

BEFORE THE DIRECTOR
OF THE
IDAHO DEPARTMENT OF WATER RESOURCES

IN THE MATTER OF THE PROPOSED)
FORMATION OF A WATER DISTRICT) PRELIMINARY ORDER
IN THE BANCROFT-LUND AREA)
_____)

Warren P. Lloyd and Calvin G. Lloyd filed letters dated February 21, 1995, asking the Director of the Idaho Department of Water Resources (department) to form a water district in the Bancroft-Lund Area located in Caribou County, Idaho.

Notice of the request and of a hearing to consider the request was mailed to those persons listed in the department's records as holding a right to use ground water for irrigation purposes within the area previously designated as the "Bancroft-Lund Ground Water Management Area."

On April 28, 1995, the department held a hearing in Grace, Idaho to consider the need for formation of a water district in the Bancroft-Lund area. The roster of attendance was signed by 31 people, most of whom hold water rights in the Bancroft-Lund Area. Four of those in attendance testified. The record was left open until May 12, 1995 to accept written comment in accordance with Section 42-604, Idaho Code. Four letters were received; one of which was signed by 12 persons holding rights to use ground water in the area. The following issues were raised in the testimony and comment letters:

1. Whether unauthorized use is occurring within the Bancroft-Lund Area and whether formation of a water district is a necessary and effective means of controlling such unauthorized uses.
2. Whether ground water supplies in the Bancroft-Lund Area are, at times, inadequate to supply all existing uses, thereby reducing the water available to holders of some senior priority ground water rights.
3. Whether the Bancroft-Lund Area has a common source of ground water supply or sources of supply that are sufficiently interrelated to be managed as a single district.

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Eastern District Office

4. If a water district is formed, what area should be included?

5. Whether rights that are not being actively used because the land to which the rights are appurtenant are enrolled in the Federal Conservation Reserve Program (CRP) should be included within a water district.

6. Whether the cost of operating a water district would add an unacceptable financial burden to the water right holders.

A hearing having been held, testimony taken, written comment received, and the record closed, the hearing officer enters the following Findings of Fact, Conclusions of Law, and Preliminary Order:

FINDINGS OF FACT:

1. On July 28, 1992, the Sixth District Court entered an order in Civil Case No. 2919 decreeing all rights within the Bancroft-Lund Area, including those from ground water sources, in accordance with the "Director's Report for the Bancroft-Lund Area," dated November 8, 1991. The order decrees all rights to use ground water existing in the Bancroft-Lund Area at the time of the order and links the administration of all the rights in the area by providing for administration of the rights on a time priority basis. Included in the decree are 65 rights listing irrigation as a purpose of use authorizing the diversion and use of ground water for irrigation of 13,738 acres. To the extent that some land may be listed under more than one water right, the area authorized to be irrigated from ground water within the Bancroft-Lund Area is less than 13,738 acres.

2. On October 21, 1991, the director of the department entered an order designating the Bancroft-Lund Ground Water Management Area. The area included within the Bancroft-Lund Ground Water Management Area is included within the area for which the decree of ground water rights was entered in Civil Case No. 2919.

3. Some holders of relatively senior ground water rights within the Bancroft-Lund Area are not able to divert and use the amount of water authorized under their rights because of reduced water supplies and increased pumping drawdowns. Efforts to reconstruct, deepen, or relocate the wells from which these senior rights obtain water have not restored an adequate supply of water for the senior priority uses.

4. The Bancroft-Lund Area includes parts of the Portneuf River Basin (Basin 29) and the Bear River Basin (Basin 13). Some users located within Basin 29 are concerned that formation of a water district encompassing the entire Bancroft-Lund Area will result in their being administered in more than one district when a decree is issued for Basin 29 in the ongoing Snake River Basin Adjudication.

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5. Some holders of ground water rights in the northern part of the proposed water district contend that their wells are located in a different water source from those requesting formation of the water district and are far enough separated from the wells for which problems have been reported that they should be excluded from the district.

