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Sylte v. Idaho Department of Water Resources Respondent's Brief Dckt. 46062

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IN THE SUPREME COURT OF THE STATE OF IDAHO

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

GORDON SYLTE, AN INDIVIDUAL; SUSAN GOODRICH, AN INDIVIDUAL; JOHN
SYLTE, AN INDIVIDUAL; AND SYLTE RANCH LIMITED LIABILITY COMPANY,

Petitioners/Appellants,

v.

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

Petitioners/Respondents,

v.

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,
DONAL JAYNE, DOUGLAS I. & BERTHA MARY JAYNE, TERRY KIEFER, MICHAEL
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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 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/Respondents,

**TWIN LAKES FLOOD CONTROL DISTRICT NO. 17'S BRIEF IN RESPONSE TO
SYLTE'S OPENING BRIEF**

Appeal from the District Court of the First Judicial District of
The State of Idaho, in and for the County of Kootenai,
Honorable Eric J. Wildman, Presiding

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I. NATURE OF THE CASE

The fundamental issue in this case as it concerns Twin Lakes-Rathdrum Flood Control Dist. No. 17 (“Flood Control District”) is that water once stored in the reservoir is private water that belongs to the storage right holder, and a natural flow water right holder, like Appellant, is not entitled to demand release of stored water.

This case involves an appeal by the holder of a natural flow water right, Petitioners Gordon, Susan, and John Sylte and Sylte Ranch Limited Liability Company (“Sylte”), from a decision of the District court upholding a decision of the Idaho Department of Water Resources (“Department” or “IDWR”) upholding Instructions to the Water Master for Administration of Rights on Rathdrum Creek and amending one portion of the Instructions. IDWR limited Sylte’s water right to the total annual diversion volume authorized by the Decree for their right that had been issued in a 1989 adjudication of the Twin Lakes Basin (Case No. 32572). Sylte seeks a determination that their natural flow right requires the Department to release water stored in the Twin Lakes over and above the natural inflow into Twin Lakes at the time of the inflow. Sylte’s challenge would harm the storage rights of Twin Lakes Rathdrum Creek Flood Control District No. 17.

This case arises from Sylte’s administrative challenge to a decision of the Director on how to administer water in the Twin Lakes Basin. The legislature has entrusted the Director with considerable discretion to distribute water from natural water courses. Idaho Code § 42-602. To be sure, that discretion must be exercised within the bounds of the law. *In re: SRBA, Case No. 39576, Subcase 00-91017*, 157 Idaho 385, 393, 336 P.3d 792, 801 (2014) (*Basin Wide 17*) (“he must follow the law”). In this case, Sylte does not allege that the Director has abused his discretion but contends the Department did not follow the law as set out in the prior decree when

it issued the Instructions. The District court construed the decree and concluded that the Department was correct. This Court should do the same.

II. COURSE OF PROCEEDINGS

The Flood Control District adopts the Statement of the Course of Proceedings set forth in the other Respondents' Briefs.

III. STATEMENT OF FACTS

The Flood Control District continues to rely on the statement of facts set forth by other parties to this appeal for the facts relevant to this appeal. However, the Flood Control District wishes to make clear to this Court that it would be adversely impacted by Sylte's appeal. The Flood Control District holds Water Right 95-0973. AR. 001394¹. This right is what the Department and the 1989 Decree refers to as the "third block of storage." *Id.* That "third block of storage" occupies the space between elevations 6.4 and 10.4 on the staff gauge of the Twin Lakes outlet control structure. *Id.* Below that is the space held by Twin Lakes Improvement Association between elevation 0.0 and 6.4 feet on the staff gauge by Water Right 95-0974. *Id.* Beneath those two blocks of storage is the natural lake storage between the bottom of the lake and elevation 0.0 on the staff gauge. AR. 001393.

The main tributary to the lake is Fish Creek. R. 000264 & AR. 001392. The main outlet is Rathdrum Creek. *Id.* Water released from the outlet structure flows down Rathdrum Creek. *Id.* Sylte has a natural flow right for stockwater from Rathdrum Creek at the rate of 0.07 cfs and with a volume of 4.10 AFA. AR. 001393. Critically, Sylte has no storage right. AR. 001394; R. 000233.

