

# Moffatt Thomas

MOFFATT THOMAS BARRETT ROCK & FIELDS, CHTD.

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DEPARTMENT OF  
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*Eugene C. Thomas, 1931-2010*  
*John W. Barrett, 1931-2011*  
*Kirk R. Helvie, 1956-2003*

October 14, 2011  
*via Hand Delivery*

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*File: Pratt + CK Water District*

Gary Spackman, Director  
Idaho Department of Water Resources  
322 E. Front Street, 6th Floor  
P.O. Box 83720  
Boise, ID 83720

**Re: Illegal Water Diversions**  
MTBR&F File No. 24798.0000

Dear Gary:

I am writing on behalf of my clients, The Zenas Hartvigson Trust and Verdell and Valerie Olson. The Trust owns property in Lemhi County, adjacent to Highway 28, along the Lemhi River corridor. Verdell and Valerie Olson lease the Trust property for agricultural uses. I wrote to you on February 2, 2011, concerning illegal water diversions by James Skinner for the Ruby Skinner Ranch (copy enclosed). Unfortunately, I must notify you of additional illegal diversions by Mr. Skinner which violate Idaho law and are causing significant property damage to my clients' property interests.

Apparently, Mr. Skinner assumes that he has some legal right to divert water from Pratt Creek under his irrigation water right when he does not use the water for irrigation of his land, but instead intentionally discharges the water into a natural drainage to cause flooding of the Lemhi County Back Road and the Trust property. I will be providing you with photographic documentation of these events in a later communication. However, I have enclosed a copy of a detailed narrative written complaint to Deputy Steve Penner, Lemhi County Sheriff's Department which was prepared by Mary and Ray Sloan, 1063 Lemhi Road, Salmon, Idaho, 83467.

Based upon the requirements of Idaho Code Sections 42-101, 42-201, 42-1203, 42-1701B and numerous decisions of the Idaho Supreme Court limiting water use to beneficial purposes, my clients request that the Department undertake an immediate investigation of these matters and proceed with enforcement of the violations of Idaho law by Mr. Skinner.

While Mr. and Mrs. Sloan assert that Mr. Phillip Moulton is in violation of Idaho law, my clients do not have independent knowledge that Mr. Moulton is illegally diverting water and

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using it for a non-beneficial purpose. Perhaps the Department's investigation will reveal if that is occurring because of the shared division box between Mr. Moulton and Mr. Skinner.

Please also be advised that this ongoing controversy is now the subject of active litigation in Lemhi County District Court. Lemhi County filed a complaint to assert that a drainage right of way now exists on the Trust property because of the ongoing nature of improper water diversion and use by Mr. Skinner, and perhaps Mr. Moulton. In addition to my clients, the County has named Mr. Skinner and Mr. Moulton. In view of these developments, I can understand if the Department might have reluctance to pursue any investigation or enforcement action until that litigation is resolved. However, my clients maintain that the Department has independent authorities and responsibilities to properly administer use of the water resources of Idaho regardless of the pendency of litigation regarding existence of drainage rights of way or easements. My clients are hopeful the Department concurs with their view of the law.

Finally, a pre-hearing conference is presently scheduled to be conducted in Salmon, Idaho on October 26, 2011, to consider the protested application for permit (74-15950) filed by Mr. Skinner to obtain a legal entitlement to divert stock water from Pratt Creek. I request that any Department investigation materials concerning the illegal water diversion and use alleged in this correspondence be included in the official record of that proceeding. I am providing a copy of this correspondence to Mr. James Cefalo of the Eastern Region Office of the Department because he is conducting the pre-hearing conference in Salmon. My clients believe this additional illegal water diversion and use by Mr. Skinner is probative to the issue of injury, beneficial use, and the local public interest because it demonstrates a pattern of behavior which illustrates a willingness to ignore Idaho law and misuse Idaho water resources.

I regret that I must request the Department's attention to this matter. Unfortunately, because of the previous lack of active water administration in this portion of the Lemhi River Basin, Mr. Skinner apparently believes he is not subject to any controls over his use of water diverted from Pratt Creek. Hopefully, the Department will be able to educate Mr. Skinner on the restrictions which apply to his activities when it comes to water diversion and use on his property.

Thank you for your immediate attention to this matter. I will be available for any questions you or your staff may have.

Best regards,

  
Scott L. Campbell

SLC/dll

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Enclosures

cc: Zenas and Sharon Hartvigson  
Verdell Olson  
James R. Cefalo  
Tim Luke  
Ray and Mary Sloan

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February 2, 2011

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Idaho Department of Water Resources  
322 E. Front Street, 6th Floor  
P.O. Box 83720  
Boise, ID 83720

**Re: Illegal Water Diversions from Pratt Creek**  
MTBR&F File No. 24798.0000

Dear Gary:

I am writing on behalf of my client, The Zenas Hartvigson Trust. The Trust owns property in Lemhi County, adjacent to Highway 28 and divided by the Lemhi River.

