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AUG 12 2004

WATER RESOURCES
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August 11, 2004

John Westra
Western Regional Manager
Idaho Dept. of Water Resources
2735 Airport Way
Boise, ID 83705-5082

Re: 42-225 Forfeiture Exemptions

Dear Mr. Westra:

As you are aware, this law firm represents the interests of The Terteling Company and T-7, LLC with respect to their water right interests. I am writing to seek your input regarding the application of I.C. §42-225 with respect to my clients' diversions of water.

My clients own water rights to divert geothermal water from wells located within the Boise Front Low Temperature Geothermal Resource Ground Water Management Area (hereinafter "BFGWMA"). The BFGWMA was designated by the Director of IDWR on June 15, 1987. On June 3, 1988, the Director issued the Management Policy for the BFGWMA, and on June 10, 1988, the Director issued an Order establishing a Moratorium on further development of water from the BFGWMA. The Moratorium was extended in 1998 and again in 2004. The purpose of these Orders and policy collectively are to protect existing water rights and to protect the geothermal resource within the BFGWMA from over appropriation and overuse.

Recent reactivation of Water District 63-S together with newly established monitoring and reporting programs are positive steps which benefit both BFGWMA users and IDWR. Although my clients have supported these programs in the hopes of achieving higher aquifer pressures within the BFGWMA, the desired results have not materialized. Instead, recent monitoring indicates that during periods of overlapping heating and irrigation uses, aquifer pressures in some locations are at levels close to those which may cause interference issues - and which resulted in disputes in the recent past.

My clients wish to reduce the quantity of water diverted pursuant to their BFGWMA water rights to assist in the protection and conservation of the local geothermal groundwater

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resource without any fear that their water rights may be considered to be partially forfeited. My clients are prepared to implement conservation measures (which are not required by any authority) that will result in the reduction of their diversions. Obviously, a reduction in the quantity of water diverted from the BFGWMA can only help protect and conserve the resource, and may also result in the recovery of aquifer pressures.

However, my clients, like other water users, are concerned that if they do implement non-required conservation measures, their water rights may be susceptible to allegations of forfeiture for non-use.

I.C. §42-223 does provide certain exceptions and/or defenses to forfeiture which may be applicable to my clients and other water right holders should they reduce their diversions of BFGWMA water for conservation purposes. For example, I.C. §42-223(4) provides protection from forfeiture for water rights that are not used to comply with the provisions of groundwater management plans approved by the director. The Management Policy sets forth requirements of users which include the following: "All uses, new and existing, must use the resource with reasonable efficiency to prevent waste of the heat in the resource"; "use with reasonable efficiency will be required." Management Policy, pp. 8 - 9. While my clients already are using the resource "with reasonable efficiency," they believe that further conservation measures, including the cessation of some diversions at some times are possible. I.C. §42-223(4) may provide my clients the ability to implement these measures, while at the same time ensure the continued existence and viability of their valuable water rights.

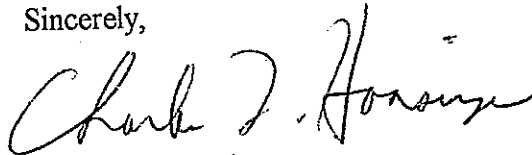
I.C. §42-223(9) may also be helpful to my clients and other responsible geothermal water users. That statute provides protection from forfeiture for the nonuse of a water right if the nonuse results from a water conservation practice which maintains the full beneficial use authorized by the right. Therefore, if my clients are able to maintain the full beneficial use authorized under their water rights while, at the same time implementing conservation measures to reduce their diversions, their water rights should be protected.

My clients seek written confirmation from IDWR that conservation practices they may propose to implement, specifically including the possible cessation of diversions at certain times, will not be viewed by IDWR as forfeiture of their water rights. It is my understanding that IDWR has recently provided similar guidance and assurance to certain Southeast Boise Groundwater Management Area water users. In providing such written assurances to Water District 63-S users, IDWR will be furthering the policies behind the designation of, and various orders affecting the BFGWMA, and will be assisting in preserving the resource for the future, and in preventing potential future conflicts.

I look forward to receiving your written response. My clients and I also are available to discuss this issue in a meeting at your convenience.

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Sincerely,

A handwritten signature in cursive script that reads "Charles L. Honsinger". The signature is written in black ink and is positioned above the printed name.

Charles L. Honsinger

cc: Clients
Gary Spackman
Ed Squires
Water District 63-S Users