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Ada County Clerk

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DEPARTMENT OF WATER RESOURCES

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A.M. P.M.

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J. DAVID NAVARRO, Clerk
By SHARY ABBOTT
DEPUTY

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Attorneys for Petitioner Frank Astorquia

IN THE DISTIRCT 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.	Case No. CV OC 0208301 D ***ORDER APPROVING STIPULATION TO STAY PROCEEDINGS***

IT IS HEREBY ORDERED that, good cause have been shown, all further proceedings in this case are stayed pending final action on Petitioner's claim to water right no. 37-7460 before the Snake River Basin Adjudication District Court. The parties shall notify the Court upon completion of the proceedings before the SRBA District Court on water right claim no. 37-7460.

DATED this 23 day of August 2004.

D. DUFF McKEE
D. DUFF McKEE
JUDGE

Z:\3028\6320

THIS CASE IS ON APPEAL TO FOURTH DISTRICT

COURT, ADA COUNTY

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

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 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;

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
IDWR-SOUTHERN REGION
1341 FILLMORE ST STE 200
TWIN FALLS ID 83301-3380

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

Deborah J. Gibson

Deborah J. Gibson
Administrative Assistant
Water Allocation Bureau

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

ORDER GRANTING EXTENSION TO FILE BRIEF

This matter having come before the Idaho Department of Water Resources ("Department") as an EXCEPTION TO PRELIMINARY ORDER filed on July 25, 2002, by Frank and/or Josephine Astorquia ("permit holder"), the Department responds as follows:

On July 3, 2002, the permit holder filed a PETITION TO REINSTATE PERMIT AND ORIGINAL PRIORITY DATE together with the required license examination fee to the Department.

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

On July 25, 2002, the permit holder filed EXCEPTION TO PRELIMINARY ORDER with the Department and sought 30 days in which to file a brief in support of the exception.

ORDER

IT IS HEREBY ORDERED that the time in which the Department will accept a brief in support of the exception in the above captioned matter is extended thirty (30) days to **August 24, 2002**.

Dated this 25th day of July, 2002.

for KARL J. DREHER
Director

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 25th day of July, 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
IDWR-SOUTHERN REGION
1341 FILLMORE ST STE 200
TWIN FALLS ID 83301-3380

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

Deborah J. Gibson

Deborah J. Gibson
Administrative Assistant
Water Allocation Bureau

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	)	**PRELIMINARY ORDER REINSTATING PERMIT**

This matter having come before the Idaho Department of Water Resources ("Department"), the Department makes the following Findings of Fact, Conclusions of Law and 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 water from Groundwater to be diverted for irrigation of 320 acres within the NE1/2 of the NW ½ 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 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 and the required fee to the Department. The Department approved the request and reinstated the permit advancing the priority to November 26, 1975. A new proof due date was established for January 1, 1984.

MICROFILMED

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

6. On January 4, 1984, the Department sent the permit holder a lapse notice, since the Department had not received an acceptable proof or extension of time request.

7. On July 3, 2002, the permit holder submitted a Petition to Reinstate Permit and Original Priority Date with the required license examination fee to the Department. The permit holder 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.

CONCLUSIONS OF LAW

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

> 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;

2. The permit holder has provided sufficient information and reasonable cause for the Department to reinstate the permit by submitting an Affidavit substantiating the development and provided copies of the Well Driller's Report, a Pump Estimate and Order form from Layne Pumps dated May 17, 1976, and 1977 and 1987 aerial photos provided by Jill Moore, Program Assistant with Farm Service Agency, Gooding/Camas Office, in Gooding, Idaho.

3. The Department should reinstate the permit with the priority advanced to the date that proof and the license examination fee were submitted to the Department.

ORDER

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

MICROFILMED

Dated this 10th day of July, 2002.

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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 11th day of July, 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
IDWR-SOUTHERN REGION
1341 FILLMORE ST STE 200
TWIN FALLS ID 83301-3380

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

Deborah J. Gibson
Administrative Assistant
Water Allocation Bureau

MICROFILMED

RECEIVED
JUL - 9 2002
Department of Water Resources

FOR OFFICE USE ONLY
Amt. of Fee $: 175.00
Receipt No. 063128
Receipt By: D. Wood
Date Received: 7-3-02

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

PROOF OF BENEFICIAL USE

The Idaho Department of Water Resources considers this form a statement that the permit holder(s) has/have completed all development that will occur under this permit and that water has been applied according to the provisions of the permit for the beneficial use(s) described below. This form must be accompanied by a license examination fee, when necessary, or be accompanied by a completed field examination report prepared by a certified water right examiner.

1. Permit No. 37-7460 Telephone No. (208) 934-8178

2. Name of Permit Holder(s): Frank Asiorquia

3. Mailing Address: 1725 East 1800 South

City Gooding State ID Zip 83330

4. Source of Water: Groundwater If **GROUNDWATER** (well), Date Drilled: mo. 03 yr. 1976

Well Driller: Elaine Well Drilling Drilling Permit Number: Unknown

5. Use(s) (as authorized by the water right permit):

Domestic (No. of households): _____ Stockwater (No. and type of stock): _____

Irrigation (No. of acres): 200 Other: _____

6. Total rate of diversion and/or volume for which proof is submitted: 4.0 cfs **OR** _____ acre-feet

7. Measuring Device Requirement: **(refer to the approval conditions on your permit and respond accordingly)**
(This question is not optional. Please check either yes or no. Proofs returned not checked accordingly, will be considered incomplete)

Measuring Device: Is a measuring device required? Yes X or No _____
Has the measuring device been installed? ** Yes X or No _____

8. Fee Enclosed: $ 175 * (See Fee Schedule on back of the instructions for filing proof of beneficial use)

9. Person to contract to accompany the Department representative during field examination of the water system.

Name: Frank Asiorquia Telephone Number: (208) 934-8178

Address: 1725 East 1800 South

10. ***The information given on this form is my true statement of the extent to which the above numbered permit has been developed and water has been diverted. I agree to relinquish any undeveloped portion of the permit to the State of Idaho.***

Signature of permit holder: [signature] Date: 8-8-02
(include your title, if on behalf of company or organization)

* Fee paid with Petition to Reinstate Permit and Original Priority Date filed on July 3, 2002.

** There is ten feet of straight, unobstructed pipe for external measurement. If this is inadequate, an additional port will be installed.

PROOF OF BENEFICIAL USE

MICROFILMED

000072

PROOF OF BENEFICIAL USE, DATED 7/3/02

Phil.

BEEMAN & ASSOCIATES, P.C.

Counselors and Attorneys at Law
409 West Jefferson Street
Boise, Idaho 83702-6049

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office@beemanlaw.com

January 30, 2004

The Honorable D. Duff McKee
Senior District Court Judge
Ada County Courthouse
200 W. Front St.
Boise, ID 83702

Re: Astorquia v. Idaho Department of Water Resources
Case No. CV OC 0208301 D

Dear Judge McKee:

This letter is a brief status report on the above-referenced case, which has been stayed before the Court and remanded to the Idaho Department of Water Resources ("the Agency") for the taking of additional evidence pursuant to the Court's *Order Granting Joint Stipulation for Remand to Agency (Dec. 17, 2002).*

On September 2, 2003, the parties filed a *Joint Response to Notice of Intent to Dismiss*, which advised the Court that the Agency was still in the process of evaluating evidence and that the parties reasonably believed the Agency would be in a position to file an order with the Court not later than December 31, 2003. The Court subsequently entered an *Order* on September 22, 2003, indicating that it would "retain and review in January of 2004."

The Agency is still in the process of evaluating the information previously provided by Astorquia. Also, Astorquia is providing additional information to the Agency. Upon completion of its review of the evidence provided by Astorquia, the Agency will file with the Court an order setting out its additional findings and conclusions, if any.

Based on my discussions with Phil Rassier, counsel for the Agency, the parties reasonably believe that the Agency will be in a position to file an order with the Court by the end of July, 2004. As provided in Rule 500 of the IDWR Rules of Procedure, the

parties may also use an informal alternative dispute resolution process in reviewing the additional evidence. IDAPA 37.01.01.500. Thus, the parties respectfully request that this case not be dismissed and that this case continue to be stayed until July 31, 2004.

Respectfully,

BEEMAN & ASSOCIATES, P.C.

Josephine Beeman

Josephine P. Beeman

MJH:ja
cc: Stephanie Astorquia
Judd Astorquia
Phil Rassier, Esq.
Z:\3028\6046

IN THE DISTRICT COURT OF THE JUDICIAL DISTRICT

OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF

FRANK ASTORQUIA, Petitioner, vs. STATE OF IDAHO, DEPARTMENT OF WATER RESOURCES, an agency of the State of Idaho, Respondent.	)	Case No. CV-0C 0208301D Fee Category Exempt

---

AGENCY'S RECORD ON APPEAL

Appealed from the Department of Water Resources, of the State of Idaho

---

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Dana H. Rose
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BOISE, ID 83702

Attorneys for
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Phillip J. Rassier
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Attorney for
Respondent

TABLE OF CONTENTS
In the Matter of Lapsed Permit No. 37-7460 in the Name of
Frank and/or Josephine Astorquia

Chronological Table of Contents ii

Alphabetical Table of Contents v

CHRONOLOGICAL TABLE OF CONTENTS
In the Matter of Lapsed Permit No. 37-7460 in the Name of
Frank and/or Josephine Astorquia

VOLUME I

PETITION FOR REVIEW OF FINAL ORDER IN THE MATTER OF LAPSED PERMIT NO. 37-7460 IN THE NAME OF FRANK AND/OR JOSEPHINE ASTORQUIA, OCTOBER 23, 2002 1

LETTER RE: LASPED PERMIT NO. 37-7460, SEPTEMBER 25, 2002 11

CERTIFIED MAIL RECEIPTS, SEPTEMBER 25, 2002 15

FINAL ORDER, SEPTEMBER 25, 2002 16

LETTER RE: MEMORANDUM IN SUPPORT OF EXCEPTION TO PRELIMINARY ORDER, AUGUST 23, 2002 21

BRIEF IN SUPPORT OF EXCEPTION TO PRELIMINARY ORDER, AUGUST 23, 2002 22

LETTER RE: EXCEPTION TO PRELIMINARY ORDER, JULY 25, 2002 27

EXCEPTION TO PRELIMINARY ORDER, JULY 25, 2002 28

ORDER GRANTING EXTENSION TO FILE BRIEF, JULY 25, 2002 33

LETTER RE: REQUEST FOR EXTENSION OF TIME TO SUBMIT EXCEPTIONS TO PRELIMINARY ORDER, July 19, 2002 35

REQUEST FOR EXTENSION OF TIME TO SUBMIT EXCEPTIONS TO PRELIMINARY ORDER, JULY 19, 2002 36

NOTICE RE: MICROFICHE FILE, JULY 16, 2002 42

OLD FILE

CERTIFICATION, JUNE 6, 1984 43

LETTER TO ASTORQUIAS, JANUARY 4, 1984 44

LETTER TO ASTORQUIAS, OCTOBER 31, 1983 45

LETTER TO ASTORQUIAS, DECEMBER 4, 1980 46

LETTER TO ASTORQUIAS, SEPTEMBER 30, 1980 47

LETTER, MAY 19, 1980 48

LETTER TO FRANK ASTORQUIA, JANUARY 12, 1980 49

LETTER TO ASTORQUIAS, DECEMBER 9, 1975 50

NEWSPAPER NOTICE, OCTOBER 30, 1975 51

LETTER RE: APPLICATION FOR PERMIT,
OCTOBER 21, 1975 52

AFFIDAVIT OF PUBLICATION,
NOVEMBER 26, 1975 53

NOTICE OF APPLICATION FOR WATER
PERMIT, NOVEMBER 17, 1975 54

NOTICE RE: MICROFICHE, JULY 16, 2002 55

OLD FILE

REQUEST FOR EXTENSION OF TIME,
DECEMBER 1, 1985 56

ORDER, AUGUST 18, 1978 57

APPLICATION FOR PERMIT, DECEMBER 5, 1975 58

LETTER RE: ACKNOWLEDGEMENT OF PROOF,
JULY 11, 2002 62

CERTIFIED MAIL RECEIPTS, JULY 11, 2002 64

ANALYSIS SHEET FOR PROOF OF BENEFICIAL USE, JULY 10, 2002 65

PRELIMINARY ORDER REINSTATING PERMIT, JULY 10, 2002 66

RECEIPT, JULY 5, 2002 71

PROOF OF BENEFICIAL USE, JULY 03, 2002 72

PETITION TO REINSTATE PERMIT AND ORIGINAL PRIORITY DATE, JULY 3, 2002 73

AFFIDAVIT OF FRANK ASTORQUIA, JULY 3, 2002 81

ALPHABETICAL TABLE OF CONTENTS
In the Matter of Lapsed Permit No. 37-7460 in the Name of
Frank and/or Josephine Astorquia

