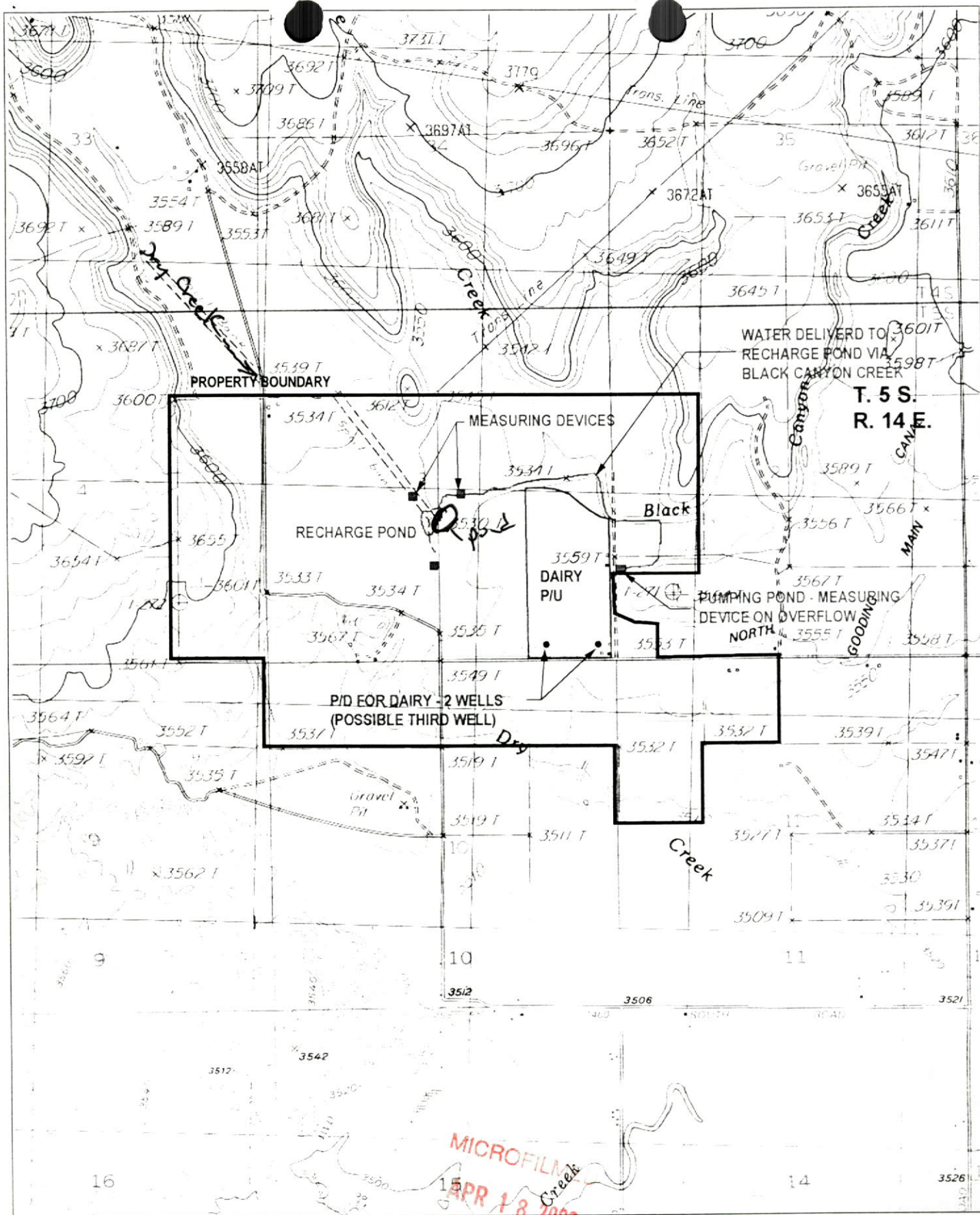




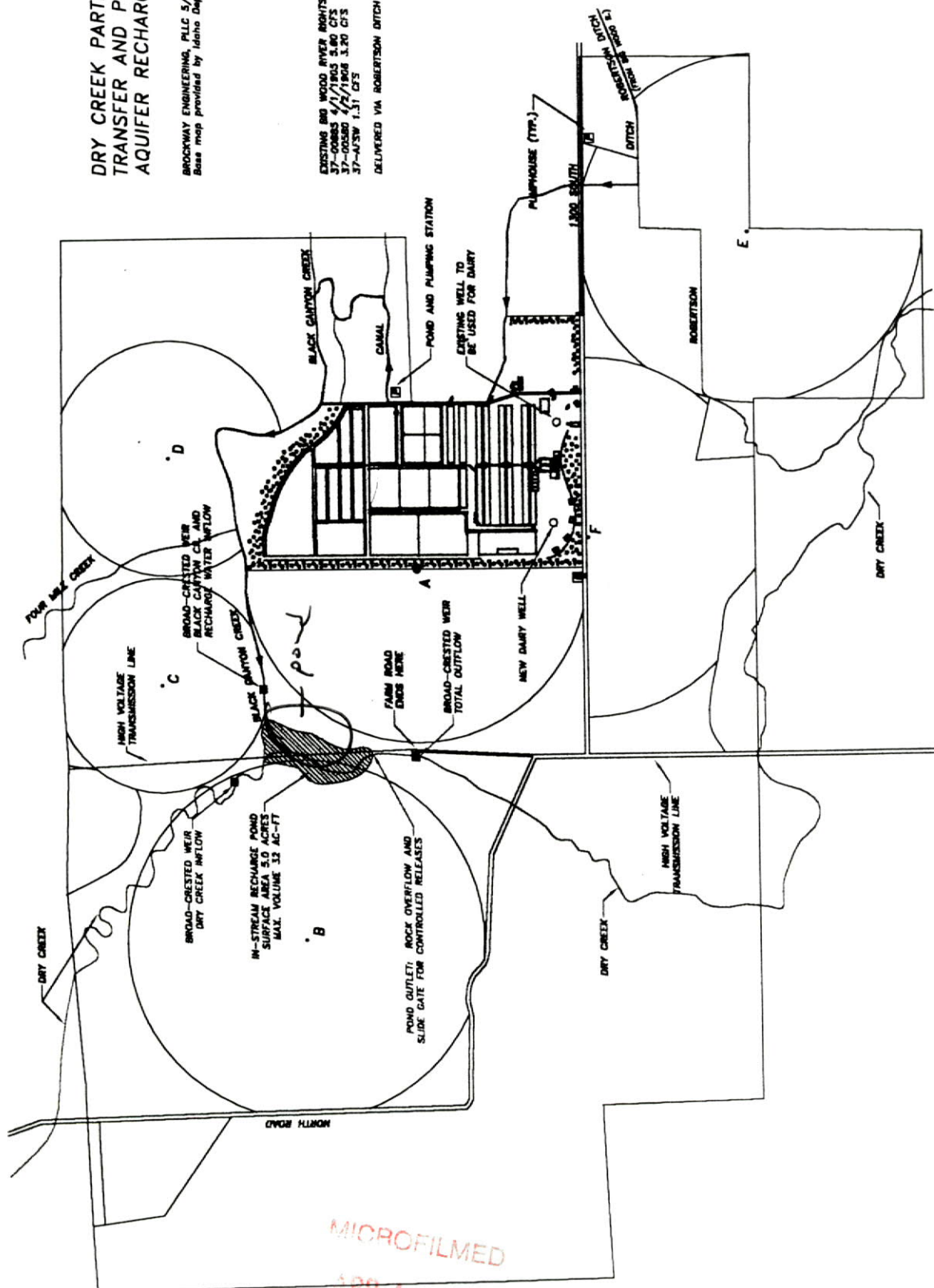
VICINITY MAP FOR TRANSFER AND PERMIT APPLICATIONS DRY CREEK PARTNERS

Brockway Engineering, PLLC 5/27/99

DRY CREEK PARTNERS TRANSFER AND PERMIT APPLICATIONS FOR AQUIFER RECHARGE PROGRAM

BROOKWAY ENGINEERING, PLLC 5/28/98
Base map provided by Idaho Department of Agriculture

EXISTING BIG WOOD RIVER RIGHTS:
37-00883 4/1/1903 5.80 CFS
37-00580 4/2/1908 3.20 CFS
37-AJ3W 1.31 CFS
DELIVERED VIA ROBERTSON DITCH



MICROFILMED
APR 18 2000

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
REQUEST FOR EXTENSION OF TIME

FEB - 6 2003

Department of Water Resources

TO PROVIDE ADDITIONAL TIME IN WHICH TO SUBMIT PROOF OF
BENEFICIAL USE FOR A WATER RIGHT PERMIT

The Idaho Department of Water Resources will consider this form as a request that the permit holder(s) be granted an additional period of time under the provisions of Section 42-204, Idaho Code in which to complete development of a water right.

Permit No. 37-8894
Name(s) of Permit Holder: Dry Creek Partners
Address: 1598 E. 1300 S. City Gooding State ID Zip 83330
Telephone No. 208-934-4448 Date Proof is Due: 3/1/03

Describe what work has been completed toward the development of this water right:
(This must be filled out! If no work has been completed, show "none".)

see attached

Costing \$ _____

The permit holder(s) has been unable to complete the remainder of the work for the following reasons:

see attached

Permit holder(s) request an extension to March 1, 20 08

Dry Creek Partners

by: [Signature] Gen. Partner

(Signature)

*If other than permit holder, Power of Attorney must be supplied.

ACTION OF THE DEPARTMENT OF WATER RESOURCES

IT IS HEREBY ORDERED that the above request for extension of time be

APPROVED and the time within which to submit proof of beneficial use is extended to March 1, 2008. IT IS FURTHER ORDERED that the permit holder is not authorized to assign ownership of the permit to another party without prior approval of the Department.

Signed this 19th day of February, 20 03

[Signature]
L. GLEN SAXTON, Chief
Water Allocation Bureau

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
INSTRUCTIONS FOR EXTENSION OF TIME REQUEST
TO SUBMIT PROOF OF BENEFICIAL USE

If the water right development authorized by your permit is not complete and you need more time to submit proof of beneficial use of water under your permit, please read the following:

Under the provisions of Section 42-204, Idaho Code, the department can extend the proof due date of your permit only once, and then only if you can demonstrate that you have been pursuing development of the permit with due diligence.

The Request for Extension of Time form requires that you indicate the extent of development that has occurred, the cost, and the reason(s) the work has not been completed. This information must be provided in enough detail to show due diligence. Examples of work performed are: well drilled, pump installed, 10 acres now irrigated, fish propagation ponds constructed, sprinkler system purchased, etc.

