



State of Idaho
DEPARTMENT OF WATER RESOURCES

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JAMES E. RISCH
Governor

KARL J. DREHER
Director

October 2, 2006

KEVIN TONER
136 MADISON AVE 3RD FLOOR
NEW YORK, NY 10016

Re: Snake River Basin Adjudication (SRBA)
Claims: 24-4018, 24-4021, 24-4022, 24-10751 & 24-10753

Subject: EVIDENCE OF PRIORITY

Dear Claimant (s):

The Notice(s) of Claim identified with the numbers shown above, have been filed in the Snake River Basin Adjudication (SRBA).

The Notice indicates that the claims are based on statutory 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 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. **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 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 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"**.

It is our goal to recommend historical water rights within the Snake River Basin as accurately as possible.

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The Department cannot recommend the court decree the Notice if no evidence of a priority date is submitted.
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We received your Notice of Error Replies on the above referenced claims. However, you must also submit the proper documents to support your assertions. Even if it is apparent today that irrigation is occurring the Idaho Code requires that if you want to establish a beneficial use right you must provide us with the proper documents to support each element of the water right. Please submit the documentation supporting the priority date referencing **all documents with the corresponding Claim numbers.** The report for this basin will be submitted to the SRBA Court on the 21st of November. At that time you can object to the recommendation and provide the court with the necessary documents to support each element of the claim. If you have any questions not covered by this letter, please feel free to contact me at (208) 547-3993.

Respectfully,

Cindy E. Bird

Enclosure: Brochure on "Evidence of Priority"

CC: