



State of Idaho

DEPARTMENT OF WATER RESOURCES

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C.L. "BUTCH" OTTER
Governor

GARY SPACKMAN
Director

September 20, 2016

LAURIN SCARCELLO
22389 N KEVIN RD
RATHDRUM, ID 83814

COPY

Re: Watermaster Guidance

Dear Mr. Scarcello:

The Idaho Department of Water Resources ("Department") has received a written complaint from Mr. Colby Clark, a water right owner in Water District 95C (WD 95C), which includes a formal request for removal of the watermaster for WD 95C. Idaho Code § 42-605(9) states the following:

The director of the department of water resources may remove any watermaster whenever such watermaster fails to perform the watermaster's duty, upon complaint in that respect being made to the director in writing, by one (1) person owning or having the right to the use of a water right in such district, which right has been adjudicated or decreed by the court or is represented by valid permit or license issued by the department of water resources provided, that upon investigation the director, after a hearing with the other water users of said district, which shall be held in the district or at some location convenient to the water users of the district, finds such charge to be true, and the director may appoint a successor for the unexpired term.

The complaint alleges that you have been releasing storage water from Twin Lakes contrary to the *Final Decree, In the Matter of the General Determination of the Rights to the Use of the Surface Waters of Twin Lakes, Including Tributaries and Outlets*, Case No. 32572 (1st Jud. Dist. Ct. April 20, 1989) ("Decree"). To clarify your duties as watermaster and resolve any potential discrepancies between your regulation and the legal requirements of the Decree, the Department requests that you adhere to the following instructions:

- 1) The watermaster shall follow the guidelines set out in the Watermaster Handbook available online at:
https://www.idwr.idaho.gov/files/districts/20130701_Watermaster_Handbook.pdf
- 2) The watermaster shall administer all diversions from surface water sources tributary to Twin Lakes and Rathdrum Creek, except springs and diversions for non-irrigation domestic purposes. See *Order Creating Water District, In the Matter of Creating Water District 95-C, Twin Lakes and Surface Tributaries* (August 7, 1989).

- 3) Only two water rights (no. 95-974 – Twin Lakes Improvement Association (0 to 6.4 ft) and no. 95-973 – Flood Control District (6.4-10.4 ft.)) are authorized to store waters in Twin Lakes. Filling of these storage water rights can occur only November 1 through March 31 each year. *Proposed Findings of Water Rights in the Twin Lakes-Rathdrum Creek Drainage Basin*, In the Matter of the General Determination of the Rights to the Use of the Surface Waters of Twin Lakes, Including Tributaries and Outlets, Civil Case No. 32572 (1st Jud. Dist. Ct. Feb. 14, 1985) at 21. The storage water rights do not authorize release of water for instream purposes. *See Decree* at Findings of Fact 10b-c, 11, 12; Conclusions of Law 8, 9, 12; *Memorandum Decision*, In the Matter of the General Determination of the Rights to the Use of the Surface Waters of Twin Lakes, Including Tributaries and Outlets, Civil Case No. 32572 (1st Jud. Dist. Ct. Feb. 27, 1989) (“Memorandum Decision”) at 18-19.
- 4) From April 1 to October 31 of each year, the watermaster will measure the total natural tributary inflow to Twin Lakes (weekly) and allow diversion of up to that amount by the direct flow water rights on the basis of water right priority. *See Decree* at Conclusion of Law 12.
- 5) From April 1 to October 31 each year, when seepage and evaporation losses from Twin Lakes exceed the total natural tributary inflow to Twin Lakes (as determined by decreasing lake level), no water will be released from the lakes to satisfy Rathdrum Creek water rights, except for water right no. 95-734. *Decree* at Conclusions of Law 12, 14; *Memorandum Decision* at 12-13. When this occurs, all or a portion of the total natural tributary inflow to Twin Lakes, as measured by the watermaster, can be released to satisfy delivery of water right no. 95-734 with 0.07 cfs at the legal point of diversion. If all of the natural inflow must be released to satisfy water right no. 95-734, the watermaster shall curtail all junior direct flow water rights. If only a portion of the inflow is released to satisfy water right no. 95-734, the watermaster shall satisfy water rights that divert from Twin Lakes and its tributaries using the remainder of the natural flow, on the basis of water right priority.
- 6) From April 1 to October 31 of each year, when seepage and evaporation losses from Twin Lakes do not exceed the total natural tributary inflow (as determined by steady or increasing lake level), the watermaster shall distribute the total natural tributary inflow to water rights that divert from Twin Lakes and its tributaries and Rathdrum Creek on the basis of water right priority. *See Decree* at Conclusions of Law 12, 14.
- 7) If release of all of the natural tributary inflow does not satisfy delivery of water right no. 95-734 within a 48-hr period, the watermaster shall consult with the Department’s Northern Regional Manager or designated Department representative, regarding determination of a futile call with respect to delivery of water right no. 95-734. The Department’s Northern Regional Manager will issue written notice to the watermaster regarding the futile call determination. A futile call determination will result in non-delivery of water right no. 95-734.
- 8) With respect to those rights to the use of water from Rathdrum Creek with a priority prior to April 5, 1906, the unnamed stream that is currently tributary immediately above the outlet at the lower end of Lower Twin Lake will be administered as if the stream were tributary to Rathdrum Creek immediately below the outlet. *Decree* at Conclusion of Law 17. The watermaster shall release up to the inflow of the unnamed stream to satisfy those rights.

Water rights that divert 0.2 cfs or more must have Department-approved measurement devices. *Decree at Conclusion of Law 7*. The Department will issue an order to those water right holders at the end of the irrigation season to allow time for installation of the devices before the 2017 irrigation season.

You must administer water rights according to these instructions, which are subject to further review and updates by the Department. In addition, pursuant to Idaho Code § 42-605(9), unless the complaint is withdrawn, the Department will hold a hearing with other water users of WD 95C to determine whether you should be removed as watermaster of WD 95C.

Please let me know if you have any questions.

A handwritten signature in blue ink that reads "Morgan Case". The signature is written in a cursive, flowing style.

Morgan Case
Northern Regional Manager

C: Colby Clark
WD 95C Advisory Committee