

From: [Colby Clark](#)
To: [Case, Morgan](#)
Subject: Amended Complaint
Date: Tuesday, August 30, 2016 10:59:16 PM
Attachments: [Exhibit A - Inflow vs. Outflow Measurements \(Colby Clark\).pdf](#)
[Twin Lakes Water Right Complaints and Legal Support - 2016-8-30 \(Colby Clark - Signed\).pdf](#)

See attached.

Colby Clark
9836 W Twin Lakes Rd
Rathdrum, ID 83858

2016-8-30

Morgan Case
Idaho Department of Water Resources
7600 N Mineral Dr # 100
Coeur d'Alene, ID 83815

RE: Amended Complaint

Summary Explanation and Narrative:

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 summers, 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 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, in their formation petition, or in the flood control statutes is there any support for being responsible for water delivery to water right holders. This is the responsibility of the Water District, not the Flood Control District. 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, as measured with existing flow meter technologies), in direct contravention of the 1989 court ruling. Gordon Stevenson, John Eixenberger, and Laurin 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."

Laurin 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. Laurin also stated that being as he is an activated watermaster, how much water he releases is his call and the ruling does not apply. He talked about the importance of taking care of the fish in the creek, which are not covered by the 1989 ruling.

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 (Laurin) what to set the dam at, but they decided to make a motion to do exactly that. As a result, 2 days later Laurin 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 Laurin Scarcello

I have had over a half-dozen discussions during the last couple months with Laurin 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 early in the summer, which robs everyone of needed water (including Sylte) later in the season. 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 Laurin'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.

Further, due to over delivery of water early in the summer, lake levels have been at very low levels the last two years at mid and end of summer, thus negatively affecting everyone on the lake as well as the creek. Poor water management throughout the summer creates a situation where the creek is dry in whole or in part starting in August and the docks on the lake that normally have boats docked next to them are sitting on the lake bed, uselessly. Ultimately, nobody has benefited the way things have been handled and notwithstanding all of the requests from myself and others on the board of the Water District for course correction, all requests have been ignored or dismissed.

In fact, at a Water District meeting held on 2016-8-29, I made motions for two separate resolutions, both of which effectively stated that the Water District and watermaster needed to follow laws, statutes, and decrees relating to water release from Twin Lakes dam. Both of these motions passed, but Laurin was the single objector that voted against them. So, in both cases, the watermaster voted AGAINST following the law, which should be his primary focus in delivering water. If he is not willing to support and follow the law, he CANNOT be an effective watermaster.

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 Laurin 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 or your superiors have the power to do this.

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 and seem hamstrung every step of the way. 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, wastermaster, 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?

Detailed List of Complaints and Supporting Documentation

Specific complaints detailed below have been provided to IDWR who is in the process of reviewing and responding to them.

Complaint 1: Outflows from the Twin Lakes dam exceed inflows from Fish Creek. As of August 4, 2016, inflows were 6.6 CFS from the Fish Creek tributary and outflows were 12.5 CFS and outflow has continued to exceed inflow continuously before and after that time.

Complaint Support 1: When seepage and evaporation losses from Twin Lakes exceed the total natural tributary inflow to Twin Lakes no water will be released from the lakes to satisfy downstream water rights with the exception of Sylte .07CFS water right 95-0734. When this occurs, water right 95-0734 and

water rights that divert from Twin Lakes and from the tributaries to Twin Lakes may divert the natural flow, but not the stored waters, on the basis of water right priority (Final Decree Page xix). Only Twin Lakes Improvement Association and Flood Control have a right to store water and to make beneficial use of stored waters in Twin Lakes and only for specified purposes. All other water rights with source of Twin Lakes tributary to Rathdrum Creek are direct flow water rights and are entitled to divert, on the basis of priority, a combined rate of flow equal to the inflow to the lakes. Stated in another manner, direct flow water rights can be utilized to divert water from Twin Lakes only if the diversions do not injure the storage water rights in Twin Lakes (FD page xix). Said simply, Twin Lakes outflows can never exceed tributary inflows for the purposes of delivering water to Rathdrum Creek water right holders

Complaint 2: On August 4th and continuing for a time thereafter, more water than necessary is being released to fulfill Sylte water right 95-0734 (.07CFS at the point of diversion).

