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April 24, 2015

**VIA E-MAIL - Shelley.Keen@idwr.idaho.gov**  
**ORIGINAL WILL NOT FOLLOW**

Mr. Shelley W. Keen  
Idaho Department of Water Resources  
322 E. Front St.  
P.O. Box 83720  
Boise, ID 83720-0098

***Re: Smokey Dome LLC - Permits Nos. 37-8850 and 37-8857***

Dear Shelly:

As you know I represent Smokey Dome LLC, the owner of the above-referenced Permits. My client acquired these Permits in May, 2005 together with all of the unsold lots in the two subdivisions as well as the adjacent Solder Mountain Resort properties. Proof of beneficial use for both permits had been filed by the prior owner before my client acquired the properties.

The Department is now proposing to void Permit No. 37-8850 and issue a license for 37-8857 limited to domestic use for two homes. My client objects to these actions and requests the Department issue licenses for both permits based on the amounts in the respective proofs of beneficial use. In both cases, the beneficial use field examiner found the system capacity to be equal to or greater than the amounts in the respective proofs. The number of lots served by each license would be limited to the number of homes that correspond to the maximum instantaneous water requirement for domestic use based on the respective rates of diversion. For 37-8850, 0.16cfs will serve twelve (12) homes and for 37-8857, 0.2cfs will serve twenty (20) homes.

I know the Department is very reluctant to apply the "stub-in" rule to the development of these permits. However, in light of the reduced number of homes for which we are now requesting the permits to be licensed, we ask the Department to apply the stub-in rule for both water rights. With respect to 37-8857, a water right which will serve 20 homes qualifies my client as a "municipal provider" under I.C. § 42-202B(5). Although Permit 37-8857 is for domestic and not municipal purposes, the licensing of this water right should still have the benefit of the guidance provided in your Application Processing No. 18 Memorandum for establishing beneficial use under a "non-RAFN" permit for municipal purposes. Specifically the Memorandum states, "beneficial use shall be based on development within the service area during the authorized development period of the

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permit **and shall include stubbed-in lots for domestic purposes (i.e., a service line is available for each lot to hook up to the municipal delivery system).**" (emphasis added). Although the 12 lots served by 37-8850 do not qualify my client as a "municipal provider" for that Subdivision, the "stub-in" rule should be applied up to the system capacity. A week ago I asked Dan Nelson to provide me with examples of subdivision water systems that had been licensed for less than the number of lots actually stubbed in during the development period. As of yesterday he has not been able to provide me with any so I don't have any precedent to compare the my client's Permits with.

Please call me to discuss these requests at your earliest convenience. Thank you.

Sincerely yours,

SPECK & AANESTAD  
A Professional Corporation

A handwritten signature in black ink, appearing to read "Jim", written in a cursive style.

James P. Speck

cc: client