AFFIDAVIT OF FRANK ASTORQUIA, JULY 3, 2002 81

AFFIDAVIT OF PUBLICATION, NOVEMBER 26, 1975 53

ANALYSIS SHEET FOR PROOF OF BENEFICIAL USE,
JULY 10, 2002 65

APPLICATION FOR PERMIT, DECEMBER 5, 1975 58

BRIEF IN SUPPORT OF EXCEPTION TO PRELIMINARY
ORDER, AUGUST 23, 2002 22

CERTIFICATION, JUNE 6, 1984 43

CERTIFIED MAIL RECEIPTS, JULY 11, 2002 64

CERTIFIED MAIL RECEIPTS, SEPTEMBER 25, 2002 15

EXCEPTION TO PRELIMINARY ORDER, JULY 25, 2002 28

FINAL ORDER, SEPTEMBER 25, 2002 16

LETTER RE: ACKNOWLEDGEMENT OF PROOF,
JULY 11, 2002 63

LETTER RE: APPLICATION FOR PERMIT, OCTOBER 21, 1975 52

LETTER RE: EXCEPTION TO PRELIMINARY ORDER,
JULY 25, 2002 27

LETTER RE: LAPSED PERMIT NO. 37-7460,
SEPTEMBER 25, 2002 11

LETTER RE: MEMORANDUM IN SUPPORT OF
EXCEPTION TO PRELIMINARY ORDER, AUGUST 23, 2002 21

LETTER RE: REQUEST FOR EXTENSION OF TIME TO
SUBMIT EXCEPTIONS TO PRELIMINARY ORDER,
JULY 19, 2002 35

LETTER TO ASTORQUIAS, JANUARY 4, 1984 44

LETTER TO ASTORQUIAS, OCTOBER 31, 1983 45

LETTER TO ASTORQUIAS, DECEMBER 4, 1980 46

LETTER TO ASTORQUIAS, DECEMBER 9, 1975 50

LETTER TO ASTORQUIAS, SEPTEMBER 30, 1980 47

LETTER, MAY 19, 1980 48

LETTER TO FRANK ASTORQUIA, JANUARY 12, 1980 49

NEWSPAPER NOTICE, OCTOBER 30, 1975 51

NOTICE OF APPLICATION FOR WATER PERMIT, NOVEMBER 17, 1975 54

NOTICE RE: MICROFICHE FILE, JULY 16, 2002 42

ORDER, AUGUST 18, 1978 57

PETITION FOR REVIEW OF FINAL ORDER IN THE MATTER OF LAPSED PERMIT NO. 37-7460 IN THE NAME OF FRANK AND/OR JOSEPHINE ASTORQUIA, OCTOBER 23, 2002 1

PETITION TO REINSTATE PERMIT AND ORIGINAL PRIORITY DATE, JULY 3, 2002 73

PRELIMINARY ORDER REINSTATING PERMIT, JULY 10, 2002 66

PROOF OF BENEFICIAL USE 72

RECEIPT, JULY 5, 2002 71

REQUEST FOR EXTENSION OF TIME, DECEMBER 1, 1985 56

REQUEST FOR EXTENSION OF TIME TO SUBMIT EXCEPTIONS TO PRELIMINARY ORDER, JULY 19, 2002 36

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OCT 2 3 2002
J. DAVID NAVARRO, Clerk
By
Deputy

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OCT 2 5 2002
Department of Water Resources

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 0208301D

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

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
_V_ 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 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

EXHIBIT
A

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 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;

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
IDWR-SOUTHERN REGION
1341 FILLMORE ST STE 200
TWIN FALLS ID 83301-3380

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

Deborah J. Gibson

Deborah J. Gibson
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.

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

DIRK KEMPTHORNE
Governor
KARL J. DREHER
Director

September 25, 2002

RE: In the matter of Lapsed Permit No. 37-7460 in the name of Frank and/or Josephine Astorquia

Dear Interested Parties:

The Department of Water Resources (department) has issued the accompanying order as a **"final order"** pursuant to section 67-5246 or 67-5247, Idaho Code. Enclosed is an informational sheet that explains how to respond to final orders.

If you have any questions, please call me at (208)327-7953.

Sincerely,

Deborah J. Gibson

Deborah J. Gibson
Administrative Assistant
Water Allocation Bureau

Enclosure

c: IDWR – Southern Region

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

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(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.

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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.

U.S. Postal Service
CERTIFIED MAIL RECEIPT
(Domestic Mail Only; No Insurance Coverage Provided)

7000 1670 0013 9129 7979

Postage	$
Certified Fee	
Return Receipt Fee (Endorsement Required)	
Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	$

9/25/02
Postmark Here
dlg

Sent To: John Marshall
Street, Apt. No.; or PO Box No.: PO Box 2720
City, State, ZIP+4: Boise Id. 83701-2720

PS Form 3800, May 2000 — See Reverse for Instructions

U.S. Postal Service
CERTIFIED MAIL RECEIPT
(Domestic Mail Only; No Insurance Coverage Provided)

7000 1670 0013 9129 7962

Postage	$
Certified Fee	
Return Receipt Fee (Endorsement Required)	
Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	$

9/25/02
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dlg

Sent To: Frank Astorquia
Street, Apt. No.; or PO Box No.: 1735 E 1800 S
City, State, ZIP+4: Gooding, Id. 83330

PS Form 3800, May 2000 — See Reverse for Instructions

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and [illegible] so complete item 4 if Restricted Delive[illegible] desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

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

37-7460

COMPLETE THIS SECTION ON DELIVERY

A. Received by *(Please Print Clear[illegible])* B. Date of Delivery
JOSH FRAZIER SEP 25 2002

C. Signature
X [signature] ☐ Agent ☐ Addressee

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type
☑ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
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4. Restricted Delivery? *(Extra Fee)* ☐ Yes

2. Article Number *(Copy from service label)*
7000167000139129797 9

PS Form 3811, July 1999 Domestic Return Receipt 102595-00-M-0952

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1. Article Addressed to:

FRANK ASTORQUIA
JOSEPHINE ASTORQUIA
1735 EAST 1800 SOUTH
GOODING ID 83330

37-7460

COMPLETE THIS SECTION ON DELIVERY

A. Receive[illegible] *(Please Print Clearly)* B. Date of Delivery
Frank Astorquia Jr 10/10/02

C. Signature
X [signature] ☐ Agent ☐ Addressee

D. Is delivery address different from item 1? ☑ Yes
If YES, enter delivery address below: ☐ No
1725 & 1800 S.

3. Service Type
☑ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? *(Extra Fee)* ☐ Yes

2. Article Number *(Copy from service label)*
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UNITED STATES POSTAL SERVICE

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Department of Water Resources

• Sender: Please print your name, address, and ZIP+4 in this box •

IDAHO DEPT OF WATER
RESOURCES
ATTN DEBORAH GIBSON
1301 N ORCHARD ST
BOISE ID 83706

43

UNITED STATES POSTAL SERVICE

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

• Sender: Please print your name, address, and ZIP+4 in this box •

IDAHO DEPT OF WATER
RESOURCES
ATTN DEBORAH GIBSON
1301 N ORCHARD ST
BOISE ID 83706

43

September 25, 2002

Department Orders Routing list:
(These documents are also available at http://www.idwr.state.id.us/info/pio/orders.htm)

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EASTERN - Ron Carlson / Skip Jones

WESTERN - Gary Spackman

SODA SPRINGS – Cindy Bird

LEWISTON – Greg Taylor

Legal Division - Phil Rassier

Adjudication Bureau - Dave Tuthill

Information Officer - Dick Larsen

Water Allocation Bureau - Glen Saxton

Water Distribution Section - Tim Luke / Steve Burrell / Dayna Ball / Bob Foster (Salmon)

Water Permits Section - Jeff Peppersack / Shelley Keen

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1. Article Addressed to:

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

37-7460

COMPLETE THIS SECTION ON DELIVERY

A. Received by (Please Print Clearly) JOSH FOLTES B. Date of Delivery SEP 25 2002

C. Signature X [signature] ☐ Agent ☐ Addressee

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type
☑ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

2. Article Number (Copy from service label)
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SENDER: COMPLETE THIS SECTION

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- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

FRANK ASTORQUIA
JOSEPHINE ASTORQUIA
1735 EAST 1800 SOUTH
GOODING ID 83330

37-7460

COMPLETE THIS SECTION ON DELIVERY

A. Received (Please Print Clearly) Frank Astorquia B. Date of Delivery 10/10/02

C. Signature X [signature] ☐ Agent ☐ Addressee

D. Is delivery address different from item 1? ☑ Yes
If YES, enter delivery address below: ☐ No
1725 & 1800 S.

3. Service Type
☑ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

2. Article Number (Copy from service label)
7000167000139129796 2

PS Form 3811, July 1999 Domestic Return Receipt 102595-00-M-0952

U.S. Postal Service
CERTIFIED MAIL RECEIPT
(Domestic Mail Only; No Insurance Coverage Provided)

7000 1670 0013 9129 7962

Postage	$
Certified Fee	
Return Receipt Fee (Endorsement Required)	
Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	$

9/25/02
Postmark Here
dlg

Sent To: Frank Astorquia
Street, Apt. No., or PO Box No.: 1735 E 1800 S
City, State, ZIP+4: Gooding, Id. 83330

PS Form 3800, May 2000 See Reverse for Instructions

U.S. Postal Service
CERTIFIED MAIL RECEIPT
(Domestic Mail Only; No Insurance Coverage Provided)

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Return Receipt Fee (Endorsement Required)	
Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	$

9/25/02
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dlg

Sent To: John Marshall
Street, Apt. No., or PO Box No.: PO Box 2720
City, State, ZIP+4: Boise Id. 83701-2720

PS Form 3800, May 2000 See Reverse for Instructions

CERTIFIED MAIL RECEIPTS, DATED 9/25/02

RECEIVED
AUG 2 3 2002
Department of Water Resources

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

Gary G. Allen
Christopher J. Beeson
Michael C. Creamer
Jeffrey A. De Voe
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

August 23, 2002

VIA HAND DELIVERY

Idaho Department of Water Resources
1301 N. Orchard
Boise, ID 83706

Re: In the Matter of Water Right Permit No. 37-7460
Our File: 6478-1

Dear Clerk:

Enclosed for filing please find Frank Astorquia's Memorandum in Support of Exception to Preliminary Order in the above-captioned matter.

If you have any questions, please call me.

