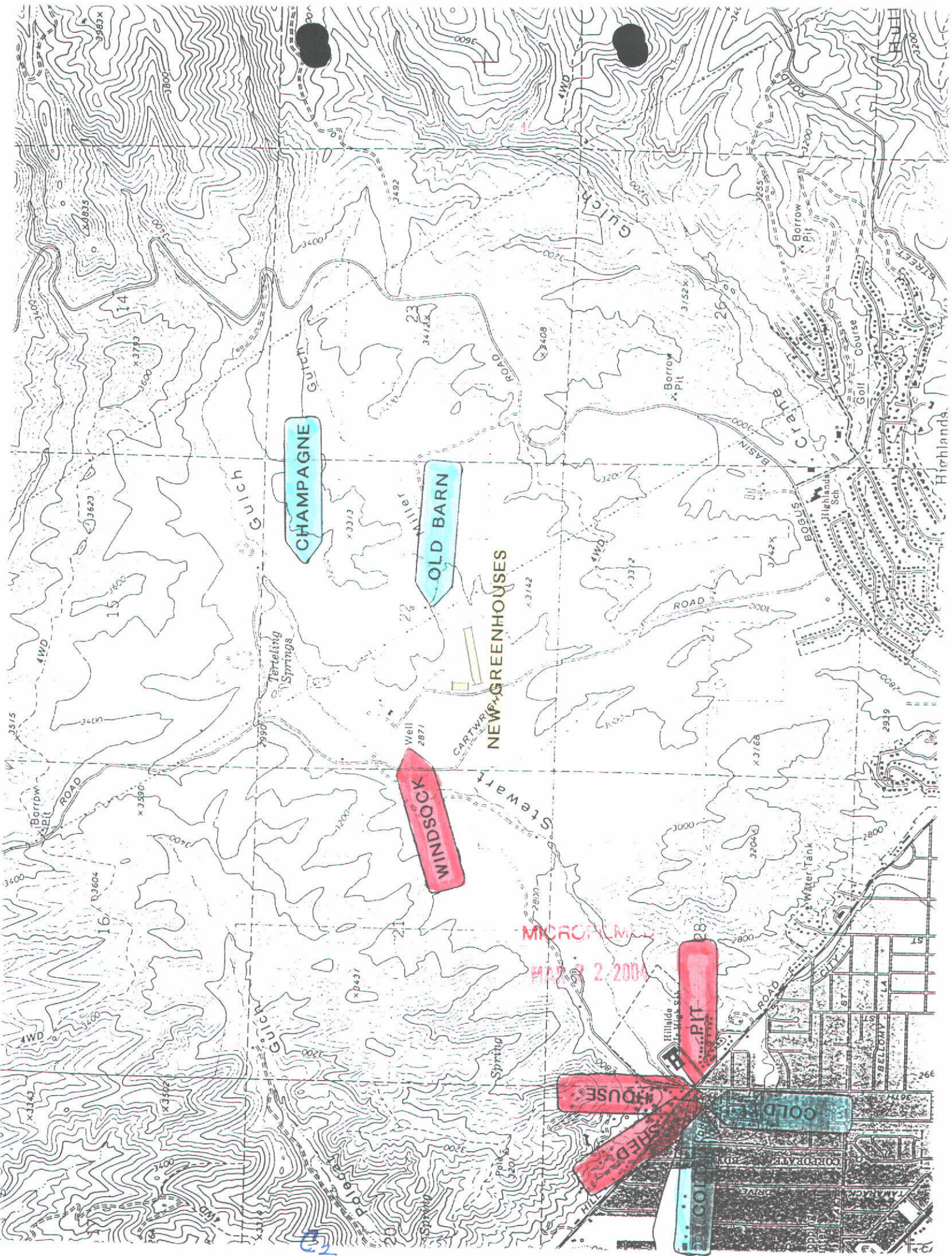






The Terteling Co., Inc.

4N 2E Section 29 NESE

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MAR 22 2004

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
TRANSFER OF WATER RIGHT
TRANSFER NO. 68559

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
63-31051	AJC/Beneficial Use	07/01/1921	0.12 cfs			6.0	GROUND WATER

Purpose of Transfer (Changes Proposed)

Current Number	Split	POD	POU	Add POD	Period of Use	Nature of Use
63-31051	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
63-31051	63-31051	0.12 cfs	38.0 af	N/A	N/A		N/A	N/A	N/A	N/A
TOTALS		0.12 cfs	38.0 af	N/A	N/A		N/A	N/A	N/A	N/A

Detailed Water Right Description(s) attached

Dated this 3rd day of June, 2002


Chief, Water Allocation Bureau

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WATER RIGHT NO. 63-31051
As Modified by Transfer No. 68559

In accordance with the approval of Transfer No. 68559, Water Right No. 63-31051 is now described as follows.

Right Holder: THE TERTELING COMPANY INC
 3823 N 36TH ST
 BOISE ID 83703

Priority Date: 07/01/1921

Source: GROUND WATER

<u>BENEFICIAL USE</u>	<u>From</u>	<u>To</u>	<u>Diversion Rate</u>	<u>Volume</u>
COMMERCIAL	01/01	12/31	0.12 CFS	38.0 AF
			0.12 CFS	38.0 AF

LOCATION OF POINT(S) OF DIVERSION:

GROUND WATER	NWNE	Sec. 22 Twp 04N	Rge 02E	ADA County
GROUND WATER	NWSE	Sec. 22 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: COMMERCIAL

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				

CONDITIONS OF APPROVAL

- Commercial use is for inside greenhouses, associated outside irrigation and other miscellaneous business related uses.
- The total instantaneous diversion of water from all points of diversion under Right 63-31051 shall not exceed 0.12 cfs, nor total combined annual volume of 38.0 af.
- Rights 63-12, 63-13, 63-15 and 63-31051 when combined shall not exceed a total annual maximum diversion volume of 38.0 af for the irrigation of 6.0 total acres included under commercial use of this right.
- Prior to diversion of water under this approval, the right holder shall provide a means of measurement acceptable to the Department from all authorized points of diversion which will allow determination of the total rate of diversion.

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WATER RIGHT NO. 63-31051
As Modified by Transfer No. 68559

CONDITIONS OF APPROVAL

5. After specific notification by the Department, the right holder shall measure the diversion or shall enter into an agreement with the Department to determine the amount of water diverted from power records and shall annually report the information to the Department.
6. Use of water under this right may be affected by an agreement between the protestant and the right holder.
7. The right holder shall accomplish the change authorized by this transfer within one (1) year of the date of this approval.
8. Failure of the right holder to comply with the conditions of this transfer is cause for the Director to rescind approval of the transfer.
9. 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


Chief, Water Allocation Bureau

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SEE X-FER NO. 68558

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FOR ADDITIONAL

Department of Water Resources

INFORMATION

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WATER RESOURCES
WESTERN REGION

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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~~	~~20~~													~~7.5~~				
~~4N~~	~~2E~~	~~22~~									~~7~~			~~1.5~~					
4N	2E	29													C				
4N	2E	22									C			C					

6. General Information

a. Description of diversion system:

PLANTS IN AN EXISTING GREENHOUSE OPERATION, BOTH INSIDE AND OUTSIDE OF THE GREENHOUSES, ARE IRRIGATED BY TWO COLD WATER WELLS ADJACENT TO THE GREENHOUSES. WATER IS ALSO USED FOR MISCELLANEOUS COMMERCIAL PURPOSES ASSOCIATED WITH RUNNING THE BUSINESS. EXISTING WELLS IN SECTION 22, KNOWN AS THE CHAMPAGNE WELL AND THE OLD BARN WELL WILL BE USED TO SUPPLY WATER FOR THE SAME PURPOSES IN NEW GREENHOUSES IN SECTION 22.

b. Are the lands from which you propose to transfer the water right subject to any liens, deeds of trust, mortgages, or contracts? NO If yes, provide a notarized statement from the holder of the lien, deed of trust, mortgage or contract agreeing to the proposed changes. NOT APPLICABLEc. Describe the effect on the land now irrigated if the place of use is changed pursuant to this transfer: IRRIGATION OCCURS INSIDE AND OUTSIDE OF EXISTING GREENHOUSES. NEW GREENHOUSES WILL BE CONSTRUCTED IN SECTION 22. THE EXISTING GREENHOUSES MAY BE REDUCED IN SIZE AND POTENTIALLY REMOVED.

d. Remarks: _____

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MAR 22 2004

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

1. Right evidenced by

Claim No. A63-31051

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 AND COMMERCIAL
- (1-1 to 12-31)

6. Total amount of water under right(s)
- 0.12
- cubic feet per second and/or _____ acre-feet per annum.

7. Point(s) of Diversion:
- THERE ARE TWO WELLS AT THE FOLLOWING LOCATION

Lot	¼	¼	¼	Sec.	Twp	Rge	County	Local name for diversion
		NE	SE	29	4N	2E	ADA	

8. Lands irrigated or place of use:
- THE PLACE OF USE FOR BOTH USES IS IN THE NESE of TOWNSHIP 4N, RANGE 2E, SECTION 29. Irrigation is for 6 Acres.

