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MAY 18 2012
DEPARTMENT OF
WATER RESOURCES

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Boise, Idaho 83702
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E-Mail: Dana@IdahoWaterLaw.com

Attorney for Flying H Farms Partnership and
Jeff C. and Jackie Harper

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

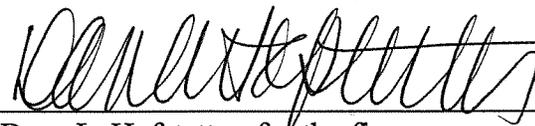
IN THE MATTER OF THE CREATION OF)
WATER DISTRICT NO. 2, SNAKE RIVER)
FROM MILNER DAM TO MURPHY)
GAGE BELOW SWAN FALLS DAM)
_____)
_____)

PETITION FOR
RECONSIDERATION

Petitioners, Flying H Farms Partnership and Jeff C. and Jackie Harper, by and through their counsel of record, Dana L. Hofstetter of Hofstetter Law Office, LLC, respectfully file this *Petition for Reconsideration* requesting reconsideration of the May 1, 2012, Preliminary Order in this matter. Petitioners respectfully request that the Department reconsider whether the establishment of the Water District is necessary at this time.

DATED this 18th day of May, 2012.

HOFSTETTER LAW OFFICE, LLC

By 
Dana L. Hofstetter, for the firm
Attorney for Flying H Farms Partnership
and Jeff C. and Jackie Harper

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 18th day of May, 2012, I caused a true copy of the foregoing **PETITION FOR RECONSIDERATION** to be served by the method(s) indicated on the following:

Original to:

Director
Idaho Department of Water Resources
The Idaho Water Center
322 East Front Street
Boise, Idaho 83702
 U.S. Mail Fed Ex Hand Fax

Copy to:

Jeff Peppersack
Idaho Department of Water Resources
The Idaho Water Center
322 East Front Street
Boise, Idaho 83702
 U.S. Mail Fed Ex Hand Fax


DANA L. HOFSTETTER

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MAY 18 2012

DEPARTMENT OF
WATER RESOURCES

John M. Marshall
John Marshall Law PLLC
575 W. Bannock Street, Suite B
Boise, Idaho 83702
Telephone: 208-991-2701
Facsimile: 208-906-8043
john@jmarshalllaw.com

*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) PETITION FOR
FROM MILNER DAM TO MURPHY GAGE) RECONSIDERATION OF
BELOW SWAN FALLS DAM) PRELIMINARY ORDER**

Grindstone Butte Mutual Canal Company, MAN Farms, LLC and ATN Holdings, LLC (“Petitioners”) seek reconsideration of the May 1, 2012 Preliminary Order in this matter. Petitioners specifically ask that the Department rescind the order and delay its decision to create Water District 02 in light of the significant burdens that the district will impose upon the water users in the affected river reach. Petitioners respectfully request that the Department thoroughly analyze the data available to it through existing river gages for at least 3 years and then determine whether a district and the associated costs to users is necessary. Alternatively, and at a minimum, Petitioners request that the Department stay implementation of the Preliminary Order pending an opportunity for Petitioners to provide additional comment after their review the public records relied upon by the Department in its decision to create Water District 02.

**THE DEPARTMENT DOES NOT NEED TO CREATE A WATER
DISTRICT TO ACHIEVE IS STATED ADMINISTRATIVE OBJECTIVES
ON THE AFFECTED REACH OF THE SNAKE.**

Department officials acknowledged at the public meeting and hearing on the creation of Water District 02 that the affected reach of the Snake has an abundant water supply that has dropped below the flow necessary to supply senior rights only in very rare instances, and then only for a very brief period of time. Even so, the driving reason given for creating the water district is to protect the State's instream flow rights that are measured at the Murphy Gage. Additionally, in Finding of Fact No. 10 in the Preliminary Order, the Department states that a district is necessary to more accurately measure the instream flow at the Murphy Gage and to assess water users' compliance with their water rights.

Petitioners believe that the Department can achieve its stated administrative objectives for the affected reach of the Snake using existing tools without need for creating a water district. Accordingly, Petitioners propose that the decision to create Water District 02 is premature and should be delayed until after the Department determines that it cannot properly administer the affected reach of the Snake without a water district and the associated imposition of costs on the affected water users.

