

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 37-7460

Date Received 7/17/02

Receipt Number 5025086

**NOTICE OF CLAIM
TO A
WATER RIGHT
ACQUIRED UNDER STATE LAW**

RECEIVED
JUL 17 2002
Department of Water Resources
Southern Region

Please type or print clearly

1. Name of Claimant (s) Frank Astorquia Phone (208) 934-8178

Mailing Address 1725 East 1800 South Zip 83330

2. Date of Priority (Only one (1) per claim) 11/26/1975

3. Source of water supply (a) Groundwater
which is tributary to (b) _____

4. a. Location of existing point of diversion is: Township 6S Range 14E Section 02,
_____ 1/4 of NW 1/4 of NE 1/4, Govt. Lot, _____, B.M., County of Gooding

Additional points of diversion if any: _____

b. If instream flow, beginning point of claimed instream flow is:

Township _____ Range _____ Section _____, _____ 1/4 of _____ 1/4 of _____ 1/4,

Govt. Lot _____ B.M., County of _____

ending point is: Township _____ Range _____ Section _____, _____ 1/4 of _____ 1/4 of

_____ 1/4, Govt. Lot _____ B.M., County of _____

5. Description of existing diversion works (Dams, Reservoirs, Ditches, Wells, Pumps, Pipelines, Headgates, Etc),
including the dates of any changes or enlargements in use, the dimensions of the diversion works as constructed and
as enlarged and the depth of each well. 320 foot well and 1800 gpm pump

*p. date
2002... doesn't
appear to be correct
yet... does this
... command?*

*see as a
permit... per
claim*

COPY

6. Water is claimed for the following purposes:

(both dates are inclusive)

(cfs)

(acre feet)

For Irrigation purposes from 04-01 to 11-01 amount 4.00 or _____

For _____ purposes from _____ to _____ amount _____ or _____

For _____ purposes from _____ to _____ amount _____ or _____

For _____ purposes from _____ to _____ amount _____ or _____

7. Total quantity claimed (a) 4.00 (cfs) and/or (b) _____ (acre feet)

8. Total consumptive use claimed is N/A acre feet per annum.

9. Non-irrigation uses; describe fully (eg. Domestic: Give number of households served; Stockwater: Type and number of livestock Etc.) _____

10. Description of place of use:

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

b. If water is used for other purposes, place a symbol of use (example: D for Domestic) in the corresponding place of use below. See instructions for standard symbols.

TWP	RNG	SEC	NE 1/4				NW 1/4				SW 1/4				SE 1/4				Totals
			NE1/4	NW1/4	SW1/4	SE1/4	NE1/4	NW1/4	SW1/4	SE1/4	NE1/4	NW1/4	SW1/4	SE1/4	NE1/4	NW1/4	SW1/4	SE1/4	
6S	14E	2	21	33	3		39.5	30	37	37									

Total number of acres irrigated 200.5

11. In which county(ies) are lands listed above as place of use located? Gooding

12. Do you own the property listed above as place of use? Yes X No

If your answer is No, describe in Remarks below the authority you have to claim this water right.

13. Describe any other water rights used at the same place and for the same purposes as described above.

_____ or None (X)

14. Remarks: _____

Last Name _____ Ident. Number _____

COPY

Map of Project: show clearly the point of diversion, place of use, section number, township, and range number

Please see attached aerial photograph.

Last Name _____ Ident. Number _____

COPY

15. Basis of Claim (check one) Beneficial Use _____ Posted Notice _____ License _____ Permit X
Decree _____

If applicable provide IDWR Water Right Number 37-7460
Court _____ Case Number _____ Decree Date _____
Plaintiff vs Defendant _____

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 1

For Individuals: I do solemnly swear or affirm that the statements contained in the foregoing document are true and correct.

Signature of Claimant (s) Frank Hestegren Date 8-8-02
Date _____

For Organizations: I do solemnly swear or affirm that I am _____
of _____, that I have signed the foregoing document in the space

below as _____ Title _____ of _____ Organization _____
and that the statements contained in the foregoing document are true and correct.

Signature of Authorized Agent _____
Title and Organization _____ Date _____

State of Idaho/or IDaho)
County of Goodale) ss.

Subscribed and sworn (or affirmed) before me this 9th day of July, 2002.
Notary Public Donna M. [Signature]
Residing at 742nd. Falls, ID.
My Commission Expires 10/19/05

17. Notice of Appearance:

Notice is hereby given that I, John M. Marshall of Givens Pursley, LLP 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 _____
Address PO Box 2710, Boise, Idaho 83701-2720
Date _____

Last Name _____ Ident. Number _____

RECEIVED

JUL 25 2002

Department of Water Resources
Southern Region

15. Basis of Claim (check one) Beneficial Use _____ Posted Notice _____ License _____ Permit X
Decree _____

If applicable provide IDWR Water Right Number 37-7460

Court _____ Case Number _____ Decree Date _____

Plaintiff vs Defendant _____

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 1

For Individuals: I do solemnly swear or affirm that the statements contained in the foregoing document are true and correct.

Signature of Claimant (s) _____

Date 8-8-02
Date _____

For Organizations: I do solemnly swear or affirm that I am _____

of _____, that I have signed the foregoing document in the space

below as _____ of _____
Title Organization

and that the statements contained in the foregoing document are true and correct.

Signature of Authorized Agent _____

Title and Organization _____

Date _____

State of Idaho/or IDAHO

ss.

County of Gooding

Subscribed and sworn to before me this _____ day of _____, 2002
Notary Public
State of Idaho

Notary Public _____

Residing at _____

My Commission Expires 10/19/05

17. Notice of Appearance:

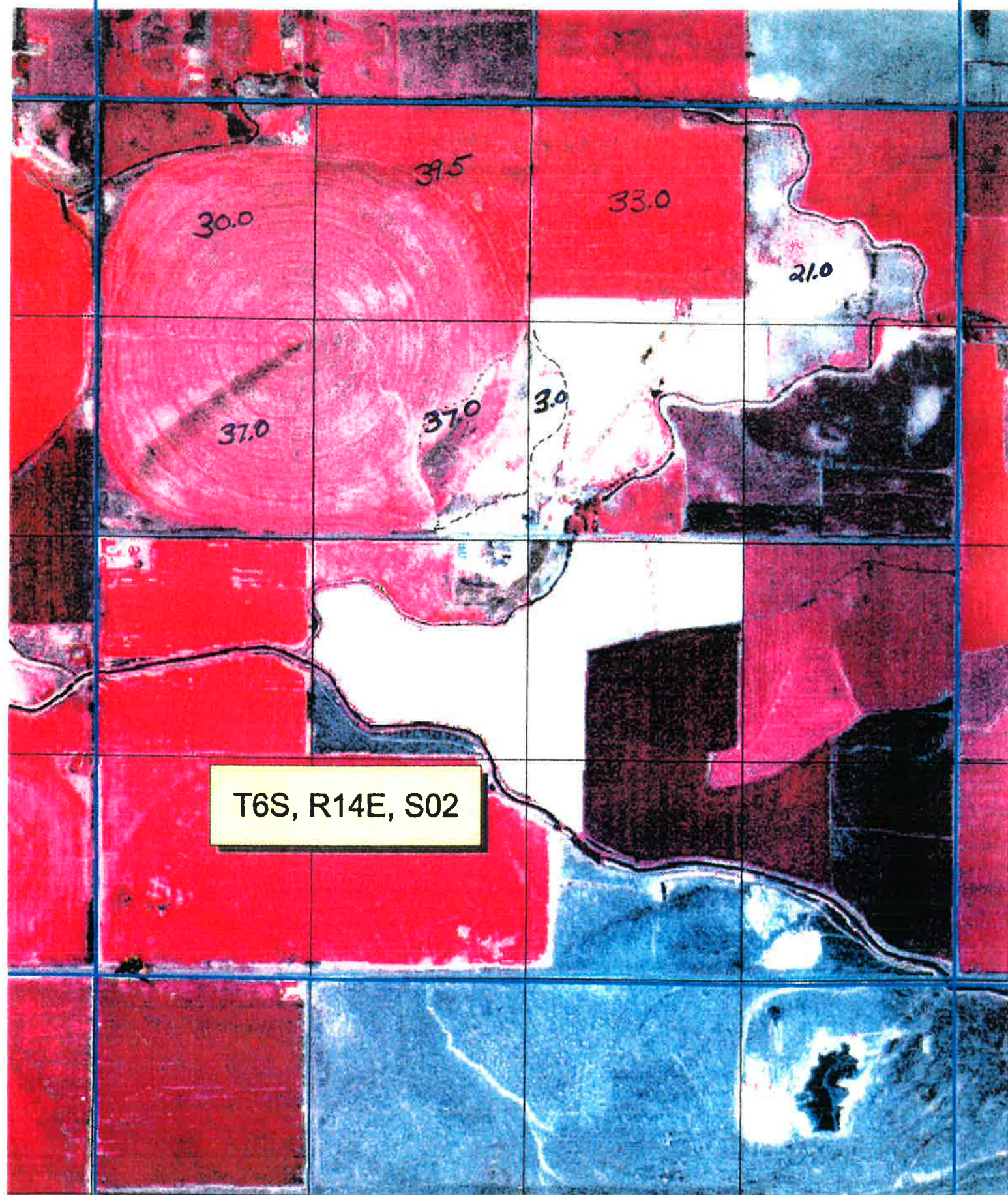
Notice is hereby given that I, John M. Marshall of Givens Pursley, LLP will be acting as attorney at law on behalf of the claimant signing above, and that all notices required by law to be mailed by the director to the claimant signing above should be mailed to me at the address listed below.

Signature _____

Address PO Box 2710, Boise, Idaho 83701-2720

Date _____

Last Name _____ Ident. Number _____



Date Received _____

State of Idaho
Department of Water Resources
REQUEST FOR EXTENSION OF TIME
TO FILE ADJUDICATION CLAIM(S)

RECEIVED
JUL 17 2002
Department of Water Resources
Southern Region

The Idaho Department of Water Resources will consider this form as a request by the claimant for an additional period of time in which to file claim(s) beyond the 90 days allowed by Section 42-1409(10), Idaho Code.

Frank Astorquia (208) 934-8178
Name of Claimant Phone Number

c/o Stephanie Astorquia, PO Box 27, Boise, ID 83707-0027
Mailing Address City State Zip

Gooding Not known
County(s) where place of use is located Date claim originally due

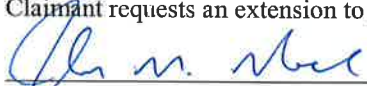
37-7460
Identify water right(s) for which extension is requested

State why an extension of time is requested explaining how a diligent effort has been made to meet the deadline:

Please see attached Petition to Reinstate Permit and Original Priority and supporting Affidavit of Frank Astorquia

In sum, Claimant was not aware until recently that IDWR has caused his permit to lapse in 1984. Because IDWR had lapsed the permit, Mr. Astorquia did not receive notice of the need to file a claim on the permit.

Claimant requests an extension to _____, 20 02


Signature Date of request 07/16, 20 02

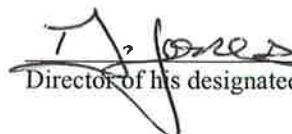
Attorney for Frank Astorquia
Title

ACTION OF THE DIRECTOR, DEPARTMENT OF WATER RESOURCES

The above request for extension of time is hereby [☒ granted] [☐ denied] for the following reasons:

And if granted the filing deadline is extended to 7/17, 20 02

Signed this 17th day of July, 20 02


Director of his designated agent

Mail to: Idaho Department of Water Resources
1301 N. Orchard St.
Boise, ID 83706

Request for Extension of Time to File Adjudication Claim(s)

John M. Marshall ISB #5628
Michael C. Creamer ISB #4030
GIVENS PURSLEY LLP
277 North Sixth Street, Suite 200
P.O. Box 2720
Boise, Idaho 83701-2720
Telephone: 208-388-1200
Facsimile: 208-388-1300
S:\Clients\6478\1\Pleadings\2002-07-02 Petition.doc

Attorneys for Frank Astorquia

BEFORE THE STATE OF IDAHO DEPARTMENT OF WATER RESOURCES

IN THE MATTER OF WATER RIGHT
PERMIT NUMBER 37-7460

**PETITION TO REINSTATE PERMIT AND
ORIGINAL PRIORITY DATE**

INTRODUCTION

This is a petition by Frank Astorquia to reinstate permit 37-7460 and its November 26, 1975 priority date. This petition is based on Idaho Code §§ 42-217 and 42-219 and the Affidavit of Frank Astorquia ("Astorquia Aff.") submitted with this petition. Mr. Astorquia respectfully requests an order from the Director of the Idaho Department of Water Resources (the "Department") reinstating permit 37-7460 and thereafter granting Mr. Astorquia a license authorizing a diversion rate of 4.0 cfs for the irrigation of 200 acres (0.02 cfs per acre) under a priority date of November 26, 1975.

FACTUAL BACKGROUND

The Department approved Mr. Astorquia's Application for Permit No. 37-7460 on December 5, 1975, authorizing development of 6.40 cfs of ground water to irrigate 320 acres (0.02 cfs per acre) in the N ½ of Section 2, T 6S, R 14E with a point of diversion in the NW ¼ of

the NE ¼ of Section 2. A copy of the approved permit is attached as Exhibit A to the Astorquia Aff. Proof of beneficial use was due on December 1, 1980.

Following permit approval, Mr. Astorquia hired Elsing Well Drilling ("Elsing") to drill the approved irrigation well. Elsing then drilled and completed a 320-foot well in the NW ¼ of the NE ¼ of Section 2, T 6S, R 14E between March 5 and March 25, 1976. A copy of the Well Driller's Report is attached as Exhibit B to the Astorquia Aff. Subsequently, between April 1976 and October 1976, Mr. Astorquia purchased and installed a center-pivot, wheel lines, hand lines and pump and began irrigating 200 acres in the NW ¼ and the NW ¼ of the NE ¼ of Section 2, T 6S, R 14E. Astorquia Aff. at ¶ 3 and a copy of a work order/invoice from Layne Pumps attached as Exhibit C to the Astorquia Aff. A certified USDA Agricultural Stabilization and Conservation Service ("ASCS") photograph from 1977 demonstrating these acres were developed during this timeframe is attached to the Astorquia Aff. as Exhibit D. Mr. Astorquia has irrigated these 200 acres every year since he originally developed them in 1976. Astorquia Aff. at ¶ 4 and a certified ASCS photograph from 1987 attached to the Astorquia Aff. as Exhibit D.

✓ Mr. Astorquia missed the December 1, 1980 deadline for submitting proof of beneficial use. However, he promptly responded to the Department's December 4, 1980 lapse notice by submitting a completed Request for Extension of Time (copy attached as Exhibit E to the Astorquia Aff.). In this Request for Extension of Time, Mr. Astorquia confirmed he had developed 200 acres under permit 37-7460, but he had been prevented from developing the other 120 acres approved by the permit because Idaho Power had imposed a moratorium on new power hookups. By his Request for Extension of Time, Mr. Astorquia believed he had complied

with the requirement for submitting proof of beneficial use for the 200 developed acres and he was requesting an extension of time only for the 120 undeveloped acres. Astorquia Aff. at ¶ 6.

The Department granted the Request for Extension of time on January 9, 1981, reinstating permit 37-7460 and advancing the priority date to November 26, 1975. The Department's Approval is appended to the bottom of the Request for Extension of Time (Astorquia Aff., Exhibit E). Under the terms of the approval, the beneficial use date was extended to January 1, 1984.

Mr. Astorquia still had not developed the remaining 120 acres by the end of the irrigation season in 1984. Consequently, he did not seek to prove beneficial use for the remaining 120 acres or any further extension of time to develop the 120 acres. When Mr. Astorquia allowed the permit to lapse, he believed the lapse applied only to the 120 undeveloped acres and he had a valid right for the 200 acres he had developed and continually irrigated since 1976. Astorquia Aff. at ¶ 7. Mr. Astorquia only recently has learned the Department's position is the entire permit, including the 200 acres he developed in 1976, had lapsed. Astorquia Aff. at ¶ 8.

RELIEF REQUESTED

1. The Department should Reinstate Permit 37-7460

Mr. Astorquia first requests that the Department reinstate permit 37-7460 in accordance with Idaho Code § 42-219(2), which provides that the Department may reinstate a lapsed permit "[u]pon finding that beneficial use had occurred during the authorized period and upon a showing of reasonable cause for filing a late proof of beneficial use." This petition meets both of these statutory requisites.

Mr. Astorquia's showing of reasonable cause for failure to file timely proof of beneficial use before January 1, 1984 is he simply did not believe he needed to file any additional proof.

Rather, Mr. Astorquia understood that by failing to file proof of beneficial use by January 1, 1984, he was allowing only the undeveloped 120-acre portion of his permit to lapse. Astorquia Aff. at ¶ 7. Not unreasonably, he believed the 200-acre portion of his permit already had been perfected. Astorquia Aff. at ¶ 7. Mr. Astorquia learned for the first time in late May 2002 he was mistaken and the Department had lapsed his entire permit. Astorquia Aff. at ¶ 8. During the intervening time period, Mr. Astorquia believed that he had a valid water right to irrigate 200 acres and has continued to irrigate these acres through the present. Astorquia Aff. at ¶ 4 and ¶ 7.

Mr. Astorquia's belief that he had perfected a 200 acre right is premised on the Department's approval of his Request for Extension of Time on January 9, 1981. This approval is appended to the bottom of the Request for Extension of Time that indicates that "[w]ell has been dug, and 200 acres are being irrigated." Mr. Astorquia, who is not an expert in state water laws, reasonably believed that the Department's approval of his Request for Extension of Time applied only to the 120 acres of his permit that he had not then developed. Consequently, he did not file what he thought would be a duplicative proof of beneficial use prior to the new deadline on January 1, 1984 because he still had not developed the 120 acres. Astorquia Aff. at ¶ 7.

To prove beneficial use before the December 1, 1980 deadline, Mr. Astorquia provides the following: 1) the Well Driller's Report from 1976 attached as Exhibit B to the Astorquia Aff., 2) the pump and installation work order/invoice from 1976 attached as Exhibit C to the Astorquia Aff., 3) the ASCS photographs from 1977 and 1987 attached as Exhibit D to the Astorquia Aff., and 4) the Request for Extension of Time, attached as Exhibit E to the Astorquia Aff., wherein Mr. Astorquia notified the Department of his diversion and development of 200 acres. These exhibits demonstrate that 200 acres were developed within 6 months of permit approval.

