

Merritt, Allen

From: Merritt, Allen
Sent: Friday, October 19, 2012 3:35 PM
To: 'Jim Speck'
Cc: hobdeycraig@gmail.com; 'Mr. Fritz X. Haemmerle'; 'Greg Vik'; 'Rodney Ray Gonsales'; 'Nancy Lukacs'
Subject: RE: Re: Smokey Dome LLC/Application for Permit 37-8859
Attachments: 37-21386.docx

Jim,

Technically Big Wood Canal Company is not a protestant. They did not intervene. They only filed a letter of support for the only protestants at the time. The only protestant is Tucker.

As far as drafting something the applicant will need to identify what acres are to be dried up. We just went thru a similar permit approval that I signed today where acres were dried up from existing rights to mitigate for allowing a new permit. Reference permit 37-22769 mitigated by rights 37-21386 and 37-21793.

The permit would likely have a condition something similar to:

4. To mitigate for the depletion of water resulting from the use of water under this right and to prevent

injury to senior water right holders, the right holder shall cease diverting and using water as

authorized by the following water rights for the purposes and amounts specified below.

Moreover,

the official record for the following water right will be changed to show that diversion and use of

water is not authorized because the rights, or portion thereof, are being dedicated to mitigation

purposes.

Right No.	Use Changed to Mitigation	Mitigation Rate (cfs)	Mitigation Acres
37-21386		0.02 cfs	4.2
37-21793		0.25 cfs	4.2

The land that will no longer be irrigated under this right is located within the NENW, Section 32,

Township 4N, Range 19E.

If the specified mitigation right, or portion thereof, is sold, transferred, leased, used on any place of

use, or is not deliverable due to a shortage of water or a priority call, then the amount of water

authorized for diversion under this right approval shall be reduced by the same proportion as the

reduction to the mitigation rights.

The mitigation right would likely be structured similar to the attached proof report for 37-21386. In the process a mitigation use is identified for the right that replaces the use for the acres being dried up. Conditions are also modified.

I hope this helps.

Allen

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

From: Jim Speck [mailto:jim@speckandaanestad.com]
Sent: Friday, October 19, 2012 11:49 AM
To: Merritt, Allen
Cc: hobdeycraig@gmail.com; 'Mr. Fritz X. Haemmerle'; 'Greg Vik'; 'Rodney Ray Gonsales'; 'Nancy Lukacs'
Subject: FW: Re: Smokey Dome LLC/Application for Permit 37-8859

Allen,

I spoke to Craig Hobdey this morning. He will be willing to withdraw the Big Wood Canal Company protest if the mitigation proposal outlined below is incorporated into conditions of approval. Can you draft something that will accomplish this for us to review? I am hopeful that Fritz's client will also agree. Please call me if you have any questions.

Thanks.

Jim

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

From: Jim Speck
Sent: Wednesday, August 29, 2012 3:11 PM
To: 'Mr. Fritz X. Haemmerle'; 'hobdeycraig@gmail.com'
Cc: 'Rodney Ray Gonsales'; 'Greg Vik'; 'Greg Sullivan'; 'Nancy Lukacs'; 'Merritt, Allen'

Fritz and Craig,

Diamond-Soldier Properties LLC ("DSP"), a related entity wholly owned by the same entity that wholly owns Smokey Dome LLC, is the owner of the adjacent ranch formerly known as VM Diamond. Jerry Mobley, the prior owner of that ranch, is the other protestant in this matter and we strongly doubt he has any further interest in its outcome. DSP owns water right 37-368A and I have attached a copy of the partial decree and map of the place of use and point of diversion. The source is the same as 37-8859. We propose to permanently dry up 1.7 acres irrigated by this water right to fully mitigate for the evaporation loss from and annually filling the two ponds that are the subject of 37-8859. I have attached Brockway Engineering's calculations that arrive at this number based on the current size of the ponds determined in a recent site visit by Greg Sullivan from Brockway. With this proposal there will be no reduction in any water flowing from the West Fork of Three Mile Creek off my client's properties and down into Magic Reservoir if, in fact, that water ever reaches Magic.

Mrs. Tucker does not own any water rights which could be injured if this mitigation plan was not in place. Furthermore, the mitigation plan will assure that the flows in the West Fork of Three Mile Creek as it flows off my client's land and down to and through Mrs. Tucker's ranch will not be reduced by the diversion of water into the two ponds.

Please let me know as soon as possible if this proposal is sufficient for your clients to both withdraw their protests to this application. I will be out of the office Sept. 6 until Sept. 26 and hope to resolve this dispute before I go. Thank you.

Jim

James P. Speck
SPECK & AANESTAD

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

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