

**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

**ORDER REGARDING
INTERVENTION; ORDER
REQUIRING SUBMITTAL OF
INFORMATION**

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.

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 hearing officer.

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>.

The Department received sixty-seven timely petitions to intervene, and five untimely petitions to intervene. Sylte had seven days to file a motion opposing the petitions to intervene. IDAPA 37.01.01.354. The Department received no written opposition to the petitions to intervene.

On May 22, 2017, the hearing officer held the prehearing conference. Sylte appeared in person. All but sixteen of the petitions to intervene were represented by petitioners either in person or by telephone. Three of the sixteen unrepresented petitions to intervene were untimely filed.³ The two other untimely filed petitions to intervene were represented by Eva Maxfield (“Maxfield”) and Rick and Corrinne Van Zandt (“Van Zandt”) at the prehearing conference.

The hearing officer inquired of Sylte whether Sylte objected to any of the petitions to intervene represented by petitioners appearing at the prehearing conference. Counsel for Sylte stated that Sylte did not object to the petitions to intervene filed by Twin Lakes Improvement Association (“TLIA”) and Twin Lakes Flood Control District No. 17 (“FCD 17”). Accordingly, the hearing officer verbally granted TLIA’s and FCD 17’s petitions to intervene. Counsel for Sylte did object to the remaining petitions to intervene. The hearing officer inquired of Sylte’s reasons for failing to object in writing within seven days of receipt of the petitions as required by the Department’s Rule of Procedure 354. The hearing officer also allowed those seeking to intervene to respond to Sylte’s objection to their intervention. Thereafter, the hearing officer verbally granted, over Sylte’s objections, the petitions to intervene filed by those petitioners in addition to TLIA and FCD 17 who were present at the prehearing conference either in person or by telephone. The hearing officer stated he would issue a written decision documenting his decision granting intervention. The hearing officer also stated he would consider and address the untimely petitions to intervene by written order following the prehearing conference. Based upon discussion at the prehearing conference, the hearing officer also stated he would require additional information regarding the petition to intervene filed by FCD 17.

At the prehearing conference, counsel for Sylte raised concerns, among others, that interests of individual intervenors may be adequately represented by other intervenors and there is potential for duplicative or repetitive testimony and evidence being offered at hearing. To address this, Sylte’s counsel, TLIA’s counsel, and other intervenors expressed a desire for coordinating and consolidating intervenors. It was suggested that the hearing officer allow individual intervenors to designate a spokesperson to represent their interests in this proceeding, subject to limitations.

ANALYSIS

The Department’s Rule of Procedure 353 states:

If a timely-filed petition to intervene shows direct and substantial interest in any part of the subject matter of a proceeding and does not unduly broaden the issues, the presiding officer will grant intervention, subject to reasonable conditions, unless the applicant’s interest is adequately represented by existing

³ On May 26, 2017, the hearing officer issued a *Notice of Proposed Default Order* to the representatives of the sixteen petitions to intervene (whether timely or untimely) who did not appear at the prehearing conference.

parties. If it appears that an intervenor has no direct or substantial interest in the proceeding, the presiding officer may dismiss the intervenor from the proceeding.

IDAPA 37.01.01.353.

Rule 352 of the Department's Rule of Procedure allows the hearing officer to consider and deny or grant untimely filed petitions to intervene "for failure to state good cause for untimely filing, to prevent disruption, prejudice to exiting parties or undue broadening of the issues, or for other reasons." IDAPA 37.01.01.352. The two untimely petitions to intervene filed by Maxfield and Van Zandt were received by the Department on May 9, 2017, just one day past the May 8, 2017, deadline set forth in the Notice. Also, Maxfield certified her petition to intervene was sent by U.S. Mail to the Department on May 7, 2017. Vand Zandt certified their petition was sent by U.S. Mail to the Department on May 8, 2017. Maxfield and Van Zandt received the Notice because they were identified by the Department as "persons likely to be interested in the subject matter" of the Petition. *Notice* at 2. Maxfield and Van Zandt state in their petitions to intervene they are water right holders in WD95C. The hearing officer concludes the two untimely petitions to intervene filed by Maxfield and Van Zandt should be granted.

The hearing officer has discretion to exclude repetitive evidence under Rule 600 of the Department's Rules of Procedure. IDAPA 37.01.01.600. Certain intervenors may have similar interests or concerns as other intervenors, and they may not have unique evidence to present in the contested case. As a result, their independent participation in the hearing may generate repetitive evidence. Accordingly, the hearing officer will allow individual intervenors to designate a spokesperson, with limitations.