Because Mr. Astorquia has shown good cause for filing late proof of beneficial use, and because he submitted sufficient evidence to clearly establish the extent of beneficial use, the Department should reinstate permit 37-7460 and license it for a diversion rate of 4.0 cfs for the irrigation of 200 acres (0.02 cfs per acre).

2. The Department Should Reinstate the November 26, 1975 Priority Date for Permit 37-7460.

This petition also separately requests that the Department reinstate the November 26, 1975 priority date for this permit because Mr. Astorquia developed 200 of the 320 acres authorized by the permit in 1976 and submitted evidence of beneficial use for 200 acres of irrigation, albeit through a Request for Extension of Time form, on January 9, 1981.

Idaho Code § 42-218a(3) provides that the original priority date for a lapsed permit may be reinstated upon a showing "of error or mistake of the department." While Mr. Astorquia does not allege any complicity by the Department in lapsing permit 37-7460, he does maintain that the Department made an oversight error by lapsing the entire permit on January 4, 1984 without considering his statements of beneficial use in the Request for Extension of Time as his required statement of proof of beneficial use. It seems that it would have been reasonable for the Department to notify Mr. Astorquia that 200 acres he had already developed specifically would be at risk if he did not come forward with further proof of beneficial use.

Idaho Code § 42-217 governs the procedure for submitting proof of beneficial use. It provides, "[o]n or before the date set for the beneficial use of waters appropriated under the provisions of this chapter, the permit holder shall submit a statement that he has used such water for the beneficial purpose allowed by the permit." The statute goes on to describe what must be required in the statement: "1. The name and post-office address of the permit holder. 2. The permit number. 3. A description of the extent of the use. 4. [information relevant only to

municipal providers]. 5. The source of the water used. 6. Such other information as shall be required by the blank form furnished by the department.” Idaho Code § 42-217.

Mr. Astorquia’s Request for Extension of Time (“Request”) provides all the required information. The Request clearly states the name and address of the permit holder as well as the permit number. The Request also indicates a description of the extent of beneficial use by stating that “[w]ell has been dug, and 200 acres are being irrigated.” Although it does not expressly state that the source of the diverted water is “ground water,” the reference to the well clearly indicates that the source is ground water. Accordingly, Mr. Astorquia provided all the information required to prove development and beneficial use under permit 37-7460.

Idaho Code § 42-217 does provide that proof of beneficial use shall be submitted “upon forms furnished by the department of water resources and shall include fees as provided in subsection K. of section 42-221, Idaho Code.” However, to advance the priority date of water user simply because he did not chose from among the correct official department forms would unfairly place form over substance in a situation where the permit holder clearly developed his permit prior to the beneficial use cutoff date and informed the Department of his beneficial use. Moreover, because actual development under permit 37-7460 occurred in 1976 and has been continual use since that time, no other water users will be injured by reinstating the 1975 priority date.

In sum, Mr. Astorquia respectfully asserts that he did file proof of beneficial use for permit 37-7460 prior to the January 1, 1984 deadline. While he filed proof in the form of a Request for Extension of Time, he included all the information required by the proof of beneficial use statute. Mr. Astorquia reasonably believed the Request for Extension of Time served as notice that he had fully developed 200 acres of his permit and that he needed more time

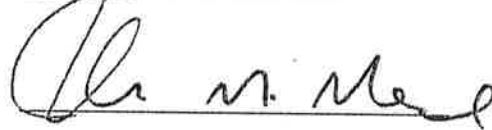
only to try and prove up on the remaining 120 acres. This is apparent in the Request for Extension of Time, which states that 200 acres have been developed. As a result, Mr. Astorquia contends he did file a timely proof of beneficial use and the Department erred by terminating permit 37-7460. In accordance with Idaho Code § 42-218a(3), the Department should reinstate the original November 26, 1975 priority date for permit 37-7460.

CONCLUSION

For all the reasons stated above, the Department should reinstate permit 37-7460 and license it for a diversion rate of 4.0 cfs for the irrigation of 200 acres (0.02 cfs per acre) with a priority date of November 26, 1975.

Respectfully submitted this 3rd day of July 2002

GIVENS PURSLEY LLP

A handwritten signature in dark ink, appearing to read "John M. Marshall", written over a horizontal line.

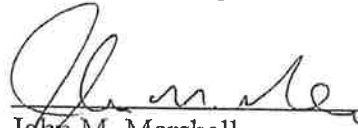
John M. Marshall

CERTIFICATE OF SERVICE

I hereby certify that on this 3rd day of July 2002, I caused to be served a true and correct copy of the foregoing **PETITION TO REINSTATE PERMIT AND ORIGINAL PRIORITY DATE, AND AFFIDAVIT OF FRANK ASTORQUIA** by the method indicated below, and addressed to the following:

Idaho Department of Water Resources
1301 N. Orchard St.
P.O. Box 83720
Boise, ID 83720-0098

☐ U.S. Mail
☐ Facsimile
☒ Hand Delivery
☐ Overnight Mail


John M. Marshall

John M. Marshall ISB #5628
Michael C. Creamer ISB #4030
GIVENS PURSLEY LLP
277 North Sixth Street, Suite 200
P.O. Box 2720
Boise, Idaho 83701-2720
Telephone: 208-388-1200
Facsimile: 208-388-1300
S:\Clients\6478\1\Pleadings\2002-07-02 Astorquia Aff, signature page.doc

Attorneys for Frank Astorquia

BEFORE THE STATE OF IDAHO DEPARTMENT OF WATER RESOURCES

IN THE MATTER OF WATER RIGHT
PERMIT NUMBER 37-7460

AFFIDAVIT OF FRANK ASTORQUIA

I, Frank Astorquia, make the following statements based on my personal knowledge:

1. I filed an Application for Permit to Appropriate the Public Waters of the State of Idaho on October 20, 1975. The Department approved my Application on December 5, 1975 and assigned it number 37-7460. Proof of beneficial use was due on December 1, 1980. A true and correct copy of the Application and the Department's approval is attached as Exhibit A.
2. In March of 1976 I hired Elsing Well Drilling to drill my irrigation well. Elsing began the work on March 5, 1976 and completed the well on March 25, 1976. A true and correct copy of the Well Driller's Report is attached as Exhibit B.
3. During the irrigation season of 1976, I installed pumps and irrigation equipment, including a center pivot, wheel lines and hand lines, and began irrigating 200 acres of the 320 acres authorized by permit 37-7460 using a diversion rate of approximately 1800 gallons per minute (approximately 4.0 cfs). A true and correct copy of the pump work order/invoice from Layne Pumps is attached as Exhibit C.

4. I have continually irrigated these 200 acres every season since 1976. The water level in my well has remained stable for the past twenty-seven years. Certified copies of photographs from the USDA Agricultural Stabilization and Conservation Service showing cultivation of these acres in 1977 as well as 1987 are attached as Exhibit D.

5. I was not able to increase my diversions to irrigate the remaining 120 acres because Idaho Power would not allow me to increase the size of my pump due to a moratorium on new power hookups.

6. I missed my December 1, 1980 proof of beneficial use deadline, but filed a Request for Extension of Time on January 7, 1981. In this Request for Extension of Time, I stated that I had developed 200 acres under my permit and explained that I needed more time to develop the additional 120 acres. With this form, I believed I had provided the Department with all the information required to prove up on 200 acres of my permit. I believed the Request for Extension of Time only applied to the 120 undeveloped acres. A true and correct copy of the Request for Extension of Time is attached as Exhibit E.

7. The Department granted my Request for Extension of Time, giving me until January 1, 1984 to prove beneficial use. Again, I believed this new deadline applied only to the 120 acres I had not developed. As explained above, I was unable to develop these 120 acres with ground water. Consequently, I did not provide any additional proof of beneficial use and did not react to the Department's notices concerning the permit lapsing because I believed this applied only to the 120 acres. I believed I had a valid right to irrigate the 200 acres I had developed in 1976. I did not know the priority date for these 200 acres would be lost or moved to a later date when I did not file proof of beneficial use for the 120 acres.

8. While recently organizing information about my ranch for a possible transfer to my son, I learned for the first time late in May of this year that the Department's position is that my entire permit had lapsed. I also learned for the first time my priority date may be advanced if my permit were reinstated. Upon learning that the Department had lapsed my entire permit, I hired legal counsel to assist me in understanding Idaho water laws. I am filing a Petition to Reinstate Permit and Original Priority Date to correct the oversight in allowing my entire permit to lapse.

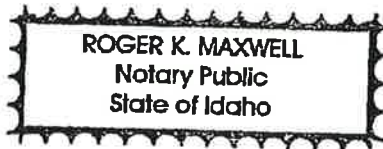
9. I declare under penalty of perjury that the foregoing is true and correct.

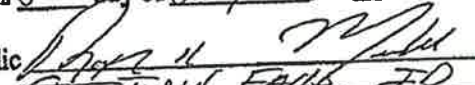
Dated this 3 day of July, 2002


Frank Astorquia

Subscribed and sworn (or affirmed) before me this 3rd day of July, 2002.

