

**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

**NOTICE OF PREHEARING
CONFERENCE; ORDER SETTING
DEADLINE FOR PETITIONS TO
INTERVENE AND APPOINTING
HEARING OFFICER**

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")¹ 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")² 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.

¹ The Petition may be viewed on the Department's website at: <https://idwr.idaho.gov/legal-actions/administrative-actions/sylte-petition.html>.

² The Instructions may be viewed on the Department's website at: <https://idwr.idaho.gov/files/legal/C-RWM-2016-001/C-RWM-2016-001-20160920-Watermaster-instructions.pdf>.

ANALYSIS

The Department's Rule of Procedure 400 ("Rule 400") states that any person may petition the Department "for a declaratory ruling on the applicability of a statute, rule or order administered by the agency." IDAPA 37.01.01.400. Rule 400 requires that a petition for declaratory ruling must identify the petitioner and state the petitioner's interest in the matter, state the declaratory ruling the petitioner seeks, and indicate the order and factual allegations upon which the petitioner relies to support the petition. *Id.* Sylte's Petition meets the requirements of Rule 400.

The Department's Rule of Procedure 401 ("Rule 401") requires the Department issue notice of the Petition "in a matter designed to call its attention to persons likely to be interested in the subject matter of the petition." IDAPA 37.01.01.401. The Department's Rule of Procedure 402 provides that "the agency's decision on a petition for declaratory ruling . . . is a final agency action decided by order." IDAPA 37.01.01.402.01. Idaho Code § 67-5232 states "[a] petition for declaratory ruling does not preclude an agency from initiating a contested case in the matter."

The Director will address Sylte's Petition through a formal contested case proceeding. The Director will schedule a prehearing conference for purposes identified in the Department's Rule of Procedure 510. *See* IDAPA 37.01.01.510. The Director will also require that petitions to intervene be filed by May 8, 2017, in accordance with the Department's Rules of Procedure 351 and 352. *See* IDAPA 37.01.01.350 & 352. Sylte is currently the only party to the matter and, therefore, not required to file a petition to intervene to participate in the contested case. *See* IDAPA 37.01.01.150-156. The Director will appoint a hearing officer to hear the contested case pursuant to the Department's Rule of Procedure 410. *See* IDAPA 37.01.01.410. In compliance with Rule 401, the Director is sending this notice of prehearing conference and order setting deadline for petitions to intervene and appointing hearing officer to "persons likely to be interested in the subject matter" of the Petition as reflected in the attached Certificate of Service.

NOTICE OF PREHEARING

The Director hereby notifies water users that a prehearing conference will be held in the above-captioned matter on **May 22, 2017, at 1:00 p.m. (PST)**, at the Kootenai County Commissioner's building, meeting room 1A, located at 451 Government Way, Coeur d'Alene, Idaho 83816. The purpose of the prehearing conference will be to discuss hearing dates and other items listed in the Department's Rule of Procedure 510. *See* IDAPA 37.01.01.510.

Sylte and those seeking to intervene must be represented at the prehearing conference in person or by telephone. If participating by telephone, **please dial 1-720-279-0026 and enter the following guest code when prompted: 581193#.**

The prehearing conference will be held in accordance with provisions of Chapters 2 and 17, Title 42 and Chapter 52, Title 67, Idaho Code, and the Department's Rules of Procedure, IDAPA 37.01.01. A copy of the Rules of Procedure may be obtained from the Department or at <https://adminrules.idaho.gov/rules/current/37/0101.pdf>.

The prehearing conference will be conducted in a facility which meets the accessibility requirements of the Americans with Disabilities Act. If you require special accommodations in order to attend, participate in or understand the conference, please contact Kimi White at (208) 287-4815, no later than five (5) days prior to the conference.

ORDER

Based upon and consistent with the foregoing, IT IS HEREBY ORDERED that petitions to intervene must be filed with the Department by **May 8, 2017**, in accordance with the Department's Rules of Procedure 350-352. *See* IDAPA 37.01.01.350-352. A \$25.00 filing fee per person seeking to intervene must be submitted at the time of filing a petition to intervene with the Department. *See* Idaho Code § 42-221(L).

IT IS FURTHER ORDERED that Shelley Keen is appointed hearing officer pursuant to the Department's Rule of Procedure 410. *See* IDAPA Rule 37.01.01.410.

DATED this 14th day of April 2017.



GARY SPACKMAN
Director

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 14th day of April 2017, I served a true and correct copy of the foregoing document on the following by the method(s) indicated:

MICHAEL P LAWRENCE
JACK W RELF
GIVENS PURSLEY LLP
601 WEST BANNOCK ST
PO BOX 2720
BOISE ID 83701-2720
mpl@givenspursley.com

- ☒ U.S. Mail, postage prepaid
- ☐ Hand Delivery
- ☐ Overnight Mail
- ☐ Facsimile
- ☒ Email

Courtesy Copy to:

COLBY CLARK
30701 N CLAGSTONE RD
ATHOL ID 83801

- ☒ U.S. Mail, postage prepaid
- ☐ Hand Delivery
- ☐ Overnight Mail
- ☐ Facsimile
- ☐ Email

I FURTHER CERTIFY that, on this 14th day of April 2017, a true a correct copy of the foregoing was served by U.S. mail on water users at their last known addresses listed in the document titled "Additional Service List in the Matter of Sylte's Petition for Declaratory Ruling Regarding Distribution of Water to Water Right No. 95-0734" dated April 14, 2017, and posted to the Department's website at: <https://idwr.idaho.gov/legal-actions/administrative-actions/sylte-petition.html#P-DR-2017-001>.



Kimi White