File 1 of 2

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

In Re SRBA	)	PARTIAL DECREE PURSUANT TO
	)	I.R.C.P. 54(b) FOR
Case No. 39576	)	
	)	Water Right 36-02457

NAME & ADDRESS: TAMMY D VAN DYK
RICHARD B VAN DYK
216A N 500 W
JEROME ID 83338

SOURCE: GROUNDWATER

QUANTITY: 1.00 CFS

USE OF THIS RIGHT WITH RIGHT NO. 36-07760 IS LIMITED TO A TOTAL COMBINED DIVERSION RATE OF 3.30 CFS, A TOTAL COMBINED ANNUAL DIVERSION VOLUME OF 888 AF.

PRIORITY DATE: 09/29/1961

POINT OF DIVERSION: T07S R16E S21 NENESE Within JEROME County

PURPOSE AND PERIOD OF USE:

PURPOSE OF USE	PERIOD OF USE	QUANTITY
IRRIGATION	Irrigation Season	1.00 CFS

PLACE OF USE: IRRIGATION Within JEROME County

T07S R16E S21	SWNE 33	SENE 40	NESE 40	NWSE 34
S22	NESW 29	NWSW 36	NWSE 10	

222 ACRES TOTAL

USE OF THIS RIGHT WITH RIGHT NO. 36-07760 IS LIMITED TO THE IRRIGATION OF A COMBINED TOTAL OF 222 ACRES IN A SINGLE IRRIGATION SEASON.

THIS RIGHT IS LIMITED TO THE IRRIGATION OF 118 ACRES WITHIN THE PLACE OF USE DESCRIBED ABOVE IN A SINGLE IRRIGATION SEASON.

DANIEL C. HURLBUTT, JR.
PRESIDING JUDGE
Snake River Basin Adjudication

RULE 54(b) CERTIFICATE

With respect to the issues determined by the above judgment or order, it is hereby CERTIFIED, in accordance with Rule 54(b), I.R.C.P., that the court has determined that there is no just reason for delay of the entry of a final judgment and that the court has and does hereby direct that the above judgment or order shall be a final judgment upon which execution may issue and an appeal may be taken as provided by the Idaho Appellate Rules.

DANIEL C. HURLBUTT, JR.
PRESIDING JUDGE
Snake River Basin Adjudication

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STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
North Orchard Street, P.O. Box 83720
Boise, Idaho 83720-0098

Return Service Requested

PRESORTED
FIRST CLASS

RECEIVED
NOV 18 1998
Idaho Water Resources

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F F GUNNING
G C GUNNING
PO BOX 821
WENDELL ID 83355

GUNN821 833552016 1A98 05 11/16/98
RETURN TO SENDER
GUNNING GAIL C
5104 W COVE ST
BOISE ID 83703-1976

Re-sent
11-19-98
gw

RECEIVED
NOV 19 1998
Idaho Department of Water Resources

LAW OFFICES
HOBDEY & HOBDEY
125 FIFTH AVENUE WEST
P.O. BOX 176
GOODING, IDAHO 83330-0176

CRAIG D. HOBDEY
(208) 934-4429

OF COUNSEL
CECIL D. HOBDEY

November 18, 1998

Idaho Department of Water Resources
1301 North Orchard Street
P.O. Box 83720
Boise, Idaho 83720-0098

ATTN: L. GLEN SAXTON

RE: GUNNING TRANSFER APPLICATION NO. 5297
OUR CLIENT: CITY OF WENDELL, IDAHO

Dear Mr. Saxton:

Enclosed please find Protestant's, City of Wendell, Answers to Interrogatories and Requests for Production, together with supplemental response. The items identified in the Response to Requests for Production are exhibits we intend to rely on at the hearing scheduled for December 10, 1998. If this does not properly comply with I.D.A.P.A. Rules of Procedure 37.01.01 606, please advise and we will resubmit.

Sincerely yours,

Craig Hobdey

Craig D. Hobdey

CDH:bj
Enclosures

pc: Patrick D. Brown

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Craig D. Hobdey
HOBDEY & HOBDEY
Attorneys at Law
125 5th Avenue West
P.O. Box 176
Gooding, Idaho 83330-0176
208-934-4429

Attorneys for Protestants.

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE
STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR TRANSFER NO. 5297	
F. F. and G. C. GUNNING, Applicants, CITY OF WENDELL, WENDELL RECREATION DISTRICT, JOHN & VERLA HALL, NOEL BRIGGS, and FRANK ROST, JR., PROTESTANTS.	NOTICE OF SERVICE OF DISCOVERY

TO: APPLICANTS, F.F. AND G.C. GUNNING, AND YOUR ATTORNEY OF RECORD, PATRICK D. BROWN:

NOTICE IS HEREBY GIVEN that Protestant's (City of Wendell) Answers to Applicants' First Set of Interrogatories and Requests for Production to City of Wendell was served upon the parties by mailing a true and correct copy thereof to the following office on the 27th day of October, 1998 at the following address:

Patrick D. Brown
Attorney at Law
812 Shoshone Street East
Twin Falls, Idaho 83301

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NOV 12 1999

DATED THIS 27 day of October, 1998.

HOBDEY & HOBDEY

BY: Craig D. Hobdey
Craig D. Hobdey

CERTIFICATE OF SERVICE

I hereby certify that on the 27 day of October, 1998 I served a true and correct copy of the foregoing NOTICE OF SERVICE OF DISCOVERY by the method indicated below, and addressed to the following:

Patrick D. Brown
Attorney at Law
812 Shoshone Street East
Twin Falls, Idaho 83301

x U. S. Mail
_____ Hand Delivered
_____ Overnight Mail
_____ Telecopy (FAX)

Craig D. Hobdey

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Craig D. Hobdey
HOBDEY & HOBDEY
Attorneys at Law
125 5th Avenue West
P.O. Box 176
Gooding, Idaho 83330-0176
208-934-4429

Attorneys for Protestants.

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE
STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR TRANSFER NO. 5297 F. F. and G. C. GUNNING, Applicants, CITY OF WENDELL, WENDELL RECREATION DISTRICT, JOHN & VERLA HALL, NOEL BRIGGS, and FRANK ROST, JR., PROTESTANTS.	ANSWERS TO APPLICANTS' FIRST SET OF INTERROGATORIES AND REQUESTS FOR PRODUCTION TO CITY OF WENDELL

COMES NOW, the Protestant, CITY OF WENDELL, by and through it attorney, Craig D. Hobdey of the firm Hobdey & Hobdey, and hereby answers the Applicants' interrogatories as follows:

INTERROGATORY NO. 1: If you contend the proposed transfer may injure other water rights, state all the facts which support this contention.

ANSWER: In the past the City of Wendell has detected coliform bacteria in its drinking water. There has also been a manure smell. We have no experts to testify that this came from the Gunning dairy, only the fact that it exists.

INTERROGATORY NO. 2: If you contend the proposed transfer may constitute an enlargement in the use of the original rights, state all facts which support this contention.

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ANSWER: The original ground will not be dried up; the time of prior use was for irrigation season and the new use will be year round, therefore the total annual consumptive use will be increased. There is no way to monitor over-use of water and therefore the dairy will use as often and as much as it can.

INTERROGATORY NO. 3: If you contend the proposed transfer may not be in the local public interest, state all facts which support this contention.

ANSWER: The dairy has not been approved by local authorities and in fact has been denied a citing permit. It is in the City Impact Area and is within one (1) mile of the school district, city limits, recreation district, swimming pool, ball fields and city residents. It is illegal to piggy-back wells, as the dairy has done. It generally decreases the quality of life within the City and impact area.

INTERROGATORY NO. 4: If you contend the proposed transfer may be contrary to conservation of water resources within the State of Idaho, state all facts which support this contention.

ANSWER: The water is going to a higher consumptive use and is an expansion of the existing use as set forth in the answer to Interrogatory No. 2.

INTERROGATORY NO. 5: Who may you call as a witness before the hearing officer on this proposed transfer, and if any such witness purports to be an expert, what are all of the opinions he or she may testify about.

ANSWER: Gwen Rost, the City Mayor; Joe Baldwin, Department of Agriculture; Jennifer (last name unknown), Department of Environmental Quality.

Gwen Rost will testify to the illegality of the existing operation and its proximity to the City, the recreation district and school district. She will also testify as to the orders and increase of flies as a result of the dairy operation.

Joe Baldwin may testify as to the consumptive use of water on dairies.

Jennifer at DEQ may testify as to DEQ's requirements.

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INTERROGATORY NO. 6: What are all of the facts, data and other basis for each opinion which you or someone on your behalf may testify about at any hearing on this proposed transfer.

ANSWER: Those facts as set forth in Interrogatories 1 through 4; will support Gwen Rost's testimony that this is not in the public interest; and that it is an expansion of existing use and is speculative.

INTERROGATORY NO. 7: What documents or other exhibits may you attempt to use at hearing on this proposed transfer (please identify each by what it shows, when and who made it, and where it came from).

ANSWER: The only document that may be used at the hearing will be a map similar to the one attached to the Interrogatories delivered by Applicants.

INTERROGATORY NO. 8: On the attached map or by other description, identify the point of diversion, the place of use, and the SRBA claim number for each water right or claim that you contend may be injured or otherwise affected if the proposed transfer is approved.

ANSWER: The City of Wendell has four (4) wells, (a) the Gooding Well (on Gooding Street), 36-11277; (b) the Monroc Well (West of the Grain Elevator), 36-07440; (c) the Boise Street Well (Southwest of Park), 36-11276; (c) the Lewiston Well (Northwest area of town), 36-07722.

INTERROGATORY NO. 9: If you contend any water right may be injured or otherwise affected by this proposed transfer, for each right, state when if ever, it has ever had its water quality affected negatively and why you think it may be affected.

ANSWER: The Gooding Well has had water quality issues regarding smell.

INTERROGATORY NO. 10: If you contend any water right may be injured or otherwise affected by this proposed transfer for each such right, state how much water has been used since 1988, and why you think it may be affected.

ANSWER: Protestant does not believe that this small transfer

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of water will injure the quantity of water.

INTERROGATORY NO. 11: What facts are you aware of which show this proposed transfer may be in the local public interest.

ANSWER: There are no facts indicating the transfer is in the public interest.

INTERROGATORY NO. 12: What facts are you aware of which show this proposed transfer may not be in the local public interest.

ANSWER: See answers to Interrogatories 1 through 11.

REQUEST FOR PRODUCTION NO. 1: Please produce a true copy of any document or other exhibit you may attempt to use at any hearing on this proposed transfer.

ANSWER: See answer to Interrogatory No. 7.

REQUEST FOR PRODUCTION NO. 2: Please produce a true copy of any document or other exhibit which relates, positively or negatively, to the contentions you may raise at any hearing on this proposed transfer.

ANSWER: None.

DATED THIS 27 day of October, 1998.

HOBDEY & HOBDEY

BY: Craig Hobdey
Craig D. Hobdey
Attorney for Protestant,
City of Wendell

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VERIFICATION

STATE OF IDAHO)
) ss.
County of Gooding)

Gwen Rost, Mayor of the City of Wendell, Idaho, being first duly sworn upon oath deposes and says:

That she is the Mayor of the City of Wendell, Idaho, one of the Protestants in the above entitled action; that she has read the within and foregoing Answers to Applicants' First Set of Interrogatories and Requests for Production to City of Wendell; and believes that the statements therein contained are true.

Gwen Rost
Gwen Rost, Mayor

STATE OF IDAHO)
) ss.
County of Gooding)

On this 27 day of October, 1998, before me, the undersigned, a Notary Public in and for said State, personally appeared GWEN ROST, known to me or proved to me on oath to be, the Mayor of the City of Wendell, State of Idaho, the entity that executed the foregoing and annexed instrument, and the person who executed the instrument on behalf of said City of Wendell, and acknowledged to me that said City of Wendell executed the same.

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

Craig Holden
NOTARY PUBLIC FOR IDAHO
Residing at: Gooding
Commission Expires: 10-24-2000

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Craig D. Hobdey
HOBDEY & HOBDEY
Attorneys at Law
125 5th Avenue West
P.O. Box 176
Gooding, Idaho 83330-0176
208-934-4429

Attorneys for Protestants.

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE
STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR TRANSFER NO. 5297	
F. F. and G. C. GUNNING, Applicants, CITY OF WENDELL, WENDELL RECREATION DISTRICT, JOHN & VERLA HALL, NOEL BRIGGS, and FRANK ROST, JR., PROTESTANTS.	NOTICE OF SERVICE OF DISCOVERY

TO: APPLICANTS, F.F. AND G.C. GUNNING, AND YOUR ATTORNEY OF RECORD, PATRICK D. BROWN:

NOTICE IS HEREBY GIVEN that Protestant's (City of Wendell) Interrogatories and Requests for Production was served upon the parties by mailing a true and correct copy thereof to the following office on the 26th day of October, 1998 at the following address:

Patrick D. Brown
Attorney at Law
812 Shoshone Street East
Twin Falls, Idaho 83301

DATED THIS 26 day of October, 1998.

HOBDEY & HOBDEY

BY: Craig Hobdey
Craig D. Hobdey

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CERTIFICATE OF SERVICE

I hereby certify that on the 26 day of October, 1998 I served a true and correct copy of the foregoing NOTICE OF SERVICE OF DISCOVERY by the method indicated below, and addressed to the following:

Patrick D. Brown
Attorney at Law
812 Shoshone Street East
Twin Falls, Idaho 83301

x U. S. Mail
____ Hand Delivered
____ Overnight Mail
____ Telecopy (FAX)

Craig D. Hobdey

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Craig D. Hobdey
HOBDEY & HOBDEY
Attorneys at Law
125 5th Avenue West
P.O. Box 176
Gooding, Idaho 83330-0176
208-934-4429

Attorneys for Protestants.

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE
STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR TRANSFER NO. 5297

F. F. and G. C. GUNNING,

Applicants,

CITY OF WENDELL, WENDELL RECREATION DISTRICT, JOHN & VERLA HALL, NOEL BRIGGS, and FRANK ROST, JR.,

PROTESTANTS.

NOTICE OF SERVICE

TO: APPLICANTS, F.F. AND G.C. GUNNING, AND YOUR ATTORNEY OF RECORD, PATRICK D. BROWN:

I HEREBY CERTIFY That Protestant's SUPPLEMENTAL ANSWERS TO APPLICANTS' INTERROGATORIES ND REQUESTS FOR PRODUCTION TO CITY OF WENDELL, along with a copy of this Notice of Service, were served to Patrick D. Brown, attorney at law, 812 Shoshone Street East, Twin Falls, Idaho 83301.

DATED THIS 11 day of November, 1998.

HOBDEY & HOBDEY

BY: Craig D. Hobdey

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NOV 12 1999

CERTIFICATE OF SERVICE

I hereby certify that on the 11 day of November, 1998 I served a true and correct copy of the foregoing NOTICE OF SERVICE by the method indicated below, and addressed to the following:

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Attorneys at Law
125 5th Avenue West
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208-934-4429

Attorneys for Protestants.

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE
STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR TRANSFER NO. 5297	
F. F. and G. C. GUNNING, Applicants, CITY OF WENDELL, WENDELL RECREATION DISTRICT, JOHN & VERLA HALL, NOEL BRIGGS, and FRANK ROST, JR., PROTESTANTS.	SUPPLEMENTAL ANSWERS TO APPLICANTS' INTERROGATORIES AND REQUESTS FOR PRODUCTION TO CITY OF WENDELL

COMES NOW, THE Protestant, CITY OF WENDELL, by and through its attorney, Craig D. Hobdey of the firm Hobdey & Hobdey, and hereby supplements Protestant's answers to interrogatories as follows:

INTERROGATORY NO. 5: Who may you call as a witness before the hearing officer on this proposed transfer, and if any such witness purports to be an expert, what are all of the opinins he or she may testify about.

ANSWER: Protestant may call Judy Daubner, Gooding County Planning and Zoning Administrator. Ms. Daubner will testify as to the findings of the Planning and Zoning Commission regarding

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the Hillcrest Dairy (Gunning) request for citing permit.

If necessary, the Protestant will call Philip A. Brown, Gooding County Prosecuting Attorney, to testify as to the County's present legal position regarding the validity of the Zoning Ordinance.

INTERROGATORY NO. 7: What documents or other exhibits may you attempt to use at hearing on this proposed transfer (please identify each by what it shows, when and who made it, and where it came from).

AND

REQUEST FOR PRODUCTION NO. 1: Please produce a true copy of any document or other exhibit you may attempt to use at any hearing on this proposed transfer.

ANSWER: Findings of Fact and Conclusions Before the Gooding County Planning and Zoning Commission (six pages dated 3/26/98 and signed by Bob Bolte), a copy is enclosed.

DATED THIS 11 day of November, 1998.

HOBDEY & HOBDEY

BY: Craig Hobdey
Craig D. Hobdey
Attorney for Protestant,
City of Wendell, Idaho

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FINDINGS OF FACT AND CONCLUSIONS BEFORE THE GOODING COUNTY PLANNING AND ZONING COMMISSION

❖❖❖❖❖❖❖

ADMINISTRATIVE APPEAL – Hillcrest Dairy, P.O. Box 821, Wendell, ID 83355, on a property located in Sec. 34, T. 7 S., R. 15 EBM with an approximate address of 2950 S. 2100 E., Wendell, ID 83355, in a T-2 Zoning District. The Appeal is of the Administrators decision to deny a CAFO Siting Permit Application since the facility is not recognized by the Planning and Zoning Office to be an existing "Grandfathered" CAFO due to the fact it was enlarged with no application or permits under Ordinance #60 in a T-2 zoning district.

❖❖❖❖❖❖❖

This matter having come before the Commission on November 19, 1997 and again on February 25, 1998, with Bob Bolte, Dr. Kieffer, and Henry Westendorf at the first hearing and Bob Bolte, Dr. Kieffer, Henry Westendorf, Stacy Butler, and Mike Goedhart present at the second hearing.

FINDINGS OF FACT

Having given due consideration to the application and evidence presented, the Planning and Zoning Commission hereby makes the following findings of fact:

1) The existing land use in the area is presently residential, commercial and agricultural.

2) The proper legal requirements for advertisement of the hearing have been fulfilled as required by the laws of the State of Idaho. Advertisement has taken place on the following dates: October 14, 1997, October 30, 1997, February 4, 1998.

3) Notice was posted on the property on October 15, 1997, November 3, 1997, and on February 11, 1998.

4) Notice was mailed to property owners or residents within ½ mile on October 14, 1997, October 30, 1997, and on February 6, 1998.

5) The Hillcrest Dairy, located in Section 34, T. 7 S., R.15 EBM made application containing a total of 80 acres. As of February 25, 1998, this would include, 3 tax parcels by the records in the Gooding County Assessors Office. Tax Parcel 0002 is comprised of approximately 68.631 acres and is owned by F.F. & Irene Gunning. Tax Parcel 0337 is comprised of 10 acres and is owned by F.F. & Irene Gunning, Gail C. & Susan Gunning and contains the dairy equipment. Tax Parcel 2174 is comprised of approximately 1.369 acres and is owned by Andrew C. & Jessica C. Gunning.

6) The Hillcrest Dairy is located in a T-2 Zoning district.

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7) The Hillcrest Dairy is located within the City of Wendell's Impact Area.

8) The Hillcrest Dairy is approx. ½ mile from the eastern boundary of the Wendell City Limits and ½ mile from the Wendell High School property.

9) The first Wendell City Impact Area was established under the City of Wendell's Ordinance #277, March 25, 1976.

10) On June 13, 1991, the City of Wendell gave jurisdiction of the City Impact Area to Gooding County, Ordinance #356.

11) On April 27, 1995 a new City Impact Agreement was adopted with Gooding County, Ordinances #57 & 58. Jurisdiction of the Impact Area remains with Gooding County.

12) The Gooding County Comprehensive Plan was adopted in 1975, revised in 1985, and again in 1992.

13) Due to the following reasons, we find that this facility is a non-conforming use and the location is not in compliance or conformance with the Comprehensive Plan:

Under Article Four, Land Use of the Comprehensive Plan:

Section Three, Agricultural, under Policy, Item IV, states: To adopt an Ordinance that regulates the proximity of residential areas to confined animal feeding operations (CAFO's) and confined animal feeding operations (CAFO's) to residential areas.

Section Four, Residential states in part that ...An area of impact and/or transitional zoning district surrounds the incorporated cities in the county. These areas shall provide space for future residential growth within the county. It further states that it shall be the intent of the Comprehensive Plan to protect cities and residential zoning districts from encroachment by confined animal feeding operations (CAFO's). Under Policy it states that it shall be the policy of Gooding County to protect incorporated cities and residential zoning districts from encroachment by confined animal feeding operations (CAFO's).

Section Five, Impact Areas states in part that, ...rural county surrounding an incorporated city which is affected by and allows for the future growth and development of the city may be known as an area of city impact.

Section Six, Transitional, states in part, there is a need for a district which acts as a buffer between incompatible zoning districts or areas which are changing to other uses. Residential zoning districts in the county shall be buffered by a transitional zoning district. It is intended that these areas act as a buffer between cities and confined animal feeding operations (CAFO's). Agriculture except confined animal feeding operations shall be allowed.

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14) Moratoriums by the Gooding County Commissioners were placed from November 14, 1991 thru June 11, 1992 for construction or enlargement of CAFO's.

15) Gooding County records show that on October 5, 1993, Farm Credit Services sent notice to the Administrator, requesting the dairy be approved for a CAFO Grandfather Permit at 473 head of cows and 204 head of young stock, no permit for a calf operation. This permit was for the dairy numbers only. In April, 1986 the dairy was accepted into the Dairy Termination Program and they had five months to remove all animals and they could not milk on the facility for five years or August of 1991.

16) Gooding County records show that on October 20, 1993, CAFO Siting Permit 94-016 was issued to Farm Credit Bank (Dairy West Assoc.) for 473 lactating cattle and 204 calves. On the CAFO Siting Permit it states: Any increase in structures or change in the location of structures must conform to the restrictions as outlined in Section C, Article XVII of Zoning Ordinance #50 and again later the same guidelines applied in Ordinance #60 which was a requirement to obtain a Special Use Permit.

17) On July 27, 1994, District Judge J. William Hart declared Ordinance #50 void.

18) Gooding County Zoning Ordinance #60 was passed on August 31, 1995, and was duly published as required by Idaho Code and Gooding County Ordinances. When notice is required to two hundred (200) or more property owners or residents, in lieu of posted or mailed notification, three (3) notices in the official newspaper or paper of general circulation is sufficient, provided that the third notice appear ten (10) days prior to the public hearing.

19) There was testimony received from the Wendell City Mayor that in the Statement of G.C. Gunning, he stated that no member of our family received any personal notice of any change in the Ordinance which down-zoned the property from Ag to T-2. However, in documentation provided to the Gunnings' when they purchased the property and in the information submitted by Mr. Williams, there were documents in regard to the property being zoned T-2.

20) Gooding County records show on January 11, 1996, the Administrator received a letter from Farm Credit Services with a copy of Warranty Deed dated March 2, 1995 and a copy of CAFO Siting Permit dated October 20, 1993. This deed was to F.F. Gunning and Irene Gunning and the dairy was not in operation at that time.

21) At the time of the purchase of the property, the facility was not in operation.

22) On the Warranty Deed referenced above it states --- subject to any and all easements, rights of way, or restrictions, zoning and building laws and ordinances.

23) The Board of County Commissioners received a letter on May 1, 1996, from Attorney Craig Hobdey, representing the City of Wendell, objecting to the

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remodel and reconstruction of the old Dairy West facility, giving the County 10 days to reply.

24) Per Gooding County records, on May 1, 1996 a letter was mailed from the Administrator to F.F. Gunning and/or G.C. Gunning with copy to Phil Brown, Harry DeHaan, City of Wendell, and Craig Hobdey stating that Hillcrest Dairy had removed the existing facility and they had no building permit, Special Use Permit or new CAFO Siting Permit on file with the County and that they were not in compliance with Gooding County Ordinance #60 and gave them notice to cease & desist until they had all permits required.

25) Records show that no applications were ever made for a SUP or for a change or enlargement to the CAFO.

26) May 14, 1996 a stop work order was issued stating that because "NO PERMITS ISSUED" "You are hereby notified that no more work shall be done upon these premises until the above violations are corrected. When corrections have been made call 934-5958 for inspection." Work on the facility continued.

27) May 28, 1996, letter from Harry DeHaan (Gunning Attorney) was sent to the Administrator stating "first of all we have not 'completely removed the CAFO facility'. In fact if we had completely removed it, as per your letter, it would be impossible to 'rebuild it'. As you know, your office issued a grandfather permit and as you are further fully aware, agricultural buildings do not require building permits." There was still nothing in the file showing that the Gunnings ever applied for a SUP that was required for any change or enlargement in a T-2 Zoning District. It was later determined that a building permit was not necessary for the barn and a letter sent to Idaho Power on August 15, 1996, in that regard.

28) Ordinance #60, Article XVII, Permits, Section C (b) states in part that a CAFO in existence at the time of enactment (in a transitional zone) shall be required to have a Siting Permit. For a CAFO enlargement or change of operation a Special Use Permit shall be required.

29) August 9, 1996, letter to the Gooding County Commissioners from Rob Williams representing F.F. & Irene Gunning. This letter was in regard to a Building Permit for the remodel of the barn. It was found that the remodel had started prior to Gooding County requiring building permits on Barns (Jan. 1, 1996).

30) A Moratorium was placed by the Board of County Commissioners for new construction or enlargement of CAFO's from July 8, 1996 thru February 10, 1997.

31) October 11, 1996, the file shows a letter from Mr. Williams that his clients were willing to sign and apply for an application for a Siting permit as an existing CAFO operation. He also stated that it would be promptly completed and returned.

32) October 28, 1996, a letter in the file shows an application was sent to Robert E. Williams. No record in the file that the application was ever returned. Also, stated in the letter was the fact that in the opinion of the Planning and Zoning Administrator, that this would be a new siting permit not a Grandfathered CAFO

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since the facility was not in operation at the time of enactment of Zoning Ordinance #60.

33) August 10, 1997, F.F. & Irene Gunning and G.C. & Susan Gunning made application for a Grandfathered CAFO under Ordinance #62 for 1050 milking and dry cows and 200 heifers. It was returned in a format other than that on our application form. (The information was typed up on a sheet of paper.) The line providing for the lease information was left out. It was also noted that the water permit submitted is in the name of Dairy West Associates. Since the application was made there has been a parcel of land split off of the original acreage to Andrew Gunning.

34) August 26, 1997 the Administrator rejected the Existing CAFO Siting Permit Application on the basis that the facility is not recognized by the Planning and Zoning Office to be an existing "Grandfathered" CAFO due to the fact it was enlarge with no application or permits under Ordinance #60 in a T-2 zoning district.

35) September 12, 1997 Robert E. Williams sent a letter appealing the action of the Administrator on behalf his client Hillcrest Dairy. The appeal was on the following grounds: 1) Gooding County Ordinance No. 62 is unlawful & void. and 2) Gooding County Planning and Zoning Ordinance No. 60 is unlawful. To date, neither of those statements were determined by a Judge.

36) A public hearing was set for October 29, 1997 to hear the Administrative Appeal of the Hillcrest Dairy. That hearing was continued until November 19, 1997 at which time the Planning and Zoning Commission upheld the Administrators decision.

37) December 1, 1997, the file shows a letter from Robert E. Williams to the Board of County Commissioners appealing the decision of the Planning and Zoning Commission.

38) An Appeal Hearing was held with the County Commissioners on January 12, 1998. It was the findings of the Board of County Commissioners in the Matter of the Hillcrest Dairy Appeal that the Planning & Zoning Findings of Fact are inadequate and a further hearing is needed, therefor it was ordered that the matter be remanded to the Planning and Zoning Commission for a further hearing and Findings of Fact.

39) A Hearing was held on February 25, 1998, by the Planning and Zoning Commission pursuant to the order of the County Commissioners. New testimony was taken as well as the previous testimony considered.

40) There was no information found in the file and there was testimony received to the fact that the Hillcrest Dairy did not show a valid water permit for the number of animals on the facility.

41) On the notarized Statement of G.C. Gunning, item 8 includes a summary of the costs and expenses paid in a total amount of $298,038.69. This number included the purchase of straw, hay and silage, which should not be considered a

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NOV 12 1999

capital expenditure. Also, these items were purchased well in advance of the dairy operation beginning.

42) In the testimony received, there was no date established as to the exact date the facility went into operation.

CONCLUSIONS

Based on the foregoing findings, the Commission concludes as follows:

The facility was not in operation at the time the property was purchased and therefore would not be entitled to a registration as a grandfathered CAFO.

ORDER

The Planning and Zoning Commission, pursuant to the aforementioned, orders that the application, as described in the petition, should be denied and to uphold the decision of the Planning and Zoning Administrator.

Signed this 26th day of March, 1998.

Bob Bolte, Chairman

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NOV 12 1999

State of Idaho
DEPARTMENT OF WATER RESOURCES
1301 North Orchard Street, P.O. Box 83720, Boise, Idaho 83720-0098
Phone: (208) 327-7900 FAX: (208) 327-7866

PHILIP E. BATT
GOVERNOR

KARL J. DREHER
DIRECTOR

RECEIVED
NOV 17 1998
Department of Water Resources
Southern Region

November 13, 1998

RE: In the Matter of Application for Transfer No. 5197 in the name of F.F. Gunning and G.C. Gunning

Dear Interested Parties:

I have enclosed a copy of the Notice of Rescheduled Hearing, which changes the hearing date of the above referenced matter to December 10, 1998, at 9:00 a.m. in Gooding.

If you have any questions concerning the enclosed document, please contact me directly at (208)327-7953.

Sincerely,

Julie D. Yarbrough

JULIE L. YARBROUGH, Senior Secretary
Water Allocation Bureau

Enclosure

c: IDWR - Southern Region

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NOV 12 1999

RECEIVED
NOV 17 1998
Department of Water Resources
Southern Region

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR)
TRANSFER NO. 5197 IN THE NAME OF)
F.F GUNNING AND G.C. GUNNING)
)

NOTICE OF RESCHEDULED HEARING

The department has scheduled the above captioned matter for hearing on November 19, 1998 in Gooding, Idaho.

On November 12, 1998, the applicant contacted the department seeking to have the hearing rescheduled to allow for the completion of discovery. Protestants city of Wendell and Frank Rost, Jr. agree to have the hearing rescheduled.

By service of this Revised Hearing Notice, the hearing scheduled for November 19, 1998 is **VACATED** and is **RESCHEDULED** as follows:

Date:	December 10, 1998
Time:	9:00 a.m.
Place:	Multi-Purpose Room Gooding City Hall 308 5th Avenue West Gooding, ID

The hearing will be held in accordance with provisions of Chapters 2 and 17, Title 42, Chapter 52, Title 67, Idaho Code, and the adopted Rules of Procedure of the department. A copy of the rules may be obtained from the department upon request. The presiding officer at the hearing will be L. Glen Saxton.

If you plan to offer exhibits for the record, note that IDAPA Rule of Procedure 37.01.01606 requires that you provide a copy of exhibits to each party and to the presiding officer.

The hearing will be conducted in a facility which meets the accessibility requirements of the Americans with Disabilities Act. If you require special accommodations in order to attend, participate in or understand the hearing, please advise the department within (10) days prior to the hearing. Parties to the matter will have the opportunity to respond and present information and argument on all issues involved.

Dated this 13th day of November, 1998.

L. Glen Saxton

L. GLEN SAXTON
Hearing Officer

MICROFILMED
NOV 12 1999

CERTIFICATE OF SERVICE

I DO HEREBY CERTIFY that on this 13th day of November, 1998, the above and foregoing document was served upon the following by placing a copy of the same in the United States Mail, postage prepaid and properly addressed to the following:

F F Gunning
G C Gunning
PO Box 821
Wendell ID 83355

Mayor Gwen Rost
City of Wendell
PO Box 208
Wendell ID 83355

Dale Bitterli
President Wendell Rec Dist
PO Box 217
Wendell ID 83355

Noel Briggs
2050 E 3000 S
Wendell ID 83355

Patrick D Brown
PARKER WARR AND BROWN
812 Shoshone St E
Twin Falls ID 83301

Craig D Hobdey Esq
PO Box 176
Gooding ID 83330

John and Verla Hall
1988 E 2800 S
Wendell ID 83355

Frank Rost Jr
604 6th Ave E
Wendell ID 83355

Julie L. Yarbrough

JULIE L. YARBROUGH
Senior Secretary, Water Allocation Bureau

MAILED
NOV 12 1998

State of Idaho
DEPARTMENT OF WATER RESOURCES
1341 Fillmore Street, Suite 200, Twin Falls, ID 83301-3380
Phone: (208) 736-3033 FAX: (208) 736-3037

PHILIP E. BATT
GOVERNOR

KARL J. DREHER
DIRECTOR

November 13, 1998

ATTENTION: Carmen or Kathy
GOODING CITY HALL
308 5TH AVENUE WEST
GOODING ID 83330

Dear Ladies:

This is a follow-up to confirm the reservation of the Multi-purpose Room for a meeting to be held by this office on Thursday-**December 10** from 9:00 a.m. - 5:00 p.m. and on Friday-**December 11** from 8:00 a.m. - 12:00 p.m.

If you have any questions please feel free to contact me or Allen Merritt, Southern Regional Office Manager.

Thank you very much for your assistance in this matter.

Very truly yours,

Mary Baldwin

Mary Baldwin
Senior Secretary

NOV 12 1998

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR TRANSFER NO. 5197 IN THE NAME OF F.F GUNNING AND G.C. GUNNING

NOTICE OF RESCHEDULED HEARING

The department has scheduled the above captioned matter for hearing on November 19, 1998 in Gooding, Idaho.

On November 12, 1998, the applicant contacted the department seeking to have the hearing rescheduled to allow for the completion of discovery. Protestants city of Wendell and Frank Rost, Jr. agree to have the hearing rescheduled.

By service of this Revised Hearing Notice, the hearing scheduled for November 19, 1998 is **VACATED** and is **RESCHEDULED** as follows:

Date:	December 10, 1998
Time:	9:00 a.m.
Place:	Multi-Purpose Room Gooding City Hall 308 5th Avenue West Gooding, ID

The hearing will be held in accordance with provisions of Chapters 2 and 17, Title 42, Chapter 52, Title 67, Idaho Code, and the adopted Rules of Procedure of the department. A copy of the rules may be obtained from the department upon request. The presiding officer at the hearing will be L. Glen Saxton.

If you plan to offer exhibits for the record, note that IDAPA Rule of Procedure 37.01.01606 requires that you provide a copy of exhibits to each party and to the presiding officer.

The hearing will be conducted in a facility which meets the accessibility requirements of the Americans with Disabilities Act. If you require special accommodations in order to attend, participate in or understand the hearing, please advise the department within (10) days prior to the hearing. Parties to the matter will have the opportunity to respond and present information and argument on all issues involved.

Dated this 13th day of November, 1998.

L. Glen Saxton

L. GLEN SAXTON
Hearing Officer

NOV 12 1998

CERTIFICATE OF SERVICE

I DO HEREBY CERTIFY that on this 13th day of November, 1998, the above and foregoing document was served upon the following by placing a copy of the same in the United States Mail, postage prepaid and properly addressed to the following:

F F Gunning
G C Gunning
PO Box 821
Wendell ID 83355

Mayor Gwen Rost
City of Wendell
PO Box 208
Wendell ID 83355

Dale Bitterli
President Wendell Rec Dist
PO Box 217
Wendell ID 83355

Noel Briggs
2050 E 3000 S
Wendell ID 83355

Patrick D Brown
PARKER WARR AND BROWN
812 Shoshone St E
Twin Falls ID 83301

Craig D Hobdey Esq
PO Box 176
Gooding ID 83330

John and Verla Hall
1988 E 2800 S
Wendell ID 83355

Frank Rost Jr
604 6th Ave E
Wendell ID 83355

Julie L. Yarbrough

JULIE L. YARBROUGH
Senior Secretary, Water Allocation Bureau

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NOV 12 1998

PARKER, WARR & BROWN, LLP
ATTORNEYS AT LAW

PENELOPE PARKER
JEFFREY A. WARR
PATRICK D. BROWN

812 Shoshone Street East
Twin Falls, Idaho 83301
phone (208) 735-8812
facsimile (208) 735-8820

FACSIMILE TRANSMITTAL SHEET

TO: Glen Saxton	FROM: Patrick D. Brown
COMPANY: IDWR	DATE: November 12, 1998
FAX NUMBER: (208)327-7866	TOTAL NO. OF PAGES INCLUDING COVER: 4
PHONE NUMBER: (208)327-7900	SENDER'S REFERENCE NUMBER: 102-001
RE: Application for Transfer No. 5197	YOUR REFERENCE NUMBER:

☐ URGENT ☐ FOR REVIEW ☐ PLEASE COMMENT ☐ PLEASE REPLY ☐ PLEASE RECYCLE

NOTES/COMMENTS:

NOV 12 1998

PARKER, WARR & BROWN, LLP
ATTORNEYS AT LAW

PENELOPE PARKER
JEFFREY A. WARR
PATRICK D. BROWN

812 Shoshone Street East
Twin Falls, Idaho 83301
phone (208) 735-8812
facsimile (208) 735-8820

November 12, 1998

SENT VIA FACSIMILE

Idaho Department of Water Resources
Glen Saxton
1301 North Orchard
Boise, ID 83706

RE: Gail Gunning, Transfer Application No. 5197
Our File No. 102-001

Dear Mr. Saxton:

Attached is a list of the parties to the Hillcrest Dairy transfer proceedings. As indicated, I have been able to contact three who have no objection to changing the hearing date to December 9th or 10th. The other two I have been unable to obtain a response from either by mail or by phone. As indicated, I have attempted to contact Mr. Bitterli and Mr. Briggs not only about rescheduling but because their discovery responses are several weeks overdue.

Not only do I request rescheduling in order to accommodate schedules but also in order to obtain responses from those two whom I have asked to identify wells which they contend are threatened in terms of quantity and quality by the transfer. I have attempted to search IDWR records to identify which rights they own or may contend are contaminated, but have been unsuccessful. Consequently, I can not have Dr. Brockway perform an analysis and prepare for the hearing scheduled on November 19 unless and until those wells are identified.

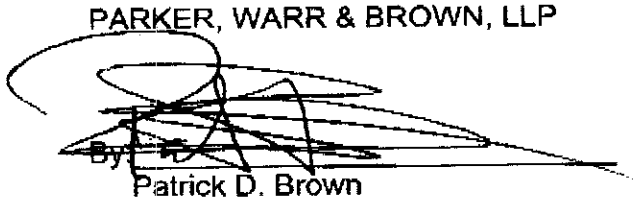
For all the above reasons, I respectfully ask that you change the hearing date from November 19 to December 9 or 10 in order to accommodate everyone's schedule and in order to allow us to prepare our case as consistent with the discovery orders entered to date.

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NOV 12 1998

Thank you for your attention this matter and I look forward to hearing from you.

Sincerely,

PARKER, WARR & BROWN, LLP



By: P.D.
Patrick D. Brown

PDB/llm

cc: client
Gwen Rost Mayor, City of Wendell
Dale Bitterli, President, Wendell Recreation District
John & Verla Hall
Noel Briggs
Frank Rost Jr.

NOV 12 1998

The following parties have no objections to changing the hearing date to December 9 or December 10

Gwen Rost Mayor
City of Wendell
P. O. Box 208
Wendell, ID 83355
REPRESENTED BY: Craig Hobdey

John & Verla Hall
1988 East 2800 South
Wendell, ID 83355

Frank Rost Jr.
604 6th Ave. East
Wendell, ID 83355

Attempts have been made to attempt the following parties since Monday, November 9 to obtain discovery responses and reschedule hearing. As of this time, no discovery responses have been received or return phone calls.

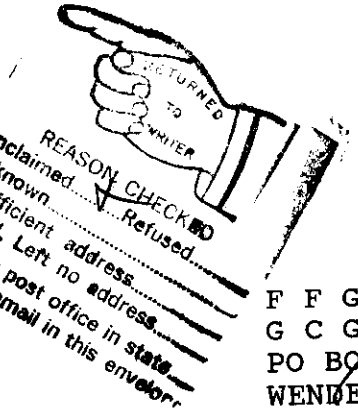
Dale Bitterli, President
Wendell Recreation District
P. O. Box 217
Wendell, ID 83355

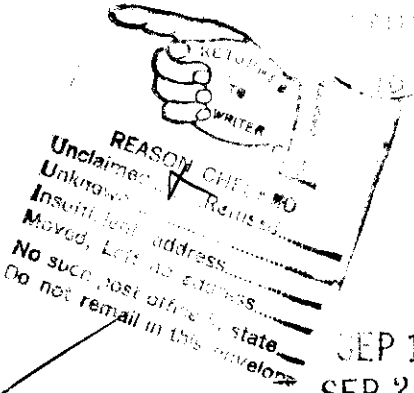
Noel Briggs
2050 East 3000 South
Wendell, ID 83355

NOV 12 1998

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
1341 Fillmore Street, Suite 200
Twin Falls, Idaho 83301-3380

ADDRESS SERVICE REQUESTED





F F GUNNING &
G C GUNNING
PO BOX 821
WENDELL ID 83355

RECEIVED
OCT 19 1998
Department of Water Resources
Southern Region

SEP 15 1998
SEP 22 1998
SEP 30 1998
OCT 14 1998

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NOV 12 1998

CERTIFIED
1802

Is your RETURN ADDRESS completed on the reverse side?

SENDER:

- Complete items 1 and/or 2 for additional services.
- Complete items 3, and 4a & b.
- Print your name and address on the reverse of this form so that we can return this card to you.
- Attach this form to the front of the mailpiece, or on the back if space does not permit.
- Write "Return Receipt Requested" on the mailpiece below the article number.
- The Return Receipt will show to whom the article was delivered and the date delivered.

I also wish to receive the following services (for an extra fee):

1. ☐ Addressee's Address
2. ☐ Restricted Delivery

Consult postmaster for fee.

3. Article Addressed to: T# 5197

F F GUNNING &
G C GUNNING
PO BOX 821
WENDELL ID 83355

MICROFILMED
NOV 12 1999

4a. Article Number 1802

4b. Service Type
☐ Registered ☐ Insured
☒ Certified ☐ COD
☐ Express Mail ☐ Return Receipt for Merchandise

7. Date of Delivery

5. Signature (Addressee)

6. Signature (Agent)

8. Addressee's Address (Only if requested and fee is paid)

PS Form **3811**, December 1991 ☆U.S. GPO: 1993—352-714 **DOMESTIC RETURN RECEIPT**

Thank you for using Return Receipt Service.

PARKER, WARR & BROWN, LLP
ATTORNEYS AT LAW

PENELOPE PARKER
JEFFREY A. WARR
PATRICK D. BROWN

812 Shoshone Street East
Twin Falls, Idaho 83301
phone (208) 735-8812
facsimile (208) 735-8820

RECEIVED
OCT 15 1998
Department of Water Resources
Southern Region

October 14, 1998

Idaho Department of Water Resources
1341 Fillmore, Suite 200
Twin Falls, ID 83303-3380

RE: Gail Gunning, Transfer Application No. 5197
Our File No. 102-001

Dear Sir or Madam:

Enclosed for filing in the above-entitled application are Notices of Service of Discovery.

Sincerely,

PARKER, WARR & BROWN, LLP

By: LeAnn McMillan
LeAnn McMillan, Legal Assistant

/llm
Encl.

RECEIVED
NOV 12 1998

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE
STATE OF IDAHO

RECEIVED
OCT 15 1998
Department of Water Resources
Southern Region

IN THE MATTER OF APPLICATION FOR TRANSFER NO. 5297 5191 nb

F.F. and G.C. GUNNING,

Applicants,

CITY OF WENDELL, WENDELL RECREATION DISTRICT, JOHN & VERLA HALL, NOEL BRIGGS, and FRANK ROST, Jr.,

Protestants.

NOTICE OF SERVICE OF DISCOVERY

TO: The Protestant Noel Briggs and your attorneys of record:

NOTICE IS HEREBY GIVEN that Applicants' Interrogatories and Requests for Production was served upon the parties by mailing a true and correct copy thereof to the following offices on the 14th day of October, 1998, at the following address:

Noel Briggs
2050 East 3000 South
Wendell, ID 83355

FILED
NOV 12 1998

Dated this 14th day of October, 1998.

PARKER, WARR & BROWN, LLP

By: _____ for
Patrick D. Brown
Attorneys for Applicants

CERTIFICATE OF SERVICE

The undersigned, a resident attorney of the State of Idaho, with offices at 812 Shoshone St. East, Twin Falls, Idaho 83301, and one of the attorneys for the applicants in this matter, certifies that on the 14th day of October, 1998, he served a true and correct copy of the foregoing document by the method indicated below, and addressed to the following:

Gwen Rost, Mayor City of Wendell P. O. Box 208. Wendell, ID 83355	✓ U.S. Mail ___ Hand Delivered ___ Overnight Mail ___ Telecopy (Fax)
Craig D. Hobdey, Esq. P. O. Box 176 Gooding, ID 83330	✓ U.S. Mail ___ Hand Delivered ___ Overnight Mail ___ Telecopy (Fax)
Dale Bitterli, President Wendell Recreation District P. O. Box 217 Wendell, ID 83355	✓ U.S. Mail ___ Hand Delivered ___ Overnight Mail ___ Telecopy (Fax)
John & Verla Hall 1988 East 2800 South Wendell, ID 83355	✓ U.S. Mail ___ Hand Delivered ___ Overnight Mail ___ Telecopy (Fax)

NOV 12 1999

Noel Briggs
2050 East 3000 South
Wendell, ID 83355

✓ U.S. Mail
___ Hand Delivered
___ Overnight Mail
___ Telecopy (Fax)

Frank Rost, Jr.
604 6th Avenue East
Wendell, ID 83355

✓ U.S. Mail
___ Hand Delivered
___ Overnight Mail
___ Telecopy (Fax)

Patrick D. Brown

MAY 12 1999

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE
STATE OF IDAHO

RECEIVED
OCT 15 1998
Department of Water Resources
Southern Region

IN THE MATTER OF APPLICATION FOR TRANSFER NO. 5297 5197 ~~

F.F. and G.C. GUNNING,

Applicants,

CITY OF WENDELL, WENDELL RECREATION DISTRICT, JOHN & VERLA HALL, NOEL BRIGGS, and FRANK ROST, Jr.,

Protestants.

NOTICE OF SERVICE OF DISCOVERY

TO: The Protestant Wendell Recreation District and your attorneys of record:

NOTICE IS HEREBY GIVEN that Applicants' Interrogatories and Requests for Production was served upon the parties by mailing a true and correct copy thereof to the following offices on the 14th day of October, 1998, at the following address:

Dale Bitterli, President
Wendell Recreation District
P. O. Box 217
Wendell, ID 83355

MICROFILMED
NOV 12 1999

Dated this 14th day of October, 1998.

PARKER, WARR & BROWN, LLP

By: _____ for
Patrick D. Brown
Attorneys for Applicants

CERTIFICATE OF SERVICE

The undersigned, a resident attorney of the State of Idaho, with offices at 812 Shoshone St. East, Twin Falls, Idaho 83301, and one of the attorneys for the applicants in this matter, certifies that on the 14 day of October, 1998, he served a true and correct copy of the foregoing document by the method indicated below, and addressed to the following:

Gwen Rost, Mayor City of Wendell P. O. Box 208. Wendell, ID 83355	✓ U.S. Mail ___ Hand Delivered ___ Overnight Mail ___ Telecopy (Fax)
Craig D. Hobdey, Esq. P. O. Box 176 Gooding, ID 83330	✓ U.S. Mail ___ Hand Delivered ___ Overnight Mail ___ Telecopy (Fax)
Dale Bitterli, President Wendell Recreation District P. O. Box 217 Wendell, ID 83355	✓ U.S. Mail ___ Hand Delivered ___ Overnight Mail ___ Telecopy (Fax)
John & Verla Hall 1988 East 2800 South Wendell, ID 83355	✓ U.S. Mail ___ Hand Delivered ___ Overnight Mail ___ Telecopy (Fax)

NOV 12 1998

Noel Briggs
2050 East 3000 South
Wendell, ID 83355

✓ U.S. Mail
___ Hand Delivered
___ Overnight Mail
___ Telecopy (Fax)

Frank Rost, Jr.
604 6th Avenue East
Wendell, ID 83355

✓ U.S. Mail
___ Hand Delivered
___ Overnight Mail
___ Telecopy (Fax)

Patrick D. Brown

NOV 12 1999

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE
STATE OF IDAHO

RECEIVED
OCT 15 [illegible]
Department of Water Resources

IN THE MATTER OF APPLICATION FOR TRANSFER NO. ~~5297~~ 57[illegible]

F.F. and G.C. GUNNING,

Applicants,

CITY OF WENDELL, WENDELL RECREATION DISTRICT, JOHN & VERLA HALL, NOEL BRIGGS, and FRANK ROST, Jr.,

Protestants.

NOTICE OF SERVICE OF DISCOVERY

TO: The Protestant Frank Rost, Jr. and your attorneys of record:

NOTICE IS HEREBY GIVEN that Applicants' Interrogatories and Requests for Production was served upon the parties by mailing a true and correct copy thereof to the following offices on the 14th day of October, 1998, at the following address:

Noel Briggs
2050 East 3000 South
Wendell, ID 83355

MICROFILMED
NOV 12 1999

Dated this 14th day of October, 1998.

PARKER, WARR & BROWN, LLP

By: _____ for
Patrick D. Brown
Attorneys for Applicants

CERTIFICATE OF SERVICE

The undersigned, a resident attorney of the State of Idaho, with offices at 812 Shoshone St. East, Twin Falls, Idaho 83301, and one of the attorneys for the applicants in this matter, certifies that on the 14 day of October, 1998, he served a true and correct copy of the foregoing document by the method indicated below, and addressed to the following:

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Dale Bitterli, President Wendell Recreation District P. O. Box 217 Wendell, ID 83355	✓ U.S. Mail ___ Hand Delivered ___ Overnight Mail ___ Telecopy (Fax)
John & Verla Hall 1988 East 2800 South Wendell, ID 83355	✓ U.S. Mail ___ Hand Delivered ___ Overnight Mail ___ Telecopy (Fax)

MICROFILMED
NOV 12 1999

Noel Briggs
2050 East 3000 South
Wendell, ID 83355

✓ U.S. Mail
___ Hand Delivered
___ Overnight Mail
___ Telecopy (Fax)

Frank Rost, Jr.
604 6th Avenue East
Wendell, ID 83355

✓ U.S. Mail
___ Hand Delivered
___ Overnight Mail
___ Telecopy (Fax)

Patrick D. Brown

MICROFILMED
NOV 12 1999

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE
STATE OF IDAHO

RECEIVED
OCT 15 1998
Department of Water Resources
Southern Region

IN THE MATTER OF APPLICATION FOR TRANSFER NO. 5297 5197

F.F. and G.C. GUNNING,

Applicants,

CITY OF WENDELL, WENDELL RECREATION DISTRICT, JOHN & VERLA HALL, NOEL BRIGGS, and FRANK ROST, Jr.,

Protestants.

NOTICE OF SERVICE OF DISCOVERY

TO: The Protestant City of Wendell and your attorneys of record:

NOTICE IS HEREBY GIVEN that Applicants' Interrogatories and Requests for Production was served upon the parties by mailing a true and correct copy thereof to the following offices on the 14th day of October, 1998, at the following address:

Gwen Rost, Mayor
City of Wendell
P. O. Box 208
Wendell, ID 83355

Craig D. Hobdey, Esq.
P. O. Box 176
Gooding, ID 83330

MICROFILMED
NOV 12 1999

Dated this 14th day of October, 1998.

PARKER, WARR & BROWN, LLP

By: _____
Patrick D. Brown
Attorneys for Applicants

CERTIFICATE OF SERVICE

The undersigned, a resident attorney of the State of Idaho, with offices at 812 Shoshone St. East, Twin Falls, Idaho 83301, and one of the attorneys for the applicants in this matter, certifies that on the 14 day of October, 1998, he served a true and correct copy of the foregoing document by the method indicated below, and addressed to the following:

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Dale Bitterli, President Wendell Recreation District P. O. Box 217 Wendell, ID 83355	✓ U.S. Mail ___ Hand Delivered ___ Overnight Mail ___ Telecopy (Fax)
John & Verla Hall 1988 East 2800 South Wendell, ID 83355	✓ U.S. Mail ___ Hand Delivered ___ Overnight Mail ___ Telecopy (Fax)

MICROFILMED
NOV 12 1999

Noel Briggs
2050 East 3000 South
Wendell, ID 83355

✓ U.S. Mail
___ Hand Delivered
___ Overnight Mail
___ Telecopy (Fax)

Frank Rost, Jr.
604 6th Avenue East
Wendell, ID 83355

✓ U.S. Mail
___ Hand Delivered
___ Overnight Mail
___ Telecopy (Fax)

Patrick D. Brown

MICROFILMED
NOV 12 1999

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE
STATE OF IDAHO

RECEIVED
OCT 15 1998
Department of Water Resources
Southern Region

IN THE MATTER OF APPLICATION FOR TRANSFER NO. 5297 5197

F.F. and G.C. GUNNING,

Applicants,

CITY OF WENDELL, WENDELL RECREATION DISTRICT, JOHN & VERLA HALL, NOEL BRIGGS, and FRANK ROST, Jr.,

Protestants.

NOTICE OF SERVICE OF DISCOVERY

TO: The Protestant John and Verla Hall and your attorneys of record:

NOTICE IS HEREBY GIVEN that Applicants' Interrogatories and Requests for Production was served upon the parties by mailing a true and correct copy thereof to the following offices on the 14th day of October, 1998, at the following address:

John and Verla Hall
1988 East 2800 South
Wendell, ID 83355

MICROFILMED
NOV 12 1998

Dated this 14th day of October, 1998.

PARKER, WARR & BROWN, LLP

By: _____ for
Patrick D. Brown
Attorneys for Applicants

CERTIFICATE OF SERVICE

The undersigned, a resident attorney of the State of Idaho, with offices at 812 Shoshone St. East, Twin Falls, Idaho 83301, and one of the attorneys for the applicants in this matter, certifies that on the 14th day of October, 1998, he served a true and correct copy of the foregoing document by the method indicated below, and addressed to the following:

Gwen Rost, Mayor City of Wendell P. O. Box 208. Wendell, ID 83355	✓ U.S. Mail ___ Hand Delivered ___ Overnight Mail ___ Telecopy (Fax)
Craig D. Hobdey, Esq. P. O. Box 176 Gooding, ID 83330	✓ U.S. Mail ___ Hand Delivered ___ Overnight Mail ___ Telecopy (Fax)
Dale Bitterli, President Wendell Recreation District P. O. Box 217 Wendell, ID 83355	✓ U.S. Mail ___ Hand Delivered ___ Overnight Mail ___ Telecopy (Fax)
John & Verla Hall 1988 East 2800 South Wendell, ID 83355	✓ U.S. Mail ___ Hand Delivered ___ Overnight Mail ___ Telecopy (Fax)

MICROFILMED
NOV 12 1999

Noel Briggs
2050 East 3000 South
Wendell, ID 83355

✓ U.S. Mail
___ Hand Delivered
___ Overnight Mail
___ Telecopy (Fax)

Frank Rost, Jr.
604 6th Avenue East
Wendell, ID 83355

✓ U.S. Mail
___ Hand Delivered
___ Overnight Mail
___ Telecopy (Fax)

Patrick D. Brown

MICROFILMED
NOV 12 1999

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

RECEIVED
SEP 15 1998
Department of Water Resources
Southern Region

IN THE MATTER OF APPLICATION FOR TRANSFER NO. 5197 IN THE NAME OF F.F. GUNNING AND G.C. GUNNING

ORDER AUTHORIZING DISCOVERY

On September 10, 1998, the department conducted a conference at the Gooding City Hall in Gooding, Idaho, in connection with the above captioned matter. All parties attended the conference and requested the department to issue an order authorizing discovery.

The department hereby authorizes the parties to engage in discovery commencing with the date of this order. The parties shall complete discovery seven (7) days prior to the date of the hearing in this matter which has been tentatively scheduled on November 19, 1998. Discovery shall be conducted pursuant to IDAPA Rules 37.01.01520-532 (Rules of Procedure 520 through 532). The parties are directed to answer or otherwise respond to discovery in accordance with the department's Rules of Procedure and the Idaho Rules of Civil Procedure, as appropriate.

In accordance with Rule 520, the scope of discovery shall be governed by Rule 26(b) of the Idaho Rules of Civil Procedure, unless otherwise provided by statute, rule or order of the Director.

Dated this 14th day of September, 1998.

L. Glen Saxton

L. GLEN SAXTON
Hearing Officer

MICROFILMED
NOV 12 1999

CERTIFICATE OF MAILING

I hereby certify that on the 14th day of September, 1998 a true and correct copy of the foregoing Notice of Pre-hearing Conference was mailed by regular U.S. Mail with all required charges prepaid to the parties listed below:

Secretary

F F GUNNING &
GC GUNNING
P O BOX 821
WENDELL ID 83355

GWEN ROST MAYOR
CITY OF WENDELL
P O BOX 208
WENDELL ID 83355

DALE BITTERLI PRESIDENT
WENDELL RECREATION DISTRICT
P O BOX 217
WENDELL ID 83355

NOEL BRIGGS
2050 E 3000 S
WENDELL ID 83355

PATRICK D BROWN ESQ
PARKER WARR & BROWN
812 SHOSHONE STREET EAST
TWIN FALLS ID 83301

GRAIG D HOBDEY ESQ
P O BOX 176
GOODING ID 83330

JOHN & VERLA HALL
1988 E 2800 S
WENDELL ID 83355

FRANK ROST JR
604 6TH AVE EAST
WENDELL ID 83355

MICROFILMED
NOV 12 1999

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE
STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR TRANSFER NO. 5297	)	NOTICE OF HEARING
F.F. and G.C. GUNNING, Applicants	)	
City of Wendell, Wendell Recreation District, John & Verla Hall, Noel Briggs, and Frank Rost, Jr., Protestants	)	SOURCE: groundwater
	)	COUNTY: Gooding

On April 3, 1997 F.F. and G.C. Gunning, applicants, filed with the Department of Water Resources an application to transfer the public waters of the State of Idaho. The Department has received protests against the approval of said application from the above captioned protestants. The conference held by the department on September 10, 1998 did not resolve the matter of protest.

The Department has scheduled the matter for hearing on **Thursday-November 19, 1998 at 9:00 a.m. in the Multi-Purpose Room of the Gooding, Idaho City Hall located at 308 5th Avenue West.**

The hearing will be held in accordance with provisions of Chapters 2 and 17, Title 42 and Chapter 52, Title 67, Idaho Code and the adopted Rules of Procedure of the department. A copy of the rules may be obtained from the department upon request. The presiding officer at the hearing will be **L. Glen Saxton.**

If you plan to offer exhibits for the record, note that IDAPA Rule of Procedure 37.01.01606 requires that you provide a copy of exhibits to each party and to the presiding officer.

IT IS FURTHER NOTED, in accordance with IDAPA Rule of Procedure 37.01.01606, all parties have agreed to exchange witness lists and copies of documents that may be offered as exhibits to each party and to the presiding officer on or before November 9, 1998.

The hearing will be conducted in a facility which meets the accessibility requirements of the Americans With Disabilities Act. If you require special accommodations in order to attend, participate in or understand the hearing, please advise the department within ten (10) days prior to the hearing.

All parties to the matter will have the opportunity to respond and present information and argument on all issues involved.

Dated this 14th day of September, 1998.

Allen D. Merritt, P.E.
Southern Region Manager

MICROFILMED
NOV 12 1999

CERTIFICATE OF MAILING

I hereby certify that on the 14th day of September, 1998 a true and correct copy of the foregoing Notice of Hearing was forwarded with all required charges prepared, by the method(s) indicated below, to the parties listed:

Mary A. Baldwin
Secretary

F F GUNNING & G C GUNNING PO BOX 821 WENDELL ID 83355	Hand delivered	____
	U.S. Mail-Regular	____
	U.S. Mail-Certified	__X__
	Fax	____
PATRICK D BROWN ESQ PARKER WARR & BROWN 812 SHOSHONE STREET EAST TWIN FALLS ID 83301	Hand delivered	____
	U.S. Mail-Regular	____
	U.S. Mail-Certified	__X__
	Fax	____
GWEN ROST MAYOR CITY OF WENDELL PO BOX 208 WENDELL ID 83355	Hand delivered	____
	U.S. Mail-Regular	____
	U.S. Mail-Certified	__X__
	Fax	____
CRAIG D HOBDEY ESQ PO BOX 176 GOODING ID 83330	Hand delivered	____
	U.S. Mail-Regular	____
	U.S. Mail-Certified	__X__
	Fax	____
DALE BITTERLI PRESIDENT WENDELL RECREATION DISTRICT PO BOX 217 WENDELL ID 83355	Hand delivered	____
	U.S. Mail-Regular	____
	U.S. Mail-Certified	__X__
	Fax	____
JOHN & VERLA HALL 1988 E 2800 S WENDELL ID 83355	Hand delivered	____
	U.S. Mail-Regular	____
	U.S. Mail-Certified	__X__
	Fax	____
NOEL BRIGGS 2050 E 3000 S WENDELL ID 83355	Hand delivered	____
	U.S. Mail-Regular	____
	U.S. Mail-Certified	__X__
	Fax	____
FRANK ROST JR 604 6TH AVE EAST WENDELL ID 83355	Hand delivered	____
	U.S. Mail-Regular	____
	U.S. Mail-Certified	__X__
	Fax	____

MAILED
NOV 12 1998

FOR REGISTERED, INSURED, C.O.D., CERTIFIED, AND EXPRESS MA Feb. 1

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1	✓1803	Patrick Braun, Esq	.32	1 35	1 10	2 77
2	✓1804	Gwen Root, Mayor City of Wendell				
3	✓1805	Craig Hobdey, Esq				
4	✓1806	Dale Bitterli Pres. Wendell Rec. Dept.				
5	✓1807	John + Verla Hall				
6	✓1808	Noel Briggs				
7	✓1809 (8)	Frank Root, Jr.				
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PS Form 3877, Feb. 1982

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FORM MUST BE COMPLETED BY TYPEWRITER, INK OR BALL POINT PE

MICROFILMED
NOV 12 1999

SENDER:
- Complete items 1 and/or 2 for additional services.
- Complete items 3, and 4a & b.
- Print your name and address on the reverse of this form so that we can return this card to you.
- Attach this form to the front of the mailpiece, or on the back if space does not permit.
- Write "Return Receipt Requested" on the mailpiece below the article number.
- The Return Receipt will show to whom the article was delivered and the date delivered.

I also wish to receive the following services (for an extra fee):
1. ☐ Addressee's Address
2. ☐ Restricted Delivery

Consult postmaster for fee.

3. Article Addressed to: T#5198

JOHN & VERLA HALL
1988 E 2800 S
WENDELL ID 83355

4a. Article Number 1807

4b. Service Type
☐ Registered ☐ Insured
☒ Certified ☐ COD
☐ Express Mail ☐ Return Receipt for Merchandise

7. Date of Delivery SEP 17 1998

5. Signature (Addressee)

8. Addressee's Address (Only if requested and fee is paid)

6. Signature (Agent) X Verla Hall

PS Form **3811**, December 1991 ☆U.S. GPO: 1993—352-714 **DOMESTIC RETURN RECEIPT**

Thank you for using Return Receipt Service.

Is your RETURN ADDRESS completed on the reverse side?

SENDER:
- Complete items 1 and/or 2 for additional services.
- Complete items 3, and 4a & b.
- Print your name and address on the reverse of this form so that we can return this card to you.
- Attach this form to the front of the mailpiece, or on the back if space does not permit.
- Write "Return Receipt Requested" on the mailpiece below the article number.
- The Return Receipt will show to whom the article was delivered and the date delivered.

I also wish to receive the following services (for an extra fee):
1. ☐ Addressee's Address
2. ☐ Restricted Delivery

Consult postmaster for fee.

3. Article Addressed to: T#5197

FRANK ROST JR
604 6TH AVE EAST
WENDELL ID 83355

4a. Article Number 1809

4b. Service Type
☐ Registered ☐ Insured
☒ Certified ☐ COD
☐ Express Mail ☐ Return Receipt for Merchandise

7. Date of Delivery 9/15/98

5. Signature (Addressee) Gwen Rost

8. Addressee's Address (Only if requested and fee is paid)

6. Signature (Agent) Gwen Rost

PS Form **3811**, December 1991 ☆U.S. GPO: 1993—352-714 **DOMESTIC RETURN RECEIPT**

Thank you for using Return Receipt Service.

Is your RETURN ADDRESS completed on the reverse side?

SENDER:
- Complete items 1 and/or 2 for additional services.
- Complete items 3, and 4a & b.
- Print your name and address on the reverse of this form so that we can return this card to you.
- Attach this form to the front of the mailpiece, or on the back if space does not permit.
- Write "Return Receipt Requested" on the mailpiece below the article number.
- The Return Receipt will show to whom the article was delivered and the date delivered.

I also wish to receive the following services (for an extra fee):
1. ☐ Addressee's Address
2. ☐ Restricted Delivery

Consult postmaster for fee.

3. Article Addressed to: T#5197

NOEL BRIGGS
2050 E 3000 S
WENDELL ID 83355

4a. Article Number 1808

4b. Service Type
☐ Registered ☐ Insured
☒ Certified ☐ COD
☐ Express Mail ☐ Return Receipt for Merchandise

7. Date of Delivery

5. Signature (Addressee) Noel Briggs

8. Addressee's Address (Only if requested and fee is paid)

6. Signature (Agent) Noel Briggs

PS Form **3811**, December 1991 ☆U.S. GPO: 1993—352-714 **DOMESTIC RETURN RECEIPT**

Thank you for using Return Receipt Service.

Is your RETURN ADDRESS completed on the reverse side?

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- Complete items 1 and/or 2 for additional services.
- Complete items 3, and 4a & b.
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- Attach this form to the front of the mailpiece, or on the back if space does not permit.
- Write "Return Receipt Requested" on the mailpiece below the article number.
- The Return Receipt will show to whom the article was delivered and the date delivered.

I also wish to receive the following services (for an extra fee):
1. ☐ Addressee's Address
2. ☐ Restricted Delivery

Consult postmaster for fee.

3. Article Addressed to: T#5197

DALE BITTERLI PRESIDENT
WENDELL RECREATION DIST
PO BOX 217
WENDELL ID 83355

4a. Article Number 1806

4b. Service Type
☐ Registered ☐ Insured
☒ Certified ☐ COD
☐ Express Mail ☐ Return Receipt for Merchandise

7. Date of Delivery

5. Signature (Addressee)

8. Addressee's Address (Only if requested and fee is paid)

6. Signature (Agent)

PS Form **3811**, December 1991 ☆U.S. GPO: 1993—352-714 **DOMESTIC RETURN RECEIPT**

Thank you for using Return Receipt Service.

Is your RETURN ADDRESS completed on the reverse side?

SENDER:
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- Complete items 3, and 4a & b.
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- Write "Return Receipt Requested" on the mailpiece below the article number.
- The Return Receipt will show to whom the article was delivered and the date delivered.

I also wish to receive the following services (for an extra fee):
1. ☐ Addressee's Address
2. ☐ Restricted Delivery

Consult postmaster for fee.

3. Article Addressed to: T#5197

PATRICK D BROWN ESQ
PARKER WARR & BROWN
812 SHOSHONE STREET E.
TWIN FALLS ID 83301

4a. Article Number 1803

4b. Service Type
☐ Registered ☐ Insured
☒ Certified ☐ COD
☐ Express Mail ☐ Return Receipt for Merchandise

7. Date of Delivery

5. Signature (Addressee)

8. Addressee's Address (Only if requested and fee is paid)

6. Signature (Agent)

PS Form **3811**, December 1991 ☆U.S. GPO: 1993—352-714 **DOMESTIC RETURN RECEIPT**

Thank you for using Return Receipt Service.

Is your RETURN ADDRESS completed on the reverse side?

SENDER:
- Complete items 1 and/or 2 for additional services.
- Complete items 3, and 4a & b.
- Print your name and address on the reverse of this form so that we can return this card to you.
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- The Return Receipt will show to whom the article was delivered and the date delivered.

I also wish to receive the following services (for an extra fee):
1. ☐ Addressee's Address
2. ☐ Restricted Delivery

Consult postmaster for fee.

3. Article Addressed to: T#5197

GWEN ROST MAYOR
CITY OF WENDELL
PO BOX 208
WENDELL ID 83355

4a. Article Number 1804

4b. Service Type
☐ Registered ☐ Insured
☒ Certified ☐ COD
☐ Express Mail ☐ Return Receipt for Merchandise

7. Date of Delivery SEP 16 1998

5. Signature (Addressee)

8. Addressee's Address (Only if requested and fee is paid)

6. Signature (Agent)

PS Form **3811**, December 1991 ☆U.S. GPO: 1993—352-714 **DOMESTIC RETURN RECEIPT**

Thank you for using Return Receipt Service.

Is your RETURN ADDRESS completed on the reverse side?

SENDER:
- Complete items 1 and/or 2 for additional services.
- Complete items 3, and 4a & b.
- Print your name and address on the reverse of this form so that we can return this card to you.
- Attach this form to the front of the mailpiece, or on the back if space does not permit.
- Write "Return Receipt Requested" on the mailpiece below the article number.
- The Return Receipt will show to whom the article was delivered and the date delivered.

I also wish to receive the following services (for an extra fee):
1. ☐ Addressee's Address
2. ☐ Restricted Delivery

Consult postmaster for fee.

3. Article Addressed to: T#5197

CRAIG D HOBDEY ESQ
PO BOX 176
GOODING ID 83330

4a. Article Number 1805

4b. Service Type
☐ Registered ☐ Insured
☒ Certified ☐ COD
☐ Express Mail ☐ Return Receipt for Merchandise

7. Date of Delivery 9-15-98

5. Signature (Addressee)

8. Addressee's Address (Only if requested and fee is paid)

6. Signature (Agent)

PS Form **3811**, December 1991 ☆U.S. GPO: 1993—352-714 **DOMESTIC RETURN RECEIPT**

Thank you for using Return Receipt Service.

UNITED STATES POSTAL SERVICE

Official Business

PENALTY FOR PRIVATE USE TO AVOID PAYMENT OF POSTAGE, $300

U.S. MAIL

MICROFILMED

NOV 12 1999

RECEIVED

SEP 17 1998

Department of Water Resources
Southern Region

Print your name, address and ZIP Code here

IDAHO DEPARTMENT OF WATER RESOURCES
1341 FILLMORE STREET, SUITE 200
TWIN FALLS, ID 83301-3380

UNITED STATES POSTAL SERVICE

Official Business

PENALTY FOR PRIVATE USE TO AVOID PAYMENT OF POSTAGE, $300

U.S. MAIL

MICROFILMED

NOV 12 1999

RECEIVED

SEP 17 1998

Department of Water Resources
Southern Region

Print your name, address and ZIP Code here

IDAHO DEPARTMENT OF WATER RESOURCES
1341 FILLMORE STREET, SUITE 200
TWIN FALLS, ID 83301-3380

UNITED STATES POSTAL SERVICE

Official Business

PENALTY FOR PRIVATE USE TO AVOID PAYMENT OF POSTAGE, $300

U.S. MAIL

MICROFILMED

NOV 12 1999

RECEIVED

SEP 15 1998

Department of Water Resources
Southern Region

Print your name, address and ZIP Code here

IDAHO DEPARTMENT OF WATER RESOURCES
1341 FILLMORE STREET, SUITE 200
TWIN FALLS, ID 83301-3380

UNITED STATES POSTAL SERVICE

Official Business

PENALTY FOR PRIVATE USE TO AVOID PAYMENT OF POSTAGE, $300

U.S. MAIL

MICROFILMED

NOV 12 1999

RECEIVED

SEP 18 1998

Department of Water Resources
Southern Region

Print your name, address and ZIP Code here

IDAHO DEPARTMENT OF WATER RESOURCES
1341 FILLMORE STREET, SUITE 200
TWIN FALLS, ID 83301-3380

UNITED STATES POSTAL SERVICE

Official Business

PENALTY FOR PRIVATE USE TO AVOID PAYMENT OF POSTAGE, $300

U.S. MAIL

MICROFILMED

NOV 12 1999

RECEIVED

SEP 15 1998

Department of Water Resources
Southern Region

Print your name, address and ZIP Code here

IDAHO DEPARTMENT OF WATER RESOURCES
1341 FILLMORE STREET, SUITE 200
TWIN FALLS, ID 83301-3380

UNITED STATES POSTAL SERVICE

Official Business

PENALTY FOR PRIVATE USE TO AVOID PAYMENT OF POSTAGE, $300

U.S. MAIL

MICROFILMED

NOV 12 1999

RECEIVED

SEP 24 1998

Department of Water Resources
Southern Region

Print your name, address and ZIP Code here

IDAHO DEPARTMENT OF WATER RESOURCES
1341 FILLMORE STREET, SUITE 200
TWIN FALLS, ID 83301-3380

UNITED STATES POSTAL SERVICE

Official Business

PENALTY FOR PRIVATE USE TO AVOID PAYMENT OF POSTAGE, $300

U.S. MAIL

MICROFILMED

NOV 12 1999

RECEIVED

SEP 17 1998

Department of Water Resources
Southern Region

Print your name, address and ZIP Code here

IDAHO DEPARTMENT OF WATER RESOURCES
1341 FILLMORE STREET, SUITE 200
TWIN FALLS, ID 83301-3380

State of Idaho
DEPARTMENT OF WATER RESOURCES
1341 Fillmore Street, Suite 200, Twin Falls, ID 83301-3380
Phone: (208) 736-3033 FAX: (208) 736-3037

PHILIP E. BATT
GOVERNOR

KARL J. DREHER
DIRECTOR

September 14, 1998

ATTENTION: KATHY
GOODING CITY HALL
308 5TH AVENUE WEST
GOODING ID 83330

Dear Kathy:

This is a follow-up to our telephone conversation of 9/10/98 to confirm the reservation of the Multi-purpose Room for a meeting to be held by this office on **Thursday-** November 19, 1998 from 9:00 a.m.- 5:00 p.m.

If you have any questions please feel free to contact me or Allen Merritt, Southern Regional Office Manager.

Thank you very much for your assistance in this matter.

Very truly yours,

Mary Baldwin

Mary Baldwin
Senior Secretary

MICROFILMED
NOV 12 1999

From: DWR60::AMERRITT 10-SEP-1998 13:17:52.83
To: DWR03::GSAXTON
CC: AMERRITT
Subj: Gunning Pre-hearing Conference

FROM: Allen Merritt DATE: September 10, 1998

TO: Glen Saxton

SUBJECT: Pre-hearing Conference for protested Transfer 5197.

This day I conducted a pre-hearing conference for the Gunning Dairy's Transfer #5197 at Gooding City Hall. All parties were present. Gunning was represented by attorney Pat Brown. The City of Wendell was represented by attorney Craig Hobdey. All other protestants represented themselves.

The issues discussed included:

- -Public Interest
  - -Potential contamination of groundwater
  - -Odor, Flies, and related issues
  - -Within City impact area
    - -Denied County Permit
- -Expansion of Season of Use from Irrigation to year round.
- -Potential Expansion of use of Canal Shares.
- -Injury to other rights

The main issue seems to revolve around recent litigation over the Gooding County's CAFO permits. I understand the county has denied the dairy a permit but recent litigation has resulted in some of the county ordinances being found invalid. The applicant's take on this is that the basis for denial is now invalid and the dairy is grandfathered in. The city's and other protestant's take on this is that the denial is valid since it was based on some ordinances not found valid and even if some of the ordinances presently are invalid that they will be fixed and the dairy will not gain a valid county permit. We discussed if it was timely for a hearing on the transfer to be held. The applicant wanted to proceed.

We also discussed the lack of action by the IDWR in allowing the dairy to operate without valid rights. I pointed out that I had drafted a NOV but Norm would not sign it since the transfer had been filed and at the time the county was in litigation and there was proceedings being held for the CAFO permit. I told them that it was my opinion that Norm did not wish to jump into something that may ultimately resolve the dispute but a NOV option is still open.

After discussion of the various issues there was no resolution of the matter so we discussed setting a hearing. It was agreed that the department would allow discovery that would extend to November 2nd and that the parties would exchange witness lists and exhibit copies on or before November 9th. The hearing would be on one day between November 17th thru 19th depending on attorney calendar checks this afternoon.

I told them we would issue an order granting discovery and send notice of the hearing. Please send discovery order.

MICROFILMED

NOV 12 1999

RE: TR# 5197, (F.F. and G.C. Gunning)

PLACE: Multi-Purpose Rm., City Hall; Gooding, ID

DATE: Thursday-September 10, 1998 at 10:00 a.m.

CONFERENCE OFFICER: Allen D. Merritt

ASSISTED BY:

ROSTER OF ATTENDANCE

NAME	ADDRESS	REPRESENTING
Frank Rost Jr.	604 6 A. E	Wendell
Dale Bitterli	Box 817 Wendell	Wendell Rec Dist
Steven Rost	604 6th AE	City of Wendell
Craig Hadley	P.O. Box 176	City Atty
Andrew Gunning	2072 E 2950 S	Hillcrest Dairy
Pat Brown	812 E Shoshone, Twin Falls	Hillcrest Dairy
John Hall	198 FE 2600 S	Wendell
Joel Briggs	2050 E 3000 S	Wendell personal
	MICROFILMED	
	NOV 12 1999	

RECEIVED
AUG 13 1998
Department of Water Resources
Southern Region

Wendell Res. Dist.

AUGUST 1998

FILE RECEIPTS, BILLS & STATEMENTS IN THIS POCKET

JUL.

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AUGUST

SEPTEMBER 1998

FILE RECEIPTS, BILLS & STATEMENTS IN THIS POCKET

AUG.

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13 256 GRANDPARENTS DAY	14 257	15 258	16 259	17 260	18 261	19 262
20 263	21 264 ROSH HASHANAH	22 265	23 266 AUTUMN BEGINS	24 267	25 268	26 269
27 270	28 271	29 272	30 273			

MICROFILMED
NOV 12 1998

E. D. Bitterli
Box 217
Wendell, Ida
83355



Dept. of Water Resources
1341 Filmore ST. Suite 200
Twin Falls, Id
83301-3380

MICROFILMED
AUG 17 1998

RECEIVED
AUG 13 1998
Department of Water Resources
Southern Region

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE
STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR TRANSFER NO. 5297	NOTICE OF PRE-HEARING CONFERENCE
F.F. and G.C. GUNNING, Applicants	
City of Wendell, Wendell Recreation District, John & Verla Hall, Noel Briggs, and Frank Rost, Jr., Protestants	SOURCE: groundwater COUNTY: Gooding

On April 3, 1997 F.F. and G.C. Gunning, applicants, filed with the Department of Water Resources an application to transfer the public waters of the State of Idaho. The Department has received protests against the approval of said application from the above captioned protestants.

The Department has set the matter of protest for conference on **Thursday**-September 10, 1998 at 10:00 a.m. in the Multi-Purpose Room of the Gooding, Idaho City Hall located at 308 5th Avenue West.

The purpose of the conference is to formulate and simplify the issues, obtain admissions of fact and of documents which will avoid unnecessary proof, arrange for the exchange of proposed exhibits or prepared expert testimony prior to the hearing, limit the number of witnesses, consolidate the examination of witnesses, and advise the parties of the procedure which will be followed at any subsequent hearing.

The conference will be held in accordance with Chapter 2, Title 42, of the Idaho Code and the adopted Rules of Practice and Procedure of the Department of Water Resources.

The conference will be conducted in a facility which meets the accessibility requirements of the Americans with Disabilities Act. If you require special accommodations in order to attend, participate in or understand the conference, please advise the department within (10) days prior to the conference.

