State of Idaho
DEPARTMENT OF WATER RESOURCES
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C. L. "BUTCH" OTTER
Governor

GARY SPACKMAN
Interim Director

August 19, 2009

The Terteling Co.
c/o Charles Honsinger
Ringert Clark
PO Box 2773
Boise, ID 83701-2773

Quail Hollow, LLC
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608 W Franklin St
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Mary Ryan & Rose Ryan
4504 Foothill Rd.
Boise, ID 83703

Re: Final Order Regarding Petition for Order to Implement Water Monitoring Plan, Water District 63-S, Stewart Gulch

Dear Gentlemen,

The Idaho Department of Water Resources (IDWR or Department) has issued the enclosed order regarding the Petition for Order Implementing Watermaster's Monitoring Plan filed with the Department by The Terteling Company on February 27, 2009. The enclosed order is a Final Order issued by the Department Pursuant to Section 67-5246, Idaho Code. Any party may file a petition for reconsideration of a final order as explained in the enclosed information sheet.

If you have questions concerning this order, please contact the Watermaster for Water District 63-S, Ken Neely, at the IDWR State Office (208-287-4852), or contact Tim Luke at the IDWR State Office (208-287-4959).

Respectfully,

Tim Luke
Water Distribution Section

cc: Ken Neely, Watermaster, Water District 63-S
John Westra and Vicki Music, IDWR Western Region
Nick Spencer, Idaho Deputy Attorney General

SCANNED
AUG 17 2009

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

IN THE MATTER OF PETITION FOR ORDER IMPLEMENTING WATERMASTER'S MONITORING PLAN SUBMITTED BY THE TERTELING COMPANY INC., IN WATER DISTRICT NO. 63-S, STEWART GULCH	)	**FINAL ORDER**

This matter having come before the Idaho Department of Water Resources (IDWR or Department) in response to the Petition for Order Implementing Watermaster's Monitoring Plan submitted by the Terteling Company Inc. (Terteling), and the Response to Petition For Order Implementing Watermaster's Monitoring Plan submitted by the Edwards Family LLC (Edwards), regarding the measurement and reporting of water use from certain diversions in Water District No. 63-S (WD63-S), Stewart Gulch, the Department finds as follows:

FINDINGS OF FACT

1. On December 5, 1989, the Director of the Department created WD63-S, Stewart Gulch, for the purpose of supervising and managing the low temperature geothermal resource within the district. The Director's order creating the district required owners of low temperature geothermal wells in the district to install devices acceptable to the Department to measure the rate of flow and volume of water diverted from their respective wells.

SCANNED
AUG 17 2009

WD63-S is located within the Boise Front Low Temperature Geothermal Resource Ground Water Management Area (BFGWMA). The Director designated the BFGWMA on June 15, 1987 due to reported declines in aquifer water levels and water pressure.

2. Wells owned and operated by the three major water users in WD63-S (Terteling, Edwards and Quail Hollow Golf Course) are identified in the Boise Front Geothermal Aquifer Monitoring and Reporting Plan (BF Monitoring Plan). This plan was included as part of a stipulated agreement signed by various parties, including Terteling and Edwards, who are water users and holders of water rights within the BFGWMA. The various parties signed the stipulated agreement on July 24, 2002, for the purpose of settling proceedings related to certain water right permits owned by the City of Boise. *See Stipulated Agreement for Settlement in Part and Stay of Proceedings Regarding Remainder of Petition In The Matter of Petition for Order Authorizing Additional Use Under Existing Permits and Moratorium Order for Water Rights 63-9138 & 63-9139 in the Name of the City of Boise.* Quail Hollow Golf Course (Quail Hollow) did not sign the stipulated agreement but its' two wells in WD63-S are identified as "non-party" wells in the BF Monitoring Plan, along with several other wells in the BFGWMA.

3. On September 6, 2002, the Department issued an order accepting the stipulated agreement referenced in Finding 3 above. That order provided in part that "the Department shall enforce the terms of the Agreement, including the Monitoring and Reporting Plan attached as Exhibit 1 thereto, to the extent of and in accordance with the Department's authority and provision of the Agreement."

4. On March 3, 2009, the Department received the Petition for Order Implementing Watermaster's Monitoring Plan submitted by Terteling. The petition alleges that "the watermaster of Water District 63-S drafted and circulated a monitoring plan applicable to the

three major water right users in the District" as part of "settlement discussions between themselves and IDWR in an attempt to resolve their respective objections to IDWR's recommendations to each other's water rights in the Snake River Basin Adjudication" (SRBA). The petition further states that "the parties have been unable to resolve their objections to each other's water rights, and as a result, the monitoring plan created by the Water District 63-S watermaster has not been implemented." The petition requests the Director to issue an Order adopting and requiring the implementation of the watermaster's monitoring plan.