Sincerely,

Tina N. Smith
Assistant to John M. Marshall

Enclosures
cc: Stephanie J. Astorquia
S:\Clients\6478\1\corr\2002-8-23 IDWR clerk.doc

LETTER RE MEMORANDUM IN SUPPORT OF EXCEPTION TO PRELIMINARY ORDER, DATED 08/23/02

RECEIVED
AUG 2 3 2002
Department of Water Resources

Michael C. Creamer ISB #4030
John M. Marshall ISB #5628
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\Brief on Exception\2002-08-23 Exception Brief.doc

Attorneys for Frank Astorquia

BEFORE THE STATE OF IDAHO DEPARTMENT OF WATER RESOURCES

IN THE MATTER OF WATER RIGHT PERMIT NUMBER 37-7460	**FRANK ASTORQUIA'S MEMORANDUM IN SUPPORT OF EXCEPTION TO PRELIMINARY ORDER**

INTRODUCTION

On July 3, 2002, Frank Astorquia filed a Petition To Reinstate Permit And Original Priority Date ("Petition"). The Petition asked the Idaho Department of Water Resources ("Department") to take two actions with regard to permit 37-7460: (1) reinstate the permit, which the Department had lapsed on January 4, 1984, and (2) restore the permit's November 26, 1975 priority date. On July 10, 2002, the Department issued a Preliminary Order granting the Petition's request to reinstate permit 37-7460 but effectively denying the Petition's request to reinstate the original priority by imposing a July 3, 2002 priority date. Mr. Astorquia challenges the Department's decision to advance permit 37-7460's priority to 2002.

FACTUAL BACKGROUND

On December 5, 1975, the Department approved Mr. Astorquia's Application for Permit No. 37-7460 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, Township 6 South, Range 14 East, Gooding County, B.M. Between March and October 1976, Mr. Astorquia drilled a well and began irrigating 200 acres

under the permit. Mr. Astorquia has irrigated these 200 acres every year since he originally developed them in 1976.

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 ("Request for Extension"). A copy is attached as Exhibit E to the Affidavit of Frank Astorquia ("Astorquia Aff.") filed July 3, 2002. In this Request for Extension, Mr. Astorquia stated he had developed 200 acres under permit 37-7460 but had not yet developed the other 120 acres approved by the permit. By filing this Request for Extension confirming development of 200 acres, Mr. Astorquia believed he had complied with the requirement for submitting proof of beneficial use for the 200 developed acres and was requesting an extension of time only for the 120 undeveloped acres. Astorquia Aff. at ¶6.

The Department granted the Request for Extension 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 deadline to file proof of beneficial use 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 neither attempted to prove beneficial use for the remaining 120 acres nor sought any further extension of time to develop the 120 acres. Mr. Astorquia believed the lapse notice he received applied only to the 120 undeveloped acres. Mr. Astorquia further believed that he adequately notified the Department of his beneficial use on the 200 acres he had developed and continually irrigated since 1976. Astorquia Aff. at ¶ 7. Mr. Astorquia

only recently learned of the Department's position that the entire permit had lapsed, including the 200 acres he developed in 1976. Astorquia Aff. at ¶ 8.

ARGUMENT

1. Mr. Astorquia submitted proof of beneficial use of 200 acres under permit 37-7460 in 1981.

Idaho Code § 42-217 governs the requirements for proving beneficial use under a permit. 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." Mr. Astorquia complied in his Request for Extension, stating, "[w]ell has been dug, and 200 acres are being irrigated." The Request for Extension likewise includes all other information required by Idaho Code § 42-217. Accordingly, Mr. Astorquia substantially complied with Idaho Code § 42-217.

2. The Department erred when it lapsed permit 37-7460. Consequently, the priority date for permit 37-7460 should not be advanced to 2002.

Idaho Code § 42-218a(3) provides the priority date for a reinstated permit should not be advanced if there is an "error or mistake" by the Department. In this case the Department erred by failing to recognize that Mr. Astorquia had submitted to the Department all the required information for proof of beneficial use in his 1981 Request for Extension. Indeed, there is no dispute that Mr. Astorquia developed 200 acres under permit 37-7460 in 1976 and notified the Department of this development in the 1981 Request for Extension.

The Preliminary Order recognizes that Mr. Astorquia did in fact develop the 200 acres under permit 37-7460 as indicated in the Request for Extension. Preliminary Order, Finding No. 7. Despite this, the Preliminary Order advances the priority date of permit 37-7460 to 2002 on the stated basis that proof of beneficial use was not filed until July 3, 2002. As discussed in the

previous section, however, proof of beneficial use was filed in 1981 with the Request for Extension. Consequently, the Department erred by lapsing permit 37-7460 in 1984 and the priority date therefore should not be advanced.

Mr. Astorquia now understands the Department's position is that he was supposed to file another statement of beneficial use on January 1, 1984, restating the fact that he had developed 200 acres under permit 37-7460. However, at that time, Mr. Astorquia reasonably believed he only needed to file a new proof of beneficial use if he had developed additional acreage over the 200 acres he had already developed and notified the Department of. Advancing the priority of permit 37-7460 on the basis that Mr. Astorquia did not file the right form at the right time would inappropriately shift the focus of Idaho's water appropriation laws away from beneficial use and on to technical compliance under a rigid forms practice. Instead, the focus should be on substantial compliance with Idaho Code § 42-217's requirement that the permit holder submit a statement indicating the extent of beneficial use—a requirement Mr. Astorquia met.

For all the reasons stated herein, Mr. Astorquia respectfully requests that the Department recognize the original November 26, 1975 priority date for permit 37-7460.

Pursuant to Procedure Rule 740(b), Mr. Astorquia requests oral argument on his Exception.

Submitted this 23rd day of August 2002

GIVENS PURSLEY LLP

John M. Marshall
Attorneys for Frank Astorquia

CERTIFICATE OF SERVICE

I hereby certify that on this 23rd day of August, 2002, I caused to be served a true and correct copy of the foregoing 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 ___ Fax _x_ By Hand

Tina Smith

RECEIVED
JUL 25 2002
Department of Water Resources

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

Gary G. Allen
Christopher J. Beeson
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Jeffrey A. De Voe
Emily MacMaster Durkee
Thomas E. Dvorak
Roy Lewis Eiguren
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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 25, 2002

VIA HAND DELIVERY

Debbie Gibson
Idaho Department of Water Resources
1301 N. Orchard
Boise, ID 83706

Re: In the Matter of Water Right Permit No. 37-7460
Our File: 6478-1

Dear Debbie:

Enclosed for filing please find an Exception to Preliminary Order and a proposed Order Accepting Exception to Preliminary Order. These filings follow a Request for Extension of Time to Submit Exceptions we filed last week. However, after discussions with Department staff, it was determined that a more efficient course of action would be to file an exception and then confirm that additional time is allowed to file a supporting brief. Therefore, we submit the attached documents.

The purpose of the proposed Order is to confirm that the Exception is timely filed and that we do in fact have the extra time we need to file a supporting brief. Because today is the deadline for filing exceptions, I would greatly appreciate if the Director or his designee could sign and return the Order to us today.

If you have any questions, please call me.

Sincerely,

John M. Marshall

Enclosures
cc: Stephanie J. Astorquia
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LETTER RE: EXCEPTION TO PRELIMINARY ORDER, DATED 7/25/02

RECEIVED
JUL 25 2002
Department of Water Resources

Michael C. Creamer ISB #4030
John M. Marshall ISB #5628
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\Final Exception To Preliminary Order.doc

Attorneys for Frank Astorquia

BEFORE THE STATE OF IDAHO DEPARTMENT OF WATER RESOURCES

IN THE MATTER OF WATER RIGHT PERMIT NUMBER 37-7460

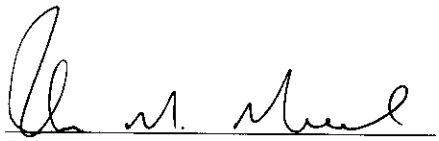
EXCEPTION TO PRELIMINARY ORDER

Pursuant to Idaho Code § 67-5245(3) and Procedure Rule 730(02), Frank Astorquia hereby files this Exception and petitions the Director for review of a Preliminary Order issued on July 10, 2002 in the matter of Permit Number 37-7460. The Preliminary Order resulted from a Petition To Reinstate Permit And Original Priority Date filed by Mr. Astorquia on July 3, 2002. The Preliminary Order granted the request to reinstate Permit Number 37-7460. However, the Preliminary Order did not address Mr. Astorquia's request to reinstate the original priority date as delineated in Mr. Astorquia's Petition to Reinstate Permit And Original Priority Date filed on July 3, 2002.

The basis for this Exception is that the Idaho Department of Water Resources has not addressed Mr. Astorquia's request to reinstate the original priority date as filed on July 3, 2002. In accordance with Idaho Code § 67-5245(5) and Procedure Rule 730(02), Mr. Astorquia will file a brief in support of this Exception. Mr. Astorquia will file a supporting brief within 30 days.

Respectfully submitted this 25th day of July, 2002

GIVENS PURSLEY LLP



John M. Marshall

CERTIFICATE OF SERVICE

I hereby certify that on this 25th day of July, 2002, I caused to be served a true and correct copy of the foregoing 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 __ Fax _x_ By Hand

Tina Smith

RECEIVED
JUL 25 2002
Department of Water Resources

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\Final Order Allowing Brief.doc

Attorneys for Frank Astorquia

BEFORE THE STATE OF IDAHO DEPARTMENT OF WATER RESOURCES

IN THE MATTER OF WATER RIGHT PERMIT NUMBER 37-7460

ORDER ACCEPTING EXCEPTION TO PRELIMINARY ORDER

On July 25, 2002 Frank Astorquia filed an Exception to Preliminary Order in the matter of Permit Number 37-7460. The Exception states that in accordance with Idaho Code § 67-5245(5) and Procedure Rule 730(02), a brief supporting Frank Astorquia's request as filed in his Petition To Reinstate Permit And Reinstate Original Priority Date on July 3, 2002 will be filed within thirty days of the filing of the Exception.

It is hereby ORDERED that Frank Astorquia's Exception To Preliminary Order filed on July 25, 2002 is timely filed and accepted for consideration by the Director. Frank Astorquia may file a brief supporting the Exception for consideration by the Director within 30 days of this Order.

Dated this ____ day of July, 2002

Karl J. Dreher
Director, Idaho Department of Water Resources

CERTIFICATE OF SERVICE

I hereby certify that on this _____ day of July, 2002, I caused to be served a true and correct copy of the foregoing by sending it US mail, and addressed to the following:

Mike C. Creamer, Esq.
John M. Marshall, Esq.
GIVENS PURSLEY LLP
P.O. Box 2720
Boise, ID 83701

_____

GIVENS PURSLEY LLP

LAW OFFICES
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PO Box 2720, Boise, Idaho 83701
TELEPHONE: 208 388-1200
FACSIMILE: 208 388-1300
WEBSITE: www.givenspursley.com

RECEIVED
JUL 19 2002
Department of Water Resources

Gary G. Allen
Christopher J. Beeson
Michael C. Creamer
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Emily MacMaster Durkee
Thomas E. Dvorak
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L. Edward Miller
Patrick J. Miller
Judson B. Montgomery
Angela K. Nelson
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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 19, 2002

VIA HAND DELIVERY

Idaho Department of Water Resources
1301 N. Orchard
Boise, ID 83706

Re: In the Matter of Water Right Permit No. 37-7460
Our File: 6478-1

Dear Clerk:

Enclosed for filing please find Request for Extension of Time to Submit Exceptions to Preliminary Order, and proposed Order granting the extension in the above-captioned matter.

If you have any questions, please call me.

Sincerely,

Tina N. Smith
Assistant to John M. Marshall

Enclosures
cc: Stephanie J. Astorquia
S:\Clients\6478\1\corr\2002-7-19 IDWR clerk.doc

LETTER RE: REQUEST FOR EXTENSION OF TIME TO SUBMIT EXCEPTIONS TO PRELIMINARY ORDER, DATED 7/19/02

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\extension of time.doc

Attorneys for Frank Astorquia

BEFORE THE STATE OF IDAHO DEPARTMENT OF WATER RESOURCES

IN THE MATTER OF WATER RIGHT PERMIT NUMBER 37-7460

REQUEST FOR EXTENSION OF TIME TO SUBMIT EXCEPTIONS TO PRELIMINARY ORDER

This is a request by Frank Astorquia ("Astorquia") for an extension of time to submit exceptions to the Departments Preliminary Order Reinstating Permit No. 37-7460. Astorquia requests the Department grant him an additional seven days to submit his Exceptions to the Preliminary Order entered by the Director in the above captioned matter.

