BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

IN THE MATTER OF DISSOLVING THE BANCROFT-LUND GROUND WATER MANAGEMENT AREA DESIGNATION	)))))	**FINAL MORATORIUM ORDER AND FINAL ORDER DISSOLVING THE BANCROFT-LUND GROUND WATER MANAGEMENT AREA**

The Director of the Department of Water Resources ("Director" or "Department") on October 21, 1991, entered an order designating the Bancroft-Lund Ground Water Management Area ("Bancroft-Lund GWMA") pursuant to Idaho Code § 42-233b. The Director created the ground water management area to administer ground water use and to limit the appropriation of ground water in a manner that recognizes and protects senior priority water rights in accordance with the directives of Idaho law.

In addition to limiting further appropriation, administration of existing decreed water rights in the Bancroft-Lund area was necessary. On May 26, 1995, the Department issued a Preliminary Order forming Water District No. 13-T, Bancroft-Lund. The order became final on or about August 14, 1995. The order creating Water District No. 13-T required measurement and reporting of diversions from ground water. The order also stated that "the watermaster shall not curtail the use of water under any junior priority ground water right …[u]ntil 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 …." Conclusion of Law No. 15 of the Director's Report stated that the director could require watermaster regulation or other remedies if data demonstrates that ground water withdrawals are injuring senior surface water users in the Bear River Basin or are causing a decline in ground water levels below the reasonable pumping level.

Because of the creation of Water District No. 13-T, existing water rights can be administered through the water district instead of the ground water management area. Future appropriations of water can be limited by moratorium rather than through a ground water management area. The continued existence of the ground water management area may cause confusion in the administration of water rights. Therefore, the Director enters the following Findings of Fact, Conclusions of Law, Moratorium Order, and Order Dissolving the Bancroft-Lund GWMA designation.

FINDINGS OF FACT

1. Springs discharge from the ground and flow to the Bear River in the area of Grace, Idaho. The springs are hydraulically connected to ground water underlying an area between Bancroft and Grace, Idaho, sometimes referred to as the Bancroft-Lund area.

2. Ground water levels are measured and recorded in five wells on the northwest side of the Bear River near or in the Bancroft-Lund area. Water levels in three of the wells declined approximately 10 – 15 feet during the period from 1985 through 2003. Water levels in one of the wells remained relatively stable. Water levels in the fifth well have only been measured continuously since 1993, a period that is too short to establish a water level trend.

3. Diversion of ground water from wells in the Bancroft-Lund area deplete the surface water flow in the springs and the Bear River. New ground water uses also increase pumping lifts for existing ground water rights.

4. On October 21, 1991, the Director established the Bancroft-Lund GWMA pursuant to Idaho Code § 42-233b. The Director designated the Bancroft-Lund GWMA due to concerns about the depletionary effects of ground water withdrawals under junior priority water rights and the availability of water supplies for senior priority water rights from connected surface and ground water sources. The Director issued the order because he has a responsibility, subject to the confines of existing knowledge and technology, to administer water rights for the use of ground water in a manner that recognizes and protects senior priority surface water and ground water rights.

5. The order creating the Bancroft-Lund GWMA was accompanied by a document titled "Management Policy for The Bancroft-Lund Ground Water Management Area" (hereafter referred to as "the management policy"). The management policy stated that "[t]he designation of a ground water management area for the Bancroft-Lund area is a preferred management policy."

6. The management policy allowed processing of existing applications, established standards for review of the applications, and restricted new appropriations of ground water.

7. The Bancroft-Lund GWMA was created prior to the final determination of the water rights in the Bancroft-Lund Adjudication. The management policy contemplated that the Director would take additional actions following completion of the Bancroft-Lund Adjudication.

8. On July 28, 1992, the Sixth District Court of the State of Idaho entered an order in Civil Case No. 2919 decreeing all rights within the Bancroft-Lund area, including those from ground water sources. The order decrees all rights to use ground water existing in the Bancroft-Lund area at the time of the order and provides for administration of ground water and surface water rights on the basis of priority.

9. In August 1995, the Department created Water District No. 13-T, Bancroft-Lund. The water district boundaries are identical to the boundaries of the Bancroft-Lund GWMA. The water district includes all holders of water rights authorizing diversion of ground water for irrigation within its boundaries.

10. Water District No. 13-T provides an organizational structure for measurement and reporting of diversions and water use for existing ground water rights within the water district. In times of shortage, the watermaster of the water district may also administer and regulate the water rights to protect senior priority water rights.