(SEAL)



Notary Public 
Residing at 200 TOWN FALLS RD
My Commission Expires 10/19/05

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

APPROVED

APPLICATION FOR PERMIT

To Appropriation the Public Waters of the State of Idaho
(TYPE OR PRINT IN INK)

1. Name of applicant FRANK &/or JOSEPHINE ASTOROUTA Phone 934-5017
post office address Route #2, Gooding, Idaho
2. Source of water supply Groundwater which is a tributary of _____
3. a. Location of point of diversion is 1 pt. 2 RM $\frac{1}{4}$ of NE $\frac{1}{4}$ of Section 2 Township 6S
Range 14E B.M. Gooding County; additional points of diversion if any: _____
- b. If water is not consumed, it will be discharged into _____ at a point in _____ $\frac{1}{4}$ of _____ $\frac{1}{4}$ of Section _____ Township _____ Range _____ B.M. _____
4. Water will be used for the following purposes:
Amount 6.40 cfs for Irrigation purpose from April 1 to Nov. 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. 6.40 cubic feet per second and/or
b. _____ acre-feet per annum.
6. Proposed diverting works:
a. Description of ditches, flumes, pumps, headgates, etc. well, pump, sprinkler lines

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 20 inches; proposed depth of well is 300 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 \$ 80,000.00
8. Description of proposed uses:
a. If water is not for irrigation:
(1) Give the place of use of water: _____ $\frac{1}{4}$ of _____ $\frac{1}{4}$ of Section _____ Township _____ Range _____ B.M. _____
(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: _____

TWP.	RANGE	SEC.	NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	TOTAL
6S	14E	2	40	40	40	40	40	40	40	40									320

Total number of acres to be irrigated 320

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

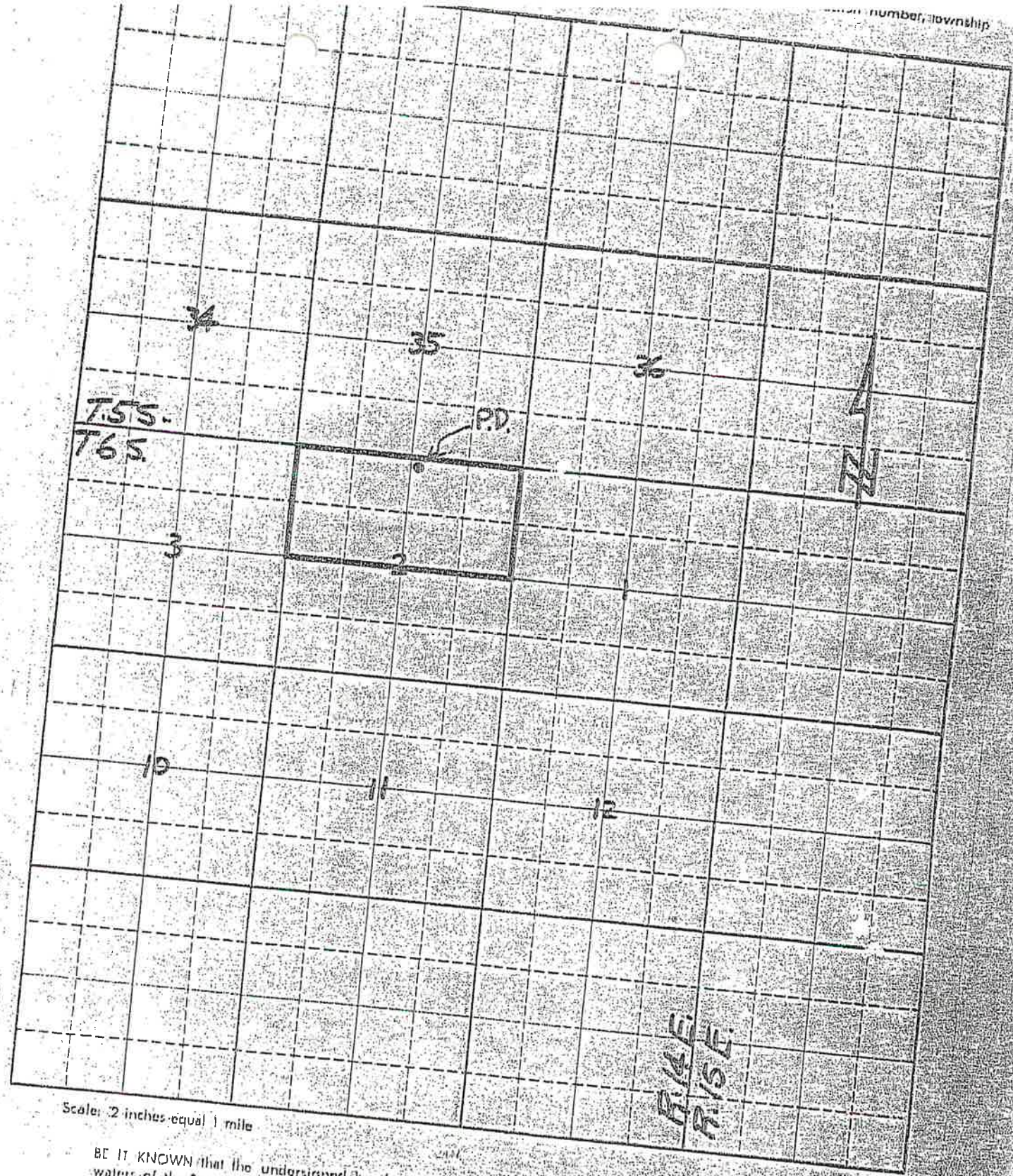
No

9. a. Who owns the property at the point of diversion Applicant

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

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



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.

Frank R. [Signature]
(Applicant)

Proposed Priority 10-20-1975

Received by RM Date 10-20-75 Time 11:40
Preliminary check by SL Fee \$ 25.00
Received by CE Date 10-20-75 # 1723
Publication prepared by CC Date 10-21-75
Published in Gooding County Leader
Publication dates 10-30 & 11-6-75
Publication approved CC Date 10-1-75
Priority reduced to Reason

Protests filed by

Copies of protests forwarded by

Hearing held by Date

Recommended for approval denial by RB

ACTION OF THE DIRECTOR, DEPARTMENT OF WATER RESOURCES

This is to certify that I have examined Application for Permit to appropriate the public waters of the State of Idaho No. 37-7460 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 December 1, 19 80.

c. Other: A measuring device of a type approved by the Director 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 5 day of December, 19 75.