Before creating a water district whose primary design is to satisfy the State's instream flow rights at the Murphy Gage, the Department can and should undertake a concentrated review of the river flow data available from the numerous existing river gages that exist upstream of the Murphy Gage. According to discussion at the public hearing on the creation of the district, there are at least seven gages in the reach that report the flow of the Snake River. Only in the event the data from these gages is demonstrated to be insufficient for understanding the river flows in the reach and for assessing whether the State's instream flows at the Murphy Gage are being

satisfied should the Department consider creating a water district for the purpose of collecting additional data.

Similarly, the objective of ensuring compliance by water users with their water rights can be achieved outside of creating a water district. Initially, and as noted above, there is no identified existing problem related to unfilled senior rights in Basin 02. Consequently, Petitioners question the need for a stepped up compliance program on this reach of the Snake. Moreover, the Department has not identified any chronic compliance problem in the reach that would suggest a new level of administrative intervention is needed. Regardless, the Department has existing tools through Landsat data and the like by which it can assess water user compliance without having to create a water district. These available tools provide for an appropriate level of compliance monitoring under the existing, water-rich circumstances in Basin 02.

In summary, the Department can achieve its administrative objectives for the affected reach of the Snake River using existing administrative tools and existing river gages. Petitioners propose that the Department first utilize these existing tools before imposing the burdens of a water district on them.

THE WATER USERS IN THE DISTRICT WILL HAVE TO SHOULDER A SUBSTANTIAL BURDEN

The burdens on water users following creation of the district are unquestionably significant. Department officials have made it clear that their intent is to require users to install expensive measuring devices and to undertake routine monitoring and reporting of their water use. The cost to comply will require initial capital investment by many of the affected water users of tens of thousands of dollars, perhaps more, and many thousands more in ongoing costs for assessments and operation and maintenance. Additionally, water users will have to devote time and effort to monitoring the administration of the district and to participating in its

governance. These burdens may be acceptable and justified in a situation where a water supply problem exists, but here the Department is asking the water users to assume these burdens in the absence of any identified problem that this new level of government regulation and associated costs are designed to solve.

REQUEST TO PROVIDE ADDITIONAL BRIEFING FOLLOWING REVIEW OF PUBLIC RECORDS

Petitioners have sought to review the Department's public records concerning the rationale for creating Water District 02. In the event the Department is not inclined to rescind the Preliminary Order now, Petitioners respectfully request an opportunity to provide further briefing on this matter after they have had the opportunity to review the requested public records.

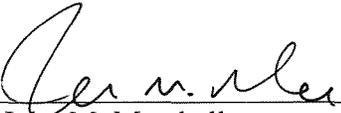
CONCLUSION

The imposition of a new water district is a serious matter for the affected water users. A water district adds another level of government regulation to the users and requires them to dip into their own pocket books to fund this new regulatory oversight. Consequently, the affected water users are right to resist the imposition of a water district on them in the absence of any existing water administration problem or explanation of how the creation of a water district and all of its associated costs will help solve an actual problem. The Preliminary Order identifies only a potential, future water supply problem and the need for more data as grounds for creating a district. Because there is no existing water supply problem in the reach, and the Department can collect data and administer existing rights without a water district and its associated costs, Petitioners request that the Department rescind its Preliminary Order and reassess whether the a water district is necessary after it undertakes study of the river data available to it outside of the creation of the district. Petitioners propose at least a three-year study period before the Department reevaluates whether a water district is warranted for the reach. In the alternative,

Petitioners request the opportunity to review the public records at the Department prior to closing the opportunity to be heard on this Petition for Reconsideration.

DATED May 18, 2012.

John Marshall Law PLLC

By: 

John M. Marshall

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DEPARTMENT OF
WATER RESOURCES

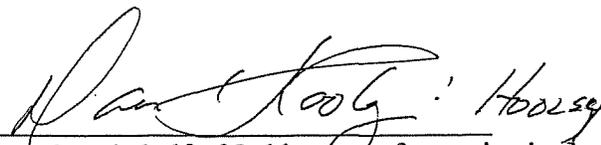
BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

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

DALE HOOLSEY have reviewed the Petition for Reconsideration of Preliminary Order submitted in this matter by Grindstone Butte Mutual Canal Company, MAN Farms, LLC and ATN Holdings, LLC and adopt the positions and arguments made by them as our own.

DATED May ____, 2012.

By:  *Hoolsey Farms*
 [add name] on behalf of [add name of organization]

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James D Wolfe have reviewed the Petition for Reconsideration of Preliminary Order submitted in this matter by Grindstone Butte Mutual Canal Company, MAN Farms, LLC and ATN Holdings, LLC and adopt the positions and arguments made by them as our own.

DATED May 16, 2012.

By: James D Wolfe - Wolfe Bros Inc,
 [add name] on behalf of [add name of organization]

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BELOW SWAN FALLS DAM) PRELIMINARY ORDER

Black Mesa Farms LLC have reviewed the Petition for Reconsideration of Preliminary Order submitted in this matter by Grindstone Butte Mutual Canal Company, MAN Farms, LLC and ATN Holdings, LLC and adopt the positions and arguments made by them as our own.

DATED May 16, 2012.

By: Wesley R. Waska
[add name] on behalf of [add name of organization]

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BELOW SWAN FALLS DAM)	PRELIMINARY ORDER

BLANKSMA LAND STORAGE, LLC have reviewed the Petition for Reconsideration of Preliminary Order submitted in this matter by Grindstone Butte Mutual Canal Company, MAN Farms, LLC and ATN Holdings, LLC and adopt the positions and arguments made by them as our own.

DATED May ____, 2012.

By: Jeffrey C. Blankenship MGR
 [add name] on behalf of [add name of organization]
Blanksma Land Storage, LLC

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WILSON + WILSON CO. have reviewed the Petition for Reconsideration of Preliminary Order submitted in this matter by Grindstone Butte Mutual Canal Company, MAN Farms, LLC and ATN Holdings, LLC and adopt the positions and arguments made by them as our own.

DATED May 17, 2012.

By: Ann T Wilson WILSON + WILSON CO.
[add name] on behalf of [add name of organization]

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BELOW SWAN FALLS DAM) PRELIMINARY ORDER

Trail Ranches, Inc - Walter Trail have reviewed the Petition for Reconsideration of Preliminary Order submitted in this matter by Grindstone Butte Mutual Canal Company, MAN Farms, LLC and ATN Holdings, LLC and adopt the positions and arguments made by them as our own.

DATED May 17, 2012.

By: Walter Trail Trail Ranches, Inc
[add name] on behalf of [add name of organization]

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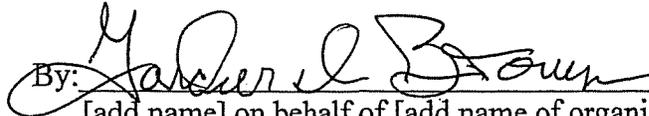
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GARDNER I BROWN have reviewed the Petition for Reconsideration of Preliminary Order submitted in this matter by Grindstone Butte Mutual Canal Company, MAN Farms, LLC and ATN Holdings, LLC and adopt the positions and arguments made by them as our own.

DATED May 16 2012.

By: 
[add name] on behalf of [add name of organization]

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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

BAGLE CREEK NW, LLC))) PETITION FOR RECONSIDERATION OF
PRELIMINARY ORDER

I, CHARLES W. BRYAN, have reviewed the Petition for Reconsideration of Preliminary
Order submitted in this matter by Grindstone Butte Mutual Canal Company, MAN Farms, LLC
and ATN Holdings, LLC and adopt the positions and arguments made by them as our own.

DATED May 17, 2012.

By: Ch Bryan

Title V.P.

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IN THE MATTER OF THE CREATION OF)
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Rockin S Ranch by

John R. Sobushal

have reviewed the Petition for Reconsideration of Preliminary Order submitted in this matter by Grindstone Butte Mutual Canal Company, MAN Farms, LLC and ATN Holdings, LLC and adopt the positions and arguments made by them as our own.

DATED May 16, 2012.

By: John R. Sobushal Rockin S Ranch
[add name] on behalf of [add name of organization]

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DeRuyter Properties, LP

I, Nick DeRuyter have reviewed the Petition for Reconsideration of Preliminary Order submitted in this matter by Grindstone Butte Mutual Canal Company, MAN Farms, LLC and ATN Holdings, LLC and adopt the positions and arguments made by them as our own.

DATED May 18, 2012.

By: Nick J. DeRuyter Owner of DeRuyter Properties, LP
[add name] on behalf of [add name of organization]

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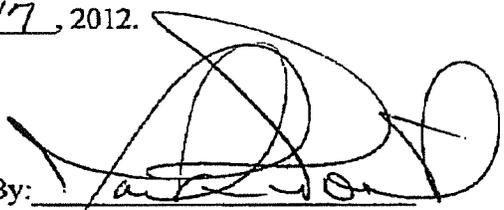
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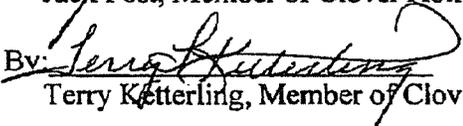
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BELOW SWAN FALLS DAM) **PRELIMINARY ORDER**

Clover Hollow, LLC has reviewed the Petition for Reconsideration of Preliminary Order submitted in this matter by Grindstone Butte Mutual Canal Company, MAN Farms, LLC and ATN Holdings, LLC and adopts the positions and arguments made by them as our own.

DATED May 17, 2012.

By: 
Jack Post, Member of Clover Hollow, LLC

By: 
Terry Ketterling, Member of Clover Hollow, LLC

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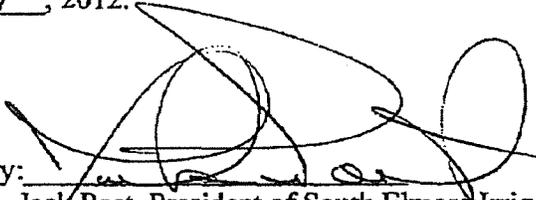
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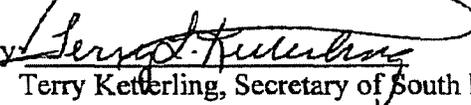
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BELOW SWAN FALLS DAM) PRELIMINARY ORDER

South Elmore Irrigation Co., Inc. has reviewed the Petition for Reconsideration of Preliminary Order submitted in this matter by Grindstone Butte Mutual Canal Company, MAN Farms, LLC and ATN Holdings, LLC and adopts the positions and arguments made by them as our own.

DATED May 17, 2012.

By: 
Jack Post, President of South Elmore Irrigation Co., Inc.

By: 
Terry Ketterling, Secretary of South Elmore Irrigation Co., Inc.

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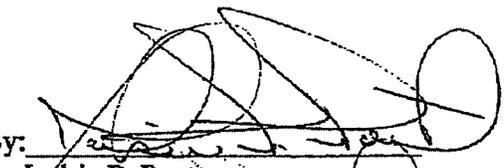
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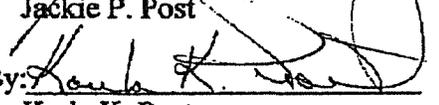
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BELOW SWAN FALLS DAM)** **PETITION FOR
RECONSIDERATION OF
PRELIMINARY ORDER**

Jackie P. Post and Karla K. Post have reviewed the Petition for Reconsideration of Preliminary Order submitted in this matter by Grindstone Butte Mutual Canal Company, MAN Farms, LLC and ATN Holdings, LLC and adopts the positions and arguments made by them as our own.

DATED May 18, 2012.

By: 
Jackie P. Post

By: 
Karla K. Post

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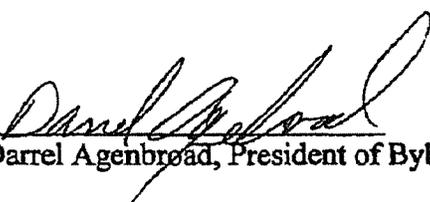
DEPARTMENT OF
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**BEFORE THE DEPARTMENT OF WATER RESOURCES
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FROM MILNER DAM TO MURPHY GAGE)
BELOW SWAN FALLS DAM)** **PETITION FOR
RECONSIDERATION OF
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Bybee Lateral Water Users Association has reviewed the Petition for Reconsideration of Preliminary Order submitted in this matter by Grindstone Butte Mutual Canal Company, MAN Farms, LLC and ATN Holdings, LLC and adopts the positions and arguments made by them as our own.

