

**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

**NOTICE OF PROPOSED
DEFAULT ORDER**

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"), scheduling the prehearing conference in this matter for May 22, 2017, and appointing 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.

On May 22, 2017, the hearing officer held the prehearing conference. On May 26, 2017, the hearing officer issued an *Order Regarding Intervention; Order Requiring Submittal of Information* ("Order"). The hearing officer ordered the parties who were not represented by counsel, but who appeared at the prehearing conference, 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 26, 2017, the hearing officer issued a *Notice of Proposed Default Order* (“Notice of Proposed Default”) upon several individuals who filed petitions to intervene but did not appear at the prehearing conference in person or by telephone as required by the Notice, including John Conklin.¹ 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 responses to the Notice of Proposed Default from 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 did not issue a default order to John B. Conklin, Cindy A. and David R. Nipp, Marie A. Alice, Rene Lacroix and Steven and Elizabeth Holmes.

On June 14, 2017, the hearing officer issued an *Order Granting Petitions to Intervene; Order Requiring Submittal of Information* (“Order Requiring Submittal”) granting the petitions to intervene filed by John B. Conklin, Cindy A. and David R. Nipp, Marie A. Alice, Rene Lacroix and Steven and Elizabeth Holmes. The hearing officer also required John B. Conklin to submit the form enclosed with the Order by June 26, 2017.² *Order Requiring Submittal* at 3. The hearing officer stated “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.” *Id.* at 4.

On June 14, 2017, the hearing officer also issued an *Order Authorizing Discovery; Scheduling Order; Notice of Hearing; Order Requiring Notice Regarding Participation* (“Order Requiring Notice”). The hearing officer required 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 *Notice Regarding Participation* enclosed with the Order Requiring Notice to the Department by June 30, 2017.³ The hearing officer stated that parties who do not timely submit the *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. *Order Requiring Notice* at 4 (citing IDAPA 37.01.01.700-701).

¹ On May 30, 2017, the Department received an untimely petition to intervene filed by Mary K. Collins, Bosch Properties LLC. 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 the form enclosed with the May 26, 2017, Order by June 26, 2017. Ms. Collins had already submitted the form as required by the May 26, 2017 Order on June 7, 2017, and appointed Mr. Semanko as her spokesperson.

² The Department had already received the form from Cindy A. and David R. Nipp, Marie A. Alice, Rene Lacroix, and Steven and Elizabeth Holmes.

³ On June 14, 2017, the hearing officer also issued a *Notice of Proposed Default Order* to parties who failed to submit the form enclosed with the May 26, 2017, Order as required by the Order. The only party who responded to that *Notice of Proposed Default Order* and stated good cause why the proposed default order should not be entered was the Estate of Carmela G. Dempsey and Curran D. Dempsey Disclaimer Trust. The Estate of Carmela G. Dempsey and Curran D. Dempsey Disclaimer Trust submitted the form enclosed with the Order and the *Notice Regarding Participation* to the Department on June 26, 2017.

ANALYSIS

Rule 700 of the Department's Rules of Procedure authorizes the Department to issue a notice of proposed default order to parties for failure to respond to a written information inquiry. IDAPA 37.01.01.700.

The hearing officer did not receive the form enclosed with the Order Requiring Submittal from John B. Conklin. Accordingly, the hearing officer will issue a notice of proposed default order to John B. Conklin for failure to respond to the written information inquiry as required by the Order Requiring Submittal.

The hearing officer received the *Notice Regarding Participation* from Colby Clark, Paul Finman, and Twin Lakes Flood Control District No. 17 (represented by William M. Gumm) as required by the Order Requiring Notice. The hearing officer did not receive the *Notice Regarding Participation* from Barbara Herr. However, Mr. Semanko submitted email correspondence to the hearing officer on June 20, 2017, informing the hearing officer that Ms. Herr appointed Mr. Semanko as her spokesperson in this matter. The hearing officer will not issue a default order to Ms. Herr for failure to submit the *Notice Regarding Participation*. The hearing officer did not receive the *Notice Regarding Participation* from Kristin E. Megy. Accordingly, the hearing officer will issue a notice of proposed default order to Ms. Megy for failure to respond to the written information inquiry as required by the Order Requiring Notice.

PROPOSED DEFAULT ORDERS

Based upon his failure to respond to the written information inquiry as required by the June 14, 2017 *Order Granting Petitions to Intervene; Order Requiring Submittal of Information*, it is HEREBY ORDERED that John B. Conklin is DISMISSED AS A PARTY to this matter.

Based upon her failure to respond to the written information inquiry as required by the June 14, 2017 *Order Authorizing Discovery; Scheduling Order; Notice of Hearing; Order Requiring Notice Regarding Participation*, Kristen E. Megy is DISMISSED AS A PARTY to this matter.

RIGHT TO CHALLENGE

Pursuant to the Department's Rule of Procedure 701, John B. Conklin and Kristen E. Megy have seven (7) days after service of this notice of proposed default order to file a written petition requesting that the proposed default order not be entered. IDAPA 37.01.01.701. The petition must state the grounds why the petitioning party believes the default order should not be entered. *Id.*

DATED this 7th day of July 2017.



SHELLEY KEEN
Hearing Officer

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 7th day of July 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.

JOHN B CONKLIN
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KRISTIN E MEGY
22951 NORTH COVEY LANE
RATHDRUM ID 83858



Jean Hersley

I HEREBY FURTHER CERTIFY that on this 7th day of July 2017, I served a true and correct copy of the above and foregoing *Notice of Proposed Default Order* on the parties listed below by their designated method of service as indicated.

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