

SPECK & AANESTAD

A PROFESSIONAL CORPORATION

ATTORNEYS

JAMES P. SPECK
jim@speckandaanestad.com

DOUGLAS J. AANESTAD
doug@speckandaanestad.com

120 EAST AVENUE
POST OFFICE BOX 987
KETCHUM, IDAHO 83340

TELEPHONE
(208) 726-4421
FACSIMILE
(208) 726-0752

November 17, 2009

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

RECEIVED

NOV 19 2009

DEPT. OF WATER RESOURCES
SOUTHERN REGION

Re: *Transfer No. 75342 – Peter and Antonia Breck*
Applicants' Motion for Order Denying Petition to Intervene by Trout Unlimited

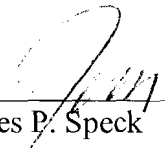
Dear Allen:

Enclosed you will find the original and one copy of the above-referenced Motion for Order Denying Petition to Intervene by Trout Unlimited. Please file this Motion in the contested proceeding, and receipt date-stamp the copy of the Motion and return it to me in the postage prepaid self-addressed envelope I have also included for that purpose. Please call me if you have any questions.

Thank you.

Sincerely yours,

SPECK & AANESTAD
A Professional Corporation

By: 
James P. Speck

Enclosures

CC w/ Encl: Client
 Jim Laski
 Al Barker

James P. Speck, Esq. ISB #2067
SPECK & AANESTAD
A Professional Corporation
120 East Avenue
Post Office Box 987
Ketchum, Idaho 83340
Telephone (208) 726-4421
Facsimile (208) 726-0752
Attorneys for Applicants

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DEPT. OF WATER RESOURCES
SOUTHERN REGION

BEFORE THE IDAHO DEPARTMENT OF WATER RESOURCES

IN THE MATTER OF APPLICATION)
FOR TRANSFER NO. 75342:)
)
PETER B. BRECK and)
ANTONIA HUNTER BRECK,)
TRUSTEES OF THE BRECK)
FAMILY 1998 REVOCABLE) APPLICANTS' MOTION FOR ORDER
TRUST DATED JUNE 12, 1998,) DENYING PETITION TO INTERVENE
AS FIRST AMENDED AND) BY TROUT UNLIMITED
RESTATED JUNE 18, 2001 ,)
)
Applicants, and)
)
IDAHO WATER RESOURCE)
BOARD,)
)
Protestant.)

The Applicants, by and through their attorneys of record, respectfully move the Idaho Department of Water Resources ("IDWR") for an order denying intervention in the above-numbered Application by Trout Unlimited ("TU"). The reasons for such denial are as follows:

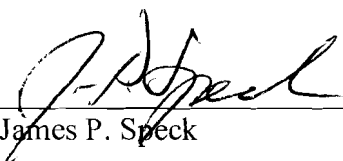
1. TU is a national organization acting on behalf of its members who desire to "protect and maintain the coldwater fishery in the Big Wood River." TU states that it "does not intend to introduce additional issues in this matter, but only seeks to protect its interests in the Big Wood River fisheries to the extent those issues are protected by the [Idaho Water Resource Board's] water rights." (emphasis added).

2. Assume, solely for the sake of this argument, that TU's stated interest in protecting the Big Wood River fisheries is a "direct and substantial" interest in this proceeding as required by Rules 350 through 354 of the Rules of Procedure of the Idaho Department of Water Resources. However, that interest, by TU's own admission, is equivalent to the flows in the Big Wood River protected by the minimum stream flow water rights held by IWRB. In other words, if those minimum stream flows are protected then the only interest TU seeks to protect in this proceeding are, by definition, also protected. IWRB is a party to this proceeding and the only entity which can obtain and hold in-stream minimum flow water rights in Idaho. IWRB, upon approval of its request to appropriate a minimum stream flow in a particular river, is charged by the legislature with thereafter acting in the public interest to protect those minimum stream flows. IWRB is more than capable of adequately protecting its own water rights. Therefore, without question, TU's stated interest in this proceeding is "adequately represented" by IWRB and, pursuant to Rule 353, intervention by TU must be denied.

WHEREFORE, the undersigned hereby move IDWR to make a finding that purported interests which TU seeks to protect in this proceeding are adequately represented by IWRB. Applicants further move IDWR for an Order denying TU's Petition to Intervene.

Respectfully submitted this 17 day of November, 2009.

SPECK & AANESTAD
A Professional Corporation
Attorneys for Applicants

By: 
James P. Speck

CERTIFICATE OF SERVICE

I hereby certify that on the 17 day of November 2009, I served a true and correct copy of the within and foregoing document upon the persons named below in the manner noted:

Mr. Peter Anderson
TROUT UNLIMITED
910 W. Main St., Suite 342
Boise, ID 83702
Facsimile: (208) 345-6766

- ☒ United States Mail, Postage Prepaid
- ☐ Hand Delivery
- ☐ Facsimile, with copy by United States Mail, Postage Prepaid

Ms. Shasta Kilminster-Hadley
IDAHO ATTORNEY GENERAL'S OFFICE
PO Box 83720
Boise ID 83720-0010

- ☒ United States Mail, Postage Prepaid
- ☐ Hand Delivery
- ☐ Facsimile, with copy by United States Mail, Postage Prepaid

Ms. Helen Harrington
IDAHO WATER RESOURCE BOARD
PO Box 83720
Boise ID 83720-0010

- ☒ United States Mail, Postage Prepaid
- ☐ Hand Delivery
- ☐ Facsimile, with copy by United States Mail, Postage Prepaid

Mr. Allen Merritt
IDAHO DEPARTMENT OF WATER
RESOURCES
1341 Fillmore, Suite 200
Twin Falls ID 83301

- ☒ United States Mail, Postage Prepaid
- ☐ Hand Delivery
- ☐ Facsimile, with copy by United States Mail, Postage Prepaid



JAMES P. SPECK