PUMPAGE AND GROUND WATER DATA

GLENNS FERRY

- MAGIC WEST PUMPAGE
- USGS WELL
- AIRPORT WELL
- JERRY HEATH WELL
- ED POTUCEK WELL

DISCONTINUED

AVE: 1.83 mil/gal/wk

SHUT DOWN

DEPTH TO WATER IN FEET ABOVE OR BELOW LAND SURFACE

10
0
-10
-20

PUMPAGE IN GALLONS PER WEEK

5000000
4000000
3000000
2000000
1000000
0

9/26/96
11/15/96
1/4/97
2/23/97
4/14/97
6/3/97
7/23/97
9/11/97
10/31/97
12/20/97
2/8/98
3/30/98
5/19/98
7/8/98
8/27/98
10/16/98
12/5/98
1/24/99
3/15/99
5/4/99
6/23/99
8/12/99
10/1/99
11/20/99
1/9/00
2/28/00
4/18/00
6/7/00
7/27/00
9/15/00
11/4/00
12/24/00
2/12/01
4/3/01

DATE

ATTACHMENT #3

PREPARD BY THE IDAHO DEPARTMENT OF WATER RESOURCES APRIL 01 SB

MICROFILMED
MAR 0 6 2003

PUMPAGE AND GROUND WATER DATA

GLENNS FERRY

- MAGIC WEST PUMPAGE
- USGS WELL
- AIRPORT WELL
- JERRY HEATH WELL
- ED POTUCEK WELL

DISCONTINUED

DRAFT

AVE: 1.83 mil/gal/wk

SHUT DOWN

DEPTH TO WATER IN FEET ABOVE OR BELOW LAND SURFACE

10
0
-10
-20

PUMPAGE IN GALLONS PER WEEK

5000000
4000000
3000000
2000000
1000000
0

9/26/96
11/15/96
1/4/97
2/23/97
4/14/97
6/3/97
7/23/97
9/11/97
10/31/97
12/20/97
2/8/98
3/30/98
5/19/98
7/8/98
8/27/98
10/16/98
12/5/98
1/24/99
3/15/99
5/4/99
6/23/99
8/12/99
10/1/99
11/20/99
1/9/00
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2/12/01
4/1/01

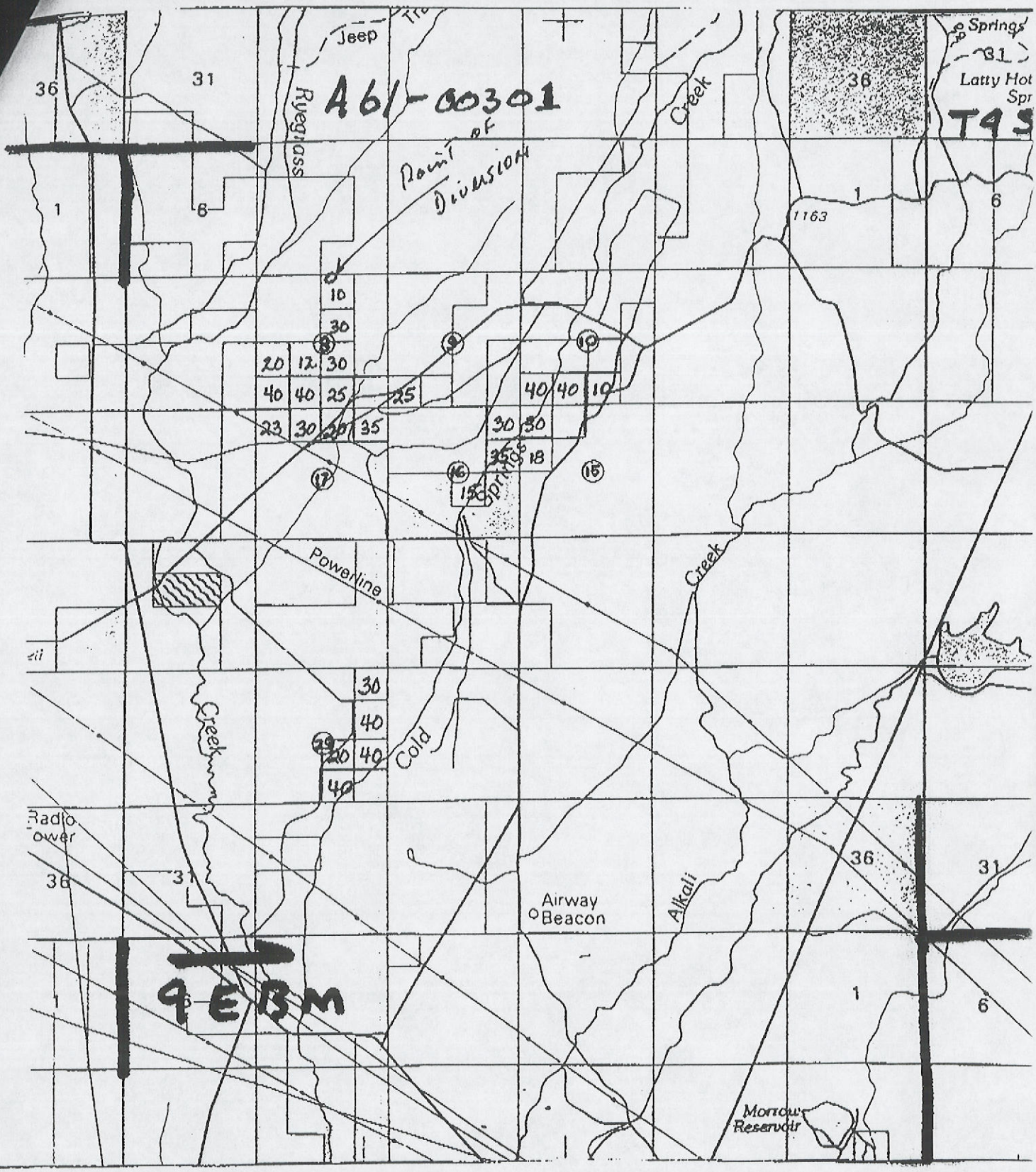
DATE

ATTACHMENT #3

PREPARD BY THE IDAHO DEPARTMENT OF WATER RESOURCES APRIL 01 SB

MICROFILMED
MAR 0 6 2003

Draw a map indicating the point(s) of diversion and place of use of the right, or portion thereof. Show clearly the land involved by section, township and range.



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OCT 05 2000

Exhibit 3

Department of Water Resources
APPLICANT'S
Exhibit 9
Date Admitted

In File

Form 219
6/86

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

BENEFICIAL USE FIELD REPORT

A. GENERAL INFORMATION

Permit No. 61-7189

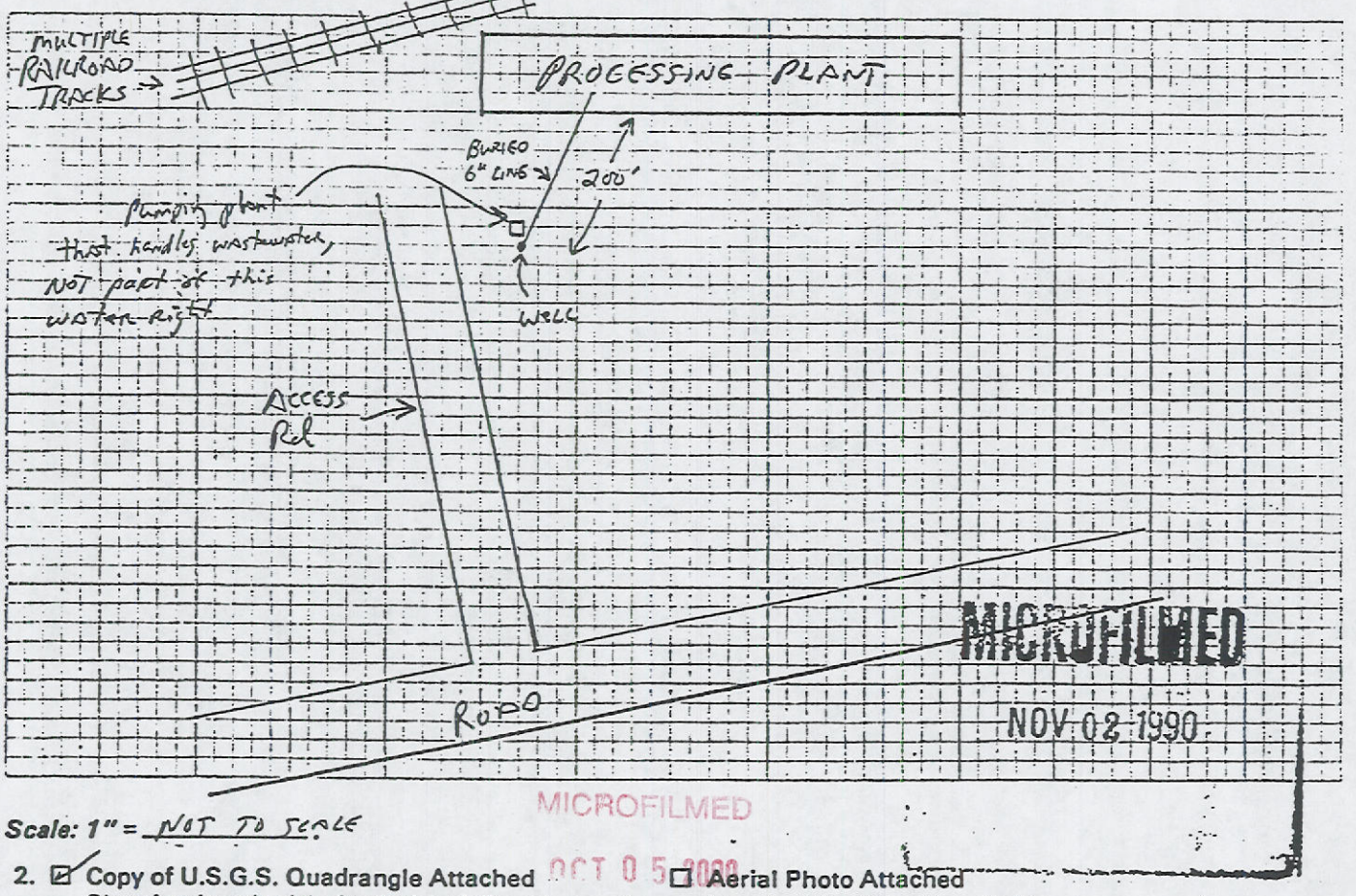
1. Owner: Magic West Inc. Phone No. 366-7477
   Current Address: P.O. Box 968 Glenns Ferry, Id. 83623
2. Accompanied by: Doug Masson EXAM. DATE: 8/4/87
   Address: Same Phone No. Same
   Relationship to Permit Holder: Maint. Supt.
3. Source: groundwater tributary to —

B. OVERLAP REVIEW

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

C. SYSTEM DESCRIPTION

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



Scale: 1" = NOT TO SCALE

MICROFILMED
OCT 05 2000

2. ☑ Copy of U.S.G.S. Quadrangle Attached Showing location(s) of point(s) of diversion and place(s) of use (required).
   ☐ Aerial Photo Attached (required for irrigation of 10 acres or more).
   ☑ Photo of Diversion and System Attached

Form 219
6/86

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

BENEFICIAL USE FIELD REPORT

A. GENERAL INFORMATION

Permit No. 61-7189

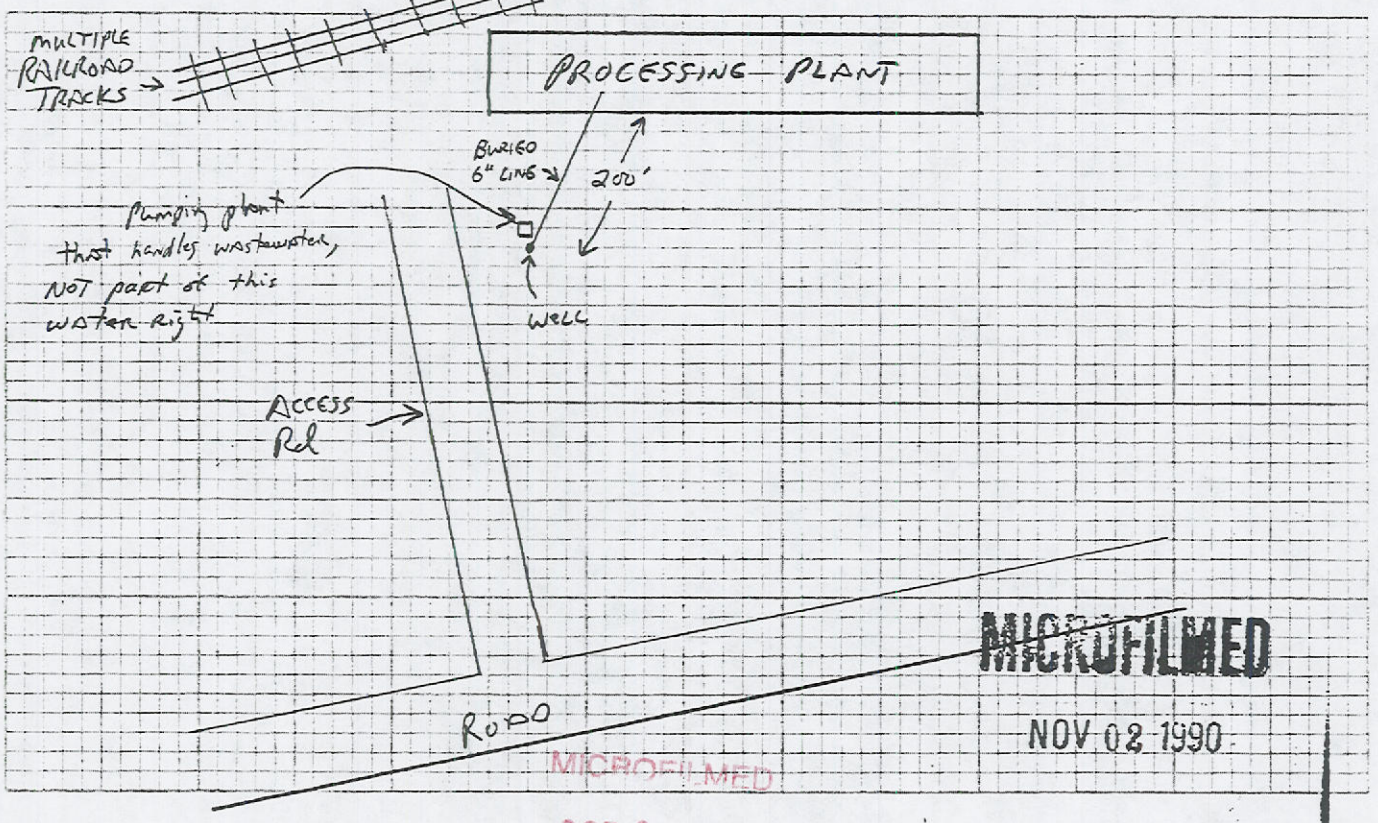
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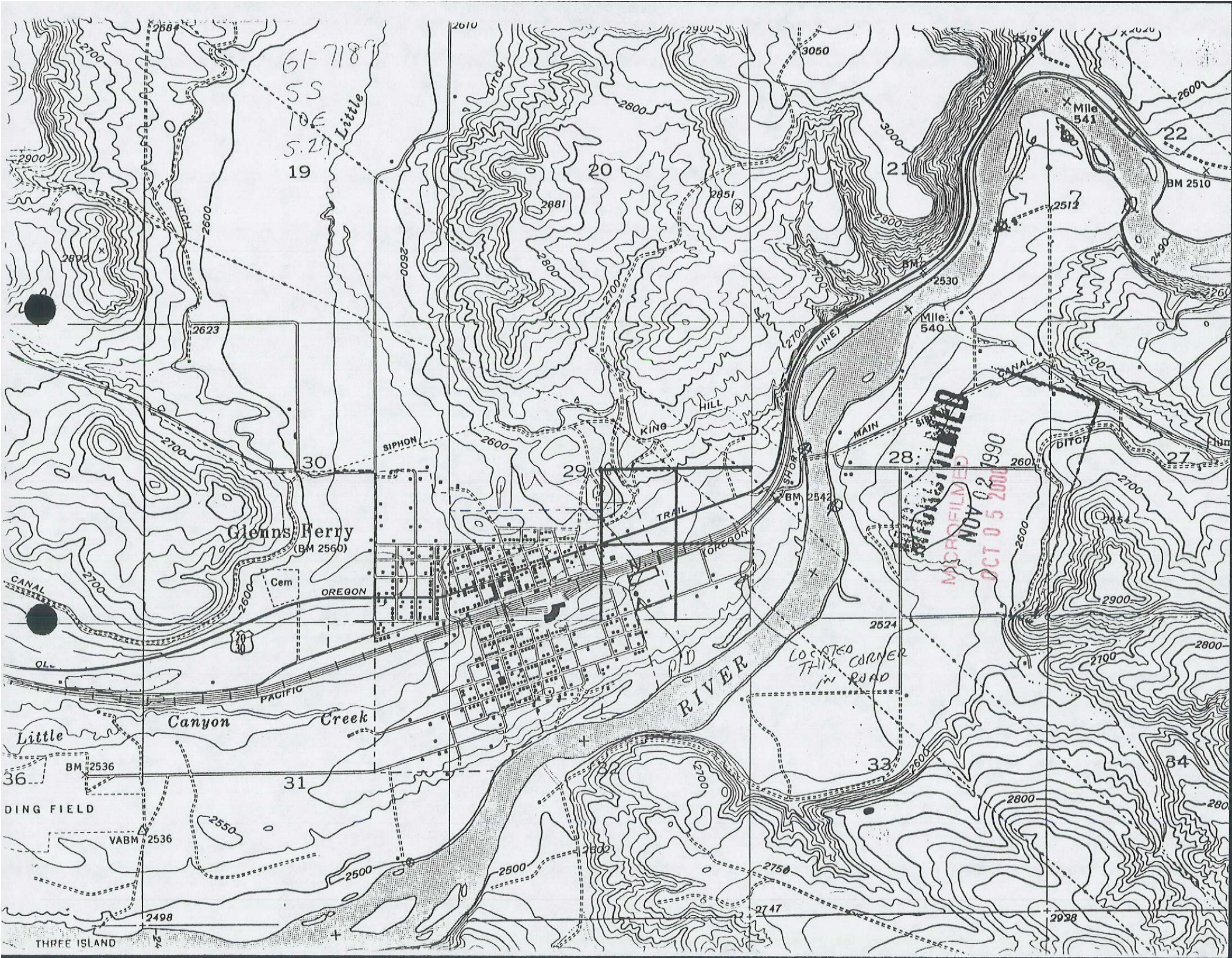
1. **Diversion System Diagram:** Indicate all major components and distances between components. Indicate weir size/ditch size/pipe i.d. as applicable. ☐ Alternative diagram attached



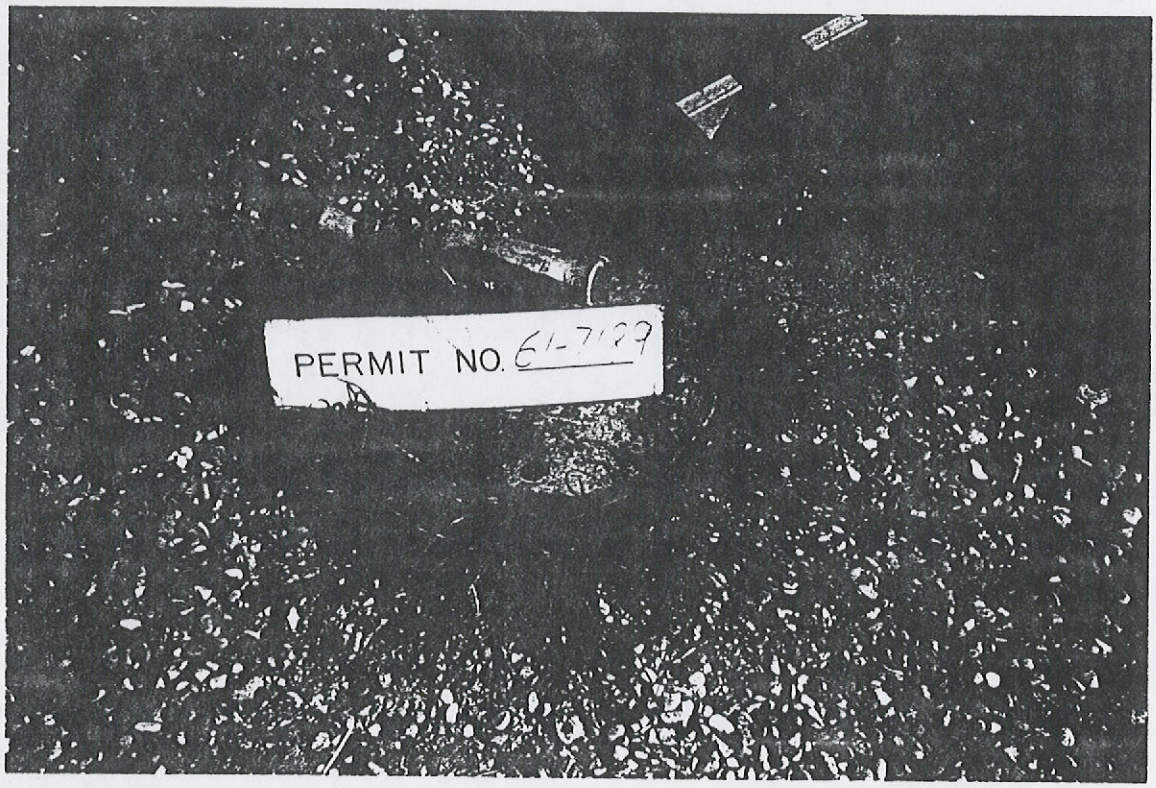
MICROFILMED
NOV 02 1990
MICROFILMED
OCT 05 2000

Scale: 1" = NOT TO SCALE

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

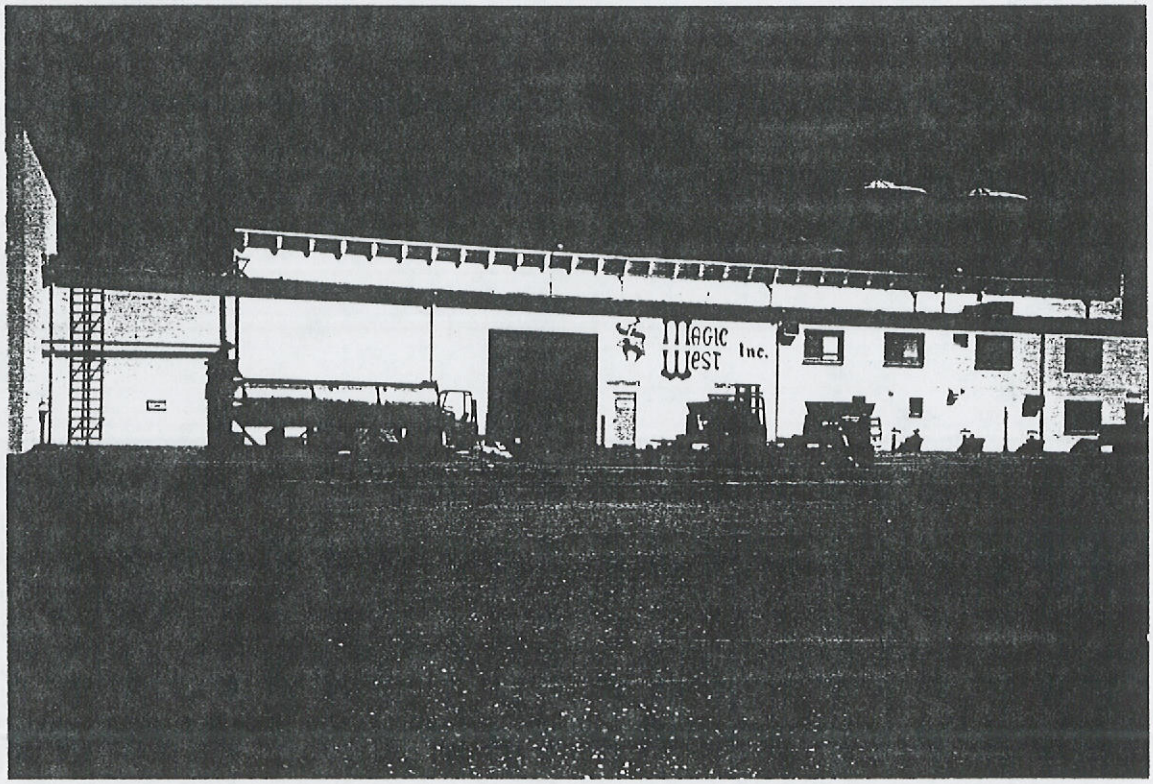

61-7187
5S
10E
5.29
Little
Glenns Ferry
(BM 2560)
Cem
OREGON
TRAIL
SIPHON
KING
HILL
MAIN
CANAL
DITCH
LINE
SHORT
PACIFIC
Canyon
Creek
Little
BM 2536
VABM 2536
BM 2542
BM 2530
BM 2510
Mile 541
Mile 540
RIVER
LOCATED THIS CORNER IN ROAD
MICROFILMED
NOV 02 1990
PCT 0 5 20m
THREE ISLAND
19
20
21
22
27
28
29
30
31
33
34
36

61-7189



P/D

well just behind pumping plant at Magic West plant in Glenns Ferry.



P/U

Looking North from well to plant.

MICROFILMED
NOV 02 1990

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OCT 05 2000

USE TYPEWRITER OR BALL POINT PEN

State of Idaho
Department of Water Resources

EXTRA COPY

WELL DRILLER'S REPORT

State law requires that this report be filed with the Director, **Department of Water Resources within 30** days after the completion or abandonment of the well.

1. WELL OWNER

Name MAGIC VALLEY FOODS-Inc

Address Box V, GLENNS FERRY-Id

Owner's Permit No. 8623

2. NATURE OF WORK

☒ New well ☐ Deepened ☐ Replacement

☐ Abandoned (describe method of abandoning)

3. PROPOSED USE

☐ Domestic ☐ Irrigation ☐ Test ☐ Other (specify type)

☐ Municipal ☒ Industrial ☐ Stock ☐ Waste Disposal or Injection

4. METHOD DRILLED

☒ Cable ☐ Rotory ☐ Dug ☐ Other

5. WELL CONSTRUCTION

Diameter of hole 10 inches Total depth 1230 feet

Casing schedule: ☐ Steel ☐ Concrete

Thickness	Diameter	From	To
1/4" inches	10" inches	+2 feet	195 feet
____ inches	____ inches	____ feet	____ feet
____ inches	____ inches	____ feet	____ feet
____ inches	____ inches	____ feet	____ feet
____ inches	____ inches	____ feet	____ feet

Was casing drive shoe used? ☐ Yes ☐ No

Was a packer or seal used? ☐ Yes ☒ No

Perforated? ☐ Yes ☒ No

How perforated? ☐ Factory ☐ Knife ☐ Torch

Size of perforation ____ inches by ____ inches

Number	From	To
____ perforations	____ feet	____ feet
____ perforations	____ feet	____ feet
____ perforations	____ feet	____ feet

Well screen installed? ☐ Yes ☒ No

Manufacturer's name ____

Type ____ Model No. ____

Diameter ___ Slot size ___ Set from ____ feet to ____ feet

Diameter ___ Slot size ___ Set from ____ feet to ____ feet

Gravel packed? ☐ Yes ☒ No Size of gravel ____

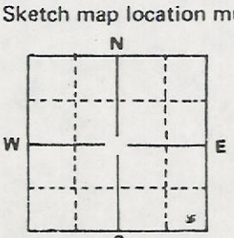
Placed from ____ feet to ____ feet

Surface seal depth 18ft Material used in seal ☒ Cement grout ☐ Puddling clay ☐ Well cuttings

Sealing procedure used ☐ Slurry pit ☐ Temporary surface casing ☒ Overbore to seal depth

6. LOCATION OF WELL

Sketch map location must agree with written location.



MICROFILMED NOV 02 1990

Subdivision Name ____

Lot No. 2 Block No. 30

County ELMORE

E ¼ S ¼ Sec. 29, T. 5 N/S, R. 10 E/W

7. WATER LEVEL

55 drawn 407 gal

Static water level 12' feet below land surface

Flowing? ☐ Yes ☒ No G.P.M. flow ____

Temperature ____ ° F. Quality ____

Artesian closed-in pressure ____ p.s.i.

Controlled by ☐ Valve ☐ Cap ☐ Plug

8hr

8. WELL TEST DATA

80 tons

☐ Pump ☐ Bailer ☐ Other

Discharge G.P.M.	Draw Down	Hours Pumped

9. LITHOLOGIC LOG

Hole Diam.	Depth From	Depth To	Material	Water Yes	Water No
10	0	4	SOIL		
	4	70	CLAY, SAND & GRAVEL		
	70	95	CLAY WITH SOME SAND		
	95	240	BLUE CLAY		
	240	390	BLUE CLAY WITH FINE SAND	X	
	390	660	BLUE CLAY		
	660	680	GRAY CLAY		
	680	800	BLUE CLAY		
	800	815	SAND & CLAY	X	
	815	820	FINE SAND & CLAY	X	
	820	880	SAND STONE	X	
	880	885	BLUE CLAY		
	885	950	GRAY CLAY		
	950	970	SAND STONE	X	
	970	1015	GRAY CLAY		
	1015	1020	GRAY CLAY WITH LAYERS OF BLUE CLAY & RED WAS HOT TO BOTTOM		
	1020	1070	GRAY SANDY CLAY WITH LAYERS OF SAND STONE		
	1070	1145	GRAY CLAY WITH LAYERS OF BLUE SHALE		
	1145	1220	GRAY CLAY		
	1220	1230	GRAY CLAY WITH LAYERS OF SAND	X	

10.

Work started 7 Jun '14 finished 13 JUL '14

11. DRILLERS CERTIFICATION

Firm Name Middleton Drilling Firm No. 55

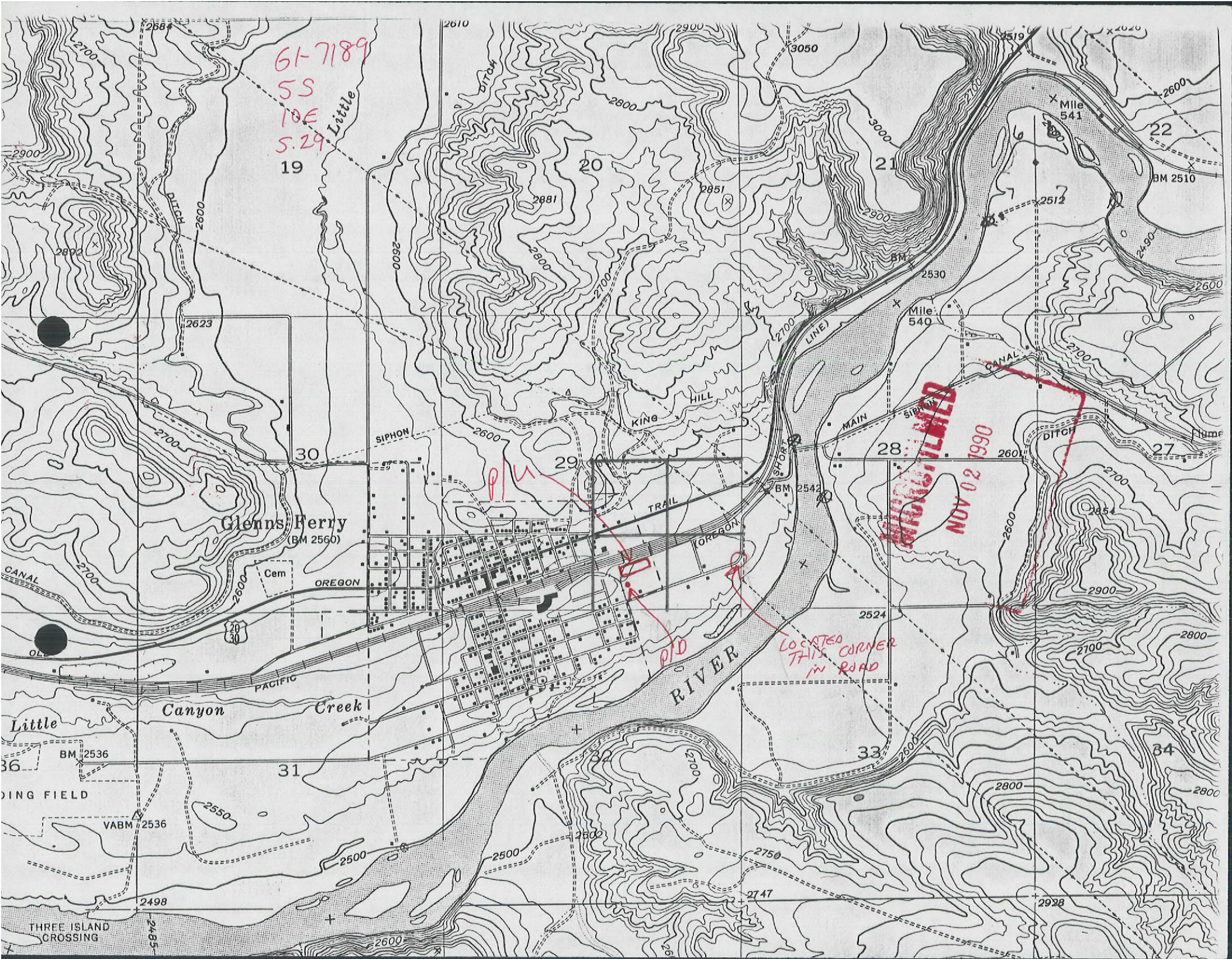
Address Rt 1 Box 6000 Mtn. Home Date 18 JUL '14

Signed by (Firm Official) C.L. MIDDLETON

and

(Operator) K.W. TOMASON

USE ADDITIONAL SHEETS IF NECESSARY FORWARD THE WHITE COPY TO THE DEPARTMENT


61-7189
5S
10E
S.29
Little
DITCH
19
20
21
22
Mile 541
BM 2510
2512
2851
2881
BM 2530
Mile 540
LINE)
CANAL
HILL
KING
SIPHON
30
29
28
27
MAIN
SIPHON
DITCH
Flume
SHORT
BM 2542
TRAIL
OREGON
Glenns Ferry
(BM 2560)
Cem
OREGON
CANAL
PACIFIC
Canyon
Creek
Little
BM 2536
31
32
33
34
RIVER
LOCATED THIS CORNER IN ROAD
VABM 2536
2524
2747
2928
2498
2485
THREE ISLAND CROSSING

61-7189



P/O

well just behind pumping plant at Magic West plant in Glenns Ferry.



P/U

Looking North from well to plant.

MICROFILMED
NOV 02 1990

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 61-07189

2002 JUN -4 AM 11:58

T-SRBA
TWIN FALLS CO., IDAHO
FILED

NAME AND ADDRESS: MAGIC WEST INC
PO BOX 475
RUPERT, ID 83350

SOURCE: GROUNDWATER

QUANTITY: 0.67 CFS
58.00 AFY

USE OF THIS RIGHT WITH RIGHT NO. 61-02248B IS LIMITED TO A TOTAL COMBINED DIVERSION RATE OF 0.67 CFS

PRIORITY DATE: 07/10/1974

POINT OF DIVERSION: T05S R10E S29 SWSE Within Elmore 0002 County

PURPOSE AND PERIOD OF USE:

PURPOSE OF USE	PERIOD OF USE	QUANTITY
Industrial	08-15 TO 07-01	0.67 CFS 58.00 AFY

INDUSTRIAL USE IS FOR POTATO PROCESSING PLANT

PLACE OF USE: Industrial
T05S R10E S29 SWSE Within Elmore 0002 County

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

THIS PARTIAL DECREE IS SUBJECT TO SUCH GENERAL PROVISIONS NECESSARY FOR THE DEFINITION OF THE RIGHTS OR FOR THE EFFICIENT ADMINISTRATION OF THE WATER RIGHTS AS MAY BE ULTIMATELY DETERMINED BY THE COURT AT A POINT IN TIME NO LATER THAN THE ENTRY OF A FINAL UNIFIED DECREE. I.C. SECTION 42-1412(6).

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.

R Burdick

Roger Burdick
Presiding Judge of the
Snake River Basin Adjudication

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MAR 0 6 2003

THIS RIGHT HAS BEEN

DECREED

IN THE

SRBA

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

IN THE MATTER OF AMENDED LICENSE NO. 61-07189 IN THE NAME OF MAGIC WEST	**NOTICE OF RESCHEDULED HEARING**

At the request of Magic West, the department scheduled a hearing in the above captioned matter to be held in Glenns Ferry, Idaho on March 12, 1999.

On March 10, 1999, Magic West submitted a Motion to Continue Hearing to the department. The motion seeks to have the hearing which is scheduled on March 12, 1999, vacated and to have the hearing rescheduled on March 30, 1999 in Glenns Ferry.

By service of this Notice of Rescheduled Hearing, the hearing scheduled for March 12, 1999 is hereby **VACATED** and is **RESCHEDULED** as follows:

Date:	March 30, 1999
Time:	10:00 a.m.
Place:	City Hall Glenns Ferry, Idaho

The hearing will be conducted in a facility which meets the accessibility requirements of the Americans with Disabilities Act. If you require special accommodations in order to attend, participate in or understand the hearing, please advise the department within (10) days prior to the hearing.

Dated this 10th day of March, 1999.

L. Glen Saxton

L. GLEN SAXTON
Hearing Officer

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CERTIFICATE OF MAILING

I DO HEREBY CERTIFY that on this 10th day of March, 1999, the above and foregoing document was served upon the following by placing a copy of the same in the United State Mail, postage prepaid and properly addressed to the following:

MAGIC WEST INC
PO BOX 475
RUPERT ID 83350

EDWARD T POTUCEK
ROSEVEAR RD
PO BOX 537
GLENNS FERRY ID 83623

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

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

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

ROBERT K HALL
RT 1 BOX 103
GLENNS FERRY ID 83623

Julie L. Yarbrough

JULIE L. YARBROUGH
Senior Secretary, Water Allocation Bureau

OCT 05 2000

MICROFILMED
OCT 05 2000

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

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

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

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

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

A2. **Magic West has failed to produce verifiable records for the amount of waste water discharged from its plant to the City of Glenns Ferry sewer system, the**

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OCT 0 5 2000

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

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

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OCT 0 5 2000

B1. **The cease and desist order should not be removed and has no relationship to Magic West's diligence or lack of diligence in pursuing alternatives to obtain adequate water rights for its Glenns Ferry plant**. Magic West argues that the cease and desist order should be stricken or at least modified because Magic West claims to have been diligent in pursuing alternatives to obtain adequate water rights for its Glenns Ferry plant. Idaho Code § 42-350(1)(b) allows the Director to issue a cease and desist order when on the basis of available information after a license has been issued, "the licensee . . . has wilfully or intentionally failed to comply with any of the conditions in the license, or has wilfully or intentionally failed to comply with provisions of the law governing the license." The record in this matter shows that Magic West wilfully or intentionally failed to comply with the condition of Water Right License No. 61-07189 limiting the annual volume of ground water that could be diverted as the license was originally issued or has been amended. Even if Magic West has been diligent in pursuing alternatives to obtain adequate water rights for its Glenns Ferry plant, not issuing a cease and desist order in this instance would imply that Magic West's failure to comply with the limitation on annual diversion volume was not intentional or wilfull. This would not be consistent with the record.

B2. **The cease and desist order will not hinder Magic West's pursuit of its pending application for permit to appropriate water or other possible alternative water supplies and is not inconsistent with the procedures described in various correspondence**. Magic West argues that the cease and desist order should be removed or should not be effective until after a final decision is made on pending Application for Permit No. 61-07724 or until Magic West has adequate time to assess its options to secure an alternative water supply. The cease and desist order has no relationship to Magic West's pending application to appropriate water or other water supply alternatives it may pursue. Consequently, the cease and desist order will not hinder these activities. The cease and desist order is also not inconsistent with the procedures described in various correspondence. The cease and desist order essentially has no effect until the volume of ground water diverted and used at Magic West's plant reaches the annual volume limitation specified in the amended license, which Magic West has calculated to occur no earlier than April 10, 1999. Therefore, actual enforcement will not occur until the annual volume limitation is reached, which will be several months following issuance of the Final Order amending the water right license.

B3. **A determination of injury is not required prior to issuing a cease and desist order under § 42-350**. Magic West argues that the cease and desist order should be removed or amended to become effective only after a determination of injury is made. However, the purpose for the cease and desist order is to ensure that Magic West complies with the annual volume limitation set forth in Amended Water Right License No. 61-07189 given that, based on available information, Magic West has wilfully or intentionally failed to comply with the annual volume

OCT 0 5 2000

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

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

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

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

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ORDER

IT IS THEREFORE, hereby ORDERED as follows:

1. The Petition for Reconsideration filed by Magic West is **DENIED**.

2. The Petition to Stay the cease and desist order is **DENIED**.

2. The Request for Hearing is **GRANTED**. Said hearing will be held at 10:00 am on Friday, March 12, 1999, at the Glenns Ferry City Hall. Mr. L. Glen Saxton will preside as hearing officer.

Signed this 23rd day of February, 1999.

KARL J. DREHER
Director

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CERTIFICATE OF MAILING

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

(Certified mail #P-581 145 487)
MAGIC WEST INC
P O BOX 475
RUPERT ID 83350

EDWARD T POTUCEK
ROSEVEAR RD
P O BOX 537
GLENNS FERRY ID 83623

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

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

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

ROBERT K HALL
ROUTE 1 BOX 103
GLENNS FERRY ID 83623

Rita I. Fleck, Administrative Assistant

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BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

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

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

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

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

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

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

4. **Records of waste water pumped from Magic West's plant to Magic West's waste water farm do not corroborate the testimony of witnesses for Magic West that Magic West's plant operations and associated beneficial use of water were the same during and following the time period authorized for development by the permit to appropriate water. Consequently, the**

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

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

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

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

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

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

6. **The alternate calculation proposed by Magic West to estimate beneficial use during the development period is not supported by adequate evidence**. In its exceptions, Magic West contends that "There is no dispute that the plant has always been operated 24-hours per day, using 3 8-hour shifts per day. Tr. at 120 (Anderson), 195 (Ogden), 222 (Schow). It was also undisputed that the flow of the plant was constant while it was in operation. Tr. at 28, 231-32." Therefore, as an alternate calculation to the use of Magic West's proposed input-output formula, Magic West proposes to multiply 0.67 cfs (which is equivalent to a flow rate of 433,000 gallons per day) by the number of days the plant was operated during 1978 (217 days) and by the conversion factor 1.9835, which is the volume of water in acre-feet that results from a constant flow rate of 1 cfs for 24 hours. However, the records of waste water discharged to the waste water farm during fiscal year 1978 show that the plant was not operated at a constant flow rate for 24 hours each day the plant was in operation. At maximum operations, during June of 1978, the records of waste water discharged to Magic West's waste water farm show that Magic West's plant was operated 28 days for an average of 22.8 hours per day and discharged an average of 235,064 gallons of waste water per day to the waste water farm. At minimum operations, during September of 1978, the records of waste water discharged show that Magic West's plant was operated 8 days for an average of 17. 5 hours per day and discharged an average of 156,687 gallons of waste water per day to the waste water farm. These records are not consistent with Magic West's contention the flow rate of water through the plant was constant each day the plant was in operation.

7. **The limitation on the volume of ground water diverted annually should not be removed from the Water Right License for Water Right No. 61-07189**. Section 42-219, Idaho Code, provides that a license issued by the Department shall state the "quantity of water which may be used" among other parameters. In licensing Water Right No. 61-07189, the Department specified an annual volume limitation together with a rate of diversion limitation to limit the quantity of water that can be used under the water right to the quantity of water that was beneficially used during the time period authorized for development under the permit to appropriate water. Because the records of waste water discharged from Magic West's plant to Magic West's waste water farm show that the plant was not operated using a constant flow rate 24 hours per day, 365 days per year, the diversion rate alone is not sufficient to limit the quantity of water that can be used to the amount beneficially used during the development period authorized by the permit to appropriate. Hence, the diversion volume should not be removed from the license as suggested by Magic West.

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

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

FINDINGS OF FACT

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

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

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

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

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

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

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

a. Petitioner's Exhibit 1 - Report on Annual Diversion Volume for License No. 61-07189 During Authorized Development Period 1974-1979

b. Petitioner's Exhibit 1A - Water Discharge Records from DEQ in connection with Magic West's plant

c. Petitioner's Exhibit 2 - Water Use Measurements 1996-1997 (Oct. 20 to Oct. 18)

d. Petitioner's Exhibit 3 - Water Usage Chart - Well Water - 1996 and 1997

e. Petitioner's Exhibit 4 - Water Usage Chart - City Water - 1996 and 1997

f. Petitioner's Exhibit 5 - Magic West Water Usage Chart - Discharge/Waste Water Pumped to Farm

g. Petitioner's Exhibits 6 thru 12 - NOT OFFERED

h. Petitioner's Exhibit 13 - Magic West Farm Water Report 04/06/87 through 04/30/87

I. Petitioner's Exhibit 14 - Magic West Farm Water Report 04/30/87 through 05/31/87

j. Petitioner's Exhibit 15 - Magic West Farm Water Report 06/01/87 through 06/30/87

k. Intervenor's Exhibits A thru D - NOT OFFERED

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l. Intervenor's Exhibit E - Letter to Magic West, Inc. from Kay Walker dated August 9, 1979

m. Intervenor's Exhibit F - NOT OFFERED

n. Intervenor's Exhibit G - Letter to Magic West, Inc. from Steve Lester dated July 23, 1987

o. Intervenor's Exhibits H thru Q - NOT OFFERED

p. Intervenor's Exhibit R - Memorandum to Gary Spackman from Steve Lester dated May 2, 1997

q. Intervenor's Exhibit S - NOT OFFERED

r. Intervenor's Exhibit T - Sale Agreement dated September 11, 1959

s. Intervenor's Exhibit U - Map of Glenns Ferry area showing total depth of selected wells

t. Intervenor's Exhibit V - Conservation Plan Map - Soils, Photo No. 3EE 102, April 1975

7. During the hearing, the hearing officer took official notice of all water right records in the Department's files.

8. Issues identified by the parties for post-hearing briefing included the following:

a. the Department's authority to issue an amended license

b. the Motion in Limine and Motion to Strike certain evidence

c. injury to intervenor Potucek

d. the extent of beneficial use of water by Magic West during the period authorized to appropriate water

9. The license examination information submitted to the Department by Magic West on April 21, 1987, advised the Department that Jack Anderson was the company's designated representative who was to accompany the Department's field examiner during the license examination conducted to determine the extent of beneficial use made of water under Permit to Appropriate Water No. 61-07189. The Department procedurally erred by not specifically contacting Mr. Anderson to schedule his participation in the field examination. Instead, Mr. Doug Mason, the maintenance superintendent at the Magic West facilities in Glenns Ferry,

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

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

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

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

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

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

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

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

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

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

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

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

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

Source:	Groundwater
Priority:	April 3, 1939
Rate of diversion:	0.40 cfs
Point of diversion:	Lot 3, Section 32, T5S, R10E, B.M.
Uses:	Domestic and bathing, irrigation of 3 acres
Place of use:	Same as point of diversion.
Remarks:	Use of low temperature geothermal water under this license was the subject of a Local Ground Water Board Ruling in April 1960. The board held that the authorized rate of diversion be reduced to 0.08 cfs. After October 1, 1960, the order of the board became permanent.

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CONCLUSIONS OF LAW

1. The Department has the statutory authority to amend the Water Right License for Water Right No. 61-07189 in accordance with § 67-5254(1), Idaho Code.

2. Magic West's use of water in 1997 was clearly larger than its water use during the 1970s, both in duration and the amount of water diverted and is not representative of Magic West's use of water in the late 1970s during the time period authorized by the permit to appropriate water.

3. The Department issued Water Right License No. 61-07189 based on information provided by Magic West during the beneficial use field examination conducted on August 4, 1987. Although the license was issued based on data provided by Magic West, the Department erred procedurally by failing to involve Magic West's designated representative in the field examination and subsequent requests for information.

4. The records submitted by Magic West during the hearing on December 15, 1997, show that Magic West used more water under Permit to Appropriate Water No. 61-07189 than reported to the Department in 1987 during the beneficial use field examination.

5. The data submitted by Magic West showing water discharged to the City of Glenns Ferry sewer system and the net amount of water lost during plant operations should not be considered in determining the amount of water actually diverted under the permit to appropriate water because the information available in the record is not sufficient to relate these data to actual plant operations and use of water during the time period authorized to appropriate water under the permit. With respect to the data showing discharge to the City of Glenns Ferry sewer system during 1975, the record does not show that a similar discharge was made to the sewer system during fiscal year 1978, the only year during the appropriation period authorized by the permit for which complete data are available documenting the amount of waste water discharged by Magic West to its waste water farm and the volume of water supplied by the City of Glenns Ferry. Similarly, the record does not establish that the net processing consumption and losses at the plant during 1997 are comparable to those during fiscal year 1978.

6. The Motion in Limine and to Strike: Re. Introduction of Certain Evidence to Establish Diversion Volume, filed by intervenor Edward Potucek, should be denied. Approval would have precluded the hearing that the Department authorized in its order dated October 22, 1997, designating a contested case.

7. The injury alleged by intervenor Potucek has no bearing on the extent of beneficial use of water made by Magic West during the period to appropriate water authorized by the permit. The present proceeding is to determine the volume of water authorized for diversion under License No. 61-07189. If Potucek, or one or more other groundwater users, can demonstrate injury because of groundwater diversions by Magic West, the Department's "Rules for Conjunctive Management of Surface and Groundwater Resources" provide procedures for the

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

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

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

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

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

= 58 acre-feet (rounded up)

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

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

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

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

ORDER

IT IS THEREFORE, hereby ORDERED as follows:

1. The renewed motion for dismissal filed by intervenor Hall is **DENIED**.

2. The Motion in Limine and to Strike: Re. Introduction of Certain Evidence to Establish Diversion Volume, filed by intervenor Potucek, which motion the hearing officer took under advisement, is **DENIED**.

3. Water Right License No. 61-07189 issued by the Department on October 27, 1990, is amended to change the authorized diversion volume from 12.9 afa to 58 afa. All other terms and conditions of License No. 61-07189 are included in Amended License No. 61-07189 without change. The Amended License No. 61-07189 replaces the original license issued on October 27, 1990.

4. Upon receiving this order, Magic West shall cease and desist forthwith from diverting amounts of groundwater underAmended Water Right License No. 61-07189 that exceed the annual volume authorized by the amended license.

5. In addition to maintaining an approved totalizing measuring device on its point of diversion, Magic West shall report the volume of groundwater diverted and used to the Department every three (3) months beginning June 1, 1999 for the three-month period beginning on February 1, 1999, and ending April 30, 1999. Magic West shall continue to report the volume of groundwater diverted and used pursuant to Amended Water Right License No. 61-07189, and any other water right authorizing use of the same point of diversion, within thirty (30) days following each three-month period thereafter until such time as the Department determines that annual reporting is sufficient to ensure compliance with Amended Water Right License No. 61-07189.

Signed this 22nd day of January, 1999.

KARL J. DREHER
Director

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CERTIFICATE OF MAILING

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

MAGIC WEST INC
PO BOX 475
RUPERT ID 83350

EDWARD T POTUCEK
ROSEVEAR RD
PO BOX 537
GLENNS FERRY ID 83623

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

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

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

ROBERT K HALL
RT 1 BOX 103
GLENNS FERRY ID 83623

Julie L. Yarbrough

JULIE L. YARBROUGH
Senior Secretary, Water Allocation Bureau

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BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

IN THE MATTER OF LICENSE NUMBER 61-07189 IN THE NAME OF MAGIC WEST, INC. DISTRICT	ORDER FOR EXTENSION OF TIME

Intervenor, Edward T. Potucek, by and through his attorneys of record Ringert Clark, Chartered, has moved this Department for an order for the extension of time to file his response brief, pursuant to IDAPA 37.01.01.720, to Magic West's Exceptions to the Recommended Order in the above-titled matter.

IT IS ORDERED that Potucek's motion is GRANTED.

IT IS FURTHER ORDERED that Potucek has seven (7) days of the date of this Order to file his response brief.

DATED This 16th day of October, 1998.

~~Hearing Officer~~
Director

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CERTIFICATE OF SERVICE

I certify that on October 19th, 1998, I mailed the original and copies of the foregoing ORDER FOR EXTENSION OF TIME, to the following:

Dan Steenson
RINGERT CLARK
P.O. Box 2773
Boise, ID 83701

Norman Semanko
ROSHOLT ROBERTSON TUCKER
P.O. Box 1906
Twin Falls, ID 83303-1906

Perce Hall
HALL FRIEDLY & WARD
340 E. 2nd N. St.
Mountain Home, ID 83647

Deborah Drew-Ellis
Legal Secretary

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OCT 05 2000

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

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

This matter having come before the Idaho Department of Water Resources (the "Department") in the form of a petition, and the Department having held a hearing in the matter, the hearing officer recommends the following Findings of Fact, Conclusions of Law, and Order:

FINDINGS OF FACT

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

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

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

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

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

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

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

a. Petitioner's Exhibit 1 - Report on Annual Diversion Volume for License No. 61-07189 During Authorized Development Period 1974-1979

b. Petitioner's Exhibit 1A - Water Discharge Records from DEQ in connection with Magic West's plant

c. Petitioner's Exhibit 2 - Water Use Measurements 1996-1997 (Oct. 20 to Oct. 18)

d. Petitioner's Exhibit 3 - Water Usage Chart - Well Water - 1996 and 1997

e. Petitioner's Exhibit 4 - Water Usage Chart - City Water - 1996 and 1997

f. Petitioner's Exhibit 5 - Magic West Water Usage Chart - Discharge/Waste Water Pumped to Farm

g. Petitioner's Exhibits 6 thru 12 - NOT OFFERED

h. Petitioner's Exhibit 13 - Magic West Farm Water Report 04/06/87 through 04/30/87

i. Petitioner's Exhibit 14 - Magic West Farm Water Report 04/30/87 through 05/31/87

j. Petitioner's Exhibit 15 - Magic West Farm Water Report 06/01/87 through 06/30/87

k. Intervenor's Exhibits A thru D - NOT OFFERED

l. Intervenor's Exhibit E - Letter to Magic West, Inc. from Kay Walker dated August 9, 1979

m. Intervenor's Exhibit F - NOT OFFERED

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n. Intervenor's Exhibit G - Letter to Magic West, Inc. from Steve Lester dated July 23, 1987

o. Intervenor's Exhibits H thru Q - NOT OFFERED

p. Intervenor's Exhibit R - Memorandum to Gary Spackman from Steve Lester dated May 2, 1997

q. Intervenor's Exhibit S - NOT OFFERED

r. Intervenor's Exhibit T - Sale Agreement dated September 11, 1959

s. Intervenor's Exhibit U - Map of Glenns Ferry area showing total depth of selected wells

t. Intervenor's Exhibit V - Conservation Plan Map - Soils, Photo No. 3EE 102, April 1975

7. During the hearing, the hearing officer took official notice of all water right records in the Department's files.

8. Issues identified by the parties for post-hearing briefing included the following:

a. the Department's authority to issue an amended license

b. the Motion in Limine and Motion to Strike certain evidence

c. injury to intervenor Potucek

d. the extent of beneficial use of water by Magic West during the period authorized to appropriate water

9. The license examination information submitted to the Department by Magic West on April 21, 1987, advised the Department that Jack Anderson was the company's designated representative who was to accompany the Department's field examiner during the license examination conducted to determine the extent of beneficial use made of water under permit to appropriate water no. 61-07189. The Department procedurally erred by not specifically contacting Mr. Anderson to schedule his participation in the field examination. Instead, Doug Mason, the maintenance superintendent at the Magic West facilities in Glenns Ferry, accompanied the Department's field examiner during the license examination conducted on August 4, 1987.

10. Magic West contends that its potato processing operations at its plant in Glenns Ferry have not significantly changed from the late 1970s to the present time. Consequently, Magic West claims that water use data collected at its plant during 1996 and

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1997 generally represent water use at its plant in the late 1970s during the development period authorized by the permit to appropriate water. To estimate the amount of water diverted from its well prior to June 13, 1979, Magic West relies upon records of waste water discharged from its plant to its farm, records of water discharged to Glenn Ferry's sewer system, records of water provided by Glenns Ferry to the plant, records of water trucked to the sludge pond, and processing records for consumptive uses and losses.

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

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

13. Magic West's records of the discharge of waste water to its farm include complete records for only one year during the time period authorized by the permit to appropriate water: Magic West's fiscal year 1978. The records show that for fiscal year 1978, there were 44.1368 million gallons of waste water discharged from the plant to Magic West's farm over 217 days in 11 months of the 12 month time period in the fiscal year. (See petitioner's Exhibit 1A).

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

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

16. In 1985, Magic West began diverting water from its well on a year-round basis and reworked its pump and pump bowls in 1986. The 1997 data showing waste water discharged from the processing plant to the farm indicate that the plant operated 352 days and discharged approximately 112.7974 million gallons of waste water to the farm.

17. Based on comparing the number of days waste water was discharged from Magic West's processing plant to its farm, and the corresponding amounts of waste water discharged, Magic West's use of water in 1997 was clearly larger than its water use during the time period authorized to appropriate water in the late 1970s. Therefore, Magic West's

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water use in 1997 is not representative of Magic West's water use during the time period authorized by the permit to appropriate water.

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

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

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

Source:	Groundwater
Priority:	April 3, 1939
Rate of diversion:	0.40 cfs
Point of diversion:	Lot 3, Section 32, T5S, R10E, B.M.
Uses:	Domestic and bathing, irrigation of 3 acres
Place of use:	Same as point of diversion.
Remarks:	Use of low temperature geothermal water under this license was the subject of a Local Ground Water Board Ruling in April 1960. The board held that the authorized rate of diversion be reduced to 0.08 cfs. After October 1, 1960, the order of the board became permanent.

CONCLUSIONS OF LAW

1. IDAPA 37.01.01230 (Rule of Procedure 230), allows the Department to review its past orders, including licenses, and consider making corrections to such orders and licenses.

2. Magic West's use of water in 1997 was clearly larger than its water use during the 1970s, both in duration and the amount of water diverted and is not representative of Magic West's use of water in the late 1970s during the time period authorized by the permit to appropriate water.

3. The Department issued License No. 61-07189 based on information provided by Magic West during the beneficial use field examination conducted on August 4, 1987. Although the license was issued based on data provided by Magic West, the Department erred procedurally by failing to involve Magic West's designated representative in the field examination and subsequent requests for information.

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4. The records submitted by Magic West during the hearing on December 15, 1997, show that Magic West used more water under permit to appropriate water no. 61-07189 than reported to the Department in 1987 during the beneficial use field examination.

5. The data submitted by Magic West showing water discharged to the Glenns Ferry sewer system and the net amount of water lost during plant operations should not be considered in determining the amount of water actually diverted under the permit to appropriate water because the information available in the record is not sufficient to relate this data to actual plant operations and use of water during the time period authorized to appropriate water under the permit. With respect to the data showing discharge to the Glenns Ferry sewer system during 1975, the record does not show that a similar discharge was made to the sewer system during fiscal year 1978, the only year during the appropriation period authorized by the permit for which complete data is available documenting the amount of waste water discharged by Magic West to its farm. Similarly, the record does not establish that the net processing consumption and losses at the plant during 1997 are comparable to those during fiscal year 1978.

6. The Motion in Limine and to Strike: Re. Introduction of Certain Evidence to Establish Diversion Volume, filed by intervenor Edward Potucek, should be denied. Approval would have precluded the hearing which the Department authorized in its order dated October 22, 1997, designating a contested case.

7. The injury alleged by intervenor Potucek has no bearing on the extent of beneficial use of water made by Magic West during the period to appropriate water authorized by the permit. If Magic West's operation had an effect on Potucek, testimony indicated that the effect began approximately in 1985 when Magic West increased its water use. The present proceeding is to determine the volume of water authorized for diversion under License No. 61-07189. If Potucek, or one or more other groundwater users, can demonstrate injury because of groundwater diversions by Magic West, the Department's "Rules for Conjunctive Management of Surface and Groundwater Resources" provide procedures for the holder of a senior water right for groundwater to call for delivery of water against the holder of a junior water right for groundwater causing injury to the senior water right.

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

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

10. The amended license should limit annual diversions of groundwater to a volume of 58 afa instead of 12.9 afa. The volume of 58 afa is calculated using fiscal year 1978 data for the volume of water discharged from Magic West's processing plant to its

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

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

= 58 acre-feet (rounded up)

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

ORDER

IT IS THEREFORE, hereby ORDERED as follows:

1. Water Right License No. 61-07189 issued by the Department on October 27, 1990, is amended to change the authorized diversion volume from 12.9 afa to 58 afa. All other terms and conditions of License No. 61-07189 are included in Amended License No. 61-07189 without change, with the addition of the condition set forth in item 3 below. The Amended License No. 61-07189 replaces the original license issued on October 27, 1990.

2. The Motion in Limine and to Strike: Re. Introduction of Certain Evidence to Establish Diversion Volume, filed by intervenor Potucek, which motion the hearing officer took under advisement, is **DENIED**.

3. In addition to maintaining an approved totalizing measuring device on its point of diversion, Magic West shall report its water use to the Department in a form approved by the Department every three (3) months beginning three (3) months after the effective date of the Final Order in this matter.

Signed this 31st day of August, 1998.

L. GLEN SAXTON
Hearing Officer

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OCT 05 2000

CERTIFICATE OF MAILING

I DO HEREBY CERTIFY that on the 4th day of September, 1998, the above and foregoing document was served upon the following by placing a copy of the same in the United States Mail, postage prepaid and properly addressed to the following:

MAGIC WEST INC
PO BOX 475
RUPERT ID 83350

EDWARD T POTUCEK
ROSEVEAR RD
PO BOX 537
GLENNS FERRY ID 83623

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

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

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

ROBERT K HALL
RT 1 BOX 103
GLENNS FERRY ID 83623

Julie L. Yarbrough

JULIE L. YARBROUGH
Senior Secretary, Water Allocation Bureau

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OCT 05 2000

CERTIFICATE OF MAILING

I DO HEREBY CERTIFY that on the 31st day of August, 1998, the above and foregoing document was served upon the following by placing a copy of the same in the United States Mail, postage prepaid and properly addressed to the following:

MAGIC WEST INC
PO BOX 475
RUPERT ID 83350

EDWARD T POTUCEK
ROSEVEAR RD
PO BOX 537
GLENNS FERRY ID 83623

ELIZABETH EICHOLZ
PO BOX 311
GLENNS FERRY ID 83623

JIM KEVAN
PO BOX 70
GLENNS FERRY ID 83623

JERRY L HEATH
PO BOX 456
GLENNS FERRY ID 83623

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

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

FRED MACKEY
PO BOX 637
GLENNS FERRY ID 83623

ROBERT K HALL
RT 1 BOX 103
GLENNS FERRY ID 83623

JOHN SOLOSABAL
PO BOX 938
GLENNS FERRY ID 83623

PAUL BATRUEL
RT 1 BOX 426
GLENNS FERRY ID 83623-9756

Julie L. Yarbrough

JULIE L. YARBROUGH
Senior Secretary, Water Allocation Bureau

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OCT 05 2000

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

IN THE MATTER OF LICENSE NO. 61-07189 IN THE NAME OF MAGIC WEST	**ORDER GRANTING MOTION FOR EXTENSION OF TIME**

On December 30, 1997, intervenor Edward T. Potucek (Potucek), by and through his attorney of record, Daniel V. Steenson, filed a Motion for Extension of Time (extension) in connection with the above captioned matter, seeking to extend the January 5, 1998 brief submittal date to January 20, 1998. Intervenor Robert Hall joined in the motion for extension.

On December 31, 1997, Magic West, Inc. (Magic West) by and through its attorney of record, Norman M. Semanko filed a Response to Motion For Extension of Time opposing an extension. Magic West did not allege or show that it would be prejudiced by the granting of an extension of time in which to submit simultaneous briefs.

The hearing officer is not aware of any apparent prejudice to Magic West as a result of granting an extension of time in which to prepare and exchange briefs.

ORDER

IT IS THEREFORE, HEREBY ORDERED as follows:

1. Potucek's Motion for Extension of Time is **GRANTED.**

2. The parties shall simultaneous exchange briefs on or before **January 20, 1998** and shall provide a copy to the hearing officer.

Dated this 2nd day of January, 1998.

L. GLEN SAXTON
Hearing Officer

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BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

IN THE MATTER OF LICENSE NO. 61-07189 IN THE NAME OF MAGIC WEST	**ORDER DENYING MOTION TO DISMISS**

On November 14, 1997, Robert K. Hall (Hall), by and through his attorney of record, Perce Hall, filed a Petition to Intervene in the above captioned matter. On November 19, 1997, Magic West, Inc., by and through its attorney of record, Norman M. Semanko filed a response.

On November 24, 1997, the department issued an Order Granting Hall Leave to Intervene in the proceeding.

On December 4, 1997, Hall filed a Motion to Dismiss the petition of Magic West, Inc. to amend water license No. 61-07189 and to vacate the hearing set for December 15, 1997.

ORDER

IT IS THEREFORE, HEREBY ORDERED as follows:

1. Hall's Motion filed on December 3, 1997 to vacate the hearing and to dismiss the petition of Magic West is **DENIED.** The reason for denial as required in IDAPA 37.01.01565 (Rule of Procedure 565) is described below in paragraph 2. of this order.

2. At the hearing scheduled on December 15, 1997, the department will allow oral argument on the question of the department's jurisdiction to conduct an evidentiary hearing for the above captioned matter.

Dated this 8th day of December, 1997.

L. Glen Saxton

L. GLEN SAXTON
Hearing Officer

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CERTIFICATE OF SERVICE

I DO HEREBY CERTIFY that on this 8th day of December, 1997, the above and foregoing document was served upon the following via facsimile and by placing a copy of the same in the United States Mail, postage prepaid and properly addressed to the following:

Via Facsimile No. (208)736-0041
NORMAN SEMANKO
ROSHOLT ROBERTSON TUCKER
PO BOX 1906
TWIN FALLS ID 83303-1906

Via Facsimile No. (208)342-4657
DANIEL V. STEENSON
RINGERT CLARK CHARTERED
PO BOX 2773
BOISE ID 83701-2773

Via Facsimile No. (208)587-3144
PERCE HALL
HALL FRIELDY AND WARD
340 E 2ND N ST
MOUNTAIN HOME ID 83647

Julie L. Yarbrough

JULIE L. YARBROUGH
Senior Secretary, Water Allocation Bureau

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BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

IN THE MATTER OF LICENSE NO. 61-07189 IN THE NAME OF MAGIC WEST	**ORDER DENYING MOTION TO DISMISS**

On November 19, 1997, intervenor Edward T. Potucek (Potucek), by and thorough his attorney of record, Daniel V. Steenson, filed a Petition to Intervene and a Motion to Dismiss Petition in connection with the above captioned matter. On November 24, 1997, Magic West, Inc. by and through its attorney of record, Norman M. Semanko filed a response.

On November 24, 1997, the department issued an Order Granting Leave to Intervene to Potucek in the proceeding but did not act on the Motion to Dismiss Petition.

On December 2, 1997, Potucek, filed a Motion to Stay Hearing with the department until the department has ruled on the prior Motion to Dismiss Petition and requested the opportunity to present oral argument on the November 19, 1997 Motion to Dismiss.

ORDER

IT IS THEREFORE, HEREBY ORDERED as follows:

1. Potucek's Motion to Dismiss Petition filed on November 19, 1997 is **DENIED.**

2. Potucek's Motion to Stay the Hearing is **DENIED** as moot following the ruling in paragraph 1. denying the Motion to Dismiss.

3. At the hearing scheduled on December 15, 1997, the department will allow oral argument on the question of the department's jurisdiction to conduct an evidentiary hearing for the above captioned matter.

Dated this 4th day of December, 1997.

L. Glen Saxton

L. GLEN SAXTON
Hearing Officer

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CERTIFICATE OF SERVICE

I DO HEREBY CERTIFY that on this 4th day of December, 1997, the above and foregoing document was served upon the following via facsimile and by placing a copy of the same in the United States Mail, postage prepaid and properly addressed to the following:

Norman Semanko
ROSHOLT ROBERTSON TUCKER
PO Box 1906
Twin Falls ID 83303-1906

Daniel V. Steenson
RINGERT CLARK CHARTERED
PO Box 2773
Boise ID 83701-2773

Perce Hall
HALL FRIELDY AND WARD
340 E 2nd N St
MounTain Home ID 83647

Julie L. Yarbrough

JULIE L. YARBROUGH
Senior Secretary, Water Allocation Bureau

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BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE

STATE OF IDAHO

IN THE MATTER OF LICENSE NO. 61-07189 IN THE NAME OF MAGIC WEST	**ORDER GRANTING PETITION TO INTERVENE**

On October 24, 1997, the Department of Water Resources (department) issued a Notice of Hearing in connection with the above captioned matter requiring that parties who wished to participate in the hearing file a petition to intervene in the matter with the department on or before November 19, 1997.

On November 14, 1997, Robert K. Hall, by and through his attorney, Perce Hall, submitted to the department a petition for an order to intervene (petition) in the Matter of License No. 61-07189 as authorized in Rule of Procedure IDAPA 37.01.01350 (Rule 350). On November 19, 1997, Magic West filed a response opposing the petition.

Petitioner has shown sufficient direct and substantial interest in the above captioned matter for the department to grant the petitioner intervention into the matter.

ORDER

IT IS THEREFORE HEREBY ORDERED that the petition of Robert K. Hall requesting intervention in the hearing scheduled by the department on December 15, 1997 in connection with the above captioned matter is **GRANTED.**

IT IS FURTHER ORDERED that the intervention authorized by this order is limited to the matter of license No. 61-07189 and does not apply to protested application for permit No. 61-07724 which is also pending before the department.

DATED 24th day of November, 1997.

L. Glen Saxton

L. GLEN SAXTON
Hearing Officer

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CERTIFICATE OF SERVICE

I DO HEREBY CERTIFY that on the 24th day of November, 1997, the above and foregoing document was served upon the following via facsimile and by placing a copy of the same in the United States Mail, postage prepaid and properly addressed to the following:

Via Facsimile No. (208)736-0041
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RINGERT CLARK CHARTERED
PO Box 2773
Boise ID 83701-2773

Via Facsimile No. (208)587-3314
Perce Hall
HALL FRIEDLY AND WARD
340 E 2nd N St
Mountain Home ID 83647

Julie L. Yarbrough

JULIE L. YARBROUGH
Senior Secretary, Water Allocation Bureau

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BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE

STATE OF IDAHO

IN THE MATTER OF LICENSE NO. 61-07189 IN THE NAME OF MAGIC WEST	**ORDER AUTHORIZING LIMITED DISCOVERY**

On November 14, 1997, Robert K. Hall (petitioner) by and through his attorney, Perce Hall, filed a Motion to Compel Discovery with the Department of Water Resources (department). On November 19, 1997, Magic West filed a response opposing petitioner's motion. The department will treat the motion of petitioner as a request to issue an order Authorizing Discovery pursuant to IDAPA Rule 37.01.01521 (Rule of Procedure 521).

The Director of the department of Water Resources (Director) hereby authorizes the parties (Magic West and intervenors) to engage in LIMITED discovery commencing with the date of this order. The parties shall complete discovery seven (7) days prior to the date of the hearing in this matter which has been tentatively scheduled on December 15, 1997. Discovery shall be conducted pursuant to IDAPA Rules 37.01.01520-532 (Rules of Procedure 520 through 532). The parties are directed to answer or otherwise respond to discovery in accordance with the department's Rules of Procedure and the Idaho Rules of Civil Procedure, as appropriate.

The extent of discovery authorized by this order is limited to the matter of license No. 61-07189, and does not apply to protested application for permit No. 61-07724 which is also pending before the department.

In accordance with Rule 520, the scope of discovery shall be governed by Rule 26(b) of the Idaho Rules of Civil Procedure, unless otherwise provided by statute, rule or order of the Director.

DATED this 24th day of November, 1997.

L. Glen Saxton

L. GLEN SAXTON
Hearing Officer

MICROFILMED

OCT 0 5 2006

CERTIFICATE OF SERVICE

I DO HEREBY CERTIFY that on the 24th day of November, 1997, the above and foregoing document was served upon the following via facsimile and by placing a copy of the same in the United States Mail, postage prepaid and properly addressed to the following:

Via Facsimile No. (208)736-0041
Norman Semanko
ROSHOLT ROBERTSON TUCKER
PO Box 1906
Twin Falls ID 83303-1906

Via Facsimile No. (208)342-4657
Daniel V. Steenson
RINGERT CLARK CHARTERED
PO Box 2773
Boise ID 83701-2773

Via Facsimile No. (208)587-3314
Perce Hall
HALL FRIEDLY AND WARD
340 E 2nd N St
Mountain Home ID 83647

Julie L. Yarbrough

JULIE L. YARBROUGH
Senior Secretary, Water Allocation Bureau

MICROFILMED
OCT 05 2000

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE

STATE OF IDAHO

IN THE MATTER OF LICENSE NO. 61-07189 IN THE NAME OF MAGIC WEST	**ORDER AUTHORIZING LIMITED DISCOVERY**

On November 19, 1997, Edward T. Potucek (petitioner) by and through his attorney, Daniel V. Steenson, filed a Motion to Compel Discovery with the Department of Water Resources (department). Magic West did not respond to petitioner's motion. The department will treat the motion of petitioner as a request to issue an order Authorizing Discovery pursuant to IDAPA Rule 37.01.01521 (Rule of Procedure 521).

The Director of the department of Water Resources (Director) hereby authorizes the parties (Magic West and intervenors) to engage in LIMITED discovery commencing with the date of this order. The parties shall complete discovery seven (7) days prior to the date of the hearing in this matter which has been tentatively scheduled on December 15, 1997. Discovery shall be conducted pursuant to IDAPA Rules 37.01.01520-532 (Rules of Procedure 520 through 532). The parties are directed to answer or otherwise respond to discovery in accordance with the department's Rules of Procedure and the Idaho Rules of Civil Procedure, as appropriate.

The extent of discovery authorized by this order is limited to the matter of license No. 61-07189, and does not apply to protested application for permit No. 61-07724 or to claims of petitioner which are pending before the department.

In accordance with Rule 520, the scope of discovery shall be governed by Rule 26(b) of the Idaho Rules of Civil Procedure, unless otherwise provided by statute, rule or order of the Director.

DATED this 24th day of November, 1997.

L. Glen Saxton

L. GLEN SAXTON
Hearing Officer

MICROFILMED
OCT 0 5 2000

CERTIFICATE OF SERVICE

I DO HEREBY CERTIFY that on the 24th day of November, 1997, the above and foregoing document was served upon the following via facsimile and by placing a copy of the same in the United States Mail, postage prepaid and properly addressed to the following:

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Twin Falls ID 83303-1906

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PO Box 2773
Boise ID 83701-2773

Via Facsimile No. (208)587-3314
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HALL FRIEDLY AND WARD
340 E 2nd N St
Mountain Home ID 83647

Julie L. Yarbrough

JULIE L. YARBROUGH
Senior Secretary, Water Allocation Bureau

MICROFILMED
OCT 0 5 2000

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE

STATE OF IDAHO

IN THE MATTER OF LICENSE NO. 61-07189 IN THE NAME OF MAGIC WEST	**ORDER GRANTING PETITION TO INTERVENE**

On October 24, 1997, the Department of Water Resources (department) issued a Notice of Hearing in connection with the above captioned matter requiring that parties who wished to participate in the hearing file a petition to intervene in the matter with the department on or before November 19, 1997.

On November 19, 1997, Edward T. Potucek, by and through his attorney, Daniel V. Steenson, submitted to the department a petition for an order to intervene (petition) in the Matter of License No. 61-07189 as authorized in Rule of Procedure IDAPA 37.01.01350 (Rule 350). Magic West did not respond to the petition.

Petitioner has shown sufficient direct and substantial interest in the above captioned matter for the department to grant the petitioner intervention into the matter.

ORDER

IT IS THEREFORE HEREBY ORDERED that the petition of Edward T. Potucek requesting intervention in the hearing scheduled by the department on December 15, 1997 in connection with the above captioned matter is **GRANTED.**

IT IS FURTHER ORDERED that the intervention authorized by this order is limited to the matter of license No. 61-07189 and does not apply to protested application for permit No. 61-07724 or to claims which are pending before the department.

DATED 24th day of November, 1997.

L. Glen Saxton

L. GLEN SAXTON
Hearing Officer

MICROFILMED
OCT 0 5 2000

CERTIFICATE OF SERVICE

I DO HEREBY CERTIFY that on the 24th day of November, 1997, the above and foregoing document was served upon the following via facsimile and by placing a copy of the same in the United States Mail, postage prepaid and properly addressed to the following:

Via Facsimile No. (208)736-0041
Norman Semanko
ROSHOLT ROBERTSON TUCKER
PO Box 1906
Twin Falls ID 83303-1906

Via Facsimile No. (208)342-4657
Daniel V. Steenson
RINGERT CLARK CHARTERED
PO Box 2773
Boise ID 83701-2773

Via Facsimile No. (208)587-3314
Perce Hall
HALL FRIEDLY AND WARD
340 E 2nd N St
Mountain Home ID 83647

Julie L. Yarbrough

JULIE L. YARBROUGH
Senior Secretary, Water Allocation Bureau

MICROFILMED
OCT 05 2000

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE

STATE OF IDAHO

IN THE MATTER OF LICENSE NO. 61-07189 IN THE NAME OF MAGIC WEST, INC.	**NOTICE OF HEARING**

On October 22, 1997, the director of the Idaho Department of Water Resources (IDWR) designated the request of Magic West, Inc. (Magic West) asking IDWR to amend or modify License No. 61-07189 as a contested case. This notice is the additional notice referred to in the October 22, 1997 order.

IDWR has scheduled the above captioned matter for hearing on December 15, 1997, at 9:00 a.m. at the IDWR 2nd floor conference room, 1301 N. Orchard St., Boise, Idaho. The hearing will be held in accordance with provisions of Chapters 2 and 17, Title 42, and Chapter 52, Title 67, Idaho Code, and the adopted Rules of Procedure of IDWR. A copy of the rules may be obtained from IDWR upon request. The presiding officer at the hearing will be L. Glen Saxton.

This Notice of Hearing is being served on parties in the matter of protested application for permit No. 61-07724 filed in the name of Magic West which is a matter also pending before IDWR. In order for the protesting parties to 61-07724 to participate as parties in the matter of License No. 61-07189, those parties are required to file with IDWR a petition to intervene in the matter of License No. 61-07189 within twenty-eight (28) days of October 22, 1997 (i.e. on or before November 19, 1997), in accordance with IDAPA Rules 37.01.01350 - 354 (Procedure Rules 350 - 354).

NOTE: THE PURPOSE OF THE HEARING HEREIN SCHEDULED IS TO PROVIDE THE OPPORTUNITY TO MAGIC WEST, INC. TO ESTABLISH THROUGH PLANT RECORDS, OR OTHER SIMILAR EVIDENCE, THE EXTENT OF BENEFICIAL USE THAT EXISTED UNDER RIGHT NO. 61-07189 PRIOR TO THE SUBMISSION OF PROOF OF BENEFICIAL USE BY MAGIC WEST ON JUNE 13, 1979. **THE PURPOSE IS <u>NOT</u> TO HEAR TESTIMONY OR CONSIDER EVIDENCE IN THE MATTER OF PROTESTED APPLICATION FOR PERMIT NO. 61-07724.**

If you plan to offer exhibits for the record, note that IDAPA Rule 37.01.01606 (Procedure Rule 606) requires that you provide a copy of exhibits to each party and to the presiding officer.

The hearing will be conducted in a facility which meets the accessibility requirements of the Americans with Disabilities Act. If you require special accommodations in order to attend, participate in or understand the hearing, please advise IDWR within ten (10) days prior to the hearing.

MICROFILMED

OCT 0 5 2000

IDWR will provide the opportunity for all parties to respond and present evidence and argument on all issues involved.

Dated this 24th day of October, 1997.

L. GLEN SAXTON
Hearing Officer

MICROFILMED
OCT 05 2000

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on the 30th day of October, 1997, a true and correct copy of the foregoing **NOTICE OF HEARING** was forwarded, by Certified Mail, to the parties listed:

JIM KEVAN
PO BOX 70
GLENNS FERRY ID 83623

JERRY L HEATH
PO BOX 456
GLENNS FERRY ID 83623

JOHN SOLOSABAL
PO BOX 938
GLENNS FERRY ID 83623

PAUL BATRUEL
RT 1 BOX 426
GLENNS FERRY ID 83623-9756

Julie L. Yarbrough

JULIE L. YARBROUGH
Senior Secretary, Water Allocation Bureau

MICROFILMED
OCT 0 5 2000

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on the 24th day of October, 1997, a true and correct copy of the foregoing **NOTICE OF HEARING** was forwarded, by Certified Mail, to the parties listed:

Magic West, Inc.
PO Box 475
Rupert ID 83350

Edward T. Potucek
Rosevear Rd.
PO Box 537
Glenns Ferry ID 83623

Elizabeth Eicholz
PO Box 311
Glenns Ferry ID 83623

Perce Hall
340 E 2nd N
Mountain home ID 83647

Norman Semanko
ROSHOLT ROBERTSON TUCKER
PO Box 1906
Twin Falls ID 83303-1906

Fred Mackey
PO Box 637
Glenns Ferry ID 83623

Robert K. Hall
Rt 1 Box 103
Glenns Ferry ID 83623

Julie L. Yarbrough

JULIE L. YARBROUGH
Senior Secretary, Water Allocation Bureau

MICROFILMED
OCT 05 2007

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

IN THE MATTER OF LICENSE NO. 61-07189 IN THE NAME OF MAGIC WEST INC.	)	**ORDER DESIGNATING CONTESTED CASE; APPOINTING HEARING OFFICER; AND SCHEDULING HEARING**

Magic West, Inc., by and through its attorneys, Rosholt, Robertson & Tucker, filed a petition for adjustment and clarification of existing order/license no. 61-07189 with the Department of Water Resources (IDWR) pursuant to IDWR's Rules of Procedure and the licensing order issued by IDWR on October 27, 1990. The petition was filed pursuant to Rule 770 which states:

> Any party or person affected by an order may petition to clarify any order, whether interlocutory, recommended, preliminary or final. Petitions for clarification from final orders do not suspend or toll the time to petition for reconsideration or appeal the order. A petition for clarification may be combined with a petition for reconsideration or stated in the alternative as a petition for clarification and/or reconsideration.

Rule 770 appears between the rules discussing orders issued by the agency and the rules related to filing a notice of appeal. The language in Rule 770 implies that a petition for clarification should be considered prior to an order becoming final. Furthermore, the petition for clarification filed by Magic West does not seek an interpretation of the language contained in license no. 61-07189. The restrictions regarding annual volume limitations are clear and not ambiguous. The petition seeks an amendment or modification of license no. 61-07189. IDWR will view the petition as a petition for modification or amendment under Rule 230 of IDWR's Rules of Procedure. IDAPA 37.01.01.230.01.a.

MICROFILMED

OCT 0 5 2009

In considering the petition, IDWR is called upon to determine whether the 12.9 acre-foot annual volume limitation placed on license no. 61-07189 reasonably reflects the extent of beneficial use made by Magic West during the developmental permit stage of the water right. The August 4, 1987, licensing exam report indicates that based upon information provided by the plant maintenance supervisor, Magic West diverted approximately 20,000 gallons per day under the permit. By contrast, the current petition supported by the affidavit of Jack Anderson, plant manager at Glenns Ferry, Idaho, states that Magic West was diverting a daily average of between 240,000 and 260,000 gallons a day at the time of the August 4, 1987, field exam. The affidavit further states that, on average, the amount of low-temperature geothermal water diverted under right no. 61-07189 has remained the same since 1987.

A hearing on the petition is appropriate to provide Magic West the opportunity to establish through plant production records, or other similar evidence, the extent of beneficial use that existed under right no. 61-07189 prior to the submission of the proof of beneficial use on June 13, 1979. Accordingly, IDWR issues the following interlocutory order.

ORDER

IT IS HEREBY ORDERED that Magic West's application for amendment and/or modification is designated a contested case before IDWR to be heard by L. Glen Saxton as the IDWR hearing officer.

IT IS FURTHER ORDERED that the matter is scheduled for hearing before the hearing officer on December 15, 1997, with additional notice to be provided by the hearing officer.

IT IS FURTHER ORDERED that notice of this Order shall be provided to all other parties in the pending proceeding before IDWR on Application for Permit No. 61-07724 and that the other parties to that proceeding shall have twenty-eight (28) days from the service of this Order to file a petition with IDWR to intervene in this proceeding involving License No. 61-07189. Due to the interrelated issues in the two proceedings and the lack of a fee for the petitioner, no intervention fee shall be assessed.

MICROFILMED
OCT 0 5 2000

Dated this 22nd day of October, 1997.

KARL J. DREHER, Director

CERTIFICATE OF SERVICE

I hereby certify that on this 22nd day of October, 1997, I mailed a true and correct copy, postage prepaid, of the foregoing ORDER DESIGNATING CONTESTED CASE; APPOINTING HEARING OFFICER; AND SCHEDULING HEARING to the following:

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

Norman Semanko
ROSHOLT ROBERTSON TUCKER
P.O. Box 1906
Twin Falls, ID 83303-1906

Edward T. Potucek
Rosevear Rd.
P.O. Box 537
Glenns Ferry ID 83623

Fred Mackey
P.O. Box 637
Glenns Ferry, ID 83623

Elizabeth Eicholz
P.O. Box 311
Glenns Ferry, ID 83623

Robert K. Hall
Route 1, Box 103
Glenns Ferry, ID 83623

Perce Hall
340 E 2 N
Mountain Home, ID 83647

Paul Batruel
Route 1, Box 426
Glenns Ferry, ID 83623-9756

Deborah Drew-Ellis
Legal Secretary

MICROFILMED
OCT 05 2000

CERTIFICATE OF SERVICE

I hereby certify that on this 30th day of October, 1997, I mailed a true and correct copy, postage prepaid, of the foregoing ORDER DESIGNATING CONTESTED CASE; APPOINTING HEARING OFFICER; AND SCHEDULING HEARING to the following:

Jim Kevan
P.O. Box 70
Glenns Ferry ID 83623

Jerry L. Heath
P.O. Box 456
Glenns Ferry, ID 83623-0456

John R. Solosabal
Box 938
Glenns Ferry, ID 83623

Deborah Drew-Ellis
Legal Secretary

MICROFILMED
OCT 0 5 2000

State of Idaho
Department of Water Resources

WATER RIGHT LICENSE

WATER RIGHT NO. 61-07189

Priority: July 10, 1974

Maximum Diversion Rate: 0.67 CFS
Maximum Diversion Volume:[1] 12.9 AF

This is to certify, that MAGIC WEST INC.
P.O. BOX 968
GLENNS FERRY, ID 83623 has complied with the terms and conditions of the permit, issued pursuant to Application for Permit dated July 10, 1974; and has submitted Proof of Beneficial Use on June 13, 1979. An examination indicates that the works have a diversion capacity of .670 cfs of water from a GROUNDWATER source, and a water right has been established as follows:

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

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

PLACE OF USE: INDUSTRIAL

TWN	RGE	SEC	
05S	10E	29	SWSE

CONDITIONS/REMARKS:

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

MICROFILMED
NOV 02 1990

State of Idaho
Department of Water Resources

WATER RIGHT LICENSE

WATER RIGHT NO. 61-07189

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

Acting for R. Keith Higginson, Director

MICROFILMED
NOV 02 1990

State of Idaho
Department of Water Resources

APPROVED

APPLICATION FOR AMENDMENT
(For Licensing Purposes)
WATER RIGHT NO. 61-07189

Date of Priority: July 10, 1974

Maximum Diversion Rate: 0.67 CFS
Maximum Diversion Volume:[1] 12.9 AF

Comes now MAGIC WEST INC.
P.O. ~~DRAWER V~~ Box 968
GLENNS FERRY, ID 83623 and represents to the Director of the

Idaho Department of Water Resources:

That he is the owner and holder of Permit to Appropriate the Public Waters of the State of Idaho No. 61-07189, and requests that the permit be changed as follows:

Source: **GROUNDWATER**

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

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

PLACE OF USE: INDUSTRIAL

TWN	RGE	SEC	
05S	10E	29	SWSE

Permit holder asserts that no one will be injured by such change and that such change will be made at permit holder's own risk.

Signed at Glenns Ferry, this 18 day of Sept., 1990.

MICROFILMED
NOV 02 1990

Magic West Inc. Jo Kennedy
(Signature) (Farm Manager)

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE

STATE OF IDAHO

IN THE MATTER OF REMOVAL OF THE MEASURING)
DEVICE REQUIREMENT FOR PERMIT NO. 61-7189) ORDER

WHEREAS, it has been determined by the Department of Water Resources that a measuring device is not required at this time for a determination of the quantity of water appropriated under said permit;

IT IS, THEREFORE, HEREBY ORDERED that the condition of approval that a measuring device of a type approved by the Department be permanently installed and maintained as part of the diverting works, be and is, REMOVED from said permit.

Dated this 28th day of August, 1978.

L. Glen Saxton

L. GLEN SAXTON

Chief, Operations Bureau

MICROFILMED

Identification No. _____

Application No. 51-7189

STATE OF IDAHO

DEPARTMENT OF WATER ADMINISTRATION RESOURCES

APPROVED

APPLICATION FOR PERMIT

RECEIVED

JUL 9 1974

Department of Water Administration
Southern District Office

To Appropriate the Public Waters of the State of Idaho

(TYPE OR PRINT IN INK)

1. Name of applicant Magic West, Inc.

   post office address P.O. Drawer V. Glenns Ferry, Idaho 83623

2. Source of water supply Well-ground water which is a tributary of _____

3. a. Location of point of diversion is SE ¼ of SE ¼ of Section 29 Township 5S see map R.W.H

   Range 10 E. B.M. Elmore Block 20 Lot 2 County; additional points of diversion if any: _____

   _____

   _____

   b. If water is not consumed, it will be discharged into _____ at a point in _____ ¼

   of _____ ¼ of Section _____ Township _____ Range _____ B.M. _____

4. Water will be used for the following purposes:

   Amount 300 Gal/min. (.67 cfs) for Production/ of processing food (Industrial) purpose from Aug. 15 to July 1 (both dates inclusive)
   (cfs or acre-feet per annum)

   Amount _____ for _____ purpose from _____ to _____ (both dates inclusive)
   (cfs or acre-feet per annum)

   Amount _____ for _____ purpose from _____ to _____ (both dates inclusive)
   (cfs or acre-feet per annum)

5. Total quantity to be appropriated:

   a. 0.67 cfs cubic feet per second and/or

   b. _____ acre feet per annum.

6. Proposed diverting works:

   a. Description of ditches, flumes, pumps, headgates, etc. deep well, pump & motor

   _____

   _____

   _____

   b. Height of storage dam _____ feet, active reservoir capacity _____ acre feet; total reservoir capacity _____ acre feet, materials used in storage dam: _____

   Period of year during which storage will occur _____ (Mo. Day) to _____ (Mo. Day) inclusive.

   c. Proposed well diameter is 16 inches; proposed depth of well is 1200 feet.

7. a. Time required for the completion of the works and application of the water to the proposed beneficial use is 5 years.

   b. Estimated construction cost is $ 15,000.00 .

8. Description of proposed uses:

   a. If water is **not** for irrigation:

   (1) Give the place of use of water: SE ¼ of SE ¼ of Section 29 Township 5 S see map R.W.H

   Range 10E B.M. Boiler in Processing Plant

   (2) Amount of power to be generated: _____ hp under _____ feet of head.

   (3) List number of each kind of livestock to be watered _____

   _____

   (4) Name of municipality to be served _____, or number of families to be supplied with domestic water _____.

   (5) If water is to be used for other purposes describe: 300 gal /min. use for food processing plant - dehydration of potato flakes

   _____

   _____

APPROVED

b. If water is for irrigation, indicate acreage in each subdivision in the tabulation below:

TWP.	RANGE	SEC.	NE¼				NW¼				SW¼				SE¼				TOTALS
			NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	

Total number of acres to be irrigated_____

c. Describe any other water rights used for the same purposes as described above._____

9. a. Who owns the property at the point of diversion_____

b. Who owns the land to be irrigated or place of use_____

c. If the property is owned by a person other than the applicant, describe the arrangement enabling the applicant to make this filing_____

10. Remarks _____

11. Map of proposed project: show clearly the proposed point of diversion, place of use, section number, township and range number.

SEE ATTACHED PLOT PLAN

Scale: 2 inches equal 1 mile

BE IT KNOWN that the undersigned hereby makes application for permit to appropriate the public waters of the State of Idaho as herein set forth.

Roger Jones

(Applicant) MAGIC WEST, INC.
Roger Jones, President

APPROVED

Proposed Priority 7-10-1974

Received by LT Date 7-10-74 Time 4:00 PM

Preliminary check by mls Fee $25.00 (13944)

Receipted by LT Date 7-10-74

Publication prepared by SW Date ~~7-18-74~~ 8-1-74

Published in Mtn. Home News

Publication dates ~~7-25, 8-1-74~~ 8-8, 8-15-74

Publication approved CA Date 8-20-74

Priority reduced to _____ Reason _____

Protests filed by: _____

Copies of protests forwarded by _____

Hearing held by _____ Date _____

Recommended for (approval) denial by ~~SDF~~

ACTION OF THE DIRECTOR, DEPARTMENT OF WATER ADMINISTRATION

This is to certify that I have examined Application for Permit to appropriate the public waters of the State of Idaho No. 61-7189, and said application is hereby ~~APPROVED~~.

1. Approval of said application is subject to the following limitations and conditions:

   a. SUBJECT TO ALL PRIOR WATER RIGHTS.

   b. Proof of construction of works and application of water to beneficial use shall be submitted on or before August 1, 1979.

   c. Other: ~~A measuring device of a type approved by this Department shall be~~ permanently installed and maintained as part of the ~~diverting works.~~

2. Denial of said application is for the following reasons: _____

Witness my hand this 29 day of August 19 74.

A. Kenneth Dunn
For the Director

BY: A. KENNETH DUNN, Administrator

NOTICE OF APPLICATION FOR WATER PERMIT

Notice is hereby given that MAGIC WEST, INC. P.O. Drawer V., Glenns Ferry, ID has on July 10 1974 submitted Application No. 61-7189 for a permit to appropriate .67 cubic feet per second of water from a groundwater source by means of well, pump and motor within the SE¼SE¼, Sec. 29, T. 5S, R. 10E, B.M. Elmore County to be used from August 15 to July 1 for food processing within the SE¼SE¼, Sec. 29, T. 5S, R. 10E, B.M.

If issued, this permit will be subject to all prior water rights. Protests against the granting of the permit must be filed with the Idaho Department of Water Resources, Statehouse, Boise, Idaho, 83707, on or before August 26, 1974.

R. Keith Higginson
Director

Published in the Mountain Home News, Mtn. Home, ID on August 8, 1974 and August 15, 1974.

OK 8-20-74 CR

Affidavit of Publication

County of Elmore
STATE OF IDAHO } ss.

I, Laura M. Walker do solemnly swear that I am the foreman, or publisher of the

MOUNTAIN HOME NEWS

a weekly newspaper of general circulation, published once a week at MOUNTAIN HOME, IDAHO, that the notice attached hereto and which is a part of the proof of publication thereof, was published in said newspaper for

2 consecutive weeks, the first publication having been made on the 8 day of August, 1974, and the last publication having been made on the 15 day of August 1974; every Thursday issue of the paper during the period and time of publication and that the notice was published in the newspaper proper and not in a supplement thereof.

And I further swear that the said MOUNTAIN HOME NEWS has been continuously and uninterruptedly published in said Elmore County during a period of 78 consecutive weeks prior to the first publication of the attached notice.

Laura M. Walker

Subscribed and sworn to me this 15 day of August, 1974

Dorothy C. Bradley
Notary Public

MICROFILMED

NOTICE OF APPLICATION FOR WATER PERMIT

Notice is hereby given that MAGIC WEST, INC. P. O. Drawer V, Glenns Ferry, Idaho has on July 10, 1974 submitted Application No. 63-8007 for a permit to appropriate .67 cubic feet per second of water from a groundwater source by means of well, pump and motor within the SE¼SE¼, Sec. 29, T. 5 S, R. 10 E, B.M., Elmore County to be used from Aug. 15 to July 1 for production of processing food within the SE¼SE¼, Sec. 29, T. 5 S, R. 10 E, B.M.

If issued, this permit will be subject to all prior water rights. Protests against the granting of the permit must be filed with the Idaho Department of Water Administration, Statehouse, Boise, Idaho, 83707, on or before Aug. 12, 1974.

R. KEITH HIGGINSON
Director

Published in the Mountain Home News, Mountain Home, Idaho on July 25, 1974 and Aug. 1, 1974.

RECEIVED
AUG 6
Department of Water Resources

Affidavit of Publication

County of Elmore } ss.
STATE OF IDAHO }

I, Lloyd S. Waters do solemnly swear that I am the foreman, or publisher of the

MOUNTAIN HOME NEWS

a weekly newspaper of general circulation, published once a week at MOUNTAIN HOME, IDAHO, that the notice attached hereto and which is a part of the proof of publication thereof, was published in said newspaper for 2 consecutive weeks, the first publication having been made on the 25 day of July, 1974 and the last publication having been made on the 1 day of Aug. 1974; every Thursday issue of the paper during the period and time of publication and that the notice was published in the newspaper proper and not in a supplement thereof.

And I further swear that the said MOUNTAIN HOME NEWS has been continuously and uninterruptedly published in said Elmore County during a period of 78 consecutive weeks prior to the first publication of the attached notice.

Lloyd S. Waters

Subscribed and sworn to me this 1 day of Aug., 1974

Vivian M. Waters
Notary Public

THIS RIGHT HAS BEEN DECREED IN THE SRBA

MICROFILMED

MAR 0 6 2003

State of Idaho
DEPARTMENT OF WATER RESOURCES
1301 North Orchard Street, Boise, ID 83706 - P.O. Box 83720, Boise, ID 83720-0098
Phone: (208) 327-7900 Fax: (208) 327-7866 Web Site: www.idwr.state.id.us

DIRK KEMPTHORNE
Governor
KARL J. DREHER
Director

August 29, 2002

IDAHO FRESH PAK INC
PO BOX 130
LEWISVILLE ID 83431-0130

Re: Amendment of Permit No. 61-7724

Gentlemen:

Enclosed is a copy of the approved amendment of permit 61-7724.

Be sure to note condition no. 6 requiring measurement and reporting of volume diverted and used under this right. Measurement and reporting was previously required under this permit every three months. As you can see from condition no.6, submittal of the reports to the department will be on an annual basis. There is an existing license, no. 61-7189 that has also been under the measurement and reporting condition; the annual submittal will now also apply to that right.

Future submittal of measurement data should be addressed to Tim Luke of this department. He is the Water Distribution Section Manager and the measurement data should be sent to his attention. A copy of the data that was just submitted prior to the amendment approval has been forwarded to him.

If you have any questions, please give us a call.

Sincerely,

Sharla Curtis

for Jeff Peppersack, Manager
Water Rights Permits Section

JP:klt

Enclosure

cc: Norm Semanko, Idaho Water User's Assn.
Tim Luke – IDWR - State Office

MICROFILMED
MAR 0 6 2003

State of Idaho
Department of Water Resources

Amendment of Permit

NO. 61-07724

Priority: September 27, 1996 Maximum Diversion Rate: 0.67 CFS

This is to certify, that IDAHO FRESH PAK INC
PO BOX 130
LEWISVILLE ID 83431-0130

has applied for an amendment of a permit and the amendment is APPROVED for development of water as follows:

Source: GROUND WATER

BENEFICIAL USE	PERIOD OF USE	RATE OF DIVERSION
INDUSTRIAL	1/01 to 12/31	0.67 CFS

LOCATION OF POINT(S) OF DIVERSION:

GROUND WATER SW¼SE¼ Sec. 29, Twp 05S, Rge 10E, B.M. ELMORE County

PLACE OF USE: INDUSTRIAL

Twp Rge Sec	NE				NW				SW				SE				Totals
	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
05S 10E 18									X			X			X	X	
05S 10E 19					X			X	X			X		X	X		
05S 10E 29															X		
05S 10E 30		X	X		X			X									

CONDITIONS OF APPROVAL

1. Proof of application of water to beneficial use shall be submitted on or before **September 1, 2005**.
2. Subject to all prior water rights.
3. Right holder shall comply with the drilling permit requirements of Section 42-235, Idaho Code.
4. 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.
5. 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.
6. 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.
7. 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.
8. 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.

MICROFILMED

MAR 0 6 2003

State of Idaho
Department of Water Resources

Amendment of Permit

NO. 61-07724

CONDITIONS OF APPROVAL

9. 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.
10. 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.
11. 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.
12. Industrial use is for the Glenns Ferry food processing plant including the existing cogeneration operation.

This amendment of permit is issued pursuant to the provisions of Section 42-211, Idaho Code. Witness the signature of the Director, affixed at Boise, this 28th day of August, 2002

for KARL J DREHER, Director

MICROFILMED
MAR 0 6 2003

File: 61-7[redacted]9

Jim Lukes ltr

MEMORANDUM

May 3, 2001

To: Norm Young
Through: Bob Sutter
From: Shane Bendixsen
Subject: Ground Water Update for Glenns Ferry and Magic West Pumpage.

Attached are ground water hydrographs and pumpage data for Glenns Ferry current to spring 2001 except for the one discontinued well. The following is a brief summary.

Attachment #1 presents long-term data for three deep geothermal wells and two shallow cold water wells. The geothermal wells represent the aquifer used for production at Magic West and for some domestic and stock use. The cold water wells represent the aquifer used for the present municipal supply in Glenns Ferry. The two aquifers are not hydraulically connected and therefore pumping one will not affect the other. The cold water aquifer appears to be quite stable with water levels the same as they were in the mid 1970's. The geothermal aquifer has lost approximately 40 feet of head since the mid 1960's, but water levels appear to have increased since 1998.

Attachment #2 presents short-term data from 1996 to present for the geothermal aquifer. While this shows the same scenario as the long-term data, it is more apparent that water levels are increasing. Water levels have increased approximately five feet since 1998. The one exception is the Airport well. Water levels are about the same as 1998 and may have decreased by as much as five feet since 1997. One explanation may be it is the only well somewhat downgradient from Magic West's well and therefore is more affected by Magic West. On the other hand the Jerry Heath well and the USGS well are much more responsive to Magic West's pumping. Therefore an adequate explanation is not yet available.

Attachment #3 presents pumpage for Magic West and the short term hydrographs for the geothermal aquifer current to spring 2001. As presented, Magic West's pumpage has been somewhat less than average since 1998. Correspondingly, ground water levels in the geothermal aquifer have increased. Referring back to Attachment #1, the USGS well (04S10E 30BBA1) north of Glenns Ferry also shows an increase. It is unlikely the pumping by Magic West would effect this due to distance. Therefore the increase must be from natural recharge. How much this natural recharge is affecting wells in Glenns Ferry is not known.

MICROFILMED

MAR 0 6 2003

In summary the cold water aquifer in Glenns Ferry appears to be quite stable. The deep geothermal aquifer appears to have increasing ground water levels in the eastern part of town and possible decreasing levels near the airport or the western part of town.

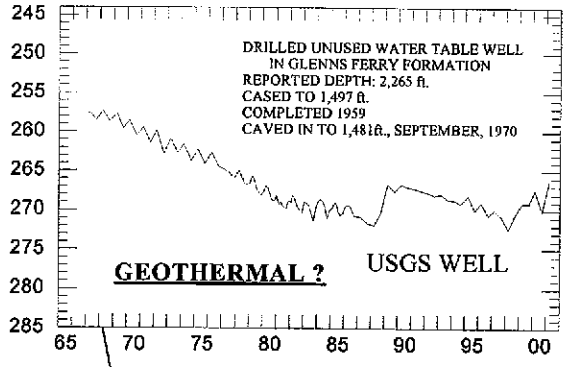
cc. Hal Anderson, Glenn Saxton, Gary Spackman

MICROFILMED
MAR 0 6 2003

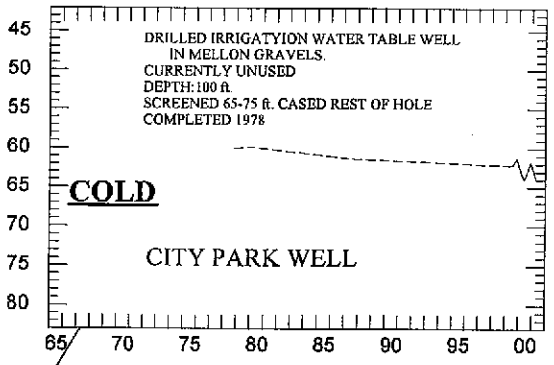
GROUND WATER HYDROGRAPHS

GLENNS FERRY AREA

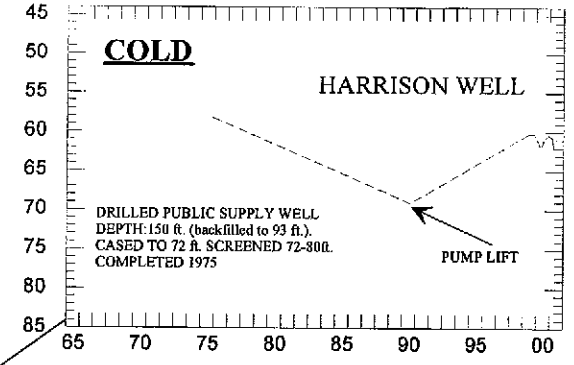
WELL 04S10E-30BBA1



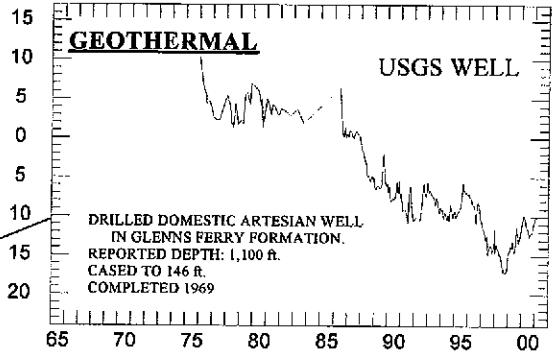
WELL 05S10E-31ABA1



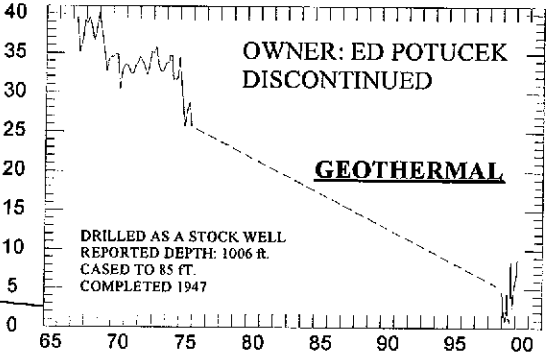
WELL 05S10E-32BBA1



WELL 05S10E-28CAB1

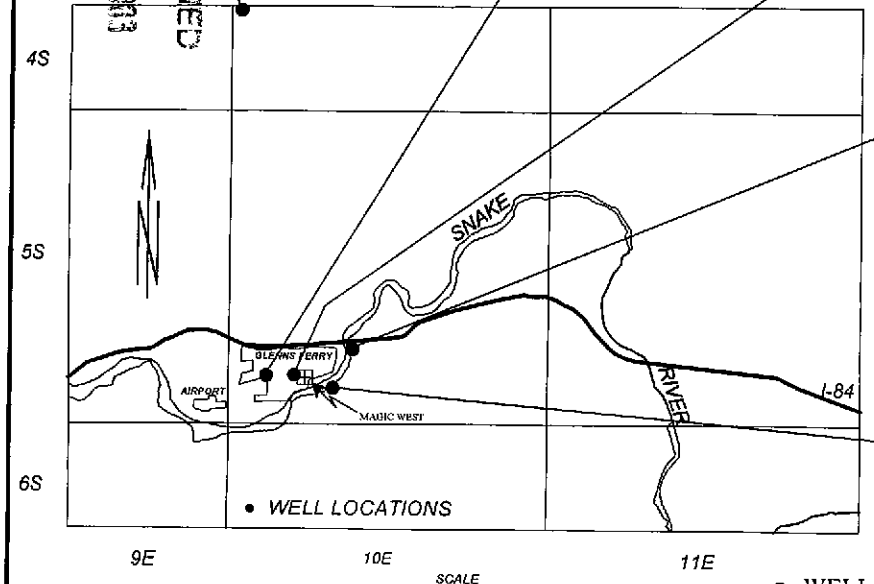


WELL 05S10E-32ADA1



HISTORIC

MICROFILMED
MAR 0 6 2003



LEGEND

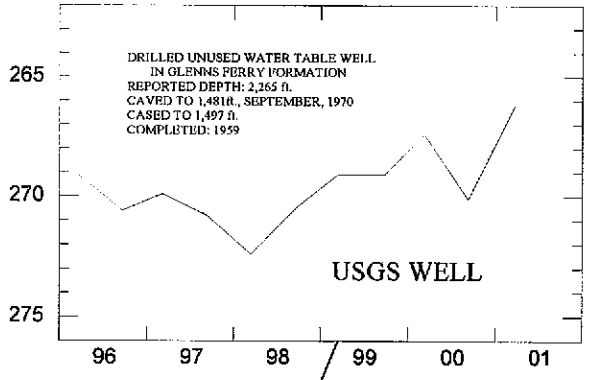
BASE: YEAR
LEFT SIDE: DEPTH TO WATER
ALL MEASUREMENTS IN FEET
CURRENT TO SPRING 2001
DASHED LINE INDICATES
MORE THAN ONE YEAR
BETWEEN MEASUREMENTS
NA: NOT AVAILIBLE

● WELL LOCATION

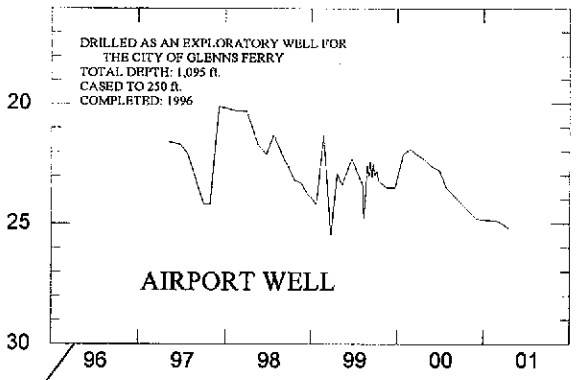
PREPARED BY THE IDAHO DEPARTMENT OF WATER RESOURCES APRIL 2001 SB

ATTACHMENT #1

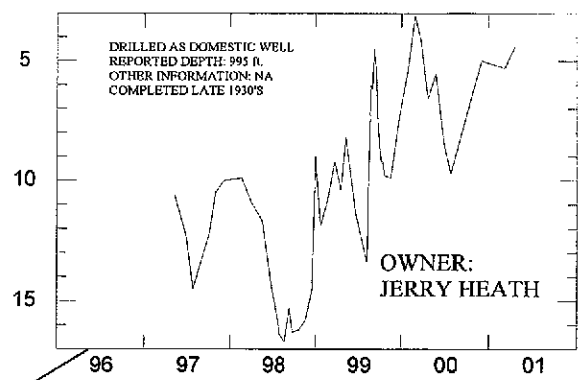
WELL 04S10E-30BBA1



WELL 05S09E-36DAB1



WELL 05S10E-28BDA1

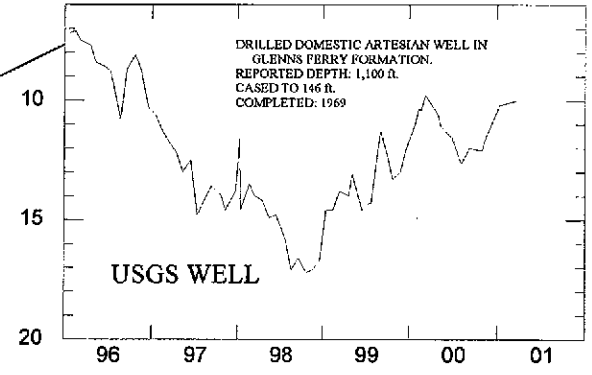


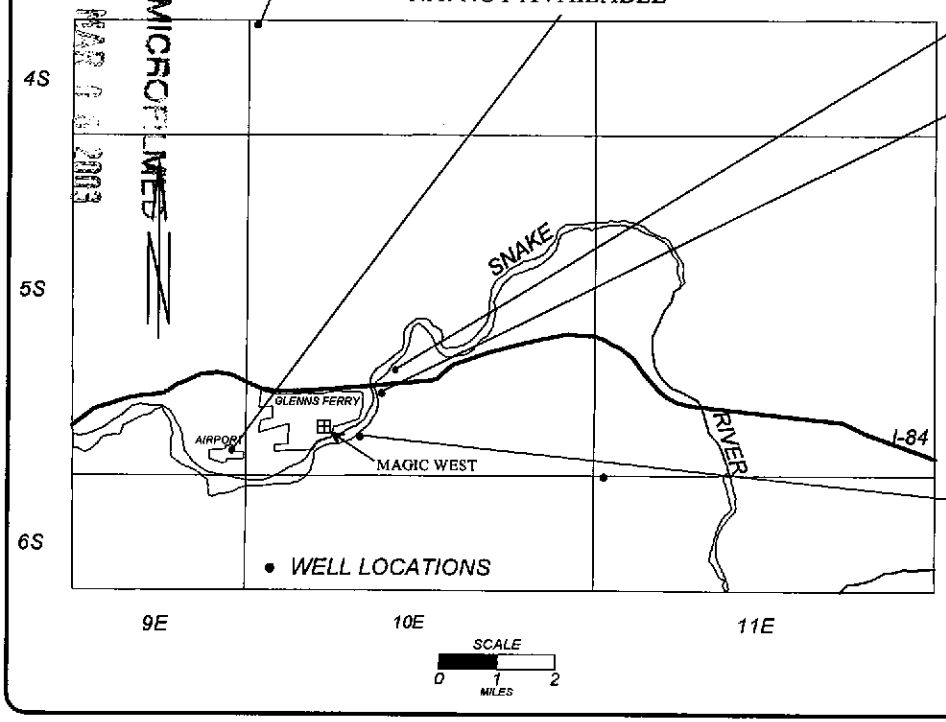
LEGEND

BASE: YEAR
LEFT SIDE: DEPTH TO WATER
ABOVE OR BELOW LAND SURFACE
ALL MEASUREMENTS IN FEET
CURRENT TO SPRING, 2001
NA: NOT AVAILABLE

SHORT TERM

WELL 05S10E-28CAB1

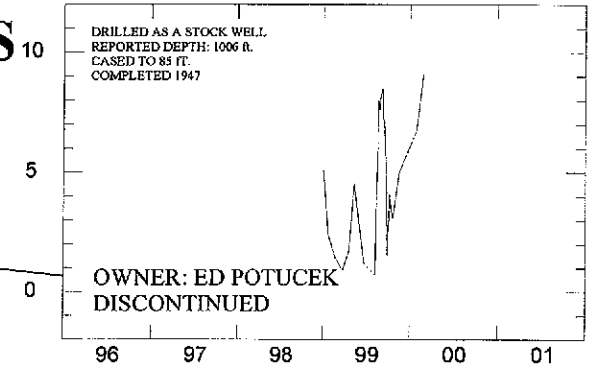




GROUND WATER HYDROGRAPHS

TIME PERIOD: 1996-2001

WELL 05S10E-32ADA1



GLENNS FERRY AREA

PREPARED BY THE IDAHO DEPARTMENT OF WATER RESOURCES APRIL, 2001 SB

ATTACHMENT #2

PUMPAGE AND GROUND WATER DATA

GLENNS FERRY

- MAGIC WEST PUMPAGE
- USGS WELL
- AIRPORT WELL
- JERRY HEATH WELL
- ED POTUCEK WELL

DISCONTINUED

AVE: 1.83 mil/gal/wk

SHUT DOWN

DEPTH TO WATER IN FEET ABOVE OR BELOW LAND SURFACE

10
0
-10
-20

PUMPAGE IN GALLONS PER WEEK

5000000
4000000
3000000
2000000
1000000
0

9/26/96
11/15/96
1/4/97
2/23/97
4/14/97
6/3/97
7/23/97
9/11/97
10/31/97
12/20/97
2/8/98
3/30/98
5/19/98
7/8/98
8/27/98
10/16/98
12/5/98
1/24/99
3/15/99
5/4/99
6/23/99
8/12/99
10/1/99
11/20/99
1/9/00
2/28/00
4/18/00
6/7/00
7/27/00
9/15/00
11/4/00
12/24/00
2/12/01
4/3/01

DATE

ATTACHMENT #3

PREPARD BY THE IDAHO DEPARTMENT OF WATER RESOURCES

MICROFILMED
MAR 0 6 2003

PUMPAGE AND GROUND WATER DATA

GLENNS FERRY

- MAGIC WEST PUMPAGE
- USGS WELL
- AIRPORT WELL
- JERRY HEATH WELL
- ED POTUCEK WELL

DISCONTINUED

DRAFT

AVE: 1.83 mil/gal/wk

SHUT DOWN

DEPTH TO WATER IN FEET ABOVE OR BELOW LAND SURFACE

10
0
-10
-20

PUMPAGE IN GALLONS PER WEEK

5000000
4000000
3000000
2000000
1000000
0

9/26/96 11/15/96 1/4/97 2/23/97 4/14/97 6/3/97 7/23/97 9/11/97 10/31/97 12/20/97 2/8/98 3/30/98 5/19/98 7/8/98 8/27/98 10/16/98 12/5/98 1/24/99 3/15/99 5/4/99 6/23/99 8/12/99 10/1/99 11/20/99 1/9/00 2/28/00 4/18/00 6/7/00 7/27/00 9/15/00 11/4/00 12/24/00 2/12/01 4/01

DATE

ATTACHMENT #3

PREPARD BY THE IDAHO DEPARTMENT OF WATER RESOURCES APRIL 01 SB

MICROFILMED
MAR 0 6 2003

file : 61-7724 & 61-7189

MEMORANDUM

May 9, 2000

TO: Glen Saxton

FROM: Cindy Hodges

RE: Magic West Quarterly Report

Attached is a cumulative summary including the fourth quarterly diversion report filed by Magic West for the Glenns Ferry processing plant. A full year's data, from February 1, 1999 through January 31, 2000 have now been submitted and Magic West has evidenced that annual withdrawals have not exceeded the combined authorized water right limit of 338 acre-feet.

This diversion has been added to the WMIS database and records of annual withdrawals will be maintained.

MICROFILMED
OCT 0 3 2000

MagicWest 61-07724.xls
Magic West, Glenns Ferry, Water Measurement Report Compilation
61-07724, 61-07189, 61-02248B (also 61-00301, Water Supply Bank Rental)
compiled by Scott King, 9/3/99
updated by Cindy Hodges, 2/1/00, 5/8/00

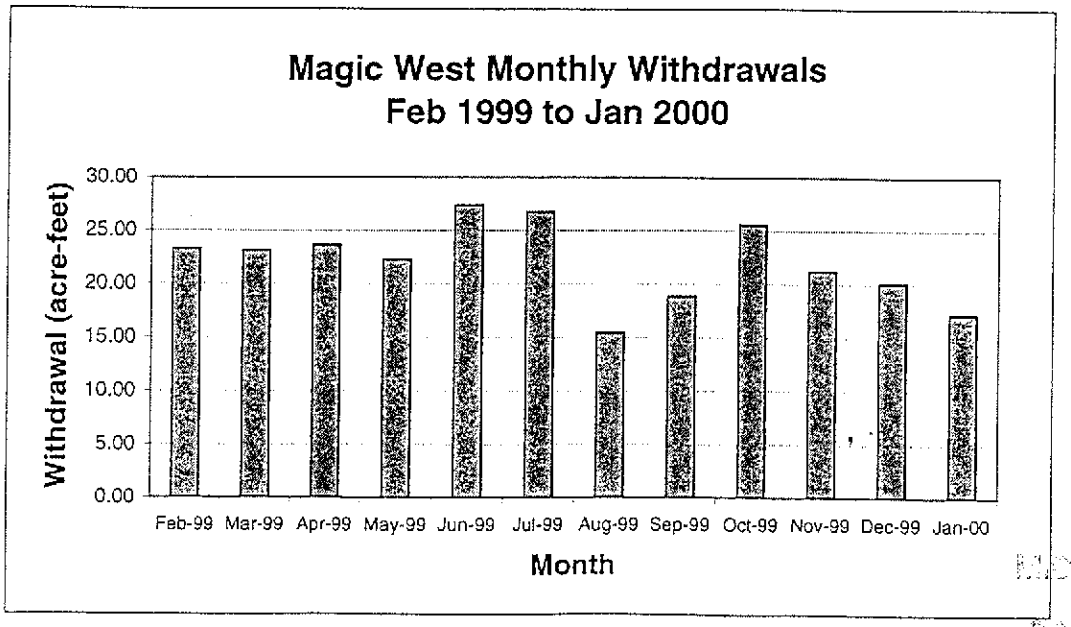
Flowmeter volume multiplier 100
Flowmeter volume units = gallons
Flowmeter calibrated in 1999 by C.E. Brockway and Cindy Hodges
Flowmeter calib. Multiplier= 1.083

Reading Date (midnight)	Flowmeter Reading (with multiplier)	Monthly use (gal)	Adjusted** Monthly Use (gal)	Adjusted** Monthly Use (acre-ft)	Month / Year	Average Daily Use (gal)
1/31/99	38,618,700					
2/28/99	45,617,300	6,998,600	7,579,484	23.26	Feb-99	270,696
3/31/99	52,569,700	6,952,400	7,529,449	23.11	Mar-99	242,885
4/30/99	59,680,900	7,111,200	7,701,430	23.63	Apr-99	256,714
5/31/99	66,365,700	6,684,800	7,239,638	22.22	May-99	233,537
6/30/99	74,613,600	8,247,900	8,932,476	27.41	Jun-99	297,749
7/31/99	82,659,000	8,045,400	8,713,168	26.74	Jul-99	281,070
8/31/99	87,309,700	4,650,700	5,036,708	15.46	Aug-99	162,474
9/30/99	92,976,400	5,666,700	6,137,036	18.83	Sep-99	204,568
10/31/99	100,657,400 *	7,681,000	8,318,523	25.53	Oct-99	268,339
11/30/99	107,043,200 *	6,385,800	6,915,821	21.22	Nov-99	230,527
12/30/99	113,100,500 *	6,057,300	6,560,056	20.13	Dec-99	218,669
1/27/00	118,270,900 *	5,170,400	5,599,543	17.18	Jan-00	199,984

Total Diversions Feb, 1999 to Jan, 2000 (adjusted)= 264.73 acre-feet**

Diversions Nov, 1999 to Jan, 2000 (present quarter, adjusted**) 58.54 acre-feet
Average diversion per quarter = 66.18 acre-feet
Maximum authorized annual diversion= 338.00 acre-feet

* Flow meter readings adjusted for meter "roll-over" (occurred 10/29/99)
**Adjusted per meter calibration; volume multiplied by 1.083



RECEIVED
OCT 05 2000

MEMORANDUM

February 2, 2000

TO: Magic West Water Right Files 61-07724 and 61-07189
Magic West Water Distribution File

FROM: Cindy Hodges

RE: Third Quarter Report

Magic West has submitted the third quarterly report of diversions as required pursuant to the conditions of use of the above water rights. A summary of that report and of total diversions since February 1, 1999 is attached. Daily withdrawal data was submitted and may be found in the Water Distribution file.

A quarterly report for the period November 1, 1999 to January 31, 2000, is due on March 1. At that time a full year's withdrawal data will have been accumulated.

cc: Western Region

MICROFILMED
OCT 05 2000

MagicWest 61-07724.xls
Magic West, Glenns Ferry, Water Measurement Report Compilation
61-07724, 61-07189, 61-02248B (also 61-00301, Water Supply Bank Rental)
compiled by Scott King, 9/3/99
updated by Cindy Hodges, 2/1/00

Flowmeter volume multiplier = 100
Flowmeter volume units = gallons
Flowmeter calibrated in 1999 by C.E. Brockway and Cindy Hodges
Flowmeter calib. Multiplier= 1.083

Reading Date (8am)	Flowmeter Reading (with multiplier)	Monthly use (gal)	Adjusted** Monthly Use (gal)	Adjusted** Monthly Use (acre-ft)	Month / Year	Average Daily Use (gal)
2/1/99	38,702,700					
3/1/99	45,689,500	6,986,800	7,566,704	23.22	Feb-99	270,239
4/1/99	52,635,900	6,946,400	7,522,951	23.09	Mar-99	242,676
5/1/99	59,756,300	7,120,400	7,711,393	23.67	Apr-99	257,046
6/1/99	66,852,500	7,096,200	7,685,185	23.59	May-99	247,909
7/1/99	74,690,700	7,838,200	8,488,771	26.05	Jun-99	282,959
8/1/99	82,749,500	8,058,800	8,727,680	26.78	Jul-99	281,538
9/1/99	87,347,600	4,598,100	4,979,742	15.28	Aug-99	160,637
10/1/99	93,067,100	5,719,500	6,194,219	19.01	Sep-99	206,474
11/1/99	100,731,400 *	7,664,300	8,300,437	25.47	Oct-99	267,756

Diversions Aug through Oct, 1999 (present quarter, adjusted**)=	59.76	acre-feet
Total Diversions Feb through Oct, 1999 (adjusted**)=	206.16	acre-feet
Average diversion per quarter ^ =	68.72	acre-feet
Maximum authorized annual diversion=	338.00	acre-feet

* Flow meter readings adjusted for meter "roll-over" (occurred 10/29/99)
**Adjusted per meter calibration; volume multiplied by 1.083
^ Final quarterly report for the period Nov 1 to Jan 31 is due march 1, 2000

ROSHOLT, ROBERTSON & TUCKER
Chartered
ATTORNEYS AT LAW

JOHN A. ROSHOLT
J. EVAN ROBERTSON
JAMES C. TUCKER
GARY D. SLETTE
JOHN K. SIMPSON
NORMAN M. SEMANKO
JERRY V. JENSEN
TIMOTHY J. STOVER
AMY D. CHESTNUT

Twin Falls Office
142 3rd Ave. North
P.O. BOX 1906
TWIN FALLS, IDAHO 83303-1906
TELEPHONE (208) 734-0700
FAX (208) 736-0041

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

RECEIVED
DEC 1 1999
Department of Water Resources

December 1, 1999

Karl J. Dreher, Director
Idaho Department of Water Resources
1301 North Orchard Street
Boise, ID 83720

Re: Magic West -- Report on Groundwater Diversions

Dear Karl:

As required by Condition No. 6 of Permit No. 61-07724, issued on August 27, 1999, and the Final Order issued in the Matter of License No. 61-07189 on January 22, 1999, this is Magic West's report on the volume of groundwater diverted and used for the three-month period beginning on August 1, 1999 and ending on October 31, 1999.

The enclosed well water usage charts, maintained by Magic West, include the diversions from Magic West's well from August 1, 1999 through October 31, 1999. Adding the gallons from the weekly charts (and subtracting the usage on November 1-6) reveals that a total of 18.98 million gallons, or 58.25 acre-feet, was used by Magic West during the 3 month period. Multiplying by 1.083 to account for the fact that the flow meter totalizer is recording 7.7 percent low, as documented previously by Brockway Engineering, it appears that a total of 20.56 million gallons, or 63.09 acre-feet was diverted from the well over the three-month period.

Please let us know if you have any questions.

Sincerely,

NORMAN M. SEMANKO

12019902.NMS

Enclosures

cc: Magic West
Charles E. Brockway

State of Idaho
DEPARTMENT OF WATER RESOURCES
1301 North Orchard Street, P.O. Box 83720, Boise, Idaho 83720-0098
Phone: (208) 327-7900 FAX: (208) 327-7866

DIRK KEMPTHORNE
GOVERNOR

KARL J. DREHER
DIRECTOR

November 2, 1999

Norman M. Semanko
ROSHOLT, ROBERTSON & TUCKER
P.O. Box 1906
142 3rd Ave N.
Twin Falls, ID 83303-1906

RE: MAGIC WEST - WATER BANK RENTAL

Dear Mr. Semanko:

I have reviewed your letter dated November 1, 1999, in which you apparently seek clarification on required reporting periods for water rented from the Water Supply Bank and in connection with License No. 61-07189 and Permit No. 61-07724. The authority to divert water under the rental will terminate when 300 AF has been diverted or on March 31, 2000, whichever occurs first. The six month reporting period was chosen to be used as a reasonable indicator of the actual amount of water diverted by Magic West under terms of the rental and will terminate relatively soon. The reporting periods for the permit and license are synchronized with each other for ongoing reporting. Hence, the department does not see a need to change the reporting periods.

Enclosed is the department's analysis of the flow data you submitted in August 1999, relative to water diverted under the rental. The department estimates the 6-month diversion to be about 146 acre feet instead of the 124 acre feet indicated in your November 1, 1999 letter.

If you have questions, please feel free to contact me or the department.

Sincerely,

L. GLEN SAXTON, P.E.
Chief, Water Allocation Bureau

Encl: 1

c: IDWR - S. Region
Allen Merritt

OCT 0 5 2000

MEMORANDUM

To: Glen Saxton
From: Scott King
Date: September 9, 1999

Subject: Review of Magic West August '99 report

I have reviewed the report submitted by Norman M. Semanko regarding diversions made by the Magic West food processing facility in Glenns Ferry, Idaho. Reviewed materials include a cover letter, records of flow meter readings, and a flow meter calibration report prepared by Brockway Engineering. No major problems were found with the submitted materials. The records, documenting 97 days of diversions, appear to support Semanko's claim that additional rentals will not be necessary. A few minor items were discovered and are listed here.

First, several documented flow rates in the record of flow meter readings exceed the authorized diversion rate of 0.67 cfs. These readings occurred on 5/24 (0.68 cfs), 5/29 (0.91 cfs), and 6/16 (0.74 cfs). (Note that these three readings should be multiplied by a factor of 1.083 based on the flow meter calibration discussed later.) These flow rates are an average flow rate for an 8-hour period. Review of Brockway's flow meter calibration report indicates that this diversion open-discharges into the top of a holding tank. Tank level controls operation of the well pump. Flow rate measured during the calibration was 0.95 cfs. It appears that when the pump is running, it flows at or near the 0.95 cfs rate. Typical plant usage for the recorded 8-hour periods usually averages less than 0.67 cfs, but occasionally average diversions for an 8-hour period exceed 0.67 cfs. The schematic included with Brockway's report indicates the discharge pipe does not currently have a valve or other means of reducing flow from the well pump.

Second, the flow meter calibration report prepared by Brockway Engineering indicates that the flow meter totalizer is recording 7.7 percent low, which may be attributed to poor meter location. The instantaneous flow meter "needle" reading is about 38 percent low, which is likely due to gearing in the flow meter head, and not to installation location. Brockway recommended relocating the flow meter in an attempt to reduce inaccuracy in the totalizer readings. The department's current standards require flow meters have an accuracy of +/- 10 percent or better. Volumes and rates calculated using totalizer readings could be multiplied by a factor of 1.083 to get a more accurate accounting of flows. I have started a spreadsheet to account for flows reported by Magic West which incorporates this multiplier.

$$\text{Multiplier} = 1 \div [\,1 + (\,\% \div 100\,)\,] = 1 \div (1 - 0.077) = 1.083$$

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Mr. Semanko's letter documents diversion of 67.84 acre-feet during the three months of May, June, and July, 1999. The July 31 midnight totalizer reading was 82,659,000 gallons, and the April 30 midnight reading was 59,680,900. The difference (22,978,100 gallons) multiplied by 1.083 yields a total of 76.37 acre-feet (24,885,300 gallons) for this three-month period. The file shows that diversions for February, March, and April total 69.97 acre-feet, and therefore a total of 146.09 acre-feet for the past 6-month period. Assuming that Magic West continues to divert at this rate indicates an annual diversion of about 292 acre-feet. Permit No. 61-07724 states: "The limit on maximum rate of diversion and annual pumped volume under this right when combined with Right 61-07189 and any other water right (sic) authorized to use the same point of diversion shall not exceed 0.67 cfs nor 338.0 afa." Careful usage of water should allow Magic West to continue operation within these authorizations.

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MagicWest 61-07724.xls
Magic West, Glenns Ferry, Water Measurement Report Compilation
61-07724, 61-07189, 61-02248B (also 61-00301, Water Supply Bank Rental)
compiled by Scott King, 9/3/99

Flometer volume multiplier = 100
Flowmeter volume units = gallons
Flowmeter calibrated in 1999 by C.E. Brockway and Cindy Hodges
Flowmeter calib. Multiplier= 1.083

Reading Date	Flowmeter Reading (8 am)	Monthly use (gal)	Adjusted** Monthly Use (gal)	Adjusted** Monthly Use (acre-ft)	Month / Year	Average Daily Use (gal)	comments
2/1/1999	38,702,700		n/a	n/a			
3/1/1999	45,689,500	6,986,800	7,566,704	23.22	Feb-99	270,239	
4/1/1999	52,635,900	6,946,400	7,522,951	23.09	Mar-99	242,676	
5/1/1999	59,756,300	7,120,400	7,711,393	23.67	Apr-99	257,046	
6/1/1999	66,852,500	7,096,200	7,685,185	23.59	May-99	247,909	
7/1/1999	74,690,700	7,838,200	8,488,771	26.05	Jun-99	282,959	
8/1/1999	82,659,000	7,968,300	8,629,669	26.48	Jul-99	278,376	7/31/99 midnight reading

Diversions for Feb through July, 1999 (unadjusted)= 43,956,300 gallons
Diversions for Feb through July, 1999 (adjusted**)= 47,604,673 gallons
Diversions for Feb through July, 1999 (adjusted**)= 146.09 acre-feet

* Flow meter readings adjusted for meter "roll-over" (none yet)
**Adjusted per meter calibration; volume multiplied by 1.083

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August 31, 1999

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Department of Water Resources

Karl J. Dreher, Director
Idaho Department of Water Resources
1301 North Orchard Street
Boise, ID 83720

Re: Magic West -- Report on Groundwater Diversions

Dear Karl:

As required by the Final Order issued in the Matter of License No. 61-07189 on January 22, 1999, this is Magic West's report on the volume of groundwater diverted and used under License No. 61-07189, and other water rights authorizing use of the same point of diversion, for the three (3) month period beginning on May 1, 1999 and ending July 31, 1999.

The enclosed well water usage charts, maintained by Magic West, include the diversions from Magic West's well from May 1, 1999 through July 31, 1999. Adding the gallons from the weekly charts (and subtracting the usage on April 25-30) reveals that a total of 22.1044 million gallons, or 67.84 acre-feet, was used by Magic West during the 3 month period. Combining this amount with the totals reported for the February 1 through April 30 period (20.8615 million gallons, or 64.02 acre-feet), indicates that a total of 42.9659 million gallons, or 131.86 acre-feet, was diverted by Magic West during the 6 month period from February 1 through July 31, 1999.

The water rights (with diversion volumes) used to supply this water are as follows:

61-07189	(58 acre-feet, per amended license)
61-02248B	(8 acre-feet, per IDWR recommendation to SRBA Court)
61-00301	(300 acre-feet, per State Water Supply Bank rental)
Total	366 acre-feet per year

As you will recall, Magic West rented a portion of water right no. 61-00301 from the State Water Supply Bank, for the period beginning April 1, 1999 and ending March 31, 2000. Since Application for Permit No. 61-07724 was approved on August 27, 1999, allowing a maximum diversion volume of 338.0 acre-feet per year, it is expected that additional rentals will not be necessary. Pursuant to the approved permit, Magic West will continue to provide quarterly reports of its diversions to the Department until the requirement is waived by the Director.

On July 21, 1999, Cindy Hodges requested that we submit information regarding calibration of Magic West's meter. The calibration was performed by Dr. Charles E. Brockway on August 11, 1999, with the assistance of Cindy Hodges. A copy of Dr. Brockway's August 16, 1999 report is enclosed to verify the calibration.

Please let us know if you have any questions.

Sincerely,

NORMAN M. SEMANKO

08319901.NMS

Enclosures

cc: Magic West
Charles E. Brockway

Report on Calibration of Discharge Meter
Magic West Inc. Well
Glenns Ferry, Idaho

Brockway Engineering P.L.L.C.
August 16, 1999

NOTE: See Water Distribution file for Calibration Exam Notes.

Introduction

As requested by the Idaho Department of Water Resources in connection with discharge reporting of ground water use by Magic West Inc. Glenns Ferry, the in-line flow meter was calibrated on August 11, 1999. Ms. Cindy Hodges, IDWR Boise attended and assisted in the calibration, which was performed by C.E. Brockway of Brockway Engineering P.L.L.C. C.E. Brockway is a certified water rights examiner.

Facility

The Magic West Inc. well provides water to the Glenns Ferry facility utilizing a submersible pump, pumping into a 6-inch steel pipe to the plant. The low temperature geothermal well was drilled in 1974 by Hiddleston Drilling. Pump and well data are shown on the attached well data sheet. The well is 1230 feet deep (see attached well driller's log), with a 30 hp submersible pump. In-plant piping is schedule 40, 6-inch steel conveying water through the flow meter to a 8500 gal storage and regulation tank. Water level in the tank is controlled by an elevation sensor which turns the pump on and off depending on the in-plant demand. The attached schematic diagram, prepared by Magic West Inc., shows the flow meter location relative to the well and tank.

The flow meter is a McCrometer, in-line saddle type propeller meter installed on September 15, 1996, serial number 96-06682. The meter is installed in a vertical section of schedule 40 steel pipe as shown on the attached schematic. The instantaneous discharge dial is calibrated from 0 to 1300 gpm in 10 gpm increments and the totalizer registers in gallons x 100. The meter is installed approximately 3 feet (6 diameters) downstream from the end of a tee in the pipe leading to a fire hydrant and 10 feet upstream of a 90° elbow. The upstream unobstructed distance does not meet manufacturer's suggested installation of 10 diameters (5 feet) without flow straighteners.

The storage and regulation tank is an 11.0ft diameter 12 ft high stainless steel tank. Inflow from the well enters the tank from the top and water level is observable using a ¾ inch diameter clear Teflon sight glass. The inside diameter of the tank was measured with a cloth tape at three locations by entering the tank through the access port on the side of the tank.

Calibration Procedure

The storage tank was emptied, access port removed and the inside diameter measured. The access port was closed and a cloth tape graduated in 0.01 ft increments attached to the sight glass on the tank. All outlet valves were closed. The well pump was turned on to automatic mode and the sight glass read approximately every two (2) minutes. The flow meter instantaneous discharge and totalizer was also read approximately every two (2) minutes. The sight glass was read and timed by C.E. Brockway and the flow meter data read by Cindy Hodges of IDWR.

Readings were taken on the sight glass and flow meter for approximately 14 minutes until the tank was near the automatic shut off level. The pump automatically shut off after the last reading.

Following the initial calibration, the process was repeated by C.E. Brockway again measuring the tank and meter for approximately 14 minutes.

Results

The attached spreadsheet shows the results of the calibration and the repeat of the calibration.

The totalizer is utilized for reporting volumes of water diverted to IDWR. Based on the results of the calibration, the McCrometer flow meter is registering flow volumes from 7.3 to 8.1 percent low compared to the tank calibration. An average difference of 7.7 percent low is reasonable. The likely reason for this difference is the location of the meter in the pipe relative to the pipe elbow just upstream.

The instantaneous discharge dial reads low compared to the totalizer register. In the initial calibration, the instantaneous discharge readings averaged 265 gpm whereas the totalizer calibrated average discharge was 393 gpm, a difference of 33 percent. Similarly, in the repeat calibration, the instantaneous dial read 30 percent low. This difference cannot be explained by the meter installation location but is more likely related to the gear assembly in the meter head.

Conclusions and Recommendations

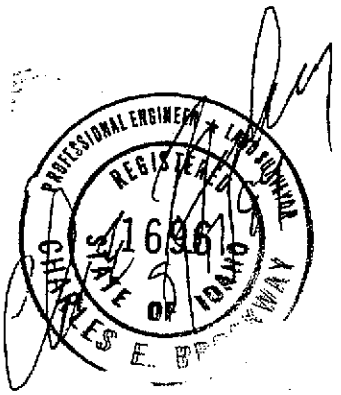
The calculated discharge volumes indicated by the McCrometer flow meter totalizer are approximately 7.7 percent lower than the discharge volume calculated from the tank measurements. This is likely due to placement of the meter in the inlet pipe too close to the upstream pipefitting.

The instantaneous discharge reading of the flow meter is between 30 and 33 percent low compared to the totalizer calculated discharge and approximately 38 percent lower than the tank calibrated discharge. This difference is most likely due to gearing in the flow meter head and not to installation location.

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Moving the meter downstream in the vertical pipe to provide an unobstructed flow distance upstream of the meter of 10 or more pipe diameters may improve the totalizer registration of the meter. However, it will not improve the discrepancy between the instantaneous discharge dial and the totalizer. Re-installing the meter farther downstream or at a higher elevation in the vertical pipe will make it difficult to read without a ladder or some other means of reaching the meter.

It is therefore recommended that a new meter with a remote readout be procured and installed in the vertical 6 inch pipe at a point 7 feet (14 pipe diameters) downstream of the tee and 6 feet (12 diameters) upstream of the 90° elbow. The remote readout can be installed at eye level so that it can be read from the floor of the plant or could be wired to the maintenance supervisors office or other more convenient location.



MAGIC WEST, INC.
GLENNS FERRY, IDAHO

WELL AND PUMP DATA

Well is 1230 ft. deep, with a 10" casing to 198 feet.
Temperature of water: 90 degrees.
Pump is set at 105 ft with 5 pipe joints 21 ft ea. then pump.
Production pipe is 4" dia. With check valve on last joint before pump.
Pump is a Peerless, 4 stage. Serial #66HXB400-Mfg. Date: 1974
Motor was replaced: 5/17/97
Motor Data: 30 HP Franklin Electric
Model: 2366169020
22kw/3ph/460volt
RPM 3450/60HZ
39 amp/SF max amp 45.2
S.F. 1.15/KVA Code J/G
Min. Flow FT./sec. 0.5

MAGIC WEST
WELL WATER USAGE CHART

DATE June 13 - June 19, 1999

SHIFT	DATE	HOURS	METER READINGS		GPM
I	06/13	12:00 AM - 8:00 AM	69,891,400	94,200	196
II	06/13	8:00 AM - 4:00 PM	69,985,600	87,100	181
III	06/13	4:00 PM - 12:00 AM	70,072,700	82,400	172
I	06/14	12:00 AM - 8:00 AM	70,155,100	93,300	194
II	06/14	8:00 AM - 4:00 PM	70,248,400	102,000	213
III	06/14	4:00 PM - 12:00 AM	70,350,400	84,900	177
I	06/15	12:00 AM - 8:00 AM	70,435,300	107,200	223
II	06/15	8:00 AM - 4:00 PM	70,542,500	104,900	219
III	06/15	4:00 PM - 12:00 AM	70,647,400	91,900	191
I	06/16	12:00 AM - 8:00 AM	SD	160,100	334
II	06/16	8:00 AM - 4:00 PM	SD	0	0
III	06/16	4:00 PM - 12:00 AM	70,899,400	94,000	196
I	06/17	12:00 AM - 8:00 AM	70,993,400	93,900	196
II	06/17	8:00 AM - 4:00 PM	71,087,300	77,500	161
III	06/17	4:00 PM - 12:00 AM	71,164,800	104,900	219
I	06/18	12:00 AM - 8:00 AM	71,269,700	111,400	232
II	06/18	8:00 AM - 4:00 PM	71,381,100	62,200	130
III	06/18	4:00 PM - 12:00 AM	71,443,300	106,600	222
I	06/19	12:00 AM - 8:00 AM	71,549,900	75,500	157
II	06/19	8:00 AM - 4:00 PM	71,625,400	109,200	228
III	06/19	4:00 PM - 12:00 AM	71,734,600	87,200	182

SHIFT		HOURS	GALLONS	GPD	GPM
I	6	48	735,600	122,600	255
II	6	48	542,900	90,483	189
III	7	56	651,900	93,129	194
		152	1,930,400	306,212	212

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MAGIC WEST
WELL WATER USAGE CHART

DATE June 20 - June 26, 1999

SHIFT	DATE	HOURS	METER READINGS		GPM
I	06/20	12:00 AM - 8:00 AM	71,821,800	90,300	188
II	06/20	8:00 AM - 4:00 PM	71,912,100	89,600	187
III	06/20	4:00 PM - 12:00 AM	72,001,700	99,700	208
I	06/21	12:00 AM - 8:00 AM	72,101,400	97,000	202
II	06/21	8:00 AM - 4:00 PM	72,198,400	91,800	191
III	06/21	4:00 PM - 12:00 AM	72,290,200	86,600	180
I	06/22	12:00 AM - 8:00 AM	72,376,800	91,900	191
II	06/22	8:00 AM - 4:00 PM	72,468,700	95,700	199
III	06/22	4:00 PM - 12:00 AM	72,564,400	85,900	179
I	06/23	12:00 AM - 8:00 AM	72,650,300	82,100	171
II	06/23	8:00 AM - 4:00 PM	72,732,400	102,500	214
III	06/23	4:00 PM - 12:00 AM	72,834,900	79,200	165
I	06/24	12:00 AM - 8:00 AM	72,914,100	91,500	191
II	06/24	8:00 AM - 4:00 PM	73,005,600	100,300	209
III	06/24	4:00 PM - 12:00 AM	73,105,900	96,400	201
I	06/25	12:00 AM - 8:00 AM	73,202,300	82,900	173
II	06/25	8:00 AM - 4:00 PM	73,285,200	21,500	45
III	06/25	4:00 PM - 12:00 AM	73,306,700	100,500	209
I	06/26	12:00 AM - 8:00 AM	73,407,200	90,700	189
II	06/26	8:00 AM - 4:00 PM	73,497,900	73,900	154
III	06/26	4:00 PM - 12:00 AM	73,571,800	100,800	210

SHIFT		HOURS	GALLONS	GPD	GPM
I	7	56	626,400	89,486	186
II	7	56	575,300	82,186	171
III	7	56	649,100	92,729	193
		168	1,850,800	264,400	183

MAGIC WEST
WELL WATER USAGE CHART

DATE June 27 - July 3, 1999

SHIFT	DATE	HOURS	METER READINGS		GPM
I	06/27	12:00 AM - 8:00 AM	73,672,600	108,600	226
II	06/27	8:00 AM - 4:00 PM	73,781,200	57,100	119
III	06/27	4:00 PM - 12:00 AM	73,838,300	92,500	193
I	06/28	12:00 AM - 8:00 AM	73,930,800	84,400	176
II	06/28	8:00 AM - 4:00 PM	74,015,200	79,900	166
III	06/28	4:00 PM - 12:00 AM	74,095,100	99,700	208
I	06/29	12:00 AM - 8:00 AM	74,194,800	78,400	163
II	06/29	8:00 AM - 4:00 PM	74,273,200	89,500	186
III	06/29	4:00 PM - 12:00 AM	74,362,700	84,300	176
I	06/30	12:00 AM - 8:00 AM	74,447,000	98,700	206
II	06/30	8:00 AM - 4:00 PM	74,545,700	67,900	141
III	06/30	4:00 PM - 12:00 AM	74,613,600	77,100	161
I	07/01	12:00 AM - 8:00 AM	74,690,700	95,700	199
II	07/01	8:00 AM - 4:00 PM	74,786,400	88,900	185
III	07/01	4:00 PM - 12:00 AM	74,875,300	81,700	170
I	07/02	12:00 AM - 8:00 AM	74,957,000	88,400	184
II	07/02	8:00 AM - 4:00 PM	75,045,400	88,300	184
III	07/02	4:00 PM - 12:00 AM	SD	84,100	175
I	07/03	12:00 AM - 8:00 AM	SD	0	0
II	07/03	8:00 AM - 4:00 PM	SD	0	0
III	07/03	4:00 PM - 12:00 AM	SD	0	0

SHIFT		HOURS	GALLONS	GPD	GPM
I	6	48	554,200	92,367	192
II	6	48	471,600	78,600	164
III	5	40	519,400	103,880	216
		136	1,545,200	274,847	191

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MAGIC WEST
WELL WATER USAGE CHART

DATE July 4 - July 10, 1999

SHIFT	DATE	HOURS	METER READINGS		GPM
I	07/04	12:00 AM - 8:00 AM	SD	0	0
II	07/04	8:00 AM - 4:00 PM	SD	0	0
III	07/04	4:00 PM - 12:00 AM	SD	0	0
I	07/05	12:00 AM - 8:00 AM	SD	0	0
II	07/05	8:00 AM - 4:00 PM	SD	0	0
III	07/05	4:00 PM - 12:00 AM	SD	0	0
I	07/06	12:00 AM - 8:00 AM	SD	66,100	138
II	07/06	8:00 AM - 4:00 PM	75,680,200	47,700	99
III	07/06	4:00 PM - 12:00 AM	75,727,900	67,700	141
I	07/07	12:00 AM - 8:00 AM	75,795,600	84,100	175
II	07/07	8:00 AM - 4:00 PM	75,879,700	98,100	204
III	07/07	4:00 PM - 12:00 AM	75,977,800	91,100	190
I	07/08	12:00 AM - 8:00 AM	76,068,900	97,700	204
II	07/08	8:00 AM - 4:00 PM	76,166,600	98,700	206
III	07/08	4:00 PM - 12:00 AM	76,265,300	83,400	174
I	07/09	12:00 AM - 8:00 AM	76,348,700	80,500	168
II	07/09	8:00 AM - 4:00 PM	76,429,200	109,700	229
III	07/09	4:00 PM - 12:00 AM	76,538,900	90,400	188
I	07/10	12:00 AM - 8:00 AM	76,629,300	118,300	246
II	07/10	8:00 AM - 4:00 PM	76,747,600	82,200	171
III	07/10	4:00 PM - 12:00 AM	76,829,800	100,100	209

SHIFT		HOURS	GALLONS	GPD	GPM
I	4	32	446,700	111,675	233
II	5	40	436,400	87,280	182
III	5	40	432,700	86,540	180
		112	1,315,800	285,495	198

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MAGIC WEST
WELL WATER USAGE CHART

DATE July 11 - July 17, 1999

SHIFT	DATE	HOURS	METER READINGS		GPM
I	07/11	12:00 AM - 8:00 AM	76,929,900	94,500	197
II	07/11	8:00 AM - 4:00 PM	77,024,400	101,800	212
III	07/11	4:00 PM - 12:00 AM	77,126,200	83,900	175
I	07/12	12:00 AM - 8:00 AM	77,210,100	124,900	260
II	07/12	8:00 AM - 4:00 PM	77,335,000	64,000	133
III	07/12	4:00 PM - 12:00 AM	77,399,000	110,700	231
I	07/13	12:00 AM - 8:00 AM	77,509,700	89,100	186
II	07/13	8:00 AM - 4:00 PM	77,598,800	110,800	231
III	07/13	4:00 PM - 12:00 AM	77,709,600	83,400	174
I	07/14	12:00 AM - 8:00 AM	77,793,000	89,500	186
II	07/14	8:00 AM - 4:00 PM	77,882,500	87,600	183
III	07/14	4:00 PM - 12:00 AM	77,970,100	98,400	205
I	07/15	12:00 AM - 8:00 AM	78,068,500	86,100	179
II	07/15	8:00 AM - 4:00 PM	78,154,600	90,700	189
III	07/15	4:00 PM - 12:00 AM	78,245,300	99,000	206
I	07/16	12:00 AM - 8:00 AM	78,344,300	92,100	192
II	07/16	8:00 AM - 4:00 PM	78,436,400	92,100	192
III	07/16	4:00 PM - 12:00 AM	78,528,500	90,300	188
I	07/17	12:00 AM - 8:00 AM	78,618,800	88,400	184
II	07/17	8:00 AM - 4:00 PM	78,707,200	88,400	184
III	07/17	4:00 PM - 12:00 AM	78,795,600	95,100	198

SHIFT		HOURS	GALLONS	GPD	GPM
I	7	56	664,600	94,943	198
II	7	56	635,400	90,771	189
III	7	56	660,800	94,400	197
		168	1,960,800	280,114	194

MAGIC WEST
WELL WATER USAGE CHART

DATE July 18 - July 24, 1999

SHIFT	DATE	HOURS	METER READINGS		GPM
I	07/18	12:00 AM - 8:00 AM	78,890,700	98,400	205
II	07/18	8:00 AM - 4:00 PM	78,989,100	84,400	176
III	07/18	4:00 PM - 12:00 AM	79,073,500	97,300	203
I	07/19	12:00 AM - 8:00 AM	79,170,800	81,200	169
II	07/19	8:00 AM - 4:00 PM	79,252,000	96,800	202
III	07/19	4:00 PM - 12:00 AM	79,348,800	92,900	194
I	07/20	12:00 AM - 8:00 AM	79,441,700	97,300	203
II	07/20	8:00 AM - 4:00 PM	79,539,000	102,700	214
III	07/20	4:00 PM - 12:00 AM	79,641,700	80,500	168
I	07/21	12:00 AM - 8:00 AM	79,722,200	96,800	202
II	07/21	8:00 AM - 4:00 PM	79,819,000	101,700	212
III	07/21	4:00 PM - 12:00 AM	79,920,700	86,100	179
I	07/22	12:00 AM - 8:00 AM	80,006,800	87,500	182
II	07/22	8:00 AM - 4:00 PM	80,094,300	89,600	187
III	07/22	4:00 PM - 12:00 AM	80,183,900	99,700	208
I	07/23	12:00 AM - 8:00 AM	SD	107,100	223
II	07/23	8:00 AM - 4:00 PM	80,368,500	0	0
III	07/23	4:00 PM - 12:00 AM	SD	0	0
I	07/24	12:00 AM - 8:00 AM	SD	0	0
II	07/24	8:00 AM - 4:00 PM	80,521,300	106,100	221
III	07/24	4:00 PM - 12:00 AM	80,627,400	96,400	201

SHIFT		HOURS	GALLONS	GPD	GPM
I	5	40	568,300	113,660	237
II	6	48	581,300	96,883	202
III	6	48	552,900	92,150	192
		136	1,702,500	302,693	210

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MAGIC WEST
WELL WATER USAGE CHART

DATE July 25 - July 31, 1999

SHIFT	DATE	HOURS	METER READINGS		GPM
I	07/25	12:00 AM - 8:00 AM	80,723,800	111,500	232
II	07/25	8:00 AM - 4:00 PM	80,835,300	67,700	141
III	07/25	4:00 PM - 12:00 AM	80,903,000	97,900	204
I	07/26	12:00 AM - 8:00 AM	81,000,900	107,300	224
II	07/26	8:00 AM - 4:00 PM	81,108,200	85,200	178
III	07/26	4:00 PM - 12:00 AM	81,193,400	103,300	215
I	07/27	12:00 AM - 8:00 AM	81,296,700	95,600	199
II	07/27	8:00 AM - 4:00 PM	81,392,300	103,600	216
III	07/27	4:00 PM - 12:00 AM	81,495,900	105,200	219
I	07/28	12:00 AM - 8:00 AM	81,601,100	128,300	267
II	07/28	8:00 AM - 4:00 PM	81,729,400	70,600	147
III	07/28	4:00 PM - 12:00 AM	81,800,000	95,900	200
I	07/29	12:00 AM - 8:00 AM	81,895,900	101,900	212
II	07/29	8:00 AM - 4:00 PM	81,997,800	104,100	217
III	07/29	4:00 PM - 12:00 AM	82,101,900	94,300	196
I	07/30	12:00 AM - 8:00 AM	82,196,200	90,800	189
II	07/30	8:00 AM - 4:00 PM	82,287,000	99,700	208
III	07/30	4:00 PM - 12:00 AM	82,386,700	87,900	183
I	07/31	12:00 AM - 8:00 AM	82,474,600	90,600	189
II	07/31	8:00 AM - 4:00 PM	82,565,200	93,800	195
III	07/31	4:00 PM - 12:00 AM	82,659,000	90,500	189

SHIFT		HOURS	GALLONS	GPD	GPM
I	7	56	726,000	103,714	216
II	7	56	624,700	89,243	186
III	7	56	675,000	96,429	201
		168	2,025,700	289,386	201

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MAGIC WEST
WELL WATER USAGE CHART

DATE Apr. 25 - May 1, 1999

SHIFT	DATE	HOURS	METER READINGS		GPM
I	04/25	12:00 AM - 8:00 AM	58,720,600	63,100	131
II	04/25	8:00 AM - 4:00 PM	58,783,700	102,800	214
III	04/25	4:00 PM - 12:00 AM	58,886,500	89,000	185
I	04/26	12:00 AM - 8:00 AM	58,975,500	65,000	135
II	04/26	8:00 AM - 4:00 PM	59,040,500	82,100	171
III	04/26	4:00 PM - 12:00 AM	59,122,600	67,500	141
I	04/27	12:00 AM - 8:00 AM	SD	89,600	187
II	04/27	8:00 AM - 4:00 PM	SD	8,600	18
III	04/27	4:00 PM - 12:00 AM	SD	8,600	18
I	04/28	12:00 AM - 8:00 AM	SD	2,800	6
II	04/28	8:00 AM - 4:00 PM	59,299,700	49,700	104
III	04/28	4:00 PM - 12:00 AM	59,349,400	56,100	117
I	04/29	12:00 AM - 8:00 AM	59,405,500	59,000	123
II	04/29	8:00 AM - 4:00 PM	59,464,500	43,900	91
III	04/29	4:00 PM - 12:00 AM	59,508,400	67,800	141
I	04/30	12:00 AM - 8:00 AM	59,576,200	45,000	94
II	04/30	8:00 AM - 4:00 PM	59,621,200	59,700	124
III	04/30	4:00 PM - 12:00 AM	59,680,900	75,400	157
I	05/01	12:00 AM - 8:00 AM	59,756,300	77,300	161
II	05/01	8:00 AM - 4:00 PM	59,833,600	80,400	168
III	05/01	4:00 PM - 12:00 AM	59,914,000	86,000	179

SHIFT		HOURS	GALLONS	GPD	GPM
I	5	40	401,800	80,360	167
II	6	48	427,200	71,200	148
III	6	48	450,400	75,067	156
		136	1,279,400	226,627	157

MAGIC WEST
WELL WATER USAGE CHART

DATE May 2 - May 8, 1999

SHIFT	DATE	HOURS	METER READINGS		GPM
I	05/02	12:00 AM - 8:00 AM	60,000,000	63,500	132
II	05/02	8:00 AM - 4:00 PM	60,063,500	64,400	134
III	05/02	4:00 PM - 12:00 AM	60,127,900	79,000	165
I	05/03	12:00 AM - 8:00 AM	60,206,900	63,500	132
II	05/03	8:00 AM - 4:00 PM	60,270,400	86,700	181
III	05/03	4:00 PM - 12:00 AM	60,357,100	69,500	145
I	05/04	12:00 AM - 8:00 AM	60,426,600	80,800	168
II	05/04	8:00 AM - 4:00 PM	60,507,400	54,200	113
III	05/04	4:00 PM - 12:00 AM	60,561,600	84,800	177
I	05/05	12:00 AM - 8:00 AM	60,646,400	66,200	138
II	05/05	8:00 AM - 4:00 PM	60,712,600	66,700	139
III	05/05	4:00 PM - 12:00 AM	60,779,300	71,600	149
I	05/06	12:00 AM - 8:00 AM	60,850,900	77,000	160
II	05/06	8:00 AM - 4:00 PM	60,927,900	72,600	151
III	05/06	4:00 PM - 12:00 AM	61,000,500	82,300	171
I	05/07	12:00 AM - 8:00 AM	61,082,800	95,100	198
II	05/07	8:00 AM - 4:00 PM	61,177,900	86,700	181
III	05/07	4:00 PM - 12:00 AM	61,264,600	77,100	161
I	05/08	12:00 AM - 8:00 AM	61,341,700	86,500	180
II	05/08	8:00 AM - 4:00 PM	61,428,200	70,800	148
III	05/08	4:00 PM - 12:00 AM	Shut Down	90,400	188

SHIFT		HOURS	GALLONS	GPD	GPM
I	7	56	532,600	76,086	159
II	7	56	502,100	71,729	149
III	6	48	554,700	92,450	193
		160	1,589,400	240,264	167

MAGIC WEST
WELL WATER USAGE CHART

DATE May 9 - May 15, 1999

SHIFT	DATE	HOURS	METER READINGS		GPM
I	05/09	12:00 AM - 8:00 AM	SD	0	0
II	05/09	8:00 AM - 4:00 PM	SD	0	0
III	05/09	4:00 PM - 12:00 AM	SD	0	0
I	05/10	12:00 AM - 8:00 AM	SD	42,400	88
II	05/10	8:00 AM - 4:00 PM	61,723,600	62,100	129
III	05/10	4:00 PM - 12:00 AM	61,785,700	63,800	133
I	05/11	12:00 AM - 8:00 AM	61,849,500	74,900	156
II	05/11	8:00 AM - 4:00 PM	61,924,400	61,300	128
III	05/11	4:00 PM - 12:00 AM	61,985,700	94,000	196
I	05/12	12:00 AM - 8:00 AM	62,079,700	70,300	146
II	05/12	8:00 AM - 4:00 PM	62,150,000	86,900	181
III	05/12	4:00 PM - 12:00 AM	62,236,900	78,900	164
I	05/13	12:00 AM - 8:00 AM	62,315,800	80,600	168
II	05/13	8:00 AM - 4:00 PM	62,396,400	68,600	143
III	05/13	4:00 PM - 12:00 AM	62,465,000	85,600	178
I	05/14	12:00 AM - 8:00 AM	62,550,600	71,200	148
II	05/14	8:00 AM - 4:00 PM	62,621,800	81,100	169
III	05/14	4:00 PM - 12:00 AM	62,702,900	82,000	171
I	05/15	12:00 AM - 8:00 AM	62,784,900	81,000	169
II	05/15	8:00 AM - 4:00 PM	62,865,900	74,800	156
III	05/15	4:00 PM - 12:00 AM	62,940,700	107,800	225

SHIFT		HOURS	GALLONS	GPD	GPM
I	5	40	420,400	84,080	175
II	6	48	434,800	72,467	151
III	6	48	512,100	85,350	178
		136	1,367,300	241,897	168

MAGIC WEST
WELL WATER USAGE CHART

DATE May 16 - May 22, 1999

SHIFT	DATE	HOURS	METER READINGS		GPM
I	05/16	12:00 AM - 8:00 AM	63,048,500	91,700	191
II	05/16	8:00 AM - 4:00 PM	63,140,200	72,500	151
III	05/16	4:00 PM - 12:00 AM	63,212,700	89,600	187
I	05/17	12:00 AM - 8:00 AM	63,302,300	94,900	198
II	05/17	8:00 AM - 4:00 PM	63,397,200	63,700	133
III	05/17	4:00 PM - 12:00 AM	63,460,900	102,000	213
I	05/18	12:00 AM - 8:00 AM	63,562,900	60,200	125
II	05/18	8:00 AM - 4:00 PM	63,623,100	80,200	167
III	05/18	4:00 PM - 12:00 AM	63,703,300	89,700	187
I	05/19	12:00 AM - 8:00 AM	63,793,000	71,800	150
II	05/19	8:00 AM - 4:00 PM	63,864,800	99,500	207
III	05/19	4:00 PM - 12:00 AM	63,964,300	89,300	186
I	05/20	12:00 AM - 8:00 AM	64,053,600	84,900	177
II	05/20	8:00 AM - 4:00 PM	64,138,500	70,900	148
III	05/20	4:00 PM - 12:00 AM	64,209,400	97,000	202
I	05/21	12:00 AM - 8:00 AM	64,306,400	74,500	155
II	05/21	8:00 AM - 4:00 PM	64,380,900	89,800	187
III	05/21	4:00 PM - 12:00 AM	64,470,700	72,200	150
I	05/22	12:00 AM - 8:00 AM	64,542,900	107,100	223
II	05/22	8:00 AM - 4:00 PM	64,650,000	55,500	116
III	05/22	4:00 PM - 12:00 AM	64,705,500	91,400	190

SHIFT		HOURS	GALLONS	GPD	GPM
I	7	56	585,100	83,586	174
II	7	56	532,100	76,014	158
III	7	56	631,200	90,171	188
		168	1,748,400	249,771	173

MAGIC WEST
WELL WATER USAGE CHART

DATE May 23 - May 29, 1999

SHIFT	DATE	HOURS	METER READINGS		GPM
I	05/23	12:00 AM - 8:00 AM	64,796,900	86,800	181
II	05/23	8:00 AM - 4:00 PM	64,883,700	75,400	157
III	05/23	4:00 PM - 12:00 AM	64,959,100	101,300	211
I	05/24	12:00 AM - 8:00 AM	65,060,400	147,500	307
II	05/24	8:00 AM - 4:00 PM	65,207,900	19,300	40
III	05/24	4:00 PM - 12:00 AM	65,227,200	93,700	195
I	5/25	12:00 AM - 8:00 AM	65,320,900	80,000	167
II	5/25	8:00 AM - 4:00 PM	65,400,900	86,100	179
III	5/25	4:00 PM - 12:00 AM	65,487,000	79,200	165
I	5/26	12:00 AM - 8:00 AM	65,566,200	90,300	188
II	5/26	8:00 AM - 4:00 PM	65,656,500	68,400	143
III	5/26	4:00 PM - 12:00 AM	65,724,900	96,400	201
I	5/27	12:00 AM - 8:00 AM	65,821,300	71,400	149
II	5/27	8:00 AM - 4:00 PM	65,892,700	94,800	198
III	5/27	4:00 PM - 12:00 AM	65,987,500	92,700	193
I	5/28	12:00 AM - 8:00 AM	66,080,200	89,100	186
II	5/28	8:00 AM - 4:00 PM	66,169,300	96,100	200
III	5/28	4:00 PM - 12:00 AM	66,265,400	100,300	209
I	5/29	12:00 AM - 8:00 AM	66,365,700	196,700	410
II	5/29	8:00 AM - 4:00 PM	SD	0	0
III	5/29	4:00 PM - 12:00 AM	SD	0	0

SHIFT		HOURS	GALLONS	GPD	GPM
I	7	56	761,800	108,829	227
II	6	48	440,100	73,350	153
III	6	48	563,600	93,933	196
		152	1,765,500	276,112	192

MAGIC WEST
WELL WATER USAGE CHART

DATE May 30 - June 5, 1999

SHIFT	DATE	HOURS	METER READINGS		GPM
I	05/30	12:00 AM - 8:00 AM	SD	0	0
II	05/30	8:00 AM - 4:00 PM	SD	0	0
III	05/30	4:00 PM - 12:00 AM	SD	0	0
I	05/31	12:00 AM - 8:00 AM	SD	0	0
II	05/31	8:00 AM - 4:00 PM	SD	0	0
III	05/31	4:00 PM - 12:00 AM	SD	0	0
I	06/01	12:00 AM - 8:00 AM	66,852,500	73,100	152
II	06/01	8:00 AM - 4:00 PM	66,925,600	68,400	143
III	06/01	4:00 PM - 12:00 AM	66,994,000	77,000	160
I	06/02	12:00 AM - 8:00 AM	67,071,000	88,200	184
II	06/02	8:00 AM - 4:00 PM	67,159,200	69,800	145
III	06/02	4:00 PM - 12:00 AM	67,229,000	97,600	203
I	06/03	12:00 AM - 8:00 AM	67,326,600	79,000	165
II	06/03	8:00 AM - 4:00 PM	67,405,600	87,700	183
III	06/03	4:00 PM - 12:00 AM	67,493,300	81,100	169
I	06/04	12:00 AM - 8:00 AM	67,574,400	79,600	166
II	06/04	8:00 AM - 4:00 PM	67,654,000	100,600	210
III	06/04	4:00 PM - 12:00 AM	67,754,600	83,700	174
I	06/05	12:00 AM - 8:00 AM	67,838,300	96,300	201
II	06/05	8:00 AM - 4:00 PM	67,934,600	75,400	157
III	06/05	4:00 PM - 12:00 AM	68,010,000	77,200	161

SHIFT		HOURS	GALLONS	GPD	GPM
I	4	32	416,200	104,050	217
II	5	40	401,900	80,380	167
III	5	40	416,600	83,320	174
		112	1,234,700	267,750	186

MAGIC WEST
WELL WATER USAGE CHART

DATE June 6 - June 12, 1999

SHIFT	DATE	HOURS	METER READINGS		GPM
I	06/06	12:00 AM - 8:00 AM	68,067,200	102,900	214
II	06/06	8:00 AM - 4:00 PM	68,170,100	96,000	200
III	06/06	4:00 PM - 12:00 AM	68,266,100	80,300	167
I	06/07	12:00 AM - 8:00 AM	68,346,400	89,200	186
II	06/07	8:00 AM - 4:00 PM	68,435,600	65,000	135
III	06/07	4:00 PM - 12:00 AM	68,500,600	84,000	175
I	06/08	12:00 AM - 8:00 AM	68,584,600	83,100	173
II	06/08	8:00 AM - 4:00 PM	68,667,700	91,000	190
III	06/08	4:00 PM - 12:00 AM	68,758,700	101,700	212
I	06/09	12:00 AM - 8:00 AM	68,860,400	78,000	163
II	06/09	8:00 AM - 4:00 PM	68,938,400	78,000	163
III	06/09	4:00 PM - 12:00 AM	69,016,400	101,400	211
I	06/10	12:00 AM - 8:00 AM	69,117,800	94,000	196
II	06/10	8:00 AM - 4:00 PM	69,211,800	77,300	161
III	06/10	4:00 PM - 12:00 AM	69,289,100	98,900	206
I	06/11	12:00 AM - 8:00 AM	69,388,000	69,800	145
II	06/11	8:00 AM - 4:00 PM	69,457,800	102,600	214
III	06/11	4:00 PM - 12:00 AM	69,560,400	86,800	181
I	06/12	12:00 AM - 8:00 AM	69,647,200	72,000	150
II	06/12	8:00 AM - 4:00 PM	69,719,200	86,900	181
III	06/12	4:00 PM - 12:00 AM	69,806,100	85,300	178

SHIFT		HOURS	GALLONS	GPD	GPM
I	7	56	589,000	84,143	175
II	7	56	596,800	85,257	178
III	7	56	638,400	91,200	190
		168	1,824,200	260,600	181

MEMORANDUM

To: File 61-07189

From: L. Glen Saxton

RE: **HEARING SCHEDULED FOR MARCH 30, 1999**

Date: July 13, 1999

While reviewing License File No. 61-07189, department staff recently raised a question concerning the outcome of the hearing scheduled on March 30, 1999 at the request of Magic West. Since the file is not clear in this regard, this memo will provide additional information for the file.

Before the scheduled hearing on March 30, 1999, Magic West entered into negotiations with the holder of water right no. 61-00301 to rent a portion of the right thorough the water supply bank. An agreement was reached to rent 300 acre feet of water prior to the scheduled hearing. Hence Magic West contacted the department and advised that there was not a need to conduct the scheduled hearing and verbally withdrew the request. Hence the hearing was not conducted and the administrative time periods associated with the Director's Final Order have expired.

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OCT 13 2000

State of Idaho
DEPARTMENT OF WATER RESOURCES
1301 North Orchard Street, P.O. Box 83720, Boise, Idaho 83720-0098
Phone: (208) 327-7900 FAX: (208) 327-7866

DIRK KEMPTHORNE
GOVERNOR

KARL J. DREHER
DIRECTOR

June 7, 1999

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

RE: Magic West - Report on Ground Water Diversions 61-07189

Dear Norm:

The department has received the report of diversions for the period February 1 to April 30 for the Magic West Glenns Ferry plant. We have reviewed the report and find the reporting format acceptable.

Your request to report less frequently than on a quarterly basis has been noted, but I believe a change to the reporting requirement is premature. The terms of the Final Order dated January 22, 1999 and amending license 61-07189 provide for quarterly reports until the Department can determine satisfactory adherence to all water rights. The recently executed Water Supply Bank Rental Agreement also requires a diversion report every six months during the term of the lease. A single quarterly report does not satisfy either of these criteria and does not establish that sufficient water right coverage has been attained for the plant's annual operating requirements.

In order that reported diversion information may be further validated, please submit the following information about the flow meter installed on the Magic West water distribution system:

- Date of meter installation
- Diagram and description of the location of the flow meter in the system. Please include pipe sizes and distances to elbows, tees or valves both upstream and downstream of the meter.
- Meter manufacturer
- Meter model, serial number and nominal size
- Display units for rate of flow and total volume (gpm or cfs; gallons or acre-feet) and any unit multipliers
- Date of meter calibration (if any)

For your convenience form WMP2, Water Measuring Device Certification, has been enclosed. Completion of Section II of this form will provide the above requested information. If the meter has been calibrated *as installed*, the certifier should complete Section III and sign the form. Please return the meter information and all subsequent diversion reports to Tim Luke, Section Manager, Water Distribution Section. This section will monitor cumulative diversions and track the total annual uses of ground water under the applicable rights. If necessary, staff from this section are available to assist with the collection of the meter information. Mr. Luke or the Water Distribution staff may be reached at 208-327-7907.

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Application no. 61-07724 continues to be held at the Western Region office pending the receipt of information requested from the applicant. Please correspond directly with the Region office at this time in matters pertaining to this application.

Thank you for your continued cooperation.

Sincerely,

Norman C. Young, Administrator
Water Management Division

Enclosure

cc: Magic West
IDWR Western Region

ROSHOLT, ROBERTSON & TUCKER
Chartered
ATTORNEYS AT LAW

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May 28, 1999

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MAY 28 1999
Department of Water Resources

Karl J. Dreher, Director
Idaho Department of Water Resources
1301 North Orchard Street
Boise, ID 83720

61-07189

Re: Magic West -- Report on Groundwater Diversions

Dear Karl:

As required by the Final Order issued in the Matter of License No. 61-07189 on January 22, 1999, this is Magic West's report on the volume of groundwater diverted and used under License No. 61-07189, and other water rights authorizing use of the same point of diversion, for the three (3) month period beginning on February 1, 1999 and ending April 30, 1999.

The enclosed well water usage charts, maintained by Magic West, include the diversions from Magic West's well from February 1, 1999 through April 30, 1999. Adding the gallons from the weekly charts (and subtracting the usage on January 31 and May 1) reveals that a total of 20.8615 million gallons, or 64.02 acre-feet, was used by Magic West during the 3 month period.

The water rights (with diversion volumes) used to supply this water are as follows:

61-07189	(58 acre-feet, per amended license)
61-02248B	(8 acre-feet, per IDWR recommendation to SRBA Court)
61-00301	(300 acre-feet, per State Water Supply Bank rental)
Total	366 acre-feet

As you know, Magic West has rented a portion of water right no. 61-00301 from the State Water Supply Bank, for the period beginning April 1, 1999 and ending March 31, 2000. This water was rented specifically for the purpose of allowing Magic West's Glenns Ferry plant to continue operating this year, without exceeding the annual volume currently authorized under water right nos. 61-07189 and 61-02248B. Magic West has also continued to pursue Application for Permit No. 61-07724 so that future rentals will not prove necessary. Significantly, we have been able to reach agreement with the protestants regarding this matter and they have withdrawn their protests as a result. We urge the Department to approve the permit application as soon as possible, given the significant effort and resources that has gone into settling the matter.

IMAGED
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Before the Water Bank rental began on April 1, the amount of water diverted from the well between February 1 and March 31, 1999 was 13.9332 million gallons, or 42.76 acre-feet, as indicated by the enclosed well water usage charts. This is clearly within the cumulative 66 acre-foot diversion volume currently authorized by water right nos. 61-07189 and 61-02248B. Of course, all diversions after March 31, 1999 are attributable to the rental water. All of this confirms that Magic West is in full compliance with the terms of its water rights.

The January 22, 1999 Final Order indicated that Magic West would be required to report its water use every 3 months "until such time as the Department determines that annual reporting is sufficient to ensure compliance with Amended Water Right License No. 61-07189." Our report reveals that 64.02 acre-feet of the 366 acre-feet per year that is legally authorized was used by Magic West during the first 3 month period. This amounts to 17% of the water supply being used over 25% of the year. In view of these figures, please let us know whether quarterly reporting will be necessary while the water rental is in effect.

Given the rental that is in place, it should be sufficient for the next report to cover a longer period of time, perhaps from May 1, 1999 through January 31, 2000 (a 9-month report), or through March 31, 2000 (the date the current rental expires). Quarterly reporting should also prove unnecessary if Application for Permit No. 61-07724 is approved. Once the rental expires, and if it is not renewed, we would expect quarterly reporting to again be required, unless the permit application has been approved in the interim.

Again, please let us know whether you believe a change in the reporting schedule is warranted while a sufficient rental is in place. If not, we will plan to submit the next quarterly report on or before September 1, 1999.

Thank you.

Sincerely,

NORMAN M. SEMANKO

05279901.NMS

Enclosure

cc: Magic West

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Magic West Inc.

SALES
Magic Valley Foods, Inc.
P.O. Box 475
Rupert, Idaho 83350
Phone: 208-436-3126
FAX: 208-436-4542

P.O. Box 968 GLENNS FERRY, IDAHO 83623
Phone: 208-366-7477
FAX: 208-366-7751

May 25, 1999

Norman Semanko, Atty.
Rosholt, Robertson & Tucker
P.O. Box 1906
Twin Falls, ID 83303

Dear Norm:

Bill Schow asked me to send you copies of our Well Water Usage Reports dated from February through April 1999. I am enclosing them.

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

Sincerely:

Marilyn Chevalier

Marilyn Chevalier
Plant Secretary

Enc.

OCT 02 2007

State of Idaho
DEPARTMENT OF WATER RESOURCES
1301 North Orchard Street, P.O. Box 83720, Boise, Idaho 83720-0098
Phone: (208) 327-7900 FAX: (208) 327-7866

DIRK KEMPTHORNE
GOVERNOR

KARL J. DREHER
DIRECTOR

April 5, 1999

Norman M. Semanko
142 3rd Ave North
P.O. Box 1906
Twin Falls, ID 83303-1906

RE: RENTAL OF WATER FROM THE WATER SUPPLY BANK

Dear Mr. Semanko:

Enclosed for your records, please find a copy of a fully executed Water Supply Bank Rental Agreement in connection with the diversion of 300 AF of groundwater by Magic West, Inc. Also enclosed is a copy of the receipt for the water rental in the amount of $1,500 which you submitted to the department.

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

Sincerely,

L. GLEN SAXTON, P.E.
Chief, Water Allocation Bureau

Encl: 2

c: IDWR - W. Region
Gary Spackman
A61-00301

MICROFILMED
OCT 0 5 2000

ROSHOLT ROBERTSON & TUCKER
ATTORNEYS AT LAW

142 THIRD AVENUE NORTH
P.O. BOX 1906
TWIN FALLS, ID 83303-1906
(208) 734-0700
FAX (208) 736-0041

FACSIMILE TRANSMISSION

DATE: 4/5/99

FAX TO: Ken Daxton

FROM: Norm Semanko

RE: Magic West - Rental Agreement

NUMBER OF PAGES INCLUDING THIS ONE: 3

IF YOU DO NOT RECEIVE ALL OF THE PAGES, PLEASE CALL US BACK AS SOON AS POSSIBLE AT (208) 734-0700.

INFORMATION CONTAINED IN THIS FACSIMILE COMMUNICATION IS ATTORNEY/CLIENT PRIVILEGED AND/OR CONFIDENTIAL INFORMATION INTENDED ONLY FOR THE USE OF THE INDIVIDUAL OR ENTITY NAMED ABOVE. IF THE READER OF THIS COVER PAGE IS NOT THE INTENDED RECIPIENT, OR THE EMPLOYEE OR AGENT RESPONSIBLE TO DELIVER IT TO THE INTENDED RECIPIENT, YOU ARE HEREBY NOTIFIED THAT ANY DISSEMINATION, DISTRIBUTION OR COPYING OF THIS COMMUNICATION OR THE INFORMATION CONTAINED HEREIN IS STRICTLY PROHIBITED. IF YOU HAVE RECEIVED THIS COMMUNICATION IN ERROR, PLEASE IMMEDIATELY CALL AT (208) 734-0700, AND RETURN THIS FACSIMILE TO US BY MAIL AT THE ABOVE ADDRESS. WE APPRECIATE YOUR COOPERATION.

ADDITIONAL MESSAGE:

RECEIVED
OCT 05 2009

Before the Idaho Water Resource Board

WATER SUPPLY BANK RENTAL AGREEMENT

The Idaho Water Resource Board (Board) being authorized to operate a Water Supply Bank (bank) and to contract by and through the Director of the Idaho Department of Water Resources (Director) for rental of water from the bank agrees to rent water as follows:

1. Renter: Magic West, Inc. and Glenns Ferry Cogeneration Partners
2. Address: P.O. Box 475, Rupert, ID 83350
3. Source of water: Ground water
4. Volume of water rented: 300 AF, Max rate: 0.67 cfs
5. Diversion period: from April 1, 1999 to March 31, 2000
6. Use of water: Cogeneration/Cooling and potato processing
7. a) Renter's point of diversion:

   Legal description: SW1/4SE1/4 Section 29, T5S, R10E, B.M.

   Pump HP: 30 Lift: 105 feet

   b) Renter's place of use:

   Legal description: SW1/4SE1/4 Section 29, T5S, R10E, B.M.

8. The right from which water will be rented is 61-00301

Conditions of water use under this agreement:

1. The use of water under this agreement shall be subject to the provisions of Section 42-1766, Idaho Code.
2. Prior to diversion and use of water under terms of this agreement, the renter shall install a measuring device to measure the amount of water diverted and

shall report the amount diverted to the department every 6 months unless the Director determines that more frequent reporting is required.

3. Use of water under this agreement does not constitute a dedication of the water to renter's land and upon expiration of this agreement, the place of use of the water shall revert to its original place of use and/or again be available to rent from the bank.

4. Renter agrees to hold the Board, the Director and the state of Idaho harmless from all liability on account of the diversion and use of water under this agreement.

5. This rental does not grant any right-of-way or easement to use the diversion works or conveyance works of another party.

Dated this 2 day of APRIL, 1999.

Roger L. Dozer for Magic West Inc.
Renter

I hereby execute this Rental Agreement on behalf of the Idaho Water Resource Board this 5th day of April, 1999.

for L. Glen Saxton
KARL J. DREHER, Director
Department of Water Resources

MOORE & MCFADDEN
999 Main Street, Suite 910
Boise, Idaho 83702
(208) 331-1800
Fax: (208) 331-1202

FACSIMILE COVER SHEET

DATE: 4-2-99 Recipient's Fax: 327-7900

RE: Warden Mtns - Magic Wat Client: 1606

TO: Ken Saxton - IDWR

FROM: Bruce Smith

NUMBER OF PAGES INCLUDING THIS COVER SHEET: 3

- [x] Original will not be sent.
- [ ] Original will be sent by first class mail.
- [ ] Original will be sent by Federal Express.

ADDITIONAL COMMENTS:

See attached memo

********** IMPORTANT MESSAGE **********

THE INFORMATION CONTAINED IN THIS FACSIMILE MESSAGE IS ATTORNEY PRIVILEGED AND CONFIDENTIAL INFORMATION INTENDED ONLY FOR THE USE OF THE INDIVIDUAL NAMED ABOVE. IF THE READER OF THIS MESSAGE IS NOT THE INTENDED RECIPIENT, OR THE EMPLOYEE OR AGENT RESPONSIBLE TO DELIVER IT TO THE INTENDED RECIPIENT, YOU ARE HEREBY NOTIFIED THAT ANY DISSEMINATION, DISTRIBUTION OR COPYING OF THIS COMMUNICATION IS STRICTLY PROHIBITED. IF YOU HAVE RECEIVED THIS COMMUNICATION IN ERROR, PLEASE IMMEDIATELY NOTIFY US BY TELEPHONE, AND RETURN THE ORIGINAL MESSAGE TO US AT THE ABOVE ADDRESS VIA THE U.S. POSTAL SERVICE. THANK YOU.

MOORE & McFADDEN, CHARTERED
999 Main Street
Boise, Idaho
Telephone: (208) 331-1800
Facsimile: (208) 331-1202

CONFIDENTIAL / ATTORNEY-CLIENT PRIVILEGED

MEMORANDUM

TO: **Glen Saxton**

FROM: **Bruce M. Smith**

RE: **Charter Mountain - Magic West**

DATE: **April 2, 1999**

Here are the substitute pages to make the changes which we discussed on the phone today.

7. Lands irrigated or place of use:

TWP.	RANGE	SEC.	NE¼				NW¼				SW¼				SE¼				TOTALS
			NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	

Total number of acres to be irrigated _____

B. DESCRIPTION OF PORTION OF RIGHT FOR SALE OR LEASE (If the entire right is for sale or lease, omit part B.)

1. Amount of water: a. _____ cubic feet per second
&/or
b. 300 acre feet per annum

2. Point of diversion SE ¼ SE ¼, Section 08 Township 4S
Range 9E, B.M., Elmore County

Additional points _____

3. Place of use:

TWP.	RANGE	SEC.	NE¼				NW¼				SW¼				SE¼				TOTALS
			NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	

Total number of acres to be irrigated _____

RECEIVED
OCT 2 1 2004

AJ5809NP
No. A61-00301

IDAHO DEPARTMENT OF WATER RESOURCES
ADJUDICATION CLAIM PROFILE REPORT

DATE: 03/19/
PAGE: 3

OWNER CODE	NAME & ADDRESS	PRIORITY DATE	WATER USE	USE PERIOD FROM	USE PERIOD TO	DIVERSION RATE	DIVERSION VOLUME
C	WM MC GREW	06/10/1955	IRRIGATION	04-01	11-01	6.40 CFS	
C	HELEN B MC GREW						
	PO BOX 965				TOTAL DIVERSION:	6.40 CFS	
	GLENNS FERRY ID 83623						
	(208) 366-2480						

Water Source: GROUNDWATER Tributary to: Stage: DECREED

Point(s) of Diversion: T04S R09E S08 NWNE ELMORE County

Place of use Legal Description for: IRRIGATION

			NE					NW					SW					SE				
			NENE	NWNE	SWNE	SENE		NENW	NWNW	SWNW	SENW		NESW	NWSW	SWSW	SESW		NESE	NWSE	SWSE	SESE	
T	R	S	Lt Ac	Lt Ac	Lt Ac	Lt Ac		Lt Ac	Lt Ac	Lt Ac	Lt Ac		Lt Ac	Lt Ac	Lt Ac	Lt Ac		Lt Ac	Lt Ac	Lt Ac	Lt Ac	SUM
04S	09E	8		10	30								12	20	40	40			30	25		207.0
04S	09E	9													25							25.0
04S	09E	10													40	40				10		90.0
04S	09E	15							30	18												48.0
04S	09E	16	30			35													15			80.0
04S	09E	17	35	20				30	23													108.0
04S	09E	29	30			40												5	10	10		95
																	TOTAL ACRES					653

POU County: ELMORE

Non-Irrigation Uses: NONE

Other Rights: A61-00338,00339,02199,02209,07203,02111,02012&APP.#61-07393.

Dates: Exam Made Date: Verified Date: Objection Filed Date:

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

Exhibit 2

ROSHOLT, ROBERTSON & TUCKER
Chartered
ATTORNEYS AT LAW

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

Twin Falls Office
142 3rd Ave. North
P.O. BOX 1906
TWIN FALLS, IDAHO 83303-1906
TELEPHONE (208) 734-0700
FAX (208) 736-0041

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

RECEIVED
MAR 2 9 1999
Department of Water Resources

March 26, 1999

Glen Saxton
Idaho Department of Water Resources
1301 North Orchard
Boise, ID 83720-0098

Re: Water Supply Bank
Charter Mountain – Magic West

Dear Glen:

Enclosed are executed originals of Charter Mountain Ranch, Inc.'s application to lease 300 af of low temperature geothermal and Magic West and Glenns Ferry Cogeneration Partners Application to rent the same water through the water bank. Also enclosed is Magic West's check to cover the $1,500 IWRB Surcharge. The lease governing the relationship of the parties is a fax original. A copy is enclosed.

We hope this lease can be expeditiously considered and approved. Questions concerning Charter Mountain can be answered by Bruce Smith, phone 331-1800. Please call either Norm Semanko or myself if you have questions for us.

Respectfully Submitted,

ROSHOLT, ROBERTSON & TUCKER

By: John A. Rosholt
JOHN A. ROSHOLT

JAR:bh
cc: Bruce Smith
Roger Jones
R. Michael Jones
Enclosures
jar.99\magicwest\saxton

OCT 0 5 1999

Form No. 42-1761
3-92

Water Supply Bank No. _____

Water Right No. 61-00301

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
APPLICATION TO SELL OR LEASE A WATER RIGHT TO THE WATER SUPPLY BANK

Name of Seller/Lessor Charter Mountain Ranch, Inc. Phone (208) 366-7931

Post office address Rte 1, Box 451, Glenns Ferry, Idaho 83623

A. DESCRIPTION OF RIGHT AS RECORDED

1. Right evidenced by:

a. Decree No. _____ Decreed to See attached Exhibit 1 (Name)

in case of _____ vs _____

dated _____ in _____ (Name of court) county of _____

b. License No. _____ Issued by the Idaho Department of Water Resources.

c. Permit No. _____ Issued by the Idaho Department of Water Resources.

2. Source of water groundwater tributary to _____

3. Date of priority 6/10/55

4. Water is used for the following purposes:

amount 6.4 cfs for irrigation purposes from 4/1 to 11/1

amount _____ for _____ purposes from _____ to _____

amount _____ for _____ purposes from _____ to _____ (month/day — both dates inclusive)

5. Total amount of water under right: a. 6.4 cubic feet per second &/or

b. _____ acre feet per annum

6. Location of point of diversion is SE ¼ of SE ¼ of Section 08

Township 4S Range 9E, B.M. in Elmore County

Additional points of diversion, if any _____

OCT 0 5 2009

7. Lands irrigated or place of use: SEE ATTACHED EXHIBIT 1

TWP.	RANGE	SEC.	NE¼				NW¼				SW¼				SE¼				TOTALS
			NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	

Total number of acres to be irrigated _____

B. DESCRIPTION OF PORTION OF RIGHT FOR SALE OR LEASE (If the entire right is for sale or lease, omit part B.)

1. Amount of water: a. _____ cubic feet per second
&/or
b. 300 acre feet per annum

2. Point of diversion NW ¼ NE ¼, Section 08 Township 4S
Range 9E, B.M., Elmore County
Additional points _____

3. Place of use:

TWP.	RANGE	SEC.	NE¼				NW¼				SW¼				SE¼				TOTALS
			NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	

SEE ATTACHED EXHIBIT 2 Total number of acres to be irrigated _____

OCT 03 2003

C. ADDITIONAL INFORMATION ABOUT RIGHT, OR PORTION THEREOF, FOR SALE OR LEASE

1. Explain how the seller/lessor acquired the right, or portion thereof, and attach a copy of the deed to the land to which it is appurtenant or other evidence of ownership of the right.

- Lessor purchased land to which right is appurtenant.

- See attached Exhibit 1.

2. Describe the frequency of water use under the right, or portion thereof, during the past 5 years. Attach watermaster records, pumping power bills, or other evidence to demonstrate that the right has not been lost through abandonment or forfeiture:

Water has been used every year.

Change of ownership approved 5/97.

3. Describe the relative availability of water to fill the right, or portion thereof. Attach evidence to support the availability:

Water has been available and used during past 5 years for irrigation of 728 acres consistent with water right.

4. Describe any other water rights with the same purpose and place of use as the right, or portion thereof. Will the present place of use continue to receive water from any source? If so, describe.

61-00338, 61-00339, 61-02199, 61-07288, 61-02111, 61-02102, App. 61-07393.

Water in excess of leased amount of 300 A/F/A will be used on existing place of use (see attached Exhibit 2).

5. If the water right is a permit, describe the work accomplished toward developing the right.

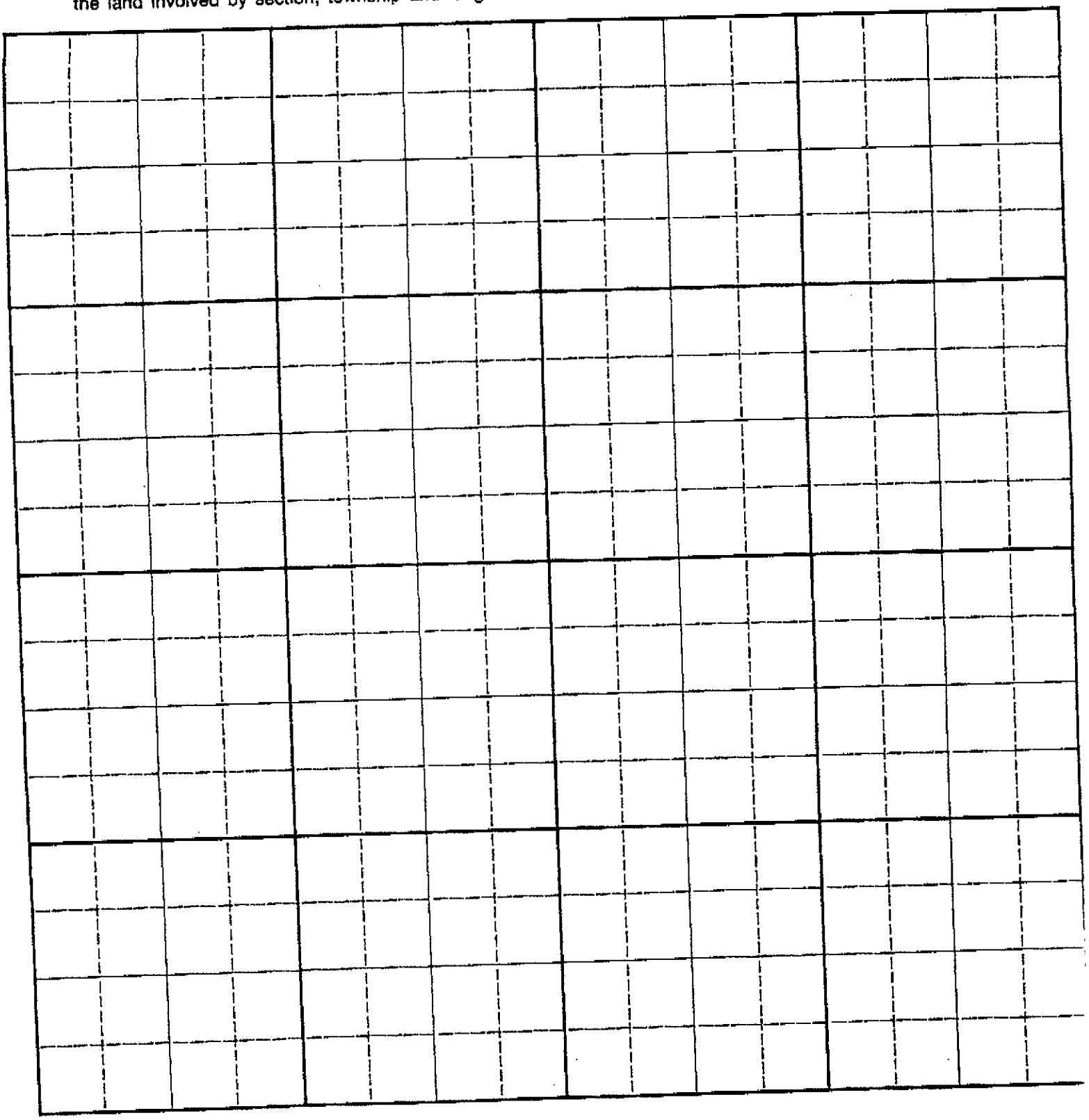
6. If the right to the use of the water or the use of the diversion works or irrigation system is represented by shares of stock in a company or corporation, or if such works or system is owned or managed by an irrigation district, a written consent of the sale or lease must be attached.

7. If the right is included in an ongoing adjudication, a copy of the claim must be provided with this application.

See attached Exhibit 1.

RECEIVED
OCT 05 2000

8. Draw a map indicating the point(s) of diversion and place of use of the right, or portion thereof. Show clearly the land involved by section, township and range.



SCALE: 2 inches equal 1 mile. Draw plan in ink.

SEE ATTACHED EXHIBIT 3

9. **Remarks** Lease is to be pursuant to, and consistent with attached Lease Agreement. Lease is for 300 A/F/A to be leased by Magic West Inc. and Glenns Ferry Cogeneration Partners for use 4/1/99 to 3/31/2000.

D. SALE/LEASE AGREEMENT

1. The water right, or portion thereof, described above is offered to the Idaho Water Resource Board:

_____ For sale

X For lease for period from 4/1/99 (year) to 3/31/2000 (year)

_____ As a gift to the State of Idaho.

2. The minimum payment acceptable to the Seller/Lessor is: (Include the method of determining the minimum payment)

Payment is donation to Elmore County.

3. Payment contingent on subsequent sale or leasing of this right, or portion thereof, is:

_____ Acceptable X Not Acceptable Payment to be consistent with Lease Agreement.

I hereby assert that the information contained in this application is true to the best of my knowledge, and that I have the authorities necessary to offer the sale or lease of this right to the Idaho Water Resource Board.

3/18/99 (Date) (Signature of applicant)

FOR DEPARTMENT USE ONLY

Received by MA Date 3-29-99 Preliminary check by MA

Watermaster recommendation requested on N/A Received _____

Recommended for ____ approval ____ denial by _____

OWNER CODE	NAME & ADDRESS	PRIORITY DATE	WATER USE	USE PERIOD FROM	USE PERIOD TO	DIVERSION RATE	DIVERSION VOLUME
C	WH MC GREW	06/10/1955	IRRIGATION	04-01	11-01	6.40 CFS	
C	HELEN B MC GREW						
	PO BOX 965			TOTAL DIVERSION:		6.40 CFS	
	GLENNS FERRY ID 83623						
	(208) 366-2480						

Water Source: GROUNDWATER Tributary to: Stage: DECREED

Point(s) of Diversion: T04S R09E S08 NWNE ELMORE County

Place of use Legal Description for: IRRIGATION

			NE				NW				SW				SE				
			NENE	NWNE	SWNE	SENE	NENW	NWNW	SWNW	SENW	NESW	NWSW	SWSW	SESW	NESE	NWSE	SWSE	SESE	
T	R	S	Lt Ac	Lt Ac	Lt Ac	Lt Ac	Lt Ac	Lt Ac	Lt Ac	Lt Ac	Lt Ac	Lt Ac	Lt Ac	Lt Ac	Lt Ac	Lt Ac	Lt Ac	Lt Ac	SUM
04S	09E	8		10	30						12	20	40	40		30	25		207.0
04S	09E	9											25						25.0
04S	09E	10											40	40			10		90.0
04S	09E	15						30	18										48.0
04S	09E	16	30			35										15			80.0
04S	09E	17	35	20			30	23											108.0
04S	09E	29	30			40									40	20	40		170.0
																TOTAL ACRES			728.0

POU County: ELMORE

Non-Irrigation Uses: NONE

Other Rights: A61-00338,00339,02199,02209,07288,02111,02012&APP.#61-07393.

Dates: Exam Made Date: Verified Date: Objection Filed Date:

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

Exhibit 1

OWNER CODE	NAME & ADDRESS	PRIORITY DATE	WATER USE	USE PERIOD FROM	USE PERIOD TO	DIVERSION RATE	DIVERSION VOLUME
C	WH MC GREW	06/10/1955	IRRIGATION	04-01	11-01	6.40 CFS	
C	HELEN B MC GREW						
	PO BOX 965			TOTAL DIVERSION:		6.40 CFS	
	GLENNS FERRY ID 83623						
	(208) 366-2480						

Water Source: GROUNDWATER Tributary to: Stage: DECREED

Point(s) of Diversion: T04S R09E S08 NWNE ELMORE County

Place of use Legal Description for: IRRIGATION

			NE					NW					SW					SE					
			NENE		NWNE		SWNE		SENE		NENW		NWNW		SWNW		SENW		NESW		NWSW		SWSW		SESW		NESE		NWSE		SWSE		SESE		
T	R	S	Lt	Ac	Lt	Ac	Lt	Ac	Lt	Ac	Lt	Ac	Lt	Ac	Lt	Ac	Lt	Ac	Lt	Ac	Lt	Ac	Lt	Ac	Lt	Ac	Lt	Ac	Lt	Ac	Lt	Ac		SUM
04S	09E	8			10		30												12		20		40		40				30		25			207.0
04S	09E	9																					25											25.0
04S	09E	10																					40		40						10			90.0
04S	09E	15											30		18																			48.0
04S	09E	16		30					35																				15					80.0
04S	09E	17		35		20						30		23																				108.0
04S	09E	29		30					40																		20		10		10			40
																													TOTAL ACRES					668

POU County: ELMORE

Non-Irrigation Uses: NONE

Other Rights: A61-00338,00339,02199,02209,07288,02111,02012&APP.#61-07393.

Dates: Exam Made Date: Verified Date: Objection Filed Date:

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

Exhibit 2
OCT 03 2019

Draw a map indicating the point(s) of diversion and place of use of the right, or portion thereof. Show clearly the land involved by section, township and range.

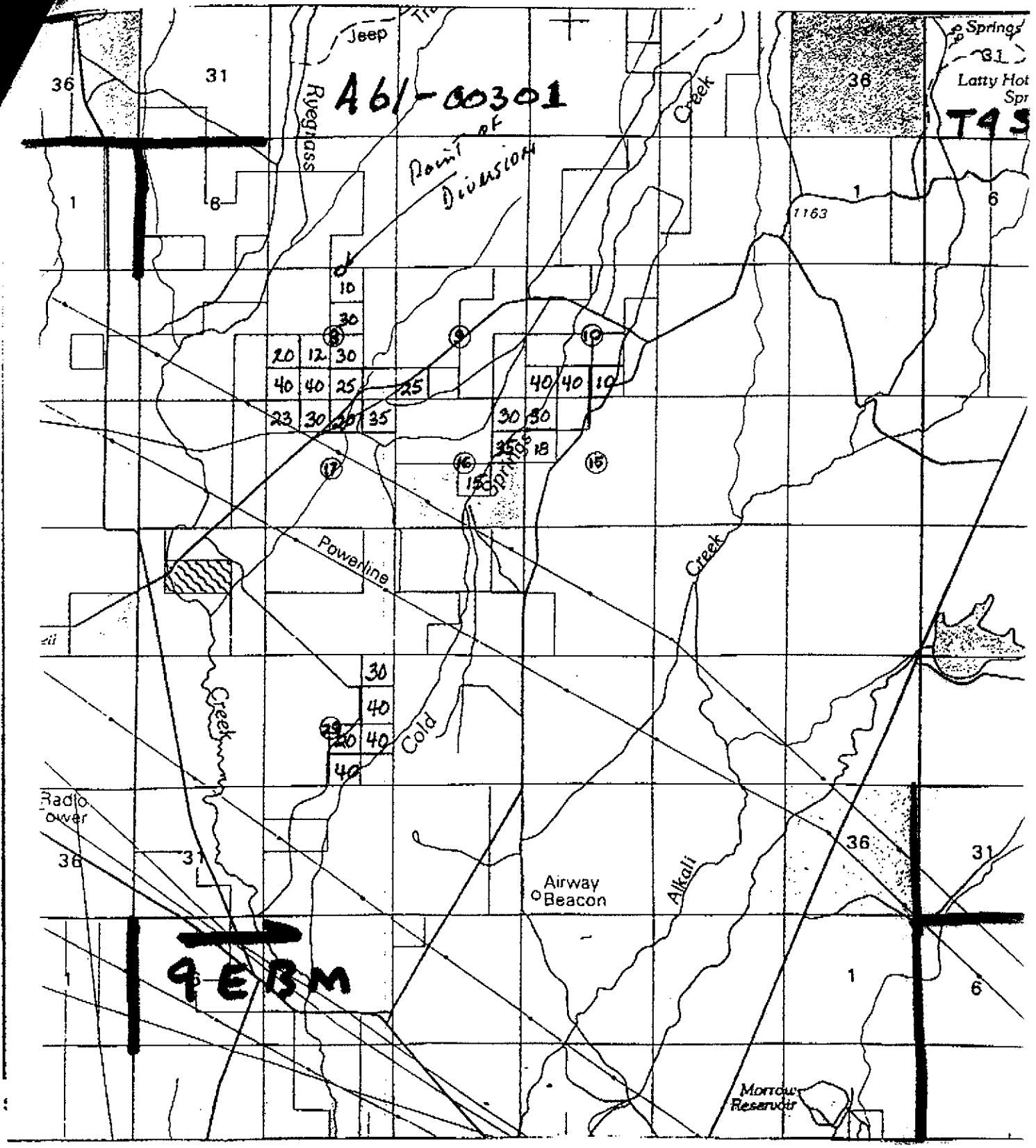


Exhibit 3

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year first above written.

CHARTER MOUNTAIN RANCH INC.

By: _____
Its: Pres.

MAGIC WEST, INC.

_____
Roger Jones, President

GLENNS FERRY
COGENERATION PARTNERS

By: _____
Its: General Manager

jw:99\magic-w\charter

RECEIPT
For Monies Paid
to the
Idaho Department of Water Resources

Receipt No: C044972

Date: 3/29/1999
Time: 15:19:51

Received From: ROSHOLT, ROBERTSON, AND

Type of Payment		Program Acct	Amount
WATER SUPPLY BANK	55109	229 21 1205	1,500.00

CHECK 28016

Total $ 1,500.00

Region: STATE

Signature: Lu Wilcomb

OCT 05 2020

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year first above written.

CHARTER MOUNTAIN RANCH INC.

By: _____
Its: Pres.

MAGIC WEST, INC.

_____
Roger Jones, President

GLENNS FERRY
COGENERATION PARTNERS

By: _____
Its: _____

jar.99\magicwe\charlse

11/92

Before the Idaho Water Resource Board

APPLICATION TO RENT WATER

FROM THE

WATER SUPPLY BANK

Applicant Magic West, Inc. Glenns Ferry Cogeneration Partners Phone 208-436-3126

Address P.O. Box 475, Rupert, ID 83350

A. DESCRIPTION OF WATER SOUGHT FOR RENTAL

1. Source of water Ground water (Low Temp Geothermal)

which is tributary to _____.

2. Maximum volume of water sought 300 AF.

3. Maximum rate of diversion .67 cfs.

B. DESCRIPTION OF USE PROPOSED

1. Nature of use Cogen/cooling and potato processing.

2. Location of point of diversion SW 1/4 SE 1/4, Section 29, Twp 5 S, Rge 10 E, B.M. Elmore County.

Additional points of diversion, if any: _____

_____.

3. Season of use: From 4/1/99 to 3/31/00.

4. Description of diverting works:

Pump HP 30 Lift 105' Pump type Peerless Four Stage, Franklin Motor

Canal name, if appropriate N/A.

5. Place of use:

a. If water is for irrigation, describe the number of acres to be irrigated by 40 acre tract, section, township and range.

_____

_____

_____.

b. If water is not for irrigation, describe the nature of the intended use and the place of use.
.23 cfs diverted to Cogen Plant to cool turbines and after conversion to steam, goes to Magic West. .44 cfs goes directly to Magic West potato processing. All .67 goes to Magic West if Cogen is not operating.

6. Describe any other water rights used for the same purposes as the rental water sought under this application.

61-07189 (61-7228-City water)

61-02248B

7. Who owns the property at the point of diversion?

Magic West, Inc.

8. Who owns the property at the place of use?

Magic West, Inc, Glenns Ferry Cogeneration Partners

9. Are you seeking a rental for more than one (1) year? no

If so, how many years?

9. Remarks: Lease allows extensions upon mutual agreement with Lessor.

Mar 26, 1999
Date

MAGIC WEST, INC.
By: Roger L. Jones
GLENNS FERRY COGENERATION PARTNERS
By:

****

FOR DEPARTMENT USE ONLY

Rec'd by VLA Date 3-29-99 Time 2:45 P.

Published in N/A Pub. dates N/A

Protests filed by N/A

Hearing held by N/A Date

Action recommended

LEASE AGREEMENT

This Lease Agreement, made and entered into this 19th day of March, 1999, by and between CHARTER MOUNTAIN RANCH, INC., hereinafter "Lessor" and MAGIC WEST, INC. an Idaho corporation, whose address is P.O. Box 978, Glenns Ferry, Idaho 83623; and GLENNS FERRY COGENERATION PARTNERS, of P.O. Box 475, Rupert, Idaho, 83350 hereinafter "Lessees"

WITNESSETH

WHEREAS, the Lessor is the owner of water right No. 61-0301 which provides low temperature geothermal water in the Glenns Ferry area and Lessees seek to lease 300 acre feet annually of said right for use at the Magic West Potato Processing Plant and Glenns Ferry Cogeneration Partner's Plant, both in Glenns Ferry, Idaho; and

WHEREAS, the parties wish to set forth their Agreement in writing as to Lessor's agreement to lease 300 acre feet of said low-temperature geothermal water to Lessees;

NOW THEREFORE, for and in consideration of the covenants and agreements of the parties as herein provided, Lessor hereby agrees to assign to the Idaho Water Resource Board's (IWRB) water supply bank for lease by said bank to Lessees 300 acre feet of low temperature geothermal water from Lessor's water right No. 61-0301; provided that only the hereinabove named Lessees may rent and use said low temperature geothermal water, and Lessor reserves the right to, and Lessees shall agree to, the withdrawal of said water right from the water supply bank if the water is transferred to or used by any other entity.

LEASE

1. Subject of Lease. Lessor agrees to apply to the Idaho Water Resource Board water supply bank to assign thereto for lease to Lessees 300 acre feet annually based on water right No. 61-0301. The water contemplated by this Agreement is to be used solely by the Lessees, and no transfer of or use of the water by any person or entity other than the Lessees shall be permitted.

2. Term. This Lease shall be in full force and effect from the execution date hereof until April 1, 2000; provided this Lease may be sooner terminated for the material breach of any condition herein by either party, and if so the non-breaching party may terminate and seek other or further remedies as may be available at law or equity.

3. Lease Term Extensions. Lessor and Lessees may agree to extend this Lease annually upon mutually agreeable terms and conditions for four (4) one-year terms. Lessor or Lessee are to give written notice of their desire to extend by March 1 of each year.

4. Funding. Upon the execution of this agreement, Lessees shall deposit with the appropriate Elmore County official the sum of $15,000 which shall be deemed a donation to the county on behalf of Lessees and John B. McCallum. Notwithstanding any other event, occurrence, or circumstance, this money shall not be refundable to either Lessees, Lessor, or John B. McCallum, but shall inure to the sole benefit of Elmore County, provided however, that John B. McCallum, in consultation with the County Commissioners, shall designate how and when such funds shall be used. Lessees shall be responsible for any charges assessed in connection herewith by IWRB.

5. Indemnification. Lessee agrees to indemnify and hold harmless the Lessor from any and all claims, causes of action and damages arising from death or injury to any person or damage to any property occasioned by anything done or caused by any person, entity, or instrumentality other than the Lessor by reason of this Lease Agreement.

6. Attorneys Fees. Lessees shall pay Lessor's reasonable attorneys fees in preparation and review of documents to complete this Lease.

7. Abstention of Lessor's Use. Lessor agrees to reduce his diversion and beneficial use under the above-referenced right by 300 acre feet annually during the term of this lease or any extension thereof. Lessor reserves the right to use all allowable water under water right 61-0301 except for the 300 acre feet annually to be provided under this Lease Agreement or any extension thereof. No other water rights owned by Lessor shall be affected by this Agreement and any impact on other water rights owned by Lessor or ARK, Inc. caused by this Lease Agreement shall be grounds for termination of this Agreement by Lessor.

8. Availability of Water. Lessor makes no guarantee as to water availability pursuant to this Agreement based on decisions or orders by the Idaho Department of Water Resources, the Idaho Water Resource Board, a result of proceedings in and/or orders or decisions rendered pursuant to the Snake River Basin Adjudication, acts of God, or other matters beyond the control of Lessor.

9. Assignment and Subletting. This Lease Agreement is not assignable.

10. Resolutions By Board. Any resolution by the Idaho Water Resources Board accepting the water to be provided pursuant to this Agreement into the water bank and providing for lease of such water to Lessees from the water bank shall be consistent with and in accord with this Lease Agreement or this Lease Agreement is deemed void *ab initio* except for the payment of funds set forth in paragraph 4.

11. Time Is Of The Essence. Upon delivery of this Lease Agreement signed by Lessor to the Lessees, Lessees shall have two (2) days to execute this Lease Agreement. If not executed within two (2) days, this Lease Agreement is deemed void *ab initio*.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year first above written.

CHARTER MOUNTAIN RANCH INC.

By: [signature]
Its: [illegible]

MAGIC WEST, INC.

[signature] MARCH, 19, 99
Roger Jones, President

GLENNS FERRY
COGENERATION PARTNERS

By: [signature]
Its: General Manager

[illegible]

MAR 19 '99 15:45 208 331 1202 PAGE.004
** TOTAL PAGE 004 **

MAR 19 '99 16:27 208 436 4559 PAGE.004
** TOTAL PAGE 002 **

MAR 19 '99 17:37 PAGE.001

State of Idaho
DEPARTMENT OF WATER RESOURCES
1301 North Orchard Street, P.O. Box 83720, Boise, Idaho 83720-0098
Phone: (208) 327-7900 FAX: (208) 327-7866

DIRK KEMPTHORNE
GOVERNOR

KARL J. DREHER
DIRECTOR

March 10, 1999

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

Dear Interested Party:

I have enclosed a copy of the Notice of Rescheduled Hearing in connection with the above referenced license.

If you have any questions concerning the enclosed document, please contact me directly at (208)327-7953.

Sincerely,

Julie L. Yarbrough

JULIE L. YARBROUGH, Senior Secretary
Water Allocation Bureau

Enclosure

c: IDWR - Region

MORO [illegible]
OCT 05 2000

To: Senator Robbi King
Fax #: 334-5397
Re: Magic West Hearing
Date: March 10, 1999
Pages: 2, including this cover sheet.

FACSIMILE

IMPORTANT

IMPORTANT

Sent 2:00 pm

From the desk of...

Julie L. Yarbrough
Senior Secretary, Water Allocation Bureau
Idaho Dept. Of Water Resources
1301 N. Orchard St.
Boise, ID 83706

(208)327-7953
Fax: (208)327-7866

MISD
OCT 05 1999

ROSHOLT ROBERTSON & TUCKER
ATTORNEYS AT LAW

142 THIRD AVENUE NORTH
P.O. BOX 1906
TWIN FALLS, ID 83303-1906
(208) 734-0700
FAX (208) 736-0041

FACSIMILE TRANSMISSION

DATE: 3-10-99

FAX TO: Glen Saxton

FROM: Norm Semanko

RE: Magic West

NUMBER OF PAGES INCLUDING THIS ONE: 3

IF YOU DO NOT RECEIVE ALL OF THE PAGES, PLEASE CALL US BACK AS SOON AS POSSIBLE AT (208) 734-0700.

INFORMATION CONTAINED IN THIS FACSIMILE COMMUNICATION IS ATTORNEY/CLIENT PRIVILEGED AND/OR CONFIDENTIAL INFORMATION INTENDED ONLY FOR THE USE OF THE INDIVIDUAL OR ENTITY NAMED ABOVE. IF THE READER OF THIS COVER PAGE IS NOT THE INTENDED RECIPIENT, OR THE EMPLOYEE OR AGENT RESPONSIBLE TO DELIVER IT TO THE INTENDED RECIPIENT, YOU ARE HEREBY NOTIFIED THAT ANY DISSEMINATION, DISTRIBUTION OR COPYING OF THIS COMMUNICATION OR THE INFORMATION CONTAINED HEREIN IS STRICTLY PROHIBITED. IF YOU HAVE RECEIVED THIS COMMUNICATION IN ERROR, PLEASE IMMEDIATELY CALL AT (208) 734-0700, AND RETURN THIS FACSIMILE TO US BY MAIL AT THE ABOVE ADDRESS. WE APPRECIATE YOUR COOPERATION.

ADDITIONAL MESSAGE:

- March 30 works for everyone
- Original to follow by mail

MAR 10 '99
OCT 05 PM

John A. Rosholt
Norman M. Semanko
ROSHOLT, ROBERTSON & TUCKER
P. O. Box 1906
142 3rd Avenue N.
Twin Falls, Idaho 83303-1906
Telephone: (208) 734-0700
Facsimile: (208) 736-0041
03109901.NMS

Attorneys for Magic West, Inc.

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

IN THE MATTER OF LICENSE NO. 61-07189: CEASE AND DESIST ORDER	))))	MOTION TO CONTINUE HEARING

* * * * * * * * * * *

Pursuant to IDAPA Rules 37.01.01.260 and 37.01.01.413 (IDWR Rules of Procedure 260 and 413), Magic West, Inc., by and through its attorneys, Rosholt, Robertson & Tucker, hereby moves the Hearing Officer to issue an order continuing the hearing currently scheduled for 10:00 a.m. on March 12, 1999 in Glenns Ferry regarding the Cease and Desist Order issued in the matter of License No. 61-07189.

The grounds for this hearing are that conflicts in the schedules of Magic West's counsel and some of its witnesses do not allow attendance on March 12. Magic West requests that the March 12 date be vacated and that the hearing be continued until 10:00 a.m. on March 30, 1999 in Glenns Ferry.

DATED this 10th day of March, 1999.

ROSHOLT, ROBERTSON & TUCKER

By: _____
NORMAN M. SEMANKO

CERTIFICATE OF SERVICE

I hereby certify that on this 10th day of March, 1999, I caused a copy of the foregoing MOTION TO CONTINUE HEARING to be served upon the following persons by facsimile transmission to the fax numbers indicated below and by depositing same in the mail, postage prepaid, addressed to the following:

Daniel V. Steenson
RINGERT CLARK CHARTERED
455 S. Third
P.O. Box 2773
Boise, ID 83701-2773 FAX: (208) 342-4657

Perce Hall
HALL, FRIEDLY & WARD
340 E. 2nd North St.
Mountain Home, ID 83647 FAX: (208) 587-3144

_____
Norman M. Semanko

Is your RETURN ADDRESS completed on the reverse side?

SENDER:

- Complete items 1 and/or 2 for additional services.
- Complete items 3, 4a, and 4b.
- Print your name and address on the reverse of this form so that we can return this card to you.
- Attach this form to the front of the mailpiece, or on the back if space does not permit.
- Write *"Return Receipt Requested"* on the mailpiece below the article number.
- The Return Receipt will show to whom the article was delivered and the date delivered.

I also wish to receive the following services (for an extra fee):

1. ☐ Addressee's Address
2. ☐ Restricted Delivery

Consult postmaster for fee.

3. Article Addressed to:

ROBERT K HALL
RT 1 BOX 103
GLENNS FERRY ID 83623

MICROFILMED
OCT 0 5 2000

4a. Article Number

Z 238 915 391

4b. Service Type

☐ Registered ☒ Certified
☐ Express Mail ☐ Insured
☐ Return Receipt for Merchandise ☐ COD

7. Date of Delivery

1/25/99

5. Received By: *(Print Name)*

8. Addressee's Address *(Only if requested and fee is paid)*

6. Signature: *(Addressee or Agent)*

X Mary Hall

PS Form **3811**, December 1994

Domestic Return Receipt

Thank you for using Return Receipt Service.

UNITED STATES POSTAL SERVICE

First-Class Mail
Postage & Fees Paid
USPS
Permit No. G-10

• Print your name, address, and ZIP Code in this box •

Water Allocation Bureau
Department of Water Resources
1301 N. Orchard St.
Boise, ID 83706

Is your RETURN ADDRESS completed on the reverse side?

SENDER:

- Complete items 1 and/or 2 for additional services.
- Complete items 3, 4a, and 4b.
- Print your name and address on the reverse of this form so that we can return this card to you.
- Attach this form to the front of the mailpiece, or on the back if space does not permit.
- Write *"Return Receipt Requested"* on the mailpiece below the article number.
- The Return Receipt will show to whom the article was delivered and the date delivered.

I also wish to receive the following services (for an extra fee):

1. ☐ Addressee's Address
2. ☐ Restricted Delivery

Consult postmaster for fee.

3. Article Addressed to:

EDWARD T POTUCEK
ROSEVEAR RD
PO BOX 537
GLENNS FERRY ID 83623

4a. Article Number

Z 238 915 387

4b. Service Type

- ☐ Registered
- ☐ Certified
- ☐ Express Mail
- ☐ Insured
- ☐ Return Receipt for Merchandise
- ☐ COD

7. Date of Delivery

OCT 05 2000

5. Received By: *(Print Name)*

EDWARD T. POTUCEK

6. Signature: *(Addressee or Agent)*

X

8. Addressee's Address *(Only if requested and fee is paid)*

GLENNS FERRY US 83623 OCT 5 2000

PS Form **3811,** December 1994

Domestic Return Receipt

Thank you for using Return Receipt Service.

U[illegible] STATES POSTAL SERVICE

First-Class Mail
Postage & Fees Paid
USPS
Permit No. G-10

• Print your name, address, and ZIP Code in this box •

Water Allocation Bureau
Department of Water Resources
1301 N. Orchard St.
Boise, ID 83706

[illegible]

Julie

Is your RETURN ADDRESS completed on the reverse side?

SENDER:

- Complete items 1 and/or 2 for additional services.
- Complete items 3, 4a, and 4b.
- Print your name and address on the reverse of this form so that we can return this card to you.
- Attach this form to the front of the mailpiece, or on the back if space does not permit.
- Write *"Return Receipt Requested"* on the mailpiece below the article number.
- The Return Receipt will show to whom the article was delivered and the date delivered.

I also wish to receive the following services (for an extra fee):

1. ☐ Addressee's Address
2. ☐ Restricted Delivery

Consult postmaster for fee.

3. Article Addressed to:

PERCE HALL ESQ
340 E SND N
MOUNTAIN HOME ID 83647

MICROFILMED
OCT 05 2000

4a. Article Number

Z 238 915 389

4b. Service Type

☐ Registered ☒ Certified
☐ Express Mail ☐ Insured
☐ Return Receipt for Merchandise ☐ COD

7. Date of Delivery

9-25-99 CWC

5. Received By: *(Print Name)*

8. Addressee's Address *(Only if requested and fee is paid)*

6. Signature: *(Addressee or Agent)*

X

PS Form **3811,** December 1994

Domestic Return Receipt

Thank you for using Return Receipt Service.

U[illegible]D STATES POSTAL SERVICE

First-Class Mail
Postage & Fees Paid
USPS
Permit No. G-10

• Print your name, address, and ZIP Code in this box •

Water Allocation Bureau
Department of Water Resources
1301 N. Orchard St.
Boise, ID 83706

Julie

Is your RETURN ADDRESS completed on the reverse side?

SENDER:

- Complete items 1 and/or 2 for additional services.
- Complete items 3, 4a, and 4b.
- Print your name and address on the reverse of this form so that we can return this card to you.
- Attach this form to the front of the mailpiece, or on the back if space does not permit.
- Write *"Return Receipt Requested"* on the mailpiece below the article number.
- The Return Receipt will show to whom the article was delivered and the date delivered.

I also wish to receive the following services (for a extra fee):

1. ☐ Addressee's Address
2. ☐ Restricted Delivery

Consult postmaster for fee.

3. Article Addressed to:

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

4a. Article Number

Z 238 915 388

4b. Service Type

- ☐ Registered
- ☒ Certified
- ☐ Express Mail
- ☐ Insured
- ☐ Return Receipt for Merchandise
- ☐ COD

7. Date of Delivery

JAN 25 1989

5. Received By: *(Print Name)*

Mary Reid

8. Addressee's Address *(Only if requested and fee is paid)*

6. Signature: *(Addressee or Agent)*

X Mary Reid

PS Form **3811**, December 1994

Domestic Return Receipt

Thank you for using Return Receipt Service.

U[illegible] STATES POSTAL SERVICE

First-Class Mail
Postage & Fees Paid
USPS
Permit No. G-10

• Print your name, address, and ZIP Code in this box •

M.C.R.S. [illegible]
OCT 05 2009

Water Allocation Bureau
Department of Water Resources
1301 N. Orchard St.
Boise, ID 83706

Julie

Is your RETURN ADDRESS completed on the reverse side?

SENDER:

- Complete items 1 and/or 2 for additional services.
- Complete items 3, 4a, and 4b.
- Print your name and address on the reverse of this form so that we can return this card to you.
- Attach this form to the front of the mailpiece, or on the back if space does not permit.
- Write "*Return Receipt Requested*" on the mailpiece below the article number.
- The Return Receipt will show to whom the article was delivered and the date delivered.

I also wish to receive the following services (for a extra fee):

1. ☐ Addressee's Address
2. ☐ Restricted Delivery

Consult postmaster for fee.

3. Article Addressed to:

MAGIC WEST INC
PO BOX 475
RUPERT ID 83350

4a. Article Number

Z 238 915 386

4b. Service Type

☐ Registered ☒ Certified
☐ Express Mail ☐ Insured
☐ Return Receipt for Merchandise ☐ COD

7. Date of Delivery

1-26-99

5. Received By: *(Print Name)*

8. Addressee's Address *(Only if requested and fee is paid)*

6. Signature: *(Addressee or Agent)*

X Carl Robinson

OCT 05 2000

PS Form **3811,** December 1994

Domestic Return Receipt

Thank you for using Return Receipt Service.

U[redacted] STATES POSTAL SERVICE

First-Class Mail
Postage & Fees Paid
USPS
Permit No. G-10

• Print your name, address, and ZIP Code in this box •

Water Allocation Bureau
Department of Water Resources
1301 N. Orchard St.
Boise, ID 83706

MAILED
OCT 05 2007

Julie

Is your RETURN ADDRESS completed on the reverse side?

SENDER:

- Complete items 1 and/or 2 for additional services.
- Complete items 3, 4a, and 4b.
- Print your name and address on the reverse of this form so that we can return this card to you.
- Attach this form to the front of the mailpiece, or on the back if space does not permit.
- Write "*Return Receipt Requested*" on the mailpiece below the article number.
- The Return Receipt will show to whom the article was delivered and the date delivered.

I also wish to receive the following services (for a extra fee):

1. ☐ Addressee's Address
2. ☐ Restricted Delivery

Consult postmaster for fee.

3. Article Addressed to:

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

4a. Article Number

Z 238 915 390

4b. Service Type

- ☐ Registered
- ☐ Express Mail
- ☐ Return Receipt for Merchandise
- ☒ Certified
- ☐ Insured
- ☐ COD

7. Date of Delivery

OCT 05 2000

5. Received By: *(Print Name)*

Teena M. Thompson

6. Signature: *(Addressee or Agent)*

X Teena M. Thompson

8. Addressee's Address *(Only if requested and fee is paid)*

PS Form **3811,** December 1994

Domestic Return Receipt

Thank you for using Return Receipt Service.

U[redacted] STATES POSTAL SERVICE

First-Class Mail
Postage & Fees Paid
USPS
Permit No. G-10

• Print your name, address, and ZIP Code in this box •

Water Allocation Bureau
Department of Water Resources
1301 N. Orchard St.
Boise, ID 83706

[illegible]
OCT 16 2000

Julie

Z 238 915 390

S Postal Service

eceipt for Certified Mail

No Insurance Coverage Provided.

Do not use for International Mail *(See reverse)*

Sent to Norman Semanko	
Street & Number	
Post Office, State, & ZIP Code	
Postage	$ .99
Certified Fee	1.40
Special Delivery Fee	
Restricted Delivery Fee	
Return Receipt Showing to Whom & Date Delivered	
Return Receipt Showing to Whom, Date, & Addressee's Address	
TAL Postage & Fees	$ 2.39
Postmark or Date	

D MAIL JAN 22 10 S

PS Form 3800, April 1995

Stick postage stamps to article to cover First-Class postage, certified mail fee, and charges for any selected optional services *(See front).*

1. If you want this receipt postmarked, stick the gummed stub to the right of the return address leaving the receipt attached, and present the article at a post office service window or hand it to your rural carrier *(no extra charge).*

2. If you do not want this receipt postmarked, stick the gummed stub to the right of the return address of the article, date, detach, and retain the receipt, and mail the article.

3. If you want a return receipt, write the certified mail number and your name and address on a return receipt card, Form 3811, and attach it to the front of the article by means of the gummed ends if space permits. Otherwise, affix to back of article. Endorse front of article **RETURN RECEIPT REQUESTED** adjacent to the number.

4. If you want delivery restricted to the addressee, or to an authorized agent of the addressee, endorse **RESTRICTED DELIVERY** on the front of the article.

5. Enter fees for the services requested in the appropriate spaces on the front of this receipt. If return receipt is requested, check the applicable blocks in item 1 of Form 3811.

6. Save this [redacted] and present it if you make an inquiry. 102595-97-B [redacted]

PS Form **3800**, April 1995 *(Reverse)*

Z 238 915 387

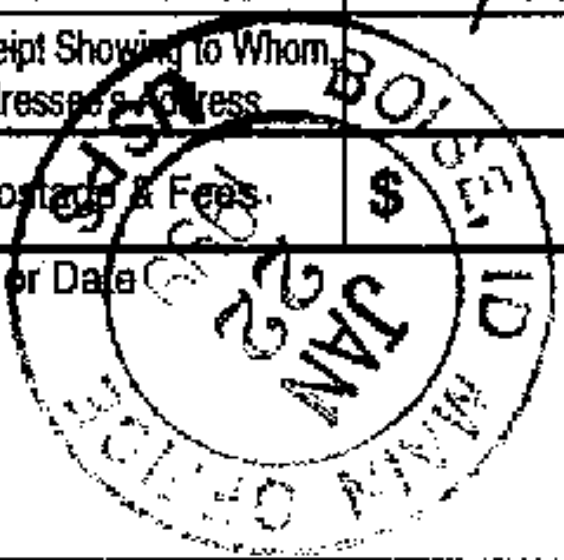
S Postal Service

eceipt for Certified Mail

No Insurance Coverage Provided.

Do not use for International Mail *(See reverse)*

Sent to Edward Potucek	
Street & Number	
Post Office, State, & ZIP Code	
Postage	$ .99
Certified Fee	1.40
Special Delivery Fee	
Restricted Delivery Fee	
Return Receipt Showing to Whom & Date Delivered	1.25
Return Receipt Showing to Whom, Date, & Addressee's Address	
TAL Postage & Fees	$ 3.64
Postmark or Date	



PS Form 3 April 1995

Stick postage stamps to article to cover First-Class postage, certified mail fee, and charges for any selected optional services *(See front).*

1. If you want this receipt postmarked, stick the gummed stub to the right of the return address leaving the receipt attached, and present the article at a post office service window or hand it to your rural carrier *(no extra charge).*

2. If you do not want this receipt postmarked, stick the gummed stub to the right of the return address of the article, date, detach, and retain the receipt, and mail the article.

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5. Enter fees for the services requested in the appropriate spaces on the front of this receipt. If return receipt is requested, check the applicable blocks in item 1 of Form 3811.

6. Save this [redacted] and present it if you make an inquiry. 102595-97-B [redacted]

PS Form **3800**, April 1995 *(Reverse)*

Z 238 915 388

S Postal Service

eceipt for Certified Mail

No Insurance Coverage Provided.

Do not use for International Mail *(See reverse)*

Sent to Daniel Stevenson	
Street & Number	
Post Office, State, & ZIP Code	
Postage	$ .99
Certified Fee	1.40
Special Delivery Fee	
Restricted Delivery Fee	
Return Receipt Showing to Whom & Date Delivered	1.25
Return Receipt Showing to Whom, Date, & Addressee's Address	
TAL Postage & Fees	$ 3.64
Postmark or Date	

PS Form 38 April 1995

Stick postage stamps to article to cover First-Class postage, certified mail fee, and charges for any selected optional services *(See front).*

1. If you want this receipt postmarked, stick the gummed stub to the right of the return address leaving the receipt attached, and present the article at a post office service window or hand it to your rural carrier *(no extra charge).*

2. If you do not want this receipt postmarked, stick the gummed stub to the right of the return address of the article, date, detach, and retain the receipt, and mail the article.

3. If you want a return receipt, write the certified mail number and your name and address on a return receipt card, Form 3811, and attach it to the front of the article by means of the gummed ends if space permits. Otherwise, affix to back of article. Endorse front of article **RETURN RECEIPT REQUESTED** adjacent to the number.

4. If you want delivery restricted to the addressee, or to an authorized agent of the addressee, endorse **RESTRICTED DELIVERY** on the front of the article.

5. Enter fees for the services requested in the appropriate spaces on the front of this receipt. If return receipt is requested, check the applicable blocks in item 1 of Form 3811.

6. Save this [redacted] and present it if you make an inquiry. 102595-97-B [redacted]

PS Form **3800**, April 1995 *(Reverse)*

Z 238 915 389

S Postal Service

eceipt for Certified Mail

No Insurance Coverage Provided.

Do not use for International Mail *(See reverse)*

Sent to Pearl Hall	
Street & Number	
Post Office, State, & ZIP Code	
Postage	$ .99
Certified Fee	1.40
Special Delivery Fee	
Restricted Delivery Fee	
Return Receipt Showing to, Whom & Date Delivered	1.25
Return Receipt Showing to Whom, Date, & Addressee's Address	
TAL Postage & Fees	$ 3.64
Postmark or Date	

PS Form 3800, April 1995

Stick postage stamps to article to cover First-Class postage, certified mail fee, and charges for any selected optional services *(See front).*

1. If you want this receipt postmarked, stick the gummed stub to the right of the return address leaving the receipt attached, and present the article at a post office service window or hand it to your rural carrier *(no extra charge).*

2. If you do not want this receipt postmarked, stick the gummed stub to the right of the return address of the article, date, detach, and retain the receipt, and mail the article.

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4. If you want delivery restricted to the addressee, or to an authorized agent of the addressee, endorse **RESTRICTED DELIVERY** on the front of the article.

5. Enter fees for the services requested in the appropriate spaces on the front of this receipt. If return receipt is requested, check the applicable blocks in item 1 of Form 3811.

6. Save this [redacted] and present it if you make an inquiry. 102595-97-[redacted]

PS Form **3800,** April 1995 *(Reverse)*

Z 238 915 386

US Postal Service

Receipt for Certified Mail

No Insurance Coverage Provided.

Do not use for International Mail *(See reverse)*

Sent to Magic Wrist	
Street & Number	
Post Office, State, & ZIP Code	
Postage	$ 1.99
Certified Fee	1.10
Special Delivery Fee	
Restricted Delivery Fee	
Return Receipt Showing to Whom & Date Delivered	1.25
Return Receipt Showing to Whom, Date, & Address of Addressee's Address	
TOTAL Postage & Fees	3.64
Postmark or Date	

PS Form 3800, April 1995

USPS JAN 22 1996 CLEVELAND OHIO

Stick postage stamps to article to cover First-Class postage, certified mail fee, and charges for any selected optional services *(See front).*

1. If you want this receipt postmarked, stick the gummed stub to the right of the return address leaving the receipt attached, and present the article at a post office service window or hand it to your rural carrier *(no extra charge).*

2. If you do not want this receipt postmarked, stick the gummed stub to the right of the return address of the article, date, detach, and retain the receipt, and mail the article.

3. If you want a return receipt, write the certified mail number and your name and address on a return receipt card, Form 3811, and attach it to the front of the article by means of the gummed ends if space permits. Otherwise, affix to back of article. Endorse front of article **RETURN RECEIPT REQUESTED** adjacent to the number.

4. If you want delivery restricted to the addressee, or to an authorized agent of the addressee, endorse **RESTRICTED DELIVERY** on the front of the article.

5. Enter fees for the services requested in the appropriate spaces on the front of this receipt. If return receipt is requested, check the applicable blocks in item 1 of Form 3811.

6. Save this [redacted]t and present it if you make an inquiry.

102595-97-[redacted]

PS Form **3800**, April 1995 *(Reverse)*

Z 238 915 391

Postal Service

Receipt for Certified Mail

No Insurance Coverage Provided.

Do not use for International Mail *(See reverse)*

Sent to Robert K Hall	
Street & Number	
Post Office, State, & ZIP Code	
Postage	$ .99
Certified Fee	1.40
Special Delivery Fee	
Restricted Delivery Fee	
Return Receipt Showing to Whom & Date Delivered	1.25
Return Receipt Showing to Whom, Date, & Addressee's Address	
TOTAL Postage & Fees	$ 3.64
Postmark or Date	

PS Form 3800, April 1995

USPS

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6. Save this [redacted] and present it if you make an inquiry.

102595 97-B [redacted]

PS Form **3800,** April 1995 *(Reverse)*

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
1301 North Orchard Street, P.O. Box 83720
Boise, Idaho 83720-0098

Return Service Requested

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Department of Water Resources

Daniel V. Steenson
Charles L. Honsinger
RINGERT CLARK, CHARTERED
455 S. Third St., P.O. Box 2773
Boise, ID 83701-2773
Telephone: (208) 342-4591
FAX: (208) 342-4657

Attorneys for Edward T. Potucek

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

In the Matter of License Number 61-07189 in the Name of Magic West, Inc.	License Number 61-07189 POTUCEK'S RESPONSE TO MAGIC WEST'S PETITION FOR RECONSIDERATION, PETITION FOR STAY, AND REQUEST FOR HEARING

Edward T. Potucek (hereinafter "Potucek"), by and through his attorneys of record, Ringert Clark, Chartered, files this *Response* to Magic West Inc.'s (hereinafter "Magic West") *Petition for Reconsideration, Petition for Stay, and Request for Hearing* (hereinafter "*Petition*") in the above captioned matter. Magic West's *Petition* requests essentially three types of alternative relief: (1) that the Director should reconsider his order amending the license, and issue an Amended Order with a greater licensed volume; or (2) that the Director should amend, remove, modify, or stay the Cease and Desist Order to allow Magic West to search for alternative sources of water; or (3) that Magic West is entitled to a hearing on the Cease and Desist Order.

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In this brief, Potucek addresses the first two types of relief sought by Magic West, and argues that the only appropriate response to Magic West's *Petition* is a hearing pursuant to I.C. § 42-350(4).

I. The Request to Issue an Amended Order Should be Denied

In its *Petition*, Magic West argues that the Director should issue an Amended Order upon reconsideration of his Final Order. *Petition*, at 3. This request should be denied. In the *Petition*, Magic West makes no argument that it has not already made in either its *Post-Hearing Brief*, filed January 20, 1998, or its *Exceptions to Recommended Order*, filed September 25, 1998. Each of these arguments is in the record, has been considered, and has been rejected both in the *Recommended Order* issued August 31, 1998 and in the *Final Order* issued January 22, 1999. Because Magic West's request that the Final Order be amended is merely a rehashing of the same arguments previously denied, that request should be denied.

II. The Cease and Desist Order Should Remain in Place Without Amendment or Modification

Magic West's *Petition* also requests that the Cease and Desist Order should either be phased in, or should be stayed. Magic West's arguments on this point amount to a complaint that it has not been given enough time to pursue alternative sources of water, and that the Director impliedly promised persons other than Magic West that he would not undertake enforcement actions against Magic West until after he issued a final order.

Magic West has had plenty of time to pursue alternative sources of water for its operations. It discovered its problem in 1996. *Petition*, at 6. In 1997, instead of pursuing its Application for Permit No. 61-07724 to cover possible shortfalls, Magic West chose to pursue an amendment of its existing license. Now that it has found it cannot amend its license to the extent it believes necessary, Magic West once again has taken up its Application for Permit. If its

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Application for Permit is denied, it is possible that Magic West may attempt a transfer to cover its perceived shortfalls. If the first transfer fails, it could attempt a second transfer. In each of those situations, Magic West could make the same argument it is making here: that it is diligently trying to resolve its water right problems and that it should be given more time. At some point, however, the existing license must be enforced. If the license is not enforced now, Magic West may try the same ploy over and over. It is long past time for the Director to enforce the elements of this license. Enforcement should not be further delayed merely to give Magic West numerous opportunities and unlimited time to "resolve its water right problem."

Magic West artfully contorts the letters referred to in its *Petition* to wring out of them a promise by the Director not to enforce the license until after he issues a final order. In his letter to Senator Robbi King, dated August 13, 1998, the Director makes no representations that he will not enforce Magic West's license, as he is entitled to do by law. See I.C. §§ 42-350, 42-351. However, in that letter, the Director does state that the Department will fulfill its responsibilities. Those responsibilities include enforcement of the elements of Magic West's licensed water right.

In the Director's November 20, 1998 letter to Daniel V. Steenson, he states that the "Department will take appropriate steps to enforce the elements of Magic West's water right once agency action regarding modification of license no. 61-07189 has been completed." Contrary to Magic West's twisted interpretation of the Director's words, he has done exactly as he promised: he has taken appropriate steps to enforce the licensed elements upon completion of agency action. Nothing the Director has done is inconsistent with his prior representations to any party nor is anything he has done outside of his authority. Magic West's request to phase in or to stay the Cease and Desist Order should be denied.

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CERTIFICATE OF MAILING

I certify that on February 22, 1999, I mailed the original and copies of this document, including all attachments to the following:

Norman M. Semanko
Rosholt, Robertson & Tucker
P.O. Box 1906
Twin Falls, ID 83303-1906

Idaho Department of Water Resources
1301 N. Orchard
Boise, ID 83712

Perce Hall
Hall, Friedly & Ward
340 East 2nd North Street
Mountain Home, Idaho 83647

Charles F. Honsinger
Person mailing documents

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Department of Water Resources

John A. Rosholt
Norman M. Semanko
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142 3rd Avenue N.
Twin Falls, Idaho 83303-1906
Telephone: (208) 734-0700
Facsimile: (208) 736-0041
02049904.NMS

Attorneys for Magic West, Inc.

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

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

* * * * * * * * * *

COMES NOW, Magic West, Inc., by and through its attorneys, Rosholt, Robertson and Tucker, and submits the following **Petition for Reconsideration, Petition to Stay, and Request for Hearing** in the above-captioned matter.

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PETITION FOR RECONSIDERATION

Pursuant to Secs. 67-5246(4) and 42-350, Idaho Code, and IDAPA 37.01.01.230 and 37.01.01.740 (IDWR Rules of Procedure 230 and 740), Magic West, Inc., by and through its attorneys, Rosholt, Robertson & Tucker, hereby petitions the Director of the Department to reconsider the Final Order in the above-captioned matter, issued on January 22, 1999.

Specifically, Magic West requests that the Final Order be amended to: (1) increase the annual diversion volume in the Amended License above 58 acre-feet; and (2) remove, modify or amend the cease and desist order for License No. 61-07189.

PETITION TO STAY

Pursuant to IDAPA 37.01.01.230 and 37.01.01.780 (IDWR Rules of Procedure 230 and 780), Magic West, Inc., by and through its attorneys, Rosholt, Robertson & Tucker, hereby petitions the Director of the Department to issue an order staying the effectiveness of the cease and desist order contained in the Final Order.

REQUEST FOR HEARING

Pursuant to Sec. 42-350(4), Idaho Code, Magic West requests that an administrative hearing be held before the Department regarding the cease and desist order issued by the Director as part of the Final Order. Magic West reserves the right to withdraw this request in the event that either the above Petition for Reconsideration or Petition to Stay is granted.

Further grounds for the above **Petition for Reconsideration, Petition to Stay, and Request for Hearing** are set forth in the argument presented below.

Oral argument before the Director of the Department is requested.

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ARGUMENT

I. The Final Order Should be Amended.

For the reasons set forth below, an Amended Final Order should be issued by the Director upon reconsideration of this matter.

A. The Diversion Volume in the Amended License Should be Increased.

Despite the conclusions reached in the Final Order, issued on January 22, 1999, Magic West continues to maintain that the amount of water beneficially used between 1974 and 1979 was well in excess of 58 acre-feet per year. It is unfortunate that when presented with the only evidence available, and two reasonable calculations, the Director chose not to increase the volume beyond 58 a.f., even in the face of a procedural error by the Department. We urge the Director to reconsider this decision, consistent with the reasoning provided below.

1. The Mistake in the License was the Result of a Procedural Error by the Department, not Magic West.

The original license was issued on the strength of a 1987 field exam that occurred eight (8) years after Magic West submitted proof of beneficial use in 1979. The daily volume of use upon which the license was based came from Magic West's maintenance supervisor. The Director found that the Department procedurally erred by not contacting the person designated for the field examination, Plant Manager Jack Anderson. Final Order, pp. 2, 8, 11.

The original license was issued on the basis of completely unreliable, and unverified, information from a maintenance supervisor in 1987.[1] The evidence submitted by Magic West

[1] Doug Mason allegedly estimated daily use of the well at 20,000 gallons. If he had guessed 300,000 gpd, this is the figure that would have been used by the field examiner. The point is, there was no attempt by the Department to verify daily use through any kind of objective, measurable data -- for example, waste water records which were available at the time of the field exam in 1987.

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in the current proceeding is far more reliable and should be sufficient to amend the license. Magic West is left wondering: if the field examiner would have asked for waste water records from the plant (with which Jack Anderson was very familiar) in 1987, how much water would have been licensed? Certainly much more than 58 a.f. Unfortunately, we will never know because the Department "procedurally erred" by failing to contact Jack Anderson and obtain accurate, reliable information on the plant's water use.[2]

While the Director recognized this procedural error, the Department is not held accountable for it in the Final Order. Even though the Department made an error which resulted in a severely flawed license, it is not held accountable for the mistake, or the fact that the field exam was conducted 8 years after proof was submitted. While it was the Department that erred, it is Magic West that has suffered the consequences by being saddled with a license that bears no reasonable relationship to actual use and provides Magic West with enough water to operate the plant for only ten (10) weeks.[3]

---

[2] Regarding the value of these waste water records in determining beneficial use, the field examiner admitted: "I think in hindsight, it, it probably would have been valuable, yes." Transcript of Hearing held on December 15, 1997, pp. 62-63.

[3] As established in this matter, Magic West uses approximately 300,000 gallons per day from the well. At this rate, Magic West has enough water under the Amended License for about 63 days:

$$\frac{58 \text{ af} \times 325{,}850 \text{ g}}{300{,}000 \text{ gpd}} = 63 \text{ days}$$

Assuming that Water Right No. 61-02248B (8 a.f.) can also be used in the plant, the well could operate for about 72 days.

$$\frac{66 \text{ af} \times 325{,}850 \text{ g}}{300{,}000 \text{ gpd}} = 71.69 \text{ days}$$

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2. The Final Order Does not Account for Discharges to the City Sewer, Water Trucked to the Sludge Site, or Water Consumed in Process.

The 58 acre-feet figure in the Final Order only accounts for discharges to the waste water farm. It does not account for water discharged to the city sewer, despite the fact that Doug Ogden testified that these discharges existed while he was the plant manager between 1974 and 1979. Transcript, p. 196. The 58 a.f. figure does not account for water trucked to the sludge site, despite the fact that Ogden testified that these trips were made. Transcript, pp. 195-96. It does not account for water consumed in process, despite the fact that the process obviously consumed water and testimony was received to this effect. Transcript, p. 259.

Given the evidence received, it is simply unreasonable to assume a value of zero (0) for each of these variables in the input-output formula. Water was discharged to the sewer; it was trucked to the sludge farm; it was consumed in the process -- and Magic West provided the only available evidence regarding each of these variables between 1974 and 1979.

3. The Alternate Calculation Shows that Far More than 58 Acre-Feet was Beneficially Used by Magic West During 1978.

The Final Order points out that the plant was in operation less than 24 hours per day during 1978 and concludes that the alternate calculation suggested by Magic West is therefore not supported by adequate evidence. Final Order, p. 5. Despite this fact, the evidence still shows a much higher volume of use in 1978 than 58 a.f.

As noted in the Final Order, during maximum operations the plant was operated an average of 22.8 hours per day in June of 1978 (28 days). During minimum operations, the plant was operated 17.5 hours per day in September (8 days). Final Order, p. 5. At the diversion rate of .67 cfs, an average of 411,350 gallons per day would have been used in June. During September, 315,729 gallons would have been used each day. Using a weighted average

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for these 36 days in June and September, 390,101 gallons per day would have been used. Utilizing this average over the 217 days of actual use in 1978, approximately 84.65 million gallons, or about 260 acre-feet (rounded up) would have been used during 1978.

It is true that the average amounts of water discharged to the waste water farm in June (235,064 gallons per day) and September (156,687 gallons per day) were less than the 411,350 gallons per day (June) and 315,729 gallons per day (September) figures above. However, not all of the water used in the plant was discharged to the waste water farm. The water that was not discharged to the waste water farm was either discharged to the city sewer, trucked to the sludge site, or consumed in the process. Again, the evidence clearly shows that water did go to each of these locations, in addition to the waste water farm.

As a result, even if the exact amount attributable to each of these areas (sewer, sludge site and consumption) is not known for 1978, the total amount used from the well during 1978 can still be calculated by multiplying the diversion rate by the number of hours the plant was in operation each day, as has been done above. No matter how the Director chooses to do the math, or how he calculates the amount of water used each day or each month, the conclusion is the same: a lot more than 58 a.f. was beneficially used by Magic West in the Glenns Ferry plant during 1978.

In reconsidering this issue, we urge the Director to make these calculations and arrive at a figure that is reasonable. It is obvious from the record that more than 58 a.f. was in use during the permit development period. The method used in the alternate calculation is acceptable under the Department's Beneficial Use Examination Rules. IDAPA 37.03.02.40.04 (Rule 40.04); see also, Transcript, p. 47 (testimony of field examiner that theoretical calculations

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exist and can be used in the licensing process). Therefore, the Director should reconsider his decision and amend the Final Order to more accurately reflect the actual beneficial use.

B. The Cease and Desist Order Should be Removed, Modified or Amended.

In the Final Order, the Director included a cease and desist order. The Final Order provides:

> . . .this Final Order includes a cease and desist order directing Magic West to comply with the amended water right license forthwith as provided under § 42-350, Idaho Code.
>
> * * *
>
> 12. . . .Magic West should be ordered to cease and desist forthwith from diverting larger volumes of ground water than authorized by Amended Water Right License No. 61-07189. The hearing held on this matter by the Department on December 15, 1997, satisfies the substantive due process requirements of § 42-350, Idaho Code, for issuance of a cease and desist order.
>
> * * *
>
> 4. Upon receiving this order, Magic West shall cease and desist forthwith from diverting amounts of groundwater under Amended Water Right License No. 61-07189 that exceed the annual volume authorized by the amended license.
>
> 5. In addition to maintaining an approved totalizing measuring device on its point of diversion, Magic West shall report the volume of groundwater diverted and used to the Department every three (3) months beginning June 1, 1999 for the three-month period beginning on February 1, 1999, and ending April 30, 1999. Magic West shall continue to report the volume of groundwater diverted and used pursuant to Amended Water Right License No. 61-07189, and any other water right authorizing use of the same point of diversion, within thirty (30) days following each three-month period thereafter until such time as the Department determines that annual reporting is sufficient to ensure compliance with Amended Water Right License No. 61-07189.

Final Order, pp. 6, 12, 13.

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If the authorized diversion volume remains at 58 acre-feet and the cease and desist order remains in place unchanged, the Final Order virtually guarantees that Magic West's Glenns Ferry plant will be without water from the well within ten (10) weeks of February 1, 1999, or by the middle of April, 1999.

This portion of the Final Order should be amended for a number of reasons, discussed below.

1. Magic West Has Diligently Pursued a Solution to Its Water Right Problem at the Glenns Ferry Plant.

Realizing during 1996 that 12.9 acre-feet was not enough to run the plant, Magic West filed Application for Permit No. 61-07724 to attempt to make up the difference between the authorized diversion rate and what was actually being used. Two pre-hearing conferences were held on the application during 1997 and Magic West has now requested a hearing.

In addition, Magic West attempted to amend its existing license during 1997 to recognize that more than 12.9 acre-feet was actually used during the authorized development period, 1974-1979. This was partially successful, increasing the authorized annual volume from 12.9 acre-feet to 58 acre-feet in the Final Order. However, Magic West continues to maintain, and actively pursue, Application for Permit No. 61-07724 to make up the difference.

Since discovering the problem in 1996, Magic West has diligently attempted to correct the water right problem at its Glenns Ferry plant. However, before its Application for Permit has even been considered and a final decision issued, the Director has chosen to issue a cease and desist order, effective immediately. Magic West should be encouraged to continue to attempt to solve its problem through the permit process, not penalized for following the process.

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2. Magic West Should be Given an Opportunity to Pursue Its Pending Application for Permit and Other Possible Alternative Water Supplies.

The Director's action provides very little time for Magic West to assess its options, let alone choose and implement one, to allow the plant to stay in business. As a result, the cease and desist order should be removed from the Final Order, or modified or amended to provide that the cease and desist order is not effective until after a final decision is made on Application for Permit No. 61-07724, or at least until Magic West has been given adequate time to assess its options and secure an alternative supply -- if any is available -- to keep the plant in operation and avoid putting Glenns Ferry residents out of work.

The manner in which the cease and desist order was issued also supports its removal or modification. While the Director has broad discretion under Section 42-350, Idaho Code, to issue cease and desist orders, every indication in this matter was that enforcement would occur after the water right issues were resolved -- not in the middle of the process.

In a letter to Senator Robbi King, dated August 13, 1998, the Director clearly laid out the issues pending before the Department, as well as the procedure to be utilized, including Magic West's petition to modify License No. 61-07189 and Application for Permit No. 61-07724. No mention was made in that letter of enforcement prior to a decision on these two matters. Instead, the letter states that, following issuance of the Final Order, counsel would be contacted, a hearing would be set on the application for permit, and an order would be issued denying or granting the permit with or without conditions. In addition, a November 20, 1998 letter to Daniel V. Steenson from the Director states that action would be taken to enforce the elements of Magic West's water right, but not until after the Final Order was issued. The

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inclusion of a cease and desist order in the Final Order itself is inconsistent with these previous representations made by the Director.

3. No Injury Determination has Been Made.

It seems that the unstated, yet overriding purpose of the cease and desist order is to address allegations of injury made by the Intervenors in this matter. However, injury was not considered at all in connection with Magic West's petition to modify License No. 61-07189. Final Order, p. 11.

In addition, a hearing has yet to be held on Application for Permit No. 61-07724 and no injury determination will be made until the hearing is concluded and an order is issued regarding the permit application.

Therefore, if injury is the overriding concern, the cease and desist order is premature. No injury determination has yet been made, but one will be made in connection with the pending permit application. The cease and desist order should be removed, or amended to become effective only after this injury determination is made.

4. The Director Has Discretion to Phase-In the Cease and Desist Order.

Section 42-350, Idaho Code, provides that, if the Director determines, on the basis of available information, that a licensee has wilfully or intentionally failed to comply with a license, he may issue a cease and desist order. However, the cease and desist order need not be effective immediately, as has been done in the Final Order.

Regarding this issue, the statute provides:

> A cease and desist order may direct compliance with the license forthwith or may provide for a time schedule to bring the licensee into compliance with the conditions of the license.

I.C. Sec. 42-350(1) (emphasis added).

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In this matter, removal of the cease and desist order, or adoption of a time schedule to phase-in compliance with the Amended License would be appropriate. As a result, Magic West requests that the Director reconsider the cease and desist order.

II. The Cease and Desist Order Should be Stayed.

Rule 780 allows the Director to stay any order that he has previously issued. In the event that the Director decides not to reconsider the cease and desist order by removing it from the Final Order or modifying or amending it, Magic West believes that the cease and desist order should be stayed.

As indicated above, the amended license only provides enough well water to run the plant for ten (10) weeks. A significant number of jobs in the Glenns Ferry area rely upon the continued operation of the plant and the plant has a significant impact on the area's tax base. Without a reasonable period of time to complete processing of Application for Permit No. 61-07724, or to identify and secure an alternative source of water -- if any is available -- Magic West's ability to continue operating the plant is in serious question.

Magic West has diligently pursued a "fix" to the current water right problem. Under these circumstances, a stay of the cease and desist order would be appropriate.

III. Magic West Requests a Hearing on the Cease and Desist Order.

In the event that the Director decides not to remove, modify, amend or stay the cease and desist order as requested above, Magic West further requests that an administrative hearing be held on the cease and desist order, pursuant to I.C. Sec. 42-350(4).

This subsection provides that Magic West "shall have a right to an administrative hearing before the department, if requested in writing within twenty-one (21) days from the date of

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service of the order. . ." I.C. Sec. 42-350(4). This constitutes Magic West's written request for such a hearing.

A hearing is not required before a cease and desist order is issued. Rather, the decision is made "on the basis of available information". I.C. Sec. 42-350(1). However, once a cease and desist order is issued, the licensee has an absolute right to an administrative hearing, if one is timely requested in writing.

The hearing held on December 15, 1997 was a hearing regarding Magic West's petition to modify License No. 61-07189. While it may have provided information upon which the Director based his decision to issue a cease and desist order, it was not a hearing regarding the cease and desist order itself.

As a result, Magic West has the right to a hearing on the cease and desist order, including the right to present testimony from witnesses that will be impacted by the cease and desist order, as well as other evidence and argument, pursuant to Section 42-350(4), Idaho Code.

Magic West reserves the right to withdraw this request for an administrative hearing in the event that the Director decides to remove, modify, amend or stay the cease and desist order, as requested above.

DATED this 5th day of February, 1999.

ROSHOLT, ROBERTSON & TUCKER

NORMAN M. SEMANKO
Attorneys for Magic West, Inc.

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CERTIFICATE OF SERVICE

I hereby certify that on this 5th day of February, 1999, I caused a copy of the foregoing **PETITION FOR RECONSIDERATION; PETITION TO STAY; REQUEST FOR HEARING** to be served upon the following persons by depositing same in the mail, postage prepaid, addressed to the following:

Dan Steenson
RINGERT CLARK CHARTERED
455 S. Third
P.O. Box 2773
Boise, ID 83701-2773

Perce Hall
HALL, FRIEDLY & WARD
340 E. 2nd North St.
Mountain Home, ID 83647

Norman M. Semanko

OCT 05 2000

State of Idaho
DEPARTMENT OF WATER RESOURCES
1301 North Orchard Street, P.O. Box 83720, Boise, Idaho 83720-0098
Phone: (208) 327-7900 FAX: (208) 327-7866

January 22, 1999

DIRK KEMPTHORNE
GOVERNOR

KARL J. DREHER
DIRECTOR

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

Dear Interested Parties:

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

Section 67-5246 provides as follows:

(1) If the presiding officer is the agency head, the presiding officer shall issue a final order.

(2) If the presiding officer issued a recommended order, the agency head shall issue a final order following review of that recommended order.

(3) If the presiding officer issued a preliminary order, that order becomes a final order unless it is reviewed as required in section 67-5245, Idaho Code. If the preliminary order is reviewed, the agency head shall issue a final order.

(4) Unless otherwise provided by statute or rule, any party may file a petition for reconsideration of any order issued by the agency head within fourteen (14) days of the issuance of that order. The agency head shall issue a written order disposing of the petition. The petition is deemed denied if the agency head does not dispose of it within twenty-one (21) days after the filing of the petition.

(5) Unless a different date is stated in a final order, the order is effective fourteen (14) days after its issuance if a party has not filed a petition for reconsideration. If a party has filed a petition for reconsideration with the agency head, the final order becomes effective when:

(a) the petition for reconsideration is disposed of; or

(b) the petition is deemed denied because the agency head did not dispose of the petition within twenty-one (21) days.

(6) A party may not be required to comply with a final order unless the party has been served with or has actual knowledge of the order. If the order is mailed to the last known address of a party, the service is deemed to be sufficient.

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

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

PETITION FOR RECONSIDERATION

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

APPEAL OF FINAL ORDER TO DISTRICT COURT

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

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

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

Sincerely,

L. Glen Saxton

L. GLEN SAXTON, Chief
Water Allocation Bureau

Enclosure

c: Distrubution List

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State of Idaho
DEPARTMENT OF WATER RESOURCES
1301 North Orchard Street, P.O. Box 83720, Boise, Idaho 83720-0098
Phone: (208) 327-7900 FAX: (208) 327-7866

PHILIP E. BATT
GOVERNOR

KARL J. DREHER
DIRECTOR

November 20, 1998

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

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

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

Dear Mr. Steenson: Dan

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

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

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

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

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

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

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

Sincerely,

Karl J. Dreher
Director

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

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RINGERT
CLARK
CHARTERED
LAWYERS

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Department of Water Resources

Laura E. Burri
Jeffrey R. Christenson
D. Blair Clark
Michael J. Doolittle
Patrick D. Furey
David Hammerquist
Joseph B. Jones
James P. Kaufman
Jennifer Reid Mahoney
James G. Reid
William F. Ringert
Daniel V. Steenson
Allyn L. Sweeney

Samuel Kaufman (1921-1986)

October 23, 1998

Mr. Karl Dreher, Director
Idaho Department of Water Resources
1301 N. Orchard
Boise, ID 83706

Re: Initiation of Idaho Code section 42-237b proceedings.

Dear Director Dreher:

On April 20, 1998 we filed an affidavit of Edward T. Potucek with the Idaho Department of Water Resources which states that illegal use of water right number 61-07189 by Magic West, Inc. is completely depriving Mr. Potucek of the use of his senior water right number 51-10331. Mr. Potucek's affidavit meets the requirements of Idaho Code section 42-237b, and requests that you convene an administrative proceeding before a local ground water board pursuant to Idaho Code section 42-237b to determine the injury caused Mr. Potucek by Magic West's excessive diversion of ground water. We also wrote you on that date asking that you set the matter for hearing before a local ground water board as soon as possible, and requesting that you take action against Magic West, Inc. for its illegal diversion of a volumetric quantity of water in excess of that for which it is licensed under water right number 61-07189.

After L. Glen Saxton's April 24, 1998 letter suggesting that Mr. Potucek instead seek relief under the Conjunctive Management Rules promulgated by the Department, we wrote back on May 1, 1998 and informed the Department that the procedure outlined in section 42-237b better serves the needs of our client. That letter also stated that we assumed the Department would shortly be forming a local ground water board and setting the matter for hearing. As you are aware, the Department's duty to convene a local ground water board under Idaho Code section 42-237b is mandatory once Mr. Potucek's affidavit has been deemed to meet the requirements of the statute.

Perce Hall, on behalf of his client Robert K. Hall, has similarly requested that the Department form a local ground water board to resolve a dispute over Magic West Inc.'s excessive, illegal diversion of water, and has received correspondence from the Department similar to that described above. To date, neither we nor Mr. Hall have received notice setting this matter for hearing, nor have we received any communication from the Department regarding the reasons the Department might have for failing to follow its mandatory duty and convene a local ground water board.

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Because of Magic West's continued illegal diversions of excessive volumetric quantities of water, our client has been unable to irrigate his property since at least the late 1980's, and has been unable to use water for any purposes since at least early 1997, despite the fact that our client's ground water right has an earlier priority date than Magic West's ground water right. Furthermore, without action from the Idaho Department of Water Resources, our client has no expectation that he will be able to use his water right in the near future. Therefore, this letter is to inform you that absent action from the Department by November 23, 1998 either enforcing the elements of Magic West's licensed water right number 61-07189, or setting this matter for hearing before a local ground water board, it is our intent to file with the appropriate court a petition for writ of mandamus compelling the Department to comply with the mandatory duties set forth in Idaho Code Section 42-237b.

Please contact us should you desire to speak about this matter.

Sincerely,

Daniel V. Steenson

enclosure(s)

cc: Perce Hall
Norm Semanko
Robbi L. King

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State of Idaho
DEPARTMENT OF WATER RESOURCES
1301 North Orchard Street, P.O. Box 83720, Boise, Idaho 83720-0098
Phone: (208) 327-7900 FAX: (208) 327-7866

PHILIP E. BATT
GOVERNOR

KARL J. DREHER
DIRECTOR

August 13, 1998

The Honorable Robbi L. King
Idaho State Senate
P. O. Box 28
Glenns Ferry, ID 83623

Re: Concerns Regarding Unresolved Water Right Issues Associated With Magic West
(Your Letter Dated August 5, 1998)

Dear Senator King:

I have reviewed your letter dated August 5 regarding the concerns expressed by several of your constituents about unresolved water rights issues involving Magic West, Inc. As you know, the matters about which you have inquired are contested before the Department of Water Resources. Consequently, I can not respond to specifics of any associated facts or allegations, but must confine my response to procedural information. I wholeheartedly agree with the underlying premise of your letter that people are entitled to timely actions from the government agencies which regulate activities affecting their livelihoods. Unfortunately, there are instances when the timeliness of some actions suffers because of the complexity of the issues framing those actions, such as the four pending issues relative to water rights involving Magic West.

The first issue involves the application for a permit to appropriate water which Magic West filed on September 27, 1996. The application for permit, numbered 61-07724, was filed to increase the number of days Magic West could divert water for its processing plant and provide for an increase in the volume of water that could be diverted. As you correctly point out, that application was protested by seven individuals. A protest conference was subsequently held on April 2, 1997, to explore the basis for the protests and the potential for resolving the protests. Because this conference failed to resolve the protests, a second conference was scheduled for June 2, 1997. However, in May of 1997, before the second conference was held, Magic West filed a Petition for Adjustment and Clarification of Existing Order/License for an existing water right, numbered 61-07189. Through this petition, Magic West alleged that the Department of Water Resources had incorrectly established the annual diversion volume limitation of 12.9 acre-feet for Magic West's existing licensed water right and that the license should be amended or modified by either increasing or removing the annual volume limitation. Although the second protest conference for the new application for permit was held as scheduled, a formal hearing on the application for permit was not scheduled. Instead, it was decided that further processing of

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the application for permit to appropriate water should be suspended until after a decision was issued regarding Magic West's Petition for Adjustment of Existing Order/License for water right number 61-07189. Depending on the outcome of that decision, Magic West could then decide to withdraw its application for permit numbered 61-07724, amend the application for permit, or proceed with a hearing on the application for permit as originally filed. Depending on the action taken by Magic West, the protestants to the application for permit could decide to withdraw or maintain their protests.

Thus the second issue, which has taken precedence over the new application for permit to appropriate water, is Magic West's application for amendment or modification of the license for water right number 61-07189. On October 22, 1997, I issued an order which designated this matter as a contested case. In addition, because of the interrelationship of this issue with the pending application for permit previously filed by Magic West, I provided the protestants to the application for permit the opportunity to intervene. This resulted in various petitions and motions being filed by the protestants, who chose to intervene, and by Magic West. A formal hearing on Magic West's application for amendment or modification of the license for water right number 61-07189 was held on December 15, 1997, to provide Magic West the opportunity to establish through appropriate evidence the extent of beneficial use that was actually developed under the permit prior to the submission of proof of beneficial use and the issuance of the license for water right number 61-07189. Since that hearing, and the submission of post-hearing briefs, the hearing officer, Mr. L. Glen Saxton, has been preparing a recommended order for Magic West's application for amendment or modification of the license. That recommended order should be issued before the end of August.

The department's action on Magic West's application for amendment or modification of the license for water right number 61-07189 will result in an administrative determination of the extent of Magic West's existing water right. If Magic West or the intervenors are aggrieved by the department's determination, the determination can be appealed to a district court. Even if this does not happen, Magic West has filed a claim for water right number 61-07189 in the Snake River Basin Adjudication ("SRBA") for year-round use without any limitation on the volume of water that can be diverted annually, other than the diversion rate of 0.67 cfs. Thus the third issue is that regardless of what the department determines to be the extent of water right number 61-07189, that determination could be modified by future judicial action. However, the department will fulfill its responsibilities by issuing a decision on Magic West's application for amendment or modification of the existing water right license and by providing the SRBA Court with a recommendation, consistent with the pending administrative determination, for defining water right number 61-07189 in January of 1999.

The fourth and last pending issue involving Magic West's water rights is the request filed by Mr. Edward T. Potucek with the Department of Water Resources by affidavit dated April 17, 1998, and cover letter from counsel for Mr. Potucek dated April 20, 1998, asking me to convene a ground water board pursuant to § 42-237b, Idaho Code. Until the administrative review is

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completed of the extent of Magic West's existing water right, numbered 61-07189, as described on pages 1 and 2 of this letter, a decision regarding the establishment of a ground water board is premature. While I can not discuss the merits of Mr. Potucek's request, the provisions of § 42-237b, Idaho Code, appear to be somewhat antiquated. At best, the provisions of § 42-237b overlap provisions in other sections of the code; at worst, the provisions of § 42-237b contradict other provisions of the code. Consequently, there may be more appropriate ways to resolve Mr. Potucek's assertions of injury.

In summary, the Department of Water Resources will issue a recommended order before the end of August in response to the request filed by Magic West to amend or modify the license for water right 61-07189. The recommended order will be followed by a final order, as provided in rule of procedure 740, IDAPA 37.01.01. Following issuance of the final order, the department will contact counsel for Mr. Potucek to determine whether he wishes to maintain or withdraw his request for convening a ground water board pursuant to § 42-237b, Idaho Code. If Mr. Potucek wishes to maintain his request, I will act upon his request within two or three weeks following such confirmation from counsel for Mr. Potucek. If Mr. Potucek's request is denied, one or more alternative processes for addressing his assertions of injury will be identified. During this time period, the department will also contact counsel for Magic West to determine whether Magic West wishes to maintain, amend, or withdraw its application for permit to appropriate water numbered 61-07724. If the application is amended, it will be re-advertised. If the application is maintained, it will be set for hearing. If the application is not withdrawn, recommended and final orders denying or granting the permit with or without conditions will be subsequently issued. Finally, the department will also make timely recommendations to the SRBA Court regarding the definition of water right number 61-07189 and other water rights claimed by Magic West in the SRBA.

I hope you find this information responsive to your letter dated August 5. If you want more information regarding any of these issues, please let me know.

Sincerely,

Karl J. Dreher
Director

cc: Governor Philip E. Batt
Mr. Perce Hall
Mr. Robert K. Hall
Mr. Edward T. Potucek
Mr. Daniel V. Steenson - Ringert Clark
Mr. Norman M. Semanko - Rosholt, Robertson & Tucker

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OCT 0 5 2000

ROSHOLT, ROBERTSON & TUCKER
Chartered
ATTORNEYS AT LAW

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FAX (208) 344-6034

November 2, 1998

Karl J. Dreher, Director
Idaho Department of Water Resources
1301 North Orchard St.
P.O. Box 83720
Boise, ID 83720-0098

VIA FAX and U.S. MAIL

Re: Magic West – Response to Potucek Correspondence to IDWR

Dear Karl:

This letter is in response to the letter from Daniel V. Steenson of Ringert Clark to you, dated October 23, 1998, regarding the desire of his client, Edward T. Potucek, to shut down Magic West's potato processing plant in Glenns Ferry. We are concerned about some misleading and inaccurate characterizations contained in that letter and feel that it is necessary to respond. We also wanted to inform you of Magic West's intentions with regard to further processing of Application for Permit No. 61-07724.

Mr. Steenson's letter represents to you that Mr. Potucek "has been unable to irrigate his property since at least the late 1980's, and has been unable to use water for any purposes since at least early 1997", including domestic use, and that Mr. Potucek "has no expectation that he will be able to use his water right in the near future."

We have been informed by Magic West's Farm Manager, Blaine Allen, that Mr. Potucek has installed a pump with which he draws water for his livestock. We are not certain whether this pump was installed before or after the December 15, 1997 hearing regarding Magic West's petition. In any event, it is simply inaccurate to say that Mr. Potucek "has been unable to use water for any purposes" or that he "has no expectation that he will be able to use his water right in the near future."

In addition, the well in question does not serve the domestic needs of Mr. Potucek at all. Mr. Potucek lives at a different location and a different source serves his home, contrary to what we and the Department have been led to believe in the past.

Finally, we are informed that Mr. Potucek's irrigation has been accomplished entirely with water from the Snake River since at least 1978. To the best of our belief and knowledge, Mr. Potucek has not used the well in question for irrigation since at least that time -- many years before the alleged effects from Magic West's well.

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As a result, it appears that the only real use of Mr. Potucek's well is for livestock -- a use that is currently being met. Therefore, there is no basis for Mr. Potucek's allegations of "injury" -- and no basis to shut down Magic West's Glenns Ferry plant to satisfy Potucek's "water right".

Mr. Potucek's SRBA Claim No. 51-10331 for this well, which was recently amended to increase quantity and add irrigation as a purpose of use, is due to be reported soon in the Director's Report for Basin 51. Based upon the above information, Magic West intends to file an objection to the right if it is recommended as claimed. It is our opinion that this issue, which will determine the nature and extent of Potucek's water right, will need to be resolved before any action is taken on Potucek's request to convene a local ground water board. We also understand that a recommendation for Magic West's Water Right No. 61-07189 is due out in January, 1999.

With regard to the issue of convening a local ground water board, we wish to remind you that we have filed a motion to dismiss this request. A ruling on our motion could dispose of the matter.

Also, upon final disposition of Magic West's petition to correct the annual diversion volume for License No. 61-07189, we intend to determine whether, and when, to pursue further processing of Application for Permit No. 61-07724, as was indicated at the last pre-hearing conference. We thought it was necessary to first correct License No. 61-07189 before moving forward with the Application for Permit. We have not wavered from this course of action and still believe it is the most prudent way to proceed.

Because of the obvious overlap with the final decision on Magic West's petition for License No. 61-07189, we certainly believe that it would be most appropriate for the Department to finish processing and render a decision on Application for Permit No. 61-07724 before proceeding with Potucek's request to convene a local ground water board. The SRBA issues identified above also need to be resolved. If you do decide to act on Potucek's request before these issues are resolved, however, we ask that you also rule on our motion to dismiss.

Thank you for your attention to this matter.

Sincerely,

NORMAN M. SEMANKO

cc: Daniel V. Steenson
Perce Hall
Robbi L. King

11029802.NMS

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XAD

ROSHOLT ROBERTSON & TUCKER
ATTORNEYS AT LAW

142 THIRD AVENUE NORTH
P.O. BOX 1906
TWIN FALLS, ID 83303-1906
(208) 734-0700
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FACSIMILE TRANSMISSION

DATE: 11-2-98

FAX TO: Karl Drehar, Director

FROM: Norm Semanko

RE: Magic West - Potucek

NUMBER OF PAGES INCLUDING THIS ONE: 3

IF YOU DO NOT RECEIVE ALL OF THE PAGES, PLEASE CALL US BACK AS SOON AS POSSIBLE AT (208) 734-0700.

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ADDITIONAL MESSAGE:

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RINGERT
CLARK
CHARTERED
LAWYERS

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Department of Water Resources

Laura E. Burri
Jeffrey R. Christenson
D. Blair Clark
Michael J. Doolittle
Patrick D. Furey
David Hammerquist
Joseph B. Jones
James P. Kaufman
Jennifer Reid Mahoney
James G. Reid
William F. Ringert
Daniel V. Steenson
Allyn L. Sweeney

Samuel Kaufman (1921-1986)

October 16, 1998

VIA FACSIMILE

Karl J. Dreher, Director
Idaho Dept. of Water Resources
1301 North Orchard
Boise, ID 83720
Fax No. (208) 327-7866

Re: Potucek's Response to Exceptions Filed in the Matter of License No. 61-07189.

Dear Director,

Please find enclosed Edward T. Potucek's Motion for Extension of Time in the above-titled matter. Also, we have enclosed a proposed Order for extension of time. We request that the Order reflect that Potucek has an extension of seven (7) days to file his brief in response to Magic West's Exceptions. Please contact us if you have any questions or comments regarding this matter.

Thank you for your attention to this matter.

Yours very truly,

S. Bryce Farris

Enclosures

cc: Edward T. Potucek
Norman Semanko
Perce Hall

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OCT 05 2000

Daniel V. Steenson
Charles L. Honsinger
S. Bryce Farris
Ringert Clark, Chartered
P.O. Box 2773
Boise, ID 83702
(208)342-4591

Attorneys for Intervenor Edward T. Potucek

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

IN THE MATTER OF LICENSE NUMBER 61-07189 IN THE NAME OF MAGIC WEST, INC. DISTRICT	MOTION FOR EXTENSION OF TIME

COMES NOW, EDWARD T. POTUCEK, by and through his attorneys of record Ringert Clark, Chartered, and hereby moves the Idaho Department of Water Resources (IDWR) for an Order for Extension of Time. Specifically, Potucek moves IDWR for an order directing that the Potucek has an extension of seven (7) days to file his response brief, pursuant to IDAPA 37.01.01.720, to Magic West's Exceptions to the Recommended Order in the above-titled matter.

A proposed Order for Extension of Time is attached hereto.

DATED This 16th day of October, 1998.

S. Bryce Farris

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CERTIFICATE OF SERVICE

I certify that on October 16th, 1998, a true and correct copy of the foregoing was served upon all parties below by facsimile and/ or U.S. Mail, postage prepaid:

Karl J. Dreher, Director
Idaho Dept. of Water Resources
1301 North Orchard
Boise, ID 83720
Fax No. 327-7866

Norman Semanko
ROSHOLT ROBERTSON TUCKER
P.O. Box 1906
Twin Falls, ID 83303-1906
Fax No. (208) 736-0041

Perce Hall
HALL FRIEDLY & WARD
340 E. 2nd N. St.
Mountain Home, ID 83647
Fax No. (208) 587-3314

S. Bryce Farris

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BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

IN THE MATTER OF LICENSE NUMBER 61-07189 IN THE NAME OF MAGIC WEST, INC. DISTRICT	)	ORDER FOR EXTENSION OF TIME

Intervenor, Edward T. Potucek, by and through his attorneys of record Ringert Clark, Chartered, has moved this Department for an order for the extension of time to file his response brief, pursuant to IDAPA 37.01.01.720, to Magic West's Exceptions to the Recommended Order in the above-titled matter.

IT IS ORDERED that Potucek's motion is GRANTED.

IT IS FURTHER ORDERED that Potucek has seven (7) days of the date of this Order to file his response brief.

DATED This ___ day of October, 1998.

Hearing Officer

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CERTIFICATE OF SERVICE

I certify that on October ___, 1998, I mailed the original and copies of the foregoing ORDER FOR EXTENSION OF TIME, to the following:

Dan Steenson
RINGERT CLARK
P.O. Box 2773
Boise, ID 83701

Norman Semanko
ROSHOLT ROBERTSON TUCKER
P.O. Box 1906
Twin Falls, ID 83303-1906

Perce Hall
HALL FRIEDLY & WARD
340 E. 2nd N. St.
Mountain Home, ID 83647

_____

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Department of Water Resources

Daniel V. Steenson
Charles L. Honsinger
RINGERT CLARK, CHARTERED
455 S. Third St., P.O. Box 2773
Boise, ID 83701-2773
Telephone: (208) 342-4591
FAX: (208) 342-4657

Attorneys for Edward T. Potucek

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

	)	License Number 61-07189
	)	
IN THE MATTER OF	)	POTUCEK'S RESPONSE TO
LICENSE NO. 61-07189	)	MAGIC WEST'S EXCEPTIONS
IN THE NAME OF	)	TO RECOMMENDED ORDER
MAGIC WEST, INC.	)	
	)	

Edward T. Potucek (hereinafter "Potucek"), by and through his attorneys of record, Ringert Clark, Chartered, files this Response to Magic West Inc.'s (hereinafter "Magic West") Exceptions to the Recommended Order issued by the Idaho Department of Water Resources (hereinafter "IDWR") on August 31, 1998.

BACKGROUND

License No. 61-07189 was issued to Magic West on October 27, 1990. The license authorizes a diversion volume of 12.9 acre-feet per annum. In May, 1997, Magic West filed a Petition for Adjustment and Clarification of Existing Order/License ("Petition") in an attempt to increase the diversion volume to 270.7 acre-feet per annum. The Director issued an order designating the matter a contested case on October 22, 1997. Potucek was granted intervention

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in the contested case on November 24, 1997. A hearing was held on December 15, 1997 and the Hearing Officer issued the Recommended Order on September 4, 1998. Magic West filed its Exceptions to Recommended Order ("Exceptions") on September 25, 1998.

ARGUMENT

Through this proceeding, Magic West is attempting to "amend" its license to legitimize its illegal diversion of water in excess of the licensed quantity. The Director should deny the request that IDWR authorize Magic West's past and ongoing license violations.

In its Petition, Magic West requested that IDWR either increase the licensed quantity from 12.9 AFA to 270.7 AFA, or remove diversion volume to allow around the clock depletion of the aquifer at the licensed rate. These first two proposals were based on Plant Manager Jack Anderson's unsubstantiated "estimate" and comparison of use at the time of the beneficial use field examination in 1987 to current water use. During the hearing and in its Post Hearing Brief, Magic West offered a third proposal that IDWR increase its licensed diversion volume to 302.53 AFA. This proposal infers the amount of water Magic West might have diverted from its well using disparate recollections, assumptions, and incomplete data from various time periods regarding water diverted from a separate source, water used in the facility, and water discharged from the facility. Now, in its Exceptions, Magic West presents a fourth proposal to increase its license to 288.38 AFA assuming a constant twenty-four-hour diversion of 1.9835 AF per day for 217 days, and a fifth proposal to increase the license to 314.96 AFA assuming the same daily diversion volume for 237 days. As alternatives to these proposals, Magic West continues to advocate 302.53 AFA and removing the diversion volume from the license. None of these proposals is based on any records of actual diversion of water from Magic West's well.

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I. MAGIC WEST'S LICENSE CANNOT BE "AMENDED"

In perfecting its water right, Magic West must abide by the mandatory application, permit, and license procedure of Title 42 of the Idaho Code. I.C. § 42-229; *Tappan v. Smith*, 92 Idaho 451, 456, 444 P.2d 412 (1968). Magic West's license must state "the quantity of water used, which in no case shall be an amount in excess of the amount that has been beneficially applied." I.C. § 42-219. Diversion rate and volume are essential to defining the quantity of water Magic West actually used and perfected under its water right. Once issued, Magic West's license is binding upon the state and is prima facie evidence of the elements of the water right. I.C. § 42-220. In October, 1990, Magic West had the opportunity to contest the license under I.C. § 42-1701A(3):

> any applicant for any . . . license . . . required by law to be issued by the director, who is aggrieved by a denial or conditional approval ordered by the director . . . shall be entitled to contest the denial or conditional approval upon filing with the director, *within fifteen (15) days* after receipt of the . . . conditional approval, a written petition stating the grounds for contesting the action by the director and requesting a hearing.

(Emphasis added).

Implicit in this opportunity is the obligation to review the license when it is issued. No other statutory provision permits a license holder to contest a license. Because Magic West failed to contest the license until more than *seven years* after it was issued, and because no other statutory provision exists under which Magic West may attempt to change its license, the Director has no authority to grant Magic West's request to amend license number 61-07189.[1]

---

[1] Potucek has extensively argued in prior briefing and at hearing that the nature of licenses are such that they cannot be amended. Those arguments are incorporated herein by this reference.

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This case clearly demonstrates the wisdom of the statutory procedures and the impropriety of allowing licensees to "amend" their licenses. Since 1990, when the license was issued, Magic West increased its diversions to over twenty times the licensed quantity,[2] without complying with the measuring device requirement in the license. In 1996, several ground water users in the Glenns Ferry area raised concerns, and IDWR requested that Magic West submit information regarding its diversion and the status of the measuring device. In response, Magic West filed a new permit application which was protested, and then, to avoid the issues raised by the protests, applied to "amend" its license to cover its illegal diversion of water. While entertaining Magic West's requested "amendment," IDWR has failed to enforce the license, allowed Magic West to continue its illegal diversion, disregarded its statutory obligation to convene a ground water board as requested by the intervenors, and done nothing to address the significant detrimental impact of Magic West's illegal diversions on the aquifer and on senior ground water appropriators. By creating the opportunity to amend a license, IDWR provides Magic West and others the opportunity to divert more water without consequence, and without complying with the mandatory application, permit, and license procedures of Title 42.

Magic West uses the pretext that IDWR erred in relying upon the information Magic West provided for the beneficial use examination ten years ago to justify "amending" its license to conform to its illegal diversion of water. Allowing an amendment under these circumstances

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[2] Jack Anderson testified that when it finally installed the required measuring device in 1996, Magic West discovered that it used between 240,000 and 260,000 gallons each day from the well supplying water right number 61-07189. TR at 101. Magic West diverts water from the well 352 days each year. Exceptions at 7. Therefore, Magic West's actual minimum daily use of water from the well in AFA can be calculated as follows: 240,000 gallons per day/646,315 gallons (1.0 cfs diverted at a constant rate for 24 hours) X 1.9835AF per day X 352 days = 259 AFA.

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relieves prospective licensees from the obligation to provide accurate information to IDWR during the licensing process, to review the license when it is issued, and to contest any perceived errors in the license within the statutorily provided period. The atmosphere created by a failure to follow the statutorily mandated procedures for establishing a water right would also be rife with opportunities for increasing diversions through amendments where the alleged errors did not result from information provided by the licensee.

Challenging an agency action within the time allowed is a crucial mandate in administrative law, particularly when the action allocates a right to a finite and indispensible resource such as water. By requiring challenges within fifteen days after issuance of a license, I.C. § 42-1701A(3) facilitates error correction by ensuring both that the necessary information is contemporaneous to the determination of whether an error occurred, and that it can be more readily assembled and evaluated. Years later, as in this case, reliable information may no longer be available and recollections of actual use of water fade. Now, nearly twenty years after the development period of Magic West's permit, Magic West has only a patchwork of questionable, circumstantial evidence of the quantity of water it actually diverted from its well.

More importantly, after a license is issued without challenge, others may apply for and IDWR may approve subsequent appropriations based on the available, unappropriated supply of water after diversions from that supply as represented by the licensed water right. Allowing a licensee to amend its license to increase its diversion after subsequent permits and licenses are issued deprives the junior appropriators of their water rights and of their right to a continuance of the conditions of the source that existed when their appropriations were perfected, and disrupts IDWR's administration of water rights. *Lambrix v. Frazier*, 31 Idaho 382, 171 P. 1134 (1918);

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Nettleton v. Higginson, 98 Idaho 87, 558 P.2d 1048 (1977) *citing DeRousse v. Higginson*, 95 Idaho 173, P.2d 321 (1973).

II. IF IDWR AMENDS LICENSE NO. 61-07189, THE ONLY PROPER METHOD TO DETERMINE QUANTITY IS OUTLINED IN THE RECOMMENDED ORDER

In the Recommended Order, the Hearing Officer concluded that IDWR should determine the diversion volume "based upon the extent of diversion and beneficial use made of water within the time period authorized for appropriation of water under the permit and prior to submittal of proof of beneficial use, i.e. within the time period of August 29, 1974 to June 13, 1979." Recommended Order at 6. Although IDWR is not authorized to amend Magic West's license, if it does, the Hearing Officer's decision that the diversion volume should be determined by examining the period of the water right's development is correct.

In its Exceptions to the Recommended Order, Magic West asserts that the Hearing Officer erred in calculating the amended diversion volume and sets forth three alternatives to that calculated volume: (1) recalculation of the Hearing Officer's proposed diversion volume using variables in the input-output formula that are more favorable to Magic West's position, yet lack support in the record; (2) a calculation using a constant diversion rate over a specified number of days; (3) removing the diversion volume from the license. Each of these alternatives is defective for the reasons listed below.

A. The Diversion volume Should Not Be Removed From The License

Magic West asserts that, because of certain procedural irregularities, if the Director cannot accurately determine the actual diversion volume during the period from 1974 to 1979, the limitation should be removed from the license entirely. This proposal is unacceptable.

IDWR included diversion volume in the license to define the extent of Magic West's

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beneficial use, and to protect other appropriators from injury due to excessive diversions by Magic West. It is undisputed that water right number 61-07189 is currently used less than 365 days each year, and that it was used less than 365 days each year during the period of its development from 1974 to 1979. Exceptions at 6, fn.2, 7. Thus, to properly define the extent of beneficial use of the water right, a diversion volume *must* be included in the license. Removal of the condition would permit Magic West to divert .67 cfs around the clock, 365 days a year. The diversion volume to which Magic West is limited under the license would increase *thirty-sevenfold*, from 12.9 AFA to 485.06 AFA.[3] An increase of this magnitude in the annual diversion volume under water right number 61-07189 would certainly impact other water rights diverting from the same source. Thus, an amendment removing the diversion volume from the license will defeat the purposes of defining the extent of beneficial use of the water right, and of protecting other appropriators from injury.

B. A Limitation Calculated By Determining A 24 Hour Volume Under The Licensed Diversion Rate And Multiplying That Figure By The Number Of Days The Magic West Facility Is In Operation Each Year Is Meaningless And Exceeds The Volume Under Which The Water Right Was Developed And Licensed.

As an alternative method to calculate the diversion volume that it asserts should replace the licensed diversion volume, Magic West suggests that multiplying the licensed diversion rate by the number of days the plant is in operation and then multiplying that figure by 1.9835 acre-feet per day yields an acceptable diversion volume.

This "theoretical calculation" of the diversion volume is acceptable to Magic West because it is meaningless. It does not limit the water right in any manner other than by the already licensed

[3] The volume of water diverted twenty-four hours a day for an entire year is calculated as follows: .67 cfs X 1.9835 Acre-feet per day X 365 days a year = 485.06.

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24-hour diversion rate, and by the number of days the water right was used during 1978. It does not take into account any "down time" in plant operations that may have occurred, nor does it take into account the fact that surrounding groundwater diverters were entitled to and did rely upon the diversion volume in Magic West's license. The Director should reject this alternative method of calculating the diversion volume.

Magic West argues that this "theoretical calculation" method is appropriate because IDWR's Beneficial Use Examination Rules provide that "theoretical calculations are acceptable when a measuring device is not a permit requirement," and because "[t]here was no permit requirement." Exceptions at 6.

First, Magic West incompletely quotes the Beneficial Use Examination Rule referenced. That rule specifically provides that theoretical *diversion rates* or theoretical *carrying capacities* are acceptable when there is no measuring device requirement in the permit. IDAPA 37.03.02.040.04. Nothing in the rule specifies that theoretical *diversion volumes* are acceptable when there is no measuring device requirement in the permit.

Second, the assertion that there was no permit requirement for a measuring device is untrue. From August 29, 1974, the date of permit approval, to August 28, 1978, the date of its removal, the permit required a permanent measuring device. Permit for Water Right Number 61-07189. If Magic West had complied with this permit requirement that was in place for four years of the five-year period of water right development, the data establishing the actual volume diverted during that period of development would be available, and Magic West would not be arguing that a "theoretical calculation" of that volume is acceptable. Magic West should not be allowed to forego the consequences of its noncompliance with permit conditions and argue that

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just because a former permit requirement did not exist at the time of the beneficial use examination, IDWR can now theoretically calculate the volume of a water right as supposedly used during its period of development when, if Magic West had complied with its permit, such a calculation would not be necessary.

C. The Only Proper Method to Calculate The Diversion volume Is With The Input-Output Formula Suggested By Magic West And Used By IDWR

Although IDWR cannot amend water right licenses, to the extent that it will amend the license in this contested case, the Hearing Officer properly determined that the diversion volume in the license should be based upon the extent of beneficial use during the period of development of the water right, and that the volume during that period should be calculated using the input-output formula suggested by Magic West. The Hearing Officer also properly rejected figures submitted by Magic West as part of the "output" side of the formula because "information available in the record is not sufficient to relate this data to actual plant operations and use of water during the time period authorized to appropriate water under the permit." Recommended Order at 6.

Magic West argues that figures it submitted as appropriate for the variables on the "output" side of the formula should be included in the calculations because "all available data should be included in making relevant calculations." *Citing, Final Order, In the Matter of Application for Transfer No. 4985, in the Name of Mark T. Gates, Trustee* (June 4, 1998). Magic West's reliance on the Director's conclusion in the Matter of Application for Transfer No. 4985 is misplaced. In that decision, the Director did not consider *all available* data in making his calculations of the conveyance loss attributable to a specific water right delivered through a canal with other water rights. Instead, the Director considered actual measurements of canal flows and

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did not consider measurements that did not take into account a parameter taken into account by the more reliable measurements. Thus, the Director did not include all *available* data, but instead included all *reliable* data in his calculations. Similarly, in this case, the Hearing Officer did, and the Director should consider only reliable data in making any calculation of the volume diverted under water right number 61-07189 during the period of development.

Idaho Code Section 67-5251 also provides some guidance to an agency in the evaluation of evidence admitted by the agency during an administrative hearing. That statute provides that "[t]he agency's experience, technical competence, and specialized knowledge may be utilized in the evaluation of the evidence." Idaho Code Section 67-5251. Here, the Hearing Officer properly evaluated the evidence using his experience, technical competence and specialized knowledge in rejecting evidence that did not have sufficient indicia of reliability

Magic West complains that the Hearing Officer did not use figures that it supplied showing discharges to the City of Glenns Ferry. However, the data supplied showed discharges to the City sewer system in 1975, not 1978, the year for which data showing discharges to Magic West's farm is available. Moreover, there was no showing at the hearing that the discharges to the City in 1978 were either made or, even if made, that they were similar in volume to those made in 1975. Therefore, the Hearing Officer properly did not include discharges to the City as part of his calculations of total discharges during the period of development.

Magic West argues that a volume should also be included in the discharge calculations to reflect consumptive losses during processing. However, the only evidence available to show consumptive use during the period of development was Bill Schow's *estimate* of 20-50% losses in processing currently, and his testimony that the amount lost in processing currently is similar to

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that lost in processing in the period from 1975-1979. TR at 172, 219.[4] There is no showing or evidence other than this estimate. The Hearing Officer properly did not include this estimated figure in the discharge calculations as it did not have sufficient assurances of reliability.

Finally, Magic West argues that the discharge calculations should have included a figure representing that volume of water trucked from the plant to the sludge pond. No evidence of actual volumes trucked to the sludge pond from 1975 - 1979 was presented. Magic West did present schedules showing the amount of water trucked to the sludge pond for one week in 1997. Mr. Ogden also testified that the amount of water trucked from the plant during the period from 1975-1979 was approximately the same as is trucked now. TR at 154. However, it is quite a stretch to infer that data from one week of operations during 1997 in any way relates to the total quantity of water trucked for an entire year during 1978 based on one person's eighteen year old memory. The evidence that Magic West asserts establishes the amount of water trucked to the sludge pond is clearly unreliable and was properly rejected by the Hearing Officer.

IDWR is not authorized to amend Magic West's license. As very little information regarding actual beneficial use of the water right from 1974 to 1979 is available in the record, any estimate of the volume used at that time would be an impermissible "theoretical calculation." *See* IDAPA 37.03.02.040.04.[5]

If IDWR does amend the license, it must use the input-output method outlined by the

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[4] Potucek had the hearing on December 15, 1997 transcribed. The page numbers of that transcription do not correspond to the page numbers of Magic West's transcript. Upon request by IDWR, Potucek will supply a transcript copy.

[5] Potucek's prior briefing further discusses the standard of evidence acceptable to establish the volume used during the period from 1974-1979. Those arguments are herein incorporated by this reference.

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Hearing Officer because it is the only alternative for which any reliable support is found in the record. The Hearing Officer properly rejected as unreliable the data submitted by Magic West to show the quantity amount of water discharged to the City sewer system, the quantity trucked to sludge ponds, and the quantity lost in processing. Although slim, the only data with any indicia of reliability are DEQ reports recording discharges to Magic West's farm. Based on those reports, the best case scenario for Magic West is for IDWR to amend license no. 61-07189 to include a diversion volume of 42.03 AFA,[6] not the 58 acre feet recommended by the Hearing Officer.

III. MAGIC WEST SHOULD BE REQUIRED TO REPORT ITS WATER USE TO THE DEPARTMENT EVERY THREE MONTHS

The Hearing Officer recommended that Magic West be required to report its water use to the Department every three (3) months once the Final Order is issued. Recommended Order at 7. Magic West objected to this requirement. The periodic measurement requirement is appropriate because Magic West has proved that, absent enforcement, it will not comply with the conditions of its license. It has not complied with the diversion volume since the right was licensed. It did not comply with the measuring device requirement until six years after the license was issued. Given this history of Magic West's noncompliance with its license, the Hearing Officer properly and justifiably required Magic West to report its water use to IDWR every three months.

CONCLUSION

Through its request that IDWR amend its licensed diversion volume, Magic West is making a transparent attempt to have IDWR legitimize its illegal diversion of water. The Director should deny Magic West's request because the finality inherent in water right licenses is relied

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[6] Potucek's calculations to arrive at the 42.03 AFA figure are discussed in Potucek's Post-hearing Memorandum at 30-31, incorporated herein by this reference.

CERTIFICATE OF MAILING

I certify that on October 23rd, 1998, I caused to be served the original and copies of this document, including all attachments to the following:

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Twin Falls, ID 83303-1906

Idaho Department of Water Resources
1301 N. Orchard
Boise, ID 83712

Perce Hall
Hall, Friedly & Ward
340 East 2nd North Street
Mountain Home, Idaho 83647

Charles L. Honsinger
Person mailing documents

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CHARTERED LAWYERS

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Jennifer Reid Mahoney
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William F. Ringert
David V. Stevenson
Allyn L. Sweeney

Samuel Kaufman (1921-1989)

October 16, 1998

VIA FACSIMILE

Karl J. Dreher, Director
Idaho Dept. of Water Resources
1301 North Orchard
Boise, ID 83720
Fax No. (208) 327-7866

Re: Potucek's Response to Exceptions Filed in the Matter of License No. 61-07189.

Dear Director,

Please find enclosed Edward T. Potucek's Motion for Extension of Time in the above-titled matter. Also, we have enclosed a proposed Order for extension of time. We request that the Order reflect that Potucek has an extension of seven (7) days to file his brief in response to Magic West's Exceptions. Please contact us if you have any questions or comments regarding this matter.

Thank you for your attention to this matter.

Yours very truly,

S. Bryce Farris

Enclosures

cc: Edward T. Potucek
Norman Semanko
Perce Hall

455 South Third Street • P.O. Box 2773 • Boise, Idaho 83701 • 208/342-4591 FAX 342-4657

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Attorneys for Intervenor Edward T. Potucek

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

IN THE MATTER OF LICENSE NUMBER 61-07189 IN THE NAME OF MAGIC WEST, INC. DISTRICT	MOTION FOR EXTENSION OF TIME

COMES NOW, EDWARD T. POTUCEK, by and through his attorneys of record Ringert Clark, Chartered, and hereby moves the Idaho Department of Water Resources (IDWR) for an Order for Extension of Time. Specifically, Potucek moves IDWR for an order directing that the Potucek has an extension of seven (7) days to file his response brief, pursuant to IDAPA 37.01.01.720, to Magic West's Exceptions to the Recommended Order in the above-titled matter.

A proposed Order for Extension of Time is attached hereto.

DATED This 16th day of October, 1998.

S. Bryce Farris

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CERTIFICATE OF SERVICE

I certify that on October 16th, 1998, a true and correct copy of the foregoing was served upon all parties below by facsimile and/ or U.S. Mail, postage prepaid:

Karl J. Dreher, Director
Idaho Dept. of Water Resources
1301 North Orchard
Boise, ID 83720
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S. Bryce Farris

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RINGERT CLARK CHARTERED
FAX COVER LETTER

From: Daniel V. Steenson
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Time: Date: **October 16, 1998**

PLEASE DELIVER THE FOLLOWING PAGES TO:

NAME: **Karl J. Dreher, Director**

WITH: **Idaho Dept. of Water Resources**

CITY & STATE: **Boise, Idaho**

TELEPHONE NO.: **(208)**

FAX. NO.: **(208) 327-7866**

SENDER: **Bryce Farris**

WE ARE TRANSMITTING **6** PAGES (INCLUDING THIS COVER LETTER)

ADDITIONAL INFORMATION:

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Department of Water Resources

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BEFORE THE DEPARTMENT OF WATER RESOURCES

OF

THE STATE OF IDAHO

ROBERT K. HALL, Petitioner, vs. MAGIC WEST, INC., a corporation, Respondent	ROBERT K. HALL'S OBJECTION TO EXCEPTIONS FILED BY MAGIC WEST TO THE DEPARTMENTS RECOMMENDED ORDER

At the time of the hearing upon the contested case, held by the Idaho Department of Water Resources on December 15, 1997, the attorney for Robert K. Hall made oral argument in support of their previous motion to dismiss the proceedings, which motion had been denied but with the provision that oral argument could be made at the time specified. The basis of the motion to dismiss the proceedings was jurisdictional. In its recommended order the hearing officer made no mention whatsoever of this motion. Granting of the motion would have effectively terminated the hearing.

The reasons underlying Hall's Motion to Dismiss were, among others, the following:

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(1) Magic West is objecting to the provision in License No. 61-07189 granted to it, which license limited its annual use of water to 12.9 acre feet per acre. Under the provisions of Idaho Code 42-1701a, Subsection 3, any person aggrieved by any provision in a license shall be entitled to a hearing before the director to contest the matter within fifteen (15) days after receipt of the decision.

(2) Idaho Code Section 42-222 provides that any person entitled to the use of water whether represented by license issued by the Department of Water Resources, by claims to water right by reason of diversion and application to beneficial use, who shall desire to change the point of diversion, place of use, period of use or nature of use shall first make application to the Department of Water Resources for approval of such change. At the bottom of Page 54 of this section of the law appears the following: "The Director of the Department of Water Resources shall examine all evidence and available information and shall approve the change in whole or in part or upon conditions, provided no water rights are injured thereby, the change does not constitute an enlargement in use of the original right, the change is consistent with the conservation of water resources within the State of Idaho and is in the local public interest." In this matter Magic West is requesting a modification of its license to enlarge the annual use of water from 12.9 acre feet to 288 acre feet.

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(3) It is the protestants contention that Magic West should have filed a new application to appropriate the additional water, in which case the burden would have been on Magic West to prove that there was sufficient water to fulfill its requirements and that other senior priority users would not be affected by the appropriation or suffer damage by reason thereof.

(4) Magic West should have filed its application in the SRBA Court, which is the only court having jurisdiction and which could adjudicate the matter.

Walker vs. Big Lost River Irrigation District, 124 Idaho 78.

For the foregoing reasons, we renew our motion for dismissal.

HALL, FRIEDLY & WARD

By _____
Attorneys for Robert K. Hall

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CERTIFICATE OF SERVICE

I certify that on the 5th day of October, 1998, I mailed a copy of the foregoing Objection to Exceptions to Recommended Order, to be served upon the following persons by United States first class mail with postage prepaid, addressed to the following:

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Department of Water Resources

September 25, 1998

Karl J. Dreher, Director
Idaho Department of Water Resources
1301 North Orchard Street
Boise, ID 83720

VIA SAME DAY COURIER

Re: Exceptions Filed in the Matter of License No. 61-07189

Dear Director:

Please find enclosed Magic West's Exceptions to the Recommended Order in the above-titled matter. As noted in the brief, Magic West has prepared a transcript of the hearing. If you would like a copy for your consideration of the matter, please let us know. Magic West will make separate arrangements for the transcript with the intervenors, if they so desire.

Thank you for your attention to this matter.

Sincerely,

NORMAN M. SEMANKO

09259801.NMS

Enclosure

cc: Daniel V. Steenson
Perce Hall

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OCT 05 2000

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Attorneys for Magic West, Inc.

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SEP 25 1998
Department of Water Resources

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

IN THE MATTER OF	)	
LICENSE NO. 61-07189	)	EXCEPTIONS TO
IN THE NAME OF	)	RECOMMENDED ORDER
MAGIC WEST, INC.	)	
	)	

* * * * * * * * * * *

Pursuant to Rule 720 of the Idaho Department of Water Resources (IDWR) Rules of Procedure, IDAPA 37.01.01, Magic West, Inc., by and through its attorneys, Rosholt, Robertson & Tucker, files the following brief taking exceptions to the Recommended Order issued by the Hearing Officer in the above-captioned matter.

PROCEDURAL BACKGROUND

Magic West, Inc. filed its Petition for Adjustment and Clarification of Existing Order/License during May, 1997. The Director subsequently issued an Order Designating Contested Case; Appointing Hearing Officer; and Scheduling Hearing on October 22, 1997. Robert K. Hall and Edward T. Potucek were allowed to intervene. Subsequent motions to dismiss the Petition and to stay the hearing were denied. The hearing was held on December

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15, 1997 and the parties subsequently filed post-hearing briefs. The Hearing Officer issued a Recommended Order, served on September 4, 1998.

EXCEPTIONS TO RECOMMENDED ORDER

Magic West takes exceptions to items 1 and 3 of the Order recommended by the Hearing Officer on page 7 of the Recommended Order, along with all Findings of Fact and Conclusions of Law supporting items 1 and 3. These exceptions are discussed in more detail below.

1. The Diversion Volume Recommended by the Hearing Officer is Not Supported by the Record and is not a Reasonable Determination of Actual Beneficial Use under the Input-Output Formula.

In item 1 of his Order, the Hearing Officer recommends that the maximum authorized diversion volume for Water Right License No. 61-07189 be changed from 12.9 acre feet per annum (afa) to 58 afa.

At hearing, Magic West used an input-output relationship to estimate the amount of water used during the 1974-1979 development of the permit. The reason for this attempt is that there were no actual measurements made or required during the development period.

As structured, the input-output formula included several variables, all essential in arriving at a reliable conclusion regarding the amount of water used by Magic West. The input variables included: (1) water diverted into the plant from the well licensed under Permit No. 61-07189; and (2) water diverted into the plant from the City's water supply. The output variables included: (1) discharge to the waste water farm; (2) discharge to the City of Glenns Ferry; (3) water trucked to sludge ponds; and (4) water lost or consumed during processing.

By inserting a value for each of the other variables, a value could be determined for the first variable -- the amount of water pumped under the permit. Without values for any one of these variables, the calculation is not complete and cannot be considered a reasonable

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determination of beneficial use. Unfortunately, the Hearing Officer included no value for three of the output variables in the formula. This was despite the fact that actual data, corroborated by the testimony of several witnesses, was admitted into the record.

The evidence submitted by Magic West provides a basis for the missing output variables and should not be ignored. As the Director has concluded in another matter recently under his consideration, all available data should be included in making relevant calculations. See, Final Order, In the Matter of Application for Transfer No. 4985, in the Name of Mark T. Gates, Trustee (June 4, 1998). In that case, evidence was admitted regarding the percentage of conveyance losses in a canal. Certain data was included in the calculations by the Hearing Officer in his Recommended Order, while other data was not. The Director concluded that all available data should be included in the calculation, thereby revising the recommendation significantly.

In the current case, Magic West expended considerable effort to amass all records that it could find pertaining to the 1974-1979 development period. Certain records were available, while others were not. Transcript of the Hearing Held on December 15, 1997 (Tr.) at 231-33.[1] Despite the information that was made available, the Hearing Officer chose not to use the evidence in his calculations.

A lot of data was available regarding measured discharges to the waste water farm. This information was utilized by the Hearing Officer.

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[1] Magic West has caused a transcript of the December 15, 1997 hearing to be prepared. It is unknown to Magic West whether IDWR already has a transcript. If not, and if the transcript prepared by Magic West is deemed by IDWR to be the official transcript of the hearing, or is otherwise requested by IDWR, Magic West will furnish a copy of its transcript to IDWR, pursuant to Rule 651 of IDWR's Rules of Procedure.

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Data regarding the metered amount of water discharged to the city was available from the City of Glenns Ferry for 1975 only. Tr. at 254, 274, 284. The Hearing Officer did not utilize this information in his calculation and therefore included no value for this amount, despite the fact that discharges to the City obviously existed. Approximately 38 million gallons were discharged to the city in 1975.

The fact that so much water was discharged to the city during the development period is perhaps best explained by the testimony of Doug Ogden and Bill Schow that complaints were being registered in the area at the time regarding the odor associated with discharging water to the waste water farm. Tr. at 199, 276. The odor problem has since been taken care of, allowing more of the discharge water to go to the farm. Tr. at 199.

For the amount of water hauled off in trucks, no 1975-1979 records were available. Tr. at 245. However, the Plant Manager from 1974-1979, Doug Ogden, who is currently responsible for trucking to and from the plant, testified that they hauled the same amount of water from the plant during the 1975-1979 period as they do now. Tr. at 197-98. Calculations regarding the amount trucked from the plant were admitted and explained at length during the hearing. Tr. at 248-52, 285. Again, the Hearing Officer did not insert this amount, or any other amount, in his calculation.

No records were available regarding the amount of water lost or consumed during processing from 1974-1979. Tr. at 245. Bill Schow testified that the amount lost in processing in 1974-1979 was the same, if not more, than today's processing losses and explained calculations for today's losses. Tr. at 252-55, 58. He also testified that he estimated the losses to be 20-50%. Tr. at 290. Again, the Hearing Officer did not insert this amount, or any other amount, in his calculation.

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No other evidence was submitted regarding the output variables. As a result, the available data should be utilized. Otherwise, there is no basis for making a determination under the input-output method. The only output variable included in the calculation by the Hearing Officer was the amount of water discharged to the waste water farm during fiscal year 1978. As a result, the calculation is not complete and is not a reasonable determination of beneficial use.

Bill Schow testified that 12.9 afa, the amount currently included in the license, would allow the plant to run for 12-15 days. Tr. at 229. The Hearing Officer now proposes, under his incomplete use of the input-output formula, to allow the use of 58 afa. Based upon Bill Schow's testimony and simple math, this will allow the plant to run for 54 to 67 days, or about two months of the year. Given the testimony regarding the amount of water needed to run the plant, this cannot be reflective of actual beneficial use during any period of time.

On the other hand, the calculations provided by Magic West in Petitioner's Exhibit 1, Report on Annual Diversion Volume, provide values for all of the variables necessary to determine annual diversion volume. This report, testified to by Bill Schow and corroborated by other witness testimony and exhibits, concludes that 302.53 acre-feet was the average annual amount of water used between 1975 and 1979. In the absence of any other data upon which to make the input-output calculations, this amount should be included in the license.

2. An Alternative Calculation, Based Upon the Actual Days of Production in 1978, Yields a Reasonable Calculation of Actual Beneficial Use.

Steve Lester, the IDWR employee who conducted the beneficial use field exam during 1987, testified that there was no way to measure water being discharged from the well to the plant during his field examination and that this was not unusual for this type of use. Tr. at 43,

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60. He further testified that it is always better to have real data than theoretical data. However, if no real data is available, theoretical calculations exist and would be used in the licensing process. Tr. at 47. This is confirmed by IDWR's Beneficial Use Examination Rules, IDAPA 37.03.02. Specifically, Rule 40.04 provides that theoretical calculations are acceptable when a measuring device is not a permit requirement. There was no permit requirement.

Lester's theoretical calculation for diversion volume in the Beneficial Use Field Report was 427 a.f. Tr. at 47. However, he said that a lesser amount should be licensed to reflect what was actually being used. He equated this to determining how much is "needed to run the farm" or how much is needed to irrigate. Tr. at 49, 59. In this case, then, it must be determined how much was needed to run the plant during the 1974-1979 period. Fortunately, there is a basis in the record to make this determination.

There is no dispute that the plant has always been operated 24-hours per day, using 3 8-hour shifts per day. Tr. at 120 (Anderson), 195 (Ogden), 222 (Schow). It was also undisputed that the flow of the plant was constant while it was in operation. Tr. at 28, 231-32. The diversion rate was .67 cfs, as confirmed by the beneficial use field examination and Lester's follow-up with Magic West, was also undisputed at the hearing.[2]

---

[2] In his Recommended Order, the Hearing Officer seems to conclude that reworking the pump and bowls in 1985 increased the discharge from the plant. However, there is no basis for concluding that the discharge rate was increased from the 1974-1979 period. As Bill Schow testified, Magic West did not increase the diversion capacity of the plant at anytime after 1974. Tr. at 233-34. Better, more state-of-the-art potato processing equipment was installed to replace the old equipment. Tr. at 223, 282. Magic West was entitled to fix or replace old or worn out equipment, including the pump and bowls, as long as the diversion rate was not increased. While the 1978 data indicates that Magic West was in production less days per year than it has been since 1985, there is no basis to conclude that the diversion rate has increased.

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However, there was a lot of question at the hearing about the actual number of days that the plant was in operation. Tr. at 149, 170, 204, 210, 211. The Hearing Officer concluded that, based upon the fiscal year 1978 discharge records to the waste water farm, the plant was in operation "over 217 days in 11 months of the 12 month time period in the fiscal year". Recommended Order, p. 4.[3]

Using Steve Lester's Beneficial Use Field Report volume calculations with the benefit of the 1978 data, yields the following:

.67 cfs multiplied by 217 days multiplied by 1.9835

= 288.38 afa[4]

This is significantly less that the 426.6 afa originally calculated by Lester under the theoretical calculation and, more importantly, is tied to the number of days the plant was actually in operation and using well water during 1978. It thereby takes into account the Hearing Officer's conclusion that Magic West diverted for different durations during 1974-1979 (e.g., 217 days in 1978) than it currently does (e.g., 352 days). It also compares favorably with the 302.53 afa calculated by Magic West under the input-output formula.

---

[3] There is some question whether an additional number of days should be assumed for the 12th month. If so, the average per month over 11 months, or 20 days, should be added to the 217 days.

[4] If an additional 20 days of use are assumed during the 12th month in 1978, as suggested in n.2 above, the diversion volume would be calculated: .67 cfs x 237 days x 1.9835 = 314.96 afa.

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In any event, the maximum diversion volume is much higher than either the 12.9 afa included in the license or the 58 afa recommended by the Hearing Officer. To paraphrase Steve Lester, it is how much was needed to run the plant in 1978.

Actual data and corroborating testimony was submitted at hearing by Magic West. If that data is included in the input-output formula, the annual diversion volume is 302.53 afa. If this data is not used, there is no basis for using the input-output formula. Since there are no 1974-1979 measurements from the well itself, an alternative calculation, based upon Steve Lester's volume calculations and actual data from fiscal year 1978 regarding the number of days the plant was in operation, yielding 288.38 afa, is a reasonable calculation of beneficial use.

Therefore, the Recommended Order should be revised by the Director and the license should be corrected to include a diversion volume of either 302.53 or 288.38 afa.

3. In the Absence of a Conclusion Regarding Actual Diversion Volume, the Diversion Volume Limitation Should be Removed from the License.

A number of procedural irregularities and complications suggest that, if the actual diversion volume in the 1974-1979 period cannot be determined by the Director, the annual volume limitation should be removed from the license entirely.

As the Hearing Officer noted, the Department procedurally erred by not contacting Mr. Anderson to participate in the beneficial use field exam during 1987. The plant was shut down during the 1987 field exam. The Department also erred by not requesting additional information or taking other steps to determine the actual diversion volume in the plant after the 1987 field exam.

Proof of beneficial use was submitted in 1979. On July 23, 1979, IDWR tried to do a field exam, but the plant was shut down. Nothing was done to follow-up for 8 years. Tr. at

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156. As Steve Lester described, a large backlog of licensing field exams existed at the time. Tr. at 97-99. As he stated, there was "too much to do and not enough people to do it". Tr. at 99. As a result, he acknowledged that it was difficult to go back and determine use in 1974-1979. Tr. at 102. In fact, he made no effort to do so.

As a result, and as the Hearing Officer concluded, the 12.9 afa diversion volume included in the license is wrong and should be corrected. Given the procedural history and evidence submitted, it would be patently unfair to saddle Magic West with an annual diversion volume that is obviously wrong (i.e., 12.9 or 58 afa) and that would not allow the plant to operate over the period of the year that it was permitted and licensed for. As a result, if the data and calculations submitted by Magic West are not acceptable to the Director, or another reasonable determination of actual beneficial use cannot be made by the Director, the diversion volume limitation should be removed altogether.

4. The Recommended 3-Month Reporting Requirement is not Necessary.

In item 3 of his Order, and without being asked by the parties to do so, the Hearing Officer recommended that Magic West report its water use once every three (3) months after the Final Order is issued. The reasoning for this requirement is not provided.

If the reasoning for the requirement is concern for the alleged injury by Magic West on other water users, that has not been established. The hearing was not held for this purpose and no conclusions regarding injury were made. As the Hearing Officer explained, there are opportunities to address this issue -- outside the current proceeding.

If the reasoning for the requirement is to verify Magic West's use, the proposed condition is unnecessary. Magic West is already required to measure its discharge and keeps

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records. In fact, the records for 1996-1997 were submitted at the hearing and verify current use. At most, a reporting requirement of once per year would be sufficient.

CONCLUSION

For the foregoing reasons, Magic West respectfully requests that the Director revise the Recommended Order and issue a Final Order consistent with the arguments above and the documentary and oral evidence provided at hearing.

DATED this 25th day of September, 1998.

ROSHOLT, ROBERTSON & TUCKER

By: _____
NORMAN M. SEMANKO

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CERTIFICATE OF SERVICE

I hereby certify that on this 25th day of September, 1998, I caused a copy of the foregoing EXCEPTIONS TO RECOMMENDED ORDER to be served upon the following persons by depositing same in the mail, postage prepaid, addressed to the following:

Daniel V. Steenson
RINGERT CLARK CHARTERED
455 S. Third
P.O. Box 2773
Boise, ID 83701-2773

Perce Hall
HALL, FRIEDLY & WARD
340 E. 2nd North St.
Mountain Home, ID 83647

Norman M. Semanko

OCT 05 2000

61-07189

State of Idaho
DEPARTMENT OF WATER RESOURCES
1301 North Orchard Street, P.O. Box 83720, Boise, Idaho 83720-0098
Phone: (208) 327-7900 FAX: (208) 327-7866

PHILIP E. BATT
GOVERNOR

KARL J. DREHER
DIRECTOR

September 11, 1998

The Honorable Glenn Thompson
Mayor of Glenns Ferry
P.O. Box 910
204 East 2nd Ave
Glenns Ferry, ID 83623

Dear Mayor Thompson:

I have received your letter to me dated September 3, 1998, regarding the use of water by Magic West, Inc. in its potato processing plant in Glenns Ferry. Since, the amount of water used by Magic West is currently the subject of a contested matter which is before me, I can only comment on associated procedural matters, not on the merits of the contested case. The Idaho Administrative Procedure Act (APA), Title 67, Chapter 52, Idaho Code, provides that a presiding officer in a contested case shall not communicate, directly or indirectly, regarding any substantive issue in the proceeding, with any party, except upon notice and opportunity for all parties to participate in the communication. Further, the APA requires that the Department's decision be based exclusively on the record created in the contested proceeding. Therefore, it would not be appropriate for me to consider any substantive content in your letter which is not already part of the agency record.

As you may know, Magic West submitted a Petition for Adjustment and Clarification of Existing Order/License ("petition") to the Department on May 5, 1997. The petition represented that Magic West had beneficially used a larger volume of water under water right permit no. 61-07189, which was issued on August 29, 1974, than the 12.9 acre-feet per year that was subsequently provided by the water right license that the Department issued on October 27, 1990.

On October 22, 1997, the Department issued an Order Designating Contested Case; Appointing Hearing Officer; and Scheduling Hearing. On December 15, 1997, a hearing officer for the Department conducted a hearing and on September 4, 1998, issued a Recommended Order. Parties to the matter may file a petition for reconsideration with the hearing officer on or before September 18, 1998, and may file exceptions or briefs with me by September 25, 1998. If exceptions and briefs are filed, opposing parties may file responses. I will then review any exceptions, briefs, and responses filed and will issue a final order for which any party may ultimately seek review in district court.

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I understand your interest in the water rights issues involving Magic West. I hope you understand why I am unable to respond to your concerns in more detail. Copies of this letter and your letter dated September 3, 1998, are being provided to counsel for the parties in the contested proceeding before the Department.

Sincerely,

Karl J. Dreher
Director

cc: Office of Governor Batt
Senator Robbie King
Norman M. Semanko, Esq.
Daniel V. Steenson, Esq.
Perce E. Hall, Esq.
File for Water Right No. 61-07189

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SEP 10 1998
Department of Water Resources

CONSTITUENT AFFAIRS TRACKING INQUIRY
OFFICE OF THE GOVERNOR
Philip E. Batt

Number: 24779
Name:Thompson, Glenn
Org:City Of Glenns Ferry
Address:Mayor
Address:POB 910
Zip:83623 City:Glenns Ferry

Date:09/08/98
Class:SW
Type:Letter
Phone:(208)
Phone:(208)
State:

SSN:
Case:
County:Elmore

Assigned To	Current Referral
Jim Yost Date:09/08/98 Org.:Office Of Governor Phone:(208)334-2100 Due:10/08/98	Karl Dreher Date:09/08/98 Org.:Water Resources Phone:(208)327-7910 Due:10/08/98

Subject

concerns, Magic West, possible limited use of well water, explains

Notes

09/09/98 10:28 AM Tracking memo:Send Reply, Send Govenor's Office Copy.
09/08/98 Referred to Water Resources, Karl Dreher

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OCT 05 2000

The City of Glenns Ferry

MAYOR
Glenn Thompson

CLERK
David M. Hahn

P. O. Box 910
204 East 2nd Ave.
Glenns Ferry, Idaho 83623

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SEP 0 8 1998
Department of Water Resources

COUNCIL
Earl P. Gardner
Larry A. Stevenson
Dewey C. Crane
F. JoAnne Lanham

Phone (208) 366-7418
FAX (208) 366-2238

September 3, 1998

Karl J. Dreher, Director
Department of Water Resources
1301 North Orchard Street
P. O. Box 83720
Boise, Idaho 83720-0098

Dear Director Dreher:

As the Mayor of Glenns Ferry, I am asking the Department of Water Resources to consider carefully, before making their decision, their limiting Magic West's use of hot water.

In their daily processing of potatoes, Magic West currently supplements their well water with city domestic water. If Magic West was limited to the amount of hot water they could use, the only alternative for them would be to use City domestic water. To date, the City does not have the water volume to meet their needs and serve the City.

I firmly believe, that if Magic West is not allowed to use water from their well, they would be forced to shut down their operation in Glenns Ferry. Even if their hot water use was restricted for a three-month period, the economic impact would be great to both the City and Idaho potato farmers.

Respectfully yours,

Glenn Thompson, Mayor

cc: Governor Phil Batt
Senator Robbie King
Magic West, Glenns Ferry

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State of Idaho
DEPARTMENT OF WATER RESOURCES
1301 North Orchard Street, P.O. Box 83720, Boise, Idaho 83720-0098
Phone: (208) 327-7900 FAX: (208) 327-7866

PHILIP E. BATT
GOVERNOR

KARL J. DREHER
DIRECTOR

September 4, 1998

To: The persons shown on the attached mailing list.

RE: LICENSE NO. 61-07189 IN THE NAME OF MAGIC WEST, INC.

On August 31, 1998, the department mailed you a Recommended Order in the above captioned matter. The order was accompanied by a letter describing how a petition for consideration, exceptions and briefs could be filed in connection with the Recommended Order and described the time frames for such filing.

The department inadvertently sent the Recommended Order and explanatory material to you in error, since you are not an official party to the license matter referenced above. Hence, please disregard the Recommended Order and explanatory material.

Your standing in connection with a different protested matter, i.e. Application for Permit No. 61-07724 filed in the name of Magic West will remain the same as in the past, since a hearing has not yet been held and a Recommended Order has not been issued in that matter. If you are a party to the protested permit, you are still a party to it.

I apologize for any misunderstanding the August 31, 1998 mailing may have generated. If you have questions, please feel free to contact me.

Sincerely,

L. Glen Saxton

L. GLEN SAXTON, P.E.
Chief, Water Allocation Bureau

c: Elizabeth Eicholz
Jim Kevan
Jerry L. Heath
Fred Mackey
John Solosabal
Paul Batruel
IDWR - W. Region

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State of Idaho
DEPARTMENT OF WATER RESOURCES
1301 North Orchard Street, P.O. Box 83720, Boise, Idaho 83720-0098
Phone: (208) 327-7900 FAX: (208) 327-7866

PHILIP E. BATT
GOVERNOR

KARL J. DREHER
DIRECTOR

September 4, 1998

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

Dear Interested Party:

The accompanying order is a "**recommended order**" issued by the department pursuant to Section 67-5243, Idaho Code. The provisions of this order will not become effective until the Director issues a final order in this matter.

Each party to these proceedings who appeared at the hearing may file a petition for reconsideration, briefs and exceptions to the recommended order and may request oral argument before the Director of the department as further described below:

PETITION FOR RECONSIDERATION

Any party may file a petition for reconsideration of a recommended order with the hearing officer issuing the order within fourteen (14) days of the service date of the order. The hearing officer will act on a petition for reconsideration within twenty-one (21) days of its receipt, or the petition will be considered denied by operation of law. See Section 67-5243(3), Idaho Code.

EXCEPTIONS AND BRIEFS

Within twenty-one (21) days after (a) the service date of this recommended order, (b) the service date of a denial of a petition for reconsideration from this recommended order, or (c) the failure within twenty-one (21) days to grant or deny a petition for reconsideration from this recommended order, any party may in writing support or take exceptions to any part of a recommended order and may file briefs in support of the party's position on any issue in the proceeding. Written briefs in support of or taking exceptions to the recommended order shall be filed with the Director. Opposing parties shall have twenty-one (21) days to respond.

ORAL ARGUMENT

The Director may schedule oral argument in the matter before issuing a final order. Oral argument on exceptions to a recommended order shall be heard at the discretion of the Director. If oral arguments are to be heard, the Director will, within a reasonable time, notify each party of the place, date and hour for the argument of the case. Unless the Director orders otherwise, all oral arguments will be heard in Boise, Idaho.

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CERTIFICATE OF SERVICE

All exceptions, briefs, requests for oral argument and any other matters filed with the Director in connection with the recommended order shall be served on all other parties to these proceedings in accordance with Rules of Procedure 302 and 303.

FINAL ORDER

The Director will issue a final order within fifty-six (56) days of receipt of the written briefs, oral argument or response to briefs, whichever is later, unless waived by the parties or for good cause shown. The agency may remand the matter for further evidentiary hearings if further factual development of the record is necessary before issuing a final order. The department will serve a copy of the final order on all parties of record.

APPEAL OF FINAL ORDER TO DISTRICT COURT

A party aggrieved by a final order of the Director is entitled to judicial review in compliance with sections 67-5271 through 67-5279, Idaho Code.

Sincerely,

L. Glen Saxton

L. GLEN SAXTON, Chief
Water Allocation Bureau

Enclosure

c: IDWR - Western Region

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OCT 05 2000

State of Ida[redacted]
DEPARTMENT OF WATER RESOURCES
1301 North Orchard Street, P.O. Box 83720, Boise, Idaho 83720-0098
Phone: (208) 327-7900 FAX: (208) 327-7866

PHILIP E. BATT
GOVERNOR

KARL J. DREHER
DIRECTOR

August 31, 1998

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EXCEPTIONS AND BRIEFS

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APPEAL OF FINAL ORDER TO DISTRICT COURT

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Sincerely,

L. Glen Saxton

L. GLEN SAXTON, Chief
Water Allocation Bureau

Enclosure

c: IDWR - Western Region

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OCT 05 2000

State of Idaho
DEPARTMENT OF WATER RESOURCES
1301 North Orchard Street, P.O. Box 83720, Boise, Idaho 83720-0098
Phone: (208) 327-7900 FAX: (208) 327-7866

PHILIP E. BATT
GOVERNOR

KARL J. DREHER
DIRECTOR

August 13, 1998

The Honorable Robbi L. King
Idaho State Senate
P. O. Box 28
Glenns Ferry, ID 83623

Re: Concerns Regarding Unresolved Water Right Issues Associated With Magic West
(Your Letter Dated August 5, 1998)

Dear Senator King:

I have reviewed your letter dated August 5 regarding the concerns expressed by several of your constituents about unresolved water rights issues involving Magic West, Inc. As you know, the matters about which you have inquired are contested before the Department of Water Resources. Consequently, I can not respond to specifics of any associated facts or allegations, but must confine my response to procedural information. I wholeheartedly agree with the underlying premise of your letter that people are entitled to timely actions from the government agencies which regulate activities affecting their livelihoods. Unfortunately, there are instances when the timeliness of some actions suffers because of the complexity of the issues framing those actions, such as the four pending issues relative to water rights involving Magic West.

The first issue involves the application for a permit to appropriate water which Magic West filed on September 27, 1996. The application for permit, numbered 61-07724, was filed to increase the number of days Magic West could divert water for its processing plant and provide for an increase in the volume of water that could be diverted. As you correctly point out, that application was protested by seven individuals. A protest conference was subsequently held on April 2, 1997, to explore the basis for the protests and the potential for resolving the protests. Because this conference failed to resolve the protests, a second conference was scheduled for June 2, 1997. However, in May of 1997, before the second conference was held, Magic West filed a Petition for Adjustment and Clarification of Existing Order/License for an existing water right, numbered 61-07189. Through this petition, Magic West alleged that the Department of Water Resources had incorrectly established the annual diversion volume limitation of 12.9 acre-feet for Magic West's existing licensed water right and that the license should be amended or modified by either increasing or removing the annual volume limitation. Although the second protest conference for the new application for permit was held as scheduled, a formal hearing on the application for permit was not scheduled. Instead, it was decided that further processing of

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the application for permit to appropriate water should be suspended until after a decision was issued regarding Magic West's Petition for Adjustment of Existing Order/License for water right number 61-07189. Depending on the outcome of that decision, Magic West could then decide to withdraw its application for permit numbered 61-07724, amend the application for permit, or proceed with a hearing on the application for permit as originally filed. Depending on the action taken by Magic West, the protestants to the application for permit could decide to withdraw or maintain their protests.

Thus the second issue, which has taken precedence over the new application for permit to appropriate water, is Magic West's application for amendment or modification of the license for water right number 61-07189. On October 22, 1997, I issued an order which designated this matter as a contested case. In addition, because of the interrelationship of this issue with the pending application for permit previously filed by Magic West, I provided the protestants to the application for permit the opportunity to intervene. This resulted in various petitions and motions being filed by the protestants, who chose to intervene, and by Magic West. A formal hearing on Magic West's application for amendment or modification of the license for water right number 61-07189 was held on December 15, 1997, to provide Magic West the opportunity to establish through appropriate evidence the extent of beneficial use that was actually developed under the permit prior to the submission of proof of beneficial use and the issuance of the license for water right number 61-07189. Since that hearing, and the submission of post-hearing briefs, the hearing officer, Mr. L. Glen Saxton, has been preparing a recommended order for Magic West's application for amendment or modification of the license. That recommended order should be issued before the end of August.

The department's action on Magic West's application for amendment or modification of the license for water right number 61-07189 will result in an administrative determination of the extent of Magic West's existing water right. If Magic West or the intervenors are aggrieved by the department's determination, the determination can be appealed to a district court. Even if this does not happen, Magic West has filed a claim for water right number 61-07189 in the Snake River Basin Adjudication ("SRBA") for year-round use without any limitation on the volume of water that can be diverted annually, other than the diversion rate of 0.67 cfs. Thus the third issue is that regardless of what the department determines to be the extent of water right number 61-07189, that determination could be modified by future judicial action. However, the department will fulfill its responsibilities by issuing a decision on Magic West's application for amendment or modification of the existing water right license and by providing the SRBA Court with a recommendation, consistent with the pending administrative determination, for defining water right number 61-07189 in January of 1999.

The fourth and last pending issue involving Magic West's water rights is the request filed by Mr. Edward T. Potucek with the Department of Water Resources by affidavit dated April 17, 1998, and cover letter from counsel for Mr. Potucek dated April 20, 1998, asking me to convene a ground water board pursuant to § 42-237b, Idaho Code. Until the administrative review is

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completed of the extent of Magic West's existing water right, numbered 61-07189, as described on pages 1 and 2 of this letter, a decision regarding the establishment of a ground water board is premature. While I can not discuss the merits of Mr. Potucek's request, the provisions of § 42-237b, Idaho Code, appear to be somewhat antiquated. At best, the provisions of § 42-237b overlap provisions in other sections of the code; at worst, the provisions of § 42-237b contradict other provisions of the code. Consequently, there may be more appropriate ways to resolve Mr. Potucek's assertions of injury.

In summary, the Department of Water Resources will issue a recommended order before the end of August in response to the request filed by Magic West to amend or modify the license for water right 61-07189. The recommended order will be followed by a final order, as provided in rule of procedure 740, IDAPA 37.01.01. Following issuance of the final order, the department will contact counsel for Mr. Potucek to determine whether he wishes to maintain or withdraw his request for convening a ground water board pursuant to § 42-237b, Idaho Code. If Mr. Potucek wishes to maintain his request, I will act upon his request within two or three weeks following such confirmation from counsel for Mr. Potucek. If Mr. Potucek's request is denied, one or more alternative processes for addressing his assertions of injury will be identified. During this time period, the department will also contact counsel for Magic West to determine whether Magic West wishes to maintain, amend, or withdraw its application for permit to appropriate water numbered 61-07724. If the application is amended, it will be re-advertised. If the application is maintained, it will be set for hearing. If the application is not withdrawn, recommended and final orders denying or granting the permit with or without conditions will be subsequently issued. Finally, the department will also make timely recommendations to the SRBA Court regarding the definition of water right number 61-07189 and other water rights claimed by Magic West in the SRBA.

I hope you find this information responsive to your letter dated August 5. If you want more information regarding any of these issues, please let me know.

Sincerely,

Karl J. Dreher
Director

cc: Governor Philip E. Batt
Mr. Perce Hall
Mr. Robert K. Hall
Mr. Edward T. Potucek
Mr. Daniel V. Steenson - Ringert Clark
Mr. Norman M. Semanko - Rosholt, Robertson & Tucker

MICROFILMED
OCT 0 5 2000

ROBBI L. KING
DISTRICT 20
ELMORE &
OWYHEE COUNTIES

RECEIVED
AUG 06 1998
OFFICE OF THE GOVERNOR

HOME ADDRESS
P.O. BOX 28
GLENNS FERRY, IDAHO 83623
(208) 366-7715

cc: copy - J.Y. (SW)

Idaho State Senate

Capitol Building
P.O. Box 83720
Boise, Idaho 83720-0081

August 5, 1998

Director Karl J. Dreher
Department of Water Resources
1301 N. Orchard Street
Boise, ID 83706-2237

Dear Director Dreher:

It has been brought to my attention by several of my constituents that there is to date an unresolved issue before the Department of Water Resources that has a tremendous impact on their livelihood.

On September 7, 1996, Magic West, of Glenns Ferry, Idaho filed with the Department of Water Resources of the State of Idaho an application for a permit to appropriate the public waters of the State of Idaho. This application was protested by several individuals but only two of those individuals are represented by attorneys.

As you are aware the Department of Water Resources scheduled a conference for April 2, 1997 in Glenns Ferry. No decision was reached at this conference and a second conference was scheduled for June 2, 1997. At the conclusion of this conference is was stated by Mr. Gary Spackman that a decision on the matter would be issued within two to three weeks. It is my understanding that Mr. Spackman did make a decision which he submitted to you for your approval. Nothing further has been heard however.

On October 22, 1997 the Department of Water Resources made a determination that this indeed was a contested case and set a hearing for December 15, 1997 to allow Magic West the opportunity to furnish evidence as to their extent of water use pursuant to license number 61-07189.

The hearing was held on December 15, 1997, however six months have expired and no decision has been issued to my knowledge by the Department of Water Resources.

Director Dreher, I have constituents in my district that have their livelihoods at stake. I would appreciate greatly your immediate attention to this matter. At the very least I would like to know where the decision stands and what the time frame is for resolving this issue. It is common knowledge in the Glenns Ferry Area that since the increase in

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water use by Magic West several domestic and agricultural wells have experienced difficulties.

I also understand that both Edward T. Potucek and Robert K. Hall's attorneys have filed a "Claimant's Statement" under Idaho Code 42-237b, requesting a Ground Water Board to determine the adverse claims. In a letter dated April 20, 1998 to Perce Hall the Department of Water Resources discouraged the use of this proceeding and suggested an alternative procedure. Mr. Hall has advised the department that they would prefer to proceed under the Ground Water Board Statute yet nothing further has been heard from the Department of Water Resources in conjunction with this issue.

I look forward to hearing from you regarding this "unresolved" issue as soon as possible.

Sincerely,

Robbi King
State Senator
District 20

cc: Governor Phillip E. Batt
Perce Hall
Robert K. Hall
Edward T. Potucek

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JUN 0 1 1998
Department of Water Resources

Daniel V. Steenson
Charles L. Honsinger
RINGERT CLARK, CHARTERED
455 S. Third St., P.O. Box 2773
Boise, ID 83701-2773
Telephone: (208) 342-4591
FAX: (208) 342-4657

Attorneys for Edward T. Potucek

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

In the Matter of Edward T. Potucek's request for Hearing Before a Local Ground Water Board	License Number 61-07189 BRIEF IN OPPOSITION TO MOTION TO DISMISS

DESCRIPTION

This is Edward T. Potucek's Brief in Opposition to Magic West Inc.'s (hereinafter "Magic West") Motion to Dismiss Mr. Potucek's request that the Idaho Department of Water Resources set the matter of the adverse effects of Magic West's diversion of water on the use of Mr. Potucek's senior water right before a local ground water board pursuant to Idaho Code Section 42-237b.

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FACTS

On April 20, 1998, Edward T. Potucek filed with the Idaho Department of Water Resources his affidavit requesting the Director of IDWR to convene an administrative determination of adverse claims under Idaho Code Section 42-237b. On May 5, 1998, Magic West filed its Motion to Dismiss Mr. Potucek's request.

ARGUMENT

Magic West alleges that Mr. Potucek's request should be dismissed because: (a) "local ground water boards have no jurisdiction to determine water right claims already filed in the SRBA," (b) "no rules of procedure exist to govern proceedings before local ground water boards," and (c) "the statement of the claimant is not sufficient."

1. A Local Ground Water Board May Determine Whether Magic West's Illegal Diversion of Water Adversely Affects Mr. Potucek's Use of his Water Right

Magic West first alleges that Mr. Potucek's request should be dismissed because local ground water boards have no jurisdiction to determine claims to water rights filed in the SRBA. Magic West cites *Walker v. Big Lost River Irrigation District*, 124 Idaho 78 (1993), in support of its position that no jurisdiction exists other than in the SRBA District Court to determine the elements of a water right. Magic West's reliance on *Walker* is misplaced, as Mr. Potucek's request is that Magic West be required to remain within the bounds of the elements of its licensed water right, not that the the elements of Magic West's SRBA claim to a water right be determined. Under Magic West's reading of *Walker*, IDWR would be precluded from conducting administrative procedures such as transfers, calls, or enforcement actions.

Magic West's position on this issue and its reliance on *Walker* is peculiar as it has itself initiated proceedings before the Idaho Department of Water Resources to amend an element of

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license no. 61-07189 to include a greater annual volume limitation than that specified in the license. The procedure initiated by Magic West necessarily requires some determination by IDWR of the elements of the water right that is the subject of the proposed license amendment. By its attempt to amend the license before the Idaho Department of Water Resources, Magic West has acknowledged that IDWR is not precluded by the pending Snake River Basin Adjudication from conducting administrative procedures affecting water rights.

2. Existing Statutory Procedures are Sufficient to Protect Magic West's Right to Due Process

Magic West also alleges that Mr. Potucek's request should be dismissed because no specific procedural rules exist to govern proceedings before a local ground water board. Magic West states that Idaho Code Section 42-237c requires that the Director adopt such rules,[1] and that the fact that no such rules have been duly promulgated would deny Magic West its constitutional rights to due process and equal protection, and would make any action taken by the local groundwater board arbitrary and capricious.

The fundamental elements of procedural due process under both the Idaho and United States constitutions are that a person involved in a process be given (1) meaningful notice, and (2) a meaningful opportunity to be heard. *Rudd v. Rudd*, 105 Idaho 112, 115 (1983); *Frontier Federal Savings and Loan Association v. Douglass*, 123 Idaho 808, 824 (1993). Idaho Code Section 42-237b provides that notice of a hearing before a local ground water board shall be

[1] Magic West errs when it represents that Idaho Code Section 42-237c requires the director's *adoption* of rules setting forth hearing procedures in front of a local ground water board. In fact, Section 42-237c provides that procedural rules shall be "*prescribed* by the director." The term "adoption" is used in the Administrative Procedure Act to refer to formal promulgation of rules, whereas Idaho Code Section 42-237c authorizes the director to determine how a particular hearing will be conducted.

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served upon the respondent against whom a claim is made at least five days before the time fixed for hearing. This statutory requirement satisfies the meaningful notice element of procedural due process. In this instance, Magic West will have had several months notice prior to hearing. In addition, Magic West has known of its adverse impact on Mr. Potucek's water right since 1996, if not earlier.

Idaho Code Section 42-237c provides for a hearing which includes the right to be heard in person or by an attorney, the right to subpoena witnesses, and the right to question them under oath. The only procedures not addressed by the statute are formalities, such as determining which party first presents evidence, or a requirement that the proceedings be recorded. To address these formalities, the Director may prescribe the appropriate procedures, and may, if he chooses, direct that the proceeding will be governed by the Rules of Procedure for contested cases before the Department. IDAPA 37.01.01. The existing statutory procedures together with those prescribed by the director will provide a meaningful opportunity to be heard and thus satisfy the second fundamental element of procedural due process.

Magic West's allegation that a local ground water board cannot hear Mr. Potucek's request until rules of hearing procedures are promulgated pursuant to the requirements of the Administrative Procedure Act fails to recognize that the Idaho legislature enacted 42-237b to give citizens such as Mr. Potucek a remedy against those interfering with the use of their ealier priority water rights. The fact that an agency has not formally promulgated certain procedural rules for the conduct of a hearing does not deprive Mr. Potucek of his statutory right to a remedy under Idaho Code Section 42-237b. *Musser v. Higginson, Order and Memorandum Decision Granting Petition for Writ of Mandate* at 9 (SRBA Dist. Ct., Aug. 5, 1993). Moreover, Idaho Code

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Section 42-237c existed prior to the enactment of the Administrative Procedure Act in 1965 . Thus, the legislature did not contemplate formal promulgation of rules and regulations governing hearings when it enacted the statute setting forth procedures before local ground water boards.

As to Magic West's allegation that a hearing without duly promulgated rules to govern the proceedings would deny Magic West its constitutional right to equal protection, Magic West fails to state how it will be denied equal protection of the law. Magic West cites *Fellhauer v. People of Colorado*, 447 P.2d 986 (Colo. 1969) in support of its allegation. In that case, the court held that certain well owners had been discriminated against because their wells were among 39 out of more than 1,600 that were arbitrarily shut off to satisfy earlier priority surface water rights. *Id.* No similar situation exists in this matter by which Magic West will be able to allege a denial of equal protection of the law.

Magic West alleges that a hearing under Idaho Code Section 42-237c will result in arbitrary and capricious actions by the local ground water board. Again, Magic West fails to state how the proceeding could be viewed as arbitrary and capricious. Magic West's allegation is also premature. The arbitrary and capricious standard is applied only by a court reviewing an agency's final action. I.C. Secs. 67-5270, 67-5279. Until the agency's actions are "final," a court may not review the actions. *South Fork Coalition v. Board of Commissioners*, 112 Idaho 89, 90 (1986). Without final actions, it is not possible to review actions under an arbitrary and capricious standards.

Finally, it is the reviewing court, not any other entity that is to determine whether actions are arbitrary and capricious. Magic West cites *Musser v. Higginson, Order and Memorandum Decision Granting Petition for Writ of Mandate* (SRBA Dist. Ct., Aug. 5, 1993), and *Fellhauer,*

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infra, for the proposition that without duly promulgated rules, local ground water board actions would be arbitrary and capricious. Both of those cases involve a reviewing court's determination that an agency's actions were arbitrary and capricious. It is not the Director's responsibility to conclude that actions he may take pursuant to statutory proceedings will be arbitrary and capricious. Rather, it is the Director's responsibility to act in response to Mr. Potucek's request under Idaho Code 42-237b, and to allow the court reviewing those actions to determine whether they are arbitrary and capricious.

3. Mr. Potucek's Statement is Sufficient

Magic West's third allegation is that Mr. Potucek's Statement is insufficient to initiate proceedings under Idaho Code Section 42-237b because of lack of jurisdiction and lack of procedural rules. Magic West correctly points out that the statement must be "deemed sufficient by the director," I.C. Sec. 42-237d, and that this is a discretionary determination by the director. Because Mr. Potucek has demonstrated that IDWR does have jurisdiction to hear this matter, and that duly promulgated rules governing hearing procedures are unnecessary for the director to act on Mr. Potucek's request, Mr. Potucek's statement is sufficient.

Magic West's Motion to Dismiss is a transparent attempt to deny Mr. Potucek his statutory opportunity to protect his water right. The director should deny Magic West's Motion to Dismiss, and expeditiously convene a local ground water board.

Dated this 29th day of May, 1998.

Charles L. Honsinger
RINGERT CLARK, CHARTERED

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CERTIFICATE OF MAILING

I certify that on May 29th, 1998, I mailed the original and copies of this document, including all attachments to the following:

Norman M. Semanko
Rosholt, Robertson & Tucker
P.O. Box 1906
Twin Falls, ID 83303-1906

Idaho Department of Water Resources
1301 N. Orchard
Boise, ID 83712

Perce Hall
Hall, Friedly & Ward
340 East 2nd North Street
Mountain Home, Idaho 83647

Kimi White
Person mailing documents

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PERCE HALL
HALL, FRIEDLY & WARD
Attorneys for Claimant
340 East 2nd North Street
Mountain Home, Idaho 83647
Telephone: (208) 587-4412

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MAY 29 1998
Department of Water Resources
Adjudication Bureau

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

61-07189

IN THE MATTER OF ROBERT K. HALL'S REQUEST FOR HEARING BEFORE A LOCAL GROUND WATER BOARD	ROBERT K. HALL'S ANSWER TO MAGIC WEST'S MOTION TO DISMISS

Robert K. Hall has filed a Claimant's Statement under the provisions of Idaho Code 42-237b, because the use of water by Magic West greatly in excess of the amount for which it is licensed adversely affects the right of Robert K. Hall to the use of the ground water, even though Robert K. Hall has a right of senior priority. In response to the Claimant's Statement, Magic West has filed a Motion to Dismiss based upon the following contentions:

(a) That a local ground water board had no jurisdiction to determine water right claims already filed in the SRBA.

(b) That no Rules of Procedure exist to govern the proceedings before a local ground water board.

(c) That Claimant's Statement is not sufficient because of the provisions of (a) and (b) above.

Apparently as a further reason, Magic West asserts that the difference between its actual level of beneficial use and that which is included in its license is so large that adherence to

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its licensed amount would require Magic West to shut down its food processing plant. This statement bears no relevancy to the legal issues before the Department.

ANSWER

We will answer Magic West's Motion for Dismissal in the same order as they are contained in the Motion.

(a) A local ground water board would have no jurisdiction to determine water rights claims already filed in the SRBA.

To answer the contention that a local ground water board has no jurisdiction in this matter, we should first check the law to determine the purpose of the Snake River Basin Act. Those provisions are as follows:

Under the provisions of Idaho Code 42-1406a as amended by Session Laws 1994, Chapter 454, Section 11, Page 1452, the purpose of the Snake River Basin Adjudication is to determine:

(1) The source of water claimed.

(2) The quantity claimed.

(3) The date of priority.

(4) Purpose and period of use.

(5) A legal description of the place of use.

Magic West assumes that the purpose of claimant's statement is to determine water right claims. That is an erroneous assumption. The water right claims of both parties have already been determined and licensed. The purpose of claimant's statement is to enforce the claims as licensed, not to re adjudicate them. There is therefore no conflict with the jurisdiction of the SRBA because its only authority as set forth above is to determine the five issues listed above. Claimant's

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statement does not involve any one of the five purposes for which the SRBA laws were enacted. Idaho Code Section 42-237b, is still the law in Idaho.

(b) Magic West's second argument is that no rules of procedure exist to govern proceedings before local ground water boards.

Idaho Code Section 42-237b provides for the appointment of a local ground water board to conduct a hearing to determine whether or not the use of a junior water right affects, contrary to the declared policy of the state, the use of a senior water right. Idaho Code Section 42-237c further provides that the hearing before the local ground water board shall be conducted before the board under reasonable rules and regulations of procedure prescribed by the Director of the Department of Water Resources. Magic West argues that since there are no rules of procedure presently available for governing the procedure of local ground water boards, that claimant's statement should be dismissed. To dismiss claimant's statement on the ground that there were no rules available to govern the procedure of the local ground water board would make the Idaho Department of Water Resources look rather ridiculous, since it is the entity designated to provide such rules. There is no reason why the Department of Water Resources should not proceed at once to provide such rules. Idaho Code 42-1758.

(c) Magic West's third contention is that the statement of the claimant is not sufficient. This is not an argument which stands by itself, but is a claim based on the first two arguments made by Magic West. In its brief Magic West states "in this

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case, the statement should be deemed insufficient by the director because of the lack of jurisdiction and lack of procedural rules discussed above. In addition, a pending action before the Department, involving the same parties, makes it inappropriate to proceed with the action requested by Hall".

Magic West then states that it has filed a petition with the Department seeking to amend the maximum diversion volume recognized by its Water Right License No. 61-07189. In view of Magic West's argument that this proceeding should have been filed with the SRBA Court, it is difficult for us to understand why Magic West has not filed the proceedings to increase its license with that court, rather than to file a proceedings with the Department. No decision has yet been made on its petition to increase its diversion rate and that petition should be dismissed because it should have been filed with the SRBA Court.

As a final argument for dismissal, Magic West states " the difference between Magic West's actual level of beneficial use and that which is included in the license is so large that adherence to the licensed amount would require Magic West to shut down its food processing plant. The plant would not even have enough water to start up let alone maintain production". Although we might feel sorry for Magic West because of that situation, it got itself into that predicament and it is not a valid reason for overriding the law. We therefore request the Department to overrule the Motion to Dismiss, and to proceed with the adoption of Rules of Procedure for a local ground water board and to appoint the board to hear the issues involved in this matter.

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Respectfully submitted.

HALL, FRIEDLY & WARD

By _____
Perce Hall, attorney for Robert K. Hall

CERTIFICATE OF MAILING

I certify that on the 28th day of May, 1998, I served a copy of the foregoing Answer by United States first class mail, postage prepaid, directed and addressed to the following:

Norman Semanko
ROSHOLT ROBERTSON TUCKER
P. O. Box 1906
Twin Falls, ID 83303-1906

Daniel Steenson
Ringert Clark, CHTD.
P. O. Box 2773
Boise, Idaho 83701-2773

_____
Perce Hall, attorney for
Robert K. Hall

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MAY 29 1998
Department of Water Resources

HALL, FRIEDLY & WARD
A PROFESSIONAL ASSOCIATION
ATTORNEYS AT LAW
340 EAST 2ND NORTH
MOUNTAIN HOME, IDAHO 83647

PERCE HALL
JAY R. FRIEDLY
ROBERT W. WARD
CLAY M. SHOCKLEY

TELEPHONE
(208) 587-4412
FACSIMILE
(208) 587-3144
E-MAIL
hfw@micron.net

May 28, 1998

Idaho Department of Water Resources
1301 North Orchard Street
P. O. Box 83720
Boise, Idaho 83720-0098

Gentlemen:

A short time ago I filed with you a "Claimant's Statement" of Robert K. Hall, filed under the provisions of Idaho Code Section 42-237b. Norman Semanko, attorney for Magic West, filed a Motion to Dismiss the proceeding. I have prepared and I am enclosing herewith an Answer to the Motion to Dismiss.

Very truly yours,

Perce Hall

PH:tam
Enclosure

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HALL, FRIEDLY & WARD

A PROFESSIONAL ASSOCIATION
ATTORNEYS AT LAW
340 EAST 2ND NORTH
MOUNTAIN HOME, IDAHO 83647

PERCE HALL
JAY R. FRIEDLY
ROBERT W. WARD
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(208) 587-4412
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hfw@micron.net

May 4, 1998

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Department of Water Resources

L. Glen Saxton
Water Allocation
Department of Water Resources
1301 North Orchard Street
P. O. Box 83720
Boise, Idaho 83720-0098

Dear Sir:

Re: Magic West Water Dispute

I acknowledge receipt of your letter to me dated April 20, 1998. I thank you for your prompt reply.

I have discussed the contents of your letter with Robert K. Hall. Although you apparently prefer that his Complaint be processed under the Conjunctive Management Rules, Mr. Hall's Complaint was filed under Idaho Code 42-237 (b), which provides for the appointment of a board.

Mr. Hall would prefer to proceed under the provisions of Idaho Code 42-237 (b).

Sincerely yours,

Perce Hall

PH:tam
Enclosures
cc: Robert K. Hall
Ringert Clark

OCT 0 5 2000

John A. Rosholt
Norman M. Semanko
ROSHOLT, ROBERTSON & TUCKER
P. O. Box 1906
142 3rd Avenue N.
Twin Falls, Idaho 83303-1906
Telephone: (208) 734-0700
Facsimile: (208) 736-0041
05059802.NMS

Attorneys for Magic West, Inc.

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

IN THE MATTER OF EDWARD T. POTUCEK'S REQUEST FOR HEARING BEFORE A LOCAL GROUND WATER BOARD	MOTION TO DISMISS

* * * * * * * * * * *

Magic West, Inc., by and through its attorneys, Rosholt, Robertson & Tucker, files the following motion to dismiss in response to the Affidavit of Edward T. Potucek.

MOTION TO DISMISS

Magic West, Inc. hereby moves the director of the Idaho Department of Water Resources to issue an order dismissing Edward T. Potucek's request to set a hearing before a local ground water board. This motion is based upon the following facts and provisions of law.

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1. Facts.

Edward T. Potucek filed an affidavit seeking initiation of proceedings under Idaho Code Section 42-237b.[1] The copy provided to Magic West is dated April 17, 1998, was mailed to counsel for Magic West with a cover letter on April 20, 1998, and was received by counsel for Magic West on April 22, 1998.

In his affidavit, the "claimant" asserts certain elements of his water right claim, specifically referencing "water right number 51-10331"[2]. In addition, he asserts that Magic West "is the owner of a licensed water right number 61-07189."[3]

Claims numbered 51-10331 (Exhibit "A") and 61-07189 (Exhibit "B") have been filed in the Snake River Basin Adjudication (SRBA), currently pending before the District Court, Fifth Judicial District, Twin Falls County, Idaho, and are attached hereto.

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[1] Curiously, Potucek's affidavit is captioned "In the Matter of License Number 61-07189 in the Name of Magic West, Inc.". However, the record has been closed in this matter (i.e., regarding Magic West's petition to amend License No. 61-07189). Therefore, the affidavit may not be included as part of the record in the pending action involving Magic West's license.

[2] A search of the department's records reveals that there is no "water right number 51-10331" issued to Potucek. However, there is a beneficial use claim filed in the Snake River Basin Adjudication bearing this number. The claim was only very recently amended to increase quantity from .1 cfs to .6 cfs and to add irrigation as a purpose of use. The amended claim will be included in the Director's Report for Reporting Area 6 Irrigation Rights. See, SRBA Subcase No. 51-10331 Order Granting Motion to File Amended Notice of Claim (April 28, 1998).

[3] Potucek makes no reference to SRBA Claim No. 61-07189, as filed by Magic West. This claim does not include the 12.9 acre foot annual volume currently included in the license. In addition, Magic West has filed a petition with the department to adjust the maximum diversion volume recognized under License No. 61-07189. This matter is still pending before the department.

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Potucek further alleges that diversion by Magic West adversely affects use of his water right and requests that the matter be set for hearing before a local ground water board.

2. Controlling Legal Authority.

Upon receipt of a request of the type filed by Potucek, the director is to issue a notice setting the matter for hearing before a local ground water board and proceed to form such a board "if the statement of the claimant is deemed sufficient by the director" and meets the statutory requirements. I.C. Sec. 42-237d.

If a hearing is set, the hearing is to be conducted before the board "under reasonable rules and regulations of procedure prescribed by the director of the department of water resources." I.C. Sec. 42-237c. The board is to determine "the existence and nature of the respective water rights claimed by the parties and whether the junior right affects, contrary to the declared policy of this act, the use of the senior right." Id.

3. Argument.

Potucek's request should be dismissed for the following reasons.

a. Local Ground Water Boards have No Jurisdiction to Determine Water Right Claims already filed in the SRBA.

The action requested by Potucek would require that a local ground water board determine the nature and extent of the water right claims made by Potucek and Magic West. See, I.C. Sec. 42-237c; see also, Stevenson v. Steele, 93 Idaho 4 (1969) (Cassia County local ground water board made findings regarding nature and extent of use).

Potucek's claim is based upon beneficial use and has not yet been confirmed or defined in the SRBA. While Magic West's right has been licensed, it too is before the SRBA for a determination of the elements of the water right.

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The Idaho Supreme Court has held that once the SRBA commenced, and until a final order is issued, jurisdiction to resolve all of the water right claims is in the SRBA district court only. Walker v. Big Lost River Irrig. Dist., 124 Idaho 78 (1993). As a result, a local ground water board has no jurisdiction to determine water right claims which have already been filed in the SRBA and which are awaiting judicial scrutiny. In effect, Potucek seeks a private adjudication. However, the pendency of the SRBA prevents such an action from being commenced.

Therefore, Potucek's request to convene a local ground water board and set a hearing should be dismissed.

b. No Rules of Procedure Exist to Govern Proceedings Before Local Ground Water Boards.

In addition to the obvious jurisdictional defects of Potucek's water right "claim", no procedural rules exist to govern proceedings before a local ground water board.

The pertinent statute provides that hearings must be conducted under rules adopted by the director. I.C. Sec. 42-237c. While it appears that such rules existed in the past[4], no such rules currently exist.[5] The department's current Rules of Procedure, IDAPA 37.01.01., effective on July 1, 1993, govern only contested case proceedings before the department and the Idaho Water Resource Board. See, Rules 1, 5, 50 and 51. These rules do not govern proceedings before local ground water boards.

---

[4] See, Hart v. Stewart, 95 Idaho 781, 783-84 (1974) (discussing rules promulgated to "govern all practice and procedure before the Director, or any Local Ground Water Board.") (quoting from I Idaho Water Laws and Regulations, Rules of Practice and Procedure, Rule 2.1, at 1 (1966)).

[5] By statute, all administrative rules adopted prior to June 30, 1990 expired on July 1, 1991. I.C. Sec. 67-5292.

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Without duly promulgated rules to govern the proceedings, any actions taken by a local ground water board would be arbitrary and capricious and would deny Magic West of its constitutional rights to equal protection and due process. Musser v. Higginson, Order and Memorandum Decision Granting Petition for Writ of Mandate at 5 (Aug. 5, 1993), aff'd., 125 Idaho 392 (1994); Fellhauer v. People of Colorado, 447 P.2d 986, 992-93 (1969). Such proceedings would also run afoul of I.C. Sec. 42-237c, which requires such rules to be adopted by the director before any hearing is held.[6]

For this additional reason, Potucek's request to set a hearing of a local ground water board should be dismissed.

c. The Statement of the Claimant is Not Sufficient.

It is not enough to merely list the items required by I.C. Sec. 42-237b. A statement must also be "deemed sufficient by the director". I.C. Sec. 42-237d. This is a discretionary determination by the director.

In this case, the statement should be deemed insufficient by the director because of the lack of jurisdiction and lack of procedural rules discussed above. In addition, a pending action before the department, involving the same parties, makes it inappropriate to proceed with the action requested by Potucek.

Magic West has filed a petition with the department seeking to amend the maximum diversion volume recognized by Water Right License No. 61-07189. Potucek is a party to these proceedings. An evidentiary hearing was held on December 15, 1997 to determine the extent

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[6] Of course, any future rules proposed by the director to govern proceedings before local ground water boards would need to be adopted in compliance with the Administrative Procedures Act. Chapter 52, Title 67, Idaho Code.

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of beneficial use during the authorized development period. The matter has been fully briefed and is awaiting a determination by the department.

The difference between Magic West's actual level of beneficial use and that which is included in the license is so large that adherence to the licensed amount would require Magic West to shut down its food processing plant. The plant would not even have enough water to start up, let alone maintain production.

Because of the overriding importance of Magic West's petition, no further action should be commenced until that pending matter is decided.[7] Potucek's request should therefore be deemed insufficient by the director.

4. Relief Sought.

For the reasons set forth above, Magic West respectfully requests that Potucek's request to set a hearing of a local ground water board be dismissed.[8]

DATED this 5th day of May, 1998.

ROSHOLT, ROBERTSON & TUCKER

By: _____
NORMAN M. SEMANKO

[7] Apparently unsatisfied with waiting for the department's decision on Magic West's petition, Potucek has requested that the department commence proceedings to shut down Magic West's processing plant under I.C. Sec. 42-351. Of course, this request only serves to highlight the importance of amending Magic West's license to reflect the actual level of beneficial use.

[8] Magic West reserves the right to file an answer in this matter and seek other relief in the event that the motion to dismiss is not granted.

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CERTIFICATE OF MAILING

I hereby certify that on this 5th day of May, 1998, I caused a copy of the foregoing MOTION TO DISMISS to be served upon the following persons in the following manner:

Via U.S. Mail to:
Daniel V. Steenson
RINGERT CLARK CHARTERED
P.O. Box 2773
Boise, ID 83701

Norman M. Semanko

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EXHIBIT A

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OCT 05 2000

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

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

CIVIL CASE NUMBER: 39576

Ident. Number: A51-10331
Date Received:
Receipt No.:_____
Received By:_____

AMENDED
NOTICE OF CLAIM TO A WATER RIGHT ACQUIRED UNDER STATE LAW

1. Name: Edward T. Potucek 208-366-2311
Address: P.O. Box 537
Glenns Ferry, Idaho 83623

2. Date of Priority: June 1, 1947

3. Source: GROUNDWATER Trib. to:

4. Point of Diversion

Township	Range	Section	1/4 of	1/4 of	1/4	Lot	County
05S	10E	32	NE	SE	NE		ELMORE

5. Description of diverting works
1200' ARTESIAN WELL

6. Water is used for the following purposes:

Purpose	From	To	C.F.S.	(or)	A.F.A.
DOMESTIC	01/01	12/31	0.040		
STOCKWATER	01/01	12/31	0.060		
IRRIGATION	03/15	11/15	0.500		

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

8. Total consumptive use is Acre Feet Per Annum.

9. Non-irrigation uses:
D/1 S/150

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OCT 05 2006

10. Place of Use:

Township	Range	Section	1/4 of 1/4		Lot	Use	Acres
05S	10E	32	SE	NE		DOMEST	
05S	10E	32	SE	NE		STOCK	
05S	10E	32	SE	NE		Irr	13.0
05S	10E	33	SW	NW		Irr	9.0
						Total Acres	22.00

11. Place of use in counties: Owyhee.

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

13. Other Water Rights Used:
KING HILL IRR. DIST.

14. Remarks:

15. Basis of Claim: BENEFICIAL USE

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OCT 05 2000

16. Signature(s)

(a) By signing below, I/We acknowledge that I/We have received, read and understand the form entitled "How you will receive notice in the Snake River Basin Adjudication."

(b) I/We do ___ do not _X_ wish to receive and pay a small annual fee for monthly copies of the docket sheet.

Number of attachments:

I/We do solemnly swear or affirm that the statements contained in the foregoing document are true and correct.

For Individuals:

I/We do solemnly swear or affirm that the statements contained in the foregoing document are true and correct.

Signature of Claimant(s): _____ Date: 12-4-97

_____ Date: _____

STATE OF IDAHO)
)ss.
COUNTY OF Ada)

Subscribed and sworn (or affirmed) before me this 4th day of December, 1997.

_____
Notary Public
Residing at Boise, Idaho
My commission expires: 1-20-2000

MIDPA3-[illegible]
OCT 05 2000

EXHIBIT B

MICROFILMED
OCT 0 5 2000

RECEIVED
APR 04 1997
Department of Water Resources
Southern Region

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

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

CIVIL CASE NUMBER: 39576

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

AMENDED **NOTICE OF CLAIM TO A WATER RIGHT ACQUIRED UNDER STATE LAW** **AMENDED**

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

2. Date of Priority: JUL 10, 1974

3. Source: GROUNDWATER Trib. to:

4. Point of Diversion:

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

5. Description of diverting works:
   WELL & PUMP.

6. Water is used for the following purposes:

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

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

8. Total consumptive use is Acre Feet Per Annum.

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

10. Place of Use:

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

11. Place of use in counties: ELMORE

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DEC 05 2000

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

13. Other Water Rights Used:
A61-02248B

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

15. Basis of Claim: PERMIT

16. Signature(s)

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

Number of attachments: _____

For Organizations:

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

Title / Organization

Roger L Jones
Signature of Authorized Agent

President; Magic West, Inc.
Title and Organization

April 3, 1997
Date

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OCT 0 5 2000

State of Idaho)
) SS.
County of Minidoka)

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

Blaine Allphin
Notary Public

Seal

Residing at Burley, Idaho

My Commission Expires 6/14/99

17. Notice of Appearance:
Notice is hereby given that I, NORMAN M SEMANKO (Print Name) will be acting as attorney at law on behalf of the claimant signing above, and that all notices required by law to be mailed by the director to the claimant signing above should be mailed to me at the address listed below.

Signature N. M. S.

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

Date APRIL 4, 1997

MICROFILMED
OCT 03 2008

RINGERT
CLARK
CHARTERED
LAWYERS

RECEIVED
MAY 0 4 1998
Department of Water Resources

Laura E. Burri
Jeffrey R. Christenson
D. Blair Clark
Michael J. Doolittle
Patrick D. Furey
David Hammerquist
Joseph B. Jones
James P. Kaufman
Jennifer Reid Mahoney
James G. Reid
William F. Ringert
Daniel V. Steenson
Allyn L. Sweeney

Samuel Kaufman (1921-1986)

May 1, 1998

Mr. L. Glen Saxton, Chief
Water Allocation Bureau
Idaho Department of Water Resources
P.O. Box 83720
Boise, ID 83720-0098

Re: Edward T. Potucek's request to convene proceedings under I.C. 42-237b

Dear Mr. Saxton:

We have received your letter of April 24, 1998 suggesting that our client Edward T. Potucek use the Conjunctive Management Rules rather than seeking the appointment of a ground water board under Idaho Code section 42-237b to obtain relief from interference with his well by Magic West, Inc.'s excessive use of their well. Although we appreciate your advice, we previously considered using the Conjunctive Management Rules to seek relief and decided that the procedure outlined under section 42-237b better meets the needs of our client.

We assume that Mr. Potucek's affidavit meets the requirements of I.C. 42-237b, and that pursuant to the statute, you will shortly be forming a local ground water board and issuing a notice setting the matter for hearing. We look forward to receiving your notice.

Please contact me with any questions or comments you may have regarding this matter.

Sincerely,

Daniel V. Steenson

cc: Ed Potucek
W.F. Ringert
Perce Hall
Norm Semanko

MICROFILMED
OCT 0 5 2000

State of Idaho
DEPARTMENT OF WATER RESOURCES
1301 North Orchard Street, P.O. Box 83720, Boise, Idaho 83720-0098
Phone: (208) 327-7900 FAX: (208) 327-7866

PHILIP E. BATT
GOVERNOR

KARL J. DREHER
DIRECTOR

Daniel V. Steenson
RINGERT - CLARK
455 South 3rd St.
P.O. Box 2773
Boise, ID 83701

April 24, 1998

RE: REQUEST TO CONVENE A GROUND WATER BOARD

Dear Mr. Steenson:

The department has reviewed your letter dated April 20, 1998 submitted on behalf of your client, Edward T. Potucek, seeking the appointment of a ground water board in connection with your client's use of water near Glenns Ferry, Idaho. While still in law, this section has not been used for many years and some provisions are out-of-date.

It appears that the Conjunctive Management Rules (rules) promulgated by the department on October 7, 1994 as IDAPA 37.03.11. may be more appropriate for your client to follow to seek relief to the alleged well interference than the ground water board provisions described in section 42-237(b), Idaho Code. The rules provide a procedure for the holder of a senior priority water right to place a "delivery call" against the holder of a junior priority ground water right. Among other matters, the rules describe the sequence of actions associated with a delivery call.

Enclosed for your information and review is a copy of the Conjunctive Management Rules. After your review of the rules, please advise the department how you wish to proceed in this matter.

If you have questions, please feel free to contact the department.

Sincerely,

L. GLEN SAXTON, Chief
Water Allocation Bureau

Encl: 1

c: Gary Spackman
Perce Hall
Norm Semanko

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OCT 0 5 2000

RINGERT
CLARK
CHARTERED
LAWYERS

RECEIVED
APR 2 2 1998
Department of Water Resources

Laura E. Burri
Jeffrey R. Christenson
D. Blair Clark
Michael J. Doolittle
Patrick D. Furey
David Hammerquist
Joseph B. Jones
James P. Kaufman
Jennifer Reid Mahoney
James G. Reid
William F. Ringert
Daniel V. Steenson
Allyn L. Sweeney

Samuel Kaufman (1921-1986)

April 20, 1998

Mr. Karl Dreher, Director
Idaho Department of Water Resources
1301 N. Orchard
Boise, ID 83706

Re: Request for initiation of Idaho Code 237b proceedings.

Dear Director Dreher:

Enclosed, please find an Affidavit of Edward T. Potucek meeting the requirements of Idaho Code section 42-237b. As required by Idaho Code section 42-237b, we ask that you issue a notice setting the matter for hearing before a local ground water board as soon as is possible. Please return the notice to us within seven (7) days before the hearing so that we may comply with the statute and serve the notice together with a copy of the this letter and the affidavit upon the respondent. It is our understanding that Robert K. Hall has filed a similar statement also asking for initiation of proceedings.

Related to the same matter, we respectfully request that you take action pursuant to Idaho Code section 42-351 against Magic West, Inc. for its illegal diversion of a volumetric quantity of water in excess of that for which it is licensed under water right number 61-07189. The Idaho Department of Water Resources is in possession of tapes containing sworn testimony by the Plant Manager, and the Vice President of Magic West, Inc. that Magic West, Inc. is indeed diverting a quantity in excess of the annual volume to which it is limited by license for water right number 61-07189, and that this illegal diversion is adversely impacting Mr. Potucek's water rights. Pertinent excerpts of a transcription of those tapes are enclosed. The Affidavit of Jack Anderson, attached to the Affidavit of Edwart T. Potucek as Exhibit D, corroborates this testimony.

Please contact me should you desire to speak about this matter.

Sincerely,

Daniel V. Steenson
Ringert Clark, Chartered

enclosure(s)

cc: Perce Hall
Norm Semanko

MICROFILMED
OCT 0 5 2000

TRANSCRIPTION OF CASSETTE TAPES

1/11/98

Department of Water Resources

Magic West Corporation

BURNHAM, HABEL & ASSOCIATES, INC.
Certified Shorthand Reporters

COPY
Prepared for
Mr. Steenson

Reported By
Sharon Hammons,
(Transcriber)

Post Office Box 835
Boise, Idaho 83701

(208) 345-5700 • FAX 345-6374 • 1-800-867-5701

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OCT 05 2000

TAPE 1, SIDE A

Good morning, I'm Glenn Saxton from the State Office of the Department of Water Resources. I'll be the hearing officer today in this matter on behalf of the Director of the Department, Carl Grayer. The Department staff here include Mr. Shelly Keen from the State Office who is assisting me, and Mr. Steve Lester from our Western Regional Office. The purpose of this hearing is to receive evidence and testimony in connection with License No. 61-07189, issued in the name of Magic West Incorporated. The Department issued this license on October 27, 1990. This hearing will be conducted in compliance with applicable provisions of Chapters 2 and 17, Title 42, Idaho Code, Chapter 52, Title 67, Idaho Code, and the adopted Rules of Procedure. Today is December 15, 1997. The time is a little after 10:00 in the morning. The hearing was actually scheduled to start at 9:00 a.m., but we spent the previous hour in terms of discussing procedure and pre-marking proposed exhibits. This hearing is being held in the Department of Water Resource conference room on Orchard Street in Boise, Idaho. At this point, I'd like to ask the petitioners to make their appearance, starting with petitioner.

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OCT 05 2000

Norman Semanko for the petitioner, Magic West Incorporated.

Thank you. And the intervenors.

Daniel Steenson for intervenor Ed Potocheck.

Thank you. I'm going to move that mike over a little closer to you to make -- right in the middle so we pick up Mr. Hall, also. Bring it back the other direction a little. Very good.

Mr. Hall.

First off. I'm representing Robert K. Hall in this matter.

Thank you.

One of the things we did in the conference immediately preceding this hearing was described issues -- one of the issues from the Department's standpoint is the extent of beneficial use made under this particular water right prior to the time the proof of beneficial use was filed. There were some other issues described. I will let the parties describe those for the record. Mr. Steenson.

One issue of concern for the intervenors is the question of the impact of this -- of diversion of this well on their water rights. Intervenor Potocheck has stated in his protest concerns he has about those impacts and given an indication in the pleadings he's filed of those impacts, and

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Mr. Lester, you are excused. Thank you. Let's break for lunch.

[LUNCH BREAK]

We're back on the record after lunch. We just finished with the testimony of Steve Lester. Mr. Semanko.

We'd like to call Jack Anderson as a witness.

Okay.

Raise your right hand. Do you solemnly affirm the testimony you're about to give in these proceedings is the truth, the whole truth, and nothing but the truth?

I do.

You may be seated. Mr. Semanko.

Good afternoon. I was wondering if we could start out by having you state your full name for the record.

Okay. Jack V. Anderson.

And where do you live?

Live in Glenns Ferry.

What's your current occupation?

I'm the plant manager at Magic West.

How long have you been employed in that capacity?

Twelve years.

Would you tell us a little bit about your work history, going back before Magic West, and any training you might have had?

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OCT 0 5 2006

I notice there's a difference between the total water use well and City and the amount pumped to the farms in gallons per year.

The discrepancy between those two figures, we haul a lot of water to the tankers to the City lagoons. Some of that water is used for washing vehicles, probably discharged in the City sewer system and probably evaporation from boiler usage and steam light up those figures.

To be clear, on this first well water, the number at the bottom would be the number for the day, or for the week, or what is that number at the bottom?

158 1.4-some million --

Okay. That was 68, 143 GPM's is 143 gallons a minute used by the plant. 68,573 gallons per shift. 480,000 gallons per day. This is based on a seven-day week, 24 hours a day. But these are shift readings.

For each shift?

Every eight hours.

Have you had a chance to calculate how much you used on average per day of the well water last year?

Normally, we run between 240,000 and 260,000 gallons a day. We come to that figure from the water meter readings that we've monitored since we installed the meters in '96.

Is this use consistent with that?

Yes, it is.

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OCT 05 2000

The 1996/1997 use, I'm referring to. Aside from what you shipped off and what goes to the waste farm, is there any other water lost anywhere in the process?

We do lose some -- the City water, the City sewer system from bathrooms, lab usage, into the City system.

Any kind of consumption in the process that you referred to earlier or --

Evaporation. We use water and lose water in evaporation from the heat from the boilers and also the cookers.

Are you aware, as the plant manager, of the current amount that's in the license in terms of annual diversion volume?

I know what the license says today, yeah.

What's your understanding of the annual diversion volume?

That we're authorized to pump 300 gallons a minute or 12.9 acre feet, which calculates to about 20,000 gallons per day.

When were you first aware that this 20,000-gallons-per-day figure was out there?

When we had the hearing at the City here this last summer.

You said 20,000 gallons per day?

Yes.

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And how much do you say you're using now?

240,000 to 260,000 gallons a day.

Over the time that you've been involved in the operation of the plant, does the amount of the well water that you've used vary significantly from year to year?

No, I would say it was basically the same.

You've run the plant through some 12 years. In your opinion, is it possible to run the plant with 20,000 gallons per day?

No. We couldn't start the plant up on 20,000 gallons.

That's all I have.

Mr. Steenson, questions?

Mr. Anderson, I wanted to clear one thing up regarding your affidavit, just for point of clarification. Is this affidavit you've objected to having admitted or is it a different one?.

It's in the record.

Okay. Thanks.

This is the affidavit I objected to, though.

We have pre-marked some proposed exhibits, yes. We have. As far as admitted, we haven't admitted very many exhibits today.

What I'm referring to is, for example, the beneficial use report. It's already in the Department's file.

It's in the file.

MECHO FILE
OCT 05 2000

Mr. Hall, recross? Do you want to recross this witness? Mr. Ogden, thank you. Mr. Semanko, additional witnesses?

We'd like to call Bill Scowl.

Do you solemnly affirm that the testimony you're about to give in this proceeding is the truth, the whole truth, and nothing but the truth?

Yes, it is.

Thank you. You may be seated.

Mr. Semanko.

Good afternoon. I was wondering if you could state your full name for the record, please.

William S. Scowl.

Could you tell us what your current occupation is?

I'm the Vice President of Magic West, Inc., and Magic Valley Foods.

And you heard the characterization that Mr. Ogden gave of the relationship between Magic West and Magic Valley Foods; did you not?

Yes, I did.

Does he accurately state that, or is there anything you want to add to that?

I'd say that -- to answer your question, Magic Valley Foods has common ownership through the Jones family, and so we utilize, I think it's called, the Magic Valley Foods

OCT 0 5 2006

Whether I want to. It's whether you want to.

I've given you a copy of applicant's Exhibit No. 12. Before I ask you about that, we asked you: were you present for the testimony of Jack Anderson earlier today?

Yes.

Do you have any reason to disagree with his conclusions regarding the amount of water used by the plant?

No.

With regard to paragraph 3, it says Doug Mason was the maintenance supervisor at the time of field exam and was responsible for general maintenance and had no detailed knowledge of the water usage. Were you involved, or did you have knowledge of Doug Mason's employment with Magic West?

Yes.

Would you say that's an accurate statement that he had no detailed knowledge of the water usage?

Yes.

It goes on to state that the 20,000-gallon-per-day estimate was not correct. Do you believe that's an accurate statement?

Yes.

Why?

Well, you know, I've been involved probably with Magic West starting in 1977, especially with the DEQ and the water rights and discharge permit. And we've always discharged a

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OCT 05 2006

lot more water than 20,000 or 30,000 gallons a day. Also, I was involved in 1979 with the --

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TAPE 3, SIDE A

Mr. Semanko, you can continue your answer.

Also, I think in 1979, I was involved with collecting the numbers to formulate the data and the information that was on the lease with Ready Spud of America as to what we used, and indicated that our discharge was significantly higher than 20,000 to 30,000 gallons a day.

And that would hold true for 1987 as well?

Yes, I've been involved again with Magic West when I went back in '85, and the reports generated from the plant as to water usage and discharge and anything else are reviewed sent on to me weekly.

You've referenced a lease with Ready Spuds and going back to the plant -- could you explain -- there's some chronology here maybe we need to understand between the time the lease was executed and when you came back.

Okay. In -- I would guess that in about July of 1979, we closed the plant. And then we leased it out to Ready Spud of America, and I think that lease was in November of '79. And they ran that facility until early 1985, and then took out bankruptcy. And we spent 1985 getting the plant back and started production in 1986.

With regard to paragraph 4, it says, at the time of the exam in August of '87, the Glenns Ferry plant operated 24

OCT 0 5 2000

Daniel V. Steenson
Charles L. Honsinger
RINGERT CLARK, CHARTERED
455 S. Third St., P.O. Box 2773
Boise, ID 83701-2773
Telephone: (208) 342-4591
FAX: (208) 342-4657

Attorneys for Edward T. Potucek

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

	)	
	)	
	)	License Number 61-07189
	)	
In the Matter of License	)	AFFIDAVIT OF
Number 61-07189 in the	)	EDWARD T. POTUCEK
Name of Magic West, Inc.	)	
	)	

STATE OF IDAHO)
County of) ss.
)

Edward T. Potucek, being first duly sworn, deposes and states as follows:

1. My name is Edward T. Potucek. My address is P.O. Box 537, Glenns Ferry, Idaho 83623. I reside in Glenns Ferry, Idaho.

2. I am the owner of water right number 51-10331.

3. By submitting this Affidavit, I hereby respectfully request the Director of the Idaho Department of Water Resources to convene an administrative determination of adverse claims pursuant to the procedure set forth in section 42-237b, Idaho Code.

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OCT 05 2000

4. I have claimed water right number 51-10331 in the Snake River Basin Adjudication. The priority date of water right number 51-10331 is June 1, 1947. A copy of the Amended Notice of Claim to water right number 51-10331 is attached hereto as Attachment A and is incorporated by reference herein as the description of water right number 51-10331 required pursuant to section 42-237b, Idaho Code.

5. Magic West, Inc. is the owner of licensed water right number 61-07189. The priority date of water right number 61-07189 is July 10, 1974. A copy of the Water Right License for water right number 61-07189 issued by the Idaho Department of Water Resources is attached hereto as Attachment B and is incorporated by reference herein as the description of water right number 61-07189 required pursuant to section 42-237b, Idaho Code.

6. The point of diversion for my water right number 51-10331 is a well approximately 100 yards south of the Snake River, and directly across the river from the well that is the point of diversion for water right number 61-07189. I estimate that the two wells are no more than 1/4 mile apart.

7. The well that is the point of diversion for my water right number 51-10331 is approximately 1200 feet deep. According to the Beneficial Use Field Report for permit number 61-07189, a copy of which is attached hereto as Attachment C, the well that is the point of diversion for water right number 61-07189 is 1230 feet deep.

8. According to Attachment C, in 1987, the time of the beneficial use field exam, the temperature of the water diverted from the well that is the point of diversion for water right number 61-07189 was 112F. At approximately the same time, the temperature of the water diverted from the well that is the point of diversion for my water right 51-10331 was 103F.

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OCT 05 2000

9. Attachment B lists the maximum annual volume of water to be diverted under water right number 61-07189 as 12.9 AF. This limitation was calculated based on a volumetric use of 20,000 gallons per day as represented in Attachment C, a copy of the Beneficial Use Field Report for permit number 61-07189, and as testified to by Steve Lester during a Department of Water Resources administrative proceeding at which I was present on December 15, 1997.

10. In 1972, when I purchased the property to which water right number 51-10331 is appurtenant, the rate of flow from the artesian well that is the point of diversion for water right number 51-10331 was approximately .50 cfs. I have never installed a pump to enhance the flow of the artesian well. In 1972, the temperature of the water from the artesian well was approximately 103F.

11. From the date of my purchase of the property until the late 1980's, I used water diverted pursuant to water right number 51-10331 for livestock and domestic purposes, and for the irrigation of approximately 21 acres. During this period of time, the water continued to flow out of the artesian well at a rate of approximately .50 cfs and was sufficient for the purposes for which it was beneficially used. During this time, the temperature of the water diverted from the artesian well was approximately 103F.

12. In the late 1980's the flow rate of the well dropped from .50 cfs to a point where I could continue to use water diverted pursuant to water right number 51-10331 for domestic and livestock purposes, but could no longer use it for irrigation. I have not been able to use water diverted from the artesian well for irrigation purposes since that time. In the late 1980's the temperature of the water diverted from the artesian well dropped below 103F.

13. In late 1996 or early 1997, the flow from the artesian well that is the point of

MICROFILMED
OCT 05 2000

diversion for water right number 51-10331 dwindled to a seep. Thereafter, I could no longer use water diverted from the artesian well for domestic and livestock purposes.

14. During the summer of 1997, the flow from the well entirely ceased.

15. Attachment D is a copy of an Affidavit of Jack Anderson, Plant Manager for the Magic West food processing plant filed with the Idaho Department of Water Resources on December 15, 1997 in a proceeding involving license number 61-07189. In the Affidavit, Mr. Anderson states that he estimates a daily average of between 240,000 and 260,000 gallons of low temperature geothermal water has been diverted pursuant to water right number 61-07189 and used at the Magic West food processing plant from August 1987 to the present. He also states that a measuring device, installed since 1987, confirms this level of volumetric diversion during 1996 and 1997. Mr. Anderson further confirmed this level of volumetric diversion during his sworn testimony in a Department of Water Resources administrative proceeding at which I was present on December 15, 1997.

16. A daily diversion volume of between 240,000 and 260,000 gallons is 12 to 13 times the 20,000 gallons per day to which Magic West, Inc. is limited by the license for water right number 61-07189.

17. Using the same process on page 3 of Attachment C by which the beneficial use field examiner calculated annual diversion volume, a daily diversion volume of between 240, 000 and 260,000 gallons is equivalent to an annual diversion volume of between 154.7 acre-feet and 167.5 acre-feet. This is between 12 and 13 times the annual diversion volume of 12.9 acre-feet to which Magic West, Inc. is limited by the license for water right number 61-07189.

18. Since the flow from my artesian well became unusable in late 1996 or early 1997,

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OCT 05 2000

it has periodically resumed. The most vivid instance of flow resumption occurred in September of 1997. At that time, after speaking with the Magic West Farms manager about the lack of water from my artesian well, he indicated to me that the plant had shut down and suggested that I check the water supply from the well. When I turned on the hydrant faucet through which water from the artesian well is diverted, it was flowing.

19. That same day, I spoke with Jack Anderson at Magic West's plant. Mr. Anderson indicated to me that the plant's pump had not operated for some period of time but that the pump had been switched back on that morning. Two to three days later, the flow from the artesian well through which my water right number 51-10331 is diverted again ceased flowing.

20. Other instances of my artesian well beginning to flow at a higher rate have occurred since the late 1980's. These occasions have always occurred on days such as holidays when the Magic West plant was shut down, and on which I assumed that the pump used to supply water right number 61-07189 was not operating.

21. Based on the fact that the wells that are the points of diversion for water right numbers 61-07189 and 51-10331 are of similar depth, on the fact that the wells for the two water rights are less than one-quarter mile apart, on the fact that they both diverted water with a temperature in excess of 103F in 1987, and on the fact that I have personally observed a relationship between decreased flows from the well that is the point of diversion for my water right number 51-10331 and increased flows from the well that is the point of diversion for water right number 61-07189, it is my belief that the two wells are hydrologically connected.

22. It is my belief that the illegal diversion by Magic West, Inc. of an annual volume 12 to 13 times the annual volume to which it is limited by the license for water right number 61-

MICROFILMED
OCT 05 2009

07189 has caused, and continues to cause, the cessation of flows from the artesian well through which my water right number 51-10331 is diverted, thereby adversely affecting my use of that water right.

Dated this 17 day of April 1998.

Edward T. Potucek

SUBSCRIBED AND SWORN To before me this 17 day of April 1998.

NOTARY PUBLIC FOR IDAHO
Residing at Glenns Ferry, Idaho
My Commission Expires 5-15-99

MICROFILMED
OCT 05 2000

ATTACHMENT A

MICROFILM
OCT 05 2009

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

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

CIVIL CASE NUMBER: 39576

Ident. Number: A51-10331
Date Received:
Receipt No.:_____
Received By:_____

AMENDED

NOTICE OF CLAIM TO A WATER RIGHT ACQUIRED UNDER STATE LAW

1. Name: Edward T. Potucek 208-366-2311
   Address: P.O. Box 537
   Glenns Ferry, Idaho 83623

2. Date of Priority: June 1, 1947

3. Source: GROUNDWATER Trib. to:

4. Point of Diversion

Township	Range	Section	1/4 of	1/4 of	1/4	Lot	County
05S	10E	32	NE	SE	NE		ELMORE

5. Description of diverting works
   1200' ARTESIAN WELL

6. Water is used for the following purposes:

Purpose	From	To	C.F.S.	(or)	A.F.A.
DOMESTIC	01/01	12/31	0.040		
STOCKWATER	01/01	12/31	0.060		
IRRIGATION	03/15	11/15	0.500		

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

8. Total consumptive use is Acre Feet Per Annum.

9. Non-irrigation uses:
   D/1 S/150

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10. Place of Use:

Township	Range	Section	1/4 of 1/4		Lot	Use	Acres
05S	10E	32	SE	NE		DOMEST	
05S	10E	32	SE	NE		STOCK	
05S	10E	32	SE	NE		Irr	13.0
05S	10E	33	SW	NW		Irr	9.0
						Total Acres	22.00

11. Place of use in counties: Owyhee.

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

13. Other Water Rights Used:
KING HILL IRR. DIST.

14. Remarks:

15. Basis of Claim: BENEFICIAL USE

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16. Signature(s)

(a) By signing below, I/We acknowledge that I/We have received, read and understand the form entitled "How you will receive notice in the Snake River Basin Adjudication."

(b) I/We do ___ do not _X_ wish to receive and pay a small annual fee for monthly copies of the docket sheet.

Number of attachments:

I/We do solemnly swear or affirm that the statements contained in the foregoing document are true and correct.

For Individuals:

I/We do solemnly swear or affirm that the statements contained in the foregoing document are true and correct.

Signature of Claimant(s): _____ Date: 12-4-97

_____ Date: _____

STATE OF IDAHO)
)ss.
COUNTY OF Ada)

Subscribed and sworn (or affirmed) before me this 4th day of December, 1997.

_____
Notary Public
Residing at Boise, Idaho
My commission expires: 1-20-2000

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ATTACHMENT B

OCT 05 2009

State of Idaho
Department of Water Resources

WATER RIGHT LICENSE

WATER RIGHT NO. 61-07189

Priority: July 10, 1974

Maximum Diversion Rate: 0.67 CFS
Maximum Diversion Volume:[1] 12.9 AF

This is to certify, that MAGIC WEST INC.
P.O. BOX 968
GLENNS FERRY, ID 83623 has complied with the terms and conditions of the permit, issued pursuant to Application for Permit dated July 10, 1974; and has submitted Proof of Beneficial Use on June 13, 1979. An examination indicates that the works have a diversion capacity of .670 cfs of water from a GROUNDWATER source, and a water right has been established as follows:

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

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

PLACE OF USE: INDUSTRIAL

TWN	RGE	SEC	
05S	10E	29	SWSE

CONDITIONS/REMARKS:

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

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State of Idaho
Department of Water Resources

WATER RIGHT LICENSE

WATER RIGHT NO. 61-07189

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

Acting for R. Keith Higginson, Director

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ATTACHMENT C

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Department of Water Resources
APPLICANT'S
Exhibit 9
Date Admitted

Form 219
6/86

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

BENEFICIAL USE FIELD REPORT

A. GENERAL INFORMATION

Permit No. 61-7189

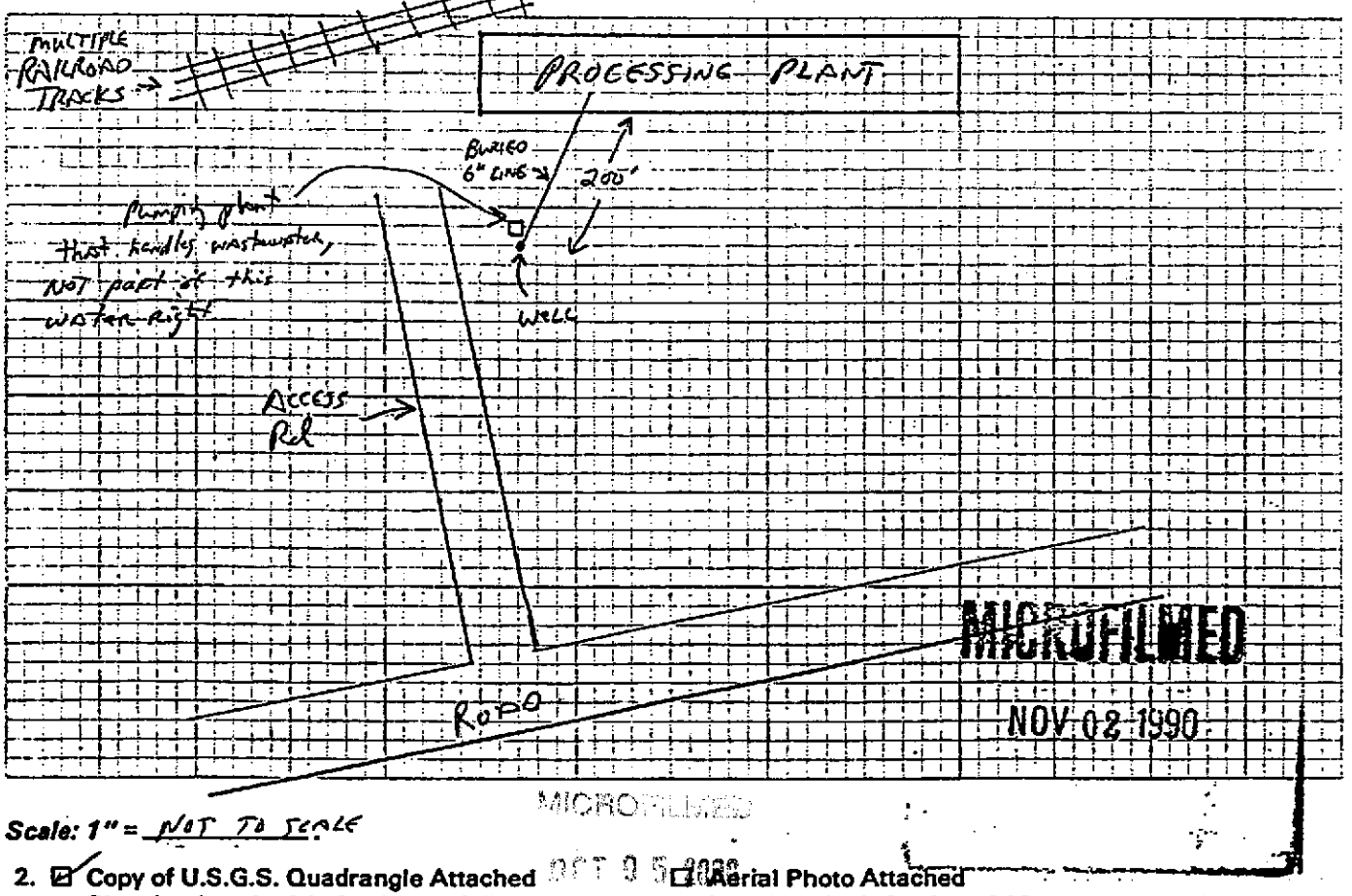
1. Owner: Magic West Inc. Phone No. 366-7477
   Current Address: P.O. Box 968 Glenns Ferry, Id. 83623
2. Accompanied by: Doug Masson EXAM. DATE: 8/4/87
   Address: Same Phone No. Same
   Relationship to Permit Holder: Maint. Supt.
3. Source: groundwater tributary to —

B. OVERLAP REVIEW

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

C. SYSTEM DESCRIPTION

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



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Scale: 1" = NOT TO SCALE

2. ☑ Copy of U.S.G.S. Quadrangle Attached ☐ Aerial Photo Attached
   Showing location(s) of point(s) of diversion and place(s) of use (required). (required for irrigation of 10 acres or more).
   ☑ Photo of Diversion and System Attached

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System Description (continued)

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

1230' deep well with 10" casing and submersible pump provides water through 4"6" mainline for use in potato processing plant approx 2000' N. of well. This hot water source (112° F) is combined with city water (cold) for an estimated 24 hr.-day use of 30,000 gallons, of which about 20,000 gallons is from ~~the~~ the hot water well. Hot & cold processing water is reused (wastewater) in numerous other ways in and around the plant. A series of pumps & storage tanks are found, but these are not part of the diversion works for this water right. Maint. Supt. cannot find any company records about this well and diversion system.

☒ See Remarks on page 4 for continuation

4.

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

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

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

Ident. No.	Gov't. Lot	¼	¼	¼	Sec.	Twp.	Rge.	County	Method of Determination/Remarks
			SW	SE	29	5S	10E	Elmore	USGS 7½' Quad

6. **Place(s) of Use:** Indicate Method of Determination SAME AS IN P/D

Twp.	Rge.	Sec.	NE¼				NW¼				SW¼				SE¼				Totals
			NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	
5S	10E	29															I		—

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Do not use this space

Do not use this space

D. FLOW MEASUREMENTS

☐ Additional Data Sheets Attached

1.

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

2. Measurements:

NONE POSSIBLE

E. FLOW CALCULATIONS

☐ Additional Computation Sheets Attached

1. Measured Method: NONE

2. Alternate Method for Checking Purposes:
HP eq. when HP = 25, eff = .8
psi = 75, z = 30

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

F. PUMP EFFICIENCY DATA (Optional) N/A

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

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

Water HP: (3) x (4) ÷ 8.8 = _____ (5)

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

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

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

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

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G. VOLUME CALCULATIONS

1. Volume Calculations for Irrigation: N/A

$V_{I.R.}$ = (Acres Irrigated) x (Irrigation Requirement) = _____

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

V = Smaller of $V_{I.R.}$ and $V_{D.R.}$ = _____ (.67)(321 ac)(1.2235) = 426.6 AF

V.

2. Volume Calculations for Other Uses:

INDUSTRIAL USE IN PLANT:

24 hrs/day
5 days/wk
42 wks/year
estimated 20,000 gpd (per 24

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20,000 gpd x 5 days/wk x 42 wks/yr =

4,200,000 gpy

$\frac{4,200,000 \text{ gal/yr}}{325{,}851 \text{ gal/ac-ft}} = 12.889 = 12.9$

H. REMARKS AND OVERLAP REVIEW ANALYSIS

Measuring device Req't. removed 8/28/78.
Allow .67 cfs as permit shows. HP equation confirms system can produce at least that
NARRATIVE CONTINUED: My letter of 12/16/87 resulted in the response of 1/4/88 by W. Schow, Vice-President. Pump data from this letter and subsequent phone conversation with Bill Webb of Layne Pump Co. (NAmpa) provided necessary information. I assumed a total dyn. head of 30' based on well log and conversation with maint. sup't at the plant.

WDA 05 000

Overlap - ~~Although micrfiche shows city water~~ City water under Licence 63-7228 is supplied to the plant and used in a variety of functions including industrial

→ Lic. condition: This right, combined with other rights, should not exceed .67 cfs for industrial use.

I. RECOMMENDATIONS

1. Recommended Amounts

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

2. Recommended Amendments

☑ Change P.D. as reflected above ☐ Add P.D. as reflected above ☐ None
☑ Change P.U. as reflected above ☐ Add P.U. as reflected above ☐ Other

J. AUTHENTICATION

Field Examiner's Name: Steven Lester
Signature: Steven Lester
Certification Date: 1/12/88 BD
Field Report Preparation Date: 8/4/87

CONSULTANT SEAL

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

REGISTERED PROFESSIONAL ENGINEER 3459 STATE OF IDAHO A. MICHAEL STUBBLEFIELD 1/21/88

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ATTACHMENT D

OCT 0 5 2009

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John A. Rosholt
Norman M. Semanko
ROSHOLT, ROBERTSON & TUCKER
P. O. Box 1906
142 3rd Avenue N.
Twin Falls, Idaho 83303-1906
Telephone: (208) 734-0700
Fax: (208) 736-0041
04229705.NMS

Attorneys for Magic West, Inc.

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

IN THE MATTER OF LICENSE NO. 61-07189 IN THE NAME OF	LICENSE NO. 61-07189 AFFIDAVIT OF JACK ANDERSON

STATE OF IDAHO)
) ss.
County of Elmore)

JACK ANDERSON, being first duly sworn upon his oath deposes and says:

1. I am the Plant Manager for the Magic West food processing plant in Glenns Ferry, Idaho and have been employed in that capacity since December, 1985. I also worked at Magic Valley Foods (Magic West's Rupert plant) for 15 years previous to my current position with Magic West, Inc.

2. I am familiar with and have personal knowledge of the water usage by Magic West at its Glenns Ferry plant, including the use of Water Right No. 61-07189, and have for the past 11 years.

3. Doug Masson was the Maintenance Supervisor for the Glenns Ferry plant at the time of the field examination for Water Right No. 61-07189 in August, 1987. He was

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responsible for general maintenance of the plant, but had no detailed knowledge of water usage and only limited knowledge of plant operations and procedures. The 20,000 gallon per day estimate which I now understand was provided by Doug Masson to the department's field examiner in August, 1987 was simply not correct.

4. At the time of the beneficial use field examination in August, 1987, the Glenns Ferry plant operated 24-hours a day, composed of three 8-hour shifts, between six and seven days a week. Low-temperature geothermal water from Water Right No. 61-07189 was continually used by the plant. This is the same basic running schedule and water usage that we have in place today.

5. On average, the amount of water utilized from the low-temperature geothermal well is and has remained the same since the beneficial use examination in 1987. In addition, the same basic equipment, procedures, and numbers of gallons of water per minute have been used in the plant.

6. I estimate that a daily average of between 240,000 and 260,000 gallons of low-temperature geothermal water from Water Right No. 61-07189 was used at the time of the beneficial use field examination in August, 1987. On average, this amount has not changed. In addition, Magic West's records, maintained since a measuring device was installed, confirm this same level of use during 1996 and 1997.

7. Adherence to an annual diversion volume of 12.9 AF (or 20,000 gallons per day) would not provide enough water for even two (2) hours of plant operation and would likely put the plant out of operation altogether. The plant has never operated at such low levels.

8. The Glenns Ferry plant paid more than $3 million in wages to Glenns Ferry area residents and more than $72,000 in local property taxes during 1996.

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9. During the summer of 1996, Jerry Grace, Magic West's Purchasing Agent, and I went to Boise for a meeting with departmental representatives. At that meeting, the department's Cindy Hodges indicated to us that the annual volume included in Water Right License No. 61-07189 was the result of mistake or inadvertence.

DATED this 29 day of April, 1997.

Jack Anderson
JACK ANDERSON

SUBSCRIBED AND SWORN To before me this 29 day of April, 1997.

NOTARY PUBLIC FOR IDAHO
Residing at Glenns Ferry, ID
My Commission Expires 5-99

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State of Idaho
DEPARTMENT OF WATER RESOURCES
1301 North Orchard Street, P.O. Box 83720, Boise, Idaho 83720-0098
Phone: (208) 327-7900 FAX: (208) 327-7866

PHILIP E. BATT
GOVERNOR

KARL J. DREHER
DIRECTOR

Perce Hall
HALL, FRIEDLY & WARD
340 East 2nd North
Mountain Home, ID 83647

April 20, 1998

RE: REQUEST TO CONVENE A GROUND WATER BOARD

Dear Mr. Hall:

The department has reviewed your letter dated April 13, 1998 together with the statement of your client, Robert K. Hall, seeking the appointment of a ground water board in connection with your client's use of water near Glenns Ferry, Idaho. While still in law, this section has not been used for many years and some provisions are out-of-date.

It appears that the Conjunctive Management Rules (rules) promulgated by the department on October 7, 1994 as IDAPA 37.03.11. May be more appropriate for your client to follow to seek relief to the alleged well interference than the ground water board provisions described in section 42-237(b), Idaho Code. The rules provide a procedure for the holder of a senior priority water right to place a "delivery call" against the holder of a junior priority ground water right. Among other matters, the rules describe the sequence of actions associated with a delivery call.

Enclosed for your information and review is a copy of the Conjunctive Management Rules. After your review of the rules, please advise the department how you wish to proceed in this matter.

If you have questions, please feel free to contact the department.

Sincerely,

L. Glen Saxton

L. GLEN SAXTON, Chief
Water Allocation Bureau

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Encl: 1
c: Gary Spackman

HALL, FRIEDLY & WARD
A PROFESSIONAL ASSOCIATION
ATTORNEYS AT LAW
340 EAST 2ND NORTH
MOUNTAIN HOME, IDAHO 83647

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APR 16 1998
Department of Water Resources

TELEPHONE
(208) 587-4412
FACSIMILE
(208) 587-3144
E-MAIL
hfw@micron.net

PERCE HALL
JAY R. FRIEDLY
ROBERT W. WARD
CLAY M. SHOCKLEY

April 13, 1998

VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Director, Idaho Department of
Water Resources
State Office
1301 North Orchard
Boise, Idaho 83706

Dear Sir:

On behalf of Robert K. Hall of Glenns Ferry, Idaho, I am enclosing a claimant's statement made under the provisions of Idaho Code § 42-237(b), to institute proceedings for appointment on a groundwater board.

Very truly yours,

Perce Hall

PH:ldf

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CLAIMANT'S STATEMENT
OF
ROBERT K. HALL UNDER OATH UNDER THE PROVISIONS
OF
IDAHO CODE 42-237b.

TO THE IDAHO DIRECTOR OF WATER RESOURCES:

1. Robert K. Hall hereby states that he is the claimant named herein and that his post office address is Route 1, Box 103, Glenns Ferry, Idaho 83623.

2. Claimant is the owner of Water Right No. 61-10013, claiming 0.04 cfs of ground water from an artesian well, with a priority date of 12-31-52, to be used for domestic purposes. The point of diversion is located in the Northeast Quarter of the Northeast Quarter of the Northeast Quarter of Section 35, Township 5 South, Range 9 East, Boise Meridian, Elmore County, Idaho.

3. Magic West, Inc., whose post office address is Box 475, Rupert, Idaho 83350, is the owner of a well located in the Southwest Quarter of the Southeast Quarter of Section 29, Township 5 South, Range 10 East, Boise Meridian, Elmore County, Idaho, identified as No. 61-07189, claiming the right to divert .67 cfs, but not to exceed 12.9 acre feet per annum, with the water to be used for industrial purposes, with a priority date of July, 1974.

4. Claimant states that the use of his water right is being adversely affected by the use by Magic West of its well, although its use has a later priority and is for industrial purposes. Claimant's well is an artesian well and from the time that Magic West started pumping water from its well of approximately 240,000 gallons per day, claimants

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well ceased its artesian flow and the water level in the well commenced to decline. In order to secure its domestic water, claimant first installed a pump in said well at a depth of 21 feet. Because the water continued to decline, the claimant has had to continually decrease the depth of his pump from 21 feet to 167 feet and which is now at 250 feet deep and is again starting to pump air. Each time Magic West shuts down its plant and ceases to withdraw water from its well, the water table in claimant's well rises within a few days but again declines when Magic West resumes its withdrawal of water. The unauthorized use by Magic West of water for co-generation has aggravated the problem.

Claimant is informed and believes and upon information and belief states that Edward Potucek and James Kevan, both of whom own artesian wells, have had the same results with their artesian wells as the claimant, as a result of the unauthorized withdrawal of water by Magic West.

The claimant therefore respectfully requests that the Idaho Director of Water Resources shall issue a notice setting this matter for hearing before a local ground water board constituted and formed in accordance with the provisions of Idaho Code Section 42-237e.

DATED this 8th day of April, 1998.

Robert K. Hall

Robert K. Hall, Claimant

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STATE OF IDAHO,)
) ss.
COUNTY OF ELMORE,)

ROBERT K. HALL, being first duly sworn, deposes and says that he is the claimant named in the foregoing claim, that he has read said claim, knows the contents thereof and believes the facts therein stated to be true.

Robert K Hall

SUBSCRIBED AND SWORN to before me this 8th day of April, 1998.

Notary Public for Idaho,
Residing at Mountain Home, ID.

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OCT 05 2000

Daniel V. Steenson
Jennifer Reid Mahoney
RINGERT CLARK CHARTERED
455 S. Third, P.O. Box 2773
Boise, Idaho 83701-2773
Telephone: (208) 342-4591
Fax: (208) 342-4657

Attorneys for Intervenor Edward T. Potucek

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JAN 23 1997 1998
Department of Water Resources

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

IN THE MATTER OF LICENSE NUMBER 61-07189 IN THE NAME OF MAGIC WEST, INC	)	LICENSE NO. 61-07189
	)	POST-HEARING MEMORANDUM

COMES NOW, EDWARD T. POTUCEK, by and through his attorneys of record, and submits the following Post-Hearing Memorandum.

INTRODUCTION

Magic West's attempt to adjust, clarify or amend (i.e. change) its License is a clever maneuver to avoid the consequences of violating the license and the precursor permit, liability for damages resulting from the illegal diversion and use of water, and the need to apply for a new water right to increase diversion and/or a transfer to change the period of diversion. There is no established procedure, and no statutory authority for amending a license. Magic West cannot, by creative interpretation of administrative rules pertaining to contested cases, create such a procedure, particularly where the legislature has enacted a specific statute creating a remedy and a procedure for contesting

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license decisions.

Magic West's effort here is clearest possible illustration of why the Idaho Department of Water Resources (IDWR) cannot and should not entertain requests to amend a licenses.

Magic West asks the Idaho Department of Water Resources (IDWR) to change its license to reflect its current diversion and use of water because plant operations today are no different that its plant operations were during the 1970s. To support this assertion, Magic West pieced together a patchwork of information regarding water discharge from the plant and water received from the City of Glenns Ferry during different periods of time. From this information, Magic West asks IDWR to infer a diversion volume and use of water in the range of 15 times greater than Magic West's representative reported to IDWR at the time of the beneficial use examination. Aside from the fact that Magic West's information is incomplete, unreliable, and irrelevant, the information demonstrates that Magic West's use of water at the time beneficial use was due is not the same or similar enough to its water use today to justify upgrading its license to 1997 use levels.

FACTS

A. Permitting and Licensing

In July of 1974, Magic West, Inc. ("Magic West") applied for a permit to appropriate .67 cfs of groundwater for use in its potato processing plant from August 15th to July 1st (321 days per year). The plant is normally shut down for cleaning and maintenance from July 1st to August 15th. On August 29, 1974 the

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Idaho Department of Water Resources (IDWR) approved the permit as number 61-7189 upon the conditions that (1) it was subject to all prior water rights, proof of beneficial use was to be submitted on or before August 1, 1979, and a measuring device was to be permanently installed and maintained as part of the diverting works.

Magic West submitted no documentary evidence or testimony to establish the date it began diverting water under permit no. 61-7189, and there are no records of diversions from the well until October, 1996. Magic West did not install a measuring device as required by the permit. On August 28, 1978, pursuant to Magic West's request, IDWR issued an Order removing the measuring device requirement from Magic West's permit.

In June or July of 1979, Magic West filed a statement that it had completed development under the permit on the short form provided by IDWR. The only statement regarding the extent of use on the form is: "Being used for processing plant water." IDWR attempted to schedule a field examination in 1979, but was unsuccessful.

It does not appear that there was any further attempt by either IDWR or Magic West to schedule the field examination until 1987. In April, 1987 IDWR sent Magic West an Examination Fee Notice and Magic West returned the Examination Fee Information, signed by William Schow, stating that Magic West elected to have IDWR conduct the examination. In July, 1987, Steve Lester, IDWR Water Resource Agent, sent correspondence to Magic West and spoke

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with Doug Mason, Magic West's maintenance supervisor, to schedule the examination. During a July 30, 1987 telephone conversation, Mr. Lester and Mr. Mason scheduled the examination on August 4, 1987. Mr. Lester's letter specifically advised Magic West that the purpose of the examination was to "verify your water use so that a license can be issued."

The plant was not in operation, and water was not being diverted from the well, during Mr. Lester's examination. Mr. Lester testified that this did not impair his examination since there was no measuring device and it was otherwise impossible to measure or see water being diverted from the submersible pump through a pipe to the plant. Field examinations under these conditions and during periods of non-use are not uncommon.

Since there was no method of measurement, Mr. Lester used the horsepower equation to determine that the capacity of the pump was .87. The horsepower equation is a widely recognized, standard engineering technique for this purpose. Through this method he confirmed that the permitted diversion rate of .67 cfs was within the capacity of the pump and could be licensed. Magic West does not dispute this determination.

Mr. Lester then determined diversion volume in order to accurately describe the extent of beneficial use. Similar to determining maximum pump capacity with the horsepower equation, Mr. Lester first determined the maximum volume that could be diverted during the period of use. Assuming diversions of 24 hours every day for 321 days (August 15th to July 1st), Mr. Lester determined

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the maximum diversion capacity would be 426.6 afa. Mr. Mason advised Mr. Lester that the plant operated five days per week, and diverts 20,000 gallons per day. Using these figures, Mr. Lester calculated that Magic West diverted 4.2 million gallons per year (mgy) or 12.9 afa.

After the field exam, Mr. Lester requested and received additional information regarding the pump and the well tests. Magic West submitted an application for amendment of its permit pursuant to I.C. § 42-211 dated September 18, 1990 to adjust the place of use description. The application is signed by Magic West's Farm Manager and includes a statement of annual volume as 12.9 afa.

In its action on the application for amendment dated October 2, 1990, IDWR stated several approval conditions, including:

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

Each of these conditions was incorporated into License No. 61-07189 issued on October 27, 1990.

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Mr. Lester testified that he did not understand the first condition, unless it meant that Magic West could seek to have the diversion volume changed within the time allowed by I.C. §§ 42-407 and 42-1701A(3). It is Intervenor's opinion that the intent of the first sentence of the first condition sets a firm "maximum allowable volume" and that the second and third sentences indicate that, if the amount that can be actually beneficially used is less, then the maximum diversion volume may be reduced to reflect actual beneficial use. This interpretation is consistent with the positions IDWR and the State of Idaho have taken in the SRBA and other contests regarding on reasonable beneficial use and partial forfeiture, among others. Regardless of the intent, it is Intervenor's position that a license cannot be issued with a clause which authorizes use in excess of that which is confirmed during the beneficial use examination.

IDWR did not, at any time during or after the application, permitting, and licensure process, perform or require any investigation or analysis to determine whether the supply of water in the aquifer was sufficient to sustain Magic West's diversion, and did not consider whether senior water rights would be injured by Magic West's diversion.

Magic West did not install a measuring device until October, 1996. As Mr. Lester recognized, this failure constituted a violation of Magic West's License.

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B. Magic West's Petition for Adjustment and Clarification

Magic West claims to have processed food, and therefore diverted water from the well on a year around basis since at least 1985. (Magic West Petition, p. 2, fn 1.) Magic West amended its SRBA claim for License No. 61-07189 to cover this expansion in use and agreed to "'overfile' on this use by filing Application for Permit No. 61-07724" on September 27, 1996. (Id.) The remarks on the application explain that the purpose of the application is:

> to increase total number of days of operation plus increase annual volume not recorded in existing 1974 priority water right for Glenns ferry processing plant.

This is a succinct and accurate description of Magic West's efforts to change License No. 61-07189 through this proceeding and the SRBA.

The events which prompted Magic West to install the measuring device and engage in these efforts to change License No. 61-07189 began in the spring of 1996. During a March 13, 1996 meeting regarding an application of the City of Glenns Ferry and in subsequent letters, several ground water users in the Glenns Ferry area expressed concerns about Magic West's well water usage. In a July 2, 1996 letter addressing these concerns, Mr. Lester requested that Magic West advise IDWR whether a measuring device had been installed, and whether Magic West had records of the extent of well usage, including the amount of water diverted from the well on an annual basis. Mr. Lester wrote that the information from Magic West would help address the concerns raised, and in understanding the status of the aquifer in the Glenns Ferry area.

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There is no indication in the record of any response by Magic West to Mr. Lester's requests. Instead, Magic West filed Application for Permit No. 61-07724 on September 27, 1996, and installed and/or began using a measuring device at about that time. Several ground water users in the Glenns Ferry area filed protests opposing the permit application in which they expressed strong concern about the impact to their water rights of Magic West's existing diversions and proposed increase in period of use and diversion volume. The protestants reiterated these concerns during an IDWR conference in April, 1997.

The meter readings on Magic West's well water usage charge indicate that the measuring device was installed and first used in early October, 1996.

Mr. Lester's February 10, 1997 memorandum to Gary Spackman regarding License No. 61-07189 recommends sending a letter or initiating a notice of violation process to obtain or address the measuring device requirement, records of diversion volume, and Magic West's response to the protestants' concerns. Mr. Lester raised the question of how IDWR should respond to the protestants' requests to conduct a ground water study. Neither IDWR nor Magic West has performed any analysis or field investigation to determine the impact of Magic West's diversions on the aquifer and senior ground water appropriators. There is no record of IDWR sending a letter as suggested by Mr. Lester or of any response from Magic West.

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On May 2, 1997, Magic West filed its Petition for Adjustment and Clarification in an attempt to accomplish the same result as permit application 61-07724 (increase period of use and diversion volume) and avoid the issues regarding injury raised by the protestants.

In a May 2, 1997 memorandum, Steve Lester summarized IDWR's file information regarding Magic West's water right claims. In that memorandum, Mr. Lester wrote:

> It appears that Magic West is diverging water in excess of its legally defensible water rights. Based on available information, Magic West should be required to restrict it [sic] use and/or should provide adequate mitigation to any water users whose water rights may have been injured. A foundation appears to exist for IDWR to initiate the appropriate process to address the issues described in this memorandum.

In a May 29, 1997 memorandum, Mr. Lester discussed Magic West's Petition for Adjustment/Clarification and summarized the procedure IDWR followed in performing the beneficial use examination. Mr. Lester wrote:

> [D]ata was not submitted in 1987 or since then to document Magic West's well production. There does not appear to be an independent method to verify Mr. Anderson's statements regarding unchanged water use from the well.
>
> The petition refers to an expanded season of use for year around use (footnote 1 on page 2). That suggests an expansion beyond the water right limits. Both the permit and license stages of the water right define the season of use from August 15 through July 1 each year.
>
> It is noteworthy that Magic West did not voice its concern about volume limits in this right during the time period in which the license was being issued.

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IDWR notified protestants to Magic West's Application No. 61-07724 of Magic West's Petition for Adjustment/Clarification on May 14, 1997. In a May 28, 1997 letter, Intervenor Potucek requested guidance regarding the procedure IDWR would follow regarding the Petition. In its October 22, 1997 Order Designating Contested Case, IDWR determined that Magic West's request could not be considered a petition for clarification under IDWR Rule of Procedure 770, but that it could be considered a petition for modification or amendment under IDWR Rule of Procedure 230. IDWR designated this contested case to provide Magic West to establish through records of the extent of beneficial use that existed prior to the submission of proof of beneficial use on June 13, 1979.

Intervenors Potucek and Hall filed timely motions to intervene and to dismiss the petition for lack of jurisdiction.

Magic West took no action to change the conditions of the license until it filed its Petition for Adjustment and Clarification on May 12, 1997.

C. <u>The Effect of Magic West's diversions on Mr. Potucek's Well</u>

In 1972 Mr. Potucek purchased his land located south of the Magic West plant, on the south side of the Snake River. Mr. Potucek's property includes an artisan well with a priority date of 1947. Until the late 1980s, the well produced a minimum of 25 inches of water without a pump, at a constant pressure and a temperature of 103 degrees, and produced. Mr. Potucek and his predecessors in interest utilized the water for domestic,

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stockwater and irrigation purposes. Mr. Potucek used the well for these purposes, without pumping, from the time he purchased the property in 1972 until the pressure began to drop during the late 1980s. Since that time, the water pressure has been inadequate to irrigate the lands which were historically irrigated from the well.

The well produced enough water for domestic and livestock use until 1996 or early 1997 when his well completely quit flowing and Mr. Potucek lost his domestic and livestock use.

The flow of the well has returned at times when the Magic West plant is shut down, only to be lost again when the plant begins operating again. Mr. Potucek observed this in September, 1996 and confirmed the plant being shut down in conversations with magic West's Farm Manager and Jack Anderson. Mr. Potucek informed IDWR when this occurred Anderson.

ARGUMENT

A. Licenses May Not be Amended

It has been Intervenor's position throughout these proceedings that the Department is exceeding its statutory authority in considering Petitioner's Petition to Amend. In support of this position, Intervenor has submitted a Response to Petition and Motion to Dismiss dated November 19, 1997 and has presented oral argument in support of that motion at the December 15, 1997 hearing in this matter. Intervenor incorporates all of the arguments raised in that written response and motion to dismiss and at the December hearing in this brief by reference. Intervenor will only elaborate on those points which were not extensively discussed in

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the prior briefing and oral argument in this post-hearing memorandum.

When it set this matter for hearing, the Department indicated that it would consider Petitioner's petition as petition under Rule 230(a), which provides for petitions to be filed for "[m]odification, amendment or stay of existing orders or rules." IDAPA 37.01.01.230.01(a). Apparently, the Department considered a "license" to be an "existing order" which was subject to modification under this Rule.

However, the Department Rules specifically define both "order" and "license," and one is not inclusive of the other. "Order" is defined as "[a]n agency action of particular applicability that determines the legal rights, duties, privileges, immunities, or other legal interests of one (1) or more specific persons." IDAPA 37.01.01.05.14. A "license" is defined separately as "[t]he whole or part of any agency permit, certificate, approval, registration, charter, or similar form of authorization required by law . . . ." IDAPA 37.01.01.05.12. A "license" is <u>not</u> included in the definition of order, and the two are made separate and distinct by the Departmental Rules. Therefore, the fact that Rule 230 provides only for modification and amendment of "orders" is significant. Rule 230 simply does not apply to "licenses" because it does not refer to "licenses," and "licenses" are separate from "orders" as defined in the Rules. Accordingly, the Department has no authority under Rule 230 to conduct these proceedings.

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Moreover, Idaho statutes also do not provide the Department with the authority to conduct these proceedings to amend a license. This fact is significant because other amendments are specifically authorized by statute. For example, I.C. § 42-211 provides for the amendment of a permit. The fact that the legislature provided a mechanism for amendment of a permit, and did not provide a mechanism for the amendment of a license, indicates that it did not intend for licenses to be amended.

One of the absurd consequences of the theory that licenses may be amended under these rules is that anyone, not just the licensee, who is aggrieved by IDWR's decision may at any time in the future file a motion to amend the license to correct what they believe to be IDWR's errors.

B. <u>Injury is an Issue</u>

During the permitting and licensing process, IDWR did not take any action, make any inquiry, perform any study, or in any manner consider whether the supply of water in the aquifer was sufficient to sustain Magic West's diversion, or whether any other water right holder would be injured thereby. IDWR has a duty to consider these matters whether or not they are raised by a protestant. Injury is an issue an any transfer proceeding to change the elements of a water right. If Magic West is allowed to reopen its license and expand its water right, the Intervenors in this proceeding should have the opportunity to raise the issue of injury to their water rights which IDWR has all but ignored to date.

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C. **Magic West's License Violations**

Magic West violated the conditions of its license for six years by failing to install a measuring device until 1996. Magic West is diverting water during periods of the year that are not authorized by its license. Magic West is diverting 10 to 15 times the quantity of water authorized by its license. IDWR's response to Magic West's activity should be an enforcement action, rather than this hearing to validate Magic West's violations of the law.

These violations are relevant to this proceeding because IDWR cannot approve unlawful activity, particularly where that activity has injured and continues to injure other water right owners to the point that they have no water available to irrigate their land, water their livestock, or run a faucet in their home.

D. **Magic West's Evidence**

Magic West presented testimony and documents for three purposes during the hearing:

1. criticize the manner in which IDWR and Steve Lester conducted the beneficial use examination;

2. explain why they did not provide information or take action prior to 1997 to address the diversion volume condition in the License; and

3. piece together a method and disparate recollections and data in an attempt to show that Magic West diverted 10 times more water than authorized by the license.

Assuming licenses can be amended as Magic West proposes, Magic West's evidence provides an inadequate and unreliable basis upon which to determine the extent of beneficial use at any time or for any purpose. This type of evidence is particularly suspect when it

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is offered to overturn a ten year old IDWR determination of beneficial use that was based on information provided by the Licensee at the time, for the purpose of increasing water use by a factor of 10 to 15, with information from disparate past and present periods of time that is pieced together to establish beneficial use that occurred twenty years ago.

If this is IDWR's maiden adventure in allowing people to amend their licenses, the precedent will open the door to extremely tenuous and speculative methods and data for quantifying water use.

1. Burden & Standards

IDWR's Order Designating Contested Case defined Magic West's burden in this contested case as:

> establish[ing] through plant production records, or other similar evidence, the extent of beneficial use that existed under right no. 61-07189 prior to the submission of proof of beneficial use on June 13, 1979.

If IDWR determines that it has authority to act upon a request to amend a license to expand one or more elements, IDWR must next determine what burden of proof and evidentiary standards apply in this contested case. The difficulty in this is that there are no statutes or regulations which establish procedure for amending a license. Several baseline criteria are, however, apparent from IDWR's order and certain statutes and rules:

1. Magic West's evidence of beneficial use of the well must be in the form of records - testimony that is not substantiated by such records is insufficient;

2. Magic West's evidence must pertain to Magic West's diversion and use of water from the well prior June 13, 1979 - evidence of Magic West's use of water at any subsequent time is inadequate;

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3. Magic West's evidence must be sufficient to overcome the prima facie effect of license as evidence of the water right (I.C. § 42-220), and Magic West's burden should be no less than the burden in a hearing pursuant to I.C. § 42-407 or a claimant's burden to rebut IDWR's determination of the elements of a water right when objecting to a Directors Report in the SRBA, as provided in I.C. § 42-1411(5);

4. IDWR should not admit evidence if it is not "a type commonly relied upon by prudent persons in the conduct of their affairs" (IDWR Rule of Procedure 600);

5. evidence which does not meet or is inconsistent with IDWR's standards and methods for determining beneficial use under its Beneficial Use Examination Rules is not sufficient to overcome the prima facie effect of the license;

6. to the extent that Magic West attempts or is required to show error in IDWR's 1987 determination of beneficial use, Magic Must show that IDWR's determination was clearly erroneous, arbitrary, capricious, or an abuse of discretion.

2. Magic West's Witnesses

a. Doug Masson

On the one hand Magic West criticized IDWR's reliance on Doug Masson because of his limited knowledge of plant operations and procedures. (Anderson Aff., p. 2, para. 3.) On the other hand, Magic West called Doug Masson to testify that, in his opinion, the 20,000 gpd figure IDWR used was erroneous, and the Magic West required and actually used several times more water at the time of the examination. Obviously, Magic West cannot have it both ways.

Mr. Masson testified that he did have knowledge and responsibility pertaining to plant production operations and procedures, and that he could not dispute that he provided Mr. Lester with the 20,000 gpd figure during the beneficial use

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examination. Mr. Mason did not refer to any records or other documentary evidence to substantiate his assertion that Magic West's actual water use was several times greater than he represented to Mr. Lester in 1987. Mr. Lester testified that Mr. Mason's testimony regarding the volume of water Magic West used in 1987 totally contradicted his representation ten years earlier during the beneficial use examination.

One of the factors Mr. Mason provided to Mr. Lester was, in fact, confirmed by records Magic West presented later during and after the hearing. Magic West relies heavily upon its waste water discharge reports to infer annual volume of well diversions prior to June 13, 1979. Magic West submitted waste water discharge reports for 9 months of 1977 and 10 months of 1978. Magic West provided no waste water reports for the years 1974, 1975, 1976 or 1979, and no other record which indicates the period of use during 1974-1979. These reports show water use during 219 days of 1977 and 197 days of 1978, or an average of 208 days per year. In item G of the Beneficial Use Field Report, Mr. Lester used a period of 24 hours per day, 5 days per week, for 42 weeks per year, as reported to him by Mr. Mason. This period of 210 days is consistent with Magic West's discharge reports which show an average period of use of 208 days. This confirmation of one of the two diversion volume factors provided by Mr. Mason (period of use) lends credibility to the daily diversion volume figure provided by Mr. Mason in 1987. Magic West did not submit any documentation which directly contradicts the 20,000 gpd figure.

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As Mr. Lester testified and summarized in his May 2, 1997 and May 29, 1997 memorandum to Gary Spackman, IDWR made a significant effort during the licensing process to obtain the best information available regarding annual diversion volume. IDWR followed standard procedures in scheduling and conducting the beneficial use examination. Mr. Lester met with and relied upon the information provided by Mr. Mason because he was the person Magic West made available as the spokesman for the company.

Without any supporting documentation, Mr. Mason's testimony in 1997 during a hearing in which his former employer is attempting to obtain a greater quantity of water cannot be relied upon to reject the figure he provided to Mr. Lester in 1987.

Magic West criticizes IDWR for conducting the examination during a period when the plant was shut down. Mr. Lester testified that, while an examination during operation is preferred, it is not necessary or even helpful where, as here, there is no measuring device (pursuant to Magic West's request) and there is no way to measure or otherwise observe water flowing from the submersible pump to a pipe. Mr. Lester testified that the fact that the plant was shut down had no bearing on his examination for these reasons.

b. <u>Jack Anderson Testimony & Affidavit</u>

Mr. Anderson's knowledge and experience with the Magic West plant as its manager extends from 1985 to the present. He has no knowledge and could provide no information regarding water use or the equipment Magic West used during the period relevant to the contested case, or at any time prior to 1985. No one at Magic West

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trained Mr. Anderson in water right matters, and he not even know who at Magic West had responsibility for water matter prior to 1985.

The substance of Mr. Anderson's Affidavit and testimony is that Magic West plant operations and diversions from the well have not changed since 1987. However, Magic West does not have any records of well water use prior to 1996, and no witness provided any record to show Magic West production or water discharges during the period of Mr. Anderson's experience at Magic West prior to October, 1996. There is, therefore, no record to substantiate Mr. Anderson's assertion that plant operations, production, or well water use, have not changed since 1987. Mr. Anderson's assertions regarding Magic West water usage dating back to 1987 depend entirely upon his memory. However, he has no way of knowing how one would acquire a detailed knowledge of water usage prior to 1996 at the Magic West plant given the fact that there were no measuring devices installed until 1996.

Mr. Anderson's testimony is completely irrelevant to Magic West well water use prior to June, 1979, and carries little weight or credibility regarding water use at any time prior to 1996. His testimony regarding water use and plant operation and production prior to 1996 is totally unsubstantiated by any document, and therefore does not meet IDWR's evidentiary requirement that Magic West produce records showing this information.

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Mr. Anderson's Affidavit should be stricken for the reasons stated in Intervenor's Motion to Strike and for the reasons elicited during cross-examination of Mr. Anderson. Applicant's Exhibits 1(C), 2, 3, 4, and 5, and all other documents, references in documents, and testimony regarding Magic West operations and water use during 1996 and 1997 should be stricken because this information is irrelevant to the issues before IDWR in this contested case, and do not constitute evidence of a type commonly relied upon by prudent persons in the conduct of their affairs, as required by IDWR Rule of Procedure 600.

Paragraphs 8 and 9 of Mr. Anderson's Affidavit should be stricken or given no weight for the additional reason that wages and taxes paid by Magic West have no relevance in this proceeding, and Mr. Anderson's statements regarding Cindy Hodges are inadmissible hearsay, are not relevant to this proceeding, and are contradicted by Ms. Hodges June 13, 1997 memorandum to Gary Spackman.

c. Doug Ogden

Mr. Ogden did not have or refer to any records or documents to support any of the assertions in his testimony. This evidence does not meet IDWR's criteria for this hearing. In his testimony, Mr. Ogden gave general descriptions and comparisons between Magic West operations prior to 1979. Mr. Ogden was not involved with Magic West's water rights and has no specific knowledge of the quantities of water Magic West used on a daily, monthly, or annual basis, or the percentage of well versus city water used by Magic West.

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c. William Schow Testimony

Mr. Schow had no knowledge or experience pertaining to Magic West's water rights prior to 1987. Mr. Schow's testimony related primarily to the methodology and data Magic West used to support its Petition to Amend, which is discussed in the following sections.

3. Magic West's Assumptions

Like Mr. Anderson, Mr. Schow believes it is appropriate to use Magic West's current water usage to infer past diversion volume because the Magic West plant ran similar a number of days, similar times, using a similar process and the same pump. This assumption about the consistency of Magic West's water use since the 1970s is seriously flawed. Magic West claims to have started year around diversions beginning in 1985, thereby dramatically increasing its annual diversion volume. Magic West's discharge records demonstrate a significant change in the period of use from an average of 210 to 230 days during 1977 to 1978 (see Appendix 1 hereto), consistent with Mr. Masson's 1987 report to Mr. Lester (Magic West has no records showing the annual period of operation and water use during 1974, 1975, 1976, or 1979) to 352 days from December 8, 1996 to December 6, 1997. As a result, annual diversion volume during 1997 is significantly higher than it was in 1977-1978, even if IDWR assumes a diversion volume of 198,000 gpd during the 1970s as advocated by Magic West.

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Based on the reported meter readings, the average annual discharge to the farm in 1977 and 1978 was 41,453,000 gpy, and was approximately 112,797,400 gy during from December 8, 1996 to December 6, 1997 (the reports indicate the meter was stuck for several days in December of 1996). Magic West's account ledgers suggest average annual city water use in 1977 to 1978 was 27,755,000 gy, whereas its reports show it used 42,533,000 gy of city water in 1997.

Magic West's records of discharge to the farm also show a substantial increase in daily discharges to the farm during 1997 as compared to 1977-1978. The discharge reports for 1977 and 1978 show daily discharges to the farm ranging generally from approximately 146,000 gpd to 235,000 gpd, whereas 1997 daily discharges range generally from approximately 280,000 gpd to over 420,000 gpd.

Obviously, Magic West's water use in 1997 is significantly greater than its water use during the 1970s. This increase in use correlates with Mr. Potucek's testimony regarding the reduction in the flow of his well over the years.

The data invalidate Magic West's assertion that water use has not changed and, therefore, current water use information may be used to infer or as part of the calculation of water use during the 1970s. The data also show that Magic West's operations and water use varies from day to day, month to month, and year to year, particularly during the 1970s. Magic West relies heavily on reports of water discharged from the plant to establish the extent

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of its water use. Appendix 1 to this brief summarizes the reports Magic West submitted as part of its Exhibit 1(A), as supplemented after the hearing. These reports show that the days the plant was in operation varied from 8 to 28 days per month, and that the discharges of water varied from 1.25 to 4.86 million gallons per month, from 32,200 to over 300,000 gallons per day, and a monthly average of 146,400 to 235,064 gallons per day.

This variation makes it imperative that all the data used in calculating water use either relate to the same period of time, or that there be some showing that information from different time periods may be properly integrated. Clearly, Magic West used so much more water on so many more days during the year in 1997 as compared to the 1970 that 1997 data cannot be used as comparable or used to infer or as part of the calculation of the extent of beneficial use during the 1970s.

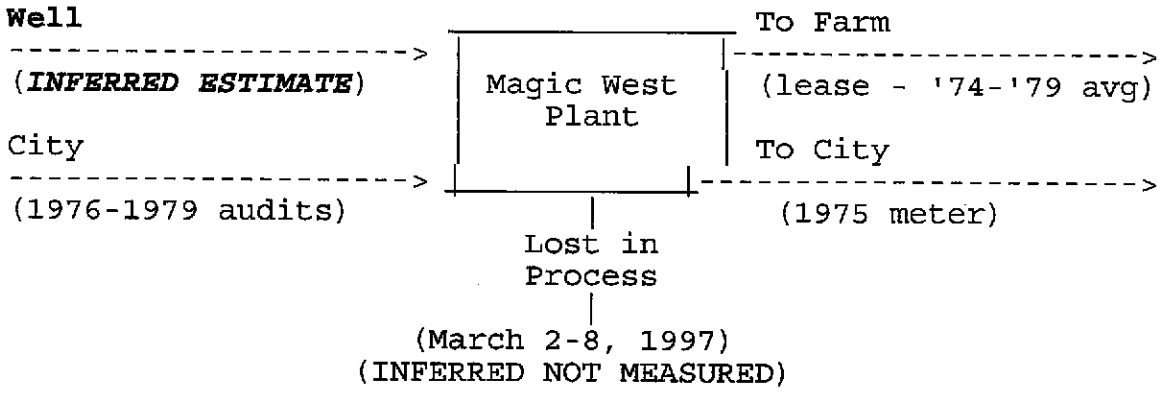
Magic West's calculations assume the plant operated 320.25 days per year during the 1970s. This assumption is clearly refuted by Magic West's discharge records, which show operations during 210 to 230 days per year.

4. Magic West's Method

Magic West's methodology is to subtract known inputs of water to the plant from known outputs to infer the quantity of water diverted from the well.

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The components of Magic West's formula are:



Sum of outputs (to farm + to City + loss) - City input = well use.

For this method to work Magic West must have data for all other water inputs and all outputs of water, and this data must either be from the same time frame or from different time frames of identical or sufficiently similar diversion and use water. If factors are pulled from different years, there must be a clear showing that the data can be properly integrated. Obviously, Magic West cannot use discharge data from a year of high water use with inflow data from a year of low or lesser water use, to infer the quantity diverted from the well. The number would obviously be inflated.

5. Magic West's Data

The evidence Magic West uses in this formula is:

1. Assumed operation of 320.25 days.
2. a statement in a lease of average daily discharge to its farm operation (allegedly corroborated by DEQ discharge to farm reports from 1977 and 1978);
3. a 1975 ledger showing water discharged to the City of Glenns Ferry;

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4. an estimate of water lost in processing inferred by subtracting water discharged and lost from water delivered to the plant during one week in March, 1997; and

5. estimates of water delivered to the plant from the City during 1976 to 1979 inferred from audit reports of payments to the City at an alleged rate of $100 per million gallons delivered.

One of the water inputs that Magic West, Mr. Ogden and Mr. Schow discussed during the hearing was water content of the potatoes that are processed in the plant. This input was not considered as an input in Magic West's calculations.

a. Evidence Not Meeting Standards for Beneficial Use Examinations Should Be Excluded

The petition submitted in this action essentially argues that the conclusions reached in the beneficial use examination conducted in 1987 for the Magic West plant were based on erroneous information, and requests that a new beneficial use exam be conducted using information which accurately reflects the amount of water put to beneficial use prior to 1979. By doing this, Magic West is essentially asking that another beneficial use exam be conducted, this time through a hearing process with the Department. Accordingly, it is Intervenors position, that all evidence submitted to the Department in these proceedings must be the type of evidence which would be properly considered by a beneficial use field examiner, or more specifically, should have been considered as part of the beneficial use field exam conducted by the Department in 1987. In other words, all evidence presented in the December 15, 1997 hearing must meet the guidelines for evidence

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submitted in beneficial use field exams and any evidence which could not have been considered by the person conducting the beneficial use exam in 1987 should not be considered in this proceeding.

Regarding information and evidence of measurements considered for proof of beneficial use, Rule 40.04 of the Beneficial Use Examination Rules provides: "[t]heoretical diversion rates or theoretical carrying capacitates are not acceptable as a measure of the rate of diversion except for some diversion systems where an exception is granted by the director." IDAPA 37.03.02.040.04. In this action, Magic West is attempting to establish beneficial use prior to June 13, 1979 by a theoretical method of inferring diversion volume from records of water usage from another source, discharges from the facility, and conveyance loss derived from such information. These theoretical calculations are invalid methods for determining beneficial use under the Beneficial Use Examination Rules. Similarly, the methods by which Magic West calculated beneficial use do not conform to sound examination principles followed by water right examiners as required by IDAPA 37.03.02.001.01. Because the results based on theoretical calculations are not acceptable means of proof of beneficial use, those calculations should be excluded from evidence at the hearing in this matter.

Moreover, the information provided by Magic West is not complete. The Beneficial Use Examination Rules require that information be submitted "concerning the beneficial use that has

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been made of the water . . . ." IDAPA 37.03.02.035.01(1). Magic West has not provided any information regarding the beneficial use that was made of the water prior to 1979 such as plant records from that time period. In the absence of such information, the Department can only infer such beneficial use, which is not a method approved by the Beneficial Use Examination Rules.

b. Number of Days of Use

For purposes of quantifying the water right, the number of days Magic West uses water should be no more than is substantiated by Magic West's records. Magic West uses 320.25 days per year, apparently because this is the authorized period. However, as previously discussed, Magic West's discharge records from 1977 and 1978 show the that the plant used water no more than 210 to 230 days per year. These records corroborate the figure Mr. Masson gave to Mr. Lester, and support the conclusion that IDWR should not change this aspect of its prior analysis.

c. Lease Statement - Discharge Data

As argued in Intervenor's Motion to Strike and during the hearing, the Lease is inadmissible hearsay. Hearsay is defined by the Idaho Rules of Evidence as "a statement, other then one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted." IRE 801. "Hearsay is not admissible except as provided by" the Rules of Evidence or other Rules promulgated by the Supreme Court of Idaho. IRE 802. The statement in the lease regarding diversion amounts is clearly hearsay, and should not be admitted as evidence in these

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proceedings.

If the lease is admitted, its value is severely limited. Magic West's discharge records, not the one-sentence summary statement at page 14 of the lease, is the best evidence of discharge from the plant during the period. There are a number of ways in which the 198,000 gpd figure might have been calculated, and there is no way to know which method the author used. The lease does not state whether the 275,000 gpd figure represents a single day, or a monthly average gallons per day. It is unlikely that it is a monthly average because none of the monthly averages comes close to 275,000 gpd.

If IDWR is to consider discharge to infer well production, it should use the monthly discharge reports. With these reports, there is no need to use a daily average figure because the meter readings show directly that 82,906,000 gallons were discharge from the plant in 1977 and 1978, for an average of 41,453,000 gallons per year.

d. <u>Water discharged to the City of Glenns Ferry in 1975</u>

This information in this document cannot be integrated with the discharge data to infer well production. Magic West did not present any other data pertaining to water use or discharge during 1975. In light of the variability in Magic West's operations, particularly during the 1970s, IDWR cannot determine whether the 1975 discharge may have been comparable to discharges to the City which may have occurred during 1977 or 1978. In fact, since there is no record of any discharge to the City during 1977 or 1978, IDWR

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cannot determine that such a discharge occurred. Again, in this proceeding, Magic West must produce records showing water use or plant production. Without documented water use, IDWR does not have a sufficient basis to overturn its licensing determination.

e. Water Lost in Processing

Magic West attempts to estimate water lost in processing during the 1970s using data from one week in March of 1997. As previously discussed, water use in the plant cannot be used to compare, infer, or calculate water use 20 years earlier.

Magic West used 320.25 days to calculate the amount of water lost annually. As previously discussed, this figure is invalid.

The quantity of water lost is relative to the quantity of water used. During that week in March of 1997, Magic West used an average of 397,514 gpd, as compared to an average daily use of 186,306 gpd during 1977 and 1978. Obviously, the quantity of water lost in 1977 and 1978 loss would be much less, and probably less than half the quantity lost in 1997. At best, the March 1997 data might be used to calculate a loss ratio of 15%. However, it would not be appropriate to use only one week of one year. Furthermore, changes in plant operations, which Magic West witnesses described as improving plant efficiency would have to be considered.

Magic West did not produce any qualified expert testimony or analysis to calculate water loss, or any other factors it attempted to use to infer 1970s water use. Mr. Lester testified that using 1997 data to infer 1970s water use is not a reasonable method of determining water use. For all of these reasons, IDWR should

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reject Magic West's attempt to use 1997 data to infer water loss or any other aspect of water use during the 1970s.

f. Estimates of City Water Used by the Plant

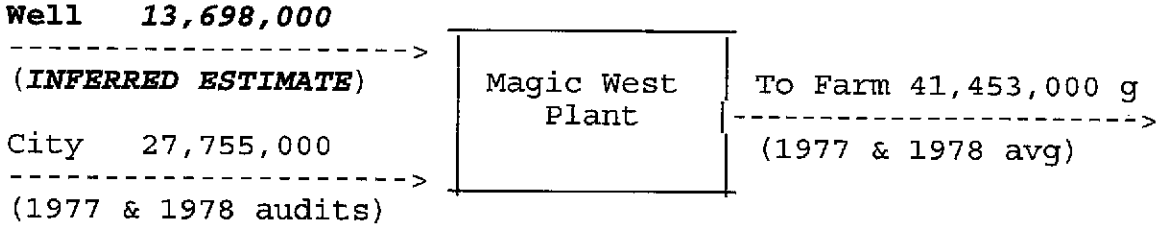
Magic West did not produce any record from the City of Meridian verifying it water rates. Magic West's use of its account ledgers to extrapolate City water usage is entirely dependent upon the unsubstantiated, undocumented assertion that the City charged $100.00 per million gallons of water used. This evidence does not meet the standards IDWR has established for this proceeding.

If IDWR does consider this information, it should only consider the figures for 1977 and 1978 because these are relatively contemporaneous with the 1977 and 1978 discharge data. The average of City water usage during these years is 27.755 mgy.

6. Best-Case results of Magic Wests Methodology

Intervenor maintains that IDWR has no authority to amend Magic West's License, and that Magic West's data provides an insufficient and unreliable basis upon which to overturn IDWR's licensing determination.

If, however, IDWR grants Magic West's Petition and the amends the license using the only marginally reliable data presented by Magic West, the most favorable calculation of annual diversion volume for Magic West would be:



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41,453,000 gpy (to farm)
- 27,755,000 gpy (from City)
13,698,000 gpy (well use)

13,698,000 gpy = 42.03 afa
325,850 g/af

CONCLUSION

The best case in this proceeding for Magic West is a change in diversion volume from 12.9 to 42.03 afa, rather than the increase of 10 to 15 times Magic West has requested. In even this best case, however, IDWR would have to act on authority it does not have, validate Magic West's illegal diversion and use of water, and disregard the injury Magic West has caused and will continue to cause to the Intervenors. Intervenor urges IDWR to deny Magic West's Petition and to instead begin to take some action to protect the aquifer and Intervenor's water rights.

DATED this 23rd day of January, 1998.

By _____
Daniel V. Steenson
RINGERT CLARK CHARTERED

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APPENDIX 1

Discharge Data

1977

Month	Days of Use	Meter	Total Gallons	GPD
12-31-76		80,543,200		
1/77	25/31	85,010,700	4,467,500	178,700
2/77	24/28	88,882,300	3,871,600	161,316
3/77	27/31	92,835,100	3,952,800	146,400
4/77	26/30	96,706,900	3,872,500	148,942
5/77	25/31	989,900	4,283,000	171,320
6/77	28/30	5,634,200	4,634,900	165,532
7/77	23/31	9,127,600	3,585,300	155,882
8/77		NO REPORT PROVIDED		
9/77		NO REPORT PROVIDED		
10/77		NO REPORT PROVIDED		
(8/77-10/77	*(18/92)*	12,090,800	*(2,963,200)*	*(163,291)*[1]
11/77	18/30	15,086,500	2,975,900	165,327
12/77	23/31	19,267,200	4,371,000	190,043

Totals: Days of well use = 219/365 REPORTED FOR 9 MONTHS
237/365 ESTIMATED FOR 12 MONTHS

Gallons per year = 119,267,200
- 80,543,200
38,724,000

Gallons per day = 163,392 (38,724,000 g/237 days)

---

[1] The italicized numbers were derived by:

12,090,800 - 9,127,600 = *2,963,200 g*
38,724,000 - 2,963,200 = 35,760,800 g
35,760,800 g / 219 days = *163,291 gpd*
2,963,200 g / 163,291 = *18.15 days.*

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1978

Month	Days of Use	Meter	Total Gallons	GPD
12-31-77		19,267,200		
1/78	15/31	22,156,500	2,889,300	192,620
2/78	22/28	27,023,200	4,866,700	221,213
3/78	8/31	28,902,200	1,879,000	234,875
4/78	25/30	33,790,600	4,888,400	195,536
5/78	24/31	38,907,200	5,116,600	213,191
6/78	28/30	45,488,900	6,581,800	235,064
7/78	25/31	50,934,600	5,445,700	217,828
8/78		NO REPORT PROVIDED		
(8/78	*(11/31)*	*(53,358,700)*	*(2,424,100)*	*(220,373)*[2]
9/78	8/30	54,551,000	1,253,500	156,687
10/78	21/31	58,807,500	*(4,256,500)*	*(202,690)*[3]
11/78	21/30	63,449,200	4,348,350	207,064
12/78		NO REPORT PROVIDED		

Totals: Days of well use = 197/365 REPORTED FOR 10 MONTHS
208/365 ESTIMATED FOR 11 MONTHS

Gallons per year = 163,449,200
-119,267,200
44,182,000

Gallons per day = 212,413 (44,182,000 g / 208 days)

---

[2] The report of the 535,870 meter reading at the end of August is in error. A digit was obviously left out. A corrected figure is inferred by: 53,402,400 - 43,700 = *53,358,700*. The remainder of the italicized figures for the month are calculated by:

53,358,700 - 50,934,600 = *2,424,100 gpm*,
44,182,000 gpy - 2,424,100 gpm = 41,757,900 gpy (for 10 months)
41,757,900 gpy / 197 days = 211,969gpd (for 10 months),
2,424,100gpm / 211,969gpd = *11.44 days*
2,424,100 gpm / 11 days = *220,373 gpd*.

[3] The reported figures for total gallons and gallons per day are not consistent with the meter readings or the sum of the daily reported gallons used (4,256,000). This appears to happen quite often in the reports. The italicized, corrected figures were derived by:

58,807,500 - 54,551,000 = *4,256,500*
4,256,500 / 21 = *202,690*

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1977 - 1978

Metered flow	163,449,200	
	- 80,543,200	
	82,906,000 g	
Gallons per month	3,604,609 g	(23 months)
Days of use	445	(222.5 avg per year)
gallons per day	186,306	
Annual average	41,453,000	

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CERTIFICATE OF SERVICE

I hereby certify that on this 23rd day of January 1998, a true and correct copy of the foregoing was served upon all parties listed below by facsimile and/or U.S. Mail, postage prepaid:

Norman Semanko
ROSHOLT ROBERTSON TUCKER
P.O. Box 1906
Twin Falls, ID 83303-1906
Fax. No. (208) 736-0041

Perce Hall
HALL FRIEDLY & WARD
340 E. 2nd N. St.
Mountain Home, ID 83647
Fax No. (208) 587-3314

Daniel V. Steenson

OCT 05 2000

Fax

TO: Julie Yarbrough
Idaho Department of Water Resources
1301 N. Orchard
Boise, ID 83706-2237

FAX #: 327-7866

FROM: Daniel V. Steenson
Ringert Clark Chartered
P.O. Box 2773
Boise, ID 83701

DATE: January 22, 1998

SUBJECT: In the Matter of Magic West, Inc.

PAGES: 2, including cover sheet.

NOTES: See attached.

CONFIDENTIALITY NOTICE

The information in this facsimile is confidential and intended only for the use of the addressee. The data transmitted is attorney privileged and may be exempt from disclosure. Do not copy or distribute to anyone other than addressee. Reliance on this data by other than the intended recipient is prohibited. Please notify us immediately if you have received this communication in error. Upon notification we will arrange for return of the fax copies to Ringert Clark Chartered. Thank you for your assistance.

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RINGERT
CLARK
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LAWYERS

Lisa H. Hunt
Jeffrey R. Christensen
D. Blair Clark
Michael J. Doolittle
Patrick D. Fahey
David Hammerquist
Joseph R. Jones
James P. Kaufman
James G. Reid
William F. Ringert
Daniel V. Steenson
Allyn L. Sweeney

Samuel Ringert (1921-1986)

January 22, 1998

FACSIMILE

Julie Yarbrough
Idaho Department of Water Resources
1301 N. Orchard
Boise, ID 83706-2237

Re: In the Matter of Magic West, Inc.
License No. 07189
Our Client: Mr. Potucek

Dear Julie:

I tried to contact you concerning this matter today, but was unable to reach you. I have been working on the Brief that is due in this matter but due to the delays and problems in getting the transcript in this matter, which slowed me up substantially; my schedule being even more hectic than usual the last couple weeks; and because of the complex manner in which Magic West attempts to calculate annual diversion volume, I will not be able to file my Brief today. I plan to get it filed tomorrow morning. I have not read Norm Semanko's Brief and since I have to be in Twin Falls tomorrow anyhow, I will hand deliver a copy of my Brief to Mr. Semanko at that time.

I regret any inconvenience this may cause and appreciate your professional courtesies in this regard.

Sincerely,

Daniel V. Steenson

Daniel V. Steenson

DVS:lr
cc: Norman E. Semanko (via/fax)
Perce E. Hall (via/fax)

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WATER RESOURCES
WESTERN REGION

PERCE HALL
HALL, FRIEDLY & WARD
Attorneys for Intervenor
340 East 2nd North Street
Mountain Home, Idaho 83647
Telephone: (208) 587-4412

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF

THE STATE OF IDAHO

IN THE MATTER OF LICENSE NUMBER 61-07189 IN THE NAME OF MAGIC WEST, INC.	LICENSE NUMBER 61-07189 POST HEARING BRIEF SUBMITTED BY ROBERT K. HALL, INTERVENOR

At the conclusion of the hearing held on December 15, 1997, before Glen Saxton, hearing officer, the parties were directed to submit simultaneous briefs in support of their positions. This brief is being submitted in behalf of Robert K. Hall, one of the intervenors.

HISTORY

Robert K. Hall is the owner of an artesian well (Identification Number AC61-10013) licensed to use .04CFS of water for domestic purposes, with a priority date of December 31, 1952. Magic West filed its application to appropriate water (No. 61-07189), filed in 1974 with a priority date of July 10, 1974, to use water for industrial purposes. The license was issued on October 22, 1990, authorizing Magic West to use a maximum diversion volume of 12.9 acre feet per year.

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On May 12, 1997, Magic West filed a petition with the department asking for adjustment and clarification of its

license, claiming error in the amount of water which was being put to beneficial use under this license and asking for an increase in the amount of water to between 240,000 and 260,000 gallons per day. The director of the Department of Water Resources decided to treat this petition as a petition for amendment of the license and on October 22, 1997, entered and order designating the matter as a contested case, appointing Glen Saxton as hearing officer to determine the matter and setting a hearing for December 15, 1997, to grant Magic West an opportunity to present evidence as to the amount of water it had put to beneficial use during the beneficial use period prior to 1979.

It is the position of this intervenor that the director of the Department of Water Resources has no authority under Idaho statutes, or otherwise, to amend the license of Magic West to increase the amount of water for which it was originally licensed. For that reason this intervenor filed a motion to dismiss Magic West's petition and to vacate the hearing date, which motion was denied by the hearing officer.

LAW

The case of Beker Industries vs. Georgetown Irrigation District(1980) 101 Idaho 187, held that an administrative agency like the Department of Water Resources has only such powers as the applicable statute confers. This case involved a change in the nature of use of water. The statute involved was Idaho Code Section 42-222, which authorized certain changes to be made by the director but

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did not authorize the director to change the nature of use of water. This Section of the law, as it existed at that time, did not grant authority for the director to authorize a change in the nature of use. The statute has since been amended to allow the director to grant such a change. It authorizes the director to change the point of diversion, place of use, period of use and nature of use.

Idaho Code Section 42-222, as it is now written, provides, among other things, as follows:

> "The director of the Department of Water Resources shall examine all the evidence and available information and shall approve the change in whole or in part, or upon conditions, provided no other water rights are injured thereby and the change does not constitute an enlargement in use of the original right".

Thus, in this case, the director not only has no authority to make such a change but is specifically prohibited from doing so.

ARGUMENT

It was a waste of time to hold the hearing apparently aimed at granting an amendment to the license of Magic West to increase the amount of water authorized to be diverted by the license since the director has no authority to grant such a change no matter what the evidence at the hearing showed. The motion to dismiss should have been granted.

If Magic West desires an increase in the amount of water which it is licensed to divert, it should file an application in accordance with the procedure outlined in the statutes (Idaho Code 42-229) and the burden would then be on Magic West to prove that there was sufficient water

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available to fulfill its needs, without injury to other water users holding a prior right.

The parties and the hearing officer spent all day on December 15, 1997, listening to Magic West attempt to prove that its water use during the beneficial use period ending in 1979, when they kept no records, was the same as its use in 1996 and 1997, when they did keep records. During the beneficial use period prior to 1979, Magic West was also using water from the City of Glenns Ferry. An applicant for a water license should be able to supply the department with direct and accurate proof as to the amount of water the applicant has put to beneficial use during the period allowed for that purpose. The department should not be expected to determine by speculation the amount of water put to beneficial use from indirect evidence, such as Magic West presented in this matter.

At the two conferences held in Glenns Ferry on April 2nd and June 2nd, 1997, numerous protestants appeared, claiming that their water rights were being injured by Magic West's large withdrawal of water.

Robert K. Hall has an artesian well which he uses for domestic purposes only, with a priority date of December 31, 1952. After Magic West started withdrawal, the artesian flow in his well ceased and he installed a pump at a depth of 21 feet. He has since had to drop the pump to 167 feet and then to 250 feet where it is at the present time. Even at that depth of 250 feet, the pump is starting to draw air. Unless Magic West's withdrawal of water is regulated, sooner

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or later all well users will be at rock bottom. Hall has noticed that whenever Magic West shuts down its operation for any extended period of time, within a short time his well resumes its artesian flow. Edward Potucek has noticed the same results.

When there is insufficient water available to supply the various users from the same source, under Article XV of the Idaho Constitution, domestic users have the first priority, agricultural users have the second priority and industrial users have the third priority.

It thus appears to us that the only way to settle this question is for the department to curtail Magic West's withdrawal of water until it can be determined at what rate the aquifer recharges and that the withdrawal rate be adjusted to stabilize the water supply and the water be apportioned according to the law of priorities.

DATED this 15th day of January, 1998.

HALL, FRIEDLY & WARD

By _____
Attorneys for Robert K. Hall, Intervenor

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CERTIFICATE OF MAILING

I certify that on the 16th day of January, 1998, I mailed a copy of the foregoing Post Hearing Brief to each of the following by United States Mail with postage prepaid, addressed as follows:

Department of Water Resources
Western Division
2735 Airport Way
Boise, Idaho 83705-5082

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ROSHOLT ROBERTSON TUCKER
P. O. Box 1906
Twin Falls, ID 83303-1906

Daniel Steenson
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Perce Hall, Attorney for
Robert K. Hall, Intervenor

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Attorneys for Magic West, Inc.

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

IN THE MATTER OF LICENSE NO. 61-07189 IN THE NAME OF MAGIC WEST, INC.	)))))	LICENSE NO. 61-07189 MAGIC WEST'S POST-HEARING BRIEF

* * * * * * * * * *

Magic West, Inc., by and through its attorneys, Rosholt, Robertson & Tucker, files the following post-hearing brief, the hearing on this matter having been held in Boise, Idaho on December 15, 1997.

PROCEDURAL BACKGROUND

Magic West, Inc. filed its Petition for Adjustment and Clarification of Existing Order/License during May, 1997. The Director subsequently issued an Order Designating Contested Case; Appointing Hearing Officer; and Scheduling Hearing on October 22, 1997. Robert K. Hall and Edward T. Potucek were allowed to intervene. Subsequent motions to dismiss the Petition and to stay the hearing were denied. The hearing was held on December 15, 1997 and the parties agreed to file simultaneous post-hearing briefs, due January 20.

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ARGUMENT

Several issues were identified by the parties for post-hearing briefing. They include: (1) the Department's authority (Motion to Dismiss); (2) the Motion in Limine and Motion to Strike certain evidence; (3) injury; and (4) the extent of beneficial use by Magic West.

Each of these issues is discussed below, in order, and demonstrate why Magic West's Petition should be granted.

I. THE DEPARTMENT HAS AUTHORITY TO GRANT THE AMENDMENT.

Although the Intervenors' motions to dismiss the Petition were denied prior to the hearing, the Hearing Officer allowed an opportunity to present oral argument "on the question of the department's jurisdiction to conduct an evidentiary hearing" on the matter. Order Denying Motion to Dismiss (Dec. 4, 1997); Order Denying Motion to Dismiss (Dec. 8, 1997).

Oral argument was presented by all parties at the December 15, 1997 hearing. In addition, the issue was briefed by all parties prior to the hearing. At the hearing, the Intervenors expressed interest in additional briefing on the issue.

Magic West incorporates the arguments presented at oral argument, as well as those contained in its response to the original motion to dismiss the Petition. . . .Answer to Potucek's Response to Petition and Motion to Dismiss, pp. 5-8 (November 24, 1997). Additional argument is offered below.

In short, the Department has authority to amend the license. Rule 230 of the Department's Rules of Procedure allows such changes, as the Director has already concluded. These rules were adopted pursuant to the Idaho Administrative Procedures Act's broad grant of authority to the Department to adopt rules to govern contested cases, including "any

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provisions as may be necessary or useful." I.C. Secs. 67-5206(4)(k) and (5)(b). Rule 230 has not been challenged or found unlawful.

The Idaho APA also recognizes that state agencies may amend or modify licenses if notice and an opportunity for an appropriate contested case is provided. I.C. Sec. 67-5254. That is exactly what has been done in this case through issuance of the Director's Order Designating Contested Case.

The license itself contains a condition that the annual diversion volume of 12.9 AF "may be adjusted to more accurately describe the beneficial use. . ." Again, this is exactly what is being done by allowing Magic West with the opportunity to provide evidence regarding the extent of beneficial use during the permit development period.

The Intervenors argue that granting the amendment would allow Magic West to appropriate additional water without complying with I.C. Sec. 42-202 et seq. or to make a change in use without complying with I.C. Sec. 42-222. These arguments are without merit. Magic West seeks only to confirm and accurately state the amount of water developed during the permit development period (1974-1979), not to appropriate additional water under the Petition. Additionally, no change in place of use, point of diversion, nature of use or period of use is being sought through the Petition which requires adherence to I.C. Sec. 42-222.

The annual diversion volume included in the license is not accurate and its enforcement would, according to testimony received at the December 15 hearing, close down Magic West's potato processing plant. The current diversion volume is the result of mistake, inadvertence, or excusable neglect and the Department has authority to amend it.

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II. THE MOTION IN LIMINE SHOULD BE DENIED.

At the time set for the hearing, Intervenor Edward T. Potucek presented the Hearing Officer with a Motion in Limine and to Strike: Re. Introduction of Certain Evidence to Establish Diversion Volume. Having no evidence of their own regarding Magic West's beneficial use, Potucek seeks instead to exclude the evidence that Magic West has been able to gather.

The Hearing Officer did not rule on this motion at the hearing, but should have summarily denied it as untimely. It was highly prejudicial to ask that a motion in limine be considered at the time set for hearing. In addition, since most, if not all, of Magic West's evidence has already been admitted into evidence, the motion is moot.

As a general matter, the Department's Rules of Procedure provide that: "Evidence should be taken by the agency to assist the parties' development of a record, not excluded to frustrate that development. The presiding officer at hearing is not bound by the Rules of Evidence." Rule 600. This supports the admission of Magic West's evidence.

The motion seeks to strike the Affidavit of Jack Anderson. This affidavit was submitted with the Petition and is already in the record. The statements contained in the affidavit are based on personal knowledge and are relevant to the issue of annual diversion volume. As a result, there is no basis to strike or otherwise exclude it. Moreover, Anderson testified at the hearing, reaffirming the statements contained in his affidavit and providing additional testimony regarding the level of beneficial use during the time that the field exam was conducted in 1987, and at all times since.

Because the department's field examination was conducted in 1987, and concludes that only 20,000 gallons per day was used, serving as the basis for the amount included in the

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license, Anderson's testimony regarding the amount of water used in 1987 is very relevant. If 1987 information is not relevant, how can any reliance be placed on the 1987 field examination?

Similarly, comparison of 1974-1979, 1987, and 1996-1997 data is relevant because of the testimony from Bill Schow and others that well water usage has not changed significantly over the life of the potato processing plant.

Potucek argues that Magic West uses no actual measurements from the well, but rather a "theoretical method" to demonstrate the annual volume of water used during the 1974-1979 period. Potucek's reading of the Department's Beneficial Use Examination Rules and the evidence submitted by Magic West is poor at best.

First, much of the evidence submitted by Magic West is the result of actual measurements during the 1974-1979 period. The amount of water discharged from the plant and pumped to Magic West's farm was metered. The amount discharged to the City sewer system was also metered. The Beneficial Use Examination Rules provide that water must be traced not only from the point of diversion to the place of use, but also to and beyond the discharge point. IDAPA 37.03.02.35.01.c. and e. This data was admitted into evidence at the hearing.

In addition, the rules state that theoretical diversion rates are not acceptable as a measure of rate of diversion. IDAPA 37.03.40.04. No mention is made of any "theoretical method" for diversion volumes. More importantly, the rule specifically exempts systems for which a measuring device is not a permit requirement. Id. Magic West's permit was of this type.

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Finally, if Potucek's argument is valid, doesn't that render the department's field examination void? After all, no actual measurements were taken to support the 20,000 gallon per day amount included in the field exam.

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The daily diversion volume figures in the 1979 lease are attacked as being unsupported. However, the 1976-1978 records submitted to the Idaho Division of Environmental Quality, readily verify the lease figures. Applicant's Exhibit 1, Tab A and Supplement to Record (December 18, 1997). These documents have all been admitted into evidence.

Potucek complains about the use of production cost records to determine the amount of City water used in the plant. We understood the Director's Order Designating Contested Case to require the submission of "plant production records, or other similar evidence". The production cost records are verified audit reports prepared by Magic West's accountants and were admitted at the hearing. The originals of the complete audit reports were offered for examination at the hearing, but Potucek chose not to review them.

The fact that sewer service costs are included in the total is of little significance. The amounts paid for sewer service are small. In addition, including these amounts only increased the calculation regarding the amount of City water used, thus decreasing the calculated amount of well (licensed) water used.

For the reasons set forth above, Potucek's motion in limine and motion to strike should be denied.

III. INJURY TO OTHER WATER RIGHTS IS NOT AT ISSUE AND HAS NOT BEEN ESTABLISHED.

The Intervenors chose not to submit evidence regarding the extent of beneficial use by Magic West. Rather, they attempted to establish that they have been injured by Magic West's diversion of water or will be injured by the amendment.

Injury is a relevant factor under I.C. Sec. 42-203A(5) for new appropriations and under I.C. Sec. 42-222 for changes in use. Injury is also a major consideration when a "delivery call"

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is made under the Department's Conjunctive Management Rules. IDAPA 37.01.12. However, there is no new appropriation or change in use proposed by Magic West's Petition. In addition, no delivery call has been made. The Petition seeks only to verify and confirm the actual level of beneficial use during the authorized development period. To do this, the license must be amended.

It should be noted that the current condition contained in the license that "[t]his right is subject to all prior water rights" will not be changed by the proposed amendment. In addition, the Intervenors chose not to protest Magic West's water right when the application for permit was filed and advertised in 1974 and did not argue that any injury occurred during the 1974 to 1979 development period. Their concerns is with subsequent periods. Beneficial use was made pursuant to the permit and should be confirmed through a license amendment.

Magic West admits no injury to other water rights and maintains that injury is not properly considered as part of this proceeding. We believe the pre-hearing orders issued by the Director and the Hearing Officer established this conclusively. See e.g., Order Granting Petition to Intervene (November 24, 1997) ("the intervention. . .does not apply to. . .claims which are pending before the department").

The evidence introduced by Potucek does not establish injury, and certainly does not show that any injury was, or is, caused by Magic West. Any number of circumstances could have caused the decrease in pressure and temperature allegedly experienced by Potucek after 1980. Intervenor Robert K. Hall offered no evidence at all, arguing only that Magic West should be curtailed. If these issues are to be addressed, it must be in another proceeding, as explained by the Hearing Officer at the beginning of the hearing. These matters are not relevant

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to the narrow issue of what the extent of beneficial use was by Magic West during the permit development period.

IV. THE PETITION SHOULD BE GRANTED, AMENDING THE ANNUAL DIVERSION VOLUME TO REFLECT ACTUAL BENEFICIAL USE.

The evidence submitted by Magic West at the hearing establishes that: (1) the annual diversion volume included in the license is not an accurate estimate of actual beneficial use during the authorized development period (1974-1979); and (2) the actual diversion volume during the authorized development period (1974-1979) was approximately 300,000 gallons per day/300 AF per year.

A. The Annual Diversion Volume Included in the License does not Reasonably Reflect the Extent of Beneficial Use made by Magic West during the Permit Stage.

In his order designating the contested case, the Director noted that "IDWR is called upon to determine whether the 12.9 acre-foot annual volume limitation placed on license no. 61-07189 reasonably reflects the extent of beneficial use made by Magic West during the developmental permit stage of the water right." Order Designating Contested Case; Appointing Hearing Officer; and Scheduling Hearing, p. 2 (October 22, 1997). The evidence submitted in this matter makes clear that the annual diversion volume included in the license does not reasonably reflect the extent of beneficial use made by Magic West.

The licensing exam indicates that 20,000 gallons per day was being used under the permit during the time of the licensing exam on August 4, 1987. When combined with water provided by the City of Glenns Ferry, the total amount used was listed as 30,000 gallons per day for both sources combined in the field exam. Applicant's Exhibit 9.

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The only evidence indicating that Magic West diverted 20,000 gallons per day under the permit is the licensing exam report. There are no accurate or reliable measurements or data supporting this number. Rather, it was an estimate allegedly provided by Magic West's maintenance supervisor, Doug Mason. Jack Anderson, the Plant Manager, was designated by Magic West as the contact for the licensing exam, but was not contacted. The evidence suggests that the plant was not even in operation at the time of the field examination. The former maintenance supervisor, Doug Mason, testified that he does not recall providing any estimate and further testified that he believes the daily use to have been at least several times more than 20,000 gallons per day.

In addition, the 20,000 gallon (permit use) and 30,000 gallon (total use) figures included in the field exam are rebutted by actual measurement records which recorded the amount of water discharged from the plant and pumped to Magic West's waste farm during 1987. Applicant's Exhibits 13 and 14. These records indicate that much more than 30,000 gallons per day was being discharged from the plant after being used for food processing at the time of the licensing field exam. The testimony of Jack Anderson, Doug Ogden, and Bill Schow corroborated this information, as did actual measurements of waste water during the 1976-1978 period and the 1996-1997 period. Applicant's Exhibits 1, 2 an 5, and Supplement to Record (Dec. 18, 1997). Anderson, Ogden and Schow all testified that the plant cannot start up, let alone operate, using 20,000 gallons per day from the well.

The field examiner, Steve Lester, testified that it is possible that he wrote the wrong number (20,000) in his report. This was a period during which numerous field examinations were being conducted by the Department.

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More importantly, the field examiner did not have the benefit of the measured discharge records for the water pumped away from the plant and to the waste farm. This is despite the fact that the system description on the first page of the Beneficial Use Field Report clearly identified the "pumping plant that handles wastewater". Applicant's Exhibit 9. While follow-up was conducted regarding the diversion rate, no follow-up was conducted regarding the diversion volume. Applicant's Exhibit 9 (December 16, 1987 letter from Steve Lester to Magic West). In addition, the field examiner testified that he did not ask for measurement records for the waste water pumping plant.

The field examiner made two calculations of annual diversion volume in the field report. The first assumed a constant flow at the authorized diversion rate of .67 cfs (300 gpm), 24-hours per day, for 321 days. The result was an annual diversion volume of 426.6 AF. Applicant's Exhibit 9. The second calculation, using the 20,000 gallon per day figure, was 12.9 AF. This was despite the fact that the authorized diversion rate of .67 cfs was ultimately verified, and even though the field exam clearly notes that the plant operates 24-hours per day. Id. These variables (diversion rate and hours per day) are the same as those used in the first calculation. Despite the fact that the two calculations varied by a factor of 33, the lower amount was included in the license without any follow-up or verification. During his testimony, the field examiner admitted that while considerable effort was made in soliciting flow data, there was no such concerted effort to find volume data. As a result, when Magic West received its license, it had no idea that the annual volume was incorrect.

Notably, the 20,000 gallon figure does not correspond to the actual permit development period (1974-1979) (as required by the Order Designating Contested Case), but rather 8 years later (1987) when the field exam was performed. For this reason, and those set forth above,

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it is not reasonably reflective of the extent of beneficial use during the permit development period, nor is the 12.9 AF amount included in the license.

B. The Extent of Beneficial Use that Existed Prior to the Submission of Proof of Beneficial Use on June 13, 1979 Was Approximately 300,000 Gallons Per Day, or Approximately 300 Acre-Feet per Year.

A hearing on the Petition was determined "appropriate to provide Magic West the opportunity to establish through plant production records, or other similar evidence, the extent of beneficial use that existed under right no. 61-07189 prior to the submission of the proof of beneficial use on June 13, 1979." Order Designating Contested Case, p. 2.

Without 1974-1979 measurements of the amount of water pumped directly from the well, this is a somewhat difficult burden to meet. However, Magic West has met this burden by providing reliable and accurate data. By calculating the total amount of water used by Magic West and then subtracting the amount of City water used, Magic West was able to calculate the amount of well (licensed) water used. This amount can also be compared to actual measurements from the well which Magic West began taking and recording in October, 1996.

The evidence submitted by Magic West regarding the amount of water beneficially used during the 1974-1979 period was uncontroverted. In addition, it is corroborated by data available from 1987 and 1996-1997, as well as the testimony of several individuals familiar with the plant and its water use.

The plant uses both City water and the well (licensed) water. The amount of City water used annually during the 1976-1979 period was calculated by referring to Magic West's schedule of annual production costs for each year ("water and sewer payments"). The cost of water at the time was established as $100 per million gallons. Using these figures, annual use was calculated. Applicant's Exhibit 1, p. 3 and Tab D.

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The outflow of water from the plant (waste water) went to several places. The majority of the water was pumped to Magic West's farm. An additional amount was discharged to the City sewer system. A portion was shipped to sludge ponds. Some amount of water was also consumptively used in the process. By adding these amounts together, Magic West was able to provide evidence regarding the total amount of water used in the plant.

The 1979 lease between Magic West and Redi-Spuds states that during the five years preceding the lease (1974-1979), the average flow from the plant which was pumped to the farm was 198,000 gallons per day, with a high of 275,000 gallons per day. Applicant's Exhibit 1, Tab A (Lease, p. 14). This is readily verified by waste water measurement records provided to the Idaho Division of Environmental Quality (DEQ). Id. (1977 and 1978 DEQ records) and Supplement to Record (additional DEQ records). By using the average daily amount (rather than the maximum daily amount) included in the lease, Magic West was able to calculate the annual amount of waste water pumped to the farm. Applicant's Exhibit 1, p. 2. The permit (and license) authorize use of the water over a 320.25 day period and annual use was therefore calculated using this number of days.

The amount of waste water discharged to the City in 1975 was 37.93 million gallons. This amount was metered by the City. Applicant's Exhibit 1, Tab B. Records for other years were not available from the City.

Doug Ogden, the Magic West Plant Manager from 1974-1979, testified that water was also trucked to a sludge pond. No information was available to calculate this amount and, even though current figures are available, no amount was included in the 1974-1979 calculations.

Consumptive use or loss in the potato processing plant was calculated by using 1997 figures. Applicant's Exhibit 1, p. 2 and Tab C. Bill Schow testified that the current loss in the

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process may actually be less than what it was during the 1974-1979 period. As a result, using the current numbers provides a conservative estimate of what the consumptive use or loss was during the permit development period.

These amounts added together yielded an average annual amount of 121.05 million gallons per year which were discharged from the potato processing plant after use. Applicant's Exhibit 1, p. 2. By subtracting the average amount of City water used each year (22.47 mgy) from this total amount, the amount of well (licensed) water used was 98.58 million gallons, or 302.53 AF per year. On a daily basis (over the 320.25 days allowed by the permit), this is 307,822 gallons per day. Id., p. 4.

These calculations are based on actual records from the permit development period (1974-1979). No other evidence was submitted regarding the extent of beneficial use during this period. It is certainly much more extensive than the information used to calculate annual diversion volume during the licensing process in 1987.

In addition, Bill Schow testified that there have been no major changes to Magic West's water use since the permit development period. The basic operating schedule and other details of water use testified to by the 1974-1979 Plant Manager (Doug Ogden) were virtually identical to those testified to by the current Plant Manager (Jack Anderson). As a result, the evidence regarding the amount of water currently used can be expected to, and does, reasonably reflect the amount used during the permit development period.

CONCLUSION

Magic West is in an unfortunate position. The annual diversion volume included in its license has only recently been discovered to be incorrect and the result of some mistake, inadvertence, or neglect. Enforcement of this amount will cause the plant to shut down.

OCT 05 2000

As a result, the Director has, pursuant to authority vested in the Department, provided Magic West with the opportunity to demonstrate the extent of beneficial use during the permit development period (1974-1979). Magic West has provided reliable and accurate information to demonstrate this amount. Therefore, the annual diversion volume should be amended from 12.9 AF to 302.53 AF. Alternatively, annual diversion volume should be removed as a limitation on the right, consistent with the application and approved permit.

DATED this 20th day of January, 1998.

ROSHOLT, ROBERTSON & TUCKER

By: _____
NORMAN M. SEMANKO

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OCT 2 5 2000

CERTIFICATE OF SERVICE

I hereby certify that on this 20th day of January, 1998, I caused a copy of the foregoing MAGIC WEST'S POST-HEARING BRIEF to be served upon the following persons by hand – delivery ~~depositing same in the mail, postage prepaid, addressed~~ to the following:

Daniel V. Steenson
RINGERT CLARK CHARTERED
455 S. Third
P.O. Box 2773
Boise, ID 83701-2773

Perce Hall
HALL, FRIEDLY & WARD
340 E. 2nd North St.
Mountain Home, ID 83647

Norman M. Semanko

OCT 05 2023

State of Idaho
DEPARTMENT OF WATER RESOURCES
1301 North Orchard Street, P.O. BOX 83720, Boise, Idaho 83720-0098
Phone: (208) 327-7900 FAX: (208) 327-7866

PHILIP E. BATT
GOVERNOR

KARL J. DREHER
DIRECTOR

January 2, 1998

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

Dear Interested Parties:

I have enclosed a copy of the Order Granting Motion for Extension of Time, issued in connection with the request filed by Norman Semanko on December 31, 1997.

If you have any questions concerning the enclosed document, please contact me directly at (208)327-7953.

Sincerely,

Julie L. Yarbrough

JULIE L. YARBROUGH, Senior Secretary
Water Allocation Bureau

Enclosure

c: IDWR - Western Region

MICRO
OCT 05 2000

CERTIFICATE OF SERVICE

I DO HEREBY CERTIFY that on this 2nd day of January, 1998, the above and foregoing document was served upon the following via facsimile and by placing a copy of the same in the United States Mail, postage prepaid and properly addressed to the following:

Via Facsimile No. (208)736-0041
NORMAN SEMANKO
ROSHOLT ROBERTSON TUCKER
PO BOX 1906
TWIN FALLS ID 83303-1906

Via Facsimile No. (208)342-4657
DANIEL V STEENSON
RINGERT CLARK CHARTERED
PO BOX 2773
BOISE ID 83701-2773

Via Facsimile No. (208)587-3144
PERCE HALL
HALL FRIELDY AND WARD
340 E 2ND N ST
MOUNTAIN HOME ID 83647

Julie L. Yarbrough

JULIE L. YARBROUGH
Senior Secretary, Water Allocation Bureau

MICROFILMED

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Department of Water Resources

John A. Rosholt
Norman M. Semanko
ROSHOLT, ROBERTSON & TUCKER
P. O. Box 1906
142 3rd Avenue N.
Twin Falls, Idaho 83303-1906
Telephone: (208) 734-0700
Facsimile: (208) 736-0041
12319701.NMS

Attorneys for Magic West, Inc.

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

IN THE MATTER OF LICENSE NO. 61-07189 IN THE NAME OF MAGIC WEST, INC.	)))))	LICENSE NO. 61-07189 RESPONSE TO MOTION FOR EXTENSION OF TIME

* * * * * * * * * * *

Magic West, Inc., by and through its attorneys, Rosholt, Robertson & Tucker, files the following response to the Motion for Extension of Time filed by Edward T. Potucek in the above-captioned matter and joined in by Robert K. Hall ("Intervenors").

MICROFILMED
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RESPONSE TO MOTION FOR EXTENSION OF TIME

The motion should be denied. If granted, a lesser amount than requested should be provided.[1]

Magic West is prepared to file its brief on January 5, 1998, as previously agreed to and ordered, and sees no reason to extend the briefing schedule. As the Petitioner understands the Intervenors' arguments regarding the Petition, most of the briefing to be done is on legal issues. The Intervenors state as much in their motion, noting that the issues raised are the Intervenor's motion in limine and the issue of jurisdiction. These are legal, not factual issues. As a result, there is little, if any, need to listen to audio tapes or compile and read a transcript of the hearing prior to briefing.

The parties have already had more than two weeks to write their briefs. Even if the audio tapes are reasonably required to write the Intervenors' brief(s), they represent in their motion that the tapes will be ready today, January 31, 1997, some five (5) days before the briefs are due on January 5, 1998, providing sufficient time to finish briefing. As a result, a two-week extension until January 20, 1998 is unwarranted.

---

[1] In its motion, the Intervenor indicates that he contacted counsel for Magic West and was informed that Magic West does not object to the request for extension of time. To clarify, counsel for Intervenor Potucek contacted counsel for Magic West by telephone during the morning of December 30 regarding the request. Magic West's counsel indicated that he saw no immediate problem, but would need to contact Magic West and get back to Potucek's counsel with a response by that afternoon. Magic West's counsel subsequently faxed a letter to Potucek's counsel on the afternoon of December 30, indicating that Magic West would likely oppose the request and further discussed the matter with Potucek's counsel by telephone. Unfortunately, the motion had already been mailed.

MICROFILMED
OCT 0 5 2000

The motion should be denied. If an extension is granted, the Petitioner respectfully requests that it be for the shortest amount of time reasonable under the circumstances and that the briefing schedule continue to require the submission of simultaneous briefs.

DATED this 31st day of December, 1997.

ROSHOLT, ROBERTSON & TUCKER

By: _____
NORMAN M. SEMANKO

MICROFILMED
OCT 0 5 2000

CERTIFICATE OF MAILING

I hereby certify that on this 31st day of December, 1997, I caused a copy of the foregoing RESPONSE TO MOTION FOR EXTENSION to be served upon the following persons in the following manner:

Via Facsimile No. (208) 342-4657 and U.S. Mail to:
Daniel V. Steenson
RINGERT CLARK CHARTERED
455 S. Third
P.O. Box 2773
Boise, ID 83701-2773

Via Facsimile No. (208) 587-~~3314~~ 3144 and U.S. Mail to:
Perce Hall
HALL, FRIEDLY & WARD
340 E. 2nd North St.
Mountain Home, ID 83647

Norman M. Semanko

M.ORIGINAL
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ROSHOLT, ROBERTSON & TUCKER
Chartered
ATTORNEYS AT LAW

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

Twin Falls Office
142 3rd Ave. North
P.O. BOX 1906
TWIN FALLS, IDAHO 83303-1906
TELEPHONE (208) 734-0700
FAX (208) 736-0041

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

DATE: 12 - 31 - 97

FAX TO: Glen Saxton, Hearing Officer

FROM: Norm Semanko

RE: Magic West

NUMBER OF PAGES INCLUDING THIS ONE: 5

IF YOU DO NOT RECEIVE ALL OF THE PAGES, PLEASE CALL US BACK AS SOON AS POSSIBLE AT (208) 734-0700.

THE INFORMATION CONTAINED IN THIS FACSIMILE COMMUNICATION IS ATTORNEY/CLIENT PRIVILEGED AND/OR CONFIDENTIAL INFORMATION INTENDED ONLY FOR THE USE OF THE INDIVIDUAL OR ENTITY NAMED ABOVE. IF THE READER OF THIS COVER PAGE IS NOT THE INTENDED RECIPIENT, OR THE EMPLOYEE OR AGENT RESPONSIBLE TO DELIVER IT TO THE INTENDED RECIPIENT, YOU ARE HEREBY NOTIFIED THAT ANY DISSEMINATION, DISTRIBUTION OR COPYING OF THIS COMMUNICATION OR THE INFORMATION CONTAINED HEREIN IS STRICTLY PROHIBITED. IF YOU HAVE RECEIVED THIS COMMUNICATION IN ERROR, PLEASE IMMEDIATELY CALL AT (208) 734-0700, AND RETURN THIS FACSIMILE TO US BY MAIL AT THE ABOVE ADDRESS. WE APPRECIATE YOUR COOPERATION.

ADDITIONAL MESSAGE:

Please deliver to Glen Saxton ASAP

MICROFILMED
OCT 05 2000

John A. Rosholt
Norman M. Semanko
ROSHOLT, ROBERTSON & TUCKER
P. O. Box 1906
142 3rd Avenue N.
Twin Falls, Idaho 83303-1906
Telephone: (208) 734-0700
Facsimile: (208) 736-0041
12319701.NMS

Attorneys for Magic West, Inc.

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

IN THE MATTER OF LICENSE NO. 61-07189 IN THE NAME OF MAGIC WEST, INC.	))))	LICENSE NO. 61-07189 RESPONSE TO MOTION FOR EXTENSION OF TIME

* * * * * * * * * *

Magic West, Inc., by and through its attorneys, Rosholt, Robertson & Tucker, files the following response to the Motion for Extension of Time filed by Edward T. Potucek in the above-captioned matter and joined in by Robert K. Hall ("Intervenors").

MICROFILMED
OCT 0 5 2000

RESPONSE TO MOTION FOR EXTENSION OF TIME

The motion should be denied. If granted, a lesser amount than requested should be provided.[1]

Magic West is prepared to file its brief on January 5, 1998, as previously agreed to and ordered, and sees no reason to extend the briefing schedule. As the Petitioner understands the Intervenors' arguments regarding the Petition, most of the briefing to be done is on legal issues. The Intervenors state as much in their motion, noting that the issues raised are the Intervenor's motion in limine and the issue of jurisdiction. These are legal, not factual issues. As a result, there is little, if any, need to listen to audio tapes or compile and read a transcript of the hearing prior to briefing.

The parties have already had more than two weeks to write their briefs. Even if the audio tapes are reasonably required to write the Intervenors' brief(s), they represent in their motion that the tapes will be ready today, January 31, 1997, some five (5) days before the briefs are due on January 5, 1998, providing sufficient time to finish briefing. As a result, a two-week extension until January 20, 1998 is unwarranted.

---

[1] In its motion, the Intervenor indicates that he contacted counsel for Magic West and was informed that Magic West does not object to the request for extension of time. To clarify, counsel for Intervenor Potucek contacted counsel for Magic West by telephone during the morning of December 30 regarding the request. Magic West's counsel indicated that he saw no immediate problem, but would need to contact Magic West and get back to Potucek's counsel with a response by that afternoon. Magic West's counsel subsequently faxed a letter to Potucek's counsel on the afternoon of December 30, indicating that Magic West would likely oppose the request and further discussed the matter with Potucek's counsel by telephone. Unfortunately, the motion had already been mailed.

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OCT 0 5 2000

The motion should be denied. If an extension is granted, the Petitioner respectfully requests that it be for the shortest amount of time reasonable under the circumstances and that the briefing schedule continue to require the submission of simultaneous briefs.

DATED this 31st day of December, 1997.

ROSHOLT, ROBERTSON & TUCKER

By: _____
NORMAN M. SEMANKO

MICROFILMED
OCT 0 5 2000

CERTIFICATE OF MAILING

I hereby certify that on this 31st day of December, 1997, I caused a copy of the foregoing RESPONSE TO MOTION FOR EXTENSION to be served upon the following persons in the following manner:

Via Facsimile No. (208) 342-4657 and U.S. Mail to:
Daniel V. Steenson
RINGERT CLARK CHARTERED
455 S. Third
P.O. Box 2773
Boise, ID 83701-2773

Via Facsimile No. (208) 587-3314 and U.S. Mail to:
Perce Hall
HALL, FRIEDLY & WARD
340 E. 2nd North St.
Mountain Home, ID 83647

Norman M. Semanko

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LAWYERS

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Department of Water Resources

Laura E. Burri
Jeffrey R. Christenson
D. Blair Clark
Michael J. Doolittle
Patrick D. Furey
David Hammerquist
Joseph B. Jones
James P. Kaufman
James G. Reid
William F. Ringert
Daniel V. Steenson
Allyn L. Sweeney

Samuel Kaufman (1921-1986)

December 30, 1997

Julie Yarbrough
IDWR
1301 N. Orchard St.
Boise, ID 83720

HAND DELIVERED

Julie,

Enclosed please find an original Motion for Extension of Time for filing in the matter of License number 61-07189.

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Department of Water Resources

Daniel V. Steenson
Jennifer Reid Mahoney
RINGERT CLARK CHARTERED
455 S. Third, P.O. Box 2773
Boise, Idaho 83701-2773
Telephone: (208) 342-4591
Fax: (208) 342-4657

Attorneys for Intervenor

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

IN THE MATTER OF LICENSE NUMBER 61-07189 IN THE NAME OF MAGIC WEST, INC	MOTION FOR EXTENSION OF TIME

COMES NOW, EDWARD T. POTUCEK, by and through his attorneys of record, and moves for an order extending the date on which briefs are due in this matter from January 5, 1998 to January 20, 1998.

DISCUSSION

At the December 15, 1997 evidentiary hearing in this matter, the Department indicated that it wished to have further briefing from the parties on the issues raised in Intervenor's motion in limine and the issue of jurisdiction of the Department over this matter. Intervenor requested a tape of the December 15, 1997 hearing, which he intends to use in preparation of that briefing. However, Intervenor was notified by the Department that the tape will not be ready until Wednesday, December 31, 1997. This does not leave Intervenor sufficient time in which to listen to the tape, or have the tape transcribed, for use in the briefs due January 5, 1998. Accordingly, Intervenor requests an extension of two weeks for preparing his briefs due January 5, 1998.

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Intervenor has contacted counsel for Magic West, and has been informed that Magic West does not object to this request for extension of time.

Intervenor has also contacted counsel for Intervenor Robert Hall, and has been informed that Mr. Hall joins in this motion for extension of time.

DATED this 30th day of December, 1997.

By _____
Daniel V. Steenson
RINGERT CLARK CHARTERED

MICROFILMED
OCT 05 2000

CERTIFICATE OF SERVICE

I hereby certify that on the 30th day of December 1997, a true and correct copy of the foregoing was served upon all parties listed below by U.S. Mail, postage prepaid:

Norman Semanko
ROSHOLT ROBERTSON TUCKER
P.O. Box 1906
Twin Falls, ID 83303-1906
Fax. No. (208) 736-0041

Perce Hall
HALL FRIEDLY & WARD
340 E. 2nd N. St.
Mountian Home, ID 83647
Fax No. (208) 587-3314

Jennifer Reid Mahoney

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Department of Water Resources

John A. Rosholt
Norman M. Semanko
ROSHOLT, ROBERTSON & TUCKER
P.O. Box 1906
142 3rd Avenue N.
Twin Falls, Idaho 83303-1906
Telephone: (208) 734-0700
Facsimile: (208) 736-0041
12099702.NMS

Attorneys for Magic West, Inc.

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

IN THE MATTER OF LICENSE NO. 61-07189 IN THE NAME OF MAGIC WEST, INC.	LICENSE NO. 61-07189 NOTICE OF SERVICE OF DISCOVERY

TO: L. Glen Saxton, Hearing Officer in the above-captioned matter.

Please take notice that Magic West, Inc., Petitioner, by and through its attorneys, Rosholt, Robertson & Tucker, served MAGIC WEST'S ANSWERS TO EDWARD T. POTUCEK'S INTERROGATORIES AND REQUESTS FOR PRODUCTION on the Intervenors, Robert K. Hall and Edward T. Potucek, on the 9th day of December, 1997, by facsimile and U.S. Mail to Perce Hall and Daniel V. Steenson, attorneys of record.

DATED this 9th day of December, 1997.

ROSHOLT, ROBERTSON & TUCKER

By _____
Norman M. Semanko

MICROFILMED
OCT 0 5 2000

CERTIFICATE OF SERVICE

The undersigned certifies that on the 9th day of December, 1997, he caused a true and correct copy of the foregoing NOTICE OF SERVICE OF DISCOVERY to be served upon the following persons in the following manner:

Via Facsimile No. (208) 587-3144 and U.S. Mail to:
Perce Hall
HALL, FRIEDLY & WARD
340 E. 2nd North St.
Mountain Home, ID 83647

Via Facsimile No. (208) 342-4657 and U.S. Mail to:
Daniel V. Steenson
RINGERT CLARK CHARTERED
P.O. Box 2773
Boise, ID 83701-2773

Norman M. Semanko

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OCT 0 5 2000

RINGERT
CLARK
CHARTERED
LAWYERS

December 8, 1997

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DEC 09 1997
WATER RESOURCES
WESTERN REGION

Laura E. Burri
Jeffrey R. Christenson
D. Blair Clark
Michael J. Doolittle
Patrick D. Furey
David Hammerquist
Joseph B. Jones
James P. Kaufman
James G. Reid
William F. Ringert
Daniel V. Steenson
Allyn L. Sweeney

Samuel Kaufman (1921-1986)

Department of Water Resources
Western Division
2735 Airport Way
Boise, ID 83705-5082

Department of Water Resources

RE: Magic West, Inc.
License No. 61-07189

Dear Sir or Madam:

Enclosed for filing, please find the original and one (1) copy of a Notice of Service. I am enclosing a self-addressed and stamped envelope for your convenience in returning a conformed copy to me. Thank you.

Very truly yours,

Kelly Maier
Secretary to Jennifer Reid Mahoney

:klm
Enclosures

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OCT 03 2000

455 South Third Street ◆ P.O. Box 2773 ◆ Boise, Idaho 83701 ◆ 208/342-4591 FAX 342-4657

Daniel V. Steenson
Jennifer Reid Mahoney
RINGERT CLARK CHARTERED
455 S. Third, P.O. Box 2773
Boise, Idaho 83701-2773
Telephone: (208) 342-4591
Fax: (208) 342-4657

Attorneys for Intervenor

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

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

TO: L. GLEN SAXTON, HEARING OFFICER:

You are hereby notified that upon the 8th day of December 1997, the undersigned served upon Norman Semanko of the firm Rosholt, Robertson & Tucker, attorneys for Magic West, Inc., a full and true copy of Edward T. Potucek's Response to Petitioner's Interrogatories, Requests for Production and Requests for Admissions directed to Magic West, Inc.

MICROFILMED
OCT 0 5 2000

Dated this 8th day of December, 1997.

RINGERT CLARK CHARTERED

BY: _____
Jennifer Reid Mahoney

CERTIFICATE OF SERVICE

I do hereby certify that on the 8th day of December, 1997, the above and foregoing document was served upon the following by facsimile and by placing a copy of same in the United States Mail, postage prepaid and properly addressed as follows:

Norman Semanko
Rosholt Robertson Tucker
P.O. Box 1906
Twin Falls, ID 83303-1906
FAX: (208) 736-0041

Perce Hall
Hall, Friedly & Ward
340 East 2nd North Street
Mountain Home, ID 83647
FAX: (208) 587-3144

Dated this 8th day of December, 1997.

RINGERT CLARK CHARTERED

by: _____
Jennifer Reid Mahoney

MICROFILMED
OCT 0 5 2000

ROSHOLT, ROBERTSON & TUCKER
Chartered
ATTORNEYS AT LAW

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

Twin Falls Office
142 3rd Ave. North
P.O. BOX 1906
TWIN FALLS, IDAHO 83303-1906
TELEPHONE (208) 734-0700
FAX (208) 736-0041

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

DATE: 12 - 9 - 97

FAX TO: Glen Saxton, Hearing Officer

FROM: Norm Semanko

RE: Magic West

NUMBER OF PAGES INCLUDING THIS ONE: 3

IF YOU DO NOT RECEIVE ALL OF THE PAGES, PLEASE CALL US BACK AS SOON AS POSSIBLE AT (208) 734-0700.

THE INFORMATION CONTAINED IN THIS FACSIMILE COMMUNICATION IS ATTORNEY/CLIENT PRIVILEGED AND/OR CONFIDENTIAL INFORMATION INTENDED ONLY FOR THE USE OF THE INDIVIDUAL OR ENTITY NAMED ABOVE. IF THE READER OF THIS COVER PAGE IS NOT THE INTENDED RECIPIENT, OR THE EMPLOYEE OR AGENT RESPONSIBLE TO DELIVER IT TO THE INTENDED RECIPIENT, YOU ARE HEREBY NOTIFIED THAT ANY DISSEMINATION, DISTRIBUTION OR COPYING OF THIS COMMUNICATION OR THE INFORMATION CONTAINED HEREIN IS STRICTLY PROHIBITED. IF YOU HAVE RECEIVED THIS COMMUNICATION IN ERROR, PLEASE IMMEDIATELY CALL AT (208) 734-0700, AND RETURN THIS FACSIMILE TO US BY MAIL AT THE ABOVE ADDRESS. WE APPRECIATE YOUR COOPERATION.

ADDITIONAL MESSAGE:

- Original to follow by mail

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OCT 05 2000

John A. Rosholt
Norman M. Semanko
ROSHOLT, ROBERTSON & TUCKER
P.O. Box 1906
142 3rd Avenue N.
Twin Falls, Idaho 83303-1906
Telephone: (208) 734-0700
Facsimile: (208) 736-0041
12099702.NMS

Attorneys for Magic West, Inc.

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

IN THE MATTER OF LICENSE NO. 61-07189 IN THE NAME OF MAGIC WEST, INC.	LICENSE NO. 61-07189 NOTICE OF SERVICE OF DISCOVERY

TO: L. Glen Saxton, Hearing Officer in the above-captioned matter.

Please take notice that Magic West, Inc., Petitioner, by and through its attorneys, Rosholt, Robertson & Tucker, served MAGIC WEST'S ANSWERS TO EDWARD T. POTUCEK'S INTERROGATORIES AND REQUESTS FOR PRODUCTION on the Intervenors, Robert K. Hall and Edward T. Potucek, on the 9th day of December, 1997, by facsimile and U.S. Mail to Perce Hall and Daniel V. Steenson, attorneys of record.

DATED this 9th day of December, 1997.

ROSHOLT, ROBERTSON & TUCKER

By _____
Norman M. Semanko

MICROFILMED
OCT 0 5 2000

CERTIFICATE OF SERVICE

The undersigned certifies that on the 9th day of December, 1997, he caused a true and correct copy of the foregoing NOTICE OF SERVICE OF DISCOVERY to be served upon the following persons in the following manner:

Via Facsimile No. (208) 587-3144 and U.S. Mail to:
Perce Hall
HALL, FRIEDLY & WARD
340 E. 2nd North St.
Mountain Home, ID 83647

Via Facsimile No. (208) 342-4657 and U.S. Mail to:
Daniel V. Steenson
RINGERT CLARK CHARTERED
P.O. Box 2773
Boise, ID 83701-2773

Norman M. Semanko

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DEC 05 2003

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DEC 09 1997
Department of Water Resources

John A. Rosholt
Norman M. Semanko
ROSHOLT, ROBERTSON & TUCKER
P.O. Box 1906
142 3rd Avenue N.
Twin Falls, Idaho 83303-1906
Telephone: (208) 734-0700
Facsimile: (208) 736-0041
12089710.NMS

Attorneys for Magic West, Inc.

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

IN THE MATTER OF LICENSE NO. 61-07189 IN THE NAME OF MAGIC WEST, INC.	LICENSE NO. 61-07189 MAGIC WEST'S ANSWERS TO ROBERT K. HALL'S INTERROGATORIES

TO: L. Glen Saxton, Hearing Officer in the above-captioned matter.

Please take notice that Magic West, Inc., Petitioner, by and through its attorneys, Rosholt, Robertson & Tucker, served MAGIC WEST'S ANSWERS TO ROBERT K. HALL'S INTERROGATORIES on the Intervenors, Robert K. Hall and Edward T. Potucek, on the 8th day of December, 1997, by facsimile and U.S. Mail to Perce Hall and Daniel V. Steenson, attorneys of record.

DATED this 8th day of December, 1997.

ROSHOLT, ROBERTSON & TUCKER

By _____
Norman M. Semanko

MICROFILMED
OCT 05 2000

CERTIFICATE OF SERVICE

The undersigned certifies that on the 8th day of December, 1997, he caused a true and correct copy of the foregoing NOTICE OF SERVICE OF DISCOVERY to be served upon the following persons in the following manner:

Via Facsimile No. (208) 587-3144 and U.S. Mail to:
Perce Hall
HALL, FRIEDLY & WARD
340 E. 2nd North St.
Mountain Home, ID 83647

Via Facsimile No. (208) 342-4657 and U.S. Mail to:
Daniel V. Steenson
RINGERT CLARK CHARTERED
P.O. Box 2773
Boise, ID 83701-2773

Norman M. Semanko

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Department of Water Resources

Daniel V. Steenson
Jennifer Reid Mahoney
RINGERT CLARK CHARTERED
455 S. Third, P.O. Box 2773
Boise, Idaho 83701-2773
Telephone: (208) 342-4591
Fax: (208) 342-4657

Attorneys for Intervenor

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

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

TO: L. GLEN SAXTON, HEARING OFFICER:

You are hereby notified that upon the 5th day of December 1997, the undersigned served upon Norman Semanko of the firm Rosholt, Robertson & Tucker, attorneys for Magic West, Inc., a full and true copy of Edward T. Potucek's Interrogatories and Requests for Production directed to Magic West, Inc.

Dated this 5th day of December, 1997.

RINGERT CLARK CHARTERED

BY: Jennifer Reid Mahoney

MICROFILMED
OCT 0 5 2000

CERTIFICATE OF SERVICE

I do hereby certify that on the 5th day of December, 1997, the above and foregoing document was served upon the following by facsimile and by placing a copy of same in the United States Mail, postage prepaid and properly addressed as follows:

Norman Semanko
Rosholt Robertson Tucker
P.O. Box 1906
Twin Falls, ID 83303-1906
FAX: (208) 736-0041

Perce Hall
Hall, Friedly & Ward
340 East 2nd North Street
Mountain Home, ID 83647
FAX: (208) 587-3144

Dated this 5th day of December, 1997.

RINGERT CLARK CHARTERED

by: _____
Jennifer Reid Mahoney

MICROFILMED
OCT 05 2000

ROSHOLT, ROBERTSON & TUCKER
Chartered
ATTORNEYS AT LAW

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

Twin Falls Office
142 3rd Ave. North
P.O. BOX 1906
TWIN FALLS, IDAHO 83303-1906
TELEPHONE (208) 734-0700
FAX (208) 736-0041

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

DATE: 12-8-97

FAX TO: Glen Saxton, Hearing officer

FROM: Norm Semanko

RE: Magic West - Discovery Certification

NUMBER OF PAGES INCLUDING THIS ONE: 3

IF YOU DO NOT RECEIVE ALL OF THE PAGES, PLEASE CALL US BACK AS SOON AS POSSIBLE AT (208) 734-0700.

THE INFORMATION CONTAINED IN THIS FACSIMILE COMMUNICATION IS ATTORNEY/CLIENT PRIVILEGED AND/OR CONFIDENTIAL INFORMATION INTENDED ONLY FOR THE USE OF THE INDIVIDUAL OR ENTITY NAMED ABOVE. IF THE READER OF THIS COVER PAGE IS NOT THE INTENDED RECIPIENT, OR THE EMPLOYEE OR AGENT RESPONSIBLE TO DELIVER IT TO THE INTENDED RECIPIENT, YOU ARE HEREBY NOTIFIED THAT ANY DISSEMINATION, DISTRIBUTION OR COPYING OF THIS COMMUNICATION OR THE INFORMATION CONTAINED HEREIN IS STRICTLY PROHIBITED. IF YOU HAVE RECEIVED THIS COMMUNICATION IN ERROR, PLEASE IMMEDIATELY CALL AT (208) 734-0700, AND RETURN THIS FACSIMILE TO US BY MAIL AT THE ABOVE ADDRESS. WE APPRECIATE YOUR COOPERATION.

ADDITIONAL MESSAGE:

- Original to follow by mail

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OCT 0 5 2000

John A. Rosholt
Norman M. Semanko
ROSHOLT, ROBERTSON & TUCKER
P.O. Box 1906
142 3rd Avenue N.
Twin Falls, Idaho 83303-1906
Telephone: (208) 734-0700
Facsimile: (208) 736-0041
12089710.NMS

Attorneys for Magic West, Inc.

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

IN THE MATTER OF LICENSE NO. 61-07189 IN THE NAME OF MAGIC WEST, INC.	LICENSE NO. 61-07189 MAGIC WEST'S ANSWERS TO ROBERT K. HALL'S INTERROGATORIES

TO: L. Glen Saxton, Hearing Officer in the above-captioned matter.

Please take notice that Magic West, Inc., Petitioner, by and through its attorneys, Rosholt, Robertson & Tucker, served MAGIC WEST'S ANSWERS TO ROBERT K. HALL'S INTERROGATORIES on the Intervenors, Robert K. Hall and Edward T. Potucek, on the 8th day of December, 1997, by facsimile and U.S. Mail to Perce Hall and Daniel V. Steenson, attorneys of record.

DATED this 8th day of December, 1997.

ROSHOLT, ROBERTSON & TUCKER

By _____
Norman M. Semanko

MICROFILMED
OCT 0 5 2009

CERTIFICATE OF SERVICE

The undersigned certifies that on the 8th day of December, 1997, he caused a true and correct copy of the foregoing NOTICE OF SERVICE OF DISCOVERY to be served upon the following persons in the following manner:

Via Facsimile No. (208) 587-3144 and U.S. Mail to:
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340 E. 2nd North St.
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Via Facsimile No. (208) 342-4657 and U.S. Mail to:
Daniel V. Steenson
RINGERT CLARK CHARTERED
P.O. Box 2773
Boise, ID 83701-2773

Norman M. Semanko

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OCT 0 5 2009

State of Idaho
DEPARTMENT OF WATER RESOURCES
1301 North Orchard Street, P.O. BOX 83720, Boise, Idaho 83720-0098
Phone: (208) 327-7900 FAX: (208) 327-7866

PHILIP E. BATT
GOVERNOR

KARL J. DREHER
DIRECTOR

December 8, 1997

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

Dear Interested Parties:

I have enclosed a copy of the Order Denying Motion to Dismiss, issued in connection with the above referenced water right license. The hearing will proceed on December 15, 1997, at 9:00 a.m., as scheduled.

If you have any questions concerning the enclosed document, please contact me at (208)327-7953.

Sincerely,

Julie L. Yarbrough

JULIE L. YARBROUGH, Senior Secretary
Water Allocation Bureau

Enclosure

c: IDWR - Western Region

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P. 01

TRANSACTION REPORT

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Norman Semanko

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Dan Steenson

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Perce Hall

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HALL, FRIEDLY & WARD
A PROFESSIONAL ASSOCIATION
ATTORNEYS AT LAW
340 EAST 2ND NORTH
MOUNTAIN HOME, IDAHO 83647

PERCE HALL
JAY R. FRIEDLY
ROBERT W. WARD
CLAY M. SHOCKLEY

TELEPHONE
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E-MAIL
hfw@micron.net

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Department of Water Resources

December 3, 1997

L. Glen Saxton
Department of Water Resources
1301 North Orchard Street
P. O. Box 83720
Boise, Idaho 83720

Dear Sir:

Re: License Number 61-07189
In the name of Magic West, Inc.

I am enclosing the following documents to be filed with you as hearing officer in the above-designated matter.

The documents are as follows:

1. Notice of Response to Interrogatories served on Robert K. Hall by Magic West, Inc.

2. Robert K. Hall's Motion to Dismiss.

3. Notice of Service of Robert K. Hall's Interrogatories directed to Magic West, Inc.

Very respectfully yours,

Perce Hall

PH:tam
Enclosures

MICROFILMED
OCT 05 2000

PERCE HALL
HALL, FRIEDLY & WARD
Attorneys for Intervenor
340 East 2nd North Street
Mountain Home, Idaho 83647
Telephone: (208) 587-4412

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF

THE STATE OF IDAHO

IN THE MATTER OF LICENSE NUMBER 61-07189 IN THE NAME OF MAGIC WEST, INC.	LICENSE NUMBER 61-07189 NOTICE OF SERVICE OF ROBERT K. HALL'S INTERROGATORIES DIRECTED TO MAGIC WEST, INC.

TO: L. GLEN SAXTON, HEARING OFFICER:

You are hereby notified that upon the 3rd day of December, 1997, the undersigned served upon Norman Semanko of the firm of Rosholt, Robertson & Tucker, attorneys for Magic West, Inc., a full and true copy of Robert K. Hall's Interrogatories directed to Magic West, Inc.

DATED this 3rd day of December, 1997.

Perce Hall, attorney for
Robert K. Hall

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OCT 0 5 2000

PERCE HALL
HALL, FRIEDLY & WARD
Attorneys for Intervenor
340 East 2nd North Street
Mountain Home, Idaho 83647
Telephone: (208) 587-4412

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF

THE STATE OF IDAHO

IN THE MATTER OF LICENSE NUMBER 61-07189 IN THE NAME OF MAGIC WEST, INC.	LICENSE NUMBER 61-07189 ROBERT K. HALL'S MOTION TO DISMISS

ROBERT K. HALL, protestant and intervenor, hereby moves the Idaho Department of Water Resources to dismiss the petition of Magic West, Inc., to amend Water Right License No. 61-07189, and in connection therewith, joins in the motion to dismiss submitted by Edward T. Potucek through his attorney, Daniel Steenson of Ringert Clark, Chartered.

In support of the motion to dismiss, Hall desires to present the following additional arguments:

1. Magic West is attempting to amend its license which states in clear and unambiguous language that the maximum amount of water to be diverted is 0.67CFS(12.9AF).

2. Water Right License No. 61-07189 expressly states in subparagraphs 3 and 4, under conditions, that the right is subject to all prior water rights and that modifications to or variance from the license must be made within the limits of Section 42-222 of the Idaho Code.

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3. Idaho Code 42-222 provides as follows:

"The director of the Department of Water Resources shall examine all the evidence and available information and shall approve the change in whole or in part, or upon conditions, provided no other water rights are injured thereby, and the change does not constitute an enlargement in use of the original right,***"

The protestants who appeared at the conferences held by the department on Magic West's application clearly showed that other rights are being injured by Magic West's use of water and a change which constitutes an enlargement in use of the original right is expressly prohibited by Idaho Code 42-.

(1) If the Department of Water Resources is planning to change the original license to increase the water use allowed by Magic West, it is overlooking the requirement of Idaho Code 42-203A, which provides that an application to appropriate water must prove, among other things, (1) that the proposed application will not injure other water users, and (2) that the water supply is sufficient for the purposes for which it is sought to be appropriated. (3) If the original application of Magic West had requested the amount of water which is now being requested, there would have been numerous protests. If the license is now amended as requested without requiring Magic West to file a new application to appropriate the additional waters, the protestants will have been deprived of their right to protest the original application and of their right to appeal any order entered as a result thereof.

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IT IS THEREFORE RESPECTFULLY REQUESTED that the petition of Magic West for amendment of the license be denied and dismissed and that the hearing set for December 15, 1997, be vacated.

DATED this 3rd day of December, 1997.

HALL, FRIEDLY & WARD

By _____
Attorneys for Robert K. Hall

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Department of Water Resources

John A. Rosholt
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11219705.NMS

Attorneys for Magic West, Inc.

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

IN THE MATTER OF LICENSE NO. 61-07189 IN THE NAME OF MAGIC WEST, INC.	LICENSE NO. 61-07189 MOTION IN OPPOSITION TO POTUCEK'S PETITION TO INTERVENE; ANSWER TO POTUCEK'S MOTION TO COMPEL DISCOVERY; AND ANSWER TO POTUCEK'S RESPONSE TO PETITION AND MOTION TO DISMISS

* * * * * * * * * *

Magic West, Inc., by and through its attorneys, Rosholt, Robertson & Tucker, files the following: (1) motion in opposition to the Petition of Edward T. Potucek to Intervene in Proceedings Involving License Number 61-07189 ("Petition to Intervene and Protest"); (2) answer to the Motion of Edward T. Potucek to Compel Discovery ("Motion to Compel Discovery"); and (3) answer to Intervenor's Response to Petition to Amend and Motion to Dismiss Petition ("Response to Petition and Motion to Dismiss").

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PROCEDURAL BACKGROUND

On May 5, 1997, Magic West, Inc. filed its Petition for Adjustment and Clarification of Existing Order/License No. 61-07189, pursuant to the Idaho Department of Water Resources ("Department") Rules of Procedure, IDAPA 37.01.01, and the licensing order issued by the department on October 27, 1990, to adjust and clarify the maximum diversion volume of license no. 61-07189.

The Department concluded that a hearing on the petition is appropriate to determine the extent of beneficial use and set the hearing for December 15, 1997. Order Designating Contested Case; Appointing Hearing Officer; and Scheduling Hearing, (October 22, 1997). The Department also provided that any party to pending Application for Permit No. 61-07724 had twenty-eight (28) days in which to file a petition to intervene in the proceeding involving license no. 61-07189 (i.e., on or before November 19[1], 1997), pursuant to Rules of Procedure 350-354. Id.

To Magic West's knowledge, Robert K. Hall and Edward T. Potucek are the only potential parties that filed motions to intervene on or before the November 19 deadline.

The Department made clear that the purpose of the December 15 hearing is not to hear testimony or consider evidence in the matter of the protested application for permit no. 61-07724, but only regarding the extent of beneficial use under license no. 61-07189. Notice of Hearing (October 24, 1997).

---

[1] Magic West, Inc. inadvertently noted the deadline as November 18 in its brief in opposition to the motions to intervene and compel discovery filed by Robert K. Hall. The correct deadline, as set forth in the Department's order, is November 19.

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I. MOTION IN OPPOSITION TO PETITION TO INTERVENE.

Pursuant to Rule 354, Magic West hereby moves that the Petition to Intervene filed by Edward T. Potucek be denied for the reasons provided below.

In order to grant a motion to intervene, the Department must find that the petition to intervene: (1) shows direct and substantial interest in any part of the subject matter of the proceeding; and (2) does not unduly broaden the issues. Rule 353. Reasonable conditions may be placed on any grant of intervention. Id.

Like Robert K. Hall, Potucek states as his reason for intervening that "there is not sufficient water available for Magic West's use without injuring Intervenor's senior water right". Petition to Intervene at 1-2.

As pointed out in response to Hall's Motion to Intervene, the issue in this proceeding is not whether permission should be granted to Magic West to develop water right no. 61-07189. That application for permit has already been granted. Development has already occurred and a license has been issued. The hearing is also not about pending application for permit no. 61-07724, as the Department has made clear. No application for permit is being considered. As a result, the concerns about "sufficient water" and "injuring" other rights, which are considered in the context of applications for permit, are not under consideration in this proceeding. See, I.C. Sec. 42-203A(5) (factors to be considered for applications for permit).

Rather, the sole purpose of the hearing is to allow the introduction of evidence regarding the actual extent of beneficial use. Potucek in no way contends that the amount of water developed by Magic West under license no. 61-07189 is less than what Magic West contends it is. In fact, he seems to concede just the opposite, stating that he is ". . .unable to counter any

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evidence petitioner might have regarding its water use. . ." Response to Petition and Motion to Dismiss at 6.

As a result, Potucek's stated reason for intervening is not applicable to the current proceeding and does not constitute a "direct and substantial interest in any part of the subject matter of the proceeding", as required by Rules 351 and 353.

In addition, if the petition to intervene were granted, it would "unduly broaden the issues" in the current proceeding, contrary to Rule 353. Potucek seeks consideration of issues which apply in permit proceedings. As discussed above, these issues are inapplicable to the hearing.

Because the petition to intervene does not state a direct and substantial interest regarding the extent of beneficial use under license no. 61-07189, and would unduly broaden the issues under consideration at the December 15 hearing, it should be denied. The Applicant hereby requests that it be denied.

II. ANSWER TO MOTION TO COMPEL DISCOVERY.

Pursuant to Rule 270.02, Magic West hereby responds to Edward T. Potucek's Motion to Compel Discovery and requests that it be denied for the reasons set forth below.

Rule 521 provides that no party is entitled to engage in discovery unless the party moves to compel discovery and the agency issues an order directing that the discovery be answered.

In the instant case, the Petition commencing this action was filed by Magic West in May, 1997. Now, some 6 month later, and less than 1 month before the hearing, Potucek proposes to compel discovery. The motion is not timely. In addition, Potucek has proposed

OCT 0 5 2000

no discovery to Magic West which could be answered and he states absolutely no factual grounds or reason for granting his motion. The motion is therefore incomplete. See, Rule 260.

Also, because of the broad scope of the issues which Potucek raises in his motion to intervene, as discussed above, and the fact that Potucek has not yet propounded any discovery, the hearing set for December 15 is likely to be delayed. Because the issues do not relate to the subject matter of the proceeding, discovery is likely to seek irrelevant information that will not be helpful to the Department in determining the extent of beneficial use under license no. 61-07189. In addition, the Department has already provided the opportunity for all parties to respond and present evidence and argument in this matter. Notice of Hearing at 2. This will include the right to cross-examine Magic West's witnesses. The Petitioner therefore requests that the motion be denied.

In the event that the motion to compel discovery is granted, Magic West hereby requests the right to reciprocal discovery, as authorized under Rule 522, to discover information from the proposed intervenor. Discovery should not be a one-way street.

III. ANSWER TO RESPONSE TO PETITION AND MOTION TO DISMISS.

Finally, Potucek contends that the Department is without power to modify, amend, or correct mistakes in existing licenses in his Response to Petition and Motion to Dismiss. If the Department were to do so, Potucek contends, Magic West would be allowed to appropriate additional water without going through the mandatory permit process. This is simply incorrect and the motion to dismiss should be denied.

The Director himself has already determined that "[a] hearing on the petition is appropriate." Order Designating Contested Case; Appointing Hearing Officer; and Scheduling

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Hearing (October 22, 1997). See also, Petition for Adjustment and Clarification of Existing Order/License (May 1, 1997).

In addition, from the time the Petition was filed by Magic West in May, 1997, until the order designating contested case and setting a hearing was issued in October, 1997, Potucek had more than five months to seek to intervene and answer the Petition. However, he chose not to do so until after the Director had already decided to designate a contested case, appoint a hearing officer and set a hearing date.

The Director was correct to designate the contested case and set a hearing. Rule 230, and arguably Rules 305 and 770, as well as the license itself, allow limited changes or amendments of the type sought by Magic West.[2] In addition, the Idaho Administrative Procedure Act (APA) recognizes that state agencies may amend or modify licenses granted under their respective authorities. See, I.C. Sec. 67-5254 ("An agency shall not. . .modify. . .or amend a license. . .unless the agency first gives notice and an opportunity for an appropriate contested case. . ."). Finally, the Idaho APA grants broad authority to agencies to adopt rules to govern contested cases, including any "provisions as may be necessary or useful". I.C. Secs. 67-5206(4)(k) and (5)(b). Therefore, authority exists to adopt the rules cited above.

---

[2] The time limits of Idaho Rule of Civil Procedure 60(b), to which Potucek refers, are inapplicable in this matter. The IRCP do not apply to Departmental proceedings, but only to the district courts of the State of Idaho. Reference to the rule in the Petition was only for purposes of citing "similar" authority vested in the courts. Petition for Adjustment and Clarification of Existing Order/License at 5. In any event, it is clear that the Director did not rely on IRCP 60(b) in his October 22, 1997 Order.

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As the above authorities attest, the judicial review provisions of I.C. Secs. 42-407 and 42-1701A which Potucek cites do not prohibit the modification or amendment of existing licenses to correct mistakes of the type at issue here. In addition, prior to the designation of the contested case by the Director, no protest has ever been filed or any hearing ever held regarding the license which could have been the subject of judicial review under these provisions.

The reason for allowing consideration of the proposed change or amendment is self-evident upon reviewing Magic West's Petition and the supporting Affidavit of Jack Anderson, the plant manager. The diversion volume listed in the license is so incorrect that literal application of the amount would likely shut the plant down. In relation to the permitted and licensed diversion rate, the diversion volume would allow the plant to operate less than two hours a day. The reality is that it runs all day long. See, Affidavit of Jack Anderson.

When such a blatant error exists in a license and is brought to the Department's attention, it is entirely appropriate for the Department to allow an opportunity for the license holder to establish the correct amount based on actual beneficial use during the authorized development period. This is especially true in the case of an uncontested application for permit and license, which license no. 61-07189 is. This case is also compelling because the actual diversion volume was not measured, nor was it required to be, until recently.

In addition, the license itself contains a condition that: "The maximum diversion volume may be adjusted to more accurately describe the beneficial use. . ." This condition recognizes the fact that the volume of water used was not actually measured, nor was it required to be. In effect, the condition gives the Department continuing jurisdiction over this element. Now

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that annual volume is measured, and Magic West's operations have not changed appreciably, it is apparent that the volume in the license is grossly wrong. See, Affidavit of Jack Anderson. Pursuant to the license condition, Magic West has the right to seek to change or amend the license to "more accurately describe the beneficial use" that existed during the authorized development period.

The fact that the license contains this condition also blunts Potucek's argument that the license is binding on the state as to the right to use the amount of water mentioned in the license, pursuant to I.C. Sec. 42-220. The license itself provides that the maximum diversion volume can, and may need to, be modified because the amount may not be accurate. If anything, the fact that the amount included in the license is not based on actual measurements is a compelling reason to delete the annual diversion volume limitation altogether. Diversion rate is adequate to describe the quantity of water appropriated. See, I.C. Sec. 42-102 (providing that a cubic foot of water per second of time shall be the legal standard for measurement of water in this state). If diversion volume is to remain in the license, it should be accurate.

Contrary to Potucek's assertion, the Petition seeks no additional development or appropriation of water. It seeks only to correct the diversion volume in the existing license. As a result Potucek's motion to dismiss Magic West's Petition should be denied.

CONCLUSION

For the reasons stated above, Edward T. Potucek's Petition to Intervene, Motion to Compel Discovery, and Response to Petition and Motion to Dismiss should be denied.

OCT 05 2009

DATED this 24th day of November, 1997.

ROSHOLT, ROBERTSON & TUCKER

By: _____
NORMAN M. SEMANKO

OCT 0 5 2005

PERCE HALL
HALL, FRIEDLY & WARD
Attorneys for Intervenor
340 East 2nd North Street
Mountain Home, Idaho 83647
Telephone: (208) 587-4412

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF

THE STATE OF IDAHO

IN THE MATTER OF LICENSE NUMBER 61-07189 IN THE NAME OF MAGIC WEST, INC.	LICENSE NUMBER 61-07189 NOTICE OF SERVICE OF ROBERT K. HALL'S INTERROGATORIES DIRECTED TO MAGIC WEST, INC.

TO: L. GLEN SAXTON, HEARING OFFICER:

You are hereby notified that upon the 3rd day of December, 1997, the undersigned served upon Norman Semanko of the firm of Rosholt, Robertson & Tucker, attorneys for Magic West, Inc., a full and true copy of Robert K. Hall's Interrogatories directed to Magic West, Inc.

DATED this 3rd day of December, 1997.

Perce Hall, attorney for
Robert K. Hall

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OCT 0 5 2000

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Perce Hall

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Norman Semanko

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State of Idaho
DEPARTMENT OF WATER RESOURCES
1301 North Orchard Street, P.O. BOX 83720, Boise, Idaho 83720-0098
Phone: (208) 327-7900 FAX: (208) 327-7866

PHILIP E. BATT
GOVERNOR

KARL J. DREHER
DIRECTOR

December 4, 1997

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

Dear Interested Parties:

I have enclosed a copy of the Order Denying Motion to Dismiss, issued in connection with the above referenced water right license.

If you have any questions concerning the enclosed document, please contact me at (208)327-7953.

Sincerely,

Julie L. Yarbrough

JULIE L. YARBROUGH, Senior Secretary
Water Allocation Bureau

Enclosure

c: IDWR - Western Region

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Department of Water Resources

John A. Rosholt
Norman M. Semanko
ROSHOLT, ROBERTSON & TUCKER
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12029705.NMS

Attorneys for Magic West, Inc.

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

IN THE MATTER OF LICENSE NO. 61-07189 IN THE NAME OF MAGIC WEST, INC.	LICENSE NO. 61-07189 RESPONSE TO MOTION TO STAY HEARING

* * * * * * * * * * *

Magic West, Inc., by and through its attorneys, Rosholt, Robertson & Tucker, files the following response to the Motion to Stay Hearing filed by Edward T. Potucek in the above-captioned matter.

RESPONSE TO MOTION TO STAY HEARING

The motion should be denied. Magic West is prepared to present evidence at the hearing and sees no reason to delay the matter beyond December 15, 1997, the date designated by the Director.

It is well-established that an intervenor must take a case as he finds it at the time that he files his petition to intervene. Anderson v. Ferguson, 56 Idaho 554 (1936). In other words, he is required to adhere to the schedule which is already in place.

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Magic West filed its Petition in this matter during May, 1997 and an order was issued by the Director on October 22, 1997 designating the contested case, appointing a hearing officer, and setting a hearing on the Petition. The motions to intervene were filed and granted after the schedule had already been set. Limited discovery was authorized, but only within the existing schedule.

The orders granting intervention and limited discovery in this matter made abundantly clear that all discovery was to be completed one week before the December 15 hearing.[1] This addressed Magic West's concerns that intervention and discovery not be allowed to postpone the hearing. Intervention and authority to conduct limited discovery were granted by the Hearing Officer, not the ability to delay the proceedings. Nonetheless, Potucek now seeks to delay the hearing.

As argued in Magic West's response to Potucek's motion to dismiss[2], the Director has already determined that it is proper to hold a hearing on the Petition for the purpose of allowing Magic West to present evidence regarding the actual level of beneficial use. Order Designating Contested Case; Appointing Hearing Officer; and Scheduling Hearing, (October 22, 1997). The intervention orders now allow the intervenors to present evidence, as well.

Magic West does not believe that oral argument on Potucek's motion is necessary and that it should be denied forthwith, based upon the Director's previous decision to designate the

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[1] In compliance with the Hearing Officer's discovery orders, Magic West has already served its discovery request on the intervenors, requesting a response by December 8. No discovery request has yet been received from the intervenors.

[2] See, Motion in Opposition to Potucek's Petition to Intervene; Answer to Potucek's Motion to Compel Discovery; and Answer to Response to Petition and Motion to Dismiss, filed by Magic West on November 24, 1997, at pp. 5-8.

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DATED this 2nd day of December, 1997.

ROSHOLT, ROBERTSON & TUCKER

By: _____
NORMAN M. SEMANKO

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OCT 05 2000

CERTIFICATE OF MAILING

I hereby certify that on this 2nd day of December, 1997, I served a copy of the foregoing RESPONSE TO MOTION TO STAY HEARING, to be served upon the following persons in the following manner:

Via Facsimile No. (208) 342-4657 and U.S. Mail to:
Daniel V. Steenson
RINGERT CLARK CHARTERED
455 S. Third
P.O. Box 2773
Boise, ID 83701-2773

Via Facsimile No. (208) 587-3314 and U.S. Mail to:
Perce Hall
HALL, FRIEDLY & WARD
340 E. 2nd North St.
Mountain Home, ID 83647

Norman M. Semanko

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ROSHOLT, ROBERTSON & TUCKER
Chartered
ATTORNEYS AT LAW

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

Twin Falls Office
142 3rd Ave. North
P.O. BOX 1906
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FAX (208) 736-0041

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

DATE: 12-2-97

FAX TO: Glen Saxton, Hearing Officer

FROM: Norm Semanko

RE: Response to Motion to Stay

NUMBER OF PAGES INCLUDING THIS ONE: 5

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ADDITIONAL MESSAGE:

Original to follow by mail - faxed to avoid delay in responding

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John A. Rosholt
Norman M. Semanko
ROSHOLT, ROBERTSON & TUCKER
P. O. Box 1906
142 3rd Avenue N.
Twin Falls, Idaho 83303-1906
Telephone: (208) 734-0700
Facsimile: (208) 736-0041
12029705.NMS

Attorneys for Magic West, Inc.

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

IN THE MATTER OF LICENSE NO. 61-07189 IN THE NAME OF MAGIC WEST, INC.	LICENSE NO. 61-07189 RESPONSE TO MOTION TO STAY HEARING

* * * * * * * * * * *

Magic West, Inc., by and through its attorneys, Rosholt, Robertson & Tucker, files the following response to the Motion to Stay Hearing filed by Edward T. Potucek in the above-captioned matter.

RESPONSE TO MOTION TO STAY HEARING

The motion should be denied. Magic West is prepared to present evidence at the hearing and sees no reason to delay the matter beyond December 15, 1997, the date designated by the Director.

It is well-established that an intervenor must take a case as he finds it at the time that he files his petition to intervene. Anderson v. Ferguson, 56 Idaho 554 (1936). In other words, he is required to adhere to the schedule which is already in place.

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DATED this 2nd day of December, 1997.

ROSHOLT, ROBERTSON & TUCKER

By: _____
NORMAN M. SEMANKO

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OCT 0 5 2000

CERTIFICATE OF MAILING

I hereby certify that on this 2nd day of December, 1997, I served a copy of the foregoing RESPONSE TO MOTION TO STAY HEARING, to be served upon the following persons in the following manner:

Via Facsimile No. (208) 342-4657 and U.S. Mail to:
Daniel V. Steenson
RINGERT CLARK CHARTERED
455 S. Third
P.O. Box 2773
Boise, ID 83701-2773

Via Facsimile No. (208) 587-3314 and U.S. Mail to:
Perce Hall
HALL, FRIEDLY & WARD
340 E. 2nd North St.
Mountain Home, ID 83647

Norman M. Semanko

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RINGERT
CLARK
CHARTERED
LAWYERS

Laura E. Burri
Jeffrey R. Christenson
D. Blair Clark
Michael J. Doolittle
Patrick D. Furey
David Hammerquist
Joseph B. Jones
James P. Kaufman
James G. Reid
William F. Ringert
Daniel V. Steenson
Allyn L. Sweeney

Samuel Kaufman (1921-1986)

December 2, 1997

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DEC 0 2 1997
Department of Water Resources

HAND DELIVERED

L. Glen Saxton
Hearing Officer
Idaho Department of Water Resources
2735 Airport Way
Boise, Idaho 83705

Dear Mr. Saxton:

Enclosed is Edward T. Potucek's Motion to Stay the December 15, 1997 evidentiary hearing in the this matter until after such time as the Department has had the opportunity to issue a ruling on Potucek's Motion to Dismiss.

By this letter I am requesting that this matter be given immediate attention for the reason that my client is considering the possibility of filing a petition for writ of prohibition with the appropriate court to arrest these proceedings should the Department deny the motion for stay. For that reason, I need to know whether the Department intends to proceed with the December 15, 1997 evidentiary hearing as soon as possible.

Thank you for your consideration of this matter.

Sincerely,

Daniel V. Steenson

DVS:lr
Enclosure
cc: Edward T. Potucek
William F. Ringert

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OCT 0 5 2000

Daniel V. Steenson
Jennifer Reid Mahoney
RINGERT CLARK CHARTERED
455 S. Third, P.O. Box 2773
Boise, Idaho 83701-2773
Telephone: (208) 342-4591
Fax: (208) 342-4657

Attorneys for Intervenor

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DEC 0 2 1997
Department of Water Resources

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

IN THE MATTER OF LICENSE NUMBER 61-07189 IN THE NAME OF MAGIC WEST, INC	))))	MOTION TO STAY HEARING

COMES NOW, EDWARD T. POTUCEK, by and through his attorneys of record, and moves for an order staying the evidentiary hearing scheduled for December 15, 1997 in this matter, until such time as the Department has issued a ruling on Potucek's motion to dismiss.

I. DISCUSSION

By its order of October 22, 1997, the Department scheduled a hearing in this matter for December 15, 1997, for the purpose of "providl[ing] the opportunity to Magic West, Inc. to establish through plant records, or other similar evidence, the extent of beneficial use that existed under right no. 61-07189 prior to the submission of proof of beneficial use by Magic West on June 13, 1979." Order, at 2.

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Subsequently, Potucek moved to intervene in the proceedings involving license no. 61-07189, and simultaneously filed a motion with the Department to dismiss Magic West's petition to amend or clarify on the grounds that the Department does not have the jurisdiction to preside over such a matter. Potucek was granted leave to intervene, and now requests that he be provided an opportunity to present oral argument on the motion to dismiss filed November 19, 1997.

Due to the fact that Potucek has raised issues regarding the jurisdiction of the Department to conduct the evidentiary hearing and to preside over this matter, Potucek requests that the evidentiary hearing scheduled for December 15, 1997 be stayed until the Department has had the opportunity to issue a ruling on the jurisdictional questions. Potucek further requests that oral argument on his motion to dismiss be scheduled for December 15, 1997, in place of the currently scheduled evidentiary hearing.

II. CONCLUSION

Potucek has raised issues regarding the jurisdiction of this tribunal over these proceedings. Until such time as those jurisdictional issues have been resolved, Potucek requests that the evidentiary hearing scheduled for December 15, 1997 in this matter be stayed.

DATED this 2nd day of December, 1997.

RINGERT CLARK CHARTERED

By _____
Daniel V. Steenson
RINGERT CLARK CHARTERED

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OCT 0 5 2000

CERTIFICATE OF SERVICE

I hereby certify that on the 2nd day of December, 1997, a true and correct copy of the foregoing was served upon all parties listed below by:

(x) U. S. mail, postage prepaid ( ) express mail
( ) hand delivery (x) facsimile

Norman Semanko
ROSHOLT ROBERTSON TUCKER
P.O. Box 1906
Twin Falls, ID 83303-1906
Fax No.: (208) 736-0041

Perce Hall
HALL FRIEDLY AND WARD
340 E. 2nd N. ST.
Mt. Home, ID 83647
Fax No.: (208) 587-3314

Daniel V. Steenson

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Department of Water Resources

John A. Rosholt
Norman M. Semanko
ROSHOLT, ROBERTSON & TUCKER
P.O. Box 1906
142 3rd Avenue N.
Twin Falls, Idaho 83303-1906
Telephone: (208) 734-0700
Facsimile: (208) 736-0041
11299702.NMS

Attorneys for Magic West, Inc.

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

IN THE MATTER OF LICENSE NO. 61-07189 IN THE NAME OF MAGIC WEST, INC.	LICENSE NO. 61-07189 NOTICE OF SERVICE OF DISCOVERY

TO: L. Glen Saxton, Hearing Officer in the above-captioned matter.

Please take notice that Magic West, Inc., Petitioner, by and through its attorneys, Rosholt, Robertson & Tucker, served MAGIC WEST'S INTERROGATORIES, REQUESTS FOR PRODUCTION, AND REQUESTS FOR ADMISSION on the Intervenors, Robert K. Hall and Edward T. Potucek, on the 29th day of November, 1997, by facsimile and U.S. Mail to Perce Hall and Daniel V. Steenson, attorneys of record.

DATED this 29th day of November, 1997.

ROSHOLT, ROBERTSON & TUCKER

By _____
Norman M. Semanko

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CERTIFICATE OF SERVICE

The undersigned certifies that on the 29th day of November, 1997, he caused a true and correct copy of the foregoing NOTICE OF SERVICE OF DISCOVERY to be served upon the following persons in the following manner:

Via Facsimile No. (208) 587-3314 and U.S. Mail to:
Perce Hall
HALL, FRIEDLY & WARD
340 E. 2nd North St.
Mountain Home, ID 83647

Via Facsimile No. (208) 342-4657 and U.S. Mail to:
Daniel V. Steenson
RINGERT CLARK CHARTERED
P.O. Box 2773
Boise, ID 83701-2773

Norman M. Semanko

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OCT 0 5 2000

ROSHOLT, ROBERTSON & TUCKER
Chartered
ATTORNEYS AT LAW

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

Twin Falls Office
142 3rd Ave. North
P.O. BOX 1906
TWIN FALLS, IDAHO 83303-1906
TELEPHONE (208) 734-0700
FAX (208) 736-0041

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

DATE: 11-29-97

FAX TO: IDWR Attn: Glen Saxton, Hearing officer

FROM: Norm Semanko

RE: Notice of Service of Discovery

NUMBER OF PAGES INCLUDING THIS ONE: 3

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ADDITIONAL MESSAGE:

- Original to follow by mail

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John A. Rosholt
Norman M. Semanko
ROSHOLT, ROBERTSON & TUCKER
P.O. Box 1906
142 3rd Avenue N.
Twin Falls, Idaho 83303-1906
Telephone: (208) 734-0700
Facsimile: (208) 736-0041
11299702.NMS

Attorneys for Magic West, Inc.

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

IN THE MATTER OF LICENSE NO. 61-07189 IN THE NAME OF MAGIC WEST, INC.	LICENSE NO. 61-07189 NOTICE OF SERVICE OF DISCOVERY

TO: L. Glen Saxton, Hearing Officer in the above-captioned matter.

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DATED this 29th day of November, 1997.

ROSHOLT, ROBERTSON & TUCKER

By _____
Norman M. Semanko

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OCT 0 5 2000

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340 E. 2nd North St.
Mountain Home, ID 83647

Via Facsimile No. (208) 342-4657 and U.S. Mail to:
Daniel V. Steenson
RINGERT CLARK CHARTERED
P.O. Box 2773
Boise, ID 83701-2773

Norman M. Semanko

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CERTIFICATE OF MAILING

I hereby certify that on this 24th day of November, 1997, I served a copy of the foregoing MOTION IN OPPOSITION TO POTUCEK'S PETITION TO INTERVENE; ANSWER TO POTUCEK'S MOTION TO COMPEL DISCOVERY; AND ANSWER TO POTUCEK'S RESPONSE TO PETITION AND MOTION TO DISMISS, by depositing same in the United States mail, postage prepaid, in an envelope, addressed to the following:

Daniel V. Steenson
RINGERT CLARK CHARTERED
455 S. Third
P.O. Box 2773
Boise, ID 83701-2773
(Attorney for proposed intervenor Edward T. Potucek)

Perce Hall
HALL, FRIEDLY & WARD
340 E. 2nd North St.
Mountain Home, ID 83647
(Attorney for proposed intervenor Robert K. Hall)

Norman M. Semanko

OCT 0 5 2000

State of Idaho
DEPARTMENT OF WATER RESOURCES
1301 North Orchard Street, P.O. BOX 83720, Boise, Idaho 83720-0098
Phone: (208) 327-7900 FAX: (208) 327-7866

PHILIP E. BATT
GOVERNOR

KARL J. DREHER
DIRECTOR

November 24, 1997

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

Dear Interested Parties:

I have enclosed copies of the two (2) Orders Authorizing Limited Discovery and the two (2) Orders Granting Petition to Intervene, issued in connection with the above referenced license.

If you have any questions concerning the enclosure, please contact me at (208)327-7953.

Sincerely,

Julie L. Yarbrough

JULIE L. YARBROUGH
Senior Secretary, Water Allocation Bureau

Enclosure

c: IDWR - Western Region

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P.01

TRANSACTION REPORT

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Semanko

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John A. Rosholt
Norman M. Semanko
ROSHOLT, ROBERTSON & TUCKER
P. O. Box 1906
142 3rd Avenue N.
Twin Falls, Idaho 83303-1906
Telephone: (208) 734-0700
Facsimile: (208) 736-0041
11199701.NMS

Attorneys for Magic West, Inc.

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

IN THE MATTER OF LICENSE NO. 61-07189 IN THE NAME OF MAGIC WEST, INC.	LICENSE NO. 61-07189 MOTION IN OPPOSITION TO HALL'S PETITION TO INTERVENE AND PROTEST; ANSWER TO HALL'S MOTION TO COMPEL DISCOVERY

* * * * * * * * * *

Magic West, Inc., by and through its attorneys, Rosholt, Robertson & Tucker, files the following motion in opposition to the Petition of Robert K. Hall to Intervene in Proceedings Involving License Number 61-07189, and Protest ("Petition to Intervene and Protest") and answer to the Motion of Robert K. Hall to Compel Discovery ("Motion to Compel Discovery").

PROCEDURAL BACKGROUND

On May 5, 1997, Magic West, Inc. filed its Petition for Adjustment and Clarification of Existing Order/License No. 61-07189, pursuant to the Idaho Department of Water Resources ("Department") Rules of Procedure, IDAPA 37.01.01, and the licensing order issued by the

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department on October 27, 1990, to adjust and clarify the maximum diversion volume of license no. 61-07189.

The Department concluded that a hearing on the petition is appropriate to determine the extent of beneficial use and set the hearing for December 15, 1997. Order Designating Contested Case; Appointing Hearing Officer; and Scheduling Hearing, (October 22, 1997). The Department also provided that any party to pending Application for Permit No. 61-07724 had twenty-eight (28) days in which to file a petition to intervene in the proceeding involving license no. 61-07189 (i.e., on or before November 18, 1997), pursuant to Rules of Procedure 350-354. Id.

To Magic West's knowledge, Robert K. Hall is the only potential party to have filed a motion to intervene prior to the November 18, 1997 deadline.

The Department made clear that the purpose of the December 15 hearing is not to hear testimony or consider evidence in the matter of the protested application for permit no. 61-07724, but only regarding the extent of beneficial use under license no. 61-07189. Notice of Hearing (October 24, 1997).

MOTION IN OPPOSITION TO PETITION TO INTERVENE AND PROTEST

Pursuant to Rule 354, Magic West hereby moves that the Petition to Intervene and Protest filed by Robert K. Hall be denied for the reasons provided below.

In his petition, Robert K. Hall petitions the Department to intervene in the proceedings involving license no. 61-07189. He also purports to protest the "application of Magic West, Inc.". As a threshold matter, Hall cannot be a "protestant" in this matter. The 28-day window

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provided by the Department only provided for motions to intervene, not protests. In addition, parties may be "protestants, or intervenors", but not both. Rule 150 (emphasis added).

In order to grant a motion to intervene, the Department must find that the petition to intervene: (1) shows direct and substantial interest in any part of the subject matter of the proceeding; and (2) does not unduly broaden the issues. Rule 353. Reasonable conditions may be placed on any grant of intervention. Id.

As reason for proposing to intervene, Hall states that he "protests the application of Magic West for the reason that there is not sufficient water available in the aquifer for Magic West's use, without injuring the rights of owners withdrawing water from said aquifer and with a prior right". Petition to Intervene at 2. He also states: "It is incumbent on Magic West to show that there is sufficient water available to fulfill its request, without injuring water users having a prior right." Id. at 3.

The issue in this proceeding is not whether permission should be granted to Magic West to develop water right no. 61-07189. That application for permit has already been granted. Development has already occurred and a license has been issued. The hearing is also not about pending application for permit no. 61-07724, as the Department has made clear. No application for permit is being considered. As a result, the concerns about "sufficient water" and "injuring" other rights, which are considered in the context of applications for permit, are not under consideration in this proceeding. See, I.C. Sec. 42-203A(5) (factors to be considered for applications for permit).

Rather, the sole purpose of the hearing is to allow the introduction of evidence regarding the actual extent of beneficial use. Hall offers no reason for intervening which relates to the

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subject matter of the proceeding. He does not in any way contend that the amount of water developed by Magic West under license no. 61-07189 is less than what Magic West contends it is. As a result, Hall's stated reason for intervening is not applicable to the current proceeding and does not constitute a "direct and substantial interest in any part of the subject matter of the proceeding", as required by Rules 351 and 353.

In addition, if the petition to intervene were granted, it would "unduly broaden the issues" in the current proceeding, contrary to Rule 353. Hall seeks consideration of issues which apply in permit proceedings. As discussed above, these issues are inapplicable to the hearing. Hall also seeks to litigate issues regarding lowering of the aquifer, the domestic use preference of Art. XV, Sec. 3 of the Idaho State Constitution, the alleged failure to install a measuring device, and the alleged production of electric power. Petition to Intervene at 3. None of these issues relate to the question posed by the original application and the orders that have been issued by the Department regarding the December 15 hearing.

Because the petition to intervene does not state a direct and substantial interest regarding the extent of beneficial use under license no. 61-07189, and would unduly broaden the issues under consideration at the December 15 hearing, it should be denied. The Applicant hereby requests that it be denied.

ANSWER TO MOTION TO COMPEL DISCOVERY

Pursuant to Rule 270.02, Magic West hereby responds to Robert K. Hall's Motion to Compel Discovery and requests that it be denied for the reasons set forth below.

Rule 521 provides that no party is entitled to engage in discovery unless the party moves to compel discovery and the agency issues an order directing that the discovery be answered.

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In the instant case, the Petition commencing this action was filed by Magic West in May, 1997. Now, some 6 month later, and only 1 month before the hearing, Hall proposes to compel discovery. The motion is not timely. In addition, Hall has proposed no discovery to Magic West which could be answered and he states absolutely no factual grounds or reason for granting his motion. The motion is therefore incomplete. See, Rule 260.

Also, because of the broad scope of the issues which Hall raises in his motion to intervene, as discussed above, and the fact that Hall has not yet propounded any discovery, the hearing set for December 15 is likely to be delayed. Because the issues do not relate to the subject matter of the proceeding, discovery is likely to seek irrelevant information that will not be helpful to the Department in determining the extent of beneficial use under license no. 61-07189. In addition, the Department has already provided the opportunity for all parties to respond and present evidence and argument in this matter. Notice of Hearing at 2. This will include the right to cross-examine Magic West's witnesses. The Petitioner therefore requests that the motion be denied.

In the event that the motion to compel discovery is granted, Magic West hereby requests the right to reciprocal discovery, as authorized under Rule 522, to discover information from the proposed intervenor. Discovery should not be a one-way street.

CONCLUSION

For the reasons stated above, Robert K. Hall's Motion to Intervene and Motion to Compel Discovery should be denied.

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DATED this 19th day of November, 1997.

ROSHOLT, ROBERTSON & TUCKER

By: _____
NORMAN M. SEMANKO

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CERTIFICATE OF MAILING

I hereby certify that on this 19th day of November, 1997, I served a copy of the foregoing MOTION IN OPPOSITION TO HALL'S PETITION TO INTERVENE AND PROTEST; ANSWER TO HALL'S MOTION TO COMPEL DISCOVERY, by depositing same in the United States mail, postage prepaid, in an envelope, addressed to the following:

Perce Hall
HALL, FRIEDLY & WARD
340 E. 2nd North St.
Mountain Home, ID 83647

Robert K. Hall
Rt. 1, Box 103
Glenns Ferry, ID 83623

Norman M. Semanko

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OCT 0 5 2000

Daniel V. Steenson
Jennifer Reid Mahoney
RINGERT CLARK CHARTERED
455 S. Third, P.O. Box 2773
Boise, Idaho 83701-2773
Telephone: (208) 342-4591
Fax: (208) 342-4657

Attorneys for Intervenor

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WATER RESOURCES
WESTERN REGION

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

IN THE MATTER OF LICENSE NUMBER 61-07189 IN THE NAME OF MAGIC WEST, INC	))))	PETITION OF EDWARD T. POTUCEK TO INTERVENE IN PROCEEDINGS INVOLVING LICENSE NUMBER 61-07189

EDWARD T. POTUCEK hereby petitions to intervene in the proceedings before the Idaho Department of Water Resources involving license number 61-07189, pursuant to the Department's Order of October 22, 1997, for the following reasons:

He is owner of water right number 51-10331, with a senior priority date, for ground water diversion through an artesian well located in Section 28, Township 5 South, Range 10 East, Boise Meridian, Elmore County, Idaho.

Since Magic West commenced its unauthorized diversion of groundwater, Intervenor's well has experienced substantial loss of pressure. In the past, when Magic West has shut down its operation and ceased withdrawing water from its well, the water pressure in Intervenor's well has been restored. This indicates that Intervenor's water right is being adversely affected by Magic West's use of water.

Intervenor protests the petition of Magic West to amend its water right to increase the amount of its use for the reason that there is not sufficient water available

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for Magic West's use without injuring Intervenor's senior water right, and for the reason Magic West has no right, and the Department has no jurisdiction, to seek or approve such amendment, as discussed in Intervenor's Response to Petition to Amend and Motion to Dismiss Petition, filed concurrently herewith.

DATED this 19th day of November, 1997.

RINGERT CLARK CHARTERED

by: Daniel V. Steenson

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CERTIFICATE OF SERVICE

I do hereby certify that on the 19th day of November, 1997, the above and foregoing document was served upon the following by placing a copy of same in the United States Mail, postage prepaid and properly addressed as follows:

Department of Water Resources
Western Division
2735 Airport Way
Boise, ID 83705-5082

Norman Semanko
Rosholt Robertson Tucker
P.O. Box 1906
Twin Falls, ID 83303-1906

Fred Mackey
P.O. Box 637
Glenns Ferry, ID 83623

Paul Batruel
Route 1, Box 426
Glenns Ferry, ID 83623-9756

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

Elizabeth Eicholz
P.O. Box 311
Glenns Ferry, ID 83623

Perce Hall
Hall, Friedly & Ward
340 East 2nd North Street
Mountain Home, ID 83647

Daniel V. Steenson

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Boise, Idaho 83701-2773
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Attorneys for Intervenor

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WATER RESOURCES
WESTERN REGION

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

IN THE MATTER OF LICENSE NUMBER 61-07189 IN THE NAME OF MAGIC WEST, INC	))))	INTERVENOR'S RESPONSE TO PETITION TO AMEND, AND MOTION TO DISMISS PETITION

COMES NOW Intervenor, Edward T. Potucek, and objects to the petition to amend water right no. 61-07189, and moves to dismiss petition for lack of subject matter jurisdiction.

I. FACTUAL BACKGROUND

Magic West, Inc. ("Magic West") applied for a permit in 1974 for water use at its food processing plant in Glens Ferry, Idaho with a priority date of July 10, 1974. Pursuant to the statutory procedure for obtaining a license, a beneficial use field exam was conducted by the Idaho Department of Water Resources ("IDWR") on August 4, 1987. An application for amendment was subsequently submitted during September, 1990. The amendment was approved, and Water Right License No. 61-07189 was issued on October 27, 1990. The final license provided for a maximum diversion volume of 12.9 AF.

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On May 12, 1997, nearly seven years after the final Water Right License No. 61-07189 was issued, Magic West filed a petition for adjustment and clarification of existing order/license. In its petition, Magic West claims that the amount of water which was actually put to beneficial use in 1987 at the time of the field exam was closer to 240,000 to 260,000 gallons per day and not the 20,000 gallons per day which was recorded for the license. Magic West claims that the estimate of 20,000 gallons per day in 1987 was simply erroneous, and requests that License No. 61-07189 be amended to reflect the actual amount of water Magic West claims was put to beneficial use in 1987.

In support of its conclusion that it should be permitted to modify its final license to greatly increase the amount of water permissibly used, Magic West directed the IDWR to the department's Rule of Procedure 770. However, IDWR did not agree that Rule 770 provided the mechanism by which the final license could be amended, and instead noticed a hearing on the matter for December 15, 1997, pursuant to Rule of Procedure 230, which allows for amendment of certain orders. IDAPA 37.01.01.230 (providing for petitions to modify, amend or stay existing orders or rules).

Intervenor objects to the December 15, 1997 hearing and objects to the consideration of the petition to amend by IDWR because it is Intervenor's position that IDWR does not have the authority to modify the final water right license issued by it to Magic West in 1990 to increase the allowed water use under that license, in effect allowing Magic West to appropriate additional water under its original priority date.

II. ARGUMENT

There is no direct authority which supports the proposition that a party, seven years after a final Water Right License was issued, can amend the amount of water allowed under that right due to a mistake allegedly made by one of its own agents. In fact, to allow such amendment would be inconsistent with the provisions requiring appeals to final agency decisions be made pursuant to I.C. § 67-5201 *et seq.*, and is inconsistent with the rules allowing modification of final orders in civil cases pursuant to the Idaho Rules of Civil Procedure. Finally, rather than allowing Magic West to amend its Water Right License No. 61-07189 to allow 240,000 to 2600,000 gallons per day under

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the 1974 priority date, Magic West should be required to go through the procedure to appropriate additional water under a later priority date.

A. Allowing Magic West to Amend the Final Water Right Issued in 1990 Is the Same As Allowing An Appeal of an Agency Order Seven Years After It Was Issued, and Is Not Permitted Under The Idaho Administrative Procedures Act or Idaho Code § § 42-407, 42-1701A(3)

When a person feels aggrieved by the determination or decision of the department of water resources relative to the issuance of a license, "such person[ ] may request a hearing pursuant to section 42-1701A(3), Idaho Code, if a hearing on the matter has not been held, or, if a hearing has been held, may seek judicial review pursuant to section 42-1701A(4), Idaho Code." I.C. § 42-407. In the case of Magic West and license number 61-07189, no hearing has been held pursuant to I.C. § 42-1701A(3), and thus, in order to appeal that decision, a hearing must first be requested pursuant to that provision.

Regarding requesting a hearing to appeal a final decision of the department of water resources, section 42-1701A(3) provides:

> [A]ny applicant for any . . . license . . . who is aggrieved by a denial or conditional approval ordered by the director, and who has not previously been afforded an opportunity for a hearing on the matter shall be entitled to a hearing before the director to contest the denial or conditional approval *upon filing with the director, within fifteen (15) days after receipt of the denial or conditional approval, a written petition stating the grounds for contesting the decision* by the director and requesting a hearing.

I.C. § 42-1701A(3) (emphasis added). In the case of license number 61-07189, Magic West seems to claim that it was denied the right to use more than 20,000 gallons per day under that license. If Magic West had wanted to appeal that decision through the proper channels, it would have had to file notice of a request for hearing within fifteen days of receiving the license in 1990, which it did not. Accordingly, it is barred from appealing the issue through a hearing to the director of IDWR.

Similarly, if Magic West would have been entitled to a judicial review of the agency decision, such review would have had to have been pursued in accordance with

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the provisions and standards set forth in I.C. § § 67-5201 *et seq.* Regarding timing for such judicial review, section 67-5273 provides that a party wishing to petition for review of a final agency decision must do so within twenty-eight (28) days of receiving such decision. I.C. § 67-5273. Accordingly, had Magic West been entitled to judicial review of the license decision, it would have had to file such petition for review within twenty-eight days of receiving the license.

Of course, Magic West argues that it is not pursuing the amendment of the final order as an appeal or as a judicial review of an agency decision, but rather is filing such petition to amend under the nebulous concept of amendment due to mistake of the permittee powers. However, such amendment powers are not specifically enumerated by statute, and to allow such amendment would thwart the time limitations for appeal because any person who missed the appeal dates could just claim factual error and file what amounts to an appeal far past the appeal deadlines. Such an action is not contemplated by the provisions of the Idaho Code dealing with water licenses and administrative review, and such an action is contrary to the provisions for review of agency decisions which are set forth by statute.

It is clear that an "administrative agency like the [IDWR] has only such powers as the statute or ordinance confers." *Beker Industries, Inc. v. Georgetown Irr. Dist.*, 101 Idaho 187, 191, 610 P.2d 546 (1980) (citing Idaho Const. art. 15, § 7; I.C. §§ 42-1734, 42-1736; 1 Am.Jur.2d § 69, p. 865). Therefore, because no statute or rule authorizes an action for amendment such as that proposed by Petitioner, Intervenor submits that such action is outside the authority of the Idaho Department of Water Resources. Accordingly, Petitioner's action before the IDWR to amend its license should be dismissed.

B. <u>Allowing the Amendment of A Final Order After Seven Years Has Passed Is Not Permitted Under The Idaho Rules Of Civil Procedure</u>

In its petition to amend, Magic West analogizes the instant situation to amending a judgment due to a mistake under Idaho Civil Rule of Procedure 60(b). Rule 60(b) provides that on a motion and upon just terms, a court "may relieve a party or his legal representative from a final judgment, order, or proceeding for the following . . . mistake,

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inadvertence, surprise or excusable neglect . . . ." I.R.C.P. § 60(b)(1). However, the right of a party to move for relief or amendment of a judgment due to mistake is not limitless. In fact, a party bringing a motion for relief from a judgment due to mistake or inadvertence must file such motion "not more that six (6) months after the judgment, order or proceeding was entered or taken." I.R.C.P. 60(b).

Thus, even if Magic West were filing this type of a motion in District Court it would not be granted relief from the final order because it has filed its petition to amend seven years after the date of the final order. Such petition would not be considered under the Civil Rules of Procedure as is it grossly untimely, and such petition should be disallowed under the Department's Rules of Procedure for the same reason. At some point an order must become final in order to give the parties a sense of security in the system and a sense of finality. Of course there are situations in which modification or amendment of a final order is necessary, and the Civil Rules of Procedure provide for such circumstances. However, the facts in the instant situation are not those which would lead a court to amend a final order seven years after its issuance.

III. CONCLUSION

A license is a final order of the Department of Water Resources which is "binding upon the state as to the right of such licensee to use the amount of water mentioned therein, and shall be prima facie evidence as to such right . . . ." I.C. § 42-220. As such, it is similar to a final court order and should be treated as such. Just as courts do not have the authority to amend final judgments due to mistake of the parties more than six months after the issuance of such judgment, neither does the Idaho Department of Water Resources have the authority to amend a final water right license issued by it seven years after the date of the issuance due to a mistake by the licensee. Nor can a licensee appeal the decision of the department of water resources with respect to such a license seven years after its issuance.

Rather, a licensee which believes that it is entitled to more water must file another petition and go through the process again to establish a right to use more water with a new priority date, and cannot be permitted to increase its water use under the

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original priority date. To allow such amendment under the original priority date would be manifestly unjust to other water users in the area, who, by the passage of time, are rendered unable to counter any evidence petitioner might have regarding its water use ten years ago. To allow such amendment is contrary to statute, procedural rules, and general principals of fairness and equity.

Based on the foregoing, Magic West's petition to amend should be dismissed for lack of subject matter jurisdiction.

Dated this 19th day of November, 1997.

RINGERT CLARK CHARTERED

by: _____
Daniel V. Steenson

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OCT 0 5 2000

CERTIFICATE OF SERVICE

I do hereby certify that on the 19th day of November, 1997, the above and foregoing document was served upon the following by placing a copy of same in the United States Mail, postage prepaid and properly addressed as follows:

Department of Water Resources
Western Division
2735 Airport Way
Boise, ID 83705-5082

Norman Semanko
Rosholt Robertson Tucker
P.O. Box 1906
Twin Falls, ID 83303-1906

Fred Mackey
P.O. Box 637
Glenns Ferry, ID 83623

Paul Batruel
Route 1, Box 426
Glenns Ferry, ID 83623-9756

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

Elizabeth Eicholz
P.O. Box 311
Glenns Ferry, ID 83623

Perce Hall
Hall, Friedly & Ward
340 East 2nd North Street
Mountain Home, ID 83647

Daniel V. Steenson

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OCT 0 5 2000

Daniel V. Steenson
Jennifer Reid Mahoney
RINGERT CLARK CHARTERED
455 S. Third, P.O. Box 2773
Boise, Idaho 83701-2773
Telephone: (208) 342-4591
Fax: (208) 342-4657

Attorneys for Intervenor

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NOV 19 1997
WATER RESOURCES
WESTERN REGION

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

IN THE MATTER OF LICENSE NUMBER 61-07189 IN THE NAME OF MAGIC WEST, INC	))))	MOTION OF EDWARD T. POTUCEK TO COMPEL DISCOVERY

EDWARD T. POTUCEK, intervenor and protestant in the above-designated matter, hereby moves the Idaho Department of Water Resources to enter its order compelling discovery pursuant to Rule 521 of the Department's Rules of Procedure.

DATED this 19th day of November, 1997.

RINGERT CLARK CHARTERED

by: _____
Daniel V. Steenson

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CERTIFICATE OF SERVICE

I do hereby certify that on the 14th day of November, 1997, the above and foregoing document was served upon the following by placing a copy of same in the United States Mail, postage prepaid and properly addressed as follows:

Department of Water Resources
Western Division
2735 Airport Way
Boise, ID 83705-5082

Norman Semanko
Rosholt Robertson Tucker
P.O. Box 1906
Twin Falls, ID 83303-1906

Fred Mackey
P.O. Box 637
Glenns Ferry, ID 83623

Paul Batruel
Route 1, Box 426
Glenns Ferry, ID 83623-9756

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

Elizabeth Eicholz
P.O. Box 311
Glenns Ferry, ID 83623

Perce Hall
Hall, Friedly & Ward
340 East 2nd North Street
Mountain Home, ID 83647

Daniel V. Steenson

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WATER RESOURCES
WESTERN REGION

PERCE HALL
HALL, FRIEDLY & WARD
Attorneys for Intervenor
and Protestant
340 East 2nd North Street
Mountain Home, Idaho 83647
Telephone: (208) 587-4412

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF
THE STATE OF IDAHO

IN THE MATTER OF LICENSE NUMBER 61-07189 IN THE NAME OF MAGIC WEST, INC.	PETITION OF ROBERT K. HALL TO INTERVENE IN PROCEEDINGS INVOLVING LICENSE NUMBER 61-07189, AND PROTEST

ROBERT K. HALL hereby petitions for authority to intervene in the proceedings involving license number 61-07189, for reasons as follows:

He is the owner of license number 61-10013 with a priority date of December 31, 1952, granting him the right to the use for domestic purposes of 0.04CFS of ground water in Section 35, Township 5 South, Range 9 East, Boise Meridian, Elmore County, Idaho.

Prior to the time Magic West commenced withdrawal of water under the above designated license, his water was received through an Artesian well which had been in use for many years. Since Magic West started its unauthorized voluminous diversion of underground water, his well has not

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only ceased to flow as an Artesian well, but the water table in his well has been continually dropping, requiring installation of pump and motor in order to salvage any water from the well.

Whenever Magic West shuts down its operation and ceases withdrawing water from its well, the water level in his well rises to its previous level within a relatively short time and resumes Artesian flow, which indicates that both his well and the well of Magic West are located on the same aquifer and that his water right is being eroded by Magic West's withdrawal!

He therefore protests the application of Magic West for the reason that there is not sufficient water available in the aquifer for Magic West's use, without injuring the rights of owners withdrawing water from said aquifer and with a prior right.

He therefore files this petition to intervene in order to protect his water right.

PROTEST

Hall protests the above-designated application of Magic West, Inc., for the following reasons, among others, to-wit:

1. The application filed by Magic West has not been timely filed and should be dismissed.

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2. Any licenses issued by the Department of Water Resources is subject to existing prior rights. It is incumbent on Magic West to show that there is sufficient water available to fulfill its request, without injuring water users having a prior right.

3. If the application of Magic West is granted, the undersigned not only loses the Artesian flow in his well but is saddled with the perpetual obligation of furnishing pump, motor and power to continually lower his well until the bottom of the aquifer is reached, at which time his water right would be completely obliterated.

4. The application of Magic West is for industrial use. Hall's water right is for domestic use which takes priority over industrial use. Idaho State Constitution Article XV Section 3.

5. Magic West has failed and neglected to install a meter in its well to measure the withdrawal of water, even though it was ordered to do so by the Department.

6. Hall is informed and believes that Magic West is using water from said well for the production of electric power, which use has not been authorized by the Department.

WHEREFORE, Hall respectfully requests that the application of Magic West to amend License Number 61-07189 should be denied.

Dated this 12 day of November, 1997.

Robert K. Hall

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OCT 15 2002

HALL, FRIEDLY & WARD

By _____
Peree Hall, Attorneys for
the Intervener and Protestant

STATE OF IDAHO)
) ss.
COUNTY OF ELMORE)

ROBERT K. HALL, being first duly sworn, deposes and says that he is the petitioner named in the foregoing petition, that he has read said petition, knows the contents thereof and believes the facts therein stated to be true.

_____
ROBERT K. HALL

SUBSCRIBED AND SWORN to before me this 12 day of November, 1997.

_____
Notary Public for Idaho,
Residing at Mountain Home, ID.

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OCT 0 5 2000

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NOV 14 1997
WATER RESOURCES
WESTERN REGION

CERTIFICATE OF SERVICE

I hereby certify that on this 13th day of November, 1997, I mailed a true and correct copy, postage prepaid, of the foregoing PETITION OF ROBERT K. HALL TO INTERVENE IN PROCEEDINGS INVOLVING LICENSE NUMBER 61-07189, AND PROTEST to the following:

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NOV 18 1997
Department of Water Resources

Department of Water Resources
Western Division
2735 Airport Way
Boise, Idaho 83705-5082

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

Norman Semanko
ROSHOLT ROBERTSON TUCKER
P. O. Box 1906
Twin Falls, ID 83303-1906

Edward T. Potucek
Rosevear Rd.
P. O. Box 537
Glenns Ferry, ID 83623

Fred Mackey
P. O. Box 637
Glenns Ferry, ID 83623

Elizabeth Eicholz
P. O. Box 311
Glenns Ferry, ID 83623

Paul Batruel
Route 1, Box 426
Glenns Ferry, ID 83623-9756

Daniel Steenson
Ringert Clark, CHTD.
P. O. Box 2773
Boise, Idaho 83701

Perce Hall, Attorney for the
Intervener and Protestant

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WATER RESOURCES
WESTERN REGION

PERCE HALL
HALL, FRIEDLY & WARD
Attorneys for Intervenor
and Protestant
340 East 2nd North Street
Mountain Home, Idaho 83647
Telephone: (208) 587-4412

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF
THE STATE OF IDAHO

IN THE MATTER OF LICENSE NUMBER 61-07189 IN THE NAME OF MAGIC WEST, INC.	MOTION OF ROBERT K. HALL TO COMPEL DISCOVERY

ROBERT K. HALL, who is intervenor and protestant in the above-designated matter, hereby moves the Department to enter its order compelling discovery pursuant to Rule 521 of its Rules of Procedure.

DATED this 12 day of November, 1997.

Robert K. Hall

HALL, FRIEDLY & WARD

By _____
Perce Hall, Attorneys
for the Intervener and
Protestant

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OCT 05 2006

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WATER RESOURCES
WESTERN REGION

CERTIFICATE OF SERVICE

I hereby certify that on this 13th day of November, 1997, I mailed a true and correct copy, postage prepaid, of the foregoing MOTION OF ROBERT K. HALL TO COMPEL DISCOVERY to the following:

Department of Water Resources
Western Division
2735 Airport Way
Boise, Idaho 83705-5082

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

Norman Semanko
ROSHOLT ROBERTSON TUCKER
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Twin Falls, ID 83303-1906

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Daniel Steenson
Ringert Clark, CHTD.
P. O. Box 2773
Boise, Idaho 83701

Perce Hall, Attorney for the
Intervener and Protestant

MICROFILMED
OCT 05 2000

FOR REGISTERED, INSURED, C.O.D., CERTIFIED, AND EXPRESS MAIL

NAME AND ADDRESS OF SENDER

Water Allocation Bureau
Department of Water Resources
1301 N. Orchard St.
Boise, ID 83706 Julie

Indicate type of mail
☐ Registered
☐ Insured
☐ COD
☒ Certified ☐ Express Mail

Check appropriate block for Registered Mail:
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1	P590 062 143	MAGIC WEST INC PO BOX 475 RUPERT ID 83350	32	135								
2	P590 062 144	EDWARD T POTUCEK PO BOX 537 GLENNS FERRY ID 73623										
3	P590 062 145	ELIZABETH EICHOLZ PO BOX 311 GLENNS FERRY ID 83623										
4	P590 062 146	PERCE HALL 340 E 2ND N MTN HOME ID 83647										
5	P590062147	NORMAN SEMANKO PO BOX 1906 TWIN FALLS ID 83303-1906										
6	P590062148	FRED MACKEY PO BOX 637 GLENNS FERRY ID 83623										
7	P590062149	ROBERT K HALL RT 1 BOX 103 GLENNS FERRY ID 83623										
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☆U.S. GOVERNMENT PRINTING OFFICE: 1988 197-542

ATTACHMENT 2

61-[redacted]89

June 13, 1997

TO: Gary Spackman

FROM: Cindy Hodges

RE: Magic West

After reading Jack Anderson's affidavit and my notes, and reviewing the license file, I have to conclude that Jack Anderson either misinterpreted my remarks or is using them out of context. As you have already speculated, I can't imagine that I represented a mistake on the license. I do recall suggesting that the license volume was the direct result of information given us by the company. The only inadvertence I could have been referring to was the inadvertence of the Magic West to provide adequate data.

There is an inconsistency between my notes, the license file and Mr. Anderson's statement. In his affidavit, Mr. Anderson states that the plant was in operation on a 24-hr, year-round basis in 1987 at the time of the field exam. However, he told me last year and my notes show that the plant expanded to year-round operation only within the last five years. Steve's 1987 BU exam states only 42 weeks of operation per year. The permit, made in 1974, shows the same limited season of use (Aug 15 to July 1).

In reviewing the file, I noted that correspondence from Steve Lester to Magic West in December 1987 requests additional information about the pumping plant for use in licensing. This letter was addressed to "manager" and, according to Mr. Anderson's statement, should have been routed to him. However, the letter was answered by Bill Schow, president of Magic West, who sent pump test data but no volume information. Proof of beneficial use was signed by Schow with Anderson listed as contact, but Mr. Masson assisted in the field exam. The license amendment, showing the reduced volume, was signed by neither Mr. Anderson or Mr. Schow, but a farm manager. Mr. Anderson evidently had several opportunities to relay accurate information to us and did not.

If you have any other questions, please let me know.

OCT 03 2003

MEMORANDUM

TO: GARY SPACKMAN

FROM: STEVE LESTER

DATE: MAY 29, 1997

RE: PETITION TO CLARIFY MAGIC WEST LICENSE 61-07189

These comments are provided for your consideration regarding the petition that Magic West recently filed to clarify its licensed volume in the above referenced water right.

The company filed its "Examination Fee Information" form dated April 20, 1987. Item 8 of that form indicated that Jack Anderson was to be contacted at a Glenns Ferry address different from the permit owner address of record, although the telephone number for him in item 8 matched the company telephone number in item 3 of the form.

The regional office sent an examination scheduling letter dated July 23, 1987 to the company at the address of record using the computer generated label method that makes use of the permit owner of record data. The letter suggested a time frame in which to conduct the field exam and requested that the company call the regional office to schedule an exam appointment. That is a typical procedure used by the department to initiate the licensing field exam appointment. Department staff rely on the permit owner to make scheduling arrangements suitable to the permit owner's needs.

Doug Masson of Magic West telephoned the regional office on July 30, 1987 in response to the department's scheduling letter. He and I discussed the situation and agreed that an exam appointment for August 4, 1987 would work. He indicated that the plant was temporarily shut down but would be in production again by the week of August 17 through sometime in November of that year. Because the permit did not have a measuring device requirement and a method to measure well production did not exist, I recall that we agreed that a field exam could be conducted even though the plant was not operating. The exam was conducted on August 4, 1987 as scheduled when I met on-site with Mr. Masson, who informed me that he was the maintenance superintendent.

Mr Anderson's affidavit (petition exhibit E) states that water use from the well in 1987 was in the range of 250,000 gallons per day. He states that 1996 and 1997 measuring device data (the department was informed that the device was installed sometime in 1996) show the same level of use. However, data was not submitted in 1987 or since then to document Magic West's well production. There does not appear to be an independent method to verify Mr. Anderson's statements regarding unchanged water use from the well.

The petition refers to an expanded season of use for year round use (footnote 1 on page 2). That suggests an expansion beyond the water right limits. Both the permit and license stages of the water right define the season of use from August 15 through July 1 each year.

OCT 05 2000

It is noteworthy that Magic West did not voice its concern about volume limits in this right during the time period in which the license was being issued. Also, what method should be used to include other concerned parties in the department's consideration of this petition?

OCT 0 6 2006

ROSHOLT, ROBERTSON & TUCKER
Chartered
ATTORNEYS AT LAW

JOHN A. ROSHOLT
J. EVAN ROBERTSON
JAMES C. TUCKER
GARY D. SLETTE
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142 3rd Ave. North
P.O. BOX 1906
TWIN FALLS, IDAHO 83303-1906
TELEPHONE (208) 734-0700
FAX (208) 736-0041

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

RECEIVED
MAY 5 - 1997
Department of Water Resources

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MAY 12 1997
WATER RESOURCES
WESTERN REGION

Date May 1, 1997

Idaho Department of Water Resources

Re: License No. 61-07189 in the Name of Magic West, Inc.

X Please file the attached Petition for Adjustment and Clarification of Existing Order/License

___ Please issue the attached _____

___ Please certify the attached _____

___ Please present to the Judge for his consideration the attached _____

___ Please record the enclosed _____

___ Our firm check is enclosed in the amount of $_____ for _____

X Please return to this office Conformed copy of first page.

___ Please forward _____

___ Other _____

Sincerely,

ROSHOLT, ROBERTSON & TUCKER

Kay Nistler,
Secretary

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OCT 05 2000

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MAY 5 - 1997
Department of Water Resources

John A. Rosholt
Norman M. Semanko
ROSHOLT, ROBERTSON & TUCKER
P. O. Box 1906
142 3rd Avenue N.
Twin Falls, Idaho 83303-1906
Telephone: (208) 734-0700
Fax: (208) 736-0041
04229702.NMS

Attorneys for Magic West, Inc.

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MAY 12 1997
WATER RESOURCES
WESTERN REGION

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

IN THE MATTER OF LICENSE NO. 61-07189 IN THE NAME OF MAGIC WEST, INC.	LICENSE NO. 61-07189 PETITION FOR ADJUSTMENT AND CLARIFICATION OF EXISTING ORDER/LICENSE

* * * * * * * * * * *

Magic West, Inc., by and through its attorneys, Rosholt, Robertson & Tucker, files this Petition for Adjustment and Clarification of Existing Order/License No. 61-07189, pursuant to the department's Rules of Procedure, IDAPA 37.01.01, and the licensing order issued by the department on October 27, 1990, to adjust and clarify the maximum diversion volume included in Water Right License No. 61-07189.

PROCEDURAL BACKGROUND

Application for Permit No. 61-07189, in the name of Magic West, Inc., was approved by the department August 29, 1974 with a priority date of July 10, 1974, in the amount of .67 cfs, or 300 gallons per minute, for industrial use (production of processing food), from August

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15 to July 1.[1] Exhibit "A". An order, removing the measuring device requirement for Permit No. 61-7189, was issued on August 28, 1978. Exhibit "B".

A beneficial use field exam was conducted by the department on August 4, 1987. Exhibit "C". An Application for Amendment was subsequently prepared by the department and submitted by Magic West during September, 1990. The amendment was approved and Water Right License No. 61-07189 was issued on October 27, 1990. Exhibit "D". Among the conditions in the license was the installation of a measuring device. In addition, a maximum diversion volume of 12.9 AF was included along with the condition that: "The maximum diversion volume may be adjusted to more accurately describe the beneficial use...".

FACTS

The permit application submitted by Magic West, Inc. and approved by the department during 1974 did not include a maximum diversion volume, but only a diversion rate of .67 cfs. Exhibit "A". No measuring device was installed, or required, prior to the beneficial use examination conducted in August, 1987. See, Exhibits "B" and "C". As a result, there was no requirement, or anticipated need, to measure the annual diversion volume prior to the issuance of the license.

The Beneficial Use Field Report prepared by the department's Steve Lester indicates that he was accompanied by Doug Masson, the Maintenance Superintendent at Magic West's facility. The Report further indicates: "Maint. sup't. cannot find any company records about

[1] Magic West has processed foods on a year around basis since at least 1985. As a result, Magic West's SRBA Claim for Water Right No. 61-07189 has been amended to include a year around period of use rather than August 15 to July 1. In addition, Magic West's SRBA Claim for Water Right No. 61-02248B, acquired during 1974, has been amended to cover portions of the same use as the SRBA Claim for Water Right No. 61-07189. Finally, Magic West has agreed to "overfile" on this use by filing Application for Permit No. 61-07724, currently pending before the Department in a separate action.

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this well and diversion system." The Report also indicates that the maintenance superintendent estimated that daily use under the permit was 20,000 gallons per day. Exhibit "C". This estimate was simply erroneous. In addition, no actual volume measurements or records were maintained, or required, at the time.

Steve Lester's volume calculations were based on Masson's estimate, and a five-day operating week, yielding an estimated volume of 12.9 AF which was subsequently included in the license. Exhibits "C" and "D". An alternate volume calculation yielded 426.6 AF, based upon the .67 cfs diversion rate of the right. Exhibit "C".

The Plant Manager, Jack Anderson, who has a long and detailed knowledge of the facility, including its water usage and operations, indicates that the daily volume used under the license far exceeded 20,000 gallons per day at the time the beneficial use examination was conducted in 1987. In addition, the plant was operated between six and seven days per week, not five. Exhibit "E" (Affidavit of Jack Anderson, filed herewith). Due to his familiarity with water use in the plant, Mr. Anderson is the individual that Magic West indicated should accompany the department's representative during the field examination. Exhibit "F". Unfortunately, that did not occur and the department's representative was instead accompanied by Doug Masson, an individual with virtually no knowledge of the amount of water utilized by the plant and only limited knowledge of the plant's operations.

The actual amount used under the permit is estimated by Mr. Anderson to have been between 240,000 and 260,000 gallons per day at the time of the beneficial use examination. Exhibit "E". In addition, actual records, required and maintained after licensing, indicate that the daily diversion volume under the license is upwards of 300,000 gallons per day, or 15 times higher than the estimate used in the licensing process. Exhibit "G".

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Mr. Anderson has determined that adherence to a diversion volume of 12.9 AF, the amount currently listed in the license, would not provide enough water to operate for even two (2) hours per day. The plant has never operated for such a short period of time, but rather operates on a 24-hour basis, between six and seven days per week. As a result, adherence to the current, erroneous volume would likely cause the plant to be put out of operation, significantly impacting the community of Glenns Ferry. Departmental staff have also indicated that the diversion volume included in the license must have been the result of some type of mistake or oversight. Exhibit "E".

APPLICABLE AUTHORITY AND ANALYSIS

The department's Rules of Procedure indicate that any person affected by an order may file a petition to clarify a final order. Rule 770. In addition, the Rules further provide that the department may allow a pleading (i.e., application for permit) to be amended or corrected or any omission to be supplied. Rule 305. Finally, the license itself provides:

> The maximum diversion volume is defined as the maximum allowable volume of water that may be diverted annually from the source under this right. The use of water confirmed by this right is limited to the amount which can be actually beneficially used. The maximum diversion volume may be adjusted to more accurately describe the beneficial use or to implement accepted standards of diversion and use efficiency. (emphasis added).

The maximum diversion volume included in the license was based upon an erroneous estimate of the daily diversion volume. The estimate used, 20,000 gallons per day, is 15 times less than the amount estimated by the plant supervisor and the amount indicated by actual measurements made after the license was issued. In addition, the estimated diversion volume (12.9 AF) is 33 times less than the alternate diversion volume calculation (426.6 AF) made by the department during the licensing process.

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The maximum diversion volume condition of the license set forth above confirms the department's authority to adjust the maximum diversion volume in the event that more accurate information regarding the actual amount of water beneficially used is obtained subsequent to the licensing process. The department's rules give further effect to this authority by allowing affected parties to petition for clarification of a licensing order, or to amend or correct an application for permit, even after it has become final. See e.g., Preliminary Order to Correct and Amend Transfer No. 3861 (August 28, 1995). This is similar to a court's authority to modify a previous decree or order based upon a mistake of fact, inadvertence, excusable neglect, newly discovery evidence, or similar occurrence. I.R.C.P., Rule 60(b).

The evidence in this matter reveals that the daily diversion volume utilized by the department in estimating the annual diversion volume was erroneous. Correction of the annual diversion volume is necessary to avoid an absurd result. Failure to correct the oversight will result in Magic West's operations being substantially curtailed or even terminated. Pursuant to the authority set forth above, the department should therefore clarify the existing license by adjusting the maximum diversion volume based upon a daily diversion volume of 300,000 gallons per day, for seven days a week, or a total maximum diversion volume of 270.7 AF (in lieu of 12.9 AF). Alternatively, the maximum diversion volume should be removed.

RELIEF REQUESTED

For the reasons set forth above, the Petitioner respectfully requests the following relief:

1. That an order be issued adjusting the maximum diversion volume under Water Right No. 61-07189 from 12.9 AF to 270.7 AF.

2. Alternatively, that an order be issued deleting the maximum diversion volume of 12.9 AF from Water Right License No. 61-07189.

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OCT 0 5 2000

DATED this 1st day of May, 1997.

ROSHOLT, ROBERTSON & TUCKER

For By: _____
JOHN A. ROSHOLT

By: _____
NORMAN M. SEMANKO

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OCT 0 5 2009

CERTIFICATE OF MAILING

I hereby certify that on this 1st day of May, 1997, I served a copy of the foregoing PETITION FOR ADJUSTMENT AND CLARIFICATION OF EXISTING ORDER/LICENSE, by depositing same in the United States mail, postage prepaid, in an envelope, addressed to the following:

Parties of Record to Application for Permit and License No. 61-07189 (none)
(Pursuant to IDWR Rules of Procedure, Rule 302)

Norman M. Semanko

MICRO... OCT 0 5 2006

Exhibit A

MDRC
OCT 0 5 2009

Identification No. _____

Application No. 61-7189

STATE OF IDAHO

DEPARTMENT OF WATER ~~ADMINISTRATION~~ RESOURCES

APPROVED

APPLICATION FOR PERMIT

To Appropriate the Public Waters of the State of Idaho

(TYPE OR PRINT IN INK)

RECEIVED

JUL 9 1974

Department of Water Administration
Southern District Office

1. Name of applicant Magic West, Inc.

   post office address P.O. Drawer V. Glenns Ferry, Idaho 83623

2. Source of water supply Well-ground water which is a tributary of _____

3. a. Location of point of diversion is SE ¼ of SE ¼ of Section 29 Township 5S see map R.
   Range 10 E. B.M. Elmore Block 20 Lot 2 County; additional points of diversion if any: _____

   b. If water is not consumed, it will be discharged into _____ at a point in _____ ¼
   of _____ ¼ of Section _____ Township _____ Range _____ B.M. _____

4. Water will be used for the following purposes:
   Amount 300 Gal/min. .67 cfs for Production/ of processing food (Industrial) purpose from Aug. 15 to July 1 (both dates inclusive)
   (cfs or acre-feet per annum)
   Amount _____ for _____ purpose from _____ to _____ (both dates inclusive)
   (cfs or acre-feet per annum)
   Amount _____ for _____ purpose from _____ to _____ (both dates inclusive)
   (cfs or acre-feet per annum)

5. Total quantity to be appropriated:
   a. 0.67 cfs cubic feet per second and/or
   b. _____ acre feet per annum.

6. Proposed diverting works:
   a. Description of ditches, flumes, pumps, headgates, etc. deep well, pump & motor
   b. Height of storage dam _____ feet, active reservoir capacity _____ acre feet; total reservoir capacity _____ acre feet, materials used in storage dam: _____
   Period of year during which storage will occur _____ (Mo. Day) to _____ (Mo. Day) inclusive.
   c. Proposed well diameter is 16 inches; proposed depth of well is 1200 feet.

7. a. Time required for the completion of the works and application of the water to the proposed beneficial use is 5 years.
   b. Estimated construction cost is $ 15,000.00 .

8. Description of proposed uses:
   a. If water is **not** for irrigation:
   (1) Give the place of use of water: SE ¼ of SE ¼ of Section 29 Township 5 S see R.
   Range 10E B.M. Boiler in Processing Plant
   (2) Amount of power to be generated: _____ hp under _____ feet of head.
   (3) List number of each kind of livestock to be watered _____
   (4) Name of municipality to be served _____, or number of families to be supplied with domestic water _____.
   (5) If water is to be used for other purposes describe: 300 gal /min. use for food processing plant - dehydration of potato flakes

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OCT 0 5 2005
RECEIPT NO.

b. If water is for irrigation, indicate acreage in each subdivision in the tabulation below:

TWP.	RANGE	SEC.	NE¼				NW¼				SW¼				SE¼				TOTALS
			NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	

Total number of acres to be irrigated_____

c. Describe any other water rights used for the same purposes as described above._____

9. a. Who owns the property at the point of diversion_____

b. Who owns the land to be irrigated or place of use_____

c. If the property is owned by a person other than the applicant, describe the arrangement enabling the applicant to make this filing_____

10. Remarks _____

OCT 0 5 2000

11. Map of proposed project: show clearly the proposed point of diversion, place of use, section number, township and range number.

SEE ATTACHED PLOT PLAN

Scale: 2 inches equal 1 mile

BE IT KNOWN that the undersigned hereby makes application for permit to appropriate the public waters of the State of Idaho as herein set forth.

Roger Jones

(Applicant) MAGIC WEST, INC.
Roger Jones, President

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OCT 05 2000

Proposed Priority 7-10-1974

Received by LT Date 7-10-74 Time 4:00 PM

Preliminary check by MLS Fee $25.00 (13944)

Receipted by LT Date 7-10-74

Publication prepared by SW Date ~~7-18-74~~ 8-1-74

Published in Mtn. Home News

Publication dates ~~7-25, 8-1-74~~ 8-8, 8-15-74

Publication approved CA Date 8-20-74

Priority reduced to _____ Reason _____

Protests filed by: _____

Copies of protests forwarded by _____

Hearing held by _____ Date _____

Recommended for (approval) denial by ~~ADF~~

ACTION OF THE DIRECTOR, DEPARTMENT OF WATER ADMINISTRATION

This is to certify that I have examined Application for Permit to appropriate the public waters of the State of Idaho No. 61-7189, and said application is hereby ~~APPROVED~~.

1. Approval of said application is subject to the following limitations and conditions:

   a. SUBJECT TO ALL PRIOR WATER RIGHTS.

   b. Proof of construction of works and application of water to beneficial use shall be submitted on or before August 1, 1979.

   c. Other: A measuring device ~~of a type approved by this Department shall be~~ permanently installed and maintained as part of the diverting works.

2. Denial of said application is for the following reasons: _____

Witness my hand this 29 day of August 19 74.

A. Kenneth Dunn
For the Director

BY: A. KENNETH DUNN, Administrator

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OCT 05 2000

Exhibit B

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OCT 0 5 2009

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE

STATE OF IDAHO

IN THE MATTER OF REMOVAL OF THE MEASURING DEVICE REQUIREMENT FOR PERMIT NO. 61-7189

ORDER

WHEREAS, it has been determined by the Department of Water Resources that a measuring device is not required at this time for a determination of the quantity of water appropriated under said permit;

IT IS, THEREFORE, HEREBY ORDERED that the condition of approval that a measuring device of a type approved by the Department be permanently installed and maintained as part of the diverting works, be and is, REMOVED from said permit.

Dated this 28th day of August, 1978.

L. Glen Saxton

L. GLEN SAXTON

Chief, Operations Bureau

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OCT 05 2000

Exhibit C

Form 219
6/86

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

BENEFICIAL USE FIELD REPORT

A. GENERAL INFORMATION

Permit No. 61-7189

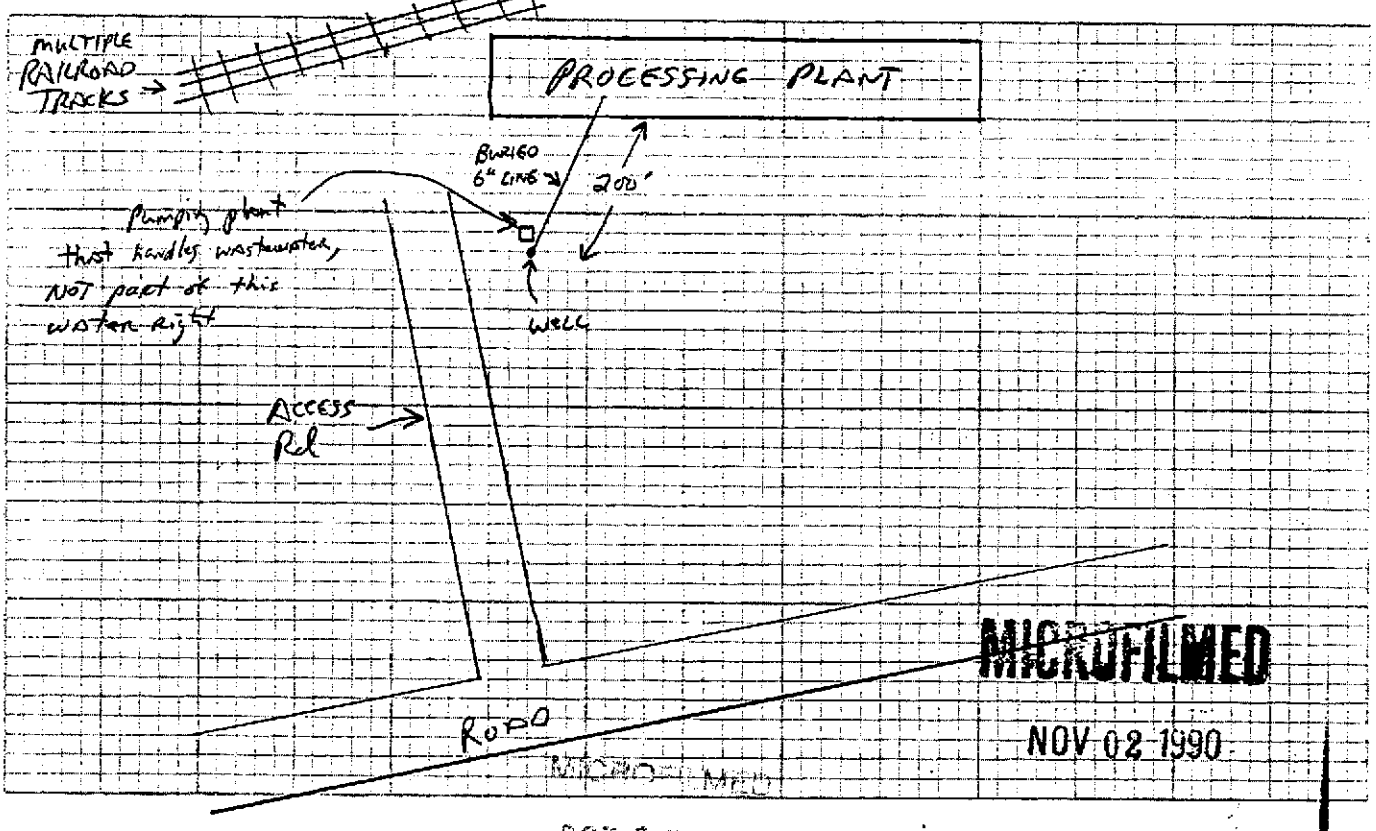
1. Owner: Magic West Inc. Phone No. 366-7477
   Current Address: P.O. Box 968 Glenns Ferry, Id. 83623
2. Accompanied by: Doug Masson EXAM. DATE: 8/4/87
   Address: Same Phone No. Same
   Relationship to Permit Holder: Maint. Supt.
3. Source: groundwater tributary to —

B. OVERLAP REVIEW

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

C. SYSTEM DESCRIPTION

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



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OCT 05 2000

Scale: 1" = NOT TO SCALE

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

System Description (continued)

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

1230' deep well with 10" casing and submersible pump provides water through 4"6" mainline for use in potato processing plant approx 200' N. of well. This hot water source (112° F) is combined with city water (cold) for an estimated 24 hr.-day use of 30,000 gallons, of which about 20,000 gallons is from ~~the~~ the hot water well. Hot & cold processing water is reused (wastewater) in numerous other ways in ~~and around~~ the plant. A series of pumps & storage tanks are found, but these are not part of the diversion works for this water right. Maint Supt. cannot find any company records about this well and diversion system.

☒ See Remarks on page 4 for continuation

4.

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

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

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

Ident. No.	Gov't. Lot	¼	¼	¼	Sec.	Twp.	Rge.	County	Method of Determination/Remarks
			SW	SE	29	5S	10E	Elmore	USGS 7½' Quad

6. **Place(s) of Use:** Indicate Method of Determination SAME AS IN P/D

Twp.	Rge.	Sec.	NE¼				NW¼				SW¼				SE¼				Totals
			NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	
5S	10E	29															I		—

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H. REMARKS AND OVERLAP REVIEW ANALYSIS

Measuring device Req't. removed 8/28/78.
Allow .67 cfs AS permit shows. HP equation confirms system can produce at least THAT
NARRATIVE CONTINUED: My letter of 12/16/87 resulted in the response of 1/4/88 by W. Schow, Vice-President. Pump data from this letter and subsequent phone conversation with Bill Webb at Layne Pump Co. (NAmpa) provided necessary information. I assumed a total dyn. head of 30' based on well log and conversations with maint. sup't at the plant.

OCT 05 1988

Overlap - ~~Although microfiche shows city water~~ City water under license 63-7228 is supplied to the plant and used in a variety of functions, including industrial
→ Lic. condition: This right, combined with other rights, should not exceed .67 cfs for industrial use.

I. RECOMMENDATIONS

1. **Recommended Amounts**

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

2. **Recommended Amendments**

☑ Change P.D. as reflected above ☐ Add P.D. as reflected above ☐ None
☑ Change P.U. as reflected above ☐ Add P.U. as reflected above ☐ Other

J. AUTHENTICATION

Field Examiner's Name: Steven Lester BD
Signature: Steven Lester 1/12/88
Certification Date:
Field Report Preparation Date: 8/4/87

CONSULTANT SEAL

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

MICROFILMED
NOV 02 1990
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OCT 05 2000

REGISTERED PROFESSIONAL ENGINEER 3459 STATE OF IDAHO A. MICHAEL STUBBLEFIELD 11/21/88

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D. FLOW MEASUREMENTS

☐ Additional Data Sheets Attached

1.

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

2. **Measurements:**

NONE POSSIBLE

E. FLOW CALCULATIONS

☐ Additional Computation Sheets Attached

1. Measured Method: NONE

2. Alternate Method for Checking Purposes:
HP eq. where HP = 25, eff = .8
psi = 75, z = 30

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

F. PUMP EFFICIENCY DATA (Optional) N/A

Discharge Pressure: _____ psi x 2.31 = _____ ft (1); Dynamic pumping level: _____ ft (2)
Total Head: (1) + (2) = _____ (3) ; Flow rate: _____ cfs (4)

Water HP: (3) x (4) ÷ 8.8 = _____ (5)
Meter Input KW: 3.6 x _____ KH x _____ CTR or _____ MULT x _____ PTR x _____ N/ _____ T = _____ (6)
Meter Input HP: (6) x 1.34 = _____ (7)
Panel Input KW: _____ Ave PF x _____ Ave Volts x _____ Ave Ampsx .001732 = _____ (6)
Panel Input HP: (6) x 1.34 = _____ (7) Efficiency: (5)/(7) x 100 = _____ %

MICROFILMED
NOV 02 1990

G. VOLUME CALCULATIONS

1. Volume Calculations for Irrigation: N/A

$V_{I.R.}$ = (Acres Irrigated) x (Irrigation Requirement) = _____

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

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

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

V.

2. Volume Calculations for Other Uses:

INDUSTRIAL USE IN PLANT:

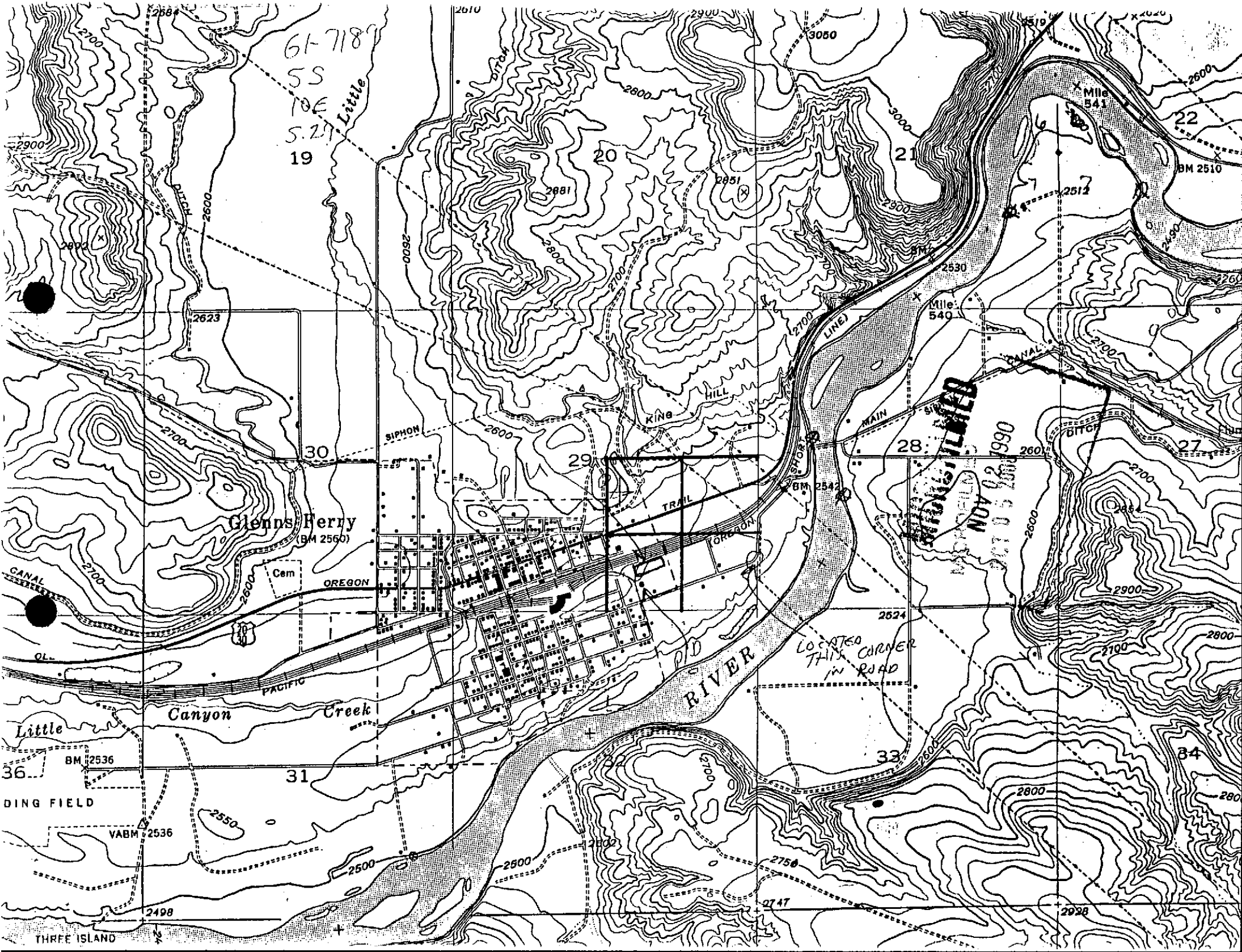
24 hrs/day
5 days/wk
42 wks/year
estimated 20,000 gpd (per 24 hr. period)

20,000 gpd x 5 days/wk x 42 wks/yr =

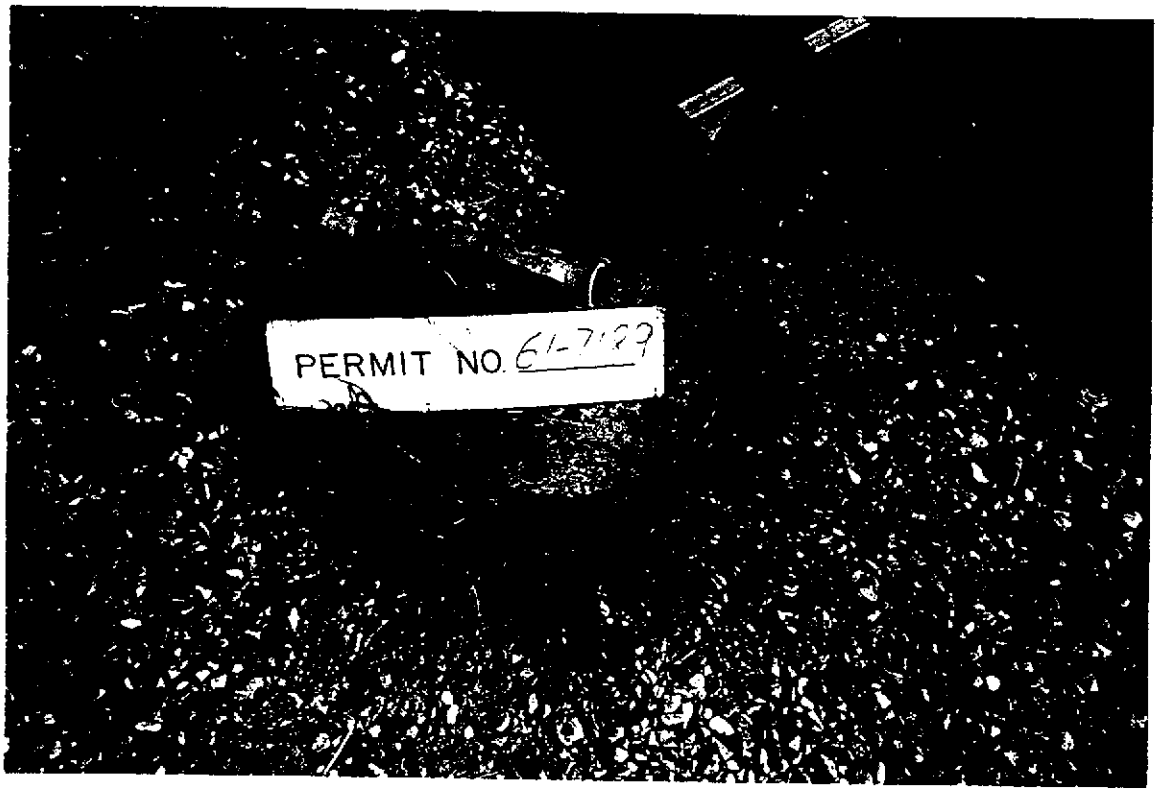
4,200,000 gpy

$$\frac{4,200,000 \text{ g/yr.}}{325,850 \text{ g/ac-ft.}} = 12.889 = 12.9$$

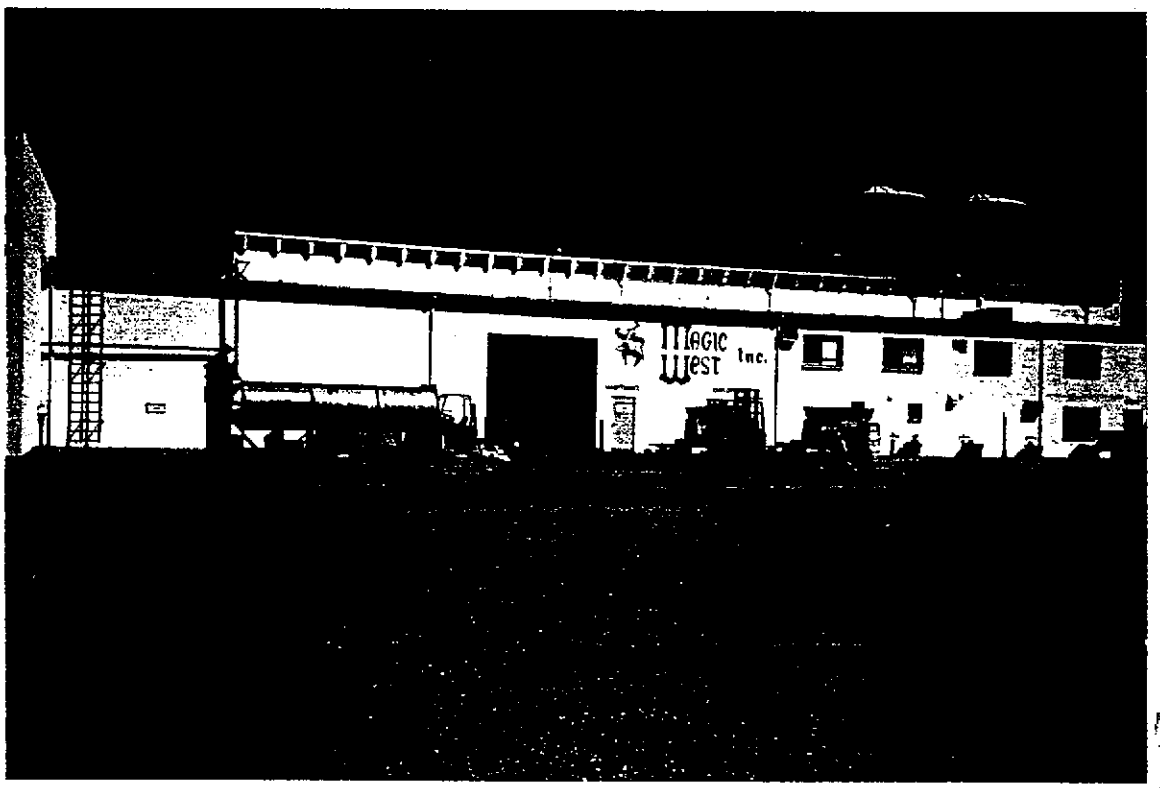
MICROFILMED
OCT 05 2000


61-7189
5S
10E
5.27
Little
Glenns Ferry
(BM 2560)
Cem
OREGON
TRAIL
SIPHON
KING HILL
MAIN
CANAL
LINE)
SHORT
BM 2542
BM 2530
BM 2510
Mile 541
Mile 540
Little Canyon Creek
PACIFIC
SNAKE RIVER
BM 2536
VABM 2536
DING FIELD
THREE ISLAND
LOCATED THIS CORNER IN ROAD
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61-7189



P/O
well just behind pumping plant at Magic West plant in Glenns Ferry.



P/u
Looking North from well to plant.

MICROFILMED
NOV 02 1990

MICROFILMED
OCT 0 5 2000

State of Idaho
DEPARTMENT OF WATER RESOURCES
Western Region

CECIL D. ANDRUS
Governor

R. KEITH HIGGINSON
Director

2735 Airport Way
Boise, Idaho 83705
(208) 334-2190

Manager
Magic West Inc.
P.O. Box 968
Glenns Ferry, ID. 83623
Re: Permit 61-7189

Dec. 16, 1987

Dear Sir:

A field exam was conducted on August 4, 1987 to gather information to license the industrial use of the hot water well at your facility. Before the water right can be advanced from a Permit to a License, additional information is needed.

I have not been able to determine anything about the pumping capacity of the well except that a submersible pump and four-inch mainline are used. Please consult your records or any other pertinent sources. Any further information will be helpful. I am interested in the pump brand, horsepower, pump curve, normal operating pressure, dynamic pumping level (static water level plus the operating drawdown), individual or company who installed the pump, any pump test data, or any other information that describes the operation of the well.

I spoke with the well driller, Hiddleston Drilling of Mtn. Home. The driller did not have any knowledge beyond that of the well log, which I have. He recommended the Layne Pump Co. offices in Twin Falls and Nampa. I spoke with individuals at both offices, but they had no information concerning the well.

Without additional information, it will be difficult to issue a License to allow continued legal use of the water. Please respond within 30 days to avoid jeopardizing your water right. Please contact me if I can assist you in any way.

Sincerely,

Steve Lester
Water Resource Agent

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NOV 02 1990

MICROFILMED
OCT 05 2020

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

MAGIC WEST Inc.

P.O. Box 968 GLENNS FERRY, IDAHO 83623
Phone: 208-366-7477

RECEIVED
JAN 13 1988
Department of Water Resources

61-7189

Jan. 4, 1988

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

Dear Mr. Lester:

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

Pump Data:	
Brand: Peerless	360 G.P.M. @ 3,600 R.P.M.
Model Number: 6HXB	10 inch hole
440 Volt	105 ft. deep
4 stage	

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

Please contact me if you need additional information.

Sincerely,

MAGIC WEST, INC.

Wm. Schow

Wm. Schow
Vice President

MICROFILMED
NOV 02 1990

WS:sh

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

S. Lester

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OCT 05 2000

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JAN 6 1988
Department of Water Resources
Western Regional Office

Exhibit D

October 31, 1990

MAGIC WEST INC.
P.O. BOX 968
GLENNS FERRY, ID 83623

RE: WATER RIGHT NO. 61-07189

Dear Water Right Holder(s):

Enclosed herewith is a copy of the Water Right License issued on the above referenced permit along with a copy of your approved application for amendment.

Should you have any questions regarding these documents, please feel free to contact our office.

Sincerely,

JIM JOHNSON
Water Rights Supervisor

JJ:blm

Enclosure

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OCT 05 2000

State of Idaho
Department of Water Resources

WATER RIGHT LICENSE

WATER RIGHT NO. 61-07189

Priority: July 10, 1974

Maximum Diversion Rate: 0.67 CFS
Maximum Diversion Volume:[1] 12.9 AF

This is to certify, that MAGIC WEST INC.
P.O. BOX 968
GLENNS FERRY, ID 83623 has complied with the terms and conditions of the permit, issued pursuant to Application for Permit dated July 10, 1974; and has submitted Proof of Beneficial Use on June 13, 1979. An examination indicates that the works have a diversion capacity of .670 cfs of water from a GROUNDWATER source, and a water right has been established as follows:

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

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

PLACE OF USE: INDUSTRIAL

TWN	RGE	SEC	
05S	10E	29	SWSE

CONDITIONS/REMARKS:

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

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NOV 02 1990
OCT 05 2000

State of Idaho
Department of Water Resources

WATER RIGHT LICENSE

WATER RIGHT NO. 61-07189

This license is issued pursuant to the provisions of Section 42-219, Idaho Code. Witness the seal and signature of the Director, affixed at Boise, this 22nd day of OCTOBER, 1990.

Acting for R. Keith Higginson, Director



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NOV 02 1990

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OCT 05 2000

State of Idaho
Department of Water Resources

APPROVED

APPLICATION FOR AMENDMENT
(For Licensing Purposes)
WATER RIGHT NO. 61-07189

Date of Priority: July 10, 1974

Maximum Diversion Rate: 0.67 CFS
Maximum Diversion Volume:[1] 12.9 AF

Comes now MAGIC WEST INC.
P.O. ~~DRAWER V~~ Box 968
GLENNS FERRY, ID 83623 and represents to the Director of the

Idaho Department of Water Resources:

That he is the owner and holder of Permit to Appropriate the Public Waters of the State of Idaho No. 61-07189, and requests that the permit be changed as follows:

Source: GROUNDWATER

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

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

PLACE OF USE: INDUSTRIAL

TWN	RGE	SEC	
05S	10E	29	SWSE

Permit holder asserts that no one will be injured by such change and that such change will be made at permit holder's own risk.

Signed at Glenns Ferry, this 18 day of SEPT., 1990.

Magic West Inc Jack Kennedy (Farm Manager)
(Signature)

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NOV 02 1990

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OCT 05 2000

State of Idaho
Department of Water Resources

APPLICATION FOR AMENDMENT
(For Licensing Purposes)
WATER RIGHT NO. 61-07189

****

FOR DEPARTMENT USE ONLY #C018383

Preliminary check by SC Fee ✓ $20.00 Receipted by J.D. Date 9/21/90

ACTION OF THE DEPARTMENT OF WATER RESOURCES

I, R. Keith Higginson, of the Department of Water Resources hereby approve the above Application for Amendment for Permit No. 61-07189 with the following;

CONDITIONS/REMARKS:

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

Witness my hand this 27th day of October, 1990.

Acting for R. Keith Higginson, Director

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NOV 02 1990

MICROFILMED
OCT 05 2000

Exhibit E

RECEIVED APR 3 0 1997

John A. Rosholt
Norman M. Semanko
ROSHOLT, ROBERTSON & TUCKER
P. O. Box 1906
142 3rd Avenue N.
Twin Falls, Idaho 83303-1906
Telephone: (208) 734-0700
Fax: (208) 736-0041
04229705.NMS

Attorneys for Magic West, Inc.

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

IN THE MATTER OF LICENSE NO. 61-07189 IN THE NAME OF	LICENSE NO. 61-07189 AFFIDAVIT OF JACK ANDERSON

STATE OF IDAHO)
) ss.
County of Elmore)

JACK ANDERSON, being first duly sworn upon his oath deposes and says:

1. I am the Plant Manager for the Magic West food processing plant in Glenns Ferry, Idaho and have been employed in that capacity since December, 1985. I also worked at Magic Valley Foods (Magic West's Rupert plant) for 15 years previous to my current position with Magic West, Inc.

2. I am familiar with and have personal knowledge of the water usage by Magic West at its Glenns Ferry plant, including the use of Water Right No. 61-07189, and have for the past 11 years.

3. Doug Masson was the Maintenance Supervisor for the Glenns Ferry plant at the time of the field examination for Water Right No. 61-07189 in August, 1987. He was

OCT 0 5 2009

responsible for general maintenance of the plant, but had no detailed knowledge of water usage and only limited knowledge of plant operations and procedures. The 20,000 gallon per day estimate which I now understand was provided by Doug Masson to the department's field examiner in August, 1987 was simply not correct.

4. At the time of the beneficial use field examination in August, 1987, the Glenns Ferry plant operated 24-hours a day, composed of three 8-hour shifts, between six and seven days a week. Low-temperature geothermal water from Water Right No. 61-07189 was continually used by the plant. This is the same basic running schedule and water usage that we have in place today.

5. On average, the amount of water utilized from the low-temperature geothermal well is and has remained the same since the beneficial use examination in 1987. In addition, the same basic equipment, procedures, and numbers of gallons of water per minute have been used in the plant.

6. I estimate that a daily average of between 240,000 and 260,000 gallons of low-temperature geothermal water from Water Right No. 61-07189 was used at the time of the beneficial use field examination in August, 1987. On average, this amount has not changed. In addition, Magic West's records, maintained since a measuring device was installed, confirm this same level of use during 1996 and 1997.

7. Adherence to an annual diversion volume of 12.9 AF (or 20,000 gallons per day) would not provide enough water for even two (2) hours of plant operation and would likely put the plant out of operation altogether. The plant has never operated at such low levels.

8. The Glenns Ferry plant paid more than $3 million in wages to Glenns Ferry area residents and more than $72,000 in local property taxes during 1996.

OCT 05 2000

9. During the summer of 1996, Jerry Grace, Magic West's Purchasing Agent, and I went to Boise for a meeting with departmental representatives. At that meeting, the department's Cindy Hodges indicated to us that the annual volume included in Water Right License No. 61-07189 was the result of mistake or inadvertence.

DATED this 29 day of April, 1997.

Jack Anderson
JACK ANDERSON

SUBSCRIBED AND SWORN To before me this 29 day of April, 1997.

NOTARY PUBLIC FOR IDAHO
Residing at Glenns Ferry, ID
My Commission Expires 5-99

OCT 03 2000

Exhibit F

RECORDED
DOC # 0000

RECEIVED
APR 21 1987
Department of Water Resources
Western Regional Office

RECEIVED
MAY 06 1987
STATE OF IDAHO
Department of Water Resources

KEYPUNCHED
For Office Use Only ok jp
Fee Received 100
Date 4/30/87
Receipt # 42388
Receipt by R. H.
Sent to S.O. AA

DEPARTMENT OF WATER RESOURCES

EXAMINATION FEE INFORMATION

1. Permit No. 61-7189

ONE OF THE FOLLOWING BOXES SHOULD BE MARKED TO DESIGNATE YOUR CHOICE:

☒ I choose to have the department make the field examination of this permit; attached is the examination fee. (If this box is marked, complete items 1 thru 8.)

2. Permit Holder: Magic West, Inc.

3. Post Office Address: P.O. Box 968 Glenns Ferry, Idaho 83623

Telephone No. 208-366-7477

4. Source of Water: Ground Water

5. Extent of Use:

Domestic _____(No. of households) Stockwater _____(No. and type of stock)

Irrigation _____(acres) Other/Remark for food Processing

6. Total rate &/or volume for which proof is submitted .62 cfs _____acre-feet

7. Show the date water was first diverted and beneficially used under this permit:

July 1974

8. Person to contact to accompany the department representative during the field examination:

Jack Anderson
(Name)

600 East Harrison Glenns Ferry, Id. 83623 208-366-7477
(Address) (Telephone Number)

☐ I choose to have the field examination conducted by a certified water right examiner. Attached is a statement from the certified examiner I have selected verifying that he has been retained to conduct the examination. (If this box is marked, complete items 1 thru 7.)

4/30/87
Date

Wm. Shaw Vice President
Signature of Permit Holder (and title, if appropriate)

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State of Idaho

Department of Water Resources

LICENSE EXAMINATION FEE SCHEDULE

(c.f.s. = cubic feet per second
AF = acre feet)

cfs	AF	Fee
0 - 0.04	0 - 4	$ 0
.05 - 0.20	5 - 20	50.00
.21 - 1.0	21 - 100	100.00
1.01 - 2.0	101 - 200	125.00
2.01 - 3.0	201 - 300	150.00
3.01 - 4.0	301 - 400	175.00
4.01 - 5.0	401 - 500	200.00
5.01 - 6.0	501 - 600	225.00
6.01 - 7.0	601 - 700	250.00
7.01 - 8.0	701 - 800	275.00
8.01 - 9.0	801 - 900	300.00
9.01 - 10.0	901 - 1000	325.00
10.01 - 11.0	1001 - 1100	350.00
11.01 - 12.0	1101 - 1200	375.00
12.01 - 13.0	1201 - 1300	400.00
13.01 - 14.0	1301 - 1400	425.00
14.01 - 15.0	1401 - 1500	450.00
15.01 - 16.0	1501 - 1600	475.00
16.01 - 17.0	1601 - 1700	500.00
17.01 - 18.0	1701 - 1800	525.00
18.01 - 19.0	1801 - 1900	550.00
19.01 - 20.0	1901 - 2000	575.00
20.01 & over	2001 & over	600.00

Checks should be made payable to the
Department of Water Resources

No fee is required for single family
domestic use or stockwater use.

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OCT 0 5 2000

Exhibit G

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OCT 05 2000

WELL WATER 4C

SHIFT	DATE	HOURS	METER READINGS	GALL USED	GP
I	10-20-96	12:00am to 8:00am	026632	82 200	
II	10-20-96	8:00am to 4:00am	027434	63 600	
III	10-20-96	4:00am to 12:00am	028090	79,100	
I	10-21-96	12:00am to 8:00am	028881	61,900	
II	10-21-96	8:00am to 4:00pm	029500	83 300	
III	10-21-96	4:00pm to 12:00am	030333	81 100	
I	10-22-96	12:00am to 8:00am	031144	68 700	
II	10-22-96	8:00am to 4:00pm	031831	85 000	
III	10-22-96	4:00pm to 12:00am	032681	85 300	
I	10-23-96	12:00am to 8:00am	033536	74 900	
II	10-23-96	8:00am to 4:00pm	?	74 900	
III	10-23-96	4:00pm to 12:00am	035034	73 200	
I	10-24-96	12:00am to 8:00am	035786	70 300	
II	10-24-96	8:00am to 4:00pm	036489	60 800	
III	10-24-96	4:00pm to 12:00am	037097	77800	
I	10-25-96	12:00am to 8:00am	037875	71100	
II	10-25-96	8:00am to 4:00pm	038586	67100	
III	10-25-96	4:00pm to 12:00am	039257	73400	
I	10-26-96	12:00am to 8:00am	039991	50900	
II	10-26-96	8:00am to 4:00pm	040500 8hr Clean up.	72000	
III	10-26-96	4:00pm to 12:00am	041220	27800	

	DAYS	HOURS	GALLONS	GPD	GP
I	7 Days	56 hours	480 000	68,571	14
II	7 Days	36 hours	506 700	72,386	15
III	7 Days	36 hours	499 900	71 414	14
		168	1,486,600	212,371	44

Oct 27 - Nov 2 1996 WELL WATER 4D

SHIFT	DATE	HOURS	METER READINGS	GALL USED	GP
I	10-27-96	12:00am to 8:00am	041498	31100	
II	10-27-96	8:00am to 4:00am	041809	35400	
III	10-27-96	4:00am to 12:00am	042163	36300	
I	10-28-96	12:00am to 8:00am	042626	62100	
II	10-28-96	8:00am to 4:00pm	043147	67300	
III	10-28-96	4:00pm to 12:00am	043820	66900	
I	10-29-96	12:00am to 8:00am	044489	70600	
II	10-29-96	8:00am to 4:00pm	045195	93200	
III	10-29-96	4:00pm to 12:00am	046147	62100	
I	10-30-96	12:00am to 8:00am	046768	51500	
II	10-30-96	8:00am to 4:00pm	047283	71300	
III	10-30-96	4:00pm to 12:00am	047996	76300	
I	10-31-96	12:00am to 8:00am	048759	62300	
II	10-31-96	8:00am to 4:00pm	049382	84300	
III	10-31-96	4:00pm to 12:00am	050225	62900	
I	11-1-96	12:00am to 8:00am	050854	65300	
II	11-1-96	8:00am to 4:00pm	051507	80900	
III	11-1-96	4:00pm to 12:00am	052316	66100	
I	11-2-96	12:00am to 8:00am	052977	77000	
II	11-2-96	8:00am to 4:00pm	053747	81300	
III	11-2-96	4:00pm to 12:00am	054360	73000	

	DAYS	HOURS	GALLONS	GPD	GPM
I	7 Days	56 hours	419900	59986	42
II	7 Days	56 hours	515700	73671	15
III	7 Days	56 hours	443600	63371	13
		168	1379.200	197028	13

WELL WATER

SHIFT	DATE	HOURS	METER READING	GALL USED	G
I	11-3-96	12:00am to 8:00am	055290	77200	
II	11-3-96	8:00am to 4:00am	056062	38200	
III	11-3-96	4:00am to 12:00am	056444	40300	
I	11-4-96	12:00am to 8:00am	056847	43100	
II	11-4-96	8:00am to 4:00pm	057278	75400	
III	11-4-96	4:00pm to 12:00am	058032	61500	
I	11-5-96	12:00am to 8:00am	058647	66300	
II	11-5-96	8:00am to 4:00pm	059310	80300	
III	11-5-96	4:00pm to 12:00am	060113	70800	
I	11-6-96	12:00am to 8:00am	060823	74400	
II	11-6-96	8:00am to 4:00pm	061567	92000	
III	11-6-96	4:00pm to 12:00am	062487	62400	
I	11-7-96	12:00am to 8:00am	063111	79200	
II	11-7-96	8:00am to 4:00pm	063903	70000	
III	11-7-96	4:00pm to 12:00am	064603	83600	
I	11-8-96	12:00am to 8:00am	065439	85400	
II	11-8-96	8:00am to 4:00pm	066293	81200	
III	11-8-96	4:00pm to 12:00am	067103	94300	
I	11-9-96	12:00am to 8:00am	068048	70800	
II	11-9-96	8:00am to 4:00pm	068756	78900	
III	11-9-96	4:00pm to 12:00am	069545	90400	
	DAYS	HOURS	GALLONS	GPD	GI
I	7 Days	56 Hours	496400	70.914	14
II	7 Days	56 Hours	516200	73743	15
III	7 Days	56 Hours	503300	71,900	15
OTAL		168	1515900	216.557	150

WELL WATER

SHIFT	DATE	HOURS	METER READINGS	GALL USED	G
I	11-17-96	12:00am to 8:00am	086139	86000	
II	11-17-96	8:00am to 4:00am	086999	65200	
III	11-17-96	4:00am to 12:00am	087651	93800	
I	11-18-96	12:00am to 8:00am	088609	64800	
II	11-18-96	8:00am to 4:00pm	089257	90100	
III	11-18 96	4:00pm to 12:00am	090158	94700	
I	11-19-96	12:00am to 8:00am	091105	69600	
II	11-19-96	8:00am to 4:00pm	091801	81500	
III	11-19-96	4:00pm to 12:00am	092616	84600	
I	11-20-96	12:00am to 8:00am	093462	68800	
II	11-20-96	8:00am to 4:00pm	094150	76900	
III	11-20-96	4:00pm to 12:00am	094919	65600	
I	11-21-96	12:00am to 8:00am	095573	71900	
II	11-21-96	8:00am to 4:00pm	096294	85800	
III	11-21-96	4:00pm to 12:00am	097152	60700	
I	11-22-96	12:00am to 8:00am	097759	74600	
II	11-22-96	8:00am to 4:00pm	098505	70300	
III	11-22-96	4:00pm to 12:00am	099208	81000	
I	11-23-96	12:00am to 8:00am	100068	57100	
II	11-23-96	8:00am to 4:00pm	100639	28500	
III	11-23-96	4:00pm to 12:00am	101524	76900	
	DAYS	HOURS	GALLONS	GPD	G
I	7 Days	56 Hours	492800	70400	14
II	7 Days	56 Hours	558300	79757	16
III	7 Days	56 Hours	564300	80614	16
TOTAL		168	1615400	230771	46

WELL WATER

SHIFT	DATE	HOURS	METER READING	GALL USED	G
I	11-24-96	12:00am to 8:00am	102293	62100	
II	11-24-96	8:00am to 4:00am	102914	83700	
III	11-24-96	4:00am to 12:00am	103771	74600	
I	11-25-96	12:00am to 8:00am	104517	78600	
II	11-25-96	8:00am to 4:00pm	105303	81800	
III	11-25-96	4:00pm to 12:00am	106121	73600	
I	11-26-96	12:00am to 8:00am	106857	20600	
II	11-26-96	8:00am to 4:00pm	107063	155100	
III	11-26-96	4:00pm to 12:00am	108614	83900	
I	11-27-96	12:00am to 8:00am	109453	85000	
II	11-27-96	8:00am to 4:00pm	Plant down		
III	11-27-96	4:00pm to 12:00am	Plant down		
I	11-28-96	12:00am to 8:00am	Plant down		
II	11-28-96	8:00am to 4:00pm	Plant down		
III	11-28-96	4:00pm to 12:00am	Plant down		
I	11-29-96	12:00am to 8:00am	Plant down		
II	11-29-96	8:00am to 4:00pm	Plant down		
III	11-29-96	4:00pm to 12:00am	Plant down		
I	11-30-96	12:00am to 8:00am	110303	31900	
II	11-30-96	8:00am to 4:00pm	110622	66300	
III	11-30-96	4:00pm to 12:00am	111285	84300	

	DAYS	HOURS	GALLONS	GPD	GI
I	5 Days	40 Hours	278200	55640	116
II	5 Days	40 Hours	388900	77780	162
III	5 Days	40 Hours	316400	63280	132
TOTAL		120	983500	196700	410

WELL WATER

SHIFT	DATE	HOURS	METER READINGS	GALL USED
I	12-8-96	12:00am to 8:00am	132428	80200
II	12-8-96	8:00am to 4:00am	133230	104800
III	12-8-96	4:00am to 12:00am	134278	96800
I	12-9-96	12:00am to 8:00am	135246	86600
II	12-9-96	8:00am to 4:00pm	136112	110700
III	12-9-96	4:00pm to 12:00am	137219	97300
I	12-10-96	12:00am to 8:00am	138194	82200
II	12-10-96	8:00am to 4:00pm	139016	112600
III	12-10-96	4:00pm to 12:00am	140142	94400
I	12-11-96	12:00am to 8:00am	140958	84200
II	12-11-96	8:00am to 4:00pm	141800	109800
III	12-11-96	4:00pm to 12:00am	142898	99700
I	12-12-96	12:00am to 8:00am	143893	100200
II	12-12-96	8:00am to 4:00pm	144897	116700
III	12-12-96	4:00pm to 12:00am	146064	96900
I	12-13-96	12:00am to 8:00am	147033	142700
II	12-13-96	8:00am to 4:00pm	148460	65800
III	12-13-96	4:00pm to 12:00am	149118	101600
I	12-14-96	12:00am to 8:00am	150134	96900
II	12-14-96	8:00am to 4:00pm	151103	108600
III	12-14-96	4:00pm to 12:00am	152189	94900

	DAYS	HOURS	GALLONS	GPD	GI
I	7 Days	56 Hours	673000	96143	2(
II	7 Days	56 Hours	729800	104143	21
III	7 Days	56 Hours	681800	97400	2(
TOTAL		168	2083800	297686	2(

SHIFT	DATE	HOURS	METER READINGS	GALL USED
I	12-22-96	12:00am to 8:00am	172675	94 700
II	12-22-96	8:00am to 4:00am	173622	100,300
III	12-22-96	4:00am to 12:00am	174625	83,600
I	12-23-96	12:00am to 8:00am	175461	91,900
II	12-23-96	8:00am to 4:00pm	176380	98,900
III	12-23-96	4:00pm to 12:00am	177369	94,100
I	12-24-96	12:00am to 8:00am	178310 ?	297,900
II	12-24-96	8:00am to 4:00pm	Plant Down	
III	12-24-96	4:00pm to 12:00am	Plant Down 42,357	
I	12-25-96	12:00am to 8:00am	Merry XMAS	
II	12-25-96	8:00am to 4:00pm	Merry XMAS	
III	12-25-96	4:00pm to 12:00am	Merry XMAS	
I	12-26-96	12:00am to 8:00am	Plants Down	
II	12-26-96	8:00am to 4:00pm	181289	101,300
III	12-26-96	4:00pm to 12:00am	182304	75,300
I	12-27-96	12:00am to 8:00am	183059	82,700
II	12-27-96	8:00am to 4:00pm	183886	113,800
III	12-27-96	4:00pm to 12:00am	185024	86,700
I	12-28-96	12:00am to 8:00am	185891	107,300
II	12-28-96	8:00am to 4:00pm	186964	117,700
III	12-28-96	4:00pm to 12:00am	188141	91,900

	DAYS	HOURS	GALLONS	GPD
I	3 Days	40 Hours	674,500	134,900
II	3 Days	40 Hours	532,200	106,440
III	3 Days	40 Hours	431,800	86,360
TOTAL		120	1,638,500	327,700

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WELL WATER

SHIFT	DATE	HOURS	METER READINGS	GALL USED	G
I	1-12-97	12:00am to 8:00am	226550	91200	
II	1-12-97	8:00am to 4:00am	227462	106300	
III	1-12-97	4:00am to 12:00am	228527	98100	
I	1-13-97	12:00am to 8:00am	229508	95800	
II	1-13-97	8:00am to 4:00pm	230466	98200	
III	1-13-97	4:00pm to 12:00am	231448	83700	
I	1-14-97	12:00am to 8:00am	232285	106000	
II	1-14-97	8:00am to 4:00pm	233345	107100	
III	1-14-97	4:00pm to 12:00am	234416	104900	
I	1-15-97	12:00am to 8:00am	235465	87100	
II	1-15-97	8:00am to 4:00pm	236336	100,000	
III	1-15-97	4:00pm to 12:00am	237336	81200	
I	1-16-97	12:00am to 8:00am	238148	98400	
II	1-16-97	8:00am to 4:00pm	239132	88100	
III	1-16-97	4:00pm to 12:00am	240013	77300	
I	1-17-97	12:00am to 8:00am	240786	80300	
II	1-17-97	8:00am to 4:00pm	241589	88100	
III	1-17-97	4:00pm to 12:00am	242470	74300	
I	1-18-97	12:00am to 8:00am	243213	85900	
II	1-18-97	8:00am to 4:00pm	244072	87600	
III	1-18-97	4:00pm to 12:00am	244948	89000	
	DAYS	HOURS	GALLONS	GPD	GI
I	7 Days	56 Hours	44700	92100	19.
II	7 Days	56 Hours	673600	96514	20
III	7 Days	56 Hours	608300	86929	18.
			OCT 0 5 2000		
TOTAL		168	1928800	275343	19.

WELL WATER

SHIFT	DATE	HOURS	METER READING	GALL USED	G
I	2-2-97	12:00am to 8:00am	287584	80 300	
II	2-2-97	8:00am to 4:00am	?	80,300	
III	2-2-97	4:00am to 12:00am	289 194	10,800	
I	2-3-97	12:00am to 8:00am	289 902	94 900	
II	2-3-97	8:00am to 4:00pm	290 851	89 500	
III	2-3-97	4:00pm to 12:00am	291 746	100 300	
I	2-4-97	12:00am to 8:00am	292 719	96 900	
II	2-4-97	8:00am to 4:00pm	293 713	79 900	
III	2-4-97	4:00pm to 12:00am	294 [illegible]	101 200	
I	2-5-97	12:00am to 8:00am	295 729	86,000	
II	2-5-97	8:00am to 4:00pm	296 389	96 300	
III	2-5-97	4:00pm to 12:00am	297 359	90 900	
I	2-6-97	12:00am to 8:00am	298261	85 700	
II	2-6-97	8:00am to 4:00pm	299118	93 100	
III	2-6-97	4:00pm to 12:00am	300119	104 200	
I	2-7-97	12:00am to 8:00am	301161	97 400	
II	2-7-97	8:00am to 4:00pm	302135	104 100	
III	2-7-97	4:00pm to 12:00am	303176	97 100	
I	2-8-97	12:00am to 8:00am	304147	94 600	
II	2-8-97	8:00am to 4:00pm	305093	102 300	
III	2-8-97	4:00pm to 12:00am	306116	73 100	
	DAYS	HOURS	GALLONS	GPD	GP
I	7 Days	56 Hours	636 000	90 857	18
II	7 Days	56 Hours	645 700	92 243	17
III	7 Days	56 Hours	639 300	91 357	19
TOTAL		168	1 921 200	274 457	1,9

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WELL WATER

SHIFT	DATE	HOURS	METER READINGS	GALL USED
I	2-9-97	12:00am to 8:00am	306866	73 000
II	2-9-97	8:00am to 4:00am	307396	70 600
III	2-9-97	4:00am to 12:00am	308312	101 000
I	2-10-97	12:00am to 8:00am	308312	44 300
II	2-10-97	8:00am to 4:00pm	309757	32 000
III	2-10-97	4:00pm to 12:00am	310077	129 800
I	2-11-97	12:00am to 8:00am	310775	82 600
II	2-11-97	8:00am to 4:00pm	311601	102 400
III	2-11-97	4:00pm to 12:00am	312625	104 800
I	2-12-97	12:00am to 8:00am	313613	91 400
II	2-12-97	8:00am to 4:00pm	314567	112 300
III	2-12-97	4:00pm to 12:00am	315710	117 300
I	2-13-97	12:00am to 8:00am	316685	93 900
II	2-13-97	8:00am to 4:00pm	317824	107 000
III	2-13-97	4:00pm to 12:00am	318894	109 400
I	2-14-97	12:00am to 8:00am	319988	90 800
II	2-14-97	8:00am to 4:00pm	320896	120 700
III	2-14-97	4:00pm to 12:00am	322103	96 900
I	2-15-97	12:00am to 8:00am	323072	100 600
II	2-15-97	8:00am to 4:00pm	324078	117 200
III	2-15-97	4:00pm to 12:00am	325250	94 200

	DAYS	HOURS	GALLONS	GPD	G
I	7 Days	56 Hours	576 800	82 400	17
II	7 Days	56 Hours	1162 200	94 600	19
III	7 Days	56 Hours	693 [illegible]	99 086	2
TOTAL		168	1932 600	276 086	1

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WELL WATER

SHIFT	DATE	HOURS	METER READINGS	GALL USED	G
I	2-16-97	12:00am to 8:00am	326102	108600	
II	2-16-97	8:00am to 4:00am	332778	73300	
III	2-16-97	4:00am to 12:00am	326011	68200	
I	2-17-97	12:00am to 8:00am	328693	89900	
II	2/17/97	8:00am to 4:00pm	329392	104000	
III	2/17/97	4:00pm to 12:00am	330632	117100	
I	2/18/97	12:00am to 8:00am	331803	101750	
II	2-18-97	8:00am to 4:00pm	?	111750	
III	2/18/97	4:00pm to 12:00am	333838	100100	
I	2-19-97	12:00am to 8:00am	334839	91300	
II	2-19-97	8:00am to 4:00pm	335752	108300	
III	2-19-97	4:00pm to 12:00am	336835	110600	
I	2-20-97	12:00am to 8:00am	337811	98700	
II	2-20-97	8:00am to 4:00pm	338828	114500	
III	2-20-97	4:00pm to 12:00am	339973	94300	
I	2-21-97	12:00am to 8:00am	340916	101700	
II	2-21-97	8:00am to 4:00pm	341933	98400	
III	2-21-97	4:00pm to 12:00am	342917	91100	
I	2-22-97	12:00am to 8:00am	343828	96300	
II	2-22-97	8:00am to 4:00pm	344791	102700	
III	2-22-97	4:00pm to 12:00am	345816	101700	
	DAYS	HOURS	GALLONS	GPD	G
I	7 Days	56 Hours	688250	98321	2
II	7 Days	56 Hours	702950	100421	2
III	7 Days	56 Hours	673780	96157	2
			OCT 0 5 2000		
TOTAL		168	2,064,300	294899	2

WELL WATER

SHIFT	DATE	HOURS	METER READINGS	GALL USED	G
I	2-23-97	12:00am to 8:00am	346835	118400	
II	2-23-97	8:00am to 4:00am	348019	64700	
III	2-23-97	4:00am to 12:00am	348666	73300	
I	2-24-97	12:00am to 8:00am	349399	83200	
II	2-24-97	8:00am to 4:00pm	350231	95000	
III	2-24-97	4:00pm to 12:00am	351181	99000	
I	2-25-97	12:00am to 8:00am	352171	87500	
II	2-25-97	8:00am to 4:00pm	353046	99500	
III	2-25-97	4:00pm to 12:00am	354041	100400	
I	2-26-97	12:00am to 8:00am	355045	109300	
II	2-26-97	8:00am to 4:00pm	356138	81400	
III	2-26-97	4:00pm to 12:00am	356952	103600	
I	2-27-97	12:00am to 8:00am	357988	90300	
II	2-27-97	8:00am to 4:00pm	358893	75100	
III	2-27-97	4:00pm to 12:00am	359641	102900	
I	2-28-97	12:00am to 8:00am	360673	107400	
II	2-28-97	8:00am to 4:00pm	361747	107100	
III	2-28-97	4:00pm to 12:00am	362818	107800	
I	3-1-97	12:00am to 8:00am	363896	107000	
II	3-1-97	8:00am to 4:00pm	364966	98850	
III	3-1-97	4:00pm to 12:00am	?	98850	
	DAYS	HOURS	GALLONS	GPD	G
I	7 Days	36 Hours	703300	140471	2
II	7 Days	36 Hours	621650	88807	18
III	7 Days	36 Hours	685850	97979	2
TOTAL		168	2010800	287257	19

OCT 06 2000

WELL WATER

SHIFT.	DATE	HOURS	METER READINGS	GALL USED	G
I	3-2-97	12:00am to 8:00am	3669413	73000	
II	3-2-97	8:00am to 4:00am	3671673	68200	
III	3-2-97	4:00am to 12:00am	3678355	75800	
I	3-3-97	12:00am to 8:00am	3689113	85300	
II	3-3-97	8:00am to 4:00pm	3699996	111200	
III	3-3-97	4:00pm to 12:00am	3711108	92600	
I	3-4-97	12:00am to 8:00am	3720341	103600	
II	3-4-97	8:00am to 4:00pm	3730710	95000	
III	3-4-97	4:00pm to 12:00am	3741020	111000	
I	3-5-97	12:00am to 8:00am	3731180	99900	
II	3-5-97	8:00am to 4:00pm	3761179	99300	
III	3-5-97	4:00pm to 12:00am	3771174	110800	
I	3-6-97	12:00am to 8:00am	3782282	140200	
II	3-6-97	8:00am to 4:00pm	3796841	59900	
III	3-6-97	4:00pm to 12:00am	3802783	102800	
I	3-7-97	12:00am to 8:00am	3813111	107000	
II	3-7-97	8:00am to 4:00pm	3823811	103600	
III	3-7-97	4:00pm to 12:00am	3834117	112600	
I	3-8-97	12:00am to 8:00am	3845431	106700	
II	3-8-97	8:00am to 4:00pm	3856101 (Chgd to City Water)	93000	
III	3-8-97	4:00pm to 12:00am	3865401	83900	
	DAYS	HOURS	GALLONS	GPD	G
I	7 Days	56 Hours	718700	102671	2
II	7 Days	56 Hours	630400	90057	18
III	7 Days	56 Hours	694500	99214	20
TOTAL		168	2043600	291942	20

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WELL WATER

SHIFT	DATE	HOURS	METER READINGS	GALL USED	G
I	3-9-97	12:00am to 8:00am	387379	102000	
II	3-9-97	8:00am to 4:00am	388399	94900	
III	3-9-97	4:00am to 12:00am	389348	104800	
I	3-10-97	12:00am to 8:00am	390396	81800	
II	3-10-97	8:00am to 4:00pm	391214	91300	
III	3-10-97	4:00pm to 12:00am	392127	93700	
I	3-11-97	12:00am to 8:00am	393064	100900	
II	3-11-97	8:00am to 4:00pm	394073	86400	
III	3-11-97	4:00pm to 12:00am	394937	108200	
I	3-12-97	12:00am to 8:00am	396019	104300	
II	3-12-97	8:00am to 4:00pm	397062	95600	
III	3-12-97	4:00pm to 12:00am	398018	112100	
I	3-13-97	12:00am to 8:00am	399139	98600	
II	3-13-97	8:00am to 4:00pm	400125	107400	
III	3-13-97	4:00pm to 12:00am	401199	90600	
I	3-14-97	12:00am to 8:00am	402105	107400	
II	3-14-97	8:00am to 4:00pm	403179	86600	
III	3-14-97	4:00pm to 12:00am	404043	112500	
I	3-15-97	12:00am to 8:00am	405170	89900	
II	3-15-97	8:00am to 4:00pm	406069	101800	
III	3-15-97	4:00pm to 12:00am	407087	112600	
	DAYS	HOURS	GALLONS	GPD	G
I	7 Days	56 Hours	684900	97843	2
II	7 Days	56 Hours	664000	94857	19
III	7 Days	56 Hours	734566	104929	21
TOTAL		168	2083400	297629	42

WELL WATER

SHIFT	DATE	HRS	METER READINGS	GALL USED
I	3-16-97	12:00am to 8:00am	408213	97200
II	3-16-97	8:00am to 4:00am	409185	65000
III	3-16-97	4:00am to 12:00am	409835	70500
I	3-17-97	12:00am to 8:00am	410540	79400
II	3-17-97	8:00am to 4:00pm	411339	118400
III	3-17-97	4:00pm to 12:00am	412523	70000
I	3-18-97	12:00am to 8:00am	413223	86300
II	3-18-97	8:00am to 4:00pm	414086	112000
III	3-18-97	4:00pm to 12:00am	415206	86200
I	3-19-97	12:00am to 8:00am	416068	103100
II	3-19-97	8:00am to 4:00pm	417099	95800
III	3-19-97	4:00pm to 12:00am	418057	101200
I	3-20-97	12:00am to 8:00am	419069	85400
II	3-20-97	8:00am to 4:00pm	419923	110900
III	3-20-97	4:00pm to 12:00am	421032	90300
I	3-21-97	12:00am to 8:00am	421935	105200
II	3-21-97	8:00am to 4:00pm	422987	103000
III	3-21-97	4:00pm to 12:00am	424017	97700
I	3-22-97	12:00am to 8:00am	424994	83000
II	3-22-97	8:00am to 4:00pm	425824	104400
III	3-22-97	4:00pm to 12:00am	426868	97200

	DAYS	HOURS	GALLONS	GPD	
I	7 Days	56 Hours	640 100	91443	19
II	7 Days	56 Hours	709,566	101357	21
III	7 Days	56 Hours	613,106	87586	18
TOTAL		168	1,962,700	280 386	58

RECEIVED
FEB 11 1997
Department of Water Resources

MEMORANDUM

TO: GARY SPACKMAN

FROM: STEVE LESTER

DATE: FEBRUARY 10, 1997

RE: GROUND WATER APPLICATIONS IN GLENNS FERRY AREA

This memo summarizes the situation in the Glenns Ferry - Hammett area regarding several water right applications for permit proposing ground water for several uses. All of the applications are protested although only one protest conference for one application has been held to date.

Cold and hot (low temperature geothermal) water is involved. All of the points of diversion are on the north side of the Snake River. Two of the four filings include irrigation while the others involve municipal and industrial (latter two uses assume some degree of consumptive use?).

APPLICATION 61-07653 (AMENDED) - COLD SPRINGS PROJECT

Bill Ringert's application proposes up to four cold water wells, approximately 300' deep, for irrigation, commercial, domestic and fire protection uses. The irrigated land is associated with Carey Act Project No. 61-CA-03. The BLM has indicated that the public land will not be released for private development. The amended version was advertised as directed by the S.O. per applicant's November 1, 1996 letter.

This application should remain in the processing delay related to irrigation in "open areas". Also, it appears that approval is highly unlikely given the BLM response to the Carey Act issues.

APPLICATION 61-07715 - CITY OF GLENNS FERRY

The city applied for a 1500' cold water well for increased municipal use, including lawn irrigation according to the mayor's statements in the March 13, 1996 protest conference hosted by Dave Tuthill. Numerous protestants attended. The city was authorized to drill a test well and contracted with J-U-B Engineers to conduct a pump test while monitoring surrounding wells.

I requested a status report from the city via a November 5, 1996 letter but have not received a reply. Based on a few telephone conversations plus the city's action of filing a new municipal application for permit for Snake River water[1],

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[1]No. 02-07471 - application held at region pending direction from S.O. regarding direct diversion from the river since at least some consumptive use will occur for this municipal use. See attached copy of my 1/24/97 memo to GLS.

MICROFILMED
OCT 05 2000

it might be inferred that the city does not intend to pursue application no. 61-07715.

Once S.O. direction is provided for the city's surface water application, IDWR should allow the city 30 days to clarify its intent for 61-07715.

APPLICATION 61-07722 - KEITH CHAMBERLAIN

Mr. Chamberlain applied for irrigation of 33 acres (reduced from original 72 acres to address protestants' concerns) from an existing 170' cold water well. The BLM withdrew its protest upon the deletion of three acres listed on public land. It remains to be seen if the remaining protestant (Robert Hall) will withdraw his protest based upon a second reduction of the acreage.

The remaining land proposed for irrigation is above the ditch and is therefore not served by King Hill water. The application should remain on hold pending the "irrigation in open areas" delay.

APPLICATION 61-07724 - MAGIC WEST

This filing is perhaps the most problematic of the bunch due to a variety of issues. Magic West holds license 61-07189 for .67 cfs and 12.9 afa from August 15 through July 1, excluding about six weeks each summer. The source is a hot water well thought to be about 1230' deep. Some of the protestants have complained that expanded industrial use at the food processing plant has injured older domestic and/or stock wells which also use the low temperature geothermal aquifer apparently found on both sides of the Snake River in the local area.

The application was filed to codify the expanded use plus provide "make-up volume" that the applicant believes was overlooked in licensing of its older right. As the examiner of that right in 1987, I recall considerable effort in soliciting flow and volume data from the company, resulting in the current license.

I sent a letter to Magic West on July 2, 1996 requesting that the company show how it is meeting the measuring device requirement re-instated upon licensing after being removed in 1978. I also asked for any records held by the company to detail the flow and volume data to better understand the annual use made of this well in recent years. The only response received has been a couple of telephone calls from Magic West staff that progress is being made in installing a measuring device.

That response seemed adequate when received since I thought the department would make significant progress in resolving some of the inter-related issues found in all of the applications under discussion. However, other information that has been anticipated has not been forthcoming (e.g., status report from city).

Recently, the region received a fax complaint (see attached) by Mr. Hall, a protestant common to all four applications, that Magic West, with its partner Co-Generation, has been using the plant's hot well to produce power. The region has already notified the parties, verbally and in writing, that the well cannot be used for an additional use such as power production until a valid water right is secured for this purpose. No application or other approval has been issued by

MICROFILMED

OCT 0 5 2000

IDWR for use of the Magic West well beyond the limits of license 61-07189.

IDWR should respond to the protestant's allegation and should follow-up to previous department correspondence by requiring Magic West to document its recent and current use of the existing hot well.

OTHER INFORMATION

Also see my memo dated December 23, 1996 (copy in 61-07715 and 61-07724) for more summary information. Perhaps the department can play a limited role if some type of ground water study occurs as a result of any of these protests or related matters. Any approvals for new uses of ground water in the area in question should be considered within a "big picture" viewpoint, it appears.

RECOMMENDED ACTION FOR IDWR REGARDING THE FOUR APPLICATIONS

1. 61-07653 - continue holding the application without additional processing due to new irrigation issues. Eventually, the application might be withdrawn or voided based on the BLM stance re Carey Act land.

2. 61-07715 - upon receiving S.O. guidance re processing no. 02-07471, send a letter allowing 30 days for the applicant to clarify its intention regarding ground water development.

3. 61-07722 - continue holding as in 61-07653.

4. 61-07724 - send a letter requiring written response within 30 days - or begin N.O.V. process? - to document the following:

a) installation of measuring device for 61-07189;

b) submittal of any flow and volume records (or best estimates if records not available) for last five years of use for 61-07189;

c) clearly state the extent of use, if any, for power production at the food plant as alleged by the written complaint received by IDWR; and

d) applicant's response to protestants' concerns about allowing use of the hot well beyond the limits of 61-07189.

Based on a timely written response, a protest conference could be scheduled to more fully air these issues. This application might be able to move forward since irrigation use is n/a (although some consumptive use might occur - problem in "irrigation delay" thinking?).

5. Question - to what extent can or should IDWR respond to protestants requests to conduct a ground water study in the area in question? If IDWR does proceed on that path, what roles would S.O. and Regional staff play?

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MEMORANDUM

TO: GLEN SAXTON

FROM: STEVE LESTER

DATE: JANUARY 24, 1997

02-0747

RE: SNAKE RIVER APPLICATION FOR PERMIT

Attached is a re-submittal of an earlier memo that did not reach you according to a telephone conversation that I had with Shelley a few days ago. An additional thought occurs to me as this is forwarded.

Can river water between Swan Falls and Milner be appropriated for a non-irrigation use in excess of 2 af/day (recalling the "DCMI up to 2 af/day" limit in the trust water category) notwithstanding Norm's July 30, 1996 memo? I am a little unclear on the ability to establish new consumptive uses other than irrigation from the river between Swan Falls (terminal control point for trust water) and King Hill Gaging Station (terminal control point for Amended Moratorium Order, Eastern Snake River Plain Area).

Advertising of this application remains on hold pending your advice. If advertising does proceed, do you see a need for any clarifying remark in the ad?

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OCT 0 5 2000

cc for 2/10/97 ground water Appls. memo

RECEIVED
OCT 2 8 1996
Department of Water Resources

IMPORTANT NOTE

ALSO SEE PENDING PROTESTED APPLICATION BY CITY OF GLENNS FERRY NO. **61-07715** PLUS EXISTING LICENSE FOR MAGIC WEST NO. **61-07189** WHEN CONSIDERING THIS APPLICATION TO EXPAND TOTAL # DAYS & TOTAL VOLUME AT MAGIC WEST PLANT IN GLENNS FERRY, NO. 61-07724. WILL NEED STATUS REPORT FROM CITY ABOUT AQUIFER TESTING TO CONTINUE PROCESSING EITHER OF THESE 2 APPLS. - **SEE APPL. 61-07724 "COMMENTS" FOR EXPLANATION.**

Steve Lester
Oct. 25, 1996

MICROFILMED
OCT 0 5 2000

State of Idaho
DEPARTMENT OF WATER RESOURCES
Western Region, 2735 Airport Way, Boise, Idaho 83705-5082 - (208) 334-2190
FAX (208) 334-2348

PHILIP E. BATT
GOVERNOR

KARL J. DREHER
DIRECTOR

July 2, 1996

RECEIVED
JUL 0 3 1996
Department of Water Resources

Robert K. Hall
Rt. 1, Box 103
Glenns Ferry, ID 83623

John R. Solosabal
PO Box 938
Glenns Ferry, ID 83623

RE: GROUND WATER USES IN THE GLENNS FERRY AREA

Dear Gentlemen:

I am responding on behalf of Mr. David Tuthill regarding your recent letters about ground water concerns in the Glenns Ferry area. As you are aware from the March 13, 1996, protest conference for the city's water right application no. 61-07715, a process is underway to obtain more aquifer data in an effort to resolve the protests and complete the water right application process.

As a follow-up step to the March meeting, the city obtained approval for a test well on May 2, 1996. The city's consultant, J-U-B Engineers, Inc., will conduct the testing that will be associated with this exploratory well. Data from the test well, plus any other pertinent data that can be obtained, will be used by the department in evaluation of the city's application.

The department does not have a sufficient basis at this time to require installation of measuring devices for all wells involved in this situation. However, an item of discussion at our recent meeting focused on the possibility of a ground water study for the Glenns Ferry area. This office will be evaluating such requests in the coming winter. Resources are not available to initiate any studies now, but every consideration will be given to the desire to conduct an aquifer study in your area as soon as circumstances will allow this. The issue of measuring devices can be revisited in conjunction with such a study. Data from the test well should prove helpful in this regard.

Another topic of discussion at the March meeting and in your recent letters concerns the use of well water at the Magic West plant in Glenns Ferry. The plant is authorized under license no. 61-07189 to divert up to .67 cubic feet per second (about 300 gpm) but not to exceed 12.9 acre feet per year (about 4.2 million gallons) for industrial use.

The plant's license does not allow the use of well water for power generation or any other use not included within the industrial definition. No new water right applications have been filed to add power use from this well as was noted at the March meeting. License no. 61-07189 does include a measuring device requirement, condition of approval no. 5.

MICROFILMED
OCT 0 5 2000

With this letter, this office is asking Magic West to provide the following information to alleviate concerns about the use of its water right and to supplement data from the city's test well:

a) Has a measuring device been installed as part of the diverting works for the licensed well? Please explain if the answer is negative.

b) Does the company maintain records that document the extent of well usage, including the rate of diversion and the total amount of water diverted from the well on an annual basis?

The information from Magic West will be useful in addressing some of the concerns raised to date, and any data about well usage at Magic West might prove helpful in understanding the overall aquifer picture for the Glenns Ferry area.

The department will revisit the water right issues raised in the city's application upon completion of the test well project. The protested water right application will remain on hold at this office pending the test results.

The city's test well is the first step in obtaining a better understanding of the ground water resources available in the local area. I am optimistic that we can continue to work together to reach an outcome that serves the needs of the local community while making the best use of ground water resources.

Please contact me at your convenience if you have any questions about the process discussed in this letter.

Sincerely,

Steve Lester
Deputy Regional Manager

c: Mayor Leo McGhee, City of Glenns Ferry
Phillip Krichbaum, P.E. J-U-B Engineers, Inc.
Jack Anderson, Magic West, Inc.

MICROFILMED
OCT 0 5 2000

October 31, 1990

MAGIC WEST INC.
P.O. BOX 968
GLENNS FERRY, ID 83623

RE: WATER RIGHT NO. 61-07189

Dear Water Right Holder(s):

Enclosed herewith is a copy of the Water Right License issued on the above referenced permit along with a copy of your approved application for amendment.

Should you have any questions regarding these documents, please feel free to contact our office.

Sincerely,

JIM JOHNSON
Water Rights Supervisor

JJ:blm

Enclosure

MICROFILMED
NOV 02 1990

September 10, 1990

MAGIC WEST INC.
P.O. DRAWER V
GLENNS FERRY, ID 83623

RE: PERMIT NO. 61-07189

Dear Permit Holder(s):

We previously forwarded an amendment to you to be completed to amend this permit to correspond with the findings of the field examiner so that we could issue the license.

As of this date, we have not received the amendment. If we do not receive it within fifteen (15) days, we will assume you no longer have any interest in the permit and cancellation proceedings will begin. Enclosed for your convenience is another amendment form in the event the first one was misplaced.

If you have any questions, please contact us.

Sincerely,

JIM JOHNSON
Water Rights Supervisor

JJ:sc

Enclosure

MICROFILMED
NOV 02 1990

USE TYPEWRITER OR BALL POINT PEN

State of Idaho
Department of Water Resources

EXTRA COPY.

WELL DRILLER'S REPORT

State law requires that this report be filed with the Director, **Department of Water Resources within 30** days after the completion or abandonment of the well.

1. WELL OWNER

Name MAGIC VALLEY FOODS, INC

Address BOX V, GLENNS FERRY, ID

Owner's Permit No. 83623

2. NATURE OF WORK

☒ New well ☐ Deepened ☐ Replacement

☐ Abandoned (describe method of abandoning)

3. PROPOSED USE

☐ Domestic ☐ Irrigation ☐ Test ☐ Other (specify type)

☐ Municipal ☒ Industrial ☐ Stock ☐ Waste Disposal or Injection

4. METHOD DRILLED

☒ Cable ☐ Rotory ☐ Dug ☐ Other

5. WELL CONSTRUCTION

Diameter of hole 10 inches Total depth 1230 feet

Casing schedule: ☐ Steel ☐ Concrete

Thickness	Diameter	From	To
1/4" inches	10" inches	+ 2 feet	198 feet
_____ inches	_____ inches	_____ feet	_____ feet
_____ inches	_____ inches	_____ feet	_____ feet
_____ inches	_____ inches	_____ feet	_____ feet
_____ inches	_____ inches	_____ feet	_____ feet

Was casing drive shoe used? ☐ Yes ☐ No

Was a packer or seal used? ☐ Yes ☒ No

Perforated? ☐ Yes ☒ No

How perforated? ☐ Factory ☐ Knife ☐ Torch

Size of perforation _____ inches by _____ inches

Number	From	To
_____ perforations	_____ feet	_____ feet
_____ perforations	_____ feet	_____ feet
_____ perforations	_____ feet	_____ feet

Well screen installed? ☐ Yes ☒ No

Manufacturer's name _____

Type _____ Model No. _____

Diameter ___ Slot size ___ Set from _____ feet to _____ feet

Diameter ___ Slot size ___ Set from _____ feet to _____ feet

Gravel packed? ☐ Yes ☒ No Size of gravel _____

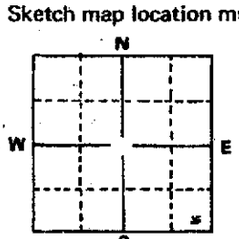
Placed from _____ feet to _____ feet

Surface seal depth 18 ft Material used in seal ☒ Cement grout ☐ Puddling clay ☐ Well cuttings

Sealing procedure used ☐ Slurry pit ☐ Temporary surface casing ☒ Overbore to seal depth

6. LOCATION OF WELL

Sketch map location must agree with written location



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NOV 02 1990

Subdivision Name _____

Lot No. 2 Block No. 30

County ELMORE

E ¼ SE ¼ Sec. 24, T. 5 N/S, R. 11 E/W

7. WATER LEVEL

55 drum 407 gal 8hr

Static water level 17' feet below land surface

Flowing? ☐ Yes ☒ No G.P.M. flow _____

Temperature _____ ° F. Quality _____

Artesian closed-in pressure _____ p.s.i.

Controlled by ☐ Valve ☐ Cap ☐ Plug

8. WELL TEST DATA

80 tons

☐ Pump ☐ Bailer ☐ Other

Discharge G.P.M.	Draw Down	Hours Pumped

9. LITHOLOGIC LOG

Hole Diam.	Depth From	Depth To	Material	Water Yes	Water No
10	0	4	SOIL		
	4	70	CLAY, SAND & GRAVEL		
	70	75	CLAY WITH SOME SAND		
	75	240	BLUE CLAY		
	240	270	BLUE CLAY WITH FINE SAND	X	
	270	660	BLUE CLAY		
	660	680	GRAY CLAY		
	680	800	BLUE CLAY		
	800	815	SAND & CLAY	X	
	815	820	FINE SAND & CLAY	X	
	820	880	SAND STONE	X	
	880	885	BLUE CLAY		
	885	950	GRAY CLAY		
	950	970	SAND STONE	X	
	970	1015	GRAY CLAY		
	1015	1020	GRAY & CLAY WITH LAYERS OF BLUE CLAY & MUD WASH HOLE TO BOTTOM		
8					
	1020	1070	GRAY SANDY CLAY WITH LAYERS OF SAND STONE		
	1070	1145	GRAY CLAY WITH LAYERS OF BLUE SHALE		
	1145	1220	GRAY CLAY		
	1220	1230	GRAY CLAY WITH LAYERS OF SAND	X	

10.

Work started 7 Jun 94 finished 13 Jul 94

11. DRILLERS CERTIFICATION

Firm Name Hollenback Drilling Firm No. 35

Address Kuna Box 610 Id. Date 18 Jul 94

Signed by (Firm Official) C.L. HOLLENBACK

and

(Operator) K.L. JOHNSON

USE ADDITIONAL SHEETS IF NECESSARY FORWARD THE WHITE COPY TO THE DEPARTMENT

July 19, 1990

MAGIC WEST INC.
P.O. DRAWER V
GLENNS FERRY, ID 83623

RE: PERMIT NO. 61-07189

Dear Permit Holder(s):

The above referenced water right is in the process of being licensed. However, before a license can be issued, your permit must be amended to correspond with the findings of the Department's field examiner.

The enclosed application for amendment contains information that will be included on the license when it is issued. Please review carefully and if you concur, sign the amendment and return with the $20.00 filing fee within 30 days.

If you do not concur with these findings or if you have any questions, please contact us within the 30-day period.

Sincerely,

JIM JOHNSON
Water Rights Supervisor

JJ:sc

Enclosure

MICROFILMED
NOV 02 1990

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

MAGIC WEST Inc.

P.O. Box 968 GLENNS FERRY, IDAHO 83623
Phone: 208-366-7477

RECEIVED
JAN 13 1988
Department of Water Resources

Jan. 4, 1988

61-7189

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

Dear Mr. Lester:

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

Pump Data:	
Brand: Peerless	360 G.P.M. @ 3,600 R.P.M.
Model Number: 6HXB	10 inch hole
440 Volt	105 ft. deep
4 stage	

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

Please contact me if you need additional information.

Sincerely,

MAGIC WEST, INC.

Wm. Schow

Wm. Schow
Vice President

MICROFILMED
NOV 02 1990

WS:sh

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

RECEIVED
JAN 8 1988
Department of Water Resources
Western Regional Office

WELL TEST REPORT

ANDREW WELL DRILLING

Contractors

Idaho Falls, Idaho

DATE February 6, 1975

ORDER NO. _____

CUSTOMER Magic Valley Foods Inc.

ADDRESS Glenns Ferry, Idaho

WELL LOCATION _____

WELL DEPTH _____ CASING I.D. _____

WELL DEPTH _____ CASING I.D. _____

WELL DEPTH _____ CASING I.D. _____

TOTAL WELL DEPTH _____

DISCH. PIPE 6" ORIFICE DIA. 4 3/4" STATIC LEVEL 3'6" BOWL USED 8"

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

MICROFILMED NOV 02 1990

TIME	ORIFICE IN INCHES	G. P. M.	PUMPING LEVEL	DRAWDOWN	ENG. R.P.M.	PUMP R.P.M.	REMARKS
10:30 a.m.	1"	101	13'6"	10'	900	800	65° Clear
10:45	1"	101	13'7"	10'1"	900	800	70° Clear
11:00	1½"	125	13'7"	10'1"	950	840	80° Clear
11:10	2"	143	13'8"	10'2"	1000	850	94° Clear
11:30	2½"	160	20'	16'6"	1100	900	94° Clear
11:50	2½"	160	22'	18'6"	1100	900	95° Clear
12:00	3"	176	22'6"	19'	1200	1000	95° Clear
[illegible]0 p.m.	4"	203	27'	23'6"	1300	1200	95° Clear
1:30	4"	203	28'	24'6"	1300	1200	95° Clear
2:00	6"	249	34'	30'6"	1500	1400	95° Clear
2:15	11"	337	43'	39'6"	1700	1600	95° Clear
3:00	12"	352	48'	44'6"	1800	1700	96° Clear

HOURS PUMPED THIS DAY _____

HOURS PUMPED TO DATE _____

TESTED BY _____

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

Static water level at 3'6"

WELL TEST REPORT

ANDREW WELL DRILLING

Contractors

Idaho Falls, Idaho

DATE February 5, 1975

ORDER NO. _____

CUSTOMER Magic Valley Foods Inc.

ADDRESS Glenns Ferry, Idaho

WELL LOCATION _____

WELL DEPTH _____ CASING I.D. _____

WELL DEPTH _____ CASING I.D. _____

WELL DEPTH _____ CASING I.D. _____

TOTAL WELL DEPTH _____

SCH. PIPE 6" ORIFICE DIA. 4 3/4" STATIC LEVEL 3'6" BOWL USED 8"

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

TIME	ORIFICE IN INCHES	G. P. M.	PUMPING LEVEL	DRAWDOWN	ENG. R.P.M.	PUMP R.P.M.	REMARKS
4:30 p.m.	16"	407	57'4"	53'10"	2000	1900	95° Clear
5:30	16"	407	57'2"	53'8"	2000	1900	96° Clear
6:30 p.m.	16"	407	57'2"	53'8"	2000	1900	96° Clear

MICROFILMED NOV 02 1990

HOURS PUMPED THIS DAY 8

HOURS PUMPED TO DATE 8

TESTED BY _____

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

State of Idaho
DEPARTMENT OF WATER RESOURCES
Western Region

CECIL D. ANDRUS
Governor

R. KEITH HIGGINSON
Director

2735 Airport Way
Boise, Idaho 83705
(208) 334-2190

Manager
Magic West Inc.
P.O. Box 968
Glenns Ferry, ID. 83623
Re: Permit 61-7189

Dec. 16, 1987

Dear Sir:

A field exam was conducted on August 4, 1987 to gather information to license the industrial use of the hot water well at your facility. Before the water right can be advanced from a Permit to a License, additional information is needed.

I have not been able to determine anything about the pumping capacity of the well except that a submersible pump and four-inch mainline are used. Please consult your records or any other pertinent sources. Any further information will be helpful. I am interested in the pump brand, horsepower, pump curve, normal operating pressure, dynamic pumping level (static water level plus the operating drawdown), individual or company who installed the pump, any pump test data, or any other information that describes the operation of the well.

I spoke with the well driller, Hiddleston Drilling of Mtn. Home. The driller did not have any knowledge beyond that of the well log, which I have. He recommended the Layne Pump Co. offices in Twin Falls and Nampa. I spoke with individuals at both offices, but they had no information concerning the well.

Without additional information, it will be difficult to issue a License to allow continued legal use of the water. Please respond within 30 days to avoid jeopardizing your water right. Please contact me if I can assist you in any way.

Sincerely,

Steve Lester
Water Resource Agent

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NOV 02 1990

POD 55 10E S. 29 SW SE

Form 219-S.A.
6/86

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

61-7189
Permit No.

Staff Analysis Sheet
for
Beneficial Use Field Report

RECEIVED
FEB - 3 1988
Department of Water Resources

A. Prior to Conducting the Exam, the File Contains:

- ☑ Blank Field Report Form
- ☑ Copy of Permit
- ☑ Copies of any Amendments/Orders with conditions of approval — means, device rept., removal
- ☐ ~~Computer Data Proof Report~~
- ☑ Copy of U.S.G.S. Quad
- ☑ Check for Government Lots. If so, make a copy of Government Plat

Check of P/D index SC 7/31/87 (Initial and date)

Overlap? ☐ yes ☑ no If yes: ☐ copy of exam(s) attached?
Type of Overlap? ☐ Add acres or uses to existing system
☐ Increase rate of flow or volume
☑ Other: 61-4008

Check of P/U index SC 7/31/87 (Initial and date)

Overlap? ☑ yes ☐ no If yes: ☐ copy of water right(s) attached? N/A
Type of Overlap? ☐ Increase rate of flow or volume
☐ Add P/D's
☐ Increase number of acres within tracts
☑ Other: _____

Aerial Photo

Required? ☐ yes ☑ no If yes: ☐ copy attached?

Scheduling Letter sent? SC 7/23/87 (Initial and date)

☑ Appointment made and telephone conversation memo attached

B. After Conducting the Exam, the File Contains:

- ☑ Fully completed and signed Field Report Form
- ☑ Photographs of Point of Diversion and Place of Use
- ☐ ~~Corrected~~ Computer Data Proof Report with recommended license information, and date and signature of examiner.

C. Review and Processing:

Exam Completed Steven Lester 8/4/87 (Signature of examiner and date)

Exam Reviewed by Senior Water Resource Agent [illegible] 1/12/88 (Initial and date)

Exam Reviewed by Manager of Regional Office [illegible] 1/21/88 (Initial and date)

Exam Date Entered in Computer ✓ (Initial and date)

Exam sent to State Office [illegible] 2/2/88 (Initial and date)

Copy of Staff Analysis Sheet sent to Manager of Regional Office and Original Refiled in White File _____ (Initial and date)

Form 219
6/86

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

BENEFICIAL USE FIELD REPORT

A. GENERAL INFORMATION

Permit No. 61-7189

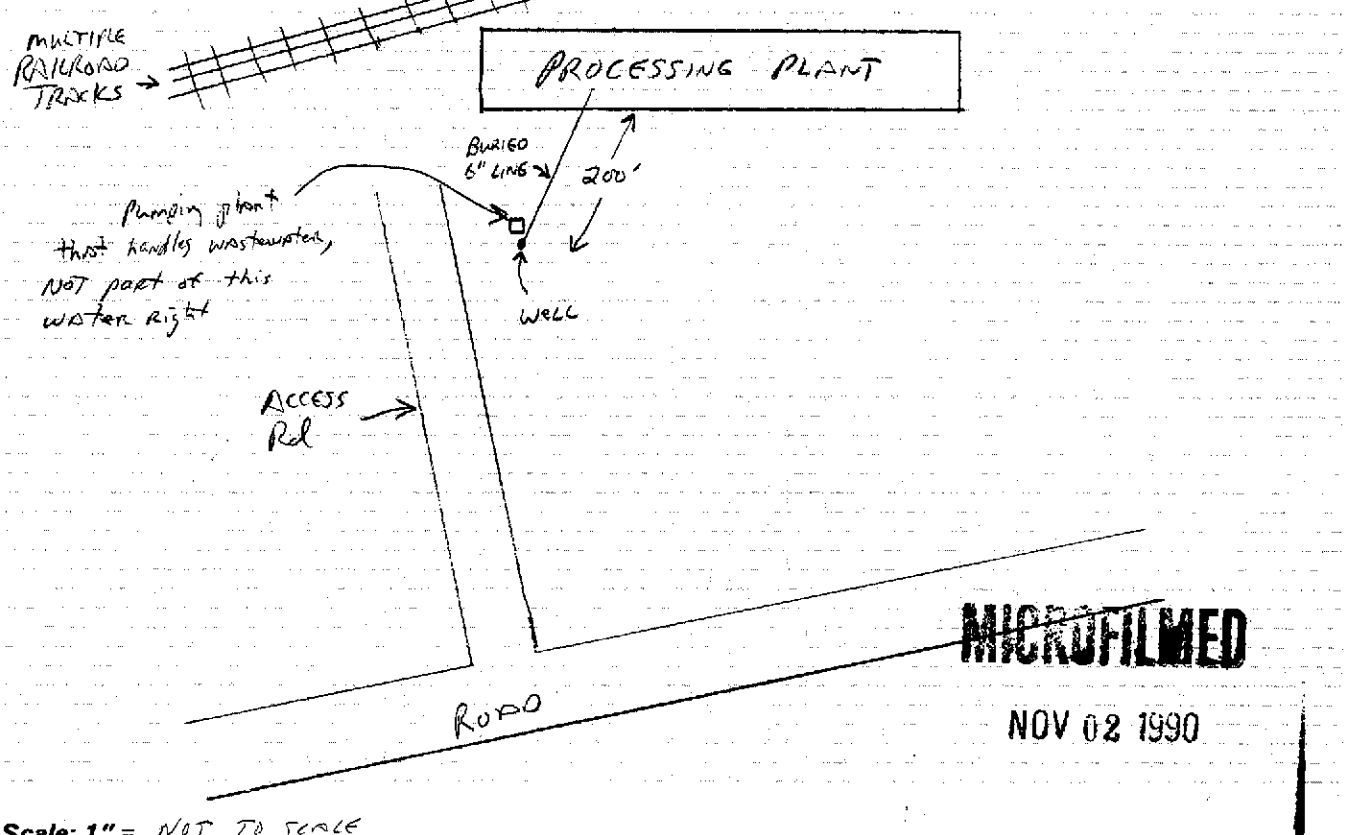
1. Owner: Magic West Inc. Phone No. 386-7477
   Current Address: P.O. Box 968 Glenns Ferry, Id. 83623
2. Accompanied by: Doug Masson EXAM. DATE: 8/4/87
   Address: Same Phone No. Same
   Relationship to Permit Holder: Maint. Supt.
3. Source: groundwater tributary to —

B. OVERLAP REVIEW

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

C. SYSTEM DESCRIPTION

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



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NOV 02 1990

Scale: 1" = NOT TO SCALE

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

System Description (continued)

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

1230' deep well with 10" casing and submersible pump provides water through 4 6" mainline for use in potato processing plant approx 200' N. of well. This hot water source (112° F) is combined with city water (cold) for an estimated 24 hr.-day use of 30,000 gallons, of which about 20,000 gallons is from ~~the~~ the hot water well. Hot & cold processing water is reused (wastewater) in numerous other ways in and around the plant. A series of pumps & storage tanks are found, but these are not part of the diversion works for this water right. Maint. Supt. cannot find any company records about this well and diversion system.

☒ See Remarks on page 4 for continuation

4.

Well or Diversion Identification No.*	Motor Make	Hp	Motor Serial No.	Pump Make	Pump Serial No. or Discharge Size
	Peerless Submers. Tpe	25	model # 6HXB	Peerless	6" pipe

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

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

Ident. No.	Gov't. Lot	¼	¼	¼	Sec.	Twp.	Rge.	County	Method of Determination/Remarks
			SW	SE	29	5S	10E	Elmore	USGS 7½' Quad

6. **Place(s) of Use:** Indicate Method of Determination SAME AS IN P/D

Twp.	Rge.	Sec.	NE¼				NW¼				SW¼				SE¼				Totals
			NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	
5S	10E	29															I		—

INCORPORATED

NOV 02 1990

Do not use this space

Do not use this space

D. FLOW MEASUREMENTS

☐ Additional Data Sheets Attached

1.

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

2. **Measurements:**

NONE POSSIBLE

E. FLOW CALCULATIONS

☐ Additional Computation Sheets Attached

1. Measured Method: NONE

2. Alternate Method for Checking Purposes:
HP eq. where HP = 25, eff = .8
psi = 75, z = 30

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

F. PUMP EFFICIENCY DATA (Optional) N/A

Discharge Pressure: _____ psi x 2.31 = _____ ft (1); Dynamic pumping level: _____ ft (2)
Total Head: (1) + (2) = _____ (3) ; Flow rate: _____ cfs (4)

Water HP: (3) x (4) ÷ 8.8 = _____ (5)
Meter Input KW: 3.6 x _____ KH x _____ CTR or _____ MULT x _____ PTR x _____ N/ _____ T = _____ (6)
Meter Input HP: (6) x 1.34 = _____ (7)
Panel Input KW: _____ Ave PF x _____ Ave Volts x _____ Ave Amps x .001732 = _____ (6)
Panel Input HP: (6) x 1.34 = _____ (7) Efficiency: (5)/(7) x 100 = _____ %

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NOV 02 1990

G. VOLUME CALCULATIONS

1. Volume Calculations for Irrigation: N/A

$V_{I.R.}$ = (Acres Irrigated) x (Irrigation Requirement) = _____

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

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

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

2. Volume Calculations for Other Uses:

INDUSTRIAL USE IN PLANT:
24 hrs/day
5 days/wk.
42 wks/year
estimated 20,000 gpd (per 24 hr. period)
(Est. by Maint. Sup't.)

V.
20,000 gpd x 5 days/wk x 42 wks/yr =
4,200,000 gpy

$$\frac{4,200,000 \text{ g/yr.}}{325,850 \text{ g/ac-ft.}} = 12.889 = 12.9$$

H. REMARKS AND OVERLAP REVIEW ANALYSIS

Measuring device Req't. removed 8/28/78.
Allow .67 cfs as permit shows. NP equation confirms system can produce at least that.
NARRATIVE CONTINUED: My letter of 12/16/87 resulted in the response of 1/11/88 by W. Schow, Vice-President. Pump data from this letter and subsequent phone conversation with Bill Webb at Layne Pump Co. (NAmpa) provided necessary information. I assumed a total dyn. head of 30' based on well log and conversations with maint. sup't. at the plant.

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

I. RECOMMENDATIONS

1. **Recommended Amounts** — one year / to next year

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

2. **Recommended Amendments**

☑ Change P.D. as reflected above ☐ Add P.D. as reflected above ☐ None
☑ Change P.U. as reflected above ☐ Add P.U. as reflected above ☐ Other

J. AUTHENTICATION

Field Examiner's Name: Steven Lester
Signature: Steven Lester
Certification Date:
Field Report Preparation Date: 8/4/87

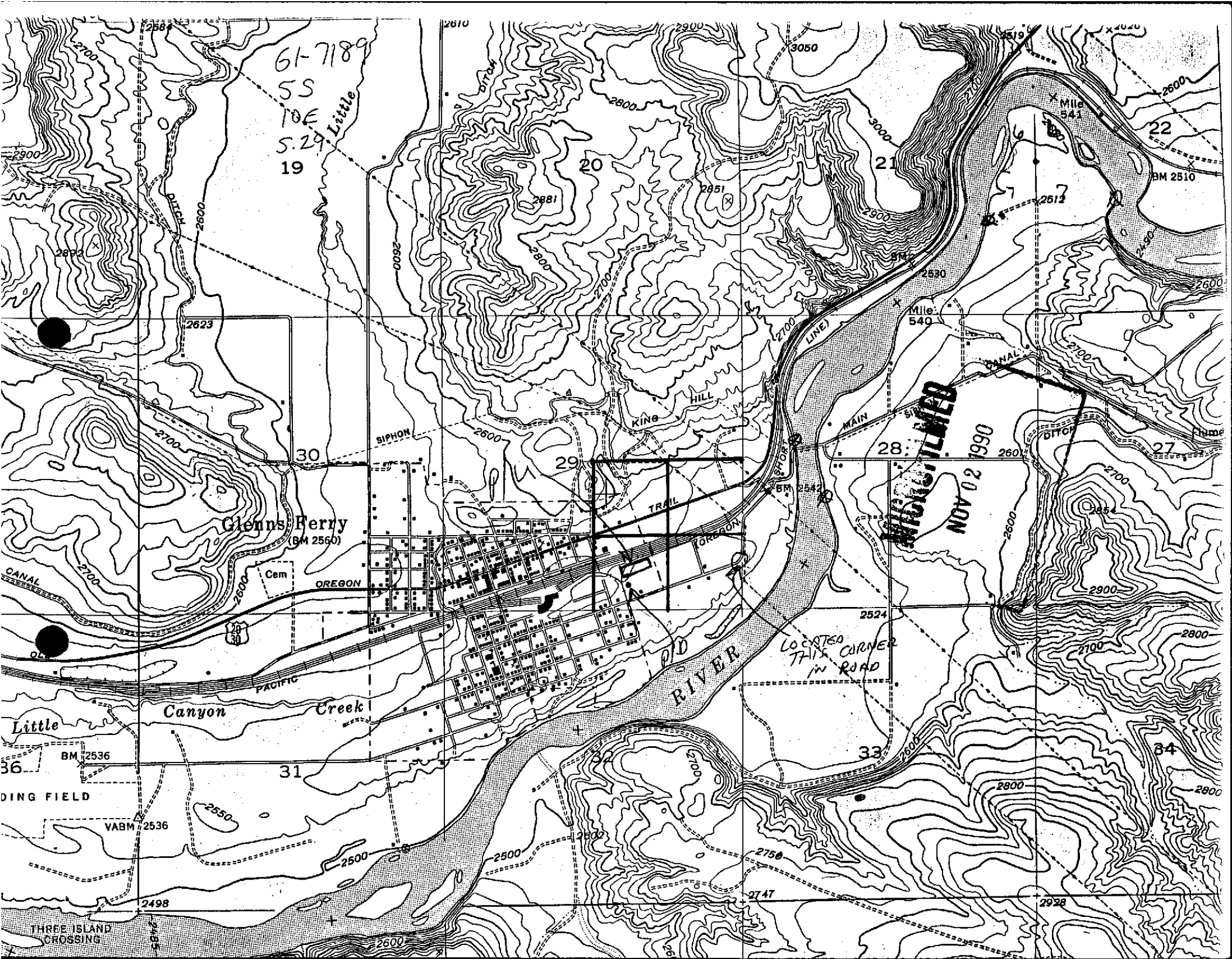
BD
1/12/88

CONSULTANT SEAL

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

MICROFILMED
NOV 02 1990

REGISTERED PROFESSIONAL ENGINEER 3459 STATE OF IDAHO A. MICHAEL STUBBLEFIELD 1/21/1988


61-7189
5S
10E
5.29
Little
19
20
21
22
Mile 541
BM 2510
2512
2530
Mile 540
LINE)
CANAL
MAIN
DITCH
Flume
28
27
30
29
SIPHON
KING
HILL
SHORT
BM 2542
TRAIL
OREGON
Glenns Ferry
(BM 2560)
Cem
OREGON
CANAL
PACIFIC
Canyon
Creek
Little
BM 2536
36
31
33
34
DING FIELD
VABM 2536
2550
2500
2498
THREE ISLAND
CROSSING
SNAKE
RIVER
2524
LOCATED THIS CORNER IN ROAD
2747
2928
2600
2700
2800
2900
3000
3050

61-7189



P/D

well just behind pumping plant at Magic West plant in Glenns Ferry.

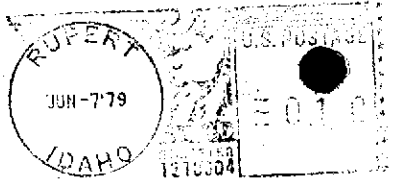


P/u

Looking North from well to plant.

MICROFILMED
NOV 02 1990

Magic West, Inc.
Drawer V
Glenns Ferry, Id. 83623



RECEIVED

JUN 13 1979

Department of Water Resources

IDAHO DEPARTMENT OF WATER RESOURCES
STATEHOUSE
BOISE, IDAHO 83720

DEPARTMENT OF WATER RESOURCES

[redacted]daho Department of Water Resources will consider this card as a statement that the permit
[redacted]der(s) has completed development to the extent shown below of Permit No. 61-7188.

[redacted]me(s) of Permit Holder: Magic West, Inc.

[redacted]t Office Address: Drawer V

Ketchum Ferry, Idaho 83633

Source of Water: well

Extent of Use:
- ☑ Domestic _____ (number of households)
- ☐ Stockwater _____ (number and type of stock)
- ☐ Irrigation _____ (acres)
- ☐ Other Being used for processing Plant water

Measuring Device: Required? ☐ Yes ☒ No Installed? ☐ Yes ☐ No

Access Port: Required? ☐ Yes ☒ No Installed? ☐ Yes ☐ No

The above information is a true statement of the extent to which the above numbered permit has been developed.

10-12-79
Date

Roger Jones / by jel
Signature of Permit Holder

RECEIVED
APR 21 1987
Department of Water Resources
Western Regional Office

RECEIVED
MAY 06 1987
STATE OF IDAHO
Department of Water Resources

KEYPUNCHED
For Office Use Only OK JP
Fee Received 100
Date 4/30/87
Receipt # 42388
Receipt by S. H.
Sent to S.O. 11

DEPARTMENT OF WATER RESOURCES

EXAMINATION FEE INFORMATION

1. Permit No. 61-7189

ONE OF THE FOLLOWING BOXES SHOULD BE MARKED TO DESIGNATE YOUR CHOICE:

☒ I choose to have the department make the field examination of this permit; attached is the examination fee. (If this box is marked, complete items 1 thru 8.)

2. Permit Holder: Magic West, Inc.

3. Post Office Address: P.O. Box 968 Glenns Ferry, Idaho 83623

Telephone No. 208-366-7477

4. Source of Water: Ground Water

5. Extent of Use:

Domestic _____(No. of households) Stockwater _____(No. and type of stock)

Irrigation _____(acres) Other/Remark for food Processing

6. Total rate &/or volume for which proof is submitted .62 cfs _____acre-feet

7. Show the date water was first diverted and beneficially used under this permit:

July 1974

8. Person to contact to accompany the department representative during the field examination:

Jack Anderson
(Name)

600 East Harrison Glenns Ferry, Id. 83623 208-366-7477
(Address) (Telephone Number)

☐ I choose to have the field examination conducted by a certified water right examiner. Attached is a statement from the certified examiner I have selected verifying that he has been retained to conduct the examination. (If this box is marked, complete items 1 thru 7.)

MICROFILMED
NOV 12 1998

4/30/87
Date

Wm. Schow Vice President
Signature of Permit Holder (and title, if appropriate)

State of Idaho
DEPARTMENT OF WATER RESOURCES
Western Region

Cecil D. Andrus
Governor

2735 Airport Way
Boise, Idaho 83705
(208) 334-2190

61-7189
MAGIC WEST INC.
P.O. DRAWER V.
GLENNS FERRY, ID 83623

138134

April 3, 1987

CERTIFIED MAIL

EXAMINATION FEE NOTICE

Dear Permit Holder:

Department records show that proof of beneficial use has been submitted for the above-referenced permit, but that a field examination has not yet been conducted to determine the extent of beneficial use of the water for licensing purposes.

House Bill 671 (effective April 4, 1986) enacted by the 1986 Idaho Legislature requires the payment of a fee before this department can conduct the field examination needed to issue a license confirming use of water under the permit. This letter is notification that the license examination fee is due within sixty (60) days of the date of this letter. The examination fee information sheet (enclosed) must be returned with the fee.

As an alternative to submitting the fee, the department will accept a field examination report completed by a certified water right examiner from the private sector. If you choose to have the examination done by a certified water right examiner, you need not submit the license examination fee to the department, but you must within sixty (60) days of the date of this letter return to the department, the examination fee information set showing appropriate information together with a statement from the certified examiner to verify that you have retained a certified examiner to conduct the field examination. If you choose this alternative, a completed field examination report must be submitted within one year of the date of this letter. You cannot later change your decision to use this alternative and submit the fee needed for the department to conduct the field examination, but you may change to another certified examiner.

MICROFILMED
NOV 02 1990

State of Idaho
DEPARTMENT OF WATER RESOURCES
WESTERN REGION, 92 South Cole Road, Boise, Idaho 83709

JOHN V. EVANS
Governor

C. STEPHEN ALLRED
Director

(Office at the corner of
Franklin and Cole Roads)

(208) 384-2190

July 10, 1979

Magic West, Inc.
P. O. Drawer V
Glenns Ferry, ID 83623

RE: Permit No. 61-7189

Dear Sirs:

We acknowledge receipt of your statement submitted as proof of beneficial use for the above referenced permit.

Before a license can be issued, a field examination must be made by a representative of this Department.

[X] A field examination of your system has been scheduled for

Monday, July 23, 11:00am.

If this time and date is not convenient for you, please contact this office as soon as possible.

[ ] A field examiner will contact you to arrange to examine your system.

If you have any questions regarding the field examination, please contact this office.

Sincerely,

Kay Walker

Kay Walker
Secretary

MICROFILMED

State of Idaho
DEPARTMENT OF WATER RESOURCES
STATE OFFICE, 373 W. Franklin Street, Boise, Idaho

JOHN V. EVANS
Governor

C. STEPHEN ALLRED
Director

Mailing address:
Statehouse
Boise, Idaho 83720
(208) 384-2215

May 31, 1979

10981

Magic West, Inc.
P. O. Drawer V
Glenns Ferry, ID 83623

Gentlemen:

One of the conditions of approval of your water Permit No. 61-7189 was that evidence of the extent of development must be submitted to this office on or before August 1, 1979. (See last page of your approved permit). Enclosed is a post card which may be used to submit the required proof of beneficial use.

If you have not fully completed your project, and you have not previously received an extension of time, you may request an extension of time provided the delay is for reasonable cause as indicated in Section 42-204, Idaho Code, amended. If you have been prevented from proceeding by a governmental agency or by litigation, more than one extension of time can be granted.

Either the beneficial use post card or a request for an extension of time must be received by this Department on or before the above mentioned date, otherwise, the permit will lapse and be of no further force or effect within 60 days.

Sincerely,

Rita Fleck
RITA FLECK
Sr. Secretary

Enc: 1

MICROFILMED

State of Idaho
DEPARTMENT OF WATER RESOURCES
STATE OFFICE, 373 W. Franklin Street, Boise, Idaho

JOHN V. EVANS
Governor

C. STEPHEN ALLRED
Director

Mailing address:
Statehouse
Boise, Idaho 83720
(208) 384-2215

NOV 28 1979

Dear Wateruser:

The enclosed Order removes the measuring device requirement as a condition of approval from your permit.

If you have installed the measuring device, the field examination can be more expediently conducted by the Department's field examiner as well as you will derive benefit from water management information which may be obtained from the installed meter.

If you have questions regarding this matter, please contact this office or our regional offices.

Sincerely,

L. Glen Saxton

L. GLEN SAXTON
Chief, Operations Bureau

LGS:JG:kw

Enclosure

MICROFILMED

September 3, 1974

Re: Permit No. 61-7189

MAgic West, Inc.
P. O. Box V
Glenns Ferry, Idaho 83623

Gentlemen:

Enclosed is a copy of your approved Application for Permit No. 61-7189. We direct your attention to the conditions of approval as listed on the fourth page.

Be sure to note that a special condition requiring you to install and maintain a measuring device at your point of diversion has been placed upon your permit. We are enclosing a letter describing different types of measuring devices accepted by this office.

Sincerely,

BOBBY D. FLEENOR
Chief, Water Rights

BDF:jfr

Enclosures

MICROFILMED

STATE OF IDAHO
DEPARTMENT OF WATER ADMINISTRATION

Cecil D. Andrus
Governor

R. Keith Higginson
Director

Statehouse - Annex 2
Boise, Idaho 83707
(208) 384-2215
Western District Office

Water Rights Administration
Water Resource Investigation
Dam and Reservoir Safety
Water Well Drilling
Waste Disposal Wells
Stream Channel Protection

August 2, 1974

Mountain Home News
P. O. Drawer 0
Mountain Home, Idaho 83647

Re: **Application for Permit No. 61-7189 - Magic West, Inc.**
02-7158 - Robert S. Skyles Carey Act Project

Gentlemen:

Enclosed you will find a legal notice which we wish to have published once a week for two consecutive weekly issues of your newspaper. We have inserted the publication dates allowing ample time for you to submit us a galley proof for review before publication.

After sending us a galley proof, proceed with the publication on the dates we have inserted, assuming the notice is correct. If we have any corrections, we will notify you before the first publication. If you cannot publish the notice on the proposed dates, please contact us immediately.

An affidavit of publication must be submitted to the Department along with the publication bill. In order to receive payment, the following certification must appear on the bill:

> "I hereby certify that the foregoing account is just and correct, that the amount claimed is legally due, after allowing all just credits, and that no part of the same has been paid."

(signature of claimant)

Bill submitted
8-20-74
ca

Sincerely,

MICROFILMED

NOTICE OF APPLICATION FOR WATER PERMIT

Notice is hereby given that MAGIC WEST, INC. P.O. Drawer V., Glenns Ferry, ID has on July 10 1974 submitted Application No. 61-7189 for a permit to appropriate .67 cubic feet per second of water from a groundwater source by means of well, pump and motor within the SE¼SE¼, Sec. 29, T. 5S, R. 10E. B.M. Elmore County to be used from August 15 to July 1 for food processing within the SE¼SE¼, Sec. 29, T. 5S, R. 10E. B.M.

If issued, this permit will be subject to all prior water rights. Protests against the granting of the permit must be filed with the Idaho Department of Water Resources, Statehouse, Boise, Idaho, 83707, on or before August 26, 1974.

R. Keith Higginson
Director

Published in the Mountain Home News, Mtn. Home, ID on August 8, 1974 and August 15, 1974.

8-8-74

NOTICE OF APPLICATION FOR WATER PERMIT

Notice is hereby given that MAGIC WEST, INC.

P.O. Drawer V., Glenns Ferry, ID

has on July 10, 1974 submitted Application No. 61-7189

for a permit to appropriate .67 cubic feet per second ~~acre feet per annum~~ of water from a groundwater source

by means of well, pump & motor

within the SE¼SE¼, Sec. 29, T. 5S, R. 10E, B.M. Elmore County

to be used from Aug. 15 to July 1

for food processing

within the SE¼SE¼, Sec. 29, T. 5S, R. 10E, B.M.

.

If issued, this permit will be subject to all prior water rights. Protests against the granting of the permit must be filed with the Idaho Department of Water ~~Administration~~ Resources, Statehouse, Boise, Idaho, 83707, on or before August 26, 1974.

R. KEITH HIGGINSON

Director

Published in the Mountain Home News, Mtn. Home, ID

on August 8, 1974 and August 15, 1974.

NOTICE OF APPLICATION FOR WATER PERMIT

Notice is hereby given that MAGIC WEST, INC.

P. O. Drawer V, Glenns Ferry, Idaho

has on July 10, 1974 submitted Application No. 63-65-8007

for a permit to appropriate .67 cubic feet per second ~~acre-foot~~

~~per annum~~ of water from a groundwater source

by means of well, pump and motor

within the SE¼SE¼, Sec. 29, T. 5 S, R. 10 E, B.M., Elmore County

to be used from Aug. 15 to July 1

for production of processing food

within the SE¼SE¼, Sec. 29, T. 5 S, R. 10 E, B.M.

.

If issued, this permit will be subject to all prior water rights. Protests against the granting of the permit must be filed with the Idaho Department of Water Administration, Statehouse, Boise, Idaho, 83707, on or before Aug. 12, 1974.

R. KEITH HIGGINSON

Director

Published in the Mountain Home News, Mountain Home, Idaho

on July 25, 1974 and Aug. 1, 1974.

RECEIVED

STATE OF IDAHO
DEPARTMENT OF WATER ADMINISTRATION
WESTERN DISTRICT OFFICE

Cecil D. Andrus
Governor
R. Keith Higginson
Director

614 State Street
Statehouse – Annex 2
Boise, Idaho 83707
(208) 384-2190

Water Rights Administration
Water Resource Investigations
Dam and Reservoir Safety
Water Well Drilling
Waste Disposal Wells
Stream Channel Protection
Geothermal Resources

July 16, 1974

Magic West, Inc.
P.O. Drawer V.
Glenns Ferry, ID 83623

Gentlemen:

Enclosed is your Receipt No. 13944 in the amount of $ 25.00 for Application for Permit which was received in this office on July 10, 1974.

Sincerely,

SUSAN WHALEY
Secretary

SW:s

Enclosure