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

63-00012, 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 TransferredNOT APPLICABLE**C. Description of Unchanged Portion of Right**NOT APPLICABLE

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PART 3

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

PLEASE SEE EXHIBIT C.

B. CHANGES IN NATURE OF USE

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

NOT APPLICABLE.

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

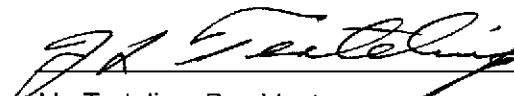
NOT APPLICABLE.

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

NOT APPLICABLE.

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

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


J.L. Terteling, President.

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


(Notary Public)

My commission expires 3/22/2002

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FOR DEPARTMENT USE ONLY

Transfer contains 6 pages and 3 attachments

Received by At Date 10-2-00 Protest by _____

Prelim. check by RL Fee 100⁰⁰ W 0027031

Receipted by At Date 10-3-00

Published in _____ Copies of protest forwarded by _____
THE IDAHO STATESMAN

Pub. dates 12/7+14/00 -SC 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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REVISED EXHIBIT A – Overview of Requested Changes

1. Background

This application for transfer of water right 63-31051 is filed in conjunction with a separate transfer for water rights 63-00012, 63-00013 and 63-00015 (the "Flora Rights"). Right 63-31051 and the Flora Rights are all used in a commercial greenhouse operation on the corner of 36th Street and Hill Road, currently know as the Flora Greenhouse. The Flora Rights, which all cover geothermal uses, were adjudicated in 1930, but rights to cold water from the wells in the vicinity were not adjudicated. Consequently, water right 63-31051, which is diverted from two wells drilled at the same time as the geothermal wells covered by the Flora Rights, is a beneficial use right. Documents establishing the use are included with this Exhibit.

2. Purpose of the Transfer

This transfer seeks to add two alternate points of diversion to water right 63-31051 in two existing wells which are located up Stewart Gulch from the Flora complex. This transfer would allow this existing water right to be used for the same irrigation and commercial purposes in new greenhouses and a new shop that will be constructed on Terteling's property. The transfer deletes the irrigation purpose of use, recognizing that the use of water for irrigation under this right is more properly categorized as a commercial use. The irrigation that does take place is part of a year-round commercial greehouse operation. The total combined diversion rate for all the points of diversion will remain 0.12 cfs, thereby preventing any enlargement. It is not yet know 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 water authorized by water right 63-31051 at the most efficient location.

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MAR 22 2004

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T. 5876

A.

Tom - cc to:
ID
cc to: [unclear]

Ralph Milstead
8410 Winchester Cir.
Boise, ID 83704

September 30, 1999

Mr. Joe Terteling
3823 N. 36th Street
Boise, ID 83703

Dear Mr. Terteling:

You recently requested information about the cold water resources at the location, 3823 North 36th Street in Boise, ID or what was once the old Milstead Floral Property. I will provide you with as much information as I can remember about the subject.

My parents, Oscar and Virginia Milstead, purchased and moved to that location in the spring of 1937. I was born during that same year, June 30, 1937. The cold water well was already in place as I was growing up at the floral. The site of the well was always at one location which was on the north side of the property line on the Catalpa Street side. When you enter the driveway from Catalpa Street the well would be on your right hand side approximately 25 to 30 feet in from the right side gate post. As it has been quite a few years since I have been on the property, I would guess it to be about 125 to 130 feet from the north east corner of the property or from the intersection of North 36th Street and Catalpa Drive. It was a concrete walled structure that had been dug into the ground about 10 to 15 feet deep and extended about one foot or less above the surface of the ground.

The first incident I recall pertaining to problems with the well was sand getting into the system. Sometime during the late forties my father and the H.J. Woods Co., a retailer of water pumps and supplies, pulled the old pump, pressure tank and the pipe that went down into the well casing out and replaced it with new components. I don't remember exactly how deep the well was but somewhere in the neighborhood of fifty to sixty feet comes to mind. I do know that one of the hot water wells, some thirty plus feet away from the cold water well, was over a thousand feet deep (contained in the well house next to the house). There were five hot water wells all very close together, some at the northwest corner of the house adjacent to the foundation and one in the well house with the deep hot water well. As I recall from conversations with my father, the one was deep as mentioned previously and the others were shallower.

I hope this helps. Should you need any further information, please do not hesitate to ask.

Sincerely,


Ralph Milstead

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EXHIBIT A₂

EXHIBIT B - Warranty Deed

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B,

ADA CO. RECORDER
J. DAVID NAVARRO
BOISE ID
WARRANTY DEED

PIONEER TITLE

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WATER RESOURCES
WESTERN REGION

'92 FEB 14 PM 4 41

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

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

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

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

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Reviewed By: *JH*

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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

(G:\8975.29\doc\warrrdd.1)

STATE OF IDAHO)

) ss.

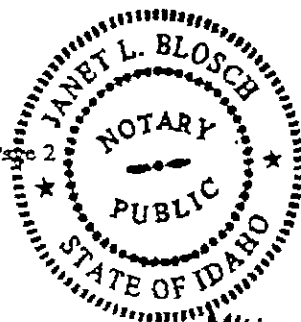
County of Ada)

Elizabeth Tullis Secretary

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 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 Treasurer

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

WARRANTY DEED - Page 2
MM&C 8975.29 02/14/97



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

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SCHEDULE I

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

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

EXCEPT any portion lying within the following:

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

EXCEPT ditch and road rights-of-way.

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WATER RESOURCES
WESTERN REGION

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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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WATER RESOURCES
WESTERN REGION

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MAR 22 2004

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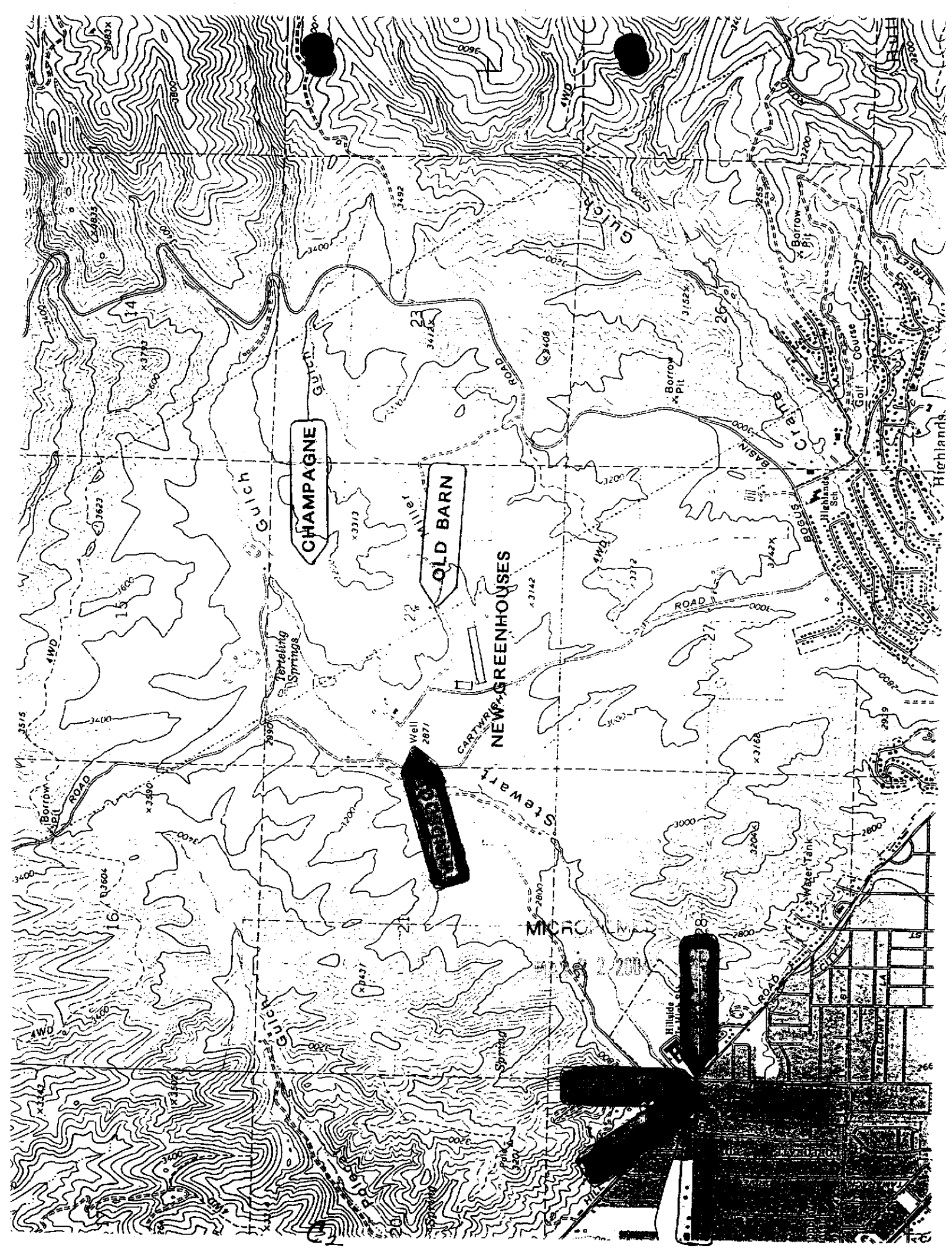
EXHIBIT C - USGS Map

