

Jim  
File WD 13-T

**BEFORE THE DEPARTMENT OF WATER RESOURCES**

**OF THE**

**STATE OF IDAHO**

<b>IN THE MATTER OF PETITION</b>	)	
<b>FOR CONJUNCTIVE MANAGEMENT</b>	)	<b>NOTICE OF</b>
<b>IN WATER DISTRICT NO. 13-T AND</b>	)	<b>HEARING AND</b>
<b>WITHIN THE BANCROFT-LUND</b>	)	<b>PREHEARING</b>
<b>GROUND WATER MANAGEMENT</b>	)	<b>ORDER</b>
<b>AREA IN THE NAME OF WARREN</b>	)	
<b>LLOYD</b>	)	
_____	)	

**HISTORY**

On August 6, 2003, Warren Lloyd (Lloyd) filed a petition for delivery call with the Idaho Department of Water Resources (IDWR). Lloyd was represented by Kent Foster, attorney at law. The petition sought 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. Some supporting hydrogeologic information was submitted with the petition. Other ground water users in the Water District No. 13-T, Bancroft-Lund, were served with the petition. Additional copies can be obtained from IDWR upon request. The filing of the petition created a contested case before IDWR.

On September 2, 2003, Ron Carlson of IDWR acknowledged receipt of the petition and asked for additional information. On September 19, 2003, Kent Foster supplemented the initial information submitted.

On December 4, 2003, IDWR conducted an informal resolution conference in Grace, ID. Approximately 30 ground water users attended the meeting. The water users discussed alternatives for resolution. The water users, including Warren Lloyd and his attorney, agreed that the contested case for the petition for delivery call could not be resolved in time for the 2004 irrigation season. Warren Lloyd also stated that the property was leased for the 2004 season to Terry Rindlisbaker, one of the other ground water users. The water users asked that IDWR take no action until mid-February, 2004, and that the parties would try to resolve the dispute themselves. The water users agreed that, if necessary, a hearing would be conducted in the fall of 2004.

On February 6, 2004, IDWR received a withdrawal of counsel from Kent Foster, the attorney for Warren Lloyd.

On April 20, 2004, IDWR received a letter from Warren Lloyd stating that the negotiations for resolution failed, and requesting that IDWR resume consideration of his petition for delivery call. A copy of the letter is enclosed with this document.

## GOVERNING LAW

Idaho Code § 42-237a.g. grants the director the power to:

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. Several years ago, IDWR created a ground water management area in the Bancroft-Lund area and also formed Water District no. 13-T.

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, instead of Rule 40, would govern the proceedings except that the water rights are also located within a ground water management area.

Rule 41 of the Conjunctive Management Rules defines the procedures for "administration of diversion and use of water within a ground water management area." Rule 41.01.b. states:

The Director shall conduct a fact-finding hearing on the petition at which the petitioner and respondents may present evidence on the water supply, and the diversion and use of water from the ground water management area.

Finally, Rule 41.02.b. establishes a deadline for issuing any order for the administration of water within the ground water management area:

Any order to cease or reduce withdrawal of water will be issued prior to September 1 and shall be effective for the growing season during the year following the date of the order is given and until such order is revoked or modified by further order of the Director.

The water rights that are the subject of Lloyd's petition for delivery call are located both within a water district and a ground water management area. The watermaster of Water District no. 13-T is not authorized to regulate water rights, however. As a result, both Rule 30 and Rule 41 describe procedures that IDWR must follow in considering the petition for delivery call. To the extent possible, IDWR will follow the requirements of both rules. If there is a conflict between the rules, IDWR will follow the rule procedures that provide for the maximum process and production of evidence.

IDWR must hold a hearing and issue a decision prior to September 1, 2004. As a result, a hearing must be scheduled in July 2004. The following prehearing notice and prehearing order sets out the hearing requirements for the contested case.

