



State of Idaho

DEPARTMENT OF WATER RESOURCES

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Phone: (208) 327-7900 FAX: (208) 327-7866

September 27, 1995

PHILIP E. BATT
GOVERNOR

KARL J. DREHER
DIRECTOR

RE: In the matter of a petition to modify the boundaries of Water District No. 63-S

Dear Interested Party:

The accompanying order is a "**recommended order**" issued by the department pursuant to Section 67-5243, Idaho Code. The provisions of this order will not become effective until the Director issues a final order in this matter.

Each party to these proceedings who appeared at the hearing may file a petition for reconsideration, briefs and exceptions to the recommended order and may request oral argument before the Director of the department as further described below:

PETITION FOR RECONSIDERATION

Any party may file a petition for reconsideration of a recommended order with the hearing officer issuing the order within fourteen (14) days of the service date of the order. The hearing officer will act on a petition for reconsideration within twenty-one (21) days of its receipt, or the petition will be considered denied by operation of law. See Section 67-5243(3), Idaho Code.

EXCEPTIONS AND BRIEFS

Within twenty-one (21) days after (a) the service date of this recommended order, (b) the service date of a denial of a petition for reconsideration from this recommended order, or (c) the failure within twenty-one (21) days to grant or deny a petition for reconsideration from this recommended order, any party may in writing support or take exceptions to any part of a recommended order and may file briefs in support of the party's position on any issue in the proceeding. Written briefs in support of or taking exceptions to the recommended order shall be filed with the Director. Opposing parties shall have twenty-one (21) days to respond.

ORAL ARGUMENT

The Director may schedule oral argument in the matter before issuing a final order. Oral argument on exceptions to a recommended order shall be heard at the discretion of the Director. If oral arguments are to be heard, the Director will, within a reasonable time, notify each party of the place, date and hour for the argument of the case. Unless the Director orders otherwise, all oral arguments will be heard in Boise, Idaho.

CERTIFICATE OF SERVICE

All exceptions, briefs, requests for oral argument and any other matters filed with the Director in connection with the recommended order shall be served on all other parties to these proceedings in accordance with Rules of Procedure 302 and 303.

FINAL ORDER

The Director will issue a final order within fifty-six (56) days of receipt of the written briefs, oral argument or response to briefs, whichever is later, unless waived by the parties or for good cause shown. The agency may remand the matter for further evidentiary hearings if further factual development of the record is necessary before issuing a final order. The department will serve a copy of the final order on all parties of record.

APPEAL OF FINAL ORDER TO DISTRICT COURT

A party aggrieved by a final order of the Director is entitled to judicial review in compliance with sections 67-5271 through 67-5279, Idaho Code.

Sincerely,


L. GLEN SAXTON

Chief, Water Allocation Bureau

Enclosure

cc: IDWR - Region

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE
STATE OF IDAHO

IN THE MATTER OF A PETITION)
TO MODIFY THE BOUNDARIES OF)
WATER DISTRICT NO. 63-S)
_____)

RECOMMENDED ORDER

Terteling Trust No. 7 filed a petition with the Idaho Department of Water Resources (Department) to modify the boundaries of Water District No. 63-S, also known as Stewart Gulch. The petition was filed on January 25, 1995, and a hearing for water district members and interested parties was conducted on May 16, 1995.

The four regulated water right users within the water district participated in the hearing. These waterusers include, in senior to junior water right priority order, the following: Flora Company (Flora), Edwards Greenhouses (Edwards), Terteling Trust No. 7 (Petitioner) and Quail Hollow Golf Course (Golf Course).

At the conclusion of the hearing, the record was left open until June 6, 1995, to accommodate additional information. Briefs by attorneys were also due by that date. Response briefs were due by June 16, 1995. Additional information was submitted by the Petitioner, Flora and Edwards in a timely manner.

Based on the evidence before the Department, the hearing officer recommends the following FINDINGS OF FACT, CONCLUSIONS OF LAW and ORDER:

FINDINGS OF FACT

1. Water District No. 63-S (District) is a low temperature geothermal resource district composed of four regulated water users. The regulated District members use "hot water" wells primarily for commercial (greenhouses) and irrigation (crops and a golf course) purposes. Minor or domestic uses exempt from water right permitting requirements remain unregulated within the District absent a showing of cause for regulation.

2. The District was established by the Final Order Adopting Proposed Memorandum Decision and Order issued by the Director of the Department (Director) on December 5, 1989. That order

recognized the terms of Silkey v. Tiegs, et al., Ada County Case No. 11748, June 13, 1930. Pursuant to a request for ground water regulation within the District, the Director issued a subsequent order (Final Memorandum Decision and Order) on December 1, 1992, to implement watermaster administration of pertinent water rights. The Department initiated District operations by organizing the first annual District meeting in February, 1993.

