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JAN 12 2007

DEPARTMENT OF WATER RESOURCES

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 8 Idaho State Bar #849  
 9 Attorneys for Southwest Irrigation District  
 10 (SOUTHWWaterDistrict140PetitionRecon.wpd)

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BEFORE THE DEPARTMENT OF WATER RESOURCES  
 OF THE STATE OF IDAHO

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|                                    |   |                               |
|------------------------------------|---|-------------------------------|
| IN THE MATTER OF CREATING THE      | ) | Water District No. 140        |
| OAKLEY VALLEY AREA WATER DISTRICT, | ) | <b><u>PETITION FOR</u></b>    |
| DESIGNATED AS WATER DISTRICT NO.   | ) | <b><u>RECONSIDERATION</u></b> |
| 140, FOR THE ADMINISTRATION OF     | ) |                               |
| WATER RIGHTS IN ADMINISTRATIVE     | ) |                               |
| BASIN 45                           | ) |                               |

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**COME NOW** Southwest Irrigation District, Goose Creek Irrigation District and  
 Petitioners, Jack Duncan, Paul Duncan, Bill Hepworth, Bruce Newcomb, Mark Newcomb,  
 Mark Sanderson, Dan Walton, Gary Fowler, William McManus, Ron Heib, Ardel Wickel,  
 Lynn Mitchell and Del Mitchell and petitions the Department for reconsideration of the  
 Final Order Creating Water District No. 140 and allege:

1. The petitioning parties concur with the Department in creating Water  
 District No. 140, however, the petitioning parties allege that certain references to the  
 boundary of the Eastern Snake Plain Aquifer as shown on attachment A and as  
 referenced in the Order are inappropriate and were not subject to the proceedings  
 creating Water District No. 140.

PARSONS, SMITH & STONE, LLP  
 LAWYERS  
 BURLEY, IDAHO

1           2.       The petitioning parties particularly ask for reconsideration of Findings of  
2 Fact 25, 26, 27, 33, and 37 for the reasons that any reference to the Eastern Snake Plain  
3 aquifer and the boundaries outlined on attachment A are more complicated than  
4 described in the referenced USGS Professional Paper and the dash line on the  
5 attachment. The boundary described by the USGS is determined by areal extent of  
6 basalts considered to be in the Snake River Plain group. The geology of tributary valleys  
7 must be considered when finalizing the ESPA boundary. Without extensive chemical  
8 profiling, it is impossible to determine the boundary of the ESPA water. Voluminous  
9 amounts of water coming from the surrounding and leakage from canals and  
10 containment basins enter the ground water and mix with water of the ESPA. Not all  
11 ground water in tributary basalts is ESPA water. Maintaining this description of ESPA  
12 increases the responsibility of mitigation on ground water irrigators within Basin 45.  
13 Irrigators holding ground water rights with wells completed in basalts pumps water that  
14 is more likely derived from surrounding mountains. Ground water boundaries cannot be  
15 determined with vertical lines described by the juxtaposition of stratigraphic formations.  
16 New and pending scientific data on ground water of the area will more adequately  
17 describe the "mixing zone."  
18

19  
20           3.       As to Finding No. 27 this is similar to the preceding point. The mound  
21 created by leakage of surface water to ground water in the Murtaugh Lake area  
22 intercepts the boundary of the ESPA as described in paragraph 27. As with other areas  
23 of the ESPA, ground water pumpers cannot be responsible to mitigate for ground water  
24 pumped from sources other than the ESPA.  
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26           4.       As to Finding No. 33 this is as heretofore noted in this Petition.

          5.       As to Finding No. 37 the IDWR Water Right Data Base returned 8,748

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acres with expanded water rights within the boundary of SWID/GCID. The additional 3,000 acres is not accounted for.


6. As to Conclusion of Law No. 10 it was the understanding of the petitioning parties that the IDWR would provide funding for a water master for a period of two years. The moving parties understood that in creation of other Water Districts, i.e., 120 and 130, that that was the case, and the moving parties ask that this be incorporated for equal treatment.

