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

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| AMERICAN FALLS RESERVOIR DISTRICT #2, A & B IRRIGATION DISTRICT, BURLEY IRRIGATION DISTRICT, MINIDOKA IRRIGATION DISTRICT, and TWIN FALLS CANAL COMPANY,<br><br>**Plaintiffs,**<br><br>RANGEN, INC., CLEAR SPRINGS FOODS, INC., THOUSAND SPRINGS WATER USERS ASSOCIATION, and IDAHO POWER COMPANY,<br><br>**Intervenors,**<br><br>**vs.**<br><br>THE IDAHO DEPARTMENT OF WATER RESOURCES and KARL DREHER, its Director,<br><br>**Defendants,**<br><br>IDAHO GROUND WATER APPROPRIATORS, INC.,<br><br>**Intervenor.** | **Case No.: CV-2005-600**<br><br>**ORDER GRANTING DEFENDANTS' MOTION TO DISMISS** |

A hearing was held in open court on February 26, 2008 on the Defendants' *Second Motion to Dismiss*. Mr. W. Kent Fletcher, attorney for Minidoka Irrigation District, argued for

the Plaintiffs. Mr. Phillip A. Rassier, Deputy Attorney General for the Idaho Department of Water Resources ("IDWR"), argued for the Defendants. The court announced its decision on the record stating that the *Motion to Dismiss* would be granted. This ORDER is entered to memorialize the court's decision in writing and to more fully explain the rationale for the decision.

The facts and procedural history of this case are stated in *American Falls Reservoir District No. 2 vs. Idaho Dept. of Water Resources*, 143 Idaho 862, 154 P.3d 433 (2007) and need not be restated at length here. This case originated from a delivery call filed in 2005 by surface water irrigation entities. The Director of the Department of Water Resources, in response to the call, issued an *Initial Order* requesting additional information from the parties making the call. On April 7, 2005, the director issued a *Relief Order*, which, among other things, ordered groundwater users with junior priority dates to provide replacement water to senior surface water users or face curtailment. The *Relief Order* provided that aggrieved parties could request a hearing within 15 days—otherwise the *Relief Order* would become final. A hearing was timely requested by both ground water and surface water users but before a hearing was held the Plaintiffs filed this action seeking a declaratory judgment challenging, in Count I, the constitutionality of the IDWR Conjunctive Management Rules ("CMR"). Count II alleges that IDWR failed to provide notice and an opportunity to be heard in connection with the replacement water plan set forth in the *Relief Order*. Judge Wood, who was previously assigned to this case, ruled that the CMR were facially unconstitutional. On appeal, the Supreme Court reversed Judge Wood's decision and held that the CMR were facially constitutional and also reaffirming that in challenging a decision of an administrative body, a party is not entitled to seek declaratory relief until administrative remedies have been exhausted unless a party is

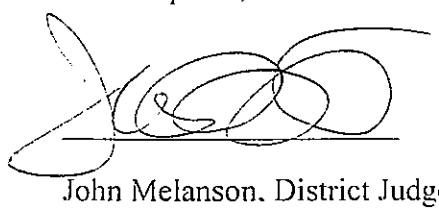
challenging a rule's constitutionality. The Court held that in regards to a constitutional challenge based on an "as applied" analysis, administrative remedies must first be exhausted subject to two exceptions: (1) when the interest of justice so require, and (2) when an agency has acted outside of its authority. The Court ruled that neither exception was at issue in this case. The case was remanded and subsequently assigned to the undersigned judge.

On remand, the Defendants have moved to dismiss Count II. The Plaintiff's assert that administrative remedies have been exhausted with respect to Count II and that it is, therefore, appropriate for the court to exercise jurisdiction. This court rules as follows:

Count II alleges that the plaintiffs did not nave notice and an opportunity to be heard with respect to the replacement plan. It appears, however, that the parties were accorded an opportunity for a hearing but the matter was stayed because of this pending action. The Plaintiffs now have the opportunity to raise the issue before the Director in conjunction with an administrative hearing on the relief order. After the Director makes his ruling and a *Final Order* is entered the matter may then be addressed in accordance with the Administrative Procedures Act. Even if the alleged denial of an opportunity to be heard were to be viewed as an "as applied" constitutional challenge the cause of action does not fit within an exception to the exhaustion of administrative remedies.

Based upon the foregoing, it is hereby **ORDERED** that the Defendants *Motion to Dismiss* is **GRANTED.**

Dated April 7, 2008



John Melanson, District Judge

CERTIFICATE OF SERVICE

I do hereby certify that on 4th day of April, 2007, a true and correct copy of the foregoing document, ORDER GRANTING DEFENDANTS' MOTION TO DISMISS, was served upon the following by U.S. Mail, postage Prepaid:

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