

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.

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)

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.

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

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

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

**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.