Dated this 11th day of August, 1998.

Allen D. Merritt, P.E.
Regional Manager

MICROFILMED
NOV 12 1999

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CERTIFICATE OF MAILING

I hereby certify that on the 12th day of August, 1998 a true and correct copy of the foregoing Notice of Pre-hearing Conference was forwarded with all required charges prepared, by the method(s) indicated below, to the parties listed:

Mary A. Baldwin
Secretary

F F GUNNING & G C GUNNING PO BOX 821 WENDELL ID 83355	Hand delivered U.S. Mail-Regular U.S. Mail-Certified Fax	____ __X__ ____ ____
PATRICK D BROWN ESQ PARKER WARR & BROWN 812 SHOSHONE STREET EAST TWIN FALLS ID 83301	Hand delivered U.S. Mail-Regular U.S. Mail-Certified Fax	____ __X__ ____ ____
GWEN ROST MAYOR CITY OF WENDELL PO BOX 208 WENDELL ID 83355	Hand delivered U.S. Mail-Regular U.S. Mail-Certified Fax	____ __X__ ____ ____
CRAIG D HOBDEY ESQ PO BOX 176 GOODING ID 83330	Hand delivered U.S. Mail-Regular U.S. Mail-Certified Fax	____ __X__ ____ ____
DALE BITTERLI PRESIDENT WENDELL RECREATION DISTRICT PO BOX 217 WENDELL ID 83355	Hand delivered U.S. Mail-Regular U.S. Mail-Certified Fax	____ __X__ ____ ____
JOHN & VERLA HALL 1988 E 2800 S WENDELL ID 83355	Hand delivered U.S. Mail-Regular U.S. Mail-Certified Fax	____ __X__ ____ ____
NOEL BRIGGS 2050 E 3000 S WENDELL ID 83355	Hand delivered U.S. Mail-Regular U.S. Mail-Certified Fax	____ __X__ ____ ____
FRANK ROST JR 604 6TH AVE EAST WENDELL ID 83355	Hand delivered U.S. Mail-Regular U.S. Mail-Certified Fax	____ __X__ ____ ____

NOV 1 2 1999

CONFERENCE AND HEARING PROCEDURE

APPLICATION FOR TRANSFER ISSUES

Section 42-222, Idaho Code, identifies the following potential issues that the department can consider in connection with an application for transfer:

1. Will the proposed transfer injure other water rights?

2. Will the proposed transfer constitute an enlargement in the use of the original right?

3. Is the proposed transfer in the local public interest, where local public interest is defined as the affairs of the people in the area directly affected by the proposed use?

4. Is the proposed use contrary to conservation of water resources within the state of Idaho?

BURDEN OF PROOF

The applicant has the initial burden of proof for issues 1, 2, and 4 above and must provide evidence for the department to evaluate these criteria. The initial burden of proof on issue 3 above lies with both the applicant and protestant as to factors of which they are most knowledgeable and cognizant. The applicant has the ultimate burden of persuasion, however, for this issue.

PROCEDURE

The department generally conducts an informal conference with the parties to determine the issues and to try to settle a protested matter before a hearing is scheduled. If a hearing is held, the department will issue a written decision based on the hearing record.

CONFERENCE

The purpose of a pre-hearing conference is to provide the opportunity for the parties and the department to familiarize themselves with a contested matter and to attempt to resolve the matter. At the conference, the department may also formulate and simplify the issues, identify documents to avoid unnecessary proof, exchange proposed exhibits or prepared testimony, limit witnesses, discuss settlement or make settlement offers, schedule hearings, establish procedure at hearing and address other matters that may expedite orderly conduct and disposition of the proceeding or its settlement. The department may issue a "pre-conference statement order" which requires response to the inquiries.

HEARING

The department will tape record the hearing. Copies of a hearing tape are available upon request and the payment of the cost of reproducing the tape. The hearing likely will be conducted by a hearing officer appointed by the Director rather than by the Director himself. If so, the hearing officer will prepare a recommended order for the Director's consideration. Parties can file exceptions to a recommended order, briefs in support of the exceptions or may request oral argument. Parties may seek judicial review of any final order issued by the Director. Parties may by written stipulation waive the right to a recommended order, particularly when a shortened decision process is desirable or necessary. Such a waiver does not eliminate any rights of the parties in connection with the final order of the Director and judicial review of the order.

EXHIBITS

A party who plans to offer an exhibit as part of the hearing record must provide a copy of the proposed exhibit to the parties and to the hearing officer. As part of the conference a date may be set by which exchange of exhibits and witness lists must occur.

EFFECT OF FAILURE TO APPEAR AT A CONFERENCE OR HEARING

Failure to appear at the time and place set for a conference or hearing by the applicant or protestant(s) may allow the department to dismiss without prejudice the protest(s) or the application. Any and all cost incurred by reason of such non-appearance may be assessed against such non-appearing party.

AMERICANS WITH DISABILITIES ACT

Any hearing scheduled will be conducted in a facility which meets the accessibility requirements of the Americans with Disabilities Act. If you require special accommodations in order to attend, participate in or understand the hearing, please advise the department within (10) days prior to the hearing.

RECEIVED
JAN 12 1999

State of Idaho
DEPARTMENT OF WATER RESOURCES
1341 Fillmore Street, Suite 200, Twin Falls, ID 83301-3380
Phone: (208) 736-3033 FAX: (208) 736-3037

PHILIP E. BATT
GOVERNOR

KARL J. DREHER
DIRECTOR

August 11, 1998

ATTENTION: Carmen
GOODING CITY HALL
308 5TH AVENUE WEST
GOODING ID 83330

Dear Carmen:

This is a follow-up to our telephone conversation on this date to confirm the reservation of the Multi-purpose Room for a meeting to be held by this office on **Thursday-September 10, 1998 from 10:00 a.m.- 12:00 p.m.**

If you have any questions please feel free to contact me or Allen Merritt, Southern Regional Office Manager.

Thank you very much for your assistance in this matter.

Very truly yours,

Mary Baldwin
Senior Secretary

MICROFILMED
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AUGUST 1998

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SEPTEMBER 1998

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NOV 12 1999

Pat Brown

AUGUST 1998

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SEPTEMBER 1998

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Department of Water Resources
Southern Region

City of Wendell

AUGUST 1998

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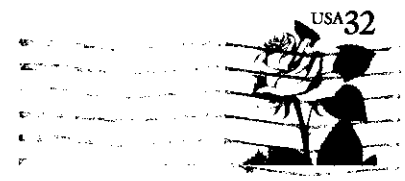
STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
1341 Fillmore Street, Suite 200
Twin Falls, Idaho
83301-3380

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AUG 05 1998
Department of Water Resources
Southern Region

ACKNOWLEDGED
NOV 12 1999

T. Rost
604 6th Ave E.
Wendell, Id.
83355





Dept. of Water Resources
1341 Fillmore St
Suite 200
Twin Falls, Id.
83301-3380

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Department of Water Resources
Southern Region

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Southern Region

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MCRS RECEIVED
NOV 12 1999

LAW OFFICES
HOBDEY & HOBDEY
125 FIFTH AVENUE WEST
P.O. BOX 176
GOODING, IDAHO 83330-0176

CRAIG D. HOBDEY
(208) 934-4439

OF COUNSEL
CECIL D. HOBDEY

RECEIVED
AUG 04 1998
Department of Water Resources

August 3, 1998

Allen D. Merritt
Department of Water Resources
1341 Fillmore Street, Suite 200
Twin Falls, Idaho 83301-3380

RE: APPLICATION FOR TRANSFER NO. 5197

Dear Mr. Merritt:

I am available for a pre-hearing on the following dates:

August, 1998 -- 10, 11, 17, 20, 21, 27, 28

September, 1998 -- 2, 4, 8, 9, 10, 11, 16, 17, 18, 21, 22, 24, 25, 28, 30

These dates are subject to change and will need notice, therefore please confirm by telephone.

Sincerely yours,

Craig D. Hobdey

CDH:bj

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NOV 12 1999

05/13/98

GWEN HOST
CALLED INQUIRING ABOUT STATUS OF TRANSFER. RETURNED HER CALL AND TOLD HER ~~APPLICATION~~ WAS STILL PROTESTED.

C. SKINNER

MICROFILMED
NOV 12 1999

State of Idaho
DEPARTMENT OF WATER RESOURCES
1341 Fillmore Street, Suite 200, Twin Falls, ID 83301-3380
Phone: (208) 736-3033 FAX: (208) 736-3037

July 30, 1998

PHILIP E. BATT
GOVERNOR

KARL J. DREHER
DIRECTOR

GWEN ROST MAYOR
CITY OF WENDELL
PO BOX 208
WENDELL ID 83355

Re: Application for Transfer No. 5197 filed in the name of F.F. Gunning & G.C. Gunning

Dear Protestant(s):

We have received recent correspondence from the applicant's legal counsel requesting a pre-hearing conference in late August or early September concerning the above referenced application.

Please indicate the dates you are available on the enclosed calendar and return it to this office as soon as possible.

If you are no longer interested in pursuing a protest, please submit a written withdrawal of your protest to this office as soon as possible.

If you have any questions or if this office can be of further assistance, please feel free to contact us.

Very truly yours,

Allen D. Merritt, P.E.
Regional Manager

AM:MB

Enclosure

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NOV 12 1999

State of Idaho
DEPARTMENT OF WATER RESOURCES
1341 Fillmore Street, Suite 200, Twin Falls, ID 83301-3380
Phone: (208) 736-3033 FAX: (208) 736-3037

July 30, 1998

PHILIP E. BATT
GOVERNOR

KARL J. DREHER
DIRECTOR

CRAIG D HOBDEY ESQ
PO BOX 176
GOODING ID 83330

Re: Application for Transfer No. 5197 filed in the name of F.F. Gunning & G.C. Gunning

Dear Mr. Hobdey:

We have received recent correspondence from the applicant's legal counsel requesting a pre-hearing conference in late August or early September concerning the above referenced application.

As legal counsel for the protestant, the City of Wendell, please indicate the dates you are available on the enclosed calendar and return it to this office as soon as possible.

If your client is no longer interested in pursuing a protest, please submit a written withdrawal of the protest at your earliest convenience.

If you have any questions or if this office can be of further assistance, please feel free to contact us.

Very truly yours,

Allen D. Merritt, P.E.
Regional Manager

AM:MB

Enclosure

RECEIVED
NOV 12 1999

State of Idaho
DEPARTMENT OF WATER RESOURCES
1341 Fillmore Street, Suite 200, Twin Falls, ID 83301-3380
Phone: (208) 736-3033 FAX: (208) 736-3037

July 30, 1998

PHILIP E. BATT
GOVERNOR

KARL J. DREHER
DIRECTOR

DALE BITTERLI PRESIDENT
WENDELL RECREATION DISTRICT
PO BOX 217
WENDELL ID 83355

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Very truly yours,

Allen D. Merritt, P.E.
Regional Manager

AM:MB

Enclosure

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NOV 12 1999

State of Idaho
DEPARTMENT OF WATER RESOURCES
1341 Fillmore Street, Suite 200, Twin Falls, ID 83301-3380
Phone: (208) 736-3033 FAX: (208) 736-3037

July 30, 1998

PHILIP E. BATT
GOVERNOR

KARL J. DREHER
DIRECTOR

JOHN & VERLA HALL
1988 E 2800 S
WENDELL ID 83355

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Very truly yours,

Allen D. Merritt, P.E.
Regional Manager

AM:MB

Enclosure

NOV 12 1999

State of Idaho
DEPARTMENT OF WATER RESOURCES
1341 Fillmore Street, Suite 200, Twin Falls, ID 83301-3380
Phone: (208) 736-3033 FAX: (208) 736-3037

July 30, 1998

PHILIP E. BATT
GOVERNOR

KARL J. DREHER
DIRECTOR

NOEL BRIGGS
2050 E 3000 S
WENDELL ID 83355

Re: Application for Transfer No. 5197 filed in the name of F.F. Gunning & G.C. Gunning

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Very truly yours,

Allen D. Merritt, P.E.
Regional Manager

AM:MB

Enclosure

NOV 12 1998

State of Idaho
DEPARTMENT OF WATER RESOURCES
1341 Fillmore Street, Suite 200, Twin Falls, ID 83301-3380
Phone: (208) 736-3033 FAX: (208) 736-3037

July 30, 1998

PHILIP E. BATT
GOVERNOR

KARL J. DREHER
DIRECTOR

FRANK ROST JR
604 6TH AVE EAST
WENDELL ID 83355

Re: Application for Transfer No. 5197 filed in the name of F.F. Gunning & G.C. Gunning

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If you have any questions or if this office can be of further assistance, please feel free to contact us.

Very truly yours,

Allen D. Merritt, P.E.
Regional Manager

AM:MB

Enclosure

NOV 12 1998

PARKER, WARR & BROWN, LLP
ATTORNEYS AT LAW

PENELOPE PARKER
JEFFREY A. WARR
PATRICK D. BROWN

812 Shoshone Street East
Twin Falls, Idaho 83301
phone (208) 735-8812
facsimile (208) 735-8820

July 27, 1998

RECEIVED
JUL 28 1998
partment of W
Southern

Idaho Department of Water Resources
1341 Fillmore, Suite 200
Twin Falls, ID 83303-3380

RE: Gail Gunning, Transfer Application No. 5197
Our File No. 102-001

Dear Sir or Madam:

I am writing on behalf of the Gunning's to ask that you schedule a pretrial hearing so that we may meet with all of the protestors, identify the issues, determine the timing and scope of any prehearing discovery or other matters which need to be addressed, and schedule the hearing on the protests.

I am available for a pretrial hearing anytime during the week of August 17th – 21st, as well as on August 25. I would appreciate it if you could schedule the hearing during that time. Thank you for your attention to this matter and I look forward to hearing from you.

Sincerely,

PARKER, WARR & BROWN, LLP

By:
Patrick D. Brown

PDB/llm

cc: client
Gwen Rost Mayor, City of Wendell
Dale Bitterli, President, Wendell Recreation District
John & Verla Hall
Noel Briggs
Frank Rost Jr.

NOV 12 1998

MAGIC VALLEY

Disputed dairy under appeal again

By Sharon Metcalf
Times-News correspondent

GOODING – For the second time, a dairy is appealing a Gooding County decision to deny it a site permit.

Attorney Rob Williams, representing Hillcrest Dairy, has appealed a recent Gooding County Planning and Zoning Commission decision to uphold P&Z administrator Judy Daubner's denial of a dairy permit.

Gooding County commissioners will hear the appeal at 6 p.m., May 11 at the county building.

This will be the second appeal of the P&Z decision by Hillcrest to commissioners. After the first appeal, commissioners referred the matter back to the P&Z for another public hearing.

The non-permitted dairy has drawn fire in the past. Wendell Mayor Gwen Rost has described the operation as "holding the citizens of Wendell hostage."

In other county business:

- Another juvenile home detention monitor has been added to the one already available, with the county paying only for time used.
- Cheryl Juntunen of the South Central Health District presented commissioners with a budget proposal for 1999. Gooding County contributed $59,023 last year, and this year's requested budget is $61,054.
- County Clerk Helen Edwards said the coroner's budget will have to be raised after this month due to escalating autopsy costs.

SERVICES

Ronald W. Kevan of Twin Falls, 11 a.m. today at the Peace Lutheran Church in Filer (Parke's Magic Valley Funeral Home).

Ola N. McGregor of Twin Falls, 11 a.m. today at Reynolds Funeral Chapel in Twin Falls.

Noel R. England of Rupert, 1 p.m. today at the Rupert Stake Center; friends may call one hour before the service at the church (Hansen Mortuary Rupert Chapel).

Tad R. Zemke of Burley, 11 a.m. Thursday at the Paul Pine Chapel; family will be gathering one hour before the service at the chapel (Hansen Mortuary Burley Chapel).

Emma Sevey of Walla Walla, Wash., graveside service at 2 p.m. Friday in Hagerman (Colonial-DeWitt Crematorium in Walla Walla, Wash.).

Don H. Porter of Thermopolis, Wyo., memorial service at 2 p.m. Saturday at the Hagerman Reorganized Church of Jesus Christ, Third and Orchard Street in Hagerman (Mortimore Funeral Home in Thermopolis, Wyo.).

Robert Hackett of Twin Falls, memorial service at 1 p.m. Saturday at Reynolds Funeral Chapel in Twin Falls.

Sue Witherspoon of Heyburn, memorial service at 11 a.m. Saturday at Payne Memorial Chapel in Burley; graveside memorial service at 1 p.m. Sunday at Sunset Memorial Park in Twin Falls.

DEATH NOTICE

Fred I. Sturtevant

HAGERMAN – Fred Ira Sturtevant, 73, of Hagerman, died Tuesday, April 14, 1998, at his residence.

No service is planned.

FOR T

The Times-News

GOODING – Recent activity in 5th District Court in Gooding County included the following:

Arraignments and appearances

Julio Avelar, no age available, no street address, Gooding; battery; failure to appear for April 9 pretrial conference; warrant; Magistrate Judge Kevin Cassidy.

John Henry Carpenter, 20, 109B Ave. E., Jerome; violation of protective order; pleaded guilty; sentencing April 30; violation of protective order; domestic assault; battery; pleaded guilty; sentencing April 30; Magistrate Judge Kevin Cassidy.

Simon Carillo-Medrano, 32, 1550 E. Second S., Wendell; driving without privileges (second offense); violation of registration provisions; pleaded innocent; public defender appointed; court trial May 7; Magistrate Judge Kevin Cassidy.

Candace J. Emery, 24, 544 First Ave. E., Wendell; domestic battery; pleaded guilty; injury to child; dismissed; needs domestic violence evaluation; sentencing May 7; Magistrate Judge Kevin Cassidy.

Amanda C. Goodlet, 18, 2150 Main, No. 16, Gooding; failure to appear for sentencing; failure to appear for court trial on petit-theft charge; Magistrate Judge Kevin Cassidy.

Michael Scott Grissom, 37, 111

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State of Idaho
DEPARTMENT OF WATER RESOURCES
1341 Fillmore Street, Suite 200, Twin Falls, ID 83301-3380
Phone: (208) 736-3033 FAX: (208) 736-3037

March 4, 1998

PHILIP E. BATT
GOVERNOR

KARL J. DREHER
DIRECTOR

F F GUNNING &
G C GUNNING
PO BOX 821
WENDELL ID 83355

RE: APPLICATION FOR TRANSFER NO. 5197

Dear Applicants:

Enclosed are copies of protests filed against the above referenced application.

The Department suggests you contact the protestant(s) directly to determine the exact nature of the protest(s) and, if possible, to resolve the matter without action by the Department.

The attachment to this letter describes the issues which the Department must consider in taking action on an application. It also gives a brief description of the conference and hearing procedure followed by the Department in resolving protested applications.

If you have any questions or if this office can be of further assistance, please feel free to contact us.

Very truly yours,

Allen D. Merritt, P.E.
Southern Region Manager

AM:MB
Enclosure(s)

NOV 12 1998

State of Idaho
DEPARTMENT OF WATER RESOURCES
1341 Fillmore Street, Suite 200, Twin Falls, ID 83301-3380
Phone: (208) 736-3033 FAX: (208) 736-3037

March 4, 1998

PHILIP E. BATT
GOVERNOR

KARL J. DREHER
DIRECTOR

GWEN ROST MAYOR
CITY OF WENDELL
PO BOX 208
WENDELL ID 83355

RE: APPLICATION FOR TRANSFER NO. 5197 (36-02457B, 36-07760B, 36-08063F) filed in the name of F.F. Gunning and G.C. Gunning

Dear Protestant(s):

Your protest against the approval of the above referenced application has been received and a copy has been sent to the applicant with the suggestion that he contact you directly to determine the exact nature of the protest and, if possible, to resolve the matter without action by the Department.

The attachment to this letter describes the issues which the Department must consider in taking action on an application. It also gives a brief description of the conference and hearing procedure followed by the Department in resolving protested applications.

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Very truly yours,

Allen D. Merritt, P.E.
Southern Region Manager

AM:MB
Enclosure(s)
cc: Craig D. Hobdey, Esq.

State of Idaho
DEPARTMENT OF WATER RESOURCES
1341 Fillmore Street, Suite 200, Twin Falls, ID 83301-3380
Phone: (208) 736-3033 FAX: (208) 736-3037

March 4, 1998

PHILIP E. BATT
GOVERNOR

KARL J. DREHER
DIRECTOR

DALE BITTERLI PRESIDENT
WENDELL RECREATION DISTRICT
PO BOX 217
WENDELL ID 83355

RE: APPLICATION FOR TRANSFER NO. 5197 (36-02457B, 36-07760B, 36-08063F) filed in the name of F.F. Gunning and G.C. Gunning

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Allen D. Merritt, P.E.
Southern Region Manager

AM:MB
Enclosure(s)

MAR 12 1998

State of Idaho
DEPARTMENT OF WATER RESOURCES
1341 Fillmore Street, Suite 200, Twin Falls, ID 83301-3380
Phone: (208) 736-3033 FAX: (208) 736-3037

March 4, 1998

PHILIP E. BATT
GOVERNOR

KARL J. DREHER
DIRECTOR

JOHN & VERLA HALL
1988 E 2800 S
WENDELL ID 83355

RE: APPLICATION FOR TRANSFER NO. 5197 (36-02457B, 36-07760B, 36-08063F) filed in the name of F.F. Gunning and G.C. Gunning

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Southern Region Manager

AM:MB
Enclosure(s)

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DEPARTMENT OF WATER RESOURCES
1341 Fillmore Street, Suite 200, Twin Falls, ID 83301-3380
Phone: (208) 736-3033 FAX: (208) 736-3037

March 4, 1998

PHILIP E. BATT
GOVERNOR

KARL J. DREHER
DIRECTOR

NOEL BRIGGS
2050 E 3000 S
WENDELL ID 83355

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Southern Region Manager

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Enclosure(s)

NOV 1 2 1998

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DEPARTMENT OF WATER RESOURCES
1341 Fillmore Street, Suite 200, Twin Falls, ID 83301-3380
Phone: (208) 736-3033 FAX: (208) 736-3037

March 4, 1998

PHILIP E. BATT
GOVERNOR

KARL J. DREHER
DIRECTOR

FRANK ROST JR
604 6TH AVE EAST
WENDELL ID 83355

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Very truly yours,

Allen D. Merritt, P.E.
Southern Region Manager

AM:MB
Enclosure(s)

NOV 1 2 1998

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RECEIVED
MAR 0 2 1998
Department of Water Resources

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
NOTICE OF PROTEST

This form may be used to file a protest with the department under sections 42-108B, 42-203A, 42-203C, 42-211, 42-222 and 42-224, Idaho Code. The department will also accept a timely protest not completed on this form if it contains the same information.

T#5197

1. Matter being protested Gunning Proposed change of Water right
2. Name of protestant Wendell Recreation District
3. Protestant's representative for service (If different than protestant)

4. Service mailing address Box217 Wendell, Idaho
5. Service telephone no. 208-536-2477
6. Basis of protest (including statement of facts and law upon which the protest is based)
Current Operation and proposed changes not in compliance with existing Current State & ~~Local~~ Local Laws, Rules & Guidelines.

(additional pages may be attached to describe the nature of the protest)

7. What would resolve your protest? Move ~~the~~ commercial operation out of City of Wendell impact zone

I hereby, acknowledge that if I, or my designated representative, fails to appear at any regularly scheduled conference or hearing in the matter of which I have been notified at the address above, the department may issue a notice of proposed default against me in this matter for failure to appear. I also verify that I have served a copy of this protest upon the applicant.

Signed this 2 day of March, 1998.

Wendell Recreation DIST
PROTESTANT

Dale Bittick Rec Dist President
PROTESTANT'S REPRESENTATIVE

NOV 12 1999

NOTE:

A protestant is required to timely file a protest with the department together with a $25.00 protest for each application being protested in order for the protestant to be considered a full party by the department. In addition, the department's Rule of Procedure, IDAPA 37.01.01203, requires a protestant to send a copy of a protest to the applicant.

INSTRUCTIONS

1. The matter being protested must be clearly identified. A typical matter is identified by the application number such as "Application for Permit No. _____ in the name of _____" or "Application for Transfer No. _____ in the name of _____."

2. Show the name of the protestant. Only one (1) protestant may be shown per protest form. If this protest form is signed by more than one person, the hearing officer will consider the first signer as the official protestant and the representative for service of documents.

3. If the protestant is represented by an attorney or other authorized representative, show the representative's name. The department then will serve documents on the representative and upon the protestant if specifically requested.

4. Show the address where the department is to serve the documents. This should be the address of the authorized representative unless the protestant does not designate a representative.

5. Show the telephone number of the authorized representative unless the protestant does not designate a service representative.

6. Specifically describe the nature of the protest.

7. Describe the relief being sought by the protestant.

FOR DEPARTMENT USE ONLY

Received by MB Date 3/2/98 Time 3:55 p.m.

$25.00 fee Receipted by _____ # SO 20917 Date 3/2/98

MICROFILMED

NOV 12 1999

Wendell Recreation District

P.O. Box 248

Wendell, Idaho 83355

2-25-98

RECEIVED

MAR 0 2 1998

Department of Water Resources
Southern Region

Planning and Zoning Board
Gooding County Courthouse
Gooding, ID 83355

Dear Board Members:

The Wendell Recreation District, which is a separate taxing entity from the City of Wendell, goes on record of being in support of the Dairy Industry and appreciates the many good things it does for our area.

The Planning and Zoning Board of Gooding County, the Impact Zone for the City of Wendell, the T-2 Zone, and the Idaho Department of Water Resources have all been organized for the benefit of everyone. Without following the rules and laws set forth therein we would have chaotic growth and continued conflicts between the people living within the area.

We are opposed to issuing the permit to the Hillcrest Dairy because they have not followed the necessary rules and laws set in place to govern the Dairy Industry, the City of Wendell, Gooding County, and the Idaho Department of Water Resourses.

The dairy is in operation at the present time, and we are experiencing a very offensive odor which affects the patrons and visitors of Wendell who come to enjoy the recreation offered at both the McGinnis and City Parks.

Sincerely,

Dale Bitterli, President

DB/pb

NOV 1 2 1999

RECEIVED
MAR 0 2 1998
Department of Water Resource
Southern Region

STATE OF IDAHO

DEPARTMENT OF WATER RESOURCES
NOTICE OF PROTEST

This from may be used to file a protest with the department under sections 42-108B, 42-203A, 42-203C, 42-211, 42-222 and 42-224, Idaho Code. The department will accept a timely protest not completed on this form if ti contains the same information.

1. Matter being protested Application for Permit # T-5197 by F.F. Gunning and G.C. Gunning, P.O. Box 821, Wendell, Idaho 83355

2. Name of Protestant John Hall

3. Protestant's representative for service(if different that Protestant None

4. Service mailing address 1988 E 2800 s Wendell, Idaho 83355

5. Service telephone number 208-536-6590

6. Basis of protest (including statement and law upon which the protest is based)

An attempt is being made to establish a large scale confined animal operation in a residential area.

Proper permits were not obtained prior to beginning operation of the dairy facility. Permits are not currently in place, yet the facility continues to operate.

Water and air quality concerns have not been met.

Disease control plans have not been developed.

Nuisance concerns have not been addressed.

7. What would resolve your protest?

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NOV 1 2 1999

A written environmental impact statement specifically addressing:

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3/2/98
Receipt # 5020919

the exact amount of water to be used each day
how and where the water used will be discarded
how animal run off and run off die to rain or snow will be handled
adequate safe guards to ensure that no animal waste products,
chemicals, and/or viral or bacterial contaminants, such as E Coli,
or Staphylococci, reach any ground water
testing of all wells within a half mile radius to ensure that no current or
future contamination has occurred.

Written approval by all neighbors within ½ mile of the facility.

I hearby acknowledge that if I, or my designated representative, fails to appear at any regularly scheduled conference of hearing in the matter of which I have been notified at the address above, the department may issue a notice of proposed default against me in this matter for failure to appear. I also verify that I served a copy of this protest upon the applicant.

Signed this 2nd day of March, 1998

Protestant John Hall

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RECEIVED
MAR 0 2 1998
Department of Water Resources
Southern Region

STATE OF IDAHO

DEPARTMENT OF WATER RESOURCES
NOTICE OF PROTEST

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1. Matter being protested Application for Permit # T-5197 by F.F. Gunning and G.C. Gunning, P.O. Box 821, Wendell, Idaho 83355

2. Name of Protestant Verla Hall

3. Protestant's representative for service(if different that Protestant None

4. Service mailing address 1988 E 2800 s Wendell, Idaho 83355

5. Service telephone number 208-536-6590

6. Basis of protest (including statement and law upon which the protest is based)

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Proper permits were not obtained prior to beginning operation of the dairy facility. Permits are not currently in place, yet the facility continues to operate.

Water and air quality concerns have not been met.

Disease control plans have not been developed.

Nuisance concerns have not been addressed.

7. What would resolve your protest?

A written environmental impact statement specifically addressing:

NOV 1 2 1999

MB
3/2/98
Receipt #50 2019

7. What would resolve your protest?

A written environmental impact statement specifically addressing:
the exact amount of water to be used each day
how and where the water used will be discarded
how animal run off and run off due to rain or snow will be handled
adequate safe guards to ensure that no animal waste products, chemicals, and/or viral or bacterial contaminants, such as E Coli, or Staphylococci, reach any ground water
testing of all wells within a half mile radius to ensure that no current or future contamination has occurred.

Written approval by all neighbors within ½ mile of the facility.

I hearty acknowledge that if I, or my designated representative, fails to appear at any regularly scheduled conference of hearing in the matter of which I have been notified at the address above, the department may issue a notice of proposed default against me in this matter for failure to appear. I also verify that I served a copy of this protest upon the applicant.

Signed this 2nd day of March, 1998

Protestant Verla Hall

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NOV 12 1999

Nov. 18, 1997

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MAR 0 2 1998
Department of Water Resources
Southern Region

Gooding County Planning and Zoning Board:

We strongly support, and have been involved in, the agriculture of Gooding County. However, we believe that a confined-animal operation exceeding 50 -100 animals is not an agricultural operation, but an industrial operation.

Before issuing permits for a large scale confined animal operation to the Gunning/Bettencourt dairy (on the former Dairy West site), the following questions should be satisfactorily resolved:

1. Exactly how much water will be used daily? Does the dairy have water permits for the desired amount of water? Where and how will the water used in washing cows and in washing equipment be discarded? How will animal waste run-off, and run-off due to rain or snow be handled? Is there a written environmental impact plan which meets all water quality standards? Are there adequate safeguards to ensure that no animal waste products, chemicals, and/or viral/bacterial contaminants, such as E. Coli or Streptococci, reach any ground water? Have all neighbors, including those living in the city of Wendell, been informed of precautions necessary to avoid ground water health concerns? Will the county provide funding and personnel for an on-going well testin program? If contamination does occur, what will, or can be done, to return the ground water to its previous uncontaminated condition?

2. Is there a written air quality impact statement? How will contaminant-laden dust (containing, among other contaminants, animal fecal and urinary products, chemical residues in various forms, and/or possible bacterial or viral contaminants, be controlled? Are there safeguards to protect residents with asthma, allergies, or lung problems, from dust, and dust-borne contaminants? When overpowering animal waste odors prevent us from opening our bedroom windows (at approximately ½ mile northwest of the facility), or from enjoying fireworks displays, football games, or other outdoor activities in Wendell, is there any recourse?

3. Have adequate disease control plans been developed? Any visitor to Wendell Elementary School during the fall months will notice large numbers of flies crawling on the eyes, noses, mouths, hands, and desks of the students. What are the disease implications of flies breeding uncontrolled in a large confined-animal facility? Are flies prevented from crawling on sick or dying animals, dead animals, or discarded contaminated milk products? How can we avoid the transferral of disease causing organisms from these sources to our school children and to other residents?

4. Are there safeguards to protect neighbors from environmental irritants, such as lights, noise at all hours, and increased heavy vehicle traffic? In the city of Wendell, a

NOV 1 2 1999

building code variation requires written approval by all residents within 600 yards. Has written approval been obtained from neighbors of the proposed dairy facility?

5. The proposed dairy facility began construction and operation without required permits. If permits are issued after the fact, what precedents are we setting? Is it logical to excuse compliance with the law because money has already been invested in an unlicensed operation? If unlawful operations are allowed to be built and then licensed after the fact, do we in fact have any licensing laws? Is there any point in having any Planning and Zoning regulations if they are not enforced?

If the above questions cannot be satisfactorily answered, then the only wise course is to deny permits for the proposed confined-animal operation. The rights of a small group of people desiring to operate an industrial facility in a populated area should not negate the rights of those who have invested large amounts of money and time into creating safe homes for themselves and their families.

Sincerely,

John Hall

Verla Hall

John and Verla Hall
1988 East 2800 South
Wendell, Idaho 83355
208-536-6590

NOV 12 1999

3/96

RECEIVED
MAR 0 2 1998
Department of Water Resources
Southern Region

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
NOTICE OF PROTEST

This form may be used to file a protest with the department under sections 42-108B, 42-203A, 42-203C, 42-211, 42-222 and 42-224, Idaho Code. The department will also accept a timely protest not completed on this form if it contains the same information.

1. Matter being protested Proposed water change right # T # 5197

2. Name of protestant Noel Briggs

3. Protestant's representative for service (If different than protestant)

4. Service mailing address 2050 E 3000S Wendell ID 83355

5. Service telephone no. 208 - 536-2985

6. Basis of protest (including statement of facts and law upon which the protest is based)

Proposed water change could affect my drinking water well, As well as flies & smell

(additional pages may be attached to describe the nature of the protest)

7. What would resolve your protest? Denial of Application

I hereby, acknowledge that if I, or my designated representative, fails to appear at any regularly scheduled conference or hearing in the matter of which I have been notified at the address above, the department may issue a notice of proposed default against me in this matter for failure to appear. I also verify that I have served a copy of this protest upon the applicant.

Signed this 2 day of March, 19 98.

Noel Briggs
PROTESTANT

PROTESTANT'S REPRESENTATIVE

MICROFILMED
NOV 1 2 1999

NOTE:

A protestant is required to timely file a protest with the department together with a $25.00 protest or each application being protested in order for the protestant to be considered a full party by the department. In addition, the department's Rule of Procedure, IDAPA 37.01.01203, requires a protestant to send a copy of a protest to the applicant.

INSTRUCTIONS

1. The matter being protested must be clearly identified. A typical matter is identified by the application number such as "Application for Permit No. _____ in the name of _____" or "Application for Transfer No. _____ in the name of _____."

2. Show the name of the protestant. Only one (1) protestant may be shown per protest form. If this protest form is signed by more than one person, the hearing officer will consider the first signer as the official protestant and the representative for service of documents.

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4. Show the address where the department is to serve the documents. This should be the address of the authorized representative unless the protestant does not designate a representative.

5. Show the telephone number of the authorized representative unless the protestant does not designate a service representative.

6. Specifically describe the nature of the protest.

7. Describe the relief being sought by the protestant.

FOR DEPARTMENT USE ONLY

Received by MB Date 3/2/98 Time 3:55 pm

$25.00 fee Receipted by MB # 5020918 Date 3/2/98

MICROFILMED

NOV 12 1999

3/96

RECEIVED
MAR 02 1998
Department of Water Resource
Southern Region

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
NOTICE OF PROTEST

MAR 02 1998
Department of Water Resources
Southern Region

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1. Matter being protested Transfer # 5197
2. Name of protestant Frank Rost
3. Protestant's representative for service (If different than protestant)

4. Service mailing address 604 6th Av. E. Wendell, Id. 83355
5. Service telephone no. 536-2115
6. Basis of protest (including statement of facts and law upon which the protest is based)

allowing more water for the dairy allows them to legally have more cows. This dairy a public nuisance. The odor already coming from their illegal dairy is terrible.

(additional pages may be attached to describe the nature of the protest)

7. What would resolve your protest? not allow an increase in water use there by cutting down on number of cows allowed

I hereby, acknowledge that if I, or my designated representative, fails to appear at any regularly scheduled conference or hearing in the matter of which I have been notified at the address above, the department may issue a notice of proposed default against me in this matter for failure to appear. I also verify that I have served a copy of this protest upon the applicant.

Signed this 2nd day of March, 19 98.

Frank Rost Jr.
PROTESTANT

PROTESTANT'S REPRESENTATIVE

MICROFILMED
NOV 12 1999

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5. Show the telephone number of the authorized representative unless the protestant does not designate a service representative.

6. Specifically describe the nature of the protest.

7. Describe the relief being sought by the protestant.

FOR DEPARTMENT USE ONLY

Received by MB Date 3/2/98 Time 355 p m

$25.00 fee Receipted by MB # 50 20920 Date 3/2/98

MICROFILMED

NOV 12 1999

RECEIVED
MAR 0 2 1998
Department of Water Resources
Southern Region

CITY OF WENDELL
P.O. BOX 208
WENDELL, ID. 83355
(208) 536-5161

TO: Gooding County Planning and Zoning Board

I am Gwen Rost, Mayor of Wendell, Id. I am here to represent the City of Wendell at this hearing of the F.F. and G.C Gunning Dairy known as the Hillcrest Dairy.

Since this is a hearing for the finding of facts I would like to start my remarks by giving the history of the Wendell Impact Area. I will start with Gooding County Ordinances.

April 3, 1980 Ordinance #20
An ordinance designating area's of City Impact and adopting maps identifying the areas of City Impact.

May 9, 1990 Ordinance #22
This ordinance was adopted giving the Administration and control back to the City of Wendell, to be controlled by the plans and Ordinances of the City of Wendell.

May 9, 1988 Ordinance #37
This ordinance was adopted to amend ordinance # 20.

June 28, 1990 Ordinance #44
This ordinance repealed ordinance # 22 and providing that the area of City Impact for the City of Wendell, Id. shall be administered and controlled by the Comprehensive Plan and the ordinances of Gooding County.

April 27, 1995 Ordinance #57
Was adopted designating the area of City Impact for the City of Wendell and adopting a map identifying the area. This ordinance supersedes and replaces all provisions of previously adopted ordinances dealing with matters addressed by this ordinance.

April 27, 1995 Ordinance #58
An ordinance providing for the application of the County Plan and Ordinances Adopted under Chapter 65 of Title 67 of the Idaho Code to the area of City Impact for the City of Wendell. Identifying methods and procedures for giving notice to the City of Wendell, providing for review of City Impact Areas, repealing conflicting provisions and county ordinances.

City of Wendell Ordinances

Feb. 20, 1976 Ordinance #275
An ordinance of the City of Wendell, Id. fixing the area of City Impact, and adopting a map identifying the area of City Impact.

March 25, 1976 Ordinance #277

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Amending and correcting the legal description of the City Impact area as in ordinance #275.

June 13, 1991 Ordinance #356
Repealing Ordinance #275 and #277 and giving county jurisdiction.

March 9, 1995 Ordinance #374
Area of City Impact agreement with the County of Gooding.

March 9, 1995 Ordinance #373
Defining and establishing area of impact.

The area of impact is an area of one mile distance around the City of Wendell. This area has been designated by the county as a T-2 zone or a Transitional District. According to zoning ordinances #50, #60 and #62 the purpose of a T-2 district is to serve as a buffer area surrounding incorporated cities.

T-2 zoning does not allow "Confined Animal Feeding Operations." Non residential uses whose negative impact on adjacent residential uses cannot be permitted in this area. New CAFO operations shall not be allowed. An existing CAFO at the time the ordinance was drafted is required to have a siting permit. If a CAFO is in existence in a T-2 zone it is a non-conforming CAFO. It is non-conforming if it is not compatible with the zoning district in which it is located. A non-conforming CAFO can continue in use until they are removed. The non-conforming CAFO uses shall not be enlarged on or be used for grounds for adding other structures who's uses would be prohibited elsewhere in the same zoning district in this case a T-2 zone.. Sub-divisions are encouraged to locate within T-2 districts, both for their protection and the protection of the agricultural area on the outside of the T-2 district.

All of these facts can be found in old Ordinance 50 page 10 Section B-#3 and on page 31 and 32. Section A and B tells of CAFO'S and non-conforming use. Ordinance #60 page 14 section B #3 and page 42 Section B has the very same Ordinances. According to Idaho Code section 52-101 addressing Nuisances it says a nuisance is something that is offensive to the senses.

Section 52-102 A public nuisance is one which affects at the same time an entire community or neighborhood, or any considerable number of persons.

This dairy is illegal--It is in a T-2 zone--It is nonconforming.--It is a public nuisance. The citizens of Wendell have been adversely affected by this dairy. The odor coming from this dairy is very offensive. The quality of life in Wendell has definitely changed for the worse. We are basically a bedroom community that no longer can open their windows and enjoy the smell of fresh air. We are virtually held hostage within our houses.

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These are all facts! facts of life, we live with everyday. We have no way of knowing how adversely our health can be affected by this dairy located to the east of the City limits. The water for the City wells all come from the aquifer from an eastern direction. also we have no way of knowing how the over abundance of flies will affect our health.

Now for the history and facts of the City of Wendells involvement with the Gunning family in regard to this well.

Correspondence about the dairy:
February 1995--Wendell protested an application for a water permit made by the Gunnings to the Department of Water Resources.

(Gunnings bought the farm the next month March of 1995)

June 23, 1995--received letter from Department of Water Resources advising the City that water permit was voided.

December 4, 1995--Gunnings received letter from City Attorney Mr. Craig Hobdey. (Read)

December 20, 1996--Letter to Department of Water Resources from Attorney Hobdey.

January 9, 1996--Gunning letter from Attorney Hobdey. (Read)

January 22, 1996--To attorney DeHann from Attorney Hobdey.

February 29, 1996--Letter from Attorney Harry DeHann.

March 22, 1996--To Attorney Harry DeHann from Attorney Hobdey.

May 1, 1996--Gooding County Planning and Zoning issued a cease and desist work order.

May 14, 1996--Gooding County Planning and Zoning issued a stop work order.

According to the rules and regulations set forth by the Gooding County zoning ordinances the Hillcrest dairy is an illegal dairy. Also according to the material that was presented to the planning and zoning board by Mr. Williams at the Nov. 17, 1997 hearing there was a statement given by G.C. Gunning referring to the T-2 zone. Article #9 says "At the time of our acquisition of the property in question its zoning was"Agricultural." No member of our family received any personal notice of any change in the ordinance which down-zoned the property from "ag" to "T-2" apparently, under Ordinance No. 60".

Exhibit B - in this very same material is a copy of a CAFO siting permit - dated October 20, 1993
Name--Farm Credit Bank of Spokane
(Dairy West Associates)

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Zoning District--T-2 Wendell

I do not see how the Gunnings did not know about the T-2 zoning when it was stated so in there legal papers. Zoning Ordinances #50 had the area of Impact Zone designated as a T-2 zone, and that was adopted in Feb. of 1993.

Also in Exhibit "A" of this same material from Mr. Williams is a copy of a Warranty Deed. The 3rd paragraph reads.

Subject to any and all easements, rights of way or restrictions of record, and buildings and use restrictions, zoning and building laws, and ordinances.

So we also find in their legal papers presented by Mr. Williams that they were also aware that they had to apply to the zoning, and also ordinances laws.

Fact--This dairy is 1/2 mile from the City of Wendell. The school zone is in the City limits. It was annexed into the City on January 23, 1975.

Fact--It is an illegal dairy built in the City of Wendells Impact Area in a T-2 zone.

Fact--It is a non-conforming dairy.

Fact--They have water rights for only one domestic well. Even though they have 2 hooked together and are using them. They are watering over 1,000 head of animals with water rights for not more than 400.

Fact--The Gunnings put this dairy in a T-2 zone within the Wendell Impact area. They do not have a siting permit, they did not apply for a siting permit. They do not have sufficient water rights. The only way they could build and equip this dairy was exactly the way they did it. They ignored the rights of the City of Wendell. They ignored the Gooding County Planning and Zoning board. They ignored all the Ordinances adopted for T-2 zones set up by the Planning and Zoning Board and adopted by the Gooding County Commissioners. They ignored the Idaho Department of Water Resourses.

Plain and simply they did what <u>they</u> wanted to do. But now where are they? They have spent a lot of money we all know. They have a big illegal dairy. Now they want the County Planning and Zoning to give them their siting permits. They want the Department of Water Resource to give them more water rights.

I have questions to ask the planning and zoning. If you went elk hunting without a license and without your tags what would happen after you shot your elk? When the legal authorities discovered what you had done do you think they would sit and wait while you went to town and bought your license and tags. And when

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you got back they would say well and good. I don't think so. There is not much difference is there. Now what they want is for you as a board to ignore your own ordinances on a T-2 Zone and for a Non-conforming dairy. I personally don't see how you can adopt rules and regulations in the form of Ordinances and then vote against them. I am asking for the City of Wendell--The Wendell Recreation District--
That you deny their petition for a siting permit and vote in favor of the rights of the 3,000 plus citizens of the City of Wendell.

We also urge the County Commissioners to uphold the laws and ordinances that they have adopted.

Thank you

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MAR 02 1998
Department of Water Resources
Southern Region

LAW OFFICES
HOBDEY & HOBDEY
125 FIFTH AVENUE WEST
P.O. BOX 176
GOODING, IDAHO 83330-0176

TELEPHONE
(208) 934-4429

COPY

December 4, 1995

Mr. G. C. Gunning
Hill Crest Dairy
2100 E. 2950 S.
Wendell, Idaho 83355

RE: DAIRY OPERATION EAST OF WENDELL

Dear Mr. Gunning:

X The City of Wendell strenuously objects to the placement of a dairy within the City Impact Zone. The area is not zoned for a dairy and as such is clearly in violation of County Ordinance No. 60. The information I have indicates that the dairy is not now in operation and therefore you must submit to the requirements of Ordinance No. 60. You have not done so and therefore any operation of your dairy is in direct conflict with the Ordinance. X

Please be advised that if the dairy commences operation the City of Wendell has instructed me, on behalf of the City, to immediately obtain an injunction. The purpose of this letter is to advise you that you are in violation and as such you will be wasting your money in continuing to go forth with plans for the dairy.

Should you have any questions please have your counsel contact me, or if you do not have an attorney please feel free to write to me yourself.

Sincerely yours,

Craig Hobdey

Craig D. Hobdey
Wendell City Attorney

CDH:bj
pc: Client
Mr. F. F. Gunning

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COPY

LAW OFFICES
HOBDEY & HOBDEY
125 FIFTH AVENUE WEST
P.O. BOX 176
GOODING, IDAHO 83330-0176

TELEPHONE
(208) 934-4429

CECIL D. HOBDEY
CRAIG D. HOBDEY

January 9, 1996

Mr. G. C. Gunning
Hill Crest Dairy
2100 E. 2950 S.
Wendell, Idaho 83355

Mr. F. F. Gunning
2027 E. 2975 S.
Wendell, Idaho 83355

Mr. Andrew Gunning
2298 E. 2900 S.
Wendell, Idaho 83355

RE: PROPOSED DAIRY 3/4 MILE EAST OF WENDELL CITY CENTER

Gentlemen:

The City of Wendell has once again asked that I intervene on their behalf in regards to the location of the above dairy. Since you have not seen fit to answer any of my letters I assume that you do not care and therefore I must give you this last ultimatum.

You seem to think you have a dairy permit. As I reviewed the information on file at the County's office the only thing you have is a CAFO SITING PERMIT dated October 20, 1993 in the name of Farm Credit Bank of Spokane (Dairy West Associates). That particular permit was granted under Zoning Ordinance No. 50 and has expired. Since there are no dairy cattle on the property at this time you need permission in order to put a dairy in. The fact that you are building a dairy only implies that you are spending the money to build what will eventually be empty barns. I can assure you that the City of Wendell will take all steps necessary to prevent the construction of a dairy on that site.

Not only will the ground water used by the City be contaminated but the water that you have available will not be sufficient to run a dairy operation. I would hope that you would have the courtesy to respond to the letters rather than ignoring them. However, if I do not receive a response, within 10 days,

MAIL
NOV 12 1999

I will have no alternative other than to commence legal proceedings.

If you have an attorney, please have him contact me so that we may explain in detail our positions without incurring the cost of litigation, document preparation, expert fees and associated costs.

Believe it or not, I am trying to work with you to resolve this matter, however your insistence on not replying to my letters have led me to believe that you simply do not care.

Sincerely yours,

Craig Hobdey

Craig D. Hobdey
Wendell City Attorney

CDH:bj
pc: Client

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NOV 12 1999

RECEIVED

3/96

FEB 27 1998

Department of Water Resources
Southern Region

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
NOTICE OF PROTEST

This form may be used to file a protest with the department under sections 42-108B, 42-203A, 42-203C, 42-211, 42-222 and 42-224, Idaho Code. The department will also accept a timely protest not completed on this form if it contains the same information.

1. **Matter being protested** #T 5197 F.F. GUNNING & G.C. GUNNING Proposed Change of Water Right (#'s R36-02457; 36-07760; 36-08063A)

2. **Name of protestant** CITY OF WENDELL, IDAHO

3. **Protestant's representative for service (If different than protestant)**

GWEN ROST, MAYOR

4. **Service mailing address** P.O. BOX 208 WENDELL, IDAHO 83355

5. **Service telephone no.** 536-5161

6. **Basis of protest (including statement of facts and law upon which the protest is based)**

(1) The proposed change of the point of diversion and point of use is not in the public interest.

(2) The proposed change amounts to a change in name only. The applicant will still be able to use the existing water rights to irrigate the real property while at the same time proposing to split part of each water right into a commercial dairy well.

(3) The applicant is requesting the right based upon speculation. Applicants do not have the proper permits to run a dairy at the location they have requested.

(additional pages may be attached to describe the nature of the protest)

7. **What would resolve your protest?** A denial of the proposed changes would resolve this protest.

I hereby, acknowledge that if I, or my designated representative, fails to appear at any regularly scheduled conference or hearing in the matter of which I have been notified at the address above, the department may issue a notice of proposed default against me in this matter for failure to appear. I also verify that I have served a copy of this protest upon the applicant.

Signed this 23 day of February, 19 98.

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NOV 12 1999

CITY OF WENDELL, IDAHO

PROTESTANT

Gwen Rost

PROTESTANT'S REPRESENTATIVE Gwen Rost, Mayor
City of Wendell

NOTE:

A protestant is required to timely file a protest with the department together with a $25.00 protest or each application being protested in order for the protestant to be considered a full party by the department. In addition, the department's Rule of Procedure, IDAPA 37.01.01203, requires a protestant to send a copy of a protest to the applicant.

INSTRUCTIONS

1. The matter being protested must be clearly identified. A typical matter is identified by the application number such as "Application for Permit No. _____ in the name of _____" or "Application for Transfer No. _____ in the name of _____."

2. Show the name of the protestant. Only one (1) protestant may be shown per protest form. If this protest form is signed by more than one person, the hearing officer will consider the first signer as the official protestant and the representative for service of documents.

3. If the protestant is represented by an attorney or other authorized representative, show the representative's name. The department then will serve documents on the representative and upon the protestant if specifically requested.

4. Show the address where the department is to serve the documents. This should be the address of the authorized representative unless the protestant does not designate a representative.

5. Show the telephone number of the authorized representative unless the protestant does not designate a service representative.

6. Specifically describe the nature of the protest.

7. Describe the relief being sought by the protestant.

FOR DEPARTMENT USE ONLY

Received by R. SKINNER Date 02/27/98 Time X 11:00 AM

$25.00 fee Receipted by R SKINNER # S020916 Date 02/27/98

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NOV 12 1999

AFFIDAVIT of PUBLICATION

RECEIVED

FEB 27 1998

Department of Water Resources
Southern Region

State of Idaho } ss.
County of Jerome }

Patty L Nance, being first duly sworn, deposes and says that she is the printer (publisher) of the Jerome North Side News, a newspaper published every week in Jerome, County of Jerome, State of Idaho; that said newspaper has been continuously and uninterruptedly published for a period of seventy-eight consecutive weeks prior to the first publication of the annexed notice, and is a newspaper qualified to publish legal notices as provided by act of the 1919 session of the legislature of the State of Idaho, known as House Bill 145; that the annexed advertisement was published once each week for 2 consecutive issues in said newspaper proper and not in a supplement; that the date of the first publication of said advertisement was on the 11th day of February, 1998 and the date of the last publication was on the 18th day of February, 1998.

Patricia Nance

Subscribed and sworn to before me this 25th day of February, 1998.

(SEAL)

Norma DeVore
NOTARY PUBLIC

19573/7540
NORTH SIDE NEWS
Jerome, Idaho

OK MB 3/3/98

COST OF PUBLICATION

Number of Picas per Line _____
Number of Lines in Notice _____
Number of Insertions 2X
affidavit fee 2.25

_____	Lines tabular at _____	7¢/Pica
952.88	Lines straight at 57.17	6¢/Pica
952.88	Subsequent lines at 47.64	5¢/Pica
	TOTAL COST 107.06	

COPY OF NOTICE
(Paste Here)

#5197 - Gunning
TITLE OF NOTICE

PLAINTIFF ATTORNEY

DEFENDANT

PLAINTIFF

Dept. of Water Res.
BILL TO

NOTICE OF PROPOSED CHANGE OF WATER RIGHT
No. TF 5197

Notice is hereby given that F.F. Gunning and G.C. Gunning, PO Box 821; WENDELL ID 83355 have applied to the Department of Water Resources for changes to the rights listed below.

The purpose of Transfer No. 5197 is to change portions of the rights from irrigation use to commercial dairy use by drying up 14 acres.

PRESENTLY, the following listed Licensed Water Rights are diverting a combined total of 3.30 cfs from existing wells located within NE1/4SE1/4, S21, T07S, R16E; Jerome County for irrigation of a 329 acre permissible place of use within parts of Sections 21 & 22, T07S, R16E; Jerome County.

Right No.	Priority	Amt (cfs)
36-02457	09/29/196[illegible]	1.00
(222 acres in 329 PPU)		
36-07760	11/07/1977	2.30
(222 acres in 329 PPU)		
36-08063A	2/16/1982	2.14
(329 acres in 329 PPU)		

PROPOSED CHANGE

The applicant wishes to divert a portion of each right for a combined total of 0.20 cfs of water from two existing wells within NE1/4NE1/4, S34, T07S, R15E; Gooding County for stockwater and commercial dairy use within NE1/4NE1/4, S34, T07S, R15E; Gooding County. The unchanged portions of the rights will continue to irrigate a 315 acre permissible place of

№ 7540

19573

MICROFILMED
NOV 17 1999

AFFIDAVIT of PUBLICATION

RECEIVED

FEB 27 1998

Department of Water Resources
Southern Region

State of Idaho } ss.
County of Gooding }

Patty Nance, being first duly sworn, deposes and says that she is the printer (publisher) of the Gooding County Leader, a newspaper published every week in Gooding, County of Gooding, State of Idaho; that said newspaper has been continuously and uninterruptedly published for a period of seventy-eight consecutive weeks prior to the first publication of the annexed notice, and is a newspaper qualified to publish legal notices as provided by act of the 1919 session of the legislature of the State of Idaho, known as House Bill 145; that the annexed advertisement was published once each week for 2 consecutive issues in said newspaper proper and not in a supplement; that the date of the first publication of said advertisement was on the 11th day of February, 1998, and the date of the last publication was on the 18th day of February, 1998.

Patty Nance

Subscribed and sworn to before me this 25th day of February, 1998.

(SEAL)

Norma DeVoe
NOTARY PUBLIC

#19574/6739
GOODING COUNTY LEADER
Gooding, Idaho

OK
MB
3/3/98

COST OF PUBLICATION

Number of Picas per Line _____
Number of Lines in Notice _____
Number of Insertions 2x
affidavit fee 2.25

_____ Lines tabular at _____ 7¢/Pica
946.69 Lines straight at 56.80 6¢/Pica
946.69 Subsequent lines at 47.33 5¢/Pica
TOTAL COST 106.38

COPY OF NOTICE

(Paste Here)

#5197-Gunning
TITLE OF NOTICE

PLAINTIFF ATTORNEY

DEFENDANT

PLAINTIFF

Dept of Water Resources
BILL TO

NOTICE OF PROPOSED CHANGE OF WATER RIGHT
No. TF 5197

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(329 acres in 329 PPU)		

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No 6739

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Dairy faces many questions

By Sharon Metcalf
Times-News correspondent

GOODING – A disputed dairy's spokesman faced questioning from many sides during an appeal hearing this week.

The Gooding County Planning and Zoning Commission delayed its decision after Hillcrest Dairy's second public hearing regarding Hillcrest's appeal of denial of a Combined Animal Feedlot Ordinance siting permit.

The hearing wasn't as well attended as the first, but it showed what small-town officials do when they get their dander up.

Wendell Mayor Gwen Rost apparently had spent considerable time preparing for the second round in her fight to protect Wendell residents from "a public nuisance."

Rost reviewed the dairy's failure to qualify for a grandfather clause; efforts to stop construction on the dairy; Department of Water Resources denial of Hillcrest's application for a water permit; and planning and zoning cease-and-desist and stop-work orders – all ignored as construction proceeded, she said.

Hillcrest attorney Rob Williams had begun the meeting saying he hoped everyone recognized that the proceeding was not a popularity contest or an approval vote for Planning and Zoning Administrator Judy Daubner. Williams told the commission it is obliged to sift through the facts, apply law and make a reasonable decision.

"The county commission determined that you didn't do that last time," Williams told the planning and zoning commission.

Here's the case's history:

Hillcrest appealed the planning commission's prior decision – upholding Daubner's denial of a Confined Animal Feeding Operation permit – to the county commissioners. County commissioners remanded the issue to planners to complete findings of fact.

In this week's hearing, Williams repeated his argument that there was no valid, legal ordinance in effect when F.F. and G.C. Gunning proceeded with construction on the property.

Wendell City Attorney Craig Hobdey disagreed. But in his rebuttal, Williams said his clients have no obligation to follow laws that are illegal.

In addition, Williams said, the area Hillcrest is built upon, was "never lawfully zoned T2."

Planning and zoning commissioners Stacy Butler, Bob Bolte and Henry Westendorf had some questions for Williams.

Westendorf wanted to know why straw, hay and silage were included as capitalized investments in a statement from G.C. Gunning. Williams said Gunning was responsible for the statement.

Butler questioned Williams in an attempt to discover why the Gunnings would proceed with work on Hillcrest without permits of any kind.

Williams said Gooding County has never had a set of rules that were not vague, not ambiguous.

Butler said, "Looking at the water permitting process, it appears as though once again there's a pattern of jumping in and doing these things. I'm seeing a disregard for a permitting process. My concerns are if this is a situation of invalid ordinances, or folks who are not necessarily concerned with permitting. Water Resources requirements are very clear."

In other planning and zoning business, the commission granted a special-use permit to H&H Diesel for agricultural mechanical service.

Times-News correspondent Sharon Metcalf can be reached in Gooding at 934-5292.

NOV 12 1999

the chapel.

TICES —

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herman

LY – Ben E. Sherman,
erly, died Wednesday,
, at his home.
rial service will be
30 p.m. Monday at
uary Chapel in Twin
Pastor Dale Metzger
A complete obituary
t a later date.

in

LY – Leota Akin, 84,
ia and formerly of
ied Sunday, Jan. 25,
fornia.
al will be held at 10
y at White Mortuary,
uneral Chapel with
e Metzger officiating.
be at the Twin Falls

d
nis Werner, both of
ow Mendenhall, both
pson of Declo.

Freeman of Burley.

AL HOSPITAL
patients' request.
d
and Theodor Fujiki
ert.
d
McKeown, both of
rley; and Benjamin

ys or ext. 262
re a free service and

; a daughter, Janet
Twin Falls; a brother,
of Filer; a brother-in-
o of Twin Falls; two
Suzette Nelson and
of Boise; and three
children, Amanda
ha Ellis and Danielle
se. He was preceded
s parents and a sis-

will be held at 1 p.m.
n. 31, 1998, at the

past," he said.

Crime statistics for 1997 include: 105 arr[illegible], 15 vehicle burglaries, 17 r[illegible]dential and business burglaries, 10 illegal narcotics cases, 14 juvenile alcohol and tobacco violations, 16 miscellaneous juvenile violations and seven firearms violations.

In 1998, Cowell plans to continue with the schools' GREAT program, further nurture residents' involvement in city business and on behalf of a resident victimized by several break-ins in recent years, asked for a street l[illegible] on the corner of Seventh A[illegible]ue East and Milner Street.

"It's a very dark place," Rost told council members, asking them to visit the site.

• The new water tank and refurbished well on Lewiston Street are online, and water pressure is turned up to 55 pounds per square inch, City Superintendent Paul Isaacson said. He office supplies, equipment and material necessary for the job; Henry will provide, at his expense, his own vehicle and any licenses the state requires.

• Cowell said three boys involved in a dumpster fire at the middle school last week will be "doing some community service."

Times-News correspondent Steve Koehler can be reached in Wendell at 536-2545.

30 JANUARY 1998

Gooding County takes ownership of properties for failure to pay taxes

By Sharon Metcalf
Times-News correspondent

GOODING – Gooding County commissioners approved taking ownership of several properties throughout the county, for prolonged failure to pay property taxes, during a special tax deed hearing Thursday.

Commissioner Mitch Arkoosh abstained from voting on one deed, for his neighbor's property.

County Treasurer Helen Faulkner said, "I even had Sheriff Gough go out at the end of December to warn (the property owners)."

As soon as tax deed officially is taken, anyone still on the properties will be evicted. After 30 days, property can be sold at a sheriff's sale.

Owners may redeem their property as of today by paying all taxes current, and they have a three-year right of redemption unless commissioners enter into a contract of sale.

Commissioners directed Faulkner to advertise the properties at minimum assessed value.

In other Gooding County business:

• Commissioners referred the Hillcrest Dairy appeal back to the planning and zoning commission for another public hearing and statement of fact before they make a decision. Hillcrest was denied a siting permit for alleged failure to conform with county zoning ordinances.

• The Idaho Department of Fish and Game denied commissioners' request to delay changing fishing rules at Mormon Reservoir. However, a public meeting with Fish and Game is scheduled for 7 p.m. Wednesday at Gooding High School.

• County Clerk Helen Edwards requested an appointment with the Gooding City Board of Equalization on behalf of county commissioners to request the county be relieved of $600 yearly irrigation fees because it does not use the system.

• Commissioners reappointed Carol Johnson to head county disaster services.

• The balance remaining on an ambulance billing was written off for a Wendell resident. The person referred Johnson, who collects the bills, to the city of Wendell for payment, saying the city had caused her heart attack by flooding her house.

• Roger Bartlett, representative for the Public Employees Retirement System, along with several representatives from other interested companies, reviewed their retirement plans with commissioners. Bartlett said there has been lots of talk about switching from PERSI in Idaho, but not many agencies have done so.

Times-News correspondent Sharon Metcalf can be reached in Gooding at 934-5292.

Debate over nuclear waste facility intensifies

SALT LAKE CITY (AP) — Utah state attorneys were under fire Thursday as debate intensified over a proposal to build a nuclear waste storage facility in the state's remote west desert.

Attorneys for power companies and an Indian tribe who want to build the facility in Skull Valley even coined a phrase to describe the state's far-reaching safety concerns: "meteorite arguments."

"The state of Utah is trying to require this facility to be built to withstand any terrorist attack known by man ... up to and including a meteorite falling from the sky, " said Danny Quintana, the attorney for the Skull Valley Band of Goshutes. "But that is not the law."

"The way the state's arguments always run in this proceeding is 'If this...' and 'If that...,'" Private Fuel Storage lawyer Jay Silberg said. "We don't deal in speculation and unrealistic scerarios."

The dump would store spent nuclear reactor fuel on the Skull Valley Goshute Indian Reservation in the state's west desert, 50 miles southwest of Salt Lake City.

The debate became acrimonious as the prehearing before the Nuclear Regulatory Commission's Atomic Safety and Licensing Board entered its third day.

Each party accused the other of providing voluminous but useless information to the proceedings. Proponents said the state was simply rephrasing the same arguments that the Goshutes and PFS refuted earlier.

The three-member board spent much of Thursday's proceedings examining the myriad safety concerns expressed by Utah attorneys. The facility's proponents became exasperated as the state's list of potential hazards grew into the dozens.

Silberg pointed out that the facility's plans met or exceeded every safety standard within current nuclear regulatory policy.

Both sides still hoped to finish the prehearings Friday, but no definite timetable was agreed upon.

NOV 12 1999

NOTICE OF PROPOSED CHANGE OF WATER RIGHT
No. T# 5197

Notice is hereby given that F.F. Gunning and G.C. Gunning, PO Box 821; WENDELL ID 83355 have applied to the Department of Water Resources for changes to the rights listed below.

The purpose of Transfer No. 5197 is to change portions of the rights from irrigation use to commercial dairy use by drying up 14 acres.

PRESENTLY, the following listed Licensed Water Rights are diverting a combined total of 3.30 cfs from existing wells located within NE1/4SE1/4, S21, T07S, R16E; Jerome County for irrigation of a 329 acre permissible place of use within parts of Sections 21 & 22, T07S, R16E; Jerome County.

Right No.	Priority	Amt (cfs)
36-02457	09/29/1961	1.00
(222 acres in 329 PPU)		
36-07760	11/07/1977	2.30
(222 acres in 329 PPU)		
36-08063A	2/16/1982	2.14
(329 acres in 329 PPU)		

PROPOSED CHANGE

The applicant wishes to divert a portion of each right for a combined total of 0.20 cfs of water from two existing wells within NE1/4NE1/4, S34, T07S, R15E; Gooding County for stockwater and commercial dairy use within NE1/4NE1/4, S34, T07S, R15E; Gooding County. The unchanged portions of the rights will continue to irrigate a 315 acre permissible place of use at the original place of use with a combined rate of 3.10 cfs.

Water Right No. 36-02457 will be split into Part A (0.94 cfs) which will continue to irrigate 218 acres within permissible place of use and Part B (0.06 cfs) which will be changed to stockwater and commercial dairy use.

Water Right No. 36-07760 will be split into Part A (2.16 cfs) which will continue to irrigate 218 acres within permissible place of use and Part B (0.14 cfs) which will be changed to stockwater and commercial dairy use.

Water Right No. 36-08063A will be split into Part E (2.01 cfs) which will continue to irrigate 315 acres within permissible place of use and Part B (0.13 cfs) which will be changed to stockwater and commercial dairy use.

Any protest against the proposed changes must be filed with the Department of Water Resources, Southern Region, 1341 Fillmore St., Suite 200; Twin Falls, ID 83301 together with a protest fee of $25.00 on or before March 2, 1998 to be considered by the Department in its decision to grant or deny any part of the proposed change. The protestant must also send a copy of the protest to the applicant.

Karl J. Dreher, Director

Published in the North Side News & Gooding County Leader on 02/11 & 02/18/98

MICROFILMED
NOV 1 2 1999

State of Idaho
DEPARTMENT OF WATER RESOURCES
1341 Fillmore Street, Suite 200, Twin Falls, ID 83301-3380
Phone: (208) 736-3033 FAX: (208) 736-3037

January 30, 1998

PHILIP E. BATT
GOVERNOR

KARL J. DREHER
DIRECTOR

LEGALS DEPT
MAGIC VALLEY PUBLISHING CO
ATTN Norma DeVoe
PO BOX 468
JEROME ID 83338

Gentlemen:

Enclosed you will find a legal notice which we wish to have published in your newspaper. We have inserted the required publication dates.

We have attempted to submit this legal as camera ready. Please call me at your earliest convenience and prior to your staff re-typing the legal if it does not meet your specifications so I can possibly make adjustments.

If you cannot publish the notice on the proposed dates, please contact us immediately.

In order to receive payment, an affidavit of publication must be submitted to the Department along with the publication bill.

Very truly yours,

Mary Baldwin
Sr. Secretary

Enclosure

MICROFILMED
NOV 12 1999

NOTICE OF PROPOSED CHANGE OF WATER RIGHT
No. T# 5197

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Right No.	Priority Date	Amount (cfs)
36-02457	09/29/1961	1.00 (222 acres in 329 PPU)
36-07760	11/07/1977	2.30 (222 acres in 329 PPU)
36-08063A	02/16/1982	2.14 (329 acres in 329 PPU)

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The applicant wishes to divert a portion of each right for a combined total of 0.20 cfs of water from two existing wells within NE1/4NE1/4, S34, T07S, R15E; Gooding County for stockwater and commercial dairy use within NE1/4NE1/4, S34, T07S, R15E; Gooding County. The unchanged portions of the rights will continue to irrigate a 315 acre permissible place of use at the original place of use with a combined rate of 3.10 cfs.

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Water Right No. 36-08063A will be split into Part E (2.01 cfs) which will continue to irrigate 315 acres within permissible place of use and Part B (0.13 cfs) which will be changed to stockwater and commercial dairy use.

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Karl J. Dreher, Director

Published in the North Side News & Gooding County Leader on 02/11 & 02/18/98

NOV 12 1999

State of Idaho
DEPARTMENT OF WATER RESOURCES
1341 Fillmore Street, Suite 200, Twin Falls, ID 83301-3380
Phone: (208) 736-3033 FAX: (208) 736-3037

January 28, 1998

PHILIP E. BATT
GOVERNOR

KARL J. DREHER
DIRECTOR

F F GUNNING &
G C GUNNING
PO BOX
WENDELL ID 83355

Re: Application for Transfer No. 5197 (36-02457, 36-07760, 36-08063A)

Dear Applicants:

The Department of Water Resources acknowledges receipt of your Application for Transfer.

This office has scheduled advertising the application in The Gooding County Leader and also in The North Side News on 02/11 & 02/18/98 since the county for the point of diversion will be changed.

The advertisement(s) will be published for two weeks, and a period of ten days following the second publication will be allowed for the submittal of protests.

If an application is protested, you will be sent a copy of the protest. The protest must be resolved before the application is approved or denied. If the protest is not resolved voluntarily, this Department will conduct a conference and/or hearing on the matter.

State Office personnel will conduct a complete review prior to final processing of the application and will notify you of the outcome of this review.

Please feel free to contact this office if you have any questions regarding this procedure.

Very truly yours,

Georgia Satterlee
Water Resource Agent

GS:mb
cc: CRAIG D HOBDEY ESQ
PO BOX 176
GOODING ID 83330

MAYOR GWEN ROST
CITY OF WENDELL
WENDELL ID 83355

NOV 12 1998

LAW OFFICES
HOBDEY & HOBDEY
125 FIFTH AVENUE WEST
P.O. BOX 176
GOODING, IDAHO 83330-0176

CRAIG D. HOBDEY
(208) 934-4429

OF COUNSEL
CECIL D. HOBDEY

January 26, 1998

RECEIVED
JAN 30 1998
Department of Water Resources

Allen Merritt
Department of Water Resources
Southern Region
222 Shoshone Street East
Twin Falls, Idaho 83301-6105

RE: HILLCREST DAIRY (GUNNING)
2100 E. 2950 S.
WENDELL, IDAHO

Dear Allen:

The City of Wendell is quite concerned that the above described dairy is exceeding their water permit by at least double. Based upon information and belief they assert the dairy has at least 1,000 cows.

Please give me an update on the status of the Department's investigation.

Sincerely yours,

Craig D. Hobdey
Wendell City Attorney

CDH:bj

pc: Client

Responded to phone
1/30/98.
I told him the dairy [illegible]
was being investigated.

NOV 12 1999

State of Idaho
Department of Water Resources

WATER RIGHT LICENSE

WATER RIGHT NO. 36-08063A

Priority: February 16, 1982 **Maximum Diversion Rate:** 2.14 CFS

This is to certify, that F F GUNNING
G C GUNNING
PO BOX 716
WENDELL ID 83355-0716 has complied with the terms and conditions of the permit, issued pursuant to Application for Permit dated February 16, 1982; and has submitted Proof of Beneficial Use on September 28, 1994. An examination indicates that the works have a diversion capacity of 3.300 cfs of water from a **GROUNDWATER** source, and a water right has been established as follows:

BENEFICIAL USE	PERIOD OF USE	RATE OF DIVERSION	ANNUAL VOLUME
IRRIGATION	04/01 to 10/31	2.14 CFS	

LOCATION OF POINT(S) OF DIVERSION: NESE , Sec. 21, Township 07S, Range 16E
JEROME County

PLACE OF USE: IRRIGATION

TWN	RGE	SEC		ACRES		ACRES		ACRES	TOTAL
07S	16E	21	SWNE	33	SENE	40	NESW	40	
			NWSW	34					147
		22	NESW	37	NWSW	40	SWSW	37	
			SESW	32	NWSE	36			182
					Total number of acres irrigated:				329

CONDITIONS OF APPROVAL AND REMARKS

1. This water right is appurtenant to the described place of use.
2. This right is subject to all prior water rights and may be forfeited by five years of non-use.
3. Modifications to or variance from this license shall be made within the limits of Section 42-222, Idaho Code, or the applicable Idaho law.
4. This right when combined with all other rights shall provide no more than .02 cfs per acre nor more than 4.0 afa per acre for irrigation of the lands above.
5. This right shall not be used if the surface water right(s) appurtenant to the place of use is sold, transferred, leased or used on any other place of use.
6. Diversion and use of water under this right is subject to rules that may subsequently be promulgated for existing rights used for supplemental purposes.

NOV 12 1995

Post-it® Fax Note 7671 | Date 12/30 | # of pages 2
To Northern Region | From Jim Johnson
Co./Dept. | Co.
Phone # | Phone # 327-7947
Fax # | Fax #

TT#5197

State of Idaho
Department of Water Resources

WATER RIGHT LICENSE

WATER RIGHT NO. 36-08063A

CONDITIONS OF APPROVAL AND REMARKS

7. Rights 36-02457 and 36-07760 are also diverted through the point of diversion described above.
8. Rights 36-02457, 36-07760, and 36-08063A when combined shall not exceed a total diversion rate of 3.30 cfs, a total annual diversion volume of 1107.9 af, and the irrigation of 329 acres. This right is limited to the irrigation of 107 acres within the place of use described above in a single irrigation season.

This license is issued pursuant to the provisions of Section 42-219, Idaho Code. Witness the seal and signature of the Director, affixed at Boise, this 30TH day of DECEMBER, 1997.

KARL J. DREHER, Director

NOV 12 1999

M E M O T O F I L E

FROM: Georgia Satterlee
DATE: 28 January 1998
RE: Gunning Transfer per 36-02457,-07760,-08063

The application for transfer proposes to dry up acres irrigated in Jerome County (per licensed rights listed above) and augment to a existing dairy in Gooding County.

Currently the dairy is covered by a domestic claim, 36-10815, and adjudication claim, R36-15511, director's report is pending. There are two wells on the dairy each having a 7.5 hp pump and are tied together by a valve.

Three dairy worksheets were produced using the cow numbers extracted from the Gooding County Planning and Zoning data. Mr. Gunning listed 1050 milkers and 150 dry. The first dairy worksheet is using the information from the R36-15511 claim (400 milkers). The second dairy worksheet is calculated using the remainder of the cows numbers (650 milkers/150 dry). This is the data that was used to figure the rate and acre feet per annum for the proposed transfer.

The rates derived from the three licensed rights were limited to the rate of 3.30 cfs.:

36-02457 - 0.20/3.30 = 0.06 cfs x 1.00 =0.06 cfs
36-07760 - 0.20/3.30 = 0.06 cfs x 2.30 =0.14 cfs
36-08063 - 0.20/3.30 = 0.06 cfs x 2.14 =0.13 cfs

Conditions for Approval:

-Right holder shall obtain a measuring device on each point of diversion associated with the dairy.
-Participation in West ESPA Measurement district.
-The acres which will be unauthorized for irrigation under 36-02457,-07760,-08063 is described as follows:
14 acres in Section 22, T07S, R16E SW¼.
-Approval of this transfer does not preclude the opportunity for review of the validity of the water right(s) in the ongoing SRBA.

MICROFILMED
NOV 12 1999

T #5197

State of Idaho
DEPARTMENT OF WATER RESOURCES
1301 North Orchard Street, Statehouse Mail, Boise, Idaho 83720-9000
Phone: (208) 327-7900 FAX: (208) 327-7866

PHILIP E. BATT
GOVERNOR

KARL J. DREHER
DIRECTOR

January 20, 1998

F.F. Gunning and/or G.C. Gunning
PO Box 821
Wendell, ID. 83355

RE: Power Records

Dear Mr. Gunning,

Thank you for your cooperation regarding the power records for the years 1995-1996. Idaho Power has the records prior to 1995 on microfilm. However, the customer needs to request these documents from the company.

In order to continue the processing of the application for transfer, I will need the power records from 1991-1994. I have included a self-addressed envelope for your convenience.

Thank you for your attention in this matter.

Cordially,

Georgia Satterlee

Georgia Satterlee
Senior Water Resource Agent

NOTE
MAR 12 1998

T#5197

01-17-98

T#5197

Gooding commissioners table Hillcrest appeal

Carol R. Dumas
Ag Weekly editor

GOODING – It was the same debate in Gooding County on Monday, with the owners of Hillcrest Dairy fighting the denial of a CAFO siting permit for their dairy east of Wendell – exactly the same, only at a higher level.

In the appeal to the Gooding County Commission to overturn the county's planning and zoning commission's denial, no new information could be entered or considered, according to county commissioners. It was a point that had to be made several times.

Robb Williams, attorney for Hillcrest owners F.F. and Irene Gunning and G.C. Gunning, took a new tack. however, urging commissioners to consider the law in their decision and not disregard the facts as he alleges was done by P&Z commissioners.

"They ignored everything that was presented at that hearing, or at least 90 percent of it," Williams said. "A review in court would have no hesitancy in sending this back ... ".

At the heart of the issue is whether Hillcrest – which is located within the city of Wendell's impact zone – needed a permit to expand the dairy. Williams contends that at the time of purchase there was no livestock ordinance in place and no permits in existence. He also contends that the Gunnings made P&Z Administrator Judy Daubner aware of their intent to expand, were told no permits were required, and invested a large amount of money in the expansion before a new ordinance was passed.

Daubner does not contest that no ordinance was in force at the time of the purchase in March 1995. She does, however, maintain that when the new ordinance came on the books in August 1995 – allowing for existing dairies in the impact zone to be grandfathered in at their former capacity – the Gunnings should have applied for a permit to expand.

Williams contends that the Gunnings had already begun enlarging the dairy and referred to a similar court case that upheld another dairymen's contention that he should not be penalized for an expansion he pursued in good faith because a law to prevent it was later passed.

Greg Hobdie, attorney for the city of Wendell, disputes the good faith area of the matter. He said the Gunnings ignored a stop-work order and the city's repeated contention that something was wrong and its request that the matter be sorted out before the Gunnings moved ahead.

"Those things were flat ignored," he said. "The city of Wendell has not sat back and waited till they spent $300,000 then objected. They objected from the `get go'.

Following the hearing, Wendell Mayor Gwen Rost said the city began objecting in February 1995 before the purchase, but "it's like the city of Wendell, 3,000 people, didn't exist." The Gunnings went ahead with the purchase and expansion despite the city's protest that they were inside the one-mile impact zone.

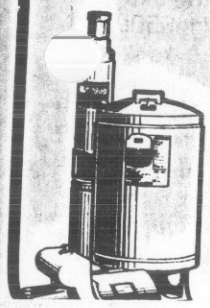
In addition, she said, the dairy doesn't have a commercial well to support the expansion and is located above the city's water supply, both of which causes concern over water quality. Another point of contention is the odor the dairy emits and the close proximity top town. In addition, it is located east of town, the city's most likely direction of development.

Regardless, Williams said, the commision must stick to the legal points of the issue. There was no ordinance in place to deny the purchase or the expansion of the dairy, he said.

"I urge you to take some time, review the records, sit down with council," Williams said.

The commissioners – minus Commissisoner Win Henslee, who is employed at another operation by Hillcrest's manager, removed himself from participation due to a conflict of interest – took the matter under advisement.

