

TRENT GALBRAITH
WATER AGENT
ADJUDICATION BUREAU

RECEIVED SEPT. 15, 2005
SEP 19 2005
Department of Water Resources
Eastern Region

RE: EVIDENCE OF PRIORITY FOR SRBA CLAIM #21-10019

DEAR TRENT:

THE RESULTS OF MY INVESTIGATION INTO THE 'PRIORITY DATE' OF MY WATER RIGHTS OF JUNE 27TH, 1898, IS W^M R. BOWERS NEVER RECEIVED NOTIFICATION THAT HE HAD TO APPEAR IN COURT TO DEFEND HIS WATER RIGHTS.

YOUR LETTER TO ME DATED SEPT. 2, 2005, STATED YOUR ATTORNEY IN BOISE HAD A LIST OF PEOPLE WHO FAILED TO APPEAR IN COURT TO DEFEND THEIR WATER RIGHTS.

IN ORDER TO PROCEED WITH MY INVESTIGATION, I RESPECTFULLY REQUEST THE FOLLOWING ITEMS:

- (1) A COPY OF ALL INFORMATION SENT TO W^M R. BOWERS REGARDING HIS APPEARING IN COURT TO DEFEND HIS WATER RIGHTS.
- (2) WHAT MEANS WAS USED TO NOTIFY MR. BOWERS. IE. (FEDEX) (U.S. MAIL) (TELEPHONE)

- (3) WHAT ADDRESS WAS USED TO NOTIFY MR. BOWERS.
- (4) THE DATES OF ANY NOTICES SENT TO MR. BOWERS.
- (5) A LIST OF NAMES OF THE PEOPLE IN FREMONT COUNTY THAT WERE REQUIRED TO APPEAR IN COURT TO DEFEND THEIR WATER RIGHTS.
- (6) A LIST OF NAMES OF THE PEOPLE IN FREMONT COUNTY THAT FAILED TO APPEAR IN COURT TO DEFEND THEIR WATER RIGHTS.

WITH THE INFORMATION REQUESTED I CAN CONTINUE WITH MY INVESTIGATION.

THANKS FOR YOUR HELP —
& BEST REGARDS —



CHICK KANE
ISLAND PARK, IDAHO



State of Idaho

DEPARTMENT OF WATER RESOURCES

900 N. SKYLINE DR., SUITE A, IDAHO FALLS, ID 83402-1718

PHONE: (208) 525-7161 FAX: (208) 525-7177 WEB SITE: www.idwr.state.id.us

EASTERN REGION

DIRK KEMPTHORNE
Governor

KARL J. DREHER
Director

September 2, 2005

Charles Kane
3761 HWY 87
Island Park, Id. 83429

RE: EVIDENCE OF PRIORITY FOR SRBA CLAIM NUMBER: 21-10019

Dear Mr. Kane,

After our conversation over the phone on 9-2-05 about your change of ownership I was able to review the "Notice of Water Right" dated June 27 1898 that you submitted for evidence of priority. While reviewing the notice I saw that William R. Bowers filed the notice. I contacted our attorney in Boise who did some research and found that Mr. Bowers was on a list that was included within the "Finding of Fact and Conclusions of Law" for the Rexburg Decree. This was a list of people who failed to appear before the court to defend their water right. Consequently, I can't recommend the right based on the June 27, 1898 priority date because it has been forfeited by Mr. Bowers when he did not show up to defend it. However, I can still recommend a right based on a priority date after the Rexburg Decree (December 16, 1910). If you can provide me evidence that water was being used after December 16, 1910 and before the year 1971 I can recommend the right with a priority date based on that evidence. After 1971 it was required by law that you file an application for permit and go through the steps to get a water right license. That is why it must be before 1971.

Respectfully submitted,

Trent Galbraith
Water Agent
Adjudication Bureau
(208)525-7161

TRENT —

8-25-05

RE: WATER RIGHT # 21-10019
'DATE OF PRIORITY'

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Department of Water Resources
Eastern Region

ENCLOSED YOU WILL FIND THE
'NOTICE OF WATER RIGHT' WHICH ESTABLISHES
THE DATE OF PRIORITY AS JUNE 27, 1898,
AS WELL AS THE USAGE OF THE WATER.

