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RECEIVED

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**DEPARTMENT OF
WATER RESOURCES**

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August 21, 2007

Director David R. Tuthill, Jr. *Dr*
Department of Water Resources
322 East Front Street
PO Box 83720
Boise ID 83720-0130

RE: Application for Permit No. 35-13542
South Interchange Properties, LLC

Dear Director Tuthill:

We filed an application for permit on behalf of South Interchange Properties, LLC, an entity owned by Melaleuca, Inc., to appropriate .2 CFS of ground water to be used for commercial and industrial purposes in connection with a new complex presently being constructed, which will include the manufacturing plant, distribution center and administration building for Melaleuca, Inc. The application was filed in October of 2005, and was assigned number 35-13542. The complex is located on about 80 acres of land which is within the boundaries of and has been historically irrigated under the New Sweden Irrigation District.

After filing, we were requested by eastern region to submit a mitigation proposal. As we pointed out in the mitigation statement, we did not contemplate a significant impact because only 5% of the ground water will be used consumptively. Although that 5% amounts to a maximum of only 7.4 acre feet and 80 acres of irrigated lands will be dried up, we suggested that if additional mitigation were required, Mr. Vandersloot had other ground water rights for irrigation not too far distant which could be used. We specifically referenced 35-7206D because we had originally contemplated an application for transfer of a portion of this ground water right rather than the application for transfer.

We received a letter from Shelley Keen dated April 11, 2006, informing us that even for an application for permit, it would be necessary to do the computer analysis using the

“new” transfer tool. According to his calculations, we needed to dry up 45 acres under ground water right number 34-7206D. There was no comment on the drying up of the 80 acres adjacent to the proposed new well site.

Mr. Vandersloot could not agree to dry up another 45 acres of farmland, so after some further analysis, we proposed to mitigate the theoretical impacts on the Henry’s Fork by drying up fewer acres of land on the Henry’s Fork north of Ashton, and on the Heise to Lewisville reach of the Southfork by using storage water. Our letter containing this proposal was sent September 26, 2006. We finally received, on May 14, 2007, a letter from Erin Retelle, dated May 4, 2007, asking us to evaluate this proposal using the ESPA transfer spreadsheet. Our evaluation using such spreadsheet was in fact how we had already arrived at the mitigation proposal using water rights 21-2012, 21-2034 and 21-7148 and the storage water which resulted in our letter of September 26, 2006.

We have had a number of conversations with both Dave Carlson and Shelley Keen, but we cannot tell that we are making any progress. We wrote to both of them on August 9, 2007, but all we have heard back is a telephone call from Dave Carson telling us our proposal will not work. We have asked why, but have not received an answer that makes any sense to us. Is there anything we can do to get a written response that either tells us what the Department wants and why what we have proposed is not adequate, or a written rejection of our application? We are running out of time; we thought we had started on this project early enough to accommodate the building schedule, but construction is winding down, and we have no idea how to bring this water rights matter to a conclusion.

Thank you for your kind attention to this matter.

Yours very truly,



Kent W. Foster