

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

IN THE MATTER OF SYLTYE'S PETITION
FOR DECLARATORY RULING
REGARDING DISTRIBUTION OF WATER
TO WATER RIGHT NO. 95-0734

Docket No. P-DR-2017-001

**ORDER GRANTING PETITION TO
INTERVENE; 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"), setting a May 8, 2017, deadline for filing petitions to intervene; scheduling a prehearing conference 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>.

On May 30, 2017, the Department received an untimely petition to intervene filed by Mary K. Collins, Bosch Properties LLC. The petition is accompanied by a letter explaining that, “[d]ue to family medical issues, [Ms. Collins] was out of the area the entire month of May, 2017, and unable to respond with the requested Petition to Intervene until May 26, 2017.” Sylte had seven days to file a motion opposing the petition to intervene. IDAPA 37.01.01.354. The Department received no written opposition to the petition to intervene.

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 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 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 hearing officer concludes Ms. Collins has stated good cause for her failure to timely file a petition to intervene and will consider the petition. Bosch Properties LLC, received the Notice in this matter because the Department identified it as “likely to be interested in the subject matter” of the Petition. *Notice* at 2. The hearing officer will grant the petition to intervene filed by Ms. Collins.

ORDER

IT IS HEREBY ORDERED that the petition to intervene filed by Mary K. Collins, Bosch Properties LLC is GRANTED.

IT IS FURTHER ORDERED that Ms. Collins must submit the *Form Required by May 26, 2017, Order*³ to the hearing officer by U.S. mail or hand delivery to the Department’s Northern Regional Office or State Office stating 1) whether she consents to email service of documents in this matter by the Department and other parties; 2) whether she wishes to withdraw from participation in this matter pursuant to the Department’s Rule of Procedure 204; and 3) whether she has designated a spokesperson, who must be another party granted intervenor status herein or be an intervenor’s attorney, all **by June 26, 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

³ This form was attached to the *Order Granting Petition to Intervene; Order Requiring Submittal of Information* served to Ms. Collins by U.S. mail.

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 failure to timely submit the enclosed form as set forth above may be grounds for dismissal as a party 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 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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