

The Idaho Supreme Court issued its much awaited opinion on the Conjunctive Management Rules on March 5, 2007, unanimously affirming that the rules are constitutional. IGWA's legal counsel, Randy Budge, provides the following brief summary of the opinion written by Justice Linda Trout overturning Judge Wood's district court decision.

1. The District Court has jurisdiction to decide constitutional issues, but generally administrative remedies must first be exhausted. Since they were not here, the Courts are limited to addressing constitutionality on a limited "facial challenge" basis. A full factual record is needed to make that determination on an "as applied" basis.
2. The CM rules do not unconstitutionally shift the burden of proof to the senior user making the call. The rules incorporate Idaho law relative to burdens of proof and those requirements are well established.

The rules don't require the senior to prove material injury just because the rules require the senior to provide injury and other information as a part of making their delivery call.

3. The CM rules are not deficient because they don't specify timeframes for making a response to a delivery call.
4. The CM rules don't lack objective standards. The Director has authority under the rules to make determinations regarding material injury, reasonableness of a diversion, reasonableness of use and full economic development.
5. Responding to delivery calls under the Cm rules do not constitute a re-adjudication of the senior's water rights. Partial decrees need not contain information on how each source physically interacts or affects other rights.
6. Once the initial determination is made that a material injury is occurring, the junior then bears the burden of proving the call would be futile or to challenge in some other way the senior's call.

7. There is no statutory provision for obtaining a decreed right to "carryover" water. Excess carryover without regard to need would be unconstitutional. Reasonable carryover provisions in the rules are valid and can consider that right holders must not waste water or unnecessarily hoard it without putting it to beneficial use.
8. The rules properly exempt domestic and stock water rights. The constitutional preferences among water right users support that conclusion, but compensation may be required when a right is taken by a higher preference.
9. The court did not abuse its discretion in excluding the City of Pocatello.
10. Costs awarded to the appellants, but not attorney fees.