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SEP 05 2013

WATER RESOURCES
WESTERN REGION

Jerry R. Rigby ISBN 2470
RIGBY, ANDRUS & RIGBY, *Chartered*
Attorneys at Law
25 North Second East
Rexburg, Idaho 83440
Telephone: 208-356-3633

Attorneys for Idaho Fresh Pak, LLC

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

IN THE MATTER OF PERMIT TO)
APPROPRIATE WATER NO.)
)
61-12274)
IN THE NAME OF LOUIS D. JEFFREY)
_____)

**WITNESS LIST AND DISCLOSURE
OF EXHIBITS**

TO: IDAHO DEPARTMENT OF WATER RESOURCES

COMES NOW the firm of Rigby, Andrus & Rigby, *Chartered*, and through Jerry R.

Rigby, a partner in said firm, and hereby submit the following intended witness list and
disclosure of exhibits in the above entitled matter:

LIST OF WITNESSES/INTENDED WITNESSES

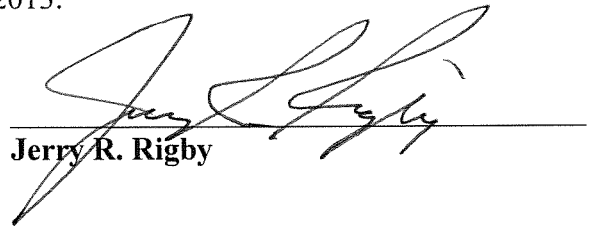
1. Robert K. Hall - Glenns Ferry, Idaho
2. John R. Solosabal - Glenns Ferry, Idaho
3. Jerry L. Heath and Shirley A. Heath - Glenns Ferry, Idaho
4. Elizabeth Eichholz - Glenns Ferry, Idaho
5. Fred Mackey - Glenns Ferry, Idaho
6. Edward T. Potucek - Glenns Ferry, Idaho

7. Gary N. Nelson and Nancy Nelson - Hagerman, Idaho
8. Any witness required to establish a foundation for an exhibit.
9. Any witness required for rebuttal.
10. Any witness endorsed or produced by other party.

DISCLOSURE OF EXHIBITS

1. Amended Expert Witness Report of Rocky Mountain Environmental.
2. Agreement between Magic West, Inc. and Robert K. Hall.
3. Agreement between Magic West, Inc. and John R. Solosabal.
4. Agreement between Magic West, Inc. and Jerry L. Heath and Shirley A. Heath.
5. Agreement between Magic West, Inc. and Elizabeth Eichholz.
6. Agreement between Magic West, Inc. and Fred Mackey.
7. Agreement between Magic West, Inc. and Edward T. Potucek, Gary N. Nelson and Nancy Nelson.
8. IDWR Water permit Report

DATED This 3rd day of September, 2013.

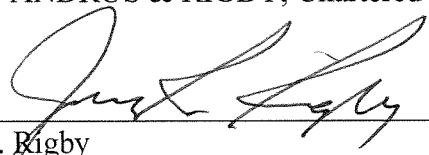

Jerry R. Rigby

CERTIFICATE OF SERVICE BY MAIL, HAND DELIVERY
OR FACSIMILE TRANSMISSION

I hereby certify that a true and correct copy of the foregoing document was on this date served upon the persons named below, at the addresses set out below their name, either by mailing, hand delivery or by telecopying to them a true and correct copy of said document in a properly addressed envelope in the United States mail, postage prepaid; by hand delivery to them; or by facsimile transmission.

DATED this 3rd day of September, 2013.

RIGBY ANDRUS & RIGBY, Chartered



Jerry R. Rigby

Vicki Music
Idaho Department of Water Resources
2735 Airport Way
Boise, ID 83705
vicky.music@idwr.idaho.gov

☒ Mail
☐ Hand Delivery
☐ Facsimile
☒ - E-Mail

Louis D. Jeffrey
2050 E. Medicine Wheel Ln.
King Hill, ID 83633

☒ Mail
☐ Hand Delivery
☐ Facsimile

Edward T. Potucek
1890 E. Potucek Ln.
King Hill, ID 83633

☒ Mail
☐ Hand Delivery
☐ Facsimile

Robert K. Hall
2975 W. Latty Dr.
Glenns Ferry, ID 83623

☒ Mail
☐ Hand Delivery
☐ Facsimile



Rocky Mountain
ENVIRONMENTALSM
ASSOCIATES, INC.

RECEIVED

SEP 05 2013

WATER RESOURCES
WESTERN REGION

8/26/2013

AMENDED

RMEA No.: 13-0058

Mr. Jerry Rigby
P.O. Box 250
Rexburg, ID 83440

Re: NBO3 protest against application to appropriate water right no. 61-12274

Dear Jerry:

Rocky Mountain Environmental Associates (RMEA) is performing the role of expert witness in support of a Protest filed against the subject water rights application. Reasons for protest are as outlined below:

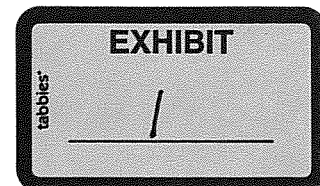
In matters of defending this action, the burden of proof is largely upon the applicant. However, protestant shares the responsibility of determining conflict with the local public interest, where local public interest is defined as interests that the people in the area directly affected by a proposed water use have in the effects of such use on the public water resource.

NBO3 is the successor owner of water right permit 61-7724. Upon application and advertisement of this permit, the water right permit was protested by local water right holders on the basis of a limited supply of ground water that allegedly had been negatively affected by their (the processing plant) use of the water. The potentially affected wells are quite deep (about 1,000 feet) but pumping levels had been much shallower due to artesian aquifer conditions which pushes the water up the well nearer to the surface. Hydrographs of select wells in the area are attached.

There are two main aquifers in this area; an upper cold water aquifer that the Glens Ferry City Springs issues from and select wells. The lower aquifer is a low-temperature geothermal aquifer that is geologically confined by fine grained strata that forms the artesian condition. It is not clear what types of connectivity exist between the two aquifers.

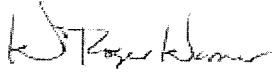
In order to move forward with water right permit 61-7724, NBO3's predecessors in interest, Magic West, entered into an agreement with the protestants essentially guaranteeing that any perceived injury from water use at the facility would result in Magic West (or their successor) supplying water from any alternate source that could be reasonably obtained and if not obtainable that they would curtail their usage (See attached agreements).

This new application for a water right potentially accumulates an additional burden on NBO3's ability to guarantee the water rights associated with those that participated in the agreement.



If you have any questions, please don't hesitate to call us at (208) 524-2353.

Sincerely,



W. Roger Warner, Hydrologist
Vice-President

Attachments:

IDWR "Bendixon" Hydrographs

Select Updated Hydrographs

WELL 6S 7E 2CDD1

WELL 5S 8E 17CAB1

WELL 5S 10E 28CAB1

WELL 5S 9E 36DAB1

WELL 5S 10E 32ADA1

WELL 10E 28BDA1

WELL 5S 11E 33DAC1

Magic West Agreements dated May 1999

Robert K Hall

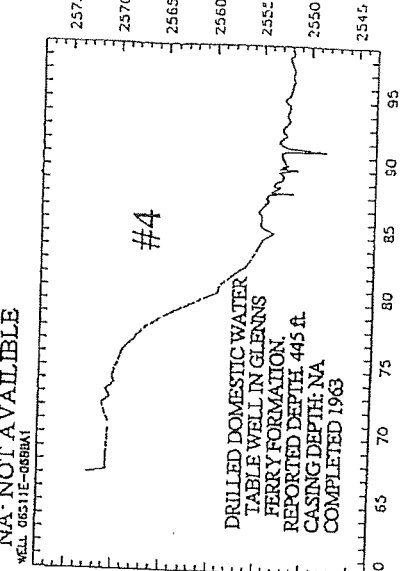
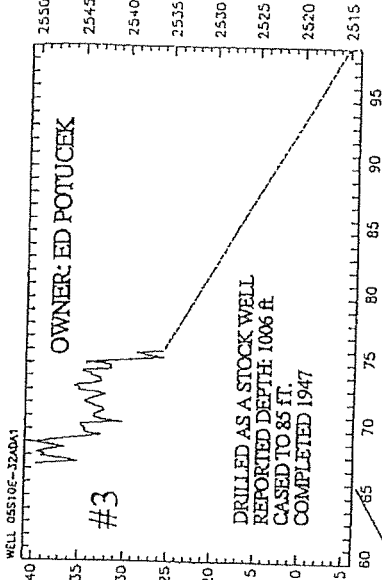
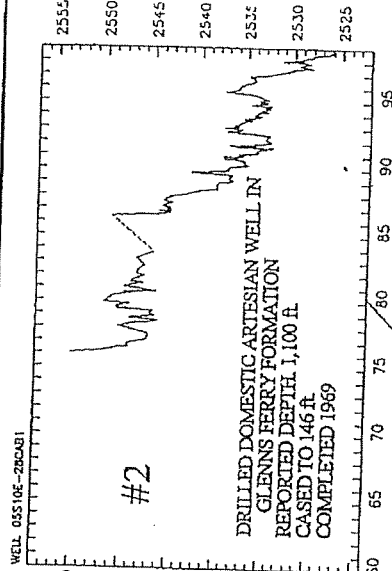
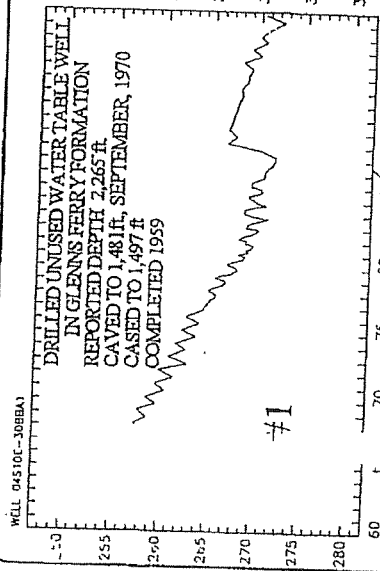
John R Solosabal

Jerry L Heath and Shirley A. Heath

Fred Mackey

Elizabeth Eichholz

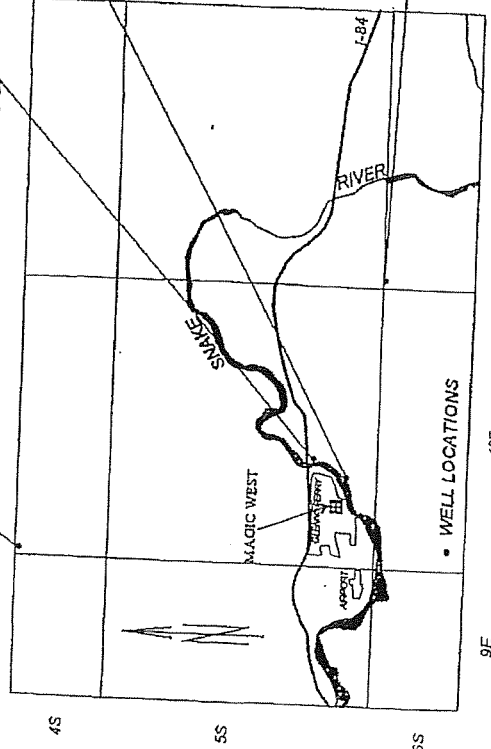
Edward T Potucek



LEGEND

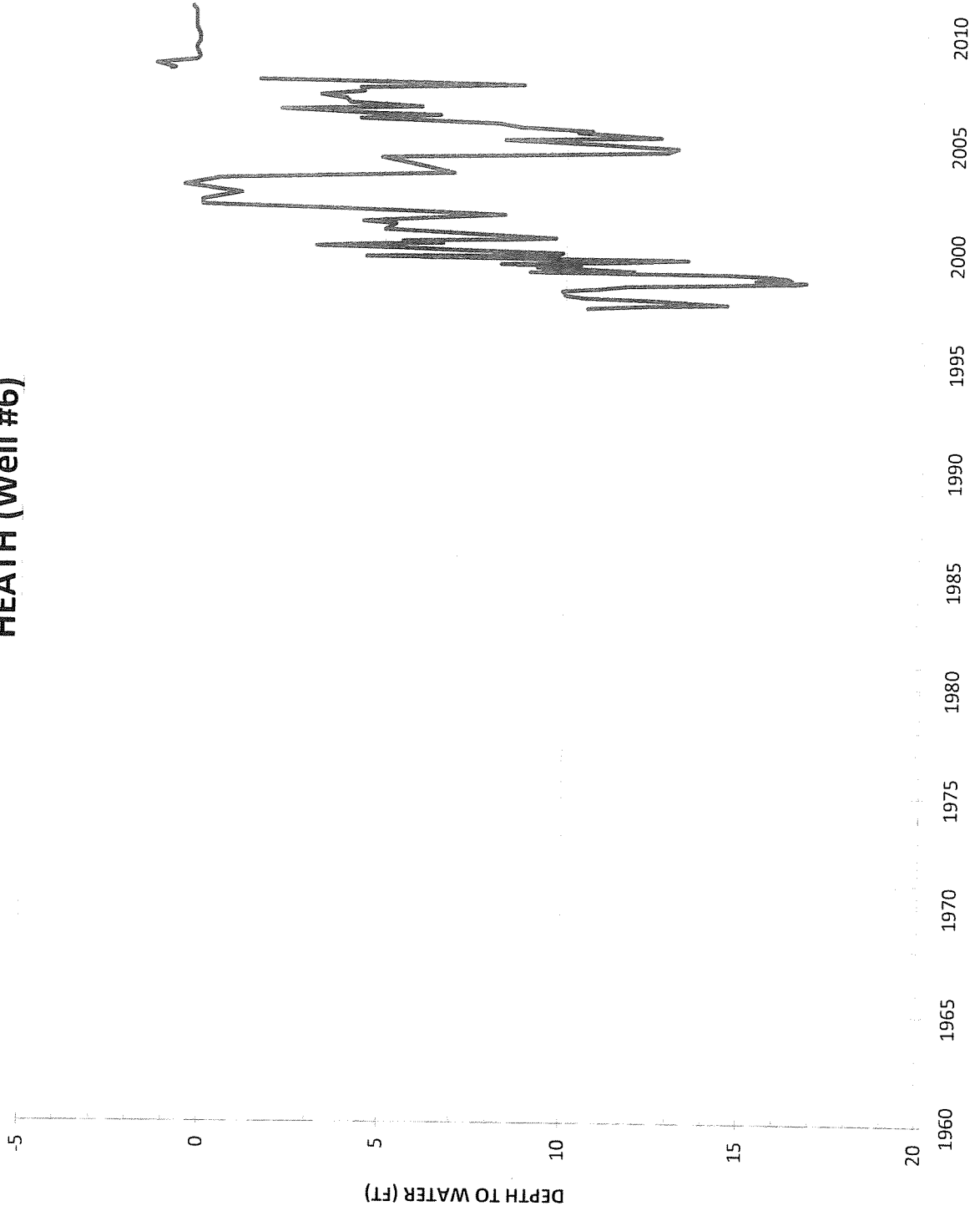
BASE: YEAR
LEFT SIDE: DEPTH TO WATER
RIGHT SIDE: WATER ELEVATION
ALL MEASUREMENTS IN FEET
CURRENT TO FALL, 1998
DASHED LINE INDICATES MORE THAN ONE YEAR BETWEEN MEASUREMENTS
NA: NOT AVAILABLE

GLENN'S FERRY AREA

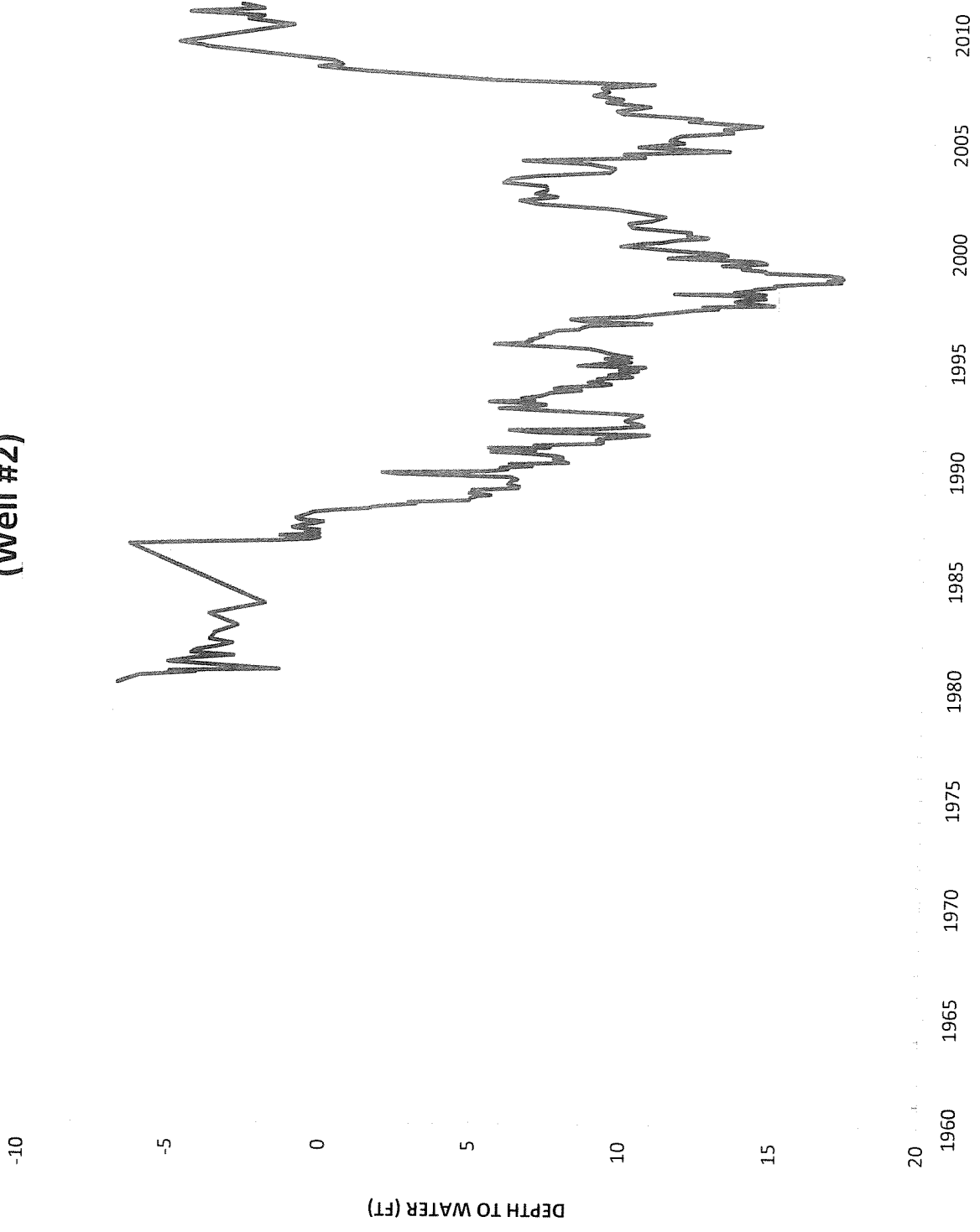


GROUND WATER HYDROGRAPHS HISTORIC

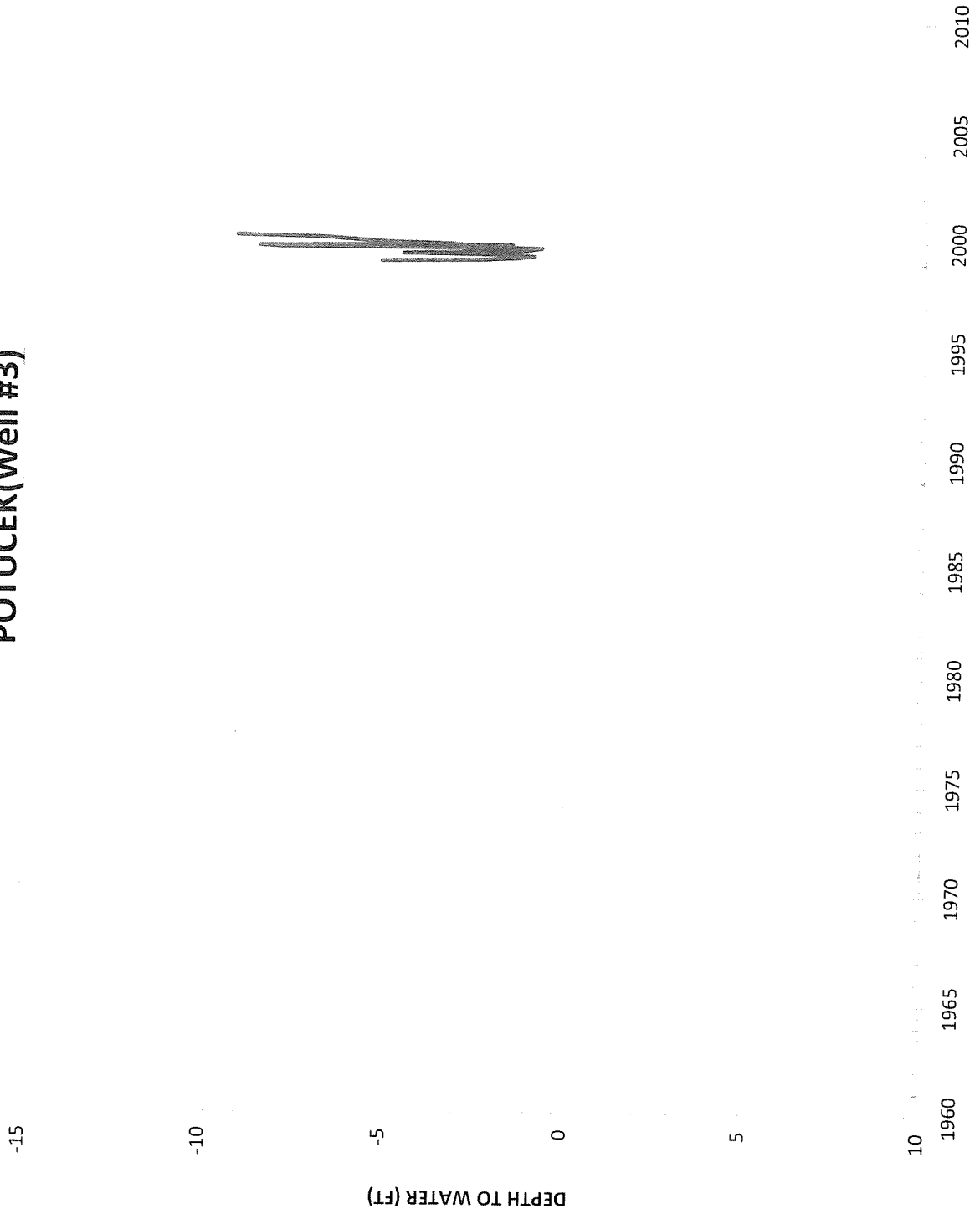
WELL 5S 10E 28BDA1
HEATH (Well #6)



