

HOFSTETTER LAW OFFICE

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Dana L. Hofstetter
Attorney at Law

Telephone: (208) 424-7800
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March 13, 2009

RECEIVED

MAR 16 2009

DEPARTMENT OF
WATER RESOURCES

Idaho Department of Water Resources
P.O. Box 83720
Boise, Idaho 83720-0098

Re: In the Matter of Water District 63-S, Stewart Gulch

Dear Sir/Madam:

Enclosed are the facsimile original and a copy for each of the following two (2) documents:

*Response to Petition for Order Implementing Monitoring Plan; and
Affidavit of Dana L. Hofstetter.*

Please file the enclosed originals in the above-referenced file and conform the copies and return the conformed copies to me in the enclosed addressed and stamped envelope. Please contact me if you have any questions about this matter. Thank you for your assistance with this matter.

Done
D.L.H.

Sincerely,

HOFSTETTER LAW OFFICE, L.L.C.


Dana L. Hofstetter

Enclosures
3006.3/8455

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MAR 16 2009

DEPARTMENT OF
WATER RESOURCES

Dana L. Hofstetter, ISB #3867
Hofstetter Law Office, LLC
608 West Franklin Street
Boise, Idaho 83702
Telephone: (208) 424-7800
Facsimile: (208) 424-8774
E-Mail: Dana@IdahoWaterLaw.com

Attorney for Edwards Family LLC

**BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO**

)	
)	
In the Matter of)	RESPONSE TO
Water District 63-S,)	PETITION FOR ORDER
Stewart Gulch)	IMPLEMENTING MONITORING
)	PLAN
<hr style="width: 40%; margin-left: 0;"/>)	

Edwards Family LLC ("Edwards"), by and through its counsel of record, Dana L. Hofstetter of Hofstetter Law Office, LLC, respectfully submits this Response to Petition For Order Implementing Monitoring Plan, pursuant to Idaho Code, the Idaho Department of Water Resources' Rules and other applicable legal authorities. This Response is supported by the contemporaneously filed Affidavit of Dana L. Hofstetter and the records of the Department.

Edwards Family , LLC notes that a comprehensive monitoring plan is already in place in Water District 63-S, developed at least in part in connection with the resolution of the City Of

Boise permit matters and involving the remainder to the Boise Front Geothermal Aquifer also. The proposed monitoring plan would make certain changes to current monitoring procedures, for Stewart Gulch Water District 63-S.

The Petition promotes the proposed monitoring plan on the basis that it was created by the watermaster in connection with settlement discussions. However, while the watermaster had input into the monitoring plan, he was not the creator of the monitoring plan. *Affidavit of Dana L. Hofstetter*. Further, the record provides no evidentiary basis as to why the proposed monitoring plan in lieu of the current monitoring plan is necessary at the present time. *Id.* Further, pursuant to Idaho Rule of Evidence 408 it is improper to use the fact that the monitoring plan was developed in settlement discussions as an evidentiary basis supporting adoption of the plan. Likewise, the recent vote supporting the Resolution promoting adoption of the monitoring plan, should not be viewed as widespread support for the plan within the District. *Affidavit of Dana L. Hofstetter*.

Edwards does not support changes to the existing monitoring plan until the Snake River Basin Adjudication (“SRBA”) proceedings concerning the subject water rights are concluded. Until finalization of the respective partial decrees, it will not be fully known which rights should be monitored and what types of monitoring would be most appropriate. Further, it is noted that additional administration of such rights might require an interim administration ruling from the SRBA Court.

For the foregoing reasons, Edwards respectfully asks the Department not to adopt the proposed monitoring plan at the present time.

DATED this 13th day of March, 2009.

HOFSTETTER LAW OFFICE, LLC

By 
Dana L. Hofstetter
Attorney for Edwards Family LLC

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 13th day of March, 2009, I caused the foregoing **RESPONSE TO PETITION** to be served by the pre-paid method(s) indicated on the following:

Original to:

David R. Tuthill, Jr., Director
Idaho Department of Water Resources
The Idaho Water Center
322 East Front Street
Boise, Idaho 83702
 U.S. Mail Fed Ex Hand Fax

Copies to:

Gary Spackman
Idaho Department of Water Resources
P.O. Box 83720
Boise, Idaho 83720-0098
 U.S. Mail Fed Ex Hand Fax

Ken Neely
Idaho Department of Water Resources
P.O. Box 83720
Boise, Idaho 83720-0098
 U.S. Mail Fed Ex Hand Fax

Andrew Waldera (Attorney for Quail Hollow)
Moffatt Thomas
P.O. Box 829
Boise, Idaho 83701
 U.S. Mail Fed Ex Hand Fax

Charles Honsinger (Attorney for The Terteling Company and the Ryans)
Ringert Clark
P.O. Box 2773
Boise, Idaho 83701-2773
 U.S. Mail Fed Ex Hand Fax



Dana L. Hofstetter

RECEIVED

MAR 16 2009

DEPARTMENT OF
WATER RESOURCES

Dana L. Hofstetter, ISB #3867
Hofstetter Law Office, LLC
608 West Franklin Street
Boise, Idaho 83702
Telephone: (208) 424-7800
Facsimile: (208) 424-8774
E-Mail: Dana@IdahoWaterLaw.com

Attorney for Edwards Family LLC

**BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO**

**In the Matter of
Water District 63-S,
Stewart Gulch**

) **AFFIDAVIT OF**
) **DANA L. HOFSTETTER**
) **IN RESPONSE TO**
) **PETITION FOR ORDER**
) **IMPLEMENTING MONITORING**
) **PLAN**
)

STATE OF IDAHO)
) ss.
COUNTY OF ADA)

Dana L. Hofstetter, being first being duly sworn upon oath, deposes and says:

(1) I am Dana L. Hofstetter, counsel of record in this matter for Edwards Family LLC.

(2) As counsel for Edwards Family LLC, the holder of Water Right No. 63-14 which is diverted within District 63-S, I attended the Snake River Basin Adjudication (“SRBA”) settlement meetings involving the Water District 63-S water rights, participated in the City of Boise geothermal permit

proceedings and also attended the Water District 63-S annual meeting held on March 5, 2009.

(3) The Monitoring Plan that is the subject of the Terteling Company, Inc.'s Petition was developed in the context of SRBA settlement negotiations. The monitoring plan was one component of a comprehensive settlement package that was under discussion. However, no final settlement agreement was reached as to the monitoring plan or as to any other portion of the settlement package. It is also my recollection that The Terteling Company was a major contributor to the proposed monitoring plan, that the other parties had some input and that the Watermaster also had input. However, I would not describe the Watermaster as the creator of the monitoring plan.

(4) District 63-S already has monitoring and reporting requirements in effect, along with the rest of the Boise Front Geothermal Aquifer, as part of the settlement of the City of Boise's permit proceedings.

(5) At the March 5, 2009, Water District 63-S annual meeting, the proposed Resolution supporting adoption of the proposed monitoring plan was approved only after The Terteling Company invoked the special voting procedures in Idaho Code §42-605(4) providing for the weighting of votes based on assessments. Of the three voting members of the District, only The Terteling Company voted in favor of the Resolution, with Quail Hollow abstaining and Edwards Family LLC voting nay.


FURTHER YOUR AFFIANT SAYETH NAUGHT.

DATED this 13th day of March, 2009.


Dana L. Hofstetter

SUBSCRIBED AND SWORN to before me this 13th day of March 2009.





Notary Public in and for the State of Idaho
Residing at: Umo, ID
My Commission Expires: 3-5-13

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 13th day of March, 2009, I caused the foregoing **AFFIDAVIT OF DANA L. HOFSTETTER** to be served by the pre-paid method(s) indicated on the following:

Original to:

David R. Tuthill, Jr., Director
Idaho Department of Water Resources
The Idaho Water Center
322 East Front Street
Boise, Idaho 83702
 U.S. Mail Fed Ex Hand Fax

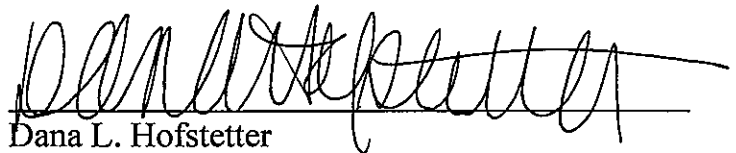
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Gary Spackman
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Ken Neely
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Andrew Waldera (Attorney for Quail Hollow)
Moffatt Thomas
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Charles Honsinger (Attorney for The Terteling Company and the Ryans)
Ringert Clark
P.O. Box 2773
Boise, Idaho 83701-2773
 U.S. Mail Fed Ex Hand Fax


Dana L. Hofstetter

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