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DEPARTMENT OF
WATER RESOURCES

Sylte Ranch LLC
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**BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO**

In the Matter of Application for	)	SYLTE RANCH LLC BRIEF
Permit No. 95-10877 in the	)	
Name of Sylte Ranch LLC	)	
_____	)	

Sylte Ranch LLC wishes to submit the following summary of the hearing held June 14, 2012 concerning Application for Permit 95-10877 in accordance with the evidence and testimony presented.

We believe that the evidence and testimony presented at the hearing demonstrated application 95-10877 should be approved. We would like to review the criteria for making a decision one by one.

1. We believe the evidence clearly showed the source of water is the regional Rathdrum Prairie ground water system. Recharge to this system averages 1471cfs annually. What is consumptively removed by pumping averages 318cfs annually. The lowest water levels recorded in the aquifer occurred in 1932. This application seeks 0.08cfs. The well driller did not observe any drawdown in the well when he tested the well at a rate less than this application proposes.
2. The statements above address the adequacy of the supply. Bob Haynes, expert witness for the applicant who was recognized as such by the protestant, repeatedly and unequivocally provided unrefuted testimony which established that the well in question, 95-10877, would have no impact on any other surface, ground or well water rights even if a well were drilled in very close proximity. Because the well 97-10877 is in the aquifer and the levels have actually increased over the years, he also established that there is sufficient water to satisfy the use for which the application is intended. Although Mr. Semanko repeatedly referred to it as a "domestic well," it should be noted that it was and still is common practice for drillers to apply for a permit for a domestic well because it is less expensive. The designation on the permit does not prohibit the use of this well (95-10877) for irrigation.

3. We have a contract with the city of Rathdrum that has transferred ownership of the property to be irrigated to the city. They are not currently using all of the acreage. In the meantime, with the city's concurrence, we continue to farm the unused portion of the property.
4. The project is complete. We do not expect to spend any more money on it with the exception of needed repairs.
5. Because of the relative magnitudes of the water supply and what we seek to appropriate, there is no observable effect on the water supply and therefore this project is not in conflict with the local public interest.
6. Water is pumped from the aquifer and irrigation occurs by use of a sprinkler system. What water is not consumed by the plants returns to the aquifer in Idaho. Livestock are watered in a trough that has a float valve that calls for water when levels drop and shuts the pump off when the trough has filled.

We objected to the admission of documents relating to water rights on properties owned by both the protestant and applicants because we believed those water rights are not and could not be affected by use of water under this application. We do understand why the hearing officer chose to allow their admission. We believe that the evidence and testimony supports the conclusion that this use of water does not affect flows of water in Rathdrum Creek and its tributaries or upland wells and springs. We believe that the hearing officer's findings of fact should reflect this.

This application came about because Sylte Ranch LLC was voluntarily working to be in compliance with the adjudication now underway and discovered the appropriation in question had no water right number. Use for which they are applying (97-10877) has been in existence since the well was completed in 1977 with upgrades to the well and system over the past 35 years to maximize use and follow conservation practices. It should be noted that the application was voluntarily made in 2009 as soon as Sylte Ranch LLC discovered it needed to be. Common sense supports the fact that such development would not have been undertaken had not Sylte Ranch LLC believed this water right was secured.

The topo map (Exhibit 137) provided by the protestant and marked by Mr. Haynes shows only in which quadrants the POD's of some Finman and Sylte Ranch LLC water rights are located. It does not reflect correct POU or POD'S and is, in fact, incorrect in more than one of these locations which could be verified by IDWR records. It should also be noted that property lines are not indicated. It does little more to indicate relative location of Finman water rights to the well in question (95-10877) than the map (Exhibit B) introduced by Sylte Ranch LLC to which Mr. Semanko objected. Both demonstrate that the Finman water rights are approximately 1-2 miles from the well in question (95-10877) and at higher elevations. As is, Exhibit 137 clearly

demonstrates that the well in question (95-10877) would not impact any of the water rights marked on it. This exercise was used by the protestant to have an expert witness enter into the record guesses about the location of POD's or POU's for a number of water rights. If the protestants had wanted to be accurate, they could certainly have constructed a true map. While it makes sense that the Finman water rights were included, the inclusion of the Sylte Ranch LLC rights is puzzling since they obviously would not jeopardize their own water rights. Equally puzzling is why Mr. Semanko stated that the Finman well (Exhibit 110) "would not impact any of these water rights." That statement was objected to by Sylte Ranch LLC for relevance since the hearing was about a totally different well referenced in the Application for Permit 97-10877. One can only speculate why that statement was made unless Mr. Finman and Mr. Semanko plan to use that statement in some future application or protest.