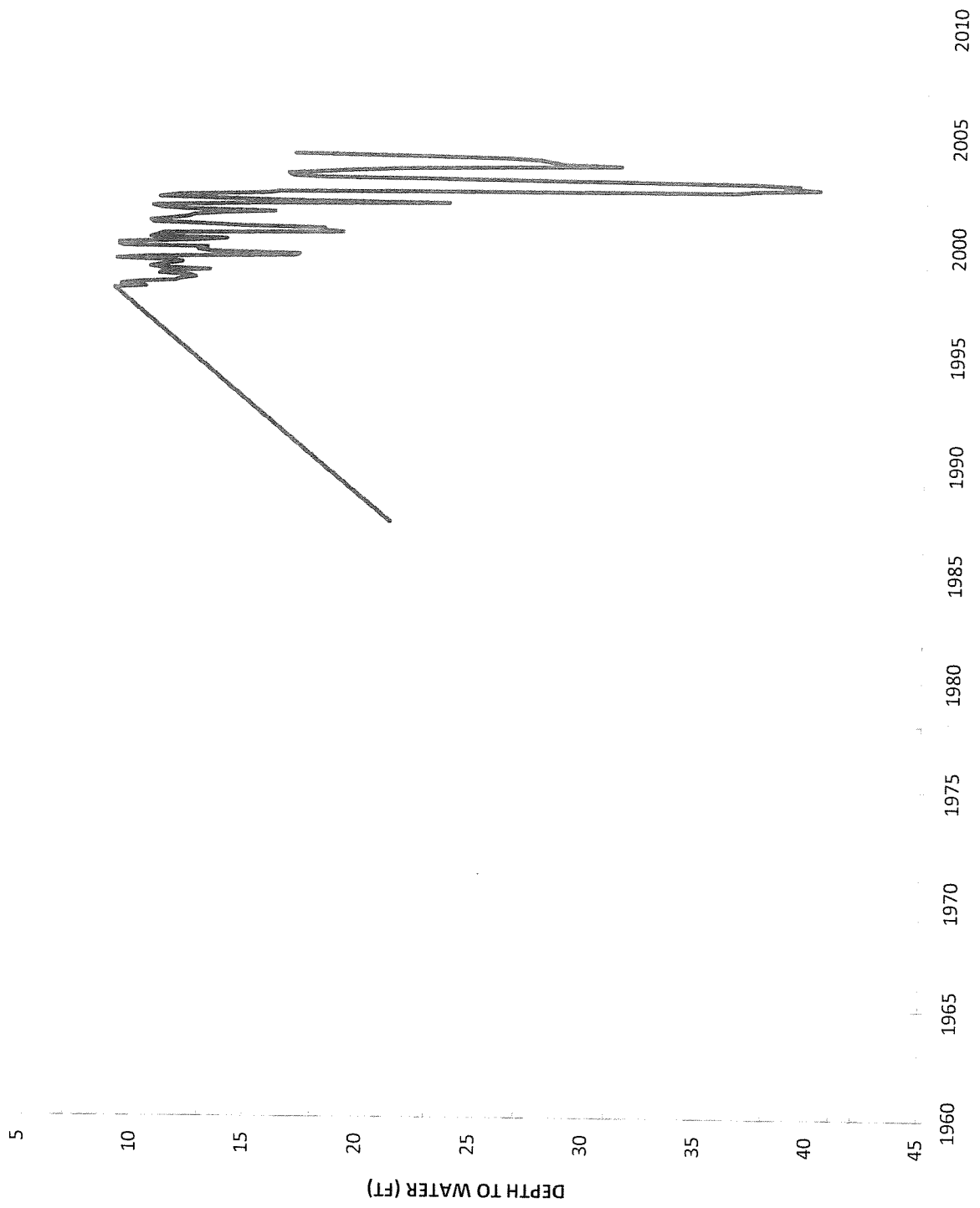
**WELL 5S 10E 28CAB1
(Well #2)**



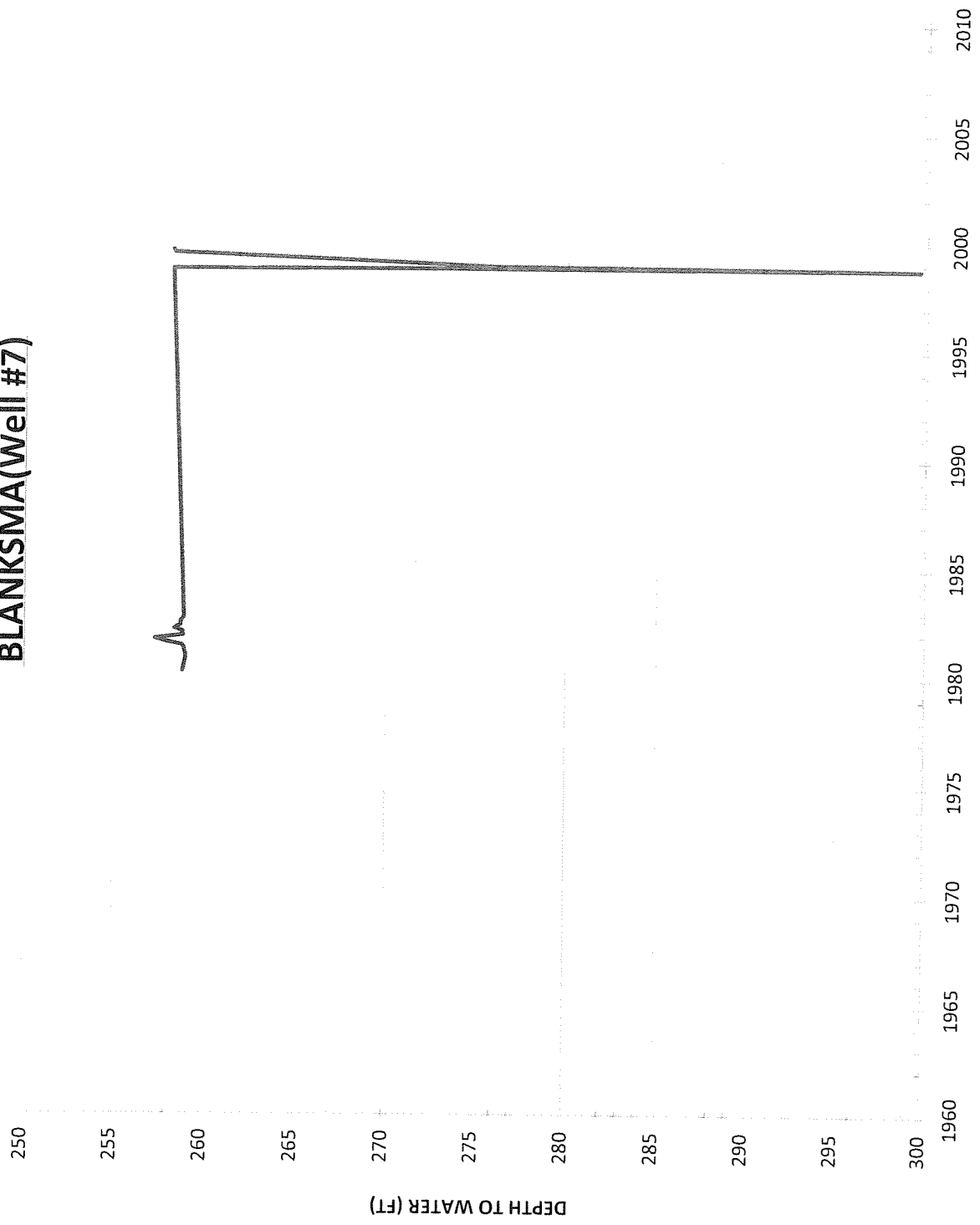
WELL 5S 10E 32ADA1
POTUCEK(Well #3)



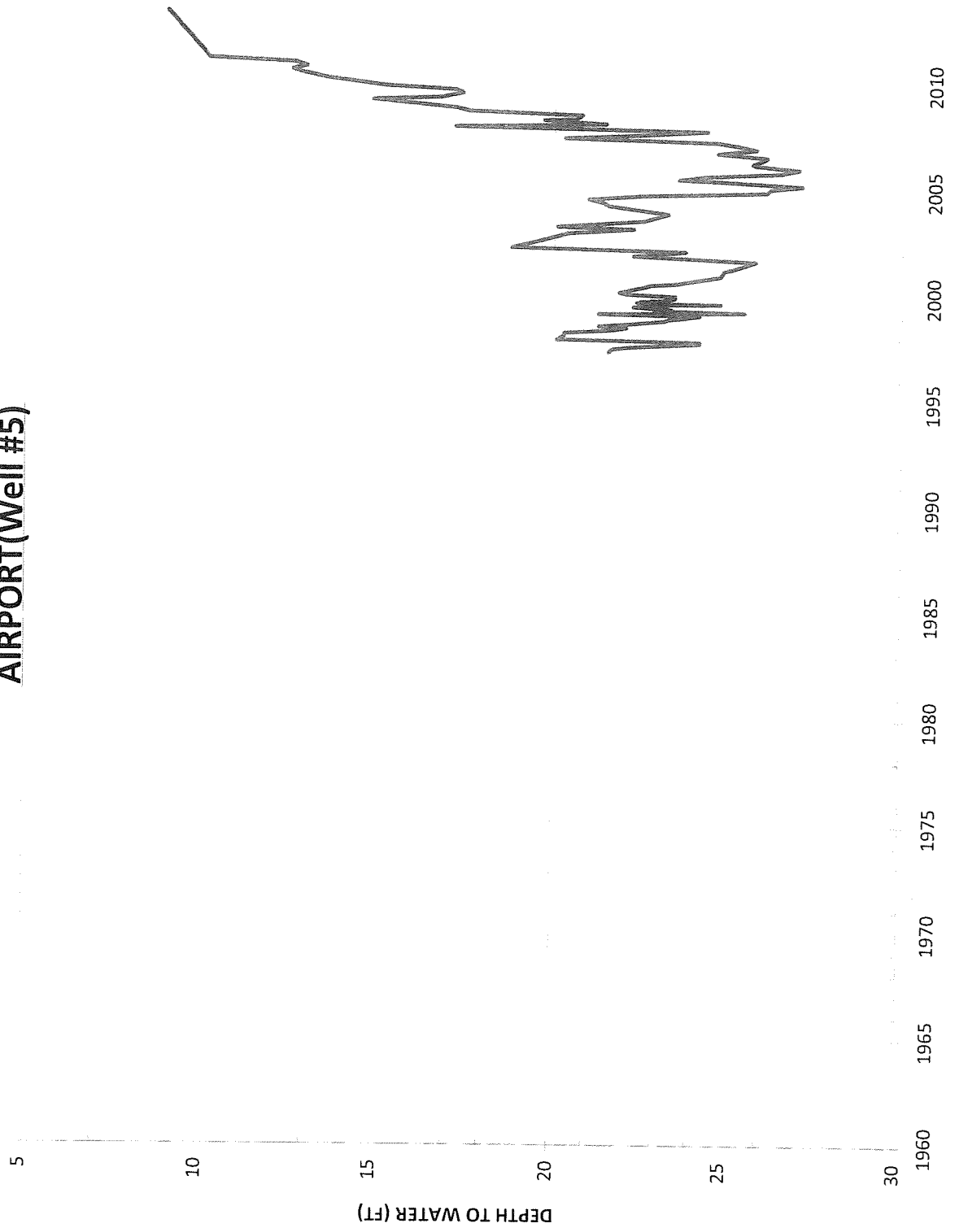
WELL 5S 11E 33DAC1



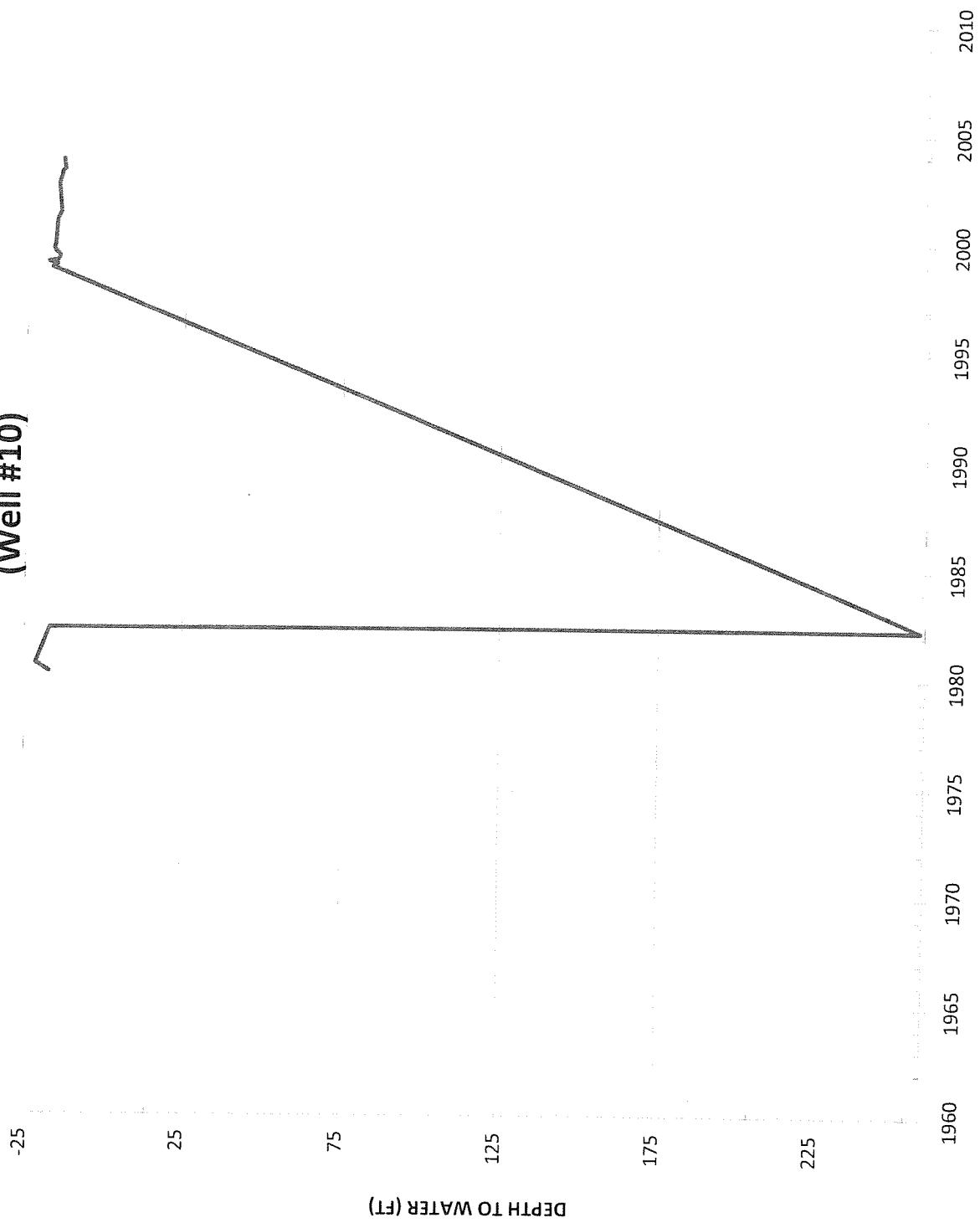
WELL 5S 8S 17CAB1
BLANKSMA(Well #7)



WELL 5S 9E 36DAB1
AIRPORT(Well #5)



**WELL 6S 7E 2CDD1
(Well #10)**



REC'D BY 1999

AGREEMENT

THIS AGREEMENT is entered into between MAGIC WEST, INC., an Idaho corporation ("Magic West"), and ROBERT K. HALL, a married man residing in Glens Ferry, Idaho ("Protestant").

WHEREAS, Magic West has filed Application for Permit No. 61-07724 with the Idaho Department of Water Resources; and

WHEREAS, Protestant is the owner of Water Right No. 61-10013, a domestic water right evidenced by a partial decree entered in the Snake River Basin Adjudication on January 30, 1998, a copy of which is attached hereto as Exhibit "A"; and

WHEREAS, Magic West's Application for Permit has been protested by Protestant; and

WHEREAS, the parties desire to resolve the protest pursuant to mutually agreeable terms and conditions.

NOW THEREFORE, in consideration of the mutual promises below, and other good and valuable consideration, the receipt of which is hereby acknowledged, the parties agree as follows:

1. Mitigation of Current Water Shortages. In order to mitigate Protestant's current water shortage, Magic West agrees to:

- (a) lower the Protestant's pump to 500 feet;
- (b) make any rating changes necessary for the Protestant's pump to produce 9 gallons per minute on a sustainable basis, including replacement of the current pump, if necessary;
- (c) pay the electrical charges for electrical power necessary to pump water from Protestant's well to the storage tank to be installed on Protestant's property;
- (d) provide for future repairs or replacement of Protestant's pump, as necessary and as determined by the parties or by a professional well driller; and
- (e) install a 1500 ^{gpm} gallon storage tank to allow water to be supplied directly from the storage tank to Protestant's domestic place of use.

It is agreed that Protestant shall pay the cost of installing a pressure tank and a pump to pump water from the storage tank to the place of use. In addition, any electrical charges or other costs related to pumping water from the storage tank shall be borne by Protestant.

If it is discovered that Protestant's well is currently obstructed by cave-in or other structural problem with the well, the parties agree to correct the problem and each pay one-half of the cost. If water shortages continue to occur after the necessary corrections are made to the well, Magic West will provide mitigation under this paragraph 1 and, if necessary, under paragraph 2 below.

2 Mitigation of Future Water Shortages. It is expected that the measures set forth in paragraph 1 above will be sufficient to provide Protestant with water. However, in the event of future shortages in Protestant's domestic water supply, Magic West agrees to take one or more of the following steps to provide Protestant with an adequate supply of potable water:

(a) lower the pump in Protestant's well to a sufficient depth to provide a sustainable flow of 9 gallons per minute and pay any additional electrical charges resulting from the new pumping level;

(b) arrange to have water supplied by the City of Glenns Ferry and pay any applicable hook-up fees and City water payments;

(c) drill and adequately equip a new well and pay the electrical charges necessary to pump water from the new well; provided that any existing equipment owned by the Protestant may be used to equip the new well; or

(d) provide Protestant with another source of potable water.