According to the Explanatory Information accompanying the Preliminary Order, Exceptions are due on Wednesday, July 24, 2002. However, counsel for Astorquia has not had time to prepare Exceptions due to preparing for a Federal trial and having to go out of town unexpectedly.

Therefore, Astorquia respectfully requests that the Director grant him as additional seven days to submit his Exceptions to the Preliminary Order Reinstating Permit, making such Exceptions due on July 31, 2002.

Respectfully submitted this 19th day of July, 2002

GIVENS PURSLEY LLP

John M. Marshall

CERTIFICATE OF SERVICE

I hereby certify that on this 19th day of July, 2002, I caused to be served a true and correct copy of the foregoing 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 __ Fax _x_ By Hand

Tina Smith

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\Order extension of time.doc

Attorneys for Frank Astorquia

BEFORE THE STATE OF IDAHO DEPARTMENT OF WATER RESOURCES

IN THE MATTER OF WATER RIGHT PERMIT NUMBER 37-7460

ORDER GRANTING EXTENSION OF TIME TO SUBMIT EXCEPTIONS TO PRELIMINARY ORDER

Pursuant to the Request for Extension of Time to Submit Exceptions to Preliminary Order filed by Frank Astorquia in the above captioned case, it is hereby ORDERED that such request is granted, and that such Exceptions shall be due on July 31, 2002.

Dated this ____ day of July, 2002

Karl J. Dreher

CERTIFICATE OF SERVICE

I hereby certify that on this _____ day of July, 2002, I caused to be served a true and correct copy of the foregoing by sending it US mail, and addressed to the following:

Mike C. Creamer, Esq.
John M. Marshall, Esq.
GIVENS PURSLEY LLP
P.O. Box 2720
Boise, ID 83701

_____

CERTIFICATE OF SERVICE

I hereby certify that on this _____ day of July, 2002, I caused to be served a true and correct copy of the foregoing by sending it US mail, and addressed to the following:

Mike C. Creamer, Esq.
John M. Marshall, Esq.
GIVENS PURSLEY LLP
P.O. Box 2720
Boise, ID 83701

_____

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

DIRK KEMPTHORNE
Governor
KARL J. DREHER
Director

July 11, 2002

FRANK ASTORQUIA
JOSEPHINE ASTORQUIA
1735 EAST 1800 SOUTH
GOODING ID 83330

PROOF ACKNOWLEDGEMENT LETTER

RE: PERMIT NO. 37-07460

Dear Permit Holder:

The department acknowledges receipt of documentation you provided to the department together with evidence of development of your permit. Enclosed is a preliminary order that reinstates this permit, since proof and the license examination fee were submitted more than 60 days after the lapse notice was issued. Please note that the priority date has been advanced to **July 3, 2002**, as provided in Section 42-218a(2), Idaho Code, which was the date you filed proof of beneficial use with the department.

The Department of Water Resources (the department) has issued the enclosed preliminary order. Pursuant to Section 67-5243, Idaho Code, it can and will become a final order without further action of the Department unless a party petitions for reconsideration or files an exception and/or brief as described in the enclosed information sheet.

The next step in the process of developing a water right is for the department to conduct a field examination to determine and confirm the use being made of the water. If you have questions concerning the field examination, please contact the **Southern** Regional Office of the department in Twin Falls at (208) 736-3033.

Additionally, please be advised that Section 42-248, Idaho Code, requires you or the owner of this water right to maintain current ownership and address records on file with the

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LETTER RE: ACKNOWLEDGEMENT OF PROOF, DATED 7/11/02

department. Forms to file a change of ownership of a water right and/or a change in the address of the water right owner are available from any department office.

Sincerely,

Deborah J. Gibson

Deborah J. Gibson
Administrative Assistant
Water Allocation Bureau

Enclosure
c: IDWR - Region
John Marshall, Givens Pursley

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JUL 15 2002

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

[illegible]so wish to receive the [illegible]owing services (for an extra fee):
1. ☐ Addressee's Address
2. ☐ Restricted Delivery

Consult postmaster for fee.

Is your RETURN ADDRESS completed on the reverse[illegible]e?

3. Article Addressed to:

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

37-7460

4a. Article Number
7000167000139129844O

4b. Service Type
☐ Registered ☑ Certified
☐ Express Mail ☐ Insured
☐ Return Receipt for Merchandise ☐ COD

7. Date of Delivery
7/12/02

5. Received By: *(Print Name)*

8. Addressee's Address *(Only if requested and fee is paid)*
MICROFILMED
JUL 16 2002

6. Signature: *(Addressee or Agent)*
X

PS Form **3811**, December 1994 Domestic Return Receipt

Thank you for using Return Receipt Service.

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

I als[illegible]h to receive the follo[illegible] services (for an extra fee):
1. ☐ Addressee's Address
2. ☐ Restricted Delivery

Consult postmaster for fee.

Is your RETURN ADDRESS completed on the reverse side?

3. Article Addressed to:

FRANK ASTORQUIA
JOSEPHINE ASTORQUIA
1735 EAST 1800 SOUTH
GOODING ID 83330

37-7460

4a. Article Number
7000167000139129845 7

4b. Service Type
☐ Registered ☑ Certified
☐ Express Mail ☐ Insured
☐ Return Receipt for Merchandise ☐ COD

7. Date of Delivery
MICROFILMED 7/12/02

5. Received By: *(Print Name)*
Frank Astorquia

8. Addressee's Address *(Only if requested and fee is paid)*
JUL 16 2002

6. Signature: *(Addressee or Agent)*
X Frank Astorquia

PS Form **3811**, December 1994 Domestic Return Receipt

Thank you for using Return Receipt Service.

U.S. Postal Service
CERTIFIED MAIL RECEIPT
(Domestic Mail Only; No Insurance Coverage Provided)

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Postage	$
Certified Fee	JUL 16 2002
Return Receipt Fee (Endorsement Required)	
Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	$

7/11/02
Postmark Here

Sent To: Frank Astorquia
Street, Apt. No., or PO Box No. 1735 East 1800 South
City, State, ZIP+4 Gooding Id. 83330

PS Form 3800, May 2000 See Reverse for Instructions

7000 1670 0013 9129 8457

U.S. Postal Service
CERTIFIED MAIL RECEIPT
(Domestic Mail Only; No Insurance Coverage Provided)

Postage	$
Certified Fee	
Return Receipt Fee (Endorsement Required)	MICROFILMED
Restricted Delivery Fee (Endorsement Required)	JUL 16 2002
Total Postage & Fees	$

7/11/02
Postmark Here

Sent To: John Marshall
Street, Apt. No., or PO Box No. PO Box 2720
City, State, ZIP+4 Boise Id. 83701-2720

PS Form 3800, May 2000 See Reverse for Instructio

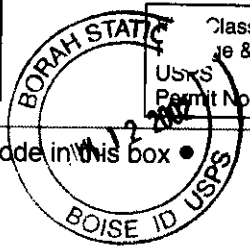
7000 1670 0013 9129 8440

000064

CERTIFIED MAIL RECEIPT, DATED 7/11/02

UNITED STATES POSTAL S :E





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

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

IDAHO DEPT OF WATER
RESOURCES
ATTN DEBORAH GIBSON
1301 N ORCHARD ST
BOISE ID 83706

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JUL 16 2002

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JUL 15 2002

Department of Water Resources

43



UNITED STATES POS ERVICE



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

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

IDAHO DEPT OF WATER
RESOURCES
ATTN DEBORAH GIBSON
1301 N ORCHARD ST
BOISE ID 83706

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JUL 16 2002

RECEIVED
JUL 17 2002

Department of Water Resources

EXPLANATORY INFORMATION TO ACCOMPANY A PRELIMINARY ORDER

(Required by Rule of Procedure 730.02)

The accompanying order or approved document is a "**Preliminary Order**" issued by the Department of Water Resources (Department) pursuant to section 67-5243, Idaho Code. It can and will become a final order without further action of the Department unless a party petitions for reconsideration, files an exception and brief, or requests a hearing as further described below:

PETITION FOR RECONSIDERATION

Any party may file a petition for reconsideration of a preliminary 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.

EXCEPTIONS AND BRIEFS

Within fourteen (14) days after a) the service date of a preliminary order, b) the service date of a denial of a petition for reconsideration from this preliminary order, or c) the failure within twenty-one (21) days to grant or deny a petition for reconsideration from this preliminary order, any party may in writing support or take exceptions to any part of a preliminary order and may file briefs in support of the party's position on any issue in the proceeding with the Director. Otherwise, this preliminary order will become a final order of the agency.

REQUEST FOR HEARING

Unless a right to a hearing before the Department or the Water Resource Board is otherwise provided by statute, any person aggrieved by any final decision, determination, order or action of the Director of the Department and who has not previously been afforded an opportunity for a hearing on the matter may request a hearing pursuant to section 42-1701A(3), Idaho Code. A written petition contesting the action of the Director and requesting a hearing shall be filed within fifteen (15) days after receipt of the denial or conditional approval.

ORAL ARGUMENT

If the Director grants a petition to review the preliminary order, the Director shall allow all parties an opportunity to file briefs in support of or taking exceptions to the preliminary order and may schedule oral argument in the matter before issuing a final order. If oral arguments are to be heard, the Director will within a reasonable time period notify each party of the place, date and hour for the argument of the case. Unless the Director orders otherwise, all oral arguments will be heard in Boise, Idaho.

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CERTIFICATE OF SERVICE

All exceptions, briefs, requests for oral argument and any other matters filed with the Director in connection with the preliminary order shall be served on all other parties to the proceedings in accordance with IDAPA Rules 37.01.01302 and 37.01.01303 (Rules of Procedure 302 and 303).

FINAL ORDER

The Director will issue a final order within fifty-six (56) days of receipt of the written briefs, oral argument or response to briefs, whichever is later, unless waived by the parties or for good cause shown. The Director may remand the matter for further evidentiary hearings if further factual development of the record is necessary before issuing a final order. The department will serve a copy of the final order on all parties of record.

Section 67-5246(5), Idaho Code, provides as follows:

> 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.

APPEAL OF FINAL ORDER TO DISTRICT COURT

Pursuant to sections 67-5270 and 67-5272, Idaho Code, if this preliminary order becomes final, any party aggrieved by the final order or orders previously issued in this case may appeal the final order and all previously issued orders in this case 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 of this preliminary order becoming final. 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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RECEIPT, DATED 7/5/02

Receipt Details for ID C063128

Status	Adjustment Type	Version
		1

General Information:

Date Received	Date Deposited	Region	Total Amount	Payment Type
7/3/2002 4:31:12 PM	7/5/2002 1:13:12 PM	STATE	$175.00	Check
Payer	GIVENS PURSLEY			

Account Information:

Check #	Account #	Credit Card Name	Authorization #
13024			
Card Expiration Date	**Credit Card Transaction #**		

Comment WATER RIGHT 37-7460

0000271 MICROFILMED

Fee Detail:

Amount	Description	PCA	Fund	Fund Detail	Subsidiary	Object
$175.00	BENEFICIAL USE	56104	0229	21		1155

Refund(s):

Amount	Payee	Date	Document Number

CO63128

RECEIVED
JUL - 3 2002
Department of Water Resources

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

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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

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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.

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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.

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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

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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

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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.

CONLUSION

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

John M. Marshall

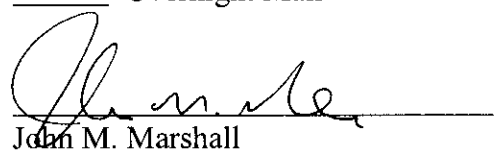
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CERTIFICATE OF SERVICE

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
__X__ Hand Delivery
_____ Overnight Mail



John M. Marshall

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RECEIVED
JUL 3 2002
Department of Water Resources

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.

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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.

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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.