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MAR 22 2004

7. 68559

C,



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. 1003; *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.

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.

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

Opinion of the Court—Varian, J.

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. Brennaman*, 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, 93 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.

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.)

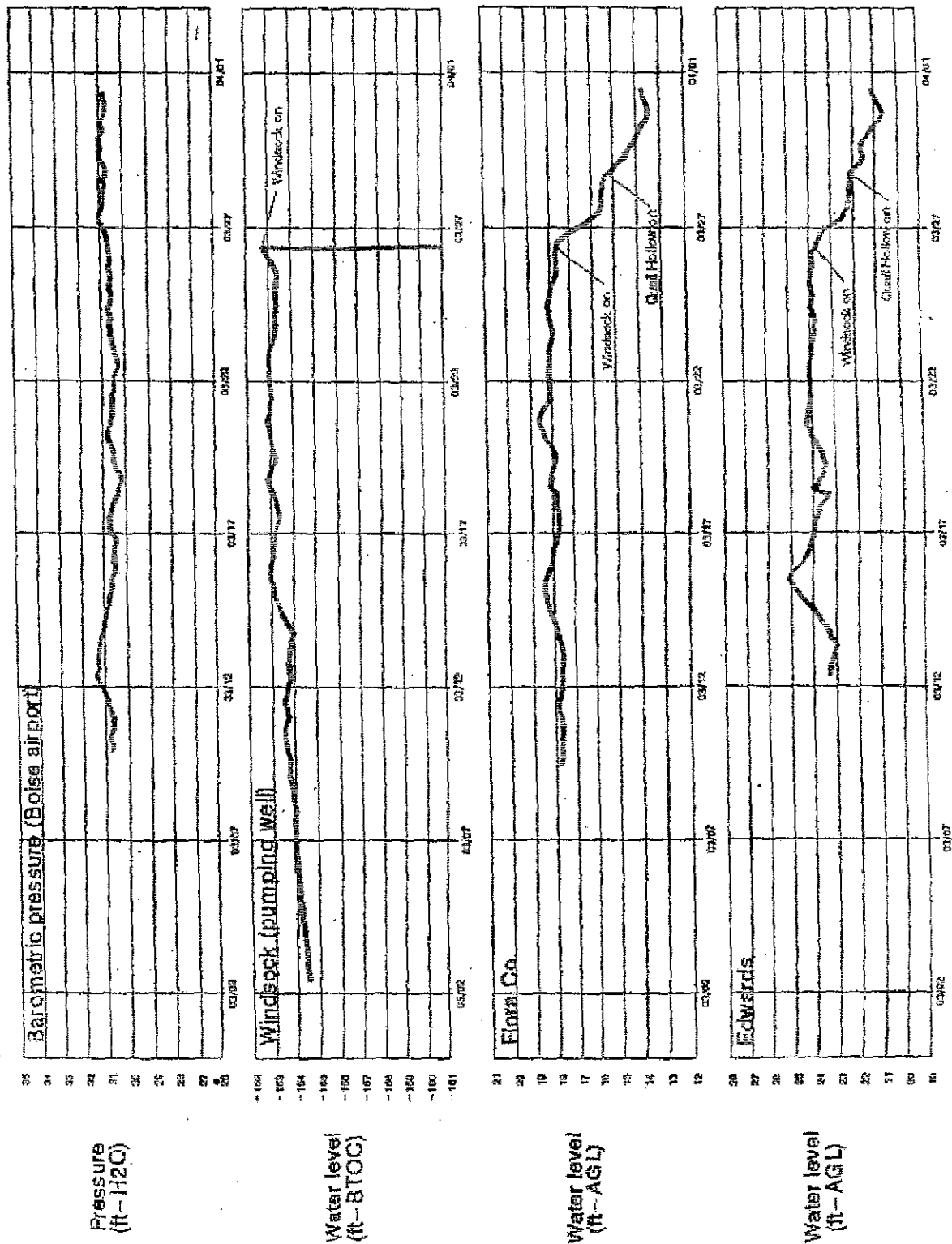
MRS. R. REINOEHL, Appellant, v. HAMACHER POLE
& LUMBER COMPANY and STATE INSURANCE
FUND, Respondents.

[6 Pac. (2d) 860.]

WORKMEN'S COMPENSATION LAW — CONSTRUCTION — INDUSTRIAL ACCI-
DENT — 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.



11-21-38



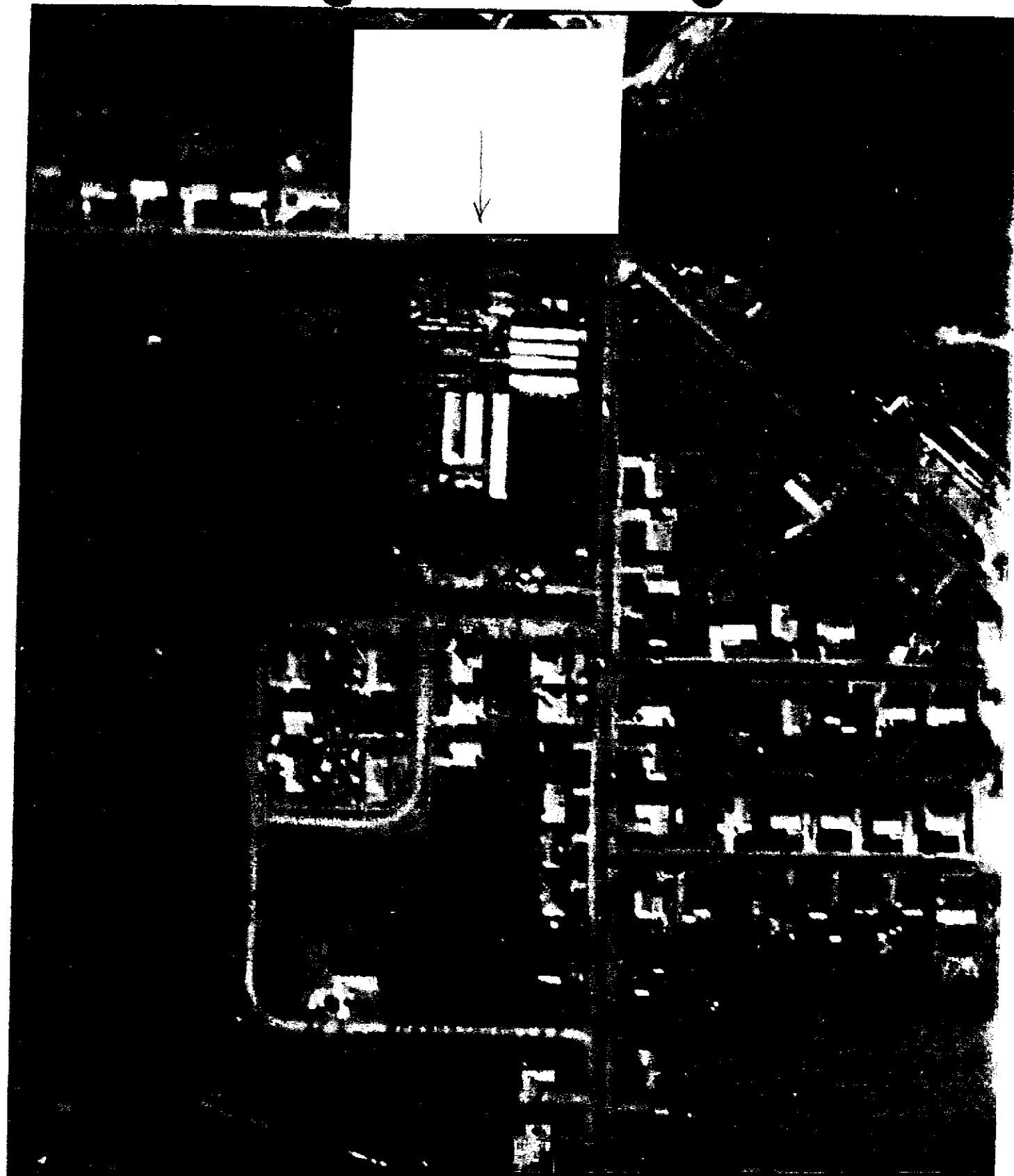
THE TEXTILE CO. 1001 PLOCH ST.
BIRMINGHAM
ALABAMA