If Magic West is unable to provide Protestant with a source of potable water by any means, Magic West agrees to curtail its use under Permit No. 61-07724 as necessary to provide an adequate supply of water from Protestant's well for Protestant's actual domestic needs. If Protestant's well does not respond to Magic West's curtailment within a reasonable time, Magic West shall not be prohibited from diverting water under Permit No. 61-07724, *or any other water right permit or license owned by Magic West.* *Brady*

3. Notification and Verification. Magic West shall provide for one or more of the alternatives set forth in paragraph 2 upon notification from the Protestant that the Protestant is receiving an inadequate supply of water for his domestic needs. Magic West shall have the right to verify any alleged water shortages before providing additional mitigation, including the right to enter into or upon Protestant's premises after reasonable notice.

4. Amount of Water. Magic West shall only be required to provide Protestant with the amount of water actually required for Protestant's domestic needs. In no event shall the Protestant be entitled to receive more than the quantity included in Exhibit "A", from all available sources. Magic West does not guarantee that the water provided will be of any particular temperature and the Protestant understands and agrees that any water provided by Magic West may or may not be low-temperature geothermal water.

5. Withdrawal of Protest. Upon execution of this Agreement, Protestant agrees to simultaneously execute a Withdrawal of Protest in the matter of Application for Permit No. 61-07724 and immediately file the Withdrawal with the Idaho Department of Water Resources.

6 Future Applications. The Protestant agrees not to protest, intervene in, or appear as an adverse witness in, any application for permit, permit amendment, transfer, water bank rental, or other proceeding that may be initiated by Magic West, or anyone else, which seeks to provide water for Magic West's Glenns Ferry food processing plant or the cogeneration plant located at the plant site.

7. Snake River Basin Adjudication. The Protestant agrees not to file any objection, response, motion to participate, motion to alter or amend, or notice of challenge regarding any of Magic West's claims or recommendations in the Snake River Basin Adjudication.

8. Delivery Calls. The Protestant agrees not to file a petition for delivery call with the Idaho Department of Water Resources, or to initiate, or participate in, any judicial or administrative action seeking curtailment of Magic West's water rights.

9. Term. This Agreement shall become effective upon final approval of Application for Permit No. 61-07724 by the Idaho Department of Water Resources and Magic West shall perform its duties under the agreement within sixty (60) days of said approval. This Agreement shall remain in full force and effect until such time that Magic West, its successor(s) or assign(s) may choose, if ever, to stop diverting water under the permit.

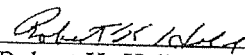
10. Entire Agreement. This Agreement is the entire agreement between the parties.

11. Attorney Fees. In the event that either party is required to enforce the terms of this Agreement in an administrative or judicial proceeding, the prevailing party shall be entitled to a reasonable attorney fee from the losing party.

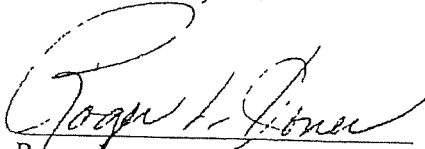
12. Binding Nature. This Agreement shall constitute a covenant which runs with the land to which Protestant's Water Right No. 61-10013 is appurtenant (i.e., the place of use listed on Exhibit "A") and shall be binding on the parties and their successors and assigns. Upon execution, Magic West shall cause a copy of this Agreement, including Exhibit "A", to be recorded with Elmore County.

DATED THIS 6 day of May, 1999.

PROTESTANT


Robert K. Hall

MAGIC WEST, INC


Roger Jones

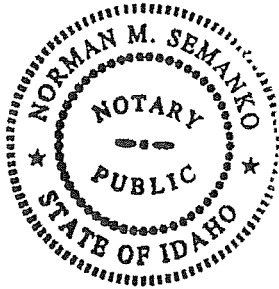
HALL8.AGR

AGREEMENT - 3

STATE OF IDAHO)
)ss.
County of Elmore)

On the 6th day of May, 1999, before me, a Notary Public, in and for said County and State, personally appeared ROBERT K. HALL, known or identified to me to be the individual whose name is subscribed to the within instrument, and acknowledged to me that he executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

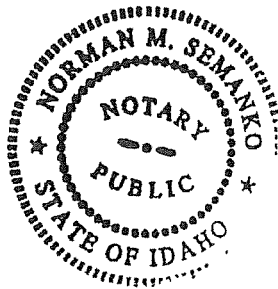


N. S.
NOTARY PUBLIC FOR IDAHO
Residing at: Twin Falls, Idaho
My commission expires: 9-21-2004

STATE OF IDAHO)
)ss.
County of Elmore)

On this 6th day of May, 1999, before me, a Notary Public, in and for said County and State, personally appeared ROGER JONES, known or identified to me to be the President of MAGIC WEST, INC., the corporation that executed the foregoing instrument, and acknowledged to me that such corporation executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.



N. M. Semanko
NOTARY PUBLIC FOR IDAHO
Residing at: Twin Falls, Idaho
My commission expires: 9-21-2004

315221

ELMORE COUNTY, IDAHO ss
Request of

Rosholt, Robertson + Lucke

Time 10:42 A.M.

Date May 10, 1999

GAIL L. BEST, Recorder

By [Signature]

Fee \$18.00 Deputy

EXHIBIT A

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

In Re SRBA)
Case No. 39576)
PARTIAL DECREE PURSUANT TO
I.R.C.P. 54(b) FOR
Water Right 61-10013

1998 JAN 15 11:02
1034
1030

NAME & ADDRESS: ROBERT K HALL
RT 1 BOX 103
GLENNS FERRY ID 83623

SOURCE: GROUNDWATER

QUANTITY: 0.04 CFS

THE QUANTITY OF WATER UNDER THIS RIGHT SHALL NOT EXCEED 13,000
GALLONS PER DAY.

PRIORITY DATE: 12/31/1952

POINT OF DIVERSION: T05S R09E S35 NEHENE Within ELMORE County

PURPOSE AND PERIOD OF USE:	PURPOSE OF USE	PERIOD OF USE	QUANTITY
	DOMESTIC 1 HOME	01-01 12-31	0.04 CFS

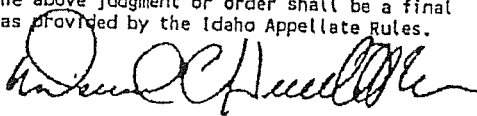
PLACE OF USE: DOMESTIC Within ELMORE County
T05S R09E S35 NEHENE

OTHER PROVISIONS NECESSARY FOR DEFINITION OR ADMINISTRATION OF THIS WATER RIGHT:

THE QUANTITY OF WATER DECREED FOR THIS WATER RIGHT IS NOT A
DETERMINATION OF HISTORICAL BENEFICIAL USE.

RULE 54(b) CERTIFICATE

With respect to the issues determined by the above judgment or order, it is hereby CERTIFIED, in accordance with Rule 54(b), I.R.C.P., that the court has determined that there is no just reason for delay of the entry of a final judgment and that the court has and does hereby direct that the above judgment or order shall be a final judgment upon which execution may issue and an appeal may be taken as provided by the Idaho Appellate Rules.



DANIEL C. HURLBUTT, JR.
PRESIDING JUDGE
Snake River Basin Adjudication

RECEIVED MAY 14 1999

AGREEMENT

THIS AGREEMENT is entered into between MAGIC WEST, INC., an Idaho corporation ("Magic West"), and JOHN R. SOLOSABAL of Glenss Ferry, Idaho ("Protestant").

WHEREAS, Magic West has filed Application for Permit No. 61-07724 with the Idaho Department of Water Resources; and

WHEREAS, ROCKING S. RANCH, INC. is the owner of Water Right No. 51-10312, a domestic and stockwater right evidenced by a partial decree entered in the Snake River Basin Adjudication on January 30, 1998, a copy of which is attached hereto as Exhibit "A", and Protestant, as President of ROCKIN S. RANCH, INC. has authority to enter into this Agreement ; and

WHEREAS, Magic West's Application for Permit has been protested by Protestant; and

WHEREAS, the parties desire to resolve the protest pursuant to mutually agreeable terms and conditions.

NOW THEREFORE, in consideration of the mutual promises below, and other good and valuable consideration, the receipt of which is hereby acknowledged, the parties agree as follows:

1. Mitigation of Water Shortages. In the event of future shortages in Protestant's domestic and/or stockwater supply, Magic West agrees to take one or more of the following steps, as necessary to provide Protestant with an adequate supply of potable water:

(a) pay Protestant the cost of installing a pump in Protestant's well and pay a lump sum to the Protestant equal to the present value of 25 years worth of electrical charges for electrical power necessary to pump water from Protestant's well;

(b) pay Protestant the cost of lowering the existing pump, if any, in Protestant's well to a sufficient depth and pay a lump sum to the Protestant equal to the present value of 25 years worth of electrical charges resulting from the new pumping level; provided that, Magic West shall only be required to pay for the difference in electrical charges, if any, resulting from lowering the pump; provided further that Magic West shall agree to lower the pump at such time, if ever, that the pumping level comes within 30 feet of the pump bowls, as monitored by the Idaho Department of Water Resources;

© pay Protestant the cost of having water supplied by the City of Glenss Ferry, including any applicable hook-up fees and a lump sum equal to the present value of 25 years worth of City water payments; provided that, Magic West shall install a storage tank sufficient to supply up to 400 head of cattle, if necessary, as per the Idaho Department of Water Resources' standard allowance for livestock watering; provided further that this agreement shall be contingent upon the City of Glenss Ferry's adoption of a resolution agreeing to hook the Protestant up to the City's water supply, if necessary;

(d) pay Protestant the cost of drilling and adequately equipping a new well; provided that any existing equipment owned by the Protestant may be used to equip the new well, if practicable, and further provided that Magic West shall not be required to pay electrical charges associated with the use of any new well; or

(e) provide Protestant with another source of potable water.

2. Notification and Verification. Magic West shall provide for one or more of the above mitigation alternatives upon notification from the Protestant that the Protestant is receiving an inadequate supply of water for his/her domestic and/or stockwater needs. Magic West shall have the right to verify any alleged water shortages before providing mitigation, including the right to enter into or upon Protestant's premises after reasonable notice.

3. Amount of Water. Magic West shall only be required to provide Protestant with the amount of water actually required for Protestant's domestic and/or stockwater needs. In no event shall the Protestant be entitled to receive more than the quantity included in Exhibit "A", from all available sources. Magic West does not guarantee that the water provided will be of any particular temperature and the Protestant understands and agrees that any water provided by Magic West may or may not be low-temperature geothermal water.

4. Withdrawal of Protest. Upon execution of this Agreement, Protestant agrees to simultaneously execute a Withdrawal of Protest in the matter of Application for Permit No. 61-07724. Upon execution by Protestant, Magic West will cause said Withdrawal of Protest to be filed with the Idaho Department of Water Resources and properly served.

5. Future Applications. The Protestant agrees not to protest, intervene in, or appear as an adverse witness in, any application for permit, permit amendment, transfer, water bank rental, or other proceeding that may be initiated by Magic West, or anyone else, which seeks to provide water for Magic West's Glenns Ferry food processing plant or the cogeneration plant located at the plant site.

6. Snake River Basin Adjudication. The Protestant agrees not to file any objection, response, motion to participate, motion to alter or amend, or notice of challenge regarding any of Magic West's claims or recommendations in the Snake River Basin Adjudication.

7. Delivery Calls. The Protestant agrees not to file a petition for delivery call with the Idaho Department of Water Resources, or to initiate, or participate in, any judicial or administrative action seeking curtailment of Magic West's water rights.

8. Term. This Agreement shall remain in full force and effect until such time that Magic West, its successor(s) or assign(s) may choose, if ever, to permanently shut down the Glenns Ferry plant.

9. Entire Agreement. This Agreement is the entire agreement between the parties.

10. Attorney Fees. In the event that either party is required to enforce the terms of this Agreement in an administrative or judicial proceeding, the prevailing party shall be entitled to a reasonable attorney fee from the losing party.

11. Binding Nature. This Agreement shall constitute a covenant which runs with the land to which Water Right No. 51-10312 is appurtenant (i.e., the place of use listed on Exhibit "A") and shall be binding on the parties, ROCKIN S. RANCH, INC. and their successors and assigns. Upon execution, Magic West shall cause a copy of this Agreement, including Exhibit "A", to be recorded with Elmore County.

DATED THIS 6th day of May, 1999.

PROTESTANT


John R. Solosabal

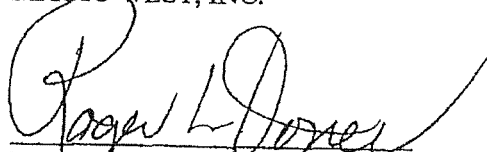
315285

ELMORE COUNTY, IDAHO ss
Request of

Rosholt, Robertson & Lucken
Time 11:09 A M
Date May 11, 1999
GAIL L. BEST, Recorder

By 
Fee \$15.00 Deputy

MAGIC WEST, INC.


Roger Jones, President

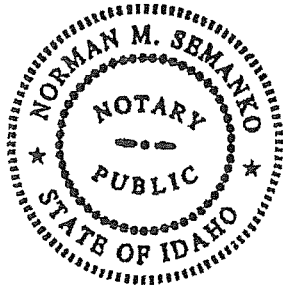
SOLOSABAL.AGR

AGREEMENT - 3

STATE OF IDAHO)
)ss.
County of Elmore)

On the 14th day of May, 1999, before me, a Notary Public, in and for said County and State, personally appeared JOHN R. SOLOSABAL, known or identified to me to be the individual whose name is subscribed to the within instrument, and acknowledged to me that he executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

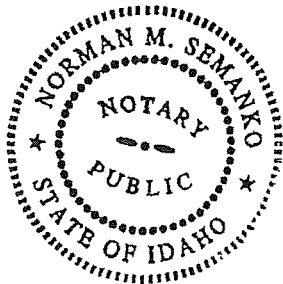


N - 7-5
NOTARY PUBLIC FOR IDAHO
Residing at: Twin Falls, Idaho
My commission expires: 9-21-2004

STATE OF IDAHO)
)ss.
County of Elmore)

On this 14th day of May, 1999, before me, a Notary Public, in and for said County and State, personally appeared ROGER JONES, known or identified to me to be the President of MAGIC WEST, INC., the corporation that executed the foregoing instrument, and acknowledged to me that such corporation executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.



N - 7-5
NOTARY PUBLIC FOR IDAHO
Residing at: Twin Falls, Idaho
My commission expires: 9-21-2004

EXHIBIT A

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

In Re SRBA)
)
Case No. 39576)
)

PARTIAL DECREE PURSUANT TO
I.R.C.P. 54(b) FOR
Water Right 51-10312

1998 JUN 20 PM 1:43
DISTRICT COURT - SRBA
TWIN FALLS, IDAHO

NAME & ADDRESS: ROCKW S RANCH INC
C/O DENNIS SMITH
PO BOX 939
GLENNS FERRY ID 83623

SOURCE: GROUNDWATER

QUANTITY: 0.15 CFS

THE QUANTITY OF WATER UNDER THIS RIGHT SHALL NOT EXCEED 13,000
GALLONS PER DAY.

PRIORITY DATE: 06/01/1948

POINT OF DIVERSION: T06S R09E S01 LOT 2 (NWNW)

Within ELMORE County

2 POINTS OF DIVERSION LOCATED IN T06S, R09E, S01, GOV. LOT 2
(NW NW).

PURPOSE AND
PERIOD OF USE:

PURPOSE OF USE
STOCKWATER
DOMESTIC 2 HOMES

PERIOD OF USE
01-01 12-31
01-01 12-31

QUANTITY
0.09 CFS
0.06 CFS

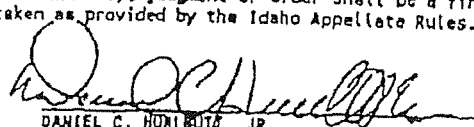
PLACE OF USE: STOCKWATER Within ELMORE County
T06S R09E S01 Lot 2 (NW NW)
DOMESTIC Within ELMORE County
T06S R09E S01 Lot 2 (NW NW)

OTHER PROVISIONS NECESSARY FOR DEFINITION OR ADMINISTRATION OF THIS WATER RIGHT:

THE QUANTITY OF WATER DECREED FOR THIS WATER RIGHT IS NOT A
DETERMINATION OF HISTORICAL BENEFICIAL USE.

RULE 54(b) CERTIFICATE

With respect to the issues determined by the above judgment or order, it is hereby CERTIFIED, in accordance with Rule 54(b), I.R.C.P., that the court has determined that there is no just reason for delay of the entry of a final judgment and that the court has and does hereby direct that the above judgment or order shall be a final judgment upon which execution may issue and an appeal may be taken as provided by the Idaho Appellate Rules.


DANIEL C. HOHLBEIN, JR.
PRESIDING JUDGE
Snake River Basin Adjudication

PARTIAL DECREE PURSUANT TO I.R.C.P. 54(b)
Water Right 51-10312

PAGE 1
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MICROFILMED
DEC 28 1998

APR 29 '99 14 06

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AGREEMENT

THIS AGREEMENT is entered into between MAGIC WEST, INC., an Idaho corporation ("Magic West"), and JERRY L. HEATH and SHIRLEY A. HEATH, a married couple residing in Glenns Ferry, Idaho ("Protestant").

WHEREAS, Magic West has filed Application for Permit No. 61-07724 with the Idaho Department of Water Resources; and

WHEREAS, Protestant is the owner of Water Right No. 51-04013, a domestic and stockwater right evidenced by a partial decree entered in the Snake River Basin Adjudication on January 30, 1998, a copy of which is attached hereto as Exhibit "A"; and

WHEREAS, Magic West's Application for Permit has been protested by Protestant; and

WHEREAS, the parties desire to resolve the protest pursuant to mutually agreeable terms and conditions.

NOW THEREFORE, in consideration of the mutual promises below, and other good and valuable consideration, the receipt of which is hereby acknowledged, the parties agree as follows:

1. Mitigation of Water Shortages. In the event of future shortages in Protestant's domestic and/or stockwater supply, Magic West agrees to take one or more of the following steps, as necessary to provide Protestant with an adequate supply of potable water:

(a) pay Protestant the cost of installing a pump in Protestant's well and pay a lump sum to the Protestant equal to the present value of 25 years worth of electrical charges for electrical power necessary to pump water from Protestant's well;

(b) pay Protestant the cost of lowering the existing pump, if any, in Protestant's well to a sufficient depth and pay a lump sum to the Protestant equal to the present value of 25 years worth of electrical charges resulting from the new pumping level; provided that, Magic West shall only be required to pay for the difference in electrical charges, if any, resulting from lowering the pump; provided further that Magic West shall agree to lower the pump at such time, if ever, that the pumping level comes within 30 feet of the pump bowls, as monitored by the Idaho Department of Water Resources;

© pay Protestant the cost of having water supplied by the City of Glenns Ferry, including any applicable hook-up fees and a lump sum equal to the present value of 25 years worth of City water payments; provided that, Magic West shall install a storage tank sufficient to supply up to 100 head of cattle, if necessary, as per the Idaho Department of Water Resources' standard allowance for livestock watering; provided further that this agreement shall be contingent upon the City of Glenns Ferry's adoption of a resolution agreeing to hook the Protestant up to the City's water supply, if necessary.

(d) pay Protestant the cost of drilling and adequately equipping a new well; provided that any existing equipment owned by the Protestant may be used to equip the new well, if practicable, and further provided that Magic West shall not be required to pay electrical charges associated with the use of any new well; or

(e) provide Protestant with another source of potable water.

2. Notification and Verification. Magic West shall provide for one or more of the above mitigation alternatives upon notification from the Protestant that the Protestant is receiving an inadequate supply of water for his/her domestic and/or stockwater needs. Magic West shall have the right to verify any alleged water shortages before providing mitigation, including the right to enter into or upon Protestant's premises after reasonable notice.

3. Amount of Water. Magic West shall only be required to provide Protestant with the amount of water actually required for Protestant's domestic and/or stockwater needs. In no event shall the Protestant be entitled to receive more than the quantity included in Exhibit "A", from all available sources. Magic West does not guarantee that the water provided will be of any particular temperature and the Protestant understands and agrees that any water provided by Magic West may or may not be low-temperature geothermal water.

4. Withdrawal of Protest. Upon execution of this Agreement, Protestant agrees to simultaneously execute a Withdrawal of Protest in the matter of Application for Permit No. 61-07724. Upon execution by Protestant, Magic West will cause said Withdrawal of Protest to be filed with the Idaho Department of Water Resources and properly served.