[Signature]
Director

WELL DRILLER'S REPORT

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

Resource 44th 83 1978

1. WELL OWNER Name: <u>FRANK Ostorguis</u> Address: <u>Gooding</u> Owner's Permit No. _____	7. WATER LEVEL Department of Water Resources Southern District Office Static water level <u>221</u> feet below land surface Finding? ☐ Yes ☒ No G.P.M. flow _____ Temperature _____ F. Quality _____ Artesian closed-in pressure _____ p.s.i. Controlled by ☐ Valve ☐ Cap ☐ Plug																																																									
2. NATURE OF WORK ☒ New well ☐ Deepened ☐ Replacement ☐ Abandoned (describe method of abandoning) _____	8. WELL TEST DATA ☐ Pump ☐ Baller ☒ Other <table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th>Discharge G.P.M.</th> <th>Draw Down</th> <th>Hours Pumped</th> </tr> </thead> <tbody> <tr><td> </td><td> </td><td> </td></tr> <tr><td> </td><td> </td><td> </td></tr> <tr><td> </td><td> </td><td> </td></tr> </tbody> </table>	Discharge G.P.M.	Draw Down	Hours Pumped																																																						
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3. PROPOSED USE ☐ Domestic ☒ Irrigation ☐ Test ☐ Other (specify type) _____ ☐ Municipal ☐ Industrial ☐ Stock ☐ Waste Disposal or Injection	9. LITHOLOGIC LOG <table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th rowspan="2">Hole Diam.</th> <th colspan="2">Depth</th> <th rowspan="2">Material</th> <th rowspan="2">Water</th> </tr> <tr> <th>From</th> <th>To</th> </tr> </thead> <tbody> <tr><td>20</td><td>0</td><td>3</td><td>TOP SOIL</td><td> </td></tr> <tr><td>"</td><td>3</td><td>7</td><td>HARD PAN</td><td> </td></tr> <tr><td>"</td><td>7</td><td>74</td><td>SOFT BROWN LAVA</td><td> </td></tr> <tr><td>"</td><td>74</td><td>80</td><td>CINDERS</td><td> </td></tr> <tr><td>"</td><td>80</td><td>121</td><td>RED BROWN LAVA CINDERS SOFT</td><td> </td></tr> <tr><td>"</td><td>121</td><td>204</td><td>RED BROWN LAVA</td><td> </td></tr> <tr><td>"</td><td>204</td><td>222</td><td>RED HARD LAVA</td><td> </td></tr> <tr><td>"</td><td>222</td><td>246</td><td>FLAKES BLACK LAVA CUTTINGS</td><td> </td></tr> <tr><td>"</td><td>246</td><td>315</td><td>BLACK LAVA HARD</td><td> </td></tr> <tr><td>"</td><td>315</td><td>320</td><td>CINDERS LAST CUTTINGS</td><td> </td></tr> </tbody> </table>	Hole Diam.	Depth		Material	Water	From	To	20	0	3	TOP SOIL		"	3	7	HARD PAN		"	7	74	SOFT BROWN LAVA		"	74	80	CINDERS		"	80	121	RED BROWN LAVA CINDERS SOFT		"	121	204	RED BROWN LAVA		"	204	222	RED HARD LAVA		"	222	246	FLAKES BLACK LAVA CUTTINGS		"	246	315	BLACK LAVA HARD		"	315	320	CINDERS LAST CUTTINGS	
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"	315	320	CINDERS LAST CUTTINGS																																																							
4. METHOD DRILLED ☒ Cable ☐ Rotary ☐ Dug ☐ Other	10. Work started <u>MAR. 5, 1976</u> finished <u>MAR. 25, 1976</u>																																																									
5. WELL CONSTRUCTION Diameter of hole <u>20"</u> inches Total depth <u>320'</u> feet Casing schedule: ☒ Steel ☐ Concrete <table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th>Thickness</th> <th>Diameter</th> <th>From</th> <th>To</th> </tr> </thead> <tbody> <tr> <td><u>1/4</u> inches</td> <td><u>20"</u> inches</td> <td><u>1</u> feet</td> <td><u>20</u> feet</td> </tr> <tr><td> </td><td> </td><td> </td><td> </td></tr> <tr><td> </td><td> </td><td> </td><td> </td></tr> <tr><td> </td><td> </td><td> </td><td> </td></tr> <tr><td> </td><td> </td><td> </td><td> </td></tr> <tr><td> </td><td> </td><td> </td><td> </td></tr> </tbody> </table> Was casing drive shoe used? ☐ Yes ☒ No Was a packer or seal used? ☒ Yes ☒ No Perforated? ☐ Factory ☐ Knife ☐ Torch How perforated? ☐ Factory ☐ Knife ☐ Torch Size of perforation _____ inches by _____ inches <table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th>Number</th> <th>From</th> <th>To</th> </tr> </thead> <tbody> <tr><td> </td><td> </td><td> </td></tr> <tr><td> </td><td> </td><td> </td></tr> <tr><td> </td><td> </td><td> </td></tr> </tbody> </table> 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 <u>20'</u> Material used in seal ☒ Cement grout ☐ Pudding clay ☐ Well cuttings Sealing procedure used ☐ Sherry pit ☐ Temporary surface casing ☒ Overbore to seal depth	Thickness	Diameter	From	To	<u>1/4</u> inches	<u>20"</u> inches	<u>1</u> feet	<u>20</u> feet																					Number	From	To										11. DRILLERS CERTIFICATION Firm Name: <u>ELSONG Well Drilling</u> No. <u>31</u> Address: <u>Box 919 Tule Falls</u> Date: <u>3/76</u> Signed by (Firm Official) <u>Charles Elsong</u> and <u>Shirley Wagner</u> (Operator)																	
Thickness	Diameter	From	To																																																							
<u>1/4</u> inches	<u>20"</u> inches	<u>1</u> feet	<u>20</u> feet																																																							
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6. LOCATION OF WELL Sketch map location must agree with written location. <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="text-align: center;">N</td> <td style="text-align: center;">X</td> <td style="text-align: center;">E</td> </tr> <tr> <td style="text-align: center;">W</td> <td style="text-align: center;">2</td> <td style="text-align: center;">E</td> </tr> </table> Subdivision Name _____ Lot No. _____ Block No. _____ County: <u>Gooding</u> N.W. 1/4 NE 1/4 Sec. <u>2</u> T. <u>6</u> S. R. <u>14</u> E. <u>10</u>	N	X	E	W	2	E	USE ADDITIONAL SHEETS IF NECESSARY FORWARD THE WHITE COPY TO THE DEPARTMENT																																																			
N	X	E																																																								
W	2	E																																																								

LAYNE PUMPS

Box 640, Twin Falls, Idaho 83301
Phone No. 733-3284

ORDER NO

DATE 5/7 1976

DEALER

PUMP ESTIMATE AND ORDER

CUSTOMER

Route _____ Date Desired _____

S/N 45767

PUMPING CONDITIONS

Inside Dia. of Well 20"
Depth of Well 310
Static Water Level 22.5
Drawdown. _____

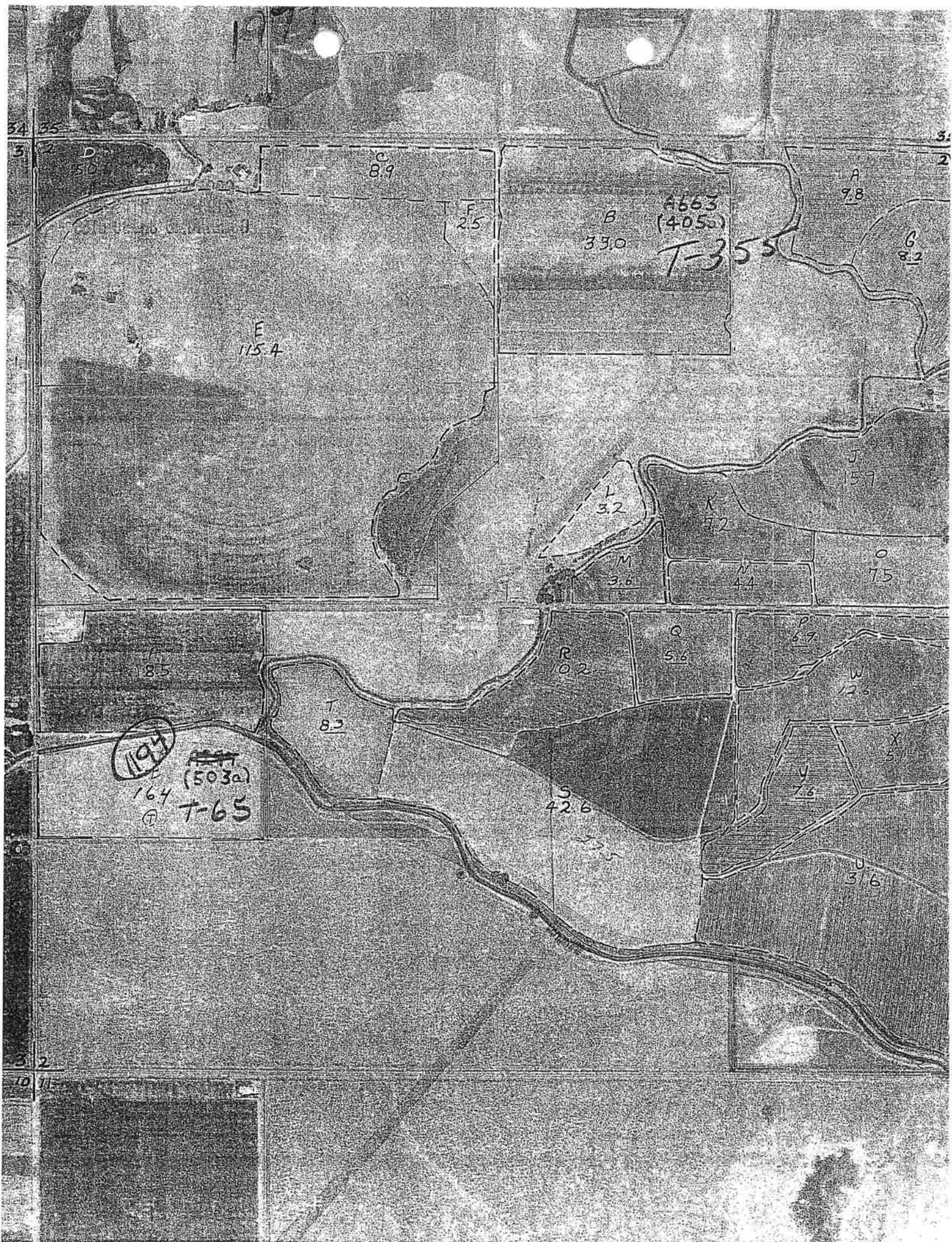
Lift in Well... ..
Lift Above. lbs.
Column Friction.....
Total Dynm. Head 248

Capacity, 1800 GPM
Speed of Pump _____ RPM
HP Required _____
Allowable Shaft HP _____

Number	DESCRIPTION	LIST PRICE	NET PRICE
1	125 HP MOTOR Phase Volt 4.5 Make RPM With Ratchet Without		
	HP STARTER { Across Line } Auto Start Volt Make		
	AMP SAFETY SWITCH Volt Phase Make		
	GEAR DRIVE Ratio { With } Without Ratchet Make		
	WL SPICER SHAFT " Long		
	W DRIVE FLANGE Bore Key		
	W ENGINE FLANGE Bore Key		
1	1046 HEAD " Outlet { Water Lub } Oil Lub }		
1	16 GPM OILER Volt Solenoid		
	"X DISCHARGE NIPPLE { TOE } TBE }		
L	250' SETTING OF 10" X 2 1/2" "X 1 1/2" In Length		
1	12 BOWLS NK 14 Type 5 Stage { Open } Ports { Bronze } Close Cast Iron Wear Rings { Bronze } Impellers { Oversize } Shaft Fitted X 2-F.P. Cast Iron Standard X 3-9.00 X Couplings		
	"X SUCTION { TOE } TBE Couplings		
	" STRAINER { Bronze } Screwed } { Basket } Galvanized Welded Cone		
	TOTAL		

Quoted By _____

TF-127







United States
Department of
Agriculture

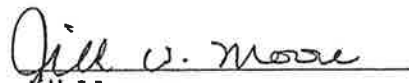
Farm Service
Agency

Gooding/Camas Office
219 University Ave.
Gooding, ID 83330

Phone:
208-4-8472 ext. 2
Fax: 208-934-4327

To Whom It May Concern:

The aerial photos provided to Astorquias are from 1977 and 1987.