FOR YOUR RESIDENTIAL WELL AND FARM IRRIGATION NEEDS.
• COMMERCIAL • RESIDENTIAL
• IRRIGATION PUMPS & WELLS
SERVICING MAGIC VALLEY FOR 90 YEARS



Master Gardeners open roles

Ag Weekly

A new Master Gardener [illegible] class will also be held on the same days in Rupert from 9 a.m. to noon. Cost of the 36-hour and care. Instructors are University of Idaho educators. A commitment of [illegible]

MICROFILMED
NOV 12 1999

01-14-98

ıtal group bidding

d to graze "one Irish ow" for at least 30 min- te spring.
proposals from the envi- alists promised to graze) goats or llamas or a cow st one day a year.
laho Watersheds Project get state land leases to rate how water and land an be improved by bet- agement practices. The oard has rejected the applications as not being te livestock operations ntinued that trend

lepartment is of the opin- he proposed uses submit- onflict applicants do not serious intent to manage land for livestock use," ls Department staff said. e should seek "long-term hips with livestock opera- graze endowment lands d together" with other and.
and Board also granted a five-year lease to the J.R. Simplot Co. so the company can start work on a $5 million grain-handling facility on the outskirts of Mountain Home.

The lease will allow work to start this year while the company and state negotiate terms of an exchange of 180 acres of state land for 320 acres of timber land owned by Simplot west of Banks in western Idaho.

Williams said the exchange could mean a lot of money to the state. Simplot wants the railside grain-handling facility to assure a steady supply of grain to its huge cattle feedlot near Grand View.

Once it is developed, Williams said, the commercial potential of nearby state land will soar.

"It could become an incredibly valuable piece of property," he said.

Construction is expected to start as soon as Simplot wins zoning and permit approval from Elmore County.

in 1st female mayor

en made her yearly nts: Sharon Sheets, city lark Grimes, fire chief; pton, police chief; and n, public works supervi- appointed were Kattie berg to the planning and oard, Gene Pyles to the board and Bob Squire Shriver to airport ser-

Monday, Amy Wright permission to open an Web site catalog ser- the Silver Sage District of Girl Scouts got permission to sell cookies.

City Engineer Scott Bybee gave an update on the grant request meeting in Boise in March. Bybee suggested the city make a video of completed projects and projects that will be part of the grant. These include a new well, new and replaced water heaters and a standby generator.

Times-News correspondent Mary Lou Potts can be reached in Buhl at 543-8854.

Commission delays decision on dairy appeal

By Sharon Metcalf
Times-News correspondent

GOODING – County commissioner Win Henslee disqualified himself from Monday's Hillcrest Dairy appeal, citing a conflict of interest.

After the public hearing, commissioners Mitch Arkoosh and Tom Faulkner said they will take the appeal under advisement and decide after more discussion.

Hillcrest Dairy, three-quarters of a mile east of Wendell, is appealing a November decision by the county planning and zoning commission that denied the dairy a confined animal feeding operation site permit.

During Monday's hearing, Planning and Zoning Administrator Judy Daubner reviewed her dealings with Hillcrest, including a cease-and-desist order in May 1996, followed by a stop-work order when F.F. and Irene Gunning, the dairy owners, ignored the cease-and-desist order, she said. The stop-work order was ignored as well, she said.

Hillcrest attorney Rob Williams said, "This is a fiction being entertained by Gooding County that (Ordinance) 25 is in order."

Citing former Gooding County Judge Thomas Cushman's 1991 opinion that county commissioners had made "no minimal effort to do procedures to lawfully zone property" in Ordinance 25, Williams said there was no ordinance stopping the Gunnings from building the dairy where it is now.

But Craig Hobdey, representing Wendell city, said, "Regarding Ordinance 25, Judge Cushman gratuitously took it upon himself to make the dicta ... it was not a decision called for in that situation."

Williams also said the Gunnings acted in good faith when they proceeded to spend upwards of $300,000 to complete work on the expanded dairy, and the amount spent would support their right of permit.

Hobdey disagreed.

"I think you'll find that the Gunnings ignored a stop-work order," said Hobdey, who said he didn't believe the Gunnings acted in good faith.

Hobdey said the city of Wendell has nothing against dairy operations. All it asks is that dairy operations follow the letter of the law.

In other Gooding County business Monday:

- Sheriff Shaun Gough requested commissioners' presence at a meeting with Lincoln and Camas county prosecuting attorneys and sheriffs to discuss pros and cons of starting a three-county drug task force.
- Commissioners agreed to draft a letter to the state Land Board requesting money be allocated to tear down Gooding's former tuberculosis hospital. Local real estate agent Rick Strickland has asked that commissioners meet with Region IV Development representative Joe Herring – who has worked toward rehabilitating the building – and Gooding City Council members before issuing that letter.

Commissioners agreed to attend the meeting, but Henslee said, "I think they're grasping at straws at this point."

- Commissioners approved financing of a new county ambulance through U.S. Bank at an annual rate of 5.22 percent.

Times-News correspondent Sharon Metcalf can be reached in Gooding at 934-5292.

T #5197

nguage

NOV 12 1999

ıcil's behalf.
aid the ordinance will trict parking of motor to seven days. Simms uncil members have d her to add a section ng placement of refrig- and freezers outside a ince they could pose a azard to children who

STARTS THURSDAY, JANUARY 15
HURRY IN...
EMPTY OUR
HANGERS!

2/6/98

RECEIVED
FEB 09 1998
Department of Water Resources
Southern Region

Dear Georgia,

Enclosed are the Idaho Power records you requested. Let me know if there is anything more you need.

Thank You,

G.C. Gunning

MICROFILMED
NOV 17 1999

02/06/98 10:50 ☎208 368 6912 IPCO RECORD CNTR ⌀001

Post-it® Fax Note 7671 | Date 2/6/98 | # of pages ▶ 4
To JACQUE | From DAVE
Co./Dept. 550 | Co.
Phone # | Phone #
Fax # 6907 | Fax #

NOV 1 2 1999

MICROFILMED

715 CM 10/04/94 10.04 READ DATE 09/30
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KWH EST.... XCHGS....... 0

READ DAYS BILL BILL DESCR CODE PREV READ PREV BILL
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RATE D C S UNT UNT UNT RELMP UNIT CHARGE CHARGE CHARGE AMOUNT AMOUNT
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15 A 1 A 1 1 06.79 34 9.67 .20 9.67

ACCT NO-- 0552-000974-4 NAME-- GUNNINGUF F CORPP-- EL DIAMOND RANCH
ACCT ST-- INACTIVE LOCT-- 550 N 300 W 0550 ID 24
CON/DIS-- 09/30/94 CITY-- JEROME ID 83338

CUST, PHONE- 208-536-6390 EMPLOYER- SSN/TAX- 573501314
CO-APP, PHONE- - - EMPLOYER- SSN/TAX-
MAIL LINE 1- BOX 716 MAIL LINE 2-
MAIL CTY- WENDELL ST- ID ZIP- 83355

NOTES: INS: PU N K CANAL IN FIELD ELEC MTR

REMARKS: DT- 08/09/85 BY- 51 IDA-GRO 324-5886

AREA CODE-- 100 SIC CODE--- 0000 THIRD PARTY N OWN/RENT--- 0
PREMISE CD- 2 PERM BILL-- 1 GUARANTOR-- 0
LANGUAGE--- TEMP BILL-- 0 LANDLORD--- 0

DUE DATE ACCT BAL CURRENT 30 DAYS 60 DAYS 90 DAYS
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UBNE- .00 NELC- .00 .00 .00 .00
CRDT CODE-- 00 CRDT ACTION- 0 0 F 2 0 2 2 2 2 1 0 0 0 MRICN- TAX DIST-
ST DATE ACT AMOUNT ST DATE ACT TYPE AMOUNT
C 10/25/94 RNDA 287.82
V 11/01/94 FEN 287.82
V 11/08/94 CCNP 287.82
V 11/14/94 FOLL 287.82
COMM-DATE BY-
LEVEL PAY AMOUNT----- START DATE CHANGE DATE
LEVEL PAY RECEIVABLE- AVERAGE KWH LEVEL PAY STATUS---
UAR ELEC---- UAR DATE-- BNKR AMT---
UAR N-ELEC-- COLL AGNT- BNKR CONTR-
UAR CONTR--- BNKR NUMBER
UAR COMMENT-

TRN ID	BATCH/ ORDER	PROCESS DATE	TRANS AMOUNT	DESCRIPTIVE INFORMATION	ACCOUNT BALANCE
500 00	92985	10/25/94	287.82-		0.00
800 03	WM707	10/24/94			287.82
850 00		10/04/94	287.82	READ DATE 09/30	287.82
501 00	52591	09/20/94	2,000.91-		0.00
700 00	TB695	09/12/94		KVAR13	2,000.91
700 00	TB694	09/12/94		KVAR12	2,000.91
700 00	TB693	09/12/94		KVAR11	2,000.91
700 00	SW693	09/09/94		KVAR13	2,000.91
700 00	SW691	09/09/94		KVAR12	2,000.91
700 00	SW690	09/09/94		KVAR11	2,000.91
730 18	ST478	09/09/94		IRRIGATION	2,000.91
850 00		09/02/94	2,000.91	READ DATE 08/31	2,000.91
501 00	52413	08/23/94	3,058.10-		0.00
850 00		08/04/94	3,058.10	READ DATE 08/02	3,058.10

METER NO S U D T P F-SCL CONST INS/RM/CHG CURR PREV RT-ANNIV RTE SEQ RC
762176196 D 1 5 5 3 8.0 00090 11/30/84 63779 63779 11/92 42 1120 5

RATE........24 AREACD.....100 HEADER #.....
ELEC MT..... LOC CODE....TP 19 CONT KW..... 0
MIN VLT.....0 INS CODE....00 CONT RATE....
IRG USE..... UNGRD....... CONT RATE....
LG POWER.... LANDLD......0 STANDBY...... 0
MULT FAN....1 APTNDR...... +SB AMT....... 0
CONN LD..... N APTNDR.... CAP CHG.......
MNTH MIN.... T A/C....... MILEAGE CHG...
FAC CHG..... DN EST......0 % FACCHG.....
ESTCHT......0 CHG ST......0 BLC START....11/17/92
KWH EST..... XCHGS.......0

[redacted] K ♦ [redacted]

METER NO S U D T P F-SCL CONST INS/RM/CHG CURR PREV RT-ANNIV RTE SEQ RC
762176196 D 1 5 5 3 8.0 00090 11/30/84 63779 63779 11/92 42 1120 5

MRC	RCC	READ	DAYS	DEM-KW	BLC-KW	ENERGY-KWH	BILL AMT
	0	09/30/94	00	0		0	0.00
00	0	09/30/94	30	148		8,080	287.82
00	0	08/31/94	30	156		56,440	2,000.91
	0	08/02/94	30	149		93,920	3,058.10
	0	07/01/94	30	149		51,800	1,866.44
	0	06/02/94	30	149		18,360	913.23
	0	05/03/94	29	154		30,200	1,046.70
	0	04/08/94	00	0		0	0.00
	0	11/02/93	00	0		0	0.00
	0	11/02/93	30	149		12,800	443.64
	0	10/01/93	30	150		9,920	393.82
	0	09/01/93	30	149		41,720	1,541.10
	0	08/02/93	30	151		72,760	2,394.87

IRRG YR- 94 S ACRES LIFT KVA HORSEPOWR WHOT DEMAND/HP COMP CODE--- 0
0 P 00225 0000 1 75.0 1 200.0 1
2 75.0 2 KWH TAX REF--
3 75.0 3 PROP TAX REF-
4 FINANCE CODE- N

IRRG YR- 93 S ACRES LIFT KVA HORSEPOWR WHOT DEMAND/HP COMP CODE--- 0
0 P 00225 0000 1 75.0 1 200.0 1
2 75.0 2 KWH TAX REF--
3 75.0 3 PROP TAX REF-
4 FINANCE CODE-

COMBINATION NO.- 00181 NOCHECK CODE 0
EXCHANGE CREDIT ACCOUNT- 2252-00018?-0

ACCT NO-- 0552-000975-4 NAME-- PALMER LAWRENCE F CORPP--
ACCT ST-- ACTIVE LOCT-- 334 N 400 W ID 42
CON/DIS-- 11/30/84 CITY-- JEROME ID 83338

DUE DATE ACCT BAL CURRENT 30 DAYS 60 DAYS 90 DAYS
12/21/94 102.07 102.07 .00 .00 .00

KWH EST.... CHG BY.....0 PCHGS..... 0 BLC START....

READ RATE	A R D C S	DAYS BILL UNT	ACT UNT	BILL UNT	DESCR N-GRD RELMP	CODE KWH/ UNIT	PREV READ LAMP CHARGE	PREV BILL FACILITY CHARGE	UNDER/GRD CHARGE	RENT AMOUNT	BILLING AMOUNT
06/11	09	06/15					06/02	06/09			
15	A 1 D	1		1	06/79	34	9.69	.20			2.95

0	10/30/92	30	813	38.90
0	09/30/92	09	175	8.28
0	09/21/92	00	0	0.00
A	09/16/00	16	587	28.30
A	08/31/00	30	982	47.21

K11

ACCT NO-- 0552-000976-9 NAME-- GUNNINGAF F COAPP-- EL DIAMOND RANCH
ACCT ST-- INACTIVE LOC#-- 550 N 300 W 0950 ID 24
CON/DIS-- 11/02/93 CITY-- JEROME ID 83338

CUST: PHONE- -536-6390 EMPLOYER- SSN/TAX- 573501314
CO-APP: PHONE- - - EMPLOYER- SSN/TAX-
MAIL LINE 1- BOX 716 MAIL LINE 2-
MAIL CITY- WENDELL ST- ID ZIP- 83355

NOTES: ING: PU N X CANAL IN FIELD ELEC MTR

REMARKS: DT- 08/09/85 BY- ST IDA-GRO 324-5886

AREA CODE-- 100 SIC CODE--- 0000 THIRD PARTY N OWN/RENT--- 0
PREMISE CD- 2 PERM BILL-- 1 GUARANTOR-- 0
LANGUAGE--- TEMP BILL-- 0 LANDLORD--- 0

DUE DATE	ACCT BAL	CURRENT	30 DAYS	60 DAYS	90 DAYS
12/19/93	.00	.00	.00	.00	.00
N-ELECTRIC		.00	.00	.00	.00
CRDT CODE-- 00	CRDT ACTION-	0 P 0 2 2 2 2 2 1 1 1 0 0		MRTGN-	TAX DIST-

ST	DATE	ACT	AMOUNT
C	10/21/93	RMDR	393.82
V	11/03/93	FDN	393.82
V	11/15/93	CPMP	393.82
V	11/22/93	POLL	393.82

ST	DATE	ACT	TYPE	AMOUNT

CONN-DATE BY-
LEVEL PAY AMOUNT-----
LEVEL PAY RECEIVABLE-
UMA ELEC----
UMA N-ELEC--
UMA CONTR---
UMA COMMENT-

START DATE
AVERAGE KWH
UMA DATE--
COLL AGNT-

CHANGE DATE
LEVEL PAY STATUS---
BNKR AMT---
BNKR CONTR-
BNKR NUMBER

DSN	ID	BATCH/ ORDER	PROCESS DATE	TRANS AMOUNT	DESCRIPTIVE INFORMATION		ACCOUNT BALANCE
201	01		10/29/93	14.93	PYMT TOTINT		0.00
800	03	XA591	11/29/93				0.00
501	00	57720	11/22/93	993.64-			0.00
850	00		11/09/93	993.64	READ DATE 11/02		993.64
501	00	57679	10/27/93	393.82-			0.00
850	00		10/05/93	393.82	READ DATE 10/01		393.82
501	00	57625	09/20/93	1,541.10-			0.00
850	00		09/03/93	1,541.10	READ DATE 09/01		1,541.10
501	00	57572	08/31/93	2,909.80-			0.00
501	00	57533	08/09/93	1,493.16-			0.00
850	00		08/04/93	2,909.80	READ DATE 08/02		2,909.80
700	03		08/04/93		UNBILLED :	14.93	3,902.96
850	00		07/06/93	1,493.16	READ DATE 07/01		1,493.16
501	00	57451	06/28/93	596.36-			1,493.16
							0.00

METER NO S TYP D PH F-SCL CONST INS/RM/CHG CURR PREV RT-ANNIV RTE SEQ RC
76217619G D 5 S 3 0.0 00040 11/30/84 57309 57309 11/92 42 1010 5

RATE.....2W
ELEC HT....
MIN VLT....0
IRG USE....
LG POWER...
MULT FAM...1
COMM LD....
MNTH MIN...
PAC CHG....
ESTCNT.....0
KWH EST....

AREACD.....100
LOC CODE...TP
INS CODE...00
UNGRD.....
LANDLD.....0
APTMOD.....
APTMOD....
T A/C......
DN EST.....0
CHG ST.....0
#CHGS..... 0

HEADER #.....
19 CONT KW...: 0
CONT RATE....
CONT RATE....
STANDBY.....: 0
+5% AMT.....: 0
CAP CHG.....
MILEAGE CHG..
96 PACCHG....
BLC START....11/17/92

METER NO S TYP D PH F-SCL CONST INS/RM/CHG CURR PREV RT-ANNIV RTE SEQ RC
76217619G D 5 S 3 0.0 00040 11/30/84 57309 57309 11/92 42 1010 5

MRC	RCC	READ	DAYS	DEM-KW	BLC-KW	ENERGY-KWH	BILL AMT
0	0	11/02/93	00	0		0	0.00
0	0	11/02/93	30	159		12,800	993.64
0	0	10/01/93	30	160		9,920	393.82
0	0	09/01/93	30	149		41,720	1,541.10
0	0	08/02/93	30	151		78,760	2,394.87
0	0	07/01/93	30	158		39,080	1,493.16
0	0	06/02/93	30	152		6,920	596.36
0	0	05/03/93	30	0		0	15.00
0	0	04/01/93	00	0		0	0.00
0	0	03/29/93	00	0		0	9.00
0	0	11/17/00	10	0		0	0.00
0	0	10/30/00	10	0		0	9.00
0	0	10/20/00	00	0		0	5.00
							0.00

IRRG YR- 93 S ACRES LIFT KVA HORSEPOWR RNOT DEMAND/HP COMP CODE--- 0
D P 00225 0000 1 37.0 1 200.0 1
2 37.0 2 KWH TAX REP--
3 37.0 3 PROP TAX REP-
4 FINANCE CODE- N

IRRG YR- 94 S ACRES LIFT KVA HORSEPOWR RNOT DEMAND/HP COMP CODE--- 0
D P 00225 0000 1 37.0 1 200.0 1
2 37.0 2 KWH TAX REP--
3 37.0 3 PROP TAX REP-
4 FINANCE CODE-

COMBINATION NO.- 00101 NOCHECK CODE 0
EXCHANGE CREDIT ACCOUNT- 2252-000101-0

ACCT NO-- 0552-000976-9 NAME-- PALMER LAWRENCE E COAPP--
ACCT ST-- ACTIVE LOC#-- 339 N 500 N ID 92
CON/DIS-- 11/30/90 CITY-- JEROME ID 83338

CUST: PHONE- 208-329-3119 H EMPLOYER- SSN/TAX-

DUE DATE	ACCT BAL	CURRENT	30 DAYS	60 DAYS	90 DAYS
12/22/93	467.91)	229.91	223.07	.00	.00
N-ELECTRIC		2.23	2.36	.00	.00
CRDT CODE-- 00	CRDT ACTION-	3 5 5 5 1 5 5 1 5 5 5 5 5		MRTGN- N	TAX DIST-

TRN ID	BATCH/ ORDER	PROCESS DATE	TRANS AMOUNT	DESCRIPTIVE INFORMATION		ACCOUNT BALANCE
850 00		12/07/92	66.67	READ DATE 12/01		67.11
501 00	52936	11/23/92	57.00-			0.44
300 02	UDB04	11/12/92	8.23	01 1557-001815-6		57.44
850 00		11/03/92	49.21	READ DATE 10/30		49.21
501 00	52812	10/19/92	26.37-			0.00
850 00		10/02/92	26.37	READ DATE 09/30		26.37
160 08	RF457	09/22/92		UNBILLED *	15.00	0.00
790 05	RF457	09/22/92		09/21/92		0.00

METER NO	S	TYP	D	PH	F-SCL	CONST	INS/RM/CHG	T-YR	READ	CURR	PREV	DEMAND
29219830S	A	1	S	1		00001	00/00/65			12037	10869	

RATE	DT	C	READ	DAYS	DEM-KW	ENERGY-KWH	BILL AMT-MTR	
RATE--- 31		#0	12/01	30		1,168	56.36	#
REV CLS 1		#0	10/30	30		813	38.90	#
RATE DT		#0	09/30	09		175	8.20	#AREA CD 100
MTR LOC E0		#0	09/21	00		0	0.00	#INSTR-- 00
MUL FAM 1		#A	09/16	16		587	28.30	#ROUTE-- 42
APTMOD-		#A	08/31	30		982	47.21	#GEO---- 0960
IRG USE		#A	07/31	30		876	42.00	#KWH EST
ELC MT-		#A	07/01	30		1,086	52.33	#LNDLORD 0
HIH VLT 0		#A	06/02	30		1,083	52.01	#LRG PWR
UNGRD--		#A	05/01	30		1,044	49.08	#
CONN LD		#A	04/01	30		1,154	54.26	#
MNTH MN		#A	03/02	30		1,219	57.31	#
FAC CHG		#A	01/31	30		1,271	59.76	#

READ A/C	DAYS TIL	BILL ACT	BILL INA	DESCR CODE N-GRD	PREV READ KWH/	PREV BILL LAMP	FACILITY	UNDER/GRD	RENT	BILLING
RATE D C S	UNT	UNT	UNT	RELMP	UNIT	CHARGE	CHARGE	CHARGE	AMOUNT	AMOUNT
12/01	30	12/07				10/30	11/03			
15 A 1 A		1		06/79	34	10.11	.20			10.31

MICROFILMED
NOV 12 1992

ACCT NO-- 0552-000974-4 NAME-- GUNNING#F F COAPP-- EL DIAMOND RANCH
ACCT ST-- INACTIVE LOCT-- 550 N 300 W 0950
CON/DIS-- 11/17/92 CITY-- JEROME ID 83338

CUST: PHONE- -536-6390 EMPLOYER- SSN/TAX- 573501314
CO-APP: PHONE- - - EMPLOYER- SSN/TAX-
MAIL LINE 1- BOX 716 MAIL LINE 2-
MAIL CTY- WENDELL ST- ID ZIP- 83355

NOTES: ING: PU N X CANAL IN FIELD ELEC MTR

REMARKS: DT- 08/09/85 BY- ST IDA-GRO 324-5886

AREA CODE-- 100 SIC CODE--- 0000 THIRD PARTY N OWN/RENT--- 0
PREMISE CD- 2 PERM BILL-- 1 GUARANTOR-- 0
LANGUAGE--- TEMP BILL-- 0 LANDLORD--- 0

DUE DATE	ACCT BAL	CURRENT	30 DAYS	60 DAYS	90 DAYS
12/07/92	.00	.00	.00	.00	.00
N-ELECTRIC		.00	.00	.00	.00

CRDT CODE-- 00 CRDT ACTION- F 0 1 0 2 2 2 2 5 2 1 0 0 MRTRN- TAX DIST-
COMM-DATE BY-

ST	DATE	ACT	TYPE	AMOUNT	ST	DATE	ACT	TYPE	AMOUNT	
C	09/21/92	TERM		1,349.08	V	09/30/92	DIGN		1,349.08	M

LEVEL PAY AMOUNT----- START DATE CHANGE DATE
LEVEL PAY RECEIVABLE- AVERAGE KWH LEVEL PAY STATUS---

LWR ELEC---- LWR DATE-- BNKR AMT---
LWR N-ELEC-- COLL AGNT- BNKR CONTR-
LWR CONTR--- BNKR NUMBER
LWR COMMENT-

TRN	ID	BATCH/ ORDER	PROCESS DATE	TRANS AMOUNT	DESCRIPTIVE INFORMATION		ACCOUNT BALANCE
501	00	57007	11/24/92	56.94-			0.00
781	01		11/19/92	1.12	PYMT TOTINT		56.94
800	03	VH064	11/19/92	9.00			56.94
850	00		11/03/92	47.94	READ DATE 10/30		47.94
160	07	55308	11/02/92		UNBILLED *	42.94	0.00
501	00	57963	10/30/92	452.33-			0.00
000	CM	55308	10/22/92		160-07	42.94	
110	03	TH511	10/21/92				452.33
162	CM	TH511	10/21/92		110-03		
781	01		10/19/92	1.12	PYMT TOTINT		452.33
800	03	RU573	10/19/92	7.50			452.33
850	00		10/02/92	444.83	READ DATE 09/30		444.83
501	00	57901	09/30/92	1,349.08-			0.00
850	00		09/02/92	1,349.08	READ DATE 08/31		1,349.08

METER NO	S	TYP	D	PH	F-SCL	CONST	INS/RM/CHG	T-YR	READ	CURR	PREV	DEMAND
76217619G	D	5	5	3	8.0	00040	11/30/84	84		52739	52739	

RATE	DT	C	READ	DAYS	DEM-KW	ENERGY-KWH	BILL AMT-MTR	
RATE--- 24		#0	11/17	18	0	0	9.00	#
REV CLS 5		#0	10/30	10	0	0	5.00	#
RATE DT	03/30/83	#0	10/20	00	0	0	0.00	#AREA CD 100
MTR LOC TP		#0	10/15	15	0	0	7.50	#INSTR-- 00
MUL FAM 1		#0	09/30	30	163	12,440	444.83	#ROUTE-- 42
APTMOD-		#0	08/31	30	167	31,320	1,349.08	#GEO---- 0980
IRG USE		#0	07/31	30	166	72,760	2,510.36	#KWH EST
ELC MT-		#0	07/01	30	166	39,600	1,670.86	#LNDLORD 0
HIH VLT 0		#0	06/02	30	167	37,000	1,500.37	#LRG PWR
UNGRD--		#0	05/01	30	160	9,920	168.13	#
CONN LD		#0	04/01	26	160	9,200	314.37	#
MNTH MN		#0	03/06	00	0	0	0.00	#
FAC CHG		#0	11/12	12	0	0	6.00	#

IRRG YR- 92 G ACRES LIFT KVA HORSEPOWR #HOT DEMAND/HP COMP CODE--- 0
0 P 00225 0000 1 37.0 1 200.0 1
2 37.0 2 KWH TAX REF--
3 37.0 3 PROP TAX REF-
4 FINANCE CODE- W

IRRG YR- 93 G ACRES LIFT KVA HORSEPOWR #HOT DEMAND/HP COMP CODE--- 0
0 P 00225 0000 1 37.0 1 200.0 1
2 37.0 2 KWH TAX REF--
3 37.0 3 PROP TAX REF-
4 FINANCE CODE-

COMBINATION NO.- 00101 NOCHECK CODE 0
EXCHANGE CREDIT ACCOUNT- 2252-000101-0

02/06/98 10:51 ☎208 368 6912 IPCO RECORD CNTR 003

IPCO RECORD CNTR
02/06/98 10:52 208 368 6912
004

[redacted] H 2 [redacted]

CYCLE 05 DIST 52 SOUTHERN TOWN JEROME BILLING DATE 12/05/91

TRANSACTION CD	ID	DR NO	MO DA YR	AMT / DSC
50000		920580	112791	83.54-

READ MO DA	DA	DM KW	ENERGY KWH	AMOUNT
01 20	30		1520	7146
01 03	30		1568	7372
01 90	130		936	4401
00 83	030		804	3780
00 80	122		499	2344
00 71	0		0	
00 71	008		314	1477
00 70	230		545	2562
00 69	314		55	350
00 52	0		0	
00 50	907		250	1175
00 50	230		885	4161
00 40	230		1806	8491

EL HEAT / HR USE / APT/MOB / MULT FM / UDG / HI VOLT / EST CNT / EMP / GUAR / LND LRD / LG PWR / # BILL / OWN/RNT / PB/CODE / FB/CODE

METER # 29214830 MS DP FSCL CONST T INS DT LO IN

CON/DIS	RT	SEQ	TY	COMBO	SIC	ARA	BL	TAX
07	09	18	22	0	0000	0000	180	

DATE	READINGS	A/C	APT
12	029917		
10	31	27656	NO EST D

CONNECT LD / MONTH MIN / FAC CHG / GUAR - AG / SPOUSE / EMPLYR SERVICEMAS / PHONE 3298082800

RA	RA	UNIT	ACT	KWH	CHARGE	FC CHG	UD CHG
91		1	1	34	962	20	

RA DAT / GRID COORDINATE

DEP # / DATE / DEP AMT / T / INT PD / DATE / RATE

ADV # / DATE / ADV AMT / TRNS ACT #

T / PH / ACRES / LIFT / KVA / HP / # MOT

RR / DA

ACT STATS	A	ACCOUNT # 05520009720
NAME		LYON&CURTIS D
C/O DBA		LYON&BECCI J
SERVICE		518 N 300 W
LOCATION		
SERV - CSZ		JEROME ID83338
MAIL LN 1		
MAIL LN 2		
MAIL - CSZ		

BILLING - ELEC - CUR	8128
BILLING - NON-ELEC - CUR	
ARREARS - ELECTRIC	
ARREARS - NON-ELECTRIC	
ACCOUNT BALANCE	8128
RATE 91	7146

CYCLE 05 DIST 52 SOUTHERN TOWN JEROME BILLING DATE 12/05/91

TRANSACTION CD	ID	DR NO	MO DA YR	AMT / DSC
80003	XU519	111591		TOFF-CYCLE 13
781	CAM	111591		90
				PYMT TOTINT
781	CAM	120591		90
				PYMT TOTINT

READ MO DA	DA	DM KW	ENERGY KWH	AMOUNT
01 11	12	0	0	600
01 03	30	160	9040	30891
01 00	130	165	13640	46611
00 83	030	165	71480	236273
00 80	130	165	77440	252273
00 70	230	162	23960	107899
00 60	330	165	14040	82075
00 50	230	162	9560	32668
00 40	230	0	0	1500
00 30	130	0	0	1500
11 70	130	0	0	1500
97 12	330	0	0	1500
90 11	030	157	2760	9431

EL HEAT / HR USE / APT/MOB / MULT FM / UDG / HI VOLT / EST CNT / EMP / GUAR / LND LRD / LG PWR / # BILL / OWN/RNT / PB/LOCK / FB/CODE

METER # 76217619 MS DP FSCL CONST T INS DT LO IN

CON/DIS	RT	SEQ	TY	COMBO	SIC	ARA	BL	TAX
11	29	21	20	0	0181	0000	180	

DATE	READINGS	A/C	APT
11	27558		
10	31	27558	NO EST D

CONNECT LD / MONTH MIN / FAC CHG / GUAR - AG / SPOUSE / EMPLYR / PHONE 5366390

RA	RA	UNIT	ACT	KWH	CHARGE	FC CHG	UD CHG
29	50	3	80	R3			

RA DAT / GRID COORDINATE

DEP # / DATE / DEP AMT / T / INT PD / DATE / RATE

ADV # / DATE / ADV AMT / TRNS ACT #

T / PH / ACRES / LIFT / KVA / HP / # MOT

DP 225 0 1110 2000 1

RR 0809 SST CDA-GRD 329-5806 / DA

ACT STATS	A	ACCOUNT # 05520009750
NAME		GUNNING&F F
C/O - DBA		EL DIAMOND RANCH
SERVICE		550 N 300 W
LOCATION		0950
SERV - CSZ		JEROME ID83338
MAIL LN 1		BOX 716
MAIL LN 2		
MAIL - CSZ		MENDELL ID83355

BILLING - ELEC - CUR	
BILLING - NON-ELEC CUR	
ARREARS - ELECTRIC	31491
ARREARS - NON ELECTRIC	
ACCOUNT BALANCE	31491
RATE 24	

CYCLE 05 DIST 52 SOUTHERN TOWN JEROME BILLING DATE 12/05/91

TRANSACTION: CD / ID / DR NO / MO DA YR / AMT / DSC

READ MO DA / DA / DM KW / ENERGY KWH / AMOUNT

EL HEAT / HR USE

METER # 29833837 MS DP FSCL CONST T INS DT LO IN

ACT STATS A ACCOUNT # 05520009250

NAME PALMER&LAWRENCE F

M E M O T O F I L E

TO: **F.F. Gunning &/or G.C. Gunning**
FROM: Georgia Satterlee
DATE: 13 January 1998
RE: Power Records

Thank you for your phone call this morning regarding Andrew Gunning bringing in the power records. You said Idaho Power only had the records for 1995-1996. According to Idaho Power, their records for the last two years are "on-line" (hard copy is easily accessible).

All other years (up to seven years) are on microfilm, which can be obtained, upon the request from the customer. In order to complete the process for the application for transfer, I will need the power records from 1991-1994.

Thank you for your attention in this matter.

MICROFILMED
NOV 12 1999

T# 5197

ACCT NO-- 1052-000974-4 ME-- GUNNING*F F ATE 24S PAE1
ACCT ST-- FINALED COAPP- DBA EL DIAMOND LND&L TARIFF- ID SPEC ADDR- *
CON/DIS-- 12/05/96 LOCT-- 550 N 300 W 0950 CK-9
ACTIVITY- NONE PENDING CITY-- JEROME ID 83338

SUBPAGE (MTR-1) 1

* * * * * * * * * * * * * METER BILLING INFORMATION * * * * * * * * * * * * *

METER NO	S	U	T	D	P	F-SCL	CONST	INS/RM/CHG	CURR	PREV	RT-ANNIV	RTE	SEQ	RC
01428071A	D	1	5	5	3	999.9	00040	10/12/95	04202	04202	11/92	22	1190	5

	MRC	RCC	READ	DAYS	DEM-KW	BLC-KW	ENERGY-KWH	BILL AMT	RATE
01		0	12/05/96	29	0	0	0	2.50	24S
02	00	0	11/06/96	30	0	0	0	2.50	24S
03	22	8	10/08/96	30	146	0	5,480	193.82	24S
04	13	8	09/09/96	30	147	0	27,440	1,261.61	24S
05	00	0	08/08/96	30	146	0	68,920	2,361.21	24S
06	00	0	07/10/96	30	148	0	49,560	1,853.43	24S
07	00	0	06/10/96	30	147	0	10,520	816.35	24S
08	00	0	05/09/96	30	146	0	6,160	236.00	24S
09		8I	04/09/96	21	0	0	0	7.00	24S
10	00	6	03/19/96	00	0	0	0	0.00	24S
11		0	10/10/95	00	0	0	0	0.00	24S
12		6	10/10/95	00	0	0	0	0.00	24S
13	00	0	10/10/95	30	149	0	14,240	532.37	24S

TRAN CODE ____ OR NAME/PHONE/ACCOUNT/SSN ENTER FOR SUBPAGE

IDAHO POWER CO.
422 MAIN ST.
GOODING, ID 83330

RECEIVED
JAN 13 1998
Department of Water Resources
Southern Region

MICROFILMED
NOV 12 1999

T#5197

ACCT NO-- 1052-000974-4 NAME-- GUNNING*F F RATE 24S PAE1
ACCT ST-- FINALED COAPP- DBA EL DIAMOND LND&L TARIFF- ID SPEC ADDR- *
CON/DIS-- 12/05/96 LOCT-- 550 N 300 W 0950 CK-9
ACTIVITY- NONE PENDING CITY-- JEROME ID 83338

SUBPAGE (MTR-1) 2

* * * * * * * * * * * * * METER BILLING INFORMATION * * * * * * * * * * * * *

METER NO	S	U	T	D	P	F-SCL	CONST	INS/RM/CHG	CURR	PREV	RT-ANNIV	RTE	SEQ	RC
01428071A	D	1	5	5	3	999.9	00040	10/12/95	04202	04202	11/92	22	1190	5

	MRC	RCC	READ	DAYS	DEM-KW	BLC-KW	ENERGY-KWH	BILL AMT	RATE
14	00	0	09/08/95	30	149	0	51,600	2,031.35	24S
15	00	0	08/09/95	30	149	0	55,200	2,120.21	24S
16	00	0	07/10/95	30	159	0	24,520	1,274.07	24S
17	00	0	06/08/95	30	151	0	17,680	1,051.86	24S
18	00	0	05/09/95	30	150	0	4,520	177.49	24
19	00	0	04/07/95	30	0	0	0	10.00	24
20	00	0	03/08/95	07	0	0	0	2.50	24
21		0	03/01/95	00	0	0	0	0.00	24
22	00	0	09/30/94	00	0	0	0	0.00	24
23	00	0	09/30/94	30	148	0	8,080	287.82	24
24		0	08/31/94	30	150	0	56,440	2,000.41	24

TRAN CODE ____ OR NAME/PHONE/ACCOUNT/SSN

MICROFILMED
NOV 12 1998

T #5197

6/9/94

COMMUNICATION DOCUMENTATION

This form is to be used to document public record information requests regarding any SRBA claim or claims. The form may also be used to document IDWR communications requesting information regarding any SRBA claim or claims when the request is not made in writing or the claim verification report is not readily available to document the request. This form is to be filed in all relevant claim files or a central office file.

IDWR Employee/Agent Georgia Satterlee

DATE
January 9, 1998 8:42am

CUSTOMER
Gunning, GC

SUBJECT: Power Records
phone call (x) walk-in (.)
Per phone conversation on 02 Jan w/ ADM and myself, Mr. Gunning said he would bring (the 5th or 6th) in the power records for last 5 years per P/D Sec 21, T7S, R16E NENESE¼. I left a phone message at 536-5617 stating the above.

MICROFILMED
NOV 12 1999

T#5197

State of Ida
DEPARTMENT OF WATER RESOURCES
1341 Fillmore Street, Suite 200, Twin Falls, ID 83301-3380
Phone: (208) 736-3033 FAX: (208) 736-3037

PHILIP E. BATT
GOVERNOR

KARL J. DREHER
DIRECTOR

December 30, 1997

F.F. Gunning and/or G.C. Gunning
PO Box 821
Wendell, ID. 83355

Re: Proposed Transfer Pending (36-02457,-07760,-08063)

Dear Mr. Gunning,

In order to proceed with the above transfer it is necessary to clarify some issues related with the above water rights.

Please contact me at the office (208)734-3033 at your earliest convenience.

Cordially,

Georgia Satterlee

Georgia Satterlee
Water Resource Agent

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NOV 12 1999

T #5197

6/9/94

COMMUNICATION DOCUMENTATION

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IDWR Employee/Agent Georgia Satterlee

DATE
December 9, 1997 8:07am

CUSTOMER
GUNNING DAIRY

SUBJECT: COW NUMBERS
phone call (.) walk-in (.)

I went out to the Gunning Dairy yesterday at approximately 1500 hrs. I was met by Mr. Bettencourt. He is leasing the dairy from Gunning. I told him I was there to count his cows. He said he could save me the trouble and that there were 835 cows. He said if I still wanted to count the cows I was welcomed to.
I was told by the lead person running the dairy that the best way to get an accurate number is to count the cows as they are leaving the barn. This same person verified what Mr. Bennecourt had said about the number of cows (835). He went on to say that they could put another 140 cows in a corral that is available.

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NOV 12 1999

T # 5197

6/9/94

COMMUNICATION DOCUMENTATION

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IDWR Employee/Agent Georgia Satterlee

DATE
December 1, 1997 2:38pm

CUSTOMER
P&Z Gooding County

SUBJECT: Gunning Dairy
phone call (x) walk-in (.)
Gooding County P&Z 934-5958
I talked to the P&Z Office in Gooding County regarding the latest application (8/97) from Gunning. Gunning applied for the CAFO Registration of 1050 cows and 200 heifers (200 lbs.+). The county denied, Gunning appealed, the motion was upheld, and as of today Rob Williams (attorney for Gunning) will go through the appeal process again. The P&Z is faxing me the application which Gunning filled out this year. This shows the current numbers of cows. The numbers from this application are similiar to the application for transfer (1200 cows ±).

DEC 12 1997

T # 5197

P.O. Box 417
624 Main Street
Gooding, ID 83330
(208)934-5958

GOODING COUNTY PLANNING AND ZONING COMMISSION

Fax

To: Georgia / IDWR **From:** Shelly Hayde

Fax: 736-3037 **Pages:** 1+Cover

Phone: **Date:** 12/01/97

Re: Hillcrest/Gunning

☐ **Urgent** ☐ **For Review** ☐ **Please Comment** ☐ **Please Reply** ☐ **Please Recycle**

• **Comments:**

DEC 0 1 1997
Department of Water Resource
Southern Region

MICROFILMED
NOV 1 2 1999

T# 5197

ANIMAL UNITS SURVEY

Instructions: In column 2, enter the number of each animal type present on the operation. Multiply that number by the animal equivalency factor found in column 1. This will give you the single animal unit number to be entered in column 3 (col. 1 x col. 2 = col. 3). The total of all numbers in column 3 is to total number of animal units present on the CAFO.

Animal Type	Animal Equivalency Factor (1)	Number on the Operation (2)	Equivalent Animal Units (3)
DAIRY CATTLE			
Milking and Dry Cows	1.000	1050	1050
Heifers (2 years and older)	0.750	200	~~200~~ 150
Heifers (1 to 2 years old)	0.700		
Calves (3 months to 1 year)	0.400		
Calves (under three months)	0.250		
BEEF CATTLE			
Bulls (each)	1.000		
Steers/Cows (over 1000 lbs.)	0.750		
Steers/Cows (600 lbs. - 1000 lbs.)	0.600		
Calves (under 600 lbs.)	0.400		
SWINE			
Pigs (55 lbs. - market)	0.400		
Pigs (up to 55 lbs.)	0.100		
Sows (each)	0.400		
Boars (each)	0.500		
SHEEP			
Each Sheep	0.150		
HORSES			
Each Horse	1.000		
FISH			
(500 lbs.)	1.000		
CHICKENS			
Layers (each)	0.010		
Broilers (each)	0.005		
FOR SPECIES NOT SPECIFICALLY IDENTIFIED			
(350 lbs.)	1.000		

TOTAL COMBINED ANIMAL UNITS 1200

TOTAL # OF ACRES ON THE CAFO 80

Signed this 10 day of August, 1997.

Applicant

DEC 01 1997

MICROFILMED

NOV 12 1999

T #5197

GROUNDWATER MEASUREMENT REQUIREMENT ANALYSIS
****

FILE: GUNNING
DATE: DEC. 1997
BY: G.K. SATTERLEE

THEORETICAL RATE OF FLOW: $Q = \frac{(8.8) \times (H.P.) \times (EFF.)}{TDH}$

Q = CFS
H.P. = Total Brake Horsepower of pumping plant (including booster)
EFF. = Pumping plant efficiency (ASSUME 70% OR 0.70)
TDH = total dynamic head = [(LIFT) + (PSI X 2.31)]
LIFT = depth to water in FEET from land surface to pumping water level
PSI = pumping pressure measured in psi near pump (if open discharge assume zero [0])

$$Q = \frac{(8.8)\ (7.5)\ (0.70)}{[\ (135) + (45 \times 2.31)\ ]} = \frac{46.2}{239} = 0.19 \text{ cfs}$$

LIFT FROM:
measurement ( )
owner ( )
area estimate ( )
well logs (X)
Booster (Y) (N)

PSI FROM:
measurement ( )
owner ( )
estimate (X)
owner gage ( )

NOTES ON PUMP:
Motor Make, Serial or ID

Pump Make, Serial or ID, rating

REMARKS

THEORETICAL RATE OF FLOW: $Q = \frac{(8.8) \times (H.P.) \times (EFF.)}{TDH}$

Q = CFS
H.P. = Total Brake Horsepower of pumping plant (including booster)
EFF. = Pumping plant efficiency (ASSUME 70% OR 0.70)
TDH = total dynamic head = [(LIFT) + (PSI X 2.31)]
LIFT = depth to water in FEET from land surface to pumping water level
PSI = pumping pressure measured in psi near pump (if open discharge assume zero [0])

$$Q = \frac{(8.8)\ (7.5)\ (0.70)}{[\ (128) + (40 \times 2.31)\ ]} = \frac{46.2}{220} = 0.21 \text{ cfs}$$

LIFT FROM:
measurement ( )
owner ( )
area estimate ( )
well logs ( )
Booster (Y) (N)

PSI FROM:
measurement ( )
owner ( )
estimate ( )
owner gage ( )

NOTES ON PUMP:
Motor Make, Serial or ID

Pump Make, Serial or ID, rating

REMARKS

MICROFILMED
NOV 12 1999

T #5197

See Dairy Worksheet for R36·15511 for remainder. numbers from Animal Units Survey Gooding P&Z

FILE NUMBER ----- 36-02457...
REVIEWER ----- Gunning Transfer

DAIRIES: WATER USE WORKSHEET

REQUIRED DAIRY DATA

NUMBER OF MILKING CATTLE	650
NUMBER OF NONMILKING CATTLE	150
IF LAGOON IS AEROBIC, ENTER ITS SURFACE AREA IN ACRES; IF ANAEROBIC, ENTER ZERO	4.0
EVAPOTRANSPIRATION FACTOR FOR AREA (AC-FT/AC-YR)	4
ENTER 1 FOR MANUAL COW WASHING, 2 FOR AUTOMATIC, OR 3 IF SPRINKLERS ARE USED TO FLUSH HOLDING PEN AND WASH COWS	3
NUMBER OF MILKINGS PER DAY	2

CALCULATIONS

DIVERSION RATE FOR STOCKWATER (CFS):

MILKING CATTLE @35 GPD/HD	0.42
MILKING CATTLE (NUMBER OF CATTLE ROUNDED UP) *	0.45
NONMILKING CATTLE @12 GPD/HD	0.03
NONMILKING CATTLE (NUMBER OF CATTLE ROUNDED UP) *	0.04
TOTAL (BASED UPON ROUNDED NUMBERS)	0.50

DIVERSION VOLUME (AFA):

STOCKWATER	
MILKING CATTLE @35 GPD/HD	25.5
MILKING CATTLE (NUMBER OF CATTLE ROUNDED UP) *	28.0
NONMILKING CATTLE @12 GPD/HD	2.0
NONMILKING CATTLE (NUMBER OF CATTLE ROUNDED UP) *	2.7
TOTAL (BASED UPON ROUNDED NUMBERS)	30.7
COMMERCIAL	
WASHING OF BULK TANK AND RELATED EQUIPMENT	0.4
PARLOR FLOOR AND MILKHOUSE FLOOR	0.1
CATTLE WASHING BASED UPON METHOD OF WASHING	24.1
TOTAL	24.6
TOTAL DIVERSION VOLUME	55.3 ÷ 4 = 13.8 ac 14 acres

CONSUMPTIVE USE VOLUME (AFA):

STOCKWATER	
MILKING	4.1
NONMILKING	0.0
TOTAL	4.1
COMMERCIAL	16.0
TOTAL CONSUMPTIVE USE	20.1

* NUMBER OF CATTLE ROUNDED UP TO AGREE WITH EXISTING TABLES.

THEORETICAL FLOW ESTIMATION WORKSHEET

REQUIRED PUMP INFORMATION

	PUMP 1	PUMP 2	PUMP 3
PUMP HORSEPOWER (HP)	7.50	7.50	0.00
LIFT (FT)	135	128	0
DISCHARGE PRESSURE (PSI)	45	40	0
FRICTION LOSSES (FT)	10.0	10.0	0.0

CALCULATIONS

THEORETICAL FLOW RATE (CFS) *	0.19	0.20	0.00
DIVERSION VOLUME (AFA) **	140.0	145.2	0.0

* PUMP EFFICIENCY WAS ASSUMED TO BE 70%.
* DIVERSION VOLUME IS THE ABSOLUTE MAXIMUM VOLUME BASED ON THE THEORETICAL FLOW RATE ASSUMING PUMP RUNS CONTINUOUSLY EVERY DAY OF THE YEAR.

T 5197 #1

MICROFILMED
NOV 17 1999

FILE NUMBER ---- R36-15511
REVIEWER ---- Gunning Dairy

DAIRIES: WATER USE WORKSHEET

REQUIRED DAIRY DATA

NUMBER OF MILKING CATTLE	400
NUMBER OF NONMILKING CATTLE	0
IF LAGOON IS AEROBIC, ENTER ITS SURFACE AREA IN ACRES; IF ANAEROBIC, ENTER ZERO	4.0
EVAPOTRANSPIRATION FACTOR FOR AREA (AC-FT/AC-YR)	4
ENTER 1 FOR MANUAL COW WASHING, 2 FOR AUTOMATIC, OR 3 IF SPRINKLERS ARE USED TO FLUSH HOLDING PEN AND WASH COWS	3
NUMBER OF MILKINGS PER DAY	2

CALCULATIONS

DIVERSION RATE FOR STOCKWATER (CFS):

MILKING CATTLE @35 GPD/HD	0.26
MILKING CATTLE (NUMBER OF CATTLE ROUNDED UP) *	0.26
NONMILKING CATTLE @12 GPD/HD	0.00
NONMILKING CATTLE (NUMBER OF CATTLE ROUNDED UP) *	0.00
TOTAL (BASED UPON ROUNDED NUMBERS)	0.26

DIVERSION VOLUME (AFA):

STOCKWATER	
MILKING CATTLE @35 GPD/HD	15.7
MILKING CATTLE (NUMBER OF CATTLE ROUNDED UP) *	16.0
NONMILKING CATTLE @12 GPD/HD	0.0
NONMILKING CATTLE (NUMBER OF CATTLE ROUNDED UP) *	0.0
TOTAL (BASED UPON ROUNDED NUMBERS)	16.0
COMMERCIAL	
WASHING OF BULK TANK AND RELATED EQUIPMENT	0.4
PARLOR FLOOR AND MILKHOUSE FLOOR	0.1
CATTLE WASHING BASED UPON METHOD OF WASHING	15.2
TOTAL	15.7
TOTAL DIVERSION VOLUME	31.7

CONSUMPTIVE USE VOLUME (AFA):

STOCKWATER	
MILKING	2.3
NONMILKING	0.0
TOTAL	2.3
COMMERCIAL	15.7
TOTAL CONSUMPTIVE USE	18.0

* NUMBER OF CATTLE ROUNDED UP TO AGREE WITH EXISTING TABLES.

THEORETICAL FLOW ESTIMATION WORKSHEET

REQUIRED PUMP INFORMATION

	PUMP 1	PUMP 2	PUMP 3
PUMP HORSEPOWER (HP)	7.50	7.50	0.00
LIFT (FT)	138	138	0
DISCHARGE PRESSURE (PSI)	45	60	0
FRICTION LOSSES (FT)	10.0	10.0	0.0

CALCULATIONS

THEORETICAL FLOW RATE (CFS) *	0.19	0.16	0.00
DIVERSION VOLUME (AFA) **	138.2	116.7	0.0

* PUMP EFFICIENCY WAS ASSUMED TO BE 70%.
* DIVERSION VOLUME IS THE ABSOLUTE MAXIMUM VOLUME BASED ON THE THEORETICAL FLOW RATE ASSUMING PUMP RUNS CONTINUOUSLY EVERY DAY OF THE YEAR.

RECEIVED
SEP 17 1999

Total Cow Numbers taken from Animal Units Survey Gooding P&Z

FILE NUMBER ----- 36-02457...
REVIEWER ----- Gunning Dairy

DAIRIES: WATER USE WORKSHEET

REQUIRED DAIRY DATA

NUMBER OF MILKING CATTLE	1050
NUMBER OF NONMILKING CATTLE	150
IF LAGOON IS AEROBIC, ENTER ITS SURFACE AREA IN ACRES; IF ANAEROBIC, ENTER ZERO	4.0
EVAPOTRANSPIRATION FACTOR FOR AREA (AC-FT/AC-YR)	4
ENTER 1 FOR MANUAL COW WASHING, 2 FOR AUTOMATIC, OR 3 IF SPRINKLERS ARE USED TO FLUSH HOLDING PEN AND WASH COWS	3
NUMBER OF MILKINGS PER DAY	2

CALCULATIONS

DIVERSION RATE FOR STOCKWATER (CFS):

MILKING CATTLE @35 GPD/HD	0.68
MILKING CATTLE (NUMBER OF CATTLE ROUNDED UP) *	0.71
NONMILKING CATTLE @12 GPD/HD	0.03
NONMILKING CATTLE (NUMBER OF CATTLE ROUNDED UP) *	0.04
TOTAL (BASED UPON ROUNDED NUMBERS)	0.76

DIVERSION VOLUME (AFA):

STOCKWATER	
MILKING CATTLE @35 GPD/HD	41.2
MILKING CATTLE (NUMBER OF CATTLE ROUNDED UP) *	44.0
NONMILKING CATTLE @12 GPD/HD	2.0
NONMILKING CATTLE (NUMBER OF CATTLE ROUNDED UP) *	2.7
TOTAL (BASED UPON ROUNDED NUMBERS)	46.7
COMMERCIAL	
WASHING OF BULK TANK AND RELATED EQUIPMENT	0.4
PARLOR FLOOR AND MILKHOUSE FLOOR	0.1
CATTLE WASHING BASED UPON METHOD OF WASHING	38.2
TOTAL	38.6
TOTAL DIVERSION VOLUME	85.3

$\frac{85.3}{4} = 21.3$ acres

CONSUMPTIVE USE VOLUME (AFA):

STOCKWATER	
MILKING	6.4
NONMILKING	0.0
TOTAL	6.4
COMMERCIAL	16.0
TOTAL CONSUMPTIVE USE	22.4

* NUMBER OF CATTLE ROUNDED UP TO AGREE WITH EXISTING TABLES.

THEORETICAL FLOW ESTIMATION WORKSHEET

REQUIRED PUMP INFORMATION

	PUMP 1	PUMP 2	PUMP 3
PUMP HORSEPOWER (HP)	7.50	7.50	0.00
LIFT (FT)	135	128	0
DISCHARGE PRESSURE (PSI)	45	40	0
FRICTION LOSSES (FT)	10.0	10.0	0.0

CALCULATIONS

THEORETICAL FLOW RATE (CFS) *	0.19	0.20	0.00
DIVERSION VOLUME (AFA) **	140.0	145.2	0.0

* PUMP EFFICIENCY WAS ASSUMED TO BE 70%.
* DIVERSION VOLUME IS THE ABSOLUTE MAXIMUM VOLUME BASED ON THE THEORETICAL FLOW RATE ASSUMING PUMP RUNS CONTINUOUSLY EVERY DAY OF THE YEAR.

Gooding #1

LAW OFFICES
HOBDEY & HOBDEY
125 FIFTH AVENUE WEST
P.O. BOX 176
GOODING, IDAHO 83330-0176

CRAIG D. HOBDEY
(208) 934-4429

OF COUNSEL
CECIL D. HOBDEY

November 25, 1997

Idaho Department of Water Resources
222 Shoshone Street East
Twin Falls, Idaho 83301-6105

RECEIVED
DEC 01 1997
Department of Water Resources
Southern Region

ATTN: ALLEN MERRITT
SOUTHERN REGIONAL MANAGER

RE: HILLCREST DAIRY (GUNNING)
2100 EAST 2950 SOUTH
WENDELL, IDAHO 83355

Dear Allen:

As the civil attorney for the City of Wendell I have been asked to inquire about the status of the above dairy. My client has information that the dairy has hooked two domestic wells together and is operating them as a series of wells in order to avoid the requirement of drilling a new well. I believe Idaho Code §42-111 clearly provides that one cannot drill multiple "domestic" wells to satisfy an intended use that would require a permit.

Mayor Rost has indicated she spoke with someone from the Department of Water Resources. Unfortunately she did not obtain this person's name. He advised her that a series of wells were on the Gunning dairy.

We would ask that you investigate this matter to determine whether or not an illegality exists and advise.

Sincerely yours,

Craig Hobdey

Craig D. Hobdey
Wendell City Attorney

CDH:bj
pc: Client

MICROFILMED
NOV 12 1999

T # 5197

ished carving up a mound of paperwork.

A full environmental assessment of the project is due in a year, said Devin Rigby, an Idaho Transportation Department district engineer in Shoshone.

That makes for a tight schedule, because ITD wants to start moving on the first of three phases – widening Pole Line Road between Washington Street and Blue Lakes Boulevard North – by 2001, he s[illegible]

Pole L[illegible]ght be widened to include two lanes each way plus two turning lanes, Rigby said.

Rigby laid out some details of the proposed project for officials from Twin Falls city, Twin Falls County and area transportation committees during a meeting Thursday.

The second phase, set t[illegible] 2002, would take the new route a[illegible]ss Rock Creek. Phase three would end with a link to the U.S. 93-U.S. Highway 30

District Engineer Bob Rumpler[illegible] state would pay for the rest.

The ITD hopes to use some of the grant money to pay a consultant to start hammering out the environmental assessment.

Please see HIGHWAY, Page B3

GIRLS WITH AN ATTITUDE



KIRSTEN SHULTZ/The Times-News

Hailey Elementary School fifth-grader Chelsea Pooley leads her friends – from left, Maycon Sheppard, Leslie Riemann and Autum Christiansen – in a battle of the sexes with Mike Sheehan during a recent snowstorm. When the girls aren't in school or playing in the snow, Sheppard said, they play in a band called Girls with Attitude. Sheehan is 'not in the band,' Sheppard said, 'but we still hang out with him.'

Contaminated water inspires students

Fifth-graders work to reduce injection well threat to drinking water

By Steve Koehler
Times-News correspondent

WENDELL – Some local fifth-graders left their classroom this week to help raise public awareness about the danger of water contamination.

Wendell and Gooding are two of the four Idaho cities that channel runoff into deep injection wells. The others are Shoshone and Idaho Falls.

Surface water can carry contaminants into the aquifer – oil, gasoline, antifreeze, compounds from normal tire and brake wear, residential lawn and garden chemicals, industrial and agricultural chemicals and other waste. Six of Wendell's nine injection wells lie along state Highway 46; so a potential tanker spill would add to the threat.

"The concern with deep injection wells is that they bypasses shallow treatments," said Helen Harrington of the Idaho Department of Water Resources in Boise. "A lot of towns use shallow injection well systems which incorporate drain fields with soil filtration."

The Gooding Soil Conservation District and the city of Wendell sponsored a project by Grace Koehler's fifth-grade Wendell Elementary School class this week to mark the town's injection wells. The youngsters were helped by Gooding High School's Envirothon team, which first showed the class how contaminated groundwater entering an injection well can end up in drinking water.

Gooding's Levi Faulkner added water to a plastic model aquifer, in which sand represented the area's porous volcanic rocks. He then added red-dyed water to the model's injection well and pumped water from a drinking water well. The red water migrated into the drinking water well.

The students split into six teams to stencil signs on the ground, marking

Please see WATER, Page B3



STEVE KOEHLER/The Times-News

Gooding High School junior Levi Faulkner uses a groundwater model to show how contaminated runoff entering an injection well can move into a drinking water well. Faulkner is part of a five-member Envirothon team that helped Wendell fifth-graders understand the threat injection wells pose to the aquifer.

County rejects dairy permit again

By Sharon Metcalf
Times-News correspondent

GOODING – County officials have again denied a permit for a long-disputed dairy east of Wendell.

After a rancorous public hearing in which Wendell's mayor said the dairy's stench holds her citizens "hostage in their homes," the county's planning and zoning commission denied an appeal by Hillcrest Dairy.

The decision Wednesday upholds an August ruling that also went against the dairy, situated at approximately 2950 S. 2100 E.

Wendell Mayor Gwen Rost, who has been protesting Hillcrest since February 1995, repeated her contention that the business has neither a valid permit nor a "grandfather" right to operate. Rost also argued that the dairy lacks adequate water resources and cannot legally sustain more than 250 to 350 cattle.

The dairy applied for a permit to raise 1,057 cows and 200 heifers.

"Our citizens are adversely affected," Rost said. "In the a.m. and p.m., the smell comes through town. Quality of life has definitely changed for the worse since this dairy came into being."

Rost said she realized that a great deal of money had been spent on the dairy, but the city of Wendell has also spent many, many dollars to make Wendell a nice place for its citizens.

"I see a lot of people being held hostage in their homes," Rost said. "We can't open windows because we smell the dairy and it's not nice."

Rost gave the commission a petition opposing a confined animal feeding operation permit for Hillcrest.

But lawyer Rob Williams, representing Hillcrest owners F.F. and Irene Gunning, contended that the dairy predated county zoning rules.

"For Gooding to engage in the fiction that zoning was in effect is just wrong," he said. County zoning has "never been lawful and it's still not lawfully done, and people like the Gunnings who rely on the existing set of laws should not be penalized."

P&Z Administrator Judy Daubner reviewed the history of Gooding County's zoning, dating back to a 1982 ordinance, which banned dairies within a mile of existing residential areas. Daubner reviewed multiple attempts to prevent the dairy's construction, including a stop work order.

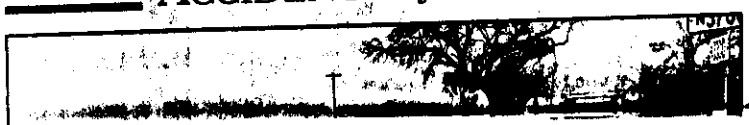
Hillcrest applied for a CAFO permit in early August and was denied later that month.

"It's a shame people choose to demonize these facilities," Williams said.

Another dairy permit also prompted debate on Wednesday. Milt Sorenson,

Please see DAIRY, Page B3

ACCIDENT INJURES 4



Murder plot suspect identified

16-year-old girl arrested for aiding in plot to kill father

The Times-News

were thinking," said Buhl Det. Karen Trent. "The only thing I got out of them was that they were planning on doing this, then go to Las Vegas and get mar-

impkin.
ards describe the journey
vis and Clark, an essay cov-
lavery and a stuffed great
d owl watched over the fair.

gar just didn't react with the baking soda, or the battery simply refused to illuminate the light.

Jewlie had a trump card.

tion at home! (Just my luck!)"

Gregory Hahn is the Times-News' Mini-Cassia bureau chief and can be reached in Burley at 677-4042.

Woods questioned whether Grabher's plans to lease the property constituted a mobile home park in the ci ich is also against Hagern code

Times-News correspondent Gina Mulder can be reached in Hagerman at 837-6273.

urb teen pregnancy rates

l to Twin Falls in October
e over for Adria Masoner,
ved to promote community
reness and get others
ed."

re are no teen-agers on the
ion yet, but Goodale said
oup is hoping to get some
ge membership. She has
y talked with two teen-age
rs interested in joining, she

alition member Marie
el from the Health and
re Office announced she's
into three Declo High
ol classes Tuesday and
esday to educate students

about changing laws affecting teen-age fathers.

"We want all students to know that teen-age fathers are going to have to pay $50 a month until they're 18 and then they'll have to pay the big bucks after that," Hanzel said. "They also need to know that if a girl names him as the father that he and his parents will both be getting a letter from us."

The coalition will meet again on Jan. 22 at 3:30 p.m. at South Central Health District, 2311 Parke Ave., Suite 4. The public is welcome to attend.

Monument documents may aid lawsuit

SALT LAKE CITY (AP) — Congressional investigators have received more subpoenaed documents related to creation of a massive southern Utah monument, but the Interior Department wants them kept under wraps.

As the documents were delivered Wednesday, Interior Department Deputy Solicitor Edward B. Cohen complained that Rep. Jim Hansen, R-Utah, might try to use the files to aid lawsuits aimed at dissolving the Grand Staircase-Escalante National Monument.

Such suits have been filed by the Utah Association of Counties and overseers of state school trust lands.

Republicans counter that the White House likely is more concerned that the environmental studies on a proposed coal mine may prove that President Clinton knew it posed no major threat to the region.

In announcing the 1.7 million-acre monument, the president implied potential damage from the mining operation had spurred his decision to set aside the scenic canyon lands for protection.

"They (administration officials) have no control over what we do with the documents," said Allen Freemyer, staff director for the House Resources Subcommittee on National Parks and Public Lands, which Hansen chairs.

Freemyer added the committee has not decided what, if any of the documents to release. He said the committee may write a report quoting the files.

Earlier this month, the panel subpoenaed all versions of draft environmental studies on the once-proposed Andalex mine after the Interior Department did not voluntarily provide them.

Rep. Chris Cannon, R-Utah, was among Republicans who predicted the documents would prove Clinton lied about how much threat the mine posed to the monument area.

As the documents were delivered Wednesday, Cohen wrote to Resources Committee Chairman Don Young, R-Alaska, that Hansen had earlier indicated the files would fall into plaintiffs' hands.

Hansen had been quoted as saying that groups suing to overturn the monument "will feel they hit the mother lode," and "that's one reason I pushed to make these documents public, to help them."

Cohen wrote that many of the documents being provided "would not be available in litigation, and we presume that the committee will respect the privileges the United States is asserting" in keeping them confidential.

"Use of the congressional subpoena authority to obtain documents for use by private parties opposed to the United States in litigation does not appear to be the type of legislative or oversight purpose for which you indicate the documents are being sought," Cohen added.

He noted that the reports turned over are all preliminary and include candid expressions of opinion. Releasing them "could confuse the public as to the official agency position on an issue, and have a detrimental effect on the orderly process of decision-making," Cohen added.

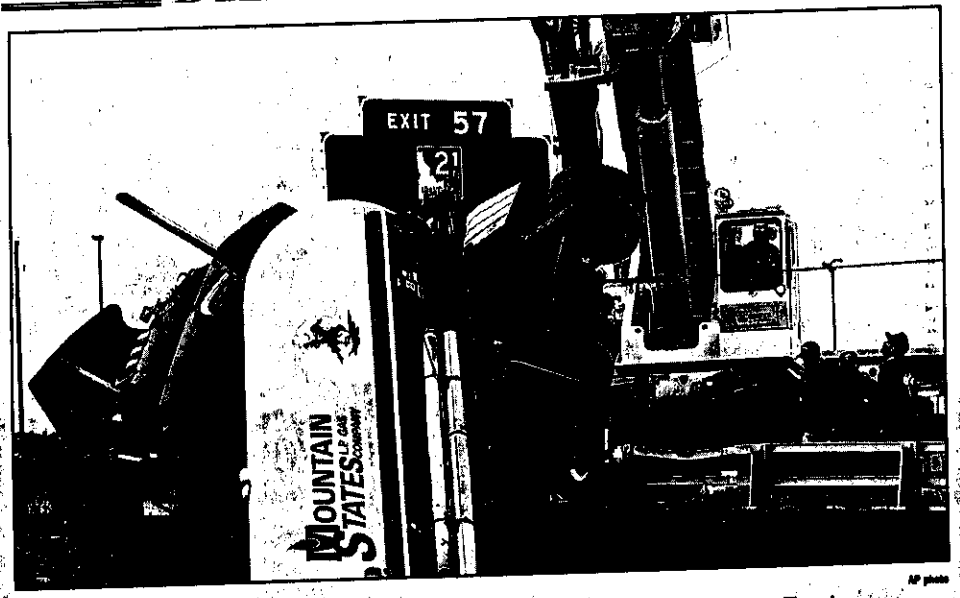
n death faces additional charges

ting the girl's 13-year-old
, police contend. Finally,
nonths before his arrest, in
rendous slumber party, he
dly molested the younger
hter and a 13-year-old
bor girl, moving from one
to another in the dark.
ne second time, I knew it
t a dream," she said.
nnett on Thursday was
l over for trial on 11 felony
es including rape of a child,
avated sexual abuse and
ny of a child. He pleaded not
. No trial date has been set.
e case has sent the tiny
hern Utah town of
icane reeling and baffled
in three states.
ause Bennett, they say, is
osed to be dead.

Investigators say Bennett, then a sergeant in the Marines, faked his own death in a trailer fire near Las Vegas in February 1994 during an investigation into allegations he molested another soldier's child while stationed in Yuma, Ariz. Police don't know whose charred remains they found in the ashes of the fire, but suspect he was murdered. No charges have been filed.

Investigators say Bennett, flush with $200,000 insurance money, moved with his ex-wife and three daughters to Hurricane, 150 miles to the northeast, where he assumed the identity of Joe Benson, an affable braggart who endeared himself to the town's teenagers.

DELAYS ON THE INTERSTATE



AP photo

A semi-trailer hauling propane gas jackknifed going eastbound on I-84 about one mile from Boise on Thursday. Emergency crews attempt to move the truck as it backs up traffic into Boise. The driver walked away with only a scratch on his head. The highway was closed for several hours.

o make only one 90-degree
south at the end of Pole
Road, he said. And the
might force abandonment
e west end of Pole Line
dashing the hopes of area
wners seeking commercial
g, Hempleman said.
in Falls City Planner
r Orton said he worries
a widened Pole Line Road
"sever the community"
make a tough crossing for
strians and bicyclists.
city is trying to link up a
and foot path between the College of Southern Idaho and the Perrine Bridge, he said.

Engineers should consider routing the path through a tunnel under the widened Pole Line Road, he said.

Safety islands in the middle of the street would also make crossing easier for pedestrians and cyclists, Orton said.

Public hearings on the project should be scheduled soon.

Times-News staff writer Mark Heinz can be reached in Jerome 324-6962.

Dairy

Continued from B1

2192 E. 1775 S., Gooding, sought permission to enlarge an existing lagoon.

"I have lived on the property adjoining for 38 years and have been able to build a comfortable home where we would like to live out our days," Willis Cheney said. But he said the dairy has brought a terrible stench, along with unbearable flies, gnats and mosquitos.

Cheney also fears well contamination and harm to property values, he said.

Sorenson said, "I am sorry I have offended so many people by trying to be in a business that is being run in an agricultural zone as an agricultural business." But he refused to take the blame for flies in the neighborhood, arguing that everyone in the area keeps livestock.

"I spend $70,000 a year in my neighborhood for feed," he said. "What have most of you done for the agricultural community today?"

The planning commission approved Sorenson's application, on the condition that his dairy not enlarge.

It also approved a CAFO siting permit for Don Askew, 1926 S. 2100 E., on the same condition. Pieter Deelstra, 1813 E. 3100 S., Wendell, also received approval for a CAFO permit.

Deelstra and Askew's applications caused no controversy.

Times-News correspondent Sharon Metcalf can be reached in Gooding at 934-5292.

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bad things get in them."
onstructing a grassy swale is
easiest and most effective
to treat runoff," Harrington
"Grass and soil will take up
ents and settle solids."
e cost of changing runoff
ction systems can be
ed if the work is done dur-
oad improvement projects,
ington said.
e conservation district's
Reedy helped Gooding
graders label their town's injection wells last October. The district hopes the projects will encourage voluntary, responsible behavior from the public regarding injection wells.

The Water Resources Department, which regulates the wells, encourages communities to develop runoff collection and treatment systems.

Times-News correspondent Steve Koehler may be reached in Wendell at 536-2545.

10/28/97

Dale McMinn

536-5421

RE: Deffenbaugh Drive
E. of Mendell

Prob E. of Mendell
Bentwood Gardens, MHP
East of Mendell
Lois Deffenbaugh
1/2 E N side
Mendell

(Gardens)

7S 15E 34 NENE

R36-10815
R36-15511

10/30/97
I called McMinn back & described status of two SRDA claims & pending transfer.

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He requests notification of transfer. I told him it would be advertised in Gooding paper.

T # 5197

From: DWR03::SCURTIS 11-AUG-1997 15:52:21.71
To: DWR60::GSATTERL
CC:
Subj: 36-08063A and 37-08508

Georgia, Shelley asked me to pull the above two files and review them so we can get them moving (hopefully) in response to your inquiry as to the status of them. Just wanted to let you know we're working on it.

Sharla

T#5197

From: DWR60::GSATTERL 31-JUL-1997 10:52:24.02
To: DWR01::SKEEN
CC: GSATTERL
Subj: 36-08063A and 37-08508

Hi...long time, no talk.
First water right=Gunning who can I ask about the status of the license of permit. I hold the transfer related to several of Gunning's license and this permit.
Second water right=Says in our records the field examination is complete and sent to State Office May 18, 1992. I will check Bar Code also.
Thank you for getting back to me on the above. Hope all is well with you. We are busy as little bees and our hive is the Southern Region and the honey is dairies and transfers...
C U...G.L.S...

T#5197

From: DWR60::GSATTERL 6-JUN-1997 08:03:25.62
To: DWR03::SKEEN
CC: GSATTERL
Subj: 36-08063A

Hi. I have sent several messages to J. Johnson but have not heard anything from him. I wondered what is the status of the above permit number (this was supposed to be licensed because this right with two other licenses were part of an application for transfer for Gunning). Thank you for your help. G. Satterlee

Per phone conversation w/ Jim J.
6 June-97 0850 hrs, he will give the permit back to Cindy Zimmerman and the area will be deemed:

"PPL" , including other 2 licenses.

This will change the transfer, however, until the above is accomplished I will not attempt this feat!

T# 5197

From: DWR03::SKEEN 6-JUN-1997 08:12:15.07
To: DWR60::GSATTERL
CC:
Subj: RE: 36-08063A

Georgia,

Jim found the file in his office. He told me to tell you that he will look at it today.

Shelley Keen

T# 5197

From: DWR60::GSATTERL 4-JUN-1997 16:45:16.21
To: DWR03::JJOHNSON
CC: GSATTERL
Subj: 36-08063A

Hi Jim. Could you tell me the status of the above permit that is awaiting to be licensed. I have the application for transfer regarding this permit and two other licenses. I am wondering what sort of action to take regarding this matter. Thank you for your attention to this message.
G. Satterlee

T#5197

From: DWR60::GSATTERL 3-JUN-1997 14:26:52.47
To: DWR06::JJOHNSON
CC: GSATTERL
Subj: GUNNING TRANSFER

HI JIM. WHAT IS THE STATUS OF THE GUNNING PERMIT NUMBER
36-08063A, HAS IT BEEN LICENSED?
I STILL HAVE THE APPLICATION FOR TRANSFER IN MY POSSESSION
AND I AM WONDERING WHAT ACTION I AM TO TAKE.
THANK YOU FOR YOUR ATTENTION IN THIS MATTER.
G L SATTERLEE

T #5197

From: DWR60::GSATTERL 30-MAY-1997 08:27:33.26
To: DWR03::JJOHNSON
CC: GSATTERL
Subj: Gunning Transfer

Good Morning. I rcvd. a call from Rob Wms. (attorney for the grantee) and he said the transaction was complete between Gunning and his client. I was curious about the transfer and if this sell needs to be included? Thank You. G.Satterlee

T#5197

6/9/94

COMMUNICATION DOCUMENTATION

This form is to be used to document public record information requests regarding any SRBA claim or claims. The form may also be used to document IDWR communications requesting information regarding any SRBA claim or claims when the request is not made in writing or the claim verification report is not readily available to document the request. This form is to be filed in all relevant claim files or a central office file.

IDWR Employee/Agent Georgia Satterlee

DATE
April 9, 1997 2:14pm

CUSTOMER
Rob Wms.

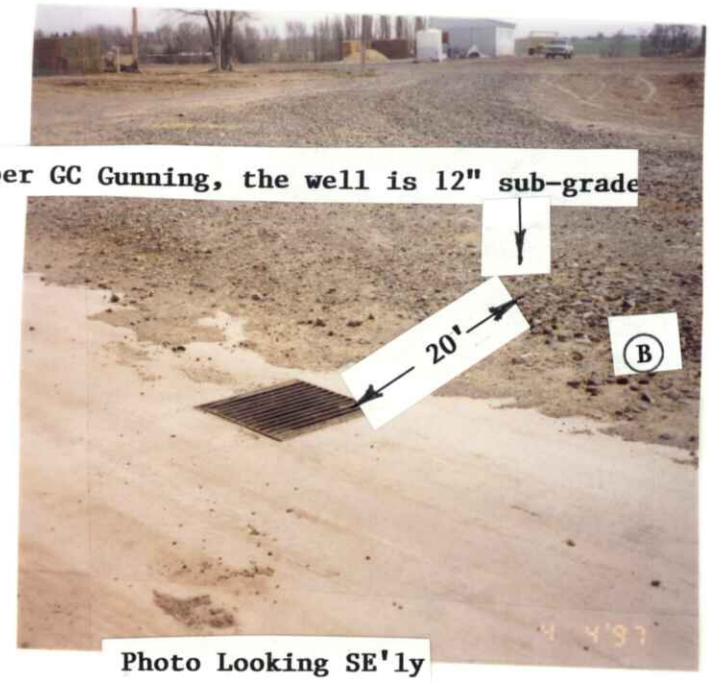
SUBJECT: 36-02457,-07760,-8063A**

phone call (x) walk-in (.)
He is attorney for Van Dyke who wants to buy S½ of NE¼ and N½ of SE¼ Section 21 and SW¼ and NW¼ SE¼ Section 22 (approx. 329 acres) from Gunning. After discussing the situation, Mr. Wms. thought it be best to wait until after the permit** is licensed (the field examination and ADM's blessings is completed as of 08 April 1997).

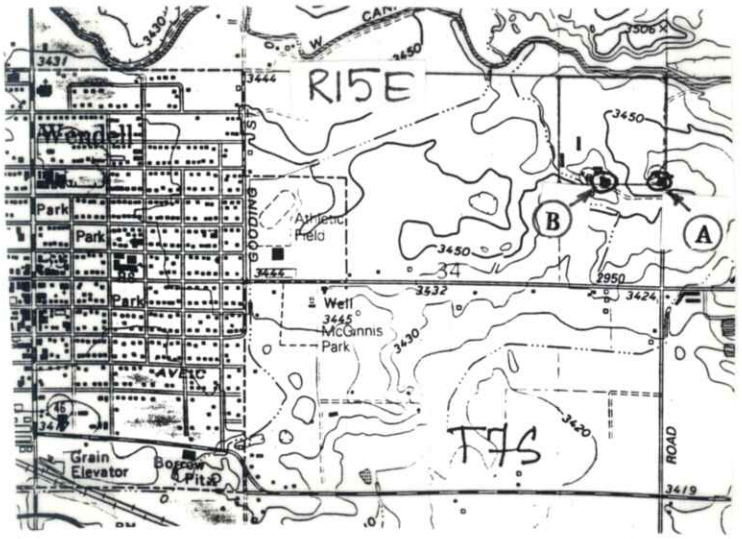
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NOV 12 1999

T #5197







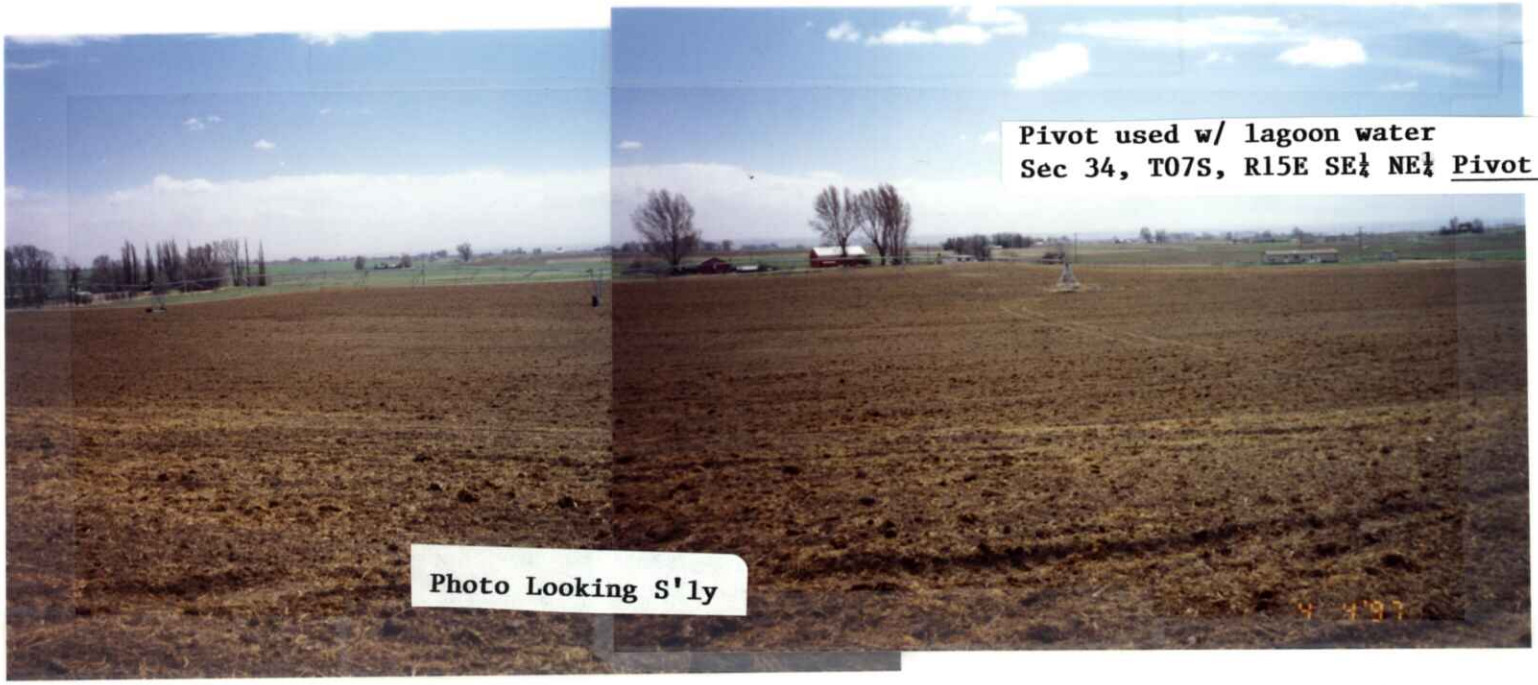


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NOV 12 1999

Gunning, FF &/or GC 04Ap97 1300 hrs.
P/D's Sec 34, T07S, R15E NE¼ NE¼

T # 5197

36-10815





Gunning, FF &/or GC 04 Ap 1997 1300 hrs
P/U = Sec 34, T07S, R15E NE¼ NE¼

Photo 2/2

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NOV 12 1998

FF#5197

36-10815

6/9/94

COMMUNICATION DOCUMENTATION

This form is to be used to document public record information requests regarding any SRBA claim or claims. The form may also be used to document IDWR communications requesting information regarding any SRBA claim or claims when the request is not made in writing or the claim verification report is not readily available to document the request. This form is to be filed in all relevant claim files or a central office file.