5. Future Applications. The Protestant agrees not to protest, intervene in, or appear as an adverse witness in, any application for permit, permit amendment, transfer, water bank rental, or other proceeding that may be initiated by Magic West, or anyone else, which seeks to provide water for Magic West's Glens Ferry food processing plant or the cogeneration plant located at the plant site.

6. Snake River Basin Adjudication. The Protestant agrees not to file any objection, response, motion to participate, motion to alter or amend, or notice of challenge regarding any of Magic West's claims or recommendations in the Snake River Basin Adjudication.

7. Delivery Calls. The Protestant agrees not to file a petition for delivery call with the Idaho Department of Water Resources, or to initiate, or participate in, any judicial or administrative action seeking curtailment of Magic West's water rights.

8. Term. This Agreement shall remain in full force and effect until such time that Magic West, its successor(s) or assign(s) may choose, if ever, to permanently shut down the Glens Ferry plant.

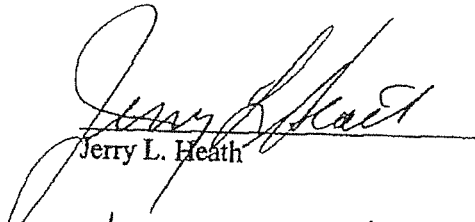
9. Entire Agreement. This Agreement is the entire agreement between the parties.

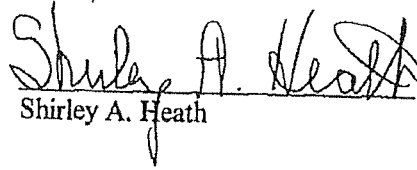
10. Attorney Fees. In the event that either party is required to enforce the terms of this Agreement in an administrative or judicial proceeding, the prevailing party shall be entitled to a reasonable attorney fee from the losing party.

11. Binding Nature. This Agreement shall constitute a covenant which runs with the land to which Protestant's Water Right No. 51-04013 is appurtenant (i.e., the place of use listed on Exhibit "A") and shall be binding on the parties and their successors and assigns. Upon execution, Magic West shall cause a copy of this Agreement, including Exhibit "A", to be recorded with Elmore County.

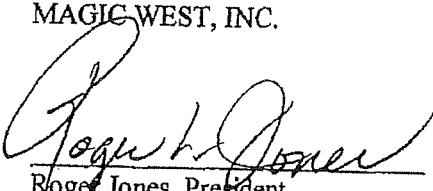
DATED THIS 6 day of May, 1999.

PROTESTANT


Jerry L. Heath


Shirley A. Heath

MAGIC WEST, INC.


Roger Jones, President

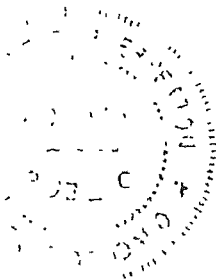
HEATH.AGR

AGREEMENT - 3

STATE OF IDAHO)
)ss.
County of Elmore)

On the 6th day of May, 1999, before me, a Notary Public, in and for said County and State, personally appeared JERRY L. HEATH, known or identified to me to be the individual whose name is subscribed to the within instrument, and acknowledged to me that he executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.



Christine D. Phernetton
NOTARY PUBLIC FOR IDAHO
Residing at: Glenn Ferry, Elmore Co.
My commission expires: 2/01/2001

STATE OF IDAHO)
)ss.
County of Elmore)

On the 6th day of May, 1999, before me, a Notary Public, in and for said County and State, personally appeared SHIRLEY A. HEATH, known or identified to me to be the individual whose name is subscribed to the within instrument, and acknowledged to me that she executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.



Christine D. Phernetton
NOTARY PUBLIC FOR IDAHO
Residing at: Glenn Ferry, Elmore Co.
My commission expires: 2/01/2001

STATE OF IDAHO)
)ss.
County of Elmore)

On this 6th day of May, 1999, before me, a Notary Public, in and for said County and State, personally appeared ROGER JONES, known or identified to me to be the President of MAGIC WEST, INC., the corporation that executed the foregoing instrument, and acknowledged to me that such corporation executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

Christine D. Phemmetton
NOTARY PUBLIC FOR IDAHO
Residing at: Glenns Ferry, Elmore Co.
My commission expires: 2/01/2001

315222

ELMORE COUNTY, IDAHO ss
Request of

Rocholt, Robertson + Tucker

Time 8:43 A.M.

Date May 10, 1999

GAIL L. BEST, Recorder

By [Signature]

Fee \$18.00 Deputy

EXHIBIT A

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

In Re SRBA)
Case No. 39576)
_____)

PARTIAL DECREE PURSUANT TO
I.R.C.P. 54(b) FOR
Water Right 51-04013
JAN 13 1998
DISTRICT COURT
TWIN FALLS, IDAHO

NAME & ADDRESS: JERRY L HEATH
SHIRLEY A HEATH
PO BOX 456
GLENNS FERRY ID 83623

SOURCE: GROUNDWATER

QUANTITY: 0.06 CFS

THE QUANTITY OF WATER UNDER THIS RIGHT SHALL NOT EXCEED 13,000
GALLONS PER DAY.

PRIORITY DATE: 03/01/1948

POINT OF DIVERSION: T05S R10E S28 LOT 2 (SENW)

Within ELMORE County

PURPOSE AND
PERIOD OF USE:

PURPOSE OF USE
STOCKWATER
DOMESTIC 1 HOME

PERIOD OF USE
01-01 12-31
01-01 12-31

QUANTITY
0.02 CFS
0.04 CFS

PLACE OF USE: DOMESTIC Within ELMORE County
T05S R10E S28 Lot 2 (SENW)

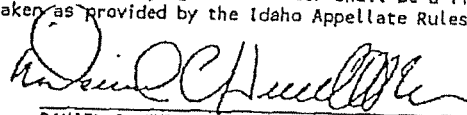
Place of use for STOCKWATER is same as DOMESTIC

OTHER PROVISIONS NECESSARY FOR DEFINITION OR ADMINISTRATION OF THIS WATER RIGHT:

THE QUANTITY OF WATER DECREED FOR THIS WATER RIGHT IS NOT A
DETERMINATION OF HISTORICAL BENEFICIAL USE.

RULE 54(b) CERTIFICATE

With respect to the issues determined by the above judgment or order, it is hereby CERTIFIED, in accordance with Rule 54(b), I.R.C.P., that the court has determined that there is no just reason for delay of the entry of a final judgment and that the court has and does hereby direct that the above judgment or order shall be a final judgment upon which execution may issue and an appeal may be taken as provided by the Idaho Appellate Rules.



DANIEL C. HURLBUTT, JR.
PRESIDING JUDGE
Snake River Basin Adjudication

AGREEMENT

THIS AGREEMENT is entered into between MAGIC WEST, INC., an Idaho corporation ("Magic West"), and FRED MACKEY, an individual residing in Glens Ferry, Idaho ("Protestant").

WHEREAS, Magic West has filed Application for Permit No. 61-07724 with the Idaho Department of Water Resources; and

WHEREAS, Protestant owns a well from which he is entitled to divert ground water for domestic and/or stockwater uses, pursuant to Section 42-111, Idaho Code; and

WHEREAS, Magic West's Application for Permit has been protested by Protestant; and

WHEREAS, the parties desire to resolve the protest pursuant to mutually agreeable terms and conditions.

NOW THEREFORE, in consideration of the mutual promises below, and other good and valuable consideration, the receipt of which is hereby acknowledged, the parties agree as follows:

1. Mitigation of Water Shortages. In the event of future shortages in Protestant's domestic and/or stockwater supply, Magic West agrees to take one or more of the following steps, as necessary to provide Protestant with an adequate supply of potable water:

(a) pay Protestant the cost of installing a pump in Protestant's well and pay a lump sum to the Protestant equal to the present value of 25 years worth of electrical charges for electrical power necessary to pump water from Protestant's well;

(b) pay Protestant the cost of lowering the existing pump, if any, in Protestant's well to a sufficient depth and pay a lump sum to the Protestant equal to the present value of 25 years worth of electrical charges resulting from the new pumping level; provided that, Magic West shall only be required to pay for the difference in electrical charges, if any, resulting from lowering the pump; provided further that Magic West shall agree to lower the pump at such time, if ever, that the pumping level comes within 30 feet of the pump bowls, as monitored by the Idaho Department of Water Resources;

© pay Protestant the cost of having water supplied by the City of Glens Ferry, including any applicable hook-up fees and a lump sum equal to the present value of 25 years worth of City water payments; provided that, Magic West shall install a storage tank sufficient to supply up to 20 head of cattle, if necessary, as per the Idaho Department of Water Resources' standard allowance for livestock watering; provided further that this agreement shall be contingent upon the City of Glens Ferry's adoption of a resolution agreeing to hook the Protestant up to the City's water supply, if necessary;

(d) pay Protestant the cost of drilling and adequately equipping a new well; provided that any existing equipment owned by the Protestant may be used to equip the new well, if practicable, and further provided that Magic West shall not be required to pay electrical charges associated with the use of any new well; or

(e) provide Protestant with another source of potable water.

2. Notification and Verification. Magic West shall provide for one or more of the above mitigation alternatives upon notification from the Protestant that the Protestant is receiving an inadequate supply of water for his domestic and/or stockwater needs. Magic West shall have the right to verify any alleged water shortages before providing mitigation, including the right to enter into or upon Protestant's premises after reasonable notice.

3. Amount of Water. Magic West shall only be required to provide Protestant with the amount of water actually required for Protestant's domestic and/or stockwater needs. In no event shall the Protestant be entitled to receive more than the quantity authorized for domestic and stockwater uses under Section 42-111, Idaho Code (i.e., 13,000 gallons per day), from all available sources. Magic West does not guarantee that the water provided will be of any particular temperature and the Protestant understands and agrees that any water provided by Magic West may or may not be low-temperature geothermal water.

4. Withdrawal of Protest. Upon execution of this Agreement, Protestant agrees to simultaneously execute a Withdrawal of Protest in the matter of Application for Permit No. 61-07724. Upon execution by Protestant, Magic West will cause said Withdrawal of Protest to be filed with the Idaho Department of Water Resources and properly served.

5. Future Applications. The Protestant agrees not to protest, intervene in, or appear as an adverse witness in, any application for permit, permit amendment, transfer, water bank rental, or other proceeding that may be initiated by Magic West, or anyone else, which seeks to provide water for Magic West's Glenns Ferry food processing plant or the cogeneration plant located at the plant site.

6. Snake River Basin Adjudication. The Protestant agrees not to file any objection, response, motion to participate, motion to alter or amend, or notice of challenge regarding any of Magic West's claims or recommendations in the Snake River Basin Adjudication.

7. Delivery Calls. The Protestant agrees not to file a petition for delivery call with the Idaho Department of Water Resources, or to initiate, or participate in, any judicial or administrative action seeking curtailment of Magic West's water rights.

8. Term. This Agreement shall remain in full force and effect until such time that Magic West, its successor(s) or assign(s) may choose, if ever, to permanently shut down the Glenns Ferry plant.

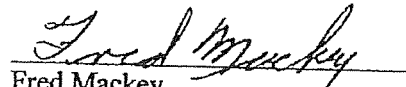
9. Entire Agreement. This Agreement is the entire agreement between the parties.

10. Attorney Fees. In the event that either party is required to enforce the terms of this Agreement in an administrative or judicial proceeding, the prevailing party shall be entitled to a reasonable attorney fee from the losing party.

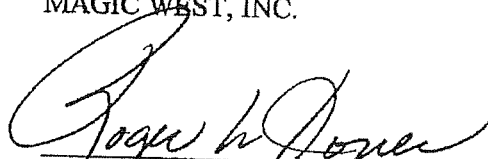
11. Binding Nature. This Agreement shall constitute a covenant which runs with the land to which Protestant's domestic and/or stockwater use is appurtenant and shall be binding on the parties and their successors and assigns. Upon execution, Magic West shall cause a copy of this Agreement to be recorded with Elmore County.

DATED THIS 6 day of May, 1999.

PROTESTANT


Fred Mackey

MAGIC WEST, INC.


Roger Jones, President

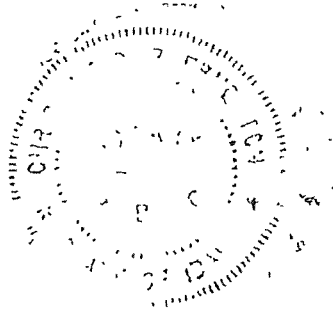
MACKEY.AGR

AGREEMENT - 3

STATE OF IDAHO)
)ss.
County of Elmore)

On this 6th day of May, 1999, before me, a Notary Public, in and for said County and State, personally appeared ROGER JONES, known or identified to me to be the President of MAGIC WEST, INC., the corporation that executed the foregoing instrument, and acknowledged to me that such corporation executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

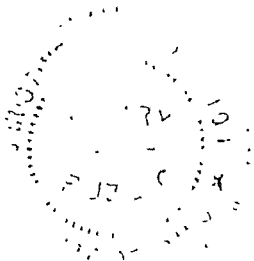


Christine D. Phemetton
NOTARY PUBLIC FOR IDAHO
Residing at: Henns Ferry, Elmore Co.
My commission expires: 5/01/2001

STATE OF IDAHO)
)ss.
County of Elmore)

On the 6th day of May, 1999, before me, a Notary Public, in and for said County and State, personally appeared FRED MACKEY, known or identified to me to be the individual whose name is subscribed to the within instrument, and acknowledged to me that he executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.



Christine D. Phernetton
NOTARY PUBLIC FOR IDAHO
Residing at: Elmore Ferry, Elmore Co.
My commission expires: 2/1/2001

315223

ELMORE COUNTY, IDAHO ss
Request of

Robert Robertson & Linda

Time 10:44 A M

Date May 10, 1999

GAIL L. BEST, Recorder

By [Signature]

For \$15.00 Deputy

RECEIVED APR 15 1999

AGREEMENT

THIS AGREEMENT is entered into between MAGIC WEST, INC., an Idaho corporation ("Magic West"), and ELIZABETH EICHHOLZ, an individual residing in Glens Ferry, Idaho ("Protestant").

WHEREAS, Magic West has filed Application for Permit No. 61-07724 with the Idaho Department of Water Resources; and

WHEREAS, Protestant is the owner of Water Right No. 51-10285, a domestic water right evidenced by a partial decree entered in the Snake River Basin Adjudication on January 30, 1998, a copy of which is attached hereto as Exhibit "A"; and

WHEREAS, Magic West's Application for Permit has been protested by Protestant; and

WHEREAS, the parties desire to resolve the protest pursuant to mutually agreeable terms and conditions.

NOW THEREFORE, in consideration of the mutual promises below, and other good and valuable consideration, the receipt of which is hereby acknowledged, the parties agree as follows:

1. Mitigation of Water Shortages. In the event of future shortages in Protestant's domestic water supply, Magic West agrees to take one or more of the following steps, as necessary to provide Protestant with an adequate supply of potable water:

(a) pay Protestant the cost of installing a pump in Protestant's well and pay a lump sum to the Protestant equal to the present value of 25 years worth of electrical charges for electrical power necessary to pump water from Protestant's well;

(b) pay Protestant the cost of lowering the existing pump, if any, in Protestant's well to a sufficient depth and pay a lump sum to the Protestant equal to the present value of 25 years worth of electrical charges resulting from the new pumping level; provided that, Magic West shall only be required to pay for the difference in electrical charges, if any, resulting from lowering the pump;

(c) pay Protestant the cost of having water supplied by the City of Glens Ferry, including any applicable hook-up fees and a lump sum equal to the present value of 25 years worth of City water payments;

(d) pay Protestant the cost of drilling and adequately equipping a new well; provided that any existing equipment owned by the Protestant may be used to equip the new well, if practicable, and further provided that Magic West shall not be required to pay electrical charges associated with the use of any new well; or

(e) provide Protestant with another source of potable water

AGREEMENT - 1

314613

ELMORE COUNTY, IDAHO ss
Request of

Risholt, Robert
Time 9:53 A.M.

Date April 9, 1999
GAIL L. BEST, Recorder

By *[Signature]*
Fee 18.00 Deputy

2. Notification and Verification. Magic West shall provide for one or more of the above mitigation alternatives upon notification from the Protestant that the Protestant is receiving an inadequate supply of water for her domestic needs. Magic West shall have the right to verify any alleged water shortages before providing mitigation, including the right to enter into or upon Protestant's premises after reasonable notice.

3. Amount of Water. Magic West shall only be required to provide Protestant with the amount of water actually required for Protestant's domestic needs. In no event shall the Protestant be entitled to receive more than the quantity included in Exhibit "A", from all available sources. Magic West does not guarantee that the water provided will be of any particular temperature and the Protestant understands and agrees that any water provided by Magic West may or may not be low-temperature geothermal water.

4. Withdrawal of Protest. Upon execution of this Agreement, Protestant agrees to simultaneously execute a Withdrawal of Protest in the matter of Application for Permit No. 61-07724. Upon execution by Protestant, Magic West will cause said Withdrawal of Protest to be filed with the Idaho Department of Water Resources and properly served.

5. Future Applications. The Protestant agrees not to protest, intervene in, or appear as an adverse witness in, any application for permit, permit amendment, transfer, water bank rental, or other proceeding that may be initiated by Magic West, or anyone else, which seeks to provide water for Magic West's Glenns Ferry food processing plant or the cogeneration plant located at the plant site.

6. Snake River Basin Adjudication. The Protestant agrees not to file any objection, response, motion to participate, motion to alter or amend, or notice of challenge regarding any of Magic West's claims or recommendations in the Snake River Basin Adjudication.

7. Delivery Calls. The Protestant agrees not to file a petition for delivery call with the Idaho Department of Water Resources, or to initiate, or participate in, any judicial or administrative action seeking curtailment of Magic West's water rights.

8. Term This Agreement shall remain in full force and effect until such time that Magic West, its successor(s) or assign(s) may choose, if ever, to permanently shut down the Glenns Ferry plant.

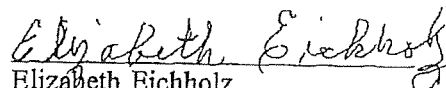
9. Entire Agreement. This Agreement is the entire agreement between the parties.

10. Attorney Fees. In the event that either party is required to enforce the terms of this Agreement in an administrative or judicial proceeding, the prevailing party shall be entitled to a reasonable attorney fee from the losing party.

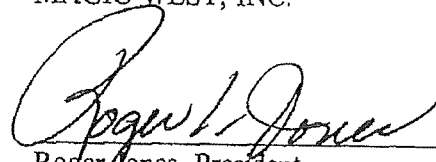
11. Binding Nature. This Agreement shall constitute a covenant which runs with the land to which Protestant's Water Right No. 51-10285 is appurtenant (i.e., the place of use listed on Exhibit "A") and shall be binding on the parties and their successors and assigns. Upon execution, Magic West shall cause a copy of this Agreement, including Exhibit "A", to be recorded with Elmore County.

DATED THIS 18 day of MARCH, 1999.

PROTESTANT


Elizabeth Eichholz

MAGIC WEST, INC.


Roger Jones, President

EICHHOLZ.AGR

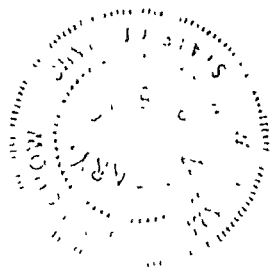
AGREEMENT - 3

STATE OF IDAHO)
)ss.
County of Minidoka)

On the 18 day of MARCH, 1999, before me, a Notary Public, in and for said County and State, personally appeared ELIZABETH EICHHOLZ, known or identified to me to be the individual whose name is subscribed to the within instrument, and acknowledged to me that she executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

William Lloyd Elmer
NOTARY PUBLIC FOR IDAHO
Residing at: Rupert, Idaho
My commission expires: 07/04/2000



STATE OF IDAHO)
)ss.
County of Minidoka)

On this 9 day of March, 1999, before me, a Notary Public, in and for said County and State, personally appeared ROGER JONES, known or identified to me to be the President of MAGIC WEST, INC., the corporation that executed the foregoing instrument, and acknowledged to me that such corporation executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

William Floyd Elean
NOTARY PUBLIC FOR IDAHO
Residing at: Reupert, Idaho
My commission expires: 09/24/2000

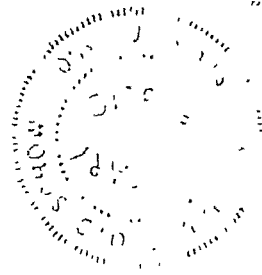


EXHIBIT A

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

In Re SRBA)
Case No. 39576)
PARTIAL DECREE PURSUANT TO
I.R.C.P. 54(b) FOR
Water Right 61-10285

1998 JAN 30 PM
DISTRICT COURT
TWIN FALLS CO.,
FILED -

NAME & ADDRESS: ELIZABETH EICHHOLZ
PO BOX 311
GLENN'S FERRY ID 83623

SOURCE: GROUNDWATER

QUANTITY: 0.04 CFS

THE QUANTITY OF WATER UNDER THIS RIGHT SHALL NOT EXCEED 13,000
GALLONS PER DAY.

