

BEFORE THE DEPARTMENT OF WATER RESOURCES  
OF THE STATE OF IDAHO

IN THE MATTER OF PETITION	)	
FOR CONJUNCTIVE MANAGEMENT	)	
IN WATER DISTRICT NO. 13-I	)	<b>ORDER CREATING</b>
IN THE NAME OF WARREN	)	<b>CONTESTED CASE AND</b>
LLOYD (SECOND PETITION	)	<b>ESTABLISHING FILING</b>
DATED JANUARY 13, 2006)	)	<b>DEADLINES</b>
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**HISTORY**

On August 6, 2003, Warren Lloyd (Lloyd) filed a petition for delivery call with the Idaho Department of Water Resources (IDWR) requesting conjunctive management of ground water rights in the Bancroft-Lund Area. The petition created a contested case before IDWR. On October 25, 2004, IDWR conducted a hearing for the contested case. On January 31, 2005, IDWR issued a preliminary order denying Lloyd's petition for delivery call without prejudice. Lloyd petitioned the hearing officer to reconsider the denial of the petition for delivery call, and, on March 3, 2005, the hearing officer denied Lloyd's petition for reconsideration. The preliminary order became a final order on March 17, 2005.

On January 13, 2006, Lloyd filed a second petition for delivery call. The petition seeks curtailment of diversion of ground water under ground water rights bearing a priority date earlier than September 29, 1966, the priority date of Lloyd's ground water right. The requested relief is the same relief requested in the August 6, 2003 petition for delivery call. Other ground water users in the Water District No. 13-I, Bancroft-Lund, were served with the petition.

**ANALYSIS**

Idaho Code § 42-237a.g grants the director of IDWR the following authority:

To supervise and control the exercise and administration of all rights to the use of ground waters and in the exercise of this discretionary power he may initiate administrative proceedings to prohibit or limit the withdrawal of water from any well during any period that he determines that water to fill any water right in said well is not there available. To assist the director of the department of water resources in the administration and enforcement of this act, and in making determinations upon which said orders shall be based, he may establish a ground water pumping level or levels in an area or areas having a common ground water supply as determined by him as hereinafter provided. Water in a well shall not be deemed available to fill a water right therein if withdrawal therefrom of the amount called for by such right would

affect, contrary to the declared policy of this act, the present or future use of any prior surface or ground water right or result in the withdrawing of the ground water supply at a rate beyond the reasonably anticipated average rate of future natural recharge. However, the director may allow withdrawal at a rate exceeding the reasonably anticipated rate of future natural recharge if the director finds it is in the public interest. . . .

Administration of ground water rights in times of shortage is accomplished by the Rules for Conjunctive Management of Surface and Ground Water Resources, IDAPA 37, Title 03, Chapter 11. The Conjunctive Management Rules require the filing of a petition for delivery call by the aggrieved water user. The petition for delivery call is addressed by IDWR in one of three ways depending on whether regulation is sought within a water district, a ground water management area, or within an area where no administrative boundaries have been established. IDWR formed Water District no. 13-T in the Bancroft-Lund Area.

Rule 40 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 from areas having a common ground water supply *in an organized water district*.” Because the area is organized into Water District no. 13-T, a first interpretation of the rules would lead one to believe that the IDWR must respond to the delivery call by following the procedures described by Rule 40.

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. As a result of this limitation, Rule 30 contains the procedures for addressing Lloyd’s petition for delivery call.

Rule 30.01 c. of the Conjunctive Management Rules requires the petitioner to submit “[a]ll information, measurements, data or study results available to the petitioner to support the claim of material injury.” No supporting hydrogeologic information was submitted with the petition, although the petition promised that a report titled “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” would “follow.” The hearing officer considered this report in the prior contested case.

Rule 30 of the Conjunctive Management Rules does not require that IDWR hold a hearing.

Rule 270.01 of IDWR’s Rules of Procedure states:

Answers to . . . petitions when required to be filed by provision of statute, rule, or order must be filed and served on all parties of record within twenty-one (21) days after service of the pleading being answered, unless order or notice modifies the time within which an answer may be made. . . .

### ORDER

IT IS HEREBY ORDERED that the petition for delivery call filed by Warren Lloyd on January 13, 2006 creates a contested case before the Idaho Department of Water Resources.

IT IS FURTHER ORDERED that prospective respondents to the petition are not required to file answers in the contested case until requested by the Idaho Department of Water Resources.

