



# DEPARTMENT OF WATER RESOURCES

1301 North Orchard Street, Statehouse Mail, Boise, Idaho 83720 - (208) 327-7900

CECIL D. ANDRUS

GOVERNOR

R. KEITH HIGGINSON

DIRECTOR

October 10, 1989

J. A. Terteling  
877 W. Main, Rm. 706  
Boise, ID 83702

Dear Mr. Terteling:

RE: WATER DISTRICT 63-S, STEWART GULCH

Enclosed is a proposed memorandum decision and order which creates a water district in the Stewart Gulch area. By creating the water district, the initial administrative steps have been taken to provide for distribution of the rights to the low temperature geothermal water resource (not the cold water) in the area.

The department will appoint a watermaster upon receipt of a petition as required by Section 42-608, Idaho Code. Until subsequent court action changes the language in the Silkey v. Tiegs decree relative to artesian flow from the wells or interpretation of the law relative to the existing decree dictates a change, the department will instruct the watermaster to deliver the rights in accordance with the decree.

The users should recognize that during times of shortage, rights which are not represented by court decree or by permit or license issued by the department will be the first water uses to be reduced or shut off regardless of the priority which has been claimed. (Section 42-607, Idaho Code).

Note that the order creating the district requires measuring devices to be installed and operable on each well authorized to divert water. Department representatives are available to provide technical advice on the type of measuring device and/or equipment which is suitable to measure your use of water. The measuring equipment is to monitor the following parameters:

1. Instantaneous rate of withdrawal and cumulative volume withdrawn;
2. Well head temperature;
3. Well head pressure or drawdown;
4. Closed-in pressure or water level when the well is not being used.

The issue of applicability of the ground water act, including department authority under 42-237a, reasonable pumping lifts and cease and desist orders remains before the agency and will be addressed separately upon completion of briefing and review of these issues.


J. A. Terteling

-2-

October 10, 1989

Please feel free to contact the department if you have questions.

Sincerely,



Gary Spackman, Manager  
W.R. Permits Section

c: IDWR - W. Region



State of Idaho  
DEPARTMENT OF WATER RESOURCES

1301 North Orchard Street, Statehouse Mall, Boise, Idaho 83720 -(208) 327-7900

CECIL D. ANDRUS

GOVERNOR

R. KEITH HIGGINSON  
DIRECTOR

December 5, 1989

Susan D. Miner, Esq.  
Hawley, Troxell, Ennis & Hawley  
P. O. Box 1617  
Boise, ID 83701

RECEIVED

DEC 06 1989

Department of Water Resources  
Western Regional Office

Dear Ms. Miner:

RE: WATER DISTRICT 63-S, STEWART GULCH

Enclosed is a memorandum decision and order which creates the above referenced water district. The intent of the order is to manage the low temperature geothermal water resource (not the cold water) in the area.

Note that the order requires the installation of measuring equipment on or before April 1, 1990. The department will provide technical advice upon request relative to the needed equipment. The measuring equipment, however, shall be of a type acceptable to the department to monitor the following parameters:

1. Instantaneous rate of withdrawal and cumulative volume withdrawn;
2. Well head temperature;
3. Well head pressure or drawdown;
4. Closed-in pressure or water level when the well is not being used.

The question of the applicability of the reasonable pumping level provisions of the Idaho Code and the authority granted the department by Section 42-237a, Idaho Code, remain before the department and will be addressed in a separate action.

Please feel free to contact the department if you have questions.

Sincerely,

L. GLEN SAXTON, Chief  
Water Allocation Bureau

c: IDWR - W. Region

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE

STATE OF IDAHO

RECEIVED  
OCT 11 1989

Department of Water Resources  
Western Regional Office

IN THE MATTER OF CREATION OF WATER )  
DISTRICT 63-S, STEWART GULCH )

COUNTY: ADA

PROPOSED MEMORANDUM DECISION AND ORDER

This matter having come before the Idaho Department of Water Resources (Department) as a petition to form a water district and also as a response to an Order to Show Cause why the Department should not administer groundwater rights, the Department finds, concludes and orders as follows:

FINDINGS OF FACT

1. On August 22, 1989, the Department received a request to create a water district and appoint a watermaster. On the same date, the Department also received a request to issue a summary order prohibiting water use from some wells used by Quail Hollow Golf Course.

2. The rights to the use of low temperature geothermal groundwater from certain wells in the vicinity of 36th Street and Hill Road in Boise, Idaho were decreed in the case of Silkey v. Tiegs, et. al., Ada County Case No. 11748 on June 13, 1930. The decree found that the rights were diverted from a common source and that they were directly related to each other.

3. The decree recognized that water was diverted by means of artesian pressures and established a distribution scheme to protect historic pressures and flow rates by artesian pressure.

4. The rights and current users of water under those rights in the Silkey decree are as follows: 63-0012, 63-0013 and 63-0015, Hunt Bros. Floral, Inc.; 63-0014, Edwards Greenhouses; and 63-0016, M.E. or R.E. Ryan.

5. Two wells are operated for irrigation purposes by Quail Hollow Golf Club represented by Claim No. 63-4037P and Permit No. 63-9758. Claim No. 63-4037P claims a priority date of 1931. Permit No. 63-9758 has a priority of June 30, 1981. Data gathered by the United States Geological Survey, represented by hydrographs that are part of the record in this matter and testimony of witnesses, establish that the Quail Hollow wells are interconnected with the water uses decreed in the Silkey decree.

6. Evidence currently available does not show a direct connection between the wells in the Stewart Gulch area and wells in the Capital Mall area.

7. Further testimony indicates wells owned by J. A. Terteling also appear to be interconnected to the water supply for the previously described

rights. Mr. Terteling stated that he did not object to creation of a water district for regulation of these rights.

8. Department records show that Raymond F. Stralow owns a well once known as the Church well, and has filed a Snake River adjudication claim alleging a date of priority of January 1, 1900. The Stralow well is interconnected with the water supply for the uses of water listed above.

9. Section 42-602, Idaho Code, requires the Department to supervise the distribution of Idaho's public waters in accordance with the rights of prior appropriation.

10. Section 42-604, Idaho Code, charges the Department with the responsibility to create water districts and Section 42-605, Idaho Code, provides for the election or appointment of a watermaster to administer the rights within the water district.

11. The Silkey decree directs the Department to form a water district and administer the uses accordingly.

12. Many legal issues have been raised regarding the authority of the Department under Section 42-237a, Idaho Code, to enjoin the use of water by later-in-time diverters to protect senior water rights and the general applicability of the ground water act to wells which predate the act. Issues of law have also been raised regarding the establishment of reasonable pumping levels.

13. Both issues of fact and law remain to be resolved regarding the scope of authority granted to the Department by Idaho Code, Section 42-237a. A legal question must be resolved regarding the applicability of the reasonable pumping level language. Furthermore, if a reasonable pumping level should be established, a factual question regarding what level is reasonable must also be resolved.

14. Installed flow measuring devices and pressure measuring equipment are needed to determine the amount of water being diverted from wells within the water district and to properly deliver the water to those entitled to its use.

#### CONCLUSIONS OF LAW

1. The Department is authorized to create a water district and appoint a watermaster for proper distribution of the water decreed in the case of Silkey v. Tiegs together with other water rights which divert and use water from the same low temperature geothermal aquifer.

2. Section 42-607, Idaho Code states:

It shall be the duty of the said watermasters to distribute the waters of the public stream, streams or water supply, comprising his water district, among the several ditches taking water there from according to the prior water rights of each respectively, and whole or in part, . . . provided, that any person or corporation claiming the right to the use of waters of the stream or water supply comprising a water

district, but not owning or having the use of any adjudicated or decreed right therein, or right therein evidence by permit or license issued by the Department of Water Resources, shall for purposes of distribution during the scarcity of water, be held to have a right subsequent to any adjudicated, decreed, permit, or licensed right in such stream or water supply ...