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Dated this 3 day of July, 2002

Frank Astorquia

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

(SEAL)

ROGER K. MAXWELL
Notary Public
State of Idaho

Notary Public
Residing at Twin Falls, ID
My Commission Expires 10/19/05

Application No. 37-7460

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

APPLICATION FOR PERMIT

APPROVED

To Appropriate the Public Waters of the State of Idaho

(TYPE OR PRINT IN INK)

1. Name of applicant FRANK &/or JOSEPHINE ASTORQUIA 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 Lot 2 NW ¼ of NE ¼ 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 _____ ¼

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

4. Water will be used for the following purposes:

   Amount 6.40cfs (cfs or acre-feet per annum) for Irrigation purpose from April 1 to Nov. 1 (both dates inclusive)

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

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

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: _____ ¼ of _____ ¼ 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: _____

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JUL 16 2002 000085

EXHIBIT

tabbies A

AFFIDAVIT OF FRANK ASTORQUIA, DATED 7/3/02

b. If water is for irrigation, indicate acreage in each subdivision in the following section:

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

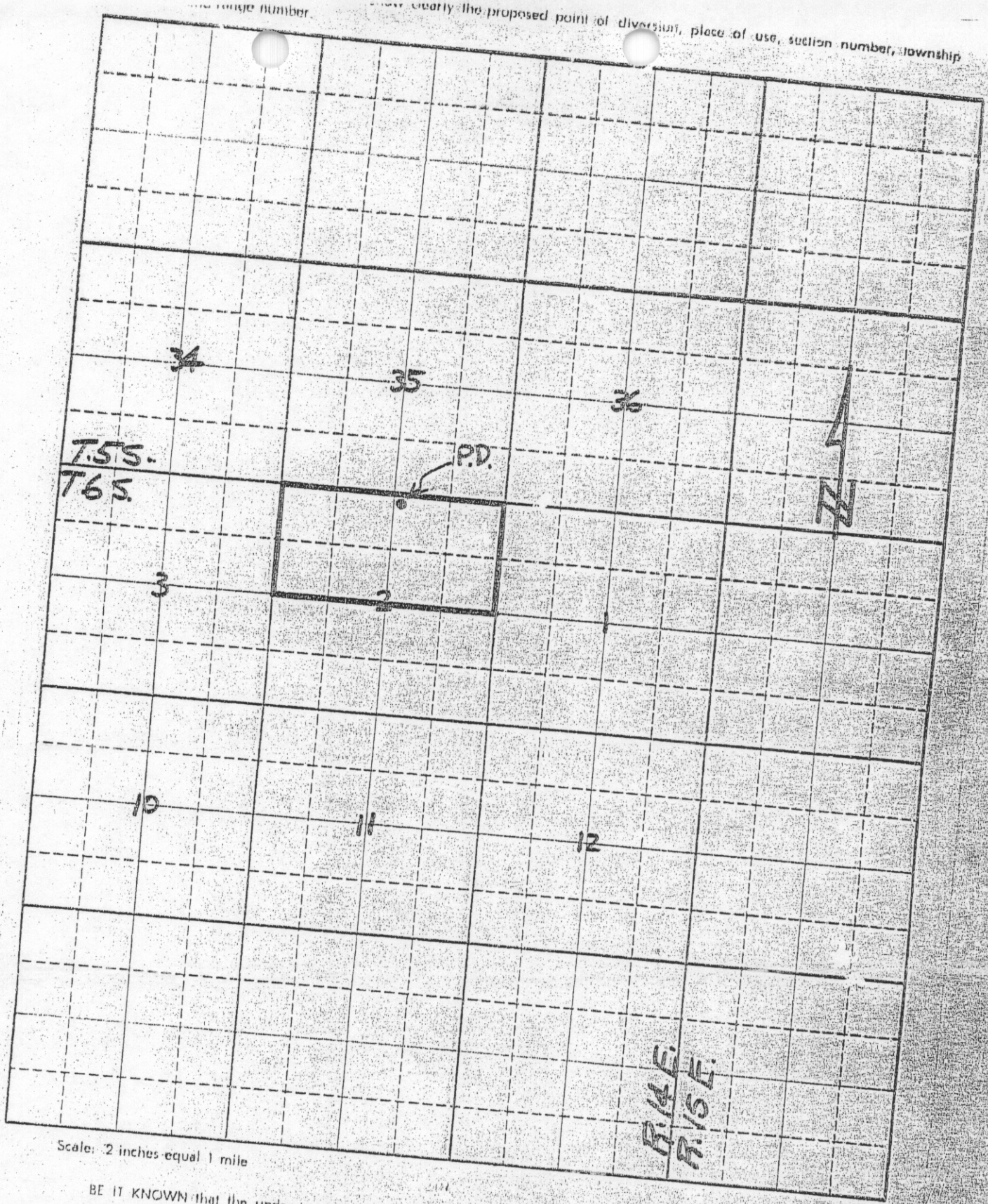
10. Remarks

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JUL 16 2002

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AFFIDAVIT OF FRANK ASTORQUIA, DATED 7/3/02

...range number. ...clearly the proposed point of diversion, place of use, section number, township



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.

(Applicant)

MICROFILMED
OCT 16 2002

000087

AFFIDAVIT OF FRANK ASTORQUIA, DATED 7/3/02

Proposed Priority 10-20-1975

Received by ADM Date 10-20-75 Time 11:40

Preliminary check by [illegible] Fee $ 85.00

Receipted by AC Date 10-20-75

Publication prepared by CC Date 10-21-75

Published in Gooding County Leader

Publication dates 10-30 & 11-6-75

Publication approved [illegible] Date 12-1-75

Priority reduced to _____ Reason _____

Protests filed by: _____

Copies of protests forwarded by _____

Hearing held by _____ Date _____

Recommended for (approval) denial by [illegible]

4.1723

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, 1980.

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 1975.

Director

MICR[illegible]

JUL 16 2002

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AFFIDAVIT OF FRANK ASTORQUIA, DATED 7/3/02

USE TYPEWRITER OR BALL POINT PEN

Department of Water Resources

RECEIVED

WELL DRILLER'S REPORT

State law requires that this report be filed with the Director, Department of Water Resources within 30 days after the completion or abandonment of the well. 1978

Department of Water Resources
Southern District Office

1. WELL OWNER

Name Frank K Astorquia

Address Gooding

Owner's Permit No.

2. NATURE OF WORK

☒ New well ☐ Deepened ☐ Replacement

☐ Abandoned (describe method of abandoning)

3. PROPOSED USE

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

☐ Municipal ☐ Industrial ☐ Stock ☐ Waste Disposal or Injection

4. METHOD DRILLED

☒ Cable ☐ Rotary ☐ Dug ☐ Other

5. WELL CONSTRUCTION

Diameter of hole 20" inches Total depth 320" feet

Casing schedule: ☒ Steel ☐ Concrete

Thickness	Diameter	From	To
1/4 inches	20" inches	+ 1 feet	20 feet
inches	inches	feet	feet
inches	inches	feet	feet
inches	inches	feet	feet
inches	inches	feet	feet

Was casing drive shoe used? ☐ Yes ☒ No

Was a packer or seal used? ☒ Yes ☐ No

Perforated? ☐ Yes ☒ No

How perforated? ☐ Factory ☐ Knife ☐ Torch

Size of perforation inches by inches

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

Well screen installed? ☐ Yes ☒ No

Manufacturer's name

Type Model No.

Diameter Slot size Set from feet to feet

Diameter Slot size Set from feet to feet

Gravel packed? ☐ Yes ☐ No Size of gravel

Placed from feet to feet

Surface seal depth 20' Material used in seal ☒ Cement grout

☐ Puddling clay ☐ Well cuttings

Sealing procedure used ☐ Slurry pit ☐ Temporary surface casing

☒ Overbore to seal depth

6. LOCATION OF WELL

Sketch map location must agree with written location. (37)

N / W / E

Subdivision Name

Lot No. Block No.

County Gooding

NW¼ NE¼ Sec. 2 T. 6 N/S, R. 14 E/W

7. WATER LEVEL

Static water level 221 feet below land surface

Flowing? ☐ Yes ☒ No G.P.M. flow

Temperature ° F. Quality

Artesian closed-in pressure p.s.i.

Controlled by ☐ Valve ☐ Cap ☐ Plug

8. WELL TEST DATA

☐ Pump ☐ Bailer ☐ Other

Discharge G.P.M.	Draw Down	Hours Pumped

9. LITHOLOGIC LOG

Hole Diam.	Depth From	Depth To	Material	Water Yes	Water No
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	BROWN LAVA		–
"	204	222	red HARD LAVA		–
"	222	246	CINDERS BLACK LOST CUTTING		–
"	246	315	BLACK LAVA HARD		–
"	315	320	CINDERS Lost Cuttings		–

10.

Work started MAR. 5, 1976 finished MAR. 25, 1976

11. DRILLERS CERTIFICATION

Firm Name Elsing Well Drilling No. 31

Address Box 919 Twin Falls Date 3/76

Signed by (Firm Official) Arnold Elsing

and

(Operator) Lloyd Hayden

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

2002

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AFFIDAVIT OF FRANK ASTORQUIA, DATED 7/3/02

EXHIBIT

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B

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

ORDER NO _____

DATE 5-17 1976

DEALER

PUMP ESTIMATE AND ORDER

CUSTOMER Frank Astorquia

S/N 45767

Route _____ Date Desired _____

PUMPING CONDITIONS

Inside Dia. of Well 20"	Lift in Well _____	Capacity 1800 GPM
Depth of Well 310	Lift Above _____ Lbs.	Speed of Pump _____ RPM
Static Water Level 225	Column Friction _____	HP Required _____
Drawdown _____	Total Dynm. Head 248	Allowable Shaft HP _____

Number	DESCRIPTION	LIST PRICE	NET PRICE
1	125 HP MOTOR _ Phase _____ Volt 460 Make _____ RPM		
	{ With / Without } Ratchet _____		
	_____ 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	10WL HEAD _____" Outlet _____ { Water Lub / Oil Lub } _____		
1	16 GAL OILER _____ Volt Solenoid _____		
	_____"X_____" DISCHARGE NIPPLE { TOE / TBE } _____		
1	250' SETTING OF 10" X 2½" X 1½" In _____ Length		
1	12 "BOWLS NK11 Type 5 Stage { Open / Close } Ports { Bronze / Cast Iron } Wear Rings		
	{ Bronze / Cast Iron } Impellers { Oversize / Standard } Shaft Fitted X 2-F.D. 3-G.D. X _____ X _____		
	_____"X_____' SUCTION { TOE / TBE } _____ ; _____ Couplings		
	_____" STRAINER { Bronze / Galvanized } { Screwed / Welded } { Basket / Cone }		
	002 TOTAL		

