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EUGENE D. FREDERICKSEN - RETIRED

December 22, 2005

Via facsimile to 208.287.6700

Department of Water Resources
Attn: Jeff Peppersack
PO Box 83720
Boise, Idaho 83720-0098

RE: Transfer #69309/Avelars Dairy Petition for Reconsideration

Dear Mr. Peppersack:

This letter will respond to your letter of November 29, 2005. Thank you for the opportunity of providing additional information for your consideration.

The data you provided on page two of your November 29th letter is accurate and we have no quarrel with it. The assumptions and policies which underlie the data are what are troubling to us.

The total diversion volume available for transfer has been computed by averaging available diversion volumes for years 1993 through 2000 under the supplemental right. The IDWR, by policy, assumes that the average diversion volume over the eight (8) year period is the best indicator of the amount of water available for transfer, even though there is no partial forfeiture shown from the use data in 2001 and succeeding years. The owner of the right could have continued to use the full amount of the supplemental right and would have been constrained by the average diversion volume in future years. Many previous transfers approved by the IDWR regarding supplemental rights were based upon the highest annual diversion volume demonstrated, not the average.

The IDWR, by policy, deems all water used for dairy purposes to be totally consumptive. This policy is adhered to despite most dairies, and this one in particular, impounding dairy process and run off water in lagoons and then applying the lagoon water and nutrients therein to agricultural land at agronomic rates under nutrient management planning rules administered by the Department of Agriculture. The Department's stated policy that dairy use water is 100% consumptive does not mesh with reality generally and with this Applicant's operation in particular. To the extent that the stock water/commercial water is not 100% consumptive, the IDWR's analysis of this transfer is not correct.

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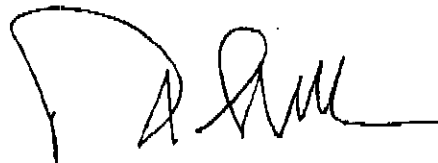
The Applicant believes the Department has a duty, especially where it has adhered to well known policies for many years, to adopt changes in such policies by rule making, or some other similar procedure, where persons affected can comment and dialogue may take place prior to the enactment of the policy. The Applicant remains of the view that most of the policies announced in the Transfer Guidance Memorandum of 2002 meet all the standards of rules and should have been adopted as such.

In our recent telephone conversation you noted that the Department may be willing to delete the years 1999 and 2000 from the computation of the average volume available for the transfer of the supplemental water right. I have reviewed your proposal with my client and it is an acceptable means of resolving the current dispute. From our calculations, using the years 1993 through 1998, the average diversion volume per year is 105.6 cfs, making the consumptive use volume available for transfer at 79.2 cfs. This is approximately 3.8 cfs more than the 75.4 cfs of volume requested for transfer and an acceptable result.

If you are willing to adjust the Preliminary Order to reflect 79.2 cfs of consumptive use diversion volume available for transfer and revise the other parameters of the transfer accordingly, my client will agree to withdraw his current Petition for Reconsideration. My client and I appreciate your courtesy in allowing additional time to formulate this response, and look forward to hearing from you soon.

Very truly yours,

FREDERICKSEN WILLIAMS MESERVY & LOTHSPREICH, LLP



ROBERT E. WILLIAMS

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Encl.
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