If no work has been accomplished, the statutes provide that the Request for Extension of Time must be denied. **Lack of financial resources, the state of the economy or personal illness usually cannot be considered adequate reasons to approve a Request for Extension of Time.**

EXCEPTIONS TO ONLY ONE EXTENSION

The proof due date for a permit that has not been developed for one of the following reasons may be granted one or more extensions of time even though no work has been accomplished:

- When there is a lack of a required consent or final approval from a federal government agency (evidence of delay must be submitted with the request), i.e. right-of-way easement or land classification such as Desert Land Entry or Carey Act.
- When litigation related to title of the water has prevented development of the permit (evidence must be submitted with the request).
- When the water project is of a large scale – storage of more than 10,000 acre-feet or diversion of more than 25,000 acre-feet in one irrigation season for an irrigation project of at least 5,000 acres.
- When the water right permit is held by the United States of America (reason for request must be submitted).

A non-refundable filing fee of \$50.00 must accompany the Request for Extension of Time form.

NOTE that in no case should a Proof of Beneficial Use form and a Request for Extension of Time form both be submitted. If your water development project is completed, then the proof of beneficial use form should be completed and returned. If the project is started but not completed, then the Request for Extension of Time form should be completed and returned in compliance with the guidelines above. If the project has not been initiated and does not fit into one of the exceptions listed above, then neither form should be returned and the permit will lapse and become of no further force nor effect.

DRY CREEK PARTNERS

February 3, 2003

Request for Extension of Time - Permits No. 37-8893 & 37-8894

Describe what work has been completed toward the development of this water right:

- Numerous consultations with Brockway Engineering concerning the design and placement of the measuring devices and agency permitting requirements prior to their installation, design and sizing of recharge pond, options with respect to conveyance systems from irrigation pond to recharge pond, well construction requirements, dairy water requirements, etc. Approximately \$770 spent for these services.
- Robertson Ditch is the conveyance system for the decreed water to be used to mitigate that which is used under the above referenced permits. Permit 37-8893 is for groundwater withdrawal for the dairy and Permit 37-8894 is the storage permit for the recharge pond. The decreed water is diverted by a dam in the Big Wood River near its confluence with Thorn Creek and runs westerly approximately 18.9 miles to the appurtenant land located northwest of Gooding. The ditch was capable of delivering only a fraction of the decreed water. Concerned about our inability to irrigate during dry years and to comply with the mitigation requirement we prevailed on the other owners of the Robertson Ditch Co. to completely renovate the system in the spring of 2002. We prepared our projections, arranged for funding from the Idaho Water Resource Board, notified all the adjacent property owners, both by mail and in person of the proposed work, took bids, hired contractors and completed the construction in a little over two months, with only minor disruption to the irrigation water supply. Excavation work was performed by several contractors and to a lesser extent our own equipment. Installation of gates in fences that had been built across our easement, relocating fences built on the canal bank and piling and burning brush was in addition to the funds spent on contractors. The contractors were paid a total of \$38,370. Dry Creek Partners, though it owns 40.74% of the decreed water in the ditch, owns only 21.63% of the shares in the company. Therefore our share of the contractor cost was \$8,299.
- Construction of a recharge pond, was completed by a local contractor in 2001. The contractor estimated between 3,000 and 3,500 yards of dirt was moved at a cost of \$3,920. Another \$150 was spent on reseeding the banks to reduce weed problems and erosion.

The permit holder(s) has been unable to complete the remainder of the work for the following reasons:

- Milk prices in 2000 created a climate, which was not conducive to financing a new operation. We did however, proceed with our planning, both in terms of finding a market for the milk (signing a conditional agreement with West Farm) and attempting

to locate suitable financing. The milk price recovered briefly in 2001 prior to the events of 9-11. Since that date it has remained well below the cost of production. Even now, milk prices are not expected to recover to profitable levels for at least six more months. This problem has been exasperated by the concurrent shortage of replacement heifers, which has driven the price of replacements into the range of \$1800 to \$2000. Thus we determined to phase into a dairy by starting with the heifer raising operation, and therefore spent the winter of 2001 – 02 researching and preparing a detailed business plan to build the heifer raising facilities. Initially it would be largely a custom heifer operation, but the facilities would be much the same as those required for the heifer enterprise planned for the dairy operation. And, these facilities would give us the opportunity to build equity in our own cowherd. Our bank agreed to finance the heifer project, if we could get an "as improved appraisal" for the farm, which would justify the additional funds. That appraisal was completed and paid for in late May 2002 at a cost of \$2,700. Since then our bank, like most agricultural lenders, has become increasingly reluctant to commit additional resources to the dairy industry, preferring instead to take a "wait and see attitude".

- In the summer of 2002 we were approached by another bank, one I had done business with for many years when I was previously in the dairy business. After an extensive effort preparing projections and discussing the options they too concluded that they did not want to make a major commitment to the industry at this time.

State of Idaho
Department of Water Resources

Permit To Appropriate Water

NO. 37-08894

Priority: June 1, 1999

Maximum Diversion Rate:

5.00 CFS

This is to certify, that DRY CREEK PARTNERS
C/O BILL NOVINGER
1598 E 1300 S
GOODING ID 83330

has applied for a permit to appropriate water from:

BLACK CANYON CREEK tributary of DRY CREEK
DRY CREEK tributary of BIG WOOD RIVER

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>
GROUNDWATER RECHARGE	01/01 to 12/31	5.00 CFS	
GW RECHARGE STORAGE	01/01 to 12/31		40.0 AF
Totals		5.00 CFS	

LOCATION OF POINT(S) OF DIVERSION: NENESW , Sec. 3, Township 05S, Range 14E
NWNWSE , Sec. 3, Township 05S, Range 14E
GOODING County

PLACE OF USE: GROUNDWATER RECHARGE

TWN RGE SEC

05S 14E 3 NESW NWSE

PLACE OF USE: GW RECHARGE STORAGE

TWN RGE SEC

05S 14E 3 NESW NWSE

CONDITIONS OF APPROVAL AND REMARKS

1. Proof of application of water to beneficial use shall be submitted on or before March 1, 2003.
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 permit holder had no control.
4. Any license issued by IDWR pursuant to the right or portion thereof for the use of trust water is subject to a term review of 20 years after the date of this approval to determine availability of water for the use and to re-evaluate the public interest at the end of the term.
5. Use of water under this water right will be regulated by the watermaster of State Water District No. 37.

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State of Idaho
Department of Water Resources**Permit To Appropriate Water**

NO. 37-08894

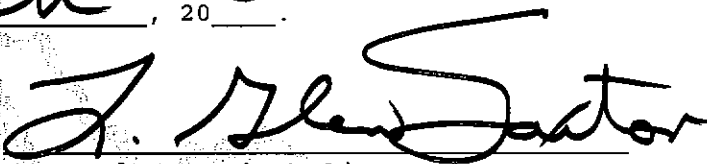
CONDITIONS OF APPROVAL AND REMARKS

6. Right 37-00865A diverts water to a recharge project as mitigation for dairy use of water under this right and for storage under Right 37-08894.
7. Prior to diversion of water under Rights 37-00865A, 37-08893 and 37-08894, a measuring and reporting plan prepared by the right holder must be approved by both the department and the watermaster of Water District 37. The plan shall include measuring and recording devices to measure the natural flows of both Black Canyon Creek and Dry Creek above the recharge pond, and Dry Creek below the recharge pond. The plan shall provide for the measurement of water injected into Black Canyon Creek and subsequently the recharge pond under Right 37-00865A to accurately account for the amount of water that may be counted as recharge.

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

7th day of

March, 2000


for Karl J. Dreher, Director

MICROFILMED
APR 18 2000

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
APPLICATION FOR PERMIT

Ident No. 37-08894
RECEIVED

JUN 01 1999

Department of Water Resources
Southern Region

RECEIVED

JAN 7 2000

DEPARTMENT OF WATER RESOURCES

To appropriate the public waters of the State of Idaho

1. Name of applicant Dry Creek Partners Phone (208) 934-4448
Post Office address c/o Bill Novinger, P.O. Box 301, Gooding, ID 83330
2. Source of water supply Black Canyon Cr. and Dry Cr. which is a tributary of Big Wood River
3. Location of point of diversion is NE 1/4 of NE 1/4 of SW 1/4, Govt. Lot _____
Sec. 3 Township 05S Range 14E B.M. Gooding County; additional
points of diversion, if any: NW1/4 NW1/4 SE1/4 Sec. 3, T. 5 S., R. 14 E.
4. Water will be used for the following purposes:
Amount 40.0 af for Storage purposes from 1/1 to 12/31 (both dates inclusive)
(cfs or acre-feet per annum)
Amount 5.0 cfs for Recharge purposes from 1/1 to 12/31 (both dates inclusive)
(cfs or acre-feet per annum)
Amount _____ for _____ purposes from _____ to _____ (both dates inclusive)
(cfs or acre-feet per annum)
Amount _____ for _____ purposes from _____ to _____ (both dates inclusive)
(cfs or acre-feet per annum)
5. Total quantity being appropriated is (a) 5.0 and/or (b) 40.0
cubic feet per second acre-feet per annum
6. Proposed diverting works:
 - a. Description of ditches, flumes, pumps, headgates, etc. In-stream pond. Natural flow of both
Dry Creek and Black Canyon Creek will flow into pond.
 - b. Height of storage dam _____ feet; active reservoir capacity _____ acre-feet; total
reservoir capacity _____ acre-feet; period of year when water will be diverted to storage:
_____ to _____ inclusive.
 - c. Proposed well diameter is _____ inches; proposed depth of well is _____ feet
 - d. Is groundwater with a temperature of greater than 85 degrees being sought? No
 - e. If well is already drilled, when? _____; Drilling firm _____;
Well was drilled for (well owner) _____
7. Time required for the completion of the works and application of the water to the proposed beneficial use is
3 years (minimum 1 year).

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APR 18 2000

8. Description of proposed uses (if irrigation only, go to item 9):

- a. Hydropower; show total feet of head and proposed capacity in KW. _____
- b. Stockwatering; list number and kind of livestock. _____
- c. Municipal; show name of municipality. _____
- d. Domestic; show number of households _____
- e. Other; describe fully. Storage pond with surface area of 5.0 acres and maximum volume of 40.0 acre-feet. Recharge component is to cover additional recharge of natural flow that will likely occur because of the pond.

9. Description of place of use:

- a. If water is for irrigation, indicate acreage in each subdivision in the tabulation below.
- b. If water is used for other purposes, place a symbol of the use (example: D for Domestic) in the corresponding place of use below. See instructions for standard symbols.