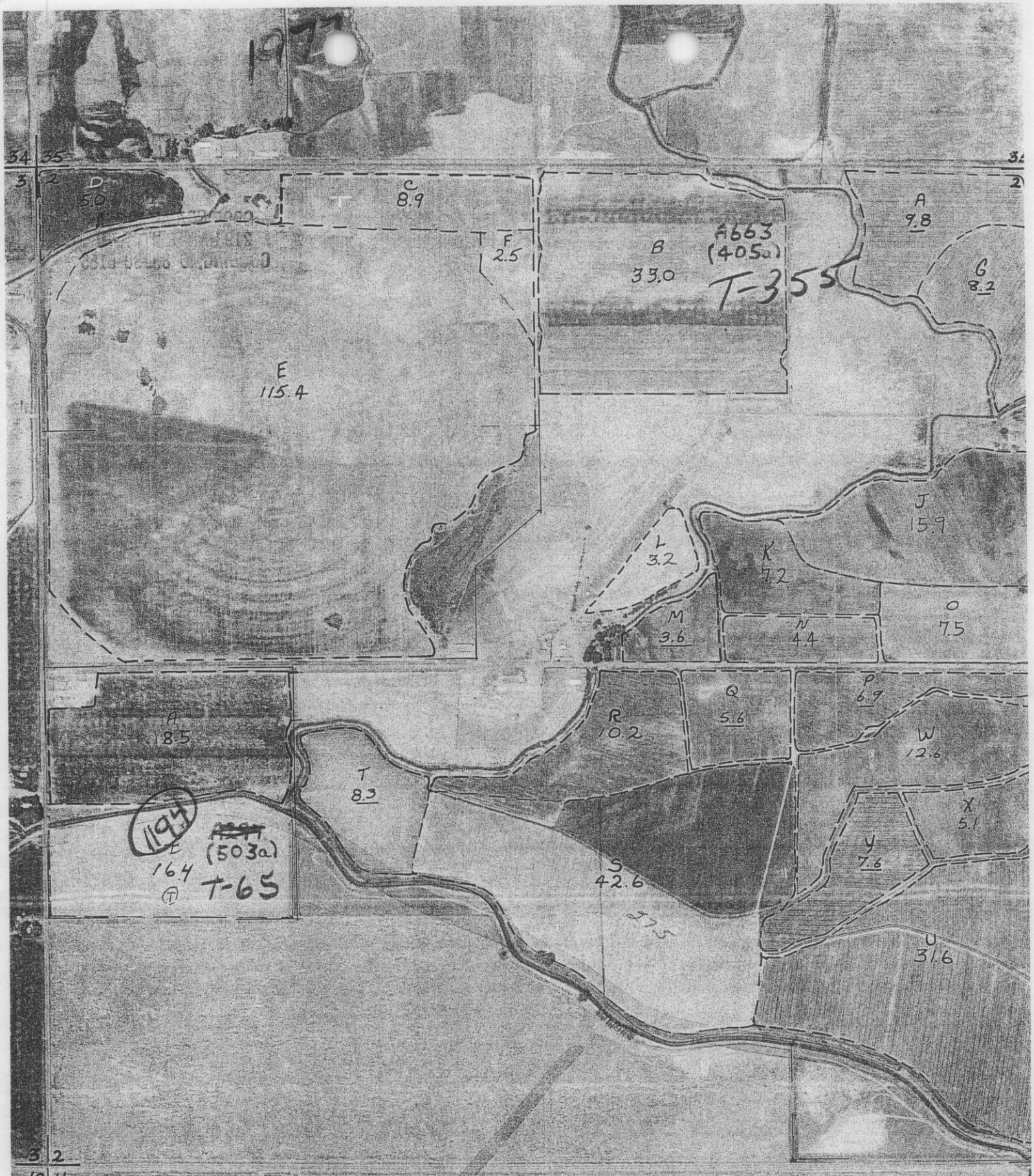
Quoted By _____

000090

AFFIDAVIT OF FRANK ASTORQUIA, DATED 7/3/02

EXHIBIT C

TF-127



MICROFILMED
JUL 16 2002
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EXHIBIT

tabbies

D

AFFIDAVIT OF FRANK ASTORQUIA, DATED 7/3/02



AFFIDAVIT OF FRANK ASPORQUIA, DATED 7/3/02

USDA United States Department of Agriculture
F Service Agency
Gooding/Camas Office
219 University Ave.
Gooding, ID 83330
Phone:
208-934-8472 ext. 2
Fax: 208-934-4327

To Whom It May Concern:

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

Jill V. Moore

Jill Moore
Program Assistant

MICRO

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Form 204
5/78

Identification No. 37-7460

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

REQUEST FOR EXTENSION OF TIME

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

RECEIVED
JAN 7 1981
Department of Water Resources

Frank Astorquie (Name) of Route #2, Gooding (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 Astorquie
(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, 19 81.

L. Glen Saylor
Chief, Operations Bureau

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

000094

EXHIBIT
tabbies
E

AFFIDAVIT OF FRANK ASTORQUIA, DATED 7/3/02

NOTICE

This file has been REPRODUCED from MICROFICHE because :

For Reinstatement

Dale S. Block
Person Recreating File

July 16, 2002
Date

Form 204
5/78

Identification No. 37-7460

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

REQUEST FOR EXTENSION OF TIME

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

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

L. Glen Saxton
Chief, Operations Bureau

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

$15 fee received by [illegible] Date 1-5-81 Receipt # 16750

OLD FILE 000056
REQUEST FOR EXTENSION OF TIME, DATED 12/1/85

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE

STATE OF IDAHO

IN THE MATTER OF CHANGING THE MEASURING DEVICE REQUIREMENT FOR PERMIT NO. 37-7460 } ORDER

WHEREAS, the above numbered permit was approved with the condition that a measuring device of a type approved by the Department be permanently installed and maintained as part of the diverting works; and,

WHEREAS, on July 1, 1978, the Department adopted a new water measurement condition which states: "An access port or other device as specified by the Department shall be installed by the permit holder to provide for the installation of measuring equipment and the determination of the rate of diversion by the Department"; and,

WHEREAS, the former condition required the permit holder to purchase and install a measuring device or hire a professional engineer to certify the rate of diversion; and,

WHEREAS, the measuring device condition effective July 1, 1978, requires less capital expenditure by the permit holder; and,

WHEREAS, to be equitable to holders of permits issued prior to July 1, 1978, the new condition should be retroactive;

NOW THEREFORE, it is hereby ordered that the condition of approval of this permit related to water measurement is hereby changed as follows: "The permit holder shall either install a measuring device or provide a certified measurement by a professional engineer or install an access port or other device as specified by the Department".

Dated this 18th day of August, 1978.

C. STEPHEN ALLRED
Director

OLD FILE
ORDER, DATED 8/18/78

Identification No. _____

Application No. 37-7460

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

APPROVED

APPLICATION FOR PERMIT

To Appropriate the Public Waters of the State of Idaho

(TYPE OR PRINT IN INK)

1. Name of applicant FRANK &/or JOSEPHINE ASTORQUIA 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 Lot 2 NW ¼ of NE ¼ 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 _____ ¼

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

4. Water will be used for the following purposes:

   Amount 6.40cfs (cfs or acre-feet per annum) for Irrigation purpose from April 1 to Nov. 1 (both dates inclusive)

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

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

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 $ 30,000.00 .

8. Description of proposed uses:

   a. If water is not for irrigation:

   (1) Give the place of use of water: _____ ¼ of _____ ¼ 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: _____

OLD FILE
APPLICATION FOR PERMIT DATED 12/5/75

000038

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

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

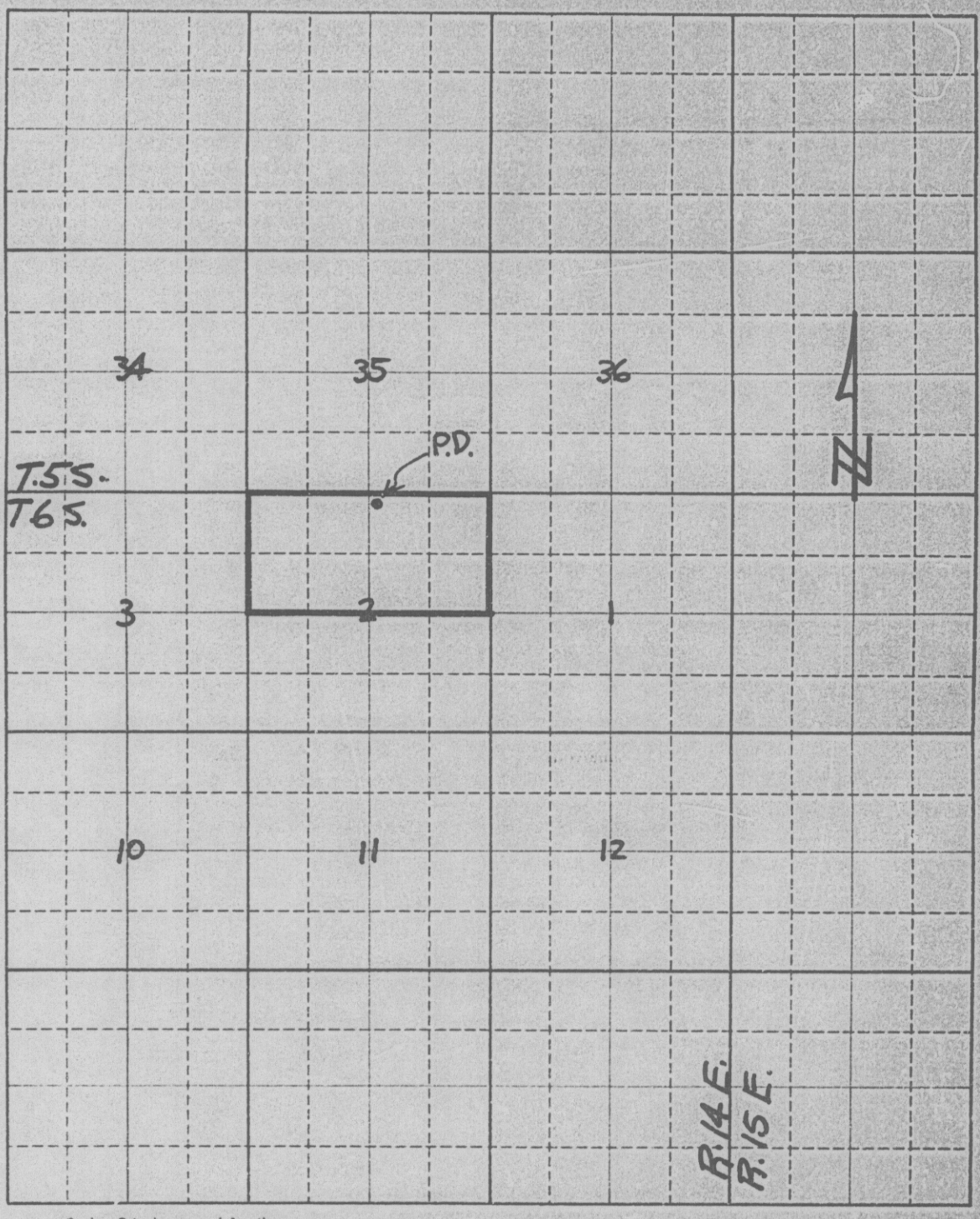
b. Who owns the land to be irrigated or place of use Applicant

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

OLD FILE
APPLICATION FOR A PERMIT, DATED 12/5/75
000059

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



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 Gastineau
(Applicant)

000060

OLD FILE
APPLICATION FOR A PERMIT, DATED 12/5/75

Proposed Priority 10-20-1975

Received by ADM Date 10-20-75 Time 11:40

Preliminary check by DF Fee $ 85.00 #1723

Receipted by CC Date 10-20-75

Publication prepared by CC Date 10-21-75

Published in Gooding County Leader

Publication dates 10-30 & 11-6-75

Publication approved CC Date 12.1.75

Priority reduced to _____ Reason _____

Protests filed by: _____

Copies of protests forwarded by _____

Hearing held by _____ Date _____

Recommended for (approval) denial by RB dr

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.

R. Keith Higginson
Director

000061

OLD FILE
APPLICATION FOR A PERMIT, DATED 12/5/75

NOTICE

This file has been REPRODUCED from MICROFICHE because :

For Reinstatement

Person Recreating File

July 16, 2002
Date

000042

NOTICE RE: MICROFICHE, DATED 7/16/02

I certify that file No. 37-7460 has been reviewed and is ready to be **MICROFILMED** and **DESTROYED.**

File should not be destroyed before 6-6-84
Date

Kay Walker
Signature

6-6-84
Date

OLD FILE CERTIFICATION, DATED 6/6/84

S T A T E O F I D A H O

DEPARTMENT OF WATER RESOURCES

STATEHOUSE
BOISE, IDAHO 83720
(208) 334-4440

ASTORQUIA, FRANK & JOSEPHINE
RT. 2
GOODING, ID 83330

LAPSE NOTICE

JANUARY 04, 1984

DEAR PERMIT HOLDER:

YOU ARE HEREBY NOTIFIED THAT UNDER THE PROVISIONS OF SECTION 42-218A OF THE IDAHO CODE, PERMIT NO. 37-7460 HAS LAPSED. THIS OFFICE DID NOT RECEIVE EITHER AN ACCEPTABLE NOTICE THAT YOU HAVE COMPLETED THE PROJECT (PROOF OF BENEFICIAL USE) BY THE DATE REQUIRED ON YOUR PERMIT OR AN ACCEPTABLE REQUEST FOR AN EXTENSION OF TIME. YOU WERE PROVIDED THE PROPER FORMS IN OUR PROOF DUE NOTICE TO YOU DATED OCTOBER 31, 1983.