3. Interim management is needed. The Department should create a water district for the management and supervision of the low temperature geothermal resource.

4. The Department should require the installation and maintenance of flow measuring devices and pressure measuring equipment which enable a watermaster to properly distribute water to those entitled to its use.

ORDER

IT IS HEREBY ORDERED AS FOLLOWS:

1. Water district 63-S, Stewart Gulch, is hereby created in connection with the use of the low temperature geothermal water resource.

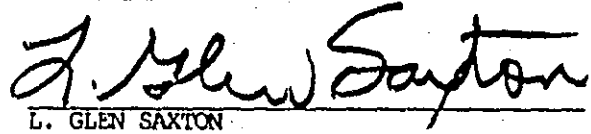
2. The area within the following boundaries shall constitute the water district:

Beginning at the East Quarter corner of Section 15, T4N, R2E, B.M., thence south approximately one and one-half mile to the southeast corner of Section 22, thence west one mile to the southwest corner of Section 22, thence south one-half mile to the east quarter corner of Section 28, thence west one-half mile to the center of Section 28, thence south one-half mile to the south quarter corner of Section 28, thence west approximately one and one-half mile to the southwest corner of Section 29, thence north one mile to the northwest corner of Section 29, thence east one mile to the Northeast corner of Section 29, thence north one-half mile to the west quarter corner of Section 21, thence east one-half mile to the center of Section 21, thence north one-half mile to the north quarter corner of Section 21, thence east one-half mile to the northeast corner of Section 21, thence North one-half mile to the west quarter corner of Section 15, thence east one mile to the point of beginning, all in T4N, R2E, B.M.

3. The owners of wells used for the diversion of low temperature geothermal water within the district shall install flow measuring devices and pressure measuring equipment acceptable to the Department for the measurement of water from their respective wells.

4. Domestic heating uses are exempt from regulation by the watermaster of the district. The intent of this exemption is to exclude from regulation the existing heating of single family residences and in-house uses of the water which utilize the heat of the water where total use of water per household does not exceed 13,000 gallons per day.

Dated this 10<sup>th</sup> day of October, 1989.



L. GLEN SAXTON  
Hearing Officer

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this the 10th day of October, 1989, I deposited in the United States mail, postage prepaid a true and correct copy of each of the foregoing ORDER ISSUING PROPOSED DECISION and PROPOSED MEMORANDUM DECISION AND ORDER sent to:

William F. Ringert, Esq.  
Ringert, Clark, Harrington, Reid, Christenson & Kaufman  
P. O. Box 2773  
Boise, ID 83701-2773

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M. E. and R. E. Ryan  
4504 Foothill Dr.  
Boise, ID 83703

Ray F. Stralow  
3911 Whitehead  
Boise, ID 83703

J. A. Terteling  
877 W. Main, Rm. 706  
Boise, ID 83702



RLTA F. FLECK  
Secretary/Records Manager



BEFORE THE DEPARTMENT OF WATER RESOURCES  
OF THE STATE OF IDAHO

IN THE MATTER OF CREATION OF WATER )  
DISTRICT 63-S, STEWART GULCH )

COUNTY: ADA

FINAL ORDER  
ADOPTING PROPOSED MEMORANDUM DECISION AND ORDER

This matter having come before the Idaho Department of Water Resources (Department) as a petition to form a water district and also as a response to an Order to Show Cause why the Department should not prohibit or limit the diversion of water under certain groundwater rights, the Department finds, concludes and orders as follows:

FINDINGS OF FACT

1. On August 22, 1989, the Department received a request to create a water district and appoint a watermaster. On the same date, the Department also received a request to issue a summary order prohibiting water use from some wells used by Quail Hollow Golf Course.

2. The rights to the use of low temperature geothermal groundwater from certain wells in the vicinity of 36th Street and Hill Road in Boise, Idaho were decreed in the case of Silkey v. Tiegs, et. al., Ada County Case No. 11748 on June 13, 1930. The decree found that water to supply the rights was diverted from a common and interconnected source.

3. The decree recognized that water was diverted by means of artesian pressures and established a distribution scheme to protect historic pressures and flow rates by artesian pressure.

4. The identification numbers of the rights and current users of water under the rights as confirmed by the Silkey decree are as follows: 63-0012, 63-0013 and 63-0015, Hunt Bros. Floral, Inc.; 63-0014, Edwards Greenhouses; and 63-0016, M.E. or R.E. Ryan.

5. Two wells are operated for irrigation purposes by Quail Hollow Golf Club under Claim No. 63-4037P and Permit No. 63-9758. Claim No. 63-4037P claims a priority date of 1931. Permit No. 63-9758 has a priority of June 30, 1981. Data gathered by the United States Geological Survey, represented by hydrographs that are part of the record in this matter and testimony of witnesses, establish that the source of water diverted from the Quail Hollow wells is interconnected with the source of water for the rights decreed in the Silkey decree.

6. Testimony indicates the water supply for wells owned by J. A. Terteling also appears to be interconnected to the water supply for the previously described rights.

7. Department records show that Raymond F. Stralow owns a well once known as the Church well, and has filed a claim in the Snake River Basin Water Rights Adjudication alleging a date of priority of January 1, 1900. The Stralow well is also interconnected with the water supply for the uses of water listed above.

8. Section 42-602, Idaho Code, requires the Department to supervise the distribution of Idaho's public waters in accordance with the rights of prior appropriation.

9. Section 42-604, Idaho Code, charges the Department with the responsibility to create water districts and Section 42-605, Idaho Code, provides for the election or appointment of a watermaster to administer the use of water under rights within the water district.

10. The Silkey decree directs the Department to form a water district and administer the uses accordingly.

11. Many legal issues of law and fact have been raised regarding the authority of the Department under Section 42-237a, Idaho Code, to enjoin the use of water by later-in-time diverters to protect senior water rights and the general applicability of the ground water act to wells which predate the act.

12. Both issues of fact and law have been raised and remain to be resolved regarding the scope of authority granted to the Department by Idaho Code, Section 42-237a. A legal question must be resolved regarding the applicability of the reasonable pumping level language as provided in Section 42-226, Idaho Code. Furthermore, if a reasonable pumping level should be established, a factual question regarding what level is reasonable must also be resolved.

13. The unresolved issues of fact and law described in findings of fact Nos. 11 and 12 are before the Department in a separate but related show cause proceeding and will not be further addressed in the present proceeding.

14. Flow measuring devices and pressure measuring equipment are needed on each well to determine the amount of water being diverted within the water district and to properly deliver the water to those entitled to its use.

#### CONCLUSIONS OF LAW

1. The Department is authorized to create a water district and appoint a watermaster for proper distribution of the water decreed in the case of Silkey v. Tiegs together with other water rights which divert and use water from the same low temperature geothermal aquifer.

2. Section 42-607, Idaho Code states:

It shall be the duty of the said watermasters to distribute the waters of the public stream, streams or water supply, comprising his water district, among the several ditches taking water there from according to the prior water rights of each respectively, and whole or in part, . . . provided, that any person or corporation claiming the right to the use

of waters of the stream or water supply comprising a water district, but not owning or having the use of any adjudicated or decreed right therein, or right therein evidence by permit or license issued by the Department of Water Resources, shall for purposes of distribution during the scarcity of water, be held to have a right subsequent to any adjudicated, decreed, permit, or licensed right in such stream or water supply. . .

3. Interim management is needed. The Department should create a water district for the management and supervision of the low temperature geothermal resource.

