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DEPT OF WATER RESOURCES
SOUTHERN REGION

John K. Simpson, ISB #4242
Travis L. Thompson, ISB #6168
Paul L. Arrington, ISB #7198
BARKER ROSHOLT & SIMPSON LLP
195 River Vista Place, Suite 204
Twin Falls, Idaho 83301-3029
Telephone: (208) 733-0700
Facsimile: (208) 735-2444

W. Kent Fletcher, ISB #2248
FLETCHER LAW OFFICE
P.O. Box 248
Burley, Idaho 83318
Telephone: (208) 678-3250
Facsimile: (208) 878-2548

*Attorneys for American Falls Reservoir
District #2 and Minidoka Irrigation District*

*Attorneys for A&B Irrigation District, Burley
Irrigation District, Milner Irrigation District,
North Side Canal Company, and Twin Falls
Canal Company*

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

IN THE MATTER OF THE MITIGATION
PLAN FILED BY MCCAIN FOODS USA,
INC.

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Docket No.: CM-MP-2015-002

**SURFACE WATER COALITION'S
JOINT PROTEST**

COME NOW, 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, (hereinafter "Surface Water Coalition" or "SWC"), by and
through their attorneys of record, Barker Rosholt & Simpson, LLP, and Fletcher Law Office and
hereby file this *Protest* to McCain Foods USA, Inc. ("McCain") *Rule 43 Mitigation Plan for
Pre-Approved Mitigation Activities* ("Mitigation Plan"), filed with the Idaho Department of

Water Resources (“Department”) on April 23, 2015 pursuant to the provisions of Conjunctive Management Rule 43, IDWR Procedural Rule 250 and other applicable law.

The SWC is authorized to oppose the Mitigation Plan due to the fact that the Plan attempts to mitigate injury to the SWC’s senior surface water rights caused by McCain’s junior priority ground water rights. The initial bases for the SWC’s *Protest* are as follows:

1. The Mitigation Plan does not identify, with particularity, the water rights benefiting from the Mitigation Plan.
2. The Mitigation Plan does not identify, with particularity, any circumstances or limitations on the availability of the water supply proposed to be used for mitigation.
3. To the best of the SWC’s knowledge McCain does not hold the right to use any storage water in the Upper Snake River Reservoir system. Accordingly, McCain does not have available storage to provide to the SWC for direct mitigation in any given year.
4. McCain’s proposed activities, including reduced pumping, recharge, and others are not defined with any particularity, including location, water rights involved, and the estimated benefits that might accrue from such projects.
5. The Mitigation Plan does not identify that it will provide replacement water, at the time and place required by the SWC’s senior priority surface water rights, sufficient to offset the depletive effect of McCain’s ground water withdrawals on the Snake River at such time and place necessary to satisfy the SWC’s senior priority water rights.
6. The Mitigation Plan contains no “contingency provisions to assure protection of the senior-priority right in the event the mitigation water source becomes unavailable” and therefore violates Rule 43.03.c.

7. The Mitigation Plan does not identify how injury to the SWC's right to reasonable carryover storage will be addressed.

8. In general, the Mitigation Plan is vague and ambiguous, does not provide for adequate mitigation, provides no certainty that the mitigation water will be delivered to prevent injury, does not provide a reliable source of replacement water, could result in the diversion and use of ground water at a rate beyond the reasonably anticipated average rate of future natural recharge and otherwise fails to adequately mitigate for injury caused by McCain's junior priority ground water rights.

9. For such other and further reasons as may be discovered or offered at the hearing on this matter.

DATED this 15th day of June, 2015.

BARKER ROSHOLT & SIMPSON LLP



Travis L. Thompson
Paul L. Arrington

*Attorneys for A&B Irrigation District,
Burley Irrigation District, Twin Falls Canal
Company, North Side Canal Company, and
Milner Irrigation District*

FLETCHER LAW OFFICE



W. Kent Fletcher

*Attorneys for American Falls
Reservoir District #2 and Minidoka
Irrigation District*

CERTIFICATE OF SERVICE

I hereby certify that on this 1st day of June, 2015, I served a true and correct copy of the foregoing **SURFACE WATER COALITION'S JOINT PROTEST** by email and by depositing same in the United States mail, postage prepaid, addressed to the following:

Candice McHugh
Chris Bromley
McHugh Bromley PLLC
380 S. 4th St., Suite 103
Boise, Idaho 83702
cmchugh@mchughbromley.com
cbromley@mchughbromley.com



Travis L. Thompson

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Fee: \$25.00 #175 -
Receipt No. 5034808 + 5034809
Receipt by: ADM
Date Received: 6-1-2015