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OCT 14 2004

Department of Water Resources

ROBERT E. WILLIAMS

IDAHO STATE BAR No. 1693

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Attorneys for Terry Ketterling,
Successor-in-interest to F. F. Gunning

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE
STATE OF IDAHO

IN THE MATTER OF THE DIVERSION
AND USE OF WATER NOT IN
CONFORMANCE WITH CONDITIONS
OF APPROVAL OF TRANSFER NO.
5197 INVOLVING RIGHTS NOS. 36-
02457B, 36-07760B AND 36-
08063B IN THE NAME OF F.F.
GUNNING

MOTION TO ISSUE A FINAL ORDER
APPROVING TRANSFER NO. 5197

COMES NOW, TERRY KETTERLING, successor-in-interest to F. F. Gunning and Irene Gunning, husband and wife, and Susan Gunning, by and through his attorney, Robert E. Williams of the firm Fredericksen, Williams, Meservy and Lothspeich, LLP, and moves the Department for a final order approving Transfer No. 5197 involving Water Rights Nos. 36-02457B, 36-07760B, and 36-08-63F. This motion is made for the following reasons:

MOTION TO ISSUE A FINAL ORDER APPROVING TRANSFER NO. 5197 - 1

F:\data\Ketterling\Mtn.wpd

1. On the 25th day of May, 2000, the Idaho Department of Water Resources issued its preliminary order rescinding the previously issued order approving Transfer No. 5917.

2. On the 22nd day of June, 2000, the Idaho Department of Water Resources entered its order granting the Gunnings' Petition for Reconsideration.

3. The Order Granting the Petition for Reconsideration was predicated on the conclusion of litigation in Case No. CV 00 374, then pending in the District Court of the Fifth Judicial District of the State of Idaho, in and for the County of Gooding, with respect to the final award of a CAFO siting permit under the ordinances of Gooding County for the dairy facility to which the water right referred to in the transfer was appurtenant. Attached to this motion as **EXHIBIT A** is a certified copy of the final judgment entered in Case No. CV 00 374 in the District Court of the Fifth Judicial District of the State of Idaho in and for the County of Gooding, entitled F. F. Gunning and Irene Gunning, husband and wife, and Susan Gunning, a single woman, dba Hillcrest Dairy, Plaintiffs, vs Gooding County, Idaho, et al, Defendants.

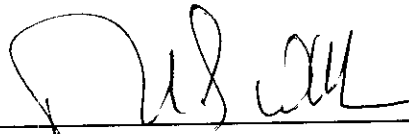
4. The Judgment, which was not appealed, grants to the Plaintiffs a siting permit under Gooding County ordinances for a dairy facility of 750 mature cows.

5. On the 4th day of January, 2002, the Plaintiff sold the real property and appurtenant water rights to Terry and Linda Ketterling, husband and wife. A copy of the Deed recorded to the Ketterlings as a result of that transaction is attached hereto as **EXHIBIT B**.

6. The moving parties hereby request that Water Right Transfer No. 5197 be finally approved, and that the records of the Idaho Department of Water Resources be altered accordingly.

DATED this 24 day of October, 2004.

FREDERICKSEN, WILLIAMS, MESERVY
& LOTH SPEICH, LLP

By: 

ROBERT E. WILLIAMS
Attorney for Applicant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY That on this ____ day of _____, 2004, I served a true and correct copy of the foregoing document on the person(s) whose names and addresses appear below by the method indicated:

F.F. Gunning
1367 Locust Street North #157
Twin Falls, Idaho 83301

- ☐ U.S. Mail, postage prepaid
- ☐ Hand Delivery ☐ Court Folder
- ☐ Facsimile
- ☐ Federal Express

Susan Gunning
5104 West Cove
Boise ID 83703

- ☐ U.S. Mail, postage prepaid
- ☐ Hand Delivery ☐ Court Folder
- ☐ Facsimile
- ☐ Federal Express

Don Cogger
2923 South 2200 East
Wendell ID 83355

- ☐ U.S. Mail, postage prepaid
- ☐ Hand Delivery ☐ Court Folder
- ☐ Facsimile
- ☐ Federal Express

Marv Patten
Idaho Department of Agriculture
Bureau of Dairying
2270 Old Penitentiary Road
PO Box 790
Boise ID 83701

- ☐ U.S. Mail, postage prepaid
- ☐ Hand Delivery ☐ Court Folder
- ☐ Facsimile
- ☐ Federal Express

Patrick D. Brown
Hutchinson & Brown
PO Box 207
Twin Falls ID 83303-0207

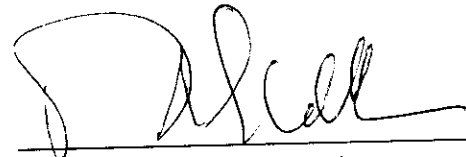
- ☐ U.S. Mail, postage prepaid
- ☐ Hand Delivery ☐ Court Folder
- ☐ Facsimile
- ☐ Federal Express

Allen Merritt
Idaho Department of Water Resources
1341 Fillmore St., Suite 200
Twin Falls ID 83301-3388

- ☐ U.S. Mail, postage prepaid
- ☐ Hand Delivery ☐ Court Folder
- ☐ Facsimile
- ☐ Federal Express

ORIGINAL TO:
Idaho Department of Water Resources
1301 North Orchard Street
PO Box 83720
Boise ID 83720-0098

- ☐ U.S. Mail, postage prepaid
- ☐ Hand Delivery ☐ Court Folder
- ☐ Facsimile
- ☐ Federal Express



ROBERT E. WILLIAMS

EXHIBIT A

SEP 20 2004

DISTRICT COURT
GOODING CO. IDAHO
FILED

NOV 28 AM 10 45

GOODING COUNTY CLERK

BY: CLK

CLERK OF IDAHO DEPUTY
COUNTY OF GOODING ss.

I hereby certify that the foregoing is a true copy
of the instrument on file in my office.

9-17-2004
HELEN R. EDWARDS
Deputy Court Clerk

Robert E. Williams
IDAHO STATE BAR NO. 1693
FREDERICKSEN, WILLIAMS & MESERVY
Attorneys at Law
117 South Adams Street
P. O. Box 168
Jerome, Idaho 83338
Telephone: (208) 324-2303
Facsimile: (208) 324-3135

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF GOODING

F.F. GUNNING and IRENE GUNNING,)
husband and wife, and SUSAN GUNNING,)
a single woman, dba HILLCREST DAIRY,)

Plaintiffs,)

vs)

GOODING COUNTY, IDAHO, a political)
subdivision of the State of Idaho, TOM)
FAULKNER, MITCH ARKOOSH and WIN)
HENSLEE, Commissioners,)

Defendants.)

Case No. CV 00 374

JUDGMENT

The above entitled matter having come before this Court on the stipulation of the parties,
the Court having reviewed the filings herein, being fully advised in the premise, and good cause
showing,

IT IS HEREBY ORDERED, AND THIS DOES ORDER as follows:

a) Plaintiffs have a valid "Grandfathered" dairy CAFO siting permit on their real property located in Gooding County, Idaho, more particularly described as:

Township 7 South, Range 15 East of the Boise Meridian,
Gooding County, Idaho:

Section 34: E $\frac{1}{2}$ NE $\frac{1}{4}$
for 750 mature cows.

b) The foregoing siting permit shall be considered valid under Gooding County Ordinance No. 60, Gooding County Ordinance No. 70, or any other ordinance of Gooding County which may be applicable.

c) Plaintiff shall construct and install at their expense, as soon as weather permits, an appropriate windbreak, designed, constructed, and planted in accordance with NRCS Guidelines, along the portion of the western boundary of the real property adjacent to the corrals now located on the real property.

d) Each party shall bear their respective attorney fees and costs incurred.

IT IS SO ORDERED this 28 day of Nov, 2000.

S/ Nathan Higer
NATHAN HIGER
District Judge

EXHIBIT B

WARRANTY DEED

FOR VALUE RECEIVED,

F. F. GUNNING and IRENE GUNNING, husband and wife, and SUSAN E. GUNNING, a single woman, /aka Susan Gunning, and SUSAN E. GUNNING, as Personal Representative of the Estate of Gail C. Gunning, Deceased, hereinafter collectively referred to as "Grantors", do hereby grant, bargain, sell and convey unto **TERRY L. KETTERLING and LINDA K. KETTERLING, husband and wife,** whose address is 475 E. 16th N, Mountain Home, ID 83647 the "Grantee", the following described premises located in Gooding County, Idaho, to wit:

See Exhibit A attached hereto and by this reference made a part hereof

TOGETHER WITH all water rights appurtenant thereto, including, but not limited to:

80 shares of stock in the Northside Canal Company, Ltd..
Water Rights 36-2457B, 36-7760B, 36-8063F, and 36-15511.

TO HAVE AND TO HOLD the said premises, with their appurtenances unto the said Grantee, its heirs and assigns forever. The said Grantors do hereby covenant to and with the said Grantee, that they are the owners of said premises; that they will warrant and defend the same from all lawful claims whatsoever, except as hereinabove specifically provided, and the specific exceptions listed below.

1. Taxes subsequent to the year 2001, which are not yet due or payable.
2. Assessments of the North Side Canal Company and the rights and powers of said Company as by law provided.
3. Right of way for canals, laterals and waste ditches of the North Side Canal Company, Ltd.
4. Power Line Easement given by A. A. Hobdey and Myrtle Jane Hobdey, husband and wife, to Idaho Power Company, a corporation, dated May 26, 1941, recorded December 4, 1945 in Book 5 Page 623 as Instrument Number 94986, Gooding County records, affecting a portion of the NE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 34, Township 7 South, Range 15, East Boise Meridian.
5. Power Line Easement given by Idaho Farms Company, R. P. Parry, President, to Idaho Power Company, a corporation, dated September 15, 1943, recorded December 4, 1945 in Book 5 Page 624 as Instrument Number 94987, Gooding County records, affecting a portion of the SE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 34, Township 7 South, Range 15, East Boise Meridian.

6. Power Line Easement given by George D. Ellsworth and Helen Ellsworth, husband and wife, to Idaho Power Company, a corporation, dated September 7, 1976, recorded April 5, 1977 as Instrument Number 64057, Gooding County records, affecting a portion of the NE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 34, Township 7 South, Range 15, East Boise Meridian.
7. Power Line Easement given by Ben T. Austin and Glade M. Knight and George D. Ellsworth to Idaho Power Company, a corporation, dated March 5, 1981, recorded October 5, 1981 as Instrument Number 91702, Gooding County records, affecting a portion of the SE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 34, Township 7 South, Range 15, East Boise Meridian.
8. Power Line Easement given by Glade M. Knight, sole owner, to Idaho Power Company, a corporation, dated October 7, 1985, recorded March 28, 1986 as Instrument Number 120297, Gooding County records, affecting a portion of the SE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 34, Township 7 South, Range 15, East Boise Meridian.
9. Power Line Easement given by F. F. Gunning to Idaho Power Company, a corporation, dated October 13, 1995, recorded January 11, 1996 as Instrument Number 163988, Gooding County records, affecting the NE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 34, Township 7 South, Range 15 East, Boise Meridian.
10. Power Line Easement given by G. C. Gunning to Idaho Power Company, a corporation, recorded December 6, 1996 as Instrument Number 168851, Gooding County records, affecting the NE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 34, Township 7 South, Range 15 East, Boise Meridian, Gooding County, Idaho.

DATED THIS 5th day of January, 2002.

✓ F. F. Gunning
F. F. GUNNING

✓ Irene Gunning
IRENE GUNNING

✓

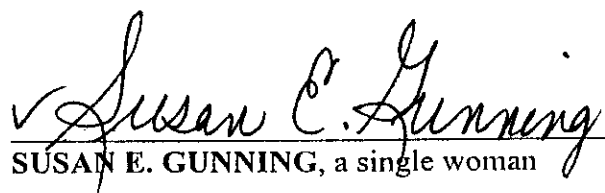
SUSAN E. GUNNING, a single woman

SUSAN E. GUNNING, as the Personal
Representative of the Estate of
Gail C. Gunning, Deceased

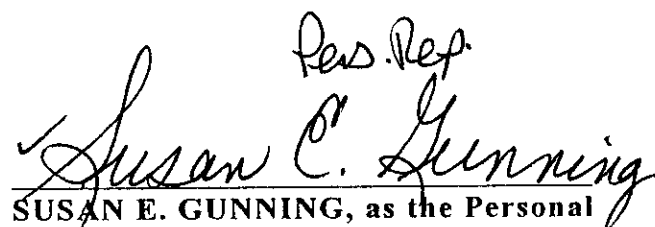
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10. Power Line Easement given by G. C. Gunning to Idaho Power Company, a corporation, recorded December 6, 1996 as Instrument Number 168851, Gooding County records, affecting the NE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 34, Township 7 South, Range 15 East, Boise Meridian, Gooding County, Idaho.

DATED THIS 4 day of January, 2002.

F. F. GUNNING


SUSAN E. GUNNING, a single woman

IRENE GUNNING

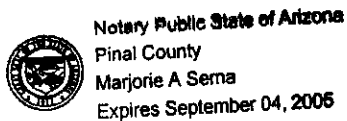

SUSAN E. GUNNING, as the Personal
Representative of the Estate of
Gail C. Gunning, Deceased

Arizona
STATE OF IDAHO)

SS.
County of PINAL)

On this 14th day of January, 2002, before me, the undersigned, a Notary Public in and for said County and State, personally appeared F. F. GUNNING and IRENE GUNNING, husband and wife, known to me to be the persons whose names are subscribed to the within and foregoing instrument, and who acknowledged to me that they executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and seal, the day and year in this certificate first above written.



