

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE
STATE OF IDAHO

IN THE MATTER OF PETITION)
FOR CONJUNCTIVE MANAGEMENT)
IN WATER DISTRICT NO. 13-T AND)
WITHIN THE BANCROFT-LUND)
GROUND WATER MANAGEMENT)
AREA IN THE NAME OF WARREN)
LLOYD)
_____)

ORDER VACATING
HEARING AND ORDER
AUTHORIZING DISCOVERY

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 December 4, 2003, IDWR conducted an informal resolution conference in Grace, ID. Approximately 30 ground water users attended the meeting. The parties discussed alternatives for resolution. The parties, 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 parties asked that IDWR take no action until mid-February, 2004, and that the parties would try to resolve the dispute themselves. The parties 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.

On May 26, 2004, IDWR issued a notice of hearing and a prehearing order. The notice scheduled the hearing for July 13 and 14, 2004.

On June 9, 2004, Randall C. Budge, an attorney representing several of the parties, requested a continuance and rescheduling of the hearing. On June 14, 2004, Warren Lloyd objected to the request for a continuance and rescheduling. On June 16, 2004, A. Bruce Larson, an attorney representing Don C. Rigby, also requested a continuance and rescheduling of the hearing.

The motions for continuance and rescheduling argue that the expedited hearing does not allow sufficient time to prepare for the hearing and also conflicts with previous schedules of the parties and the attorneys. Lloyd argues that further delay is not justified because he has waited patiently for years for IDWR to administer the water rights.

At the December 4, 2003 prehearing conference, the parties agreed that preparations for the hearing would take several months. The parties agreed that Lloyd's farm was rented, and that immediate action by IDWR was not necessary. The parties agreed that they could prepare for the hearing during the spring and summer of 2004 and a hearing could be conducted in the fall of 2004.

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. Idaho Code § 42-233a requires that any curtailment of ground water rights within a ground water management area must be preceded by an order of curtailment issued before September 1 of the year before curtailment. 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.

In contrast, 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. If the Bancroft-Lund area were designated only as a water district (without the overlapping ground water management area), Rule 30 would solely govern the conjunctive management procedures. Rule 30 does not require a hearing or issuance of a decision prior to September 1.

The motions for continuance suggest that the water users who might be affected by the curtailment order could waive the September 1 deadline for issuance of an order.

Delay of the hearing and issuance of a decision after August 31, 2004 would not cause any hardship to Warren Lloyd provided a decision is issued that will govern water use during 2005. Water right holders owning water rights that might be subject to conjunctive management would benefit from the delay, however, if IDWR did not issue a decision prior to September 1, 2004 because they would automatically be protected from curtailment during the 2005 irrigation season.

Nonetheless, the arguments for continuance and rescheduling justify delay in holding the hearing. IDWR should reschedule the hearing for the fall of 2004. The parties requesting the delay should not unfairly benefit from their requested delay, however. The parties who could benefit from the delay must state whether they would raise the decision deadline as a defense to an order related to administration of water rights issued after August 31, 2004.

ORDER

IT IS HEREBY ORDERED that the hearing scheduled on July 13 and 14, 2004 for the Warren Lloyd petition for delivery call is **Vacated** and will be rescheduled during the last three weeks of October or the first week of November, 2004.

IT IS FURTHER ORDERED that the parties shall inform IDWR in writing on or before July 9, 2004, of **unavailable** dates for the hearing between October 11 and November 6, 2004. Calendars of October and November 2004 are enclosed for marking and return. A party that does not notify IDWR of unavailable dates will be assumed to be available on all working days during the above time period.

IT IS FURTHER ORDERED that, on or before July 9, 2004, each party shall inform IDWR in writing whether the party would raise the September 1 deadline as a defense against any order for administration of water rights during 2005 within Water District 13-T because the area is also designated as a ground water management area. If any party that might be subject to administration under this contested case states that the deadline will or may be used as a defense, or does not respond in writing regarding this issue, IDWR will consider other actions that may promote more efficient administrative process and oversight of the ground water resources in the Bancroft-Lund area.

IT IS FURTHER ORDERED that the parties may engage in discovery as follows:

1. General discovery can begin immediately.
2. The identity of expert witnesses shall be disclosed by September 3, 2004.
3. All written discovery requests shall be served on or before September 17, 2004.
4. All depositions shall be complete on or before October 1, 2004.
5. Written requests for discovery must be either interrogatories or requests for documents. No more than 10 interrogatories may be served by any party (or the attorney for several parties) on another party, and no more than 10 unanswered interrogatories may be pending served by any party (or the attorney for several parties).

IT IS FURTHER ORDERED that the date for exchange of exhibits will be established in

the subsequent notice of hearing.

IT IS FURTHER ORDERED that the enclosed memorandum prepared by IDWR staff will be part of the record in this contested case. Staff preparing the memorandum will be available for examination at the hearing.

Dated this _____ day of June, 2004.

Gary Spackman

CERTIFICATE OF MAILING

I hereby certify that on the _18TH_ day of June 2004, I sent a true and correct copy, postage prepaid, of the Order Vacating Hearing and Order Authorizing Discover to those listed:

Crystal Calais
Administrative Assistant
Water Distribution Section