

WESTBERG, McCABE & COLLINS, CTD.

ATTORNEYS & COUNSELORS AT LAW
516 WEST FRANKLIN STREET
P. O. BOX 2836
BOISE, IDAHO 83701-2836

PAUL L. WESTBERG
THOMAS J. McCABE
WILLIAM D. COLLINS

September 2, 1994

RECEIVED

SEP 06 1994

WATER RESOURCES
WESTERN REGION

FAX
(208) 336-2121

TELEPHONE
(208) 336-5200

VIA FAX: 334-2348

Mr. Steve Lester
Water Rights Supervisor
Western Region
Idaho Department of Water Resources
2735 Airport Way
Boise, ID 83705

RE: Stuart Gulch Water District, No. 63-S

Dear Mr. Lester:

It is my understanding that the water master for the above district, Ed Young, shut down the Terteling Trust No. 7 well (windsock well) yesterday at 4:30 in the afternoon. This was done without contacting my client and ostensibly for the reason that Flora, the most senior right holder, had made a call for water. It is also my understanding that my client's well along with the two Quail Hollow golf course wells were shut down at the same time. As of yesterday afternoon the Edwards' Greenhouse well was not flowing but it began flowing and as of this morning was flowing at the rate of 45 gallons per minute. Water is still not flowing in the Flora well. There has been no action to shut down the Edwards' Greenhouse well.

As you know, it is our position that the artisan pressure should not be part of a ground water right. However, I understand the department's position in trying to enforce the Silkey v. Tiegs decree until our present litigation is completed. However, assuming for the sake of argument that the department is correct in its existing ground water management decision, it is our opinion that the department has acted capriciously and not properly protected junior rights in the administration of water use within the district.

I have set up our position in my letter to you of August 31, 1993. I insist it is incumbent upon the department to manage the water within the district such that the rights of the senior appropriators are protected. This includes not only Flora but every other user senior to that of the Quail Hollow wells.

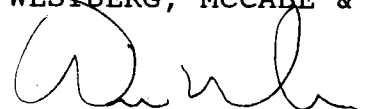
In the management of any water district the most junior right holder should not be allowed to divert more water than what all senior rights are entitled to receive. If we look at the aquifer as being limited in quantity, like water behind a dam, you would not let the junior appropriator withdraw from the reservoir more than what was left behind the dam to fill the senior rights. The data is clear that we know if a junior appropriator is shut off at some point in time there will be sufficient water to meet the demands of all senior right holders, but if the junior right holder is shut off at some later point in time, the next senior right holder in ascending order will also have to be shut off at some later time when the demands of a more senior right holder are not met. The water master clearly should have shut off the Quail Hollow wells before now. Typically, the greenhouses are in need of water around the first of September of each year for heat purposes. By delaying shutting off the Quail Hollow wells, you have in effect permitted the Quail Hollow wells to consume part of my client's entitlement.

It is also incomprehensible to me how you can permit, under the circumstances of your logic, the junior right of Edwards to be used or well allowed to flow when there is no flowing water at the Flora well. Using your logic and not being arbitrary it is incumbent upon you to have the water master shut off the Edwards well until such time as the full Flora entitlement is obtained.

As a side issue, the manner in which Mr. Young shut off the Terteling well may well have caused some damage. There is certain procedure he must follow in shutting off that well. I would strongly recommend that you have him contact Tom Terteling so that he can be thoroughly instructed in the proper procedure to follow.

Very truly yours,

WESTBERG, McCABE & COLLINS, Ctd.



William D. Collins

WDC:tc

cc: Ed Young
Terteling Trust No. 7