

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

**IN THE MATTER OF APPLICATION FOR)
PERMIT NO. 95-10877 IN THE NAME OF)
SYLTE RANCH LLC)
_____)**

**PRELIMINARY ORDER
APPROVING APPLICATION**

PROCEDURAL HISTORY

On July 21, 2009, Sylte Ranch LLC (“Sylte”) filed Application for Permit to Appropriate Water No. 95-10877 (“application”) with the Department of Water Resources (“IDWR”). IDWR published notice of the application in the manner set forth in Idaho Code § 42-203A. Paul F. Finman (“Finman”) protested the application. On June 14, 2012, IDWR conducted a hearing in Coeur d’Alene, Idaho, to take evidence in connection with the application.

At the hearing, John Sylte represented Sylte and testified for Sylte. John Sylte is an employee of Sylte. Bob Haynes testified as an expert witness for Sylte. Attorney Norman Semanko represented Finman. Finman did not call any witnesses at the hearing.

At the conclusion of the hearing, the Hearing Officer left the record open for fourteen days to allow for post-hearing briefs to be submitted. Sylte submitted a post-hearing brief. Finman did not submit a brief.

ISSUES

Sylte’s application seeks authorization to continue diverting ground water to irrigate ten acres near Rathdrum, Idaho. Finman’s protest states that it is based on “all of the criteria listed in Idaho Code § 42-203A(5), including, but not limited to, injury to existing water rights, lack of available water resources, adverse impacts on the local public interest, and proposed use contrary to conservation of water resources within the State of Idaho.” Of particular issue is the potential for Sylte’s ground water diversions to injure Finman. Finman alleges that Sylte’s ground water pumping may deplete the sources of water for Finman’s ground water rights and surface water rights. Finman also alleges that Sylte’s pumping of ground water may deplete the surface water sources for water rights held by Sylte, Sylte Family Ranch, and Gordon Sylte. If the surface water sources were depleted, Finman’s surface water rights could be curtailed to satisfy Sylte’s surface water rights.

FINDINGS OF FACT

1. On July 21, 2009, Sylte filed Application for Permit to Appropriate Water No. 95-10877 with IDWR. The application does not propose a new use of water. Sylte filed the application to bring an existing water use into compliance with Idaho water law. Sylte has diverted water

from the point of diversion described in the application for many years. The water use described in the application would not exceed Sylte's historic practice.

2. The application seeks authorization for the diversion of 0.08 cfs from ground water in the SE $\frac{1}{4}$ SE $\frac{1}{4}$, Section 30, Township 52 North, Range 4 West, B.M., for the irrigation of 10 acres and for the watering of an unspecified number and type of stock. The place of use described in the application is in the NE $\frac{1}{4}$ SE $\frac{1}{4}$ and SE $\frac{1}{4}$ SE $\frac{1}{4}$, Section 30, Township 52 North, Range 4 West, B.M.
3. IDWR's published notice for the application indicates that the proposed stockwater use is for twenty head of mixed stock.
4. The point of diversion described in the application is an existing well ("well") drilled for Sylte Ranch, Inc., in 1977. The diameter of the well is eight inches. The well was constructed and cased to a depth of 296 feet below ground surface. The well driller's report indicates water was encountered in sand, gravel, and clay strata from 167 feet to 296 feet, with one waterless interval of decomposed granite from 228 feet to 231 feet. The well's casing is perforated from 271 feet to 291 feet. When the well was drilled, the static water level was 216 feet. The well driller withdrew water from the well for four hours at a rate of 35 gallons per minute (0.08 cfs) and observed no discernible cone of depression in the well. The static water level in this well is higher now than it was when it was constructed in 1977.
5. Sylte's well was completed in an extensive aquifer of coarse alluvium commonly termed the Spokane Valley-Rathdrum Prairie Aquifer ("SVRPA"). Bob Haynes' description of the SVRPA was consistent with IDWR's 2002 order *In the Matter of Petition Seeking to Establish a Moratorium on the Approval of Permits to Appropriate Water From the Rathdrum Prairie Aquifer* ("order"), which states:

Ground water within the aquifer occurs under unconfined, non-artesian conditions. The top of the saturated surface within the aquifer (the water table) is lower than the surface elevation of all of the lakes and the reach of the Spokane River located within Idaho. Hence, ground water is not tributary to surface water within Idaho

The 2002 order established the Rathdrum Prairie Ground Water Management Area ("RPGWMA") to provide the basis for adoption of a management plan for the SVRPA in Idaho. New appropriations of ground water within the boundaries of the RPGWMA are subject to the measuring and reporting requirements of the *Management Plan for the Rathdrum Prairie Ground Water Management Area* adopted by IDWR on September 15, 2005.

6. Bob Haynes testified that a recent bi-state (Idaho and Washington) study of the SVRPA showed that recharge of water to the aquifer exceeds pumping withdrawals by hundreds of cubic feet per second. (See U.S. Geological Survey Scientific Investigations Report 2007-5041, *Hydrogeologic Framework and Ground-Water Budget of the Spokane Valley-Rathdrum Prairie Aquifer, Spokane County, Washington, and Bonner and Kootenai Counties, Idaho*.)

7. The City of Rathdrum ("City") owns the parcel of land Sylte seeks authorization to continue irrigating. The City uses a portion of the parcel as a cemetery. The City plans to expand usage of the parcel for cemetery purposes as needed over time. The pace at which the conversion will occur is not yet determined, but the conversion is not imminent. Meanwhile, under a 1981 agreement with the City of Rathdrum, Sylte can use the otherwise unneeded portion of the parcel for "agricultural pursuits."
8. Sylte's diversion rate of 0.08 cfs, when applied via a sprinkler system, is sufficient to allow Sylte to get two cuttings of hay from the proposed place of use in most years. The use of a sprinkler system to apply irrigation water is more efficient (requires less water) than flood irrigation methods. After the second hay crop each year, Sylte typically grazes cattle on the proposed place of use. The diversion of 0.08 cfs for irrigation after the second hay crop improves the pasture available for grazing in the late summer and fall.
9. Sylte's diversion of water for stock watering purposes is controlled by a float switch in the stock trough. The effect of the float switch is to limit the diversion of water only to those times when water in the trough is depleted.
10. Finman owns or has filed the following water rights and claims:

WR No.	Type	Source	Priority Date	Point(s) of Diversion					Quantity	
				Township	Range	Section	QQQ	Lot	Div. Rate (cfs)	Acres
95-731	Water Right	RATHDRUM CREEK	10/1/1947	52N	04W	19 & 30			0.03	
95-2011	Claim	SPRING	4/3/1906	52N	04W	30	NENW		0.07	3.0
95-4358	Water Right	SPRING	6/1/1920	52N	04W	30	SWNW		0.09	3.0
95-7617	Water Right	RATHDRUM CREEK	4/30/1976	52N	04W	19 & 30			1.81	91.4
95-7719	Water Right	UNNAMED STREAM	4/11/1977	52N	04W	30	SWNW	2	0.20	60.0
95-8547	Water Right	UNNAMED STREAM	8/20/1984	52N	04W	30	SWNW	2	0.20	56.6
95-11191	Claim	GROUND WATER	1/1/1947	52N	04W	30	NENW		0.04	20.2
95-11768	Claim	UNNAMED STREAM	4/11/1977	52N	04W	30	SWNW	2	0.20	143.5
95-13833	Water Permit	GROUND WATER	10/14/2010	52N	04W	19	SWSWSE		0.08	8.0

11. The points of diversion for Finman's rights to divert surface water from Rathdrum Creek, springs, and unnamed streams are each located more than half a mile to the northwest of the point of diversion proposed in the application.
12. Sylte, Sylte Family Ranch, and Gordon Sylte also own a number of water rights authorizing the diversion and use of surface water from Rathdrum Creek and tributaries of Rathdrum Creek.
13. Distribution of surface water from Rathdrum Creek and its tributaries is regulated by the watermaster of Water District 95C. The watermaster was not activated to deliver water in the years 2004 through 2008, but he was activated at the request of Sylte in 2009.