4. The Department should require the installation and maintenance of flow measuring devices and pressure measuring equipment which enable a watermaster to properly distribute water to those entitled to its use.

#### ORDER

IT IS HEREBY ORDERED AS FOLLOWS:

1. Water District 63-S, Stewart Gulch, is hereby created in connection with the use of the low temperature geothermal water resource.

2. The area within the following boundaries shall constitute the water district as shown on Figure 1, attached:

Beginning at the East Quarter corner of Section 15, T4N, R2E, B.M., thence south approximately one and one-half mile to the southeast corner of Section 22, thence west one mile to the southwest corner of Section 22, thence south one-half mile to the east quarter corner of Section 28, thence west one-half mile to the center of Section 28, thence south one-half mile to the south quarter corner of Section 28, thence west approximately one and one-half mile to the southwest corner of Section 29, thence north one mile to the northwest corner of Section 29, thence east one mile to the Northeast corner of Section 29, thence north one-half mile to the west quarter corner of Section 21, thence east one-half mile to the center of Section 21, thence north one-half mile to the north quarter corner of Section 21, thence east one-half mile to the northeast corner of Section 21, thence North one-half mile to the west quarter corner of Section 15, thence east one mile to the point of beginning, all in T4N, R2E, B.M.

3. The owners of wells used for the diversion of low temperature geothermal water within the district shall install flow measuring devices and the rate of flow and volume of pressure measuring equipment acceptable to the Department for the measurement of the rate of flow and volume of water diverted from their respective wells. Such devices and/or equipment shall be installed on or before April 1, 1990.

4. Certain domestic heating uses are exempt from regulation by the watermaster of the district. The intent of this exemption is to exclude from

regulation the heating of single family residences and in-house uses of the water which utilize the heat of the water where total use of water per household does not exceed 13,000 gallons per day. Wells not used exclusively for domestic heating purposes are subject to regulation and the requirement to install measuring devices and/or pressure measuring equipment.

Dated this 5th day of December, 1989.

  
R. KEITH HIGGINSON  
Director

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this the 5th day of December, 1989, I deposited in the United States mail, postage prepaid a true and correct copy of each of the foregoing ORDER ISSUING PROPOSED DECISION and PROPOSED MEMORANDUM DECISION AND ORDER sent to:

William F. Ringert, Esq.  
Ringert, Clark, Harrington, Reid, Christenson & Kaufman  
P. O. Box 2773  
Boise, ID 83701-2773

Susan D. Miner, Esq.  
Hawley, Troxell, Ennis & Hawley  
P. O. Box 1617  
Boise, ID 83701

Kenneth R. Arment  
Brady, Saetrum & Lerma  
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Boise, ID 83701

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Boise, ID 83703

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Jeffrey C. Fereday  
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Givens, Pursley, Webb & Huntley  
P. O. Box 2720  
Boise, ID 83701

Ray F. Stralow  
3911 Whitehead  
Boise, ID 83703

  
RITA L. FLECK  
Secretary/Records Manager



December 2, 1992

DEC-2  
Department of  
Water

Attached are copies copy of the Final Memorandum Decision and Order, Certificates of Mailing and Cover Letter recently sent in reference to Request for Groundwater Regulation: Decreed Right No.'s 63-0012, 63-0013, 63-0014, 63-0015, 63-0016, claim no. 63-4037 and permit no. 63-09758

Copies forwarded to

IDWR - Northern Region - Bob Haynes  
IDWR - Southern Region - Loren Holmes  
IDWR - Eastern Region - Ron Carlson  
IDWR - Western Region - Dave Tuthill  
Adjudication Bureau - Dave Shaw  
Water Allocation Bureau - Glen Saxton  
Karen Gustafson  
Tim Luke  
JJ Seifert  
Pam Skaggs  
Erv Ballou  
George Austiguy  
Darla Block  
Brenda Miller  
Cindy Zimmerman  
Carolyn Andregg  
Sharla Curtis  
Jim Johnson  
Gary Spackman

12/1/92 From office

W.D. 635

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE

STATE OF IDAHO

IN THE MATTER OF REQUEST FOR )  
GROUNDWATER REGULATION: DECREED ) FINAL MEMORANDUM  
RIGHT NO.'S 63-0012, 63-0013 ) DECISION AND ORDER  
63-0014, 63-0015 & 63-0016; CLAIM )  
NO. 63-4037P AND PERMIT NO. 63-9758 )

This matter came before the Idaho Department of Water Resources (Department) as a petition to form a water district and as a response to an order to show cause why the Department should not prohibit or limit the diversion of water under certain groundwater rights. A proposed decision was issued, and exceptions were filed by Tee Ltd. (Quail Hollow) and Hunt Bros. Floral, Inc. The exceptions will be addressed in the following analysis.

EXCEPTIONS

Tee Ltd. objected to the proposed decision because:

1. Tee Ltd. alleged the Silkey v. Tiegs decree limits the use of water to the uses as of the date of the decree and implies that change of the uses is prohibited.
2. Tee Ltd. contended that diversion from the Tiegs and Ryan well is prohibited, and that diversion from the Tiegs well under another water right and diversion from the Ryan well should be enjoined.
3. Tee Ltd. argued that physical conditions and water use has changed so significantly, that the Silkey decree can't be administered, and the Department should establish a reasonable pumping level.
4. Tee Ltd. argued that diversions are not being measured.
5. Tee Ltd. requested oral argument.

Hunt Bros. Floral, Inc. objected to the decision, not because it disagreed with the holding, but because several conclusions of law not necessary to the decision discuss disputed Department

NOW  
Jeff Jayo  
or  
FLORA SHUP

authority to subject pre-1951 groundwater rights to the reasonable pumping level language of the Groundwater Act.

#### ANALYSIS

Silkey granted to the predecessor of Hunt Bros. Floral, Inc., the right to use water for "irrigation, stock, domestic heating and other beneficial uses" upon the land described. There is no evidence in the record that the Silkey rights are being used for a purpose other than those described by the decree.

The intent of the decree prohibition of diversion from the Tiegs well was to prevent injury to earlier right holders. Diversion from the Tiegs well to satisfy the Silkey rights is not prohibited by the decree.

The prohibition of diversion of other rights will be followed except for diversion for domestic purposes, including heating associated with a domestic use.

Diversions can be measured and the rights administered.

Oral argument is not necessary.

Most of the conclusions of law to which Hunt Bros. objected have been removed as unnecessary language.

#### FINDINGS OF FACT

1. On August 22, 1989, Hunt Bros. Floral, Inc. (Hunt Bros.) filed a petition with the Department requesting the creation of a water district and the appointment of a watermaster for the Stewart Gulch low temperature geothermal basin located in the vicinity of 36th Street and Hill Road in Boise, Idaho. On the same date, Hunt Bros. requested that the Department issue a summary order prohibiting any further withdrawals of water from certain wells operated by Quail Hollow Golf Club (Quail Hollow) within the basin.

2. On August 25, 1989, the Department issued an Order to Show Cause directing certain well owners in the Stewart Gulch low temperature geothermal area to show cause why the Department should not issue an order prohibiting withdrawals from their respective wells.

3. On September 7, 1989, the Department conducted a hearing on the Petition to Create a Water District and the request for an

issuance of an order prohibiting further withdrawals from the Quail Hollow wells.

4. The hearing was reconvened by the Department on September 13, 1989 and September 14, 1989 to allow the participants additional time to introduce evidence on the matters at issue.

5. Preliminary investigations by the Department and testimony at the hearing indicate that during pumping in the late summer Quail Hollow Golf Club's irrigation wells interfere with the artesian pressure and the delivery of hot water to wells owned by Hunt Bros., the senior water right holders under the Silkey v. Tiegs decree.

