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IDWR / NORTH

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

IN THE MATTER OF CLARK’S REQUEST)	Docket No. C-RWM-2016-001
FOR REMOVAL OF THE WATER DISTRICT)	
NO. 95C WATERMASTER, LAURIN)	CLARK’S RESPONSE
SCARCELLO)	TO SYLTE’S REQUEST FOR
_____)	ORAL ARGUMENT

Colby Clark hereby responds to the Sylte’s Request for Oral Argument (“Request”) filed by Susan Goodrich and John Sylte (collectively hereinafter “Sylte”). The Sylte’s Request for oral arguments should be summarily rejected for the following reasons:

I. The Sylte’s Do Not Have An Affirmative Right to Oral Argument on Their Appeal and Exceptions.

The Sylte’s do not have a right to have oral argument. Rather, the code provides that that the Director *may* allow oral argument. Idaho Code §67-5244, §67-5245 and IDAPA Rule §563. Oral arguments in this proceeding are unnecessary. The Sylte’s do not contest removing the watermaster. Rather, they request that the Director curtail certain findings of fact that may or may not affect their arguments in Case P-DR-2017-001. The Appeal and Exceptions that the

Sylte's filed in this matter make their point sufficiently clear to make a ruling. Oral arguments are unnecessary in that the removal of the Watermaster is uncontested.

II. The Syltes are Already Presenting This Argument in Another Venue (P-DR-2017-001) and Any Arguments for the Same Purpose Would Be Redundant

The Sylte's are already trying to contest these matters of settled law (points 1-5) in another case in their Petition for Declaratory Ruling P-DR-2017-001. All arguments pursuant to challenges to 2016 Watermaster Instructions provided by IDWR (which are an attempt to re-litigate the 1989 Decree) should be consolidated under the Sylte's Petition for Declaratory Ruling P-DR-2017-001 and then summarily dismissed for being a blatant attempt to make an end-run around the 1989 Decree,

As such, the Sylte's request to re-open oral arguments should be denied in full. It is not reasonable to re-open oral arguments for the purpose of pursuing a matter that is already being pursued in another case.

III. The Syltes are Attempting to Contest Matters of Settled Law and Substantive Content Within the 1989 Decree, Which is Outside the Scope of the These Proceedings.

The Sylte's and their attorneys in Request (points 1-5) are attempting to argue against what are considered matters of settled law and which matters were clearly defined in the 1989 Decree, the 1989 Decision Memorandum, and the administration of which is clearly prescribed

in the 2016 IDWR Watermaster Instructions (Instructions). Arguments seeking to establish additional water rights and water flow allotments over and above what is granted by their existing water rights, within the decree, described in its respective definitions, findings, and conclusions or which contest the content of the Instructions are not within scope of the watermaster removal hearing.

The purpose of the watermaster removal hearing was to determine if the watermaster was satisfactorily performing his job and acting in compliance with the administration of water rights as defined by applicable laws, statutes, decrees, instructions, etc. Following the November, 2016 hearing, Shelley Keen, the Hearing Officer, found that the watermaster was not in compliance with applicable obligations, duties, and responsibilities, and moreover expressed contempt and a continuing wilful disregard and disobedience for the same.

As such, the Sylte's request to re-open oral arguments should be denied in full. The matters being requested (substantive changes to findings within the 1989 Decree and the modifications to the IDWR interpretation thereof in the watermaster Instructions) are out of scope of this proceeding.

IV. If Allowed to Proceed, Oral Arguments Must be in Water District 95C and be Open to All Water Right Holders to Participate

Although the generic instructions attached on yellow paper to the Preliminary Order and Amended Preliminary Order state: "Unless the Director orders otherwise, all oral arguments will be heard in Boise, Idaho," these instructions seem to conflict with Idaho Code §42-605. If the

Hearing Officer does decide to re-open oral arguments for C-RWM-2016-001, the same must be held in Water District 95C, per Idaho Code §42-605, which states:

(9) The director of the department of water resources may remove any watermaster whenever such watermaster fails to perform the watermaster's duty, upon complaint in that respect being made to the director in writing, by one (1) person owning or having the right to the use of a water right in such district, which right has been adjudicated or decreed by the court or is represented by valid permit or license issued by the department of water resources provided, that upon investigation the director, after a hearing with the other water users of said district, which shall be held in the district or at some location convenient to the water users of the district, finds such charge to be true, and the director may appoint a successor for the unexpired term. (Emphasis added).

It is unreasonable for the Sylte's to obtain a special, off-site, private venue to present additional oral arguments in Boise, Idaho (a distance too great and costly for other water rights holders and participants to attend). This would give the Sylte's an unfair advantage over other water right holders who may want to participate. Moreover, if oral arguments are allowed to proceed, which they should not, it is only reasonable to re-open them for all water right holders on the Twin Lakes watershed and allow all of them the opportunity to make their case once again.

Respectfully Submitted,



Colby Clark

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BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

IN THE MATTER OF CLARK'S REQUEST FOR) Docket No. C-RWM-2016-001
REMOVAL OF THE WATER DISTRICT NO 95C)
WATERMASTER, LAURIN SCARCELLO) **PROOF OF SERVICE**
_____)

I HEREBY CERTIFY that on this 13th day of March 2017, I served the original of the **Complainant's Response to Sylte's Request for Oral Argument** on the following office by hand delivery to the office.

Idaho Department of Water Resources
c/o Morgan Case
7600 Mineral Drive Ste. 100
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Copies these same documents were serve via U.S. Postal service on the same day to the following addresses:

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Dated: March 13, 2017



Kathy Clark