5. On March 16, 2009, Edwards filed its' Response to Petition For Order Implementing Watermaster's Monitoring Plan, along with an affidavit of Dana L. Hofstetter, attorney for Edwards. Edwards' petition requests the Department not to issue an order to adopt the implementation of the proposed monitoring plan for the following reasons:

- The monitoring plan that Terteling requests the Director to adopt was not created by the watermaster but the watermaster did provide input to the plan.
- A comprehensive monitoring plan for the three major users in WD63-S already exists as a result of the BF Monitoring Plan. The Terteling petition provides "no evidentiary basis as to why the proposed monitoring plan in lieu of the current monitoring plan is necessary at the present time;"
- The recent water district vote supporting the Resolution for the proposed monitoring plan that is the subject of the Terteling petition does not have widespread support within the water district. At the annual water district meeting held on March 5, 2009, Edwards voted against supporting the proposed monitoring plan, Terteling voted in support of the plan, and the third major user, Quail Hollow Golf Course (Quail Hollow), abstained from voting on the matter.
- A new monitoring plan for WD63-S, or changes to the existing BF Monitoring Plan should not be implemented "until the SRBA proceedings concerning the subject water rights are concluded."

6. In late March 2009, the WD63-S watermaster, Ken Neely, visited with Department representatives on several occasions to address questions raised by the Terteling and

Edwards petitions referenced in Findings 5 and 6 above. The watermaster confirmed the facts outlined in the affidavit submitted by Dana L. Hofstetter and added that Terteling's consultant, Mr. Ed Squires (Hydro Logic Inc) provided the initial draft of the monitoring plan. The watermaster made numerous changes to the initial plan and presented it to all three major parties. The parties provided input to the plan during two water right settlement meetings and via email correspondence to the watermaster.

7. The watermaster stated that Quail Hollow has not submitted any monitoring data as recommended in Exhibit 1 and Table 4 of the BF Monitoring Plan since June, 2004. The watermaster advised that Quail Hollow has adequate totalizing flow meters on its' wells to measure and record instantaneous flow rates and withdrawal volumes. The watermaster has further advised the Department that the measuring and reporting frequency outlined for the Quail Hollow wells in the BF Monitoring Plan would benefit resource management efforts within both Water District 63-S and the BFGWMA.

8. The watermaster advised the Department that Terteling is achieving the measurement frequencies for the Tiegs well as required in Table 1 of the BF Monitoring Plan, and that Terteling is providing excellent wellhead pressure and water level data from data loggers for three of their other four district wells. Edwards has also done an excellent job with data collections and submittals. However, the watermaster advised that in 2008, neither Terteling nor Edwards fully met the weekly hand measurement requirements specified in Tables 1 and 2 of the BF Monitoring Plan.

9. The watermaster advised that the two six-week time periods for weekly measurements should be changed for WD63-S in order to record the maximum and minimum

water level values in the district wells. The new six-week time periods should be January 1 to February 15, and June 1 to July 15.

10. WD63-S watermaster has informed the Department that flow meters and gages installed on the wells in the district that are also identified in the BF Monitoring Plan have not been calibrated annually as required in the Calibration section of the plan

11. The watermaster advised that a specific monitoring plan for WD63-S, which contains the basic components of the BF Monitoring Plan with some additional enhancements, will be beneficial for aquifer management in the District. As such, the watermaster developed the Water District 63-S Monitoring Plan (WD63-S Monitoring Plan).

CONCLUSIONS OF LAW

1. Section 42-233B, Idaho Code, provides in pertinent part:

42-233b. GROUND WATER MANAGEMENT AREA

> The director may require all water right holders within a designated water management area to report withdrawals of ground water and other necessary information for the purpose of assisting him in determining available ground water supplies and their usage.

2. Section 42-606, Idaho Code, provides in pertinent part:

42-606. REPORTS OF WATERMASTERS

> All watermasters shall make an annual report to the department of water resources prior to the expiration of the watermaster's appointment for the current year. This report shall show the total amount of water delivered by the watermaster during the preceding year, the amount delivered to each water user, the total expense of delivery and the apportionment of expenses among users and all debits and credits to be carried over to the following year. Such report shall also include records of stream flow the watermaster used or made in the process of distributing water supplies. The director may ask for other information deemed necessary in assuring proper distribution of water supplies within the district. The reports of watermasters to the department of water resources shall be filed and kept in the office of the department.

3. Section 42-701, Idaho Code, provides in pertinent part:

42-701 INSTALLATION AND MAINTENANCE OF CONTROLLING WORKS AND MEASURING DEVICES BY WATER APPROPRIATORS – PROCEDURE UPON FAILURE TO INSTALL AND MAINTAIN – MEASURING AND REPORTING OF DIVERSIONS – PENALTY FOR FAILURE TO COMPLY – REPORT FILING FEE.

