

**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	)	Subcase 37-7460
	)	
Case No. 39576	)	
	)	
	)	STANDARD FORM 1
	)	OBJECTION
_____	)	

NAME AND ADDRESS OF PERSON OBJECTING

Name: Frank Astorquia
Address: 1725 E 1800 S
Gooding, ID 83330

Daytime Phone: 208-934-8178

Name & Address of Attorney, if any:

Josephine P. Beeman
Beeman & Associates, P.C.
409 West Jefferson Street
Boise, Idaho 83702
(208) 331-0950
(208) 331-0954 (fax)

CLAIMANT OF WATER RIGHT AS LISTED IN DIRECTOR'S REPORT

Name: Frank Astorquia
Address: 1725 E 1800 S
Gooding, ID 83330

I object to the following elements as recommended in the Director's Report.

1. ☐ **Name and Address**
2. ☐ **Source**

3. ☐ **Quantity**
4. ☒ **Priority Date**
Should be: November 26, 1975
5. ☐ **Point(s) of Diversion**
6. ☐ **Instream Flow Description**
7. ☐ **Purpose(s) of Use**
8. ☐ **Period of Year**
9. ☐ **Place of Use**
10. ☒ **Other:** Condition of Approval AO1 should not apply to the priority date element. Condition of Approval AO1 should not apply to the quantity element because of the passage of 29 years between the development in 1976 and the IDWR field exam in 2005.
11. **I object because:**
- ☐ This water right should not exist.
- ☐ This water right was not recommended, but should be recommended with the elements described above.

REASONS SUPPORTING OBJECTION(S):

PRIORITY DATE IS AN ELEMENT OF THE WATER RIGHT AND THE ACTIONS TO DEVELOP WATER RIGHT 37-7460 WERE TAKEN BEFORE THE COMMENCEMENT OF THE SRBA ON NOVEMBER 19, 1987.

The priority date is an element of the water right and is appropriately before the SRBA court to be determined. *See Walker v. Big Lost River Irr. Dist.*, 124 Idaho 78, 856 P.2d 868 (1993).

The November 26, 1975 priority date for 37-7460 is based on development of 199.5 acres of ground water irrigation under Permit 37-7460. The Permit was issued to the Astorquias in 1975 and the 199.5 acres have been continuously irrigated by the Astorquias since 1976.

The Astorquias object to the 2002 priority date because their permit was improperly lapsed in 1984 after they received a 1981 extension to file proof of beneficial use that should have constituted proof of beneficial use for the 199.5 acres. The Astorquias' 1981 application for extension to file beneficial use put IDWR on notice that the 199.5 acres had been appropriately developed under Permit 37-7460.

IDWR and the claimant have agreed to have the priority date issue addressed by the SRBA court.

THE RELEVANT ACTIONS AFFECTING 37-7460 ALL OCCURRED PRIOR TO THE COMMENCEMENT OF THE SRBA ON NOVEMBER 19, 1987, AND INCLUDED SIGNIFICANT IMPACTS FROM THE SWAN FALLS LITIGATION AND SETTLEMENT

Subsequent to the Astorquias' application for and approval of Permit 37-7460 (10-20-75; 12-05-75), the Idaho Public Utilities Commission approved Idaho Power's irrigation embargo (IPUC Order 14595 of April 27, 1979) which was confirmed and extended by IPUC Order 15305 on February 1, 1980. The Astorquias' request for extension of time to submit proof of beneficial use was filed January 7, 1981 indicating that "well has been dug, and 200 acres are being irrigated" but "because of moratorium on new power hookups, I cannot get enough electrical power to pump water to the other 120 acres."

Although the Astorquias asked for a five-year extension of time (to December 1, 1985) to complete development of the additional acres, IDWR only granted a three-year extension to January 1, 1984. In the meantime, as a result of the November 9, 1982 Idaho Supreme Court decision holding that Idaho Power's water rights at Swan Falls were not subordinated to upstream development, Idaho Power filed a complaint in Ada County on March 30, 1983 against water rights in each of the 24 hydrologic basins upstream from Swan Falls Dam. The Astorquias' 37-7460 was named in the complaint and was not dismissed from the action until January 4, 1985, following the signing of the Swan Falls Agreement and Contract in October 1984.

