

**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;
AND GARY SPACKMAN, IN HIS CAPACITY AS THE
DIRECTOR OF THE IDAHO DEPARTMENT OF
WATER RESOURCES,

Respondents.

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 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 SCHAFFER, DARWIN R. SCHULTZ, MOLLY
SEABURG, HAL SUNDAY, TCRV LLC, TWIN
LAKES, LLC, RICK & CORRINNE VAN ZANDT,
GERALD J. WELLER, BRUCE & JAMIE WILSON,

Case No. CV-2017-7491

District Court - SRBA Fifth Judicial District In Re: Administrative Appeals County of Twin Falls - State of Idaho
JUL 16 2018
By _____ Clerk
_____ Deputy Clerk

DAVE ZIUCHKOVSKI, PAUL FINMAN, AND TWIN
LAKES FLOOD CONTROL DISTRICT NO. 17,

Intervenors.

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

SYLTE'S AMENDED NOTICE OF APPEAL

Appeal of final agency action by the Idaho Department of Water Resources

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*Attorneys for Twin Lakes Improvement
Association, et al.*

Petitioners Gordon Sylte, Susan Goodrich, John Sylte, and Sylte Ranch Limited Liability Company (collectively, “Sylte” or “Appellant”), pursuant to Idaho Appellate Rule 17(m), submit this *Amended Notice of Appeal* to reflect additional facts arising after the filing of the initial notice of appeal, namely, entry of the District Court’s June 5, 2018 *Order Denying Petition for Rehearing*¹ in the above-captioned case. Amendments to *Sylte’s Notice of Appeal*, filed May 23, 2018, are indicated below with underlining. No changes other than those indicated have been made.

* * *

NOTICE IS HEREBY GIVEN that Petitioners Gordon Sylte, Susan Goodrich, John Sylte, and Sylte Ranch Limited Liability Company (collectively, “Sylte” or “Appellant”), pursuant to the Idaho Appellate Rules, appeal to the Idaho Supreme Court from the District Court’s April 11, 2018 *Judgment and Memorandum Decision*, and the District Court’s June 5, 2018 *Order Denying Petition for Rehearing*. Copies of the *Judgment*, *Memorandum Decision*, and *Order Denying Petition for Rehearing*² are attached to this Amended Notice of Appeal

1. The title of this action or proceeding is Gordon Sylte, Susan Goodrich, John Sylte, and Sylte Ranch Limited Liability Company, petitioners v. Idaho Department of Water Resources, defendant, and Twin Lakes Improvement Association et al., Intervenors, Kootenai County Case No. CV-2017-7491, and is more fully described in the caption above. The specific decisions being appealed are the District Court’s April 11, 2018 *Judgment and Memorandum*

¹ Sylte timely filed *Petitioner Sylte’s Petition for Rehearing with the District Court on May 16, 2018*. Sylte timely filed *Sylte’s Notice of Appeal on May 23, 2018*, before the District Court entered its June 5, 2018 *Order Denying Petition for Rehearing*.

Decision and Order, and the District Court's June 5, 2018 Order Denying Petition for Rehearing.

2. The title of the court which heard the proceeding being appealed is the Snake River Basin Adjudication District Court of the Fifth Judicial District, the Honorable Eric J. Wildman, District Judge, presiding, which, in turn was reviewing an order of the Idaho Department of Water Resources, Gary Spackman, Director.

3. The number assigned to the action or proceeding by the District Court was Kootenai County Case No. CV-2017-7491, which was a judicial review of an action assigned Docket No. P-DR-2017-001 by the Idaho Department of Water Resources. The judicial review action was re-assigned to the Snake River Basin Adjudication District Court of the Fifth Judicial District pursuant to the Idaho Supreme Court's *Administrative Order* December 9, 2009.