Complaint Support 2: When water levels are below 10.4, only sufficient water required (up to the volume of tributary inflow) should be released to satisfy downstream water right. Any additional water released depletes Twin Lakes storage water and is prohibited.

All other water rights with source of Twin Lakes tributary to Rathdrum Creek are direct flow water rights and are entitled to divert, on the basis of priority, a combined rate of flow equal to the inflow to the lakes. Stated in another manner, direct flow water rights can be utilized to divert water from Twin Lakes only if the diversions do not injure the storage water rights in Twin Lakes (FD page xix).

When seepage and evaporation losses from Twin Lakes exceed the total natural tributary inflow to Twin Lakes no water will be released from the lakes to satisfy downstream water rights with the exception of Sylte .07CFS water right 95-0734. When this occurs, water right 95-0734 and water rights that divert from Twin Lakes and from the tributaries to Twin Lakes may divert the natural flow, but not the stored waters, on the basis of water right priority (FD Page xix).

Complaint 3: Storage water right 95-0975 (currently owned by Flood Control) is currently being used for water delivery to members of the Flood Control board, for stream bed maintenance, and to keep the creek flowing for the beautification of the community, in contravention of its decreed purposes, which are as stated in the District Court ruling:

- a. For flood control purposes – which do not apply at this time.
- b. For the benefit of recreation, fish, and wildlife of Twin Lakes (this purpose specifically applies to Twin Lakes and not to Rathdrum Creek as no claim for this purpose for Rathdrum Creek was filed).

Complaint Support 3: Flood Control storage water rights (95-0975) are specifically to be used in a manner to benefit recreation and fish and wildlife (Final Decree Page xvi). This only pertains to Twin Lakes and does not in any way pertain to Rathdrum Creek (Memorandum Decision Page 18, final paragraph), because the no permit was filed and at the time of the ruling the deadline for filing a claim had passed. Storage waters are not permitted to be used to deliver flow water rights or for other unauthorized purposes.

Complaint 4: The Flood Control District is acting outside of their stated purpose in statute and formational documents / mission statement. For reference, Idaho Code Section 42-3102, states: *"POLICY OF STATE. It is hereby recognized by the legislature that the protection of life and property from floods is*

of great importance to this state. It is therefore declared to be the policy of the state to provide for the prevention of flood damage in a manner consistent with the conservation and wise development of our water resources and thereby to protect and promote the health, safety and general welfare of the people of this state.” The Flood Control district is instead being used to ensure water delivery to Flood Control board members, friends, family, neighbors and for purposes outside the mission and objective of flood control and is directing the watermaster to release water for water delivery and other purposes outside of flood control concerns. John Eixenberger admitted as much in the presence of Morgan Case when he attended the Water District meeting on 2016-8-29.

Complaint Support 4: The Flood Control District exists for the purposes of flood control, not for water delivery or other purposes. As noted in the complaint, this is stated in Idaho Statute 42-3102. Moreover, the Flood Control District has no authority over the watermaster and can only make recommendations. The watermaster is governed by the IDWR Director or his delegates.

Complaint 5: Water is being delivered to Rathdrum Creek water right holders over and above their water right priority at the expense of Twin Lakes water right holders and the stated purpose of Flood Control water storage rights.

Complaint Support 5: Only TLIA and BoR have a right to store water and to make beneficial use of stored waters in Twin Lakes. All other water rights with source of Twin Lakes tributary to Rathdrum Creek are direct flow water rights and are entitled to divert, on the basis of priority, a combined rate of flow equal to the inflow to the lakes. Stated in another manner, direct flow water rights can be utilized to divert water from Twin Lakes only if the diversions do not injure the storage water rights in Twin Lakes (FD page xix).

When seepage and evaporation losses from Twin Lakes exceed the total natural tributary inflow to Twin Lakes no water will be released from the lakes to satisfy downstream water rights with the exception of Sylte .07CFS water right 95-0734. When this occurs, water right 95-0734 and water rights that divert from Twin Lakes and from the tributaries to Twin Lakes may divert the natural flow, but not the stored waters, on the basis of water right priority (FD Page xix). As such, Twin Lakes storage waters can never be utilized to deliver water to Rathdrum Creek water right holders.

Also see Exhibit A – Inflow vs. Outflow for known inflow vs outflow measurements taken in July and August.