TWP	RANGE	SEC.	NE 1/4				NW 1/4				SW 1/4				SE 1/4				TOTALS
			NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	
05S	14E	3			X					X	X					X			

X = Storage and recharge

Total number of acres to be irrigated _____

10. Describe any other water rights used for the same purposes as described above. None.

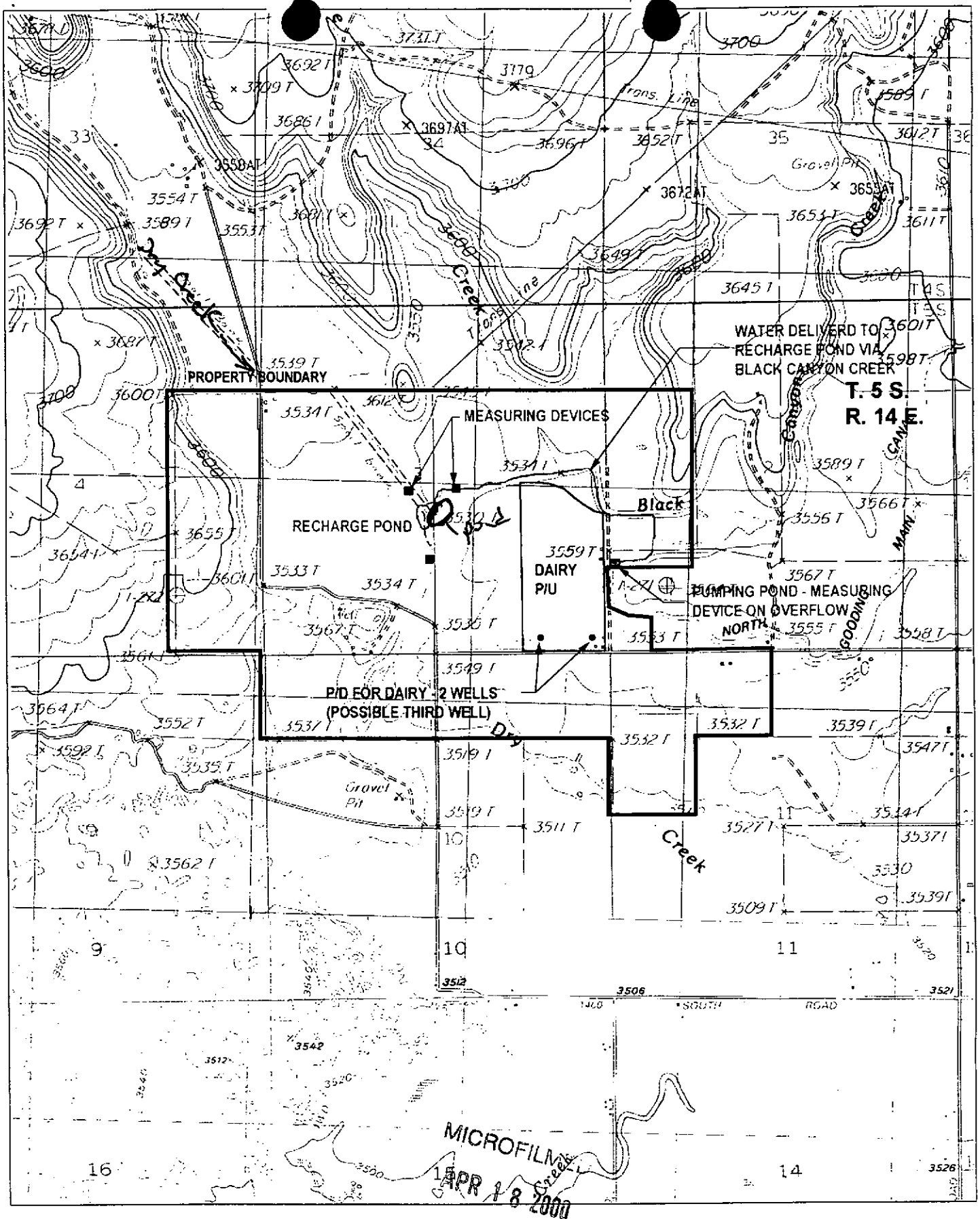
11. a. Who owns the property at the point of diversion? Applicant

b. Who owns the land to be irrigated or place of use? Applicant

c. If the property is owned by a person other than the applicant, describe the arrangement enabling the applicant to make this filing. _____

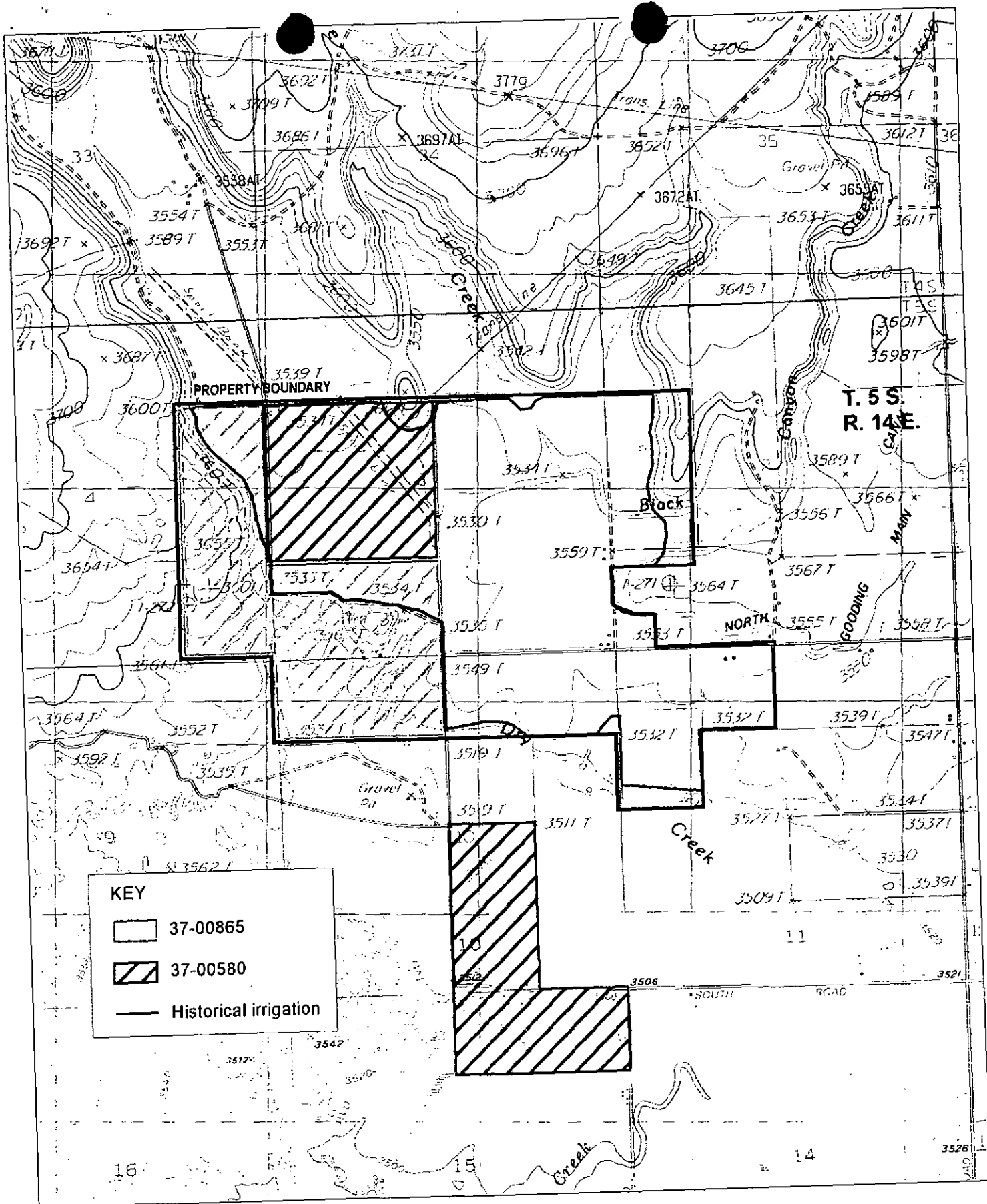
12.. Remarks: Transfer application is being filed concurrently to use a portion of existing irrigation rights for mitigation of pond evaporation. Measuring devices will be installed on both creeks above the pond and on Dry Creek below the pond. 5.0 cfs recharge based on 2.0 ft/day sustained infiltration rate.

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APR 18 2000



VICINITY MAP FOR TRANSFER AND PERMIT APPLICATIONS **DRY CREEK PARTNERS**

Brockway Engineering, PLLC 5/27/99

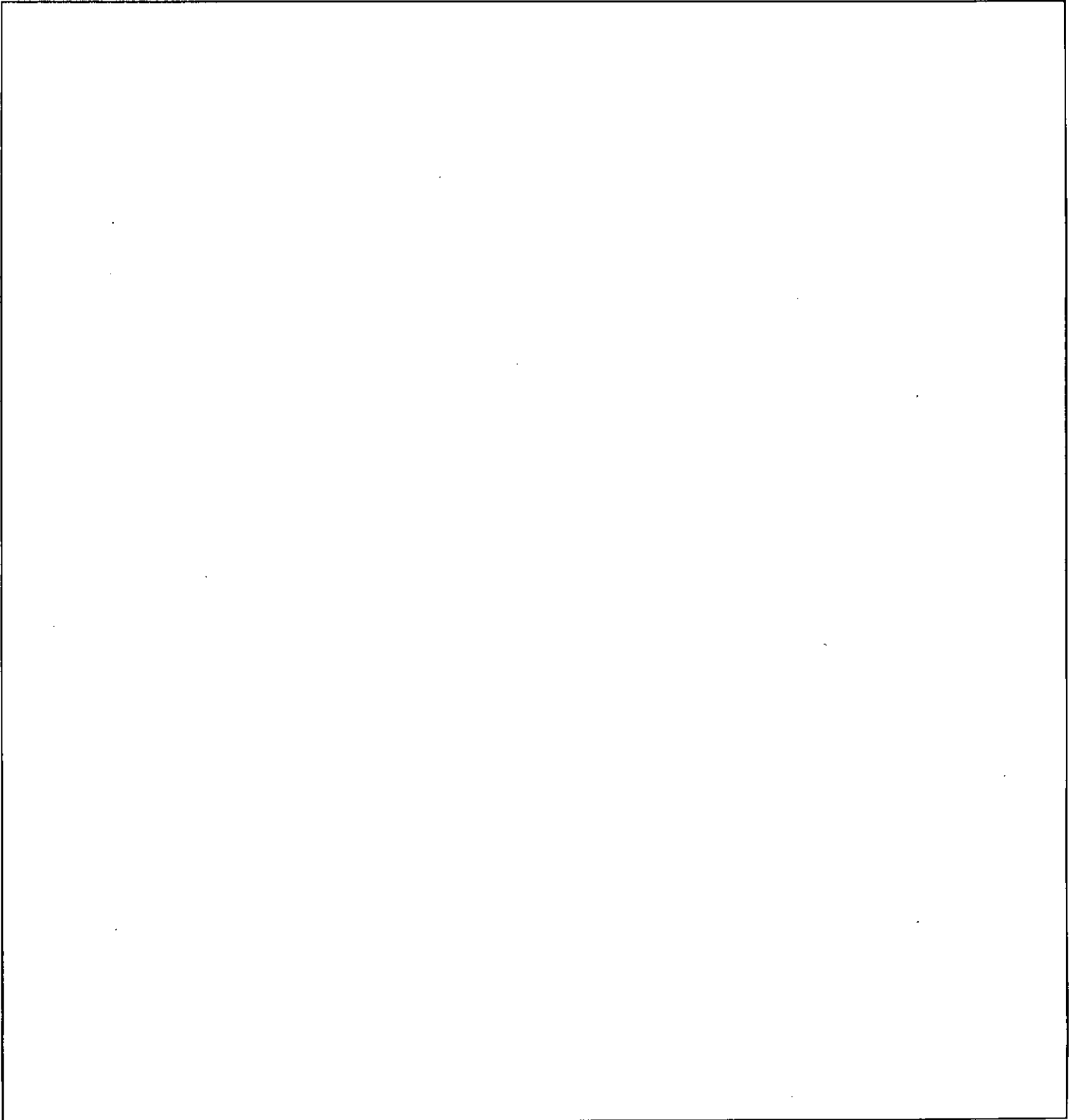


VICINITY MAP FOR TRANSFER AND PERMIT APPLICATIONS SHOWING
 CURRENT WATER RIGHT COVERAGE AND HISTORICAL IRRIGATION
 DRY CREEK PARTNERS

APR 18 2000

Brockway Engineering, PLLC 6/1/99

13. Map of proposed project: show clearly the proposed point of diversion, place of use, section number, township and range number.



Scale: 2 inches equal 1 mile.

BE IT KNOWN that the undersigned hereby makes application for permit to appropriate the public waters of the State of Idaho as herein set forth.

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APR 18 2000

Dry Creek Partners

by: *William H. Hargis, Partner*

(applicant)

Received by AD~ Date 6/1/99 Time 16:55 Preliminary check by _____
Fee \$ 180⁰⁰ Receipted by AD~ # 5022223 Date 6/1/99
Publication prepared by ADM Date 9/10/99 Published in Gooding Co. Leader
Publication approved 7MB Date 10/7/99

ACTION OF THE DIRECTOR, DEPARTMENT OF WATER RESOURCES

This is to certify that I have examined Application for Permit to appropriate the public waters of the State of Idaho No. _____ and said application is hereby _____.

1. Approval of said application is subject to the following limitations and conditions:

a. SUBJECT TO ALL PRIOR WATER RIGHTS

b. Proof of construction works and application of water to beneficial use shall be submitted on or before

_____, 19____.

c. The rate of diversion, if water is to be used for irrigation under this permit, when combined with all other water rights for the same land shall not exceed 0.02 cubic feet per second for each acre of land.

d. The water right acquired under this permit if for hydropower purposes shall be junior and subordinate to all rights to the use of water, other than hydropower, within the State of Idaho that are initiated later in time than the priority of this permit and shall not give rise to any right or claim against any future rights to the use of water, other than hydropower, within the State of Idaho initiated later in time than the priority of this permit.

e. Other:

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APR 18 2000



State of Idaho

DEPARTMENT OF WATER RESOURCES

1301 North Orchard Street, Boise, ID 83706 - P.O. Box 83720, Boise, ID 83720-0098
Phone: (208) 327-7900 Fax: (208) 327-7866 Web Site: www.idwr.state.id.us

DIRK KEMPTHORNE
Governor

February 20, 2003

KARL J. DREHER
Director

DRY CREEK PARTNERS
C/O BILL NOVINGER
1598 E 1300 S
GOODING ID 83330

**RE: PERMIT NO. 37-8893 and 37-8894 and TRANSFER NO. 66912 (FOR
WATER RIGHT NOS. 37-00865A & 37-00865B)**

Dear Permit Holder:

I have enclosed copies of the approved requests for extension of time submitted in connection with the above referenced permits. The order extends the time within which to submit proof of beneficial use to **March 1, 2008**. Please note that the department granted the extensions based upon due diligence.

Also enclosed is an Order Granting Extension of Time to Complete Transfer, however, since you had been granted a previous extension for the completion of the transfer, this order only extends the deadline to March 7, 2005. If you have not completed the transfers and used the water by this date, you may want to file an application for Extension of Time to Avoid Forfeiture of a water right as provided in Section 42-222, Idaho Code, or apply to put the rights in the Water Supply Bank.

Section 42-248, Idaho Code requires you or the owner of this water right to maintain current ownership and address records on file with the department. Please contact this office or any regional office of the department for the proper form to file a change of ownership of a water right and/or a change in the address of the owner.

Please contact the department, if you have any questions regarding this matter.

Sincerely,

Deborah J. Gibson
Administrative Assistant
Water Allocation Bureau

Enclosure

c: IDWR - Regional Office

ANALYSIS SHEET FOR EXTENSION OF TIME

Permit No.: 37-8894

Reviewed By: dgibson

Date: February 19, 2003

	<u>Yes</u>	<u>No</u>		<u>Yes</u>	<u>No</u>
Request received timely?	X		Is delay by a government agency?		X
Appropriate fee	X		Is supporting documentation needed to support the file?		
Additional Amount Due:					
Receipt No.:		C067378	Has the permit been involved in litigation?		X
Name and signature same as permit?	X		Is supporting documentation needed to support the file?		
Is address same as permit?	X		Is the project more than 25,000 acre feet for irrigation or 10,000 acre feet for a reservoir?		X
Has adequate work been completed to demonstrate due diligence?	X				

Priority Calculation

Extension request received	02/13/2003	New proof due date	03/01/2008
Date proof due	- 03/01/2003		
Lapse notice sent	-		
No. of days late	= 0		
Holiday allowance	+		
Priority date	+ 06/01/1999		
New priority date	= 06/01/1999		

Action Taken

Acknowledge request and extend proof deadline to March 1, 2008.



State of Idaho

DEPARTMENT OF WATER RESOURCES

1301 North Orchard Street, Boise, ID 83706 - P.O. Box 83720, Boise, ID 83720-0098
Phone: (208) 327-7900 Fax: (208) 327-7866 Web Site: www.idwr.state.id.us

DIRK KEMPTHORNE
Governor

KARL J. DREHER
Director

February 7, 2003

DRY CREEK PARTNERS
1598 E 1300 S
GOODING ID 83330

RE: Permit Nos. 37-8893 & 37-8894

Dear Permit Holder:

Returned are the original Requests for Extension of Time ("requests") and the attachments to these requests, which you submitted to the department in connection with the above referenced water rights. In order for the department to take action on these requests, they must be accompanied by a \$50.00 filing fee for each water right.

Therefore, please return the original requests along with the filing fees, addressed to my attention. It is important that I receive your filing fees before the proof of beneficial use deadline of **March 1, 2003** to avoid affecting the priority date of these permits.

Please contact me at (208) 327-7953 if you have any questions regarding this matter.

Sincerely,

Deborah J. Gibson
Administrative Assistant
Water Allocation Bureau

Enclosure

December 31, 2002

DRY CREEK PARTNERS
C/O BILL NOVINGER
1598 E 1330 S
GOODING, ID 83330

PROOF DUE NOTICE

RE: PERMIT NO. 37-8894

Dear Permit Holder:

One of the conditions of approval of the above referenced water permit was that proof of the extent of your beneficial use must be submitted to this office on or before March 01, 2003. (See last page of your approval permit or your last approved extension request.) Enclosed is a form which when accompanied by the license examination fee or a completed field examination report prepared by a certified water right examiner may be used to submit the required proof.

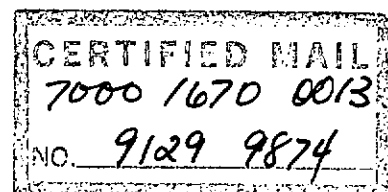
If you have not fully completed your project, and you or a previous owner of this permit have not received a prior extension of time, you may request an extension of time if the delay is for reasonable cause as provided in Section 42-204, Idaho Code. If you have been prevented from proceeding by a governmental agency or by litigation which might bring title to the water in question, more than one extension of time can be granted. An extension of time request form is enclosed for your convenience.

Either an acceptable proof of beneficial use submittal or an acceptable request for an extension of time must be received by this department on or before the above described proof due date. If neither is received, the department will send you a lapse notice. Within sixty (60) days of the mailing of the lapse notice, the permit will no longer be of any force nor effect.

Sincerely,

Deborah J. Gibson, Administrative Assistant
Water Allocation Bureau

Enclosures





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 8, 2000

DRY CREEK PARTNERS
C/O BILL NOVINGER
1598 E 1300 S
GOODING ID 83330

PERMIT APPROVAL NOTICE

RE: PERMIT NO. 37-08894

Dear Permit Holder:

The Department of Water Resources (IDWR) has issued the enclosed permit authorizing you to establish a new water right. Please be sure to thoroughly review the conditions of approval and remarks listed on your permit.

The permit is a preliminary order issued by IDWR pursuant to section 67-5243, Idaho Code. It can and will become a final order without further action by IDWR unless a party petitions for reconsideration or files an exception and/or brief as described in the enclosed information sheet.

As a permit owner you must commence the excavation or construction of the diverting works within one year of the date the permit was issued, and you must proceed diligently until the project is completed. The date shown under condition no. 1 is the date when the project must be completed.

The Department will send you a "Proof Due Notice" approximately 60 days prior to the above referenced date requesting you to file either a Proof of Beneficial Use form or a Request for Extension of Time form.

This permit authorizes the appropriation of trust water. Trust water is defined as that portion of a particular hydropower water right which exceeds certain minimum stream flows established by state action, and is held in trust by the State of Idaho for the use and benefit of the people within the state. Conditions pertaining to a term review, annual use fee and jurisdiction of the permit are trust water conditions.

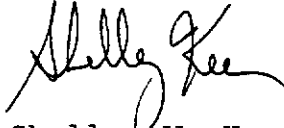
Also, please note that water right owners are required to report any change of water right ownership and/or change of mailing address to the department within 120 days of the change. Failure to report these changes could result in a \$100 late filing fee.

APR 18 2000

Contact any office of the department or visit the department's homepage on the Internet to obtain the proper reporting form.

If you have any questions, please call me at 208-327-7946.

Sincerely,

A handwritten signature in cursive script, appearing to read "Shelley W. Keen".

Shelley W. Keen
Water Rights Supervisor

SK:klt

Enclosures

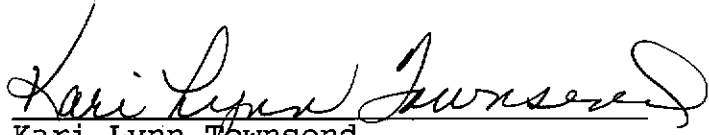
MICROFILMED
APR 18 2000

CERTIFICATE OF MAILING

I hereby certify that on the 8th day of March, 2000, I mailed a true and correct copy, postage prepaid, of the foregoing PRELIMINARY ORDER (Approved Permit) to the person(s) listed below:

Water Right No. 37-08894

DRY CREEK PARTNERS
C/O BILL NOVINGER
1598 E 1300 S
GOODING ID 83330


Kari Lynn Townsend
Secretary

APR 18 2000

Responding to Preliminary Orders Issued by the Idaho Department of Water Resources

The Idaho Department of Water Resources (Department) issues water right permits, licenses, and transfers as preliminary orders pursuant to section 67-5243, Idaho Code. A preliminary order can and will become a final order without further action of the department unless a party petitions for reconsideration or files an exception and/or brief as further described below:

PETITION FOR RECONSIDERATION

Any party may file a petition for reconsideration of a preliminary order with the Department within fourteen (14) days of the service date of the 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 67-5243(3), Idaho Code.

