 71690 The Terteling Co Inc - Draft Approval Conditions

Jeff:

Thanks for your comments. We'll use the "can't add more uses" approach in a letter, giving the applicant a chance to overcome the presumption of enlargement.

Applicant's intentions clarified as I understand them:

- implied reduction in greenhouse use if switch to homes occurs, verified by measurement equipment for all the wells, allowing tracking of use per well & per right, would document that total rate & volume of senior rights would not be exceeded (use the monitoring equipment instead of identifying a reduction in greenhouse use at the beginning of each heating season - a different slant on the NMID example where id reduced acres prior to irrigation season).

- not truly a "heating ppou" with all the senior & junior rights included but more of a flexible boundary for senior p/u.

I don't think the proposal for homes is necessary, practical or reasonably manageable but guess the applicant can try for it.

Will let you know what response we get to enlargement issue letter. Thanks again for the help.

Steve

EXHIBIT 106

-----Original Message-----
From: Peppersack, Jeff
Sent: Wednesday, March 23, 2005 3:54 PM
To: Lester, Steve
Subject: RE: WESTERN REPLY TO: 71690 The Terteling Co Inc - Draft Approval Conditions

Steve,
When I reviewed the evaluation memo and draft approval conditions there was no mention of a reduction in existing use at the greenhouse operation if the homes were to take advantage of the senior rights. Is that something the applicant proposed?

Even if they did, do we want to make a regular practice of applying the PPU idea to non-irrigation uses (NMID is a good example of what we want to avoid). PPU for irrigation use is an easier concept to apply because the use is measured in acres. I'm not sure asking the water user to document use at the time of curtailment would be satisfactory. Seems like we would need that information up front and an approval condition providing clear instruction regarding the "units" available under each right so the watermaster could quickly determine the number of units authorized under each priority and the number of units that need to be curtailed. The NMID transfer was pretty clear on the switch between irrigation and industrial/recharge.

Another distinction between this application and NMID is that the NMID approval requires the right holder to report the acres to be irrigated and the rate to be diverted for industrial and recharge prior to March 15 of each year. Applied to this application, the right holder would be required to choose the homes or the greenhouse prior to each heating season.

Also keep in mind that we don't apply the PPU concept for irrigation unless all the rights associated with all the acres are part of the application. I didn't see where the application included the jr. heating rights to add them in to the system.

The transfer memo provides that a change which would not result in an equivalent reduction in beneficial use under the original rights will be presumed to be an enlargement. Gary and I agreed that the applicant needs a letter raising the enlargement concern so they have the opportunity to overcome the presumption of enlargement. This will put it in the record and we may be able to advertise even if the response is somewhere in the "gray" area. If protested, the record will be more complete.

Jeff

-----Original Message-----
From: Lester, Steve
Sent: Wednesday, March 23, 2005 2:21 PM
To: Peppersack, Jeff
Subject: WESTERN REPLY TO: 71690 The Terteling Co Inc - Draft Approval Conditions

Jeff:

I am replying to you regarding Pam's 3/22 email to Lori in an effort to arrive at the best place without copying lots of people with email exchanges. There are some cleanup items currently being fixed that Pam already noted (additional uses on claims due to undetected amendments of claims during transfer processing, for example).

The key item is enlargement. Our offices disagree about this. I am not familiar with all the details but understood the idea was this:

- Terteling senior rights have 0.86 cfs & 400 af recently defined by transfer 68558
- owner wants to make sort of a "heating ppou" with senior rights
- if junior right for a home curtailed, switch to senior right to keep heating the home
- show an appropriate reduction in existing use at greenhouse operation to cover the switch if it happens (personally, I can't imagine a right to heat a single home will need to be curtailed in the water district)
- all wells to be equipped for watermaster to track rate & volume to ensure that senior rights limits cannot be exceeded ... lots of details there but apparently Ken Neely is ok with that aspect
- adding homes to senior rights not an expansion since that action matched by an equal reduction at the time of curtailment
- historical rate/volume would not be enlarged in this manner.

Perhaps the file is not adequately documented, explained or conditioned. For example, the owner could be

required to document a be[redacted]cial use at the time of curtailment that cou[redacted]e terminated before providing water to curtailed homes ... alternate but not additional use of senior water. This is conceptually similar to NMID transfer allowing a sliding scale to reduce irrigation & replace it with non-irrigation uses ... making variable uses of the same block of water.

What's next? Pam's email mentions Gary's idea that a letter should be sent etc. Western doesn't want to send a letter explaining something we don't see. If Western is to send a letter along those lines, we need to understand the analysis leading to the conclusion of enlargement. Please provide some explanation that Western can relay to the applicant.

Thanks.

Steve

-----Original Message-----
From: Skaggs, Pam
Sent: Tuesday, March 22, 2005 12:10 PM
To: Graves, Lori
Cc: Lester, Steve; Peppersack, Jeff
Subject: FW: 71690 The Terteling Co Inc - Draft Approval Conditions

Lori,

Jeff looked over the proposed transfer & draft approval. He discussed his concerns with Gary. They both feel that the transfer would create an enlargement of the heating use by attaching the senior rights to the 3 houses served by junior rights. In a time of shortage if curtailment occurred, diversion would continue under the senior rights enlarging their historical use. The suggested condition doesn't adequately address the issue either.

Gary recommends that a letter (for written documentation) be sent to the applicant &/or consultant describing the enlargement concerns and asking them to address the issue with a written response to be evaluated. If we find that they have adequately addressed the issue, we may continue processing. If not, this part of the transfer may not be approvable.

If simply having an alternative p/d associated with the homes for back-up if the original wells have problems is desired by the applicant, a transfer to add a p/d(s) to the junior rights would be appropriate.

I know you are already addressing some of the other problems with uses etc, but this is an important issue that needs to be specifically addressed before we can move forward.

Pam

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Jeff,

I notified Lori of the concerns regarding the additional uses added on the claims & other problems in the application. These rights had specific conditions added in the previous transfer & subsequent preliminary Order from Glen. Could you look over the draft conditions & see if you have any problems with the way they have been suggested.

For your quick reference, I have attached Lori's review memo, a copy of the unsigned previous Amended Approval since it isn't on power docs. Also, a copy of the current AJ recommendation that has slightly modified conditions and a copy of the Draft Approval for the pending transfer.

046 (drilling permit requirements) has been added for the proposed new well.

The transfer adds heating use to 3 houses covered under other junior rights as a back-up. AJ Rights 63-31052, 63-31057 & 63-31059 for heating of homes per Lori's review memo (attached), addressed in condition

15.

A couple of the previous conditions are modified slightly & conditions 6 & 15 on 63-12 are new non-standard conditions proposed added to address concerns under this transfer.

<< File: 68558-Amended-Final.RTF >> << File: 63-12 AJ Recommendation Report.RTF >> << File: Draft Approval.RTF >> << File: Review Memo.doc >>

I am holding these files for Lori's response, so no rush on your comments.

Pam

Graves, Lori

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68558-Amended-Final.RTF

63-12 AJ Recommendation Repo

Draft Approval.RTF

Review Memo.doc

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EXHIBIT 107

Graves, Lori

From: Skaggs, Pam
Sent: Wednesday, March 16, 2005 2:03 PM
To: Graves, Lori
Cc: Curtis, Sharla
Subject: 71690 Terteling Co -FIRST REPLY

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EXHIBIT 108

July 2004

OK PROCESS RE AJ... WAS ALREADY FAR ALONG IN PROCESSING -SL

WESTERN REGION TRANSFER REVIEW CHECKLIST

Applicant Terteling Company Inc **Transfer #** 71690

RIGHTS INVOLVED (WR or AJ records being transferred)

Record #	63-12	63-13	63-15	
	WR or AJ	WR or AJ	WR or AJ	WR or AJ
RightID Correct	YES for all records – work with SO until correct record is selected			
Split	Y or N	Y or N	Y or N	Y or N
Changed Part #				
Unchanged Part #				

COMMENT LETTERS ✓ Y = see below ____ N

	Date requested	Date received
✓ Water District # 635	8/11/05	8-15-05
____ IDFG		
____ Delivery organization *		
✓ Other 5 parties listed *	8/11/05	

* list here or see attached

1. Whitehead Well Users c/o Helen Miller 4023 N Whitehead St Boise Id 83703
2. Mary + Rose Ryan 4504 Foothills Dr Boise Id 83703
3. Edwards Family LLC c/o Garnette Monnie 4106 Sand Cr Boise Id 83703
4. Hofstetter Law Office LLC Attn: Dana Hofstetter 608 W Franklin St Boise Id 83702
5. Quail Hollow Golf Course c/o Dave Hendrickson 4520 N 36th St Boise Id 83703

LEGAL NOTICE

Statewide ads	____ Y	✓ N
Affidavit(s) received	____ Y	____ N
Published correctly	____ Y	____ N = see below
Republished correctly	____ Y	____ N
Protest(s) received	____ Y	____ N

Protest deadline 9/8/05

EXHIBIT 113

CONDITIONS

Transfer # 71690 Page 2

GROUNDWATER:
DRILLING PERMIT (-046)
DP upgrade req'd __Y __N (contact GW staff)

WMD	- North/East/West
≤ 0.24 cfs/5 acres	- No MD
> 0.24 cfs/5 acres	- 067
~~WMD~~	
≤ 0.24 cfs/5 acres	- No MD
> 0.24 cfs/5 acres	- 01M or 01Q

SURFACE WATER:

WD	~~-R05~~ R04
≤ 0.20 cfs/others	- R02, 01P or No MD
> 0.20 cfs	- R43 modified
~~WD~~, SPRINGS/SINK, INACTIVE WD & REST OF STATE	
≤ 0.24 cfs/5 acres	- No MD
>0.24 cfs/5 acres	- 01M or 01Q

STANDARD SEASON 3/1 to 11/15 (use X61 if extended season)
STANDARD VOLUME 4.5 af/ac
CONSUMPTIVE USE VOLUME 3.5 af/ac

SUPPLEMENTAL - 065-104 (where irrigation is the only use)
SUPPLEMENTAL - 100-105 (where there are other uses besides irrigation)

USES:

STORAGE	- 18C-R02-01P-18B-NA
IRR ≤ 5 ac	- R66/R67/R68/R69 (0.03 cfs/ac)
> 5 ac	- R62/R63/R64/R65 (0.02 cfs/ac)
Volume only	- R58/R59/R60/R61
STOCKWATER	- R37 (all BLM/USFS)
MINING- 054-106	
FISH PROP	- 029 (70's basins only)-007-122-106
HEAT/COOL	- R07 (injection well)
FIRE PROT.	- 077
DAIRY	- 082 (zoning if a concern)-106-WD8

USES:

POWER	- 17H-17K (+uses)-025-106
MUNICIPAL	
Restricted area	- 022-075 RAFN – 007-109-X64
Irr., GW supp to SW	- 102
DOMESTIC	
Surface water	- WB5 (Big Wood or Boise above Star Bridge)
	- 27A (Payette River)
>1 in restricted area	- 070-071-075(no parks/common areas, etc)
Irr use listed separate	- WB5

MISC CONDITIONS/REMARKS:

(T07) - 1 yr to develop
(T08) - comply or rescind
T17 - >1 pd, measure all (use w/ WB4)
T18 - Special T17 & R43 combined - multiple pds in WD

Protested (-020)-X19 modified
Water Quality - 106-R07

X27 - Number of acres/season in ppu
(X36) – Combined totals of multiple rts
083 - replaces C11 (enlargement rights)

X49 - measure p/'d's (source chg'd to orig trib)
X51 - 2+ yrs to develop
X53 - Use ltd to orig. source availability
X54 - forfeited ac/rate (used rarely)
X55 - (transfer shrinks total water to less ac)
004 - no right-of-way
X58 - pending claim (statutory or AJ b/u claim)
X61 - extended irr season
X62 - replaces N11 and N13
X63 - replaces C12
(WB4) - + p/ds, cfs & afa (used with T17)
WD8 - land application of waste water
01Q - used instead of 01M when there's another meas. Cond (i.e. T17 & 01M)

Apply one to chg'd & unchg'd rts that are subject to SRBA:
(T09) - on-going SRBA (no Dir Rpt yet)
T19 - replaces C18 (if at Directors Report or Partial Decree stage)

T20 – use only on unchg'd rts not subject to SRBA

Additional Information: Conditions approved on x-fer 68558 + 046 and special general conditions.

Shape files completed by _____ **Date** 1/12/05

Initial Review by _____ **Date** 1/4/05

SO Review by _____ } ? incomplete

Regional Manager Review by _____ ____

Scanning completed and file forwarded to State Office by _____ ____

July 2004

SUPPLEMENTAL TRANSFER REVIEW CHECKLIST

▶ E'folder name Terteling Co. 71690
(applicant last name + transfer application #)

▶ Right Numbers * 63-12, 63-13, 63-15

▶ Legal Notice Word file name Transfer 71690 - Terteling
saved at "Taylor" folder in AW02Common

▶ Emails Reviewer, check one:

___ WR record transferred ✓ AJ record transferred

Reviewer, check one for Email sent, include e'folder name & brief sentence about purpose of transfer:

___ WR record = Pam ✓ AJ record = Don, copy to Pam & Jan

SCANNING

Note: underline = label/profile scanned documents, also see PowerDocs User Guide, Appendix B & C.

▶ **PowerDocs:** Application (amended if applicable) with attachments ✓

▶ **PowerDocs:** Correspondence legal notice - ad & cover letter/email ✓

▶ **AO12 E'folder:** Draft approval ✓

▶ **AO12 E'folder:** Review memo ✓

▶ **AO12 E'folder:** Review memo attachment ___

BEFORE FILE SENT TO STATE OFFICE

▶ Review memo/Review memo attachment scanned to PowerDocs ___

▶ Other permanent documents at E'folder scanned to PowerDocs ___

▶ All remaining permanent documents scanned to PowerDocs ___

▶ Green scanning sheet completed & added to transfer file ___

*** FILE COMPLETED FORM IN ALL WESTERN WR FILES LISTED**

11/04/2004

IDAHO DEPARTMENT OF WATER RESOURCES

Adjudication Claim Report 63-31057

WATER RIGHT NUMBER: 63-31057

Owner Type	Name and Address
Current Owner	T-7 LLC 3823 N 36TH ST BOISE, ID 83703 (208) 338-5200
Original Owner	TERTELING TRUST NO 7 3823 N 36TH ST BOISE, ID 83703 (208)338-5200
Attorney	CHARLES L HONSINGER RINGERT CLARK CHARTERED PO BOX 2773 BOISE, ID 83701-2773 (208)342-4591

Andys Hot Well
(AKA Peaceful Cove
Nursery Hot Well)

Priority Date: 06/20/1994

Basis: Beneficial Use

Status: Active

Source	Tributary
GROUND WATER	

Beneficial Use	From To	Diversion Rate	Annual Volume
DOMESTIC	1/01 to 12/31	0.020 CFS	
	Total Diversion:	0.020 CFS	

Location of Point(s) of Diversion

GROUND WATER — SW1/4NW1/4 — Sec. 22, Twp 04N, Rge 02E, B.M.

ADA County

Place of Use

DOMESTIC

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										

Conditions of Approval:

Remarks:

1. General — COLD WATER BENEFICIAL USE CLAIMS FOR DOMESTIC AND IRRIGATION PURPOSES. A WATER RIGHT FOR THIS IS BEING CLAIMED SEPARATELY.

EXHIBIT 114

IDAHO DEPARTMENT OF WATER RESOURCES

Adjudication Claim Report 63-31057

2. General Ownership (name) change by DB 1/12/2004

3. General Attorney name added per notification from Charlie Honsinger. DB 3/1/2004

Comments:

Dates and Other Information:

Claim Received Date: 8/13/1999
Enlargement Use Priority Date:
Enlargement Statute Priority Date:
State or Federal: S
Owner Name Connector:
Water District Number:
Generic Max Rate Per Acre:
Generic Max Volume Per Acre:
Swan Falls Trust or Nontrust:
Swan Falls Dismissed:
DLE Act Number:
Carey Act Number:
Mitigation Plan: False

Combined Use Limits:

IDAHO DEPARTMENT OF WATER RESOURCES

Adjudication Claim Report 63-31056

WATER RIGHT NUMBER: 63-31056

Owner Type	Name and Address
Current Owner	T-7 LLC 3823 N 36TH ST BOISE, ID 83703 (208) 338-5200
Original Owner	TERTELING TRUST NO 7 3823 N 36TH ST BOISE, ID 83703 (208)338-5200
Attorney	CHARLES L HONSINGER RINGERT CLARK CHARTERED PO BOX 2773 BOISE, ID 83701-2773 (208)342-4591

Andy's Cold Well
(AKA Peaceful Cove
Nursery Cold Well)

Priority Date: 06/01/1930

Basis: Beneficial Use

Status: Active

Source	Tributary
GROUND WATER	

Beneficial Use	From To	Diversion Rate	Annual Volume
IRRIGATION	3/15 to 11/15	0.040 CFS	
STOCKWATER	1/01 to 12/31	0.040 CFS	
DOMESTIC	1/01 to 12/31	0.020 CFS	
	Total Diversion:	0.040 CFS	

Location of Point(s) of Diversion

GROUND WATER SW1/4NW1/4 Sec. 22, Twp 04N, Rge 02E, B.M.

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							2.0										2.0

Total Acres: 2

STOCKWATER

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										

EXHIBIT 115

IDAHO DEPARTMENT OF WATER RESOURCES

Adjudication Claim Report 63-31056

DOMESTIC

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										

Conditions of Approval:

Remarks:

1. General SEPARATELY CLAIMED GEOTHERMAL WELL PROVIDES HEATING FOR THIS SAME RESIDENCE. A WATER RIGHT FOR THIS IS BEING CLAIMED SEPARATELY.

2. General Ownership (name) change by DB 1/12/2004

3. General Attorney name added per notification from Charlie Honsinger. DB 3/1/2004

Comments:

Dates and Other Information:

Claim Received Date: 8/13/1999
Enlargement Use Priority Date:
Enlargement Statute Priority Date:
State or Federal: S
Owner Name Connector:
Water District Number:
Generic Max Rate Per Acre:
Generic Max Volume Per Acre:
Swan Falls Trust or Nontrust:
Swan Falls Dismissed:
DLE Act Number:
Carey Act Number:
Mitigation Plan: False

Combined Use Limits:

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

TRANSFER OF WATER RIGHT

TRANSFER NO. 71690

DRAFT

This is to certify that: THE TERTELING CO 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. A summary of the changes is also listed below. 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	Acre Limit	Total Acres	Source
63-12	AJC/Decreed	07/01/1921	0.14 cfs	101.4 af	6.0	15.0	GROUND WATER
63-13	AJC/Decreed	07/01/1922	0.66 cfs	400.0 af	6.0	15.0	GROUND WATER
63-15	AJC/Decreed	03/23/1927	0.80 cfs	400.0 af	6.0	15.0	GROUND WATER

Purpose of Transfer (Changes Proposed)

Current Number	Split	POD	POU	Add POD	Period of Use	Nature of Use
63-12	NO	NO	NO	YES	NO	NO
63-13	NO	NO	NO	YES	NO	NO
63-15	NO	NO	NO	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 af	6.0	15.0		N/A	N/A	N/A	N/A
63-15	**63-15**	0.8 cfs	400 af	6.0	15.0		N/A	N/A	N/A	N/A
COMBINED TOTALS		**0.86 cfs**	**400 af**	**6.0**	**15.0**		N/A	N/A	N/A	N/A

Detailed Water Right Description(s) attached

Dated this _____ day of _____, 20_____

_____
Chief, Water Allocation Bureau

WATER RIGHT NO. 63-12
As Modified by Transfer No. 71690

In accordance with the approval of Transfer No. 71690, Water Right No. 63-12 is now described as follows.

Right Holder: THE TERTELING CO INC
3823 N 36TH ST
BOISE ID 83703

Priority Date: July 01, 1921

Source: GROUND WATER

BENEFICIAL USE	From	To	Diversion Rate	Volume
HEATING	01/01	12/31	0.14 CFS	101.4 AF
DOMESTIC	01/01	12/31	0.04 CFS	0.6 AF
IRRIGATION	01/01	12/31	0.14 CFS	38.0 AF
			0.14 CFS	101.4 AF

LOCATION OF POINT(S) OF DIVERSION:

GROUND WATER	NWNENW	Sec. 22 Twp 04N	Rge 02E	ADA County
GROUND WATER	NESWNW	Sec. 22 Twp 04N	Rge 02E	ADA County
GROUND WATER	SENESW	Sec. 22 Twp 04N	Rge 02E	ADA County
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: 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: DOMESTIC

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. 63-12
As Modified by Transfer No. 71690

CONDITIONS OF APPROVAL

1. The right holder shall accomplish the change authorized by this transfer within three years of the date of this approval.

2. Failure of the right holder to comply with the conditions of this transfer is cause for the Director to rescind approval of the transfer.

3. 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.

4. Right holder shall comply with the drilling permit requirements of Section 42-235, Idaho Code and applicable Well Construction Rules of the Department.

5. 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 points of diversion.

6. 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.

7. Use of water under this right will be regulated by a watermaster with responsibility for the distribution of water among appropriators within a water district. At the time of this approval, this water right is within State Water District No. 63-S.

8. Diversion and use of water from the wells in Section 22, T4N, R2E is contingent upon continued activity of Water District 63-S.

9. Prior to diversion of water under this approval, the right holder shall provide lockable controlling works for all authorized points of diversion. The controlling works must be suitable for control of the diversions and acceptable to the watermaster.

10. All points of diversion under this approval must be equipped to provide independent control, monitoring and measurement along the distribution lines leading to all places of use described in the transfer. The purpose of this condition is to independently determine the quantity of water in rate and volume credited to any well for any portion of the place of use.

11. 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. 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.

WATER RIGHT NO. 63-12
As Modified by Transfer No. 71690

CONDITIONS OF APPROVAL

13. Unless otherwise determined by the Snake River Basin Adjudication, diversion from the wells in Section 22 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 IDWRs 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 wells in Section 22 is causing the significant reduction in pressure; (b) curtail diversion of water from the wells in Section 22; or (c) require mitigation for diversion of water from the wells in Section 22.

14. 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. Section 42-226 unless and until a contrary determination is made in an appropriate judicial or administrative proceeding.

15. 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.

16. 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.

17. This water right is subject to the terms of an Agreement dated 1/24/2002, recorded at the Ada County Recorders Office on 8/27/2002, as Instrument No. 102097169.

18. Irrigation use is for inside commercial greenhouses and outside irrigation.

19. Domestic use is for business offices.

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 _____ day of _____, 20_____

_____

Chief, Water Allocation Bureau

WATER RIGHT NO. 63-13
As Modified by Transfer No. 71690

In accordance with the approval of Transfer No. 71690, Water Right No. 63-13 is now described as follows.

Right Holder: THE TERTELING CO INC
3823 N 36TH ST
BOISE ID 83703

Priority Date: July 01, 1922

Source: GROUND WATER

BENEFICIAL USE	From	To	Diversion Rate	Volume
IRRIGATION	01/01	12/31	0.66 CFS	38.0 AF
DOMESTIC	01/01	12/31	0.04 CFS	0.6 AF
HEATING	01/01	12/31	0.66 CFS	400.0 AF
			0.66 CFS	400.0 AF

LOCATION OF POINT(S) OF DIVERSION:

GROUND WATER	NWNENW	Sec. 22 Twp 04N	Rge 02E	ADA County
GROUND WATER	NESWNW	Sec. 22 Twp 04N	Rge 02E	ADA County
GROUND WATER	SENESW	Sec. 22 Twp 04N	Rge 02E	ADA County
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: 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: DOMESTIC

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. 71690

CONDITIONS OF APPROVAL

1. The right holder shall accomplish the change authorized by this transfer within three years of the date of this approval.

2. Failure of the right holder to comply with the conditions of this transfer is cause for the Director to rescind approval of the transfer.

3. 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.

4. Right holder shall comply with the drilling permit requirements of Section 42-235, Idaho Code and applicable Well Construction Rules of the Department.

5. 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 points of diversion.

6. 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.

7. Use of water under this right will be regulated by a watermaster with responsibility for the distribution of water among appropriators within a water district. At the time of this approval, this water right is within State Water District No. 63-S.

8. Diversion and use of water from the wells in Section 22 is contingent upon continued activity of Water District 63-S.

9. Prior to diversion of water under this approval, the right holder shall provide lockable controlling works for all authorized points of diversion. The controlling works must be suitable for control of the diversions and acceptable to the watermaster.

10. All points of diversion under this approval must be equipped to provide independent control, monitoring and measurement along the distribution lines leading to all places of use described in the transfer. The purpose of this condition is to independently determine the quantity of water in rate and volume credited to any well for any portion of the place of use.

11. 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. 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.

WATER RIGHT NO. 63-13
As Modified by Transfer No. 71690

CONDITIONS OF APPROVAL

13. Unless otherwise determined by the Snake River Basin Adjudication, diversion from the wells in Section 22 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 IDWRs 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 wells in Section 22 is causing the significant reduction in pressure; (b) curtail diversion of water from the wells in Section 22; or (c) require mitigation for diversion of water from the wells in Section 22.

14. 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

15. 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.

16. 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.

17. This water right is subject to the terms of an Agreement dated January 24, 2002, recorded at the Ada County Recorders Office on August 27, 2002 as Instrument No. 102097169.

18. Irrigation use is for inside commercial greenhouses and outside irrigation.

19. Domestic use is for business offices.

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 _____ day of _____, 20_____

_____

Chief, Water Allocation Bureau

WATER RIGHT NO. 63-15
As Modified by Transfer No. 71690

In accordance with the approval of Transfer No. 71690, Water Right No. 63-15 is now described as follows.

Right Holder: THE TERTELING CO INC
3823 N 36TH ST
BOISE ID 83703

Priority Date: March 23, 1927

Source: GROUND WATER

BENEFICIAL USE	From	To	Diversion Rate	Volume
DOMESTIC	01/01	12/31	0.04 CFS	0.6 AF
IRRIGATION	01/01	12/31	0.80 CFS	38.0 AF
HEATING	01/01	12/31	0.80 CFS	400.0 AF
			0.80 CFS	400.0 AF

LOCATION OF POINT(S) OF DIVERSION:

GROUND WATER	NWNENW	Sec. 22 Twp 04N	Rge 02E	ADA County
GROUND WATER	NESWNW	Sec. 22 Twp 04N	Rge 02E	ADA County
GROUND WATER	SENESW	Sec. 22 Twp 04N	Rge 02E	ADA County
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: 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: DOMESTIC

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. 63-15
As Modified by Transfer No. 71690

CONDITIONS OF APPROVAL

1. The right holder shall accomplish the change authorized by this transfer within three years of the date of this approval.

2. Failure of the right holder to comply with the conditions of this transfer is cause for the Director to rescind approval of the transfer.

3. 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.

4. Right holder shall comply with the drilling permit requirements of Section 42-235, Idaho Code and applicable Well Construction Rules of the Department.

5. 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 points of diversion.

6. 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.

7. Use of water under this right will be regulated by a watermaster with responsibility for the distribution of water among appropriators within a water district. At the time of this approval, this water right is within State Water District No. 63-S.

8. Diversion and use of water from the wells in Section 22 is contingent upon continued activity of Water District 63-S.

9. Prior to diversion of water under this approval, the right holder shall provide lockable controlling works for all authorized points of diversion. The controlling works must be suitable for control of the diversions and acceptable to the watermaster.

10. All points of diversion under this approval must be equipped to provide independent control, monitoring and measurement along the distribution lines leading to all places of use described in the transfer. The purpose of this condition is to independently determine the quantity of water in rate and volume credited to any well for any portion of the place of use.

11. 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. 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.

WATER RIGHT NO. 63-15
As Modified by Transfer No. 71690

CONDITIONS OF APPROVAL

13. Unless otherwise determined by the Snake River Basin Adjudication, diversion from the wells in Section 22 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 IDWRs 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 wells in Section 22 is causing the significant reduction in pressure; (b) curtail diversion of water from the wells in Section 22; or (c) require mitigation for diversion of water from the wells in Section 22.

14. 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.

15. 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.

16. 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.

17. This water right is subject to the terms of an Agreement dated January 24, 2002, recorded at the Ada County Recorders Office on August 27, 2002 as Instrument No. 102097169.

18. Irrigation use is for inside commercial greenhouses and outside irrigation.

19. Domestic use is for business offices.

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 _____ day of _____, 20_____

_____

Chief, Water Allocation Bureau

State of Idaho
DEPARTMENT OF WATER RESOURCES
1301 North Orchard Street, Boise, ID 83706 - P.O. Box 83720, Boise, ID 83720-0098
Phone: (208) 327-7900 Fax: (208) 327-7866 Web Site: www.idwr.state.id.us

DIRK KEMPTHORNE
Governor

KARL J. DREHER
Director

October 11, 2002

THE TERTELING CO INC
3823 N 36TH ST
BOISE ID 83703

RE: Transfer No.: 68558 - Water Right 63-12, 63-13, 63-15
Transfer Approval Notice

Dear Water Right Holder(s):

The Department of Water Resources has issued the enclosed approved Transfer of Water Right(s). Please be sure to thoroughly review the conditions of approval and remarks listed on the approval document.

The Transfer of Water Right(s) is a PRELIMINARY ORDER issued by the Department pursuant to section 67-5243, Idaho Code. It can and will become a final order without further action by the Department unless the APPLICANT petitions for reconsideration or files an exception and/or brief within fourteen (14) days of the service date as described in the enclosed information sheet.

ANY PERSON aggrieved by any decision, determination, order or action of the Department and who has not previously been afforded an opportunity for a hearing on the matter may request a hearing pursuant to section 42-1701A(3), Idaho Code. A written petition contesting the action of the Department and requesting a hearing shall be filed within fifteen (15) days after receipt of the denial or conditional approval.

Please note that water right owners are required to report any change of water right ownership and/or mailing address to the Department within 120 days of the change. Failure to report these changes could result in a $100 late filing fee. Contact any office of the Department or visit the Department's homepage on the Internet to obtain the proper forms and instructions.

EXHIBIT 117

If you have any questions, please contact me at 208-327-7940.

Sincerely,

Pamela S. Skaggs

for Jeff Peppersack, Manager
Water Rights Permits Section

JP:klt

Enclosure(s)

cc: Michael Creamer, Givens Pursley, PO Box 2720, Boise, ID 83702-2720
[redacted]ana Hofstetter, Hofstetter Law Office, 608 W. Franklin St, Boise, ID 83702

CERTIFICATE OF SERVICE

I hereby certify that on October 11, 2002 I mailed a true and correct copy, postage prepaid, of the foregoing TRANSFER APPROVAL to the person(s) listed below:

RE: TRANSFER NO. 68558 - WATER RIGHTS 63-12, 63-13, 63-15

THE TERTELING CO INC
3823 N 36TH ST
BOISE ID 83703

GIVENS PURSLEY LLP
ATTN MICHAEL CREAMER
PO BOX 2720
BOISE ID 83701-2720

DANA HOFSTETTER
HOFSTETTER LAW OFFICE
608 W FRANKLIN ST
BOISE ID 83702

Kari Lynn Townsend
Secretary

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

AMENDED TRANSFER OF WATER RIGHT *AMENDED*

TRANSFER NO. 68558

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

L. Glenn Saxton

Chief, Water Allocation Bureau

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

BENEFICIAL USE	From	To	Diversion Rate	Volume
HEATING	01/01	12/31	0.14 CFS	101.4 AF
DOMESTIC	01/01	12/31	0.04 CFS	~~0.6 AF~~
IRRIGATION	01/01	12/31	0.14 CFS	38.0 AF
			0.14 CFS	101.4 AF

LOCATION OF POINT(S) OF DIVERSION:

GROUND WATER NWNWSW Sec. 22 Twp 04N Rge 02E ADA County Windsock

GROUND WATER NWNWSW Sec. 28 Twp 04N Rge 02E ADA County Trigs

GROUND WATER NENESE Sec. 29 Twp 04N Rge 02E ADA County Silky

GROUND WATER NENESE Sec. 29 Twp 04N Rge 02E ADA County office

PLACE OF USE: HEATING & DOMESTIC

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. 63-12
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

L. Glen Saxton

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

BENEFICIAL USE	From	To	Diversion Rate	Volume
IRRIGATION	01/01	12/31	0.66 CFS	38.0 AF
DOMESTIC	01/01	12/31	0.04 CFS	0.6 AF
HEATING	01/01	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

L. Glen Saxton

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

BENEFICIAL USE	From	To	Diversion Rate	Volume
DOMESTIC	01/01	12/31	0.04 CFS	0.6 AF
IRRIGATION	01/01	12/31	0.80 CFS	38.0 AF
HEATING	01/01	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

L. Glen Saxton

Chief, Water Allocation Bureau

ADA COUNTY RECORDER
J. DAVID NAVARRO
BOISE, IDAHO

RECORDED - REQUEST OF Pertling Co. + Edwood Family LLC
FEE 39.00 DEPUTY Hooper

2002 AU 27 PM 4:22

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

EXHIBIT 118

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

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

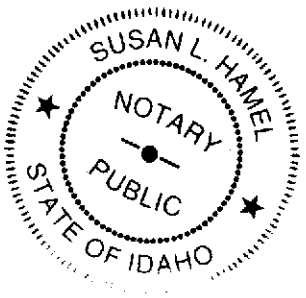
EDWARDS FAMILY, LLC

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.

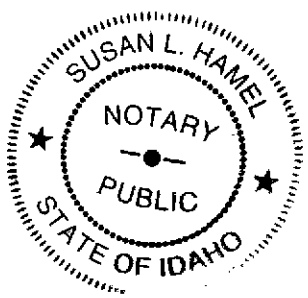


Susan L. Hamel
Notary Public for the State of Idaho
Residing in Kuna, ID Ada County
My Commission Expires: 03/22/2002

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°29' West a distance of 662.3 feet along the section line common to said Sections 28 and 29; thence North 89°11' West, parallel to the East and West quarter section line of said Section 29, a distance of 657.4 feet; thence North 0°39' East a distance of 662.3 feet, to the East and West quarter section line of said Section 29; thence South 89°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°29' West 1003.9 feet on the East line of said Section 29 marked by an iron pin; thence North 81°16' West 234.2 feet to a point; thence North 61°35' West 135.75 feet to a point; thence North 76°20' West 328.4 feet to a point, marked by an iron pin; thence North 0°39' East 838.2 feet to a point; thence South 89°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.

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 3823 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:

_____

_____

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

TRANSFER OF WATER RIGHT

TRANSFER NO. 4202
WATER RIGHT NO. 63-07595

This is to certify that: **TERTELING TRUST NO 7**
877 W MAIN ST #706
BOISE ID 83702

has requested a change to the above captioned water right(s). This change in water right(s) is authorized pursuant to the provisions of Section 42-222, Idaho Code, provided the conditions listed below are met.

BENEFICIAL USE	PERIOD OF USE	DIVERSION RATE	ANNUAL VOLUME
IRRIGATION	03/15 to 11/15	2.00 CFS	463.5 AF
STOCKWATER	01/01 to 12/31	0.05 CFS	2.0 AF
DOMESTIC	01/01 to 12/31	0.05 CFS	1.2 AF
	Totals	2.00 CFS	466.7 AF

SOURCE

GROUNDWATER

Priority: 03/07/1973

LOCATION OF POINT(S) OF DIVERSION:

NWNE , Sec. 22, Township 04N, Range 02E
NENW , Sec. 22, Township 04N, Range 02E
SWNW , Sec. 22, Township 04N, Range 02E
NWSW , Sec. 22, Township 04N, Range 02E
ADA County

PLACE OF USE: IRRIGATION

TWN	RGE	SEC		ACRES		ACRES		ACRES	TOTAL
04N	02E	21	SENE	1	NESE	8	SESE	10	19
		22	NWNE	8	NENW	11	NWNW	10	
			SWNW	27	SENW	1	NESW	3	
			NWSW	14	SWSW	3	SESW	3	
			NWSE	4					84
					Total number of acres irrigated:				103

PLACE OF USE: STOCKWATER

TWN	RGE	SEC	
04N	02E	22	SWNW

APPROVED
DEC 02 1993

EXHIBIT 119

TRANSFER NO. 4202
WATER RIGHT NO. 63-07595

PLACE OF USE:
DOMESTIC, same as STOCKWATER use

CONDITIONS/REMARKS:
1. Right No. 63-07595 is subject to the conditions of the Final Order in the matter of Application for Transfer No. 4202.

Dated this 27th day of October, 1993

L. Glen Saxton
Chief, Water Alloc. Bureau

DEC 02 1993

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE

STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR TRANSFER NO. 4202 OF WATER RIGHT NO. 63-07595 IN THE NAME OF TERTELING TRUST NO. 7

FINAL ORDER

This matter having come before the Idaho Department of Water Resources (department) in the form of a protested application for transfer, the department having held a conference in the matter and having issued a recommended order to which no exceptions were filed, the Director of the department makes the following Findings of Fact, Conclusions of Law and Order:

FINDINGS OF FACT

1. On January 14, 1993, the department issued license no. 63-07595 in the name of Terteling Trust No. 7 (applicant) authorizing the diversion of 2.0 cfs of ground water from wells located in the SW1/4SE1/4 Section 15, SW1/4NW1/4 and NW1/4SW1/4 Section 22, all in T4N, R2E,B.M. for the irrigation of 103 acres in Sections 21 and 22, T4N, R2E,B.M. The priority of use is March 7, 1973.

2. On February 4, 1993, the applicant submitted application for transfer no. 4202 of licensed right no. 63-07595 to the department proposing to add a point of diversion (well) in the NE1/4NW1/4 Section 22, T4N, R2E,BM.

3. The application was advertised as required by law and was protested by Jeff J. Jayo, Maryann Duggan, Helen M. Miller, Edwards Greenhouses, Clifton Johnson and Sherman Nelson. All protests have been withdrawn except the protest of Sherman Nelson.

