

DEC 15 2016

DEPARTMENT OF  
WATER RESOURCES

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BEFORE THE DEPARTMENT OF WATER RESOURCES  
OF THE STATE OF IDAHO

In the Matter of Mitigation Plan for McCain  
Foods USA, Inc.

AA-GWMA-2016-001

MCCAIN FOODS USA, INC.'S  
PETITION FOR INTERVENTION

COMES NOW McCain Foods USA, Inc. ("McCain") by and through its counsel and hereby files this *Petition for Intervention* ("Petition") contesting the November 2, 2016, *Order Designating the Eastern Snake Plain Aquifer Ground Water Management Area*, ("Order") issued by the Director of the Department of Water Resources.

I. BACKGROUND

On November 2, 2016 the Director issued the *Order*. McCain filed a timely appeal on the *Order* on November 17, 2016. (*Notice of Appeal and Petition for Judicial Review* ("Notice of Appeal") is attached hereto.) McCain and IDWR filed with the District Court a *Joint Motion to Stay Proceedings* on the appeal and the District Court. On December 7, 2016, the District Court issued an *Order Granting the Joint Motion to Stay Proceeding*.

In a letter dated December 6, 2016, the Director sent a letter to McCain and other parties who participated in the public meetings on the issues regarding the Ground Water Management

Area for the ESPA stating that if a party, such as McCain, wanted to participate in the proceedings on the *Order* that a petition to intervene must be filed in accordance with IDAPA 37.01.01.352 (“Rule 352”).<sup>1</sup>

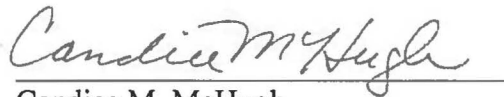
## II. ARGUMENT

Rule 352 states that in order to grant a petition to intervene the moving party’s petition must be timely and the party must have a “direct and substantial interest in any part of the subject matter of the proceeding and does not unduly broaden the issues....” McCain’s petition is timely, as it is before the pre-hearing conference which is set for January 12, 2017. McCain has a direct and substantial interest in the proceeding because McCain owns water rights that fall within the area designated as a ground water management area, is not a member of a Ground Water District and has concerns on whether or not mitigation for its own water use and rights will be allowed if the ground water management area is designated and how such designation may impact the ability to self-mitigate. (See too Notice of Appeal).

## III. CONCLUSION

Based on the foregoing, McCain requests that this Petition for Intervention be granted.

DATED this 15th day of December, 2016.

  
Candice M. McHugh  
McHugh Bromley, PLLC  
Attorneys for McCain Foods USA, Inc.

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<sup>1</sup> Alternatively this is a Petition contesting the *Order*. The Director published notice in various newspapers around the state with various ending dates for publication that the *Order* had been issued and states that if a party wants to contest the *Order* the party must do so within 15 days of receiving actual notice of the order. The publishing of the notice after the fact and after petitions for reconsideration were filed, after the hearing was granted and after McCain’s appeal was filed confuses the process. The reasons for contesting the *Order* are set forth in the attached Notice of Appeal which is incorporated herein.

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 15th day of December, 2016, I served a true and correct copy of the foregoing document on the person(s) whose names and addresses appear below by the method indicated:

DIRECTOR GARY SPACKMAN GARRICK L. BAXTER IDAHO DEPARTMENT OF WATER RESOURCES PO BOX 83720 BOISE, ID 83720 FAX: 208-287-6700 <a href="mailto:garrick.baxter@idwr.idaho.gov">garrick.baxter@idwr.idaho.gov</a>	<input type="checkbox"/> Via US Mail, Postage Paid <input type="checkbox"/> Via Facsimile - <input checked="" type="checkbox"/> Hand-Delivered - Court Folder <input type="checkbox"/> Other _____
SCOTT L CAMPBELL MATT MCGEE SARA MCCORMACK MOFFATT THOMAS PO BOX 829 BOISE ID 83701 <a href="mailto:slc@moffatt.com">slc@moffatt.com</a> <a href="mailto:mjm@moffatt.com">mjm@moffatt.com</a> <a href="mailto:sam@moffatt.com">sam@moffatt.com</a>	<input type="checkbox"/> Via US Mail, Postage Paid <input type="checkbox"/> Via Facsimile - <input type="checkbox"/> Hand-Delivered - Court Folder <input checked="" type="checkbox"/> Email
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