PRIORITY DATE: 03/09/1921

POINT OF DIVERSION: T05S R10E S32 SHNWNWNE Within ELMORE County

PURPOSE AND PERIOD OF USE:	PURPOSE OF USE DOMESTIC 1 HOME	PERIOD OF USE 01-01 12-31	QUANTITY 0.04 CFS
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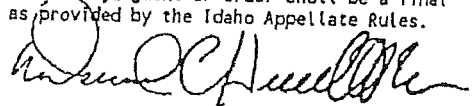
PLACE OF USE: DOMESTIC Within ELMORE County
T05S R10E S32 HWNE

OTHER PROVISIONS NECESSARY FOR DEFINITION OR ADMINISTRATION OF THIS WATER RIGHT:

THE QUANTITY OF WATER DECREED FOR THIS WATER RIGHT IS NOT A
DETERMINATION OF HISTORICAL BENEFICIAL USE.

RULE 54(b) CERTIFICATE

With respect to the issues determined by the above judgment or order, it is hereby CERTIFIED, in accordance with Rule 54(b), I.R.C.P., that the court has determined that there is no just reason for delay of the entry of a final judgment and that the court has and does hereby direct that the above judgment or order shall be a final judgment upon which execution may issue and an appeal may be taken as provided by the Idaho Appellate Rules.


DANIEL C. HURLBUTT, JR.
PRESIDING JUDGE
Snake River Basin Adjudication

RECEIVED JUN - 1 1999

AGREEMENT

THIS AGREEMENT is entered into between MAGIC WEST, INC., an Idaho corporation ("Magic West"), and EDWARD T. POTUCEK, a single man residing in Glenns Ferry, Idaho (hereinafter "Potucek" or "Lessee") and GARY N. NELSON and NANCY NELSON, a married couple residing in Hagerman, Idaho (hereinafter "Nelsons" or "Owners").

WHEREAS, Magic West has filed Application for Permit No. 61-07724 with the Idaho Department of Water Resources; and

WHEREAS, Nelsons are the owners of Water Right No. 51-10331, a domestic and stock water right evidenced by a Director's Report recommended to the Snake River Basin Adjudication ("SRBA") Court by the Idaho Department of Water Resources, a copy of which is attached hereto as Exhibit "A"; and

WHEREAS, Potucek has amended the SRBA Claim for Water Right No. 51-10331 to include irrigation as a purpose of use; and

WHEREAS, Potucek is the lessee of the property to which Water Right No. 51-10331 is appurtenant; and

WHEREAS, Magic West's Application for Permit has been protested by Potucek; and

WHEREAS, the parties desire to resolve the protest pursuant to mutually agreeable terms and conditions.

NOW THEREFORE, in consideration of the mutual promises below, and other good and valuable consideration, the receipt of which is hereby acknowledged, the parties agree as follows:

A. DOMESTIC AND STOCK WATER

1. Mitigation of Current Domestic and Stock Water Shortages. In order to mitigate the current domestic and stock water shortage under Water Right No. 51-10331, as recommended by the Director and set forth in Exhibit "A", Magic West agrees to:

(a) install a new pump or make any rating changes necessary for the current pump to produce 9 gallons per minute on a sustainable basis;

(b) design and install a domestic and stock water system to insure delivery of water to the domestic and stock water places of use set forth in Exhibit "A";

(c) install a separate electrical service and pay the electrical charges for electrical power necessary to pump water from the well to the domestic and stock water places of use set forth in Exhibit "A"; and

(d) provide for future repairs or replacement of the pump, as necessary.

2. Mitigation of Future Domestic and Stock Water Shortages. It is expected that the measures set forth in paragraph A.1 above will be sufficient to provide the required domestic and stock water. However, in the event of future shortages in the domestic and stock water supply, Magic West agrees to take one or more of the following steps to insure an adequate supply of domestic and stock water:

(a) lower the pump in the well to a sufficient depth to provide a sustainable flow of 9 gallons per minute and pay additional electrical charges resulting from the new pumping level;

(b) arrange to have water supplied by the City of Glenns Ferry and pay any applicable hook-up fees and City water payments; provided that, Magic West shall install a storage tank sufficient to supply up to 150 head of cattle, if necessary, as per the Idaho Department of Water Resources' standard allowance for livestock watering; provided further that this agreement shall be contingent upon the City of Glenns Ferry's adoption of a resolution agreeing to hook the Owners' property up to the City's water supply, if necessary;

(c) drill and adequately equip a new well and pay the electrical charges necessary to pump water from the new well; provided that any existing equipment may be used to equip the new well; or

(d) provide another source of domestic and stock water.

3. Curtailment by Magic West. If Magic West is unable to insure a source of domestic and stock water by any means, Magic West agrees to curtail its use under Permit No. 61-07724, and any other water right permit or license owned by Magic West, as necessary to insure an adequate supply of water from the well for actual domestic and stock water needs. If the well does not respond to Magic West's curtailment in a manner sufficient to provide the required domestic and stock water, Magic West shall not be prohibited from diverting water under Permit No. 61-07724, or any other water right permit or license owned by Magic West.

B. IRRIGATION WATER

1. Mitigation of Irrigation Water Shortages. In the event that Water Right No. 51-10331 is decreed by the SRBA Court to authorize irrigation as a purpose of use, Magic West agrees to provide additional mitigation as follows:

(a) modify the existing domestic and stock water system, or design and install a new system to insure delivery of domestic, stock and irrigation water to the places of use in Exhibit "A" and in any decree entered by the SRBA Court for Water Right No. 51-10331;

(b) install a separate electrical service, if necessary, and pay the electrical charges for electrical power necessary to pump water from the well to the domestic, stockwater and irrigation places of use set forth in Exhibit "A" and in any decree entered by the SRBA Court for Water Right No. 51-10331; and

(c) future repairs or replacement of the pump, as necessary.

2. Mitigation of Future Irrigation Water Shortages. It is expected that the measures set forth in paragraph B.1 above will be sufficient to provide the required irrigation water. However, in the event that Water Right No. 51-10331 is decreed for irrigation use, and in the further event of future shortages in the irrigation water supply under Water Right No. 51-10331, Magic West agrees to take one or more of the following steps to insure an adequate supply of irrigation water:

(a) lower the pump in the well to a sufficient depth to provide the flow rate and annual volume included in any decree entered by the SRBA Court for Water Right No. 51-10331 and pay any additional electrical charges resulting from the new pumping level;

(b) drill and adequately equip a new well and pay the electrical charges necessary to pump water from the new well; provided that any existing equipment may be used to equip the new well;

(c) pay the electrical charges for pumping and delivery of other irrigation water rights appurtenant to the same place of use, including installation of a new electrical service, if necessary; or

(d) provide another source of irrigation water.

3. Limitations on Mitigation of Irrigation Water Shortages. It is understood and agreed that the irrigation place of use claimed in the SRBA for Water Right No. 51-10331 has, or may have, surface water rights from the Snake River appurtenant to it and Magic West will not be required to provide mitigation for irrigation use when other irrigation rights are being used to provide for irrigation of the place of use decreed under Water Right No. 51-10331. In addition, if the Director of the Idaho Department of Water Resources establishes a reasonable ground water pumping level for the well, Magic West will be required to provide mitigation for irrigation water shortages under this agreement only if the pumping level in the well drops below the established reasonable ground water pumping level.

4. Curtailment by Magic West. If Magic West is unable to insure a source of irrigation water by any means, Magic West agrees to curtail its use under Permit No. 61-07724, and any other water right permit or license owned by Magic West, as necessary to insure an adequate supply of water from the well for actual irrigation needs. If the well does not respond to Magic West's curtailment in a manner sufficient to provide the required irrigation water, Magic West shall not be prohibited from diverting water under Permit No. 61-07724, or any other water right permit or license owned by Magic West.

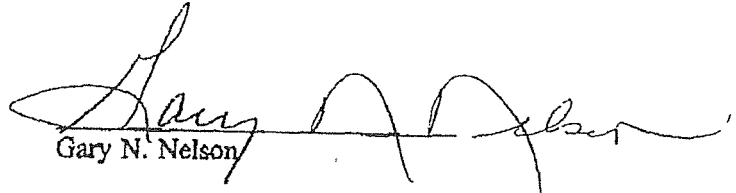
C. GENERAL PROVISIONS

1. Notification and Verification Magic West shall provide mitigation pursuant to this agreement upon notification from the Owners or Lessee that an inadequate supply of water is being supplied for actual domestic, stock or irrigation needs. Magic West shall have the right to verify any alleged water shortages before providing additional mitigation, including the right to enter into or upon the premises after reasonable notice.

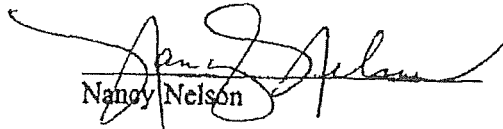
2. Amount of Water. Magic West shall only be required to provide the amount of water needed for actual domestic, stock and irrigation needs. In no event shall the Owners or Lessee be entitled to receive more than the quantity included in Exhibit "A" or any decree issued by the SRBA Court, from all available sources. Magic West does not guarantee that the water provided will be of any particular temperature and the parties understand and agree that any water provided by Magic West may or may not be low-temperature geothermal water.
3. Withdrawal of Protest. Upon execution of this Agreement by Magic West, Potucek agrees to simultaneously execute a Withdrawal of Protest in the matter of Application for Permit No. 61-07724 and immediately file the Withdrawal with the Idaho Department of Water Resources.
4. Future Applications. As long as mitigation is provided by Magic West pursuant to this agreement, the Owners and Lessee agree not to protest, intervene in, or appear as an adverse witness in, any application for permit, permit amendment, transfer, water bank rental, or other proceeding that may be initiated by Magic West, or anyone else, which seeks to provide water for Magic West's Glens Ferry food processing plant or the cogeneration plant located at the plant site.
5. Delivery Calls. As long as mitigation is provided by Magic West pursuant to this agreement, the Owners and Lessee agree not to file a petition for delivery call with the Idaho Department of Water Resources, or to initiate, or participate in, any judicial or administrative action seeking curtailment of Magic West's water rights.
6. Term. This agreement must be fully executed by the parties before 5:00 p.m. on Friday, May 14. This agreement shall become effective upon final approval of Application for Permit No. 61-07724 by the Idaho Department of Water Resources and Magic West shall perform its duties under the agreement within sixty (60) days of said approval. This Agreement shall remain in full force and effect until such time that Magic West, its successor(s) or assign(s) may choose, if ever, to stop diverting water under the permit.
7. Entire Agreement. This Agreement is the entire agreement between the parties.
8. Attorney Fees In the event that any of the parties is required to enforce the terms of this Agreement in an administrative or judicial proceeding, the prevailing party or parties shall be entitled to a reasonable attorney fee from the losing party or parties.
9. Binding Nature. This Agreement shall constitute a covenant which runs with the land to which Water Right No. 51-10331 is appurtenant (i.e., the place of use listed on Exhibit "A" and any decree issued by the SRBA Court) and shall be binding on the parties and their successors and assigns. Upon execution, Magic West shall cause a copy of this Agreement, including Exhibit "A", to be recorded with Elmore County.

DATED THIS 12 day of May, 1999.

OWNERS


Gary N. Nelson

315608


Nancy Nelson

ELMORE COUNTY, IDAHO ss
Request of

Rosholt, Blanton & Tucker

Time 11:38 A M

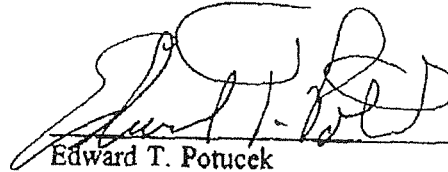
Date May 26, 1999

GAIL L. BEST, Recorder

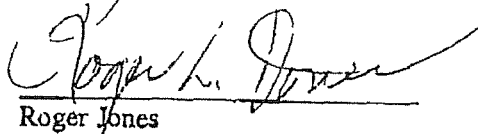
By  Deputy

Fee \$27.00

LESSEE

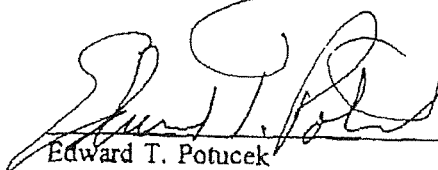

Edward T. Potucek

MAGIC WEST, INC.


Roger Jones

Edward T. Potucek hereby agrees to execute and file a written Notice of Withdrawal of his protest to Application for Permit No. 61-07724 with the Idaho Department of Water Resources upon execution of the above agreement by Magic West, even if the Nelsons ("Owners") do not sign the above agreement prior to 5:00 p.m. on Friday, May 14.

PROTESTANT


Edward T. Potucek

5-10-99
Date

POTUCEK.AGR

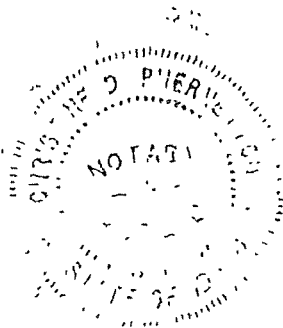
AGREEMENT - 5

STATE OF IDAHO)
)ss.
County of Blaine)

On the 10th day of May, 1999, before me, a Notary Public, in and for said County and State, personally appeared EDWARD T. POTUCEK, known or identified to me to be the individual whose name is subscribed to the within instrument, and acknowledged to me that he executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

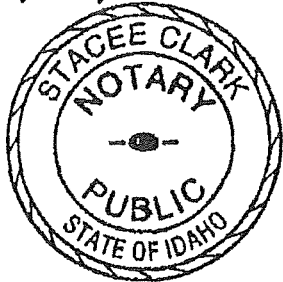
Christine D. Fremont
NOTARY PUBLIC FOR IDAHO
Residing at: Glenn Ferry, Blaine Co.
My commission expires 5/01/2001



STATE OF IDAHO)
County of Cooking)ss.

On the 12 day of May, 1999, before me, a Notary Public, in and for said County and State, personally appeared GARY N. NELSON, known or identified to me to be the individual whose name is subscribed to the within instrument, and acknowledged to me that he executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

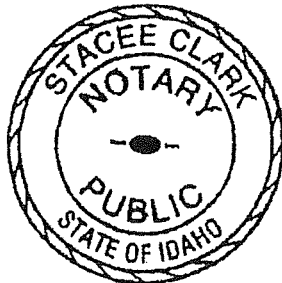


Stacey Clark
NOTARY PUBLIC FOR IDAHO
Residing at: Hagerman, ID
My commission expires: 1-14-2005

STATE OF IDAHO)
County of Cooking)ss.

On the 13th day of May, 1999, before me, a Notary Public, in and for said County and State, personally appeared NANCY NELSON, known or identified to me to be the individual whose name is subscribed to the within instrument, and acknowledged to me that she executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

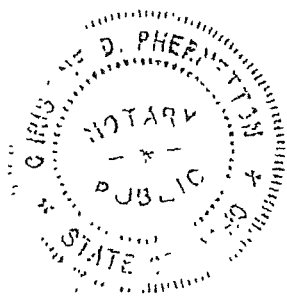


Stacey Clark
NOTARY PUBLIC FOR IDAHO
Residing at: Hagerman, ID
My commission expires: 1-14-2005

STATE OF IDAHO)
County of Almo)ss.

On this 17th day of May, 1999, before me, a Notary Public, in and for said County and State, personally appeared ROGER JONES, known or identified to me to be the President of MAGIC WEST, INC., the corporation that executed the foregoing instrument, and acknowledged to me that such corporation executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.



Christine D. Phemetton
NOTARY PUBLIC FOR IDAHO
Residing at: Christine Phemetton
My commission expires: 2/01/2001

SRBA DIRECTORS REPORT 51-10331

Return to SRBA Home Page

INT072

IDAHO DEPARTMENT OF WATER RESOURCES
RECOMMENDED WATER RIGHTS ACQUIRED UNDER STATE LAW

Right Number: 51-10331

Name and Address: EDWARD T POTUCEK
JANE POTUCEK
PO BOX 537
GLENN'S FERRY, ID 83623

Source: GROUNDWATER

Quantity: .10 CFS

THE QUANTITY OF WATER UNDER THIS RIGHT SHALL NOT EXCEED 13,000
GALLONS PER DAY.

Priority Date: 06-01-1889

Diversion Point: T05S R10E S32 NESENE Within Elmore County

Purpose and Period of Use:	Purpose of Use	Period of Use	Quantity
	Domestic 1 HOME	01-01 TO 12-31	.04 CFS
	Stockwater	01-01 TO 12-31	.06 CFS

Place of Use:	Stockwater		Within Elmore County
	T05S R10E S32	SENE	
	Domestic		Within Elmore County
	T05S R10E S32	SENE	

Other Provisions Necessary for Definition / Administration of this Water Right:

THE QUANTITY OF WATER DECREED FOR THIS WATER RIGHT IS NOT A
DETERMINATION OF HISTORICAL BENEFICIAL USE.

Explanatory Material: Basis of Claim - Beneficial Use

PARCEL NO. RP 05S10E321850
STOCKWATER, 150 RANGE

Return to SRBA Home Page

SEP 05 2013

WATER RESOURCES
WESTERN REGION

AGREEMENT

THIS AGREEMENT is entered into between MAGIC WEST, INC., an Idaho corporation ("Magic West"), and ROBERT K. HALL, a married man residing in Glens Ferry, Idaho ("Protestant").

WHEREAS, Magic West has filed Application for Permit No. 61-07724 with the Idaho Department of Water Resources; and

WHEREAS, Protestant is the owner of Water Right No. 61-10013, a domestic water right evidenced by a partial decree entered in the Snake River Basin Adjudication on January 30, 1998, a copy of which is attached hereto as Exhibit "A"; and

WHEREAS, Magic West's Application for Permit has been protested by Protestant; and

WHEREAS, the parties desire to resolve the protest pursuant to mutually agreeable terms and conditions.

NOW THEREFORE, in consideration of the mutual promises below, and other good and valuable consideration, the receipt of which is hereby acknowledged, the parties agree as follows:

1. Mitigation of Current Water Shortages. In order to mitigate Protestant's current water shortage, Magic West agrees to:

- (a) lower the Protestant's pump to 500 feet;
- (b) make any rating changes necessary for the Protestant's pump to produce 9 gallons per minute on a sustainable basis, including replacement of the current pump, if necessary;
- (c) pay the electrical charges for electrical power necessary to pump water from Protestant's well to the storage tank to be installed on Protestant's property;
- (d) provide for future repairs or replacement of Protestant's pump, as necessary and as determined by the parties or by a professional well driller; and
- (e) install a 1500 ^{64 H} gallon storage tank to allow water to be supplied directly from the storage tank to Protestant's domestic place of use.

It is agreed that Protestant shall pay the cost of installing a pressure tank and a pump to pump water from the storage tank to the place of use. In addition, any electrical charges or other costs related to pumping water from the storage tank shall be borne by Protestant.

If it is discovered that Protestant's well is currently obstructed by cave-in or other structural problem with the well, the parties agree to correct the problem and each pay one-half of the cost. If water shortages continue to occur after the necessary corrections are made to the well, Magic West will provide mitigation under this paragraph 1 and, if necessary, under paragraph 2 below.

2 Mitigation of Future Water Shortages. It is expected that the measures set forth in paragraph 1 above will be sufficient to provide Protestant with water. However, in the event of future shortages in Protestant's domestic water supply, Magic West agrees to take one or more of the following steps to provide Protestant with an adequate supply of potable water:

(a) lower the pump in Protestant's well to a sufficient depth to provide a sustainable flow of 9 gallons per minute and pay any additional electrical charges resulting from the new pumping level;

(b) arrange to have water supplied by the City of Glenns Ferry and pay any applicable hook-up fees and City water payments;

(c) drill and adequately equip a new well and pay the electrical charges necessary to pump water from the new well; provided that any existing equipment owned by the Protestant may be used to equip the new well; or

(d) provide Protestant with another source of potable water.

