



8/16/2013

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

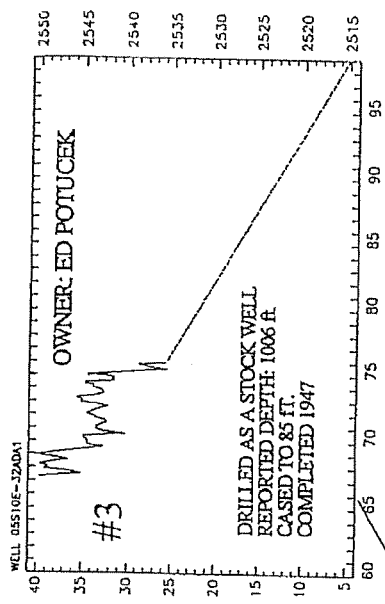
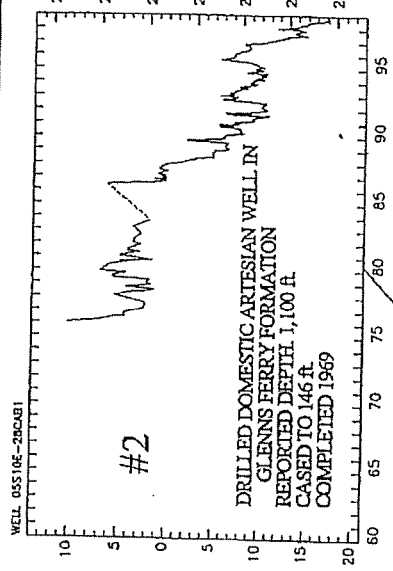
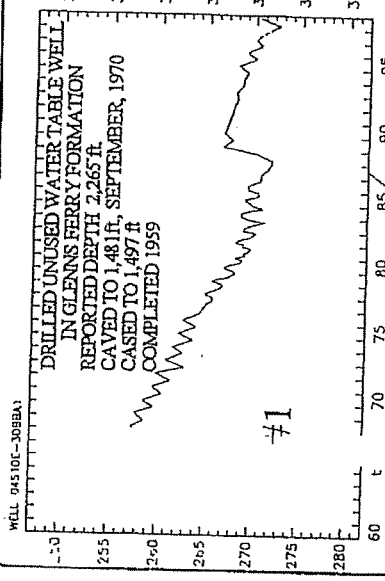
Robert K Hall

John R Solosabal

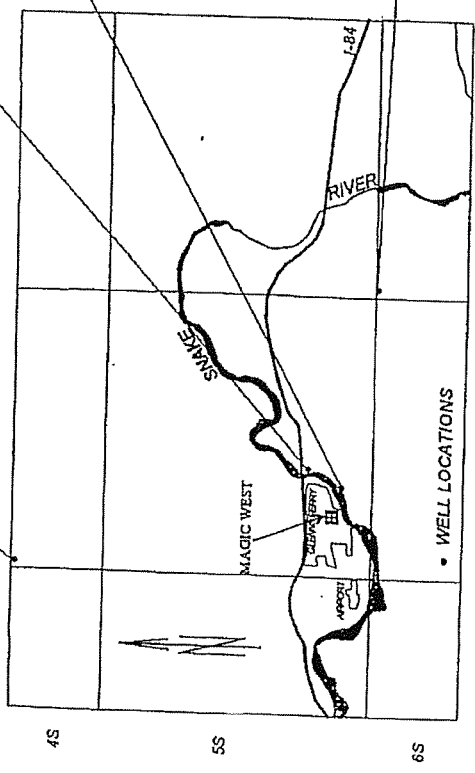
Jerry L Heath and Shirley A. Heath

Fred Mackey

Elizabeth Eichholz



GLENN'S FERRY AREA



GROUND WATER HYDROGRAPHS HISTORIC

LEGEND

BASE: YEAR

LEFT SIDE: DEPTH TO WATER

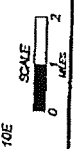
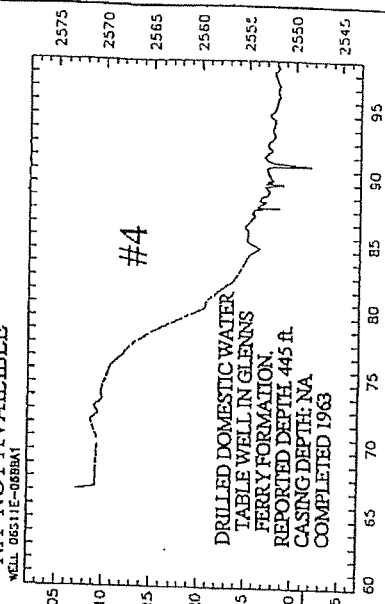
RIGHT SIDE: WATER ELEVATION

ALL MEASUREMENTS IN FEET

CURRENT TO FALL, 1998

DASHED LINE INDICATES MORE THAN ONE YEAR BETWEEN MEASUREMENTS

NA: NOT AVAILABLE



PREPARED BY THE IDAHO DEPARTMENT OF WATER RESOURCES DECEMBER, 1998 SB HH

ATTACHMENT A

WELL 05507E-17CAB1

DRILLED IRRIGATION-STOCK
WATER TABLE(?) WELL
DEPTH 1,500 ft.
CASED TO 20 ft.
COMPLETED 1972

#7

275
270
265
260
255
250
245

65 70 75 80 85 90 95

WELL 04510E-30BB1

DRILLED UNUSED WATER TABLE WELL
IN GLENN FERRY FORMATION
REPORTED DEPTH 2,265 ft.
CASED TO 1,481 ft., SEPTEMBER, 1970
CASED TO 1,497 ft.
COMPLETED 1959

