

HOFSTETTER LAW OFFICE

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August 29, 2002

RECEIVED
SEP - 3 2002

Department of Water Resources

Via Facsimile and U.S. Mail

ms
Glen Saxton
Idaho Department of Water Resources
1301 North Orchard Street
Boise, ID 83706

Re: Reactivation of Water District 63-S

Dear Mr. Saxton:

Section 2 of the Settlement Agreement entered into by The Terteling Company and the Edwards Family LLC with regard to Transfer Nos. 68558 and 68559 provides for the parties to petition the Department to reactivate District 63-S. I enclose a copy of the Settlement Agreement for your reference. Please consider this letter to be the Edwards Family LLC's petition to reactivate Water District 63-S.

The language of Section 2 of the Settlement Agreement, which is based upon *Idaho Code* § 42-605(11), provides for requesting a special meeting of the water right holders of District 63-S "for the purpose of reactivating the District by the appointment of a watermaster for administration of water rights and by reinstating measurement and reporting for water rights in the District." The Edwards Family LLC would request that the special meeting is scheduled soon to enable the District to function during as much of the upcoming heating season as possible. While the District was active for awhile in the early 1990's, in recent years it has ceased to be operational. The calling of a special

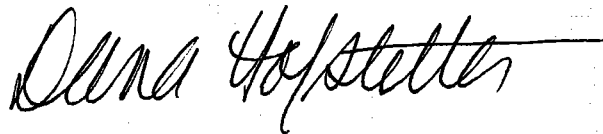
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Page 2

meeting for District 63-S would enable reinstatement of the monitoring and reporting that is critical for proper management of the Stewart Gulch Geothermal Aquifer.

Please let me know if you need any additional information to process this request. Thank you for your attention to this matter.

Sincerely,

HOFSTETTER LAW OFFICE, LLC

A handwritten signature in black ink that reads "Dana Hofstetter". The signature is written in a cursive style with a long horizontal line extending from the end of the name.

Dana L. Hofstetter

Enclosure

cc: Jeffrey Fereday w/out enclosure

Gary Spackman w/out enclosure

E:/3006.1/5344

ADA COUNTY RECORDER
J. DAVID NAVARRO
BOISE, IDAHO

RECORDED - REQUEST OF 7

Gentling Co. v Edward Family Ltd
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to accommodate recording information.**

SETTLEMENT AGREEMENT

This Settlement Agreement (the "Agreement") is made and entered into this 24th day of January, 2002, between The Terteling Company, Inc., an Idaho corporation ("Terteling"), and the Edwards Family, LLC, an Idaho Limited Liability Corporation ("Edwards"). Terteling and Edwards may be referred to hereinafter individually as "Party" or collectively as the "Parties."

Recitals and Background Information

A. Terteling represents that it owns Water Right Nos. 63-00012, 63-00013 and 63-00015, which were decreed in *Silkey v. Tiegs*, Ada County Case No. 11748, *on review* 51 Idaho 344 (1931) and 54 Idaho 126 (1934) ("*Silkey v. Tiegs*"). *Silkey v. Tiegs* adjudicated rights to use geothermal water from an aquifer referred to herein as the Stewart Gulch Geothermal Aquifer. Water Right Nos. 63-00012 and 63-00013 (the "Silkey Rights") are the two most senior water rights decreed in *Silkey v. Tiegs* with priority dates of July 1, 1921 and July 1, 1922 respectively. Water Right No. 63-00015 (the "Tiegs Right") is designated in *Silkey v. Tiegs* with a priority date of March 23, 1927.

B. Edwards represents that it owns Water Right No. 63-00014 (the "Edwards Right"), which was decreed in *Silkey v. Tiegs* with a priority date of November 22, 1926. The Edwards Right is diverted from a well located in SE $\frac{1}{4}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$ Section 29, Township 4 North, Range 2 East, Boise Meridian (the "Edwards Well").

C. By Final Orders dated December 5, 1989 and December 1, 1992, the Department established Water District 63-S (the "District") and implemented watermaster administration of water rights diverted from the Stewart Gulch Geothermal Aquifer in the District. As of the date of this Agreement, the District is not active.