DATED May 17, 2012.

By: 
Darrel Agenbroad, President of Bybee Lateral Water Users Association

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BELOW SWAN FALLS DAM) PRELIMINARY ORDER

Bart C. Fowers - Little Valley Mutual Irr. Co. have reviewed the Petition for Reconsideration of Preliminary Order submitted in this matter by Grindstone Butte Mutual Canal Company, MAN Farms, LLC and ATN Holdings, LLC and adopt the positions and arguments made by them as our own.

DATED May 17, 2012.

By: Bart C. Fowers - President Little Valley Mutual
[add name] on behalf of [add name of organization] Irrigation Co.

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Grand View Irrigation have reviewed the Petition for Reconsideration of Preliminary Order submitted in this matter by Grindstone Butte Mutual Canal Company, MAN Farms, LLC and ATN Holdings, LLC and adopt the positions and arguments made by them as our own.

DATED May 18, 2012.

By: Mark A. Host
[add name] on behalf of [add name of organization]

Grand View Irrigation District

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BEFORE THE DEPARTMENT OF WATER RESOURCES
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IN THE MATTER OF THE CREATION OF)
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Grand View Mutual Canal have reviewed the Petition for Reconsideration of Preliminary Order submitted in this matter by Grindstone Butte Mutual Canal Company, MAN Farms, LLC and ATN Holdings, LLC and adopt the positions and arguments made by them as our own.

DATED May 18, 2012.

By: Randy H. Howell VP
[add name] on behalf of [add name of organization]
Grand View Mutual Canal Co.

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Snake River Irrigation District have reviewed the Petition for Reconsideration of Preliminary Order submitted in this matter by Grindstone Butte Mutual Canal Company, MAN Farms, LLC and ATN Holdings, LLC and adopt the positions and arguments made by them as our own.

DATED May 18, 2012.

By: Wayne Roddy Chairman
[add name] on behalf of [add name of organization]
Snake River Irrigation District

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Upper Grand View Canal have reviewed the Petition for Reconsideration of Preliminary Order submitted in this matter by Grindstone Butte Mutual Canal Company, MAN Farms, LLC and ATN Holdings, LLC and adopt the positions and arguments made by them as our own.

DATED May 18, 2012.

By: 
[add name] on behalf of [add name of organization]
Upper Grand View Canal Company
Secretary

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John Terry Field have reviewed the Petition for Reconsideration of Preliminary Order submitted in this matter by Grindstone Butte Mutual Canal Company, MAN Farms, LLC and ATN Holdings, LLC and adopt the positions and arguments made by them as OUR OWN.

DATED May 17, 2012.

By: John Terry Field
[add name] on behalf of [add name of organization]

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BELOW SWAN FALLS DAM) PRELIMINARY ORDER

VERLON, ELLA FRUDY GINGERICH have reviewed the Petition for Reconsideration of Preliminary Order submitted in this matter by Grindstone Butte Mutual Canal Company, MAN Farms, LLC and ATN Holdings, LLC and adopt the positions and arguments made by them as our own.

DATED May 18, 2012.

By: Verlon Gingerich
[add name] on behalf of [add name of organization]
GINGERICH BROTHERS FARMS
VERLON & ELLA GINGERICH

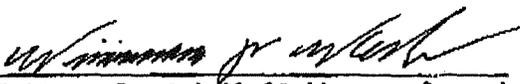
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William R. Wolfe - Victoria^{R.} have reviewed the Petition for Reconsideration of Preliminary Order submitted in this matter by Grindstone Butte Mutual Canal Company, MAN Farms, LLC and ATN Holdings, LLC and adopt the positions and arguments made by them as our own.

DATED May 18, 2012.

By: 
[add name] on behalf of [add name of organization]

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Was Eagle Farms, LLC

I, James, Michael & Rhonda have reviewed the Petition for Reconsideration of Preliminary Order submitted in this matter by Grindstone Butte Mutual Canal Company, MAN Farms, LLC and ATN Holdings, LLC and adopt the positions and arguments made by them as our own.

DATED May 18, 2012.

Michael James, Mgr

By: Rhonda James
[add name] on behalf of [add name of organization]