IDWR Employee/Agent Georgia Satterlee

DATE
April 3, 1997 4:35pm

CUSTOMER
Gunning, GC

SUBJECT: 36-02457,-07760,-08063A

phone call (.) walk-in (X)

He came in on my request to clarify the situation of the Amendment of Permit 36-08063A. After much discussion and one phone call to the hero of the story, Shelley Keen, it was decided to recommend the permit 36-08063A to be licensed (augmented w/ licensed rights 36-02457,-07760) and then proceed w/ a transfer.

Gunning is proposing to dry up the pivot corners (acres add up to 17 acres) in Sec 22, T07S, R16E and transfer the acres to dairy which is east of Wendell.

The Amendment for Permit was paid for ($50.00) 05 March S#019904. Because we are going to do a transfer instead of the Amendment for Permit, the $50.00 from S#019904 will be applied with another $50.00 (S#019994) towards the transfer fee.

The Amendment for Permit was withdrawn and compiled with the transfer appliication and other documents.

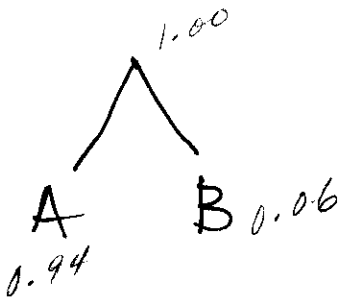
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T #5197

SD-0611-2 Basin: 36 Starting Water Right: 02457

SEL	Water Right No.	Name Last, First	OWN	Priority Date	STG/STS	Source	Use Desc	SYS
_	36-02457	LECERTUA, JESS C.	C	09/29/1961	L/	GROUNDWATER	IRR	WR
_	36-02457	GUNNING, F F	C	09/29/1961	L/	GROUNDWATER	IRR	AJ
		GUNNING, IRENE	C					
_	A36-02457	GUNNING, FF	C	09/29/1961	L/	GROUNDWATER	IRR	AJ
		GUNNING, IRENE	C					
_	A36-02457	GUNNING, FF	C	09/29/1961	L/	GROUNDWATER	IRR	AJ
		GUNNING, IRENE	C					

(GOLD6=Print Profile Rpt For All Rights/Claims on Screen)
(Enter=Continue) (GOLD7=This Query) (GOLD8=Cancel) (Menu _____)



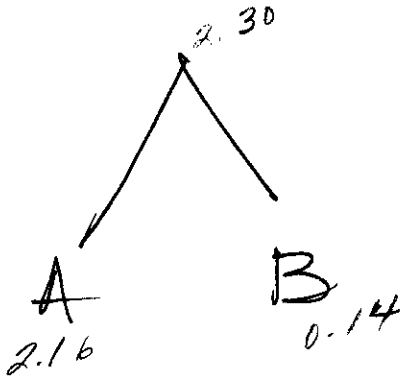
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NOV 12 1999

T#5197

SD-0611-2 Basin: 36 Starting Water Right: 07760

SEL	Water Right No.	Name Last, First	OWN	Priority Date	STG/ STS	Source	Use Desc	SYS
	36-07760	LACERTUA, ROSITA	C	11/07/1977	L/	GROUNDWATER	IRR	WR
	36-07760	GUNNING, F F	C	11/07/1977	L/	GROUNDWATER	IRR	AJ
		GUNNING, IRENE	C					
	A36-07760	GUNNING, IRENE	C	11/07/1977	L/	GROUNDWATER	IRR	AJ
		GUNNING, FF	C					
	A36-07760	GUNNING, IRENE	C	11/07/1977	L/	GROUNDWATER	IRR	AJ
		GUNNING, FF	C					

(GOLD6=Print Profile Rpt For All Rights/Claims on Screen)
(Enter=Continue) (GOLD7=This Query) (GOLD8=Cancel) (Menu _____)



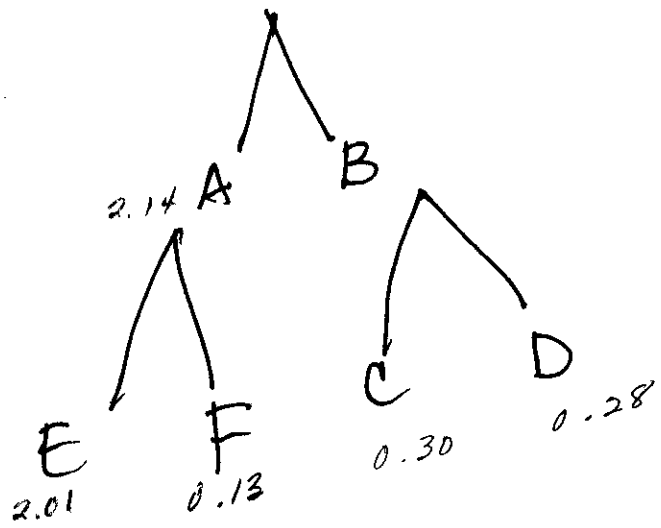
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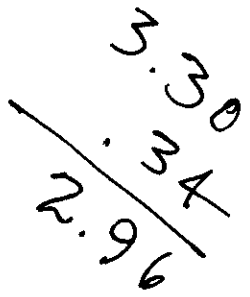
T # 5197

SD-0611-2 Basin: 36 Starting Water Right: 08063

SEL	Water Right No.	Name Last, First	OWN	Priority Date	STG/ STS	Source	Use Desc	SYS
	36-08063			00/00/0000	/Z			WR
	36-08063A	GUNNING, F F	C	02/16/1982	P/	GROUNDWATER	IRR	WR
		GUNNING, G C	C					
	36-08063B	BRANCHFLOWER, MIKE	C	00/00/0000	/Z			WR
	36-08063C	BRANCHFLOWER, MIKE	C	02/16/1982	P/	GROUNDWATER	IRR	WR
		BRANCHFLOWER, KATHY	C					
	36-08063D	BRANDSMA, HILL	C	03/18/1982	P/	GROUNDWATER	STOCK COMMER	WR

(GOLD6=Print Profile Rpt For All Rights/Claims on Screen)
(Enter=Continue) (GOLD7=This Query) (GOLD8=Cancel) (Menu _____)





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NOV 12 1999

T # 5197

O & M RECORD -W 3-W-17

PAID OUT

CERT. NO. 21871

OWNER FF GUNNING & Irene Gunning, H/W NO. SHARES 80.0

ADDRESS P.O Box 716 Irene, Idaho 83338 COUNTY Gooding

TO BE PAID BY _____ FROM CERT. NO. 18600

ADDRESS _____ TO CERT. NO. _____

DESCRIPTION E1/2 NE (WestEnd Dairy) SEC. 34 TWP. 7 RANGE 15E

SEC. _____ TWP. _____ RANGE _____

To: Georgia Satterlee

from: Tony Watkins

MICROFILMED
NOV 12 1999

T #5197

DAIRY WASTE SYSTEM DESIGN
PROGRAM WRITTEN BY
ROBERT CHLENSCHLEN
EXTENSION AGRICULTURAL AGENT
TWIN FALLS COUNTY

PLAN PREPARED FOR: Date Prepared: 12/22/94

FF e G.C. GUNNING
P.O. BOX 821
WENDELL, ID

PLAN PREPARED BY:
Robert Chlenschlen
Extension Ag Agent
246 3RD. AVE. EAST
TWIN FALLS, ID 83301

MILKING HERD INFORMATION:

Number of Milking Cows in the Herd.....	930
Number of Dry Cows in the Herd.....	160
Average Weight of Mature Cows.....	1400

REPLACEMENT ANIMAL INFORMATION:

Number of Calves Weighing from 100 - 300 lbs.....	100	e 2.5 gpd
Number of Calves Weighing from 300 - 500 lbs.....	100	e 4.6 "
Number of Calves Weighing from 500 - 700 lbs.....	0	
Number of Calves Weighing from 700 - 900 lbs.....	0	
Number of Calves Weighing from 900 -1100 lbs.....	0	

TOTAL NUMBER OF ANIMALS ON SITE..... 1160 Head

WASTE PRODUCED BY HERD ON A DAILY BASIS

Waste Produced by Cows on a Daily Basis.....	1845	cu.ft.
Waste Produced by Calves Weighing from 100 - 300 lbs...	41	cu.ft.
Waste Produced by Calves Weighing from 300 - 500 lbs...	69	cu.ft.
Waste Produced by Calves Weighing from 500 - 700 lbs...	0	cu.ft.
Waste Produced by Calves Weighing from 700 - 900 lbs...	0	cu.ft.
Waste Produced by Calves Weighing from 900 -1100 lbs...	0	cu.ft.

TOTAL MANURE PRODUCTION PER DAY..... 1951 cu.ft.

MICROFILMED
NOV 12 1999

T# 5197

Waste Storage System Plan

PLAN PREPARED FOR: Date Prepared: 12/21/94

C.C. GUNNING
P.O. BOX 831
WENDELL, ID

PLAN PREPARED BY:

Robert Ohlensehlen
Extension Ag Agent

GENERAL INFORMATION:

Manure Reduction due to Solid Separation	0 %
Times Per Day Cows Are Being Milked	2
% of Milking Herd Manure Produced Being Stored as Liquid	15 %
Daily Manure From Milking Herd Stored in Lagoon	230 cu.f
% of Replacement Herd Manure Produced Being Stored as Liquid	0 %
Daily Manure From Replacement Herd Stored in Lagoon	0 cu.f
Total Manure Stored from Herd Stored in Lagoon	230 cu.f

PARLOR WASTE BEING STORED:

Gallons of Water Used to Flush Holding Pen (Daily)	2000 gal
Enter Amount of Water Used to Clean Bulk Tank	60 gal.
Enter Amount of Water Used to Clean Pipeline	250 gal.
Enter Amount of Water Used for Miscellaneous Cleanup	30 gal.
Enter Amount of Water Used for Cow Prep	400 gal.
Enter Amount of Water Used to Wash the Parlor Floor	75 gal.
Enter Amount of Water Used to Wash Milk House Floor	20 gal.
Enter Amount of Water From Cooling Systems Added To Lagoon	0 gal.
TOTAL WATER USED IN BARN AND HOLDING PEN PER DAY	2834 gal
TOTAL CU.FT. OF WATER USED IN BARN AND HOLDING PEN PER DAY	378 cu.
TOTAL CU.FT. OF WATER PLUS MANURE STORED PER DAY	608 cu.

RUNOFF CONTRIBUTING TO STORAGE:

AREA 1	-	300 ft.	x	800 ft.	Slope -	1 %	Runoff -	19813 cu.f
AREA 2	-	200 ft.	x	800 ft.	Slope -	2 %	Runoff -	13209 cu.f
AREA 3	-	80 ft.	x	800 ft.	Slope -	1 %	Runoff -	5284 cu.f
AREA 4	-	0 ft.	x	0 ft.	Slope -	0 %	Runoff -	0 cu.f
AREA 5	-	0 ft.	x	0 ft.	Slope -	0 %	Runoff -	0 cu.f

Total Runoff from 25 year 24 hour Storm Event	38306 cu.ft.
Winter Precipitation From 1 in 5 Year to Be Contained	42533 cu.ft.
TOTAL Runoff From Winter Precip. + Storm Event	80839 cu.ft.

SUMMARY OF LIQUIDS TO BE STORED:

Total Number of Days of Storage Required	180 days
Total Process Water Being Stored in Lagoon	68026 cu.ft.
Percent of Runoff Being Stored in Lagoon	50 %
Total of Runoff Water To Be Stored In Lagoon	40420 cu.ft.
Manure To Be Stored in Lagoon	41429 cu.ft.

LAGOON STORAGE REQUIRED (PRIMARY LAGOON) 149874 cu.ft
ADDITIONAL RUNOFF STORAGE REQUIRED 40420 cu.ft

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NOV 12 1999
T#5197

03/06/97 THU 10:56 FAX 2083225598

PRIMARY LAGOON SIZE REQUIREMENTS:

Number of Cells Used in Lagoon Design	2 cells
Length of Lagoon (Each Cell)	220 ft.
Width of Lagoon (Each Cell)	112 ft.
Depth of Lagoon (Each Cell)	6 ft.
Freeboard Used on Lagoon	2 ft.
Side Slope Used in Calculations	2 to 1

ADDITIONAL RUNOFF CONTAINMENT USING SECONDARY LAGOON:

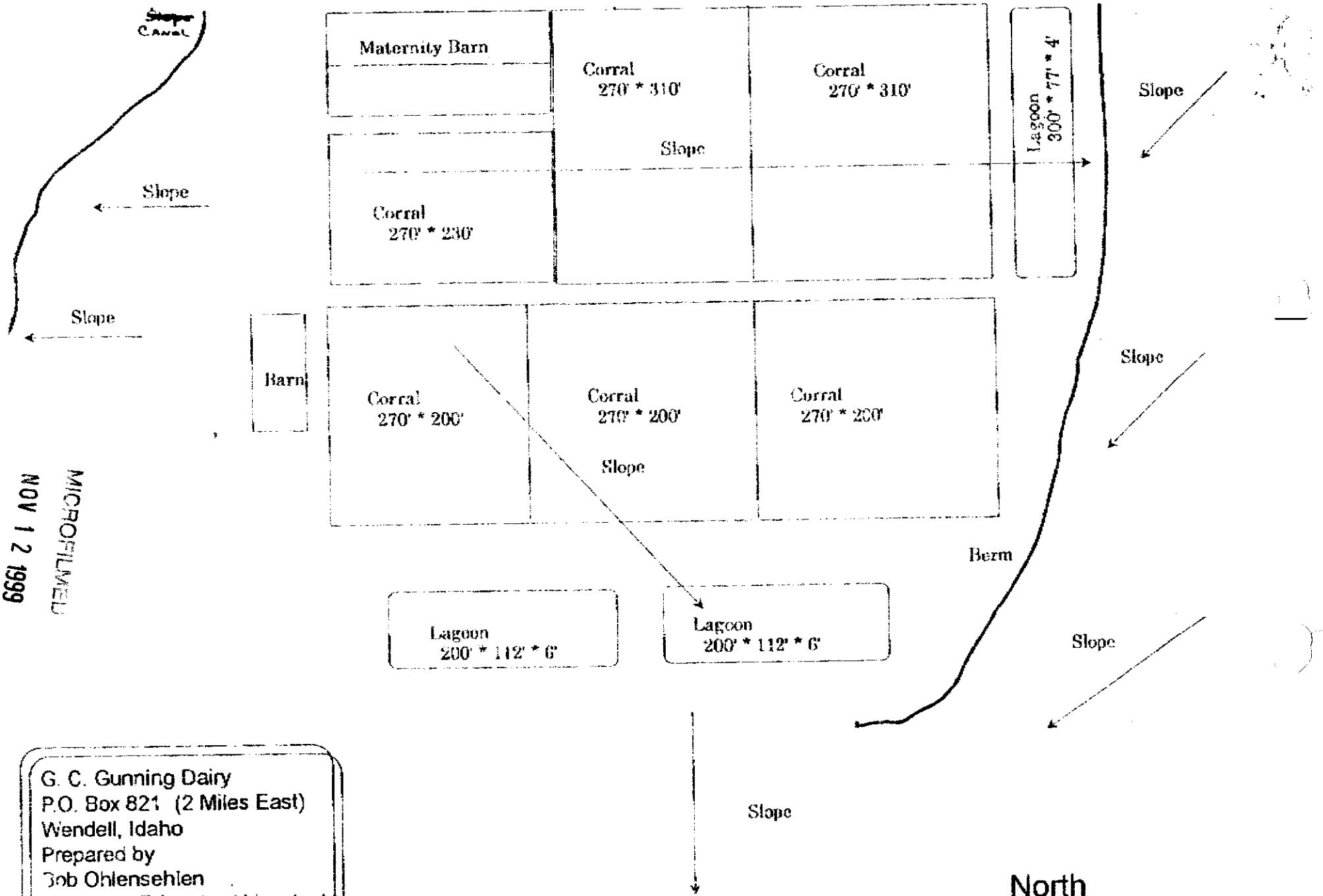
Number of Cells Used in Lagoon Design	1 cell
Length of Lagoon Cell	300 ft.
Width of Lagoon Cell	77 ft.
Depth of Lagoon Cell	4 ft.
Freeboard Used on Lagoon	2 ft.
Side Slope Used in Calculations	2 to 1

MICROFILMED

NOV 12 1999

T# 5197

03/06/97 THU 10:36 FAX 2083223397



G. C. Gunning Dairy
P.O. Box 821 (2 Miles East)
Wendell, Idaho
Prepared by
Bob Ohlensehlen
Extension Educator / Livestock
Twin Falls County

NOV 12 1999
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Exhibits & Hearing Info

T 5197

(F.F. Gunning & G.C. Gunning)

State of Idaho
Department of Water Resources

ROSTER OF ATTENDANCE

IN THE MATTER OF APPLICATION FOR TRANSFER NO. 5197 IN THE NAME OF F.F. GUNNING AND G.C. GUNNING

Date: December 10, 1998

Time: 9:00 a.m.

Location: Multi-Purpose Room
Gooding City Hall
308 5th Avenue West
Gooding, ID

Hearing Officer: L. Glen Saxton

** *Please Print* **

NAME	ADDRESS	REPRESENTING (Applicant or Protestant)
Gwen Rost	604 6th AE Wendell	City of Wendell/Pr.
E. Dale Bittell	Box 217 Wendell	Wendell Rec Dist Prt.
Frank Root Jr.	604 6th AVE E Wendell	City Pro
Tom Webb	505 4th ave W Wendell, Idaho	Applicant
Joe Brasil → Joe Brasil	1810 [illegible]	Applicant
ANDREW GUNNING	2072E 2950S WENDELL IDAHO	Applicant
Patrick Braun	817 Shoshone St E, T. F. Id	Applicant
Cathy Holder	125 5th Ave W. Gooding ID	Prot.

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NOV 12 1999

State of Idaho
DEPARTMENT OF WATER RESOURCES
1301 North Orchard Street, P.O. Box 83720, Boise, Idaho 83720-0098
Phone: (208) 327-7900 FAX: (208) 327-7866

PHILIP E. BATT
GOVERNOR

KARL J. DREHER
DIRECTOR

MEMORANDUM

To: L. Glen Saxton

From: Karl J. Dreher

RE: APPOINTMENT AS HEARING OFFICER - PROCEDURE RULE 410

Date: November 17, 1998

You are hereby appointed as hearing officer and are authorized to represent the department as provided by IDAPA Rule 37.01.01410 (Procedure Rule 410) in the following matter:

IN THE MATTER OF APPLICATION FOR TRANSFER NO. 5297 IN THE NAME OF F.F. GUNNING AND G.C. GUNNING

Date: December 10, 1998

Time: 9:00 a.m.

Location: Multi-Purpose Room
Gooding City Hall
308 5th Avenue West
Gooding, ID

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EXHIBIT LOG

RE: GUNNING Transfer No. 5197
PLACE: Gooding, Id
DATE: 9:00 am , Thursday, December 10, 1998
HEARING OFFICER: Glen Saxton
ASSISTED BY: Allen Merritt

APPLICANT			PROTESTANT		
EXHIBIT ID	DESCRIPTION	ENTERED?	EXHIBIT ID	DESCRIPTION	ENTERED?
~~1~~	~~[illegible]~~	~~Not offered~~	A	Findings Gooding Pdz	Yes
~~2~~	~~Collins Affidavit~~	~~Not~~	B		
~~3~~	~~Stathem Affidavit~~	~~Not~~	C		
~~4~~	~~Webb Statement~~	~~Not~~	D		
~~5~~	~~CAFO Permit~~	~~Not~~	E		
6	Gunning Statement	Yes	F		
~~7~~ (No copy)	~~Photos~~	~~Not offered~~	G		
8	USGS Map	Yes	H		
9	WR Claim, Well Rpt	Yes	I		
10	Brockway Analysis	Yes	J		
11	36-10815 Decree	Yes	K		
12	36-15511 Decree	Yes	L		
~~13~~ (No copy)	~~Chronology~~	~~Not offered~~	M		
~~14~~ (No copy)	~~IDWR Files~~	~~Not offered~~	N		
15	Judicial Decisions	Yes	O		
16	36-02457 Decree	Yes	P		
17	36-07760 Decree	Yes	Q		
18	36-08063A License	Yes	R		
19	Gunning Affidavit	Yes	S		
20			T		
21			U		
22			V		
23			W		
24			X		
25			Y		
26			Z		

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Department of Water Resources
APPLICANT'S
Exhibit 6
Date Admitted 12/10/98

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STATEMENT OF G.C. GUNNING

STATE OF IDAHO)
ss:
County of Jerome)

1. I am G.C. GUNNING, currently residing at 2298 East 2900 South, Wendell, Idaho.

2. I make this statement on my own personal knowledge in support of the appeal of Hillcrest Dairy concerning the denial of its CAFO Siting Permit application in Gooding County. I am the son of F.F. Gunning and have an ownership interest in Hillcrest Dairy.

3. In the fall of 1994, my father and I began negotiating for the purchase of the Hillcrest Dairy site from its then owners. The Gunning family subsequently purchased the Hillcrest Dairy site in March of 1995. A copy of the deed conveying title to the real property is attached hereto as Exhibit "A".

4. At the time we began negotiating the purchase of the real property, it was being used as a calf-feeding operation, with several thousand head of calves present. Our research indicated that prior to 1987, the property had been used as a dairy for several decades. In 1987, the property was put in the whole herd dairy buy out program. From 1991, onward, it was used as a large calf-raising operation until we purchased it. Although Gooding County Zoning Ordinance No. 50 was ruled invalid, the property was issued a CAFO siting permit as a "Grandfathered Dairy" on October 20, 1993. A copy of said siting permit is attached hereto as Exhibit "B".

5. From the commencement of our negotiations with the then owners of the Hillcrest Dairy site, it was our family's intention to establish the site as a dairy with approximately 960 head of cows. On December 29, 1994, I went to the office of the Gooding County Planning & Zoning Commission with the purpose of discussing our family's plans for the Hillcrest Dairy site. I dropped off a document entitled "Confined Feeding Operation Animal Waste Treatment and Disposal Plan Review Application" indicating our intent to establish the dairy site for 960 milking cows. I received a receipt for these papers from the Gooding County Planning & Zoning office on December 30, 1994. Copies of the application and receipt are attached to this statement as Exhibits "C" and "D", respectively.

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6. I was told by Judy Daubner in January, 1995, and again in March of 1995, that Gooding County then had no ordinance in effect which would prohibit the plans which I had presented, and that no permitting process of any kind was then required by Gooding County for the operation that we planned.

7. On the 26th day of January, 1995, approval for the waste water treatment system at the site was granted by the Division of Environmental Quality of the State of Idaho, Dept. of Health & Welfare. See Exhibit "E" attached hereto.

8. In reliance on the statements of Ms. Daubner as to the status of zoning in Gooding County, our family completed the acquisition of the Hillcrest Dairy site in March of 1995, and commenced the remodeling of the facilities present to accommodate a 960-cow dairy. From that point through September 27, 1995, the date of the adoption of Gooding County Ordinance No. 60, the Gunning family expended large sums of money in converting the calf feeding operation to a milking cow dairy. The summary of the costs and expenses paid by our family in establishing the 960-cow dairy between the date of our acquisition of the property and the date of the adoption of Ordinance No. 60 is as follows:

Date	Amount	Purpose
3/95	$165,000.00	Purchase of Hillcrest Dairy site
8/94	$15,000.00	Down payment for farm manager's manufactured home
3/95-9/95	$7,397.40	Repair of house, removal of barn roof, general cleanup
3/95-9/95	$1,579.93	Supplies for foregoing
8/95	$3,291.00	Idaho Power - relocation of power service
3/95-9/95	$18,500.00	Removal of rock, dirt and other excavation
9/95	$3,750.00	Concrete work
9/95	$14,465.67	Northside Canal Co. - pipe existing lateral
9/95	$20,000.00	Dairy equipment
9/95	$15,900.00	Masonry work on barn
9/95	$6,955.91	Roof trusses
9/95	$26,198.78	Purchase of straw, hay, silage
TOTAL	$298,038.69	

9. At the time of our acquisition of the property in question its zoning was "Agricultural".

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No member of our family received any personal notice of any change in the ordinance which down-zoned the property from "Ag" to "T-2", apparently, under Ordinance No. 60.

10. We continued the remodeling process through October of 1996, when the dairy facility was occupied by approximately 960 head of cows. Our family invested in the project an additional amount of approximately $550,000 to complete the project, over and above the amounts set forth in paragraph 8 of this statement. I acted as general contractor on the job throughout the course of construction. The project was self-financed by our family. Conventional financing was not obtainable because of the zoning controversies in Gooding County, which caused delays in our contemplated completion date. In July, 1996, Gooding County caused delays in the connection of power to our facilities which further delayed the completion date.

DATED this 19th day of November, 1997.

G.C. GUNNING

STATE OF IDAHO)
ss:
County of Jerome)

On this 19th day of November, 1997, before me, the undersigned, a Notary Public in and for said County and State, personally appeared G.C. GUNNING, known to me to be the person whose name is subscribed to the within and foregoing instrument, and who acknowledged to me that he 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 Idaho
Residing at: Jerome
Commission Expires: 2/9/99

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WARRANTY DEED

FOR VALUE RECEIVED, AgAMERICA, FCB, successor in interest to Farm Credit Bank of Spokane, the Grantor, does hereby grant, bargain, sell, and convey unto F.F. GUNNING and IRENE GUNNING, husband and wife, Grantees, whose address is P.O. Box 716, Wendell, Idaho 83355, the following described premises in Gooding County, Idaho, to-wit:

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

Section 34: E½NE¼.

TOGETHER WITH all tenements, hereditaments, and appurtenances thereunto belonging or any wise appertaining; together with all water and water rights used upon or appurtenant to said lands and however evidenced.

SUBJECT TO any and all easements, rights of way, or restrictions of record, and buildings and use restrictions, zoning and building laws, and ordinances, if any, as the same may appear of record, and the exceptions, provisions, and reservations contained in patents or deeds from the United States of America, or the State of Idaho, or in other deeds of record.

TO HAVE AND TO HOLD the said premises unto the said Grantees, their heirs and assigns forever. And the said Grantor does hereby covenant to and with the said Grantees that it is the owner in fee simple of said premises; that the premises are free from all encumbrances, except as mentioned above, and that it will warrant and defend the same from all lawful claims whatsoever.

DATED This 2nd day of March, 1995.

AgAMERICA, FCB.
Successor in interest to
Farm Credit Bank of Spokane

By: Kim Heyungs
Position: Authorized Agent

160731

STATE OF IDAHO COUNTY OF GOODING

Filed for record at the request of Land Title & Escrow Inc.

18 min. past 9 o'clock A m. this 30

of March 1995 6 00

HELEN A. PAOLI, Recorder

By Celinda Sotis Deputy

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NOV 12 1999

EXHIBIT A

STATE OF IDAHO)
) ss.
County of Twin Falls)

On this 2nd day of March, 1995, before me, the undersigned, a Notary Public in and for said County and State, personally appeared Kim Herzinger, known to me to be the authorized agent of AgAmerica, FCB, who executed the foregoing instrument on behalf of the said corporation, and acknowledged to me that such corporation executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year last above written.

NOTARY PUBLIC FOR IDAHO
Residing at: Heyburn
My commission expires: 12-07-2000

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CAFO SITING PERMIT
PLANNING AND ZONING COMMISSION
COUNTY OF GOODING, IDAHO

Date October 20, 1993

Permit No. G-94-016

Permission is hereby granted to : NAME- Farm Credit Bank of Spokane
(Dairy West Assoc.)

ADDRESS- P.O. Box 308, Twin Falls, Idaho 83303-0308

LEGAL DESCRIPTION- Section 34, Township 7 South, Range ~~14~~ 15 EBM

NUMBER OF ACRES- 80

ZONING DISTRICT- T-2 Wendell

NUMBER OF HEAD- 473 head of lactating dairy cattle
204 head of calves

FEE- $00.00

GRANDFATHERED DAIRY

This permission is granted under Gooding County Zoning Ordinance # 50, Article XVII- Section C. Any increase in structures or change in the location of structures must conform to the restrictions as outlined in Section C. A Confined Animal Feeding Operation (CAFO) can be transferred or sold upon written notification to the Administrator by the holder of the existing permit. Article XVII, Section C-4.

No building permit shall be required for a barn, corral, coop, pen, machinery shed, or ther structure used exclusively for agricultural purposes, when such structures are situated on parcels of land containing twenty (20) acres or more. Article XVII, Section A.

Judy Dawson
Administrator

LOCATION- 1 ½ mi. East of Wendell

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EXHIBIT B

CONFINED FEEDING OPERATION
ANIMAL WASTE TREATMENT AND DISPOSAL PLAN
REVIEW APPLICATION

1. NAME AND ADDRESS — EL-DIAMOND LAND & LIVESTOCK
   a. Name of owner/operator. MR. G.C. Gunning
   b. Name of facility. HILL CREST DAIRY
   c. Mailing Address (street, route, po box).
      P.O. Box 821
   d. City/Town, State, Zip Code.
      Wendell, Id 83355
   e. Name, Address, state, of contractor doing the work on the CFO. Western National Construction 5104 W. Cove Boise, Id 83355

2. PHYSICAL LOCATION OF FACILITY
   a. County Gooding
   b. Legal Description
      1. Township Name South
      2. Township Number 7 Range 15 EBM
         Section 34 1/4 Section
         Quarter of Quarter E½ of the NE¼

3. ANIMAL UNITS
   Please list the maximum number of animal units held in confinement for more than 45 consecutive days in any 12 month period. (complete attached worksheet)
   a. Total number of Animal Units (from the worksheet) 1554

4. ANIMAL UNITS WORKSHEET
   Instructions: In column 2, enter the number of each animal type present on the operation for 45 consecutive days in any 12 month period. Multiply that number by the animal equivalency factor found in column 1. This will give you the single animal unit number to be entered in column 3 (col.1 x col.2 = col. 3). The total of all numbers in column 3 is the total number of animal units present on the CFO.

Animal Type	Animal Equivalency Factor (1)	Number on the operation (2)	Equivalent Animal Units (3)
DAIRY CATTLE			
Milking & Dry Cows	1.4	960	1344
Heifers (800 lbs-1200 lbs)	1.1		

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EXHIBIT C

Heifers (400 lbs-800 lbs)	0.6		
Calves (under 600 lbs)	0.5	200	210
BEEF CATTLE			
Calves (up to 400 lbs)	0.5		
Steers/cows (over 1000 lbs)	1.0		
Steers/cows (600 lbs-1000 lbs)	0.8		
Bulls (each)	1.4		
SWINE			
Pigs (55 lbs-market)	0.4		
Pigs (up to 55 lbs)	0.1		
Sows (each)	0.4		
Boars (each)	0.5		
SHEEP (each)	0.1		
HORSES (each)	2.0		
CHICKENS			
Layers (each)	0.01		
Broilers (each)	0.005		

TOTAL COMBINED ANIMAL UNITS 1554
(Transfer this number to question 3a)

5. SOILS AND HYDROLOGY

a. Is there fractured bedrock or basalts within 5 feet of the surface at the lagoon site? Y X N ___

b. Are there any rivers, streams, canals within 50 ft. of the CFO? Y X N ___

c. Are there any lakes, ponds within 50 ft. of the CFO? Y ___ N X

d. What are the primary soil types in the area of the CFO?
Sandy Clay Loam

e. Attach a copy of the soil tests conducted at the site of the waste containment lagoon. NOT ON FILE

MODESTO, CA.
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f. What is the depth to ground water at the CFO (in ft.)? In checking (Attach well drillers log if available)
with Dept. of Water Resources well was drilled in 1930 no log available.

g. What is the distance to the nearest domestic water supply?
700 ft

h. What is the slope or gradient to the nearest domestic well?
.0128% per ft

6. SYSTEM DESIGN ON FILE

Attach a copy of the proposed waste treatment and disposal system design , prepared by a Agricultural Extension Agent, the Soil Conservation Service, Professional Engineer or other qualified personnel. Include the name, address, agency of the design personnel. _____

7. DRAWINGS NOT ON FILE

Please submit a drawings of the CFO. The drawing should be to scale and include the following information:

a. Locations and dimensions of:
loafing sheds ____ X ____ ft
milking barns 34' X 121' ft
corrals ____ X ____ ft
waste storage lagoons ____ X ____ ft
discharge ditches ____ X ____ ft
paved parking lots ____ X ____ ft

b. Slope and elevations of the highest and lowest geology features. North slope with a difference of 9 ft. from high to low
c. Slopes and locations of drains and clean outs.
d. Distance to the nearest neighbors property boundary(ies).
50 ft.
e. Acres available for land application of solid and liquid animal wastes 1350 acres

8. OPERATING PLAN NOT ON FILE

Include an operating plan that addresses how liquid and solid wastes will be managed including but not limited to storage and land application. The operating plan shall be consistent with Idaho Waste Management Guidelines for Confined Animal Feeding Operations.

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9. OTHER INFORMATION

Other information may be required depending on the circumstances related to the waste treatment and disposal facility.

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REDIFORM 8L816 carbonless

RECEIPT Date 12-30 19 94 No. 2980

Received From Gail Gunning

Address

CAFO Papers - Increase in herd size Dollars $

For

Phone # 853-5556

ACCOUNT		HOW PAID	
AMT. OF ACCOUNT		CASH	X
AMT. PAID	X	CHECK	
BALANCE DUE		MONEY ORDER	

Gooding Co. P&Z

By Helen K. Piatt, Secretary

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EXHIBIT D

IDAHO DEPARTMENT
OF HEALTH AND WELFARE

DIVISION OF
ENVIRONMENTAL QUALITY

601 Pole Line Road, Suite 2, Twin Falls, ID 83301-3035, (208) 736-2190

Cecil D. Andrus, Governor

January 26, 1995

Mr. G. C. Gunning
Hill Crest Dairy
2100 East 2950 South
Wendell, ID 83301

RE: Approval for Confined Feeding Operation (CFO) Waste Treatment and Disposal Facility

Dear Mr. Gunning:

A confined animal feeding operation Waste treatment and disposal system site inspection was conducted on January 24, 1995 by Nick Cizmich from the Division on Environmental Quality (DEQ)-South Central Idaho Regional Office (SCIRO). DEQ hereby approves the disposal system for 1554 animal units located at 2100 East 2950 South, Wendell, Idaho.

This approval is based on compliance with the following conditions:

1. Surface water runoff must be directed away from or around your dairy facility.

2. Runoff from corrals must be contained on your property or directed to your containment lagoon.

3. A minimum of 2 feet of undisturbed native soil will be required as base material for all wastewater containment lagoons.

4. All soils categorized as group I or II type soils according to the Soil Conservation Service (SCS) 716 Technical Note will require appropriate liners; (Soil types at your facility appear to be appropriate for waste containment lagoon construction.)

5. Solids should be stacked in the corrals or stockpiled and then removed by hauling to land application. The waste shall be handled in a timely manner to reduce potential nuisance, odor and vector problems. Solids and liquids shall be applied at agronomic rates.

6. Waste containment lagoons shall be lowered prior to going into winter months. Waste material should not be applied to frozen or during winter months.

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EXHIBIT
E

Printed on Recycled Paper

7. The operation of the CFO facility waste management system facilities will be consistent with **Best Management Practices** contained in the **Idaho Waste Management Guidelines for Confined Feeding Operations.**

This approval issued pursuant to Idaho Code 39-118 shall not relieve you from any obligation to comply with any other applicable local, state or federal laws, including without limitation, the IDAHO WATER QUALITY STANDARDS AND WASTEWATER TREATMENT REQUIREMENTS or local zoning ordinances. In addition, this approval by DEQ does not imply approval of the proposed operation by any other agencies of the State of Idaho or by any local governmental entities.

The owner/operator assumes all liabilities that may be incurred due to the operation of the facility waste treatment and disposal system that results in discharges of solid or liquid animal wastes to waters of the State.

It is recommended that the owner/operator apply for the Environmental Protection Agency's (EPA) National Pollution Discharge Elimination System (NPDES) Permit.

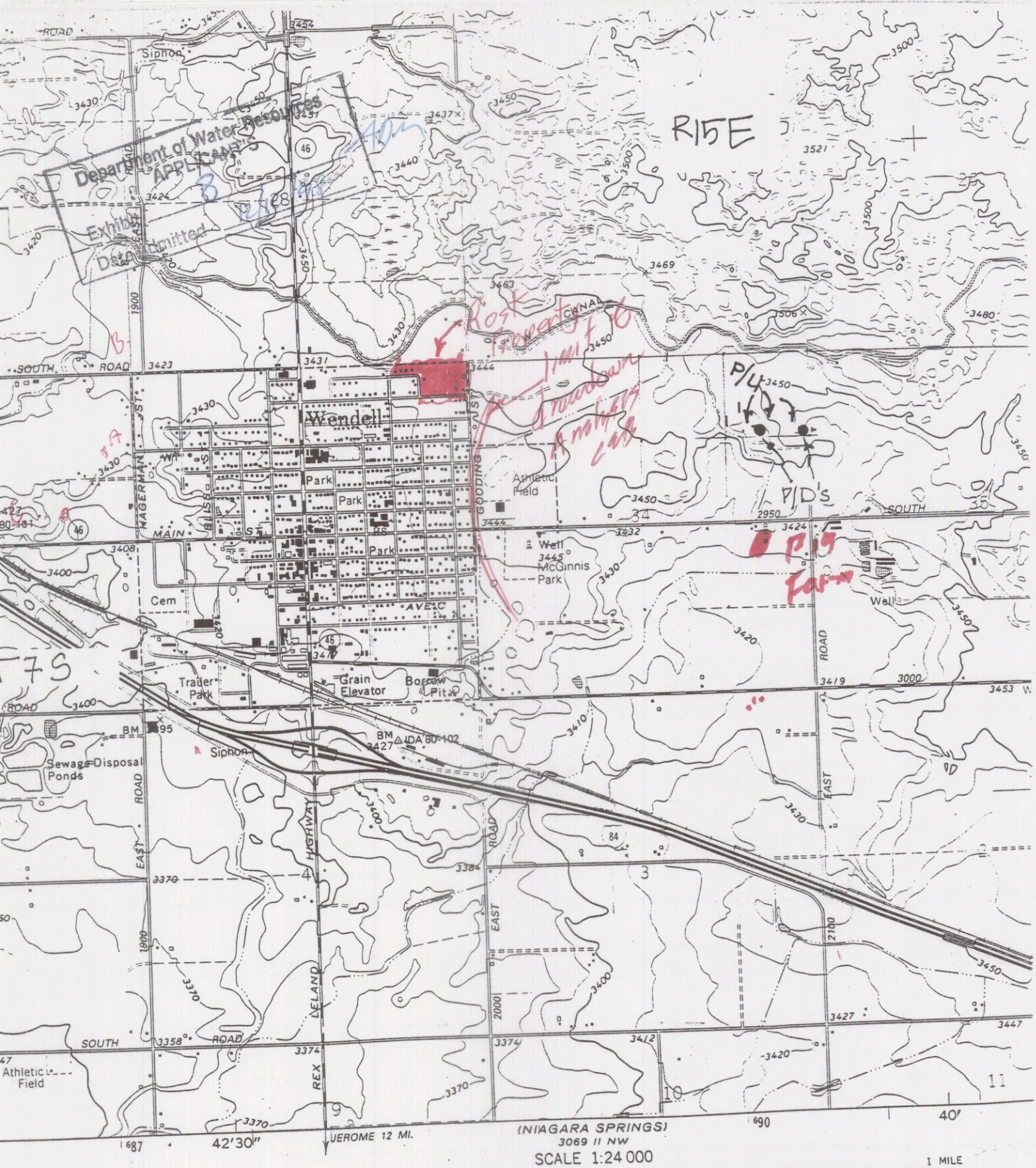
If you have any questions or comments, or need assistance I can be contacted at 208-736-2190

Sincerely,

Nick A. Cizmich
Water Quality Compliance Officer

NAC/ml
cc: Judy Daubner, Gooding County Planning & Zoning
Mike McMasters, Prevention & Certification Supervisor, DEQ

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UTM GRID AND 1992 MAGNETIC NORTH

COMPLIES WITH U.S. GEOLOGICAL SURVEY STANDARDS FOR SPATIAL ACCURACY-(

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Pg 11 of 15

T# 5197

WENDELL
7.5" QUAD 1971
REVISED 1992

Department of Water Resources
APPLICANT'S
Exhibit 4
Date Admitted 12/10/98

COPY

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

Ident. Number: **A36-07440**
Date Received: 9/16/1998
Receipt No: C043414
Received By: _____

COPY FOR YOUR FILES

NOTICE OF CLAIM TO A WATER RIGHT ACQUIRED UNDER STATE LAW

COPY FOR YOUR FILES

1. Name: CITY OF WENDELL 208-536-5161
   Address: PO BOX 208
   WENDELL ID 83355

2. Date of Priority: FEB 6, 1974

3. Source: GROUNDWATER Trib. to:

4. Point of Diversion:

Township	Range	Section	1/4 of	1/4 of	1/4	Lot	County
07S	15E	33		SE	SW		GOODING

5. Description of diverting works:

6. Water is used for the following purposes:

Purpose	From	To	C.F.S	(or)	A.F.A.
INDUSTRIAL	01/01	12/31	0.220		53.10

7. Total Quantity Appropriated is:
   0.220 C.F.S. (and/or) 53.10 A.F.A.

8. Total consumptive use is Acre Feet Per Annum.

9. Non-irrigation uses:

10. Place of Use:

Township	Range	Section	1/4 of	1/4	Lot	Use	Acres
07S	15E	33	SE	SW		INDUST	

11. Place of use in counties: GOODING

12. Do you own the property listed above as place of use? YES

13. Other Water Rights Used:

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14. Remarks:
RIGHT GIFTED TO CITY APPROXIMATELY 1989.

15. Basis of Claim: LICENSE

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

In Re SRBA	)	PARTIAL DECREE PURSUANT TO I.R.C.P. 54(b) FOR
Case No. 39576	)	Water Right 36-07722

NAME & ADDRESS: CITY OF WENDELL
PO BOX 208
WENDELL ID 83355

SOURCE: GROUNDWATER

QUANTITY: 2.67 CFS

PRIORITY DATE: 06/20/1977

POINT OF DIVERSION: T07S R15E S33 NWNWSE Within GOODING County

PURPOSE AND PERIOD OF USE:	PURPOSE OF USE	PERIOD OF USE	QUANTITY
	MUNICIPAL MUNICIPAL/CITY LIMITS OF	01-01 12-31	2.67 CFS

PLACE OF USE:

OTHER PROVISIONS NECESSARY FOR DEFINITION OR ADMINISTRATION OF THIS WATER RIGHT:

PLACE OF USE IS LANDS WITHIN CITY LIMITS OF WENDELL.
USE OF THIS RIGHT WITH RIGHTS LISTED BELOW IS LIMITED TO A TOTAL COMBINED DIVERSION RATE OF 4.67 CFS AND A TOTAL COMBINED ANNUAL CONSUMPTIVE USE VOLUME OF 708 AF IN A SINGLE IRRIGATION SEASON.
COMBINED RIGHT NOS. 36-11276, 36-11277.

RULE 54(b) CERTIFICATE

With respect to the issues determined by the above judgment or order, it is hereby CERTIFIED, in accordance with Rule 54(b), I.R.C.P., that the court has determined that there is no just reason for delay of the entry of a final judgment and that the court has and does hereby direct that the above judgment or order shall be a final judgment upon which execution may issue and an appeal may be taken as provided by the Idaho Appellate Rules.

DANIEL C. HURLBUTT, JR.
PRESIDING JUDGE
Snake River Basin Adjudication

NOV 12 1999

COPY

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

In Re SRBA	)	PARTIAL DECREE PURSUANT TO I.R.C.P. 54(b) FOR
Case No. 39576	)	Water Right 36-11276

NAME & ADDRESS: CITY OF WENDELL
PO BOX 208
WENDELL ID 83355

SOURCE: GROUNDWATER

QUANTITY: 1.33 CFS

PRIORITY DATE: 04/27/1951

POINT OF DIVERSION: T07S R15E S33 SESENE Within GOODING County

PURPOSE AND PERIOD OF USE:	PURPOSE OF USE	PERIOD OF USE	QUANTITY
	MUNICIPAL MUNICIPAL/ CITY OF WENDE	01-01 12-31	1.33 CFS

PLACE OF USE:

OTHER PROVISIONS NECESSARY FOR DEFINITION OR ADMINISTRATION OF THIS WATER RIGHT:

PLACE OF USE IS LANDS WITHIN CITY LIMITS OF WENDELL.
USE OF THIS RIGHT WITH RIGHTS LISTED BELOW IS LIMITED TO A TOTAL COMBINED DIVERSION RATE OF 4.67 CFS, A TOTAL COMBINED ANNUAL CONSUMPTIVE USE VOLUME OF 708 AF IN A SINGLE IRRIGATION SEASON.
COMBINED RIGHT NOS.: 36-07722, 36-11277.

RULE 54(b) CERTIFICATE

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DANIEL C. HURLBUTT, JR.
PRESIDING JUDGE
Snake River Basin Adjudication

COPY

NOV 12 1999

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

In Re SRBA	)	PARTIAL DECREE PURSUANT TO I.R.C.P. 54(b) FOR
Case No. 39576	)	Water Right 36-11277

NAME & ADDRESS: CITY OF WENDELL
PO BOX 208
WENDELL ID 83355

SOURCE: GROUNDWATER

QUANTITY: 0.67 CFS

PRIORITY DATE: 12/31/1929

POINT OF DIVERSION: T07S R15E S33 NESWNW Within GOODING County

PURPOSE AND PERIOD OF USE:	PURPOSE OF USE	PERIOD OF USE	QUANTITY
	MUNICIPAL MUNICIPAL/ CITY OF WENDE	01-01 12-31	0.67 CFS

PLACE OF USE:

OTHER PROVISIONS NECESSARY FOR DEFINITION OR ADMINISTRATION OF THIS WATER RIGHT:

PLACE OF USE IS LANDS WITHIN CITY LIMITS OF WENDELL.
USE OF THIS RIGHT WITH RIGHTS LISTED BELOW IS LIMITED TO A TOTAL COMBINED DIVERSION RATE OF 4.67 CFS, A TOTAL COMBINED ANNUAL CONSUMPTIVE USE VOLUME OF 708 AF IN A SINGLE IRRIGATION SEASON.
COMBINED RIGHT NOS.: 36-07722, 36-11276.

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DANIEL C. HURLBUTT, JR.
PRESIDING JUDGE
Snake River Basin Adjudication

NOV 12 1998

COPY

USE TYPEWRITER OR BALL POINT PEN

State of Idaho
Department of Water Resources

WELL DRILLER'S REPORT

RECEIVED
NOV 4 1974
Department of Water Resources
Southern District Office

State law requires that this report be filed with the Director, Department of Water Resources within 30 days after the completion or abandonment of the well.

1. WELL OWNER

Name RTP

Address Wendell, Idaho

Owner's Permit No. X 36-7440

2. NATURE OF WORK

☒ New well ☐ Deepened ☐ Replacement

☐ Abandoned (describe method of abandoning)

3. PROPOSED USE

☐ Domestic ☐ Irrigation ☐ Test ☐ Other (specify type)

☐ Municipal ☒ Industrial ☐ Stock ☐ Waste Disposal or injection

4. METHOD DRILLED

☒ Cable ☐ Rotory ☐ Dug ☐ Other

5. WELL CONSTRUCTION

Diameter of hole 12 inches Total depth 256 feet

Casing schedule: ☒ Steel ☐ Concrete

Thickness	Diameter	From	To
.250 inches	12 inches	+1½ feet	-6 feet
____ inches	____ inches	____ feet	____ feet
____ inches	____ inches	____ feet	____ feet
____ inches	____ inches	____ feet	____ feet
____ inches	____ inches	____ feet	____ feet

Was casing drive shoe used? ☐ Yes ☒ No

Was a packer or seal used? ☐ Yes ☒ No

Perforated? ☐ Yes ☒ No

How perforated? ☐ Factory ☐ Knife ☐ Torch

Size of perforation ____ inches by ____ inches

Number	From	To
____ perforations	____ feet	____ feet
____ perforations	____ feet	____ feet
____ perforations	____ feet	____ feet

Well screen installed? ☐ Yes ☒ No

Manufacturer's name ____

Type ____ Model No. ____

Diameter ____ Slot size ____ Set from ____ feet to ____ feet

Diameter ____ Slot size ____ Set from ____ feet to ____ feet

Gravel packed? ☐ Yes ☒ No Size of gravel ____

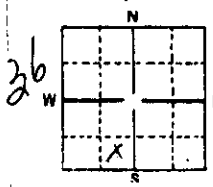
Placed from ____ feet to ____ feet

Surface seal depth As Per letter Material used in seal ☒ Cement grout ☐ Puddling clay ☐ Well cuttings

Sealing procedure used ☐ Slurry pit ☐ Temporary surface casing ☒ Overbore to seal depth

6. LOCATION OF WELL

Sketch map location must agree with written location.



26

Subdivision Name ____

Lot No. 9 - 16 Block No. 146

County Gooding

SE SW ¼ 33 T. 7S R. 16E W

7. WATER LEVEL

Static water level 131 Depth below land surface

Flowing? ☐ Yes ☒ No

Temperature ____ ° F. Quality ____

Artesian closed-in pressure ____ p.s.i.

Controlled by ☐ Valve ☐ Cap ☐ Plug

8. WELL TEST DATA

☒ Pump ☐ Bailer ☐ Other

Discharge G.P.M.	Draw Down	Hours Pumped
Approx 785	3'	1½

9. LITHOLOGIC LOG

Hole Diam.	Depth From	Depth To	Material	Water Yes	Water No
16	0	7	Top Soil		X
12	7	12	Gray Lava		
	12	23½	Broken Rock w/clay		
	23½	32½	Broken Rock		
	32½	53	Hard Rock		
	53	55	Hard Gray		
	55	55½	Crevice w/brown lava		
	55½	65½	Brown Lava		
	65½	73½	Gray Lava		
	73½	89	Hard Rock		
	89	90	Crevice		
	90	94	Broken Pink Rock		
	94	107	Hard Gray Lava		
	107	114½	Broken Brown Lava		
	114½	119½	Hard Gray Lava		
	119½	130	Hard Lava w/seams Brown		X
	130	180	Brown Broken Lava	X	
	135	140	Brown Hard Lava w/seams		X
	140	165	Hard Lava		X
	165	167	Clay		X
	167	177½	Soft Broken Lava	X	
	177½	182	Broken Lava	X	
	182	192	Hard Lava		X
	192	240	Broken Lava	X	
	240	256	Hard Gray Lava		X

10.

Work started 2/5/74 finished 9/30/74

11. DRILLERS CERTIFICATION

SMITH DRILLING & PUMP CO., INC. Firm No. 11

Firm Name

Address 328 West Avenue A, Jerome Date 10/5/74

Signed by (Firm Official) ____

and

(Operator) S. V. Robbins

NOV 12 1974

Form 238-2
7/94

RECEIVED
OCT 13 1995
Department of Water Resources
Southern Region

IDAHO DEPARTMENT OF WATER RESOURCES
WELL DRILLER'S REPORT

Use Typewriter or Ball Point Pen

1. DRILLING PERMIT NO. 36-95-5-0068-000
Other IDWR No. 36-08421

2. OWNER:
Name Wendell City Well
Address P.O. Box 208
City Wendell State ID Zip 83355

3. LOCATION OF WELL by legal description:
Sketch map location must agree with written location.

N / W / E / S

Twp. 7 S North ☐ or South ☑
Rge. 15 E East ☑ or West ☐
Sec. 33, ____ 10 acres 1/4 SE 40 acres 1/4 SW 160 acres 1/4
Gov't Lot ____ County ____

Address of Well Site Manhole Site
Wallace ST City Wendell
(Give at least name of road + Distance to Road or Landmark)

Lt. ____ Blk. ____ Sub. Name ____

4. PROPOSED USE:
☐ Domestic ☐ Municipal ☐ Monitor ☐ Irrigation
☐ Thermal ☐ Injection ☐ Other ____

5. TYPE OF WORK
☒ New Well ☐ Modify or Repair ☐ Replacement ☐ Abandonment

6. DRILL METHOD
☐ Mud Rotary ☒ Air Rotary ☐ Cable ☐ Other ____

7. SEALING PROCEDURES

SEAL/FILTER PACK Material	From	To	AMOUNT Sacks or Pounds	METHOD
Bentonite	0	150	45 SKS	

Was drive shoe used? ☐ Y ☒ N Shoe Depth(s) ____
Was drive shoe seal tested? Y ☐ N ☒ How? ____

8. CASING/LINER:

Diameter	From	To	Gauge	Material	Casing	Liner	Welded	Threaded
12	2	151	.25	Steel	☒	☐	☒	☐
					☐	☐	☐	☐
					☐	☐	☐	☐

Length of Headpipe ____ Length of Tailpipe ____

9. PERFORATIONS/SCREENS
☐ Perforations Method ____
☐ Screens Screen Type ____

From	To	Slot Size	Number	Diameter	Material	Casing	Liner
						☐	☐
						☐	☐
						☐	☐

10. STATIC WATER LEVEL OR ARTESIAN PRESSURE:
151 ft. below ground Artesian pressure None lb.
Depth flow encountered ____ ft. Describe access port or control devices: Lockable Well Cap

11. WELL TESTS:
☐ Pump ☐ Bailer ☐ Air ☐ Flowing Artesian

Yield gal./min.	Drawdown	Pumping Level	Time

Water Temp. ____ Bottom hole temp. ____
Water Quality test or comments: ____

12. LITHOLOGIC LOG: (Describe repairs or abandonment)

Bore Dia.	From	To	Remarks: Lithology, Water Quality & Temperature	Water Y	Water N
15	0	4	Top Soil		
	4	9	Gray Lava		
	9	16	Broken Br + BS Lava		
	16	50	Gray Lava		
	50	53	Red Cinders		
	53	61	BS Lava		
	61	68	Broken + BS Cinders		
	68	78	BS Lava		
	78	87	Red + bl Cinders		
	87	100	BS Lava		
	100	106	Broken BS Lava		
	106	108	BS Lava		
	108	110	Crevasse		
	110	114	Soft broken BS Lava		
	114	121	BS Lava		
	121	131	Cinders		
	131	138	Broken BS Lava + Br Sand		
	138	156	BS Lava		
	156	159	Broken		
	159	162	Soft Broken + Red Sand		
	162	170	Soft Red + White Sand		
	170	174	Soft Broken Loose Rocks	+	
	174	183	BS Lava		
12	183	186	" "		
	186	189	Broken		X
	189	195	BS Lava		
	195	200	Broken Cinders		X
	200	212	BS Lava		
	212	213	Broken		
	213	231	BS Lava		
	231	238	Broken + Cinders		X
	238	249	BS Lava		
	249	254	Broken BS Lava		
	254	255	BS Lava		

Completed Depth 255 (Measurable)
Date: Started 4-22-95 Completed 9-18-95

13. DRILLER'S CERTIFICATION
I/We certify that all minimum well construction standards were complied with at the time the rig was removed.

Firm Name Eaton Drilling Firm No. 24
Firm Official [signature] Date 9-18-95
and
Supervisor or Operator [signature] Date 9-18-95
(Sign once if Firm Official & Operator)

FORWARD WHITE COPY TO WATER RESOURCES

Form 238-7
8/90

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

WELL DRILLER'S REPORT

State law requires that this report be filed with the Director, Department of Water Resources within 30 days after the completion or abandonment of the well.

USE TYPEWRITER OR BALLPOINT PEN

1. WELL OWNER
Name City of Wendell
Address Wendell
Drilling Permit No. 36-91-5-025
Water Right Permit No. C36-08241 OK

2. NATURE OF WORK
☐ New well ☐ Deepened ☐ Replacement
Well diameter increase for casing
☐ Abandoned (describe abandonment procedures such as materials, plug depths, etc. in lithologic log)
All Surface Seal with Cement

3. PROPOSED USE
☐ Domestic ☐ Irrigation ☐ Test ☒ Municipal
☐ Industrial ☐ Stock ☐ Waste Disposal or Injection
☐ Other (specify type)

4. METHOD DRILLED
☒ Rotary ☒ Air ☐ Hydraulic ☐ Reverse rotary
☐ Cable ☐ Dug ☐ Other

5. WELL CONSTRUCTION
Casing schedule: ☒ Steel ☐ Concrete ☐ Other

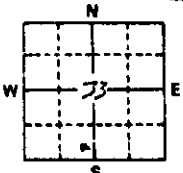
Thickness	Diameter	From	To
.2250 inches	12 inches +	1 feet	130 feet
inches	inches	feet	feet
inches	inches	feet	feet
inches	inches	feet	feet

Was casing drive shoe used? ☒ Yes ☐ No
Was a packer or seal used? ☐ Yes ☒ No
Perforated? ☐ Yes ☒ No
How perforated? ☐ Factory ☐ Knife ☐ Torch ☐ Gun
Size of perforation ____ inches by ____ inches

Number	From	To
perforations	feet	feet
perforations	feet	feet
perforations	feet	feet

Well screen installed? ☐ Yes ☒ No
Manufacturer's name
Type Model No.
Diameter Slot size Set from feet to feet
Diameter Slot size Set from feet to feet
Gravel packed? ☐ Yes ☒ No ☐ Size of gravel
Placed from feet to feet
Surface seal depth 130 Material used in seal: ☒ Cement grout ☐ Bentonite ☐ Puddling clay ☐
Sealing procedure used: ☐ Slurry pit ☐ Temp. surface casing ☒ Overbore to seal depth
Method of joining casing: ☒ Threaded ☐ Welded ☐ Solvent Weld ☐ Cemented between strata
Describe access port 1½" Pipe W/Cap

6. LOCATION OF WELL
Sketch map location must agree with written location.



Subdivision Name
Lot No. Block No.
County Gooding
SE¼ SW¼ Sec. 33, T. 7 N ☐ S ☒ R. 15 E ☐ W ☐

7. WATER LEVEL
Static water level 149 feet below land surface
Flowing? ☐ Yes ☒ No G.P.M. flow
Artesian closed-in pressure p.s.i.
Controlled by: ☐ Valve ☐ Cap ☐ Plug
Temperature 85 °F. Quality
Describe artesian or temperature zones below

8. WELL TEST DATA
☑ Pump ☐ Bailer ☐ Air ☐ Other
Next Month

Discharge G.P.M.	Pumping Level	Hours Pumped

9. LITHOLOGIC LOG

Bore Diam.	Depth From	Depth To	Material	Water Yes	Water No
			Pull 9' 12" Casing		
			Ream From 12" To 18"		
			Install 130' 12" Casing		
			Cement Grout To Bottom of Casing		
15"	0	4	Cement / Top Soil		
	4	53	Very Hard		
	53	72	Crevice		
	72	85	Very Soft		
	85	96	Crevice		
	96	110	Very Soft		
	110	129	Crevice		
	129	130	Very Hard		
12"	130	256	Open Hole (Abandoned)		

10.
Work started 5 18 91 finished 6-26-91

11. DRILLERS CERTIFICATION
I/We certify that all minimum well construction standards were complied with at the time the rig was removed.
Firm Name Eaton Drilling Firm No. 26
Address Wendell Date 6-27-91
Signed by (Firm Official)
and
(Operator) Earl Eaton

USE ADDITIONAL SHEETS IF NECESSARY — FORWARD THE WHITE COPY TO THE DEPARTMENT

NOV 12 1999

OFF

REPORT OF WELL DRILLER
State of Idaho

State law requires that this report shall be filed with the State Reclamation Engineer within 30 days after completion or abandonment of the well.

WELL OWNER:
Name CITY OF JACKPOT
Address JACKPOT, IDAHO

Owner's Permit No.
NATURE OF WORK (check): Replacement well ☐
New well ☒ Deepened ☐ Abandoned ☐
Water is to be used for: CITY WATER
METHOD OF CONSTRUCTION: Rotary ☐ Cable ☒
Dug ☐ Other (explain)

CASING SCHEDULE: Threaded __ Welded X
16 "Diam. from 0 ft. to 158 ft.
"Diam. from ft. to ft.
"Diam. from ft. to ft.
"Diam. from ft. to ft.
Thickness of casing: .281 Material:
Steel ☒ concrete ☐ wood ☐ other ☐

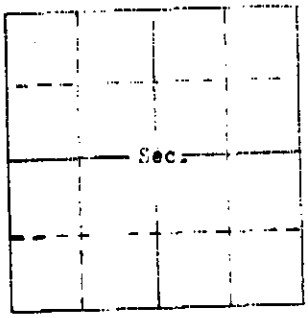
PERFORATED? Yes ☐ No ☒ Type of perforator used: (explain)
Size of perforations: " by "
perforations from ft. to ft.
perforations from ft. to ft.
perforations from ft. to ft.
perforations from ft. to ft.
WAS SCREEN INSTALLED? Yes ☐ No ☒
Manufacturer's name
Type Model No.
Diam. Slot size Set from ft. to ft.
Diam. Slot size Set from ft. to ft.

CONSTRUCTION: Well gravel packed? Yes ☐ No. ☐ size of gravel Gravel placed from ft. to ft. Surface seal provided? Yes ☒ No ☐ To what depth? 158 ft. Material used in seal: CEMENT GR

Did any strata contain unusable water? Yes ☐ No. ☐ Type of water:
Depth of strata ft. Method of sealing strata off:

Surface casing used? Yes ☐ No. ☐
Cemented in place? Yes ☐ No ☐

Locate well in section



LOCATION OF WELL: County
¼ ¼ Sec. T. N/S R. E/W

Use other side for additional remarks

Size of drilled hole: 16 Total depth of well: 161 Standing water level below ground: 140 Temp. Fahr. ° Test delivery: 1600 gpm or cfs Pump? ☐ Bail ☐
Size of pump and motor used to make test:
Length of time of test: 1 Hrs. Min.
Drawdown: 1 ft. Artesian pressure: ft. above land surface Give flow cfs or gpm. Shutoff pressure:
Controlled by: Valve ☐ Cap ☐ Plug ☐
No control ☐ Does well leak around casing? Yes ☐ No ☐

DEPTH FROM FEET	DEPTH TO FEET	MATERIAL	WATER YES OR N
0	6	TOP SOIL	
6	29	GRAY LAVA	
29	43	RED SAND & CLAY	
43	90	GRAY LAVA	
90	93	LOOSE LAVA ROCK	
		CLAY AND SAND	
93	147	GRAY LAVA	
147	157	RED LAVA	
		FIRST WATER 157	
157	175	GRAY LAVA	
175	183	RED SHALE	
183	217	BLACK LAVA (CRACKED)	
217	238	RED SOFT SHALE	
238	261	GREY, BLACK	
		UNDER FORMATION	
		LOST CUTTINGS	

Work started:
Work finished:
Well Driller's Statement: This well was drilled under my supervision and this report is true to the best of my knowledge.
Name:
Address:
Signed by:
License No. 26 Date:

NOV 12 1999

Form WMP4, rev 4/1/97, wwmd

WEST ESPA WATER MEASUREMENT DISTRICT

1997 REPORT OF FLOW METER MEASUREMENTS: NON-IRRIGATION WELLS

Submit report to: West ESPA Water Measurement District
1341 Fillmore St, Ste 200, Twin Falls, Idaho 83301-3380.

RECEIVED
JAN 05 1998
Department of Water Resources

Due Date: January 15, 1998.

NOTE: A separate reporting form must be submitted for each well.

Name:	CITY OF WENDELL	
Water Right Nos:	36-07440	
Legal Description:	T 07S R 15E S 33 SWSW	
Site Tag No:	MONROE WELL #1	
Diversion Name:		

RECEIVED
JAN 07 1998
Department of Water Resources
Southern Region

SECTION I Appropriator information

Name and Address of Water Right Holder

Please check here for address correction ☐

Current Owner

Name City of Wendell (Last, First, MI)

Phone (208) 536-5161

Address P.O. Box 208

Fax (208) 536-5227

City Wendell

State & Zip Idaho, 83355

Original Owner (if sold within last year)

Name _____

Phone _____

Address, City, State, Zip _____

Operator(if leased or operated by someone else)

Name _____

Phone _____

Address, City, State, Zip _____

SECTION II Certification

I hereby certify that the reported information is correct to the best of my knowledge and that I recognize that willful submittal of false or inaccurate data is a violation of law subject to the penalty provisions of Sections 42-311, 42-350 and 42-351, Idaho Code.

Date 1/2/98 Signature Marina Bass

MICROFILMED
NOV 12 1999

SECTION III. Rate of flow and volume pumped from well(s). Record flow meter volume and flow rate at least once per month, indicating date of reading. Take year-end reading on or near December 31. Record both units (gallons, acre-feet, gpm, cfs) and any meter multipliers. Please explain when two or more diversions are measured with one meter, or when two or more flowmeters are used for one diversion (indicate each meter's readings).

Date (enter date of reading)	**Total Volume Reading** Units: _____(gal/af) Multiplier: x_____	**Flow rate** Units:_____(gpm/cfs) Multiplier: x_____	**Discharge pressure (psi)**
January			
February			
March			
April			
May			
June			
July	30,000,000	30,000,000	55 PSI
August	11,250,000	41,250,000	↓
September	958,000	42,208,000	↓
October			
November			
December			

Do the totalizer readings above include the meter multiplier? _____Yes _____No

Total Gallons 41,908,000 or Total Acre-ft 129.5
(325,850 gallons per acre-foot)

Comments

If the flowmeter was installed, calibrated or replaced during 1997, please note the date.
Depth to water measurements are encouraged, and can be recorded here. When reporting depth measurements, also note the date, if the pump was on or off, or if other nearby pumps were on.

SECTION IV Modifications made in 1997

Please describe in the space below any major modifications made to the pumping plant or piping system which would affect the accuracy of the flow measurements during 1997. Attach drawings, sketches, notes or design information if needed.

MICROFILMED
NOV 12 1999

For District Use Only
Received_____Date_____
Reviewed_____Date_____
Data Entry_____Date_____

WMP4

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

03/07/1996

Water Measurement Program FOR MEASURING DEVICE METHOD

RECEIVED
JAN 27 1997
Department of Water Resources

NON-IRRIGATION WELLS

1996 Reporting Form

ATTENTION: Ground water users --- Year end data must be submitted to Idaho Department of Water Resources 1301 N. Orchard Boise Idaho 83706, on or before January 15, 1997.

NOTE: A separate reporting form must be submitted for each well.

Name:		
Water Right No:	CITY OF WENDELL	
Legal Description:	T 36-07440	¼
	07S 15E 33 SWSW	
Site Tag No:		
Diversion Name:	Lower Well Monroe well	

SECTION I Appropriator information

Name and Address of Water Right Holder Please check here for address correction ☐

Current Owner

Name CITY OF WENDELL Phone _____
Last, First, MI

Address P. O. BOX 208 Fax _____

City WENDELL, ID 83355-0208 State & Zip _____

Original Owner (if sold within last year)

Name _____ Phone _____
Last, First, MI

Address _____ Fax _____

City _____ State & Zip _____

Operator(if leased or operated by someone else)

Name _____ Phone _____
Last, First, MI

Address _____ Fax _____

City _____ State & Zip _____

MICROFILM
NOV 12 1999

SECTION II Well Information

Idaho code measurement statute § 42-701 requires water users to measure water levels in their wells. However, the department recognizes that measuring water levels in some wells is very difficult, especially wells with submersible-type pumps installed. If the water level cannot be measured, please give a brief explanation in the comments section.

Static Water Level: Ft._____ Date _____ Time of day _____.
Depth to water in the well with the **pump off** and water level stabilized, measured from approximate ground level to water surface in the well.

Dynamic Water Level: Ft. _____ Date _____ Time of day _____.
Depth to water in the well with the **pump operating** at or near full capacity and the water level stabilized.

SECTION III. Rate of flow and volume pumped from well(s)

Flowmeter **multipliers**: Totalizer _____ Flow Rate _____

Flowmeter **units of measurement**: Totalizer (acre feet, gallons or other) _____
Flow Rate (cfs, gpm, or other) _____

Date (enter date of reading)	**Totalizer reading**	**Flow rate**	**Discharge pressure (psi)**
January ____			
February ____			
March ____			
April ____			
May ____			
June ____			
July ____			
August ____			
September ____			
October ____			
November ____			
December* ____			

* Please make year-end reading on or near December 31, 1996

Do the totalizer readings above include the meter multiplier? _____Yes _____No

Total Gallons THIS WELL IS USED ONLY AS A BACK UP NO USEAGE IN 1996

OR

Total Acre-ft _____ (325,850 gallons per acre-foot)

MICROFILMED
NOV 12 1999

Qual = Z

SK 8/27/97

Form WMP4, rev 4/1/97, wwmd

WEST ESPA WATER MEASUREMENT DISTRICT

1997 REPORT OF FLOW METER MEASUREMENTS: NON-IRRIGATION WELLS

Submit report to: West ESPA Water Measurement District
1341 Fillmore St, Ste 200, Twin Falls, Idaho 83301-3380.

RECEIVED
JAN 05 1998
Department of Water Resources

Due Date: January 15, 1998.

NOTE: A separate reporting form must be submitted for each well.

Name:	CITY OF WENDELL
Water Right Nos:	#36-11277 36-11276, 36-07722
Legal Description:	07S 15E 33 NESWNW 9 ¼
Site Tag No:	WELL #2
Diversion Name:	

SECTION I Appropriator information

Name and Address of Water Right Holder

Please check here for address correction ☐

Current Owner

Name City of Wendell (Last, First, MI)

Phone (208) 536-5161

Address PO Box 208

Fax (208) 536-5227

City Wendell

State & Zip Idaho, 83355

Original Owner (if sold within last year)

Name _____

Phone _____

Address, City, State, Zip _____

Operator(if leased or operated by someone else)

Name _____

Phone _____

Address, City, State, Zip _____

SECTION II Certification

I hereby certify that the reported information is correct to the best of my knowledge and that I recognize that willful submittal of false or inaccurate data is a violation of law subject to the penalty provisions of Sections 42-311, 42-350 and 42-351, Idaho Code.

MICROFILMED NOV 12 1999

Date 1/2/98 Signature Marina Bass

SECTION III. Rate of flow and volume pumped from well(s). Record flow meter volume and flow rate at least once per month, indicating date of reading. Take year-end reading on or near December 31. Record both units (gallons, acre-feet, gpm, cfs) and any meter multipliers. Please explain when two or more diversions are measured with one meter, or when two or more flowmeters are used for one diversion (indicate each meter's readings).

Date (enter date of reading)	**Total Volume Reading** Units: _____(gal/af) Multiplier: x_____	**Flow rate** Units:_____(gpm/cfs) Multiplier: x_____	**Discharge pressure (psi)**
January			
February			
March			
April			
May			
June			
July			
August			
September			
October			
November			
December			

Do the totalizer readings above include the meter multiplier? _____Yes _____No

Total Gallons _____ or Total Acre-ft_____
(325,850 gallons per acre-foot)

Comments
If the flowmeter was installed, calibrated or replaced during 1997, please note the date.
Depth to water measurements are encouraged, and can be recorded here. When reporting depth measurements, also note the date, if the pump was on or off, or if other nearby pumps were on.

Didn't use this well.

SECTION IV Modifications made in 1997
Please describe in the space below any major modifications made to the pumping plant or piping system which would affect the accuracy of the flow measurements during 1997. Attach drawings, sketches, notes or design information if needed.

MICROFILMED
NOV 12 1999

For District Use Only
Received_____Date _____
Reviewed_____Date_____
Data Entry_____Date _____

WMP4

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

03/07/1996

RECEIVED

Water Measurement Program FOR MEASURING DEVICE METHOD

JAN 2 7 1997

NON-IRRIGATION WELLS

Department of Water Resources

1996 Reporting Form

ATTENTION: Ground water users --- Year end data must be submitted to Idaho Department of Water Resources 1301 N. Orchard Boise Idaho 83706, on or before January 15, 1997.

NOTE: A separate reporting form must be submitted for each well.

Name:	
Water Right No:	CITY OF WENDELL *36-11277 36-11276, 36-07722
Legal Description:	T. 07S 15E 33 NESWNW ¼
Site Tag No:	LEWISTON STREET
Diversion Name:	

SECTION I Appropriator information

Name and Address of Water Right Holder Please check here for address correction ☐

Current Owner

Name CITY OF WENDELL (Last, First, MI) Phone _____

Address P. O. BOX 208 Fax _____

City WENDELL, ID 83355-0208 State & Zip _____

Original Owner (if sold within last year)

Name _____ (Last, First, MI) Phone _____

Address _____ Fax _____

City _____ State & Zip _____

Operator(if leased or operated by someone else)

Name _____ (Last, First, MI) Phone _____

Address _____ Fax _____

City _____ State & Zip _____

MICROFILMED

NOV 1 2 1999

SECTION II Well Information

Idaho code measurement statute § 42-701 requires water users to measure water levels in their wells. However, the department recognizes that measuring water levels in some wells is very difficult, especially wells with submersible-type pumps installed. If the water level cannot be measured, please give a brief explanation in the comments section.

Static Water Level: Ft._____ Date _____ Time of day _____.
Depth to water in the well with the **pump off** and water level stabilized, measured from approximate ground level to water surface in the well.

Dynamic Water Level: Ft. _____ Date _____ Time of day _____.
Depth to water in the well with the **pump operating** at or near full capacity and the water level stabilized.

SECTION III. Rate of flow and volume pumped from well(s)

Flowmeter **multipliers**: Totalizer _____ Flow Rate _____

Flowmeter **units of measurement**: Totalizer (acre feet, gallons or other) _____
Flow Rate (cfs, gpm, or other) _____

Date (enter date of reading)	Totalizer reading	Flow rate	Discharge pressure (psi)
January			
February			
March			
April			
May			
June			
July			
August			
September			
October			
November			
December*			

* Please make year-end reading on or near December 31, 1996

Do the totalizer readings above include the meter multiplier? ~~Yes~~ ~~No~~

Total Gallons THIS WELL IS USED AS A BACK UP, NO USAGE THIS YEAR.

OR

Total Acre-ft _____ (325,850 gallons per acre-foot)

Qual = Z skirs 8/27/97

MICROFILMED
NOV 12 1999

Comments: (If the flowmeter was installed during **1996**, please note the installation date)

SECTION IV Modifications made in 1996

Please describe in the space below any major modifications made to the pumping plant or piping system which would affect the accuracy of the flow measurements during 1996. Attach drawings, sketches, notes or design information if needed.

SECTION V Certification

I hereby certify that the above reported information is correct to the best of my knowledge and that I recognize that willful submittal of false or inaccurate data is a violation of law subject to the penalty provisions of Sections 42-311, 42-350 and 42-351, Idaho Code.

Date 1/15/97 Signature

Note: Each reporting form shall be accompanied by a report processing fee in the amount of twenty-five dollars ($25) per diversion made payable to the Idaho Department of Water Resources. (Section 42-701(6), Idaho Code)

For Department Use Only

Received by _____ Date _____

Data Entry by _____ MIC Date 6/27/97

reviewed by RF 6-10-97

NOV 12 1999

Form WMP4, rev 4/1/97, wwmd

WEST ESPA WATER MEASUREMENT DISTRICT

1997 REPORT OF FLOW METER MEASUREMENTS: NON-IRRIGATION WELLS

Submit report to: West ESPA Water Measurement District
1341 Fillmore St, Ste 200, Twin Falls, Idaho 83301-3380.

RECEIVED
JAN 05 1998
Department of Water Resources

Due Date: January 15, 1998.

NOTE: A separate reporting form must be submitted for each well.

Name:	CITY OF WENDELL
Water Right Nos:	*36-11276 36-11277, 36-07722
Legal Description:	07S 15E 33 SESENE
	9 4
Site Tag No:	WELL #3
Diversion Name:	

SECTION I Appropriator information

Name and Address of Water Right Holder — Please check here for address correction ☐

Current Owner

Name City of Wendell (Last, First, MI) — Phone (208) 536-5161

Address P.O. Box 208 — Fax (208) 536-5227

City Wendell — State & Zip Idaho, 83355

Original Owner (if sold within last year)

Name _____ — Phone _____

Address, City, State, Zip _____

Operator(if leased or operated by someone else)

Name _____ — Phone _____

Address, City, State, Zip _____

SECTION II Certification

I hereby certify that the reported information is correct to the best of my knowledge and that I recognize that willful submittal of false or inaccurate data is a violation of law subject to the penalty provisions of Sections 42-311, 42-350 and 42-351, Idaho Code.

Date 1/2/98 Signature Marina Bass NOV 12 1999

SECTION III. Rate of flow and volume pumped from well(s). Record flow meter volume and flow rate at least once per month, indicating date of reading. Take year-end reading on or near December 31. Record both units (gallons, acre-feet, gpm, cfs) and any meter multipliers. Please explain when two or more diversions are measured with one meter, or when two or more flowmeters are used for one diversion (indicate each meter's readings).

Date (enter date of reading)	**Total Volume Reading** Units: _____(gal/af) Multiplier: x_____	**Flow rate** Units:_____(gpm/cfs) Multiplier: x_____	**Discharge pressure (psi)**
January			
February			
March			
April			
May			
June			
July			
August			
September			
October			
November			
December			

Do the totalizer readings above include the meter multiplier? _____Yes _____No

Total Gallons _____ or Total Acre-ft_____
(325,850 gallons per acre-foot)

Comments

If the flowmeter was installed, calibrated or replaced during 1997, please note the date.
Depth to water measurements are encouraged, and can be recorded here. When reporting depth measurements, also note the date, if the pump was on or off, or if other nearby pumps were on.

Didn't use this well.

SECTION IV Modifications made in 1997

Please describe in the space below any major modifications made to the pumping plant or piping system which would affect the accuracy of the flow measurements during 1997. Attach drawings, sketches, notes or design information if needed.