Jill Moore
Program Assistant

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
REQUEST FOR EXTENSION OF TIME

JAN 7 1981

To provide additional time in which to submit
proof of beneficial use on a water right permit

Department of Water Resources

JAN 20 1981

Frank Astorquia of Route #2, Gooding
(Name) (Address)

State of Idaho, deposes and says:

That he is the holder, or the duly authorized agent of the holder*, of Permit to appropriate the Public Waters of the State of Idaho No. 37-7460

That under the terms and conditions of said permit, work thereunder was required to be completed on or before December 1, 1980.

That he has heretofore performed the following work described under said permit: _____

Well has been dug, and 200 acres are being irrigated.

Costing \$ 70,000.

That he is unable to complete the remainder of the work within the required time for the following reasons, to-wit: Because of moratorium on new power hookups, I cannot get enough electrical power to pump water for the other 120 acres.

Wherefore, he asks that the Department of Water Resources extend the time for the completion of obligations under said permit to December 1, 1985.

Frank Astorquia
(Signature)*

ACTION OF THE DIRECTOR, DEPARTMENT OF WATER RESOURCES

IT IS HEREBY ORDERED that the above application for extension of time be APPROVED and the time within which to submit the statement of beneficial use is extended to January 1, 1984;

IT IS FURTHER ORDERED that the permit be reinstated and the priority advanced to November 26, 1975, pursuant to Section 42-218a, Idaho Code.

Signed this 9th day of January, 1981.

J. Glen Saylor
Chief, Operations Bureau

* IF OTHER THAN HOLDER, Power of Attorney must be supplied.



State of Idaho

DEPARTMENT OF WATER RESOURCES

1341 Fillmore Street, Suite 200, Twin Falls ID 83301-3380

Phone: (208) 736-3033 FAX: (208) 736-3037

SOUTHERN REGION

7/18/02

DIRK KEMPTHORNE
Governor

KARL J. DREHER
Director

JOHN MARSHALL
GIVENS PURSLEY LLP
PO BOX 2720
BOISE ID 83701-2720

RE: Astorquia claim 37-7460

Dear John,

As requested, enclosed are stamped copies of the filing made on behalf of Frank Astorquia, along with a receipt for fees, R# S025086, and a print out of the data entry. Please look over the data entered material for errors or omissions and let me know if there is a problem. I request that the original signature and notary page be forwarded to me at the earliest opportunity.

I will forward the claim and supporting material to the appropriate agent for review in conjunction with licensing. It may not be possible to complete all aspects of processing for this claim/permit in order to be included in the upcoming Director's Report for Basin 37 Part 1, Ground Water.

For informational purposes, and to provide an opportunity to request withdrawal of claim and seek a refund, it is my opinion that an SRBA claim is not required for this permit although your client may certainly continue the process. The commencement order and commencement notice for the SRBA, by Judge D. Hurlbutt, indicates that rights with proof of beneficial use filed after 11/19/1987 are not required to file claims. I understand that additional administrative remedy is being sought with regard to the reinstatement priority; however, your pursuit of reconsideration under IDAPA is, in my opinion, separate from the commencement under IRCP.

Thank you for your attention to these matters and look forward to your submittal of the original signature page.

Sincerely,

Douglas Jones, PE
Water Rights Supervisor
Southern Adjudication Unit

GIVENS PURSLEY ^{LLP}

LAW OFFICES

277 North 6th Street, Suite 200
PO Box 2720, Boise, Idaho 83701
TELEPHONE: 208 388-1200
FACSIMILE: 208 388-1300
WEBSITE: www.givenspursley.com

Direct Dial: (208) 388-1270
E-Mail: jmm@givenspursley.com

Gary G. Allen
Christopher J. Beeson
Michael C. Creamer
Jeffrey A. DeVoe
Emily MacMaster Durkee
Thomas E. Dvorak
Roy Lewis Eiguren
Timothy P. Fearnside
Jeffrey C. Fereday
Steven J. Hippler
Karl T. Klein
Debora K. Kristensen
Anne C. Kunkel

Franklin G. Lee
David R. Lombardi
D. David Lorello, Jr.
Kevin T. Maloney
Kimberly D. Maloney
John M. Marshall
Kenneth R. McClure
Kelly Greene McConnell
Cynthia A. Melillo
Christopher H. Meyer
Kendall L. Miller
L. Edward Miller
Patrick J. Miller

Judson B. Montgomery
Angela K. Nelson
Deborah E. Nelson
W. Hugh O'Riordan
Kenneth L. Pursley
Brad V. Sneed
Conley E. Ward
Robert B. White

Raymond D. Givens
James A. McClure
Stephanie C. Westermeier
OF COUNSEL

July 16, 2002

VIA FEDERAL EXPRESS

Idaho Department of Water Resources
Director
Southern Regional Office
1341 Fillmore St., Ste. 200
Twin Falls, ID 83301-3033

RECEIVED
JUL 17 2002
Department of Water Resources
Southern Region

Re: Water Right Permit No. 37-7460
Our File: 6478-1

Dear Director:

Enclosed for filing please find an original and one copy of Request for Extension of Time to File Adjudication Claim and Notice of Claim to a Water Right. I have also enclosed a check in the amount of \$250 for the filing fee.

Please acknowledge receipt of the enclosed documents by stamping the copies and returning them to me in the enclosed, self-addressed, stamped envelope. Thank you.

Sincerely,



Tina N. Smith
Assistant to John M. Marshall

Enclosures

cc: Stephanie J. Astorquia
S:\Clients\6478\1\corr\2002-7-16 IDWR south.doc

12/21/2006

IDAHO DEPARTMENT OF WATER RESOURCES
PRELIMINARY RECOMMENDATION OF WATER RIGHTS ACQUIRED UNDER STATE LAW

RIGHT NUMBER: 37-7460

NAME AND ADDRESS: FRANK ASTORQUIA
1725 E 1800 S
GOODING ID 83330

SOURCE: GROUND WATER

TRIBUTARY:

QUANTITY: 4.000 CFS

PRIORITY DATE: 07/03/2002

POINT OF DIVERSION:

T06S R14E S2 NWNWNE Lot 2 Within GOODING County

PURPOSE AND
PERIOD OF USE:

<u>PURPOSE OF USE</u>	<u>PERIOD OF USE</u>	<u>QUANTITY</u>
IRRIGATION	04/01 11/01	4.000 CFS

PLACE OF USE: IRRIGATION in GOODING County

T06S R14E S02 Lot 1 NENE	17.00	T06S R14E S02 Lot 2 NWNW	35.00
T06S R14E S02 SWNE	2.50	T06S R14E S02 Lot 3 NENW	40.00
T06S R14E S02 Lot 4 NWNW	32.00	T06S R14E S02 SWNW	37.00
T06S R14E S02 SENW	36.00		

199.5 ACRES TOTAL

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

This right is conditioned upon completion of the appropriation in accordance with the statutory procedure for appropriation of water rights. This right remains subject to all conditions set forth in the permit upon which this right is based, and will be subject to all conditions set forth in the license issued by IDWR upon completion of the statutory appropriation process.