6-13-49

DHT-2F



The TERTLING CO. DBA FLOW #2
MICROFILMED
APR 9 1981



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



EnviroSearch

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APRIL 1964

AERIAL PHOTOGRAPH

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

B1862

2/3/97

SCALE: 1"=200'

APPENDIX 1

MAR 22 2004

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OF COUNSEL
*Licensed in California only

March 13, 2002

VIA FACSIMILE

Lori Graves
Idaho Department of Water Resources
2735 Airport Way
Boise, Idaho 83701

Re: The Terteling Company, Inc.'s Applications for Transfer No. 68559
Our File: 4465-7

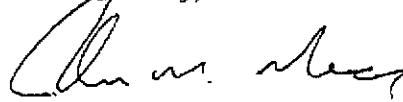
Dear Lori:

As you requested, The Terteling Company, Inc. has calculated an estimate of the volume of water it has annually diverted for cold water commercial uses at the Flora site. We estimate that approximately 27 AF is diverted annually. This water is used for a variety of uses including year-round irrigation of potted plants, domestic type uses associated with the onsite office, and other miscellaneous uses associated with the greenhouse operation such as washing and cooling.

Since the cold water wells are not equipped with measuring devices, we backed into the annual diversion estimate using the historical irrigation use on the property, which was converted over time to greenhouse uses. Based on the aerial photographs we provided from the 1930s, we estimate a total of 6 acres were irrigated on the property. We estimate that pathways, greenhouses and a house covered the other acre associated with the site. Using the 6 acres, we simply took the 4.5 acre-foot per year average irrigation diversion that IDWR has estimated for the Boise Valley and multiplied that by the 6 acres to come up with 27 AF. We estimate that this same 27 AF has been diverted annually as the uses on the site have shifted more heavily to commercial uses associated with the greenhouses.

Please call if you have any questions.

Sincerely,



John M. Marshall

JMM/tns

cc: The Terteling Co., Inc. (w/o enclosures)
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E

40S15-5

30	2740	2130	1065								
40	1790	765	385								
50	905										
60	185										
Shut-off PSI:		54	45	36	28	19	10				

40S20-7

2

0				3530	3255	2980	2400	1820	930		
20		3460	3160	2855	2210	1565	780				
30	3410	3160	2700	2230	1375	515	260				
40	3050	2710	2000	1295	650						
50	2530	1995	1115	235							
60	1780	1015	510								
Shut-off PSI:		78	70	61	52	44	35	26	18	9	

40S30-9

3

0						3385	3150	2910	2465	2020	1
20				3330	3065	2805	2320	1835	1145	450	
30		3480	3275	3065	2690	2310	1685	1060	530		
40	3450	3265	2980	2690	2165	1640	940	235			
50	3205	2980	2565	2150	1495	840	420				
60	2880	2560	2000	1435	735						
Shut-off PSI:		103	95	86	77	69	60	52	43	34	26

40S50-12

5

0								3435	3275	3115	2
20							3400	3225	3060	2785	2
30						3360	3215	2995	2780	2430	1
40				3350	3170	2990	2700	2410	1980	1550	1
50			3315	3160	2925	2690	2320	1950	1450	955	
60		3300	3110	2915	2605	2295	1845	1395	870	340	
Shut-off PSI:			133	124	116	107	98	90	81	72	64

40S50-15

5

0										3390	3
20								3355	3220	3090	2
30							3330	3210	3050	2885	2
40						3320	3180	3040	2835	2630	2
50				3415	3290	3170	2995	2825	2570	2315	1
60			3390	3280	3135	2985	2770	2550	2245	1935	1
Shut-off PSI:				161	153	144	135	127	118	110	101

40S75-21

7 1/2

0											
20											
30											3
40										3350	3
50									3335	3250	3
60								3320	3235	3135	3
Shut-off PSI:									193	184	176

40S75-25

7 1/2

0											
20											
30											

FLORA

8-99

Cold well
west of
House

Screen
55 to 60'

11' x 2' = 42'

247225 4' 12' 6"

46'
pump 3' 6"
@ 49'

oiled
60' of wire

oiled
8-25-99
60' wire

297⁵⁰ - pump

226⁵⁶ - motor

118⁵⁶ - E6C Box

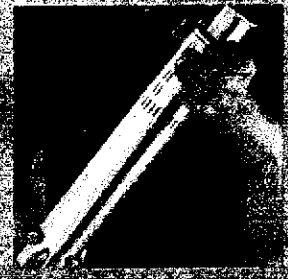
- all over 5

ROBINSON?
Selling
728-4795

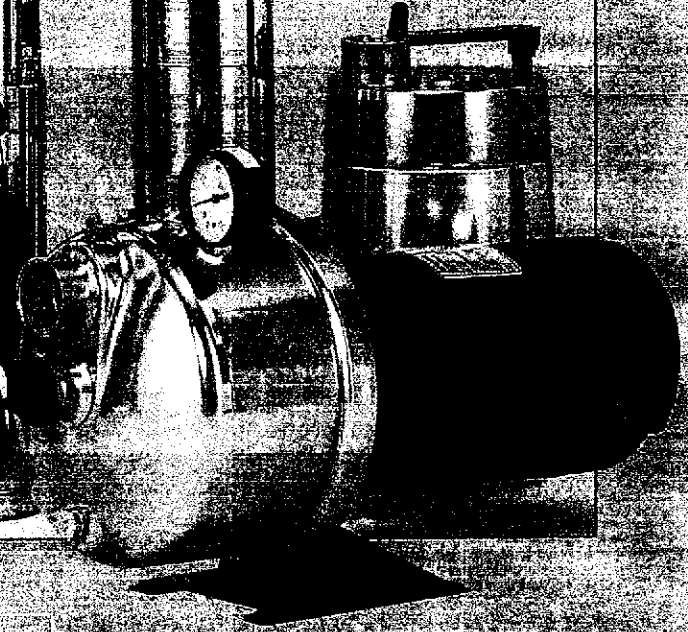
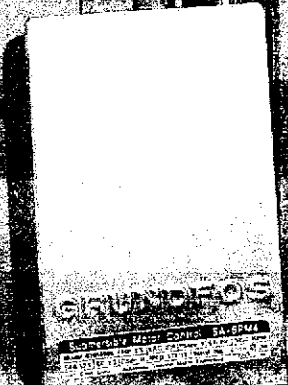
GRUNDFOS STAINLESS STEEL PUMPS

FOR GROUNDWATER APPLICATIONS

Including The
Revolutionary



GRUNDFOS
JET SUB





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.: 68559 - Water Right 63-31051 - 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,

Samuel 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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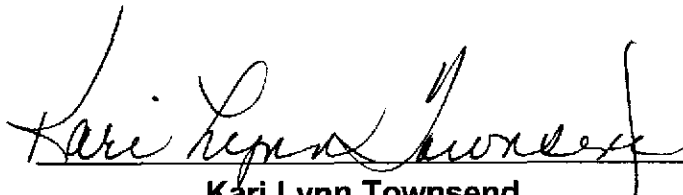
MAY 22

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. 68559 - WATER RIGHT 63-31051

**THE TERTELING COMPANY INC
3823 N 36TH ST
BOISE ID 83703**


**Kari Lynn Townsend
Secretary**

MICROFILMED
MAR 22 2004

**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).

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.

