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Department of Water Resources

FAX COVER SHEET/MEMO

To: Mr. David Tutbill Allen Merrill Travis Thompson	Fax Copies:
Fax #: 1-208-287-6700 208-736-3037 208-735-2444	Fax #'s:
From: Jeanno E. Farnica for James P. Speck	Pages: , including this cover page
Date: June 9, 2008	
Subject: SDRTR; Water Right 37-8388 10080	

COMMENTS:

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June 9, 2008

VIA FACSIMILE - 1-208-287-6700
ORIGINAL WILL NOT FOLLOW

Mr. David Tutthill

Director

Idaho Department of Water Resources

322 B. Front Street

P. O. Box 83720

Boise, ID 83720-0098

Re: Permit No. 37-8388
Our File No.: 570/070071

Dear Dave:

Attached for filing is a Motion Opposing Lisa Verling's Petition To Intervene. The original will follow by U.S. Mail along with two copies. Please arrange to have your secretary conform the copies and returned them to my office in the postage prepaid, self-addressed envelope provided for that purpose.

Please call me immediately if you have any questions. Thank you.

Sincerely yours,

SPECK & AANESTAD
A Professional Corporation



Jeanno E. Parnica

JPS:jef

Enclosures

cc: Client (w/encls.)

Edward A. Lawson (w/encls.)

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 120 East Avenue
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 Telephone (208) 726-1421
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 Attorneys for Permit Assignee SDRTR, LLC

BEFORE THE IDAHO DEPARTMENT OF WATER RESOURCES

IN THE MATTER OF PERMIT NO. 37-	)	
8388 IN THE NAME OF SDRTR, LLC	)	
AS ASSIGNEE OF STEVEN D.	)	
REUTHER	)	MOTION OPPOSING
	)	LISA VERLING'S PETITION
	)	TO INTERVENE
	)	
_____	)	

SDRTR, LLC ("SDRTR"), by and through its attorney, James P. Speck, of Speck & Aanstad, A Professional Corporation, hereby moves the Idaho Department of Water Resources (the "Department") pursuant to IDAPA 37.01.01.354 for its order denying Lisa Vierling's Petition to Intervene/Protest to Reinstate Lapsed Permit 37-8388 (the "Petition").

IDAPA 37.01.01.350 provides as follows:

Persons not applicants or claimants or appellants, petitioners, complainants, protestants, or respondents to a proceeding who claim a direct and substantial interest in the proceeding may petition for an order from the presiding officer granting intervention to become a party, *if a formal hearing is required by statute to be held in the proceeding.* (Emphasis added).

The governing statute in the present case is I.C. § 42-218a. That statute does not require the Department to hold or conduct a "formal hearing" in proceedings for the reinstatement of a lapsed permit to appropriate water. In fact, the statute does not even mention or provide for the possibility of holding a hearing in such proceedings. Therefore, under its own rules of procedure, the

MOTION OPPOSING LISA VERLING'S PETITION TO INTERVENE - 1

Department does not have the authority to allow intervention by Ms. Verling into these permit reinstatement proceedings.

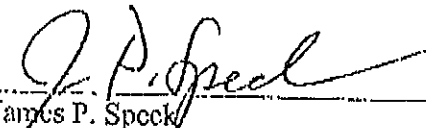
If the Department determines it does have the authority to allow intervention in these permit reinstatement proceedings, SDRTR submits Ms. Vierling does not possess the required "direct and substantial interest" for the Department to grant such intervention. The water rights held by Ms. Verling as referenced in her Petition (37-13054 and 37-20894) are based on beneficial use and not a previous decree, permit or license. The recommendations for these water rights filed in the SRBA by the Department have been objected to by both Ms. Verling and a neighbor raising the question of whether or not Ms. Verling has any valid water rights for her uses of water from Warfield Hot Springs. Therefore, unless and until the SRBA Court issues partial decrees for the water rights claimed by Ms. Verling, she does not have the "direct and substantial interest" in the reinstatement proceedings as required by the Department's rules of procedure.

In summary, there is no authority under the Department's rules of procedure to allow intervention by a non-party in lapsed permit reinstatement proceedings under I.C. 42-218a. If the Department disagrees with this position, then it should find that Ms. Verling's does not have the "direct and substantial interest" in these reinstatement proceedings. Therefore, Ms. Vierling's Petition must be denied. SDRTR requests the Department issue an appropriate order.

Respectfully submitted, this 9 day of June, 2008.

SPECK & AANESTAD
A Professional Corporation
Attorneys for Permit Assignee SDRTR, I.L.C.

By: _____


James P. Speck

CERTIFICATE OF SERVICE

I hereby certify that on the 9 day of June 2008, I served a true and correct copy of the within and foregoing document upon the persons named below in the manner noted:

Mr. Allen Merritt
Idaho Department of Water Resources
1341 Fillmore, Suite 200
Twin Falls, ID 83301
Fax 1-208-736-3037

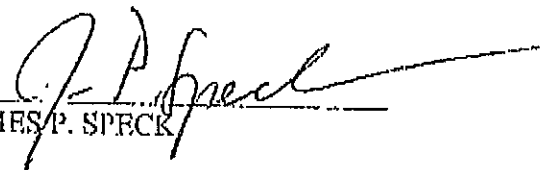
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