

ALLEN H. BROWNING, ESQ.
CURTIS & BROWNING, P.A.
598 N. Capital Ave.
Idaho Falls, Idaho 83402
Telephone: (208) 542-6995
Facsimile: (208) 542-6993
Idaho State Bar No. 3007

Attorney for Warren Lloyd:

**BEFORE THE DIRECTOR OF THE IDAHO DEPARTMENT OF
WATER RESOURCES**

**IN THE MATTER OF GROUND,
WATER RIGHT 132-2313 IN THE
NAME OF WARREN LLOYD**

**)
)
)
)** **PETITION FOR DELIVERY
CALL**

The Petition of Warren Lloyd, 1475 Mountain Road, Bancroft, Idaho 83217,
pursuant to I.D.A.P.A. 37.03.11-030, respectfully represents and shows:

1. Petitioner is the holder of water right number 13-2313, and originally licensed right confirmed by Court Decree on November 14, 1991, to divert groundwater from two wells, located in the SESE Section 14, and the NENENE Section 23, all in T. 9S., R. 39E. in Caribou County, Idaho, in the amount of 3.68 cfs for the irrigation of 237 acres of Petitioner's lands in the same sections referenced above, with a priority date of September 29, 1966. Water is diverted pursuant to such right by means of electric motor driven pumps and conveyed to four (4) pivot sprinklers for irrigation of the 237 acres of Petitioner's land. (Copy of an Idaho Department of Water Resources "Water Right Report" will follow)

2. The names, addresses and descriptions of the water rights of groundwater users Petitioner alleges to be causing material injury to the water right of the Petitioner, in

so far as such information is known by Petitioner or can be reasonable be determined by a search of public records are listed in Exhibits "A" and "B" attached hereto.

3. Subsequent to the report entitled "Ground-water Supply and Water Rights of the Bancroft-Lund Area, Idaho" prepared by R. Keith Higginson, P.E. and Jack A. Barnett, P.E. in October, 1982, groundwater supply conditions at the Petitioner's wells, referenced hereinabove, have continued to worsen, and have been further worsened by continued drought conditions in recent years. Petitioner has been unable to irrigate his crops, as needed, for the past years, 2003, 2004 and 2005 and Petitioner has suffered significant loss to his crops. (Copy of the 1982 Higginson-Barnett Report will follow)

4. A description of the area having a common groundwater supply is contained in the 1982 Higginson-Barnett Report, hereinabove. Petitioner believes that curtailment of the later priority groundwater rights listed above under Paragraph 2 of this Petition would restore the water table at his wells so that he could divert his entitlement under the priority of his Water Right No. 13-2313.

5. The groundwater rights referenced herein are within an area of the state not located in an organized water district, or are within a water district where groundwater regulation has not been included in the functions of such district, and/or are within an area that has not been designated a groundwater management area.

WHEREFORE, Petitioner hereby requests the Director of Idaho Department of Water Resources, by summary order as provided in I.C. § 42-237 a.g., to prohibit or limit the withdrawal of water from any well pursuant to the above listed water rights, commencing immediately, and continuing until such time as the groundwater level at Petitioner's wells rises sufficiently to permit the diversion by Petitioner of the full

amount to which Petitioner is entitled under water right number 13-2313, and thereafter during each succeeding irrigation season.

DATED this 13 day of January 2006.

By:


ALLEN H. BROWNING
Attorney for Petitioner

CERTIFICATE OF SERVICE

I hereby certify that on the 13 day of January 2006, a true and correct copy of the foregoing **PETITION FOR DELIVERY CALL** was delivered to the following person(s) by the method indicated below:

PARTY(S) SERVED:

Von N. Simonson
1827 Rich Road
Grace, Idaho 83241

☒ By Mail, Certified, Return Receipt Req.

Date E. Yost
1846 Lund Rd.
Bancroft, ID 83217

☒ By Mail, Certified, Return Receipt Req.

Bart O. Christensen
1364 Anderson Rd.
Grace, ID 83241

☒ By Mail, Certified, Return Receipt Req.

Kim Welch
1632 Central Rd.
Bancroft, ID 83217

☒ By Mail, Certified, Return Receipt Req.

Gem Valley Farms
c/o Chad Neibaur
1550 Central Rd.
Bancroft, ID 83217

☒ By Mail, Certified, Return Receipt Req.

Carl B. Jorgensen
1699 Lloyd Rd.
Bancroft, ID 83217

☒ By Mail, Certified, Return Receipt Req.

Terry G. Rindlisbaker
1770 Jorgensen Rd.
Bancroft, ID 83217

[X] By Mail, Certified, Return Receipt Req.

D.C. Hansen
3543 S. 100 W.
Bountiful, UT 84010

[X] By Mail, Certified, Return Receipt Req.

Stoddard Farms of Grace
2004 Two Mile Rd.
Grace, ID 83241

[X] By Mail, Certified, Return Receipt Req.

Joseph K. Campbell
1528 Central Rd.
Bancroft, ID 83217

[X] By Mail, Certified, Return Receipt Req.

Jorgensen Brothers
1928 Old Hwy. 30
Bancroft, ID 83217

[X] By Mail, Certified, Return Receipt Req.



ALLEN H. BROWNING

<u>W. R. ID No.</u>	<u>Amount</u>	<u>Priority</u>	<u>Name</u>	<u>Address</u>
13-7084	4.36 cfs	Jan. 7, 1974	Von N. Simonson	1827 Rich Rd. Grace, ID 83241
13-7097	4.46 cfs	Jan. 3, 1975	Date E. Yost	1846 Lund Rd. Bancroft, ID 83217
13-7099	4.79 cfs	Jan. 14, 1975	Bart O. Christensen	1364 Anderson Rd. Grace, ID 83241
13-7147	5.01 cfs	Jan. 19, 1977	Bart O. Christensen	1364 Anderson Rd. Grace, ID 83241
13-7163	4.37 cfs	April 4, 1977	Kim Welch	1632 Central Rd. Bancroft, ID 83217
13-7165	3.12 cfs	April 6, 1977	Gem Valley Farms, c/o Chad Neibaur	1550 Central Rd. Bancroft, ID 83217
13-7161	4.54 cfs	April 15, 1977	Carl B. Jorgensen	1699 Lloyd Rd. Bancroft ID 83217
13-7198B	0.64 cfs	June 20, 1977	Gem Valley Farms, c/o Chad Neibaur	1550 Central Rd. Bancroft, ID 83217
13-7198C	1.66 cfs	June 20, 1977	Gem Valley Farms, c/o Chad Neibaur	1550 Central Rd. Bancroft, ID 83217
13-7225	3.38 cfs	Dec. 13, 1977	Kim Welch	1632 Central Rd. Bancroft, ID 83217
13-7261	2.0 cfs	Sept. 10, 1979	Gem Valley Farms, c/o Chad Neibaur	1550 Central Rd. Bancroft, ID 83217
13-7259	1.92 cfs	Sept. 20, 1979	Von N. Simonson	1827 Rich Rd. Grace, ID 83241

EXHIBIT A

29-7070	4.68 cfs	Sept. 20, 1971	Gem Valley Farms, c/o Chad Neibaur	1550 Central Rd. Bancroft, ID 83217
29-7102	5.39 cfs	Oct. 17, 1972	Terry G. Rindlisbaker	1770 Jorgensen Rd. Bancroft, ID 83217
29-13577	2.74 cfs	Feb. 2, 1977	Terry G. Rindlisbaker	1770 Jorgensen Rd. Bancroft, ID 83217
29-7264	3.06 cfs	April 21, 1975	D. C. Hansen	3543 S. 100 W. Bountiful, UT 84010
29-7102A	5.35 cfs	Oct. 17, 1972	Terry G. Rindlisbaker	1770 Jorgensen Rd. Bancroft, ID 83217
29-7908	4.79	Aug. 30, 1972	Terry G. Rindlisbaker	1770 Jorgensen Rd. Bancroft, ID 83217
29-13421	0.23 cfs	April 1, 1987	Stoddard Farms of Grace	2004 Two Mile Rd. Grace, ID 83241
29-7434	3.11 cfs	Jan. 11, 1978	Stoddard Farms of Grace	2004 Two Mile Rd. Grace, ID 83241
29-7000B	4.41 cfs	July 28, 1967	Gem Valley Farms, c/o Chad Neibaur	1550 Central Rd. Bancroft, ID 83217
29-7000A	0.09 cfs	July 28, 1967	Joseph K. Campbell	1528 Central Rd. Bancroft, ID 83217
29-8029	8.88 cfs	July 20, 1990	Carl B. Jorgensen	1699 Lloyd Rd. Bancroft, ID 83217
29-8240	2.88 cfs	Dec. 22, 1958	Jorgensen Brothers	1928 Old Hwy. 30 Bancroft, ID 83217
29-8241	3.74 cfs	May 15, 1969	Jorgensen Brothers	1928 Old Hwy. 30 Bancroft, ID 83217

EXHIBIT B

**BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO**

IN THE MATTER OF PETITION	)	
FOR CONJUNCTIVE MANAGEMENT	)	PRELIMINARY ORDER
OF GROUND WATER IN WATER	)	
DISTRICT NO. 13-T IN THE NAME	)	
OF WARREN LLOYD	)	
	)	

On August 6, 2003, Warren Lloyd ("Lloyd") filed a petition for delivery call with the Idaho Department of Water Resources ("IDWR"). Lloyd's point of diversion for water right 13-2313 is located in Water District No. 13-T, Bancroft-Lund.

A hearing was conducted on October 25, 2004. The hearing was conducted pursuant to IDWR's Rules of Conjunctive Management.

At the time of creation of Water District No. 13-T, IDWR limited the activities of the water district to measurement and reporting. Future administration of water was to begin only upon a finding that regulation was necessary to protect senior water right holders. As a result, IDWR conducted the hearing under Rule 30 of the Conjunctive Management Rules.

At the hearing, Lloyd represented himself. Randall C. Budge, Attorney at Law, represented Bart O. Christensen, Terry and Marjean Rindlisbaker, Kim Welch, Von M. Simonson, Eric Simonson, Dale and Nuelene Wistisen, Phil and Lisa J. Yost, Gem Valley Farms and Chad Neibaur, and Stoddard Farms and Curtis Stoddard. Bruce M. Larsen, Attorney at Law, represented Carl P. and Patricia Jorgensen, Keith Jorgensen, et ux, Jorgensen Brothers, Terry Jorgensen, et ux, and Don C. Rigby. After receiving testimony and documentary evidence, the hearing officer finds, concludes, and orders as follows:

FINDINGS OF FACT

1. In 1952, Lloyd began farming a 340-acre farm with his father. The farm was located between the towns of Central and Bancroft, Idaho.
2. In 1963, Lloyd purchased some additional land called the "Peterson Place."
3. In 1966, Lloyd irrigated 110 -120 acres with surface water delivered by the Last Chance Canal Company.
4. In 1966, Lloyd sold his shares in the Last Chance Canal Company and ceased irrigating with surface water.

5. In 1967, Lloyd obtained permit to appropriate water right no. 13-2313, authorizing appropriation of ground water.

6. Lloyd first drilled a well for irrigation in the "middle of the 160 acres." The hearing officer presumes the 160 acres is located in the S1/2SE1/4 of Section 14 and the N1/2NE1/4 of Section 23, T09S, R39E, Boise Meridian. The well was ultimately drilled to a depth of 385 feet. The well would not produce enough water for a domestic use.

7. Three well drillers' reports were admitted into evidence as Respondents' Exhibit no. 8. The first of these drillers' reports describes a well constructed by Bart Westlake during the winter of 1968, the approximate time when Lloyd began irrigating his farm with ground water. The driller's report locates the well in the NWNW¹, Section 23, T9S, R39E, Boise Meridian². The testimony established that this well construction report represents the original production well for irrigation of the Lloyd farm. The hearing officer finds that the determination of location of the well by the IDWR field examiner in the NENE, Section 23, T9S, R39E, is the correct location of the well. This location was verified during the Bancroft Lund Adjudication.