14. The surface water sources for the water rights owned or claimed by Finman, Sylte, Sylte Family Ranch, and Gordon Sylte are not influenced by the SVRPA ground water diverted by Sylte. The surface water sources are perched above the SVRPA and may lose water to the aquifer, but the SVRPA does not contribute to the flow of the surface water sources. Therefore, Sylte's ground water pumping does not deplete the surface water available to satisfy Finman's surface water rights or the surface water rights of Sylte, Sylte Family Ranch, and Gordon Sylte.
15. The well identified as the point of diversion for Finman's Permit No. 95-13833 is located approximately three quarters of a mile to the northwest of Sylte's well. The point of diversion for Permit No. 95-13833 is located within, but near the edge of, the RPGWMA. However, throughout its constructed depth of 620 feet, Finman's well penetrates granitic strata not characteristic of the alluvium of the SVRPA.
16. The well identified as the point of diversion for Finman's Claim No. 95-11191 is also located approximately three quarters of a mile to the northwest of Sylte's well. The point of diversion for Claim No. 95-11191 is located within, but near the edge of, the RPGWMA. Because of its proximity to the point of diversion for Permit No. 95-13833, it is likely that it also penetrates granitic strata not characteristic of the SVRPA.
17. Based on the results of the well driller's test pumping at 35 gallons per minute, essentially the same rate of diversion requested in the application, diversion of water at the rate described in the application does not propagate a cone of depression around the Sylte well. The hydraulic connection between the SVRPA at Sylte's point of diversion and the ground water within the granitic rock at Finman's ground water points of diversion was not described in great detail in the record. However, because the pumping of water from Sylte's well does not propagate a cone of depression, it does not alter the existing hydraulic gradient across the contact between the SVRPA and the adjacent granitic rock. Therefore, pumping 0.08 cfs of ground water from the SVRPA at Sylte's point of diversion has no effect on the ground water available to satisfy Finman's ground water rights.

CONCLUSIONS OF LAW

Governing Statutes

1. Idaho Code § 42-203A(5) states in pertinent part:

In all applications whether protested or not protested, where the proposed use is such (a) that it will reduce the quantity of water under existing water rights, or (b) that the water supply itself is insufficient for the purpose for which it is sought to be appropriated, or (c) where it appears to the satisfaction of the director that such application is not made in good faith, is made for delay or speculative purposes, or (d) that the applicant has not sufficient financial resources with which to complete the work involved therein, or (e) that it will conflict with the local public interest as defined in section 42-202B, Idaho Code, or (f) that it is contrary to conservation of water resources within the state of Idaho, or (g) that it will adversely affect the local economy of the watershed or local area within which the

source of water for the proposed use originates, in the case where the place of use is outside of the watershed or local area where the source of water originates; the director of the department of water resources may reject such application and refuse issuance of a permit therefor, or may partially approve and grant a permit for a smaller quantity of water than applied for, or may grant a permit upon conditions.

2. Idaho Code § 42-202B(3) defines local public interest as “the interests that the people in the area directly affected by a proposed water use have in the effects of such use on the public water resource.