EXCEPTIONS AND BRIEFS

Within twenty-one (21) days after (a) the service date of a preliminary order, (b) the service date of a denial of a petition for reconsideration from this preliminary order, or (c) the failure within twenty-one (21) days to grant or deny a petition for reconsideration from a preliminary order, any party may in writing support or take exceptions to any part of a preliminary order and may file briefs in support of the party's position on any issue in the proceeding. Otherwise, a preliminary order will become a final order of the Department.

If any party appeals or takes exceptions to a preliminary order, opposing parties shall have twenty-one (21) days to respond to any party's appeal. Written briefs in support of or taking exceptions to the preliminary order shall be filed with the Department. The Department retains the right to review the preliminary order on its own motion.

ORAL ARGUMENT

If the Department grants a petition to review a preliminary order, the Department shall allow all parties an opportunity to file briefs in support of or taking exceptions to the preliminary order and may schedule oral argument in the matter before issuing a final order. If oral arguments are to be heard, the Department will within a reasonable time period notify each party of the place, date and hour for the argument of the case. Unless the Department 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 Department in connection with a preliminary order shall be served on all other parties to the proceedings in accordance with Rules of Procedure 302 and 303.

FINAL ORDER

The Department 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 Department 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.

Section 67-5246(5), Idaho Code, provides as follows:

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.

APPEAL OF FINAL ORDER TO DISTRICT COURT

Pursuant to sections 67-5270 and 67-5272, Idaho Code, if this preliminary order becomes final, any party aggrieved by the final order or orders previously issued in this case may appeal the final order and all previously issued orders in this case 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 of this preliminary order becoming final. See section 67-5273, Idaho Code. The filing of an appeal to district court does not itself stay the effectiveness or enforcement of the order under appeal.

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**APPLICATION FOR PERMIT
STATE OFFICE ANALYSIS**
Reviewed by Sharla Curtis on 2/16/00

No. 37-08894 Name: Dry C. Partners Corp. Officers ✓ Ad ok Govt Lots

AREA OF CONCERN: No/Yes ESPA Moratorium GWMA TRUST/NON-TRUST

GROUNDWATER: (✓Flow Chart)

DRILLING PERMIT

All wells - 046(P23)
Basin 34 - 085
Irr. w/in WD - P05
WMD - North/East/West
≤ 0.24 cfs/5 acres - No MD
> 0.24 cfs/5 acres - 067
~~WMD~~
Supp irr (irr = only use) - 065-104
Supp irr (+ other uses) - 100-105
≤ 0.24 cfs/5 acres - No MD
> 0.24 cfs/5 acres - 01M

LOCATION:

Boise Front LoGeo - 058 (<85 GW)
Mitigation - 121
42-248 Area/ P84 (20s-70s, 81-86)
Swan Falls Flag
Trust P74 (consumptive uses)
Non-Trust - 048-049 (consumptive uses or non-cons. > 1.0 cfs)

USES:

STORAGE - 18A-01H(P01), 01P-18B(P09)-NA
IRR ≤ 5 ac - R66/R67/R68/R69 (0.03 cfs/ac)
> 5 ac - R62/R63/R64/R65 (0.02 cfs/ac)
STOCKWATER - R37 (BLM/USFS)
MINING - 054-081(P10)
FISH PROP - 029(70's only)-007-042-081(P10)
HEAT/COOL - R07(injection well)
FIRE PROT. - 077

BENEFICIAL USE DUE: 3/01/2003

MISC CONDITIONS/REMARKS:

~~Protested~~ - 020-W19
~~Development Period~~
≤ 1 yr - P16
> 1 yr/ 26A(P17)
~~Ownership~~ - 004
Non-consumptive - 027
Water Quality - 081-R07

IRRIGATION SEASON (Per updated map)

OTHER CONDITIONS/REMARKS spec cond from transfer approval proposal.

COMMENTS

SURFACE WATER: (✓Flow Chart)

F&G contacted - Yes/No-Response
~~In/Above MSF~~ - WB9
PLANNING SECTION REVIEW/RESPONSE
~~In-stream development~~ - P52
WD - R04 (WD# 37)
≤ 0.20 cfs/others - 01H(P01), 01P or No MD
> 0.20 cfs - 011(P08)

SPRINGS/SINK/INACTIVE WD & REST OF STATE

≤ 0.24 cfs/5 acres - No MD
> 0.24 cfs/5 acres - 01M or No MD

RIVER BASINS: (SW special considerations)

SNAKE R (01) - W22(P04), N/A
(02,03) - 007 (w/ remark WB9 if above Weiser)
Payette R (65) - 047(P04) (Payette Lake)
Salmon R (70's) - 029 (fish screens)
Weiser R (67) - 086-087

USES:

POWER - 17H-17K (+uses)-08A-025(P18)-01N-081(P10)
MUNICIPAL
Restricted area - 022,075
Irr., GW supp to SW - 102
DOMESTIC
Surface water - WB5 (Big Wood or Boise above Star Bridge)
27A (Payette R)
≥ 1 in restricted area - 070-071-075(no parks/common areas, etc)
Irr use listed separate - WB5
Moratorium approvable - W03 (2500 gpd - meets domestic definition
i.e. D/convenience store)

Multiple p/d's per 1/4 - W32 3 in SESE, S3
Subd lot desc (pd) - W59
Subd lot desc (pu) - W60
Use definitions - W02 example - S/50 range
Pre-1987 development - 068-074 (allow 120 days for proof due)
Single p/d intended - 076

Shry Creek Partners

FORM NO.202A
REVISED 7/31/98

APPLICATION NO. _____

STATE OF IDAHO
IDWR SOUTHERN REGION
APPLICATION FOR PERMIT ANALYSIS SHEET

RECEIVED

JAN 7 2000

DEPARTMENT OF WATER RESOURCES

INITIAL REVIEW BY AD DATE 7/12/99

REQUIRED INFORMATION (Ck if OK)

- ☒ Name (If applicant is a corporation or partnership, names must be provided for the director, officers, & other partners.
- ☒ Address
- ☒ Source (see USGS quad for names of water sources)
- ☒ Point of diversion (10 Acres for spring, lot & block descriptions for subdivisions, local name, flow &/or volume.
- ☒ County
- ☒ Quantity (flow &/or volume)
- ☒ Period of use
- ☒ Nature of proposed use (include description of use)
- ☒ Description of diverting works.
- ☒ Time required for beneficial use of water.
- ☒ Place of use or acres irrigated.
- ☒ Map
- ☒ Signature (If applicant is corp., partnership, or municipality, title of signator is required)
- ☒ Fee
- ☒ Yes ☐ No* In form to receipt?

++++PROPOSED PRIORITY DATE 6/1 1999

ADDITIONAL INFORMATION

- ☐ Overlapping place of use(Describe source & relationship to present application on the back.
- ☐ Overlapping point of diversion.
- ☐ Yes ☐ No Is Source Surface Water?
- ☐ If Yes Send Copy to F&G.
- ☐ If Yes Field check/memo required.
- ☐ Field check/memo by _____
- ☐ Yes ☐ No Field report attached?
- ☐ Yes ☐ No Critical Ground water area?
- ☐ Yes ☐ No Groundwater management area?
- ☐ Yes ☐ No Measurement District or Groundwater District? ..
- ☐ What District? _____
- ☐ Yes ☐ No Send Dam safety information?
- ☐ Yes ☐ No Send power requirement letter?
- ☐ Yes ☐ No Send fish farm requirement letter?
- ☐ Yes ☐ No Power residency affidavit attached?
- ☐ Yes ☐ No Power efficiency form?
- ☐ Yes ☐ No Within trustwater boundary?(If yes, attach trustwater supplementary analysis sheet.
- ☐ Yes ☐ No Diversion greater than 5 cfs or 500 acre ft? (If yes,attach large diversion supplementary analysis sheet.
- ☐ Yes ☐ No Is Application made to record Pre Nov 1987 Development?
- ☐ If Yes then request clear evidence of when use started.

• REQUEST THE FOLLOWING ADDITIONAL INFORMATION FROM THE APPLICANT:

Date Requested _____

Date Sent Comments Received

SEND COPIES TO:

☐ Idaho Dept of Health & Welfare	_____	_____
☐ USDI BLM	_____	_____
☐ Idaho Dept of Fish & Game	_____	_____
☐ USFS	_____	_____
☐ Idaho Dept of Lands	_____	_____
☐ Water Dist. No. _____	_____	_____
☐ Adjudication Bureau Unit	_____	_____
_____	_____	_____
_____	_____	_____

PROCESSING ☐ Yes ☐ No In form for Advertising?

☐ Yes ☐ No Statewide Advertising?

☐ Yes ☐ No Fee amount, receipt date & No. recorded?

☐ Yes ☐ No Has all requested additional information been received?

If not, describe action taken: _____

FINAL REGIONAL PROCESSING REVIEW

☒ Yes ☐ No Affidavit of publication received?

☒ Yes ☐ No Application published correctly? If not, record action taken.

☒ Yes ☐ No Publication dates and paper recorded?

Final date for protest: _____

☐ Yes ☒ No Protests received?

☐ Yes ☒ No Protested?

Describe Resolution: _____

☒ Yes ☐ No Measuring device required?

☐ Yes ☒ No Access port required?

☒ Yes ☐ No Will water be delivered by watermaster? If yes, what dist? _____

☐ Yes ☐ No Special conditions codes: _____

☒ Yes ☐ No Is Evaluation Memo Attached?

If yes; date of Memo 12/30/99

Date of priority recommended: 6/1/99

COMMENTS:

RECOMMEND ☒

Approval

☐ Denial

By

AD

Date

12/30/99

RECEIVED

JAN 07 2000

MEMO

Department of Water Resources

FROM: Allen Merritt 

DATE: December 30, 1999

TO: Transfer File No. 5492 5494
Water Right(s): T37-00865A T37-00580
 T37-00865B

Application for Permits: 37-08893 & 37-08894

In the Name of: Dry Creek Partners

SUBJECT: Review and Recommendation

These four applications were filed for the purpose of clarification of water rights and conversion of rights for construction of a new dairy. They all need to be reviewed together.

Transfer 5494 reconfigures right 37-00580 P/U by shifting the right over to historically irrigated lands.

Transfer 5492 splits right 37-00865 into two parts. Part A is a change of irrigation of 54.4 acres to that of recharge to groundwater. This right is used to mitigate application for permit for the dairy and for the recharge pond (37-08893 & 37-08894). Part B reconfigures the remaining 228.6 irrigated acres on a historically irrigated parcel.

