



State of Idaho

DEPARTMENT OF WATER RESOURCES

Eastern Region, 900 North Skyline Drive, Suite A • Idaho Falls, Idaho 83402-1718

Phone: (208) 525-7161 • Fax: (208) 525-7177 • Web Site: www.idwr.idaho.gov

C. L. "BUTCH" OTTER
Governor

GARY SPACKMAN
Interim Director

August 12, 2010

Lyle Fuller
Fuller Law Office
24 North State Street
PO Box 191
Preston, ID 83263

Re: City of Franklin Application for Transfer 72646

Dear Mr. Fuller,

In February 2006, you filed an application for transfer on behalf of the City of Franklin which included two statutory claims (13-4062 and 13-4063) that had been purchased from Lewiston City. The transfer sought to change the place of use associated with the statutory claims from Lewiston City to the City of Franklin. Transfers involving statutory or beneficial use claims require a considerable amount of review and can give rise to significant procedural hurdles. In the past, the department has often "held" such transfers rather than invest the large amount of staff time needed to conduct the detailed review. Because Transfer No. 72646 involves statutory claims, it has not been processed. This letter is meant to notify you that our office has recently begun an effort to address some of these "held" transfers involving statutory claims, including the transfer filed by the City of Franklin.

Over the years, the department has developed a set of guidelines to assist its staff in processing transfer applications. These guidelines were created to provide a uniform system for reviewing transfers and ensure that the legal requirements governing transfers are being met. The current set of guidelines ("Transfer Processing Memo No. 24") states the following:

Applications for transfer proposing to change a water right based on a statutory or beneficial use claim must be reviewed to determine the validity, priority date, and extent of beneficial use established under the claimed right. Review must include field verification or other means to verify the right. . . . In addition, the applicant must be asked to provide information confirming the priority date of the claim.

Statutory claims are generally created by the claimant and have not been validated by the department or a court. Before the department can process the City of Franklin's transfer application, all of the elements of the statutory claims must be verified (priority date, diversion rate, period of use, place of use). The first elements to be analyzed are the priority dates claimed. No evidence of priority was included with Lewiston City's original filing. **Therefore, the department is requesting specific evidence of the priority dates listed on statutory claims 13-4062 (May 1915) and 13-4063 (3/31/1915).** I have

Letter re: City of Franklin Application for Transfer 72646
August 12, 2010
Page 2 of 2

enclosed a pamphlet titled "Evidence of Priority" that was distributed to claimants in the Snake River Basin Adjudication. This pamphlet was meant to assist applicants in collecting and identifying documents that sufficiently establish a water right priority date.

I am establishing a 90-day time period to collect and submit evidence supporting the claimed priority dates. Please provide the requested evidence on or before November 15, 2010. If you or representatives of the city are unable to locate evidence of the claimed priorities, the department is ultimately unable to approve the transfer, and the City of Franklin's application for transfer will be voided due to a lack of evidence supporting the underlying statutory claims. If the transfer is voided, the City of Franklin's statutory claims will continue to exist as originally claimed.

Thank you for your patience and cooperation in this matter. Feel free to contact me with any questions you may have.

Sincerely,

A handwritten signature in black ink, appearing to read 'J. Cefalo', is written over the printed name.

James Cefalo
Water Resources Program Manager
IDWR – Eastern Region

Cc: City of Franklin

Encl: Evidence of Priority pamphlet (April 1991)