

## Skinner, Corey

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**From:** Luke, Tim  
**Sent:** Thursday, August 16, 2007 5:55 PM  
**To:** 'gsslette@rsidaholaw.com'  
**Cc:** Tuthill, Dave; Skinner, Corey; Merritt, Allen  
**Subject:** Muldoon Creek

Gary,

IDWR Director Dave Tuthill received your letter dated August 10, 2007 concerning the delivery call for your client, Muldoon Creek Ranch LLC, on Muldoon Creek. The Director forwarded that letter to me for response.

I have discussed this matter with Corey Skinner and Allen Merritt. As noted in your letter, Corey did visit the creek with the watermaster on July 30, 2007. Your letter noted that Corey did observe a considerable flow in Guy Peterson's ditch below the head gate despite the head gate being shut and only a minor amount of leakage passing it. As indicated in your letter, Corey did observe the flow in the Peterson ditch well below the head gate to be the result of gain or "diffused water" from several braided sections or channels of Muldoon Creek running in the general direction of the Peterson ditch. Corey estimated a flow of at least 1 cfs in the ditch about one mile downstream of the head gate, and estimated about 2.2 cfs flowing in another location of Guy Peterson's upper ditch. It appears you are also aware that Corey observed deficiencies with head gate and/or measuring device installations on just about every diversion from the Creek, including at least two of the diversions owned by your client.

Upon review of your letter and in discussing this matter further with Corey and Allen, we believe a second visit by Corey is warranted, but feel this visit should be made unannounced to anyone. Corey would like to spend a little more time further investigating the nature of these diffused surface water contributions to the Peterson ditch. This visit should help us better determine what type of action we may need to pursue relative to correcting this concern with Guy Peterson. Corey also wants to investigate the possibility of at least one potential unauthorized point of diversion and place of use. He would also like to look at some of the other diversions on the creek that he did not have time to look at during his first visit. We anticipate that we will have to follow-up with a letter to all users on the creek regarding the head gate/measuring device deficiencies and/or maintenance concerns. Visiting the additional diversions, documenting the concerns and articulating those concerns to the users this fall will be helpful for all involved.

Corey's visit should occur sometime within the next two weeks or so. Again, this will be unannounced. If there is something specific that you or your client suggest he look at, please call or e-mail him directly.

With respect to the allegation regarding comments by watermaster Jim Peterson to your client advising that users could share in the remaining available supply, Corey reports that he did not hear Jim Peterson say this directly nor was he involved in any type of discussion during his visit where this was mentioned. The Department cannot deny or discount what your client is reporting to you, but I can say that the Department agrees with your position that rights need to be delivered in accordance with priority water rights and not some type of water sharing agreement that is not recognized by law or court decree. To this end, I am willing to send a letter to Jim Peterson reminding him that water must be delivered strictly in accordance with the priority dates and amounts authorized by the water rights. I will have to recognize however that his ability to do his job accurately is somewhat compromised by the fact that a majority of the users are not providing all of the adequate head gates and measuring devices.

At this time I would ask for your patience in allowing us to conduct a second visit that is unannounced and then pursuing necessary actions after that. These steps or actions may not provide the immediate resolution that your client is seeking. However, I believe at this time immediate resolutions will be difficult given that most or all of the users appear to have deficiencies with head gate and measuring device requirements that IDWR ordered several years ago.

Please give me, Corey or Allen a call if you have further questions or concerns regarding this issue.

Regards,

Tim Luke  
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