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DEPARTMENT OF  
WATER RESOURCES

**From:** Colby Clark  
**To:** Case, Morgan  
**Subject:** Formal Complaint Regarding the Actions of the Twin Lakes Water Master, Flood Control, and Related Parties  
**Date:** Sunday, August 28, 2016 1:24:52 AM

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Morgan,

It was a pleasure speaking with you the other day and I am thankful to have you involved in the Twin Lakes Water District. This is the first of several emails I will send you in response to the Twin Lakes water situation. I wanted to start out by registering a formal complaint, based on my experiences and observations so far. I am sorry for the length of this email, but I needed to fully lay out my complaint.

I have read through all of the Twin Lakes related documents that have been provided to me, including the District Court Civil case # 32572 (both the Memorandum Decision and Final Decree), The Watermaster Handbook, The Dam Operation Plan, and the Flood Control Formation Petition.

In fact, I have studied these documents, made notes, cross referenced materials, and feel I have a solid understanding of the duties, responsibilities, obligations, limitations, and relevant case law in this matter.

Further, in response to what seems to be "over dumping" of water beyond that which is legal resulting in a negative impact on Twin Lakes home owners and financial damages to myself, as a result of loss of summer rental income now totaling approximately \$30,000 over the last 2 years. Long story short, we have had a lot of cancellations due to lake quality problems the last 2 years, whereas the prior season (2014) was not affected by low lake issues and did not endure such problems. Renters want to move to a different lake and are less inclined to book vacation rentals on Twin Lakes.

In an attempt to seek remedies for these issues, I have joined lake and water boards, attended meetings, interviewed decision making parties, and attempted to persuade involved parties to follow the law and provide them resources to ensure they know what it is.

Such boards and parties include the Flood Control District, Water District, Twin Lakes

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Improvement Association, and the watermaster. I will break down my interactions and negative observations per group/party.

### **Flood Control District**

I attended the Thursday August 4th 7PM meeting at the golf course. I started by asking questions trying to understand under what conditions they release water from their storage right (between 6.4 and 10.4) and how that is tracked.

In response to my question, I was told that they release whatever is needed. I asked for clarification to understand what exactly "needed" means and how that is determined. Gordon Stevenson pointed to Gordon Sylte and stated, "whatever he needs."

This is not the role of the Flood Control District, which has stated responsibilities of "Responsibilities are to construct, operate, and maintain structural works to prevent floodwaters and sediment damage, and conservation, development utilization and disposal of water within the District; to annually fix and determine the amount of money to be raised by taxation for operation of the District."

Nowhere on their website or in their formation petition do they make claim to being responsible for water delivery to water right holders. This is the responsibility of the Water District, not Flood Control. Moreover, I believe that the Flood Control District instructing the water master to provide water per the request of a Flood Control board member is a direct conflict of interest and constitutes an abuse of power.

I continued my interrogatory and asked why the outflow at the dam was approximately 2x the inflow (6.6CFS into upper Twin Lake from Fish Creek and 12.5CFS out of lower Twin Lake at the dam), in direct contravention of the 1989 court ruling. Gordon Stevenson, John Eixenberger, and Lauren Scarcello advised that they were not aware of any such limitation and that the ruling was "subject to interpretation." Gordon Sylte advised that he would reduce the water use when people on the lake "stopped watering their lawns."

Lauren Scarcello went on to state that the law and ruling were irrelevant, because they have a precedent of providing water to individuals and to maintain the creek bed outside of what is authorized in the court ruling. Lauren also stated that being as he is an activated watermaster, how much water he releases is his call and the ruling does

not apply.

When I advised them that it was everyone's duty to uphold the law and pressed them to reduce the water outflow to no more than that of the water inflow, they pivoted and stated that they could release any amount of water within their storage right for the purposes of recreation, fish, and wildlife. However, the ruling specifically states that this does not apply to Rathdrum Creek as no right was filed for Rathdrum Creek pertaining to recreation, fish, and wildlife. Therefore, their duty adjust water levels for the benefit of recreation, fish, and wildlife is limited to that of Twin Lakes.

I showed them in the ruling where it is not lawful to dump more water out of Twin Lakes to satisfy Sylte water right 95-0734 than flows in. The discussion went on and on and they delayed the decision process several times. Ultimately, they decided by unanimous vote to reduce outflow to 10CFS at the end of the meeting. I want to note that this is an official act by the flood control district knowingly in direct contravention of the ruling. At this point, they had no plausible argument of ignorance of the law, which was not a valid excuse in the first place.

Interestingly, they stated at one point that they are not in charge of regulating lake out flows or advising the watermaster (Lauren) what to set the dam at, but they decided to make a motion to do exactly that. As a result, 2 days later Lauren reduced the outflow to 10CFS, after a reminder from the Water District.

As a point of fact, in the Watermaster handbook it specifically states in the preface: "Proper water distribution under Idaho water law and the appropriate system is the primary goal and responsibility of all Idaho watermasters."

### **WaterMaster Lauren Scarcello**

I have had about a half-dozen discussions during the last couple months with Lauren regarding over-dumping of Twin Lakes and how it is violating the rights and negatively impacting every homeowner on Twin Lakes in order to provide Gordon Sylte more water than he is entitled to. No matter how many facts or points of law or the court ruling I bring up, he deflects the facts, states they are no longer relevant because they have been ignoring them so long, and states that it is his intention to keep Rathdrum Creek flowing so long as he is watermaster.

He has stated numerous times that if he cannot keep the Creek flowing for the benefit of the community, the fish in the creek, and to be "good neighbors" to those

downstream, he will quit. It is extremely clear that he has no regard for the homeowners and water right holders on the lake, whom he is negatively impacting, and by his actions demonstrates he cares only for providing water to his friend Gordon Sylte. I want to formally complain about Lauren's actions as watermaster as they are a direct violation of his statutory obligations in that role and a willful violation and disregard for the law. While some of his actions can be seen as having some form of good will, he is providing a benefit to his friends that is above and beyond their water right at the expense of Twin Lakes homeowners, whose rights are being usurped. Moreover, 1 homeowner is benefiting illegally at the expense of hundreds of homeowners on the lake.

As mentioned, I have read the watermaster handbook and it clearly states that a watermaster can be removed after a formal, written complaint from a water right holder by the Director of IDWR, whom can appoint another in his stead. Considering Lauren has openly stated that he is not interested in following the law for his pre-conceived reasons and appears to have a considerable conflict of interest in carrying out this role, I would like to formally request that he is removed as water master. The watermaster handbook states that you have the power to do this.

I would also like to advise that I am willing to fulfill this role for as long as necessary and to faithfully and responsibly carry out the role in accordance with the law and IDWR guidelines. To be candid, I firmly believe we need someone in this role who is not beholden to or intimidated by Rathdrum Creek land owners, who has strong communication skills, and understand the issues at hand.

### **Water District**

This is a good group of people who is trying to do their best to carry out their duties in an unbiased way in compliance with the law, but there seems to be misunderstandings regarding responsibilities, authority, and so forth. Moreover, the team is not very empowered.

Some of the primary outstanding questions and points of confusion are as follows :

- 1) Who directs or has the authority to direct the watermaster to let more or less water out of the lake and what is the protocol for doing this?
- 2) What is the recourse if the watermaster refuses to comply?
- 3) Is the IDWR the ultimate authority and the "police" of water right abuses and what is the process to engage them/you?
- 4) Who is responsible for stream bed maintenance between downstream water right holders, such as the Sylte ranch, and the dam? The streambed is a complete mess and it is clearly evident that that there are large holes that water is pouring into, thus destroying the efficacy of the stream bed as a vehicle for water delivery.
- 5) What is the authority and limitations of the Water District, watermaster, and/or

delegates in performing stream bed maintenance? If you have a 6" diameter hole allowing water to funnel into the ground and drop what sounds like 10-15' below the surface (a very real scenario we are facing), what are we authorized or limited in doing to fix it? The current state of the stream bed is a HUGE barrier to effective water delivery, for which the Water District is tasked, and putting a little bit of bentonite clay here and there is not going to resolve the problem.

Another significant limitation to the Water District being successful is the current inability to reliably and consistently measure Fish Creek inflows in an automated way. I know that the remedy to this is currently in progress, but it is significant barrier until that time. Moreover, the current course of action of placing a flow meter in an unstable stream bed will never be accurate or fully successful in truly capturing tributary inflows to Twin Lakes. It is possible we may get close, but dynamic conditions prevent accurate measurement. I wonder if there is a way to obtain a weir to be installed at the boundary of Fish Creek and Upper Twin Lake and if the IDWR could assist in this. Thoughts?

Thanks,

Colby Clark

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