#### **NOTICE OF HEARING**

**IDWR has scheduled a hearing for July 13 and 14<sup>th</sup> at the American Legion Hall, First West First North, Grace ID 83241. The hearing will begin at 9:30 a.m. on July 13, 2004, and will continue into the next day, July 14, 2004, if necessary.**

The hearing will be held in accordance with provisions of Chapters 2 and 17, Title 42, and Chapter 52, Title 67, of the Idaho Code, the adopted Rules of Procedure of the Department of Water Resources, and Rules 40 and 45 of the adopted Rules of Water Appropriation of the Department of Water Resources. The presiding officer at the hearing will be Gary Spackman.

The hearing will be conducted in a facility that satisfies the accessibility requirements of the Americans with Disabilities Act. If you require special accommodations in order to attend, participate in or understand the hearing, please advise IDWR within (10) days prior to the hearing.

The hearing officer will request a memorandum from department staff describing the following: (1) a compilation of all depth to water information within Water District 13-T and the Bancroft-Lund Ground Water Management Area; (2) a summary of pertinent reports regarding ground water conditions and the effects of pumping pursuant to junior ground water rights on ground water and on other senior priority ground water rights; (3) any information about additional ground water resources underlying the Warren Lloyd property at deeper depths; and (4) any conclusions that can be drawn from available information about whether curtailment of water rights would benefit Warren Lloyd.

The staff memorandum will be distributed to the interested parties by approximately June 15, 2004. The IDWR staff member preparing the memorandum will be available at the hearing for examination upon request of one of the parties.

### **PREHEARING ORDER**

IT IS HEREBY ORDERED that all water users holding water rights within Water District no. 13-T or within the Bancroft-Lund Ground Water Management Area bearing priority dates later than September 29, 1966 shall be parties to this contested case. The parties are the individuals or entities identified in the mailing certificate as "Water User Parties." If a water user identified as a party does not wish to participate as a formal party in the contested case, he must file a written withdrawal with IDWR. A withdrawing party will be subject to any order requiring administration of the water rights, however.

IT IS FURTHER ORDERED that, if the scheduled hearing time conflicts with other prearranged schedules, does not allow sufficient time for preparation, or cannot be conducted because of good cause, the parties should suggest alternatives that would allow additional time for scheduling and preparation. One alternative is the dissolution or readjustment of the ground water management area by IDWR, allowing for a later hearing in the fall of 2004 pursuant to the conjunctive management rules governing administration of water rights in a water district.

IT IS FURTHER ORDERED that Warren Lloyd bears the burden of proof at the hearing regarding the following issues:

1. Whether the water rights describe points of diversion within an area "having a common ground water supply" under Rule 31 of the Conjunctive Management Rules. This issue may already have been determined at the time the water district was formed and the ground water management area designated.
2. Whether diversion by junior ground water right holders is causing material injury.
3. Whether the diversion of ground water by Warren Lloyd is a reasonable diversion.

Proof of some of the above issues may be offered with the submittal of the IDWR staff memorandum.

IT IS FURTHER ORDERED that Warren Lloyd shall present his evidence first at the hearing. Any other parties aligned with Lloyd shall present their evidence following presentation of Lloyd's presentation. Parties adverse to Lloyd shall present their evidence following the evidence supporting the petition is presented.


IT IS FURTHER ORDERED that all expert witnesses must be disclosed to the parties on or before July 7, 2004.

IT IS FURTHER ORDERED that a written request for attendance of the IDWR staff person who prepared the staff memorandum for examination must be filed with IDWR on or before July 10, 2004.

IT IS FURTHER ORDERED that a mitigation plan may be submitted to the Director for consideration during the hearing on or before July 7, 2004.

IT IS FURTHER ORDERED that all documents and correspondence sent to IDWR related to this contested case must be served upon all the parties to this contested case. IDWR will return all correspondence and documents not properly served.

Dated this 26<sup>th</sup> day of May, 2004.

