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DEPARTMENT OF  
WATER RESOURCES

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Attorneys for Twin Lakes Improvement Association

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

**REPLY IN SUPPORT OF TWIN LAKES  
IMPROVEMENT ASSOCIATION'S  
CROSS-MOTION FOR SUMMARY  
JUDGMENT**

COMES NOW, Twin Lakes Improvement Association ("TLIA"), by and through  
Norman M. Semanko of the law firm MOFFATT THOMAS BARRETT ROCK & FIELDS,  
CHTD., and hereby submits its **REPLY IN SUPPORT OF TWIN LAKES IMPROVEMENT  
ASSOCIATION'S CROSS-MOTION FOR SUMMARY JUDGMENT.**

## **I. ADDITIONAL PROCEDURAL BACKGROUND**

In this matter, Sylte stands alone in trying to convince the Idaho Department of Water Resources (“IDWR”) to overturn its Instructions to the Watermaster.

The Flood Control District has filed a joinder to *Clark’s Response to Sylte’s Motion for Summary Judgment*. Letter from William M. Gumm, Commissioner of Division 1, Flood Control District 17 to Hearing Officer (July 7, 2017). Clark’s response “respectfully requests that the Sylte’s Motion for Summary Judgment be denied in full and that the Instructions dated September 20, 2016, prepared by Morgan Case of IDWR be upheld as is.” *Clark’s Response to Sylte’s Motions for Summary Judgment* at 34. TLIA has also joined in and supported Clark’s response. *TLIA’s Memorandum in Support of Cross-Motion for Summary Judgment and in Opposition to Sylte’s Motion for Summary Judgment* at 2.

TLIA’s Amended Cross-Motion for Summary Judgment asks for the same relief being requested by Clark and the Flood Control District; that is, “denying Sylte’s Petition for Declaratory Ruling and upholding IDWR’s September 20, 2016 Instructions to the Water Master.” *TLIA’s Amended Cross-Motion for Summary Judgment* at 1.

TLIA’s reply concludes the briefing on the cross-motions for summary judgment. None of the parties have requested oral argument. As a result, the matter should be considered fully submitted for the Hearing Officer’s consideration.

## **II. ARGUMENT**

Sylte claims that TLIA has misinterpreted Idaho law as it applies to the Instructions to the Watermaster. TLIA is unconvinced by Sylte’s arguments and reiterates the detailed legal analysis regarding IDWR’s incorporation and interpretation of the Decree, related documents, and Idaho’s prior appropriation doctrine in the Instructions. *See, TLIA’s*

*Memorandum in Support of Cross-Motion for Summary Judgment and in Opposition to Sylte's Motion for Summary Judgment* at 10-14 (Section III.B: "The Instructions Properly Incorporate and Interpret the Decree, Related Documents and Idaho's Prior Appropriation Doctrine").

Sylte has simply failed to demonstrate that IDWR has violated the law in setting forth the "details" for administration of water rights in Water District 95-C.

A reply to other aspects of Sylte's response is set forth below.

**A. The Decree Does Not -- and Cannot -- Guarantee an Uninterrupted Supply of Water to Sylte.**

Sylte continues to argue that they are somehow entitled to a guaranteed, uninterrupted supply of water to satisfy their stock water right no. 95-0734. To support this contention, they rely heavily on what they characterize as Judge Magnuson's conclusion that Rathdrum Creek flowed "at all times" so that it has "always" had water to serve water right no. 95-0734 "on a continuous year-round basis." *Sylte's Reply in Support of Motion for Summary Judgment* at 5. Somehow, they believe this entitles them to a guaranteed supply of water, even during drought years.

Aside from suspending the laws of nature, there can be no guarantee that a natural flow water right will "always" flow "at all times." Sooner or later, natural flows deplete during the summer months, precisely as they did in Water District 95-C during 2016. *See, Order on Exceptions Re: Amended Preliminary Order Removing a Watermaster* (Apr. 24, 2017). So, while Judge Magnuson's findings are helpful in understanding the basis for excluding water right no. 95-0734 (as a pre-dam right) from the evaporation and seepage losses that were applied to other natural flow water rights (post-dam rights), it does not equate to a guarantee of a permanent, uninterrupted supply.

To accomplish a continuous, guaranteed, and uninterrupted supply of water, Sylte would need to tap into the storage of the lake, including the water rights held by TLIA and the Flood Control District, as a supplemental supply to Sylte's natural flow water right. That is precisely what they are attempting to do here, as they have attempted to do in the past. To allow such use by Sylte would be in direct violation of the Decree, Memorandum Decision, and Idaho law. The Instructions to the Watermaster appropriately recognize this.