If Magic West is unable to provide Protestant with a source of potable water by any means, Magic West agrees to curtail its use under Permit No. 61-07724 as necessary to provide an adequate supply of water from Protestant's well for Protestant's actual domestic needs. If Protestant's well does not respond to Magic West's curtailment within a reasonable time, Magic West shall not be prohibited from diverting water under Permit No. 61-07724, *or any other water right permit or license owned by Magic West.* THAT

3. Notification and Verification. Magic West shall provide for one or more of the alternatives set forth in paragraph 2 upon notification from the Protestant that the Protestant is receiving an inadequate supply of water for his domestic needs. Magic West shall have the right to verify any alleged water shortages before providing additional mitigation, including the right to enter into or upon Protestant's premises after reasonable notice.

4. Amount of Water. Magic West shall only be required to provide Protestant with the amount of water actually required for Protestant's domestic needs. In no event shall the Protestant be entitled to receive more than the quantity included in Exhibit "A", from all available sources. Magic West does not guarantee that the water provided will be of any particular temperature and the Protestant understands and agrees that any water provided by Magic West may or may not be low-temperature geothermal water.

5. Withdrawal of Protest. Upon execution of this Agreement, Protestant agrees to simultaneously execute a Withdrawal of Protest in the matter of Application for Permit No. 61-07724 and immediately file the Withdrawal with the Idaho Department of Water Resources.

6 Future Applications. The Protestant agrees not to protest, intervene in, or appear as an adverse witness in, any application for permit, permit amendment, transfer, water bank rental, or other proceeding that may be initiated by Magic West, or anyone else, which seeks to provide water for Magic West's Glenns Ferry food processing plant or the cogeneration plant located at the plant site.

7. Snake River Basin Adjudication. The Protestant agrees not to file any objection, response, motion to participate, motion to alter or amend, or notice of challenge regarding any of Magic West's claims or recommendations in the Snake River Basin Adjudication.

8. Delivery Calls. The Protestant agrees not to file a petition for delivery call with the Idaho Department of Water Resources, or to initiate, or participate in, any judicial or administrative action seeking curtailment of Magic West's water rights.

9. Term. This Agreement shall become effective upon final approval of Application for Permit No. 61-07724 by the Idaho Department of Water Resources and Magic West shall perform its duties under the agreement within sixty (60) days of said approval. This Agreement shall remain in full force and effect until such time that Magic West, its successor(s) or assign(s) may choose, if ever, to stop diverting water under the permit.

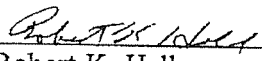
10. Entire Agreement. This Agreement is the entire agreement between the parties.

11. Attorney Fees. In the event that either party is required to enforce the terms of this Agreement in an administrative or judicial proceeding, the prevailing party shall be entitled to a reasonable attorney fee from the losing party.

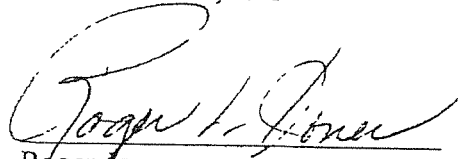
12. Binding Nature. This Agreement shall constitute a covenant which runs with the land to which Protestant's Water Right No. 61-10013 is appurtenant (i.e., the place of use listed on Exhibit "A") and shall be binding on the parties and their successors and assigns. Upon execution, Magic West shall cause a copy of this Agreement, including Exhibit "A", to be recorded with Elmore County.

DATED THIS 6 day of May, 1999.

PROTESTANT


Robert K. Hall

MAGIC WEST, INC


Roger Jones

HALL8.AGR

AGREEMENT - 3

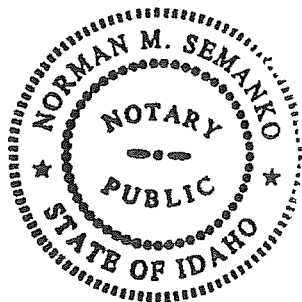
STATE OF IDAHO)

)ss.

County of Elmore)

On the 6th day of May, 1999, before me, a Notary Public, in and for said County and State, personally appeared ROBERT K. HALL, known or identified to me to be the individual whose name is subscribed to the within instrument, and acknowledged to me that he executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.



NOTARY PUBLIC FOR IDAHO

Residing at: Twin Falls, Idaho

My commission expires: 9-21-2004

EXHIBIT A

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

In Re SRBA)
Case No. 39576)
PARTIAL DECREE PURSUANT TO
I.R.C.P. 54(b) FOR
Water Right 61-10013

1998 JAN 15 11:02

1998 JAN 15 11:02

NAME & ADDRESS: ROBERT K HALL
RT 1 BOX 103
GLENNS FERRY ID 83623

SOURCE: GROUNDWATER

QUANTITY: 0.04 CFS

THE QUANTITY OF WATER UNDER THIS RIGHT SHALL NOT EXCEED 13,000
GALLONS PER DAY.

PRIORITY DATE: 12/31/1952

POINT OF DIVERSION: T05S R09E S35 NENENE Within ELMORE County

PURPOSE AND
PERIOD OF USE: PURPOSE OF USE PERIOD OF USE QUANTITY
DOMESTIC 1 HOME 01-01 12-31 0.04 CFS

PLACE OF USE: DOMESTIC Within ELMORE County
T05S R09E S35 NENE

OTHER PROVISIONS NECESSARY FOR DEFINITION OR ADMINISTRATION OF THIS WATER RIGHT:

THE QUANTITY OF WATER DECREED FOR THIS WATER RIGHT IS NOT A
DETERMINATION OF HISTORICAL BENEFICIAL USE.

RULE 54(b) CERTIFICATE

With respect to the issues determined by the above judgment or order, it is hereby CERTIFIED, in accordance with Rule 54(b), I.R.C.P., that the court has determined that there is no just reason for delay of the entry of a final judgment and that the court has and does hereby direct that the above judgment or order shall be a final judgment upon which execution may issue and an appeal may be taken as provided by the Idaho Appellate Rules.


DANIEL C. HURLBUTT, JR.
PRESIDING JUDGE
Snake River Basin Adjudication

RECEIVED MAY 14 1999

AGREEMENT

THIS AGREEMENT is entered into between MAGIC WEST, INC., an Idaho corporation ("Magic West"), and JOHN R. SOLOSABAL of Glenss Ferry, Idaho ("Protestant").

WHEREAS, Magic West has filed Application for Permit No. 61-07724 with the Idaho Department of Water Resources; and

WHEREAS, ROCKING S. RANCH, INC. is the owner of Water Right No. 51-10312, a domestic and stockwater right evidenced by a partial decree entered in the Snake River Basin Adjudication on January 30, 1998, a copy of which is attached hereto as Exhibit "A", and Protestant, as President of ROCKIN S. RANCH, INC. has authority to enter into this Agreement ; and

WHEREAS, Magic West's Application for Permit has been protested by Protestant; and

WHEREAS, the parties desire to resolve the protest pursuant to mutually agreeable terms and conditions.

NOW THEREFORE, in consideration of the mutual promises below, and other good and valuable consideration, the receipt of which is hereby acknowledged, the parties agree as follows:

1. Mitigation of Water Shortages. In the event of future shortages in Protestant's domestic and/or stockwater supply, Magic West agrees to take one or more of the following steps, as necessary to provide Protestant with an adequate supply of potable water:

(a) pay Protestant the cost of installing a pump in Protestant's well and pay a lump sum to the Protestant equal to the present value of 25 years worth of electrical charges for electrical power necessary to pump water from Protestant's well;

(b) pay Protestant the cost of lowering the existing pump, if any, in Protestant's well to a sufficient depth and pay a lump sum to the Protestant equal to the present value of 25 years worth of electrical charges resulting from the new pumping level; provided that, Magic West shall only be required to pay for the difference in electrical charges, if any, resulting from lowering the pump; provided further that Magic West shall agree to lower the pump at such time, if ever, that the pumping level comes within 30 feet of the pump bowls, as monitored by the Idaho Department of Water Resources;

© pay Protestant the cost of having water supplied by the City of Glenss Ferry, including any applicable hook-up fees and a lump sum equal to the present value of 25 years worth of City water payments; provided that, Magic West shall install a storage tank sufficient to supply up to 400 head of cattle, if necessary, as per the Idaho Department of Water Resources' standard allowance for livestock watering; provided further that this agreement shall be contingent upon the City of Glenss Ferry's adoption of a resolution agreeing to hook the Protestant up to the City's water supply, if necessary.



(d) pay Protestant the cost of drilling and adequately equipping a new well; provided that any existing equipment owned by the Protestant may be used to equip the new well, if practicable, and further provided that Magic West shall not be required to pay electrical charges associated with the use of any new well; or

(e) provide Protestant with another source of potable water.

2. Notification and Verification. Magic West shall provide for one or more of the above mitigation alternatives upon notification from the Protestant that the Protestant is receiving an inadequate supply of water for his/her domestic and/or stockwater needs. Magic West shall have the right to verify any alleged water shortages before providing mitigation, including the right to enter into or upon Protestant's premises after reasonable notice.

3. Amount of Water. Magic West shall only be required to provide Protestant with the amount of water actually required for Protestant's domestic and/or stockwater needs. In no event shall the Protestant be entitled to receive more than the quantity included in Exhibit "A", from all available sources. Magic West does not guarantee that the water provided will be of any particular temperature and the Protestant understands and agrees that any water provided by Magic West may or may not be low-temperature geothermal water.

4. Withdrawal of Protest. Upon execution of this Agreement, Protestant agrees to simultaneously execute a Withdrawal of Protest in the matter of Application for Permit No. 61-07724. Upon execution by Protestant, Magic West will cause said Withdrawal of Protest to be filed with the Idaho Department of Water Resources and properly served.

5. Future Applications. The Protestant agrees not to protest, intervene in, or appear as an adverse witness in, any application for permit, permit amendment, transfer, water bank rental, or other proceeding that may be initiated by Magic West, or anyone else, which seeks to provide water for Magic West's Glenns Ferry food processing plant or the cogeneration plant located at the plant site.

6. Snake River Basin Adjudication. The Protestant agrees not to file any objection, response, motion to participate, motion to alter or amend, or notice of challenge regarding any of Magic West's claims or recommendations in the Snake River Basin Adjudication.

7. Delivery Calls. The Protestant agrees not to file a petition for delivery call with the Idaho Department of Water Resources, or to initiate, or participate in, any judicial or administrative action seeking curtailment of Magic West's water rights.

8. Term. This Agreement shall remain in full force and effect until such time that Magic West, its successor(s) or assign(s) may choose, if ever, to permanently shut down the Glenns Ferry plant.

9. Entire Agreement. This Agreement is the entire agreement between the parties.

10. Attorney Fees. In the event that either party is required to enforce the terms of this Agreement in an administrative or judicial proceeding, the prevailing party shall be entitled to a reasonable attorney fee from the losing party.

11. Binding Nature. This Agreement shall constitute a covenant which runs with the land to which Water Right No. 51-10312 is appurtenant (i.e., the place of use listed on Exhibit "A") and shall be binding on the parties, ROCKIN S. RANCH, INC. and their successors and assigns. Upon execution, Magic West shall cause a copy of this Agreement, including Exhibit "A", to be recorded with Elmore County.

DATED THIS 8th day of May, 1999.

PROTESTANT


John R. Solosabal

315285

ELMORE COUNTY, IDAHO ss

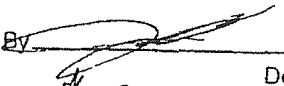
Request of

Rosholt, Robert & Tucker

Time 11:09 A.M.

Date May 11, 1999

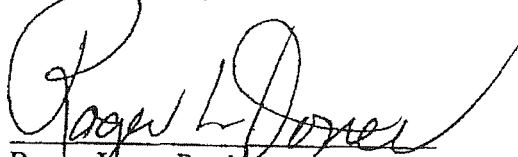
GAIL L. BEST, Recorder

By 

Deputy

Fee \$15.00

MAGIC WEST, INC.


Roger Jones, President

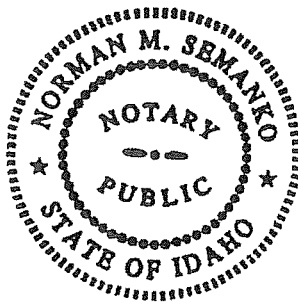
SOLOSABAL.AGR

AGREEMENT - 3

STATE OF IDAHO)
)ss.
County of Elmore)

On the 14th day of May, 1999, before me, a Notary Public, in and for said County and State, personally appeared JOHN R. SOLOSABAL, known or identified to me to be the individual whose name is subscribed to the within instrument, and acknowledged to me that he executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

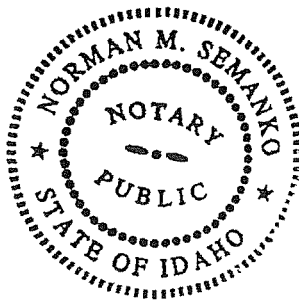


N - 7-5
NOTARY PUBLIC FOR IDAHO
Residing at: Twin Falls, Idaho
My commission expires: 9-21-2004

STATE OF IDAHO)
)ss.
County of Elmore)

On this 14th day of May, 1999, before me, a Notary Public, in and for said County and State, personally appeared ROGER JONES, known or identified to me to be the President of MAGIC WEST, INC., the corporation that executed the foregoing instrument, and acknowledged to me that such corporation executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.



N - 7-5
NOTARY PUBLIC FOR IDAHO
Residing at: Twin Falls, Idaho
My commission expires: 9-21-2004

EXHIBIT A

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

In Re SRBA)
)
Case No. 39576)

PARTIAL DECREE PURSUANT TO
I.R.C.P. 54(b) FOR

Water Right 51-10312

1998 JUN 30 PM 1:43

DISTRICT COURT - SRBA
TWIN FALLS, IDAHO

NAME & ADDRESS: ROCKIN S RANCH INC
C/O DENNIS SMITH
PO BOX 939
GLENNS FERRY ID 83623

SOURCE: GROUNDWATER

QUANTITY: 0.15 CFS

THE QUANTITY OF WATER UNDER THIS RIGHT SHALL NOT EXCEED 13,000
GALLONS PER DAY.

PRIORITY DATE: 06/01/1948

POINT OF DIVERSION: T06S R09E S01 Lot 2 (NWNW)

Within ELMORE County

2 POINTS OF DIVERSION LOCATED IN T06S, R09E, S01, GOV. LOT 2
(NW NW).

PURPOSE AND
PERIOD OF USE:

PURPOSE OF USE
STOCKWATER
DOMESTIC 2 HOMES

PERIOD OF USE
01-01 12-31
01-01 12-31

QUANTITY
0.09 CFS
0.06 CFS

PLACE OF USE:

STOCKWATER Within ELMORE County
T06S R09E S01 Lot 2 (NW NW)

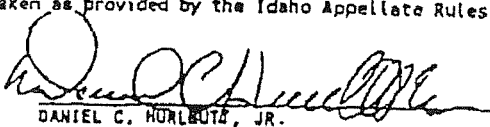
DOMESTIC Within ELMORE County
T06S R09E S01 Lot 2 (NW NW)

OTHER PROVISIONS NECESSARY FOR DEFINITION OR ADMINISTRATION OF THIS WATER RIGHT:

THE QUANTITY OF WATER DECREED FOR THIS WATER RIGHT IS NOT A
DETERMINATION OF HISTORICAL BENEFICIAL USE.

RULE 54(b) CERTIFICATE

With respect to the issues determined by the above judgment or order, It is hereby CERTIFIED, in accordance with Rule 54(b), I.R.C.P., that the court has determined that there is no just reason for delay of the entry of a final judgment and that the court has and does hereby direct that the above judgment or order shall be a final judgment upon which execution may issue and an appeal may be taken as provided by the Idaho Appellate Rules.


DANIEL C. HURLBUT, JR.
PRESIDING JUDGE
Snake River Basin Adjudication

PARTIAL DECREE PURSUANT TO I.R.C.P. 54(b)
Water Right 51-10312

PAGE 1
MICROFILMED JAN-15-1998

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SEP 05 2013

WATER RESOURCES
WESTERN REGION

AGREEMENT

THIS AGREEMENT is entered into between MAGIC WEST, INC., an Idaho corporation ("Magic West"), and JERRY L. HEATH and SHIRLEY A. HEATH, a married couple residing in Glens Ferry, Idaho ("Protestant").

WHEREAS, Magic West has filed Application for Permit No. 61-07724 with the Idaho Department of Water Resources; and

WHEREAS, Protestant is the owner of Water Right No. 51-04013, a domestic and stockwater right evidenced by a partial decree entered in the Snake River Basin Adjudication on January 30, 1998, a copy of which is attached hereto as Exhibit "A"; and

WHEREAS, Magic West's Application for Permit has been protested by Protestant; and

WHEREAS, the parties desire to resolve the protest pursuant to mutually agreeable terms and conditions.

NOW THEREFORE, in consideration of the mutual promises below, and other good and valuable consideration, the receipt of which is hereby acknowledged, the parties agree as follows:

1. Mitigation of Water Shortages. In the event of future shortages in Protestant's domestic and/or stockwater supply, Magic West agrees to take one or more of the following steps, as necessary to provide Protestant with an adequate supply of potable water:

(a) pay Protestant the cost of installing a pump in Protestant's well and pay a lump sum to the Protestant equal to the present value of 25 years worth of electrical charges for electrical power necessary to pump water from Protestant's well;

(b) pay Protestant the cost of lowering the existing pump, if any, in Protestant's well to a sufficient depth and pay a lump sum to the Protestant equal to the present value of 25 years worth of electrical charges resulting from the new pumping level; provided that, Magic West shall only be required to pay for the difference in electrical charges, if any, resulting from lowering the pump; provided further that Magic West shall agree to lower the pump at such time, if ever, that the pumping level comes within 30 feet of the pump bowls, as monitored by the Idaho Department of Water Resources;

© pay Protestant the cost of having water supplied by the City of Glens Ferry, including any applicable hook-up fees and a lump sum equal to the present value of 25 years worth of City water payments; provided that, Magic West shall install a storage tank sufficient to supply up to 100 head of cattle, if necessary, as per the Idaho Department of Water Resources' standard allowance for livestock watering; provided further that this agreement shall be contingent upon the City of Glens Ferry's adoption of a resolution agreeing to hook the Protestant up to the City's water supply, if necessary.

EXHIBIT

4

tabbies

(d) pay Protestant the cost of drilling and adequately equipping a new well; provided that any existing equipment owned by the Protestant may be used to equip the new well, if practicable, and further provided that Magic West shall not be required to pay electrical charges associated with the use of any new well; or

(e) provide Protestant with another source of potable water.

2. Notification and Verification. Magic West shall provide for one or more of the above mitigation alternatives upon notification from the Protestant that the Protestant is receiving an inadequate supply of water for his/her domestic and/or stockwater needs. Magic West shall have the right to verify any alleged water shortages before providing mitigation, including the right to enter into or upon Protestant's premises after reasonable notice.

3. Amount of Water. Magic West shall only be required to provide Protestant with the amount of water actually required for Protestant's domestic and/or stockwater needs. In no event shall the Protestant be entitled to receive more than the quantity included in Exhibit "A", from all available sources. Magic West does not guarantee that the water provided will be of any particular temperature and the Protestant understands and agrees that any water provided by Magic West may or may not be low-temperature geothermal water.

4. Withdrawal of Protest. Upon execution of this Agreement, Protestant agrees to simultaneously execute a Withdrawal of Protest in the matter of Application for Permit No. 61-07724. Upon execution by Protestant, Magic West will cause said Withdrawal of Protest to be filed with the Idaho Department of Water Resources and properly served.

5. Future Applications. The Protestant agrees not to protest, intervene in, or appear as an adverse witness in, any application for permit, permit amendment, transfer, water bank rental, or other proceeding that may be initiated by Magic West, or anyone else, which seeks to provide water for Magic West's Glenns Ferry food processing plant or the cogeneration plant located at the plant site.

6. Snake River Basin Adjudication. The Protestant agrees not to file any objection, response, motion to participate, motion to alter or amend, or notice of challenge regarding any of Magic West's claims or recommendations in the Snake River Basin Adjudication.

7. Delivery Calls. The Protestant agrees not to file a petition for delivery call with the Idaho Department of Water Resources, or to initiate, or participate in, any judicial or administrative action seeking curtailment of Magic West's water rights.

8. Term. This Agreement shall remain in full force and effect until such time that Magic West, its successor(s) or assign(s) may choose, if ever, to permanently shut down the Glenns Ferry plant.

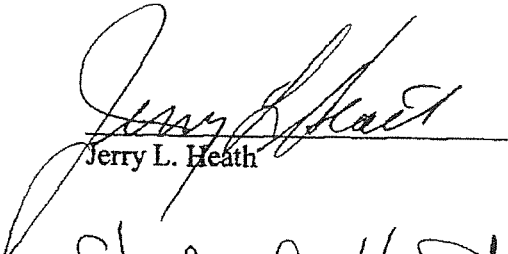
9. Entire Agreement. This Agreement is the entire agreement between the parties.

