

01/22/2024
12:20:17

ELMORE COUNTY
INDEX & RECORD A DOCUMENT

Receipt No: 9562694

Received From SIMPLOT

Received on 01/22/2024

Type of Payment
Check: 34.00 Check No: 43687
Cash:
Credit Card:

<u>Received For</u>	<u>Cost Each</u>	<u>Quantity</u>	<u>Cost</u>
Miscellaneous	34.00	1	34.00
		Receipt Amount:	<u>34.00</u>

Related Instrument/Case No. 0000508715

Received by: KATRINA
Authorized by:

for: SHELLEY ESSL
County Clerk, Auditor



Recording Requested By and
When Recorded Return to:

Instrument # 508715 # Pages: 9
ELMORE COUNTY, Idaho
Jan 22, 2024 12:17:36 pm Fee: \$ 34.00
For: SIMPLOT
SHELLEY ESSL, Recorder
KREYES, Deputy

SPACE ABOVE THIS LINE FOR RECORDERS USE ONLY

**THIS PROPERTY IS SUBJECT TO AN ENVIRONMENTAL COVENANT IMPOSING
ACTIVITY AND USE LIMITATIONS PURSUANT TO THE UNIFORM ENVIRONMENTAL
COVENANTS ACT, IDAHO CODE § 55-3001, et seq.**

ENVIRONMENTAL COVENANT

As provided in Idaho Code §55-3008, J. R. Simplot Company, a Nevada corporation (as "Grantor" and "Grantee") grants this Environmental Covenant which shall be recorded in the official real property records of Elmore County encumbering the real property as described in Exhibit A.

This instrument is an Environmental Covenant ("Environmental Covenant") executed by Grantor, and the Idaho Department of Environmental Quality ("Department") pursuant to the Uniform Environmental Covenants Act, Idaho Code §§ 55-3001 through 3015. This Environmental Covenant sets forth protective provisions, covenants, restrictions and conditions (collectively referred to as "Activity and Use Limitations") on the Property described below. The Activity and Use Limitations are designed to protect natural resources, human health and the environment. Grantee is a "holder" as defined in Idaho Code § 55-3002(6). Grantor, as the current property owner grants this Environmental Covenant to all signatories to this instrument.

Property. This Environmental Covenant concerns real property 1301 Highway 67 County of Elmore, State of Idaho, being a portion of Elmore County Assessor Parcel No. RP04S03E352410 as legally described and depicted as the Restricted Area in Exhibit A, attached hereto (hereafter referred to as "the Property").

Property Ownership. Grantor hereby represents and warrants that it is the sole owner of the Property, holds fee simple title to the Property and Grantor has the power and authority to enter into this Environmental Covenant.

Reason for Activity and Use Limitations. The Property is currently used to operate a livestock facility. Underground storage tanks (USTs) were used at the site for refueling vehicles used in operations at the site. Two 10,000-gallon diesel, one 10,000-gallon gasoline, one 7,000-gallon motor oil, one 6,000-gallon ethylene glycol, and one 10,000-gallon motor oil USTs were present on the site. A diesel release occurred from an UST sump in 1991. 650 cubic yards of petroleum contaminated soil were removed. A second release was confirmed during closure of the USTs in 1994. On August 10, 1992, Simplot entered into a Consent Order with the Department to

remediate the Property. Simplot implemented a corrective action plan (CAP) on the Property. A pump and treat system was installed and operated until 1996. This Environmental Covenant is required because there are residual concentrations of benzene and naphthalene in groundwater underlying the Property. These concentrations are above allowable risk-based concentrations, as determined by the Department. Therefore, future use of the Property shall be limited to protect human health and the environment.

Name and Location of Administrative Record. A copy of the Grand View Farms (Facility Identification 3-370001) administrative records can be found on the Department's Electronic Data Management System Record 2011BAZ2563, more specifically release records 2011BBK1306 and 2011BBK431.

Activity and Use Limitations. By acceptance and recordation of this Environmental Covenant, Grantor, and any successors in interest, are hereby restricted from using the Property, now or at any time in the future, as specifically set forth below:

There shall be no extraction of groundwater under the Property for any purpose, including, without limitation, drinking by animals or human beings, irrigation or for an industrial or commercial use. Groundwater may be extracted as part of an environmental investigation or remediation project.