7. Finally, the petitioning parties request that any reference to the Eastern Snake Plain Aquifer be eliminated from the final Order as it was not discussed, requested to be determined by the Director or in any manner a basis to create Water District No. 140.

8. Alternatively, the petitioning parties would respectfully request a hearing with the Idaho Department of Water Resources to resolve this matter as to have a final Order on the basis that it now stands with relation to the Eastern Snake Plain Aquifer would have an effect of res judicata in subsequent proceedings either before the Department or in the courts.

**DATED** this 9 day of January 2007.

**PARSONS, SMITH & STONE, LLP**

  
\_\_\_\_\_  
William A. Parsons  
Attorneys for Southwest Irrigation District  
137 West 13<sup>th</sup> Street  
P. O. Box 910  
Burley, Idaho 83318

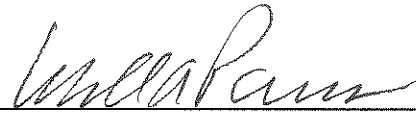
**CERTIFICATE OF MAILING**

I hereby certify that on the 9 day of January 2007, I served a copy of the foregoing upon the following:

Idaho Department of Water Resources  
Box 83720  
Boise, ID 83720-0098  
Cert. Mail 7006 0810 0006 6839 2525

by depositing a copy thereof in the United States mail, postage prepaid, in an envelope addressed to the above named persons at the above addresses, their last known address.

**PARSONS, SMITH & STONE, LLP**



William A. Parsons  
Attorneys for Southwest Irrigation District  
137 West 13th Street  
P. O. Box 910  
Burley, Idaho 83318

PARSONS, SMITH & STONE, LLP  
LAWYERS  
BURLEY, IDAHO

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JAN 16 2007

DEPARTMENT OF  
WATER RESOURCES

***Marsh Creek Water District***

% Don G. Gunderson  
P.O. Box 125 \* 1047 East 1000 South  
Albion, Idaho 83311  
Telephone (208) 673-5359 \* E-mail [gundy@safelink.net](mailto:gundy@safelink.net)  
Fax: 208-673-6745 (Albion City Office)

---\*---

*Board Members:* Jeff Chatburn / Pat McCammon / George Kelley

January 11, 2007

***FAX COVER SHEET***

Fax Number: 1-208-287-6700

**Send To:** State Of Idaho  
Department Of Water Resources  
322 East Front Street,  
P.O. Box 83720  
Boise, ID 83720-0098

**Attention:** *Tim Luke*  
*Manager, Water Distribution Section*

**Subject:** ***Marsh Creek Water District 45F Petition For Reconsideration***

**Ref:** Final Order Creating the Oakley Valley Area Water District

**Remarks:** We are submitting this Fax to your office per the telephone conversation with Don Gunderson. He stated that we needed to get this into your office before the end of the working day of 1/12/2007. We will follow up by mailing in the original documentation to your office.

Respectively submitted;

Thank you;

Marsh Creek Water District 45F

Number of Sheets Sent: 9 & Time 11:20 Estimated  
*[Signature]*

## PETITION FOR RECONSIDERATION

We the undersigned Water Right Users of Marsh Creek Water District # 45- F located in Cassia County, State Of Idaho hereby Petition For Reconsideration Of Final Order Creating Water District # 140 and also request prior to any final decision that the Director Of Water Resources attend a meeting with the water users of said district before making a final decision on this petition for Reconsideration.

