

District Court - SRBA  
Fifth Judicial District  
In Re: Administrative Appeals  
County of Twin Falls - State of Idaho

**JUN - 5 2018**

By \_\_\_\_\_ Clerk  
Deputy Clerk:

**IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI**

GORDON SYLTE, an individual, SUSAN  
GOODRICH, an individual, JOHN SYLTE,  
an individual, and SYLTE RANCH LIMITED  
LIABILITY COMPANY, an Idaho limited  
liability company,

Petitioners,

vs.

IDAHO DEPARTMENT OF WATER  
RESOURCES,

Respondent.

and

TWIN LAKES IMPROVEMENT  
ASSOCIATION, MARY A. ALICE, MARY  
F. ANDERSON, MARY F. ANDERSON ET  
AL., DEBRA ANDREWS, JOHN  
ANDREWS, MATTHEW A. BAFUS,  
CHARLES AND RUTH BENAGE, ARTHUR  
CHETLAIN JR., CLARENCE & KURT  
GEIGER FAMILIES, MARY K.  
COLLINS/BOSCH PROPERTIES, SANDRA  
COZZETTO, WES CROSBY, JAMES  
CURB, MAUREEN DEVITIS, DON ELLIS,  
SUSAN ELLIS, SCOTT ERICKSON, JOAN  
FREIJE, AMBER HATROCK, BARBARA  
HERR, WENDY AND JAMES HILLIARD,  
PAT & DENISE HOGAN, STEVEN &  
ELIZABETH HOLMES, LEIF HOUKAM,  
DONALD JAYNE, DOUGLAS I & BERTHA  
MARY JAYNE, TERRY KIEFER,  
MICHAEL KNOWLES, ADAM KREMIN,  
ROBERT KUHN, RENE LACROIX, JOAN  
LAKE-OMMEN, LARRY D & JANICE A

) Case No. CV-2017-7491

**) ORDER DENYING PETITION  
) FOR REHEARING**

FARIS LIVING TRUST, TERRY )  
LALIBERTE, PATRICK E. MILLER, )  
WILLIAM H. MINATRE, ANGELA )  
MURRAY, DAVID R. NIPP, JOHN )  
NOONEY, STEVE & PAM RODGERS, )  
KIMBERLI ROTH, DAVID & LORI )  
SCHAFER, DARWIN R. SCHULTZ, )  
MOLLY SEABURG, HAL SUNDAY, TCRV )  
LLC, TWIN ECHO RESORT, UPPER TWIN )  
LAKES, LLC, RICK & CORRINNE VAN )  
ZANDT, GERALD J. WELLER, BRUCE & )  
JAMIE WILSON, DAVE ZIUCHKOVSKI )  
PAUL FINMAN, AND TWIN LAKES )  
FLOOD CONTROL DISTRICT NO. 17, )

Intervenors. )

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IN THE MATTER OF SYLTES' PETITION )  
FOR DECLARATORY RULING )  
REGARDING DISTRIBUTION OF WATER )  
TO WATER RIGHT NO. 95-0734 )

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On April 11, 2018, the Court entered a *Memorandum Decision* in the above-captioned matter affirming the *Final Order* issued by the Respondent. The Court entered its *Judgment* on that same date. On May 2, 2018, the Petitioners filed a *Petition for Rehearing* followed by a *Memorandum in Support* on May 16, 2018. The Petitioners ask the Court to rehear its determination that their substantial rights were not prejudiced by the Respondent's decision to amend provision 5 of the water master instructions to include an annual volume limitation of 4.1 acre-feet with respect to water right 95-734. For the reasons stated herein, the Court denies the *Petition for Rehearing*.

The Petitioners argue the Respondent's decision violates their due process rights since the issue of the 4.1 acre-foot limitation was not raised before it. For the reasons set forth in the *Memorandum Decision* the Court disagrees. The Petitioners had both notice and an opportunity to be heard on the issue of a 4.1 acre-foot limitation in the prior adjudication.<sup>1</sup> It is undisputed that the *Final Decree* entered in that adjudication unambiguously limits water right 95-734 to a

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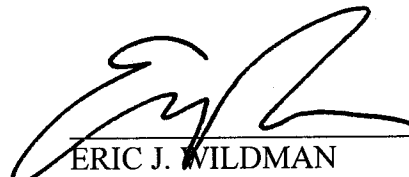
<sup>1</sup> The term "prior adjudication" refers to the general adjudication commenced in 1975 to adjudicate rights to the use of surface waters in the Twin Lakes-Rathdrum Creek Drainage Basin.

total annual diversion volume of 4.1 acre-feet.<sup>2</sup> R., 26. That the Respondent must now administer water right 95-734 in accordance with that volumetric limitation does not implicate the Petitioners' due process rights, but rather is a simple result of the operation of law. Idaho Code § 42-1413(2) mandates that the Respondent administer water right 95-734 "in accordance with the final decree." If the Petitioners were dissatisfied with how water right 95-734 was memorialized in the *Final Decree*, they were required to timely file an appeal. They did not. Therefore, the Respondent's decision to administer water right 95-734 in accordance with the *Final Decree* does not prejudice any substantial rights of the Petitioners.

Next, the Petitioners assert that the Respondent improperly limits the exercise of the right to "unless or until the maximum annual diversion volume of 4.1. acre feet has been delivered." They assert they are entitled to divert 4.1 acre feet annually under the *Final Decree*, and not have administration based on the amount of water that flows to and/or past their headgate. The Court finds the distinction made by the Petitioners to be a distinction without a difference under the circumstances. At the hearing, counsel for the Department confirmed that the Department is not administering, and will not administer, the water right based on the amount of water that flows to and/or past the Petitioners' headgate as argued by the Petitioners. Rather, counsel represented that the amount "delivered" is that amount diverted and used by the Petitioner. There has been no showing that the water right will be administered in any other way. Nor is there any allegation that the watermaster is or has administered the right based on the amount of water that has flowed to and/or past the Petitioners' headgate. Therefore, there is no showing that a substantial right of the Petitioners has been prejudiced.

Therefore, based on the foregoing, IT IS ORDERED that the *Petition for Rehearing* is hereby denied.

Dated June 5, 2018

  
ERIC J. WILDMAN  
District Judge

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<sup>2</sup> The *Final Decree* was entered in Kootenai County Case Civil Case No. 32572 on April 20, 1989. By its terms, it incorporates by reference (1) a *Memorandum Decision* entered by the Court in that matter on February 27, 1989, and (2) the *Proposed Finding of Water Rights in the Twin Lakes-Rathdrum Creek Drainage Basin* filed on January 14, 1985, as subsequently amended as set forth in the *Final Decree*. R., 197-918.

**CERTIFICATE OF MAILING**

I certify that a true and correct copy of the ORDER DENYING PETITION FOR REHEARING was mailed on June 05, 2018, with sufficient first-class postage to the following:

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