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Attorney for Frank Astorquia

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

In the Matter of the Issuance of)
 License for Water Right 37-7460)
)
 _____)

REQUEST FOR HEARING

Pursuant to Idaho Code § 42-1701A(3) and Rule 730.02.e of the Rules of Practice & Procedure for the Idaho Department of Water Resources (IDWR), Claimants Frank Astorquia and/or Josephine Astorquia (Astorquias) request a hearing regarding Water Right License 37-7460.

The Preliminary Order for License 37-7460 was signed July 6, 2011. The Preliminary Order was served July 7, 2011, and received by counsel on July 8, 2011. Pursuant to Idaho Code 42-1701A(3) and IDWR Rule 730.02.e, the Astorquias, who have not previously been afforded an opportunity for a hearing, have until July 25, 2011 to file a written petition stating the grounds for contesting the preliminary order and requesting a hearing. The Astorquias are aware that a petition for reconsideration of the Preliminary order has a deadline of July 21, 2011.

This request for hearing is based on the legal and factual allegations in the following documents:

Exhibit A: Objection, dated November 14, 2007, filed with the SRBA court in Subcase 37-7460.

Exhibit B: Petition for Judicial Review, dated October 23, 2002, filed with Ada County District Court in *Astorquia v. IDWR*, CV OC 0208301 D.

Exhibit C: Statement of Issues, dated November 6, 2002, filed with Ada County District Court in *Astorquia v. IDWR*, CV OC 0208301 D.

DATED this 21st day of July 2011.

BEEMAN & ASSOCIATES, P.C.
Attorneys for Frank Astorquia

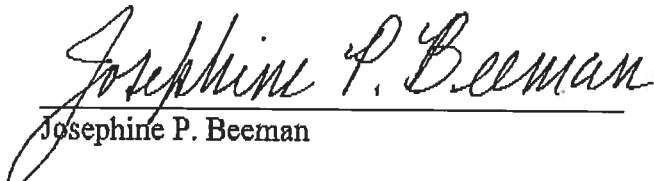
By Josephine P. Beeman
Josephine P. Beeman

CERTIFICATE OF SERVICE

I hereby certify that on the 21ST day of July 2011, I caused a true and correct copy of the foregoing **REQUEST FOR HEARING** to be deposited in an official U.S. Post Office receptacle with proper First Class postage affixed, addressed to the following:

Gary Spackman
Interim Director
Idaho Department of Water Resources
P. O. Box 83720
Boise, ID 83720-0098

Frank Astorquia
1725 E 1800 S
Gooding, ID 83330



Josephine P. Beeman

TIMELINE: Swan Falls and Astorquela 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 (Astorquela Permit 37-7460)	10-20-75	12-1-75
Permit approved (Astorquela 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 (Astorquela Permit 37-7460)	12-1-80	1-1-81
Request for Extension of Time to submit Proof of Beneficial Use (Astorquela Permit 37-7460)	1-7-81 ¹	11-18-80
Date of approval of Request for Extension of Time (Astorquela 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 (Astorquela Permit 37-7460)	1-1-84 (requested 12-1-85)	1-1-86 (requested 1-1-86)
Permit lapses (Astorquela 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 Astorquelas (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	

Z:\3028\Timeline with IPCo proceedings.doc

¹ Mr. Astorquela'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.

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NOV-14-2007 05:42P FROM:
NOV. 14. 2007 4:57PMTO: 12083310954
NOV. 14. 2007 P. 1DISTRICT COURT-SRBA
TWIN FALLS CO., IDAHO
FILED _____

2007 NOV 14 PM 4 36

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 Astorgula
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 Astorgula
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)

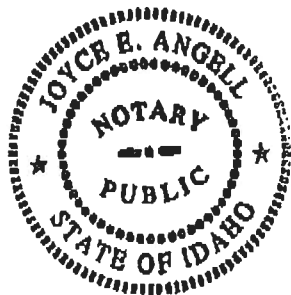
I, Josephine P. Beeman, being duly sworn, upon oath, depose and say:

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

Josephine P. Beeman

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



Joyce E. Angell

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:

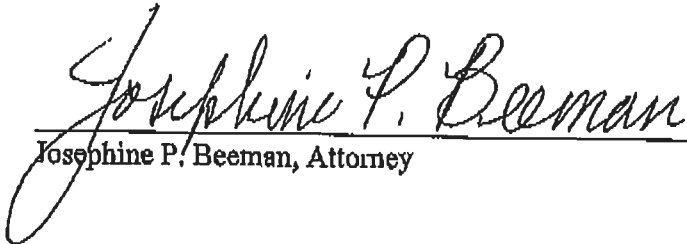
Name: Frank Astorquia
Address: 1725 E 1800 S
Gooding, ID 83330

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

COPY

OCT 23 2002

J. DAVID NAVARRO, Clerk
By ~~ELKNAFF~~

Josephine P. Beeman (Idaho State Bar #1806)
Dana H. Rose (Idaho State Bar #6638)
BEEMAN & ASSOCIATES, P.C.
409 West Jefferson Street
Boise, ID 83702
Telephone: (208) 331-0950
Facsimile: (208) 331-0954
Email: office@beemanlaw.com

Attorneys for Petitioner Frank Astorquia

**IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA**

FRANK ASTORQUIA,

Petitioner,

vs.