THIS 'NOTICE OF WATER RIGHT'
FAR EXCEEDS THE CRITERIA SET
FORTH IN THE IDWR PAMPHLET TITLED
'EVIDENCE OF PRIORITY' FOR PROOF
OF THE DATE OF PRIORITY. I HAVE
ENCLOSED A COPY OF THE PAMPHLET
THAT APPLIES TO 'WHAT KIND OF EVIDENCE
IS REQUIRED.

ALSO ENCLOSED IS A COPY OF A
AERIAL PHOTO WITH THE APPROXIMATE
USAGE AREA INDICATED.

PLEASE ACCEPT THIS PROOF TO
KEEP THE 'DATE OF PRIORITY' AS IT
RIGHTFULLY SHOULD BE AS JUNE 27, 1898.

THANK YOU —

Chuck Kane

CHUCK KANE
ISLAND PARK, IDAHO

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AUG 16 2004

Department of Water Resources
Eastern Region

OFF. G. BARRETT & CO., PRINTERS, ST. LOUIS

NOTICE OF WATER RIGHT.

STATE OF IDAHO,
County of Fremont } ss.

TO ALL CONCERNED, NOTICE IS HEREBY GIVEN:

1st. That I, William R. Bowers, of Lake
Fremont County of Idaho
hereby claim the use of the waters of Canyon Creek

to the extent of One cubic feet per second.

2d. It is intended to divert said water at or near the point where a copy of this notice is posted, and more definitely described as follows: To be diverted from said Canyon Creek at
Mouth of Canyon one half mile South from Lake.

(In above description give legal subdivision of land or describe the place with reference to some prominent landmark.)

3d. The purpose for which said water is intended to be used is Domestic and
Agricultural

The place of intended use is Lake, Fremont County, Idaho

4th. It is intended to divert said water by means of Ditch and dam

The general course of the proposed canal is South

The length of the proposed canal is three fourths of a mile

It is intended to use said water for irrigating the following described land:
NE 1/4 Sec. 37, Twp. 16 N. R. 10 E., Range 43 East, Boise Meridian.

5th. It is intended to have the works for diversion and use of said water as aforesaid completed within
years. (This must in no case exceed five years.)

WITNESS my hand at Lake, Fremont County Idaho,

this 27 day of June 1898

William R. Bowers

Claimants.

STATE OF IDAHO,
County of Fremont } ss.

William R. Bowers
being first duly sworn, depose and say that he is of lawful age and is the
claimant of the Water Right mentioned in the foregoing notice and whose name he subscribed thereto. That
the statements in said notice are true, and that the original notice, of which the foregoing is a true copy, was posted
in a conspicuous place at or near the place of intended diversion (as provided by law) on the 27
day of June 1898, at 10 minutes past 11 o'clock A. M.

Subscribed and sworn to before me this 27 day of June 1898
Ernest R. Bowers
by William R. Bowers
by J. Sherwood, Deputy

NOTE.—The above Certificate may, where there are several claimants, be made and sworn to by one of them.

Filed for record this 30 day of June 1898 at 4 o'clock P. M.
Ernest R. Bowers
Recorder.

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Department of Water Resources
Eastern Region

2. *the claim is NOT a small domestic and stockwater claim.*

NOTE: Additional proof of priority for beneficial use claims for small D&S uses will not be required unless specifically requested by IDWR.

The claim is a beneficial use claim if it is not based on a permit or license issued by IDWR or a decree issued by the court.

Small domestic and stockwater uses are very specifically defined by statute, and proof is required for a beneficial use claim if the use claimed does not meet that definition. If your claim was accepted with a \$25.00 fee, then your claim was probably a small domestic and stockwater claim.

WHAT KIND OF EVIDENCE IS REQUIRED?