4. The department scheduled a hearing in the matter to be held on August 11, 1993. The department did not conduct the hearing, however, since the protestant advised the department that the department should consider the information already submitted to the department as the protestant's position.

5. The department advised that the applicant could respond in writing to the protestant's position and that the department would then consider the information submitted and would issue a decision in the contested matter.

6. The applicant's intent is to construct and use a well

MICROFILMED
DEC 02 1993

which is less hydraulically connected to other wells in the Stewart Gulch area than one of the applicant's existing wells which is located in the NW1/4SW1/4 Section 22, T4N, R22E,BM.

CONCLUSIONS OF LAW

1. Section 42-222, Idaho Code, provides in pertinent part as follows:

> The director of the department of water resources shall examine all the evidence and available information and shall approve the change in whole, or in part, or upon conditions, provided no other water rights are injured thereby, the change does not constitute an enlargement in use of the original right, and the change is consistent with the conservation of water resources within the state of Idaho and is in the local public interest as defined in section 42-203A(5), Idaho Code;

2. On December 5, 1989, the department created Water District 63-S, Stewart Gulch, due to concerns about the use and distribution of the low temperature geothermal water resource in Stewart Gulch.

3. The points of diversion for the water right sought to be transferred in this action are within the boundaries of the water district and are subject to watermaster regulation.

4. Approval of the application will not injure existing water rights if the approval is properly conditioned.

5. Approval of the application will not constitute an enlargement in water use over that amount already authorized if the approval is properly conditioned.

6. The application is consistent with the conservation of water resources in Idaho.

7. The application is in the local public interest.

8. The department should approve the application with certain conditions and limitations.

ORDER

IT IS THEREFORE, hereby ORDERED that Application for Transfer No. 4202 of licensed water right no. 63-07595 is **APPROVED** subject to the following conditions:

1. Prior to diversion and use of water from the new well to be constructed under this approval, the right holder shall install and maintain per department specifications flow and pressure measurement devices that allow the department to determine the rate

DEC 02 1993

of diversion from the well.

2. The right holder shall conduct an investigation, subject to the approval of the department, to determine the impact of the new well on the existing wells within Water District 63-S. Upon a determination by the department that use of water from the new well should be administered with other rights in the district, use of water under this approval is subject to the control of the watermaster of Water District 63-S, Stewart Gulch.

3. Construction of the new well is subject to the drilling permit requirements of Section 42-235, Idaho Code, and all Well Construction Standards Rules regarding the construction of low temperature geothermal wells.

4. If diversion from the new well is found to have more impact on the water available to a senior water right than the impact of the presently installed system during times the senior water right is entitled to use water, as determined by the Director of the department, the right holder shall cease to use the new well and/or shall abandon the new well as specified by the Director.

5. This right when combined with all other rights for the same land shall provide no more than 0.02 cfs per acre nor more than 4.5 afa per acre for the lands irrigated.

6. The right holder shall use the full allotment of surface water rights, to the extent water is available, in conjunction with ground water diverted pursuant to this approval.

7. The change authorized under this approval shall be accomplished within one (1) year of the date of this approval unless extended by the Director for good cause.

8. Failure to comply with the conditions of this approval is cause for the Director to rescind approval of the transfer.

9. This approval does not preclude the opportunity for review of the validity of the water right in the ongoing Snake River Basin Adjudication.

Signed this 27th day of October, 1993.

R. KEITH HIGGINSON
Director

MICROFILMED
DEC 02 1993

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 24th day of October, 1993, I mailed a true and correct copy, postage prepaid, of the foregoing Final Order to the following:

Flora Company
Jeff T Jayo
3823 N 36th Stve
Boise, ID 83703

Clifton W Johnson

3907 Whitehead
Boise, ID 83703

Maryann Duggan and/or
Helen M Miller
4023 Whitehead St
Boise, ID 83703

Sherman F Nelson
c/o WF Ringert
PO Box 2773
Boise, ID 83702

Edwards Greenhouses
Mike Monnie/Paul Edwards
4106 Sand Creek St
Boise, ID 83703

Tertling Trust No.7

877 W Main St Ste 706
Boise, ID 83702

Karen L. Gustafson
Senior Secretary

Form 222
1-87

Page 1 of 6

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

Transfer No. 4262

APPLICATION FOR TRANSFER OF WATER RIGHT

PART 1 Changes approved by: IDT
date: 2-15-93

Name of applicant Terteling Trust No. 7 Phone 208-338-5200

Post Office address 877 W. Main St., Suite 706, Boise, Idaho 83702

RECEIVED
FEB 4 1993
Department of Water Resources
Western Regional Office

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 hotter Water.
   See Remarks.
   Well A - QQ description is clarified per Recent survey, its location is
   not physically changed.

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

1.

License ~~Right~~ Number	Priority	Amount (cfs/ac-ft)	Nature of Use	Period of Use		
63-07595	March 7 1973	2.0	Irrigation	3/15	to	11/15
		0.05	Stockwater	01/01	to	12/31
		0.05	Domestic	01/01	to	12/31
					to	

* 2. Total amount of water being transferred 2.00 cubic feet per second and/or 466.7 acre-feet per annum.

3. Source of water Groundwater tributary to

4. Point(s) of Diversion:

Lot	¼	¼	¼	Sec.	Twp.	Rge.	County	Local name for diversion
		NW	NE	22	4N	2E	ADA	} Existing wells
		SW	NW	22	4N	2E	ADA	
		NW	SW	22	4N	2E	ADA	
		NE	NW	22	4N	2E	ADA	Proposed well

5. Lands irrigated or place of use: NO CHANGE IN 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	21				1									8			10	19
4N	2E	22		8			11	10	27	1	3	14	3	3		4			84
4N	2E	22							D										
									S										
																		DEC	0 2 1993

* Corrected per licensee 2/9/93 -SC

Total acres 103

EXHIBIT 120

PART 1

6. General Information:

a. Description of diversion system Wells, Pumps, Storage Reservoir, Sprinklers

b. Are the lands from which you propose to transfer the water right subject to any liens, deeds of trust, mortgages, or contracts? _____ Yes XX 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:

None

d. Remarks:

TBF 2-13-97

A new well in NENW 5.22 will decrease dependence on well B in NWSW 5.22. Well B is believed to be inter-related to golf course well (63-04037), but new well & other wells are thought to be less related or unrelated to golf course well (Nibler well).

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 _____, 19____.

DEC 02

Transfer No. _____

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

APPLICATION FOR TRANSFER OF WATER RIGHT

TEF 2-18-93

PART 2

(Attach one copy for each right)

A. DESCRIPTION OF RIGHT AS RECORDED

SRBA claim A63-07595 is on file with IDWR. See Attachment O for details of A63-07595.

1. Right evidenced by:
   a. Decree No. _____ Decreed to _____
      in case of _____ vs. _____
      dated _____ in _____ county of _____
   b. License No. 63-07595 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 _____
3. Source of water Groundwater tributary to _____
4. Date or priority March 7, 1973
5. Water is used for the following purpose:

amount (cfs/ac-ft)	2.0 0.05	for	Irrigation Stockwater	purposes from	03/15 01/01	to	11/15 12/31
amount (cfs/ac-ft)		for		purposes from		to	
amount (cfs/ac-ft)	0.05	for	Domestic	purposes from	01/01	to	12/31

* 6. Total amount of water under right 2.00 cubic feet per second and/or 466.7 acre-feet per annum.

7. Point(s) of Diversion:

Lot	¼	¼	¼	Sec.	Twp.	Rge.	County	Local name for diversion
		SW	SE	15	4N	2E	ADA	
		SW	NW	22	4N	2E	ADA	
		NW	SW	22	4N	2E	ADA	

8. 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	21				1									8			10	19
4N	2E	22		8			11	10	27	1	3	14	3	3		4			84
* 4N	2E	22					8		D										
									S										

DEC 02 1993

* Corrected per license – SL 2/9/93

Total acres 103

9. Describe any other water rights used for the same purpose as described above _____
   63-03603, 63-03604, 63-9288

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

2. Point(s) of Diversion:

Lot	¼	¼	¼	Sec.	Twp.	Rge.	County	Local name for diversion

3. 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	

Total acres _____

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

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

2. Point(s) of Diversion:

Lot	¼	¼	¼	Sec.	Twp.	Rge.	County	Local name for diversion

3. 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	

DEC 02 1993

Total acres _____

Transfer No. _____

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.

SEE ATTACHED

Attachment B = applicant's map

" C = IDWR map per applicant's 2/17/93 office visit

-SL

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DEC 02 1993

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

 Transfer No. _____

PART 3

B. CHANGES IN NATURE OF USE

1	New Nature of Use	Amount (cfs/ac-ft)	Hours/days/year	Period of Use
	same			_____ 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:
none

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.

(Signature of Applicant)

Subscribed and sworn to before me this 11th day of January, 19 93.

(Notary Public)

My commission expires 5-7-97

FOR DEPARTMENT USE ONLY

Transfer contains 6 pages and 4 attachments

Received by _____ Date 2-4-93 Protest filed by _____

Prelim. check by _____ Fee $50.00 #W015902

Receipted by _____ Date 2-4-93

Published in Id Statesman

Pub. dates 3/4 & 3/11/93 Copies of protest forwarded by _____

Watermaster recommendation requested on _____ Hearing held by _____ Date _____

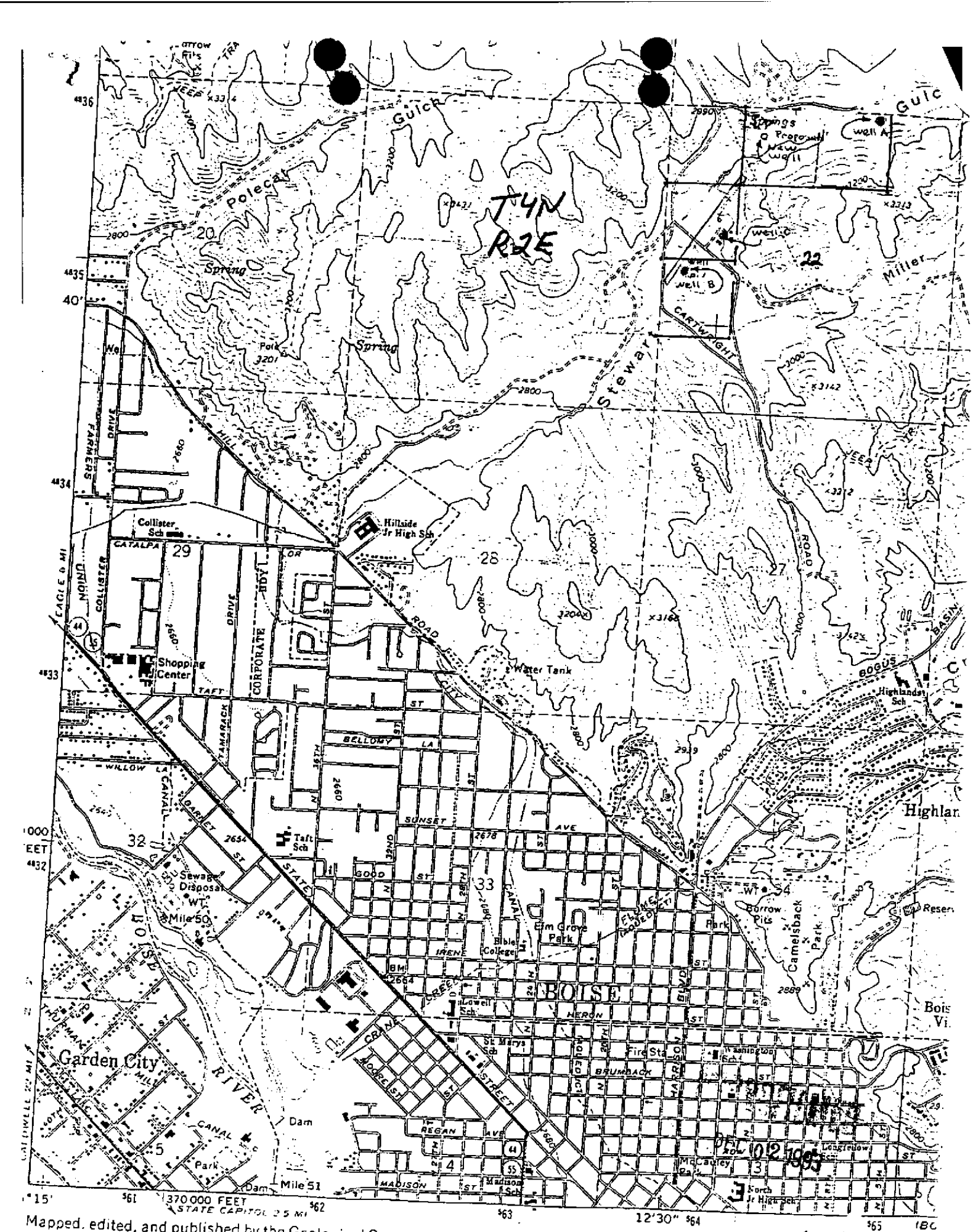
Recommended for ☐ approval ☐ denial

_____ rec'd. _____ by _____

Copy of transfer sent to lien holder _____

MICROFILMED

DEC 0 2 1993



Mapped, edited, and published by the Geological Survey

ATTACHMENT B

State of Idaho
Department of Water Resources

WATER RIGHT LICENSE

WATER RIGHT NO. 63-07595

Priority: March 7, 1973

Maximum Diversion Rate: 2.00 CFS
Maximum Diversion Volume: 466.7 AF

This is to certify, that TERTELING TRUST NO 7
877 W MAIN ST #706
BOISE ID 83702 has complied with the terms and conditions of the permit, issued pursuant to Application for Permit dated May 3, 1972; and has submitted Proof of Beneficial Use on June 29, 1982. An examination indicates that the works have a diversion capacity of 2.930 cfs of water from a GROUNDWATER source, and a water right has been established as follows:

BENEFICIAL USE	PERIOD OF USE	RATE OF DIVERSION	ANNUAL VOLUME
IRRIGATION	03/15 to 11/15	2.00 CFS	463.5 AF
STOCKWATER	01/01 to 12/31	0.05 CFS	2.0 AF
DOMESTIC	01/01 to 12/31	0.05 CFS	1.2 AF
	Totals	2.00 CFS	466.7 AF

LOCATION OF POINT(S) OF DIVERSION: SWSE , Sec. 15, Township 04N, Range 02E
SWNW , Sec. 22, Township 04N, Range 02E
NWSW , Sec. 22, Township 04N, Range 02E
ADA County

PLACE OF USE: IRRIGATION

TWN	RGE	SEC		ACRES		ACRES		ACRES	TOTAL
04N	02E	21	SENE	1	NESE	8	SESE	10	19
		22	NWNE	8	NENW	11	NWNW	10	
			SWNW	27	SENW	1	NESW	3	
			NWSW	14	SWSW	3	SESW	3	
			NWSE	4					84

Total number of acres irrigated: 103

PLACE OF USE: STOCKWATER

TWN	RGE	SEC	
04N	02E	22	SWNW

PLACE OF USE: DOMESTIC, same as STOCKWATER use

CONDITIONS/REMARKS:

1. The maximum diversion volume is defined as the maximum allowable volume of water that may be diverted annually from the source under this right. The use of water confirmed by this

RECORDED

FEB 0 2 1993

EXHIBIT 121

State of Idaho
Department of Water Resources

WATER RIGHT LICENSE

WATER RIGHT NO. 63-07595

CONDITIONS/REMARKS:

right limited to the amount that can actually be beneficially use used. The maximum diversion volume may be adjusted to more accurately describe the beneficial use or to implement accepted standards of diversion and use efficiency.

2. This water right is appurtenant to the described place of use.
3. This right is subject to all prior water rights and may be forfeited by five years of non-use.
4. Modifications to or variance from this license must be made within the limits of Section 42-222, Idaho Code, or the applicable Idaho law.
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 above.
6. 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.
7. Diversion and use of low temperature geothermal resource water under terms of this license is subject to the control of the watermaster of Water District 63-S, Stewart Gulch, upon a determination of interconnection with other low temperature geothermal water users in the district.
8. Domestic use is for 2 homes.
9. Stockwater use is for 150 mixed stock.

This license is issued pursuant to the provisions of Section 42-219, Idaho Code. Witness the seal and signature of the Director, affixed at Boise, this 14th day of JANUARY, 1993.

Acting for R. Keith Higginson, Director

FEB 02 1993

Form 222
1-87

Page 1 of 6

RECEIVED
JUL 20 1992
Department of Water Resources
Western Region

Transfer No. 3990

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

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 PUMPING DEPTH

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

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

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	¼	¼	¼	Sec.	Twp.	Rge.	County	Local name for diversion
		NE	NW	22	4N	2E	Ada	Interim
		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	SW	NW	22	4N	2E	Ada	Proposed
	NW	NE	NW	22	4N	2E	Ada	Proposed

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	

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OCT 27 1992

Total acres

EXHIBIT 122

Transfer No. _____

PART 1

6. General information:

a. Description of diversion system A well - proposed surface diameter of 16", 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.

L. Lew Sayton

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.

Chief, Water Alloc. Bureau

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OCT 27 1992

 Transfer No. _____

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. 63-03603 (A63-03603) 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 (cfs/ac-ft) for Irrigation purposes from 3/15 to 11/15

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

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

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	¼	¼	¼	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 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	22					3	5	3		20	22		12		13			78

MICROFILMED

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

2. Point(s) of Diversion: ALL OR NONE DEPENDING UPON SUCESS OF FINDING WATER AT SHALLOWER DEPTHS.

Lot	¼	¼	¼	Sec.	Twp.	Rge.	County	Local name for diversion

3. 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	

Total acres _____

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

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

2. Point(s) of Diversion:

Lot	¼	¼	¼	Sec.	Twp.	Rge.	County	Local name for diversion

3. 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	

MISDEFINED

OCT 27 1992

Total acres _____

Transfer No. _____

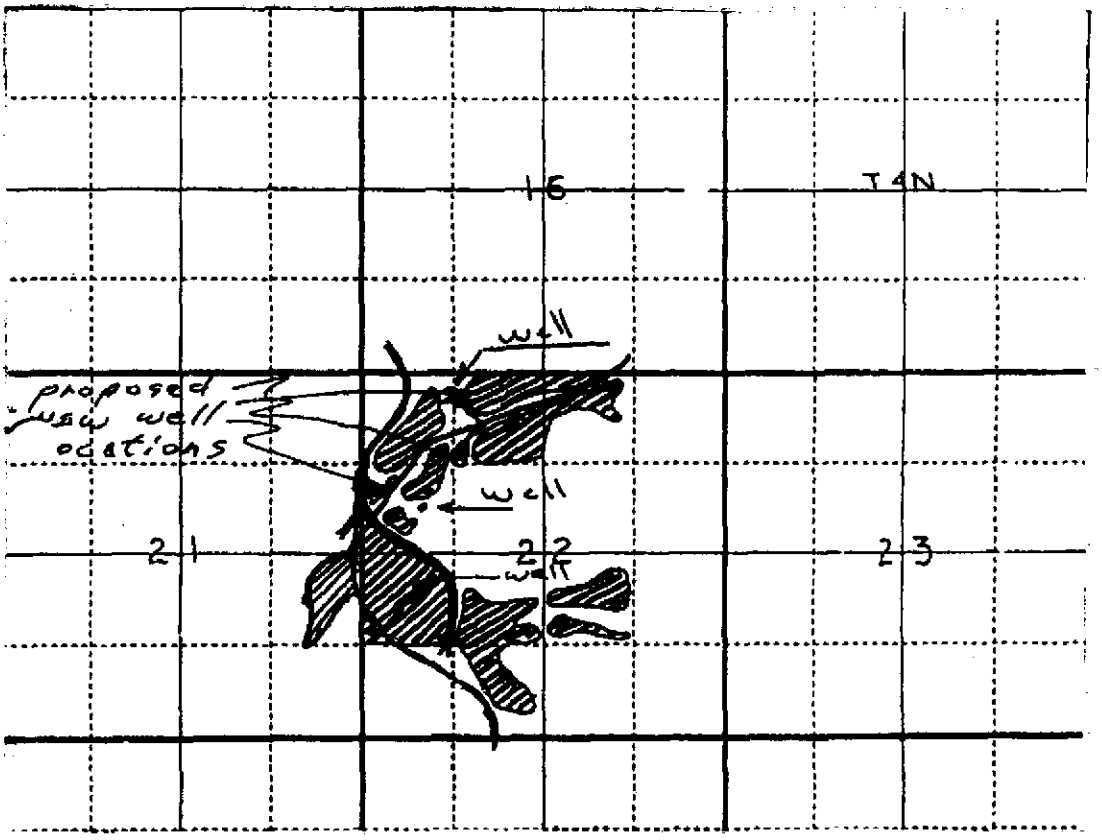
STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

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



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

Transfer No. 5E

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

J L Terteling
(Signature of Applicant)

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

Flinda A. Thomas
(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 [illegible] Date 7-20-92

Published in Idaho Statesman 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 [illegible]

Copy of transfer sent to lien holder _____

MICROFILMED

OCT 27 1992

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
Irrigation	from March 15	to Nov. 15	at 1.03 cfs and	351 acre feet or 4.5 af per acre
	from	to	at cfs and	
	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 so 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 SW¼NW¼, NE¼NW¼ -and- NW¼SW¼ 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.	NE¼				NW¼				SW¼				SE¼				Totals
			NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	
4N	2E	22					3	5	3		20	22		12		13			78

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.

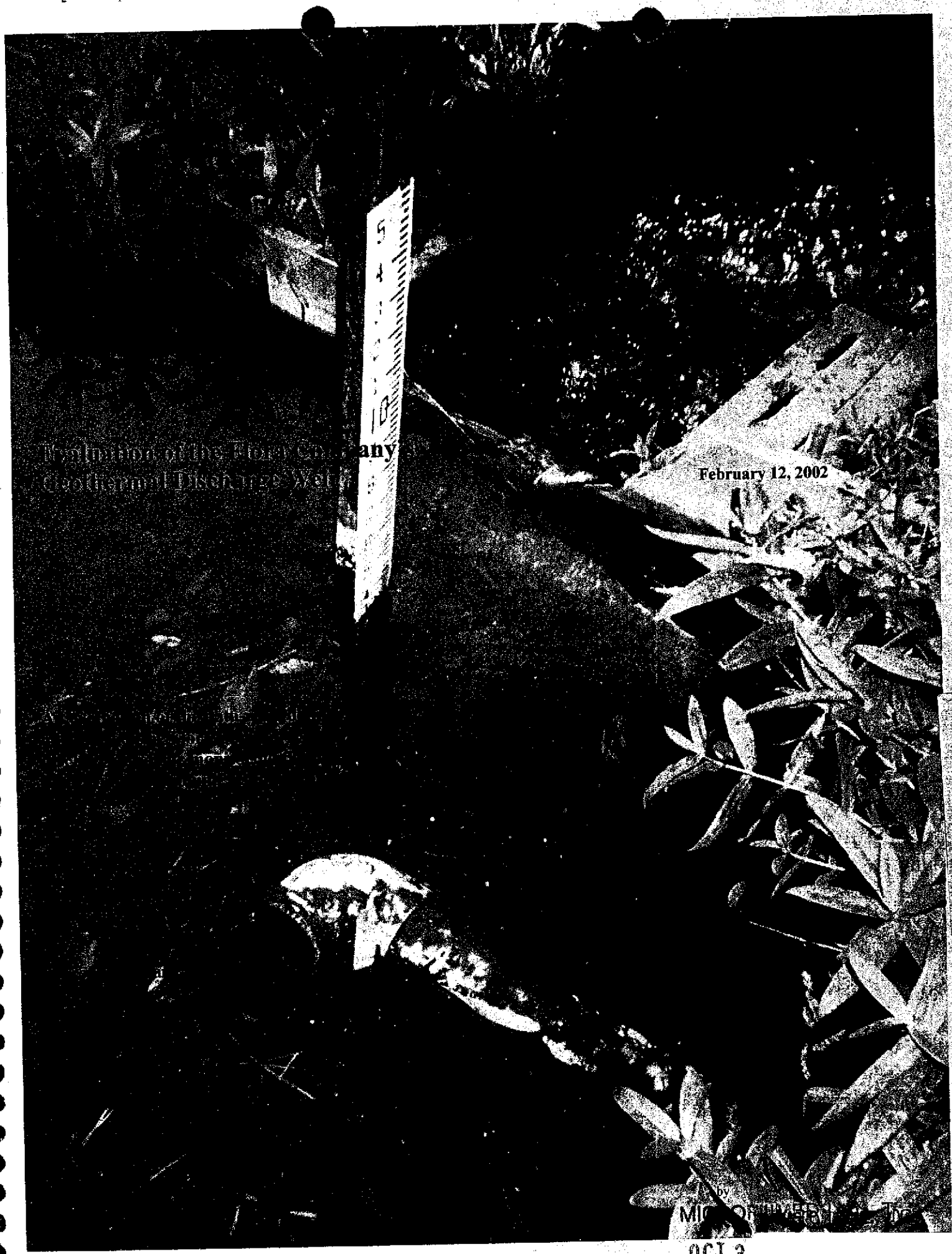
CONFIRMED

OCT 27 1992

Director

63-36

EXHIBIT 123



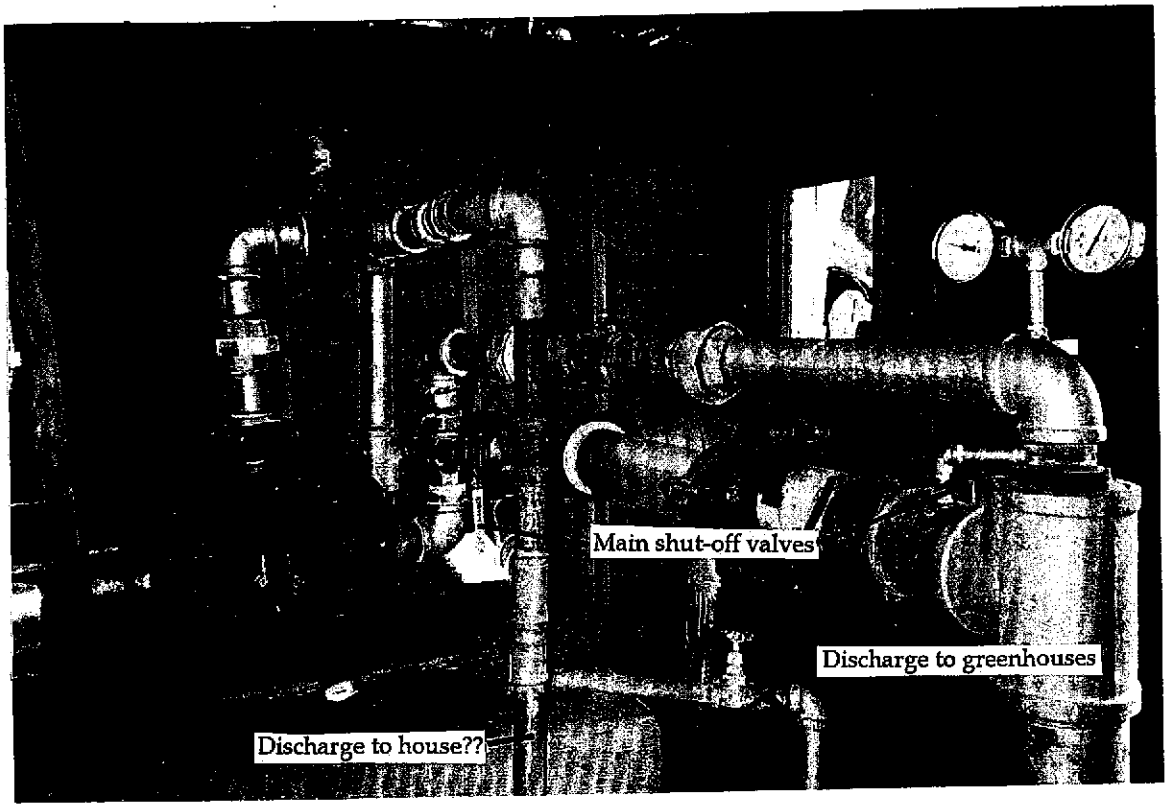
Evaluation of the Flora Co[illegible]any's
Geothermal Discharge Wel[illegible]

February 12, 2002

by
MI[illegible]

OCT 3

EXHIBIT 124



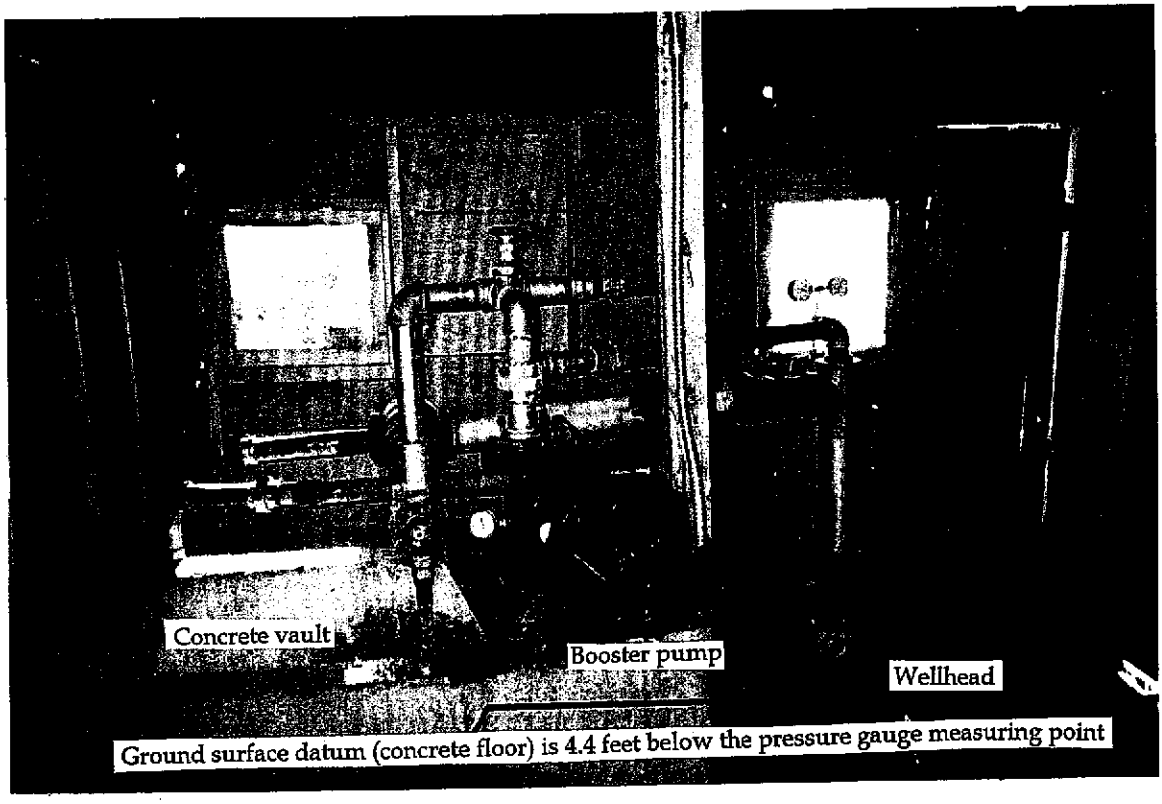


Figure 14
Wellhead piping configuration for the Flora "Shed" Well
October 1998

Figure 14.

ADMINISTRATOR'S MEMORANDUM

Transfer Processing No. 24

To: Water Management Division Staff

From: Karl J. Dreher and Norman C. Young

RE: **TRANSFER PROCESSING POLICIES & PROCEDURES**

(Interim Policies & Procedures Currently Applicable for Applications to Transfer Ground Water in the Eastern Snake River Plain Only)

Date: October 30, 2002

The purpose of this memorandum is to provide policy guidance for processing applications for transfers of water rights pursuant to Section 42-222, *Idaho Code*, and other applicable law. These policies and procedures are to be followed until rescinded or amended, or superseded by statute or rule or court decision, to assure that applications are processed efficiently and with consistency.

Regardless of whether or not an application for transfer is protested, Section 42-222, *Idaho Code*, requires that the department evaluate whether there would be injury to other water rights, there would be an enlargement in use of the original right, the proposed use would be a beneficial use, the proposed use would be in the local public interest, the proposed use would be consistent with the conservation of water resources within the State of Idaho, and whether the proposed change would impact the agricultural base of the local area. The department must also evaluate the validity of the right (or part thereof) being changed and must assure that the applicant owns the right or otherwise has the authority to apply for the transfer.

1. When a Transfer is Required.

Section 42-222, *Idaho Code*, requires the holder of a water right to obtain approval from the department prior to changing: (1) the point of diversion, (2) the place of use, (3) the period of use, or (4) the nature of use of an established water right. An established water right is a licensed right, a decreed right, or a right established by diversion and beneficial use for which a claim in an adjudication or a statutory claim has been filed. Approval is sought by filing an application for transfer with the department.

Changes to Elements of a Water Right. An application for transfer is required if a proposed change would alter any of the four elements of the water right listed above

EXHIBIT 125

that can be changed pursuant to Section 42-222, *Idaho Code*, as recorded with the department or by decree. If a proposed change has the potential to injure other rights or the potential to enlarge the right, even when there would be no change in any of the recorded elements of the right, an application for transfer should be filed to provide for evaluation of injury and enlargement issues before the change is made. For example, if the point of diversion from a fully appropriated creek is proposed to be moved where additional water would be available for diversion or if the proposed point of diversion as changed would move upstream of the points of diversion for other rights, the change can not be made unless other conditions are imposed, such as mitigation, to prevent injury. As another example, a proposed change of use under a water right for an industrial use, which includes a limitation on the quantity of water that can be consumptively used, to an industrial use that would increase the quantity of water that would be consumptively used can not be made unless enlargement is prevented.

Changes in Consumptive Use. Unless there is a specific condition of the water right limiting the amount of consumptive use, the amount of consumptive use of water under a water right is not an element of the water right, and changes in water use under a water right for the authorized purpose of use that simply change the amount of consumptive use do not require an application for transfer provided that no element of the water right is changed and there is no potential for injury or enlargement. However, when determining the amount of water that can be transferred pursuant to an application for transfer proposing to change the nature or purpose of use, and for certain other circumstances as described herein, historical consumptive use is considered.

Changes to Points of Diversion. If a point of diversion is proposed to be moved to a different tract than described as an element under an established water right, then a transfer application is required. This includes a change from one 10-acre legal subdivision to another if the point of diversion has been previously described as a 10-acre legal subdivision. An application for transfer is also required when a point of diversion is proposed to be added for a water right, even when the existing authorized point of diversion is recorded as a 10-acre legal subdivision and the additional diversion would be within the same 10-acre legal subdivision.

If a point of diversion is proposed to be moved from a tributary to a location downstream from the confluence of the tributary and the surface water stream to which the tributary is joined, then an application for transfer is required. If a point of diversion is proposed to be moved from a stream to the stream to which it is tributary at a location upstream of the confluence between them, or moved from one tributary to another tributary, an application for exchange is required rather than an application for transfer.

Changes in Place of Use. An application for transfer is required if a change in the location of use between 40-acre legal subdivisions is proposed that would result in use of water at a new 40-acre subdivision that is not included within the recorded place of use element for the right. An application for transfer is also required for a proposed change in location of use under a water right for irrigation, with or without a proposed change in purpose of use, where the place of use is defined as an area within

prescribed boundaries or by a GIS "shape file," except for those rights held by irrigation districts, municipal providers, and others included under the provisions of Sections 42-202B or 42-219, *Idaho Code*, even when the change in location would be included within the same 40-acre legal subdivisions existing prior to the proposed change. A proposed change to any water right held for irrigation involving a change in the number of irrigated acres of less than one acre at the original place of use or at a proposed new place of use is not approvable unless the proposed change involves a new purpose of use within the original place of use or the applicant provides a verification procedure approved by the Director that can be practically administered to prevent injury or enlargement.

Consolidation of Acreage. An application for transfer is required for proposed consolidation of water use for irrigation by permanently reducing the number of acres authorized for irrigation under a water right, while maintaining the original diversion rate or annual diversion volume.

Land Application of Wastewater. An application for transfer is required for a proposed change in the place of use under a water right for industrial use, dairy use, or confined animal feeding operation that would allow land application of wastewater from that use or change the location of lands used for application of wastewater, except for wastewater from non-industrial uses when there is a full existing water right for irrigation of the place of use receiving wastewater. See Application Processing Memorandum No. 61 for additional information concerning wastewater from industrial uses.

Correction of Errors. An application for transfer may also be required to correct errors in licenses or decrees. For example, a transfer application may be required to correct the location of the place of use of a water right decreed by a court if the decree is later determined to be in error. However, a transfer action is not always required to correct such errors. For example, if a water right claim is determined to be in error, the claim can be amended to correct the error. Similarly, some clerical errors in a license or decree may be corrected by issuance of an amended license or decree (by the jurisdictional court) without using the transfer process. Also, a change to a description of the location of the place of use or point of diversion, as used by the Department for administration of water rights, resulting from improved methodology does not require an application for transfer, as described below. In addition, conditions that are no longer applicable may be modified or removed from a license without a transfer, provided other rights are not materially affected. For decrees, conditions that are no longer applicable should be noted in comments on the Department's electronic record for the right. However, a change to any element of a decreed water right requires filing an application for transfer, unless the appropriate court makes the change by amending the decree.

2. When a Transfer is not Required.

An application for transfer is not required if a proposed change will not alter any of the elements of a water right as licensed or decreed, except that even when the elements of a water right are not changed an application should be filed under such circumstances

described in Section 1 above. In addition, an application for transfer is not needed when an accomplished change to a water right or an enlargement of a right has been claimed in an adjudication in accordance with the provisions of Sections 42-1425 or 42-1426, *Idaho Code*.

Change in Ownership. An application for transfer is not required to change the owner of record for a water right or address of record for a right holder. Changes in ownership or address are to be filed in accordance with Section 42-248, *Idaho Code*, or for adjudication claims in accordance with Section 42-1409(6), *Idaho Code*. However, a transfer application filed pursuant to Section 42-222, *Idaho Code*, accompanied by evidence documenting a change in ownership for a water right, or showing a change in the address of the owner of a water right, satisfies the requirements of Section 42-248, *Idaho Code*.

Split Rights. An application for transfer is not required when a water right for irrigation is proposed to be split, with notice to the department pursuant to the provisions of Section 42-248, *Idaho Code*, such that a disproportionate per acre share of the right would be conveyed to another party provided that the resulting diversion rates do not exceed 0.02 cfs per acre, the amount of water historically applied per acre, or the amount of water diverted at a particular point of diversion, whichever is greater, for that part of the right conveyed or retained, and provided no other changes are made.

Replacement of Point of Diversion. An application for transfer is not required to replace a point of diversion if the new point of diversion is constructed at the same location as described in the license or decree for the water right, and the change will not injure other rights.

Refined Descriptions. An application for transfer is not required when a change in the description of the location of the point of diversion or place of use is only the result of improved methodology for referencing and displaying the location, which results in a more accurate description of the same physical location.

Generally Described Place of Use. As provided in Section 42-219, *Idaho Code*, an application for transfer is not required to change the place of use within a generally described place of use. A generally described place of use may be by court decree or as provided in Section 42-219(5) and (6). Pursuant to Section 42-219(7), any change within a generally described place of use can not result in an increase in the diversion rate, or in the total number of acres irrigated under the water right, and can not cause injury to other water rights. Any change to the boundaries of a generally described place of use requires an application for transfer, except for an irrigation district where changes in boundaries must be documented by a map of the revised boundaries filed with the department in accordance with Section 43-323(2), *Idaho Code*.

Municipal Places of Use. An application for transfer is not required to change or add a place of use for "municipal purposes" within the "service area" of a "municipal provider." See Sections 42-202B and 42-222(1), *Idaho Code*, for appropriate definitions and provisions governing use of municipal water rights. The ownership of a portion of a

municipal water right held by a municipal provider for reasonably anticipated future needs can be changed to a different municipal provider subject to the provisions of Section 42-248, *Idaho Code*. However, the right can not be changed to a place of use outside the service area of a municipal provider or to a new nature of use, and an application filed for such a change is to be returned together with any associated application fee.

In-stream Stock Watering. An application for transfer is not required to divert water away from a stream for stock watering purposes provided the diversion is added and used in conjunction with an in-stream stockwater right and provided the diversion meets certain conditions pursuant to Section 42-113(3), *Idaho Code*. See guidance memorandum for in-stream stock diversions dated June 26, 2000, for additional information.

Intensified Use of Water. An application for transfer is not required to increase production under an authorized use of water, unless the proposed change would also result in a change to one or more of the elements of the water right(s) as licensed or decreed. For example, an application for transfer is not required to increase the number or volume of raceways in a fish propagation facility, increase the number of cows at a dairy, change irrigation to a more water consumptive crop, or increase the generating capacity of hydroelectric generators, so long as none of the elements of the associated water rights are changed.

3. Requirements for an Acceptable Application for Transfer.

The department is a public service oriented agency, and department employees traditionally have helped applicants complete transfer application forms. The existing transfer backlog, together with the increasing number and complexity of new applications for transfer, requires that staff focus their time on processing existing acceptable applications. Department employees are encouraged to provide general assistance to applicants but should refrain from completing application forms on behalf of applicants.

An applicant or qualified consultant must prepare and submit an application for transfer in accordance with the minimum requirements enumerated below to be acceptable for initiating the processing of the application by the department. An application that does not comply with these minimum requirements is to be considered incomplete and is to be returned to the applicant along with a letter or checklist identifying the deficiencies. The letter shall state that unless the application is resubmitted within 30 days of its return, the application fee will be refunded upon written request. An application for transfer that satisfies the minimum requirements will be processed in accordance with Section 5, Information Needed to Complete Processing of a Transfer Application.

(1) Application Forms. An application for transfer must be submitted on a current form provided by the department entitled, "Application for

Transfer of Water Right." An electronic version of the current form can be used, such as the form available from the department's Internet homepage at:

http://www.idwr.state.id.us/info/forms/wrf3.pdf

(2) Name and Address. An application for transfer must include the name and address of the applicant. In addition, the application must include the name and address of any new right holder(s) for the water rights (or parts thereof) being transferred, if different than the applicant. The applicant's name must match the department's current record of ownership for the water rights (or parts thereof) being transferred. Otherwise, adequate documentation must be included to show that a change in ownership or authority to make the change has legally occurred. Adequate documentation can be a warranty deed, title policy, contract of sale or option for purchase by applicant (if the contract or option allows the transfer), or other similar document confirming ownership of the water right(s) or the authority to change the water right.

(3) List of Water Rights to be Changed. An application for transfer must list all water rights for use in a common system of diversion and distribution for which the point of diversion, place of use, period of use, or nature of use are proposed to be changed (the water rights to be transferred). A proposed change, which involves separate diversion and distribution systems, must be filed as separate applications. A proposed change to the remaining portion of an existing water right subsequent to a proposed transfer requires a separate application for transfer.

(4) Associated Water Rights or Water Supply. The application must include a separate list of individual water rights, other than those proposed to be changed, and a description of water supplied by a canal company, irrigation district, or municipality, that provide water currently used in the same diversion system or at the same place of use as the right(s) proposed to be transferred (associated water rights or water supply). In addition, the application must include a separate list of associated water rights or water supply proposed to be used in the same system or at a new place of use. If the associated water rights or water supply are not owned by the applicant and changes to conditions for those rights are necessary, documentation must be submitted confirming that the applicant has the legal authority to make such changes on behalf of the current owner of the other rights.

Changes to conditions or remarks for associated water rights that are necessary as a result of an approved transfer and that do not affect the rights of other persons or entities can be made without a separate transfer application or process. Such changes usually result from a

division in ownership and should be included in the transfer approval document.

(5) Reason for Change. The application must list the purpose for and a general statement of the reason for the proposed change.

(6) Description of Proposed Change. The application must describe in writing the proposed changes, which must include the following:

a. The right number(s) assigned by the department for the right(s) proposed to be changed must be identified. If the right was established by a beneficial use for which a claim has not been filed, a claim must be filed before or together with the transfer application. If the right is represented by a decree and the department has not assigned a number to the right, a copy of the decree must be included with a description of the right that is proposed to be changed.

b. The amount of water proposed to be diverted, as a rate of flow in cubic feet per second and as acre-feet per year, if the transferred water right has a volume limitation, for natural flow and ground water rights must be set forth. The amount of any stored water involved in a transfer must be identified in terms of acre-feet per year for each purpose of use listed.

c. The proposed nature or purpose of use must be stated. For proposed uses such as "industrial" or "commercial," a more detailed description of the proposed use(s) must be provided under the "Remarks" section of the application, or as an attachment to the application.

d. The period of each year during which water is proposed to be diverted, or diverted and stored, and beneficially used must be set forth for each use listed.

e. The source of water for the proposed changes must be listed. An application proposing a diversion, injection, and re-diversion of water must list the source for the original diversion as the source for the injection and re-diversion.

f. The legal description of the point(s) of diversion must be described. The description must be to the nearest 40–acre subdivision or U. S. Government Lot of the Public Land Survey System. The point(s) of diversion should be described to the nearest 10-acre tract, if based on a previously recorded 10-acre description or other accurate means such as GPS or a detailed and accurate map. The

location of springs must be described to the nearest 10–acre tract. Subdivision names, lot and block numbers, and any name in common usage for the point of diversion should be included in the "Remarks" section of the application form.

g. Except as provided herein, the legal description of the place of use must be set forth to the nearest 40-acre subdivision or U. S. Government Lot of the Public Land Survey System. Subdivision names, block and lot numbers, and any name in common usage for the place of use should be included in the "Remarks" section of the application form. For water rights held by irrigation districts, municipal providers, and others included under the provisions of Sections 42-202B or 42-219, *Idaho Code*, the place of use may be generally described even if previously described to the nearest 40-acre subdivision or lot.

   i. If irrigation is a purpose of use, the number of acres in each 40-acre tract of the place of use or within a generally described place of use must be shown. The location of uses, other than for municipal providers or for irrigation, must be identified in the appropriate 40-acre tract(s).

   ii. Except for wastewater from non-industrial uses when there is a full existing water right for irrigation of the place of use receiving wastewater, if a proposed change includes disposal or use of wastewater by land application to growing crops the application must identify the location of the waste disposal area by legal description under the use from which the wastewater originates.

h. An adequate description of the proposed diversion, delivery, application system(s), and measuring devices must be provided. This should include preliminary sizes and dimensions of pumps, pipelines, headgates, ditches, dams, impoundments, and application equipment. The type and location of measuring devices must also be provided. For large existing systems, such as those owned by municipal providers, irrigation districts, and canal companies, only those features proposed to be added or modified need to be described.

(7) Map of System. A map corresponding to the written description above must be included showing the location of points of diversion, reservoirs, dams, canals, ditches, pipelines, and other works proposed to be used

in the diversion and conveyance of water. The map must clearly show the location of the place of use including lands to be irrigated, if any. If only a part of the water right(s) is proposed to be changed, the map must include the location of the part of the existing recorded right(s) proposed to be removed (or changed). Legal descriptions including townships, ranges, sections, quarter-quarters, and government lots must be evident or labeled. In lieu of creating a map, a copy of a published map, such as a U. S. Geological Survey quadrangle map, or an aerial photograph, can be attached to the application with the required identification shown thereon. For large existing systems, such as those owned by municipal providers, irrigation districts, and canal companies, only those features proposed to be added or modified need to be shown.

(8) Response to Questions on the Form. The application for transfer must include responses to the questions on the application form concerning the validity of the right, the proposed use of the land from which the right is proposed to be removed (if applicable) and the existence of mortgages or liens.

(9) Changes to Part of a Right. If only a part of a right is being changed, the application for transfer must define that part by describing each of the elements, as currently licensed or decreed or otherwise recorded, for the part of the right being changed.

(10) Signature. The application for transfer must include the notarized signature of the applicant or the applicant's authorized representative. If a representative signs the application, evidence of authority to sign for the applicant must accompany the application. An application in more than one name must be signed by each applicant unless the right is held in the name of one joint owner "or" other joint owner(s), or the right is held in the name of one joint owner "and/or" other joint owner(s).

(11) Filing Fee. The filing fee provided in Section 42-221, *Idaho Code*, must be submitted with the application for transfer. If the applicant is a governmental agency, a purchase order for the required amount is acceptable. (See the memorandum titled "Guidance on SB 1337 Amending Section 42-221, I.C.," dated June 26, 2000, and Transfer Processing Memorandum No. 23 for further guidance on application fees.)

(12) Changes to Point of Diversion from Eastern Snake Plain Aquifer. Except as provided below, if the application for transfer proposes to move the point of diversion for a water right to divert and use ground water from one location to another within the Eastern Snake Plain Aquifer (ESPA), the applicant must submit an attachment to the application that sets forth the time history of calculated depletions

(transient to steady-state) to reaches of the Snake River that are hydraulically-connected to the ESPA using or based on the department's current ground water model for the ESPA, or other equivalent analysis acceptable to the department. When using results from the department's ground water model, the time history of calculated depletions must be for the cells containing the points of diversion both before and after the proposed transfer, if different. The most current response functions from the ground water model must be used, which as of the date of this memorandum can be obtained by contacting Dr. Donna M. Cosgrove (at cosgrove@if.uidaho.edu) and then manipulating the "Eastern Snake River Plain Hydrologic Effects Spreadsheet," which can be downloaded from the following web site:

http://www.if.uidaho.edu/~johnson/ifiwrri/effects.html

Alternatively, a copy of the department's ESPA ground water model can be obtained by the applicant and used by a qualified person to directly calculate the time history of depletions. A copy of the current ground water model can be obtained by contacting Mr. John Lindgren at jlindgren@idwr.state.id.us.

The purpose of this attachment is to provide a basis for evaluating whether the proposed transfer will increase depletions to hydraulically-connected reaches of the Snake River. Increases in such depletions are presumed to cause injury to existing water rights because all of the hydraulically-connected reaches of the Snake River (including tributary springs) have water rights that are not fully satisfied at certain times. Absent an analysis of injury, increased depletions must be mitigated (within 5 percent for transient increases in depletion, reflecting the confidence intervals for the ground water model) for the proposed transfer to be approvable, assuming the other criteria set forth in Section 42-222, *Idaho Code*, can be satisfied. If mitigation for the proposed transfer is proposed by the applicant, which consists of reduced ground water withdrawals, then any proposed schedule for adjusting reduced withdrawals must also be set forth in the application for transfer.

If the application for transfer proposes to move or add a point of diversion within the existing place of use for the water right, the attachment described above is not required when the application is submitted. However, if the department determines that the proposed change may increase depletions to a hydraulically-connected reach of the Snake River (including tributary springs), the attachment will be required to complete processing of the application for transfer.

(13) Historic Beneficial Use. If the application for transfer proposes to change the nature or purpose of use, season of use, or for a

supplemental water right, the place of use, the applicant must include an attachment documenting the historic extent of beneficial use under the right. For a transfer seeking to change a water right from irrigation, the attachment must provide sufficient data and information to determine historic consumptive water use. This can be satisfied by submitting records of cropping pattern or rotation, or records of water diverted and system efficiency, for at least the most recent, five consecutive years.

(14) Electronic Shape Files or Photographs Documenting Place of Use Changes. If the application for transfer proposes to change the purpose of use for a water right from irrigation to another use, or change the place of use for a water right for irrigation to another location, either of which requires the drying up of acres at the original place of use, the applicant must submit an attachment to the application for transfer. The attachment must provide a clear delineation of the location and extent of the irrigated acres prior to the proposed transfer, and must also provide a clear delineation of the location and extent of the irrigated acres after the transfer, if it is approved. This attachment may either consist of two electronic shape files in a format that is compatible with the department's GIS system or two aerial photographs of sufficient detail acceptable to the department with the boundaries of the irrigated areas clearly shown and referenced to the Public Land Survey System. Applications for transfer proposing to move irrigated acres to another location must submit an attachment that provides a clear delineation of the location and extent of the irrigated acres prior to the proposed transfer at the proposed new place of use, if any, and the location and extent of the irrigated acres at the new place of use after the transfer, if it is approved. This attachment may also consist of either two electronic shape files in a format that is compatible with the department's GIS system or two aerial photographs of sufficient detail acceptable to the department with the boundaries of the irrigated areas clearly shown and referenced to the Public Land Survey System. If a place of use involved with the application for transfer currently consists of a permissible place of use, then the applicable attachment is not required provided the application contains a clear statement that the boundaries for that permissible place of use are not proposed to be changed by the transfer and the total number of irrigated acres within that permissible place of use before and after the transfer is clearly set forth.

(15) Applications Involving Water Rights Based Upon Domestic Exemption. If an application for transfer involving one or more water rights having priority dates of March 25, 1963, or later, that relied on the domestic exemption set forth in Section 42-227, *Idaho Code*, for domestic purposes defined in Section 42-111, *Idaho Code*, even when evidenced by a decree, that proposes to establish a use, which itself would not be included within the scope of the definition for domestic purposes in

Section 42-111, *Idaho Code*, is not approvable. *Idaho Code* specifically prohibits the diversion and use of water under one or more exempt, domestic uses to provide a supply of water for a use that does not meet the exemption of Section 42-227, *Idaho Code*, and is required to comply with the mandatory application and permit process for appropriating a right to the use of water pursuant to Chapter 2, Title 42, *Idaho Code*. An application for transfer filed for such a change is to be returned together with any associated application fee submitted.

4. Changes to Applications for Transfer.

Amendment of Application. An applicant may revise or amend an acceptable application for transfer to clarify or correct information on the application. Significant changes to the place, period, or nature of the proposed use, amount of water, method or location of diversion, or other substantial changes from those shown on a pending application for transfer, will require filing a new application for transfer to replace the original application. If the revisions are not substantial, the application may be revised or amended with an initialed, dated endorsement by the applicant, or by the applicant's representative, on the original application, or by a notarized letter describing the amendments in sufficient detail. Changes to the application or supporting information are not to be made by staff under any circumstances. A replacement application must be identified as "changed" or "revised" on its face so that it can be distinguished from the original application, and the original application must be marked as "superseded." An additional filing fee may be required if the revised or replacement application involves more water than proposed in the original application for transfer. A re-advertisement fee, as provided in Section 42-221F, *Idaho Code*, will be required if notice of the original application has been published and changes to the original application are significant and warrant re-notice. (See Transfer Processing Memorandum No. 20 for additional information regarding changes to applications.)

Assignment of Application. An applicant may assign, in writing (must be notarized), an application for transfer to another entity while the application is pending before the department. An assignment does not require additional notice of the application to be published, and there is no fee for an assignment of an application. The assignment will change the name of the transfer applicant, but ownership of the water right(s) involved in the transfer cannot be changed without proper notice and documentation. Section 42-248, *Idaho Code*, provides that a transfer application can substitute for a notice of change in water right ownership if adequate documentation is provided with the application.

5. Processing an Application for Transfer Prior to Hearing.

Processing of an application for transfer consists of the following steps:

(1) Initiating Processing – Data Entry. Once an application has been accepted and the application fee receipted pursuant to Section 3, Requirements for an Acceptable Application for Transfer, the Regional Office shall complete data entry of the basic information contained in the application and initiate working in parallel with the State Office to process the application.

(2) Parallel Processing. Working in parallel, the Regional Office and the State Office will determine what, if any, additional information is necessary to complete or supplement the application, and the Regional Office will correspond with the applicant to obtain the additional information as well as perform any field review that is also necessary in coordination with staff from the Adjudication Bureau if the water right is claimed in a pending adjudication.

(3) Administrative, Hydrologic, and Legal Review. The Regional and State Offices will complete a review of all information submitted, in coordination with the Adjudication Bureau as needed, and forward appropriate information to the Hydrology Section and Administration for additional hydrologic, policy, and legal review as necessary.

(4) Preparation of Staff Memorandum. Once the review is complete, the Regional Office will prepare a memorandum, with the concurrence of the State Office and using the department's computerized Work Flow process, that documents the joint review and evaluation by the Regional and State Offices of the sufficiency of the information submitted and whether processing of the application can continue because there is no clear inconsistency with the criteria set forth in Section 42-222, *Idaho Code*. If it is determined that processing of the application can continue, the Regional Office will complete necessary GIS descriptions, finalize data entry, and draft conditions for entry into Work Flow.

(5) Rejection or Denial of Application. If it is determined that the application for transfer should be rejected or can not be approved pursuant to Section 42-222, *Idaho Code*, the State Office will prepare and issue a preliminary order rejecting or denying the application. An application for transfer is to be rejected if the applicant fails to provide additional or adequate information pursuant to the requirements in this Section 5. An application for transfer that clearly does not meet the criteria set forth in Section 42-222, *Idaho Code*, must be denied. A rejected application may be re-filed when adequate information can be provided; a denied application can not generally be re-filed for substantially the same proposed transfer, unless a showing is made that substantial changes have subsequently occurred such that the criteria set forth in Section 42-222, *Idaho Code*, can potentially be satisfied. In either case, application fees will be retained.

(6) Applicant Contest of Rejection or Denial. If the applicant contests the preliminary order rejecting or denying the application and requests a hearing pursuant to Section 42-1701A, *Idaho Code*, the Regional Office will provide notice of the application for transfer pursuant to Section 42-222, *Idaho Code*, including notice of the contested case, and provide opportunity to protest the application and intervene in the contested case.

(7) Public Notice. If it is determined that processing of the application can continue consistent with the criteria set forth in Section 42-222, *Idaho Code*, the Regional Office will provide notice of the application for transfer pursuant to Section 42-222, *Idaho Code*.

(8) Preparation of Approval Document. If no protest to the application for transfer is filed under step (7) above, or all protests filed are withdrawn prior to hearing, the Regional Office will finalize an electronic approval document and forward the document to the State Office. The State Office will issue an approved transfer, subject to appropriate conditions, as a preliminary order. The State Office will also complete data updates in Work Flow.

(9) Contested Case Proceedings. If protest to the application for transfer is filed under either step (6) or (7) above, a contested case process will be completed. The hearing officer will forward electronically any final order that results from the contested case and the State Office will complete data updates in Work Flow.

Gathering Information Needed for Processing. In completing the steps outlined above, additional information may be needed for clarification of the purpose and intent of the proposed change, to further document the information on the application, or to provide a sufficient basis for determining whether the proposed change satisfies the statutory criteria for approval. **The burden of providing sufficient information is borne by the applicant**. However, staff should locate and assemble information available in the department's records that does not require compilation, interpretation, or analysis by an engineer, geologist, or other technical specialist.

Requests for Additional Information. Correspondence shall be prepared requesting any additional information needed and providing a reasonable period of time for response (generally 30 days). When additional information is requested from the applicant, the applicant shall be informed of the need for a timely response to avoid delays in processing. The applicant shall also be informed that the application may be rejected if the additional information requested from the applicant is not timely received or is inadequate. The department can grant additional time to submit the required information if the applicant requests additional time and sufficient justification is provided.

Watermaster Recommendation. Section 42-222, *Idaho Code*, requires that the department shall advise the watermaster of any water district in which the water is used

of any proposed change. The department shall not take final action on an application for transfer until the watermaster's recommendation has been received and considered. If the watermaster does not respond to the department's initial request for a recommendation, a second request should be sent seeking a recommendation and informing the watermaster that a non-response will be considered by the department to be the watermaster's recommendation not objecting to approval of the proposed transfer.

Staff to Exercise Judgement. **Department staff has discretion to adapt the requirements set forth herein according to the nature and complexity of a proposed transfer.** While it is important that the information and documentation requirements are consistently applied, **staff is to use sound judgement to avoid asking the applicant for unnecessary information or seeking unnecessary review and comment from other state or local governmental entities as these guidelines are applied.**

5a. Evaluation of Authority to File an Application for Transfer.

(1) Presumption Based Upon Department Ownership Records. For any application for transfer, the department must have sufficient information to determine that the applicant has the authority to seek the proposed change in use of the water right(s). The department can presume, absent information to the contrary, that the applicant is the owner of the right(s) if the department's ownership records maintained pursuant to Sections 42-248 or 42-1409(6), *Idaho Code*, list the applicant as the current owner. The department may need to seek documentation regarding ownership if there is reason to believe that the department's ownership records may be inaccurate.

(2) Other Acceptable Documentation. If the applicant's name does not match the name in the department's records for the current owner of the right(s) sought to be transferred, the applicant must provide evidence of current ownership or authority to make the proposed change(s). Adequate documentation can be a warranty deed, title policy, contract of sale or option for purchase by applicant (if contract or option allows the transfer), or other similar document confirming ownership of the water right(s).

(3) Applicant Does Not Own New Place of Use. If the application for transfer proposes to change the place of use authorized under the water right(s), and the applicant does not own the land at the proposed new place of use, then the applicant must provide documentation that authorizes the change on behalf of the current owner of the proposed new place of use, except when the applicant is a municipal provider, irrigation district, canal company, or other similar entity. Such entities may only need to provide evidence of their authority to provide water for

the proposed place of use in instances where evidence of such authority is necessary.

(4) Conditions on Associated Rights. If an application for transfer proposes a change from or to a system where there is an associated water right that is not listed on the application as a right being transferred, a change to conditions for that right is required, and the right is not owned by the applicant, then the applicant must provide documentation authorizing the change on behalf of the current owner of the associated right.

(5) Authority to Sign on Behalf of an Applicant. If the application for transfer is signed by someone other than the applicant(s) as listed on the application, documentation is needed to establish that the signatory is a representative of the applicant and is authorized to sign on the applicant's behalf. The documentation can be a copy of a current "power of attorney" authorizing signature on behalf of the applicant, or other similar documentation. An application could also be signed by an officer of a corporation or company, an elected official of a municipality, or any individual authorized by an organization to sign the application for a corporation, company, or municipality (if accompanied by documentation confirming authorization). The signatory's title must be shown with the signature.

(6) Corporation, Partnership, Joint Venture, or other Business Entity. If the application for transfer is in the name of a corporation, partnership, joint venture, or other business entity, department staff must verify that the entity is authorized to do business in the State of Idaho by completing a Business Entity Status Search at: http://www.idsos.state.id.us/. If the Business Entity Status Search does not confirm that the corporation, partnership, joint venture, or other business entity is authorized to do business in the State of Idaho, department staff is to request further clarification from the applicant.

(7) Approval of Irrigation Entity or Legislature. Section 42-108, *Idaho Code*, requires that if the right(s), diversion works, or irrigation system is represented by shares in a corporation, or owned by an irrigation district, no change can be made without the consent of such corporation or irrigation district. This includes the use of such right(s), diversion works, or irrigation system for mitigation purposes related to a proposed transfer. Any permanent or temporary change in period of use or nature of use, in or out-of-state, involving a quantity of water greater than fifty (50) cfs or a storage volume greater than five thousand (5,000) acre-feet must also be approved by the legislature if approved by the department, except that any temporary change within the State of Idaho for a period of less than three (3) years does not require legislative approval.

(8) Liens, Mortgages, or Contract Restrictions. If the land from which the water right is proposed to be transferred is subject to liens, mortgages, or other contract restrictions affecting the right to transfer the water, a notarized statement is required from the holder of each such lien, mortgage, or contract (see Transfer Processing Memorandum No. 10).

(9) Municipal Provider. If an application for transfer proposes to change the nature of use of a water right to municipal purposes in the name of a municipal provider for reasonably anticipated future needs, the applicant must provide documentation to establish its qualifications as a municipal provider as defined in Section 42-202B, *Idaho Code.*

5b. Evaluation of Water Right Validity.

For any application for transfer, the department must determine the validity of the water right(s), or part thereof, proposed to be changed. The following factors must be considered when processing an application for transfer and may require additional information from the applicant.

(1) Department Records. For any application for transfer, the department must determine that a right, or part thereof, proposed to be transferred is valid and has not been lost by forfeiture or partial forfeiture. The department will presume, absent other information indicating forfeiture, that the right has not been forfeited if the department's water measurement records, aerial photography, remote sensing, or other information, shows use of water during the previous, consecutive, five-year period. The department will also presume that the right has not been forfeited when it is claimed in a pending adjudication or initially decreed in an adjudication within the previous five-year period. If staff makes a field inspection (all transfers seeking a change to a right evidenced only by a claim are to be field inspected, see Transfer Processing Memorandum No. 1), information must be gathered concerning the current status of diversion and delivery facilities and the apparent recent use of water.

(2) Other Acceptable Documentation. If the records available to the department do not establish that a right has been used within the previous, consecutive, five-year period (except as provided in (1) above or for a right held by a municipal provider for reasonably anticipated future needs pursuant to Section 42-223(2), *Idaho Code*), the applicant must be asked to provide written documentation demonstrating that the right has been used within that time period. Examples of appropriate documentation include power records for pumps used to divert water under the right, Farm Service Agency (FSA) crop production records, receipts or other evidence of expenditures or revenue from the use of water under the right, and adequate affidavits of objective persons

having actual knowledge of the uses of water under the right. Alternatively, if the right has not been used within the previous, consecutive, five-year period, then the applicant must be asked to provide information showing that exceptions or defenses to forfeiture are applicable. Exceptions or defenses to forfeiture include those set forth in Section 42-223, *Idaho Code*; extensions provided for in Section 42-222, *Idaho Code*; and case law relating to factors such as resumption of use, unavailability of water when needed, or non-use when other water is available.

(3) Validity of Unchanged Parts of a Water Right. For applications for transfer proposing to change part of a water right or rights, the remaining part(s) of the right(s) that are not involved in the proposed transfer are subject to a finding of forfeiture as part of the transfer action by the department. However, department staff is not required to perform a comprehensive forfeiture analysis for the remaining part(s) of the right(s), unless the information submitted by the applicant or gathered by the department clearly shows that forfeiture of the remaining part(s) has occurred. In addition, the remaining part(s) of the right(s) are not subject to any additional conditions beyond the requirements of the original right(s). When there has not been a comprehensive forfeiture analysis performed for the remaining, unchanged part(s) of the right(s), a remark will be included for any remaining part(s) of the right(s) to indicate that an approved transfer does not confirm the validity of the remaining, unchanged part(s) of the right(s).

(4) Statutory or Beneficial Use Claims. Applications for transfer proposing to change a water right based on a statutory or beneficial use claim must be reviewed to determine the validity of the claim. Review must include field verification as required in Transfer Processing Memorandum No. 1. In addition, the applicant must be asked to provide information confirming the priority date of the claim. Adjudication staff must also be consulted for questions regarding review of the priority date if the claim is filed in a pending adjudication. A transfer approval for the water right (or part thereof) based on a claim shall incorporate the department's findings regarding the validity of the right. If a statutory or beneficial use claim is the basis for a pending claim in an adjudication, adjudication staff shall be notified of the results of the validity review, and the claimant shall be informed of the findings.

5c. Injury to Other Water Rights

For any application for transfer, the department must determine whether the proposed change will injure any other rights, whether junior or senior in priority to the right being changed. The following factors must be considered when processing a transfer and may require additional information from the applicant.

(1) Reduction in Quantity of Water Available to Other Water Rights. Whether the amount of water available under an existing water right, senior or junior in priority, will be reduced below the amount recorded by permit, license, decree, or valid claim, or the historical amount beneficially used by the right holder, whichever is less.

(2) Unreasonable Effort or Expense. Whether the holder of an existing water right will be forced to an unreasonable effort or expense to divert water under the existing water right.

Existing ground water rights are subject to reasonable pumping level provisions of Section 42-226, *Idaho Code*, as well as applicable court decisions (e.g., Parker v. Wallentine, 103 Idaho 506, 650 P.2d 648 (1982), regarding in part the obligation to pay increased costs to divert an existing right).

(3) Unusable Water Quality. Whether the quality of water available to the holder of an existing water right would be made unusable for the purposes of the existing right.

(4) Mitigation. Whether mitigation would be needed to prevent injury to an existing water right that would be injured otherwise.

Unless agreed to in writing by the holder of an existing right, the only mitigation that can be considered acceptable by the department is the provision of replacement water in the full amount of the injury, at the same time injury would otherwise occur, and of acceptable water quality at the point of diversion for the existing right. For applications that propose to move the point of diversion for a water right to divert and use ground water from the ESPA, the transfer is not approvable if the transfer would result in increased depletions to any hydraulically-connected reach of the Snake River, within 5 percent for transient increases in depletion (reflecting the confidence intervals for the current ground water model). When increases in such depletions would occur, acceptable mitigation includes reduction in the quantity of ground water diverted and depleted such that there is no increase in depletions, within 5 percent for transient increases, to any hydraulically-connected reach of the Snake River. When this form of mitigation is proposed, the quantity of ground water diverted may be increased periodically (no more frequently than annually) if supported by an analysis of the timing of calculated depletions (transient to steady-state) to reaches of the Snake River that are hydraulically-connected to the ESPA for the points of diversion both before and after the proposed transfer. However, the proposed schedule for increased diversions must be set forth in the application for transfer, and if approved, the applicant may not increase ground water diversions under the transfer without first filing notice of

intent to increase the annual diversion volume with the department each time an increase in diversion volume is sought.*

(5) Ground Water Management Area or Critical Ground Water Area. Whether the point of diversion for a ground water right would move from outside the boundaries of a critical ground water area (CGWA) or ground water management area (GWMA) to within the boundaries of a CGWA or GWMA, or whether the point of diversion would move from within the boundaries of a GWMA to within the boundaries of a CGWA.

An application for transfer proposing such a change in the location of the point of diversion for a ground water right is not approvable unless the applicant proposes acceptable mitigation to prevent injury to other water rights. For cold water (less than 85° F) GWMAs over the ESPA, mitigation beyond that satisfying condition (4) above will not be required at this time as a condition of approval, unless injury would occur to a water right to divert ground water or injury would occur to a water right to divert surface water that has not been offset by stipulated agreement or through a mitigation plan approved by the Department,

(6) Change of Source. Whether the source would be changed from ground water to surface water, or from surface water to ground water.

An application for transfer proposing such a change in source is not approvable unless the ground water and surface water sources have a direct and immediate hydraulic connection (at least 50 percent depletion in original source from depletion at proposed point of diversion in one day). The existing point of diversion and proposed point of diversion must be proximate such that diversion and use of water from the proposed point of diversion would have substantially the same effect on the hydraulically-connected source as diversion and use of water from the original point of diversion. If such application for transfer is approved, the changed water right shall be administered no differently than any other water right from the surface water source. If approved, the source for a change from a surface water source to a ground water source should be listed as ground water tributary to the surface water source.

(7) Changing Aquifer Source. Whether a proposed change in point of diversion for a ground water right is from one aquifer to another aquifer.

* If the transfer is approved with mitigation by reducing the amount of ground water withdrawn, and as a result the reach gains to one or more other hydraulically-connected reaches of the Snake River increase, then the applicant shall retain the right to receive credit for the increased reach gains. Such credits can not currently be used because there is no administrative system in place to recognize such credits. In the event that an administrative system is created in the future whereby such credits available at that time can be recognized, the applicant shall retain the right to the possible future use of such credits, which shall be reflected in a condition of approval for the transfer.

An application for transfer proposing to change the point of diversion from one distinct aquifer to a totally separate aquifer is not approvable, just as an application for transfer proposing to change the point of diversion for a surface water right from one distinct surface water source to a totally separate surface water source is not approvable.

(8) Conveyance Losses. Whether the proposed change would move part or all of a right from a canal impacting conveyance losses associated with the delivery of multiple water rights in the canal.

If such application for transfer is otherwise approvable, the approval must require that the applicant retain an appropriate amount of water in the canal to prevent any additional reduction in the amount of water available from the canal to fill other water rights because of the portion of the conveyance losses that, prior to the transfer, were attributable to the right being transferred.

Additional Considerations. In addition to the considerations above, the following information may be needed to evaluate injury involving an application for transfer for a ground water right, depending on the specific circumstances of the proposed transfer. If the information is not available in the department's records, the applicant must provide the following information that department staff determines is necessary:

(1) Location of Nearby Wells. The location of the nearest production well, including domestic wells, to the proposed point of diversion, and if different, the nearest production well down gradient from the proposed point of diversion (the location of other nearby production wells may also be required);

(2) Location of Nearby Springs. The location of nearby springs from which water is diverted under existing rights, including domestic uses, that could be affected by ground water diversions from the proposed point of diversion;

(3) Ground Water Levels. The depth to water, the stability of ground water levels, or the stability of confined aquifer pressures, in the area of the proposed point of diversion; and

(4) Water-Bearing Zones. The depth and thickness of water-bearing zones, including identification of the zone or zones sought for the proposed use.

5d. Enlargement of Use

For any application for transfer, the department must determine whether the proposed change will enlarge the use of water under the water right(s). Enlargement will occur if

the total diversion rate, annual diversion volume, or extent of beneficial use (except for nonconsumptive water rights), exceeds the amounts or beneficial use authorized under the water right(s) prior to the proposed transfer. The following factors must be considered when processing an application for transfer, which may require that additional information be provided by the applicant:

(1) Diversion Rate, Annual Diversion Volume, and Number of Acres Licensed or Decreed. The authorized diversion rate, annual diversion volume (ground water rights only and certain surface water rights), and number of acres authorized for irrigation (if applicable), as licensed or decreed for the water right, shall not be increased. If the annual diversion volume is not specifically stated on the license or decree for a ground water right, then the amount will be based on the most current standards adopted by the department.

(2) Beneficial Use. An application for transfer proposing to change the place of use or nature of use for all or part of a water right or water rights, which change would not result in an equivalent reduction in beneficial use under the original right(s), will be presumed to enlarge the water right(s). For example, hydropower use cannot be added to a right used for irrigation, even though no additional water would be diverted for the hydropower use. The irrigation use, or part thereof, could be changed to hydropower use by reducing the irrigation use by an equivalent amount, or the new use could be provided without reducing the irrigation use by obtaining a new permit to appropriate water for hydropower use.

(3) Stacked Water Rights. Water rights are "stacked" when two or more water rights, generally of different priorities and often from different sources, are used for the same use and overlie the same place of use. Water rights for irrigating a permissible place of use are not stacked when the water rights in total provide for irrigating up to the maximum acreage authorized within a permissible place of use. An application for transfer proposing to "unstack" one or more water rights used for irrigation or other use, without changing all the rights for the same use, is presumed to enlarge the water right. However, the place of use for a supplemental irrigation right may be changed for continued use as a supplemental irrigation right at a different place of use without, by definition, enlarging the original right or the supplemental right proposed for transfer, so long as the primary rights at the original and proposed places of use provide comparable water supplies. In other words, use of the supplemental right at the proposed place of use can not materially exceed use of the supplemental right at the current place of use.

(4) Changing Supplemental Right to Primary Water Right. An application for transfer proposing to change a supplemental irrigation right to a use

as a primary water right for irrigation or other use constitutes an enlargement. An exception is when the applicant can demonstrate there would be no enlargement of the water right being changed or other related water rights because the supplemental right has been used on a regular basis and the extent of beneficial use under all associated rights prior to the transfer will be proportionately reduced.

(5) Historic Beneficial Use. For an application for transfer seeking to change the nature or purpose of use, season of use, or for a supplemental water right, the place of use, the historic extent of beneficial use under the right must not be enlarged. The extent of historic beneficial use may also have to be considered for other proposed changes in the place of use under some circumstances when there are other sources of water, such as natural subirrigation, even when the purpose of use or period of use are not proposed to be changed. For a transfer seeking to change a water right for irrigation, the consumptive water use based on the cropping pattern or rotation, or estimated from records of water diverted and system efficiency, for the most recent, five consecutive years is presumed to provide a reasonable basis to establish historic use under the water right proposed for transfer, unless information provided by the applicant supports using a longer historic period. Exceptions or defenses to forfeiture may also justify extending the time period considered in establishing the historic use prior to the proposed transfer. The highest-year historic consumptive use, except for supplemental rights, will be the basis for the annual volume of consumptive use available for transfer. When it is necessary to determine the historic consumptive use under a supplemental right, the average annual historic consumptive use, over an appropriately representative time period that may be greater than five years, will be the basis for the volume available for transfer. In some rare instances, the diversion rate, the annual diversion volume, and season of use could also be limited based on the extent of historic use.