#1

280
275
270
265
260
255
250

65 70 75 80 85 90 95

WELL 05510E-28CAB1

#2

DRILLED DOMESTIC ARTESIAN WELL IN
GLENN FERRY FORMATION.
REPORTED DEPTH 1,100 ft.
CASED TO 146 ft.
COMPLETED 1969

3175
3180
3185
3190
3195
3200
3205

65 70 75 80 85 90 95

GROUND WATER HYDROGRAPHS REGIONAL

LEGEND

BASE: YEAR

LEFT SIDE: DEPTH TO WATER
RIGHT SIDE: WATER ELEVATION
ALL MEASUREMENTS IN FEET

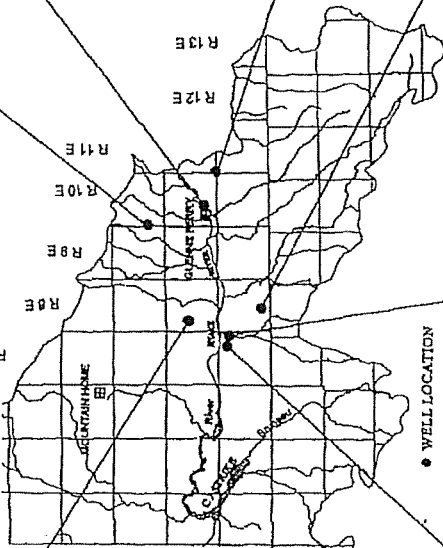
CURRENT TO FALL, 1998

---DASHED LINE INDICATES

MORE THAN ONE YEAR

BETWEEN MEASUREMENTS

NA NOT AVAILABLE



WELL 05511E-06BB1

DRILLED DOMESTIC WATER
TABLE WELL IN GLENN
FERRY FORMATION
REPORTED DEPTH 445 ft.
CASED DEPTH NA
COMPLETED 1963

#4

105
110
115
120
125
130
135

65 70 75 80 85 90 95

WELL 06507E-12ABC1

DRILLED DOMESTIC-STOCK
GEOTHERMAL ARTESIAN WELL
DEPTH: 1,250 ft.
CASED DEPTH: NA
COMPLETED: 1925
TEMP 99°F

#9

2525
2520
2515
2510
2505
2500
2495
2490

65 70 75 80 85 90 95

WELL 06507E-33AB1

DRILLED TEST WELL BY THE ARMY CORP ENG
ARTESIAN GEOTHERMAL WELL
DEPTH: 4,000 ft.
CASED TO 2,120 ft.
COMPLETED: 1959
TEMP 130°F