Breach and Cure of Activity and Use Limitations. Grantor, or its successors in interest, shall be responsible for demonstrating that use on the Property is in conformity with the Activity and Use Limitations. If any event or action occurs that constitutes or may constitute a breach of the Activity and Use Limitations, Grantor, or any successors in interest, shall notify the Department within thirty (30) days of becoming aware of the event or action, and shall remedy the breach of the Activity and Use Limitations within sixty (60) days of becoming aware of the event or action, or such other time frame as may be agreed to by Grantor, or any successors in interest, and Department.

Amendment by Consent. This Environmental Covenant may be amended by consent pursuant to Idaho Code § 55-3010. Except for an assignment undertaken pursuant to a governmental reorganization, assignment of this Environmental Covenant to a new holder is an amendment.

Duration and Termination. The Activity and Use Limitations shall apply to the Property, or any subdivided portion thereof, in perpetuity unless terminated by court action as provided in Idaho Code § 55-3009 or by consent pursuant to Idaho Code § 55-3010. Grantor, or its successors in interest, may seek consent to terminate the Activity and Use Limitations that apply to the Property, or any subdivided portion thereof, pursuant to Idaho Code § 55-3010, by demonstrating with the record before the Department that:

Groundwater is at levels the Department deems in writing to be adequate for the Property to be developed for unrestricted use.

Upon a request and demonstration of the record for termination of the Environment Covenant, the Department will take all reasonable steps to locate or identify holders to determine consent to terminate. If the Department finds that the person no longer exists or cannot be located or identified with the exercise of reasonable diligence, the holder waives their right to sign the termination as provided in Idaho Code § 55-3010.

Provisions to Run With the Land. Each and all of the Activity and Use Limitations shall run with

the land, and pass with each and every portion of the Property, and shall apply to and bind the respective successors in interest thereof. Each and all of the Activity and Use Limitations are imposed upon the entire Property unless expressly stated as applicable to a specific portion of the Property.

Concurrence of Subsequent Owners Presumed. All purchasers, lessees, or possessors of any portion of the Property shall be deemed by their purchase, leasing, or possession of such Property, to be in accord with the foregoing and to agree for and among themselves, and their successors, that the Activity and Use Limitations as herein established must be adhered to and that their interest in the Property shall be subject to the Activity and Use Limitations contained herein.

Recording/Filing of Environmental Covenant. This Environmental Covenant and any amendment or termination of this Environmental Covenant shall be recorded in the county recorder's office of every county in which any portion of the Property subject to the Environmental Covenant is located. This Environmental Covenant or any amendment or termination shall be recorded by Grantor, or its successors in interest, within ten (10) days of receipt of this Environmental Covenant signed by the Department. Within ten (10) days of the recording of this Environmental Covenant, or any amendment or termination, Grantor, or its successors in interest, shall provide to the Department a copy of this recorded Environmental Covenant, or any amendment or termination of this Environmental Covenant. Upon receipt of the copy of the recorded Environmental Covenant, and any amendment or termination therein, the Department shall post the copy of the fully executed instrument in the Registry as required by Idaho Code Section 55-3012(1). In addition, a copy of this recorded Environmental Covenant, or any amendment or termination, shall be provided by Grantor, or by its successors in interest, to the following persons: (a) each person that signed this Environmental Covenant; (b) each person holding a recorded interest in the Property; (c) each person in possession of the Property; (d) each municipality or other local government in which the Property is located; and (e) any other person the Department requires. The validity of this Environmental Covenant is not affected by failure to provide a copy of this Environmental Covenant as required under this section.

Compliance Reporting. Grantor, or and any successors in interest, shall submit to the Department on an annual basis written documentation verifying that the Activity and Use Limitations remain in place and their compliance with the activity and use limitations.

Enforcement. The Department and any party of this Environmental Covenant shall have authority to enforce the Activity and Use Limitations against Grantor or its successors in interest, including subsequent owners of the Property and any other person using the Property. Failure of Grantor, or its successors in interest, to comply with any of the Activity and Use Limitations set forth herein shall be grounds for the Department, or its successor, and/or any party to this Environmental Covenant to require that Grantor correct or remove any violations of this Environmental Covenant. Violation of this Environmental Covenant shall be grounds for the Department, or its successor, and/or any persons identified in Idaho Code § 55-3011 to file civil actions against Grantor, or its successors in interest, as provided by law or in equity, including without limitation, the Uniform Environmental Covenants Act, Idaho Code § 55-3011.

Non-Waiver. No failure on the part of the Department or any holder at any time to require performance of any term of this Environmental Covenant shall be taken or held to be a waiver of such term or in any way affect the Department's or any holder's rights to enforce such term.

