

State of Idaho
Department of Water Resources
Water Right License

WATER RIGHT NO. 37-08850

Priority: October 27, 2004

Maximum Diversion Rate: 0.16 CFS
Maximum Diversion Volume: 14.4 AF

It is hereby certified that SMOKEY DOME LLC
 C/O GREGORY VIK
 PO BOX 1607
 BELLEVUE WA 98009

has complied with the terms and conditions of the permit, issued pursuant to Application for Permit dated August 21, 1995; and has submitted Proof of Beneficial Use on October 27, 2004. An examination confirms water is diverted from:

SOURCE

GROUND WATER

and a water right has been established as follows:

<u>BENEFICIAL USE</u>	<u>PERIOD OF USE</u>	<u>DIVERSION RATE</u>	<u>ANNUAL DIVERSION VOLUME</u>
DOMESTIC	01/01 to 12/31	0.16 CFS	14.4 AF

LOCATION OF POINT(S) OF DIVERSION:

GROUND WATER NE1/4SE1/4 Sec. 14, Twp 01N, Rge 13E, B.M. CAMAS County

PLACE OF USE: DOMESTIC

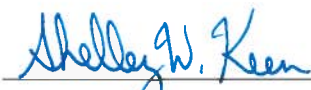
Twp	Rge	Sec	NE				NW				SW				SE				Totals
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
01N	13E	13										X	X						
01N	13E	14													X			X	

CONDITIONS OF APPROVAL

1. This right does not grant any right-of-way or easement across the land of another.
2. The irrigation occurring under this domestic use shall not exceed 1/2 acre within each platted subdivision lot upon which a home has been constructed. This right does not provide for irrigation of common areas or for irrigation of lots upon which homes have not been constructed.
3. The domestic use authorized under this right shall not exceed 13,000 gallons per day per home.
4. Domestic use is for 12 homes.
5. This right is for the use of trust water and is subject to review 20 years after the issuance of the permit to determine availability of water and to re-evaluate the public interest.
6. Place of use is for 12 homes located within Lots 1 - 7 Blk 1, Lots 1 - 19 Blk 2, Lots 1 - 6 Blk 3, and Lots 1 - 7 Blk 4 of the Fairway Estates.
7. Use of water under this right will be regulated by a watermaster with responsibility for the distribution of water among appropriators within a water district. At the time of this approval, this water right is within State Water District No. 37B.
8. When notified by the Department, the right holder shall install and maintain a measuring device of a type acceptable to the Department as part of the diverting works.

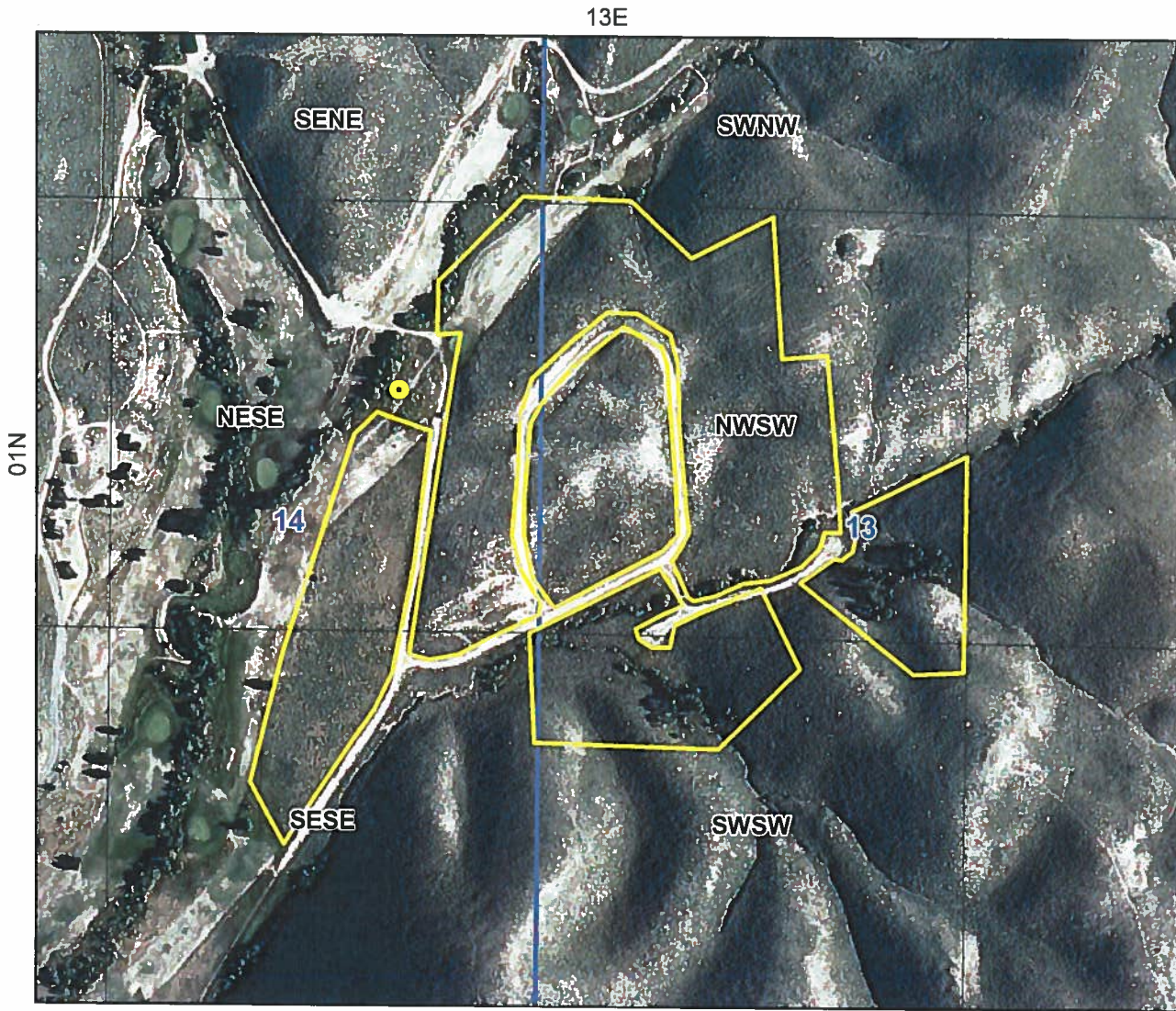
This license is issued pursuant to the provisions of Section 42-219, Idaho Code. The water right confirmed by this license is subject to all prior water rights and shall be used in accordance with Idaho law and applicable rules of the Department of Water Resources.

Signed this 1st day of May, 2015.

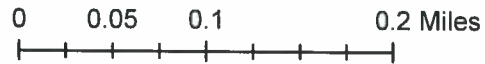

for GARY SPACKMAN
Director

State of Idaho
Department of Water Resources
Attachment To Water Right License
37-8850

This map depicts the DOMESTIC place of use boundary for this water right at the time of this approval and is attached to the approval document solely for illustrative purposes.



-  Point of Diversion
-  Place Of Use Boundary
-  Townships
-  PLS Sections
-  Quarter Quarters





State of Idaho

DEPARTMENT OF WATER RESOURCES

322 East Front Street • P.O. Box 83720 • Boise, Idaho 83720-0098

Phone: (208) 287-4800 • Fax: (208) 287-6700 • Website: www.idwr.idaho.gov

C.L. "BUTCH" OTTER
Governor

GARY SPACKMAN
Director

May 4, 2015

SMOKEY DOME LLC
C/O GREGORY VIK
PO BOX 1607
BELLEVUE WA 98009

RE: License No. 37-8850

Issuance of License

Dear Water Right Holder(s):

The Department of Water Resources has issued the enclosed Water Right License confirming that a water right has been established in accordance with your permit. Please be sure to thoroughly review the conditions of approval and remarks listed on your license.

The license is a PRELIMINARY ORDER issued by the Department pursuant to section 67-5243, Idaho Code. It can and will become a final order without further action by the Department unless a party petitions for reconsideration or files an exception and/or brief within fourteen (14) days of the service date as described in the enclosed information sheet.

Please note that water right owners are required to report any change of water right ownership and/or mailing address to the Department within 120 days of the change. Failure to report these changes could result in a \$100 late filing fee. Contact any office of the Department or visit the Department's homepage on the Internet to obtain the proper forms and instructions.

If you have any questions, please contact me at 208-287-4951.