(6) Period of Use. An application for transfer, which proposes an increased period of use in connection with a changed nature of use for ground water, is presumed not to be an enlargement in use if the rate of diversion, total annual volume diverted, and annual volume of consumptive use are not increased. However, a change to an increased period of use for a surface water right is presumed to be an enlargement and would cause injury where there are junior priority rights that rely on surface water during the time period outside of the historic period of use for the right proposed to be changed.

(7) Confined Animal Feeding Operations. For the purpose of quantifying the amount of water needed or used in connection with a confined

animal feeding operation, such as a feedlot or dairy, the water use will be considered fully (100 percent) consumptive.

(8) Fish Propagation. An application for transfer, which proposes to increase the number or volume of raceways in a fish propagation facility, will not be presumed to be an enlargement of the water right, unless the diversion rate or annual volume of water diverted are proposed to be increased.

(9) Disposal of Waste Water. An application for transfer filed to provide for the disposal of wastewater, by land application on cultivated fields or other beneficial use disposing of the wastewater, resulting from use of water under "commercial," "municipal," or "industrial" water rights where the use of water is considered to be fully consumptive, is not considered an enlargement of the commercial, municipal, or industrial water right. While not an enlargement of the water right, such use of wastewater must not injure other water rights (see Application Processing Memorandum No. 61) and must comply with best management practices required by the Idaho Department of Environmental Quality, the U. S. Environmental Protection Agency, or other state or federal agency having regulatory jurisdiction.

(10) Enhanced Water Supply. An application for transfer, which proposes to change a point of diversion from a surface water source to a new location where the water available is greater or more reliable, such as moving from the tributary of a stream downstream to the mainstem of the stream, is presumed to enlarge the water right, unless the proposed change is subject to conditions limiting diversion of water at the proposed new point of diversion to times when water is available and the water right is in priority at the original point of diversion.

(11) Water Held for Reasonably Anticipated Future Needs. Section 42-222, *Idaho Code*, provides that when a water right, or part thereof, to be changed is held by a municipal provider for municipal purposes, that portion of the right held for reasonably anticipated future needs can not be changed to a new place of use outside the service area of the municipal provider or to a new nature of use. See Section 42-202B, *Idaho Code* for applicable definitions related to municipal water use.

(12) Changing the Purpose of Use for a Water Right to Municipal Purposes. An application for transfer, which proposes to convey an established water right to a municipal provider and change the nature of use to municipal purposes, as defined in Section 42-202B, *Idaho Code*, shall not be approved without limiting the volume of water divertible under the right to the historic consumptive use under the water right prior to the proposed change. If the proposed transfer involves a surface water

right, the transfer shall not be approved without also limiting the right to the historic period of use under the right prior to the proposed change.

(13) Historic Use Recognized for Municipal Purposes. An application for transfer, which proposes to change the nature of use to municipal purposes for an established water right held by a municipal provider that lists the purpose(s) of use as domestic, commercial, industrial, irrigation, or any combination of those uses, where those uses have historically been essentially for municipal purposes, as defined in Section 42-202B, *Idaho Code*, will not be presumed to be an enlargement of the right.

(14) Stored Water. Section 42-222(1), *Idaho Code*, provides that a transfer of a water right for the use of stored water for irrigation purposes does not constitute an enlargement in the use of the original water right, even when more acres are irrigated, provided that no other water rights are injured.

(15) Conveyance Losses. An application for transfer, which proposes to change the purpose of use for a portion of a water right covering conveyance losses to a use that would provide for irrigating additional acres, or other additional use, is presumed to be an enlargement of the water right.

(16) Measuring Requirements for Ground Water Diversions. Any water right transfer authorizing one or more changes to the diversion and use of ground water approved subsequent to the date of this memorandum shall include a condition of approval that requires the installation and maintenance of one or more measuring devices or means of measurement approved by the department. Until and unless changed pursuant to Section 42-701, *Idaho Code*, the following flow meter installation is required for the transferred right prior to diverting and using ground water under the transferred right:

a. One or more magnetic flow meters shall be installed, as required by the department, having an accuracy of 0.5 percent of rate of flow for flow velocities between 0.1 and 33 ft/sec in pipe sizes up to 4 inches in diameter and for flow velocities between 0.1 and 20 ft/sec in pipe sizes greater than 4 inches in diameter;

b. Each magnetic flow meter must be installed and maintained in accordance with the manufacture's specifications and equipped with an LCD backlit display unit that displays instantaneous flow rate and total volume of water diverted in accordance with the department's requirements;

c. Each magnetic flow meter must provide analog output for flow rate, scaled pulse frequency for total volume of water diverted, and an RS232 port for communications; and

d. Each magnetic flow meter must be equipped with a data logger specified by the department and capable of storing 120 days of data including dates and cumulative volume of ground water diverted updated daily, as a minimum.

Detailed specifications for the above requirements will be provided by the Water Distribution Section of the department upon request. A municipal provider subject to other measurement provisions that satisfy the department's measuring and reporting requirements are exempt from the above condition. Holders of ground water rights approved for transfer for diversion through existing systems may request a variance from the above requirements, which may or may not be granted.

5e. Local Public Interest

For any application for transfer, the department must consider whether the proposed change(s) are in the local public interest as defined in Section 42-203A(5), *Idaho Code*. Consistent with earlier guidance herein regarding use of discretion and sound judgement, department staff are to address the following items, as well as other issues that are pertinent to specific circumstances, in considering whether sufficient information has been provided regarding local public interest issues. When there are one or more significant questions about whether a particular transfer would be in the local public interest, additional information from the applicant or comments from other state or local governmental entities that have germane expertise on local public interest issues must be sought. The applicant shall be informed when written comments regarding an application are solicited or received from another agency.

(1) Economic Impacts. The positive and negative impacts the proposed transfer could have on the economy of the local area, indicated by changes in short-term and long-term employment, short-term and long-term changes in economic activity, and the stability of economic activity;

(2) Recreation, Fish, and Wildlife Impacts. The effect the proposed transfer could have on recreation, fish, and wildlife resources in the local area that would be affected by the proposed change (Transfer Processing Memoranda Nos. 19 and 21 provide guidance related to state protected river reaches and minimum stream flow reaches);

(3) Agricultural Base. The effect the proposed transfer could have on the agricultural base of the local area (Section 42-222(1), *Idaho Code*, provides that a change in nature of use from agricultural use shall not be approved if it would significantly affect the agricultural base of the local area);

(4) Air, Water, and Hazardous Substance Standards. Whether the proposed transfer would comply with applicable air, water, and hazardous substance standards;

(5) Local and State Requirements. Whether the proposed transfer would comply with local government and state government, if any, planning and zoning ordinances, regulations, and records of decisions;

(6) Neighboring Jurisdictions. Whether the proposed transfer would comply with existing land use and other uses of natural resources, if any, adjacent to the place of use proposed by the transfer but beyond the jurisdiction of the local government having authority or control over the proposed place of use; and

(7) State Water Plan. Whether the proposed transfer would be compatible with the objectives and policies of the State Water Plan pertaining to the local public interest.

5f. Beneficial Use and Conservation of Water Resources

For any application for transfer, the department must consider whether the proposed use of water is a beneficial use consistent with the conservation of water resources within the State of Idaho. The following factors must be considered when processing a transfer and may require additional information from the applicant:

(1) Efficiency of Diversion and Use. Whether the water delivery and distribution/application systems for the use proposed by the transfer would be consistent with contemporary standards for reasonably efficient use of water.

(2) Diversion Rates for Irrigation Use. Whether the proposed transfer, if involving irrigation, proposes a diversion rate in excess of 0.02 cfs per acre of land irrigated (see Section 42-220, *Idaho Code*), and if the application for transfer proposes a higher diversion rate, whether the higher rate would be justified based on soils, crop types, irrigation system, climate, and reasonable conveyance losses from the point of diversion to the place of use. A higher diversion rate may also be justified for irrigating lands that because of public access can only be irrigated during certain times of the day (see Application Processing Memorandum No. 60). For the irrigation of five acres or less, justification is not necessary for a diversion rate of up to 0.03 cfs per acre (see Application Processing Memorandum No. 17). If the right proposed for transfer is based on a decree or license authorizing a diversion rate greater than 0.02 cfs per acre, then additional justification is not necessary unless:

a. The proposed transfer would change the place of use to a new place of use, rather than simply rearranging acreage at the general location of the existing place of use;

b. The proposed transfer would change the point of diversion with the intent to abandon the existing conveyance system and replace it with a new conveyance system that would reduce conveyance losses; or

c. The proposed transfer would add additional rights to an existing place of use from the same source as the existing water right(s) at the place of use.

(3) State Water Plan. Whether the proposed transfer would be compatible with the objectives and policies of the State Water Plan pertaining to beneficial use and conservation of water resources.

RECEIVED
DEC 2 7 2001
WATER RESOURCES
WESTERN REGION

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

Attorney for the Estate of Paul Edwards
and the Edwards Family LLC

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR TRANSFER OF WATER RIGHT NOS. 63-00012, 63-00013, AND 63-00015 (TRANSFER NO. 5875) AND 63-31051 (TRANSFER NO. 5876) IN THE NAME OF THE TERTELING, COMPANY, INC.	**AFFIDAVIT OF DANA L. HOFSTETTER IN SUPPORT OF MOTION TO SUBSTITUTE PARTY**

STATE OF IDAHO)
) ss.
COUNTY OF ADA)

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

(1) I am counsel of record for Paul Edwards and the Edwards Family LLC in this proceeding.

EXHIBIT 126

(2) Attached hereto as Exhibit A is a true and correct copy of the Warranty Deed dated December 29, 2000 by the terms of which Paul Edwards and his wife, Wilma Josephine Edwards, conveyed water right nos. 63-00014, 63-05065 and 63-05067 along with the associated land to the Edwards Family LLC, an Idaho limited liability company.

(3) Attached hereto as Exhibit B is a true and correct copy of the Articles of Organization for the Edwards Family LLC, that I printed on December 27, 2001 from the Idaho Secretary of State's internet web page. Paul Edwards and Wilma Josephine Edwards executed the Articles of Organization of the Edwards Family LLC as persons responsible for forming the limited liability company. It is my understanding that the Edwards Family LLC was established to address estate planning matters for Paul Edwards and Wilma Josephine Edwards.

(4) Attached hereto as Exhibit C is a true and correct copy of the Annual Report Form dated October 12, 2001 for the Edwards Family LLC, that I printed on December 27, 2001 from the Idaho Secretary of State's internet web page. It indicates that Garnette Monnie is the Managing Member of the Edwards Family LLC. Garnette Monnie is the daughter of Paul and Wilma Josephine Edwards.

(5) It is my understanding that Paul Edwards passed away on July 18, 2001.

(6) I anticipate that substitution of the Edwards Family LLC for Paul Edwards will have no material effect on this proceeding, either procedurally or substantively. Garnette Monnie, the managing member of the Edwards Family LLC, has maintained an active role in

this proceeding from the time of Protest filing to the present and has participated in all prehearing conferences and in all meetings with the Tertelings. There should be no need to change the current case scheduling as a result of this substitution of party.

FURTHER YOUR AFFIANT SAYETH NAUGHT.

DATED this 27th day of December, 2001.

DANA L. HOFSTETTER

SUBSCRIBED AND SWORN to before me this 27th day of December, 2001.

Notary Public in and for the State of Idaho

Residing at: Boise, Idaho

My Commission Expires: 10/11/2006

CERTIFICATE OF SERVICE

I hereby certify that on the 27th day of December, 2001, I caused to be served copies of the foregoing **Affidavit Of Dana L. Hofstetter In Support Of Motion To Substitute Party** on the following person by the methods indicated below:

John M. Marshall
Givens Pursley LLP
P.O. Box 2720
Boise, ID 83701-2720
✖ U.S. Mail ☐ Fed Ex ☐ Hand ✖ Fax

Dana L. Hofstetter

E:\3006.1\5090

ADA COUNTY RECORDER
J. DAVID NAVARRO
BOISE, IDAHO

RECORDED REQUEST OF
Carl W. Harder
FEE 12.00 DEPUTY J. Hooper

WARRANTY DEED

2000 DE 29 PM 2:54 100104472

THIS INDENTURE is made December 29, 2000, by PAUL W. EDWARDS and WILMA JOSEPHINE EDWARDS, husband and wife ("Grantors"), and EDWARDS FAMILY LLC, an Idaho limited liability company ("Grantee").

AS PART OF THE FUNDING of Grantee, Grantors hereby grant, bargain, sell, convey and confirm to Grantee those certain parcels of real property situated in the County of Ada, State of Idaho, and more particularly described on Exhibit "A" attached to this Warranty Deed and incorporated by this reference;

TOGETHER with all and singular the buildings, structures, improvements, tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining, including, without limitation all water rights, the reversion and reversions, remainder and remainders, rents, issues and profits thereof;

SUBJECT TO all existing encumbrances, rights reserved by federal and state laws or in federal patents or state deeds; building or use restrictions, building and zoning regulations and ordinances of any governmental unit; easements of record; rights-of-way of record; taxes and assessments for the current year; exceptions that would be revealed by a physical inspection of the property; and liens or encumbrances created by or permitted to exist by Grantee;

TO HAVE AND TO HOLD said premises unto Grantee and its successors and assigns forever.

Grantors warrant to Grantee and its successors and assigns that Grantors are the owners of said premises in fee simple and that Grantors have the right and authority to convey the same to Grantee. Grantors covenant with Grantee and its successors and assigns that Grantors will defend said premises to the extent of the warranties herein against the lawful claims of all persons.

The current address of Grantee is 4106 Sand Creek Street, Boise, Idaho 83703.

IN WITNESS WHEREOF, this WARRANTY DEED has been duly executed by Grantors as of the day and year first above written.

Paul W Edwards
PAUL W. EDWARDS

Wilma Josephine Edwards
WILMA JOSEPHINE EDWARDS

EXHIBIT
A

STATE OF IDAHO)
)
County of Ada)

On December 29, 2000, before me, Carl W. Harder, a Notary Public in and for said state, personally appeared PAUL W. EDWARDS and WILMA JOSEPHINE EDWARDS, husband and wife, known to me to be the persons whose names are subscribed to the within instrument, and acknowledged to me that they executed the same.

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

CARL W. HARDER NOTARY PUBLIC STATE OF IDAHO

Notary Public for Idaho
Residing at Boise, Idaho
My commission expires August 16, 2006

EXHIBIT "A"

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

#5 (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.

#4 (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.

#1 (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.

251

ARTICLES OF ORGANIZATION
LIMITED LIABILITY COMPANY

FILED - EFFECTIVE

Dec 29 1 41 PM '00

(Instructions on back of application)

SECRETARY OF STATE

1. The name of the limited liability company is: EDWARDS FAMILY LLC

2. The address of the initial registered office is: 516 S. CAPITOL BLVD., SUITE 224, BOISE, ID 83702 and the name of the initial registered agent at that address is: CARL W. HARDER

3. The mailing address for future correspondence: 4106 SAND CREEK STREET, BOISE, ID 83703

4. Management of the limited liability company will be vested in:

Manager(s) [x] or Member(s) [ ]. (please check the appropriate box)

5. If management is to be vested in one or more manager(s), list the name(s) and address(es) of at least one initial manager. If management is to be vested in the members, list the name(s) and address(es) of at least one initial member.

Name	Address
PAUL W. EDWARDS	4106 SAND CREEK STREET, BOISE, ID 83703
W. JOSEPHINE EDWARDS	4106 SAND CREEK STREET, BOISE, ID 83703

6. Signature of at least one person responsible for forming the limited liability company:

Paul W Edwards

Josephine Edwards

IDAHO SECRETARY OF STATE
Secretary of State Use Only
12/29/2000 09:00
CK: 1055337 CT: 133968 BH: 359429
1 @ 100.00 = 100.00 ORGAN LLC $ 2

W 13936

EXHIBIT
B

12/7/2001 10:

No. W 13936

Return to:
SECRETARY OF STATE
700 WEST JEFFERSON
PO BOX 83720
BOISE, ID 83720-0080

NO FILING FEE IF RECEIVED BY DUE DATE

Due no later than Dec 31, 2001
Annual Report Form

EDWARDS FAMILY LLC

4106 SAND CREEK ST

BOISE, ID 83703

2 Registered Agent and Office NO PO BOX

CARL W HARDER
516 S CAPITOL BLVD STE 224

BOISE, ID 83702

3. New Registered Agent Signature

4. Limited Liability Companies: Enter Names and Addresses of Managers.

Office held	Name	Street or P.O. Address	City	State	Zip
Managing Member	Garnette Monnie	4021 Hill Rd	Boise	ID	83703

5. Organized Under the Laws of:
IDAHO
W 13936

6.
Signature Garnette Monnie Date 10/17/01
Name Garnette Monnie Title owner

Issued 10/02/2001

Do Not Tape or Staple

3598

EXHIBIT
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C

12/27/2001

Close

IDAHO DEPARTMENT OF WATER RESOURCES
Adjudication Recommended Right Report

03/15/2006

WATER RIGHT NO. 63-14

Owner Type	Name and Address
Current Owner	EDWARDS FAMILY LLC 4106 SAND CREEK BOISE , ID 83703 (208)342-7548
Attorney	HOFSTETTER LAW OFFICE LLC C/O DANA L HOFSTETTER 608 W FRANKLIN ST BOISE, ID 83702 (208)424-7800
Original Owner	THOMAS F EDWARDS BOISE, ID
Original Owner	PAUL W EDWARDS 4106 SAND CREEK BOISE, ID 83703 (208)342-7548

Priority Date: 11/22/1926
Basis: Decreed
Status: Active

Source	Tributary
GROUND WATER	

Beneficial Use	From	To	Diversion Rate	Volume

EXHIBIT 127

IRRIGATION	03/15	11/15	0.33 CFS	
COMMERCIAL	01/01	12/31	0.84 CFS	250 AFA
HEATING	01/01	12/31	0.84 CFS	250 AFA
Total Diversion			0.84 CFS	

Location of Point(s) of Diversion:

GROUND WATER | SWNE | Sec. 29 | Township 04N | Range 02E | ADA County

IRRIGATION Use:
Acre Limit: 8.3

COMMERCIAL Use:
Number of other uses: Greenhouses, apartment/shop

HEATING Use:
Number of other uses: Greenhouses, appartment/shop

Place(s) of use:

Place of Use Legal Description: IRRIGATION ADA County

Township	Range	Section	Lot	Tract	Acres	Lot	Tract	Acres	Lot	Tract	Acres	Lot	Tract	Acres
04N	02E	29		SWNE	8.3									

Place of Use Legal Description: COMMERCIAL ADA County

Township	Range	Section	Lot	Tract	Acres	Lot	Tract	Acres	Lot	Tract	Acres	Lot	Tract	Acres
04N	02E	29		SWNE										

Place of Use Legal Description: HEATING ADA County

Township	Range	Section	Lot	Tract	Acres	Lot	Tract	Acres	Lot	Tract	Acres	Lot	Tract	Acres
04N	02E	29		SWNE										

Total Acres: 8.3

Conditions of Approval:

1.		Commercial use is included as an accomplished transfer pursuant to Section 42-1425, Idaho Code, to recognize all uses within the greenhouse, shop, and apartment including domestic, heating, retail shops and irrigation of plants.
2.	C18	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.
3.	C04	Right includes accomplished change in purpose of use pursuant to Section 42-1425, Idaho Code.
4.	B07	Water is 120 degree F temperature geothermal water.
5.	B09	This right is subject to regulation by the watermaster of Water District 63-S.
6.		Commercial use is for a greenhouse business and includes all associated uses including use for retail offices and shop, heating, and irrigation inside and outside of the greenhouses.
7.	E55	Use of this right with Right No. 63-5067 is limited to the irrigation of a combined total of 8.3 acres.
8.	E51	Use of this right with Right No. 63-5067 is limited to a total combined diversion rate of .33 cfs.

Dates:

Other Information:
State or Federal: S
Owner Name Connector:
Water District Number:
Generic Max Rate per Acre:
Generic Max Volume per Acre:
Swan Falls Trust or Nontrust:
Swan Falls Dismissed:
DLE Act Number:
Cary Act Number:
Mitigation Plan: False

Close

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.

EXHIBIT 128

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 Nos. 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:

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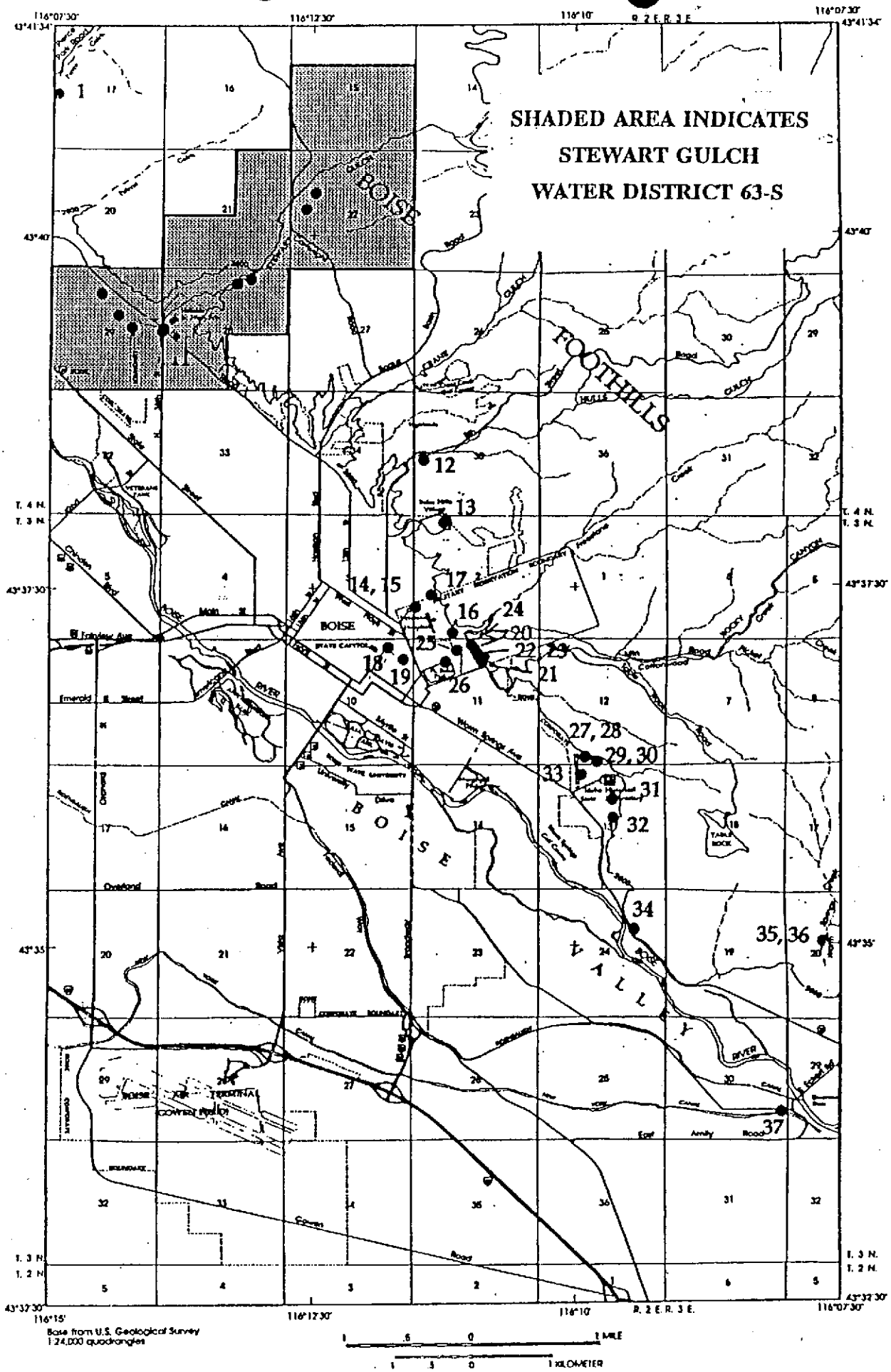
SHADED AREA INDICATES
STEWART GULCH
WATER DISTRICT 63-S
BOISE
FOOTHILLS
BOISE
VALLEY
1
12
13
14, 15
16
17
18
19
20
21
22
23
24
25
26
27, 28
29, 30
31
32
33
34
35, 36
37
Base from U.S. Geological Survey
1:24,000 quadrangles
1 MILE
1 KILOMETER

FIGURE 1

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE

STATE OF IDAHO

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

EXHIBIT 129

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.

Owner	Adjudication Claim No.	Water Right No.
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-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 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:

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

RECEIVED
JAN 25 1995
Idaho Department of Water Resources

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE

STATE OF IDAHO

IN THE MATTER OF WATER DISTRICT)
63-S, STEWART GULCH) COUNTY: ADA
)

PETITION OF TERTELING TRUST NO. 7 TO MODIFY BOUNDARIES OF WATER DISTRICT 63-S

COMES NOW, Terteling Trust No. 7, by and through its attorney, William D. Collins of the firm of Westberg, McCabe & Collins and hereby petitions the Director of The Idaho Department of Water Resources to modify the boundaries of Water District 63-S, Stewart Gulch, to exclude from the District that portion which lies northerly and easterly of a hydrological barrier in the low temperature geothermal aquifer. The Petitioner asserts that the boundaries of the District should be amended to read as follows:

> Commencing at the northwest corner of the NE¼NE¼NE¼ of Section 21, T. 4 N., R. 2 E., B.M., Ada County, Idaho, the real point of beginning;
> thence westerly along the north boundary of Section 21 a distance of approximately 1,980 feet to the north quarter corner of Section 21;
> thence southerly along the north-south center section line of Section 21 approximately 2,640 feet to the center quarter corner of Section 21;
> thence westerly along the north boundary of the SW¼ of Section 21 a distance of approximately 2,640 feet to the west quarter corner of Section 21;
> thence southerly along the west boundary of Section 21 a distance of approximately 2,640 feet to the southwest corner of Section 21;
> thence westerly along the north boundary of Section 29 approximately 5,280 feet to the northwest corner of Section 29;
> thence southerly along the west boundary of Section 29 a distance of approximately 5,280 feet to the southwest corner of Section 29;
> thence easterly along the south boundary of Section 29 a distance of approximately 5,280 feet to the southeast corner of Section 29;

EXHIBIT 130

thence along the south boundary of Section 28 a distance of approximately 2,640 feet to the south quarter corner of Section 28;
thence northerly along the north-south center section line of Section 28 to the center quarter corner of Section 28;
thence easterly along the north boundary of the SE¼ of Section 28 a distance of approximately 2,640 feet to the east quarter corner of Section 28;
thence northerly along the west boundary of Section 28 a distance of approximately 2,640 feet to the northeast corner of Section 28;
thence easterly along the south boundary of Section 22 a distance of approximately 4,620 feet to the southeast corner of the SE¼SE¼SE¼ of Section 22;
thence northwesterly a distance of approximately 7,467 feet, more or less to the real point of beginning.

A map showing the existing boundaries of the District and the area to be excluded is attached as Exhibit A.

The Petitioner submits, based upon data obtained by The Idaho Department of Water Resources and that submitted to the Department by Petitioner through its consultant, Edward Squires, that there is a hydrological barrier in the low temperature geothermal aquifer which has probably occurred through faulting. The location of that barrier is shown on Exhibit A. Water drawn from wells lying northerly and easterly of that barrier has been shown to not affect wells lying southerly and westerly of that barrier. As a consequence, Petitioner requests that the boundaries of Water District 63-S be modified so as to only comprise that part of the District lying southerly and westerly of the barrier.

DATED This 25 day of January, 1995.

William D. Collins
Attorney for Petitioner,
Terteling Trust No. 7

CERTIFICATE OF MAILING

I hereby certify that a true and correct copy of the foregoing document was mailed, postage prepaid, to the following on this 25 day of January, 1995:

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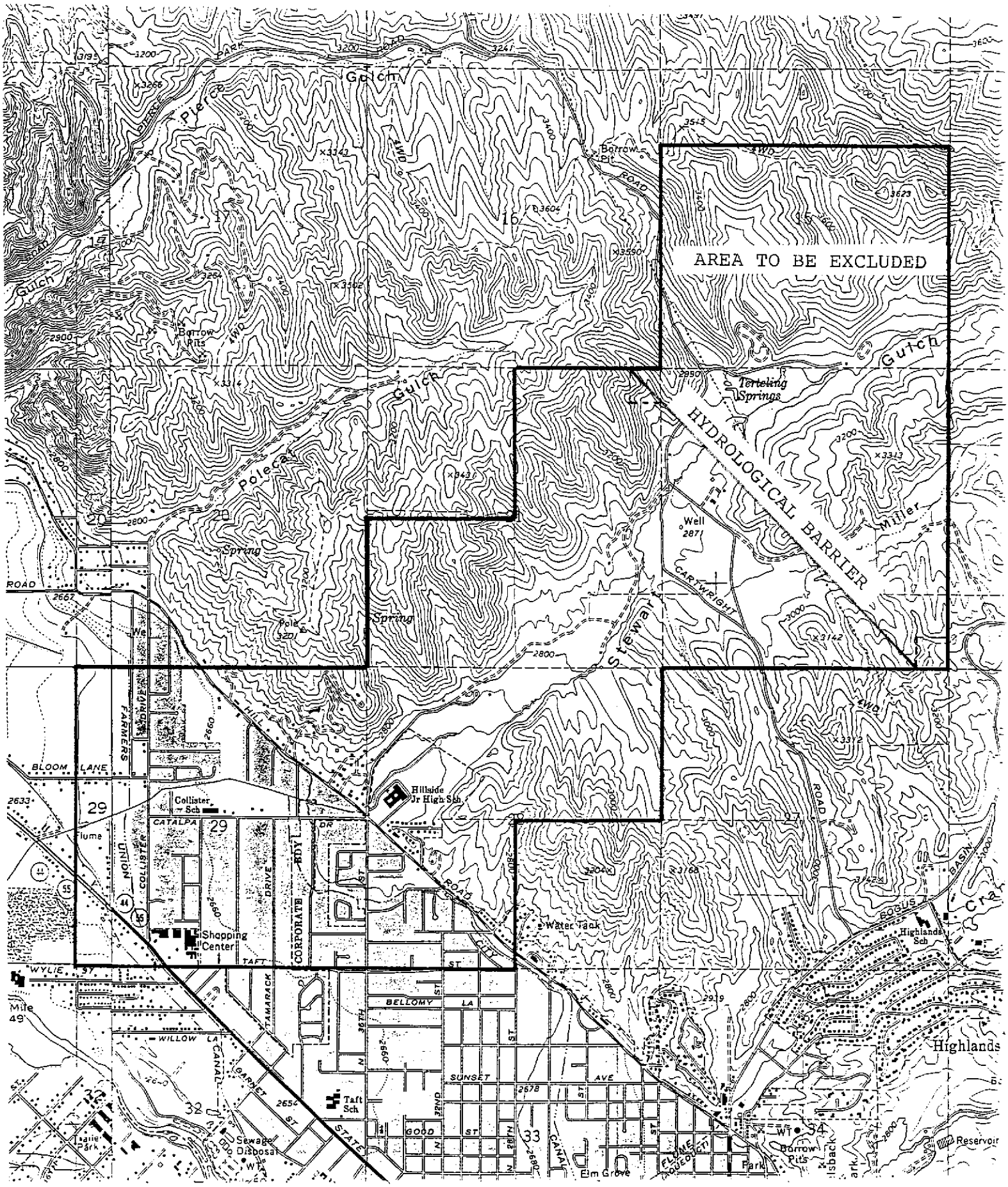
WESTBERG, McCABE & COLLINS, Ctd.

William D. Collins

EXHIBIT A
TO PETITION OF TERTELING TRUST NO. 7
TO MODIFY BOUNDARIES OF WATER DISTRICT 63-S



BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE

STATE OF IDAHO

IN THE MATTER OF A PETITION TO MODIFY THE BOUNDARIES OF WATER DISTRICT NO. 63-S

RECOMMENDED ORDER

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 waterusers include, in senior to junior water right priority order, the following: 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.

Based on the evidence before the Department, the hearing officer recommends the following FINDINGS OF FACT, CONCLUSIONS OF LAW and 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 NW1/4SW1/4 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 NW1/4SW1/4 Section 28 and well no. 2 in the NE1/4SE1/4 Section 29;

b) Edwards well in the SW1/4NE1/4 Section 29; and

c) Golf Course well no. 1 in the SW1/4SE1/4 Section 21 and well no. 2 in the NW1/4NE1/4 Section 28.

6. Petitioner's Motorcycle Club well (TMC well) is located in the NW1/4NE1/4 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 is now 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 but hydraulically isolated from the wells; and

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 all of these wells do not appear to be interconnected with the TMC well, the barrier appears to restrict communication between the areas northeast and southwest of the barrier. Therefore, well interconnection has not been demonstrated between the TMC well and the wells located down-gradient, the TWS, Golf Course, Flora and Edwards wells.

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. Therefore, the proposed hydrological barrier is thought to be more general rather than specific, but basically separates aquifer functions between the TMC well and the wells found down-gradient.

12. All available evidence reasonably demonstrates that a hydrological barrier exists between the TMC well and the low temperature geothermal wells located down-gradient beginning with the TWS well. The hydrological 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).

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. The participants requested that all information to be included in the official record be further identified. In addition to the testimony and exhibits presented at the May 16, 1995 hearing and subsequent information submitted while the record remained open, the hearing officer takes official notice of the following:

a) Silkey v. Tiegs decree;

b) previous Department proceedings establishing the District and subsequent orders issued by the Director;

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 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 by law.

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. The exact location and extent of the hydrological barrier cannot be mapped from existing evidence. Adequate information to redefine the proposed District boundary to conform with section tract lines or surface landmarks is not available; the proposed boundary should remain as a diagonal line through the section.

7. The low temperature geothermal wells to 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.

8. 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.

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

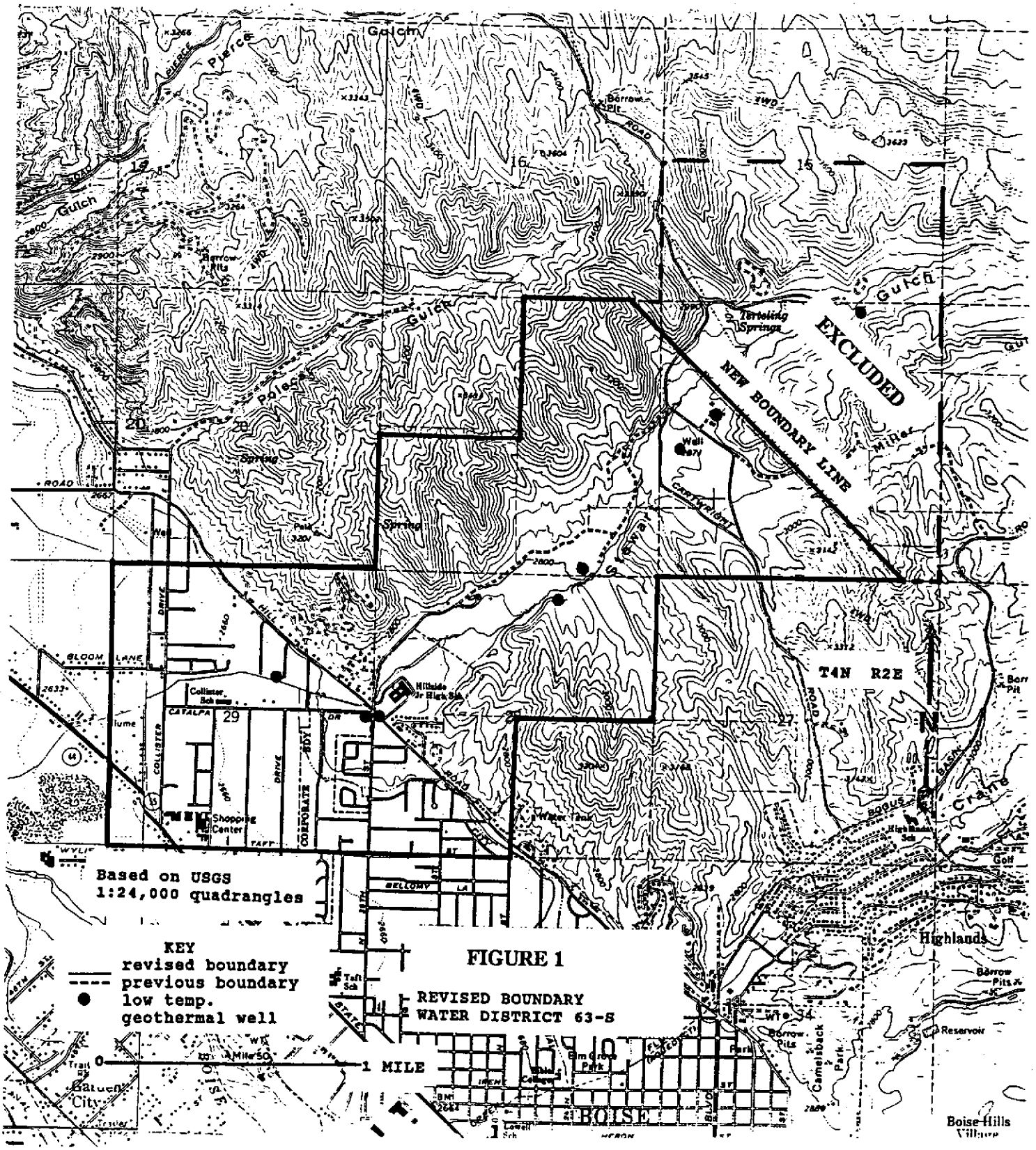


FIGURE 1

REVISED BOUNDARY
WATER DISTRICT 63-8

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE

STATE OF IDAHO

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

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:

EXHIBIT 132

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 NW¼SW¼ 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 NW¼SW¼ Section 28 and well no. 2 in the NE¼SE¼ Section 29;

b) Edwards well in the SW¼NE¼ Section 29; and

c) Golf Course well no. 1 in the SW¼SE¼ Section 21 and well no. 2 in the NW¼NE¼ Section 28.