Application for permit 37-08893 is for development of groundwater for the new dairy. It is mitigated with 37-00865A.

Application for permit 37-08894 is for storage in the recharge pond located at the confluence of Black Canyon Creek and Dry Creek. Evaporation at the pond is mitigated by 37-0865A.

Brockway Engineering prepared the applications and provides the supporting documentation.

The applications were advertised and T5492 and application 37-08893 were protested by Lee Halper but after meeting with Mr. Novinger he withdrew his protests.

I have GIS'd the transfers and as a result I have shifted the acreage slightly as a result. Also the tract of NESW was added as a place of use for recharge in T5492 and application 37-08894 since the confluence of Dry Creek and Black Canyon Creek would place the pond at this location. I do not advise re-advertisement due to this slight change. Also I corrected the mailing address of the applicant.

During the preliminary work with Brockway the SRBA claims were amended to more correctly reflect the irrigated acres. Also the applicant resolve the competing claim of O'Maley for right 37-00580. O'Maley now claims 37-00581. Attached is a GIS map describing the property ownership. Also is a preliminary GIS map showing the historically irrigated lands. The applicant has

APR 18 2000

relinquished his claim to Dry Creek water 37-00859 since he does not use it. The lands historically irrigated within the property are irrigated by the decrees from the Big Wood River as well as American Falls supplemental water (1.31 cfs) Big Wood Canal Co shares and American Falls Lower Water Users shares (599 shares).

To prevent expansion due to drying up acres all shares should be retained on the property that currently exist. To prevent injury to groundwater the recharge should be monitored closely.

Recommendation

I recommend that these applications be approved subject to the following conditions:

- Measuring and reporting of use plan be submitted and approved by the department and watermaster to document the recharge to groundwater and use at the dairy. (No credit shall be given for waters recharged from the natural flows in Dry Creek or Black Canyon Creek. Only water measured from right 37-00865A shall be allowed as credit for mitigation for permit 37-08893.) To measure recharge recording devices must be installed on Dry Creek and Black Canyon Creek above the recharge pond and on Dry Creek below the recharge pond. Also the water injected into Black Canyon Creek must also be measured.
- All rights under the control of watermaster of water district 37.
- Drilling permit requirement for new wells at dairy site.
- All other water rights or shares be maintained on property.
- Subject to SRBA.
- Subject to other county, state or federal requirements as appropriate.

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APR 18 2000

APPLICANT: Dry Creek Partners WATER RIGHT NO. 37-08894

[illegible]

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NOV 12 1999

Department of Water Resources
Southern Region

APPLICATION FOR TRANSFER
NO. 37-8894

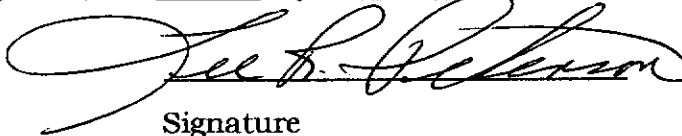
RECOMMENDATION OF WATERMASTER

I, Lee R. Peterson, watermaster of Big Wood River,
of Water District No 37, County of Gooding, State of Idaho,
whose address is P O Box T, Shoshone, Idaho 83352,
have read the attached copy of the application for transfer in the name of
Dry Creek Partners, and to the best of my knowledge believe the
application to be true.

A. I hereby endorse the above numbered Application for Transfer and recommend
that the director of the Department of Water Resources approve the transfer
subject to the following conditions: None.

B. I do not endorse approval of the above numbered Application for Transfer as re-
quested for the following reasons: _____

Dated at Shoshone, Idaho, this 9th day of November 1999.


Signature

Please use reverse side if needed.

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APR 18 2000

ACTION REQUIRED

app 37-08894

FROM: MB

TO: Terry Blau

9/13/99

SCA Comment Please

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APR 18 2000

NOTICE OF APPLICATIONS FOR WATER PERMIT
AND PROPOSED CHANGE OF WATER RIGHT

Notice is hereby given that Dry Creek Partners, c/o Bill Novinger, PO Box 301, Gooding ID 83330 on June 1, 1999 filed two applications for water permit and later finalized two applications for transfer of existing rights. All applications are associated with development of a new dairy and recording of surrounding irrigation rights.

Application for Permit No. 37-08893 requests development of groundwater from one existing well and two new wells within SESE Section 3, T05S, R14E, Gooding County. Use is for Stockwater and Commercial (total of 1.00 cfs from 1/1 to 12/31) used within portions of Sections 2 and 3 of T05S, R14E. Commercial use includes dairy barn and land application of wastewater from dairy. This application intended to be mitigated by recharge to groundwater pursuant to transfer application No. 5492.

Application for Permit No. 37-08894 requests development of year-round 40 acre foot storage/recharge pond within Section 3, T05S, R14E, Gooding County. Pond to be built at the confluence of Black Canyon Creek and Dry Creek, tributary of the Big Wood River with a flow of 5.0 cfs from these same creeks for recharge. Recharge will occur as water sinks in unlined pond.

Transfer No. 5492 requests modification of right 37-00865 with a priority date of 4/1/1905 for 5.60 cfs diverted from the Big Wood River within the SWNW Section 7, T05S, R16E (Robertson Ditch) and used for irrigation of 280 acres within Sections 2 and 3 of T05S, R 14E. The transfer proposes to dry up 51.4 acres where the dairy is to be built and use water (1.03 cfs or 154.2 acre feet per year to be diverted to storage/recharge pond described above via Black Canyon Creek). 228.6 acres will continue to be irrigated with 4.57 cfs. The acres being dried up are intended to mitigate for evaporation in above described pond and for recharge to groundwater to mitigate for development of application 37-08893.

Transfer No. 5494 is intended to correctly describe the historical place of use of right 37-00580 with a priority date of 4/2/1906 for 3.20 cfs for irrigation diverted from the Big Wood River through the Robertson Ditch. Current recorded place of use is within Sections 3, 10 and 15, T05S, R14E with unspecified number of acres irrigated. This transfer proposes to record the historical place of use as 160 acres within Sections 3 and 4, T05S, T14E.

Any protest against the proposed applications 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 October 12, 1999 to be considered by the Department in its decision to grant or deny any part of the proposed applications. (**Each application requires a separate protest**). The protestant must also send a copy of the protest to the applicant.

Karl J. Dreher, Director

Published in the Gooding County Leader on 09/23 & 09/30/99.

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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

SOUTHERN REGION

**DIRK KEMPTHORNE
GOVERNOR**

September 10, 1999

**KARL J. DREHER
DIRECTOR**

**DRY CREEK PARTNERS
C/O BILL NOVINGER
PO BOX 301
GOODING ID 83330**

Re: Applications for Permit No. 37-08893 & 37-08894; Applications for Transfer No. 5492 & 5494

Dear Applicant(s):

The Department of Water Resources acknowledges receipt of your applications and have assigned the above referenced identification numbers. Please refer to this number in all further correspondence.

This office has scheduled advertising the applications in the Gooding County Leader for 09/23 & 09/30/99. 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.

If an application is not protested, it will be forwarded to our State Office in about five weeks. 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. If a permit is issued, you will be sent a copy. A typical processing time for an unprotested application is about eight weeks.

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

Very truly yours,

Allen D. Merritt, P.E.
Regional Manager

AM:MB

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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

SOUTHERN REGION

DIRK KEMPTHORNE
GOVERNOR

September 10, 1999

KARL J. DREHER
DIRECTOR

MAGIC VALLEY PUBLISHING
ATTN GOODING COUNTY LEADER
PO BOX 468
JEROME ID 83338

Ladies and Gentlemen:

Enclosed you will find a legal notice which we wish to have published once a week for two consecutive weekly issues of your newspaper.

We have inserted the required publication dates. 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
Administrative Assistant

Enclosure

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NARRATIVE FOR WATER RIGHT PERMIT AND TRANSFER APPLICATIONS DRY CREEK PARTNERS

Brockway Engineering, PLLC 5/26/99 rev. 6/1/99
C. G. Brockway, P. E.

Introduction and Summary

A commercial dairy facility is being proposed north of Gooding in Section 3, T. 5 S., R. 14 E. The land is currently part of Dry Creek Farms, and the dairy will be owned by Dry Creek Partners. A water requirements analysis indicates that the total annual water usage will be 138 acre-feet, with a maximum instantaneous diversion requirement of 1.0 cfs. It is proposed to supply this water from one existing well and one new well. An application for permit is being submitted to allow the water withdrawal for the dairy. However, because the Snake River basin moratorium precludes new consumptive water rights, the volume diverted for the dairy will be mitigated by developing an aquifer recharge program utilizing an existing irrigation water right.

Aquifer recharge will be accomplished via an in-stream recharge pond, located at the confluence of Dry Creek and Black Canyon Creek. A permit application for storage in the pond is also being submitted, with mitigation for the pond evaporation to be provided by removing sufficient acres from an existing irrigation right.

Summary of Applications Submitted

1. Groundwater permit for stockwater/commercial use in a dairy.
2. Non-consumptive surface water permit for pond storage.
3. Surface water permit for aquifer recharge, with the source being Dry Creek and Black Canyon Creek.
4. Transfer to convert surface right from irrigation to aquifer recharge to mitigate for permit #1, and to remove acres to mitigate for pond evaporation under permit #2.

Existing Water Rights

Water rights currently applicable to the property include two decreed rights from the Big Wood River, Big Wood Canal Company shares, and American Falls Reservoir supplemental water. The components of the decreed rights are shown below:

37-00580
Priority 4/1/1905
3.2 cfs
320 acres

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Department of Water Resources
Southern Region

No diversion volume listed
No irrigation period listed

37-00865

Priority 4/2/1906

5.6 cfs

280 acres

No diversion volume listed

No irrigation period listed

It is proposed to use one of the decreed water rights as the source of mitigation water for the dairy. The attached map shows the existing places of use of the decreed rights, and the area which has historically been irrigated on the property. The decreed places of use do not overlap, although the place of use for 37-00865 is mostly on land which has not historically been irrigated. However, the historic operation of the farm since the 1960s has been to divert all water including decreed rights and canal shares into a pond, from which water is pumped to hand lines and wheel lines. Therefore, the decreed water rights have been fully used on the property for many years and forfeiture should not be an issue. A separate transfer application is being filed to change the places of use to coincide with actual usage.

Irrigation System Operation

Decreed rights and American Falls supplemental water are diverted from the Big Wood River into the Robertson Ditch. This ditch carries water to Dry Creek Farms, where it is diverted into a small irrigation storage pond. Three centrifugal pumps pressurize the water and deliver it to sprinkler irrigation systems, which have historically been hand lines and wheel lines. Within the past two years, most of these systems have been replaced by center pivots.

The Big Wood Canal Company shares are delivered via the Gooding Main Canal, and diverted into the same irrigation storage pond.

Overflow from the irrigation pond travels north in a ditch and returns to Black Canyon Creek, as shown on the attached map. The amount of the overflow generally depends on the water year, with considerable spillage occurring during the wet years 1996 through 1998. During dry years, the operational overflow has generally been small.