8. At the time the first production well was drilled, the well would produce approximately 2,000 gallons of ground water per minute with very little draw down.

9. Lloyd's water right is recorded in the records of the department as water right no. 13-2313. The water right was licensed as follows:

Flow Rate:	3.68 cfs
Annual Volume:	714 acre-feet
Source of Water:	Ground water
Priority Date:	September 29, 1966
Nature of Use:	Irrigation
Season of Use:	4/15 to 10/15
Point of Diversion:	NENE, Section 23, T9S, R39E, Boise Meridian
Place of Use:	T9S, R39E
	Section 14
	SESW
	38.5 acres
	SWSE
	39.5 acres
	SESE
	39.5 acres
	Section 23
	NENE
	40 acres
	NWNE
	39.5 acres
	NENW
	36 acres
	NWNW
	5 acres
	Total
	238 acres

¹ The descriptor "1/4" will be assumed for all two alpha character public land survey locators in this decision unless otherwise written expressly in the text.

² The survey meridian line "Boise Meridian" is assumed for all subsequent public land survey descriptions in this decision.

10. Lloyd pumped water from the well for several irrigation seasons at full capacity. In 1977, however, the pump in Warren Lloyd's well began to pump air. In addition, the well began to produce sand. In 1979, the pump filled Warren Lloyd's mainline and sprinkler lines with sand.

11. In the ensuing years, a pattern of water shortage developed. At the beginning of the irrigation season, there was sufficient water in Lloyd's well to pump the full capacity of his licensed water right. Beginning approximately June 15 of each year, Lloyd was not able to divert his entire water right. Lloyd's production from his well declined by 600 to 700 gallons per minute by approximately July 15. After July 15, water levels rose again in the well, and some of the lost well production returned.

12. In 1984, Lloyd became frustrated with his ability to obtain water, and tried to construct a new irrigation well. The first new well did not produce sufficient water for Warren Lloyd's irrigation needs. As a result, Warren Lloyd contracted with a well driller to drill a second new irrigation well approximately ten (10) feet from the original production well. Casing was placed in the well to a depth of 98 feet and the remainder of the well was constructed "open hole," or without casing that would preserve the well bore. Some of the natural material below the casing caved into the open hole portion of the well.

13. In 1984, Lloyd began using the new well located next to the original production well and discontinued use of the original production well.

14. Water right no. 13-2313 was decreed in the Bancroft-Lund adjudication in 1991.

15. In 1993, Lloyd filed an application for transfer to readjust the place of use so the farm could be irrigated with circular pivot irrigation systems. IDWR approved the application for transfer.

16. In 2002, Lloyd filed another application for transfer seeking to add a point of diversion to water right no. 13-2313. IDWR approved the application for transfer.

17. In the spring of 2003, Lloyd contracted with a driller to ream out his production well. The second well drillers' report of Respondents' Exhibit no. 8 represents the additional construction in Lloyd's production well.

18. Lloyd has never employed a professional engineer or geologist to evaluate the condition of his production well, including the uncased portion of the well in which the open bore material fell into the bore hole.

19. In 2003, Lloyd drilled another well in the SESE, Section 14, Township 9 South, Range 39 East. A well log for the well is the third page of Respondent's Exhibit No. 8. Water was not pumped from this well in 2004, however, because the well did not produce enough water to justify diversion for irrigation.

20 During the period of irrigation with ground water, Lloyd drilled at least one other irrigation well on his farm that would not produce sufficient water for irrigation in addition to the wells previously discussed. In total, Lloyd drilled five irrigation wells. In addition to drilling of five irrigation wells, Lloyd drilled three other test wells that were dry or produced very little ground water.

21 During recent years the production from Lloyd's wells continued to decline in June and early July. In some years of drought, the loss of production from Lloyd's well continued through the entire summer.

