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DEPARTMENT OF
 WATER RESOURCES

Attorneys for Claimant Frank Astorquia

**BEFORE THE DEPARTMENT OF WATER RESOURCES
 OF THE STATE OF IDAHO**

IN THE MATTER OF ISSUANCE OF	)	
WATER RIGHT LICENSE NO. 37-7460	)	
IN THE NAME OF FRANK ASTORQUIA	)	ASTORQUIAS' PETITION
AND/OR JOSEPHINE ASTORQUIA	)	FOR RECONSIDERATION
_____	)	

COMES NOW Claimants, Frank Astorquia and Josephine Astorquia (Astorquias), by and through his attorney of record, Josephine P. Beeman of Beeman & Associates, P.C., and hereby petitions the Department to reconsider its *Preliminary Order* filed in this matter, dated May 23, 2012, and served on May 24, 2012.

GROUND FOR RECONSIDERATION

1. The findings of fact and procedural history do not include the data regarding the actions of IDWR in its review of Request for Extension of Time to File Beneficial use during the years the Swan Falls embargo affected pending water right permits in the area tributary to the Snake River above Swan Falls Dam.

2. The booster pump was installed prior to the time the Astorquias submitted a request for extension of time seeking five more years to develop the permitted beneficial use of water. Astorquia will submit data to confirm this timeframe.

3. The Astorquia provided a review of Basin 37 water rights and was in the process of completing the review of Basin 36 water rights at the time of hearing. At the hearing, the Astorquias offered to complete the review of water rights in Basins 34, 35, and 36. To the extent that the record as a "class of one" can be more conclusively established through the completion of this water right review, the Astorquias so request.

4. At the time of hearing, the evidence presented established that IDWR's action was arbitrary and capricious because every single water right that was reviewed in Basin 37 and a portion of Basin 36 established that the Astorquias were the only claimants who did not receive the full extent of the extension they requested. It is not the province of the hearing officer to speculate about the nature of the evidence before it. The evidence conclusively showed that the Astorquias were the only applicants for an extension who were granted less than the timeframe requested during the Swan Falls embargo.

5. The Astorquias' argument that the actions of IDWR were arbitrary or capricious is not time limited because the Astorquias had no knowledge of this arbitrary and capricious action until they investigated the records at IDWR during the Petition to the District Court for the Fourth Judicial District to review IDWR's Final Order of September 24, 2002 regarding the reinstatement of Permit 37-7460.

6. The Astorquias reserve the right to challenge this determination within the broader jurisdiction of the SRBA court, to the extent the SRBA court's jurisdiction is broader

than the Department's with respect to the elements of the water right 37-7460. See SRBA files and decisions for Magic West water rights 61-2248B and 61-7189.

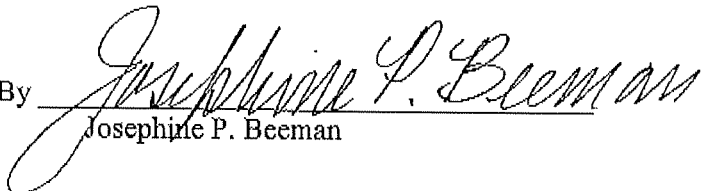
CONCLUSION

For the foregoing reasons, the Astorquias petition IDWR to reconsider the Preliminary Order of May 24, 2012, and enter an order allowing further development of the record for Basins 34, 35, and 36.

DATED this 7th day of June 2012.

BEEMAN & ASSOCIATES, P.C.

By


Josephine P. Beeman