MICROFILMED
NOV 12 1999

For District Use Only
Received_____ Date _____
Reviewed_____ Date_____
Data Entry_____ Date _____

WMP4

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

03/07/1996

Water Measurement Program FOR MEASURING DEVICE METHOD

RECEIVED
JAN 2 7 1997
Department of Water Resources

NON-IRRIGATION WELLS

1996 Reporting Form

ATTENTION: Ground water users --- Year end data must be submitted to Idaho Department of Water Resources 1301 N. Orchard Boise Idaho 83706, on or before January 15, 1997.

NOTE: A separate reporting form must be submitted for each well.

Name:		___
Water Right No:	CITY OF WENDELL	___
Legal Description:	*36-11276 36-11277, 36-07722 07S 15E 33 SESENE	¼
Site Tag No:		___
Diversion Name:	Wooding ST well	___

SECTION I Appropriator information

Name and Address of Water Right Holder — Please check here for address correction ☐

Current Owner

Name CITY OF WENDELL (Last, First, MI) — Phone ____

Address P. O. BOX 208 — Fax ____

City WENDELL, IDAHO 83355-0208 — State & Zip ____

Original Owner (if sold within last year)

Name ____ (Last, First, MI) — Phone ____

Address ____ — Fax ____

City ____ — State & Zip ____

Operator(if leased or operated by someone else)

Name ____ (Last, First, MI) — Phone ____

Address ____ — Fax ____

City ____ — State & Zip ____

MICROFILMED
NOV 1 2 1999

SECTION II Well Information

Idaho code measurement statute § 42-701 requires water users to measure water levels in their wells. However, the department recognizes that measuring water levels in some wells is very difficult, especially wells with submersible-type pumps installed. If the water level cannot be measured, please give a brief explanation in the comments section.

Static Water Level: Ft._____ Date _____ Time of day _____.
Depth to water in the well with the **pump off** and water level stabilized, measured from approximate ground level to water surface in the well.

Dynamic Water Level: Ft. _____ Date _____ Time of day _____.
Depth to water in the well with the **pump operating** at or near full capacity and the water level stabilized.

SECTION III. Rate of flow and **volume** pumped from well(s)

Flowmeter **multipliers**: Totalizer _____ Flow Rate _____

Flowmeter **units of measurement**: Totalizer (acre feet, gallons or other) _____
Flow Rate (cfs, gpm, or other) _____

Date (enter date of reading)	**Totalizer reading**	**Flow rate**	**Discharge pressure (psi)**
January _____			
February _____			
March _____			
April _____			
May _____			
June _____			
July _____			
August _____			
September _____			
October _____			
November _____			
December* _____			

* Please make year-end reading on or near December 31, 1996

Do the totalizer readings above include the meter multiplier? _____Yes _____No

Total Gallons THIS WELL IS USED AS A BACK UP, NO USEAGE THIS YEAR
OR

Total Acre-ft _____ (325,850 gallons per acre-foot)

Qual=Z SK 8/27/97

MICROFILMED

NOV 12 1999

Comments: (If the flowmeter was installed during **1996**, please note the installation date)

SECTION IV Modifications made in 1996

Please describe in the space below any major modifications made to the pumping plant or piping system which would affect the accuracy of the flow measurements during 1996. Attach drawings, sketches, notes or design information if needed.

SECTION V Certification

I hereby certify that the above reported information is correct to the best of my knowledge and that I recognize that willful submittal of false or inaccurate data is a violation of law subject to the penalty provisions of Sections 42-311, 42-350 and 42-351, Idaho Code.

Date 1/15/97 Signature

Note: Each reporting form shall be accompanied by a report processing fee in the amount of twenty-five dollars ($25) per diversion made payable to the Idaho Department of Water Resources. (Section 42-701(6), Idaho Code)

For Department Use Only

Received by _____ Date _____

Data Entry by _____ Date NOV 12 1999

reviewed by RF 6.10.97

RECEIVED
FEB 27 1996
Department of Water Resources

WMP1-4-24-95

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

Water Measurement Program FOR MEASURING DEVICE METHOD

1995 Reporting Form

ATTENTION: Ground water users --- Year end data must be submitted to Idaho Department of Water Resources 1301 N. Orchard Boise Idaho 83706, on or before January 15, 1996 .

NOTE: A separate reporting form must be submitted for each well.

Name: CITY OF WENDELL #3
Water Right No. 36-[redacted]1276 SENE
Legal Description: 07S 15E 33 ~~SENW~~

SECTION I Appropriator information

Name and Address of Water Right Holder
Current Owner

Name City Of Wendell (Last, First, MI) — Phone (208) 536-5161
Address PO Box 208 — Fax (208) 536-5527
City Wendell — State & Zip Id. 83355

Original Owner (if sold within last year)

Name _____ (Last, First, MI) — Phone _____
Address _____ — Fax _____
City _____ — State & Zip _____

Operator(if leased or operated by someone else)

Name _____ (Last, First, MI) — Phone _____
Address _____ — Fax _____
City _____ — State & Zip _____

MICROFILMED
NOV 12 1999

SECTION II Well Information

**Depth to water level prior to any pumping, measured from approximate ground level to water surface in well: Ft._____ Date_____ Time of day_____

**Depth to water in the well with pump operating at or near full capacity and the system stabilized (pump should have been operating at least 6 hours): Ft. _____ Date _____ Time of day _____

Pump discharge pressure at normal operating conditions: _____ PSI(pounds per square inch)

SECTION III. Rate of flow and volume pumped from well(s)

Meter multiplier X_____(if any)

Units of measurement (Acre feet, gallons or other) _____

Date (enter date of reading)	Totalizer reading	Acre feet since last reading	Cumulative acre feet	Flow rate cfs or gpm	Discharge pressure
Jan. ( )	-0-	N/A	N/A	800gpm	55
Feb. ( )	-0-	N/A	N/A	800gpm	55
March ( )	768,400	N/A	N/A	800 gpm	55
April ( )	700,600	N/A	N/A	800 gpm	55
May ( )	384,200	N/A	N/A	800 gpm	55
June ( )	113,000	N/A	N/A	800 gpm	55
July ( )	3,322,200	N/A	N/A	800 gpm	55
August ( )	90,400	N/A	N/A	800 gpm	55
Sept. ( )	-0-	N/A	N/A	800 gpm	55
Oct. ( )	-0-	N/A	N/A	800 gpm	55
Nov. ( )	192,100	N/A	N/A	800 gpm	55
Dec. ( )	350,300	N/A	N/A	800 gpm	55

Y

Does totalizer reading above include meter multiplier? _____Yes _____No

OK

Total Acre-feet 18.17 AF

Comment:

** readings not taken, due to inaccessibility to take measurement

MICRO

NOV 12 1999

SECTION IV Modifications made in 1995

Please describe in the space below any major modifications made to the pumping plant or piping system which would affect the accuracy of the flow measurements during 1995.
Attach drawings, sketches, notes or design information if needed.

SECTION V Certification

I hereby certify that the above reported information is correct to the best of my knowledge and that I recognize that willful submittal of false or inaccurate data is a violation of law subject to the penalty provisions of Sections 42-311, 42-350 and 42-351, Idaho Code.

Date 2-23-96 Signature [signature]

Note:

- Each reporting form shall be accompanied by a report processing fee in the amount of twenty dollars ($20) per diversion made payable to the Idaho Department of Water Resources. (Section 42-701(6), Idaho Code)

For Department Use Only

Received by _____ Date _____ Time _____

Fee amount submitted 20.00 Correct? yes____ no ____

Receipted by JW Receipt No. C034916

Data Entry by KR 2/29/96 Date 2-27-96

NOV 1 2 1999

Form WMP4, rev 4/1/97, wwmd

WEST ESPA WATER MEASUREMENT DISTRICT

1997 REPORT OF FLOW METER MEASUREMENTS: NON-IRRIGATION WELLS

Submit report to: West ESPA Water Measurement District
1341 Fillmore St, Ste 200, Twin Falls, Idaho 83301-3380.

RECEIVED
JAN 05 1998
Department of Water Resources

Due Date: January 15, 1998.

NOTE: A separate reporting form must be submitted for each well.

Name:	CITY OF WENDELL
Water Right Nos:	#36-07722 36-1127a, 36-1127
Legal Description:	07S 15E 33 NWNWSE
	S
Site Tag No:	MELL #4 MAIN PUMP
Diversion Name:	

SECTION I Appropriator information

Name and Address of Water Right Holder — Please check here for address correction ☐

Current Owner
Name City of Wendell (Last, First, MI) — Phone (208) 536-5161
Address P.O. Box 208 — Fax (208) 536-5207
City Wendell — State & Zip Idaho, 83355

Original Owner (if sold within last year)
Name _____ — Phone _____
Address, City, State, Zip _____

Operator(if leased or operated by someone else)
Name _____ — Phone _____
Address, City, State, Zip _____

SECTION II Certification

I hereby certify that the reported information is correct to the best of my knowledge and that I recognize that willful submittal of false or inaccurate data is a violation of law subject to the penalty provisions of Sections 42-311, 42-350 and 42-351, Idaho Code.

Date 1/2/98 Signature Marina Ross

NOV 12 1999

SECTION III. Rate of flow and volume pumped from well(s). Record flow meter volume and flow rate at least once per month, indicating date of reading. Take year-end reading on or near December 31. Record both units (gallons, acre-feet, gpm, cfs) and any meter multipliers. Please explain when two or more diversions are measured with one meter, or when two or more flowmeters are used for one diversion (indicate each meter's readings).

Date (enter date of reading)	**Total Volume Reading** Units: _____(gal/af) Multiplier: x_____	**Flow rate** Units:_____(gpm/cfs) Multiplier: x_____	**Discharge pressure (psi)**
January	8,179,210		50 PSI
February	8,331,460		
March	9,347,330		
April	14,202,000		
May	34,540,000		
June	38,058,000		
July	33,342,000		
August	33,500,000		
September	26,500,000		
October	12,350,000		
November	9,050000		
December	10,481,450		

Do the totalizer readings above include the meter multiplier? _____Yes _____No

Total Gallons 232,881,450 or Total Acre-ft 714.7
(325,850 gallons per acre-foot)

Comments

If the flowmeter was installed, calibrated or replaced during 1997, please note the date.
Depth to water measurements are encouraged, and can be recorded here. When reporting depth measurements, also note the date, if the pump was on or off, or if other nearby pumps were on.

SECTION IV Modifications made in 1997

Please describe in the space below any major modifications made to the pumping plant or piping system which would affect the accuracy of the flow measurements during 1997. Attach drawings, sketches, notes or design information if needed.

MICROFILMED

NOV 12 1999

For District Use Only
Received_____ Date _____
Reviewed_____ Date_____
Data Entry_____ Date _____

WMP4

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

03/07/1996

Water Measurement Program FOR MEASURING DEVICE METHOD

RECEIVED
JAN 2 7 1997
Department of Water Resources

NON-IRRIGATION WELLS

1996 Reporting Form

ATTENTION: Ground water users --- Year end data must be submitted to Idaho Department of Water Resources 1301 N. Orchard Boise Idaho 83706, on or before January 15, 1997.

NOTE: A separate reporting form must be submitted for each well.

Name:	____	
Water Right No:	____	CITY OF WENDELL
Legal Description:	***T*** ____	*36-07722 36-11276, 36-11277 07S 15E 33 NWNWSE
Site Tag No:	____	
Diversion Name:	____	Boise STReeT well

SECTION I Appropriator information

Name and Address of Water Right Holder Please check here for address correction ☐

Current Owner

Name CITY OF WENDELL Phone ____
(Last, First, MI)

Address P.O. BOX 208 Fax ____

City WENDELL, ID 83355-0208 State & Zip ____

Original Owner (if sold within last year)

Name ____ Phone ____
(Last, First, MI)

Address ____ Fax ____

City ____ State & Zip ____

Operator(if leased or operated by someone else)

Name ____ Phone ____
(Last, First, MI)

Address ____ Fax ____

City ____ State & Zip ____

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NOV 12 1999

SECTION II Well Information

Idaho code measurement statute § 42-701 requires water users to measure water levels in their wells. However, the department recognizes that measuring water levels in some wells is very difficult, especially wells with submersible-type pumps installed. If the water level cannot be measured, please give a brief explanation in the comments section.

Static Water Level: Ft._____ Date _____ Time of day _____.
Depth to water in the well with the **pump off** and water level stabilized, measured from approximate ground level to water surface in the well.

N

Dynamic Water Level: Ft. _____ Date _____ Time of day _____.
Depth to water in the well with the **pump operating** at or near full capacity and the water level stabilized.

SECTION III. Rate of flow and volume pumped from well(s)

Flowmeter **multipliers**: Totalizer N/A Flow Rate GALLONS

Flowmeter **units of measurement**: Totalizer (acre feet, gallons or other) GALLONS
Flow Rate (cfs, gpm, or other) _____

Date (enter date of reading)	TOTAL GALLONS ~~Totalizer reading~~	Flow rate	Discharge pressure (psi)
January 96	8,261,510		
February 96	8,709,670		
March 96	9,119,180		
April 96	16,949,530		
May 96	21,854,030		
June 96	37,769,080		
July 96	45,704,200		
August 96	45,804,000		
September 96	15,667,500		
October 96	17,487,500		
November 96	8,173,000		
December* 96	10,026,970		

Y

* Please make year-end reading on or near December 31, 1996

Do the totalizer readings above include the meter multiplier? _____Yes X No

Total Gallons 255,086,970 MICRO NOV 12 1996

my addition shows: 245,526,170 gal

OR

Total Acre-ft _____

= 753.5 AF Qual=MR

(325,850 gallons per acre-foot)

Skirs 8/27/97

Comments: (If the flowmeter was installed during **1996**, please note the installation date)

SECTION IV Modifications made in 1996

Please describe in the space below any major modifications made to the pumping plant or piping system which would affect the accuracy of the flow measurements during 1996. Attach drawings, sketches, notes or design information if needed.

SECTION V Certification

I hereby certify that the above reported information is correct to the best of my knowledge and that I recognize that willful submittal of false or inaccurate data is a violation of law subject to the penalty provisions of Sections 42-311, 42-350 and 42-351, Idaho Code.

Date 1/15/97 Signature [signature]

Note: Each reporting form shall be accompanied by a report processing fee in the amount of twenty-five dollars ($25) per diversion made payable to the Idaho Department of Water Resources. (Section 42-701(6), Idaho Code)

For Department Use Only

Received by Kef Date 1-27-97 Receipt # C037824

Data Entry by [signature] Date 6/27/97

reviewed by RF 6-10-97

MICROFILMED

NOV 12 1999

WMP1-4-24-95

RECEIVED
FEB 27 1996
Department of Water Resources

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

Water Measurement Program FOR MEASURING DEVICE METHOD

1995 Reporting Form

ATTENTION: Ground water users --- Year end data must be submitted to Idaho Department of Water Resources 1301 N. Orchard Boise Idaho 83706, on or before January 15, 1996 .

NOTE: A separate reporting form must be submitted for each well.

Name: CITY OF WENDELL (#4)
Water Right No. *36-07722
Legal Description: T 07S 15E 33 NW(NWSE)

SECTION I Appropriator information

Name and Address of Water Right Holder

Current Owner

Name City Of Wendell (Last, First, MI) — Phone (208) 536-5161
Address PO Box 208 — Fax (208) 536-5527
City Wendell — State & Zip Id. 83355

Original Owner (if sold within last year)

Name (Last, First, MI) — Phone
Address — Fax
City — State & Zip

Operator(if leased or operated by someone else)

Name (Last, First, MI) — Phone
Address — Fax
City — State & Zip

RECEIVED
NOV 12 1999

SECTION II Well Information

Depth to water level prior to any pumping, measured from approximate ground level to water surface in well: Ft. 151' 3" Date 9/12/95 Time of day 9:30 a.m.

Depth to water in the well with pump operating at or near full capacity and the system stabilized (pump should have been operating at least 6 hours): Ft. 150' 9" Date 9/12/95 Time of day 4:30 p.m.

Pump discharge pressure at normal operating conditions: 55 PSI(pounds per square inch)

SECTION III. Rate of flow and volume pumped from well(s)

Meter multiplier X_____(if any)

Units of measurement (Acre feet, gallons or other) gallons

Date (enter date of reading)	Totalizer reading	Acre feet since last reading	Cumulative acre feet	Flow rate cfs or gpm	Discharge pressure
Jan. ( )	6,463,600	N/A	N/A	1500gpm	55
Feb. ( )	6,531,400	N/A	N/A	1500gpm	55
March ( )	7,864,800	N/A	N/A	1500gpm	55
April ( )	11,322,600	N/A	N/A	1500 gpm	55
May ( )	14,373,600	N/A	N/A	1500 gpm	55
June ( )	23,865,600	N/A	N/A	1500 gpm	55
July ( )	22,667,800	N/A	N/A	1500 gpm	55
August ( )	25,515,400	N/A	N/A	1500 gpm	55
Sept. ( )	19,429,000	N/A	N/A	1500 gpm	55
Oct. ( )	16,280,230	N/A	N/A	1500 gpm	55
Nov. ( )	8,350,000	N/A	N/A	1500 gpm	55
Dec. ( )	10,246,000	N/A	N/A	1500 gpm	55

Does totalizer reading above include meter multiplier? _____Yes _____No

Total Acre-feet 530.64 AF

Comment:

ANCHO
NOV 12 1999

SECTION IV Modifications made in 1995

Please describe in the space below any major modifications made to the pumping plant or piping system which would affect the accuracy of the flow measurements during 1995.
Attach drawings, sketches, notes or design information if needed.

SECTION V Certification

I hereby certify that the above reported information is correct to the best of my knowledge and that I recognize that willful submittal of false or inaccurate data is a violation of law subject to the penalty provisions of Sections 42-311, 42-350 and 42-351, Idaho Code.

Date 2/23/96 Signature [signature]

Note:

- Each reporting form shall be accompanied by a report processing fee in the amount of twenty dollars ($20) per diversion made payable to the Idaho Department of Water Resources. (Section 42-701(6), Idaho Code)

For Department Use Only

Received by _____ Date _____ Time _____

Fee amount submitted 20.00 Correct? yes____ no ____

Receipted by JW Receipt No. C034916

Data Entry by KR 2/29/96 Date 2-27-96

MICROFILMED

NOV 12 1999

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DEC 2 1998

BROCKWAY
ENGINEERING
P.L.L.C.

Hydraulics
Hydrology
Water Resources

CHARLES E. BROCKWAY, PH.D., P.E.

CHARLES G. BROCKWAY, PH.D.

2016 NORTH WASHINGTON STREET • SUITE 4

TWIN FALLS, IDAHO 83301

208•736•8543

FAX: 736•8506

December 1, 1998
Pat Brown
Parker, Waar and Brown
812 Shoshone Street East
Twin Falls, ID 83301

Subject: Gunning Dairy

Dear Pat:

Attached is the well interference analyses for the proposed new diversion under transfer 5197 for the Gunning dairy near Wendell. The drawdown analysis is based on pumping of the proposed diversion of 0.2 cfs(90 gpm) continuously. The analysis shows that pumping of the proposed increased diversion would cause an imperceptible drawdown(0.02 ft) at Gooding Street on the east edge of Wendell. Also attached is an analysis using a pumping rate of 193 gpm which is equal to the total dairy diversion rate including the two existing water rights and the proposed transfer. The estimated drawdown at the Gooding Street area is about 0.03 feet(0.4 inches). An increased drawdown of this magnitude would be undetectable in any of the Wendell City wells.

The water requirements analyses for the dairy are enclosed. The analysis was performed using the Brockway Engineering LCO Water Requirements and Consumptive Use Worksheet. Two analyses were performed. The first analysis used the 1993 Gooding County grandfathered LCO permit of 473 milking cows and 204 calves. The second analysis utilized the current (1998) animal loading of 800 milking cows, 160 dry cows and 200 calves. I assumed, based on Gail Gunning's information, that the lagoons were smaller in 1993 than his estimated sizes for the current lagoons.

The water requirements worksheets show that the estimated 1993 annual volume requirement of 30.2 acre feet was not quite met by the two water rights which had an estimated annual diversion volume of 24.5 acre feet. The 1998 annual volume diversion requirement of 62.7 acre feet will be more than met by the additional 55.3 acre feet proposed under transfer 5197.

Drying up of 14 acres as contemplated under the transfer is in excess of the 12.7 acres required to assure no expansion of diversion volume. Likewise, based on the 14 acre reduction in irrigated area, there will be no expansion of consumptive use under the transfer.

Since the proposed transfer, as advertised, does not split the diversion rate or diversion volume into stockwater and commercial components, I have assumed for comparison purposes that the 0.2 cfs diversion rate would be split based on the proportion of consumptive use required as calculated from the worksheet.

Let me know if you have questions.

Sincerely,

C E Brockway

Charles E. Brockway P.E.

NOV 12 1999

Department of Water Resources
APPLICANT'S
Exhibit 1C
Date Admitted 12/10/98

COPY

Gunning Dairy

1-Dec-98 Brockway Engineering PLLC

Comparison of Water Requirements and Water Rights 1993 to 1998

	1993	1998		
Milking Cows	473	800		
Dry Cows	0	160		
Calves	204	200		
Lagoons	2 small	2		
Holding Pen	no sprinklers	sprinklers		
Diversion vol. Reqt				
Stockwater	19.2	34.4	acre feet	Brockway Engr. Worksheet
Commercial	11.1	28.3	acre feet	Brockway Engr. Worksheet
Total	30.2	62.7	acre feet	Brockway Engr. Worksheet
Consumptive Use	28.1	56.7	acre feet	Brockway Engr. Worksheet
IDWR allowable	3	3	af/acre	
Equivalent Irr. Acres	9.4	18.9	acres	
Div. volume/IDWR allowable (assumes 100%consumptive)	10.1	20.9	acres	

	Milking	Dry	Calves	Total Animals
Water Right 36-10815	73	0	204	277
Water Right 36-15511	400	0		400
				677

	Diversion					
	Stockwater		Commercial		Total	
	cfs	acre feet	cfs	acre feet	cfs	acre feet
Water Right 36-10815	0.04	4			0.04	4
Water Right 36-15511	0.15	16	0.04	4.5	0.19	20.5
Total	0.19	20	0.04	4.5	0.23	24.5
Required 1998 (800milking,160 dry,200 calves)		34.4		28.3		62.7 acre feet
Difference		14.4		23.8		38.2 af or **12.7 acres**
Transfer 5197 Proposes (stock/commercial split estimated.)	0.11	30.2	0.09	24.8	0.20	55 af **14 acres dried up**
After Transfer	0.30	50.2	0.13	29.3	0.43	79.50

NOV 12 1999

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WELL INTERFERENCE ANALYSIS
Gunning Dairy Transfer 5197
Location: SW1/4 NE1/4 NE1/4 SEC. 34, T.7S., R.15E.
Constant pumping rate
Cone of depression estimated using Theis approach
Brockway Engineering, PLLC 12/1/1998

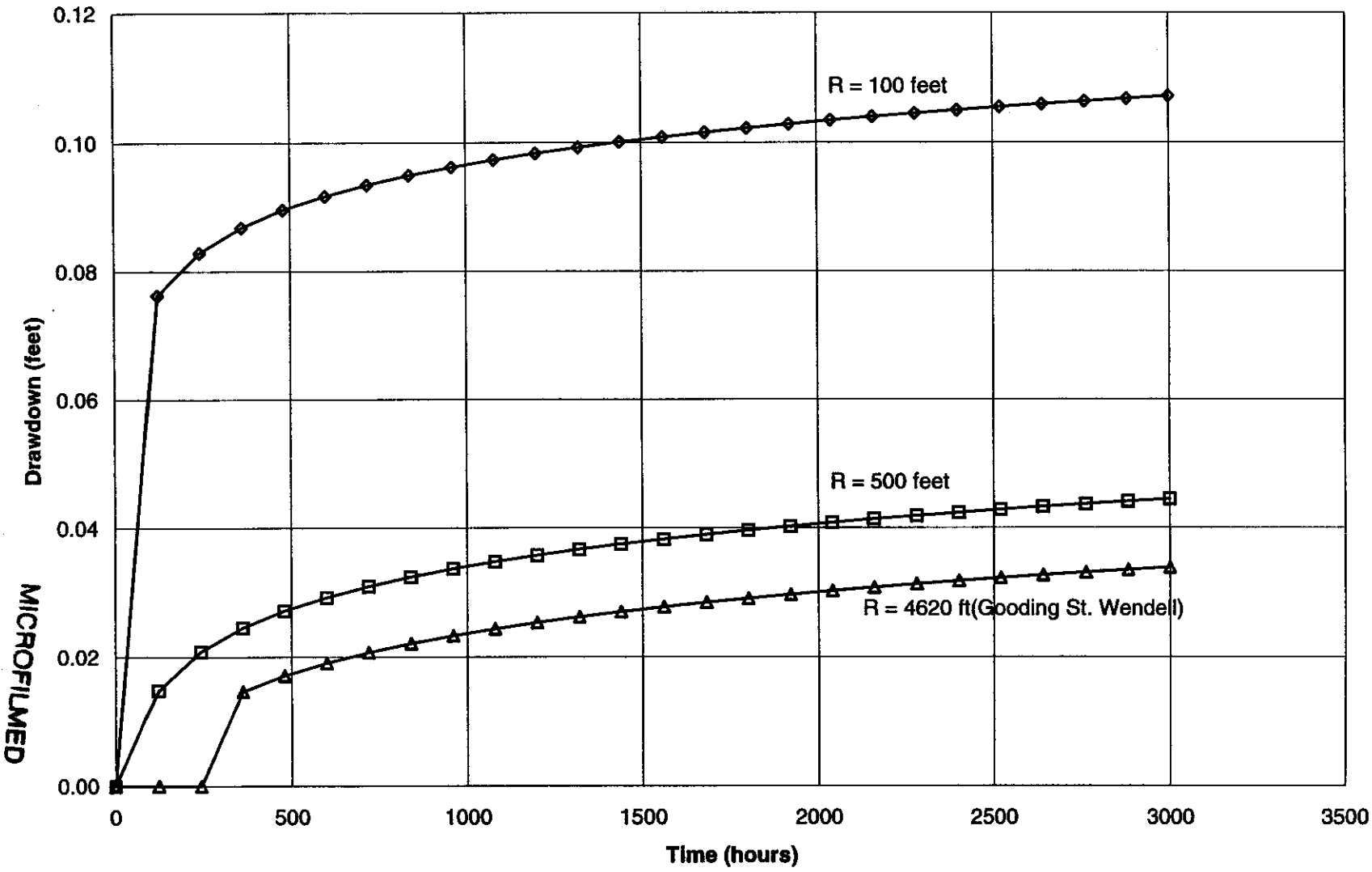
Transmissitivity	2310000	gpd/ft	Based on basalt aquifer and Wendell City well pumping data
Storage coefficient	0.12		and surrounding well driller's logs
Pumping rate	193.0	gpm or	0.43 cfs
Pumping time	2880	hrs or	120 days

	R = 100 feet			R = 2640 feet			R = 4620 feet (Gooding Street,		
Time (hrs)	u	W(u)	z (feet)	u	W(u)	z (feet)	u	W(u)	z (feet)
0	--	--	0.00	--	--	0.00	--	--	0.00
120	1.9E-04	8.0	0.08	1.4E-01	1.553	0.01	4.1E-01	0.678	0.00
240	9.7E-05	8.7	0.08	6.8E-02	2.182	0.02	2.1E-01	1.193	0.00
360	6.5E-05	9.1	0.09	4.5E-02	2.565	0.02	1.4E-01	1.535	0.01
480	4.9E-05	9.4	0.09	3.4E-02	2.842	0.03	1.0E-01	1.790	0.02
600	3.9E-05	9.6	0.09	2.7E-02	3.059	0.03	8.3E-02	1.994	0.02
720	3.2E-05	9.8	0.09	2.3E-02	3.236	0.03	6.9E-02	2.163	0.02
840	2.8E-05	9.9	0.09	1.9E-02	3.387	0.03	5.9E-02	2.307	0.02
960	2.4E-05	10.0	0.10	1.7E-02	3.519	0.03	5.2E-02	2.434	0.02
1080	2.2E-05	10.2	0.10	1.5E-02	3.634	0.03	4.6E-02	2.546	0.02
1200	1.9E-05	10.3	0.10	1.4E-02	3.738	0.04	4.1E-02	2.647	0.03
1320	1.8E-05	10.4	0.10	1.2E-02	3.832	0.04	3.8E-02	2.738	0.03
1440	1.6E-05	10.5	0.10	1.1E-02	3.918	0.04	3.5E-02	2.822	0.03
1560	1.5E-05	10.5	0.10	1.0E-02	3.998	0.04	3.2E-02	2.900	0.03
1680	1.4E-05	10.6	0.10	9.7E-03	4.071	0.04	3.0E-02	2.971	0.03
1800	1.3E-05	10.7	0.10	9.0E-03	4.139	0.04	2.8E-02	3.039	0.03
1920	1.2E-05	10.7	0.10	8.5E-03	4.203	0.04	2.6E-02	3.101	0.03
2040	1.1E-05	10.8	0.10	8.0E-03	4.263	0.04	2.4E-02	3.160	0.03
2160	1.1E-05	10.9	0.10	7.5E-03	4.320	0.04	2.3E-02	3.216	0.03
2280	1.0E-05	10.9	0.10	7.1E-03	4.374	0.04	2.2E-02	3.269	0.03
2400	9.7E-06	11.0	0.10	6.8E-03	4.425	0.04	2.1E-02	3.319	0.03
2520	9.3E-06	11.0	0.11	6.4E-03	4.473	0.04	2.0E-02	3.367	0.03
2640	8.8E-06	11.1	0.11	6.2E-03	4.519	0.04	1.9E-02	3.413	0.03
2760	8.4E-06	11.1	0.11	5.9E-03	4.564	0.04	1.8E-02	3.456	0.03
2880	8.1E-06	11.1	0.11	5.6E-03	4.606	0.04	1.7E-02	3.498	0.03
3000	7.8E-06	11.2	0.11	5.4E-03	4.647	0.04	1.7E-02	3.538	0.03

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Drawdown versus time and radial distance from the pumping well

Q = 193 gpm, T = 231000 gpd/ft, Sc = 0.12



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WELL INTERFERENCE ANALYSIS
Gunning Dairy Transfer 5197
Location: SW1/4 NE1/4 NE1/4 SEC. 34, T.7S., R.15E.
Constant pumping rate
Cone of depression estimated using Theis approach
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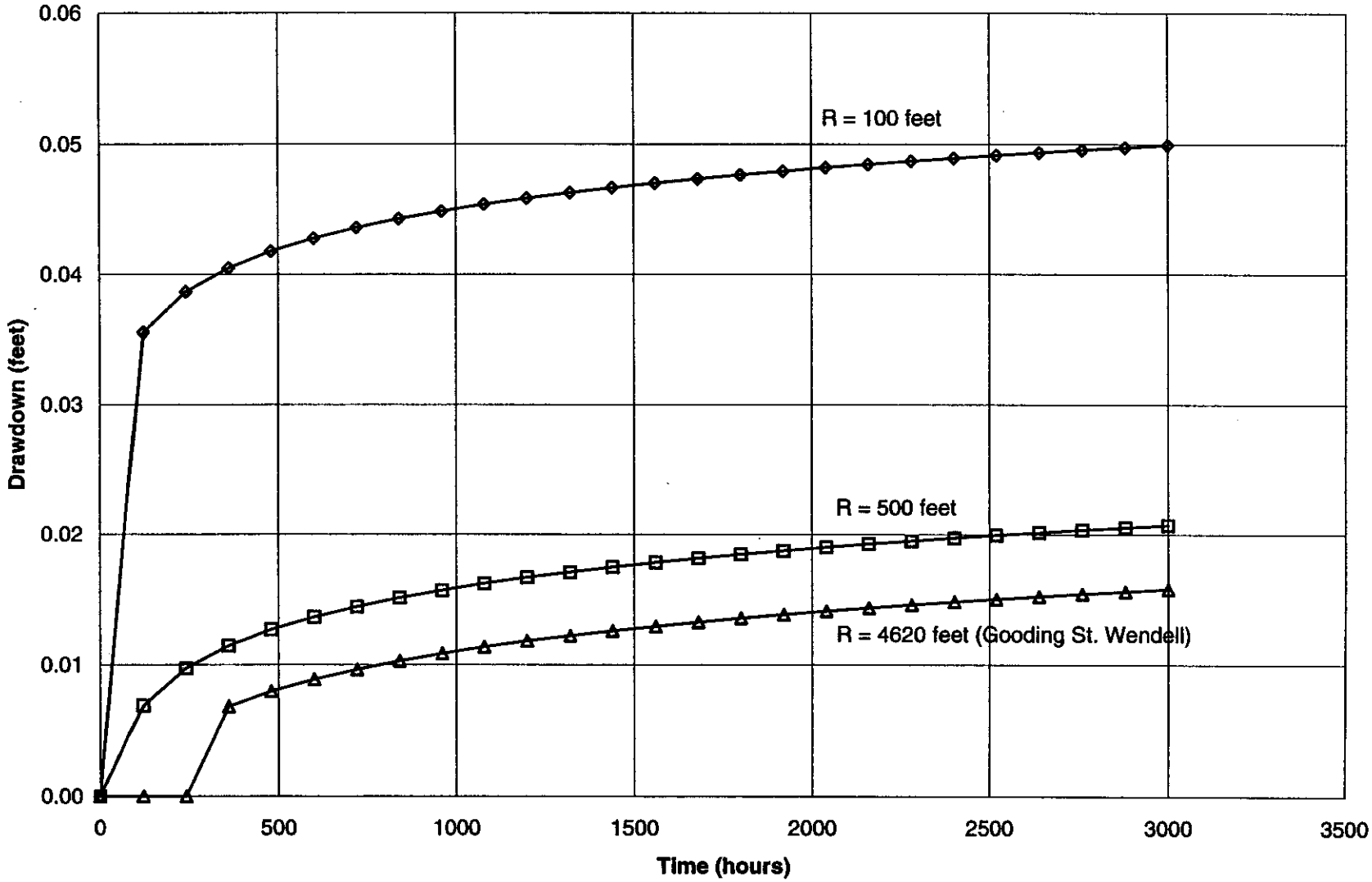
Transmissitivity	2310000	gpd/ft	Based on basalt aquifer and Wendell City well pumping data
Storage coefficient	0.12		and surrounding well driller's logs
Pumping rate	90	gpm or	0.20 cfs
Pumping time	2880	hrs or	120 days

	R = 100 feet			R = 2640 feet			R = 4620 feet (Gooding Street,		
Time (hrs)	u	W(u)	z (feet)	u	W(u)	z (feet)	u	W(u)	z (feet)
0	--	--	0.00	--	--	0.00	--	--	0.00
120	1.9E-04	8.0	0.04	1.4E-01	1.553	0.01	4.1E-01	0.678	0.00
240	9.7E-05	8.7	0.04	6.8E-02	2.182	0.01	2.1E-01	1.193	0.00
360	6.5E-05	9.1	0.04	4.5E-02	2.565	0.01	1.4E-01	1.535	0.01
480	4.9E-05	9.4	0.04	3.4E-02	2.842	0.01	1.0E-01	1.790	0.01
600	3.9E-05	9.6	0.04	2.7E-02	3.059	0.01	8.3E-02	1.994	0.01
720	3.2E-05	9.8	0.04	2.3E-02	3.236	0.01	6.9E-02	2.163	0.01
840	2.8E-05	9.9	0.04	1.9E-02	3.387	0.02	5.9E-02	2.307	0.01
960	2.4E-05	10.0	0.04	1.7E-02	3.519	0.02	5.2E-02	2.434	0.01
1080	2.2E-05	10.2	0.05	1.5E-02	3.634	0.02	4.6E-02	2.546	0.01
1200	1.9E-05	10.3	0.05	1.4E-02	3.738	0.02	4.1E-02	2.647	0.01
1320	1.8E-05	10.4	0.05	1.2E-02	3.832	0.02	3.8E-02	2.738	0.01
1440	1.6E-05	10.5	0.05	1.1E-02	3.918	0.02	3.5E-02	2.822	0.01
1560	1.5E-05	10.5	0.05	1.0E-02	3.998	0.02	3.2E-02	2.900	0.01
1680	1.4E-05	10.6	0.05	9.7E-03	4.071	0.02	3.0E-02	2.971	0.01
1800	1.3E-05	10.7	0.05	9.0E-03	4.139	0.02	2.8E-02	3.039	0.01
1920	1.2E-05	10.7	0.05	8.5E-03	4.203	0.02	2.6E-02	3.101	0.01
2040	1.1E-05	10.8	0.05	8.0E-03	4.263	0.02	2.4E-02	3.160	0.01
2160	1.1E-05	10.9	0.05	7.5E-03	4.320	0.02	2.3E-02	3.216	0.01
2280	1.0E-05	10.9	0.05	7.1E-03	4.374	0.02	2.2E-02	3.269	0.01
2400	9.7E-06	11.0	0.05	6.8E-03	4.425	0.02	2.1E-02	3.319	0.01
2520	9.3E-06	11.0	0.05	6.4E-03	4.473	0.02	2.0E-02	3.367	0.02
2640	8.8E-06	11.1	0.05	6.2E-03	4.519	0.02	1.9E-02	3.413	0.02
2760	8.4E-06	11.1	0.05	5.9E-03	4.564	0.02	1.8E-02	3.456	0.02
2880	8.1E-06	11.1	0.05	5.6E-03	4.606	0.02	1.7E-02	3.498	0.02
3000	7.8E-06	11.2	0.05	5.4E-03	4.647	0.02	1.7E-02	3.538	0.02

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Drawdown versus time and radial distance from the pumping well

Q = 90gpm, T = 231000 gpd/ft, Sc = 0.12



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Livestock Confinement Operations

Water Requirements and Consumptive Use Worksheet

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COMPLETE BLUE HIGHLIGHTED SECTIONS ONLY

Prepared for: GUNNING DAIRY
1993 Animal Loading
Gooding, ID

Revision: 9801
Run Date: 11/30/98

Herd Information - User Input

Number of milking cows	473	Breed:	Large
Number of dry cows	0		
Number of other adult dry animals	0		
Calves at age:		**Heifers at age:**	
1 month	0	5 months	0
2 months	204	15 - 18 months	0
3 months	0	18 - 24 months	0
4 months	0		
Average body weight	1300 lbs	Nearest weather station	Jerome
Milk fat percentage	3.6 %	Number of milkings/day	2
Average days dry	60		
Annual milk yield per animal	25550 lbs/year	Check: Total herd size based on days dry	0
Percent dry matter in ration	90 %	HERD SIZE NOT CONSISTENT WITH DAYS DRY	

Lagoon Information - User Input

Lagoon Number	Top width	Top length	SS (h:v)	Max depth	Average depth factor	% days with water	Top Area	Bottom Area	Average Area
1	150	600	2	12	0.85	50	90000	72576	87386
2	75	400	2	10	0.85	50	30000	20900	28635
3	0	0	0	0	0	0	0	0	0
4	0	0	0	0	0	0	0	0	0
5	0	0	0	0	0	0	0	0	0
6	0	0	0	0	0	0	0	0	0
7	0	0	0	0	0	0	0	0	0
8	0	0	0	0	0	0	0	0	0
9	0	0	0	0	0	0	0	0	0
10	0	0	0	0	0	0	0	0	0
						TOTAL ACRES	2.75	2.15	2.66

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Facility Information - User Input

	Holding Pen 1	Holding Pen 2	
Holding pen active	1	0	(0 = not used or nonexistent)
Number of sprinklers in pen	0	48	
Average line pressure	40	60	psi
Sprinkler nozzle size - primary	5/32	5/32	inches
Sprinkler nozzle size - secondary	0	0	(enter 0 for single-nozzle sprinklers)
Daily operation time of sprinklers	80	90	minutes
Percent of days per year cows are washed	60	90	%

Number of free stalls	0	
Length of each free stall	0	feet
Width of each free stall	0	feet

Is the feeding area flushed to lagoon?	No
Is this housing area flushed to lagoon?	No

	Barn	Feeding	Housing
Flushing recycle rate	0	0	0

CLEANING VOLUME DEFAULTS (MODIFY IF MANUFACTURER VOLUMES ARE KNOWN)

Cleaning parlor floor	2000 gal	Cleaning pipeline	400 gal
Cleaning milkroom	200 gal	Cleaning equipment	200 gal
Cleaning bulk tank	400 gal	Other	gal

Land Application Information - User Input

Type of system	Wheel Lines
Predominant cropping	Alfalfa
Percent of waste water which goes to meet crop irrigation requirement	90 %

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Stockwater Component

Drinking Water Calculation for Lactating Cows

4% fat-corrected milk yield	24017 lbs/year
Daily average FCM yield	78.74 lbs/day
Daily average milk yield	83.77 lbs/day
Estimated DMI	48.89 lbs/day

METHOD 1: Kertz

Estimated total water intake (TWI)	299.9 lbs/day or
	36.0 gal/day
As-fed feed daily intake	54.3 as-fed lb/day
Water content of feed	5.43 lb/day in feed
Drinking water intake	294.5 lb/day or
	35.3 gal/day
Drinking water requirement for lactating cows	16702 gal/day
	18.7 ac-ft/year

METHOD 2: Holter and Urban
Regression equation with DMI, milk production, and dry matter %

Drinking water intake	105.8 liters/day
	27.9 gal/day
	13217 gal/day
	14.8 ac-ft/year

Maximum drinking water requirement: 18.7 ac-ft/year

Drinking Water Calculation for Dry Cows

Estimated DMI	24.7 lbs/day
Average drinking water intake	13 gal/day
Average drinking water requirement	0 gal/day
	0.0 ac-ft/year

Drinking Water Calculation for Replacement Herd (Calves and Heifers)

Age	GPD	Ac-Ft/year
1 mo	0	0.00
2 mo	398	0.45
3 mo	0	0.00
4 mo	0	0.00
5 mo	0	0.00
15-18 mo	0	0.00
18-24 mo	0	0.00
Drinking water requirement for replacement herd	398 gpd	0.45 ac-ft/year

TOTAL STOCKWATER COMPONENT 19.2 AC-FT/YEAR

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Commercial Component

Milking Parlor Water Usage Calculation

*Volume needed **per milking** in each parlor for:*

Cleaning parlor floor	2000 gal	Cleaning pipeline	400 gal
Cleaning milkroom	200 gal	Cleaning equipment	200 gal
Cleaning bulk tank	400 gal	Cleaning cows	236.5 gal

Total milking parlor volume	6873 gal/day
Second milking parlor volume	0 gal/day
Recycled water	0 gal/day
	7.70 ac-ft/year

Holding Pen Water Usage Calculation

	Pen 1	Pen 2	
Output of primary nozzle	4.49	5.5	gpm
Output of secondary nozzle	0	0	gpm
Holding pen flushing volume	3000	0	gal
Sprinkler volume	0	0	gal/day
Total holding pen volume	3000	0	gal/day
Recycled water	0	0	gal/day

3.36 ac-ft/year

Other Flushing Water Calculation

Daily volume needed for:

Feeding area flushing	0 gal/day
Housing area flushing	0 gal/day
Total other flushing volume	0 gal/day
Recycled water	0
	0.00 ac-ft/year

TOTAL COMMERCIAL COMPONENT 11.1 AC-FT/YEAR

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Consumptive Use Calculation

A. Lagoon Evaporation

Annual reference ET (Allen & Brockway , 1983)	4.51	feet	
Annual open water coeff (Kohler Nordenson Fox)	0.90		
Annual open water (lagoon) evaporation	4.06	feet	
Manual override: Input annual lagoon evap		feet	
Total lagoon water surface area at full	120000	sq. ft.	
Total lagoon bottom area	93476	sq. ft.	
Average surface area when water is present	58011	sq. ft. =	1.33 ac
Total lagoon evaporation	5.41	ac-ft/year	

B. Animal usage: milk, metabolism, and excretion loss

	Milking	Dry	
Waste excretion volume per cow	1.3	1.3	ft^3/day/1000lb
Water content	87.5	88.4	%
Total water volume in excrement	5232	0	gal/day
Percent of excrement flushed to lagoons	15	% (based on areas which are flushed)	
Consumptive use (evap.) of water in excrement	85	%	
Consumptive use (evap.) volume	4447	gal/day	
Excrement c.u. attributable to drinking water	4367	gal/day	
Total milk production - assume 100% leaves site	39623	lbs/day or	4751 gal/day
Water content of milk	4133	gal/day	
Water content attributable to drinking water	4059	gal/day	
Water use for animal metabolism	7644	gal/day	
Metabolism water attributable to drinking water	7506	gal/day	
Consumptive use - replacement herd (100%)	398	gal/day	
Total animal consumptive use from drinking water	16329	gal/day or	18.3 ac-ft/year
Percent of drinking water intake	97.8	%	

C. Parlor/holding pen cleanup

Average sprinkler washing system evap loss	2	%	
Free stall total area	0	sq. ft. =	0.00 acres
Length of time free stall concrete is wet	1	hr/day	
Average evaporation from wet concrete	0.15	in./day	
Sprinkler system loss volume	0.00	ac-ft/year	
Free stall evaporation volume	0.00	ac-ft/year	
Total cleanup loss	0.00	ac-ft/year	

D. Land application site

Crop evapotranspiration	3.29	ac-ft/ac/year
Irrigation diversion volume	4.38	ac-ft/ac/year
System efficiency	75	%
Waste water volume to lagoons	11.9	ac-ft/year
Waste water volume available for land application	6.5	ac-ft/year
Total crop consumptive use of waste water	4.4	ac-ft/year

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Summary

Drinking Water

Milking herd	18.7
Non-milking herd (dry cows)	0.0
Replacement herd (calves and heifers)	0.4
Total drinking water volume	19.2 ac-ft/year

Commercial

Milking parlor	7.70
Holding pen and cleanup	3.4
Other flushing water	0.00
Total commercial volume	11.1 ac-ft/year
TOTAL DIVERSION VOLUME REQUIREMENT	30.2 AC-FT/YR

Consumptive Use

Lagoon evaporation	5.41
Animal milk, excretion, & metabolism	18.3
Parlor and holding pen cleanup	0.00
Crop consumptive use on iand application	4.4
Total consumptive use	28.1 ac-ft/year
Percent of diversion volume consumed	93.0 %
Annual crop consumptive use - IDWR allowable	3.0 afa
Equivalent irrigated acres	9.4 acres
Diversion volume to acres conversion factor	**3.23 ac-ft/ac**

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Livestock Confinement Operations

Water Requirements and Consumptive Use Worksheet

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Prepared for: GUNNING DAIRY
1998 Animal Loading
Gooding, ID

Revision: 9801
Run Date: 11/30/98

Herd Information - User Input

Number of milking cows	800	Breed:	Large
Number of dry cows	160		
Number of other adult dry animals	0		
Calves at age:		**Heifers at age:**	
1 month	0	5 months	0
2 months	200	15 - 18 months	0
3 months	0	18 - 24 months	0
4 months	0		
Average body weight	1300 lbs	Nearest weather station	Jerome
Milk fat percentage	3.6 %	Number of milkings/day	2
Average days dry	60		
Annual milk yield per animal	25550 lbs/year	Check: Total herd size based on days dry	973
Percent dry matter in ration	90 %	HERD SIZE OK	

Lagoon Information - User Input

Lagoon Number	Top width	Top length	SS (h:v)	Max depth	Average depth factor	% days with water	Top Area	Bottom Area	Average Area
1	250	800	2	15	0.85	50	200000	169400	195410
2	100	500	2	12	0.85	50	50000	36176	47926
3	0	0	0	0	0	0	0	0	0
4	0	0	0	0	0	0	0	0	0
5	0	0	0	0	0	0	0	0	0
6	0	0	0	0	0	0	0	0	0
7	0	0	0	0	0	0	0	0	0
8	0	0	0	0	0	0	0	0	0
9	0	0	0	0	0	0	0	0	0
10	0	0	0	0	0	0	0	0	0
						TOTAL ACRES	5.74	4.72	5.59

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Facility Information - User Input

	Holding Pen 1	Holding Pen 2	
Holding pen active	1	0	(0 = not used or nonexistent)
Number of sprinklers in pen	70	48	
Average line pressure	40	60	psi
Sprinkler nozzle size - primary	5/32	5/32	inches
Sprinkler nozzle size - secondary	0	0	(enter 0 for single-nozzle sprinklers)
Daily operation time of sprinklers	80	90	minutes
Percent of days per year cows are washed	60	90	%

Number of free stalls	0	
Length of each free stall	0	feet
Width of each free stall	0	feet

Is the feeding area flushed to lagoon?	No
Is this housing area flushed to lagoon?	No

	Barn	Feeding	Housing
Flushing recycle rate	0	0	0

CLEANING VOLUME DEFAULTS (MODIFY IF MANUFACTURER VOLUMES ARE KNOWN)

Cleaning parlor floor	2000	gal	Cleaning pipeline	400	gal
Cleaning milkroom	200	gal	Cleaning equipment	200	gal
Cleaning bulk tank	400	gal	Other		gal

Land Application Information - User Input

Type of system	Wheel Lines
Predominant cropping	Alfalfa
Percent of waste water which goes to meet crop irrigation requirement	90 %

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Stockwater Component

Drinking Water Calculation for Lactating Cows

4% fat-corrected milk yield	24017 lbs/year
Daily average FCM yield	78.74 lbs/day
Daily average milk yield	83.77 lbs/day
Estimated DMI	48.89 lbs/day

METHOD 1: Kertz

Estimated total water intake (TWI)	299.9 lbs/day or
	36.0 gal/day
As-fed feed daily intake	54.3 as-fed lb/day
Water content of feed	5.43 lb/day in feed
Drinking water intake	294.5 lb/day or
	35.3 gal/day
Drinking water requirement for lactating cows	28248 gal/day
	31.6 ac-ft/year

METHOD 2: Holter and Urban Regression equation with DMI, milk production, and dry matter %

Drinking water intake	105.8 liters/day
	27.9 gal/day
	22355 gal/day
	25.0 ac-ft/year

Maximum drinking water requirement: 31.6 ac-ft/year

Drinking Water Calculation for Dry Cows

Estimated DMI	24.7 lbs/day
Average drinking water intake	13 gal/day
Average drinking water requirement	2080 gal/day
	2.3 ac-ft/year

Drinking Water Calculation for Replacement Herd (Calves and Heifers)

Age	GPD	Ac-Ft/year
1 mo	0	0.00
2 mo	390	0.44
3 mo	0	0.00
4 mo	0	0.00
5 mo	0	0.00
15-18 mo	0	0.00
18-24 mo	0	0.00
Drinking water requirement for replacement herd	390 gpd	0.44 ac-ft/year

TOTAL STOCKWATER COMPONENT 34.4 AC-FT/YEAR

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Commercial Component

Milking Parlor Water Usage Calculation

*Volume needed **per milking** in each parlor for:*

Cleaning parlor floor	2000 gal	Cleaning pipeline	400 gal
Cleaning milkroom	200 gal	Cleaning equipment	200 gal
Cleaning bulk tank	400 gal	Cleaning cows	400 gal

Total milking parlor volume	7200 gal/day
Second milking parlor volume	0 gal/day
Recycled water	0 gal/day
	8.07 ac-ft/year

Holding Pen Water Usage Calculation

	Pen 1	Pen 2	
Output of primary nozzle	4.49	5.5	gpm
Output of secondary nozzle	0	0	gpm
Holding pen flushing volume	3000	0	gal
Sprinkler volume	15086	0	gal/day
Total holding pen volume	18086	0	gal/day
Recycled water	0	0	gal/day

20.26 ac-ft/year

Other Flushing Water Calculation

Daily volume needed for:

Feeding area flushing	0 gal/day
Housing area flushing	0 gal/day
Total other flushing volume	0 gal/day
Recycled water	0
	0.00 ac-ft/year

TOTAL COMMERCIAL COMPONENT 28.3 AC-FT/YEAR

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Consumptive Use Calculation

A. Lagoon Evaporation

Annual reference ET (Allen & Brockway , 1983)	4.51	feet	
Annual open water coeff (Kohler Nordenson Fox)	0.90		
Annual open water (lagoon) evaporation	4.06	feet	
Manual override: Input annual lagoon evap		feet	
Total lagoon water surface area at full	250000	sq. ft.	
Total lagoon bottom area	205576	sq. ft.	
Average surface area when water is present	121668	sq. ft. =	2.79 ac
Total lagoon evaporation	11.35	ac-ft/year	

B. Animal usage: milk, metabolism, and excretion loss

	Milking	Dry	
Waste excretion volume per cow	1.3	1.3	ft^3/day/1000lb
Water content	87.5	88.4	%
Total water volume in excrement	8849	1788	gal/day
Percent of excrement flushed to lagoons	15	% (based on areas which are flushed)	
Consumptive use (evap.) of water in excrement	85	%	
Consumptive use (evap.) volume	9041	gal/day	
Excrement c.u. attributable to drinking water	8878	gal/day	
Total milk production - assume 100% leaves site	67016	lbs/day or	8036 gal/day
Water content of milk	6991	gal/day	
Water content attributable to drinking water	6864	gal/day	
Water use for animal metabolism	13221	gal/day	
Metabolism water attributable to drinking water	12982	gal/day	
Consumptive use - replacement herd (100%)	390	gal/day	
Total animal consumptive use from drinking water	29114	gal/day or	32.6 ac-ft/year
Percent of drinking water intake	96.0	%	

C. Parlor/holding pen cleanup

Average sprinkler washing system evap loss	2	%	
Free stall total area	0	sq. ft. =	0.00 acres
Length of time free stall concrete is wet	1	hr/day	
Average evaporation from wet concrete	0.15	in./day	
Sprinkler system loss volume	0.34	ac-ft/year	
Free stall evaporation volume	0.00	ac-ft/year	
Total cleanup loss	0.34	ac-ft/year	

D. Land application site

Crop evapotranspiration	3.29	ac-ft/ac/year
Irrigation diversion volume	4.38	ac-ft/ac/year
System efficiency	75	%
Waste water volume to lagoons	25.8	ac-ft/year
Waste water volume available for land application	18.4	ac-ft/year
Total crop consumptive use of waste water	12.4	ac-ft/year

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Summary

Drinking Water

Milking herd	31.6
Non-milking herd (dry cows)	2.3
Replacement herd (calves and heifers)	0.4
Total drinking water volume	34.4 ac-ft/year

Commercial

Milking parlor	8.07
Holding pen and cleanup	20.3
Other flushing water	0.00
Total commercial volume	28.3 ac-ft/year
TOTAL DIVERSION VOLUME REQUIREMENT	62.7 AC-FT/YR

Consumptive Use

Lagoon evaporation	11.35
Animal milk, excretion, & metabolism	32.6
Parlor and holding pen cleanup	0.34
Crop consumptive use on land application	12.4
Total consumptive use	56.7 ac-ft/year
Percent of diversion volume consumed	90.4 %
Annual crop consumptive use - IDWR allowable	3.0 afa
Equivalent irrigated acres	18.9 acres
Diversion volume to acres conversion factor	**3.32 ac-ft/ac**

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Department of Water Resources
APPLICANT'S
Exhibit 11
Date Admitted 12/10/98

1998 MAR -2 PM 2:44
DISTRICT COURT - SRBA
TWIN FALLS CO., IDAHO
FILED

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

In Re SRBA)
)
Case No. 39576)
)

ORDER OF PARTIAL DECREE

For Water Right 36-10815

On January 13, 1998, a ***Special Master's Report and Recommendation*** was filed for the above water right. No Challenges were filed to the ***Special Master's Report and Recommendation*** and the time for filing Challenges has now expired.

Pursuant to I.R.C.P. 53(e)(2) and ***SRBA Administrative Order 1***, Section 13f, this court has reviewed the Findings of Fact and Conclusions of Law contained in the ***Special Master's Report*** and wholly adopts them as its own.

Therefore, IT IS ORDERED that water right 36-10815 is hereby **decreed** as set forth in the attached ***Partial Decree Pursuant to I.R.C.P. 54(b)***.

DATED March 2, 1998.

DANIEL C. HURLBUTT, JR.
Presiding Judge
Snake River Basin Adjudication

MICROFILMED
NOV 12 1999

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

In Re SRBA)
)
Case No. 39576)
)

PARTIAL DECREE PURSUANT TO
I.R.C.P. 54(b) FOR

Water Right 36-10815

1998 MAR -2 PM 2:44

DISTRICT COURT - SRBA
TWIN FALLS CO., IDAHO

FILED _____

NAME & ADDRESS: F F GUNNING
IRENE GUNNING
SUSAN GUNNING
G C GUNNING
PO BOX 821
WENDELL ID 83355

SOURCE: GROUNDWATER

QUANTITY: 0.04 CFS

THE QUANTITY OF WATER UNDER THIS RIGHT SHALL NOT EXCEED 13,000 GALLONS PER DAY.

PRIORITY DATE: 01/01/1930

POINT OF DIVERSION: T07S R15E S34 SWNENE Within GOODING County

PURPOSE AND PERIOD OF USE:	PURPOSE OF USE	PERIOD OF USE	QUANTITY
	DOMESTIC 1 HOME	01-01 12-31	0.04 CFS

PLACE OF USE: DOMESTIC Within GOODING County
T07S R15E S34 NENE

OTHER PROVISIONS NECESSARY FOR DEFINITION OR ADMINISTRATION OF THIS WATER RIGHT:

THE QUANTITY OF WATER DECREED FOR THIS WATER RIGHT IS NOT A DETERMINATION OF HISTORICAL BENEFICIAL USE.

RULE 54(b) CERTIFICATE

With respect to the issues determined by the above judgment or order, it is hereby CERTIFIED, in accordance with Rule 54(b), I.R.C.P., that the court has determined that there is no just reason for delay of the entry of a final judgment and that the court has and does hereby direct that the above judgment or order shall be a final judgment upon which execution may issue and an appeal may be taken as provided by the Idaho Appellate Rules.

DANIEL C. HURLBUTT, JR.
PRESIDING JUDGE
Snake River Basin Adjudication

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NOV 12 1999

1998 MAR 02 PM 02:00
DISTRICT COURT - SRBA
TWIN FALLS CO., IDAHO
FILED _____

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

In Re SRBA)
)
Case No. 39576)
)

CERTIFICATE OF MAILING

Water Right(s): 36-10815

CERTIFICATE OF MAILING

I certify that a true and correct copy of the PARTIAL DECREE PURSUANT TO I.R.C.P. 54(b) for WATER RIGHT 36-10815 was mailed on March 02, 1998, with sufficient first-class postage prepaid to the following:

DIRECTOR OF IDWR
PO BOX 83720
BOISE, ID 83720-0098

STATE OF IDAHO
Represented by:
CLIVE STRONG
OFFICE OF ATTORNEY GENERAL
STATE OF IDAHO
PO BOX 44449
BOISE, ID 83711-4449
Phone: 208-334-2400

F.F. & IRENE GUNNING
Represented by:
PATRICK D. BROWN
PO BOX 389
TWIN FALLS, ID 83303
Phone: 208-734-7510

DAIRY WEST ASSOCIATES
P O BOX 95
HAGERMAN, ID 83332

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NOV 12 1999

CERTIFICATE OF MAILING

DIANA DELANEY
Chief Deputy Clerk

03/02/98

Department of Water Resources
APPLICANT'S
Exhibit 12
Date Admitted 12/10/98

1998 JUL 20 AM 9:32
DISTRICT COURT - SRBA
TWIN FALLS CO., IDAHO
FILED

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

In Re SRBA)
)
Case No. 39576)
)

ORDER OF PARTIAL DECREE

For Water Right 36-15511

On April 8, 1998, a ***Special Master's Report and Recommendation*** was filed for the above water right. No Challenges were filed to the ***Special Master's Report and Recommendation*** and the time for filing Challenges has now expired.

Pursuant to I.R.C.P. 53(e)(2) and ***SRBA Administrative Order 1***, Section 13f, this court has reviewed the Findings of Fact and Conclusions of Law contained in the ***Special Master's Report*** and wholly adopts them as its own.

Therefore, IT IS ORDERED that water right 36-15511 is hereby **decreed** as set forth in the attached ***Partial Decree Pursuant to I.R.C.P. 54(b).***

DATED JUL 20 1998.

DANIEL C. HURLBUTT, JR.
Presiding Judge
Snake River Basin Adjudication

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NOV 12 1999

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

In Re SRBA)
)
Case No. 39576)
)

PARTIAL DECREE PURSUANT TO
I.R.C.P. 54(b) FOR

Water Right 36-15511

1999 JUL 20 AM 9:32

DISTRICT COURT - SRBA
TWIN FALLS CO., IDAHO

FILED

NAME AND ADDRESS: F.F. GUNNING
G.C. GUNNING
IRENE GUNNING
SUSAN GUNNING
P O BOX 821
WENDELL, ID 83355

SOURCE: GROUNDWATER

QUANTITY: 0.19 CFS
20.50 AFY

PRIORITY DATE: 03/24/1963

POINT OF DIVERSION: T7S R15E S34 SWNENE Within Gooding County

PURPOSE AND PERIOD OF USE:

PURPOSE OF USE	PERIOD OF USE	QUANTITY
Stockwater	01-01 TO 12-31	0.15 CFS 16.00 AFY
Commercial	01-01 TO 12-31	0.04 CFS 4.50 AFY

PLACE OF USE:

Stockwater T7S R15E S34	NENE	Within Gooding County
Commercial T7S R15E S34	NENE	Within Gooding County

RULE 54(b) CERTIFICATE

With respect to the issues determined by the above judgment or order, it is hereby CERTIFIED, in accordance with Rule 54(b), I.R.C.P., that the court has determined that there is no just reason for delay of the entry of a final judgment and that the court has and does hereby direct that the above judgment or order shall be a final judgment upon which execution may issue and an appeal may be taken as provided by the Idaho Appellate Rules.

Daniel C. Hurlbutt, Jr.
Presiding Judge
Snake River Basin Adjudication

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NOV 12 1999

1998 JUL 20 PM 02:00
DISTRICT COURT - SRBA
TWIN FALLS CO., IDAHO
FILED _____

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

In Re SRBA)
)
Case No. 39576)
)

CERTIFICATE OF MAILING

Water Right(s): 36-15511

CERTIFICATE OF MAILING

I certify that a true and correct copy of the PARTIAL DECREE PURSUANT TO I.R.C.P. 54(b) for WATER RIGHT 36-15511 was mailed on July 20, 1998, with sufficient first-class postage prepaid to the following:

DIRECTOR OF IDWR
PO BOX 83720
BOISE, ID 83720-0098

F.F. GUNNING
G.C. GUNNING
IRENE GUNNING
SUSAN GUNNING
P O BOX 821
WENDELL, ID 83355

DIANA DELANEY
Chief Deputy Clerk

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NOV 12 1999

FREDERICKSEN, WILLIAMS & MESERVY
Attorneys at Law
117 South Adams Street
P. O. Box 168
Jerome, Idaho 83338
Telephone: (208) 324-2303
Attorneys for Plaintiffs

Department of Water Resources
APPLICANT'S
Exhibit 15
Date Admitted 12/10/98

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

JAMES D. NAFZIGER and PATTIE NAFZIGER, husband and wife, Plaintiffs, vs. GOODING COUNTY, A POLITICAL SUBDIVISION OF THE STATE OF IDAHO AND ITS COMMISSIONERS: ROBERT E. TUPPER, DON C. MORROW and BOB J. MUFFLEY, Defendants.	Case No. 21610 **JUDGMENT**

* * * * * * * * * * * * * * * * * * *

Pursuant to Order of the Court dated the 15th day of October, 1991 and no objection having timely been made to Plaintiff's Memorandum of Costs and Disbursements and good cause appearing therefore,

IT IS THE ORDER OF THE COURT AND THIS DOES ORDER that:

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The Plaintiffs are entitled to Judgment against the Defendants in and for the sum of $2,384.00, said sum to bear interest as allowed by law.

SO ORDERED, ADJUDGED, AND DECREED this 8th day of November, 1991.

THOMAS R. CUSHMAN

THOMAS R. CUSHMAN
JUDGE

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NOV 12 1999

FREDERICKSEN, WILLIAMS & MESERVY
Attorneys at Law
117 South Adams Street
P. O. Box 168
Jerome, Idaho 83338
Telephone: (208) 324-2303
Attorneys for Plaintiffs

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

JAMES D. NAFZIGER and PATTIE NAFZIGER, husband and wife,	)	
Plaintiffs,	)	Case No. 21610
vs.	)	**ORDER**
GOODING COUNTY, A POLITICAL SUBDIVISION OF THE STATE OF IDAHO AND ITS COMMISSIONERS: ROBERT E. TUPPER, DON C. MORROW and BOB J. MUFFLEY,	)	
Defendants.	)	

* * * * * * * * * * * * * * * * * * * *

This matter having come before the Court on the Plaintiff's Motion for Summary Judgment, the 7th day of October, 1991. The Plaintiffs being present and represented by their counsel, James C. Meservy of the firm Fredericksen, Williams & Meservy; Lynn Nelson, Prosecuting Attorney for Gooding County being present and representing the Defendants; the Court having considered the arguments of counsel, the

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files and records herein, and the Court having reviewed and having taken judicial notice of the 1975 Gooding County Comprehensive Plan and the 1985 Gooding County Comprehensive Plan,

IT IS THE ORDER OF THIS COURT AND THIS DOES ORDER that:

Pursuant to Love v. Board of County Commissioners of Bingham County, 105 Idaho 158, 670 P.2d 471 (1983), this matter is remanded to the Gooding County Commissioners to properly enter findings of facts and conclusions of law consistent with Love. Further, and by way of dicta and for the purpose of guiding the Defendants, from the records it is revealed (and agreed) that the notice provisions of Idaho Code §67-6511 would apply to the Plaintiffs. Should Gooding County wish to proceed in the enforcement of the ordinance as it applies to these Plaintiffs, the Court would expect Gooding County to comply and to have complied with all notice requirements required by law. In addition it would appear to the Court that the 1982 zoning ordinance to the extent it automatically zoned as residential all preplatted subdivisions in the County would consititute spot zoning. It does not appear that the reclassification of all preplatted properties was the result of a change in the properties use such that the use had become so prevasive that the character of the property had actually changed from agricultural to residential. It does not appear that the rezoning of all preplatted residential subdivisions is consistent with the comprehensive

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plan, the general welfare, or the objectives of the ordinance or the Comprehensive Plan. Further, it appears that the 1982 ordinance contrevenes and opposes the stated purposes and policies of the 1975 Comprehensive Plan as specifically stated in the plan. Further, the 1985 Plan is contrary to the 1982 ordianance. The Plan stated goals being to protect agricultural property and to promote the agricultural use of all agricultural property. Further, it appears to the Court that the proposed 1991 zoning ordinance also contravenes and opposes the stated goals and purposes of the 1985 Comprehensive Plan.

Therefore, Plaintiff's Motion For Summary Judgment is granted to the extent indicated herein. Further, the Court finds that the issues raised by Plaintiff's were straightforward and that the Plaintiffs took reasonable steps to have their concerns raised before the Planning and Zoning Commission and later the Gooding County Commissioners and that the Defendants, Gooding County, have unreasonably defended the claims of the Plaintiffs, and therefore, the Plaintiffs are awarded their fees and costs. Plaintiff's counsel is instructed to submit a memorandum of fees and costs as provided by the Rules of Civil Procedure.

IT IS SO ORDERED, ADJUDGED AND DECREED this 15 day of Oct, 1991.

/s/ Thomas R. Cushman
HONORABLE THOMAS R. CUSHMAN

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120 - Idaho Dairymen vs. Gooding Co.

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

IDAHO DAIRYMEN'S ASSOCIATION INC., et al.,

Plaintiffs,

vs.

WIN HENSLEE, MICHAEL ARKOOSH, and TOM FAULKNER, in their official capacities as Gooding County Commissioners; et al.,

Defendants.

CASE NO. CV 97-430

OPINION AND ORDER

THESE MOTIONS came before the above-entitled court at Burley, Cassia County, Idaho, on April 10, 1998, with the Honorable George Granata Jr., District Judge, presiding. Scott L. Campbell, Jeffery J. Ventrella, and Robert E. Williams, Attorneys at Law, represented the plaintiffs; Donald J. Farley and Philip A. Brown, Attorneys at Law, represented the defendants. The court heard oral argument on the parties' motions, which included: Plaintiffs' Motion for Partial Summary Judgment; Defendants' Motion for Summary Judgment; Plaintiffs' Motion to Strike Portions of Defendants' Brief;

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Plaintiffs' Objection and Motion to Strike Re: Rule 56 Affidavits; Plaintiffs' Objection and Motion to Strike Affidavits of Dr. Dwaine S. Bundy and Bradley G. Gilmore; Plaintiffs' Request to Take Judicial Notice; and Plaintiffs' Motion to Deem Admitted. Thereafter, the matters were taken under advisement. Being advised in the law and in the premises, the court issues the following Opinion and Order:

STATEMENT OF FACTS

On February 10, 1997, the Board of County Commissioners of Gooding County enacted Gooding County Ordinance 62. On February 26, 1997, the ordinance went into effect. Prior to the passage of Ordinance 62, two public hearings were held on November 21, 1996, and on February 6, 1997, at which time the general public commented on the proposed ordinance.

Gooding County Ordinance 62, on page one (1), paragraph one (1), sets forth the various purposes for the ordinance, such as to define and establish "Confined Animal Feeding Operations" (CAFO's); to provide for existing CAFO's; to provide the criteria and the procedure to obtain "siting permits"; to set forth the criteria for "occupancy certificates," etc.

OPINION

I. INTRODUCTION

The parties to this action have brought numerous motions, as set forth above. The plaintiffs have preliminarily raised issues relating to the admissibility of certain affidavits and portions of the defendants' Memorandum in Support of Defendants' Motion for

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Summary Judgment and Response to Plaintiffs' Motion for Partial Summary Judgment. In order for the court to appropriately address the parties respective summary judgment motions, this court will first make a determination as to what portions, if any, of the affidavits submitted on behalf of the defendants should be stricken. The court will thereafter address the plaintiffs' Motion to Strike Portions of the Defendants' Brief. The court will then determine whether to grant the defendants' Request to Take Judicial Notice of the Final Order entered by the Idaho Department of Water Resources, in the matter of Application for Transfer Nos. 4722 and 4723 of Water Right No. 37-07575, in the name of North Valley Milk, Inc., dated September 15, 1997.[1] After making the above preliminary determinations, the court will address the parties' respective summary judgment motions.

II. PLAINTIFFS' OBJECTIONS AND MOTIONS TO STRIKE

The plaintiffs have filed three separate motions to strike. The first motion asks the court to strike certain statements found in the defendants' brief in support of their summary judgment motion. The second and third motions move the court to exercise its discretion, as outlined in I.R.C.P. 56(e), to strike four of

---

[1]The plaintiffs made an additional motion to deem admitted factual matters set forth in their Statement of Material Facts filed on January 27, 1998. The defendants submitted a memorandum in response to the plaintiffs' motion in which they conceded that "for the limited purpose of summary judgment, the alleged facts set forth in plaintiffs' Statement of Material Facts as to Which There is No Dispute, may be admitted." Due to the parties' consensus relating to the admissibility of such facts, this court concludes that it is proper to use them in its determination of the issues currently before the court.

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the affidavits used by the defendants in support of their Motion for Summary Judgment. The court will address each request in turn.

A. Plaintiffs' Motion to Strike Portions of the Defendants' Brief

In evaluating this motion, the controlling issue is whether a party, moving for summary judgment, must limit his or her argument to information which conforms to I.R.C.P. 56. Rule 56 has been interpreted to require an affiant to assert only information for which he or she has personal knowledge, which is admissible in evidence, and for which the party's counsel is competent to testify. See Hecla Mining Co. v. Star-Morning Mining Co., 122 Idaho 778, 839 P.2d 1192 (1992).

The plaintiffs cite to several Idaho cases in support of this motion to strike. State v. Shama Resources Ltd. Partnership, 127 Idaho 267, 899 P.2d 977 (1995) is representative of these cases. In Shama, the Idaho Supreme Court determined that, "[t]he requirements of 56(e) are not satisfied by an affidavit that is conclusory, based on hearsay, and not supported by personal knowledge . . . [o]nly material contained in affidavits or depositions that is based upon personal knowledge that is admissible at trial will be considered by this court." Id. at 271.

The plaintiffs also cite an Eleventh Circuit case in support of their argument, as follows:

> Statements of fact in a party's brief, not in proper affidavit form, cannot be considered in determining if a genuine issue of material fact exists. Briefs serve an entirely different function than affidavits, even though signed by a member of the Bar under the constraint of legal ethics. [The plaintiff] should have presented an affidavit from his attorney . . . .

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Helmich v. Kennedy, 796 F.2d 1141, 1143 (11th Cir. 1986).

Finally, the plaintiffs cite the following language from another federal case in support of their Motion to Strike: "[t]he unverified representations of counsel in a brief are not a proper part of the record for consideration on a motion for summary judgment." Prince v. Sun Ship Building and Docking Corp. 86 FRD 106, 107 (E.D.Penn. 1980).

While the above cases represent good law, this court finds more persuasive the defendants' argument that since memoranda are lodged only with the court, it will be for the court to decide how much weight, if any, to give the arguments contained therein. This court therefore concludes that the statements made by counsel in a brief are not controlled by the requirements of Rule 56. Thus, the legitimacy and weight of each party's arguments are to be determined by the court, which is well able to consider or disregard arguments and representations made by counsel in his or her briefs.

B. Plaintiffs' Objections and

Motion to Strike Affidavits

The defendants, in support of their Motion for Summary Judgment, have filed the affidavits of Charles Lenkner, Darcy Thornborrow, Dr. Dwaine S. Bundy and Bradley G. Gilmore. The plaintiffs claim that each of these affidavits is deficient in either content, foundation, credibility, or a combination of these factors and, as such, should be stricken pursuant to Rule 56(e). I.R.C.P. 56(e) reads:

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> Supporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein . . . [w]hen a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of that party's pleadings, but the party's response, by affidavits or otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. If the party does not so respond, summary judgment, if appropriate, shall be entered against the party.

Thus, in order for an affidavit to pass muster under Rule 56(e), the moving party must show that the statements made therein are: (1) based upon personal knowledge; (2) setting forth "such facts as would be admissible in evidence"; and (3) made by one who shall show affirmatively that the affiant is "competent to testify to the matters stated therein." Id. A further requirement, as expressed in various Idaho court opinions, requires that the statements not be "insufficient and conclusory in nature." Shama, 127 Idaho at 271, 899 P.2d at 981.

The issue presented before this court, as to these objections and motions to strike affidavits, is whether the affidavits complained of meet the threshold tests of admissibility, as set forth above. The court will now consider individually the admissibility of each affidavit in question.

1. Affidavit of Charles Lenkner

The plaintiffs base their objection and motion to strike Dr. Lenkner's affidavit on four grounds. First, that the affidavit suffers from a lack of factual background and that Dr. Lenkner "sets forth no facts establishing any foundation for his assertions." Plaintiffs' Motion to Strike Rule 56 Affidavits at 6.

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If the affidavit meets the three foundational requirements of Rule 56(e), his or her affidavit would be admissible.

Second, the plaintiffs argue that Dr. Lenkner is not qualified to give an opinion as to matters of the transmission and effects of animal waste on the surrounding human population. Dr. Lenkner received his doctor's degree in Veterinary Medicine from Washington State University in 1972. He has since worked for 25 years as a veterinarian in rural settings. Supplemental Affidavit of Charles Lenkner at 2. In addition to his education, however, Dr. Lenkner testifies that he has been, "involved in the gathering of information, research and data concerning confined animal feeding operations" and has, "knowledge of the various physiological and environmental affects confined animal feeding operations may have." Affidavit of Charles Lenkner at 2. Based upon the education and the acquired knowledge of Dr. Lenkner in this area, the court determines that Dr. Lenkner meets the threshold requirements of Rule 56 and is qualified to testify as to the effects of animal waste on the human population.

Finally, the plaintiffs argue that Dr. Lenkner's affidavit is irrelevant because it does not cover the whole gamut of issues contested in this case. Under this argument, the only experts qualified to submit affidavits in support of a summary judgment motion would be those with testimony that conforms to the requirements of Rule 56(e) and that covers all of the issues and arguments propounded by a moving party. This is an impossibly high standard. If the court were to accept this argument, it would

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become very difficult for either party to find anyone with enough experience, knowledge, or education to submit a proper affidavit. The court, therefore, concludes that the affidavit of Dr. Lenkner is admissible. The court will deny the portion of the plaintiffs' objections and motion to strike that relate to Dr. Lenkner's affidavit.

2. Affidavit of Darcy Thornborrow

The plaintiffs proffer three arguments that Ms. Thornborrow's affidavit should be stricken as to the defendants' Motion for Summary Judgment. Their first argument is similar to the second argument found in the Lenkner portion of the brief, i.e., that the defendants have failed to show that Ms. Thornborrow is qualified to make the statements that she has made in support of the defendants' Motion for Summary Judgment, either because she is not competent to so testify or because her statements are based upon hearsay. These two claims will be examined separately.

The first issue is whether Ms. Thornborrow is competent to make the statements contained in her affidavit. In contrast to Dr. Lenkner, Ms. Thornborrow does not set forth any educational background that would qualify her under Rule 56. She relies wholly on her assertion that, "[she has] been involved in the extensive gathering of information, research and data concerning confined animal feeding operations" and "[she has] knowledge of the various psychological and environmental affects confined animal feeding operations might have." Affidavit of Darcy Thornborrow at 2. The substance of Ms. Thornborrow's affidavit covers the fields of

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hydrology, psychology, and environmental engineering, among others. Without any stated educational qualifications or research background, the affiant's statements of involvement with information gathering and knowledge acquisition are conclusory and reflect an insufficient foundation to testify as to the matters contained therein. While Ms. Thornborrow may, indeed, have such qualifications, they are not set forth in the affidavit.

Since the court will grant the plaintiffs' objection and motion to strike Ms. Thornborrow's affidavit, the court will not address the remaining arguments raised by the plaintiffs. The court will, therefore, not consider Ms. Thornborrow's affidavit in its evaluation of the defendant's Motion for Summary Judgment.

3. Affidavit of Dwaine S. Bundy, Ph.D., P.E.

The plaintiffs also move to strike the affidavit of Dr. Dwaine S. Bundy. They base this portion of their motion upon two arguments. First, that any affidavit filed in this matter by the defendants must address Ordinance 62 in its entirety. Since the court has addressed this issue and found it unpersuasive, there is no need to review it again here.

Second, the plaintiffs argue that Dr. Bundy's affidavit suffers from ambiguity, particularly as to Paragraph 5 of his affidavit, wherein he stated, "[o]dor is reduced downwind from a source . . . [d]epending upon the size and strength of the odor source, most of the odors begin to reduce within a few hundred feet of the source." Affidavit of Dwaine S. Bundy, Ph.D., P.E. at 3. The plaintiffs claim that Dr. Bundy's references to the size and

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strength of an odor source is too nonspecific and ambiguous to be helpful. This argument goes to weight, not admissibility. It is within the court's discretion to give the affidavit the weight it deems appropriate. The strength of Dr. Bundy's statements can and will be tested by the court upon its consideration of the defendants' Motion for Summary Judgment. Rule 56(e) seeks only to keep out those affidavits that cannot meet the threshold requirements contained within the rule itself.

The court concludes that Dr. Bundy's affidavit is sufficient under Rule 56(e) and, as a result, will deny the plaintiffs' objection and motion that it be stricken from consideration as to the defendants' Motion for Summary Judgment.

