



## State of Idaho

# DEPARTMENT OF WATER RESOURCES

322 East Front Street • P.O. Box 83720 • Boise, Idaho 83720-0098

Phone: (208) 287-4800 • Fax: (208) 287-6700 • Web Site: [www.idwr.idaho.gov](http://www.idwr.idaho.gov)

C. L. "BUTCH" OTTER  
Governor

GARY SPACKMAN  
Interim Director

November 21, 2011

Scott L. Campbell  
Moffat Thomas Barrett Rock & Fields, Chtd.  
PO Box 829  
Boise, ID 83701-7710

Re: Your Correspondence Dated October 14, 2011 Regarding Illegal Water Use from Pratt Creek

Dear Mr. Campbell:

The Idaho Department of Water Resources (Department or IDWR) received your correspondence referenced above on October 18, 2011. On November 3, 2011, I also visited with you personally about some of your client's concerns.

On October 20, 2011, Tim Luke of IDWR contacted Rick Sager, Water District 74 watermaster (Lemhi River), and requested Mr. Sager to measure the diversions from Pratt Creek by Mr. James Skinner and Mr. Phil Moulton and report to IDWR the extent of water use by Skinner and Moulton.

On October 22, 2011, Mr. Sager contacted Mr. Luke and advised that he had inspected the diversions and use of water by Skinner and Moulton late in the afternoon of October 20<sup>th</sup>. Mr. Sager reported the following:

- The upper ditch diversion from Pratt Creek that may be used for irrigation of lands on the upper bar above the Hartvigson slide was dry.
- The lower ditch diversion from Pratt Creek that may be used for irrigation of lands on the upper bar above the Hartvigson slide had a small flow of water in it resulting from head gate leakage. The controlling head gate for this ditch was shut off but could not be completely closed so that a small amount of water continued to flow or leak through the bottom of the gate. The leakage was measured at 0.35 cfs by Mr. Sager using the installed measuring device on the ditch located about one-quarter mile below the head gate.
- The 0.35 cfs was being used to flood irrigate a small area in Skinner's upper field served by this ditch (likely located within the SWNW Section 1, T20N, R23E). Runoff from this field combines with water draining from a spring and swampy area along the bottom part of the Skinner ranch. The total combined flow of the runoff and spring flow, estimated to be 0.5 cfs by Mr. Sager, drained through a ditch that goes over the hill toward the Wimpy Creek drainage. Wimpy Creek then runs south of Baker Road and crosses the Lemhi Road to the Ottonello property, and then discharges directly to the Lemhi River.
- No other water was diverted from Pratt Creek by Skinner and Moulton on October 20<sup>th</sup> except the 0.35 cfs leakage through the lower ditch head gate.
- Mr. Sager visited Mr. Skinner concerning the water use and was advised that the irrigation ditches were shut off on October 14. The head gate to the lower ditch was shut down as far as it could be shut except for the leakage of 0.35 cfs.

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The irrigation season for the Skinner and Moulton rights from Pratt Creek, as well as most other rights in the Lemhi River basin, extended until November 15. The use of the incidental head gate leakage (0.35 cfs) for flood irrigation constitutes a reasonable beneficial use of water authorized within the season of use of Skinner's water rights. Mr. Sager did not observe any illegal use of water or wasting of water from Pratt Creek during his inspection on October 20, 2011. Mr. Sager did not observe any water being diverted directly to the Hartvigson slide area. The head gate leakage should be sealed off by the water users before the end of the irrigation season. Via copy of this letter to Mr. Skinner and Mr. Moulton, the Department hereby requests that Mr. Skinner and Mr. Moulton seal off the leakage from Pratt Creek around the lower ditch head gate.

I am aware of your February 2, 2011 correspondence to IDWR concerning the diversion of winter stock water without proper water rights. In response to that correspondence, the Department sent a notice to Mr. Skinner and Mr. Moulton on February 14, 2011 (copy attached) requesting them to immediately cease and desist further diversion of water for winter stock water purposes because they did have water rights authorizing such use. It is our understanding that the diversion was stopped and that Moulton and Skinner both filed applications for permit for winter stock water use. The Department has advised Moulton and Skinner that water can't be diverted for stock water use until valid water rights are obtained for such purposes.

Please be advised that I am also aware of a number of related complaints or inquiries made to Department staff both about Pratt Creek water use and the drainage issue referenced in your latest correspondence. The issue raised in the litigation, whether irrigation runoff from lands above your client's property should cross your client's property, is not a matter the Department has authority to address. Inquiries by the parties and adjoining landowners, however, have impacted IDWR staff.

Given your complaints and other inquiries about Pratt Creek water use and the fact that Pratt Creek remains an inactive water district, the Department will work towards either reactivating the water district or combining it with Water District 74 in accordance with Idaho Code § 42-604. Please contact me or Tim Luke if you have additional questions or concerns regarding this matter.

Respectfully,



Gary Spackman  
Interim Director

Enclosure: Correspondence from IDWR dated February 14, 2011 regarding Illegal Water Diversions from Pratt Creek to James Skinner and Phil Moulton

cc: Tim Luke, IDWR  
James Cefalo, IDWR Eastern Region  
James Skinner  
Phil Moulton  
Rick Sager, WD74 Watermaster