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WATER RESOURCES
WESTERN REGION

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Department of Water Resources
Southern Region

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE OF IDAHO,
IN AND FOR THE COUNTY OF TWIN FALLS

IN RE THE GENERAL ADJUDICATION
OF RIGHTS TO THE USE OF WATER FROM
THE SNAKE RIVER BASIN WATER SYSTEM.

CIVIL CASE NUMBER: 39576

Ident. Number: A61-07189
Date Received: 10/ 3/1989
Receipt No: S009570
Received By: SW

AMENDED

NOTICE OF CLAIM TO A WATER RIGHT
ACQUIRED UNDER STATE LAW

AMENDED

1. Name: MAGIC WEST INC 208-436-3126
Address: PO BOX 475
RUPERT ID 83350

2. Date of Priority: JUL 10, 1974

3. Source: GROUNDWATER Trib. to:

4. Point of Diversion:

Township	Range	Section	1/4 of	1/4 of	1/4	Lot	County
05S	10E	29	SW	SE			ELMORE

5. Description of diverting works:
WELL & PUMP.

6. Water is used for the following purposes:

Purpose	From	To	C.F.S	(or)	A.F.A.
INDUSTRIAL	01/01	12/31	0.670		

7. Total Quantity Appropriated is:
0.670 C.F.S. (and/or) A.F.A.

8. Total consumptive use is Acre Feet Per Annum.

9. Non-irrigation uses:
I/PROCESSING POTATOES.

10. Place of Use:

Township	Range	Section	1/4 of	1/4	Lot	Use	Acres
05S	10E	29	SW	SE		INDUST	

11. Place of use in counties: ELMORE

12. Do you own the property listed above as place of use? YES

13. Other Water Rights Used:
A61-02248B

14. Remarks:
AMENDED 3/31/97 SCC.

15. Basis of Claim: PERMIT

16. Signature(s)

(a.) By signing below, I/We acknowledge that I/We have received, read and understand the form entitled "How you will receive notice in the Snake River Basin Adjudication." (b.) I/We do _____ do not _____ wish to receive and pay a small annual fee for monthly copies of the docket sheet.

Number of attachments: _____

For Organizations:

I do solemnly swear or affirm that I am President of
Magic West, Inc. Title
Organization, that I have signed the foregoing
document in the space below as President of
Magic West, Inc. Title
Organization and that the statements contained in the
foregoing document are true and correct.

Robert L. Jones
Signature of Authorized Agent

President; Magic West, Inc.
Title and Organization

April 3, 1997

Date

State of Idaho)
County of Minidoka) SS.

Subscribed and sworn (or affirmed) before me this 3rd day
of April 19 97

Blaine Allphin
Notary Public

Seal

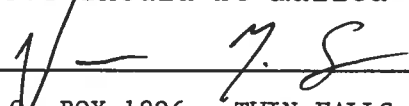
Residing at Burley, Idaho

My Commission Expires 6/14/99

17. Notice of Appearance:

Notice is hereby given that I, NORMAN M SEMANKO will be
Print Name

acting as attorney at law on behalf of the claimant signing above, and that
all notices required by law to be mailed by the director to the claimant
signing above should be mailed to me at the address listed below.

Signature 

Address P. O. BOX 1906 TWIN FALLS ID 83303-1906

Date APRIL 4, 1997

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE OF IDAHO,
IN AND FOR THE COUNTY OF TWIN FALLS

IN RE THE GENERAL ADJUDICATION
OF RIGHTS TO THE USE OF WATER FROM
THE SNAKE RIVER BASIN WATER SYSTEM.

CIVIL CASE NUMBER: 39576

Ident. Number: A61-07189
Date Received: 9/29/1989
Receipt No: 5009570
Received By: LW

RECEIVED
OCT 06 1989

Department of Water Resources
Western Regional Office

NOTICE OF CLAIM TO A WATER RIGHT
ACQUIRED UNDER STATE LAW

1. Name: MAGIC WEST, INC.
Address: P.O. BOX 475
RUPERT, ID

83350

208-436-3126

RECEIVED

2. Date of Priority: JUL 10, 1974

OCT 3 1989

3. Source: GROUNDWATER

Trib. to:

4. Point of Diversion:

Department of Water Resources
Southern Region Office

Township	Range	Section	1/4 of	1/4 of	1/4 of	Lot	County
05S	10E	29	SE	SE			ELMORE

5. Description of diverting works:
WELL & PUMP.

6. Water is used for the following purposes:

Purpose	From	To	C.F.S.	(or)	A.F.A.
INDUSTRIAL	08/15	07/01	0.670		

7. Total Quantity Appropriated is:
0.670 C.F.S. (and/or)

A.F.A.

8. Total consumptive use is

Acre Feet Per Annum.

9. Non-irrigation uses:
I/PROCESSING POTATOES.

10. Place of Use:

Township	Range	Section	1/4 of	1/4 of	Lot	Use	Acres
05S	10E	29	SE	SE		INDUST	

11. Place of use in counties: ELMORE

A61-07189

Page 1

Date: 09/29/89

MICROFILMED

AUG 11 1992

12. Do you own the property listed above as place of use? YES

13. Other Water Rights Used:
NONE

14. Remarks:

15. Basis of Claim: PERMIT

16. Signature(s)

(a.) By signing below, I/We acknowledge that I/We have received, read and understand the form entitled "How you will receive notice in the Snake River Basin Adjudication." (b.) I/We do _____ do not _____ wish to receive and pay a small annual fee for monthly copies of the docket sheet.

Number of attachments: _____

For Organizations:

I do solemnly swear or affirm that I am President of _____ Title

Magie West Inc. Organization, that I have signed the foregoing document in the space below as President of _____ Title

Magie West Inc. Organization and that the statements contained in the foregoing document are true and correct.

Gage L. Jones Signature of Authorized Agent

President, Magie West Inc. Title and Organization

October 2, 1989 Date

State of Idaho)
County of Minidoka) SS.

Subscribed and sworn (or affirmed) before me this 2 day
of October 19 89

Wm. E. Jones Notary Public

Seal

Residing at Rupert, Idaho

My Commission Expires Feb. 18, 1994
Date: 09/29/89

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Today's News

Over water ruling ... Magic West threatens to move out 180 jobs out of Glenns Ferry plant

By Pat Marcantonio
Times-News writer

GLENN'S FERRY - Glenns Ferry's largest employer is considering moving out its major potato-processing production and 180 jobs, in the wake of a state water ruling that put a squeeze on its water use.

Magic West Inc. said a Jan. 22 ruling by the Idaho Department of Water Resources gives it only enough water for two months of production instead of year-round work.

The department said Magic West must stop using water greater than what's allowed in its license, and said the company has a history of using more water than it's allowed.

In October 1990, the department issued Magic West a water-right license to use 12.9 acre-feet of groundwater per year, the state order said. In May 1997, Magic West petitioned the department to adjust its license. Under a 1974 water permit, the company said it had "beneficially" used more than the 12.9 acre-feet. Magic West requested changing its license to reflect the higher amount used, or removing the limit entirely.

Two residents protested the request.

After a December 1998 hearing, the department ordered the following:

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- Adjusting the plant's license to 58 acre-feet of water annually. The amount was calculated partly on information about the volume of water coming from the city and discharged from the plant to its wastewater farm.
- The plant must stop using more than the 58 acre-feet.
- The company must measure how much groundwater it diverts and report it to the department until the department determines the company is complying.

Magic West records and witness testimony showed the plant consistently violated its license limit on water diversion, the department said.

But the company said the state issued a license for an inadequate supply to run the plant even though the plant had operated for 15 years.

Magic West is delaying of a \$1.5 million expansion plan while it considers closing or moving its frozen production line, which uses the most water and employs the most people, the company said. Its sister company, Magic Valley Foods, a dehydration plant in Rupert, is one site where the production might go.

Between 30 to 35 people might be kept at the Glenns Ferry plant to run dehydration drum-dryers, the company said.

The company could apply for a permit for additional water use, evaluate buying more water rights, or use city water for 10 months. This supply has been limited, especially during summer months.

"We're going to do everything we can do to relieve the problem to get them to stay here," Glenns Ferry Mayor Glen Thompson said. "In a small town, 180 jobs is a lot."

But at this point the city supply can't help the company year-round, he said.

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The department realizes the amount of water allowed in the order doesn't meet all the plant's needs, and it's offering technical help to Magic West, said department spokesman Dick Larsen in Boise. At the same time, the department must protect existing water users.

Magic West has 14 days to ask the department to reconsider.

The water ruling pleased Glens Ferry residents Ed Potucek and Robert K. Hall, who protested Magic West's request.

Potucek said an artesian well at his ranch near Magic West used to flow at 250 gallons a minute and 103 degrees and supplied irrigation, livestock and domestic water.

"Over the course of the years we gradually kept losing our water," he said.

When the plant operated his well pressure decreased. Two years ago, the well quit completely, he said.

If the ruling doesn't reverse problems with his well, Polucek said he might pull his 1947 senior right on the plant.

The plant is a big employer, but there also is protection of individual water rights to consider, he said.

Hall said the ruling shows everyone in Idaho must abide by their water license. If that doesn't happen, Idaho is in big trouble.

"I'm really concerned about losing my well," said Hall, whose home artesian well has declined over the years.

Times-News staff writer Pat Marcantonio can be reached at 733-0931, Ext. 242.

About Magic West

- Started in 1974

- \$12 million investment in area.
- Produces dehydrated potato flakes and frozen products.
- Employs 250 people. Payroll from 1986 to 1998 totaled \$33.8 million.
- Adds \$320,000 in property taxes annually and spends \$3 million in Elmore County on goods and services.
- Owned by the Roger Jones family, which also owns Rolland Jones Potatoes Inc. and Magic Valley Foods in Rupert and Carmela Winery in Glenns Ferry.

Source Magic West Inc.

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file copy

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

IN THE MATTER OF LICENSE NO. 61-07189	)	ORDER ON PETITION
IN THE NAME OF MAGIC WEST, INC.	)	FOR RECONSIDERATION;
	)	PETITION TO STAY;
	)	REQUEST FOR HEARING

On January 22, 1999, the Director of the Idaho Department of Water Resources (the "Department") issued a Final Order in connection with the above captioned matter. On February 5, 1999, Magic West, Inc. ("Magic West" or "petitioner") filed a Petition for Reconsideration, Petition to Stay, and Request for Hearing (collectively, the "Petition"). The Director has reviewed the Petition and issues this order denying the Petition for Reconsideration, denying the Petition to Stay, and granting the Request for Hearing on the cease and desist order.

Magic West petitioned for reconsideration requesting that: A. The annual diversion volume in the Amended License No. 61-07189 be increased above 58 acre-feet; and B. The cease and desist order be removed, modified, or amended.

- A1. The mistake in the annual diversion volume in the Water Right License for Water Right No. 61-07189 resulted not only from the procedural error of the Department, but also from the failure of Magic West to review the water right license in a timely manner and contest any perceived errors within fifteen days of receiving the water right license as provided under Idaho Code § 42-1701A(3). In its argument for reconsideration, Magic West fails to acknowledge its responsibility for ensuring the Department had adequate information upon which to issue an accurate water right license, or its responsibility to review the water right license in a timely manner after it was issued. Although the Department erred by not contacting the plant manager at the time, Mr. Jack Anderson, when the Department conducted its beneficial use field examination in 1987, Mr. Anderson had several subsequent opportunities to provide the Department with information that could have been considered before or after the license was issued. At the hearing held on December 15, 1997, Mr. Anderson was again provided the opportunity to provide verifiable information documenting the extent of beneficial use that occurred during the time period authorized for development by the permit to appropriate water for Water Right No. 61-07189.
- A2. Magic West has failed to produce verifiable records for the amount of waste water discharged from its plant to the City of Glenns Ferry sewer system, the

amount of water in sludge trucked from its plant, and the amount of water consumed in plant processing, for a consistent annual time period during the time authorized for development by the permit to appropriate water. In its argument for reconsideration, Magic West again contends that in determining the annual volume of water beneficially used during the time period authorized by the permit to appropriate water, it is unreasonable not to account for waste water discharged from its plant to the City of Glenns Ferry sewer system, the amount of water contained in sludge trucked from the plant, and the amount of water consumed in plant processing. However, Magic West failed to provide data from one or more consistent annual time periods, during the time authorized for development by Permit to Appropriate Water No. 61-07189, for all of the parameters related to use of ground water under the permit; i.e., the amount of water supplied to Magic West's plant by the City of Glenns Ferry, the amount of water contained in incoming potatoes, the amount of water consumed during plant processing, the amount of waste water discharged to the City of Glenns Ferry sewer system, the amount of waste water discharged to Magic West's waste water farm, and the amount of water contained in sludge hauled from the plant. For the reasons stated in responses to exceptions numbered 3 and 4 in the Final Order dated January 22, 1999, it is not appropriate to use data for these parameters obtained during time periods beyond the time authorized for development by the permit to appropriate water. Similarly, for the reasons stated in response to exceptions numbered 5 in the Final Order, it is not appropriate to use data for waste water discharged to the City of Glenns Ferry sewer system during one year of the period authorized for development by the permit to appropriate water together with waste water discharged to the waste water farm during other years of the development period to estimate water use during the development period.

- A3. The alternate calculation of the annual volume of ground water beneficially used during the development period as proposed by Magic West is not supported by verifiable data that show ground water was diverted at a constant rate of 0.67 cfs each hour Magic West's plant was operated during the time period authorized for development by the permit to appropriate water. In its argument for reconsideration, Magic West contends that use of its alternate calculation of the volume of ground water diverted and beneficially used during 1978 results in an estimate of the volume of water beneficially used of about 260 acre-feet. This calculation is based on the assumption that ground water was diverted under the permit to appropriate water at a constant rate of 0.67 cfs each hour Magic West's plant was operated during the time period authorized for development by the permit. However, Magic West has not provided verifiable data to support this assumption. For any particular day the plant was operated, Magic West has not shown that it diverted and used ground water at a constant rate of 0.67 cfs rather than relying to a greater extent on water supplied to the plant by the City of Glenns Ferry.