The Flood Control District has the right and duty to provide for the protection from

¹ For purposes of this brief the Clerk's Record before the District court is cited as R_____, and the Administrative Record before IDWR is cited as AR_____.

floods and conservation of water by doing, among other things, repair of the banks of the Creek. Idaho Code § 42-3115(14). Rathdrum Creek is subject to a number of known leaks and seepages. The 1989 Decree recognized that conditions had substantially changed in Rathdrum Creek in the prior century. AR. 001395-96, R. 000229-230 & R. 000265.

Sylte argues that the Department's Instructions are in error because they do not authorize release of water from storage in excess of the natural inflow to the Twin Lakes. The consequence of this argument would require the Water Master to deliver water previously stored for the benefit of the Flood Control District under Water Right 95-0973 and the right of Twin Lakes Improvement District, Water Right 95-0974.

IV. STANDARD OF REVIEW

Judicial review of a final decision of the Director of IDWR is governed by the Idaho Administrative Procedure Act ("IDAPA"). Under IDAPA, the court reviews an appeal from an agency decision based upon the record created before the agency. Idaho Code § 67-5277. The court shall not substitute its judgment for that of the agency as to the weight of the evidence on questions of fact. Idaho Code § 67-5279(1).

A reviewing court "defers to the agency's findings of fact unless they are clearly erroneous," and "the agency's factual determinations are binding on the reviewing court, even when there is conflicting evidence before the agency, so long as the determinations are supported by substantial competent evidence in the record." *A&B Irrigation Dist. v. Idaho Dep't of Water Res.*, 153 Idaho 500, 505-06, 284 P.3d 225, 230-31 (2012). Substantial evidence is "relevant evidence that a reasonable mind might accept to support a conclusion." *In re Idaho Dep't of Water Res. Amended Final Order Creating Water Dist. No. 170*, 148 Idaho 200, 212, 220 P.3d 318, 330 (2009) (quoting *Pearl v. Bd. Of Prof'l Discipline of Idaho State Bd. Of Med.*, 137 Idaho 107, 112, 44 P.3d 1162, 1167 (2002)). The Court is bound by an agency's factual determinations "even where there is conflicting evidence before the agency, so long as the determinations are supported by substantial competent evidence in the record." *Eddins v. City of Lewiston*, 150 Idaho 30, 33, 244 P.3d 174, 177 (2010).

Rangen, Inc. v. IDWR, 159 Idaho 708, 367 P.3d 193 (2016).

The court shall affirm the agency decision unless it finds that the agency's findings, inferences, conclusions or decisions are: (a) in violation of constitutional or statutory provisions; (b) in excess of the statutory authority of the agency; (c) made upon unlawful procedure; (d) not supported by substantial evidence on the record as a whole; or (e) arbitrary, capricious or an abuse of discretion. Idaho Code § 67-5279(3); *Rangen, supra*. Further, the petitioner must show that one of its substantial rights has been prejudiced. Idaho Code § 67-5279(4); *Rangen, supra*. Even if evidence in the record is conflicting, the court shall not overturn an agency's decision that is based on substantial competent evidence in the record. *Barron v. IDWR*, 135 Idaho 414, 417, 18 P.3d 219, 222 (2001). The petitioner bears the burden of documenting and proving that there was not substantial evidence in the record to support the agency's decision. *Payette River Property Owners Assn. v. Board of Comm'rs.*, 132 Idaho 552, 976 P.2d 477 (1999).

On appeal from the District Court's decision upholding the action of the Director, this Court defers to the Agency's finding of fact. *North Snake Groundwater Dist. V. IDWR*, 160 Idaho 518, 522, 376 P. 3d 722, 726 (2016). Appellant bears the burden of demonstrating that the Director and the District Court have made an error of law. *Id.*

V. ARGUMENT

A. Sylte's Claim for Delivery of Water Would Require Delivery of the District's Private Storage Water Contrary to Idaho Law.

