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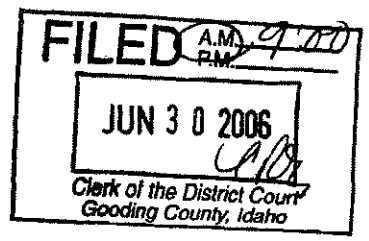

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE OF IDAHO IN AND FOR THE COUNTY OF GOODING

AMERICAN FALLS RESERVOIR DISTRICT # 2, A & B IRRIGATION DISTRICT, BURLEY IRRIGATION DISTRICT, MINIDOKA IRRIGATION DISTRICT, and TWIN FALLS CANAL COMPANY,	)	
Plaintiffs,	)	
v.	)	Case No. CV-2005-0000600
THE IDAHO DEPARTMENT OF WATER RESOURCES, an agency of the State of Idaho, and KARL J. DREHER, in his official capacity as Director of the Idaho Department of Water Resources,	)	
Defendants.	)	

JUDGMENT GRANTING PARTIAL SUMMARY JUDGMENT

This Judgment Granting Partial Summary Judgment is an attempt to summarize the 127 page Order, filed June 2, 2006, on Plaintiffs' Motions for Summary Judgment

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("Order"). To the extent that this Judgment is incomplete and/or at variance with any portion of the Order, the actual language of the Order is to govern.[1]

This cause, having come on for hearing upon the Complaint, Petitions for Intervention, and Motions for Summary Judgment by Plaintiffs American Falls Reservoir District #2, A & B Irrigation District, Burley Irrigation District, Minidoka Irrigation District, and Twin Falls Canal Company, and Plaintiff-Intervenors Clear Springs Foods, Inc., Thousand Springs Water Users Association, Idaho Power Company, and Rangen, Inc., the parties having been heard, and the Court being fully informed herein and having issued its June 2, 2006, Order, summarily stated this Court hereby ORDERS, ADJUDGES, DECREES AND DECLARES that, for the reasons set forth in the Order:

1. The Rules of Conjunctive Management of Surface and Ground Water Resources (hereinafter "CMR's") are constitutionally deficient for failure to integrate the required legal tenets and procedures regarding burden of proof and evidentiary standards.

2. The Director acted outside his legal authority in adopting the CMR's, which are not in accord with Idaho's version of the prior appropriation doctrine.

3. The factors and policies contained in the CMR's and to be applied by the Director can be construed consistent with the prior appropriation doctrine – albeit – with due caution as to the context in which such are used (understanding that some are not used in the context of curtailment cases).

4. The CMR's are facially unconstitutional due to the omission of necessary components of the prior appropriation doctrine, including: presumption of injury, burden of proof, objective standards for review, and failure to give due effect to the partial decree for a senior water right.

5. The CMR's exclusion of domestic water rights from ground water sources is both facially unconstitutional and is in violation of Idaho Code §§ 42-602, 42-603, and 42-607.

6. The "reasonable carryover" provision of the CMR's is unconstitutional, both facially and as threatened to be applied.

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[1] This Court recognizes that some parties have requested this Judgment Granting Partial Summary Judgment to be issued with an I.R.C.P. 54(b) certification. Because all proceedings on the Plaintiffs' January 14, 2005 delivery call are not yet completed, this Court will not issue such a certificate without an express determination that there is no just reason for delay and upon an express direction for the entry of the judgment as a final judgment upon which an appeal may be taken. If the parties seek a certificate, a hearing will need to be held to ascertain the propriety for such a certificate. In an effort to expedite this process, and if the parties are interested, this Court has already dedicated time for such a hearing on its law and motion calendar on July 11, 2006 at 1:00 p.m in Gooding County.

7. The CMR's disparate treatment of the holders of junior ground water rights and junior surface water does not violate Equal Protection; serves a legitimate state interest; and is rationally related to that interest.

8. Under CMR's the untimely administration of water rights and in particular irrigation rights, constitutes an unconstitutional taking without just compensation.

9. Each party shall bear its own fees and costs.

IT IS SO ORDERED.

Dated: June 30, 2006

Signed: B Wood
Barry Wood, District Judge