



State of Idaho

DEPARTMENT OF WATER RESOURCES

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

December 27, 2004

DIRK KEMPTHORNE
Governor

KARL J. DREHER
Director

Charles Honsinger, Attorney
Ringert Clark Chartered
455 S Third St
PO Box 2773
Boise, ID 83701

RE: Forfeiture Exemption (Terteling) Letter of 8/11/04

Dear Mr. Honsinger:

This letter is in response to your letter of 8/11/04 and documents a previous telephone conversation.

Your client, the Terteling Company, hold water rights authorizing diversion of geothermal water from wells located in the Stuart Gulch Water District #63S. The geothermal resource is protected by the Boise Front Low Temperature Geothermal Resource Ground Water Management Area (BFGWMA) established in 1987 and a 1988 Moratorium Order issued by the Department Director curtailing further development (extended to 2008).

The Terteling Company proposes voluntary conservation practices that will reduce geothermal diversion quantities for unchanged-full beneficial water uses. There is concern that diversion quantity reductions could result in forfeiture of portions of the Terteling Company's water rights. Your letter seeks written confirmation from the Department of Water Resources (Department) that conservation practices will not subject their water rights to forfeiture.

Idaho Code (IC) §42-223 recognizes exception and defenses to forfeiture of water rights. "Water conservation practices" and "conserved water" are further defined under IC§ 42-250. IC §42-223(9) states that a water right shall not be forfeited for nonuse resulting from conservation practices if full beneficial use is maintained. Despite the statutory protection against forfeiture, there is not a proceeding/case presently before the Department raising the issue of forfeiture. The Department can not confirm forfeiture protection of a water right based on a letter inquiry and a statement proposing future water conservation practices.

IC §42-223(4) provides protection from forfeiture if nonuse is recognized by a ground water management plan pursuant to IC §42-233b. The BFGWMA Management Policy was approved by the Department Director in 1988 and meets IC§ 42-233b provisions.

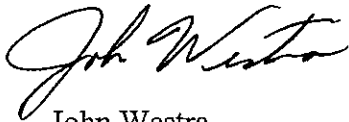
Charles Honsinger
December 27, 2004
Page 2.

The policy identifies goals, objectives, and administrative actions performed by the Department. However, water conservation and protection from forfeiture provisions are lacking from the policy. Amending the BFGWMA Management Policy appears to be the best action to address the Terteling Company's and other water users forfeiture concerns at this time. To facilitate the amendment process, the Terteling Company could:

-Petition the Department Director to establish an BFGWMA Advisory Committee to draft an updated/amended Management Policy that reflects the conservation-forfeiture concerns. The draft would be submitted to the Director for review and signature.

Should you or the water users need further assistance/information in facilitating the process, feel free to contact me at the Western Regional Office, phone 334-2190.

Sincerely,



John Westra
Manager, Western Region

cc: Water District #63S