4. The appealing party is Sylte, or Gordon Sylte, Susan Goodrich, John Sylte, and Sylte Ranch Limited Liability Company, and Sylte's attorney, Givens Pursley LLP, is identified with address, phone number, and email address on Page 2 above. The adverse party is the Idaho Department of Water Resources, and its Attorney, Lawrence G. Wasden, Attorney General, is identified with address, phone number, and email address on Page 2 above. A large number of intervenors, including Twin Lakes Improvement Association and Twin Lakes Flood Control District No. 17, also participated in the proceedings and were represented by counsel identified on Page 2 above.

² Only a copy of the *Order Denying Petition for Rehearing* is attached to this *Amended Notice of Appeal*. Copies of the *Judgment* and *Memorandum Decision* were attached to Sylte's original *Notice of Appeal*.

5. Sylte's preliminary statement of the issues it intends to assert on appeal, which under Rule 17, Idaho Appellate Rules, does not prevent Sylte from asserting other issues as Sylte deems necessary, is as follows:

a. Whether the District Court erred when it affirmed the Idaho Department of Water Resources' *Order on Motions for Summary Judgment; Order Amending Instructions; Order Vacating Hearing Dates and Schedule* dated September 6, 2017.

b. Whether the District Court erred by failing to consider issues and arguments raised by Sylte in this judicial review.

c. Whether the District Court erred by upholding the Idaho Department of Water Resources' determination that the distribution of water to Sylte's decreed water right no. 95-0734 should be limited to the amount of inflow to Twin Lakes.

d. Whether the District Court erred by upholding the Idaho Department of Water Resources' *sua sponte* order in the underlying administrative proceeding directing the distribution of water to Sylte's decreed water right no. 95-0734 "unless or until the maximum annual diversion volume of 4.1 acre feet has been delivered."

e. Whether the District Court erred by upholding the Idaho Department of Water Resources' review and citation to documents outside the agency record in the underlying administrative proceeding.

f. Whether the District Court erred by denying *Petitioner Sylte's Petition for Rehearing* by holding that Sylte's substantial rights were not prejudiced by the Idaho Department of Water Resources' actions described in paragraph 5.d above.

6. Sylte has the right to appeal to the Idaho Supreme Court, and the *Judgment and Memorandum Decision* described above are appealable under and pursuant to Idaho Appellate Rule 11(f), and the *Order Denying Petition for Rehearing* described above is appealable under and pursuant to Idaho Appellate Rule 11(a)(7).

7. Sylte requests a transcript of the March 20, 2018 hearing before the District Court in the above-captioned matter, and specifically requests that an electronic copy of the transcript be provided.

8. Sylte designates the following documents to be included in the clerk's record, in addition to those automatically included pursuant to Idaho Appellate Rule 28:

a. Each and every document comprising the Agency Record Lodged with the District Court, as set forth in the *Notice of Lodging the Settled Agency Record with District Court* dated November 17, 2017, and comprising the documents labeled 000001-001475;

b. To the extent not automatically included in the Standard Record pursuant to Idaho Appellate Rule 28, each and every pleading, brief, and other document filed by any party or intervenor before the District Court in this judicial review proceeding, including without limitation the following:

Date	Document
10-04-2017	PETITION FOR JUDICIAL REVIEW OF AGENCY ACTION
10-05-2017	NOTICE OF REASSIGNMENT
10-06-2017	PROCEDURAL ORDER GOVERNING JUDICIAL REVIEW OF FINAL ORDER OF DIRECTOR OF IDWR
10-16-2017	NOTICE OF APPEARANCE FOR TWIN LAKES IMPROVEMENT ASSOCIATION ET AL
10-20-2017	NOTICE OF LODGING AGENCY RECORD WITH THE AGENCY
10-23-2017	NOTICE OF APPEARANCE FOR TWIN LAKES FLOOD CONTROL