6. Petitioner's Motorcycle Club well (TMC well) is located in the NW¼NE¼ 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

Sherman Nelson
4015 Whitehead St.
Boise, ID 83703

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

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

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

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

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

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

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

Dave Hendrickson
4520 N 36th
Boise, ID 83703

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

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

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

Ed Squires
1530 Knights Dr.
Boise, ID 83712

Julie L. Yarbrough
JULIE L. YARBROUGH
Senior Secretary

Dalby, Cindy

From: Luke, Tim
Sent: Monday, March 28, 2005 10:30 AM
To: Dalby, Cindy
Subject: FW: Notes from March 10th water district mtg.

Please print and file in WD63-S? Stewart Gulch 05 file.
Tim

-----Original Message-----
From: RYAN MARY [mailto:ryanm@meridianschools.org]
Sent: Friday, March 25, 2005 4:04 PM
To: HMAYM44@aol.com; kneely@idwr.state.id.us; lgraves@idwr.state.id.us; tluke@idwr.state.id.us; DHBOISE1@AOL.com; hydrologic@qwest.net; edwardsgh@qwest.net; Dana@IdahoWaterLaw.com; tom@tertco.com; Mary Ryan; ryanm@meridianschools.org
Subject: Notes from March 10th water district mtg.

Minutes for the March 10th, 2005 Water District 63-S meeting.

The following were present:
Helen M. Miller
David Niznik
Garnette Monnie-Edwards Greenhouse
Dana Hofstetter-Hofstetter Law Office
Vicky Music-IDWR
Lori Graves-IDWR
Joe Terteling-Terteling Co.
Ed Squires-Hydro Logic
Mary E. Ryan
Dave Hendrickson-Quail Hollow Golf Course
Ken Neely-IDWR & Water Master
Rose E. Ryan

The meeting was called to order at 1:45 p.m. by Garnette Monnie.
Tom Terteling is out of town and asked Garnette to act as chairperson.

The minutes of the March 11th, 2004 meeting were read and approved.

Treasurer's Report:
Dave reported that there is $205.86 in the checking account. All members paid in full for the 2003 year. $2,869.37 was paid to Ken Neely for Water Master duties for 2003. We have been billed by Ken Neely $3,563.01 for Water Master duties for 2004. Ken stated there was no anticipated increase for 2005 budget.

A motion was made the assessment for 2004 will be 4 times of 2003. It was approved.

The assessment is as follows:

Quail Hollow Golf Course	$361.60		
Terteling Co.		$2,742.44	
Edwards Greenhouse	$920.08		
Ryan			$40.00
Total			$4,064.12

Garnette proposed a motion that the assessments increase by 10% for the 2005 budget. It was approved.

New Business:

EXHIBIT 134

Election of officers:
Meeting Chairmen-Tom Terteling
Secetary-Rose E. Ryan
Treasurer-Dave Hendrickson

A motion was made we use voting procedure described by Idaho Code 42-605. It was approved.

Helen Miller introduced David Niznik as the owner of the Whitehead Street well.

Water Master Report:

Ken reported that the data is available upon request for the monitoring of the wells as of March 8th, 2005. No problems were reported. Ken has been monitoring the Whitehead Street well since October 2004. Whitehead well has had all monitoring devices installed. Pressure reading has been constant on the Whitehead well. Over all for the whole district pressure is up a little from the previous year.

Garnette proposed a motion thjat Ken Neely remain as water master for the next year. It was approved.

Old Business:

All monitoring devices have been installed on the Whitehead Street well. Helen Miller presented a paper detailing the history of the Whitehead Street Geothermal well. She also presented a petition to join the Stewart Gulch Water District by the Owner and Users of the Whitehead Steet Well. Decision was deferred till next year on a vote and the proper procedure for Whitehead well to join the district. Ken will monitor the Whitehead well for a year. No fee will be assessed for this year.

Next meeting will be March 9th, 2006 at 1:30 p.m. at Quail Hollow Club House.

Meeting was adjourned at 2:45 p.m.

Submitted
Rose E. Ryan
Secretary

The Terteling Co. Inc. 3823 N 36th St Boise ID 83703	Office: 338-5200 Tom: 381-5213 (w), 229-1116 (h) tom@tertco.com
Hydro Logic Inc. Attn: Ed Squires 1002 W Franklin Boise ID 83702	Office: 342-8369 Mobile: 631-6781 hydrologic@qwest.net
Edwards Family LLC C/o Garnette Monnie 4106 Sand Cr Boise ID 83703	Office: 342-7548 edwardsgh@qwest.net
Hofstetter Law Office LLC Attn: Dana Hofstetter 608 W Franklin St Boise ID 83702	Office: 424-7800 Dana@IdahoWaterLaw.com
Quail Hollow Golf Course C/o Dave Hendrickson 4520 N 36th St Boise ID 83703	Office: 344-7807 dhboise1@aol.com
Mary and Rose Ryan 4504 Foothills Dr Boise ID 83703	Home: 342-8498 maryryan1@earthlink.com ryanm@meridianschools.org
Helen Miller 4023 N Whitehead St Boise ID 83703	Home: 344-6215 HMAYM44@aol.com
Todd Bunderson 4015 N Whitehead St Boise ID 83703	Home: 342-3311
Ed Altman C/o Plantation West Bldrs 6529 Plantation Ln Boise ID 83703	Home: 853-0650 Mobile: 850-8917
Wynn & Jan Johnson 3907 N Whitehead St Boise ID 83703	Home: 424-8616

63-S 2004 file.

Review of Boise Front Geothermal Monitoring Data for Water Year 2003 (October 1, 2002 – September 30, 2003)

Kenneth W. Neely, Technical Hydrogeologist
Idaho Department of Water Resources (IDWR)
March 2, 2004

1. EXECUTIVE SUMMARY

Water Year 2003, which ran from October 1, 2002 through September 30, 2003 had the most complete set of monitoring data on record for the Boise Front Low Temperature Geothermal Ground Water Management Area. This accomplishment is the direct result of the monitoring plan which was implemented as part of the Agreement signed by representatives for six of the geothermal entities on July 24, 2002. Appreciation is extended to everyone who faithfully collected and submitted data to the Idaho Department of Water Resources.

The following observations summarize Water Year 2003:

1. Gross and net withdrawals from the four downtown Boise heating systems have been fairly consistent for the last three water years.
2. The water level in the BLM well in September 2003 was at its highest level since 1983, with the exception of one value in 2001. Peak water levels in the Boise Warm Spring Water District East and West wells were lower in 2003 than in 2002; however, overall, upward trends in these wells have continued since 1998.
3. Supply temperatures have dropped a little more than two degrees Fahrenheit in the Capital Mall system since late 1997.
4. Total withdrawal from the four major systems in Ground Water District 63S (Stewart Gulch) was just over 200 million gallons for Water Year 2003 (WY03), which is the first year that total production could be calculated for the District.
5. Water level changes in the nine wells measured in Water District 63S (WD63S) varied considerably with wells showing either increasing or decreasing trends. Local withdrawals may be causing some of these trends.

This report is a condensed version compared to the two previous reports. Additional hydrographs for the downtown Boise, Harris Ranch, and WD63S wells, and the flow calibration checks for the four downtown Boise systems can be found on the IDWR geothermal website (www.idahogeothermal.org).

2. DOWNTOWN BOISE/HARRIS RANCH

In WY03, gross and net withdrawals from the four downtown Boise district heating systems were 734.4 and 274.3 million gallons, respectively (Table 1). About 63 percent of the fluids were reinjected. Both gross and net withdrawals for WY03 were fairly consistent with the two previous water years (Figure 1). Calibration checks using a polysonic meter on the four systems showed that the installed measuring devices are

underreporting the flow rates by 2.5% to 12%. IDWR has a policy that measuring devices are to be accurate to within ± 10 percent. The Sparling meter on the BWSWD was the only one that exceeded 10%. Thus, the data from the Sparling meter should be adjusted accordingly.

Water levels in the BLM well in September 2003 were at their highest levels since 1983 except for one unusual peak in 2001 (Figure 2). Peak water levels in the BLM well increased 17.8 feet from October 1998 to September 2003 (the City of Boise Injection well began service in early 1999). Water levels in the BWSWD East and West wells continue to show upward trends, although the peak value was a little lower in 2003 than in 2002. Overall, the peak value in the West well was 29 feet higher in August 2003 than in August 1998. The peak water level in the BWSWD #3 well was almost as high as the peak reading in 1983. Water levels in the Harris Ranch wells have climbed steadily since August 2002 (West well +3.6 feet; East well +5.2 feet) with some slight indication of annual cycles. Water levels in the Old Pen well have remained similar to historic data.

Based on the maximum monthly temperature, the supply temperatures in the Capital Mall system have dropped a little more than two degrees Fahrenheit since late 1997 (Figure 3). The temperature sensor on the supply well was switched with the sensor from the injection well in order to determine if the declining trend might be related to inaccurate equipment. However, Bill Hudson (Idaho Department of Administration, personal communication) found that the two thermometers read essentially the same temperature, which gives validity to the observed trend

Table 1. Production from the four district heating systems in the downtown Boise area for Water Year 2003 (October 1, 2002 through September 30, 2003).

System	Gross Withdrawals (gallons)	Net Withdrawals[1] (gallons)
Boise Warm Springs Water District	250,509,000	250,509,000
Capitol Mall (State of Idaho)	130,257,355	0
City of Boise	180,094,820	23,747,788
Veterans Administration	173,542,686	0
Total	**734,403,861**	**274,256,788**

[1]Net Withdrawals equal Gross Withdrawals minus Injection amount.

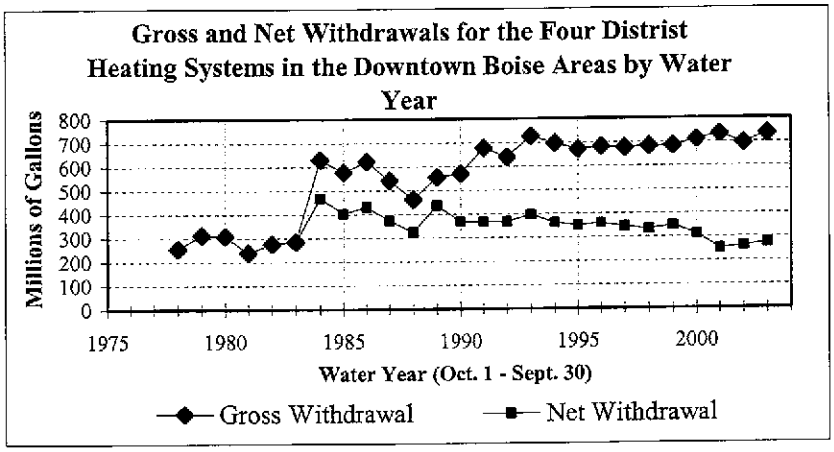


Figure 1. Gross and net withdrawals for the four district heating systems in the downtown Boise area for water years 1978 through 2003.

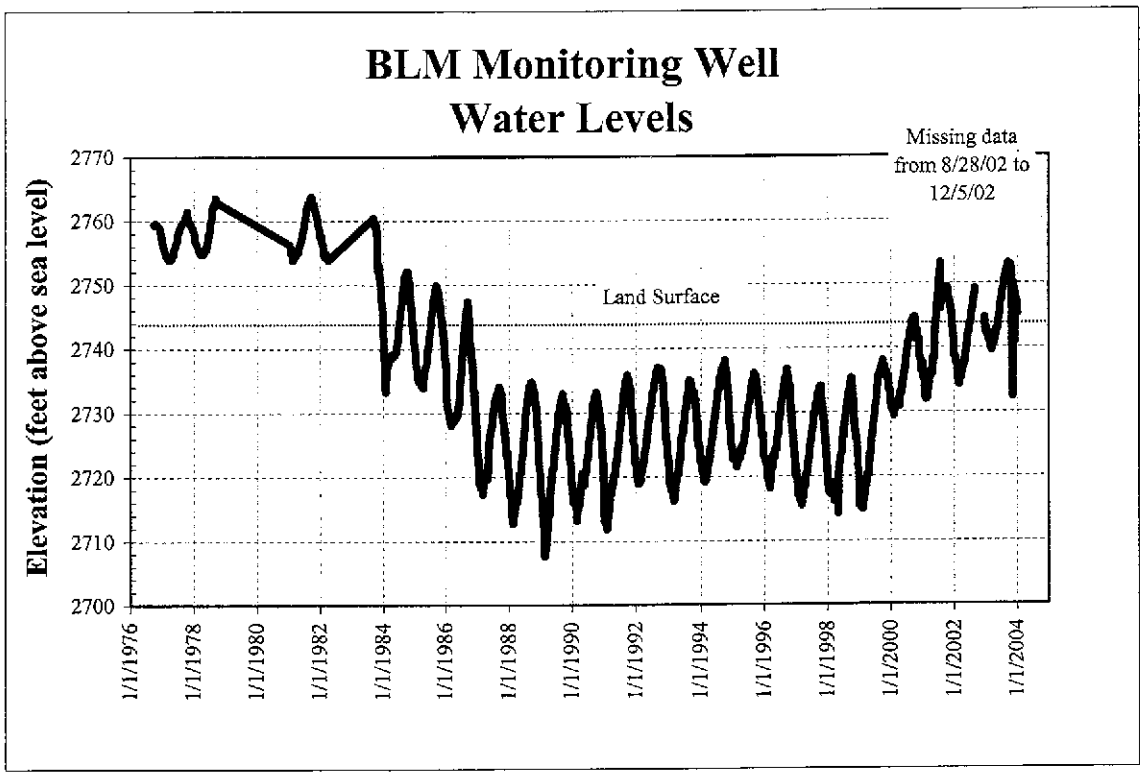


Figure 2. Water level hydrograph for the BLM monitoring well.

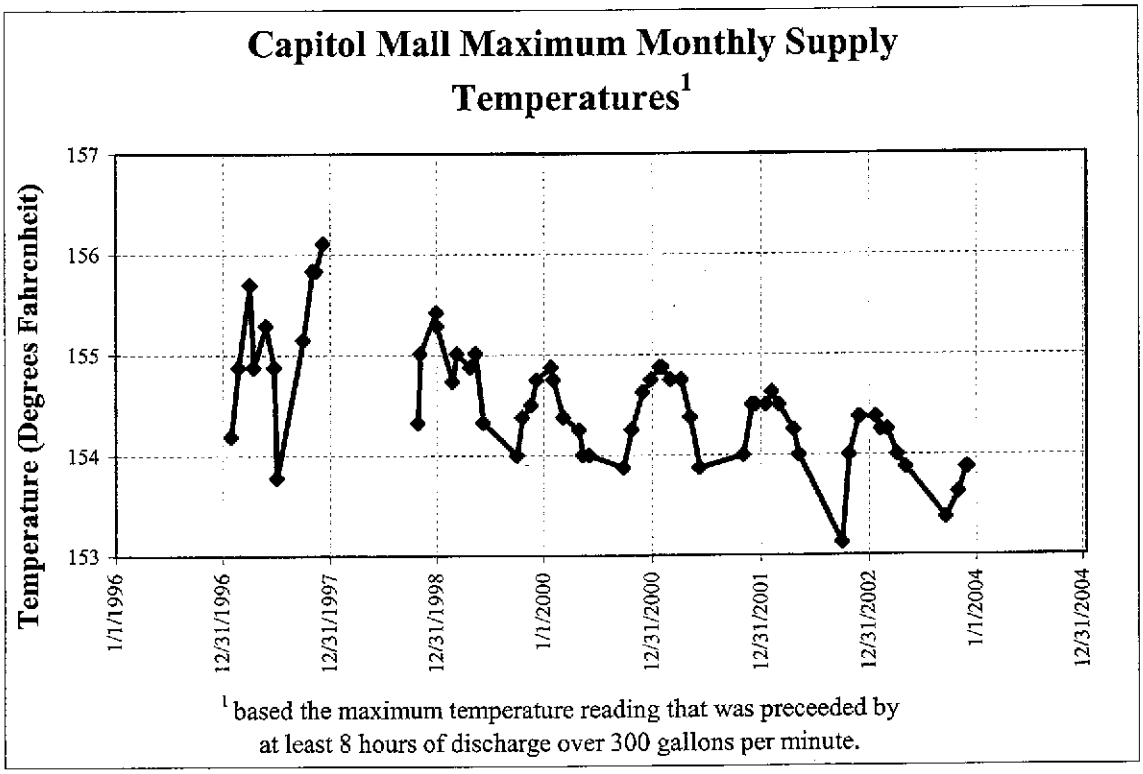


Figure 3. Water supply temperatures for the Capitol Mall system.

3. STEWART GULCH GROUND WATER DISTRICT 63S

Monitoring in the WD63S has improved significantly in the last year. Data are submitted to IDWR according to the monitoring plan of the Agreement signed in 2002 as part of the City of Boise's application for additional withdrawals. In addition to new monitoring equipment installed on the Terteling Ranch and Flora Company wells, monitoring data have been collected monthly since June 2003 by the Water Master of WD63S. Twice a year, the measurement frequency is to increase to once a week for six weeks (Sept-Oct, and Feb-March). The measurements were missed in Sept-Oct due to an oversight by the Water Master, but are being collected weekly for the Feb-March interval at the time of this report. The hydrographs in this report and those posted on the website contain both the data submitted by the reporting entity and the data collected by the Water Master.

Table 2 shows withdrawals for WD63S wells for WY03. In addition to the total reported on Table 2, there is unknown amount of domestic withdrawal from three wells that each service a single residence, and from a well known historically as "Stralow" that provides water to four homes. The domestic wells are exempt from monitoring. However, IDWR is currently reviewing a request by a water user within WD 63S to require the installation of measuring equipment on the Stralow well.

Water level[1] changes varied considerably in the WD63S wells. Overall, water levels were lower in 2003 than in 2002. However, 2002 was an unusual year of high water levels in some of the wells. Therefore, water levels from 2003 were compared to 2001 to try to obtain a longer term picture of trends.

In the Edwards well, peak water levels dropped 8.1 feet from 2001 to 2003 (Figure 4). In the nearby Flora Company Tiegs (Triangle) well, peak water levels dropped 5.8 feet for the same time period (Figure 5). Water levels increased 7 feet in the Flora Company Silkey (Shed) Well, but the September 2001 reading was missing which should have been the highest reading in the year. The Flora Company House well experienced a decline of 4.6 feet from 2001 to 2003. Water levels in the Quail Hollow Golf Course wells were higher in 2003 than in 2001; +3.7 feet in the Lower well and +6.7 feet in the Upper well. The Terteling Ranch Windsock well had an increase in peak values of 1 foot from 2001 to 2003 (Figure 6). Both of the other two Terteling geothermal wells had decreases; -4.6 feet at the Pool well and -16.6 feet at the Windsock well (excluding the very high reading in May 2001).

The reason for variations in water levels in WD63S is unknown, but it is suspected that local pumping conditions may be a primary influence.

[1]Shut in pressure readings were converted to the equivalent feet above reference points for flowing wells.

Table 2. Withdrawals from Stewart Gulch Water District 63S geothermal wells for Water Year 2003 (October 1, 2002 through September 30, 2003).

Well	Withdrawals (gallons)
Flora Company Tiegs (Triangle)	0
Flora Company Silkey (Shed)	42,548,250
Flora Company House (Office)	3,214,900
Edwards Greenhouse	45,514,890
Terteling Ranch Windsock	74,214,130
Terteling Ranch Pool	19,944,015
Terteling Ranch Motorcycle Club	0
Quail Hollow Upper	13,431,300
Quail Hollow Lower	5,016,500
Total	**203,883,985**

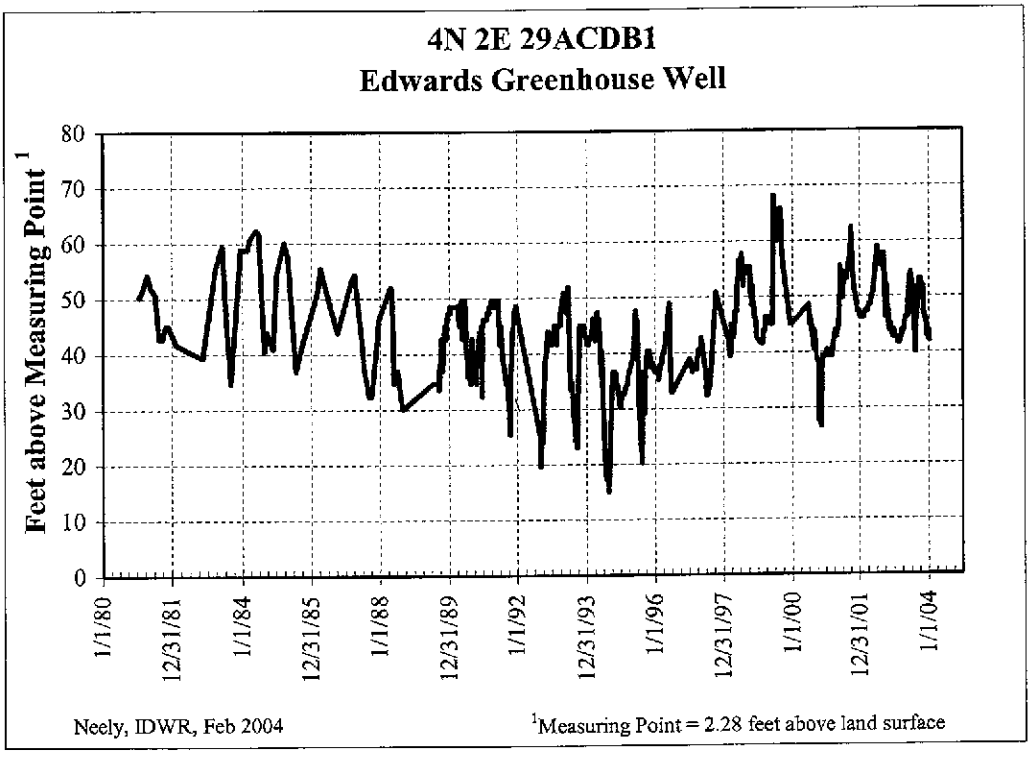


Figure 4. Water level hydrograph for the Edwards Greenhouse well.

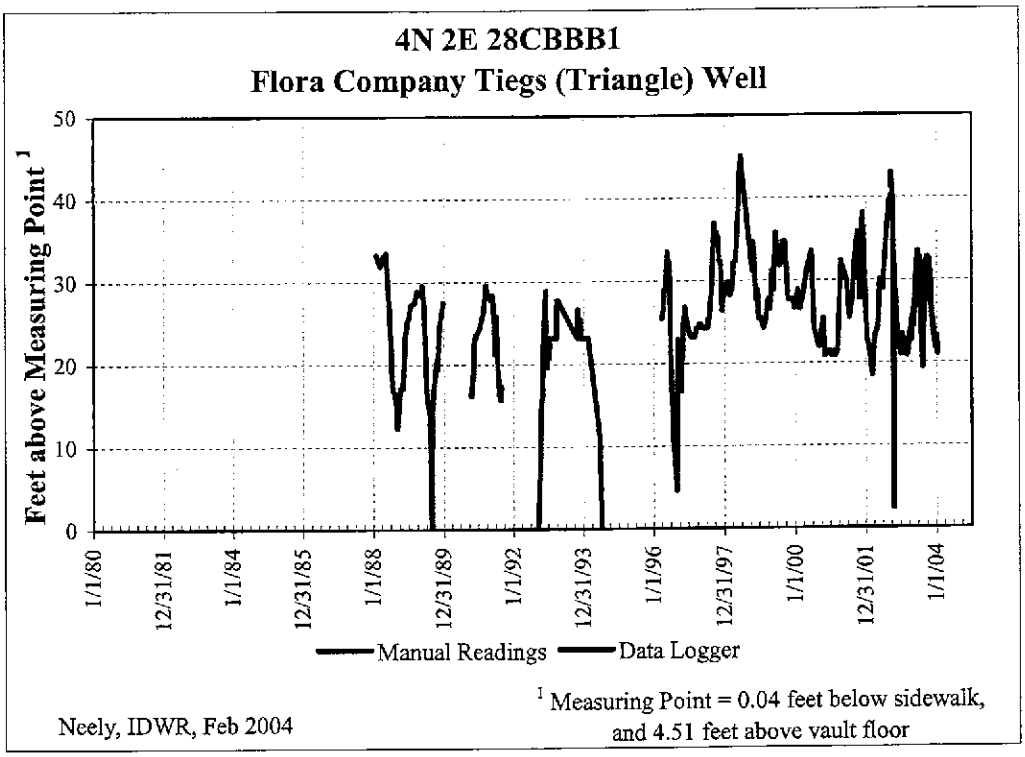


Figure 5. Water level hydrograph for the Flora Company Tiegs (Triangle) well.

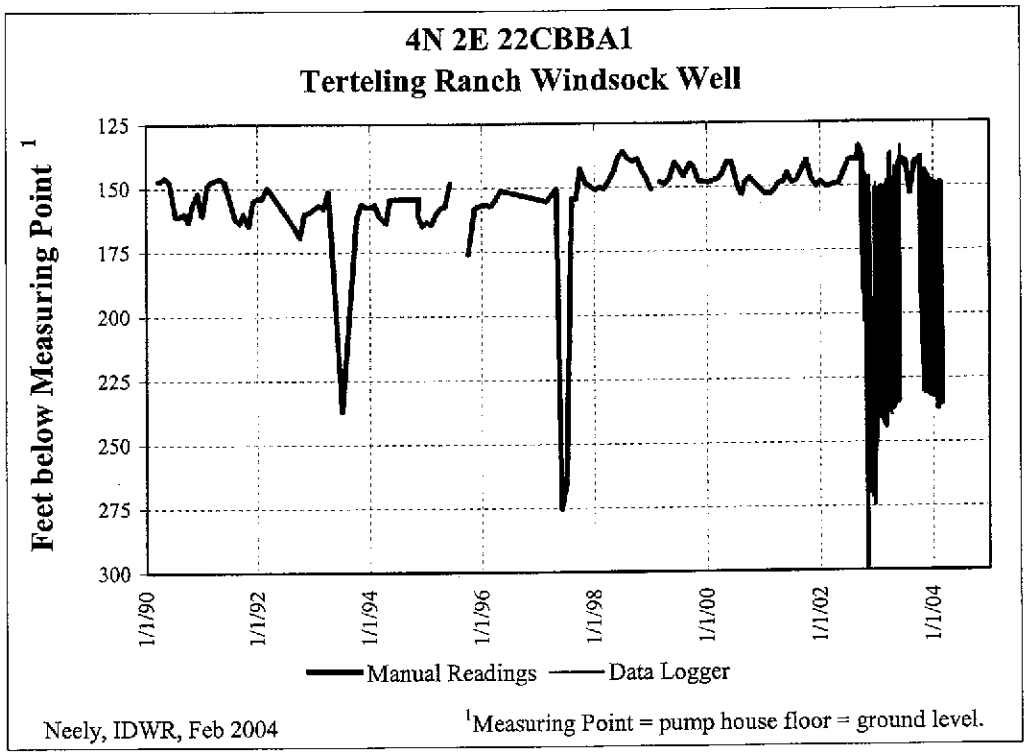


Figure 6. Water level hydrograph for the Terteling Ranch Windsock well.

4. RECOMMENDATIONS

1. **Boise Warm Springs Water District.**
   a. Apply a correction factor of 1.136 to all production totals recorded by the Sparling meter. Indicate in the quarterly submittals to IDWR that this adjustment has been made to the data
   b. Enter the log sheet data into an electronic file and submit this to IDWR for the quarterly reports.
   c. Install data loggers to collect information in a more "continuous" manner as required by the order of 1987.

2. **Edwards Greenhouse**
   a. Enter the log sheet data into an electronic file and submit this to IDWR for the quarterly reports.

3. **Veterans Administration** (Non-Party).
   a. Enter the log sheet data into an electronic file and submit this to IDWR for the quarterly reports.
   b. Install data loggers to collect information in a more "continuous" manner as required by the order of 1987.
   c. Determine if the air line on the production well is working properly for collecting water level data.
   d. Collect water levels in the injection and test injection wells on a weekly basis.

4. **Change IDWR's reporting requirements as follows:**
   a. Complete an annual report following the submission of the 3rd quarter data. This report will cover the previous water year and will be due from IDWR by November 30. The report will be similar to this report, and will include representative hydrographs, updated productions tables, and data interpretations. Additional hydrographs will be posted on the IDWR geothermal website.
   b. Complete a brief (1-2 page) memo following the submission of the 1st quarter data. The memo will include a general overview of the previous six months of monitoring and production, an update on the BLM well hydrograph, and an updated temperature plot for the Capitol Mall system. Any unusual situations or issues that need to be addressed will be reported in the memo, which will be due from IDWR by May 31. Flow calibration checks conducted during the heating season will be posted on the IDWR website.

Watermaster's Report
Ground Water District 63-S (Stewart Gulch)
June 1, 2003 to February 29, 2004

Summary of Watermaster Activities

I was elected as the Watermaster of Ground Water District 63-S at the Annual Meeting on April 30, 2003. Regular monthly measurements began on June 3, 2003. Most measurements were taken on the first Tuesday of each month. Weekly measurements were to be taken for a six-week period from September 1 to about mid October. However, I forgot about this, and the weekly measurements were missed. A second set of weekly measurements began successfully on February 3, 2004, and were completed on March 11, 2004. Table 1 shows the dates of the measurements taken from June 2003 through February 2004, and the time associated with the measurements and miscellaneous time.

Table 1. Watermaster hours for Water District 63-S work, June 2003 through February 2004.

Date	Hours	Comments
6/3/2003	5.5	Measurements with Brian Cavanagh
7/8/2003	2	Parts for measuring device
7/9/2003	4.5	Measurements
7/10/2003	2	Measurements
8/5/2003	5	Measurements
9/4/2003	5	Measurements
10/7/2003	2	Measurements
10/8/2003	3	Measurements
11/5/2003	5.5	Measurements
12/1/2003	5	Measurements
1/6/2004	5	Measurements
2/3/2004	5	Measurements
2/10/2004	5.5	Measurements
2/17/2004	5	Measurements
2/24/2004	5	Measurements
TOTAL	65	

Summary of Data Collections

Table 2 shows that withdrawals from the eight wells monitored in Water District 63-S for Water Year 2003 (October 1, 2002 to September 30, 2003. In addition to the total reported on Table 2, there is unknown amount of domestic withdrawal from three wells that each service a single residence, and from a well known historically as "Stralow" that provides water to four homes. The domestic wells are exempt from monitoring.

However, IDWR is currently reviewing a request by a water user within WD 63S to require the installation of measuring equipment on the Stralow well.

Table 2. Withdrawals from Stewart Gulch Water District 63S geothermal wells for Water Year 2003 (October 1, 2002 through September 30, 2003).

Well	Withdrawals (gallons)
Flora Company Tiegs (Triangle)	0
Flora Company Silkey (Shed)	42,548,250
Flora Company House (Office)	3,214,900
Edwards Greenhouse	45,514,890
Terteling Ranch Windsock	74,214,130
Terteling Ranch Pool	19,944,015
Quail Hollow Upper	13,431,300
Quail Hollow Lower	5,016,500
Total	**203,883,985**

Water level[1] changes varied considerably in the WD63S wells. Overall, water levels were lower in 2003 than in 2002. However, 2002 was an unusual year of high water levels in some of the wells. Therefore, water levels from 2003 were compared to 2001 to try to obtain a longer term picture of trends.

In the Edwards well, peak water levels dropped 8.1 feet from 2001 to 2003. In the nearby Flora Company Tiegs (Triangle) well, peak water levels dropped 5.8 feet for the same time period. Water levels increased 7 feet in the Flora Company Silkey (Shed) Well, but the September 2001 reading was missing which should have been the highest reading in the year. The Flora Company House well experienced a decline of 4.6 feet from 2001 to 2003. Water levels in the Quail Hollow Golf Course wells were higher in 2003 than in 2001; +3.7 feet in the Lower well and +6.7 feet in the Upper well. The Terteling Ranch Windsock well had an increase in peak values of 1 foot from 2001 to 2003. Both of the other two Terteling geothermal wells had decreases; -4.6 feet at the Pool well and -16.6 feet at the Windsock well (excluding the very high reading in May 2001). The reason for variations in water levels in WD63S is unknown, but it is suspected that local pumping conditions may be a primary influence.

Hydrographs can be viewed on the Idaho Department of Water Resources geothermal website (www.idahogeothermal.org) or obtained by contacting me (327-5455)

[1]Shut in pressure readings were converted to the equivalent feet above reference points for flowing wells.

Budget

The Total Cost for the Water Master services and for the equipment purchased was $2869.37 for the time period from June 2003 through the end of February, 2004. The cost for the Water Master's service is based on an hourly rate which includes overhead. The amount assigned to each well was determined as follows:

1. At the Annual meeting, it was determined that about $1000 was needed in addition to the existing balance in the bank account to pay IDWR.
2. The Ryan well was assessed $10.00
3. At the meeting, Tom Terteling calculated the individual percentage of the total withdrawals for the remaining wells. He used these values to calculated Column 2 of Table 3. Tom supplied the numbers in Column 2 to me.
4. I calculated the percentages in Column 3 of Table 3 by dividing each number in column 2 by 1006.03 and then multiplying by 100 (The divisor was reduced $10 for the Ryan well)).
5. I multiplied the percentages in Column 3 times $2;859.37 ($10 removed from the total assessment for the Ryan well) and divided by 100. The results are in Column 4 of Table 3.

A proposed budget is not needed for March 2004 through February 2005 because the Water District agreed to pay the Water Master according to the rate set by the Idaho Department of Water Resources. The next assessment is to be submitted by February 28, 2005, and payment in full will be due by April 1, 2005.

Table 3. Assessment for Water Master and measuring equipment expenses for Water District 63S for June 2003 through the end of February 2004.

Name	Received From T. Terteling	Percent	6/03 to 2/04 Amounts
Flora Tiegs	$0	0.000	$0.00
Flora Silkey	$208.48	20.723	$592.55
Flora House	$15.75	1.566	$44.77
Edwards	$230.02	22.864	$653.77
Terteling Ranch	$363.65	36.147	$1033.58
Terteling Pool	$97.73	9.714	$277.77
Quail Hollow Upper	$65.81	6.542	$187.05
Quail Hollow Lower	$24.59	2.444	$69.89
Ryan	$10	-	$10.00
Total	**$1016.03**	**100**	**$2869.37**

Respectfully submitted,

Kenneth Neely 3/19/04

Kenneth Neely, Water Master

Review of Boise Front Geothermal Monitoring Data for Water Year 2005 (October 1, 2004 – September 30, 2005)

Kenneth W. Neely, Technical Hydrogeologist
Idaho Department of Water Resources (IDWR)
February 1, 2006

1. EXECUTIVE SUMMARY

Monitoring results for Water Year 2005 (WY05) showed that net withdrawals from the four downtown Boise geothermal district heating systems was 293.4 million gallons (mgal), which is about 9.5% higher than the net withdrawals in Water Year 2004 (WY04). Overall, water levels[1] in the downtown area of the Boise Front geothermal system declined in 2005 from the previous year. Peak water levels decreased just over one foot in the BLM well, which is the primary monitoring well in the downtown area of the Boise Front geothermal system. The greatest water level change occurred in the Boise Warm Springs Water District West well where the minimum water level decreased 46 feet from 2004 to 2005. Maximum monthly water temperatures continued to decline in the water withdrawn from the State of Idaho Capitol Mall production well.

For Stewart Gulch Ground Water District 63S (WD63S), total ground water withdrawal was 196.4 mgal, which was about 9% higher than in WY04. In general, the minimum water levels were higher in early 2005 than they were in early 2004. However, the maximum water levels in mid 2005 did not recover to the levels of 2004, and the overall status of ground water levels in the District by late 2005 was lower than 2004.

2. DOWNTOWN BOISE/HARRIS RANCH

In WY05, gross and net withdrawals from the four downtown Boise district heating systems were 775.6 and 293.4 mgal, respectively (Table 1). Gross withdrawals were about 4% more in WY05 than in the previous water year, and net withdrawals were about 9.5% higher, with the majority of this increase attributed to the City system (Table 1). About 62 percent of the fluids were re-injected, which is a decrease of approximately 2% from the previous year. After dropping sharply in Water Year 2001 (WY01), net withdrawals have risen from 249.3 mgal (WY01) to 293.5 mgal (WY05), which is about an 18% increase over this time period (Figure 1).

Overall, water levels in the Boise Front geothermal system declined in 2005 from the previous year. The peak water level in the BLM well was 1.1 feet lower in 2005 than in 2004 (Figure 2). Minimum water level patterns in the BLM well have been inconsistent over the last three years.

Water levels in the BWSWD East, West, and #3 wells were all lower in 2005 than in 2004 (Figure 3). The minimum water levels in early 2005 were 33 and 46 feet lower than

[1]For flowing wells, pressure readings were converted to the equivalent feet below measuring points.

in 2004 for the East and West Wells, respectively (the minimum values for these two wells generally occur annually in January – March). For the West Well, this declining trend started in 2003 when the minimum water level dropped 19 feet from 2003 to 2004. The East Well, however, had a higher minimum value in 2004 than in 2003. The maximum values for the East and West wells were 2 feet and 3 feet lower, respectively, in 2005 than in 2004. The peak water level in the BWSWD #3 was only 0.07 feet lower in 2005 than in 2004; however, the minimum value, which occurred in March 2005, was 4.6 feet lower than the minimum value in 2004 (Figure 4).

