

# 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 MAYBE 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 di- version 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 you can contact the National Archives at:

Web: <https://www.archives.gov/contact>

Phone: 1-866-272-6272

9. **Aerial photography.** Information on available aerial photography can be obtained from the U.S. Geological Survey by contacting the U.S. Geological Survey EROS Data Center User Services Section at:

Web: <https://www.usgs.gov/centers/eros>

Phone: 1-888-275-8747

**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 SECTION STATEHOUSE  
MAILBOISE 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

April 2022