- B1. The cease and desist order should not be removed and has no relationship to Magic West's diligence or lack of diligence in pursuing alternatives to obtain adequate water rights for its Glenns Ferry plant.** Magic West argues that the cease and desist order should be stricken or at least modified because Magic West claims to have been diligent in pursuing alternatives to obtain adequate water rights for its Glenns Ferry plant. Idaho Code § 42-350(1)(b) allows the Director to issue a cease and desist order when on the basis of available information after a license has been issued, "the licensee . . . has wilfully or intentionally failed to comply with any of the conditions in the license, or has wilfully or intentionally failed to comply with provisions of the law governing the license." The record in this matter shows that Magic West wilfully or intentionally failed to comply with the condition of Water Right License No. 61-07189 limiting the annual volume of ground water that could be diverted as the license was originally issued or has been amended. Even if Magic West has been diligent in pursuing alternatives to obtain adequate water rights for its Glenns Ferry plant, not issuing a cease and desist order in this instance would imply that Magic West's failure to comply with the limitation on annual diversion volume was not intentional or wilfull. This would not be consistent with the record.
- B2. The cease and desist order will not hinder Magic West's pursuit of its pending application for permit to appropriate water or other possible alternative water supplies and is not inconsistent with the procedures described in various correspondence.** Magic West argues that the cease and desist order should be removed or should not be effective until after a final decision is made on pending Application for Permit No. 61-07724 or until Magic West has adequate time to assess its options to secure an alternative water supply. The cease and desist order has no relationship to Magic West's pending application to appropriate water or other water supply alternatives it may pursue. Consequently, the cease and desist order will not hinder these activities. The cease and desist order is also not inconsistent with the procedures described in various correspondence. The cease and desist order essentially has no effect until the volume of ground water diverted and used at Magic West's plant reaches the annual volume limitation specified in the amended license, which Magic West has calculated to occur no earlier than April 10, 1999. Therefore, actual enforcement will not occur until the annual volume limitation is reached, which will be several months following issuance of the Final Order amending the water right license.
- B3. A determination of injury is not required prior to issuing a cease and desist order under § 42-350.** Magic West argues that the cease and desist order should be removed or amended to become effective only after a determination of injury is made. However, the purpose for the cease and desist order is to ensure that Magic West complies with the annual volume limitation set forth in Amended Water Right License No. 61-07189 given that, based on available information, Magic West has wilfully or intentionally failed to comply with the annual volume

limitation set forth in the water right license as originally issued or as amended. By seeking Magic West's compliance with the condition of the license fixing a limitation on the annual volume of water diverted and used, injury to other water rights may be prevented. However, a determination of injury does not have to be made for the Director to require that Magic West comply with conditions in its water rights license.

- B4. The Director has the discretion to allow a time schedule for Magic West to comply with the cease and desist order and will consider a time schedule for compliance provided Magic West provides a suitable plan for complying with the annual volume limitation at the hearing scheduled in response to Magic West's Request for Hearing.** Magic West correctly argues that under Idaho Code § 42-305(1)(b), the Director has the discretion to allow a time schedule for Magic West to comply with the cease and desist order. Magic West is also entitled to an administrative hearing pursuant to Idaho Code § 42-350(4). Therefore, the Department has scheduled an administrative hearing to be held at 10:00 am, on March 12, 1999, at the Glenns Ferry City Hall, to hear Magic West's request that a time schedule be adopted to phase-in Magic West's compliance with the amended water right license. The Director will consider adopting a time schedule for compliance provided Magic West presents a suitable plan for complying with the annual volume limitation at the March 12 hearing.

In the event Magic West's Petition for Reconsideration is denied, Magic West petitioned to stay the cease and desist order on the basis of its claim that the amended license only provides enough ground water to operate its processing plant for a period of ten (10) weeks, and that without an alternative source of water, "Magic West's ability to continue operating the plant is in serious question." As stated in B1 and B3 above, the available information shows that Magic West has wilfully or intentionally failed to comply with the condition of Water Right License No. 61-07189 limiting the annual volume of ground water that could be diverted as the license was originally issued or amended. Consequently, there is no appropriate basis to stay the cease and desist order.

Magic West also requested an administrative hearing on the cease and desist order. In his Final Order of January 22, 1999, the Director concluded that the hearing held by the Department in considering whether to amend Water Right License No. 61-07189 satisfied the substantive due process requirements of Idaho Code § 42-350 for issuance of a cease and desist order (Conclusion of Law No. 12). However, since Magic West has requested an administrative hearing on the cease and desist order within twenty-one (21) days from the date of service of the Final Order, Magic West's Request for Hearing will be granted pursuant to Idaho Code § 42-350(4). The Director acknowledges the cease and desist order may impact a number of persons and that Magic West may want to have such persons testify at this hearing. However, the administrative hearing is not for a determination of equity and will be limited to the water right aspects of the cease and desist order, such as whether compliance with the cease and desist order can be reasonably and appropriately achieved through a phased plan for compliance.

ORDER

IT IS THEREFORE, hereby ORDERED as follows:

1. The Petition for Reconsideration filed by Magic West is **DENIED**.
2. The Petition to Stay the cease and desist order is **DENIED**.
2. The Request for Hearing is **GRANTED**. Said hearing will be held at 10:00 am on Friday, March 12, 1999, at the Glenns Ferry City Hall. Mr. L. Glen Saxton will preside as hearing officer.

Signed this 23rd day of February, 1999.


KARL J. DREHER
Director

CERTIFICATE OF MAILING

I do hereby certify that on this the 23rd day of February, 1999, the above and foregoing document, **Order on Petition for Reconsideration; Petition for Stay; Request for Hearing** was served upon the following, by placing a copy of the same in the United States Mail, postage prepaid and properly addressed to the following:

(Certified mail #P-581 145 487)

MAGIC WEST INC
P O BOX 475
RUPERT ID 83350

PERCE HALL EDQ
340 E 2ND N
MOUNTAIN HOME ID 83647

EDWARD T POTUCEK
ROSEVEAR RD
P O BOX 537
GLENN'S FERRY ID 83623

(Certified mail #P-581 145 488)
NORMAN SEMANKO
ROSHOLT ROBERTSON & TUCKER
P O BOX 1906
TWIN FALLS ID 83303-1906

DANIEL V STEENSON
RINGERT CLARK CHARTERED
P O BOX 2773
BOISE ID 83701-2773

ROBERT K HALL
ROUTE 1 BOX 103
GLENN'S FERRY ID 83623



Rita I. Fleck, Administrative Assistant

ROSHOLT, ROBERTSON & TUCKER

Chartered
ATTORNEYS AT LAW

JOHN A. ROSHOLT
J. EVAN ROBERTSON
JAMES C. TUCKER
GARY D. SLETTE
JERRY V. JENSEN
BRUCE M. SMITH
JOHN K. SIMPSON
NORMAN M. SEMANKO
PATRICK D. MADIGAN
TIMOTHY J. STOVER

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Boise Office
1221 WEST IDAHO, SUITE 600
P.O. BOX 2139
BOISE, IDAHO 83701-2139
TELEPHONE (208) 336-0700
FAX (208) 344-6034

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WATER RESOURCES
WESTERN REGION

February 3, 1999

Kay Walker, Water Resource Agent
Adjudication Bureau
Idaho Department of Water Resources
Western Region
2735 Airport Way
Boise, ID 83705

HAND DELIVERED

Re: Basin 61 SRBA Recommendations for Magic West, Inc.

Dear Kay:

We appreciate your January 25 response to our Notices of Error for the preliminary recommendations for SRBA Claim Nos. 61-02248B and 61-07189.

As we discussed yesterday, there is one remaining issue for these two claims that we believe needs to be corrected -- the season of use. Your revised preliminary recommendations include a season of use for both rights from August 15 through July 1. This season of use accurately reflects the season of use contained in Magic West's License No. 61-07189. However, the Glenns Ferry plant has operated year 'round since at least 1986, before the commencement of the SRBA. As a result, the accomplished transfer statute, I.C. Sec. 42-1425, should recognize this change in the season of use.

You are correct to conclude that the 1987 field examination conducted by Steve Lester only included 42 weeks in the volume calculation. This merely reflects the fact that the permit only authorized a period of use from August 15 through July 1. Uncontested testimony received at the December 15, 1997 administrative hearing on Magic West's Petition to correct the annual volume in License No. 61-07189 clearly indicates that the plant has been operated year 'round since at least 1986. For your information, I've enclosed excerpts from the Transcript of Hearing held December 15, 1997.

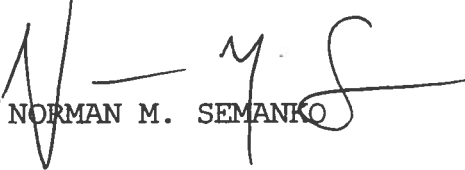
In addition, production and sales records for 1986 and 1987 verify that the plant was in use during July and August of those years. A copy of these records is enclosed.

Kay Walker
February 3, 1999
Page 2

The evidence clearly shows that year 'round use began no later than 1986, before the commencement of the SRBA in 1987. As a result, the recommendations for SRBA Claim Nos. 61-02248B and 61-07189 should both be revised to include a year 'round season of use, pursuant to the accomplished transfer statute, I.C. Sec. 42-1425. We request that these changes be made before the Director's Report for Basin 61 is filed.

Thank you for your consideration.

Sincerely,



NORMAN M. SEMANKO

02029902.NMS

Enclosures

cc: Susan Hamlin, IDWR

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WATER RESOURCES
WESTERN REGION

Idaho Department of Water Resources

RE: Magic West Inc.

Transcript of hearing held on
December 15, 1997

2 of 3

APPEARANCES:

HEARING OFFICER

GLEN SAXTON

DIRECTOR, IDWR

KARL DREHER

PETITIONER, MAGIC WEST

MR. NORMAN SEMANKO
Attorney at Law
P.O. Box 1906
Twin Falls, ID 83303

INTERVENOR, EDWARD T. POTUCEK

MR. DANIEL STEENSON
Attorney at Law
P.O. Box 2773
Boise, ID 83701

INTERVENOR, ROBERT K. HALL

MR. PERCE HALL
Attorney at Law
340 East Second N.
Mountain Home, ID 83647

1 entrance and exit of the plant?

2 MR. ANDERSON: Right.

3 MR. STEENSON: Of the plant.

4 [Pause]

5 MR. STEENSON: Now, at the time of the, let me
6 ask you about this period in July and August when the
7 plant has historically, as I understand it, correct me if
8 I'm wrong, shut down for maintenance. In nineteen
9 eighty, (unintelligible) nineteen eighty seven, did you
10 shut down in June, in July and August to perform
11 maintenance? Shut the plant down altogether for a forty
12 five day period?

13 MR. ANDERSON: No.

14 MR. STEENSON: Okay. When was the last year
15 that you did that? Shut the plant down entirely for
16 maintenance?

17 MR. ANDERSON: Uh, to my knowledge we haven't.

18 MR. STEENSON: In your experience you've never
19 shut the plant down between, during January, excuse me.
20 July and August to perform maintenance for a period of
21 forty five days?

22 MR. ANDERSON: No. We did not.

23 MR. STEENSON: So, in your experience, have you
24 at all times operated the well every July and every
25 August . . .

1 MR. SEMANKO: I'm going to object. Uh, this
2 isn't part of the proceeding and application for permit
3 which is not at issue here, one is of the specific issues
4 in that proceeding is, is whether or not to extend the
5 period of use from ten and a half months to twelve
6 months. So, uh, if you want to do a deposition on that
7 later, that's fine. But I don't think this is the time
8 or the place for these questions.

9 MR. STEENSON: I am trying to ascertain water
10 usage on average between nineteen eighty seven and
11 nineteen ninety seven, nineteen seventy nine. In this,
12 in this witness's experience. (unintelligible) back to
13 nineteen eighty five. He talked about shutting the plant
14 down for a period of, at, what was it? A certain period
15 of time after a twenty one days operating period to
16 perform cleaning. That affect annual diversion volume?
17 If they're not diverting from the well in July and
18 August, that affects annual diversion volume. So I think
19 these issues are. Period of use. Timing of use.
20 Duration of use. All of these issue are relevant to
21 these proceedings.

22 HEARING OFFICER: My notes show that he
23 testified to an eight hour clean up period. Is that what
24 you're inquiring about?

25 MR. STEENSON: No. I'm inquiring about any

1 other period during which the plant is shut down. Now,
2 my information is there's a period in July and August.
3 I will now follow up and ask him if there was any other
4 period during which Magic West historically and regularly
5 shuts the plant down. It relates directly to annual
6 diversion rate.

7 HEARING OFFICER: I'll allow the question. If
8 you may answer.

9 MR. STEENSON: Let me back up.

10 MR. ANDERSON: Yeah. Tell me again.

11 MR. STEENSON: So we're both in the same place.
12 My previous question was whether or not you have in your
13 experience at Magic West shut the plant down in July and
14 August?

15 MR. ANDERSON: For the forty five day period
16 that . . .

17 MR. STEENSON: Yes.

18 MR. ANDERSON: No.

19 MR. STEENSON: And that has not occurred in
20 your experience since nineteen eighty five?

21 MR. ANDERSON: No.

22 MR. STEENSON: Is there any other period of the
23 year when you customarily or historically have shut
24 operations down, other than the eight hour period you
25 talked about, to maintain the facility, clean the

1 facility, change equipment or any other maintenance
2 activity?

3 MR. ANDERSON: Uh, there has been over the
4 years. I don't know the dates today. But we go down
5 sometime for holidays. We're down. Uh, we are down once
6 in a while for equipment change. For maybe two or three
7 days. But not long periods of time.

8 MR. STEENSON: When you saw equipment change,
9 that's entire replacement of equipment with other
10 equipment?

11 MR. ANDERSON: Mostly uh, steam peelers, we
12 have to re-build. Uh, shafts and those types of things,
13 sometimes we're down for a couple of days for that.

14 MR. STEENSON: Okay. You know if since
15 nineteen eighty five you've replaced the boilers in your
16 plant?

17 MR. ANDERSON: No. We have not replaced them.

18 MR. STEENSON: And by holidays, is it, is it
19 every year since nineteen eighty five you've shut down
20 for Christmas?

21 MR. ANDERSON: Right.

22 MR. STEENSON: Do you shut down for
23 Thanksgiving?

24 MR. ANDERSON: Right.

25 MR. STEENSON: And the rest of the main

1 were shut down are the same in nineteen six, ninety six
2 and ninety seven, as in nineteen eighty five?

