

**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 REGARDING CERTIFICATE
OF SERVICE**

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.

On July 7, 2017, the hearing officer issued a *Notice of Proposed Default Order* (“Second Notice of Proposed Default”). The hearing officer issued 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. *Second Notice of Proposed Default* at 3. The hearing officer also issued a notice of proposed default order to Kristin E. Megy for failure to respond to the written information inquiry as required by the Order Requiring Notice. *Id.* The hearing officer explained that, pursuant to the Department’s Rule of Procedure 701, Mr. Conklin and Ms. Megy had seven days after service of the Second Notice of Proposed Default to file a written petition requesting that the proposed default order not be entered. *Id.* Mr. Conklin and Ms. Megy did not file any written petition in response to the Second Notice of Proposed Default. Accordingly, the hearing officer issued a default order dismissing Mr. Conklin and Ms. Megy as parties.

ANALYSIS

As described above, the parties have now been identified in this matter, including whether they are represented by counsel, wish to represent themselves, or have appointed a spokesperson. The parties have also identified their preferred method of service for documents.

In this *Order Regarding Certificate of Service*, the hearing officer will, for the last time, utilize a Certificate of Service that includes service by email or mail to those parties who appointed Mr. Norman Semanko as their spokesperson. Henceforth, the hearing officer will utilize the modified Certificate of Service set forth below, which includes service by email to Mr. Semanko on behalf of all the parties who appointed him as their spokesperson. Consistent with the foregoing, and to reduce costs and resources associated with filings and mailings, the hearing officer will order the use of a modified certificate of service.

ORDER

IT IS HEREBY ORDERED that any document intended to be part of the agency record shall be filed with the Department in accordance with the Department’s Rule of Procedure 300 (IDAPA 37.01.01.300). Rule 300 requires that the parties file “[a]n original and necessary copies (if any are required by the agency)” of all documents intended to be part of the agency record in this matter with the hearing officer.⁴ *Id.* Documents in excess of ten (10) pages must be sent by U.S. Mail or physically delivered to the agency. Documents ten (10) pages in length or less may be filed by facsimile transmission, but the original must still be mailed by U.S. mail or physically delivered to the agency the next working day. In addition to complying with Rule 300’s requirements, parties may email the document to the hearing officer at Shelley.Keen@idwr.idaho.gov, copying Kimi White at Kimi.White@idwr.idaho.gov. Parties that email documents to the hearing officer must still send the original documents to the hearing officer by U.S. Mail or physically deliver the documents to the agency the next working day.

IT IS FURTHER ORDERED that parties must serve upon other parties any document intended to be part of the agency record in accordance with and utilizing the following Certificate of Service, which is also posted to the Department’s website for this matter at <https://idwr.idaho.gov/legal-actions/administrative-actions/sylte-petition.html>:

⁴ The hearing officer’s mailing address is 322 E Front St., P.O. Box 83720, Boise, ID, 83720-0098.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this _____ day of _____ 2017, I served a true and correct copy of the foregoing document on the parties listed below by their designated method of service as indicated.

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NAME OF PERSON SERVING DOCUMENT

DATED this 20th day of July 2017.



SHELLEY KEEN
Hearing Officer

CERTIFICATE OF SERVICE

I HEREBY FURTHER CERTIFY that on this 20th day of July 2017, I served a true and correct copy of the above and foregoing *Order Regarding Certificate of Service* on the parties listed below by their designated method of service as indicated.

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