Property Access. The Department shall have a right of access to the Property at reasonable times for the purposes of evaluating compliance with this Environmental Covenant.

Notice of Conveyance of Property. Within thirty (30) days of the closing of any conveyance of the Property, or part thereof, the Conveyer of the Property, shall provide written notice to the Department and each municipality or other local government in which the Property is located, the name and address of all the owners and/or occupants of the Property, or part thereof, conveyed. The Department shall not, by reason of this Environmental Covenant, have authority to approve, disapprove, or otherwise affect any conveyance of the Property except as otherwise provided by law.

Notices. All notices required hereunder shall be in writing and mailed in the United States Mail, postage prepaid, by certified or registered mail, return receipt requested, to the appropriate address indicated below, or at such address as a party, or its successors to this Environmental Covenant, may designate in a written notice given to the other parties to this Environmental Covenant. Notices which are deposited in the United States Mail in accordance with the terms of this provision shall be deemed received three (3) days after the date of mailing thereof.

OWNER: J. R. Simplot Company
PO Box 27
Boise, ID 836624

THE DEPARTMENT: Idaho Department of Environmental Quality
ATTN: Assessment and Compliance Bureau Chief
Waste Management and Remediation Division
1410 N. Hilton
Boise, ID 83706

Costs and Expenses. All costs of terminating this Environmental Covenant, including the cost of any remediation or abatement of any environmental condition related to Activity and Use Limitations pertaining to the Property, shall be borne by the party seeking such termination.

Partial Invalidity. If any portion of this Environmental Covenant or terms set forth herein is determined to be invalid for any reason, the remaining portion shall remain in full force and effect as if such invalidated portion had not been included herein.

Headings. Headings at the beginning of each section of this Environmental Covenant are solely for the convenience of the parties and are not a part of this Environmental Covenant.

Idaho Code References. All references to the Idaho Code sections include successor provisions.

Reservation of Rights. Notwithstanding any provision of this Environmental Covenant, the Department retains all of its access and enforcement authorities under any applicable statute or rule. Nothing in this Environmental Covenant shall affect the Department's ability to enforce the terms of any Consent Order or other agreement relating to remediation of the Property entered into between the Department and Grantor, or any other responsible party. Nothing in this Environmental Covenant shall affect the obligations of Grantor, or any other responsible party under such consent order or other agreement. The Department's acceptance hereunder is

based upon the information presently known or available to the Department with respect to the environmental condition of the Property, and the Department reserves the right to take appropriate action under applicable authorities in the event the Department determines new information warrants such action.

Effective Date. The effective date of this instrument shall be the date the fully executed Environmental Covenant is recorded at the county recorder's office.

Signature and Acknowledgments
Accepted:

Idaho Department of Environmental Quality

Signature: *Jess Byrne*
Printed Name: Jess Byrne
Title: Director, Idaho Department of Environmental Quality
Date: November 15, 2023

State of Idaho)
) ss.

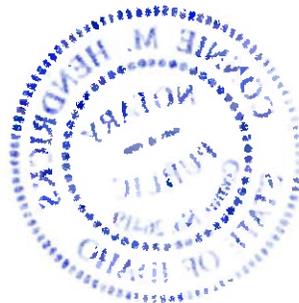
County of Ada)

On this 15th day of November, in the year 2023, before me, a Notary Public in and for said County and State, personally appeared Jess Byrne, known or identified to me to be the Director of the Idaho Department of Environmental Quality that executed this Environmental Covenant, and acknowledged to me that the Idaho Department of Environmental Quality executed the same.

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



Notary Public for Idaho: *Elaine Ganino*
Residing at: Boise, ID
Commission Expires: 07/22/2027



LEGAL DESCRIPTION
FOR
SIMPLOT FEEDLOT RESTRICTED AREA

Restricted area lying in a portion of Section 35, Township 4 South, Range 3 East, Boise Meridian, Elmore County, Idaho, said area being more particularly described as follows:

Commencing at the SE corner of said Section 35; thence along the south line of said Section 35, S.89°57'20"W. 3157.07 feet to a point, also being the POINT OF BEGINNING;

Thence continuing along the south line of said Section 35, S.89°57'20"W. 1362.42 feet to a point;

Thence N.00°02'40"W. 840.00 feet to a point;

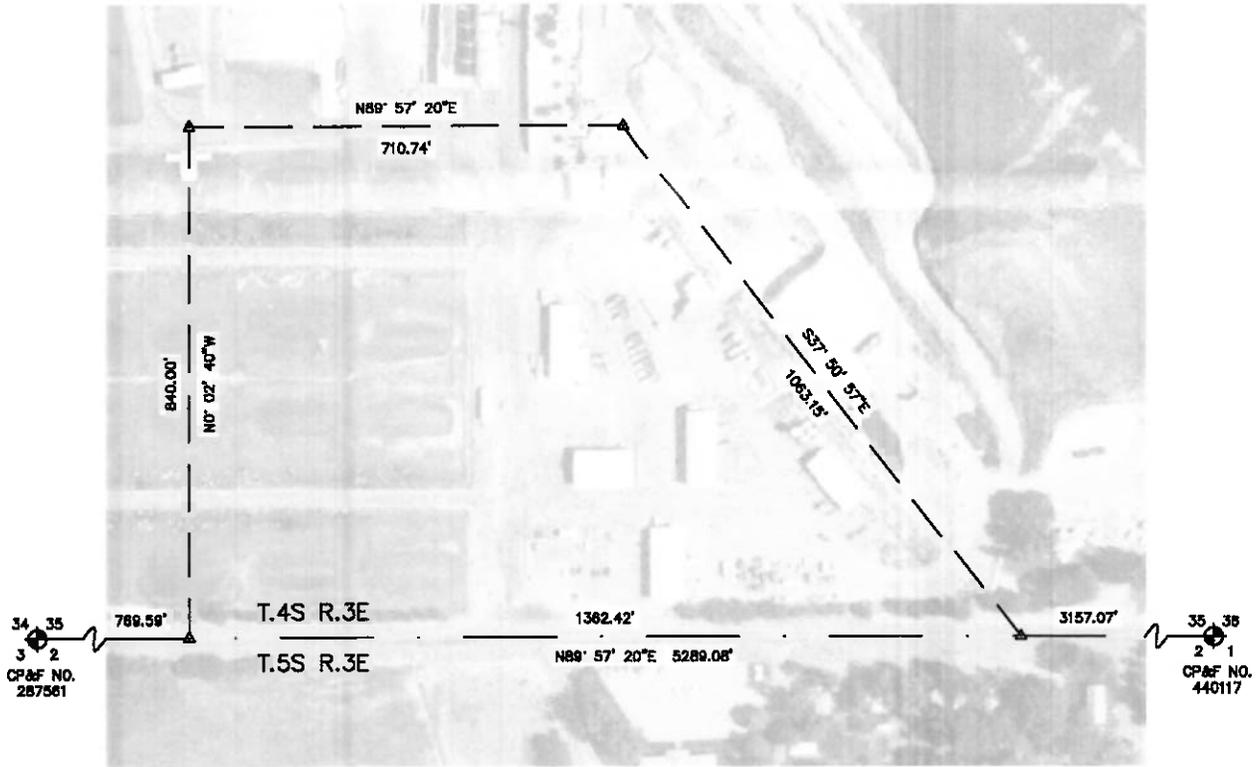
Thence N.89°57'20"E. 710.74 feet to a point;

Thence S.37°50'57"E. 1063.15 feet to the POINT OF BEGINNING.

Said area contains 20 acres, more or less, and is subject to all existing easements and right-of-ways of record or implied.

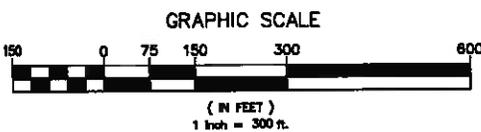


RESTRICTED AREA EXHIBIT DRAWING
 LYING IN A PORTION OF SECTION 35, TOWNSHIP 4 SOUTH,
 RANGE 3 EAST, B.M., ELMORE COUNTY, IDAHO, 2022.



LEGEND

- SECTION LINE
- - - AREA OF DISTURBANCE
- ⊕ FOUND BRASS CAP
- ▲ CALCULATED POINT—NOT SET
- ~ BROKEN LINE



 J.J. HOWARD MAPPING / SURVEYING <small>2022 W. STATE ST., 2ND FL. / BOISE, IDAHO 83726 (208) 338-8887</small>	DATE: 4/12/23	DESIGN BY: CLS		SHEET: OF 2 2	SIMPLOT FEEDLOT
	SCALE: 1" = 300'	DRAWN BY: CLS	DRAWING NO. 230303	RESTRICTED AREA	