Sincerely,

Pamela Skaggs
Water Rights Supervisor

Enclosure(s)

cc: SPECK & AANESTAD
WATER DISTRICT #37B

CERTIFICATE OF SERVICE

I hereby certify that on May 5, 2015, I mailed a true and correct copy, postage prepaid, of the foregoing PRELIMINARY ORDER (Approved License) to the person(s) listed below:

RE: WATER RIGHT NO. 37-8850

**SMOKEY DOME LLC
C/O GREGORY VIK
PO BOX 1607
BELLEVUE WA 98009**

**SPECK & AANESTAD
JAMES P SPECK
PO BOX 987
KETCHUM ID 83340**

**WATER DISTRICT #37B
RUSTY KRAMER
PO BOX 591
FAIRFIELD ID 83327**



**Darla Block
Technical Records Specialist**

EXPLANATORY INFORMATION TO ACCOMPANY A PRELIMINARY ORDER

(To be used in connection with actions when a hearing was **not** held)

(Required by Rule of Procedure 730.02)

The accompanying order or approved document is a "Preliminary Order" issued by the department pursuant to section 67-5243, Idaho Code. **It can and will become a final order without further action of the Department of Water Resources ("department") unless a party petitions for reconsideration, files an exception and brief, or requests a hearing 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 this order. **Note: the petition must be received by the department within this fourteen (14) day period.** 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 fourteen (14) 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 this 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 with the Director. Otherwise, this preliminary order will become a final order of the agency.

REQUEST FOR HEARING

Unless a right to a hearing before the Department or the Water Resource Board is otherwise provided by statute, any person aggrieved by any final decision, determination, order or action of the Director of the Department and who has not previously been afforded an opportunity for a hearing on the matter may request a hearing pursuant to section 42-1701A(3), Idaho Code. A written petition contesting the action of the Director and requesting a hearing shall be filed within fifteen (15) days after receipt of the denial or conditional approval.

ORAL ARGUMENT

If the Director grants a petition to review the preliminary order, the Director 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 Director will within a reasonable time period notify each party of the place, date and hour for the argument of the case. Unless the Director orders otherwise, all oral arguments will be heard in Boise, Idaho.

CERTIFICATE OF SERVICE

All exceptions, briefs, requests for oral argument and any other matters filed with the Director in connection with the preliminary order shall be served on all other parties to the proceedings in accordance with IDAPA Rules 37.01.01302 and 37.01.01303 (Rules of Procedure 302 and 303).

FINAL ORDER

The Director 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 Director 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 service date 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.

MEMORANDUM

TO: File 37-8850 and 37-8857

FROM: Daniel Nelson – Staff Hydrologist

DATE: April 19, 2015

SUBJECT: Correspondence review of Jim Speck's April 24, 2015 letter

The Department received a letter from Jim Speck, the attorney for Smokey Dome LLC regarding the notice of intent to void of water right 37-8850 and the reduced amendment for 37-8857 that was sent by the Department. The letter requested that permits be licensed based on the proofs of beneficial uses that were submitted of 0.16 cfs for 12 homes for 37-8850 and 0.20 cfs for 20 homes for 37-8857.

The Department staff considered this request and agreed to proceed with the licensing process using these diversion rates and the limitation of homes for each water right. The place of use for the homes was not identified. We will proceed with allowing 12 homes in within the description of the 39 lot subdivision for 37-8850 and 20 homes within the description of the 62 lot subdivision for 37-8857.

Even though the water rights have a condition limiting each home to 13,000 gpd, a volume will be needed. For permit 37-8850, the volume for the 12 homes would be 14.4 af (12 homes X 1.2 af per home). For permit 37857, the volume for the 20 homes would be 24 af (20 homes X 1.2 af per home). The 1.2 af per home limitation comes from administrative processing memo 22.

MEMORANDUM

DATE: April 27, 2015

TO: Water Right Files 37-8850 and 37-8857

FROM: Shelley W. Keen *SWK*

RE: Phone conversation with Attorney Jim Speck

This afternoon I returned a phone call to attorney Jim Speck, who wanted to discuss his April 24, 2015, letter regarding Permits 37-8850 and 37-8857. I explained to Mr. Speck that I plan to meet tomorrow with other IDWR staff members to discuss his proposal and, therefore, it would be premature for me to provide any specific response until then. I agreed to call Mr. Speck later in the week with more information.

