

**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 AUTHORIZING  
DISCOVERY; SCHEDULING ORDER;  
NOTICE OF HEARING; ORDER  
REQUIRING NOTICE REGARDING  
PARTICIPATION**

**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") 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")<sup>1</sup> 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 for May 22, 2017, and appointing Shelley Keen as hearing officer.

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<sup>1</sup> 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, including one from Twin Lakes Improvement Association (“TLIA”), 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.<sup>2</sup> 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.

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. Parties at the prehearing conference also discussed that the hearing officer should issue an order authorizing discovery and a schedule for various deadlines and hearing dates.

On May 26, 2017, the hearing officer issued an *Order Regarding Intervention; Order Requiring Submittal of Information* (“Order”). The hearing officer documented his granting of timely petitions to intervene filed by petitioners who were present at the prehearing conference either in person or by telephone, granted the two untimely petitions to intervene filed by Maxfield and Van Zandt, and ordered the parties to submit the form enclosed with the Order to the Department by June 5, 2017. The hearing officer specified that parties who do not timely submit the form enclosed with the Order “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.” *Order* at 7.

On May 30, 2017, the Department received a petition to intervene from Mary K. Collins, Bosch Properties LLC.<sup>3</sup>

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<sup>2</sup> 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. On June 14, 2017, the hearing officer issued a *Default Order Denying Petitions to Intervene* denying the petitions to intervene filed in this matter 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. On June 14, 2017, the hearing officer also issued an *Order Granting Petitions to Intervene; Order Requiring Submittal of Information* to those who received the May 26, 2017, *Notice of Proposed Default Order* but satisfactorily petitioned the hearing officer to not enter the proposed default order against them.

<sup>3</sup> On June 14, 2017, the hearing officer issued an *Order Granting Petition to Intervene; Order Requiring Submittal of Information* granting Ms. Collins’ petition to intervene and requiring she submit additional information.

By the June 5, 2017, deadline set forth in the Order, the Department received forms enclosed with the Order from 56 intervenors.<sup>4</sup> For the parties' information, these forms are posted to the Department's website for this matter at: <https://idwr.idaho.gov/legal-actions/administrative-actions/sylte-petition.html>.<sup>5</sup>

Based upon and consistent with the above, the hearing officer will authorize discovery, adopt a scheduling order, and schedule a hearing as follows. The hearing officer will also require the parties who are representing themselves in this matter – Barbara Herr, Colby Clark, Paul Finman, Kristin E. Megy, and Twin Lakes Flood Control District No. 17 – to submit the enclosed *Notice Regarding Participation*.

### **ORDER AUTHORIZING DISCOVERY**

IT IS HEREBY ORDERED that the parties are authorized to engage in and conduct discovery.

### **SCHEDULING ORDER**

IT IS HEREBY ORDERED that the following schedule is ADOPTED:

|                |  |
|----------------|--|
| July 28, 2017  | Deadline for filing dispositive motions.   |
| Sept. 8, 2017  | Deadline for disclosing expert witnesses and exchanging expert reports.  |
| Sept. 22, 2017 | Deadline for rebuttal reports to expert reports.   |
| Sept. 29, 2017 | Deadline for completion of discovery (answers all provided).   |
| Oct. 13, 2017  | Deadline for filing prehearing briefs.   |
| Oct 13, 2017   | Deadline for parties to submit exhibits they intend to rely upon at hearing. Three copies of each exhibit must be physically received by the hearing officer by this deadline.   |
| Oct 13, 2017   | Deadline for parties to submit witness lists, including a list of expert witnesses (with summaries of expert qualifications) and a list of all other expected witnesses (including a summary of the scope of testimony). By this deadline the Department will also serve upon the parties a list of employees that may testify at hearing. |

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<sup>4</sup> On June 14, 2017, the hearing officer issued a *Notice of Proposed Default Order* to those intervenors who did not submit the form enclosed with the Order as required.

<sup>5</sup> The certificate of service for this *Scheduling Order*; *Notice of Hearing* reflects what parties consented to email service of documents.



## NOTICE OF HEARING

The hearing officer hereby notifies the parties that a hearing will be held in this matter beginning at **8:30 a.m. on October 23, 2017, and continuing through October 27, 2017**, as necessary, at the **University of Idaho Research Park Classroom, 721 S. Lochsa Street, Post Falls, Idaho 83854**. The hearing officer will be Shelley Keen.

The hearing will be conducted in accordance with the accessibility requirements of the Americans with Disabilities Act. If you require special accommodations in order to attend, participate in, or understand the hearing, please inform the Department no later than five (5) days prior to the conference. Inquiries for special accommodations should be directed to Kimi White, Idaho Department of Water Resources, P.O. Box 83720, Boise, Idaho 83720-0098, telephone: (208) 287-4815.