The minimum water level in the Kanta well declined about 4.4 feet from March 2004 to March 2005 (Figure 5). BGL #1's minimum water level dropped about 7.7 feet from March 2004 to March 2005, but the minimum value was still higher than the minimum value in 2003 (Figure 6). Water levels in the Old Penitentiary well have shown an overall decline of about six feet since late 2002; however the decline was less in 2005 than in previous years (Figure 7). After over two years of steady water level increases (with some seasonal cycling), water levels in the Harris Ranch wells declined about 3.9 feet from January 2005 to August 2005 (Figure 8). This decline is the largest in the recent (2002-2005) water level records for the Harris wells.

The maximum monthly water supply temperatures in the Capitol Mall Production well continued to decline in WY05 (Figure 9). Maximum monthly water temperatures during the water year were all below 154 degrees Fahrenheit (F) for the first time on record. Since December, 1998, the maximum monthly water temperature has dropped 1.54 degrees F which is equates to 0.26 degrees F per year. The trend since 1998 is statistically significant at a greater than 95% confidence level.

Table 1. Production from the four district geothermal heating systems in the downtown Boise area for Water Year 2005 (October 1, 2004 through September 30, 2005).

System	Gross Withdrawals (gallons) and percent change from WY04 to WY05	Net Withdrawals[1] (gallons) and percent change from WY04 to WY05
Boise Warm Springs Water District	248,354,024 (+5%)	248,354,024 (+5%)
Capitol Mall	134,634,190 (-5%)	0 (NC[2])
City of Boise	195,088,046 (+4%)	45,081,820 (+48%)
Veterans Administration	197,552,789 (+11%)	0 (NC)
Total	**775,626,049 (+4%)**	**293,435,844 (+9.5%)**

[1]Net Withdrawals equal Gross Withdrawals minus Injection amounts.
[2]NC = No change.

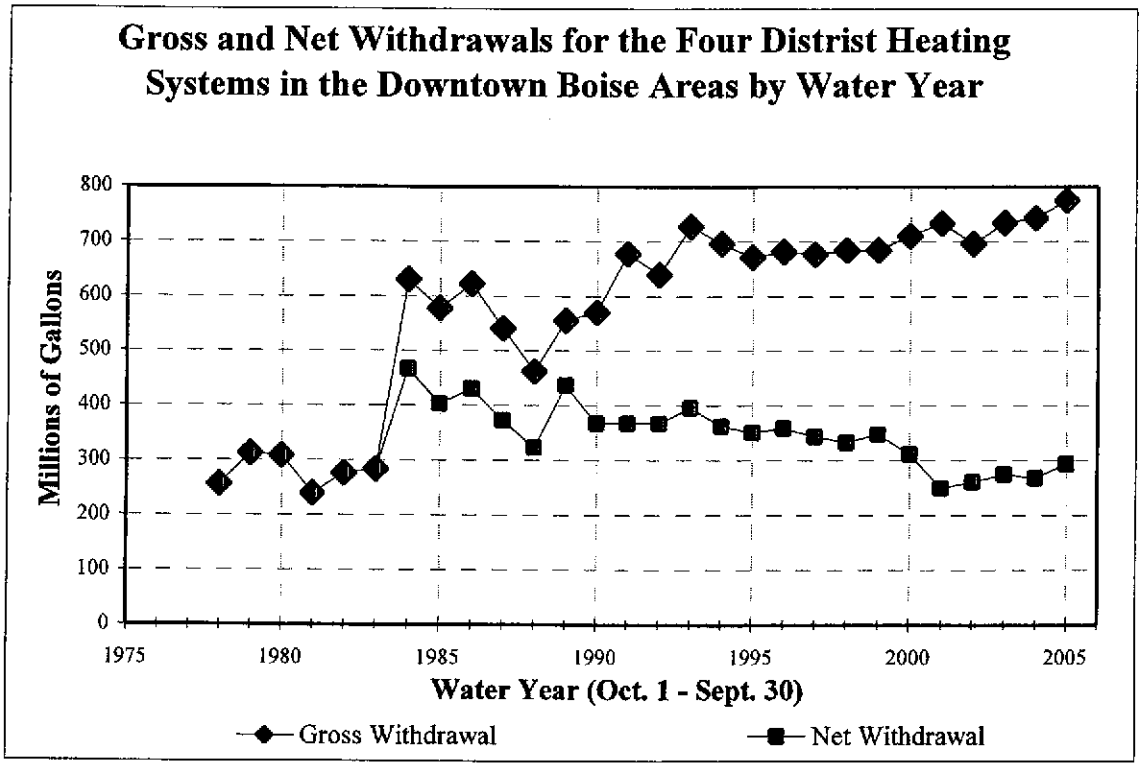


Figure 1. Gross and net withdrawals for the four district heating systems in the downtown Boise area for water years 1978 through 2005.

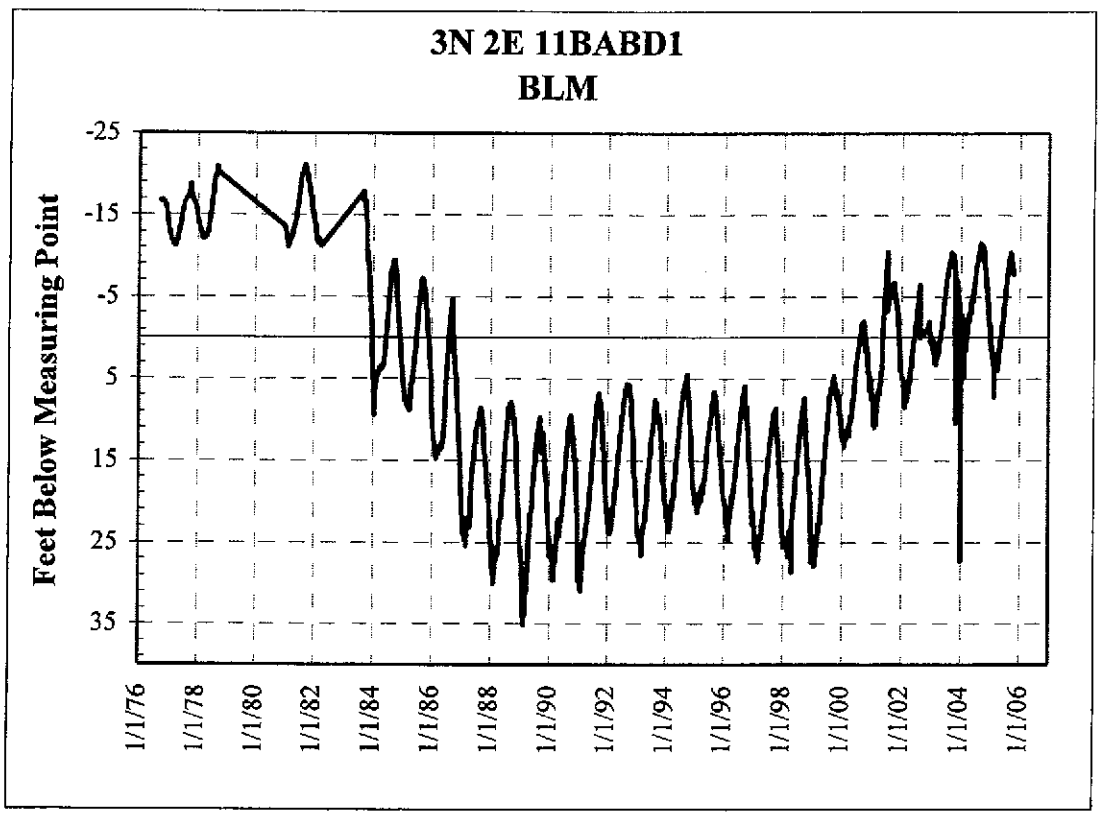


Figure 2. Water level hydrograph for the BLM well.

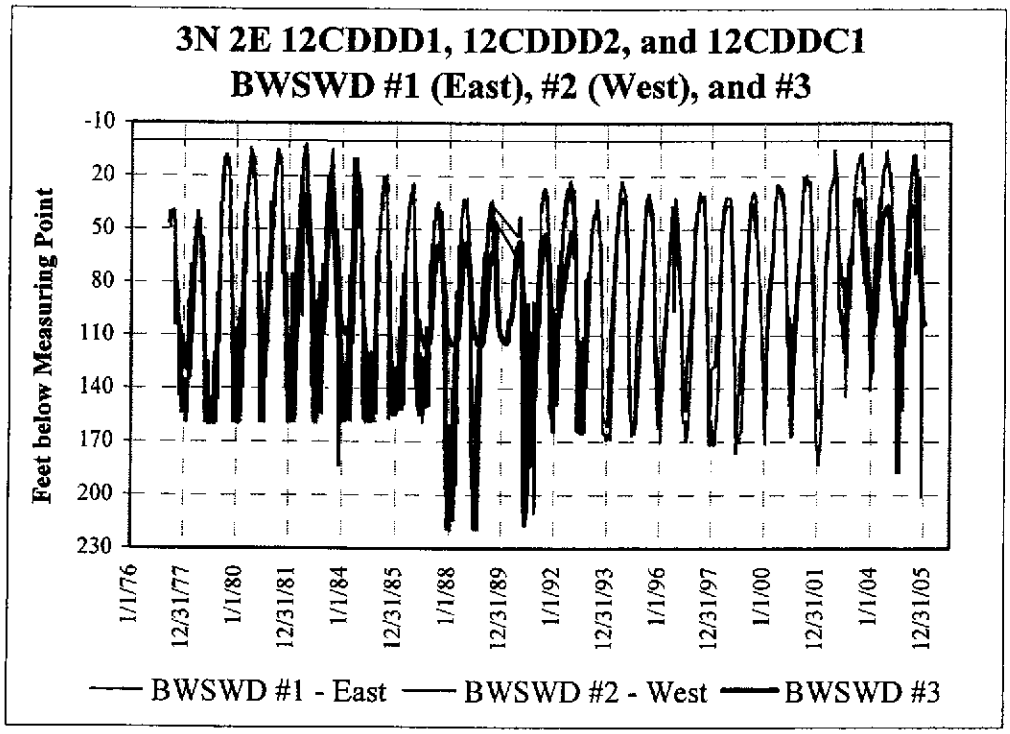


Figure 3. Water level hydrographs for the Boise Warm Springs Water District (BWSWD) wells.

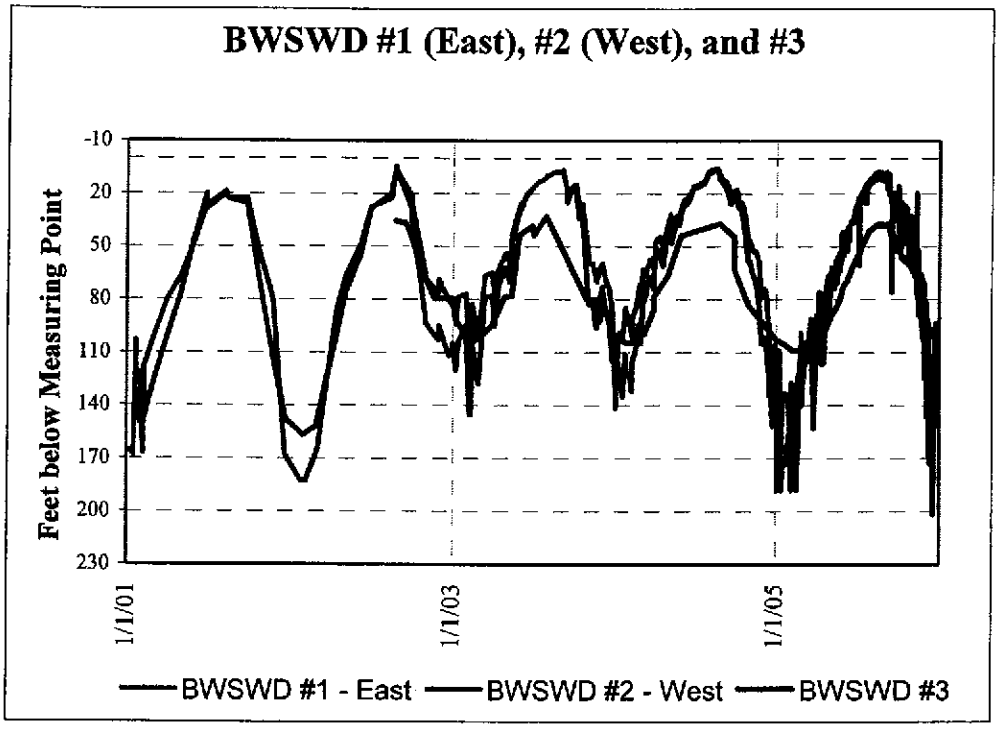


Figure 4. Water level hydrographs for the Boise Warm Springs Water District (BWSWD) wells, January 2001 to December 2005.

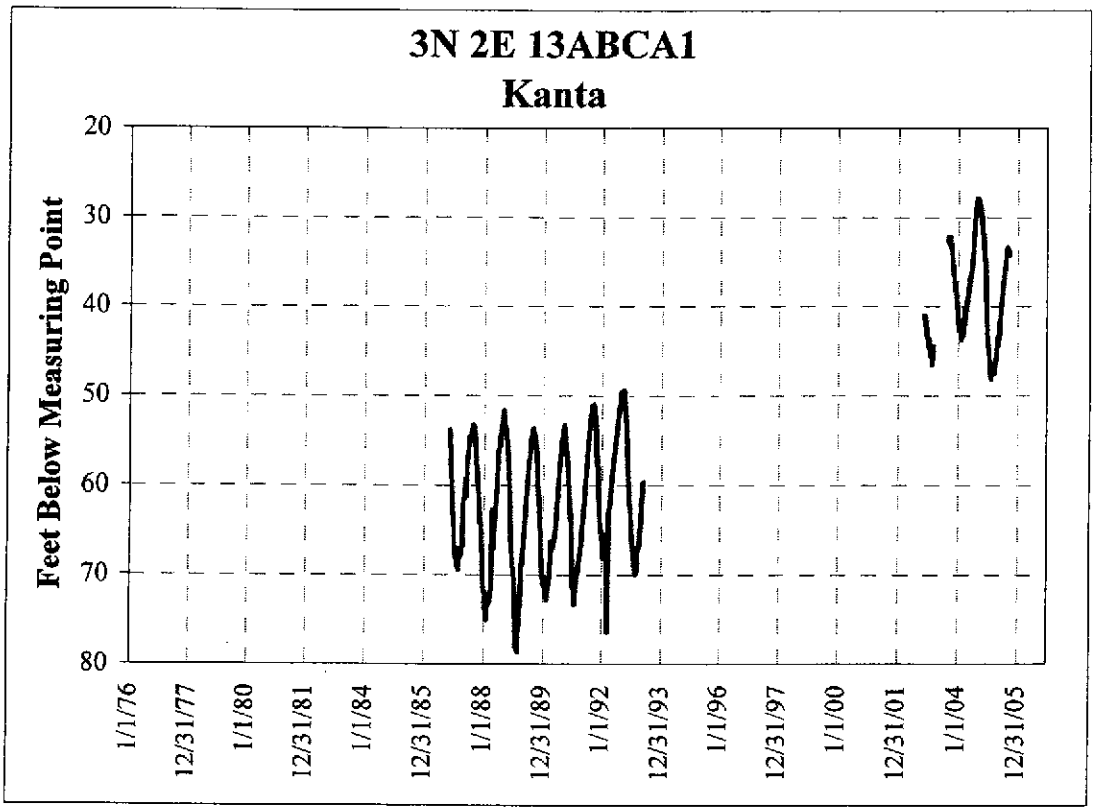


Figure 5. Water level hydrograph for the Kanta well.

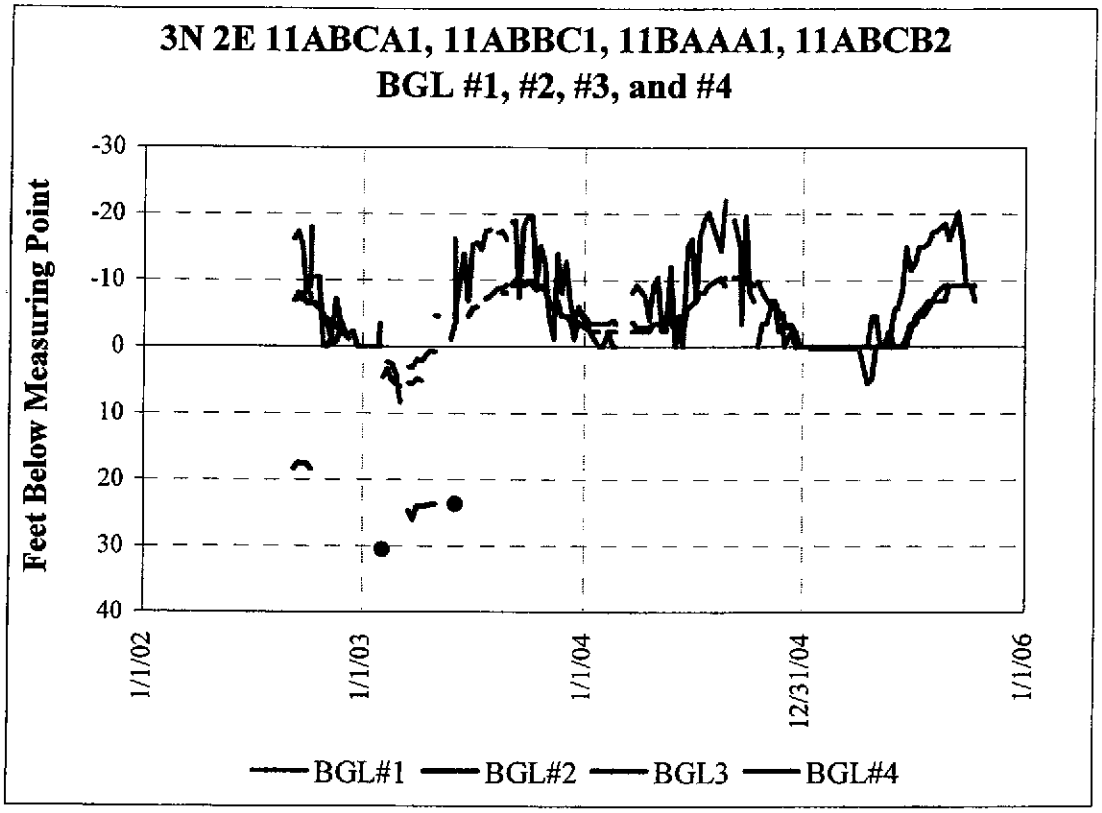


Figure 6. Water level hydrograph for the BGL #1, #2, #3, and #4 wells.

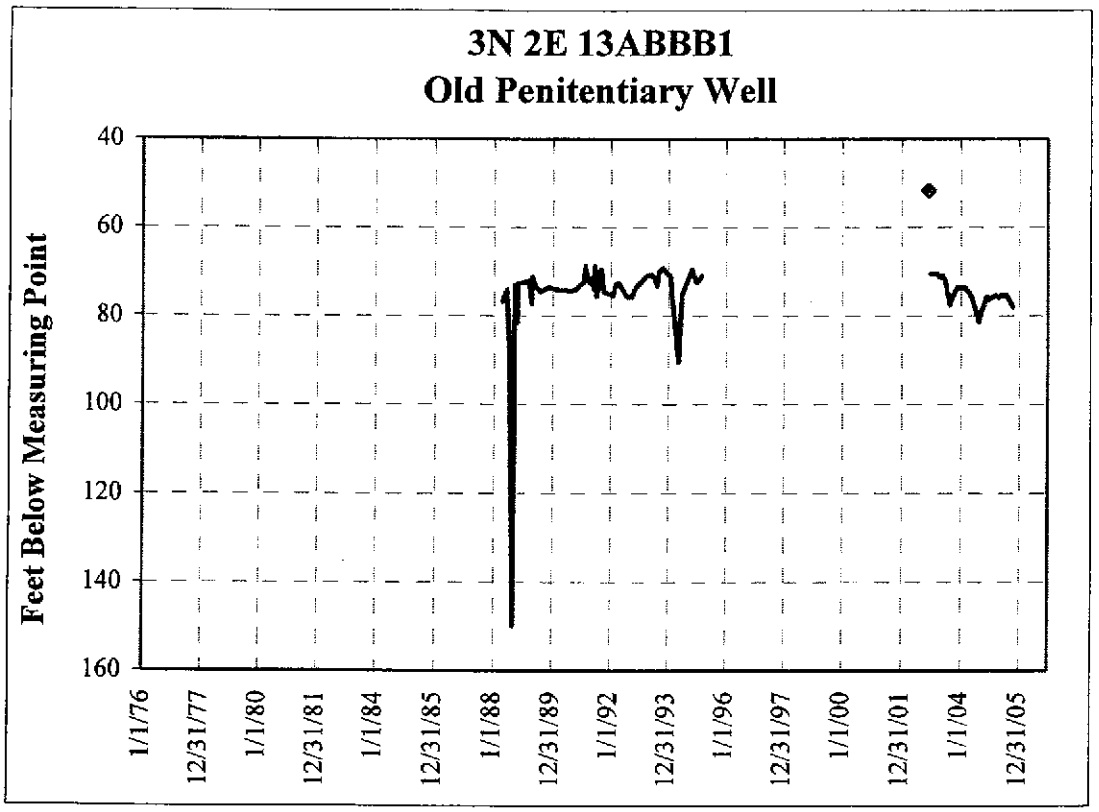


Figure 7. Water level hydrographs for the Old Penitentiary well.

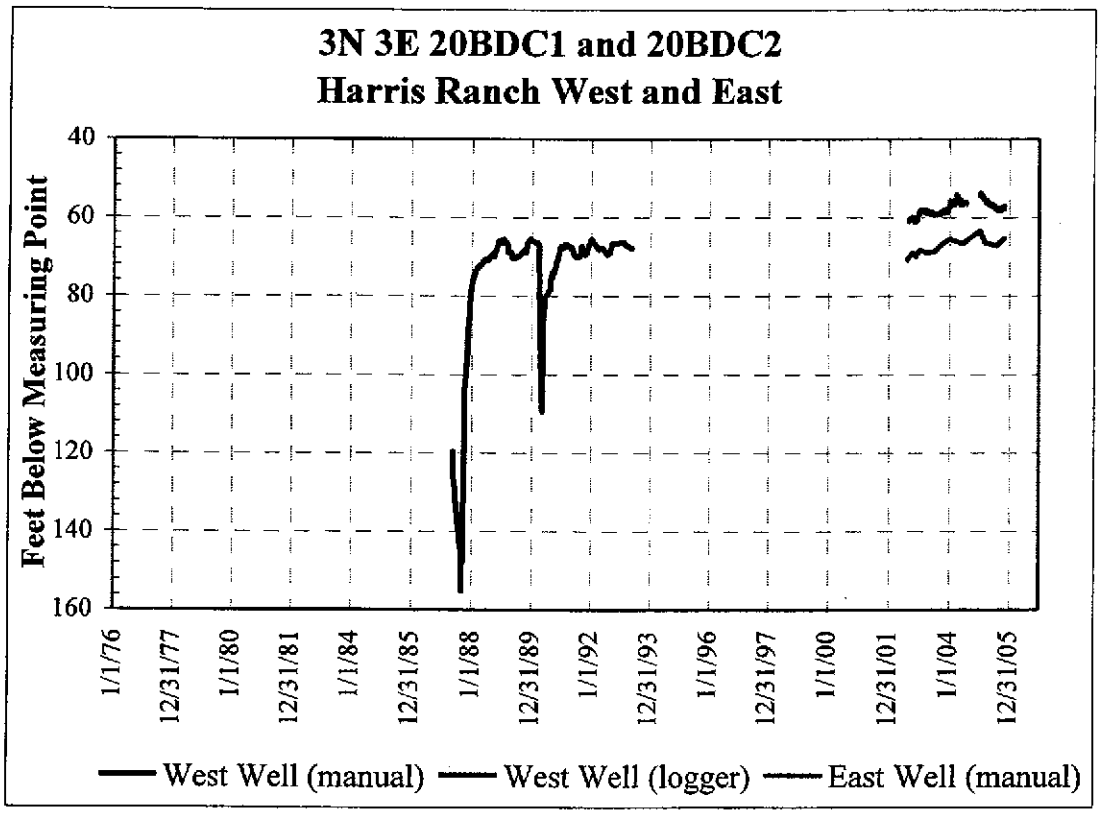


Figure 8. Water level hydrographs for the Harris Ranch wells.

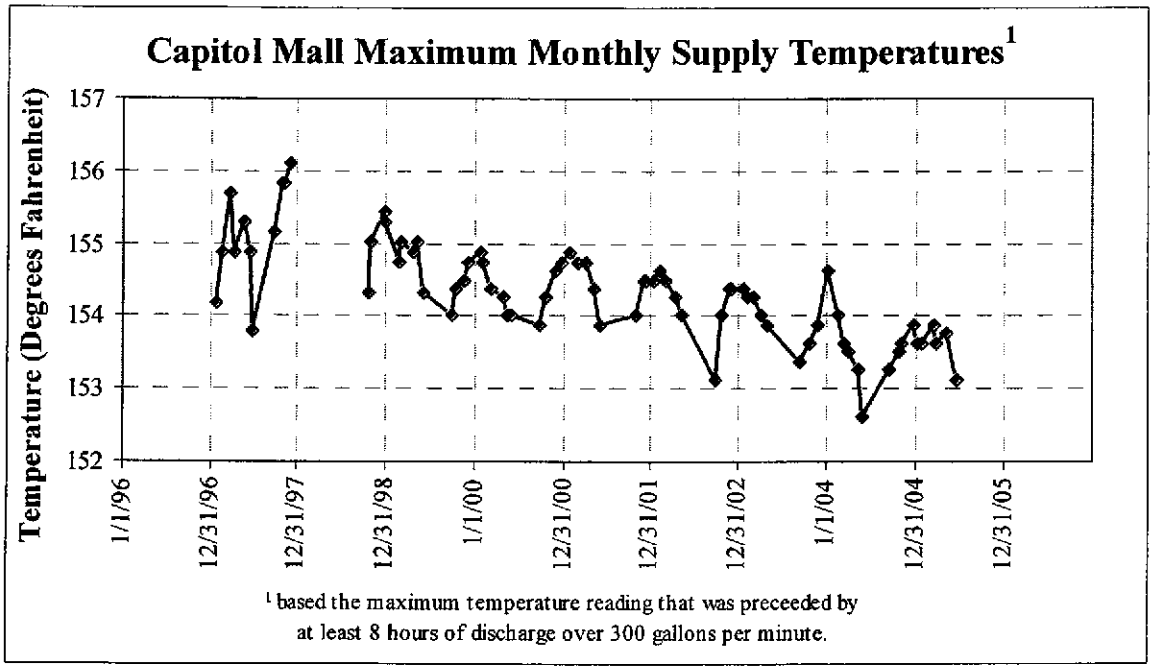


Figure 9. Maximum monthly water supply temperatures for the Capitol Mall geothermal system.

3. STEWART GULCH GROUND WATER DISTRICT 63S

Total withdrawals from WD63S wells for WY05 was 196.40 mgal (Figure 10), which was 16.2 million gallons greater than in WY04 - a change of nine percent[1]. Four of the seven production wells in WD63S (excluding the Whitehead well) had increases in withdrawals (Table 2).

Changes in ground water trends in WD63S were mixed in 2005. Typical of the observed water level patterns in the District, the Edwards Greenhouse well showed an increase in the minimum value from 2004 to 2005, but the latter part of 2005 was characterized by an overall decrease in water levels including a decrease in the maximum value of about 3.7 feet from 2004 to 2005 (Figure 11). The three nearby Flora Company wells exhibited the same pattern as the Edwards well (Figures 12-14). The Whitehead well, which is located between the Edwards and Flora Company wells has only been monitored since late 2004; however, it also showed a decline in water levels in 2005 (Figure 15).

Moving up Stewart Gulch, the two geothermal wells at the Quail Hollow Golf Course also showed similar patterns as the Flora and Edwards well (Figures 16 and 17). At the Terteling Ranch, the Windsock well had the lowest pumping water levels on record in early 2005, and the maximum values dropped 5.8 feet from mid 2004 to mid 2005 (Figure 18). The pumping water levels for the Pool well showed a major increase in the minimum values of about 20 feet, and a slight decrease in the maximum values from 2004 to 2005 (Figure 19). The Motorcycle Club Hot well had minimum values that increased 5.2 feet from early 2004 to early 2005, and maximum values that decreased 5.2 feet from mid 2004 to mid 2005 (Figure 20).

[1]This amount does not include data from the Whitehead well because production records for that well were partial in WY04.

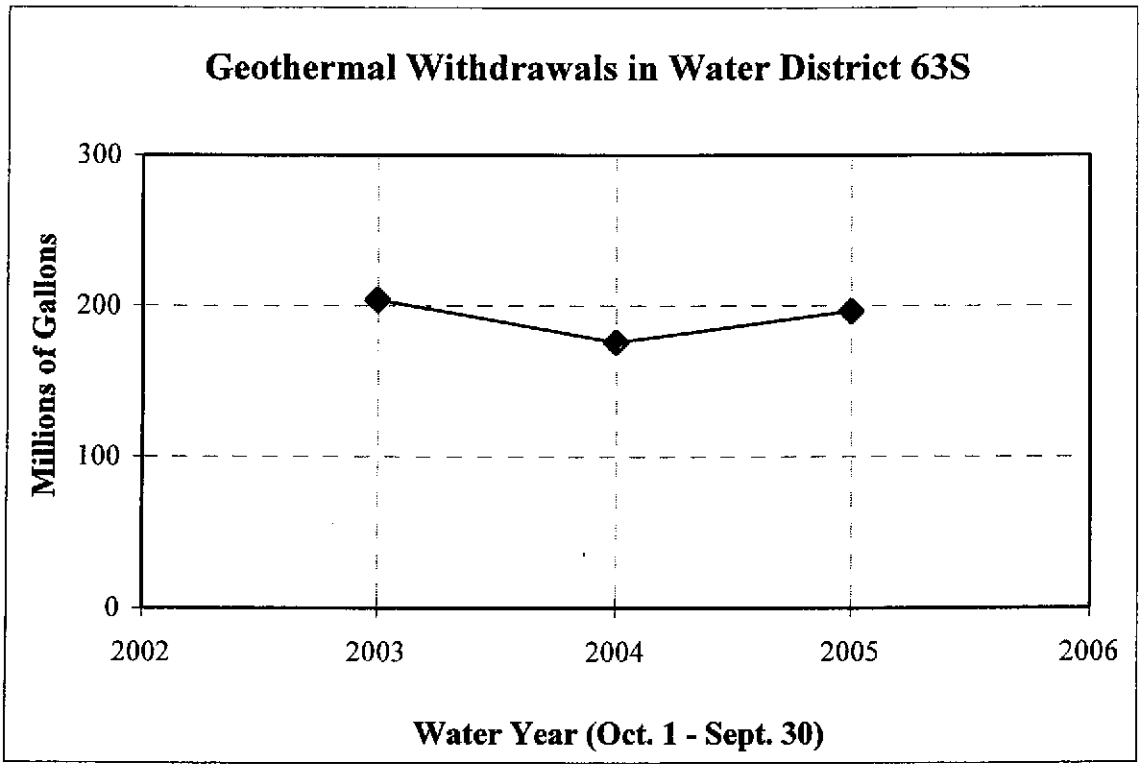


Figure 10. Geothermal withdrawals in Stewart Gulch Water District 63S for Water Years 2003-2005.

Table 2. Withdrawals from Stewart Gulch Water District 63S geothermal wells for Water Year 2005 (October 1, 2004 through September 30, 2005).

Well	Withdrawals in WY05 (gallons)	Change from WY04 (gallons)
Flora Company Tiegs (Triangle)	0	0
Flora Company Silkey (Shed)	33,770,048	-1,497,266
Flora Company House (Office)	5,728,467	-148,953
Edwards Greenhouse	35,677,800	-12,756,000
Terteling Ranch Windsock	85,363,052	+22,296,941
Terteling Ranch Pool	17,256,220	+1,866,809
Quail Hollow Golf Course Upper	13,286,400	+5,759,600
Quail Hollow Golf Course Lower	978,700	+722,000
Whitehead	4,339,274	NA[1]
Total	**196,399,961**	**+16,194,801[2]**

[1]Only partial production data were available in WY04.
[2]Does not include data for Whitehead well.

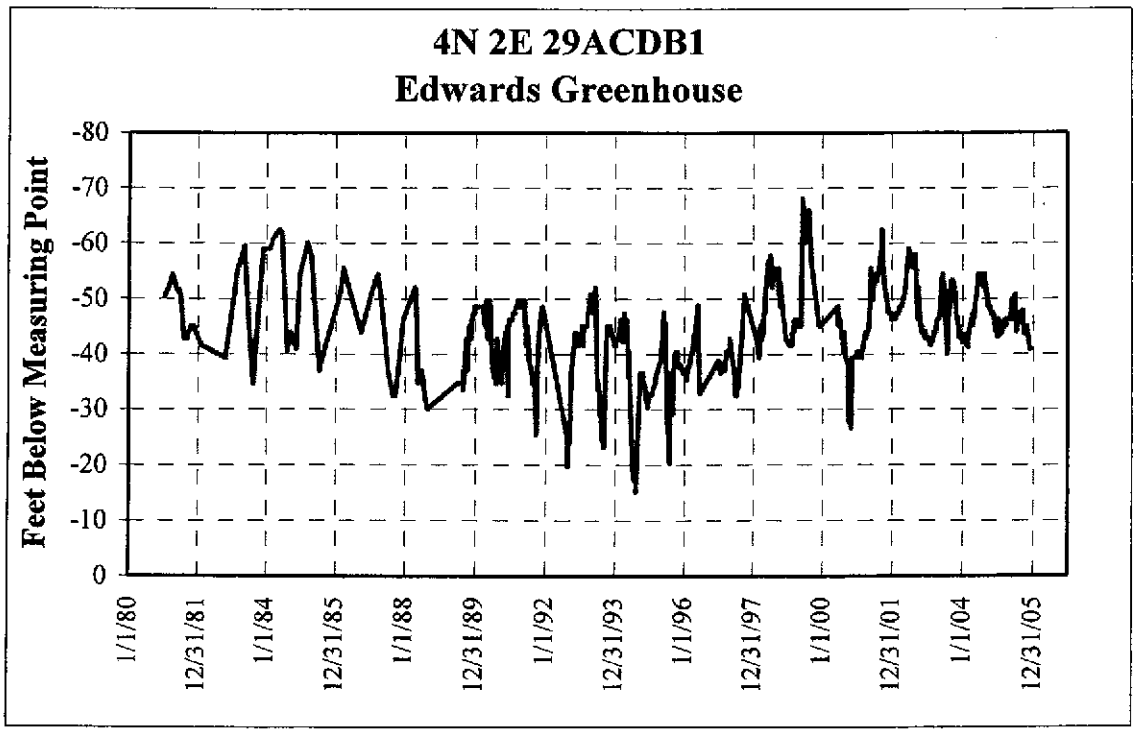


Figure 11. Water level hydrograph for the Edwards Greenhouse well.

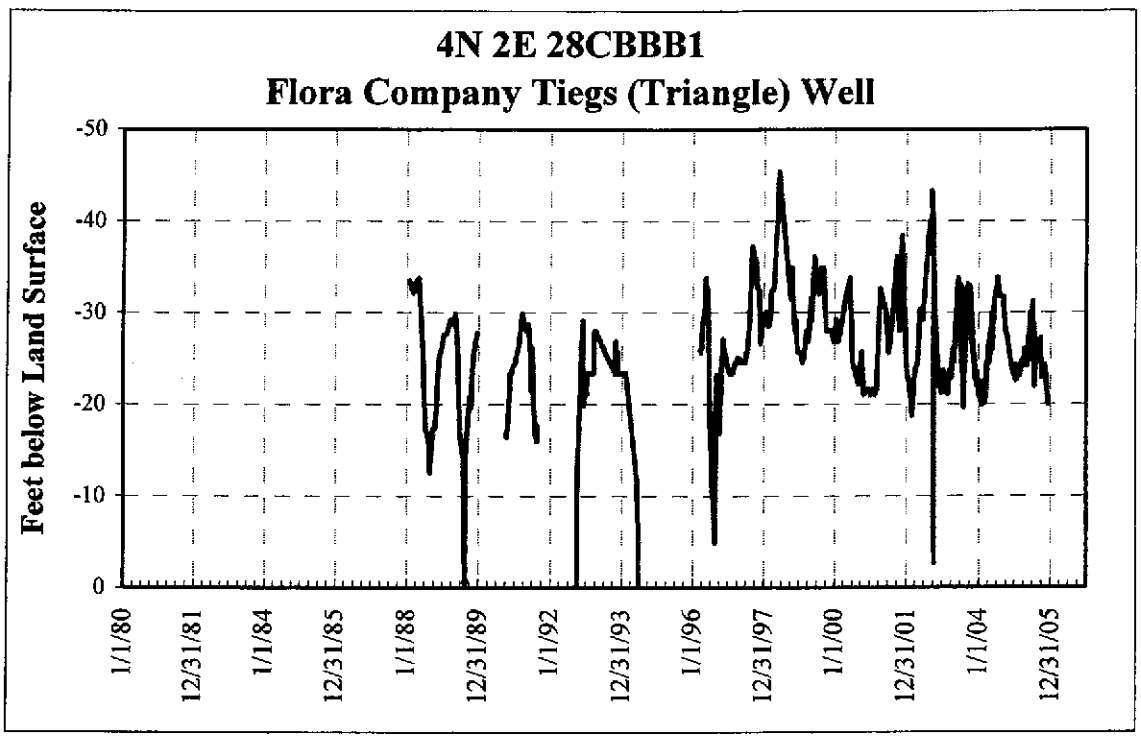


Figure 12. Water level hydrograph for the Flora Company Tiegs (Triangle) well.