(1) The appropriators or users of any public waters of the state of Idaho shall maintain to the satisfaction of the director of the department of water resources suitable headgates and controlling works at the point where the water is diverted. Each device shall be of such construction that it can be locked and kept closed by the watermaster or other officer in charge, and shall also be of such construction as to regulate the flow of water at the diversion point. Each such appropriator shall construct and maintain, when required by the director of the department of water resources, a rating flume or other measuring device at such point as is most practical in such canal, ditch, wellhead or pipeline for the purpose of assisting the watermaster or department in determining the amount of water that may be diverted into said canal, ditch, wellhead or pipeline from the stream, well or other source of public water. Plans for such headgates, rating flumes or other measuring devices shall be approved by the department of water resources.

(3) Any appropriator or user of the public waters of the state of Idaho that neglects or refuses to construct or maintain such headgates, controlling works, or measuring devices..., upon receiving ten (10) days' notice from the director of the department of water resources within which to begin and diligently pursue to completion the construction or installation of the required device or devices or to begin and diligently pursue to completion a remedy to such defects as exist in accordance with said notice, then the director of the department of water resources may order the duly qualified and acting watermaster of the water district to shut off and refuse to deliver at the point of diversion, the water owned by such appropriator or user until the user does construct and maintain such headgates, controlling works or measuring devices or remedy the defects which exist or the director may take action pursuant to section 42-1701B, Idaho Code, to enforce the requirement to construct, install or maintain such devices.

(5) All appropriators of the public waters of the state of Idaho who are given thirty (30) days' written notice by the director prior to the beginning of the irrigation season but no later than March 15 of any year, shall measure their water diversions and report said diversions annually thereafter on a form approved by the director of the department of water resources. Such report shall include: a legal description of the point of diversion, the number assigned to each water right diverting from the public waters of the state, the maximum authorized rate of diversion, the maximum rate at which diversions have been made during the reporting period, the total volume diverted during the reporting period, and a description of the physical changes to the diversion works that have been made

during the reporting period. The appropriator shall furnish each year the depth to water in any well prior to commencement of pumping, the depth to water during the pumping period, and the pressure in the pipe distribution system during diversion if the well is not free flowing. When the director of the department of water resources determines that any person is in substantial violation of any provision of this section or any rule, permit, condition of approval or order issued or promulgated pursuant to this section, the director may commence an administrative enforcement action by issuing a written notice of violation in accordance with the provisions of section 42-1701B, Idaho Code.

4. The BF Monitoring Plan satisfies or exceeds the requirements of Sections 42-233b, 42-604 and 42-701, Idaho Code.

5. Terteling, Edwards and Quail Hollow have installed measuring devices that are acceptable to the Department for the purpose of measuring rate of flow and volume of water diverted from their wells. Quail Hollow does not currently meet the measurement and reporting frequencies recommended for its' wells in Table 4 of the BF Monitoring Plan. Overall, data collections and submittals by Edwards and Terteling have been excellent. However, in 2008, Edwards and Terteling did not fully meet the hand measurement requirements in Tables 1 and 2 of the BF Monitoring Plan.

6. Flow meters that are installed on the wells of the three major water users in WD63-S are not calibrated on a regular basis. The Director should require regular calibration of flow meters for the wells owned and operated by Terteling, Edwards and Quail Hollow.

7. The Director should deny Terteling's Petition for Order Implementing Watermaster's Monitoring Plan.

ORDER

IT IS HEREBY ORDERED AS FOLLOWS:

1. The Petition for Order Implementing Watermaster's Monitoring Plan submitted by the Terteling Company Inc. is denied.

2. Beginning on October 1, 2009, Edwards, Quail Hollow, and Terteling shall collect measurements for their wells according to the Water District 63-S Monitoring Plan (WD63-S Monitoring Plan) shown in Attachment A of this Order. The parties shall submit data to IDWR on a quarterly basis. Data submittals are to be received within 30 days following the end of the previous quarter. For reporting purposes, the ends of the quarters shall be March 31, June 30, September 30, and December 31.

3. The watermaster will collect measurements on a monthly basis for one year after the implementation of the WD63-S Monitoring Plan. At the conclusion of the first year, the watermaster will evaluate the data and make recommendations to IDWR and the District parties regarding the frequency of future watermaster quality assurance measurements.

4. The watermaster, or a deputy appointed by either the watermaster or the Director of IDWR, shall annually calibrate the flow meters installed on the Terteling, Edwards and Quail Hollow wells located in WD63-S. The watermaster shall assess the water district water users for the expense or time to complete the flow meter calibrations in the same manner as all other watermaster expenses.

5. The Director of IDWR retains authority to modify the Water District 63-S Monitoring Plan in the future as necessary.

6. Failure to comply with the terms of this Order may result in the Director of IDWR issuing a notice of violation pursuant to sections 42-351 and 42-1701B of the Idaho Code.

