

**Robertson & Slette, p.l.l.c.**

ATTORNEYS AT LAW

J. EVAN ROBERTSON  
GARY D. SLETTE

Robin L. Moorn, PLS - Paralegal

134 Third Avenue East  
P.O. BOX 1906  
TWIN FALLS, IDAHO 83303-1906  
TELEPHONE (208) 933-0700  
FAX (208) 933-0701GARY D. SLETTE  
gslette@rsidaho.com

August 10, 2007

*Corey suggested that  
if I e-mail Slette on  
unannounced visit  
Ask where to look geologically*VIA FACSIMILE 208-287-6700David Tuthill, Director  
Idaho Dept. of Water Resources  
322 E. Front Street  
Boise, ID 83720-0098**RE: Water Call – Muldoon Creek (Blaine County, Idaho)**

Dear Dave:

Our law firm represents Muldoon Creek Ranch, LLC, the owner of certain property and water rights in Blaine County, Idaho (hereinafter the "LLC"). Although the LLC is the holder of multiple rights, as confirmed by Corey Skinner of the Twin Falls office of the IDWR, I want to direct your attention to certain senior priority rights on Muldoon Creek. Of critical concern are four (4) water rights held by the LLC that are senior in time to an upstream junior water user's rights. Those four rights are as follows:

	<u>Water Right</u>	<u>Priority Date</u>	<u>CFS</u>
A.	IDWR 37-1005	4/1/1886	1.4 cfs
B.	IDWR 37-1046C	4/1/1885	1.51 cfs
C.	IDWR 37-1048A	4/1/1884	2.0 cfs
D.	IDWR 37-1051	4/1/1888	<u>2.0 cfs</u>
	<b>Total</b>		<b>6.91 cfs</b>

These rights are all senior in time to water rights held by Guy Peterson, a junior water rights holder whose point of diversion is upstream of the LLC's points of diversion. During the past thirty (30) days, the LLC has sought to obtain the delivery of its priority rights before delivery of Mr.

David Tuthill, Director  
IDWR  
August 10, 2007  
Page 2

Peterson's various junior water rights, the earliest of which dates from 1910. Corey Skinner was helpful, and traveled to the property a week ago to review the situation. Apparently there was some diffused surface water coming from the banks of the creek which had caused Mr. Peterson's ditches to fill, despite the fact that water was not actually being diverted at his headgate. It appears to my client that someone has been actively involved in facilitating stream channel work in order to allow for this "incidental" diversion to occur. During the week of July 23, the LLC was obtaining approximately 2.5 cfs of its 6.91 cfs water rights, while Mr. Peterson's ditch below his diversion was full.

Arlen Crouch, the owner of the LLC, spent last weekend on the property to review the situation. He found that not only were Mr. Peterson's ditches still running full, but that water was also actively being diverted from Muldoon and Argosy Canyons upstream of Mr. Peterson's recorded point of diversion, thus serving to further deprive the LLC of its water rights. Additionally, another junior appropriator, Terry Clark, was diverting 90 to 100 inches of Muldoon Creek water despite being junior in time to the LLC. There was no lock located on the Clark headgate, but after some discussion with Mr. Crouch, Mr. Clark agreed to reduce the flow into his ditch for stock water purposes only.

*per Corey  
he did not  
hear Jim say  
this directly*

Jim Peterson, Guy Peterson's cousin, is the water master for the Muldoon Creek area. His headgates likewise do not have any locks, and he has been diverting water directly out of the LLC's ditch without having a valid point of diversion. My client was previously informed by Jim Peterson that he was delivering water to his cousin on the basis that everyone could share in its use, and that a little bit of water to Guy meant more to him than it does to the LLC. Quite simply, the LLC cannot abide by this philosophy of water delivery when it comes to its senior water rights, and my client has asked that a priority call be immediately instituted to insure that the water rights on Muldoon Creek are delivered according to their priority. The LLC has had to move hundreds of its cattle off the LLC's property due to insufficient grass, and clearly has been injured by this method of water delivery.

My client desires to fully cooperate with the IDWR with regard to the institution of this call. Mr. Crouch would like the opportunity to show representatives of the Department the unauthorized points of diversion that are being utilized by both Jim Peterson and Guy Peterson. The LLC is fully prepared to install new lockable headgates at its point of diversion this fall, and would ask the Department to insure that all other water users do the same thing. While we know that the end of this year's irrigation season is rapidly coming to a conclusion, we want to be proactive for that portion of the season which remains, and for coming years.

My client is eager and prepared to meet with representatives of the Department to review the unauthorized points of diversion, and to attempt to find solutions as quickly as possible. These are obviously difficult times for everyone, but the priority doctrine is intended to be operational when only limited water resources are available. The LLC's investment in its property and its

David Tuthill, Director  
IDWR  
August 10, 2007  
Page 3

appurtenant water rights is far too great to simply abide by a water-sharing arrangement to its detriment. Please advise of steps the Department will take in response to this call.

Yours truly,

  
GARY D. SLETTE

GDS:rlm

cc: Muldoon Creek Ranch  
Tim Luke – IDWR State Office Boise  
Allen Merritt – Southern Regional Office TF  
Corey Skinner – Southern Regional Office TF  
rlm\gds\letter\IDWR\_tuthill

**Robertson & Slette, p.l.l.c.**  
**ATTORNEYS AT LAW**

134 Third Ave. East  
P.O. BOX 1906  
TWIN FALLS, ID 83303-1906  
PHONE (208) 933-0700  
FAX (208) 933-0701

**FACSIMILE TRANSMISSION**

DATE: August 10, 2007

FAX TO:	David Tuthill, Director	208-287-6700
COPY TO:	Tim Luke	208-287-6700
COPY TO:	Allen Merritt	736-3037
COPY TO:	Corey Skinner	736-3037

FROM: Robin L. Moore for Gary Slette

RE: **Water Call – Muldoon Creek (Blaine Co.)**

NUMBER OF PAGES INCLUDING THIS ONE: 4

IF YOU DO NOT RECEIVE ALL OF THE PAGES, PLEASE CALL US BACK AS SOON AS POSSIBLE AT (208) 933-0700.

INFORMATION CONTAINED IN THIS FACSIMILE COMMUNICATION IS ATTORNEY/CLIENT PRIVILEGED AND/OR CONFIDENTIAL INFORMATION INTENDED ONLY FOR THE USE OF THE INDIVIDUAL OR ENTITY NAMED ABOVE. IF THE READER OF THIS COVER PAGE IS NOT THE INTENDED RECIPIENT, OR THE EMPLOYEE OR AGENT RESPONSIBLE TO DELIVER IT TO THE INTENDED RECIPIENT, YOU ARE HEREBY NOTIFIED THAT ANY DISSEMINATION, DISTRIBUTION OR COPYING OF THIS COMMUNICATION OR THE INFORMATION CONTAINED HEREIN IS STRICTLY PROHIBITED. IF YOU HAVE RECEIVED THIS COMMUNICATION IN ERROR, PLEASE IMMEDIATELY CALL AT (208) 933-0700, AND RETURN THIS FACSIMILE TO US BY MAIL AT THE ABOVE ADDRESS. WE APPRECIATE YOUR COOPERATION.

ADDITIONAL MESSAGE: