

Norman M. Semanko ISB #4761
Attorney at Law
P.O. Box 538
Eagle, Idaho 83616
Telephone: (208) 863-7921
Facsimile: (208) 344-2744
semanko@rmci.net

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DEPARTMENT OF
WATER RESOURCES

Attorney for Protestant Paul F. Finman

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

In the Matter of Application for	)	MOTION FOR DEFAULT
Permit No. 95-10877 in the	)	OR SANCTION FOR
Name of Sylte Ranch LLC	)	FAILURE TO DISCLOSE
	)	WITNESS LIST
_____	)	

Protestant Paul F. Finman ("Protestant" or "Finman"), through his counsel, pursuant to the Department's Rules of Procedure, the Idaho Rules of Civil Procedure, and the *Order Requiring Disclosure of Witnesses* issued on May 8, 2012, hereby moves for: (1) a notice of proposed default, dismissing the application, for Applicant's failure to respond to the Hearing Officer's *Order Requiring Disclosure of Witnesses*; or (2) an order imposing a sanction for failure to disclose, including exclusion of witnesses that the Applicant has failed to disclose.

FACTS

A hearing is scheduled in the above-captioned matter on June 14, 2012. As part of the pre-hearing process, the Hearing Officer issued an *Order Requiring Disclosure of Witnesses* on May 8, 2012. In pertinent part, the Order states: "On or before May 31, 2012, the parties shall disclose in writing to all other parties and to the hearing officer the identity of all witnesses who will or may testify at the hearing." This would allow the

parties approximately two weeks to make final preparations for the hearing.

Accordingly, the Protestant physically served his witness list on the Hearing Officer and the Applicant on May 31, 2012.

The Applicant failed to meet the May 31, 2012 deadline and has not disclosed any witness list. The only notification received from the Applicant was a memo dated April 26, 2012, identifying Bob Haynes as a potential expert witness, pursuant to a separate deadline.

APPLICABLE AUTHORITY

1. Motion for Notice of Default

Pursuant to Rule 418, the Hearing Officer has authority to issue notices of default. A notice of default, dismissing an application, may be issued for failure of an applicant to respond to a written information request. Rule 700.

In the present case, the Applicant has completely failed to respond to the Hearing Officer's written *Order Requiring Disclosure of Witnesses*. The deadline was May 31, 2012, two weeks before the scheduled June 14, 2012 hearing. There is now barely a week left before the hearing.

Under such circumstances, it is appropriate for the Hearing Office to issue a notice of default, dismissing the application.

2. Motion for Sanction

Alternatively, a sanction should be imposed on the Applicant, pursuant to Rule 531 and the Idaho Rules of Civil Procedure. As identified in the *Order Requiring Disclosure of Witnesses*, Rule 16(h) of the Idaho Rules of Civil Procedure provides that: "Failure to comply. . .may be grounds. . .for excluding a witness from testifying. . .".

In the current case, the Applicant has failed to comply with the May 31, 2012 deadline set forth in the *Order Requiring Disclosure of Witnesses*. As a result, it is appropriate to exclude any witnesses from testifying at the hearing that were not identified by the Applicant pursuant to the *Order Requiring Disclosure of Witnesses*. The only witness allowed to testify for the Applicant would be Bob Haynes, who was previously identified as an expert witness by the Applicant under a different deadline.

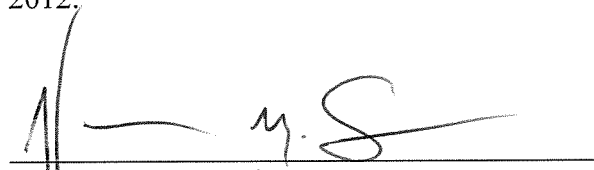
Failure to dismiss the application or, alternatively, exclude witnesses that the Applicant has failed to disclose, would be prejudicial to the Protestant, who has complied with all applicable pre-hearing deadlines and has worked diligently to prepare for the June 14, 2012 hearing in this matter.

RELIEF REQUESTED

For the reasons set forth above, the Protestant respectfully requests issuance of:

- (1) A notice of proposed default, dismissing the application, for Applicant's failure to respond to the Hearing Officer's *Order Requiring Disclosure of Witnesses*; or
- (2) An order imposing a sanction for failure to disclose, including exclusion of witnesses that the Applicant has failed to disclose.

DATED this 5th day of June, 2012.



Norman M. Semanko
Attorney for Protestant Paul F. Finman

CERTIFICATE OF SERVICE

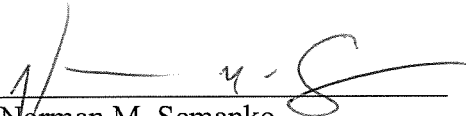
I hereby certify that on this 5th day of June, 2012, a true and correct copy of the foregoing MOTION FOR DEFAULT OR SANCTION FOR FAILURE TO DISCLOSE WITNESS LIST was served by the method indicated below to the following parties:

Shelley Keen
Idaho Department of Water Resources
322 E. Front St.
Boise, ID 83702

☒ Hand Delivery
☐ U.S. Mail
☐ Overnight Delivery

Sylte Ranch LLC
8626 W. Sylte Ranch Rd.
Rathdrum, ID 83858

☐ Hand Delivery
☒ U.S. Mail
☐ Overnight Delivery


Norman M. Semanko