I am writing to advise you that my client desires the Idaho Department of Water Resources to investigate an apparent illegal water diversion from Pratt Creek by James Skinner for the Ruby Skinner Ranch property. The Skinner property is situated up-gradient from my client's property.

For a number of years, the Skinners have been diverting water from Pratt Creek into an open ditch during the non-irrigation season for stock-watering purposes. This diversion has resulted in uncontrolled water discharges onto my client's property during winter weather conditions, resulting in significant damage to the property. My review of the Department's water rights records failed to reveal a winter out-of-stream diversionary water right for stock-watering purposes from Pratt Creek. Consequently, the Skinners apparently have been illegally diverted this water since they do not appear to have a valid entitlement to do so under Idaho Law.

Based upon the requirements of Idaho Code Sections 42-101, 42-103, 42-113, 42-113, 42-202, and 42-1701B, my client requests that the Department undertake an immediate investigation of these matters and proceed with enforcement of violations of the referenced provisions of the Idaho Code. The apparent continuing violations of Idaho Law by the Skinners' diversion of water from Pratt Creek causes ongoing damages to my client's property. Consequently, expedited consideration of this request is sincerely appreciated.

Gary Spackman, Director  
February 2, 2011  
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If you require any additional information regarding this matter, please contact me at your convenience.

Best regards,



Scott L. Campbell

SLC/dll

cc: Zenas and Sharon Hartvigson  
Verdell Olson

**Submitted on October 13, 2011 to Officer Steve Penner, Lemhi County Sheriff's Department to include in my complaint regarding violation of the irrigation regulations by the Molten and Skinner Ranches**

On October 11, 2011, at approximately 7:30 p.m., I observed water coming from the Hartvigson slide running onto the Lemhi Road of about 4 feet in width. Earlier that day, a thunderstorm had moved through our area. The water I observed on the roadway, however, did not appear to be runoff from that storm. The water was damaging the roadway and could potentially cause the Hartvigson slide to move since it was overloading the county drain that runs along our property. In addition, if the volume of water increased, it could flood our home. Since the water did not appear to be runoff, I became concerned that water was again being diverted into the Hartvigson slide from Pratt Creek by the ranches above us.

On October 12, 2011, approximately 4 feet of water was still running down Lemhi Road. My husband Ray and I drove to the Pratt Creek diversion on the Molten Ranch to try to determine where the water was coming from. Between our home at 1063 Lemhi Road and Pratt Creek, all the gullies were dry and there was no puddling or runoff on the Lemhi Road or on the side of the road except for the water coming out of the slide. And, there was no water at all running down Pratt Creek.

At the Pratt Creek Molten/Skinner diversion, Ray and I observed a large volume of Pratt Creek being diverted into the ditch on the Molten Ranch property. We also observed that the Molten Ranch was not using any irrigation equipment. We went to Highway 28 and looked up at the Skinner Ranch. There was no irrigation equipment operating on the Skinner Ranch.

October 12, 2011, at 4:26 p.m., I observed Mr. Skinner on his ATV inspecting the Lemhi Road at the Hartvigson slide.

On October 13, 2011, at 8:45 a.m., the volume of water has increased and is overtopping the cattle guard on Lemhi Road. There has been no additional rain in our area since October 11, 2011.

Throughout Spring and Summer of 2011, Ray and I have observed large amounts irrigation water being dumped into the slide and flowing onto Lemhi Road. It caused havoc with our own irrigation ditches. On one occasion, I had to call the water master because a huge volume of water was coming down the slide and overtopping ditches along the road, flooding our property and threatening our house. They stopped the water at that time but it started again about five days later.

Ray and I believe that water not used for irrigation is are being deliberately diverted at the Molten/Skinner Ranch diversion on Pratt Creek and dumped into the Hartvigson slide specifically right after storm events to cover up the ongoing violation of irrigation regulations. The reason we suspect this is because it is the second time we have observed large amounts of unused Pratt Creek water being diverted and dumped into the slide

during a rainstorm causing damage to the Lemhi Road. On the first occasion as well, I observed Mr. Skinner on his ATV inspecting the water damage on Lemhi Road, but he never stopped diverting the water that was causing the damage. Anyone with integrity would have immediately acted to stop the water. It ran across the road for weeks.

I have lived in Northern California most of my life. My husband Ray lived in Northern California for 18 years. We are familiar with what storm water looks like and how it flows. The flow of the water running down the slide onto the Lemhi Road is mechanical and too high volume for natural run off. Since there is no natural creek running down the slide, we believe the only possible source could be the Molten/Skinner Ranch irrigation diversion on Pratt Creek.

I recently retired from the California Department of Transportation, Project Management. I am aware that dumping large amounts of water down a slide of loose material causes erosion and silting that pollutes the watershed. The water that is being dumped into the Hartvigson slide drains into sensitive areas where endangered fish spawn. This water dumping is harmful on multiple levels and we do not understand why federal, state, and county officials in Idaho are not requiring the ranches above us to comply with the state's irrigation laws.

Mary and Ray Sloan  
1063 Lemhi Road  
Salmon, ID 83467  
(208) 756-1761