

CANDICE MCHUGH
IDAHO STATE BAR NO. 5908
MCHUGH BROMLEY, PLLC
Attorneys at Law
380 S. 4th St., Ste. 103
Boise, ID 83702
Telephone: (208) 287-0991
Facsimile: (208) 287-0864
cmchugh@mchughbromley.com

Attorney for McCain Foods USA, Inc.

**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
MCCAIN FOODS USA, INC.'S
NOTICE OF MITIGATION**

REQUEST FOR HEARING

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.

McCain Foods USA, Inc., (“McCain”) by and through its attorney of record, submits this *Notice of Mitigation*. McCain owns and uses water rights junior to the December 30, 1953,

date. On Tuesday, May 2, 2023 McCain petitioned Southwest Irrigation District (“SWID”) to become a member of SWID and to be covered by its approved mitigation plan. Counsel for McCain was informed by letter on May 3, 2023, that McCain has been approved to join SWID as a member and that McCain will be covered under its mitigation plan. A copy of the letter is attached hereto as Exhibit A and incorporated herein. SWID also indicated that a letter was sent to IDWR informing IDWR of this fact.

McCain requests an order, or some other applicable document, from IDWR that it has established to the “satisfaction of the Director, that they can mitigation for their proportionate share ... with an approved mitigation plan” by becoming members of SWID.

Submitted this 4th day of May, 2023

MCHUGH BROMLEY, PLLC

/s/ Candice M. McHugh

Candice M. McHugh
Attorney for McCain

CERTIFICATE OF SERVICE

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

Idaho Dept. of Water Res.
file@idwr.idaho.gov
gbaxter@idwr.idaho.gov

Kathleen Marion Carr
US Dept. Interior 960 Broadway Ste 400
Boise, ID 83706
kathleenmarion.carr@sol.doi.gov

John K. Simpson
MARTEN LAW LLP
P.O. Box 2139 Boise, ID 83701-2139
jsimpson@martenlaw.com

David W. Gehlert
Natural Resources Section Environment and
Natural Resources Division U.S. Department
of Justice
999 18th St., South Terrace, Suite 370
Denver, CO 80202
david.gehlert@usdoj.gov

Travis L. Thompson
MARTEN LAW LLP P.O. Box 63
Twin Falls, ID 83303-0063
tthompson@martenlaw.com
jnielsen@martenlaw.com

Matt Howard
US Bureau of Reclamation
1150 N Curtis Road Boise, ID 83706-1234
mhoward@usbr.gov

W. Kent Fletcher
FLETCHER LAW OFFICE
P.O. Box 248 Burley, ID 83318
wkf@pmt.org

Sarah A Klahn
Somach Simmons & Dunn
1155 Canyon Blvd, Ste. 110 Boulder, CO
80302 sklahn@somachlaw.com
dthompson@somachlaw.com

Thomas J. Budge
Elisheva M. Patterson
RACINE OLSON
P.O. Box 1391 Pocatello, ID 83204-1391
tj@racineolson.com
elisheva@racineolson.com

Rich Diehl
City of Pocatello
P.O. Box 4169 Pocatello, ID 83205
rdiehl@pocatello.us

Candice McHugh
MCHUGH BROMLEY, PLLC
380 South 4th Street, Suite 103 Boise, ID
83702 cbromley@mchughbromley.com
cmchugh@mchughbromley.com

Robert L. Harris
HOLDEN, KIDWELL, HAHN & CRAPO,
PLLC
P.O. Box 50130 Idaho Falls, ID 83405
rharris@holdenlegal.com

Robert E. Williams
WILLIAMS, MESERVY, & LOTHSPREICH,
LLP P.O. Box 168 Jerome, ID 83338
rewilliams@wmlattys.com

Skyler C. Johns
Nathan M. Olsen Steven L. Taggart
OLSEN TAGGART PLLC P.O. Box 3005
Idaho Falls, ID 83403
sjohns@olsentaggart.com
nolsen@olsentaggart.com
staggart@olsentaggart.com

Randall D. Fife City
Attorney, City of Idaho Falls
P.O. Box 50220 Idaho Falls, ID 83405
rfife@idahofallsidaho.gov

Corey Skinner
IDWR—Southern Region
1341 Fillmore St., Ste. 200 Twin Falls, ID
83301-3033
corey.skinner@idwr.idaho.gov

Tony Olenichak IDWR—Eastern Region
900 N. Skyline Drive, Ste. A Idaho Falls, ID
83402
Tony.Olenichak@idwr.idaho.gov

William A. Parsons
PARSONS SMITH & STONE
P.O. Box 910 Burley, ID 83318
wparsons@pmt.org

/s/ Candice M. McHugh
Candice M. McHugh



PARSONS, LOVELAND, SHIRLEY & LINDSTROM

—LLP—

ATTORNEYS AT LAW
137 WEST 13TH STREET
P.O. BOX 910
BURLEY, IDAHO 83318
TELEPHONE (208) 878-8382
www.pssslaw.com

WILLIAM A. PARSONS
LANCE A. LOVELAND
DAVID F. SHIRLEY

SCOTT B. LINDSTROM
RHETT M. MILLER

May 3, 2023

Candice M. McHugh
380 S. 4th Street, Ste 103
Boise, Idaho 83702
cmchugh@mchughbromley.com

RE: Petition to Join Southwest Irrigation District for Mitigation

Dear Candice:

Pursuant to your request of May 2, 2023, the Board approved the mitigation for the following water rights:

| WaterRight | Priority Date | Owner | CFS | Volume | Combined Limit | WaterUse | Condition |
|------------|---------------|---------------|------|---------|----------------|------------|-----------|
| 45-2747 | 3/15/1960 | McCain Foods* | 4.00 | 2062.80 | - | Industrial | - |
| 45-2748 | 3/6/1961 | McCain Foods | 0.60 | 309.40 | - | Industrial | - |
| 45-2758 | 3/15/1960 | McCain Foods | 2.08 | 1072.70 | - | Commercial | - |
| 45-13970 | 9/1/1957 | McCain Foods | 2.66 | 1371.80 | - | Industrial | - |
| Totals: | | | 9.34 | 4816.70 | | | |

* McCain Foods USA Inc.

Southwest charges \$900 per CFS per year billed in arrears.

It is the policy of Southwest Irrigation District to charge new participants in mitigation for the previous three years. In keeping with that procedure, the back fees for McCains would be \$25,218.00. It may be paid over three years if necessary.

The 2023 assessment will be billed in the spring of 2024.

We have forwarded a letter to the Idaho Department of Water Resources indicating the

approval of McCain Foods USA Inc. for mitigation.

I have sent a copy of this letter to you by email and I placed one in regular mail to your office.

Very truly yours,

**PARSONS, LOVELAND, SHIRLEY &
LINDSTROM, LLP**

A handwritten signature in black ink, appearing to read "William A. Parsons". The signature is written in a cursive style with a large initial "W".

William A. Parsons
wparsons@pmt.org