3 MR. ANDERSON: Uh, . . . pretty similar. I
4 can't uh, I would have to go back in the records to
5 answer that.

6 MR. HALL: You don't know?

7 MR. ANDERSON: I don't know.

8 MR. HALL: Don't you have any regular periods
9 that you're shut down like July and August?

10 MR. ANDERSON: No. We don't.

11 MR. HALL: You (unintelligible) is that what
12 you're saying?

13 MR. ANDERSON: That's what I'm saying.

14 MR. HALL: Now, on an average, in nineteen
15 eighty five, how many days were you shut down?

16 MR. ANDERSON: Uh, . . .

17 MR. HALL: To your knowledge?

18 MR. ANDERSON: Probably, over the entire year,
19 I would estimate uh, maybe twenty one days.

20 MR. HALL: And how about nineteen eighty six?

21 MR. ANDERSON: Uh, I'm just guessing, but uh,
22 I would say probably clean ups, holidays, uh, same.

23 MR. HALL: And how about nineteen ninety six?

24 MR. ANDERSON: Uh, probably the same.

25 MR. HALL: The same for ninety seven?

FEB 03 '99 07:21AM MAGIC VALLEY FOODS

P.4

FOR THE MONTH OF: July, 1987

	SUB-TOTAL	# TERMINATED	TOTAL BAL.FOR M
Construction jobs generated to date:	0	0	0
New permanent jobs generated to date (1st of mo.):	136		136 (July)
New permanent jobs filled by minorities to date:	24	1	23
New permanent jobs filled by Blacks to date:	0	0	0
New permanent jobs filled by Hispanics to date:	20	0	20
New permanent jobs filled by other minorities:	4	1	3
New permanent jobs fill by caucasians:	114	9	105
New permanent Very low jobs generated to date:	33	4	29
New permanent low jobs generated to date:	96	6	90
New permanent moderate jobs generated to date:	1	0	1
New permanent high income jobs generated to date:	8	0	8
New permanent jobs filled by CETA qualified:	0	0	0
Number of jobs terminated for the month:		10	
Number of jobs retained as of (end of mo.): July	138	10	128

RECEIVED

FEB 03 1999

WATER RESOURCES
WESTERN REGION

FEB 03 '99 07:21AM MAGIC VALLEY FOODS

P.5

FOR THE MONTH OF: August

	SUB-TOTAL	# TERMINATED	TOTAL BAL.FOR MO.
Construction jobs generated to date:	0	0	0
New permanent jobs generated to date (1st of mo.):	138	23	115
New permanent jobs filled by minorities to date:	26	4	22
New permanent jobs filled by Blacks to date:	0	0	0
New permanent jobs filled by Hispanics to date:	22	3	19
New permanent jobs filled by other minorities:	4	1	3
New permanent jobs fill by caucasians:	112	19	93
New permanent Very low jobs generated to date:	35	10	25
New permanent low jobs generated to date:	94	13	81
New permanent moderate jobs generated to date:	1	0	1
New permanent high income jobs generated to date:	8	0	8
New permanent jobs filled by CETA qualified:	0	0	0
Number of jobs terminated for the month:		23	
Number of jobs retained as of (end of mo.): August	138	23	115

RECEIVED

FEB 03 1999

WATER RESOURCES
WESTERN REGION

As of July 31, 1986

3. Number of jobs created 170; 47 terminated; 123 currently employed.
Number of Low Moderate (no high school diploma) 49; 15 terminated; 34 currently.
Number of Minority 29; 5 terminated; 24 currently.
Number of JTCA people 24; 11 completed; 2 terminated; 11 currently.
4. Number of construction people 0
Number of permanent People 106
Number of part time people 17
Number of low Income People 112

Barbara Bud, Sr. Magic Valley Inc.

FEB 03 '99 07:20AM MAGIC VALLEY FOODS

P.3

As of August 31, 1986

3. Number of jobs created: 194; 75 terminated; 119 currently employed.
Number of Low Moderate (no high school diploma) 58; 22 terminated; 36 currently.
Number of Minority 33; 11 terminated; 22 currently.
Number of JTCA people 25; 21 completed; 2 terminated; 2 currently.
4. Number of construction people 0
Number of permanent People 110
Number of part time people 9
Number of Low Income People 105

Barbara Lee Secretary
Magic Valley Foods, Inc.

FEB 03 '99 12:02PM MAGIC VALLEY FOODS

P.4

SALES WEEKLY \$ 508,078.11

DATE

August 21, 1986

SALES YTD \$ 581,676.09

DEPOSIT \$ 626,881.95

YEAR TO DATE \$ 628,474.34

FROZEN

	LBS.	WEEKLY PACKOUT	TOTAL # SHIPPED	YTD SALES CASES	YTD SALES POUNDS
6/3# Ore-Ida	18	<u>29,314</u>	<u>527,652</u>	<u>44,671</u>	<u>804,078</u>
6/3# Grace	18	<u>3,755</u>	<u>67,590</u>	<u>3,925</u>	<u>70,650</u>
6/3# Idaho Naturally	18				
6/3# Carnation	18	<u>5,260</u>	<u>94,680</u>	<u>5,260</u>	<u>94,680</u>
Subtotal Frozen			<u>689,922</u>		<u>969,408</u>

FLAKES

P & G Bulk Cars		<u>5</u>	<u>941,600</u>	<u>5</u>	<u>941,600</u>
Subtotal Flakes			<u>941,600</u>		<u>941,600</u>

GRAND TOTAL

1,631,522

1,911,008

DATE: 02/03/99
PAGE: 1

58.00 AFA

LICENSE

Other Water Rights Listing Overlapping Place(s) of Use:
A37-04112

AJ0749NP
No. R61-07189

IDAHO DEPARTMENT OF WATER RESOURCES
ADJUDICATION CLAIM PROFILE REPORT
(REGIONAL)

DATE: 02/03/99
PAGE: 2

Dates: Exam Made Date: 08/04/1987 Verified Date: 02/03/1999 Objection Filed Date:

Misc: Water District Number: Field Inspection Flag:
Presumption Flag:

Comments: Date: 11/17/1998 User-ID: KWALKER Subject: RECOMMENDATION
THIS RIGHT IS RECOMMENDED AS LICENSED IN OCTOBER OF 1990. THERE
IS ADMINISTRATIVE ACTION BEING TAKEN ON AMENDING THE LICENSE. IF
LICENSE IS AMENDED PRIOR TO RECOMMENDATION GOING TO SRBA COURT, I
WILL AMEND RECOMMENDATIONS TO SHOW THE AMENDED LICENSE.

Date: 11/21/1998 User-ID: AJU10-JS Subject: AJU10 CONDITION UPDATE
CONDITION CODE(S) C15 ADDED IF NOT ALREADY PART
OF RECORD THRU AJU10.

Date: 02/03/1999 User-ID: KWALKER Subject: REVISED RECOMMENDATION
REVISED RECOMMENDATION PER ORDER AMENDING LICENSE TO INCREASE
DIVERSION VOLUME. NO OTHER CHANGES MADE.

Audit: 02/03/99 KWALKER



State of Idaho

DEPARTMENT OF WATER RESOURCES

1301 North Orchard Street, P.O. Box 83720, Boise, Idaho 83720-0098

Phone: (208) 327-7900 FAX: (208) 327-7866

January 22, 1999

DIRK KEMPTHORNE
GOVERNOR

KARL J. DREHER
DIRECTOR

RE: In the Matter of License No. 61-07189 in the name of Magic West, Inc.

Dear Interested Parties:

The accompanying order is a "final order" issued by the department pursuant to section 67-5246 or 67-5247, Idaho Code.

Section 67-5246 provides as follows:

- (1) If the presiding officer is the agency head, the presiding officer shall issue a final order.
- (2) If the presiding officer issued a recommended order, the agency head shall issue a final order following review of that recommended order.
- (3) If the presiding officer issued a preliminary order, that order becomes a final order unless it is reviewed as required in section 67-5245, Idaho Code. If the preliminary order is reviewed, the agency head shall issue a final order.
- (4) Unless otherwise provided by statute or rule, any party may file a petition for reconsideration of any order issued by the agency head within fourteen (14) days of the issuance of that order. The agency head shall issue a written order disposing of the petition. The petition is deemed denied if the agency head does not dispose of it within twenty-one (21) days after the filing of the petition.
- (5) Unless a different date is stated in a final order, the order is effective fourteen (14) days after its issuance if a party has not filed a petition for reconsideration. If a party has filed a petition for reconsideration with the agency head, the final order becomes effective when:
 - (a) the petition for reconsideration is disposed of; or
 - (b) the petition is deemed denied because the agency head did not dispose of the petition within twenty-one (21) days.
- (6) A party may not be required to comply with a final order unless the party has been served with or has actual knowledge of the order. If the order is mailed to the last known address of a party, the service is deemed to be sufficient.

(7) A non-party shall not be required to comply with a final order unless the agency has made the order available for public inspection or the nonparty has actual knowledge of the order.

(8) The provisions of this section do not preclude an agency from taking immediate action to protect the public interest in accordance with the provisions of section 67-5247, Idaho Code.

PETITION FOR RECONSIDERATION

Any party may file a petition for reconsideration of a final order within fourteen (14) days of the service date of this order. The department will act on a petition for reconsideration within twenty-one (21) days of its receipt, or the petition will be considered denied by operation of law. See section 67-5246(4) Idaho Code.

APPEAL OF FINAL ORDER TO DISTRICT COURT

Pursuant to sections 67-5270 and 67-5272, Idaho Code, any party aggrieved by a final order or orders previously issued in a matter before the department may appeal the final order and all previously issued orders in the matter to district court by filing a petition in the district court of the county in which:

- i. A hearing was held,
- ii. The final agency action was taken,
- iii. The party seeking review of the order resides, or
- iv. The real property or personal property that was the subject of the agency action is located.

The appeal must be filed within twenty-eight (28) days a) of the service date of the final order, b) of an order denying petition for reconsideration, or c) the failure within twenty-one (21) days to grant or deny a petition for reconsideration, whichever is later. See section 67-5273, Idaho Code. The filing of an appeal to district court does not in itself stay the effectiveness or enforcement of the order under appeal.

Sincerely,



L. GLEN SAXTON, Chief
Water Allocation Bureau

Enclosure

c: Distrubution List

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

IN THE MATTER OF LICENSE NO. 61-07189)
IN THE NAME OF MAGIC WEST, INC.)
_____)

FINAL ORDER

On September 4, 1998, the hearing officer for the Idaho Department of Water Resources (the "Department") issued a Recommended Order in connection with the above captioned matter. On September 25, 1998, Magic West, Inc. ("Magic West" or "petitioner") filed exceptions to the Recommended Order. On October 9, 1998, intervenor Robert K. Hall filed a response to the exceptions of Magic West. On October 23, 1998, intervenor Edward T. Potucek filed a response to the exceptions of Magic West. The Director of the Department has reviewed the exceptions and responses and responds as follows:

1. **The Department has the statutory authority to amend the Water Right License for Water Right No. 61-07189 in accordance with § 67-5254(1), Idaho Code.** In response to exceptions filed by Magic West, intervenor Edward T. Potucek contends that the Department has no authority to amend the license for Water Right No. 61-07189. Similarly, in his objection to exceptions filed by Magic West, intervenor Robert K. Hall renews his motion to dismiss Magic West's Petition for Adjustment and Clarification of Existing Order/License. Under Idaho Code § 67-5201, "'License' means the whole or part of any agency permit, certificate, approval, registration, charter, or similar form of authorization required by law, but does not include a license required solely for revenue purposes." Idaho Code § 67-5254(1) grants the authority to the Department to amend such a license when "the agency first gives notice and an opportunity for an appropriate contested case" Because the Department has complied with this statute, the Department will amend the license for Water Right No. 61-07189 as ordered herein. Also, an additional element is included in this final order denying intervenor Hall's renewed motion for dismissal.

2. **The Department initially required Magic West to install and maintain a device to measure groundwater diversions, and Magic West could have used such measurements to document the extent of beneficial use under its permit to appropriate water.** In its exceptions, Magic West contends that use of data and information subsequent to the period for development authorized by Permit to Appropriate Water No. 61-07189, or the alternative use of a theoretical calculation of maximum groundwater diversions based on pump capacity, is reasonable for determining the extent of beneficial use under the permit because "there were no actual measurements made or required during the development period." However, when the Department approved the permit to appropriate water on August 29, 1974, a condition of approval was that "A measuring device ... be

permanently installed and maintained as part of the diverting works.” Although the Department removed the requirement for a measuring device by order dated August 28, 1978, Magic West was not relieved of its burden to offer sufficient proof of the extent of beneficial use prior to the Department licensing the water right, a burden that Magic West could have met by installing an adequate device to measure actual diversions and water use.

3. **The Department is not required or obligated to use the input-output formula proposed by Magic West or the data and information provided by Magic West regarding water use that occurred after the development period to estimate water use during the development period.** Magic West contends that the diversion volume recommended by the Hearing Officer “is not a Reasonable Determination of Actual Beneficial Use under the Input-Output Formula.” At issue is not whether the determination of the Hearing Officer resulted from reasonable and complete use of the input-output formula proposed by Magic West, but whether the determination of the Hearing Officer is appropriate given the lack of measurements of diversions and use during the period for development authorized by the permit to appropriate water. Magic West contends that based on the Department’s Final Order for Transfer No. 4985, in the name of Mark T. Gates, “all available data should be included in making relevant calculations.” While the Department procedurally erred by failing to contact the representative identified by Magic West to accompany the Department during the beneficial use field examination, in determining whether to amend Water Right License No. 61-07189 the Department should only consider data and information concerning beneficial use during the permit development period that could have been provided by Magic West’s designated representative had that representative been notified of the Department’s beneficial use field examination. Data and information for time periods subsequent to the permit development period should only be considered if it is conclusively shown that groundwater diversions and beneficial use subsequent to the development period were the same as groundwater diversions and beneficial use during the development period. Magic West has not provided measured data or information derived during the period authorized for development by the permit to appropriate water for five of the six variables in the input-output formula proposed by Magic West to determine the seventh variable, the volume of groundwater diverted and beneficially used during the development period. Magic West has also not conclusively shown that groundwater diversions and beneficial use subsequent to the development period were essentially the same as groundwater diversions and beneficial use during the development period.
4. **Records of waste water pumped from Magic West’s plant to Magic West’s waste water farm do not corroborate the testimony of witnesses for Magic West that Magic West’s plant operations and associated beneficial use of water were the same during and following the time period authorized for development by the permit to appropriate water. Consequently, the**

calculation of annual volume of groundwater beneficially used during the development period proposed by Magic West is not supported by adequate evidence. During the hearing held on December 15, 1997, the plant manager for Magic West, Mr. Jack C. Anderson, testified describing the operations at the plant since 1985. Tr. at 120, Ln. 1-17.¹ Mr. Anderson testified that from 1985 through 1997, the plant generally processed potatoes year-round, six to seven days per week, 24 hours per day, for 21 days. Following this 21-day time period, Magic West's plant was taken out of service 8 to 12 hours for clean up. Mr. Anderson testified that the cycle of 21 days of 24-hour operations followed by 8 to 12 hours for clean up was continuously repeated year-round, excluding holidays. Mr. Doug Ogden, who was the plant manager from August of 1974 through June of 1979, testified that "We run [the plant] the same way [as described by Mr. Anderson for the time period 1985 through 1997]." Tr. at 193, Ln. 19. Mr. Ogden testified that "There were some weeks we could only run [the plant] five [days]." Tr. at 195, Ln. 5-7. But that the amount of raw potatoes processed at the plant each year of operations beginning in 1974 through 1979 was about the same as the amount processed in 1997. Tr. at 196, Ln. 16-17. Mr. Ogden further testified that the amount of waste water sent to Magic West's waste water farm during each year beginning in 1974 through 1979 was "awfully close" to the amount of waste water sent to the farm in 1997. Tr. at 198, Ln. 4-7. Finally, Mr. William S. Schow, vice president for Magic West from 1975 through 1997, testified that the plant was always operated 24 hours per day, 7 days per week, year-round. He testified that it was therefore reasonable to determine water use during the years 1974 through 1979 using more recent information because plant operations were similar. Tr. at 222 and 233, Ln. 8-23.

