



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 • Website: [www.idwr.idaho.gov](http://www.idwr.idaho.gov)

C.L. "BUTCH" OTTER  
Governor

GARY SPACKMAN  
Director

July 6, 2020

JANICE GEYER  
3814 NE 89<sup>TH</sup> ST  
SEATTLE WA 98115

RE: Palouse River Basin Adjudication (PRBA) Claim No. 87-11171  
Evidence of Priority & Information Request

Dear Mrs. Geyer

The Idaho Department of Water Resources (IDWR) recently reviewed Notice of Claim to a Water right 87-11171. Notice of Claim 87-11171 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 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.**

Claim 87-11171 proposes a priority of 12/31/1925 from spring water for domestic use at 1 home as well as stockwater for cattle and horses. You are one of 5 claimants, and are listed as the current owner of the parcel No. RP37N05W200000 at the claimed place of use. Due to lack of historical data, the Department is not able to verify the claimed priority date of 1925. The most historical aerial imagery available was taken on July 29, 1947. A copy of the image is included with this letter. Using this imagery, it is difficult to determine the extent of domestic beneficial use, as no structures are *clearly* visible. Additionally, 2020 Nez Perce County parcel data and recent aerial imagery do not show a domestic home or structures at the claimed place of use. **Please provide additional information to support the claimed priority date and claimed domestic beneficial use.**

It is important that each element of the Notice be substantiated. For instance, regarding claims for domestic, the evidence should tend to show that structures were in place 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. I would 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".

.....  
The Department can not recommend the Notice be decreed by the court if no evidence of a priority date is submitted.  
.....

Please submit the documentation supporting the priority date by **August 10, 2020 referencing all documents with the corresponding Notice number.** If you have any questions not covered by this letter or the enclosed pamphlet, please feel free to contact me at (208) 287-4913.

Respectfully,

Alex Dagleish  
Water Resource Agent  
[alex.dagleish@idwr.idaho.gov](mailto:alex.dagleish@idwr.idaho.gov)  
208.287.4913

Enclosures:     Brochure on "Evidence of Priority"  
                     Notice of Claim 87-11171  
                     1947 aerial imagery of claimed place of use  
                     2020 Nez Perce County Parcel Information

## **EVIDENCE OF PRIORITY DATE FOR CLAIMS FILED IN AN ADJUDICATION**

IF YOU HAVE RECEIVED A LETTER FROM THE DEPARTMENT OF WATER RESOURCES INFORMING YOU THAT YOU MAY HAVE TO SUBMIT PROOF OF BENEFICIAL USE THE INFORMATION BELOW WILL ASSIST YOU IN FINDING THE NECESSARY DOCUMENTATION.

### **WHAT IS A PRIORITY DATE?**

The Priority date is one of the elements of the water right which you were required to state on your notice of claim. The priority date is the basis upon which water is distributed in times of shortage. When there is not enough water to satisfy all existing water rights, then water is distributed first to those with the oldest priority date.

### **WHAT IS A BENEFICIAL USE WATER RIGHT?**

A beneficial use water right is one that is based on actual use of the water, and is not documented by a permit or license issued by IDWR, or a decree issued by a court. A beneficial use water right is established by putting the water to beneficial use, such as for domestic, stockwater, irrigation, hydro-power, commercial or industrial use or aquaculture, among others.

Generally, the priority date of a beneficial use right is the date the water was first put to beneficial use. This date is NOT NECESSARILY WHEN YOU ACQUIRED THE PROPERTY, or WHEN YOU FIRST MADE BENEFICIAL USE. A previous owner could have established beneficial use, which you continued.

There is a special category of beneficial use rights called "posted notice" rights, to which special rules apply. Prior to 1903, Idaho had a "posted notice" statute, which provided for posting of a notice including specified information at the point of diversion, recording of the notice at the county recorder's office, and actual diversion and beneficial use within a reasonable time after posting, among other things. If the statutory requirements were met, then the priority date was the date of posting the notice. These "posted notice" water rights are considered a type of beneficial use water right because they are not confirmed by a permit, license, or decree.

### **FOR WHICH CLAIMS IS EVIDENCE OF PRIORITY DATE REQUIRED?**

Each claim filed in the Adjudication is the claimant's affidavit (statement) of the elements of the water right being claimed. Some claimants in the Adjudication will be required to submit additional evidence of the priority date of the water right IF:

1. *The claim is based on beneficial use AND*

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.*

It is possible for a water right to have been established on one parcel of land and then transferred for use on another parcel of land. In such cases, the evidence should tend to show that water was used on the original place of use or by the owner of the original place of use to meet the third part of the requirement.