22 Water right no. 13-2313 is presently shown in IDWR's records as follows:

Flow Rate:	3.68 cfs
Annual Volume:	714 acre-feet
Source of Water:	Ground water
Priority Date:	September 29, 1966
Nature of Use:	Irrigation
Season of Use:	4/15 to 10/15
Point of Diversion:	SESE, Section 14, and NENENE, Section 23, T9S, R39E
Place of Use:	T9S, R39E Section 14 SESW 28 acres
	SWSE 39 acres
	SESE 39 acres
	Section 23 NENE 33 acres
	NWNE 39.5 acres
	NENW 33 acres
	SENW 5.5 acres
	NWSE <u>20 acres</u>
	237 acres

23. Lloyd's wells are located on the western side of the Gem Valley in Caribou County. The Bancroft-Lund aquifer underlies the Gem Valley and is a part of the larger Bear River Basin. The Bear River flows from Soda Springs westerly towards Lloyd's property. At Alexander Point, the Bear River turns south and flows through Grace, Idaho. Lloyd's property is located approximately eight miles west of Alexander Point.

24. The Bear River loses surface water into the ground water in the vicinity of Alexander Point. The ground water flows radially north, west, and south from Alexander Point into the Gem Valley. Ground water contours decline from east to west in the direction of Lloyd's property.

25. Bear River surface water diverted into the Last Chance Canal near Grace is delivered to farms in canals and ditches traversing the Central-Bancroft-Lund area. Surface water delivered through the Last Chance Canal system is lost in the canals and ditches and when

the water is applied to the land for irrigation. The lost surface water percolates into the ground water, raising ground water levels

26. Ground water in the Bancroft-Lund area resides primarily in basalt formations. The basalt originated from a location near the intersection of U.S. Highway 30 and Idaho State Highway 34, approximately five miles north of Grace, Idaho. The lava flowed in an east-to-west direction into the Gem Valley. The lava flowed over ancient sediments and cooled forming a layer of basalt. As the lava flowed from east to west, the depth of the basalt decreased. The lava encountered shallower alluvial formations on the west side of the valley. Several alternating events of lava flow and sedimentation caused a fingering effect on the west side of the valley.

27. Lloyd's wells are completed within some of the shallower basalt zones. Lloyd's wells are also completed in alluvial water bearing zones that do not produce as much water as the basalt. Finally, a thick impervious formation of clay is encountered at shallower depths below the Lloyd property than in the center of the Gem Valley east of Lloyd's farm.

28. During the same approximate time Lloyd began irrigating with ground water instead of surface water, other landowners also drilled wells. Some of these wells were drilled to irrigate lands previously irrigated with surface water similar to Lloyd's well. A farmer named Welch discontinued delivery of surface water to a nearby farm in 1978 - 1979. Another farmer named Holsten discontinued delivery of surface water to a nearby farm in 1986.

29. Other wells were drilled to supplement lands irrigated by Last Chance Canal water. Finally, many wells were drilled to irrigate dry land farms. By the early 1980s, ground water development, the conversion to sprinkler irrigation, and the irrigation of additional acreage raised concerns about ground water availability for additional appropriation. In 1980, IDWR petitioned the Sixth Judicial District Court of the State of Idaho to commence a general adjudication of the water rights in the Bancroft-Lund area.

30. In 1991, IDWR created a ground water management area designated as the Bancroft-Lund Ground Water Management Area. The management plan for the ground water management area limited additional appropriations of water from within the boundaries of the management area.

31. Shane Bendixsen, a hydrogeologist for the Idaho Department of Water Resources, prepared staff memorandum at the request of the hearing officer. The Bendixsen report was received into evidence as Respondent's Exhibit no. 11. The report contains hydrographs depicting water levels in the Bancroft-Lund area. The page titled "Short Term Local Data" contains four hydrographs. These hydrographs depict ground water levels for wells located near the Lloyd property measured from 1996 through 2003. The hydrographs register the deepest declines in ground water levels during June and July of each year. The deepest water levels may have been measured while the wells were pumping, however. Nevertheless, the contribution of surface water to ground water from the Last Chance delivery systems is reflected by hydrographs showing peak ground water levels in the fall of the year.

