

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

IN THE MATTER OF APPLICATION)
FOR TRANSFER NO. 68558 IN THE)
NAME OF TERTELING COMPANY INC)
_____)

**AMENDED PRELIMINARY ORDER
AND ORDER DENYING PETITION
FOR RECONSIDERATION**

This matter having come before the Idaho Department of Water Resources ("IDWR") in the form of an application for transfer, IDWR enters the following Findings of Fact and Order:

FINDINGS OF FACT

On September 19, 2000, The Terteling Company, Inc. ("Terteling") filed Application for Transfer No. 5875 ("application") with IDWR proposing to change the place of use and add points of diversion for water right nos. 63-12, 63-13, and 63-15. The application was later renumbered to 68558. The water rights were decreed in the case of Silkey v. Tiegs, 51 Idaho 344, 5 P.2d 1049 (1931) that authorized diversion of low temperature geothermal water.

The application was protested by the Edwards Family LLC ("Edwards"), the owner of water right no. 63-14, one of the water rights decreed in Silkey. The parties reached an agreement resulting in suspension of the protest. Complete withdrawal of the protest was contingent upon inclusion of agreed-to conditions in the final approval of the transfer by IDWR.

On June 3, 2002, IDWR approved transfer no. 68558. Condition No. 9 of the approval stated:

Diversion from the Windsock well shall not significantly reduce artesian pressure for water rights bearing priority dates earlier than December 20, 2000, describing points of diversion within Water District 63-S. A significant reduction is defined as a decline in pressure below historical pressure reductions caused by diverting from the wells in the Silkey v. Tiegs decree.

On July 8, 2002, Terteling filed a PETITION FOR RECONSIDERATION arguing that IDWR should not protect historical artesian pressure. Terteling requested that the language of the condition be modified to establish and protect reasonable pumping levels. Terteling argues that "the unique protection of artesian pressure in the Silkey v. Tiegs decree . . . applies only to applicant's rights 63-12 and 63-13."

There is no language in the Silkey v. Tiegs decree that states the court only intended to protect artesian pressure for water right nos. 63-12 and 63-13. Water right

no. 63-14, owned by Edwards, was limited, but other rights, including 63-15, now owned by Terteling and approved for diversion by the transfer contested by Terteling, were totally curtailed presumably to protect artesian pressure in the aquifer. The total curtailment was intended to protect all the water rights bearing earlier priority dates, not just the two senior priority water rights.

On October 27, 1993, the director of IDWR issued an ORDER DENYING PETITIONS FOR REHEARING AND AMENDED MEMORANDUM DECISION AND ORDER in a contested case regarding the regulation of the low temperature geothermal resources in Stewart Gulch. At that time, Terteling asked IDWR to establish reasonable pumping levels. Conclusion of Law no. 7 of the order states:

Because the Silkey decree specifically addressed and protected artesian pressure in the aquifer, the Department, in deference to the Silkey decree, will refrain from examining whether the artesian pressure in Stewart Gulch constitutes a reasonable pumping level and is in the public interest pursuant to I.C. § 42-226 until such time as the court addresses the issue in the Snake River Basin Adjudication.

IDWR determined in 1993 that the Silkey v. Tiegs decree protects artesian pressure. IDWR will not eliminate this protection in the condition and should add language to the condition allowing modification by the Snake River Basin Adjudication Court as set forth in the previous decision.

On August 6, 2002, Terteling filed a MOTION TO STRIKE EDWARD'S FAMILY LLC'S RESPONSE TO PETITION FOR RECONSIDERATION AND SUPPORTING AFFIDAVITS ("Motion to Strike") filed by Edwards. The motion was based on an argument that the order suspending the protest and the agreement between Terteling and Edwards prohibited the filing of the response.

IDWR need not decide whether to strike the response because Terteling's petition asks for a determination of Edwards' status as a party. IDWR will accept submittals from those who are not parties prior to making a decision.

Terteling also asked for an order from IDWR authorizing diversion of water from the Windsock Well prior to final approval of the application for transfer by IDWR. A separate order specifically authorizing diversion from this new well is not appropriate, since this Amended Preliminary Order that modifies the Preliminary Order issued on June 3, 2002 allows diversion of water under terms of the Preliminary Order as herein amended.

ORDER

IT IS HEREBY ORDERED that the petition for reconsideration filed by The Terteling Company, Inc, is **DENIED**.

IT IS FURTHER ORDERED that a new condition of transfer approval will be **ADDED** as follows and identified as Condition No. 7:

The Silkey v. Tiegs decree specifically addressed and protected artesian pressure in the aquifer. The Department, in deference to the Silkey decree, will refrain from examining whether the artesian pressure in Stewart Gulch constitutes a reasonable pumping level and is in the public interest pursuant to I.C. § 42-226 until such time as the court addresses the issue in the Snake River Basin Adjudication.

IT IS FURTHER ORDERED that the former Condition No. 7 on the transfer will become Condition No. 8, and will be **CHANGED** to read as follows:

Unless otherwise determined by the Snake River Adjudication, diversion from the Windsock well shall not significantly reduce artesian pressure for water rights bearing priority dates earlier than December 20, 2000, describing points of diversion within Water District 63-S. A significant reduction is defined as a decline in pressure below historical pressure reductions caused by diverting from the wells in the Silkey v. Tiegs decree. Upon written complaint of significant reduction from the holder of a water right bearing a priority date earlier than December 20, 2000 or upon IDWR's own initiative, and upon a preliminary finding by IDWR that there has been a significant reduction in pressure, the director may require the right holder to: (a) conduct further monitoring to determine whether diversion from the Windsock well is causing the significant reduction in pressure; (b) curtail diversion of water from the Windsock well; or (c) require mitigation for diversion of water from the Windsock well.

IT IS FURTHER ORDERED that the Motion to Strike filed by Terteling is **DENIED**.

Dated this ____9th____ day of _____August_____, 2002.

/Signed/

L. GLEN SAXTON, P.E.
Chief, Water Allocation Bureau