In addition to discussing the extent to which IDWR can apply the benefits of the stub-in practice to the licensing review for these permits, Mr. Speck would also like IDWR to comment on the possibility of one or more additional permits being issued for these subdivisions. He recognizes that the subdivisions are within a moratorium area, and they may also be subject to the recent delivery calls submitted pursuant to the conjunctive management rules. Nevertheless, he thinks his client may want to seek additional permits if the licenses for 37-8850 and 37-8857 cannot cover the entire anticipated beneficial use, i.e. all the subdivision lots.

SPECK & AANESTAD

A PROFESSIONAL CORPORATION

ATTORNEYS

120 EAST AVENUE NORTH

P. O. BOX 987

KETCHUM, IDAHO 83340

JAMES P. SPECK
jim@speckandaanestad.com

DOUGLAS J. AANESTAD
doug@speckandaanestad.com

TELEPHONE
(208)726-4421

FACSIMILE
(208)726-0752

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

Mr. Shelley W. Keen

April 24, 2015

Page 2

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

Nelson, Dan

From: Nelson, Dan
Sent: Friday, April 24, 2015 11:10 AM
To: Nelson, Dan; Jim Speck
Cc: Greg Sullivan; Mr. Rod Gonsales; Keen, Shelley
Subject: RE: Smokey Dome LLC/Soldier Mt. Resort - Permits 37-8850 & 37-8857

Jim,

I apologize for not getting back to you sooner, but I made several attempts to research these records for you. I also discussed this matter with our administrative staff to determine if they had any recollection of a specific situation that would meet your needs. Unfortunately, I was not able to find any records that matched your client's specific situation. Our database doesn't have a search tool that allows us to search for water rights that were significantly reduced due to lack of development of the water right, so each water right would need to be looked at individually.

I can provide a list of all of the water rights that have been approved within the last 5 years for domestic and municipal uses if that will help in your research.

Daniel Nelson
Staff Hydrologist
Idaho Department of Water Resources
Telephone (208) 287-4856
Fax (208) 287-6700 (attn: Dan Nelson)

-----Original Message-----

From: Nelson, Dan
Sent: Friday, April 17, 2015 7:43 AM
To: 'Jim Speck'
Cc: Greg Sullivan; Mr. Rod Gonsales; Keen, Shelley
Subject: RE: Smokey Dome LLC/Soldier Mt. Resort - Permits 37-8850 & 37-8857

Hello Jim,

I will research this matter. I will need to work with Shelley Keen and Jeff Peppersack to find these records, since the majority them have been voided. Unfortunately, Shelley is out of the office until the middle of next week, so I can't give you a time frame on how long it will take. I will try to get you the information by the end of next week.

Daniel Nelson
Staff Hydrologist
Idaho Department of Water Resources
Telephone (208) 287-4856
Fax (208) 287-6700 (attn: Dan Nelson)

-----Original Message-----

From: Jim Speck [<mailto:jim@speckandaanestad.com>]
Sent: Thursday, April 16, 2015 4:11 PM

To: Nelson, Dan
Cc: Greg Sullivan; Mr. Rod Gonsales
Subject: Re: Smokey Dome LLC/Soldier Mt. Resort - Permits 37-8850 & 37-8857

Dan,

I represent Smokey Dome, LLC, the owner of these two permits. I have reviewed your correspondence to my client, memos to file and the Processing Memo. Can you provide me with specific examples of other subdivision water right permits that were licensed for less than all of the lots stubbed in during the development period. Thanks.

Jim

James P. Speck
SPECK & AANESTAD
A Professional Corporation
120 East Avenue North
P.O. Box 987
Ketchum, ID 83340
208.726.4421
208.726.0752 (fax)
jim@speckandaanestad.com

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MEMORANDUM

DATE: April 15, 2015

TO: Water Right Files 37-8850 and 37-8857

FROM: Shelley W. Keen SWK

RE: Phone call from attorney Jim Speck

Today attorney Jim Speck called to discuss Permits 37-8850 and 37-8857. Mr. Speck represents the permit holder, Smokey Dome LLC. IDWR informed Smokey Dome LLC that because so many years have passed without additional development, IDWR will not be able to recognize the undeveloped subdivision lots as beneficial use, even if the water lines were stubbed to them. Mr. Speck intends to submit a letter to IDWR asking the agency to rethink its position. We discussed a timeline for the submittal and settled on a deadline of April 24, 2015.