



State of Idaho

DEPARTMENT OF WATER RESOURCES

15 West Center Street, Soda Springs, ID 83276

Phone: (208) 547-3993 Fax: (208) 547-3939 Web Site: www.idwr.state.id.us

DIRK KEMPTHORNE
Governor

KARL J. DREHER
Director

March 5, 2003

Norman Frank
835 West 100 South
Blackfoot, Idaho 83221

Re: Evidence of Priority

Claim No.: A29-10065

Response Date: March 26, 2003

Dear Mr. Frank,

I understand that you disagree with the priority date of April 1, 1974; because that is not the date you filed on. In order to change the priority date to September 26, 1903, we need to have evidence to support that date. You have not provided me with any evidence of priority.

The Idaho Department of Water Resources is finishing the water right reviews in Basin 29. On the claim listed above, 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.** As the claimant, you are responsible for submitting the necessary proof to support the priority date.

For your reference, I have enclosed 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 the entire 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**".

Because of the time frame this claim is currently being recommended as disallowed. Although this is not the final determination, with more detailed information this can be changed before it goes to the courts, but time is of the essence.

If you have any questions please feel free to contact me at 547-3993 in Soda Springs.

Respectfully,

Cindy E. Bird
Adjudication Bureau

enclosure: "Evidence of Priority"

Carlsen, Ernie

To: Bird, Cindy
Subject: RE: 29-11, 29-10065, Norman Frank

Cindy, When there is no overlapping ground water or canal company rights so only one source of water has to be considered, then an aerial photo showing the irrigation system and field boundaries can be used as evidence. You can recommend 4-1-1974 based on the orthophoto or 4-1-1987 if you feel the NAPP is the first evidence you have that the 131 acres were being irrigated.

Ernie

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

From: Bird, Cindy
Sent: Tuesday, November 12, 2002 1:46 PM
To: Carlsen, Ernie
Subject: RE: 29-11, 29-10065, Norman Frank

What priority date would I use? 4-1-74? Wouldn't he still need to provide evidence?

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

From: Carlsen, Ernie
Sent: Tuesday, November 12, 2002 1:38 PM
To: Bird, Cindy
Cc: Carlsen, Ernie
Subject: 29-11, 29-10065, Norman Frank

Cindy, I have completed linking the POD and POU shapes to the recommendations I brought back from Lava a couple of weeks ago.

I noticed that notes in the file for 29-11 indicate you are disallowing 29-10065 because Mr. Frank failed to provide documentation supporting a 1902 priority. Since the source of water is the Portneuf River and diversions are regulated by the water master, Mr. Frank would be hard pressed to furnish any documentation showing the water master delivered more water than was decreed to 29-11. However, the place of use your recommending acknowledges the irrigated acreage has been increased for the 77 acres original decreed to 131 acres, within the decreed QQs. If Mr. Frank historically only irrigates 77 out of the 131 acres each year then your recommendation is appropriate. But if he actually irrigates the entire 131 acres during the irrigation season then 29-10065 can be used to allow continuation of that practice. Though Mr. Frank likely does not qualify for additional water there appears to be sufficient evidence to support an enlargement claim under 42-1426. To recommend the 131 acres based on an enlargement Mr. Frank has to have started irrigating those acres after 1971 but prior to November 1987. The 1974 orthophotos tend to indicate 131 acres were being irrigated at that time. Rather than denying 29-10065, why not recommend it as an enlargement claim allowing him to irrigate the 131 acres with no additional water?

Notes

10/8/02 disallow "No LAWFUL APPROPRIATION"
add POI Remark; Condition



State of Idaho

DEPARTMENT OF WATER RESOURCES

15 West Center Street, Soda Springs, ID 83276

Phone: (208) 547-3993 Fax: (208) 547-3939 Web Site: www.idwr.state.id.us

DIRK KEMPTHORNE
Governor

KARL J. DREHER
Director

June 3, 2002

Norman W. Frank
Wanda J. Frank
835 W. 100 S.
Blackfoot, ID 83221

Re: Snake River Basin Adjudication (SRBA)

SUBJECT: Disallowed recommendation for 29-10065

Dear Mr. and Mrs. Frank;

I spoke with you last fall regarding Evidence of Priority needed for the above listed beneficial use claim in the SRBA. IDWR will NOT RECOMMEND this claim to be decreed by the court if no evidence of the priority date is submitted. Since no respond in this matter has taken place this claim is being recommended as **Disallowed** to the SRBA court.

Please contact this office if you have any questions regarding this matter.

Respectfully submitted,

Cindy E. Bird
Sr. Water Resource Agent
Adjudication Bureau

Enclosed: Evidence of Priority Brochure

Cc; file

a



State of Idaho

DEPARTMENT OF WATER RESOURCES

15 West Center Street, Soda Springs, ID 83276

Phone: (208) 547-3993 Fax: (208) 547-3939 Web Site: www.idwr.state.id.us

DIRK KEMPTHORNE
Governor

KARL J. DREHER
Director

September 27, 2001

STEVE HEBDON
C/O KING CREEK GRAZING ASSOCIATION
2924 KELLY TOPONCE ROAD
BANCROFT, ID 83217

REF: NORMAN FRANK

SUBJECT: EVIDENCE OF PRIORITY

Dear Steve,

Your family previously owned the property that is currently owned by Norman Frank. Mr. Frank has claimed an additional 51 acres of irrigated lands over the 77 acres decreed to the property under a beneficial use claim. The state of Idaho requires documentation of the priority date. 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. **As the person with the most knowledge of this property a signed affidavit of the beneficial use of this water would be proof to support the priority date.** The claimed priority date for Mr. Frank is September 26, 1903 for both stock water and irrigation.

It's important that each element of the claim be substantiated. For instance, regarding claims for irrigation, the evidence should tend to show that diversion works were in place, that they were capable of diverting the claimed diversion rate, and that the diverted water was beneficially used on the entire claimed place of use on or before the claimed 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 the entire 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's our goal to recommend historical water rights within the Snake River Basin as accurately as possible. I appreciate your help in this matter. If you have any questions not covered by this letter or the enclosed pamphlet, please feel free to contact me at 547-3993.

Respectfully,

Cindy E. Bird
Adjudication Bureau

Enclosure: Brochure on "Evidence of Priority"