

**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 DENYING
PETITIONS TO INTERVENE**

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

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>.

Shelley Keen as the hearing officer. The Notice stated that “those seeking to intervene must be represented at the prehearing conference in person or by telephone.” *Notice* at 2.

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. The following individuals who filed petitions to intervene did not appear at the prehearing conference in person or by telephone as required by the Notice.

- Edwin G. Frost, Personal Representative of the Estate of Eloise F. Phelps
- Cindy A. and David R. Nipp
- Sandra Cozzetto
- Charles and Ruth Benage
- Marie A. Alice
- Rene Lacroix
- Michael D. Watkins
- Harold Elofson
- John B. Conklin
- Steven and Elizabeth Holmes
- Barbara Herr
- Rodney D. Harris
- Kathleen C. Hicks
- Lauri Oates Hite
- Duane and Janice Wilcox
- William P. and Julie A. Hope

At the prehearing conference, the hearing officer stated he would issue a notice of proposed default order to individuals who filed petitions to intervene (whether timely or untimely) but did not attend the prehearing conference.

On May 26, 2017, the hearing officer issued a *Notice of Proposed Default Order* (“Notice of Proposed Default”) upon the above-named individuals who filed petitions to intervene but did not appear at the prehearing conference in person or by telephone as required by the Notice. The Notice of Proposed Default informed the individuals that, pursuant to Rule 701 of the Department’s Rules of Procedure, they had seven (7) days after service of the Notice of Proposed Default to file a written petition requesting that the proposed default order not be entered. *Notice of Proposed Default* at 3.

The hearing officer did not receive a satisfactory written response to the Notice of Proposed Default from Harold Elofson, Edwin Frost – Estate of Eloise Phelps, Rodney D. Harris, Kathleen

C. Hicks, Lauri Oates Hite, William P. and Julie A. Hope, Michael D. Watkins, and Duane and Janice Wilcox.

ANALYSIS

Rule 702 of the Department's Rules of Procedure authorizes the Department to issue a default order to parties who fail to file a written petition contesting a notice of proposed default order within the seven day time period prescribed in Rule 701. IDAPA 37.01.01.701-702.

As stated above, the hearing officer did not receive a satisfactory written response to the Notice of Proposed Default from Harold Elofson, Edwin Frost – Estate of Eloise Phelps, Rodney D. Harris, Kathleen C. Hicks, Lauri Oates Hite, William P. and Julie A. Hope, Michael D. Watkins, and Duane and Janice Wilcox. Accordingly, the hearing officer will issue a default order denying the petitions to intervene filed in this matter filed by Harold Elofson, Edwin Frost – Estate of Eloise Phelps, Rodney D. Harris, Kathleen C. Hicks, Lauri Oates Hite, William P. and Julie A. Hope, Michael D. Watkins, and Duane and Janice Wilcox.

DEFAULT ORDER

Based upon their failure to appear at the time and place set for the prehearing conference as required in the April 14, 2017, *Notice of Prehearing Conference; Order Setting Deadline for Petitions to Intervene and Appointing Hearing Officer*, it is HEREBY ORDERED that the petitions to intervene filed by Harold Elofson, Edwin Frost – Estate of Eloise Phelps, Rodney D. Harris, Kathleen C. Hicks, Lauri Oates Hite, William P. and Julie A. Hope, Michael D. Watkins, and Duane and Janice Wilcox are DENIED.

DATED this 14th day of June 2017.



SHELLEY KEEN
Hearing Officer

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 14th day of June 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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Kimi White

I HEREBY FURTHER CERTIFY that on this 14th day of June 2017, I served a true and correct copy of the: 1) *Default Order Denying Petitions to Intervene*; 2) *Notice of Proposed Default Order*; 3) *Order Granting Petitions to Intervene*; *Order Requiring Submittal of Information*; 4) *Order Granting Petition to Intervene*; *Order Requiring Submittal of Information*; and 5) *Order Authorizing Discovery*; *Scheduling Order*; *Notice of Hearing*; *Order Requiring Notice Regarding Participation*, on the parties listed below by their designated method of service as indicated.

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