6. There is an interrelationship between ground water levels within a part or all of the Bancroft-Lund Area and flows of Bear River and springs discharging into Bear River. Holders of rights for water from Bear River and the springs that are senior in priority to most if not all of the rights to use ground water for irrigation purposes in the Bancroft-Lund Area have periodically had use of water under their rights curtailed to satisfy earlier priority rights on Bear River. The holders of these rights from surface sources encourage formation of the water district as a means of protecting their rights and reducing controversy concerning water use in the area.

7. Conflicting testimony was received concerning the unauthorized use of ground water in the Bancroft-Lund Area. One water right holder testified that at times last year diversions for unauthorized purposes totalled at least 2200 gallons per minute. The unauthorized uses included pumping at a rate greater than the authorized rate, pumping an annual volume in excess of that authorized, using the water on additional land from that authorized, and unauthorized transfer of ground water rights.

8. The formation and operation of a water district in the Bancroft-Lund area is required to ensure proper regulation of the use of water during the 1995 irrigation season.

9. Notice of this proceeding for the formation of a water district in the Bancroft-Lund Area has not been provided to persons holding rights to the use of ground water for non-irrigation purposes.

CONCLUSIONS OF LAW

1. Section 42-604, Idaho Code provides, in pertinent part, as follows:

42-604. Creation of water districts. The director of the department of water resources shall divide the state into water districts in such manner that each public stream and tributaries, or independent source of water supply, shall constitute a water district: provided, that any stream or water supply, when the distance between the extreme points of diversion thereon is more than forty (40) miles, may be divided into two (2) or more water districts: provided, that any stream tributary to another stream may be constituted into a separate water district when the use of the water therefrom does not affect or conflict with the rights to the use of the water of the main stream: provided, that any stream may be divided into two (2)

or more water districts, irrespective of the distance between the extreme points of diversion, where the use of the waters of such stream by appropriators in one district does not affect or conflict with the use of the waters of such stream by appropriators outside such district: provided, that this section shall not apply to streams or water supplies whose priorities of appropriation have not been adjudicated by the courts having jurisdiction thereof.

The director may create, revise the boundaries of, or abolish a water district or combine two (2) or more water districts by entry of an order if such action is required in order to properly administer uses of the water resource. Copies of the order shall be sent by regular mail to all holders of rights to the waters affected by the order. The director's order is subject to judicial review as provided in section 42-1701A, Idaho Code....

2. Section 42-605, Idaho Code, provides for those holding water rights within a water district to meet each year prior to the irrigation season to elect a watermaster and set the district budget. This provision allows the water rights holders to control the cost of operation of the water district, and allows a district to be inactive if not needed. Because the cost of the operation of the district is assessed only against those right holders using water during a particular year, inactive rights such as those for land enrolled in the CRP are not subject to assessment while not being used.

3. Conclusion of Law No. 15 of the Director's Report entered in Civil Case No. 2919 provides for the following:

If data becomes available to demonstrate to the satisfaction of the director the extent of the effect of withdrawals of ground water tributary to the Bear River on senior surface water rights in the Bear River Basin, junior ground water users will be required to reduce or eliminate diversions in accordance with the priorities of the water right, show to the satisfaction of the director their particular ground water use does not effect senior surface water users, or may provide substitute water or other appropriate mitigation to senior surface water users at the cost of the junior ground water users. If data becomes available to demonstrate to the satisfaction of the director that withdrawals of ground water in the Bancroft-Lund Area have reduced ground water levels below reasonable pumping levels, junior ground water users will be required to reduce or eliminate diversion in accordance with the priorities of the water rights to the extent necessary to maintain reasonable ground water pumping levels, show to the satisfaction of the director their particular ground water use does not affect ground water levels which have gone below the reasonable pumping level, or may provide substitute water or other appropriate mitigation to senior ground water users at the cost of the junior ground water users.

4. The ground water rights within the Bancroft-Lund Area have been adjudicated, but the information required by Conclusion of Law No. 15 of the Director's Report entered in Civil Case No. 2919 is not now available.