32. IDWR has monitored ground water levels in a well called the "Holsten well," located approximately 1/4 mile southeast of the Lloyd farm. The ground water level data from the well is particularly important because water from the well has not been pumped during recent years of monitoring. IDWR maintained a continuous ground water level recorder in the Holsten well during the 1999, 2000, and 2001 irrigation seasons. The data collected by the recorder is depicted in the attachment to the Bendixsen report titled "Continuous Recorder Data." The hydrographs are also included as Respondents' Exhibit no. 10. Water level measurements in the Holsten well begin with a measured water level in the spring that is lower than the annual peak shown in the fall. Water levels decline in June and the first part of July, and then begin a gradual incline to a peak in October. This information contradicts some of the testimony about high water levels in the spring of the year. USGS monitoring wells measured quarterly may not reflect declines in the spring because the quarterly measurements of water levels are taken during June and July.

33. The Last Chance Canal Co. delivers surface water during June and July at the time of most severe declines in the Holsten well. Pumping in the Bancroft-Lund area has some effect on other wells in the area during the early part of the irrigation season. Surface water percolating from the canals and ditches does not immediately reach the aquifer when significant water is being pumped during the high irrigation demand period of late June and early July. By July, however, the surface water recharge to ground water reflected by increases in ground water levels

34. The hearing officer finds that recovery of the ground water in the last part of the irrigation season is a result of surface water percolation into the ground and incidental recharge by the surface water to the ground water.

35. The Bendixsen report contains nine hydrographs depicting changes in ground water levels in the Bancroft-Lund area. All of the hydrographs depict a direct relationship between ground water levels and climate. During good surface water years, ground water levels in the Bancroft-Lund area stabilize or rise. During low water years, particularly during years of extended drought, ground water levels decline and do not rise to previous annual levels.

36. The range of fluctuations in water levels in any given year is approximately four to five feet in elevation.

37. The specific capacity of Lloyd's well is approximately 45 gallons per minute per foot of draw down. Lloyd's well is a good producing well.

38. The Bendixsen report stated: "Data in the same section as Mr. Lloyd show the difference in water levels between 1982 and 1996 was 1 8 feet." Long term hydrographs depict water levels that fluctuate with drought conditions, and also fluctuate annually, but have remained relatively stable

39. Owners of other irrigation wells within one-half mile to one mile of Lloyd's well have experienced production problems from their wells.

40. Lloyd presently irrigates 175 acres through four circular pivot systems. The circular pivots consist of one large pivot, two small full pivots, and one half-circle pivot.

41. In the late 1990's, Glen Sorenson rented Lloyd's farm. Sorenson did not continue to rent the farm because of lack of water.

42. In 2001, 2002, 2003, and 2004, Terry Rindlisbaker rented Lloyd's farm. Rindlisbaker was able to divert sufficient ground water to irrigate his potato crop. Rindlisbaker could not adequately irrigate other crops on Lloyd's farm because of the insufficiency of water supply.

43. The Bancroft-Lund Adjudication, and past department determinations about the relationship of the ground water in the area establishes that the ground water within the Bancroft-Lund area, or more specifically, within Water District 13-I is water having a common water supply.

ANALYSIS

Water lost from the Bear River to ground water underflows through the basalt aquifers to the west. This migration of ground water may fill the shallower aquifers underlying the Lloyd property.

In addition to ground water underflow to the west, additional water was contributed to the ground water through percolation from ditches and canals delivering Bear River surface water to the area overlying the Lloyd farm. Discontinuation of the use of the surface water supplied by Lloyd, and conversion from surface water to ground water by other water users, combined with greater efficiency of application of water, has reduced the amount of recharge to the aquifer underlying the Lloyd property.