TRANSFER REVIEW SHEET

(05-01)

TRANSFER # 5876/68559

DATE REVIEWED 5-29-2002 CS

SPLIT ___ POD ___ ADD POD ___ POU ___ PERIOD ___ or NATURE ___ of USE

ALL OF RIGHT(S) W=Water Right ^{B/U} C=SRBA Claim No Activity R=SRBA Recommendation

<u>C/63-31051</u>	<u>/</u>	<u>/</u>	<u>/</u>	<u>/</u>
<u>/</u>	<u>/</u>	<u>/</u>	<u>/</u>	<u>/</u>
<u>/</u>	<u>/</u>	<u>/</u>	<u>/</u>	<u>/</u>
<u>/</u>	<u>/</u>	<u>/</u>	<u>/</u>	<u>/</u>

PART OF RIGHTS(S)

(Unchanged)

(Changed)

<u>/</u>	to	<u>/</u>	<u>/</u>
<u>/</u>	to	<u>/</u>	<u>/</u>
<u>/</u>	to	<u>/</u>	<u>/</u>
<u>/</u>	to	<u>/</u>	<u>/</u>
<u>/</u>	to	<u>/</u>	<u>/</u>
<u>/</u>	to	<u>/</u>	<u>/</u>
<u>/</u>	to	<u>/</u>	<u>/</u>
<u>/</u>	to	<u>/</u>	<u>/</u>
<u>/</u>	to	<u>/</u>	<u>/</u>
<u>/</u>	to	<u>/</u>	<u>/</u>
<u>/</u>	to	<u>/</u>	<u>/</u>

Standard Season 3-1 to 11-15

Standard Volume 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
 NA-63-5 - Low Temp Geothermal
 (11) ___ Water District (12) No Pertinent Conditions (13) No Expansion
 WM/Rcvd ___ w/limits

- (2) Drop IRR - COMM use more accurately describes use.
 (5) Volume equivalent to IRR extended to yr round = 38 at per John Marshall's
 2-15-02 letter - OS per J. Peppersack. for commercial use.
 (7) Add P/Ds 4 total wells - All existing wells.
 (8) Change P/U to include Sec 22 site.

Commercial use includes leaves IRR also covered under Rts 63-12/13+15
 from low temperature geothermal wells. Need combined use limit.

Conditions/Remarks 020, WB4, T17, 01Q, W35, T07, T08, T09
Commercial use for greenhouses & outside Irr associated with business.

WRs for Update Comments NA

Database Updated to Reflect Final Action 6-3-2002 CS

✓ 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 01 Feb 1944

Origination/Authorization:

Current Registered Agent: J. L. TERTELING
3823 N. 36TH STREET
BOISE, ID 83703

Organizational ID / Filing C21391
Number:

Number of Authorized Stock 1
Shares:

Date of Last Annual Report: 01 Mar 2002

Amendments:

Amendment 0 filed 01 Feb 1944 INCORPORATION

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Amendment 1 filed 27 Mar 1958 OTHER - DELETE ARTICLE V

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Amendment 2 filed 31 Mar 1958 MERGED WITH WESTERN EQUIPMENT COMPANY

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Amendment 3 filed 22 Dec 1977 OTHER - AMEND ARTICLE V

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Amendment 4 filed 31 Oct 1978 NAME CHANGED TO TERTELING COMPANY, INC. (THE)

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Amendment 5 filed 17 Nov 1978 OTHER - AMEND ARTICLE V

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Amendment 6 filed 27 Feb 1979 ARTICLES RESTATEMENT

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Amendment 7 filed 24 May 1979 OTHER - RA

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Amendment 10 filed 20 Dec REINSTATEMENT

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Amendment 8 filed 20 Dec 1983 OTHER - CHANGE RO TO 1755 WESTGATE DRIVE,
BOISE

Amendment 9 filed 02 Apr 1990 OTHER - ADD ARTICLE
VIII

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Amendment 11 filed 07 Mar 1997 OTHER - AMEND ART V -
DIRECTORS

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Comments, questions or suggestions can be emailed to: sosinfo@idsos.state.id.us

No. C 21391		Due no later than Feb 28, 2002		2. Registered Agent and Office NO PO BOX	
Return to: SECRETARY OF STATE 700 WEST JEFFERSON PO BOX 83720 BOISE, ID 83720-0000		Annual Report Form 1. Mailing Address - Company or Business (if applicable) TERTELING COMPANY, INC. (THE) J. L. TERTELING 3823 N 36TH STREET BOISE, ID 83703		J. L. TERTELING 3823 N. 36TH STREET BOISE, ID 83703	
NO FILING FEE IF RECEIVED BY DUE DATE				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	P. 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:		6.			
IDAHO C 21391		Signature <i>J. L. Terteling</i>		Date 37 FEB 02	
		Name Printed J. L. Terteling		Title President	
Issued 12/03/2001		Do Not Tape or Staple		2921	

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MAY 16 2002

cold water
wellsForm 222a
July 2000

Department of Water Resources

WESTERN REGION TRANSFER ANALYSIS

Applicant Teeteling Company Inc.Transfer No. 5876 = 68559Reviewed by [Signature]Date 11/29/001. Right number(s) A63-310512. Type of right ☐ Decree ☐ License ☐ Stat. Claim ☒ BU Claim3. 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 = 3/14/02
- 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 see SRBA file
- h. ☒ Proof of ownership of right &/or land from which water is transferred
- 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.

1 Data entry checked by ly date 5/3/02

k. ☒ Overlapping rights for current & proposed scenarios

Current see memo

Proposed " "

l. ☒ SRBA Claim(s) = the only record for this b.v.

m. ☒ Comment letters ☒ Yes (also see #2 below) ☐ No

☒ Water District # Same as T. 5875
☐ Other

PUBLICATION REVIEW

1. Legal Notice electronically sent to S.O. ☒ Yes FL 11/30/00

2. Comment Letters

Watermaster comments requested on N/A, received on _____

Other comment letters: ☐ See attached information

3. Affidavit of publication received: ☒ Yes

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 Lori Graves dated 5/1/02.

4. Recommended by Bays

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 At

Date 5-14-02 perm + adj

MEMORANDUM

DATE: 5/1/2002

FROM: Lori Graves

TO: Transfer File No. 68559

Attachments

- A. Overview and Supporting Documentation Including:
 - 1. Ralph Milstead Affidavit
- B. Flora Site Warranty Deed
- C. USGS Map
- D. John Marshall's Supporting Letter Dated 2/15/02
- E. Applicant's Annual Diversion Volume Estimate via John Marshall's Letter Dated 3/13/02
- F. Pump Curve and Receipt

Brief

Applicants propose to add two alternate points of diversion to claim 63-31051. The alternate points are two existing cold water wells aka the Champaign well and the Barn well, which are located up Stewart Gulch approximately one mile North and two miles East of the existing wells at the Flora site. The applicants also wish to change the P/U to allow flexible use of this right at the existing Flora site and the proposed new Tertling, proposing not to exceed the transfer limits at one or both locations. The transfer deletes the irrigation use as claimed, recognizing that the use of water for irrigation under this right should be clarified to commercial use.

Edwards family protested this transfer because it is associated with accompanying transfer no. 68558 involving four hot water wells. A settlement agreement was reached between the parties, allowing the processing of this transfer to go forward.

Ownership

Flora Site: See Attachment B.

Turtling Site: Confirmed as applicant via Ada County Assessor.

Historical Beneficial Use

This transfer was filed in conjunction with transfer no. 68558 involving the Flora rights. The Flora rights, which all cover geothermal uses, were adjudicated in 1930, but the cold

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water wells were not adjudicated. As a result, applicants filed beneficial use claim 63-31051 with a priority date consistent with Flora's most senior decreed geothermal right.

Because the right proposed for transfer is a beneficial use claim, the validity of the claim had to be determined. I conducted a verification investigation 2/12/02 and attached to this memo the results documented in a memo dated 3/14/02.