CONCLUSIONS OF LAW

1. The Director has a statutory responsibility to administer the use of ground water in the State of Idaho in a manner that protects prior surface and ground water rights and yet allows full economic development of the state's underground water resources in the public interest. See Idaho Code §§ 42-226, 42-237a.g, and 42-602.

2. The Director has general responsibility for direction and control over the distribution of water in accordance with the prior appropriation doctrine as established by Idaho law within water districts to be accomplished through watermasters supervised by the Director, as provided in chapter 6, title 42, Idaho Code and IDWR rules.

3. The establishment of Water District No. 13-T, which includes all of the area included within the boundaries of the Bancroft-Lund GWMA, provides the Director with the water administration authorities available under chapter 6, title 42, Idaho Code. Despite the initial statements in the management policy that a ground water management area is the preferred method of management, the creation of the water district initiated another management direction independent of the ground water management area. The authorities granted through the laws governing water districts together with the "Rules for Conjunctive Management of Surface and Ground Water Resources" (IDAPA 37.03.11) make it unnecessary to retain the Bancroft-Lund GWMA designation for the administration of existing water rights.

4. Prior surface and ground water rights will be injured if the flows of streams, rivers, and ground water underflow in the Bancroft-Lund area are reduced and ground water levels are lowered by junior priority ground water diversions.

5. To prevent injury to senior priority water rights, further appropriations of ground water in the Bancroft-Lund area should be limited to non-consumptive, municipal, small domestic, and stockwater uses.

6. In order to limit the future appropriation of ground water within Water District No. 13-T, a moratorium order should be issued that mirrors the limitations originally adopted in the management policy.

7. The Director should dissolve the Bancroft-Lund GWMA area designation because it is no longer necessary for water administration.

8. Because publication of notice in two (2) consecutive weekly issues of one or more newspapers of general circulation in the area is required by Idaho Code § 42-233b upon the designation of a ground water management area, the Director will provide similar published notice of the dissolution of the Bancroft-Lund GWMA.

9. Any person aggrieved by this order shall be entitled to a hearing before the Director to contest the action taken provided the person files with the Director, within fifteen (15) days following published notice of the order, a written petition stating the grounds for contesting the action and requesting a hearing. Any hearing conducted shall be in accordance with the provisions of chapter 52, title 67, Idaho Code, and the Rules of Procedure of the Department, IDAPA 37.01.01. Judicial review of any final order of the Director issued following the hearing may be had pursuant to Idaho Code § 42-1701A(4).

ORDER

IT IS, THEREFORE, HEREBY ORDERED that the Bancroft-Lund Ground Water Management Area designated by order of the Director dated October 21, 1991, is hereby dissolved.

IT IS FURTHER ORDERED that approval of applications to appropriate ground water is prohibited within Water District No. 13-T, except under the following circumstances:

1. The Department will consider an application to appropriate water if the applicant presents technical information to the Department, prepared by a professional engineer, hydrologist, or geologist, concluding that the proposed appropriation of water will not injure other ground water and surface water rights and that the water supply is sufficient for the purpose sought. Upon initial review and preliminary determination by the Department that the proposal will not injure other water rights and that the water supply is sufficient, the Department will process the application.

2. The Department will continue to consider the approval of applications for permit that propose nonconsumptive uses, municipal uses, stockwater uses, and domestic uses as defined in Idaho Code § 42-111. Domestic uses meeting the definition of Idaho Code § 42-111 are not subject to the application for permit filing requirements of Idaho Code § 42-229. Applications to appropriate ground water for multiple ownership subdivisions or mobile home parks will be considered provided each unit satisfies the definition for the exception of need to file an application for permit as described above.

3. While an incorporated city has wide latitude under state law to beneficially use its water rights for municipal purposes, any new large consumptive use within the municipal limits,

such as irrigation of lands not associated with a dwelling, or irrigation of more than one-half acre associated with a dwelling, must be mitigated by the municipality.

4. The Department will continue to accept and process new applications for permit and applications seeking amendment or transfer of existing water rights. Applications for amendment or applications for transfer which propose changes in the points of diversion from outside Water District No. 13-T to within the district, which would directly, or indirectly, result in the irrigation of new land will be treated as a proposed new appropriation of water.

DATED this 31st day of August, 2004.

KARL J. DREHER
Director