#8

2775
2770
2765
2760
2755
2750
2745

65 70 75 80 85 90 95

WELL 06507E-02CAB1

DRILLED DOMESTIC GEOTHERMAL
ARTESIAN WELL
DEPTH 1,350 ft.
CASED DEPTH NA
COMPLETED 1979
TEMP 94°F

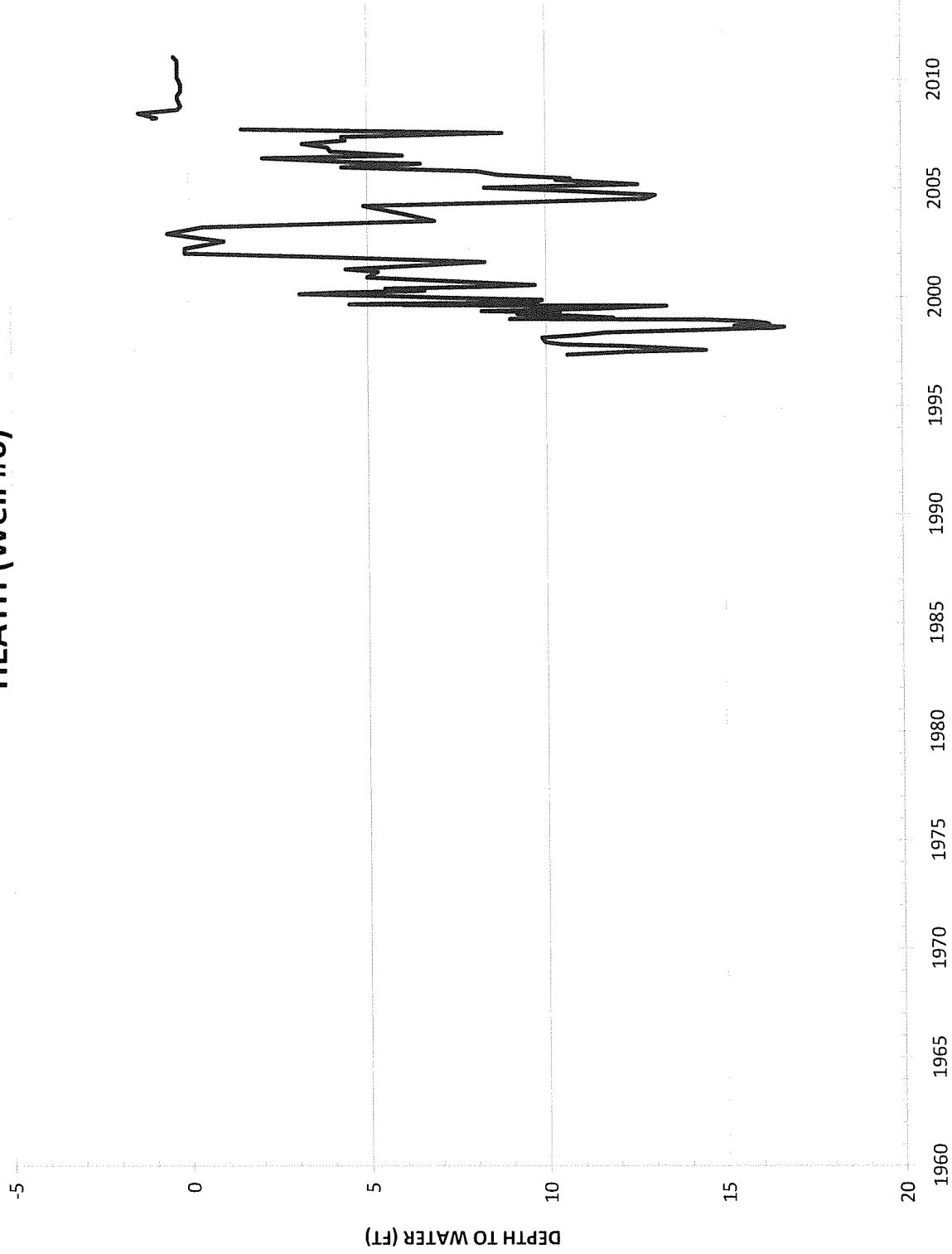