STATE OF IDAHO, DEPARTMENT
OF WATER RESOURCES, an agency
of the State of Idaho,

Respondent.

CV OC 02083010

**PETITION FOR REVIEW OF FINAL
ORDER IN THE MATTER OF LAPSED
PERMIT NO. 37-7460 IN THE NAME
OF FRANK AND/OR JOSEPHINE
ASTORQUIA**

COMES NOW Petitioner Frank Astorquia, by and through his attorneys,
Josephine P. Beeman and Dana H. Rose of the law firm of Beeman & Associates, P.C.,
and alleges as follows:

1. This action is a petition for judicial review of a final agency order
pursuant to the Idaho Administrative Procedure Act, Idaho Code §§ 67-5201 through 67-
5292.

2. Petitioner hereby petitions this Court for review of the Final Order in the
matter of the Lapsed Permit No. 37-7460 in the name of Frank and/or Josephine
Astorquia, by Respondent, State of Idaho, Department of Water Resources (hereinafter

Josephine P. Beeman (Idaho State Bar #1806)
 Dana H. Rose (Idaho State Bar #6638)
 BEEMAN & ASSOCIATES, P.C.
 409 West Jefferson Street
 Boise, ID 83702
 Telephone: (208) 331-0950
 Facsimile: (208) 331-0954
 Email: office@beemanlaw.com

Attorneys for Petitioner Frank Astorquia

INTERNAL RECORD OF RECEIPT

The document to which this stamp
 is affixed was received:

By

Date

Time

Name(s) of person(s) delivering
 document:

DANA H. ROSE
Dana H. Rose

**IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT
 OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA**

FRANK ASTORQUIA,

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2. Petitioner hereby petitions this Court for review of the Final Order in the matter of the Lapsed Permit No. 37-7460 in the name of Frank and/or Josephine Astorquia, by Respondent, State of Idaho, Department of Water Resources (hereinafter

referred to as the "Agency"), signed on September 24, 2002, and issued on September 25, 2002.

3. A true and correct copy of the Final Order is attached hereto as Exhibit A.
4. This Petition has been filed within twenty-eight days of the issuance of the final order. See Idaho Administrative Procedure Act, Idaho Code § 67-5273 and Idaho Administrative Procedure Act 37.01.01.791.02.
5. The Director of the Agency issued the Final Order in Ada County, Idaho.
6. There was no hearing or oral presentation before the Agency that was recorded or reported. No transcript is requested.
7. Statement of issues for judicial review shall be filed within fourteen (14) days, pursuant to I.R.C.P. 84(d)(5).
8. Pursuant to I.R.C.P. 84(d)(7)(C), Attorney for Petitioner hereby certifies that (1) the clerk of the Agency has been paid the estimated fee for preparation of the record, (2) service of this petition has been made upon the Agency pursuant to I.R.C.P. 84(b).

WHEREFORE, Petitioner prays that the Court:

- A. Grant this Petition and direct the Agency to remand the matter to the Agency for further proceedings;
- B. Award Petitioner his reasonable attorneys' fees and costs in pursuing this appeal pursuant to Idaho Code § 12-117, and other relevant authority; and
- C. For such other relief as this Court deems just and proper.

RESPECTFULLY SUBMITTED this 23rd day of October, 2002.

Beeman & Associates, P.C.
Attorneys for Frank Astorquia

By Josephine P. Beeman
Josephine P. Beeman

By Dana H. Rose
Dana H. Rose

CERTIFICATE OF MAILING

I hereby certify that on this 23rd day of October, 2002, the service of the Petition For Review of Final Order has been made upon the Agency rendering the decision.

Alan G. Lance
Attorney General
Statehouse Room 210
Boise, Idaho 83702
(2 copies)

☐ U.S. Mail, Postage Prepaid
☐ Courier Overnight Delivery
☒ Hand Delivered
☐ Via Facsimile

Josephine P. Beeman
Josephine P. Beeman

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

IN THE MATTER OF LAPSED PERMIT)	
NO. 37-7460 IN THE NAME OF)	FINAL ORDER
FRANK AND/OR JOSEPHINE)	
ASTORQUIA)	
_____)	

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

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

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 or 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;

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.

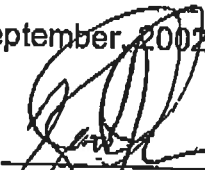
6. The Department is not authorized to reinstate the permit with the original date of priority and should reject the EXCEPTION TO PRELIMINARY ORDER and should deny the request for oral argument in the matter.

