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 IN THE NAME OF WARREN LLOYD (SECOND PETITION DATED JANUARY 13, 2006)	)	**ORDER CREATING CONTESTED CASE AND ESTABLISHING FILING DEADLINES**

HISTORY

On August 6, 2003, Warren Lloyd (Lloyd) filed a petition for delivery call with the Idaho Department of Water Resources (IDWR) requesting conjunctive management of ground water rights in the Bancroft-Lund Area. The petition created a contested case before IDWR. On October 25, 2004, IDWR conducted a hearing for the contested case. On January 31, 2005, IDWR issued a preliminary order denying Lloyd's petition for delivery call without prejudice. Lloyd petitioned the hearing officer to reconsider the denial of the petition for delivery call, and, on March 3, 2005, the hearing officer denied Lloyd's petition for reconsideration. The preliminary order became a final order on March 17, 2005.

On January 13, 2006, Lloyd filed a second petition for delivery call. The petition seeks 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. The requested relief is the same relief requested in the August 6, 2003 petition for delivery call. Other ground water users in the Water District No. 13-T, Bancroft-Lund, were served with the petition.

ANALYSIS

Idaho Code § 42-237a.g. grants the director of IDWR the following authority:

> 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. IDWR formed Water District no. 13-T in the Bancroft-Lund Area

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 contains the procedures for addressing Lloyd's petition for delivery call.

Rule 30.01.c. of the Conjunctive Management Rules requires the petitioner to submit "[a]ll information, measurements, data or study results available to the petitioner to support the claim of material injury." No supporting hydrogeologic information was submitted with the petition, although the petition promised that a report titled "'Ground-water Supply and Water Rights of the Bancroft-Lund Area, Idaho" prepared by R. Keith Higginson, P.E. and Jack A. Barnett, P.E. in October, 1982" would "follow." The hearing officer considered this report in the prior contested case.

Rule 30 of the Conjunctive Management Rules does not require that IDWR hold a hearing.

Rule 270.01 of IDWR's Rules of Procedure states:

Answers to . . . petitions when required to be filed by provision of statute, rule, or order must be filed and served on all parties of record within twenty-one (21) days after service of the pleading being answered, unless order or notice modifies the time within which an answer may be made . . .

ORDER

IT IS HEREBY ORDERED that the petition for delivery call filed by Warren Lloyd on January 13, 2006 creates a contested case before the Idaho Department of Water Resources.

IT IS FURTHER ORDERED that prospective respondents to the petition are not required to file answers in the contested case until requested by the Idaho Department of Water Resources.

IT IS FURTHER ORDERED that the Idaho Department of Water Resources will consider in reaching a decision regarding the most recent petition for delivery call: (1) the testimony, exhibits, and other information in the record of the previous contested case for the earlier Warren Lloyd petition for delivery call, and (2) the findings, conclusions, and order of the January 31, 2005 preliminary order for the earlier Warren Lloyd petition for delivery call.

IT IS FURTHER ORDERED that Warren Lloyd must submit to the Idaho Department of Water Resources, within twenty-one days of the date of this order, any additional technical information establishing material injury to Warren Lloyd and establishing the cause of the material injury.

IT IS FURTHER ORDERED that, following submittal of additional technical information, the Idaho Department of Water Resources will review information in its file, including the additional technical information, and will do one of the following: (1) Appoint a hearing officer, request answers from prospective respondents, and begin preparations for a hearing; (2) Request answers from prospective respondents and other possible documents from all parties, and issue an order disposing of the petition for delivery call; or (3) Issue an order disposing of the petition for delivery call. The determination of an alternative will be based on the quality of new data and analysis presented to the Idaho Department of Water Resources by the petitioner.

Dated this 27th day of January, 2006.

Gary Spackman

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