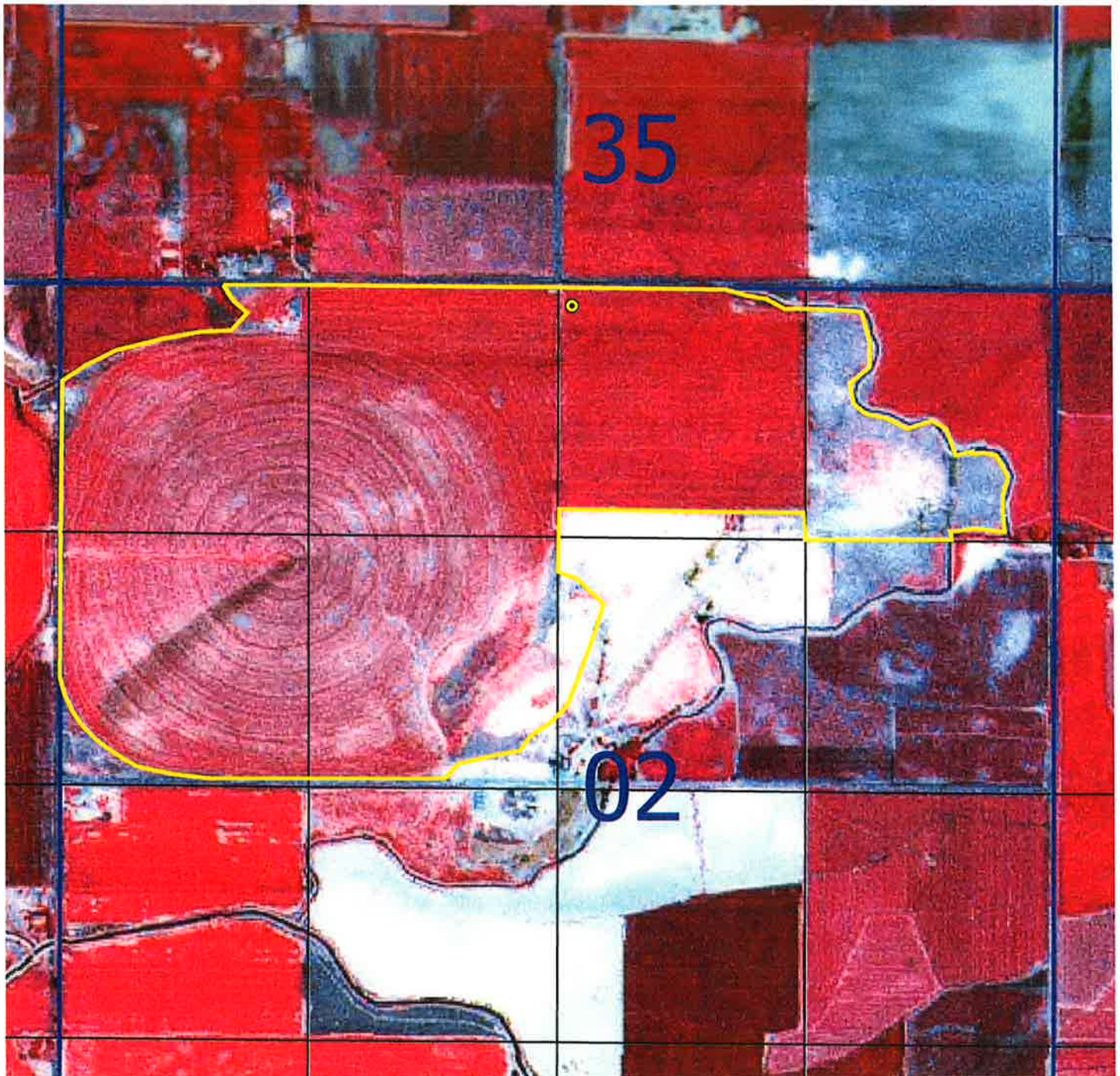
This partial decree is subject to such general provisions necessary for the definition of the rights or for the efficient administration of the water rights as may be ultimately determined by the Court at a point in time no later than the entry of a final unified decree. Section 42-1412(6), Idaho Code.

EXPLANATORY MATERIAL: BASIS OF CLAIM - Permit

Idaho Department of Water Resources

Right(s): 37-7460

Recommended Place of Use
TWP 06S RNG 14E S02
Prepared December 21, 2006



700 0 700 1400 Feet



⊙ Recommended Point of Diversion

□ Recommended Place of Use

□ Quarter Section Lines

□ PLSS Section Lines



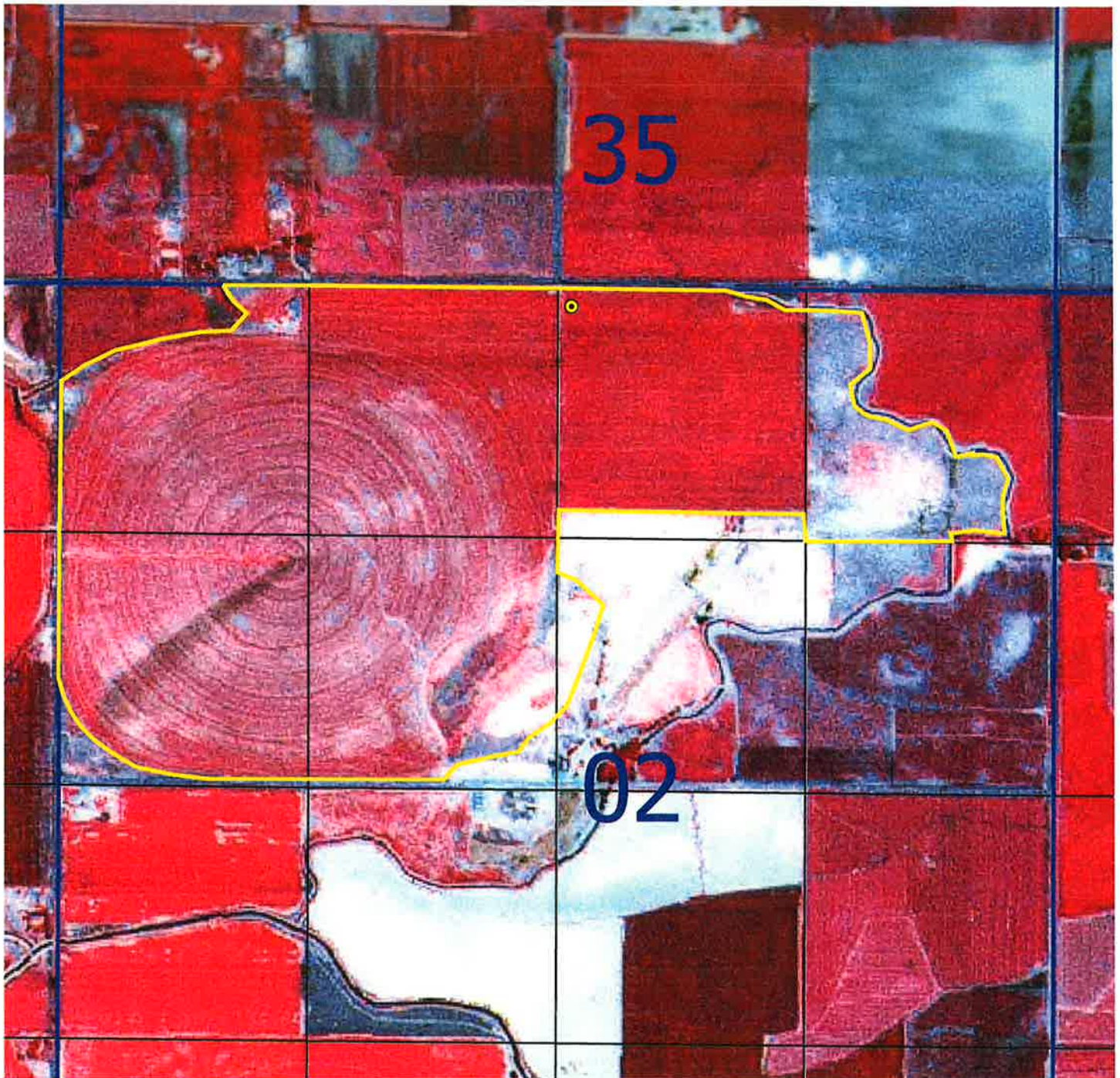
GIS Place of Use Presentation
1987 NAPP Aerial Photography

Prepared by Amanda Kriwox

Idaho Department of Water Resources

Right(s): 37-7460

Recommended Place of Use
TWP 06S RNG 14E S02
Prepared December 21, 2006



700 0 700 1400 Feet



○ Recommended Point of Diversion

□ Recommended Place of Use

□ Quarter Section Lines

□ PLSS Section Lines



GIS Place of Use Presentation
1987 NAPP Aerial Photography

Prepared by Amanda Kriwox

IDAHO DEPARTMENT OF WATER RESOURCES

Water Permit Report 37-7460

WATER RIGHT NUMBER: 37-7460

<u>Owner Type</u>	<u>Name and Address</u>
Current Owner	FRANK ASTORQUIA 1725 E 1800 S GOODING, ID 83330 (208)934-8178
Current Owner	JOSEPHINE ASTORQUIA 1725 E 1800 S GOODING, ID 83330 (208)934-8178

Priority Date: 07/03/2002

Basis:

Status: Active

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

<u>Beneficial Use</u>	<u>From</u> <u>To</u>	<u>Diversion Rate</u>	<u>Annual Volume</u>
IRRIGATION	04/01 to 11/01	6.400 CFS	
	<u>Total Diversion:</u>	6.400 CFS	

Location of Point(s) of Diversion

GROUND WATER	L2 (NW1/4NE1/4)	Sec. 2, Twp 06S, Rge 14E, B.M.
GOODING County		

Place of Use

IRRIGATION

Twp	Rge	Sec	NE				NW				SW				SE				Totals
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
06S	14E	2	40.0	40.0	40.0	40.0	40.0	40.0	40.0	40.0									320.0

Total Acres: 320

Conditions of Approval:Remarks:Comments:Dates and Other Information:

License not issued ... so SRBA
rec. should be based on the
permit, & will be fixed/changed
by license.

