

**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.

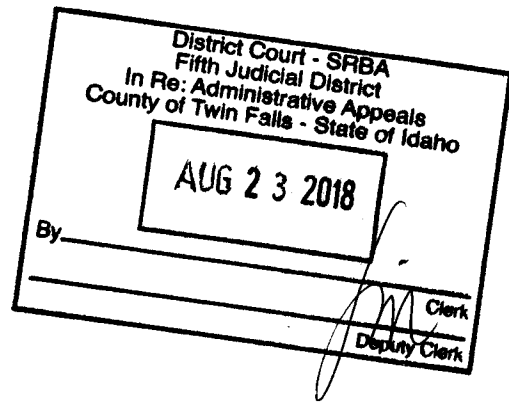
IDAHO DEPARTMENT OF WATER RESOURCES;
AND GARY SPACKMAN, IN HIS CAPACITY AS THE DIRECTOR OF THE IDAHO DEPARTMENT OF WATER RESOURCES,

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 SCHAFER, 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



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

**PETITIONERS' UNOPPOSED OBJECTION
TO REPORTER'S TRANSCRIPT**

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

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I. STATEMENT OF OBJECTION

Petitioners Gordon Sylte, Susan Goodrich, John Sylte, and Sylte Ranch Limited Liability Company (collectively "Sylte"), by and through their counsel of record, pursuant to Idaho Appellate Rule 29(a), hereby object to the July 26, 2018 *Transcript on Appeal* (Idaho Supreme Court Case No. 46062), *Reporter's Transcript* (1st Judicial District Case No. CV2017-7491) ("Transcript"), compiled and distributed in the above-captioned matter as follows:

- a. Page 10, Line 5 of the Transcript reads "all three blocks of water were at one time not for lake" whereas it should read as follows (with deletions shown in strikethrough and with additions underlined): "all three blocks of water were at one time ~~not for~~ natural lake".
- b. Page 13, Line 10 of the Transcript reads "construction somehow lessened the non-evaporation or" whereas it should read as follows (with deletions shown in strikethrough and with additions underlined): "construction somehow lessened the ~~non~~-evaporation or".

A copy of the Transcript pages referenced above, with the proposed corrections indicated as described, is attached hereto as Exhibit A. Sylte respectfully requests that the Court order the proposed corrections be made to the Transcript.

Counsel for Sylte has contacted the counsel for the other parties about the proposed corrections. Counsel for the other parties have indicated that they do not oppose the proposed corrections.

II. NOTICE OF QUALIFIED NON-OBJECTION TO CLERK'S RECORD ON APPEAL

Sylte has no objection to the *Clerk's Record on Appeal* dated July 27, 2018 ("Clerk's Record"), but nevertheless notes the following:

- a. The Clerk's Record, exclusive of the Exhibit 1 (addressed below) and the Transcript (addressed above), consists of 604 pages of documents numbered 000001-000604. However, pages 000303-000604 appear to be exact duplicates of pages 000001-000302. While this oddity perhaps does not warrant an objection, Sylte does want to note it for the Court and other parties.
- b. Page 000297 of the Clerk's Record (and duplicate page 000599) indicate that Exhibit 1 on a separate CD contains the Agency Record & Transcript (10-20-17), as lodged with the District Court, Kootenai County Case No. CV-2017-4791. However, the Agency Record & Transcript CD Sylte initially received on July 27, 2018 contained only a single page identifying it as Exhibit 1. Following communication between Sylte's counsel and the District Court's chambers, on August 7, 2018 Sylte's counsel received a new CD labeled "Corrected CD; Sylte Appeal; SC Docket 46062-2018; Agency Record & Transcript," together with a memorandum dated August 6, 2018 from the Court's clerk asking counsel to "[p]lease replace the previously sent CD containing IDWR's Agency Record & Transcript with this enclosed CD as the first one is incorrect." The new "corrected" CD contains the Agency Record, beginning with a Table of Contents and followed by documents numbered 000001-001475. Sylte does not object to the new "corrected" CD. To the extent the Court or any party intends to rely upon

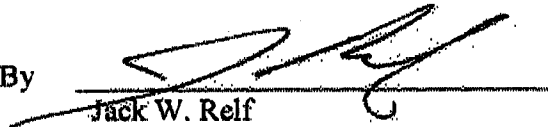
the original CD which contained only a single page, Sylte would object to such reliance or use.

DATED this 23 day of August, 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 23rd day of August, 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:

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Michael P. Lawrence

IN THE SUPREME COURT OF THE STATE OF IDAHO

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LIMITED LIABILITY COMPANY, AN IDAHO)
LIMITED COMPANY,)

Petitioners/Appellants,)

Supreme Ct. #46062

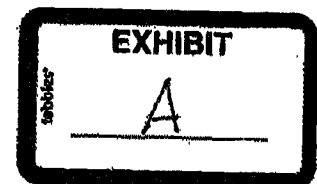
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IDAHO DEPARTMENT OF WATER RESOURCES)
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and)

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 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)

T R A N S C R I P T O N A P P E A L
 Fifth Judicial District
 State of Idaho
 HON. ERIC J. WILDMAN
 DISTRICT JUDGE

APPEARANCES:

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 Improvement Association, et al.
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 Flood Control District No. 17.

