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American Falls Reservoir Dist. No. 2 v. Idaho Dep't of Water Res., 154 P.3d 433 (Idaho 2007)

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American Falls Reservoir Dist. No. 2 v. Idaho Dep't of Water Res., 154 P.3d 433
(Idaho 2007)

storm water runoff and affirmed the ALJ's findings that the marina did not unreasonably increase erosion or interfere with endangered species.

William Garehime

IDAHO

American Falls Reservoir Dist. No. 2 v. Idaho Dep't of Water Res., 154 P.3d 433 (Idaho 2007) (holding that: (1) parties must exhaust administrative remedies before the court analyzes the constitutionality of the Idaho Department of Water Resources' Rules for Conjunctive Management of Surface and Ground Water Resources ("CM Rules"); (2) because the CM rules reference existing Idaho law, the CM Rules' perceived failure to define specific procedural components was not unconstitutional; and (3) the CM Rules were constitutional in addressing partial decrees and treatment of carryover water).

Anticipating shortages, a group of water entities including the American Falls Reservoir District No. 2, A & B Irrigation District, Burley Irrigation District, Minidoka Irrigation District and Twin Falls Canal Company (collectively "American Falls") issued a Delivery Call to the Director of the Idaho Department of Water Resources ("Director") in January 2005, requesting the Director to curtail junior ground-water use during the 2005 irrigation season. Rangen, Inc., Clear Springs Foods, Inc., Thousand Springs Water Users Association, and Idaho Power Company joined the group and collectively represented surface water rights in the Snake River canyon and storage contracts for the Upper Snake River reservoirs.

The Director responded that he would make a determination of injury after receiving inflow forecasts for the Upper Snake River Basin, and also requested additional data for 15 prior irrigation seasons regarding diversions of natural flow, storage water, and ground water; number of water rights holders and corresponding average monthly head gate deliveries; total reservoir storage; amount of water leased or made available to other users; number of acres irrigated by flood or sprinkler; and type of crop planted. American Falls responded with the requested information and also objected to the scope of the request.

The Director issued a Relief Order within two weeks of receiving the inflow forecast and confirmed that shortages were likely for 2005 and would materially injure American Falls. He ordered junior ground-water rights holders to supply replacement water to offset the American Falls supply or risk curtailment. Both American Falls and subsequent intervener Idaho Ground Water Appropriators, Inc. ("IGWA") requested an administrative hearing of the decision.

Prior to the hearing, American Falls filed a declaratory judgment action in district court, claiming that the CM Rules were unconstitu-

tional as applied to the facts of the case, and that the CM Rules were void on their face. American Falls later requested stays and a continuance in its administrative hearing schedule. The district court granted summary judgment in finding the CM Rules facially unconstitutional but for a different reason: lack of constitutionally mandated procedural components. The district court also found that the CM Rule 42 provision allowing for a reasonable amount of carry-over storage of unused water was unconstitutional and held that it injured senior storage water rights protected by the Idaho Constitution and water statutes.

In its analysis, the Supreme Court of Idaho identified seven issues on appeal, four of which relate to water law.

First, the court considered if the district court correctly exercised jurisdiction, given that the separate administrative process had not run its course. The court determined it would review the case only in the context of the CM Rules' constitutionality on their face, not as applied to the facts of the case. In doing so, the court found the district court erred in exercising jurisdiction before the parties exhausted all administrative remedies, citing precedent that a statute may be analyzed as constitutional either "on its face" or "as applied" to the facts of the case; that such challenges are generally mutually exclusive; and that a court should not rule a statute unconstitutional as applied to the facts of a case until all administrative proceedings are complete and a record of facts available.

Second, the court found the district court erred in holding the CM Rules facially unconstitutional due to lack of required procedural components, given that CM Rule 20.02 incorporates by cross-reference existing Idaho statutory and case law. American Falls argued that the CM Rules conflict with existing state law by placing the burden on senior water users to prove material injury, while juniors continue to divert. American Falls also claimed the CM Rules do not specify the standard applied by the Director in considering a call. The district court found the CM Rules failed to provide the necessary tenets and procedures related to a delivery call, including a procedural framework to allocate burdens of proof, definition of evidentiary standards the Director would apply to such a call, legal effect to a partial decree, objective criteria to evaluate such factors, and a framework to process a call for water in a timely manner.

In its facial analysis, the court considered each procedure deemed lacking by the district court. The court found the requested burdens of proof and evidentiary standards available via CM Rule 20.02, which incorporates Idaho law by reference, and so includes such procedures as addressed in existing Idaho statutory and case law. Regarding the issue of timely response to the delivery call, the court determined that, at its face, the CM Rules provide for a timely response; and, further, if the court were performing an "as applied" analysis, the record showed

the Director in this case responded within two weeks of receiving the inflow forecast. The district court also found that the CM Rules do not provide objective standards by which the Director could evaluate criteria in evaluating a delivery call. The court stated, however, that allowing the Director to exercise some discretion and a lack of any standard beyond the direction provided in Rule 42 of general “reasonableness” did not warrant voiding the CM Rules.

Also, contrary to the district court finding that the CM Rules essentially allowed the Director to re-adjudicate a decreed water right upon the delivery call, the court determined the CM Rules in all applications do not, on their face, fail to consider a partial decree. The court acknowledged that an examination of constitutionality “as applied” to the facts of the case would allow for greater factual analysis, which is not available with a facial analysis.

Third, in examining if the “reasonable carryover” provision of the CM Rules is facially unconstitutional, the court stated that to permit excessive carryover of stored water unrelated to need would be unconstitutional. However, allowing the Director some discretion to determine the reasonable necessity of carryover for future need is not facially unconstitutional.

Fourth, because the issue arose generally in the argument regarding the constitutionality of the CM Rules, the court addressed whether exempting domestic and stock water rights from the CM Rules’ administration was unconstitutional and constituted a taking of vested water rights, as concluded by the district court. The court found that the CM Rules prioritize domestic and stock watering ground waters rights and exempt them from delivery calls, but – unlike the state constitution – do not specifically address compensating the senior water right holder if there is any taking. The district court interpreted the CM Rules as allowing domestic users to take senior water rights without compensating the senior user. The court concluded the CM Rules need not include every possible remedy, and that the inclusion of Idaho law by reference allowed for a separate takings claim.

The court separately declined to address the effect of a severability clause presented in CM Rule 4 and also reviewed the district court’s revocation of its order allowing the City of Pocatello to intervene. The court found the city did not meet its burden to show the district court erred in its revocation.

The court reversed the district court’s decision granting partial summary judgment to American Falls and affirmed its revocation of the City of Pocatello’s motion to intervene.

Nicole Bonham Colby