

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

IN THE MATTER OF THE CREATION OF )  
WATER DISTRICT NO. 2, SNAKE RIVER )                   **FINAL ORDER CREATING**  
FROM MILNER DAM TO THE MURPHY )                   **WATER DISTRICT NO. 2**  
GAGE BELOW SWAN FALLS DAM       )  
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On May 1, 2012, the Idaho Department of Water Resources (“Department”) issued a *Preliminary Order* creating Water District No. 2 (“Water District No. 2”).<sup>1</sup> A *Petition for Reconsideration* was filed with the Department on May 18, 2012, by Grindstone Butte Mutual Canal Company, MAN Farms, LLC and ATN Holdings, LLC (collectively referred to as “Grindstone Butte”). Petitions for reconsideration were also filed on May 18, 2012, by 24 other parties adopting the positions and arguments made by Grindstone Butte. A petition for reconsideration was also filed on May 18, 2012 on behalf of Flying H Farms Partnership and Jeff C. and Jackie Harper.

On June 7, 2012, the Department issued an *Order Denying Petition for Reconsideration*. On June 21, 2012, *Exceptions to Preliminary Order* (“Exceptions”) were filed by Grindstone Butte with the Director of the Department (the “Director”). This final order addresses the exceptions.

**EXCEPTIONS**

Grindstone does not argue the Department is legally prohibited from creating Water District No. 2. Instead, Grindstone Butte argues that a water district is not needed at this time and requests that the Director exercise his discretion and delay implementation of the water district. *Exceptions* at 4.

First, Grindstone Butte suggests that before the Department creates the water district, the Department should gather data on how Idaho Power Company’s (“Idaho Power”) operational fluctuations impact minimum flows. *Exceptions* at 2-3. The Director agrees that it is important to be able to accurately measure the effects of Idaho Power’s operations at its storage facilities. In fact, the Department is currently participating in scoping activities with Idaho Power on how best to measure the fluctuations in the Snake River due to Idaho Power’s operations. However, the Director disagrees with Grindstone Butte that this activity should be completed prior to creation of the water district. Measurement of Idaho Power’s operations is only a component of the water use in this reach. The Department must also be able to measure and administer other water rights in this reach. Creating the water district establishes the legal organizational

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<sup>1</sup> The Preliminary Order was served on the parties to this proceeding on May 4, 2012.

structure to administer water rights in the reach. The related action of requiring installation of measuring devices establishes the necessary physical facilities to measure water diversions for proper administration of water rights.

Second, Grindstone Butte suggests the Department could effectively administer water rights in the reach “without creating a district” through voluntary measurement and reporting programs and by “estimat[ing] diversion rates.” *Exceptions* at 2-4. The Director disagrees. Water districts are the legislatively authorized mechanism for water rights administration. Idaho Code § 42-602. As recognized by the hearing officer, “If a shortage of water occurs, water rights cannot be properly administered without measurement of water, enforcement of water right limitations, and control of diversions – all functions of a watermaster in a water district.” *Order Denying Petition for Reconsideration* at 2. There cannot be effective administration of water rights along this river reach without the creation of Water District No. 2. Voluntary measurement and estimations are not sufficient for ensuring compliance with state water law. The Director recognizes that there has not yet been a water distribution crisis in this river reach, but the potential for significant water administration is real. The Department should not wait until a water administration crisis to establish the necessary structure of a water district and to require installation of the physical tools to administer the water rights.

Grindstone Butte also complains about the costs of a water district. *Exceptions* at 2. While the Director understands Grindstone Butte’s concerns about cost, the Department will work with the water users to minimize costs while still providing for proper administration. The advisory committee discussed in the *Preliminary Order* is intended to serve as a forum to involve water users and can be used to explore ways to minimize costs.

As the hearing officer stated, the Director is required to divide the state into water districts for the purpose of performing the essential governmental function of distributing water among appropriators under the laws of the State of Idaho. *In re Idaho Dept. of Water Res. Amended Final Order Creating Water Dist. No. 170*, 148 Idaho 200, 211, 220 P.3d 318, 329 (2009). For the reasons described by the hearing officer in his *Preliminary Order* and *Order Denying Petition for Reconsideration*, and for the reasons described above, the Director concludes that it is appropriate to create Water District No. 2.

## ORDER

Based upon the foregoing, it is hereby ORDERED that the hearing officer’s Preliminary Order dated May 1, 2012, is adopted in its entirety, and becomes the Final Order of the Director.

DATED this 10<sup>th</sup> day of July, 2012.

  
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Gary Spackman  
Interim Director

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 10<sup>th</sup> day of July, 2012, true and correct copies of the documents described below was served on the following by U.S. Mail, postage prepaid and properly addressed to the foregoing:

Document(s) Served: FINAL ORDER CREATING WATER DISTRICT NO. 2 and Explanatory Information to Accompany a Final Order

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WILSON & WILSON CO INC  
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WALTER TRAIL  
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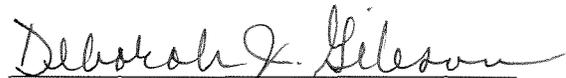
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