Overlaps

Flora Site: Rights 63-00012, -00013 and -00015 represent three hot water wells decreed for heating, domestic, stockwater and irrigation uses at the Flora site. See accompanying transfer no. 68558.

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 Champaign well and the Barn well as two alternative cold water sources. Please note that ground water from the Champaign well is also used irrigation of the 178 licensed acres.

Recommendations

Install suitable measuring and recording equipment acceptable to the Department on all four wells.

Limit combined flow rate to .12 cfs.

Limit combined volume to 27 afa.

Limit irrigation to 6 acres and .02 cfs/acre.

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Update the protest status in the data-base from "Suspended Protest" to "Withdrawn" if the transfer approvals for transfer no. 68558 are consistent with the settlement agreement (Attachment D, transfer no 68558).

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MEMORANDUM

DATE: 3/14/2002

FROM: Lori Graves *LG*

TO: Steve Lester, SRBA File 63-31051

RE: Transfer No. 68559

The following memo addresses the validity of beneficial use claim no. 63-31051 necessary for the approval of transfer no. 68559.

Applicant's Supporting Documentation:

1. 1938 aerial photo with evidence of greenhouse operation
2. 1949 aerial photo with evidence of greenhouse operation
3. 1959 aerial photo with evidence of greenhouse operation
4. 1964 aerial photo with evidence of greenhouse operation
5. Affidavit from Ralph Milstead verifying existence of cold water well since 1937
6. Pump curve for 2 hp submersible pump installed in replacement well drilled in 1999
7. Reference to the Idaho Supreme Court decision that ratified the district courts decision in *Silkey v. Tiegs*, that mentioned cold water wells existed at the Flora site along with the hot wells that were adjudicated in *Silkey v. Tiegs* (see pg 4, no. 2 of John Marshall's 2/15/02 letter)
8. John Marshall's letter dated 3/13/2002, justifying the annual volume of water historically diverted from the two cold water wells.

Department's Supporting Documentation:

1. 1987, 1994, and 2000 arc view photos showing evidence of greenhouse operation.
2. 1999 well log for 8" replacement well drilled just West of the Flora house.

2/12/02 Department Field Investigation:

An 8" well, equipped with a 2 hp submersible pump is located in the NENESE, S29, just West of the Flora house. The submersible pump is a Grundfos, #40S20-7, which has a pumping capacity of the 40 gpm (.09 cfs). This well is located in the NENESE, S29, just West of the Flora house.

A second 8" well is located South of the well described above, still within the NENESE S29. The well and casing were up to code. The well was equipped with a submersible

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pump. No other information about this well was available. Applicant's consultant, Ed Squirres, estimated that the well was upgraded in mid-1970. Because of the well's close proximity to the well described above, we can assume that it was developed in a similar manner.

Ed stated that the previous owners of Flora Co. told him that both wells were tied together by buried pvc pipe. The wells are used for hand watering, drip irrigation, buried soaker hoses, pressurized irrigation and commercial/domestic uses for the Flora office/house.

Assuming that the 2nd well also contains a similar 2 hp submersible pump, the system capacity for both wells would be approximately 80 gpm or .18 cfs. The historical cfs amount claimed is well within the estimated system capacity and appears reasonable.

The historical volume amount of 27 afa proposed for transfer per John Marshall's 3/13/2002 letter also appears reasonable based on the supporting documentation John referenced in his letter and based on the following calculations:

$.12 \text{ cfs} \times 365 \text{ days} \times 1.9835 = 86.9 \text{ afa capacity assuming historical year around irrigation use}$

$.12 \text{ cfs} \times 260 \text{ days} \times 1.9835 = 61.9 \text{ afa capacity assuming historical uses limited to the standard irrigation season.}$

SRBA Consultation:

The Flora lot is 7 acres in size. The beneficial use claim was filed for .12 cfs for commercial use, which would include all irrigation and domestic uses associated with the greenhouses and office/home. Jan Schurte reviewed the file and stated that the beneficial use right would be recommended as claimed based on the supporting documentation and the 2002 field investigation confirming the existing commercial uses and wells claimed.

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MAR 22 2004

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
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OF COUNSEL
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FEB 15 2002

WATER RESOURCES
WESTERN REGION

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.

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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.

² (4.5 AF/acre x 6 acres) / 8.5 months x 12 months = 38 AF/year

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3. The change is in the local public interest.

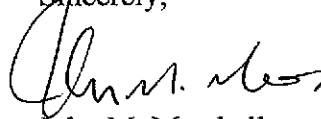
See discussion on local public interest above.

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

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MAR 22 2004

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE
STATE OF IDAHO

IN THE MATTER OF APPLICATION)	
FOR TRANSFER OF WATER RIGHT)	NOTICE OF HEARING
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.)	
_____)	

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.

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 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.

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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.

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MAR 22 2004

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

Via Facsimile and U.S. Mail

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

RECEIVED

OCT 18 2001

WATER RESOURCES
WESTERN REGION

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.

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Gary Spackman
October 17, 2001
Page 2

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

A handwritten signature in black ink, appearing to read "Dana L. Hofstetter", with a long horizontal flourish extending to the right.

Dana L. Hofstetter

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

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MAR 22 2004

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)
EA3006/5030

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November

Sun	Mon	Tue	Wed	Thu	Fri	Sat
				1	2	3 MICROFILMED MAR 22 2004
4	5 +	6 +	7 x	8	9	10
11	12	13	14	15	16	17
18	19	20	21 x	22 x	23 x	24
25	26 x	27 x	28	29	30	

2001

December

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	31					

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MAR 22 2004

2001

Reviews notes

JP
4/25/07

Determine:

to of claim ... b.w. filings
usually.

M

Might be able to substitute reliable information from
qualified party for some of I think onsite things?

Need

- ① confirm pld, plan legals
- ② quantify historical Q & volume
- ③ extent of B.W. for comm. use
- ④ what is priority date evidence?

Both sites T. 68558 & 68559

how compare before/after scenarios re
flow/volume from "current wells" to
"proposed wells" (all wells are in place but
some w/ significantly greater capacity than
others: Flora well is headwater well, for
example)

extent of historical use will ^{help} define extent
can relocate to the north site & Peaceful
Cove.

T 68559

JP
4/25/07

Regional Review - Determine:

Most if not all elements of chain ... b.w. filings
Require field exam usually.

Might be able to substitute reliable information from
qualified party for some of I'm not onsite things?

Need

- ① confirm pld, p/m legals
- ② quantify historical Q & volume
- ③ extent of B.W. for comm use
- ④ what is priority date evidence?

Both sites T. 68558 & 68559

how compare before/after scenarios re
flow/volume from "current wells" to
"proposed wells" (all wells are in place but
some w/ significant) greater capacity than
others: Flora well is Windbreak well, for
example)

help
extent of historical use will define extent
can relocate to the north site of Peaceful
Cave.

AJ5809NP
No. A63-31051

IDAHO DEPARTMENT OF WATER RESOURCES
ADJUDICATION CLAIM PROFILE REPORT

DATE: 11/03/00
PAGE: 4

OWNER CODE	NAME & ADDRESS	PRIORITY DATE	WATER USE	USE PERIOD FROM TO	DIVERSION RATE	DIVERSION VOLUME
C	THE TERTELING COMPANY INC DBA FLORA COMPANY 3823 N 36TH ST BOISE ID 83703 (208) 338-5200	07/01/1921	IRRIGATION COMMERCIAL	01-01 12-31 01-01 12-31	0.120 CFS 0.120 CFS	
TOTAL DIVERSION:					0.120 CFS	

Water Source: GROUNDWATER

Tributary to:

Stage: BENEFICIAL USE

Point(s) of Diversion: T04N R02E S29 NESE ADA County

Place of use Legal Description for: IRRIGATION

NE				NW				SW				SE					
T	R	S		T	R	S		T	R	S		T	R	S		SUM	
: Lt Ac Lt Ac Lt Ac Lt Ac				: Lt Ac Lt Ac Lt Ac Lt Ac				: Lt Ac Lt Ac Lt Ac Lt Ac				: Lt Ac Lt Ac Lt Ac Lt Ac					
04N 02E 29 :				:				:				06				:	6.0
TOTAL ACRES															6.0		

Place of use Legal Description for: COMMERCIAL

NE				NW				SW				SE				
T	R	S		T	R	S		T	R	S		T	R	S		
: Lt Ac Lt Ac Lt Ac Lt Ac				: Lt Ac Lt Ac Lt Ac Lt Ac				: Lt Ac Lt Ac Lt Ac Lt Ac				: Lt Ac Lt Ac Lt Ac Lt Ac				
04N 02E 29 :				:				:				C				:

POU County: ADA

Non-Irrigation Uses: COMMERCIAL, GREENHOUSE OPERATION

Other Rights: 63-00012, 63-00013, 63-00015 USED FOR HEATING.