D. The Parties estimate that the total sustainable volume of water that can be diverted annually from the Stewart Gulch Geothermal Aquifer is approximately between 650 AFA to 750 AFA.

E. On October 2, 2000, Terteling filed with the Department an Application for Transfer of Water Right for the Silkey and Tiegs Rights (Transfer No. 68558), seeking approval to divert and use these rights from an alternate point of diversion (the "Windsock Well") in the

NW¼ SW¼ Section 22, Township 4 North, Range 2 East, Boise Meridian, and at a new place of use in Section 22, Township 4 North, Range 2 East, Boise Meridian. The land, including place of use and diversion points, currently associated with the Silkey and Tiegs Rights is described in Exhibit A hereto. The land on which the Silkey and Tiegs Rights' proposed alternate point of diversion and new place of use is located is described in Exhibit B hereto. Also, on October 2, 2000, Terteling filed with the Department an Application for Transfer of Water Right (Transfer No. 68559) for diversion and use of cold water at locations near the Windsock Well. These two Applications for Transfer of Water Right (Transfer Nos. 68558 and 68559), as amended, will be referred to herein as the Transfers. Paul Edwards, a principal of Edwards, filed protests against the Transfers on December 22, 2000 (the "Protests"). Edwards' land associated with Water Right No. 63-00014 is described in Exhibit C hereto.

F. The Parties believe it is in their mutual interests to resolve the Protests and to enter into a comprehensive agreement to mutually protect their most senior water rights in the Stewart Gulch Geothermal Aquifer.

NOW, THEREFORE, in consideration of the mutual promises and covenants hereinafter expressed, the Parties agree as follows:

1. **Withdrawal of Protests.** Within five days after execution of this Agreement by both Parties, Edwards shall file with the Department appropriate documents suspending Paul Edwards' Protests to the Transfers pending the Department's approval of the Transfers that caps the maximum combined annual diverted volume for the Silkey and Tiegs rights at 400 AFA.

2. **Reactivation of District 63-S.** Within ten days of the Department's approval of the Transfers, the Parties will file a petition with the Department requesting a special meeting of the water right holders of the District for the purpose of reactivating the District by appointment of a watermaster for administration of water rights and by reinstating measurement and reporting for water rights in the District. Thereafter, in subsequent years, the Parties shall use all reasonable efforts to ensure the continued appointment of a District watermaster and implementation of the District measurement and reporting program. The Parties shall use all reasonable efforts to ensure that the District's measurement and reporting program includes the kind of measurement and reporting described in Section 3 of this Agreement.

3. **Measurement and Reporting.** The Parties shall install and maintain meters on all

of their wells in the District for the purpose of measuring and recording total diverted volumes. Total diverted volumes shall be reported quarterly to the watermaster, which report shall include the total volume diverted for each well either owned by them or used by them in the District for the preceding quarter.

4. **Diverted Volumes.** Terteling shall divert a combined maximum total of 400 AFA from the Stewart Gulch Geothermal Aquifer under the Silkey and Tiegs Rights and Edwards shall divert a maximum of 250 AFA from the Stewart Gulch Geothermal Aquifer under the Edwards Right.

5. **Diversion Rate.** Each Party may divert water at the rates ultimately authorized by the respective final Snake River Basin Adjudication ("SRBA") partial decrees for the Silkey Rights and the Edwards Right.

6. **Silkey v. Tiegs.** The parties shall take the following steps to protect their senior Silkey and Edwards Rights pursuant to the *Silkey v. Tiegs* decree:

(a) The Parties shall use all reasonable efforts to ensure that the Department's Boise Front Low Temperature Geothermal Resource Ground Water Management Area moratorium (or some other substantially similar Department moratorium that also includes the Stewart Gulch Geothermal Aquifer) remains in effect to prevent the development of new water rights diverted from the Stewart Gulch Geothermal Aquifer. The Parties also shall use all reasonable efforts to seek and obtain an area of drilling concern designation pursuant to Idaho Code § 42-238(15) or another appropriate regulatory designation, order, determination, decision, etc. from the Department to prohibit development in the Stewart Gulch Geothermal Aquifer of any new water rights that are exempted from Department water right permitting and licensing requirements, such as domestic water rights. Thereafter, the Parties shall use all reasonable efforts to have the Department maintain such designation, order, determination, decision, or other regulatory mechanism.