Sylte Ranch LLC has no objection to the map (Exhibit 137) but reserves the right to make a call on the water right # 95-13833 (Exhibit 110) should it or other water rights that are junior cause injury to other water rights or as they might impact Sylte Ranch LLC water rights.

The city of Rathdrum as evidenced in Exhibit C obviously has no objection to the application nor do they appear have any concerns about having enough water to adequately take care of the cemetery. On the contrary, the existing situation clearly shows how mutual cooperation between private and public interests can work for beneficial use of Idaho's water resources. While the minutes of the City Council meeting (Exhibit 133) are interesting, they actually only address installation of watering system which would have to be installed no matter what the water source was. This exhibit only serves to further confuse the issue. The contract between the Sylte Ranch LLC and the City of Rathdrum (Exhibit E) has no provision for maintenance or requirement for water on the acreage for which the water application (95-10877) will be used other than to specify that Sylte Ranch LLC will use the ground for agricultural purposes.

While the Sylte Ranch LLC has no legal obligation to do anything with the acreage in question, they have chosen (at their own expense) not minimal maintenance, but rather have tilled and planted a hay field which they water and maintain. When the crop is not sufficient for cutting, they control overgrowth through grazing. Had they not chosen to do this, assisted by water from the well in question (95-10877), the acreage could revert to a patch of knapweed or worse and become an eyesore, fire risk, and a place in which people could dump trash, yard waste and old appliances and cars. Since the land upon which the irrigation will be applied actually belongs to the City of Rathdrum, Sylte Ranch LLC's water right and the resulting water provides a service to the community. The public actually benefits from this water right and has been for many years.

Conservation of water is practiced because excess water from irrigation will go back into the aquifer and stock water is regulated by an automatic shut-off valve. It was noted in the cross examination of John Sylte that in the event there was a shortage of water, the irrigation is adjusted or curtailed.

During the cross examination of Mr. Haynes by Mr. Semanko, minutes of some of the meetings of the Twin Lakes Water District were introduced as exhibits (Exhibit 131). These show that the water master was not activated for a number of years. This would indicate that neither the Sylte Ranch LLC nor any other water right holder in that District was misappropriating water and that water users were co-existing in a cooperative manner. Such evidence should put to rest any fears Mr. Finman might have about the well in question (95-10877) ever being misused. The activation of the water master has never had anything to do with the well in question (95-10877) and it was further noted that application 95-10877 is outside the jurisdiction of the Twin Lakes Water District. However, the fact that there was a complaint against Mr. Finman (Exhibit 135) speaks for itself and further clarifies that the well in question (95-10877) was not an issue. Sylte Ranch LLC fails to see the connection Mr. Semanko tried to establish between (95-10877) and any water master activation of the Twin Lakes Water District.

Mr. Semanko questioned John Sylte as to whether or not the Fish and Game, Forest Service or EPA had been contacted. The well is within the city limits and outside the jurisdiction of those agencies. It was drilled according to the parameters drillers must follow and has been submitted to IDWR for approval. Sylte Ranch LLC has complied with what is required by law. There is no need to involve other agencies for this kind of application.

John Sylte testified that in any given year there may or may not be any financial gain for Sylte Ranch LLC because the hay is most likely fed to the animals. Further, the grave sites net only \$25 per site to them as per contract (Exhibit E). None of the possible monetary benefit to Sylte Ranch LLC could come close to offsetting the costs of drilling and maintaining the well and the acreage for which it is now utilized. One only has to look at fuel and fertilizer prices to know how expensive this maintenance can be. Since Sylte Ranch LLC is a local entity, their goods and services are obtained locally rather than out of state or county. Furthermore, all of the uses of this well (95-10877) are within the limits of the contract with the City of Rathdrum.

