

BOARD OF COUNTY COMMISSIONERS
OF GUNNISON COUNTY
RESOLUTION NO. 11-10

**A RESOLUTION GRANTING AN EXEMPTION FOR A DIVISION OF LAND
FROM THE DEFINITION OF THE TERMS "SUBDIVISION"
AND "SUBDIVIDED LAND" FOR
A 1.9 ACRE TRACT OF LAND WITHIN THE
NW1/4SE1/4 SECTION 3, TOWNSHIP 49 NORTH, RANGE 1 EAST, N.M. P.M.
FUNK SUBDIVISION EXEMPTION
AND
GRANTING A VACATION OF TRACT B, VADER SUBDIVISION
LOCATED WITHIN THE N1/2SE1/4 SECTION 3,
TOWNSHIP 49 NORTH, RANGE 1 EAST, N.M.P.M.**

WHEREAS, Vallerie Funk and Leitha Vader ("Petitioners") have petitioned the Board of County Commissioners of Gunnison County, Colorado to exempt a 1.9 acre parcel, legally described as a tract of land within the NW1/4SE1/4 Section 3, Township 49 North, Range 1 East, N.M. P.M., more fully described in Exhibit A, attached hereto and incorporated herein, (the "Funk Parcel") from the statutory definitions of the terms "subdivision" and "subdivided land" pursuant to C.R.S. 30-28-101 (10)(d); and to vacate Tract B Vader Subdivision, more fully described in Exhibit B, attached hereto and incorporated herein. The purpose of the request is to facilitate a change to an existing well permit and to allow the issuance of a new well permit to serve three existing single-family residences; one on the Vader Consolidation Tract (see paragraph No. 4 for more specific identification) and two on the Funk Parcel; and

WHEREAS, the Board of County Commissioners of Gunnison County, Colorado is informed of the following:

1. The 1.9-acre Funk Parcel was created by quitclaim deed on December 28, 1982, conveyed from R.I. Vader and Sons to Vallerie & Melvin Funk. The deed is recorded in the Office of the Gunnison County Clerk and Recorder at Reception No. 371726, January 4, 1983. The conveyance of the property did not comply with Gunnison County subdivision regulations.
2. The Funk Parcel contains an existing well. The well permit was issued by the Colorado Division of Water Resources Permit No. 71104, on August 30, 1973, as the only well on 37-acres, and is permitted for livestock watering use only. The Funk well currently serves three single family residences; two on the Funk Parcel and one on the adjacent Vader Consolidation Tract.
3. The Gunnison County Board of County Commissioners approved the Vader Subdivision on December 22, 1998, creating Tract A – 6.17 acres and Tract B - 35.95 acres. The Vader Subdivision plat is recorded with the Office of the Gunnison County Clerk and Recorder at Reception No. 489744, December 22, 1998.
4. The Board of County Commissioners approved a Lot Cluster Agreement and Declaration on January 22, 2008, recorded with the Office of the Gunnison County Clerk and Recorder at Reception No., 581811, January 25, 2008. The Lot Cluster combined Tract B, Vader Subdivision, with two adjacent metes and bounds parcels, which created the Vader Consolidation Tract, comprising 40.77 acres.
5. The Funk Parcel and Vader Consolidation Tract are located in the Tomichi Creek drainage, which is over-appropriated and for which groundwater is subject to priority administration.

6. Scott King, Well Commissioner, Colorado Division of Water Resources, in a letter to Leitha Vader, dated March 3, 2009, indicates that "...according to our records the current well permit No. 71104 has been issued that is tied to at least a portion of the parcel on the current application (Vader Consolidation Tract). In order to proceed with the current application the current permit No. 71104 would need to be abandoned or modified. We require proof that ... the parcels were created prior to June 1, 1972, were created by exemption from subdivision regulations or that the parcels are recognized by the county as one current parcel and are not a part of a subdivision. Any parcel to be tied to this type of well must not have any other exempt well on it. We require that any property description of a parcel to be tied to such a permit show that the portion of land served by this well not be located on that parcel. In other words the property description must exclude that portion of the parcel."
7. The Petitioners desire to modify Colorado Division of Water Resources Well Permit No. 71104 to allow the existing well to legally serve one of the two existing residences on the Funk Parcel.
8. The Petitioners desire to obtain a new well permit and drill a new well on the Vader Consolidation Tract to legally serve the second of the existing residences on the Funk Parcel and the existing residence on the Vader Consolidation Tract.
9. The Colorado Division of Water Resources has indicated that Well Permit No. 71104 is "tied" to the adjacent Tract B Vader Subdivision, as part of the only well on 37-acres.
10. The granting of a subdivision exemption for the Funk Parcel will allow the Petitioners to request that the Colorado Division of Water Resources modify Well Permit No. 71104 to allow the well to legally serve one of the two existing residences on the Funk Parcel.
11. The vacation of the adjacent Tract B Vader Subdivision will allow the owner of the Vader Consolidation Tract, consisting of 40.77-acres, to obtain a new exempt well permit.
12. The Petitioners desire to drill a new well on the Vader Consolidation Tract, which will serve two of the existing residences, one on the Funk Parcel and one on the Vader Consolidation Tract.
13. An existing 20' access easement to Tract A, Vader Subdivision is shown on the plat of Vader Subdivision.
14. Leitha Vader has provided a set of Restrictive Covenants, setting forth covenants for the Vader Consolidation Tract.
15. The applicants have prepared a well-sharing agreement and easement for provision of the operation and maintenance of the new exempt well, located on the Vader Consolidation Tract, which will provide a legal water supply for the existing second residence on the Funk Parcel.
16. Pursuant to C.R.S. 30-28-101(10)(d), the Board of County Commissioners of Gunnison County may exempt a division of land from the statutory definitions of the terms "subdivision" and "subdivided land" if the Board determines that such division is not within the purposes of C.R.S. 30-28-101 *et seq.*;

