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DEPARTMENT OF
WATER RESOURCES

**BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO**

IN THE MATTER OF CLARK'S REQUEST
FOR REMOVAL OF THE WATER
DISTRICT NO. 95C WATERMASTER,
LAURIN SCARCELLO

Docket No. C-RWM-2016-001

**SYLTE'S REQUEST FOR ORAL
ARGUMENT**

Susan Goodrich and John Sylte (together, "Sylte"), by and through their counsel of record, Givens Pursley LLP, and pursuant to Rules 563 and 730.02.d of the Department's Rules of Procedure, IDAPA 37.01.01.563 and .730.02.d, hereby request oral argument before the Director on *Sylte's Appeal and Exceptions to Amended Preliminary Order Removing a Watermaster ("Appeal")*.¹

Although Sylte was disinclined to request oral argument when it filed the *Appeal*, it now requests oral argument so it can address incorrect characterizations of fact and law in Colby Clark's *Complainant's Response to Sylte's Appeal and Exceptions ("Response")*, dated March 2, 2017,² including without limitation the *Response's* incorrect contentions: (1) that Twin Lakes' natural lake storage was "inaccessible" to Rathdrum Creek water users when water right no. 95-

¹ This request incorporates the defined terms used in the *Appeal*.

² Sylte's counsel received the *Response* on March 6, 2017.

0734 was created;³ (2) that water right no. 95-0734 is an instream stockwater right;⁴ (3) that water rights junior to water right no. 95-0734 may interfere with its exercise;⁵ (4) that the source of water right no. 95-0734 is Twin Lakes tributary to Rathdrum Creek;⁶ and (5) that Twin Lakes' tributary inflows are relevant to the administration of water right no. 95-0734 or the application of the futile call doctrine with respect to that right.⁷

In this *Appeal*, Sylte does not request that the Director make final determinations about how water rights in WD 95C should be administered pursuant to the *Decree*, the *Memorandum Decision*, and Idaho's Prior Appropriation Doctrine. Nevertheless, the *Response* dedicates the bulk of its arguments to matters involving the administration of water rights in WD 95C. Sylte recognizes that water users in WD 95C disagree about how their various water rights should be administered, but this is not the proper proceeding for making final determinations about such matters. Through its *Declaratory Ruling Petition*, Sylte has initiated a proceeding where a record can be fully developed to address those disagreements.⁸

³ The *Memorandum Decision* held that "the outlet waters of Twin Lakes flowed over the top of the lip during periods of high water and through the natural pre-dam obstruction at all times, forming the source waters of Rathdrum Creek." *Memorandum Decision* at 11 (emphasis in original).

⁴ Water right no. 95-0734 was decreed with a point of diversion location and no remark stating "in-stream stockwater," while other stockwater rights (e.g. nos. 95-0892, 95-0721, and 95-0890) were decreed with remarks stating "in-stream stockwater" without any decreed points of diversion. *Proposed Finding* at 3.

⁵ Idaho Const. art. XV, § 3 ("Priority of appropriation shall give the better right as between those using the water...."); *Jenkins v. IDWR*, 103 Idaho 384, 388, 647 P.2d 1256, 1260 (1982) ("Priority in time is an essential part of western water law and to diminish one's priority works an undeniable injury to that water right holder.")

⁶ Water right no. 95-0734's source was decreed as Rathdrum Creek tributary to sinks. *Proposed Finding* at 3.

⁷ See Sylte's *Petition for Reconsideration of Preliminary Order Removing a Watermaster* ("Reconsideration Petition") at 2-3 (Jan. 18, 2017) (explaining findings and conclusions in the *Decree* and *Memorandum Decision* which require delivery of water to water right no. 95-0734 on a continuous year-round basis irrespective of Twin Lakes' tributary inflow); Sylte's *Petition for Declaratory Ruling* ("Declaratory Ruling Petition"), IDWR Docket No. P-DR-2017-001, at 8-18 (Feb. 16, 2017) (further explaining the same). The *Reconsideration Petition* and the *Declaratory Ruling Petition* are incorporated herein by reference.

⁸ To the extent this watermaster removal proceeding results in any findings and conclusions about the administration of water rights in WD 95C, they should confirm that water must be delivered to 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. See generally *Declaratory Ruling Petition*; *Reconsideration Petition* at 2-3.

Sylte also requests oral argument so it can clarify, to the extent necessary, its concerns in this *Appeal*. As explained in the *Appeal*, Sylte does not ask the Director to set aside the removal of the Watermaster in WD 95C, but simply seeks to protect the interests of water users from potentially prejudicial findings and conclusions made in this watermaster removal proceeding that (i) are contrary to the *Decree*; and (ii) could be interpreted as final determinations as to the administration of water rights in WD 95C, specifically water right no. 95-0734.

In conclusion, Sylte respectfully requests oral argument before the Director in support of its *Appeal*. Sylte further requests that oral argument be held in Boise, Idaho, as contemplated in the explanatory information accompanying the *Amended Order*. Counsel for Sylte is available for oral argument on any date in March or April, 2017, except for March 20, 30, and 31, and April 5 and 12-21. Counsel's available dates in May and June 2017 will be provided if necessary.

Respectfully submitted this 8th day of March, 2017.

GIVENS PURSLEY LLP



Michael P. Lawrence

Attorneys for Susan Goodrich and John Sylte

CERTIFICATE OF SERVICE

I hereby certify that on this 8th day of March, 2017, I caused to be served a true and correct copy of the foregoing by the method indicated below, and addressed to the following:

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