SOME evidence of the YEAR of the priority claimed is sufficient. Conclusive evidence is not required. Evidence of the month and day is not required, but should be included if available.

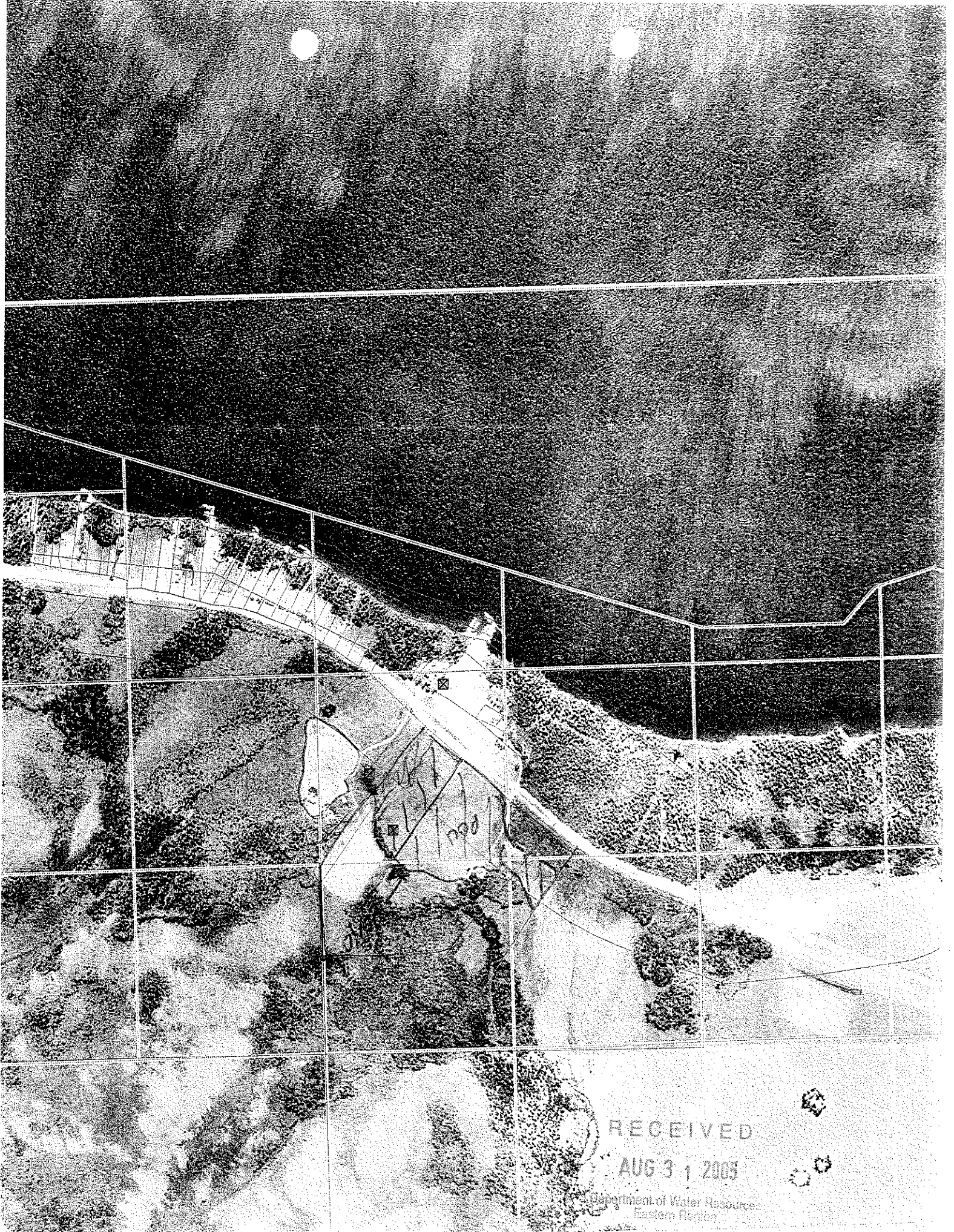
Documentation of the priority date claimed can take almost any form. Generally, the document will be sufficient if it tends to show that water was used:

1. *For the purpose claimed,*
2. *In the year claimed as the priority date,*
AND
3. *On the land claimed as the place of use or by the owner of that land.*

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Department of Water Resources
Eastern Region

July 6, 2005

Chuck Kane
3761 HWY 87
Island Park ID 83429

RE: EVIDENCE OF PRIORITY FOR SRBA CLAIM NUBER 21-10019

Dear Claimant (s):

The Notice(s) of Claim to a water right identified in the attached proof report(s) has been filed in the Snake River Basin Adjudication (SRBA). The Notice of Claim indicates water usage is based upon "Beneficial Use". 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 Claim. The date the water was first put to beneficial use, known as the priority date, has not been confirmed by License, Decree, or Permit. For this reason, proof must be provided supporting your claimed priority date. **As the claimant, you are responsible for submitting the necessary proof to support the priority date.**

It is important that each element of the Notice of Claim be verified. For instance, regarding claims for irrigation, the evidence should 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.

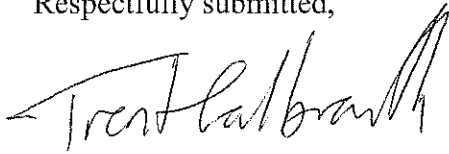
For your reference, enclosed is a printout of your Notice of Claim to Water Right and the pamphlet entitled "**Evidence of Priority**". The pamphlet describes the types of evidence required and suggests which documents may fulfill this requirement. While I encourage you to read the entire pamphlet, I 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 is our goal to recommend historical water rights within the Snake River Basin as accurately as possible. Field exams to verify other elements of the Notice of Claim have been or are currently being conducted by Department personnel.

.....
The Department will not recommend the Notice of Claim be decreed by the court if evidence of a priority date is not submitted. The Notice of Claim will be disallowed.
.....

Please submit the documentation supporting the priority date **within 30 days of the date of this letter, referencing all documents with the corresponding Claim number.** If you have any questions not covered by this letter or the enclosed pamphlet, please feel free to contact this office at 525-7161.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Trent Galbraith", with a stylized flourish at the end.

Trent Galbraith
Water Resource Agent
Adjudication Bureau

cc: File

Enclosure: Brochure on "Evidence of Priority"
Notice of Claim (copy)

June 22, 2004

**PERRY DIETRICH
685 S 5000 W
REXBURG ID 83440**

RE: EVIDENCE OF PRIORITY FOR SRBA WATER RIGHT CLAIM 21-10019

Dear Claimant (s):

The Idaho Department of Water Resources is nearing the beginning of water rights review in Basin 21, the Henry's Fork drainage. The Notice(s) of Claim identified with the number shown above has been filed in the Snake River Basin Adjudication (SRBA). The Notice of Claim indicates water usage is based on "Beneficial Use". 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 Claim. The date the water was first put to beneficial use, known as the priority date, has not been confirmed by 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.**

Your claim, as referenced above, claims a Priority Date of JUN 27 1898, from SPRING.

It is important that each element of the Notice of Claim be verified. 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 of Claim and the pamphlet entitled "**Evidence of Priority**". The pamphlet describes the types of evidence which are acceptable 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**". **PLEASE READ THE ENCLOSED PAMPHLET.**

It is our goal to recommend historical water rights within the Snake River Basin as accurately as possible. Field exams to verify other elements of the Notice of Claim have been or soon will be conducted by Department personnel.

.....
**The Department will not recommend the Notice of Claim be decreed by the court if
evidence of a priority date is not submitted. The Notice of Claim will be disallowed.**
.....

Please submit documentation supporting the priority date as soon as possible,
referencing all documents with the corresponding claim number.

Respectfully submitted,

Ernest Carlson

for Allen B. Ruberry
Sr. Water Resource Agent
Adjudication Bureau

cc: File

Enclosure: Brochure on "Evidence of Priority"