Had the Astorquias request to IDWR for a five-year extension been granted, the permit would not have been subject to lapsing until after December 1, 1985. However, the permit was lapsed on January 4, 1984. Between January 4, 1984 when the Astorquia permit was lapsed and December 1, 1985, the date the Astorquias had requested as the new deadline, the following actions occurred:

- The IPUC rescinded approval of Idaho Power's irrigation embargo (IPUC Order 18641 on January 23, 1984).
- Framework for final resolution of Swan Falls was signed on October 1, 1984
- Swan Falls Agreement and Swan Falls Contract were signed on October 25, 1984
- The Astorquias 37-7460 was dismissed from the Idaho Power Swan Falls case in Ada County (Civil No. 81375) – January 4, 1985
- IDWR sent a letter to all permit holders affected by the Swan Falls controversy regarding proof of beneficial use requirements that had changed due to legislation implementing the Swan Falls Agreement (September 1, 1985)

Understandably, this was confusing to the Astorquias. The Swan Falls proceeding indicated that

37-7460 was a valid right, even a year after IDWR had lapsed 37-7460 (improperly, as explained at the outset of this objection). Also, IDWR records for neighboring ground water right 37-7465 (filed within six weeks of the Astorquias' permit application) show that 37-7465 was given the five-year extension that the Astorquias did not receive and also received the September 1, 1985 notice regarding changes in proof of beneficial use for permit holders. This information is included in the attached timeline.

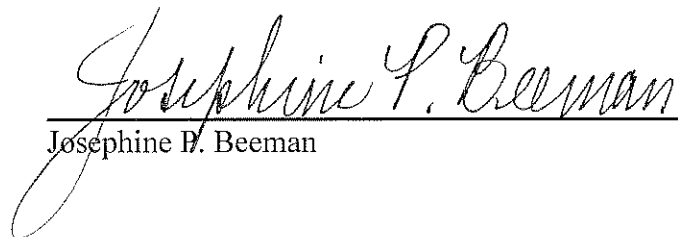
It is the understanding of the Astorquias, upon information and belief of their counsel, that this permit 37-7460 was the only Swan Falls affected permit that did not receive a five-year extension during these critical and confusing years of the Swan Falls litigation. The Astorquias believe the 1975 priority date is appropriate under the circumstances and should be confirmed by the SRBA court. Further, these circumstances also resulted in a 29-year delay between the commencement of beneficial use under 37-7460 and IDWR's 2005 field exam. For this additional reason, the inch to the acre standard, and not something less, should apply to the rate of diversion for 37-7460 in accordance with its development in 1976.

VERIFICATION

State of Idaho)
) ss.
County of Ada)

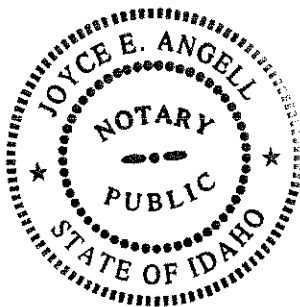
I, Josephine P. Beeman, being duly sworn, upon oath, depose and say:

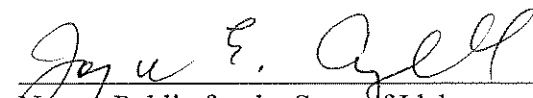
That I am the attorney for the party/claimant filing this objection, as defined by I.C. §§ 42-1401A(i) and (6), and that I have read this objection, know its contents and believe that the statements are true to the best of my knowledge.