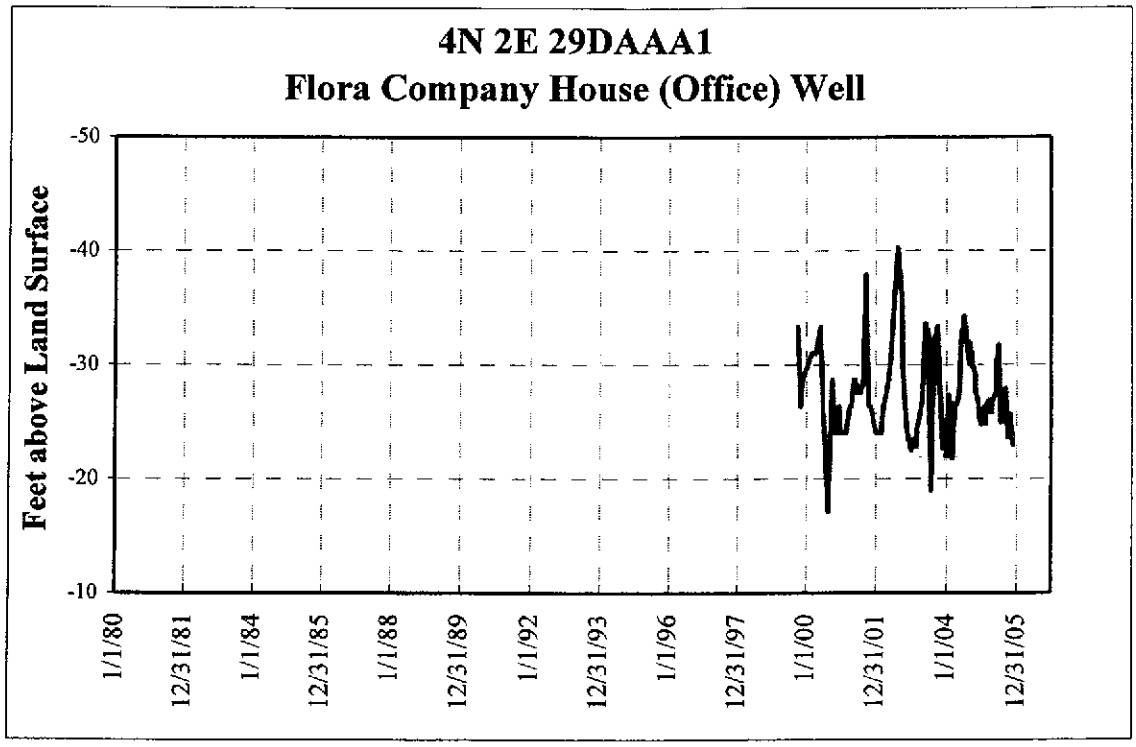


Figure 13. Water level hydrograph for the Flora Company House (Office) well.

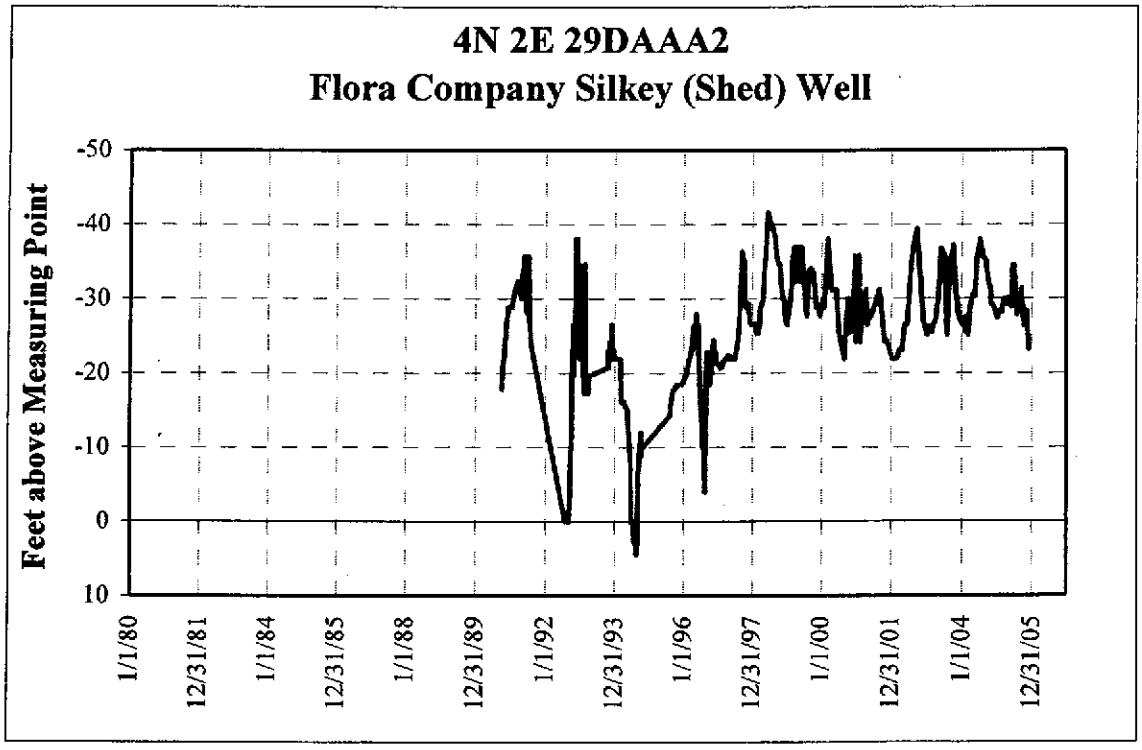


Figure 14. Water level hydrograph for the Flora Company Silkey (Shed) well.

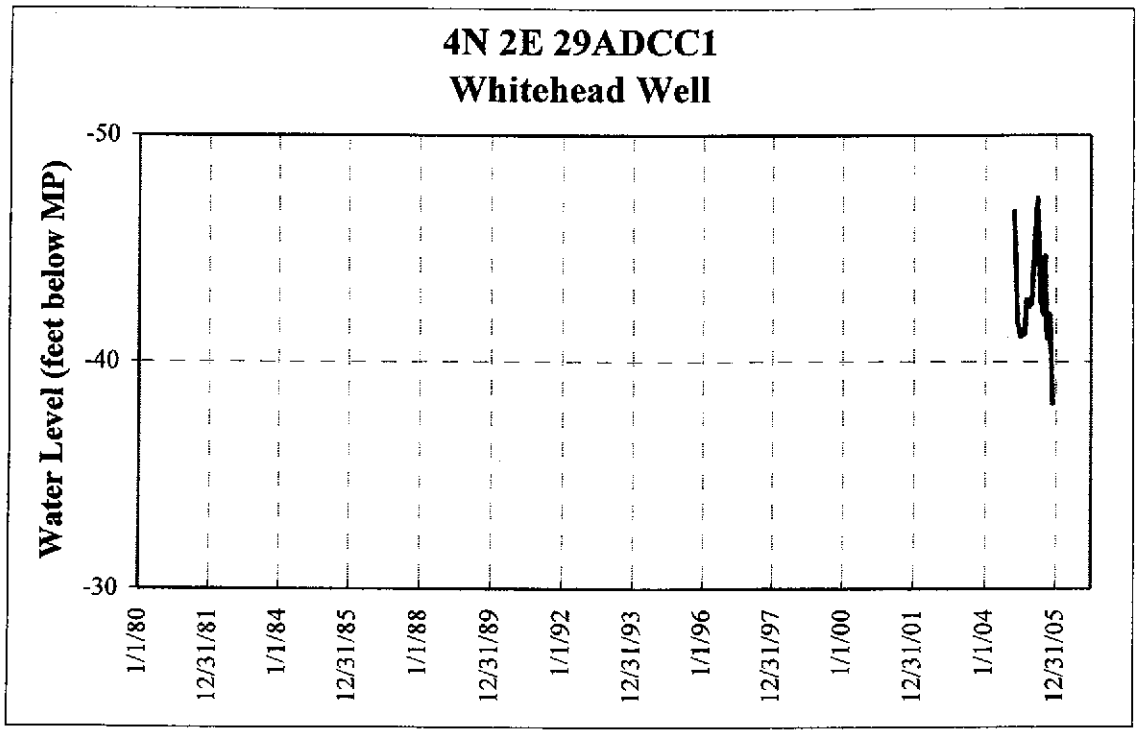


Figure 15. Water level hydrograph for the Whitehead well.

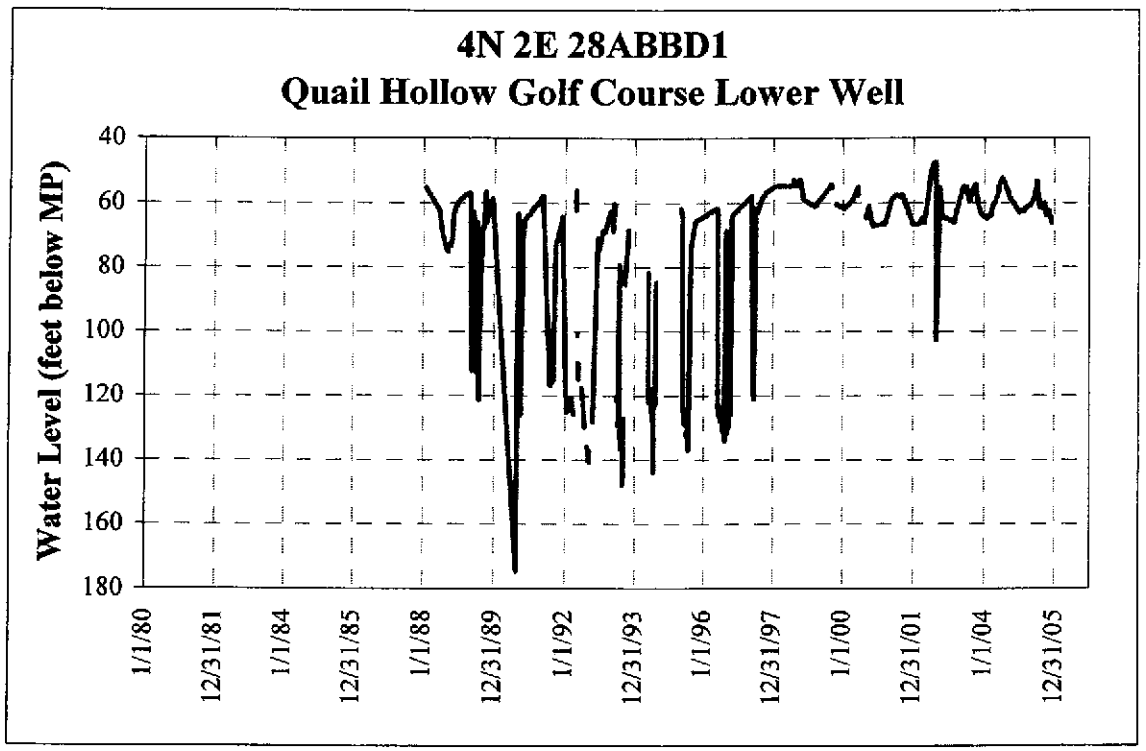


Figure 16. Water level hydrograph for the Quail Hollow Lower well.

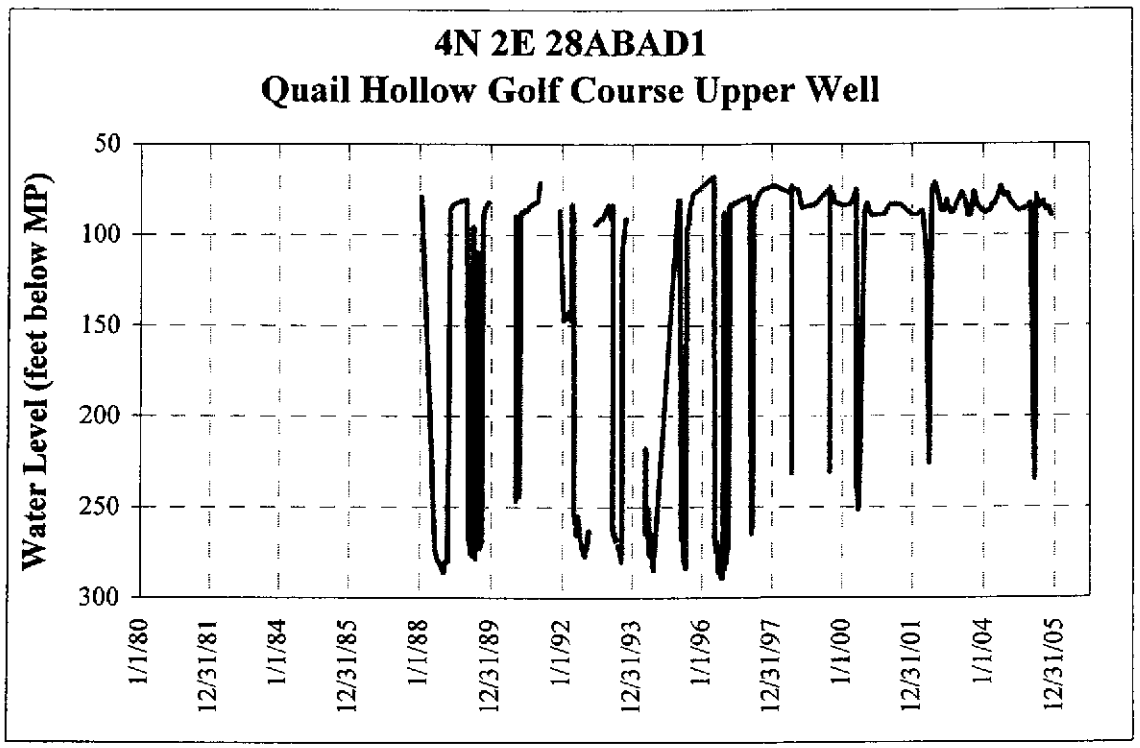


Figure 17. Water level hydrograph for the Quail Hollow Upper well.

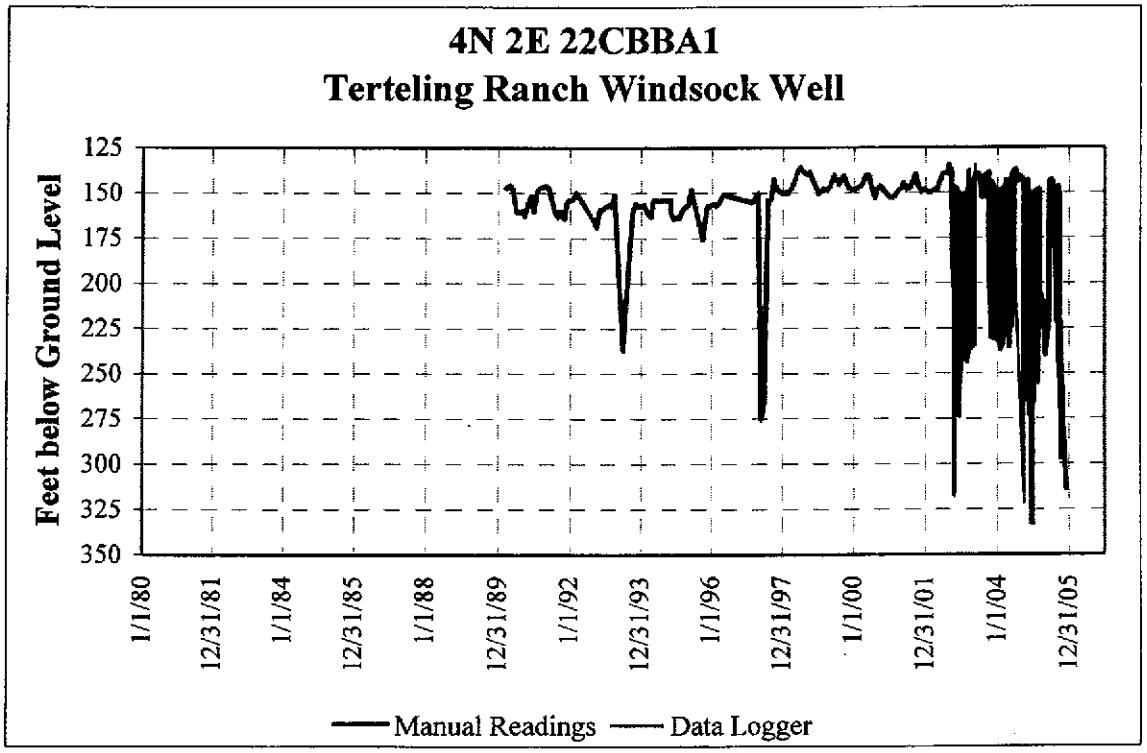


Figure 18. Water level hydrograph for the Terteling Ranch Windsock well.

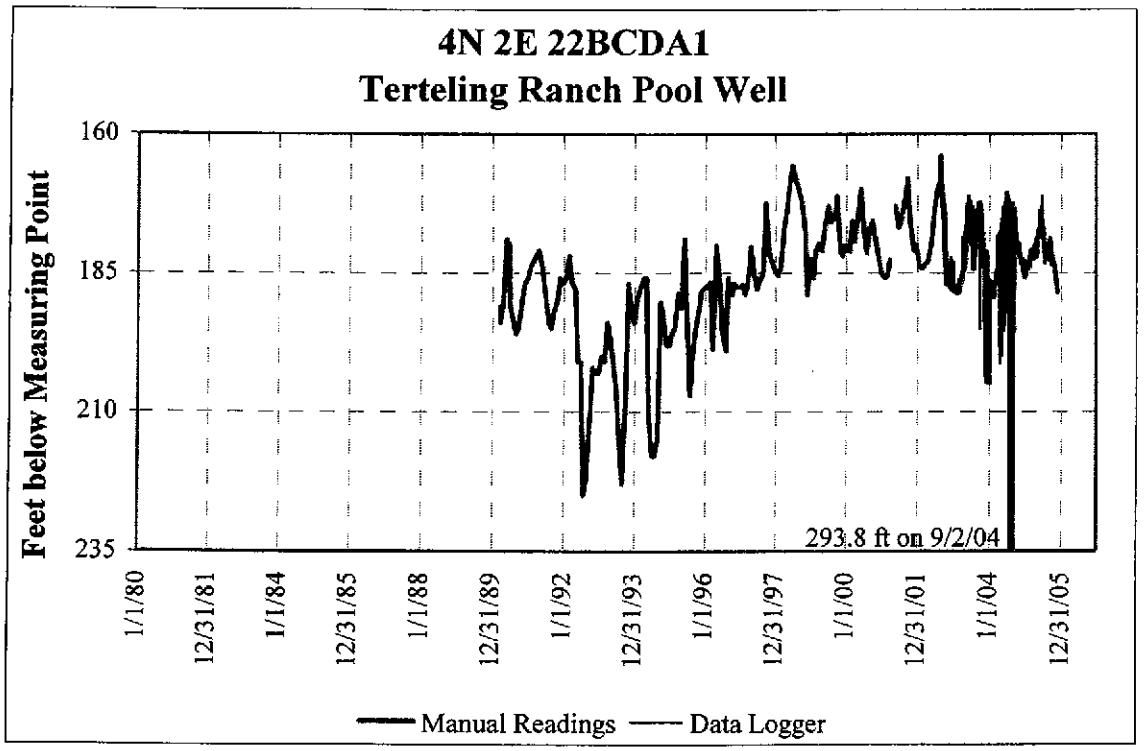


Figure 19. Water level hydrograph for the Terteling Ranch Pool well.

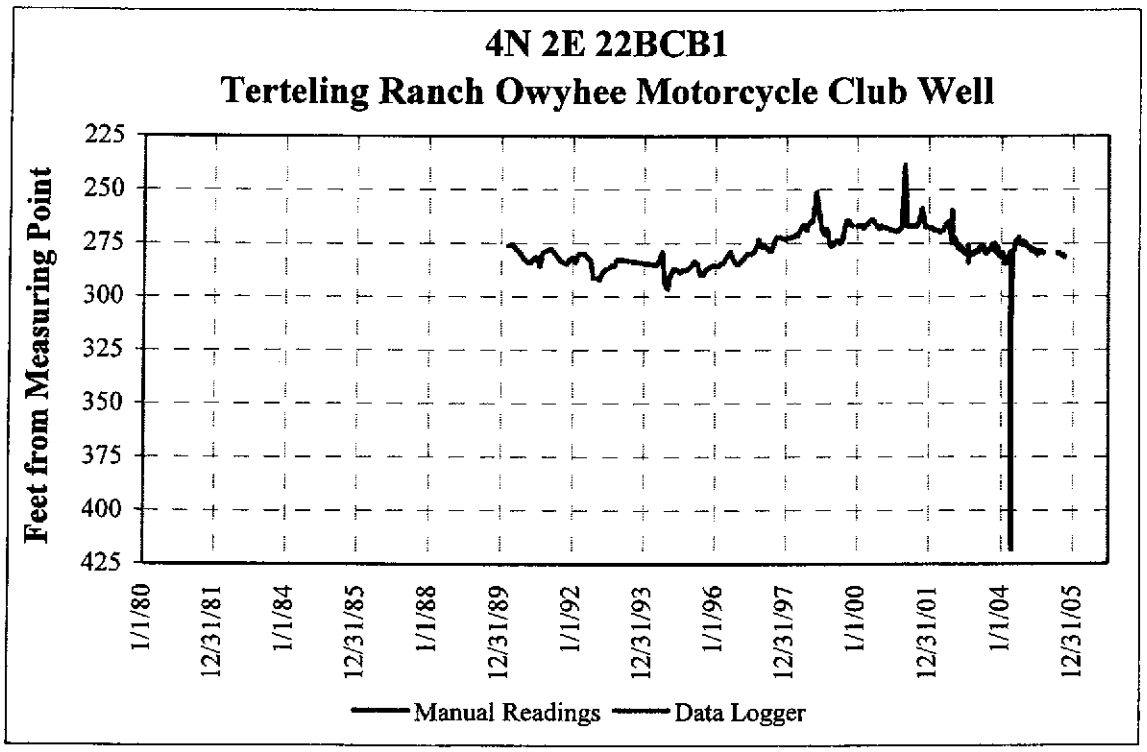


Figure 20. Water level hydrograph for the Terteling Ranch Motorcycle Club Hot well.

State of Idaho
DEPARTMENT OF WATER RESOURCES
Western Region, 2735 Airport Way, Boise, Idaho 83705-5082 - (208) 334-2190
FAX (208) 334-2348

DIRK KEMPTHORNE
Governor

KARL J. DREHER
Director

August 2, 2005

RECEIVED
AUG 0 3 2005
BY:

WILLIAM & VICTORIA WOLFE
C/O STEVEN HANNULA
ERO RESOURCES CORP
3314 GRACE ST.
BOISE ID 83703-5836

Re: Application for Transfer of Water Right(s)

Dear Applicant:

Your application for transfer to change a water right(s) was recently received. Processing of the application must be delayed as explained below.

Your application describes a water right for which a Snake River Basin Adjudication (SRBA) Claim has been filed. SRBA Claims in the area affected by the transfer application are currently being reviewed. The role of the Idaho Department of Water Resources (IDWR) in the SRBA is to review claims and make recommendations regarding those claims to the SRBA Court. Recommendations are presented to the court in a Director's Report. Potentially affected parties may object to recommendations in a Director's Report. This process introduces uncertainty regarding water rights until the objection period is over.

IDWR's limited staff resources must be used to complete the remaining Director's Reports during the next year. Additionally, experience indicates that processing an application for transfer in an area where a Director's Report is being prepared can result in confusion and complications by mixing judicial (SRBA) and administrative (transfer) actions.

The SRBA objection period for your area is expected to conclude sometime during the latter half of next year. Based on that schedule and the above reasoning, your application for transfer cannot be processed at this time. IDWR will hold your transfer application until that time and will notify you at the appropriate time to allow your application to be processed.

IDWR regrets the inconvenience undoubtedly caused by this necessary delay. Please contact me at 208-334-2190 if you have any questions in this regard.

Sincerely,

Steve Lester
Water Rights Supervisor

EXHIBIT 139

State of Idaho
DEPARTMENT OF WATER RESOURCES
STATE OFFICE, 450 W. State Street, Boise, Idaho

JOHN V. EVANS
Governor

A. KENNETH DUNN
Director

Mailing address:
Statehouse
Boise, Idaho 83720
(208) 334-4440

ADMINISTRATOR'S MEMORANDUM

Transfer Processing No. 6

TO: Regional Offices & Water Allocation Section

FROM: Norman C. Young NCY

DATE: September 27, 1982

RE: Expansion of a Water Right via a Transfer

When an Application For Transfer is received, the individual performing the initial staff analysis must take a close look at the possibility of enlargement or expansion as a result of the transfer. Item 3(h) of the Transfer Analysis Sheet indicates to "check for expansion". The purpose of this memorandum is to identify how to perform this check.

Each water right in the state is limited by three parameters: rate of flow, volume, and consumptive use. Expansion of any of these parameters must be prevented. Therefore, the following items should be checked:

1. Insure that the rate of flow is not increased by comparing the rate before and after the transfer.

2. Insure that volume is not increased by comparing volume before and after the transfer.

3. Insure that consumptive use is not increased. This factor should be carefully evaluated for transfers of place of use. First, a very precise determination should be made of all existing water rights on the original place of use (Land A), and the transferred place of use (Land B). This determination should be made using all available resources (computer, plats and maps). Then the following factors should be evaluated:

   a. When water is moved from land A to land B, land B shall not include more acres than land A. Thus, for each newly irrigated acre, one acre must be removed from irrigation.

   b. In most cases when water is moved from land A to land B, all existing water rights on land A must be moved to land B. For example, in many cases a 40 acre tract will have several decreed rights. If one of the decreed rights is transferred, they must all be transferred to the same place of use.

EXHIBIT 140

An exception is when a wateruser desires to transfer a "secondary" water right from land A to become a "secondary" water right on land B. This type of transfer is acceptable if the average annual volume diverted and consumptive use are not increased as a result of the transfer. For example, a supplemental groundwater right can be transferred from land A (which has decreed surface water rights) to land B (which has decreed surface water rights), if no increase in volume diverted or consumptive use results.

Another exception is when a surface water right is moved from land A to land B, leaving a junior groundwater right on land A. If the land is not located within a critical groundwater area, and if the Department would in general approve a new groundwater right on land A if an application were submitted, the existing groundwater right can be left on land A.

Each of the factors above must be evaluated for every transfer application to insure that expansion is prevented.

Watermaster's Report
Ground Water District 63-S (Stewart Gulch)
March 10, 2005 to March 16, 2006

Summary of Watermaster Activities

Total withdrawals from Ground Water District 63S wells for Water Year 2005 (October 1, 2004 through September 30, 2005) was 196.40 million gallons (Figure 1), which was 16.2 million gallons greater than in Water Year 2004 - a change of nine percent[1]. Four of the seven production wells in WD63S (excluding the Whitehead well) had increases in withdrawals (Table 1).

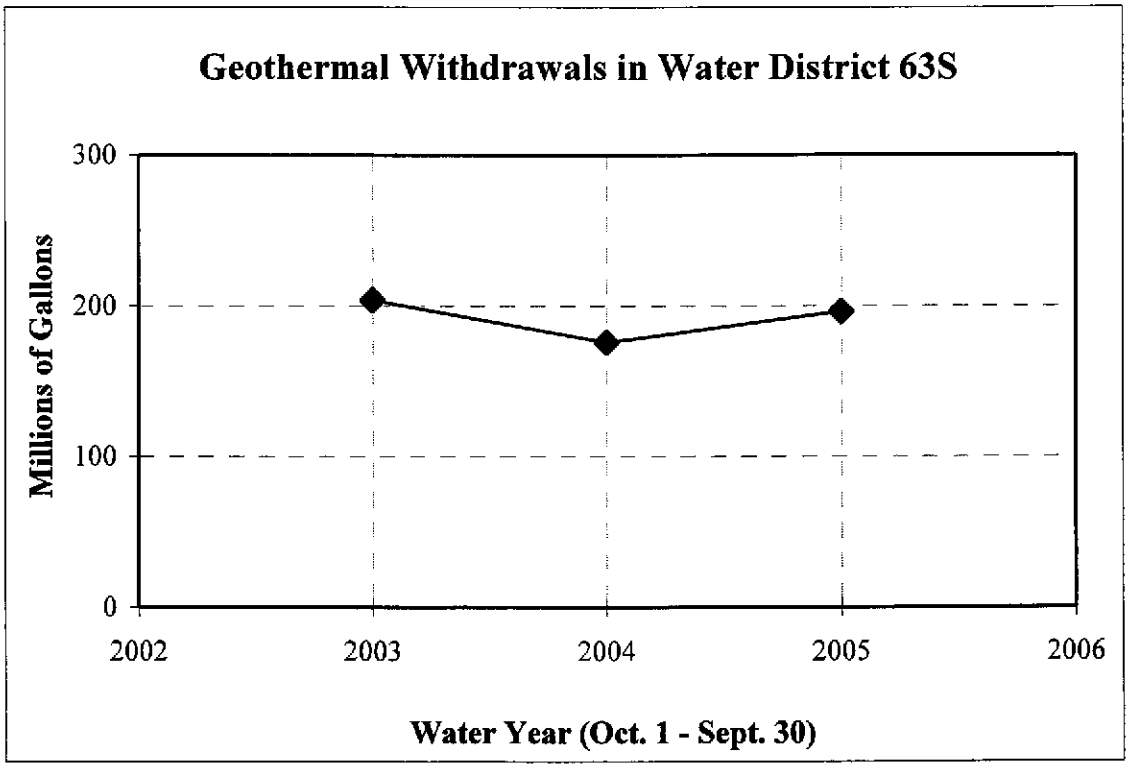


Figure 1. Geothermal withdrawals in Stewart Gulch Water District 63S for Water Years 2003-2005.

[1]This amount does not include data from the Whitehead well because production records for that well were partial in WY04.

Table 1. Withdrawals from Stewart Gulch Water District 63S geothermal wells for Water Year 2005 (October 1, 2004 through September 30, 2005).

Well	Withdrawals in WY05 (gallons)	Change from WY04 (gallons)
Flora Company Tiegs (Triangle)	0	0
Flora Company Silkey (Shed)	33,770,048	-1,497,266
Flora Company House (Office)	5,728,467	-148,953
Edwards Greenhouse	35,677,800	-12,756,000
Terteling Ranch Windsock	85,363,052	+22,296,941
Terteling Ranch Pool	17,256,220	+1,866,809
Quail Hollow Golf Course Upper	13,286,400	+5,759,600
Quail Hollow Golf Course Lower	978,700	+722,000
Whitehead	4,339,274	NA[1]
Total	**196,399,961**	**+16,194,801[2]**

[1]Only partial production data were available in WY04.
[2]Does not include data for Whitehead well.

Changes in ground water trends in WD63S were mixed in 2005. Typical of the observed water level patterns in the District, the Edwards Greenhouse well showed an increase in the minimum value from 2004 to 2005, but the latter part of 2005 was characterized by an overall decrease in water levels including a decrease in the maximum value of about 3.7 feet from 2004 to 2005 (Figure 2). The three nearby Flora Company wells exhibited the same pattern as the Edwards well (Figures 3-5). The Whitehead well, which is located between the Edwards and Flora Company wells has only been monitored since late 2004; however, it also showed a decline in water levels in 2005 (Figure 6).

Moving up Stewart Gulch, the two geothermal wells at the Quail Hollow Golf Course also showed similar patterns as the Flora and Edwards well (Figures 7 and 8). At the Terteling Ranch, the Windsock well had the lowest pumping water levels on record in early 2005, and the maximum values dropped 5.8 feet from mid 2004 to mid 2005 (Figure 9). The pumping water levels for the Pool well showed a major increase in the minimum values of about 20 feet, and a slight decrease in the maximum values from 2004 to 2005 (Figure 10). The Motorcycle Club Hot well had minimum values that increased 5.2 feet from early 2004 to early 2005, and maximum values that decreased 5.2 feet from mid 2004 to mid 2005 (Figure 11).

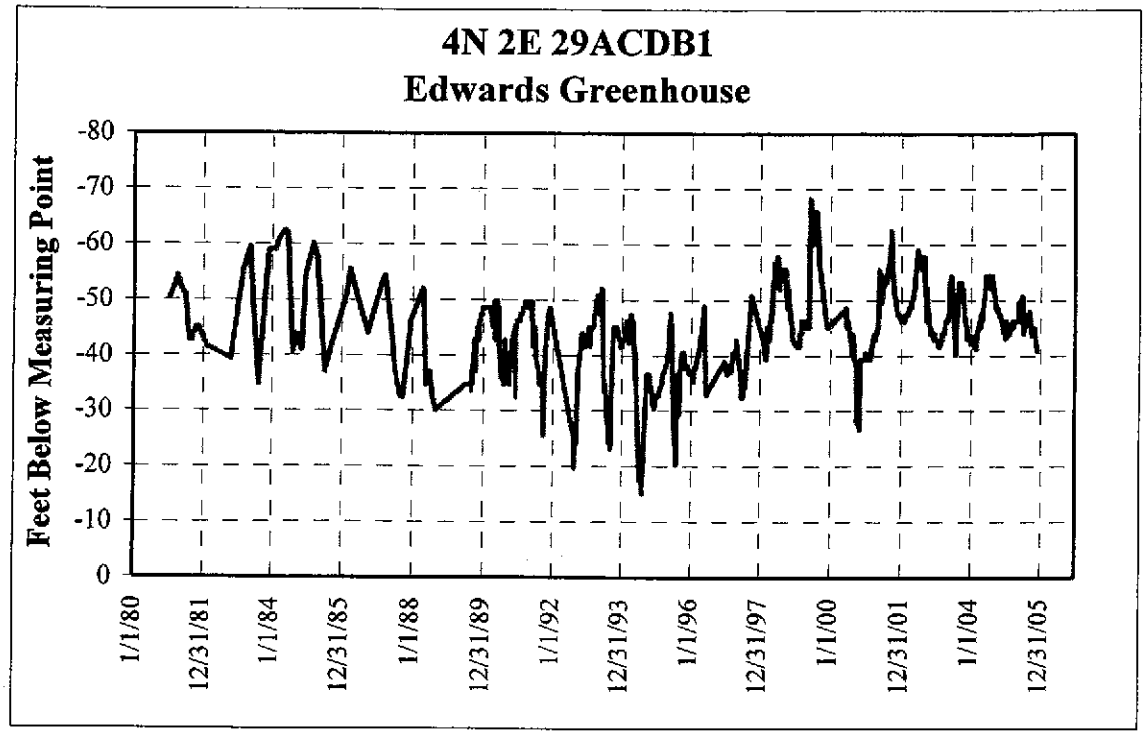


Figure 2. Water level hydrograph for the Edwards Greenhouse well.

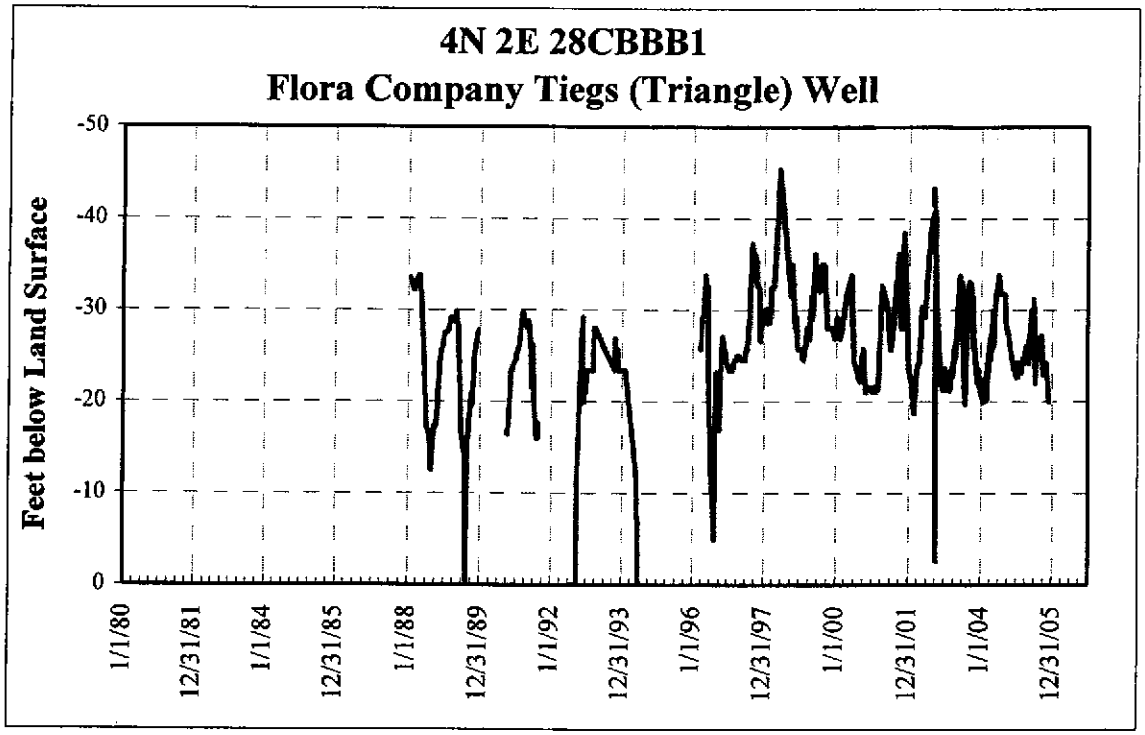


Figure 3. Water level hydrograph for the Flora Company Tiegs (Triangle) well.