Burden of Proof

3. The applicant bears the ultimate burden of proof regarding all the factors set forth in Idaho Code § 42-203A.

Satisfaction of Idaho Code § 42-203A criteria

4. Diversion of water pursuant to the application will have no effect on ground water diversions in the SVRPA or in the nearby granitic strata where Finman’s ground water points of diversion are located. Also, because the water in the SVRPA does not contribute to surface water flowing above it in Idaho, pumping from the Sylte diversion well will have no affect on the supply of water available to satisfy Finman’s surface water rights, Sylte’s surface water rights, or other surface water rights in Idaho. The need to regulate diversions within Water District 95C will not be affected by Sylte’s proposed water use. In short, diversion and use of water as proposed in the application will not reduce the quantity of water available to satisfy existing ground water rights or existing surface water rights.
5. The ground water supply in the SVRPA is sufficient for the proposed water use.
6. The proposed water use is already occurring, and it provides a benefit to the applicant. Conversion of the place of use to cemetery use is not imminent. The applicant seeks a water right that would allow it to continue the ongoing beneficial use of water until the conversion occurs, which could be many years away. The application has been made in good faith and is not speculative.
7. Sylte already established the water use proposed in the application. Sylte has proven it has sufficient financial resources to complete the project.
8. Because the water use described in the application will not affect the SVRPA other than to deplete it by a very tiny fraction of the overall supply of water, and because Sylte’s water use will have no effect on other uses of water in the SVRPA, the proposed use does not conflict with the local public interest.
9. Sylte employs efficient means to control the diversion and application of water for irrigation and stockwater purposes. The diversion and use of water as described in the application is consistent with principles of conservation of the waters of the State of Idaho.

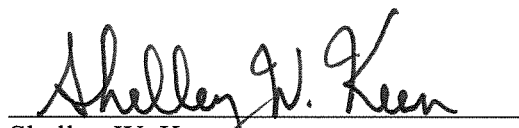
10. Sylte's place of use is not outside the watershed or local area where the water is proposed to be diverted. Therefore, the criteria described in Idaho Code § 42-203A(5)(g) does not apply to this application.

ORDER

Application for Permit No. 95-10877 is hereby APPROVED subject to the following conditions:

1. Proof of application of water to beneficial use shall be submitted on or before July 1, 2013.
2. This right does not grant any right-of-way or easement across the land of another.
3. This right authorizes the diversion of ground water within the Rathdrum Prairie Ground Water Management Area (RPGWMA). Use of water under this right shall be subject to the provisions of the management plan approved by the director for the RPGWMA.
4. When notified by the Department, the right holder shall install and maintain a measuring device of a type acceptable to the Department as part of the diverting works.
5. When notified by the Department, the right holder shall record the quantity of water diverted and annually report diversions of water and/or other pertinent hydrologic and system information as required by Section 42-701, Idaho Code, and/or the management plan for the Rathdrum Prairie Ground Water Management Area.
6. Stockwater use is for 20 head of mixed stock.
7. This right when combined with all other rights shall provide no more than 0.02 cfs per acre nor more than 3.0 afa per acre at the field headgate for irrigation of the place of use.

Dated this 16th day of July, 2012.


Shelley W. Keen
Hearing Officer

CERTIFICATE OF SERVICE

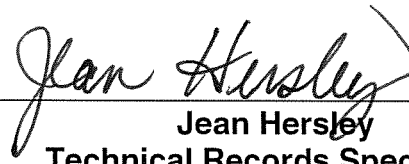
I hereby certify that on July 17, 2012, I mailed a true and correct copy, postage prepaid, of the foregoing PRELIMINARY ORDER APPROVING APPLICATION FOR PERMIT to the person (s) listed below:

RE: APPLICATION FOR PERMIT NO. 95-10877

**SYLTE RANCH LLC
8626 W SYLTE RANCH RD
RATHDRUM ID 83858-6820**

**PAUL F FINMAN
764 S CLEARWATER LOOP
POST FALLS ID 83854**

**NORMAN M SEMANKO
PO BOX 538
EAGLE ID 83616**

A handwritten signature in black ink, reading "Jean Hersley", is written over a horizontal line. The signature is cursive and stylized.

**Jean Hersley
Technical Records Specialist I**