

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

**IN THE MATTER OF THE PETITIONS  
FILED WITH THE DEPARTMENT  
REGARDING APPOINTMENT OF  
GORDON SYLTE AS A  
COMMISSIONER OF FLOOD  
CONTROL DISTRICT NO. 17**

**CASE NO. P-FCD-2018-01**

**INITIAL NOTICE OF PARTIES; ORDER  
DENYING INTERVENTION AND  
SETTING INTERVENTION DEADLINE;  
NOTICE OF HEARING; ORDER  
AUTHORIZING DISCOVERY AND  
SCHEDULING ORDER**

**BACKGROUND**

On November 28, 2018, the Director of the Idaho Department of Water Resources (“Department”) reappointed Gordon Sylte (“Sylte”) as a commissioner of Flood Control District (“FCD”) No. 17.<sup>1</sup> The Department subsequently received numerous letters and emails opposing Sylte’s reappointment. The Director treated these submissions as requests for hearing pursuant to Idaho Code § 42-1701A(3) and issued a *Notice of Pre-hearing Conference* on February 7, 2019. The pre-hearing conference was held on March 21, 2019, at 2:00 pm in Rathdrum, Idaho. *Notice of Pre-hearing Conference* at 1. Those in attendance aided the Director in narrowing the scope of the proceedings, setting the hearing date and time, and establishing deadlines.

**INITIAL NOTICE OF PARTIES**

Case No. P-FCD-2018-01 is a contested case, meaning those who petitioned the Director to either: (a) reconsider his decision to appoint Sylte; or (b) remove Sylte as an FCD commissioner pursuant to Idaho Code § 42-3109 are party petitioners in this matter, as follows: John Andrews; Ronald Cater; John Dieckman; Susan Ellis; Jean & Harry Emerson; Paul Finman; Sheree Greenfield, Cindy Mathisen, and Lori Snider for Harold Greenfield Trust; Barbara Herr; Berne and Pamela Indahl; Amy & Adam Kremin; Clint Marvel; Patti Marvel; Dave Nipp; Travis Roth; Linda Solan; and the Twin Lakes Improvement Association (“TLIA”)(represented by counsel, Norman Semanko).

Those listed above are petitioners in the above captioned matter, with all the rights extended thereto pursuant to the Department’s Rules of Procedure. *See* IDAPA 37.01.01 *et seq.*

Other than the Harold Greenfield Trust and TLIA, parties and intervenors at the pre-hearing conference stated their participation in this matter is in their individual capacities, and not in any ancillary roles related to flood districts or other boards or commissions.

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<sup>1</sup> See Letter from Douglas Jones to Gordon Sylte, November 28, 2018, and attached Certificate of Appointment.

## ORDER DENYING INTERVENTION AND SETTING INTERVENTION DEADLINE

Bobbie Hunsinger, Susan Goodrich, Laurin Scarcello, and Gordon Stephenson all filed petitions to intervene in this matter (“Petitions”). On April 5, 2019, TLIA filed a *Motion to Deny Petitions to Intervene* (“Motion”). Susan Goodrich filed a *Response to TLIA’s Motion to Deny Petitions to Intervene* on April 12, 2019.

TLIA argues the Petitions “do not state the direct and substantial interest” of the potential intervenors in this matter as required by Rule 351 of the Department’s Rules of Procedure. *See* Motion at 1. TLIA argues some of the potential intervenors “state nothing beyond the fact that they want to intervene and that they know when the prehearing conference is scheduled” and another “states that she has known and observed Gordon Sylte for 25 years, but does not state what direct and substantial interest she has in the matter.” *Id.* at 2.<sup>2</sup>

The Director notes that Bobbie Hunsinger is the secretary/treasurer for FCD No. 17. Gordon Stephenson is a commissioner for FCD No. 17. Laurin Scarcello is the dam tender for FCD No. 17. While these individuals do not seek to participate in this matter on behalf of FCD No. 17, their involvement with the operations and management of FCD No. 17 is an interest in this matter. Each of them also expressed the need for continuity in the appointment of the commissioner.<sup>3</sup> Susan Goodrich also has an interest in this matter as she lives below Twin Lakes dam and is directly affected by the operations of FCD No. 17.