Although Mr. Semanko implied that Sylte Ranch LLC should have knowledge of how the phases of the cemetery were progressing, there is no reason for the City of Rathdrum to include them in that information. As indicated by Gordon Sylte, the expansion of the cemetery is slow. While Mr. Semanko tried to get a projection for how long it would take, obviously no one knows how many people in Rathdrum are going to die so it could be another 200 years before

the plots expand to the railroad right of way. In the past 30 years, the fence line has been moved appropriately only once with no difficulty to either party. This application 97-10877 is for the unused portion, not the part actually housing the dead. Insuring that the unused portion cared for until it is needed seems like a beneficial situation for Rathdrum.

Mr. Finman and Mr. Semanko presented no case, never called a witness, and relied mostly on innuendos. Mr. Semanko used extensive and exhaustive cross examination to introduce protestant's exhibits even if they were unrelated to the reasonable scope or knowledge of the specialty of the expert witness, Mr. Haynes. It would have been more appropriate and productive to question the applicant about such things as Exhibit E (pictures of the well and surrounding area). The protestant then failed to follow through with definitive conclusions to support the protest. Mr. Finman was never sworn in a like manner as was Mr. Sylte; therefore, his statements might not even be considered valid. Indeed, he presented himself as a "farmer only trying to be able to use his land." Had the applicant been able to cross examine him as a witness in the same manner that their witnesses were intensely cross examined, it would most likely have been revealed (among other things) that his primary source of income and expertise is not farming. Sylte Ranch LLC had no opportunity to challenge or cross-examine. Mr. Finman and Mr. Semanko seem to be relying on a "brief" to which Sylte Ranch LLC will also have no opportunity to respond. It is our hope that the intent of IDWR to deal fairly will prevail in this one-sided legal display.

Perhaps this is all within the rules of procedure but it seems extraordinary to force water rights applicants to hire attorneys in order to defend a protest to a water right application which never should have happened in the first place nor ever gone past the pre-hearing stage. The actual agenda seems to be about something other than whether or not this water right should be granted.

Sylte Ranch LLC requests that the record of this hearing be limited only to this particular water right application (95-10877) and statements therein not be used in future protests or applications by either party concerning other water rights. Each future situation needs to be judged on its own merits with evidence being generated independent of this hearing about 95-10877.

Mr. Finman's closing statement had nothing to do with the 7 issues being considered in this hearing. Instead, it was a personal attack upon Gordon Sylte which attempted to portray Mr. Finman as a victim. The ruses and problems to which Mr. Finman refers are a mystery. The protestant holds that he wants to be able to utilize his land to its full potential. Given the facts and testimony presented at this hearing, Sylte Ranch LLC fails to see how the use of water under 95-10877 could possibly interfere with the utilization of Mr. Finman's property. On the contrary, it appears that Mr. Finman at the very least is attempting to prevent Sylte Ranch LLC from beneficial use of the acreage which would also then force the City of Rathdrum to use both its water and financial resources for maintenance and would render an existing well useless. This would be contrary to the goals of the State of Idaho to maximize the utilization of Idaho water resources. The most prudent action would have been for Mr. Finman to have withdrawn his protest.

Sylte Ranch LLC would like to express confidence in the ability of IDWR to deal with application 97-10877 in an equitable and fair manner. It is unfortunate in these days of economic problems that IDWR should have to be forced to mediate this issue. The only benefit or merit Sylte Ranch LLC sees to the protest is billable hours by Mr. Semanko. The time and energy spent by both sides as well as IDWR has been excessive and unproductive. One would hope the future might find our time, energies and money more wisely spent.

CERTIFICATE OF SERVICE

I hereby certify that on this 28th day of June, 2012, a true and correct copy of the foregoing SYLTE RANCH LLC BRIEF was served by U.S. mail to the following parties:

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