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IN THE DISTRICT COURT FOR THE FIFTH JUDICIAL DISTRICT OF THE

STATE OF IDAHO, IN AND FOR THE COUNTY OF GOODING

CLEAR LAKES TROUT COMPANY, INC., Petitioner/Plaintiff, vs. KARL J. DREHER, in his official capacity as Director of the Idaho Department of Water Resources, and the IDAHO DEPARTMENT OF WATER RESOURCES, Respondents/Defendants.	CASE NO. CV 2005-426 CLEAR LAKES TROUT COMPANY INC.'S MORE DEFINITE STATEMENT REGARDING CONSTITUTIONAL ISSUES

COMES NOW the Petitioner/Plaintiff, Clear Lakes Trout Company, Inc. (hereinafter referred to as "Plaintiff"), by and through its undersigned attorneys of record, Ringert Clark Chartered, and pursuant to the Court's August 15, 2005 request from the bench, hereby files this *More Definite Statement Regarding Constitutional Issues* in the above-captioned matter.

INTRODUCTION

Plaintiff filed its *Complaint and Petition for Writ of Mandate* (hereinafter "*Complaint*")on June 7, 2005 and served the same on Defendants on June 9, 2005. Paragraph XVIII of the *Complaint* alleges that Defendants' actions "violates, interferes with and impairs the constitutionally-protected priorities of Plaintiff's water rights" and "Plaintiff's constitutional rights to equal protection of the law." *Complaint*, ¶XVIII. Defendants filed their *Answer* to the *Complaint* on June 29, 2005, which denied the allegations in ¶XVIII of the *Complaint*. *Answer*, ¶15. Notably, Defendants did not make a motion for a more definite statement of the matters alleged in ¶XVIII of the *Complaint* prior to filing their *Answer* as would be required pursuant to I.R.C.P. 12(e) if Defendants in fact believed that ¶XVIII of the *Complaint* was vague or ambiguous.

Defendants filed their *Motion for Judgment on the Pleadings and Motion to Dismiss* on July 8, 2005, raising IDWR's Conjunctive Management Rules as justification for their actions in their *Memorandum* in support of those *Motions*. In its July 28, 2005 *Memorandum in Opposition to Defendant's Motion for Judgment on the Pleadings and Motion to Dismiss*, Plaintiff pointed out certain constitutional problems with Defendants' actions and with the Conjunctive Management Rules. In response to Plaintiff's argument, Defendants filed their *Motion to Strike* August 10, 2005, stating that "Plaintiff's Complaint never mentions any violation of constitutional rights by State Defendants." *Defendants' Motion to Strike*, p. 2. Plaintiff responded by filing their *Memorandum in Opposition to Motion to Strike* on August 12, 2005, which pointed out that Plaintiff's *Complaint* did in fact allege constitutional violations by Defendants. *Memorandum in Opposition to Motion to Strike*, pp. 2 - 3.

Finally, at the August 15, 2005 hearing, Defendant's attorney argued that the allegations regarding constitutional violations in the *Complaint* were vague. The Court responded by stating that it would treat Defendants' *Motion to Strike* as *Motion for a More Definite Statement*, and requested that Plaintiff provide such a statement. This document is Plaintiff's more definite statement regarding constitutional issues raised in its *Complaint*.

VIOLATIONS OF ARTICLE XV, SECTION 3 OF THE IDAHO CONSTITUTION

Article XV, Section 3 of the Idaho Constitution provides that: "Priority of appropriations shall give the better rights as between those using the water." In times of water shortage, this constitutional provision protects Plaintiff's senior water rights from diversions under junior water rights from the hydraulically-connected ESPA. Defendants have a statutory duty pursuant to Idaho Code § 42-602 *et seq.*, to administer water rights in Water District 130 in order of priority so as to provide Plaintiff this constitutional protection. Article XV, Section 3 requires the Defendants to curtail all connected junior water rights in order of priority, with the latest in time, most junior priority water rights being curtailed first, in response to Foods' June 7, 2002 water delivery "call." Article XV, Section 3 also requires the Defendants to protect Plaintiff's water rights by curtailing junior water rights that are connected to Plaintiff's water supply. The Defendants' curtailment of Plaintiff's water rights in order to supply Foods' water rights, and their failure and refusal to curtail any of the more junior water rights that are connected to Plaintiff's and Foods' water supply, violates these constitutional requirements, and deprives Plaintiff of the constitutionally-protected priority of its water rights.

VIOLATIONS OF EQUAL PROTECTION

The equal protection clauses of the Idaho and United States' constitutions provide that all persons in like circumstances should receive the same benefits and burdens of the law. Under Article XV, Section 3 of the Idaho Constitution, Idaho Code § 42-602 et seq., and other statutory provisions, all connected junior water rights in Water District 130 are subject to curtailment in response to Foods' June 7, 2002 water delivery "call," yet Defendants have curtailed only Plaintiff's water rights in response to Foods' "call." Defendants' curtailment of Plaintiff's water rights in order to supply Foods' water rights and their failure and refusal to curtail any other connected junior water user in Water District 130 imposes the burden of supplying Foods' water right entirely and exclusively upon the Plaintiff, in violation of Plaintiff's right to equal protection of the law.

Under Article XV, Section 3 of the Idaho Constitution, Idaho Code § 42-602 et seq., and other statutory provisions, Plaintiff is entitled to the same protections from diversions by connected junior water rights as Foods and any other senior water right owner in Water District 130, yet Defendants have not taken any action to protect and deliver Plaintiff's water rights, as they have in response to Foods' call. Defendants' curtailment of Plaintiff's water rights in order to supply Foods' water rights and their failure and refusal to curtail any other connected junior water user in Water District 130 denies these protections and benefits provided to water users in like circumstances, in violation of Plaintiff's right to equal protection of the law.

Respectfully submitted this 24th day of August, 2005

RINGERT CLARK CHARTERED

By: _____
Charles L. Honsinger
Attorneys for Petitioner/Plaintiff

CERTIFICATE OF SERVICE

I certify that on the 24th day of August, 2005, I served copies of this document, including all attachments by U.S. Mail to the following:

Phil Rassier
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Deputy Attorney General
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_____
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