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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 25th day of September 2002, 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:

FRANK ASTORQUIA
JOSEPHINE ASTORQUIA
1735 EAST 1800 SOUTH
GOODING ID 83330

ALLEN MERRITT
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Deborah J. Gibson
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Administrative Assistant
Water Allocation Bureau

Responding To Final Orders Issued By The Idaho Department Of Water Resources

The accompanying order is a Final Order issued by the Idaho Department of Water Resources (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.
- (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 with the department 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 67-5243(3) 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 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 itself stay the effectiveness or enforcement of the order under appeal.

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 Boise, ID 83702
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 J. DAVID NAVARRO, Clerk
 By MARTINA MORGAN
 DEPUTY

Attorneys for Petitioner Frank Astorquia

**IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT
 OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA**

FRANK ASTORQUIA,	)	
	)	
Petitioner,	)	Case No. CV OC 0208301 D
	)	
vs.	)	
	)	
STATE OF IDAHO, DEPARTMENT OF	)	
WATER RESOURCES, an agency of the	)	
State of Idaho,	)	
	)	PETITIONER'S
Respondent.	)	STATEMENT OF ISSUES
	)	FOR JUDICIAL REVIEW
	)	IRCP 84(d)(5)

COMES NOW Petitioner Frank Astorquia, by and through his attorneys of record,
 Josephine P. Beeman and Dana H. Rose of the law firm of Beeman & Associates, P.C., and
 pursuant to Rule 84(d)(5), Idaho Rules of Civil Procedure, provides the following statement of
 issues:

1. Whether Idaho law requires only "substantial compliance" with Idaho Code
 § 42-217.
2. Whether Frank Astorquia substantially complied with the water right permitting
 requirements of Idaho Code § 42-217 by providing sufficient information to the Idaho
 Department of Water Resources ("IDWR") to establish that he had applied water to beneficial
 use on 200 acres of land under his water right permit no. 37-7460.

3. Whether IDWR erroneously or mistakenly caused the entire water right permit no. 37-7460 to lapse when it is undisputed from the records contained in the IDWR permit file that 200 acres, out of the 320 acres authorized under the permit, had in fact been developed during the authorized time of development.

4. Whether, pursuant to Idaho Code § 42-218a(3), the original November 26, 1975, priority date for 37-7460 should be reinstated for the 200 acres.

5. Whether IDWR's refusal to reinstate the original November 26, 1975, priority date for 37-7460 constitutes a violation of the Equal Protection Clauses of the United States Constitution, U.S. CONST. AMEND. XIV, § 1, and Idaho Constitution, ID CONST. ART. 1, § 2, because there is no rational basis for the difference in treatment of similarly situated water users.

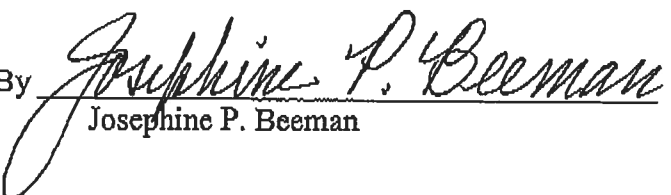
6. Whether IDWR's refusal to reinstate the original November 26, 1975, priority date for 37-7460 constitutes an unlawful taking without compensation under the United States Constitution, U.S. CONST. AMEND. V, and Idaho Constitution, ID CONST. ART. 1, § 14.

7. Whether IDWR's refusal to reinstate the original November 26, 1975, priority date for 37-7460 is arbitrary, capricious, or an abuse of discretion.

8. Whether the substantial rights of the Petitioner have been prejudiced.
Pursuant to Rule 84(d)(5), the Petitioner reserves the right to assert later discovered issues.

Dated this 6th day of November 2002.

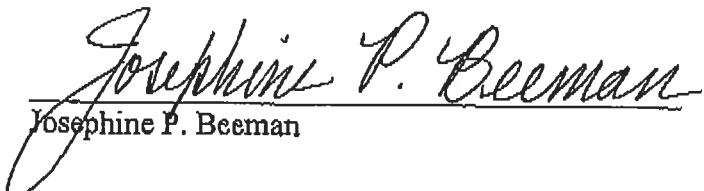
BEEMAN & ASSOCIATES, P.C.
Attorneys for Petitioner

By 
Josephine P. Beeman

CERTIFICATE OF SERVICE

I hereby certify that on the 6th day of November 2002, I caused to be served the foregoing PETITIONER'S STATEMENT OF ISSUES FOR JUDICIAL REVIEW: IRCP 84(d)(5) by U.S. Mail on:

Phillip J. Rassier
Deputy Attorney General
P. O. Box 83720
Boise, ID 83720-0098



Josephine P. Beeman