The first irrigation well Lloyd attempted to drill in 1966 or 1967 would not produce enough water to supply a domestic use. Several additional irrigation or test wells were drilled but were unusable because they did not produce sufficient water.

Lloyd diverted ground water for irrigation almost exclusively from two irrigation wells from 1967 until the present. The second well was constructed 10 feet from the first well.

Ground water levels have not declined significantly since Lloyd began irrigating with ground water.

The construction and condition of Lloyd's wells have not been evaluated by a competent professional to determine whether Lloyd's wells could be reconstructed or rehabilitated to provide the water he needs for irrigation.

There is evidence that Lloyd's discontinued use of his surface water rights and the reduction in surface water deliveries in the direct area of Lloyd's farm reduced recharge to

ground water in the immediate area of Lloyd's wells. There is a correlation between discontinuation of surface water delivery to the Welch property and the reduced production of the original Lloyd well. Lloyd's ground water right should stand alone in its order of priority without consideration of whether he or other surface water users ceased receiving surface irrigation water. Nonetheless, the reduction in surface water losses to the aquifer in Lloyd's immediate area may be the greater contributor to ground water declines in Lloyd's original well than pumping from the ground water at more remote locations in the aquifer.

The inability of Lloyd to find ground water in sufficient quantities within the confines of his property lends credibility to the theory that at least some of the ground water problems encountered by Lloyd are the result of (a) geological structures that (i) restrict the quantity of recharge from the Bear River and (ii) limit the amount of ground water under his farm; (b) conversion from flood irrigation with surface water to sprinkler irrigation with ground water in the direct vicinity of the Lloyd farm, reducing the recharge to ground water in the immediate vicinity of the Lloyd farm; and (c) substandard construction of the production wells that resulted in open borehole failures when water levels dropped in the well.

Lloyd did not present technical information at the hearing to eliminate these alternative causes of reduced production from his well. As a result, Lloyd failed to establish that pumping of ground water by junior ground water right holders depleted the ground water in sufficient quantity or depth that Lloyd could no longer divert his water right entitlement. In conclusion, Lloyd failed to prove that his water right is being injured by the diversion of water under junior priority ground water rights.

CONCLUSIONS OF LAW

1 Rule 30 of the Conjunctive Management Rules defines the procedures for "responses to calls for water delivery made by the holders of senior-priority surface or ground water rights against the holders of junior-priority ground water rights within areas of the state not in organized water districts or *within water districts where ground water regulation has not been included in the functions of such districts* or within areas that have not been designated ground water management areas." Water District 13-T was organized with the express limitation that the watermaster would not regulate the ground water rights by priority unless instructed to do so by the director. Rule 30 governs consideration of Warren Lloyd's petition for conjunctive management.

2 Rule 30 of the Conjunctive Management Rules states that the filing of a petition for a conjunctive management creates a contested case. Parties to a contested case are entitled to a hearing before IDWR. A hearing was held.

3 Warren Lloyd, as the petitioner for conjunctive management, bears the burden of proving, by the preponderance of evidence, the following:

a That other water users, identified by his petition and by IDWR, are diverting water from a water supply common to his diversion of water.

b. There are water users holding rights within the area of common water supply that are junior in priority to his rights.

c. That diversion of water by the junior water right holders is injuring his water right by diminishing the quantity of water available to Mr. Lloyd

d. That Warren Lloyd's diversion and use of water is reasonable under the circumstances.

4. Lloyd did not prove, by preponderance of evidence, that pumping by junior water right holders caused injury to his water right.

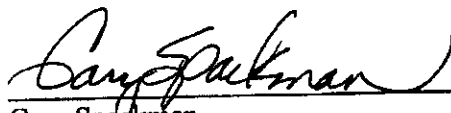
5. Lloyd did not prove that his diversion and use of water is reasonable under the circumstances.

6. Lloyd's petition for conjunctive management should be DENIED.

ORDER

IT IS HEREBY ORDERED that Warren Lloyd's petition for conjunctive management is **DENIED**, without prejudice.

Dated this 31st day of January, 2005



Gary Spackman
Hearing Officer