5. The allegations of unauthorized use of ground water within the Bancroft-Lund Area and the representations by some holders of senior priority surface and ground water rights that such uses are a contributing factor to the holders of senior rights not being able to divert their authorized amounts of water, indicate the need for administration of ground water rights within the Bancroft-Lund Area starting with the 1995 irrigation season.

6. Effective administration of ground water within the Bancroft-Lund Area is in the interest of all holders of ground water rights within the area, holders of surface water rights from Bear River and the tributary springs in the Grace, Idaho area, and the citizens of Idaho, in general. Such administration includes measurement and reporting of ground water withdrawals and regulation to insure that the ground water is only used in accordance with authorized rights.

7. The administration of ground water rights throughout the Bancroft-Lund Area have been linked by inclusion in a decree which provides for administration of the rights on a time priority basis.

8. Section 42-604, Idaho Code, provides for the boundaries of water districts to be revised, for water districts to be abolished, and for districts to be combined. Rule 040.02.e of the "Rules for Conjunctive Management of Surface and Ground Water Resources" (IDAPA 37.03.11) provides for watermasters of separate water districts to cooperate and reciprocate to insure proper administration of water rights affecting users in more than one water district.

9. The director of the department should form a water district to encompass all ground water rights and all water uses within the area for which the ground water rights were decreed in Civil Case No. 2919. Notice of this proceeding should be provided to all persons holding rights to the use of ground water within the area not previously provided with notice, except for persons with rights limited to domestic or stockwater purposes as defined in Section 42-111, Idaho Code.

ORDER

IT IS HEREBY ORDERED THAT:

1. Water District No. 13R is hereby created to include all ground water rights having irrigation as a purpose of use and all uses of water for irrigation purposes within the following described area:

Starting at the point of beginning at the SW corner of Section 7, T9S, R41E, B.M.; thence, northeasterly along the ridge between Upper Valley and Alexander to the NE corner of the NW $\frac{1}{4}$ SW $\frac{1}{4}$, Section 27, T8S, R41E, B.M.; thence, due west to the NE corner of the NW $\frac{1}{4}$ SE $\frac{1}{4}$, Section 29, T8S, R41E, B.M.; thence, northwesterly along the topographic divide of the Soda Springs Hills to the south boundary of Section 12, T8S, R40E, B.M.; thence, due west to the SW corner of Section 12, T8S, R39E, B.M.; thence due north to the NW corner of Section 1, thence west to the NW corner of Section 5, thence due south to the intersection of the section line with the North Canyon Road (approximately at the SW corner of Section 17), all within T8S, R39E, B.M.; thence, up the North Canyon road to its intersection with the Bannock County-Caribou County line in the NE $\frac{1}{4}$, Section 26, T8S, R38E, B.M.; thence, southeasterly along the county line to the south boundary of Section 36, T8S, R38E, B.M.; thence due east along the county line to the west boundary of Section 6, T9S, R39E, B.M.; thence, due south along the county line to the SW corner of Section 7, T9S, R39E, B.M.; thence southeasterly along the Fish Creek Range ridge to its intersection with the north boundary of Section 25, T10S, R39E, B.M.; thence east to the SW corner of Section 21, T10S, R40E, B.M.; thence, north to the intersection of the Bear River within the SW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 21. Thence, northeasterly along the west boundary of the Bear River to the center of Section 18, T9S, R41E, B.M. thence, northwest to the point of beginning.

This area designated as shown on Attachment A which is hereby incorporated as a part of this order. In case of discrepancy between the written description and the map, the written description shall control.

2. The director shall retain jurisdiction to issue a further order in this proceeding, upon notice and opportunity for hearing provided to persons holding rights to the use of ground water for non-irrigation purposes within the Bancroft-Lund Area, addressing the uses to be included in the district and the geographic boundaries of the district. Pending issuance of a further order by the director, all rights and uses of ground water for purposes other than irrigation shall be exempt from administration by the watermaster and assessment by the water district unless the holder of such right chooses to be included in the district, notifies the watermaster prior to the annual meeting of any year and pays the district assessment for that year.

