

ROBERT E. WILLIAMS
IDAHO STATE BAR NO. 1693
FREDERICKSEN, WILLIAMS, MESERVY & LOTHSCHEID, LLP
117 South Adams Street
P. O. Box 168
Jerome, Idaho 83338
Telephone: (208) 324-2303
Facsimile: (208) 324-3135
Attorneys for Applicant Avelars Dairy

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE
STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR TRANSFER NO. 69309 Water Right No. 47-4287 AVELARS DAIRY, Applicant.	SOURCE: Groundwater COUNTY: Twin Falls AFFIDAVIT OF CHARLES G. BROCKWAY
--	---

STATE OF IDAHO)
) ss.
County of Twin Falls)

CHARLES G. BROCKWAY, being first duly sworn, deposes and says as follows:

1. I am a licensed, professional engineer in the State of Idaho. I hold the following degrees:

University of Idaho, BS Civil Engineering

University of Iowa, Ph.D. Civil and Environmental Engineering

2. Since 1995 I have been involved in the practice of engineering throughout southern Idaho and adjacent locations. I have significant experience in the preparation of water transfer applications and am often consulted by individuals or entities proposing or involved in water transfer applications.

3. I was hired by Avelars Dairy in 2001 to prepare and submit an application for transfer regarding Water Right No. 47-4287, a supplemental irrigation right. Utilizing the then current policies and practices of the Idaho Department of Water Resources, I determined that the maximum use of the right for the five (5) years prior to the application for transfer was 122.7 afa. The transfer application proposed to move 75.4 afa for stock water and commercial purposes. Using a power consumption coefficient derived from actual measurements of discharge and power usage, I determined that the volumes of water used under Water Right No. 47-4287 for the years 1993 through 2000 were as follows:

<u>Season</u>	<u>Vol (ac-ft)</u>
1993	108.2
1994	108.6
1995	128.2
1996	86.2
1997	122.7
1998	79.8
1999	.3
2000	1.2

The portion of the right being moved was calculated to be 75.4 afa divided by 122.7 afa, or 61.5% of the right. To insure that consumptive use did not increase from any source, I calculated the number of acres to be physically dried up under any source to be 75.4 afa divided

by 3.0, or 25.18 acres, where 3.0 afa was IDWR's allowed consumptive use volume for irrigation at the time.

4. The Southern Region staff of the IDWR reviewed the original application submitted and did not disagree with the calculations. The Application was prepared upon the basis of my understanding of the then current policies of IDWR regarding such transfer applications. I had prepared other previous transfer applications using the same policies.

5. After the SRBA recommendation for Water Right No. 47-4287 was made, I reviewed the recommendation, found it to be reasonable and modified the application to reflect the parameters of the recommended right. The portion of the right being moved remained at 61.5% but the number of acres involved with the right had been reduced from 128 to 121.6. The acreage to be removed from the supplemental water right was determined to be 74.7 acres (61.5% of 121.6) and a lower diversion rate was also claimed.

6. In 2005, Southern Region staff recomputed some of the parameters of recommendation for the approval of the transfer in the name of a policy shift by IDWR. Previously in such transfers, IDWR had allowed a proportional transfer of the actual diversion volume, but now limits the transfer to the consumptive use portion. This change resulted in the amount of volume available for transfer being reduced to 92.1 afa from 122.7 afa, and the number of acres required from the existing right was increased from 74.7 to 99.6. This change in policy was made with no advance notice of any kind, actual or constructive, to me or the Applicant.

7. Prior to the issuance of the current Preliminary Order, IDWR further adjusted the parameters of the transfer. This adjustment was made at the State office, and was based upon the

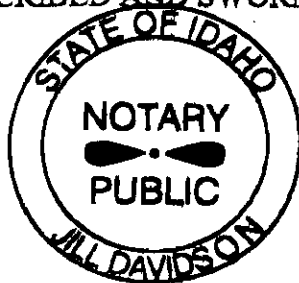
Administrator's Memorandum, Transfer Processing No. 24, dated October 30, 2002. Instead of allowing the baseline historic diversion volume to be the highest single year in the previous five or more years for transfer of supplemental irrigation rights, per the apparent policy existing at the time the transfer was filed, the baseline was determined to be the average annual volume over that period. This further reduced the volume of available water for the transfer to 59.7 afa. Since that amount was less than the needed 75.4 afa for the transfer, no part of Water Right No. 47-4287 remains at the original place of use. The Administrative Memorandum was not adopted by the IDWR pursuant to any public rule making process of which I am aware.

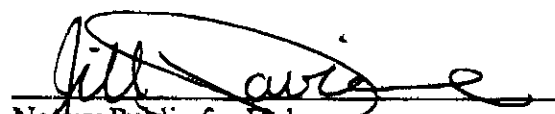
8. Through the adoption of new IDWR policies that did not exist on the date the transfer application was filed, the amount of the volume of Water Right No. 47-4287 available for transfer has been reduced from 122.7 afa to 59.7 afa, and the acres remaining for irrigation under the original right have been reduced from 46.9 to zero. These changes have significant impact on the property rights of the Applicant.

FURTHER YOUR AFFIANT SAYETH NAUGHT.


CHARLES G. BROCKWAY

SUBSCRIBED AND SWORN To before me this 8TH day of November, 2005.

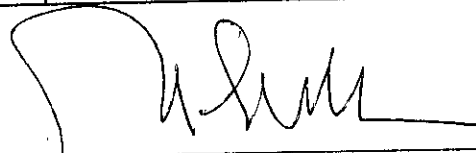



Notary Public for Idaho
Residing at: Twin Falls
Comm. Expires: November 18, 2010

CERTIFICATE OF SERVICE

I HEREBY CERTIFY That on this 8th day of November, 2005, I served a true and correct copy of the foregoing document on the person(s) whose names and addresses appear below by the method indicated:

David Tuthill Idaho Department of Water Resources PO Box 83720 Boise, Idaho 83720-0098	☒ U.S. Mail, postage prepaid ☐ Hand Delivery ☐ Court Folder ☐ Facsimile ☐ Federal Express
Allen D. Merritt, P.E. Idaho Department of Water Resources 1341 Fillmore St Suite 200 Twin Falls, Idaho 83301	☐ U.S. Mail, postage prepaid ☒ Hand Delivery ☐ Court Folder ☐ Facsimile ☐ Federal Express
Brockway Engineering 2016 N Washington St Ste 4 Twin Falls ID 83301	☐ U.S. Mail, postage prepaid ☒ Hand Delivery ☐ Court Folder ☐ Facsimile ☐ Federal Express
Jeff Peppersack, Manager Water Rights Permits Section Idaho Department of Water Resources PO Box 83720 Boise, Idaho 83720-0098	☒ U.S. Mail, postage prepaid ☐ Hand Delivery ☐ Court Folder ☐ Facsimile ☐ Federal Express



ROBERT E. WILLIAMS