| Printed Name       | Signature                 | Address                           | Date                       |
|--------------------|---------------------------|-----------------------------------|----------------------------|
| George Kelley      | <i>George Kelley</i>      | P.O. Box 25-83311                 | 1-6-07                     |
| Ronald S. Jensen   | <i>Ronald S. Jensen</i>   | 988 E 1000 S Albion IDAHO 83311   | 1-6-07 <sup>623-5376</sup> |
| Bill Kelley        | <i>Bill Kelley</i>        | 950 S-1300 E Albion Id 83311      | 1-6-07                     |
| Tom D. Dyk         | <i>Tom D. Dyk</i>         | 990 E 900 S ALBION, 83311         |                            |
| Blackjack Ranch    | <i>Blackjack Ranch</i>    | Box 177 Albion                    |                            |
| Tommy Sher         | <i>Tommy Sher</i>         | Box 146 Albion                    |                            |
| John Burrows       | <i>John Burrows</i>       | Box 158 ALBION 83311              |                            |
| Lu Bell            | <i>Lu Bell</i>            | 1137 E 1000 S Albion Ida 83311    |                            |
| Therla Bell        | <i>Therla Bell</i>        | 1137 E 1000 S. Albion, Id 83311   |                            |
| Alan Clark         | <i>Alan Clark</i>         | 1007 E 1000 S Albion, Ida 83311   |                            |
| Quathy Clark       | <i>Quathy Clark</i>       | 1003 E 1000 S. Albion, Ida. 83311 |                            |
| Sandra J. Anderson | <i>Sandra J. Anderson</i> | Box 158 Albion Ida 83311          |                            |
| Greg Montgomery    | <i>Greg Montgomery</i>    | 937 S 900 E Albion Id 83311       |                            |
| Luen Montgomery    | <i>Luen Montgomery</i>    | 937 S 900 E Albion, Id 83311      |                            |
| Mike K. Mather     | <i>Mike K. Mather</i>     | 1323 E 950 S Albion ID 83311      |                            |
| Todd Adams         | <i>Todd Adams</i>         | 1034 E 900 S Albion Id 83311      |                            |
| Thomas Geary       | <i>Thomas Geary</i>       | THOMAS GEARY 964 S 950 E ALBION   | 1/8/07                     |
| Eldon Adams        | <i>Eldon Adams</i>        | Eldon Adams 1060 E 900 S Albion   | 1/9/07                     |
| Bret Adams         | <i>Bret Adams</i>         | Bret Adams 100 school st          | 1-10-07                    |



# PETITION FOR RECONSIDERATION

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| Printed Name     | Signature               | Address            | Date    |
|------------------|-------------------------|--------------------|---------|
| JAMES D. Kelley  | <i>J. Kelley</i>        | 1090E-900S.        | 1-8-07  |
| Jeff Chatburn    | <i>Jeff Chatburn</i>    | 852S 1375-E        | 1-8-07  |
| Don G. Gundersen | <i>Don G. Gundersen</i> | 1047 E. 1000S      | 1-8-07  |
| Dale G. Goodman  | <i>Dale G. Goodman</i>  | 9255 1250E.        | 1-8-07  |
| Pat Mc-Cammon    | <i>Pat Mc-Cammon</i>    | 1354 63 Rural RD.  | 1/8/07  |
| LeRoy Robinson   | <i>LeRoy Robinson</i>   | 1170E 810S         | 1/8/07  |
| Steve Ferguson   | <i>Steve Ferguson</i>   | 992 E 1000S        | 1/9/07  |
| Sandra Koyle     | <i>Sandra Koyle</i>     | 913 S. 1050 E.     | 1-9-07  |
| Donald B. Dawson | <i>Donald B. Dawson</i> | 111 Sowersburg Dr. | 1-9-07  |
| Don H. Bowden    | <i>Don H. Bowden</i>    | 363 S. Mein        | 1-10-07 |
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**BEFORE THE DEPARTMENT OF WATER REASOURCES  
OF THE STATE OF IDAHO**

Written comments on:

**PUBLIC HEARING FOR PROPOSED WATER DISTRICT:**

Of December 15, 2005 in Burley, ID.