Complaint 6: The watermaster is not acting in accordance with watermaster guidelines contained in the watermaster handbook, but is instead acting outside existing law decreed in the 1989 District Court ruling, in contravention of established water rights and priorities, and is facilitating excessive water release from Twin Lakes.

Complaint Support 6: The watermaster is responsible for proper water distribution under Idaho law according to water rights and priorities. This involves having an understanding of all court decrees and a comprehensive list of water rights, amounts, priorities, and ensuring water right holders receive water based on availability and priority as allotted. This involves tributary inflow testing and proper dam outflow regulation and is not subject to interpretation. The role and related actions are prescribed by law. See the watermaster handbook. As recorded in the Water District meeting on 2016-8-29, Larin

Scarcello (watermaster), voted 2 times not to recognize or follow the law as guidance for when and how to release water from Twin Lakes dam.

Complaint 7: The operation of by the watermaster / dam controller of the Twin Lakes Dam is not in alignment with the published “General Operation Plan At Twin Lakes” published in 1977, which are also mostly aligned with the 1989 District Court ruling (notwithstanding the Operation Plan predates the ruling). This has resulted in very low water levels for Twin Lakes homeowners in the summer time, the reduced usefulness of the lake, inability to launch and utilize watercraft and docks, lack of lake desirability, loss of rental income, diminished property values, etc.

Complaint Support 7: The “General Operation Plan At Twin Lakes” is an operational guide and set of best practices for dam operation that provides prescriptive curves for reservoir filling and dam operation under given various environmental conditions. This operational plan should be followed to ensure Twin Lakes reservoirs are maintained at optimal conditions.

Complaint 8: Twin Lakes homeowners and water right holders are claiming financial damages as a result of deliberate lake mismanagement and disregard of fiduciary duty to manage lake levels in compliance with established law, water rights, and priorities.

Complaint Support 8: This is very easy to establish by providing the cancellation trending and notifications of such due to poor lake conditions caused by excessive dumping of water from Twin Lakes Reservoir and the resulting dirty mud hole that currently is Upper Twin Lake.

In order to resolve these complaints and stay in alignment with laws, statutes, and decrees, it is vital that all members of the Flood Control District, Water District, and watermaster have a copy and be thoroughly familiar and in compliance with the following documents:

1. February 28th Memorandum Decision (MD) of the 1989 District Court ruling; Civil Case #32572
2. October 23rd Final Decree (FD) of the 1989 District Court ruling; Civil Case #32572
3. Flood Control statutes – Title 42; Chapter 31
4. Water District statutes – Title 42; Chapter 6
5. Watermaster Statues – Title 42; Chapter 6
6. Watermaster handbook
7. Dam “General Operation Plan At Twin Lakes”
8. Established water rights, quantities, and priorities

Colby A. Clark

Water Flow Readings

<u>Date</u>	<u>Creek</u>	<u>Flow</u>	<u>Explanation</u>
7-13-16	Fish	7.8 CFS	Taken at Easterday's Bridge
7-14-16	Fish	9.3 CFS	Taken at mouth (includes three tributaries below bridge)
7-18-16	No Name	.1453 CFS	Creek above dam
7-21-16	Fish	8.1 CFS	at mouth
7-21-16	Two Creeks	<u>.18 CFS</u>	Across Upper Lake
Total of all tributaries		<u>8.4253 CFS</u>	
8-1-16	Fish	6.388 CFS	at mouth
8-1-16	Two Creeks	.17 CFS	Across Upper Lake
8-1-16	No Name	<u>.0748 CFS</u>	Will dry up
Total of all tributaries		<u>6.6328 CFS</u>	

INFLOW READINGS TO UPPER TWIN LAKE

<u>Location</u>	<u>Date/Time</u>	<u>Outlet (cfs)</u>	<u>Lake Level</u>	<u>Inflow (cfs)</u>	
No Name Creek	7/10/16 4pm	13.4	9.1'	0.17	Just above the dam
Fish Creek	7/13/2016 10am	11.9	9.1'	7.8	At Easterly Bridge
Fish Creek	7/14/16 4pm	11.1	8.9'	9.3	Near Mouth; includes tributaries
No Name Creek	7/18/16 2pm	11.6	8.8'	0.15	
Fish Creek	7/21/16 3:30pm	12.5	8.7'	8.12	At mouth
Two Creeks	7/21/16 7pm	12.2	8.7'	0.18	Near head of Upper Lake

Readings taken by Terry Kiefer