  
\_\_\_\_\_  
Gary Spackman

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 27<sup>th</sup> day of May, 2004, the above and foregoing document was served on the following individuals and entities by placing a copy of the same in the United States mail, postage prepaid and properly addressed to the following:

**WATER USER PARTIES**

JOSEPH K & STACEY R  
CAMPBELL  
1528 CENTRAL RD  
BANCROFT ID 83217

BART O CHRISTENSEN  
1364 ANDERSON RD  
GRACE ID 83241

GRANT H GIBSON  
3599 BANNOCK HWY #A  
POCATELLO ID 83204-4411

DEAN S & BARBARA GILBERT  
PO BOX 151  
BANCROFT ID 83217

J HARRIS GILBERT  
PO BOX 93  
BANCROFT ID 83217

MILTON L GILBERT  
PO BOX 28  
BANCROFT ID 83217

D C, MAUDE, & VERGE HANSEN  
3543 S 100 W  
BOUNTIFUL UT 84010

JAY DELL JENKINS  
1802 LUND RD  
BANCROFT ID 83217

NEWELL R JENKINS  
PO BOX 218  
BANCROFT ID 83217

CARL B & PATRICIA JORGENSEN  
1699 LLOYD RD  
BANCROFT ID 83217

KEITH C JORGENSEN  
KEITH C JORGENSEN ET UX  
503 BENCH LAGO RD  
GRACE ID 83241

CALVIN G LLOYD  
HC 72 BOX 2305  
BANCROFT ID 83217

THOMAS R MOORE  
PO BOX 147  
BANCROFT ID 83217

MAX D & BONNIE K RIGBY  
PO BOX 12  
BANCROFT ID 83217

DON C & VIRGINIA E RIGBY  
PO BOX 187  
BANCROFT ID 83217

TERRY & MARJEAN  
RINDLISBAKER  
1770 JORGENSEN RD  
BANCROFT ID 83217

DAVID M RUPP  
PO BOX 189  
GRACE ID 83241

VON N SIMONSON  
1827 RICH RD  
GRACE ID 83241

KIM WELCH  
1632 CENTRAL RD  
BANCROFT ID 83217

JOSEPH GLEN & BEVERLY  
WIGHT  
685 HWY 34  
GRACE ID 83241

DALE R & NUELENE WISTISEN  
WISTISEN LIVESTOCK CORP  
PO BOX 128  
BANCROFT ID 83217

RAOUL WISTISEN  
WISTISEN LIVESTOCK CO  
PO BOX 157  
BANCROFT ID 83217

STANLEY & KATHLEEN  
WISTISEN  
PO BOX 116  
BANCROFT ID 83217

DATE E YOST  
1846 LUND RD  
BANCROFT ID 83217

DATE G YOST  
HC 72 BOX 2070  
BANCROFT ID 83217

GORDON RAY & SHERRY  
YOST  
1681 LUND RD  
BANCROFT ID 83217

MONTE & SHAUNA YOST  
PO BOX 171  
BANCROFT ID 83217

PHIL J & LISA J YOST  
1780 RICH RD  
GRACE ID 83241

DIAMOND G FARMS INC  
PO BOX 186  
BANCROFT ID 83277

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

JORGENSEN BROTHERS  
TERRY C JORGENSEN ET UX  
1928 OLD HWY 30  
BANCROFT ID 83217

PARLEY L SCHENK & SONS  
FARMS  
1803 LUND RD  
BANCROFT ID 83217

STODDARD FARMS OF GRACE  
2004 TWO MILE RD  
GRACE ID 83241

US DEPT OF AGRICULTURE  
FARMERS HOME  
ADMINISTRATION  
159 E 2ND S #3  
SODA SPRINGS ID 83276

#### OTHER INDIVIDUALS AND ENTITIES

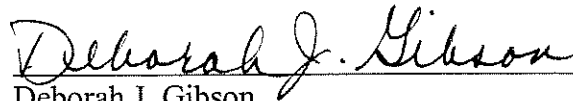
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Deborah J. Gibson  
Administrative Assistant  
Water Allocation Bureau