



State of Idaho

DEPARTMENT OF WATER RESOURCES

Western Region, 2735 Airport Way, Boise, Idaho 83705-5082 - (208) 334-2190
FAX (208) 334-2348

DIRK KEMPTHORNE
Governor

KARL J. DREHER
Director

April 7, 2004

Helen Miller
4023 N Whitehead St
Boise ID 83703

Todd and Becky Bunderson
4015 N Whitehead St
Boise ID 83703

Ed Altman
C/o Plantation West Builders
6529 Plantation Ln
Boise ID 83703

Wynn and Jan Johnson
3907 N Whitehead St
Boise ID 83703

Dear Water User:

On February 23, 2004, the Idaho Department of Water Resources (IDWR) received a complaint regarding the operation of the geothermal well serving your home, also known as the "Stralow" well represented by beneficial use claim 63-5195. This letter is to inform you that the Stralow well is in violation of the law governing the Stewart Gulch Water District 63-S and is subject to the following:

1. The right can be completely curtailed by the watermaster because it is a beneficial use claim.
2. Usage from this well is limited to historical beneficial use for four homes.
3. Measuring and controlling works must be installed.
4. Low temperature geothermal water cannot be wasted. Waste will result in issuance of a notice of violation.

Attached is the order establishing Water District 63-S and letter dated 12/5/1989 to Ray Stralow requiring the installation of flow measuring equipment on the Stralow well by 4/1/1990. According to the watermaster, Ken Neely, the Stralow well users have not complied with the measuring requirement.

The order states that certain domestic heating uses are exempt from regulation by the watermaster of the district unless it can be shown that senior wells are injured by this

protection. The intent of this exemption is to exclude from regulation the heating of single-family residences and in-house uses of the water that utilize the heat of the water. The total use per household is limited to the quantity of water reasonably necessary to heat the home, not to exceed 13,000 gallons per day (gpd). This limitation applies to each of the four homes heated from the Stralow well.

Water right claim no. 63-5195 lists a diversion rate of .84 cfs or 377 gallons per minute. Continuous flow at this rate provides 542,880 total gpd, which is more than ten times the maximum domestic amount allowed for four homes. Based on these figures, the Stralow well is not exempt from regulation as provided for in the order.

Please be advised that the following must be completed by July 31, 2004 to avoid further action by the Department.

1. Installation of a flow meter(s) that measures all of the instantaneous rate of flow and cumulative volume of water withdrawn from the Stralow well.
2. Installation of an adjustable control valve on the main pipelines.
3. Determination of the actual quantity of water necessary to heat the four homes. The requirements should be based on the size of the home heated, temperature of the water, type of heating system employed, and the local climate conditions. Following the submittal of your information, IDWR will review the information and determine whether the information is reasonable. The determination will limit your diversion of water in future years.

Because the weather is warming, you should have little need to divert water from the well for heating this summer. IDWR will ask the watermaster to check diversion and use of water from the Stralow well during the next few months to insure compliance with the law.

If you have any questions, please contact me at this office.

Sincerely



Lori Graves
Sr. Water Resource Agent

Encl: 1989 order & letter to Ray Stralow

C: Gary Spackman, IDWR
Ken Neely, Watermaster, Water District 63-S
Tom Terteling, Chairman, Water District 63-S

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

IN THE MATTER OF CREATION OF WATER)
DISTRICT 63-S, STEWART GULCH) COUNTY: ADA
_____)

FINAL ORDER
ADOPTING PROPOSED MEMORANDUM DECISION AND ORDER

This matter having come before the Idaho Department of Water Resources (Department) as a petition to form a water district and also as a response to an Order to Show Cause why the Department should not prohibit or limit the diversion of water under certain groundwater rights, the Department finds, concludes and orders as follows:

FINDINGS OF FACT

1. On August 22, 1989, the Department received a request to create a water district and appoint a watermaster. On the same date, the Department also received a request to issue a summary order prohibiting water use from some wells used by Quail Hollow Golf Course.

2. The rights to the use of low temperature geothermal groundwater from certain wells in the vicinity of 36th Street and Hill Road in Boise, Idaho were decreed in the case of Silkey v. Tiegs, et. al., Ada County Case No. 11748 on June 13, 1930. The decree found that water to supply the rights was diverted from a common and interconnected source.

3. The decree recognized that water was diverted by means of artesian pressures and established a distribution scheme to protect historic pressures and flow rates by artesian pressure.

4. The identification numbers of the rights and current users of water under the rights as confirmed by the Silkey decree are as follows: 63-0012, 63-0013 and 63-0015, Hunt Bros. Floral, Inc.; 63-0014, Edwards Greenhouses; and 63-0016, M.E. or R.E. Ryan.

5. Two wells are operated for irrigation purposes by Quail Hollow Golf Club under Claim No. 63-4037P and Permit No. 63-9758. Claim No. 63-4037P claims a priority date of 1931. Permit No. 63-9758 has a priority of June 30, 1981. Data gathered by the United States Geological Survey, represented by hydrographs that are part of the record in this matter and testimony of witnesses, establish that the source of water diverted from the Quail Hollow wells is interconnected with the source of water for the rights decreed in the Silkey decree.

6. Testimony indicates the water supply for wells owned by J. A. Terteling also appears to be interconnected to the water supply for the previously described rights.

7. Department records show that Raymond F. Stralow owns a well once known as the Church well, and has filed a claim in the Snake River Basin Water Rights Adjudication alleging a date of priority of January 1, 1900. The Stralow well is also interconnected with the water supply for the uses of water listed above.

8. Section 42-602, Idaho Code, requires the Department to supervise the distribution of Idaho's public waters in accordance with the rights of prior appropriation.

9. Section 42-604, Idaho Code, charges the Department with the responsibility to create water districts and Section 42-605, Idaho Code, provides for the election or appointment of a watermaster to administer the use of water under rights within the water district.

10. The Silkey decree directs the Department to form a water district and administer the uses accordingly.

11. Many legal issues of law and fact have been raised regarding the authority of the Department under Section 42-237a, Idaho Code, to enjoin the use of water by later-in-time diverters to protect senior water rights and the general applicability of the ground water act to wells which predate the act.

12. Both issues of fact and law have been raised and remain to be resolved regarding the scope of authority granted to the Department by Idaho Code, Section 42-237a. A legal question must be resolved regarding the applicability of the reasonable pumping level language as provided in Section 42-226, Idaho Code. Furthermore, if a reasonable pumping level should be established, a factual question regarding what level is reasonable must also be resolved.

13. The unresolved issues of fact and law described in findings of fact Nos. 11 and 12 are before the Department in a separate but related show cause proceeding and will not be further addressed in the present proceeding.

14. Flow measuring devices and pressure measuring equipment are needed on each well to determine the amount of water being diverted within the water district and to properly deliver the water to those entitled to its use.

CONCLUSIONS OF LAW

1. The Department is authorized to create a water district and appoint a watermaster for proper distribution of the water decreed in the case of Silkey v. Tiegs together with other water rights which divert and use water from the same low temperature geothermal aquifer.

2. Section 42-607, Idaho Code states:

It shall be the duty of the said watermasters to distribute the waters of the public stream, streams or water supply, comprising his water district, among the several ditches taking water there from according to the prior water rights of each respectively, and whole or in part, . . . provided, that any person or corporation claiming the right to the use

of waters of the stream or water supply comprising a water district, but not owning or having the use of any adjudicated or decreed right therein, or right therein evidence by permit or license issued by the Department of Water Resources, shall for purposes of distribution during the scarcity of water, be held to have a right subsequent to any adjudicated, decreed, permit, or licensed right in such stream or water supply. . .

3. Interim management is needed. The Department should create a water district for the management and supervision of the low temperature geothermal resource.

4. The Department should require the installation and maintenance of flow measuring devices and pressure measuring equipment which enable a water-master to properly distribute water to those entitled to its use.

ORDER

IT IS HEREBY ORDERED AS FOLLOWS:

1. Water District 63-S, Stewart Gulch, is hereby created in connection with the use of the low temperature geothermal water resource.

2. The area within the following boundaries shall constitute the water district as shown on Figure 1, attached:

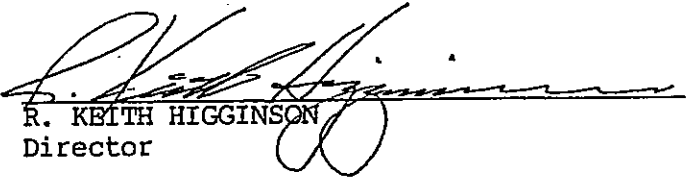
Beginning at the East Quarter corner of Section 15, T4N, R2E, B.M., thence south approximately one and one-half mile to the southeast corner of Section 22, thence west one mile to the southwest corner of Section 22, thence south one-half mile to the east quarter corner of Section 28, thence west one-half mile to the center of Section 28, thence south one-half mile to the south quarter corner of Section 28, thence west approximately one and one-half mile 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 one-half mile to the northeast corner of Section 21, thence North one-half mile to the west quarter corner of Section 15, thence east one mile to the point of beginning, all in T4N, R2E, B.M.

3. The owners of wells used for the diversion of low temperature geothermal water within the district shall install flow measuring devices and the rate of flow and volume of pressure measuring equipment acceptable to the Department for the measurement of the rate of flow and volume of water diverted from their respective wells. Such devices and/or equipment shall be installed on or before April 1, 1990.

4. Certain domestic heating uses are exempt from regulation by the watermaster of the district. The intent of this exemption is to exclude from

regulation the heating of single family residences and in-house uses of the water which utilize the heat of the water where total use of water per household does not exceed 13,000 gallons per day. Wells not used exclusively for domestic heating purposes are subject to regulation and the requirement to install measuring devices and/or pressure measuring equipment.

Dated this 5th day of December, 1989.


R. KEITH HIGGINSON
Director

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this the 5th day of December, 1989, I deposited in the United States mail, postage prepaid a true and correct copy of each of the foregoing ORDER ISSUING PROPOSED DECISION and PROPOSED MEMORANDUM DECISION AND ORDER sent to:

William F. Ringert, Esq.
Ringert, Clark, Harrington, Reid, Christenson & Kaufman
P. O. Box 2773
Boise, ID 83701-2773

Susan D. Miner, Esq.
Hawley, Troxell, Ennis & Hawley
P. O. Box 1617
Boise, ID 83701

Kenneth R. Arment
Brady, Saetrum & Lerma
P. O. Box 1398
Boise, ID 83701

M. E. and R. E. Ryan
4504 Foothill Dr.
Boise, ID 83703

J. A. Terteling
877 W. Main, Rm. 706
Boise, ID 83702

Jeffrey C. Fereday
Michael C. Creamer
Givens, Pursley, Webb & Huntley
P. O. Box 2720
Boise, ID 83701

Ray F. Stralow
3911 Whitehead
Boise, ID 83703


RITA E. FLECK
Secretary/Records Manager

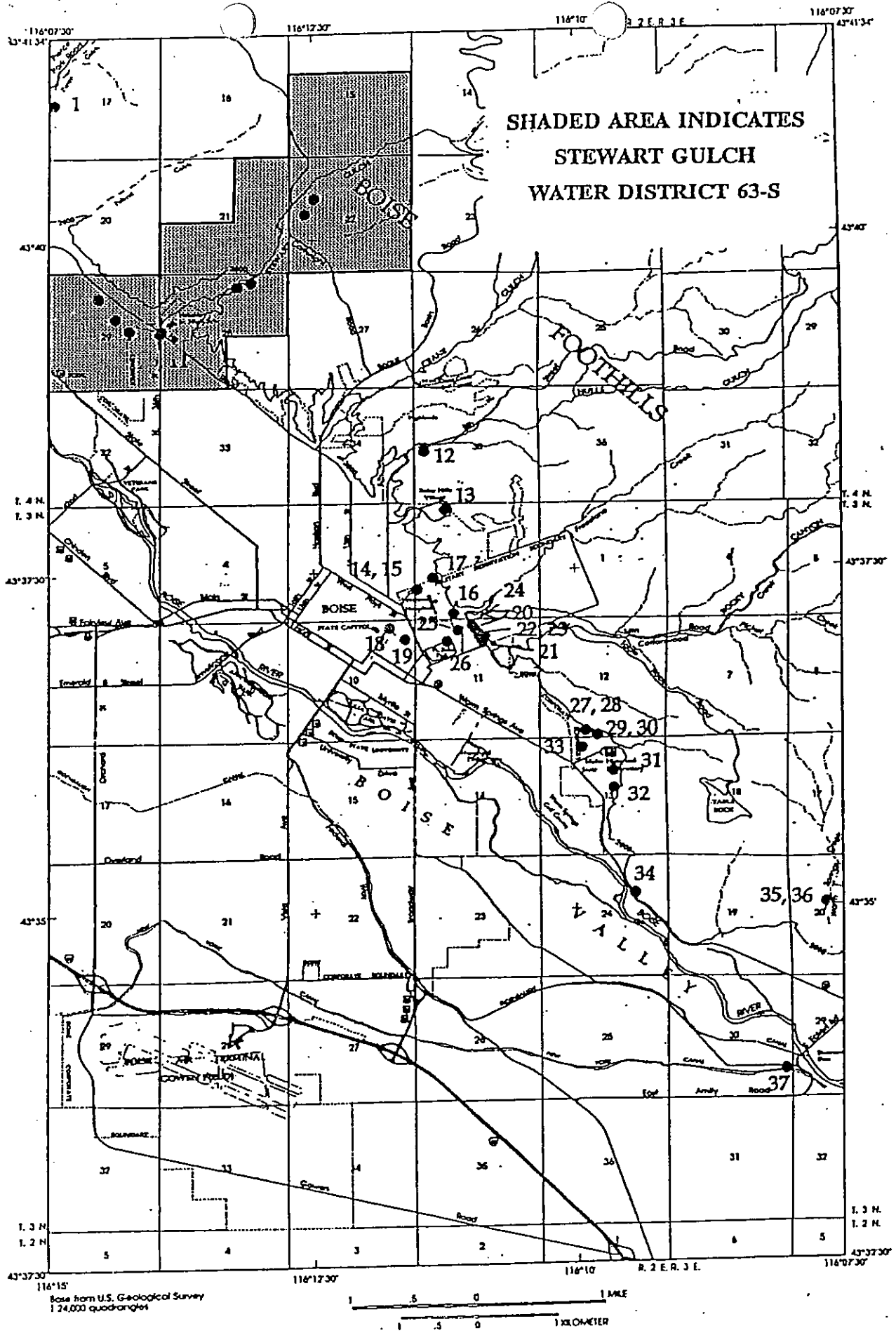


FIGURE 1



State of Idaho
DEPARTMENT OF WATER RESOURCES

1301 North Orchard Street, Statehouse Mail, Boise, Idaho 83720 -(208) 327-7900

CECIL D. ANDRUS

GOVERNOR

R. KEITH HIGGINSON

DIRECTOR

December 5, 1989

Ray F. Stralow
3911 Whitehead
Boise, ID 83703

Dear Mr. Stralow:

RE: WATER DISTRICT 63-S, STEWART GULCH

Enclosed is a memorandum decision and order which creates the above referenced water district. The intent of the order is to manage the low temperature geothermal water resource (not the cold water) in the area.

Note that the order requires the installation of measuring equipment on or before April 1, 1990. The department will provide technical advice upon request relative to the needed equipment. The measuring equipment, however, shall be of a type acceptable to the department to monitor the following parameters:

1. Instantaneous rate of withdrawal and cumulative volume withdrawn;
2. Well head temperature;
3. Well head pressure or drawdown;
4. Closed-in pressure or water level when the well is not being used.

The question of the applicability of the reasonable pumping level provisions of the Idaho Code and the authority granted the department by Section 42-237a, Idaho Code, remain before the department and will be addressed in a separate action.

Please feel free to contact the department if you have questions.

Sincerely,

A handwritten signature in cursive script that reads "L. Glen Saxton". The signature is written in black ink and is positioned above the typed name and title.

L. GLEN SAXTON, Chief
Water Allocation Bureau

c: IDWR - W. Region