WHEREAS, the Board of County Commissioners desires that the Petitioners should not be impaired in their general ability to obtain a legal supply of water for the existing residences

on the Funk Parcel and Vader Consolidation Tract; and

WHEREAS, the Board of County Commissioners desires to exempt the Funk Parcel from the definitions of "subdivision" and "subdivided land" pursuant to C.R.S. 30-28-101(10)(d) for the purpose of modifying the well permit for the existing well to legally serve one of the existing residences on the Funk Parcel; and

WHEREAS, the Board of County Commissioners desires to vacate Tract B, Vader Subdivision to allow the owner to obtain a well permit to legally serve two existing residences, one on the Funk Parcel and one on the Vader Consolidation Tract;

NOW, THEREFORE, BASED ON THE FINDINGS SET FORTH ABOVE, BE IT RESOLVED by the Board of County Commissioners of Gunnison County, Colorado, that an exemption is granted, pursuant to C.R.S. 30-28-101(10)(d), from the definition of "subdivision" and "subdivided land" for the Funk Parcel described in Exhibit A, and that a vacation of Tract B, Vader Subdivision, identified in Exhibit B is granted on the following conditions:

1. This approval shall not vacate or affect the existing 20' access easement to Tract A, Vader Subdivision.
2. The Petitioners shall record the executed well sharing and maintenance agreement and the Restrictive Covenants with the Office of the Gunnison County Clerk and Recorder, upon issuance of the new well permits by the Colorado Division of Water Resources.
3. Any further request for subdivision of the subject real property shall be in full conformance with the Gunnison County *Land Use Resolution*.
4. Nothing contained herein shall be considered as exempting the subject real property from the provisions of the International Residential Code, the Gunnison County Individual Sewage Disposal Regulations, or any other rules, regulations or resolutions of Gunnison County.
5. Nothing contained herein shall be construed to be a precedent for any future request for a subdivision exemption.

INTRODUCED by Commissioner *Swenson*, seconded by Commissioner *Chamberland* and adopted this 15th day of February, 2011.

**BOARD OF COUNTY COMMISSIONERS
OF GUNNISON COUNTY, COLORADO**

Hap Channell
Hap Channell, Chairperson

Paula Swenson
Paula Swenson, Commissioner

Phil Chamberland
Phil Chamberland, Commissioner

Attest:

[Signature]
Deputy County Clerk



BY Joanne Reifinger Deputy

EXHIBIT A

QUITCLAIM DEED

BOOK **538** PAGE **739**

R. I. Vader & Son, Inc., a Colorado corporation, whose address is Route 2, Box 5, Gunnison, Colorado 81230, for the consideration of ten dollars and other valuable consideration in hand paid, hereby sells and quitclaims to Vallerie Funk and Melvin Funk, whose legal address is 44478 East Highway 50, Gunnison, Colorado 81230, the following real property in the County of Gunnison, and State of Colorado, to wit:

A parcel of land in the NW1/4SE1/4 of Section 3, Township 49 North, Range 1 East, N.M.P.M. more particularly described as follows:

Commencing at the East quarter corner of said Section 3, thence South 75°08'37" West 1508.70 feet to a fence corner, which is the Point of Beginning of the parcel herein described; thence the following courses around said parcel;

1. North 2°27'37" East 28.19 feet to a the south boundary of U.S. Highway No. 50 as described in Book 342 at page 231 of the records of the Gunnison County Clerk and Recorder;
2. North 83°21'03" West 262.20 feet along said south boundary;
3. North 88°48'53" West 256.68 feet along said south boundary to a fence corner;
4. South 01°42'51" East 21.30 feet to the northeast corner of the Daugherty property as described in Book 585 at page 969 of said records;
5. South 2°22'33" East 233.82 feet along the easterly boundary of said Daugherty property to its southeast corner;
6. North 70°35'10" East 82.91 feet along an existing fence;
7. North 76°24'54" East 226.32 feet along said fence;
8. North 61°58'31" East 234.88 feet along said fence to the Point of Beginning.

