

HAEMMERLE & HAEMMERLE, P.L.L.C.

Attorneys & Counselors at Law

Fritz X. Haemmerle
Jennifer L. K. Haemmerle

P. O. Box 1800
Hailey, ID 83333

400 South Main Street, Suite 102
Tel: (208) 578-0520
Fax: (208) 578-0564

RECEIVED

OCT 25 2012

DEPT. OF WATER RESOURCES
SOUTHERN REGION

October 23, 2012

IDWR Southern Region
Attn: Allen Merritt
1341 Fillmore St., Suite 200
Twin Falls, ID 83301-3380
Via e-mail: Allen.Merritt@idwr.idaho.gov

Re: Protest of Permit 37-8859

Dear Allen:

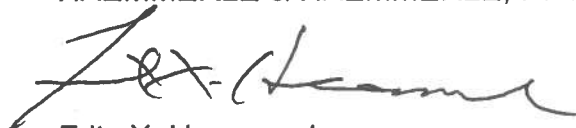
I have met with my client, Pamela Tucker, to review the mitigation plan proposed by Jim Speck, on behalf of his client, Smokey Dome, LLC. (Diamond-Solider Properties LLC).

After reviewing that mitigation plan and subject to the Idaho Department of Water Resources adopting that plan, or a plan requiring more mitigation, my client has elected to withdraw her protest. My client would like to remain active if only to receive final documentation of this permit.

If there is anything else you require, please do not hesitate to call. Thank you.

Sincerely,

HAEMMERLE & HAEMMERLE, P.L.L.C.



Fritz X. Haemmerle

FXH: fxh
cc: client
Jim Speck, Esq. (via e-mail)
Craig Hobdey, Esq. (via e-mail)

HAEMMERLE & HAEMMERLE, P.L.L.C.

Attorneys & Counselors at Law

Fritz X. Haemmerle
Jennifer L. K. Haemmerle

P. O. Box 1800
Hailey, ID 83333

400 South Main Street, Suite 102
Tel: (208) 578-0520
Fax: (208) 578-0564

October 23, 2012

RECEIVED

OCT 23 2012

DEPT. OF WATER RESOURCES
SOUTHERN REGION

via e-mail

IDWR Southern Region
Attn: Allen Merritt
1341 Fillmore St., Suite 200
Twin Falls, ID 83301-3380
Via e-mail: Allen.Merritt@idwr.idaho.gov

Re: *Protest of Permit 37-8859*

Dear Allen:

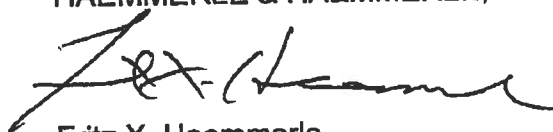
I have met with my client, Pamela Tucker, to review the mitigation plan proposed by Jim Speck, on behalf of his client, Smokey Dome, LLC. (Diamond-Solider Properties LLC).

After reviewing that mitigation plan and subject to the Idaho Department of Water Resources adopting that plan, or a plan requiring more mitigation, my client has elected to withdraw her protest. My client would like to remain active if only to receive final documentation of this permit.

If there is anything else you require, please do not hesitate to call. Thank you.

Sincerely,

HAEMMERLE & HAEMMERLE, P.L.L.C.



Fritz X. Haemmerle

FXH: fxh
cc: client
Jim Speck, Esq. (via e-mail)
Craig Hobdey, Esq. (via e-mail)

Merritt, Allen

From: Fritz Haemerle [fxh@haemlaw.com]
Sent: Tuesday, October 23, 2012 12:17 PM
To: Jim Speck; hobdeycraig@gmail.com
Cc: 'Greg Vik'; 'Rodney Ray Gonsales'; 'Nancy Lukacs'; Merritt, Allen
Subject: RE: RE: Re: Smokey Dome LLC/Application for Permit 37-8859
Attachments: 20121024001023842.pdf

All:

See attached letter.

Fritz X. Haemmerle
HAEMMERLE & HAEMMERLE, P.L.L.C.
P.O. Box 1800
Hailey, ID 83333
Tel: (208) 578-0520
FAX: (208) 578-0564

THIS IS A CONFIDENTIAL COMMUNICATION: This e-mail message and the information contained in this e-mail message may be privileged, confidential and protected from disclosure. If you are not the named recipient, any dissemination, distribution or copying is strictly prohibited. If you received or think you received this e-mail message in error, please reply to fxh@haemlaw.com or call 208-578-0520.

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

From: Jim Speck [mailto:jim@speckandaanestad.com]
Sent: Saturday, October 20, 2012 9:59 AM
To: Fritz Haemerle; hobdeycraig@gmail.com
Cc: 'Greg Vik'; 'Rodney Ray Gonsales'; 'Nancy Lukacs'; 'Merritt, Allen'
Subject: FW: RE: Re: Smokey Dome LLC/Application for Permit 37-8859

Fritz & Craig,

Please let me know right away if the language proposed by Allen in his e-mail below is acceptable.

Jim

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

From: Merritt, Allen
Sent: Friday, October 19, 2012 8:24 PM
To: Jim Speck
Cc: hobdeycraig@gmail.com; Mr. Fritz X. Haemmerle; Greg Vik; Rodney Ray Gonsales; Nancy Lukacs

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
4.2	37-21386		0.02 cfs	
4.2	37-21793		0.25 cfs	

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@speckkandaanestad.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

CONFIDENTIAL COMMUNICATION

This email message and any attachments are intended only for the use of the addressee named above and may contain information that is privileged and confidential. If you are not the intended recipient, any dissemination, distribution, or copying is strictly prohibited. If you received this email message in error, please immediately notify the sender by replying to this email message or by telephone. Thank you.