

**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 PETITIONS 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") 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") 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. The Notice stated that "those seeking to intervene must be represented at the prehearing conference in person or by telephone." *Notice* at 2.

Prior to the prehearing conference, the Department received sixty-seven timely petitions to intervene, and five untimely 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 Department received satisfactory responses to the Notice of Proposed Default from Barbara Herr, Sandra Cozzetto, Charles and Ruth Benage, John B. Conklin, Cindy A. and David R. Nipp, Marie A. Alice, Rene Lacroix, and Steven and Elizabeth Holmes. Based upon the contents of these responses, the hearing officer will not issue a default order to Barbara Herr, Sandra Cozzetto, Charles and Ruth Benage, John B. Conklin, Cindy A. and David R. Nipp, Marie A. Alice, Rene Lacroix and Steven and Elizabeth Holmes and will consider their petitions 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.

Barbara Herr, Sandra Cozzetto, Charles and Ruth Benage, John B. Conklin, Cindy A. and David R. Nipp, Marie A. Alice, Rene Lacroix, and Steven and Elizabeth Holmes received the Notice in this matter because the Department identified them as "likely to be interested in the subject matter" of the Petition. *Notice* at 2. The hearing officer will grant the petitions to intervene filed by Barbara Herr, Sandra Cozzetto, Charles and Ruth Benage, John B. Conklin, Cindy A. and David R. Nipp, Marie A. Alice, Rene Lacroix, and Steven and Elizabeth Holmes.

ORDER

IT IS HEREBY ORDERED that the petitions to intervene filed by Barbara Herr, Sandra Cozzetto, Charles and Ruth Benage, John B. Conklin, Cindy A. and David R. Nipp, Marie A. Alice, Rene Lacroix, and Steven and Elizabeth Holmes are GRANTED.

IT IS FURTHER ORDERED that **Mr. Conklin**¹ must submit the *Form Required by May 26, 2017, Order*² to the hearing officer by U.S. mail or hand delivery to the Department's Northern Regional Office or State Office stating 1) whether he consents to email service of documents in this matter by the Department and other parties; 2) whether he wishes to withdraw from participation in this matter pursuant to the Department's Rule of Procedure 204; and 3) whether he 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 personally testify and present evidence at the hearing, will be subject to cross-examination and

¹ The Department already received the enclosed form from Barbara Herr, Sandra Cozzetto, Charles and Ruth Benage, Cindy A. and David R. Nipp, Marie A. Alice, Rene Lacroix, and Steven and Elizabeth Holmes.

² This form was attached to the *Order Granting Petitions to Intervene; Order Requiring Submittal of Information* served to Mr. Conklin by U.S. mail.

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.

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 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.

MICHAEL P LAWRENCE
JACK W RELF
GIVENS PURSLEY LLP
mpl@givenspursley.com
jwr@givenspursley.com
lorigibson@givenspursley.com

DONALD R AND SUSAN R ELLIS
donellisflhx@hotmail.com
susan_elizabeth_ellis@hotmail.com

UPPER TWIN LAKES LLC
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

KRISTIN E MEGY
rathdrum@proprintidaho.com

TERRY J LALIBERTE
terry827@live.com

SANDRA COZZETTO
secozzetto@hotmail.com

CLARENCE AND KURT GEIGER
FAMILIES
geigeras@aol.com

BRUCE AND JAMIE WILSON
jwnia@msn.com

JAMES R AND WENDY K HILLIARD
longwillows@msn.com

PAULETTE M AND WILLIAM H
MINATRE
hm_madscientist@msn.com

ANGELA R MURRAY
murrayzone@aol.com

DOUGLAS I AND BERTHA
MARY JAYNE
marydougjayne@comcast.net

DEBRA L AND JOHN L ANDREWS
fordebto@aol.com
finder4@aol.com

KATHRYNE CLARK
katparker1@gmail.com

AMBER HATROCK
ahatrock@hotmail.com

DENISE S AND PATRICK J HOGAN
dsuzanhogan@gmail.com

MICHAEL KNOWLES
michael.w.knowles@jet.com

ADAM KREMIN
adam@zayconflesh.com

ROBERT A KUHN
23903 W LOWER TWIN LAKES
RATHDRUM ID 83858

PATRICK E MILLER
milpate@gmail.com

JOAN LAKE OMMEN
PO BOX 5
RATHDRUM ID 83858

TCRV LLC
TOM PEARSON
Pearson7274@yahoo.com

KIMBERLI ROTH
Kimberli.roth@gmail.com

HAL SUNDAY
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

DAVID ZIUCHKOVSKI
3307 E 28TH AVE
SPOKANE WA 99223

TWIN ECHO RESORT
twinechoshoresidaho@yahoo.com

DARWIN SCHULTZ
darschultz@juno.com

MARY F ANDERSON ET AL
18046 66TH PLACE WEST
LYNNWOOD ID 83868

STEVE AND PAM RODGERS
sjrodgers65@gmail.com

JOAN M FREIJE
joan.freije@gmail.com

PAUL FINMAN
pfinman@LCFamps.com

TWIN LAKES FCD 17
BILL GUMM
wm.gumm@gmail.com
bahunsinger@yahoo.com

JOHN NOONEY
2228 E 49TH
SPOKANE WA 99223

DAVID AND LORI SCHAFER
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

JAMES CURB
mistercurb@gmail.com

MAUREEN DEVITIS
mcdevitis@hotmail.com

LEIF HOUKUM
leifh@comcast.net

DONALD M JAYNE
djayne@jaynedds.com

MOLLY SEABURG
mollyj9@live.com

TWIN LAKES IMPROVEMENT ASSN
NORMAN SEMANKO
nms@moffatt.com

COLBY A CLARK
30701 N CLAGSTONE ROAD
ATHOL ID 83801

RICK AND CORRINNE VAN ZANDT
rick@vanzandtfinancial.com

CHARLES AND RUTH BENAGE
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

MARIE A ALICE
jim@libertyparkflorist.com

RENE LACROIX
renelacroix50@gmail.com

STEVEN AND ELIZABETH HOLMES
rwandalady@hotmail.com

BARBARA J HERR
haspedis@mindspring.com


Kimi White