However, sufficient statements of a direct and substantial interest in this proceeding were not stated in the initial Petitions. Therefore, while the Director now denies the Petitions, the denial is without prejudice. This order establishes a new intervention deadline of May 13, 2019. *See* IDAPA 37.01.01.352.

Persons interested in intervening in this proceeding must file a petition to intervene in accordance with the Department’s Rules of Procedure, specifically Rules 350 through 355. *See* IDAPA 37.01.01.350-355. Persons not interested in participating as a party may still substantively participate by becoming either: (a) a public witness providing testimony according to Rule 355; or (b) a witness of any party.

Based upon and consistent with the foregoing, IT IS HEREBY ORDERED that the *Petitions to Intervene* of Bobbie Hunsinger, Susan Goodrich, Laurin Scarcello, and Gordon Stephenson are DENIED WITHOUT PREJUDICE.

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<sup>2</sup> TLIA also argues that three of the petitions to intervene should be returned or dismissed for the failure to pay a filing fee. *Motion* at 2-3. TLIA states “while the petition filed by Susan Goodrich indicates that a \$25 fee accompanied her petition, it is unclear whether the other three petitioners paid the fee for intervention, as required by Idaho Code § 42-221L.” Idaho Code § 42-221(L) states that a fee is required “to intervene in a protested matter.” The Department’s rules define “protest” narrowly. Rule of Procedure 250 states “all pleadings opposing an application or claim or appeal as a matter of right are called ‘protests’.” IDAPA 37.01.01.250. This proceeding does not relate to an application or claim or appeal of a matter of right. It was commenced by the filing of requests for reconsideration and requests to remove Sylte as commissioner. Accordingly, this is not a protested matter as defined by the Department’s rules and so no fee is required to intervene.

<sup>3</sup> *Bobbie Hunsinger Letter of Support Regarding the Re-Appointment of Gordon Sylte* at 1; *Gordon Stephenson Letter of Support Regarding the Re-Appointment of Gordon Sylte* at 1; *Laurin Scarcello Letter of Support Regarding the Re-Appointment of Gordon Sylte* at 1.

IT IS FURTHER ORDERED that persons desiring to intervene in this matter must file a Petition to Intervene with the Director pursuant to the Department's Rules of Procedure 350 through 355, IDAPA 37.01.01.350-355 on or before May 13, 2019. Any person granted intervention after this date are bound by orders and notices earlier entered as a condition of granting the petitions. *See* IDAPA 37.01.01.352. Pursuant to Rule 302, potential intervenors must serve copies of filings on each party of record.

### **NOTICE OF HEARING**

The Director hereby gives notice that a hearing will be held in this matter on **August 19-23, 2019**. The hearing location, in or around Coeur d'Alene, Idaho, has yet to be determined but will be communicated to the parties as soon as reasonably possible.

The presiding officer will be Gary Spackman, Director of the Department, whose mailing address is PO Box 83720, Boise, ID 83720-0098.

The hearing will be held in accordance with the provisions of Chapter 31, Title 42 and Chapter 52, Title 67, Idaho Code, the Department's Rules of Procedure. A copy of the code and rules may be obtained from the Department's website, [www.idwr.idaho.gov](http://www.idwr.idaho.gov), or upon request.

All parties appearing in the matter will have the opportunity to present information, examine witnesses, and provide argument on issues related to the contested appointment.

Documents submitted to the Department will be posted to the Department's webpage for this matter, which can be found at: <https://idwr.idaho.gov/legal-actions/administrative-actions/FCD17-petition.html>

The hearing will be conducted in a facility that satisfies the accessibility requirements of the Americans with Disabilities Act. If you require special accommodations in order to attend, participate in, or understand the conference, please notify the Department at least (10) days prior to the hearing. Inquiries about scheduling or hearing facilities should be directed to Tammy Alleman at (208) 762-2800.