**FINAL ORDER CREATING WATER DISTRICT NO. 140:**

Of December 29, 2006; Petition for Reconsideration


Marsh Creek Water District 45F surface irrigation is a unique water district in its self. The watershed takes in all tributaries off the north side of the Albion Mountain Range, which starts out at 9,267 feet elevation and its lower basin of the Albion Valley is at 4500 feet. The Albion Basin is surrounded on the west side with the Declo Hills and the east side with the Contrell Mountains, all their drainages going to the main channel streams of the Howell Creek, Land Creek and Marsh Creek. The Albion Basin also sets on two faults (uplifting) on both the west (Declo Hills) and east sides of the (Contrell Mountain) ranges. The water district 45F ends at the North End of Marsh Creek at the Anderson Slip Located on the Main 6S-Ranch, which is at the East side of Declo valley at a elevation of 4,100 ft. Marsh Creek at this point on through to the Snake River is another sub-district within the current water district in 45. The overall area of Water District 45F, takes in an estimated total of 150 sq. miles.

The major land uses in the area include rangeland, agriculture, and recreation. Agriculture produce is limited due to higher elevations and the proximity to the mountains but does include alfalfa, wheat, beans, potatoes and dairy. This is primarily handled through our surface water irrigation and few wells that replaced areas that were irrigated with surface waters. This basin is very short on live stream irrigation therefore, leaving each year individuals that due have rights, without water.

Under the Stocks VS Woods the Albion Marsh Creek Water District earliest rights stand at April 1, 1873 and what we call High Water is any right that falls in with a date of 1892. These rights may or may not get water only when we have a good spring run off. Usually to help build good water storage in the ground some water right users will call for water and irrigate in off-season to build a water table.

I too, would like The Idaho Department of Water Resources to consider making The Albion Marsh Creek Water District a separate water district from the consideration of being combined with the Oakley Water District 140. I believe after the complete over view that Mr. Earl Warthen submits and the Albion Mayor elect, Mr. Don Bowden, who submitted maps and documents, will open up a complete new picture for Water District 45F in keeping it as a separate district.

Respectively submitted;

  
Don G. Gunderson  
1047 E. 1000 S.  
Albion, ID. 83311  
208-673-5359

Dated 1-11-07

Page 1<sup>st</sup>

Some or a few reasons for Petition  
For Reconsideration by Carl Warthen  
and Maybe Others

#1. Given the fact that the  
I. D. W. R. Used a Fifty Year Plus  
Study by U.S.G.S. I believe  
the Albion basin is distinctly  
different hydrologically, environmentally  
and economically and should be kept  
separate out of this joint district 140.

#2. Several Individuals petitioned  
into this district before it was  
even formed and this seems unfair  
and Inappropriate to Water district  
Members geographically located  
in the Albion Basin.

#3. The Albion Valley is made up of a percentage of water users that depend on both Deeded surface water rights and legal Ground water to produce an economic base for this community and State. And until the issue of Conjunctive Water Use Management is fairly resolved in the courts I ~~or~~ Maybe we believe that this Valley could be held out separately.

#4. We have only a few ground water wells in the Albion Valley to monitor and believe that monitoring wells can be reported to the state by our current

Surface water master and be  
compinsated for and resolved  
threw our current District

Earl L. Warkler  
Box 145  
Albion, Idaho  
83311  
208 - 673-5385

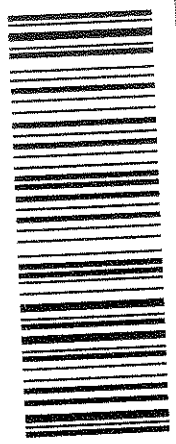
Thank you

**CERTIFIED MAIL™**

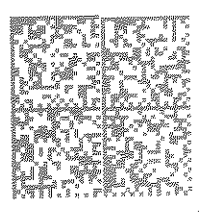
**PARSONS, SMITH & STONE, LLP**

ATTORNEYS AT LAW  
137 WEST 13TH STREET  
P.O. BOX 910  
BURLEY, IDAHO 83318

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**Boise, ID 83720-0098**

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