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FROM: Robert E. Williams
SUBJECT: Transfer No. 69309 – Water Right No. 47-4287
Avelars Dairy, Applicant
DATE: October 12, 2005

Documents Transmitted:

Applicant's Petition for Reconsideration

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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

**APPLICANT'S PETITION
FOR RECONSIDERATION**

COMES NOW the Applicant, Avelars Dairy, by and through its attorney, Robert E. Williams of the firm Fredericksen, Williams, Meservy & Lothspeich, LLP, and petitions the Department of Water Resources for reconsideration of the Amended Transfer of Water Rights issued in this matter on the 27th day of September, 2005, with service date of September 28, 2005. The Amended Transfer of Water Right has been treated as a Preliminary Order by the Department. This petition is made pursuant to IDAPA 37.01.01.730.02a.

This Petition for Reconsideration is brought primarily for the following reasons:

A. The Preliminary Order is based upon transfer processing policies and procedures, promulgated as Transfer Processing No. 24, under an Administrator's Memorandum dated October 30, 2002. The Administrator's Memorandum is a rule as defined by *Idaho Code* § 67-5201(19). Because the Administrator's Memorandum was not adopted as a rule, it cannot lawfully be used as a basis for the decision contained in the Preliminary Order;

B. The Preliminary Order represents an impermissible retroactive application of substantive policies which were not adopted by the Department of Water Resources at the filing date of the transfer application but were in fact adopted while the transfer application was pending.

C. Applicant respectfully requests twenty-one (21) days from the date of this petition to submit a brief and additional materials in support of this Petition for Reconsideration.

RESPECTFULLY SUBMITTED this 12th day of October, 2005.

FREDERICKSEN, WILLIAMS, MESERVY & LOTHSPICH, LLP



ROBERT E. WILLIAMS

Attorney for Applicant, Avelars Dairy

CERTIFICATE OF SERVICE

I HEREBY CERTIFY That on this 12th day of October, 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:

L. Glen Saxton 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
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