3. Guidelines for the administration of water rights within the District were further modified by the Director's October 27, 1993 Order Denying Petitions for Rehearing and Amended Final Memorandum Decision and Order.

4. District procedures facilitated calls by the senior water right owner, Flora, for water deliveries in the late summers of 1993 and 1994 (around Labor Day). In each regulated period as water shortages developed, senior rights were authorized to divert while junior rights were curtailed. Watermaster control included, but was not limited to, Petitioner's Windssock well (TWS well) located in the NW1/4SW1/4 Section 22, T4N, R2E, B.M., whereby use of the well was curtailed as needed.

5. Petitioner's evidence established a definite link between the TWS well and other low temperature geothermal wells that are found down-gradient in the District. These other wells include those used by Flora, Edwards and the Golf Course; these wells are located as follows in T4N, R2E, B.M.:

- a) Flora well no. 1 in the NW1/4SW1/4 Section 28 and well no. 2 in the NE1/4SE1/4 Section 29;
- b) Edwards well in the SW1/4NE1/4 Section 29; and
- c) Golf Course well no. 1 in the SW1/4SE1/4 Section 21 and well no. 2 in the NW1/4NE1/4 Section 28.

6. Petitioner's Motorcycle Club well (TMC well) is located in the NW1/4NE1/4 Section 22, T4N, R2E, B.M. and falls within current District boundaries but has not been in use during any periods of watermaster regulation.

7. The TMC well is now reconstructed to provide a viable source of low temperature geothermal water for beneficial use. Irrigation use from this well is authorized by License No. 63-07595 as most recently defined in Transfer No. 4202, approved by the Director's Final Order dated October 27, 1993. License No. 63-07595 provides for irrigation of 103 acres within Sections 21 and 22, T4N, R2E, B.M.

8. The hydrologic consultant for the Petitioner conducted three aquifer tests to determine if the TWS well and down-gradient low temperature geothermal wells are hydraulically connected to the

TMC well. The tests occurred in June 1993, March 1994, and May through June 1994. Results from the three tests showed that the TWS, Golf Course, Flora, and Edwards wells do not demonstrate such a connection with the TMC well.

9. The Petitioner's conclusion that a hydrological barrier exists between the TMC well and the other down-gradient low temperature geothermal wells, including the TWS well, is based on the following six factors:

- a) three aquifer tests in 1993 and 1994;
- b) observable faults from land surface analysis (road cuts, etc.);
- c) the Chevron Seismic Line data estimated to be dated from the 1970's or 1980's (faulting trends);
- d) substrata differences northwest and southwest of the barrier (lithology);
- e) hydrological analysis of nearby surface springs, primarily the Terteling Springs between and west/northwest of the TWS and TMC wells but hydraulically isolated from the wells; and
- f) ground water temperature differences encountered on either side of the barrier.

Testimony of the Petitioner's consultant concluded that the most significant of these six was factor (a), the three recent aquifer tests.

10. Faults can act as either conduits or barriers to the flow of water, and, if the latter, are rarely 100% effective. Existing data indicate that a barrier fault(s) is located between the TWS and TMC wells. Because the low temperature geothermal wells down-gradient (southwest) from the TWS well are interconnected with the TWS well and because all of these wells do not appear to be interconnected with the TMC well, the barrier appears to restrict communication between the areas northeast and southwest of the barrier. Therefore, well interconnection has not been demonstrated between the TMC well and the wells located down-gradient, the TWS, Golf Course, Flora and Edwards wells.

11. The precise location, path and extent of the barrier cannot be determined from existing data. Faulting in this location most likely matches the northwest-southeast trending faults of the Boise Front. Therefore, the proposed hydrological barrier is thought to be more general rather than specific, but basically separates aquifer functions between the TMC well and the wells found down-gradient.

12. All available evidence reasonably demonstrates that a hydrological barrier exists between the TMC well and the low temperature geothermal wells located down-gradient beginning with the TWS well. The hydrological barrier appears to bisect Section 22, T4N, R2E B.M. in a northwest-southeast manner from a point 700 feet south of the northwest section corner to a point 700 feet west of the southeast section corner (Petitioner's Exhibit B).

13. No aquifer communication between the low temperature geothermal wells within the District and those outside of the District has been documented. Therefore, no foundation exists to modify the District boundaries in any outward direction from the current boundaries established by the Director's previous orders (Finding of Fact Nos. 2 and 3).