#10

35
30
25
20
15
10
5

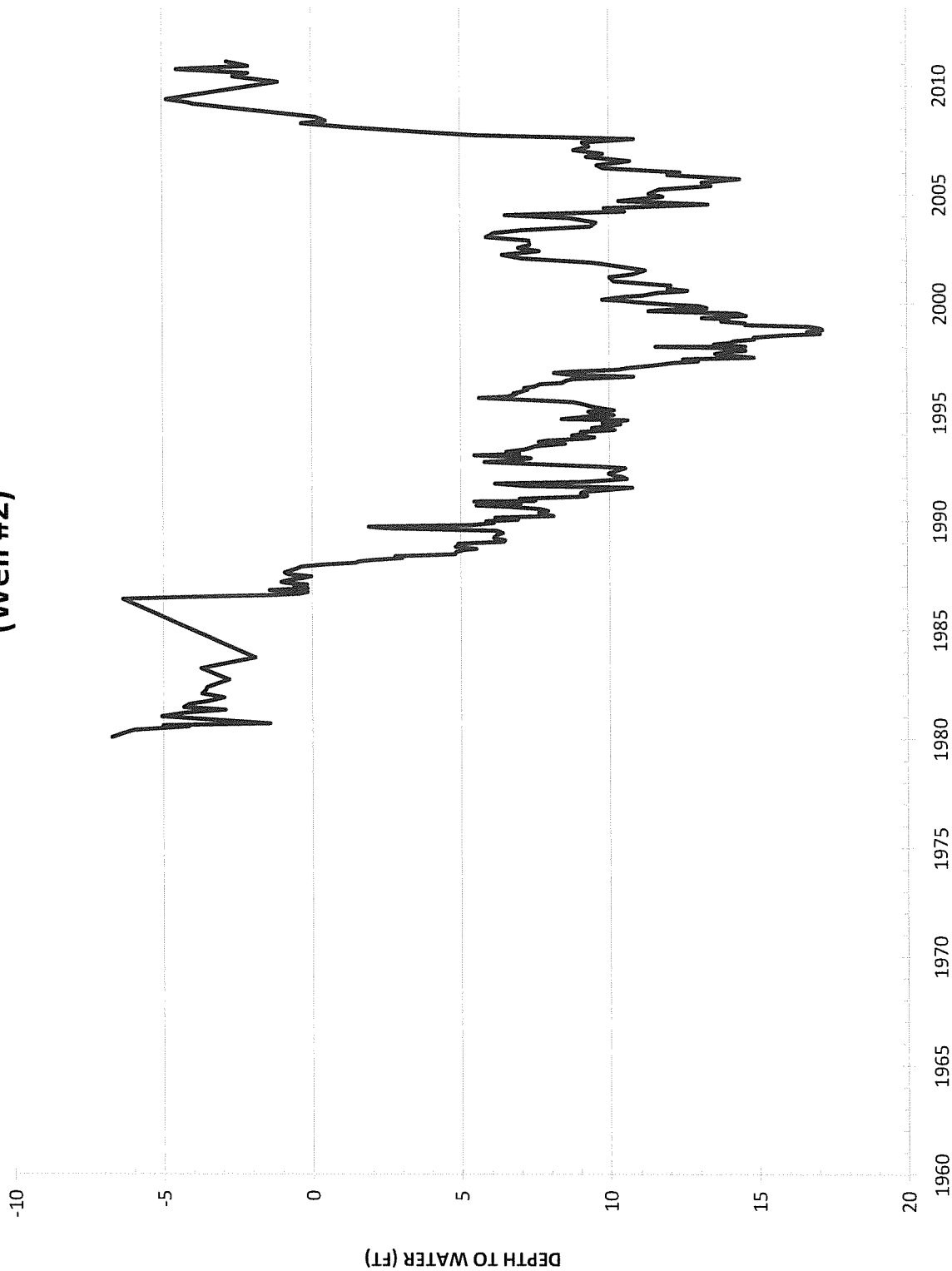
65 70 75 80 85 90 95

ATTACHMENT C

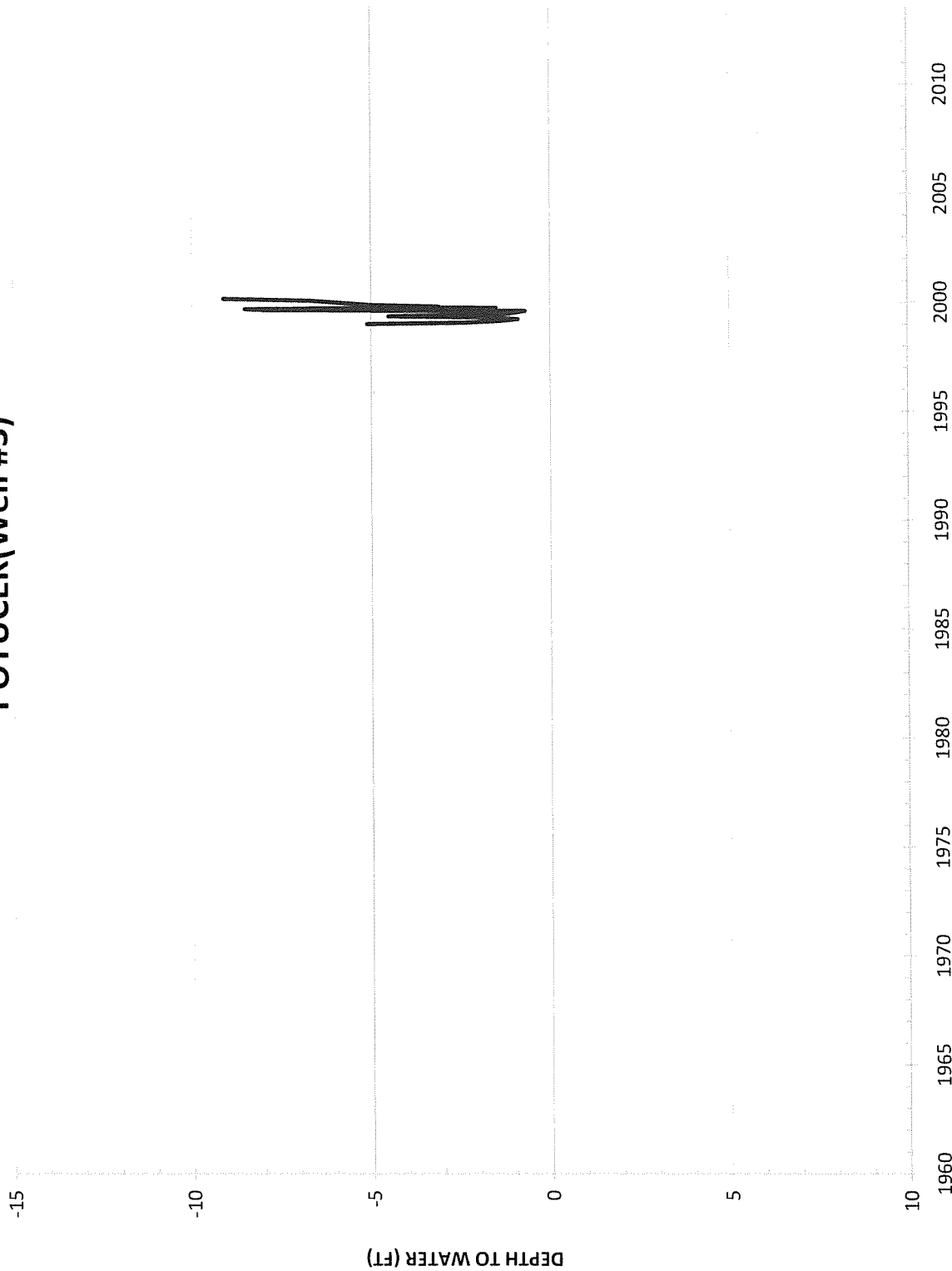
WELL 5S 10E 28BDA1
HEATH (Well #6)