Dates: Exam Made Date: Verified Date: Objection Filed Date:

Misc: Water District Number: Field Inspection Flag:
Presumption Flag:

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

IN RE THE GENERAL ADJUDICATION
OF RIGHTS TO THE USE OF WATER FROM
THE SNAKE RIVER BASIN WATER SYSTEM

CIVIL CASE NUMBER: 39576
Ident. Number AG-31051
Receipt Number W025312

**NOTICE OF CLAIM
TO A
WATER RIGHT**
ACQUIRED UNDER STATE LAW
(Flora cold supply)

RECEIVED

JUN 09 1999

WATER RESOURCES
WESTERN REGION

Please type or print clearly

1. Name of Claimant The Terteling Company, Inc., d/b/a Flora Company Phone (208) 338-5200
Mailing Address 3823 N. 36th Street, Boise, Idaho Zip 83703
2. Date of Priority (Only one (1) per claim) July 1, 1921
3. Source of water supply (a) _____
which is tributary to (b) _____
4. a. Location of existing point of diversion is: Township 4N Range 2E Section 29
1/4 of NE 1/4 of SE 1/4, Govt. Lot, B.M., County of Ada
Additional points of diversion if any: _____
b. If instream flow, beginning point of claimed instream flow is:
Township _____ Range _____ Section _____ 1/4 of _____ 1/4 of _____ 1/4,
Govt. Lot, _____ B.M., County of _____
ending point is: Township _____ Range _____ Section _____ 1/4 of _____ 1/4 of _____
1/4, Govt. Lot, _____ B.M., County of _____
5. Description of existing diversion works (Dams, Reservoirs, Ditches, Wells, Pumps, Pipelines, Headgates, Etc), including the date of any changes or enlargements in use, the dimensions of the diversion works as constructed and as enlarged and the depth of each well.
One 1 3/4 hp pump, 6" casing approx. 100' deep, one 1 1/2 hp pump, 4" casing approx. 40' deep.
6. Water is claimed for the following purposes:

	(both dates are inclusive)	(cfs)	(acre feet)
For <u>commerical/irrigation</u> purposes from <u>1/1</u> to <u>12/31</u> amount <u>0.12</u> or <u>18</u>			
For _____ purposes from _____ to _____ amount _____ or _____			
For _____ purposes from _____ to _____ amount _____ or _____			
For _____ purposes from _____ to _____ amount _____ or _____			
For _____ purposes from _____ to _____ amount _____ or _____			
For _____ purposes from _____ to _____ amount _____ or _____			
7. Total quantity claimed (a) 0.12 (cfs) and/or (b) 18 (acre feet)
8. Total consumptive use claimed is 18 acre feet per annum.

Last Name Terteling Ident No. _____

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COPY
5/99 Revision

9. Non-irrigation uses; describe fully (eg. Domestic: Give number of households served; Stockwater: Type and number of livestock Etc.) _____

Commercial greenhouse operation.

10. Description of place of use:

a. If water is for irrigation, indicate acreage in each subdivision in the tabulation below.

b. If water is used for other purposes, place a symbol of use (example: D for Domestic) in the corresponding place of use below. See instructions for standard symbols.

T W P	R N G	S E C	NE 1/4				NW 1/4				SW 1/4				SE 1/4				Totals
			NE	NW	SE	SW	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
4N	2E	29													6				6
4N	2E	29													C				

Total number of acres irrigated 6

11. In which county(ies) are lands listed above as place of use located? Ada

12. Do you own the property listed above as place of use? Yes X No

If your answer is No, describe in Remarks below the authority you have to claim this water right.

13. Describe any other water rights used at the same place and for the same purposes as described above.

Low temperature geothermal water right, no. 63-0012, 63-0013, 63-0015 used at same location for heating. or None ()

14. Remarks:

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Last Name Terteling Ident No. _____

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5/99 Revision

15. Basis of Claim (check one) Beneficial Use X Posted Notice _____ License _____ Permit _____
Decree _____

If applicable provide IDWR Water Right Number _____

Court _____ Case Number _____ Decree Date _____

Plaintiff vs Defendant _____

16. Signature (s)

(a.) By signing below, I/We acknowledge that I/We have received, read, and understand the form entitled "How you will receive notice in the Snake River Basin Adjudication." (b) I/We do _____ do not _____ wish to receive and pay a small annual fee for monthly copies of the docket sheet.

Number of attachments _____

For Individuals: I do solemnly swear or affirm that the statements contained in the foregoing document are true and correct.

Signature of Claimant (s) _____ Date _____
_____ Date _____

For Organizations: I do solemnly swear or affirm that I am J.L. Terteling, President
Title

of The Terteling Company, Inc. that I have signed the foregoing
Organization

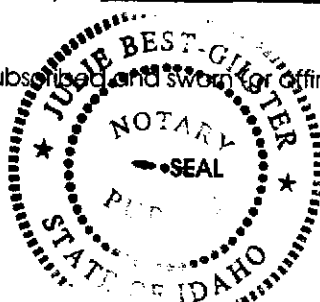
document in the space below as President of The Terteling Company, Inc.
Title Organization

and that the statements contained in the foregoing document are true and correct.

Signature of Authorized Agent J.L. Terteling
Title and Organization President of The Terteling Company, Inc. Date 6-4-99

State of Idaho/er _____)
County of Ada) SS.

Subscribed and sworn (or affirmed) before me this 4th day of June, 1999



Notary Public Julie Best Gillette

Residing at Hamper, ID

My Commission Expires 4-21-2001

17. Notice of Appearance:

Notice is hereby given that I, Jeffrey C. Fereday will be acting as attorney at law on behalf of the claimant signing above, and that all notices required by law to be mailed by the director to the claimant signing above should be mailed to me at the address listed below.

Signature Jeffrey C. Fereday

Address 277 North 6th Street, Suite 200, Boise, ID 83701

Date June 4, 1999

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MAR 22 2004

IDAHO DEPARTMENT OF WATER RESOURCES
WELL DRILLER'S REPORT

Office Use Only
Inspected by _____
Twp _____ Rge _____ Sec _____
1/4 _____ 1/4 _____ 1/4 _____
Lat: _____ Long: _____

1. WELL TAG NO. D 0009951
DRILLING PERMIT NO. 16399-C-05103 200
Other IDWR No. WR A63-31051
2. OWNER:
Name Tepteling Company
Address 3823 N. 36th St.
City BOISE State ID Zip 83703

11. WELL TESTS:

☐ Pump ☐ Bailer ☒ Air ☐ Flowing Artesian

Yield gal./min.	Drawdown	Pumping Level	Time
<u>100</u>	<u>7 1/4</u>	<u>55'</u>	<u>2 HRS</u>

Water Temp. _____ Bottom hole temp. _____
Water Quality test or comments: _____

12. LITHOLOGIC LOG: (Describe repairs or abandonment)

Bore Dia.	From	To	Remarks: Lithology, Water Quality & Temperature	Y	N
12"	0	18	Sandy Soil		X
12"	18	22	BROWN CLAY		X
12"	22	45	Small med grain w/ small clay (pink) 1/4 gal		X
8"	45	60	Sand & GRAVEL 55 to 60 gal		X
8"	60	61	Blue Clay		X

DEEPEMED 1 of 2
cold water wells
in A63-31051

RECEIVED
SEP 14 1999
Department of Water Resources
WATER RESOURCES
WESTERN REGION
Completed Depth 61' (Measurable)
Date: Started 8-18-99 Completed 8-20-99

13. DRILLER'S CERTIFICATION

We certify that all minimum well construction standards were complied with at the time the rig was removed.

Company Name Riverside Inc. Firm No. 333
Firm Official _____ Date _____
and _____
Driller or Operator _____ Date 9-2-99
(Sign as if Firm Official & Operator)

3. LOCATION OF WELL by legal description:

Sketch map location must agree with written location.