	DISTRICT NO 17
10-25-2017	STIPULATED AND UNOPPOSED MOTION TO VACATE AND RESET ORAL ARGUMENT
10-25-2017	ORDER VACATING AND RESETTING ORAL ARGUMENT
11-06-2017	ORDER TREATING APPEARANCE AS MOTION TO INTERVENE AND GRANTING SAME
11-17-2017	ORDER SETTLING AGENCY RECORD
11-17-2017	NOTICE OF LODGING THE SETTLED AGENCY RECORD WITH THE DISTRICT COURT
12-22-2017	PETITIONER SYLTE'S OPENING BRIEF
01-05-2018	STIPULATED MOTION FOR EXTENSION OF TIME TO FILE BRIEFS
01-05-2018	AFFIDAVIT IN SUPPORT OF STIPULATED MOTION FOR EXTENSION OF TIME TO FILE BRIEFS
01-05-2018	ORDER GRANTING MOTION FOR EXTENSION
02-09-2018	RESPONDENT'S BRIEF
02-09-2018	INTERVENORS' RESPONSE BRIEF
02-09-2018	ERRATA AND AMENDMENT TO INTERVENORS' RESPONSE BRIEF
02-09-2018	TWIN LAKES FLOOD CONTROL DISTRICT 17'S RESPONSE BRIEF
03-01-2018	PETITIONER SYLTE'S REPLY BRIEF
03-20-2018	MINUTES FROM MARCH 20, 2018 HEARING
04-11-2018	MEMORANDUM DECISION
04-11-2018	JUDGMENT
05-02-2018	PETITIONER SYLTE'S PETITION FOR REHEARING
05-16-2018	PETITIONER SYLTE'S MEMORANDUM IN SUPPORT OF PETITION FOR REHEARING
05-23-2018	<u>SYLTE'S NOTICE OF APPEAL</u>
06-05-2018	<u>ORDER DENYING PETITION FOR REHEARING</u>

c. To the extent not automatically included in the Standard Record pursuant to Idaho Appellate Rule 28, each and every decision, judgment, order, or other decision issued by the District Court in this case.

9. No exhibits were offered or admitted at the District Court's hearing of this matter.

10. There has not been an order entered sealing any part of the record or transcript.

11. The undersigned hereby certifies:

- a. That the service of the amended notice of appeal has been made upon the reporter of the trial or proceeding;
- b. That the clerk of the district court has been paid the estimate of Reporter's Fees in the sum of \$175.00 pursuant to Idaho Appellate Rule 24(c);
- c. That the estimated fees for preparation of the clerk's record have been paid in the sum of \$100.00 pursuant to Idaho Appellate Rule 27(d), as no actual fee has yet been computed;
- d. That all appellate filing fees have been paid; and
- e. That service has been made upon all other parties required to be served pursuant to Idaho Appellate Rule 20, including upon the Attorney General of the State of Idaho.

DATED this 13th day of July, 2018.

Respectfully submitted,

GIVENS PURSLEY LLP

By



Michael P. Lawrence

By



Jack W. Relf

*Attorneys for Petitioners Gordon Sylte,
Susan Goodrich, John Sylte, and Sylte
Ranch Limited Liability Company*

CERTIFICATE OF SERVICE

I hereby certify that on this 13th day of July, 2018, I caused a true and correct copy of the foregoing to be filed and copies delivered by the method indicated below, and addressed to the following:

DOCUMENT FILED:

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Michael P. Lawrence

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,
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ELIZABETH HOLMES, LEIF HOUKAM,
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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**

RECEIVED

JUN 07 2018

Givens Pursley, LLP

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.)

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

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.¹ It is undisputed that the *Final Decree* entered in that adjudication unambiguously limits water right 95-734 to a

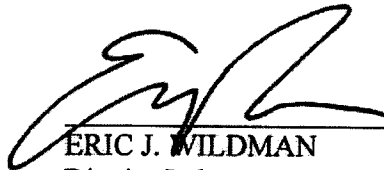
¹ The term "prior adjudication" refers to the general adjudication commenced in 1975 to adjudicate rights to the use of surface waters in the Twin Lakes-Rathdrum Creek Drainage Basin.

total annual diversion volume of 4.1 acre-feet.² 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

² 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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