4. Affidavit of Bradley S. Gilmore

The plaintiffs, in their objection and motion to strike the affidavit of Bradley S. Gilmore, base this portion of their motion on four arguments. First, that Mr. Gilmore has failed to show adequate competency for his statements. More specifically, the plaintiffs claim that just because Mr. Gilmore holds a Bachelor's Degree in Geological Engineering from Colorado School of Mines, coupled with his experience the last eight years as a research engineer and an environmental coordinator for the City of Twin Falls, Idaho, is not enough to make him an expert in the fields of hydrology, hydraulic engineering, or animal husbandry. Even though the extent of Mr. Gilmore's duties as a research engineer and an environmental coordinator are not specifically set forth, the court determines that Mr. Gilmore has nevertheless demonstrated his

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competence to testify as an expert, as reflected in his affidavit. In addition, as environmental coordinator in a rural community, similar to the one here in question, Mr. Gilmore has been faced with issues such as those dealt with in his affidavit on a consistent basis. The court therefore decides that Mr. Gilmore has illustrated his competence in the areas for which he has testified in his affidavit, which are admissible and relevant to the motion before the court.

Second, the plaintiffs claim that Mr. Gilmore's affidavit actually tends to prove that methods other than Ordinance 62 would be as effective or more effective. The plaintiffs have not explained how this contravenes the requirements of Rule 56(e). This argument goes to weight, not admissibility.

Third, the plaintiffs claim that Mr. Gilmore's affidavit is not based upon any scientific evidence. Again, as long as an affiant's testimony meets the threshold requirements of Rule 56(e), it is admissible. In fact, the substance of this argument is that the plaintiffs' expert witness testimony in this area is in direct contradiction to Mr. Gilmore's testimony. This also goes to weight not admissibility.

Finally, the plaintiffs argue that Paragraph 9 of Mr. Gilmore's affidavit is invalid for lack of proper foundation. Paragraph 9 reads, "[c]urrent Idaho state programs do not provide adequate protection to the groundwater of the state from confined animal feeding operations, thereby requiring more stringent regulations at the local level." Affidavit of Bradley G. Gilmore

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at 3. Since Mr. Gilmore has not established the required foundation as to Paragraph 9, the court will strike Paragraph 9 of Mr. Gilmore's affidavit. Accordingly, the court will grant the plaintiffs' request to strike Paragraph 9 of Mr. Gilmore's affidavit. The rest of the plaintiffs' motion to strike as to Mr. Gilmore's affidavit will, however, be denied.

III. PLAINTIFFS' REQUEST TO TAKE JUDICIAL NOTICE

The plaintiffs move this court to take judicial notice, pursuant to Idaho Code 9-101, I.R.C.P. 44(d), and I.R.E. 201, of the Final Order entered by the Idaho Department of Water Resources in the matter of Application for Transfer Nos. 4722 and 4723, in the name of North Valley Milk, Inc., dated September 15, 1997 ("Final Order"). The issue is whether, pursuant to the above cited rules and statute, a state court should take judicial notice of a state administrative agency decision.

Idaho Code § 9-101 reads: "Courts take judicial notice of the following facts; . . . 3. Public and private official acts of the legislative, executive and judicial departments of this state . . . ." The Idaho courts have interpreted subsection three in several recent cases. In many of these cases, the courts have refused to extend its domain to cover certain governmental actions. See State v. Egli, 41 Idaho 422, 238 P.2d 514 (1925) (stating that courts should not take judicial notice of municipal ordinances); see also Marcher v. Butler, 113 Idaho 867, 749 P.2d 486 (1988) (stating that courts should not take judicial notice of city ordinances or any of the codes adopted under these ordinances). However, in many

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instances the courts have been willing to take judicial notice of various governmental actions. Oregon Short-Line R.R. v. Gooding, 6 Idaho 773, 59 P.2d 821 (1899) (stating that Idaho courts will take judicial notice of acts of Congress and of the executive of the United States); Peavy v. McCombs, 26 Idaho 143, 140 P.2d 965 (1914) (stating that Idaho courts will take judicial notice of the journals of the house of representatives and the senate).

No case law has, however, been cited by the plaintiffs, nor has the court become aware of any, that addresses this issue directly. As a result, the court will look to the plain language of the statute to determine its scope. I.C. § 9-101 requires a court to take judicial notice of the acts of the executive, legislative, and judicial branches. Nowhere does it mention state administrative bodies. The court concludes, however, that the IDWR is an administrative board within the executive branch of this state which would qualify under I.C. § 9-101. Therefore, the court will grant the plaintiffs' request by taking judicial notice of the Final Order of the I.D.W.R., as set forth above.

Since the court will grant the plaintiffs' Request to Take Judicial Notice, based upon the plaintiffs' first argument, the court will forego its analysis under the plaintiffs' second and third arguments, as to the applicability of I.R.C.P. 44(d) and I.R.E. 201.

IV. SUMMARY JUDGMENT

Summary Judgment is proper when the pleadings, depositions, and admissions, along with the affidavits, "show that there is no

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genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." I.R.C.P. 56(c); McCoy v. Lyons, 120 Idaho 765, 820 P.2d 360 (1991). Where, "the record contains conflicting inferences upon which reasonable minds might reach different conclusions, summary judgment must be denied because all doubts are to be resolved against the moving party." Id. 120 Idaho at 769, 820 P.2d at 364.

Since both parties have filed summary judgment motions in this case, the court will examine each one, with its accompanying arguments, in turn.

A. The Plaintiffs' Motion for Partial Summary Judgment

Before the court can begin its analysis of this motion, the court will rule on the proper standard of proof to be applied. The plaintiffs cite Idaho case law that declares that a zoning ordinance must bear a "substantial relation" to the public health, safety, morals, or general welfare of the citizenry that it is designed to protect. See Dawson, 98 Idaho at 511, 567 P.2d at 1262 (1977). The defendants cite their own Idaho case that states that the ordinance must bear only a "reasonable relation" to proper goals pursued through the governmental entity's police power. See Sprenger, Grubb & Associates, Inc. v. Hailey, 127 Idaho 576, 584, 903 P.2d 741, 748 (1995). Other courts have called this test the "rational basis test." See Meisner v. Potlach Corp., 1998 Ida. LEXIS 23 (February 27, 1998, Filed).

This court concludes that the proper test in this case is one of "reasonable relation" to a proper goal or purpose. This

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determination is supported by language in both the Dawson and the Sprenger decisions. Contrary to the assertion of the plaintiffs, the Dawson court set the test as to whether a zoning ordinance will be upheld under Article 12, Section 2 of the Idaho Constitution, as follows: "the zoning ordinance must bear a reasonable relation to the goals the state may properly pursue under its police power." Id. at 511. The only mention made in the opinion to a substantial relation test is found in a citation to a United States Supreme Court case. Id. In addition to stating the test as one of reasonableness, the Dawson court further refined the minimal scrutiny a court is to apply to a zoning ordinance, as follows:

> Zoning is essentially a political, rather than a judicial matter, over which the legislative authorities have, generally speaking, complete discretion. Since the local governmental bodies are most familiar with the problems of their particular jurisdictions, their legislative determinations come before us with a strong presumption of validity. Such presumption can only be overcome by a clear showing that the ordinance as applied is confiscatory, arbitrary, unreasonable and capricious. If the validity of the legislative classification for zoning purposes be fairly debatable, the legislative judgment must be allowed to control and the court may not substitute its judgment for that of the zoning authority. It is not the function of this Court or of the trial courts to sit as super zoning commissions. The burden of proving that the ordinance is invalid rests upon the litigant who attacks the validity of the ordinance.

Id. at 511-12 (emphasis added) (citations omitted). Thus, in applying a set of facts to the reasonable relation standard, due deference must be given to the province of the Gooding County Commissioners in passing Ordinance 62.

In addition, the Idaho Supreme Court has defined the "reasonable relation test," as follows: "Where there is a basis for a reasonable difference of opinion, or if the validity of

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legislative classification for zoning purposes is debatable, a court may not substitute its judgment for that of the local zoning authority." City of Lewiston v. Knieriem, 107 Idaho 80, 83, 685 P.2d 821, 824 (1984). In other words, if a disputed section or subsection of the Gooding Ordinance can be shown to be one among several debatable solutions relating to the regulation of CAFOs, which is reasonable, then such will be upheld.

The plaintiffs also argue that the court should look only at the reasons that the Gooding County Commissioners actually gave as to why they chose certain specific language Ordinance 62. The court disagrees. In a recent Idaho Supreme Court case, it was declared that, "[t]o meet the rational basis test, the statutory classification must bear a rational relationship to legitimate government interests. This court will uphold the statute if any conceivable set of facts will support the finding of a rational relationship." State v. Avelar, 931 P.2d 1218, 129 Idaho 700, 1997 Ida. LEXIS 10 (January 22, 1997, Filed) (citations omitted). Thus, this court will look not only at the reasons the Gooding County Commissioners actually stated, but at those that they could have relied upon as well. These conclusions are supported by the presumption in favor of legislative determinations, as set forth above.

The court will now address the substance of the plaintiffs' Motion for Partial Summary Judgment:

1. Article 12, Section 2 of the Idaho Constitution

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The plaintiffs first argument claims that portions of Gooding County Ordinance 62 violates Article 12, Section 2 of the Idaho Constitution, which reads, "[a]ny county or incorporated city or town may make and enforce, within its limits, all such local police, sanitary and other regulations as are not in conflict with its charter or with the general laws." This is known as the "police power." The Idaho Supreme Court has interpreted this police power, as follows:

> [I]t may be said that there are three general restrictions which apply to legislation under the authority conferred by such provision: (1) the ordinance or regulation must be confined to the limits of the governmental body enacting the same, (2) it must not be in conflict with other general laws of the state, and (3) it must not be an unreasonable or arbitrary enactment.

State v. Clark, 88 Idaho 365, 374, 399 P.2d 955, 960 (1965). The plaintiffs claim that Ordinance 62 is invalid under the second and third restrictions of the Clark opinion.

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a. Whether certain provisions of Ordinance 62 are unreasonably restrictive or arbitrary

In support of their position that certain provisions of Ordinance 62 are unreasonable, arbitrary, or capricious, the plaintiffs cite two Minnesota cases which address a similar issue. In Board of Supervisors v. ValAdCo, 504 N.W.2d 267 Minn.Ct.App. 1993), the validity of a township ordinance requiring the issuance of a permit from the township before a feedlot or livestock sewage lagoon could be built was at issue. The Minnesota Court of Appeals upheld the lower court's ruling that such an ordinance was preempted by state law. The court decides that this case is

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inapposite to the question before it. The plaintiffs have not cited any Idaho law that would preempt Ordinance 62, nor is the court aware of any.

The second Minnesota case cited by the plaintiffs is Gustafson v. Board of Supervisors of Stanton Township, 1997 WL 40731 at 1 (Minn.Ct.App., February 4, 1997). In Gustafson, the validity of a Stanton Township ordinance, which set animal unit and setback limitations similar to those found in Ordinance 62, was at issue. In upholding the lower court's decision to invalidate the Stanton Township ordinance, the Minnesota Court of Appeals declared that, "Gustafson established that when the Board adopted the amendment, it did not refer to any information, studies, or reports showing that the setback and animal unit numbers used in the amendment had any relationship to controlling odor or preserving property values." Id. at 3. The Gustafson court noted that the Stanton Township failed to produce any evidence that might have supported the ordinance. Based upon this analysis, the plaintiffs declare that Ordinance 62 is invalid for the same reason--that no evidence has been presented by the defendants that would tend to show a reasonable relation between the need to protect the health and safety of the residents of Gooding County and the means chosen by the Gooding County Commissioners to accomplish that end. Under this analysis, the plaintiffs attack the following sections of Ordinance 62:

Section II(C): Definitions: Animal Units

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The plaintiffs claim that Section II(C) is unreasonably restrictive, arbitrary, and capricious because the animal equivalency factors referred to therein discriminate unreasonably between beef and dairy cows, and dry and lactating dairy cows. In addition, the plaintiffs argue that equivalency factors bear no relation to the prevention of actual production of waste, which is the stated purpose of Ordinance 62.

The defendants, on the other hand, argue that the equivalency factors themselves have taken into account the differences between the amount of waste generated by a dry cow versus a lactating cow. They also argue that the different numbers allowed between beef cows and dairy cows is necessary because dairy cows produce more waste than beef cows. The court determines that Section II(C) does bear a reasonable relation to Gooding County's legitimate goal of controlling the pollution generated by CAFOs and that, therefore, the equivalency factors within the ordinance are valid. By so ruling, the court is not saying that Section II(C) is the only alternative, but that it is a reasonable one.

Section II(D): Definitions: Applicant

The plaintiffs claim that Section II(D) is unreasonably restrictive, arbitrary, and capricious because the language contained therein is confusing and vague. Section II(D) simply defines the term "applicant." Section II(D) is not found to be unreasonably restrictive, arbitrary, or capricious. It can be reasonably understood as written.

Section II(F): Definitions: CAFO

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The plaintiffs claim that Section II(F) is unreasonably restrictive, arbitrary, and capricious based upon three arguments. First, it discriminates unfairly against dairies[2]. The defendants respond that the apparent discrimination in Section II(F) is based upon a need to include within the Ordinance 62 any operation of substantial size. Since, presumably, only a dairy of substantial size would be required to obtain a milk shipping permit, the defendants argue that the special treatment for entities who hold milk shipping permits is reasonable. The defendants also point out that the Idaho Department of Agriculture differentiates between those who hold milk shipping permits, and those who do not, for purposes of regulation. The court concludes that this portion of Section II(F) has a reasonable relation to the goal or purpose of Ordinance 62.

The plaintiffs' second argument claims that the definition of what constitutes contiguous land is ambiguous and will lead to unreasonable restrictions for those who restrict livestock to small parcels of land that are a part of larger parcels. The defendants respond by stating that, since the setback requirements of Ordinance 62 apply only to the waste treatment system of a CAFO and not to the land in its entirety, the plaintiffs' concern that small enterprises placed on large parcels of land will be affected, even

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[2]"A contiguous area or parcel of land . . . upon which are confined livestock, fish or birds in enclosures or ponds for six (6) months of the year, defined as follows:
1. Any combination of animal units which total 100 animal units or any facility with a milk shipping permit . . . ." (Emphasis added).

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though the waste produced thereon would be minimal, is not well-taken. See Section VIII(B), commencing on page 31. The court agrees. There will always be some question as to how to interpret words that perhaps contain more than one meaning. The language of Section II(F), however, is understandably clear, not unreasonable, nor arbitrary.

The plaintiffs' third argument rests upon the claim that the ambiguity referred to above will have the additional unwarranted consequence of restricting use of household waste. The defendants address this argument by stating that, since Ordinance 62 is specifically designed for regulation of animal waste, the plaintiffs' concern that anyone with a septic tank and a few gold fish in a pond could potentially be subject to Ordinance 62 is unfounded. The court agrees. Human waste is nowhere discussed in Ordinance 62 and "waste" is defined in terms of that "generated as a by-product of a CAFO." See Section II(I). Section II(F) does therefore bear a reasonable relation to the proper goal of controlling ground, water, and air pollution in CAFOs.

Section II(J): Definitions: Waste Treatment System

The plaintiffs claim that Section II(J) is unreasonably restrictive, arbitrary, and capricious because its language may lead the Administrator to conclude that its application would extend to household and other septic systems. As stated above, Ordinance 62 plainly applies only to animal waste, not to human waste. Section II(J) refers to "the application of waste." "Waste" is clearly defined in Section II(I) as referring to CAFOs.

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Therefore, it is reasonably related to the purpose of Ordinance 62 as a whole.

Section III(A): Existing CAFO's

The plaintiffs claim that Section III(A) is unreasonably restrictive, arbitrary, and capricious based upon two arguments. First, Section III(A) unfairly discriminates against dairies and, second, the phrase, "such other information that the Administrator may deem appropriate," is too vague and leaves the applicant uncertain as to what information must be supplied by him or her. The court decides that these arguments are moot. As the defendants point out, Subsections (A) through (H) of Section III address the application of grandfather rights for existing non- conforming CAFOs. Since the 6-month registration period for these rights has passed, this section is no longer applicable. Notwithstanding this conclusion, the court determines such section to be reasonable.

Section III(B) and Section III(C): Existing CAFO's

The plaintiffs claim that Section III(B) and (C) are unreasonably restrictive, arbitrary, and capricious because of overly burdensome procedures. However, since Section III's time limit has passed, section III(B) has become moot. The court, however, also determines that Section III(B) and (C) are reasonable.

Section III(D), Section III(E), Section III(F): Existing CAFO's

The plaintiffs claim that these sections are unreasonably restrictive, arbitrary, and capricious. This court disagrees and

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concludes that such sections are reasonable as to the processing of these registration notices.

Section III(G): Existing CAFO's

The plaintiffs claim that Section III(G) is unreasonably restrictive, arbitrary, and capricious because it acts as an unreasonable restraint on alienation. The defendants contradict this assertion by stating that the restraint on alienation is not unreasonable because the rights become unrecognized upon termination of the six month period and unrecognized rights cannot be transferred. In addition, a recent Idaho Supreme Court decision concluded that:

> "(1) A restraint on alienation, as that phrase is used in this Restatement, is an attempt by an otherwise effective conveyance or contract to cause a later conveyance
> (a) to be void; or
>
> (b) to impose contractual liability on the one who makes the later conveyance when such liability results from a breach of an agreement not to convey; or
>
> (c) to terminate or subject to termination all or a part of the property interest conveyed."

Lake v. Equitable Sav. & Loan Ass'n, 105 Idaho 923, 925, 674 P.2d 419, 421 (1983) (quoting Restatement of Property § 404 (1944)). Since Ordinance 62 is neither a conveyance nor a contract, there can be no restraint on alienation. The court concludes that Subsection (G) bears a reasonable relation to the purpose of Ordinance 62.

Section III(H): Existing CAFO's

The plaintiffs claim that Section III(H) is unreasonably restrictive, arbitrary, and capricious due to its overly burdensome

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and arbitrary restrictions and procedures. The plaintiffs specifically argue that two portions of Subsection (H) are arbitrary and capricious.

First, the plaintiffs assert that the time limits found in Subsection (H) are arbitrary and bear no relation to Ordinance 62's purpose. The defendants answer by arguing that these time limits were created to put applicants on notice as to when required information must be filed and when certain conditions may come into effect. The court agrees with the defendants that time limits are necessary, but the Gooding County Commissioners' decision to use the specific time limits found in Ordinance 62 must be found to be reasonable and not arbitrary. Even so, pursuant to Avelar, the court will nevertheless uphold Subsection (H), if there is any conceivable set of facts upon which the Gooding Commissioners could have relied for the basis of their determination that the time limits contained therein were reasonably or rationally related to Ordinance 62's goal or purpose. The court concurs that the provision of, "[t]wo (2) yearly extensions, for a maximum of three (3) years of non-operation . . . ." is reasonable.

The court, however, is unable to find any set of facts that would support the conclusion that Subsection (H)'s time limit as to the thirty (30) days relating to ceasing operations of non-conforming CAFOs located "in all other zoned areas" is rationally related to Ordinance 62's purpose. As such, the court concludes that this time limit of thirty (30) days, as opposed to forty-five

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(45) or sixty (60) days, etc., relating to Subsection H, has been shown by the plaintiffs to be unreasonable and arbitrary.

The plaintiffs next argue that the requirement that a pre-existing non-conforming CAFO that is destroyed up to at least 50% of its value will lose its grandfather rights is unreasonable and treats dairy operators unfairly. The defendants claim that Gooding County has an interest in limiting the effects that the pre-existing nonconforming CAFOs have on the surrounding areas. Under Avelar, the court concludes that there is a reasonable relation between this subsection and Ordinance 62, outside of what the Board of Commissioners might have thought or done. Placing the forfeiture of grandfather rights upon partial destruction of the CAFO at 50% balances the need for Gooding County to gradually have non-conforming CAFOs become conforming CAFOs with the right of preexisting non-conforming CAFOs to continue with their pre-existing non-conforming status. The court concludes that this creates a reasonable relation between the 50% limit and the purpose of Ordinance 62.

Because part of Section III(H) has been determined by this court to be unreasonable and arbitrary, it becomes necessary to decide whether the violative portion of Section III(H) can be severed, without rendering the whole of Section III(H) invalid. The court concludes that, without the 30-day grace period found in Subsection (H), relating to the section dealing with the forfeiture of grandfather rights as to the non-use of a non-conforming CAFO "located in all areas," other than those zoned for agriculture,

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Section III(H), in its entirety, will be severed. [See p. 48 for further conclusions as to Section III(H)].

Section III(J): Existing CAFO's

The plaintiffs claim that Section III(J)[subsection (I) appears to be missing] is unreasonably restrictive, arbitrary, and capricious because the language contained in the last sentence, that, "[t]he notice shall provide such information as the Administrator deems appropriate," is ambiguous. However, the question is not whether the language is perfectly written or whether it is specific enough to not cause any problems in its application. The court concludes that while such sentence is reasonably related to the purpose of Ordinance 62, it is ambiguous and such sentence will therefore be held invalid. Next, the court determines that the stricken language is a necessary part of Section III(J) and, as a result, Section III(J), in its entirety, will be held invalid.

Section V: Siting Permit Required

The plaintiffs claim that Section V is unreasonably restrictive, arbitrary, and capricious because the conditions and requirements of the standards contained therein would be unduly burdensome in several ways. First, since dairy operations experience the birth of calves and the culling of cows on a regular basis, they would be required to obtain new siting permits before the herd grew beyond the allowable number of cows on the CAFO, pursuant to Ordinance 62. Second, the requirement to obtain a siting permit, prior to making improvements that would increase the

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animal capacity, would require a permit holder in the case of an emergency, such as a flood, to obtain a new siting permit before he or she were allowed to expand his or her lagoon to contain the flood waters. Third, Section V would provide a disincentive for dairy operators who may wish to use better technology to reduce the amount of animal waste pollution on the surrounding areas.

The defendants respond by arguing that the county's need to keep track of important changes as to CAFOs makes Section V not only reasonable, but necessary. Although the court is sympathetic to the difficulties that may be faced by the plaintiffs as they strive to conform to these requirements, the court concludes that, though inconvenient, these requirements are, nonetheless, reasonable and valid.

Section VI(I): Contents of Application for Siting Permits

The plaintiffs claim that Section VI(I) is unreasonably restrictive, arbitrary, and capricious because it requires a person seeking a siting permit to first obtain from the Idaho Department of Water Resources a water right permit or license. Since, according to the plaintiffs, the IDWR will not issue a water permit or license unless the applicant is, "in the process of obtaining other permits needed to construct and operate the project" [IDAPA 37.03.08.045.01(c)(ii)], including, perhaps, a siting permit; the applicant would be faced with an impossible situation. He or she, it is argued, cannot procure the one permit without the other.

The defendants refute this argument by pointing to the specific language of IDAPA 37.03.08.045.01(c)(ii). They argue that

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since the applicant will be, "in the process of" obtaining the siting permit, IDAPA 37.03.08.045.01(c)(ii) does not bar the issuance of a water permit or license to the applicant. The court agrees with the defendants' interpretation of IDAPA 37.03.08.045.01(c)(ii). Therefore, Section VI(I) is reasonable and will be held as valid.

Section VI(J): Contents of Application for Siting Permit

The plaintiffs claim that Section VI(J) is unreasonably restrictive, arbitrary, and capricious because the requirement that the applicant list the names and addresses of all persons living within one-half (1/2) mile of the proposed CAFO, on the application for the siting permit, is arbitrary and unduly burdensome. They argue that the county, since it already has records of these people, should bear the burden of compiling these lists.

The defendants respond by arguing that the burden should be on the applicant, because it is the applicant who will benefit from the siting permit. The court agrees, however, with the plaintiffs that this is an unreasonable burden on the applicant and that it should be the responsibility of the county to locate and notify those who will be affected by the CAFO that an application for a siting permit is being considered. The county is more reasonably suited to know and be able to locate such owners and residents. Also, the ordinance is ultimately for the benefit of the county residents. The court will therefore rule in the plaintiffs' favor as to Section VI(J). Because Section VI(J) specifically places the burden of notice upon the applicant, the court's decision here

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necessitates the conclusion that Section VI(J), in its entirety, will be severed and held invalid.

Section VI(K): Contents of Application for Siting Permit

The plaintiffs claim that Section VI(K) is unreasonably restrictive, arbitrary, and capricious because the fee schedule, particularly the portion dealing with per head fees on CAFOs is unreasonable. The defendants answer by stating that these fees are necessary for the subsidization of the permit issuing process. The court concurs that the fee schedule is reasonably related to Ordinance 62's purpose and will, therefore, be held valid.

Section VII: Process of Notice and Application Hearing

The plaintiffs claim that Section VII is unreasonably restrictive, arbitrary, and capricious. They base this conclusion on five arguments. First, the Administrator is left to determine the correctness of an application, without the benefit of any specific guidelines to aid in that process. The defendants do not address this argument; but the court, pursuant to its Avelar discretion, concludes that the term "completeness" in itself offers a sufficient guideline to allow the Administrator to perform his or her duties. This section is reasonable and will be valid.

Second, the plaintiffs argue that the statement that notice may be given to other newspapers and radios does not set a time limit for such action. However, it can be reasonably inferred, from the surrounding text, that the 15-day time limit referred to throughout Section VII was intended to also apply to that portion of Section VII dealing with notice to other radio and television

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stations, as well as newspapers that serve the jurisdiction. While this section could be worded with more exactness, it will be held to be reasonable and valid.

Third, the plaintiffs argue that there is no guarantee within Section VII that an applicant who fulfills the requirements of the ordinance can expect that the Administrator will determine that the application is complete. Again, the term "completeness" is understandably clear and reasonable.

Fourth, the plaintiffs argue that the one-half (½) mile stipulation, in the last sentence of Section VII, is arbitrary. The court disagrees and holds that such is reasonable and not arbitrary.

Finally, the plaintiffs argue that the term "affected person," contained in Section VII, is ambiguous as it is left undefined in Ordinance 62. To the contrary, "Affected Person" is specifically defined in Section II(B). The court concludes that this definition is sufficiently clear and reasonable. The plaintiffs apparently fear that this will allow persons living outside the one-half(1/2) mile area from the proposed CAFO to object to the issuance of a permit. The purpose of Ordinance 62 is, however, to control the dissemination of animal waste pollution within Gooding County. Allowing any resident or real property owner of Gooding County, who has made a written request, and who is materially affected in his or her health, safety or property rights by the CAFO, to be given notice of the hearing as to the issuance of a permit to the

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potential CAFO, is reasonable and in conformity with the ordinance's purpose. It will be held valid, in its entirety.

Section VIII(B): Criteria for Removal: Waste Management

This section appears to be erroneously numbered in the ordinance as Section VII, but is presumed to be Section VIII. The plaintiffs claim that Section VIII(B) is unreasonably restrictive, arbitrary, and capricious based upon two arguments. First, because the definition of a "waste treatment system" is allegedly broadly defined, application of this section would be unreasonable. For example, an operator who owns 640 acres, but keeps his or her livestock on a 40-acre parcel in the southeast corner of the 640 acre parcel, would be forced to end use on the northwest corner of this parcel, if another's home is within 1100 feet of the 640 acre parcel property line. The definition of waste treatment system, found in Section II(J), states, "[any] area . . . employed for the retention, storage, treatment, distribution and application of waste." According to the court's reading of this definition, the remainder of the 640-acre parcel, which is not being used to contain the livestock, will not be susceptible to the setback requirements of Section VIII (B) because that remaining parcel in the northwest corner is not land, "employed for the retention, storage, treatment, distribution and application of waste." Therefore, it is not unreasonable.

Second, the plaintiffs argue that the requirement that a waste management system not be operated within 300 feet of property lines, 500 feet of domestic wells, or 50 feet of public rights of

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way are needlessly intrusive and arbitrary. The defendants counter that these setbacks are necessary to prevent air, ground and water pollution. The court agrees that the defendants' position is consistent with the established goal and purpose of Ordinance 62. The defendants refer to the affidavits of Dr. Charles Lenkner and Ms. Darcy Thornborrow. Since Ms. Thornborrow's affidavit will be stricken for lack of adequate foundation, it will not be considered here. However, in Dr. Lenkner's affidavit he testifies that he is familiar with the setback provisions of Ordinance 62 and that these provisions will have, "some effect on limiting, diminishing, or diluting the air, odor, and fecal dust pollution, and amount of flies experienced by those in close proximity to animal feed operations." Supplemental Affidavit of Charles Lenkner. The court is aware of the existence of expert testimony by affidavit that disagrees with this testimony. However, since this is a Motion for Partial Summary Judgment, the court will construe facts in favor of the nonmoving party, the defendants. The plaintiffs also complain that the 300 foot, 500 foot, and 50 foot stipulations are needlessly intrusive. The court will assume that the plaintiffs are claiming that the footages are unreasonable, since intrusiveness is not a consideration in an Article 12, Section 2 of the Idaho Constitution analysis. The court concludes that the potential disturbance and damage caused by animal waste pollution outweighs the inconvenience that the plaintiffs may experience by the 300 foot, 500 foot and 50 foot requirements. Hence, Section VIII(B)(1), (B)(2) and (B)(3) will be held reasonable and valid.

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The plaintiffs also state that Subsection (B)(4) is unreasonable because it prevents operators from selling solid waste to others as fertilizer, thus undermining a critical element of agri-business in this state. The defendants claim that Section VIII(B)(4) does not lead to this result, since it requires that the setback requirements apply only to the liquid or solid waste that remains on the land. The court agrees that Subsection (B)(4) is not unreasonable, nor arbitrary, and will therefore be held valid.

The plaintiffs further argue that Subsection (B)(5) is arbitrary and capricious because it discriminates against dairy producers. The defendants argue that all CAFOs are required to obtain an environmental compliance certification. The reason that dairies are singled out, as those required to obtain certifications from the Idaho Department of Agriculture, is because that is the appropriate agency from whom such certifications are obtained. All other CAFO operators must first determine to which agency they must apply in order to obtain their required certification. The court rules that Subsection (B)(5) is not unreasonable, nor arbitrary and will be held valid.

The plaintiffs next claim that Subsection (B)(6) is unreasonable, arbitrary, and capricious based upon arguments already addressed in this Opinion. There is no need for the court to readdress these issues. The court, however, does invalidate this subsection on other grounds. (See page 51).

The plaintiffs then argue that Subsection (B)(7) is arbitrary and capricious because it unduly restricts CAFO operators, even

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where they can prove that their actions will not be detrimental to the surrounding areas. Section VIII(B)(7) does contain a provision that allows for an exception to the general rule contained therein, if the operator can, "reasonably show that the potential site will not create any significant environmental impact." With this exception, the court concludes that this section is not arbitrary or unreasonable and will be held valid.

Finally, the plaintiffs state that Subsection (B)(8) is arbitrary and capricious. Because the exception contained in Subsection (B)(8) simply allows for differences in the potential for pollution of different kinds of waste treatment operations, the court concludes that Subsection VIII(B)(8) is reasonable.

Section VIII(C): Criteria for Approval: Water Quality

The plaintiffs claim that Section VIII(C)(1) and (3) are unreasonably restrictive, arbitrary, and capricious because both bear no relation to the purpose of Ordinance 62. They argue that (C)(1) contains the phrase "other causes," which is arbitrary and capricious due to its lack of definition in the ordinance. The court determines that this phrase defines itself by negative implication--anything that is not a CAFO-caused pollution is an "other cause." The plaintiffs' argument concerning Subsection (C)(3) has already been addressed by this court. As a result, the court concludes that Subsections(C)(1) and (C)(3) are reasonable, not arbitrary and will therefore be held valid.

Section VIII(D)(5): Criteria for Approval: Property Rights

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The plaintiffs claim that Section VIII(D)(5) is unreasonably restrictive, arbitrary, and capricious because no other enactment, federal or otherwise, uses animal units-per-acre limitations. The defendants, in refuting this position, cite Dr. Charles Lenkner's affidavit, which states that these limitations will decrease the animal waste pollution in the areas surrounding CAFOs. The court decides that Section VIII(D)(5) reasonably relates to the purpose of Ordinance 62. Claiming that state and federal entities are responsible for environmental issues in Idaho is not sufficient proof that these limitations are unreasonable or arbitrary.

Section VIII(D)(7): Criteria for Approval: Property Rights

The plaintiffs state that Section VIII(D)(7) is unreasonably restrictive, arbitrary, and capricious because it prevents applicants from creating CAFOs within 2,640 feet of the Snake River Canyon, Malad River Canyon and Zone "A" flood planes ("plains" as per Webster's Unabridged Dictionary.) The court assumes that the plaintiffs are asserting that the 2,640 foot set-back is arbitrary and capricious. The defendants answer by stating that this footage limitation is based upon a need to minimize damage, should a flood occur within these areas. Although it is reasonable that Gooding County would want to prevent the operation of CAFOs near these areas, the specific limitation of 2,640 feet, versus 2,000 feet or 4,000 feet, is found to be arbitrary. The plaintiffs have established that there is no basis to establish any authority that would allow the court to understand how this specific footage, as opposed to a greater or lesser footage, would be reasonable. As

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such, Section VIII(D)(7) will be held invalid as to the 2640 foot restriction. The general provision is reasonable, but the specific footage is found to be arbitrary, based on this record. Without a specific set-back footage specification, Subsection (D)(7) cannot stand on its own. As a result, though the court concludes that the remainder of Subsection (D)(7) is reasonable, it is insufficient, however, without the set-back specification, to be valid. It will therefore be held invalid, in its entirety.

Section VIII(D)(8): Criteria for Approval: Property Rights

The plaintiffs claim that Section VIII(D)(8) is unreasonably restrictive, arbitrary, and capricious because it is contrary to established law. Their argument rests on the proposition that I.C. § 52-111 and Article V, Section 2 of the Idaho Constitution prohibit Gooding County from deciding whether an agricultural enterprise is or is not a nuisance, or from delegating that power to the Administrator. I.C. § 52-111 reads as follows:

> Anything which is injurious to the health or morals, or indecent, or offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property, is a nuisance and the subject of an action. In the case of a moral nuisance, the action may be brought by any resident of the county; in all other cases the action may be brought by any person whose property is injuriously affected, or whose personal enjoyment is lessened by the nuisance; and by the judgment the nuisance may be enjoined or abated, as well as damages recovered.

Idaho Code § 52-111 (1994) (emphasis added). The plaintiffs claim that the emphasized portions above create, within the judiciary, the exclusive authority to adjudicate nuisance claims. If this is true, the plaintiffs argue, the Gooding County Commissioners overstepped their authority in Section VIII(D)(8) when they took it

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upon themselves to delegate to the Administrator the responsibility of making a nuisance determination. The court, however, in reading (D)(8), concludes that it is reasonable for the Administrator to consider whether a CAFO might be a nuisance. This is not a formal determination, but one of numerous considerations for approval to be made by the Administrator. The court agrees with the plaintiffs that the judiciary would make any formal adjudication as to nuisance, but for the Administrator to examine whether I.C. § 52-101 will have application to a proposed CAFO is a reasonable consideration for him or her to take into consideration. (The court notes that this conclusion is not to be taken as an indication as to how the court will rule on the plaintiffs' later argument that Section VIII(D)(8) violates I.C. § 22-4501, et seq., otherwise known as the Right to Farm Act. See page 44.

Section IX: Grant or Denial of Siting Permit

The plaintiffs argue that Section IX is unreasonably restrictive, arbitrary, and capricious because the standards which the Administrator must use to determine that the applicant has met the established criteria of the ordinance are unreasonably restrictive, arbitrary and capricious. They further claim that the ordinance's requirement that an applicant show "conclusively" that he or she has met all of the necessary criteria is too high a burden, one which even exceeds the criminal standard of beyond a reasonable doubt. The court agrees that this heavy burden is an unreasonably high standard; such standard is unreasonable regulatory control. Therefore, to Section IX will be held invalid.

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Based upon this decision, the court also determines that Section IX, in its entirety, will be held invalid. Without the standard of a conclusive showing, Section IX suffers from inherent vagueness and ambiguity. As such, it will be held invalid, it its entirety.

Section XI(A): Process for Occupancy Certificate

The plaintiffs claim that Section XI(A) is unreasonably restrictive, arbitrary, and capricious because it requires a second approval process, even after the siting permit has been obtained. The defendants counter that this section applies only where the applicant, after receiving a siting permit, desires to make improvements or other changes to the CAFO. As such, the defendants claim that Section XI(A) is necessary to protect the purpose of Ordinance 62, once a siting permit has been granted. In other words, without Section XI(A), the county would be unable to assure its residents that future actions by CAFO operators would be in conformity with Ordinance 62. It is clear that the requirement that an applicant obtain an occupancy permit before making any improvements or changes to their CAFO does add an additional requirement to the CAFO operators. However, the court concludes that these are not unreasonable requirements, nor are they arbitrary. These procedures directly relate to the purpose or goal of Ordinance 62, by requiring prolonged enforcement of its requirements. Section XI(A) will be held valid.

Section XI(C): Process for Occupancy Certificate

The plaintiffs claim that Section XI(C) is unreasonably restrictive, arbitrary, and capricious based upon three arguments.

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First, the plaintiffs argue that the subsection is arbitrary and capricious because no restriction is placed on who can file a complaint. The court disagrees. The purpose of Ordinance 62, as has been stated many times in this Opinion, is to protect the areas surrounding a CAFO from air, water, and odor pollution. Nowhere within the four corners of Ordinance 62 does it restrict the ability to call to the attention of the county authorities that a CAFO is not in compliance with Ordinance 62. It is immaterial who brings this allegation to the attention of the authorities. In fact, allowing anyone to file a complaint will strengthen the enforcement of Ordinance 62, which subsection is not unreasonable.

Second, the plaintiffs argue that, since there is no provision for the notification of the CAFO operator of the complaint, these operators, in essence, will be found liable before they are given a chance to respond. While this argument addresses a negative possibility, it does not take into consideration that frivolous complaints will inevitably be found invalid. Notwithstanding this, the court decides that the plaintiffs' argument is well-taken. The operator is indeed notified of the complaint, as per Section XI(C), but only after the Administrator has made his or her determination as to the complaint's validity. The operator ("permit owner") has 20 days from the time he or she receives the Administrator's written determination to either correct the non-compliance or appeal such decision. The court rules in favor of the plaintiffs that this procedure, set forth in Section XI(C), is unreasonable and lacks due process. Additionally, the wording of this sentence,

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as well as the next, is contradictory and confusing as to when the correction must be completed. These two sentences will be held invalid.

Third, the plaintiffs argue that the 30-day time limit for corrections to be made by the operator is arbitrary and capricious. The court disagrees. This time limit is reasonable, in light of the Administrator's ability to grant an extension when necessary. This provision does bear a reasonable or rational relation to the purpose of Ordinance 62. The court, however, determines that, without a stated right to appeal a decision of the Administrator to now allow an extension, renders a lack of due process as to this sentence. The last sentence of Section XI(C) will be held invalid.

The court must now determine whether holding invalid the last two (2) sentences of Section XI(C) renders the whole subsection invalid. The court does conclude that Section XI(C) will be held invalid, in its entirety.

Section XIII(A) and (B): Enforcement

The plaintiffs claim that Section XIII(A) and (B) are unreasonably restrictive, arbitrary, and capricious because the term "affected persons," found in XIII(B), and which is defined in Section II(B), is over broad. They base this argument on the claim that too many individuals will be allowed to file complaints for noncompliance against a CAFO. As this argument has already been addressed as to Section XI(C) above, the court will again conclude that these Sections XIII(A) and (B) are reasonable and valid.

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b. Idaho Code § 67-6529

The plaintiffs next allege that Ordinance 62 violates Idaho Code § 67-6529 and, thus, is invalid as an exercise of the county's police power. Idaho Code § 67-6529 reads:

> **Applicability to agricultural land.**--No power granted hereby shall be construed to empower a board of county commissioners to enact any ordinance or resolution which deprives any owner of full and complete use of agricultural land for production of any agricultural product. (Emphasis added.)

Thus, only if the plaintiffs can show that Ordinance 62, "deprives any owner of full and complete use of agricultural land for production of any agricultural product" will the court grant the plaintiffs' Motion for Partial Summary Judgment on this issue.

Before beginning the analysis of Idaho Code § 67-6529, the court again notes that the Dawson court declares that legislative enactments are to be given a presumption of validity. The plaintiffs have the burden of proving otherwise.

The plaintiffs cite to the only case which analyzes the language of Idaho Code § 67-6529. See Olson v. Ada County, 105 Idaho 18, 665 P.2d 717 (1983). In Olson, the Idaho Court of Appeals listed several factors which could be used by a court in determining whether a specific ordinance violates Idaho Code § 67-6529. In addition, the Olson court stated that these factors were to be construed, as much as possible, within the context of the Local Planning Act of 1975, of which Idaho Code § 67-6529 is a part. These factors are listed in Idaho Code § 67-6502, which reads:

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> The purpose of this act shall be to promote the health, safety, and the general welfare of the people of the state of Idaho as follows:
>
> (a) To protect property rights and enhance property values while making accommodations for other necessary types of development . . . .
>
> (b) To ensure that adequate public facilities and services are provided to the people at reasonable cost.
>
> (c) To ensure that the economies of the state and localities are protected and enhanced.
>
> (d) To ensure that the important environmental features of the state and localities are protected and enhanced.
>
> (e) To encourage the protection of prime agricultural, forestry, and mining for production of food, fibre, and minerals.
>
> (f) To encourage urban and urban-type development within incorporated cities.
>
> (g) To avoid undue concentration of population and crowding of land.
>
> (h) To ensure that the development on land is commensurate with the physical characteristics of the land.
>
> . . . .
>
> (k) To avoid undue water and air pollution.
>
> . . . .

The plaintiffs argue that paragraphs (a), (c), (e), and (h) indicate that the Local Planning Act of 1975 was designed primarily to protect agricultural lands from encroachment. The plaintiffs, however, cannot explain the existence of paragraphs (d), (f), and (k), which, by their language, counter the plaintiffs' argument. In addition, as the defendants argue, a CAFO operator will not be deprived of the "full and complete use" of his or her agricultural land under Ordinance 62. A non-conforming CAFO, without grandfather rights, will be deprived of a specific agricultural use, and only so long as a CAFO is non-conforming. The court, therefore, concludes that, under Olson, Ordinance 62 does not violate Idaho Code § 67- 6529. The court notes that the defendants argue that Ordinance 62 does not violate I.C. § 67- 6529

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because there is no taking of property by Gooding County. This is not the correct place for such an argument. The court will subsequently deal with these arguments in the section on the applicability of the Fifth and Fourteenth Amendments to the United States Constitution and Article I, Section 13 of the Idaho Constitution.

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c. Idaho Code § 22-4501, et seq., otherwise known as the Right to Farm Act

The plaintiffs also allege that Ordinance 62 violates Idaho Code § 22-4501, et seq., otherwise known as the Right to Farm Act (RTFA), which reads, in part, as follows:

> The legislature finds that agricultural activities conducted on farmland in urbanizing areas are often subjected to nuisance lawsuits, and that such suits encourage and even force the premature removal of the lands from agricultural uses, and in some cases prohibit investments in agricultural improvements. It is the intent of the legislature to reduce the loss to the state of its agricultural resources by limiting the circumstances under which agricultural operations may be deemed to be a nuisance. The legislature also finds that the right to farm is a natural right and is recognized as a permitted use throughout the state of Idaho.

Another part of the RTFA, which deals specifically with county zoning ordinances, states, in part, the following:

> No city, county, taxing district or other political subdivision of this state shall adopt any ordinance or resolution that declares any agricultural operation operated in accordance with generally recognized agricultural practices to be a nuisance nor shall any zoning ordinance that forces the closure of any such agricultural operation be adopted. Zoning and nuisance ordinances shall not apply to agricultural operations that were established outside the corporate limits of a municipality and then were incorporated into the municipality by annexation.

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Idaho Code § 22-4504 (Supp. 1997).

The plaintiffs base their argument upon two grounds. First, that several sections of Ordinance 62 expressly violate the RTFA. The first of these, Section III(G), requires an existing CAFO to file a registration notice with the Administrator within the time limit, or the CAFO, "shall not be recognized as an existing CAFO;" this would also preclude pre-existing non-conforming CAFOs from taking advantage of grandfather rights.

Section III(H) eradicates any grandfather rights of a CAFO, if the value of the CAFO is destroyed by more than 50% of its value. The plaintiffs claim that these two sections, in effect, force the closure of these CAFOs and leave open the possibility that a CAFO could be deemed a nuisance.

The defendants deny these claims. They argue that Ordinance 62 does not force the closure of these CAFOs, but that the CAFOs themselves force their own closure by non-compliance. In addition, the defendants argue that Ordinance 62 does not purport to establish any CAFOs as a nuisance; that Subsection VIII(D)(8) merely borrows the term nuisance from the RTFA.

Ordinance 62 does set forth what is required for compliance. Under Section III(G), an operator who fails to register within the requisite time period loses his or her status as a pre-existing non-conforming CAFO. Under Section III(H), if the CAFO ceases operation, it loses its grandfather rights. Also, if a pre-existing non-conforming CAFO is destroyed, by more than fifty percent (50%) of its value, it must be reconstructed as a

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conforming CAFO. None of these restrictions will close a CAFO, as long as the operator complies with Ordinance 62, notwithstanding the loss of his or her grandfather rights. The court therefore concludes that such requirements are a reasonable way for the county to gradually move toward compliance, as circumstances change over the years.

Section VIII(D)(8)'s reference to nuisance determinations, however, is much more problematic. The basic concept of the RTFA is that no county government can adopt any ordinance that declares an agricultural pursuit, which is being operated under generally recognized agricultural practices, to be a nuisance. Section VIII(D)(8) states, in pertinent part, that the county must find, "[t]hat the CAFO will not be a nuisance as defined by Section 52-101, Idaho Code. Under a strict reading of that section, the Gooding Commissioners seek to grant to the county the power to determine whether a CAFO is a nuisance. This is in direct violation of the RTFA. In sum, the court holds as valid Sections III(G) and III(H), but rules that Section VIII(D)(8) is contrary to the RTFA, not withstanding the court's prior ruling, in favor of the defendants, on pages 36-37 above, as to Section VIII(D)(8). It will be held invalid in its entirety.

The next ground argued by the plaintiffs is that Ordinance 62 violates the stated legislative intent of the RTFA, in which it is stated, "the right to farm is a natural right and is recognized as a permitted use throughout the state of Idaho." I.C. § 22-4501. The plaintiffs define the purpose of Ordinance 62 as an attempt to

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prevent the operation of CAFOs in Gooding County. Based upon this alleged statement of purpose, Ordinance 62 would violate the legislative intent of the RTFA. However, the court has already concluded that the purpose of Ordinance 62 is to control the effect of pollution generated by CAFOs on surrounding areas. Though it is true that some of the provisions of Ordinance 62 have the effect of interfering with the operation of CAFOs, the ordinance does not preclude the CAFO operators' right to farm and to operate their agricultural business on their land. Hence, the court decides that the argument is not well-taken.

2. Article I, Section 13 of the Idaho Constitution

The plaintiffs' second major argument, as per their Motion for Partial Summary Judgment, is that portions of Ordinance 62 violate Article I, Section 13 of the Idaho Constitution, which reads, "[n]o person shall . . . be deprived of life, liberty or property without due process of law." The plaintiffs argue that several of Ordinance 62's provisions are unconstitutional, under Article I, Section 13, in that they are either unconstitutionally vague or that they violate due process of law by preventing the continuation of pre-existing non-conforming uses.

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a. Vagueness

The Idaho Supreme Court has determined that the legal standard for a constitutional attack on a legislative enactment alleging that the act is void for vagueness is whether a person of ordinary intelligence is given fair warning of the contents therein. See

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State v. Bitt, 118 Idaho 584, 798 P.2d 43 (1990). In that same case, the court further specified the following:

> First, the court must ask whether the ordinance regulates constitutionally protected conduct. If the answer to this first step is in the affirmative, then the next step asks whether the ordinance specifically precludes a significant amount of the constitutionally protected conduct. If the answer to this step is also in the affirmative, then the ordinance is quite likely over broad and must be restricted in its application or rewritten. But if the ordinance does not regulate constitutionally protected conduct, or if the ordinance does not preclude a significant amount of such conduct, then the next and last step is to ask whether (a) the ordinance gives notice to those who are subject to it, and (b) whether the ordinance contains guidelines and imposes sufficient discretion on those who must enforce the ordinance.

Id. at 588, 47. In Olsen v. J.A. Freeman Co., 117 Idaho 706, 791 P.2d 1285 (1990), the court stated that, when determining whether an ordinance is unconstitutionally vague, a court should, "consider both the essential fairness of the law and the impracticability of drafting legislation with greater specificity." Id. at 1294. In addition, if the ordinance is noncriminal in nature, more leniency will be given to the position that the enactment should be upheld.

Following the Bitt analysis, the plaintiffs claim that Ordinance 62 does preclude a significant amount of constitutionally protected conduct, but they choose to address those arguments later. The court will do so as well. Under the third step in the analysis, the plaintiffs claim that certain sections of Ordinance 62 are unconstitutionally vague.

Section II(B): Definitions: Affected Person

The plaintiffs claim that Section II(B) is void for vagueness because the term "AFFECTED PERSON" is over broad. If Ordinance 62's language in this respect is reasonably understandable to the common

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person, then it is not vague. Section II(B) restricts the term "AFFECTED PERSON" to include those who are: (1) living within ½ mile of a CAFO, or (2) a resident who is materially affected in their health, safety or property rights; and (3) the Administrator. This list is not vague, nor over broad. The court will uphold Section II(B).

Section III(H): Existing CAFO's

The plaintiffs claim that Section III(H) is void for vagueness based upon four grounds. First, the subsection is vague, ambiguous, and over broad because it fails to take into consideration why the CAFO has ceased operation. The court disagrees that this subsection is vague.

Second, the plaintiffs claim that this subsection is vague because it does not specify whether the area in question needs to be zoned as agricultural at the time of Ordinance 62's enactment or at any future time. A person of common intelligence will not have difficulty with this portion of subsection H; therefore, it is not vague.

Third, the plaintiffs argue that the phrase "size or capacity" is ambiguous and vague. In Bitt, the court recognized the fact that, "in most English words and phrases there lurk uncertainties." Id. at 585, 45. The court concludes that this applies here. The phrase "size or capacity" is not unreasonably ambiguous, nor vague.

Finally, the plaintiffs argue that Section III(H) is over broad because it fails to take into account government programs that give incentives to CAFO operators to cease production and

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operation for a time. The court agrees. Ordinance 62 does not appear to take these potentially applicable programs into consideration. As such, the court will rule in the plaintiffs' favor as to Section III(H), that it is over broad.

The conclusion that must necessarily be drawn, due to the over breadth of Section III(H), is that it will be held invalid in its entirety.

Section V: Siting Permit Required

The plaintiffs claim that Section V is void for vagueness because it fails to take into account the birth of new calves. The court disagrees. It is proper for this ordinance to require siting permits for the reasons set forth, which are not vague. It is not vague for the ordinance to require siting permits as to improvements, and/or increasing animal units, but not for repairs to existing improvements which do not result in a change to the location or capacity. This provision is clear and understandable. Section V will therefore be held as valid.

Section VIII(B)(1): Criteria for Approval: Waste Management

The plaintiffs claim that Section VIII(B)(1) is void for vagueness based upon two arguments. First, that the phrase "areas accessible to the public" is vague. The plaintiffs argue that this phrase could be interpreted as including areas owned by the CAFO operator, but which may be accessible to the public because only a small fence marks the border. The court is persuaded by this argument. This phrase "or areas accessible to the public" is

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confusing and unclear to those of common intelligence and will be severed.

Second, that the phrase "belonging to" is vague and ambiguous. The court again determines that this phrase is subject to the inherent vagueness of the English language, but is not unduly confusing. An individual of common understanding would understand these words within paragraph VIII(B)(1).

The court must now determine whether its conclusion that the term "areas accessible to the public" is vague renders the whole of Section VIII(B)(1) invalid, or just the part severed above. The court concludes that only the phrase of Section VIII(B)(1), "areas accessible to the public," will be held invalid; the remainder of Section VIII(B)(1) will be held valid under Article I, Section 13 of the Idaho Constitution.

Section VIII(B)(5): Criteria for Approval: Waste Management

The plaintiffs claim that Section VIII(B)(5) is void for vagueness because the phrase "appropriate state agency" is vague and ambiguous. The defendants state that, as a result of the multiple changes that have occurred, it is impossible to put into writing which department is the proper forum for the issuance of the required permits. Even so, a CAFO operator can find out, without extreme difficulty, which agency will issue the permits that he or she may need. The court agrees with the defendants. It is clear that the Board of Commissioners had no other alternative that would have created less confusion. The phrase, as stated, provides a

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person of common intelligence with the necessary information to obtain the needed permits.

Section VIII(B)(6): Criteria for Approval: Waste Management

The plaintiffs claim that Section VIII(B)(6) is void for vagueness because the phrase "adequate area" is vague and ambiguous and may lead to arbitrary enforcement by the Administrator. The defendants argue that the "adequate area" can be determined by taking into account the size of the waste treatment system, the setback requirements, and the amount of land that the CAFO will be using. Were this type of language, setting forth standards within VIII(B)(6) stated in the subsection, it may not be vague and ambiguous. However, based upon the standard, as enunciated by the Bitt court, that the ordinance must be understandable to a person of common intelligence, this court concludes that Section VIII(B)(6) is indeed vague and ambiguous. Hence, the court rules that Section VIII(B)(6) is invalid. Since Section VIII(B)(6) relies on the term "adequate area" for its substance, the court's ruling in this matter renders Section VIII(B)(6) invalid in its entirety.

Section VIII(B)(7): Criteria for Approval: Waste Management

The plaintiffs claim that Section VIII(B)(7) is void for vagueness because the phrases "reasonably show" and "significant environmental impact" are vague and ambiguous. The court determines that, because the words "reasonable" and "significant" are commonly used in legal terminology and are understandably clear, their use here is not found to be vague, nor ambiguous.

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Section VIII(C)(1): Criteria for Approval: Water Quality

The plaintiffs claim that Section VIII(C)(1) is void for vagueness based upon two arguments. First, that the term "other causes" is vague and ambiguous; and, second, that its application is uncertain, as it is unclear how much effect the CAFO pollution must have in comparison with the other causes. The term "other" is defined in Webster's New Collegiate Dictionary 806 (1st ed. 1981), as follows: "being the ones distinct from those first mentioned." Hence, the language of Ordinance 62, which states, "[o]peration of the CAFO will not cause, either alone or in conjunction with other causes, contamination of ground water and drinking water beyond MCL's" refers to any cause, but those related to operation of the CAFO. The court concludes that the above phrase, and the words "other causes," are not vague or ambiguous. Section VIII(C)(1) will be held valid.

Section XI(C): Process for Occupancy Certificate

The plaintiffs claim that Section XI(C) is void for vagueness based upon two arguments. First, that no guidelines exist for the Administrator, in his or her determination of whether a complaint is valid, making this subsection vague and ambiguous in its application. The court disagrees. There are guidelines set forth in Section VIII, entitled "Criteria for Approval." While Section XI(C) does not specifically refer to Section VIII, it is a reasonable interpretation of this subsection that Section VIII would be the basis for a Section XI(C) determination of validity by the Administrator when a written complaint is received of alleged

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non-compliance with the terms of a siting permit. There would be potential for disparate and nonuniform treatment of complaints, if there were no guidelines for the Administrator to follow and to apply in making his or her determinations. For this reason, the court will uphold Subsection XI(C) as to vagueness, ruling that there are appropriate guidelines for the Administrator to follow, as stated above. (The court does believe that more specificity as to the applicable criteria in Section VIII would be recommended, even though the above inference is sufficient to hold Section XI(C) as valid.)

Second, the plaintiffs claim that the provision itself does not place a limit on who is able to file a written complaint. This issue has been dealt with above in this Opinion. Without more, the court disagrees with the plaintiffs' argument on this issue.

While Section XI(C) is held valid as to vagueness, as set forth above; it has previously been held invalid, in its entirety on other grounds. (See pages 39-40 above.)

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b. Due process

Several Idaho court decisions have determined that pre-existing non-conforming uses cannot be eliminated by legislative enactment. More specifically, the court, in Bastian v. City of Twin Falls, 104 Idaho 307, 308 658 P.2d 978, 979 (Idaho Ct. App. 1983), stated that, "non-conforming uses are substantive due process rights." As such, these rights cannot be impinged upon without due process. The plaintiffs argue that Section III of

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Ordinance 62 violates due process by eliminating grandfather rights. The defendants counter that the very existence of the grandfather rights is evidence that due process has been observed. The court agrees with the defendants. The case law cited by the plaintiffs states only that an ordinance must provide grandfather rights. Ordinance 62 does this in a constitutional fashion. Section III, except for Subsection (H), will be held valid.

3. Fifth and Fourteenth Amendments to the United States Constitution

The plaintiffs' third major argument claims that Ordinance 62 is unreasonably restrictive, arbitrary, and capricious and, thus, violates Article 12, Section 2 and Article I, Section 13 of the Idaho Constitution, as well as the Fifth and Fourteenth Amendments of the United States Constitution. Since determinations concerning Article 12, Section 2 and Article I, Section 13 of the Idaho Constitution have already been made in this Opinion, this court will confine this portion of its Opinion to the issue of whether certain provisions of Ordinance 62 violate the Fifth and Fourteenth Amendments of the United States Constitution.

The plaintiffs cite one case to support their position. In Nebbia v. People of State of New York, 291 U.S. 502 (1934) (footnotes omitted), the U.S. Supreme Court declared:

> The Fifth Amendment, in the field of federal activity, and the Fourteenth, as respects state action, do not prohibit governmental regulation for public welfare. They merely condition the exertion of the admitted power, by securing that the end shall be accomplished by methods consistent with due process. And the guaranty of due process, as has often been held, demands only that the law shall not be unreasonable, arbitrary, or capricious, and that the means selected shall

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have a real and substantial relation to the object sought to be obtained.

Id. at 525. The Court's decision in Nebbia states a different test than that used by the Idaho courts in their interpretation of Idaho's due process clause. Instead of requiring a "reasonable or rational" relation to a proper or permissible legislative objective, the Nebbia court requires a "substantial relation to the object being sought." Id. The plaintiffs state that various provisions of Ordinance 62 violate the due process clause of the United States Constitution. As this court has previously concluded, in the above Opinion; it will deny, in part, and grant, in part, the plaintiffs' request. The court determines, specifically, that the portions of Ordinance 62 that pass muster under the "reasonable relation" test, do so as well under the "substantial relation" test.

4. Severability Clause of Ordinance 62

Finally, the plaintiffs argue that the severability clause contained within Ordinance 62 cannot save it from complete dismissal. The plaintiffs cite a recent Idaho Supreme Court case wherein the court sought to determine whether an ordinance, which had been declared preempted, in part, by federal law, could be saved by its severability clause as to the part not preempted. The court found that, "[d]espite the obvious intent of the board to preserve the remainder of the ordinance if portions are declared unconstitutional, the portions of the ordinance that are preempted by federal law are so integral and indispensable to the ordinance,

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we conclude the entire ordinance must fall." Boundary Backpackers v. Boundary County, 128 Idaho 371, 378, 913 P.2d 1141, 1148 (1996). The court will draw its conclusion as to severability subsequently, after deciding all other issues raised by both parties as to the validity or invalidity of the various sections and subsections ruled upon by the court.

B. The Defendants' Motion for Summary Judgment

The defendants base their Motion for Summary Judgment on five arguments.

1.Police Power

First, the defendants argue that the plaintiffs have failed to prove that Gooding County misused its police powers when it enacted Ordinance 62. The defendants cite Article 12, Section 2 to support Gooding County's authority for the passage of Ordinance 62. It states that, "[a]ny county . . . may make and enforce, within its limits, all such local police, sanitary and other regulations as are not in conflict with its charter or with the general laws." This is known as the "police power." Several Idaho cases have interpreted this power to include the authority to create zoning ordinances. See County of Ada v. Walter, 96 Idaho 630, 533 P.2d 1199 (1975); Dawson Enterprises, Inc. v. Blaine County, 98 Idaho 506, 567 P.2d 1257 (1977). The defendants also refer to an additional Idaho law which states that the Board of County Commissioners for any county has the power to:

> [P]ass all ordinances and rules and make all regulations, not repugnant to law, necessary for carrying into effect or discharging the powers and duties conferred by the laws of the State of Idaho, and such as are necessary and proper to

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> provide for the safety, promote the health and prosperity , improve the morales, peace and good order, comfort and convenience of the county and the inhabitants thereof.

Idaho Code § 31-714. Based upon this section, the defendants argue that the passage of Ordinance 62 was a lawful exercise of its police power to act for the health, safety, and welfare of the citizens of Gooding County.

Next, the defendants argue that various state agencies have impliedly reserved to the counties the power to regulate CAFOs. Specifically, the defendants cite the Idaho Waste Management Guidelines for Confined Feeding Operations ("Waste Management Guidelines"). According to the defendants, several places in the Waste Management Guidelines point to a grant by the state legislature to allow counties to regulate CAFOs: "[c]ertain counties have local laws or regulations concerning confined feeding operations. Other counties may develop such regulations." Waste Management Guidelines at 3. The defendants also claim that other state and federal agencies have indicated an understanding that counties would and should be involved in the regulation of CAFOs. See EPA Guide Manual on NPDES Regulations for Concentrated Animal Feeding Operations, and NPDES Permit No. ID-G-010000; Idaho Ground Water Quality Plan, pp. 65, 101, 102, 104; Idaho Wellhead Protection Plan, Appendix E, Table E-1, pp. 2-3.

Based upon these arguments, and Part IV.A.1. (see page 17) of the above Opinion, the court will uphold Ordinance 62 as a valid exercise of Gooding County's police power.

2. Article 12, Section 2 of the Idaho Constitution

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The defendants' second argument claims that the plaintiffs have failed to establish that Ordinance 62 violates Article 12, Section 2 of the Idaho Constitution. As previously stated, Section 2 allows a county to enact laws that deal with local police, sanitary, and any other area, so long as these enactments are not in conflict with the general laws of the state. In response to the plaintiffs' claims, the defendants proffer two arguments. First, that the plaintiffs' have failed to prove that the disputed portions of Ordinance 62 are not rationally related to a proper exercise of Gooding County's police power and that such provisions are not arbitrary and capricious; and, second, that the plaintiffs have failed to show that Ordinance 62, or any part thereof, is in conflict with Idaho law.

For an analysis of the court's conclusions in this regard, please refer above to Part IV.A.1., commencing at page 17 of the above Opinion.

3. Article I, Section 13 of the Idaho Constitution

The defendants' third argument rests upon the claim that the plaintiffs have failed to establish that Ordinance 62 violates Article I, Section 13 of the Idaho Constitution.

For an analysis of the court's conclusions in this regard, please refer above to Part IV.A.2., commencing at page 46 of the above Opinion.

4. Fifth and Fourteenth Amendments to the United States Constitution

The defendants' fourth argument states that the plaintiffs have failed to establish that Ordinance 62 violates the Fifth and

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Fourteenth Amendments to the United States Constitution. The defendants reassert their arguments, as summarized throughout this Opinion, as to the claim that Ordinance 62 is not an arbitrary and capricious exercise of Gooding County's police power. For an analysis of the court's conclusions in this regard, please refer above to Part IV.A.3., commencing on page 54 of the above Opinion.

5. Recusal of Commissioner Arkoosh

Fifth, the defendants contend that the plaintiffs have failed to prove that Gooding Commissioner Mitch Arkoosh was required to recuse himself from voting on Ordinance 62. The court, having reviewed the plaintiffs' argument in this regard, as well as the facts surrounding this claim, agrees that the plaintiffs have not proven this claim. The court will, therefore, rule in the defendants' favor as to the issue of whether Ordinance 62 is invalid due to Mr. Arkoosh's failure to recuse himself from participating in the discussion of and in voting for Ordinance 62.

6. Severability

Finally, the defendants argue that Ordinance 62's severability clause should be upheld and should effectuate the saving of any parts of the ordinance that are not held to be unconstitutional or unlawful by this court's decision.

The court draws its ultimate conclusion, as to severability, in Part IV. C., the next paragraph below.

C. Severability Clause of Ordinance 62

Pursuant to this court's conclusions, contained in the above Opinion, various sections and subsections of Ordinance 62 will be

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held invalid; all but one in its entirety. As a result, the question before this court, on the issue of severability, is whether these invalid sections and subsections are so integral and indispensable to the whole of Ordinance 62 that their dismissal necessarily leads to the ultimate determination that all of Ordinance 62 must fall in its entirety. Particularly problematic to the defendants' position that Ordinance 62 should survive this court's above conclusions are Sections III(H), VIII(B)(6) and XI(C).

Section III(H) will have the sentence stricken as to the thirty (30) day ceasing of operation relating to grandfather rights in areas zoned other than agricultural. In striking this sentence, the remainder of Section III(H) will be held invalid because such section then has application only to non-conforming CAFOs located in agricultural zones which cease operation, but would not apply to non-conforming CAFOs located "in all other zoned areas." This subsection, without the stricken sentence, violates Gooding County's police power by being arbitrary in its application. State v. Clark, supra.

Section VIII(B)(6) requires, "[t]hat the CAFO site has adequate area for its waste treatment system." The court has determined that this section will, in its entirety, be held invalid. Without Section VIII(B)(6), there is no way for an operator of a CAFO to determine whether his or her waste treatment system complies with the ordinance as to size, nor for the

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Administrator to know how to determine what is an adequate area for a waste treatment system.

Next, the court has determined that Section XI(C), in its entirety, will be held invalid. Without Section XI(C), the ordinance lacks deadlines for correction of non-compliance by the "permit owner." The court also concluded that the last two (2) sentences were contradictory and confusing. The court finally determined that, with no appeal provision as to extensions, it lacked due process. The court therefore determines that Sections III(H), VIII(B)(6) and XI(C), in combination with Sections III(J), VI(J), VIII(D)(7), VIII(D)(8), and IX, which will also be held invalid in their entirety, are integral and indispensable to Ordinance 62 and, consequently, their being severed requires the court to ultimately conclude that Ordinance 62 cannot stand and is invalid in its entirety. This bolsters the court's ultimate conclusion that it is appropriate to hold Ordinance 62 invalid as a whole.

CONCLUSION

The above sections and subsections which will be stricken by the court and these stricken portions of Gooding County Ordinance 62 will be severed, as per Section I(B). The court further determines that these severed portions of Ordinance 62, as ruled above, are so integral and indispensable that the entire ordinance must fall, even though the court has upheld a majority of the sections within Ordinance 62.

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The court, therefore, concludes that there are no genuine issues of material fact relating to these summary judgment motions of the plaintiffs and the defendants that would preclude the court from moving forward to rule, as a matter of law. The court further determines that the plaintiffs are entitled to judgment, as a matter of law, consistent with the above Opinion.

Based upon the above Opinion, the court will enter the following Order:

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED that the plaintiffs' Motions to Strike, as to portions of the defendants' brief, as to the affidavits of Dr. Lenkner, and Dr. Bundy be denied; it is hereby granted, in part, and denied, in part, as to the affidavit of Mr. Gilmore; the motion is granted as to the affidavit of Darcy Thornborrow.

IT IS HEREBY FURTHER ORDERED that the plaintiffs' Request to Take Judicial Notice be granted.

IT IS HEREBY FURTHER ORDERED that Gooding County Ordinance 62 be held valid as to the following sections and subsections:

II(B), II(C), II(D), II(F), and II(J); III(A), III(B), III(C), III(D), III(E), III(F) and III(G); V; VI(I) and VI(K); VII; VIII(B)(2), VIII(B)(3), VIII(B)(4), VIII(B)(5), VIII(B)(7), and VIII(B)(8); VIII(C)(1) and VIII(C)(3); VIII(D)(5); XI(A); XIII(A) and XIII(B).

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IT IS HEREBY FURTHER ORDERED that Gooding County Ordinance 62 be held invalid as to the following sections and subsections, in their entirety:

III(H) and III(J); VI(J); VIII(B)(6); VIII (D)(7) and VIII(D)(8); IX and XI(C),

IT IS HEREBY FURTHER ORDERED that the plaintiffs' Motion for Partial Summary Judgment, as to Idaho Code § 67-6529, be denied, as reflected in the above Opinion.

IT IS HEREBY FURTHER ORDERED that the plaintiffs' Motion for partial Summary Judgment as to I.C. § 22-4501, et seq., be granted as reflected in the above Opinion.

IT IS HEREBY FURTHER ORDERED that the plaintiffs' Motion for Partial Summary Judgment, as to Section VIII(B)(1) of Ordinance 62, be granted, in part, and denied, in part, as reflected in the above Opinion.

IT IS HEREBY FINALLY ORDERED that the plaintiffs' Motion for Partial Summary Judgment, requesting that Ordinance 62, in its entirety, be deemed invalid based upon constitutional and/or statutory grounds, be granted; Ordinance 62 is hereby held invalid in its entirety, for the reasons set forth in the above Opinion and Order.

Counsel for the plaintiffs is hereby requested to prepare a proposed Summary Judgment, consistent with the above Opinion and Order. (Because Ordinance 62 is being held invalid in its entirety, the court will grant Summary Judgment, rather than Partial Summary Judgment, in favor of the plaintiffs.)

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The issue of costs and attorney fees will be subsequently determined, as per I.R.C.P. 54(d) and (e).

DATED this 17 day of June, 1998.

J. WILLIAM HART
District Judge

pc: Scott L. Campbell
Jeffery J. Ventrella
Robert E. Williams, III
Donald J. Farley
Philip A. Brown

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

PIETER DEELSTRA and NIESJE DEELSTRA, husband and wife, Plaintiffs, vs. BOARD OF COUNTY COMMISSIONERS OF GOODING COUNTY, IDAHO, Defendants.	Case No. 22808 **MEMORANDUM OPINION & ORDER RE DEFENDANT'S MOTION TO DISMISS & PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT**

This matter comes before the above entitled court on Defendant's Motion for Dismissal and Plaintiff's Motion for Summary Judgment. Plaintiffs PIETER DEELSTRA and NIESJE DEELSTRA (the "Deelstras") are represented by Robert E. Williams III, Esq., of the firm Fredericksen, Williams & Meservy. Defendants BOARD OF COUNTY COMMISSIONERS OF GOODING COUNTY, IDAHO (the "Board") is represented by Philip A. Brown, Gooding County Prosecuting Attorney.

BACKGROUND

This action involves a parcel of real property located in Gooding County, south of the city of Wendell (the "Property"). October 14, 1992, the Gooding County Planning and Zoning

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Commission ("P&Z") commenced hearings on the adoption of a new Gooding County zoning ordinance. This proposed zoning ordinance designated the Property as "Agricultural" as it had been before the proposed ordinance. The P&Z forwarded the proposed zoning ordinance to the Board and recommended adoption of the ordinance.

The Board held a number of hearings regarding the proposed zoning ordinance. There was a hearing held December 23, 1992, and notice of such was published on December 16, 1992, and December 23, 1992. Notice of a January 14, 1993, hearing was published December 30, 1992, and notice was published on January 20, 1993, for a February 4, 1993, hearing. The purpose of these hearings was to discuss extension of "Transitional T-2" ("T-2") zones to include the Property. No individual notice of these hearings was given to the owners of the Property, Mr. and Mrs. James Nafziger. P&Z was not consulted regarding the extension of the T-2 zone to include the Property.

The Board adopted the present Gooding County Zoning Ordinance ("Ordinance No. 50") on February 8, 1993. Under Ordinance No. 50 the Property was zoned a T-2 district. A summary of Ordinance No. 50 was published in the Gooding County Leader on March 17, 1992.

The Deelstras purchased the Property from Mr. and Mrs. James Nafziger on September 1, 1993, for the purpose of establishing a dairy. However, a dairy, which would constitute a confined

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animal feeding operation ("CAFO"), is not permitted in a T-2 district. The Deelstras brought this action seeking a declaratory judgment.

DISMISSAL

A. THE DEELSTRAS HAVE STANDING TO BRING THIS CAUSE OF ACTION

The Board moves this court to dismiss this action based on the theory that the Deelstras lack standing to assert their claim. The Idaho Supreme Court has adopted language from Duke Power Co. v. Carolina Envtl. Study Group, 438 U.S. 59, 72, 98 S.Ct. 2620, 2630, 57 L.Ed.2d 595 (1978), explaining the doctrine of standing.

> The essence of the standing inquiry is whether the party seeking to invoke the court's jurisdiction has "alleged such a personal stake in the outcome of the controversy as to assure the concrete adverseriness which sharpens the presentation upon which the court so depends for illumination of difficult constitutional questions." As refined by subsequent reformation, this requirement of "personal stake" has come to be understood to require not only a "distinct palpable injury" to the plaintiff, but also a "fairly traceable" causal connection between the claimed injury and the challenged conduct. (Citations omitted).

Miles v. Idaho Power Co., 116 Idaho 635, 641, 778 P.2d 757, 763 (1989).

In examining the Deelstra's complaint, it appears that they have suffered an injury. They cannot use their property as a CAFO. However, the doctrine of standing requires not only a

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"distinct palpable injury," but also a "fairly traceable" causal connection between the claimed injury and the challenged conduct. Id. The Deelstras have alleged the cause of their injury to be the Board's failure to conform to statutory requirements in enacting Ordinance No. 50. The Deelstras have alleged facts to establish a "fairly traceable" connection between the injury and the allegedly illegal zoning ordinance. The Deelstras do have standing to assert this claim.

B. THE DEELSTRAS MAY BRING AN ACTION FOR DECLARATORY JUDGMENT

The Board argues that the Deelstras can not bring this suit because they have already sought administrative relief which must be exhausted before any resort to the courts can be made. The Board cites Bone v. City of Lewiston, 107 Idaho 844, 693 P.2d 1046 (1984), in support of this argument. In Bone, the Idaho Supreme court held that a declaratory judgment action was not available to a landowner who requested the Planning and Zoning Commission rezone his land. The Court found that the action was in effect an appeal from the denial of his request. Bone, 107 Idaho at 849, 693 P.2d at 1051.

The Deelstras argue that Bone is not dispositive because the Deestras did not seek a rezone but requested that the Board correct the unlawful nature of Ordinance No. 50. This court agrees that Bone is not dispositive of this action. The Deelstras are challenging the enactment of Ordinance No. 50, not

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arguing that the Board made the wrong decision by zoning the Property T-2. See McCuskey v. Canyon County, 123 Idaho 657, 660, 851 P.2d 953, 956 (1993). The Deelstras may maintain this action seeking declaratory judgment, and they now move for summary judgment.

STANDARDS FOR SUMMARY JUDGMENT

A motion for summary judgment "shall be rendered forthwith if the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." I.R.C.P. 56(c), Bonz v. Sudweeks, 119 Idaho 539, 808 P.2d 876 (1991); G.M. Farms v. Funk Irrigation Co., 119 Idaho 514, 808 P.2d 851 (1991); Brown v. Matthews Mortuary, Inc., 118 Idaho 830, 801 P.2d 37 (1990); Olsen v. J.A. Freeman, 117 Idaho 706, 791 P.2d 1285 (1990); Tusch Enters. v. Coffin, 113 Idaho 37, 740 P.2d 1022 (1987); Tawson v. United Steelworkers of Am., 111 Idaho 630, 726 P.2d 742 (1986); Doe v. Durtschi, 110 Idaho 466, 716 P.2d 1238 (1986).

Upon a motion for summary judgment, all disputed facts are liberally construed in favor of the non-moving party. G & M Farms v. Funk Irrigation Co., 119 Idaho 514, 808 P.2d 851 (1991); Brown v. Matthews Mortuary Inc., 118 Idaho 830, 801 P.2d 37 (1990); Tusch Enters. v. Coffin, 113 Idaho 37, 740 P.2d 1022

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(1987); Doe v. Durtschi, 110 Idaho 466, 716 P.2d 1238 (1986); Anderson v. Ethington, 103 Idaho 658, 651 P.2d 923 (1982); Kline v. Clinton, 103 Idaho 116, 645 P.2d 350 (1982).

The burden of proving the absence of a material fact rests at all times upon the moving party. G & M Farms v. Funk Irrigation Co., 119 Idaho 514, 808 P.2d 851 (1991); Petricevich v. Salmon River Canal Co., 92 Idaho 865, 868-69, 452 P.2d 362, 365-66 (1969); Christiansen v. Rumsey, 91 Idaho 684, 429 P.2d 416 (1967). This burden is onerous because even "[c]ircumstantial evidence can create a genuine issue of material fact." Doe v. Durtschi, 110
Idaho 466, 716 P.2d 1238 (1986); Petricevich v. Salmon River Canal Co., 92 Idaho 865-69, 452 P.2d 362, 365-66 (1969).

Moreover, all reasonable inferences which can be made from the record shall be made in favor of the party resisting the motion. G & M Farms v. Funk Irrigation Co., 119 Idaho 514, 808 P.2d 851 (1991); Brown v. Matthews Mortuary, Inc., 118 Idaho 830, 801 P.2d 37 (1990); Tusch Enters. v. Coffin, 113 Idaho 37, 740 P.2d 1022 (1987); Doe v. Durtschi, 110 Idaho 466, 716 P.2d 1238 (1986); Anderson v. Ethington, 103 Idaho 658, 651 P.2d 923 (1982); Kline v. Clinton, 103 Idaho 116, 645 P.2d 350 (1982).

If the record contains conflicting inferences upon which reasonable minds might reach different conclusions, a summary judgment must be denied because all doubts are to be resolved

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against the moving party. G & M Farms v. Funk Irrigation Co., 119 Idaho 514, 808 P.2d 851 (1991); Brown v. Matthews Mortuary, Inc., 118 Idaho 830, 801 P.2d 37 (1990); Kline v. Clinton, 103 Idaho 116, 645 P.2d 350 (1982); Farmers Ins. Co. v. Brown, 97 Idaho 380, 544 P.2d 1150 (1976); Lundy v. Hazen, 90 Idaho 323, 411 P.2d 768 (1966). The requirement that all reasonable inferences be construed in the light most favorable to the non-moving party is a strict one. Clarke v. Prenger, 114 Idaho 766, 760 P.2d 1182 (1988).

Nevertheless, when a party moves for summary judgment the opposing party's case must not rest on mere speculation because a mere scintilla of evidence is not enough to create a genuine issue of fact. G & M Farms v. Funk Irrigation Co., 119 Idaho 514, 808 P.2d 851 (1991); Petricevich v. Salmon River Canal Co., 92 Idaho 865, 452 P.2d 362 (1969). Notwithstanding the utility of a summary judgment, a motion for summary judgment should be granted with caution. Steele v. Nagel, 89 Idaho 522, 406 P.2d 805 (1965).

DISCUSSION

The Deelstras argue that Ordinance No. 50 is invalid because the Board did not properly publish a summary of the ordinance as required by Idaho Code § 31-715A (1983 & Supp. 1994). Statute requires that "all ordinances of a general nature shall, before

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they take effect and within one (1) month after they are passed, be published in at least one (1) issue of a newspaper published in the county . . .." Idaho Code § 31-715 (1983 & Supp. 1994) (emphasis added). However, a summary of the ordinance may be published instead, provided that the

> summary shall be approved by the board of county commissioners and which shall include:
> (a) The name of the county;
> (b) The formal identification or citation number of the ordinance;
> (c) A descriptive title;
> (d) A summary of the principal provisions of the ordinance, including penalties provided and the effective date;
> (e) Any other information necessary to provide an accurate summary; and
> (f) A statement that the full text is available and the name, location, and office hours of the agency where a complete copy may be obtained.
>
> . . .
>
> (3) Before submission of a summary to a newspaper for publication under this section, the county clerk under seal of the board of county commissioners shall sign a statement, which shall be filed with the ordinance, that the summary is true and complete and provides adequate notice to the public.

Idaho Code § 31-715A(1) & (3) (1983 & Supp. 1994). The statute is clear and easily understood.

