

State of Idaho
Department of Water Resources

Permit to Appropriate Water

NO. 63-32423

Priority: August 22, 2006

Maximum Diversion Rate: 5.00 CFS
Maximum Diversion Volume: 1,764.0 AF

This is to certify, that JMM DRY CREEK LLC
C/O LAND BARON INVESTMENTS
5275 S DURANGO DR
LAS VEGAS NV 89113

has applied for a permit to appropriate water from:

Source: GROUND WATER

and a permit is APPROVED for development of water as follows:

<u>BENEFICIAL USE</u>	<u>PERIOD OF USE</u>	<u>RATE OF DIVERSION</u>	<u>ANNUAL VOLUME</u>
MUNICIPAL	01/01 to 12/31	5.00 CFS	1,764.0 AF

LOCATION OF POINT(S) OF DIVERSION:

GROUND WATER NE¼NE¼ Sec. 36, Twp 05N, Rge 01E, B.M. ADA County
GROUND WATER NE¼NE¼ Sec. 36, Twp 05N, Rge 01E, B.M. ADA County

CONDITIONS OF APPROVAL

1. Proof of application of water to beneficial use shall be submitted on or before **March 01, 2015**.
2. Subject to all prior water rights.
3. Project construction shall commence within one year from the date of permit issuance and shall proceed diligently to completion unless it can be shown to the satisfaction of the Director of the Department of Water Resources that delays were due to circumstances over which the permit holder had no control.
4. Right holder shall comply with the drilling permit requirements of Section 42-235, Idaho Code and applicable Well Construction Rules of the Department.
5. Place of use is within the area served by the public water supply system of JMM Dry Creek LLC. The place of use is generally located within Sections 1 and 2, Township 4 North, Range 1 East; Sections 25, 35, and 36, Township 5 North, Range 1 East; and Section 30, Township 5 North, Range 2 East; B.M.
6. A map depicting the place of use boundary for this water right at the time of this approval is attached to this document for illustrative purposes.
7. Water bearing zone to be appropriated is 100 ft. to 300 ft. below ground surface.
8. The right holder shall maintain a totalizing measuring device of a type approved by the Department as a part of the diverting works.
9. After specific notification by the Department, the right holder shall report to the Department the amount of water diverted annually in connection with this right.
10. Diversion and use of water with a temperature greater than 85 degrees Fahrenheit is not authorized under this right.
11. Rights 63-2535, 63-4023B, 63-4086B, 63-7123, 63-17454, 63-32266, and 63-32423 when combined shall not exceed a total diversion rate of 7.84 cfs and a total annual maximum diversion volume of 1764.0 af at the field headgate.
12. The right holder shall carry out the "Dry Creek Ranch Aquifer Monitoring Plan: April 2008." See Exhibit E of the January 14, 2009, Water Rights Agreement between Dry Creek Rural Neighborhood Association and JMM Dry Creek LLC.

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CONDITIONS OF APPROVAL CONTINUED