No testimony was offered to refute the testimony described in the preceding paragraph. However, recorded measurements of the volume of waste water discharged from the Magic West plant to Magic West's waste water farm do not corroborate the testimony of Magic West's witnesses. During Magic West's fiscal year ending October 31, 1978, records of waste water discharge submitted by Magic West to the Idaho Division of Environmental Quality show that a total of 44.1368 million gallons waste water were discharged to the waste water farm during 217 days (Petitioner's Exhibit 1A). For Magic West's fiscal year ending October 31, 1997, records of waste water discharge show that more than 103.7492 million gallons of waste water were discharged to the waste water farm during more than 313 days (Petitioner's Exhibit 1A). Because the number of days during which waste water was discharged to the waste water farm must be directly related to the number of days during which the plant was in operation, Magic West's plant was operated approximately 50 percent more days in fiscal year 1997 than in fiscal year 1978. As a result, approximately 250 percent more waste water

¹ Unofficial transcript of hearing held on December 15, 1997, provided by Mr. Norman Semanko on behalf of Petitioner, Magic West.

was discharged to the waste water farm in fiscal year 1997 than was discharged in fiscal year 1978. The primary difference between the days of plant operation in 1978 and 1997 occurred because in fiscal year 1978, the plant operated only about 15 days in January, less than 10 days in March, no days in August, and less than 10 days in September. Although records of waste water discharged for 1978 may not be representative of plant operations for all years of the 1974 to 1979 period authorized for development by the permit to appropriate water, 1978 was the only fiscal year during the development period for which complete records of waste water discharged to the waste water farm and use of water supplied by the City of Glenns Ferry were provided. Based on the significant differences in plant operations indicated during Magic West's fiscal years 1978 and 1997, Magic West has not shown that groundwater diversions and beneficial use subsequent to the period authorized for development by the permit to appropriate water were the same as groundwater diversions and beneficial use during the development period. Therefore, it is not reasonable to determine groundwater use during the 1974 through 1979 development period using information derived during various years subsequent to the development period.

5. **The information available to the Department does not support the use of data for waste water discharged to the City of Glenns Ferry sewer system during one year of the period authorized for development by the permit to appropriate water together with waste water discharged to the waste water farm during other years of the development period to estimate water use during the development period.** Petitioner's Exhibit 1 includes a copy of recorded measurements of waste water from the Magic West plant discharged to the City of Glenns Ferry sewer system for calendar year 1975. In its exceptions, Magic West contends that the Hearing Officer should have included the amount of waste water discharged to the Glenns Ferry sewer system in addition to the amount of waste water discharged to the waste water farm in his determination of the amount of water used at the plant during the time period authorized by the permit to appropriate water. However, no records for the amount of waste water discharged to the waste water farm were provided for calendar year 1975, and no records for the amount of waste water discharged to the Glenns Ferry sewer system were provided for the years corresponding to records of discharge to the waste water farm. In its exceptions, Magic West describes that more waste water was discharged to the Glenns Ferry sewer system during the development period than in later years because of odor problems associated with waste water discharged to the waste water farm, which have since been corrected. Since Magic West has not conclusively shown that the amount of waste water discharged to the Glenns Ferry sewer system in 1975 was similar to the amounts of waste water discharged to the sewer system during other years of the development period, it is possible that a relatively small volume of waste water was discharged to the waste water farm in 1975 or that a relatively small volume of waste water was discharged to the Glenns Ferry sewer system in 1978 when records of waste water discharged to the waste water farm were provided.

Therefore, it is not appropriate to add the volume of waste water discharged to the Glenns Ferry sewer system in 1975 to the volume of waste water discharged to the waste water farm in 1978 in estimating the amount of water used at the plant during the development period.

6. **The alternate calculation proposed by Magic West to estimate beneficial use during the development period is not supported by adequate evidence.** In its exceptions, Magic West contends that “There is no dispute that the plant has always been operated 24-hours per day, using 3 8-hour shifts per day. Tr. at 120 (Anderson), 195 (Ogden), 222 (Schow). It was also undisputed that the flow of the plant was constant while it was in operation. Tr. at 28, 231-32.” Therefore, as an alternate calculation to the use of Magic West’s proposed input-output formula, Magic West proposes to multiply 0.67 cfs (which is equivalent to a flow rate of 433,000 gallons per day) by the number of days the plant was operated during 1978 (217 days) and by the conversion factor 1.9835, which is the volume of water in acre-feet that results from a constant flow rate of 1 cfs for 24 hours. However, the records of waste water discharged to the waste water farm during fiscal year 1978 show that the plant was not operated at a constant flow rate for 24 hours each day the plant was in operation. At maximum operations, during June of 1978, the records of waste water discharged to Magic West’s waste water farm show that Magic West’s plant was operated 28 days for an average of 22.8 hours per day and discharged an average of 235,064 gallons of waste water per day to the waste water farm. At minimum operations, during September of 1978, the records of waste water discharged show that Magic West’s plant was operated 8 days for an average of 17.5 hours per day and discharged an average of 156,687 gallons of waste water per day to the waste water farm. These records are not consistent with Magic West’s contention the flow rate of water through the plant was constant each day the plant was in operation.
7. **The limitation on the volume of ground water diverted annually should not be removed from the Water Right License for Water Right No. 61-07189.** Section 42-219, Idaho Code, provides that a license issued by the Department shall state the “quantity of water which may be used” among other parameters. In licensing Water Right No. 61-07189, the Department specified an annual volume limitation together with a rate of diversion limitation to limit the quantity of water that can be used under the water right to the quantity of water that was beneficially used during the time period authorized for development under the permit to appropriate water. Because the records of waste water discharged from Magic West’s plant to Magic West’s waste water farm show that the plant was not operated using a constant flow rate 24 hours per day, 365 days per year, the diversion rate alone is not sufficient to limit the quantity of water that can be used to the amount beneficially used during the development period authorized by the permit to appropriate. Hence, the diversion volume should not be removed from the license as suggested by Magic West.

8. The requirement for reporting ground water diversions every three months is necessary to verify that use of water by Magic West under Water Right License No. 61-07189 does not exceed the authorized volume of water that can be diverted and beneficially used on an annual basis. Magic West contends that the requirement for reporting ground water diversions every three months is either inappropriate or unnecessary. However, the records of plant operations submitted by Magic West and the testimony of witnesses for Magic West show that Magic West has consistently violated the limitation on annual volume of ground water that can be diverted under Water Right License No. 61-07189 as originally issued or as amended herein. Therefore, this Final Order includes a cease and desist order directing Magic West to comply with the amended water right license forthwith as provided under § 42-350, Idaho Code. To ensure Magic West complies with the cease and desist order, Magic West is required to measure all ground water diversions and report the volume of ground water diverted to the Department every three months as described herein.

Based upon his understanding of the law and the facts in this matter, the Director makes the following Findings of Fact, Conclusions of Law and Final Order:

FINDINGS OF FACT

1. On October 27, 1990, the Department issued Water Right License No. 61-07189 (the "license") in the name of Magic West, Inc. as follows:

Source:	Groundwater
Priority:	July 10, 1974
Use:	Industrial
Rate of diversion:	0.67 cubic feet per second ("cfs")
Volume:	12.9 acre feet per year ("afa")
Season of use:	August 15 of each year to July 1 of the following year
Point of diversion:	SW1/4SE1/4 Section 29, T5S, R10E, B.M.
Place of use:	SW1/4SW1/4 Section 29, T5S, R10E, B.M.

2. On May 5, 1997, Magic West submitted a Petition for Adjustment and Clarification of Existing Order/License ("petition") to the Department. The petition represented that Magic West had beneficially used a larger volume of water under the permit to appropriate water, issued on August 29, 1974, than the 12.9 afa subsequently provided on the license that was issued on October 27, 1990. In the petition, Magic West contends that because a larger volume of water was beneficially used during the time period authorized by the permit, and prior to the beneficial use examination conducted by the Department on August 4, 1987, the volume limitation set forth in License No. 61-07189 should be clarified or amended to reflect the higher volume of water beneficially used during the permit period. Alternatively, Magic West contends that the volume limitation should be removed from the license.

3. On October 22, 1997, the Department issued an Order Designating Contested Case; Appointing Hearing Officer; and Scheduling Hearing. The order provided that a hearing was appropriate "to provide Magic West the opportunity to establish through plant production records, or other similar evidence, the extent of beneficial use that existed under right no. 61-07189 prior to the submission of proof of beneficial use on June 13, 1979."

4. On December 15, 1997, the Department conducted a hearing in the matter. Magic West was represented by Norman M. Semanko. Intervenor Robert K. Hall was present and was represented by Perce Hall. Intervenor Edward T. Potucek was present and was represented by Daniel V. Steenson.

5. At the hearing held on December 15, 1997, intervenor Edward T. Potucek filed a Motion in Limine and to Strike: Re. Introduction of Certain Evidence to Establish Diversion Volume, which motion the hearing officer took under advisement.

6. Exhibits premarked, offered, or accepted as a part of the record include the following:

- a. Petitioner's Exhibit 1 - Report on Annual Diversion Volume for License No. 61-07189 During Authorized Development Period 1974-1979
- b. Petitioner's Exhibit 1A - Water Discharge Records from DEQ in connection with Magic West's plant
- c. Petitioner's Exhibit 2 - Water Use Measurements 1996-1997 (Oct. 20 to Oct. 18)
- d. Petitioner's Exhibit 3 - Water Usage Chart - Well Water - 1996 and 1997
- e. Petitioner's Exhibit 4 - Water Usage Chart - City Water - 1996 and 1997
- f. Petitioner's Exhibit 5 - Magic West Water Usage Chart - Discharge/Waste Water Pumped to Farm
- g. Petitioner's Exhibits 6 thru 12 - NOT OFFERED
- h. Petitioner's Exhibit 13 - Magic West Farm Water Report 04/06/87 through 04/30/87
- i. Petitioner's Exhibit 14 - Magic West Farm Water Report 04/30/87 through 05/31/87
- j. Petitioner's Exhibit 15 - Magic West Farm Water Report 06/01/87 through 06/30/87
- k. Intervenor's Exhibits A thru D - NOT OFFERED

- l. Intervenor's Exhibit E - Letter to Magic West, Inc. from Kay Walker dated August 9, 1979
 - m. Intervenor's Exhibit F - NOT OFFERED
 - n. Intervenor's Exhibit G - Letter to Magic West, Inc. from Steve Lester dated July 23, 1987
 - o. Intervenor's Exhibits H thru Q - NOT OFFERED
 - p. Intervenor's Exhibit R - Memorandum to Gary Spackman from Steve Lester dated May 2, 1997
 - q. Intervenor's Exhibit S - NOT OFFERED
 - r. Intervenor's Exhibit T - Sale Agreement dated September 11, 1959
 - s. Intervenor's Exhibit U - Map of Glenns Ferry area showing total depth of selected wells
 - t. Intervenor's Exhibit V - Conservation Plan Map - Soils, Photo No. 3EE 102, April 1975
7. During the hearing, the hearing officer took official notice of all water right records in the Department's files.
8. Issues identified by the parties for post-hearing briefing included the following:
- a. the Department's authority to issue an amended license
 - b. the Motion in Limine and Motion to Strike certain evidence
 - c. injury to intervenor Potucek
 - d. the extent of beneficial use of water by Magic West during the period authorized to appropriate water
9. The license examination information submitted to the Department by Magic West on April 21, 1987, advised the Department that Jack Anderson was the company's designated representative who was to accompany the Department's field examiner during the license examination conducted to determine the extent of beneficial use made of water under Permit to Appropriate Water No. 61-07189. The Department procedurally erred by not specifically contacting Mr. Anderson to schedule his participation in the field examination. Instead, Mr. Doug Mason, the maintenance superintendent at the Magic West facilities in Glenns Ferry,

accompanied the Department's field examiner during the license examination conducted on August 4, 1987.

10. Magic West contends that its potato processing operations at its plant in Glenns Ferry have not significantly changed from the late 1970s to the present time. Consequently, Magic West claims that water use data collected at its plant during 1996 and 1997 generally represent water use at its plant in the late 1970s during the development period authorized by the permit to appropriate water. To estimate the amount of water diverted from its well prior to June 13, 1979, Magic West relies upon records of waste water discharged from its plant to its waste water farm, records of water discharged to the sewer system of the City of Glenns Ferry, records of water provided by the City of Glenns Ferry to the plant, records of water trucked to a sludge pond, and processing records for consumptive uses and losses.

11. Magic West used an input-output relationship to estimate the amount of groundwater diverted from its well during the years 1975 through 1979, since Magic West did not actually measure the amount of groundwater diverted until October 1996. Using this relationship, the amount of groundwater diverted from Magic West's well added to the amount of water provided to Magic West's processing plant by the City of Glenns Ferry is estimated to approximately equal the discharge of wastewater from the plant to Magic West's farm, plus discharge to the Glenns Ferry sewer system, plus water trucked to a sludge pond, plus the net processing consumption and losses in the plant, reduced by the water contained in the incoming potatoes.

12. Magic West's records indicate the amount of water provided to the plant by the City of Glenns Ferry during Magic West's fiscal year 1978 (November 1, 1977 through October 31, 1978) was 25.49 million gallons per year. (See petitioner's Exhibit 1).

13. Magic West's records of the discharge of waste water to its waste water farm include complete records for only one year during the time period authorized by the permit to appropriate water: Magic West's fiscal year 1978. The records show that for fiscal year 1978, there were 44.1368 million gallons of waste water discharged from the plant to Magic West's farm over 217 days in the 12 month time period of the fiscal year. (see petitioner's Exhibit 1A).

14. The records submitted by Magic West do not include corresponding data for fiscal year 1978 documenting discharge to the city sewer system, water trucked to the sludge pond, or the net consumption and losses in Magic West's processing plant.

15. Magic West's records show the amount of water discharged to the City of Glenns Ferry sewer system during calendar year 1975 only, and Magic West bases its estimate of net losses and consumption during plant processing on data for one (1) week in March 1997.

16. The 1997 data showing waste water discharged from the processing plant to the waste water farm indicate that the plant operated 352 days and discharged approximately 112.7974 million gallons of waste water to the farm.

17. Based on comparing the number of days waste water was discharged from Magic West's processing plant to its waste water farm, and the corresponding amounts of waste water discharged, Magic West's use of water in 1997 was clearly larger than its water use during the time period authorized to appropriate water in the late 1970s. Therefore, Magic West's water use in 1997 is not representative of Magic West's water use during the time period authorized by the permit to appropriate water.

18. Magic West has consistently exceeded the limitation on annual volume of ground water that can be diverted under Water Right License No. 61-07189 as originally issued or as amended herein.

19. Intervenor Potucek alleges that he would incur injury if the Department amends the license increasing the annual volume of water diverted under the license from the 12.9 afa now provided by the license.

20. Magic West has filed Claim No. A61-02248B in the Snake River Basin Adjudication claiming the use of 0.40 cfs of groundwater from the same point of diversion as for Water Right No. 61-07189 for industrial use in connection with its potato processing plant in Glenns Ferry. This water right was previously licensed by the Department and has also been claimed by a different party in the Snake River Basin Adjudication.