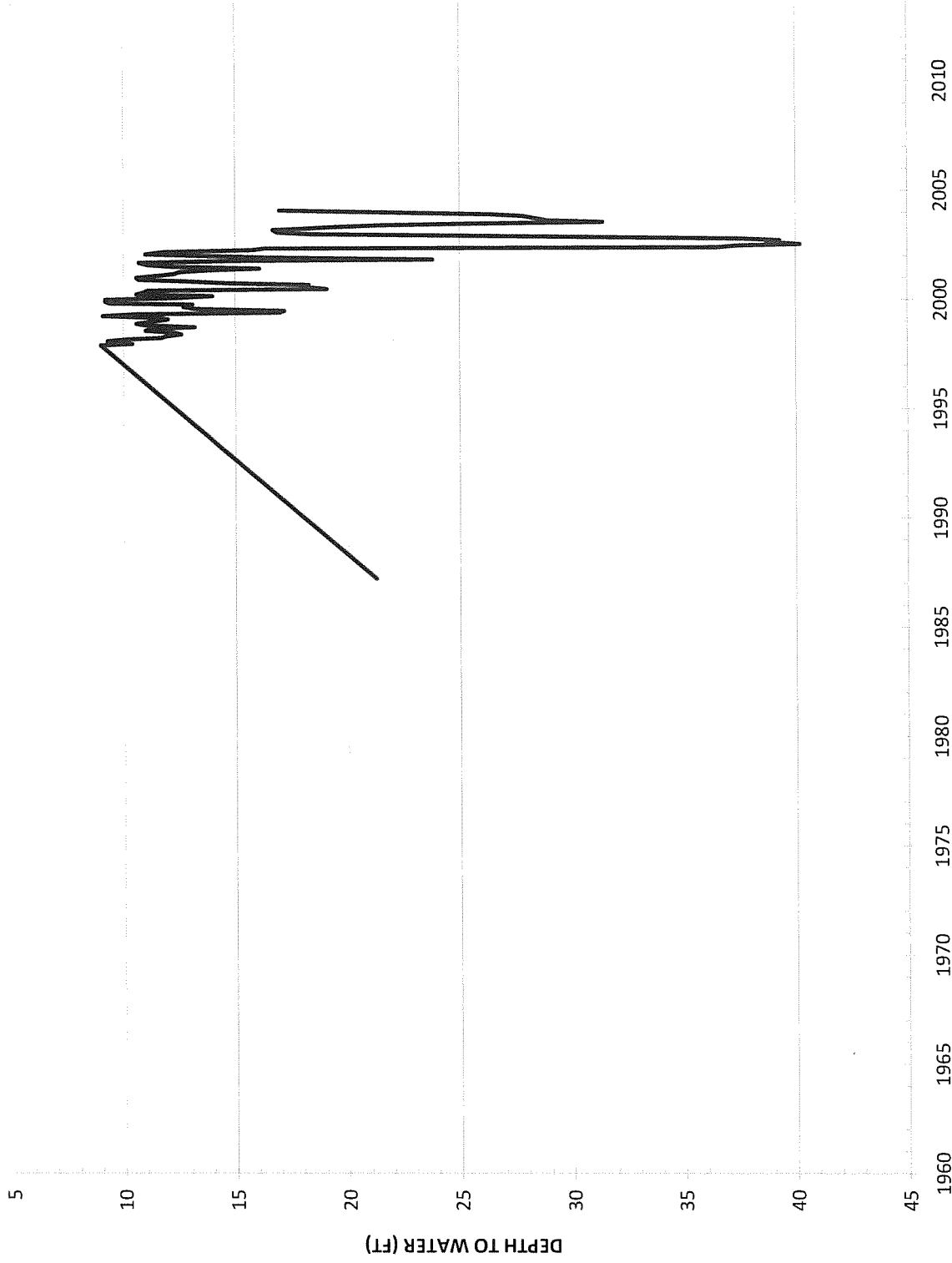
**WELL 5S 10E 28CAB1
(Well #2)**



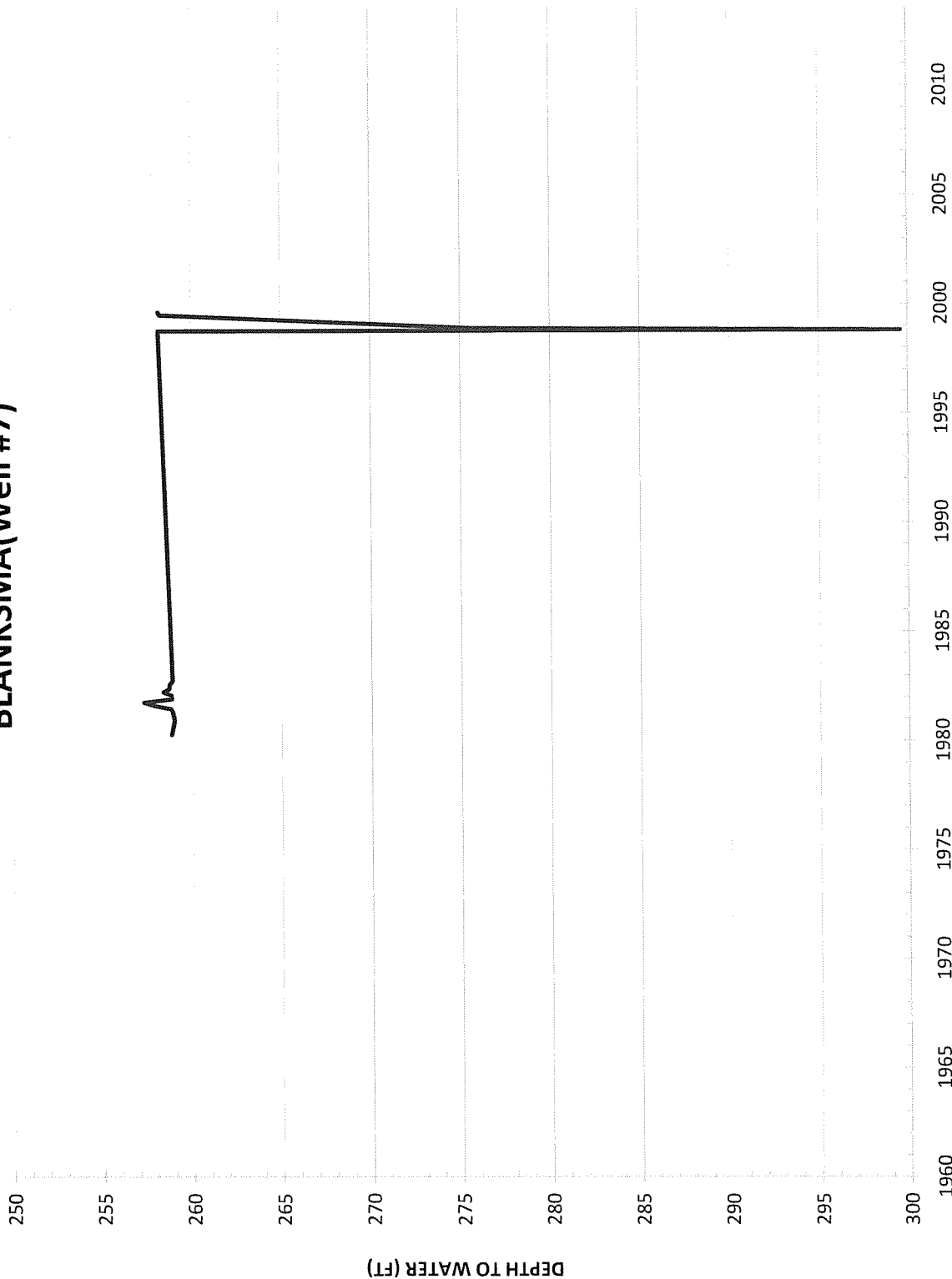
WELL 5S 10E 32ADA1
POTUCEK(Well #3)