### **SOME EXAMPLES OF DOCUMENTS WHICH MAY BE EVIDENCE OF THE PRIORITY DATE**

*Note: Proof of ownership of land by a title or warranty deed usually does not, by itself, constitute proof of a priority date since the priority is based on use of water.*

Here are a few examples and there may be others. But the proof must meet the general requirements highlighted above.

1. *Affidavits* -a notarized statement of someone with personal knowledge of when beneficial use was first made, such as a neighbor or a previous owner of the property. Personal knowledge means someone who observed the use, not someone who was told of the use by someone else.
2. *For irrigation claims*--crop reports, income tax documents showing income from sale of crops, or property tax documents showing property was taxed as irrigated agriculture.
3. *For ground water rights*--the report

- of the well driller who drilled the well, if a report was filed with IDWR.
4. ***Pump test records.***
  5. ***Sales receipts*** for equipment or materials used in the water system.
  6. ***Records*** of the person or business who sold, installed, or constructed the diversion works.
  7. ***Electric bills*** for electric powered diversion equipment.
  8. ***Homestead documents for irrigation claims, patent documentation for mining claims or other documentation indicating use of water during the acquisition of government land.*** These may be of record at the county recorder's office for the county in which the land is located. These should also be of record with the National Archives, although there are often delays in obtaining copies. The address and phone number of the National Archives are:

8th and Pennsylvania Ave., N.W.  
Washington, D.C., 20408  
202-523-3006

9. ***Aerial photography.*** Information on available aerial photography can be obtained from the U.S. Geological Survey at the following address and phone number:

U.S. Geological Survey EROS Data  
Center User Services Section Sioux  
Falls, South Dakota 57198  
605-594-6151

## **WHAT IF I AM UNABLE TO OBTAIN ANY OF THE SOURCES LISTED ABOVE?**

**IF YOU CANNOT** furnish some proof such as the examples listed above, you may submit your own testimony, in the form of an affidavit (a letter signed by the you and notarized), which explains the basis for the year of priority claimed. The letter should include a statement of the claimant's personal knowledge of the water use, but may also include information the claimant obtained from others.

## **DOCUMENTS WHICH ARE NOT SUFFICIENT EVIDENCE OF THE PRIORITY DATE CLAIMED**

1. **STATUTORY CLAIMS** filed pursuant to Idaho Code 42-243. In the late 1970's, legislation was enacted that required persons with beneficial use rights to register them with **IDWR**. These "claims" were declarations of the water right owners, and were not investigated or verified. Notices of claims in the Adjudication are different, because they will be investigated and verified, resulting in a decree that confirms the water right and properly describes it.

The statutory claim may be evidence of a water right claimed in the Adjudication if the times and quantities of use claimed in the Adjudication are substantially the same as they were on the statutory claim. **EVEN THEN**, the statutory claim is evidence of

such use **ONLY** as the date the statutory claim was filed – **NOT** as of the priority date claimed either in the statutory claim or the notice of claim filed in the Adjudication

2. **POSTED NOTICES.** The posted notice may be evidence of a priority date as of the date the notice was posted, but **ONLY IF** some evidence is submitted showing completion of the appropriation within a reasonable time after posting of the notice.

## **WHAT WILL HAPPEN IF EVIDENCE OF THE PRIORITY DATE IS NOT SUBMITTED?**

IDWR will not recommend the claim to be decreed by the court if no evidence of the priority date is submitted. If proof is submitted but it supports a year of priority later than the year claimed, then a later year will be recommended.

**CALL TOLL-FREE  
1-800-451-4129**

IDAHO DEPARTMENT OF WATER  
RESOURCES ADJUDICATION BUREAU  
STATEHOUSE MAIL  
BOISE IDAHO 83720-0098  
(208) 287-4800

# **EVIDENCE OF PRIORITY**

## **A GUIDE TO SOURCES WHICH MAY CONSTITUTE PROOF OF THE PRIORITY DATE OF YOUR WATER RIGHT**



IDAHO DEPARTMENT OF WATER RESOURCES  
FEBRUARY 2013

**IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT  
OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS**

**IN RE THE GENERAL ADJUDICATION OF  
RIGHTS TO THE USE OF WATER FROM THE  
PALOUSE RIVER BASIN WATER SYSTEM**

**CIVIL CASE 59576**

**NUMBER:**

**Ident. 87-**

**Number: 11171**

**Date**

**Received:**

**Receipt No.:**

**RECEIVED**

**JUL 18 2019**

**DEPARTMENT OF  
WATER RESOURCES**

**1. Name of Claimant(s):**

| Name              | Address                | City      | State | Country | Postal Code |
|-------------------|------------------------|-----------|-------|---------|-------------|
| ZIEMULZ FARMS LLC | 510 W HIGHLAND VIEW DR | BOISE     | ID    | USA     | 83702       |
| JANICE GEYER      | 3814 NE 89TH ST        | SEATTLE   | WA    | USA     | 98115       |
| JEZ RANCH LLC     | 5741 179 AVE SE        | BELLEVUE  | WA    | USA     | 98006       |
| JOHN R ZIEMANN    | 1651 UNIONTOWN RD      | GENESEE   | ID    | USA     | 83832       |
| VAN G ZIEMANN     | 39 ALBERTA RD          | WESTBROOK | ME    | USA     | 04092       |