6. The rights to the use of low temperature geothermal groundwater from certain wells in the vicinity of 36th Street and Hill Road in Boise, Idaho were decreed in the case of Silkey v. Tiegs, et. al., Ada County Case No. 11748 on June 13, 1930. The court found that water to supply the rights was diverted from a common and interconnected source.

7. The Silkey decree recognized that the groundwater in Stewart Gulch was diverted by means of artesian pressures and directed the Department to regulate and measure the flows of the wells and to create a water district under the applicable law.

8. Water right identification numbers and the current users of water as confirmed by the Silkey decree are as follows:

Hunt Bros. Floral, Inc. - 63-0012  
63-0013  
63-0015

Edwards Greenhouses - 63-0014

M. E. or R. E. Ryan - 63-0016

9. Quail Hollow operates two wells for irrigation purposes under Claim No. 63-4037P and Permit No. 63-9758. Claim No. 63-4037P claims a priority date of October 1, 1931. Permit No. 63-9758 claims a priority date of June 30, 1981.

10. Department records and testimony indicate that the water supply for the wells owned by J. A. Terteling and the well owned by Raymond F. Stralow appear to be interconnected to the same water

*WKS. 63-04037P } it does not exist  
DJS 63-04177P }  
should be 63-04037*

supply described in the Silkey decree and used for irrigation by Quail Hollow.

11. The following is a list of adjudication claim nos. assigned to claims filed by the well owners for water rights in the Snake River Basin Adjudication.

| <u>Owner</u>        | <u>Adjudication Claim No.</u> | <u>Water Right No.</u> |
|---------------------|-------------------------------|------------------------|
| Hunt Bros.          | A63-0012                      | 63-0012                |
|                     | A63-0013                      | 63-0013                |
|                     | A63-0015                      | 63-0015                |
| Edwards Greenhouse  | A63-0014                      | 63-0014                |
| M.E. or R.E. Ryan   | A63-0016                      | 63-0016                |
| Quail Hollow        |                               |                        |
| a) Victor L. Nibler | A63-4037                      | 63-04037               |
| b) TEE Limited      | (No Claim Filed)              | 63-09758               |
| J.A. Terteling      | A63-03603                     | 63-03603               |
|                     | A63-07595                     | 63-07595               |
| Raymond Stralow     | A63-05195                     | 63-05195               |

12. Evidence at the hearing established that Hunt Bros. acquired the Tiegs well, and began diverting water under its water right entitlement from the Tiegs well. Evidence also established that the nature of use by Hunt Bros. has changed, both by transfer which was approved in 1954, and by transfers accomplished without recording.

13. There was no evidence of forfeiture by Hunt Bros. or the other right holders.

14. The Silkey decree prohibited diversion of water from the Tiegs well and the Ryan well. Both of these wells have been used for diversion of water.

15. In response to the petition to create a water district, the Department issued a final order dated December 5, 1989 creating Water District 63-S for the low temperature geothermal water resource in Stewart Gulch.

16. The final order creating a water district dated December 5, 1989, did not address the show cause matter and reserved any

decision on certain unresolved legal issues pertaining to the Department's authority under the Ground Water Act.

17. The Department issued a Proposed Decision and Order for the show cause order on September 24, 1990.

18. The Department was informed that Hunt Bros. no longer own the property, and the current owner is Jeff Jayo or the "Flora Shop."

19. Matter herein expressed as a finding of fact which is later deemed to be a conclusion of law is hereby made a conclusion of law.

#### CONCLUSIONS OF LAW

1. Idaho's Constitution provides that all waters within the state are subject to the regulation and control of the state. Idaho Const. art. XV § 1, provides:

Use of waters a public use. - The use of all waters now appropriated, or that may hereafter be appropriated for sale, rental or distribution; also of water originally appropriated for private use, but which after such appropriation has heretofore been, or may hereafter be sold, rented, or distributed, is hereby declared to be a public use, and subject to the regulations and control of the state in the manner prescribed by law.

2. The state has a statutory duty to supervise the appropriation and allotment of the water resources of the state to water users who divert the water for beneficial use. Idaho Code § 42-101 (1990) prescribes in part:

Nature of property in water. - Water being essential to the industrial prosperity of the state, and all agricultural development throughout the greater portion of the state depending upon its just apportionment to, and economical use by, those making a beneficial application of the same, its control shall be in the state, which, in providing for its use, shall equally guard all the various interests involved. All the waters of the state, when flowing in their natural channels, including the waters of all natural spring and lakes within the boundaries of the state are declared to be the property of the state, whose duty it shall be to supervise their appropriation and allotment to those diverting the same therefrom for any beneficial purpose

3. The state's duty to supervise the appropriation of water applies to all subterranean waters as well as to surface waters within the state. I.C. § 42-103.

4. The low temperature geothermal waters at issue in this action have already been the subject of previous litigation in which the court applied the general water laws and principles under Idaho law. The Idaho Court, citing Hinton v. Little, 50 Idaho 371, 296 P. 582 (1931), specifically acknowledged that the underground artesian waters at issue in this matter are subject to the laws of prior appropriation. Silkey v. Tiegs, 51 Idaho 344, 5 P.2d 1049 (1931).

5. The proposed decision issued earlier discussed at length the authority of the Director to regulate diversions and require a reasonable pumping level even before the passage of the Ground Water Act in 1951. The entire discussion has been omitted because the Department is not required to determine a reasonable pumping level in this case.

6. The Silkey court established that artesian pressure should be protected from further declines.

7. Because the Silkey decree specifically addressed and protected artesian pressure in the aquifer, the Department, in deference to the Silkey decree, will refrain from examining whether the artesian pressure in Stewart Gulch constitutes a reasonable pumping level and is in the public interest pursuant to I.C. § 42-226 until such time as the court addresses the issue in the Snake River Basin Adjudication.

8. The watermaster of Water District 63-S must administer the waters of Stewart Gulch in accordance with the provisions of the Silkey v. Tiegs decree, including the protection of the artesian pressure necessary to deliver water to the prior appropriators. I.C. § § 42-237a and 42-607.

9. Hunt Bros., or its successors, is entitled to full use of its water rights in their order of priority from the point of diversion it has acquired, including the Tiegs well.

10. Water users from the Ryan well and the Stralow well may

continue to divert water for domestic purposes, provided it does not cause significant declines in any artesian pressure diversions which injures earlier in time water rights.

11. Even though the Stralow well use is only represented by an adjudication claim, the watermaster will not shut off domestic use from the well.

12. Matter herein expressed as a conclusion of law which is later deemed to be a finding of fact is hereby made a finding of fact.

ORDER

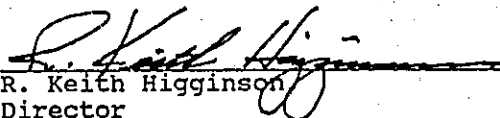
IT IS HEREBY ORDERED that the watermaster of Water District 63-S shall administer the groundwater in the water district under the terms of the Silkey v. Tiegs decree and according to the laws of prior appropriation.

IT IS FURTHER ORDERED that the watermaster of Water District 63-S shall, upon determination that there is not sufficient water that can be delivered by artesian pressure to fill a senior groundwater right, limit or prohibit withdrawals from wells within the water district having a later priority.

IT IS FURTHER ORDERED that a water district meeting should be conducted pursuant to Title 42, Chapter 6 of the Idaho Code. Should the users fail to appoint a watermaster, upon request of a user, the Department will appoint a watermaster.

IT IS FURTHER ORDERED that Tee Ltd.'s request for oral argument is DENIED.

Dated this 13<sup>th</sup> day of DECEMBER, 1992.

  
\_\_\_\_\_  
R. Keith Higginson  
Director

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 2nd day of December, 1992, I mailed a true and correct copy of the foregoing Final Memorandum Decision and Order, postage prepaid to the following:

William F Ringert  
Ringert, Clark et al  
PO Box 2773  
Boise, ID 83701

J. A Terteling  
877 W Main Rm. 706  
Boise, ID 83702

Susan D Hiner  
Hawley, Troxell et al  
PO Box 1617  
Boise, ID 83701

Jeffrey C Fereday  
Givens Pursley et al  
PO Box 2720  
Boise, ID 83701

Kenneth R Arment  
Brady, Saetrum & Lerma  
PO Box 1398  
Boise, ID 83701

Ray F Stralow  
3911 Whitehead  
Boise, ID 83703

Michael C Creamer  
Givens Pursley et al  
PO Box 2720  
Boise, ID 83701

M E and R E Ryan  
4505 Foothill Dr  
Boise, ID 83703

Karen L. Gustafson  
Karen L. Gustafson  
Secretary/Records Manager

*Brace Smith now  
Atty for email  
Kathleen golf course  
instead of K. Amel?  
Tim Lake's info  
10/1/92 - SL*

MEMORANDUM

Copy Star Leske  
RECEIVED

DEC 23 1992

Department of Water Resources  
Western Regional Office

TO: Stewart Gulch File

FROM: TIM LUKE

DATE: December 22, 1992

RE: Correction concerning water right number 63-4037

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The orders and correspondence in this file incorrectly identify the above referenced water right number as number 63-4037P. The correct number for all future correspondence and orders etc. should be 63-4037.



State of Idaho  
DEPARTMENT OF WATER RESOURCES

1301 North Orchard Street, Statehouse Mail, Boise, Idaho 83720-9000  
Phone: (208) 327-7900 FAX: (208) 327-7866

63-S  
file

CECIL D. ANDRUS  
GOVERNOR  
R. KEITH HIGGINSON  
DIRECTOR

October 27, 1993

Re: In the matter of application for transfer no. 4202 of water right no. 63-07595 in the name of Terteling Trust No. 7

Dear Interested Party:

The accompanying order is a "final order" issued by the department pursuant to section 67-5246 or 67-5247, Idaho Code.

Section 67-5246 provides as follows:

(1) If the presiding officer is the agency head, the presiding officer shall issue a final order.

(2) If the presiding officer issued a recommended order, the agency head shall issue a final order following review of that recommended order.

(3) If the presiding officer issued a preliminary order, that order becomes a final order unless it is reviewed as required in section 67-5245, Idaho Code. If the preliminary order is reviewed, the agency head shall issue a final order.

(4) Unless otherwise provided by statute or rule, any party may file a petition for reconsideration of any order issued by the agency head within fourteen (14) days of the issuance of that order. The agency head shall issue a written order disposing of the petition. The petition is deemed denied if the agency head does not dispose of it within twenty-one (21) days after the filing of the petition.

(5) 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.

(6) A party may not be required to comply with a final order unless the party has been served with or has actual knowledge of the order. If the order is mailed to the last known address of a party, the service is deemed to be sufficient.

(7) A nonparty shall not be required to comply with a final order unless the agency has made the order available for public inspection or the nonparty has actual knowledge of the order.

(8) The provisions of this section do not preclude an agency from taking immediate action to protect the public interest in accordance with the provisions of section 67-5247, Idaho Code.

#### PETITION FOR RECONSIDERATION

Any party may file a petition for reconsideration of a final order 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(4) Idaho Code.

#### APPEAL OF FINAL ORDER TO DISTRICT COURT

Pursuant to sections 67-5270 and 67-5272, Idaho Code, any party aggrieved by a final order or orders previously issued in a matter before the department may appeal the final order and all previously issued orders in the matter 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 a) of the service date of the final order, b) of an order denying petition for reconsideration, or c) the failure within twenty-one (21) days to grant or deny a petition for reconsideration, whichever is later. See section 67-5273, Idaho Code. The filing of an appeal to district court does not in itself stay the effectiveness or enforcement of the order under appeal.

Sincerely,



L. Glen Saxton  
Chief, Water Allocation Bureau

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE

STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR)  
TRANSFER NO. 4202 OF WATER RIGHT)  
NO. 63-07595 IN THE NAME OF )  
TERTELING TRUST NO. 7 )

FINAL ORDER

This matter having come before the Idaho Department of Water Resources (department) in the form of a protested application for transfer, the department having held a conference in the matter and having issued a recommended order to which no exceptions were filed, the Director of the department makes the following Findings of Fact, Conclusions of Law and Order:

FINDINGS OF FACT

1. On January 14, 1993, the department issued license no. 63-07595 in the name of Terteling Trust No. 7 (applicant) authorizing the diversion of 2.0 cfs of ground water from wells located in the SW1/4SE1/4 Section 15, SW1/4NW1/4 and NW1/4SW1/4 Section 22, all in T4N, R2E, B.M. for the irrigation of 103 acres in Sections 21 and 22, T4N, R2E, B.M. The priority of use is March 7, 1973.

2. On February 4, 1993, the applicant submitted application for transfer no. 4202 of licensed right no. 63-07595 to the department proposing to add a point of diversion (well) in the NE1/4NW1/4 Section 22, T4N, R2E, B.M.

3. The application was advertised as required by law and was protested by Jeff J. Jayo, Maryann Duggan, Helen M. Miller, Edwards Greenhouses, Clifton Johnson and Sherman Nelson. All protests have been withdrawn except the protest of Sherman Nelson.

4. The department scheduled a hearing in the matter to be held on August 11, 1993. The department did not conduct the hearing, however, since the protestant advised the department that the department should consider the information already submitted to the department as the protestant's position.

5. The department advised that the applicant could respond in writing to the protestant's position and that the department would then consider the information submitted and would issue a decision in the contested matter.

6. The applicant's intent is to construct and use a well

which is less hydraulically connected to other wells in the Stewart Gulch area than one of the applicant's existing wells which is located in the NW1/4SW1/4 Section 22, T4N, R22E, BM.

#### CONCLUSIONS OF LAW

1. Section 42-222, Idaho Code, provides in pertinent part as follows:

The director of the department of water resources shall examine all the evidence and available information and shall approve the change in whole, or in part, or upon conditions, provided no other water rights are injured thereby, the change does not constitute an enlargement in use of the original right, and the change is consistent with the conservation of water resources within the state of Idaho and is in the local public interest as defined in section 42-203A(5), Idaho Code;

2. On December 5, 1989, the department created Water District 63-S, Stewart Gulch, due to concerns about the use and distribution of the low temperature geothermal water resource in Stewart Gulch.

3. The points of diversion for the water right sought to be transferred in this action are within the boundaries of the water district and are subject to watermaster regulation.

4. Approval of the application will not injure existing water rights if the approval is properly conditioned.

5. Approval of the application will not constitute an enlargement in water use over that amount already authorized if the approval is properly conditioned.

6. The application is consistent with the conservation of water resources in Idaho.

7. The application is in the local public interest.

8. The department should approve the application with certain conditions and limitations.

#### ORDER

IT IS THEREFORE, hereby ORDERED that Application for Transfer No. 4202 of licensed water right no. 63-07595 is APPROVED subject to the following conditions:

1. Prior to diversion and use of water from the new well to be constructed under this approval, the right holder shall install and maintain per department specifications flow and pressure measurement devices that allow the department to determine the rate

of diversion from the well.

2. The right holder shall conduct an investigation, subject to the approval of the department, to determine the impact of the new well on the existing wells within Water District 63-S. Upon a determination by the department that use of water from the new well should be administered with other rights in the district, use of water under this approval is subject to the control of the watermaster of Water District 63-S, Stewart Gulch.

3. Construction of the new well is subject to the drilling permit requirements of Section 42-235, Idaho Code, and all Well Construction Standards Rules regarding the construction of low temperature geothermal wells.

4. If diversion from the new well is found to have more impact on the water available to a senior water right than the impact of the presently installed system during times the senior water right is entitled to use water, as determined by the Director of the department, the right holder shall cease to use the new well and/or shall abandon the new well as specified by the Director.

5. This right when combined with all other rights for the same land shall provide no more than 0.02 cfs per acre nor more than 4.5 afa per acre for the lands irrigated.

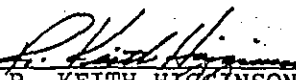
6. The right holder shall use the full allotment of surface water rights, to the extent water is available, in conjunction with ground water diverted pursuant to this approval.

7. The change authorized under this approval shall be accomplished within one (1) year of the date of this approval unless extended by the Director for good cause.

8. Failure to comply with the conditions of this approval is cause for the Director to rescind approval of the transfer.

9. This approval does not preclude the opportunity for review of the validity of the water right in the ongoing Snake River Basin Adjudication.

Signed this 27<sup>th</sup> day of October, 1993.

  
R. KEITH HIGGINSON  
Director

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 24<sup>th</sup> day of October, 1993, I mailed a true and correct copy, postage prepaid, of the foregoing Final Order to the following:

Flora Company  
Jeff T Jayo  
3823 N 36th Stve  
Boise, ID 83703

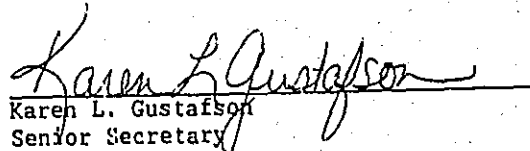
Clifton W Johnson  
3907 Whitehead  
Boise, ID 83703

Maryann Duggan and/or  
Helen M Miller  
4023 Whitehead St  
Boise, ID 83703

Sherman F Nelson  
c/o WF Ringert  
PO Box 2773  
Boise, ID 83702

Edwards Greenhouses  
Mike Monnie/Paul Edwards  
4106 Sand Creek St  
Boise, ID 83703

Tertling Trust No.7  
877 W Main St Ste 706  
Boise, ID 83702

  
Karen L. Gustafson  
Senior Secretary

STATE OF IDAHO  
DEPARTMENT OF WATER RESOURCES

**TRANSFER OF WATER RIGHT**

TRANSFER NO. 4202  
WATER RIGHT NO. 63-07595

This is to certify that: TERTELING TRUST NO 7  
877 W MAIN ST #706  
BOISE ID 83702

has requested a change to the above captioned water right(s). This change in water right(s) is authorized pursuant to the provisions of Section 42-222, Idaho Code, provided the conditions listed below are met.

| <u>BENEFICIAL USE</u> | <u>PERIOD OF USE</u> | <u>DIVERSION RATE</u> | <u>ANNUAL VOLUME</u> |
|-----------------------|----------------------|-----------------------|----------------------|
| IRRIGATION            | 03/15 to 11/15       | 2.00 CFS              | 463.5 AF             |
| STOCKWATER            | 01/01 to 12/31       | 0.05 CFS              | 2.0 AF               |
| DOMESTIC              | 01/01 to 12/31       | 0.05 CFS              | 1.2 AF               |
| Totals                |                      | 2.00 CFS              | 466.7 AF             |

SOURCE

GROUNDWATER

Priority: 03/07/1973

LOCATION OF POINT(S) OF DIVERSION:

NWNE , Sec. 22, Township 04N, Range 02E  
NENW , Sec. 22, Township 04N, Range 02E  
SWNW , Sec. 22, Township 04N, Range 02E  
NWSW , Sec. 22, Township 04N, Range 02E  
ADA County

PLACE OF USE: IRRIGATION

| <u>TWN RGE SEC</u> | <u>ACRES</u> | <u>ACRES</u> | <u>ACRES</u> | <u>TOTAL</u> |
|--------------------|--------------|--------------|--------------|--------------|
| 04N 02E 21         | SENE 1       | NESE 8       | SESE 10      | 19           |
| 22                 | NWNE 8       | NENW 11      | NWNW 10      |              |
|                    | SWNW 27      | SENW 1       | NESW 3       | 84           |
|                    | NWSW 14      | SWSW 3       | SESW 3       |              |
|                    | NWSE 4       |              |              | 103          |

Total number of acres irrigated: 103

PLACE OF USE: STOCKWATER

| <u>TWN RGE SEC</u> |      |
|--------------------|------|
| 04N 02E 22         | SWNW |

TRANSFER NO. 4202  
WATER RIGHT NO. 63-07595

PLACE OF USE:

DOMESTIC, same as STOCKWATER use

CONDITIONS/REMARKS:

1. Right No. 63-07595 is subject to the conditions of the Final Order in the matter of Application for Transfer No. 4202.

Dated this 27th day of October, 19 93

*A. Glen Saylor*

Chief, Water Alloc. Bureau

✓  
Sten ✓  
File ✓

RECEIVED

63-5

OCT 28 1993

WATER RESOURCES  
WESTERN REGION

October 27, 1993

Attached is a copy of the Order denying petitions for rehearing and amended final memorandum decision and order issued in connection with the request for groundwater regulation in Stewart Gulch

Copies forwarded to

- IDWR - Northern Region - Bob Haynes
- IDWR - Southern Region - Loren Holmes
- IDWR - Eastern Region - Ron Carlson
- IDWR - Western Region - Dave Tuthill
- Legal Division - Phil Rassier
- Adjudication Bureau - Dave Shaw
- Information Officer - Dick Larsen
- Water Allocation Bureau - Glen Saxton
- Karen Gustafson
- Tim Luke
- Pam Skaggs
- Erv Ballou
- George Austiguy
- Darla Block
- Brenda Chapman
- Cindy Zimmerman
- Carolyn Andregg
- Jim Johnson
- Donna Corless

CC: Mailed to 10/29/93 - Watermaster - Bill Collins (for Fluor Co)



State of Idaho

DEPARTMENT OF WATER RESOURCES

1301 North Orchard Street, Statehouse Mall, Boise, Idaho 83720-9000

Phone: (208) 327-7900 FAX: (208) 327-7366

CECIL D. ANDRUS  
GOVERNOR

R. KEITH HIGGINSON  
DIRECTOR

October 22, 1993

Re: In the matter of request for ground water regulation: decreed right nos. 63-0012, 63-0013, 63-0014, 63-0015 and 63-0016, claim no. 63-4037 and permit no. 63-9758

Dear Interested Party:

The accompanying order is a "final order" issued by the department pursuant to section 67-5246 or 67-5247, Idaho Code.

Section 67-5246 provides as follows:

(1) If the presiding officer is the agency head, the presiding officer shall issue a final order.

(2) If the presiding officer issued a recommended order, the agency head shall issue a final order following review of that recommended order.

(3) If the presiding officer issued a preliminary order, that order becomes a final order unless it is reviewed as required in section 67-5245, Idaho Code. If the preliminary order is reviewed, the agency head shall issue a final order.

(4) Unless otherwise provided by statute or rule, any party may file a petition for reconsideration of any order issued by the agency head within fourteen (14) days of the issuance of that order. The agency head shall issue a written order disposing of the petition. The petition is deemed denied if the agency head does not dispose of it within twenty-one (21) days after the filing of the petition.

(5) 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.

Page 1

(6) A party may not be required to comply with a final order unless the party has been served with or has actual knowledge of the order. If the order is mailed to the last known address of a party, the service is deemed to be sufficient.

