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*Attorneys for the Cities of Bliss, Burley,
Carey, Declo, Dietrich, Gooding, Hazelton, Heyburn,
Jerome, Paul, Richfield, Rupert,
Shoshone, and Wendell, and
McCain Foods USA, Inc.*

**CITY OF POCATELLO, CITY OF IDAHO
FALL, CITY OF BLISS, CITY OF BURLEY,
CITY OF CAREY, CITY OF DECLO, CITY
OF DIETRICH, CITY OF GOODING, CITY
OF HAZELTON, CITY OF HEYBURN,
CITY OF JEROME, CITY OF PAUL, CITY
OF RICHFIELD, CITY OF RUPERT, CITY
OF SHOSHONE, CITY OF WENDELL,
BINGHAM GROUND WATER DISTRICT,
BONNEVILLE-JEFFERSON GROUND
WATER DISTRICT, and MCCAIN FOODS
USA, INC.**

Petitioners,

vs.

**IDAHO WATER RESOURCES BOARD,
DEPARTMENT OF WATER RESOURCES,
and GARY SPACKMAN, in his capacity as
Director of Department of Water Resources,**

Respondents.

Case No. _____

IDWR Docket No. CM-DC-2010-001

**DECLARATION OF CANDICE M.
MCHUGH**

**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**

I, Candice McHugh hereby declare and state as follows:

1. I am over the age of 18 and state the following based upon my own personal knowledge.
2. I am one of two owners of McHugh Bromley, PLLC, the law firm that represents the cities that make up the Coalition of Cities as their interests relate to the on-going Surface Water Coalition (“SWC”) Delivery Call and mitigation thereof. McHugh Bromley, PLLC also represents Amalgamated Sugar Company (“Amalgamated”) and McCain Foods USA, Inc. (“McCain”).
3. My clients, the Cities of Bliss, Burley, Carey, Declo, Dietrich, Gooding, Hazelton, Heyburn, Jerome, Paul, Richfield, Rupert, Shoshone, and Wendell (the “Coalition of Ciites”) are parties to the underlying administrative action and thus, as their attorney, I received notice of the Director’s *Fifth Amended Final Order Regarding Methodology for Determining Material Injury to Reasonable In-Season Demand and Reasonable Carryover* (“*Fifth Methodology*”).

Order”); and *Final Order Regarding April 2023 Forecast Supply (Methodology Steps 1-3)* (“*As-Applied Order*”). The As-Applied Order states:

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. If a junior ground water user cannot 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, the Director will issue an order curtailing the junior-priority ground water user.

4. Attached hereto as Exhibit A is a true and correct copy of a letter dated May 1, 2023 to McCain at its address in Burley, Idaho. The letter was received by McCain in Burley, Idaho on May 12, 2023. Exhibit A does not advise McCain of the May 5, 2023 deadline above. Exhibit A does not specify water right numbers that are subject to curtailment.

5. McCain has no water rights senior to December 30, 1953 for use at its Burley facility.

6. Exhibit A states:

Holders of ground water rights potentially subject to curtailment may also submit a proposed mitigation plan to the Director in accordance with Conjunctive Management Rule 43.1 See IDAPA 37.03.11.043. However, please be aware the approval process for a mitigation plan is time-consuming **A proposed mitigation plan submitted now may not be approved in time for the 2023 irrigation season.** Upon receipt of a proposed mitigation plan, the Director will publish notice for two successive weeks, after which ten days will be allowed for the filing of protests. The Director may hold a hearing if necessary to determine whether a proposed mitigation plan will mitigate injury to the SWC caused by diversions of ground water authorized by junior priority ground water rights. If the proposed mitigation plan is protested, the Director will hold a hearing. **Please be advised that a curtailment order is not stayed pending evaluation of a mitigation plan.**

(emphasis added)

7. McCain was not a party to the underlying administrative action and thus, did not receive any notice of the May 5, 2023 deadline. It was only because I had other clients that I was made

aware of this deadline and its impact to McCain. On behalf of McCain I filed an objection to Fifth Amended Order and the As-Applied Order and requested a hearing.

8. McCain had no option but to petition to join Southwest Irrigation District in order to protect its water use because of the May 5, 2023 deadline in the As-Applied Order. I filed a Notice of Mitigation on McCain's behalf before the May 5, 2023 deadline.