YOUR PERMIT CANNOT BE REINSTATED UNLESS YOU SUBMIT THE STATEMENT OF BENEFICIAL USE POSTCARD OR SUBMIT AN EXTENSION OF TIME REQUEST SHOWING REASONABLE CAUSE FOR DELAY. EITHER THE COMPLETED POSTCARD OR THE EXTENSION REQUEST MUST BE RECEIVED BY THIS OFFICE WITHIN SIXTY DAYS OF THE DATE OF THIS LAPSE NOTICE OR THE PERMIT WILL NO LONGER BE OF ANY FORCE OR EFFECT.

A STATEMENT OF BENEFICIAL USE POSTCARD AND A REQUEST FOR EXTENSION OF TIME FORM ARE AGAIN ENCLOSED FOR YOUR USE. PLEASE NOTE THAT A FEE OF $15.00 MUST ACCOMPANY AN EXTENSION OF TIME REQUEST AND THAT ONLY ONE EXTENSION OF TIME CAN BE GRANTED UNLESS THE PROJECT HAS NOT BEEN COMPLETED BECAUSE OF LACK OF A NECESSARY APPROVAL BY A GOVERNMENTAL AGENCY OR BY LITIGATION.

1-25-1984

L. GLEN SAXTON
CHIEF, OPERATIONS BUREAU

ENCLOSURES

LGS:RF

Rita Leach

000044

OLD FILE
LETTER TO ASTORQUIA S, DATED 1/4/84

STATE OF IDAHO

DEPARTMENT OF WATER RESOURCES

STATEHOUSE
BOISE, IDAHO 83720
(208) 334-4440
CERTIFIED MAIL

138132

ASTROQUIA, FRANK & JOSEPHINE
RT. 2
GOODING, ID 83330

PROOF DUE NOTICE

OCTOBER 31, 1983

DEAR PERMIT HOLDER:

ONE OF THE CONDITIONS OF APPROVAL OF YOUR WATER PERMIT NO. 37-7460 WAS THAT PROOF OF THE EXTENT OF YOUR BENEFICIAL USE MUST BE SUBMITTED TO THIS OFFICE ON OR BEFORE JANUARY 01, 1984. (SEE LAST PAGE OF YOUR APPROVED PERMIT OR YOUR LAST APPROVED EXTENSION REQUEST). ENCLOSED IS A POSTCARD WHICH MAY BE USED TO SUBMIT THE REQUIRED PROOF.

IF YOU HAVE NOT FULLY COMPLETED YOUR PROJECT, AND YOU OR A PREVIOUS OWNER OF THIS PERMIT HAVE NOT RECEIVED A PRIOR EXTENSION OF TIME, YOU MAY REQUEST AN EXTENSION OF TIME IF THE DELAY IS FOR REASONABLE CAUSE AS PROVIDED IN SECTION 42-204, IDAHO CODE. IF YOU HAVE BEEN PREVENTED FROM PROCEEDING BY A GOVERNMENTAL AGENCY OR BY LITIGATION, MORE THAN ONE EXTENSION OF TIME CAN BE GRANTED. AN EXTENSION OF TIME REQUEST FORM IS ENCLOSED FOR YOUR CONVENIENCE.

EITHER THE BENEFICIAL USE POSTCARD OR A REQUEST FOR AN EXTENSION OF TIME MUST BE RECEIVED BY THIS DEPARTMENT ON OR BEFORE THE ABOVE DESCRIBED PROOF DUE DATE. IF NEITHER IS RECEIVED, THE DEPARTMENT WILL SEND YOU A LAPSE NOTICE. WITHIN SIXTY (60) DAYS OF THE MAILING OF THE LAPSE NOTICE, THE PERMIT WILL NO LONGER BE OF ANY FORCE NOR EFFECT.

SINCERELY,

RITA FLECK
SECRETARY/RECORDS MANAGER

ENCLOSURES

000045

OLD FILE
LETTER TO ASTORQUIA S, DATED 10/31/83

S T A T E O F I D A H O

DEPARTMENT OF WATER RESOURCES

STATEHOUSE
BOISE, IDAHO 83720
(208) 334-4440

ASTORQUIA, FRANK & JOSEPHINE
RT. 2
GOODING, ID 83330

DECEMBER 04, 1980

DEAR PERMIT HOLDER:

YOU ARE HEREBY NOTIFIED THAT UNDER THE PROVISIONS OF SECTION 42-218A OF THE IDAHO CODE, PERMIT NO. 37-7460 HAS LAPSED SINCE YOU HAVE NOT NOTIFIED US THAT YOU HAVE COMPLETED THE PROJECT BY THE DATE REQUIRED ON YOUR PERMIT. YOU WERE PROVIDED FORMS FOR THAT PURPOSE IN OUR NOTICE TO YOU DATED SEPTEMBER 30, 1980.

YOUR PERMIT CANNOT BE REINSTATED UNLESS YOU SUBMIT THE STATEMENT OF BENEFICIAL USE POSTCARD, ENCLOSED, OR SHOW OTHER REASONABLE CAUSE WHY THE PERMIT SHOULD BE REINSTATED WITHIN 60 DAYS FROM THE DATE OF THIS LAPSE NOTICE.

C. STEPHEN ALLRED
DIRECTOR

ENCLOSURE

12-17-80

OLD FILE
LETTER TO ASTORQUIA'S, DATED 12/04/80

00035

STATE OF IDAHO

DEPARTMENT OF WATER RESOURCES

STATEHOUSE
BOISE, IDAHO 83720
(208) 334-4440
CERTIFIED MAIL

ASTORQUIA, FRANK & GOICOECHEA
ET. Z
GOODING, ID 83330

37-7460

SEPTEMBER 30, 1980

DEAR PERMIT HOLDER:

ONE OF THE CONDITIONS OF APPROVAL OF YOUR WATER PERMIT NO. 37-7460 WAS THAT EVIDENCE OF THE EXTENT OF DEVELOPMENT MUST BE SUBMITTED TO THIS OFFICE ON OR BEFORE DECEMBER 01, 1980. (SEE LAST PAGE OF YOUR APPROVED PERMIT). ENCLOSED IS A POST CARD WHICH MAY BE USED TO SUBMIT THE REQUIRED PROOF OF BENEFICIAL USE.

IF YOU HAVE NOT FULLY COMPLETED YOUR PROJECT, AND YOU HAVE NOT PREVIOUSLY RECEIVED AN EXTENSION OF TIME, [illegible] PROVIDED THE DELAY IS FOR REASONABLE CAUSE AS INDICATED IN SECTION 42-204, IDAHO CODE, AMENDED. IF YOU HAVE BEEN PREVENTED FROM PROCEEDING BY A GOVERNMENTAL AGENCY OR BY LITIGATION, MORE THAN ONE EXTENSION OF TIME CAN BE GRANTED. A REQUEST FOR EXTENSION OF TIME FORM IS ENCLOSED FOR YOUR CONVENIENCE. PLEASE NOTE THAT A FEE OF $15.00 MUST BE SUBMITTED WITH THIS FORM.

EITHER THE BENEFICIAL USE POST CARD OR A REQUEST FOR AN EXTENSION OF TIME MUST BE RECIEVED BY THIS DEPARTMENT ON OR BEFORE THE ABOVE MENTIONED DATE, OTHERWISE, THE PERMIT WILL LAPSE AND BE OF NO FURTHER FORCE OR EFFECT WITHIN 60 DAYS.

SINCERELY,

RITA FLECK
SR. SECRETARY

ENCLOSURES

OLD FILE
LETTER TO ASTORQUIA'S, DATED 9/30/80

00037

State of Idaho
DEPARTMENT OF WATER RESOURCES
STATE OFFICE, 450 W. State Street, Boise, Idaho

JOHN V. EVANS
Governor

C. STEPHEN ALLRED
Director

Mailing address:
Statehouse
Boise, Idaho 83720
(208) 334-4440

May 19, 1980

Dear Wateruser:

The enclosed Order changes the measuring device condition of approval on your water right permit.

The changed condition is less restrictive and provides you the option to install an access port or have your system measured and certified by a professional engineer. Instructions for access port installation are also enclosed.

If you have questions regarding this matter, please contact the Regional Office nearest to you.

Sincerely,

David R. Tuthill Jr.

DAVID R. TUTHILL JR., P.E.
Supervisor, Water Allocations Section

DRT:jg

Enclosures

Northern Region Office
Rt. #5 Box 203, Government Way
Coeur d'Alene, Idaho 83814

Eastern Region Office
1515 Lincoln Road
Idaho Falls, Idaho 83401

Southern Region Office
1041 Blue Lake Boulevard North
Twin Falls, Idaho 83301

Western Region Office
92 South Cole Road
Boise, Idaho 83705

OLD FILE LETTER DATED 5/19/80

0000-13

January 12, 1980

Frank Astorquia
Route 2
Gooding, ID 83330

Dear Mr. Astorquia:

Re: Permit No. 37-7460

Enclosed is a copy of the approved request for extension of time. The permit has been reinstated with an advance in priority to November 26, 1975 and the time within which to submit the statement of beneficial use is extended to January 1, 1984.

The approval of the extension of time is based upon the moratorium by Idaho Power Company against new power hookups. In order for the Department to consider any future requests for an extension of time due to the moratorium, it will be necessary for you to submit evidence together with your request that you have applied to Idaho Power Company and have been denied a power hookup.

Sincerely,

RITA FLECK
Sr. Secretary

Enclosure

OLD FILE
LETTER TO FRANK ASTORQUIA, DATED 1/12/80
000013

STATE OF IDAHO

DEPARTMENT OF WATER RESOURCES

STATEHOUSE
BOISE, IDAHO 83720
(208) 334-4440

ASTRODQUIA, FRANK & JOSEPHINE
RT. 2
GOODING, ID 83330

DECEMBER 04, 1980

DEAR PERMIT HOLDER:

YOU ARE HEREBY NOTIFIED THAT UNDER THE PROVISIONS OF SECTION 42-218A OF THE IDAHO CODE, PERMIT NO. 37-7460 HAS LAPSED SINCE YOU HAVE NOT NOTIFIED US THAT YOU HAVE COMPLETED THE PROJECT BY THE DATE REQUIRED ON YOUR PERMIT. YOU WERE PROVIDED FORMS FOR THAT PURPOSE IN OUR NOTICE TO YOU DATED SEPTEMBER 30, 1980.

YOUR PERMIT CANNOT BE REINSTATED UNLESS YOU SUBMIT THE STATEMENT OF BENEFICIAL USE POSTCARD, ENCLOSED, OR SHOW OTHER REASONABLE CAUSE WHY THE PERMIT SHOULD BE REINSTATED WITHIN 60 DAYS FROM THE DATE OF THIS LAPSE NOTICE.

C. STEPHEN ALLRED
DIRECTOR

ENCLOSURE

[illegible] 12-17-80

OLD FILE
LETTER TO ASTORQUIA'S, DATED 12/04/80

000046

STATE OF IDAHO

DEPARTMENT OF WATER RESOURCES

STATEHOUSE
BOISE, IDAHO 83720
(208) 334-4440
CERTIFIED MAIL

ASTEQUIA, FRANK & JOSEPHINE
RT. 2
COOLING, ID 83330

37B627

SEPTEMBER 30, 1980

DEAR PERMIT HOLDER:

ONE OF THE CONDITIONS OF APPROVAL OF YOUR WATER PERMIT NO. 37-7460 WAS THAT EVIDENCE OF THE EXTENT OF DEVELOPMENT MUST BE SUBMITTED TO THIS OFFICE ON OR BEFORE DECEMBER 01, 1980. (SEE LAST PAGE OF YOUR APPROVED PERMIT). ENCLOSED IS A POST CARD WHICH MAY BE USED TO SUBMIT THE REQUIRED PROOF OF BENEFICIAL USE.