10. Attorney Fees. In the event that either party is required to enforce the terms of this Agreement in an administrative or judicial proceeding, the prevailing party shall be entitled to a reasonable attorney fee from the losing party.

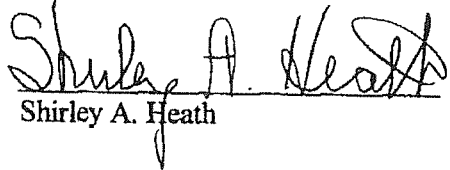
11. Binding Nature. This Agreement shall constitute a covenant which runs with the land to which Protestant's Water Right No. 51-04013 is appurtenant (i.e., the place of use listed on Exhibit "A") and shall be binding on the parties and their successors and assigns. Upon execution, Magic West shall cause a copy of this Agreement, including Exhibit "A", to be recorded with Elmore County.

DATED THIS 6 day of May, 1999.

PROTESTANT

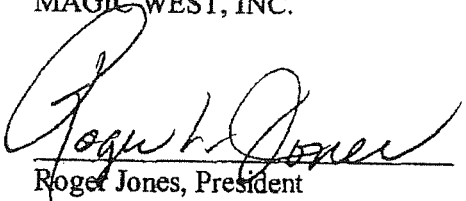


Jerry L. Heath



Shirley A. Heath

MAGIC WEST, INC.



Roger Jones, President

HEATH.AGR

AGREEMENT - 3

STATE OF IDAHO)
)ss.
County of Elmore)

On the 6th day of May, 1999, before me, a Notary Public, in and for said County and State, personally appeared JERRY L. HEATH, known or identified to me to be the individual whose name is subscribed to the within instrument, and acknowledged to me that he executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.



Christine D. Phernetton
NOTARY PUBLIC FOR IDAHO
Residing at: Glenn Ferry, Elmore Co.
My commission expires: 2/01/2001

STATE OF IDAHO)
)ss.
County of Elmore)

On the 6th day of May, 1999, before me, a Notary Public, in and for said County and State, personally appeared SHIRLEY A. HEATH, known or identified to me to be the individual whose name is subscribed to the within instrument, and acknowledged to me that she executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.



Christine D. Phernetton
NOTARY PUBLIC FOR IDAHO
Residing at: Glenn Ferry, Elmore Co.
My commission expires: 2/01/2001

STATE OF IDAHO)

County of Elmore) ss.

On this 6th day of May, 1999, before me, a Notary Public, in and for said County and State, personally appeared ROGER JONES, known or identified to me to be the President of MAGIC WEST, INC., the corporation that executed the foregoing instrument, and acknowledged to me that such corporation executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

Christine D. Phemetton
NOTARY PUBLIC FOR IDAHO
Residing at: Glenns Ferry, Elmore Co.
My commission expires: 2/01/2001

315222

ELMORE COUNTY, IDAHO ss
Request of

Roscholt, Robert + Julie

Time 10:43 AM

Date May 10, 1999

GAIL L. BEST, Recorder

By [Signature]

Fee \$18.00 Deputy

EXHIBIT A

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

In Re SRBA)
Case No. 39576)
_____)

PARTIAL DECREE PURSUANT TO
I.R.C.P. 54(b) FOR
Water Right 51-04013

NAME & ADDRESS: JERRY L HEATH
SHIRLEY A HEATH
PO BOX 456
GLENN'S FERRY ID 83623

SOURCE: GROUNDWATER

QUANTITY: 0.06 CFS

THE QUANTITY OF WATER UNDER THIS RIGHT SHALL NOT EXCEED 13,000
GALLONS PER DAY.

PRIORITY DATE: 03/01/1948

POINT OF DIVERSION: T05S R10E S28 LOT 2 (SENW)

Within ELMORE County

PURPOSE AND PERIOD OF USE:	PURPOSE OF USE	PERIOD OF USE	QUANTITY
	STOCKWATER	01-01 12-31	0.02 CFS
	DOMESTIC 1 HOME	01-01 12-31	0.04 CFS

PLACE OF USE: DOMESTIC Within ELMORE County
T05S R10E S28 Lot 2 (SENW)

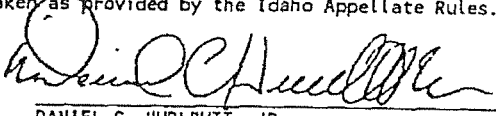
Place of use for STOCKWATER is same as DOMESTIC

OTHER PROVISIONS NECESSARY FOR DEFINITION OR ADMINISTRATION OF THIS WATER RIGHT:

THE QUANTITY OF WATER DECREED FOR THIS WATER RIGHT IS NOT A
DETERMINATION OF HISTORICAL BENEFICIAL USE.

RULE 54(b) CERTIFICATE

With respect to the issues determined by the above judgment or order, it is hereby CERTIFIED, in accordance with Rule 54(b), I.R.C.P., that the court has determined that there is no just reason for delay of the entry of a final judgment and that the court has and does hereby direct that the above judgment or order shall be a final judgment upon which execution may issue and an appeal may be taken as provided by the Idaho Appellate Rules.


DANIEL C. HURLBUTT, JR.
PRESIDING JUDGE
Snake River Basin Adjudication

PARTIAL DECREE PURSUANT TO I.R.C.P. 54(b)
Water Right 51-04013

PAGE 1
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SEP 05 2003

WATER RESOURCES
WESTERN REGION

AGREEMENT

THIS AGREEMENT is entered into between MAGIC WEST, INC., an Idaho corporation ("Magic West"), and ELIZABETH EICHHOLZ, an individual residing in Glens Ferry, Idaho ("Protestant").

WHEREAS, Magic West has filed Application for Permit No. 61-07724 with the Idaho Department of Water Resources; and

WHEREAS, Protestant is the owner of Water Right No. 51-10285, a domestic water right evidenced by a partial decree entered in the Snake River Basin Adjudication on January 30, 1998, a copy of which is attached hereto as Exhibit "A"; and

WHEREAS, Magic West's Application for Permit has been protested by Protestant; and

WHEREAS, the parties desire to resolve the protest pursuant to mutually agreeable terms and conditions.

NOW THEREFORE, in consideration of the mutual promises below, and other good and valuable consideration, the receipt of which is hereby acknowledged, the parties agree as follows:

1. Mitigation of Water Shortages. In the event of future shortages in Protestant's domestic water supply, Magic West agrees to take one or more of the following steps, as necessary to provide Protestant with an adequate supply of potable water:

(a) pay Protestant the cost of installing a pump in Protestant's well and pay a lump sum to the Protestant equal to the present value of 25 years worth of electrical charges for electrical power necessary to pump water from Protestant's well;

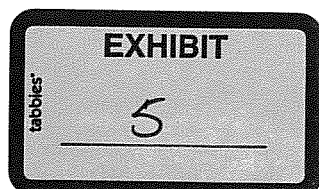
(b) pay Protestant the cost of lowering the existing pump, if any, in Protestant's well to a sufficient depth and pay a lump sum to the Protestant equal to the present value of 25 years worth of electrical charges resulting from the new pumping level; provided that, Magic West shall only be required to pay for the difference in electrical charges, if any, resulting from lowering the pump;

(c) pay Protestant the cost of having water supplied by the City of Glens Ferry, including any applicable hook-up fees and a lump sum equal to the present value of 25 years worth of City water payments;

(d) pay Protestant the cost of drilling and adequately equipping a new well; provided that any existing equipment owned by the Protestant may be used to equip the new well, if practicable, and further provided that Magic West shall not be required to pay electrical charges associated with the use of any new well; or

(e) provide Protestant with another source of potable water

AGREEMENT - 1



314613

ELMORE COUNTY, IDAHO ss
Request of

Elizabeth Robertson
Time 9:53 A.M.
Date April 9, 1999

GAIL L. BEST, Recorder

By [Signature] Deputy
Fee \$18.00

2. Notification and Verification. Magic West shall provide for one or more of the above mitigation alternatives upon notification from the Protestant that the Protestant is receiving an inadequate supply of water for her domestic needs. Magic West shall have the right to verify any alleged water shortages before providing mitigation, including the right to enter into or upon Protestant's premises after reasonable notice.

3. Amount of Water. Magic West shall only be required to provide Protestant with the amount of water actually required for Protestant's domestic needs. In no event shall the Protestant be entitled to receive more than the quantity included in Exhibit "A", from all available sources. Magic West does not guarantee that the water provided will be of any particular temperature and the Protestant understands and agrees that any water provided by Magic West may or may not be low-temperature geothermal water.

4. Withdrawal of Protest. Upon execution of this Agreement, Protestant agrees to simultaneously execute a Withdrawal of Protest in the matter of Application for Permit No. 61-07724. Upon execution by Protestant, Magic West will cause said Withdrawal of Protest to be filed with the Idaho Department of Water Resources and properly served.

5. Future Applications. The Protestant agrees not to protest, intervene in, or appear as an adverse witness in, any application for permit, permit amendment, transfer, water bank rental, or other proceeding that may be initiated by Magic West, or anyone else, which seeks to provide water for Magic West's Glenss Ferry food processing plant or the cogeneration plant located at the plant site.

6. Snake River Basin Adjudication. The Protestant agrees not to file any objection, response, motion to participate, motion to alter or amend, or notice of challenge regarding any of Magic West's claims or recommendations in the Snake River Basin Adjudication.

7. Delivery Calls. The Protestant agrees not to file a petition for delivery call with the Idaho Department of Water Resources, or to initiate, or participate in, any judicial or administrative action seeking curtailment of Magic West's water rights.

8. Term This Agreement shall remain in full force and effect until such time that Magic West, its successor(s) or assign(s) may choose, if ever, to permanently shut down the Glenss Ferry plant.

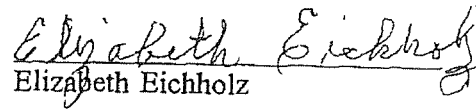
9. Entire Agreement. This Agreement is the entire agreement between the parties.

10. Attorney Fees. In the event that either party is required to enforce the terms of this Agreement in an administrative or judicial proceeding, the prevailing party shall be entitled to a reasonable attorney fee from the losing party

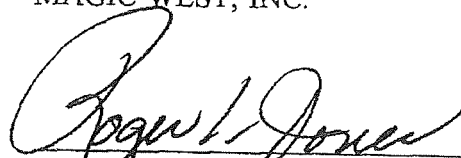
11. Binding Nature. This Agreement shall constitute a covenant which runs with the land to which Protestant's Water Right No. 51-10285 is appurtenant (i.e., the place of use listed on Exhibit "A") and shall be binding on the parties and their successors and assigns. Upon execution, Magic West shall cause a copy of this Agreement, including Exhibit "A", to be recorded with Elmore County.

DATED THIS 18 day of MARCH, 1999.

PROTESTANT


Elizabeth Eichholz

MAGIC WEST, INC.


Roger Jones, President

EICHHOLZ.AGR

AGREEMENT - 3

STATE OF IDAHO)
)ss.
County of Minidoka)

On this 9 day of March, 1999, before me, a Notary Public, in and for said County and State, personally appeared ROGER JONES, known or identified to me to be the President of MAGIC WEST, INC., the corporation that executed the foregoing instrument, and acknowledged to me that such corporation executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

William Floyd Elson
NOTARY PUBLIC FOR IDAHO
Residing at: Boise, Idaho
My commission expires: 09/24/2000

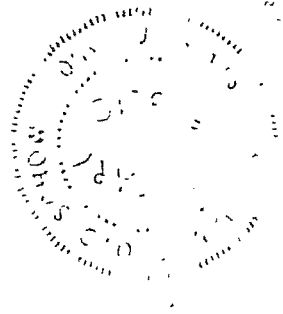


EXHIBIT A

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

In Re SRBA)
Case No. 39576)
_____)

* PARTIAL DECREE PURSUANT TO
I.R.C.P. 54(b) FOR
Water Right 61-10285

1998 JAN 30 PM

DISTRICT COURT
TWIN FALLS CO.,

FILED - _____

NAME & ADDRESS: ELIZABETH EICHHOLZ
PO BOX 311
GLENN'S FERRY ID 83623

SOURCE: GROUNDWATER

QUANTITY: 0.04 CFS

THE QUANTITY OF WATER UNDER THIS RIGHT SHALL NOT EXCEED 13,000
GALLONS PER DAY.

PRIORITY DATE: 03/09/1921

POINT OF DIVERSION: T05S R10E S32 SNNWNE Within ELMORE County

PURPOSE AND PERIOD OF USE:	PURPOSE OF USE DOMESTIC 1 HOME	PERIOD OF USE 01-01 12-31	QUANTITY 0.04 CFS
-------------------------------	-----------------------------------	------------------------------	----------------------

PLACE OF USE: DOMESTIC Within ELMORE County
T05S R10E S32 NWNW

OTHER PROVISIONS NECESSARY FOR DEFINITION OR ADMINISTRATION OF THIS WATER RIGHT:

THE QUANTITY OF WATER DECREED FOR THIS WATER RIGHT IS NOT A
DETERMINATION OF HISTORICAL BENEFICIAL USE.

RULE 54(b) CERTIFICATE

With respect to the issues determined by the above judgment or order, it is hereby CERTIFIED, in accordance with Rule 54(b), I.R.C.P., that the court has determined that there is no just reason for delay of the entry of a final judgment and that the court has and does hereby direct that the above judgment or order shall be a final judgment upon which execution may issue and an appeal may be taken as provided by the Idaho Appellate Rules.


DANIEL C. HURLBUTT, JR.
PRESIDING JUDGE
Snake River Basin Adjudication

RECEIVED

SEP 05 2013

WATER RESOURCES
WESTERN REGION

AGREEMENT

THIS AGREEMENT is entered into between MAGIC WEST, INC., an Idaho corporation ("Magic West"), and FRED MACKEY, an individual residing in Glens Ferry, Idaho ("Protestant").

WHEREAS, Magic West has filed Application for Permit No. 61-07724 with the Idaho Department of Water Resources; and

WHEREAS, Protestant owns a well from which he is entitled to divert ground water for domestic and/or stockwater uses, pursuant to Section 42-111, Idaho Code; and

WHEREAS, Magic West's Application for Permit has been protested by Protestant; and

WHEREAS, the parties desire to resolve the protest pursuant to mutually agreeable terms and conditions.

NOW THEREFORE, in consideration of the mutual promises below, and other good and valuable consideration, the receipt of which is hereby acknowledged, the parties agree as follows:

1. Mitigation of Water Shortages. In the event of future shortages in Protestant's domestic and/or stockwater supply, Magic West agrees to take one or more of the following steps, as necessary to provide Protestant with an adequate supply of potable water:

(a) pay Protestant the cost of installing a pump in Protestant's well and pay a lump sum to the Protestant equal to the present value of 25 years worth of electrical charges for electrical power necessary to pump water from Protestant's well;

(b) pay Protestant the cost of lowering the existing pump, if any, in Protestant's well to a sufficient depth and pay a lump sum to the Protestant equal to the present value of 25 years worth of electrical charges resulting from the new pumping level; provided that, Magic West shall only be required to pay for the difference in electrical charges, if any, resulting from lowering the pump; provided further that Magic West shall agree to lower the pump at such time, if ever, that the pumping level comes within 30 feet of the pump bowls, as monitored by the Idaho Department of Water Resources;

© pay Protestant the cost of having water supplied by the City of Glens Ferry, including any applicable hook-up fees and a lump sum equal to the present value of 25 years worth of City water payments; provided that, Magic West shall install a storage tank sufficient to supply up to 20 head of cattle, if necessary, as per the Idaho Department of Water Resources' standard allowance for livestock watering; provided further that this agreement shall be contingent upon the City of Glens Ferry's adoption of a resolution agreeing to hook the Protestant up to the City's water supply, if necessary;

EXHIBIT

tabbies

6

(d) pay Protestant the cost of drilling and adequately equipping a new well; provided that any existing equipment owned by the Protestant may be used to equip the new well, if practicable, and further provided that Magic West shall not be required to pay electrical charges associated with the use of any new well; or

(e) provide Protestant with another source of potable water.

2. Notification and Verification. Magic West shall provide for one or more of the above mitigation alternatives upon notification from the Protestant that the Protestant is receiving an inadequate supply of water for his domestic and/or stockwater needs. Magic West shall have the right to verify any alleged water shortages before providing mitigation, including the right to enter into or upon Protestant's premises after reasonable notice.

3. Amount of Water. Magic West shall only be required to provide Protestant with the amount of water actually required for Protestant's domestic and/or stockwater needs. In no event shall the Protestant be entitled to receive more than the quantity authorized for domestic and stockwater uses under Section 42-111, Idaho Code (i.e., 13,000 gallons per day), from all available sources. Magic West does not guarantee that the water provided will be of any particular temperature and the Protestant understands and agrees that any water provided by Magic West may or may not be low-temperature geothermal water.

4. Withdrawal of Protest. Upon execution of this Agreement, Protestant agrees to simultaneously execute a Withdrawal of Protest in the matter of Application for Permit No. 61-07724. Upon execution by Protestant, Magic West will cause said Withdrawal of Protest to be filed with the Idaho Department of Water Resources and properly served.

5. Future Applications. The Protestant agrees not to protest, intervene in, or appear as an adverse witness in, any application for permit, permit amendment, transfer, water bank rental, or other proceeding that may be initiated by Magic West, or anyone else, which seeks to provide water for Magic West's Glens Ferry food processing plant or the cogeneration plant located at the plant site.

6. Snake River Basin Adjudication. The Protestant agrees not to file any objection, response, motion to participate, motion to alter or amend, or notice of challenge regarding any of Magic West's claims or recommendations in the Snake River Basin Adjudication.

7. Delivery Calls. The Protestant agrees not to file a petition for delivery call with the Idaho Department of Water Resources, or to initiate, or participate in, any judicial or administrative action seeking curtailment of Magic West's water rights.

8. Term. This Agreement shall remain in full force and effect until such time that Magic West, its successor(s) or assign(s) may choose, if ever, to permanently shut down the Glens Ferry plant.

9. Entire Agreement. This Agreement is the entire agreement between the parties.

10. Attorney Fees. In the event that either party is required to enforce the terms of this Agreement in an administrative or judicial proceeding, the prevailing party shall be entitled to a reasonable attorney fee from the losing party.

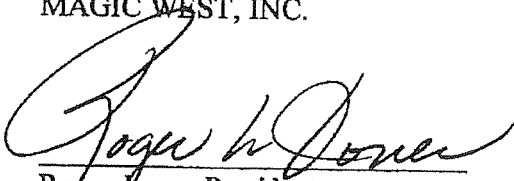
11. Binding Nature. This Agreement shall constitute a covenant which runs with the land to which Protestant's domestic and/or stockwater use is appurtenant and shall be binding on the parties and their successors and assigns. Upon execution, Magic West shall cause a copy of this Agreement to be recorded with Elmore County.

DATED THIS 6 day of May, 1999.

PROTESTANT


Fred Mackey

MAGIC WEST, INC.


Roger Jones, President

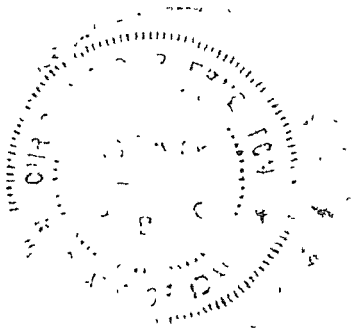
MACKEY.AGR

AGREEMENT - 3

STATE OF IDAHO)
)ss.
County of Elmore)

On this 6th day of May, 1999, before me, a Notary Public, in and for said County and State, personally appeared ROGER JONES, known or identified to me to be the President of MAGIC WEST, INC., the corporation that executed the foregoing instrument, and acknowledged to me that such corporation executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

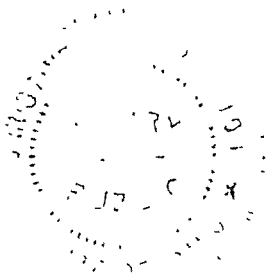


Christine D. Phemetton
NOTARY PUBLIC FOR IDAHO
Residing at: Elmore, Elmore Co.
My commission expires: 5/01/2001

STATE OF IDAHO)
)ss.
County of Elmore)

On the 6th day of May, 1999, before me, a Notary Public, in and for said County and State, personally appeared FRED MACKEY, known or identified to me to be the individual whose name is subscribed to the within instrument, and acknowledged to me that he executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.