21. As issued, License No. 61-02248 provides the following:

Source:	Groundwater
Priority:	April 3, 1939
Rate of diversion:	0.40 cfs
Point of diversion:	Lot 3, Section 32, T5S, R10E, B.M.
Uses:	Domestic and bathing, irrigation of 3 acres
Place of use:	Same as point of diversion.

Remarks:	Use of low temperature geothermal water under this license was the subject of a Local Ground Water Board Ruling in April 1960. The board held that the authorized rate of diversion be reduced to 0.08 cfs. After October 1, 1960, the order of the board became permanent.
----------	---

CONCLUSIONS OF LAW

1. The Department has the statutory authority to amend the Water Right License for Water Right No. 61-07189 in accordance with § 67-5254(1), Idaho Code.
2. Magic West's use of water in 1997 was clearly larger than its water use during the 1970s, both in duration and the amount of water diverted and is not representative of Magic West's use of water in the late 1970s during the time period authorized by the permit to appropriate water.
3. The Department issued Water Right License No. 61-07189 based on information provided by Magic West during the beneficial use field examination conducted on August 4, 1987. Although the license was issued based on data provided by Magic West, the Department erred procedurally by failing to involve Magic West's designated representative in the field examination and subsequent requests for information.
4. The records submitted by Magic West during the hearing on December 15, 1997, show that Magic West used more water under Permit to Appropriate Water No. 61-07189 than reported to the Department in 1987 during the beneficial use field examination.
5. The data submitted by Magic West showing water discharged to the City of Glenns Ferry sewer system and the net amount of water lost during plant operations should not be considered in determining the amount of water actually diverted under the permit to appropriate water because the information available in the record is not sufficient to relate these data to actual plant operations and use of water during the time period authorized to appropriate water under the permit. With respect to the data showing discharge to the City of Glenns Ferry sewer system during 1975, the record does not show that a similar discharge was made to the sewer system during fiscal year 1978, the only year during the appropriation period authorized by the permit for which complete data are available documenting the amount of waste water discharged by Magic West to its waste water farm and the volume of water supplied by the City of Glenns Ferry. Similarly, the record does not establish that the net processing consumption and losses at the plant during 1997 are comparable to those during fiscal year 1978.
6. The Motion in Limine and to Strike: Re. Introduction of Certain Evidence to Establish Diversion Volume, filed by intervenor Edward Potucek, should be denied. Approval would have precluded the hearing that the Department authorized in its order dated October 22, 1997, designating a contested case.
7. The injury alleged by intervenor Potucek has no bearing on the extent of beneficial use of water made by Magic West during the period to appropriate water authorized by the permit. The present proceeding is to determine the volume of water authorized for diversion under License No. 61-07189. If Potucek, or one or more other groundwater users, can demonstrate injury because of groundwater diversions by Magic West, the Department's "Rules for Conjunctive Management of Surface and Groundwater Resources" provide procedures for the

holder of a senior water right for groundwater to call for delivery of water against the holder of a junior water right for groundwater causing injury to the senior water right.

8. The parameters for Water Right License No. 61-07189 should be based upon the extent of diversion and beneficial use made of water within the time period authorized for appropriation of water under the permit and prior to submittal of proof of beneficial use, i.e. within the time period of August 29, 1974 to June 13, 1979.

9. The Department should issue an amended license based on the amount of water diverted and applied to beneficial use within the time period beginning August 29, 1974 and ending June 13, 1979.

10. The amended license should limit annual diversions of groundwater to a volume of 58 afa instead of 12.9 afa. The volume of 58 afa is calculated using fiscal year 1978 data for the volume of water discharged from Magic West's processing plant to its waste water farm and the volume of water provided by the City of Glenns Ferry to the processing plant. The volume of waste water discharged to Magic West's farm is taken to be the volume of water used at the processing plant without additions for water discharged to the City of Glenns Ferry sewer system, water trucked to the sludge pond, or the net amount of water consumed and lost during processing, because actual data for these additions during the period of appropriation authorized by the permit do not exist in the record. Therefore, the volume of groundwater diverted from Magic West's well in fiscal year 1978 is calculated to be the volume of waste water discharged from the processing plant in fiscal year 1978 less the volume of water supplied by the City of Glenns Ferry in fiscal year 1978 as follows:

$$\frac{44.1368 \text{ million gallons used in 1978 less } 25.49 \text{ million gallons from Glenns Ferry}}{0.325850 \text{ million gallons per acre-foot}}$$

$$= 58 \text{ acre-feet (rounded up)}$$

11. Magic West should not be authorized to divert more water than 58 afa under terms of Amended Water Right License No. 61-07189.

12. The records of plant operations submitted by Magic West and the testimony of witnesses for Magic West show that Magic West has consistently violated the limitation on annual volume of ground water that can be diverted under Water Right License No. 61-07189 as originally issued or as amended herein. Therefore, Magic West should be ordered to cease and desist forthwith from diverting larger volumes of ground water than authorized by Amended Water Right License No. 61-07189. The hearing held on this matter by the Department on December 15, 1997, satisfies the substantive due process requirements of § 42-350, Idaho Code, for issuance of a cease and desist order.

13. To ensure Magic West complies with the cease and desist order, Magic West should be required to measure all ground water diversions and report the volume of ground water diverted under Amended Water Right License No. 61-07189 during four, consecutive, three

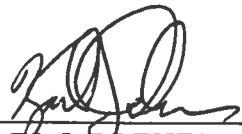
month periods annually to the Department until such time as the Department determines annual reporting is sufficient to ensure compliance with the provisions of Amended Water Right License No. 61-07189.

ORDER

IT IS THEREFORE, hereby ORDERED as follows:

1. The renewed motion for dismissal filed by intervenor Hall is **DENIED**.
2. The Motion in Limine and to Strike: Re. Introduction of Certain Evidence to Establish Diversion Volume, filed by intervenor Potucek, which motion the hearing officer took under advisement, is **DENIED**.
3. Water Right License No. 61-07189 issued by the Department on October 27, 1990, is amended to change the authorized diversion volume from 12.9 afa to 58 afa. All other terms and conditions of License No. 61-07189 are included in Amended License No. 61-07189 without change. The Amended License No. 61-07189 replaces the original license issued on October 27, 1990.
4. Upon receiving this order, Magic West shall cease and desist forthwith from diverting amounts of groundwater under Amended Water Right License No. 61-07189 that exceed the annual volume authorized by the amended license.
5. In addition to maintaining an approved totalizing measuring device on its point of diversion, Magic West shall report the volume of groundwater diverted and used to the Department every three (3) months beginning June 1, 1999 for the three-month period beginning on February 1, 1999, and ending April 30, 1999. Magic West shall continue to report the volume of groundwater diverted and used pursuant to Amended Water Right License No. 61-07189, and any other water right authorizing use of the same point of diversion, within thirty (30) days following each three-month period thereafter until such time as the Department determines that annual reporting is sufficient to ensure compliance with Amended Water Right License No. 61-07189.

Signed this 22nd day of January, 1999.



KARL J. DREHER
Director

CERTIFICATE OF MAILING

I DO HEREBY CERTIFY that on this 22nd day of January, 1999, the above and foregoing document was served upon the following, via certified mail, by placing a copy of the same in the United State Mail, postage prepaid and properly addressed to the following:

MAGIC WEST INC
PO BOX 475
RUPERT ID 83350

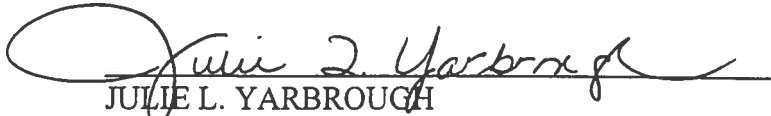
PERCE HALL ESQ
340 E 2ND N
MOUNTAIN HOME ID 83647

EDWARD T POTUCEK
ROSEVEAR RD
PO BOX 537
GLENN'S FERRY ID 83623

NORMAN SEMANKO
ROSHOLT ROBERTSON TUCKER
PO BOX 1906
TWIN FALLS ID 83303-1906

DANIEL V STEENSON
RINGERT CLARK CHARTERED
PO BOX 2773
BOISE ID 83701-2773

ROBERT K HALL
RT 1 BOX 103
GLENN'S FERRY ID 83623


JULIE L. YARBROUGH
Senior Secretary, Water Allocation Bureau



State of Idaho
DEPARTMENT OF WATER RESOURCES

Western Region, 2735 Airport Way, Boise, Idaho 83705-5082 - (208) 334-2190
FAX (208) 334-2348

January 25, 1999

DIRK KEMPTHORNE
GOVERNOR

KARL J. DREHER
DIRECTOR

Magic West Inc.
P.O. Box 475
Rupert, ID 83350

and/or

Norman M. Semanko, Attorney
ROSHOLT, ROBERTSON & TUCKER
P.O. Box 1906
Twin Falls, ID 83301

Gentlemen:

In reply to the Notice of Errors that you submitted in response to the proposed recommendations on Claim Nos. 61-02248B and 61-07189, I offer the following:

Claim 61-02248B:

We have reconsidered the advancement of priority date in regard to this right. We have changed the priority date to the licensed date of April 3, 1939. We have also changed the season of use to the season described at the field examination in 1987 which is August 15 through July 1. Since this right was used at the plant in 1987 when our examiner was out there and a season of use was defined by the maintenance superintendent at that field visit, I cannot recommend a different season of use for this right.

Claim 61-07189:

We have considered your request to change the quantity and period of use of this water right. The proposed recommendations reflect the license as it was issued in 1990. Since this license was recently issued, it requires administrative action to make any changes. The only way I can recommend any other volume is if the petition you have filed with IDWR is finalized prior to the Director's Report submittal to the SRBA Court.

I have enclosed a profile report of the revisions to Claim 61-02248B for your information. No changes were made to the proposed recommendations of Claim 61-07189.

There are several instances in which IDWR may reconsider the expansion in season of use request: (1) You could amend the petition that is pending in front of the Director to amend your license and request an expanded season of use along with your request for the increased volume, (2) You could file a transfer of these rights to increase the season of use, and (3) As you know, claimants always have the right to object to our recommendations with the court once our report is submitted.

I hope these changes resolve your problems with the way these claims have been recommended. Our Director's report is to be submitted to the court the second week of February.

Sincerely,

A handwritten signature in black ink that reads "Kay Walker". The signature is fluid and cursive, with the first name "Kay" and last name "Walker" clearly distinguishable.

KAY WALKER
Sr. Water Resource Agent
Adjudication Bureau

KW:k
Enclosure

cc: Susan Hamlin, IDWR

November 20, 1998

NOTICE OF ERROR
REPLY

RECEIVED

DEC 28 1998

WATER RESOURCES
WESTERN REGION

ATTENTION: KAY WALKER

Please type or print clearly, fill out this form completely and mail.

Return this reply form to IDWR by the deadline date printed below if you want IDWR to change your recommendation or you want to let IDWR know that you agree with its recommendation.

YOUR DEADLINE FOR RETURNING A NOTICE OF ERROR REPLY IS: December 18, 1998

* Extension granted
until Dec. 28
by Kay Walker

Water right number: 61-07189

MAGIC WEST INC
PO BOX 475
RUPERT ID 83350Attorney: Norman M. Semanko
Rosholt, Robertson & Tucker
P.O. Box 1906
Twin Falls, ID 83303-1906

Daytime Telephone Number: (208) 734-0700

Evening Telephone Number:

1. Describe the portion of the proposed recommendation with which you disagree (e.g. priority date, period of use, source):

Quantity and Period of Use

2. Describe the changes you wish to make in the proposed recommendation:

Quantity: Annual volume should be either 302.53 or 288.38 AFA.

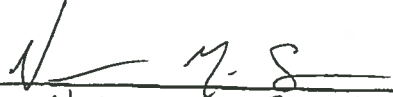
Period of Use: Should be 01-01 to 12-31

3. Give a brief explanation as to why you disagree with these portions:

The annual volume in the license is incorrect and should be amended. The matter is currently before the Director in an administrative action. The water has been used year 'round since at least 1985. This is an accomplished transfer which should be recognized under I.C. Sec. 42-1425 in the SRBA.

 I AGREE with this proposed recommendation; no changes need to be made.

DATE: 12-24-98

SIGNATURE: 

Please print your name:

Norman M. Semanko
Attorney for Magic West, Inc.

CC: SUSAN HAMLIN

IDWR Western Regional Office, 2735 Airport Way, Boise, ID 83705-5082, (208) 334-2190



State of Idaho

DEPARTMENT OF WATER RESOURCES

1301 North Orchard Street, P.O. Box 83720, Boise, Idaho 83720-0098

Phone: (208) 327-7900 FAX: (208) 327-7866

November 20, 1998

PHILIP E. BATT
GOVERNOR

KARL J. DREHER
DIRECTOR

Mr. Daniel V. Steenson, Esq.
Ringert Clark, Chtd.
455 South 3rd Street
P.O. Box 2773
Boise, ID 83701

RECEIVED

NOV 23 1998

WATER RESOURCES
WESTERN REGION

VIA FACSIMILE TO (208) 342-4657 AND FIRST CLASS MAIL

Re: Request to Convene a Local Groundwater Board Pursuant to I.C. § 42-237b

Dear Mr. ^{Dan}Steenson:

I have considered your letter dated October 23, 1998, concerning the request made on behalf of your client, Mr. Edward T. Potucek. Mr. Potucek, by his affidavit filed with the Department of Water Resources on April 20, 1998, has requested that I convene a local groundwater board pursuant to Idaho Code § 42-237b. Mr. Potucek made this request for the purpose of hearing his allegations that the use of groundwater by Magic West under water right no. 61-07189 is illegally interfering with the use of water under Mr. Potucek's senior groundwater right no. 51-10331. Your letter states that if the Department does not: (1) enforce the elements of Magic West's licensed water right no. 61-07189; or (2) set the matter for hearing before a local groundwater board, you intend to seek a writ of mandamus compelling formation of a local groundwater board.

Previously, I sent both you and Mr. Potucek a copy of a letter I wrote to Senator Robbi King dated August 13, 1998, which addressed the issues of concern to Mr. Potucek and outlined a plan for resolving those issues. Based on your October 23 letter, Mr. Potucek apparently still wants to pursue convening a local groundwater board.

I do not believe that initiating yet another legal proceeding to address the issues now pending before the Department and before the SRBA Court would help resolve Mr. Potucek's allegations. I recognize the frustration you and Mr. Potucek may have regarding the time it has taken to resolve the issues before the Department. Regardless, I have nearly completed my review of the record from the Department's hearing process that resulted from Magic West's Petition for Adjustment and Clarification of Existing Order/License for water right no. 61-07189. I have also nearly completed my review of the hearing officer's recommended order and the exceptions and response to exceptions that were subsequently filed. I intend to issue the final

Mr. Daniel V. Steenson, Esq.
November 20, 1998
Page 2 of 2

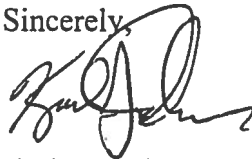
order for modification of Magic West's water right license no. 61-07189 in the very near future. Unless appealed, the final order will determine the extent of Magic West's licensed water right. The Department will then take action to enforce the elements of Magic West's water right.

It would not be appropriate for the Department to initiate enforcement of the elements of Magic West's water right prior to completion of the pending administrative action which is being conducted to review the extent of that right. Convening of a local groundwater board would not speed-up this determination, but instead would likely slow the relief sought by Mr. Potucek. Under Idaho Code § 42-237c, a local groundwater board is required to determine the existence and nature of the respective water rights claimed. The board would, I believe, be required to defer to a determination of the elements of the right by either the Department or the SRBA Court. Because actions regarding Magic West's water right are already pending before the Department and the SRBA Court, it appears that a further action before a local groundwater board should be precluded.

While Idaho Code § 42-1421 specifically preserves the jurisdiction of the Director over water right licenses under Chapters 2 and 3, Title 42, Idaho Code, during the pendency of the SRBA, no similar provision exists preserving the jurisdiction of a local groundwater board. However, even if board action is not precluded, it is difficult to justify the added costs in time and expense that would be incurred by the parties to such additional proceeding.

Please accept this letter as my assurance that the Department will take appropriate steps to enforce the elements of Magic West's water right once agency action regarding modification of license no. 61-07189 has been completed.

Sincerely,



Karl J. Dreher
Director

cc: Perce Hall, Esq.
Norman M. Semanko, Esq.
Senator Robbi L. King

AJ0749NP
No. R61-07189

IDAHO DEPARTMENT OF WATER RESOURCES
ADJUDICATION CLAIM PROFILE REPORT
(REGIONAL)

DATE: 11/18/98
PAGE: 2

Comments: Date: 11/17/1998 User-ID: KWALKER Subject: RECOMMENDATION
LICENSE IS AMENDED PRIOR TO RECOMMENDATION GOING TO SRBA COURT, I
WILL AMEND RECOMMENDATIONS TO SHOW THE AMENDED LICENSE.

Audit: 11/18/98 KWALKER

12.90 AFA

ELMORE County

ESSE ESMS E

[illegible]

• • •

A37-04112

MAINTAINED AS A PART OF THE DIVERTING WORKS.

USE OF THIS RIGHT IS COMBINED WITH WATER FROM THE CITY OF

Objection Filed Date:

Field Inspection Flag:

03/30/95 POST-STD

EXP-105010

Memorandum

To: FILE A61-07089

From: Kay Walker 

Date: 11/17/98

Re: MAGIC WEST CLAIM

This right is going through administrative procedures at the State Office level. Magic West initiated action to amend the license issued October, 1990, to increase the volume of water under the license. IDWR sent out a recommended order in regard to this request. An exception to the order was filed along with responses to the exception. A second recommended order was sent out on October 26, 1998 with a final order proposed to be completed by December 18, 1998. I am recommending this right as licensed in 1990. When the final order addressing the volume of water under this right is issued, this recommendation of Claim 61-07089 should be revised to reflect the revision of the license.

MEMORANDUM

TO: GARY SPACKMAN

FROM: STEVE LESTER 

DATE: MAY 9, 1997

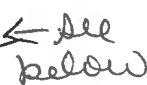
RE: SUMMARY OF MAGIC WEST WATER RIGHTS

This memorandum summarizes IDWR file information for the use of ground water at the Magic West plant in Glenns Ferry. The water for the plant under water rights and/or SRBA claims in the name of the company is diverted from the company's low temperature geothermal well located in SWSE S.29, T5S, R10E (see attached map).

The company maintains that it has water from two rights for this well: license 61-07189 and SRBA claim A61-02248B, amended. Note that the latter right is claimed for Magic West whereby the nature of use, season of use, P/D and P/U have changed from the original items licensed in 61-02248 (old no. 18758) to the licensed well described in 61-07189. The SRBA information implies that an accomplished transfer occurred for part of 61-02248, meaning that the change was completed prior to the SRBA commencement in November, 1987. I cannot locate any documentation to substantiate an accomplished transfer for 61-02248.

To add to the complexity, note that the Cunninghams have also claimed all of the flow in 61-02248. They filed SRBA claim A61-02248A for .40 cfs for domestic and recreation uses all year (1 home and swimming pool). Their claim lists a P/D and P/U in Lot 3 (SENW) S. 32, matching the original licensed location.

License 61-07189 is relatively straight forward. The right includes .67 cfs and 12.9 afa from 8/15-7/1. IDWR made a significant effort during the course of licensing this right to make the best estimate of annual volume from the plant's well. The resulting data supplied by the water user lead to the licensed volume. Magic West recently initiated an action to address the volume limitation in the license, but it remains to be seen what impact, if any, this action will have on the water right.

It is interesting to note that a 1974 well interference complaint was lodged with the department when the Magic West well was drilled. See the September 9, 1974 letter by Gregory Logan and the department reply dated September 12, 1974 for details. Perhaps the 1978 *Parker v Wallentine* decision would result in a different response from IDWR today for a similar question. 

License 61-02248 is another matter, not at all straight forward. This right was licensed for a 4", 950' artesian low temperature (100 d. F) geothermal well in Lot 3 (SENW) S. 32 in the same township as above. The right included irrigation, domestic and bathing uses associated with the P/U, which was in the same tract as the well. The only acreage reference found in file 61-02248 is that listed in the original application, "about 3 acres" in application item #14 (P/U). The domestic and bathing reference applies to a small pool and associated "bath houses - dressing rooms etc" described in the 1943 "Proof of Completion of Works, Affidavit of Holder" under remarks.

The file does not include any reference to a home although one could reasonably conclude that the well was probably used for a home if one was in place -- why wouldn't such a well be used for a home? Maybe a home was never involved.

License 61-02248 was issued in 1945 for the artesian well to include .40 cfs for irrigation, domestic and bathing uses for the well in Lot 3, S. 32. The number of acres, place of use, season of use and domestic/bathing items were not elaborated upon in the license.

However, a 1960 action by the department ("Dept. of Reclamation") reduced that right to .08 cfs, "the amount actually put to beneficial use". See "Findings and Decisions of the Local Ground Water Board for Elmore County, Idaho" dated April 21, 1960 and signed by the Deputy State Reclamation Engineer. Furthermore, the order mandated that the well be equipped with proper control devices and "be closed and remain closed except during the periods necessary for irrigation or filling of the swimming pool". The well control devices must be permanently installed, plus approved and subject to inspection anytime by the department, the order goes on to state.

A reasonable volume estimate can be made for license 61-02248 via the following steps.

1) It appears that up to 3 acres of irrigation ("small park and garden" from proof filing) were licensed.

2) Under current standards, irrigation included 4/1-10/31, 4 afa/acre diversion volume (3 afa/acre consumptive volume), and up to .03 cfs/acre for under 5 acres of land. This means that up to .09 cfs and 12 afa could have been licensed even though .02 cfs/acre was probably the recognized limit at the time of licensing -- but allow .09 cfs for this exercise.

3) Domestic and recreation ("bathing") uses included filling and maintaining a swimming pool and associated but unnumbered amount of bath houses, dressing rooms etc. It is conceivable that a home (and yard?) might be included although silent in the license (but see #5 below which negates this idea). A generous assumption of 1.2 afa for these uses, or the modern-day equivalent of a home with up to 1/2 acre yard, would appear to fully cover the non-irrigation uses, including a refill component for the swimming pool.

4) The pool was 20' x 50' x 3'-7' (licensing field exam). Assuming an average 5' depth, the pool capacity was $(20 \times 50 \times 5) / 43560 = 0.1 \text{ af.}$

5) The rate of flow was limited to .08 cfs by the 1960 order. The order meant that the well was to remain closed unless actually being used to irrigate or fill the pool (which undercuts the possibility that the well served a home), implying that very limited well use was found outside of the irrigation season.

6) Based on the above, a reasonable but generous summary of uses under this license would include the following components, giving any benefit of doubt to the water user:

Irrigation, 3 acres from 4/1-10/31, .08 cfs, 12.0 afa

Domestic/Recreation from 1/1-12/31, .08 cfs, 1.2 afa (?)

Total .08 cfs 13.2 afa.

CONCLUSION

At this time Magic West can use its well under the terms of license 61-07189. The well use is limited to .67 cfs, 12.9 afa from 8/15 through 7/1 each year.

It is possible but not yet verified that the company accomplished a transfer prior to November, 1987 for a portion of license 61-02248. If the transfer did legally occur by that date, it appears that no more than .08 cfs and about 12 afa could be recognized in the shift of irrigation to industrial use. The season of use change from irrigation season to all year could be problematic (expansion and/or injury?).

Since it appears that the plant's well capacity is .67 cfs, an accomplished transfer would suggest that the plant's allowable annual volume has about doubled but that the diversion rate remains at .67 cfs. IDWR does not have sufficient data to determine if the total amount of water used by the plant remains within the limits stated or implied by the associated water rights.

The concept of an accomplished transfer in this case remains problematic. Prior to amending the claim, A61-02248B listed 20 acres of irrigation, but there does not appear to be any file basis for that number of acres; perhaps it was assumed by the claimant per diversion rate of .40 cfs. That assumption suggests than the claim prior to amendment reflected an expanded use in which the number of irrigated acres had been increased (a SRBA "presumption" action).

Also, the amended claim for Magic West is recorded incorrectly (township and range; perhaps a typo error?) and is not substantiated by file documentation. If the change from the S. 32 well to the plant's S. 29 well occurred after November, 1987, the company must file an application for transfer. It appears that any transfer of right 61-02248, whether pre or post SRBA commencement, must include those limits defined by the 1960 order.

Additionally, what should one conclude from the other claim, A61-02248A, as it relates to Magic West's competing claim for the same right? The answer to that question can only be determined within the SRBA or in another water right action placed before the department.

No documentation can be found to support the idea that existing water rights at the Magic West plant authorize the use of any water for power production. This new use will require additional water right protection under a new right or by an approved change of an existing right.



STATE OF IDAHO

DEPARTMENT OF WATER RESOURCES

Cecil D. Andrus
Governor

R. Keith Higginson
Director

Statehouse
Boise, Idaho 83720
(208) 384-2215

September 12, 1974

Mr. Gregory B. Logan
Campinland
P.O. Box 336
Glenns Ferry, ID 83623

RE: MAGIC VALLEY FOODS WELL

Dear Mr. Logan:

Mrs. Reich referred your letter to me for a response to your problem with Magic Valley.

As you know, the person who first appropriates water has the first right to its continued use. If your problem was one where Magic Valley was depriving you of water, your right could be fully protected in the Courts. However, the problem you have is that your means of diversion, i.e. -- by artesian flow -- is not protected or guaranteed. This holding was announced by our Supreme Court in the case of Baker -vs- Ore-Ida Foods (1973). The Court said that a senior appropriator:

"is only entitled to be protected to the extent of the reasonable ground water pumping levels as established by the Department of Water Resources. A senior appropriator is not absolutely protected in either his historic water level or his historic means of diversion. Our Ground Water Act contemplates that in some situations senior appropriators may have to accept some modification of their rights in order to achieve the goal of full economic development."

Thus, as the Supreme Court held:

"the senior appropriators are not entitled to relief if the junior appropriators, by pumping from their wells, force seniors to lower their pumps from historic levels to reasonable pumping levels."

MICROFILMED

WATER RESOURCE BOARD:

John F. Streiff
Chairman

Franklin Jones
Member

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Member

Mr. Gregory B. Logan
Page 2
September 12, 1974

Since Magic Valley has a valid permit for its well and because you are not diverting (pumping) your water from a reasonable level, you are not entitled to protection of your artesian flow. If you desire to continue use of your well, you will have to install a pump.

If you have any further questions, please feel free to contact me directly.

Very truly yours,

NATHAN W. HIGER
Counsel, Idaho Department
of Water Resources

NWH/slg

CC: Mrs. Darlene Reich ✓

UNRECORDED

CAMPINLAND
P. O. BOX 336 306-2023
GLENN'S FERRY, IDAHO 83623

RECEIVED

SEP 10 1974
Department of Water Resources

P.O. Box 336
Glenns Ferry, Idaho
September 9, 1974

Ms. Darlene Rich
Department of Water Resources
Capitol Building
Boise, Idaho

Dear Ms. Rich:

In order to protect my water rights on an artesian hot well located on my property in the city limits of Glenns Ferry, I wish to inform you of an occurrence which was a direct infringement on these rights.

Approximately one quarter mile from my well, Magic Valley Foods Inc. drilled an eight inch diameter well 1230 feet deep. I have been informed by Roger Jones, president of the company, that the water from this well will be used to feed a boiler system in the newly constructed potato processing plant, as of September 15, 1974. In order to prove continuous accessibility to pre-heated water from this well the company conducted a test pump. At approximately 7:00 pm August 14, 1974, a temporary pump was installed on the well and the test pump was started at 800 gallons per minute. At approximately 2:00 am August 15, 1974, my well stopped its natural flow of water.

The test pump on the Magic Valley Foods Inc. well was completed by 12:10 pm August 15, 1974, and the well was temporarily capped. It wasn't until 8:20 pm of August 15, 1974, that my well started a slow trickle of water at a temperature of 92 degrees F. My well has a normal temperature of 104 degrees F. By 3:00 am August 16, 1974, my well was flowing approximately one quarter of its natural flow at a temperature of 98 degrees F. My well slowly increased its flow and temperature for several days. By August 26, 1974, my well was once again back to its normal flow and temperature.

Mr. Jones has informed me that when the plant goes into production on September 15, 1974, they will be pumping fifty gallons per minute from their well. He further informed me that in one years time that his company expects to be using approximately 100 gallons per minute from this same well.

I wish, at this time, to state my concern that the continuous and increased pumping of the Magic Valley Foods Inc. well could seriously damage the natural flow of my well and directly infringe on my water rights which are recorded in your office.