(b) The Parties also shall use all reasonable efforts to ensure that the Department continues to include the Stewart Gulch Geothermal Aquifer either in a designated ground water management area, such as the Boise Front Ground Water Management Area, in a designated critical ground water area or in some other substantially similar designated area under Idaho law. The Parties shall use all reasonable efforts so that the Department

issues, implements, and maintains such orders or some other similar regulatory mechanism to ensure that the diverted volumes to the maximum extent provided for in Section 4 of this Agreement are available to fulfill the senior Silkey and Edwards Rights.

7. **The Tiegs Right.** The Transfers do not authorize Terteling to divert water under the Tiegs Right.

8. **Snake River Basin Adjudication.** The Parties shall use all reasonable efforts to establish the Stewart Gulch Geothermal Aquifer as a separate source in the SRBA for purposes of water right administration. The Parties agree that their respective SRBA claims shall be consistent with the terms of this Agreement, including the total annual combined diverted volume of 400 AFA for the Silkey and Tiegs Rights and the total annual diverted volume of 250 AFA for the Edwards Right. The Parties on behalf of themselves and any related individuals or entities agree that they will not assert or argue in the SRBA that the total combined annual diverted volume for the Silkey and Tiegs Rights is greater or less than 400 AFA and that total annual diverted volume for the Edwards Right is greater or less than 250 AFA. The Parties agree to undertake all reasonable and appropriate efforts to have the SRBA decrees for Water Right Nos. 63-00012, 63-00013, 63-00014 and 63-00015 reference this Agreement in substantially the following manner: "This water right is subject to the terms of an Agreement dated _____, 2002 recorded at the Ada County Recorder's Office as Instrument No. _____."

9. **Heating Purposes.** The Parties shall utilize water diverted under Water Right Nos. 63-00012, 63-00013, and 63-00014 primarily for heating purposes. Any other use of water diverted under Water Right Nos. 63-00012, 63-00013, and 63-00014, such as for irrigation, only shall occur after the heat is removed by another beneficial use.

10. **Closure of Wells.** If either Party ceases use (including monitoring) of any wells in the Stewart Gulch Geothermal Aquifer for five consecutive years, the Party shall immediately close and appropriately seal such wells. The wells shall be closed and sealed in such a way to prevent any leakage or loss of the geothermal resource.

11. **Department Approval of Transfers.** The Parties agree that the terms of this Agreement are contingent upon the Department's approval of the Transfers that include a

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combined total annual diversion volume for the Silkey and Tiegs Rights of no more than and no less than 400 AFA.

12. Recording of Agreement. Within ten (10) days after the Department's approval of the Transfers, the Parties shall record this Agreement at the Ada County, Idaho Recorder's Office. The provisions of this Agreement shall be covenants and perpetual servitudes running with Water Right Nos. 63-00012, 63-00013, 63-00014, and 63-00015, and the associated lands, including any new lands to which these water rights are transferred.

13. Communications. All communications and submission of measurement data to the Parties pursuant to this Agreement shall be addressed as follows:

The Terteling Company, Inc. (Terteling)
3823 N. 36th Street
Boise, ID 83703
Ph. (208) 381-5205

Garnette Monnie (Edwards)
Edwards Greenhouses
4106 Sand Creek
Boise, ID 83703-4028
Ph. (208) 342-7548


The parties agree to notify each other regarding any changes in the names and/or addresses listed above.

14. General. The Parties acknowledge that both Parties and their attorneys have reviewed and participated in drafting this Agreement. The headings of the sections of this Agreement have been inserted for the convenience of reference only and shall not affect any construction or interpretation of this Agreement. This Agreement is the entire agreement of the Parties with respect to the Transfers and with respect to the matters addressed herein concerning Water Right Nos. 63-00012, 63-00013, 63-00014, and 63-00015. This Agreement may be modified only with the mutual written consent of both Parties. Except as otherwise provided in this Agreement, any waivers hereunder must be in writing. No waiver of any right or remedy in the event of default hereunder shall constitute a waiver of such right or remedy in the event of any subsequent default. This Agreement shall be governed in all respects by the laws of the State of Idaho. This Agreement is for the benefit only of the Parties hereto and shall inure to the benefit of and bind the heirs, personal representatives, successors and assigns of the Parties hereto. The

invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provision hereof. In the event of a court proceeding or other legal action regarding the breach or violation of this Agreement, the prevailing party shall be entitled to reasonable attorney's fees and costs. The Parties each represent that they are authorized to enter into this Agreement.