With the Brief in Support of Motion for Summary Judgment, the Deelstras submitted a copy of the summary of Ordinance No. 50 which was published in the Gooding County Leader, March 17, 1993. The summary provided:

> THE ZONING ORDINANCE OF GOODING COUNTY, IDAHO
> ORDINANCE NO. 50
> An ordinance establishing new zoning regulations for unincorporated Gooding County and repealing Gooding

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County Ordinance No. 25; providing for title, interpretation and enactment; providing for definitions; providing for administration; providing for establishment and purpose of zoning districts; providing for provisions for official zoning map; providing for zoning district regulations; providing for Flood Plain Overlay District (FP); providing for performance standards; providing for special use; providing for Planned Unit Development (PUD); providing for non-conforming uses; providing for off-street parking design and loading facilities; providing for signs; providing for appeal, variance and action by affected persons; providing for public hearing; providing for permits; providing for enforcement; providing for amendment; and providing for effective date.
Now therefore, be it ordained by the Board of County Commissioners of Gooding County, Idaho, as follows:
A full and complete coverage of this ordinance is on file for public study at the Office of the Gooding Planning and Zoning Commission and the Office of the Gooding Clerk.

The Board does not contest that this was the actual summary published after passage of Ordinance No. 50. Clearly, the summary does not contain the effective date of Ordinance No. 50, nor does it contain the location and office hours of the Planning and Zoning Commission or the Office of the Gooding Clerk. These omissions violate Idaho Code § 31-715A(1)(d) & (f). Moreover, there is no evidence in the record that the county clerk, under seal of the county commissioners, signed a statement that the summary is true and complete and provides adequate notice to the public as required by § 31-715A(3). No genuine issue of material fact exists as to whether Board has conformed to the requirements of Idaho Code § 31-715A(1) & (3). It has not.

This court must next examine what effect the above statutory

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violations have on Ordinance No. 50. Title 31 Chapter 7 of the Idaho Code is entitled "Board of County Commissioners." The purpose of this chapter is to set forth the powers, responsibilities, and procedures of the boards of county commissioners throughout the state of Idaho. Actions by a board of county commissioners which do not conform to the procedures laid out in Chapter 7 must be termed "ineffectual." "A zoning ordinance enacted without complying with the state enabling statutes is ineffectual." McCuskey v. Canyon County, 123 Idaho 657, 663, 851 P. 2d 953, 959 (1993). Accordingly, Ordinance No. 50 is invalid and void. Plaintiff's Motion is granted.

The Deelstras make several other challenges to the adoption of Ordinance No. 50, but this court need not reach those contentions because of the resolution on the publication issue.

CONCLUSION

The Deelstras have alleged a "distinct palpable injury" as well as a "fairly traceable" connection between the injury and the challenged conduct. Thus they have standing. The Deelstras may maintain an action seeking a declaratory judgment because they are challenging the enactment of Ordinance No. 50 not arguing that the Board made the wrong decision by zoning the Property T-2. Finally, there is no genuine issue of material fact regarding whether the Board violated § 31-715A. The Board

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failed to publish a proper summary. The Deelstras are entitled to judgment as a matter of law. Motion granted.

Mr. Williams may draft an appropriate order.

Dated this 27 day of July, 1994.

J. WILLIAM HART
DISTRICT JUDGE

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

PIETER DEELSTRA and NIESJE DEELSTRA, husband and wife, Plaintiffs, vs. GOODING COUNTY, IDAHO, AND BOARD OF COUNTY COMMISSIONERS OF GOODING COUNTY, IDAHO, Defendants.	Case No. CV 96-00368 SECOND AMENDED ORDER GRANTING PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT

The plaintiffs' Motion for Summary Judgement came on for hearing on Monday, August 5, 1996, at 10:00 a.m. The plaintiffs were represented by Fritz Wonderlich of Benoit, Alexander, Sinclair, Harwood and High. The defendants were represented by Philip Brown, Gooding County Prosecuting Attorney. The court having considered the pleadings, affidavits, briefs and arguments of counsel,

IT IS HEREBY ORDERED that the plaintiffs' Motion for Summary Judgment is granted.

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EXHIBIT

The court finds that the judgment in *Nafziger v. Gooding County*, Gooding County Case No. 21610, rendered Gooding County Ordinance No. 25 voidable and not void. The notice provided by Gooding County to the plaintiffs prior to the adoption of Ordinance No. 60 was not adequate notice and failed to comply with statutory and constitutional requirements.

The court also finds, as an alternative basis, that the plaintiffs made substantial economic expenditures and otherwise committed themselves, to their substantial disadvantage, before the effective date of Ordinance No. 60, and that the plaintiffs are protected against zoning changes under the rule set forth in *Boise City v. Blaser*, 98 Idaho 789, 592 P.2d 892 (S.Ct. 1977).

The plaintiffs have legally established the right to operate a dairy with more head of cattle than the limits required by Ordinance #60. The defendants are therefore prohibited from enforcing Ordinance #60 to the plaintiffs' cattle operation.

The court will make no ruling on the applicability of I.C. § 67-6529 and I.C. § 22-4504.

IT IS SO ORDERED, ADJUDGED AND DECREED this 27th day of August, 1996.

DANIEL B. MEEHL
District Judge

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CERTIFICATE OF DELIVERY

The undersigned certifies that on the 27th of August, 1996, she caused a true and correct copy of the foregoing SECOND AMENDED ORDER GRANTING PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT to be served upon the following persons in the following manner:

Plaintiff:

Fritz A. Wonderlich	[ ] Hand Deliver
Twin Falls City Attorney	[ ] U.S. Mail
P. O. Box 366	[✓] Court Folder
Twin Falls, ID 83303-0366	[ ] Facsimile Transmission

Defendant:

Philip Brown	[ ] Hand Deliver
Gooding County Prosecuting Attorney	[✓] U.S. Mail
P. O. Box 86	[ ] Court Folder
Gooding, ID 83330	[ ] Facsimile Transmission

Ellie D Hetzner

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FRITZ WONDERLICH
BENOIT, ALEXANDER, SINCLAIR,
HARWOOD & HIGH, L.L.P.
126 Second Avenue North
P.O. Box 366
Twin Falls, Idaho 83303-0366
Telephone: (208) 733-5463
Attorneys for Plaintiffs
(9974\AM-JUDG)

DISTRICT COURT
GOODING CO. IDAHO
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STATE OF IDAHO } ss.
COUNTY OF GOODING }
I hereby certify that the foregoing is a true copy of the original instrument on file in my office.
Dated 4-7, 19 97
HELEN E. EDWARDS
District Court Clerk
By
Deputy Clerk

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

* * * * *

PIETER DEELSTRA and NIESJE DEELSTRA, Husband and Wife,

Plaintiffs,

vs.

GOODING COUNTY, IDAHO, AND BOARD OF COUNTY COMMISSIONERS OF GOODING COUNTY, IDAHO,

Defendants.

Case No. CV-96-00368

AMENDED JUDGMENT

* * * * *

This Court, having considered the Stipulation to Amend Judgment, and other matters on file in this case, and finding that the Plaintiffs made substantial economic expenditures and otherwise committed themselves, to their substantial disadvantage, to the construction and operation of a dairy on the subject property prior to the enactment of Gooding County Ordinance No. 60,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED, That the Plaintiffs' real property is protected against the zoning district changes made in Gooding County Ordinance No. 60, and that the

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zoning designation for the property is "Agriculture" under Ordinance No. 60.

DATED this 27th day of March, 1997.

/S/ Daniel B. Meehl
DANIEL B. MEEHL, District Judge

AMENDED JUDGMENT: 2.

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

In Re SRBA)
)
Case No. 39576)
)

PARTIAL DECREE PURSUANT TO
I.R.C.P. 54(b) FOR

Water Right 36-02457

Department of Water Resources
APPLICANTS
Exhibit 16
Date Admitted 12/10/98
ADM

NAME & ADDRESS: TAMMY D VAN DYK
RICHARD B VAN DYK
216A N 500 W
JEROME ID 83338

SOURCE: GROUNDWATER

QUANTITY: 1.00 CFS

USE OF THIS RIGHT WITH RIGHT NO. 36-07760 IS LIMITED TO A TOTAL COMBINED DIVERSION RATE OF 3.30 CFS, A TOTAL COMBINED ANNUAL DIVERSION VOLUME OF 888 AF.

PRIORITY DATE: 09/29/1961

POINT OF DIVERSION: T07S R16E S21 NENESE Within JEROME County

PURPOSE AND PERIOD OF USE:	PURPOSE OF USE	PERIOD OF USE	QUANTITY
	IRRIGATION	Irrigation Season	1.00 CFS

PLACE OF USE: IRRIGATION Within JEROME County

T07S R16E S21	SWNE 33	SENE 40	NESE 40	NWSE 34
S22	NESW 29	NWSW 36	NWSE 10	

222 ACRES TOTAL

USE OF THIS RIGHT WITH RIGHT NO. 36-07760 IS LIMITED TO THE IRRIGATION OF A COMBINED TOTAL OF 222 ACRES IN A SINGLE IRRIGATION SEASON.
THIS RIGHT IS LIMITED TO THE IRRIGATION OF 118 ACRES WITHIN THE PLACE OF USE DESCRIBED ABOVE IN A SINGLE IRRIGATION SEASON.

DANIEL C. HURLBUTT, JR.
PRESIDING JUDGE
Snake River Basin Adjudication

RULE 54(b) CERTIFICATE

With respect to the issues determined by the above judgment or order, it is hereby CERTIFIED, in accordance with Rule 54(b), I.R.C.P., that the court has determined that there is no just reason for delay of the entry of a final judgment and that the court has and does hereby direct that the above judgment or order shall be a final judgment upon which execution may issue and an appeal may be taken as provided by the Idaho Appellate Rules.

DANIEL C. HURLBUTT, JR.
PRESIDING JUDGE
Snake River Basin Adjudication

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DANIEL C. HURLBUTT, JR.
PRESIDING JUDGE
Snake River Basin Adjudication

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DANIEL C. HURLBUTT, JR.
PRESIDING JUDGE
Snake River Basin Adjudication

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

In Re SRBA)
)
Case No. 39576)
)

PARTIAL DECREE PURSUANT TO
I.R.C.P. 54(b) FOR

Water Right 36-07760

Department of Water Resources
APPLICANT'S
Exhibit 17
Date Admitted 12/10/98

NAME & ADDRESS: RICHARD B VAN DYK
TAMMY D VAN DYK
216A N 500 W
JEROME ID 83338

SOURCE: GROUNDWATER

QUANTITY: 2.3 CFS

USE OF THIS RIGHT WITH RIGHT NO. 36-02457 IS LIMITED TO A TOTAL COMBINED DIVERSION RATE OF 3.30 CFS, A TOTAL COMBINED ANNUAL DIVERSION VOLUME OF 888 AF.

PRIORITY DATE: 11/07/1977

POINT OF DIVERSION: T07S R16E S21 NENESE Within JEROME County

PURPOSE AND PERIOD OF USE:	PURPOSE OF USE	PERIOD OF USE	QUANTITY
	IRRIGATION	Irrigation Season	2.3 CFS

PLACE OF USE: IRRIGATION Within JEROME County

T07S R16E S21	SWNE 33	SENE 40	NESE 40	NWSE 34
S22	NESW 29	NWSW 36	NWSE 10	

222 ACRES TOTAL

USE OF THIS RIGHT WITH RIGHT NO. 36-02457 IS LIMITED TO A COMBINED TOTAL OF 222 ACRES IN A SINGLE IRRIGATION SEASON.
THIS RIGHT IS LIMITED TO THE IRRIGATION OF 221 ACRES WITHIN THE PLACE OF USE DESCRIBED ABOVE IN A SINGLE IRRIGATION SEASON.

DANIEL C. HURLBUTT, JR.
PRESIDING JUDGE
Snake River Basin Adjudication

RULE 54(b) CERTIFICATE

With respect to the issues determined by the above judgment or order, it is hereby CERTIFIED, in accordance with Rule 54(b), I.R.C.P., that the court has determined that there is no just reason for delay of the entry of a final judgment and that the court has and does hereby direct that the above judgment or order shall be a final judgment upon which execution may issue and an appeal may be taken as provided by the Idaho Appellate Rules.

DANIEL C. HURLBUTT, JR.
PRESIDING JUDGE
Snake River Basin Adjudication

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State of Idaho
Department of Water Resources

Department of Water Resources
APPLICANT'S
Exhibit 15
Date Admitted 12/10/98

WATER RIGHT LICENSE

WATER RIGHT NO. 36-08063A

Priority: February 16, 1982 **Maximum Diversion Rate:** 2.14 CFS

This is to certify, that F F GUNNING
G C GUNNING

PO BOX 716
WENDELL ID 83355-0716 has complied with the terms and conditions of the permit, issued pursuant to Application for Permit dated February 16, 1982; and has submitted Proof of Beneficial Use on September 28, 1994. An examination indicates that the works have a diversion capacity of 3.300 cfs of water from a GROUNDWATER source, and a water right has been established as follows:

BENEFICIAL USE	PERIOD OF USE	RATE OF DIVERSION	ANNUAL VOLUME
IRRIGATION	04/01 to 10/31	2.14 CFS	

LOCATION OF POINT(S) OF DIVERSION: NESE , Sec. 21, Township 07S, Range 16E
JEROME County

PLACE OF USE: IRRIGATION

TWN	RGE	SEC		ACRES		ACRES		ACRES	TOTAL
07S	16E	21	SWNE	33	SENE	40	NESW	40	
			NWSW	34					147
		22	NESW	37	NWSW	40	SWSW	37	
			SESW	32	NWSE	36			182
					Total number of acres irrigated:				329

CONDITIONS OF APPROVAL AND REMARKS

1. This water right is appurtenant to the described place of use.
2. This right is subject to all prior water rights and may be forfeited by five years of non-use.
3. Modifications to or variance from this license shall be made within the limits of Section 42-222, Idaho Code, or the applicable Idaho law.
4. This right when combined with all other rights shall provide no more than .02 cfs per acre nor more than 4.0 afa per acre for irrigation of the lands above.
5. This right shall not be used if the surface water right(s) appurtenant to the place of use is sold, transferred, leased or used on any other place of use.
6. Diversion and use of water under this right is subject to rules that may subsequently be promulgated for existing rights used for supplemental purposes.

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Post-it® Fax Note 7671 | Date 12/30 | # of pages 2
To Southern Region | From Jim Johnson
Co./Dept. | Co.
Phone # | Phone # 327-7947
Fax # | Fax #

State of Idaho
Department of Water Resources

WATER RIGHT LICENSE

WATER RIGHT NO. 36-08063A

CONDITIONS OF APPROVAL AND REMARKS

7. Rights 36-02457 and 36-07760 are also diverted through the point of diversion described above.
8. Rights 36-02457, 36-07760, and 36-08063A when combined shall not exceed a total diversion rate of 3.30 cfs, a total annual diversion volume of 1107.9 af, and the irrigation of 329 acres. This right is limited to the irrigation of 107 acres within the place of use described above in a single irrigation season.

This license is issued pursuant to the provisions of Section 42-219, Idaho Code. Witness the seal and signature of the Director, affixed at Boise, this 30TH day of DECEMBER, 1997.

KARL J. DREHER, Director

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BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE
STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR TRANSFER NO. 5297

F.F. and G.C. GUNNING,

Applicants,

CITY OF WENDELL, WENDELL RECREATION DISTRICT, JOHN & VERLA HALL, NOEL BRIGGS, and FRANK ROST, Jr.,

Protestants.

AFFIDAVIT OF GAIL GUNNING

Department of Water Resources
APPLICANT'S
Exhibit 19
Date Admitted 12/10/98

STATE OF IDAHO)
) ss.
County of Ada)

Gail Gunning, being first duly sworn upon oath, deposes and says:

1. My name is Gail Gunning. I make the following statements based on my personal knowledge and am otherwise competent to give that testimony.

2. I am the person who filed the application in this case and the person who has knowledge for the applicants about the matters involved in the transfer. I am a partial owner of the properties, with my family. My father F.F. Gunning is a partial owner of the properties involved but does not have personal knowledge of the particulars of the transfer.

3. While I would like to be present to attend the transfer hearing on

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December 10, 1998, I am simply unable to do so at this point in time. My health condition does not allow it. Attached as Exhibit A is a true and accurate copy of the sworn statement of one of my doctor's verifying this. I am both unable to travel and unable to speak and therefore, cannot attend and give testimony concerning the transfer.

4. My son Andrew Gunning may not have first-hand knowledge of all of the events including what lead up to the filing of the application the way it is filed. Consequently, I do not know of anyone who is aware of all of the facts to which I would testify about if I were able to attend. Because I am unavailable, I am submitting this affidavit.

5. The transfer application reflects the transfer of the portion of three water rights. This came about when I worked closely with Georgia Satterlee of the Idaho Department of Water Resources in the Twin Falls office. The rights have suffixes on them because Ms. Satterlee and I worked out how much water would have to be transferred to the new place of use for the dairy, and how much ground and water would have to be removed from irrigation on the old place of use in order to accomplish the dry up of acreage. Therefore the application reflects the quantities that Ms. Satterlee of the Department of Water Resources determined should be transferred, the number of acres which needed to be dried up and the particular acres which would be dried up. As the application reflects, it is the 14 acres within one quarter section on the old place of use.

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6. The 14 acres consists of the corners ground which are not irrigated by pivot system within the quarter section. These acres have historically been irrigated using solid set and moveable handlines. They have been irrigated from the three water rights identified in the application. Over the years the crop rotation has varied, but has primarily been alfalfa and different kinds of grains.

7. After filing the application for transfer, we decided we would sell to the VanDyke family the property which encompasses the place of use from which the water is being transferred. In order to ensure that the transfer could be approved based on what the Department of Water Resources had inspected and confirmed was being used on the old place, we dropped our original application for transfer and filed the one that is presently being heard. The portions of the water rights which are proposed to be transferred were withheld from the sale. In other words, we agreed with the VanDyke's that they would not purchase all of our water and would not have water to irrigate the pivot corners. The rights proposed for transfer were not sold. Georgia Satterlee helped us change the claims for the water rights so that the splits reflect what they would look like after a transfer. Ms. Satterlee can explain how the acreages were split to ensure that the pivot corners being dried up are not included with the water rights being claimed by the VanDyke's. I also understand that the claim reports, which are part of the Department files, shows that those claims have been changed to reflect that the VanDyke's do not

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have any claim and have not made any claim for the water proposed to be transferred. They also have not filed for any claim on the pivot corners.

8. The copy of the map attached to the application show the corners and the specific amounts of acres being dried up.

9. If there is any concern about the fact that there are Northside Canal Company shares on the place of use where the water would be transferred, i.e. Hillcrest Dairy, I hereby agree to restrict the use of those shares in any manner that the hearing officer determines would be appropriate in order to assure that there is no increase or enlargement in the use of these rights if the transfer is granted. While I believe that the acres dried up on what is now become the VanDyke place of use adequately cover what necessarily should be dried up in order to ensure there is no enlargement in the rights or injury to existing users, I not only agree to any conditions that the hearing officer may impose on those 80 shares of Northside Canal water appurtenant to the Hillcrest Dairy site, but I agree that I will also maintain the shares, make them available for any recharge or mitigation program or otherwise allow them to be used as is necessary to condition the transfer.

10. I also hereby authorize my attorney, Patrick D. Brown to have power of attorney for me and my family in the transfer proceeding. As attorney-in-fact, I hereby authorize him to make concessions or otherwise agree to

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the imposition of conditions necessary to obtain approval of this transfer application.

11. I understand the protestants intend to raise zoning issues. I hereby adopt all statements I made in what has been marked as Exhibit 6, Statement of G.C. Gunning dated November 19, 1997. Of particular importance to the zoning issue is the fact that neither I nor anyone in my family received notice of any attempt to down zone by Gooding County. I was specifically told by Ms. Judy Daubert on behalf of Gooding County that no such permits or other County approvals were required other than those which I have already obtained.

12. Further your affiant sayeth not.

Dated this 9 day of December, 1998.

G.C. Gunning

SUBSCRIBED and SWORN to before me this 9 day of December, 1998.

RITA VAUGHN NOTARY PUBLIC STATE OF IDAHO

NOTARY PUBLIC FOR IDAHO
Residing at: Boise
My Commission Expires: 11-09-02

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CERTIFICATE OF SERVICE

The undersigned, a resident attorney of the State of Idaho, with offices at 812 Shoshone St. East, Twin Falls, Idaho 83301, and one of the attorneys for the applicants in this matter, certifies that on the ___ day of December, 1998, he served a true and correct copy of the foregoing document by the method indicated below, and addressed to the following:

Gwen Rost, Mayor
City of Wendell
P. O. Box 208.
Wendell, ID 83355

___ U.S. Mail
___ Hand Delivered
___ Overnight Mail
___ Telecopy (Fax)

Craig D. Hobdey, Esq.
P. O. Box 176
Gooding, ID 83330

___ U.S. Mail
___ Hand Delivered
___ Overnight Mail
___ Telecopy (Fax)

Dale Bitterli, President
Wendell Recreation District
P. O. Box 217
Wendell, ID 83355

___ U.S. Mail
___ Hand Delivered
___ Overnight Mail
___ Telecopy (Fax)

John & Verla Hall
1986 East 2600 South
Wendell, ID 83355

___ U.S. Mail
___ Hand Delivered
___ Overnight Mail
___ Telecopy (Fax)

Noel Briggs
2050 East 3000 South
Wendell, ID 83355

___ U.S. Mail
___ Hand Delivered
___ Overnight Mail
___ Telecopy (Fax)

Frank Rost, Jr.
604 6th Avenue East
Wendell, ID 83355

___ U.S. Mail
___ Hand Delivered
___ Overnight Mail
___ Telecopy (Fax)

Patrick D. Brown

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COPY

Saint Alphonsus
Cancer Treatment Center

[redacted]

Carolyn Collins, MD
[illegible]
Mary M. Farquhar, MD
[illegible]
David A. Hughes, MD
[illegible]

[redacted]

Comprehensive Breast Care Service
Community Education/Resource Room
Home Nursing Cancer Program
Clinical Research
Tumor Board/Cancer Conference
Hematology/Medical Oncology
Radiation Therapy
Stereotactic Body Radiotherapy
Intensity Modulated Radiation Therapy
Psychosocial Support
Clinical Pharmacy
Nutritional Support
Rehabilitation Services
Pain Management
Home Health
Hospice Services

December 9, 1998

RE: Gunning, Gail
DOB: 3-3-40

Dear Pat Brown:

Mr. Gunning is a patient in my care at Saint Alphonsus Cancer Treatment Center. He is unable to speak and is unable to travel to Twin Falls for the water rights hearing due to his on-going medical condition which requires frequent monitoring.

If you have any questions or concerns, please contact my office at the Cancer Treatment Center, (208) 367-3131.

Sincerely,

Carolyn Collins

Carolyn Collins, M.D.
Medical Oncology

CC.clz

State of Idaho)
County of Ada) S.S.

On this 9 day of December, in the year of 1998, before me Patricia Pate, a notary public, personally appeared Carolyn Collins, personally known to me to be the person(s) whose name(s) is (are) subscribed to the within instrument, and acknowledged to me that he/(she) (they) executed the same.

Notary Public
My Commission Expires on 10-1-02

EXHIBIT
1 A

1055 North Curtis Road • Boise, Idaho 83706-1320 • (208) 367-3131 • FAX 367-8174

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FINDINGS OF FACT AND CONCLUSIONS BEFORE THE GOODING COUNTY PLANNING AND ZONING COMMISSION

ADMINISTRATIVE APPEAL – Hillcrest Dairy, P.O. Box 821, Wendell, ID 83355, on a property located in Sec. 34, T. 7 S., R. 15 EBM with an approximate address of 2950 S. 2100 E., Wendell, ID 83355, in a T-2 Zoning District. The Appeal is of the Administrators decision to deny a CAFO Siting Permit Application since the facility is not recognized by the Planning and Zoning Office to be an existing "Grandfathered" CAFO due to the fact it was enlarged with no application or permits under Ordinance #60 in a T-2 zoning district.

This matter having come before the Commission on November 19, 1997 and again on February 25, 1998, with Bob Bolte, Dr. Kieffer, and Henry Westendorf at the first hearing and Bob Bolte, Dr. Kieffer, Henry Westendorf, Stacy Butler, and Mike Goedhart present at the second hearing.

FINDINGS OF FACT

Having given due consideration to the application and evidence presented, the Planning and Zoning Commission hereby makes the following findings of fact:

1) The existing land use in the area is presently residential, commercial and agricultural.

2) The proper legal requirements for advertisement of the hearing have been fulfilled as required by the laws of the State of Idaho. Advertisement has taken place on the following dates: October 14, 1997, October 30, 1997, February 4, 1998.

3) Notice was posted on the property on October 15, 1997, November 3, 1997, and on February 11, 1998.

4) Notice was mailed to property owners or residents within ½ mile on October 14, 1997, October 30, 1997, and on February 6, 1998.

5) The Hillcrest Dairy, located in Section 34, T. 7 S., R.15 EBM made application containing a total of 80 acres. As of February 25, 1998, this would include, 3 tax parcels by the records in the Gooding County Assessors Office. Tax Parcel 0002 is comprised of approximately 68.631 acres and is owned by F.F. & Irene Gunning. Tax Parcel 0337 is comprised of 10 acres and is owned by F.F. & Irene Gunning, Gail C. & Susan Gunning and contains the dairy equipment. Tax Parcel 2174 is comprised of approximately 1.369 acres and is owned by Andrew C. & Jessica C. Gunning.

6) The Hillcrest Dairy is located in a T-2 Zoning district.

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Department of Water Resources
PROTESTANT'S
Exhibit A
Date Admitted 12/10/98

7) The Hillcrest Dairy is located within the City of Wendell's Impact Area.

8) The Hillcrest Dairy is approx. ½ mile from the eastern boundary of the Wendell City Limits and ½ mile from the Wendell High School property.

9) The first Wendell City Impact Area was established under the City of Wendell's Ordinance #277, March 25, 1976.

10) On June 13, 1991, the City of Wendell gave jurisdiction of the City Impact Area to Gooding County, Ordinance #356.

11) On April 27, 1995 a new City Impact Agreement was adopted with Gooding County, Ordinances #57 & 58. Jurisdiction of the Impact Area remains with Gooding County.

12) The Gooding County Comprehensive Plan was adopted in 1975, revised in 1985, and again in 1992.

13) Due to the following reasons, we find that this facility is a non-conforming use and the location is not in compliance or conformance with the Comprehensive Plan:

Under Article Four, Land Use of the Comprehensive Plan:

Section Three, Agricultural, under Policy, Item IV, states: To adopt an Ordinance that regulates the proximity of residential areas to confined animal feeding operations (CAFO's) and confined animal feeding operations (CAFO's) to residential areas.

Section Four, Residential states in part that ...An area of impact and/or transitional zoning district surrounds the incorporated cities in the county. These areas shall provide space for future residential growth within the county. It further states that it shall be the intent of the Comprehensive Plan to protect cities and residential zoning districts from encroachment by confined animal feeding operations (CAFO's). Under Policy it states that it shall be the policy of Gooding County to protect incorporated cities and residential zoning districts from encroachment by confined animal feeding operations (CAFO's).

Section Five, Impact Areas states in part that, ...rural county surrounding an incorporated city which is affected by and allows for the future growth and development of the city may be known as an area of city impact.

Section Six, Transitional, states in part, there is a need for a district which acts as a buffer between incompatible zoning districts or areas which are changing to other uses. Residential zoning districts in the county shall be buffered by a transitional zoning district. It is intended that these areas act as a buffer between cities and confined animal feeding operations (CAFO's). Agriculture except confined animal feeding operations shall be allowed.

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14) Moratoriums by the Gooding County Commissioners were placed from November 14, 1991 thru June 11, 1992 for construction or enlargement of CAFO's.

15) Gooding County records show that on October 5, 1993, Farm Credit Services sent notice to the Administrator, requesting the dairy be approved for a CAFO Grandfather Permit at 473 head of cows and 204 head of young stock, no permit for a calf operation. This permit was for the dairy numbers only. In April, 1986 the dairy was accepted into the Dairy Termination Program and they had five months to remove all animals and they could not milk on the facility for five years or August of 1991.

16) Gooding County records show that on October 20, 1993, CAFO Siting Permit 94-016 was issued to Farm Credit Bank (Dairy West Assoc.) for 473 lactating cattle and 204 calves. On the CAFO Siting Permit it states: Any increase in structures or change in the location of structures must conform to the restrictions as outlined in Section C, Article XVII of Zoning Ordinance #50 and again later the same guidelines applied in Ordinance #60 which was a requirement to obtain a Special Use Permit.

17) On July 27, 1994, District Judge J. William Hart declared Ordinance #50 void.

18) Gooding County Zoning Ordinance #60 was passed on August 31, 1995, and was duly published as required by Idaho Code and Gooding County Ordinances. When notice is required to two hundred (200) or more property owners or residents, in lieu of posted or mailed notification, three (3) notices in the official newspaper or paper of general circulation is sufficient, provided that the third notice appear ten (10) days prior to the public hearing.

19) There was testimony received from the Wendell City Mayor that in the Statement of G.C. Gunning, he stated that no member of our family received any personal notice of any change in the Ordinance which down-zoned the property from Ag to T-2. However, in documentation provided to the Gunnings' when they purchased the property and in the information submitted by Mr. Williams, there were documents in regard to the property being zoned T-2.

20) Gooding County records show on January 11, 1996, the Administrator received a letter from Farm Credit Services with a copy of Warranty Deed dated March 2, 1995 and a copy of CAFO Siting Permit dated October 20, 1993. This deed was to F.F. Gunning and Irene Gunning and the dairy was not in operation at that time.

21) At the time of the purchase of the property, the facility was not in operation.

22) On the Warranty Deed referenced above it states --- subject to any and all easements, rights of way, or restrictions, zoning and building laws and ordinances.

23) The Board of County Commissioners received a letter on May 1, 1996, from Attorney Craig Hobdey, representing the City of Wendell, objecting to the

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remodel and reconstruction of the old Dairy West facility, giving the County 10 days to reply.

24) Per Gooding County records, on May 1, 1996 a letter was mailed from the Administrator to F.F. Gunning and/or G.C. Gunning with copy to Phil Brown, Harry DeHaan, City of Wendell, and Craig Hobdey stating that Hillcrest Dairy had removed the existing facility and they had no building permit, Special Use Permit or new CAFO Siting Permit on file with the County and that they were not in compliance with Gooding County Ordinance #60 and gave them notice to cease & desist until they had all permits required.

25) Records show that no applications were ever made for a SUP or for a change or enlargement to the CAFO.

26) May 14, 1996 a stop work order was issued stating that because "NO PERMITS ISSUED" "You are hereby notified that no more work shall be done upon these premises until the above violations are corrected. When corrections have been made call 934-5958 for inspection." Work on the facility continued.

27) May 28, 1996, letter from Harry DeHaan (Gunning Attorney) was sent to the Administrator stating "first of all we have not 'completely removed the CAFO facility'. In fact if we had completely removed it, as per your letter, it would be impossible to 'rebuild it'. As you know, your office issued a grandfather permit and as you are further fully aware, agricultural buildings do not require building permits." There was still nothing in the file showing that the Gunnings ever applied for a SUP that was required for any change or enlargement in a T-2 Zoning District. It was later determined that a building permit was not necessary for the barn and a letter sent to Idaho Power on August 15, 1996, in that regard.

28) Ordinance #60, Article XVII, Permits, Section C (b) states in part that a CAFO in existence at the time of enactment (in a transitional zone) shall be required to have a Siting Permit. For a CAFO enlargement or change of operation a Special Use Permit shall be required.

29) August 9, 1996, letter to the Gooding County Commissioners from Rob Williams representing F.F. & Irene Gunning. This letter was in regard to a Building Permit for the remodel of the barn. It was found that the remodel had started prior to Gooding County requiring building permits on Barns (Jan. 1, 1996).

30) A Moratorium was placed by the Board of County Commissioners for new construction or enlargement of CAFO's from July 8, 1996 thru February 10, 1997.

31) October 11, 1996, the file shows a letter from Mr. Williams that his clients were willing to sign and apply for an application for a Siting permit as an existing CAFO operation. He also stated that it would be promptly completed and returned.

32) October 28, 1996, a letter in the file shows an application was sent to Robert E. Williams. No record in the file that the application was ever returned. Also, stated in the letter was the fact that in the opinion of the Planning and Zoning Administrator, that this would be a new siting permit not a Grandfathered CAFO

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since the facility was not in operation at the time of enactment of Zoning Ordinance #60.

33) August 10, 1997, F.F. & Irene Gunning and G.C. & Susan Gunning made application for a Grandfathered CAFO under Ordinance #62 for 1050 milking and dry cows and 200 heifers. It was returned in a format other than that on our application form. (The information was typed up on a sheet of paper.) The line providing for the lease information was left out. It was also noted that the water permit submitted is in the name of Dairy West Associates. Since the application was made there has been a parcel of land split off of the original acreage to Andrew Gunning.

34) August 26, 1997 the Administrator rejected the Existing CAFO Siting Permit Application on the basis that the facility is not recognized by the Planning and Zoning Office to be an existing "Grandfathered" CAFO due to the fact it was enlarge with no application or permits under Ordinance #60 in a T-2 zoning district.

35) September 12, 1997 Robert E. Williams sent a letter appealing the action of the Administrator on behalf his client Hillcrest Dairy. The appeal was on the following grounds: 1) Gooding County Ordinance No. 62 is unlawful & void. and 2) Gooding County Planning and Zoning Ordinance No. 60 is unlawful. To date, neither of those statements were determined by a Judge.

36) A public hearing was set for October 29, 1997 to hear the Administrative Appeal of the Hillcrest Dairy. That hearing was continued until November 19, 1997 at which time the Planning and Zoning Commission upheld the Administrators decision.

37) December 1, 1997, the file shows a letter from Robert E. Williams to the Board of County Commissioners appealing the decision of the Planning and Zoning Commission.

38) An Appeal Hearing was held with the County Commissioners on January 12, 1998. It was the findings of the Board of County Commissioners in the Matter of the Hillcrest Dairy Appeal that the Planning & Zoning Findings of Fact are inadequate and a further hearing is needed, therefor it was ordered that the matter be remanded to the Planning and Zoning Commission for a further hearing and Findings of Fact.

39) A Hearing was held on February 25, 1998, by the Planning and Zoning Commission pursuant to the order of the County Commissioners. New testimony was taken as well as the previous testimony considered.

40) There was no information found in the file and there was testimony received to the fact that the Hillcrest Dairy did not show a valid water permit for the number of animals on the facility.

41) On the notarized Statement of G.C. Gunning, item 8 includes a summary of the costs and expenses paid in a total amount of $298,038.69. This number included the purchase of straw, hay and silage, which should not be considered a

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capital expenditure. Also, these items were purchased well in advance of the dairy operation beginning.

42) In the testimony received, there was no date established as to the exact date the facility went into operation.

CONCLUSIONS

Based on the foregoing findings, the Commission concludes as follows:

The facility was not in operation at the time the property was purchased and therefore would not be entitled to a registration as a grandfathered CAFO.

ORDER

The Planning and Zoning Commission, pursuant to the aforementioned, orders that the application, as described in the petition, should be denied and to uphold the decision of the Planning and Zoning Administrator.

Signed this 26th day of March, 1998.

Bob Bolte, Chairman

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Left Side

File 2 of 2

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

TRANSFER OF WATER RIGHT

TRANSFER NO. 5197
WATER RIGHT NO(S). 36-02457B/36-07760B/36-08063F

This is to certify that: **F F GUNNING**
G C GUNNING
PO BOX 821
WENDELL ID 83355

has requested a change to the above captioned water right(s). This change in water right(s) is authorized pursuant to the provisions of Section 42-222, Idaho Code, provided the conditions listed below are met.

BENEFICIAL USE	PERIOD OF USE	DIVERSION RATE	ANNUAL VOLUME
Right No. 36-02457B :			
STOCKWATER	01/01 to 12/31	0.09 CFS	20.7 AF
COMMERCIAL	01/01 to 12/31	0.09 CFS	16.9 AF
Priority: 09/29/1961		**0.09 CFS**	**37.6 AF**
Right No. 36-07760B :			
STOCKWATER	01/01 to 12/31	0.11 CFS	20.7 AF
COMMERCIAL	01/01 to 12/31	0.11 CFS	16.9 AF
Priority: 11/07/1977		**0.11 CFS**	**37.6 AF**
	SUBTOTAL:		**37.6 AF**
Right No. 36-08063F :			
STOCKWATER	01/01 to 12/31	0.09 CFS	10.1 AF
COMMERCIAL	01/01 to 12/31	0.09 CFS	8.3 AF
Priority: 02/16/1982		**0.09 CFS**	**18.4 AF**
	TOTAL:	**0.20 CFS**	**56.0 AF**

SOURCE

GROUNDWATER

LOCATION OF POINT(S) OF DIVERSION: NENE , Sec. 34, Township 07S, Range 15E
GOODING County

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TRANSFER NO. 5197
WATER RIGHT NO(S). 36-02457B/36-07760B/36-08063F

PLACE OF USE: STOCKWATER

TWN	RGE	SEC		
07S	15E	34	NENE	

PLACE OF USE: COMMERCIAL

TWN	RGE	SEC		
07S	15E	34	NENE	SENE

CONDITIONS OF APPROVAL AND REMARKS

Rights 36-02457B, 36-07760B and 36-08063F are subject to the conditions of the Final Order in the matter of Application for Transfer 5197.

Dated this 21st day of October, 1999.

L. Glen Saylor
Chief, Water Allocation Bureau

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BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR TRANSFER NO. 5197 IN THE NAME OF F. F. GUNNING AND G. C. GUNNING	)))))	**FINAL ORDER**

On April 1, 1999, the hearing officer for the Idaho Department of Water Resources (the "Department") issued a Recommended Order in the above captioned matter. None of the parties filed a petition for reconsideration, briefs, or exceptions to the Recommended Order. Based on his understanding of the law and the facts in this matter, the Director makes the following Findings of Fact, Conclusions of Law and Final Order.

FINDINGS OF FACT

1. On December 4, 1997, the Snake River Basin Adjudication ("SRBA") Court issued a partial decree for water right no. 36-02457 as follows:

Source:	Groundwater
Priority:	September 29, 1961
Rate of diversion:	1.0 cubic foot per second ("cfs")
Point of diversion:	NE1/4 NE1/4 SE1/4[1] Section 21, T7S, R16E, Jerome County
Purpose of Use:	Irrigation
Period of use:	April 1 to October 31
Place of use:	118 acres within a 222-acre permissible place of use in parts of Sections 21 and 22, T7S, R16E, Jerome County
Other Limitations:	Use of this right with right no. 36-07760 is limited to a total combined diversion rate of 3.3 cfs and a total combined annual diversion volume of 888 acre feet ("af").
	Use of this right with right no. 36-07760 is limited to the irrigation of a combined total of 222 acres in a single irrigation season.

[1] The "1/4" designations will be omitted from subsequent legal descriptions in this order.

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2. On December 4, 1997, the SRBA Court issued a partial decree for water right no. 36-07760 as follows:

Source:	Groundwater
Priority:	November 7, 1977
Rate of diversion:	2.3 cfs
Point of diversion:	NESE Section 21, T7S, R16E, Jerome County
Purpose of Use:	Irrigation
Period of use:	April 1 to October 31
Place of use:	221 acres within a 222-acre permissible place of use in parts of Sections 21 and 22, T7S, R16E, Jerome County
Other Limitations:	Use of this right with right no. 36-02457 is limited to a total combined diversion rate of 3.3 cfs and a total combined annual diversion volume of 888 af. Use of this right with water right no. 36-02457 is limited to a combined total of 222 acres in a single irrigation season.

3. On December 30, 1997, the Department issued water right license no. 36-08063A as follows:

Source:	Groundwater
Priority:	February 16, 1982
Rate of diversion:	2.14 cfs
Point of diversion:	NESE Section 21, T7S, R16E, Jerome County
Purpose of Use:	Irrigation
Period of use:	April 1 to October 31
Place of use:	107 acres within a 329-acre permissible place of use in parts of Sections 21 and 22, T7S, R16E, Jerome County
Other Limitations:	Rights 36-02457, 36-07760, and 36-08063A when combined shall not exceed a total diversion rate of 3.3 cfs, a total annual diversion volume of 1107.9 af, and the irrigation of 329 acres.

4. On April 3, 1997, F. F. Gunning and G. C. Gunning[2] ("applicant") filed Application for Transfer No. 5197 ("application") with the Department seeking to change the nature of use for a total of 0.2 cfs and 55.3 af from parts of three irrigation water rights (36-02457, 36-07760 and 36-08063A) to stockwater and commercial uses at an existing dairy known as Hillcrest Dairy. Hillcrest Dairy is located within the E1/2NE Section 34, T7S, R15E, Gooding

[2] The Department has been informed that subsequent to the application for transfer and hearing, G. C. Gunning passed away. However, no documentation or Notice of Change of Water Right Ownership have been submitted to the Department.

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County, approximately six miles west of the original irrigation use within Section 21, T7S, R16E, Jerome County.

5. The Department published notice of the application, and the application was subsequently protested by the following parties ("protestants"):

City of Wendell
Wendell Recreation District
John and Verla Hall
Noel Briggs
Frank Rost, Jr.

6. On December 10, 1998, the Department conducted a hearing in the matter. The applicant was present and was represented by Patrick D. Brown. The City of Wendell was represented by Craig D. Hobdey. Protestant Frank Rost, Jr. was present and represented himself. Bud Bitterly appeared for the Wendell Recreation District, but chose not to participate as a full party in the hearing. Protestants Noel Briggs and John and Vera Hall did not appear.

7. Issues identified by the protestants include the following:

a. The proposed changes will injure the rights of the protestants.

b. The proposed changes will constitute an enlargement in use of the original right.

c. The proposed changes are not in the local public interest.

d. The proposed changes are not consistent with the conservation of water resources within the state of Idaho.

8. Exhibits premarked, offered, or accepted as a part of the record include the following:

a. Applicant's Exhibit 1 - NOT OFFERED

b. Applicant's Exhibit 2 - NOT OFFERED

c. Applicant's Exhibit 3 - NOT OFFERED

d. Applicant's Exhibit 4 - NOT OFFERED

e. Applicant's Exhibit 5 - NOT OFFERED

f. Applicant's Exhibit 6 - Statement of G. C. Gunning

g. Applicant's Exhibit 7 - NOT OFFERED

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h. Applicant's Exhibit 8 - Copy of part of a 7.5 minute U.S. Geological Survey Quadrangle sheet titled "Wendell, Idaho"

i. Applicant's Exhibit 9 - Notice of Claim to a Water Right - Identification No. A36-07440, Partial Decree for Water Right 36-07722, Partial Decree for Water Right 36-11276, Partial Decree for Water Right 36-11277, Well Driller's Reports (4), Water Measurement Reports (10)

j. Applicant's Exhibit 10 - Letter dated December 1, 1998 to Pat Brown from Charles E. Brockway together with a well interference analysis and water requirement analysis

k. Applicant's Exhibit 11 - Order of Partial Decree for Water Right 36-10815 dated March 2, 1998

l. Applicant's Exhibit 12 - Order of Partial Decree for Water Right 36-15511 dated July 20, 1998

m. Applicant's Exhibit 13 - NOT OFFERED

n. Applicant's Exhibit 14 - NOT OFFERED

o. Applicant's Exhibit 15

- Order in Case No. 21610 titled James D. Nafziger et al. v. Gooding County et al. dated October 15, 1991
- Judgment in Case No. 21610 titled James D. Nafziger et al. v. Gooding County et al. dated November 8, 1991
- Memorandum Opinion & Order Re Defendant's Motion to Dismiss & Plaintiff's Motion For Summary Judgment in Case No. 22808 titled Pieter Deelstra et al. v. Board of Gooding County Commissioners of Gooding County, Idaho dated July 27, 1994
- Second Amended Order Granting Plaintiffs' Motion for Summary Judgment in Case No. CV 96-00368 titled Pieter Deelstra et al. v. Gooding County et al. dated August 27, 1996
- Amended Order in Case No. CV 96-00368 titled Pieter Deelstra et al. v. Gooding County et al. dated March 27, 1997
- Opinion and Order in Case No. CV 97-430 titled Idaho Dairymen's Association, Inc., et al. v. Win Henslee, et al. dated June 17, 1998

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p. Applicant's Exhibit 16 - Partial Decree for Water Right 36-02457 in the name of Tammy D. and Richard B. Van Dyk

q. Applicant's Exhibit 17 - Partial Decree for Water Right 36-07760 in the name of Tammy D. and Richard B. Van Dyk

r. Applicant's Exhibit 18 - Water Right License No. 36-08063A in the name of F. F. Gunning and G. C. Gunning

s. Applicant's Exhibit 19 - Affidavit of Gail Gunning

t. Protestant's Exhibit A - Findings of Fact and Conclusions Before the Gooding County Planning and Zoning Commission dated March 26, 1998

9. The reported capacity of the Hillcrest Dairy is 1,050 milking cows and 150 non-milking cows. A partial decree in connection with SRBA Claim No. 36-15511 provides water for 400 of the milking cows at the dairy. The application seeks water for the remaining 650 milking cows and 150 non-milking cows (remaining uses). The applicant needs a maximum diversion volume of approximately 56 af of water for the remaining uses at the Hillcrest Dairy to be diverted at a maximum rate of 0.2 cfs. The consumptive use volume of water needed for the remaining dairy uses is approximately 20 af.

10. The water sought for transfer in the application was either withheld from land sold by the applicant to Richard B. and Tammy D. Van Dyk or sold back to the applicant. The land from which water was withheld or sold is more specifically described as follows:

Section 22, T7S, R16E, Jerome County

NESW - 2 acres
NWSW - 8 acres
SWSW - 4 acres

The land from which water was withheld or sold consists of corners that are no longer irrigated by the pivot on the quarter section.

11. A dairy existed at the Hillcrest Dairy site from 1962 to 1987, when the dairy ceased operation due to a federally sponsored dairy buy-out program. From 1991 to 1994, a calf feeding operation for up to 4,500 calves was conducted on the site.

12. On March 2, 1995, the applicant bought the Hillcrest Dairy site. The applicant began to enlarge the facility and reestablish the dairy. The facility enlargement was contested by the City of Wendell, which contended that the site was within the city's impact area and that zoning for the site required certain permits the Gunnings did not have. This zoning issue has been litigated in several cases between Gooding County and various dairy interests.

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13. There are approximately 10,000 milking cows within a two-mile radius of Wendell. Most of the dairies are on the west side of town.

14. Overall, the local community generally supports the dairy industry, since the industry creates jobs and contributes to the general economy.

15. The efficiency of the use of water at the Hillcrest Dairy is comparable to other dairies in the area.

16. The Board of Gooding County Commissioners enacted Gooding County Ordinance 62 on February 10, 1997. Among other purposes, the ordinance defines "Confined Animal Feeding Operations" ("CAFOs"), addresses existing CAFOs, provides criteria and procedures for "siting permits", and sets forth criteria for "occupancy certificates."

17. In Civil Case No. CV 97-430, titled Idaho Dairymen's Association Inc., et al. v. Win Henslee, et al., on June 17, 1998, (see Applicant's Exhibit 15), the Fifth Judicial District Court held that Ordinance 62 is invalid in its entirety. This ruling is presently on appeal and cross-appeal.

18. At the hearing, the applicant and protestants stipulated that the matter of zoning was presently on appeal and should not be argued in the Department's administrative hearing on the protested application for transfer, since the Department does not have the authority to decide zoning issues.

19. The field headgate diversion requirement for the irrigation of crops in the vicinity of the Hillcrest Dairy and the Van Dyk property is 4.0 af per acre, and the consumptive irrigation requirement is 3.0 af per acre. The annual field headgate diversion requirement for the irrigation of 14 acres at 4 af per acre is 56 af, and the annual consumptive irrigation requirement for irrigation at 3 af per acre is 42 acre feet.

20. The applicant's expert witness provided testimony that the diversion rate of 0.20 cfs proposed in the application would not be measurable in any wells owned by the City of Wendell or the other protestants.

21. The applicant owns approximately 80 shares of water in the North Side Canal Company, is willing to retain ownership of the shares, and will make the shares available for mitigation or a recharge program to benefit the general area if such a program is established.

22. The City of Wendell alleged that the quality of life in Wendell has decreased due to odors and flies attributable to the Hillcrest Dairy. The city also contended, without supporting evidence, that odor of water from a well owned by the city was attributable to the dairy.

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CONCLUSIONS OF LAW

1. Section 42-222, Idaho Code, provides in pertinent part as follows:

> The director of the department of water resources shall examine all the evidence and available information and shall approve the change in whole, or in part, or upon conditions, provided no other water rights are injured thereby, the change does not constitute an enlargement in use of the original right, and the change is consistent with the conservation of water resources within the state of Idaho and is in the local public interest as defined in section 42-203A(5), Idaho Code; ....

2. IDAPA 37.03.08045.01.e.iii (Water Appropriation Rule 45.01.e.iii) provides in pertinent part as follows:

> e. Criteria for determining whether the project conflicts with the local public interest. The director will consider the following, along with any other factors he finds to be appropriate, in determining whether the project will conflict with the local public interest:
>
> iii. Compliance with applicable air, water and hazardous substance standards, and compliance with planning and zoning ordinances of local or state government jurisdictions.

3. The applicant carries the burden of coming forward with evidence that the proposed change will not injure other water right holders, that it will not constitute an enlargement of the use, and that it will be consistent with principles of conservation of water resources within the state of Idaho.

4. Both the applicant and the protestants have the responsibility of coming forward with evidence regarding matters of public interest about which they are each most cognizant.

5. The applicant has the ultimate burden of persuasion for all of the criteria of Section 42-222, Idaho Code.

6. The changes proposed in the application will not injure other water rights.

7. The proposed changes do not constitute an enlargement in use of the original right since transfer of the rights for the uses sought in the application do not increase the total rate of diversion, annual volume diverted, or annual volume consumptively used.

8. The proposed changes are in the local public interest provided the applicant complies with planning and zoning ordinances of local government jurisdictions and the environmental requirements of state agencies.

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9. The proposed changes are consistent with the conservation of water resources within the state of Idaho.

10. The Department should approve the application with certain conditions and limitations.

ORDER

IT IS THEREFORE, hereby ORDERED that Application for Transfer No. 5197 is **APPROVED** subject to the following conditions and limitations:

1. Use of water under this approval shall comply with applicable water quality standards of the Division of Environmental Quality of the Idaho Department of Health and Welfare.

2. The dairy operation authorized under this approval shall comply with applicable city and county zoning and use requirements.

3. Two points of diversion are located within NENE Section 34, T7S, R15E, Gooding County.

4. The total instantaneous diversion of water from the points of diversion under Transfer 5197 shall not exceed 0.2 cfs nor a total annual combined volume of 56 af.

5. Prior to diversion and use of water under this approval, the right holder shall install and maintain a measuring device on each diversion associated with the dairy and shall annually report the amount of water diverted to the Department.

6. Wastewater from the commercial use authorized under this approval may be applied to irrigated land to satisfy water quality requirements. However, wastewater may only be applied to the lands identified on the transfer, and water shall not be land applied for irrigation use unless it has first been beneficially used in the dairy operation in accordance with this transfer approval.

7. The right holder shall maintain ownership and control of 80 shares of water in the North Side Canal Company for mitigation purposes and shall comply with the terms of mitigation as the Department may determine the terms in the future.

8. The acres which are no longer authorized for irrigation under right nos. 36-02457A, 36-07760A, and 36-08063E are described as follows: 2 acres in NESW, 8 acres in NWSW, and 4 acres in SWSW Section 22, T7S, R16E, Jerome County

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9. The remainder of right no. 36-02457 is identified as right no. 36-02457A and is limited to a diversion rate of 0.91 cfs and an annual diversion volume of 386.3 af for the irrigation of 108.6 acres each year within a 212.6-acre permissable place of use.

10. The remainder of right no. 36-07760 is identified as right no. 36-07760A and is limited to a diversion rate of 2.19 cfs and an annual diversion volume of 464.1 af for the irrigation of 211.6 acres each year within a 212.6-acre permissable place of use.

11. The remainder of right no. 36-08063A is identified as right no. 36-08063E and is limited to a diversion rate of 2.05 cfs and an annual diversion volume of 409.6 af for the irrigation of 102.4 acres each year within a 315-acre permissable place of use.

12. Use of rights no. 36-02457A and 36-07760A when combined is limited to the irrigation of a combined total of 212.6 acres in a single irrigation season.

13. Use of rights no. 36-02457A, 36-07760A, and 36-08063E when combined is limited to a total combined diversion rate of 3.10 cfs and a total combined diversion volume of 1,051.9 af for irrigating a combined total of 315 acres in a single irrigation season.

14. The change authorized by this approval shall be accomplished within one (1) year of the date of this order.

15. Failure of the right holder to comply with any condition of approval of this transfer is cause for the Director to rescind approval of the transfer.

IT IS FURTHER hereby ORDERED that the protests of Noel Briggs and John and Vera Hall be **SET ASIDE** for failure to appear at the scheduled hearing.

Signed this 20th day of September, 1999.

KARL J. DREHER
Director

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CERTIFICATE OF SERVICE

I DO HEREBY CERTIFY that on the 21st day of September, 1999, the above and foregoing document was served upon the following, via certified mail, by placing a copy of the same in the United States Mail, postage prepaid and properly addressed to the following:

F F GUNNING
G C GUNNING
PO BOX 716
WENDELL ID 83355

GWEN ROST MAYOR
CITY OF WENDELL
PO BOX 208
WENDELL ID 83355

DALE BITTERLI
PRESIDENT WENDELL REC DIST
PO BOX 217
WENDELL ID 83355

NOEL BRIGGS
2050 E 3000 S
WENDELL ID 83355

PATRICK D BROWN
PARKER WARR AND BROWN
812 SHOSHONE ST E
TWIN FALLS ID 83301

CRAIG D HOBDEY ESQ
PO BOX 176
GOODING ID 83330

JOHN AND VERLA HALL
1988 E 2800 S
WENDELL ID 83355

FRANK ROST JR
604 6TH AVE E
WENDELL ID 83355

Julie L. Yarbrough

JULIE L. YARBROUGH
Senior Secretary, Water Allocation Bureau

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BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR TRANSFER NO. 5197 IN THE NAME OF F.F. GUNNING AND G.C. GUNNING	)))))	**RECOMMENDED ORDER**

This matter having come before the Idaho Department of Water Resources (the "Department") in the form of a protested application for transfer and the Department having held a conference and a hearing in the matter, the hearing officer recommends the following Findings of Fact, Conclusions of Law and Order:

FINDINGS OF FACT

1. On December 4, 1997, the Snake River Basin Adjudication ("SRBA") court issued a partial decree in connection with Water Right License No. 36-02457 as follows:

Source:	Groundwater
Priority:	September 29, 1961
Rate of diversion:	1.0 cubic foot per second ("cfs")
Point of diversion:	NE1/4NE1/4SE1/4 Section 21, T7S, R16E, B.M., Jerome County
Use:	Irrigation
Period of use:	April 1 to October 31
Place of use:	118 acres within a permissible place of use of 222 acres in parts of Sections 21 and 22, T7S, R16E, B.M.
Conditions of Approval:	
	Use of this right with right no. 36-07760 is limited to a total combined diversion rate of 3.3 cfs and a total combined annual diversion volume of 888 acre feet ("af").
	This right is limited to the irrigation of 118 acres within the 222 acre permissible place of use in a single irrigation season.

(Note: The "1/4" designations will be omitted from subsequent legal descriptions in this order).

2. On December 4, 1997, the SRBA court issued a partial decree in connection with Water Right License No. 36-07760 as follows:

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Source: Groundwater
Priority: November 7, 1977
Rate of diversion: 2.3 cfs
Point of diversion: NESE Section 21, T7S, R16E, B.M.
Use: Irrigation
Period of use: April 1 to October 31
Place of use: 221 acres within parts of Sections 21 and 22, T7S, R16E, B.M.
Conditions of approval:

Use of this right with right no. 36-02457 is limited to a total combined diversion rate of 3.3 cfs and a total combined annual diversion volume of 888 af.

This right is limited to the irrigation of 221 acres within the place of use described above in a single irrigation season.

Use of this right with water right no. 36-02457 is limited to a combined total of 222 acres in a single irrigation season.

3. On December 30, 1997, the Department issued Water Right License No. 36-08063A as follows:

Source: Groundwater
Priority: February 16, 1982
Rate of diversion: 2.14 cfs
Point of diversion: NESE Section 21, T7S, R16E, B.M.
Use: Irrigation
Period of use: April 1 to October 31
Place of use: 107 acres within parts of sections 21 and 22, T7S, R16E, B.M.
Conditions of approval:

Rights 36-02457, 36-07760 and 36-08063A when combined shall not exceed a total diversion rate of 3.3 cfs, a total annual diversion volume of 1107.9 af and the irrigation of 329 acres.

4. On April 3, 1997, F.F. Gunning and G.C. Gunning ("applicant") filed Application for Transfer No. 5197 ("application") with the Department seeking to change the nature of use of a total of 0.20 cfs and 56 acre feet from parts of three irrigation water rights (36-02457, 36-07760 and 36-08063A) to stockwater and commercial uses at an existing dairy known as Hillcrest Dairy. The dairy is located within the E1/2NE Section 34, T7S, R15E, B.M. in Gooding County approximately six miles west of the original irrigation use within Section 21, T7S, R16E, B.M. in Jerome County.

5. The Department published notice of the application which was subsequently protested by the following parties:

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City of Wendell
Wendell Recreation District
John and Verla Hall
Noel Briggs
Frank Rost, Jr.

6. On December 10, 1998, the Department conducted a hearing in the matter. The applicant was present and was represented by Patrick D. Brown. The city of Wendell was represented by Craig D. Hobdey. Protestant Frank Rost, Jr. was present and represented himself. Bud Bitterly appeared for the Wendell Recreation District, but chose not to participate as a full party in the hearing. Protestants Noel Briggs and John and Vera Hall did not appear.

7. Issues identified by the protestants include the following:

a. The proposed changes will injure the rights of the protestants.

b. The proposed changes will constitute an enlargement in use of the original right.

c. The proposed changes are not in the local public interest.

d. The proposed changes are not consistent with the conservation of water resources within the state of Idaho.

8. Exhibits premarked, offered or accepted as a part of the record include the following:

a. Applicant's Exhibit 1 - NOT OFFERED

b. Applicant's Exhibit 2 - NOT OFFERED

c. Applicant's Exhibit 3 - NOT OFFERED

d. Applicant's Exhibit 4 - NOT OFFERED

e. Applicant's Exhibit 5 - NOT OFFERED

f. Applicant's Exhibit 6 - Statement of G. C. Gunning

g. Applicant's Exhibit 7 - NOT OFFERED

h. Applicant's Exhibit 8 - Copy of part of a 7.5 minute U.S. Geological Survey Quadrangle sheet titled "Wendell, Idaho"

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i. Applicant's Exhibit 9 - Notice of Claim to a Water Right - Identification No. A36-07440, Partial Decree for Water Right 36-07722, Partial Decree for Water Right 36-11276, Partial Decree for Water Right 36-11277, Well Driller's Reports (4), Water Measurement Reports (10)

j. Applicant's Exhibit 10 - Letter dated December 1, 1998 to Pat Brown from Charles E. Brockway together with a well interference analysis and water requirement analysis

k. Applicant's Exhibit 11 - Order of Partial Decree for Water Right 36-10815 dated March 2, 1998

l. Applicant's Exhibit 12 - Order of Partial Decree for Water Right 36-15511 dated July 20, 1998

m. Applicant's Exhibit 13 - NOT OFFERED

n. Applicant's Exhibit 14 - NOT OFFERED

o. Applicant's Exhibit 15

- Order in Case No. 21610 titled James D. Nafziger et al. v. Gooding County et al. dated October 15, 1991
- Judgment in Case No. 21610 titled James D. Nafziger et al. v. Gooding County et al. dated November 8, 1991
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p. Applicant's Exhibit 16 - Partial Decree for Water Right 36-02457 in the name of Tammy D. and Richard B. Van Dyk

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q. Applicant's Exhibit 17 - Partial Decree for Water Right 36-07760 in the name of Tammy D. and Richard B. Van Dyk

r. Applicant's Exhibit 18 - Water Right License No. 36-08063A in the name of F.F. Gunning and G. C. Gunning

s. Applicant's Exhibit 19 - Affidavit of Gail Gunning

t. Protestant's Exhibit A - Findings of Fact and Conclusions Before the Gooding County Planning and Zoning Commission dated March 26, 1998

9. The reported capacity of the Hillcrest Dairy is 1050 milking cows and 150 non-milking cows. A partial decree in connection with SRBA Claim No. 36-15511 provides water for 400 of the milking cows at the dairy. The application seeks water for the remaining 650 milking cows and 150 non-milking cows (remaining uses) . The applicant needs a maximum diversion volume of approximately 55 acre feet of water for the remaining uses to be diverted at a maximum rate of about 0.20 cfs. The consumptive use volume of water needed for the remaining uses is approximately 20 acre feet.

10. The water sought for transfer in the application was withheld from land sold by the applicant to Richard B. and Tammy D. Van Dyk. The land from which water was withheld is more specifically described as follows:

T7S, R16E, B.M. Section 22
NESW - 2 acres
NWSW - 8 acres
SWSW - 4 acres

and consists of corners which are no longer irrigated by the pivot on the quarter section.

11. A dairy has existed at the Hillcrest Dairy site from 1962 to 1987 when the dairy operation ceased due to a federally sponsored dairy buy-out program. From 1991 to 1994, a calf feeding operation of up to 4,500 calves was conducted on the site.

12. On March 2, 1995, the applicant bought the Hillcrest Dairy site and started to enlarge the facility for reestablishment of a dairy. The Gunning enlargement was contested by the city of Wendell contending that the site is within the city's impact area and that zoning for the site requires certain permits which the Gunnings do not have. This matter of zoning has been litigated in several cases between Gooding County and various dairy interests.

13. There are approximately 10,000 milking cows within a two (2) mile radius of Wendell. Most of the dairies are on the west side of town.

14. The dairy industry is generally supported by the community, since the

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industry improves the general economy and creates jobs in the vicinity.

15. The efficiency of the use of water at the dairy is generally comparable to other dairies in the area.

16. Gooding County Ordinance 62 was enacted on February 10, 1997 by the Board of County Commissioners. Among other purposes, the ordinance defines and establishes "Confined Animal Feeding Operation" (CAFO'S), provides for existing CAFO'S, provides criteria and procedure for "siting permits", and sets forth criteria for "occupancy certificates".

17. In Civil Case No. CV 97-430, titled Idaho Dairymen's Association Inc., et al. v. Win Henslee, et al., on June 17, 1998, (see Applicant's Exhibit 15), the Fifth Judicial District Court held that Ordinance 62 is invalid in its entirety. This ruling is presently on appeal and cross-appeal.

18. At the hearing, the applicant and protestants stipulated that the matter of zoning was presently on appeal and should not be argued in the department's administrative hearing in connection with the protested application for transfer, since the department does not have the authority to decide zoning issues.

19. The field headgate diversion requirement for the irrigation of crops in the vicinity of the Hillcrest Dairy and the Van Dyk property is 4.0 acre feet per acre and the consumptive irrigation requirement is 3.0 acre feet per acre. The annual field headgate diversion requirement for the irrigation of 14 acres at 4 acre feet per acre is 56 acre feet and the annual consumptive irrigation requirement for irrigation at 3 acre feet per acre is 44 acre feet.

20. The applicant's expert witness provided testimony that the diversion rate of 0.20 cfs proposed in the application would not be measurable in any wells of the city of Wendell or of the protestants.

21. The applicant owns approximately 80 shares of water in the North Side Canal Company, is willing to retain ownership of the shares and will make the shares available for mitigation or a recharge program to benefit the general area if such a program is established.

22. Protestant city of Wendell alleged that the quality of life in Wendell has decreased due to odors and flies attributable to the Hillcrest Dairy. The protestant also contended, without supporting evidence, that odor of water from a well of the city was attributable to the dairy.

CONCLUSIONS OF LAW

1. Section 42-222, Idaho Code, provides in pertinent part as follows:

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> The director of the department of water resources shall examine all the evidence and available information and shall approve the change in whole, or in part, or upon conditions, provided no other water rights are injured thereby, the change does not constitute an enlargement in use of the original right, and the change is consistent with the conservation of water resources within the state of Idaho and is in the local public interest as defined in section 42-203A(5), Idaho Code; ....

2. IDAPA 37.03.08045.01.e.iii (Water Appropriation Rule 45.01.e.iii) provides in pertinent part as follows:

> e. Criteria for determining whether the project conflicts with the local public interest. The director will consider the following, along with any other factors he finds to be appropriate, in determining whether the project will conflict with the local public interest:
>
> iii. Compliance with applicable air, water and hazardous substance standards, and compliance with planning and zoning ordinances of local or state government jurisdictions.

3. The applicant carries the burden of coming forward with evidence that the proposed change will not injure other water right holders, that it will not constitute an enlargement of the use and will be consistent with principles of conservation of water resources within the state of Idaho.

4. Both the applicant and the protestants have the responsibility of coming forward with evidence regarding matters of public interest of which they are each most cognizant.

5. The applicant has the ultimate burden of persuasion for all of the criteria of Section 42-222, Idaho Code.

6. The changes proposed in the application will not injure other water rights.

7. The proposed changes do not constitute an enlargement in use of the original right, since the rights to be transferred provide more than enough total water volume, consumptive water volume and rate of diversion for the uses sought in the application.

8. The proposed changes are in the local public interest assuming the applicant complies with planning and zoning ordinances of local government jurisdictions and the environmental requirements of state agencies.

9. The proposed changes are consistent with the conservation of water resources within the state of Idaho.

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10. The Department should approve the application with certain conditions and limitations.

ORDER

IT IS THEREFORE, hereby ORDERED that Application for Transfer No. 5197 is **APPROVED** subject to the following conditions and limitations:

1. Use of water under this approval shall comply with applicable water quality standards of the Division of Environmental Quality of the Idaho Department of Health and Welfare.

2. The dairy operation authorized under this approval shall comply with applicable city and county zoning and use requirements.

3. The total instantaneous diversion of water from the points of diversion under Transfer 5197 shall not exceed 0.20 cfs nor a total annual combined volume of 56 acre feet.

4. Prior to diversion and use of water under this approval, the right holder shall install and maintain a measuring device on each diversion associated with the dairy and shall annually report the amount of water diverted to the Department.

5. The right holder shall maintain ownership and control of 80 shares of water in the North Side Canal Company for mitigation purposes and shall comply with the terms of mitigation as the terms may be determined in the future by the Department.

6. Wastewater from the commercial use authorized under this approval is applied to irrigated land listed on the transfer to satisfy water quality requirements. Water shall not be land applied for irrigation use unless it has first been beneficially used in the dairy operation in accordance with this transfer approval.

7. Rights 36-02457B and 36-07760B when combined shall not exceed a total annual maximum diversion volume of 20.7 af for stockwater and 16.9 af for commercial use in a single year.

8. Two points of diversion are located within NENE Section 34, T7S, R15E, B.M.

9. The change authorized by this approval shall be accomplished within one (1) year of the date of this order.

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10. Failure of the right holder to comply with any condition of approval of this transfer is cause for the Director to rescind approval of the transfer.

11. The acres which are no longer authorized for irrigation under rights 36-02457A, 36-07760A and 36-08063E are described as follows: 2 acres in NESW, 8 acres in NWSW and 4 acres in SWSW Section 22, T7S, R16E, B.M.

12. The remainder of right 36-02457 is identified as 36-02457A and is limited to a diversion rate of 0.91 cfs, an annual diversion volume of 386.3 af, and irrigation of 108.6 acres each year.

13. The remainder of right 36-07760 is identified as 36-07760A and is limited to a diversion rate of 2.19 cfs, an annual diversion volume of 846.4 af, and irrigation of 211.6 acres each year.

14. The remainder of right 36-08063A is identified as 36-08063E and is limited to a diversion rate of 2.05 cfs, an annual diversion volume of 409.6 af, and irrigation of 102.4 acres each year.

15. Rights 36-02457A and 36-07760A when combined shall not exceed a total annual maximum diversion volume of 850.4 at the field headgate and the irrigation of 212.6 acres.

16. Rights 36-02457A, 36-07760A, and 36-08063E when combined shall not exceed a total diversion rate of 3.10 cfs, a total annual maximum diversion volume of 1,260 af at the field headgate, and the irrigation of 315 acres.

IT IS FURTHER hereby ORDERED that the protests of Noel Briggs and John and Vera Hall be **SET ASIDE** for failure to appear at the scheduled hearing.

Signed this 1st day of April, 1999.

L. GLEN SAXTON, P.E.
Hearing Officer

NOV 12 1999

CERTIFICATE OF SERVICE

I DO HEREBY CERTIFY that on this 15th day of April, 1999, the above and foregoing document was served upon the following by placing a copy of the same in the United States Mail, postage prepaid and properly addressed to the following:

F F GUNNING
G C GUNNING
5104 W COVE ST
BOISE ID 83703-1976

GWEN ROST MAYOR
CITY OF WENDELL
PO BOX 208
WENDELL ID 83355

DALE BITTERLI
PRESIDENT WENDELL REC DIST
PO BOX 217
WENDELL ID 83355

NOEL BRIGGS
2050 E 3000 S
WENDELL ID 83355

PATRICK D BROWN
PARKER WARR AND BROWN
812 SHOSHONE ST E
TWIN FALLS ID 83301

CRAIG D HOBDEY ESQ
PO BOX 176
GOODING ID 83330

JOHN AND VERLA HALL
1988 E 2800 S
WENDELL ID 83355

FRANK ROST JR
604 6TH AVE E
WENDELL ID 83355

Julie L. Yarbrough

JULIE L. YARBROUGH
Senior Secretary, Water Allocation Bureau

MAILED
NOV 12 1999

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR TRANSFER NO. 5197 IN THE NAME OF F.F. GUNNING AND G.C. GUNNING

ORDER AUTHORIZING DISCOVERY

On September 10, 1998, the department conducted a conference at the Gooding City Hall in Gooding, Idaho, in connection with the above captioned matter. All parties attended the conference and requested the department to issue an order authorizing discovery.

The department hereby authorizes the parties to engage in discovery commencing with the date of this order. The parties shall complete discovery seven (7) days prior to the date of the hearing in this matter which has been tentatively scheduled on November 19, 1998. Discovery shall be conducted pursuant to IDAPA Rules 37.01.01520-532 (Rules of Procedure 520 through 532). The parties are directed to answer or otherwise respond to discovery in accordance with the department's Rules of Procedure and the Idaho Rules of Civil Procedure, as appropriate.

In accordance with Rule 520, the scope of discovery shall be governed by Rule 26(b) of the Idaho Rules of Civil Procedure, unless otherwise provided by statute, rule or order of the Director.

Dated this 14th day of September, 1998.

L. Glen Saxton

L. GLEN SAXTON
Hearing Officer

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CERTIFICATE OF MAILING

I hereby certify that on the 14th day of September, 1998 a true and correct copy of the foregoing Notice of Pre-hearing Conference was mailed by regular U.S. Mail with all required charges prepaid to the parties listed below:

Secretary

F F GUNNING &
GC GUNNING
P O BOX 821
WENDELL ID 83355

GWEN ROST MAYOR
CITY OF WENDELL
P O BOX 208
WENDELL ID 83355

DALE BITTERLI PRESIDENT
WENDELL RECREATION DISTRICT
P O BOX 217
WENDELL ID 83355

NOEL BRIGGS
2050 E 3000 S
WENDELL ID 83355

PATRICK D BROWN ESQ
PARKER WARR & BROWN
812 SHOSHONE STREET EAST
TWIN FALLS ID 83301

GRAIG D HOBDEY ESQ
P O BOX 176
GOODING ID 83330

JOHN & VERLA HALL
1988 E 2800 S
WENDELL ID 83355

FRANK ROST JR
604 6TH AVE EAST
WENDELL ID 83355

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Form 222
2-97

Page_____of_____

Transfer No. 5197

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
APPLICATION FOR TRANSFER OF WATER RIGHT
PART 1

Name of Applicant GUNNING, F.F. and G.C. Phone 536-5617

Postal address PO BOX 821 City WENDELL St ID Zip 83355

A. PURPOSE OF THE TRANSFER

1. ☒ Change point of diversion ☐ Add diversion point(s) ☒ Change place of use
   ☒ Change nature of use ☒ Change period of use ☒ Other _____

2. Describe reason for the proposed changes: DRYING UP PIVOT CORNERS WHICH ADD UP TO 14.5 ACRES AND TRANSFERRING THEM TO BE USED ON DAIRY-COMMERCIAL USE

B. DESCRIPTION OF RIGHT(S), OR PORTIONS THEREOF, AFTER THE REQUESTED CHANGE (or ☐ see Attachment____)

1. Right No.	Priority	Amount (cfs, ac-ft)	Nature of use	Period of Use
36-02457B	9/29/61	~~0.34~~ 0.20	COMMERCIAL/DAIRY	1/1 to 12/31
36-07760B	11/10/77	"	"	" to "
36-08063F	2/16/82	"	"	" to "
		0.20 ~~0.34~~		to

2. Total diversion rate/volume being transferred: ~~0.34~~ cfs and/or ~~68~~ ac-ft per annum

3. Source of water: GROUNDWATER, tributary to: 55.3 (or ☐ see Attachment____)

4. Points of diversion (or ☐ see Attachment____):

Twp.	Rge.	Sec.	1/4	1/4	1/4	Lot	County	Local diversion name / Local landmark
07S	15E	34	SE	NE	NE		GOODING	WELL
"	"	"	SW	NE	NE		" "	WELL

5. Lands irrigated or place of use (or ☐ see Attachment____):

Twp	Rge	Sec	NE				NW				SW				SE				Total
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
07S	15E	34	S																
"	"	"	*C			*C													
"	"	"	D																
															MICROFILMED				
															NOV 12 1999				

* Land application from Lagoon these 2 QQs.

Total acres_____

☐ Permissible place of use, actual acreage irrigated not to exceed_____ acres per year.

Page ____ of ____ Transfer No. ____

PART 1, CONTINUED

6. General information:

a. Description of new diversion system (or ☒ see Attachment A): EXISTING WELL(S)

b. Remarks (or ☐ see Attachment ____): ____

PLEASE READ THIS SECTION CAREFULLY

Is there a current lien, mortgage or deed of trust on the property? ____ Yes ✓ No
If yes, please complete Part 2, item 6.

Has any portion of this right(s) undergone a period of 5 or more consecutive years of non-use? ____ Yes ✓ No
If yes, please attach an explanation of circumstances and label it as noted in Part 2, item 9(g).

I hereby assert that no one will be injured by such change and that the change does not constitute an enlargement in use of the right(s), and that the information contained in this application is true to the best of my knowledge. I understand that I am responsible for the accuracy and completeness of the application even though I may have been assisted in the preparation of the application.

I understand that any willful misrepresentation made in this application may result in voiding the transfer approval.

(Signature and Title of Applicant)

Subscribed and sworn before me on this 3RD day of April, 1997.

(Signature of Notary Public)

(seal)

My commission expires: 12/7/2000

FOR DEPARTMENT USE ONLY

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Transfer contains ____ pages and ____ attachments

Received by DJS Date 3April97 Fee $100.00

Receipted by DJS Date 3April97 # S019904 & S019994

Page____ of____ Transfer No._____

PART 1, CONTINUED

6. General information:

a. Description of new diversion system (or ☒ see Attachment A): EXISTING WELL(S)

b. Remarks (or ☐ see Attachment____):

PLEASE READ THIS SECTION CAREFULLY

Is there a current lien, mortgage or deed of trust on the property? ____ Yes ✓ No
If yes, please complete Part 2, item 6.

Has any portion of this right(s) undergone a period of 5 or more consecutive years of non-use? ____ Yes ✓ No
If yes, please attach an explanation of circumstances and label it as noted in Part 2, item 9(g).

I hereby assert that no one will be injured by such change and that the change does not constitute an enlargement in use of the right(s), and that the information contained in this application is true to the best of my knowledge. I understand that I am responsible for the accuracy and completeness of the application even though I may have been assisted in the preparation of the application.

I understand that any willful misrepresentation made in this application may result in voiding the transfer approval.

(Signature and Title of Applicant)

Subscribed and sworn before me on this 3RD day of April, 1997.

(Signature of Notary Public)

(seal)

My commission expires: 12/7/2000

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NOV 12 1999

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Receipted by BS Date 3April97 # S019904 & S019994

Page_____of_____ Transfer No._____

APPLICATION FOR TRANSFER OF WATER RIGHT
CHANGE IN NATURE OF USE DESCRIPTION
PART 3

A. CHANGE IN NATURE OF USE

1. New Nature of Use	Period of Use	Diversion Rate (cfs)	Annual Diversion Volume (acre-feet)	Annual Consumptive Use Volume (acre-feet)
COMMERCIAL/DAIRY	4/1 to 12/31	~~0.34 cfs~~ 0.20 cfs		~~68 afa~~ 55.3
	to			
	to			

2. ☐ If present water use is other than irrigation, attach an estimate of the annual volume of water that has been consumptively used. Also, provide justification for the estimate.

3. ~~☒~~ Attach copy of design report or system design supporting required water flow rates and volumes for the new use. Describe attachment(s): dated 12/23/94

4. If water or waste will be discharged from project, describe quantity, quality and location of the discharge:
PROJECTED IRRIGATION FROM LAGOONS TO IRRIGATE 9 AC. NE¼ NE¼ SEC. 34 and 27 AC. in SE¼ NE¼ SEC. 34

5. Describe measures that will be taken to prevent impacts to other water uses and water users:
APPROVED LAGOONS & DESIGN SYSTEM TO IMPROVE IRRIGATION FROM LAGOONS. IRRIGATION SYSTEM IS LOW PRESSURE.

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Form 222
2-97

Page 1 of 15

Transfer No. 5197

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
APPLICATION FOR TRANSFER OF WATER RIGHT
PART 1

Name of Applicant GUNNING, F.F. and G.C. Phone 536-5617

Postal address PO BOX 821 City WENDELL St ID Zip 83355

A. PURPOSE OF THE TRANSFER

1. ☒ Change point of diversion ☐ Add diversion point(s) ☒ Change place of use
☒ Change nature of use ☒ Change period of use ☒ Other _____

2. Describe reason for the proposed changes: DRYING UP PIVOT CORNERS WHICH ADD UP TO 17 ACRES AND TRANSFERRING THEM TO BE USED ON DAIRY-COMMERCIAL USE

B. DESCRIPTION OF RIGHT(S), OR PORTIONS THEREOF, AFTER THE REQUESTED CHANGE (or ☐ see Attachment ____)

1. Right No.	Priority	Amount (cfs, ac-ft)	Nature of use	Period of Use
36-02457B	9/29/61	0.34	COMMERCIAL/DAIRY (Stockwater)	1/1 to 12/31
36-07760B	11/10/77	"	" " "	" to "
36-08063F	2/16/82	"	" " "	" to "
				to

2. Total diversion rate/volume being transferred: 0.34 cfs and/or 68 ac-ft per annum

3. Source of water: GROUNDWATER, tributary to: _____ (or ☐ see Attachment ____)

4. Points of diversion (or ☐ see Attachment ____):

	Twp.	Rge.	Sec.	1/4	1/4	1/4	Lot	County	Local diversion name / Local landmark
(A)	07S	15E	34	SE	NE	NE		GOODING	WELL
(B)	"	"	"	SW	NE	NE		" "	WELL

5. Lands irrigated or place of use (or ☐ see Attachment ____):

Twp	Rge	Sec	NE				NW				SW				SE				Total
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
07S	15E	34	S																
"	"	"	C																
"	"	"	D																

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Total acres _____

☐ Permissible place of use, actual acreage irrigated not to exceed _____ acres per year.

Transfer No. 5197

PART 1, CONTINUED

6. General information:

a. Description of new diversion system (or ☒ see Attachment A): EXISTING WELL(S)

b. Remarks (or ☐ see Attachment____): _____

PLEASE READ THIS SECTION CAREFULLY

Is there a current lien, mortgage or deed of trust on the property? ____Yes ✓ No
If yes, please complete Part 2, item 6.

