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DEPARTMENT OF
WATER RESOURCES

Attorney for Grindstone Butte Mutual Canal Company, MAN Farms, LLC and ATN Holdings, LLC

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

IN THE MATTER OF THE CREATION OF WATER DISTRICT NO. 2, SNAKE RIVER FROM MILNER DAM TO MURPHY GAGE BELOW SWAN FALLS DAM	))))	**EXCEPTIONS TO PRELIMINARY ORDER**

Grindstone Butte Mutual Canal Company, MAN Farms, LLC and ATN Holdings, LLC ("Petitioners") submit these exceptions in opposition to the May 1, 2012 Preliminary Order in this matter. Petitioners object to the creation of Water District 02 and request that the Director rescind the preliminary order creating it. Petitioners are joined by at least 25 other water users in opposing the creation of Water District 02.

The public record shows that the Department, along with the Attorney General's Office and Idaho Power, decided to create Water District 02 in the fall of 2011 prior to initiating the public notice and comment process for the district in early 2012. Consequently, a typical exceptions brief that gets at specific perceived errors made by the hearing officer seems of little utility here where there has not been a contested case and the decision at issue has already been vetted through the Department. Instead, Petitioners will provide further explanation to

supplement their previous comments and briefing for why they do not want to be in a water district and why the Department can avoid creating one at this time while still achieving the Department's stated administrative goals for the reach.

THE DEPARTMENT IS ASKING WATER USERS TO SHOULDER A SIGNIFICANT REGULATORY BURDEN WITHOUT A COMMENSURATE REGULATORY BENEFIT.

Petitioners do not want to be in a water district. They do not want to participate in an advisory committee, a steering committee or to attend annual meetings. They do not want to be under the jurisdiction of a water master. And they do not want to pay tens of thousands of dollars for equipment and annual assessments to fund a water measurement program that can be accomplished without creating a water district and without forcing water users into a compulsory regulatory program. And they certainly do not want to be subjected to all of the above if the Department can administer the reach of the Snake without a district or the proposed meter measuring requirements. Petitioners believe the Department can administer the reach without creating a district and therefore oppose the imposition of a new government regulatory program on them.

It is clear that the plan to create Water District 02 is centered on the protection of the State's and Idaho Power's interests in the State's minimum stream flow rights at the Murphy Gage as memorialized in the Swan Falls agreement. As the Department's public record on this matter makes clear, neither the Department nor Idaho Power currently know whether the minimum flow rights are being filled or not because they lack understanding about how reservoir operations affect the reach. Indeed, there are no existing gages measuring the inflows from the Snake and Bruneau Rivers into CJ Strike Reservoir, a 247,000 acre foot reservoir that has major effects on the Snake River flows in the reach. Accordingly, neither the Department nor Idaho Power can accurately tell how the power company's operation of this large storage facility alters

the natural flow of the river. The same is true with regard to the dams at Lower Salmon Falls and Bliss.

The answer to the lack of information on Snake River flows, however, is not to force hundreds of users into a water district. That is an inefficient and disproportionate answer to solving the current problem of a lack of information. A more efficient way to get at the current problem is to install new gages on the river upstream of the reservoirs. The information from these gages will provide the necessary but currently unavailable information about the Snake River flows in the District 02 reach and will give an accurate picture of whether the State's minimum flow rights are being met. The State, Idaho Power and/or the Bureau of Reclamation—not the water users—should fund the installation and measurement of these gages. Once this information is in hand, the Department can assess whether a district is necessary.

In his order denying the petitions for reconsideration, the Hearing Officer states that measuring the diversions from the river is also an important component of understanding the flows in the reach. Petitioners believe the Department can reliably estimate existing diversions in its effort to understand the flows in the reach and their impact on the minimum flow rights at Murphy. Aided by the recent adjudication of the Basin 02 reach of the Snake, the Department knows the locations of the diversions on the river and the acreage being irrigated through these diversions. Based on irrigated acreage, the Department can readily estimate diversion rates and volumes from the river. To the extent more precision is needed for certain diversions, water users can supply diversion information through power records coupled to pumping equipment specifications. Petitioners would willingly participate in this type of information gathering and, in fact, have done so in the past. Other users in the reach have as well. Petitioners believe other

users would again participate in this type of information exchange in lieu of having to participate in a water district.

CONCLUSION

Nearly 30 water users within the proposed district have come out in public opposition to it. By contrast, not a single water user has expressed public support for the district. Absent a specifically identified and pressing water administration problem, the users to be regulated have cause to question why they should be asked to fund this new level of regulatory oversight.

The Department does not need to create a water district and compel expensive and burdensome measuring requirements in order to gain an understanding of the Snake River flows in Basin 02 and to assess whether water right administration is necessary to protect the State's minimum flows. The Department has existing tools available that will create far less burden on the water users by which it can collect information and administer the reach. Accordingly, Petitioners ask the Director to rescind the order creating the district and then reassess the need for the district at a later date after additional river gages are installed and the data analyzed to gain more complete understanding of the flows in water basin 02 and whether there is a need for curtailments in order to satisfy the State's instream flow rights.

DATED June 21, 2012.

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By: _____
John M. Marshall