Proposed Recharge System

In order to mitigate for the new groundwater permit for the dairy, it is proposed to transfer a portion of right 37-00865 from irrigation to aquifer recharge. The recharge

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would be accomplished by constructing an unlined recharge pond at the confluence of Dry Creek and Black Canyon Creek, as shown on the attached map. Water earmarked for recharge would be allowed to pass the pumping pond, flow into Black Canyon Creek, and travel west and enter the pond.

Based on the dairy water use estimate, the total annual recharge required to directly compensate for the groundwater withdrawal is 138 acre-feet. At the IDWR allowable crop consumptive use rate of 3.0 acre-ft/acre, this equates to 46.0 acres of irrigation. This analysis assumes that the dairy facility is 100% consumptive, which is a criteria that has been imposed by IDWR on recent dairy filings, though it is not reflective of reality.

In addition to the dairy usage, the new recharge pond will consume water via evaporation. The surface area of the pond will be 5.0 acres. The average pond evaporation at the recharge site during the irrigation season was estimated to be 38.7 inches (3.23 feet). This value was calculated by taking annual evaporation near Gooding from the NOAA evaporation atlas and applying a method developed by Molnau, et al. to compute monthly rates. The total seasonal pond evaporation is therefore 16.2 acre-feet, which equates to 5.4 acres of irrigation (again assuming 3.0 acre-ft/acre). Therefore, the total acres removed from irrigation under 37-00865 is $46.0 + 5.4 = 51.4$ acres, i.e. 46.0 acres will be transferred to recharge, and 5.4 acres will simply be removed to compensate for the pond evaporation.

The 46.0 acres transferred to recharge is 16.43% of the total right. Using this ratio, the diversion rate applicable to recharge was calculated as 0.92 cfs. To recharge 138.0 acre-feet at this rate, the right must be available continuously for 76 days. An analysis of the cutoff history of the 4/1/1905 rights from 1967 through 1996 indicates that 37-00865 is on for an average of 86 days. The probability that the right will be on for at least 76 days is about 75%.

To measure the amount of water recharged, permanent measuring devices will be constructed above the pond on Dry Creek and Black Canyon Creek, below the pond on Dry Creek, and on the irrigation pond overflow. See the attached diagram. These devices will likely consist of broad-crested weirs or other type of low-head flumes. Because the proposed recharge pond will be constructed in-stream, the recharge calculated from an inflow-outflow measurement when there is natural flow in the streams does not accurately reflect the amount which should be credited as being recharged under the water right. Consideration must be made for any natural seepage which would have occurred had the pond not been constructed. Natural seepage which has historically occurred cannot be used as mitigation of the dairy water use. After the natural flow ceases (usually in late May or early June), the inflow-outflow measurement will directly indicate the amount being recharged under the water right.

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APR 18 2000

An attempt was made to quantify the natural seepage by measuring the discharge in both streams at the approximate future measuring device locations. These measurements were conducted on May 24, 1999 using a pygmy flow meter. The channel sections were uniform and free of obstructions, and the measurements were rated "good" to "excellent" according to USBR standards. The channel substrate of Dry Creek below the confluence, and Black Canyon Creek above the confluence, is generally gravel and sand, with silt in the slower-velocity reaches. The channel of Dry Creek above the confluence is compacted silt with water-eroded features. The flow measurements are summarized below:

Dry Creek 432 feet above the confluence	0.36 cfs
Black Canyon Creek 740 feet above the confluence	2.19 cfs
Dry Creek 1120 feet below the confluence	2.21 cfs

The inflow is $0.36 + 2.19 = 2.55$ cfs, and the outflow is 2.21 cfs, making the natural seepage 0.34 cfs.

Operationally and administratively, it would be desirable to assume a fixed value for the natural seepage, and allow a recharge credit for the amount above this value. It is respectfully requested that IDWR consider this alternative. However, it is recognized that the natural seepage is generally a function of the depth of flow and wetted perimeter, and therefore will likely be greater at higher streamflows. Since only one seepage measurement was possible until higher natural flows arrive next winter or spring, an attempt was made to theoretically estimate a natural seepage vs. inflow relationship. For a seepage rate, S , a wetted perimeter, P , a flow depth, y , and a total discharge in the two streams, Q , the following assumptions were made:

$$S \propto P$$

$$P \propto y$$

$$Q \propto y^{3/2}$$

The first assumption says that increases in wetted perimeter result directly in increases in seepage. The second assumption implies a vertical-bank or trapezoidal channel, and the third assumption means that the Manning equation is valid and that the channel is wide enough relative to depth so that the hydraulic radius is approximately equal to the flow depth.

With the above assumptions, the relationship between seepage and discharge is

$$S = kQ^{0.6}$$

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APR 18 2000

where k can be estimated from the one available seepage measurement, using $S = 0.34$ cfs and $Q = 2.55$ cfs. This yields $k = 0.19$.

The attached tabulation and plot shows the theoretical relationship as a function of inflow. Seepage is a high proportion of inflow at lower flows, but less than 5% at inflows greater than 30 cfs. This relationship is very uncertain, being based on assumptions which may not be valid and on one seepage measurement at a very low streamflow. Additional measurements may be possible next winter or spring to more accurately define the relationship, but the transfer must be approved to allow construction of the dairy to begin in late summer.

Therefore, it is requested that IDWR approve the transfer with either a constant baseline seepage equal to 0.34 cfs, or with the theoretical seepage relationship to be used as a baseline which varies with inflow.

Another likely result of the recharge pond when natural flow exists will be an increase in the recharge of the natural flow above that which would have existed prior to the pond construction. This situation would exist if the measured inflow minus outflow is greater than the sum of the pre-pond natural seepage and the flow rate specifically diverted to recharge from the water right (0.92 cfs). In this case, some of the additional seepage must be coming from the natural flow in Dry Creek or Black Canyon Creek. Therefore, a new permit for aquifer recharge is being applied for to protect this beneficial use.

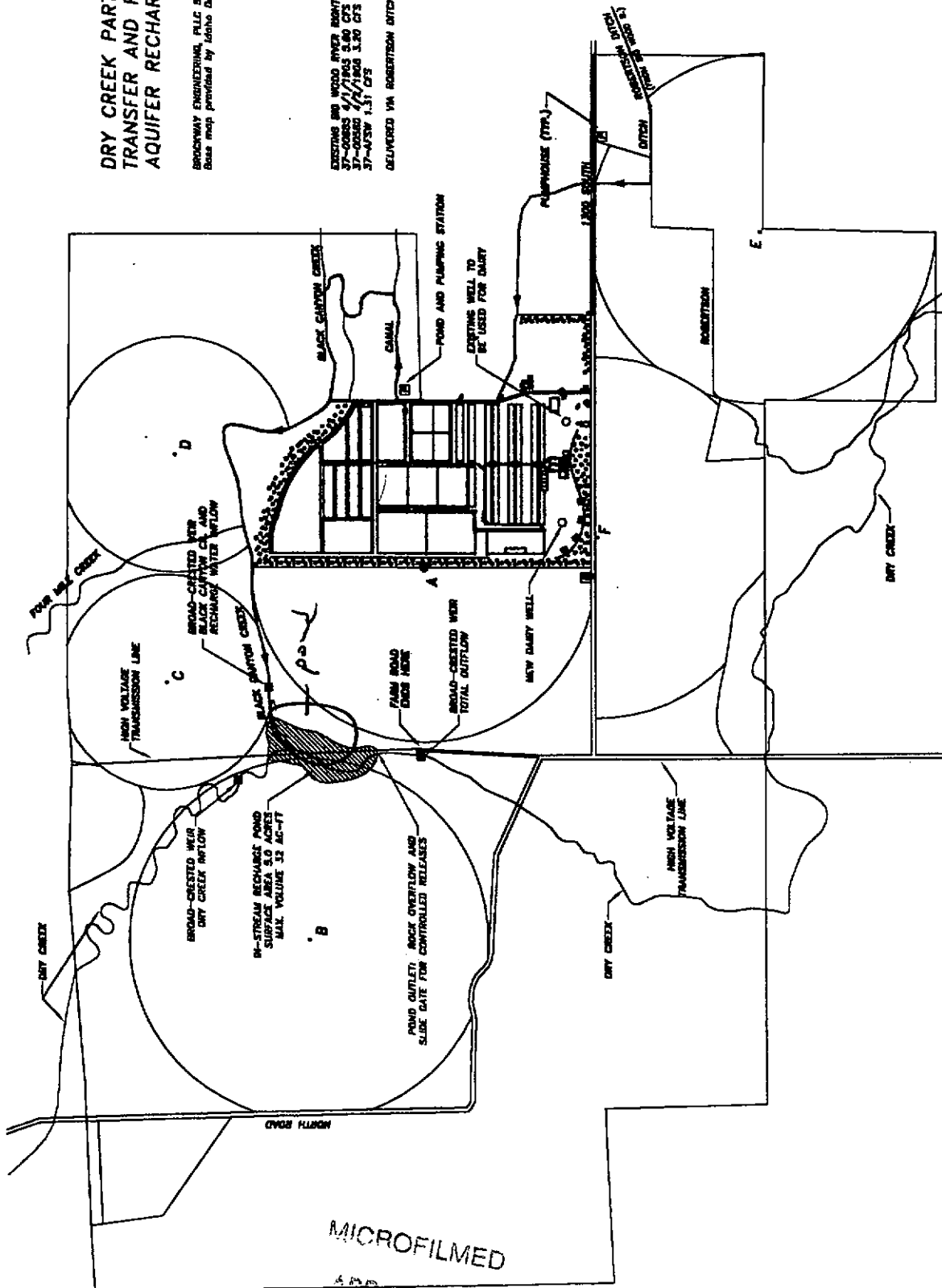
A water rights search was made for Dry Creek downstream of the proposed pond. No records were found, so recharging at the proposed site and the subsequent reduction of streamflow will not cause an injury to senior water right holders.