(7) A nonparty shall not be required to comply with a final order unless the agency has made the order available for public inspection or the nonparty has actual knowledge of the order.

(8) The provisions of this section do not preclude an agency from taking immediate action to protect the public interest in accordance with the provisions of section 67-5247, Idaho Code.

#### PETITION FOR RECONSIDERATION

Any party may file a petition for reconsideration of a final order 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(4) Idaho Code.

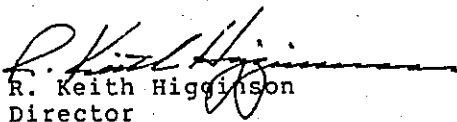
#### APPEAL OF FINAL ORDER TO DISTRICT COURT

Pursuant to sections 67-5270 and 67-5272, Idaho Code, any party aggrieved by a final order or orders previously issued in a matter before the department may appeal the final order and all previously issued orders in the matter 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 a) of the service date of the final order, b) of an order denying petition for reconsideration, or c) the failure within twenty-one (21) days to grant or deny a petition for reconsideration, whichever is later. See section 67-5273, Idaho Code. The filing of an appeal to district court does not in itself stay the effectiveness or enforcement of the order under appeal.

Sincerely,

  
R. Keith Higginson  
Director

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

|                                    |   |                          |
|------------------------------------|---|--------------------------|
| IN THE MATTER OF REQUEST FOR       | ) | ORDER DENYING PETITIONS  |
| GROUND WATER REGULATION: DECREED   | ) | FOR REHEARING AND        |
| RIGHT NOS. 63-0012, 63-0013        | ) | AMENDED FINAL MEMORANDUM |
| 63-0014, 63-0015 & 63-0016, CLAIM  | ) | DECISION AND ORDER       |
| NO. 63-4037 AND PERMIT NO. 63-9758 | ) |                          |

This matter came before the Idaho Department of Water Resources (Department) as a petition to form a water district and as a response to an Order to Show Cause why the Department should not prohibit or limit the diversion of water under certain ground water rights. On December 5, 1989, the Department issued a final Order creating Water District 63-S to control the distribution of water from the low temperature geothermal aquifer in Stewart Gulch. That final Order did not address the show cause matter and reserved any decision on certain unresolved legal issues pertaining to the Department's authority under the Ground Water Act. Those legal issues reserved in the December 5, 1989 final Order are addressed by the Department during these proceedings.

The Department issued a proposed decision on September 24, 1990, and exceptions were filed by Tee Ltd. (Quail Hollow) and Hunt Bros. Floral, Inc. (Hunt Bros.). On December 1, 1992, the Department issued a Final Memorandum Decision and Order that included Department responses to exceptions filed by Quail Hollow and Hunt Bros. Petitions for Rehearing were received from both J. L. Terteling and Quail Hollow during the month of December, 1992, raising several issues. The Department in this order addresses the issues raised in the petitions for rehearing and amends the Final Memorandum Decision and Order.

ORDER DENYING PETITIONS FOR REHEARING

On December 22, 1992, Terteling Trust No. 7 and J. L. Terteling (herein collectively "Terteling") filed a Petition for

ORDER DENYING PETITIONS FOR REHEARING AND  
AMENDED FINAL MEMORANDUM DECISION AND ORDER - Page 1

Rehearing before the Department advocating that the Department's Final Memorandum Decision and Order be modified in several respects.

Specifically, the Terteling petition requested that the Department exclude Terteling's wells from administration in Water District No. 63-S, appoint a local ground water board, eliminate protection for artesian pressure in the aquifer and correct an inconsistency in the Conclusions of Law of the Department's final decision.

On December 30, 1992, Quail Hollow filed a late Petition for Rehearing and Joinder in Terteling Petition for Rehearing with the Department requesting the Department reconsider its final order and appoint a local ground water board and establish reasonable ground water pumping levels in the aquifer.

Terteling's Petition for Rehearing and Quail Hollow's Petition for Rehearing are DENIED. The Department addresses the issues raised in the petitions by amending its Final Memorandum Decision and Order in the following manner:

A. Finding of Fact No. 10 will remain unchanged in the Amended Final Memorandum Decision as there appears to be a general interconnection between all the wells in the aquifer. The final order is amended to recognize the option of excluding the Terteling wells from regulation under Water District No. 63-S if it can be demonstrated that there is no interconnection with the other wells in the aquifer.

B. The Department declines to appoint a local ground water board. The issues raised in the petitions for rehearing do not involve a senior ground water right alleging injury because of interference from a junior ground water right as contemplated under Idaho Code § 42-237(b). Moreover, formation of a local ground water board is unnecessary in view of the changes incorporated in the Department's Amended Final Memorandum Decision and Order.

C. The Department will regulate Water District No. 63-S pursuant to the terms of the Silkey v. Tiegs decree pending

adjudication of the affected rights in Twin Falls County Case No. 39576 (Snake River Basin Adjudication). Legal issues involving the establishment of reasonable pumping levels and the protection of artesian pressure raised in the petitions for rehearing can be raised before the court in the Snake River Basin Adjudication.

D. The inconsistency in the Conclusions of Law identified by the Terteling petition for rehearing is corrected by the deletion of Conclusion of Law No. 11 from the Department's original decision.

**AMENDED FINAL MEMORANDUM DECISION AND ORDER**

**FINDINGS OF FACT**

1. On August 22, 1989, Hunt Bros. Floral, Inc. (Hunt Bros.) filed a petition with the Department requesting the creation of a water district and the appointment of a watermaster for the Stewart Gulch Low Temperature Geothermal Basin located in the vicinity of 36th Street and Hill Road in Boise, Idaho. On the same date, Hunt Bros. requested that the Department issue a summary order prohibiting any further withdrawals of water from certain wells operated by Quail Hollow Golf Club (Quail Hollow) within the basin.

2. On August 25, 1989, the Department issued an Order to Show Cause directing certain well owners in the Stewart Gulch Low Temperature Geothermal area to show cause why the Department should not issue an order prohibiting withdrawals from their respective wells.

3. On September 7, 1989, the Department commenced a hearing on the Petition to Create a Water District and on the request for issuance of an order prohibiting further withdrawals from the Quail Hollow wells.

4. The hearing was reconvened by the Department on September 13, 1989 and September 14, 1989 to allow the participants additional time to introduce evidence on the matters at issue.

5. Preliminary investigations by the Department and testimony at the hearing indicate that during pumping in the late summer Quail Hollow Golf Club's irrigation wells interfere with the

artesian pressure and the delivery of hot water to wells owned by Hunt Bros., the senior water right holder in the case of Silkey v. Tiegs, et al., Ada County Case No. 11748, June 13, 1930.

6. The rights to the use of low temperature geothermal ground water from certain wells in the vicinity of 36th Street and Hill Road in Boise, Idaho were decreed in the Silkey case. The court found that water to supply the rights was diverted from a common and interconnected source.

7. The Silkey decree recognized that the ground water in Stewart Gulch was diverted by means of artesian pressure and directed the Department to regulate and measure the flows of the wells and to create a water district under the applicable law.

8. Water right identification numbers and the current users of water as confirmed by the Silkey decree are as follows:

|                           |         |
|---------------------------|---------|
| Hunt Bros. Floral, Inc. - | 63-0012 |
|                           | 63-0013 |
|                           | 63-0015 |
| Edwards Greenhouses -     | 63-0014 |
| M. E. or R. E. Ryan -     | 63-0016 |

9. Quail Hollow operates two wells for irrigation purposes under Claim No. 63-4037 and Permit No. 63-9758. Claim No. 63-4037 claims a priority date of October 1, 1931. Permit No. 63-9758 has a priority date of June 30, 1981.