Sincerely,


Gregory B. Logan

63-2583

VERIFIED BY R. McCarthy
4-1-93

DATE: 04/01/93
PAGE: 1

IDAHO DEPARTMENT OF WATER RESOURCES
ADJUDICATION CLAIM PROFILE REPORT
(REGIONAL)

AJ0749WP
No. R61-07189

OWNER CODE NAME & ADDRESS
C MAGIC WEST INC
PO BOX 475
RUPERT ID 83350
(208) 436-3126

PRIORITY DATE 07/10/1974
WATER USE INDUSTRIAL

USE PERIOD FROM 08-15 07-01
TO

DIVERSION RATE 0.67 CFS
DIVERSION VOLUME 12.9 AFA

TOTAL DIVERSION: 0.67 CFS 12.9 AFA

Water Source: GROUNDWATER
Tributary to: SWSE
Point(s) of Diversion: T05S R10E S29
Stage: LICENSE
ELMORE County

place of use Legal Description for: INDUSTRIAL																							
NE				NW				SW				SE											
		NEWNE		NWNE		SWNE		SENE		NEWN		NWNW		SWNW		SENW		NEWSE		NWSW		SESE	
T	R	S	Lt	Ac	Lt	Ac	Lt	Ac	Lt	Ac	Lt	Ac	Lt	Ac	Lt	Ac	Lt	Ac	Lt	Ac	Lt	Ac	
05S	10E	29	:	:	:	:	:	:	:	:	:	:	:	:	:	:	:	:	:	:	:	:	

POU County: ELMORE

Non-Irrigation Uses: INDUSTRIAL, POTATO PROCESSING

Conditions of Approval:
M01 - A MEASURING DEVICE OF A TYPE APPROVED BY IDWR SHALL BE
- MAINTAINED AS A PART OF THE DIVERTING WORKS.

Remarks: WATER TEMPERATURE MEASURED AT 112 DEGREES F.
USE OF THIS RIGHT IS COMBINED WITH WATER FROM THE CITY OF
GLENN'S FERRY.

Dates: Exam Made Date: 04/01/1993
Verified Date: 04/01/1993

Misc: Water District Number:
Field Inspection Flag:
Presumption Flag:

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
ADJUDICATION CLAIM VERIFICATION REPORT

15:27:04
03/31/93

PAGE: 1
GENERAL INFORMATION

CLAIM NUMBER: A61-07189

LAST: MAGIC WEST INC
ADDRESS: PO BOX 475
CITY: RUPERT
PHONE NUMBER: 208-436-3126

FIRST:

STATE: ID ZIP: 83350

OWNER CODE: C

FIELD EXAM REQUIRED?

DATABASE N FIELD EXAMINER N

VERIFICATION REQUIRED DUE TO REMARKS?

NO REMARKS IN CLAIM

FIELD EXAMINATION INFORMATION

CONTACT PERSON:

PHONE NUMBER: () - -

DATE OF FIELD EXAM: / /

APPOINTMENT MADE: Y () N ()

TIME: : A () P ()

ACCOMPANIED BY:

PHONE NUMBER: () - -

RELATIONSHIP TO CLAIMANT:

DIRECTIONS TO PROPERTY / NOTES:

A. AJ CLAIM: # A61-07189 PRIORITY DATE: 07-10-1974 STAGE: P
B. WR RECORD: # 61-07189 PRIORITY DATE: 07-10-1974 STAGE: L

C. FIELD EXAM REQUIRED? DUE TO PRIORITY DATE DISCREPANCY? (Y/N) DATABASE N FIELD EXAMINER N

ARE THERE OBVIOUS REASONS TO QUESTION THE PRIORITY DATE CLAIMED? Y() N(✓)
IF YES EXPLAIN.

NOTES:

Recommend as Award 10/27/90.

RECOMMENDED PRIORITY DATE:

07-10-1974

REVIEWED BY

RTM

DATE

3-31-93

A. AJ CLAIM POINT OF DIVERSION AND SOURCE:

RIGHT	TWP.	RGE.	SEC.	1/4	1/4	1/4	LOT	CNTY
A61-07189	05S	10E	29		SE	SE		ELMORE

OTHER AJ CLAIMS WITH SAME AJ POD
A PREFIX R PREFIX
NONE

WR RECORDS IN SAME 40 ACRE TRACT
61-04008

SOURCE: GROUNDWATER

TRIB:

B. WR POINT OF DIVERSION AND SOURCE:

RIGHT	TWP.	RGE.	SEC.	1/4	1/4	1/4	LOT	CNTY
61-07189	05S	10E	29		SW	SE		ELMORE

OTHER WR RECORDS WITH SAME WR POD
A PREFIX R PREFIX
NONE

AJ CLAIMS IN SAME 40 ACRE TRACT
A PREFIX R PREFIX
NONE

SOURCE: GROUNDWATER

TRIB:

C. FIELD EXAM REQUIRED?

DUE TO POD DISCREPANCY? (Y/N)	DUE TO SOURCE DISCREPANCY? (Y/N)	DATABASE	FIELD EXAMINER
		Y	N
		N	

NOTES:

Recommend as licensed 10/27/90

PLACE OF USE REVIEW SHEET

A. ROOT WATER RIGHT NUMBERS: A61-07189

B. POU LISTING

TWP	RNG	SEC	1/4	1/4	LOT	NAME	#/ACRES	#/ACRES	DATA	EXAM.	ACRES
05S	10E	29	SE	SE		MAGIC WEST INC	A61-07189	/			30.0
			SE	SE		CITY OF GLENN'S FERRY	A61-04141	/			
			SE	SE		CITY OF GLENN'S FERRY	A61-07228	/			
			SE	SE		KING HILL IRRIGATION DISTRICT	A37-04112	/26.7			
			SE	SE		KING, DICK					
			SE	SE		KING HILL IRRIGATION DISTRICT					
			SE	SE		KING HILL IRRIGATION DISTRICT					
			SE	SE		KING HILL IRRIGATION DISTRICT					
			SE	SE		KING HILL IRRIGATION DISTRICT					
			SE	SE		KING HILL IRRIGATION DISTRICT					
TOTAL ACRES A61-07189											30.00

ARE IRRIGATED ACRES FOUND IN TRACTS OTHER THAN INDICATED ABOVE, Y() N(✓)

IF YES SEE ATTACHED SHEET:

C. FIELD EXAM REQUIRED? DUE TO POU DISCREPANCY? (Y/N)

POU COUNTY: ELMORE

DATABASE Y FIELD EXAMINER N

PRESUMPTION FLAG:

NOTES:

Industrial use for processing potatoes. Recommend as licensed (10/27/90) in GUSE.

RECOMMENDATIONS:

TOTAL ACRES: 0

REVIEWED BY: RMC

DATE: 4-1-93

A. AJ CLAIMED USES:

PURPOSES	MONTH/DAY	TOTAL DIVERSION RATE/VOLUME CLAIMED	DIVERSION QUANTITY
		.670 CFS	

B. WR RECORDED USES:

PURPOSES	FROM	MONTH/DAY	TOTAL DIVERSION RATE/VOLUME CLAIMED	DIVERSION QUANTITY
61-07189 INDUSTRIAL	08-15	TO 07-01	.670 CFS	12.90 AF/A
			.670 CFS	12.90 AF/A

PRESUMPTION FLAG:

C. FIELD EXAM REQUIRED?	DUE TO WATER-USE DISCREPANCY?	DUE TO DIVERSION RATE DISCREPANCY?	DUE TO PERIOD FROM/TO DISCREPANCY?	FIELD EXAMINER
	(Y/N)	(Y/N)	(Y/N)	N
				N
				N

D. PERIOD OF USE:

RECOMMEND AS CLAIMED?

Y(☒) N(☐)

RECOMMEND TO WR STANDARDS OR OTHER?

Y(☒) N(☐)

Explain in notes, below.

NOTES:

Recommend as claimed 10/27/90.

*Water temperature measured (see field exam): 112°F.
Use Remark B05.*

A. DOES DIVERSION RATE CLAIMED AGREE WITH EXISTING RECORDS? Y(✓) N()

AJ TOTAL CLAIMED DIVERSION RATE: 0.670 CFS

WR ROOT RIGHT TOTAL DIVERSION RATE: 0.670 CFS

*** IF NO or IF STATUTORY CLAIM or BENEFICIAL USE then flow measurement required. ***

** If an amount smaller than the original diversion rate is **

** claimed and an exam is NOT required, explain in notes. **

FLOW MEASUREMENT REQUIRED?

DUE TO STAGE OR DIVERSION RATE DISCREPANCY? (Y/N) N

FIELD DATABASE EXAMINER N

B. MEASUREMENT METHOD n/a , SEE ATTACHED CALCULATIONS.

FLOW MEASUREMENT

C. ARE OTHER WATER RIGHTS USED? Y() N(✓) IF YES COMPLETE OVERLAP REVIEW.

OTHER RIGHTS LISTED IN CLAIM: NONE

LIST ALL RIGHTS WITH A SAME POU AND IRRIGATION USAGE:

CLAIM NO.	SOURCE	NAME	DIV. RATE	DIV. RATE/ACRE	DIV. VOL.	DIV. VOL./ACRE
A37-04112	MALAD RIVER	KING HILL IRRIGATION DISTRICT	370.000	0.032		

LIST ALL RIGHTS WITH SAME POU BUT NOT USED FOR IRRIGATION.

CLAIM NO.	PURPOSES	NAME	MONTH/DAY	RATE	VOLUME
A61-07189	INDUSTRIAL	MAGIC WEST INC	FROM 08-15 TO 07-01	.670 CFS	
A61-04141	MUNICIPAL	CITY OF GLENNS FERRY	FROM 01-01 TO 12-31	2.890 CFS	
A61-07228	MUNICIPAL	CITY OF GLENNS FERRY	FROM 01-01 TO 12-31	.450 CFS	

D. RATE/VOLUME CALCULATIONS: (IRRIGATION)

1a. IRRIGATION RATE 1b. CALCULATIONS

(Taken from p/u review)

DOES AMOUNT CLAIMED EXCEED 0.02 CFS/ACRE? Y() N()

*** IF YES ADDITIONAL WATER USE FORM FILED AND ATTACHED? Y() N() ***

2. IRRIGATION CONSUMPTIVE USE

CLAIMED CONSUMPTIVE USE = AF/A

ACRES x CONSUMPTIVE VOL. AF/A FOR AREA =

TOTAL CONSUMPTIVE USE AF/A

3. IRRIGATION DIVERSION VOLUME

CLAIMED DIVERSION VOLUME = AF/A

ACRES x DIVERSION VOL. AF/A FOR AREA =

TOTAL DIVERSION VOLUME AF/A

4. CALCULATIONS FOR USES OTHER THAN IRRIGATION:

SEE ATTACHED SHEET? Y() N()

WR RECORD CONDITIONS/REMARKS:

PS1 - A measuring device of a type approved by this Department shall be maintained as a part of the diverting works.

no

NOTES: (Include limitations on CONSUMPTIVE USE for combined rights.)

Water is co-mingled with Pennsylvania municipal water; not subject to apportionment.

Water is apparently used for washing; consumption use is considered minimal.

RECOMMENDATIONS:

PURPOSES	FROM	TO	RATE CFS	VOL. AF/A	USE
INDUSTRIAL	08-15	07-01	DATABASE EXAMINER 0.670	DATABASE EXAMINER <u>18.9</u>	DATABASE EXAMINER 0.0
TOTAL FOR THIS RIGHT			0.670		0.0

REVIEWED BY: RLM

DATE: 4-1-93

A. CHECK ONLY THE FOLLOWING THAT APPLY:

OWNERSHIP

ADDITIONAL DIV. AMOUNT

ACCEPTED AS CLAIMED ()

NEEDS REVIEW ()

B. SPLIT WATER RIGHT REVIEW

ROOT WATER RIGHT NUMBER: 61-07189

TOTAL DIVERSION RATE OF WR SPLITS

SPLITS:

OLD RIGHT NUMBERS

CURRENT CLAIM NUMBERS

DIVERSION RATE

DATABASE 0.670

EXAMINER

CFS

WR RIGHT NUMBERS

DIVERSION RATE

61-07189

0.670

0.670

DIVERSION RATE REVIEW

DO THE SUM CFS RATE OF THE SPLITS EQUAL THE ROOT RIGHT CFS RATE? (Y/N)

IF NO, is the written review sheet attached? (Y/N)

NOTES:

AUTHENTICATION:

SIGNATURE: *Sharon McElroy*

NAME OF FIELD EXAMINER:

DATE: 4-1-93

TITLE:

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
ADJUDICATION CLAIM VERIFICATION REPORT

15:27:04
03/31/93

PAGE: 11
QUICKLOOK INFORMATION

CLAIM NUMBER: A61-07189

WR ELEMENT	FIELD EXAM Y/N	CORRESPONDENCE SENT/RECEIVED BY WHOM/DATE	FIELD EXAM BY WHOM/DATE	CHANGE CLAIM Y/N	VERIFIED BY CODE	COMPLETED REVIEW WHOM/DATE	COMPLETED DATA ENTRY WHOM/DATE	VERIFIED DATE WHOM/DATE
PRIORITY DATE	N				6			
POINT OF DIV								
SOURCE								
PLACE OF USE								
DIV. AMOUNT CFS/VOLUME								
CONSUMPTIVE USE								
PURPOSES								
PERIOD OF USE								
BASIS OF CLAIM								
REMARKS								

"VERIFIED BY" CODES

TOPO MAP/ORTHO-PQ = 1
ASCS MAP = 2
WATERMASTER RECORDS = 3
MAPP PHOTOS = 4
FIELD EXAM = 5
OTHER (SEE REMARKS) = 6

THESE CODES ARE USED TO INDICATE HOW THE FIELD EXAMINER VERIFIED THE INFORMATION
USED FOR THIS FIELD EXAMINATION. INDICATED ARE ALL CODES WHICH APPLY.

I AWE records standards

Add Condition NO1

Remark B05 (112°F)

Remark concerning municipal right.

State of Idaho
Department of Water Resources

NOV 09 1990

WATER RIGHT LICENSE

WATER RIGHT NO. 61-07189

Department of Water Resources
Western Regional Office

Priority: July 10, 1974

Maximum Diversion Rate:
Maximum Diversion Volume:¹

0.67 CFS
12.9 AF

This is to certify, that MAGIC WEST INC.

P.O. BOX 968

GLENN'S FERRY, ID 83623

has complied with the terms and conditions of the permit, issued pursuant to Application for Permit dated July 10, 1974; and has submitted Proof of Beneficial Use on June 13, 1979. An examination indicates that the works have a diversion capacity of .670 cfs of water from a GROUNDWATER source, and a water right has been established as follows:

<u>BENEFICIAL USE</u>	<u>PERIOD OF USE</u>	<u>RATE OF DIVERSION</u>	<u>ANNUAL VOLUME</u>
INDUSTRIAL	08/15 to 07/01	0.67 CFS	12.9 AF

LOCATION OF POINT(S) OF DIVERSION: SWSE , Sec. 29, Township 05S, Range 10E
ELMORE County

PLACE OF USE: INDUSTRIAL

TWN RGE SEC

05S 10E 29

SWSE

CONDITIONS/REMARKS:

1. The maximum diversion volume is defined as the maximum allowable volume of water that may be diverted annually from the source under this right. The use of water confirmed by this right is limited to the amount which can actually be beneficially used. The maximum diversion volume may be adjusted to more accurately describe the beneficial use or to implement accepted standards of diversion and use efficiency.
2. This water right is appurtenant to the described place of use.
3. This right is subject to all prior water rights and may be forfeited by five years of non-use.
4. Modifications to or variance from this license must be made within the limits of Section 42-222, Idaho Code, or the applicable Idaho law.
5. A measuring device of a type approved by this Department shall be maintained as a part of the diverting works.

