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Attorney for Amalgamated Sugar Company

**BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO**

**IN THE MATTER OF DISTRIBUTION
OF WATER TO VARIOUS WATER RIGHTS
HELD BY OR FOR THE BENEFIT OF A&B
IRRIGATION DISTRICT, AMERICAN
FALLS RESERVOIR DISTRICT #2,
BURLEY IRRIGATION DISTRICT,
MILNER IRRIGATION DISTRICT,
MINIDOKA IRRIGATION
DISTRICT, NORTH SIDE CANAL
COMPANY, AND TWIN FALLS CANAL
COMPANY**

**Docket No. CM-DC-2010-001
AMALGAMATED SUGAR
COMPANY'S REQUEST FOR
HEARING, OBJECTION,
IDENTIFICATION OF ISSUES
AND NOTICE OF MITIGATION**

REQUEST FOR HEARING

Pursuant to Idaho Code § 42-1701(A)(3), Amalgamated Sugar Company (“Amalgamated”) through its undersigned attorney, requests a hearing on the Department’s *Fifth Amended Methodology Order Regarding Methodology For Determining Material Injury to Reasonable In-Season Demand And Reasonable Carryover* and *Final Order Regarding April 2023 Forecast Supply* (“2023 As-Applied Order”) both issued April 21, 2023.

OBJECTION TO ORDER

Amalgamated objects to the *Fifth Amended Order* and the 2023 As-Applied Order's implementation this upcoming season for the reasons set forth below which it also identifies as issues for hearing. Amalgamated reserves the right to revise the issues as more information becomes available.

STATEMENT OF ISSUES FOR HEARING

Among the issues the Amalgamated has identified for hearing are:

- a) IDWR's new reliance on transient modeling;
- b) IDWR's failure to consider the Twin Falls Canal Company's increase in diversions over the last twenty years;
- d) IDWR's failure to consider changes in the efficiency of the SWC's operations;
- e) IDWR's failure to consider all sources of supply available to the SWC;
- f) IDWR's use of 2018 as the new baseline year; and
- g) IDWR's violation of Amalgamated's due process rights by not providing it actual notice of the order and requisite deadlines, and even if it was deemed that it was given "notice" because it shared an attorney with the Coalition of Cities, by giving it less than 10 business days to provide a mitigation solution after a wholesale change in methodology, by depriving it of the ability to develop its own mitigation plan to protect its water rights, by requiring compliance with a deadline to avoid curtailment without actual notice of the deadline and in a non-drought year, by setting the hearing without regard to the time required for discovery and without consideration of the existing obligations of the parties, their legal representatives and consultants.

NOTICE OF MITIGATION

Pursuant to the *Final Order Regarding April 2023 Forecast Supply* (“2023 As-Applied Order”) issued April 21, 2023 demand that:

On or before May 5, 2023, ground water users holding consumptive water rights bearing priority dates junior to December 30, 1953, within the Eastern Snake Plain Aquifer area of common ground water supply shall establish, to the satisfaction of the Director, that they can mitigate for their proportionate share of the predicted DS of 75,200 acre-feet in accordance with an approved mitigation plan.

Amalgamated submits this *Notice of Mitigation*. Amalgamated owns and uses water rights junior to the December 30, 1953, date. On Tuesday, May 2, 2023 Amalgamated petitioned Magic Valley Ground Water District (“MVGWD”) to become a member of MVGWD and to be covered by its approved mitigation plan. Counsel for Amalgamated was informed by the Chairman of MVGWD, Dean Stevenson, that the letter had been received, that he had spoken to the board members and that they will take up Amalgamated petition at its Tuesday, May 9, 2023 meeting. Chairman Stevenson also indicated to counsel for Amalgamated that he expected the petition to be approved on Tuesday and that MVGWD would send a letter to IDWR and Amalgamated’s counsel to that effect next week. Aff. of McHugh filed herewith.

Amalgamated requests an order, or some other applicable document, from IDWR that it has met the May 5, 2023 deadline and established to the “satisfaction of the Director, that they can mitigation for their proportionate share ... with an approved mitigation plan” by becoming members of MVGWD.

Submitted this 4th day of May, 2023

MCHUGH BROMLEY, PLLC

/s/ Candice M. McHugh
Candice M. McHugh
Attorney for Amalgamated

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 4th day of May, 2023, the above and foregoing, was served by email to the following:

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/s/ Candice M. McHugh
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