IN WITNESS WHEREOF, the Parties hereto have exercised this instrument the day and year first above written.

THE TERTELING COMPANY, INC.

By 

T.E. Terteling

EDWARDS FAMILY, LLC

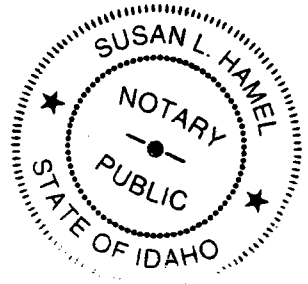
By 

Garnette Monnie, Member

STATE OF IDAHO)
) ss:
County of Ada)

On this 24th day of January, 2002, before me the undersigned Notary Public, personally appeared T.E. Terteling, known to me to be an authorized agent of THE TERTELING COMPANY, INC., the entity that executed the foregoing instrument.

IN WITNESS WHEREOF, I have hereunto set my hand and seal the day and year in this acknowledgment first above written.

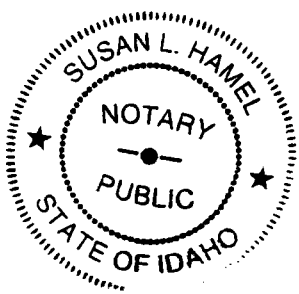


Susan L. Hamel
Notary Public for the State of Idaho
Residing in Kuna, ID Ada County
My Commission Expires: 03/22/2002

STATE OF IDAHO)
) ss:
County of Ada)

On this 24th day of January, 2002, before me the undersigned Notary Public, personally appeared Garnette Monnie, known to me to be a member of EDWARDS FAMILY, LLC, the entity that executed the foregoing instrument.

IN WITNESS WHEREOF, I have hereunto set my hand and seal the day and year in this acknowledgment first above written.



Susan L. Hamel
Notary Public for the State of Idaho
Residing in Kuna, ID Ada County
My Commission Expires: 03/22/2002

EXHIBIT A

That portion of Section 29, Township 4 North, Range 2 East, Boise Meridian, in the County of Ada, State of Idaho, more particularly described as follows:

Commencing at the quarter section corner common to Sections numbered 28 and 29, in Township 4 North, Range 2 East, the REAL PLACE OF BEGINNING; thence South $0^{\circ}29'$ West a distance of 662.3 feet along the section line common to said Sections 28 and 29; thence North $89^{\circ}11'$ West, parallel to the East and West quarter section line of said Section 29, a distance of 657.4 feet; thence North $0^{\circ}39'$ East a distance of 662.3 feet, to the East and West quarter section line of said Section 29; thence South $89^{\circ}11'$ East, along said quarter section line, 656.5 feet to the PLACE OF BEGINNING.

EXCEPT any portion lying within the following:

Commencing at the quarter section corner common to Sections 28 and 29, Township 4 North, Range 2 East, of the Boise Meridian, marked by a stone; thence South along the East line of said Section 29, a distance of 437.2 feet to a point the same being the TRUE POINT AND PLACE OF BEGINNING; thence continuing South $0^{\circ}29'$ West 1003.9 feet on the East line of said Section 29 marked by an iron pin; thence North $81^{\circ}16'$ West 234.2 feet to a point; thence North $61^{\circ}35'$ West 135.75 feet to a point; thence North $76^{\circ}20'$ West 328.4 feet to a point, marked by an iron pin; thence North $0^{\circ}39'$ East 838.2 feet to a point; thence South $89^{\circ}05'$ East 657 feet to the POINT AND PLACE OF BEGINNING.

EXCEPT ditch and road rights-of-way.

EXHIBIT B

SW 1/4 of Section 22, Township 4 North, Range 2 East of the Boise Meridian, Ada
County, Idaho.

