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Department of Water Resources
Southern Region

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	**IDAHO DAIRYMEN'S ASSOCIATION'S PETITION TO INTERVENE**

The Idaho Dairymen's Association (the "Association") is an Idaho non-profit cooperative association, duly organized and existing under the provisions of Chapter 3, Title 30, Idaho Code. In addition to other purposes which are not relevant to this action, the Association was formed to promote the dairy interests of and in the state of Idaho, and to take such action as the Association deems necessary or advisable to stabilize and protect the dairy industry of Idaho.

The regular members of the Association consists of every person, firm, corporation, or association current in their payment of the Idaho State Tax on the production of milk. This group includes every dairy owner/operator located in Bingham, Blaine, Bonneville, Gooding, Jefferson, Jerome, Lincoln, and Minidoka counties, and virtually all dairy owners / operators in Idaho, who sell milk to dairy processors for ultimate human consumption.

Pursuant to IDAPA 37.01.01.2 Rules 200, 230, 300, 301, 350, and 352, this petition to intervene is filed by the Association on behalf of all of the named members of the Association, as set forth in Exhibit A hereto. The grounds for the petition are as follows:

1. Members of the Association own, use, and rely upon water rights for ground water subject to potential curtailment within the geographic areas identified in the Order issued in this proceeding on February 14, 2005.

2. Idaho Code section 67-5240 requires a hearing before the Director may order curtailment of water rights.

3. Idaho Code section 42-237C requires a hearing when any person owning a water right for surface water use believes that the use of such right is being adversely affected by one or more users of ground water rights of later priority.

4. The due process requirements of the Idaho and United States Constitutions require a hearing before a neutral decision maker before property rights are diminished or taken and ground water rights subject to the Order fall within this category of property rights.

5. The exercise of water rights of the members of the Association who would be impacted by the Order does not constitute a measurable impact upon the water resource which

could affect the water rights of members of the Surface Water Coalition.[1] Therefore, any curtailment Order would unjustifiably discriminate against the holders of water rights for dairy operations.

6. The Association represents the interests of dairy operators who have vested water rights which will be impacted by any curtailment order in this proceeding. Therefore, the Association has standing to assert and protect the real property interests of the members of the Association in this proceeding. Intervention into this proceeding is, therefore, appropriate under the Idaho Department of Water Resources' Rules of Practice and Procedure. The Association only became aware of the impact of this proceeding upon its members after the issuance of the Order dated February 14, 2005.

7. The Director of the Idaho Department of Water Resources, by virtue of the consequences of enforcement of any curtailment order impacting dairy operations, will be causing the termination of water delivery to approximately 125,000 dairy animals. Termination of water use on dairies will cause the suffering and rapid death of all of these animals. Consequently, the Director will become an accomplice, accessory, or the de-facto violator of Chapter 35 of Title 25, concerning cruelty to animals

8. The Association files this petition at least fourteen (14) days before the date set for formal hearing and no pre-hearing conference has been scheduled. This petition to intervene is timely under the standards of IDAPA 37.01.01.352.

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[1] The identified members of the Surface Water Coalition are: 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.

RELIEF REQUESTED

The Association requests that this petition be granted and that the Association be accorded full intervenor status.

DATED this 17th day of February, 2005.

MOFFATT, THOMAS, BARRETT, ROCK & FIELDS, CHARTERED

By _____
Scott L. Campbell – Of the Firm
Attorneys for Idaho Dairymen's Association

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 17th day of February, 2005, I caused a true and correct copy of the foregoing **IDAHO DAIRYMEN'S ASSOCIATION'S PETITION TO INTERVENE** to be served by the method indicated below, and addressed to the following:

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