Sylte is asking this Court to require the Department to deliver more water to their Water Right 95-0734 than there is natural flow water available. The Department's Instructions require delivery of all the natural flow entering the Twin Lakes necessary to provide Sylte's stockwater right and no more. The Department and District Court correctly recognized that the 1989 Decree determined that Sylte's water source was natural flow, not storage water. R. 000266. This conclusion is not challenged on appeal. The 1989 Decree did not award Sylte any storage. R.

000268. There are only two storage rights in Twin Lakes, including Flood Control District's, *Id.* Sylte is only entitled to water from the decreed source and no other. *Rangen, Inc. v. IDWR*, 159 Idaho 708, 367 P.3d 193 (2016) (right limited to Martin-Curren Tunnel and does not extend to other springs not described in the decree). None of these conclusions are challenged on appeal. If Sylte had wanted their source described as storage water they should have made that claim in the adjudication and demonstrate that they were entitled to have the decree recognize storage as a source of their water right. *Id.* at 806, 367 P.3d at 201; *Black Canyon Irr. Dist. v. State*, 163 Idaho 144, 408 P. 3d 899 (2018). They did not.

A storage right entitles the right holder to hold water in a reservoir to meet the decreed needs. *American Falls Reservoir Dist. No. 2 v. IDWR*, 143 Idaho 862, 878, 154 P.3d 433, 449 (2007). A storage right is a vested property interest. *Id.* This vested right is entitled to protection by the Department and this Court. *Id.* The District Court appropriately recognized that to require release of other than natural flow would impair the storage rights. R. 001399. The District Court agreed. This Court should likewise agree.

The outcome of this appeal is controlled by the decision of this Court in *Washington County Irr. Dist. v. Talboy*, 55 Idaho 382, 43 P.2d 943 (1935). *Talboy* involved a dispute over the rights to water stored in Crane Creek Reservoir. In resolving that dispute, the Court clearly laid down the rule of law with respect to water stored in a reservoir. The court explained:

After the water was diverted from the natural stream and stored in the reservoir, it was no longer "public water" subject to diversion and appropriation under the provisions of the Constitution (article 15, § 3). It then became water "appropriated for sale, rental or distribution" in accordance with the provisions of sections 1, 2, and 3, art. 15, of the Constitution. The waters so impounded then became the property of the appropriators and owners of the reservoir, impressed with the public trust to apply it to a beneficial use.

...

No one can make an appropriation from a reservoir or canal for the obvious reason that the waters so stored or conveyed are already diverted and appropriated and are no longer “public waters.” *Rabido v. Furey*, 33 Idaho 56, 190 P. 73 [1920].

55 Idaho at 389-90, 43 P.2d at 945-46. *Accord Rayl v. Salmon River Canal Co.*, 66 Idaho 199, 208, 157 P.2d 76, 80 (1945) (“stored water having been diverted from and taken out of the natural stream is no longer public water.”)

This case is not simply about flow-through water as Sylte claims on appeal. Rather, Sylte’s demand to release water from the “block of storage” above the natural inflow violates the principles of *Talboy*. Once stored, those stored waters are the property of the storage right holders. Sylte’s attempt to expand their source of water beyond natural flow to include stored water that was not described in the prior decree violates *Rangen* and *Black Canyon*. Their appeal should be denied.

VI. ATTORNEYS FEES

The Flood Control District requests an award of attorney’s fees and costs under Idaho Code § 12-117(1) and (2). Sylte’s position that it is entitled to release of storage water to satisfy the natural flow rights violates well established Idaho law, particularly *Talboy, supra* and *Rangen, supra*. Hence, the Flood Control District is entitled to attorney’s fees. *See Rangen, Inc. v. IDWR*, 159 Idaho 798, 812, 367 P.3d 193, 207 (2016).

VII. CONCLUSION

Sylte’s appeal should be denied. The Instructions and Order approving the Instructions should be affirmed and the District Court’s decision should be affirmed. The Flood Control District should be awarded its costs and fees.

///

///

DATED this 21st day of November, 2018.

BARKER ROSHOLT & SIMPSON LLP

/s/ Albert P. Barker

Albert P. Barker

*Attorneys for Twin Lakes Flood Control District
No. 17*

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 21st day of November, 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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