Has any portion of this right(s) undergone a period of 5 or more consecutive years of non-use? ____Yes ✓ No
If yes, please attach an explanation of circumstances and label it as noted in Part 2, item 9(g).

I hereby assert that no one will be injured by such change and that the change does not constitute an enlargement in use of the right(s), and that the information contained in this application is true to the best of my knowledge. I understand that I am responsible for the accuracy and completeness of the application even though I may have been assisted in the preparation of the application.

I understand that any willful misrepresentation made in this application may result in voiding the transfer approval.

(Signature and Title of Applicant)

Subscribed and sworn before me on this 3RD day of April, 1997.

(Signature of Notary Public)

(seal)

My commission expires: 12/7/2000

FOR DEPARTMENT USE ONLY

Transfer contains 15 pages and 2 attachments

Received by DJS Date 3April97 Fee $100.00

Receipted by DJS Date 3April97 # S019904 & S019994

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Transfer No. 5197

APPLICATION FOR TRANSFER OF WATER RIGHT
ADDITIONAL DOCUMENTATION
PART 2

ATTACHED (Required)

✓ 1. Copy of each right as presently recorded with IDWR (printout of water right or other acceptable record must include Conditions/Remarks).

Complete the following items: prior consultation with IDWR staff is encouraged to simplify preparation (see "IDWR Information Sheet - Filing An Application For Transfer") as necessary for your transfer application. Label each supporting document as an attachment (A, B, etc.). Place a check mark by each item completed.

ATTACHED (enter "✓" or "N/A" for each item as advised by IDWR staff)

✓ 2. Describe any other water rights used for the same purposes described in Part 2, item 1.

✓ 3. Written description of present system and changes required to accommodate the proposed transfer.

4. Map(s) identifying township, range, section and 1/4-1/4 locations of pertinent items as follows:

✓ a) *proposed* water system showing the point of diversion, place of use, and any water conveyances such as ditches or pipelines; show irrigated acres per 1/4-1/4 if proposed; and

✓ b) *unchanged portion* of water system showing point of diversion, place of use and any water conveyances such as ditches or pipelines.

✓ c) include a system diagram of the items in 3a and 3b if this is not clear on the map(s).

✓ 5. Evidence of water right ownership for entire right or portion of right being transferred. If transferring a portion of right, provide the name and address of the owner (if not the applicant) of the unchanged portion of the right.

N/A 6. Notarized statement from holder of lien, mortgage, contract, deed of trust or any other encumbrance on the property agreeing to the transfer.

→ FORTH COMING

___ 7. Comments from county planning and zoning organization for county in which proposed water use will occur.

✓ 8. Comparison between water right as recorded, Snake River Basin Adjudication (SRBA) claim as recorded or current water use practices if any differences exist between any of these three categories. Explain any differences and submit supporting evidence and/or affidavits to substantiate your explanation.

- continued on reverse side -

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Transfer No. 5197

PART 2, CONTINUED

9. Verification of diversion and beneficial use of water within the previous five year period. Some or all of the following items might apply:

✓ a) most recent agricultural program crop map or aerial photo showing irrigated land before the proposed change

___ b) pump power records

___ c) water master records and/or comments if use is within a water district

___ d) irrigation crop reports

___ e) reports from other government agencies and/or qualified consultants

___ f) affidavits from knowledgeable third parties familiar with the history of water use for the water right being transferred

___ g) describe any defenses to forfeiture - CRP, extension of time, etc

___ h) other....list other verification documentation for the water right below:

___ 10. For a change in nature of use of part or all of the water right, complete and attach Part 3 of the transfer application.

✓ 11. Identify any other documentation that clarifies the transfer application:

	DATED
SEE ATTACHED: EARNEST MONEY AGREEMENT	10/27/94
DAIRY WATER SYSTEM DESIGN	12/23/94

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TRANS NO. 5197

PART 2

A. DESCRIPTION OF RIGHT AS RECORDED:

Claim No. **36-02457**

STAGE: LICENSE

BENEFICIAL USE	PERIOD OF USE	DIVERSION RATE
IRRIGATION	04/01 to 10/31	1.00 CFS

SOURCE

GROUNDWATER

Priority: 09/29/1961

LOCATION OF POINT(S) OF DIVERSION: NENESE , Sec. 21, Township 07S, Range 16E
JEROME County

PLACE OF USE: IRRIGATION

TWN	RGE	SEC		ACRES		ACRES		ACRES	TOTAL
07S	16E	21	SWNE	33	SENE	40	NESE	40	
			NWSE	34					147
		22	NESW	29	NWSW	36	NWSE	10	75
					Total number of acres irrigated:				222

CONDITIONS/REMARKS:

1. RIGHT INCLUDES ACCOMPLISHED CHANGE IN PLACE OF USE PURSUANT TO SECTION 42-1425, IDAHO CODE.
2. USE OF THIS RIGHT IS COMBINED WITH WATER FROM NORTH SIDE CANAL CO. LTD.
3. RIGHT NO. 36-07760 IS ALSO DIVERTED THROUGH POINT OF DIVERSION DESCRIBED ABOVE.
4. USE OF THIS RIGHT WITH RIGHT NO. 36-07760 IS LIMITED TO A TOTAL COMBINED DIVERSION RATE OF 3.30 CFS, A TOTAL COMBINED ANNUAL DIVERSION VOLUME OF 888 AF, A TOTAL COMBINED ANNUAL CONSUMPTIVE USE VOLUME OF 666 AF, AND TO THE IRRIGATION OF A COMBINED TOTAL OF 222 ACRES IN A SINGLE IRRIGATION SEASON.
5. THIS RIGHT IS LIMITED TO THE IRRIGATION OF 118 ACRES WITHIN THE PLACE OF USE DESCRIBED ABOVE IN A SINGLE IRRIGATION SEASON.

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PART 2

Transfer No. 5197

10. To your knowledge, has any portion of this water right undergone a period of five or more consecutive years of non-use?

_____ If yes, describe _____

B. DESCRIPTION OF PORTION OF RIGHT BEING TRANSFERRED

(If the entire right is to be changed by the applicant, omit part B and C.)

1. amount 0.06 cfs for COM/STOCK. purposes from 1/1 to 12/31
   amount (cfs/ac-ft) _____ for _____ purposes from _____ to _____
   amount (cfs/ac-ft) _____ for _____ purposes from _____ to _____
   amount (cfs/ac-ft)

2. Point(s) of Diversion:

Lot	¼	¼	¼	Sec.	Twp.	Rge.	County	Local name for diversion
	SW	NE	NE	34	07S	15E	GOODING	2 WELLS 36-10815
								R36-15511

3. Lands irrigated or place of use:

Twp.	Rge.	Sec.	NE ¼				NW ¼				SW ¼				SE ¼				Totals
			NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	
07S	15E	34	C																
"	"	"	S																

Total acres _____

C. DESCRIPTION OF UNCHANGED PORTION OF RIGHT *(omit if there is no change)*

1. amount 0.94 cfs for IRRIGATION purposes from 4/1 to 10/31
   amount (cfs/ac-ft) _____ for _____ purposes from _____ to _____
   amount (cfs/ac-ft) _____ for _____ purposes from _____ to _____
   amount (cfs/ac-ft)

2. Point(s) of Diversion:

Lot	¼	¼	¼	Sec.	Twp.	Rge.	County	Local name for diversion
	NE	NE	SE	21	07S	16E	JEROME	

3. Lands irrigated or place of use:

Twp.	Rge.	Sec.	NE ¼				NW ¼				SW ¼				SE ¼				Totals
			NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	
07S	16E	21			33	40					40	34							147
		22									29	32				10			71

Total acres 218

TRANS NO. 5197

PART 2

A. DESCRIPTION OF RIGHT AS RECORDED:

Claim No. **36-07760**

STAGE: LICENSE

BENEFICIAL USE	PERIOD OF USE	DIVERSION RATE
IRRIGATION	04/01 to 10/31	2.30 CFS

SOURCE

GROUNDWATER

Priority: 11/07/1977

LOCATION OF POINT(S) OF DIVERSION: NENESE , Sec. 21, Township 07S, Range 16E
JEROME County

PLACE OF USE: IRRIGATION

TWN	RGE	SEC		ACRES		ACRES		ACRES	TOTAL
07S	16E	21	SWNE	33	SENE	40	NESE	40	
			NWSE	34					147
		22	NESW	29	NWSW	36	NWSE	10	75
					Total number of acres irrigated:				222

CONDITIONS/REMARKS:

1. RIGHT INCLUDES ACCOMPLISHED CHANGE IN PLACE OF USE PURSUANT TO SECTION 42-1425, IDAHO CODE.
2. USE OF THIS RIGHT IS COMBINED WITH WATER FROM NORTH SIDE CANAL CO. LTD.
3. RIGHT NO. 36-02457 IS ALSO DIVERTED THROUGH POINT OF DIVERSION DESCRIBED ABOVE.
4. USE OF THIS RIGHT WITH RIGHT NO. 36-02457 IS LIMITED TO A TOTAL COMBINED DIVERSION RATE OF 3.30 CFS, A TOTAL COMBINED ANNUAL DIVERSION VOLUME OF 888 AF, A TOTAL COMBINED ANNUAL CONSUMPTIVE USE VOLUME OF 666 AF, AND TO THE IRRIGATION OF A COMBINED TOTAL OF 222 ACRES IN A SINGLE IRRIGATION SEASON.
5. THIS RIGHT IS LIMITED TO THE IRRIGATION OF 221 ACRES WITHIN THE PLACE OF USE DESCRIBED ABOVE IN A SINGLE IRRIGATION SEASON.

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NOV 12 1999

Transfer No. 3797

PART 2

10. To your knowledge, has any portion of this water right undergone a period of five or more consecutive years of non-use?

_____ If yes, describe _____

B. DESCRIPTION OF PORTION OF RIGHT BEING TRANSFERRED

(If the entire right is to be changed by the applicant, omit part B and C.)

1. amount 0.14 cfs (cfs/ac-ft) for COM/STOCK purposes from 1/1 to 12/31
   amount _____ (cfs/ac-ft) for _____ purposes from _____ to _____
   amount _____ (cfs/ac-ft) for _____ purposes from _____ to _____

2. Point(s) of Diversion:

Lot	¼	¼	¼	Sec.	Twp.	Rge.	County	Local name for diversion
	SW	NE	NE	34	07S	15E	GOODING	2 WELLS 36-10815 R36-15511

3. Lands irrigated or place of use:

Twp.	Rge.	Sec.	NE ¼				NW ¼				SW ¼				SE ¼				Totals
			NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	
07S	15E	34	C																
"	"	"	S																

Total acres _____

C. DESCRIPTION OF UNCHANGED PORTION OF RIGHT *(omit if there is no change)*

1. amount 2.16 cfs (cfs/ac-ft) for IRRIGATION purposes from 4/1 to 10/31
   amount _____ (cfs/ac-ft) for _____ purposes from _____ to _____
   amount _____ (cfs/ac-ft) for _____ purposes from _____ to _____

2. Point(s) of Diversion:

Lot	¼	¼	¼	Sec.	Twp.	Rge.	County	Local name for diversion
	NE	NE	SE	21	07S	16E	JEROME	

3. Lands irrigated or place of use:

Twp.	Rge.	Sec.	NE ¼				NW ¼				SW ¼				SE ¼				Totals
			NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	
07S	16E	21			33	46					40	34							147
		22									29	32				40			71

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Total acres 218

TRANS NO. 5197

PART 2

A. DESCRIPTION OF RIGHT AS RECORDED:

Water Right No. **36-08063A**

STAGE: LICENSE

BENEFICIAL USE	PERIOD OF USE	DIVERSION RATE
IRRIGATION	04/01 to 10/31	2.14 CFS

SOURCE

GROUNDWATER

Priority: 02/16/1982

LOCATION OF POINT(S) OF DIVERSION: NESE , Sec. 21, Township 07S, Range 16E JEROME County

PLACE OF USE: IRRIGATION

TWN	RGE	SEC		ACRES		ACRES		ACRES	TOTAL
07S	16E	21	SWNE	33	SENE	40	NESW	40	
			NWSW	34					147
		22	NESW	37	NWSW	40	SWSW	37	
			SESW	32	NWSE	36			182
					Total number of acres irrigated:				329

CONDITIONS/REMARKS:

1. This right when combined with all other rights shall provide no more than .02 cfs per acre nor more than 4.0 afa per acre for irrigation of the lands above.
2. This right shall not be used if the surface water right(s) appurtenant to the place of use is sold, transferred, leased or used on any other place of use.
3. Diversion and use of water under this right is subject to rules that may subsequently be promulgated for existing rights used for supplemental purposes.
4. Rights 36-02457 and 36-07760 are also diverted through the point of diversion described above.
5. Rights 36-02457, 36-07760, and 36-08063A when combined shall not exceed a total diversion rate of 3.30 cfs, a total annual diversion volume of 1107.9 af, and the irrigation of 329 acres. This right is limited to the irrigation of 107 acres within the place of use described above in a single irrigation season.

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Page _____ of _____ Transfer No. _____

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

APPLICATION FOR TRANSFER OF WATER RIGHT

PART 2

(Attach one copy for each right)

A. DESCRIPTION OF RIGHT AS RECORDED

1. Right evidenced by:

   a. Decree No. _____ Decreed to _____

   in case of _____ vs. _____

   dated _____ in _____ county of _____

   b. License No. 36-08063A issued by the Idaho Department of Water Resources.

   c. Claim No. _____ on file with the Idaho Department of Water Resources.

   d. Transfer No. _____ which produced this right.

2. Attach a copy of last year's tax notice for the property to which the water right is appurtenant or other documents which show ownership. Label document as attachment A. Check appropriate box below:

   ☐ Tax Notice ☐ Warranty Deed ☐ Other _____

3. Source of water GROUNDWATER tributary to _____

4. Date or priority 02/16/1982

5. Water is used for the following purpose:

   amount 2.14 (cfs/ac-ft) for IRRIGATION purposes from 4/1 to 10/31

   amount _____ (cfs/ac-ft) for _____ purposes from _____ to _____

   amount _____ (cfs/ac-ft) for _____ purposes from _____ to _____

6. Total amount of water under right _____ cubic feet per second and/or _____ acre-feet per annum.

7. Point(s) of Diversion:

Lot	¼	¼	¼	Sec.	Twp.	Rge.	County	Local name for diversion
		NE	SE	21	07S	16E	JEROME	

8. Lands irrigated or place of use:

Twp.	Rge.	Sec.	NE ¼				NW ¼				SW ¼				SE ¼				Totals
			NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	
07S	16E	21			33	40					40	34							147
		22									37	40	37	32		36			182

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Total acres 329

9. Describe any other water rights used for the same purpose as described above 36-02457, -07760

PART 2

Transfer No. 5197

10. To your knowledge, has any portion of this water right undergone a period of five or more consecutive years of non-use?
NO If yes, describe _____

B. DESCRIPTION OF PORTION OF RIGHT BEING TRANSFERRED

(If the entire right is to be changed by the applicant, omit part B and C.)

1. amount 0.13 cfs (cfs/ac-ft) for COM/STOCK purposes from 1/1 to 12/31
amount _____ (cfs/ac-ft) for _____ purposes from _____ to _____
amount _____ (cfs/ac-ft) for _____ purposes from _____ to _____

2. Point(s) of Diversion:

Lot	¼	¼	¼	Sec.	Twp.	Rge.	County	Local name for diversion
	SW	NE	NE	34	07S	15E	GOODING	2 WELLS (see 36-10815)

3. Lands irrigated or place of use:

Twp.	Rge.	Sec.	NE ¼				NW ¼				SW ¼				SE ¼				Totals
			NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	
07S	15E	34	C/S																
7S	16E	22									2	8							

Total acres _____

C. DESCRIPTION OF UNCHANGED PORTION OF RIGHT *(omit if there is no change)*

1. amount 2.01 cfs (cfs/ac-ft) for IRRIGATION purposes from 4/1 to 10/31
amount _____ (cfs/ac-ft) for _____ purposes from _____ to _____
amount _____ (cfs/ac-ft) for _____ purposes from _____ to _____

2. Point(s) of Diversion: SEE PART 2A. #7

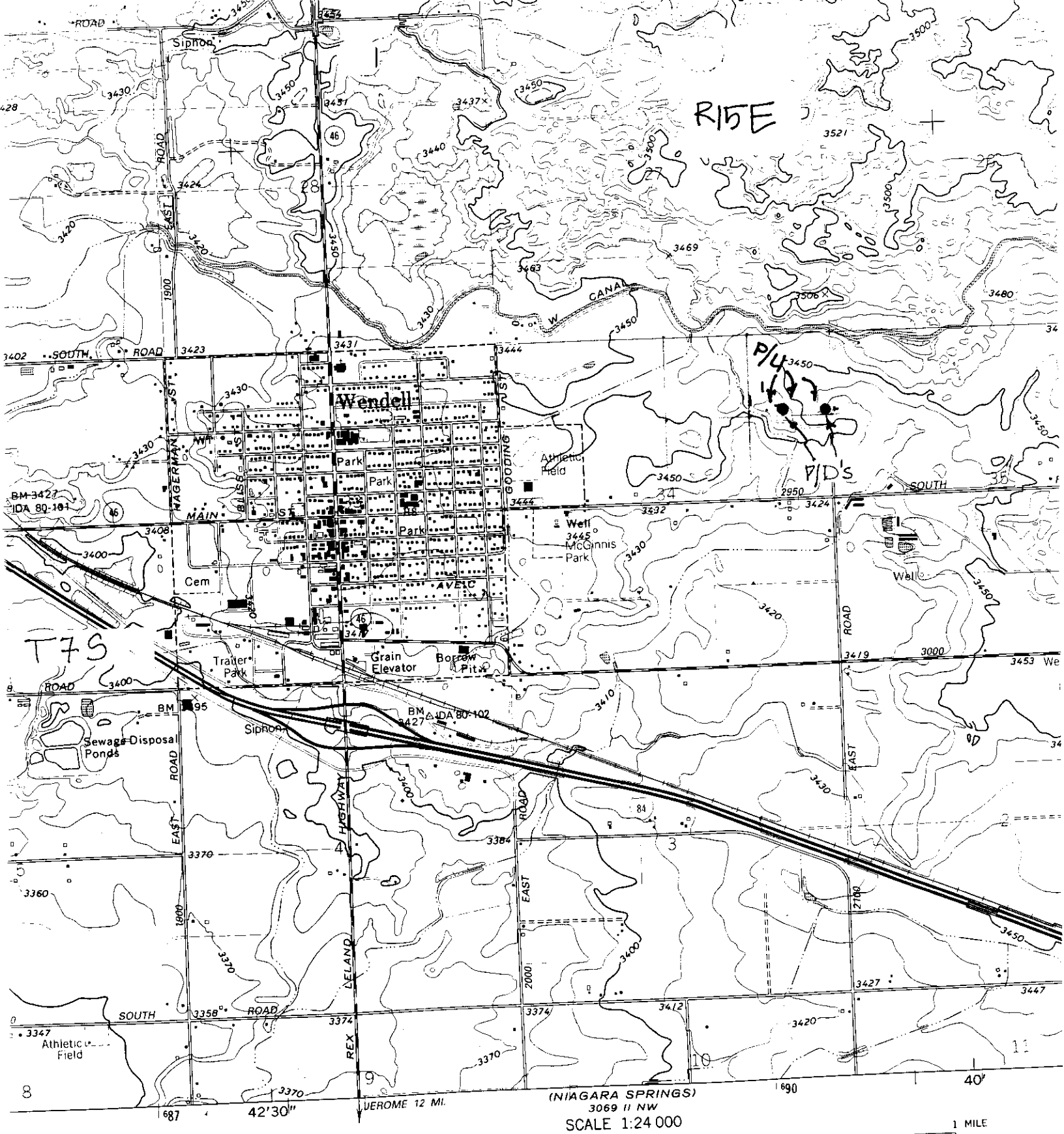
Lot	¼	¼	¼	Sec.	Twp.	Rge.	County	Local name for diversion

3. Lands irrigated or place of use:

Twp.	Rge.	Sec.	NE ¼				NW ¼				SW ¼				SE ¼				Totals
			NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	NE ¼	NW ¼	SW ¼	SE ¼	
07S	16	21			33	40					40	34							147
		22									35	32	33	32		36			168

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Total acres 315



Pg 11 of 15
T# 5197

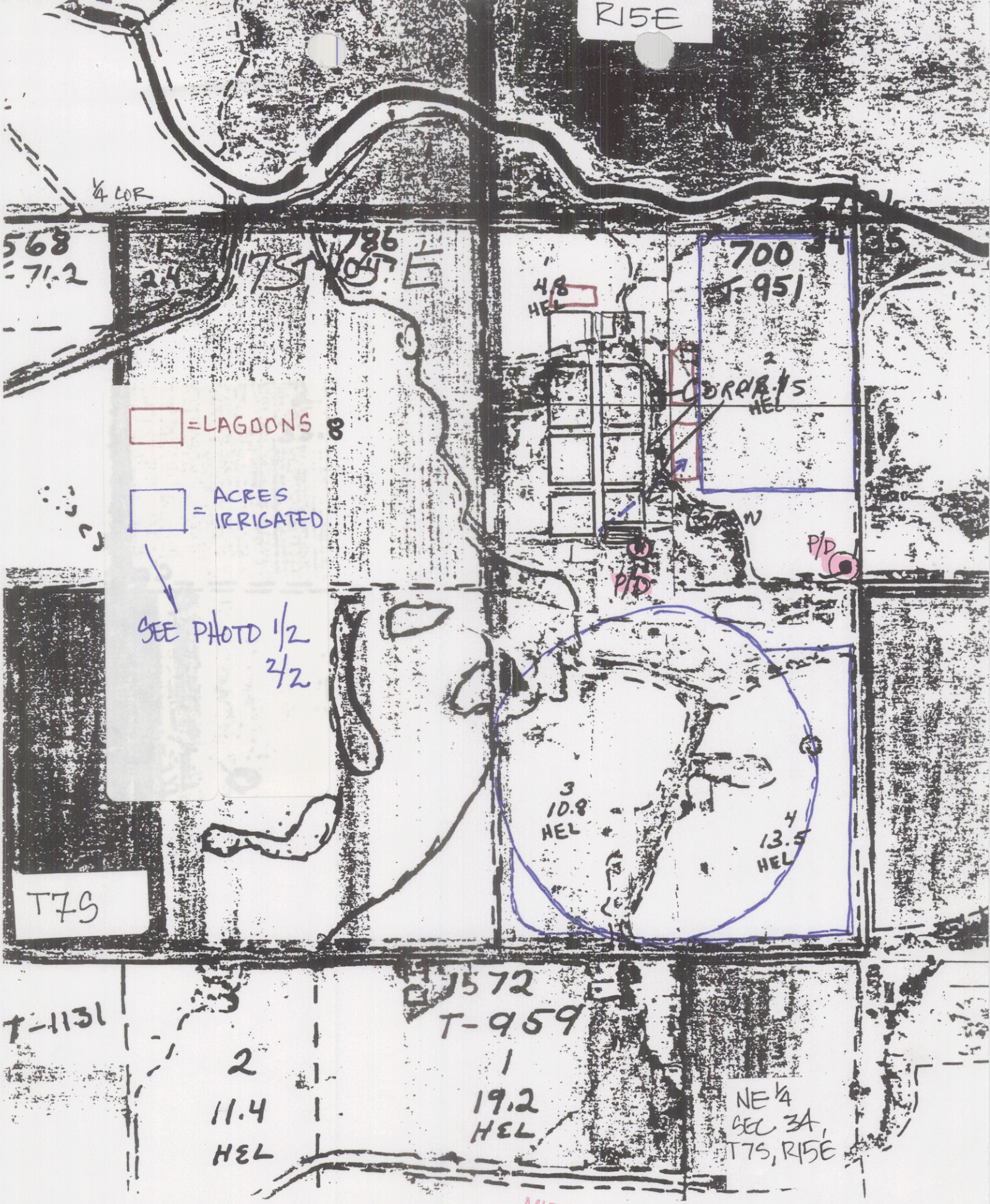
COMPLIES WITH U.S. GEOLOGICAL SURVEY STANDARDS FOR SPATIAL ACCURACY-(

FOR SALE BY U.S. GEOLOGICAL SURVEY
DENVER, COLORADO 80225, OR RESTON, VIRGINIA 22092

DESCRIBING TOPOGRAPHIC MAPS AND SYMBOLS IS AVAILABLE ON RE

NOV 12 1999

WENDELL
7.5' QUAD 1971
REVISED 1992

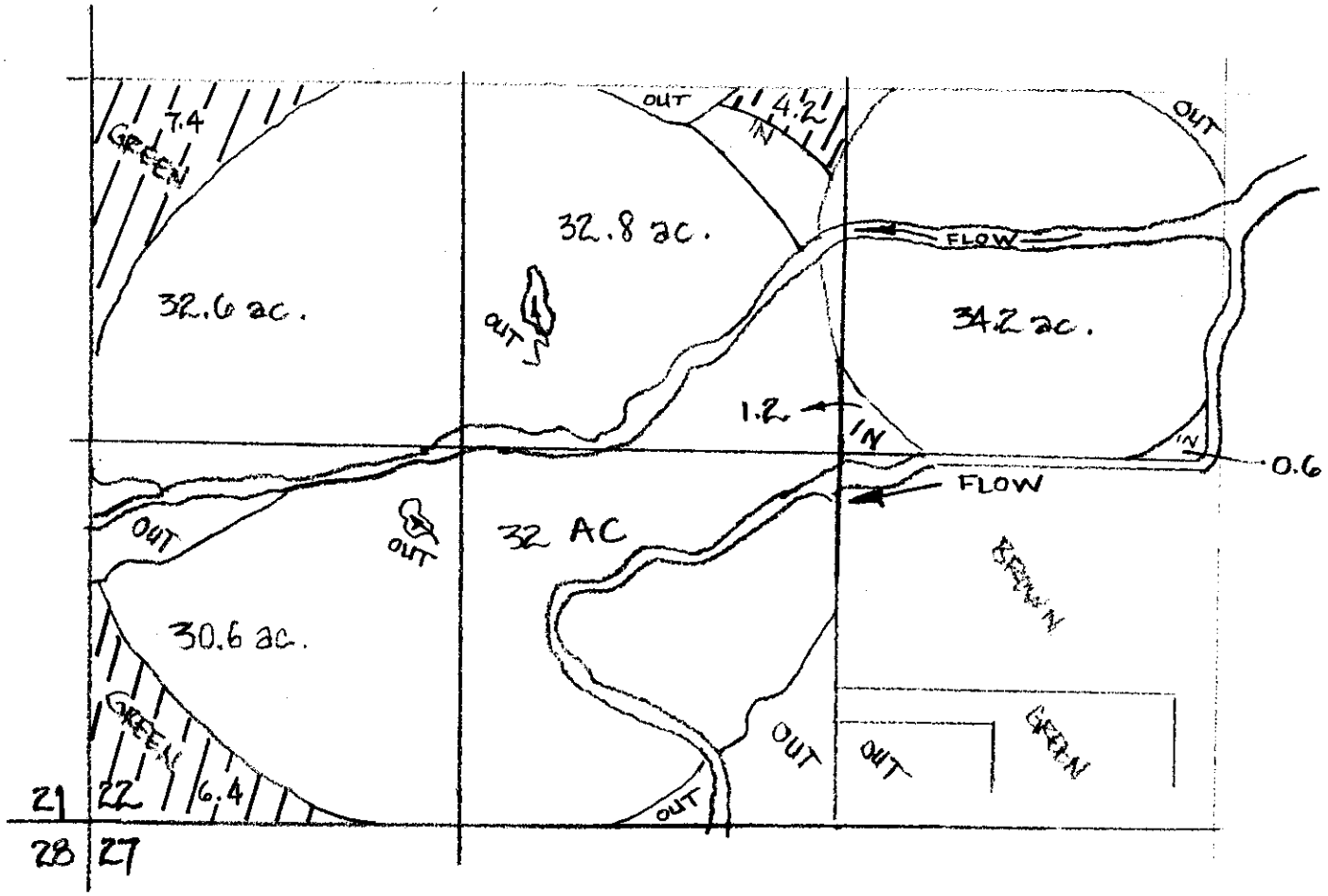


03/06/97 THU 10:55 FAX 2083225597 002

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T# 5197

▨ = acres to be dried up



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WATER RIGHTS

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Gunning, F.F. &/or G.C. Gunning
Section 22, T07S, R16E 1996 Slides
36-02457,-07760,-08063

pg 14 of 15
T #5197

16 15 21

N

1550
T-1196
8.0

SEC 21 & 22, T7S, R16E

1987 FLIGHT
36-02457-07760, -08063

21 28

Transfer No. 5197

APPLICATION FOR TRANSFER OF WATER RIGHT
CHANGE IN NATURE OF USE DESCRIPTION
PART 3

A. CHANGE IN NATURE OF USE

1. New Nature of Use	Period of Use	Diversion Rate (cfs)	Annual Diversion Volume (acre-feet)	Annual Consumptive Use Volume (acre-feet)
COMMERCIAL/DAIRY	Y1 to 12/31	0.34 cfs		68 afa
	to	0.20		55.3
	to			

2. ☐ If present water use is other than irrigation, attach an estimate of the annual volume of water that has been consumptively used. Also, provide justification for the estimate.

3. ☒ Attach copy of design report or system design supporting required water flow rates and volumes for the new use. Describe attachment(s): dated 12/23/94

4. If water or waste will be discharged from project, describe quantity, quality and location of the discharge:
PROJECTED IRRIGATION FROM LAGOONS TO IRRIGATE 9 AC. NE¼ NE¼ SEC. 34 AND 27 AC. IN SE¼ NE¼ SEC. 34

5. Describe measures that will be taken to prevent impacts to other water uses and water users:
APPROVED LAGOONS & DESIGN SYSTEM TO IMPROVE IRRIGATION FROM LAGOONS. IRRIGATION SYSTEM IS LOW PRESSURE.

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THIS IS A LEGALLY BINDING CONT[illegible] READ THE ENTIRE DOCUMENT, INCLUDING THE GENERAL PRINTED PROVISIONS ON THE REVERSE SIDE AND ANY ATTACHMENTS. IF [illegible]LY. BEFORE SIGNING, IF YOU HAVE ANY QUESTIONS, CONSULT Y[illegible]TORNEY BEFORE SIGNING.

1. **AGENCY DISCLOSURE.** At the t[illegible] ing this agreement the agent working with the buyer represented b
and the agent working with the seller represented seller. Each party signing [illegible] document confirms that prior written [illegible] disclosure of agency was provided to him/her in this transaction. Each party to this transaction has read and understands the contents of the agency disclosure brochure previously received.

Listing Agency Landmark Realty MLS# LMK Selling Agency SAME MLS#
Listing Agent Name Marva Walters MLS# 001 Selling Agent Name SAME MLS#
Phone # (208)324-7516 Phone # SAME

ID# 328550 F.F. Gunning [illegible] ("Buyer") agrees to purchase, and the undersigned Seller agrees to sell the following described real estate commonly referred to as "premises" commonly known as

1½ East of Wendell center City Wendell County Gooding ID Zip 83355

Legally described as: E½NE¼ Sec. 34 T7 R14 EBM and 80 shares of NSC
(A FULL AND COMPLETE LEGAL DESCRIPTION MUST BE INSERTED OR ATTACHED PRIOR TO EXECUTION BY SELLER. Buyer hereby authorizes broker to insert over his signature the correct legal description of the premises if unavailable at the time of signing, or to correct the legal description previously entered if erroneous or incomplete).

2. **EARNEST MONEY.**
(a) Buyer hereby deposits as Earnest Money and a receipt is hereby acknowledged of Two Thousand Five Hundred dollars ($ 2,500.00) evidenced by: ☐ Cash ☒ Personal Check ☐ Cashier's Check ☐ Note Due ☐ or and addl Two Thousand Five Hundred on acceptance
(b) Earnest Money to be deposited in trust account upon acceptance by all parties and shall be held by: ☒ Listing Broker ☐ Selling Broker ☐ Other n/a for the benefit of the parties hereto, and Marva Walters (broker) shall hold the completely executed broker's copy of this agreement and is responsible for the closing.
(c) The parties agree that Land Title & Escrow Title Company shall provide title policy and preliminary report or commitment and the "closing agency" for this transaction shall be Land Title and Escrow. If a long-term escrow / collection is involved, then the escrow holder shall be n/a

3. **TOTAL PURCHASE PRICE IS** One Hundred Forty Five Thousand **DOLLARS**
($ 145,000) Payable as follows:
(a) $ Cash at closing, including above Earnest Money (Closing costs are additional).
(b) $ Balance of the purchase price (M.I.P. not included).

4. **FINANCING.** This agreement is contingent upon the buyer securing the following financing: ☐ FHA ☐ VA ☐ Other ☐ new ☐ assumption ☐ seller carry ☐ assumption of existing mortgage ☐ Other.
(a) **New Financing.** New loan balance as noted above for a period of [illegible] years at [illegible]% per annum. (If FHA or VA loan is sought, read the applicable provisions on the reverse side hereof.) Buyer shall pay no more than [illegible] points plus origination fee, if any. Seller to pay only the discount points necessary in order to obtain above described financing but not to exceed [illegible] points. Any reduction in points shall [illegible] to the benefit of the ☐ Buyer ☐ Seller ☐ Divided Equally
(b) **Assumption.** Buyer to ASSUME and ☐ will or ☐ will not be required to qualify for an EXISTING [illegible] of approximately $ [illegible] at no more than [illegible]% with monthly payments of approximately $ [illegible] including ☐ P ☐ I ☐ T ☐ I. This agreement ☐ does ☐ does not release/relieve seller's liability.
Type of loan [illegible] held by [illegible]
Buyer shall apply for such loan or assumption within three (3) business days after Seller's acceptance of this agreement. If an appraisal is required under Buyer's financing contingency, premises must appraise at no less than purchase price.

5. **OTHER FINANCING, TERMS AND/OR CONDITIONS:** This offer contingent on buyer obtaining financing from lender of choice. Property being bought as-is. Buyer is a licensed REALTOR in the state of California.

6. **ITEMS SPECIFICALLY INCLUDED IN THIS SALE:** (If FHA/VA financing is sought see item # 18 on reverse side): Lock-ups, stalls in barn

7. **ITEMS SPECIFICALLY EXCLUDED IN THIS SALE:** renter's personal belongings

8. **COSTS PAID BY:** Costs in addition to those listed below may be incurred by Buyer and Seller. Unless otherwise agreed herein, or provided by law or required by lender, Buyer shall purchase Seller's owner's policy of title insurance. Extended Coverage Title Policy requested ☐ Yes ☒ No. Additional premium paid by n/a. See item # 21 on reverse side.

If required by lender or otherwise stated herein, the below costs will be paid as indicated. Some costs subject to loan program requirements.

Costs Paid By	Appraisal	Loan Assumpt.	Well Inspect.	Pump/Inspect Septic	Lender/Code Inspection Fee	Lender/Code Repairs	Owners and/or Document Prep.	Tax Service	Closing Escrow Fee	Title Insurance Premium	Escrow Fee Annual/Monthly Fees
BUYER	X										
N/A		X	X	X	X	X	X	X		X	X
SELLER									X		
SHARE EQUALLY											

Cost of lender or code repairs not to exceed $ AS -IS

9. **CLOSING.** On or before the closing date, Buyer and Seller shall deposit with the closing agency all funds and instruments necessary to complete the sale. The closing date shall be no later than Jan. 5, 1994

10. **POSSESSION.** Buyer shall be entitled to possession on ☒ closing ☐ other n/a. "Closing" means the date on which all documents are either recorded or accepted by an escrow agent and the sale proceeds are available to Seller. Taxes and water assessments (using the last available assessment as a basis), rents, interest and reserves, liens, encumbrances or obligations assumed and utilities shall be pro rated as of closing. Buyer shall pay for fuel in tank, amount to be determined by the supplier at Seller's expense.

11. **ACCEPTANCE.** Buyer's offer is made subject to the acceptance of Seller on or before 12:00 o'clock midnight of NOv. 4, 1994
If Seller does not accept this agreement within the time specified, the entire Earnest Money shall be refunded to Buyer on demand.

☐ **SEE ATTACHED ADDENDUM(S)**

12. **SIGNATURES**

Date 10-27-94 Buyer F.F. Gunning Inc. (Print)
Buyer F.F. Gunning Inc. by F.F. Gunning (Signature)
Address Box 716
City Wendell State Idaho Zip 83355
Hm. Ph. Bus. Ph.

Date Buyer (Print)
Buyer (Signature)
Address
City State Zip
Hm. Ph. Bus. Ph.

On this date, I/We hereby approve and accept the sale set forth in the above agreement and agree to carry out all the terms thereof on the part of the Seller. I/We further acknowledge receipt of a true copy of this agreement signed by both parties.

☒ **SIGNATURE(S) SUBJECT TO COUNTER OFFER** ☐ **SEE ATTACHED ADDENDUM** ☐ **SEE ATTACHED SELLERS RIGHT TO CONTINUE TO MARKET PREMISES**
☒ **SEE ATTACHED COUNTER OFFER(S)**

Date Seller (Print)
Seller (Signature)
Address
City State Zip
Hm. Ph. Bus. Ph.

Date Seller (Print)
Seller (Signature)
Address
City State Zip
Hm. Ph. Bus. Ph.

A true copy of the foregoing agreement, signed by the Seller and containing the full and complete legal description of the premises, is hereby received on this day of
X [illegible] F.F. Gunning Inc. by F.F. Gunning (Signature) BUYER (Signature)

THE PROVISIONS CONTAINED ON THE REVERSE SIDE OF THIS PAGE SHALL ALSO CONSTITUTE PART OF THE AGREEMENT OF THE PARTIES. EACH OF THE PARTIES ACKNOWLEDGES READING THIS AGREEMENT IN FULL.

NOV 12 1999

T # 5197

COUNTER OFFER # 1

THIS IS A LEGALLY BINDING CONTRACT. READ THE ENTIRE DOCUMENT, INCLUDING ANY ATTACHMENTS, CAREFULLY, BEFORE SIGNING. IF YOU HAVE ANY QUESTIONS, CONSULT YOUR ATTORNEY BEFORE SIGNING.

This is a COUNTER OFFER to the Real Estate Purchase and Sale Agreement and Receipt for Earnest Money:
Earnest Money Dated: 10-27 19 94 ID# 320550

ADDRESS: ½ East of Wendell city center, Wendell ID

BUYER(S): R & Gunning Inc.

SELLER(S): Farm Credit Services

Seller accepts all of the terms and conditions in the above designated agreement with the following changes or amendments:

#2 Earnest Money to be $7,500.

#3 Total Purchase Price to be $155,000.

The herein agreement, upon its execution by both parties, is made an integral part of the aforementioned Agreement.
OTHER TERMS: All other terms and conditions to remain the same.
RIGHT TO ACCEPT OTHER OFFERS: Seller reserves the right to accept any other offer prior to Buyer's written acceptance of this counter offer. Acceptance shall not be effective until a copy of this Counter Offer, dated and signed by Buyer, is personally received by the Seller or Seller's agent.
EXPIRATION: This Counter Offer shall expire unless a copy hereof with Buyers' written acceptance is delivered to Seller or Seller's agent on or before 5 o'clock ☐ A.M. ☒ P.M., on Oct. 31 19 94.

Dated Oct. 28, 1994 Seller Kim Heylinger
Time AM/PM Seller

The undersigned Buyer(s) accept(s) the above Counter Offer.
Dated , 19 Buyer
Time AM/PM Buyer

I/we acknowledge receipt of a true signed copy of Buyer's acceptance.
Seller Seller

COUNTER OFFER

The herein agreement, upon its execution by both parties, is made an integral part of the aforementioned Agreement.
OTHER TERMS: All other terms and conditions to remain the same.
Unless the above Counter Offer # is accepted on or before
19 at AM/PM, it shall be deemed revoked. Receipt of a copy hereof is hereby acknowledged.

Dated , 19 Buyer
Time AM/PM Buyer

Seller accepts Buyer's changes or amendments to Seller's Counter Offer and agrees to sell on the above terms and conditions.
Dated , 19 Seller
Time AM/PM Seller

I/we acknowledge receipt of a true signed copy of Seller's acceptance.
Buyer Buyer

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Rev 6/94

SELLER'S COPY

NOV 12 1994

T # 5197

PART 2

(3) 2 - 7½ HP Submersible Pumps - Intertied w/ Metering device.

NOV 12 2003

T # 5197
ATTACHMENT A

NOW STARTING RIGHT SIDE OF FILE

State of Idaho
DEPARTMENT OF WATER RESOURCES
1301 North Orchard Street, P.O. Box 83720, Boise, Idaho 83720-0098
Phone: (208) 327-7900 FAX: (208) 327-7866

October 22, 1999

DIRK KEMPTHORNE
GOVERNOR

KARL J. DREHER
DIRECTOR

F F GUNNING
G C GUNNING
PO BOX 821
WENDELL ID 83355

RE: Transfer of Water Rights 36-02457B/36-07760B/36-08063F
(Transfer 5197)

Dear Water Right Holder(s):

Enclosed you will find a copy of the approved Transfer of Water Rights for the water rights listed above.

If you have any questions regarding this matter, you may call me at 327-7940.

Sincerely,

Jeff Peppersack, Manager
Water Right Permits Section

JP:klt

Enclosure

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NOV 1 2 1999

Name and Address of Sender

Water Allocation Bureau
Department of Water Resources
1301 N. Orchard St.
Boise, ID 83706 Julie

Indicate type of mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured ☐ Int'l Recorded Del.
☐ COD ☐ Express Mail
☑ Certified

Check appropriate block for Registered Mail:
☐ With Postal Insurance
☐ Without Postal Insurance

Affix stamp here if issued as certificate of mailing or for additional copies of this bill.
Postmark and Date of Receipt

Line	Article Number	Name of Addressee, Street, and Post Office Address	Postage	Fee	Handling Charge	Act. Value (If Regis.)	Insured Value	Due Sender If COD	R. R. Fee	S. D. Fee	S. H. Fee	Rest. Del. Fee / Remarks
1	P 241635979	FF GUNNING GC GUNNING PO BOX 716 WENDELL ID 83355										T-5197
2	P 241635980	MAYOR GWEN ROST PO BOX 208 WENDELL ID 83355										
3	P 241635981	DALE BITTERLI WENDELL IRR DIST PO BOX 217 WENDELL ID 83355										
4	P 241635982	NOEL BRIGGS 2050 E 3000 S WENDELL ID 83355										
5	P 241635983	PATRICK D BROWN 812 SHOSHONE ST E TWIN FALLS ID 83301										
6	P 241635984	CRAIG D HOBDEY ESQ PO BOX 176 GOODING ID 83330										
7	P 241635985	JOHN AND VERLA HALL 1988 E 2800 S WENDELL ID 83355										
8	P 241635986	FRANK ROST JR 604 6TH AVE E WENDELL ID 83355										
9												
10												
11												
12												
13												
14												
15												

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Total Number of Pieces Listed by Sender	Total Number of Pieces Received at Post Office	Postmaster, Per *(Name of Receiving Employee)*
8		

The full declaration of value is required on all domestic and international registered mail. The maximum indemnity payable for the reconstruction of nonnegotiable documents under Express Mail document reconstruction insurance is $50,000 per piece subject to a limit of $500,000 per occurrence. The maximum indemnity payable on Express Mail merchandise insurance is $500. The maximum indemnity payable is $25,000 for registered mail, sent with optional postal insurance. See *Domestic Mail Manual* R900, S913, and S921 for limitations of coverage on insured and COD mail. See *International Mail Manual* for limitations of coverage on international mail. Special handling charges apply only to Standard Mail (A) and Standard Mail (B) parcels.

Form Must Be Completed by Typewriter, Ink, or Ball Point Pen

State of Idaho
DEPARTMENT OF WATER RESOURCES
1301 North Orchard Street, P.O. Box 83720, Boise, Idaho 83720-0098
Phone: (208) 327-7900 FAX: (208) 327-7866

September 21, 1999

DIRK KEMPTHORNE
GOVERNOR

KARL J. DREHER
DIRECTOR

RE: In the Matter of Application for Transfer No. 5197 in the name of F.F. Gunning and G.C. Gunning

Dear Interested Parties:

The accompanying order is a "final order" issued by the department pursuant to section 67-5246 or 67-5247, Idaho Code.

Section 67-5246 provides as follows:

(1) If the presiding officer is the agency head, the presiding officer shall issue a final order.

(2) If the presiding officer issued a recommended order, the agency head shall issue a final order following review of that recommended order.

(3) If the presiding officer issued a preliminary order, that order becomes a final order unless it is reviewed as required in section 67-5245, Idaho Code. If the preliminary order is reviewed, the agency head shall issue a final order.

(4) Unless otherwise provided by statute or rule, any party may file a petition for reconsideration of any order issued by the agency head within fourteen (14) days of the issuance of that order. The agency head shall issue a written order disposing of the petition. The petition is deemed denied if the agency head does not dispose of it within twenty-one (21) days after the filing of the petition.

(5) Unless a different date is stated in a final order, the order is effective fourteen (14) days after its issuance if a party has not filed a petition for reconsideration. If a party has filed a petition for reconsideration with the agency head, the final order becomes effective when:

(a) the petition for reconsideration is disposed of; or

(b) the petition is deemed denied because the agency head did not dispose of the petition within twenty-one (21) days.

(6) A party may not be required to comply with a final order unless the party has been served with or has actual knowledge of the order. If the order is mailed to the last known address of a party, the service is deemed to be sufficient.

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(7) A non-party shall not be required to comply with a final order unless the agency has made the order available for public inspection or the nonparty has actual knowledge of the order.

(8) The provisions of this section do not preclude an agency from taking immediate action to protect the public interest in accordance with the provisions of section 67-5247, Idaho Code.

PETITION FOR RECONSIDERATION

Any party may file a petition for reconsideration of a final order within fourteen (14) days of the service date of this order. The department will act on a petition for reconsideration within twenty-one (21) days of its receipt, or the petition will be considered denied by operation of law. See section 67-5246(4) Idaho Code.

APPEAL OF FINAL ORDER TO DISTRICT COURT

Pursuant to sections 67-5270 and 67-5272, Idaho Code, any party aggrieved by a final order or orders previously issued in a matter before the department may appeal the final order and all previously issued orders in the matter to district court by filing a petition in the district court of the county in which:

i. A hearing was held,
ii. The final agency action was taken,
iii. The party seeking review of the order resides, or
iv. The real property or personal property that was the subject of the agency action is located.

The appeal must be filed within twenty-eight (28) days a) of the service date of the final order, b) of an order denying petition for reconsideration, or c) the failure within twenty-one (21) days to grant or deny a petition for reconsideration, whichever is later. See section 67-5273, Idaho Code. The filing of an appeal to district court does not in itself stay the effectiveness or enforcement of the order under appeal.

Sincerely,

L. Glen Saxton

L. GLEN SAXTON, Chief
Water Allocation Bureau

Enclosure

c: IDWR - Southern Region

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NOV 12 1999

IDAHO DEPARTMENT OF WATER RESOURCES
SOUTHERN REGION
1341 FILLMORE ST STE 200
TWIN FALLS ID 83301-3380
(208) 736-3033

DIRK KEMPTHORNE
GOVERNOR

KARL J DREHER
DIRECTOR

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APR 0 2 1999
Department of Water Resources

CHANGE IN ADDRESS

☐ Water Right Number(s): App. For Transfer # 5199

☐ Old Mailing Address: PO Box 821 (G.C. Gunning, deceased)
Wendell, ID 83355

☐ New Mailing Address: F. F. Gunning
PO Box 716
Wendell, ID 83355

☐ New Telephone Number: ( ) 733 - 5565 (Twin Falls)

☐ Signature of Claimant(s): F. F. Gunning

Date: 3-31-99

FOR IDWR USE ONLY
Initial Review and Data Entry
Date: By:
Further Action Needed:

Further Action Taken
Date: By:
Final Review and Data Entry
Date: By:

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MAR 3 1 1999
Department of Water Resources
Southern Region

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NOV 1 2 1999

State of Idaho
DEPARTMENT OF WATER RESOURCES
1301 North Orchard Street, P.O. Box 83720, Boise, Idaho 83720-0098
Phone: (208) 327-7900 FAX: (208) 327-7866

DIRK KEMPTHORNE
GOVERNOR

KARL J. DREHER
DIRECTOR

April 1, 1999

RE: In the matter of Application for Transfer No. 5197 in the name of F.F. Gunning and G.C. Gunning

Dear Interested Party:

The accompanying order is a "**recommended order**" issued by the department pursuant to Section 67-5243, Idaho Code. The provisions of this order will not become effective until the Director issues a final order in this matter.

Each party to these proceedings who appeared at the hearing may file a petition for reconsideration, briefs and exceptions to the recommended order and may request oral argument before the Director of the department as further described below:

PETITION FOR RECONSIDERATION

Any party may file a petition for reconsideration of a recommended order with the hearing officer issuing the order within fourteen (14) days of the service date of the order. The hearing officer will act on a petition for reconsideration within twenty-one (21) days of its receipt, or the petition will be considered denied by operation of law. See Section 67-5243(3), Idaho Code.

EXCEPTIONS AND BRIEFS

Within twenty-one (21) days after (a) the service date of this recommended order, (b) the service date of a denial of a petition for reconsideration from this recommended order, or (c) the failure within twenty-one (21) days to grant or deny a petition for reconsideration from this recommended order, any party may in writing support or take exceptions to any part of a recommended order and may file briefs in support of the party's position on any issue in the proceeding. Written briefs in support of or taking exceptions to the recommended order shall be filed with the Director. Opposing parties shall have twenty-one (21) days to respond.

ORAL ARGUMENT

The Director may schedule oral argument in the matter before issuing a final order. Oral argument on exceptions to a recommended order shall be heard at the discretion of the Director. If oral arguments are to be heard, the Director will, within a reasonable time, notify each party of the place, date and hour for the argument of the case. Unless the Director orders otherwise, all oral arguments will be heard in Boise, Idaho.

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CERTIFICATE OF SERVICE

All exceptions, briefs, requests for oral argument and any other matters filed with the Director in connection with the recommended order shall be served on all other parties to these proceedings in accordance with Rules of Procedure 302 and 303.

FINAL ORDER

The Director will issue a final order within fifty-six (56) days of receipt of the written briefs, oral argument or response to briefs, whichever is later, unless waived by the parties or for good cause shown. The agency may remand the matter for further evidentiary hearings if further factual development of the record is necessary before issuing a final order. The department will serve a copy of the final order on all parties of record.

APPEAL OF FINAL ORDER TO DISTRICT COURT

A party aggrieved by a final order of the Director is entitled to judicial review in compliance with sections 67-5271 through 67-5279, Idaho Code.

Sincerely,

L. Glen Saxton

L. GLEN SAXTON, Chief
Water Allocation Bureau

Enclosure

c: Allen Merritt, Southern Region

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NOV 1 2 1999

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MAR 3 0 1999
Department of Water Resources

3-25-99

The Department of Water Resources
of the
State of Idaho

In the Matter of Application
For Transer No. 52977

Objection To Affidavit
of Richard B. Vandyk

Protestant - Frank Rost Jr.

Reasons for Protest:

1. This dairy is operating illegally, without any siting permits from Gooding Co. Planning and Zoning.
2. The City of Wendell has objected to this dairy that has established itself on the inside of the City Impact
3. The cities domestic wa[illegible]uld be affected by this dairy.
4. The odor has increased immensley since the dairy has been operating.
5. The field that the dairy is spreading its

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NOV 12 1999

waste on has ponds of waste water standing for days at a time.

b- The dairy is not showing a good stewardship of there existing water.

Frank Rost Jr.

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MAR 24 1999
Department of Water Resources

RECEIVED
MAR 29 1999
Department of Water Resources
Southern Region

RECEIVED
MAR 30 1999
Department of Water Resources

Craig D. Hobdey
HOBDEY & HOBDEY
Attorneys at Law
125 5th Avenue West
P.O. Box 176
Gooding, Idaho 83330-0176
208-934-4429

Attorneys for Protestants.

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE
STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR TRANSFER NO. 5297

F. F. and G. C. GUNNING,

Applicants,

CITY OF WENDELL, WENDELL RECREATION DISTRICT, JOHN & VERLA HALL, NOEL BRIGGS, and FRANK ROST, JR.,

PROTESTANTS.

OBJECTION TO AFFIDAVIT OF RICHARD B. VANDYK

COMES NOW, the City of Wendell, Idaho by and through their attorney of record, Craig D. Hobdey, and hereby objects to the affidavit of Richard B. VanDyk, upon the following grounds:

1. Neither the prior evidence, or the affidavit indicate whether or not there is a mortgage or prior lien holder on the VanDyk property. If there is such a mortgage or lien holder those rights would be superior to any rights purchased by Gunning as a third party. Therefore it is not at all clear whether or not VanDyks have the authority to sell the water as a unencumbered property.

2. Paragraph three of Mr. VanDyke affidavit indicates that .2 cfs shall be transferred from each of three separate water rights. However the paragraph is contradictory when it indicates that only a total of .2 cfs is being transferred. Therefore the affidavit

MICROFILMED
NOV 12 1999

is again contradictory.

3. Gunnings failed to meet their burden at the hearing held on December 10, 1998 and therefore the application for transfer should be denied without further evidence, either ex-parte or otherwise.

4. The facts, shown at the hearing of December 10, 1998 indicate that Gunnings are using more than their allotted water at this time or in the alternative that the Gunnings already have sufficient water for their dairy. In any event, they have not shown that they need the water or will apply the same to beneficial use.

DATED THIS 23 day of March, 1999.

Craig Hobdey

Craig D. Hobdey

CERTIFICATE OF SERVICE

I hereby certify that on the 23 day of March, 1999 I served a true and correct copy of the foregoing OBJECTION TO AFFIDAVIT OF RICHARD B. VANDYK by the method indicated below, and addressed to the following:

Patrick D. Brown
Parker Warr and Brown
812 Shoshone St. E.
Twin Falls, ID 83301

X U.S. Mail
____ Hand Delivered
____ Overnight Mail
____ Telecopy (FAX)

Dale Bitterli
President Wendell Rec Dist
P.O. Box 217
Wendell ID 83355

John and Verla Hall
1988 E 2800 S
Wendell ID 83355

Frank Rost Jr.
604 6th Ave. E.
Wendell, ID 83355

Noel Briggs
2050 E 3000 S
Wendell ID 83355

Craig Hobdey

Craig D. Hobdey

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NOV 1 2 1999

MEMORANDUM

To: Transfer File No. 5197

From: L. Glen Saxton

RE: **TELEPHONE CONVERSATION**

Date: March 29, 1999

On this date, I called Craig Hobdey in order to clarify whether his Objection to Affidavit of Richard B. Van Dyk received on March 29, 1999 intended to request a hearing in connection with the affidavit. He stated that he did not intend to request a hearing but wanted his objection considered as a part of the record. I advised him that my March 15, 1999 letter advised that any response to the affidavit would also become a part of the record.

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NOV 12 1999

State of Idaho
DEPARTMENT OF WATER RESOURCES
1301 North Orchard Street, P.O. Box 83720, Boise, Idaho 83720-0098
Phone: (208) 327-7900 FAX: (208) 327-7866

DIRK KEMPTHORNE
GOVERNOR

KARL J. DREHER
DIRECTOR

March 15, 1999

RE: APPLICATION FOR TRANSFER NO. 5197 IN THE NAME OF F.F GUNNING AND G.C. GUNNING

Dear Interested Party:

On December 10, 1998, I conducted a water right hearing in Gooding, Idaho in connection with the above referenced matter. Subsequent review of the record after the hearing showed that the hearing record was not complete in that there was no evidence to show that the water right sought for transfer was owned by the applicant.

In order to avoid an ex parte communication with any party to the matter, I asked staff in our Twin Falls office who had originally assisted the applicant in the preparation of the application to contact appropriate parties in order to seek information to show ownership of the right sought for transfer. On March 12, 1999, the enclosed Affidavit of Richard B. VanDyk was faxed to the department from the office of Robert E. Williams.

The purpose of this letter is to provide you a copy of the affidavit and to advise you that I intend to include the affidavit as a part of the hearing record without further hearing unless an objection and request for further hearing is received. Any response you file to the affidavit within fourteen (14) days of the date of this letter will also become a part of the hearing record.

Sincerely,

L. GLEN SAXTON
Hearing Officer

Encl: 1

c: IDWR - S. Region

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NOV 12 1999

CERTIFICATE OF SERVICE

I DO HEREBY CERTIFY that on this 15th day of March, 1999, the above and foregoing document was served upon the following by placing a copy of the same in the United States Mail, postage prepaid and properly addressed to the following:

PATRICK D BROWN
PARKER WARR AND BROWN
812 SHOSHONE ST E
TWIN FALLS ID 83301

DALE BITTERLI
PRESIDENT WENDELL REC DIST
PO BOX 217
WENDELL ID 83355

NOEL BRIGGS
2050 E 3000 S
WENDELL ID 83355

CRAIG D HOBDEY ESQ
PO BOX 176
GOODING ID 83330

JOHN AND VERLA HALL
1988 E 2800 S
WENDELL ID 83355

FRANK ROST JR
604 6TH AVE E
WENDELL ID 83355

Julie L. Yarbrough

JULIE L. YARBROUGH
Senior Secretary, Water Allocation Bureau

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NOV 1 2 1999

RECEIVED
MAR 24 1999
Department of Water Resources

RECEIVED
MAR 29 1999

Craig D. Hobdey
HOBDEY & HOBDEY
Attorneys at Law
125 5th Avenue West
P.O. Box 176
Gooding, Idaho 83330-0176
208-934-4429

Attorneys for Protestants.

Post-it® Fax Note 7671	Date	# of pages ▶ 2
To Glen Saxton	From Allen Merritt	
Co./Dept.	Co.	
Phone #	Phone #	
Fax #	Fax #	

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE
STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR TRANSFER NO. 5297

F. F. and G. C. GUNNING,

Applicants,

CITY OF WENDELL, WENDELL RECREATION DISTRICT, JOHN & VERLA HALL, NOEL BRIGGS, and FRANK ROST, JR.,

PROTESTANTS.

OBJECTION TO AFFIDAVIT OF RICHARD B. VANDYK

COMES NOW, the City of Wendell, Idaho by and through their attorney of record, Craig D. Hobdey, and hereby objects to the affidavit of Richard B. VanDyk, upon the following grounds:

1. Neither the prior evidence, or the affidavit indicate whether or not there is a mortgage or prior lien holder on the VanDyk property. If there is such a mortgage or lien holder those rights would be superior to any rights purchased by Gunning as a third party. Therefore it is not at all clear whether or not VanDyks have the authority to sell the water as a unencumbered property.

2. Paragraph three of Mr. VanDyke affidavit indicates that .2 cfs shall be transferred from each of three separate water rights. However the paragraph is contradictory when it indicates that only a total of .2 cfs is being transferred. Therefore the affidavit

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is again contradictory.

3. Gunnings failed to meet their burden at the hearing held on December 10, 1998 and therefore the application for transfer should be denied without further evidence, either ex-parte or otherwise.

4. The facts, shown at the hearing of December 10, 1998 indicate that Gunnings are using more than their allotted water at this time or in the alternative that the Gunnings already have sufficient water for their dairy. In any event, they have not shown that they need the water or will apply the same to beneficial use.

DATED THIS 23 day of March, 1999.

Craig D. Hobdey

CERTIFICATE OF SERVICE

I hereby certify that on the 23 day of March, 1999 I served a true and correct copy of the foregoing OBJECTION TO AFFIDAVIT OF RICHARD B. VANDYK by the method indicated below, and addressed to the following:

Patrick D. Brown
Parker Warr and Brown
812 Shoshone St. E.
Twin Falls, ID 83301

X U.S. Mail
____ Hand Delivered
____ Overnight Mail
____ Telecopy (FAX)

Dale Bitterli
President Wendell Rec Dist
P.O. Box 217
Wendell ID 83355

John and Verla Hall
1988 E 2800 S
Wendell ID 83355

Frank Rost Jr.
604 6th Ave. E.
Wendell, ID 83355

Noel Briggs
2050 E 3000 S
Wendell ID 83355

Craig D. Hobdey

MICROFILMED
NOV 1 2 1999

FREDERICKSEN, WILLIAMS & MESERVY
ATTORNEYS AT LAW
117 South Adams Street
P. O. Box 168
Jerome, Idaho 83338-0168

Telephone: (208) 324-2303
Telecopier: (208) 324-3135

Eugene D. Fredericksen
Robert E. Williams III
James C. Meservy

TELECOPIER COVER SHEET

TO PAM SKAGGS FAX NO. 327-7866

DATE 3/12/99

Matter: AFFIDAVIT OF RICHARD B. VAN DYK

From: ☐ Eugene D. Fredericksen ☑ Robert E. Williams ☐ James C. Meservy

☐ original will follow by mail ★ ☑ original will not follow by mail

WE'RE TRANSMITTING 4 PAGES, INCLUDING THIS PAGE. IF YOU DON'T RECEIVE ALL PAGES, CALL (208) 324-2303 AND ASK FOR Brenda THE DOCUMENTS ACCOMPANYING THIS TELECOPY TRANSMISSION CONTAIN INFORMATION WHICH IS CONFIDENTIAL AND/OR PRIVILEGED. THE INFORMATION IS INTENDED FOR THE USE OF THE INDIVIDUAL/ENTITY NAMED ABOVE. IF YOU ARE NOT THE INTENDED RECIPIENT, BE AWARE THAT ANY DISCLOSURE, COPYING, DISTRIBUTION, OR USE OF THE CONTENTS OF THIS TELECOPIED INFORMATION IS STRICTLY PROHIBITED. IF YOU'VE RECEIVED THIS TELECOPY IN ERROR, PLEASE NOTIFY US BY TELEPHONE WITHOUT DELAY.

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NOV 12 1999

AFFIDAVIT OF RICHARD B. VANDYK

STATE OF IDAHO)
:ss
County of Jerome)

Richard B. VanDyk, being first duly sworn upon oath, deposes and says:

1. My name is Richard B. VanDyk. I make this affidavit of my own personal knowledge and belief.

2. That my wife, Tammy D. VanDyk and I own certain real property in Jerome County, Idaho, which is more particularly described as the S1/2 NE1/4 and N1/2 SE1/4 Section 21 and the NW1/4 SE1/4 and the SW1/4 of Section 22 all within Township 07 South, Range 16 East of the Boise Meridian, Jerome County, Idaho. Among the water rights appurtenant to that property are Water Right Nos. 36-07760, 36-02457, and a portion of the Right 36-08063A.

3. I agree to sell the following portions of those water rights to Gunnings in order to allow Gunnings to transfer water for commercial and stockwater purposes to the Hillcrest Dairy;

36-02457 - amount being sold	.2
36-07760B - amount being sold	.2
36-08063F - amount being sold	.2
Total combined amount of all rights	.20 cfs

The portion of the three rights being sold to Gunnings is more particularly set forth in the application for transfer of water right filed with the Idaho Department of Water Resources as Transfer No. 5197.

4. If and when IDWR approves Transfer No. 5197 and Gunnings are satisfied with any conditions placed on such approval, then I agree to not irrigate with water from the three rights identified in the preceding paragraphs on 14 acres of ground in Section 22 which are

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currently being irrigated solely with those rights. The 14 acres on which I no longer utilize water under the above rights are located and identified as the pivot corners in the attached Exhibit "A." Only 14 acres of the three pivot corners identified in Exhibit "A" will no longer be utilized.

FURTHER YOUR AFFIANT SAYETH NAUGHT.

Dated this 12 day of March, 1999.

Richard B VanDyk

RICHARD B. VANDYK

SUBSCRIBED AND SWORN to before me this 12 day of March, 1999.

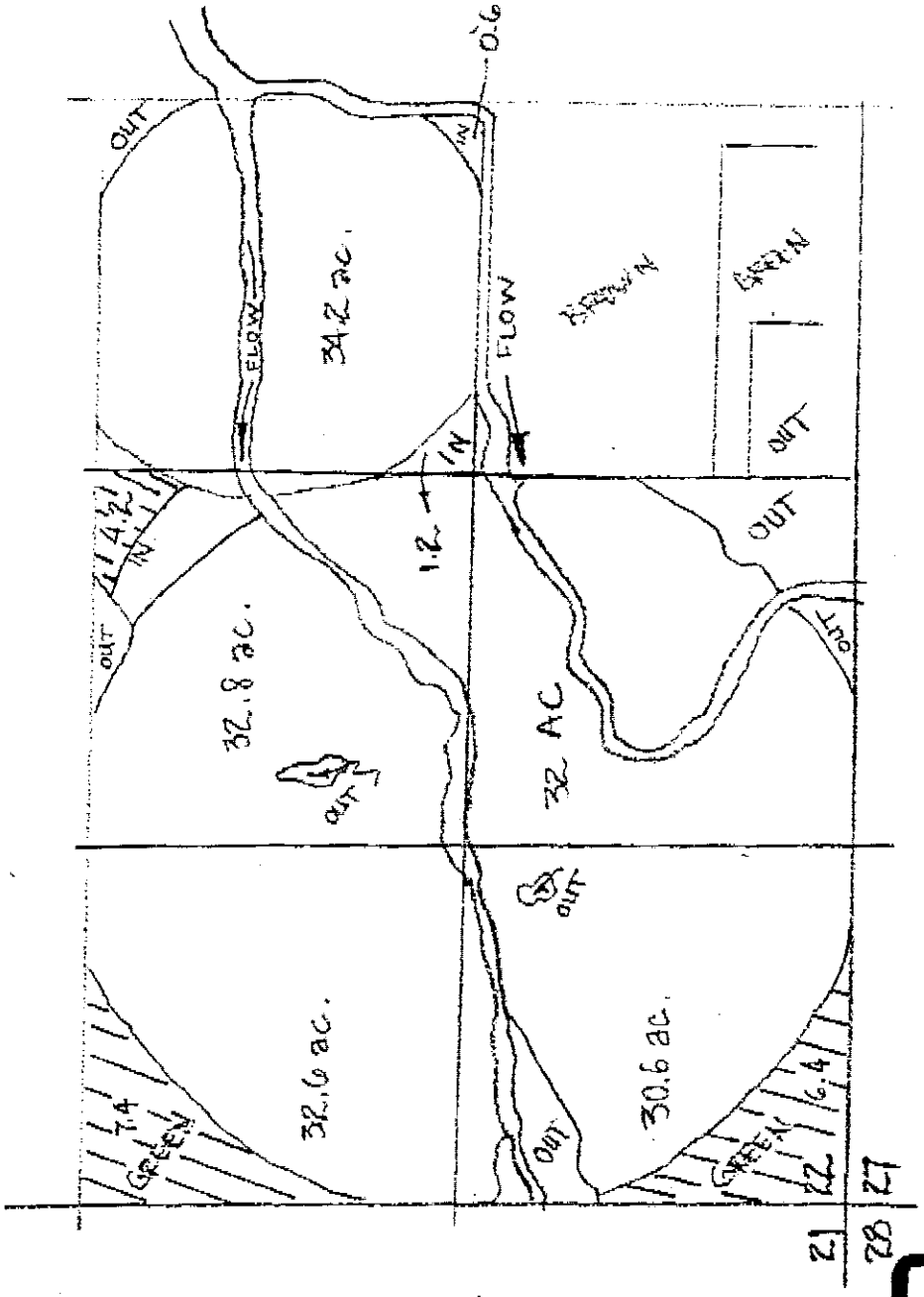
Notary Public for Idaho
Residing at: Jerome Id
Comm. Expires: 3/9/01

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NOV 12 1999

7 # 5197

Gunning, F.F. &/or G.C. Gunning
Section 22, T07S, R16E 1996 Slides

▨ = acres to be dried up



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NOV 12 1999

EXHIBIT

State of Idano
DEPARTMENT OF WATER RESOURCES
1301 North Orchard Street, P.O. Box 83720, Boise, Idaho 83720-0098
Phone: (208) 327-7900 FAX: (208) 327-7866

DIRK KEMPTHORNE
GOVERNOR

KARL J. DREHER
DIRECTOR

March 2, 1999

John Rosholt
ROSHOLT, ROBERTSON & TUCKER
P.O. Box 1906
142 3rd Ave N.
Twin Falls, ID 83303-1906

RE: PROPOSED MITIGATION - TRANSFER NO. 5197 IN THE NAME OF F.F. GUNNING AND G.C. GUNNING

Dear Mr. Rosholt:

On April 3, 1997, F.F. Gunning and G.C. Gunning ("applicant") filed Application for Transfer No. 5197 with the Department seeking to change the point of diversion, place of use, period of use and nature of use of parts of three water rights (36-02457, 36-07760 and 36-08063A) . The change in nature of use is from irrigation use to stockwater and commercial uses to be used in connection with an existing dairy known as Hillcrest Dairy, located in the E1/2NE1/4 Section 34, T7S, R15E, B.M. The proposed change in point of diversion is from Section 21, T7S, R16E, B.M. in Jerome County to a location approximately six miles west in Section 34, T7S, R15E, B.M. in Gooding County.

In order to insure that there is no injury to other water rights or enlargement in use, the applicant has offered to retain ownership of the 80 shares of North Side Canal Company water which are appurtenant to the dairy site to be used for recharge or mitigation as determined appropriate by the department.

The purpose of this letter is to advise you of the offer and to implement Norman Young's assurance to you that the department would advise you when canal company shares in companies you represent are offered as mitigation. Please advise me soon of any concerns you have about the offered mitigation.

Sincerely,

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

c: IDWR - S. Region
Norman C. Young

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NOV 12 1999

MAILING LIST FOR T# 5197
(36-02457B, 36-07760B, 36-08063F)

Applicants:

F F GUNNING &
G C GUNNING
PO BOX 821
WENDELL ID 83355

Legal Counsel for Applicants:

PATRICK D BROWN ESQ
PARKER WARR & BROWN
812 SHOSHONE STREET EAST
TWIN FALLS ID 83301

Protestants:

GWEN ROST MAYOR
CITY OF WENDELL
PO BOX 208
WENDELL ID 83355

Attorney for City of Wendell:

CRAIG D HOBDEY ESQ
PO BOX 176
GOODING ID 83330

DALE BITTERLI PRESIDENT
WENDELL RECREATION DISTRICT
PO BOX 217
WENDELL ID 83355

JOHN & VERLA HALL
1988 E 2800 S
WENDELL ID 83355

NOEL BRIGGS
2050 E 3000 S
WENDELL ID 83355

FRANK ROST JR
604 6TH AVE EAST
WENDELL ID 83355

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NOV 12 1999

State of Idaho
DEPARTMENT OF WATER RESOURCES
1301 North Orchard Street, P.O. Box 83720, Boise, Idaho 83720-0098
Phone: (208) 327-7900 FAX: (208) 327-7866

PHILIP E. BATT
GOVERNOR

KARL J. DREHER
DIRECTOR

December 31, 1998

RE: HEARING RECORD - PROTESTED APPLICATION FOR TRANSFER NO. 5197 IN THE NAME OF F.F. GUNNING AND G.C. GUNNING

Dear Full Party:

On December 10, 1998, I conducted a hearing in connection with the above referenced application. While reviewing the record, I determined that the tape recording of the hearing is of inferior quality and likely will not be sufficient for a court to review the department's order in this matter if any of the parties seek review of the order. We have had the tape reviewed by a technical firm in Boise who advises that the most of the information on the tape can not be salvaged. Either the tape was of poor quality or the tape recorder did not function properly.

The purpose of this letter is to advise each full party who appeared at the hearing that I plan to issue a recommended order based on my notes taken at the hearing, the exhibits in evidence and my understanding of the matter. Since the Administrative Procedures Act and the department's Rules of Procedure, however, provide that the parties are entitled to a complete hearing record, upon receipt of a petition for reconsideration filed in connection with the recommended order requesting a rehearing, I will grant a rehearing.

Sincerely,

L. GLEN SAXTON
Hearing Officer

c: Allen Merritt

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NOV 12 1999

CERTIFICATE OF SERVICE

I DO HEREBY CERTIFY that on this 31st day of December, 1998, the above and foregoing document was served upon the following by placing a copy of the same in the United States Mail, postage prepaid and properly addressed to the following:

F F GUNNING
G C GUNNING
5104 W COVE ST
BOISE ID 83703-1976

DALE BITTERLI
PRESIDENT WENDELL REC DIST
PO BOX 217
WENDELL ID 83355

NOEL BRIGGS
2050 E 3000 S
WENDELL ID 83355

PATRICK D BROWN
PARKER WARR AND BROWN
812 SHOSHONE ST E
TWIN FALLS ID 83301

CRAIG D HOBDEY ESQ
PO BOX 176
GOODING ID 83330

JOHN AND VERLA HALL
1988 E 2800 S
WENDELL ID 83355

FRANK ROST JR
604 6TH AVE E
WENDELL ID 83355

Julie D. Yarbrough

JULIE L. YARBROUGH
Senior Secretary, Water Allocation Bureau

MICROFILMED

NOV 1 2 1999

PARKER, WARR & BROWN, LLP
ATTORNEYS AT LAW

PENELOPE PARKER
JEFFREY A. WARR
PATRICK D. BROWN

812 SHOSHONE STREET EAST
TWIN FALLS, IDAHO 83301
PHONE (208) 735-8812
FACSIMILE (208) 735-8820

December 7, 1998

Idaho Department of Water Resources
1341 Fillmore, Suite 200
Twin Falls, ID 83303-3380

RE: Gail Gunning, Transfer Application No. 5297
Our File No. 102-001

Dear Sir or Madam:

Enclosed for filing in the above-entitled application is a Notice of Service of Discovery.

Sincerely,

PARKER, WARR & BROWN, LLP

By: LeAnn McMillan
LeAnn McMillan, Legal Assistant

/llm
Encl.

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DEC 08 1998
Department of Water Resources
Southern Region

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DEC [illegible]
Department of Water Resources
Southern Region

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NOV 12 1999

RECEIVED
DEC 08 1998
Department of Water Resources
Southern Region

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE
STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR TRANSFER NO. 5297

F.F. and G.C. GUNNING,

Applicants,

CITY OF WENDELL, WENDELL RECREATION DISTRICT, JOHN & VERLA HALL, NOEL BRIGGS, and FRANK ROST, Jr.,

Protestants.

NOTICE OF SERVICE OF DISCOVERY

NOTICE IS HEREBY GIVEN that APPLICANTS' ANSWERS TO PROTESTANT'S INTERROGATORIES AND REQUEST FOR PRODUCTION were served upon CITY OF WENDELL by hand delivering a true and correct copy thereof to Craig D. Hobdey, Esq., attorney of record, on the 4th day of December, 1998, at the following address:

Craig D. Hobdey
Hobdey & Hobdey
125 5th Ave. W.
Gooding, ID 83330

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NOV 12 1999

NOTICE IS FURTHER GIVEN that the original document has been served upon Craig D. Hobdey.

Dated this 7th day of December, 1998.

PARKER, WARR & BROWN, LLP

By: _____
Patrick D. Brown
Attorneys for Applicants

CERTIFICATE OF SERVICE

The undersigned, a resident attorney of the State of Idaho, with offices at 812 Shoshone St. East, Twin Falls, Idaho 83301, and one of the attorneys for the applicants in this matter, certifies that on the 7 day of December, 1998, he served a true and correct copy of the foregoing document by the method indicated below, and addressed to the following:

Gwen Rost, Mayor City of Wendell P. O. Box 208. Wendell, ID 83355	X U.S. Mail ___ Hand Delivered ___ Overnight Mail ___ Telecopy (Fax)
Craig D. Hobdey, Esq. P. O. Box 176 Gooding, ID 83330	X U.S. Mail ___ Hand Delivered ___ Overnight Mail ___ Telecopy (Fax)
Dale Bitterli, President Wendell Recreation District P. O. Box 217 Wendell, ID 83355	X U.S. Mail ___ Hand Delivered ___ Overnight Mail ___ Telecopy (Fax)
John & Verla Hall 1988 East 2800 South Wendell, ID 83355	X U.S. Mail ___ Hand Delivered ___ Overnight Mail ___ Telecopy (Fax)

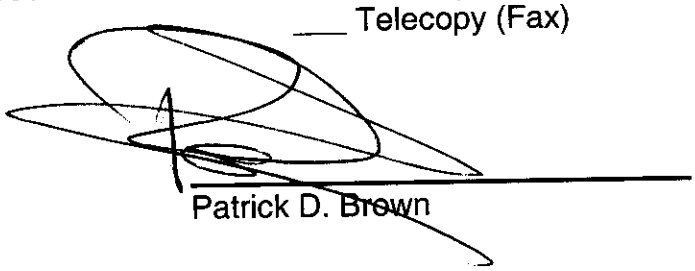
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Noel Briggs
2050 East 3000 South
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Frank Rost, Jr.
604 6th Avenue East
Wendell, ID 83355

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___ Hand Delivered
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___ Telecopy (Fax)



Patrick D. Brown

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BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE
STATE OF IDAHO

RECEIVED
DEC 04 1998
Department of Water Resources
Southern Region

IN THE MATTER OF APPLICATION FOR TRANSFER NO. 5297

F.F. and G.C. GUNNING,

Applicants,

CITY OF WENDELL, WENDELL RECREATION DISTRICT, JOHN & VERLA HALL, NOEL BRIGGS, and FRANK ROST, Jr.,

Protestants.

WITNESS AND EXHIBIT LIST

COMES NOW Applicants F.F. Gunning and G.C. Gunning, by and through their attorneys of record, the firm of Parker, Warr & Brown, and responds to the Notice of Hearing filed Septmber 14, 1998, as follows:

1. List of Witnesses:

    1. Dr. Charles E. Brockway;
    2. Pete Veenstra;
    3. Guy Callen;
    4. Walter Stockham, Jr.;
    5. Tom Webb;
    6. Gail Gunning;
    7. Louis Bettencourt or another person who is involved in the operation of the dairy (Joe Brasil);

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8. The Protestants (or their agents who have filed protests);

9. Judy Daubner; and

10. Robert Williams.

2. List of Exhibits:

1. Statement of Peter Veenstra dated October 20, 1995;

2. Affidavit of Guy Callen dated December 30, 1995;

3. Affidavit of Walter Stockham, Jr., dated June 18, 1991;

4. Statement of Tom Webb dated November 16, 1997;

5. CAFO Siting permit dated October 20, 1993;

6. Statement of G.C. Gunning dated November 19, 1997;

7. Photographs of Dairy sites and High School area;

8. Copy of USGS Map of Area;

9. Water Right Claims, Well Reports of wells of concern to protestants;

10. Dr. Brockway's analysis of water requirements and analysis of effect of transfer and well interference;

11. 36-10815 Order of Partial Decree;

12. 36-15511 Order of Partial Decree;

13. Chronology of use of site, with cattle numbers;

14. IDWR files on the rights being transferred and 36-10815 and 36-15511;

15. Judicial Decisions by Judges Hart (Granata), Meehl and Cushman on Gooding County Ordinances –
    a. 62
    b. 60
    c. 57
    d. 50
    e. 25

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16. 36-02457 Partial Decree;

17. 36-07760 Partial Decree; and

18. Water License for 36-08063A.

Dated this 4 day of December, 1998.

PARKER, WARR & BROWN, LLP

By: _____
Patrick D. Brown
Attorneys for Applicants

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CERTIFICATE OF SERVICE

The undersigned, a resident attorney of the State of Idaho, with offices at 812 Shoshone St. East, Twin Falls, Idaho 83301, and one of the attorneys for the applicants in this matter, certifies that on the 4 day of December, 1998, he served a true and correct copy of the foregoing document by the method indicated below, and addressed to the following:

Gwen Rost, Mayor City of Wendell P. O. Box 208. Wendell, ID 83355	X U.S. Mail ___ Hand Delivered ___ Overnight Mail ___ Telecopy (Fax)
Craig D. Hobdey, Esq. P. O. Box 176 Gooding, ID 83330	___ U.S. Mail X Hand Delivered ___ Overnight Mail ___ Telecopy (Fax)
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