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3. Until the information required by Conclusion of Law No. 15 of the Director's Report in Civil Case No. 2919 is available as determined by the director, the watermaster shall not curtail the use of water under any junior priority ground water right using water as authorized by the right, unless the holder of the right has not paid the current water district assessment and the members of the water district have adopted a resolution requiring payment of assessments as a condition for receiving water.

4. Water District No. 13R, as established under this order, shall include all uses of ground water for irrigation purposes within the designated boundaries, and specifically includes all decreed, licensed, and permitted rights whether the identification number assigned by the department for a right indicates that the right is within Basin 13 (Bear River) or Basin 29 (Portneuf River).

5. All holders of rights to use ground water for irrigation purposes within Water District No. 13R shall install and maintain a measuring device and controlling works of a type acceptable to the director on each well from which ground water is diverted within Water District No. 13R. With the approval of the director, the right holder may choose to supply to the director the information needed to allow power use records to be used to estimate withdrawals instead of installing a permanent measuring device.

6. For 1995, the water right holders within Water District 13R shall meet at a time and place to be announced by the director to elect a watermaster and set a budget to be collected to operate the district. In future years, the annual meeting shall be held as provided in Section 42-605, Idaho Code.

7. This order is designated a preliminary order in accordance with Section 67-5245, Idaho Code and Rule 730 of the "Rules of Procedure" (IDAPA 37.01.01). It can and will become final without further action of the department unless a petition for reconsideration by the hearing officer is received or an appeal is filed with the director of the department in accordance with the requirements of Rule 730. The provisions of Rule 730 are contained in Attachment B attached to with this order and hereby incorporated in this order with the same effect as if fully set forth within the body of this order.

SIGNED AT BOISE, IDAHO THIS 26th DAY OF MAY, 1995.


NORMAN C. YOUNG
Hearing Officer

CERTIFICATE OF MAILING

I hereby certify that on this 26th day of May, 1995, I mailed a true and correct copy, postage prepaid, of the foregoing Notice to the individuals listed below.



RITA I. FLECK
Administrative Secretary

1307517	BART O CHRISTENSEN 1364 ANDERSEN RD GRACE ID 83241	1304080	CITY OF GRACE P. O. BOX 288 GRACE ID 83241
1307261	DWAIN K. CHRISTENSEN ROUTE 1, BOX 43 GRACE ID 83241	2907253 2907446	DIAMOND G FARMS PO BOX 186 BANCROFT ID 83217
1307198	DWAIN K. CHRISTENSEN 1651 RICH RD GRACE ID 83241	2902347	JOSEPH G ELIASON BANCROFT ID 83217
1307147	KENNETH A. CHRISTENSEN 1362 ANDERSON RD GRACE ID 83241	2902562	ELIASON & SONS INC. P.O. BOX 487 BANCROFT ID 83217
1307099	KENNETH A CHRISTENSEN FARMS INC 1362 ANDERSON RD GRACE ID 8341	1304113	GRANT H. GIBSON VIOLA M. GIBSON RT. #1, BOX 56 GRACE ID 83241
1302278 1302259	PAUL N. CHRISTENSEN STAR RT. BANCROFT ID 83217	1307068	GRANT H GIBSON 1232 MOUNTAIN RD GRACE ID 83241
1302269	REED N. CHRISTENSEN 106 W. 4TH S. GRACE ID 8341	2907172	J. HARRIS GILBERT P.O. BOX 97 BANCROFT ID 83217