IT IS FURTHER ORDERED that the Idaho Department of Water Resources will consider in reaching a decision regarding the most recent petition for delivery call: (1) the testimony, exhibits, and other information in the record of the previous contested case for the earlier Warren Lloyd petition for delivery call, and (2) the findings, conclusions, and order of the January 31, 2005 preliminary order for the earlier Warren Lloyd petition for delivery call.

IT IS FURTHER ORDERED that Warren Lloyd must submit to the Idaho Department of Water Resources, within twenty-one days of the date of this order, any additional technical information establishing material injury to Warren Lloyd and establishing the cause of the material injury.

IT IS FURTHER ORDERED that, following submittal of additional technical information, the Idaho Department of Water Resources will review information in its file, including the additional technical information, and will do one of the following: (1) Appoint a hearing officer, request answers from prospective respondents, and begin preparations for a hearing; (2) Request answers from prospective respondents and other possible documents from all parties, and issue an order disposing of the petition for delivery call; or (3) Issue an order disposing of the petition for delivery call. The determination of an alternative will be based on the quality of new data and analysis presented to the Idaho Department of Water Resources by the petitioner.

Dated this 27<sup>th</sup> day of January, 2006.



Gary Spackman

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 30<sup>th</sup> day of January, 2006, a true and correct copy of the foregoing document described below was served on the following as noted:

Document(s) Served: **ORDER CREATING CONTESTED CASE AND ESTABLISHING FILING DEADLINES**

WARREN LLOYD  
C/O ALLEN H BROWNING  
CURTIS & BROWNING  
598 N CAPITAL AVE  
IDAHO FALLS ID 83402

**WATER USER PARTIES:**

VON N SIMONSON  
1827 RICH RD  
GRACE ID 83241

DALE E YOST  
1846 LUND RD  
BANCROFT ID 83217

BART O CHRISTENSEN  
1364 ANDERSON RD  
GRACE ID 83241

KIM WELCH  
1632 CENTRAL RD  
BANCROFT ID 83217

GEM VALLEY FARMS  
C/O CHAD NEIBAUR  
1550 CENTRAL RD  
BANCROFT ID 83217

CARL B JORGENSEN  
1699 LLOYD RD  
BANCROFT ID 83217

TERRY G RINDLISBAKER  
1770 JORGENSEN RD  
BANCROFT ID 83217

D C HANSEN  
3543 S 100 W  
BOUNTIFUL UT 84010


STODDARD FARMS OF GRACE  
2004 TWO MILE RD  
GRACE ID 83241

JORGENSEN BROTHERS  
1928 OLD HWY 30  
BANCROFT ID 83217

RANDALL C BUDGE  
RACINE OLSON  
PO BOX 1391  
POCATELLO ID 83204-1391

A BRUCE LARSEN  
1070 HILINE RD STE 225  
POCATELLO ID 83201

IDWR - EASTERN REGION  
900 N SKYLINE DR STE A  
IDAHO FALLS ID 83402-1718

  
Deborah J. Gibson  
Administrative Assistant

**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  By Mail, Certified, Return Receipt Req.  
1827 Rich Road  
Grace, Idaho 83241
- Date E. Yost  By Mail, Certified, Return Receipt Req.  
1846 Lund Rd.  
Bancroft, ID 83217
- Bart O. Christensen  By Mail, Certified, Return Receipt Req.  
1364 Anderson Rd.  
Grace, ID 83241
- Kim Welch  By Mail, Certified, Return Receipt Req.  
1632 Central Rd.  
Bancroft, ID 83217
- Gem Valley Farms  By Mail, Certified, Return Receipt Req.  
c/o Chad Neibaur  
1550 Central Rd.  
Bancroft, ID 83217
- Carl B. Jorgensen  By Mail, Certified, Return Receipt Req.  
1699 Lloyd Rd.  
Bancroft, ID 83217

Terry G. Rindlisbaker [X] By Mail, Certified, Return Receipt Req.  
1770 Jorgensen Rd.  
Bancroft, ID 83217

D.C. Hansen [X] By Mail, Certified, Return Receipt Req.  
3543 S. 100 W.  
Bountiful, UT 84010

Stoddard Farms of Grace [X] By Mail, Certified, Return Receipt Req.  
2004 Two Mile Rd.  
Grace, ID 83241

Joseph K. Campbell [X] By Mail, Certified, Return Receipt Req.  
1528 Central Rd.  
Bancroft, ID 83217

Jorgensen Brothers [X] By Mail, Certified, Return Receipt Req.  
1928 Old Hwy. 30  
Bancroft, ID 83217

  
\_\_\_\_\_  
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