

Holliday, Michael

From: Bromley, Chris
Sent: Wednesday, June 23, 2004 11:27 AM
To: Holliday, Michael
Subject: RE: Posted Notice

I need to qualify what I told you about using the posted notice as evidence of priority in my earlier email. ("Therefore, the notice could be treated as evidence of priority.")

According to the Claim's Manual, "A posted notice is evidence of the intent to appropriate water, *but is not evidence of application of water to beneficial use nor due diligence in completing the appropriation*. Some evidence of completion of the appropriation within a reasonable time after the date of posting will therefore be required before a claim may be recommended based on a posted notice."

While that statement applies to posted notice claims, it would appear that the posted notice document should not be treated as de facto proof of beneficial use. You will need to conduct further research into the right to ensure that the diversion structures were completed and the extent of the appropriation. However, the posted notice document can be used as a part of your analysis in determining the priority date, just not the entire basis.

Chris

-----Original Message-----

From: Bromley, Chris
Sent: Wednesday, June 23, 2004 10:54 AM
To: Holliday, Michael
Cc: Music, Vicky; McHugh, Candice; Hamlin Nygard, Susan; Spencer, Nick
Subject: Posted Notice

Prior to 1903, Idaho had a posted notice statute which described the means to perfect a statutory appropriation. According to the statute, the posted notice must contain the following:

1. Name of appropriator;
2. Source;
3. Amount of water;
4. Location of POD;
5. Purpose;
6. Location of POU;
7. Description of means of diversion;
8. For notices posted or recorded between March 7, 1895 and February 24, 1899, the length of time necessary to complete the appropriation may not be more than 5 years; and
9. Notices that were posted between June 1, 1887 and February 19, 1895 must have been recorded within 10 days.

In this case, the posted notice you gave me clearly meets requirements 1-7. While further research may prove that the proposed appropriation may have been completed within 5 years (see requirement #8), the notice states it was posted on February 6, 1888 and recorded February 20, 1888. Therefore, unfortunately, the notice was not recorded within the mandatory 10-day time period (see requirement #9).

According to the Department's Claims Manual, "If the posted notice does not meet these minimum requirements, then the basis of the claim *should be changed to beneficial use and the claim should be reviewed the same as a claim based on beneficial use.*" Emphasis added. Therefore, in this case, the appropriation should be treated as a claim for beneficial use, not a posted notice.

In your email, you asked whether the present tense wording of the posted notice indicates that the appropriation was already underway. Yes, it is possible that the appropriation may have been underway at the time notice was posted. Therefore, the notice could be treated as evidence of priority. Additional research may be needed on your end to find out the extent of the appropriation.

Please let me know if this answers your question, or if you need further assistance.

Thanks,

4265

May 6, 1991

VEARL C. CRYSTAL
26 N 3300 E
RIGBY ID 83442

RE: **Evidence of Priority**

Dear Mr. Crystal:

The Notice of Claim identified with the number shown at the end of this letter has been filed in the Snake River Basin Adjudication (SRBA). The Notice indicates the water usage is based on "Beneficial Use" or a "Statutory Claim". Water rights of this type are established by the historical use of water, dating back to when water was first used for the purpose claimed, at or on the place of use identified on the Notice. The date the water was first put to use, known as the priority date, has not been confirmed by a License, Decree, or Permit. For this reason, proof must be provided supporting the priority date.

For your reference I have provided a printout of your Notice and the pamphlet entitled **"Evidence of Priority"**. The pamphlet describes the types of evidence required and suggests which documents will fulfill this requirement. While I encourage you to read all of the pamphlet, I direct your attention to the two sections entitled **"What Kind of Evidence is Required"** and **"Some Examples of Documents Which May Be Evidence of the Priority Date"**.

It is our goal to recommend this historical water rights within the Snake River Basin as accurately as possible. Field exams to verify other items of the Notice have been or soon will be conducted by Department personnel. **But, the Department will not recommend the Notice be decreed by the court if no evidence of a priority date is submitted.**

Please submit the required evidence supporting the priority date by **June 6, 1991**, referencing all documents with the corresponding Notice number. If you have any questions not covered by this letter or the enclosed pamphlet, please contact this office.

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Vearl C. Crystal

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All Notices required to submit this evidence are currently being reviewed for recommendation to the court. Hence, the need for expediency on your part or your agency. Every effort should be made to submit this information within 30 days of the date of this letter.

Respectfully submitted,

Ernest Carlsen
Water right Supervisor, Adjudication

EC:sc

Enclosure: Brochure on "Evidence of Priority"
Proof Report

A25-04265
VEARL C. CRYSTAL
26 NORTH 3300 EAST

RIGBY

ID 83442

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