The hearing will be held in accordance with the 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 upon request or at <https://adminrules.idaho.gov/rules/current/37/0101.pdf>.

## ORDER

IT IS HEREBY ORDERED that parties who are representing themselves in this matter – Barbara Herr, Colby Clark, Paul Finman, Kristin E. Megy, and Twin Lakes Flood Control District No. 17 -- must submit a *Notice Regarding Participation*<sup>6</sup> to the hearing officer by U.S. mail or hand delivery to the Department's Northern Regional Office or State Office by **June 30, 2017**. Parties who do not timely submit the enclosed *Notice Regarding Participation* 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. IDAPA 37.01.01.700-701.

DATED this 14<sup>th</sup> day of June 2017.



SHELLEY KEEN  
Hearing Officer

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<sup>6</sup> The *Notice Regarding Participation* was attached to the *Order Authorizing Discovery; Scheduling Order; Notice of Hearing; Order Requiring Notice Regarding Participation* served to Barbara Herr, Colby Clark, Paul Finman, Kristin E. Megy, and Twin Lakes Flood Control District No. 17, by the method indicated on the Certificate of Service attached hereto and also is posted to the Department's website for this matter at <https://idwr.idaho.gov/legal-actions/administrative-actions/sylte-petition.html>.



## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 14<sup>th</sup> 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.

ESTATE OF CARMELA G DEMPSEY  
CURRAN D DEMPSEY DISCLAIMER  
TRUST  
3224 S WHIPPLE ROAD  
SPOKANE WA 99206-6310

DIANE MILLER  
PO BOX 557  
SPIRIT LAKE ID 83869

DAVID MYERS  
90335 SUMMIT VIEW DR  
KENNEWICK WA 99338

GLORIA POOLE  
325 E SHARP  
SPOKANE WA 99202



Kimi White

I HEREBY FURTHER CERTIFY that on this 14<sup>th</sup> 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.

MICHAEL P LAWRENCE  
JACK W RELF  
GIVENS PURSLEY LLP  
[mpl@givenspursley.com](mailto:mpl@givenspursley.com)  
[jwr@givenspursley.com](mailto:jwr@givenspursley.com)  
[lorigibson@givenspursley.com](mailto:lorigibson@givenspursley.com)

DONALD R AND SUSAN R ELLIS  
[donellisflhx@hotmail.com](mailto:donellisflhx@hotmail.com)  
[susan\\_elizabeth\\_ellis@hotmail.com](mailto:susan_elizabeth_ellis@hotmail.com)

UPPER TWIN LAKES LLC  
[vcater@peoplepc.com](mailto:vcater@peoplepc.com)

ARTHUR L CHETLAIN JR  
2125 S 50TH AVE N W  
GIG HARBOR WA 98335

LARRY D AND JANICE A FARIS  
LIVING TRUST  
[jandlfaris@comcast.net](mailto:jandlfaris@comcast.net)

KRISTIN E MEGY  
[rathdrum@proprintidaho.com](mailto:rathdrum@proprintidaho.com)

TERRY J LALIBERTE  
[terry827@live.com](mailto:terry827@live.com)

SANDRA COZZETTO  
[secozzetto@hotmail.com](mailto:secozzetto@hotmail.com)

CLARENCE AND KURT GEIGER  
FAMILIES  
[geigeras@aol.com](mailto:geigeras@aol.com)

BRUCE AND JAMIE WILSON  
[jwnia@msn.com](mailto:jwnia@msn.com)

JAMES R AND WENDY K HILLIARD  
[longwillows@msn.com](mailto:longwillows@msn.com)

PAULETTE M AND WILLIAM H  
MINATRE  
[hm\\_madscientist@msn.com](mailto:hm_madscientist@msn.com)

ANGELA R MURRAY  
[murrayzone@aol.com](mailto:murrayzone@aol.com)

DOUGLAS I AND BERTHA  
MARY JAYNE  
[marydougjayne@comcast.net](mailto:marydougjayne@comcast.net)

DEBRA L AND JOHN L ANDREWS  
[fordebto@aol.com](mailto:fordebto@aol.com)  
[finder4@aol.com](mailto:finder4@aol.com)

KATHRYNE CLARK  
[katparker1@gmail.com](mailto:katparker1@gmail.com)

AMBER HATROCK  
[ahatrock@hotmail.com](mailto:ahatrock@hotmail.com)

DENISE S AND PATRICK J HOGAN  
[dsuzanhogan@gmail.com](mailto:dsuzanhogan@gmail.com)

MICHAEL KNOWLES  
[michael.w.knowles@jet.com](mailto:michael.w.knowles@jet.com)

ADAM KREMIN  
[adam@zayconflesh.com](mailto:adam@zayconflesh.com)

ROBERT A KUHN  
23903 W LOWER TWIN LAKES  
RATHDRUM ID 83858

PATRICK E MILLER  
[milpate@gmail.com](mailto:milpate@gmail.com)

JOAN LAKE OMMEN  
PO BOX 5  
RATHDRUM ID 83858

TCRV LLC  
TOM PEARSON  
[Pearson7274@yahoo.com](mailto:Pearson7274@yahoo.com)

KIMBERLI ROTH  
[Kimberli.roth@gmail.com](mailto:Kimberli.roth@gmail.com)

HAL SUNDAY  
[halsunday@hotmail.com](mailto:halsunday@hotmail.com)

GERALD J WELLER  
1421 S MAPLE ST  
SPOKANE WA 99203

TERRY KIEFER  
16846 N RESERVOIR RD  
RATHDRUM ID 83858

MARY ANDERSON  
[andersonmaryfran@aol.com](mailto:andersonmaryfran@aol.com)

DAVID ZIUCHKOVSKI  
3307 E 28<sup>TH</sup> AVE  
SPOKANE WA 99223

TWIN ECHO RESORT  
[twinechoshoresidaho@yahoo.com](mailto:twinechoshoresidaho@yahoo.com)

DARWIN SCHULTZ  
[darschultz@juno.com](mailto:darschultz@juno.com)

MARY F ANDERSON ET AL  
18046 66<sup>TH</sup> PLACE WEST  
LYNNWOOD ID 83868

STEVE AND PAM RODGERS  
[sjrodgers65@gmail.com](mailto:sjrodgers65@gmail.com)

JOAN M FREIJE  
[joan.freije@gmail.com](mailto:joan.freije@gmail.com)

PAUL FINMAN  
[pfinman@LCFamps.com](mailto:pfinman@LCFamps.com)

TWIN LAKES FCD 17  
BILL GUMM  
[wm.gumm@gmail.com](mailto:wm.gumm@gmail.com)  
[bahunsinger@yahoo.com](mailto:bahunsinger@yahoo.com)

JOHN NOONEY  
2228 E 49<sup>TH</sup>  
SPOKANE WA 99223

DAVID AND LORI SCHAFER  
[ldschafer@msn.com](mailto:ldschafer@msn.com)

MATTHEW BAFUS  
PO BOX 126  
NEWMAN LAKE WA 99025

SCOTT ERICKSON  
16025 N TAMARAC CT  
NINE MILE WA 99026

WES CROSBY  
[wes.crosby@comcast.net](mailto:wes.crosby@comcast.net)

JAMES CURB  
[mistercurb@gmail.com](mailto:mistercurb@gmail.com)

MAUREEN DEVITIS  
[mcdevitis@hotmail.com](mailto:mcdevitis@hotmail.com)

LEIF HOUKUM  
[leifh@comcast.net](mailto:leifh@comcast.net)

DONALD M JAYNE  
[djayne@jaynedds.com](mailto:djayne@jaynedds.com)

MOLLY SEABURG  
[mollyj9@live.com](mailto:mollyj9@live.com)

TWIN LAKES IMPROVEMENT ASSN  
NORMAN SEMANKO  
[nms@moffatt.com](mailto:nms@moffatt.com)

COLBY A CLARK  
30701 N CLAGSTONE ROAD  
ATHOL ID 83801

RICK AND CORRINNE VAN ZANDT  
[rick@vanzandtfinancial.com](mailto:rick@vanzandtfinancial.com)

CHARLES AND RUTH BENAGE  
[cfbenage@gmail.com](mailto:cfbenage@gmail.com)

MARY COLLINS  
BOSCH PROPERTIES LLC  
3014 W GRACE AVE  
SPOKANE WA 99205-3925

JOHN B CONKLIN  
116 RICHMOND LN  
CHEWELAH WA 99109

DAVID R NIPP  
[dnipp@farmersagent.com](mailto:dnipp@farmersagent.com)

MARIE A ALICE  
[jim@libertyparkflorist.com](mailto:jim@libertyparkflorist.com)

RENE LACROIX  
[renelacroix50@gmail.com](mailto:renelacroix50@gmail.com)

STEVEN AND ELIZABETH HOLMES  
[rwandalady@hotmail.com](mailto:rwandalady@hotmail.com)



BARBARA J HERR  
[haspedis@mindspring.com](mailto:haspedis@mindspring.com)



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Kimi White