13. To prevent injury to senior water right holders:
- a. Diversion under this right shall be initially limited to 1,234.8 af (70% of 1764.0 af) for a minimum period of three years and until such time that the right holder can demonstrate to the Director that the aquifer can sustain greater diversions under the right. Demonstration shall require (1) a minimum of two years with recorded annual diversions under the right in excess of 1,000 afa, (2) water levels at a well in the NENE, Sec. 36, T05N, R01E, B.M., also known as the Jeker Big Pump well and as USGS well no. 05N01E36AAB1, (or an acceptable replacement well) that recover on an annual basis to at least 60 feet below ground surface, and (3) water-level monitoring for other wells monitored by the right holder in accordance with condition no. 12 does not show water level declines that would injure senior water rights owners.
 - b. Upon successful demonstration to the Director of sustainable aquifer capacity to support diversions under this right in excess of 1,234.8 afa, the right holder may increase the annual volume diverted under the right up to a maximum of 1764 afa.
 - c. The Director shall have the authority to reduce the annual diversion volume limits under this right at any time upon (1) a showing that diversions under the right are injuring senior water rights and (2) failure of the right holder to adequately mitigate injury to senior water rights to the satisfaction of the Director.
 - d. The diversion volume limits under right 63-32423 shall not be reduced or limited due to water-level declines or injury to senior rights resulting from diversions under water rights with priority dates junior to right 63-32423.
 - e. This condition is not intended to establish a reasonable pumping level pursuant to Idaho Code § 42-226.
14. For this condition, the term "use" shall be defined as the water delivered to and used on a single parcel of land identified in the county records and served water under this right. No later than February 15 of each calendar year during the authorized development period for this permit, the right holder shall:
- a. Identify and estimate a diversion rate and volume for all uses under the right that will exceed the individual domestic use limits as defined by Idaho Code § 42-111(1)(a) and (b) during the year. Uses under this right that exceed the individual use limits of Idaho Code § 42-111(1)(a) and (b) are to be considered 100% consumptive. Such uses shall be mitigated through reduction of one acre of irrigation use under water rights 63-2535, 63-4023B, 63-4086B, 63-7123, 63-17454, and 63-32266 for each 2.7 acre feet of water diverted under this right.
 - b. Identify all uses under the right that will meet the individual domestic use limits as defined by Idaho Code § 42-111(1)(a) and (b) during the year and estimate an annual diversion volume for these uses. Such uses shall be mitigated through reduction of one acre of irrigation use under water rights 63-2535, 63-4023B, 63-4086B, 63-7123, 63-17454, and 63-32266 for each 4.5 acre feet of water diverted under this right.
 - c. Reduce the number of acres to be irrigated under Rights 63-2535, 63-4023B, 63-4086B, 63-7123, 63-17454, and 63-32266, sufficiently to provide the required mitigation for items "a" and "b" above.
 - d. Report to the Department the volume of water to be used for municipal purposes in connection with this permit during the year.
 - e. Report the number of acres required to mitigate for the municipal use, along with the water right numbers, diversion rates, and annual diversion volumes associated with those acres.
 - f. Report the location of the lands that will be irrigated during the forthcoming irrigation season with water diverted under Rights 63-2535, 63-4023B, 63-4086B, 63-7123, 63-17454, and 63-32266. The location shall be reported in map, GIS shapefile, and PLS tabular forms.

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CONDITIONS OF APPROVAL CONTINUED

15. Once designated in an annual report as mitigation for the use of water for municipal purposes under this right, irrigation of designated lands under Rights 63-2535, 63-4023B, 63-4086B, 63-7123, 63-17454, and 63-32266 shall not be resumed unless this right is reduced through the appropriate administrative or legal process, as determined by the Department.
16. Upon receiving the right holder's annual report, the Department will change the official records for Rights 63-2535, 63-4023B, 63-4086B, 63-7123, 63-17454, and 63-32266 to show where diversion and use of water is not authorized because the rights, or portions thereof, are being dedicated to mitigation purposes.
17. The owner of Right 63-32423 shall maintain ownership of the mitigation portions of Rights 63-2535, 63-4023B, 63-4086B, 63-7123, 63-17454, and 63-32266.
18. The diversion and use of water described in Right 63-32423 may be subject to additional limitations agreed to by the protestant(s) and the right holder under separate agreement to which the Department is not a party and which may be enforceable by a court of law.
19. Noncompliance with any condition of this right, including the requirement for mitigation, is cause for the director to issue a notice of violation, cancel or revoke the right, or, if the right is included in a water district, request that the watermaster curtail diversion and use of water.