2907308	MILTON L. GILBERT P.O. BOX 28 BANCROFT ID 83217	1302312	KEITH E. LLOYD ELLA LLOYD BANCROFT ID 83217
2902467	NUEL C. GILBERT BLACKFOOT ID 83221	1302313	WARREN P LLOYD 1475 MOUNTAIN RD BANCROFT ID 83217
2907651	GOLDEN GRAIN FARMS BOX 28 BANCROFT ID 83217	2907434	CALVIN G. LLOYD HC 72 BOX 2305 BANCROFT ID 83217
1307111	GRACE CEMETERY DISTRICT C/O GRANT WILLIAMS GRACE ID 83241	2907365	DONALD G. LONGENBOHN 320 MTN. VIEW AVE. SODA SPRINGS ID 83276
2907264	VERG E. HANSEN MAUDE C. HANSEN C/O D. C. HANSEN 3543 S. 100 W. BOUNTIFUL UT	2907000B	BOYD NEWTON MC NEILL LORITA L. MC NEILL BANCROFT ID 83217
1304118	HANSEN FAMILY FARMS GRACE ID 83241	2907544	HENRY MEINERS, JR. BANCROFT ID 83217
2908117	RANDALL A HUBBARD 2220 ALEXANDER RD SODA SPRINGS ID 83276	1307407	GARY LEN MILLER BOX 184 BANCROFT ID 83217
1307138	MARK C. HULSE RT. 1 BOX 31 GRACE ID 83241	2907533	DAVID MODERSITZKI BOX 98 BANCROFT ID 83217
2907352A	JAY DELL JENKINS BANCROFT ID 83217	1104229	OREGON SHORT LINE RAILROAD CO. P.O. BOX 1592 POCATELLO ID 83204
1307289	BILL E. JORGENSEN RT. 1 BOX 87 GRACE ID 83241	2907352B	PARLEY L. SCHENK & SONS FARMS INC. BANCROFT ID 83217
2908029	CARL B. JORGENSEN PATRICIA JORGENSEN 1699 LLOYD RD. BANCROFT ID 83217	2902313	WAYNE PERKINS BANCROFT ID 83217

1102132	R & L FARMS INC. 2220 ALEXANDER RD. SODA SPRINGS ID 83276	1307084 1307259	VON N. SIMONSON RT. 1 BOX 37 GRACE ID 83241
2907001	DON C. RIGBY P.O. BOX 514 BANCROFT ID 83217	1307005 1302198 1307259	EVERETT W. SMITH 1670 TURNER RD GRACE ID 83241
2902548 2907637	DON C. RIGBY 210 W. CENTER LOGAN UT 84321	1302197	MARVIN SMITH RT. 1 GRACE ID 83241
2907543	DON C. RIGBY BANCROFT ID 83217	1107091	STATE OF IDAHO DEPT OF TRANSPORTATION DIVISION OF HIGHWAYS PO BOX 7129 BOISE ID 83720
2907636	DON C RIGBY 1226 RIGBY RD BANCROFT ID 83217	2904174	ELLWOOD J. STEPHENS 46 CHASE STREET POCATELLO ID 83201
2907547	DON C. RIGBY FAMILY PARTNERSHIP BOX 187 BANCROFT ID 83217	2902316	ELLWOOD J. STEPHENS BANCROFT ID 83217
2902537	MAX D. RIGBY BANCROFT ID 83217	1304067	W. KENNETH TARBET GRACE ID 83241
1304123	MAX E. RIGBY RT. 1, BOX 8 GRACE ID 83241	2907014	GERALD O. TOLMAN BANCROFT ID 83217
2907995	VIRGINIA RIGBY DON C. RIGBY P.O. BOX 187 BANCROFT ID 83217	2907253	US DEPT OF AGRICULTURE FARMERS HOME ADMIN. 159 E 2ND S #3 SODA SPRINGS ID 83276
2907098 2907608	TERRY G. RINDLISBAKER BANCROFT ID 83217	1304200	VARLEY FARMS INC. P.O. BOX 526 GRACE ID 83241
2907102	DAVID M. RUPP STAR RT. BANCROFT ID 83217	1307163	KIM WELCH STAR RT. BANCROFT ID 83217