N
Twp. 4 North ☒ or South ☐
Rge. 29 East ☒ or West ☐
Sec. 29 1/4 NE 1/4 SE 1/4
Gov't Lot _____ County Ada 10 acres 150 acres
Lat: _____ Long: _____
Address of Well Site 3823 N 36th St
City BOISE
(Give at least name of road + Distance to Road or Landmark)

Lt. _____ Blk. _____ Sub. Name _____

4. USE:

☒ Domestic ☐ Municipal ☐ Monitor ☐ Irrigation
☐ Thermal ☐ Injection ☐ Other _____

5. TYPE OF WORK check all that apply (Replacement etc.)

☒ New Well ☐ Modify ☐ Abandonment ☐ Other _____

6. DRILL METHOD

☒ Air Rotary ☐ Cable ☐ Mud Rotary ☐ Other _____

7. SEALING PROCEDURES

SEAL/FILTER PACK	AMOUNT	METHOD
Material From To Sacks or Pounds		
<u>Bentonite</u> <u>0</u> <u>45</u> <u>900</u>		<u>dry pour</u>

Was drive shoe used? ☒ N Shoe Depth(s) 53'
Was drive shoe seal tested? ☐ Y ☐ N How? _____

8. CASING/LINER:

Diameter	From	To	Gauge	Material	Casing	Liner	Welded	Threaded
<u>8"</u>	<u>+3</u>	<u>53</u>	<u>20</u>	<u>Steel</u>	☒	☐	☒	☐

Length of Headpipe 10' Length of Tailpipe _____

9. PERFORATIONS/SCREENS

Perforations Method _____
Screens Screen Type S/S

From	To	Slot Size	Number	Diameter	Material	Casing	Liner
<u>55</u>	<u>60</u>	<u>.035</u>		<u>5"</u>	<u>S/S</u>	☐	☒

10. STATIC WATER LEVEL OR ARTESIAN PRESSURE

30 ft. below ground Artesian pressure _____ lb.
Depth flow encountered _____ ft. Describe access port or control devices: Sanitary well cap

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE

STATE OF IDAHO

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

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

MAR 22 2004

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

MAR 22 2004

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.

MICROFILMED

MAR 22 2004

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

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

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.

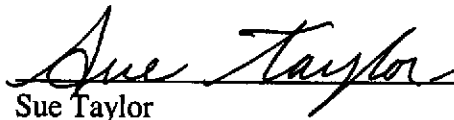
The prehearing conference will be conducted in a facility which satisfies the accessibility requirements of the Americans with Disabilities Act. If you require special accommodations in order to attend, participate in or understand the conference, please advise the department (10) days prior to the conference.

Dated this 2nd day of April 2001.


Gary Spackman

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

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- 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.

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CONFERENCE

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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

MAR 22 2006

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.

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MICROFILMED

MAR 22 2004

RECEIVED

FEB 23 2001

WATER RESOURCES
WESTERN REGION

**LEGAL NOTICE
NOTICE OF CORRECTED PROPOSED
CHANGE OF WATER RIGHTS, TRANS-
FER 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 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

MICROFILMED

MAR 22 2004

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 1
			Legal # 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

☒ 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

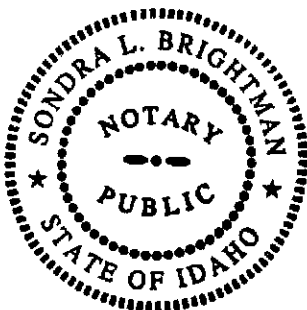
Janice Hildreth

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 state-
ments therein are true, and acknowledged to me that she executed the same.

Notary Public for Idaho
Residing at: Boise, Idaho
My Commission expires: 6/30/06

Sondra L. Brightman



MICROFILMED
MAR 22 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

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
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 02 2000

WATER RESOURCES
WESTERN REGION

VIA US MAIL

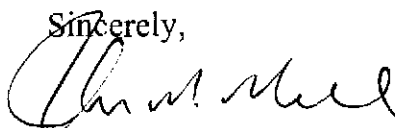
Steve Lester
Western Region
Idaho Department of Water Resources
2735 Airport Way
Boise, ID 83705-5082

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

MAR 22 2004

**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

MAR 22 2004

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
MAR 22 2004

**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

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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.

MICROFILMED
MAR 22 2004

November 26, 1999

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

NOTICE OF PROTEST

T. 68559
RECEIVED

DEC 22 2000

WATER RESOURCES
WESTERN REGION

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 5876 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

MICROFILMED

MAR 22 2004

Attachment A to Protest to Transfer No. 5876

6. Edwards' Greenhouses has two cold water wells (63-05065 and 63-05067) and a geothermal water right (63-00014) in the vicinity of the existing and proposed points of diversion for Water Right No. 63-31051. 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 a water right enlargement. 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 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.

MICROFILMED

MAR 22 2004

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 Kh Date 12/22/00 Time 2:40
\$25.00 fee Receipted by Kh # W027252 Date 12/22/00

MICROFILMED

MAR 22 2004

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE
STATE OF IDAHO

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

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.

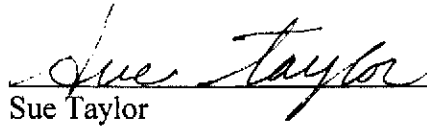
The prehearing conference will be conducted in a facility which satisfies the accessibility requirements of the Americans with Disabilities Act. If you require special accommodations in order to attend, participate in or understand the conference, please advise the department (10) days prior to the conference.

Dated this _____ day of January 2001.

Gary Spackman

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

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.



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,

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

A handwritten signature in cursive script that reads "Gary Spackman".
Gary Spackman

GS:st
Encl. Notice of Conference
Copy of Application

November 26, 1999

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

NOTICE OF PROTEST

RECEIVED

DEC 22 2000

WATER RESOURCES
WESTERN REGION

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 5876 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 _____ day of December, 2000.

Protestant

Protestant's Representative

Attachment A to Protest to Transfer No. 5876

6. Edwards' Greenhouses has two cold water wells (63-05065 and 63-05067) and a geothermal water right (63-00014) in the vicinity of the existing and proposed points of diversion for Water Right No. 63-31051. 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 a water right enlargement. 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 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.
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 6. Specifically describe the nature of the protest.
 7. Describe the relief being sought by the protestant.
-

FOR DEPARTMENT USE ONLY

Received by Kh Date 12/22/00 Time 2:40
\$25.00 fee Received by Kh # W027252 Date 12/22/00

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. Foreoay
Richard W. Jankowski
Amanda L. Keating
Karl 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. Westemeier
Robert B. White
Matthew S. Wiese

Raymond D. Givens
James A. McClure
OF COUNSEL

December 19, 2000

VIA US MAIL

Steve Lester 
Water Rights Supervisor
State of Idaho Department of Water Resources
2735 Airport Way
Boise, Idaho 83705-5082

RECEIVED

DEC 20 2000

WATER RESOURCES
WESTERN REGION

RE: Transfer Applications Nos. 5875 and 5876 for Terteling Co.
Our File: 4465-7

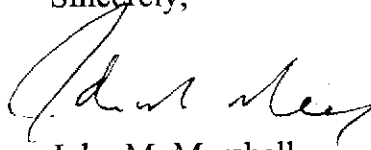
Dear Steve:

I received your 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.

Please let me know if you need anymore information. I look forward to working with you to complete these two transfers.

Sincerely,

A handwritten signature in cursive script, appearing to read "John M. Marshall".

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



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. DREIER
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

CONVERSATION MEMORANDUM

DATE 12/8/00

FILE T. 5875

NAME OF PARTY John Marshall Atty. for Terteling T. 5876

EMPLOYEE R

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 database 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 to readers the situation.

Ok to amend as done w/ inclusion of the following:

A63-31051 T. 5876 Part 1 - Delete irrigation use & # rows. Use has been for greenhouses where commercial includes the use co-described as irrigation.

T. 5875 - Consider keep in as use but delete rows and add Remark that in is commercial use in greenhouse setting.



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

December 5, 2000

KARL J. DREHER
DIRECTOR

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

*This letter was
sent to everyone
on the list 12-6-00
LM
list 12 T-5875*



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
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,

A handwritten signature in cursive script, appearing to read 'Sue Taylor', is written above the typed name.

SUE TAYLOR
Secretary/Office Coordinator

Encl.

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:

Due Taylor

* \$ 290 hot water wells transfer
\$ 100 cold " " transfer
\$ 390 ok
-JL 11/29/00