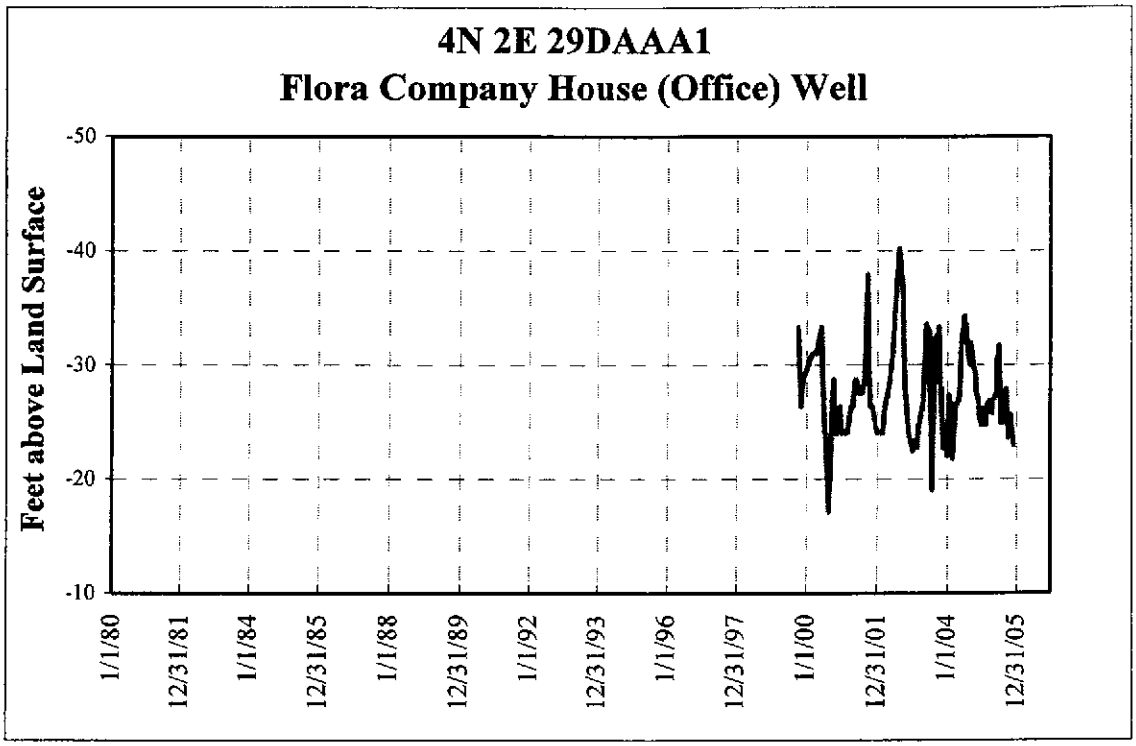


Figure 4. Water level hydrograph for the Flora Company House (Office) well.

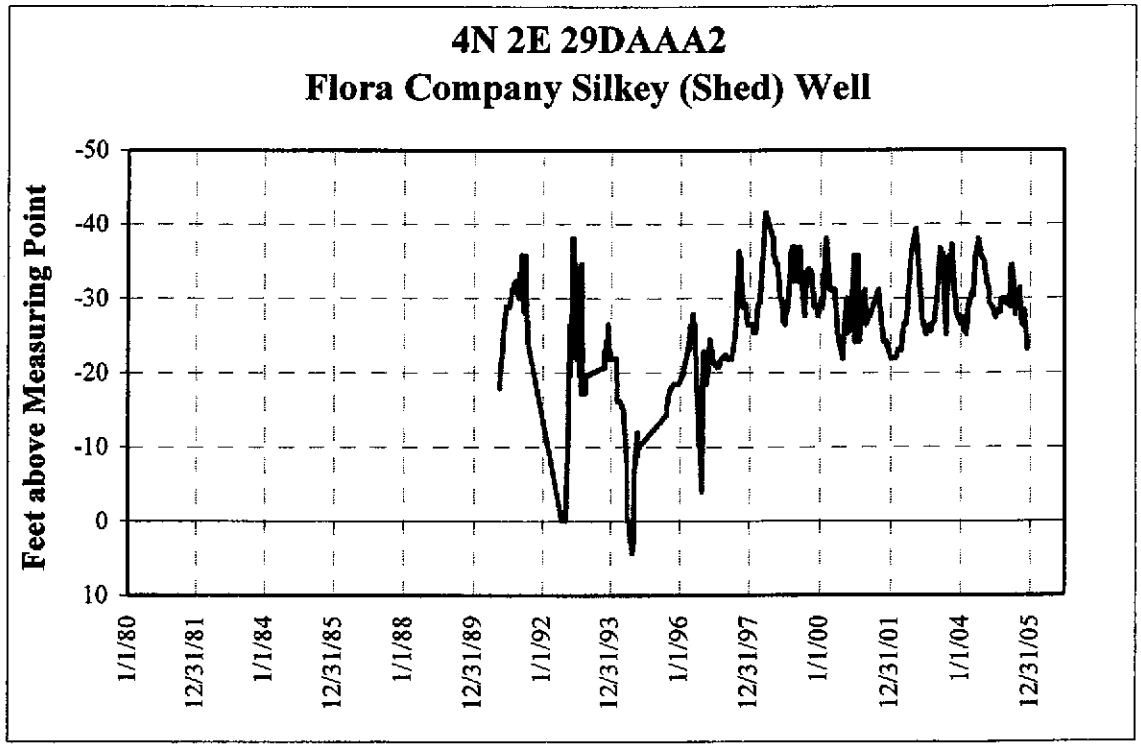


Figure 5. Water level hydrograph for the Flora Company Silkey (Shed) well.

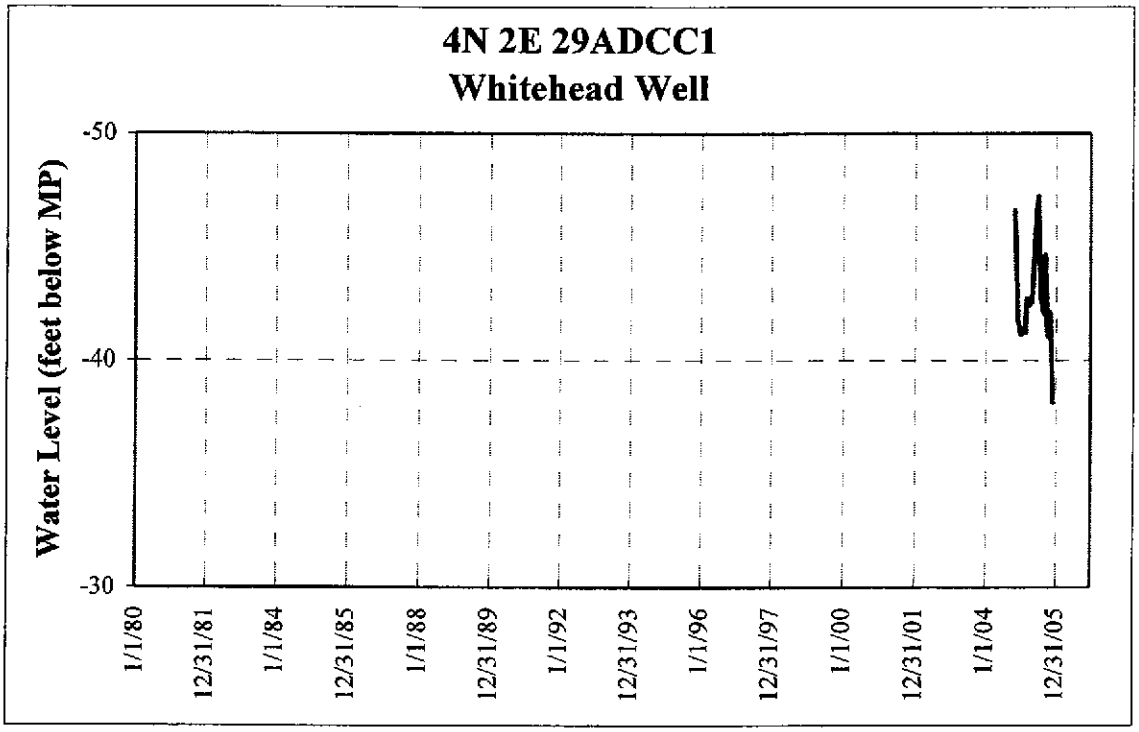


Figure 6. Water level hydrograph for the Whitehead well.

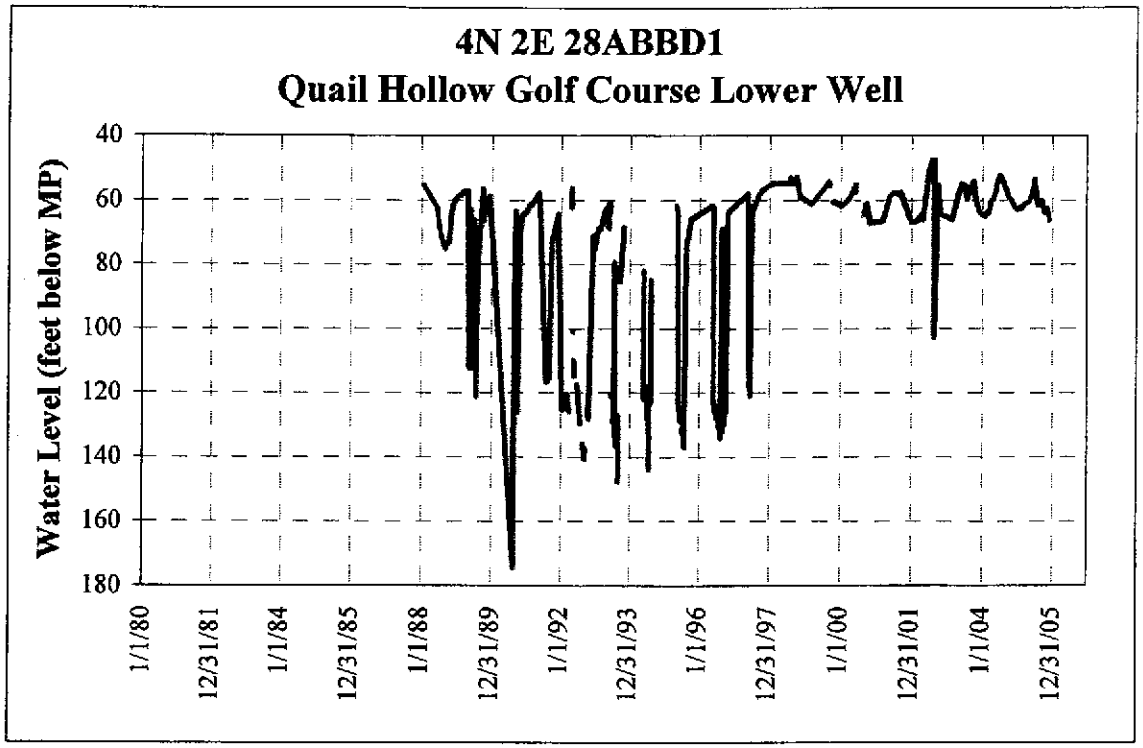


Figure 7. Water level hydrograph for the Quail Hollow Lower well.

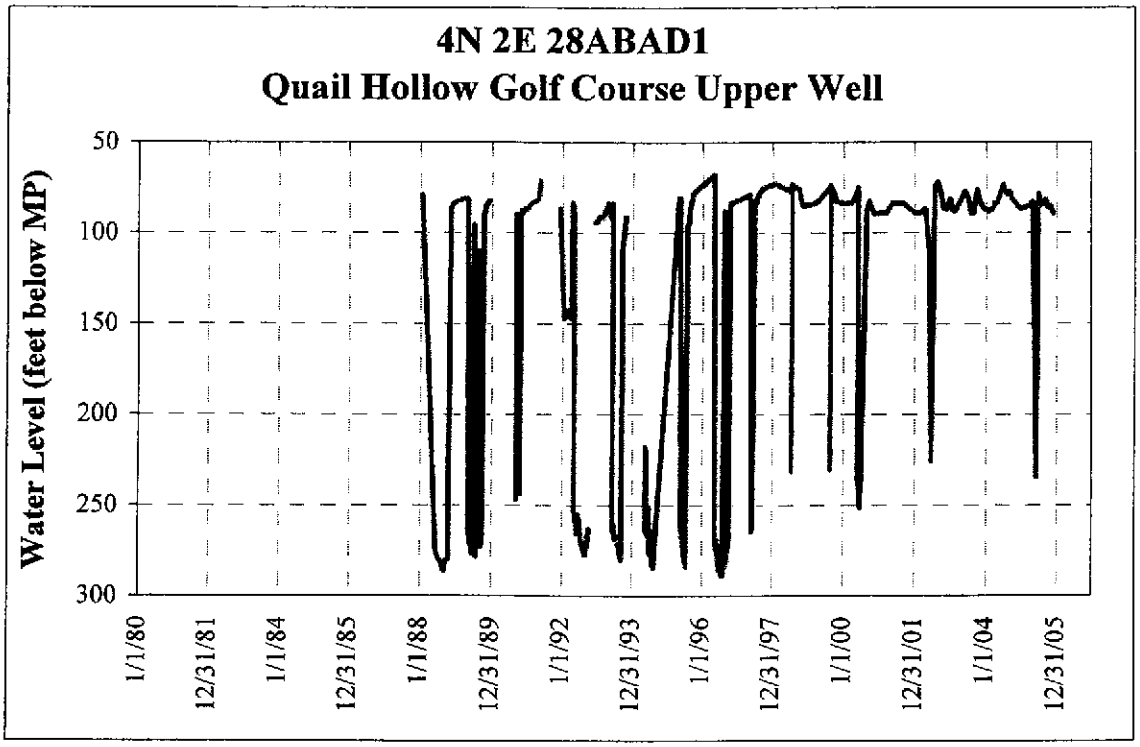


Figure 8. Water level hydrograph for the Quail Hollow Upper well.

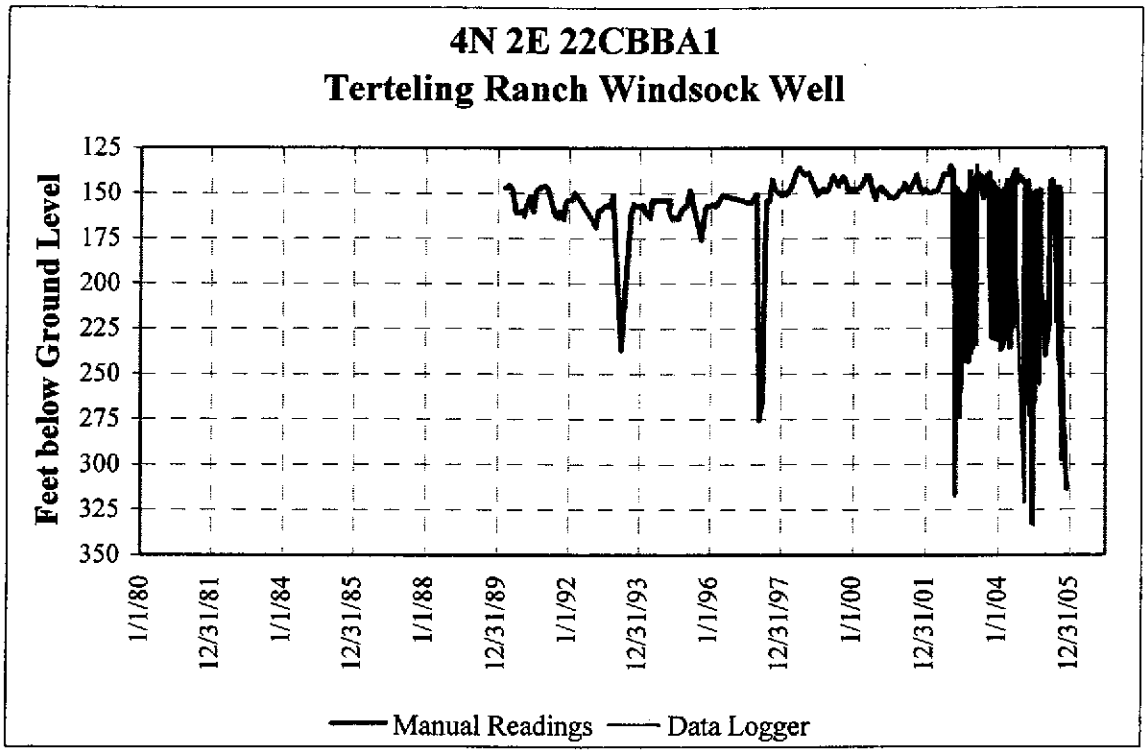


Figure 9. Water level hydrograph for the Terteling Ranch Windsock well.

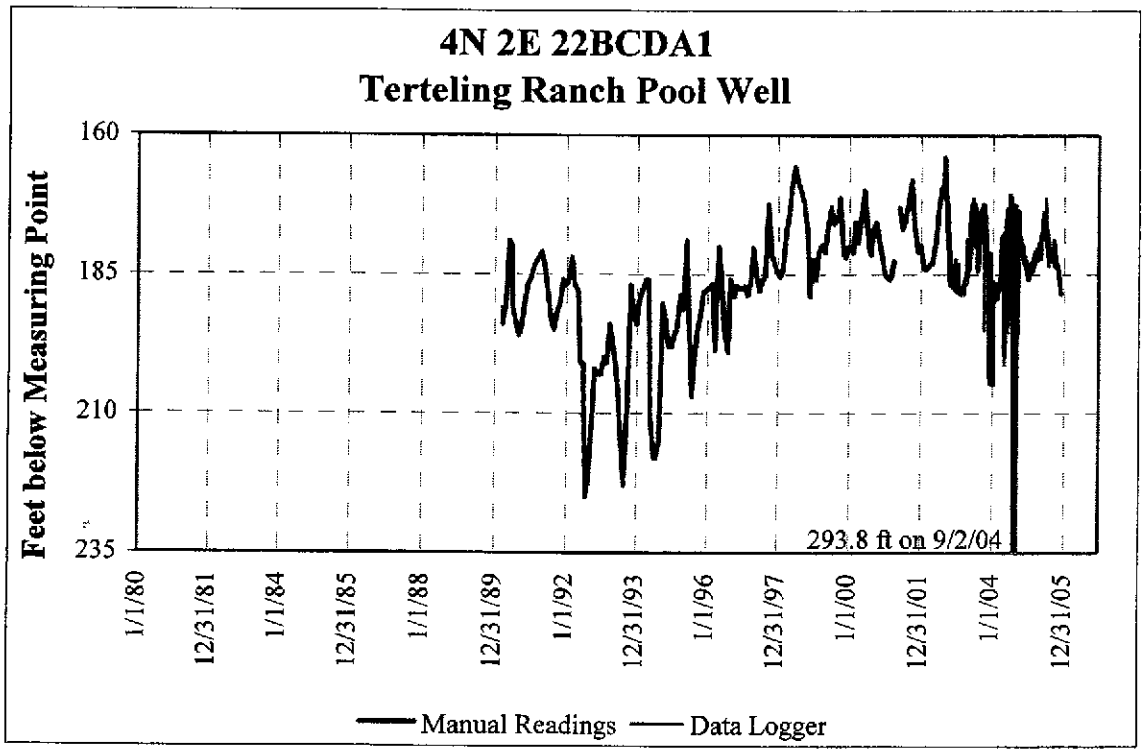


Figure 10. Water level hydrograph for the Terteling Ranch Pool well.

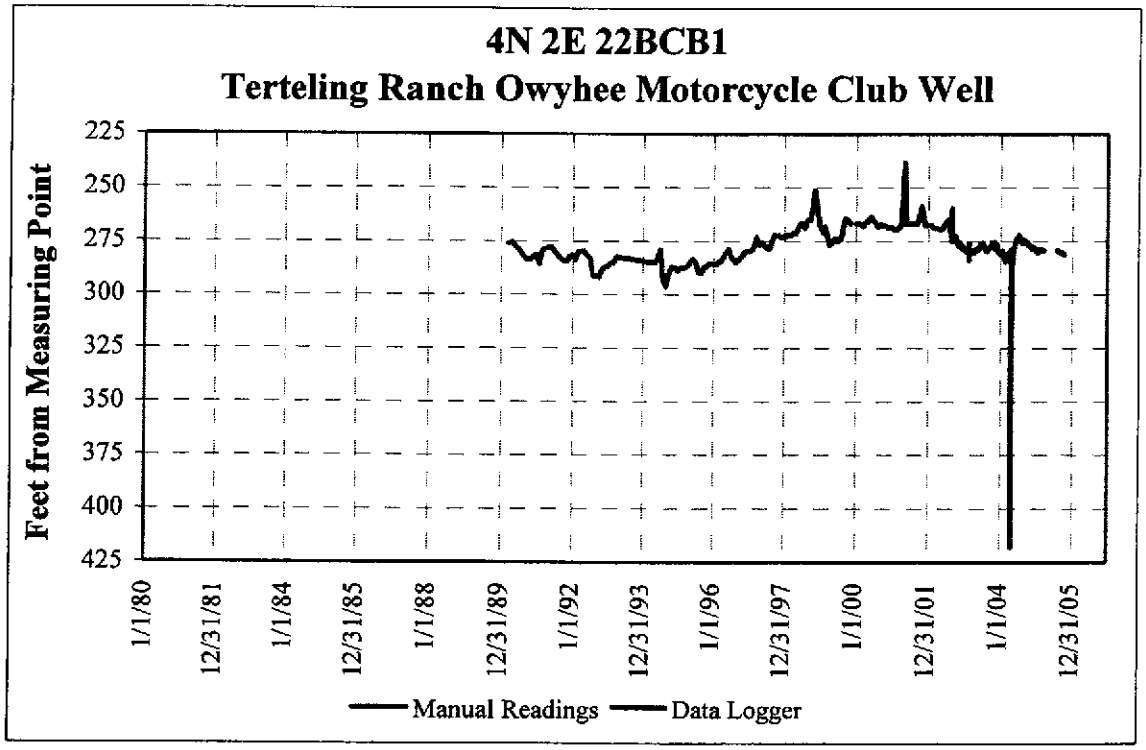


Figure 11. Water level hydrograph for the Terteling Ranch Motorcycle Club Hot well.

Table 2 shows the Watermaster hours for the reported time period. The total charges for Watermaster services from April 5, 2005 to February 21, 2006 was $2,850.89. Table 3 shows that assessment based on the percentages determined at the 2004 Annual Meeting.

Table 1. Watermaster hours for Water District 63-S work, April 4, 2005 through March 21, 2006.

Date	Hours	Comments
4/5/2005	4	Measurements
5/3/2005	3.5	Measurements
6/14/2005	5	Measurements & Data entry
7/5/2005	4	measurements
8/2/2005	4	Measurements & Data entry
9/6/2005	4	measurements
9/15/2005	4	measurements
9/21/2005	4	measurements
10/4/2005	4	measurements
10/11/2005	4	measurements
11/8/2005	4	measurements
12/6/2005	4	measurements
1/10/2006	3.5	measurements
1/11/2006	1.5	measurements
2/7/2006	4	measurements
2/14/2006	4	measurements
2/21/2006	4	measurements
2005-06	4	Data entries
TOTAL	**69.5**	

Table 3. Assessment for Water Master and measuring equipment expenses for Water District 63S for ~~June 2005~~ April 2005 through the end of February 2006.

Name	Percent	4/05 to 2/06 Amounts
Flora Tiegs	0.000	$0.00
Flora Silkey	20.723	$590.79
Flora House	1.566	$44.64
Edwards	22.864	$651.83
Terteling Ranch	36.147	$1030.51
Terteling Pool	9.714	$276.94
Quail Hollow Upper	6.562	$186.51
Quail Hollow Lower	2.444	$69.68
Ryan	-	$10.00
Total	**100**	**$2860.90**

Respectfully submitted,

3/16/06

Kenneth Neely, Water Master

Terteling Co.
re: Transfer 7/6 90
(63-12, 63-13, &
63-15)
Needs Final Order
Dismissing Contested
Case & notification
from SRSA Court re

Claims for 63-12, -13
& -15. (See Gary's
9/13/06 letter.)
Decision re: transfer
on hold until then.
(Fall or Winter of
2006.)

BEFORE THE DEPARTMENT OF WATER RESOURCES

FOR THE STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR TRANSFER NO. 71690 IN THE NAME OF THE TERTELING COMPANY, INC.	))))	**RECOMMENDED ORDER DISMISSING CONTESTED CASE**

Pursuant to Protestant's *Withdrawal of Protest* filed with the Idaho Department of Water Resources ("Department") on April 11, 2006, IT IS HEREBY ORDERED that the Edwards Family LLC protest is DISMISSED, with prejudice, and the hearing scheduled in this matter is VACATED. The Department retains full discretion to consider any and all evidence it considers relevant, and the Applicant retains the right to object to consideration of the same, including the *Affidavit of Norman C. Young* filed with the Department on April 11, 2006.

PROCEDURAL RIGHTS

This is the recommended order of the Hearing Officer. It will not become final without action of the Director of the Idaho Department of Water Resources. Any party may file a petition for reconsideration of this recommended order with the Hearing Officer within fourteen (14) days of the service date of this order. The Hearing Officer will dispose of any petition for reconsideration within twenty-one (21) days of its receipt, or the petition will be considered denied by operation of law. *See* Section 67-5243(3) Idaho Code.

Within fourteen (14) days after (a) the service date of this recommended order, (b) the service date of a denial of a petition for reconsideration from this recommended order, or (c) the failure within twenty-one (21) days to grant or deny a petition for reconsideration from this recommended order, any party may in writing support or take exceptions to any part of this recommended order and file briefs in support of the party's position with the Director or Director's designee on any issue in the proceeding. If no party files exceptions to the recommended order with the Director or Director's designee, the Director or Director's designee will issue a final order within fifty-six (56) days after:

SUPPORT DATA

IN FILE # 63-00012

i. The last day a timely petition for reconsideration could have been filed with the hearing officer;
ii. The service date of a denial of a petition for reconsideration by the hearing officer; or
iii. The failure within twenty-one (21) days to grant or deny a petition for reconsideration by the hearing officer.

Written briefs in support of or taking exceptions to this recommended order shall be filed with the Director or Director's designee. Opposing parties shall have fourteen (14) days to respond. The Director or Director's designee may schedule oral argument in the matter before issuing a final order. The Director or Director's designee will issue a final order within fifty-six (56) days of receipt of the written briefs or oral argument, whichever is later, unless waived by the parties or for good cause shown. The agency may remand the matter for further evidentiary hearings if further factual development of the record is necessary before issuing a final order.

Dated this 14th day of April, 2006.

Peter R. Anderson
Hearing Officer

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 14th day of April, 2006, the above and foregoing document was served on the following by placing a copy of the same in the United States mail, postage prepaid and properly addressed to the following:

CHARLES L. HONSINGER
RINGERT CLARK
PO BOX 2773
BOISE ID 83701-2773

DANA L HOFSTETTER
HOFSTETTER LAW OFFICE
608 W FRANKLIN ST
BOISE ID 83702

Victoria Wigle
Administrative Assistant to the Director
Idaho Department of Water Resources

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.

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,

Gary Spackman

Cc: Dana Hoffstetter

63-12

RINGERT CLARK
CHARTERED LAWYERS

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

William F. Ringert, of Counsel
Allyn L. Sweeney of Counsel
Samuel Kaufman (1921-1986)

April 19, 2006

Mr. Gary Spackman
Idaho Department of Water Resources
P.O. Box 83720
Boise, ID 83720-098

Re: Application for Transfer No. 71690 in the name of The Terteling Company, Inc.

Dear Mr. Spackman:

As you are aware, this law firm represents the interests of The Terteling Company (hereinafter "TTC") with respect to the above referenced matter. Until Tuesday, April 10, 2006, Application for Transfer No. 71690 (hereinafter the "Application") was a contested matter scheduled for hearing April 20 - 21 pursuant to a protest filed by Edwards Family, LLC (hereinafter "Edwards"). On April 11, Edwards filed a *Withdrawal of Protest*, stating that "there are no disputed issues of material fact." However, Edwards also submitted with their *Withdrawal* an *Affidavit of Norman C. Young* detailing many factual and legal issues that TTC disputes. The hearing officer in the case subsequently issued a *Recommended Order Dismissing Contested Case* specifying that my client "retains the right to object to consideration of . . . the *Affidavit of Norman C. Young*."

This correspondence is my client's objection to the consideration of Mr. Young's affidavit, and, in the event that the Affidavit is considered by IDWR is my clients' response to the points raised in the Affidavit.

As an initial matter, it is curious that Edwards states in its *Withdrawal* that "there are no disputed issues of material fact" and then submits an Affidavit that has as its purpose the allegation of facts, and states that "[a]pproval of Transfer No. 71690, without appropriate conditions and limitations attached to the approval, will enlarge the use of water and injure other water rights." Young Affidavit, p. 5. If Edwards thought that the transfer would result in enlargement and injury, then it should have gone to hearing and attempted to make that case. The fact that it did not speaks volumes. Edwards' actions simply do not add up: if it had concerns regarding enlargement and injury, why did it withdraw its protest? Despite Edwards' ambiguity, it is important to note that the Withdrawal is not pursuant to any conditions. Rather it is an unconditional *Withdrawal of Protest* with a request that IDWR consider certain information (consisting of Mr. Young's opinions) that may or may not be relevant, appropriate, or accurate. IDWR is free to reject such information, and should do so based upon its inaccuracy, and irrelevance to the Application. TTC also points out that it is simply inappropriate to enter what constitutes written testimony into the record without any opportunity to cross-examine the witness. Mr. Young's affidavit must be disregarded.

In any case, TTC contests that approval of the Transfer will enlarge the use of water and injure other water rights, and has proposed conditions upon its Transfer to prevent enlargement and injury. Following are TTC's responses to Mr. Young's opinions:

Opinion #1: Impacts to Water District 63-S Administration

Mr. Young states that the Transfer should be "conditioned to require that all resulting increased costs" from approval of the Transfer should be paid by TTC. Despite Mr. Young's opinion, the costs of monitoring water right diversions by the Water District 63-S Watermaster are determined by statute - either I.C. §42-605A or I.C. §42-610 as appropriate. No "condition" providing for an assessment against TTC would be either appropriate or necessary given the statutory assessment process.

Beyond the fact that assessments in Water District 63-S are addressed by statute, much of Mr. Young's information is inaccurate, or are simply statements showing Edwards' bias against this proposed Transfer. For example, Mr. Young's affidavit attempts to establish that an enormous additional burden will be placed upon the Watermaster by the requirement to monitor additional points of diversion. However, TTC has spoken with the Watermaster and found that he believes the additional time requirements upon him will be ½ hour per month at most. Many of the statements in Mr. Young's affidavit are sensationalized: "the Water master would be required to either open a gate and traverse several hundred yards of unmaintained farm road or crawl over a fence"; "[t]he complex piping system at the Pool well", etc. IDWR should look to the existing Application, find that it proposes a common sense approach, and to the extent IDWR has questions or concerns, contact TTC - which will be able to address issues based upon knowledge of conditions on the ground.

Opinion #2: Monitoring, Measurement, Recording and Reporting Needs

Mr. Young states that transfer should be conditioned to require specific monitoring equipment. TTC's application already addresses this point by specifying monitoring devices as approved by the Watermaster. Mr. Young's concern that the capacity of TTC's diversion works is greater than that permitted by the water rights is groundless - many water rights are diverted through works with greater capacity than that permitted by the rights. In fact, TTC's diversion works currently have a greater capacity than the diversion rate permitted by the water rights. Yet, TTC's record of compliance with both its water right and any and all monitoring and reporting requirements has been absolutely proper. There is simply no basis whatsoever to suggest that TTC's monitoring, reporting and diversion practices have or will be improper, nor is there any reason to insist that they be changed beyond the reasonable requests made by the Water District 63-S Watermaster.

Opinion #3: Extra Backup Wells

Mr. Young's opinion is that once the proposed Greenhouse well is constructed, the other points of diversion requested pursuant to the Transfer should be deleted. However, TTC is proposing all points of diversion to give it not only backup, but flexibility in the manner in which it uses its water rights. For example, it might be less expensive for TTC to pump from the Pool well during the summer months when that well is already being used rather than starting up either Windsock or the new proposed Greenhouse well. Moreover, TTC's investment in the crop in its greenhouses is extensive - in the event that the proposed Greenhouse well does not produce any water or a smaller quantity than desired, TTC will need additional backups. TTC's reasons for needing additional backup and flexibility are valid, and there is no need to remove points of diversion requested pursuant to the transfer once approved.

Opinion #4: Administration of Overlapping Water Rights

To the extent that overlapping water rights are a concern, IDWR has completed its review of this transfer and was satisfied that the concerns were addressed. TTC has filed a transfer covering water right nos. 63-3603 and 63-7595 which seeks to remove geothermal wells from those water rights as points of diversion. That transfer is currently pending before IDWR, and addresses the overlap concerns listed by Mr. Young

Opinion #5: Pending SRBA Proceedings

Mr. Young states that other Basin 63 transfer applicants' processing has been delayed. However, this transfer has been in process since well before August, 2005 when such other applicants were notified. The letter does not state, and we are not aware of any "policy" requiring that all Basin 63 transfer processing be stayed during the pendency of the adjudication. Moreover, the processing of this transfer was completed under IDWR's transfer processing policy, and IDWR had the opportunity to investigate any matters related to the SRBA - presumably it did so. The transfer has been processed, examined and investigated extensively. It is approvable now, and should be approved now.

Opinion #6: Separate Systems Require Separate Transfer Approvals

Mr. Young's opinion in this regard is that there should be a separate application for each "system" proposed by the transfer. The transfer does not propose separate systems. Rather, it adds points of diversion to the systems that were approved pursuant to Transfer No. 68558. To the extent that Edwards is objecting to the separate systems approved by that Transfer, their opportunity to so object has passed. It was a party to that proceeding, had every opportunity to

raise the issues it now raises. IDWR cannot go back and "disapprove" the separate systems it approved in an earlier transfer based upon Mr. Young's concerns. Mr. Young's other concerns about expansion and enlargement of the water rights are addressed by the monitoring and reporting requirements that TTC will be subject to upon approval of this transfer.

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

TTC agrees with Mr. Young that if this well is approved as a point of diversion, it should be subject to the monitoring and reporting requirements of other points of diversion proposed by the transfer, and should be included as a point of diversion in the Basin 63-S reporting area.

Opinion #8: Incorporation of the Conditions of Prior Transfer Approvals

TTC maintains the position that it has had throughout this proceeding: that it does not oppose appropriate conditions upon the transfer - including those that were conditions of approval for Transfer No. 68558. TTC maintains, however, that certain conditions that may be imposed - including conditions from Transfer No. 68558 - may not be appropriate, and TTC reserves the right to address those conditions as they are added to the transfer.

In short, Mr. Young's affidavit contains a tremendous amount of information, and is based upon a limited understanding of TTC's systems and the proposed transfer. It should not be considered in IDWR's continued processing of the transfer because Edwards did not present his testimony at hearing, because TTC had no opportunity to cross-examine Mr. Young regarding his opinions, and because the addition of documents and opinions to the record in this manner are simply inappropriate. To the extent that IDWR considers the information provided by Mr. Young, TTC requests that it be given further opportunity to rebut the information and present alternative information and/or theories.

Please contact me with any concerns or questions.

Sincerely,

Charles L. Honsinger

cc: Tom Terteling
Ed Squires

RECEIVED
APR 11 2008
DEPARTMENT OF
WATER RESOURCES

Dana L. Hofstetter, ISB # 3867
HOFSTETTER LAW OFFICE, LLC
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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

ORIGINAL

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

measurement sites (a 33 % increase in sites measured) and two water level monitoring sites (a 22% increase in sites measured). The Watermaster's cost breakdown by well indicates that The Terteling Company was assessed $1030 for monitoring and regulating the Windsock well alone in 2005. The proposed new well is intended as a backup to the Windsock well. Approval of the additional proposed points of diversion will add to the Watermaster's travel distance and time spent monitoring water use in the District. The proposed new well would require the watermaster to travel to a new location about ¼ mile off Cartwright Road. Also, the other proposed points of diversion would require additional Watermaster travel time. The Terteling Springs well is nearly ½ mile from the Pool well in a straight-line distance, but a practical, indirect route using Cartwright and other improved and maintained roads may be nearly twice that distance. In addition, the Watermaster would be required to either open a gate and traverse several hundred yards of unmaintained farm road or crawl over a fence to walk to the Terteling Springs well site. The Applicant asserts that the Terteling Springs well is on the route presently used by the Watermaster when visiting Motorcycle Club well, but the Watermaster's visits to Motorcycle Club well are not a part of his duties for Water District 63-S, and it is unclear how often such visits are made because the Applicant has the responsibility for monitoring this well and submitting the information to IDWR under the monitoring plan adopted pursuant to the

where does this come from

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 E½SW of Section 22 in and near the Peaceful Cove Greenhouses). Right No. 63-7595 also authorizes irrigation of 6 acres in the E½SW of Section 22, and Right No. 63-3603 authorizes irrigation of 32 acres in the E½SW 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 Tansfer 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

NORMAN C. YOUNG

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

SUE E. GIBERMAN NOTARY PUBLIC STATE OF IDAHO

Sue E Giberman

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

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HOFSTETTER LAW OFFICE
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Boise, Idaho 83702
Dana@IdahoWaterLaw.com

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Attorney at Law

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RECEIVED
APR 10 2006
DEPARTMENT OF
WATER RESOURCES

April 10, 2006

Assistant to Director
Idaho Department of Water Resources
P.O. Box 83720
Boise, Idaho 83720-0098

Re: Application for Transfer No. 71690 – The Terteling Company, Inc.

Dear Assistant to Director:

Enclosed are the original and a copy of each of the following two documents in the above-referenced case:

Affidavit of Norman C. Young

Withdrawal of Protest

Please file the original Affidavit of Norman C. Young **first**, and the original Withdrawal of Protest **second**. Please also conform both copies and return the conformed copies in the enclosed addressed and stamped envelope. Thank you for your assistance.

Sincerely,

HOFSTETTER LAW OFFICE, LLC

Dana L. Hofstetter

E:/3006.1/6862

RECEIVED

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

ORIGINAL

BEFORE THE DEPARTMENT OF WATE
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

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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Debbie —
Please send a
copy of this
affidavit to Ken
Neeb and to
John Westra.
Thx. Gary

Done 6/5/06