2907443 CLIFFORD WELCH
2902315 BANCROFT ID 83217

2907392 STANLEY WISTISEN
PO BOX 116
BANCROFT ID 83217

2907305 RAOUL WISTISEN
BANCROFT ID 83217

2907994 DALE R. WISTISEN
300 GILBERT LANE
P.O. BOX 128
BANCROFT ID 83217

2907394 WISTISEN LIVESTOCK CO.
BANCROFT ID 83217

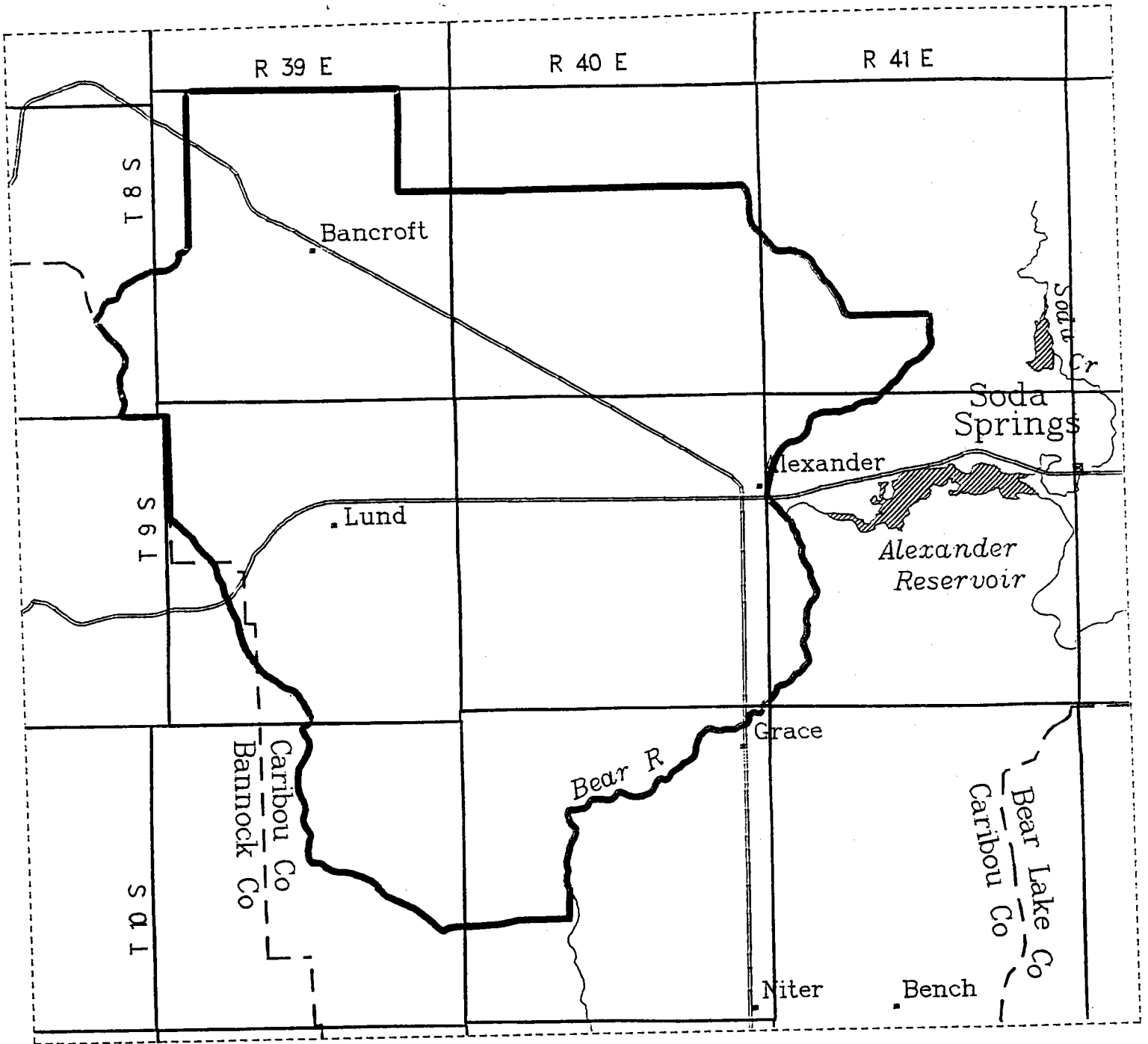
1307240 RAY W. YAMAUCHI
P.O. BOX 615
GRACE ID 83241