rec. 200 acres w/ permit p. date
rec. claimed diversion

IDAHO DEPARTMENT OF WATER RESOURCES

Water Permit Report 37-7460

Permit Proof Due Date: 1/1/1984
Permit Proof Made Date: 7/3/2002
Permit Approved Date: 12/5/1975
Permit Moratorium Expiration Date:
Enlargement Use Priority Date:
Enlargement Statute Priority Date:
Field Exam Date: 11/21/2005
Date Sent to State Office: 11/28/2005
Date Received at State Office: 11/29/2005
State or Federal:
Owner Name Connector: And/Or
Water District Number:
Generic Max Rate Per Acre:
Generic Max Volume Per Acre:
Swan Falls Trust or Nontrust:
Swan Falls Dismissed:
DLE Act Number:
Carey Act Number:
Mitigation Plan: False

Combined Use Limits:Element Reviewed/Verified Dates:

<u>Element</u>	<u>Last Reviewed Date</u>	<u>Reviewer</u>	<u>Last Verified Date</u>	<u>Verifier</u>	<u>Status</u>
----------------	---------------------------	-----------------	---------------------------	-----------------	---------------

Verification Log:

<u>Element</u>	<u>Date Time Stamp</u>	<u>Reviewer</u>	<u>Log text</u>
----------------	------------------------	-----------------	-----------------

Water Supply Bank:

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

IN THE MATTER OF LAPSED PERMIT)

NO. 37-7460 IN THE NAME OF)

FRANK AND/OR JOSEPHINE)

ASTORQUIA)

FINAL ORDER

_____)

This matter came before the Idaho Department of Water Resources ("Department") as a PETITION TO REINSTATE PERMIT AND ORIGINAL PRIORITY DATE filed by the permit holder, Frank Astorquia. In response to the petition, the Department issued a preliminary order reinstating the permit and advancing the priority date of the permit to the date of the filing of the petition on July 3, 2002. The permit holder filed a timely Exception to the Preliminary Order, with a supporting memorandum, objecting to the advancement of the permit priority date, and requesting oral argument before the Director. The Director, having reviewed the Preliminary Order, the Exception and the supporting memorandum, makes the following Findings of Fact, Conclusions of Law and Final Order:

FINDINGS OF FACT

1. On December 5, 1975, the Department issued Permit No. 37-7460 to Frank and/or Josephine Astorquia ("permit holder") authorizing the diversion of 6.40 cubic feet per second (cfs) of ground water to be diverted in Lot 2 (NW1/4NE1/4) Section 2, T6S, R14E, B.M. for irrigation of 320 acres within the N1/2 of Section 2, Township 6 South, Range 14 East, Gooding County, B.M. A condition of permit approval required the permit holder to submit proof of beneficial use of water ("proof") to the Department on or before December 1, 1980.

2. On September 3, 1980, the Department notified the permit holder that proof of beneficial use ("proof") was due and instructed the permit holder of the steps to be taken to submit the proof or an extension of time request.

3. On December 4, 1980 the Department sent the permit holder a lapse notice, since the Department had not received an acceptable proof or extension of time request.

4. On January 7, 1981, the permit holder submitted a completed Request for Extension of Time form ("extension request") and associated fee for the extension request to the Department. The printed form states it is "To provide additional time in

FINAL ORDER - Pg 1

which to submit proof of beneficial use on a water right permit." In describing the work completed, the permit holder stated on the form that, "Well has been dug, and 200 acres are being irrigated." The permit holder further stated, "Because of moratorium on new power hookups, I cannot get enough electrical power to pump water for the other 120 acres."

5. The Department approved the January 7, 1981 extension request on January 9, 1981, reinstating the permit and advancing the priority date of the permit to November 26, 1975. The extension approval established January 1, 1984 as the new date for submittal of proof of beneficial use under the permit.

6. On October 31, 1983, the Department notified the permit holder that proof was due and instructed the permit holder of the steps to be taken to submit the proof or an extension request.

7. On January 4, 1984, the Department sent a lapse notice to the permit holder, since the permit holder did not submit either proof or an extension request. On March 5, 1985, the permit became of no force nor effect as provided in Section 42-218a, Idaho Code. The plain meaning of the language in the Proof Due Notice dated October 31, 1983, and in the Lapse Notice dated January 4, 1984, is that the notices applied to the entire permit, not just to a portion of the permit.

8. On July 3, 2002, the permit holder submitted a PETITION TO REINSTATE PERMIT AND ORIGINAL PRIORITY DATE together with the required license examination fee to the Department. The permit holder also submitted a completed proof form and evidence to show that water has been applied to the authorized beneficial use during the development period and has shown sufficient cause why the beneficial use was not timely submitted.

9. On July 11, 2002, the Department issued a PRELIMINARY ORDER REINSTATING PERMIT advancing the priority of use to the date that proof was submitted to the Department as provided in Section 42-218a(2), Idaho Code.

10. On July 25, 2002, the permit holder filed EXCEPTION TO PRELIMINARY ORDER and on August 23, 2002 submitted FRANK ASTORQUIA'S MEMORANDUM IN SUPPORT OF EXCEPTION TO PRELIMINARY ORDER and requested oral argument before the Department.

11. The basis for the Exception is that the Preliminary Order does not address the permit holder's request that the Department reinstate the original priority date of the permit. In support of the Exception, the permit holder argues that the statement in the 1981 Request for Extension that 200 of the 320 acres authorized had been developed should constitute submittal of proof of beneficial use as to the 200 acres developed, thus justifying retention of the original November 26, 1975 priority date as to the

FINAL ORDER - Pg 2

developed acres.

CONCLUSIONS OF LAW

1. Section 42-217, Idaho Code, provides in pertinent part as follows:

On or before the date set for the beneficial use of waters appropriated under the provisions of this chapter, the permit holder shall submit a statement that he has used such water for the beneficial purpose allowed by the permit. The statement shall include:

1. The name and post-office address of the permit holder.
2. The permit number.
3. A description of the extent of the use.
4. In the case of a municipal provider, a revised estimate of the reasonably anticipated future needs, a revised description of the service area, and a revised planning horizon, together with appropriate supporting documentation.
5. The source of water used.
6. Such other information as shall be required by the blank form furnished by the department.

Such written proof as may be required to be submitted by such user shall be upon forms furnished by the department of water resources....

2. Section 42-218a, Idaho Code, provides as follows:

A permit upon which the proof of beneficial use has not been submitted, or a request for extension of time has not been received on or before the date set for such proof, shall lapse and be of no further force nor effect. Notice of said lapsing shall be sent by the department to the applicant at the address of record by regular mail provided:

1. That within sixty (60) days after such notice of lapsing the department may, upon a showing of reasonable cause, reinstate the permit with the priority date advanced a time equal to the number of days that said showing is subsequent to the date set for proof;
2. That upon receipt of proof of beneficial use after sixty (60) days after such notice of lapsing, the director shall require sufficient evidence to be submitted by the permit holder to clearly establish the extent of beneficial use made during the time authorized by the permit and any extensions of time previously approved. Upon finding that beneficial use had occurred during the authorized period and upon a showing of reasonable cause for filing a late proof of beneficial use, the director may reinstate the permit with the priority date advanced to the day that proof of beneficial use was received;

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FINAL ORDER, DATED 9/25/02

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3. The original priority date of a lapsed permit shall not be reinstated except upon a showing of error or mistake of the department.
3. The permit holder did not timely submit the proof of beneficial use as required by Section 42-217, Idaho Code, and as required by a condition of approval on the permit.
4. The permit holder has not demonstrated that the Department made an error or mistake that would authorize the Department to reinstate the original priority date under the provisions of Section 42-218a, Idaho Code.
5. The purpose served by the Department's approval of the January 7, 1981 extension request was to provide additional time for the permit holder to develop the additional 120 acres authorized to be developed under permit no. 37-7460. If the Department had treated the extension request as a submission of proof of beneficial use under the permit, any opportunity for additional development under the permit would have been precluded. The Department cannot now characterize as error its action approving the extension request. To do so would have the effect of treating the January 7, 1981 filing as both an extension request and the submission of proof of beneficial use. The applicable statutes do not provide this option to either the permit holder or to the Department.
6. The Department is not authorized to reinstate the permit with the original date of priority and should reject the EXCEPTION TO PRELIMINARY ORDER and should deny the request for oral argument in the matter.

ORDER

IT IS HEREBY ORDERED, that Permit No. 37-7460 in the name of Frank and/or Josephine Astorquia is **REINSTATED** with the priority date advanced to July 3, 2002.

IT IS FURTHER ORDERED, that the request for oral argument before the Director in this matter is denied and the EXCEPTION TO PRELIMINARY ORDER filed by the permit holder is **REJECTED**.

Dated this 24th day of September, 2002.


KARL J. DREHER
Director

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State of Idaho

DEPARTMENT OF WATER RESOURCES

1341 Fillmore Street, Suite 200, Twin Falls ID 83301-3380

Phone: (208) 736-3033 FAX: (208) 736-3037

SOUTHERN REGION

DIRK KEMPTHORNE
Governor

KARL J. DREHER
Director

October 30, 2002

Beeman & Associates
ATTN: Annie Adams
409 W Jefferson
Boise, ID 83702-6049

RE: Snake River Basin Adjudication Claim 37-7460, Frank Astorquia

Dear Ms. Adams;

Per your request, enclosed is a copy of EVERY page in the claim file in the order that they appear in the file. There are 15 text pages or aerial photos, and one colored GIS map. Please remit a copy charge of \$2.00 to this office.

Regards,

James E. Stanton
Sr. Water Resource Agent