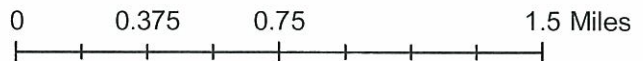
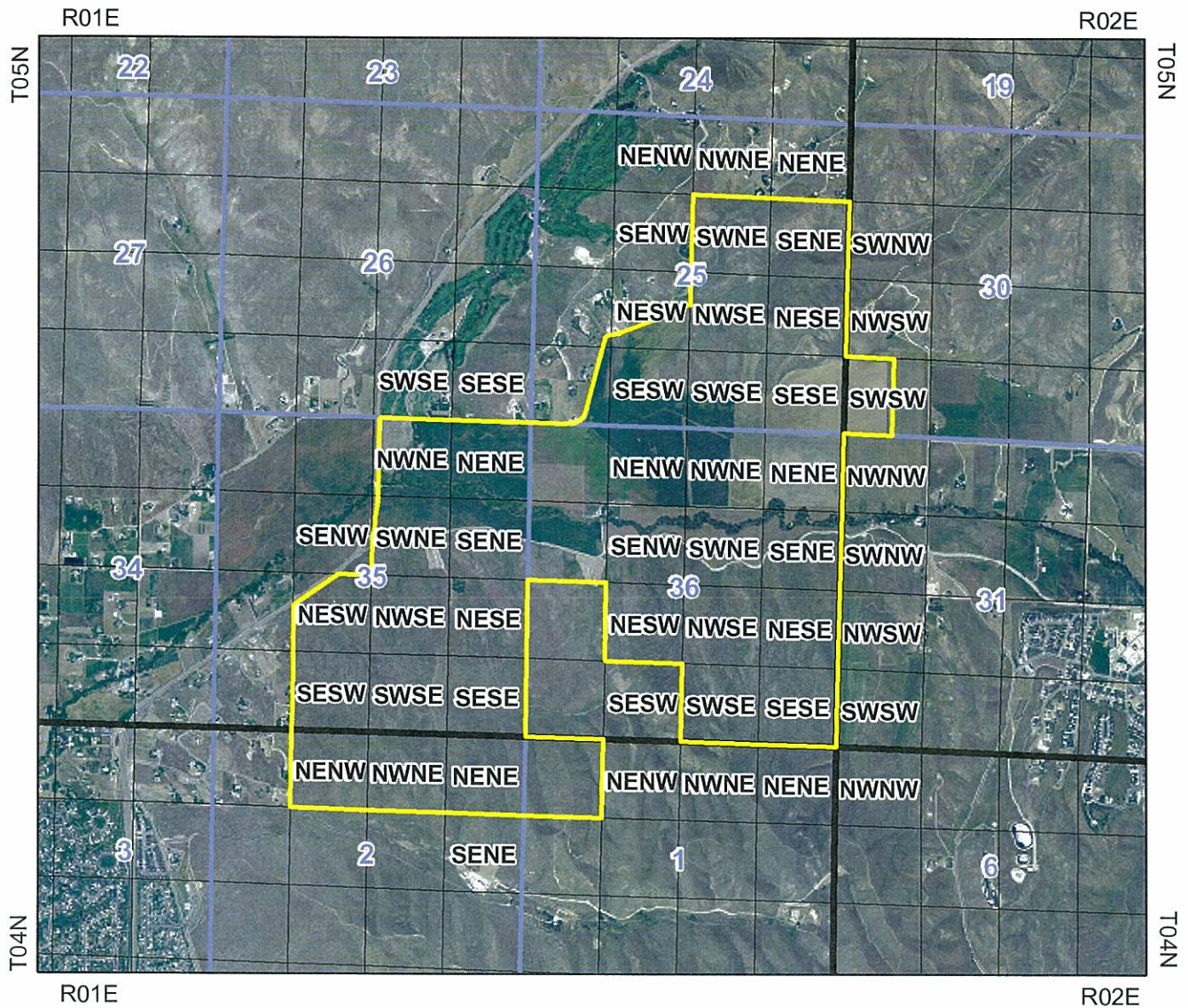
This permit is issued pursuant to the provisions of Section 42-204, Idaho Code. Witness the signature of the Director, affixed at Boise, this 3rd day of March, 20 10.

Shelley W. Keen
for GARY SPACKMAN, Interim Director





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63-32423

Water Service Area Boundary for Jmm Dry Creek Llc



Legend

-  Water Service Area Boundary
-  Townships
-  PLS Sections
-  Quarter Quarters

