

Testimony

As a water right holder, a taxpayer and a citizen concerned about our watershed, I find this complaint to be not only unnecessary but also a frivolous waste of everyone's time and resources. It threatens to negate the efforts and goodwill of IDWR, Flood Control District 17, Twin Lakes Improvement Association, Water District 95C, and water right holders in the Twin Lakes/Rathdrum drainage.

1. The circle of information and emails is confusing and incomplete. Some people do not use email. If they do, they have or could be excluded intentionally or unintentionally from the loop. Without email, or if they don't know how or where to search the internet, they are really at a loss. IDWR, the Flood Control District, Twin Lakes Water District, Twin Lakes Improvement Association, and the Water Board (and an advisory board appointed by Twin Lakes Water District to address the issue of installing a measuring device among, I guess, other issues) have all been involved along with water users on the lake and up and down the creek. Could information possibly become more confusing, incomplete or inaccurate? It would be difficult for any watermaster to navigate such a web of complex and conflicting demands. The U.S. Postal Service could have been utilized just like it has been in dealing with this hearing. Perhaps the solution is for all those involved to sit down in a mediation session and work out a more reasonable approach instead of filing malicious complaints. At the very least, the mediation process should have been used before a hearing was scheduled. In addition, Mr. Scarcello was being asked to distribute water without proper, reliable measurements of inflow. There are also no water user measuring devices or any way to shut off junior users.

2. Copies of Mr. Clark's August 28, 2016, 1:34 AM email and his amended document dated August 30, 2016 were not provided (as of October 20, 2016) either to Mr. Scarcello or the commissioners of the Flood Control District. What happened to the right to be able to confront your accusers? Most people would never know such documents existed. Both of these documents can be found on the IDWR website for Twin Lakes Water District only if one knew exactly where and when to search. Imagine my shock when I was provided a copy of the August 30th amended document by my Boise attorney. He is helping us prepare for upcoming water rights adjudication so it was surprising that he was given that

information by Morgan Case. The only reason I then began searching for the August 28th email (written at 1:24 AM to Morgan Case) was because I was curious about the word "amended." I have no idea if either of these documents were provided to the officers of the Twin Lakes Water District or anyone else. Perhaps Ms. Susie Ellis or Mr. Terry Keifer could answer that question. How many other pertinent documents are difficult or impossible to find? It almost seems like suppression of evidence in which case the accused would never get to see the accusations. Should IDWR have been more involved with the dissemination of information and if not, with whom does that responsibility lie?

3. In Mr. Clark's August 28th, 2016 1:34 AM email page 4 paragraphs 4 and 5 where he formally asks for the removal of the current watermaster, he states, "I am willing to fulfill this role for as long as necessary..." This seems to approach a calculated conflict of interest which identifies Mr. Clark's intent to assume control of the Twin Lakes/Rathdrum Creek water rights holders. Can a watermaster activate him/herself? Maybe so. Furthermore, the language implying that Mr. Scarcello is either beholden to or intimidated by Rathdrum Creek land owners is blatantly false. I can attest to this as I am one of those users in question. I am also insulted that someone who does not know me or any other member of my family would blantly question my integrity and intelligence in such a manner. It should further be noted that Mr. Scarcello owns no property on Twin Lakes or Rathdrum Creek thus allowing him neutrality as watermaster.

4. Were notices of this hearing sent to all water rights holders in the Twin Lakes/Rathdrum Creek drainage? We received only one copy of the notice addressed to our ranch LLC when in fact water rights in my name, my husband, his son and nephew should have probably received notices also. Tax notices are sent to separate parcels even though it is the same address so it seems only logical the same would hold true for water rights. Is this grounds for dismissing the complaint?

5. Was there written notice of a futile call this summer or did it just occur? What is the role of IDWR in this? One of the senior downstream users requested that the watermaster be activated and then to shut down the flow to a minimal level.

This was specifically because all the water above his property was flowing into the ground on another person's property. That property owner had not at that time given permission for anyone to repair the creek bed and was also pumping water out onto his meadow even though his water right was junior. Was that a voluntary "futile call?" If so it would seem to negate the reason for this hearing as it demonstrates that parties against whom the complaints are leveled (including Mr. Sylte who has the senior water right) were able to work out the situation without intervention and try to move forward as best they could in a difficult situation. This complaint filed by Mr. Clark creates divisiveness in a community that has over the past 23 years, through lively interaction, achieved a balance of community respect for individual and water rights. It is in no one's interest, especially IDWR, to risk that kind of cooperative effort because of a personal conflict or inability to launch a boat. Twin Lakes/Rathdrum Creek Drainage has always been a delicate balance.. Given that, I would like to see continued efforts to protect the drainage as a benefit to its combined inhabitants rather than have a "water war" erupt.