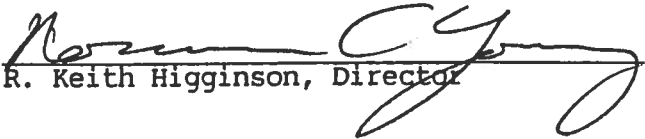
State of Idaho
Department of Water Resources

WATER RIGHT LICENSE

WATER RIGHT NO. 61-07189

This license is issued pursuant to the provisions of Section 42-219, Idaho Code.
Witness the seal and signature of the Director, affixed at Boise, this 27th
day of OCTOBER, 1990.

Acting for


R. Keith Higginson, Director

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
BENEFICIAL USE FIELD REPORT

A. GENERAL INFORMATION

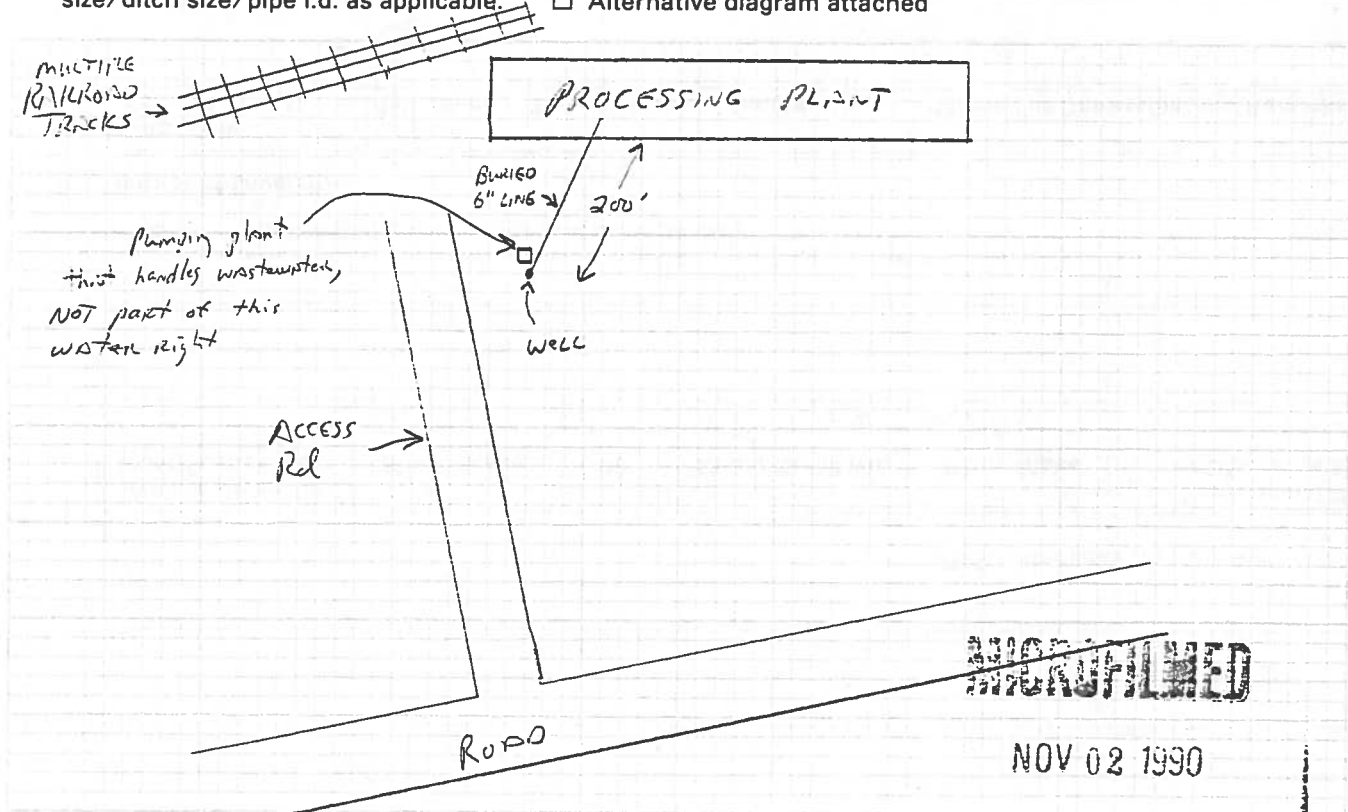
1. Owner: Magic West Inc. Permit No. 61-7189
Current Address: P.O. Box 968 Glenns Ferry, ID. 83623 Phone No. 366-7477
2. Accompanied by: Doug Masson EXAM. DATE: 8/10/87
Address: Same Phone No. Same
Relationship to Permit Holder: Maint. Supt.
3. Source: groundwater tributary to —

B. OVERLAP REVIEW

1. Other water rights with same place of use: NONE 61-7228
☐ Copies Attached ^{NOT NEEDED}
2. Other water rights with same point of diversion: NONE
☐ Copies Attached ☐ Copies of Field Exam's Attached

C. SYSTEM DESCRIPTION

1. **Diversion System Diagram:** Indicate all major components and distances between components. Indicate weir size/ditch size/pipe i.d. as applicable. ☐ Alternative diagram attached



Scale: 1" = NOT TO SCALE

2. ☒ Copy of U.S.G.S. Quadrangle Attached
Showing location(s) of point(s) of diversion and
place(s) of use (required). ☐ Aerial Photo Attached
(required for irrigation of 10 acres or more).
☒ Photo of Diversion and System Attached
(required for all but single household domestic groundwater, and stockwater).

System Description (continued)

3. **Narrative:** Description (As operating at time of measurement. Indicate pressure, number of sprinklers, etc.)

1230' deep well with 10" casing and submersible pump provides water through 6" pipe for use in other processing area. This hot water source (112°F) is combined with city water (cold) for an estimated 24 hr.-day use of 30,000 gallons, of which about 20,000 gallons is from the hot water well. Hot & cold processing water is reused (wastewater) in numerous other ways in and around the plant. A set of pumps & storage tanks are found, but these are not part of the diversion works for the water right. Maint. Swt. cannot find any company records about this well and diversion system. ☒ See Remarks on page 4 for continuation

4.

Well or Diversion Identification No.*	Motor Make	Hp	Motor Serial No.	Pump Make	Pump Serial No. or Discharge Size
	Peerless Submersible	25	MODEL # 6-HXB	Peerless	6" pipe

*Code to correspond with No. on map and aerial photo

5. **Point(s) of Diversion:**

Ident. No.	Gov't. Lot	1/4	1/4	1/4	Sec.	Twp.	Rge.	County	Method of Determination/Remarks
			SW	SE	29	SS	10E	ELMORE	USGS 7 1/2' Quad

6. **Place(s) of Use:**

Indicate Method of Determination Same as in 5

Twp.	Rge.	Sec.	NE 1/4				NW 1/4				SW 1/4				SE 1/4				Totals
			NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	
SS	10E	29															I		—

UNRECORDED

NOV 02 1990

Do not use this space

Do not use this space

D. FLOW MEASUREMENTS

☐ Additional Data Sheets Attached

1.

Measurement Equipment	Type	Make	Model No.	Serial No.	Size	Calib. Date
NONE						

2. Measurements:

NONE POSSIBLE

E. FLOW CALCULATIONS

☐ Additional Computation Sheets Attached

1. Measured Method: NONE

2. Alternate Method for Checking Purposes:

HP eq. where $HP = 25$, $eff = .8$
 $psi = 75$, $z = 30$

$$Q = \frac{(8.8)(.8)(25)}{(2.31 \times 75) + 30} = \frac{176}{203.25} = .87 \text{ cfs}$$

F. PUMP EFFICIENCY DATA (Optional) N/A

Discharge Pressure: _____ psi x 2.31 = _____ ft (1); Dynamic pumping level: _____ ft (2)

Total Head: (1) + (2) = _____ (3); Flow rate: _____ cfs (4)

Water HP: (3) x (4) ÷ 8.8 = _____ (5)

Meter Input KW: 3.6 x _____ KH x _____ CTR or _____ MULT x _____ PTR x _____ N/ _____ T = _____ (6)

Meter Input HP: (6) x 1.34 = _____ (7)

Panel Input KW: _____ Ave PF x _____ Ave Volts x _____ Ave Amps x .001732 = _____ (6)

Panel Input HP: (6) x 1.34 = _____ (7) Efficiency: (5)/(7) x 100 = _____ %

G. VOLUME CALCULATIONS

MICROFILMED

NOV 02 1990

1. Volume Calculations for Irrigation: N/A

$V_{I.R.} = (\text{Acres Irrigated}) \times (\text{Irrigation Requirement}) =$ _____

$V_{D.R.} = [\text{Diversion Rate (cfs)}] \times (\text{Days in Irrigation Season}) \times 1.9835 =$ _____

$V = \text{Smaller of } V_{I.R.} \text{ and } V_{D.R.} =$ _____

2. Volume Calculations for Other Uses:

INDUSTRIAL USE IN PLANT:

24 hrs/day

5 days/week

42 hrs/year

estimated 20,000 gpd (per 24 hrs 2000)

(Est. by Meter Dept.)

(.67)(321)(1.9835) = 426.6

V.

20,000 gpd x 5 days/week x 42 hrs/yr =

4,200,000 gpy

$\frac{4,200,000 \text{ gpy}}{325,000 \text{ gpd}} = 12.889 = 12.9$

H. REMARKS AND OVERLAP REVIEW ANALYSIS

Measuring device Read. Record 8/25/78.

Allow .67 cfs as permit shows. HP equation confirms system can produce at least

NARRATIVE CONTINUED: My letter of 12/16/87 resulted in the response of 1/11/88 by W. Schow, Vice-President. Pump data from this letter and subsequent phone conversation with Bill Webb of Layne Pump Co. (Nampa) provided necessary information. I assumed a total dyn. head of 30' based on well log and conversations with maint. supt. at the plant.

Overlap: ~~Although maintenance shows city water~~ City water under license 61-7228 is supplied to the plant and used in a variety of functions, including industrial. Lic. condition: This right, combined with other rights, should not exceed .67 cfs for industrial use.

I. RECOMMENDATIONS

1. Recommended Amounts

Beneficial Use	one year to next year Period of Use		Rate of Diversion Q (cfs)	Annual Volume V (afa)
	From	To		
Industrial	8/15	7/1	.67	12.9
Totals:				

2. Recommended Amendments

☒ Change P.D. as reflected above

☐ Add P.D. as reflected above

☐ None

☒ Change P.U. as reflected above

☐ Add P.U. as reflected above

☐ Other

J. AUTHENTICATION

Field Examiner's Name

Steven Lester

Signature

Steven Lester

Certification Date

Field Report Preparation Date

8/4/87

CONSULTANT SEAL

BD

1/12/88

K. Licensing recommendation shall be prepared by an Idaho Department of Water Resources employee on a computer printout attached hereto.

MICROFILMED

NOV 62 1990





SALES
Magic Valley Foods, Inc.
P.O. Box 475
Rupert, Idaho 83350
Phone: 208-436-3126

P.O. Box 968

GLENN'S FERRY, IDAHO 83623

Phone: 208-366-7477

RECEIVED
JAN 13 1988

Jan. 4, 1988

61-7189

Mr. Steve Lester, Water Resource Agent
State of Idaho
Department of Water Resources
2735 Airport Way
Boise, ID 83705

Dear Mr. Lester:

Enclosed is the information you requested via your letter dated Dec. 16, 1987.

Pump Data:

Brand: Peerless

360 G.P.M. @ 3,600 R.P.M.

Model Number: 6HXB

10 inch hole

440 Volt

105 ft. deep

4 stage

Copy of Andrew Well Drilling Well Test Report.
Copy of Well Drillers Report for State of Idaho.

Please contact me if you need additional information.

Sincerely,

MAGIC WEST, INC.

Wm. Schow

Wm. Schow
Vice President

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WS:sh

1/7/88 note that hp not shown above. spoke with
Bill Webb at Layne Pump Co., Nampa, 466-7376.
He said that with above info, pump curve shows:
between 70-80 psi,
21 brake hp,
25 total hp.

S. Lester

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JAN 3 1988

Department of Water Resources
Western Regional Office

WELL TEST REPORT

ANDREW WELL DRILLING

Idaho Falls, Idaho

DATE February 5, 1975

ORDER NO. _____

CUSTOMER Magic Valley Foods Inc.

ADDRESS Glenns Ferry, Idaho

WELL LOCATION

WELL DEPTH _____ CASING I.D. _____

WELL DEPTH _____ CASING I.D. _____

WELL DEPTH _____ CASING I.D. _____

TOTAL WELL DEPTH _____

CH. PIPE 6" ORIFICE DIA. 4 3/4"

STATIC LEVEL 3' 6" BOWL USED 5"

TOTAL PUMP SETTING 109' bowls at 107' PERFORATED AREAS

[illegible]

HOURS PUMPED THIS DAY 8

HOURS PUMPED TO DATE 8

TESTED BY _____

REMARKS ON SAND, CASING, PLUMB OF WELL, ETC.

WELL TEST REPORT

ANDREW WELL DRILLING

Idaho Falls, Idaho

DATE February 6, 1975

ORDER NO. _____

Contractors

CUSTOMER Magic Valley Foods Inc.

ADDRESS Glenms Ferry, Idaho

WELL LOCATION _____

WELL DEPTH _____ C/SING I.D. _____

WELL DEPTH _____ CASING I.D. _____

WELL DEPTH _____ CASING I.D. _____

TOTAL WELL DEPTH _____

CH. PIPE 6" ORIFICE DIA. 4 3/4"

STATIC LEVEL 3'6"

BOWL USED 8"

TOTAL PUMP SETTING 109' BOWLS at 107' PERFORATED AREAS _____

TIME	ORIFICE IN INCHES	G. P. M.	PUMPING LEVEL	DRAWDOWN	ENG. R.P.M.	PUMP R.P.M.	REMARKS
10:30 a.m.	1"	101	13'6"	10'	900	800	65° Clear
10:45	1"	101	13'7"	10'11"	900	800	70° Clear
11:00	1 1/2"	125	13'7"	10'11"	950	840	80° Clear
11:10	2"	143	13'8"	10'12"	1000	850	94° Clear
11:30	2 1/2"	160	20'	16'6"	1100	900	94° Clear
11:50	2 1/2"	160	22'	18'6"	1100	900	95° Clear
12:00	3"	176	22'6"	19'	1200	1000	95° Clear
1:00 p.m.	4"	203	27'	23'6"	1300	1200	95° Clear
1:30	4"	203	28'	24'6"	1300	1200	95° Clear
2:00	6"	249	34'	30'6"	1500	1400	95° Clear
2:15	11"	337	43'	39'6"	1700	1600	95° Clear
3:00	12"	352	48'	44'6"	1800	1700	96° Clear

HOURS PUMPED THIS DAY _____

REMARKS ON SAND, CASING, PLUMB OF WELL, ETC.
Static water level at 3'6"

HOURS PUMPED TO DATE _____

TESTED BY _____