2907358 GORDON RAY YOST
BANCROFT ID 83217

2907132 HERMAN YOST
BANCROFT ID 83217

2902540 DATE E. YOST
BANCROFT ID 83217

BANCROFT-LUND WATER DISTRICT



Scale 1:175,000

ATTACHMENT A



**EXPLANATORY INFORMATION
TO ACCOMPANY A
PRELIMINARY ORDER**

(Required by Rule of Procedure 730.02)

The accompanying order is a "**Preliminary Order**" issued by the department pursuant to section 67-5243, Idaho Code. It can and will become a final order without further action of the department unless a party petitions for reconsideration within fourteen (14) days after issuance as further described below:

PETITION FOR RECONSIDERATION

Any party may file a petition for reconsideration of a preliminary order with the hearing officer within fourteen (14) days of the service date of this order. The hearing officer will act on a petition for reconsideration within twenty-one (21) days of its receipt, or the petition will be considered denied by operation of law. See section 67-5243(3) Idaho Code.

EXCEPTIONS AND BRIEFS

Within twenty-one (21) days after (a) the service date of a preliminary order, (b) the service date of a denial of a petition for reconsideration from this preliminary order, or (c) the failure within twenty-one (21) days to grant or deny a petition for reconsideration from this preliminary order, any party may in writing support or take exceptions to any part of a preliminary order and may file briefs in support of the party's position on any issue in the proceeding with the Director. Otherwise, this preliminary order will become a final order of the agency.

If any party appeals or takes exceptions to a preliminary order, opposing parties shall have twenty-one (21) days to respond to any party's appeal. Written briefs in support of or taking exceptions to the preliminary order shall be filed with the Director. The Director retains the right to review the preliminary order on his own motion.

ORAL ARGUMENT

If the Director grants a petition to review the preliminary order, the Director shall allow all parties an opportunity to file briefs in support of or taking exceptions to the preliminary order and may schedule oral argument in the matter before issuing a final order. If oral arguments are to be heard, the Director will within a reasonable time period notify each party of the place, date and hour for the argument of the case. Unless the Director orders otherwise, all oral arguments will be heard in Boise, Idaho.

CERTIFICATE OF SERVICE

All exceptions, briefs, requests for oral argument and any other matters filed with the Director in connection with the preliminary order shall be served on all other parties to the proceedings in accordance with Rules of Procedure 302 and 303.

FINAL ORDER

The Director will issue a final order within fifty-six (56) days of receipt of the written briefs, oral argument or response to briefs, whichever is later, unless waived by the parties or for good cause shown. The Director may remand the matter for further evidentiary hearings if further factual development of the record is necessary before issuing a final order. The department will serve a copy of the final order on all parties of record.

Section 67-5246(5), Idaho Code, provides as follows:

Unless a different date is stated in a final order, the order is effective fourteen (14) days after its issuance if a party has not filed a petition for reconsideration. If a party has filed a petition for reconsideration with the agency head, the final order becomes effective when:

- (a) the petition for reconsideration is disposed of; or
- (b) the petition is deemed denied because the agency head did not dispose of the petition within twenty-one (21) days.

APPEAL OF FINAL ORDER TO DISTRICT COURT

Pursuant to sections 67-5270 and 67-5272, Idaho Code, if this preliminary order becomes final, any party aggrieved by the final order or orders previously issued in this case may appeal the final order and all previously issued orders in this case to district court by filing a petition in the district court of the county in which:

- i. A hearing was held,
- ii. The final agency action was taken,
- iii. The party seeking review of the order resides, or
- iv. The real property or personal property that was the subject of the agency action is located.

The appeal must be filed within twenty-eight (28) days of this preliminary order becoming final. See section 67-5273, Idaho Code. The filing of an appeal to district court does not itself stay the effectiveness or enforcement of the order under appeal.