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DRY CREEK PARTNERS TRANSFER AND PERMIT APPLICATIONS FOR AQUIFER RECHARGE PROGRAM

BROADWAY ENGINEERING, PLLC 5/24/98
Base map provided by Idaho Department of Agriculture

EXISTING BIG WOOD RIVER RIGHTS:
37-00853 4/1/1943 1.50 CFS
37-00850 4/2/1903 1.50 CFS
37-4757 1.31 CFS
DELIVERED VIA ROBERTSON DITCH



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DRY CREEK PARTNERS**BIG WOOD RIVER WATER RIGHTS - PRIORITY CUT DATES**

Brockway Engineering, PLLC 5/6/99

Start of season:

1-Apr

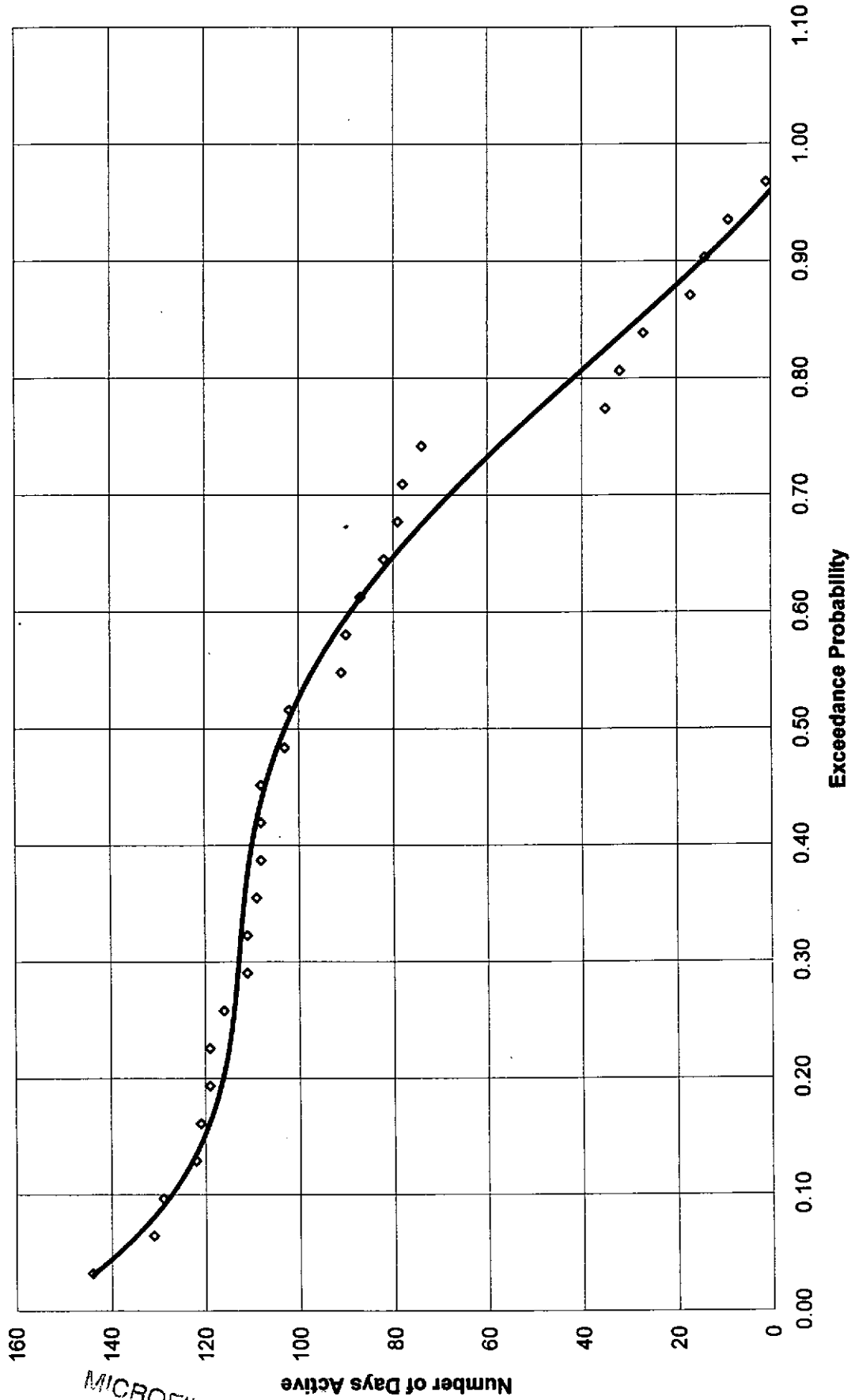
WR Num	Priority	Days on			S.D.
		Average	Min	Max	
37-0865	4/1/05	86	0	144	41
37-0580	4/2/06	85	0	144	41

Year	Priority cut date		Number of days from 4/1	
	37-0865	37-0580	37-0865	37-0580
1996	29-Jul	29-Jul	119	119
1995	23-Aug	23-Aug	144	144
1994	18-Apr	18-Apr	17	17
1993	12-Jul	12-Jul	102	102
1992	10-Apr	10-Apr	9	9
1991	28-Apr	28-Apr	27	27
1990	3-May	3-May	32	32
1989	30-Jun	30-Jun	90	90
1988	6-May	6-May	35	35
1987	15-Apr	15-Apr	14	14
1986	31-Jul	31-Jul	121	121
1985	19-Jun	19-Jun	79	79
1984	18-Jul	18-Jul	108	108
1983	8-Aug	8-Aug	129	129
1982	10-Aug	10-Aug	131	131
1981	18-Jun	18-Jun	78	78
1980	21-Jul	21-Jul	111	111
1979	14-Jun	14-Jun	74	74
1978	18-Jul	18-Jul	108	108
1977	1-Apr	1-Apr	0	0
1976	1-Jul	1-Jul	91	91
1975	1-Aug	29-Jul	122	119
1974	19-Jul	15-Jul	109	105
1973	22-Jun	22-Jun	82	82
1972	13-Jul	13-Jul	103	103
1971	26-Jul	26-Jul	116	116
1970	21-Jul	21-Jul	111	111
1969	29-Jul	29-Jul	119	119
1968	27-Jun	27-Jun	87	87
1967	18-Jul	5-Jul	108	95

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EXCEEDANCE PROBABILITY OF ACTIVE PERIOD DAYS DRY CREEK PARTNERS - BIG WOOD RIVER RIGHTS



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APPROXIMATE RELATIONSHIP BETWEEN SEEPAGE AND INFLOW RATE

Near the confluence of Dry Creek and Black Canyon Creek

Dry Creek Partners Dairy

Brockway Engineering, PLLC 5/26/99

Derived relationship: $S = K Q^{0.6}$

Theoretical based on assumed seepage-perimeter and depth-flow relationships

S proportional to wetted perimeter

Q proportional to depth^{5/3} (Manning's relationship)

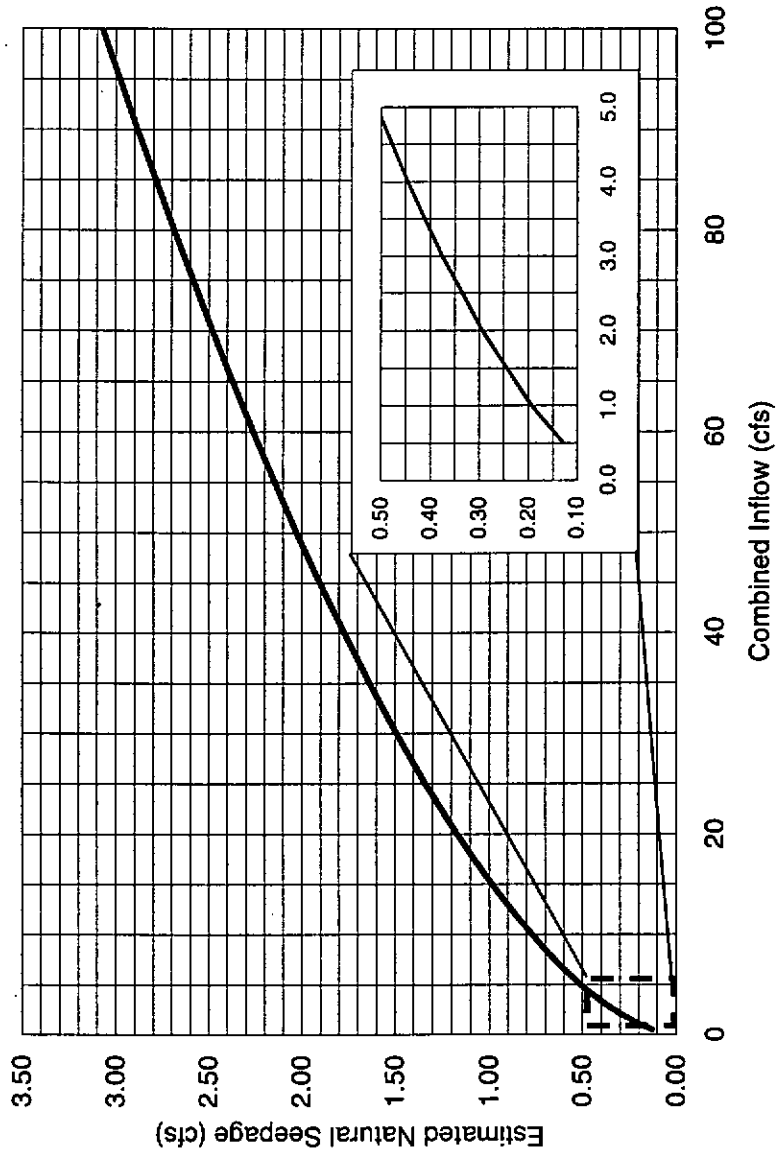
Determine K from inflow-outflow measurement:

Q = 2.55 cfs (inflow)

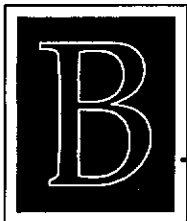
S = 0.34 cfs (seepage)

Calc. K = 0.19

Inflow (cfs)	Seepage (cfs)	Percent of inflow
0.5	0.13	0.256
1	0.19	0.194
2	0.29	0.147
3	0.37	0.125
4	0.45	0.111
5	0.51	0.102
6	0.57	0.095
7	0.62	0.089
8	0.68	0.084
9	0.72	0.081
10	0.77	0.077
12	0.86	0.072
14	0.94	0.067
16	1.02	0.064
18	1.10	0.061
20	1.17	0.058
25	1.34	0.054
30	1.49	0.050
35	1.64	0.047
40	1.77	0.044
45	1.90	0.042
50	2.03	0.041
60	2.26	0.038
70	2.48	0.035
80	2.69	0.034
90	2.88	0.032
100	3.07	0.031



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BROCKWAY
ENGINEERING
P.L.L.C.

Hydraulics

Hydrology

Water Resources

June 1, 1999

Mr. Allen Merritt
Idaho Department of Water Resources
1341 Fillmore Street, Suite 200
Twin Falls, ID 83301

Re: Transfer and permit applications – Dry Creek Partners
Project No. 347-01-1999

Dear Allen:

Enclosed is one transfer application and two permit applications for the proposed Dry Creek Dairy. As we have discussed, the intent is to transfer a portion of an existing irrigation right to aquifer recharge as mitigation for a new groundwater permit for the dairy. Also, acres are being removed from this right to compensate for the pond evaporation. I have completed a narrative which documents the existing water rights and the intent of the applicant and proposes a method by which pre-project natural stream seepage may be estimated as a baseline from which to compute additional recharge.

Please do not hesitate to call if you have any questions.

Sincerely,



Charles G. Brockway

cc: Bill Novinger

CHARLES E.
BROCKWAY,
PH.D., P.E.

CHARLES G.
BROCKWAY,
PH.D.

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WASHINGTON
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FAX: 736•8506

RECEIVED

JUN 01 1999

**Department of Water Resources
Southern Region**

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