

SNYDER, MATTHEWS & NELSON, P.A.

ATTORNEYS AND COUNSELORS

520 WEST FRANKLIN STREET, UPPER LEVEL
BOISE, IDAHO 83702
(208) 336-9080

June 6, 1995

WILLIAM R. SNYDER
STEVEN R. MATTHEWS*
KENT E. NELSON
THOMAS A. DONOVAN*

MAILING ADDRESS
POST OFFICE BOX 2338
BOISE, IDAHO 83701-2338

FACSIMILE
(208) 343-4539

* ADMITTED IN IDAHO
AND COLORADO

HAND DELIVERED

Attn: Steve Lester
Department of Water Resources
Western Region
2735 Airport Way
Boise, Idaho 83705

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WATER RESOURCES
WESTERN REGION

Re: Petition of Terteling Trust No. 7 to Modify Boundaries
of Water District 63-S

Dear Mr. Lester:

This letter is submitted to the State of Idaho Department of Water Resources, hereinafter "Department" on behalf of Flora Co., Inc., an Idaho corporation, hereinafter "Flora Company" as a member of Water District 63-S (Stewart Gulch) in response to the Petition of Terteling Trust No. 7, hereinafter "Petitioner", to modify boundaries of the District.

Petitioner has advanced a theory that there is an "interpretive" hydrological barrier, "probably" formed by "inferred" faulting, such that Petitioner's wells lying northerly and easterly of the barrier "don't affect" other wells in the District lying south and west of that same barrier. Therefore, the Petitioner concludes that the boundaries of Water District 63-S should be modified to exclude a part of Petitioner's land lying northerly and easterly of the interpretive hydrological barrier as identified on Exhibit "A" to its Petition.

Flora Company would note that much of the evidence submitted by Petitioner's expert, Edward Squires, to support this theory is highly subjective and virtually incapable of being directly refuted. Rather, the only alternative would be for an opposing party to hire another expert to expound upon other or similar subjective data to arrive at a differing theory or result. That process would seem to be a waste of time and money and should not be the burden of another member. Additionally, it would be made unnecessary by the inclusion of a reasonable safeguard to any order allowing the issue of the extent of appropriate boundaries of the District to be revisited at any time there is any evidence to support a change, whether based in theory supported by subjective data, or otherwise supported by more objective data.

Similarly, Flora Company expresses its concern over the quantity of objective data gathered by Mr. Squires or by the

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WATER RESOURCES
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Steve Lester
Department of Water Resources
June 6, 1995
Page 2

Department showing the adverse effect to draw down levels on Flora Company wells (and other interconnected wells) when the Petitioner's windsock well was used as the effecting well. The record is clear that the effect was so negative to Flora Company that the test had to be discontinued before a substantial and more reliable quantity of data could be assembled. Once again, this lack of objective data can stand if a final Order allows the scope (boundaries) of the water district to be revisited at any future date.

Finally, it must be noted that the Petitioner is still the Appellant in Case No. 97293, in the District Court of the Fourth Judicial District in and for the County of Ada, State of Idaho, and has not sought a dismissal of that appeal. One of the issues raised by Petitioner in that appeal addresses the boundaries of this water district. Petitioner alleges by assignment of error that the Department's determination that the Petitioner's wells are interconnected with other well users in 63-S is incorrect. It would seem logical (if not otherwise legally required) that the Department should require a dismissal of the Petitioner's appeal or alternatively defer any decision on this Petition unless or until the appeal in Case No. 97293 is resolved.

In summary, Flora Company asserts there is an insufficient basis to grant Petitioner's request and/or that the Petitioner has failed to carry its burden to prove that the District boundaries should be modified at this time. However, should the Department grant the Petitioner's request, any final Order should provide: (1) that no member of District 63-S is prohibited from revisiting the issue of appropriate boundaries of District 63-S (Stewart Gulch) and (2) that the Order is not intended to preclude or limit any water user from advancing a legal position, cause of action or defense before the District Court in Twin Falls County, Case No. 3957, nor in the District Court in Ada County, Case No. 97293, nor in any other judicial proceeding that involves any issue raised or not raised or ruled upon by the Department in this Petition.

Respectfully submitted this 6th day of June, 1995.

SNYDER, MATTHEWS & NELSON, P.A.

By: 
William R. Snyder - Of the Firm
Attorneys for Flora Company

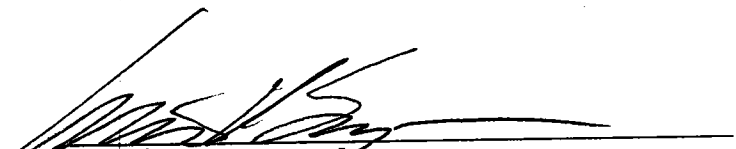
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 6th day of June, 1995, a true and correct copy of the within and foregoing document was served upon:

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William R. Snyder