Marjorie A. Serna
NOTARY PUBLIC for ARIZONA
Residing at: 513 E. 10th Ave. Phoenix AZ 85019
Commission Expires: Sept. 04, 2005

STATE OF IDAHO)

SS.
County of _____)

On this _____ day of January, 2002, before me, the undersigned, a Notary Public in and for said County and State, personally appeared SUSAN E. GUNNING, individually and as Personal Representative of the Estate of Gail C. Gunning, Deceased, known to me to be the person whose name is subscribed to the within and foregoing instrument, and who acknowledged to me that she executed the same, individually and on behalf of the Estate.

IN WITNESS WHEREOF, I have hereunto set my hand and seal, the day and year in this certificate first above written.

NOTARY PUBLIC for _____
Residing at: _____
Commission Expires: _____

STATE OF IDAHO)

County of Ada ^{ss.}

On this 4th day of January, 2002, before me, the undersigned, a Notary Public in and for said County and State, personally appeared F. F. GUNNING and IRENE GUNNING, husband and wife, known to me to be the persons whose names are subscribed to the within and foregoing instrument, and who acknowledged to me that they executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and seal, the day and year in this certificate first above written.

NOTARY PUBLIC for _____

Residing at: _____

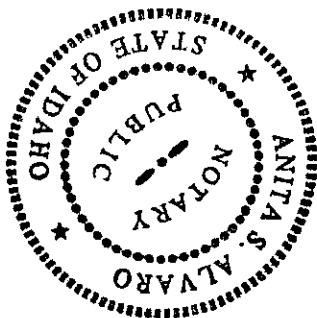
Commission Expires: _____

STATE OF IDAHO)

County of Ada ^{ss.}

On this 4th day of January, 2002, before me, the undersigned, a Notary Public in and for said County and State, personally appeared SUSAN E. GUNNING, individually and as Personal Representative of the Estate of Gail C. Gunning, Deceased, known to me to be the person whose name is subscribed to the within and foregoing instrument, and who acknowledged to me that she executed the same, individually and on behalf of the Estate.

IN WITNESS WHEREOF, I have hereunto set my hand and seal, the day and year in this certificate first above written.



Anita S. Alvaro

NOTARY PUBLIC for Idaho

Residing at: Boise, ID

Commission Expires: 1-25-04

EXHIBIT A

PARCEL NO. 1

TOWNSHIP 7 SOUTH, RANGE 15 EAST OF THE BOISE MERIDIAN,
GOODING COUNTY, IDAHO

Section 34: NE $\frac{1}{4}$ NE $\frac{1}{4}$; EXCEPT the SW $\frac{1}{4}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$.

PARCEL NO. 2

TOWNSHIP 7 SOUTH, RANGE 15 EAST OF THE BOISE MERIDIAN,
GOODING COUNTY, IDAHO

Section 34: SW $\frac{1}{4}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$.

PARCEL NO. 3

TOWNSHIP 7 SOUTH, RANGE 15 EAST OF THE BOISE MERIDIAN,
GOODING COUNTY, IDAHO

Section 34: SE $\frac{1}{4}$ NE $\frac{1}{4}$; EXCEPTING THEREFROM that part of the E $\frac{1}{2}$ NE $\frac{1}{4}$, described as follows:

Beginning at the East quarter corner for section 34 marked with a $\frac{1}{2}$ " steel pin;
Thence West 924.36 feet along the Southerly boundary of the E $\frac{1}{2}$ NE $\frac{1}{4}$ to the
TRUE POINT OF BEGINNING;
Thence West 395.12 feet along said Southerly boundary to the Southwest corner
of the E $\frac{1}{2}$ NE $\frac{1}{4}$;
Thence North 0°19'14" West, 415.07 feet along the Westerly boundary of the
E $\frac{1}{2}$ NE $\frac{1}{4}$;
Thence Southeasterly 581.80 feet along a curve left having a radius of 570.00 feet
and a chord of South 45°32'11" East, 556.87 feet;
Thence South 25.00 feet to the TRUE POINT OF BEGINNING.
Subject to a 25.00 feet in width county road right of way along the Southerly
boundary.
Subject to a 20.00 feet in width access easement along the Westerly boundary.

EXHIBIT

A