

Young, Norm

From: Don Cogger [cogger@magiclink.com]
Sent: Friday, December 03, 1999 11:50 AM
To: cogger@magiclink.com
Subject: Water transfer

Dear Mr. Young:

The following are excerpts of a letter from Allen Merritt to myself regarding the Gunning water transfer # 5197 and a letter from Judy Daubner of Planning and Zoning from Gooding County. I have a few questions shown in red below could someone from your Department respond.

Thank you in advance

Don Cogger

Don Cogger
2923 S 2200 E
Wendell, ID 83355

RE: Gunning Transfer No. 5197

Dear Mr. Cogger:

This letter is intended to respond to your inquiry contained in your October 1 5k" e-mail message. In your message you asked several questions which I will attempt to answer.

You asked what the department plans to do about the misappropriation of water for the four years prior to the recent decision.

During the past few years when the water rights for the dairy were being looked at by the SRBA

court and during the time the subject transfer was being processed, it was determination by the

department not to pursue an enforcement action. The department's authority for enforcement of

water rights currently stems from sections 42-351 and 42-170 IB of the Idaho Code.

(Section 42-

351 was amended in 1998 and 42-1701B was added in 1998.) Please note that by these statutes,

civil penalties cannot be assessed for violations that have occurred more than 12 months prior to

issuance of a notice of violation and that issuance of a notice of violation is at the discretion of the

director. Does the Department intend to take enforcement action for the past 12 months ?

You indicate that the dairy is not in compliance with Gooding County CAFO regulations. The transfer is conditioned that the dairy operation shall comply with applicable city and county zoning and use requirements. This condition was included so that the Gunnings could not assert that obtaining the water right superseded or in some way relieved them from complying with other city, county or state laws or regulations.

The department did not include this requirement with the intent of enforcing these other applicable laws or regulations. The enforcement is vested in the applicable governing body. I have contacted the Gooding County

P&Z and also the Gooding County prosecuting attorney. Both indicate that the Gunning dairy does not have a

current CAFO permit. However I understand that Gunning contends that the dairy is "grandfathered". I was told

by the prosecutor that this matter was started to be litigated and then the matter was stayed. As I understand it,

further action may be pending before Gooding County. The matter does not appear to be resolved. The

department will monitor this situation and take any appropriate steps regarding the water right.

Is the Department withholding this transfer until he comes into compliance with Gooding Cty Ordinance ? If so will he be required to reduce animals to 400 from the current 1200 ?

I hope I have addressed your questions. Please let me know if you have others. By copy of this letter I will keep others informed.

Sincerely

Allen Merritt, PE
Southern Region Manager

CC: Gooding P&Z, Judy Daubner
(Gooding Prosecuting Attorney, Phil Brown
F.F. Gunning
Pat Brown
Rob Williams
Doug Howard - DEQ
Mary Patten - IDA
Norm Young - IDWR

GOODING COUNTY PLANNING AND ZONING COMMISSION
JUDY DAUBNER 624 Main Street
ADMINISTRATOR P.O. Box 417
Gooding, ID 83330

12/6/99

(208)934-5958

November 4, 1999

State of Idaho
Department of Water Resources
1341 Fillmore Street, Suite 200
Twin Falls, ID 83301-3380

RE: Gunning Transfer No. 5197

Dear Mr. Merritt:

For clarification of the letter written to Don Cogger cc: Gooding County Planning and Zoning,
October 27, 1999.

I would like to make it clear that the Gunning Dairy is not Grandfathered and that they do not have a CAFO permit with Gooding County. Therefore they are not in compliance with Gooding County Ordinances.

Sincerely,

Judy Daubner
Administrator

CC: Don Cogger

12/6/99