Dated this 19th day of August, 2009.

GARY SPACKMAN
INTERIM DIRECTOR

Attachment A. Water District 63-S Monitoring Plan (WD 63-S Monitoring Plan)

Well Name	Owner and Monitoring Responsibility	Measurement Method	Minimum Measurement Frequency[1] (The reporting requirements are listed in #2 of the Order Section)	Monitoring Requirements
Edwards	Edwards	Pressure gauges. Datalogger (optional)[2] Flow meters.	Weekly	Operating and shut-in pressure. Flow rate, totalizer readings. Temp[3]
Tiegs	Terteling	Datalogger[4]	One reading every 12 hours	Shut-in pressure
Silkey and Office	Terteling	Pressure gauges. Dataloggers (optional)[5] Flow meters.	Monthly during March-May, and Aug-Dec. Weekly from Jan 1 to Feb 15, and from June 1 to July 15	Shut-in pressure, flow rate, and totalizer readings. Temp[3]
Windsock and Pool	Terteling	Electric line or Dataloggers (optional)[6] Flow meters	Monthly during March-May, and Aug-Dec. Weekly from Jan 1 to Feb 15, and from June 1 to July 15	Water level, flow rate, and totalizer readings. Temp[3]
Nibbler and Upper	Quail Hollow	Electric line, or Dataloggers (optional)[6] Flow meters.	Monthly during March-May, and Aug-Dec. Weekly from Jan 1 to Feb 15, and from June 1 to July 15	Water level, flow rate, and totalizer readings. Temp[3]

[1]In most cases, the Minimum Measurement Frequencies are identical to those found in the BF Monitoring Plan. This enhanced monitoring plan for WD63-S adds monthly hand measurement requirements for some of the wells during part of the year, but reduces hand measurements if wells are not in operation and have dataloggers.

[2]Since the well is in use most of the time, a datalogger would typically record only operating pressures. Therefore, hand measurements of shut-in pressure are to be conducted on a weekly basis whether or not a datalogger is installed.

[3]Temperature data shall be collected twice a year at the end of the heating season on or around May 1, and at the end of the irrigation season on or around October 1. Measurements shall be collected after the well has been in operation at least eight hours.

[4]This well is currently not in use. As such, the use of a datalogger to meet the shut-in pressure measurement requirements is acceptable. In the event that the well is put into use, then hand measurements of shut-in pressure will be required at the same minimum frequency level as the Silkey and Office wells.

[5]If a well is not in use, then a datalogger can be used to meet the shut-in pressure measurement requirements. If a well is in use, then a datalogger will be recording operating pressures, and thus, hand measurements of shut-in pressures are also to be recorded according to the Minimum Monitoring Frequency.

[6]If a datalogger is used to record water levels, then electric line measurements are not required.

EXPLANATORY INFORMATION
TO ACCOMPANY A
FINAL ORDER

(To be used in connection with actions when a hearing was not held)

(Required by Rule of Procedure 740.02)

The accompanying order is a "**Final Order**" issued by the department pursuant to section 67-5246, 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 as shown on the certificate of service. **Note: The petition must be received by the Department within this fourteen (14) day period.** 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 67-5246(4), Idaho Code.

REQUEST FOR HEARING

Unless the right to a hearing before the director or the water resource board is otherwise provided by statute, any person who is aggrieved by the action of the director, and who has not previously been afforded an opportunity for a hearing on the matter shall be entitled to a hearing before the director to contest the action. The person shall file with the director, within fifteen (15) days after receipt of written notice of the action issued by the director, or receipt of actual notice, a written petition stating the grounds for contesting the action by the director and requesting a hearing. See section 42-1701A(3), Idaho Code. **Note: The request must be received by the Department within this fifteen (15) day period.**

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 of: a) the date of issuance (not service) of the final order, b) the date of issuance 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.

CERTIFICATE OF SERVICE

I DO HEREBY CERTIFY that on this 19th day of August, 2009, the attached ORDER: **In the Matter of Petition for Order Implementing Watermaster's Monitoring plan submitted by the Terteling Company Inc., In Water District No. 63-S, Stewart Gulch,** was served upon the following individual by placing a copy of the same in the United States Mail, postage prepaid, and properly addressed as follows:

The Terteling Co.
c/o Charles Honsinger
Ringert Clark
PO Box 2773
Boise, ID 83701-2773

Quail Hollow, LLC
c/o Andrew Waldera
Moffat Thomas
PO Box 829
Boise, ID 83701-0829

The Edwards Co.
c/o Dana Hofstetter
Hofstetter Law Office, LLC
608 W Franklin St.
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Mary Ryan & Rose Ryan
4504 Foothill Rd.
Boise, ID 83703

Christine Roberts
Technical Records Specialist/Water Distribution
Idaho Department of Water Resources