REPORTED BY: Sabrina Vasquez, CSR #377
 Official Court Reporter

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)
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LIMITED LIABILITY COMPANY, AN IDAHO)
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CASE CV2017-7491

vs.)

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

REPORTER'S
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 RIGHT NO. 95-0734)

PETITION FOR JUDICIAL REVIEW
 March 20, 2018

HON. ERIC J. WILDMAN
 DISTRICT JUDGE

APPEARANCES:

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 Flood Control District No. 17.

REPORTED BY:
 SABRINA VASQUEZ, CSR #377

1 storage currently in the lake is the same as the natural
 2 lake storage is also recognized by the amended finding
 3 of fact 10, I believe it is, that describes how all
 4 three blocks, as they call it in the finding of fact,
 5 all three blocks of water were at one time ~~not for lake~~
 6 storage. **NATURAL**

7 Judge Magnuson found, quote, "Before the
 8 dam was built, the outflow water flowed into Rathdrum
 9 Creek for about four miles downstream to John Sylte's
 10 Number 95-0734 point place of diversion."

11 Then he found that "From conflicting
 12 evidence, the court finds that it was more probably
 13 true than not that the outlet waters of Twin Lakes
 14 flowed over the top of the lip at periods of high water
 15 and through the natural pre-dam obstruction at all
 16 times forming the source water of Rathdrum Creek."

17 So, in other words, Judge Magnuson found
 18 that when Syltes' 1875 right was appropriated, all of
 19 Twin Lakes' natural lake storage was available and
 20 furnished the water to Syltes' 1875 right on a
 21 continuous year-round basis.

22 Something that's important to recognize is
 23 the nature of Twin Lakes and the outflow prior to the
 24 dam construction. The Department says that the 1875
 25 right today must be limited by the lakes' inflow.

10

1 However much inflow there is to the lake, that's all
 2 that can be released down Rathdrum Creek to satisfy the
 3 Syltes.

4 Syltes' position, based on the statements
 5 of Judge Magnuson, is that they are entitled to the
 6 pre-dam natural outflow from Twin Lakes' natural lake
 7 storage, and that is not dependent on the amount of
 8 inflow. And the way we know that --

9 THE COURT: Can you show me where that is
 10 because, I mean, when I get down to this, what I'm
 11 doing is being asked to interpret a decree.

12 MR. LAWRENCE: Yes.

13 THE COURT: You know, I'm not looking at
 14 pre-decree conditions right now. At this point I'm
 15 looking at what's in the decree. So show me where the
 16 judge found that. I have it in front of me, so I want
 17 to mark it.

18 MR. LAWRENCE: Okay. The first step of this
 19 analysis, Your Honor, is on the memorandum decision at
 20 10.

21 THE COURT: Let me find it.

22 MR. LAWRENCE: At page 10, where Judge Magnuson
 23 found that the primary result the dam had on the water
 24 level was to hold the water at a higher point longer
 25 through the summer months. In other words, prior to

11

1 the dam construction, the water levels dropped faster.
 2 How did the water levels drop faster? It's
 3 pretty fairly fundamental, and we included this diagram
 4 from the USGS publication of Primer on Water on page 23
 5 of our opening brief.

6 THE COURT: Hold on one second. Excuse me one
 7 minute.

8 (Discussion between Judge
 9 and Clerk off the record.)

10 THE COURT: Apparently IDWR's northern office
 11 has been trying to connect.

12 MR. LAWRENCE: Should we wait?

13 THE COURT: Let's just give them a minute. They
 14 are going to call in.

15 Well, I did give Mr. Jones the opportunity
 16 to connect. Apparently he hasn't, so let's plug along.

17 MR. LAWRENCE: Okay. Thank you, Your Honor.
 18 I'll continue and try to pick up largely where we left
 19 off. Hopefully, I don't reiterate too much what's
 20 already been said.

21 Starting at the beginning of answering your
 22 question, the first statement of Judge Magnuson's that
 23 must be recognized with respect to the outflow, the
 24 pre-dam outflow from Twin Lakes is his finding on
 25 memorandum decision, page 10, that the primary result

12

1 the dam had on the water level was to hold the water at
 2 a higher point longer through the summer months.

3 Said another way, prior to the dam
 4 construction, the water level decreased faster than
 5 after the dam was constructed. So the question is:
 6 Where did that water go?

7 There's no indication that evaporation was
 8 greater before dam construction, or seepage to ground
 9 water was greater before dam construction, or that dam
 10 construction somehow lessened the ~~non~~-evaporation or
 11 the seepage to ground water from Twin Lakes.

12 The only other place it could have gone,
 13 then, was down Rathdrum Creek. That's what Judge
 14 Magnuson specifically found was the only outlet from
 15 Twin Lakes.

16 As this diagram that we included on page 23
 17 of our opening brief from USGS Primer on Water
 18 publication shows, it illustrates that when inflow is
 19 less than outflow, storage decreases.

20 So if the water level was going down faster
 21 prior to dam construction than after, that's another
 22 way of saying storage was decreasing, and that
 23 fundamental concept that if storage was decreasing,
 24 that means that outflow was greater than inflow. And
 25 the only place the outflow was going was down Rathdrum

13