IF YOU HAVE NOT FULLY COMPLETED YOUR PROJECT, AND YOU HAVE NOT PREVIOUSLY RECEIVED AN EXTENSION OF TIME, YOU MAY REQUEST AN EXTENSION OF TIME PROVIDED THE DELAY IS FOR REASONABLE CAUSE AS INDICATED IN SECTION 42-204, IDAHO CODE, AMENDED. IF YOU HAVE BEEN PREVENTED FROM PROCEEDING BY A GOVERNMENTAL AGENCY OR BY LITIGATION, MORE THAN ONE EXTENSION OF TIME CAN BE GRANTED. A REQUEST FOR EXTENSION OF TIME FORM IS ENCLOSED FOR YOUR CONVENIENCE. PLEASE NOTE THAT A FEE OF $15.00 MUST BE SUBMITTED WITH THIS FORM.

EITHER THE BENEFICIAL USE POST CARD OR A REQUEST FOR AN EXTENSION OF TIME MUST BE RECIEVED BY THIS DEPARTMENT ON OR BEFORE THE ABOVE MENTIONED DATE, OTHERWISE, THE PERMIT WILL LAPSE AND BE OF NO FURTHER FORCE OR EFFECT WITHIN 60 DAYS.

SINCERELY,

RITA FLECK
SR. SECRETARY

ENCLOSURES

OLD FILE
LETTER TO ASTORQUIA'S, DATED 9/30/80

STATE OF IDAHO

DEPARTMENT OF WATER RESOURCES

STATEHOUSE
BOISE, IDAHO 83720
(208) 334-4440
CERTIFIED MAIL

ASTORQUIA, FRANK & JOSEPHINE
RT. 2
COEUR D'ALENE, ID 83814

37-7460

SEPTEMBER 30, 1980

DEAR PERMIT HOLDER:

ONE OF THE CONDITIONS OF APPROVAL OF YOUR WATER PERMIT NO. 37-7460 WAS THAT EVIDENCE OF THE EXTENT OF DEVELOPMENT MUST BE SUBMITTED TO THIS OFFICE ON OR BEFORE DECEMBER 01, 1980. (SEE LAST PAGE OF YOUR APPROVED PERMIT). ENCLOSED IS A POST CARD WHICH MAY BE USED TO SUBMIT THE REQUIRED PROOF OF BENEFICIAL USE.

IF YOU HAVE NOT FULLY COMPLETED YOUR PROJECT, AND YOU HAVE NOT PREVIOUSLY RECEIVED AN EXTENSION OF TIME, YOU MAY REQUEST A EXTENSION OF TIME PROVIDED THE DELAY IS FOR REASONABLE CAUSE AS INDICATED IN SECTION 42-204, IDAHO CODE, AMENDED. IF YOU HAVE BEEN PREVENTED FROM PROCEEDING BY A GOVERNMENTAL AGENCY OR BY LITIGATION, MORE THAN ONE EXTENSION OF TIME CAN BE GRANTED. A REQUEST FOR EXTENSION OF TIME FORM IS ENCLOSED FOR YOUR CONVENIENCE. PLEASE NOTE THAT A FEE OF $15.00 MUST BE SUBMITTED WITH THIS FORM.

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SINCERELY,

RITA FLECK
SR. SECRETARY

ENCLOSURES

OLD FILE
LETTER TO ASTORQUIA'S, DATED 9/30/80

State of Idaho
DEPARTMENT OF WATER RESOURCES
STATE OFFICE, 450 W. State Street, Boise, Idaho

JOHN V. EVANS
Governor

C. STEPHEN ALLRED
Director

Mailing address:
Statehouse
Boise, Idaho 83720
(208) 334-4440

May 19, 1980

Dear Wateruser:

The enclosed Order changes the measuring device condition of approval on your water right permit.

The changed condition is less restrictive and provides you the option to install an access port or have your system measured and certified by a professional engineer. Instructions for access port installation are also enclosed.

If you have questions regarding this matter, please contact the Regional Office nearest to you.

Sincerely,

David R. Tuthill Jr.

DAVID R. TUTHILL JR., P.E.
Supervisor, Water Allocations Section

DRT:jg

Enclosures

Northern Region Office
Rt. #5 Box 203, Government Way
Coeur d'Alene, Idaho 83814

Eastern Region Office
1515 Lincoln Road
Idaho Falls, Idaho 83401

Southern Region Office
1041 Blue Lake Boulevard North
Twin Falls, Idaho 83301

Western Region Office
92 South Cole Road
Boise, Idaho 83705

OLD FILE LETTER DATED 5/19/80

000048

January 12, 1980

Frank Astorquia
Route 2
Gooding, ID 83330

Dear Mr. Astorquia:

Re: Permit No. 37-7460

Enclosed is a copy of the approved request for extension of time. The permit has been reinstated with an advance in priority to November 26, 1975 and the time within which to submit the statement of beneficial use is extended to January 1, 1984.

The approval of the extension of time is based upon the moratorium by Idaho Power Company against new power hookups. In order for the Department to consider any future requests for an extension of time due to the moratorium, it will be necessary for you to submit evidence together with your request that you have applied to Idaho Power Company and have been denied a power hookup.

Sincerely,

RITA FLECK
Sr. Secretary

Enclosure

OLD FILE
LETTER TO FRANK ASTORQUIA, DATED 1/12/80

December 9, 1975

Re: Permit No. 37-7460

Frank &/or Josephine Astorquia
Route 2
Gooding, ID 83330

Dear Mr. & Mrs. Astorquia:

Enclosed is a copy of your approved Application for Permit No. 37-7460. We direct your attention to the conditions of approval as listed on the fourth page.

Be sure to note that a special condition requiring you to install and maintain a measuring device at your point of diversion has been placed upon your permit. We are enclosing a letter describing different types of measuring devices accepted by this office.

Sincerely,

BOBBY D. FLEENOR
Chief, Water Rights

BDF:jfr

Enclosures

OLD FILE
LETTER TO ASTORQUIA S DATED 12/9/75

GALLEY PROOF LEGAL — le

NOTICE OF APPLICATION
FOR WATER PERMIT

Notice is hereby given that F R A N K &/OR JOSEPHINE ASTORQUIA Route #2, Gooding, Idaho has on 10-20-75 submitted Application No. 37-7460 for a permit to appropriate 6.40 cubic feet per second of water from Groundwater by means of well, pump, sprinkler lines within Lot 2, NW¼NE¼, Sec. 2, Twp. 6S, Rge. 14E. B.M. Gooding County to be used from April 1 - November 1 for Irrigation of 320 acres within the N½, Sec. 2, Twp. 6S, Rge. 14E, B.M.

If issued, this permit will be subject to all prior water rights. Protests against the granting of the permit must be filed with the Idaho Department of Water Resources, 1041 Blue Lakes Blvd., North, Twin Falls, Idaho, 83301 on or before November 17, 1975.

R. KEITH HIGGINSON
Director

PUB: 10-30; 11-6

OLD FILE
NEWSPAPER NOTICE DATED 10/30/75

000051

AFFIDAVIT OF PUBLICATION

State of Idaho, } SS.
County of Gooding }

ROBERT CROMPTON, being first duly sworn, deposes and says that he is the printer (publisher) of the Gooding County Leader, a newspaper published every week in Gooding, County of Gooding, State of Idaho, that said newspaper has been continuously and uninterruptedly published for a period of seventy-eight consecutive weeks prior to the first publication of the annexed notice, and is a newspaper qualified to publish legal notices as provided by act of the 1919 session of the legislature of the State of Idaho, known as House Bill 145; that the annexed advertisement was published once each week for 2 consecutive issues in said newspaper proper and not in a supplement; that the date of the first publication of said advertisement was on the 30 day of October, 19 75, and the date of the last publication was on the 6 day of November, 19 75.

Robert Crompton

Subscribed and sworn to before me this 26 day of November, 19 75.
(SEAL)

Carmen Ussia
NOTARY PUBLIC

GOODING COUNTY LEADER
Gooding, Idaho

COST OF PUBLICATION

Number of Lines in Notice	31	32
Number of Insertions	2	2
Lines tabular at 315c		
32 Lines straight at 32 21c		6.72
31 Subsequent lines at 32 15c		4.80
TOTAL COST		11.52

COPY OF NOTICE

NOTICE OF APPLICATION FOR WATER PERMIT

Notice is hereby given that FRANK &/OR JOSEPHINE ASTORQUIA Route 2, Gooding, Idaho has on 10-20-75 submitted Application No. 37-7490 for a permit to appropriate 0.40 cubic feet per second of water from Groundwater by means of well, pump, sprinkler lines within Lot 2 NW¼NE¼ Sec. 2, Twp. 6S, Rge. 14E, B.M. Gooding County to be used from April 1 to November 1 for irrigation of 37 acres within the N½ Sec. 2, Twp. 6S, Rge. 14E, B.M.

If issued, this permit will be subject to all prior water rights. Protests against the granting of the permit must be filed with the Idaho Department of Water Resources, 1041 Blue Lakes Blvd., North, Twin Falls, Idaho, 83301 on or before November 17, 1975.

R. KEITH HIGGINSON
Director
PUB: 10-30; 11-6

O.K. E 12-1-75

RECEIVED
NOV 28 1975
Department of Water Resources
Southern District Office

PUBLICATION RATES
(Idaho Code, Rev. Statutes 1971)

7 pt. per line, straight	21c
7 pt. per line, tabular	315c
7 pt. per line, successive insertions	15c

10182

No 614

000053

OLD FILE
AFFIDAVIT OF PUBLICATION, DATED 11/26/75

NOTICE OF APPLICATION FOR WATER PERMIT

Notice is hereby given that FRANK &/or JOSEPHINE ASTOROUIA

Route #2, Gooding, Idaho

has on 10-20-75 submitted Application No. 37-7460

for a permit to appropriate 6.40 cubic feet per second

of water from Groundwater

by means of well, pump, sprinkler lines.

within Lot 2, NW¼NE¼, Sec. 2, Twp. 6S, Rge. 14E, B.M. Gooding County

to be used from April 1 - November 1

for Irrigation of 320 acres

within the N½, Sec. 2, Twp. 6S, Rge. 14E, B.M.

If issued, this permit will be subject to all prior water rights. Protests against the granting of the permit must be filed with the Idaho Department of Water Resources, 1041 Blue Lakes Blvd., North, Twin Falls, Idaho, 83301 on or before November 17,1975.

R. KEITH HIGGINSON

Director

Published in the Gooding County Leader

on 10-30 and 11-6-75

OLD FILE
NOTICE OF APPLICATION FOR WATER PERMIT, DATED 11 / 17 / 75

October 21, 1975

RE: Application For Permit No. 37-7460 - Frank &/or Josephine Astorquia

Gooding County Leader
Box 56
Gooding, Idaho 83330

Gentlemen:

Enclosed you will find a legal notice which we wish to have published once a week for two consecutive weekly issues of your newspaper. We have inserted the publication dates allowing ample time for you to submit us a galley proof for review before publication.

After sending us a galley proof, proceed with the publication on the dates we have inserted, assuming the notice is correct. If we have any corrections, we will notify you before the first publication. If you cannot publish the notice on the proposed dates, please contact us immediately.

In order to receive payment, an affidavit of publication must be submitted to the Department along with the publication bill.

Sincerely,

MIKE STEELE
Southern District Supervisor

MS:cc

Bill submitted: 12.4.75 cc

000052

OLD FILE
LETTER RE: APPLICATION FOR PERMIT, DATED 10/21/75