The following order documents the hearing officer's above-described decisions in the prehearing conference regarding intervention, grants the two untimely petitions to intervene filed by Maxfield and Van Zandt, and orders parties to submit information:

ORDER

Based upon and consistent with the foregoing, IT IS HEREBY ORDERED that the petitions to intervene filed by the following are GRANTED as stated at the prehearing conference pursuant to Rule 353 of the Department's Rules of Procedure:

Susan Ellis

Donald R. Ellis

Upper Twin Lakes, LLC

Arthur L. Chetlain Jr.

Larry D. and Janice A. Faris Living Trust

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Kristin E. Megy

Terry J. Laiberte

Clarence & Kurt Geiger

Bruce and Jamie Wilson

James R. and Wendy K. Hilliard

William H. Minatre

Angela Murray

Douglas and Bertha Jayne

Debra Andrews

John Andrews

Colby Clark

Kathy Clark

Amber Hatrock

Patrick & Denise Hogan

Michael W. Knowles

Adam Kremin

Robert A. Kuhn

Patrick Miller

John Lake Ommen

Tom Pearson

Kimberli Roth

Hal Sunday

Gearld J. Weller

Terry Kiefer

Mary F. Anderson

David Ziuchkovski

Twin Echo Resort, Julie Fletcher

Darwin Schultz

Mary F. Anderson, et al

David Myers

Steve & Pam Rodgers

Joan M. Freije

Paul Finman

Curran D. Dempsey Disclaimer Trust and Estate of Carmela G. Dempsey by Michael & Curran Dempsey

Twin Lakes Flood Control District No. 17

John Nooney

David & Lori Schafer

Matthew Bafus

Scott Erickson

Gloria Poole

Dianne Miller

Wes Crosby

James Curb

Maureen DeVitis

Leif Houkom

Donald M. Jayne

Molly Seaburg

Twin Lakes Improvement Association, represented by Norman M. Semanko, Moffat, Thomas, Barrett, Rock & Fields, Chartered.

Eva Maxfield

Rick & Corrinne Van Zandt

IT IS FURTHER ORDERED that, pursuant to the Department's Rule of Procedure 352, the petitions to intervene filed by Eva Maxfield and Rick & Corrinne Van Zandt are GRANTED.

IT IS FURTHER ORDERED that Twin Lakes Flood Control District No. 17 must submit information to the hearing officer documenting the board resolution or similar authorization upon which the Flood Control District filed its petition to intervene **by June 5, 2017**.

IT IS FURTHER ORDERED that parties who were present but not represented by counsel at the May 22, 2017, prehearing conference, must submit the enclosed form to the hearing officer by U.S. mail or hand delivery to the Department's Northern Regional Office or State Office stating 1) whether the party consents to email service of documents in this matter by the Department and other parties; 2) whether the party wishes to withdraw from participation in this matter pursuant to the Department's Rule of Procedure 204; and 3) whether the party has designated a spokesperson, who must be another party granted intervenor status herein or be an intervenor's attorney, all **by June 5, 2017**. Upon designating a spokesperson, the individual intervenor's petition to intervene will be subsumed into the designated intervenor spokesperson's petition to intervene, and the individual intervenor will thereby waive the right to independently conduct discovery, to call and examine witnesses, and to individually negotiate settlement. Individual intervenors who designate a spokesperson will retain the right to personally testify and present evidence at the hearing, will be subject to cross-examination and discovery regarding their proposed individual testimony and evidence, and will be bound by any settlement reached by their designated spokesperson.

IT IS FURTHER ORDERED that nothing herein precludes an intervenor from retaining an attorney, either individually or jointly with other intervenors, and filing a notice of representation pursuant to Rule 202 of the Department's Rules of Procedure or a notice of substitution of representative pursuant to Rule 205 of the Department's Rules of Procedure.

IT IS FURTHER ORDERED that parties who do not timely designate a spokesperson as set forth above, or who do not appear personally or through an attorney at conferences or hearings or for other matters scheduled for party appearance by the hearing officer, may be dismissed as parties to this contested case by default order for failure to appear, unless good cause for such failure can be shown.

IT IS FURTHER ORDERED that parties who do not timely submit the enclosed form as set forth above 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.

DATED this 26th day of May 2017.



SHELLEY KEEN
Hearing Officer

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that, on this 26th day of May 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 "Certificate of Service for Order Regarding Intervention; Order Requiring Submittal of Information" dated May 26, 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