

RECEIVED

MAR 09 2012

DEPARTMENT OF
WATER RESOURCES

**TO: Director, Department of Water Resources
PO Box 83720, Boise, Idaho, 83720-0098**

**FROM: Grindstone Butte Mutual Canal Company (water right 02-2262)
MAN Farms, LLC (water rights 02-2371 and 02-10032)
ATN Holdings, LLC (water rights 02-2186, 02-10248, 02-10249, 02-10034, and
02-10035)**

RE: Written comments in opposition to the formation of proposed Water District No. 2

For the reasons stated below, the Grindstone Butte Mutual Canal Company, MAN Farms, LLC and ATN Holdings, LLC oppose the creation of the proposed Water District No. 2. Creating and operating the district will be very costly to water right holders, who will be required to install and maintain expensive monitoring and reporting equipment and to pay new annual assessments. The imposition of these costs and the additional layer of government oversight on private parties should only occur in the face of a pressing administrative need that cannot be solved by an less intrusive or less expensive means. In the case of proposed District 02, the Department has yet to even identify a specific water administration issue that requires a resolution, let alone explain why the imposition of a district is necessary to solve the problem. Before creating a water district on the affected reach of the Snake, the Department should first study the river reach using existing river gauges to determine whether senior rights are not being filled, and then if the Department determines that such a problem exists, it should analyze whether creating a water district is necessary to solve the problem. But until the Department identifies a pressing administrative need, it should not subject private water right holders to the unnecessary and expensive proposed monitoring and reporting program.

If the Department insists that a water district is necessary in order to regulate diversions in the event senior rights are not being filled, then the order creating the district should tailor the district to minimum extent necessary to accomplish this purpose. In other words, the district should have a water master available in the rare event that a call is made to administer diversions. The order could also require that junior diversions have lockable and controllable diversion works and perhaps measuring devices. However, the district should not arbitrarily require all water users to spend thousands, or in the case of a senior right holder like Grindstone, tens of thousands, on unnecessary measurement and reporting equipment. Indeed, water districts throughout the state exist to regulate junior diversions without a district-wide monitoring program.

The bullet points below expand on the reasons for our opposition to the water district.

- Water districts are a legislatively created tool designed to facilitate the distribution of water among adjudicated water rights. State-sponsored distribution of water is appropriate where a water supply is not sufficient to fill all water rights and the allocation of the scarce supply among water rights in accordance with adjudicated priority dates is

therefore necessary. State-sponsored distribution and measurement of water, and the associated costs, are not appropriate where a stream has sufficient supply to fill the rights on the stream.

- The reach of the Snake River proposed for inclusion into the proposed new Water District 02 is a reach where the flow almost always exceeds the diversions needed to satisfy existing rights. History shows there are rarely flow deficiencies that warrant curtailment of junior priority water rights to satisfy the priorities of senior rights. Indeed, we are aware of only one such instance in the recent decades. IDWR has sufficient administrative tools available to handle the very occasional distribution problem that occurs in the affected reach.
- IDWR has stated in the public information meeting and the public hearing on the proposed Water District 02 that the affected reach does not have a water allocation problem.
- Because there is not a water allocation problem in the proposed stream reach, or at most a very occasional, minor one that affects only a handful of rights, there is no need to subject the hundreds of water right holders in the reach to a burdensome and expensive administrative water district.
- IDWR's public notice states that the reasons for creating a water district are: 1) the SRBA process is nearly complete; 2) the Swan Falls agreement affects the reach; and 3) monitoring is required to protect the State's minimum stream flows. These stated reasons for creating the district do not justify the cost and burdens it would impose on private parties. As noted above, the river reach in question is relatively water-rich, and instances where the minimum stream flow at the Murphy Gauge is triggered are very rare. Neither the ending of the SRBA nor the Swan Falls agreement require the creation of district if one is not otherwise necessary.
- Water districts are not a mechanism for imposing measuring and reporting requirements on private water right holders independent of a water allocation problem that requires measurement and reporting to solve. Indeed, there is an operating gauge at the Murphy Gauge minimum stream flow site, along with gauges at all the Idaho Power sites in the reach and other USGS gauge locations. With proper monitoring, these gauges are more than sufficient to address whether there is a minimum stream flow deficiency.
- IDWR has stated that the proposed order for creating Water District 02 will require water right holders to install measuring devices, some with costs in excess of \$10,000.00, and possibly telemetry devices, at the water users' own expense. Such onerous cost requirements should only be imposed in the event there is a problem to solve and if the proposed measurement requirements will solve the identified problem. As discussed above, the affected reach of the Snake does not have a water distribution problem to solve, or any other identified problem. Consequently, there is no evidence or analysis

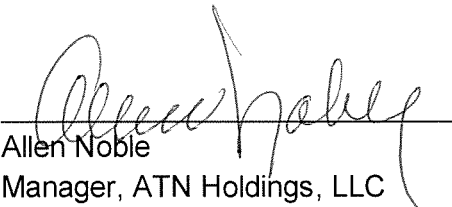
that justifies imposition of measuring requirements and the associated expense on private parties.

- IDWR's proposal to create a water district is premature. Before subjecting water rights holders to the expense of creating and maintaining a district, IDWR should study the stream flows in the Snake River reach at issue using the existing (or perhaps improved or additional) gauges operated by Idaho Power and the USGS, to determine whether a water distribution issue even exists in the reach. If a distribution problem is identified, then the Department should determine 1) whether operation of a water district would solve the problem; 2) whether other, less costly administrative means are available to solve the problem; and 3) if there are no other solutions, whether forcing the costs and other burdens associated with a water district onto private parties is justified given the magnitude of the identified problem.

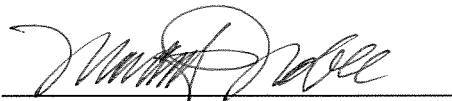
In summary, IDWR has not shown there is an administrative problem to solve in Snake River 02, let alone that a water district is necessary to solve it. Consequently, the private water users in the reach should not be subjected to a mandatory and expensive government administrative program for which there is no identified or justified need.



Mark Noble
President, Grindstone Butte Canal Company



Allen Noble
Manager, ATN Holdings, LLC



Mark Noble
President, MAN Farms, LLC