9. As of the date of this declaration, I have received no response from IDWR to the Notice of Mitigation.

I declare under penalty of perjury under the laws of the State of Idaho that the foregoing is true and correct.

Dated this 19th, day of May, 2023.

MCHUGH BROMLEY, PLLC



Candice M. McHugh

Attorney for the Coalition of Cities and McCain



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Governor Brad Little

Director Gary Spackman

May 1, 2023

RE: Notice of Possible Curtailment of Ground Water Rights with Priority Dates Junior to December 30, 1953 - Surface Water Coalition Delivery Call

Dear Water Right Holder,

You are receiving this letter because, according to the records of the Idaho Department of Water Resources ("Department"), you are the holder of one or more water rights authorizing diversion of ground water from the Eastern Snake Plain Aquifer Area of Common Ground Water Supply ("ESPA") that are not covered by an approved and effectively operating mitigation plan. Because your water right(s) are not currently covered by an approved and effectively operating mitigation plan, **your water right(s) may be subject to curtailment this 2023 irrigation season.**

On April 21, 2023, the Director of the Department issued the *Final Order Regarding April 2023 Forecast Supply (Methodology Steps 1-3)* ("As-Applied Order"). The As-Applied Order predicts a shortfall in the water supply for senior priority Snake River water rights during the 2023 irrigation season, which will result in mitigation requirements or curtailment for ground water rights with priority dates junior to (later than) **December 30, 1953.**

The Department scheduled a hearing for the parties to the As-Applied Order on **June 6–10, 2023.** After the hearing the Director will decide whether to issue a curtailment order. If the Director issues a curtailment order, ground water rights junior to December 30, 1953, could be subject to curtailment unless the holders of junior priority ground water rights mitigate for ground water diverted pursuant to an approved mitigation plan.

Holders of ground water rights affected by a curtailment order may participate in an approved mitigation plan. See Idaho Code § 42-5259. If you are already a member of a ground water district, please contact and work with the district to ensure the district's records are up to date. If you are not a member of a ground water district, you may want to contact the nearest ground water district to inquire if the district will allow you to join.

Holders of ground water rights potentially subject to curtailment may also submit a proposed mitigation plan to the Director in accordance with Conjunctive Management Rule 43.¹ See IDAPA 37.03.11.043. However, please be aware the approval process for a mitigation plan is time-consuming. A proposed mitigation plan submitted now may not be approved in time for the 2023 irrigation season. Upon receipt of a proposed mitigation plan, the Director will publish notice for two successive weeks, after which ten days will be allowed for the filing of protests. The Director may hold a hearing if necessary to determine whether a proposed mitigation plan will mitigate injury to the SWC caused by diversions of ground water authorized by junior priority ground water rights. If the proposed mitigation plan is protested, the Director will hold a hearing. Please be advised that a curtailment order is not stayed pending evaluation of a mitigation plan.

¹ For example, a copy of the proposed mitigation plan submitted by the SWC & IGWA can be found here: <https://idwr.idaho.gov/wp-content/uploads/sites/2/legal/CM-MP-2016-001/CM-MP-2016-001-20160309-SWCs-and-IGWAs-Stipulated-Mitigation-Plan-and-Request-for-Order.pdf>

Information regarding the ongoing status of this matter may be found under the Current Topics section of the Department's website at: <https://idwr.idaho.gov/> If you have questions concerning this notice, please contact the Department's State Office in Boise at 208-287-4800, or the water district watermaster in your area who regulates ground water within the ESPA and copied below. Water district boundaries can be found on the web at <https://idwr.idaho.gov/water-rights/water-districts/map/>, and Watermaster contact information can be found on the web at <https://research.idwr.idaho.gov/files/ExternalReports/wdcontactsrpt.pdf>

Respectfully,

Gary Spackman
GARY SPACKMAN
Director

- c. Blake Jordan, Watermaster, Water Districts 100, 110 and 120
- Brian Ragan, Watermaster, Water District 130
- Jaxon Higgs, Watermaster, Water District 140
- Greg Shenton, Watermaster, Water District 31
- Preston Marcroft, Watermaster, Water District 34