Exhibit "C"

Those certain parcels of real property situated in the County of Ada, State of Idaho, more particularly described as follows:

- (A) Lots One through Four, inclusive, Block 1, of Thomas F. Edwards Subdivision situate in Section 29, Township 4 North Range 2 East of the Boise Meridian, in Ada County, State of Idaho.
- (B) Lots 20 through 22, inclusive, of Block 1, of the Thomas F. Edwards Subdivision, according to the plat thereof, records of Ada County, State of Idaho.
- (C) Permit to use hot and cold water from Lot 1, Block 1, of Thomas F. Edwards Subdivision, Ada County, State of Idaho.
- (D) A parcel of land in Southwest Quarter of Northeast Quarter of Section 29, Township 4 N., Range 2 E. B. M., Ada County, State of Idaho, and more particularly described as follows: Commencing at a point 10.86 chains North of the center of Section 29, thence S. 74° 43' E. 15.32 chains to an iron bar located at the Southeast Corner of Thomas F. Edwards' land, the true point of beginning; Thence N. 1°15' E. 3.40 chs. to a piece of iron pipe; Thence S. 72° 30' E. 2.22 chains to a piece of iron pipe; thence S. 23°05' E. 3.18 chains to a piece of iron pipe; thence N. 74°43' West 3.55 chains to iron bar, the place of beginning, containing 0.98 (98/100) acres.
- (E) Beginning at the Northeast Corner of the Southwest Quarter of the Northeast Quarter of Section 29, Township 4 North, Range 2 East, B. M., Ada County, Idaho; thence South 358.38 feet; thence East 58.83 feet; thence South 285.09 feet to an iron rod; thence West 265.83 feet to an iron rod; thence South 24 feet to an iron pipe; thence North 72 degrees 30 minutes West 21.13 feet to the real point of beginning; thence North 72 degrees 30 minutes West 125.39 feet; thence North 1 degree 50 minutes East 49.50 feet; thence North 1 degree 20 minutes East 19.70 feet; thence South 88 degrees East 120 feet; thence South 1 degree 20 minutes West 104.11 feet to the real point of beginning;

EXCEPTING Any portion which may lie in Tamarack Drive.
- (F) Beginning at the Northeast Corner of the Southwest Quarter of the Northeast Quarter (SW1/4NE1/4) Section 29, T. 4N., R. 2E., B. M. Thence South 358.38 feet to a point, thence East 58.83 feet, thence South 285.09 feet to an iron rod, thence West 265.83 feet to the real point of beginning, thence South 24.0 feet, to

an iron pipe, thence N. 72 degrees 30 minutes West 21.13 feet to a point, thence North 1 degree 20 minutes East 104.11 feet to a point, thence S. 88 degrees 40 minutes E. 20.64 feet to a point, thence S. 1 degree 20 minutes W. 85.97 feet to the real point of beginning.

January 22, 2002

THE TERTELING COMPANY, INC.

BOARD OF DIRECTORS MINUTES WITHOUT A MEETING

The below signed Directors, who represent all of the Directors of The Terteling Company, Inc. without a notice or a formal meeting, approve said resolution provided a simple majority of all Directors so signify by their signatures below.

WHEREAS The Terteling Company, Inc. filed two applications with the Idaho Department of Water Resources on October 2, 2000 to transfer its rights under *Silkay v. Tieg* (geothermal rights) and a cold water right currently located on the Flora Co. property at 3823 N. 38th Street, Boise, Idaho, to the Corporation's property located in Section 22, Ada County, for use at 4988 Peaceful Cove Lane, Boise, Idaho.

WHEREAS another senior water rights owner under *Silkay v. Tieg*, Paul Edwards, filed protests against the transfers on December 22, 2000.

WHEREAS the Corporation and Edwards have reached agreement whereby Edwards agrees to withdraw its protest to the Idaho Department of Water Resources.

WHEREAS the Corporation desires to have T. E. Terteling execute the Settlement Agreement between Edwards and the Corporation on behalf of the Corporation.

THEREFORE, BE IT RESOLVED that the Board of Directors authorizes T. E. Terteling to execute the Settlement Agreement on behalf of The Terteling Company, Inc.

Disapproved:

Approved:

James K. Galloway
T. E. Terteling