Christine D. Phemilton
NOTARY PUBLIC FOR IDAHO
Residing at: Elmore Falls, Elmore Co.
My commission expires: 2/1/2001

315223

ELMORE COUNTY, IDAHO ss
Request of

Rehoboth Robertson & Tucker

Time 10:44 A.M.

Date May 10, 1999

GAIL L. BEST, Recorder

[Signature]
Deputy
Fee \$15.00

RECEIVED JUN - 1 1999

RECEIVED

SEP 05 2013

AGREEMENT

WATER RESOURCES
WESTERN REGION

THIS AGREEMENT is entered into between MAGIC WEST, INC., an Idaho corporation ("Magic West"), and EDWARD T. POTUCEK, a single man residing in Glens Ferry, Idaho (hereinafter "Potucek" or "Lessee") and GARY N. NELSON and NANCY NELSON, a married couple residing in Hagerman, Idaho (hereinafter "Nelsons" or "Owners").

WHEREAS, Magic West has filed Application for Permit No. 61-07724 with the Idaho Department of Water Resources; and

WHEREAS, Nelsons are the owners of Water Right No. 51-10331, a domestic and stock water right evidenced by a Director's Report recommended to the Snake River Basin Adjudication ("SRBA") Court by the Idaho Department of Water Resources, a copy of which is attached hereto as Exhibit "A"; and

WHEREAS, Potucek has amended the SRBA Claim for Water Right No. 51-10331 to include irrigation as a purpose of use; and

WHEREAS, Potucek is the lessee of the property to which Water Right No. 51-10331 is appurtenant; and

WHEREAS, Magic West's Application for Permit has been protested by Potucek; and

WHEREAS, the parties desire to resolve the protest pursuant to mutually agreeable terms and conditions.

NOW THEREFORE, in consideration of the mutual promises below, and other good and valuable consideration, the receipt of which is hereby acknowledged, the parties agree as follows:

A. DOMESTIC AND STOCK WATER

1. Mitigation of Current Domestic and Stock Water Shortages. In order to mitigate the current domestic and stock water shortage under Water Right No. 51-10331, as recommended by the Director and set forth in Exhibit "A", Magic West agrees to:

(a) install a new pump or make any rating changes necessary for the current pump to produce 9 gallons per minute on a sustainable basis;

(b) design and install a domestic and stock water system to insure delivery of water to the domestic and stock water places of use set forth in Exhibit "A";

(c) install a separate electrical service and pay the electrical charges for electrical power necessary to pump water from the well to the domestic and stock water places of use set forth in Exhibit "A"; and

(d) provide for future repairs or replacement of the pump, as necessary.

EXHIBIT

tabbies

7

2. Mitigation of Future Domestic and Stock Water Shortages. It is expected that the measures set forth in paragraph A.1 above will be sufficient to provide the required domestic and stock water. However, in the event of future shortages in the domestic and stock water supply, Magic West agrees to take one or more of the following steps to insure an adequate supply of domestic and stock water:

(a) lower the pump in the well to a sufficient depth to provide a sustainable flow of 9 gallons per minute and pay additional electrical charges resulting from the new pumping level;

(b) arrange to have water supplied by the City of Glens Ferry and pay any applicable hook-up fees and City water payments; provided that, Magic West shall install a storage tank sufficient to supply up to 150 head of cattle, if necessary, as per the Idaho Department of Water Resources' standard allowance for livestock watering; provided further that this agreement shall be contingent upon the City of Glens Ferry's adoption of a resolution agreeing to hook the Owners' property up to the City's water supply, if necessary;

(c) drill and adequately equip a new well and pay the electrical charges necessary to pump water from the new well; provided that any existing equipment may be used to equip the new well; or

(d) provide another source of domestic and stock water.

3. Curtailment by Magic West. If Magic West is unable to insure a source of domestic and stock water by any means, Magic West agrees to curtail its use under Permit No. 61-07724, and any other water right permit or license owned by Magic West, as necessary to insure an adequate supply of water from the well for actual domestic and stock water needs. If the well does not respond to Magic West's curtailment in a manner sufficient to provide the required domestic and stock water, Magic West shall not be prohibited from diverting water under Permit No. 61-07724, or any other water right permit or license owned by Magic West.

B. IRRIGATION WATER

1. Mitigation of Irrigation Water Shortages. In the event that Water Right No. 51-10331 is decreed by the SRBA Court to authorize irrigation as a purpose of use, Magic West agrees to provide additional mitigation as follows:

(a) modify the existing domestic and stock water system, or design and install a new system to insure delivery of domestic, stock and irrigation water to the places of use in Exhibit "A" and in any decree entered by the SRBA Court for Water Right No. 51-10331;

(b) install a separate electrical service, if necessary, and pay the electrical charges for electrical power necessary to pump water from the well to the domestic, stockwater and irrigation places of use set forth in Exhibit "A" and in any decree entered by the SRBA Court for Water Right No. 51-10331; and

(c) future repairs or replacement of the pump, as necessary.

2. Mitigation of Future Irrigation Water Shortages. It is expected that the measures set forth in paragraph B.1 above will be sufficient to provide the required irrigation water. However, in the event that Water Right No. 51-10331 is decreed for irrigation use, and in the further event of future shortages in the irrigation water supply under Water Right No. 51-10331, Magic West agrees to take one or more of the following steps to insure an adequate supply of irrigation water:

(a) lower the pump in the well to a sufficient depth to provide the flow rate and annual volume included in any decree entered by the SRBA Court for Water Right No. 51-10331 and pay any additional electrical charges resulting from the new pumping level;

(b) drill and adequately equip a new well and pay the electrical charges necessary to pump water from the new well; provided that any existing equipment may be used to equip the new well;

(c) pay the electrical charges for pumping and delivery of other irrigation water rights appurtenant to the same place of use, including installation of a new electrical service, if necessary; or

(d) provide another source of irrigation water.

3. Limitations on Mitigation of Irrigation Water Shortages. It is understood and agreed that the irrigation place of use claimed in the SRBA for Water Right No. 51-10331 has, or may have, surface water rights from the Snake River appurtenant to it and Magic West will not be required to provide mitigation for irrigation use when other irrigation rights are being used to provide for irrigation of the place of use decreed under Water Right No. 51-10331. In addition, if the Director of the Idaho Department of Water Resources establishes a reasonable ground water pumping level for the well, Magic West will be required to provide mitigation for irrigation water shortages under this agreement only if the pumping level in the well drops below the established reasonable ground water pumping level.

4. Curtailment by Magic West. If Magic West is unable to insure a source of irrigation water by any means, Magic West agrees to curtail its use under Permit No. 61-07724, and any other water right permit or license owned by Magic West, as necessary to insure an adequate supply of water from the well for actual irrigation needs. If the well does not respond to Magic West's curtailment in a manner sufficient to provide the required irrigation water, Magic West shall not be prohibited from diverting water under Permit No. 61-07724, or any other water right permit or license owned by Magic West.

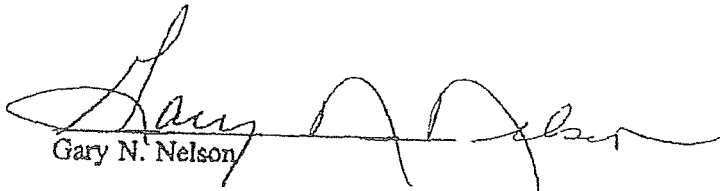
C. GENERAL PROVISIONS

1. Notification and Verification Magic West shall provide mitigation pursuant to this agreement upon notification from the Owners or Lessee that an inadequate supply of water is being supplied for actual domestic, stock or irrigation needs. Magic West shall have the right to verify any alleged water shortages before providing additional mitigation, including the right to enter into or upon the premises after reasonable notice.

2. Amount of Water. Magic West shall only be required to provide the amount of water needed for actual domestic, stock and irrigation needs. In no event shall the Owners or Lessee be entitled to receive more than the quantity included in Exhibit "A" or any decree issued by the SRBA Court, from all available sources. Magic West does not guarantee that the water provided will be of any particular temperature and the parties understand and agree that any water provided by Magic West may or may not be low-temperature geothermal water.
3. Withdrawal of Protest. Upon execution of this Agreement by Magic West, Potucek agrees to simultaneously execute a Withdrawal of Protest in the matter of Application for Permit No. 61-07724 and immediately file the Withdrawal with the Idaho Department of Water Resources.
4. Future Applications. As long as mitigation is provided by Magic West pursuant to this agreement, the Owners and Lessee agree not to protest, intervene in, or appear as an adverse witness in, any application for permit, permit amendment, transfer, water bank rental, or other proceeding that may be initiated by Magic West, or anyone else, which seeks to provide water for Magic West's Glenns Ferry food processing plant or the cogeneration plant located at the plant site.
5. Delivery Calls. As long as mitigation is provided by Magic West pursuant to this agreement, the Owners and Lessee agree not to file a petition for delivery call with the Idaho Department of Water Resources, or to initiate, or participate in, any judicial or administrative action seeking curtailment of Magic West's water rights.
6. Term. This agreement must be fully executed by the parties before 5:00 p.m. on Friday, May 14. This agreement shall become effective upon final approval of Application for Permit No. 61-07724 by the Idaho Department of Water Resources and Magic West shall perform its duties under the agreement within sixty (60) days of said approval. This Agreement shall remain in full force and effect until such time that Magic West, its successor(s) or assign(s) may choose, if ever, to stop diverting water under the permit.
7. Entire Agreement. This Agreement is the entire agreement between the parties.
8. Attorney Fees In the event that any of the parties is required to enforce the terms of this Agreement in an administrative or judicial proceeding, the prevailing party or parties shall be entitled to a reasonable attorney fee from the losing party or parties.
9. Binding Nature. This Agreement shall constitute a covenant which runs with the land to which Water Right No. 51-10331 is appurtenant (i.e., the place of use listed on Exhibit "A" and any decree issued by the SRBA Court) and shall be binding on the parties and their successors and assigns. Upon execution, Magic West shall cause a copy of this Agreement, including Exhibit "A", to be recorded with Elmore County.

DATED THIS 12 day of May, 1999.

OWNERS


Gary N. Nelson

315608


Nancy Nelson

ELMORE COUNTY, IDAHO ss
Request of

Rosholt, Rhetten & Luckin

Time 11:38 A M

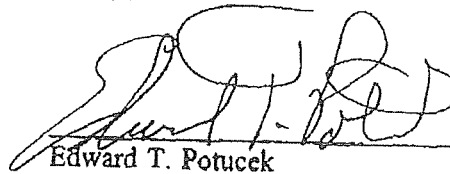
Date May 26, 1999

GAIL L. BEST, Recorder

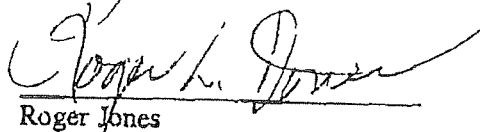
By  Deputy

Fee \$ 27.00

LESSEE

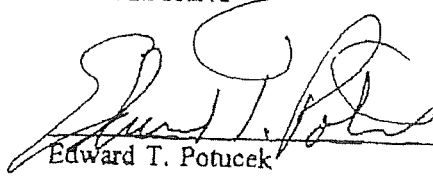

Edward T. Potucek

MAGIC WEST, INC.


Roger Jones

Edward T. Potucek hereby agrees to execute and file a written Notice of Withdrawal of his protest to Application for Permit No. 61-07724 with the Idaho Department of Water Resources upon execution of the above agreement by Magic West, even if the Nelsons ("Owners") do not sign the above agreement prior to 5:00 p.m. on Friday, May 14.

PROTESTANT


Edward T. Potucek

5-10-99
Date

POTUCEK.AGR

AGREEMENT - 5

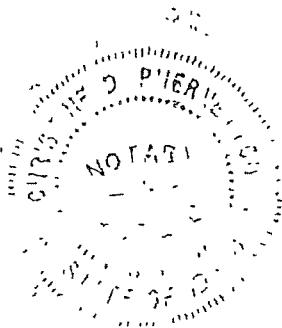
STATE OF IDAHO)
)ss.

County of Clemato)

On the 10th day of May, 1999, before me, a Notary Public, in and for said County and State, personally appeared EDWARD T. POTUCEK, known or identified to me to be the individual whose name is subscribed to the within instrument, and acknowledged to me that he executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

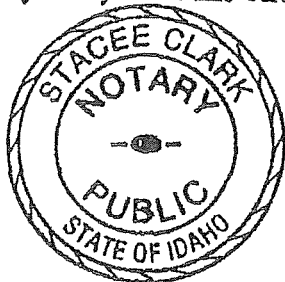
Christine D. Phemmeton
NOTARY PUBLIC FOR IDAHO
Residing at: Shenandoah, Idaho Co.
My commission expires: 5/01/2001



STATE OF IDAHO)
)ss.
County of Cooking)

On the 12 day of May, 1999, before me, a Notary Public, in and for said County and State, personally appeared GARY N. NELSON, known or identified to me to be the individual whose name is subscribed to the within instrument, and acknowledged to me that he executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

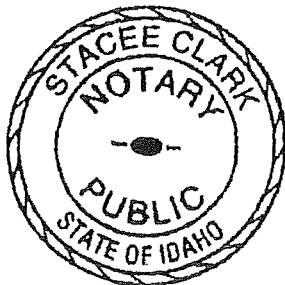


Stacey Clark
NOTARY PUBLIC FOR IDAHO
Residing at: Hagerman, ID
My commission expires: 1-14-2005

STATE OF IDAHO)
)ss.
County of Cooking)

On the 13th day of May, 1999, before me, a Notary Public, in and for said County and State, personally appeared NANCY NELSON, known or identified to me to be the individual whose name is subscribed to the within instrument, and acknowledged to me that she executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

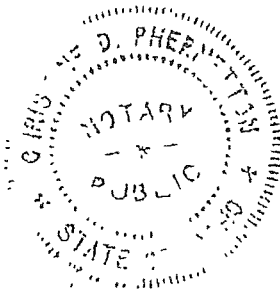


Stacey Clark
NOTARY PUBLIC FOR IDAHO
Residing at: Hagerman, ID
My commission expires: 1-14-2005

STATE OF IDAHO)
)ss.
 County of Almo)

On this 7th day of May, 1999, before me, a Notary Public, in and for said County and State, personally appeared ROGER JONES, known or identified to me to be the President of MAGIC WEST, INC., the corporation that executed the foregoing instrument, and acknowledged to me that such corporation executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.



Christine D. Phemetton
 NOTARY PUBLIC FOR IDAHO
 Residing at: Almo, Idaho 6
 My commission expires: 2/01/2001

SRBA DIRECTORS REPORT 51-10331

Return to SRBA Home Page

INT072

IDAHO DEPARTMENT OF WATER RESOURCES RECOMMENDED WATER RIGHTS ACQUIRED UNDER STATE LAW

Right Number: 51-10331

Name and Address: EDWARD T POTUCEK
JANE POTUCEK
PO BOX 537
GLENNS FERRY, ID 83623

Source: GROUNDWATER

Quantity: .10 CFS

THE QUANTITY OF WATER UNDER THIS RIGHT SHALL NOT EXCEED 13,000
GALLONS PER DAY.

Priority Date: 06-01-1889

Diversion Point: T05S R10E S32 NESENE Within Elmore County

Purpose and Period of Use:	Purpose of Use	Period of Use	Quantity
	Domestic 1 HOME	01-01 TO 12-31	.04 CFS
	Stockwater	01-01 TO 12-31	.06 CFS

Place of Use: Stockwater
T05S R10E S32 SENE Within Elmore CountyDomestic
T05S R10E S32 SENE Within Elmore County

Other Provisions Necessary for Definition / Administration of this Water Right:

THE QUANTITY OF WATER DECREED FOR THIS WATER RIGHT IS NOT A
DETERMINATION OF HISTORICAL BENEFICIAL USE.

Explanatory Material: Basis of Claim - Beneficial Use

PARCEL NO. RP 05S10E321850
STOCKWATER, 150 RANGE

Return to SRBA Home Page

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SEP 05 2013

WATER RESOURCES
WESTERN REGION

Close

IDAHO DEPARTMENT OF WATER RESOURCES
Water Permit Report

9/3/2013

WATER RIGHT NO. 61-7724

<u>Owner Type</u>	<u>Name and Address</u>
Current Owner	IDAHO FRESH PAK LLC C/O LEO HERBERT 357 CONSTITUTION WAY IDAHO FALLS, ID 83402-3538 (208) 754-8194
Original Owner	MAGIC WEST INC PO BOX 475 RUPERT, ID 83350 (208)436-3126

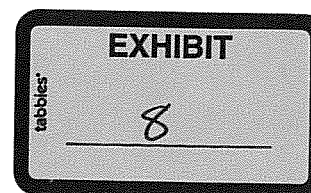
Priority Date: 09/27/1996

Status: Active

<u>Source</u>	<u>Tributary</u>
GROUND WATER	

<u>Beneficial Use</u>	<u>From</u>	<u>To</u>	<u>Diversion Rate</u>	<u>Volume</u>
INDUSTRIAL	1/01	12/31	0.67 CFS	
Total Diversion			0.67 CFS	

Location of Point(s) of Diversion:



GROUND WATER|SWSE|Sec. 29|Township 05S|Range 10E|ELMORE County

Place(s) of use:

Place of Use Legal Description: INDUSTRIAL ELMORE County

<u>Township</u>	<u>Range</u>	<u>Section</u>	<u>Lot</u>	<u>Tract</u>	<u>Acres</u>	<u>Lot</u>	<u>Tract</u>	<u>Acres</u>	<u>Lot</u>	<u>Tract</u>	<u>Acres</u>	<u>Lot</u>	<u>Tract</u>	<u>Acres</u>
05S	10E	18		NESW			SESW							
				SWSE			SESE							
		19		NENW			SENW							
				NESW			SESW							
				NWSE			SWSE							
		29		SWSE										
		30		NWNE			SWNE							
				NENW			SENW							

Conditions of Approval:

1. 046 Right holder shall comply with the drilling permit requirements of Section 42-235, Idaho Code.
2. 051 Any license issued by IDWR pursuant to the right or portion thereof for the use of trust water is subject to a term review of 20 years after the date of this approval to determine availability of water for the use and to re-evaluate the public interest at the end of the term.
3. The limit on maximum rate of diversion and annual pumped volume under this right when combined with Right 61-7189 and any other water right authorized to use the same point of diversion shall not exceed 0.67 cfs nor 338.0 afa.
4. 067 The right holder shall measure and annually report the volume of ground water diverted and used pursuant to this permit and any other water right authorizing use of the same point of diversion and/or other pertinent hydrologic and system information as required by Section 42-701, Idaho Code.
5. In accordance with applicable law, the right holder is responsible to ensure that pumpage under this approval does not directly lower the hydraulic head in any domestic well drilled and in use prior to March 29, 1978, requiring modification to the well or pumping system, unless the right holder provides reasonable compensation or mitigation to the prior right holder.
6. In accordance with applicable law, the right holder is responsible to ensure that pumpage under this approval does not reduce the water available under any prior right so as to cause material injury to the holder of the prior right, as determined by the Director, unless the right holder provides compensation or mitigation to the prior right holder.
7. The Director retains jurisdiction to require the right holder to provide purchased or leased natural flow or stored water to offset depletion of Lower Snake River flows if needed for salmon migration purposes. The amount of water required to be released into the Snake River or a tributary, if needed

- for this purpose, will be determined by the Director based upon the reduction in flow caused by the use of water pursuant to this permit.
8. Use of water under this right may be affected by a series of agreements executed in March and May of 1999 between the right holder and individuals or entities initially protesting Application for Permit to Appropriate No. 61-7724.
9. WD8 The place of industrial use authorized by this approval in Sections 18, 19 and 30, T5S, R10E describes land upon which wastewater may be applied for irrigation purposes to satisfy water quality requirements. Water diverted under this approval shall not be used for irrigation unless the water is first used in the food processing plant as authorized by this water right.
10. Industrial use is for the Glenns Ferry food processing plant including the existing cogeneration operation.

Dates:

Proof Due Date: 09/01/2005

Proof Made Date: 07/18/2005

Approved Date: 08/27/1999

Moratorium Expiration Date:

Enlargement Use Priority Date:

Enlargement Statute Priority Date:

Application Received Date: 09/27/1996

Protest Deadline Date:

Number of Protests: 0

Field Exam Date::

Date Sent to State Off:

Date Received at State Off:

Other Information:

State or Federal:

Owner Name Connector:

Water District Number:

Generic Max Rate per Acre:

Generic Max Volume per Acre:

Swan Falls Trust or Nontrust:

Swan Falls Dismissed:

DLE Act Number:

Cary Act Number:

Mitigation Plan: False