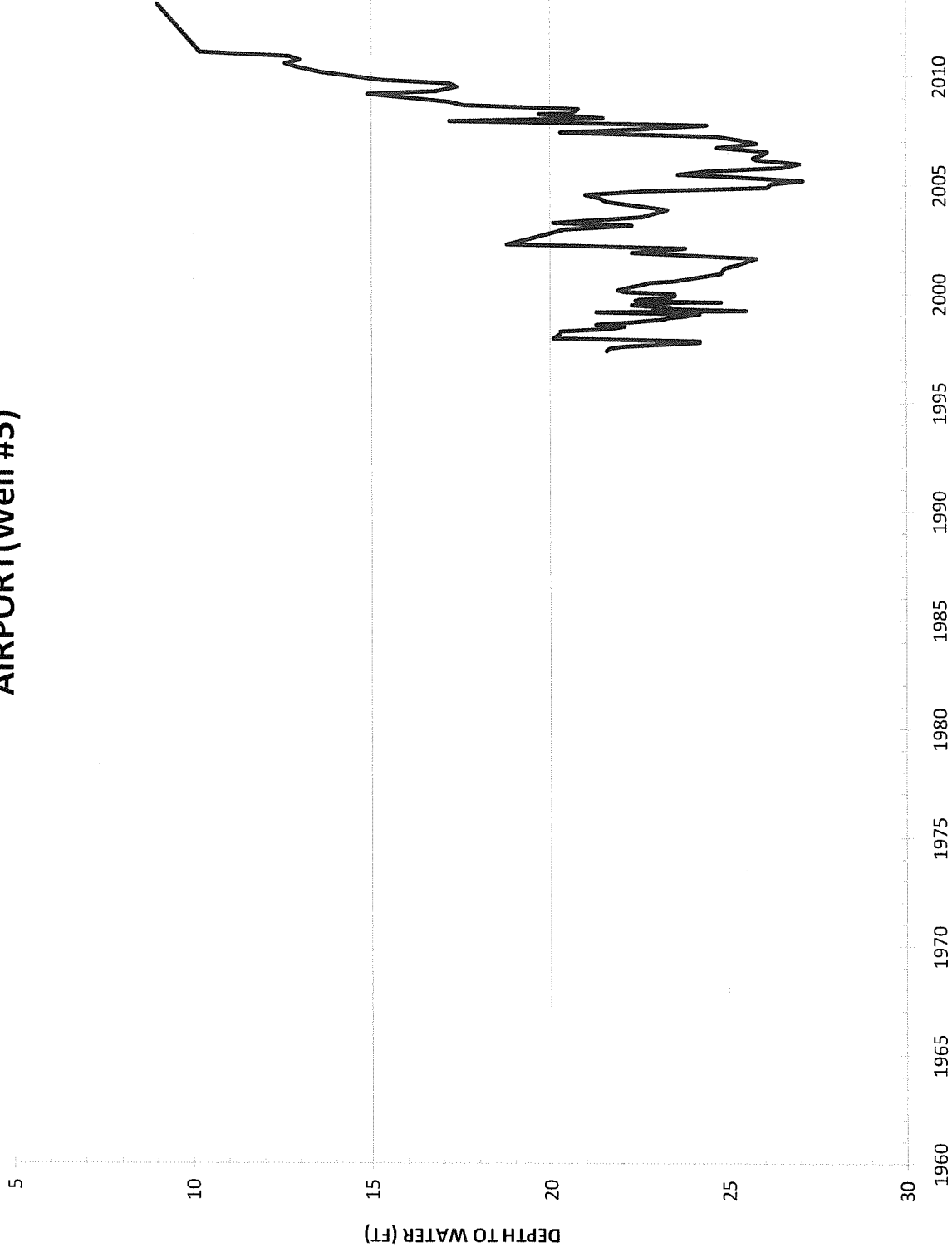
WELL 5S 11E 33DAC1



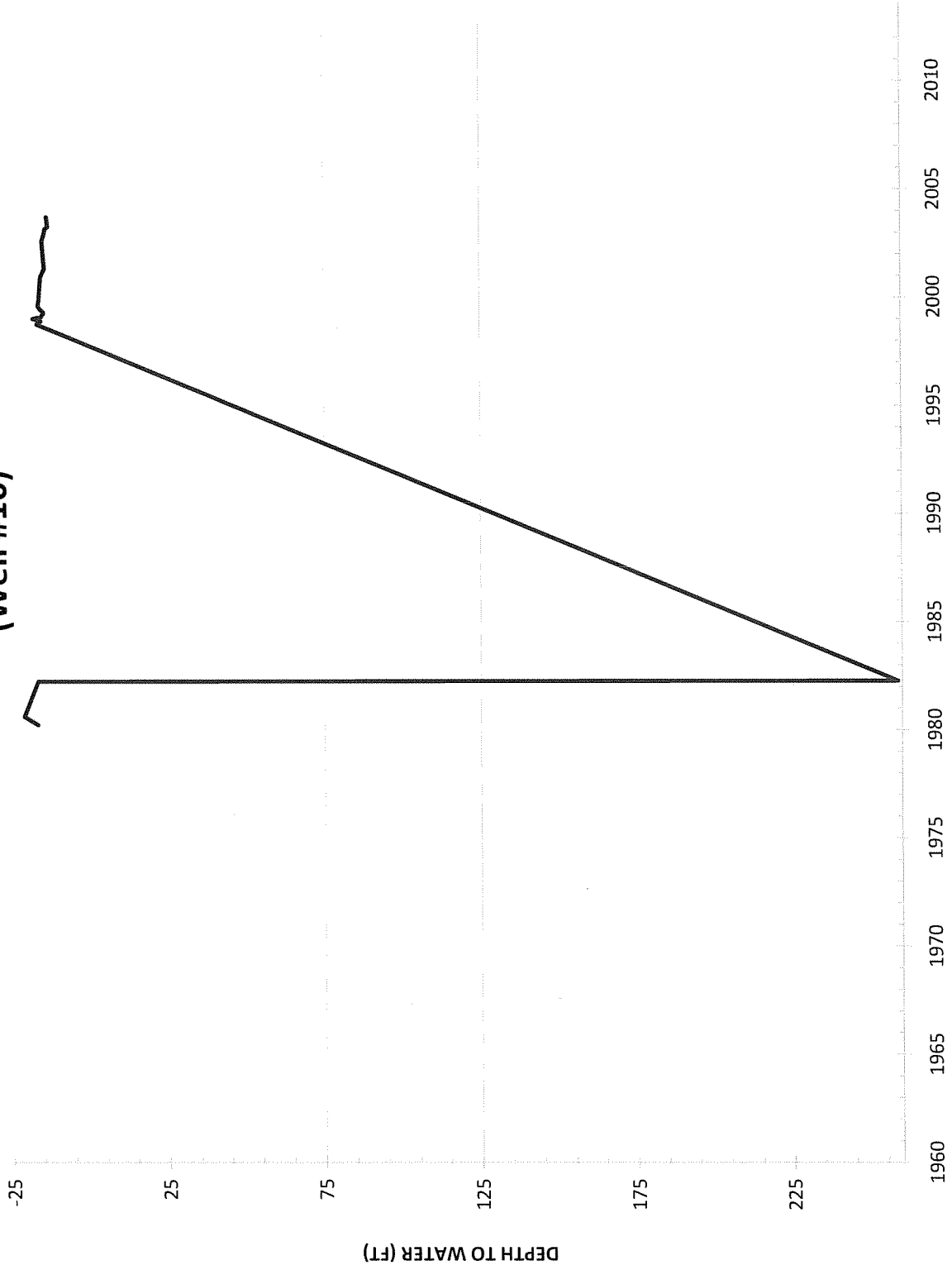
**WELL 5S 8S 17CAB1
BLANKSMA(Well #7)**



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



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



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 ^{GPH} 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. *AKIN*

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.

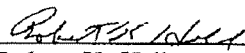
10. Entire Agreement. This Agreement is the entire agreement between the parties.

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.

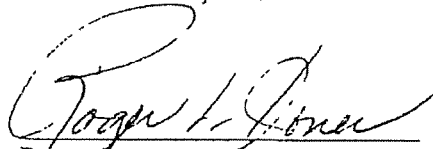
12. Binding Nature. This Agreement shall constitute a covenant which runs with the land to which Protestant's Water Right No. 61-10013 is appurtenant (i.e., the place of use listed on Exhibit "A") and shall be binding on the parties and their successors and assigns. Upon execution, Magic West shall cause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

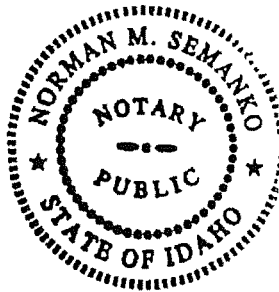
HALL8.AGR

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.

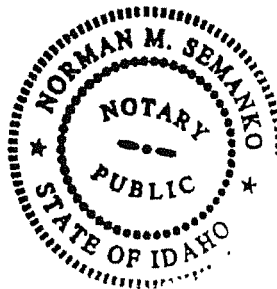


N. M. S.
NOTARY PUBLIC FOR IDAHO
Residing at: Twin Falls, Idaho
My commission expires: 9-21-2004

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.



[Signature]
NOTARY PUBLIC FOR IDAHO
Residing at: Twin Falls, Idaho
My commission expires: 9-21-2004

315221

ELMORE COUNTY, IDAHO ss
Request of

Rusholt, Robertson & Sucku
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)
) PARTIAL DECREE PURSUANT TO
) I.R.C.P. 54(b) FOR
Case No. 39576)
) Water Right 61-10013

NAME & ADDRESS: ROBERT K HALL
RT 1 BOX 103
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: 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

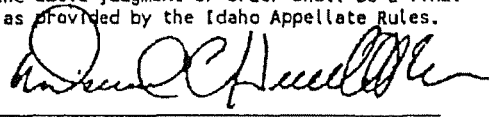
PLACE OF USE: DOMESTIC Within ELMORE County
T05S R09E S35 NENE

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 Glenns 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 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 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 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 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.

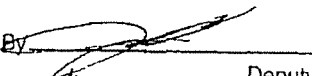
PROTESTANT


John R. Solosabal

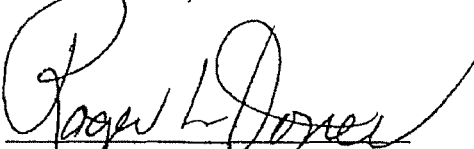
315285

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

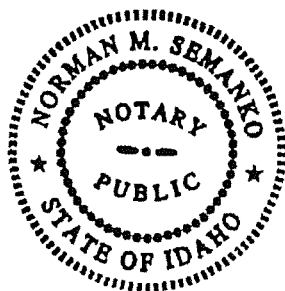
SOLOSABAL.AGR

AGREEMENT - 3

STATE OF IDAHO)
)ss.
County of Elmore)

On the 24 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.

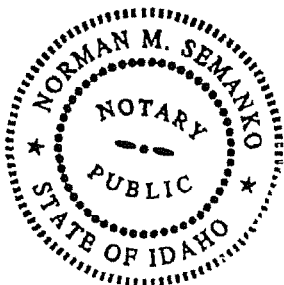


N - 7.5
NOTARY PUBLIC FOR IDAHO
Residing at: Twin Falls, Idaho
My commission expires: 9-21-2004

STATE OF IDAHO)
)ss.
County of Elmore)

On this 24 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)

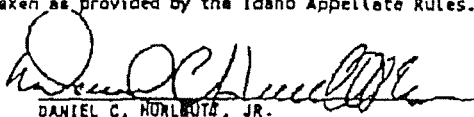
DOMESTIC Within ELMORE County
T06S R09E S01 Lot 2 (NW NW)

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. NORBLUTH, 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
DEC 26 1998

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 Glenss 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 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 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 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 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.

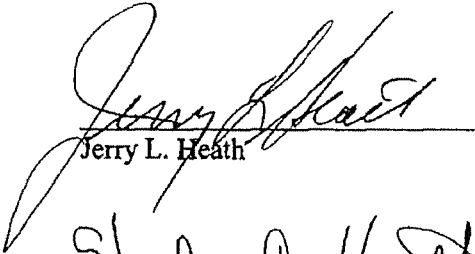
9. Entire Agreement. This Agreement is the entire agreement between the parties.

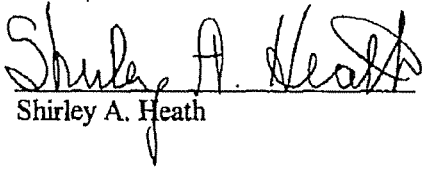
10. Attorney Fees. In the event that either party is required to enforce the terms of this Agreement in an administrative or judicial proceeding, the prevailing party shall be entitled to a reasonable attorney fee from the losing party.

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.

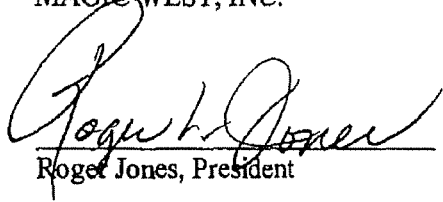
DATED THIS 6 day of May, 1999.

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 Roberton + Jucker

Time 10:43 A.M.

Date May 10, 1999

GAIL L. BEST, Recorder

By [Signature] Deputy

Fee \$18.00

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

FILED IN 1:27
DISTRICT COURT
TWIN FALLS, IDAHO

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
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)

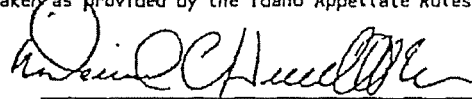
Place of use for STOCKWATER is same as DOMESTIC

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 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 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 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 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 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 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 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.

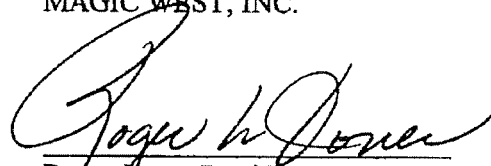
11. Binding Nature. This Agreement shall constitute a covenant which runs with the land to which Protestant's domestic and/or stockwater use is appurtenant and shall be binding on the parties and their successors and assigns. Upon execution, Magic West shall cause a copy of this Agreement to be recorded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

DATED THIS 6 day of May, 1999.

PROTESTANT


Fred Mackey

MAGIC WEST, INC.


Roger Jones, President

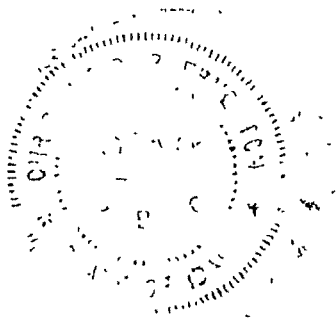
MACKEY.AGR

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.

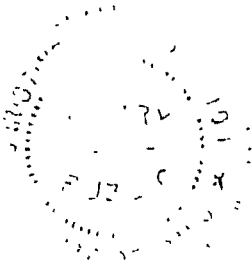


Christine D. Phemetton
NOTARY PUBLIC FOR IDAHO
Residing at: Glenn Ferry, Elmore Co.
My commission expires: 5/01/2001

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. Phamilton
NOTARY PUBLIC FOR IDAHO
Residing at: Shenandoah, Elmore Co.
My commission expires: 2/1/2001

315223

ELMORE COUNTY, IDAHO ss
Request of

Rehelt Robertson & Linder

Time 10:44 A.M

Date May 10, 1999

GAIL L. BEST, Recorder

By [Signature]

Fee \$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 Glenss 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 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;

(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 Eichholz
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.

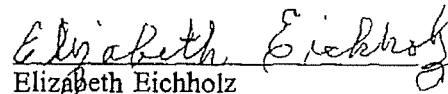
9. Entire Agreement. This Agreement is the entire agreement between the parties.

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.

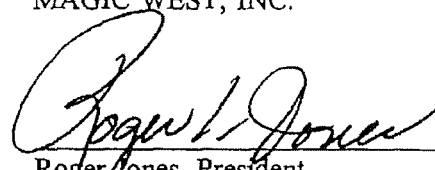
11. Binding Nature. This Agreement shall constitute a covenant which runs with the land to which Protestant's Water Right No. 51-10285 is appurtenant (i.e., the place of use listed on Exhibit "A") and shall be binding on the parties and their successors and assigns. Upon execution, Magic West shall cause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

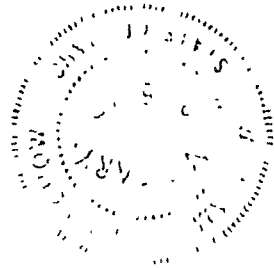
)ss.

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 Floyd Elmer
NOTARY PUBLIC FOR IDAHO
Residing at: Rupert, Idaho
My commission expires: 03/04/2000



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 Elson
NOTARY PUBLIC FOR IDAHO
Residing at: Reupert, Idaho
My commission expires: 03/25/2000

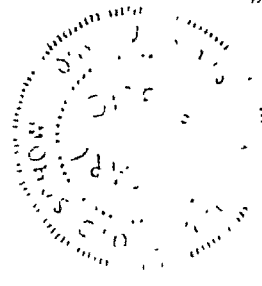


EXHIBIT A

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

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

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