14. The participants requested that all information to be included in the official record be further identified. In addition to the testimony and exhibits presented at the May 16, 1995 hearing and subsequent information submitted while the record remained open, the hearing officer takes official notice of the following:

- a) Silkey v. Tiegs decree;
- b) previous Department proceedings establishing the District and subsequent orders issued by the Director;
- c) Water District No. 63-S file information;
- d) official water right files, Snake River Basin Adjudication files, and well logs for the water rights within the District;
- e) all data, hydrographs, seismic information, and similar types of information whether found in print or electronic formats that are contained in Department files and that are related to aquifer monitoring or other testing within the District and/or the Boise Front Ground Water Management Area; and
- f) other correspondence, memoranda, and similar documents located in the Department files that pertain to low temperature geothermal wells in and around the District.

CONCLUSIONS OF LAW

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

Use of waters a public use. - The use of all waters now appropriated, or that may hereafter be appropriated 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. A statutory duty exists for the state to supervise the appropriation and allotment of the water resources of the state to water users who divert for beneficial use as prescribed in part in I. C. § 42-101:

Nature of property in water. - Water being essential to the industrial prosperity of the state All the waters of the state 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 Director must control water distribution within water districts prescribed in part by I. C. § 42-602:

Director to supervise water distribution. - The Director of the department of water resources shall have direction and control of the distribution of water from all natural sources within a water district to facilities diverting therefrom. Distribution of water within water districts created pursuant to section 42-604, Idaho Code, shall be accomplished by watermasters as provided in this chapter and supervised by the director.

5. The Director retains authority to revise water district boundaries through the hearing and order process described in I. C. § 42-604:

Creation of water districts. - The director of the department of water resources shall divide the state into water districts in such a manner where the use of waters by appropriators in one district does not affect or conflict with the use of the waters by appropriators outside such district The director may create, revise the boundaries of, or abolish a water district or combine two (2) or more water districts by entry of an order if such action is required to properly administer uses of the water resource. Before entering an order creating, modifying, or abolishing a district the hearing shall be held within the district or proposed district, or at some nearby location convenient to the affected water users.

Each water district created hereunder shall be considered an

instrumentality of the state of Idaho for the purpose of performing the essential governmental function of distribution of water among appropriators under the laws of the state of Idaho.

6. The exact location and extent of the hydrological barrier cannot be mapped from existing evidence. Adequate information to redefine the proposed District boundary to conform with section tract lines or surface landmarks is not available; the proposed boundary should remain as a diagonal line through the section.

7. The low temperature geothermal wells to remain subject to watermaster control include six wells situated down-gradient from the barrier. The regulated wells include those operated by the Petitioner (TWS well), the Golf Course (two wells), Flora (two wells), and Edwards (one well) as previously identified by legal location herein. Low temperature geothermal wells found within the District and utilized for domestic use defined in I. C. § 42-111 remain excused from watermaster regulation.

8. Based upon the information presented to the Department regarding the existence and effect of the hydrological barrier, the Department should modify the boundaries of the District and should exclude the TMC well from control of the District watermaster.

ORDER

IT IS HEREBY ORDERED that Water District No. 63-S shall be managed under the following provisions:

1. The boundaries of the District are modified to include the area as shown on attached Figure 1 and described as follows:

Beginning at a point 700 feet west of the southeast corner of Section 22, T4N, R2E, B.M., thence west seven-eighths 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 one and one-half miles 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 three-eighths mile to a point 700 feet west of the northeast corner of Section 21, thence southeast one and four-tenths miles through Section 22 in a line intersecting Cartwright

Road, Stewart Gulch, and Miller Gulch to the point of beginning, all in T4N, R2E, B.M.

2. The area north and east of the new boundary line as shown on attached Figure 1 is excluded from Water District No. 63-S, and the Terteling Motorcycle Club well located within the excluded zone is no longer subject to control by the watermaster of said District based on the revised District boundary.

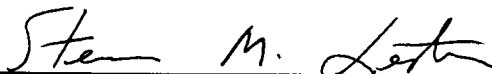
3. The Department will consider additional alterations to the boundaries of Water District No. 63-S to eliminate regulation of a well if its owners demonstrate to the satisfaction of the Director of the Department that regulation of the well will not impact the water availability to another well in the aquifer having a senior right and should not, therefore, be regulated within the District. Similarly, the Department will consider additional alterations to the boundaries of the District to add regulation of a well if it can be shown, to the satisfaction of the Director, that the well adversely affects the water availability to another well in the aquifer having a senior right and should, therefore, be regulated within Water District 63-S.

4. This Recommended Order shall only govern the administration of low temperature geothermal ground water from the District 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).