10. Department records and testimony indicate that the water supply for the wells owned by J. A. Terteling and the well owned by Raymond F. Stralow appear to be interconnected to the same water supply described in the Silkey decree and used for irrigation by Quail Hollow.

11. The following is a list of adjudication claim numbers assigned to claims filed by the well owners for water rights in the Snake River Basin Adjudication.

| <u>Owner</u>        | <u>Adjudication Claim No.</u> | <u>Water Right No.</u> |
|---------------------|-------------------------------|------------------------|
| Hunt Bros.          | A63-0012                      | 63-0012                |
|                     | A63-0013                      | 63-0013                |
|                     | A63-0015                      | 63-0015                |
| Edwards Greenhouse  | A63-0014                      | 63-0014                |
| M.E. or R.E. Ryan   | A63-0016                      | 63-0016                |
| Quail Hollow        |                               |                        |
| a) Victor L. Nibler | A63-4037                      | 63-04037               |
| b) TEE Limited      | (No Claim Filed)              | 63-09758               |
| J.A. Terteling      | A63-03603                     | 63-03603               |
|                     | A63-07595                     | 63-07595               |
| Raymond Stralow     | A63-05195                     | 63-05195               |

12. Evidence at the hearing established that Hunt Bros. acquired the Tiegs well, and began diverting water under its water right entitlement from the Tiegs well. Evidence also established that the nature of use by Hunt Bros. has changed, both by a transfer which was approved in 1954, and by transfers accomplished without recording.

13. There was no evidence of forfeiture by Hunt Bros. or the other right holders.

14. The Silkey decree prohibited diversion of water from the Tiegs well and the Ryan well. Both of these wells have been used for diversion of water.

15. In response to the petition to create a water district, the Department issued an order dated December 5, 1989 creating Water District No. 63-S for the low temperature geothermal water resource in Stewart Gulch.

16. The order creating a water district, dated December 5, 1989, did not address the show cause matter and reserved any decision on certain unresolved legal issues pertaining to the Department's authority under the Ground Water Act.

17. The Department issued a Proposed Decision and Order for the show cause order on September 24, 1990.

18. On December 1, 1992, the Department issued a Final

Memorandum Decision and Order that included Department responses to the exceptions filed by Quail Hollow and Hunt Bros.

19. The Department has been informed that Hunt Bros. no longer own the property, and the current owner is "Flora Company."

20. A matter herein expressed as a Finding of Fact which is later deemed to be a Conclusion of Law is hereby made a Conclusion of Law.

#### CONCLUSIONS OF LAW

1. Idaho's Constitution provides that all waters within the state are subject to the regulation and control of the state. Idaho Const. art. XV § 1, provides:

Use of waters a public use. - The use of all waters now appropriated, or that may hereafter be appropriated for sale, rental or distribution; also of water originally appropriated for private use, but which after such appropriation has heretofore been, or may hereafter be sold, rented, or distributed, is hereby declared to be a public use, and subject to the regulations and control of the state in the manner prescribed by law.

(Emphasis added).

2. The state has a statutory duty to supervise the appropriation and allotment of the water resources of the state to water users who divert the water for beneficial use. Idaho Code § 42-101 (1990) prescribes in part:

Nature of property in water. - Water being essential to the industrial prosperity of the state, and all agricultural development throughout the greater portion of the state depending upon its just apportionment to, and economical use by, those making a beneficial application of the same, its control shall be in the state, which, in providing for its use, shall equally guard all the various interests involved. All the waters of the state, when flowing in their natural channels, including the waters of all natural spring and lakes within the boundaries of the state are declared to be the property of the state, whose duty it shall be to supervise their appropriation and allotment to those diverting the same therefrom for any beneficial purpose

(Emphasis added).

3. The state's duty to supervise the appropriation of water

applies to all subterranean waters as well as to surface waters within the state. I.C. § 42-103.

4. The low temperature geothermal waters at issue in this action have been the subject of previous litigation in which the court applied the general water laws and principles under Idaho law. The Idaho Court, citing Hinton v. Little, 50 Idaho 371, 296 P. 582 (1931), specifically acknowledged that the underground artesian waters at issue in this matter are subject to the laws of prior appropriation. Silkey v. Tiegs, 51 Idaho 344, 5 P.2d 1049 (1931).

5. The proposed decision issued earlier discussed at length the authority of the Director to regulate diversions and require a reasonable pumping level even before the passage of the Ground Water Act in 1951. The entire discussion has been omitted because the Department is not required to determine a reasonable pumping level in this case.

6. The Silkey court established that artesian pressure should be protected from further declines.

7. Because the Silkey decree specifically addressed and protected artesian pressure in the aquifer, the Department, in deference to the Silkey decree, will refrain from examining whether the artesian pressure in Stewart Gulch constitutes a reasonable pumping level and is in the public interest pursuant to I.C. § 42-226 until such time as the court addresses the issue in the Snake River Basin Adjudication.

8. The watermaster of Water District No. 63-S must administer the waters of Stewart Gulch in accordance with the provisions of the Silkey v. Tiegs decree, including the protection of the artesian pressure necessary to deliver water to the prior appropriators. I.C. §§ 42-237a and 42-607.

9. Hunt Bros., or its successors, is entitled to full use of its water rights in order of priority from the point of diversion it has acquired, including the Tiegs well.

10. Water users from the Ryan well and the Stralow well may

continue to divert water for domestic purposes, provided the use does not cause significant decline in the artesian pressure for any diversion which causes injury to earlier in time water rights.

11. Matter herein expressed as a Conclusion of Law which is later deemed to be a Finding of Fact is hereby made a Finding of Fact.

ORDER

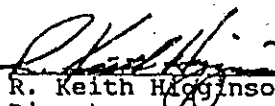
IT IS HEREBY ORDERED that the Watermaster of Water District No. 63-S shall administer the ground water in the water district under the terms of the Silkey v. Tiegs decree and according to the laws of prior appropriation.

IT IS FURTHER ORDERED that the Watermaster of Water District No. 63-S shall, upon his determination that there is not sufficient water that can be delivered by artesian pressure to fill a senior ground water right, limit or prohibit withdrawals from wells within the water district having a later priority. The Department will consider altering the boundaries of Water District No. 63-S to eliminate regulation of a well if its owners demonstrate to the satisfaction of the Director of the Idaho Department of Water Resources that regulation of the wells will not impact the water availability to the other well in the aquifer having a senior right and should not, therefore, be regulated within Water District No. 63-S.

IT IS FURTHER ORDERED that this Amended Final Memorandum Decision and Order shall only govern the administration of low temperature geothermal ground water from Water District No. 63-S until such time as the water rights are adjudicated and all other relevant matters necessary to define the rights are addressed in Twin Falls County Case No. 39576 (Snake River Basin Adjudication).

This order is not intended to preclude or limit any wateruser from advancing any legal argument or defense before the District Court in Twin Falls County Case No. 39576 involving any issue raised or ruled upon by the Department in its Amended Final Memorandum Decision and Order.

Dated this 27<sup>th</sup> day of OCTOBER, 1993.

  
R. Keith Higginson  
Director

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 27<sup>th</sup> day of October, 1993, I mailed a true and correct copy of the foregoing Order Denying Petitions for Rehearing and Amended Final Memorandum Decision and Order, postage prepaid to the following:

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J A Terteling  
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Susan D Miner  
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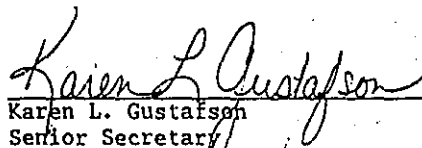
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