

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

IN THE MATTER OF SYLTE'S PETITION
FOR DECLARATORY RULING
REGARDING DISTRIBUTION OF WATER
TO WATER RIGHT NO. 95-0734

Docket No. P-DR-2017-001

**DEFAULT ORDER DISMISSING
PARTIES**

BACKGROUND

On February 16, 2017, Gordon Sylte, Susan Goodrich, John Sylte, and Sylte Ranch Limited Liability Company (collectively, "Sylte") filed with the Idaho Department of Water Resources ("Department") *Sylte's Petition for Declaratory Ruling* ("Petition") pursuant to Idaho Code § 67-5232 and Rule 400 of the Department's Rules of Procedure (IDAPA 37.01.01.400).

Sylte requests the Department issue an order setting aside the September 20, 2016, letter ("Instructions") the Department sent to the watermaster of Water District 95C ("WD95C") requiring the watermaster adhere to detailed instructions contained therein in administering water rights pursuant to the *Final Decree*, In the Matter of the General Determination of the Rights to the Use of the Surface Waters of Twin Lakes, Including Tributaries and Outlets, Case No. 32572 (1st Jud. Dist. Ct. April 20, 1989) ("Decree"). *Petition* at 1. Sylte asserts the Instructions "are contrary to the [Decree] and are not in accordance with the prior appropriation doctrine as required by Idaho Code Section 42-602." *Id.* Sylte also asserts the prior appropriation doctrine and Decree "require delivery of water to Sylte's water right no. 95-0734 on a continuous year-round basis irrespective of the amount of natural tributary inflow into Twin Lakes or the application of the futile call doctrine." *Id.* at 1-2.

On April 14, 2017, the Director of the Department issued the *Notice of Prehearing Conference; Order Setting Deadline for Petitions to Intervene and Appointing Hearing Officer* ("Notice"), scheduling the prehearing conference in this matter for May 22, 2017, and appointing Shelley Keen as the hearing officer.

On May 22, 2017, the hearing officer held the prehearing conference. On May 26, 2017, the hearing officer issued an *Order Regarding Intervention; Order Requiring Submittal of Information* ("Order"). The hearing officer ordered the parties who were not represented by counsel at the prehearing conference to submit the form enclosed with the Order to the Department by June 5, 2017. The hearing officer specified that parties who do not timely submit the form enclosed with the Order "may be dismissed as parties to this contested case by default order for failure to respond to the written information inquiry, unless good cause for such failure can be shown." *Order* at 7.

The hearing officer did not receive the form enclosed with the Order from Diane Miller, Estate of Carmela G. Dempsey and Curran D. Dempsey Disclaimer Trust, David Myers, and Gloria Poole. Accordingly, on June 14, 2017, the hearing officer issued a *Notice of Proposed Default Order* (“Notice of Proposed Default”) to Diane Miller, Estate of Carmela G. Dempsey and Curran D. Dempsey Disclaimer Trust, David Myers, and Gloria Poole for failure to respond to the written information inquiry required by the Order.

The Notice of Proposed Default explained that, pursuant to the Department’s Rule of Procedure 701, Diane Miller, Estate of Carmela G. Dempsey and Curran D. Dempsey Disclaimer Trust, David Myers, and Gloria Poole had seven (7) days after service of the notice to file a written petition requesting that the proposed default order not be entered. *Notice of Proposed Default Order* at 3 (citing IDAPA 37.01.01.701). The Notice of Proposed Default also explained the petition must state the grounds why the petitioning party believes the default order should not be entered. *Id.*

On June 20, 2017, the Estate of Carmela G. Dempsey and Curran D. Dempsey Disclaimer Trust submitted a response to the Notice of Proposed Default Order requesting that the proposed default order not be entered.

ANALYSIS

The hearing officer concludes the Estate of Carmela G. Dempsey and Curran D. Dempsey Disclaimer Trust stated good cause for failure to submit the form enclosed with the Order in the response to the Notice of Proposed Default Order. The Estate of Carmela G. Dempsey and Curran D. Dempsey Disclaimer Trust also submitted the form enclosed with the Order to the Department on June 26, 2017. The hearing officer will not issue a default order dismissing the Estate of Carmela G. Dempsey and Curran D. Dempsey Disclaimer Trust as a party.

Diane Miller, David Myers, and Gloria Poole did not file any response to the Notice of Proposed Default Order. Consistent with the Notice of Proposed Default, the hearing officer will issue a default order dismissing Diane Miller, David Myers, and Gloria Poole as parties.

DEFAULT ORDER

Based upon their failure to respond to the written information inquiry required by the May 26, 2017, *Order Regarding Intervention; Order Requiring Submittal of Information*, it is HEREBY ORDERED that Diane Miller, David Myers, and Gloria Poole are DISMISSED AS PARTIES to this matter.

DATED this 7th day of July 2017.



SHELLEY KEEN
Hearing Officer

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 7th day of July 2017, I served a true and correct copy of the foregoing document on the parties listed below by U.S. Certified Mail, Return Receipt Required.

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Jean Hersley

I HEREBY FURTHER CERTIFY that on this 7th day of July 2017, I served a true and correct copy of the above and foregoing *Default Order Dismissing Parties* on the parties listed below by their designated method of service as indicated.

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