6. Mr. Clark's Complaint #8 states "Twin Lakes homeowners and water right holders are claiming financial damages.....etc." Many people suffered financial losses in the past two years for which they are not asking unreasonable restitution. My family has taken losses on our ranch for twice as much as those Mr. Clark claims. We don't plan on pursuing those damages because we accept forces out of our control such as weather and clear cutting. I sincerely hope that those "homeowners" recognize how absurd asking for damages could be. The lake levels and precipitation trends should help establish that asking for damages is futile unless they intend to sue Mother Nature. Mr. Clark mentions that in 2014 there was no problem with lake level. Of course there was no problem as 2014 was more of a normal year. Both 2015 and 2016 were extremely dry years by comparison. Also taken into account in 2016 for lower lake level should be the water flowing into the holes in Rathdrum Creek, that Mr. Clark himself references in his August 28th email. Perhaps the land owner responsible for this continuing loss should have been included in Mr. Clark's complaint.

7. General Operation Plan at Twin Lakes, which Mr. Clark lists as a resource, is a 1977 document designed for implementation prior to the establishment of Twin Lakes Water District 95C, Flood Control District 17 or election of any watermaster. As such, it is not a binding legal document and only suggests guidelines. It does not take into account many of the changes in the Twin Lakes/Rathdrum drainage. It's main concern is that lake level not exceed 10.4 and also states that the minimum level be 6.4. "The guides and rules of the plan were tested by applying them to the available inflow data for the past 55 years. The results, based on the assumption of no downstream minimum release requirements are: (p 1, paragraph 6) "It is not possible to hold the 10.4 through the summer in most years because seepage, evaporation and pumping from Twin Lakes exceed the natural summer inflow to the lakes. The summer inflow, not the operation plan, determines how well the lake holds up." (#2) The plan goes on to describe the precipitation index recorded at the Spokane Airport and the Coeur d' Alene Ranger station with snow water content measured 15 miles east of Coeur d' Alene. Such information is now replaced by a snotel site currently located at Ragged Ridge.

8. Mr. Clark's complaint lists the Bureau of Reclamation as a storage right holder of Twin Lakes water. BOR transferred that water right to Kootenai County which then conveyed it to the Flood Control District 17. Optimizing beneficial use under the goals of the State of Idaho and IDWR thus would appear to have become an additional responsibility of Flood District 17.

9. Mr. Clark (in his August 28, 2016 1:34 AM email) has stated that IDWR or Morgan Case has the ability to remove Mr. Scarcello as watermaster and Mr. Clark could then "be willing to serve in" that position for the remainder of the term "or as long as necessary." First of all, it seems arbitrary to remove someone who has been duly elected then after the fact receives one nay vote. Should they then no longer be allowed to serve? I have questions about that process. Since the watermaster's term expires November 1, is there any need either to remove Mr. Scarcello or appoint someone else? Technically, there is no need to remove Mr. Scarcello as he is no longer the watermaster. Would a special meeting be called so that he or someone else could be elected or, as it should be, would the election

wait until the spring meeting of the Water District? Could Mr. Scarcello be re-elected if that were the will of the water right holders (who had elected him in the first place)? Why isn't it required that the people who elected him be those who remove him or at least know more details about the complaint? Would Dan Park just move into the position until an election could be held since he is now the Assistant Watermaster? Can IDWR assume the duties of watermaster until the next election? There must be some reason for this odd provision in the codes. Can anyone shed light on that which makes sense?

10. Court decisions, conflicting guidelines and legal codes governing complex water issues are always subject to interpretation. This includes but is not limited to those to which Mr. Clark refers. It is my contention that the nature of the complaint against Mr. Scarcello sets a bad precedent. Laurin Scarcello was following conflicting and confusing codes and laws as best he could in a complicated situation largely out of his control. Not only is Mr. Scarcello an asset to the community, he is also a valuable employee of IDWR. He serves selflessly in both capacities with integrity beyond question. Removing Laurin Scarcello as watermaster achieves nothing but to create divisiveness and confusion in Twin Lakes/Rathdrum watershed.