**2. Date of Priority:**

| Date       | Explanation                                                                                                    |
|------------|----------------------------------------------------------------------------------------------------------------|
| 12/31/1925 | The year Jerilynne Ziemann's mother was born. The family lived in the house at the time of her mother's birth. |

**3. Source:**

| Source | Tributary | Type |
|--------|-----------|------|
| SPRING | SINKS     |      |

**4. Point Of Diversion:**

| Township | Range | Section | Gov Lot | QQ | Q  | County    |
|----------|-------|---------|---------|----|----|-----------|
| 37N      | 05W   | 20      |         | SE | NE | NEZ PERCE |

**5. Water is used for the following purpose(s):**

| Water Use  | Number Of Homes | Stock                         | Description |
|------------|-----------------|-------------------------------|-------------|
| DOMESTIC   | 1               | -                             |             |
| STOCKWATER | -               | Type of Stock Number of Stock |             |

|  |        |         |                                                 |
|--|--------|---------|-------------------------------------------------|
|  | Cattle | 11 - 25 | In stream stock water and diversion to troughs. |
|  | Horses | 1 - 10  |                                                 |

**6. Season(s) of Use:**

| Water Use  | From Month/Day | To Month/Day |
|------------|----------------|--------------|
| DOMESTIC   | 1 / 1          | 12 / 31      |
| STOCKWATER | 1 / 1          | 12 / 31      |

**7. Quantity:**

| Water Use  | CFS   | AF   | KW  |
|------------|-------|------|-----|
| DOMESTIC   | 0.040 | 0.00 | 0.0 |
| STOCKWATER | 0.040 | 0.00 | 0.0 |

**Totals:**

| CFS   | AF   | KW |
|-------|------|----|
| 0.040 | 0.00 |    |

**8. Place of Use:**

| Water Use  | Township | Range | Section | QQ | Q  | County    | Gov Lot | Acreage |
|------------|----------|-------|---------|----|----|-----------|---------|---------|
| DOMESTIC   | 37N      | 05W   | 20      | SE | NE | NEZ PERCE | -       | -       |
| DOMESTIC   | 37N      | 05W   | 20      | SW | NE | NEZ PERCE | -       | -       |
| STOCKWATER | 37N      | 05W   | 20      | NE | SE | NEZ PERCE | -       | -       |
| STOCKWATER | 37N      | 05W   | 20      | NW | SE | NEZ PERCE | -       | -       |
| STOCKWATER | 37N      | 05W   | 20      | SE | NE | NEZ PERCE | -       | -       |
| STOCKWATER | 37N      | 05W   | 20      | SE | SE | NEZ PERCE | -       | -       |
| STOCKWATER | 37N      | 05W   | 20      | SW | NE | NEZ PERCE | -       | -       |
| STOCKWATER | 37N      | 05W   | 20      | SW | SE | NEZ PERCE | -       | -       |

**9. Basis of Claim:****Basis**

Beneficial Use

**10. Signature(s):**

(a.) By signing below, I/We acknowledge that I/We have received, read and understand the form entitled "How you will receive notice in the Palouse River Basin Adjudication." (b.) I/We do \_\_\_ do not \_\_\_ wish to receive and pay a small annual fee for monthly copies of the docket sheet.

Number of attachments: \_\_\_\_\_

For Individuals: I/We do solemnly swear or affirm under penalty of perjury that the statements contained in the foregoing document are true and correct.

Signature of Claimant(s): \_\_\_\_\_ Date: \_\_\_\_\_  
 \_\_\_\_\_ Date: \_\_\_\_\_

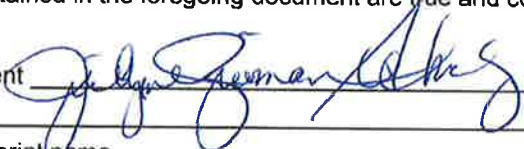
For Organizations: I do solemnly swear or affirm under penalty of perjury that I am

\_\_\_\_\_ of \_\_\_\_\_  
 Title Organization

that I have signed the foregoing document in the space below as

\_\_\_\_\_ of \_\_\_\_\_  
 Title Organization

and that the statements contained in the foregoing document are true and correct.