Containing 1.907 acres more or less.

together with all its appurtenances.

This deed is given solely to correct title, and no documentary tax is required.

Witness my hand and seal this 27th day of December, 1982.

R. I. VADER & SON, INC., a Colorado corporation

by [Signature]

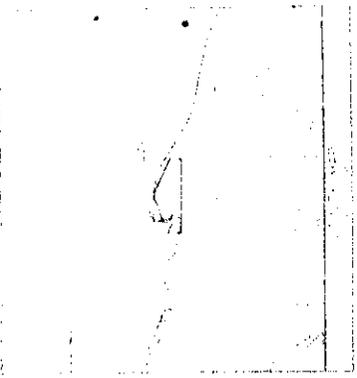
STATE DOCUMENTARY FEE
1/4/83
No Fee

S Dominguez Gunnison County, CO 603814
02/16/2011 01:02 PM Pg. 4 of 6
R: \$0.00 D: \$447



1062

EXHIBIT B



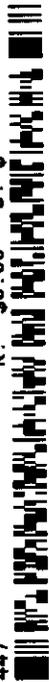
John B. Bouch

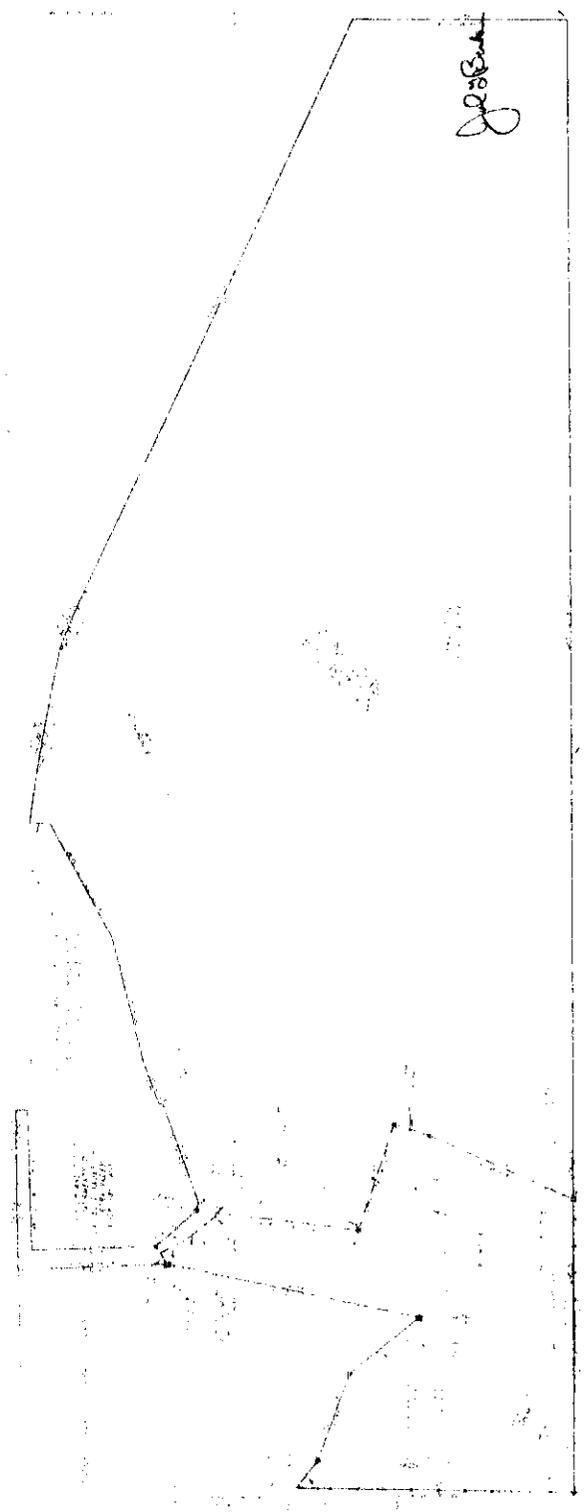
John A. Bouch

UNIVERSITY MICROFILMS
SERIALS ACQUISITION
300 N ZEEB RD
ANN ARBOR MI 48106-1500



SHEET 5 OF 6





TITLE: []
 DATE: []
 DRAWN BY: []
 CHECKED BY: []
 SHEET NO. OF []



S. Dominguez Gunnison County, CO 603814
 02/16/2011 01:02 PM Pg: 6 of 6
 447 R: \$0.00 D: \$