### **Scope of Hearing**

The scope of the hearing will be limited to the factors included in Idaho Code § 42-3109, which states in pertinent part: "[t]he director may remove a commissioner for neglect of duty, misconduct or malfeasance or inability to perform the duties of a commissioner . . . ."

The Director will allow parties to present evidence and argument related to Sylte's purported conflicts of interest specifically in relation to his performance as an FCD commissioner. The Director will allow parties to present evidence related to Sylte's prior performance as FCD commissioner, as well as evidence related to the current appointment and term of service.

The burden of proof is on the petitioners in this matter. All parties will have the right to present evidence, argue orally, and to cross examine witnesses. As discussed in the pre-hearing conference, parties with substantially similar interests, evidence, testimony and cross examination

questioning should be prepared to work together at hearing. This will help prevent repetition and will streamline the hearing.

### **ORDER AUTHORIZING DISCOVERY AND SCHEDULING ORDER**

IT IS HEREBY ORDERED that the parties are authorized to conduct and engage in discovery.  
*See* IDAPA 37.01.01.521.

IT IS FURTHER ORDERED that the following schedule is ADOPTED:

<b>May 13, 2019</b>	Deadline for Petitions to Intervene.
<b>July 22, 2019</b>	Deadline for disclosure of witnesses and exhibits by all parties including a list of all expected witnesses.
<b>August 19-23, 2019</b>	Hearing.

Dated this 30<sup>th</sup> day of April 2019.

  
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Gary Spackman  
Director

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 1st day of May, 2019, true and correct copies of the document described below were served by placing a copy of the same with the United States Postal Service, certified mail with return receipt requested, postage prepaid and properly addressed to the following:

Gordon D. Sylte 8626 W. Sylte Ranch Rd. Rathdrum, ID 83858-6820 <a href="mailto:gordonsylte@icloud.com">gordonsylte@icloud.com</a>	<input checked="" type="checkbox"/> U.S. Mail, postage prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Mail <input checked="" type="checkbox"/> Email
John L. Andrews P.O. Box 384 Rathdrum, ID 83858 <a href="mailto:Finder4@aol.com">Finder4@aol.com</a>	<input checked="" type="checkbox"/> U.S. Mail, postage prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Mail <input checked="" type="checkbox"/> Email
Ronald Cater 628 W. 22nd Ave. Spokane, WA 99203 <a href="mailto:rcater@peoplepc.com">rcater@peoplepc.com</a>	<input checked="" type="checkbox"/> U.S. Mail, postage prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Mail <input checked="" type="checkbox"/> Email
John Dieckman 5617 South Thor Street Spokane WA 99223 <a href="mailto:Dieck3512@gmail.com">Dieck3512@gmail.com</a>	<input checked="" type="checkbox"/> U.S. Mail, postage prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Mail <input checked="" type="checkbox"/> Email
Susan Ellis P. O. Box 804 N. 21867 Dellar Beach Lane Rathdrum, ID 83858 <a href="mailto:susan_elizabeth_ellis@hotmail.com">susan_elizabeth_ellis@hotmail.com</a>	<input checked="" type="checkbox"/> U.S. Mail, postage prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Mail <input checked="" type="checkbox"/> Email
Jean & Henry Emerson 9814 West Lindgren Ave Sun City, AZ. 85373 <a href="mailto:Jean.emerson922@gmail.com">Jean.emerson922@gmail.com</a>	<input checked="" type="checkbox"/> U.S. Mail, postage prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Mail <input checked="" type="checkbox"/> Email
Paul Finman Finman Farm 764 S. Clearwater Loop Post Falls, ID 83854 <a href="mailto:pfinman@lcfamps.com">pfinman@lcfamps.com</a>	<input checked="" type="checkbox"/> U.S. Mail, postage prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Mail <input checked="" type="checkbox"/> Email