Signature of Authorized Agent  Date July 18, 2019

Title and Organization \_\_\_\_\_

Please print name

claimed place of use

87-11171

7-29-'47

31 13

GS-CJ

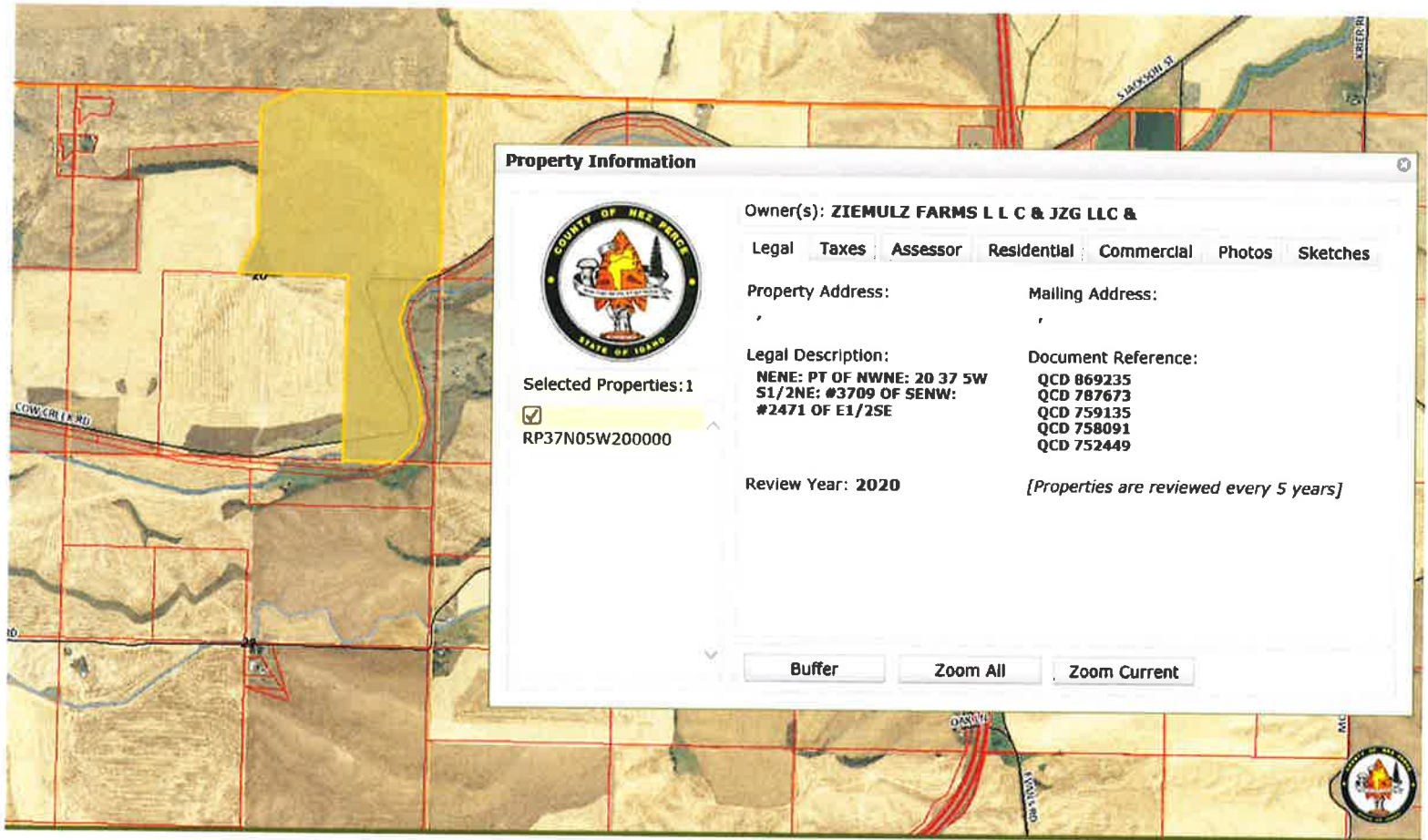
7-29-'47

31 12

GS-CJ

close up of claimed place of use.  
Domestic structure(s)?





Property Information



Selected Properties: 1



RP37N05W200000

Owner(s): ZIEMULZ FARMS L L C & JZG LLC &

Legal Taxes Assessor Residential Commercial Photos Sketches

Property Address:

Mailing Address:

Legal Description:

NENE: PT OF NWNE: 20 37 5W  
S1/2NE: #3709 OF SENW:  
#2471 OF E1/2SE

Document Reference:

QCD 869235  
QCD 787673  
QCD 759135  
QCD 758091  
QCD 752449

Review Year: 2020

[Properties are reviewed every 5 years]

Buffer

Zoom All

Zoom Current