Josephine P. Beeman

Subscribed and sworn to before me on: November 14, 2007





Notary Public for the State of Idaho
Residing at: Boise, Idaho
My Commission Expires: July 29, 2008

CERTIFICATE OF MAILING

I certify that on November 14, 2007, I mailed the original and copies of this objection, including all attachments, to the following persons:

1. Original to:

Clerk of the District Court
Snake River Basin Adjudication
253 Third Avenue North
PO Box 2707
Twin Falls, ID 83303-2707

2. One copy to the claimant of the water right at the following address:

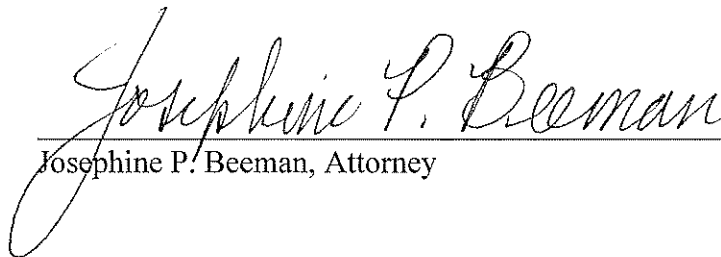
Name: Frank Astorquia
Address: 1725 E 1800 S
Gooding, ID 83330

3. Copies to:

IDWR Document Depository
PO Box 83720
Boise, ID 83720-0098

Chief, Natural Resources Division
Office of the Attorney General
State of Idaho
P. O. Box 44449
Boise, ID 83711-4449

United States Department of Justice
Environment and Natural Resource Division
550 West Fort Street, MSC 033
Boise, ID 83724



Josephine P. Beeman, Attorney

TIMELINE: Swan Falls and Astorquia Permit

Timeline Events	Timeline Dates	Permit 37-7465 Comparison
*Letter from Idaho Power to an irrigation company granting permission to install 2 pumping stations and withdraw water	April 6, 1967	
Application for permit (Astorquia Permit 37-7460)	10-20-75	12-1-75
Permit approved (Astorquia Permit 37-7460)	12-5-75	1-9-76
*Protest of Idaho Power against applications for permit filed at IDWR	December 30, 1977	
*Idaho Public Utility Commission (IPUC) Order (14595) approving Idaho Power's irrigation embargo	April 27, 1979	
*IPUC Order (14662) denying rehearing of previous proceeding	June 1, 1979	
*IPUC Order (15305) confirming and extending Idaho Power's irrigation embargo	February 1, 1980	
Beneficial Use Deadline (Astorquia Permit 37-7460)	12-1-80	1-1-81
Request for Extension of Time to submit Proof of Beneficial Use (Astorquia Permit 37-7460)	1-7-81 ¹	11-18-80
Date of approval of Request for Extension of Time (Astorquia Permit 37-7460)	1-9-81	12-18-80
*Idaho Supreme Court holds that Idaho Power's water rights at Swan Falls were not subordinated to upstream development	November 19, 1982	
*IDWR imposed a de facto moratorium on approval of new consumptive uses of water upstream from Swan Falls dam.	November 19, 1982	
*Letter from Idaho Power withdrawing permission to irrigation company (see letter of April 6, 1967)	March 2, 1983	
*Idaho Power Complaint (case no. 81375) names water right nos. 37-7460 and 37-7465	March 30, 1983	
*IPUC Order (18501) requesting comments from parties regarding Idaho Power's continued irrigation embargo	December 5, 1983	
New Deadline for Beneficial Use (Astorquia Permit 37-7460)	1-1-84 (requested 12-1-85)	1-1-86 (requested 1-1-86)
Permit lapses (Astorquia Permit 37-7460)	January 4, 1984	
*IPUC Order (18641) rescinding approval of Idaho Power's irrigation embargo	January 23, 1984	
*Framework for final resolution of Swan Falls controversy signed	October 1, 1984	
*Swan Falls Agreement and Contract signed	October 25, 1984	
*Dismissal of Astorquias (37-7460)	January 4, 1985	
*Dismissal of Bowmans (37-7465)	May 20, 1985	
*Letter from IDWR to permit holders, regarding proof of beneficial use	September 1, 1985	

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¹ Mr. Astorquia's Request for Extension of Time was filed 1 month, 6 days after the December 1, 1980 deadline. The priority date for permit 37-7460 was advanced from October 20, 1975 to November 26, 1975.