Barbara Herr 21737 Dellar Bleach Lane Twin Lakes, ID 83858 <a href="mailto:haspedis@mindspring.com">haspedis@mindspring.com</a>	<input checked="" type="checkbox"/> U.S. Mail, postage prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Mail <input checked="" type="checkbox"/> Email
Berne & Pamela Indahl 4203 E. 17th Avenue Spokane, WA 99223 <a href="mailto:berneindahl@aol.com">berneindahl@aol.com</a> ; <a href="mailto:indahlaw@aol.com">indahlaw@aol.com</a>	<input checked="" type="checkbox"/> U.S. Mail, postage prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Mail <input checked="" type="checkbox"/> Email
Amy & Adam Kremin 22921 Covey LN Rathdrum, ID 83858 <a href="mailto:butterscotchkids@yahoo.com">butterscotchkids@yahoo.com</a> <a href="mailto:akremin90@gmail.com">akremin90@gmail.com</a>	<input checked="" type="checkbox"/> U.S. Mail, postage prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Mail <input checked="" type="checkbox"/> Email
Clint & Patti Marvel 23335 N. Lakeview Blvd. Twin Lakes, ID 83858 <a href="mailto:clintandpatti@comcast.net">clintandpatti@comcast.net</a> <a href="mailto:Patti.Marvel@northwestfcs.com">Patti.Marvel@northwestfcs.com</a>	<input checked="" type="checkbox"/> U.S. Mail, postage prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Mail <input checked="" type="checkbox"/> Email
Harold Greenfield Trust c/o Cindy Mathisen, Sheree Greenfield & Lori Snider 938 S. Ridgewood Ave. Tacoma, WA 98405 <a href="mailto:Cindymathisen59@gmail.com">Cindymathisen59@gmail.com</a>	<input checked="" type="checkbox"/> U.S. Mail, postage prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Mail <input checked="" type="checkbox"/> Email
Dave Nipp 2700 E Seltice Ste 2 Post Falls, Id. 83854 <a href="mailto:dnipp@farmersagent.com">dnipp@farmersagent.com</a>	<input checked="" type="checkbox"/> U.S. Mail, postage prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Mail <input checked="" type="checkbox"/> Email
Travis Roth 20969 N. Cochran Ln Rathdrum, ID 83858 <a href="mailto:travis.l.roth@gmail.com">travis.l.roth@gmail.com</a>	<input checked="" type="checkbox"/> U.S. Mail, postage prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Mail <input checked="" type="checkbox"/> Email
Linda Solan 4721 E 41st Ct. Spokane, WA 99223 <a href="mailto:lindaapplesolan@gmail.com">lindaapplesolan@gmail.com</a>	<input checked="" type="checkbox"/> U.S. Mail, postage prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Mail <input checked="" type="checkbox"/> Email

Norm Semanko for Twin Lakes Improvement Association Parsons Behle & Latimer 800 West Main St. Ste. 1300 Boise, ID 83702 <a href="mailto:NSemanko@parsonsbehle.com">NSemanko@parsonsbehle.com</a>	<input checked="" type="checkbox"/> U.S. Mail, postage prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Mail <input checked="" type="checkbox"/> Email
Bobbie Hunsinger 6211 N. Blue Skies Newman Lake, WA 99025 <a href="mailto:bahunsinger@yahoo.com">bahunsinger@yahoo.com</a>	<input checked="" type="checkbox"/> U.S. Mail, postage prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Mail <input checked="" type="checkbox"/> Email
Susan Goodrich 8626 W. Sylte Ranch Rd. Rathdrum, ID 83858 <a href="mailto:Sgood5350@frontier.com">Sgood5350@frontier.com</a>	<input checked="" type="checkbox"/> U.S. Mail, postage prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> Email
Laurin Scarcello 22389 N. Kevin Rd Rathdrum, ID 83858	<input checked="" type="checkbox"/> U.S. Mail, postage prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Email
Gordon Stephenson 21228 N. Circle Road Rathdrum, ID 83858 <a href="mailto:gorjon@suddenlink.net">gorjon@suddenlink.net</a>	<input checked="" type="checkbox"/> U.S. Mail, postage prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Mail <input checked="" type="checkbox"/> Email

  
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Kimberle English