**B. Sylte's Supply is Limited to Natural Flow, and Sylte has No Right to the Natural or Artificial Storage of Twin Lakes.**

"Direct flow water rights utilize the flows passing through the lake and are established on a priority basis." Proposed Finding of Water Rights at xvi (Finding of Fact No. 12). Sylte's water right is a direct flow water right. Sylte is entitled to the natural flow that enters into, and flows through, the lake. That is precisely what the Instructions provide for.

"Storage water rights utilize the storage capacity of the lake." *Id.* Sylte has no storage water right and is precluded from claiming or asserting any now. Memorandum Decision at 16-17. The only two storage rights in the lake are held by TLIA (0.0 to 6.4 feet on the staff gauge) and the Flood Control District (6.4 to 10.4 feet on the staff gauge). *Id.* at 15. "No water right exists for the natural storage below the level of 0.0 on the Staff Gauge located at the outlet of Lower Twin Lake." Proposed Finding of Water Rights at xix (Conclusions of Law No. 8) (emphasis added).

Sylte's argument that they somehow have a right to the water in the natural storage (or artificial storage) of the lake is contrary to the Decree and Memorandum Decision. These claims are also precluded by res judicata, collateral estoppel, and stare decisis. Sylte's unsuccessful attempts to claim such storage water, and to strip TLIA and the Flood Control

District's predecessor in interest of their storage water rights, is well documented in Judge Magnuson's decision. Memorandum Decision at 16-17, 19-21.

Sylte is not entitled to relitigate these failed claims. Even if they were, it would need to be done in the ongoing Coeur d'Alene-Spokane River Basin Adjudication, which has jurisdiction over water right claims. The Director does not have authority to recognize a new storage water right for Sylte outside of the application and permit process of Title 42, Chapter 2, Idaho Code.

Again, the Instructions appropriately recognize the existing natural flow and storage water rights and how they should be administered by the Watermaster.

**C. The Hearing Officer Cannot Ignore Relevant Portions of the Director's Watermaster Removal Order.**

Sylte referenced the Director's *Order on Exceptions Re: Amended Preliminary Order Removing a Watermaster* (Apr. 24, 2017) in their own brief in support of summary judgment. However, they take great umbrage when relevant portions of the same order are cited in TLIA's previous brief. The fact remains that the Director made findings and conclusions that are relevant to the current matter. As a result, they should be recognized by the Hearing Officer.

For instance, the Director found that, for the water from the bottom of the lake to 0.0 feet on the staff gauge: "No water right exists for this water." *Order on Exceptions* at 5 (Finding of Fact No. 6). This is taken directly from Judge Magnuson's decision, concluding: "No water right exists for the natural storage below the level of 0.0 on the Staff Gauge located at the outlet of Lower Twin Lake." Proposed Finding of Water Rights at xix (Conclusions of Law No. 8). Of course, this serves to entirely defeat Sylte's claim to this water as "natural flow."

In addition, the Director found that as much as two-thirds of Rathdrum Creek is lost to seepage, creating futile call conditions and rendering Sylte's water right no. 95-0734 unavailable during low flow periods. He concluded that "proper administration by the watermaster includes seeking a futile call determination and refraining from turning storage water rights into Rathdrum Creek." *Id.* at 9-11, 13 (Finding of Fact Nos. 37-39, 46, 49, 53). This makes it quite apparent that it was appropriate to include futile call provisions in the Instructions.

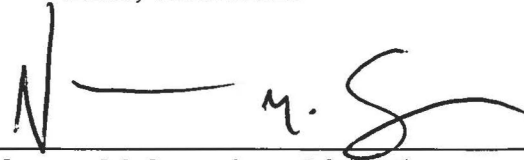
The Hearing Officer should not ignore these relevant findings and conclusions, which are part of the record in this matter. Exhibit E to *Lawrence Affidavit*.

### III. CONCLUSION

For the reasons set forth above and in *TLIA's Memorandum in Support of Cross-Motion for Summary Judgment and in Opposition to Sylte's Motion for Summary Judgment*, *Sylte's Motion for Summary Judgment* should be denied, and *TLIA's Amended Cross-Motion for Summary Judgment* should be granted, thereby denying Sylte's Petition for Declaratory Ruling and upholding the Instructions to the Watermaster.

DATED this 27th day of July, 2017.

MOFFATT, THOMAS, BARRETT, ROCK &  
FIELDS, CHARTERED

By   
Norman M. Semanko – Of the Firm  
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## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 27th day of July, 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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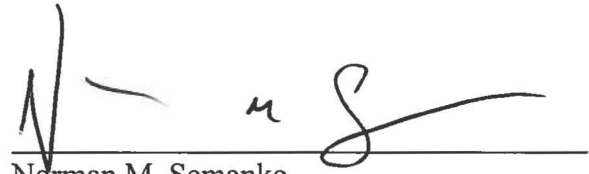
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