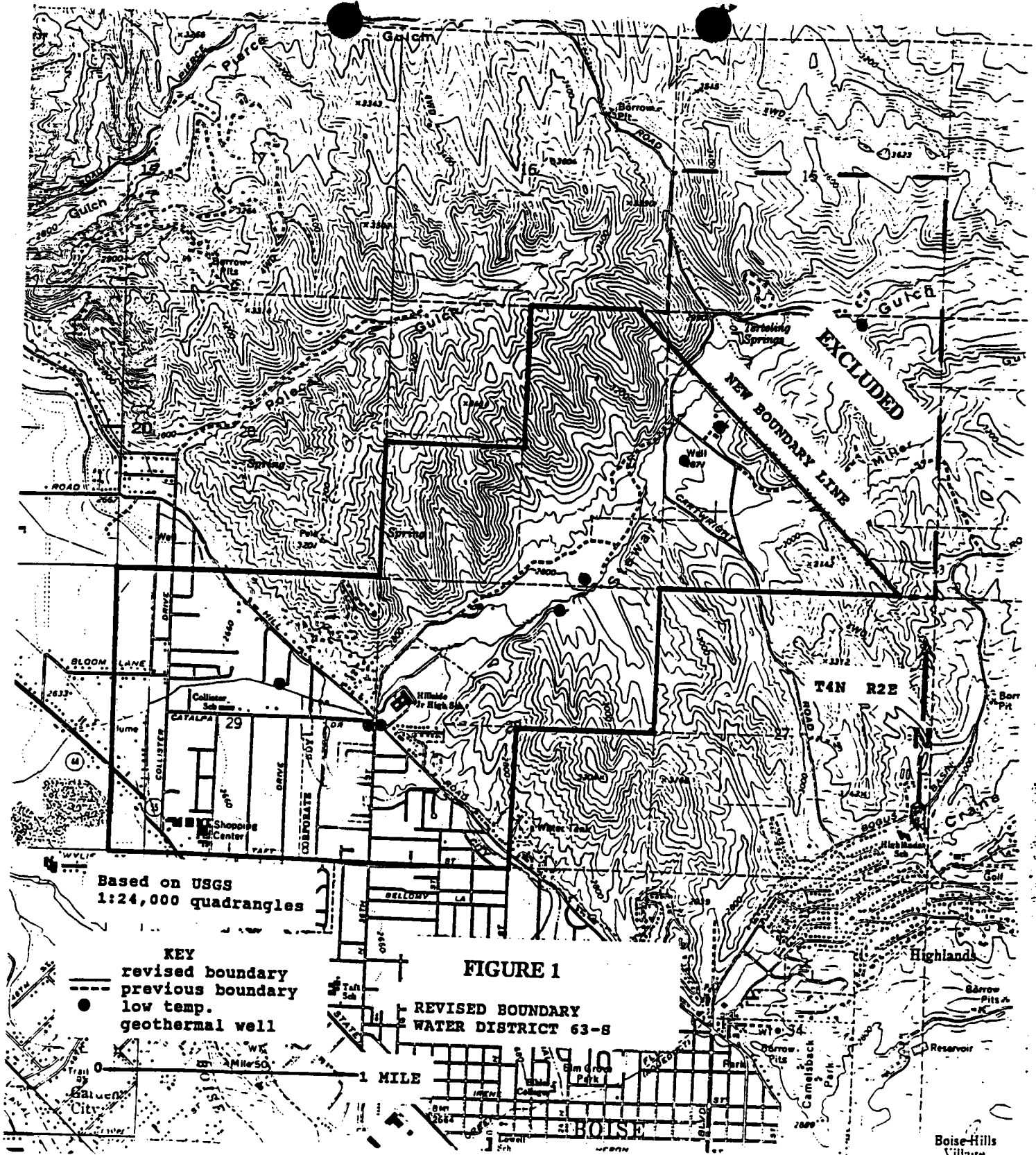
Furthermore, this order is not intended to preclude or limit any wateruser from advancing any legal argument or defense before the District Court in Twin Falls County Case No. 39576 involving any issue raised or ruled upon by the Department in its Recommended Order.

Furthermore, all other aspects of previous orders issued by the Director and referenced in Finding of Fact Nos. 2 and 3, that are not addressed herein remain in effect.

Dated this 21st day of September, 1995.



Steven M. Lester
Hearing Officer



CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 27th day of September, 1995,
I mailed a true and correct copy, postage prepaid, of the foregoing
RECOMMENDED ORDER to the following:

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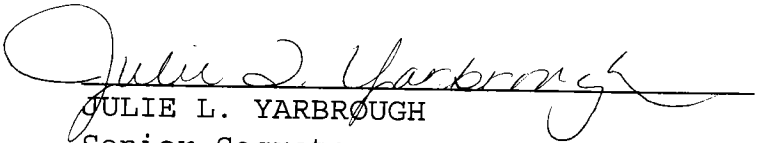
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